



Powers for a purpose - Strengthening Accountability and Empowering People

Scottish Labour Devolution Commission

March 2014

Powers for a Purpose

Strengthening Accountability and Empowering People

Foreword

Scottish Labour is a party of both devolution and the union. For over 100 years, Labour has led the argument for Scottish devolution within the union, and it is a cause we have advanced out of deep-seated conviction. That is why it was a Labour Government which set up the Scottish Parliament, delivering on what John Smith memorably called “unfinished business”.

In making the case for devolution, Labour has brought enhanced democratic accountability for decisions affecting the people of Scotland. Our desire has always been a simple one: meeting the Scottish people’s legitimate desire for more powers and enhanced accountability within a strengthened union.

To lead in the twenty-first century, to preserve our values and advance the people’s interests, Scotland needs the United Kingdom and the United Kingdom needs Scotland. As a successful multinational state we have shared over 300 years of history in a joint endeavour for economic security and social justice. The question for us today is how we remodel the union to preserve the gains we have made and lay the foundations for further achievements in the twenty-first century.

The UK is a union with economic, social, and political dimensions. All three are connected. Without political union it is not possible to have the economic integration which promotes jobs, growth and economic security. We as a Labour Party are committed to the sharing of resources and risks which allows social union across the whole UK – we believe in social solidarity that gives security for pensioners and others who have to rely on social services wherever they are.

The question we have sought to address is: how can we strengthen the present constitutional arrangements to serve Scotland better, meeting the aspirations of the Scottish people for a strong Scottish Parliament, and at the same time strengthening the United Kingdom?

The Scotland Act 2012 represents a major step in this direction, and will be the next development in Scottish devolution. It is clear that the Scottish people do not want independence, and I firmly believe this will be proven – once and for all – in the referendum later this year. We do not, of course, take this outcome for granted, and we will make every effort to ensure that Scotland remains an integral part of the UK with a powerful Scottish Parliament.

I came into politics to tear down barriers – not erect borders. Politics to me has never been about abstract debates: it has always been about how to make people's lives better. I believe we can achieve more working together than we can ever do alone. As people, we are not fixed in isolation. We are part of a family, a local community, and a wider society. We have multiple identities: I am British, a Scot, a Hebridean, a Glaswegian – I am proud of all.

It was never the intention of devolution to devolve power to the Scottish Parliament, only to see it accumulate powers upwards. This has got lost in the mists of a political debate dominated by the issue of separation. Empowering communities means trusting people, and we set out in this report what I believe is an ambitious agenda for reinvigorating local democracy.

The members of the Commission have made a substantial contribution to the production of this final report. I would like to thank them, as well as the Commission's Academic Advisory Group and Secretariat, for their expertise, endeavour and commitment in taking this important piece of work forward.

I am very grateful to those who have given evidence, and engaged with us as we considered the issues. Our final report, I believe, provides the basis on how we can remodel the union for the twenty-first century, strengthen devolution, increase accountability and better meet people's needs.

Johann Lamont MSP – Leader, Scottish Labour

March 2014

THE COMMISSION

- Sarah Boyack MSP (Shadow Cabinet Secretary for Local Government and Planning)
- Jackson Cullinane (Regional Political Officer and Regional Coordinating Officer, Unite and Chair, Scottish Labour)
- Margaret Curran MP (Shadow Secretary of State for Scotland)
- Victoria Jamieson (Former Chair, Scottish Labour)
- Johann Lamont MSP (Leader, Scottish Labour)
- Gregg McClymont MP (Shadow Minister for Work and Pensions)
- Duncan McNeil MSP (MSP for Greenock and Inverclyde)
- Anas Sarwar MP (Deputy Leader, Scottish Labour)
- Catherine Stihler MEP (MEP for Scotland)
- Councillor Willie Young (Aberdeen City Council)

ACADEMIC ADVISORY GROUP

The Commission was supported by an Academic Advisory Panel that advised it on all aspects of its work.

- Professor Jim Gallagher CB FRSE (Nuffield College, Oxford)
- Professor Arthur Midwinter (University of Edinburgh)

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Our Proposals

The sharing union

Scottish Labour is a party of devolution and the union.

The UK is a “sharing union”, with economic, social, and political aspects, in which risks and rewards are collectively pooled. These three aspects are interconnected: political union means we can have an integrated economy and a single currency. It also means we can share resources to permit social solidarity. The justification for each of these parts of the union is to a certain extent instrumental – what is in the interests of Scotland. However, it is also principled – what is right for Scotland and the whole UK. It is also, as Gordon Brown has suggested, founded on a moral purpose – that no matter where you reside and what your background is, every citizen enjoys the dignity of not just equal civil and political rights, but the same basic social and economic rights. Because we pool and share our resources, the moral purpose of the union is to deliver opportunity and security for all UK citizens irrespective of race, gender or religion – or location.

In this union, we pool and share resources to ensure hard-working people, pensioners and those in need have equal economic, social and political rights throughout the entire UK. This is an idea – founded on solidarity, community and fairness – that is much greater than any notion of creating an independent state.

This sharing union is incompatible with the SNP’s vision of independence. The SNP has attempted to adopt the language of social union, but their conception of what this entails is so shallow as to be all but meaningless. They present the social union as resting only on ties of history, culture, family and friendship. In contrast, our belief in social union is more active than that. It means real social solidarity based on sharing of resources to guarantee common standards of welfare for all.

Without economic and political union, a genuine social union is all but impossible. Far more likely is a race to the bottom on tax and workers’ rights, ultimately leading to the erosion of welfare and pensions. The sharing union – underpinned by political union,

economic and social union – is the ultimate safeguard and guarantor of the Welfare State.

We believe that the model of asymmetrical devolution, established in 1999, works well for the UK and the nations within it. In our view, devolution should be strengthened, but only in ways which make the union stronger too. The UK sharing union has always recognised historical and national distinctiveness, as well as adapting to changing political circumstances.

In our judgement, the UK sharing union has to retain the combination of economic integration and social solidarity that creates both the domestic market and a well-functioning social market. Subject to that, we take the view that the preference should be for home rule for Scotland, and that the Scottish Parliament ought to be funded by an appropriate balance of shared UK taxes, which give effect to social solidarity, and its own tax resources, to empower it and strengthen its accountability.

The key to the modern union lies in its twentieth century innovation – the decision to pool and share risks and resources across the whole of the UK to ensure our common welfare and decent standards of life. At the heart of the pooling and sharing of resources is a set of path-breaking decisions that were cemented by changes throughout the 20th century. Some were as recent as the Labour Government of 1997-2010. Often inspired by Scottish leaders, we acted together to ensure common UK-wide pensions, common UK social insurance, common UK benefits, a common UK minimum wage, and a UK system of equalising resources, so that everyone irrespective of where they stay benefits from fundamental political, social and economic rights.

The union is defined by much more than the original Act of Union: it is a form of social justice between the nations. Every day, in the UK, we pool risks and share our resources. And it is because of this that average income per head in Scotland has been raised substantially so that it is little different from that in England. Thus, while in Europe the average income of the poorest country is five times smaller than that of the richest country, and in the USA the income of the poorest state is 50 per cent lower than that of the richest, the differences between Scotland and England have narrowed to vanishing point.

The demand for social justice between the nations meant we rid ourselves of the Scottish Poor Law and replaced it with UK wide unemployment benefits. It meant we created a universal right to health care across the UK in the 1940s, and more recently in the 1990s established a UK wide minimum wage and tax credits that prevented a race to the bottom between the nations and regions within the UK.

Powers to serve Scotland

For the United Kingdom to be an effective union, it is critical that certain core matters remain reserved to the UK Parliament. Those which are not should be devolved to the Scottish Parliament. Essential reserved matters include:

- Financial and economic matters – including monetary policy, the currency, regulation, debt management and employment law. Without these, we cannot have a single economy.
- Foreign affairs (including international development) and defence, both of which are central to what defines a nation state.
- The core of the Welfare State – pensions and the majority of cash benefits. These allow the social solidarity that helps bind the UK together.
- The constitution.

Other issues which the Commission has reviewed and concluded should remain reserved are:

- Immigration.
- Drugs, drug trafficking and related laws.
- Betting, gaming and lotteries.
- Broadcasting.
- The civil service.
- Abortion and analogous issues.

There are, however, areas where we believe there is significant scope to strengthen the powers of the Scottish Parliament. In addition to our proposals on tax, welfare and other matters detailed later, we take the view that:

- The Scottish Parliament is a permanent feature of the UK constitution and that legal provision should be made to reflect the political reality that the Scottish Parliament is indissoluble and permanently entrenched in the UK constitution. We also recommend that the “Sewel convention” should be given a statutory basis. This should be enshrined in law to give effect to the convention that the UK Parliament regards the right of the Scottish Parliament to legislate for the matters it properly controls, and that its powers cannot be changed without its consent.
- In addition, the Scottish Parliament should have administrative control over its own electoral system, as it has for Scottish local government elections, with the UK Parliament remaining responsible for UK General Elections and European Elections.

Partnership arrangements

Partnership arrangements between Parliaments and Governments whose responsibilities will inevitably overlap should be established, so that they work together for the common good, safeguarding civil and political rights, and promoting social and economic rights such as welfare and full employment. There is a strong case for giving partnership arrangements a legal existence, in the form of statutory obligations on both administrations to co-operate in the public interest, or through the creation of a formal Intergovernmental Council or its equivalent with the duty to hold regular meetings.

Creating a fairer, progressive and more accountable tax system

In many respects, the key issue in relation to further devolution is how the Scottish Parliament should be funded. At the moment, it has very wide spending powers but

little tax responsibility. This will change in 2016 with the partial devolution of income tax. In our considered view, there is indeed scope to go further on tax devolution, although this must always be balanced by UK grant, so that tax revenues are shared across the UK to ensure a decent level of public services and key social rights across the UK on an equitable basis. This too gives effect to social solidarity. Setting the right balance between devolved taxation and central UK support is more a matter of judgement rather than precise arithmetic. It is right that UK resources should be sufficient to secure key UK social rights such as health and education. Since health and school education consume over half the Scottish Budget that suggests a figure of roughly 60 per cent in grant. To provide the remaining resources, as we argued in our interim report, there is scope to enhance the autonomy and accountability of the Scottish Parliament through an extension of tax powers.

Our interim report initiated a debate on the widest possible options for tax devolution. We received evidence for the case for more devolution, but also on the risks of tax competition within a union based on sharing, and the challenges of tax variation for issues like pensions. In framing our recommendations, we have been driven throughout by the objective of creating a fairer and more accountable tax system in Scotland, as well as maintaining the political, economic and social unions we strongly believe in. Following rigorous examination of the relative merits of devolving each tax, we put forward the following recommendations:

- Labour will give the Scottish Parliament the power to raise around £2 billion more in revenues beyond the recent Scotland Act, so that it raises about 40 per cent of its budget from its own resources.
- We will do this by widening the variation in income tax in the Scotland Act by half from 10p to 15p.
- This will mean that three-quarters of basic rate income tax in Scotland will be under the control of the Scottish Parliament.
- The Scotland Act enables the Scottish Parliament to increase or decrease income tax rates in Scotland. In addition to extending this power, we will also introduce new Scottish Progressive Rates of Income Tax, so that the Scottish Parliament can increase the rates of tax in the higher and additional bands. For

the first time, the Scottish Parliament will be able to alter both the level of tax and the progressivity of the tax system, but without the risk that a Scottish Government could force tax competition within the UK by cutting only the top rates, to the detriment of public services. Labour in the Scottish Parliament would be able to use these powers if a UK Government did not set fair taxes at these levels.

- Our interim report considered whether there was scope for devolution of air passenger duty, subject particularly to EU rules. We received a number of considered representations, and continue to note that departures from Highlands and Islands airports are already exempt from this tax. Given the pressure to reduce this tax from airlines and others and the risk of tax competition which would be created, we are not now convinced that devolution should be progressed until further consideration is given to the environmental impact and how else this tax might be reformed.
- We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved. However we do support, in principle, a derogation to allow a lower rate of fuel duty to be charged in remote rural areas of the Highlands and Islands.
- As we made clear in our interim report, the Barnett formula should remain as the funding mechanism for public services in Scotland. Under our proposal, as is the case under the Scotland Act, the Barnett grant will be reduced to take account of the fact that the Scottish Parliament will have a revenue stream of its own. As a result the Scottish Parliament will be funded partly by grant calculated under the Barnett formula and partly by its own resources – principally Scottish income tax payers.

Our proposal will ensure the appropriate balance of fairness, accountability and efficiency, empowering the Scottish Parliament to develop policies that promote greater fairness in the tax system, a more just society and sustainable economic growth.

Ensuring fairness to people at work, when they are most in need and in the marketplace

We strongly support the continuation of the comprehensive UK Welfare State, with pensions and cash benefits distributed largely on the same basis across the country, especially those benefits which people have contributed to through national insurance. We take this view because social union is central to the very idea of the sharing union, which is about how we pool resources to safeguard the common entitlements of citizenship enjoyed by everyone across the UK.

There is, however, scope to increase the powers of the Scottish Parliament on benefits more closely related to devolved services. The most obvious example in this respect is Housing Benefit, which is linked to devolved responsibility for housing and homelessness in Scotland, and Attendance Allowance, which exists to help the elderly with the additional costs they may incur, and which has obvious links with the devolved health and social care agenda.

In the course of our work, we also examined the possibilities of devolution in the currently reserved matters of health & safety, employment, equalities and consumer education, advice information and advocacy.

Our approach, in considering all of the issues involved, has been informed by the objective of how we can best protect people at work, when in need and in the marketplace.

Certain key benefits, notably the old-age pension, are related to national insurance contributions. These key elements of the social union should remain reserved: the basic state pension, the additional state pension, the contributory element of jobseeker's allowance, the contributory elements of employment and support allowance, maternity allowance, bereavement benefits and incapacity benefit. There is an overriding argument for reserving other, explicitly redistributive but non-contributory benefits, such as the non-contributory elements of jobseeker's allowance, the non-contributory elements of employment and support allowance, income support and pension credit. Our recommendations are:

- We are in favour of devolving Housing Benefit. This is the largest single benefit paid in Scotland after the state pension – amounting to £1.7 billion a year. We will use this power to abolish the Bedroom Tax, ensure secure funding for the provision of social housing and reduce abuse by unscrupulous private landlords.
- We will devolve Attendance Allowance – amounting to nearly half a billion pounds a year. The funding would be transferred to the Scottish Budget and appropriately updated in future.
- We believe in the need to establish a Scottish Health & Safety Executive to set enforcement priorities, goals and objectives in Scotland. This body would still be required to operate within the reserved health & safety framework and regulations, but it would be for the body – reporting to the Scottish Government, scrutinised by the Scottish Parliament and accessing funding provided by that Parliament – to set and achieve the health & safety objectives of most relevance and importance to Scotland.
- We believe that responsibility for the operation of employment tribunals should be devolved to Scotland in order to promote access to justice. (More generally, we see good reasons for devolution of tribunals’ administrative responsibilities including procedural rules, even where there is continuing reservation of responsibility for common rights across the UK.)
- Enforcement of equalities legislation should become a devolved matter. We also support any other transfer of power, should it be required, to ensure that women are fairly represented on Scotland’s public boards and in other public appointments.
- We see the case for establishing a Scottish model for the delivery of consumer advocacy and advice, one that would secure and build upon the strengths of the current providers of consumer advice and consumer advocacy respectively.

These recommendations, in our view, establish the basis for providing more focussed social provision and better protection to those in employment.

Additional transfer of power

- We favour devolution of railway powers that could facilitate consideration of a “not for profit” option in terms of the Scotrail franchise. This will widen the powers of the Scottish Parliament over the rail system.

Double devolution: empowering local government, enhancing local democracy

Devolution is not just about powers for the Scottish Parliament. It is about the distribution of powers within Scotland to bring them closer to people. Local government has a key role to play in achieving this, and we are committed to reversing its disempowerment by the SNP.

We will promote the idea that “one size does not fit all” in local government, just as it does not fit nations within the UK. As a result, we will be able to respond positively to local demands for an adjustment of powers and responsibilities to suit local circumstances and allow for local preferences and priorities. These will be on the basis of two principles:

- That there is, or can be developed, an effective administrative framework to give effect to these local decisions. This might be an existing local authority, or it might be a combination of councils or councils and other public bodies.
- That there are clear plans for effective democratic accountability for the exercise of the different set of powers. Again this might be through an existing local authority – though it may have to enhance democratic accountability if the range of responsibilities is substantially wider; or it could be through new accountability arrangements, say for a city region, as has been suggested in England. The key is that it must not simply be assumed that the present arrangements will be sufficient. Power and responsibility must march together.

We will incentivise and enable public authorities to work together to provide public services in a more efficient way, where their size, geography or priorities allow this. For example, we will work with the three islands authorities – Shetland, Orkney and the Western Isles – to develop and extend the powers of islands councils, including:

- a greater local role in all aspects of inshore marine resource management and utilisation, such as spatial planning and dealing with consents;
- work with islands councils to support the development of renewable energy resources with genuine community participation and benefits, and to ensure that grid connections can be developed;
- support to secure the future of inter-islands ferry services in the Northern Isles, funded, operated and controlled from the islands to meet island needs, and to work within the EU to ensure a sustainable future for island to island transport;
- explore potential changes to fiscal arrangements to allow the islands to benefit more directly from the exploitation of local renewables and fishing resources;
- look at how to develop more integrated service delivery, with greater local influence for example over health services, to deliver enhanced community planning, better local decision making and greater efficiency of public services; and
- ensure a more integrated approach to economic development in partnership with Highland and Islands Enterprise.

We believe that the present system of local government finance is broken. Whilst it is not within the remit of the Commission to make recommendations on the most appropriate funding model for local government, we set out what we consider should be the guiding principles in this area. These are as follows:

- It should be the aim to establish a system which commands cross-party consensus, to deliver a long term solution to funding local government services.
- A system should be put in place that establishes a clearer distinction between the roles of central and local government in setting council budgets.
- A system should be created which ensures that an updated and fairer system of property taxation continues to play an equitable part in supporting public services in the long run.

Local authorities should have increased scope to influence economic development. We support in principle increased flexibility of local authorities to generate more economic investment to develop local economic resilience, extending Tax Incremental Funding to fund public sector investment in infrastructure, and empowering local authorities to introduce initiatives such as tourist levies, and other funding vehicles to enhance accountability.

In pursuit of local economic growth, there are functions administered by quangos, which may be better managed by local authorities. In order to improve local accountability and provide a more flexible and responsive service, we believe:

- Skills Development Scotland's responsibilities should be devolved to council level in order that planning and provision of skills and training better matches local job markets.

Devolution of powers to local authorities should take account of powers which may be passed down from both the UK and Scottish level. It may, but need not, follow that legislative or ministerial responsibility should be devolved to the Scottish Parliament. We believe that there are two currently reserved areas where there is a pressing need for greater devolution of responsibility and an enhanced role for local authorities. These are the Department for Work and Pensions (DWP) Work Programme and the Crown Estate. As a result, we recommend the following:

- Full devolution of responsibility for delivery of the Work Programme to local authorities on the basis that they are better placed to meet the requirements of local labour markets and this would enhance democratic accountability. However, we believe it is essential and right that the Scottish Parliament play a key role in providing strategic oversight of local authority delivery of this service. By releasing this employment scheme from the centralised direction of the DWP and empowering councils to assume leadership, the delivery model of the Work Programme would be closer and more accountable. We are conscious of the need to ensure a link between the benefits system and income from work and for the need for local agencies to work in collaboration with local authorities and the third sector.

- We believe that devolving the Work Programme to local authorities would fundamentally enhance employability and provide better assistance to those who depend upon it. In our judgement, local authorities should have more budgetary control and a stronger financial incentive to tackle unemployment locally.
- We agree with the analysis of the Scottish Affairs Select Committee report on the Crown Estate, and hope the government will act on the recommendations. Local management agreements between local authorities and the Crown Estate, an example of best practice, should be applied as widely as possible, with the Crown Estate establishing appropriate mechanisms to facilitate maximum local authority and community engagement. We agree that the Crown Estate's default assumption is that the seabed and foreshore should be managed by local authorities or communities and that they have developed leasing arrangements which make this possible. If this can be made to work, allowing the Crown Estate to take an interest in particular developments, we will support this. Thus, we propose to use the Crown Estate's expertise and capital as necessary, but allowing local councils and local communities to manage the seabed in other respects, in order to achieve real devolution to very local areas while preserving the benefits of the wider Crown Estate resource.
- A Memorandum of Understanding between the Scottish Government should be agreed with the Crown Estate becoming accountable to the Scottish Parliament, with devolution agreed in respect of their common objectives on the development and management of the seabed and foreshore, and those local authorities with an interest in this area should be fully consulted throughout as to its contents.

The UK, perhaps because of its lack of a codified constitution, is one of the few countries in the world where the constitutional status of local government is not firmly embedded: this is as true in England and Wales as it is in Scotland. We want the right relationship between central and local government, and want local government to be a continuing and valued part of our constitutional settlement. The question is whether a form of formal, legal entrenchment could do this, and if so how. Having examined this

matter in great detail, we are convinced that local government should have a constitutional guarantee of powers.

- We therefore recommend establishing a constitutional guarantee of powers to local government.

We will promote the co-operative council model to offer the possibility of developing local co-operatively run companies as a model of service delivery, for example in social care and childcare where profits are reinvested or shared by staff working for the co-operative.

We will require local authorities to incorporate empowerment of local communities into their work.

We will support more flexible powers on compulsory purchase to enable land assembly in town centres and shopping parades, in order to assist local authorities in pulling together schemes to transform the economic performance of town centres and reintroduce residential properties back into town centres.

Finally, we will tackle the scourge of exploitative payday loans by giving local authorities the powers to prevent the proliferation of Payday Loan shops and Fixed Odds Betting Terminals (FOBT). In relation to FOBTs, working within the framework of gaming and betting as reserved matters, we will extend the powers available to local authorities, in conjunction with the UK Government, to address the licensing and technical constraints which Scottish local authorities currently experience.

Part 1: The work of the Commission

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Part 1: The work of the Commission

A. Establishment and remit of the Commission

1. Following Johann Lamont's first speech to the Scottish Labour conference as leader, the Scottish Executive Committee agreed to the following statement in March 2012:

"The Scottish Executive Committee notes that the forthcoming referendum is arguably the most important constitutional event in our country's modern history. It will be a time where the world will focus on Scotland and our democracy. The Labour movement has a crucial role to play in this process and to ensure this referendum is fair, transparent, inclusive and decisive.

Labour is the party of devolution. It is essential that we as a movement lead the debate on how it develops and changes. There is a wide range of views in Scotland as to where additional powers and responsibilities should lay, not just those devolved to the Scottish Parliament, but from the Scottish Parliament to local authorities across Scotland".

2. Subsequently, plans were put in place to establish a Devolution Commission, supported by an Academic Advisory Group and Secretariat, to take forward an evidence-based programme of work to develop Scottish Labour's position on devolution.
3. The Commission, it was agreed, would form a collective decision-making forum that would make recommendations on the enhancement and development of devolution to all layers of government – not just the transfer of powers from the UK Parliament to the Scottish Parliament. It was decided that the Commission should bring together individuals from across the wider labour movement, who would engage with the people of Scotland during the course of their work, and consult with the widest possible expert opinion.

4. The terms of reference for the Devolution Commission were as follows:

“To consider issues relating to the future development of Scottish devolution, produce an interim report that will be submitted to the Scottish Labour Conference in 2013 and a final report containing recommendations on further devolution thereafter”.

5. The Commission was responsible for:

Scope – reviewing the current devolution settlement, and, in light of experience, recommending evidence-based changes to the present constitutional arrangements that enable Scotland to become a fairer, more equitable country; considering the role of local government within the current devolution settlement and how we can make it more open and effective; further improving the accountability of all levels of government and at the community level; and securing the position of Scotland as a strong and integral part of the United Kingdom.

Engagement – seeking the views of members of the Scottish Labour Party, its affiliated organisations and a wide and diverse range of interested individuals and organisations from across Scotland.

Output – producing an interim report to the Scottish Labour conference in spring 2013; and producing a final report to the Scottish Labour Party thereafter that recommends a coherent, evidence-based package of measures to enhance devolution and better serve people in Scotland.

Capability – ensuring the Commission has the capability to deliver and to plan to meet current and future needs.

B. Membership of the Commission

6. The Commission membership encompasses all parts of the labour movement. The original membership of the Commission was as follows: Jackson Cullinane, Margaret Curran MP, Victoria Jamieson, Johann Lamont MSP, Gregg McClymont MP, Duncan McNeil MSP, Anas Sarwar MP, Catherine Stihler MEP

and Councillor Willie Young. Following publication of the Commission's interim report in April 2013, it was decided to augment the expertise of the original membership with the appointment of Sarah Boyack MSP, Shadow Cabinet Secretary for Local Government and Planning. In addition, Drew Smith MSP, who was appointed Shadow Minister for the Constitution in June 2013, has attended meetings of the Commission in an observational capacity.

7. An Academic Advisory Group, consisting of Professor Jim Gallagher and Professor Arthur Midwinter, supported and advised the Commission throughout its existence.
8. The Commission was supported by a Secretariat function which provided members with the information and analysis they required to carry out their roles and duties effectively.
9. The Commission are grateful to the Academic Advisory Group and Secretariat for their assistance in taking forward the programme of work.

C. Meetings of the Commission

10. The Commission, since its first meeting in the autumn of 2012, has met on approximately one occasion per month: it was agreed that it was essential for the membership to remain in regular communication and meet on a consistent basis right up to the publication of this final report. In total, the Commission formally met on twenty-five occasions.
11. In addition to examining and discussing the future of devolution at formal meetings, members of the Commission engaged in regular written correspondence on relevant issues throughout the process.
12. The Commission identified a number of work streams. These were on the following subject areas:
 - Taxation;
 - Welfare;

- Employment;
 - Health & Safety; and
 - Local Government
13. The work streams were led by an individual member of the Commission, who convened a small team, and reported back to the wider membership on a regular basis.

D. External engagement: ensuring an extensive evidence base

14. The Commission committed itself to a wide-ranging programme of external consultation. Members of the Commission considered it to be of the utmost importance to secure the widest possible evidence base through engagement with the people of Scotland, including those with specialist expertise in the subject areas under review.
15. The Commission received evidence from expert opinion on devolution and other issues, which supplemented the advice received from the Academic Advisory Group. This mode of engagement formed the basis for the first stage of work, and it was continued into the second phase. Those who appeared in formal evidence sessions before the Commission included Mr Jeremy (now Lord) Purvis, former leader of the cross-party Devo-Plus group; Mr Alan Trench, a key figure on IPPR's Devo More project; Professor Michael Keating, Chair of Politics at the University of Aberdeen and ESRC Professorial Fellow on the Future of the UK and Scotland programme; Professor Gavin McCrone, former Chief Economic Adviser to the Scottish Office; Professor John Curtice, Professor of Politics at the University of Strathclyde and a Research Consultant for ScotCen Social Research; Patrick McGuire, a Partner at Thompsons Solicitors; Elspeth Orcharton, Director of Taxation at the Institute of Chartered Accountants of Scotland; Owen Kelly, Chief Executive of Scottish Financial Enterprise (SFE); and a delegation from the Scottish Trades Union Congress (STUC), led by its President, Harry Frew, with Dave Moxham, Stephen Boyd and Ann Henderson.

16. Following publication of its interim findings in April 2013, the Commission sought the views of the wider public, party members, trade unions, business, the third sector and other key stakeholders, in order to test its initial findings and gain new insights on how best to proceed. The interim report set out the progress the Commission had made and provided the basis for an informed dialogue. At the time of the interim report's publication, the Commission published an executive summary and consultation document, which was placed on a special Devolution Commission section of Scottish Labour's newly launched website. This document contained a number of questions across the range of the Commission's work, and sought views on whether there were other areas the Commission should consider.
17. From April to December 2013, the Commission accepted written submissions from interested stakeholders, who wished to share their views on devolution and help in its deliberations on how the current settlement might be modified to better serve the people of Scotland. The website has been a vital engagement tool, and a high proportion of people who have engaged with the Commission have done so through it by reading evidence or other posted material, and then emailing in a written submission. The numerous written submissions received were invaluable both in preparing a final package of recommendations, and in developing an understanding of what would be broadly supported in Scotland.
18. The website has been very well utilised, with many unique visitors and page visits over the 8 months (early April to December 2013) consultation process. This was broadly reflective of the interest that Commission members have personally experienced around the country, from CLPs and in roundtable forums. Feedback on the website itself and the content was very positive.
19. Furthermore, throughout the autumn and winter of 2013 and early 2014, a number of engagement events involving members of the Commission were held with Labour councillors, trade unions, third sector organisations, representatives from the financial services industry, and the wider business community through Scottish Labour's Business Partnership.

20. On 13 September 2013, several Commission members attended the Scottish Labour Councillors' Conference in Stirling, where a productive dialogue on the interim report, particularly in relation to the future of local government and how to enhance community empowerment, took place. Amongst those involved in the discussion were Councillor Gordon Matheson (Leader of Glasgow City Council), Councillor Andrew Burns (Leader of Edinburgh City Council), and Councillor Barney Crockett (Leader of Aberdeen City Council).
21. On 18 September 2012, Scottish Labour's Business Partnership, led by Gordon Banks MP, organised a roundtable event with members of the business community in Glasgow.¹ Those who participated in the roundtable discussion included Grahame Barn (FMB), Esther Black (Crown Estate), Brian Cheyne (ACS Facilities), Colin Dalrymple (Scottish Training Federation), Gavin Donoghue (Scottish Renewables), Philip Hogg (Homes for Scotland), Brian Macauley (Bluebird Care), Mike Mulraney (Mulraney Group), Ian Smith (Diageo), John Taylor (National Grid), and David Whitton (Invicta).
22. On 30 October 2013, the Scottish Council for Voluntary Organisations (SCVO) organised a roundtable event in Edinburgh, involving chief executives from across the third sector. The meeting was chaired by John Downie, Director of Public Affairs at SCVO, and amongst those in attendance were representatives from the British Heart Foundation Scotland, Bethany Christian Trust, NHS Credit Union, Quarriers, the Prince's Trust Scotland, CHILDREN 1ST, LEAD, Alzheimer Scotland and Shelter Scotland.
23. In addition to a formal STUC evidence session to the full Devolution Commission, a meeting was held with rank-and-file trade union members of Unite, Unison, GMB and Usdaw on 4 January 2014 to consider the future of devolution, with a specific focus on health & safety and employment issues.

¹ Commissioned by Johann Lamont MSP, Leader of the Scottish Labour Party, the Scottish Business Partnership (SBP) will be led by Shadow Scotland Office Minister Gordon Banks MP and Margaret McCulloch MSP, who both have extensive private sector business experience. With trade union, local authority and private sector involvement, SPB plan to formalise the Party's engagement with business in a way that will be beneficial to both business and the Scottish Labour Party.

24. We wish to take this opportunity to express our gratitude to Gordon Banks MP and John Downie of SCVO for their time and effort in facilitating the roundtable engagement events. We would also like to take this opportunity to thank all those who engaged with us as we considered the issues.
25. Throughout the course of its work, the Commission also made use of a considerable number of publications and other evidence sources, and we have made every effort to cite any references to these where appropriate in this report.

E. Main messages from our evidence gathering

26. The overwhelming majority of evidence received by the Commission indicates that a general consensus exists on the success and value of devolution. On the whole, people felt that the Scottish Parliament has resulted in a more responsive, open and consultative political process in Scotland, and that this stood in marked contrast to the way that the pre-1999 Scottish Office operated. The balance of evidence suggests that people believe devolved decisions now better reflect what is in the best interests of Scotland.
27. There was a widely-shared view that policies introduced since the creation of devolution, such as the abolition of feudal tenure, land reform, repeal of clause 28, and the ban on smoking in public places, had been to the benefit of Scotland.
28. Overall, a broad consensus existed in favour of some further devolution, particularly in the areas of taxation and welfare. Nevertheless, it is important to underline that this was not a universally held view: a number of individuals and organisations cautioned against moving far beyond the Scotland Act 2012, while others felt that the new devolved powers should be allowed to bed in before any new proposals were put forward.
29. The views expressed in favour of increased devolution are reflective of opinion poll data, which we have studied to properly gauge public attitudes on this subject. An Ipsos/MORI poll carried out in June 2012 found strong support for

further devolution of tax and welfare powers. (In contrast, a clear majority believed that foreign policy, defence and international development should continue to be reserved to the UK Parliament.) Moreover, as regards taxation and welfare benefits, it was found that support for further devolution is not strongly patterned by socio-demographic differences.²

30. Subsequent surveys of public attitudes have shown a consistent pattern in a majority of Scots favouring further devolution of tax and welfare.³ What this demonstrates is that the Scottish people strongly support the Scottish Parliament as the place where domestic Scottish decisions are taken, but they also recognise that there must be a UK-wide dimension on questions such as welfare and taxation. The challenge for policy-makers is to design an allocation of responsibilities which meets these aspirations and is stable, equitable and efficient to operate in practice.
31. On the other hand, as the Scottish Social Attitudes survey research has shown, there is a strong feeling amongst people that Scotland benefits from the pooling of risks and resources across the whole of the UK as the best way of creating a more socially just society.⁴
32. A further issue that came out during the course of our evidence gathering was a clear desire that we explain why certain powers should continue to be reserved and what we consider to be the weaknesses in the SNP's position in regard to these areas. There was a consensus that matters such as macroeconomic policy, foreign affairs and defence should remain reserved, and an appetite for a principled justification for these and other matters to be dealt with at the UK level, and how that served Scotland's interests.
33. An important theme that emerged from the consultation process was that the SNP had centralised powers to an unprecedented extent and there was a need to redress this balance and revive local democracy through the devolution of powers to democratically accountable local authorities. There was a great deal

² Ipsos/MORI Poll for Future of Scotland group, 7-14 June 2012

³ John Curtice, "Analysis: Poll leaves independence vote in balance", *The Scotsman*, (15 September 2013)

⁴ John Curtice, *Is it really all just about economics? Issues of nationhood and welfare?*, (ScotCen Social Research, January 2014).

of support for the notion of subsidiarity. A viewpoint expressed by many was that the system of local government finance was broken and needed to be put on a long-term sustainable footing. It was also suggested that the third sector had an integral role to play alongside local government. The third sector is already a key partner in delivering a wide range of local services, particularly in relation to social work, childcare and early years, and sports, art and culture. The relationship between local government and the third sector, it was argued, will become more significant with any further decentralisation of powers to local government from the UK Parliament and the Scottish Parliament. The key point in this respect was that people and their communities must have the power they need to take full control of their lives, with all other levels of government, the third sector and society being enablers of this

34. Finally, a number of respondents felt that Scottish Labour should point to how it might use any newly devolved powers to shape the future of Scotland. In our view, it is only right for any political party to set out its detailed policy programme for government in their manifesto – a viewpoint, incidentally, shared by the majority of individuals and organisations with which we engaged. However, in this report, we have attempted, whenever is practicable, to provide the clearest possible articulation of how Scottish Labour would use any new devolved policy levers to shape the economy, politics and society of Scotland.

F. The final report

35. This report is the culmination of the Commission's work. In it, we set out our analysis of the issues and our official policy going forward. We believe this package of measures, if implemented, will enable us to better serve the people of Scotland and equip us to meet the immediate, medium and long-term challenges ahead.
36. Our agreed report marks the conclusion of our work. This report is divided into eight chapters and we now summarise each of the subsequent chapters in turn.

Labour's enduring commitment to devolution (Part 2)

37. From Keir Hardie to today, Labour politicians – including James Maxton, J. P. Macintosh, John Smith and Donald Dewar – have been at the vanguard in advancing the case for devolution. Our ambition and aim has always been to meet the Scottish people's wish for more powers within the constitutional framework of the UK.
38. Labour campaigned for a Scottish Parliament, and we established it when we were elected in 1997. It was also Labour that instigated and led the debate which gave rise to in the creation of the Calman Commission, and the resulting passage of the Scotland Act 2012. In the process, Labour has enhanced the democratic accountability of decisions impacting the Scottish people and made the union stronger.
39. In this chapter, we lay out why devolution has been a cause for Scottish Labour. This is imperative: to understand where we will go, we must first have an appreciation of where we have come from.

The sharing union (Part 3)

40. The UK is a union of equals and partnership. We have over 300 years of shared experience, history and joint endeavour. The UK family of nations – Scotland, England, Wales and Northern Ireland – have achieved so much together. There have been so many great economic, social, political, scientific and cultural advances by working together as part of the union. The question for us today is how we remodel the union to lay the foundations for further achievements.
41. The UK is a sharing union – comprised of inter-locking economic, social, and political unions – in which risks and rewards are mutually pooled. These three unions are interconnected: political union gives the basis for economic integration, whilst economic union enables and demands solidarity through social union. Economic and social union are impossible without political integration.

42. The alternative to sharing union is the divide and rule of nationalism, which divides nation against nation and will result in a race to the bottom, on everything from corporation tax to employment protection. We have no wish to see Scotland have an under-regulated economy in which workers are not afforded the rights they deserve, or in which those with the broadest shoulders do not make an appropriate contribution.
43. It is important to understand what the sharing union means for Scotland, both historically and going forward, as this enables us to properly grasp how devolution can be further developed in a way that is mutually beneficial to the whole United Kingdom.
44. For us, the sharing union in the twenty-first century accepts and recognises difference, but it is also founded upon the solidarity, partnership and co-operation between the nations of the UK. It is our belief that the union has to retain the combination of economic integration and social solidarity that has proven so successful and has been built up over the centuries. Subject to that, we take the view that the preference be for a strong Scottish Parliament funded by an appropriate balance of own tax resources and shared UK taxes, which give effect to social solidarity.
45. The purpose of the union is to pool and share resources so that hard-working people, pensioners and those most in need possess equal economic, social and political rights throughout the entire UK. The most effective way to secure the best social and economic rights for Scottish people is to be part of a bigger UK where we pool risks, allocate resources and share the rewards. This goes to the heart of what we stand for as a party: our aim is to secure opportunity for all, not just the few – no matter what the person's social background or where they live.

Powers to serve Scotland (Part 4)

46. Labour is a party of the union and devolution. Accordingly, we are of the opinion that certain matters are most appropriately administered at the UK-level. However, when addressing the subject of where powers are best situated, we begin from the basis of a clear principle: unless there is good

reason to maintain reservation of powers at the UK Parliament, the default assumption should be in favour of devolution.

47. In this chapter, we set out the areas that we deem should remain reserved, outline the reasons why this should remain so, and explain how this is to the benefit of Scotland. There are two reasons for doing this. Firstly, as we engaged with people on the issues, many conveyed a desire that we explain why certain powers should continue to be reserved. To the extent that there is scope for adjustment of the devolved-reserved boundary, we explain how this can be realised within the current arrangements. Secondly, we address what we think are the positive reasons for the continuing reservation of these powers.
48. The matters we believe should remain reserved are as follows:
- Financial and economic matters (including monetary policy, the currency, regulation and debt management);
 - Foreign affairs (including international development);
 - Defence;
 - Social security (although, as we set out in Part 6, we believe there is scope for some devolution of particular responsibilities, where there is a close correlation between devolved and reserved responsibilities);
 - The constitution;
 - The civil service;
 - Broadcasting;
 - Betting, gaming and lotteries;
 - Immigration;
 - Drugs, drug trafficking and related issues; and
 - Abortion and analogous issues.
49. Whilst it is inconceivable that the Scottish Parliament would be abolished, we believe the Scottish Parliament should become permanently entrenched in the constitution and indissoluble. Accordingly, we recommend that “the Sewel convention” should be given a statutory basis. To reflect the reality of the

Scottish Parliament's permanence and irreversibility, we are of the opinion that responsibility for administration of Scottish Parliamentary elections to be devolved to the Scottish Parliament.

50. We also propose in this section devolution of railway powers that could facilitate consideration of a "not for profit" option in terms of the Scotrail franchise. This will widen the powers of the Scottish Parliament over the rail system.
51. The following matters are also currently reserved – health & safety, employment, equalities and consumer education, advocacy and advice. In our interim report, we gave an undertaking to consult on the potential for more devolution in respect of these areas, and we present our findings and proposals on these matters, as with social security, separately in Part 6.

Creating a fairer, progressive and more accountable tax system (Part 5)

52. This chapter recaps the main conclusions on taxation contained in our interim report; outlines our approach to the formulation of our proposals; and sets out our recommendations for creating a fairer, progressive and more accountable tax system in Scotland.
53. We think that the opportunity for further devolution in the area of taxation is beyond question. However, it is simplistic to believe that the fiscal gap can ever be closed to zero – nowhere else in the world does this occur – or that this is, at any rate, something that is desirable. We begin from considerations of principle. The Scottish Parliament must be funded by a mixture of devolved taxation and shared UK taxation funded through grant. This is because it must set and raise taxes so as to be accountable to its voters, and have a stake in the success of the Scottish economy; but it is also right that Scots should share into the rest of the UK resources so that all can enjoy in shared levels of prosperity (irrespective of local taxable capability) and be guaranteed the same rights such as health care free at the point of need. We therefore wholly reject the notion of "full fiscal autonomy" for Scotland or the Scottish Parliament: that is a separatist approach, and indeed it is not seen in any federal state worldwide. An equitable system of grant redistribution – to Scotland, and indeed Wales and Northern Ireland – is a key aspect in the UK's social union.

54. Potential exists to go beyond the Scotland Act on tax devolution, though this is constrained by a number of factors. Some of these are self-evident: for example, all taxes distort markets to some degree, but geographically variable taxes can have an effect on the UK single market in goods and services, one of the advantages of economic union that we believe should be conserved in Scotland's interest. The scope for tax devolution is also restricted by EU law – for instance, VAT, which is one of the “big three” taxes in terms of revenue, cannot be devolved. The opportunity for devolution is also restrained by taxpayer behaviour: in our view, taxes on tax bases, which can freely be relocated to a lower tax jurisdiction, are not appropriate for devolution.
55. We favour enhanced devolved taxation to give real accountability to the Scottish Parliament, and shared taxation to ensure that Scotland makes its contribution to UK taxation, thereby allowing for a minimum level of public service provision throughout the UK.
56. In framing our recommendations, we have been driven throughout by the objective of creating a fairer and more accountable tax system in Scotland, as well as maintaining the political, economic and social unions we strongly believe in. Following rigorous examination of the relative merits of devolving each tax, we put forward the following recommendations:
- Labour will give the Scottish Parliament the power to raise around £2 billion more in revenues beyond the recent Scotland Act, so that it raises approximately 40 per cent of its budget from its own resources.
 - We will do this by widening the variation in income tax in the Scotland Act by half from 10p to 15p.
 - This will mean that three-quarters of basic rate income tax in Scotland will be under the control of the Scottish Parliament.
 - The Scotland Act enables the Scottish Parliament to increase or decrease income tax rates in Scotland. In addition to extending this power, we will also introduce new Scottish Progressive Rates of Income Tax, so that the Scottish Parliament can increase the rates of tax in the

higher and additional bands. For the first time, the Scottish Parliament will be able to alter both the level of tax and the progressivity of the tax system, but without the risk that a Scottish Government could force tax competition within the UK by cutting only the top rates, to the detriment of public services. Labour in the Scottish Parliament would be able to use these powers if a UK Government did not set fair taxes at these levels.

- Our interim report considered whether there was scope for devolution of air passenger duty, subject particularly to EU rules. We received a number of considered representations, and continue to note that departures from Highlands and Islands airports are already exempt from this tax. Given the pressure to reduce this tax from airlines and others and the risk of tax competition which would be created, we are not now convinced that devolution should be progressed until further consideration is given to the environmental impact and how else this tax might be reformed.
- We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved. However we do support, in principle, a derogation to allow a lower rate of fuel duty to be charged in remote rural areas of the Highlands and Islands.
- The Barnett formula should continue as the funding mechanism for public services in Scotland. Other supporters of devolution have claimed the time has come to move away from Barnett to a needs-based formula, even though they seldom explain how much Scottish public spending would be placed at risk as a consequence. There is, of course, no objective, neutral, commonly agreed measure of spending need, and that is one reason why the Barnett formula has endured for such a long period. In addition, Scotland has a number of severe social difficulties – notably in terms of health and social deprivation – and a very big

landmass relative to population, both of which add to the expense of service delivery: no serious proposals for a needs-based formula have satisfactorily taken into account these two issues. Most of all, the Barnett formula has two major advantages: firstly, it is recognised, straightforward and well-understood; and, secondly, it provides stability in levels of public funding, and so public services and their delivery. No convincing alternative which meets this condition has so far been produced. Under our policies, as is the case under the Scotland Act, the Barnett grant will be reduced to take account of the fact that the Scottish Parliament will have a revenue stream of its own.

Ensuring fairness to people at work, when they are most in need and in the marketplace (Part 6)

57. In this chapter, we consider a series of issues related to social support, workers' rights, equalities and consumer education, advice and advocacy, where there is a case for altering the current division of powers and responsibilities within the present devolution settlement.
58. We examine the potential for devolution of welfare functions presently reserved to the UK Government. This is followed by an evaluation of the possibilities for devolution of health & safety and employment. We then examine the issues of equalities and consumer education, advice and advocacy. Our approach, in examining the issues involved, has been informed by one overriding objective: how we can ensure greater fairness and protection to people at work, when they are most in need and in the marketplace, while maintaining the economic and social union in which Scotland and the UK prosper.
59. In assessing whether it would be advantageous to devolve aspects of welfare provision, and so introduce the possibility of divergence in the levels of payments made to those who receive cash benefits, we have to address whether it would matter if pensioners in Scotland were paid a different pension to those in England, or if unemployment benefits were higher or lower in other parts of the UK? As a Labour Party, we do believe that this is an important issue, and, as a result of our belief in the social union, we consider the scope

for devolution of cash benefits to be limited. Welfare States send a profound signal about belonging. Therefore, it is not surprising that nationalists, if they cannot achieve their real objective of separation, argue for devolving welfare: their aim is to establish a more exclusive Scottish feeling of national identity, to substitute the allegiances which already unite the people of the UK together.

60. The most effective way of delivering welfare provision is to share resources and risks over the largest possible geographical region, and we also believe this is the morally right way. The advantages of pooling risk among individuals, regions and across generations – over the widest possible geographical area – is also widely recognised amongst economists. Economic shocks tend to be asymmetric, affecting individuals and regions in different ways and at different times. Resource pooling at the UK-level provides UK citizens with the safety-valve of a broader and more versatile tax base to deal with such uncertainty.
61. Nevertheless, we also accept that there is potential to devolve a number of reserved cash benefits that are closely linked with devolved public services, so as to ensure a higher level of service integration. The clearest examples in this regard are Housing Benefit, which is connected to the Scottish Government's housing and homelessness remit, and Attendance Allowance, which assists disabled people with expenses related with their disability (for example the additional costs of getting around or in obtaining care) and has clear linkages with the devolved health and social care agenda. Overall, after careful examination of the practicalities, we take the view that Housing Benefit and Attendance Allowance should be devolved to Scotland.
62. In the course of our engagement, we received a number of considered submissions requesting greater recognition of Scottish-specific concerns on the enforcement and implementation of health & safety law, principally to address issues in the construction industry. We heard two main arguments on this subject: a number of people called for full devolution of health & safety legislation to Scotland, while others suggested the need for more flexibility in terms of enforcement and prioritisation. After listening to the concerns of trade unions and the workers they represent on this matter, we are of the view that

there is a need to establish a Scottish Health & Safety Executive to set and oversee enforcement priorities, goals and objectives in Scotland.

63. Although we do not suggest any changes to the current reservation of employment and industrial relations, we believe that responsibility for the administration of employment tribunals and the procedural rules associated with them, including charging, should be devolved. We are deeply troubled by the way the in which the Conservative-led Government has persistently pursued legislation attacking workers' rights and compromised the capacity of trade union legal services to defend and support workers. Devolution in this area affords the potential for an alternate policy to promote access to justice.
64. We conclude that enforcement of equalities legislation should become a devolved matter. We also support any other transfer of power, should it be required, to ensure that women are fairly represented on Scotland's public boards and in other public appointments.
65. We also see the case for establishing a Scottish model for the delivery of consumer advocacy and advice, one that would secure and build upon the strengths of the current providers of consumer advice and consumer advocacy respectively.
66. We believe our proposals offer the foundation for delivering more directed social protection, stronger back-to-work assistance and better protection to those in employment and marketplace, whilst maintaining the sharing union that we support.

Double devolution: empowering local government, enhancing local democracy (Part 7)

67. At its best, devolution is about partnership between different levels of government and the local communities they serve. The purpose of devolution was never to devolve power to a Scottish Parliament, only to see it accrue powers from the local level upwards. The issue of devolution has too often been approached through the prism of devolving powers from the UK Parliament to the Scottish Parliament – rather than considering the

opportunities for further devolution of powers to local government, communities and people.

68. Real devolution is about empowering communities and people. In our view, it is insufficient to confine any discussion on devolution to the roles of local and central layers of government, or for the boundaries of this debate to focus solely on the powers exercised by these two tiers. We believe that, whenever is practicable, central government ought to devolve decision-making to local government, and local authorities should devolve power to local communities, neighbourhoods and people.
69. In this chapter, we set out (i) why we are committed to local decision-making; (ii) how we will re-empower local government through the promotion of a “one size does not fit all” philosophy; (iii) why we believe the system of local government finance is broken and the guiding principles that will inform our approach in this area; (iv) what powers currently exercised by central government should be devolved to the local authority level; (v) why we believe that devolution of powers to local authorities should take account of powers which may be passed down from the UK level as well as the devolved level; (vi) our commitment to granting a constitutional guarantee of powers for local government; and (vii) how we might bring about a rebalancing in relations between the state, local government and communities.

Part 2: Our enduring commitment to devolution

- A Introduction
- B Our enduring commitment to devolution
- C Conclusion

Part 2: Our enduring commitment to devolution

A. Introduction

70. From Keir Hardie onwards, Labour politicians have been at the forefront in making and leading the case for devolution. Our desire and aim has always been a simple one: meeting the Scottish people's legitimate desire for more powers within the constitutional context of the UK.
71. It was Labour that argued for a Scottish Parliament and we created it when we came to power in 1997. It was, moreover, Labour that initiated and led the debate which resulted in the establishment of the Calman Commission, and the subsequent passing of the Scotland Act 2012. In doing so, Labour has ensured greater democratic accountability for decisions affecting the people of Scotland and strengthened the union.
72. In this chapter, we set out why devolution has been an enduring cause for Scottish Labour. This is important: in order to understand where we will go, we must first have a clear understanding of where we have come from.

B. Our enduring commitment to devolution

73. Famously, in the 1888 Mid-Lanark by-election, Keir Hardie, Labour's first leader, stood on a platform that included a pledge to establish a Scottish Parliament. Hardie could not have been more unequivocal in his commitment to devolution: "I believe the people of Scotland desire a Parliament, and it will be for them to send to the House of Commons a body of men to achieve it".⁵
74. Hardie was no nationalist – it has never been part of the aims and objectives of the Labour Party to separate Scotland from the UK. Instead, Labour's demand

⁵ Emrys Hughes (ed.), *Keir Hardie's Writings and Speeches, from 1888 to 1915*, (Glasgow: Forward, 1928), p. 13

was, in Hardie's refrain, "Home Rule All Round". This meant Home Rule within the UK – not independence. The phrase was used in a similar way to a later proponent of devolution, Professor John. P. Mackintosh, Labour MP for Berwick and East Lothian from 1966 to 1978. Mackintosh preferred use of the Victorian term of "Home Rule", largely because of its clearness in conveying the need for institutional structures that connected to people's everyday lives.⁶

75. In June 1918, Labour affirmed its commitment to devolution, when a conference resolution was passed stating "some early devolution of both legislation and administration is imperatively called for".⁷
76. During the 1920s, a decade in which Labour formed two minority governments, the cause of devolution was pursued. In 1924, a Scottish Home Rule Bill was introduced by the Labour MP for the Gorbals, George Buchanan. The then Labour Government approved the general principle of the Bill, which retained to the UK Parliament a number of services provided at a UK-level, including the Post Office, Customs, Army, Navy, Foreign Affairs and Tax Collection. The memorandum of the Bill stated the proposals were "... an extension of the policy of Devolution within the UK".⁸ Despite having been in preparation by the Labour Party in Scotland since 1920, the measure was talked out by the Conservatives.
77. A second Scottish Home Rule Bill was introduced by James Barr, the Labour MP for Motherwell, in 1927. The 1927 Bill was seconded by Tom Johnston, Labour MP for Stirling, who later served with great distinction as Secretary of State for Scotland in Churchill's wartime Coalition Government. Interestingly, Barr and Johnston had very different conceptions on how devolution should be applied, though both were equally clear in their opposition to Scottish independence. Barr was an idealist, whereas Johnston was more a devolutionist of the head than the heart, believing that any move to Home Rule "must not only be evolutionary, they must be clear, business-like and evoke the

⁶ Graham Walker, "John P. Mackintosh, Devolution and the Union", *Parliamentary Affairs*, 22:3 (July 2012), pp. 557-578.

