

STUC submission to the Smith Commission

INTRODUCTION

The STUC welcomes the opportunity to submit its views on further devolution to the Smith Commission. We do not underestimate the difficulty of the task the Commission faces and believe that significant compromise will be necessary on all sides if an agreement is to be reached which is coherent and matches the aspirations of a majority of the Scottish people.

The STUC's concerns about the process for agreeing further powers is a matter of record. We have joined with a range of civil society organisations to argue that whatever proposals are agreed should be tested in a citizen led process involving the use of maximum consultation and the creation of citizens' juries. The STUC is also on record as stating that the most important outcome is an optimal proposal and this, for us, is much less important than adhering to the very testing timetable laid down, both for the Commission and the subsequent parliamentary process.

The STUC has been disturbed at the enormously divergent accounts of what has been 'promised' with respect to further powers. We do not believe that the content of the proposals previously published by the three pro-devolution parties, or the wording of the 'Vow' can be categorised as a promise of 'Devo Max' or full fiscal autonomy. Equally however, a strong impression was conveyed that the powers proposed would extend significantly beyond that which had previously been promised.

Opinion polls suggest that there is strong public support in Scotland for the devolution of very meaningful fiscal, welfare, employment, equality and other powers. The detail of what this means has not been tested which is why the STUC is so strongly in favour of the outcome of the Commission being tested in an environment which is capable of investigating the detail and engaging the wider public.

The STUC's proposals in this paper fall short of what would normally be categorised as full fiscal autonomy or Devo Max. This is grounded in an honest assessment of what arrangement would best serve the people of Scotland in the years ahead. Equally, we do not propose the devolution of all aspects of welfare.

However, our proposals go significantly further than the sum total of the proposals of the three pro-devolution parties.

Our appeal to all parties in the negotiations is that they should be prepared to make significant compromises and that political advantage should take a back seat.

Taken together the proposals offer a coherent approach to tackling inequality and promoting sustainable economic growth. Fundamentally they recognise that the role of government is to support and nurture society and that the Scottish Parliament must be empowered to play a leading role in meeting that challenge.

SUMMARY OF RECOMMENDATIONS

Sections

- 1. Democratic ownership and the public good**
- 2. Fiscal powers**
- 3. Workplace protection and labour market reform**
- 4. Equality**
- 5. Citizens rights**
- 6. Welfare**
- 7. Other issues**

Democratic ownership and the public good

1.1 There should be a process of consent between Westminster and Holyrood over EU decisions affecting areas within the Scottish Parliament's jurisdiction particularly as it impacts upon democratic ownership.

1.2 The full devolution of the Crown Estate to the Scottish Parliament.

1.3 Increased borrowing powers for the Scottish Parliament to enable it to undertake public funded investment without recourse to mechanisms such as a PFI.

1.4 Devolution of powers to enable a public sector led bid for the ScotRail franchise.

1.5 Removal of any reservations preventing the Scottish Government forming publicly owned enterprises

1.6 To enable the Scottish Parliament to tackle the inequities of land ownership, the devolution of all relevant income and land related taxes including inheritance tax and capital gains tax reliefs.

1.7 The devolution of Housing Benefit as recommended by the Scottish Labour Party and various others as well as any additional power required to enable the Scottish parliament to control private and public sector rents.

Fiscal powers

2.1 The devolution and assignment of taxation amounting to at least two thirds of Scottish public spending (over 50% of all spending in Scotland)

2.2 A commitment, with appropriate legislative safeguards, that the Scottish Block Grant will continue, for at least a generation, to guarantee funding at existing levels relative to the rUK.

2.3 Devolution of income tax at all bands & other personal wealth related taxes

2.4 Devolution of Air Passenger Duty and Aggregates Taxes as proposed by the Calman Commission but not included in the Scotland Act 2012.

2.5 50% of VAT and alcohol/tobacco/fuel/gaming duties should be assigned

2.6 The agreement of a financial memorandum allowing adjustments to the block grant to recognise discreet actions by the Scottish Government using devolved funding which have a positive impact on UK welfare spending in Scotland.

2.7 The capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the UK Treasury

2.8 The capacity should exist for the Scottish Government to issue bonds within normal and negotiable limits.

A better labour market and workplace protection

3.1 The devolution of employment law, health and safety, trade union law and the minimum wage

3.2 The devolution of public sector pensions schemes with the exception of the Civil Service Scheme.

Equality

4.1 That employment law and equality law not be separated with respect to further devolution proposals

4.2 The full devolution of equality law, provided that employment law is also devolved.

4.3 In the case that employment law is not devolved, the STUC favours the devolution of equality enforcement along with the industrial tribunals and health and safety enforcement.

