

Mr I Gordon ✓ ✓ Mr Ewing, ES ✓
Mr Ferguson, LG ✓ ✓ Dr Wildgoose, AEFD ✓
Mr Beaton, SCA ✓ Mr Aldridge, DoH ✓
Mr I Campbell ✓ ✓ Mr Goodall, HD ✓
Ms Duncan, DD-TD ✓ ✓ Mr Stevens, SWSG
Mr Tripp, InD ✓ ✓ Mr Parr, HD ✓
Ms Gregson, EID ✓ ✓ Mr Kernohan, PHPU ✓
Ms Tyrell, PHPU ✓ ✓ Ms Callaghan, DD-LG ✓
Mr Fleming, AEFD ✓ Parliamentary Clerk (Scottish Parliament)

For family?
1/2/99
4

Copy to: Mr Jamieson ✓ Mr Walford
Mr Foubister ✓ Mrs Brannan
Ms Hibbert Mr Burgess

LEGISLATION AT WESTMINSTER ABOUT DEVOLVED MATTERS

1. I attach a draft submission covering the proposed arranged SPQ informing the Scottish Parliament about those Bills which are presently before Westminster and which make provision about devolved matters. Could I have comments please, and responses to the annotated queries, by 4 pm on Tuesday 1 June?
2. In particular, could Mr Stage let me know whether he has found any Bills which need to be added to the list (which I sent to him earlier in the week), or any others which (like the Financial Services and Markets Bill about which I have minuted separately) could be introduced before D-day. Could he also let me know the format for draft SPQ answers?
3. Could Mr Tripp please consider the proposals for presentation, and could Mr Ewing and Mr Campbell please consider the handling points? Does Mr Campbell think that the submission should go as a "1, 2" via Mr McCabe?

DAVID ROGERS
ES Ministerial Secretariat
Room 044
SAH
Ext 45534

27 May 1999

From: Ian Walford
ES Cabinet Secretariat
May 1999

First Minister

Copy to: Deputy First Minister
Scottish Ministers
PS/Perm Sec
PS/Departments
Director, SCA
Solicitor
Mr Gordon, OSSS
Mr Jamieson
Mr Ewing
Dr Wildgoose
Director, InD
Mr Rogers
[Special Advisers]

LEGISLATION AT WESTMINSTER ABOUT DEVOLVED MATTERS

Purpose

1. To seek the First Minister's approval for the handling and terms of a statement notifying the Scottish Parliament of Bills which make provision about devolved matters which may still be before Westminster on D-Day. The statement also explains the convention which is expected to be established that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. The Scottish Cabinet agreed on 20 May that a statement along these lines should be made.

Timing

2. **Urgent.** The statement should be made before the Scottish Parliament is asked to consent to the Food Standards Agency Bill on [] June. Accordingly it would be helpful to have the First Minister's response by []. It could any comments from other Ministers on the proposals please be sent to you by []?

Background

3. Nothing in the Scotland Act prevents the Westminster Parliament from legislating about devolved matters. However, Lord Sewel announced to the Lords on 21 July 1998 that the Government "would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament". This announcement was reflected in Mrs Beckett's evidence in November to the Commons Procedure Committee's inquiry into the procedural consequences of devolution. The Committee's report published on 24 May says that the Committee support the principles behind Mrs Beckett's statement and agree that the House should not legislate without the consent of the devolved legislature concerned.

4. In practice, we would expect that a Bill covering devolved matters in Scotland would normally be promoted by the UK Government only when UK and Scottish Ministers agree that a particular matter should be covered by a UK or GB-wide Act. This might be the case, for example, where it is agreed there should be a common regime of enforcement or regulation, or where (as in the case of the FSA) it is proposed that a new cross-border public authority should be established.

5. The convention is likely to be invoked for the first time if the FSA Bill if it is published in June, as there is a public commitment by the UK Government to seek the Scottish Parliament's consent before proceeding further at Westminster. Detailed advice is being prepared by AEFD. The Bill will set a precedent for the Scottish Parliament's consent being sought to a detailed proposal for legislation in the form of a draft Bill.

[Mr Beaton/Mr Parr, I will need to insert something here if consent is also to be sought for the Financial Services and Markets Bill or the Vienna Sales Convention Bill. I have minuted you separately about that.]

Bills currently before Westminster

6. A number of Bills which make provision about devolved matters are likely still to be before Westminster on D-Day. They are listed in attachment. It is expected that Scottish Office Ministers will consult the appropriate Scottish Ministers about the handling of the remaining stages of these Bills. One could make a case that the Scottish Parliament should be asked formally to consent to the legislative process continuing for these Bills. However,

there would be little point as the Bills are at advanced stages and the Scottish Parliament will be able to repeal or amend them in due course should it see fit.

7. Cabinet agreed on 20 May that the First Minister should make a statement to the Scottish Parliament explaining the position with regard to these Bills and the convention about consent for future legislation. **A draft statement is attached.** It takes the form of the answer to an arranged SPQ.