⁷ G. D. H. Cole, *A History of the Labour Party from 1914*, (London: Taylor & Francis, 1951), pp. 66-67

⁸ Gordon Brown and Douglas Alexander, *New Scotland, New Britain*, (London: Smith Institute), p. 14.

minimum of opposition both in England and Scotland”.⁹ These competing viewpoints – between devolution pragmatists and idealists – would be a recurring matter of debate within the Labour Party over subsequent decades, and would only be resolved half a century later by John Smith and Donald Dewar.

78. Labour again led the case for devolution in 1929. In its election manifesto of that year, Labour stated its support for the “creation of separate legislative assemblies in Scotland, Wales and England, with autonomous powers in matters of local concern”.¹⁰ Again, however, the lack of a parliamentary majority meant the Labour Government was unable to implement its devolution plans.
79. The cause of Scottish devolution remained at the forefront of Labour policy in the inter-war period. The most outstanding proponent of devolution was James Maxton, Labour MP for Glasgow Bridgeton, and one of the original Red Clydesiders. Maxton argued: “Give us our parliament in Scotland. Set it up next year. We will start with no traditions. We will start with ideals ... men and women ... [will] spend their whole energy, their whole brain-power, their whole courage, and their whole soul, in making Scotland into a country in which we can take people from all nations of the earth and say: ‘This is our land, this is our Scotland, these are our people, these are our men, our works, our women and children: can you beat it?’”¹¹ However, like Hardie and others before him, Maxton was no nationalist. In 1941, Maxton wrote of the SNP: “They came to us who were international socialists and asked us to give up our internationalism in favour of nationalism. That I was not prepared to do”.¹²
80. The greatest advocate of devolution in the post-war period was the intellectual and Labour MP, J. P. Mackintosh. From his early days as a political campaigner in the late 1950s, through to his sadly premature death at only 48, just months before the 1978 referendum, Mackintosh was an unswerving champion of devolution. In 1966 he published an influential book, *The*

⁹ Graham Walker, *Tom Johnston*, (Manchester: Manchester University Press, 1988) , p. 141

¹⁰ Labour Party, *Labour's appeal to the nation*, (London: Labour Party 1929)

¹¹ Gordon Brown, *Maxton*, (Edinburgh: Mainstream Publishing), p. 161.

¹² Gordon Brown and Douglas Alexander, *New Scotland, New Britain*, (London: Smith Institute), p. 3.

Devolution of Power, arguing for the decentralisation of power, addressing what he viewed as the problem of people's disconnection from distant government, the overburdening of the "centre", and the challenges of connecting local, regional and national government.¹³ Mackintosh's case for devolution was founded on a belief that the Scottish Office should be subject to greater democratic control and accountability – a critique of the limitations of "administrative devolution". He believed in the idea of the UK as a "union state", rather than a "unitary" one, arguing that the UK should be organised around the diversity of its four nations, with full representation of different identities and recognition of common bonds.

81. In 1999, shortly after the creation of the Scottish Parliament, Donald Dewar delivered the Mackintosh Memorial lecture at Edinburgh University, where he praised Mackintosh's "great legacy" and "lasting influence". On devolution itself, Dewar remarked: "At the core he [Mackintosh] always placed democratic control, the empowering of people. He did not base his argument on nationalism. It was not the glorification of the Nation State. It was never Scotland right or wrong. His vision was good government, an equitable democracy, that borrowed, elevated, created opportunity for the citizen".¹⁴
82. In the late 1960s, Harold Wilson's Government established the Royal Commission on the Constitution, under the initial chairmanship of Lord Crowther, who was later replaced by the eminent Scottish judge, Lord Kilbrandon. The Kilbrandon report, published in 1973, approved the principle of devolution in general and recommended the establishment of a directly elected Scottish Assembly.¹⁵ Following this, at a special conference in Glasgow's Dalintober Street during the late summer of 1974, Labour officially committed

¹³ J. P. Mackintosh, *The Devolution of Power: Local Democracy, Regionalism and Nationalism*, (Harmondsworth: Penguin, 1968)

¹⁴ Donald Dewar, John P Mackintosh Lecture, (9 November 1999)

¹⁵ The Royal Commission on the Constitution, *Report of the Royal Commission on the Constitution, 1969-1973*, Cmnd 5460, (London: HMSO, November 1973). The Commission was appointed by Royal Warrant in April 1969. The first chairman was Lord Crowther and on his death in February 1972 he was succeeded by Lord Kilbrandon. The Commission's terms of reference were: to examine the present function of the central legislature and government in relation to the several countries, nations and regions of the United Kingdom, to consider whether any changes are desirable in those functions or otherwise in the present constitutional and economic relationships between the various parts of the United Kingdom and in those between the United Kingdom and the Channel Islands and the Isle of Man.

itself to an elected assembly. In September 1974, the Labour Government published a White Paper, *Democracy and Devolution: proposals for Scotland and Wales*, putting forward proposals based on the Kilbrandon Report.¹⁶

Subsequently, Labour fought and won the October 1974 General Election on a platform containing a clear commitment to devolution.

83. In August 1976, the Labour Government introduced a further White Paper, and the piloting of the Bill through Parliament was entrusted to a young John Smith, who was then Minister of State in the Privy Council Office. Recognising the need for a further democratic mandate, Smith announced that an advisory referendum would precede the implementation of the Act. The parliamentary process leading to the devolution referendum was a long, difficult and arduous one – in large measure, like in the 1920s, because Labour lacked a working majority. It fell, once again, to J. P. Mackintosh to clarify in simple terms for what to many seemed an intractable issue: “People in Scotland want a degree of government for themselves. It is not beyond the wit of man to devise the institutions to meet these demands”.¹⁷ As the committee stage of the Referendum Bill neared its end, a controversial amendment was tabled by George Cunningham MP, which required the Secretary of State to lay before Parliament an Order repealing the Act unless at least 40 per cent of the eligible electorate voted in favour of the proposal. The amendment was strongly opposed by the Labour Government, but the vote was lost 166 to 151 – making it difficult to achieve the necessary threshold of consent. In the March 1979 referendum, Scotland voted in favour of devolution by 52 per cent to 48 per cent. However, as only 32.9 per cent of the electorate had joined the majority, the Act was repealed the following month.
84. Why was Labour unable to introduce devolution from Hardie to Callaghan? There were essentially three reasons. Firstly, in part, this resulted from an inability to unite the competing ambitions of devolution and the Welfare State. As Gordon Brown argued in his study of Scottish Labour: “no one [in the Labour Party] was able to show how capturing power in Britain – and legislating for

¹⁶ HM Government, *Democracy and devolution: proposals for Scotland and Wales*, (London: HMSO, September 1974) Cm 5732

¹⁷ Quotation engraved on the threshold of the Donald Dewar Room at Scottish Parliament.

minimum powers of welfare, for example – could be combined with a policy of devolution for Scotland”.¹⁸ Secondly, Labour was unable to bridge the gap between those who were “devolution-idealists” and “devolution-pragmatists”. The first group – including leading lights such as Barr, Maxton and Mackintosh – sought a constitutional settlement for Scotland but largely neglected issues of detail, such as on parliamentary composition, the appropriate electoral system, and, perhaps most significantly of all, specific powers that should be devolved and reserved. The second group – including Tom Johnston and one of his successors, the late Bruce Millan, Secretary of State for Scotland in the 1976-79 Labour Government – was more disposed to focus on practical and functional matters, concentrating not on the great possibilities devolution could offer, but instead on what might be achieved. The two opposing traditions within Scottish Labour – constellated around pragmatists and idealists – were only reconciled by John Smith and Donald Dewar during the late 1980s and 1990s, making the creation of a Scottish Parliament a genuine possibility. Finally, making devolution compatible with maintaining Scotland’s political representation at the UK level was an important factor. Until the Donald Dewar settlement based on substantial legislative but limited fiscal devolution, Scottish Labour politicians of all stripes were stumped by the conundrum of how to create a new Scottish Parliament without a corresponding reduction in Scotland’s influence on decisions made by the UK Parliament. And even then Dewar recognised that the *quid pro quo* for his Scotland Act and the devolution of substantial powers to Holyrood was the reduction from 72 to 59 Scottish MPs ending the over representation Scotland had enjoyed as a means of maximising Scotland’s voice in the UK.

85. On 21 October 1988, Donald Dewar delivered a speech at Stirling University, in which he declared his intention to lead the Labour Party into the Scottish Constitutional Convention. The Convention itself arose out of the publication of a *Claim of Right for Scotland* by the Campaign for a Scottish Assembly in July 1988. A *Claim of Right for Scotland* was signed by all then-serving Labour MPs, with the exception of Tam Dalyell, and read as follows: “We, gathered as

¹⁸ Gordon Brown, *The Labour Party and Political Change in Scotland, 1918-1929: the politics of five elections*, (Edinburgh: Edinburgh University PhD), p. 523.

the Scottish Constitutional Convention, do hereby acknowledge the sovereign right of the Scottish people to determine the form of Government best suited to their needs, and do hereby declare and pledge that in all our actions and deliberations their interests shall be paramount. We further declare and pledge that our actions and deliberations shall be directed to the following ends: To agree a scheme for an Assembly or Parliament for Scotland; To mobilise Scottish opinion and ensure the approval of the Scottish people for that scheme; and To assert the right of the Scottish people to secure implementation of that scheme”.¹⁹ This short statement was a profound and important expression of Scottish sovereignty within the UK constitutional framework.

86. In his Stirling speech, Dewar said that: “The people must decide if they are prepared to live a little dangerously in order to achieve what they want ... It means that the Labour Party must be prepared to negotiate and not simply seek to enforce the devolution package that we already have before the public”.²⁰ For Dewar, devolution offered the means of directing the Scottish people’s sense of dual identity into a political reality, an issue he explicitly addressed, when he argued: “We are both British and Scottish, and the two are not exclusive but essentially compatible. Political statehood is not essential to the status of genuine nationalism. What is needed is a political solution which recognises and buttresses the Scottish identity within the framework of the United Kingdom”.²¹
87. On 30 March 1989, the Scottish Constitutional Convention adopted a declaration of policy which acknowledged the sovereign right of the Scottish people to determine the form of Government best suited to their needs. Representatives from a wide range of Scottish civic society participated in the Convention, including 58 of Scotland’s 72 MPs, 7 of its 8 MEPs, 59 of 65 councils and representatives from various groups, including the STUC, Scottish

¹⁹ Adam Tomkins (ed.), *British Government and the Constitution: Text and Materials*, (Cambridge: Cambridge University Press, 2007), p. 189.

²⁰ Donald Dewar, Andrew Williamson Memorial Lecture at Stirling University, (21 October 1988). See L. Paterson, *A Diverse Assembly: The Debate on a Scottish Parliament*, (Edinburgh: Edinburgh University Press), pp. 169-173.

²¹ *Ibid.*

Council for Development and Industry and religious leaders. The SNP, driven by its desire for separatism, pulled out of the Convention. Nevertheless, it continued its work, with Labour taking a leading role.

88. The Convention consulted widely across the country and, on 30 November 1990, published its report, *Towards Scotland's Parliament*, setting out an agreed framework on what form a Scottish Assembly should take.²² The Convention worked because it was for Scottish democracy, not against British democracy. The main proposals were: (i) creation of a directly elected Scottish Parliament with a defined range of powers and responsibilities which would encompass sole or shared responsibility for all functions except those retained to the UK (defence, foreign affairs, central economic and fiscal responsibilities and social security policy); (ii) establishment of a representative office in Brussels, with a statutory entitlement to be included in UK delegations to the Council of Ministers; (iii) Scottish expenditure to be financed by a system of “assigned revenues” – including all Scottish income tax; a power to vary the rate of income tax up or down within a defined limit, and there would be an element of equalisation based on the Barnett formula; and (iv) an electoral system to be assessed in terms of the following principles: that results be broadly related to the number of votes cast, that effective positive action be taken to bring about equal representation of men and women and to encourage fair representation of ethnic and other minority groups, that a real link between the member and their constituency is made, that it be as simple as possible to understand, that it ensured adequate representation of less populous areas, and that the system be designed to place the greatest possible power in the hands of the people.
89. Following John Smith’s election as leader in 1992, devolution became “unfinished business” for the Labour Party. It became Labour’s stated mission to deliver devolution and meet, in Smith’s words, the “settled will of the Scottish people”.

²² Scottish Constitutional Convention, *Towards Scotland's Parliament*, (Edinburgh: Scottish Constitutional Convention, 1990)

90. Having successfully met on the centre ground, the Constitutional Convention continued to meet and make its plans. On 17 October 1995, the Executive Committee of the Convention issued *Key Proposals for Scotland's Parliament*, a document incorporating proposals for a Scottish Parliament.²³ The proposals were presented in final form in *Scotland's Parliament, Scotland's Right*, published on 30 November 1995.²⁴ The main recommendations were as follows:

- the Scottish Parliament's powers should include all areas currently within the remit of Scottish Office, so that the Parliament would have sole or shared responsibility for all functions except those retained to the UK Parliament i.e. defence foreign affairs, immigration, nationality, social security policy and central economic and fiscal responsibilities;
- the subsidiarity principle should apply where a function was shared between the Scottish Parliament and UK Parliament;
- the Scottish Parliament should be represented on UK Ministerial delegations to the EU and have the power to appoint representatives to the Committee of the Regions and the Economic and Social Committees;
- the Scottish Parliament should be responsible for the system of local government in Scotland, its financing and provision of local services;
- the role of quangos operating in Scotland to be examined by the Scottish Parliament which would "bring their activities under democratic control where it considers this necessary";
- there should be a clear commitment by the UK Parliament, made through a Declaration that the Act founding the Scottish Parliament, should not be repealed or amended without the consent of the Scottish

²³ Scottish Constitutional Convention, *Key proposals for Scotland's parliament: A report to the Scottish Constitutional Convention from the Executive Committee*, (Edinburgh: Scottish Constitutional Convention, October 1995)

²⁴ Scottish Constitutional Convention, *Scotland's Parliament, Scotland's Right*, (Edinburgh: Scottish Constitutional Convention, November 1995)

Parliament and people directly consulted through general election or referendum;

- a Parliament of 129 Members to be established, with electors having two votes, one for 73 constituency members of the Scottish Parliament (MSPs) elected from the UK Parliament constituencies with the addition of two separate Orkney and Shetland constituencies on a first-past-the-post system, and for 56 additional members from a local party list, with seven from each of the eight European constituencies;
- a fixed term of four years for the Parliament unless two thirds of MSPs agree otherwise;
- the Scottish Executive to be headed by a chief minister normally (but not necessarily) being the leader of the largest party, with cabinet membership to be drawn from a party or parties forming a working majority in Parliament;
- with the exception of the first term of the Parliament, MSPs would be able to hold a dual mandate (i.e. be a member of the UK Parliament, or European Parliament, or a local authority councillor);
- adoption of standing orders to provide for the Parliament to operate through a system of parliamentary committees, for MSPs not to take fulltime outside jobs, and to make appointments to public bodies as open and democratic as possible;
- the principle of financial equalisation to be embodied in the establishing Act, with the Barnett formula being used as the basis of the allocation;
- the Scottish Parliament to take over the powers currently exercised by the Secretary of State over public expenditure in Scotland; and
- a power to increase or decrease the basic rate of income tax by a maximum of 3p in the pound to be given to the Scottish Parliament, but any tax cuts would have to be financed from within the assigned budget, and no powers to vary corporate taxation.

91. The cause of devolution was embraced by the Blair government. In 1996, Tony Blair published a book laying out his “vision” of Britain, in which he made the argument for devolution: “There are now two significant impulses in modern democratic politics around the theory of the state. The first is to bring government closer to people. Big, centralised government is out. Devolution and decentralisation are in”.²⁵ For Blair, devolution would strengthen the UK – not weaken it.
92. In the immediate run-up to the 1997 General Election, Labour focussed its attention on the possible form that its devolution legislation might take. Labour’s thinking was greatly influenced by the Institute of Public Policy Research (IPPR) report, *The State and the Nations*, particularly a chapter on securing the Scottish Parliament, co-written by James McCormick and Wendy Alexander in 1996. McCormick and Alexander argued against a Bill based on the 1978 Scotland Act approach of defining those powers left to the UK Parliament, noting “the reserve powers formula would shift the burden of proof to Westminster, which would have to demonstrate that the Scottish Parliament had strayed into its reserved area of competence, rather than Edinburgh repeatedly having to prove that it was entitled to legislate”.²⁶
93. In 1997, Labour’s General Election manifesto made the case for devolution in simple terms: with the introduction of devolution, it was argued, “the Union will be strengthened”.²⁷ However, Labour ministers regarded the Scottish Constitutional Convention scheme as a broad agreement of principles – not a detailed blueprint. As a consequence, Dewar had to settle the outlines of his devolution plans immediately after Labour’s victory in May 1997. Greatly influenced by McCormick and Alexander’s advice, Labour took the decision to make all powers, except for those specifically reserved to the UK Parliament, subject to the Scottish Parliament.

²⁵ Tony Blair, *New Britain: my vision of a young country*, (London: Fourth Estate, 1996), p. 258.

²⁶ James McCormick & Wendy Alexander, “Firm foundations: securing the Scottish Parliament” in Stephen Tindale, (ed.), *The state and the nations: the politics of devolution*, (London: IPPR, 1996), p.115

²⁷ Labour Party, *New Labour – because Britain deserves better*, (London: Labour Party, 1997).

94. Within three months of the 1997 election, Dewar produced a White Paper on devolution, and subsequently piloted the legislation through the House of Commons. In September 1997, a mandate for a Scottish Parliament in a referendum was sought and won: 74.3 per cent of those voting supported a Scottish Parliament, and 63.5 per cent were in favour of giving it tax-raising powers.
95. In the first election to the Scottish Parliament, held in May 1999, Scottish Labour won 56 of the 129 seats, and Dewar became Scotland's first First Minister. Dewar, at the official opening of the Scottish Parliament on 1 July 1999, spoke for all when he said: "There shall be a Scottish parliament. Through long years, those words were first a hope, then a belief, then a promise. Now they are a reality". The Scottish Parliament was Donald Dewar's great triumph and legacy. As the historian Tom Devine has written, while devolution was far from being a "one-man band", "Donald Dewar's place in history is undeniably secure as the pre-eminent architect of that final settlement".²⁸
96. The Scottish Parliament differs from the UK Parliament in its methods of working. This is perhaps the most important legacy of Dewar's design. Devolution has also delivered for the people of Scotland. As Wendy Alexander has argued, during the Scottish Parliament's first session, when financial resources were scarce, "radicalism took many forms".²⁹ In total, 62 Bills were passed and became Acts of the Scottish Parliament. Amongst the most important measures to advance greater social justice in Scotland were the abolition of feudal tenure, land reform, introduction of a graduate endowment, and repeal of clause 28. This was followed in the next parliamentary session by major measures, such as the ban on smoking in public places and controls on anti-social behaviour.
97. In November 2007, Scottish Labour again took the lead on devolution, when Wendy Alexander, by this time Labour leader in the Scottish Parliament,

²⁸ Wendy Alexander (ed.), *Donald Dewar: Scotland's first first minister*, (Edinburgh: Mainstream, 2005), p. 203.

²⁹ *Ibid*, p. 217.

delivered a keynote speech at Edinburgh University, entitled “A New Agenda for Scotland”. In the speech, she argued: “What the next generation will demand of the current generation is a settlement that honours the birth of devolution without being hidebound by it ... It is up to us to offer a better alternative. A new Scottish Constitutional Commission will allow us to do just that”.³⁰

98. The following week, on 6 December 2007, a motion in Alexander’s name was tabled in the Scottish Parliament, stating: “That the Parliament, recognising mainstream public opinion in Scotland, supports the establishment of an independently chaired commission to review devolution in Scotland; encourages UK Parliamentarians and parties to support this commission”.³¹ The remit of this Commission would be to review the provisions of the Scotland Act 1998, in the light of experience and recommend changes to the present constitutional arrangements that would enable the Scottish Parliament to better serve the people of Scotland, improve the Scottish Parliament’s financial accountability, and continue to secure the position of Scotland within the UK.
99. As the initiator of the debate, Alexander sought to engender support for a review of the devolution settlement. During the debate, she argued: “It is clear that Scotland wants to walk taller within the United Kingdom, not to walk out. How do we move forward? How do we align power and responsibility more closely within this place? Let us address the case for greater financial accountability. The review of Scotland’s future should be about more than party politics”.³²
100. This initiative led to the establishment of the Commission on Scottish Devolution, chaired by the Chancellor of Glasgow University, Sir Kenneth Calman. The Commission began work in April 2008 and published its final report, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, in June 2009. The main recommendations of the Calman Commission, which reported to both the Scottish and UK Parliaments, were as follows:

³⁰ Wendy Alexander, “A New Agenda for Scotland”, Lecture on a Future Vision for Scotland, University of Edinburgh, (30 November, 2007).

³¹ Scottish Parliament Official Report 6 December 2007 col 4133-85.

³² *Ibid* col 4135.

- Cutting the basic and higher rates of income tax levied by the Scottish Government by 10p in the pound, with a corresponding reduction in the block grant, calculated using the Barnett formula.
- Giving the Scottish Parliament the power to set a Scottish income tax rate, applying to all bands.
- Devolving Stamp Duty Land Tax, Landfill Tax, Air Passenger Duty and Aggregates Levy to the Scottish Parliament.
- Giving Scottish ministers additional borrowing powers to cover the cost of capital projects, or temporary shortfalls in their budget.
- Devolving powers for the administration of Scottish elections.
- Devolving the regulation of airguns.
- Devolving power to set drink-drive limits.
- Devolving the power to set speed limits.
- Devolving responsibility for nature conservation at sea.
- Improving relations between the Scottish Parliament and The UK Parliament by creating mechanisms for regular meetings and discussions between ministers, MPs and MSPs³³.

101. The UK Government accepted most, but not all, of Calman's recommendations. The main exceptions not included in the Scotland Act were devolution of air passenger duty, assignment of income tax on savings and distributions, and funding for policy relating to animal health. The Scotland Act was enacted on 1 May 2012, marking the next stage of the process to change the devolution settlement. The new Act brought about the largest ever transfer of financial powers to Scotland since the creation of the UK – a change that will come fully into effect in 2015-16 that will enhance the accountability of the Scottish Parliament.

³³ Commission on Scottish Devolution, *Serving Scotland better: Scotland and the United Kingdom in the 21st Century: final report*, (Edinburgh: Commission on Scottish Devolution, June 2009). The remit of the Commission on Scottish Devolution was: "To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom".

102. The new powers included in the Scotland Act are as follows:

Finance

- A new Scottish rate of income tax to be in place from April 2016;
- The full devolution of stamp duty land tax and landfill tax, from April 2015;
- The power to introduce new taxes, subject to the agreement of the UK Government;
- A new £2.2 billion capital borrowing power for the Scottish Parliament, to be in place from April 2015 – with a limited version of the power in place from April 2013 to enable the Scottish Government to fund £100 million of pre-payments for the Forth Road Crossing;
- Extended current borrowing powers to help manage volatility in tax receipts and the creation of a new Scottish cash reserve to manage the new revenue receipts; and
- A new power, welcomed by the Labour Party, to devolve further taxes by order, so that the scope of fiscal devolution can be extended.

Non-Finance

- Formally changing the name of the Scottish Executive to the Scottish Government;
- Scottish Ministers to have powers in relation to the misuse of drugs;
- Scottish Ministers to have powers relating to the administration of elections to the Scottish Parliament;
- Power to regulate air weapons devolved to Scottish Parliament;
- Scottish Ministers to have a role in appointment process for BBC Trust member for Scotland and MG Alba Trust Members;
- Scottish Ministers to have a role in the appointments process for the Crown Estate Commissioner with special responsibility for Scotland;
- Scottish Ministers to have power to set regulations for the drink-drive limit;
- Scottish Ministers to have the power to determine the national speed limit in Scotland; and

- Ensuring that the criminal penalties that apply in Scotland Act are updated to reflect the current standards applied in Scottish courts.

C. Conclusion

103. It was Labour that argued for a Scottish Parliament and we created it when we came to power in 1997. And, again, it was Labour that initiated and led the debate which resulted in the establishment of the Calman Commission, and the subsequent passing of the Scotland Act 2012. In this report, we now set out how we will meet this challenge today. In doing so, we seek to answer one all-encompassing question: how can we strengthen the present constitutional arrangements to serve Scotland better, enhance accountability and fairness, while maintaining the integrity of the United Kingdom that they value so much?

Part 3: The sharing union

- A Introduction
- B The sharing union
- C Political union
- D Economic union
- E Social union
- F Power sharing partnerships
- G Conclusion

Part 3: The sharing union

A. Introduction

104. The UK sharing union is founded on three interlocking unions – political union, economic union and social union. In each of these, we share power, resources and interests. The undermining of one union destabilises the delicate balance of all three. The SNP wish to break the political union, but retain economic and social union: this is undemocratic as well as unworkable. They simply ignore the benefits of social union, preferring to make flawed claims on how social provision would be improved in an independent Scotland, whilst simultaneously giving a commitment in their White Paper – one of the few explicit promises – to cut corporation tax.
105. The purpose of the sharing union is to pool resources, share risks and increase security to ensure hard-working people, pensioners and those most in need have equal economic, social and political rights throughout the entire UK. This is the purpose of the union and it is an idea – based on solidarity, community and fairness – that is much bigger than establishing an independent state. The most effective way to secure the best social and economic rights for hard-working people is to be part of a bigger union where we pool risks, allocate resources and share the rewards. As a party, our aim is to secure opportunity for all, not just the few – no matter what a person's social background or nationality.
106. It is important to understand what the sharing union means for Scotland, both historically and going forward, as this enables us to properly grasp how devolution can be further developed in a way that is mutually beneficial to the whole United Kingdom.

B. The sharing union

107. We have over 300 years of shared experience, history and joint endeavour. We have achieved so much by working together. The question for us today is how we remodel the union to lay the foundations for further achievements in the twenty-first century.
108. The UK union has economic, social, and political aspects, in all of which risk and rewards are collectively pooled. These three dimensions are interconnected: political union makes possible the prospect for economic integration, whilst economic union both permits and necessitates solidarity through social union. The justification for each of these parts of the union is to a certain extent instrumental – what is in the interests of Scotland. However, it is also principled – what is right for Scotland – and, indeed, moral, in the sense that no matter where you reside and what your background is, every citizen enjoys the dignity of not just equal civil and political rights, but the same basic social and economic rights.
109. The United Kingdom, as a political union, provides Scotland the opportunity of connectedness. Connectedness in the form of deep economic integration – through free trade in goods, services, people and capital – providing wider opportunities for Scottish individuals and companies in a market ten times the size of our population. It also enables the management of risks – such as the threat to Grangemouth – and economic shocks – like the failure of RBS and HBoS – within a bigger, stronger economy. The economic union means we share a currency, and can pool our taxes and spending in fiscal union. This fiscal integration in turn necessitates and sustains a sense of social solidarity through the sharing of risks, rewards and resources on the basis of need rather than nationality. It makes sense to spread risks and burdens over a larger population with pensions, health and social security able to be supported by general taxation levied across all the nations of the UK, but that social solidarity reflects a moral choice as well as a sense of belonging. The three dimensions of the sharing union – political, economic and social – are interconnected and it is simply impossible to remove Scotland from the political union and hope to keep the others.

110. The sharing union is incompatible with the SNP's vision of independence. The SNP have attempted to adopt the language of social union, but their conception of what this entails is so shallow as to be meaningless. Alex Salmond has argued: "The social union unites all of the people of these islands. We are bound to the other nations of these islands by ties of history, culture and language; of trade, family and friendship. We will still watch the X-Factor or Eastenders. People in England will still cheer Andy Murray, and people in Scotland will still support the Lions at rugby. Except, of course, they will be the British, Scottish and Irish Lions. That's the reality of the social union". The SNP, therefore, presents the social union as resting on ties of history, culture, family and friendship. However, without a shared economic and political union, these social ties will inevitably wither in the absence of sharing. In contrast, we believe that the social union rests not just on these real feelings but on a common fiscal platform and social solidarity that gives substance to our shared identity as well as real support to those who need it most wherever in the UK they are. This is not a matter of England supporting Scotland or the other way around – both have happened in the past, and both will in the future – but how we ensure that wealthy individuals and companies across the UK contribute to a collective safety net that provides protection to all.
111. A sharing union spreads risk across the complex and diversified economies of the whole United Kingdom. Without economic and political union, a genuine social union is all but impossible. The sharing union – underpinned by political union, economic and social union – is the ultimate safeguard and guarantor of the Welfare State.
112. We believe it essential to underline that a UK Government, working in tandem with effective devolved government, can achieve real results for the people. It was a UK Labour Government, working with a Labour-led administration in Scotland, which made substantial inroads into poverty by making work pay through the minimum wage and tax credits, investing in early years and childcare, and increasing spending on schools. It was also a Labour Government that delivered a right to 28 days paid holiday for full time workers, gave free TV licenses for over-75s and introduced the New Deal that benefited

millions of people in Scotland. Furthermore, it was a Labour Government that gave the Bank of England operational independence over monetary policy – an arrangement nationalists want to keep after separation, but, as we show in the next chapter, cannot be secured on the same terms unless Scotland plays its role in the deeply integrated UK political and economic union.

113. For us, the sharing union in the twenty-first century accepts and recognises difference, but it is also founded upon the solidarity, partnership and co-operation between the nations of the UK. It is our belief that the union has to retain the combination of economic integration and social solidarity that creates both the domestic market and a well-functioning social market. Subject to this, we take the view that the preference should be for home rule all round and the Scottish Parliament ought to be funded by an appropriate balance of UK taxes, which give effect to social solidarity, and its own tax resources.
114. Our commitment to the pooling and sharing of resources to guarantee free health care, pensions, a decent family income and universal education means that, whatever devolution there is in the interpretation of and administration of these services, the UK government should guarantee that wherever they are administered we have the financial capacity to deliver these common economic and social rights and the services that flow from them.
115. We believe that the maintenance and strength of the UK is dependent upon the financing of what Gordon Brown terms “covenanted expenditure”, which ensures a common basis for defence, pensions, social security and basic health and education, and because it represents the UK honouring of a covenant – that we guarantee that social rights will be upheld by the UK as a whole by pooling our tax revenues from Scotland, England, Wales and Northern Ireland and sharing them based on need.
116. This means that in the case of the Scottish Parliament around 60 per cent of its expenditure should be guaranteed from UK wide taxes paid by Scots, English, Welsh and Northern Irish citizens and then pooled and shared on the basis of need. Other decisions are important – how we enforce law and order, what we do about transport and housing – but these are decisions that have always

been made locally and the separate Parliaments and Assemblies should raise taxes to pay for these services. It means that we need to raise approximately 40 per cent of the Scottish Parliament's expenditure which amounts to around £12 billion from Scottish led taxation. Previously the figure that the Scottish Parliament had discretion over was roughly £6 billion, and under Calman it has become £10 billion. We must now give the Scottish Parliament an extra power to raise around £2 billion more in revenues beyond the Calman report and the recent Scotland Act.

117. The more the Scottish Parliament relies on domestic taxes, the less call it has on UK grants. However, this will not change the principle that the UK is based on fiscal equalisation and the pooling and sharing of resources based on need. Nor do we accept that as long as there is an equalisation element – through the pooling and sharing of resources – that the role of Scottish or for that matter Welsh or Northern Irish MPs can or should be called into question. If the UK Parliament practises fiscal equity by allocating resources across the UK, and maintains responsibility for welfare, social security, macroeconomic policy, and defence and foreign affairs, it should have a full representation of Scottish members. Indeed if, as we propose and discuss further in the next chapter that sterling remains a UK currency, then Scottish MPs must have a say in deciding inflation, employment, money supply and macroeconomic objectives of the Treasury and Bank of England. The union will become less centralised and looser under our proposals, but the price of greater devolution should not be less influence at the centre on common issues or a weaker claim on common resources.

C. Political union

118. The UK is above all a political union. This is expressed, most obviously, in the existence of the UK Parliament, which comprises democratically-elected representatives from the whole UK – Scotland, England, Wales and Northern Ireland. The four individual nations share a central government and the UK is recognised by international organisations as a single political entity. A number

of governmental functions – such as macroeconomic policy, foreign relations and defence – can only be addressed in the present way within the context of UK political union. A further component of political union is a unified UK-wide civil service, which supports the administration and exercise of all central government responsibilities.

119. We believe that the political union is in Scotland's interests: not only is political union essential to economic and social integration from which Scots benefit, but the UK Parliament matters hugely in terms of defining Scotland's place in the world and Britain's territorial sovereignty. In examining whether a policy area should remain reserved, whether there is scope for further devolution or whether we should adjust the devolved-reserved boundary, we have been conscious throughout to make sure that our proposals are consistent with maintenance of the political union that we so strongly believe in.
120. A central aspect of political union since 1707 has been recognition of Scotland's own institutions. The 1707 union – contrary to nationalist folklore – was a negotiated agreement. In the early eighteenth century, the so-called *Squadron Volante* – the political grouping, under the leadership of the deposed Lord High Commissioner to the Parliament of Scotland – successfully agreed a deal that preserved Scotland's legal and education systems and the Presbyterian establishment of the Church. This meant that at a time when the Church dominated everyday life, the union upheld the independence of the Kirk, and did not impose England's established state religion on Scotland. It also meant that in a period when the civil power of the state was dominated by lawyers and the courts, Scotland's distinctive legal system was firmly secured and entrenched, as has remained the case ever since.
121. As the size and scope of the UK state expanded in the nineteenth and twentieth centuries, Scottish state institutions grew in parallel. In the nineteenth century, when the role of the state began to extend beyond its traditional functions of defence and tax collection, a number of Scottish boards, commissions and departments – such as the Scottish Board of Supervision for Poor Relief, created to oversee the system of poor rates, and the Scottish Education Department, which assumed responsibility for parish and burgh schools – were

established. In turn, the Scottish Office, founded in 1885 to bring about greater administrative coherence and accountability, gradually assumed a wider range of governmental duties under the control of the Secretary of State for Scotland. Consequently, by the late twentieth century, the Scottish Office was responsible for overseeing the administration of most public services in Scotland, and successive Scottish Secretaries of State – from Tom Johnston to Donald Dewar – exercised extensive power in both London and Edinburgh. However, ultimately, the system of administrative devolution in Scotland had to give way to democracy. As a result, in response to the public demand for greater democratic accountability, Labour created the Scottish Parliament in 1999.

122. For as long as the UK preserves its key features of economic integration and social solidarity, there is plenty of scope for change. The most obvious changes are already proceeding. From 2016, the Scottish Parliament will be responsible for raising about one-third of its budget, under the Calman Commission's proposals. This is an important and significant development.
123. As the nations of the UK have come together to share resources and pool risks, so that we can be more certain of meeting everyone's needs for dignity and a decent life and a minimum of public services, we believe that Scottish representation at Westminster cannot be reduced; because it is about legislating for shared welfare as well as a shared approach to the economy, and making critical decisions about peace and war. Just as the purpose of the Scottish Parliament should be to use the maximum devolution possible consistent with the UK to represent the people of Scotland, the purpose of a remodelled United Kingdom should be to provide a strong and sustainable basis on which to tackle the major challenges ahead, above all the delivery of opportunity and security for all.
124. Finally, the UK Parliament still has the power to legislate for Scotland on devolved as well as reserved matters, even though there is an established convention that it does not unless it has the prior agreement of the Scottish Parliament. At present, this arrangement works well in practice, and it is an example of where Scottish and UK institutions co-operate and collaborate effectively in the public interest. However, we are of the considered view that

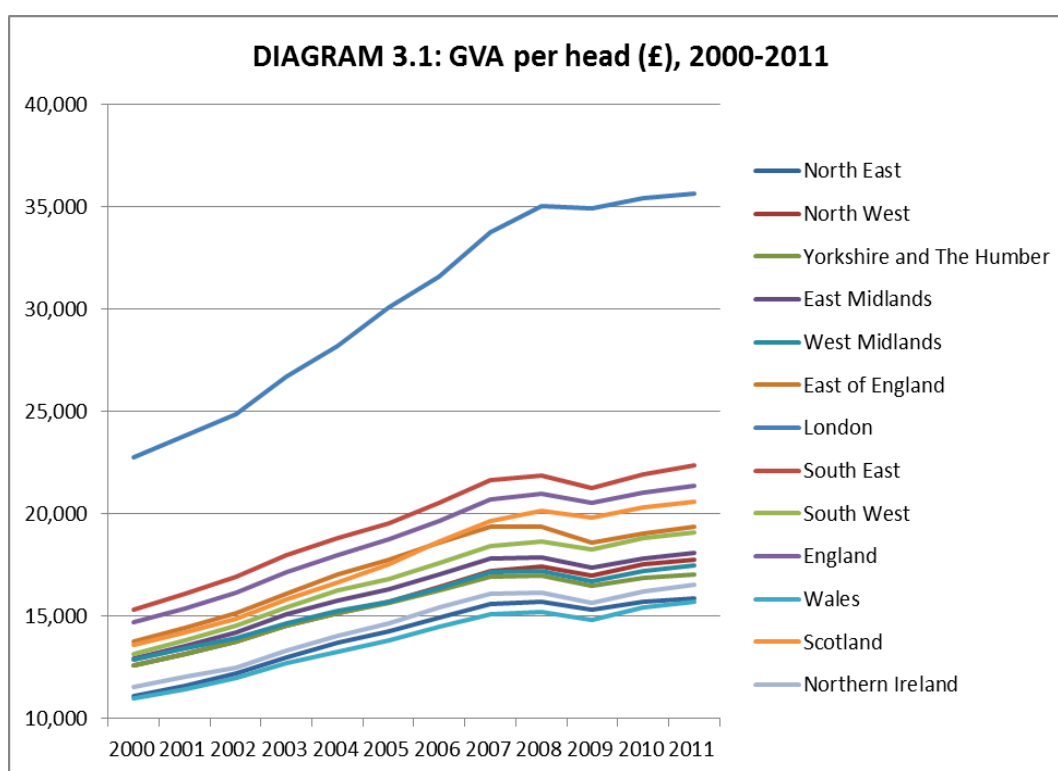
the political union would be strengthened if this arrangement were put on a statutory footing and the Scottish Parliament became responsible for the administration of its own electoral system, and we outline how this can be achieved in Part 5.

D. Economic union

125. The UK is an economic union with a deeply integrated economy in which goods and services are traded. Scotland benefits from being part of the UK economy, which is the third largest economy in Europe and the sixth largest in the world. Being part of the large and diverse UK economy provides strength and stability to Scotland's finances. It also offers protection to Scotland from unexpected economic and financial shocks. The rest of the UK is Scotland's biggest trading partner. Scottish businesses buy and sell more products and services from the rest of the UK than every other country in the world combined. In 2010, 70 per cent of Scotland's exported goods and services went to England, Wales and Northern Ireland, accounting for 35 per cent of Scottish GDP. Likewise, 70 per cent of Scotland's imports are estimated to come from the rest of the UK.
126. We are of the unequivocal view that economic union is in the interests of both Scotland and the UK. Thus, when examining the question of how devolution can be developed to better meet the people's needs, we have been extremely conscious not to advance proposals that would put in jeopardy the security and stability that economic union provides. Many devolved policy levers are crucial to economic development, and we believe that these are most effectually administered by devolved administrations. On the other hand, as we argue in the next chapter, it is right that the UK Parliament should retain responsibility for macroeconomic policy to maximise the benefits of economic union.
127. At the core of the argument for economic union is the opportunity and security it provides to individuals, families and businesses in Scotland. For over three centuries, Scotland has played an integral part within a deep-rooted economic union. Free trade – the movement of goods and services, people and capital, without interference or interruption throughout the entire country – is central to

the concept of economic union. Today, as part of the United Kingdom, we almost take this for granted: it is difficult to envisage a world in which Scots are unable to move with complete freedom to take up work elsewhere in the UK, or in which Scottish companies can trade with businesses in England, Wales and Northern Ireland without the minimum difficulty. It is worth reminding ourselves that this was not always the case, and that securing access to English markets was a key Scottish objective in entering the union. Currently, Scottish businesses have access to a domestic market ten times the size of Scotland's population, and it is imperative that this remain the case.

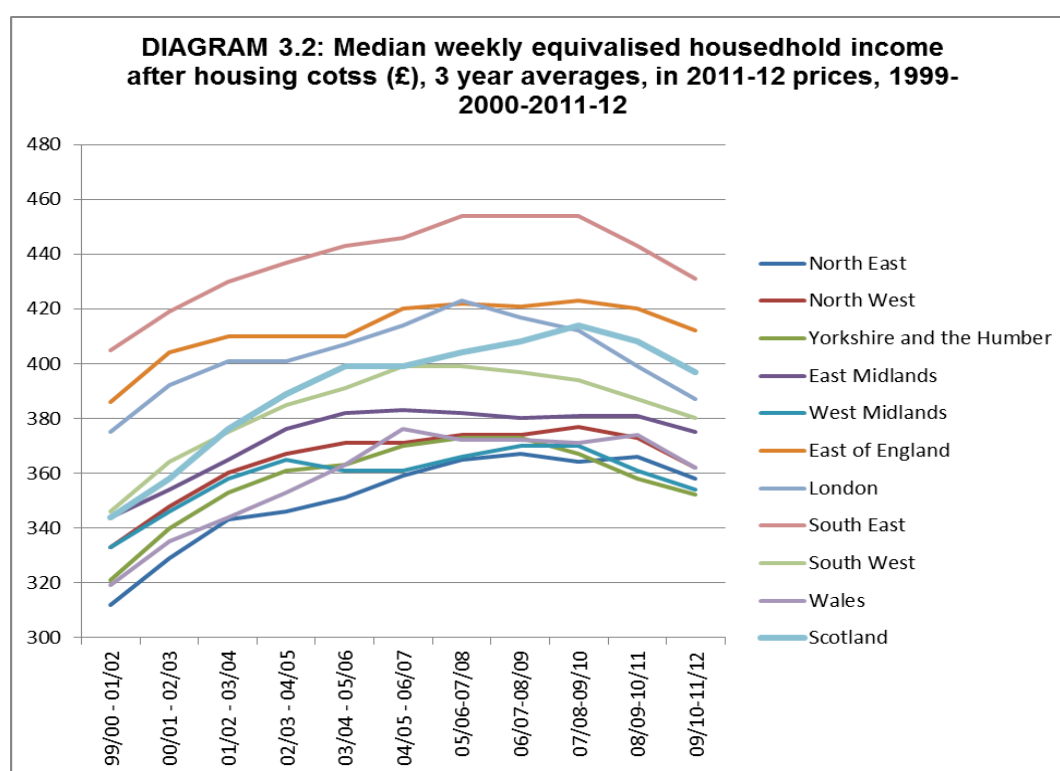
128. At present, as part of the UK economic union, Scotland is one of the wealthiest areas. As can be seen in Diagrams 3.1 and 3.2, whether measured in terms of economic output or by household income, Scotland is the third richest part of the UK.



Source: Office for National Statistics

129. Indeed, in sharp contrast to the 1980s and 1990s, Scotland's economic output per head is very close to the south-east of England, and the major Scottish cities come very near to levels of output in London. In recent decades,

Scotland's economic growth per head has been in line or surpassed that of the UK. Moreover, since the present set of statistics began in 1963, economic growth per head in Scotland has been broadly in line with the UK's. This success has been possible because of, not in spite of, being part of the UK. And, as part of the UK, Scotland has done as well as most small countries economically. We have done better than Denmark, Finland and Ireland, as well as Austria. In terms of growth in recent decades and GDP per head, Scotland is above the small country median for Europe. We believe that the Scottish economy could and can perform better. However, the answer to unlocking better economic performance and higher growth is not independence: it is the pursuit of the right economic and social policies.

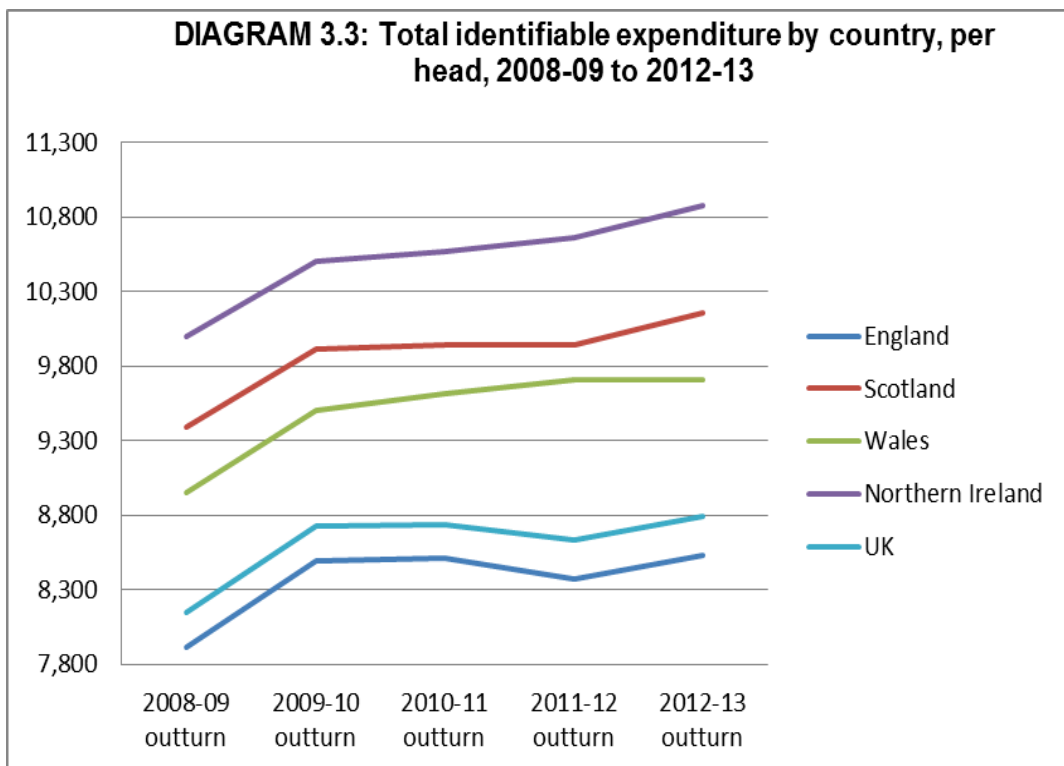


Source: HBAI, Department for Work and Pensions, 1999-00 to 2011-12

130. More importantly, Scotland benefits from being part of an integrated economic union through fiscal sharing. The pooling of tax income ensures that public spending in one part of the UK is not exclusively dependent on the taxes raised in that area. Consequently, if one part of the UK is disproportionately impacted by an economic downturn or slow growth, public services in that area are not forced to shoulder all of its impact. A vital aspect of economic union is that

more prosperous parts of the country contribute to a shared pot of resources. During various periods, over the last four decades or so, Scotland has done both. Looking to the future, when North Sea oil revenues start to fall as they must, Scotland could potentially find itself dependent on other parts of the UK to support levels of public spending. While we believe that the right economic policies will prevent such an occurrence, Scotland must be prepared for every eventuality, and fiscal sharing over the widest geographical area is the best insurance policy for protecting people and communities against potential economic travails.

131. As Diagram 3.3 shows, Scots enjoy £1,300 more spending per head on public services such as the NHS and education than the average UK citizen.



Source: HM Treasury

132. These figures show that Scotland gets a good deal out of the UK, refuting the argument that Scots are somehow short-changed by the Treasury.
133. As part of the larger UK economy, within a resilient and established political union, Scotland has the capacity to absorb instabilities, uncertainties and financial shocks. The near collapse of Scotland's two largest financial

institutions – RBS and HBoS – was a prime illustration of this. Scotland's reliance on financial services is proportionally larger than either Iceland or Ireland. However, as the impact of the financial shock was absorbed by the entire UK, the adverse consequences for the Scottish economy were much less than in both these countries. Thus, during the financial crisis, banks headquartered in Scotland were able to take advantage of the protection offered to UK banks: indeed, since 2007, the UK has committed £1.162 trillion to bailing out the banks, and, at its peak, the Royal Bank of Scotland received £253.6 billion in support from the UK Government.

134. The UK economic union is underpinned by the sharing of sterling. This means our currency is anchored in a large market and we have sizable enough reserves to manage unanticipated economic difficulties. As we discuss in greater detail in the next chapter, successful currency unions have two main aspects. Firstly, a very integrated economy is a prerequisite of an effective currency union. Secondly, currency unions require a central bank and a high degree of fiscal union, so that tax and public spending can be used to offset any economic imbalances. At the moment, Scotland benefits from such an arrangement, though this would be lost in the event of independence. Fiscal union without political union to oversee it is impracticable, ineffectual and, ultimately, undemocratic. Confusingly, a number of proponents of Scottish independence argue for maintaining the present UK currency union, whilst simultaneously refusing to countenance the political and fiscal unions that must go with it. This is ultimately a deceit and we do not believe such a currency union would materialise in the event of Scottish independence, and, if it did, this would certainly be on disadvantageous terms.
135. We do not believe it is in Scotland's interest for the economic union that has served us well for over 300 years to be torn apart. In the long term, an independent Scotland could not remain part of an integrated UK economy: in terms of trade, international borders are important because laws and regulations inevitably differ between countries. While accepting that estimates vary on the size of this impact, we see the example of the US and Canada as providing instructive insights into what might happen. Both the US and

Canada are signatories to the North American Free Trade Association, yet it has been estimated that Canadian provinces are more than twenty times as likely to trade with each other than equidistant US states.³⁴

136. The UK economic union also has social consequences. The free movement of people, over many centuries, has led to economic, social and family ties stretching from Land's End to John o' Groats. Today, 450,000 people living in Scotland were born elsewhere in the UK, while 830,000 Scots live in England alone. Economic integration and social solidarity are inextricably linked, meaning that resource sharing supports and strengthens common bonds of social citizenship.

E. Social union

137. Social union is an integral part of the UK. In part, this is about the feeling of community and shared citizenship that has been forged over centuries of economic and political union. However, social union consists of much more than this: it is about how we share and pool resources, along with the common entitlements of citizenship enjoyed by everyone across the UK. This can be illustrated by comparing the European Union with the UK union. In the EU, no assumption exists that German taxpayers should pay for unemployment benefits in Greece, and there is no law – written or unwritten – which states that tax revenues from wealthier northern Europe ought to underwrite the old-age pensions of people in poorer southern countries. Any suggestion that this should be the case would be treated with incredulity, but it is an accepted and unquestioned feature of the UK social union.
138. The idea of social union, as with so much else, is a product of history. The union of 1707 brought Scotland and England together in a political and economic relationship to secure the benefits of greater prosperity. In the twentieth century, following the expansion of the franchise, the people of the

³⁴ John F. Helliwell, "Do national borders matter for Québec's trade?", *Canadian Journal of Economics*, 29: 3 (1996) 507-522.

UK joined together in a common endeavour to build a shared social citizenship on to an integrated economy and representative political system, ensuring that the risks of everyday life were pooled and managed from common resources. The UK, moreover, has long had a highly centralised fiscal system, with most taxes collected centrally and expenditure determined on the basis of where Government decides it is most needed. Even in the area of local government, with its now very restricted tax powers, an understanding has always existed amongst politicians and policy-makers that there should be an equalisation of needs and resources across the UK. This sends a very powerful social signal of belonging.

139. An integrated fiscal system is not simply about economic management. Pooling tax receipts to support public spending throughout the UK means expenditure is governed by need, not by where the tax revenue is derived. It is also a more stable system of tax and spend since pooling and sharing enables the sharing of risks. This means that the wealthier parts of the country contribute to benefits and public services in deprived areas.
140. Since the abolition of the poor laws in the early 1920s, it has been a principle of UK fiscal policy that spending should not be determined by local taxable capacity. Social provision – pensions, health and welfare services – are supported by general taxation, levied and collected across the country according to an ability to pay, not by local resources. This was a cause led by trade unionist and social reformers from across the breadth of Britain who argued for national unemployment assistance. And, it is why the 1945-51 Labour Government created a National Health Service (NHS) funded from general taxation, rather than a system of local authority hospitals funded by ratepayers and patient fees. The NHS is based on one simple idea: treatment is determined by clinical need, not the ability to pay, no matter where you live. This principle was secured by a Scot and Welshman. It was Tom Johnston, as Secretary of State for Scotland, who refused to accept a system of health provision reliant upon local funding and charging, instead insisting on the nationalisation of the health care system. Despite opposition from within the corridors of Whitehall, Johnston thwarted the wartime Coalition Government's

proposals on piecemeal reform, because he realised that creating a health system based on local authority finance would never be sufficient in securing free health care for people at the point need. This provided the blueprint of a plan for the Welsh Secretary of State for Health, Nye Bevan, when he established an NHS free at the point of need, funded by general taxation from across the United Kingdom.

141. We believe in a welfare system which ensures that – even if there is taxable capability at the devolved level – sufficient capacity exists to redistribute public resources to where it is most needed. As far as practicable, welfare payments should be uniform throughout the UK. For us, it is a matter of principle that an old-age pensioner in Greenock should be paid the same pension as someone in Greenwich, or that an individual who falls on hard times in Edinburgh should be entitled to unemployment benefits no higher or lower than a person facing similar circumstances in Eastbourne. We strongly believe in a Welfare State that redistributes resources from the areas of greatest wealth to the areas of greatest need. Scotland benefits from this arrangement: as part of the UK, we have 8.6 per cent of the population, yet receive 11 per cent of incapacity benefits, mainly because of the disproportionate number of Scots afflicted by mining and industrial diseases.
142. People in need should benefit wherever they live in the UK because they share citizenship. Accordingly, we have a single system of income support and old-age pension across the UK. The SNP make the opposite argument: for them, social solidarity stops at the border, and only people afflicted by poverty in Scotland should have an entitlement to Scottish resources for support. The pooling of risks and resources is made explicit in national insurance contributions. UK national insurance is the largest insurance scheme of all, securing benefits to all through the widest possible risk pool. As we show in Parts 7 and 8, remaining part of the large UK insurance scheme matters to Scotland. There is, moreover, a particular issue surrounding the age structure of the population in Scotland. As Scotland is getting older more quickly than the rest of the UK, the pressure on old-age pensions will loom ever large. In

UK national insurance, with resources mutually shared, potential risks like this are pooled to provide greater security.