4.4 There should be no impediment under a devolved settlement to the Scottish Parliament legislating for mandatory 50-50 gender representation in the Scottish Parliament and local councils, or for gender equality on company boards.

Basic Rights for Scottish Citizens

5.1 STUC recommends that the Sewel Convention is given full legal force.

5.2 Consideration to how Scotland can have a stronger level of control around constitutional issues, including any change to agreed international treaties and the agreement of new international treaties. Focus on both the powers of the Scottish

Parliament (and the other devolved Parliaments) and the weight given to voters in Scotland (and the other devolved nations) in referenda be considered.

5.3 The franchise in all UK elections should be extended to include 16 and 17 year olds.

Welfare

6.1 The devolution of Housing Benefit

6.2 The devolution of Attendance Allowance.

6.3 The devolution of Carer's Allowance.

6.4 The devolution of the Work Programme and other employability programmes run by the DWP; and the creation of a Scottish Job centre Plus.

6.5 The adoption of the recommendation of Andrew Tickell in *Securing greater Social Security autonomy and restating the Union*.

Other powers

7.1 A presumption in favour of the right to Scotland to pursue distinctive policy on migration, subject to the UK Government providing substantive evidence of detriment to the rUK.

7.2 An agreement that the Scottish Government be able to offer asylum to refugees, subject to reserved Immigration and Nationalities Department consent

7.3 The Scottish Government to be enabled to legislate for those seeking asylum to work in Scotland whilst their applications are being processed.

7.4 Devolution of additional powers to tailor support for low carbon generation and the full scope of regulation of energy efficiency.

7.5 A more formal role in energy industry regulation but recognising the challenges of delivering a distinct regulatory approach within an all UK energy market. Therefore, it is essential that all stakeholders are fully engaged in discussions about how new powers and responsibilities might be utilised.

7.6 The Scottish Parliament to be given formal regulatory power over broadcasting in Scotland. It is particularly important that the public service broadcasters are accountable to, and seen to be accountable to, the Scottish Parliament.

1. Democratic ownership and the public good

The STUC supports the devolution of a number of powers to Scotland which would enhance the ability of the Scottish Parliament to democratise the ownership of land, assets and natural resources through, community ownership, co-operative ownership and state ownership. Pursuant to these aims, the Scottish Parliament should be fully empowered to undertake a more ambitious land reform agenda and to decentralise power to, and through, democratically accountable and properly resourced local government.

The goal of strengthening local government and empowering communities cannot be considered an afterthought to the process of further devolution to Scotland, nor can it be used as an excuse to bypass the Scottish Parliament. All of those involved in the Smith Commission should make clear statements of intent with respect to local empowerment.

The Scottish Parliament already possesses significant powers which enable it to promote democratic ownership and community empowerment but there are also a range of European Union and international regulations which place limits on the role of the state in relation to privately held assets and public franchises. In the STUC's view, the Scottish Parliament should be able to exert greater influence over the UK Government's ratification of treaties and directives which have an impact in areas where power is devolved to Scotland. This would include all devolved public services areas, public procurement and companies owned publicly in Scotland. The clearest example of a current treaty which falls into this category is the Transatlantic Trade and Investment Partnership (TTIP) which, depending on the nature of the wording of the final treaty, could potentially impact upon the ability of the Scottish Government to ensure that the delivery of services such as the NHS remain public.

Recommendation

- 1.1 There should be a process of consent between Westminster and Holyrood over EU decisions affecting areas within the Scottish Parliament's jurisdiction particularly as it impacts upon democratic ownership.**

Devolution of the Crown Estate

The STUC notes the proposals from various parties for the devolution, or partial devolution of the Crown Estate. The most logical approach to effecting devolution in this area is for the Scottish Parliament to have the power to manage the revenues from all Crown Estate assets in Scotland.

Recommendation

- 1.2 The full devolution of the Crown Estate to the Scottish Parliament.**

Public Ownership

The STUC strongly supports the right of national and regional legislatures to own, or maintain a controlling stake in its utilities, transport system and other key industrial sectors. It should also be able to protect its public services from privatisation. Increased borrowing powers would allow for different models of finance and strengthen the potential of a Scottish National Investment Bank, capable of issuing bonds, to invest in infrastructure and industry.

