

Potential implications of the Smith Commission for public health and health inequalities

Summary

The proposed powers contained within the Smith Commission report may offer some new possibilities for the Scottish Government and Scottish Parliament to act to improve health and reduce inequalities if they are enacted as suggested. However, these new powers are severely constrained and the most important determinants of health and inequalities continue to be reserved to Westminster.

Of the new powers that are proposed there are some that are more likely to have an impact if used appropriately:

- Social security: mitigation against the potential negative consequences of the introduction of Universal Credit, control over the social fund, disability and sickness benefits, and the ability to create new benefits without compromising UK-led benefits.
- Services for those unemployed (currently framed as 'employability' services)
- Rights-based legislation for socioeconomic status (if the risks of challenges to proportionate universalism and services for vulnerable groups can be mitigated)
- The ability to bring rail services into public ownership
- Licensing of onshore gas and oil drilling (including 'fracking')
- Regulation of 'payday loan' shops and 'fixed odds betting'
- Taxation: the level and bands of income tax on non-savings and non-dividend income, Air Passenger Duty and the Aggregates Levy

The proposed new powers over the voting franchise, Crown Estate, gender quotas for public bodies, to make requests of the Competition and Markets Authority, and consumer and advocacy services have the potential to make a small contribution if used appropriately. The continuing discussions over abortion legislation, borrowing powers, supporting vulnerable immigrants and tailoring the work of the Health and Safety Executive in Scotland may also offer some opportunities in due course.

Background

The Smith Commission reported its recommendations on the further devolution of powers to the Scottish Parliament on the 26th November 2014. The Commission involved members of the Conservatives, Labour, Liberal Democrats, Scottish National Party and Scottish Green Party and took submissions from a wide range of groups as part of a short consultation process. The UK Government has stated that it is its intention now to bring forward legislation through the House of Commons in line with the recommendations laid out by the Smith Commission.

Note that the 2012 Scotland Act, following the Calman Commission on devolution, has also generated a number of other recent changes to the responsibilities of the Scottish Parliament (including the power to vary income tax by 10% (applying equally across all tax bands), power of stamp duty and landfill tax, borrowing powers up to £2.2bn per annum, representation in the governance of the BBC and Crown Estate, and powers to control and regulate illicit drugs, set drink

driving limits and road speed limits). Some of these constitutional changes have already resulted in changes to policy in Scotland (lowered drink drive limits and a rise in stamp duty for high value housing).

This paper provides a brief commentary on the implications of the potential changes that may result from the Smith commission on public health and health inequalities if those powers were to be used by the Scottish Parliament. It would be possible to do a more thorough assessment of the opportunities and threats presented by the Commission's proposals (using the standard approaches of Health Impact Assessment supplemented by literature review) if this was a priority for the Scottish Government.

Methodological approach

The approach taken in this commentary is broadly consistent with that of a rapid scoping exercise for a Health Impact Assessment (HIA). This has meant:

1. Identifying the changes in the devolution settlement through an examination of the Smith Commission text.
2. Theorising the potential uses that the changes in powers could be used for, in terms of changes in policy or practice.
3. Theorising the health and inequality impacts (positive, negative and unknown) of the potential policy and practice changes using accumulated public health knowledge (as synthesised in standard public health textbooks for overall health impacts and the NHS Health Scotland Equally Well Policy review (for inequalities)).

It would be possible to undertake a more formal HIA process, including impacts on inequalities, if this was prioritised and likely to inform decision-making.

The proposals

The Smith Commission proposed recommendations under three 'pillars': providing a durable but responsive constitutional settlement for the governance of Scotland; delivering prosperity, a healthy economy, jobs, and social justice; and strengthening the financial responsibility of the Scottish Parliament. There are also a number of 'additional items for consideration' which relate to areas which do not require devolution of powers.

Pillar 1 – "Providing a durable but responsive constitutional settlement for the governance of Scotland"

Under the first 'pillar', the Smith Commission has proposed a series of changes relating to constitutional and electoral powers, and the Crown Estate:

1. The Sewel convention (a means of agreeing when the UK Government can legislate in devolved matters) is to become statutory.
2. The Scottish Parliament is to gain control over the conduct and regulations surrounding the Scottish Parliamentary elections (including changes to the franchise) and size of the

legislature (although only by two thirds majority), but the regulation of political parties is to remain reserved.