F. Power sharing partnerships

143. In his submission to the Commission, Gordon Brown suggested that the Commission explore the idea of power sharing partnerships. In Scotland's case, this objective would be achieved by the work of the UK Parliament and the Scottish Parliament in partnership together, just as in Wales, Northern Ireland and in London the devolved assemblies would play their part. Furthermore, it was suggested a case for stating in a new declaration, applying to all citizens of the UK, that we will work together to deliver this.
144. We agree with the suggestion that should be active partnership arrangements between Parliaments and Governments whose responsibilities will inevitably overlap, so that they work together for the common good, safeguarding civil and political rights, and promoting social and economic rights such as welfare and full employment. While we recognise that there will always be points of dispute, we agree that it cannot be right that the relationship between Scotland and the UK is defined as perpetual conflict and never-ending antagonism; it cannot be right that if Scotland decides to remain within the UK, we simply return to the current position when on each occasion Scottish Government politicians meet UK Government politicians there is a standoff, with Scottish Government leaders blaming London for all of their ills.
145. As a consequence, we believe the UK and Scottish Parliaments should in the future strive to find a better way of working together and should learn from the devolution, quasi-federal and federal arrangements in other countries. We agree that we should draw up partnership arrangements in meeting policy objectives such as full employment, a highly skilled workforce, an innovative science-based economy, and cross-border transport, where powers are shared between the different Parliaments. In all areas where there are shared responsibilities such as in housing – where the Scottish Parliament will take on responsibility for housing benefit but the UK Parliament will retain responsibility

for social security - arrangements should be explicitly agreed for working together.

146. We should examine how a partnership will work and seek to transcend an expectation of perpetual conflict – with new rules explicitly agreed for common services and for inter-parliamentary consultation on matters of mutual concern. We need to show how even with different legislatures and markedly different practices, policies and personalities, there can be – where there is a common interest – co-operative ways of working to meet that common interest. We also concur that there would be a case for giving partnership arrangements a legal existence, in the form of statutory obligations on both administrations to co-operate in the public interest, or through the creation of a formal Intergovernmental Council or its equivalent with the duty to hold regular meetings.
147. If we are to have a recognition of our mutual interdependence, which we agree is the basic argument for the Union, then there are obviously areas where working in partnership matters for the health of all parts of the Union. As a consequence, there is a need to entrench in law mechanisms for working in partnership and move beyond the current ad hoc and unsatisfactory arrangements for sharing ideas, experiences, and learning. And co-operation on matters of mutual interest requires one area of the UK to consult on policies that impact on the statutory authority, powers and responsibilities of the other and respectively for the other area to consult where it affects that one first. A policy function allocated to either the UK Government or the Scottish Government might have significant impact on legitimate functions within the remit of the other government and thereby justify moving beyond non-statutory concordats to a statutory basis for a defined partnership arrangement.
148. Equally importantly, the wider challenge of tackling poverty cannot be addressed without using powers over taxes and benefits – under the UK Parliament – and the powers available for social work, education and urban regeneration agencies – under the Scottish Parliament. We therefore see great merit in the proposal that a Joint Poverty Commission that contains formal arrangements for working together be established. If eradicating poverty is itself

a purpose of the union – as we believe it is – then establishing partnerships to deliver this will in itself give even more solid purpose to the union.

F. Conclusion

149. We believe in the UK sharing union – based around the inter-connected political, economic and social unions – to ensure risks and rewards are collectively shared. For a social union to be a truly realisable idea, the people and nations of the UK must pool their financial resources and risks across a larger and more resilient political community than that provided by the constituent nations themselves.
150. The central idea behind the sharing union is that if one part of the UK bears a time of economic or social difficulties, it will be sustained both by itself and through solidarity with the other parts. This idea of how we collectively pool our resources and efforts, in order to secure greater fairness and justice for all, is an idea much bigger than independence will ever be.
151. To further strengthen the sharing union we believe in, it is recommended:

RECOMMENDATION: Partnership arrangements between Parliaments and Governments whose responsibilities will inevitably overlap should be established, so that they work together for the common good, safeguarding civil and political rights, and promoting social and economic rights such as welfare and full employment.

RECOMMENDATION: There is a strong case for giving partnership arrangements a legal existence, in the form of statutory obligations on both administrations to co-operate in the public interest, or through the creation of a formal Intergovernmental Council or its equivalent with the duty to hold regular meetings.

Part 4: Powers to serve Scotland

A Introduction

Key reserved matters

B Financial and economic matters

C Foreign affairs (including international development)

D Defence

E Social security

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G The civil service

H Broadcasting

I Betting, gaming and lotteries

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K Drugs, drug trafficking and related laws

L Abortion and analogous issues

Strengthening the Scottish Parliament

M Entrenching the Scottish Parliament

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Part 4: Powers to serve Scotland

A. Introduction

152. Labour is a party of the union and devolution. It is against the understanding of union and devolution described in the earlier chapters that we have assessed the question of the appropriate allocation of powers and responsibilities to the different Parliaments and levels of government. As a party that is committed to the sharing union, we believe there are certain matters which are best overseen at the UK-level.
153. In this chapter, we set out the areas that we judge should remain reserved, explain the reasons why this should continue, and outline how these are of benefit to the people of Scotland. We do this for two reasons. Firstly, during our consultation process, many expressed a wish that we fully explain why certain powers should remain reserved. To the extent that there is scope for adjustment of the devolved-reserved boundary, we lay out how this can be achieved within the present arrangements. Secondly, we address what we believe are the positive reasons for the continued reservation of these powers. One of the ironies of the debate about separation is that the SNP can see many aspects of the union are in Scotland's interests, so they claim – against reason and all evidence – that an independent Scotland would simply be able to retain them.
154. The areas we examine in this chapter are as follows:
- Financial and economic matters (including monetary policy, fiscal policy, the currency, financial regulation and debt management);
 - Foreign affairs (including international development);
 - Defence;
 - Social security (although, as we set out in Part 6, we believe there is scope for some devolution in this area, where there is a close correlation between devolved and reserved responsibilities);
 - The constitution;

- The civil service;
- Broadcasting;
- betting, gaming and lotteries;
- Immigration;
- Drugs, drug trafficking and related issues; and
- Abortion and analogous issues.

155. Whilst it is inconceivable that the Scottish Parliament would be abolished, we believe the Scottish Parliament should become permanently entrenched in the constitution and indissoluble. Accordingly, we recommend that “the Sewel convention” should be given a statutory basis. To reflect the reality of the Scottish Parliament’s permanence and irreversibility, we are also of the opinion that responsibility for the administration of Scottish Parliamentary elections should be devolved to the Scottish Parliament.
156. We also recommend the devolution of railway powers that could facilitate consideration of a “not for profit” option in terms of the Scotrail franchise. This will widen the powers of the Scottish Parliament over the rail system.
157. In addition, the following matters are also currently reserved – health & safety, employment and equalities. In our previous report, we gave an undertaking to consult on the scope for further devolution in these areas, and we present our conclusions with regard to these matters, in addition to welfare, separately in Part 6.

Key reserved matters

B. Financial and economic matters

Monetary policy

158. The UK monetary policy framework established by the last Labour Government – based on the principles of credibility, flexibility, democratic legitimacy and shared responsibility – was arguably its greatest success. We believe this framework has served Scotland well: in our view, it should remain in place as

presently constituted, with the Bank of England retaining operational responsibility for interest rate decisions.

159. The Monetary Policy Committee (MPC) works according to a mandate set by the Treasury and the UK Parliament. The former Governor of the Bank of England, Sir Mervyn King, summarised this point very clearly in his BBC Today Programme Lecture, delivered in May 2012. He said: “Our job is given to us by the Government and by Parliament”.³⁵ This is advantageous to Scotland: Scottish MPs, along with their colleagues, have a direct input into the remit on which the MPC must work.
160. HM Treasury retains substantial powers under the Bank of England Act. The Act gives the Chancellor of the Exchequer sole power in setting the remit to which the MPC must work. The objectives of the MPC are currently twofold. These are: (i) maintenance of price stability; and (ii) subject to the maintenance of price stability, support of the Government’s economic policy, in respect to growth and employment. The monetary policy remit is specified at least once every 12 months in a letter from the Chancellor to the Governor of the Bank. This is a clear and transparent system that has provided stability to Scotland and the UK.
161. The SNP do not support the current monetary policy framework. Their White Paper argues that under Scottish independence, “monetary policy will be set according to economic conditions across the Sterling Area with ownership and governance of the Bank of England undertaken on a shareholder basis”. We do not see how this would be possible without revision of the Bank of England Act 1998, which would be totally at the discretion of the UK Parliament. As a party that believes monetary policy should remain reserved, we wish to take this opportunity to explain why we think the SNP’s plans would be disadvantageous to Scotland.
162. Firstly, contrary to the SNP’s argument, an independent Scotland would have no role in defining the objectives to which the MPC must work. Unless the Bank of England Act was amended, this would remain the Chancellor of the

³⁵ Mervyn King, 2012 BBC Today Programme Lecture, (2 May 2012).

Exchequer's responsibility. A Scottish Finance Minister, as a result, would play no part in defining price stability or the economic objectives that MPC decisions must support.

163. An independent Scotland would also have no role in defining what price stability is taken to consist of. The Bank of England Act gives the Chancellor complete discretion in this area. It is only the Chancellor who has the powers to adjust the inflation target either upwards or downwards, change the measure of inflation, or even adopt a different inflation regime. This is not a dry academic matter. For the first six years of the MPC, price stability was defined as an inflation rate of 2.5 per cent based on the retail prices index excluding mortgage interest payments (RPIX) measure of inflation. In 2003, the inflation target was changed to 2 per cent, based on the consumer prices index (CPI) measure. The move from RPIX to CPI and change in the inflation target would not have required any consultation with an independent Scotland.
164. Then there is the question of Scottish representation on the MPC. The MPC currently has nine members. To be more precise, the Bank of England Act stipulates that the MPC must consist of the Governor of the Bank, who chairs proceedings; two Deputy Governors; four "external" members appointed by the Chancellor; and two Bank officials selected by the Governor after consultation with the Chancellor. In addition, a "non-voting" Treasury Representative also sits on the MPC.
165. The Scottish Government appear to believe that changing the composition of the MPC will be an easy matter. First of all, Nicola Sturgeon, the Cabinet Secretary for Infrastructure and Investment, claimed on a BBC TV programme in May 2012 that, although there was no Scottish representation on the MPC at the moment, this was "something that would change if Scotland was independent". She claimed a Scottish Finance Secretary "could appoint somebody" to the MPC.³⁶ The MPC's composition however can only be altered by amending existing legislation. This would be subject to the will of the UK Parliament.

³⁶ Robbie Dinwoodie, "Sturgeon accused of gaffe over Bank of England role", *Herald*, (29 May 2012)

166. Then, at First Minister's Questions on 31 May 2012, following questioning on the subject, Alex Salmond said: "We [meaning an independent Scotland] expect to be a part of the appointments process". He also set out his expectation that an independent Scotland would "have the same representation" as the Treasury non-voting observer.³⁷ Mr Salmond's claim that an independent Scotland would "expect to be part of the appointment process" suggests that he at least understands a Scottish Finance Minister would have no formal powers of appointment, though it is not at all clear why HM Treasury or the Bank of England would consent to his proposal.
167. Putting aside the fact that securing Scottish membership on the MPC would require the jumping of a very big legislative hurdle, the Scottish Government did not stipulate in their White Paper whether:
- A Scottish representative would be a voting member or non-voting representative – or, indeed, whether they expect to have both.
 - If there is a Scottish voting member, whether this would be an "external" or "internal" appointment.
 - If it is to be an "external" member, whether this is to be an additional member to the current four.
 - If the Scottish representative is to be an additional member, how this would affect the delicate nine-member composition of the MPC, which ensures that the Governor always has a casting vote.
 - Or, finally, whether the Scottish MPC member would be held to account by the Treasury Select Committee or the Holyrood Finance Committee? Indeed, would all members of the MPC be subject to scrutiny by Holyrood, given that they would all make decisions effecting two independent states?

³⁷ Scottish Parliament Official Report, 31 May 2012.

168. Moreover, all of this neglects one important point, namely that the MPC was deliberately set up as an “expert” committee, not one that represents geographical interests. This should, in our view, remain the case.
169. It is also not clear that the Scottish Government fully grasps that the Chancellor retains legislative powers that enables interest rate decisions to be taken back into the Treasury. Under the Bank of England Act, the Treasury can “give the Bank directions with respect to monetary policy” if it is “satisfied that the directions are required in the public interest and by extreme economic circumstances”.³⁸ In such circumstances, a Chancellor would act in the interest of the rest of the UK – not Scotland. It is also within the Chancellor’s powers to “rip up” the Bank of England Act and set interest rates – as was the case prior to 1997. If a Government were elected that was unconvinced of the merits of the current monetary policy framework, responsibility for interest rates could be annexed by the Treasury. We do not envisage this happening, but only point out that a situation could emerge where a Chancellor would revert to pre-1997 monetary policy arrangements and an independent Scotland would be powerless to prevent such a development. This would lead to a situation where a Finance Minister in one state would set interest rates in another: we are not aware of another example where this happens.
170. The idea that the MPC would raise interest rates to counter inflationary pressures in an independent Scotland, if this were not in the economic interests of England, Wales and Northern Ireland, is absurd. When making interest rate decisions, the Bank of England would, in all likelihood, pay as much attention to conditions in an independent Scotland (which was attempting sterlingisation without a formal currency union), as the European Central Bank (ECB) does in Montenegro or the US Federal Reserve does in Panama. As Professor Brian Quinn, a former Deputy Governor at the Bank of England, has argued, the SNP’s post-independence plans are “vague” and “unconvincing”, and that locking Scotland into a monetary union dominated by the UK would “frustrate”

³⁸ Bank of England Act, 1998.

the countries involved, leading to “serious tensions” as the two new countries’ interests diverged.³⁹

171. The current UK monetary policy framework provides stability, transparency and democratic legitimacy, in which Scottish interests are taken into account at each stage of the decision-making process. Today, as matters currently stand, we are equal partners in the UK, with monetary policy for the whole of the UK determined together as we sit at the table to make a decision in our collective interest. We believe that this should remain the case. Scotland and the UK have benefitted from historically low and stable levels of inflation since 1997. The benefits of low inflation include, in the long term, reductions in poverty and inequality, as macroeconomic stability provides the foundation for economic growth.

The Bank of England as lender of last resort

172. As part of the UK, we share resources, risks and rewards, meaning that we have the advantage of sharing the upsides of growth and the burden that comes during an economic slow-down or financial crisis. The ability to burden share was best illustrated during the global financial crisis that rocked the UK in 2008-2009. In order to secure the financial sector, the previous Labour Government undertook a series of recapitalisations of UK banks. In total, recapitalisation involved capital injections of over £45 billion in the Royal Bank of Scotland (RBS) and over £20 billion in Lloyds Banking Group, which was created following the merger of Lloyds TSB and HBoS. As a result, the UK Government became a significant shareholder in RBS and Lloyds TSB, holding a respective share of 82 per cent and 40 per cent in each.
173. The Scottish Government’s position on the division of bank liabilities – which are now collectively shared across the UK – has been unclear. In an interview with Channel 4 News on 11 January 2012, Alex Salmond said that an independent Scotland would not take on any of the debt associated with the Treasury’s interventions in the financial sector, including in relation to RBS and

³⁹ Eddie Barnes, “Scottish independence: SNP currency plan warning”, *Scotland on Sunday*, (15 December 2013)

HBoS.⁴⁰ Mr Salmond argued that an independent Scotland would not be liable because the Treasury collected tax revenues from these institutions and failed to regulate the industry properly. This was despite the fact that Mr Salmond had encouraged RBS to purchase the Dutch bank, ABN-Amro – an acquisition that effectively broke RBS. In the lead up to the takeover, the First Minister wrote a letter to the then CEO of RBS Group, Fred Goodwin, promising “any assistance my office can provide” and wishing “good luck with the bid”.⁴¹ The FSA Board report, *The failure of the Royal Bank of Scotland*, described this deal as “a gamble”.⁴² In September 2012, contradicting Alex Salmond’s previous statements, John Swinney, the Cabinet Secretary for Finance and Sustainable Growth, conceded that an independent Scotland would have to take on a share of the liabilities of RBS and HBoS. Mr Swinney, however, declined to elaborate on what share of the banks’ liabilities he expected Scotland to support.⁴³

174. The SNP White Paper argues: “The Bank of England, accountable to both countries, will continue to provide lender of last resort facilities and retain its role in dealing with financial institutions which posed a systemic risk”. We are not convinced HM Treasury and the Bank of England would agree to such an arrangement. For the Bank of England to provide central bank services to substantial financial institutions operating in an independent Scotland and regulated by a body reporting to an independent Scottish Government implies that the Bank would accept risks over which it had little control. This seems implausible to us.
175. An important related question is whether an independent Scotland would have been able to bail out RBS and HBoS. We strongly suspect that this would not be the case. Iceland’s banks’ assets were around 7.7 times the country’s

⁴⁰ Channel Four News, “Salmond: You keep Scots bank debt, we’ll keep the oil money”, (11 January 2012). For further details see <http://www.channel4.com/news/salmond-you-keep-scots-bank-debt-well-keep-the-oil-money>

⁴¹ Kiran Stacey, “Salmond rules out sharing exposure to RBS”, *Financial Times*, (12 January 2012)

⁴² Financial Services Authority, *The failure of the Royal Bank of Scotland: Financial Services Authority Board Report*, (London: FSA, December 2011), p. 160.

⁴³ Helia Ebrahimi, “Scotland could take on state bank debts”, *Daily Telegraph*, (23 September 2012)

GDP.⁴⁴ The assets of the three main Irish banks were equivalent to 2.6 times the size of Ireland's GDP.⁴⁵ In Scotland, the total bank assets of RBS and HBoS represented a ratio of over 20 times Scottish GDP in 2008.

176. We believe that the Bank of England should continue to act as lender of last resort on the present terms. By pooling our resources and working together, we are better able to provide security to depositors and lenders. While other small nations were overwhelmed by the global financial crisis, Scotland was protected and strengthened by being part of the UK.

Fiscal policy

177. The UK's integrated fiscal model supports Scotland's economic performance and delivers funding for public services. A clear benefit of the current fiscal framework is that the Scottish Government is able to take long-term decisions on the allocation of public spending that have been devolved, and do so in full and secure knowledge that funding levels will remain stable irrespective of the volatility of Scottish receipts. Following the Scotland Act, further fiscal devolution will take place while the overall coherence and integration of the UK's tax and spending system is retained, as HM Treasury has recognised.⁴⁶ Our plans, as we set out later in this report, are consistent with this approach.
178. The Scottish Government's position on how fiscal policy would operate under independence has lacked clarity. For example, when pressed on the economics of independence, during a BBC television interview with Andrew Neill in March 2012, Alex Salmond said that a prerequisite for a functioning "sterling area" would be a "fiscal stability pact" between Scotland and the rest of the UK. However, six months later, when addressing a different audience in the US, Mr Salmond said there was no need for a "fiscal stabilisation pact". In response to a question at the Chicago Council on Global Affairs, relating to potential fiscal restrictions flowing from monetary union, he said: "I don't believe that a monetary policy restriction would have to have a fiscal stabilisation pact."

⁴⁴ Scottish Parliament Information Centre, *Banking inquiry: additional material supplied in response to Members Enquiries*, (Edinburgh: SPICe, February 2009), p. 6.

⁴⁵ *Ibid.*

⁴⁶ HM Government, *Scotland analysis: macroeconomic and fiscal performance*, (London: Stationary Office September 2013), p. 35.

I think we can have plenty of room for manoeuvre within a currency union”.⁴⁷

This issue was dealt with only fleetingly in the SNP’s White Paper. Tucked away on page 374, the White Paper makes reference to negotiation of a “fiscal stability pact”, but does not detail what this would mean, how it would be agreed, or why this would be advantageous to Scotland. Elsewhere in the document, it is argued that the “monetary framework will require a fiscal sustainability agreement between Scotland and the rest of the UK, which will apply to both governments and cover overall net borrowing and debt”, which, of course, omits the fact that there would also need to be agreement on tax levels. For such an important matter to be treated in this scant way displays a total lack of seriousness and credibility.

179. Successful monetary unions require fiscal union. The contrasting fortunes of the Eurozone and United States help illustrate this point. The current difficulties facing the Eurozone derive from the fact that it is a monetary union without a corresponding fiscal union – or, at the very least, an effective governing authority to impose fiscal discipline on member states. This is why the German Chancellor, Angela Merkel, has been urging a move towards a European fiscal union with powers of enforcement.
180. The aim of the Stability and Growth Pact was to ensure that countries adopting the euro would not:
 - Run an annual budget deficit of higher than 3 per cent of GDP; and
 - Allow national debt to be more than 60 per cent of GDP.
181. When the move towards monetary union was underway, Germany wished to ensure that the ECB followed the model of the Bundesbank. After all, the Bundesbank, with its legal obligation to pursue price stability as a primary objective, provided the foundation on which the post-war German economic miracle was built. With its understandable fear of inflation, Germany was concerned that the ECB’s anti-inflationary policy might be undermined by other governments pursuing irresponsible tax and spend policies. Unfortunately,

⁴⁷ Tom Gordon, “Salmond attacked over flip-flop on pound”, *Sunday Herald*, (30 September 2012)

even with an agreed pact, this is what happened. The Stability and Growth Pact has proved an inadequate mechanism for imposing fiscal discipline.

182. Rules without powers of enforcement do not work. More importantly, experience suggests that big countries have a tendency to ignore the “rules of the game”, and pursue their own economic interests when circumstances demand. In the autumn of 2003, for example, France and Germany worked to block implementation of the Stability and Growth Pact by rejecting a European Commission recommendation to move in the direction of sanctions. France and Germany were able to avoid punishment because of the large number of votes they command on the Council of Ministers, which must approve sanctions.
183. The United States, in contrast, is an example of a successful monetary union. The success of the US is based on the fact that the benefit of the dollar to federal states outweighs the potential economic gain to them of not being part of the monetary union. Levels of political pain are small and temporary enough to be politically tolerable. As a consequence, increased unemployment or falling growth in New York or California does not lead to calls from the Governor’s Mansion in Albany or Sacramento for these states to break from the dollar and form independent currencies in pursuit of economic competitiveness.
184. This is made possible by two factors: (i) a high degree of political and social cohesion in the US; and (iii) a common federal fiscal policy. These two conditions were absent in the Eurozone. The first of the two – political and social cohesion – would not be as absent between Scotland and England, as, say, with Germany and Greece. Even so, as we argued in the previous chapter, it is worth noting that the SNP’s express objective – its very reason for being – is to dismantle the political cohesion of the UK, as well as the social union that binds us together. The second of the two factors would not exist under the SNP’s plans for independence.
185. The SNP’s proposals would not lead to fiscal independence. As Professor David Bell and Professor Bob Elliott – two of Scotland’s leading academic economists – argued in a report for the David Hume Institute: “it is realistic to

assume that monetary union would also entail co-ordination, if not integration, of fiscal policy. Therefore, an independent Scotland would have no command over one major instrument of macroeconomic policy, monetary policy, and limited control over another, fiscal policy”.⁴⁸

186. As we have indicated, what the SNP are proposing amounts to an Anglo-Scottish version of the European Stability and Growth Pact. It is our firm belief that this would be disadvantageous to Scotland. Assuming that the Chancellor agreed to enter a “fiscal stability pact”, and we see no reason why he would, it is likely that the Treasury would insist on enforcement mechanisms much stronger than the European Stability and Growth Pact.
187. At the very minimum, it would be necessary to establish a robust institutional framework to ensure that agreed rules were enforced. The UK Government would hold the upper hand in determining such a framework. Even if this was overcome, and an overarching authority to ensure application of rules was established, experience suggests that ensuring enforcement is a completely different matter.
188. The SNP’s idea of a “sterling area” might potentially work if a large measure of sovereignty over macro-fiscal objectives was transferred to a supranational UK authority with powers to enforce sanctions. However, we do not believe this would be enough. Successful monetary unions, as history has shown over and over again, require a common fiscal policy. In our opinion, it would eventually become necessary to establish a finance ministry to co-ordinate fiscal policy with the Bank of England’s monetary policy. We already have such a body in the shape of the UK Treasury – we believe that the current arrangements, in this respect, are to Scotland’s advantage.

⁴⁸ David Bell and Robert Elliott, “Public Sector Pay in Scotland: An Overview” in *Public Sector Remuneration in Scotland: David Hume Occasional No. 92*, (Edinburgh: David Hume Institute, May 2012), p. 1.

Currency

189. The UK is one of the most successful currency unions in history. We believe the pound has served Scotland well: it is one of the oldest, strongest and most successful currencies in the world – we want to keep it on the current basis.
190. There are, as we see it, essentially three basic currency options available to an independent Scotland: one is to retain sterling on a different basis from present; one is to join the euro; and the other is to create an independent Scottish currency.
191. The preferred position of the Scottish Government, as outlined in their White Paper, is to retain sterling as part of a formal monetary union with the rest of the UK. We do not think that such an outcome should be assumed to be axiomatic. There would be two options for an independent Scotland wishing to keep the pound.
192. Firstly, Scotland could adopt what Professor John Kay – a former member of Mr Salmond’s Council of Economic Advisors – described, in his evidence to the House of Lords Economic Affairs Committee’s inquiry into the economics of independence, as the “Montenegrin solution”.⁴⁹ Montenegro is not a member of the Eurozone – or, in fact, the EU – but uses the euro as its currency. Kosovo also uses the euro in the same way. This arrangement is not unique to the Balkan Peninsula: Andorra, Monaco and San Marino also use the euro, despite not being members of the Eurozone. In a similar way, the US dollar passes for legal tender in Ecuador, El Salvador and Panama. Unilaterally adopting sterling – what economists’ term “sterlingisation” – would allow an independent Scotland to keep the pound without having to negotiate with the UK Parliament. But, if Scotland pursued such a course, the Bank of England would be under no obligation to act as a “lender of last resort” for Scottish financial institutions. It is also uncertain that the UK would agree to the Scottish Government’s preferred option of the Bank of England becoming its central bank. If this did not occur, a separate Scotland would also have no “lender of

⁴⁹ House of Lords Economic Affairs Committee, Uncorrected transcript of oral evidence, (22 May 2012)

last resort” in the form of the Bank of England, and would be wholly unable to bail out its banks should another a financial crisis arise.

193. Secondly, an independent Scotland could enter negotiations with the UK Government to form part of a sterling monetary union. The first and most obvious point relating to this scenario is that such an agreement would be subject to the consent of the UK Government. The Scottish Government should not take this for granted: we do not, as we say, think this should simply be taken for granted. Indeed, as the Shadow Chancellor, Ed Balls, has argued: “If Scotland votes for independence, there is absolutely no guarantee at all that Scotland will be able to keep the pound, whatever Alex Salmond says ... More than that, it would be a very, very difficult negotiation and I find it hard to see how the outcome could be an agreement that works either for an independent Scotland or for the rest of the UK”.⁵⁰ A Labour Government would not consent to a sterling monetary union. As Ed Balls has stated: “I am clear that the next Labour Government cannot enter into a new sterling monetary union to share the pound with an independent Scotland. Let me explain why. Ten years ago the UK had a similarly huge decision to make - whether or not to join the European single currency, the Euro. At the time there were some who argued that the UK should simply join for political reasons. But there is no more important economic decision a country can make than what currency to have. It’s not simply about the coins and notes in your pocket, but about mortgages, jobs and businesses, the taxes we pay and how our banks and financial services are regulated. The economics have got to come first”.
194. Moreover, an independent Scotland would have to convince the other nations of the UK on whether it could retain sterling, given that all would have an interest in this issue. In an important contribution to the debate, Carwyn Jones, the First Minister of Wales, cast doubt on the Welsh agreeing to the SNP’s plans. In a speech at Edinburgh University, delivered on 20 November 2013, Jones argued: “And I have to say this: if one part of the currency union decides to leave, then that is a matter for them. But if an independent nation wants to join, then that is a matter for the people of Wales, Northern Ireland and England

⁵⁰ Robbie Dinwoodie “Balls fires warning over use of sterling post-independence”, *Herald*, (4 October 2013)

– and as the First Minister of Wales, I would want the right to have a say ... Given the experience of the Eurozone in recent years, and the uncertainty which surrounded the various bail-outs, then I am not convinced that a shared currency would work from the Welsh perspective”.⁵¹

195. We are not aware of a comparable instance in history of a political union being dissolved and accompanied by maintenance of an existing monetary union. Successful monetary unions – such as the United States monetary union forged in the aftermath of the Civil War or the German Customs Union created in the nineteenth century – were preceded by political union. Both formed part of a nation-building enterprise, while what the Scottish Government proposes is breaking up an existing nation state. Equally, other attempts at currency union – such as the Latin American Monetary Union, Scandinavian Monetary Union and East African Currency Area – do not fit the model proposed by the Scottish Government.
196. The two other options available to an independent Scotland, which are not the preferred options of the Scottish Government, are to create a Scottish currency or join the euro. It is perhaps confusing that these are the two options previously favoured by the SNP.
197. In 1989, for example, Alex Salmond told the House of Commons: “A Scottish pound within the European monetary system would allow for a monetary policy suitable for Scottish domestic requirements against a framework of European currency stability”.⁵² Then, as the single currency started to emerge as a reality, the SNP adopted a policy stance in favour of an independent Scotland joining the euro. In November 1999, Mr Salmond told MSPs: “The argument for being in the euro is that it will get us out of the position in which a capital denominated over-valued currency is doing severe damage to the Scottish economy”.⁵³ The SNP’s position in favour of the euro remained in place until quite recently. In late 2009, Alex Salmond told Spanish TV that there were strong arguments for joining the euro: “I think the argument for having strong

⁵¹ Carwyn Jones AM, “Wales, Scotland and the United Kingdom”, Edinburgh University, (20 November 2013)

⁵² HC Deb, 24 October 1989, vol. 158, col. 736

⁵³ Scottish Parliament Official Report, 10 November 1999.

fiscal powers, powers over revenue, powers to expand the economy within a monetary context, within a European euro context, will prove to be a very strong one for the people of Scotland”.⁵⁴ The SNP abandonment of joining the euro, in our view, has coincided with the Eurozone crisis, making it politically difficult to argue for membership of the single currency.

198. We believe that the pound has served Scotland well. We are, therefore, committed to retaining sterling on the present advantageous terms.

Financial regulation

199. The history of Scottish banking is one that is intertwined with the union. Famously, it was a Scotsman, William Paterson, who established the Bank of England in 1694 to act as the Government’s banker and debt-manager. And, of course, the Bank of Scotland was founded in the following year to provide financial support to Scottish businesses. This was followed in later years by the establishment of other great Scottish financial institutions: the Royal Bank of Scotland in 1727, TSB in 1810, and the Clydesdale Bank in 1838. Scottish banking played a key role in Scotland’s economic development, while the invention of cash-credits by Scottish banks in the 18th-century that provided the liquidity which financed what became the industrial revolution. It was the creation of the first savings banks that gave credence to the idea of Scottish thrift.
200. Today, even after the banking crisis, financial services are of paramount importance to Scotland. Scottish financial services have responsibility for 6.5 per cent of the UK asset management sector; employ almost 87,000 people directly and numerous others indirectly; and the sector generates billions of pounds each year for the Scottish economy. Output in Scotland’s financial services industry currently stands at 75 per cent higher in real terms than in 1998.
201. As a party, we want to do everything possible to ensure that Scotland’s financial services thrive. The success of the real economy – manufacturing, exports,

⁵⁴ Simon Johnson, “Alex Salmond: Euro membership is a 'strong argument' for independence”, *Daily Telegraph*, (6 January 2009)

and job creation – depends to a large degree on successful financial services. However, we can never again go back to the world before 2007. Instead, we must create a new settlement on financial services based around the wise injunction of Adam Smith in the *Wealth of Nations*, that: “It is not by augmenting the capital of the country, but by rendering a greater part of that capital active and productive than would otherwise be so, that the most judicious operations of banking can increase the industry of the country”.⁵⁵

202. There is plenty of blame to share around for the financial crisis. Regulation should have been more robust and rigorously enforced. Policy-makers should have been more willing to “take away the punchbowl”. As the Shadow Chancellor, Ed Balls, said in his 2010 Bloomberg speech: “Of course we did not get everything right. We should have ignored Tory and City claims that we were being too tough on financial regulation and been much tougher still”.⁵⁶ To the Conservative chorus of demands calling for lighter touch regulation, we can add the SNP. In April 2007, during the run-up to the Scottish Parliamentary elections, Alex Salmond told the *Times*: “We are pledging a light-touch regulation suitable to a Scottish financial sector with its outstanding reputation for probity, as opposed to one like that in the UK, which absorbs huge amounts of management time in ‘gold-plated’ regulation”.⁵⁷
203. The failure of financial regulation does not lead us to call for its devolution or Scotland’s separation from the UK. Carefully designed financial regulation can ensure that the financial sector self-insures, limiting the fiscal burden. We believe that this is best achieved at the UK-level.
204. The position of the Scottish Government on what would happen to financial regulation in the event of independence has been unclear. In a June 2009 interview, John Swinney said that he wanted regulation of Scottish financial services to be devolved to Scotland. He said: “I quite clearly want the Scottish

⁵⁵ Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations: A Selected Edition*, (Oxford: Oxford University Press, 1998), p. 183.

⁵⁶ Ed Balls MP speech, “There is an alternative”, Bloomberg, (27 August 2010)

⁵⁷ Severin Carrell, “Alex Salmond regrets backing Goodwin”, *The Guardian*, (1 February 2012)

Government to have the full range of responsibilities [over financial services]”.⁵⁸ However, in February 2010, when giving evidence to the Scottish Parliament’s banking inquiry, Mr Swinney said there was an ongoing debate about where the appropriate level of regulation should lie, whether at a Scottish level, a UK, European or global level. He changed his position again in June 2012. Addressing a business audience in Glasgow, he said the Bank of England would take on the role of regulator for Scottish financial services in the event of independence.⁵⁹

205. The SNP White Paper proposes that the Bank of England would remain the macro-prudential regulator and identify systemic risks across the entire sterling area, but that a new conduct authority would be established that would be separate from the existing Financial Conduct Authority. We believe this is a fundamentally flawed idea that would undermine the single UK market for trade and finance and risk damaging companies operating in Scotland.
206. We agree with Scottish Financial Enterprise (SFE) – the body which represents Scotland’s banks, insurance companies and pension providers – that the Scottish Government’s current proposals for regulating the industry in an independent Scotland would be likely to contravene EU law. Owen Kelly, the Chief Executive of SFE, said an independent Scotland would need to create a separate financial regulatory authority. If this were to happen, cross-border companies would have to spend millions complying with two sets of red tape. Leaving aside the legality of what is being proposed, Sir Howard Davies, a former Deputy Governor of the Bank of England, has rightly pointed out that a UK financial industry regulator could not serve two independent Governments.⁶⁰
207. We have taken a keen interest in the Financial Services Act 2012. The Act, which transfers oversight and regulation for the stability of the financial sector to the Bank of England, establishes three new bodies:

⁵⁸ James Hall, “John Swinney blames tripartite system for fall of HBOS”, *Daily Telegraph*, (15 June 2009)

⁵⁹ BBC News, “Scottish independence: SNP denies financial plan U-turn”, (12 June 2012). See <http://www.bbc.co.uk/news/uk-scotland-18411198>

⁶⁰ *Ibid.*

- The Financial Policy Committee, as a committee of the Court of the Bank of England, to oversee macro-prudential regulation of the financial system;
 - The Prudential Regulation Authority (PRA), as a subsidiary of the Bank of England, which will have responsibility for micro-prudential regulation of financial institutions that manage significant risks on their balance sheets; and
 - The Financial Conduct Authority (FCA) to supervise all firms to ensure market integrity, consumer protection and effective competition in a way that advances the interests of all users and participants.
208. Given that the Act's aim is to ensure the stability of the UK financial system, an independent Scotland using sterling would have to adhere to its provisions. It is inconceivable that the UK Government would relinquish any control of responsibility for financial stability for so long as a common currency existed. The alternative policy of unilaterally adopting sterling would mean not only losing the Bank of England's protection of "lender of last resort", but would require the creation of a separate system of regulation.
209. To the extent that any future Scottish Parliament chooses to set up a separate regulator, it would have to consider a number of matters, including:
- Would the regulator(s) be responsible for the functions of both the PRA and the FCA?
 - Would it adopt all existing UK financial services rules and regulations at the outset or would it set out to make its own rules?
 - How might any new rules impact on the competitiveness of Scottish business?
210. If the regulations on both sides of the border were not identical, a Scottish bank with branches in both Scotland and England might well have to operate two different sets of documentation and procedures. This would inevitably push up costs for business. Similarly, an English or international bank operating in

Scotland could be required to develop separate forms and procedures. Having to follow a different regulatory regime may act as a possible disincentive to opening branches in Scotland. This is a particular risk where a bank has only a small number of branches and the cost of running a separate regime might be disproportionate.

211. We believe that a UK-wide system of regulation and supervision for financial institutions is in Scotland's long-term interests. In our view, it is time to mend the financial regulatory framework, not focus on tearing it apart.

Debt management

212. We believe that the management of debt and borrowing is best administered at the UK-level.
213. The Debt Management Office (DMO) was established on 1 April 1998 to "carry out the Government's debt management policy of minimising financing costs over the longer term, taking into account risk, and to manage the aggregate cash needs of the Exchequer in the most cost effective way". This decision followed on from the Treasury's 1995 Debt Management Review, which marked a departure from previous policy in signifying that debt management was not a key instrument of monetary policy. The DMO took over the Bank of England's responsibility for Exchequer cash management, balancing the daily net cash flow into and out of government, on 3 April 2000. In July 2002, the DMO was integrated with the Public Works Loan Board (PWLB) and the Commissioners for the Reduction of the National Debt (CRND). Accordingly, the DMO took over the statutory functions of the PWLB in issuing loans, primarily to local authorities for capital works, and the CRND's responsibility for managing the investment portfolios of public bodies, such as the National Insurance Fund Investment Account, the National Lottery Distribution Fund Investment Account and the Court Funds Investment Account. The DMO also occasionally conducts "one-off" auctions on behalf of government to raise revenue. During 2000, the DMO carried out the highly successful 3G mobile phone spectrum auction, raising £22 billion (£19.5 billion more than forecast in the 2000 Budget), and conducted the 2008 auction of EU Allowances in the UK for

Phase II of the EU Emissions Trading Scheme. In response to its acquiring of additional responsibilities, the number of staff working for the DMO increased after 1998, rising from 20 in its first full year of operation to 108 in 2010. As an executive agency of the Treasury, all members of staff in the DMO are civil servants, though the majority come from private sector backgrounds.

214. The two main responsibilities of the DMO are debt and cash management. Debt management involves the sale of government bonds, generally referred to as gilt-edged securities or gilts, and government-backed National Savings products, to finance the Central Government Net Cash Requirement (CGNCR). The government uses the proceeds from debt sales to either fund its public expenditure programmes or service the National Debt. The Treasury sets the CGNCR every year and decides, following consultation with the DMO, how many short, medium and long-term gilts should be issued. The DMO then decides the number of auctions to be held and runs the bid process. Cash management is concerned with the sale of short-term debt instruments, namely Treasury bills, in order to meet in-year fluctuations in the government's cash requirements. The DMO works according to a cash management remit, published annually at the time of the Budget, and its cash management objective is to ensure that adequate funds are available to meet any net daily central government cash shortfall. The DMO carries out its market operations in the light of forecasts provided by the Treasury of daily net cash flows into or out of the National Loans Fund.
215. The workload of the DMO increased dramatically between 2008 and 2010, when it became necessary for the Treasury to increase public borrowing to recapitalise the banking sector and meet higher levels of government expenditure. In March 2008, the Treasury authorised the DMO to issue gilts of £80 billion, a vast increase on the £58.4 billion target set in the DMO's 2007-08 remit. After the announcement of the bank recapitalisation scheme in October 2008, the DMO's 2008-09 remit was increased from £80 billion to £110 billion. One month later, at the time of the Pre-Budget Report, the DMO's remit was raised to £146.6 billion. This revised remit, as the Treasury Select Committee pointed out, represented a 251 per cent increase on the level of gilt issuance in

2006-07. The number of gilt auctions rose from 36 in 2007-08 to 58 in 2008-09. The need to meet this unprecedented financing meant that the DMO had to sell more short-term gilts (as this is the most liquid sector of the market), though long and medium-term gilts were also sold in record numbers. In April 2009, the Treasury issued its annual remit for 2009-2010, requiring the DMO to raise £220 billion in gilt sales. As a result of the unprecedented increase in gilt issuance, the DMO had to radically change how it did business, increasing its staff numbers from 75 in 2008-2009 to 110 in 2009-2010.

216. The SNP White Paper proposes that an independent Scotland would establish a “debt management function” to manage future debt and borrowing. This would be an early priority if Scotland became independent and it is hoped that the debt management body would be operationally ready to borrow from the markets from the date of separation. The debt management function of an independent Scotland would plan and undertake the management of the debt stock, refinancing of inherited debt, and the placing of new debt. The Scottish Government will seek to establish links with the UK DMO, and also with other DMOs in the EU and among Commonwealth countries to assist in the set-up phase. The establishment of a debt management function would be a huge undertaking. If the White Paper is correct, as Professor David Bell has argued, in the first year of its operation, the Scottish Debt Management Office would be engaged in floating debt equivalent to its share of redemptions.⁶¹ If the Institute for Fiscal Studies estimate of the deficit is correct, there would be a need for a further 2 per cent of GDP, worth approximately £3 billion, to be sold. This would constitute net new borrowing for the Scottish Government.⁶²
217. A newly-independent Scotland would have no track record with international lenders. As Sir Nicholas Macpherson, Permanent Secretary of the Treasury, has argued: “Even countries that are pursuing incredibly ... tight fiscal policies, such as the Netherlands and Finland, pay a premium on their debt compared to Germany. So even on day one, if Scotland was pursuing a surplus, there would

⁶¹ David Bell, “Scottish Independence: Debt and Assets”, *The Future of the UK and Scotland*, (3 December 2013)

⁶² Institute of Fiscal Studies, *Government spending on public services in Scotland: current patterns and future issues*, (London: Institute for Fiscal Studies, September 2013)

probably be some sort of premium”.⁶³ An independent Scotland would need to service its own sovereign debt and to manage its spending, borrowing and taxation in such a way as to win and retain the confidence of global lenders that its debt burden is manageable. Following agreement on how much public sector debt would be assumed by an independent Scotland, there would be the important issue of how to transfer this debt to an independent Scotland. This is not a straight forward matter. It would take a newly established independent Scotland some time to establish a successful credit history.

218. To answer the question of how UK national debt should be divided in the event of Scottish independence, it is necessary to first resolve the following questions: What do we mean by national debt? What is the size of UK debt? and How would an independent Scotland’s share of UK debt be calculated?
219. The SNP in their White Paper claim: “The national debt could be apportioned by reference to the historic contribution made to the UK’s public finances by Scotland, or on the basis of our population share. We may choose to offset Scotland’s share of the value of UK assets against our inherited debt. On any realistic calculation Scotland’s inherited debt is projected to be a lower proportion of GDP than is the case for the UK as a whole”. The first problem with the White Paper is that it makes no attempt to define “national debt”. National debt can be measured in a number of ways. Firstly, Public Sector Net Debt (PSND) provides the most straightforward method of measuring UK debt. PSND is calculated as financial liabilities (mainly gilts, Treasury bills and National Savings liabilities) *minus* liquid assets (mainly foreign exchange reserves and cash deposits) with both scored at face value. However, PSND is a limited measure of debt, as it excludes future liabilities from past Governments, including public sector pensions and PFI liabilities. Since September 2008, the ONS has used a second definition of PSND, which excludes the “temporary effects” of the UK Government’s interventions in the financial sector. At the end of March 2012, PSND, excluding liabilities accrued from interventions in the financial sector, was £1,022.5 billion, equivalent to 66

⁶³ House of Lords Economic Affairs Committee, *The Economic Implications for the United Kingdom of Scottish Independence*, (London: Stationary Office, March 2013), p. 31.

per cent of GDP.⁶⁴ For simplicity, when referring to PSND for the remainder of this report, this will be in reference to the measurement excluding UK Government financial sector interventions. A wider measurement of UK debt is contained in HM Treasury's Whole of Government Accounts (WGA), which takes account of net public service pension liabilities, commitments under PFI contracts and contingent liabilities. According to the Treasury's WGA Unaudited Summary Report for the year ending 31 March 2012, published in July 2013, the net value of future public service pension payments was £1,007 billion; total capital liabilities, arising from PFI contracts, stood at £30 billion; £113 billion was liable in "provisions" (representing the estimation of liabilities for expected future expenses, such as nuclear decommissioning, that have been discounted to present value); and there was £23 billion in unamortised premium or discount on gilts liabilities.⁶⁵

220. Given the high level of liabilities that would in all likelihood be taken on by an independent Scotland, we have concerns about the ability of a newly sovereign state to service its debt. These projected figures – which do not take into account bank exposures – are of deep concern. This, in a sense, is the key point: if an independent Scotland was unable to make its debt commitments, there would be severe economic ramifications for the wider UK.
221. The Scottish Government operates on the basis that debt could be serviced by issuing bonds and Scotland possessing a AAA credit rating. Such an assumption needs to be treated with a healthy dose of scepticism. As a newly independent country, with no credit history, it is highly likely that Scotland would find itself in difficulties with the bond markets. It should not be taken for granted that Scotland could borrow at a similar cost to the present UK Government.
222. If downgraded, Scotland would be forced to pay a greater interest rate on its debt than the UK does at the moment. If the borrowing costs of a separate Scotland increased, debt repayments would rise and force the Scottish Government to either cut public expenditure or increase taxes.

⁶⁴ Office for National Statistics, *Statistical bulletin: Public Sector Finances, March 2012*, (London: ONS, 24 April 2012), p. 9.

⁶⁵ HM Treasury, *Whole of Government Accounts: year ended 31 March 2012*, (London: Stationary Office, July 2013), HC 531, p. 22.

223. Even though an independent Scotland would in all probability have great difficulty in servicing its debt, this should play no role in the division of liabilities. An independent Scotland would have a moral obligation to accept a proportionate share of UK debt. The appropriate level of apportioned debt would be subject to intense discussion. We find it inconceivable that a UK Government would simply accept a division based on a per capita or GDP/GVA basis: this would be an independent Scotland's opening position in negotiations, not the final outcome. Scotland would have to take on more than a proportion of PSND. It would be incumbent upon an independent Scottish Government to take on a percentage of other liabilities, not contained in the PSND measurement, such as those relating to public sector pensions and PFI.
224. We believe that national debt is best pooled collectively at the UK-level. It is a matter of extreme concern to us that an independent Scotland, with no track record in issuing bonds, would not only be unable to service debt but would have arrangements in place to manage debt. We are also concerned by the conclusion of IFS report bringing national debt down in an independent Scotland would require something like a 6 per cent reduction in total public spending, a rise of 9 per cent on the basic rate of income tax, or a VAT rate of 28 per cent.⁶⁶

C. Foreign affairs (including international development)

225. As part of the UK, Scotland has a strong voice in the world. We currently occupy a place at the international top table, meaning Scotland has real clout and influence throughout the world. In our view, Scotland benefits from being part of a large, established EU Member State with considerable international influence, a far-reaching diplomatic and trade network – and, crucially, some of the most inclusive arrangements in Europe which allow the Scottish Government a significant role in decision-making.

⁶⁶ Michael Amior, Rowena Crawford and Gemma Tetlow, *Fiscal sustainability of an independent Scotland*, (London: Institute for Fiscal Studies, November 2013)

226. The UK is one of the five permanent members of the UN Security Council – sitting alongside China, France, Russia and the United States. It also plays a critical role in the G7, G8, G20 and the World Trade Organisation, all of which help Scottish trade flow as smoothly and freely as possible throughout the globe. The UK, in addition, exerts influence as a key player in the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development and the World Bank. Scotland is represented by over 270 consulates and embassies overseas – the Foreign and Commonwealth Office (FCO) has the world’s largest diplomatic network. We believe that UK participation in these international organisations enables Scotland to “punch above its weight” in the world.
227. A report published the House of Commons Foreign Affairs Select Committee highlighted significant gaps in the Scottish Government’s plans for foreign policy. These were not addressed in the SNP’s White Paper.
228. The Foreign Affairs Select Committee was critical of the SNP’s stance on Scotland’s future membership of bodies such EU and NATO, saying it was based on little more than assertion and assumption. The report makes clear that “it is one thing arguing for a position and another securing it”, and it was argued that, if the nationalists continue to pursue this approach, there is a likelihood that it “will undercut its attempts to position itself as a constructive and helpful European partner and therefore may not receive the unanimous support of EU Member States it would require”.⁶⁷
229. More generally, the Committee expressed concerns about “the extent to which seemingly unfounded assertions and what are essentially initial negotiating positions are being presented as incontrovertible facts and conclusions”.⁶⁸ The SNP’s reliance on assertion is a matter of concern to us. It also said there is an urgent need for greater clarity and candour on the international challenges an independent Scotland would face. The Committee’s report highlighted the fact that the Scottish Government had so far failed to provide any analysis of the

⁶⁷ House of Commons Foreign Affairs Select Committee, *Foreign policy considerations for the UK and Scotland in the event of Scotland becoming an independent country*, (London: Stationary Office, May 2013).

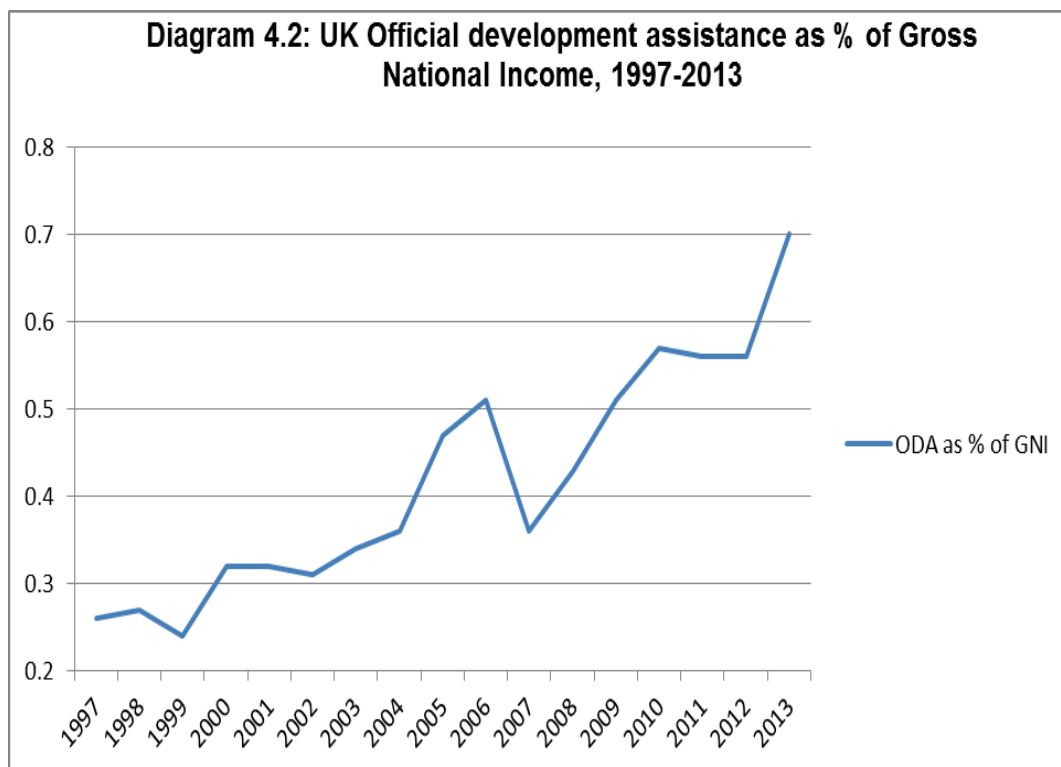
⁶⁸ *Ibid.*

costs of setting up new intelligence and diplomatic services – a concern that we share. All of the above matters because protecting the safety, security and interests of Scottish and UK citizens at home and abroad should be a top priority of any Government. It also matters because if something goes wrong overseas, Scots deserve to know that the Government will be there to protect their interests.