Recommendation

- 1.3 Increased borrowing powers for the Scottish Parliament to enable it to undertake public funded investment without recourse to mechanisms such as a PFI.**
- 1.4 Devolution of railway powers to enable a “not for profit” option for the ScotRail franchise.**
- 1.5 Removal of any reservations preventing the Scottish Government forming publicly owned enterprises**

Land ownership

The STUC believes that the empowerment of communities requires adequate control of land ownership and its use for the purposes of tax avoidance whilst, in many cases, subsidies are drawn down for farming and forestry activities.

Recommendation

- 1.6 To enable the Scottish Parliament to tackle the inequities of land ownership, the devolution of all relevant income and land related taxes including inheritance tax and capital gains tax reliefs.**

Public housing

The Scottish Government has significant powers to enact direct local authority house building and the extension of the social housing sector. In addition to the capital borrowing powers already identified.

Recommendation

- 1.7 The devolution of Housing Benefit as recommended by the Scottish Labour Party and various others as well as any additional power required to enable the Scottish parliament to control private and public sector rents.**

2. Fiscal powers

STUC supports a devolution settlement which places Scotland on a firm fiscal footing and empowers the Scottish Parliament to undertake progressive tax reform and redesign.

The STUC has considered two options. Full fiscal autonomy; and increased tax powers supplemented by a continuing block grant.

STUC believes that full fiscal autonomy presents potential future challenges for the maintenance of current levels of per-capita public spending in Scotland relative to the rest of the United Kingdom. The key factors within this calculation are:

- Diminishing and uncertain tax receipts from North Sea Oil and Gas
- Demographic trends in Scotland

During the referendum debate, the Scottish Government argued that an independent Scotland would be able to:

- Benefit from higher oil revenues than predicted by the Westminster Government
- Rebalance its demographics through promoting inward migration
- Benefit from higher relative growth consequent to additional economic and fiscal powers
- Channel tax receipts currently used for defence into other public spending areas

To a greater or lesser extent the aforementioned outcomes will not be possible under an enhanced devolution settlement rendering the longer term relative fiscal position worse than the Scottish Government imagined under an independence scenario.

The challenging position presented by the Fiscal Affairs Scotland and others, only holds true if the comparison is with existing levels of Scottish Parliament funding. In the case that the combined effect of devolved taxes and a smaller block grant were to significantly reduce Scotland's future revenues, there would be a different counterfactual which could render full fiscal autonomy more attractive.

The most comparable full fiscal autonomy model to which we can refer is the relationship between the Basque/Navarre region and the Spanish state, where there is virtually full fiscal autonomy in a national region of comparable relative size and which has higher than average GDP per capita than Spain as a whole. After collecting almost all taxes, the Basque/Navarre region 'buys back' a range of Spanish state services (amounting to around 50% of total spending) covering state functions such as defence and international affairs, but also welfare and pensions. However, there is one difference and one peculiarity which suggests the situation is not analogous to Scotland. a) The Basque/Navarre strength in GDP does not rest on a depleting natural resource b) the cost ratio at which the Basque/Navarre 'buys back' services from the Spanish state is highly advantageous to the region, a situation which is unlikely to be replicated here.

The STUC believes that it is both practical and fair to use the existing relative fiscal position as the basis for a new funding formula combining tax and block grant. Such an arrangement would recognise that Scotland has, since the inception of the Barnett Formula, contributed more in tax and received more in spending than the UK average. The arrangement would recognise that this situation may not persist in the medium to long-term as oil tax receipts diminish.

The role of the block grant would therefore be to maintain funding at existing levels relative to the rUK. Overall funding might increase or reduce pursuant to UK-wide public spending decisions or changes in Scottish devolved tax revenue, but the funding ratio would not change.

The STUC therefore supports a funding arrangement combining devolved taxes and a continuing block grant as the best option for Scotland, but this is predicated on a clear commitment that there will be no detriment to current Scottish funding levels relative to the rest of the UK for at least a generation. The block grant is the amount of funding Scotland has received in a given year and the Barnett Formula is the mechanism by which it is adjusted in the following year.¹ Neither the block grant, the Barnett Formula, nor how the Barnett Formula is applied in a given year is enshrined in statute or given any legal or constitutional form. This gives rise to uncertainties about the future and disagreement about this application.