3. New inter-governmental committee structures are to be introduced as part of a revised Memorandum of Understanding (MoU).
4. Greater involvement of Scottish ministers in negotiations with the European Union relating to developed matters, although there is no proposal for a statutory basis for this.
5. Responsibility for the management of the Crown Estate's economic assets in Scotland and associated revenue are to be devolved to the Scottish Parliament or, if requested, to local authorities. This is to be subject to an MoU in relation to protecting the interests of the UK Government in relation to oil, gas, energy, defence and security. This change is also to involve a new responsibility for financing part of the Sovereign Grant (i.e. to maintain the monarchy).
6. It is proposed that Scottish ministers and the Scottish parliament will have statutory roles in relation to the accountability and governance of the BBC, OFCOM, OFGEM, the Maritime and Coastguard Agency and Northern Lighthouse Board.

Of the proposals in this section, the implications for public health and health inequalities are limited. Extension of the voting franchise, if enacted, is likely to be empowering for young people and there is evidence to suggest that a more politically engaged population, and a more democratically accountable government, are both beneficial for health and are likely to reduce inequalities.

It is also clear the extent to which the current reserved status of the Crown Estate has influenced policy direction and implementation in Scotland, and therefore the extent to which a change might bring about change.

That said, there may be potential for the proposed partial devolution of powers over the Crown Estate to facilitate changes in energy policy that might enhance sustainability and reduce local and global Greenhouse Gas Emissions (GHGs) which would improve health and reduce inequalities (including investment in energy generation from tidal lagoons, wave power, offshore wind, etc.) or for the reverse to occur (greater fracking, fossil fuel extraction, etc.). It is therefore possible that, if a sustainable (in environmental and financial terms) energy policy was to be facilitated by the changes to Crown Estate governance, it may enhance health and reduce inequalities through the provision of lower cost energy. However, the potential for deleterious effects is also present.

The proposed MoU in relation to security presumably means there is little prospect of removing the threats of nuclear and ballistic accidents, or threats due to attacks on military bases, that are currently extant.

Pillar 2 - a healthy economy, jobs, and social justice

Under the second 'pillar', the Smith Commission has proposed a series of changes relating to welfare and the economy. The specific proposals are:

7. The Scottish Government is to be given powers to vary the frequency of Universal Credit (UC) payment and how this is split within households, to pay landlords directly for housing costs, and to vary the housing costs elements; with any changes in costs met from the Scottish budget.

8. Those aspects of social security that lie outside UC (carers benefits, for disabled people, sickness benefits, Disability Living Allowance, Personal Independence Payments, Industrial Injuries Disablement Allowance and Severe Disablement Allowance) and which comprise the Regulated Social Fund (Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant, Winter Fuel Payment), and Discretionary Housing Payments are all proposed to be devolved to the Scottish Parliament (with any changes in costs met from the Scottish budget).
9. The Scottish Government will gain powers to fund new welfare benefits without endangering eligibility to reserved benefits (including those relating to the benefits cap).
10. The arrangements for providing support to those unemployed (i.e. 'employability' programmes) will be devolved on expiry of the current contractual commitments.
11. The power to introduce gender quotas on public bodies will be devolved, as will the ability to introduce legislation on socioeconomic rights for devolved issues.
12. It is recommended that further discussion on the devolution of some health-related legislation (abortion, xenotransplantation, embryology, surrogacy, genetics, medicines and poisons and welfare foods) be pursued.
13. Powers over the management of various tribunals are to be devolved (administrative, judicial and legislative, but not immigration or proscribed organisations).
14. The power to have a public sector rail organisation bid and run Scottish rail services will be devolved.
15. The powers over speed limits, road traffic signs and the British Transport Police are to be devolved.
16. Some aspects of energy policy, specifically the design and implementation of obligations on suppliers in relation to energy efficiency and fuel poverty (but not the scale, costs or apportionment of obligations) will be devolved under the agreement that this will not create a detriment to the UK Government.
17. The licensing of onshore oil and gas development will be devolved.
18. A power to require the Competition and Markets Authority to carry out a full second phase investigation after an initial study in relation to particular competition issues pertinent in Scotland.
19. Consumer advocacy and advice services are to be devolved.
20. New powers relating to the regulation of 'payday loan shops' and 'fixed odds betting terminals' are to be devolved.