230. As part of the UK, Scotland has access and influence throughout the world, from soft power to the promotion of trade and the opening up of new markets for Scottish companies through UK Trade and Investment. In our view, under the present arrangements, we currently benefit from the best of both worlds: significant decision-making powers here in Scotland together with the strength, stability and security that being part of the UK brings in an unstable and insecure world.
231. While a devolved Scotland will not have a separate international legal status, it has been argued that it may be possible to extend its role in certain aspects of foreign affairs. For example, it has been suggested that it might be possible for the FCO to allocate part of its current budget to enable Scotland to appoint specialist diplomats. Such a scheme might be possible, though we are not convinced. For example, it is unclear how such civil servants would relate to the wider Diplomatic Service which is committed to the pursuit of UK and Scottish interests. We note the SNP's White Paper proposal that an independent Scotland would "appoint members of the Scottish diaspora and prominent local people as honorary consuls to represent Scottish interest in nations where there is no direct representation", but we doubt that this could be considered a more advantageous arrangement than the benefits of a professional foreign service
232. The Department for International Development (DfID) is a perfect example of how Scotland maximises its impact in the world by pooling and sharing resources and which demonstrates and proves the positive and powerful voice the people of Scotland have through possessing a seat at the top table. With a budget of more than £10 billion, Scotland is able make a big difference to the

lives of people across the world through the UK international development programme.

233. No one can doubt the UK's positive influence on international development, where we do not just play our part but where we lead the way in shaping global priorities in fighting poverty and creating opportunity. It is another example, like so many others, which demonstrates how our collective voice is stronger.
234. The Scottish Government, moreover, has an international development policy that sets out the framework for engagement with some of the poorest countries in sub-Saharan Africa, which have historical, and in some cases, contemporary relationships with Scotland. These countries are supported through block grants delivered by the Scottish Government's partners in development. By 2010-11 devolved spending in this area was approximately £9 million. We regard the field of international development as offering an illustrative example of the UK and Scottish Governments working effectively together, with the UK Government respecting the Scottish Government's desire to make a contribution in a reserved area in which Scotland has an interest.
235. Labour has a long record of achievement in the field of international development. It was a Labour Government that appointed the first Minister for Overseas Development, Barbara Castle, as a cabinet-level position. In 1997, Labour established DfID with a Secretary of State in the Cabinet. Labour doubled and then trebled international aid. Labour also secured debt relief for the poorest countries in the third world. And, it was Labour that set in place the target of providing 0.7 per cent of national income in aid, which was achieved in 2013.



Source: OECD

236. As a consequence, we have real and genuine concerns that the withdrawal of all Scottish MPs from the UK Parliament would put at risk a progressive majority in the UK that is supportive of keeping international development high on the political agenda, and we are concerned that this could result in a diminution in the contribution we make to those countries most in need.
237. Furthermore, we fear that the SNP's plans for separation would place at risk the jobs at DfID's Abercrombie House in East Kilbride, which, with more than 500 staff, is at the heart of the UK's international development programme. There are lots of unanswered questions on the scale any future Scottish aid budget, on what would happen to Scottish charities which currently receive DfID funding and on what would happen to the dedicated public servants working in East Kilbride. As a progressive party, committed to meeting our international obligations to the poorest countries, we believe that international development should remain a reserved matter.

D. Defence

238. The last Labour Government created Britain's first ever National Security Strategy to strengthen our response to fast-moving and interconnected threats, from terrorism and nuclear proliferation to new challenges like cyber security. We believe that, in a world with rapidly changing and uncertain threats, all parts of the UK must remain joined together for defence and national security. There should be no risk of a lack of clarity over who is responsible for dealing with this issue. These matters, in our view, are properly decided by the UK in the best interests of all its citizens. We believe that independence would make us less secure in an increasingly uncertain world. By pooling resources and expertise from across the UK, we are safer and better prepared to meet potential threats.
239. Scotland's separation from the UK would demand a division of military equipment between the two states. This would form part of wider negotiating process on division of assets and debt related to previous procurement of assets. Any other way of proceeding would be unacceptable. As Dr Michael John Williams rightly asserts: "It would be disingenuous of Mr. Alex Salmond and the SNP to believe that they should acquire weaponry, Land Rovers, helicopters, planes or ships (to name but a few pieces to be divided) without payment or assumption of debt related to such past procurement. It will thus be necessary to devise a formula for the transfer of equipment".⁶⁹
240. The SNP's defence policy raises more questions than it answers – when it comes to our security as a nation, this is simply not good enough. The SNP are proposing more members of the armed forces in a separate Scotland and new defence assets. However, it is clear that the SNP's proposed £2.5 billion defence budget would not cover the commitments they have made.
241. Major-General Andrew Mackay CBE, former commanding officer in Afghanistan who served in the army for 27 years, has summed up the dangers of the SNP's defence policy better than we ever can. He has argued: "I cannot see how

⁶⁹ House of Commons Defence Select Committee, *The Defence Implications of Possible Scottish Independence*, (London: Stationary Office, 27 September 2013).

slicing up a competent and well established military will aid either the United Kingdom or an independent Scotland”.⁷⁰

242. We not only believe in the logic of pooling our defence resources, we consider it to be vital to our national security interests.

E. Social security

243. The core of the social security system – state pensions and the vast majority of cash benefits – should remain reserved. These allow the social solidarity that helps bind the UK together. However, we believe that there is some scope for limited adjustment of the boundary of responsibility in areas of obvious cross-over between devolved and reserved welfare functions, and we set out our proposals for the potential for devolving such benefits that match closely with devolved services in Part 6.

F. The constitution

244. Under Schedule 5 of the Scotland Act, the following aspects of the constitution are reserved matters: (a) the Crown, including succession to the Crown and a regency, (b) the Union of the Kingdoms of Scotland and England, (c) the Parliament of the United Kingdom, (d) the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal, and (e) the continued existence of the Court of Session as a civil court of first instance and of appeal. We received no evidence that these aspects of the constitution could or should be devolved.
245. Whilst we believe that the constitution should remain reserved, there are aspects of the constitution, as set out in the Scotland Act, which need to be revisited. Above all, in our opinion, legal provision should be made to reflect the political reality that the Scottish Parliament is permanently entrenched in the

⁷⁰ Major-General Andrew Mackay, “Risking our security too high price to pay”, *The Scotsman*, (22 June 2013)

constitution and indissoluble and that it should also have control over its own electoral system. We set out our proposals on this issue in further detail later in this chapter.

G. The civil service

246. Labour supports the principle of a neutral, politically-impartial and meritocratic UK-wide civil service.
247. We believe in the idea of a unified civil service to ensure common standards of professionalism, an integrated approach to policy development and clear lines of communication. This is fundamental to the relationship between politicians and permanent officials and the unified civil service ensures that this is consistent across the UK. Given this, we are not in favour of establishing a devolved civil service.
248. The Calman Commission considered the unusual arrangement by which a number of senior civil service appointments in Scotland were made, or approved by, the Prime Minister, in his capacity as Minister for the Civil Service. While we do not believe that any appointment of a senior civil servant working in the Scottish Government was ever made against the wishes of the First Minister, and do not wish to suggest that any Prime Minister of whatever political stripe has acted in anything other than the highest standards of probity, we agreed that this was a somewhat strange irregularity. As Calman suggested, there was a problem of perception with the Prime Minister retaining responsibility for appointments of some senior civil servants in the Scottish Government, and this meant responsibility for appointing, or approving appointments of, senior civil servants to senior posts in the Scottish Government should be delegated by the Prime Minister to the Head of the Home Civil Service, acting on the advice of the UK Civil Service Commissioners. We accepted this recommendation and are glad this anomaly has been corrected.

249. By definition, Scotland's separation from the UK would mean an end to the unified civil service, a development that would break one of the institutions that has brought us together as a country. The vast majority of civil servants are the hard working men and women, who helped create the Welfare State, and the ordinary people who deliver vital public services today – it is an institution that is rightly admired worldwide.
250. We do not question the impartiality and integrity of a single civil servant working for the Scottish Government. Indeed we recognise the pressure under which civil servants work as pressures on all public service budgets have increased. However, we do have considerable concerns about the way SNP ministers have used their position of influence to force officials into often uncomfortable choices between adhering to the Civil Service Code and serving the Scottish Government loyally. The SNP have questions to answer on the appropriateness of using civil servants on overtly political projects such as their National Conversation and White Paper on independence.

H. Broadcasting

251. The provisions of the Broadcasting Act 1990 and the Broadcasting Act 1996, and the BBC, are reserved. As a party, we support the independent BBC, and we believe in its founding values, established by the first Director-General and Scotsman, Lord Reith, that its role should be to “inform, educate and entertain”. The BBC is one of the most admired, valued and trusted broadcasting institutions in the world: it is respected internationally for its objectivity and creative excellence, and here in Britain as a pillar of our cultural life. We support an independent, impartial and world-class BBC at the heart of a vibrant public broadcasting system. We strongly support its editorial independence and the licence fee that finances the BBC's programmes and activities.
252. During the course of our work, we examined whether there was potential for further devolution in the sphere of broadcasting, building further upon the Scotland Act 2012, which gave legislative effect to the recommendation of the Calman Commission that responsibility for the appointment of a Scottish

member of the BBC Trust should be exercised by Scottish Ministers, subject to the normal public appointments process.

253. We received a number of representations arguing that, as culture is a largely devolved, it is anomalous that the public service broadcaster should be regulated at UK level. We considered this argument and note that the Broadcasting Commission partly supported this with their recommendation that the Scottish Parliament should take an active role in considering the broadcasting industry and services audiences in Scotland receive, in order to provide a visible and public forum for debate, with Scottish Ministers having greater responsibility, within the UK framework, for those operational functions directly affecting Scotland. In addition, we also considered the recommendation of the Broadcasting Commission that the influence and responsibilities of OFCOM in Scotland should be strengthened and there should be specific representation for Scotland on the OFCOM Board at UK level.
254. Having considered the matter in great detail, we feel that OFCOM has now established productive relations with the Scottish Government and Parliament, and that it has adjusted itself to the present devolution settlement. We also note that OFCOM has shown a genuine commitment to engaging with the Scottish Parliament. We hope the Scottish Government will take advantage of the proposals OFCOM has put forward to increase scrutiny of broadcasting in Scotland by Scottish institutions.
255. Overall, in our view, the provisions of the Broadcasting Act 1990 and the Broadcasting Act 1996, and the BBC, should remain reserved.
256. The BBC, of course, would no longer belong to Scots in the event of independence. We would, as a consequence, lose an institution that is widely respected across the entire UK. Under the present arrangements, we have the best of both worlds: distinctive Scottish programming through BBC Scotland while being a part of one of the largest and most admired broadcasters in the world. We do not think that SNP's proposal in their White Paper to create a Scottish Broadcasting Service, which would enter a "new formal relationship

with the BBC as a joint venture, where the SBS would continue to supply the BBC network with the same level of programming, in return for continuing access to BBC services in Scotland” is credible. The White Paper proposes a “formal relationship” between the BBC and Scottish Broadcasting Service as a joint venture, but of course, this would be subject to agreement with the BBC and this is in no way guaranteed.

257. Finally, whilst clearly not possible to devolve, we have concerns about the loss of the BBC World Service, which is currently funded by the UK Government through Parliamentary Grant-in-Aid administered by the FCO, if Scotland separated from the UK. While we note that funding for BBC World Service will transfer to the Licence Fee from 2014-2015 onwards, we believe that BBC World Service radio has been an important window on the outside world for many people over many decades, and we would consider the prospect of its potential loss to be a particularly backward step.

I. Betting, gaming and lotteries

258. Under the Scotland Act, betting, gaming and lotteries are all reserved matters. The Scottish Parliament therefore has no power to act in this area, though Scottish Ministers have been granted certain powers under UK legislation.
259. The Gambling Act 2005 controls all forms of gambling in the UK, establishing an operating regime and the system of personal and premises licences required in relation to a gambling business. Operating and personal licences are granted by the Gambling Commission, which is an independent Non-Departmental Public Body sponsored by the Department for Culture, Media and Sport (DCMS). The Gambling Commission has over 200 employees, including over 30 compliance and enforcement managers working across the UK. The work is funded by fees paid by the licensed operators.
260. In Scotland, licences for premises are granted by local authorities, through licensing boards, as established by the Licensing (Scotland) Act 2005 – although they are required to follow guidance issued by the Gambling Commission. The Gambling Act 2005 also gives Scottish Ministers powers to

make regulations to prescribe the form and content of premises licences; the form and manner of premises licence applications; and other matters relating to applications under Part 8 of the Act. The premises review procedures are designed to give licensing authorities (Licensing Boards in Scotland) a key role in managing the Act at a local level.

261. We have considered the case for devolution of gambling during the process of our work. On the one hand, we recognise that there is some force in the argument that, as gambling regulation is a crime prevention measure and justice is a devolved matter, a case exists on its suitability for devolution. On the other hand, since gambling is increasingly becoming an online business, we believe there is an overwhelming case for a UK-wide regulatory framework. Furthermore, if there was an attempt to regulate gambling in Scotland more tightly than in the rest of the UK, or vice versa, the gambling industry would simply move the location of business, and this is something we have no wish to encourage.
262. The National Lottery was established in the National Lottery etc. Act 1993, which was subsequently amended by the National Lottery Act 1998 and National Lottery Act 2006. The Lottery since its inception has been run by a private company, Camelot, which has been awarded each of the three operation licences. The Calman Commission pointed out that that the National Lottery was established as a UK-wide endeavour with tickets sold to (and therefore the chances of winning based on) the maximum possible customer-base. We agree with the Calman Commission that this principle remains relevant today.
263. Funds devoted to good causes are allocated by independent distribution bodies under the direction of DCMS. At present, there are four good cause areas: the single health, education, environmental and charitable expenditure good cause receives 50 per cent of the money raised for good causes; and the arts, national heritage and sport causes each receive roughly 17 per cent. Lottery money is subsequently disbursed by distribution funds, to which organisations seeking Lottery support apply.

264. In Scotland, the six Lottery distributors operate either wholly as Scottish agencies or have a distinctive Scottish presence, and carry responsibility for policy and distribution of funds. Furthermore, even in the case of large UK-wide distributors, like the Big Lottery Fund, the Scottish Government is involved in high level policy direction as regards Scotland, and its views are taken fully into account on important Scottish appointments. We believe this is a highly satisfactory way of operating that should continue on the present basis.
265. As of 1 November 2013, Scotland had been awarded a total number of 51,757 grants totalling £2,503,554,517. Furthermore, since the introduction of the National Lottery, Scotland has received a disproportionate amount of funding overall, and more than any UK region from the Heritage Lottery Fund.
266. On the issue of whether the National Lottery should be devolved, we endorse the view previously expressed by the Calman Commission. Overall, we see no practical reason why the National Lottery could not be devolved, but take the view that the arguments in favour of devolution are outweighed by the benefits of Scotland's participation in a UK-wide lottery in terms of scale and the opportunities that this offers. We also believe that the current arrangements take into account Scottish needs. Finally, as Scotland is part of a UK-wide lottery, access to much larger funds is likely than would be the case in a Scotland-only lottery. Consequently, we do not favour devolution of the National Lottery, and see no argument for changing the present reservation

J. Immigration

267. We believe that immigration brings many benefits – Scotland is a more diverse, vibrant and culturally varied place because of immigrants. However, we also understand people's concerns about immigration – about whether it will undermine their wages or job prospects, or put pressure on public services or housing.
268. The Scottish experience of immigration is different to that of England. In fact, unlike England, Scotland has historically been a country of net out-migration,

with more people leaving to live elsewhere than moving to live in Scotland. However, since the 1960s, net out-migration has been greatly reduced and, in a number of years during the late 1980s and early 1990s, Scotland experienced net migration gains. Scotland has now entered a period of net in-migration. Over the last eight years, there have been net gains of at least 19,000 per year. In 2010-11 the net migration gain was 27,000, the highest since these estimates started in 1951.

269. The Scotland Act specifically reserves “immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens” and the “free movement of persons within the European Economic Area”. There would certainly be scope for devolution in the area of immigration. For example, a number of managed migration programmes, which provide for regional flexibility to meet the needs of different regions, exist around the world. The success of these schemes, though, is somewhat variable.
270. On balance, however, we are not convinced that devolving immigration powers to Scotland is the best way forward. Firstly, it is difficult to see how migrants could be obliged to settle in Scotland, given the freedom of movement that is currently enjoyed by UK citizens: this would require legislation restricting migrants to one part of the UK which would be extremely difficult to enforce. The last Labour Government, moreover, introduced reforms to strengthen immigration controls between countries that are part of the common travel area – including the UK, Republic of Ireland, Isle of Man and the Channel Islands – so as to strengthen border security.
271. We take the view that legislative competence for immigration should remain reserved. In our opinion, the UK and Scottish Governments should liaise and co-operate, in order to ensure that the Scottish dimension is properly taken into account. Thus, we recommend retention of immigration as a reserved matter, but believe that reasoned and agreed variations between Scotland and the rest of the UK are justifiable and workable. Furthermore, while we recognise that the treatment of asylum seekers’ children is not a stand-alone Scottish matter, we consider it imperative that the Home Office should not disregard the statutory obligations of Scottish local authorities.

272. Communities in Scotland need a Labour Government that will stop the exploitation of migrants that leads to the undercutting of local workers. A UK Labour Government will offer real opportunities for the next generation of Scottish workers by ensuring big companies bringing in people from outside the EU have to also offer an apprenticeship.

K. Drugs, drug trafficking and related laws

273. The Scotland Act reserves the criminal law in respect of the misuse of drugs and the proceeds of drug trafficking. The following matters, therefore, are reserved:

- Matters relating to the possession, cultivation, production, supply, import and export of drugs;
- Matters relating to drug trafficking, including the acquisition, possession or use of the proceeds of drug trafficking; and
- The statutory offences involving money laundering of the proceeds of drug trafficking, confiscation of the proceeds of drug trafficking, and forfeiture of things used in the commission of drug trafficking offences.

274. The Scottish Parliament, on the other hand, does have responsibility for matters relevant to the misuse of drugs including education, health, the police and the operation of the criminal justice system. Thus, Scotland has its own drug and substance misuse strategy and is subject to the international obligations to which the UK is a signatory, and for which the UK Government has ultimate responsibility.

275. We can see that a markedly more lenient approach to the manufacture and possession of drugs in Scotland could pose problems for the rest of the UK by making it easier to obtain or supply drugs that remained illegal elsewhere. We also note that local variations already exist with local police forces determining the priority they will give to anti-drugs activity which may, in turn, be a determining factor in individual decision-making. In considering the issues, we

have had to ask whether this potential disadvantage to the UK as a whole outweighs the advantages to Scotland of determining its own law and policy and how – and to what extent – this differs from other areas where divergence in approach can occur. Overall, we see no case for devolution in these areas.

L. Abortion and analogous issues

276. Under the Scotland Act, the following areas are reserved: abortion, xenotransplantation, embryology, surrogacy arrangements, human genetics, matters relating to the regulation and control of medicines (for both humans and animals), medicinal products, poisons and biological substances. There are two minor exceptions. Firstly, in the area of genetics, a number of aspects are devolved, primarily in relation to research funding and service provision in the NHS. Secondly, the Chief Medical Officer's powers on the approval of locations where abortions can be carried out, and regulatory role in regard to the requirement of certification of doctors' opinions before a termination, have been devolved to Scottish Ministers. In addition, Scotland has responsibility for providing abortion services through NHS Scotland.
277. With regard to genetics and xenotransplantation, we see no case for moving away from the current UK-wide arrangements, overseen and co-ordinated by such bodies as the Genetics Commissioning Advisory Group, Genetic Testing Network, and Gene Therapy Advisory Committee, and are not aware of any demands that these two reserved areas be devolved. Indeed, we see advantage in pooling expertise and professional opinion, across the UK. As the Calman Commission argued, the complex nature of these highly specialist areas, means that there is great merit in retaining an organisation of networks on a UK-basis, in order to avoid the multiplying of bodies and the dilution of specialist expertise within a more general body. Moreover, in a number of circumstances, as in the case of the Human Genetic Commission, Scottish Ministers are directly reported to on appropriate matters, and we believe that this should continue.

278. Finally, in the past, it has been suggested that the ability to legislate on abortion should be devolved to the Scottish Parliament, given that health or criminal justice are policy matters that fall within the ambit of the Scottish Government. After careful consideration of the arguments, we see no convincing argument that responsibility for abortion should be devolved.

Strengthening the Scottish Parliament

M. Entrenching the Scottish Parliament

279. The UK constitution is often called an “unwritten constitution”, but it is better described as “partly written and wholly un-codified”.⁷¹ Unlike most countries, the UK has no single, formal constitutional text – like the American Constitution of 1788, the German Basic Law of 1949, or the Constitution of France adopted by the Fifth Republic in 1958 – which sets out all the key elements of the country’s constitutional system and how they are related. The reason behind this are to be found in the UK’s history: unlike most other countries, the UK has never suffered destabilising revolution or annexation, meaning that it has not been forced to start anew and create a constitution, or fashion a new one to replace that of an overthrown regime. The UK’s constitution – “partly written and wholly un-codified” – has evolved over centuries, in response to changing conditions, such as the shifting balance of power between the Monarch and Parliament, the changing role of the House of Commons and the House of Lords, and, perhaps most importantly for our purposes, the union between Scotland and England.
280. The UK’s constitution derives from a number of sources that are part formal written constitutional documents such as Acts of Parliament and accumulated conventions, works of authority, the common law, and EU law.
281. Much of the UK’s constitution is derived from Acts of Parliament, including the Acts defining succession to the Crown (the Act of Succession of 1701, and,

⁷¹ Ian Budge *et. al*, *The New British Politics*, (London: Pearson, 2007), p. 77.

most recently, the Succession of the Crown Act 2013); the Acts of Union (the Laws in Wales Acts 1535 and 1542, and the Acts of Union in 1707), which respectively brought the legal system of Wales under the norms of English administration, and created the Parliament of Great Britain; and the Parliament Acts of 1911 and 1949, restricting the powers of the House of Lords in relation to money bills (bills designed to raise money through taxes or spend public money) and delay, and the Human Rights Act 1998.

282. The UK's entry into the European Union in 1973 was a major constitutional development, bringing the UK under the supranational jurisdiction of the EU in a limited number of areas, which have extended over subsequent years.
283. The flexibility of the UK constitution – one of its great strengths – was evident in the large number of constitutional reforms implemented by the Labour Government after 1997. The incorporation of the European Convention on Human Rights into UK law by the Human Rights Act 1998 provided individuals with the ability to bring claims in domestic courts based on prescribed human rights. And, finally, the Scotland Act 1998, in creating the Scottish Parliament, gave legislative effect to the settled will of the Scottish people that Scotland should remain a nation within the UK with its own devolved legislature, as well as representation in the UK Parliament. In the forthcoming referendum the Scottish people will be able to confirm that choice.
284. In a major speech on 2 September 2013, the former Prime Minister, Gordon Brown, proposed two major constitutional changes.⁷² Firstly, it was argued that the time had now come to write into the UK constitution a shared and continuing commitment to pool and share resources equitably across the UK to guarantee security and opportunity for all. Mr Brown's suggestion was that such a declaration should state explicitly that: "The Union exists to provide security for all and opportunity for all by sharing and pooling our resources to reduce poverty, deliver employment opportunity for all and ensure all our citizens have access to a decent level of public services including health care free at the point of need". As Brown noted, such a rewrite could not be a

⁷² Gordon Brown, "A positive, principled and forward-looking case for the union", (2 September 2013)

decision of Scotland alone. It would at first need to be a declaration of the UK Parliament, and it could over time be enshrined in UK statute. We agree that one of the most important aspects of the UK is that there is this sharing of resources to deliver these social rights, across the whole UK and indeed across the whole of Scotland.

285. Secondly, alongside an explicit statement on the purpose of the UK, Gordon Brown suggested that we should agree an explicit statement on the permanence of the Scottish Parliament. He argued that the time had come for the Scottish Parliament to be fully entrenched into the UK constitution to make its permanence and irreversibility more explicit. In particular, it was argued, we could no longer continue with the statement of the Scotland Act 1998, which states that nothing in the Act affects the UK Parliament's ultimate legislative powers. We agree with this: Section 28-7 of the Scotland Act – which asserts “This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland” – should be amended to reflect the now firmly established convention (“the Sewel convention”) that the UK Parliament does not legislate for devolved matters or to amend the powers of the Scottish Parliament without its consent.
286. The time has come for the Scottish Parliament to be seen to be what it is in reality – permanent, entrenched in the constitution and indissoluble – and for us to make its permanence and irreversibility explicit. We fully agree on the need for a constitutional guarantee of the Scottish Parliament's permanence, backed up by a constitutional lock that prevents it being overruled or undermined.
287. Because the UK constitution is unwritten there is an assumption that promises made in one Parliament need not necessarily be honoured by the next or successive Parliaments. So in theory at least, the Scottish Parliament could be dissolved or see its powers cut as one UK Parliament becomes another. As we approach a vote on our constitutional future, it is important to set down the irreversible and indissoluble terms of the settlement between Scotland and the rest of the UK. Of course Scotland's position within the UK is, as it has always been, ultimately a matter that the Scottish people can decide. We know that in reality the vote of the Scottish people in the 1997 referendum has guaranteed

the Scottish Parliament in a political sense. This is, as we noted above, reflected in the Sewel Convention, which holds that Westminster does not legislate on devolved matters in Scotland, or on the breadth of the devolved Parliament's powers, without the consent of the Scottish Parliament. The Scottish Parliament has not just to be, but also has to be seen to be, permanent, entrenched in the constitution and indissoluble. This would in effect be building a constitutional pillar which lay to rest the idea that devolution was simply at the discretion of the UK Parliament, and replace it with an irreversible and enduring political settlement guaranteed by the constitution. Thus the Scottish institutions of government will exist in their own right – and not simply for as long as a UK Parliament desires it.

N. Elections

288. In Scotland, local government elections are a matter devolved to the Scottish Parliament under the Scotland Act 1998. The Scottish Government and Ministers accordingly are responsible for setting the rules for the conduct of local government elections. This was a power that was utilised by the Labour-led Scottish Executive to enhance local democracy, when it passed the Local Governance (Scotland) Act 2004, which paved the way for the introduction of a proportional electoral system for council elections, based on the Single Transferable Vote (STV) system, and a change in the minimum age for standing as a councillor from 21 to 18. The introduction of STV was far from a self-interested act. Though it carried obvious electoral drawbacks for Labour, it was a measure designed to improve and enhance local democracy. Since the first election under STV in May 2007, there has been a more proportional distribution of seats amongst the main political parties. STV has not only made the voting system more proportional, it has led to changes in the way councils work, particularly in relation to political governance, and the agreement of coalitions have become widespread: for example, after the 2012 local government election, over half of Scotland's 32 local authorities were governed by coalitions.

289. In contrast, elections to the Scottish, UK and European Parliaments are matters reserved to the UK Government and are currently the responsibility of the Secretary of State for Scotland.
290. During the course of our evidence gathering, we did not receive any evidence to suggest that the administrative arrangements for UK and European elections should be changed. Indeed, we believe that, given the nature and purpose of these elections, administration of them is best decided at a UK level.
291. However, it seemed to us that the way in which elections to the Scottish Parliament are conducted, which is currently reserved and administered by the Scotland Office, could mean that there was a strong case for devolution. As a result, we decided to examine the case for devolving responsibility for administration of elections to the Scottish Parliament, but not the UK or European Parliaments.
292. As responsibility for local elections is already devolved, the justification for reservation of administration of Scottish Parliament elections is far from clear. Whilst we accept that the prospect of variance in practice is more likely if the administration of elections were to be devolved, we believe that acceptance of difference is inherent within the idea of devolution itself, and it is certainly not an overriding reason for the continuation of the present approach. Moreover, we see no reason why processes have to be identical across the UK.
293. At present, the Secretary of State for Scotland has order-making powers in relation to elections to the Scottish Parliament, including powers over the rules for running (and combining) elections, candidate expenses and the usage of public buildings. There is no reason why these powers could not be administered by Scottish Ministers with the same level of proficiency as the Secretary of State.
294. If the responsibility for administration of elections were to be devolved to the Scottish Parliament, a minor financial issue related to grant would have to be overcome. Under the current arrangements, the UK Parliament gives a sum of money each year to provide a budget for the Scottish Government and fund the operation of the Scottish Parliament. This is paid to the Secretary of State for

Scotland, who, in return makes grants to the Scottish Government as set out in the Scotland Act 1998. In turn, financing for the Scotland Office, the Office of Solicitor to the Advocate General and funding for elections to the Scottish Parliament are also found from within these resources. If the administration of elections to the Scottish Parliament was to be devolved then the latter would be added to the grant paid to the Scottish Government

295. In our view, devolving those areas of responsibility for the administration of elections now entrusted in the Secretary of State for Scotland is consistent with the idea of subsidiarity (i.e. that issues should be decided at the level closest to those affected unless there are good reasons for determining them at a UK level). We see no strong constitutional impediment or practical argument against such a move, and we see this as wholly consistent with the political union we wish to maintain. As a result, we propose that the administration of elections and the related order-making powers currently residing with the Secretary of State should be devolved. This would demonstrate both the maturity of the Scottish Parliament and accords with the principle that matters that effect Scotland should be decided in Scotland so far as it benefits the people of Scotland, and is possible and practicable
296. On balance, given our proposal that the Scottish Parliament should become fully entrenched and indissoluble, we take the view that it should also take full responsibility for administration of its own elections. The UK Government and Parliament, accordingly, would remain responsible for elections to the UK Parliament and European Parliament in Scotland.

Additional transfer of power

O. Railways

297. In its conference in April 2013, Scottish Labour committed to consulting and considering non-profit and public options for ScotRail in addition to its manifesto commitment in 2011 to consider all options for the franchise.

298. The process of letting the new franchise for ScotRail in 2015 commenced in August. The ScotRail franchise is one of the biggest contracts handled by the Scottish Government, worth £2.5 billion. Government support in 2013-14 will be in the region of £511 million. The new ScotRail franchise will be for a term of up to 10 years with a review and a decision by the end of year 5 to decide whether the franchise will terminate at the end of year 7 or 10.
299. The shortlisted companies that have been invited to tender are: Abellio, Arriva, FirstGroup, MTR and National Express. None of these bids will be looking at non-profit or mutual options. However, there are opportunities to encourage wider social and economic benefits from private commercial bidders following the publication of the invitation to tender.
300. In November 2013, the Co-op Party launched a significant paper, *A People's Railway for Scotland*, which presents a genuine policy option for the party in the long term as well as short term options regarding the next ScotRail franchise. The Co-op Party report argues for a new approach which would, in the longer term (i.e. after the end of the new franchise starting in 2015), see the creation of a not-for-profit enterprise – a People's ScotRail, keeping the name ScotRail as it is seen as a strong, and to an extent trusted brand in Scotland. It would operate as an arms-length enterprise with close and supportive relationships with the Scottish Government (its principal funder) and Transport Scotland which would specify the core outputs required from the operator while allowing a degree of commercial flexibility in developing new, additional services. The train company would be required to work particularly closely with Network Rail as infrastructure manager and with other train and bus companies, public, mutually-owned or private, working towards a fully integrated public transport network.
301. People's ScotRail would be a new kind of Railway Company whose primary commitment would be to the people of Scotland, not to a group of shareholders. Its values would reflect this wider social mission and it would aim to set new standards of outstanding customer service and community benefit. It should become a beacon of environmental sustainability, building on best practice for everything it does.

302. People's ScotRail should have commercial freedom to develop complementary services to its own core responsibilities; these may include feeder bus services, catering and other products which can be commercially justified. Developing mutually-beneficial commercial partnerships with local suppliers is of crucial importance.
303. The Co-op argues that these proposals will not cost the taxpayer any more than the current franchising arrangements do. On the contrary, they would provide better value for money and revenue generated by ScotRail would go back into improving its services, not shareholder dividends. Neither should there be a culture of excessive executive bonuses.
304. At a more strategic level, People's ScotRail should have a board of management that reflects the diversity of Scotland. Ways of encouraging a real sense of ownership amongst passengers and employees, either through shares or bonds, would also help provide the foundations.
305. Having examined the issue, the Devolution Commission recommends that powers over Scotland's rail services should be an area of strengthened devolution without impacting on cross border rail services. We therefore support devolution of railway powers that could facilitate consideration of a "not for profit" option in terms of the Scotrail franchise. This will widen the powers of the Scottish Parliament over the rail system.

P. Our recommendations

306. In this section, we bring together our recommendations on those powers that should remain reserved or where the Scottish Parliament's powers should be widened. Our recommendations are as follows:

RECOMMENDATION: The following matters should remain reserved as they are key to the maintenance of the union:

- Financial and economic matters – including monetary policy, the currency, regulation and debt management.
- Foreign affairs (including international development) should remain the responsibility of the UK Government.
- Defence should remain a reserved matter.
- The civil service should remain.
- Social security should remain reserved, though there is potential for some devolution to ensure better integration between devolved and reserved responsibilities.
- Immigration should remain reserved.

RECOMMENDATION: Matters relating to the possession, cultivation, production, supply, import and export of drugs; drug trafficking, including the acquisition, possession or use of the proceeds of drug trafficking; and statutory offences involving money laundering of the proceeds of drug trafficking, confiscation of the proceeds of drug trafficking, and forfeiture of things used in the commission of drug trafficking offences, should remain reserved.

RECOMMENDATION: Abortion, xenotransplantation, embryology, surrogacy arrangements, human genetics, matters relating to the regulation and control of medicines (for both humans and animals), medicinal products, poisons and biological substances, should remain reserved.

RECOMMENDATION: Whilst it is inconceivable that the Scottish Parliament would be abolished, we believe the Scottish Parliament should become permanently entrenched in the constitution and indissoluble. We also recommend that the “Sewel convention” should be given a statutory basis.

RECOMMENDATION: Responsibility for administration of Scottish Parliamentary elections should be devolved to the Scottish Parliament.

RECOMMENDATION: We support devolution of railway powers that could facilitate consideration of a “not for profit” option in terms of the Scotrail franchise. This will widen the powers of the Scottish Parliament over the rail system.

307. We think that the reservation of the above powers is to the advantage of Scotland and the UK, providing the basis for the political union, economic union and social union that unite us in such a powerful and profound way. By adjusting the devolved-reserved boundary to give greater recognition of specific Scottish concerns within the current settlement, we believe that our proposals will serve to strengthen the UK.

Part 5: Creating a fairer, progressive and more accountable tax system

- A Introduction
- B Summary of interim report findings
- C Developing our recommendations: our approach
- D Creating a fairer, progressive and more accountable tax system
- E Maintaining stability in public funding
- F Our recommendations

Part 5: Creating a fairer, progressive and more accountable tax system

A. Introduction

308. This chapter summarises the main findings of Scottish Labour's Devolution Commission interim report on taxation; lays out our approach to the development of our proposals; and sets out our recommendations for creating a fairer, progressive and more accountable tax system.

B. Summary of Interim Report findings

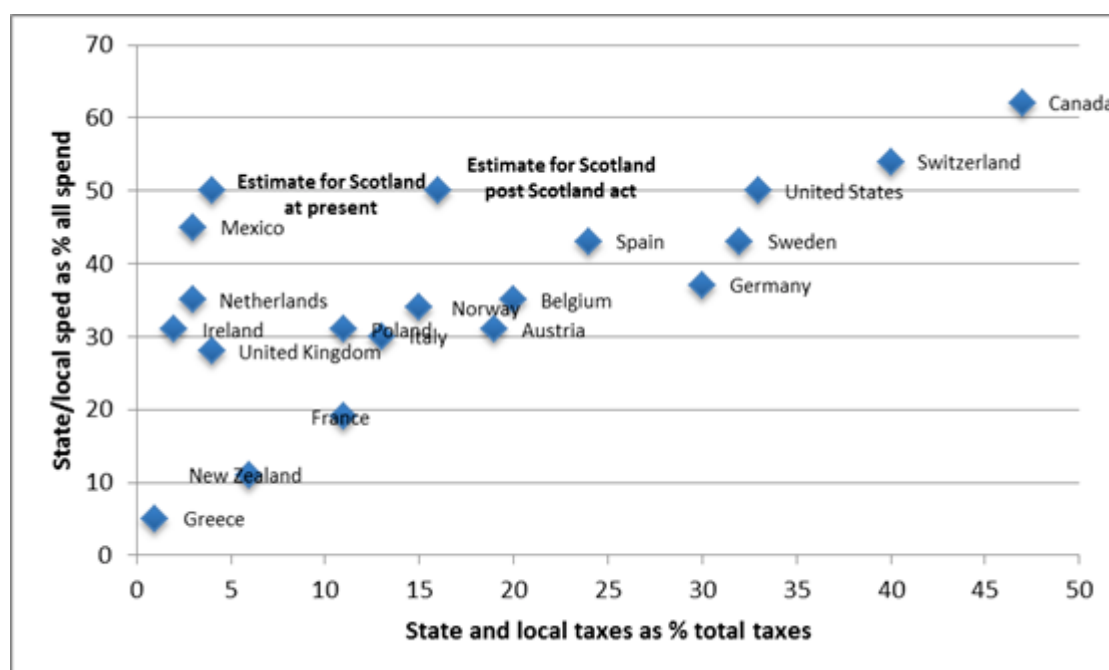
309. In our first report, we reviewed fiscal devolution in Scotland, examined the opportunities for further tax devolution, what constraints there might be on it, and what trade-offs would be involved.
310. We highlighted that the UK is a fiscally centralised state by international standards.⁷³ HM Treasury collects all taxes, with the exception of local taxes (council tax and business rates), although the Scottish Government will soon assume responsibility for landfill tax and stamp duty land tax (SDLT), which is to be replaced by a new land and buildings transaction tax (LBTT). Both landfill tax and LBTT are to be administered by a new tax collection authority, Revenue Scotland, and this is scheduled to be operational in 2015. Furthermore, we drew attention to the fact that ministers now set virtually all local taxes across the country as well, and that there is little scope for local government in this area.
311. The traditional arguments for central taxation are essentially twofold. Firstly, uniform taxation is economically efficient and, secondly, bringing the entire tax yield into a central pool enables more efficient distribution of resources

⁷³ The UK is the second most fiscally centralised country in the OECD. Only New Zealand is more fiscally centralised. See OECD, *Government at a Glance 2009*, (Paris: OECD, 2009).

according to need across the country. In recent years, as we show in Part 7, Conservative Governments have centralised fiscal power over local government taxes to an unprecedented degree, and the present Scottish Government has effectively removed all taxation discretion from Scottish local authorities – two parallel developments we consider to be undesirable and counter-productive.

312. Fiscal powers are related to spending as well as taxation, so, in the debate on where the most appropriate level of responsibility should lie, it is essential to take into account the degree of spending decentralisation – not merely take it for granted. By international standards, as Diagram 5.1 below shows, Scotland is highly decentralised in terms of public expenditure – all the more so since central government grants come without any attached conditions, which is extremely unusual in comparison to other nations – but presently not very decentralised in terms of taxation, although, following the Scotland Act 2012, this will be less so.

DIAGRAM 5.1: Comparison of “fiscal gap” between expenditure and taxation in select OECD countries



Source: OECD

313. This balance between taxation and spending in Scotland, as with every country, is a product of historical development. The high spending decentralisation in Scotland dates back to the period of administrative devolution. This also explains the lack of conditionality on central government grants: during the period of administrative devolution, when the Scottish Office was responsible for the administrative governance of Scotland, application of formal conditions was simply not required. This carried over into the post-1999 devolution settlement. The result is that the devolved Scottish Government has, by international standards, a remarkable degree of spending autonomy.
314. Other countries devolve more taxes than is currently the case in the UK, and federal systems typically allow for much greater tax variation, but tend to have less emphasis on fiscal equalisation for need. These, too, are products of history, but can also in part be attributed to a number of additional factors: problems associated with, say, different sales taxes are less significant in larger countries. However, as we previously highlighted, even a small country like Switzerland has remarkably decentralised taxes – for example, income tax varies, often over very short distances, from Canton to Canton.
315. The result of this current degree of spending decentralisation and tax centralisation is that there is a “fiscal gap” (or, what is sometimes called, a “vertical fiscal imbalance”) between taxation and public expenditure decisions taken by the Scottish Parliament. Some degree of fiscal gap inevitably exists in any devolved or federal system of government: it is true in all countries, and there are no systems where the sub-central government raises all of the money it spends. In Scotland, however, the size of the “fiscal gap” is unusually large. This limits the autonomy and ability of the Scottish Parliament to determine the size of its Budget.
316. In our interim paper, we concluded that, as a general rule, it is more practical to decentralise taxes on “tangibles” such as property that move around less, and levy taxes on “intangibles”, such as profits or online transactions, at a national level. Thus, we concluded, property and personal taxes are relatively simple to decentralise, whereas sales taxes are more difficult to devolve.

317. We also examined the potential for further devolution of specific taxes currently reserved to the UK Government. A summary of our assessment on the scope for further devolution is set out in Table 5.1 below.

TABLE 5.1: First report's conclusions on the scope for further tax devolution

Taxes collected in Scotland	Scope for devolution?
Income tax	Already partly devolved; more technically possible
VAT	Not possible under EU rules
National insurance contributions	Technically possible but linked to contributory benefits such as old-age pensions
Corporation tax (excl. North Sea revenue)	Technically possible but tax competition issues: profits are readily mobile
Fuel duties	Technically possible, but with substantial administrative changes, concerns about tax competition, and subject to EU law
Tobacco duties	Concerns about avoidance and subject to EU law
Alcohol duties	Concerns about avoidance and subject to EU law
Stamp duties	SDLT already devolved
Capital gains tax	Technically possible
Other taxes on income and wealth	Concerns about avoidance
Insurance premium tax	Concerns about avoidance
Betting and gaming and duties	Concerns about avoidance
Air passenger duty	Technically possible: should be devolved subject to EU law
Landfill tax	To be devolved
Climate change levy	Presently spread across the whole UK
Aggregates levy	To be devolved
Inheritance tax	Technically possible in principle
Vehicle excise duty	Technically possible in principle, though some issues about possible avoidance
Non-domestic rates	Already devolved
Council tax	Already devolved
Other revenues (public sector trading surpluses, rents, TV licences, National Lottery distribution, etc.)	Not relevant

318. As we pointed out in our previous report, three taxes account for roughly 60 per cent of domestic tax revenue: income tax, value added tax (VAT) and national insurance contributions (NICs). We reached the conclusion that income tax, which is already in part devolved, was the only one of these taxes that could in practice be further devolved.
319. The potential for devolving VAT is restricted by the fact that this is not possible under European law. We also considered whether a share of VAT should be assigned: we concluded that this was technically quite possible, but this would import an unacceptable degree of risk and volatility into the Scottish Budget, without giving the Scottish Parliament any tools to manage that risk, and that, on these grounds, assignment of VAT was not desirable.
320. In relation to NICs, while we accepted that devolution was theoretically possible, we concluded that, as a result of the connection to contributory social security benefits like old age pensions, this would only make sense if extensive devolution of welfare benefits were to occur – as we discuss later in greater detail, we oppose such an approach on the grounds that pooling resources and risks across the United Kingdom, a large and resilient political and economic community, is advantageous to Scotland (and the UK as a whole), and that welfare benefits are the key instrument of social union, which binds the UK together in a powerful and profound way.
321. In our interim report, we determined that there was potential for further income tax devolution. Three issues, however, would need to be addressed:
- The administrative challenges arising for employers and Her Majesty's Revenue and Customs (HMRC);
 - The risk to the Scottish Budget of being dependent on only one tax for close to half of its revenue; and
 - The challenge of social union, and whether Scotland should be able to have a different degree of progressiveness in the tax system (in either direction) than the rest of the UK.

322. Overall, we felt that income tax was the best candidate for further devolution, as it raises enough revenue to make a significant increase in the proportion of the Scottish Budget accounted for by the Parliament's own resources: indeed, as a provisional judgement, we indicated that we were minded to devolve this tax in full. During the course of our work, we identified two further issues on the devolution of income tax. Firstly, as a revenue stream that provides a substantial and stable tax yield, further devolution of income tax would provide a broader range of fiscal choices to the Scottish Parliament, thereby enhancing accountability and responsibility for decision-making. Secondly, any new system would have to provide the Scottish Parliament with the potential to make the tax system more progressive: for example, any model that was adopted should empower the Scottish Parliament with the ability to reverse the Conservative-led Government's decision to reduce the additional rate of income tax from 50p to 45p.
323. Outwith the three larger taxes, the next largest source of revenue is corporation tax. After careful and rigorous examination, we determined that corporation tax was not suitable for devolution, mainly because it would be counterproductive to create conditions for wasteful beggar-thy-neighbour business tax competition between Scotland and the rest of the UK. This would result in a race to the bottom in which the losers would be the public in Scotland.
324. Of the other taxes that raised less revenue, we suggested that some could be devolved, while underlining that their devolution would not make a large impact on the fiscal gap. Amongst these taxes, we concluded that air passenger duty (APD), vehicle excise duty (VED), capital gains tax (CGT) and inheritance tax were the best candidates for further devolution. On the other hand, we argued against devolving excise duties paid on alcohol, tobacco, betting, gaming and fuel, mainly because of the potential for creating conditions that would allow large-scale avoidance.
325. In relation to APD, which the Calman Commission recommended should be devolved but was not included in the Scotland Act, we took the view that, providing the application of different rates of APD in Scotland to the rest of the UK did not contravene EU law, and, if it could be shown that any associated

administrative and economic issues could be overcome, a case existed for APD being devolved. On VED, we argued there would be a need to overcome potential distortionary effects, such as incentivising the sellers of vehicles or owners of hire fleets to register them in the jurisdiction where the rate is lowest. Finally, we judged that there was a case for devolving two minor personal taxes, inheritance tax and CGT, but emphasised that any potential administrative challenges would need to be addressed.

326. We reached the conclusion that oil and gas revenue, like corporation tax, should continue to be collected on a UK-basis. In our interim report, we contended that the major problem with devolving oil receipts was that North Sea oil is a finite resource and revenues will never return to the high levels of thirty years ago. With the best possible combination of global oil prices, investment decisions by multinational companies and government policies, oil and gas production may continue for decades, but production costs in the next forty years could be twice as high per barrel of oil as in the last forty years, with detrimental effects on both profits and government revenue. Moreover, there will be a big drop in tax receipts when companies have to start spending on decommissioning platforms. We accepted that oil taxation could be devolved – we do not doubt that it is technically possible – but argued that it would be highly difficult in practice because of the likely effect on spending. In essence, devolution of oil receipts would build a “fiscal cliff” of uncertain size and timing into Scottish public expenditure plans – as would be the case under independence.
327. Finally, in our first report, we indicated our support for the idea of greater reliance on Scottish taxation, while recognising that this raised questions on how the remaining transfer ought to be calculated. At the moment, such calculations are based on the Barnett formula, established by the Labour Government in the late 1970s. If the Scottish Parliament were to rely more on resources raised from Scottish taxation, then some adjustment will have to be made to that calculation. Under the Scotland Act, the UK Government propose to retain the Barnett formula, but make an adjustment to take account of devolved tax income that is likely to be received. This seems a sensible

approach – and, as we outline below, a similar adjustment will be consistent with our plans.

328. Other proponents of devolution have argued for a needs-based formula, but do not set out how much Scottish public spending would be at risk as a result. There is, of course, no objective, neutral, commonly agreed measure of spending need, and that is one reason why the Barnett formula has survived for so long. Additionally, Scotland has a number of serious social problems – notably in terms of health and social deprivation – and an unusually large landmass, covering approximately one-third of the whole UK, which increases the cost of service delivery: no serious proposals for a needs-based formula have adequately taken into account these two issues. Above all, Barnett has two principal strengths: it (a) is established, simple and well-understood; and (b) provides stability in levels of public funding, and so public services and their management. No convincing alternative which meets this requirement, we argued, had thus far been proposed.

C. Developing our recommendations: our approach

329. Following publication of our interim report, we sought views on a number of questions relating to the principles and possible mechanisms for further tax devolution to the Scottish Parliament, potential issues surrounding the devolution of specific taxes, and how we could make the Scottish Parliament more accountable for decisions made in this area. We received many considered responses to this aspect of the consultation, and this was reinforced by many well informed and thoughtful contributions on the topic at our roundtable events with business, trade unions and the third sector.
330. The views articulated on the values and processes underpinning tax devolution and potential alternative financing mechanisms highlighted competing tensions between three overarching principles: fairness, accountability and efficiency. For example, we received a high volume of submissions recommending further tax devolution to improve fiscal accountability, while many others emphasised the need for limited devolution on grounds of efficiency and fairness. In other

words, whereas some argued for further tax devolution, others cautioned that we should not move beyond the Calman Commission recommendations.

331. Furthermore, a number of important works, outlining alternative proposals on tax devolution, were published during the Commission's existence, and all of these were examined in careful detail.⁷⁴ In scrutinising the issues involved, we have considered the proposals put forward in these various publications (in addition to others), weighing up the arguments on the relative merits of tax devolution and revenue assignment, in addition to the appropriate balance between the two.

D. Creating a fairer, progressive and more accountable tax system

332. Before laying out our proposals on further tax devolution, we believe that it is first of all instructive to provide an indication of our approach to taxation, our aims in relation to tax policy, what we see as potential offered by the Scotland Act 2012, and why we consider the need to build upon it.
333. The tax system is at the centre of the state and its relationship with citizens, households and commercial organisations. It has evolved over many centuries and is now used for purposes that extend beyond its traditional function of raising revenue. It is the design of the tax system, as much as the overall level of taxation, which impacts the economy, shapes lives and influences behaviour. How to create a just and accountable system of taxation is the task of politics. While accepting that the tax system is necessarily complex, we believe that the approach taken by policy-makers needs to be more joined-up and strategic. This in itself, however, will never be enough: taxation policy must be informed by a clear set of guiding principles.

⁷⁴ Alan Trench, *Funding devo more: Fiscal options for strengthening the union*, (London: IPPR, January 2013) ; Devo-Plus, *A Stronger Scotland within the UK*, (Edinburgh: Devo-Plus, May 2012); Devo-Plus, *Improving Social Outcomes in Scotland*, (Edinburgh: Devo-Plus, September 2012); Devo-Plus, *A New Union*, (Edinburgh: Devo-Plus, November 2012); Gavin McCrone, *Scottish Independence: weighing up the economics*, (Edinburgh: Birlinn, 2013); Andrew Goudie (ed.), *Scotland's Future: the economics of constitutional change*, (Dundee: Dundee University Press, 2013); Iain McLean, Jim Gallagher and Guy Lodge: *Scotland's choice: the referendum and what happens afterwards*, (Edinburgh: Edinburgh University Press, 2013)

334. Developing tax policy from a basic set of principles is not a new idea. In 1776, for example, Adam Smith argued that any tax system should be underpinned by four maxims: the burden on taxpayers should be proportionate to the ability to pay, certainty, convenience and efficiency of collection. This remains as true today, as when Smith was alive. To this list of principles underlying a good tax system, we can add accountability, simplicity, fairness and reasonableness, support of aspiration, and creating the conditions for a greener economy.
335. It is, furthermore, incumbent on any serious political party to outline how their approach to tax relates to the concept of distributive justice. Three fundamental questions must be addressed. Firstly, what comprises a just tax system, and what are its fundamentals? Secondly, should the tax regime be designed to achieve a more just wealth distribution in society, or should it be used to promote economic growth, rising living standards, and higher employment levels? Thirdly, does increased tax justice require, or can it at least lead to, a growth in general affluence? We do not believe that promotion of justice and economic prosperity are mutually exclusive ideals. We have a more balanced position. A strategic and coherent tax programme, in our view, is founded on ten principles: (i) accountability; (ii) fairness and proportionality; (iii) efficiency and simplicity; (iv) flexibility to fund public expenditure and promote long-term sustainable economic growth; (v) support of aspiration; (vi) stability to support sound public finances; (vii) promotion of a green economy; (viii) constancy in fiscal policy-making and in the way fiscal policy impacts on the economy; (ix) security of funding; and (x) minimising tax avoidance and harmful competition which would ultimately undermine the provision of public services.
336. Our approach to the design of the new tax powers that follow the passing of the Scotland Act will be consistent with these strategic principles. Similarly, our approach to whether other taxes should be devolved is based on whether this will be compatible with coherent design.

The Scotland Act – its potential

337. The Scotland Act gives the Scottish Parliament the power to set a Scottish rate of income tax to be administered by HMRC for Scottish taxpayers, and fully

devolves the power to raise taxes on land transactions and on waste disposal to landfill. As a result, when the provisions relating to taxation contained in the Scotland Act come into force, Scotland will become responsible for raising approximately 30 per cent of devolved spending.

