



CABINET OFFICE

CABINET SECRETARIAT

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1. ~~Mr. Elvidge~~  
I haven't read this yet. I'll  
come and have a word when I have, and have  
Humphreys, if that's OK.  
J. Emery has said, again, to me today that  
he is going to comment.  
JEM 9/3  
9 March 1999  
2. Return to me please

Dear David

LEGISLATION AT WESTMINSTER ABOUT DEVOLVED MATTERS

Thank you for your letter of 23 February. You sought comments on your draft paper and on the arrangements for securing UK Government Agreement.

As you may know, John Elvidge and Andrew Kennon here advise on these matters. Before either of us lets you have a considered Cabinet Office response, we should want to take the opportunity to consult internally. I suggest that that would be best done once you have had an opportunity to produce a revised version of your paper.

Although there may be no direct parallel with Wales in relation to primary legislation, I also continue to believe that it will not be possible to reach a firm view on the way forward in relation to Scotland until consideration of the Welsh interest in primary legislation is further advanced. You will wish to be aware that John Elvidge is in discussion with Jon Shortridge with a view to circulating a paper to colleagues in short order. You may wish to await that paper before redrafting your own.

As I told you on the telephone, I think the paper needs to be sharpened up considerably to make clear what decisions are being sought from the UK Government. As far as I can see, what you are looking for from this exercise is a statement from HMG about how it will conduct itself in relation to business in the UK Parliament. It would therefore be helpful if you could formulate more precisely what it is that you wish UK Ministers to agree to. You may find it helpful if I set out the points that I have drawn out of your paper as it stands, with some questions that have occurred to me.

1. HMG should not introduce a Bill extending to devolved matters in Scotland unless the SP has first consented to the principle of the proposed legislation.

*What is consent to the principle intended to mean? Is the convention better expressed as dependent on the consent of the Scottish Ministers, leaving them to seek whatever "cover" they need from the SP? The equivalent convention during the Stormont era seems to have referred to the ~~NI Government~~.*

NO!

2. HMG should invite Scottish Ministers to seek the SP's views on any Private Member's Bill following introduction in either House. It should oppose any Bill on which consent has not been given by [Committee?] Stage.

*Is this consent to the principle or to the detail? Would it make more sense to introduce a Scottish Clause to provide that the Bill would only be commenced in Scotland on a resolution of the SP? ~~perhaps~~*

3. HMG should invite Scottish Ministers to seek the SP's views on any private legislation following introduction in either House. It should oppose any Bill on which consent has not been given by [Committee?] Stage.

*Is this consent to the principle or to the detail? Would it make more sense to introduce a Scottish Clause to provide that the Bill would only be commenced in Scotland on a resolution of the SP? Is anyone other than the SofS for Scotland likely to be involved? ~~Possibly~~*

4. A UK Minister should account to the UK Parliament for any matter relating to UK legislation on devolved Scotland in consultation with Scottish Ministers.

*Which Minister should be accountable: the Secretary of State for Scotland or the Whitehall Minister? What is the breadth of this obligation? When should accountability transfer to the Scottish Minister (after completion of passage/royal assent/commencement)?*

*accountability for Bill only - not under matter in question*

5. UK Ministers should include Scottish officials in any Bill team. They should take account of any views expressed by the Scottish Parliament in respect of legislation under consideration in Parliament.

*This question has particular relevance to Wales.*

6. UK Ministers should [not lay/withdraw] any affirmative SI affecting devolved matters in Scotland unless the SP has made an affirmative resolution before [laying/affirmative resolution in either House].

*Do you really want to go this far? Is the position of Scottish Ministers not more relevant (cf. point 7)?*

7. UK Ministers should not make negative resolution SIs for devolved matters in Scotland without Scottish Ministers' consent irrespective of the views of the SP.

*What happens if we are dealing with Regulations under S.2(2) European Communities Act to rectify a breach by the Scottish Administration?*

8. If a negative resolution SI affecting devolved matters in Scotland is prayed against, UK Ministers should ...do what?

9. All of these conventions should come into force on 6 May.

I hope these statements are helpful in concentrating minds. However, I am sure that no convention to which Ministers might be prepared to subscribe could be expressed in such absolute terms.

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A copy of my letter goes to Steve Pomeroy in the Welsh Office; to John Elvidge and Andrew Kennon and to colleagues in the Constitution Secretariat. I should be grateful if you would ensure that NI colleagues are involved in the next round.

*Yours aye*

*David*

**D A BREW**

Copy to: Steve Pomeroy, WO  
John Elvidge, E&D Secretariat  
Andrew Kennon, E&D Secretariat  
Quentin Thomas, Constitution Secretariat  
Rosemary Jeffreys, Constitution Secretariat  
Paula Cohen, Constitution Secretariat  
Simon Goodwin, Constitution Secretariat  
Graham Davies, Constitution Secretariat

## Rogers DA (David)

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**From:** Rogers DA (David)  
**Sent:** 09 March 1999 19:20  
**To:** Walford IN (Ian)  
**Subject:** future leg: the Brew View

*Letter to Brew  
replying.*

(3)

Spoke to D Brew

### The Brew view

He was adamant that we would get a "huge raspberry" if we circulated these proposals at Ministerial level now, even on the basis that detail is to be sorted out by officials. He says there is great nervousness in Whitehall about making any further devolution-related commitments (presumably because of opinion polls and uncertainty about how the devolved bodies will act). He reckoned that the response would be "why do we need to decide now as an announcement would not be until after the election, why to we need to make an announcement anyway, and why cannot we deal with each bill on a case by case basis?". He pointed out that the people we need to persuade are Mrs Beckett and the Lord Chancellor, as it is the former who will manage the business in Parliament in order to implement the convention. Therefore Mrs Beckett's advisers, John Elvidge and Andrew Kennon need to be on side. John has apparently already opined that he sees no need to rush at these issues and offered to tell us that. And the Cabinet Office also want the Welsh and Northern Irish on side before the proposals go more widely around Whitehall.