The purposes of the devolution of further taxes should be:

- To provide a better balance between the amount of revenue raised and spent by the Scottish Parliament
- To enable the Scottish Parliament to enhance protection and tackle inequality through progressive and redistributive taxation
- To provide a means by which economic success in Scotland can translate into higher public spending and to remove negative incentives towards investing in services and pursuing policies with positive labour market outcomes
- To enable redesign of Scottish tax, including local taxation.

Recommendation

2.1 The devolution and assignment of taxation amounting to at least two thirds of Scottish public spending (over 50% of all spending in Scotland)

2.2 A commitment, with appropriate legislative safeguards, that the Scottish Block Grant will continue, for at least a generation, to guarantee funding at existing levels relative to the rUK.

¹ The block grant is currently calculated by taking the previous year's expenditure in Scotland, multiplying by additional (or reduced) expenditure in England, multiplying that by Scotland's population share relative to England and then adjusting it department by department

Specific Tax powers

The STUC supports the devolution of all forms of income tax.

- The STUC does not support the devolution of Corporation Tax as we support the harmonisation of Corporation Tax across the UK and Europe.
- The STUC also believes that oil and gas revenues should only be devolved in the case of full fiscal autonomy. We believe that recognising the historical and future contribution of oil and gas revenues to the UK economy is best represented by the strong block grant component recommended earlier.
- The STUC has previously rejected the devolution of National Insurance. There are competitive dangers in relation to the employer component and complications with relation to the employee component. We are however open to considering its devolution if a compelling case is put forward during discussions and negotiations post October 31st.
- The STUC recognises that assigned taxes cannot be used as economic levers, but believes that assigned taxation allows the tax base to better reflect economic success and can smooth out the unevenness potentially caused by devolving a large number of income related taxes but few other taxes.

Recommendation

7.2 Devolution of income tax at all bands & other personal wealth related taxes

7.3 Devolution of Air Passenger Duty and Aggregates Taxes as proposed by the Calman Commission but not included in the Scotland Act 2012.

The STUC believes that 'behaviours' taxes and VAT should be assigned, but not subject to variation. The proportion assigned should be 50%.

Recommendation

7.4 50% of VAT and alcohol/tobacco/fuel/gaming duties should be assigned

The full detail of the STUC's devolved tax proposals is attached as appendix A.

Funding flexibility and Financial Memoranda

By increasing the proportion of revenue raised in Scotland, the Parliament is better incentivised to use its existing spending power to grow the economy and strengthen its labour market interventions. The STUC recalls the arguments during the referendum relating to child care in which the Scottish Government argued with some, if not complete, persuasiveness that without the capacity to benefit from the improved tax outcomes of a stronger labour market created by expanded child care, it would not be able to sustain the policy. Whilst the devolution of significant new taxes partly meets that criticism, it does not address the savings such a policy would effect in relation to UK Government welfare spending in Scotland i.e. Were a free and universal childcare policy to be implemented in Scotland under existing powers, the UK Government would benefit from reduced support for childcare costs of Scottish families as a consequence of entirely devolved Scottish public spending.

This situation already exists with respect to free personal care for the elderly, where there are savings to the UK welfare budget in Scotland pursuant to the universal nature of provision here. Until 2006, this phenomenon was recognised with respect to the Council Tax (devolved) and Council Tax Benefit (then reserved) through the use of a funding agreement between Westminster and Holyrood. Between 1999 and 2006, increases or decreases to Scottish Council Tax, compared to the UK average, which led to a higher or lower than average call for Council Tax Benefit funding in Scotland led to block grant adjustments compensating whichever government suffered a funding detriment as a consequence of the variation.

Whilst the devolution of Council Tax Benefit has now rendered this specific arrangement redundant, it has a wider application in circumstances where it can be demonstrated that specific decisions using devolved funding have a positive impact on the UK welfare budget in Scotland. As an example the STUC cites potential action by the Scottish Government to create jobs for young people as was delivered by the previous Westminster Government's 'Future Jobs Fund'. This initiative was partly financed through additional fiscal stimulus, but also funded through benefit savings as a consequence of the newly created jobs which were targeted at young job seekers.

Recommendation

7.5 The agreement of a financial memorandum allowing adjustments to the block grant to recognise discreet actions by the Scottish Government using devolved funding which have a positive impact on UK welfare spending in Scotland.

Borrowing

The STUC has already outlined a recommendation for increased borrowing capacity to finance capital investment and direct government investment. However a significant

increase in tax devolution requires a borrowing capacity to match for the purposes of current account management.