338. If Scotland decides to remain in the UK, as we think it will, the Scotland Act will be implemented. What will follow is the largest transfer of fiscal powers since the creation of the union. The scale of this change should not be underestimated, and we believe that the Calman Commission – on which the Act is largely based – produced a substantive and important piece of work. On the other hand, as we will show, while the Scotland Act offers potential for distinctive policies, there is scope to go further.
339. The new Scottish rate of income tax will be introduced from 6 April 2016. The Income Tax Act 2007, accordingly, will be amended to peg the income tax rate for Scotland's taxpayers at ten percentage points below the main UK rate. As a result, the existing basic, higher and additional rates of income tax set by the UK Government will be reduced by 10p in the pound for those individuals defined as Scottish taxpayers. The definition of a Scottish taxpayer will be based on the location of an individual's main place of residence – so, Scottish people resident in Scotland will be Scottish taxpayers, Scottish people living outside of Scotland will not, and non-Scottish UK residents living in Scotland will pay the Scottish rate. Prior to April 2014, HMRC will issue tax codes to employers which identify those employees who are Scottish taxpayers, and employers will deduct tax at the appropriate rates, which may be higher or lower than or the same as those which apply in the rest of the UK. For employees and pensioners, the income tax change will be applied through PAYE.
340. The proportion of income tax paid by all Scottish taxpayers will go to fund spending by the Scottish Government. If Scotland sets a different rate it will apply to all income tax rates – the basic rate, the higher rate and the additional rate will all go up or down by the same percentage, relative to the UK rate. Current UK rates of income tax are: basic rate, 20 per cent; higher rate, 40 per cent; and additional rate, 45 per cent. Thus, if Scotland opted for a policy in

favour of reducing income tax, this would mean that the main rates for Scottish taxpayers would be less than for taxpayers elsewhere in the UK. For example, if the Scottish Parliament set a rate of 9 per cent, the Scottish basic rate would be 19 per cent, the Scottish higher rate would be 39 per cent and the Scottish additional rate would be 44 per cent. Similarly, if the Scottish Parliament set a rate of 11 per cent, Scottish taxpayers would pay more than taxpayers elsewhere in the UK: the Scottish basic rate would be 21 per cent, the Scottish higher rate would be 41 per cent and the Scottish additional rate would be 46 per cent. The Scottish Parliament will levy the new Scottish rate of income tax and this will be set every year. The block grant from the UK Government to Scotland will then be reduced to reflect the fiscal impact of the devolution of these tax-raising powers.

341. Under the Scotland Act, responsibility for SDLT and landfill tax will become an entirely devolved matter, meaning that the Scottish Government will have complete control over the design and administration of land transactions in Scotland. The Scottish Government, under the legislation, can choose to levy a tax that is similar to SDLT, but may equally choose to design the tax in a way that it feels better meets Scotland's needs. Revenue raised from the tax will remain in Scotland for use by the Scottish Government. The Scottish Government will not be able to levy the devolved tax until SDLT has been "switched off" in Scotland. The date this will occur has been agreed between the Scottish Government and the Treasury as April 2015. As mentioned above, it is the intention of the Scottish Government to replace SDLT with a new tax, LBTT, which will be levied whenever a property is purchased or leased. However, unlike SDLT, which applies one rate of tax to the whole of the consideration paid, LBTT is to apply different rates of tax to different parts of the consideration in a similar way to income tax.
342. The final rates of tax to be paid on LBTT, and the thresholds that are to apply, are not fixed by the Land and Buildings Transaction Tax (Scotland) Act, which was passed in July 2013, and will not be announced until at least September 2014. It appears that there are also likely to be other differences between the LBTT and SDLT systems: for instance, there does not appear to be sub-sale

relief in the same way as under the SDLT system and payment of the tax may have to be made prior to registration, rather than just the tax return submitted, with payments made directly to the Registers of Scotland at the same time as registration of the transaction is sought.

343. It was right that SDLT should be devolved, and we supported this at the time. However, we have reservations about the efficiency of the Scottish Government's proposals, and are concerned that the conclusions of the Mirrlees Review on the efficacy of this form of taxation have been ignored. The Institute for Fiscal Studies review of the tax system, chaired by Professor Mirrlees, concluded that transaction taxes were an ineffective form of taxation, and argued that there was a need for a more comprehensive and sensible system of taxation on property.⁷⁵ Moreover, we note with interest Professor Mirrlees' comments that the Scottish Government's plans to replace SDLT with another property tax are ill-advised. He told the *Scotland on Sunday* newspaper: "A government that is free to choose the form of taxation overall is not well advised to use transaction taxes".⁷⁶
344. The Landfill Tax (Scotland) Act 2014 introduces the Scottish Landfill Tax which will replace the current UK Landfill Tax in April 2015. Currently, landfill tax is paid on top of normal landfill fees by businesses and local authorities that wish to dispose of waste using a landfill site. The landfill tax is intended to drive local authorities and companies towards the development of recycling infrastructure by making the landfill disposal route a more expensive and unattractive option. After April 2015, all receipts from Landfill Tax will be paid into the Scottish Consolidated Fund.
345. The present UK landfill tax regime will be dis-applied in Scotland from the end of March 2015 by means of a Treasury Order in the UK Parliament. In contrast to Scottish income tax, the complete devolution of landfill tax will mean that changes to the tax regime in the rest of the UK will not have an effect on the

⁷⁵ J. Mirrlees, S. Adam, T. Besley, R. Blundell, S. Bond, R. Chote, M. Gammie, P. Johnson, G. Myles and J. Poterba (eds.), *Dimensions of Tax Design: the Mirrlees Review*, (Oxford: Oxford University Press, 2010), and *Tax by Design: the Mirrlees Review*, (Oxford: Oxford University Press, 2011)

⁷⁶ Tom Peterkin, "SNP economic adviser rejects party's plans for Stamp Duty replacement", *Scotland on Sunday*, (2 September 2012).

Scottish system, so there would be no need for further adjustments to the block grant to compensate for changes in the rest of the UK. We await the Scottish Government's detailed proposals, but we believe, as part of our commitment to promoting a green economy, the Scottish Landfill Tax should form the cornerstone of a progressive, sustainable environmental development agenda for Scotland.

346. Finally, responsibility for the aggregates levy will be devolved to the Scottish Parliament under the Scotland Act. The aggregates levy is an environmental tax on the commercial exploitation of aggregate – for the purposes of the levy, aggregate is deemed to be rock, sand and gravel. The levy was introduced by the previous Labour Government in April 2002 to reduce the environmental costs associated with quarrying not already covered by regulation, including noise, dust, visual intrusion, loss of amenity and damage to biodiversity. The tax is designed to ensure that the environmental impact of aggregates extraction is more fully reflected in prices and encourages a shift in demand away from primary aggregate towards alternatives, such as recycled construction, demolition waste and china clay waste. The aggregates levy is just like VAT, in that operators need to register and complete quarterly returns. However, it cannot be reclaimed like VAT as it is a one-stage, non-deductible levy similar to the climate change levy and landfill tax. The UK Government have committed to devolve the aggregates levy to the Scottish Parliament when outstanding EU legal proceedings have been fully resolved. In the interim, the UK Government plans to assign receipts from the aggregates levy as it relates to Scotland. The estimated revenue will be allocated to the Scottish Government, with the equivalent amount deducted from the block grant each year.
347. The aggregates levy rate has not altered significantly since it was introduced and was frozen in recognition of the difficulties faced by the construction industry during 2010. Working with the construction industry and environmental groups, we will examine the best way forward in relation to aggregates levy. The optimal approach to this tax will be underpinned by four principles:

- Increasing efficiency – aggregates levy should provide an incentive to increase the recycling of aggregate materials, re-use of components and materials and utilisation of secondary aggregates: all of these incentives will contribute to reducing demand for primary aggregates and developing a sustainable aggregates supply industry in Scotland.
- Integration with other policy – aggregates levy should complement other policies, such as on landfill tax.
- Creating sustainable jobs – green taxes are recognised as an effective means of creating long-term sustainable jobs. The aggregates levy, in conjunction with other measures, should aim to incentivise the creation of employment in this sector.
- Encouraging innovation – evidence from other green taxes is that an increase in aggregates levy would encourage companies in Scotland to become more innovative and flexible to meet future economic demands.

348. As stated above, we believe that the Calman Commission produced a substantive and important piece of work: the Scotland Act will result in the single largest transfer of fiscal powers to Scotland in over 300 years, so we do not underestimate the scale of change that will result.

Tax Devolution

349. In our interim report, we noted that the Scottish Parliament has very wide spending powers, but very narrow tax powers – though this will change after the passing of the Scotland Act. We also concluded that scope existed for greater devolution of taxation powers than is currently planned, while stating our objection to full fiscal autonomy, which, in our view, is no more than a thinly disguised version of independence. Devolving all taxes to the Scottish Parliament is not only inconsistent with the maintenance of the union – it is not economically optimal. In our view, we require further devolution of taxation to give more accountability for public expenditure decisions made by the Scottish Parliament, but this has to be balanced by the need to retain a shared taxation

base with the UK to ensure social solidarity and a minimum level of public service provision across the country.

350. Table 5.2 below shows public sector revenue in Scotland for 2011-12. In addition, the contribution of each element of taxation to the total estimated tax yield in Scotland, and the proportion of UK revenue raised in Scotland, are also included.

TABLE 5.2: Current revenue, Scotland, 2011-12

	Scotland	
	£ million	per cent of total non-North Sea revenue
Income tax	10,790	23.3
Corporation tax (excl North Sea)	2,976	6.4
Capital gains tax	246	0.5
Other taxes on income and wealth	265	0.6
National insurance contributions	8,393	18.1
VAT	9,554	20.6
Fuel duties	2,296	5.0
Stamp duties	506	1.1
Tobacco duties	1,129	2.4
Alcohol duties	981	2.1
Betting and gaming and duties	115	0.2
Air passenger duty	213	0.5
Insurance premium tax	251	0.5
Landfill tax	97	0.2
Climate change levy	64	0.1
Aggregates levy	52	0.1
Inheritance tax	164	0.4
Vehicle excise duty	475	1.0
Non-domestic rates	1,933	4.2
Council tax	1,987	4.3
Other taxes, royalties and adjustments	1,028	2.2
Interest and dividends	237	0.5
Gross operating surplus	2,498	5.4
Rent and other current transfers	47	0.1
Total current revenue (excluding North Sea revenue)	46,297	100

Source: Scottish Government, Government Expenditures and Revenue, 2011-12

351. We have reviewed each individual tax following the ten principles of a good tax system identified above. What follows is our analysis and recommendations on the appropriate balance between devolved and reserved taxes and the most suitable level of government at which each individual tax should rest.

Income tax

352. Income tax is a tax paid on income: as such, it is the tax most recognisable to taxpayers. Not all income is taxable and individuals are only taxed on “taxable income” above a certain level. Taxable income includes:
- earnings from employment;
 - earnings from self-employment;
 - most pensions income (state, company and personal pensions);
 - interest on most savings;
 - income from shares (dividends);
 - rental income; and
 - income paid from a trust
353. Income tax is the tax that is most visible and transparent to the vast majority of taxpayers. It is also the tax that raises the largest revenue in Scotland: the total raised from all rates of income tax was estimated at £10.79 billion in 2011-12, representing 23.3 per cent of non-North Sea oil revenue.
354. In the 1997 referendum on devolution, the Scottish people endorsed the possibility of Scotland having a different rate of income tax to the other constituent parts of the UK. Accordingly, the Scottish Variable Rate (SVR) was established, following passage of the Scotland Act 1998, as a mechanism to enable the Scottish Government to vary the basic rate of UK income tax either up or down by up to 3p in the pound. The SVR power was never used by the Scottish Parliament: indeed, the previous arrangements to ensure that the SVR tax could be invoked were allowed to lapse in 2007, and the Scottish Government informed the UK Government in August 2010 that they were not going to pay HMRC to work on the PAYE systems to enable the SVR to be available after the 2011 election. The SVR will be succeeded by a new legislative framework following passage of the Scotland Act 2012. This new framework, as outlined above, is scheduled to be in place by April 2016.
355. Over the course of the last year, we have examined the scope for further income tax devolution in great detail, and received advice from a number of leading experts in this field.

356. In our interim report, we made clear income tax devolution was the best way to increase the autonomy and accountability of the Scottish Parliament, and we indicated that we were in favour of full devolution. On the other hand, like all devolution it must be consistent with the purpose and stability of the continued union. Income tax devolution in particular has to meet the administrative challenges arising for employers and HMRC of running different tax structures, and has to be designed so as not to add unmanageable risks to the Scottish Budget. Finally there is the question of whether Scotland should be able to have a different degree of progressivity in the tax system from the rest of the UK.
357. Having considered the matter in great detail, we remain committed to extending the powers of the Scottish Parliament over income tax, but it is clear to us that the complete devolution of income tax carries unacceptable risks. Leaving Parliament at Westminster with no influence over income tax in Scotland could undermine the political union, by calling into question the legitimacy of tax decisions affecting the whole UK. We also received advice from ICAS and SFE which made clear to us that full income tax devolution would involve substantive administrative risk, cost and complexity for employers and HMRC.
358. Equally, it is obvious that there is a desire amongst the Scottish people for the Scottish Parliament to raise more of its own revenue to enhance accountability, and a desire to be able to ensure that income tax has the appropriate degree of progressivity to ensure fairness. We have however no wish to see Scotland become a tax haven and so have serious reservations about a devolved tax power which would enable an administration like the present SNP Government to indulge in destructive tax competition with the rest of the UK by cutting only the higher rates of tax and hoping to attract rich people to claim Scottish residence. While this might conceivably increase Scottish tax income, it would be at the expense of public services in the rest of the UK. That is inconsistent with the sharing union to which we want Scotland to continue to belong. Scotland should not try to become another Monaco, attracting tax exiles and living off the backs of poorer people elsewhere in the UK.

359. The other major factor is ensuring the right balance of equity and accountability in the funding of the Scottish Parliament. As we explain elsewhere a key element of the UK social union is that the Scottish Parliament and indeed the Welsh Assembly and Northern Ireland Assembly are guaranteed the funding to be able to deliver essential UK social rights like free healthcare and schooling, irrespective of the strength of their domestic tax bases or tax decisions.
360. Setting the right balance between devolved taxation and central UK support is more a matter of judgement rather than precise arithmetic. It is right that UK resources should be sufficient to secure key UK social rights such as health and education. Since health and school education consume over half the Scottish Budget that suggests a figure of roughly 60 per cent in grant. To provide the remaining resources, as we argued in our interim report, there is scope to enhance the autonomy and accountability of the Scottish Parliament through an extension of tax powers. We believe devolved taxation should be close to 40 per cent at present levels of spending and tax income.
361. Our interim report initiated a debate on the widest possible options for tax devolution. We received evidence for the case for more devolution, but also on the risks of tax competition within a union based on sharing, and the challenges of tax variation for issues like pensions. In framing our recommendations, we have been driven throughout by the objective of creating a fairer and more accountable tax system in Scotland, as well as maintaining the political, economic and social unions we strongly believe in. After rigorous examination of the issues involved, we recommend the following:
- Labour will give the Scottish Parliament the power to raise around £2 billion more in revenues beyond the recent Scotland Act, so that it raises approximately 40 per cent of its budget from its own resources.
 - We will do this by widening the variation in income tax in the Scotland Act by half from 10p to 15p.
 - This will mean that three-quarters of basic rate income tax in Scotland will be under the control of the Scottish Parliament.

- The Scotland Act enables the Scottish Parliament to increase or decrease income tax rates in Scotland. In addition to extending this power, we will also introduce new Scottish Progressive Rates of Income Tax, so that the Scottish Parliament can increase the rates of tax in the higher and additional bands. For the first time, the Scottish Parliament will be able to alter both the level of tax and the progressivity of the tax system, but without the risk that a Scottish Government could force tax competition within the UK by cutting only the top rates, to the detriment of public services. Labour in the Scottish Parliament would be able to use these powers if a UK Government did not set fair taxes at these levels.

362. Under our proposals, the Scottish Parliament would have the power to adjust the progressivity of the tax system, in circumstances such as those which have happened recently under a Conservative Chancellor, where the top tax rate has been reduced from 50p to 45p. Ed Balls has announced that a Labour Government will restore the top tax rate to 50p. The Scottish Parliament, under our proposals, would have the power to achieve the same aims if a UK Government like the present one failed to do so. This would mean a power to set the new Scottish Progressive Rates of Income Tax applying in the higher bands only, which would be able to secure 40p and 50p rates in the event that the United Kingdom Government proceeded unfairly to reduce them. This system will ensure also that the Scottish Parliament does not have the power to create damaging tax competition within the United Kingdom by arbitrarily reducing the higher tax rates in the hope of attracting well-off taxpayers from England.

Value Added Tax

363. VAT is a tax that is charged on most goods and services that VAT-registered businesses provide in the UK. It is also charged on goods (as well as some services) that are imported from countries outside the European Union (EU), and brought into the UK from other EU countries.

364. VAT is charged when a VAT-registered business sells to either another business or non-business customers. When VAT-registered businesses buy goods or services they can usually reclaim the VAT they have paid. There are three rates of VAT, depending on the goods or services the business provides. The rates are as follows: standard – 20 per cent; reduced – 5 per cent; and zero – 0 per cent.
365. VAT was estimated to raise £8.5 billion in Scottish receipts during 2011-12, making it the second largest source of revenue behind income tax. If devolved, VAT would have the potential to create greater accountability, given its substantial yield and the transparency to the population, and could act as a tool in promoting economic development. However, devolution of VAT to Scotland is prohibited by EU law, which requires all member states to apply a common rate of VAT within their jurisdictions. As a consequence, it is clearly not possible to devolve VAT to the Scottish Parliament.
366. We believe that the very direct relationship of VAT to economic growth suggests that devolving some share of it might make it a good candidate for tax assignment. If this were to occur, assignment would have to be on a formula basis as it would be expensive and disruptive to identify separate Scottish tax receipts. On the other hand, as assignment would import a high degree of risk and volatility into the Scottish Budget, without providing any tools to manage that risk, such a move would carry a significant level of risk. Therefore, after careful consideration, we do not believe that assignment of VAT would be an appropriate step.

National insurance contributions

367. National insurance contributions are paid by employees and the self-employed, who are aged between 16 and the state pension age, so long as their earnings are above a certain level. For historical reasons, NICs are closely linked to contributory benefits, which are reserved and mostly paid by employers rather than employees. The UK National Insurance Fund is not subsidised through general taxation, meaning that the revenue generated from NICs is closely related to UK welfare expenditure. NICs now count towards the following state

benefits: the basic state pension; the additional state pension; the “contribution-based” element of jobseeker’s allowance and employment and support allowance; maternity allowance; bereavement benefits - bereavement allowance, bereavement payment and widowed parent’s allowance; and incapacity benefit.

368. NICs raise substantial sums in Scotland, estimated by the Scottish Government at £8.4 billion in 2011-12, making it the third largest source of revenue behind income tax and VAT.
369. As we discuss in the next chapter, national insurance for us as a Labour Party is an expression of the sharing of risks by all of us that afford rights for each of us, providing guaranteed security for any insured family or citizen in any part of the UK. Of course, the British idea of national insurance has changed over time and will continue to change, but no one can deny that the sharing of risks among 58 million citizens is a more effective system of support for the poor and thus for social justice than the sharing of risks among 5 million people.
370. Although we accept that the link between NICs and the welfare system is more superficial than real, we believe that for as long as social security remains a reserved matter, NICs, as a tax that is at least notionally hypothecated, should remain the responsibility of the UK Parliament. Furthermore, as NICs is a payroll tax, devolution might lead to differing rates in Scotland and the rest of the UK. If this were to occur, it could potentially create economically distorting behaviours if companies made location decisions on the basis of different tax burdens. Therefore, after careful analysis, we take the considered view that NICs should remain reserved.

Corporation tax

371. Corporation tax is levied on the taxable profits of limited companies and a number of organisations, including clubs, co-operatives, societies, associations, charities and other unincorporated bodies. Taxable profits for corporation tax include: (i) profits from taxable income such as trading profits and investment profits (except dividend income which is taxed in a different way); or (ii) capital gains, which is known as “chargeable gains” for corporation tax purposes. All

companies and organisations based in the UK are required to pay corporation tax on all taxable profits, wherever in the world those profits are generated. If a company is not based in the UK but operates in the UK – operating, for example, through an office or branch – they only pay corporation tax on taxable profits generated from UK activities.

372. Corporation tax receipts were estimated to be worth around £2.9 billion in Scotland in 2011-12. This means corporation tax is the fourth largest source of revenue after income tax, VAT and NICs.
373. In our first report, we argued against corporation tax devolution on the basis that it would be counterproductive to create conditions for wasteful beggar-thy-neighbour business tax competition between Scotland and the rest of the UK. Even so, we also gave an undertaking to consult on this issue, as we were keen to seek views and test whether our initial conclusion that this could potentially lead to harmful tax competition was justified.
374. The SNP have talked admiringly about Ireland's 12.5 per cent rate of corporation tax. This is substantially lower than the UK's current main rate of 23 per cent. In a speech to the Northern Ireland Assembly at Stormont in 2008, Alex Salmond referred to the 12.5 per cent rate, saying "Scotland's Government believes very strongly that, with measures such as low competitive tax, we can match or even exceed" the success in Ireland.⁷⁷ More recently, the SNP's White Paper set out a commitment to implement a less ambitious but still substantial cut in corporation tax of 3 per cent. (The present UK Government intends to reduce the rate to 21 per cent in April 2014, and then 20 per cent in 2015.) However, large reductions in corporation tax in Scotland would not be easy, requiring tax increases elsewhere, spending cuts or borrowing in order to balance the books.
375. Most of those who want to devolve corporation tax simply regard it as a tool for promoting economic development. However, we are unconvinced that the Scottish Government would be able to afford such a tax cut for business. Research carried out by IPPR suggests this would be very difficult in the short

⁷⁷ Tom Gordon, "Salmond in 'fantasy land' over tax plans, says former adviser", *Herald*, (29 January 2012).

to medium term. This is because Scotland since 1990 has raised less money in tax than it spends on public services, and welfare benefits (even if North Sea oil revenue is included). To give an idea of the scale of the challenge: if Scotland's corporation tax rate had been 12.5 per cent in 2010-11, IPPR project that £3.9 billion less would have been raised in tax (including North Sea oil).⁷⁸ Even if a tax cut stimulated economic activity, this is an enormous gap to fill. The problem for Scotland with emulating Ireland's 12.5 per cent rate would be the subsequent loss of revenue from the existing corporation tax base, amounting to billions of pounds a year. It would take an absurdly large effect on economic growth to offset this loss of revenue. It is easy to see that by doing some simple arithmetic. For example, if the rate of corporation tax were reduced by one third, corporate profits would have to double to bring in the same amount of revenue. There is no conceivable reason to think that such a large effect would happen. Reducing corporation tax yield by one third would cost £1 billion a year to Scotland – a figure equivalent to almost the entire budget of the Scottish police service.

376. It is highly dubious to say that Scotland could simply emulate Ireland on corporation tax. Scotland has a higher public spending-to-GDP ratio than Ireland, resulting from more generous social services provision, and, as a consequence, Scotland has greater public spending commitments to maintain. It also has an existing corporation tax base and revenue stream, which cutting rates would reduce.
377. The problem for the rest of the UK with corporation tax devolution is essentially one of avoidance – at present, companies put huge effort into minimising their tax liabilities by using accounting devices to locate their profits in lower tax jurisdictions. To get the benefit of a lower Scottish rate, all companies would have to do is relocate their profits – not relocate their economic activity. The result might be a small gain in revenue to Scotland, but it would not be from economic activity; the result would also be a problem for the rest of the UK as businesses reduce their overall tax liabilities. Corporation tax avoidance by multinational companies is a major problem for governments across the world,

⁷⁸ Katie Schmuecker, Guy Lodge, Lewis Goodall, *Borderland: Assessing the implications of a more autonomous Scotland for the north of England*, (London: IPPR, November 2012).

as has been clearly seen in recent years in the UK and elsewhere. It would be undesirable for any scheme of tax devolution to provide further opportunities for corporations to avoid their obligations. However, while it may, in principle, be possible to devise schemes to avoid this risk, along the lines suggested by the Holtham Commission for Wales, we have not seen any convincing proposals that would lead us to move in this direction.⁷⁹ In our overall assessment, it would be counterproductive to create conditions for wasteful corporation tax competition between Scotland and the rest of the UK: such a competition would be a race to the bottom in which the losers would be the public in Scotland.

378. Given the mobile nature of the underlying tax base, we believe that the interests of Scotland are best served by a unitary corporation tax system. This provides the simplest environment for UK and foreign businesses and investors to operate in, and minimises the potential for distortion of economic activity through artificial profit diversion. In addition, if corporation tax were devolved, the ability to shift profit to Scotland from the rest of the UK, or at some future time, vice versa, could lead to an overall reduction in the corporation tax yield in the UK, although the direct costs and tax foregone would be borne primarily by Scotland through application of the European Court of Justice's Azores ruling, assuming that on-going block grant adjustments would fully reflect any increase in the level of profit shifting.

Alcohol and tobacco excise duties

379. There are a number of different types of duty on alcohol – wine and made wine duty; beer duty; spirits duty; cider and perry duty – and different rates of duty apply to each, all of which are decided by the Chancellor of the Exchequer at the time of the Budget. Reliefs are available from alcohol duty when the product is used as an ingredient in the manufacture of other goods, such as confectioneries. The following goods are liable to pay tobacco products duty if they are made entirely or partially from tobacco or from any substance used as a tobacco substitute: cigarettes, cigars, hand-rolling tobacco, other smoking

⁷⁹ Independent Commission on Funding and Finance for Wales, *Fairness and accountability: a new funding settlement for Wales*, (Cardiff: July 2010).

tobacco (also known as pipe tobacco), chewing tobacco, and herbal smoking products (since January 2014).

380. In Scotland, alcohol and tobacco duties combined were estimated to raise around £2 billion in 2011-12 – therefore, taken together, these “sin taxes” accounted for 4.5 per cent of non-North Sea oil revenue.
381. In our first report, we expressed concern about the devolution of these excise duties, specifically because this would create the conditions for potential tax avoidance. However, when considering the issues involved, we did not approach this subject with a closed mind, especially given the close relationship between these duties and devolved functions such as public health, social welfare and public order, and we undertook to consult on the potential for some Scottish variation of these indirect taxes.
382. After thorough consideration of the strong argument that devolving alcohol and tobacco duties would provide a closer alignment between the fiscal system and existing devolved policy responsibilities, we take the view that the potential attractiveness of devolving responsibility is outweighed by the significant costs and potential economic distortions that would be associated with devolution. As a result, in our view, alcohol and tobacco excise duties should remain a reserved matter.

Fuel duty

383. The vast majority of oils – including road fuels – are subject to excise duties set by HM Treasury. If a company produces, imports, sells or deals in motor and heating fuels – including hydrocarbon (mineral) oils, biofuels, fuel substitutes and fuel additives – they are required to register the business or premises with HMRC. The system of fuel duties is administered by HMRC, which collects revenues from liable manufacturers and importers of oil products. Different types of oil products are liable to different rates of duty, though road fuels are taxed at a much higher level than other oils. Rates of road fuel duties are set annually by the Chancellor, as part of the Budget, with changes coming into force that day under the Provisional Collection of Taxes Act 1968. None of the cost paid by motorists for petrol at the pump goes directly to HMRC, but the

price charged by the manufacturer or importer to the distributors and retailers is ultimately passed on to the consumer. It is a legal requirement for all road vehicles to run on duty-paid fuels. Failure to meet this requirement can result in a fine of up to £250 plus the evaded duty, in addition to the risk of forfeiture of the vehicle. Registered non-DVLA vehicles, including tractors and some other agricultural vehicles, are permitted to use rebated heavy fuel oils or “red diesel”, so as to prevent it from being used in ineligible vehicles.

384. In 2011-12, the Scottish Government estimated that fuel duty raised £2.3 billion, representing 5 per cent of non-North Sea oil revenue. Thus, fuel duty is a significant, albeit not particularly large, source of revenue.
385. During our consultation process, it was suggested that lower rates of fuel duty should apply in certain parts of the Highlands and Islands, due to transport costs associated with being located in distant rural areas. We recognise that this may well be possible: France, for example, has been granted a derogation that allows a lower rate of fuel duty to be charged in some remote rural areas of France, such as Corsica.
386. Overall, we do not judge fuel duty to be a suitable candidate for devolution, although we believe it might be possible for there to be assignment, providing administrative difficulties associated with the proportions related to Scotland could be overcome. At this stage, however, we are not in favour of assignment, but do support, in principle, the idea of derogation to allow a lower rate of fuel duty to be charged in some remote rural areas of the Highlands and Islands.

Vehicle Excise Duty

387. Vehicle Excise Duty (VED) is an annual tax levied on the ownership of road vehicles, including cars, vans, lorries and motorcycles. The duty is administered by the Driver and Vehicle Licensing Agency (DVLA), rather than HMRC. Vehicle owners who have paid the duty are issued with a “tax disc”, which must be displayed prominently on the vehicle, and enables them to drive on UK roads. Cars registered before March 2001 are subject to a rate of VED based on engine size. From 1 April 2012, vehicles with an engine capacity of over 1549cc have been liable for an annual charge of £220; for vehicles with an

engine size not over 1549cc, a charge of £135 is administered. For cars registered on or after 1 March 2001, the rate of VED is based on fuel type and CO₂ emissions. This provides for a sliding scale of liabilities split into 13 bands ranging from a maximum of £475 per annum for petrol and diesel vehicles, down to £20 for vehicles generating little pollution – most obviously, alternative fuel vehicles fall into this category. For new cars registered on or after 1 April 2010, different rates of VED are charged for the first tax disc. Motorcycles are liable for charges of between £16 and £76 per year, depending on engine size. Tax discs for motorcycles can be purchased either for a year or for six months. All disabled drivers are exempt from VED.

388. In 2011-12, the Scottish Government estimated that VED amounted to £0.47 billion, equivalent to 1 per cent of non-North Sea oil revenue. Thus, although a relatively small tax, VED raises more in revenue than air passenger duty, insurance premium tax, landfill tax, climate change levy, aggregates levy, betting and gambling duties, and inheritance tax.
389. In our interim report, we concluded that VED was a potential candidate for devolution, but we recognised that certain potential difficulties would need to be examined, such as a possible distortionary effects resulting from hire companies registering their vehicles in the lower jurisdiction if different VED systems operated in Scotland and England.
390. After careful assessment, we do not believe that VED should be devolved, given the scope for avoidance.

Betting, gaming duties

391. There are seven different duties payable on gambling activities in the UK. These are all set by the Chancellor of the Exchequer at the time of the Budget, and are as follows:

- Bingo Duty;
- Gaming Duty;
- Remote Gaming Duty;
- General Betting Duty;

- Pool Betting Duty;
- Lottery Duty; and
- Amusement Machine License Duty

392. In 2011-12, the Scottish Government estimated that betting and gaming duties amounted to £1.15 billion in revenue. It is, therefore, a very small tax, raising only 0.2 per cent of non-North Sea revenue.

393. We outright reject devolution of betting and gaming duties as devolving them would create the potential for significant avoidance due to the sheer number of transactions now conducted by telephone and over the internet. Moreover, regulation of betting and gaming is a reserved matter, so betting does not have the same overlap with devolved functions as alcohol or tobacco. Thus, while we reject devolution of alcohol and tobacco duties on the basis of potential tax avoidance, we can at least see the logic behind such a move on health and public order grounds – no similar overlap in devolved functions exists in the case of betting and gaming duties.

Air Passenger Duty

394. Air passenger duty is an excise duty which is paid on chargeable passengers being carried from a UK airport on chargeable aircraft. APD is not payable by inbound international passengers who are booked to continue a journey to an international destination within 24 hours of their scheduled arrival in the UK. If a passenger “stops-over” for more than 24 hours, APD must be paid in full. Since May 2009, APD has been structured around four distance bands, set at intervals of 2,000 miles from London to the capital city of the destination country. This change was designed to ensure that those flying longer distances, and thus those contributing more to aviation emissions, pay more for the environmental cost in tax. Each destination band has two rates of duty depending on class of travel, so there are eight different rates of APD in total. Although APD is not payable on flights departing from airports in the Scottish Highlands and Islands, flights from other parts of the UK to airports in this region must pay duty.

395. In 2011-12, the Scottish Government estimated that APD amounted to £0.21 billion, which is broadly equivalent to 0.5 per cent of non-North Sea oil revenue.
396. Our interim report considered whether there was scope for devolution of air passenger duty, subject particularly to EU rules. We received a number of considered representations, and continue to note that departures from Highlands and Islands airports are already exempt from this tax. Given the pressure to reduce this tax from airlines and others and the risk of tax competition which would be created, we are not now convinced that devolution should be progressed until further consideration is given to the environmental impact and how else this tax might be reformed.

Capital Gains Tax

397. Capital gains tax is another tax which most of the population never encounter. It applies to individuals and businesses, and is levied on the profit when an “asset” that has increased in value is disposed. (Disposing of an asset includes: selling it; giving it away; transferring it to someone else; exchanging it for something else; or receiving compensation for it, such as when an insurance payout is made when an asset is destroyed.) Most assets are liable to CGT when an individual or business disposes of them, although some are exempt such as personal possessions disposed of for £6,000 or less, the sale of a car, and, in most cases, the main home. From June 2010 onwards, the CGT rates have been: 18 per cent and 28 per cent for individuals (the rate depends on total taxable income); 28 per cent for trustees or personal representatives of someone who has died; and 10 per cent for gains qualifying for Entrepreneurs’ Relief. Capital gains tax is another tax often used in “tax planning”. It can be advantageous for individuals to ensure that profits they make are realised as capital gains, rather than as income, so as to take advantage of the nil rate amount for capital gains.
398. In 2011-12, the Scottish Government estimated that CGT paid in Scotland amounted to £0.24 billion or 0.5 per cent of total non-North Sea oil revenues. In terms of the revenue it generates, CGT falls into a similar category to APD and insurance premium tax.

399. In our first report, we concluded that, as CGT was in part a form of personal taxation, a case existed for its devolution, provided potential administrative complexities could be overcome and tax avoidance minimised.
400. Having now examined the matter in detail, we believe CGT should remain reserved, as a result of potential administrative complexities and the potential for tax avoidance.

Climate Change Levy

401. The Climate Change Levy (CCL) is an environmental tax levied on energy supplies to business, local administration and agriculture, and a number of other services – it does not apply at all to domestic energy supplies. Any company supplying energy supplies of the liable types to liable organisations is required to register with HMRC, and to pay the tax – the cost of which is passed on to customers as higher prices, in a similar way to fuel duties.
402. CCL aims to encourage greater energy efficiency and lower energy use by increasing the effective price of energy. Consequently, it aims to help the UK meet its legally binding Kyoto Protocol commitments to reduce greenhouse gas emissions. The forms of energy covered by CCL are electricity or gas obtained for end-use rather than resale from a third party supplier; hydrocarbon gases supplied in liquid form; coal and lignite (and cokes and semi-cokes); and petroleum coke. Low-value solid fuel worth less than £15 per tonne and waste used as a source of energy are exempt from CCL, while oil-based fuels are exempt as they are either liable to road fuel duties or to other excise duties.
403. A number of exceptions to the regime are in place to ease CCL's impact on energy-intensive business sectors. For example, businesses operating in a number of energy-intensive sectors are eligible for a discount of up to 65 per cent if they sign up to industry-wide Climate Change Agreements which set challenging targets for improving energy efficiency. The eligible industries are as follows: aluminium; cement; ceramics; chemicals; food and drink; foundries; glass; non-ferrous metals; paper; steel; and around 20 smaller sectors (including microelectronics, lime, distillers and textiles). Agreements are negotiated between the UK Government and trade associations representing

the sectors, all of which are covered by the EU Integrated Pollution Prevention and Control regime.

404. The Scottish Government estimated that the Scottish share of CCL paid in 2011-12 was £0.064 billion – it is thus a very small tax representing a mere 0.1 per cent of non-North Sea oil revenue.
405. While we accept that the nature of the energy supply chains within the UK mean that an actual, rather than estimated, figure for Scottish liabilities is easily obtained, suggesting CCL can be devolved with limited administrative complications, we believe that creating a separate Scottish climate change tax system and schedule would result in economic distortions. CCL is closely associated with energy policy which we believe should continue to be reserved to the UK Parliament. We therefore reject CCL as a tax that should be devolved.

Inheritance tax

406. Most people have no experience of inheritance tax, as they do not accumulate enough wealth in their lifetime to be affected by it. It is paid on an estate when an individual dies, though sometimes on trusts or gifts made during a person's lifetime. The majority of estates do not have to pay inheritance tax as they are valued at less than the threshold – £325,000 in 2012-13. The tax is payable at 40 per cent on the amount over this threshold or at a rate of 36 per cent if the estate qualifies for a reduced rate because a charitable donation is made. Inheritance tax is subject to "tax planning", as people make significant efforts to reduce the liabilities under the current arrangements. Married couples and registered civil partners can effectively raise the threshold of inheritance tax due on their estate when the second partner dies up to £650,000 in 2012-13. More complex schemes are also common for large estates.
407. In 2011-12, the Scottish Government estimated that inheritance tax raised £0.164 billion, representing 0.4 per cent of total non-North Sea oil revenues.
408. After careful assessment, given the potential adverse consequences, we take the view that inheritance tax should remain reserved.

Insurance premium tax

409. Insurance Premium Tax (IPT) is a tax on general insurance premiums. There are two rates at which the tax is charged: (i) a standard rate of 6 per cent; and (ii) a higher rate of 20 per cent for travel insurance and some insurance for vehicles and domestic/electrical appliances. Most long-term insurance is exempted from the tax, as is reinsurance, insurance for commercial ships and aircraft and insurance for commercial goods in international transit. Premiums for risks located outside the UK are also exempt, but they can be liable to similar taxes imposed by other countries.
410. The Scottish Government estimated that the Scottish share of insurance premium tax amounted to £0.25 billion in 2011-12.
411. On balance, we do not believe IPT would be a suitable candidate for devolution. Insurance premium tax is paid by businesses and intermediaries, and its devolution would not only be extremely problematic in administrative terms, it would incentivise economic distortions and, in all probability, lead to significant tax avoidance.

Oil receipts

412. In our interim report, we highlighted that North Sea oil receipts were very important to the UK economy in the 1980s, but they had fallen off since then, and, although significant in comparison with Scottish public expenditure, they are no longer as important for the UK as a whole. Presently, in very broad terms, North Sea oil receipts make up most of the difference between domestic tax receipts in Scotland and spending: devolved Scottish public spending is about 18 per cent per head higher (identifiable spending by Scottish Governments) than the UK average on devolved expenditure, and overall identifiable public spending is higher than the UK average whereas tax receipts excluding oil per capita are slightly lower. While accepting that it would be technically possible to devolve oil taxation, we argued in our interim report that this would be highly difficult in practice because of the likely effect on spending. It would build a “fiscal cliff” into Scottish public expenditure plans – a “fiscal cliff” that would see a sudden reduction in spending needed if Scotland had to rely

on its domestic taxes only, when oil revenues were no longer available, and, of course, would be difficult to fund under independence.

413. We find no case for devolving oil receipts to Scotland. As outlined in our earlier report, we believe that this would be dangerous to stability in public spending levels, and the services that rely on this.

E. Maintaining stability in public funding

414. As we argued in our interim report, the more Scotland relies on its own resources, the less it will rely on shared UK taxes. Complete fiscal self-sufficiency however is independence, and any system of finance for Scotland within the UK will involve some sharing of UK resources. It is right that it should, and this is something which the Labour Party welcomes: taxation rightly transfers resources from individuals who are able to pay to support those who are not. This is currently applied across the UK, and as a result money is transferred across different parts of the country. That is part of the social solidarity of the UK which we value. As well as transfers across the country there are also transfers from one level of government to another. As we have seen, because it makes good sense to raise many taxes at the national level, and to decentralise more spending decisions, in all countries there are transfers of resources from national to devolved government. Such transfers should continue in the UK, but greater reliance on Scottish taxation raises potential issues around how the transfer from national to devolved government would be calculated. At the moment, such transfers calculated by the Barnett formula, established by the Labour Government in the late 1970s. If the Scottish Parliament is to rely more on resources raised from Scottish taxation, then some adjustment will have to be made to that calculation. Under the Scotland Act 2012, the UK Government propose to retain the Barnett formula, but make an adjustment to take account of devolved tax income that is likely to be received. This in our view is the right approach and would continue to be followed under our proposals.

415. The alternative would be to move to a needs-based formula following a needs assessment. Proponents of a needs-based formula however seldom set out how much Scottish public spending could potentially be at put at risk by such a change. In an event, there is no objective, neutral, commonly agreed measure of spending need and those assessments which have been produced in recent debate have been criticised in material put to the Commission. That is one reason why the Barnett formula has survived for so long. Moreover, as we highlighted in our interim report, Scotland does have a number of serious social and other problems, notably in relation to health and social deprivation – and, of course, an unusually large landmass which increases the cost of service delivery. Barnett has many strengths, notably that it provides stability to levels of public funding, and so the public services and their management. We believe no convincing alternative which meets this requirement has thus far been proposed. Our proposals are fiscally neutral at the UK level and entirely compatible with the Barnett model. As we argue, while it is right that the Scottish Parliament should rely more upon its own resources, we believe that grant from the UK Parliament should remain the largest source of income for the Scottish Parliament. This enables a Labour UK Government to ensure comparable levels of public services across the UK, for reasons of equity and social solidarity and to ensure that key social rights are safeguarded.
416. The Barnett formula is a simple, broad brush, objective mechanism for allocating resources at the margins, (i.e. the annual changes on public expenditure). Barnett was not intended to produce equal spending per capita nor has it done so. Although not a needs-based formula, the historic baselines were built on the basis of specific arguments over needs. It is acknowledged by HM Treasury that the three devolved nations continue to have higher spending needs than the UK average. To maintain stability, any formula to replace Barnett would need to be developed and agreed with the three devolved administrations, and it should be recognised that a precise objective method is unlikely. Such a process could only result in uncertainty and potentially disagreement, and we are firmly of the view that continuing with a Barnett approach, suitably adjusted to take account of the increased tax resources to

be available to the Scottish Parliament, is the right and indeed the only feasible approach.

F. Recommendations

417. We believe that the opportunity for further devolution in the area of taxation is beyond question. Yet, it is naive to think we can ever completely close the fiscal gap to zero – nowhere else in the world does this happen – or that this is, in any event, a desirable outcome.
418. As we have shown, scope exists to go beyond the Scotland Act on tax devolution, but this is subject to a number of constraints. Some are obvious: all taxes distort markets to some degree, but geographically variable taxes can have an effect on the UK single market in goods and services, which is one of the benefits of economic union which should be preserved in Scotland's interest. The opportunity for tax devolution is also limited by EU law – for example, VAT, which is one of the largest taxes in terms of revenue, cannot be devolved. The opportunity for devolution is also limited by taxpayer behaviour: taxes on tax bases, which can readily be relocated to a lower tax area, are not suitable for devolution. On the other hand, it is clear that further tax devolution is possible, and this is essential to increase accountability for decisions made by the Scottish Parliament on spending.
419. In order to create a fairer, progressive and more accountable tax system, which does not introduce the potential for destructive tax competition within the UK, we make the following recommendations:

RECOMMENDATION: Labour will give the Scottish Parliament the power to raise around £2 billion more in revenues beyond the recent Scotland Act, so that it raises about 40 per cent of its present budget from its own resources.

RECOMMENDATION: We will widen the variation in income tax in the Scotland Act by half from 10p to 15p. It will mean that three-quarters of the basic rate income tax in Scotland will be under the control of the Scottish Parliament.

RECOMMENDATION: The Scotland Act enables the Scottish Parliament to increase or decrease income tax rates in Scotland. In addition to extending this power, we will also introduce new Scottish Progressive Rates of Income Tax, so that the Scottish Parliament can increase the rates of tax in the higher and additional bands. For the first time, the Scottish Parliament will be able to alter both the level of tax and the progressivity of the tax system, but without the risk that a Scottish Government could force tax competition within the UK by cutting only the top rates, to the detriment of public services. Labour in the Scottish Parliament would be able to use these powers if a UK Government did not set fair taxes at these levels.

RECOMMENDATION: Our interim report considered whether there was scope for devolution of air passenger duty, subject particularly to EU rules. We received a number of considered representations, and continue to note that departures from Highlands and Islands airports are already exempt from this tax. Given the pressure to reduce this tax from airlines and others and the risk of tax competition which would be created, we are not now convinced that devolution should be progressed until further consideration is given to the environmental impact and how else this tax might be reformed.

RECOMMENDATION: We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved. However we do support, in principle, a derogation to allow a lower rate of fuel duty to be charged in remote rural areas of the Highlands and Islands.

RECOMMENDATION: The Barnett formula should remain as the funding mechanism for public services in Scotland. Under our policies, as is the case under the Scotland Act, the Barnett grant will be reduced to take account of the fact that the Scottish Parliament will have a revenue stream of its own. As a result the Scottish Parliament will be funded partly by grant calculated under the Barnett formula and partly by its own tax resources.

420. These recommendations provide the potential for creating a fairer and more accountable tax system. They do not in themselves guarantee sound decision-making. That is why in this report we have addressed the issue of tax policy-making. In our view, avoidable mistakes have been made in the past by policy-makers failing to take a long-term, strategic and coherent approach to taxation. As a consequence, tax changes have tended to be disjointed, piecemeal, and wanting in transparency. In this respect, as evidenced by their approach to the new tax powers that will come on stream following the Scotland Act, we believe that the SNP's have fallen short and risk repeating past mistakes. In contrast, we will develop a strategic approach to taxation. Our policies will be presented as a strategic package of measures underpinned by a clear set of principles.

Part 6: Ensuring fairness to people at work, when they are most in need and in the marketplace

- A Introduction
- B Welfare
- C Workers' rights: health & safety and employment
- D Equalities
- E Consumer education, advice information and advocacy
- F Our recommendations

Part 6: Ensuring fairness to people at work, when they are most in need and in the marketplace

A. Introduction

421. In this chapter, we examine a range of issues, related to social support, the world of work, equalities and consumer advocacy, where there may be a case for changing the present allocation of responsibilities within the existing devolution settlement.
422. Firstly, we consider the potential for devolution of welfare functions currently reserved to the UK State. Secondly, we set out our assessment of the possibilities for devolution in the areas of health & safety and employment. Thirdly, we examine the issue of equalities, and why we believe enforcement in this area should become a devolved matter. Fourthly, we look at the matter of consumer education, advice information and advocacy, and explore how devolution in this area might better protect Scottish consumers. Finally, we set out our recommendations for devolution in the above matters.
423. Our approach, in considering the issues involved, has been informed by one principal objective: how we can ensure greater fairness and best protect people at work, when they are most in need and in the marketplace.

B Welfare

424. In our first report, we reached the following conclusions in relation to devolution and welfare:
- Scotland's relatively high level of welfare spending is a reflection of its economy and demography, and this will increase in the future because of growing numbers of elderly households.

- All welfare spending is about the pooling of risks and resources. There are strong economic arguments for doing this at as wide a level as possible to cope with economic shocks and needs for benefits which arise differently across different parts of the country. There are equity arguments for treating people equally, specifically in regard to cash benefits, across the different parts of the UK.
- The Labour argument for welfare is that the social union should be as uniform as possible throughout the UK. Welfare is a key part of nation building, and so nationalists will seek to devolve it if they can, whether that is in the interest of the population or not.
- Wholesale devolution of welfare could only be linked to very substantial tax devolution in order to pay for any variation. This would carry fiscal risks for Scotland.
- International experience, in general, supports the reservation of social security as a central government function.

425. Before setting out our detailed recommendations on what currently reserved social security functions should be devolved, we outline (i) Scotland's relationship with the UK Welfare State; (ii) our conception of "social citizenship rights"; (iii) our view on the advantages of pooling and sharing resources across the UK; (iv) why full-scale welfare devolution is not the solution to closing the fiscal gap; (v) why our opposition to the UK Coalition Government's welfare reforms does not lead us to the conclusion that the solution is either to end the Welfare State or the UK; and (vi) an analysis of what lessons can be learned from the decentralisation of welfare functions in other countries.

Scotland and the UK Welfare State

426. There is no definitive agreement on what constitutes the "Welfare State". It was first popularised by the Archbishop of York, William Temple, who claimed, in 1941, that it was an expression of national benevolence and a means of

enabling community.⁸⁰ The architect of the Welfare State, William Beveridge, himself abhorred the phrase and refused to use it, disliking, what he termed, as its “Santa Claus” and “brave new world” connotations. Beveridge preferred to talk of the “social services” state, emphasising, as the term suggests, social rights as well as individual responsibility.⁸¹ The boundaries of the “Welfare State” have been, on occasions, sketched so tightly as to discount everything outside the social security budget. At others, it has embraced everything from price and environmental regulation to nationalisation. There is no one Welfare State, set in stone – its boundaries, like waves on the shoreline, have expanded and contracted over time. Definitions, however, are important. For us, when using the term “Welfare State”, we mean especially the system of cash benefits and the collection of social services that help people in their everyday lives. Thus, we basically accept the definition of the Welfare State proposed by Asa Briggs, in his classic essay on the British Welfare State, which identified the following principal elements: a guarantee of minimum standards, including a minimum income; social protection in the event of insecurity; and the provision of services at the best level possible.⁸²

427. It is a common mistake to view the Welfare State as a monolithic entity, marked by national integration and territorial equality. Rather than one system of social protection, it is more useful to think of two separate, albeit interrelated, systems. While some social functions – such as cash benefits – are integrated on a UK-wide basis, other forms of social provision, above all in the areas of health and education, are administratively decentralised. This division goes back, not just to the devolution settlement of 1999, but ultimately to the 1945-51 Attlee Government. When the post-war system of social security was put into place, following the recommendations of the Beveridge report, it was decided to administer cash benefits uniformly across the UK. Thus, benefits, such as the state pension, income support and jobseeker’s allowance, are centrally administered by the Department for Work and Pensions (DWP) today. It has always been seen as a fundamental principle of the UK Welfare State that cash

⁸⁰ William Temple, *Citizen and Churchman*, (London : Eyre And Spottiswoode, 1941)

⁸¹ José Harris, *William Beveridge: A Biography*, (Oxford: Clarendon Press, 1997), p. 406.

⁸² Asa Briggs, “The Welfare State in Historical Perspective”, *European Journal of Sociology*, vol. 2 (December 1961) 2, pp. 221-258

benefits should be administered in accordance with need, not geography. The only exceptions in this respect have been council tax benefit and housing benefit, which take account of local tax and rent levels: council tax benefit is currently being decentralised, while the present government have cut housing benefit in ways which are causing harmful and damaging problems for many people and rolling it into Universal Credit.

428. By way of contrast, directly provided services such as health, education, social work and housing, have long been administratively decentralised. For example, when the NHS was established, Scotland had separate legislation to that which created the NHS in England and Wales. Before devolution, policy variations tended to be expressed through differences in implementation of UK legislation in Scotland, rather than policy divergence. Following devolution, Scotland has had greater policy-making autonomy to continue historic policy differences in health, education and local government, and this has been underpinned by greater political and democratic accountability. Thus, while education and health legislation are administered, devolved and delivered in Scotland, cash benefits (and national insurance contributions) are managed and provided by the UK State.

Social citizenship

429. The idea of “social citizenship rights” was developed by the academic, T. H. Marshall, who first used the term in his essay, *Citizenship and the Social Class*, published in 1950.⁸³ Writing at the time of the Welfare State’s creation, Marshall set out an analysis of the concept of citizenship, based around the development of civil, political and social rights. Civil rights, or the idea of equality before the law, emerged in the eighteenth century. Because of this, during the nineteenth and early twentieth century, political rights, culminating in universal suffrage, were able to arise. Both of these developments paved the way for social citizenship rights, or the notion that all members of a community ought to enjoy and to share at least a basic level of social and economic well-

⁸³ T. H. Marshall, *Citizenship and Social Class: And Other Essays*, (Cambridge: Cambridge University Press, 1950)

being – an idea embodied in the Welfare State. As Marshall's writings focussed on the British State, often referring only to England, it has been argued that his concept of social citizenship rights is incompatible with devolution. Whilst we accept that the Marshallian concept of citizenship is challenged by devolution – for instance, political rights are no longer uniform, as citizens living in Scotland, Wales and Northern Ireland can vote in devolved elections – we also believe these claims to be exaggerated.

430. As we have seen, territorial variability has always been a feature of social policy in Britain, meaning that devolution can hardly undercut the social rights of citizens based on the principle of “need, not geography”. Such a position is perfectly compatible with enhanced devolution, but there are limits: it means that the redistributive aspects of the Welfare State (i.e. administration and allocation of cash benefits) should remain largely reserved. To pursue an alternative course would mean to break the ties of common social citizenship that hold the UK together.
431. In considering whether it makes sense to further devolve provision, and thereby open the potential for differences in benefits, we have to address one overarching question: does it matter if pensioners in Scotland are paid more or less generous pensions than in England, or if unemployment benefits are higher or lower in Doncaster than Dundee? We think this an extremely important matter, and we are of the view that such a divergence in the provision of cash benefits would be a retrograde step, resulting in the tearing apart of one of the most enduring bonds that have united us. The provision of cash benefits within a nation state sends a powerful signal about belonging. The creation of the Welfare State after the Second World War bound the UK (social classes rather than nations) together. We are of the firm belief that the vast majority of welfare entitlements should remain reserved, though, as we discuss later on, we do think there is scope for further, limited devolution in this area.
432. We believe that the reservation of cash benefits, and the devolution of other aspects of social protection, are entirely consistent with the views of Marshall, who argued that social citizenship requires that “the state guarantees a minimum supply of certain essential goods and services (such as medical

attention and supplies, shelter and education) or a minimum money income available to be spent on essentials – as in the case of Old Age Pensions, insurance benefits and family allowances”.⁸⁴ Thus, devolution of certain aspects of social protection, such as education and health, are not incompatible with the idea of British social citizenship, whereas any major devolution of cash benefits would be: divergence in the way essential goods and services are provided is not the same as their denial to citizens, while any variation from uniformity in the application of cash benefits jeopardises minimum standards.