The value, conditionality, universality and operation of the social security system are key determinants of health. The vast majority of this system is to remain a reserved policy area, however there is now a proposal to devolve some aspects of this which could be used to mitigate against the likely negative consequences of the current policy direction (by making UC a weekly rather than monthly payment, ensuring housing costs are paid directly and ensuring that income does not simply transfer to a single 'head of household'). Furthermore, the proposals would transfer social fund welfare payments, disability and sickness benefits to the Scottish Parliament, and would facilitate the creation of new benefits. This has the potential to reduce inequalities and improve health if the value of these benefits can be increased and their conditionality reduced. However, it is not clear whether the assessment of eligibility for these benefits is proposed for devolution – the main aspect of the current regime which is theorised to be most detrimental to health. The financial implications

for government of increasing the value or number of benefits will be discussed in more detail under 'pillar 3'.

The proposed devolution of services for those who are unemployed (currently very focused on 'employability' and skills) is a potentially important opportunity. The current UK approach to unemployment is almost entirely supply-side orientated despite a lack of high quality and sufficiently well paid employment being the most important factor in explaining the current unemployment data. The quality of many of the current suite of 'employability' services is likely to be low, with a very modest impact on reducing unemployment and a poor record of enhancing the skills and motivation of job-seekers. If the powers over this sector are devolved in the future there would be an opportunity to use the resources much more efficiently to identify genuine skills gaps and frictional unemployment and address these issues directly. The focus of employment policy could then be re-orientated towards demand side measures and attaining full employment.

The power to introduce gender quotas for public bodies could ensure that one aspect of gender inequality is reduced, and this is likely to be a helpful policy in ensuring better governance, and ultimately performance, of public sector bodies.

There is also a proposed devolution of the power to introduce 'legislation on socioeconomic rights for devolved matters'. This is likely to refer to earlier discussions on whether socioeconomic status would be a protected characteristic such that discrimination on the basis of social class or similar measures would be included in the Equality Act. There is potential to utilise such powers to ensure that explicit or implicit discrimination within devolved services and policies, on the basis of social status, would be outlawed. The implications of this are, however, uncertain. For example, it might be possible to use such legislation to prevent the implementation of proportionate universalism or services for particular vulnerable groups on the basis that this would discriminate against those of high social status. If legislation could be constructed in order to allow discrimination in only one direction it may be useful, but might undermine the case for universalism in public service provision. It is also worth noting that the restriction to devolved matters would prevent the use of such legislation to act against socioeconomic discrimination in many of the most important determinants of health (e.g. the bulk of the tax and welfare system).

Further devolution of powers over ethical considerations in health may have the potential to impact on health and health inequalities (for abortion), but most of these powers are related to very specific medical developments which at present have little impact on health and will carry quite substantial overheads to deal with in terms of parliamentary time, research and governance.

The proposed devolution of powers on transport and energy policy are very limited and circumscribed, with only two proposals having the potential to impact substantially. The first relates to the power to bring the railways into public ownership – something that, if implemented, would have the potential to generate positive health and inequality impacts. The second is the power over licensing of onshore oil and gas developments which would facilitate restrictions on fracking and the consequent positive benefits of moving away from a carbon-based economy (although with the potential negative consequence of higher energy prices and fuel poverty).

Devolution of the powers to request a full enquiry from the Competition and Markets Authority is very limited in that it pertains only to devolved policy areas. This may be useful for transport and

housing markets but the major areas of interest (e.g. banks, supermarkets, energy, media, etc.) will be outside the scope of the Scottish Parliament. The devolution of consumer and advocacy services will need some further exploration to determine the potential for impact.