Recommendation

7.6 The capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the UK Treasury

7.7 The capacity should exist for the Scottish Government to issue bonds within normal and negotiable limits

3. A better labour market and workplace protection

The STUC believes that a central cause of current economic failures, and indeed the financial crisis itself, has been the fundamental inequalities in the labour market rooted in gender and other forms of discrimination; weak protections for workers; and the decline of collective bargaining as a means of ensuring decent wages and lower levels of pay inequality. A number of the key issues are discussed here and Appendix B looks in more detail at this area of policy, which is central to trade unionism.

Only a small number of aspects of employment regulation are currently devolved to the Scottish Parliament – the employment of children and the functioning of the agricultural wages board. However the Scottish Parliament exercises a range of powers which impact upon the workplace, some of which are detailed in Appendix B.

The default position under the current constitutional settlement has been for primary legislation on equalities, employment law, health and safety, trade union regulation and minimum wages to be reserved to Westminster. These are henceforth referred to as ‘workplace protections’ although equalities is also considered in its wider context later.

Whilst this division of powers exists between Holyrood and Westminster, it is not the case across the whole of the UK. In Northern Ireland all of the legislation listed above is devolved to the Northern Ireland Assembly.

In the context of the wide range of powers already devolved to Scotland or potentially to be devolved to Scotland (including a separate legal system, powers on economic development, planning, environmental protection and additional tax and welfare powers) there is a strong case to be made for devolving workplace protection. This is because it is easier to imagine coherent policies on economic development, tackling inequality through public service provision, welfare and active labour market intervention if the Scottish Parliament is empowered to tackle discrimination, poor employment practice, insecure employment, low minimum wages and to create healthier workplaces and promote collective bargaining.

In taking the view that workplace protection should be devolved, STUC has been mindful of the potential for competitive deregulation in the pursuit of investment and of the economic impacts of the creation of separate regulation. The STUC also recognises that in a highly integrated economy with a shared currency and similar taxation system, the potential for

policy divergence is likely to be limited. Much of the law is underpinned by EU Directives which offers both minimum protection and a range of restrictions on workplace protection.

However, the STUC also notes the appetite in Scotland for reducing income inequality and the desire to forge a more positive relationship with trade unions. There are also specific Scottish challenges with respect to health and safety which can be better met with devolved powers.

There is no inherent reason why workplace protection and cannot be devolved, as is the case in Northern Ireland. Devolving these powers has allowed Northern Ireland to pass distinctive legislation with regard to equality, - particularly around religion and political opinion - which has no precedent within the UK setting.

As mentioned earlier there has recently been some divergence in the employment environment with Northern Ireland choosing not to implement some of the reforms that were undertaken at a Westminster level.

There have been examples of delays in implementing equality and workplace protection legislation in Northern Ireland after its implementation in Great Britain and in practice some legislation came into place much later than in the rest of the UK, for example the Race Relations (Northern Ireland) Order was passed in 1997, whereas the Race Relations Act was passed in Great Britain in 1976. However, STUC does not believe that prevailing conditions in Scotland suggest that this would be the case.

The example of Northern Ireland shows, that it is possible to achieve a balance between maintaining a single labour market and devolving employment and equality powers. It also shows, however, that even where an effort is made to streamline provisions were possible, some divergence in the regulatory regimes is also inevitable, but that this divergence can be helpful and can reflect the specific context and needs of that nation.

Recommendation

3.1 The devolution of employment law, health and safety, trade union law and the minimum wage

Regulation of public sector pension schemes (with the exception of the Civil Service Pensions Scheme) is currently divided between the two legislatures even though these Scottish schemes are subject to separate actuarial valuation.

Recommendation

3.2 The devolution of public sector pensions schemes with the exception of the Civil Service Scheme.

4. Equality

The case for devolving employment law and equality law together

If equality law were to be devolved without employment law, there would be a restriction on the areas that the Scottish Parliament could effectively legislate with regards to equality. In this scenario, it would be possible to have separate Scottish equality law on devolved matters such as housing and health, enforced by the Scottish courts but it would not be possible for the Scottish Parliament to legislate with regard to equality within employment as this would be considered 'creating an employment right' and therefore reserved. This creates a situation where equality law within the employment setting would wholly be governed by Westminster as a consequence of their reservation of employment law more generally, while other parts of equality law are governed by the Scottish Parliament.

By coupling employment law and equality law together, however, it is possible to avoid complexities and keep a streamlined approach to equality legislation that is to the benefits of organisations trying to meet the law and individuals trying to access their rights in a variety of settings.