The benefit of pooling resources

433. Social security is the UK Government’s single largest item of public expenditure. In 2011-2012, total government spending was £695 billion. Of this amount, £159 billion was paid out in benefits. In Scotland, social protection spending including benefits – such as old age pensions, child benefit, income support and disability benefits – accounted for nearly 40 per cent of identifiable public spending. Table 6.1 shows the scale of benefits expenditure in Scotland (excluding tax credits). Old-age pensions, as can be seen, are by far the biggest component of the benefits bill.

⁸⁴ Scott L. Greer, *Devolution and Social Citizenship in the UK*, (Bristol: Policy Press, 2009), p. 205

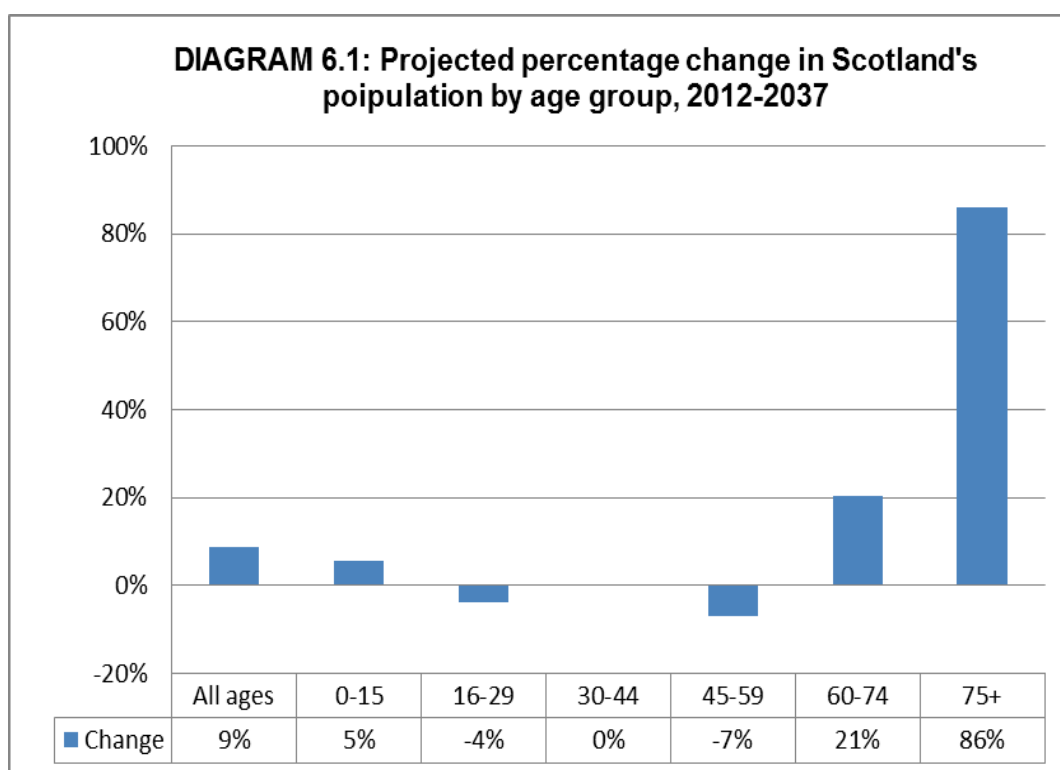
TABLE 6.1: Expenditure by UK Department for Work and Pensions on Benefits in Scotland, 2011-12

	£ million	Percentage
Attendance Allowance	481	3.4
Bereavement Benefit/Widow's Benefit	59	0.4
Carer's Allowance	153	4.4
Council Tax Benefit	384	2.8
Disability Living Allowance	1,372	9.8
<i>of which children</i>	109	
<i>of which working age</i>	774	
<i>of which pensioners</i>	488	
Employment & Support Allowance	381	2.7
Housing Benefit	1,728	12.3
Incapacity Benefit	564	4.0
Income Support	670	4.8
<i>of which on Incapacity Benefit</i>	418	
<i>of which lone parents</i>	190	
<i>of which carers</i>	34	
<i>of which others</i>	28	
Industrial Injuries Benefits	93	0.7
Jobseeker's Allowance	461	3.2
Maternity Allowance	24	0.2
Over 75 TV Licences	49	0.4
Pension Credit	752	5.3
Severe Disablement Allowance	97	0.7
<i>of which working age</i>	75	
<i>of which pensioners</i>	21	
State Pension	6,324	45.2
Statutory Maternity Pay	197	1.4
Winter Fuel Payments	188	1.3
Total	13,978	100

Source: Department for Work and Pensions

434. In comparison to England, as we highlighted in our first report, Scotland has relatively high levels of benefit spending, which is, in large part, driven by long-term social trends, most notably the age structure of the population, and changing patterns of economic activity. Scotland is now economically typical of the UK in terms of income and unemployment, but some continuing high levels of benefit expenditure may still be linked to the de-industrialisation that took place during the 1980s. The levels of benefit spending in future however will be substantially driven by the changing age structure of the population.

435. Future benefit expenditure will be in particular driven by the increasing proportion of the population over pensionable age. Diagram 6.1 below shows how Scotland's age structure will change.



Source: General Register Office for Scotland

436. The number of people aged 75 and over is projected to increase by around 28 per cent in the first ten years of the projection period, from 0.42 million in 2012 to 0.53 million in 2022. It is then projected to continue rising, reaching 0.78 million in 2037 – an increase of 86 per cent over the 25 year period. The number of people of pensionable age is projected to decrease from 1.05 million in 2012 to 1.02 million in 2020 (a decrease of 3 per cent), but it is then projected to rise, reaching 1.34 million in 2034. It then remains relatively constant and is projected to be 1.33 million by 2037 (an increase of 27 per cent from the 2012 estimate). The dependency ratio – the ratio of people aged under 16 and over pensionable age to those of working age – is projected to rise from around 59 per 100 in 2012 to 66 per 100 in 2037.
437. Old-age pensions are now the main contributory benefit (insurance stamps matter for them), and most other benefits are now means-tested and supported

from general taxation. Nevertheless, welfare is still in substance (even if not in strict form) a system of mutual insurance. Every individual faces risks like old age, illness, and unemployment: rather than carrying these risks individually they are pooled – not in a pension fund or a friendly society, but across an entire country, to become not private but “social” insurance. Individuals pay in, increasingly via general taxation (based on ability to pay rather than an insurance premium), and take the benefits when they need them. Obviously the larger the pool, the more the risks are likely to average out, and the easier an insurance scheme is to manage. Social insurance provides the largest pool of all.

438. It is not surprising that nationalists want to devolve welfare: they want to create a more exclusively Scottish sense of national identity to replace the loyalties which already bind British people together. The SNP have played politics with welfare. However, when their Expert Working Group on Welfare reported, it concluded that an independent Scotland should continue to share resources with the rest of the UK. This would mean that the system would still be constrained by choices made in the rest of the UK, while leaving Scotland with no political representation. By pooling our resources across the UK we can share the burden of funding and administering our social security system.
439. Our social security system is a deeply complex, integrated cross-border arrangement that cannot easily be separated. The SNP’s own Expert Working Group, indeed, conceded this point: “A downside of continuing to share services might be that an independent Scottish Government finds itself unable to implement some of its early priorities for change to the benefit system”.⁸⁵ Similarly, Dr Nicola McEwen, Director of Public Policy at the Academy of Government, University of Edinburgh and Senior ESRC Scotland Fellow, has argued: “The agencies delivering welfare services are scattered across the UK, and many are in Scotland. But the welfare system is nonetheless deeply integrated. It is dependent upon a core IT system run by the UK Department for Works and Pensions that determines entitlements based upon policies set by

⁸⁵ Expert Working Group on Welfare, *The Expert Working Group on Welfare*, (Edinburgh: Scottish Government, June 2013), p. 66.

the UK government. Relatively minor modifications can be accommodated - as is the case currently in Northern Ireland where social security is devolved. But it would be extremely difficult to share the administration and delivery of services if entitlements were markedly different north and south of the border".⁸⁶

440. Pension experts have warned about the risks of separation to Scottish pensions. The Institute for Chartered Accountants Scotland (ICAS), for instance, highlighted that companies with defined benefits schemes would have to fully fund their schemes if they operated between an independent Scotland and the UK, in order to comply with EU law. That would mean finding resources to fund the £230 billion pension shortfall, if companies wanted to operate in Scotland and the UK. The SNP have failed to provide any certainty about pensions in an independent Scotland. When questioned with real and legitimate concerns from people across Scotland, the SNP accuse pro UK campaigners of "scaremongering". This is despite the fact that the SNP Finance Secretary, John Swinney, admitted in a private memo that cuts to pensions would have to be made: "Spending on state pensions and public sector pensions is also driven by demographics, and is set to rise ... At present HM Treasury and DWP absorb the risk of growth in demand in the widest sense and therefore all associated costs. In future [if Scotland was to leave the UK] we will assume responsibility for managing such pressure. This will imply more volatility in overall spending than at present ... The [Scottish Government's Fiscal Commission] Working Group will consider the affordability of state pensions as its work on fiscal sustainability proceeds".
441. Scotland's population in the future is going to have more old people and fewer young people than the UK as a whole. This demographic timebomb means that if Scotland left the UK we would be faced with a stark choice: reduce the state pension or meet the shortfall via higher taxes or cuts in other social spending. This is a point that has been made by the Institute for Fiscal Studies (IFS): "The more rapid growth in the elderly population in Scotland, combined with the greater amounts spent on benefits for older people (largely in the form of state pensions, but also disability benefits) can clearly be expected to lead to

⁸⁶ Nicola McEwen, "SNP must set out their welfare vision", (University of Edinburgh, June 2013)

more rapid growth in benefit spending in Scotland than in Great Britain as a whole”.⁸⁷

442. The last Labour Government, by contrast, accepted the Calman Commission’s argument that being able to pool resources and risks across a larger and more resilient political and economic community than that provided by the constituent nations alone was important for the security of all involved, and that benefits were the key instrument of social union.

“There are areas where the people of Scotland have over many years shared rights and responsibilities, and pooled risks and resources, with the rest of the Union. These are areas of common welfare. The most notable is social security – old age pensions, benefits paid to people seeking work or those unable to do so, and allowances and credits supporting children and families. Even in federal states, however, it is common (though not universal) for social protection of this kind to be a federal, rather than state or provincial, responsibility. This makes both economic and social sense: economic sense because one part of the country may be differently affected, or affected at different times, by economic change or shocks; social sense because providing people whose circumstances are the same with the same financial support wherever they are in the UK shows solidarity and mutual support. At present social protection is financed by UK-wide resources. Tax revenues are pooled and shared out on the basis of need to individuals (and thus indirectly, to different parts of the UK). This seems to us to be a *fundamental part of the Union* (emphasis added)... The risks, and the resources to deal with them, are shared. It has a very explicit expression in the form of National insurance, which is linked to benefit entitlements. But it is also seen in pooling other taxation like income tax or VAT and even in the pooling of windfalls like taxes from oil revenues and other natural resources”.⁸⁸

443. We believe that Calman’s conclusion that being able to pool resources and risks across a larger and more resilient political and economic community than would be provided by the individual nations alone is the right one. Spending according to need is now a principle widely accepted across the political spectrum – our own belief is that sharing goes with belonging. Benefits are any Government’s largest single budget item, and the clearest example of this

⁸⁷ Institute of Fiscal Studies, *Government spending on public services in Scotland: current patterns and future issues*, (London: Institute for Fiscal Studies, September 2013), p. 53.

⁸⁸ Commission on Scottish Devolution, *Serving Scotland better: Scotland and the United Kingdom in the 21st Century: final report*, (Edinburgh: Commission on Scottish Devolution, June 2009), paras. 2.24-2.25.

principle. How much is spent in different places on pensions and benefits is determined solely by individual entitlements. So, not only do benefits help to stabilise economic activity across cycles, they are also the major geographical redistributor of resources across the UK. This is currently to the advantage of Scotland. As Table 6.2 shows, households in Scotland currently receive more than the UK average in cash benefits and total benefits than paid in total tax.

TABLE 6.2: Households receiving more in benefits than paid in taxes, 2011-12

			<i>Scotland & UK, 2011/12</i>
		Percentage	Number (000's)
Households which received more in cash benefits ¹ than paid in total tax ²			
	Scotland	42.0	1 020
	UK	37.8	10 003
Households which received more in total benefits ³ than paid in total tax ²			
	Scotland	53.7	1 304
	UK	51.9	13 710

Source: Office for National Statistics

¹ Cash Benefits include cash payments received from the state, including the state pension

² Total tax includes all direct taxes (Income Tax, employees' NI contributions and Council Tax) and indirect taxes (taxes such as VAT which are indirectly borne by households through higher prices)

444. All welfare systems involve pooling both risks and the resources to deal with them. The logic of pooling risks among individuals, regions and across generations within the largest possible geographical area is widely recognised in the economic literature. Economic shocks tend to be asymmetric, affecting individuals and regions in different ways and at different times. Resource-pooling at the UK-level provides UK citizens with the safety-valve of a broader and more versatile tax base to cope with such unpredictability.
445. If cash benefits were devolved in full, so that the Scottish Government could vary them, there would have to be very substantial tax devolution to finance

this. It would, after all, hardly be reasonable to expect English taxpayers to pay for higher Scottish benefits. Welfare devolution is therefore linked to fiscal devolution. This makes obvious sense also because the benefit system is the major engine of redistribution, alongside income tax.

446. A less theoretical argument for the pooling of resources is whether Scotland could continue to afford, on its own, its present levels of welfare spending. A short summary of Scotland's fiscal position is as follows. Public expenditure per head in Scotland is significantly higher than in the UK as a whole. (Devolved public spending is approximately 18 per cent per head higher, and overall identifiable expenditure about 14 per cent. The remainder, non-identifiable expenditure on services such as defence, is mostly allocated on a per capita basis.) Tax revenue (excluding North Sea oil) is estimated to be slightly below the UK average per head.⁸⁹ On this basis, Scotland would fall far short of the money it needed to sustain present public services and welfare benefit payments. Most of the gap could be filled if Scotland is credited with all off-shore oil revenue arising off Scottish coasts to spend on Scottish services. However, this would leave Scotland very vulnerable when the oil revenue runs out, or when its price fluctuates in global commodity markets. This makes the theoretical argument about risk pooling much more real.
447. In July 2013, it is also worth noting, the IFS produced a briefing note, *Government spending on benefits and state pensions in Scotland: current patterns and future issues*, which analysed current patterns of benefit spending, reviewed some possibilities for policy change and commented upon the long-term demographic and fiscal outlook. The IFS concluded that any major redesign of the benefits system, both under enhanced devolution or independence, would require Scotland either to spend more on cash benefits than is spent now, requiring increased levels of taxation, or else create large numbers of losers, who will typically have fairly low incomes.⁹⁰

⁸⁹ Scottish Government: Government Expenditure and Revenue in Scotland 2012, HM Treasury Public Expenditure Statistical Analysis.

⁹⁰ David Phillips, *Government spending on benefits and state pensions in Scotland: current patterns and future issues*, (London: IFS, July 2013).

Extensive welfare devolution – not the solution to closing the fiscal gap

448. Those who argue for extensive tax devolution, such as the proponents of “Devo Plus” and “Devo Max”, suggest that they are trying to solve the problem of the “fiscal gap”, namely that the Scottish Parliament raises much less in taxes than it spends, and this distorts its economic incentives. A problem with extensive welfare devolution is that it would widen this gap hugely. At the moment the Scottish Parliament spends just over half of Scottish public spending. If welfare were devolved that would rise to about 90 per cent. However, as VAT (which accounts for 20.5 per cent of non-North Sea oil revenue) cannot be devolved, it is very hard to get anything like that level of tax devolution. Thus, if welfare became a devolved function of the Scottish Government, the fiscal gap would be worsened and so the fiscal accountability of the Scottish Parliament reduced.
449. At the minimum, it would be necessary to devolve all of income tax and national insurance contributions, and give the Scottish Parliament extensive borrowing powers to finance welfare payments acting as automatic stabilisers at a time of recession. Even then, a lot of risk would be imported into the Scottish Budget. This borrowing would have implications for UK macroeconomic management, and so would inevitably be subject to constraints.

What lessons can be learned from other countries

450. Looking at how welfare functions are discharged in federal countries gives some guidance on the scope for devolving social security. Table 6.3 shows which level of government has legislative responsibility for the main aspects of welfare in a number of federal states, with Scotland for comparison. As can be seen, in almost all federal states, even in those where considerable powers are devolved, social security for the most part is the responsibility of the central government. Reviewing the international evidence, we find that there are no major countries in which welfare is a decentralised responsibility.⁹¹ Even in countries such as Switzerland, where many tax and other powers are the

⁹¹ For further information see Herbert Obinger (ed.), *Federalism and the welfare state: New world and European experiences*, (Cambridge: Cambridge University Press, 2005)

responsibility of the Canton, rather than the federal government, social security is provided at the federal level. In federal countries, such as Germany and the United States, social security programmes are overwhelming federal rather than state driven. In Canada, a country with a highly decentralised fiscal system, much of core welfare provision is run at the federal rather than the provincial level.

TABLE 6.3: Legislative responsibility for welfare in federal countries and Scotland

	Australia	Austria	Canada	Germany	Switzerland	USA	Scotland
<i>Old age, survivors and disability</i>	Common-wealth	Federal	Shared	Federal	Federal	Federal	Reserved
<i>Unemployment</i>	Common-wealth	Federal	Federal	Federal	Federal	Shared	Reserved
<i>Work injury</i>	State	Federal	Provincial	Federal	Federal	State	Reserved
<i>Family allowances</i>	Common-wealth	Federal	Shared	Federal	Federal	Shared	Reserved
<i>Social assistance</i>	Common-wealth	Shared	Provincial	Federal	Cantonal	Shared	Reserved
<i>Health</i>	Common-wealth	Federal	Shared	Federal	Federal	Shared	Devolved

Source: Obinger et al., *Federalism and the Welfare State: New World and European Experiences*, (2005)

451. As in the UK, all of these systems have developed historically. However, the pressures of risk pooling have left social security a central government function – even in nations such as Germany where it began as a decentralised one. On the other hand, it should be noted that in a number of federal countries, sub-national governments have implementation responsibilities in the area of social security, and in others they have responsibility for some particular aspects of cash welfare – for example, in Canada, residual welfare, not covered by national social insurance, is a provincial responsibility.

The Coalition Government's welfare reform agenda

452. The policies being pursued by the Conservative-led Government will deepen the problem of poverty in Scotland. This will result from the targeting of the welfare budget and massive cuts in public expenditure, totalling £20 billion a year up to 2014-15. These measures will amount to cuts of £2 billion a year in Scotland.
453. We oppose the Conservative-led Government's welfare reform agenda, but this does not lead us to the conclusion that the solution is either to end the Welfare State or United Kingdom. We believe, instead, that it is an argument for progressive Labour Governments at both the Scottish Parliament and the UK Parliament. It is convenient, but not honest for the SNP to ignore that it was a UK Labour Government, working with a Labour-led administration at the Scottish Parliament, that made substantial inroads into poverty by making work pay through the minimum wage and tax credits, investing in early years and free childcare, and increasing spending on schools.

Devolution of cash benefits

454. There is no absolute division between the redistributive elements of welfare: those carried out at the national level, and those typically devolved or decentralised. There are a number of examples where the circumstances of individuals attract help and support from both levels of government. For example, responsibility for care of the elderly is primarily a devolved matter, but other payments to support those who need care, notably Attendance Allowance, are managed at the national level. At the minimum, this creates a need for co-ordination of policy between the national and the devolved Governments, so that the services and support which are offered to people are as seamless as possible. Similarly there may be an argument that those elements of cash welfare which already vary from place to place should be devolved.
455. For this reason, we gave an undertaking in our interim report to explore whether there should be some adjustment of the boundary of responsibility in areas of obvious cross-over between devolved and reserved functions, and to examine

the possibility of devolving cash benefits that match closely with devolved services. This might, we argued, enable services to be better integrated, perhaps with local authorities, which deliver many of the services in practice. This is an issue on which we received many considered views during the course of our consultation.

456. Firstly, though, we address those reserved cash benefits where we see no case for devolution. Given the linkage between national insurance and the basic state pension, the additional state pension, the contributory element of jobseeker's allowance, the contributory elements of employment and support allowance, maternity allowance, bereavement benefits and incapacity benefit, we see no scope for devolution in these areas. Under the Social Security Administration Act 1992, these benefits are due under the National Insurance Scheme and are payable out of the National Insurance Fund (NIF). Contributions to the NIF, which also helps finance the NHS, are not attributable to particular individuals (unlike a personal pension scheme) and are used to pay current pensions, making it extremely difficult to apportion the Fund. Similarly, delivery of the social security system has developed over a number of years and is exceptionally complex. Whilst practical difficulties in themselves are an insufficient reason for determining whether it is appropriate to devolve any element of the cash benefit system, we believe that it is important that this issue is taken into account, as this may adversely impact on the ability of a devolved service provider to serve people.
457. We also take the view that there is an overriding argument for reserving other, explicitly redistributive but non-contributory benefits, such as the non-contributory elements of jobseeker's allowance, the non-contributory elements of employment and support allowance, income support and pension credit. Many of these benefits also purport to provide a minimum standard of living and, whilst the cost of living may vary throughout Britain, in line with the principle of ensuring broadly common social citizenship, it is right that certain minimum standards are set and achieved. Additionally, there would be obvious practical considerations in that most benefits are no longer processed locally

but in processing centres dispersed around the UK which are not necessarily (or even usually) connected to the regions they serve.

458. On the other hand, there are elements of the social security system which are closely aligned to areas of responsibility already devolved to Scotland and which represent levers that could potentially be exercised by the Scottish Government to achieve its objectives in key matters of domestic policy, thereby increasing the ability of devolution to better serve people. The clearest example in this respect is Housing Benefit (HB), which is linked to the Scottish Government's responsibility for housing and homelessness in Scotland, and Attendance Allowance, which exists to help the disabled with the additional costs associated with their disability (for example the additional costs of getting around or in obtaining care) and has obvious links with the devolved health and social care agenda.
459. People on low incomes can get Housing Benefit to help with their rent. Until the introduction of Universal Credit, HB is administered by local authorities on behalf of DWP. So Scottish local authorities continue to play a pivotal role in the delivery of HB, and they work closely with DWP in doing this. In 2011-12, the total number of households in Scotland in receipt of HB was over 400,000, with expenditure amounting to £1.7 billion, representing 12.3 per cent of DWP benefits expenditure in Scotland. This income is particularly important to those living in council and housing association houses. Overall, approximately two-thirds of the tenants in socially rented housing receive housing benefit. HB is thus an important tool of housing policy and element of the benefit system.
460. Even with the espoused aim of Universal Credit to simplify benefits provision, HB remains closely entwined within a complex system. For example, when an individual is in receipt of income support, their income, earnings and capital will be disregarded for HB. These links are significant, but possibly more important is the overall contribution that HB makes to household income. Moreover, there is an extremely complicated system of tapers, meaning that the level of benefits received reduces in line with earnings. This raises substantial questions on how to disentangle HB from Universal Credit and then devolve it.

461. However, equally importantly, obvious connections exist between HB and devolved policy. Above all, HB is the most important tool of housing policy in both the social and increasingly the private rental sector, and this is very much a devolved area. Scotland may well want to pursue a distinct housing policy yet the uniform UK-wide social security system makes this all but impossible.
462. Thus, HB is a very important aspect of the support for household incomes which is intended in future to be provided through Universal Credit, while simultaneously being closely linked to devolved housing responsibilities. It is clear that the overlapping responsibilities of the UK and Scottish Governments in this area could be better managed. One option, as recommended by the Calman Commission, was for HB to remain reserved, but because of the close links with devolved responsibilities, there might be scope for it to be adjusted to be different in Scotland. However, as Calman recognised, any proposed Scottish changes would need to fit in with the general structure of the UK benefit system. Therefore, change could be proposed by the Scottish Government or Parliament, but this could only come about by agreement at the UK-level. Such changes might have financial implications and Calman proposed that, unless otherwise agreed, and in line with the established general principle, responsibility for meeting the costs of changes should lie with those who propose them, and similarly that if policy changes resulted in savings to the HB budget, then Scotland should be able to benefit from that.
463. The Calman Commission's recommendations on housing benefit were not addressed in the Scotland Act. Now that Universal Credit is to be introduced, we believe that the issue requires to be revisited. The Scottish Parliament has full responsibility for all land and property matters, now including all property taxes. As a consequence, it is possible to see how these policy instruments, along with HB once disentangled from Universal Credit, might be used in a more integrated way to develop housing policies and extend choices between the appropriate balance of capital, revenue and personal subsidies, thereby supporting broader housing strategy. It is important however that the changes to what would in other parts of Britain be the housing related element of Universal Credit are developed in close collaboration with the DWP, so that the

structure of incentives and the links to other benefits are not disrupted as a consequence of changes.

464. We take the view that Housing Benefit should be devolved to the Scottish Parliament, and we agree with the general principle that a more strategic approach to housing policy would be made possible by empowering the Scottish Government to make decisions on the right mix between capital, revenue and personal subsidies. We will use this power to abolish the Bedroom Tax, ensure secure funding for the provision of social housing and reduce abuse by unscrupulous private landlords. However, we recognise that in order for this to be achieved there are a number of administrative and operational practicalities, including those arising from the Coalition Government's plans for the future implementation of Universal Credit, which will need to be overcome. Specifically, it will be important that the devolution of housing support control is done in a way that ensures the tapering off of entitlement as those who receive the support increase their earnings is fully aligned with the tapers applying to Universal Credit to avoid negative work incentive effects. The policy will also have to be implemented in such a way that does not inject unacceptable risk from changes in demand for housing support to the Scottish budget.
465. The second benefit we consider suitable for devolution is Attendance Allowance (AA). AA is a benefit paid to severely disabled people aged 65 or over who need help with personal care: it exists to help the disabled with the additional costs associated with their disability (for example the additional costs of getting around or in obtaining care), and it has obvious links with devolved health and social care policies. Over 140,000 people receive AA in Scotland. In 2011-12, it was estimated that £0.48 billion was spent on AA in Scotland, representing 3.4 per cent of total benefits expenditure. AA can be awarded as an on-going benefit or for a fixed period and is paid at two different rates: the lower rate (£53.00) and the higher rate (£79.15). The amount of personal care a person needs determines whether they are eligible for AA and the rate they are paid. At present, AA is administered by the UK-wide Pension, Disability and Carers Service which is a predominantly telephone-based service with a very limited

local presence. Given the linkage between AA and health and social care policies, we believe that it should be devolved in full to Scotland. The funding would be established and base-lined and then provided for to the block grant as part of the equalisation grant in the future.

466. It might be argued that there is a similar case for devolving Personal Independence Payment (which, following the introduction of welfare reform, replaces Disability Living Allowance), since, like AA, it is a tax-free, non-means-tested, non-contributory benefits paid to UK residents who have care and/or mobility needs as a result of a mental or physical disability. Having considered this matter in great detail, we are not in favour of devolving Personal Independence Payment, as it is not in general matched by devolved services in the same way as AA.

C. Workers' rights: health & safety and employment

Health & safety

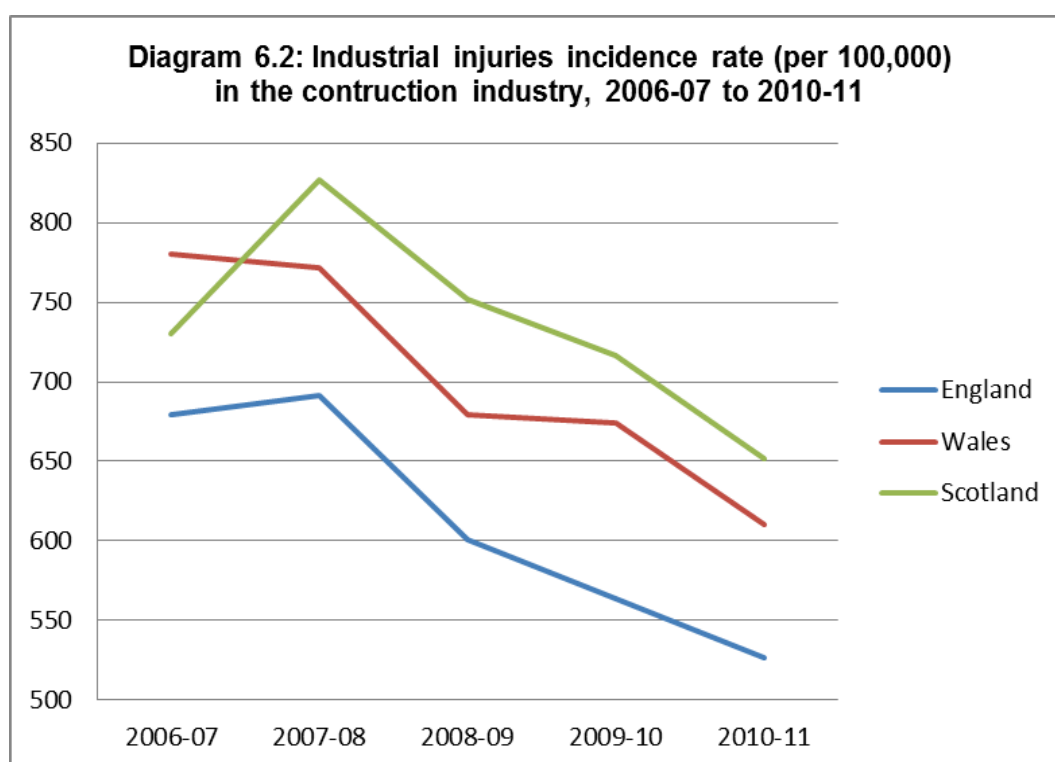
467. The Health and Safety Executive (HSE) has responsibility for protecting the health & safety of people at work across the UK. Under Parts I and II of the Health and Safety at Work etc. Act 1974, health & safety is a reserved matter.
468. The HSE is a non-departmental public body, established under the 1974 legislation, and it is sponsored by the DWP. In Scotland, HSE is the regulatory body that inspects and enforces compliance with the law. Thus, unlike in England and Wales, it is the Crown and not the HSE which is the prosecuting authority in Scotland. Consequently, breaches of health & safety law, which may constitute a criminal offence, are referred to the Procurator Fiscal in Scotland.
469. The HSE has a significant presence in Scotland, with over 270 members of staff located in offices in Edinburgh, Glasgow, Aberdeen and Inverness. Moreover, HSE maintains some specialist capability and expertise in Scotland: for example, the vast majority of staff working on offshore safety – which

comprises over 75 per cent of staff in the HSE Energy Division – are based in Aberdeen.

470. Although the HSE's parent department is DWP, it is the HSE in Scotland which liaises with the Scottish Government and local authorities on a day-to-day basis. Agreement was reached between Scottish and UK Ministers in 2005 to create a body, known as the Partnership on Health and Safety in Scotland (PHASS), to co-ordinate the work of the HSE with Scottish stakeholders. PHASS has three main objectives: (i) to target Scotland's resources to deliver higher standards of health & safety more effectively; (ii) to co-ordinate effort across devolved and reserved government interests; and (iii) to promote the benefits to people, businesses, and Scotland's economy, of working in a safe and healthy environment. The membership of PHASS includes the HSE, the Scottish Government's Health and Well-being Division, CBI Scotland and local authorities. In September 2010, HSE's Board and PHASS partners agreed that PHASS should open its meetings to others in Scotland who are in a position to improve health & safety.
471. The HSE in Scotland also interacts with the Scottish Parliament. In June 2012, for example, HSE's Director in Scotland gave evidence to the Scottish Parliament's Health and Sport Committee about the regulatory response to the Legionnaires' disease outbreak in Edinburgh. HSE appeared together with the local authority as co-regulator and other Scottish bodies involved in managing the outbreak. In December 2012, the Director of HSE Scotland was invited back to the Committee to provide a broader overview of HSE's work in Scotland.
472. During our process of engagement, a number of representations were made calling for greater recognition of Scottish-specific concerns on the implementation of health & safety law. A number of viewpoints were expressed: for example, some called for full devolution of health & safety, while others suggested the need for more flexibility in terms of enforcement and prioritisation. Furthermore, others believed that there was an overwhelming case for retaining the present health & safety arrangements, in order to ensure an efficient use of resources and a consistent approach across the UK to

prevent unnecessary duplication of effort. We have, therefore, examined each of these potential options, and now set out our conclusions.

473. There is a particular issue in Scotland surrounding the construction industry. Scotland has a higher proportion of workers employed in the construction where fatality rates are higher than the rest of the UK. As Diagram 6.2 shows, Scotland has a higher rate of industrial incidences in the construction sector than both England and Wales, as well as a larger overall number of individuals employed in the industry. Research undertaken on behalf of HSE into major injuries in the construction industry in Scotland concluded that the difference was almost entirely due to differing occupational make up: a higher proportion of manual workers were employed by construction firms in Scotland than in England and Wales.



Source: Health and Safety Executive

474. Whilst we welcome the declining number of construction industrial incidences across the UK over recent years, we remain concerned that there has been no closing of the gap.

475. Furthermore, we note that the rate of fatal accidents per 100,000 employees in Scotland has been significantly higher than in England and Wales in recent years. As can be seen from Table 6.4 below, the number of fatal injuries per 100,000 people employed is consistently higher in Scotland than England.

TABLE 6.4: Number of fatal injuries per 100,000 people employed, Scotland and England, 2006-07 to 2012-13

	Fatal Injuries		Number of people in Employment		Number of fatal injuries per 100,000 people employed	
	Scotland	England	Scotland	England	Scotland	England
2006/07	30	199	3,340,000	23,804,300	0.9	0.8
2007/08	31	180	3,361,800	24,011,600	0.9	0.7
2008/09	26	146	3,378,300	23,941,000	0.8	0.6
2009/10	22	115	3,392,600	23,521,100	0.6	0.5
2010/11	14	146	3,405,800	23,642,000	0.4	0.6
2011/12	19	129	3,405,500	23,713,500	0.8	0.5
2012/13*	22	116	3,401,100	24,017,000	0.9	0.5

Source: Health and Safety Executive – * data is provisional

476. Whilst no recent research has examined this pattern, a study commissioned by the Health & Safety Executive in 2000 found that the variations arose because Scotland has a greater proportion of its workforce employed in higher risk industries.
477. The full devolution of health & safety to the Health and Safety Executive for Northern Ireland (HSENI), a non-departmental public body sponsored by the Northern Ireland Department of Enterprise, Trade and Investment, shows that it would certainly be possible to do so. However, whether such an arrangement would be suitable to Scotland is questionable: as the Calman Commission noted, it is important to recognise that the risk profile of Northern Ireland is different to Scotland – Northern Ireland, for example, has no nuclear power

stations, unlike Scotland which has two, and is not required to deal with comparable offshore activities. Moreover, HSNEI relies heavily on the expertise and support of HSE, and has close working relations with the UK agency. This leads us to the conclusion that full devolution of health & safety on the Northern Irish model would not be appropriate for Scotland.

478. The creation and development of PHASS, as well as the co-location of HSE officials and those from the Crown Office to facilitate decisions on prosecutions, appear to us to be good examples of an agency exercising reserved powers, while taking into account the views of, and working with, those involved in the process. Moreover, while inspectors in Scotland follow HSE published guidance on when and how to enforce health & safety law, thus providing a degree of consistency of approach across Great Britain, decisions on whether to institute criminal proceedings are taken by the Crown Office and Procurator Fiscal Service (COPFS) in Scotland (rather than by inspectors themselves), thus providing an additional “Scottish” element to health & safety enforcement.
479. Nevertheless, we also recognise that a Scottish worker is statistically more likely to be injured or killed than any employee in any other part of the UK. It is a situation which rightly causes deep concern to trade unions and the workers they represent. It is viewed as an acutely Scottish problem and it is therefore argued that we require a Scottish solution by extending health & safety powers to the Scottish Parliament.
480. As a consequence, whilst we do not propose any changes to the current reservation of employment law as we believe this would undermine the economic union which is in the interests of Scotland, we believe in the need to establish a Scottish Health & Safety Executive to set enforcement priorities, goals and objectives in Scotland. This body would still be required to operate within the reserved health & safety framework and regulations, but it would be for the body – reporting to the Scottish Government, scrutinised by the Scottish Parliament and accessing funding provided by that Parliament– to set and achieve the health & safety objectives of most relevance and importance to Scotland.

Employment

481. Employment law is currently reserved to the UK Parliament.⁹² The Employment Rights Act 1996 codifies existing law with regard to employees' rights. Previous statutes, dating from the Contracts of Employment Act 1963, included the Redundancy Payments Act 1965, the Employment Protection Act 1975 and the Wages Act 1986. Provisions include the following: particulars of employment; protection of wages; right to guarantee payment; Sunday working; protected disclosures; protection from suffering detriment; time off work; study and training; suspension from work; maternity leave; flexible working; unfair dismissal; redundancy payments; and insolvency of employers. The 1996 Act was amended substantially by the Labour government after 1997, to include the right to request flexible working time and extending parental leave rights. Furthermore, rights relating to disciplinary proceedings are provided for in the Employment Relations Act 1999, whistleblowing in the Public Interest Disclosure Act 1998 and the Agency Worker Regulations 2010 for temporary contract workers. The Equality Act 2010 draws together existing equality legislation, Part 5 providing for prohibitions on discrimination, victimisation and harassment for people in or applying for work and a duty to make reasonable adjustment. The reservation of employment law covers both the substantive statutory rules and, at least in general terms, the procedural framework for bringing cases to employment tribunals – i.e. in their most recent iteration the rules outlined in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (2013 Regulations). These came into force on 29 July 2013 and also contain the “Employment Tribunals Rules of Procedure” (Rules of Procedure).
482. We have considered the possibility of devolving responsibility for employment to Scotland. This would certainly be possible. For example, employment law is devolved in Northern Ireland, unlike in the other nations of the UK, where employment legislation is the same across England, Scotland and Wales. On balance, though, we are not convinced of the advantages of moving away from

⁹² See Scotland Act 1998; Schedule 5, Part II, H1 which indicates that “employment rights and duties and industrial relations” are reserved, referring to a number of key Acts of Parliament in this field

the present reservation of employment law. In this report, we have argued that Scotland derives considerable benefit from being part of a wider economic union. The viability of this economic union is dependent on the free flow of capital, goods and labour throughout the UK and we think that any move away from the reserved status of employment and industrial relations would not be compatible with this. More importantly, we are concerned that devolution of employment law would result in a race to the bottom on worker protection, potentially resulting in the reversal of great advances for workers' rights, such as the minimum wage, paid leave and flexible working.

483. However, during the process of our consultation, we received a number of considered representations arguing that responsibility for administration of employment tribunals and the procedural rules associated with them should be devolved. Accordingly, we examined the scope for devolution in this area, along with our colleagues in the trade union movement.
484. At present, a tri-partite system for administrative justice operates in Scotland. Great Britain-wide tribunals, where policy responsibility lies with the UK Government, are supported variously by Her Majesty's Courts and Tribunal Service (HMCTS) and by the Scottish Government with the Lord President of the Court of Session and Scottish Ministers retaining a significant role in appointments to some reserved GB-wide tribunals. Scottish tribunals, established by UK legislation prior to 1998, are generally the responsibility of either Scottish Ministers or local authorities, whilst policy responsibility for Scottish tribunals established after devolution lies with the Scottish Government. Thus, a large number of tribunals deal with reserved issues and operate on a UK-wide basis in both England & Wales and Scotland. However, there are also a number of tribunals in Scotland operating solely or principally in regard to devolved matters. A number of these tribunals, such as the Lands Tribunal for Scotland, existed before devolution in 1999. On the other hand, a number of devolved tribunals have been established since 1999, including the Additional Support Needs Tribunal for Scotland, the Mental Health Tribunal for Scotland and the Private Rented Housing Panel/Homeowner Housing Panel. In an audit carried out in 2010, the Scottish Committee of the Administrative

Justice and Tribunals Council (SCAJTC) found 59 tribunals operating in Scotland, 19 of which operated in a devolved context. The Scottish Tribunals Service, launched in December 2010, currently supports a number of tribunals in Scotland.

485. Employment tribunals in Scotland fall into the category of reserved tribunals and have jurisdiction over a wide range of employment law matters specified in legislation (e.g. unfair dismissal, redundancy payments, maternity and paternity leave, equality claims, claims under the Working Time Regulations 1998, claims under the National Minimum Wage Act 1998 etc.). A key point to be aware of is that this jurisdiction is generally exclusive (i.e. claims cannot be heard by the courts). Courts can, however, hear more general claims for breach of contract or delictual claims (i.e. claims relating to negligence).
486. There are various employment tribunals across the UK. In Scotland tribunals sit in fixed locations in Aberdeen, Dundee, Edinburgh, Glasgow and Inverness, with Sheriff Courts being used in other locations as and when required. Tribunals are the lowest tier of the system and hearings generally take place before a three member panel made up of a legally qualified “Employment Judge”; a representative from employee organisations and a representative from employer organisations. Appeals relating to Scottish decisions are to the Employment Appeal Tribunal (EAT), normally in Edinburgh, and then to Inner House of the Court of Session and thereafter the Supreme Court.⁹³
487. Although their statutory origin means that there is little/no difference between employment law in England and Wales and Scotland, the practice of employment law in Scotland is not completely identical to that south of the border. This is due, at least in part, to the interaction between these statutory rules and aspects of the separate Scottish legal system. For example:
- Since Scotland does not have the same contract law as in England and Wales, it is possible that a Scottish employment tribunal could interpret an employment contract differently to an employment tribunal in England and Wales. Similarly, since the civil court system is also different, the

⁹³ Section 37 of the Employment Tribunals Act 1996

remedies available in Scotland in the normal courts in relation to claims relating to the breach of an employment contract may also differ from those in England and Wales.

- In addition, Scottish employment tribunal judges are required to have regard to the Scottish rules of evidence and specific Scottish practice directions (i.e. rules covering tribunal practice/procedure - see below). These rules generally follow Scottish civil court procedure which, by definition, differs from that in England and Wales.

488. The administrative support for employment tribunals (e.g. training, infrastructure, IT etc.) in Scotland is provided by HMCTS, even though it has no legal jurisdiction in Scotland. HMCTS is an integrated agency of the Ministry of Justice which is responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland.

489. The position of UK employment tribunals within HMCTS is, however, not the standard one. Unlike other non-devolved tribunals, which are normally part of a generic First-tier and Upper Tribunal structure (i.e. with appeals to the Upper Tribunal), employment tribunals form a separate pillar within HMCTS and appeals are made to the EAT, which is a separate appeal body.

490. In addition to being part of a separate pillar within HMCTS, there are also some distinctive features which apply solely to the Scottish employment tribunal system. In particular

- In Scotland a separate legally qualified “President of Employment Tribunals” (Scottish President) is responsible for the running of tribunals which sit in Scotland, supported by a Vice President. Both these persons are appointed by the Lord President of the Court of Session (Lord President) – i.e. the head of the Scottish judiciary.
- In Scotland, “Employment Judges” (i.e. the legally qualified members of employment tribunal panels) are also appointed by the Lord President. It

is possible for English barristers/solicitors or barristers/solicitors from Northern Ireland to be appointed to these positions.

491. In addition to his/her general role, the Scottish President can also:

- “make, vary or revoke practice directions about the procedure of the Tribunals in the area for which the President is responsible” (i.e. Scotland); and
- publish (non-binding) guidance on “matters of practice” and how the powers in the Rules of Procedure may be exercised (Rule 7 of the Rules of Procedure).

492. The Scottish President is also a member of the Judicial Council for Scotland (a body which advises the Lord President on matters relevant to the administration of justice in Scotland). Removal of the Scottish President from office is only possible with the concurrence of the Lord President. The same holds for any panel members when they exercise their functions wholly or mainly in Scotland.

493. One of the members of the EAT must be a Court of Session judge appointed for this purpose. In practice this judge generally hears Scottish cases in Edinburgh. However, it is also possible for judges appointed in England to hear cases in Scotland, and vice versa. Employment tribunals or the EAT will also ordinarily be expected to follow judgments of higher courts (e.g. the Scottish Court of Session or English Court of Appeal), even where the higher court in question is not part of the same jurisdiction (e.g. the EAT in Scotland would ordinarily be expected to follow a judgment of the English Court of Appeal on employment law). The President of the EAT – i.e. the judge who presides over the UK appeals tribunal – cannot be appointed without the consent of the Lord President.

494. It is also worth noting that the 2013 Regulations include specific rules on whether claims should be made to English or Scottish employment tribunals – i.e. which bodies have jurisdiction to hear a specific claim. In general these rules require some connection with the country in question to exist for a claim to be made, for example as a result of: the residence/place of business of the

employer; where the act/omission complained of took place; or the place where the contract was performed. Rules also exist regarding the transfer of cases between Scotland and England and Wales, or vice versa.

495. We have serious reservations on how employment tribunals in Scotland are becoming increasingly isolated with regards to the administrative function being developed to suit the new merged structure of HMCTS. Scotland has a distinct employment tribunal service and its own legal system and we therefore see a strong case for devolving employment tribunals would to allow for a fairer service to be developed in Scotland.
496. We are also greatly concerned that the Coalition Government is curtailing access to workplace justice for many workers. The Conservatives have relentlessly pursued legislation attacking workers' rights directly and through procedural changes to undermine the ability of trade union legal services to protect and support workers. Some changes are perhaps capable of being reversed or, at least, the worst effects mitigated through Scottish Parliament legislation under the current devolution settlement but others are not, such as the introduction of punitively high lodging dues to make an employment tribunal application. The employment tribunal lodging dues are aimed unashamedly at discouraging claims. In our judgement, this will prevent ordinary workers from bringing claims in their own right and impose such a significant financial burden on trade unions as to put in financial jeopardy the viability of their legal services. The Government's own statistics show a significant drop in the number of individual claims being taken to employment tribunals – putting a price on justice is immoral and allows unscrupulous employers to ride roughshod over the employment rights of their workers. In effect, application for unfair dismissal now cost around a minimum of £160 to lodge and, if they proceed to a hearing the applicant can be faced with a further fee of up to £950 or thereabouts. Fees in the Employment Appeals Tribunal are £400 to lodge and £1,200 for a hearing.
497. On balance, we take the view that it makes sense for the administrative function of employment tribunals to be devolved to Scotland and for the Scottish Parliament to be given power to develop a Courts and Tribunal system that

meets the needs of Scottish people. We believe that devolving the administration of employment tribunals would ensure that those wishing to raise claims against their employers in Scotland could do so within a merged administration that meets the needs of users but also falls within Scotland's distinct legal jurisdiction.

498. Finally, we see no compelling argument why administrative responsibility for other reserved tribunals in Scotland cannot be transferred to Scottish Ministers. Equally there is no good reason, so far as we are aware, why the power to make procedural rules for any such tribunals should not be transferred to the Lord President. The SCAJTC itself recommended that responsibility for reserved tribunals should transfer to Scottish Ministers. Para 4.13 of the Committee's report, *Vision for the Future*, stated: "we recommend that: Overall responsibility for the development of policy for tribunals in Scotland should transfer to Scottish Ministers and a single part of the Scottish Government's Justice Directorate. Initially this should apply to devolved tribunals. Following any transfer of responsibility for reserved tribunals in Scotland to Scottish jurisdiction, policy responsibility for the operation and reform of these tribunals should also rest with Scottish Ministers. Policy relating to the substance of the matters dealt with by any such tribunals will, of course, remain with the relevant UK Government departments".
499. Therefore, in summary, we take the view that it would be counterproductive to devolve responsibility for employment law to Scotland, even though all present UK statutory provisions operating in Scotland have to be construed through the prism of Scots law. In our opinion, differential employment protection provisions between Scotland and the rest of the UK could have potentially serious consequences, including a race to the bottom on workers' rights. On the other hand, we already apply UK statutory provisions through the medium of the Scottish courts which in turn set their own procedural rules. As a result, allowing different procedural rules to regulate tribunal proceedings in Scotland is a logical step forward. Moreover, we see no overriding reason for objecting to devolution of tribunals' responsibility including procedural rules, subject to

obligations to consult and co-operate, while continuing reservation of responsibility for the substance of rights with the UK.

D. Equalities

500. The previous Labour Government had a substantive record on promoting equalities within Scotland and the UK. It was a Labour Government which:

- Introduced the Equality Act 2010 to legally protect people from discrimination in the workplace and in wider society.
- Introduced the Human Rights Act, safeguarding and promoting fundamental rights and freedoms and making them legally enforceable in the UK.
- Extended protection against discrimination on grounds of religion and belief in employment (Employment Equality Regulations 2003) and when accessing goods, facilities and services (Equality Act 2006).
- Established the Equality and Human Rights Commission (EHRC) to act as a strong independent champion to tackle discrimination and promote equality.
- Supported the Minority Ethnic Achievement Programme and in primary schools.
- Supported the Black Children's Achievement Programme, which helped narrow the achievement gap between black and minority ethnic pupils and the national average.
- Legislated for aggravated sentences for racially motivated crimes (in the Crime and Disorder Act 1998) and strengthened and broadened the definition to include assaults and threatening behaviour.

- Introduced the Race Equality Duty in 2000, which applied to over 43,000 public bodies, improving the diversity of their workforce and the services they provide.
- Between 1997 and 2010 the Labour Government did more for the advancement of lesbian, gay, bisexual and trans equality than any other government in British History. In government, Labour:
 - achieved an equal age of consent;
 - ended the ban on LGBT people serving in our armed forces;
 - ended discrimination against lesbian & gay partners for immigration purposes;
 - given LGBT individuals and couples the right to adopt children;
 - scrapped the homophobic Section 28 (Clause 2a in Scotland);
 - became a signatory of the Treaty of Amsterdam, which gave the EU powers to end discrimination on the grounds of sexual orientation;
 - banned discrimination in the workplace and in vocational training with the introduction of the Employment Equality (Sexual Orientation) Regulations;
 - included homophobia in the definition of hate crimes;
 - increased sentencing for homophobic hate crimes;
 - removed out-dated offences such as gross indecency and buggery;
 - produced and implemented the Gender Recognition Act, allowing trans people to have their true gender recognised in law;
 - created civil partnerships;
 - outlawed discrimination in goods and services (with no exceptions);

- launched a campaign in the UN for the decriminalisation of homosexuality focusing on the nine countries where it is still punishable by death; and
- awarded statutory rights for fertility treatment for lesbians on the NHS

501. Furthermore, Labour legislated to protect people who may be unable to make decisions for themselves, through the Mental Capacity Act, which provides safeguards to help people make their own decisions about their daily lives and to be supported to do so where they need that. Labour also gave new rights to disabled people through the Disability Discrimination Act, and ensured the UK signed the UN Convention on the Rights of Persons with Disabilities.
502. The Scotland Act defines equal opportunities in very general terms: “equal opportunities’ means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions”. The Scotland Act also states equal opportunities are a matter reserved to the UK. Therefore, only the UK Parliament can prevent, eliminate or regulate discrimination on any of the above areas. Moreover, only the UK Parliament has the power to bring in anti-discrimination legislation or amend existing law in regard to any of these equality grounds.
503. Nevertheless, the Act goes on to make exceptions which enable the Scottish Parliament to exercise a degree of limited power in a narrowly defined way. For instance, the Scottish Parliament is empowered to encourage equal opportunities and compliance with equality legislation. Furthermore, the Scottish Parliament can impose duties on Scottish public bodies or cross-border bodies with responsibility for devolved matters, and it can require such organisations to put in place arrangements to make sure they operate with due regard to the need to meet equality law.

504. As the Equality and Human Rights Commission has highlighted, equal opportunities are unusual in that what is devolved is set out in detail.⁹⁴ The Scottish Parliament can encourage equal opportunities and compliance with equality law, except by means of prohibition or regulation. Put simply, it has the power to encourage good behaviour but no power to prohibit or regulate discriminatory behaviour. This power to encourage has a wide scope, reflecting the broad definition of equal opportunities in the Scotland Act. It goes beyond UK equality law – which covers equality in relation to age, disability, gender, race, religion or belief, sexual orientation and transgender status – and includes language, social origin, and personal attributes in its scope. This enables the Scottish Parliament to encourage equal opportunities across a wider range of different equality grounds than currently covered by UK law. This power allows the Scottish Parliament to impose legally binding duties on public bodies to give due regard to the importance of complying with equality law. Since 2000, the Parliament has used this power 14 times to impose duties on a range of public bodies responsible for improving public services in areas such as schools, housing, social care, health and transport.
505. We endorse the idea of making enforcing equality law a devolved matter. The Scottish Parliament could then decide how to enforce equality law in devolved areas. We also support any other transfer of power, should it be required, to ensure that women become fairly represented on Scotland's public boards and in other public appointments.

E. Consumer education, advice information and advocacy

506. On 14 October 2010, following completion of the UK Government's review of public bodies, it was announced that the Office of Fair Trading (OFT) would be abolished, with responsibility for a number of its reserved competition functions transferred to a new unitary body, as well as contracting with local government bodies for delivery of a range of enforcement of trading standards activities

⁹⁴ Equality and Human Rights Commission, *An uncertain mix: equality and Scottish devolution*, (Glasgow: Equality and Human Rights Commission, 2009)

currently delivered at a national level. At the same time, it was declared that Consumer Focus (and, as a result, Consumer Focus Scotland) would cease to exist, and that the relevant statutory and reserved functions in the area of consumer advice and education, and consumer advocacy would be transferred to the Citizens Advice Service – including Citizens Advice Scotland (CAS).