Therefore David is sure that the next stage should be for Robert to send our paper to John Elvidge, copied to the Welsh and Northern Irish but not more widely, and perhaps suggesting a meeting.

Incidentally, the Welsh paper mentioned by David is being drafted by John Elvidge and is near to completion but we should not hold our breath.

*into 2  
PH*

### My view

*- FSA warning  
not state order.*

You can try speaking to David if you want, or perhaps Robert could try speaking to John Elvidge. But I do not think that you will get any joy. Indeed as you know I was a bit concerned originally that writing at Ministerial level would be going off at half cock. The Brew/Elvidge view seems to indicate that that could well be the case

Our aim is to get a policy agreed now, and announced as soon as possible after the election, so that we have certainty about how the convention will operate (and because it seems right as a matter of principle that Parliament is informed of the Government's intentions). From our point of view, the proposals look like non-contentious flesh on the bones of the announcement last year, but I can see that Whitehall will be wary of anything which removes the scope for interpreting the convention flexibly. Therefore it seems to me that we will need to persuade Whitehall that muddling through on a case by case basis is not a viable option. The arguments are: that muddling through on one case without thinking through the general issues could lead to undesirable precedents being set; that Government may well need to answer MP's questions about how the proposals mentioned in the Beckett memorandum will work in practice; and that it need to be able to respond to pressure from the Scottish Ministers and Parliament for similar answers, and notably about the Bills in the present session. These arguments will sound more convincing if they are backed by the Cabinet Office rather than us. Indeed it seems to me that the best way of overcoming the likely suspicion in Whitehall more generally would be for the proposals to issue from Cabinet Office.

But the bottom line is that if we do not achieve CO agreement to the proposals they will get nowhere. And it does not appear that we will get that agreement if we proceed as we had intended. Therefore I think that the submission should go to the SofS with the recommendation that we discuss the proposals at official level with other departments. The submission need not await the "Welsh" paper but the proposals put to Whitehall better await that.

BY E-MAIL TO ALL

1. Mr Davison  
2. 5/2/13

From: E C Davison  
DD:LG2  
5 March 1999

PS/Mr McLeish

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Copy to: PS/Secretary of State  
PS/Permanent Secretary  
PS/DD  
PS/HD  
PS/AEFD  
Solicitor  
Director, InD  
Mr Ewing, Constitution Group  
Parliamentary Clerk  
Special Advisers

**PRIVATE MEMBER'S BILL: JAMES CLAPPISON MP  
BREEDING AND SALE OF DOGS (WELFARE) BILL**

**Purpose**

1. For Ministers to determine whether the above Private Member's Bill should apply to Scotland and to respond to Mr Howarth's letter of 24 February to the President of the Council seeking clearance that the Bill should not be blocked at Second Reading on Friday 12 March.

**Timing**

2. **Urgent.** A response is required by Tuesday 9 March.

**Background**

3. The background to the Bill is explained in Mr Howarth's letter. The Bill, if enacted, will improve the welfare of dogs by both imposing tighter controls on large dog breeding establishments, but without imposing conditions on the hobby breeder, and controlling the circumstances in which such dogs can be sold. The Bill is similar to a Private Member's Bill introduced by Mike Hall MP last year which had Government support but was blocked by the Opposition at Report Stage. Its contents are consistent with the publication New Labour, New Life for Animals. Home Office report that there is strong public support for the Bill, although it is not a subject on which we have received any representations and we are not in a position to assess Scottish public opinion on it.

**Scottish Parliament Considerations**

4. The subject matter of the Bill will be in a devolved area; and the main question for Scottish Office Ministers is whether to allow GB legislation on this subject to go ahead at this stage. It is the kind of Bill which, in the days before the Scotland Act, Scottish

Ministers would have supported almost automatically, since not to do so would have been indefensible. Devolution obviously changes all that; criticism is as likely to come for letting legislation go through Westminster at a time when it could just as well have been left for the Scottish Parliament to consider, as for missing an opportunity to do something for animal welfare.

### **Bill Contents**

5. If the Bill were to apply to Scotland we, like the Home Office, would have a few reservations about it as currently drafted. In particular the Bill seeks to introduce a form of registration/identification for all dogs which are sold by breeding establishments to pet shops. We would wish to ensure that any such references in the Bill was not the first steps in an effort by the sponsors to introduce some form of dog registration by the back door. We have made our concerns known at official level and at this stage do not consider it is necessary to reinforce these at Ministerial level. DETR are currently undertaking further research regarding the merits of introducing some form of dog registration or licensing scheme and are keeping us informed of developments. We need to ensure that the Private Member's Bill in no way restricts the outcome of these deliberations although it will for the Scottish Parliament to determine whether any such scheme is ultimately introduced north of the border. However this issue, and other minor concerns which we have made Home Office officials aware of regarding the draft Bill, can be addressed by the tabling of Government amendments at Committee should the Bill obtain Second Reading on 12 March.

### **Recommendation**

6. None of these concerns, even the devolution question, calls for the Bill to be blocked at Second Reading. I would suggest that Mr McLeish might reply to that effect, but indicate that the timing of the legislation, on a devolved subject, is such that the Government should seek to have it disappplied from Scotland. I attach a draft in those terms. If however Ministers are content to let the Bill go through as a GB measure, silence will be taken as assent.

E C DAVISON  
5 March 1999

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