Recommendation

4.1 That employment law and equality law not be separated with respect to further devolution proposals

Other aspects of equality law

Over and above equality issues relating to employment, the STUC believes that certain aspects of equality might better be tackled by the Scottish Parliament. Scotland has very distinct questions around sectarianism, differing demographics and a considerable rural dimension and therefore might benefit from different and distinctive legislative approaches to support equality outcomes for the Scottish people.

Devolution of the Enforcement of Equality Law

In the case that the Commission decides against the devolution of employment law, there is still potential to devolve its enforcement to the Scottish Parliament, even if primary legislative powers on passing the law are reserved to Westminster. This makes sense in conjunction with a wider set of proposals around the devolution of health and safety enforcement and employment tribunals. It also emphasizes the key point around equality. Ultimately equality law is governed by European minimums and therefore there is a level below which no part of the UK can drop. Equally the law as it currently stands is positive and tends to support the advancement of equality. The major barrier to achieving equality therefore is not the law, but practice, culture and indeed discriminatory attitudes. Therefore enforcement is key to advancing equality and major gains could be made if enforcement was carried out in line with Scottish expectations and the needs of the Scottish economy.

The STUC has a strong history of fighting for equality of representation for women. This includes arguing for the mandatory 50-50 representation of women in the Scottish Parliament and the extension of this to local government elections. The STUC also supports a policy of equal representation on company boards.

Recommendation

4.2 STUC recommends the full devolution of equality law, provided that employment law is also devolved.

4.3 In the case that employment law is not devolved, the STUC favours the devolution of equality enforcement along with the industrial tribunals and health and safety enforcement.

4.4 There should be no impediment under a devolved settlement to the Scottish Parliament legislating for mandatory 50-50 gender representation in the Scottish Parliament and local councils, or for gender equality on company boards.

5. Basic Rights for Scottish Citizens

There is a question around how the UK constitutional settlement functions with regard to international law and the signing, amendment or repeal of international treaties. An element of this debate was picked up in section above around the TTIP but a wider question regarding the basic rights of Scottish citizens remains, particularly in light of recent discussions around European exit and the repeal of the Human Rights Act.

Both the European Convention on Human Rights (ECHR) and EU law are incorporated directly into the devolution statutes in Scotland, Wales and Northern Ireland. For example, section 29(2)(d) of the Scotland Act 1998 (SA), provides that Acts of the Scottish Parliament that are incompatible with EU law or with ECHR rights are 'not law'. Section 108(6) Government of Wales Act 2006 states that any act of the Welsh Assembly incompatible with EU law or the ECHR, falls outside its competence. Section 24 of the Northern Ireland Act prohibits any legislation contrary to EU or ECHR.

In this way the ECHR and EU law are essential parts of the Constitutional settlement of the Scottish people and are often rightly portrayed as the backbone of a Scottish legal system. The Westminster Government has the power to repeal the Human Rights Act but in order to do so effectively it would also have to amend the Scotland Act. The UK Parliament may amend the devolution Acts, but the UK government has stated that it will not normally legislate on devolved matters without the consent of the devolved legislature. In this way, repeal of the Human Rights Act should require a Sewel convention.

In order to solidify the position of the Scottish Parliament in this respect it is necessary to give the Sewel Convention legal force and therefore remove the word 'normally' from the UK Government's commitment not to amend the devolution Acts. As a minimum the STUC would like to see this incorporated into an enhanced devolution package.

It might also be possible to go further than this and provide scope for the devolved Parliaments to have a power of co-decision on constitutional matters. So for example in order to change the UK's relationship with the European Court of Human Rights the Westminster Government might need consent from the majority of devolved parliaments, or to win a referendum on European exit, there might need to be majorities in every devolved nation.

There are many options for strengthening the rights of Scottish people on constitutional issues. However a basic starting point for this would require a clear understanding of what a 'constitutional issue' is within the UK context, a stumbling block which should not be underestimated. Ultimately this kind of 'co-decision' approach would strengthen democracy and local decision making (particularly if devolution was pursued within English regions) while also dealing with the current asymmetrical structure of UK democracy.

Extending the franchise for 16 and 17 year olds should also be considered as a matter of priority. It is the STUC's view that 16 and 17 year olds should have the vote in all UK elections, and the Scottish Government and the UK Government should work together to ensure that all necessary statutes are amended to allow this to happen.