507. The Department for Business Innovation and Skills (BIS) subsequently announced that the Competition and Markets Authority would be established in April 2014 following merger of many of the functions performed by the OFT and the Competition Commission. Following the UK Government's 2010 Spending Review, Consumer Focus was replaced by Consumer Futures in May 2013. Consumer Futures is funded by BIS and is due to be transferred to the Citizens Advice Bureau service in April 2014. Thus, until April 2014, Consumer Futures will continue to operate as a Non-Departmental Public Body (NDPB) sponsored by BIS, and, within the legal framework of the National Consumer Council, it will fulfill the responsibilities of the statutory consumer body in energy and postal services in Great Britain, water services in Scotland and postal services in Northern Ireland. In April 2014, Consumer Futures will, subject to Parliamentary approval, become part of the Citizens Advice service, with the Extra Help Unit also transferring to Citizens Advice Scotland
508. It has been put to us that these reforms raise a number of issues which are of particular concern in the Scottish context. In relation to the proposals to transfer the consumer advocacy functions from Consumer Futures to Citizens Advice these are as follows. Firstly, the main purpose of Consumer Futures Scotland (CFS) is to promote the consumer interest in devolved matters and to do so informed by research and evidence to provide a powerful, authoritative and expert advocate on behalf of all consumers in Scotland. Consumer Futures Scotland engages with regulators and market participants on the operation of markets and regulated sectors, as well as the public sector. It has substantial sectoral expertise, plus the ability to apply lessons across the economy, and conducts a body of in-depth research to support this work. Citizens Advice Scotland is primarily focused on supporting the provision of advice and guidance to individuals who come through the doors of Citizens Advice Bureau,

telephone or access online help either of their own volition or often referral or because other sources of help have proven unsatisfactory. The contribution to the policy debate and policy advocacy on behalf of groups of citizens is evidenced primarily by the real experience of clients that come to the CAB. Thus, CAS's role has less traditionally been to consider the consumer interest in market structures, in future regulation, or in the improvement of scrutiny of public services.

509. Secondly, members of the Board of Consumer Focus Scotland are recruited and appointed (through the public appointments process) on the basis of an open and transparent process, and selected on the basis of relevant expertise, knowledge and skills (e.g. in consumer matters, industry expertise or experience of governance), whereas appointment to the Board of Citizens Advice Scotland, a membership organisation, is by its members (representatives of the individual CAB), from nominations made by them.
510. Finally, Consumer Focus has a number of significant legal powers (such as the ability to require businesses, as well as regulators and the OFT to supply it with information). These are important in ensuring its effectiveness and authority. The feasibility and/or appropriateness of giving legal powers to a charity raise a number of questions. It is not clear either that CAS would wish to have such powers or believe it is appropriate they should have them. An alternative, it has been suggested to us, might be that the powers would rest with ministers, to be exercised at the request of CAS (and possibly others). This raises questions over the ability to exercise such powers independently, in the consumer interest.
511. In regard to the proposals to transfer the enforcement function from OFT to trading standards the key issues in Scotland are in relation to resourcing. A recent review of trading standards services in Scotland by CAS highlighted that there is a wide variation in the resourcing of trading standards services across councils in Scotland; the profile of trading standards services within individual councils is often poor; and there is a lack of consistency of services for consumers (and business) in the service that can be expected from local trading standards departments. Currently trading standards departments in

Scottish local authorities are therefore not in a strong position to take on additional responsibilities of enforcement without additional resources.

512. The proposals of UK Government to transfer the advice functions of OFT (Consumer Direct helpline) and Consumer Focus (the Extra Help Unit – for specialist advice on energy and post issues) to Citizens Advice represents a consolidation of advice within the body that is expert at delivering and supporting advice (and has a strong and trusted name in this respect). We recognise that this could result in real benefit to those in need of advice in Scotland, provided a physical call centre presence in Scotland is retained (currently the Consumer Direct services based in the Western Isles), which is important given the need for knowledge and expertise of the Scottish legal system, institutional landscape, and geography in giving advice to Scottish callers. It is be important to retain the expertise that resides in the Extra Help Unit in respect of energy issues in particular.
513. There are two areas where alternatives to the UK Government’s proposals should be considered: an adjustment to the division between devolved and reserved responsibilities in the area of consumer protection, advice, education and advocacy; and an alternative Scottish model for the delivery of consumer advocacy, advice and enforcement
514. Consumers throughout the UK are protected by the same consumer protection and competition laws, and the same regulatory arrangements for financial services, energy, telecommunications and postal services. While there may not be significant issues for consumers and businesses in Scotland with this settlement, the delivery mechanisms through which these are enforced and delivered have not always worked as well as they might to secure equity for consumers in Scotland. This is one of the key consumer issues which arise from the current overlap of responsibilities between the UK and Scottish Governments. For example, there is a complex and confusing legal framework for consumer protection in Scotland. Consumer protection legislation is reserved to the UK Parliament, but responsibility for its enforcement lies with trading standards departments within Scottish local authorities. Furthermore, at

present, there are no clear national priorities for local regulatory services and therefore no effective performance management.

515. This is not in the interests of consumers in Scotland, and requires to be addressed. Yet the Scottish Government has no legislative locus to require councils to collaborate, nor is there a clear mechanism for the Scottish Government to shape the delivery of the greater enforcement role for trading standards services as envisaged by the UK Government in its recent proposals for reform. An adjustment to legislative powers to give an administrative role here for the Scottish Government would add value for consumers in Scotland. Another key issue arising for consumers is the current division between responsibility for consumer protection legislation and consumer education, information, advice and advocacy, which lies with the UK Parliament, and responsibility for delivery of financial capability and inclusion and legal education and advice, which lies in Scotland.
516. It has been put to us that, whilst consumer education and advice are viewed as reserved matters, legal education and financial inclusion and capability are seen to be devolved – even though financial services is also a reserved matter – as is advice on housing. However, it has been argued that it is difficult to see how these matters can be separated in practice, as they are closely intertwined in people’s lives, as well as in administrative and policy terms. It might therefore be in the interests of consumers in Scotland for responsibility for delivery of consumer education and advice, along with the funding for their provision, to be devolved to Scotland. This would not affect the continued reservation of consumer protection legislation and consumer law as currently defined. Such a change would also allow the Scottish Government to consider the delivery of education, information and advice on consumer matters, legal rights and responsibilities, money advice and financial capability, and housing advice as an integrated area for delivery, and so improve the access and availability of such information and advice to Scottish consumers.
517. Similarly, it has been suggested that it would be advantageous for consumers in Scotland if primary responsibility for the delivery of consumer advocacy in Scotland were to lie with the Scottish Parliament rather than the UK Parliament.

Thus, while consumer protection and consumer and competition law would remain reserved, a number of issues affecting consumers on a day-to-day basis are devolved, and even where they are reserved, they will often impact differently on consumers in Scotland than they do on consumers and citizens elsewhere in the UK. Moreover, the different legal system, institutional landscape, and delivery of devolved policy by the Scottish Parliament and Government must all be taken into account and reflected when representing the Scottish consumer voice.

518. On balance, we see merit in a Scottish model for the delivery of consumer advocacy and advice, one that should build on and consolidate the strengths of the current providers of consumer advice and consumer advocacy respectively. More specifically, we believe that it is in the interests of vulnerable energy consumers that the expertise of the Extra Help Unit is retained and complex referral pathways with energy suppliers, regulators and ombudsmen should be maintained. We also believe a Scottish call-centre presence needs to be maintained, after the transfer of Consumer Direct to Citizens Advice and CAS, to ensure effective and knowledgeable advice to Scottish consumers, and effective referrals to Scottish trading standard services. In our view, the bringing together the casework of CAB, Consumer Direct and the Extra Help Unit under the Citizens Advice umbrella must result in robust and consistent mechanisms for the collection of casework data to inform policy work
519. In addition, we are attracted to the idea of responsibility for delivery of consumer education and advice, together with the funding for their provision (e.g. the funding of CAS), should be devolved to the Scottish Government. Such an independent, statutory consumer organisation would be fully accountable to the Scottish Parliament, representing the consumer interest across the economy and regulated industries, providing expert advocacy on behalf of Scotland's consumers, and supported by relevant statutory powers.
520. By streamlining and strengthening both consumer advice and advocacy functions in Scotland and by creating an effective arrangement to equip the trading standards service with the capacity, when necessary, to operate on behalf of consumers at a national level, there is a unique opportunity for the

Scottish Parliament and Scottish Government to establish a distinctive model for Scotland which both protects consumers and ensures their interests are advanced.

F Recommendations

521. In considering whether it would make sense to devolve social security provision, and so increase differences in benefits, we have to ask, would it matter if pensioners in Scotland were paid more generous pensions than in England, or if unemployment benefits were higher in other parts of the UK? As a Labour Party, we think that does matter, and, as a result of our belief in the social union, we believe the scope for devolution is limited. Welfare States send a powerful signal about belonging. As a result, it should not come as a shock that nationalists want to devolve welfare: they want to create a more exclusively Scottish sense of national identity, in an attempt to substitute the allegiances which already unite British people together.
522. In this chapter, we have shown why we think that the most effective way of providing welfare provision is to pool resources and risks over the widest geographical region. The rationale behind pooling risks among individuals and regions and across generations within the largest possible geographical area is widely recognised in the economic literature. Economic shocks tend to be asymmetric, affecting individuals and regions in different ways and at different times. Resource pooling at the UK-level provides UK citizens with the safety-valve of a wider and more versatile tax base to cope with such unpredictability.
523. Nevertheless, we also acknowledge that there is potential to devolve a number of select benefits that match closely with devolved services, in order to endure better service integration. The most obvious example in this area is Housing Benefit, which is linked to the Scottish Government's responsibility for housing and homelessness in Scotland, and Attendance Allowance, which exists to help the disabled with the additional costs associated with their disability (for example the additional costs of getting around or in obtaining care) and has obvious links with the devolved health and social care agenda. Following

careful examination of this matter, we take the view that Housing Benefit and Attendance Allowance should be devolved in full to Scotland.

524. During our consultation, we received a number of calls for greater recognition of Scottish-specific concerns on the implementation and enforcement of health & safety law, particularly in relation to the construction sector. A number of viewpoints were articulated on this subject: a number called for full devolution of health & safety, while others suggested the need for more flexibility in terms of enforcement and prioritisation. After listening to the concerns of trade unions and the workers they represent on this matter, we take the view that there is a need to establish a Scottish Health & Safety Executive to set enforcement priorities, goals and objectives in Scotland.
525. In our view, enforcement of equalities legislation should become a devolved matter, and we also support any other transfer of power, should it be required, to ensure that women are fairly represented on Scotland's public boards and in other public appointments.
526. Finally, we do not propose any changes to the current reservation of employment and industrial relations, but take the view, on balance, that responsibility for the administration of employment tribunals and the procedures associated with them should be devolved.
527. In order to best protect people at work, when they are most in need and in the marketplace, we make the following recommendations:

RECOMMENDATION: We take the view that Housing Benefit should be devolved to the Scottish Parliament. We will use this power to abolish the Bedroom Tax, ensure secure funding for the provision of social housing and reduce abuse by unscrupulous private landlords.

RECOMMENDATION: Given the connection between Attendance Allowance and health and social care policies, we believe that it should be devolved in full to Scotland. The funding would be transferred to the Scottish Budget and appropriately updated in future.

RECOMMENDATION: We believe in the need to establish a Scottish Health & Safety Executive to set enforcement priorities, goals and objectives in Scotland. This body would still be required to operate within the reserved health & safety framework and regulations and closely linked with the UK HSE, but it would be for the body – reporting to the Scottish Government, scrutinised by the Scottish Parliament and accessing funding provided by that Parliament – to set and achieve the health & safety objectives of most relevance and importance to Scotland.

RECOMMENDATION: Responsibility for the administration of employment tribunals and the procedural rules associated with them, including charging arrangements, should be devolved.

RECOMMENDATION: Enforcement of equalities legislation should become a devolved matter. We also support any other transfer of power, should it be required, to ensure that women are fairly represented on Scotland's public boards and in other public appointments.

RECOMMENDATION: We see the case for establishing a Scottish model for the delivery of consumer advocacy and advice, one that would secure and build upon the strengths of the current providers of consumer advice and consumer advocacy respectively.

528. These recommendations provide the basis for providing more focussed social protection, stronger back-to-work support and better protection to those in employment and the marketplace.

Part 7: Double devolution: empowering local government, enhancing local democracy

- A Introduction
- B Our commitment to local decision-making and the purpose of local government
- C One size does not fit all
- D Fiscal responsibility in local government
- E Local government's role as the engine of regional economic renewal
- F Local authorities and UK responsibilities
- G Constitutional guarantee of powers for local government
- H Empowering communities and neighbourhoods
- I Our recommendations

Part 7: Double Devolution: empowering local government, enhancing local democracy

A. Introduction

529. At its best, devolution is about partnership between different levels of government and the local communities they serve. The purpose of devolution was never to devolve power to a Scottish Parliament, only to see it accumulate powers from the local level upwards. The issue of devolution has too often been approached through the prism of devolving powers from the UK Parliament to the Scottish Parliament – rather than considering the opportunities for further devolution of powers to local government, communities and people.
530. Real devolution is about empowering communities and people. It is insufficient to confine any discussion on devolution to the roles of local and central layers of government, or for the boundaries of this debate to focus solely on the powers exercised by these two tiers. Whenever is practicable and beneficial, central government ought to devolve decision-making to local government, and local authorities should, in turn, devolve power to local communities, neighbourhoods and people.
531. This paper sets out (i) why we are committed to local decision-making and how we will reverse the SNP's centralisation of power; (ii) how we will re-empower local government through the promotion of a "one size does not fit all" philosophy; (iii) why the system of local government finance is broken and the guiding principles that should inform our approach in this area; (iv) how local authorities can support local economic renewal through devolving certain central government functions to the local level; (v) why the devolution of powers to local authorities should take account of powers which may be passed down from the UK level as well as the devolved level; (vi) why we should commit to granting a constitutional guarantee of powers for local government and how this could be achieved; and (vii) how we can bring about a rebalancing in relations between the state, local government and communities.

B. Our commitment to local decision-making and the purpose of local government

532. Local government has developed over the centuries in Scotland as a result of the desire of communities to provide services and buildings, paid for by local communities and determined at the local level. That desire for collective provision has seen different civic cultures develop across the country and different political priorities, both expressed by residents and the way in which parties operate.
533. Over time local government services have become both more professionally provided and extensive in scope. The creation of the Scottish Parliament has seen a significant increase in the legislation passed relating to local government. Landmark legislation on childcare, education, transport, economic development, housing, environment and justice has all had an impact on the range and scope of both service design and provision.
534. Local government is not just about service provision but is about the collective expression of the values and priorities of individual communities. One of the impacts of the reduction in financial flexibility in local government has been that the scope for innovative thinking about local priorities has largely become about driving efficiency and cost savings. The capacity of local government to lead has been limited, although the cities in particular under Labour leadership have been looking at more radical shifts in power, for example through the development of the co-operative council model.
535. Periodically local government has been reorganised to suit the political mood of the era. The Wheatley Commission was significant and led to a two tier system of government with regions and districts. The reorganisation by the Conservatives in the 1990s left a range of local authorities differing in size with the city regions broken up and huge variations in the size of individual authorities. Given the geography of Scotland there is no simple standardised model that would suit the range of different local circumstances. Shared

services have become more prevalent as local budgets struggle with the range of service demands.

536. The advent of the Scottish Parliament has brought a sustained debate about the role and effectiveness of local decision-making. Although the aspiration of the Parliament has been to support local government – with landmark legislation passed in the first term to confer the principle of community wellbeing (i.e. that local government is empowered to act as councils see fit) – there has also been tensions over the boundary between the Scottish Parliament and local government.
537. Ring-fencing was used extensively in the early days of the Parliament when the top priorities of the Parliament tended to be implemented by local councils with money transferred to implement them. Flagship policies – such the extension of nursery education for three and four-year-olds and homeless legislation – led to local councils assuming responsibility after negotiating for the implementation of policy aspirations.
538. The SNP's centralising agenda in local government have left our local authorities underfunded and increasingly reliant on central funding. The long-term financial and service impact has been:
- Outsourcing to drive down costs;
 - Residualisation;
 - Rationalisation;
 - Increased charges for services;
 - Rationing of services and removal of high-cost clients; and
 - Sustained loss of jobs – 40,000 since 2008, some outsourced to private companies, some to arm's-length external organisations and many lost altogether.
539. The SNP have centralised local government finance through changing the mechanism for council tax freeze funding. Originally the £70 million the

Scottish Government gave local authorities to freeze council tax was ring-fenced out-with the block grant and councils had to freeze the tax to attract their share of the £70 million. Now it is an accounting presumption within the block grant and councils have to freeze their tax to avoid losing it and then make compensatory savings. It also means that in order to access the full amount of funding for 2014-15 our local authorities have to: freeze council tax; maintain teacher numbers in line with pupil numbers; and secure places for all probationers, who require one, under the teacher induction scheme.

540. The removal of police and fire services has been a key plank of SNP efficiency savings. While Scottish Labour supported a single police force we would have retained local authority involvement in funding and community priorities. The impact of the single force has been particularly significant in relation to policing policy and operations at the local level. We have also seen a raft of closures proposed in terms of police counter access, police call centres and fire control rooms.
541. Revitalising local government is not simply a matter of reorganisation. This is the default position of those in search of an easy solution to a hard problem. Given the current pressures faced by local authorities, we should endorse our interim conclusion that there is no compelling case for wholesale structural reform. The big political question, rather, is: how do we strike the right balance between national standards in certain key public services and the diversity of choices that communities can decide upon?
542. There are certain public services where individuals should be entitled to regard uniformly high standards in provision as a right, such as in the key welfare services, of education and care for the elderly. Just as there are key UK rights to welfare benefits, as with pensions and tax credits, so there should be key Scottish rights to public services. On the other hand, there should be freedom and flexibility to encourage locally determined priorities in other areas of service provision, with scope for equivalent fiscal choices. This will encourage innovation and ultimately drive up standards.

543. Accepting this means agreeing to a greater divergence between local authorities in their choices and how public money is deployed. The argument that this will result in a “postcode lottery” is not one we should accept: it does not treat a complex matter in a serious way and the truth is that we already have a “postcode lottery” in many areas. In fact, it is often in postcodes where communities are empowered to tailor policies to local needs that public service provision is of the highest standard.
544. Fairness and diversity are not mutually opposed values. This is not a new argument. It was, indeed, Beatrice and Sidney Webb, founders of the Fabian Society and leading figures in the development of early twentieth century local government, who argued: “The case for a local administration of ... services rests primarily on the consciousness among inhabitants of a given area, of neighbourhood and of common needs, differing from those of other localities; and of the facility with which neighbours can take counsel together in order to determine for themselves what shall be their mental and physical environment and how it can be best maintained and improved”.⁹⁵
545. The debate now needs to move on: it cannot simply be framed around uniformity in service provision versus local variation. While there are certain public services where individuals should be entitled to regard uniformly high standards in provision as a right, it is also right to think about increasing freedom and flexibility to allow locally determined priorities in other areas of service provision.
546. By 2016 an incoming Scottish Labour led Scottish Parliament will inherit a legacy of centralisation and a decade of local authorities with less financial flexibility and capacity to respond to the challenges which they were elected to address. This chapter sets out how this will be overcome.

⁹⁵ Sidney Webb and Beatrice Webb, *A constitution for the socialist commonwealth of Great Britain*, (London: Longmans, Green and Co., 1920)

C. One size does not fit all

547. Devolution is not solely about the recognition of national identity. It is also about enabling choices to be made which more closely reflect the priorities and preferences of the population, and the impact of geography on service provision which will be different in one part of the UK from another. The same should also be true within Scotland: giving effect to this ought to be one of the functions of local government. To address this, we must reverse the SNP's process of centralisation to respond to reasonable local demands for an adjustment of powers and responsibilities to suit local circumstances and allow for local preferences and priorities to be given effect to. This means different arrangements for different areas based on different needs.
548. As we argued in our previous report, the centralisation of power in Scotland occurred in two phases: firstly, during the period of Conservative Government from 1979 to 1997, and then under the SNP government since 2007.
549. During the 1980s and 1990s, councils were squeezed by a central government committed to the disempowerment of local government. Prior to 1979, the system of local government in Scotland benefitted from administrative devolution on structure, finance and regulation, leading to the creation of strong regional and local district councils in 1973.⁹⁶ The Conservative Party, which had traditionally exhibited a considerable degree of respect for local autonomy, changed its approach under Margaret Thatcher by committing itself to reducing local authorities' fiscal, organisational and policy discretion through grant controls, rate-capping, centralising of business rates, capital controls on rents and compulsory competitive tendering. The culmination of these measures led to the replacement of domestic rates with the unpopular poll tax, and a muddled local government reorganisation which tore apart the regions' strategic capacity and created a single-tier system, buttressed by a variety of joint boards.
550. In response, Labour joined with the Convention of Scottish Local Authorities (CoSLA) on the Scottish Constitutional Convention to advance the cause of devolution and empowering local communities. Subsequently, when the

⁹⁶ A. Midwinter, *Local Government in Scotland – Reform or Decline?*, (London: Macmillan, 1995).

Convention's final report was published in November 1995, it recommended that any future devolution legislation should commit the Scottish Parliament "to secure and maintain a strong and effective system of local government, embodying the principle of subsidiarity so as to guarantee the important role of local government in service delivery".⁹⁷

551. The Labour Government, elected in 1997, was not only committed to delivering on the promise of devolution – it was pledged to re-empowering local government and democracy. As a result, the Labour Government commissioned Neil McIntosh, former chief executive of Strathclyde Regional Council, to examine the relationship between local authorities and the Scottish Parliament. In his final report, McIntosh recommended the signing of a covenant between the 32 councils and the Scottish Parliament; establishment of a formal working agreement between ministers and councils based around parity of esteem and partnership; and the introduction of a more proportional electoral system in local elections. McIntosh's vision was based on partnership, a need to replace the adversarial relations of the past, and strengthening local discretion. His report argued in favour of the principle of subsidiarity and avoidance of administrative centralisation.⁹⁸ The agreement of a covenant with local government and compact with the voluntary sector were important statements by Scottish Labour of its commitment to local empowerment following the establishment of the Scottish Parliament.
552. After the Scottish Parliament's official opening, its first major plenary debate was on the McIntosh Commission report. This was symbolically important: it demonstrated the importance of local government within the new devolution settlement. The Labour-led Scottish Executive subsequently introduced most of McIntosh's main recommendations. In 2001, a new "Partnership Framework" was signed between the Scottish Executive and CoSLA, defining working relationships and consultation arrangements. This was followed by the Local Government in Scotland Act in 2003, which gave local authorities a more

⁹⁷ Scottish Constitutional Convention, *Scotland's Parliament, Scotland's Right*, (Edinburgh: Scottish Constitutional Convention, November 1995)

⁹⁸ Scottish Office, *Report of the Commission on Local Government and the Scottish Parliament*, (Edinburgh: Scottish Office, 1999).

prominent role in community leadership, placing the promotion of partnerships in delivery of public services on a statutory basis, and establishing a framework to improve strategy and efficiency through Community Planning and Best Value legislation.

553. Since 2007, as we argued in our interim report, the process of centralisation has reemerged under the SNP, which has removed all taxation powers from local government, and removed local discretion in areas such as community planning. This approach is precisely what the McIntosh Commission argued should be avoided. The SNP's centralising approach is seen in their approach to Community Planning and Single Outcome Agreements (SOAs). The mechanisms of Community Planning and SOAs were intended to encourage a strategic approach to the planning and co-ordination of service delivery, but the SNP have contrived to create a bureaucratic system in which councils are expected to demonstrate how they will deliver central government priorities and spending commitments. A report by CoSLA's Improvement Service concluded that the removal of ring-fenced funds, the council tax freeze and agreed spending commitments had not created enough flexibility to move resources, and that SOAs had "excessive detail".⁹⁹ In contrast, we believe that community planning should be a process through which public sector organisations work with local communities, trade unions, businesses and the voluntary sector, in order to identify and solve local problems, improve services and share resources. The right aim is to ensure people and communities are genuinely engaged in the decisions made on the public services which affect them.
554. The move towards increasing centralisation of government in Scotland has three main costs. Firstly, it has resulted in local service providers looking upwards towards ministers and civil servants, or inwardly to complicated bureaucratic co-ordinating systems, instead of outwards towards communities and people. At present, local authorities' success is too often judged not by delivery of services that meet local requirements, but rather capacity to meet central government expectations. Secondly, centralisation leads to local

⁹⁹ B. Christie, *Interim Report on the first phase Single Outcome Agreements in 2008-0 for the Improvement Service on behalf of CoSLA and SOLACE*, (Edinburgh: CoSLA, 2009).

service delivery being managed in a way that is neither strategic nor joined-up, with local needs not taken into account in a way that connects with people and communities. Thirdly, centralised control widens the democratic deficit, as people feel unable to exert influence over the local services that they use. All of this has contributed to growing public alienation from the democratic process and civil society, as people feel powerless to influence the services they finance and depend upon.

555. Our first policy shift therefore is to accept the principle of “one size does not fit all”. This does not mean that different roles and responsibilities should be imposed on people or councils. Instead, it is a willingness to respond to reasonable local demands for an adjustment of powers and responsibilities to suit local circumstances and allow for local preferences and priorities. Power and responsibility must march together.

556. This means acceptance of two basic principles:

- Firstly, that there is, or can be developed, an effective administrative framework to give effect to better local decision-making. This might be an existing local authority, or it might be a combination of local authorities, or local authorities and other public bodies.
- Secondly, that there may be a way of enhancing democratic accountability for the exercise of the different set of powers. Again, this might be an existing local authority – though it may have to enhance democratic accountability if the range of responsibilities is substantially wider; or, alternatively, it could be planned new accountability arrangements, such as for a city region.

557. The three islands authorities – Shetland, Orkney and the Western Isles – have campaigned to gain more powers. Their campaign – “Our Islands, Our Future” – have made strong arguments on the opportunities for the three island councils to secure increased powers for their communities and creation of a decision-making apparatus which will benefit the economies and the lives of those who live in the islands. The local authorities have highlighted their priorities in relation to the development and extension of the powers of islands

councils, including a greater local role in all aspects of inshore marine resource management and utilisation, such as spatial planning and consenting; development of renewable energy resources around the islands with genuine community participation and benefits, and appropriate connections to export the energy that is generated; commissioning of inter-islands ferry services, funded, operated and controlled from the islands to meet island needs, with appropriate resource transfer; potential changes to fiscal arrangements to allow the islands to benefit more directly from the exploitation of local resources; continued development of the integrated public authority concept, in the context of enhanced community planning with a view to achieving better local decision-making and greater efficiency within the provision of public services; and clarification of the role of Highland and Islands Enterprise and any adjustment required to promote greater integration.

558. There is no reason not to be anything but positive to the three islands authorities' campaign – there is also no reason why we cannot act now. The devolution of more powers to the three island authorities can be achieved within the context of the current constitutional settlement, whereas the SNP have vacillated and appear to only be committed to hand more powers to the Western Isles, Orkney and Shetland if Scotland becomes independent.
559. The second issue is how to incentivise or enable authorities to work together to provide public services in a more efficient way, where their size, geography or priorities allow this. This has already begun in the Clyde Valley local authorities. The eight Clyde Valley councils – Glasgow City, North Lanarkshire, East Renfrewshire, Renfrewshire, East Dunbartonshire, South Lanarkshire, West Dunbartonshire and Inverclyde – will now get access to a City Deal, an initiative previously available only in England. We should applaud the project spearheaded by the largest authority in the Clyde Valley region, Glasgow City Council, which will let the area's economy compete with other UK city-regions. Under the scheme the city will negotiate deals with the Treasury – a deal which will give Glasgow new powers in exchange for greater responsibility to stimulate and support economic growth in the area. The scheme means cash invested by councils is “earned back” through income tax, corporation tax, VAT and

PAYE contributions. We should support this model for promoting economic development and wish to see it extended to the other major Scottish cities.

D Fiscal responsibility in local government

560. Whilst it is not within the scope of the Devolution Commission to make recommendations on the most appropriate model of local government finance in Scotland, it is becoming increasingly obvious that the current funding arrangements are not sustainable. When the next Scottish Parliamentary elections are held in 2016, the council tax freeze will have been in place for a decade. By the time of the next election, the council tax will not have been subjected to a revaluation exercise for over 25 years.
561. In October 2013, CoSLA established Scotland's first Commission on Strengthening Local Democracy, which will examine local government finance as part of its investigation into how to improve local democracy as the route to ensuring better outcomes. We welcome CoSLA's contribution to this debate and will give serious consideration to its final recommendations when framing our own proposals. However, at this stage, we can say that we agree with David O'Neill, CoSLA President and Chair of the Commission, that the freeze on council tax rates in Scotland is not sustainable and that a new approach to taxation may have to be looked at.
562. The over-dependency of local government on central funding can produce results that are both profound and puzzling. For instance, Glasgow's share of the local government budget has been reduced every year over the six years to 2014. This amounts to a reduction of £75 million to the city in 2013-14 alone. For the city to make up that level of loss to its resources a rise in the council tax rate in excess of 30 per cent would be required. Equally importantly, there is no involvement of local people or local representatives in this Scottish Government decision, militating against local accountability and participation.
563. Although ring-fenced in the early years by the SNP Government, the council tax freeze is now simply an accounting assumption in the block grant settlement

which adds pressure on local government. It has also remained at £70 million a year to cover all local authorities despite local authority costs increasing by 10 per cent during that period. While marketed as a tax freeze, it is also a cut in resources available for core services. Moreover, while the Scottish Government claims to have maintained local government's share of the Scottish Budget, it has not maintained its funding for core services (i.e. the council tax funding is a subsidy to taxpayers, not funding for services). This explains why the Budget Adviser's report to the Scottish Parliament Finance Committee stated that local government has borne the brunt of staffing cuts.

564. Labour introduced the council tax freeze in Glasgow in 2006 because we understood the pressure on families. However, it has now gone on for seven years in every Scottish council and is beginning to have serious and deleterious repercussions on services. Councils are charging more for services such as social care and car parking as council tax income declines. Research by the Accounts Commission, for example, has found that the amount charged for services now stands at more than £1.3 billion per year in 2012-13, compared with £1.1 billion in 2006-7.¹⁰⁰ This, in turn, adversely impacts on individuals and families, particularly the poorest sections of society who are disproportionately reliant upon local authority services. The majority of fees charged by local authorities are taken from social work clients, particularly elderly users of services such as home care, meals on wheels and emergency alarms. The council tax freeze cannot go on forever, but equally it is not right to simply let tax bills exponentially increase when family budgets are under pressure because of the policies being pursued by the Conservative-led Government.
565. The Scottish Government's policy has proved to be a bad financial deal for local government, as it means the government had only to maintain councils share of the budget, not the share of funding for services. The annual £70 million to fund the freeze was therefore ring-fenced within the spending envelope, and thus the cost fell on council budgets. The result has been a gradual squeeze on services, with 40,000 jobs lost by 2013. The SNP have presided not only

¹⁰⁰ Accounts Commission, *Charging for services: are you getting it right?*, (Edinburgh: Audit Scotland, October 2013), p. 7.

over the centralisation of local government, they have overseen its “hollowing out”. In addition, over £1billion of anti-poverty specific grants were transferred into the block grant to assist councils cope with the cutbacks. This additional flexibility has meant a serious loss of funding for tackling poverty as Table 7.1 shows.

TABLE 7.1: Reductions in Anti-Poverty spending 2007-8 to 2013-14

Programme	£m Cut
Community Regeneration Fund	113
Anti-Social Behaviour Fund	33
Working for Families Fund	15
Supporting People Fund	372
Fairer Scotland Fund	145
Housing and Regeneration	307
Educational Maintenance Allowances	15
Total Reductions	£1000m

566. Councils are caught in a predicament over resources, as to fail to freeze their tax levels would result in a disproportionately high tax increase.
567. The SNP has broken local government finance – we must now all face up to that reality. There has been no prospect of local services being financed from purely local resources for more than a century. The tax base potentially available to local government – which should essentially means property, because property has a defined location – is unlikely ever to be able to support even of half council spending; and there are good reasons of principle for ensuring equity in the provision of services, rather than allowing budgets to be determined by the accident of a strong, or weak, local tax base. This became particularly clear during the 1970s, when the combination of inflation and the expansion in welfare services provided by councils led to big increases in local rates. The resultant pressure on local tax eventually led the system to break in the 1980s with the Tories’ disastrous experiment of the poll tax.

568. The council tax, introduced following abolition of the poll tax in 1993, is a “rough and ready” form of property taxation.¹⁰¹ Throughout the 1990s, however, governments loaded an increasing share of spending increases on to local tax (assuming it would typically rise by 5 per cent each year), so that after devolution the average Band D council tax in Scotland exceeded £1,000 per annum. The limitations of the council tax were recently highlighted by an Institute for Fiscal Studies (IFS) report, *Taxing an independent Scotland*, published in October 2013. The IFS argued that the “failure of the Scottish Government to introduce difficult but much-needed reforms where it has had autonomy – notably the failure to revalue properties for council tax purposes – does not bode well”.¹⁰²
569. The council tax freeze is also regressive, as Table 7.2 below clearly shows. It has also caused a loss of council tax benefit by not maintaining the tax in real terms, of about £30 million a year.

TABLE 7.2: Average Annual Impact of Council Tax Freeze, 2012-13, as Scottish Households

Band	£Cash	% Net Household Income
A	60	0.3
B	90	0.5
C	130	0.5
D	165	0.6
E	215	0.6
F	260	0.6
G	310	0.6
H	370	0.7

570. It is wrong that people in more valuable homes pay a smaller share of their homes’ value than those in lower-cost homes. Moreover, property on similar

¹⁰¹ The council tax was introduced in 1993 by the Local Government Finance Act 1992, as a successor to the unpopular Community Charge, which briefly replaced the older system of rates; these changes were never applied to Northern Ireland, which continues to use rates.

¹⁰² Institute for Fiscal Studies, *Taxing an independent Scotland*, (London: Institute for Fiscal Studies, October 2013), p. 63.

valuations of homes are now 20 per cent lower in Scotland than in England, due to the sustained freeze on council tax since the SNP came to power.

571. The SNP manifestos in 2007 and 2011 set out a commitment to replacing the council tax with a fairer system of local taxation. However, the SNP's own proposal to replace the council tax with a system of local income tax proved profoundly unpopular. During the last term of the Scottish Parliament the SNP minority government failed to win support for its proposal which although called a local income tax would have been set at the same level across Scotland. Moreover the proposal that it be set at 3.5p significantly underestimated the level that it would have had to be set at, 6p if it were to replace the amount generated by council tax.
572. The right policy solution to the broken system of local government finance is as follows:
- We should move away from a system in which central government effectively decides local council budgets to one where this is true only for the major services – such as education and social work – in which central government has a strong interest. These should be 100 per cent funded by grant.
 - For the remaining services, central government should give a relatively small needs-based grant to allow for equalisation with most of the remaining budget coming from local taxation.
 - Any system of local taxation should be primarily based on property. Property tax is very perceptible – it is not deducted at source like income tax or absorbed into prices like VAT.
573. The system of local taxation should be reformed. As we have reported in our recommendations on strengthening the taxation power of the Scottish Parliament we believe consideration should also be given for the scope for local government to be strengthened too. The principle of giving local councils an incentive to retain more of the income which can be generated by promoting economic growth is one we would support. As we say, it is not within the remit

of the Commission to make recommendations on the appropriate model of local government finance. However, having considered the matter, it is recommended that we propose four principles that should underline the approach to local government funding. These are as follows:

- It should be the aim to establish a system which commands cross-party consensus, and is therefore no longer subject to use as a political tool at the Scottish Parliament level.
- A system should be put in place that establishes a clearer distinction between the rules of central and local government in determining council budgets.
- A system should be created which ensures that an updated and fairer system of property taxation continues to pay an equitable part in supporting public services in the long run.

574. We should also recognise that the Mirrlees review, commissioned for the IFS, offers powerful insights into the best way of financing local government through a system of property taxation. The conclusions of the Mirrlees review should be taken fully into account in any discussion between interested parties on this matter.
575. A mature relationship between local government and the public needs councils to have greater control and discretion over raising finance. Currently, the link between taxation and representation in local government is weak. Enhanced local revenue-raising powers would help to enhance the public accountability of what councils both promise and deliver. It would also allow councils a greater creative freedom to adopt local approaches best fitted to local circumstances.
576. The “Earn Back” proposal which has emerged from City Deals in England, and which we believe should be rolled-out as widely as possible in Scotland, is particularly interesting in this light. It would involve councils bringing forward capital works on the basis of the additional income that these projects would deliver to the economy. If successful in driving economic growth, then the local authority would receive a larger proportion of resultant tax take generated from

this growth than would otherwise be the case under business rate retention. This would require the agreement of HM Treasury for it to progress. Allowing local authorities to set and retain business rates raised locally would counter local government's overdependence on central funding and allow discretion to promote local economic development. This would allow councils the power to set different business rates within their local authority area and the freedom to promote business growth through targeted reductions in business rates.

577. Finally, in our interim report, we gave an undertaking to consult on whether local authorities should have the power to set and collect other forms of taxation, such as a tourist levy. Each local authority area has different needs and priorities. Empowerment of local government requires us to promote a more flexible system of local taxation which allows local authorities to raise additional funding for local projects as required. As a result, it is recommended that local authorities should be empowered to introduce additional local taxes, at their discretion, in order to raise additional resources to fund services. Such taxes would be truly local and developed by individual authorities. We, therefore, should support the principle of increased flexibility for local authorities not only in the area of non-domestic rates, but also by (a) extending Tax Incremental Funding to fund public sector investment in infrastructure, and (b) empowering local authorities to introduce initiatives such as tourist levies and other funding vehicles.
578. We support the possibility of enabling islands councils to benefit from renewable heat and power schemes developed in their local areas. For urban communities there are also opportunities which could be exploited as a source income and as a means to reduce utilities for residents. There are different models which could be used – using co-operative principles, arms-length companies, or using contracts with providers. Incentives from both the UK and Scottish Government would help develop these opportunities and lessons can be learned from existing schemes. In Aberdeen community heat schemes have been developed over the years. Edinburgh has supported the opportunity to develop renewable energy through the granting of a lease on the

Water of Leith thus enabling a community co-operative to develop a proposal to produce electricity from micro hydro and to invest in community priorities.

579. Facilitating revenue generation and greater local control over tourism would enable local authorities who wished to benefit from investing in tourist facilities and cultural infrastructure. To facilitate revenue generation for our cash strapped councils and greater local control over tourism, we advocate the introduction of a tourist levy (charged only on visitors from outside of the UK, provided that it is compliant with EU laws to exempt UK residents). We recommend that in the first instance this charge is trialled at one of our larger councils, such as Edinburgh or Glasgow.
580. Edinburgh City Council voted in favour of introducing a bed tax of £1 or £2 per night on tourists in December 2011 saying that the proposal could raise between £5-£10 million¹⁰³. Whilst the proposals were not progressed, due in part to pressure from the SNP Government, we note that a large number of other countries impose similar levies including: Austria, Belgium, Bulgaria, France, Italy, Croatia, Germany, Holland, USA and Canada.
581. The schemes adopted vary from around £1-£5 per person per night to between 5-12 per cent of the total room rate. Some of the schemes vary the tax due depending on the number of stars a hotel has, the number of rooms it has or the city the hotel is in. Some countries cap the total tax payable to a maximum number of nights. Some countries charge the tax to adults only.
582. This illustrates that the scheme that Edinburgh City Council considered adopting (at £1 or £2 per night) was at the lower end of the spectrum of the schemes currently in use. No UK city has adopted such a tax to date but it has been reported that Westminster Council¹⁰⁴ and Cornwall¹⁰⁵ have considered it.

¹⁰³ Severin Carrell, "Edinburgh votes for UK's first hotel bed tax to fund its festivals", *The Guardian*, (6 December 2011)

¹⁰⁴ It was reported they considered a 5 per cent tax which could have raised up to £37 million: "Tax on sleep in West End hotels", *Evening Standard*, (18 November 2011)

¹⁰⁵ It was reported they considered a £1 per night levy which could have raised up to £25 million: Andrew Hough, "Cornwall may cream off £25m with £1-a-night tourist tax", *Daily Telegraph*, (10 June 2011)

583. It would be important to assess what (if any) impact such a charge could have on the Scottish tourism industry when imposed alongside Value Added Tax and Air Passenger Duty. We would propose to do this after the trial of the levy in a council. The charge would only be payable by non UK residents.

E. Local government's role as the engine of regional economic renewal

584. As with local government finance, it is not within the remit of this Commission to decide and set out Scottish Labour's economic policies, let alone develop an industrial strategy. We should, however, express our strong view that harnessing the growth potential of Scotland's local economies, cities and regions is the key to securing long-term and sustainable economic growth. Local government has a proven track-record in stimulating economic renewal, and it could do even more if it is further empowered to tailor and adapt local economic development strategies to the requirements of local enterprises and labour markets.
585. Working in collaboration with central government, local authorities have a pivotal role to play as engines of regional economic growth, actively engaging with business, trade unions, universities and civil society, to build the skills, infrastructure, finance and the enterprise culture that is needed to secure lasting productivity gains, value creation and investment.
586. Whenever is possible and practicable, economic levers should be devolved to the local level: involving those most directly affected in decision-making processes will help ensure that essential infrastructure is located to meet local needs, housing and employment sites are linked by appropriate transport connections, and the local skills base is matched with employers' needs.
587. Local authorities face two major problems: they are forced to deal with the consequences of budget cuts and possess inadequate resources and levers to drive forward economic renewal. The truth is councils will never be empowered to drive forward growth until they have greater control over funding. We believe there is scope for devolving greater decision-making powers over how funding

is spent from the central government level. The Scottish and UK Governments need to provide a strategic focus and lead, leaving local government to concentrate on delivery.

588. In our interim report, we gave a commitment to examine the opportunities for local authorities to take back powers over the area of skills development. Having examined the matter, we should endorse the devolution of Skills Development Scotland's (SDS) powers and budget to local authorities, which will be required to work collaboratively with colleges as appropriate. SDS currently has a core budget of £212 million, and whilst that has fallen marginally in the last year it has been maintained at a far better rate than the college sector which has seen its role around the skills agenda diminished by the SNP administration. Since the creation of SDS, the private training provider sector has boomed, but it has only done so by undercutting colleges for the delivery of modern apprenticeship (MA) frameworks and then sub-contracted the least profitable parts of the MAs back to colleges for delivery. Colleges are losing out twice: as a result, private profits boom and the Scottish Government boasts about delivery of 25,000 MAs despite the fact that they bear very little resemblance to the skills needs of the economy. By devolving SDS's powers and budgets local authorities, which we will require to work closely with colleges, we will empower local economies to embed skills into their wider services for business. Falkirk, Edinburgh and Glasgow are already doing this with their "one-stop-shop" approach to small and medium businesses. Such an approach will enable stronger links between bigger business, local economies and colleges to flourish, ensuring that frameworks and curricula for locally provided courses to be matched with the needs of local economies. Furthermore, where the exercise of such powers requires the involvement of more than one council there is a shared history in Scotland of joint committees and boards which can be drawn upon. These represent a preferable democratic alternative to quangos.
589. We believe that cities have a key role to play in driving the economic performance of Scotland. With the right blend of strategic leadership and energy, cities such as Glasgow, Edinburgh, Aberdeen and Dundee – building

on their reputations as globally recognised centres of learning and culture – can become growth centres for Scotland, making decisions that shape long-term economic development. Cities are obviously the major hubs for business and we wish to encourage this. There is a need to invest in infrastructure and amenities to enable cities to support existing businesses, to retain them, to attract new inward investment and to incubate new businesses that will ensure economic sustainability for generations to come. We believe that cities do best when the city is empowered within its regional context, so they can stimulate not just their economies but also neighbouring local authorities. For this reason, whenever is practical and advantageous, we should look to facilitate the creation of governance structures that promote the role of cities in economic development.

F. Local authorities and UK responsibilities

590. Local authorities, although part of the devolved legal framework, discharge powers in matters which are the responsibility of the UK Government. When considering the devolution of powers to local authorities, therefore, we need to take account of powers which may be passed down from the UK level, as well as the devolved level. It may, but need not, follow that legislative or ministerial responsibility should also be devolved to the Scottish Parliament.
591. One reserved area that it was suggested to us should be devolved to the local authority-level is administration of Department for Work and Pensions (DWP) welfare-to-work programmes. Accordingly, we should consider whether local authorities should be given responsibility for delivery of the Work Programme, which is generally considered to be overly centralised and unresponsive to the differing needs of local labour markets.
592. Under the previous Labour Government, employment policy in the UK was based on the view that work is the best route out of poverty. The Coalition Government, after its election, accepted this principle, but their approach in this area has been flawed. In recent years, we have seen an increasing

marketisation of welfare-to-work, culminating in the introduction of the Work Programme in 2011.

593. The Work Programme is DWP's flagship welfare-to-work programme and is aimed at a range of claimants who are unemployed, with a focus on individuals who have been out of work for somewhere between 3 and 12 months depending on circumstances. In Scotland, it is being delivered by two prime contractors, Ingeus and Working Links. The delivery model for the Work Programme is described as "black box", which is intended to give providers freedom to design the types of support they offer. This means that, with the exception of being required to meet basic service standards, Ingeus and Working Links have more or less complete discretion to determine how they address their customers' needs. This provision lasts up to two years, with contractors rewarded on the basis of sustained employment results.
594. One of the major problems with the Work Programme is that it applies a single financial model uniformly across the UK. Consequently, no distinction is made between Scotland, Wales or England, or to regional and local variations. This means that the needs and demands of local labour markets are not fully taken into account, or importantly the cost of supporting people back into the world of work. It has also resulted in innovation at a local level being crowded out of the system.
595. The Work Programme is failing those with long-term medical conditions, which is an issue of specific concern to Scotland given the disproportionate number of people suffering from industrial-associated diseases relative to the other parts of the UK. The DWP's own figures show that people claiming Employment Support Allowance (ESA) – the main unemployment benefit for people with disabilities and long-term conditions – are attaining much lower outcomes than other groups on the Work Programme.
596. There are also glaring differences between different localities. In particular, we have concerns about the way in which the Work Programme has generally failed to take proper account of the most deprived areas, resulting from weak

labour demand and providers focussing on potentially more profitable client groups.

597. If local authorities, which would be overseen by the Scottish Parliament, were given responsibility for management of the Work Programme in their own areas, we would have the ability to design a model of payment that more appropriately reflected the needs and demands of their local labour market. In turn, this would help provide greater incentives for providers to support those most in need, helping to reduce the phenomenon of “creaming and parking”, whereby providers assist jobseekers who are better prepared for the labour market and ignoring those who are considered more difficult cases.
598. Given DWP’s not particularly successful experience in commissioning and running employment programmes, a strong case exists for local authorities to administer this responsibility, especially given their superior local knowledge and contacts with claimants through social services, schools and other services. A decentralised commissioning structure would better reflect the needs of local economies. Moreover, geographical concentrations of unemployment and deprivation are more likely to be more effectively tackled by devolving the delivery of employment outcomes to local levels.
599. Devolving responsibility for delivery of the Work Programme to local authorities would also enhance democratic accountability. By releasing the scheme from the centralised directive of DWP and empowering councils to assume leadership, the delivery model of the Work Programme would be closer and more accountable to those who depend upon it. As a result, devolving delivery of the Work Programme to local authorities would fundamentally enhance employability and provide better assistance to those who depend upon it. It is right that local authorities should have more control and stronger levers to tackle unemployment locally.
600. The third sector has an integral role to play alongside local government in delivery of the Work Programme. The third sector is already a key partner in delivering a wide range of local services, particularly in relation to social work, childcare and early years, and sports, art and culture. The relationship between

local government and the third sector will become more significant with the further decentralisation of powers to local government from the UK Parliament. Partnership, trust, and sharing “what works” are essential.

601. For all of the above reasons, we believe responsibility for delivery of the DWP Work Programme to be devolved to local authorities to better reflect local labour market conditions, with the Scottish Parliament playing a partnership role and providing strategic oversight. We are conscious of the need to ensure a link between the benefits system and income from work and for the need for local agencies to work in collaboration with local authorities and the third sector.
602. Another area where it has been suggested scope for devolution to local authorities exists is in regard to the Crown Estate. In March 2012, the House of Commons Scottish Affairs Select Committee published a report on the Crown Estate Commissioners’ (CECs) management of the Crown property, rights and interests which make up the Crown Estate in Scotland. The Committee concluded: “at best, the organisation [CEC] has a fundamental misunderstanding of the needs and interests of local communities and indigenous industries on the Scottish coast ... At worst, it behaves as an absentee landlord or tax collector which does not re-invest to any significant extent in the sectors and communities from which it derives income”. Accordingly, it was recommended that the administration and revenues of the ancient Crown property, rights and interests in Scotland, which are currently managed as part of the Crown Estate (including the seabed and the foreshore) should be devolved then decentralised as far as possible to local authorities and local communities, with devolution to the Scottish Parliament conditional upon an agreement between the Secretary of State for Scotland and the Scottish Government on how such a schemes should be implemented, on the basis of the principle of subsidiarity. This agenda has also been adopted by the Our Islands Our Future campaign.
603. There is clearly potential for devolution of the Crown Estate Commission’s powers. We agree with the analysis of the Scottish Affairs Select Committee report on the Crown Estate, and hope the government will act on the recommendations in their report of March 2014.

604. We see merit in the argument for full devolution of the Crown Estate's responsibility for the seabed and foreshore to local authorities. On the other hand, we are conscious that this could potentially undermine cross subsidy of investment and technical expertise on renewables. We need to balance these two competing viewpoints. We agree with the Crown Estate that the default assumption is that the seabed and foreshore should be managed by local authorities or local communities and that they have developed leasing arrangements which make this possible. If this can be made to work, allowing the Crown Estate to take an interest in particular developments, we will support this. Thus, we propose to use the Crown Estate's expertise and capital as necessary, but allowing local councils and local communities to manage the seabed in other respects, in order to achieve real devolution to very local areas while preserving the benefits of the wider Crown Estate resource.
605. We therefore endorse the idea of the Crown Estate developing more effective partnerships at community, local authority, and Scotland levels. This means two things in practice. Firstly, local management agreements between local authorities and the Crown Estate, which are an example of best practice, should be applied as widely as possible, with the Crown Estate establishing appropriate mechanisms to facilitate maximum local authority and community engagement. Secondly, a Memorandum of Understanding between the Scottish Government and Crown Estate should be agreed in respect of their common objectives on the development and management of the seabed and foreshore, and those local authorities with an interest in this area should be fully consulted throughout as to its contents.

G. Constitutional guarantee of powers for local government

606. In March 2013, Councillor David O'Neill, President of CoSLA, delivered a speech on the need to ensure that local government is protected within our constitutional settlement. This was not an endorsement of the SNP's call for a written constitution or an indication of support for independence. As Councillor O'Neill argued, the UK does have a constitution made up of statutes, case law,

parliamentary rules and historical ways of working. It also has Constitutional Conventions that may not have the force of statute, but are very powerful. Councillor O'Neill was arguing that "a way can be found that so fundamentally embeds local government in the 'constitution' that its status would be fundamentally altered".¹⁰⁶

607. The UK, perhaps because of its lack of a codified constitution, is one of the few countries in the world where the constitutional status of local government is not firmly embedded: this is as true in England and Wales as it is in Scotland. This contrasts with many other countries. For example, in Germany, Article 28 (2) of their constitution (Basic Law) guarantees "the right to regulate all local affairs on their own responsibility, within the limits prescribed by law".¹⁰⁷ Similarly, the very first article of the French constitution says: "it [the Republic] shall be organised on a decentralised basis".¹⁰⁸ In Denmark, their constitution states: "the right of municipalities to manage their own affairs independently under State supervision shall be laid down by statute".¹⁰⁹ In this respect, Scotland and the rest of the UK is somewhat of an anomaly.
608. Although the UK does not have a codified constitution, it is arguable that Scotland does – in a *de facto* sense – in the form of the Scotland Act 1998. The Act gives the Scottish Parliament complete legislative authority over local government, and does not seek to entrench the position of local government. It is, therefore, important to realise that entrenching local government in that constitutional settlement would need to be enacted by the UK Parliament: it is not something which could be legislated for by the Scottish Parliament (if it could be then a subsequent Parliament could legislate to reverse it, and that would not entrench the position of local government). Even so, local government is a very important part of our constitution, codified or otherwise, and it too enjoys the support of the population. We want the right relationship

¹⁰⁶ Councillor David O'Neill, "Presidential Address: Today's Reality, Tomorrow's Vision", (7 March 2013).

¹⁰⁷ Michel Rosenfeld and András Sajó (ed.), *The Oxford Handbook of Comparative Constitutional Law*, (Oxford: Oxford University Press, 2012), p. 616.

¹⁰⁸ Stephen Tierney, *Constitutional Referendums: The Theory and Practice of Republican Deliberation*, (Oxford: Oxford University Press, 2012), p. 87.