The power to regulate 'payday loan' shops and 'fixed odds betting' is highly specific, but potentially important, means to reduce the exposure of the population (and disproportionately the most deprived groups) to predatory aspects of the market which exacerbate poverty and debt.

Pillar 3 - strengthening the financial responsibility of the Scottish Parliament

Under the third 'pillar', the Smith Commission has proposed changes relating to financial and taxation powers. The specific proposals are:

21. It is proposed that the rates and thresholds for income tax for non-saving and non-dividend income be set in Scotland. Savings and dividends income, inheritance tax, capital gains tax, corporation tax, oil and gas taxation, fuel duty, excise duty, and the power to introduce new taxes, all remain reserved. There is a very obscure paragraph on VAT which seems to offer no opportunity for variance in the rate in Scotland.
22. Air Passenger Duty (APD) levied on air passengers leaving Scottish airports, and the Aggregates Levy (following resolution of the current legal dispute), will be fully devolved such that the design, collection and replacement with other forms of tax are all options (with compensation to the UK Government for any resultant decline in tax revenues and a change in the block grant to reflect the devolution of collection costs).
23. Revenue impacts from Scottish Government or UK Government decisions will be compensated such that there will be no financial detriment experienced from decisions made elsewhere.
24. The Scottish Government is to be granted further borrowing powers for capital and revenue spending, and although there are broad principles for this outlined, there is no specificity in what these will be.

The proposed changes in this area are limited to some aspects of income tax, APD and the Aggregates Levy. There is concern that the isolated devolution of income tax, were it to be used without changes in taxes on wealth and consumption, could be less effective in redistributing income than would be the case with a more coherent devolution of tax powers. However, it is possible for the system to be made substantially more progressive and for more income to be generated. There is also the potential for a divergence between the actual tax collected within Scotland and the tax receipts received because of the impacts of on economic growth. Changes to APD and the Aggregates Levy have the potential to impact on economic growth and employment, but also to create a 'race to the bottom' on taxation. Similarly, APD could impact positively or negatively on air travel related pollution. The prospects for the Scottish Government to use the proposed new powers to create a more equal and sustainable economy, with the likely positive impacts on health and inequalities, are therefore limited but do offer some possibilities.

Additional items for consideration

In relation to areas which do not require further devolution of powers, further recommendations were made:

25. To seek recognition of a 'made in Scotland' food labelling brand by the European Union.
26. To explore the possibility of foreign-born Scottish graduates remaining in Scotland for a defined length of time.
27. To explore the possibility of extending the right to remain in Scotland for those identified as being trafficked.
28. To explore the possibility of supporting asylum seekers with accommodation, financial support, advice, allowing them to lodge claims to the Home Office from within Scotland, and allowing MSPs to represent their interests in relation to devolved matters to UK authorities.
29. To explore the possibility of revising the arrangements for levy-raising (e.g. in relation to seafood and red meat).
30. To explore the devolution of fines, forfeitures, fixed penalties and Proceeds of Crime revenues to Scotland (with a corresponding adjustment of the block grant).
31. To expose the function and operation of the Health and Safety Executive (HSE) within Scotland in the context of it remaining a reserved area of legislation.

The discussions in relation to these 'additional items' could result in some other powers which could be productively used to improve health and reduce inequalities – particularly in relation to supporting vulnerable immigrants and through further tailoring the work of HSE. The potential for rights legislation to socioeconomic status is substantial, but will need very careful consideration before it would be clear that this would contribute to reduced inequalities.

Conclusions

The proposed powers contained within the Smith Commission report may offer some new possibilities for the Scottish Government and Scottish Parliament to act to improve health and reduce inequalities if they devolved as suggested. The main opportunities relate to the potential devolution of the limited parts of social security, services for those unemployed, the opportunity to introduce rights-based legislation for socioeconomic status (if the risks of challenges to proportionate universalism and services for vulnerable groups can be mitigated), public ownership of the railways, licensing of onshore gas and oil drilling, regulation of 'payday loan' shops and 'fixed odds betting', the setting of the level and bands of income tax on non-savings and non-dividend income, Air Passenger Duty and the Aggregates Levy. However, these new powers are severely constrained and the most important determinants of health and inequalities continue to be reserved to Westminster.

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