Recommendation

5.1 STUC recommends that the Sewel Convention is given legal force.

5.2 In addition consideration should be given to how Scotland can have a stronger level of control around constitutional issues, including any change to agreed international treaties and the agreement of new international treaties. The STUC recommends that focus on both the powers of the Scottish Parliament (and the other devolved Parliaments) and the weight given to voters in Scotland (and the other devolved nations) in referenda be considered.

5.3 The franchise in all UK elections should be extended to include 16 and 17 year olds

6. Welfare

The STUC is deeply disturbed at the direction of UK welfare policy both in terms of cuts in support; and policies such as workfare and the extreme conditionality in the system. We also believe that there is a strong case for the alignment of powers and spending in health and education with welfare.

The key challenges for a full devolution package are the funding of a devolved welfare system and the creation of a new architecture to support an entirely separate system.

The STUC is doubtful that without an agreement on full fiscal autonomy Westminster will consent to a fully devolved welfare system because it would remove important fiscal stabilisers.

In the context of a challenging financial climate, and the likelihood that additional welfare expenditure in Scotland would rely on additional taxation, it cannot be asserted with any confidence that the overall budget would grow if welfare were entirely devolved. There would however be the potential for better policy with respect to conditionality, work fare and other 'initiatives' which are neither cost effective nor humane.

The STUC would need to be convinced that an autonomous welfare system would be sufficiently distinct and better funded to justify the creation of a separate institutional architecture and national insurance system.

The STUC recognises that it might be possible to separate pensions from other functions of the welfare state, with the former remaining reserved.

Short of the full devolution of welfare, the STUC supports the devolution of as many welfare powers as are possible within the UK-wide system of Universal Credit. We also strongly recommend the use of financial memoranda as outlined earlier to enable the Scottish Government to recoup more of the benefit of any interventions reducing the extent to which Scottish people rely on benefits.

STUC supports the devolution of the Works Programme and Jobs Centre Plus to Scotland, allowing the creation of a Scottish Employment Service. Whilst the benefit levels underpinning the systems would endure, as would overall budget constraints, the ability to design back to work support in concert with currently devolved spending budgets such as health and education would be important. It is particularly important that workplace health, equality and decent employment are considered to be integral parts of back to work programmes and these could be more effectively pursued with enhanced devolution. Block grant flexibilities as discussed earlier, would allow a more strategic view to be taken across budgets to enhance the quality of labour market interventions.

Additional welfare powers

The partial devolution of welfare can be supplemented by additional powers providing that changes to the Scotland Act are agreed to allow the Scottish Parliament to adopt new Scottish legislation with a social security purpose; and further, to empower it to "top up" UK benefits with a supplementary Scottish rate through the universal credit using devolved Scottish revenues. This would invest in the Scottish Parliament the power to mitigate the impact of benefit cuts as it sees fit, but not to reduce the basic level of support offered through Universal Credit.

This highly persuasive proposal is discussed in detail by Andrew Tickell, Lecturer in Law, Glasgow Caledonian University and is part of a proposal he has submitted to the Commission (*Securing greater Social Security autonomy and restating the Union: Submission to the Smith Commission*). STUC recommends this approach to additional welfare powers in the strongest possible terms.

Recommendation

- 6.1 **The devolution of Housing Benefit as discussed earlier in this paper**
- 6.2 **The devolution of Attendance Allowance**
- 6.3 **The devolution of Carer's Allowance**
- 6.4 **The devolution of the Work Programme and other employability programmes run by the DWP; and the creation of a Scottish Job centre Plus**
- 6.5 **The adoption of the recommendation of Andrew Tickell in *Securing greater Social Security autonomy and restating the Union***

Section 7 Other powers

Immigration & Asylum

The STUC recognises that the continuation of the United Kingdom implies primary control by the Westminster parliament of immigration and asylum policy. Even with Scottish independence, the STUC foresaw difficulties with an entirely separate Scottish immigration system.

This notwithstanding, the STUC considers there is particular scope for the Scottish Government to pursue migration policies fitted to particular Scottish conditions and the views of its people. These are:

- The tendency for fewer EU and non-EU migrants to wish to come to Scotland compared to some regions of the UK
- The demographic challenges particular to Scotland – its ageing population
- A general (if often exaggerated) tolerance of inward migration amongst those living in Scotland.
- The desire evidenced by successive administrations in Scotland, of different political colours, for a more humane approach to refugees and asylum seekers and the existence of various devolved powers (including child protection) which has clashed in the past with reserved powers on immigration.