8. The statement should ideally be made advance of the proposed debate in the Scottish Parliament on the FSA Bill. That is timetabled for [], following the expected publication of the Bill at Westminster on []. This points to the SPQ being answered on []. Should MSPs wish to debate the statement, we would advise conceding a short debate.

Presentation

9. Most of the Bills on the list have the potential to attract the attention of the media, as will any announcement by the First Minister. We therefore propose that the statement should be the subject of a press release. We will put up that and lines for InD to take for clearance in due course.

Informing the Secretary of State

10. Scottish Office Ministers have an interest both in the Bills listed in the statement and the working of the proposed convention over the longer term. We therefore propose, if the First Minister agrees, to copy the statement to the Secretary of State.

Recommendation

11. I recommend that, subject to the views of other Ministers, the First Minister should:

11.1 agree to the terms of the attached arranged SPQ notifying the Scottish Parliament about the expected convention about consent to future Westminster legislation about devolved matters, and explaining the position of this session's Bills which may still be before Westminster on D-Day;

11.2 agree that the statement should be made on [], before the expected debate on the FSA Bill on [];

11.3 agree that we may copy the proposed statement in advance to the Secretary of State for Scotland;

11.4 agree that the statement should be the subject of a press release.

IAN WALFORD
ES Cabinet Secretariat
Room 049
SAH
Ext 45532

May 1999

[JUNE]

WRITTEN

[The format will obviously have to be changed to whatever is the form for SPQs]

SCOTTISH PARLIAMENT

«Name» («Constituency»): To ask the Scottish Executive, if it will make a statement about legislation by the United Kingdom Parliament about matters within the legislative competence of the Scottish Parliament. («Number»)

MR DONALD DEWAR:

There are a number of Bills currently before the United Kingdom Parliament which make provision about matters which, from 1 July, will be within the legislative competence of the Scottish Parliament. It is possible that some of these will still be under consideration at Westminster on 1 July, albeit at advanced stages of their passage. The table lists the Bills concerned. [The Scottish Ministers are being consulted by the Scottish Office about the handling of the remaining stages of this legislation]. *[Can you all please check that this statement will be justified?]* It will be open to the Scottish Parliament to amend or repeal these Bills, once they are enacted, so far as they make provision within its legislative competence.

Following devolution, the Westminster Parliament will retain its competence to legislate about any matter, including matters within the legislative competence of the Scottish Parliament. However, Lord Sewel announced to the House of Lords on 21 July 1998 that the United Kingdom Government expects a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. The Procedure Committee of the House of Commons has indicated its support for this approach in its report published on 24 May.

Examples of the circumstances where it might be appropriate for a Westminster Act to make provision about devolved matters in Scotland might include those where it is agreed that there should be a common UK or GB regime of enforcement or regulation, or where it is proposed that a new public authority should be established with cross-border responsibilities. It would be for the United Kingdom Government and the Scottish Ministers to agree about such proposals and for the Scottish Executive to seek the consent of the Scottish Parliament.

[Are any of these now enacted or certain to achieve Royal Assent by 1 July? If so, I can strike them off the list.]

[Mr Stage, you are checking whether there are any other Bills lurking out there which nobody has told us about which ought to be on this list.]

Access to Justice Bill. This Bill deals primarily with England & Wales, but includes contentious provisions about legal aid in Scotland. These enable the financial eligibility and contributions tests to be disapplied for assistance by way of representation in respect of certain proceedings (e.g. mental health proceedings) [or for advice and assistance for persons who are in receipt of disability working allowance.] *[I do not understand the last bit.]*

1 on Allen

Adoption (Inter-country Aspects) Bill. This Private Member's Bill makes provision for a legal framework for inter-country adoption.

Mr Mc
Stevens

Breeding and Sale of Dogs (Welfare) Bill. This Private Member's Bill is intended to improve the welfare of dogs by imposing tighter controls on large dog breeding establishments.

Fur Farming (Prohibition) Bill. *[Can a short be supplied of the purpose and effect, and an indication whether it is a private member's bill or not.]*

A.E.D.

Health Bill. This abolishes GP fund-holding, changes the financial arrangements for NHS Trusts and imposes a duty of quality on the NHS in Scotland. The powers to commence the Scottish provisions will devolve to the Scottish Ministers.

Immigration and Asylum Bill. This Bill includes provision about housing and marriages. *[Can this explanation be expanded a bit please?]*

Don't help out
(with notes) →

cc Paul

Mental Health (Amendment) (Scotland) Bill. This is a short Private Member's Bill to amend the Mental Health (Scotland) Act 1984 to allow incapable patients who leave hospital to reside in the community to continue to benefit from funds held on their behalf in the hospital.

Motor Cycle and Pedal Cycle Parking Bill. This Private Peer's Bill includes provision to permit the provision of stands and racks for motor cycles as well as for