¹⁰⁹ Henning Jørgensen, *Consensus, Co-operation and Conflict: The Policy Making Process in Denmark*, (Cheltenham: Edward Elgar Publishing, 2002), p. 50.

between central and local government, and we want local decision making – which the Scottish people value highly – to be a continuing and valued part of our constitutional settlement. The question for us is whether a form of formal, legal, entrenchment could do this, and if so how: this is an issue on which we welcome further views.

609. There is clearly an argument to be made for a similar arrangement in Scotland. We see merit in councils need a binding understanding that the “proper” relationship between local and national government is one which devolves power and resources, and that frees up councils from “unnecessary statutory duties and central direction”. However, this issue requires careful consideration: one person’s unnecessary statutory duty can be interpreted as another one’s a tool for social justice. On balance, though, we favour establishing a constitutional guarantee of powers to local government and will examine how to take this forward.

H. Empowering communities and neighbourhoods

610. We have repeatedly emphasised that Scottish Labour is the party of devolution, and takes great pride in the decentralisation of power to the Scottish Parliament in Edinburgh. This was a historic shift, but it is not an end in itself, and nor is it the final destination of devolved power. Wherever possible, powers should be decentralised further, not just from the UK Parliament to the Scottish Parliament, but from the Scottish Parliament to local authorities and communities, and indeed to people themselves. The allocation of power is a means to an end, enabling people and communities to take greater control over their own destinies, and the things which will enable them to secure more prosperous and fairer communities. It is for that reason, unlike nationalists with their narrow focus on securing powers at a Scottish level, whether that is the most appropriate or not, that Labour believes in decentralising from the Scottish Parliament as well as to the Scottish Parliament. This has been described in different ways, including the principle of subsidiarity, that functions should be allocated at the level of government nearest to those affected wherever that is

practicable, or as the ideal of double devolution – devolution from central government, so that powers can be further devolved again to wherever they can be most effectively exercised.

611. There needs to be a rebalancing in relations between the state, local government and communities. Real devolution means local government, whenever practicable, taking on new powers from central government, but then sharing these powers with citizens, neighbourhoods and communities. To address poverty, promote greater social justice and strengthen communities, it is essential we close the current power gap in society, where necessary by engaging the voluntary and third sectors. The third sector, in particular, has an important role in empowering people and communities through advocacy, and encouraging social enterprise and services. In a recent Fabian pamphlet Trevor Davies quotes Professor Danielle Allan: “To achieve connectedness you have to have an egalitarian ethos, but if you don’t start to build institutional channels for connection, it doesn’t matter what type of egalitarian ethos you have, you won’t be able to make use of it ... Building a connected society is about empowering the disempowered”. It is democratic renewal from the ground up, constitutional and institutional reform as if people mattered. It is participative and deliberative. It cannot be other than founded in subsidiarity. It is necessary to any attempt to organise and manage governmental services based on productive co-operative learning relationships between receiver and provider. That means local authorities using different approaches, which make sense in local communities. It also means engaging with the voluntary and third sectors. The third sector, in particular, has an important role in empowering people and communities through advocacy, and encouraging social enterprise and services.
612. The independence debate is a distraction from the real issue of empowering communities. It has served to crowd out discussion of how far-reaching decentralisation can be achieved by a transfer of power to communities and people. If the policies supported by proponents of independence and devolution were pursued, the result would be the accruing of more powers in the

hands of an already overly centralised government. This is something to which we are opposed.

613. Devolution should not simply be an aspiration limited to local and central government: the boundaries of this debate need to extend beyond a discussion on the allocation of powers between these respective tiers. In Scotland, many local authorities have responsibility for large populations. Scotland is a centralised state in two senses: central government too often involves itself in the details of local service delivery, and local authorities too often operate in a way that is neither adaptable nor responsive to people's diverse requirements. Real devolution will only be achieved when government, whether in its central or local form, entrusts local communities to play an active and prominent role in delivery of accessible services that can be used by all.
614. We accept that there are many complexities involved in moving towards real devolution – shifting power to the level of the neighbourhood is a radical departure. One argument against is that equity in access to services would be put at risk. A counter-argument to this point is that for as long as there continues to be central control over key determinants of opportunities – such as cash benefits and universal healthcare – these risks are very limited. Within local communities, there is a strong case for issues such as use of public space to be determined at the community level. In addressing this issue, subsidiarity is an informative and helpful principle. Subsidiarity holds that government power should reside at the lowest possible level. However, it is absolutely essential that subsidiarity should not be seen as a means for local government to thrust unwanted responsibilities onto unsuspecting individuals and communities.
615. There is a strong case for central and local government to have a more strategic focus, offering support and co-ordination rather than getting involved in the micromanagement of solutions. This would result in more effective governance, bringing power closer to people. At its core, real devolution is about a major change in the relationship between government and people. The challenge is how we connect bureaucratic service delivery structures to

local community activity. We need a more deliberative democracy where before decisions are made people are more directly involved in the process.

616. Promoting local engagement will give people a greater stake in local democracy. There has been a debate about localism across the UK long before the Coalition Government came to power and co-opted the term for its own purposes. It has been a significant temptation for all political parties, once in power in central government, to centralise power away from local government.
617. For English local authorities the experience of the localism agenda has been mixed. The Localism Act was heralded by the Coalition Government as a part of a decentralising approach. However, it has also come with heavy cuts to local government budgets and consequent threats to local services. Nor has it fundamentally altered the power relationship between tiers of government, which remains weighted towards the centre. A localism agenda for Scotland, underpinned by fairness and social justice principles could conversely, form a key part of an enhanced devolution settlement. It could draw on the best of Scotland's traditions and focus on empowering local people and their local representatives.
618. Devolution must be about creating the right climate for individuals, communities and nations to prosper. Local government and the third sector can both be enablers, working to people's strengths and focusing on an asset-based community development; it is all about learning to do things better or differently, taking account of the reduced amount of money currently available to us. We are keen to see "devolution of trust", with people showing a predisposition to trust others and to devolve power to the lowest appropriate level, rather than holding on to power. The third sector has the capacity, knowledge, and the link to communities to reconfigure community engagement and empower people to take full control of their lives. They support the state and public services, often bringing private money to public services that would otherwise not be there. This contribution to communities should not be underestimated.

619. Local representative democracy relates to the number, role and powers of elected local members. Localism should also look to articulate and enhance participative forms of democracy. This is about councils and communities exploring ways of devolving power further to a neighbourhood level and investing in local forms of decision-making.
620. Examples of this include the co-operative council model being considered currently by both Glasgow and Edinburgh as a means of engaging more closely with communities. This includes community budgeting and community management of local facilities which are tangible aspects of this approach in Glasgow, for instance. In Edinburgh the co-operative model is also seen to offer the possibility of developing local co-operatively run companies as a means of increasing the affordability of childcare where profits are reinvested or shared by staff working for the co-operative and where staff are invested in the direction of it.
621. The Co-operative Councils Innovation Network is a network of local authorities committed to reforming the way they work through building an equal partnership with local people. Their recent publication of case studies of new co-operative initiatives provides interesting examples of the application of co-operative principles of empowerment, partnership and collective action to local authorities in rethinking the way they work and design services. As described by Jim McMahon, the Chair of the network and leader of Oldham Council the key is “putting local people at the heart of what we do”.
622. It is potentially an empowering agenda for those who work for co-operatively provided services too. We need to heed the frustration of care workers who are not able to influence the quality of the services they provide and learn from the positive experiences of co-operative care model of service delivery.
623. There are important powers which would help councils respond more effectively to neighbourhood concerns. If councils are seen as being unable to respond to the concerns of the public, then people understandably lose confidence in the local democratic process. It is for this reason we will require local

authorities to give a duty to incorporate a “neighbourhood approach into their work”.

624. Communities often say that they want their council to make better use of its powers. They do not want their neighbourhoods dominated by off-sales, betting shops and fast food outlets. Many councils are only too keen to tackle such over-provision. However, each time a licence application is refused then the decision can go to appeal and be over-turned – at the expense of the council tax payer. This undermines the mandate of local government to support its communities.
625. Communities also say that rogue landlords and poor management practices in the private rented sector can blight their area. Councils are doing what they can within the powers they currently possess to address such issues. But more powers are needed if we are to really get this right. It has been suggested that these include regulation of letting agents and introduction of a local housing court. Going forward, we should work with local authorities on how this can be achieved.
626. Finally, there is the challenge of regenerating our town centres and shopping parades. While the Scottish Government has adopted the principle of Town Centre First, its centralising agenda in fire and police services has undermined town centres. Moreover the impact on council capacity to act as a result of prolonged reductions in financial flexibility and the reduction in staff numbers and expertise combine to reduce the ability of councils to carry out the mix of urban regeneration and fresh thinking required to revitalise our town centres. Business Improvement District powers have made a real difference by mobilising both businesses and councils to work in partnership and are part of the solution. However more flexible powers on compulsory purchase to enable land assembly in town centres and shopping parades would assist local authorities in pulling together schemes to transform the economic performance of town centres and reintroduce residential properties back into town centres. The key is enabling local authorities to be in the driving seat where market failure has left land and properties derelict or underutilised leading to a

downward spiral and undermining attempts to regenerate important community spaces which could be both culturally and economically vibrant.

627. We believe the time is right to consider how local authorities might work better with locally representative groups such as tenants groups, development trusts, and community groups generally and we therefore support the principle that local authorities should have to draw up proposals to develop local schemes to involve local communities in decision making in areas where there is an appetite for involvement.
628. There is also a strong case for enabling local authorities to exert more influence on the use of retail units. At the moment, Payday Loan shops can open anywhere a retail unit exists. It requires no permission and no license and the number of Payday Loan shops within its vicinity is irrelevant. We will tackle this scourge by giving local authorities the powers to reject Payday Loan shops. There are a number of ways to do this, but we favour giving councils the powers to determine what is sui generis in the context of planning law. That way a council can choose to add Payday Loan shops to that category and that planning permission would need to be sought every time a Payday Loan shop wanted to open. Such a planning process would give the community a stronger say in the process and the time and space to make a case against proposals which would lead to an inappropriate proliferation of such shops.. The capacity to prevent the proliferation of Fixed Odds Betting Terminals should also be available to local authorities so we will extend the powers available to local authorities, in conjunction with the UK Government to address the licensing and technical constraints which Scottish Local authorities currently experience.

H. Recommendations

629. The issue of devolution has too often been approached through the prism of devolving powers from The UK Parliament to the Scottish Parliament – rather than considering the opportunities for further devolution of powers to local government, communities and people. The purpose of devolution was never to devolve power to a Scottish Parliament, only to see it accumulate powers from

the local level upwards. At its best, devolution is about partnership between different levels of government and the local communities they serve.

630. To bring about transformational change in local government, place the funding of local services on a long-term sustainable footing and allow greater flexibility in financing them, enable councils to act as drivers of economic development, and empower communities to play a central role in promoting greater social justice, we recommend the following package of measures:

RECOMMENDATION: We will reverse the SNP's process of centralisation of local government by embracing the principles of double devolution and subsidiarity. This means a willingness to respond positively to reasonable local demands for an adjustment of powers and responsibilities to suit local circumstances and allow local preferences and priorities to be given effect to.

RECOMMENDATION: We will incentivise authorities to work together to provide public services in a more efficient way, where their size, geography or priorities allow this.

RECOMMENDATION: We will work in particular with the three islands authorities – Shetland, Orkney and the Western Isles – to develop and extend the powers of islands councils, including:

- a greater local role in all aspects of inshore marine resource management and utilisation, such as spatial planning and dealing with consents;
- work with islands councils to support the development of renewable energy resources with genuine community participation and benefits, and to ensure that grid connections can be developed;
- support to secure the future of inter-islands ferry services in the Northern Isles, funded, operated and controlled from the islands to meet island needs, and to work within the EU to ensure a sustainable future for island to island transport;

- explore potential changes to fiscal arrangements to allow the islands to benefit more directly from the exploitation of local renewables and fishing resources;
- look at how to develop more integrated service delivery, with greater local influence for example over health services, to deliver enhanced community planning, better local decision making and greater efficiency of public services; and
- ensure a more integrated approach to economic development in partnership with Highland and Islands Enterprise.

RECOMMENDATION: It is not within the remit of the Commission to make recommendations on the appropriate model of local government finance. However, having considered the matter, we recommend three principles that should underline the approach to local government funding. These are as follows:

- It should be the aim to establish a system which commands cross-party consensus, to deliver a long term solution to funding local government services so that local finance is no longer a political football.
- A system should be put in place that establishes a clearer distinction between the roles of central and local government in determining council budgets.
- A system should be created which ensures that an updated and fairer system of property taxation continues to play an equitable part in supporting public services in the long run.

RECOMMENDATION: Local authorities should have increased scope to influence economic development. We support in principle increased flexibility for local authorities to generate more economic investment to develop local economic resilience, extending Tax Incremental Funding to fund public sector investment in infrastructure, and empowering local authorities to introduce initiatives such as tourist levies, and other funding vehicles to enhance

accountability.

RECOMMENDATION: Responsibility for delivery of the DWP Work Programme to be devolved to local authorities to better reflect local labour market conditions, with the Scottish Parliament playing a partnership role and providing strategic oversight. We are conscious of the need to ensure a link between the benefits system and income from work and for the need for local agencies to work in collaboration with local authorities and the third sector.

RECOMMENDATION: Local management agreements between local authorities and the Crown Estate, an example of best practice, should be applied as widely as possible, with the Crown Estate establishing appropriate mechanisms to facilitate maximum local authority and community engagement.

RECOMMENDATION: The Crown Estate should adopt the approach that the default assumption is that the seabed and foreshore should be managed by local authorities or local communities, and should further develop leasing arrangements which make this possible. If this can be made to work, allowing the Crown Estate to take an interest in particular developments, we will support this. Thus, we propose to use the Crown Estate's expertise and capital as necessary, but allowing councils and communities to manage the seabed in other respects, in order to achieve real devolution to local areas while preserving the benefits of the wider Crown Estate resource.

RECOMMENDATION: There should be a Memorandum of Understanding between the Scottish Government and the Crown Estate, which should be accountable to the Scottish Parliament, with devolution agreed in respect of their common objectives on the development and management of the seabed and foreshore, and those local authorities with an interest in this area should be fully consulted throughout as to its contents.

RECOMMENDATION: We will work to establish a constitutional guarantee of powers for local government.

RECOMMENDATION: We will promote the co-operative council model to offer the possibility of developing local co-operatively run companies as a model of

service delivery for example in social care and childcare where profits are reinvested or shared by staff working for the co-operative.

RECOMMENDATION: We will require local authorities to incorporate empowerment of local communities into their work. We believe that double devolution and subsidiarity should apply to councils too.

RECOMMENDATION: We will support more flexible powers on compulsory purchase to enable land assembly in town centres and shopping parades, in order to assist local authorities in pulling together schemes to transform the economic performance of town centres and reintroduce residential properties back into town centres.

RECOMMENDATION: We will tackle the scourge of exploitative payday loans by giving local authorities the powers to prevent the proliferation of Payday Loan shops and Fixed Odds Betting Terminals. In relation to FOBTs, working within the framework of gaming and betting as reserved matters, we will extend the powers available to local authorities, in conjunction with the UK Government to address the licensing and technical constraints on Scottish local authorities.

Part 8: Conclusion

631. The UK sharing union is founded on three interlocking unions – political union, economic union and social union. In each of these, we share power, resources and interests. The undermining of one union destabilises the delicate balance of all three. The SNP wish to break the political union, seemingly oblivious to the fact that this would at a stroke destroy economic and social union.
632. The purpose of the sharing union is to pool and share resources to ensure hard-working people, pensioners and those most in need have equal economic, social and political rights throughout the entire UK. This is the purpose of the union and it is an idea – based on solidarity, community and fairness – that is much bigger than establishing an independent state. The most effective way to secure the best social and economic rights for hard-working people is to be part of a bigger union where we pool risks, allocate resources and share the rewards. As a party, our aim is to secure opportunity for all, not just the few – no matter what a person's social background or where they are from.
633. The sharing union is the antithesis of a nationalism which will result in a race to the bottom on these islands on everything from corporation tax to rights at work.
634. The United Kingdom, as a political union, brings Scotland the opportunity of connectedness. It provides connectedness in the form of deep economic integration – through free trade in goods, services, people and capital – providing wider opportunities for Scottish individuals and companies in a market ten times the size of our population. This fiscal integration in turn demands and sustains a sense of social solidarity through the sharing of risks, rewards and resources on the basis of need rather than nationality. It makes sense to spread risks and burdens over a larger population with pensions, health and social security able to be supported by general taxation levied across all the nations of the UK. The that we turn our backs on hard working people and those most in need merely because they live south of the border is intolerable to us as a party and movement. That social solidarity reflects a moral choice as well as a sense of belonging.

635. For us, the sharing union in the twenty-first century accepts and recognises difference, but it is also founded upon the solidarity, partnership and co-operation between the nations of the UK. It is our belief that the union has to retain the combination of economic integration and social solidarity that creates both the domestic market and a well-functioning social market. Subject to this, we take the view that the preference should be for home rule and the Scottish Parliament ought to be funded by an appropriate balance of UK taxes, which give effect to social solidarity, and own tax resources.

Strengthening the union: reserved matters

636. For the union to be secure, core matters must be reserved to the UK Parliament:

- Defence and Foreign affairs (including international development) define a nation state. So does the constitution.
- Managing the economy – monetary policy, the currency and financial regulation, economic regulation and employment law. Without these, we do not have a single economy.
- Because we wish to preserve the UK Welfare State. Pensions and benefits allow the social solidarity that helps bind the UK together.

637. This gives us political, economic and social union. Strengthening that is our guiding principle. We also believe, on balance, the following matters should remain reserved:

- Immigration.
- Broadcasting.
- Drugs and related laws.
- The civil service.
- Betting, gaming and lotteries.
- Abortion and analogous issues.

638. As we have shown in this report, devolved powers are already wide, but we believe there is scope for further adjustment:

- Legal provision should be made to reflect the political reality that the Scottish Parliament is indissoluble and permanently entrenched in the constitution.
- The Scottish Parliament should have control over administration of its own electoral system, as well as Scottish local elections.

Strengthening devolution: funding the Scottish Parliament

639. Tax devolution relates to the principles of funding the Scottish Parliament. At the moment, the Scottish Parliament is funded wholly by the UK Parliament grant. Scotland should fund it by a mixture of:

- grant paid from UK resources, to ensure equity and social solidarity across the country; and
- taxes it raises itself, to make it accountable.

640. In framing our recommendations on taxation, we have been driven throughout by the objective of creating a fairer and more accountable tax system in Scotland, as well as maintaining the political, economic and social unions we strongly believe in. Following rigorous examination of the relative merits of devolving each tax, we put forward the following recommendations:

- Labour will give the Scottish Parliament the power to raise around £2 billion more in revenues beyond the recent Scotland Act, so that it raises about 40 per cent of its budget from its own resources.
- We will do this by widening the variation in income tax in the Scotland Act by half from 10p to 15p.
- This will mean that three-quarters of basic rate income tax in Scotland will be under the control of the Scottish Parliament.

- The Scotland Act enables the Scottish Parliament to increase or decrease income tax rates in Scotland. In addition to extending this power, we will also introduce new Scottish Progressive Rates of Income Tax, so that the Scottish Parliament can increase the rates of tax in the higher and additional bands. For the first time, the Scottish Parliament will be able to alter both the level of tax and the progressivity of the tax system, but without the risk that a Scottish Government could force tax competition within the UK by cutting only the top rates, to the detriment of public services. Labour in the Scottish Parliament would be able to use these powers if a UK Government did not set fair taxes at these levels.
- Our interim report considered whether there was scope for devolution of air passenger duty, subject particularly to EU rules. We received a number of considered representations, and continue to note that departures from Highlands and Islands airports are already exempt from this tax. Given the pressure to reduce this tax from airlines and others and the risk of tax competition which would be created, we are not now convinced that devolution should be progressed until further consideration is given to the environmental impact and how else this tax might be reformed.
- We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved. However we do support, in principle, a derogation to allow a lower rate of fuel duty to be charged in remote rural areas of the Highlands and Islands.

641. Our proposal will ensure the appropriate balance of fairness, accountability and efficiency, empowering the Scottish Parliament to develop policies that promote greater fairness in the tax system, a more just society and sustainable economic growth.

Stability in public funding: grant and the Barnett formula

642. Grant from the UK Parliament should remain the largest source of income for the Scottish Parliament. This enables a Labour UK Government to ensure comparable levels of public services across the UK, for reasons of equity and social solidarity. The Barnett formula is a well-established, stable and effective mechanism and we are strongly of the view that it should remain as the most important funding mechanism for public services in Scotland.

The social union: welfare, employment and consumer protection

643. A comprehensive UK Welfare State involves the pooling of resources to safeguard the common entitlements of citizenship enjoyed by everyone across the UK. We believe that the most effective way of providing welfare provision is to pool resources and risks over the widest geographical region.
644. The basic state pension, the additional state pension, the contributory element of jobseeker's allowance, the contributory elements of employment and support allowance, maternity allowance, bereavement benefits and incapacity benefit, are closely linked and should remain reserved.
645. There is an overriding argument for reserving other, explicitly redistributive but non-contributory benefits, such as the non-contributory elements of jobseeker's allowance, the non-contributory elements of employment and support allowance, income support and pension credit.
646. We believe that benefits more closely related to devolved services – Housing Benefit and Attendance Allowance – should be devolved to Scotland.
647. We do not propose any changes to the current reservation of employment law as we believe this would undermine the economic union which is in the interests of Scotland. However, we believe in the need to establish a Scottish Health & Safety Executive to set enforcement priorities, goals and objectives in Scotland. This body would still be required to operate within the reserved health & safety framework and regulations, but it would be for the body –

reporting to the Scottish Government, scrutinised by the Scottish Parliament and accessing funding provided by that Parliament– to set and achieve the health & safety objectives of most relevance and importance to Scotland.

648. We believe that responsibility for the operation of employment tribunals should be devolved to Scotland in order to promote access to justice. (More generally, we see good reasons for devolution of tribunals' administrative responsibilities including procedural rules, even where there is continuing reservation of responsibility for common rights across the UK.)
649. We also see the case for establishing a Scottish model for the delivery of consumer advocacy and advice, one that would secure and built upon the strengths of the current providers of consumer advice and consumer advocacy respectively.

Empowering local government, enhancing local democracy

650. We will respond positively to reasonable local demands for an adjustment of powers and responsibilities to suit local circumstances and allow for local preferences and priorities to be given effect to. These will be on the basis of two principles:
- That there is, or can be developed, an effective administrative framework to give effect to these local decisions. This might be an existing local authority, or it might be a combination of councils or councils and other public bodies.
 - That there are clear plans for effective democratic accountability for the exercise of the different set of powers. Again this might be through an existing local authority – though it may have to enhance democratic accountability if the range of responsibilities is substantially wider; or it could be through new accountability arrangements, say for a city region, as has been suggested in England. The key is that it must not simply be assumed that the present arrangements will be sufficient. Power and responsibility must march together.

651. We will incentivise and enable authorities to work together to provide public services in a more efficient way, where their size, geography or priorities allow this. For example, we will work with the three islands authorities – Shetland, Orkney and the Western Isles – to develop and extend the powers of islands councils.
652. We believe that the present system of local government finance is broken. Whilst it is not within the remit of the Commission to make proposals on the most appropriate funding model for local government, we set out what we consider should be the guiding principles in this area. These are as follows:
- It should be the aim to establish a system which commands cross-party consensus, to deliver a long term solution to funding local government services.
 - A system should be put in place that establishes a clearer distinction between the roles of central and local government in setting council budgets.
 - A system should be created which ensures that an updated and fairer system of property taxation continues to play an equitable part in supporting public services in the long run.
653. We support in principle increased flexibility of local authorities to generate more economic investment to develop local economic resilience, extending Tax Incremental Funding to fund public sector investment in infrastructure, and empowering local authorities to introduce initiatives such as tourist levies, and other funding vehicles to enhance accountability.
654. There are functions administered by quangos that would be managed by local authorities. We believe that Skills Development Scotland's responsibilities should be devolved to council-level, and that local authorities should have increased scope to influence economic development.
655. Devolution of powers to local authorities should take account of powers which may be passed down from the UK level, as well as the devolved level. It may, but need not, follow that legislative or ministerial responsibility should also be

devolved to the Scottish Parliament. We believe that there are two currently reserved areas where there is a pressing need for greater devolution of responsibility or an enhanced role for local authorities. These are the Department for Work and Pensions Work Programme and Crown Estate. As a result, we recommend the following:

- Full devolution of responsibility for delivery of the Work Programme to local authorities on the basis that they are better placed to meet the requirements of local labour markets, with the Scottish Parliament playing the lead role in providing strategic oversight to enhance democratic accountability. By releasing this employment scheme from the centralised directive of DWP and empowering councils to assume leadership, the delivery model of the Work Programme would be closer and more accountable to those who depend upon it. We believe that devolving the programme to local authorities would fundamentally enhance employability and provide better assistance to those who depend upon it. In our judgement, local authorities should have more budgetary control and a stronger financial incentive to tackle unemployment locally.
- We agree with the analysis of the Scottish Affairs Select Committee report on the Crown Estate, and hope the government will act on the recommendations. Local management agreements between local authorities and the Crown Estate, an example of best practice, should be applied as widely as possible, with the Crown Estate establishing appropriate mechanisms to facilitate maximum local authority and community engagement. We agree with the Crown Estate that the default assumption is that the seabed and foreshore should be managed by local authorities or local communities and that they have developed leasing arrangements which make this possible. If this can be made to work, allowing the Crown Estate to take an interest in particular developments, we will support this. Thus, we propose to use the Crown Estate's expertise and capital as necessary, but allow local councils and local communities to manage the seabed in other respects, in order to

achieve real devolution to communities while preserving the benefits of the wider Crown Estate resource.

- A Memorandum of Understanding between the Scottish Government should be agreed with the Crown Estate becoming accountable to the Scottish Parliament, with devolution of agreed in respect of their common objectives on the development and management of the seabed and foreshore, and those local authorities with an interest in this area should be fully consulted throughout as to its contents. .

656. We will promote the co-operative council model to offer the possibility of developing local co-operatively run companies as a model of service delivery for example in social care and childcare where profits are reinvested or shared by staff working for the co-operative where staff have a say in the direction
657. We will require local authorities to incorporate empowerment of local communities into their work. We do not believe in a size fits all approach but believe that double devolution and subsidiarity should apply to councils too.
658. We will support more flexible powers on compulsory purchase to enable land assembly in town centres and shopping parades, in order to assist local authorities in pulling together schemes to transform the economic performance of town centres and reintroduce residential properties back into town centres.
659. Finally, we will tackle the scourge of exploitative payday loans by giving local authorities the powers to prevent the proliferation of Payday Loan shops and Fixed Odds Betting Terminals. In relation to FOBTs, working within the framework of gaming and betting as reserved matters, we will extend the powers available to local authorities, in conjunction with the UK Government to address the licensing and technical constraints which Scottish local authorities currently experience.

Summary of recommendations

RECOMMENDATION: Whilst it is inconceivable that the Scottish Parliament would be abolished, we believe the Scottish Parliament should become permanently entrenched in the constitution and indissoluble. We also recommend that the “Sewel convention” should be given a statutory basis.

RECOMMENDATION: Responsibility for administration of Scottish Parliamentary elections should be devolved to the Scottish Parliament.

RECOMMENDATION: Partnership arrangements between Parliaments and Governments whose responsibilities will inevitably overlap should be established, so that they work together for the common good, safeguarding civil and political rights, and promoting social and economic rights such as welfare and full employment.

RECOMMENDATION: There is a strong case for giving partnership arrangements a legal existence, in the form of statutory obligations on both administrations to co-operate in the public interest, or through the creation of a formal Intergovernmental Council or its equivalent with the duty to hold regular meetings.

RECOMMENDATION: Labour will give the Scottish Parliament the power to raise around £2 billion more in revenues beyond the recent Scotland Act, so that it raises about 40 per cent of its present budget from its own resources.

RECOMMENDATION: We will widen the variation in income tax in the Scotland Act by half from 10p to 15p. It will mean that three-quarters of the basic rate income tax in Scotland will be under the control of the Scottish Parliament.

RECOMMENDATION: The Scotland Act enables the Scottish Parliament to increase or decrease income tax rates in Scotland. In addition to extending this power, we will also introduce new Scottish Progressive Rates of Income Tax, so that the Scottish Parliament can increase the rates of tax in the higher and additional bands. For the first time, the Scottish Parliament will be able to alter both the level of tax and the progressivity of the tax system, but without the risk that a Scottish Government could force tax competition within the UK by cutting only the top rates, to the detriment of

public services. Labour in the Scottish Parliament would be able to use these powers if a UK Government did not set fair taxes at these levels.

RECOMMENDATION: The Barnett formula should remain as the funding mechanism for public services in Scotland. Under our policies, as is the case under the Scotland Act, the Barnett grant will be reduced to take account of the fact that the Scottish Parliament will have a revenue stream of its own. As a result the Scottish Parliament will be funded partly by grant calculated under the Barnett formula and partly by its own tax resources.

RECOMMENDATION: Responsibility for delivery of the DWP Work Programme to be devolved to local authorities to better reflect local labour market conditions, with the Scottish Parliament playing a partnership role and providing strategic oversight. We are conscious of the need to ensure a link between the benefits system and income from work and for the need for local agencies to work in collaboration with local authorities and the third sector.

RECOMMENDATION: We take the view that Housing Benefit should be devolved to the Scottish Parliament. We will use this power to abolish the Bedroom Tax, ensure secure funding for the provision of social housing and reduce abuse by unscrupulous private landlords.

RECOMMENDATION: Given the connection between Attendance Allowance and health and social care policies, we believe that it should be devolved in full to Scotland. The funding would be transferred to the Scottish Budget and appropriately updated in future.

RECOMMENDATION: We believe in the need to establish a Scottish Health & Safety Executive to set enforcement priorities, goals and objectives in Scotland. This body would still be required to operate within the reserved health & safety framework and regulations and closely linked with the UK HSE, but it would be for the body – reporting to the Scottish Government, scrutinised by the Scottish Parliament and accessing funding provided by that Parliament – to set and achieve the health & safety objectives of most relevance and importance to Scotland.

RECOMMENDATION: Responsibility for the administration of employment tribunals and the procedural rules associated with them, including charging arrangements, should be devolved.

RECOMMENDATION: Enforcement of equalities legislation should become a devolved matter. We also support any other transfer of power, should it be required, to ensure that women fairly represented on Scotland's public boards and in other public appointments.

RECOMMENDATION: We see the case for establishing a Scottish model for the delivery of consumer advocacy and advice, one that would secure and built upon the strengths of the current providers of consumer advice and consumer advocacy respectively.

RECOMMENDATION: We support devolution of railway powers that could facilitate consideration of a "not for profit" option in terms of the Scotrail franchise. This will widen the powers of the Scottish Parliament over the rail system.

RECOMMENDATION: Skills Development Scotland's responsibilities to be devolved to local authorities in order that planning and provision of skills and training better matches local job markets.

RECOMMENDATION: We will reverse the SNP's process of centralisation of local government by embracing the principles of double devolution and subsidiarity. This means a willingness to respond positively to reasonable local demands for an adjustment of powers and responsibilities to suit local circumstances and allow local preferences and priorities to be given effect to.

RECOMMENDATION: We will incentivise authorities to work together to provide public services in a more efficient way, where their size, geography or priorities allow this.

RECOMMENDATION: We will work in particular with the three islands authorities – Shetland, Orkney and the Western Isles – to develop and extend the powers of islands councils, including:

- a greater local role in all aspects of inshore marine resource management and utilisation, such as spatial planning and dealing with consents;
- work with islands councils to support the development of renewable energy resources with genuine community participation and benefits, and to ensure that grid connections can be developed;
- support to secure the future of inter-islands ferry services in the Northern Isles, funded, operated and controlled from the islands to meet island needs, and to work within the EU to ensure a sustainable future for island to island transport;
- explore potential changes to fiscal arrangements to allow the islands to benefit more directly from the exploitation of local renewables and fishing resources;
- look at how to develop more integrated service delivery, with greater local influence for example over health services, to deliver enhanced community planning, better local decision making and greater efficiency of public services; and
- ensure a more integrated approach to economic development in partnership with Highland and Islands Enterprise.

RECOMMENDATION: It is not within the remit of the Commission to make recommendations on the appropriate model of local government finance. However, having considered the matter, we recommend three principles that should underline the approach to local government funding. These are as follows:

- It should be the aim to establish a system which commands cross-party consensus, to deliver a long term solution to funding local government services so that local finance is no longer a political football.
- A system should be put in place that establishes a clearer distinction between the roles of central and local government in determining council budgets.
- A system should be created which ensures that an updated and fairer system of property taxation continues to play an equitable part in supporting public services in the long run.

RECOMMENDATION: Local authorities should have increased scope to influence economic development. We support in principle increased flexibility for local authorities to generate more economic investment to develop local economic resilience, extending Tax Incremental Funding to fund public sector investment in infrastructure, and empowering local authorities to introduce initiatives such as tourist levies, and other funding vehicles to enhance accountability.

RECOMMENDATION: Local management agreements between local authorities and the Crown Estate, an example of best practice, should be applied as widely as possible, with the Crown Estate establishing appropriate mechanisms to facilitate maximum local authority and community engagement.

RECOMMENDATION: The Crown Estate should adopt the approach that the default assumption is that the seabed and foreshore should be managed by local authorities or local communities, and should further develop leasing arrangements which make this possible. If this can be made to work, allowing the Crown Estate to take an interest in particular developments, we will support this. Thus, we propose to use the Crown Estate's expertise and capital as necessary, but allowing councils and communities to manage the seabed in other respects, in order to achieve real devolution to local areas while preserving the benefits of the wider Crown Estate resource.

RECOMMENDATION: There should be a Memorandum of Understanding between the Scottish Government and the Crown Estate, which should be accountable to the Scottish Parliament, with devolution agreed in respect of their common objectives on the development and management of the seabed and foreshore, and those local authorities with an interest in this area should be fully consulted throughout as to its contents.

RECOMMENDATION: We will work to establish a constitutional guarantee of powers for local government.

RECOMMENDATION: We will promote the co-operative council model to offer the possibility of developing local co-operatively run companies as a model of service delivery for example in social care and childcare where profits are reinvested or shared by staff working for the co-operative.

RECOMMENDATION: We will require local authorities to incorporate empowerment of local communities into their work. We believe that double devolution and subsidiarity should apply to councils too.

RECOMMENDATION: We will support more flexible powers on compulsory purchase to enable land assembly in town centres and shopping parades, in order to assist local authorities in pulling together schemes to transform the economic performance of town centres and reintroduce residential properties back into town centres.

RECOMMENDATION: We will tackle the scourge of exploitative payday loans by giving local authorities the powers to prevent the proliferation of Payday Loan shops and Fixed Odds Betting Terminals. In relation to FOBTs, working within the framework of gaming and betting as reserved matters, we will extend the powers available to local authorities, in conjunction with the UK Government to address the licensing and technical constraints on Scottish local authorities.

RECOMMENDATION: The following matters should remain reserved as they are key to the maintenance of the union:

- Financial and economic matters – including monetary policy, the currency, regulation, debt management and employment law.
- Foreign affairs (including international development) should remain the responsibility of the UK Government.
- Defence should remain a reserved matter.
- The civil service should remain.
- Social security should remain reserved, though there is potential for some devolution to ensure better integration between devolved and reserved responsibilities.
- Immigration should remain reserved.

RECOMMENDATION: Matters relating to the possession, cultivation, production, supply, import and export of drugs; drug trafficking, including the acquisition, possession or use of the proceeds of drug trafficking; and statutory offences involving money laundering of the proceeds of drug trafficking, confiscation of the proceeds of

drug trafficking, and forfeiture of things used in the commission of drug trafficking offences, should remain reserved.

RECOMMENDATION: Abortion, xenotransplantation, embryology, surrogacy arrangements, human genetics, matters relating to the regulation and control of medicines (for both humans and animals), medicinal products, poisons and biological substances, should remain reserved.

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Glossary

AA	Attendance Allowance
APD	Air Passenger Duty
BBC	British Broadcasting Corporation
CBI	Confederation of British Industry
CCL	Climate Change Levy
CEC	Crown Estate Commissioner
CGT	Capital Gains Tax
CGNCR	Central Government Net Cash Requirement
COPFS	Crown Office and Procurator Fiscal Service
CoSLA	Convention of Scottish Local Authorities
CPI	Consumer Price Index
CRND	Commissioners for the Reduction of the National Debt
DCMS	Department for Culture, Media and Sport
DfID	Department for International Development
DMO	Debt Management Office
DVLA	Driver and Vehicle Licensing Agency
DWP	Department for Work and Pensions
EAT	Employment Appeal Tribunal
ESA	Employment Support Allowance
FCA	Financial Conduct Authority

FCO	Foreign and Commonwealth Office
FOBT	Fixed Odds Betting Terminals
FOI	Freedom of Information
GB	Great Britain
GDP	Gross Domestic Product
GERS	Government Expenditure and Revenue in Scotland: a Scottish Government publication estimating Scotland's fiscal balance
HB	Housing Benefit
HBoS	Halifax Bank of Scotland
Home Rule	A term traditionally used in the UK to refer to a degree of self-government, devolution or independence, for constituent nations
HMRC	HM Revenue & Customs
HSE	Health & Safety Executive
HSENI	Health and Safety Executive for Northern Ireland
IFS	Institute for Fiscal Studies
IMF	International Monetary Fund
IPPR	Institute for Public Policy Research
IPT	Insurance Premium Tax
LBTT	Land and Buildings Transaction Tax
MA	Modern Apprenticeship
MEP	Member of European Parliament
MP	Member of Parliament
MPC	Monetary Policy Committee

MSP	Member of Scottish Parliament
NDPB	Non-Departmental Public Body
NHS	National Health Service
NICs	National insurance contributions
NIF	National Insurance Fund
OECD	Organisation for Economic Co-operation and Development
OFCOM	Office of Communication
PAYE	Pay-As-You-Earn – a means of payment of income tax in the UK
PHASS	Partnership on Health and Safety in Scotland
PRA	Prudential Regulation Authority
PSND	Public Sector Net Debt
PWLB	Public Works Loan Board
RBS	Royal Bank of Scotland
RPIX	Retail Price Index excluding mortgage interest payments
ScotCen	Scottish Centre of for Social Research
SCAJTC	Scottish Committee of the Administrative Justice and Tribunals Council
SEC	Scottish Executive Committee
SFE	Scottish Financial Enterprise
SOA	Single Outcome Agreement
STV	Single Transferable Vote
SDLT	Stamp Duty Land Tax
UK	United Kingdom

UN	United Nations
US	United States of America
VAT	Value Added Tax
VED	Vehicle Excise Duty
WGA	Whole of Government Accounts

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Annex A: Devolved and reserved responsibilities

Under the Scotland Act 1998, the Scottish Parliament can make primary and secondary legislation in areas not reserved to the UK Parliament (specified in schedule 5 of the Act) or protected from modification (also specified in schedule 5). The list of reserved matters is lengthy and complex. In some areas legislative competence differs slightly from the executive powers devolved to the new administrations, as the Executive can be granted additional powers under s63 where the Parliament has no legislative competence.

Devolved subjects are those which do not fall under the reserved categories, or are otherwise outside the legislative competence of the Scottish Parliament. They include:

- health
- education and training
- local government
- social work
- housing
- planning
- tourism, economic development and financial assistance to industry
- some aspects of transport, including the Scottish road network, bus policy and ports and harbours
- law and home affairs, including most aspects of criminal and civil law, the prosecution system and the courts
- the police and fire services
- the environment
- natural and built heritage
- agriculture, forestry and fishing

- sport and the arts
- statistics, public registers and records

Schedule 5 to the Scotland Act 1998 sets out some “general reservations” (Part I) and then a long list of “specific reservations” (Part II)

General reservations

- The constitution, including the Crown, the union, the UK Parliament, and the continued existence of Scotland’s higher courts
- Registration and funding of registration and funding
- Foreign affairs and international relations
- Public service (the civil service, other than sheriff clerks, procurators fiscal, and officers of the higher courts).
- Defence (other than some aspects of civil defence and sea fishing enforcement)
- Treason

Specific reservations

The specific reservations are set out under 12 main heads, each with a series of sub-heads. In some cases, there are exceptions, illustrations and interpretations.

- Financial and economic matters
 - Fiscal, economic and monetary policy, except local taxes to fund local authority expenditure (for example council tax and non-domestic rates)
 - The currency
 - Financial services, except bank holidays
 - Financial markets
 - Money laundering

- Home affairs
 - Misuse of drugs
 - Data protection
 - Elections (elections to the House of Commons, European Parliament and Scottish Parliament, and the franchise at local government elections)
 - Firearms
 - Entertainment (essentially videos and films)
 - Immigration and nationality
 - Scientific procedures on live animals
 - National security, interception of communications, official secrets and terrorism
 - Betting, gaming and lotteries
 - Emergency powers
 - Extradition
 - Lieutenancies
 - Public access to information held by most public bodies
- Trade and industry
 - Business associations, except “particular public bodies” and charities
 - Insolvency, except some aspects of winding up and receivership
 - Competition, except regulation of aspects of the legal profession
 - Intellectual property, except relating to plant varieties
 - Import and export control, except food, animals, plants, etc.
 - Regulation of sea fishing outside the Scottish zone, except in relation to

- Scottish fishing boats
- Consumer protection, except food safety
- Product standards, safety and liability, except in relation to food, agricultural, pesticide products etc.
- Weights and measures
- Telecommunications and wireless telegraphy, except certain police powers
- Post Office and Postal Services
- Research Councils, including funding of scientific research
- Designation of assisted areas (under the Industrial Development Act 1982)
- Industrial Development Advisory Board
- Protection of trading and economic interests (under emergency powers, etc.)
- Energy
 - Electricity, except aspects of environmental protection
 - Oil and gas, except some aspects of offshore activity and production and movement of gas
 - Coal, except environmental protection
 - Nuclear energy, except environmental protection and the Radioactive Substances Act 1993
 - Energy conservation, except the encouragement of energy efficiency
- Transport
 - Road transport, except aspects of road safety

- Rail transport, except aspects of grants for rail services, some strategic functions, the transfer of functions of passenger transport executives, and the promotion and construction of railways wholly within Scotland
- Marine transport, except ports etc., hazards to navigation and financial assistance for bulk freight services to the Highlands and Islands
- Air transport, except some matters to do with airports and aerodromes
- Transport of radioactive material
- Technical specifications for public passenger transport for disabled persons
- Carriage of dangerous goods
- Serving Scotland Better: Scotland and the United Kingdom in the 21st
- Social security
 - Social security schemes, except aspects of
 - Social welfare services
 - Welfare services for the chronically sick and disabled
 - Payments towards maintenance of children
 - Industrial injuries benefit
 - promotion of the welfare of children in need
 - advice and assistance for young persons formerly looked after by local authorities
 - Child support, except aliment
 - Occupational and personal pensions
 - War pensions

- Regulation of the professions
 - Architects
 - Specified health professions. The reserved professions are identified by reference to the Acts governing them. Consequently, regulation of new professions, such as pharmacy technicians, is not reserved.
 - Auditors
- Employment
 - Employment and industrial relations, except agricultural wages
 - Health and safety, including the Health and Safety Executive and the
 - Employment Medial Advisory Service, but excluding some aspects of fire safety
 - Job search and support, except careers services and aspects of Scottish Enterprise and Highlands and Islands Enterprise
- Health and medicines
 - Abortion
 - Xenotransplantation
 - Embryology, surrogacy and genetics
 - Medicines, medical supplies and poisons
 - Welfare foods
- Media and culture
 - Broadcasting
 - Public lending right
 - Government Indemnity Scheme
 - Property accepted in satisfaction of tax

- Miscellaneous
 - Judicial remuneration
 - Equal opportunities legislation, except for the encouragement of equal opportunities and the imposition of duties on public office-holders
 - Control of weapons of mass destruction
 - Ordnance survey
 - Timescales, time zones, and summer time, except the computation of periods of time, bank holidays, Term Days and Quarter Days
 - Regulation of activities in outer space

Part III of Schedule 5

Part III of Schedule 5 makes clear that:

- Scottish public authorities are not reserved, even if they have “mixed functions” (functions relating to both reserved and devolved matters), unless they are “cross-border public authorities”
- “reserved bodies” include all bodies mentioned in Part II of the Schedule, such as the Research Councils, plus the bodies that are now amalgamated in the Equality and Human Rights Commission
- with certain exceptions, “giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment” is not reserved.

Annex B: Devolved powers and how they have been used

The Scotland Act 1998 created a Scottish Parliament and passed to it the powers to make laws on a range of issues. These powers were extended by the Scotland Act 2012.

The by no means exhaustive list below shows that the Scottish Parliament has made extensive use of devolved powers since 1999.

Devolved powers	How they have been used
Health and social services	Mental Health (Public Safety and Appeals) (Scotland) Act 1999 Regulation of Care (Scotland) Act 2001 Community Care and Health (Scotland) Act 2002 Protection of Children (Scotland) Act 2003 Mental Health (Care and Treatment) (Scotland) Act 2003 Primary Medical Services (Scotland) Act 2004 National Health Service Reform (Scotland) Act 2004 Smoking, Health and Social Care (Scotland) Act 2005 Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 Scottish Schools (Parental Involvement) Act 2006

	<p>Adoption and Children (Scotland) Act 2007</p> <p>Adult Support and Protection (Scotland) Act 2007</p> <p>Protection of Vulnerable Groups (Scotland) Act 2007</p> <p>Public Health etc. (Scotland) Act 2008</p> <p>Health Boards (Membership and Elections) (Scotland) Act 2009</p> <p>Tobacco and Primary Medical Services (Scotland) Act 2010</p> <p>Alcohol etc. (Scotland) Act 2010</p> <p>Children's Hearings (Scotland) Act 2011</p> <p>Patient Rights (Scotland) Act 2011</p> <p>Alcohol (Minimum Pricing) (Scotland) Act 2012</p> <p>Social Care (Self-directed Support) (Scotland) Act 2013</p>
Education and training	<p>Standards in Scotland's Schools etc. Act 2000</p> <p>Education and Training (Scotland) Act 2000</p> <p>Education (Graduate Endowment and Student Support) (Scotland) Act 2001</p> <p>Regulation of Care (Scotland) Act 2001</p> <p>Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002</p>

	<p>Scottish Qualifications Authority Act 2002</p> <p>Commissioner for Children and Young People (Scotland) Act 2003</p> <p>Education (School Meals) (Scotland) Act 2003</p> <p>Education (Additional Support for Learning) (Scotland) Act 2004</p> <p>School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004</p> <p>Further and Higher Education (Scotland) Act 2005</p> <p>Gaelic Language (Scotland) Act 2005</p> <p>Schools (Health Promotion and Nutrition) (Scotland) Act 2007</p> <p>Education (Additional Support for Learning) (Scotland) Act 2009</p>
Housing	<p>Leasehold Casualties (Scotland) Act 2001</p> <p>Housing (Scotland) Act 2001</p> <p>Mortgage Rights (Scotland) Act 2001</p> <p>Tenements (Scotland) Act 2004</p> <p>Housing (Scotland) Act 2006</p> <p>Housing (Scotland) Act 2006</p> <p>Home Owner and Debtor Protection (Scotland) Act 2010</p> <p>Housing (Scotland) Act 2010</p>

	<p>Property Factors (Scotland) Act 2011</p> <p>Private Rented Housing (Scotland) Act 2011</p>
Local government	<p>Scottish Local Authorities (Tendering) Act 2001</p> <p>Scottish Local Government (Elections) Act 2002</p> <p>Local Government in Scotland Act 2003</p> <p>Local Governance (Scotland) Act 2004</p> <p>Licensing (Scotland) Act 2005</p> <p>Local Electoral Administration and Registration Services (Scotland) Act 2006</p> <p>Scottish Local Government (Elections) Act 2009</p> <p>Local Electoral Administration (Scotland) Act 2011</p> <p>Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012</p>
Transport, including, since the passing of the Scotland Act 2012, drink-driving and speed limits	<p>Transport (Scotland) Act 2001</p> <p>Erskine Bridge Tolls Act 2001</p> <p>Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004</p> <p>Transport (Scotland) Act 2005</p> <p>Edinburgh Tram (Line One and Two) Act 2006</p>

	<p>Waverley Railway (Scotland) Act 2006</p> <p>Glasgow Airport Rail Link Act 2007</p> <p>Transport and Works (Scotland) Act 2007</p> <p>Edinburgh Airport Rail Link Act 2007</p> <p>Airdrie-Bathgate Railway and Linked Improvements Act 2007</p> <p>Abolition of Bridge Tolls (Scotland) Act 2008</p> <p>Disabled Persons' Parking Places (Scotland) Act 2009</p> <p>Forth Crossing Act 2011</p> <p>Forth Road Bridge Act 2013</p>
<p>Law and home affairs, including most civil and criminal law, criminal justice and prosecution system, police and prisons; including, since the passing of the Scotland Act 2012, the licensing of air weapons</p>	<p>Bail, Judicial Appointments etc. (Scotland) Act 2000</p> <p>International Criminal Court (Scotland) Act 2001</p> <p>Protection from Abuse (Scotland) Act 2001</p> <p>Sexual Offences (Procedure and Evidence) (Scotland) Act 2002</p> <p>Criminal Justice (Scotland) Act 2003</p> <p>Council of the Law Society of Scotland Act 2003</p> <p>Vulnerable Witnesses (Scotland) Act 2004</p> <p>Antisocial Behaviour etc. (Scotland) Act</p>

	<p>2004</p> <p>Prohibition of Female Genital Mutilation (Scotland) Act 2005</p> <p>Management of Offenders etc. (Scotland) Act 2005</p> <p>Police, Public Order and Criminal Justice (Scotland) Act 2006</p> <p>Legal Profession and Legal Aid (Scotland) Act 2007</p> <p>Criminal Proceedings etc. (Reform) (Scotland) Act 2007</p> <p>Custodial Sentences and Weapons (Scotland) Act 2007</p> <p>Judiciary and Courts (Scotland) Act 2008</p> <p>Offences (Aggravation by Prejudice) (Scotland) Act 2009</p> <p>Sexual Offences (Scotland) Act 2009</p> <p>Criminal Justice and Licensing (Scotland) Act 2010</p> <p>Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010</p> <p>Legal Services (Scotland) Act 2010</p> <p>Domestic Abuse (Scotland) Act 2011</p> <p>Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011</p>
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	<p>Double Jeopardy (Scotland) Act 2011</p> <p>Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012</p> <p>Criminal Cases (Punishment and Review) (Scotland) Act 2012</p> <p>Police and Fire Reform (Scotland) Act 2012</p> <p>Long Leases (Scotland) Act 2012</p> <p>Scottish Civil Justice Council and Criminal Legal Assistance Act 2013</p>
Fire services	<p>Police and Fire Services (Finance) (Scotland) Act 2001</p> <p>Fire (Scotland) Act 2005</p> <p>Police and Fire Reform (Scotland) Act 2012</p>
Environment	<p>National Parks (Scotland) Act 2000</p> <p>Water Industry (Scotland) Act 2002</p> <p>Land Reform (Scotland) Act 2003</p> <p>Water Environment and Water Services (Scotland) Act 2003</p> <p>Building (Scotland) Act 2003</p> <p>Nature Conservation (Scotland) Act 2004</p> <p>Environmental Assessment (Scotland) Act 2005</p> <p>Flood Risk Management (Scotland) Act 2009</p>

	<p>Climate Change (Scotland) Act 2009</p> <p>Historic Environment (Amendment) (Scotland) Act 2011</p> <p>Land Registration etc. (Scotland) Act 2012</p> <p>Water Resources (Scotland) Act 2013</p> <p>High Hedges (Scotland) Act 2013</p>
Agriculture, fisheries and forestry	<p>Sea Fisheries (Shellfish) Amendment (Scotland) Act 2000</p> <p>Salmon Conservation (Scotland) Act 2001</p> <p>Protection of Wild Mammals (Scotland) Act 2002</p> <p>Fur Farming (Prohibition) (Scotland) Act 2002</p> <p>Agricultural Holdings (Scotland) Act 2003</p> <p>Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003</p> <p>Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Act 2003</p> <p>Animal Health and Welfare (Scotland) Act 2006</p> <p>Crofting Reform etc. Act 2007</p> <p>Aquaculture and Fisheries (Scotland) Act 2007</p> <p>Marine (Scotland) Act 2010</p>

	<p>Crofting Reform (Scotland) Act 2010</p> <p>Wildlife and Natural Environment (Scotland) Act 2011</p> <p>Reservoirs (Scotland) Act 2011</p> <p>Agricultural Holdings (Amendment) (Scotland) Act 2012</p> <p>Aquaculture and Fisheries (Scotland) Act 2013</p>
Tourism, sport and the arts	<p>National Galleries of Scotland Act 2003</p> <p>Charities and Trustee Investment (Scotland) Act 2005</p> <p>Tourist Boards (Scotland) Act 2006</p> <p>Glasgow Commonwealth Games Act 2008</p> <p>National Library of Scotland Act 2012</p> <p>National Trust for Scotland (Governance etc.) Act 2013</p>