The current UK immigration legislation creates and has the powers to create a number of conditions for entry to the UK for EU and non-EU including residency requirements, proof of employer, spousal rights, the treatment of overseas students etc. The STUC believes that agreement should be reached to allow amendments to immigration legislation and, if necessary, the Scotland Act, to invoke a 'presumption in favour of Scottish Government autonomy' in which the Scottish Government would be able to direct immigration policy as it affects Scotland. The caveat would be the ability of the UK Government to override such legislation, but only in the case that it demonstrated clear detriment to the rUK in relation to identifiable and significant security or economic issues.

An example of where such a 'presumption' would be utilised is the decision of the current UK Government to revoke the Scottish Government 'Fresh Talent' initiative without, in the STUC's view, the provision of objective evidence of detriment to the UK.

There are likely to be severe limitations to the Scottish Government's ability to conduct an alternative Asylum and Refugee policy, as the ultimate outcome of offering asylum tends for some, to be UK citizenship. However, evidence from Glasgow suggests that once UK citizenship is achieved, new citizens tend to remain in the communities in which they have lived and imaginative approaches should be explored to allow the Scottish Government to offer asylum to particular ethnic groups or those suffering for reasons of war or other oppression.

The STUC does not see any reason why those in the process of seeking leave to remain or citizenship should not be allowed to work in Scotland following the criteria for a discreet approach to migration outlined earlier.

Recommendation

1.2 A presumption in favour of the right of Scotland to pursue distinctive policy on migration, subject to the UK Government providing substantive evidence of detriment to the rUK.

1.3 An agreement that the Scottish Government be able to offer asylum to refugees, subject to reserved Immigration and Nationalities Department consent

1.4 The Scottish Government to be enabled to legislate for those seeking asylum to work in Scotland whilst their applications are being processed.

Energy policy

As reflected in our *A Just Scotland* reports, the STUC believes that energy policy at Scottish and UK level has failed - and is likely to continue to fail - to deliver on the three key social priorities of security of supply, emissions reduction and affordability.

The STUC also agrees with the Scottish Government's view that *'currently there is a complex landscape for energy policy across the UK'* and that the division of relevant responsibilities established by the original devolution settlement may not have assisted in delivering the priorities listed above. For instance, there can be little doubt that the regulatory regime has discriminated against Scottish generation; especially low carbon power generated around Scotland's periphery.

Therefore the STUC is sympathetic to the Scottish Government's call for Scotland to have a *'formal role in network regulation and setting reliability standards, including planning, ownership and operation of energy infrastructure and fairer grid charges to ensure secure energy supplies'* and supports the full devolution of the regulation of energy efficiency and additional powers to support low carbon generation. These new powers must be used to build a new approach to energy policy which prioritises community ownership and effectively tackles fuel poverty.

However the STUC notes that the Scottish Government wishes Scotland to remain fully integrated into the UK energy market. The challenges of making a system with separate and distinct approaches to industry regulation work in practice must not be underestimated.

The STUC does not support devolution of the Oil and Gas Fiscal Regime.

Recommendation

1.5 The STUC supports devolution of additional powers to tailor support for low carbon generation and the full scope of regulation of energy efficiency.

1.6 The STUC is supportive of Scotland playing a more formal role in industry regulation but recognises the challenges of delivering a distinct regulatory approach within an all UK energy market. Therefore, it is essential that all stakeholders are fully engaged in discussions about how new powers and responsibilities might be utilised.

Broadcasting

As reflected in earlier submissions to the Calman and Broadcasting Commissions, the STUC believes that the broadcasting industry has failed both to provide sufficient quality employment opportunities and to discharge its duty to strengthen and sustain Scotland's democracy and culture due to low investment, failures of regulatory oversight and a lack of accountability.

The STUC and the Scottish Federation of Entertainment Unions have previously called for the regulatory system to be restructured to create a significantly enhanced role for the Scottish Parliament. It is essential that, for instance, the BBC Trust and Ofcom are much more accountable to the Scottish Parliament. Any additional powers devolved to Scotland as a result of the Smith Commission process must be designed and used to boost the accountability of broadcasting to Scottish citizens through their democratically elected representatives.

Recommendation

1.7 The STUC calls for the Scottish Parliament to be given formal regulatory power over broadcasting in Scotland. It is particularly important that the public service broadcasters are accountable to, and seen to be accountable to, the Scottish Parliament.