

(65)

Rogers DA (David)

From: Parr PM (Paul)
Sent: 02 June 1999 16:22
To: Rogers DA (David)
Cc: Mullin JC (Charles)
Subject: RE: your Bills

Importance: High

David

Copy to Charles

I have offered some changes to the submission. I have not yet had the chance of seeking Charles' views. The amended submission is attached.

Paul



-----Original Message-----

Paul could you check the para in this partial draft on the electronic and FSM Bills and let me have some words to fill in the gaps. By 4.30 please!

<< File: 0602parr.doc >>

reasonably practicable, taking account of the timing of any announcement by the UK Government about its legislative intentions. Depending on the topic the Scottish Ministers announcement could take the form of an answer to an SPQ or a debatable motion. At a later stage, again depending on the circumstances, it may be appropriate to seek the approval of the Parliament to the precise content of a draft Bill. [In other cases it may be sufficient to draw the attention of the Parliament or the relevant committee to the publication of a Bill at Westminster.]

6. The convention is likely to be invoked for the first time if the FSA Bill is published later this month, 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. Introduction is likely to be on 10 or 11 June and Second Reading on 21 June. A debate in the Scottish Parliament is scheduled for []. The Bill will set a precedent for the Scottish Parliament's consent being sought to a detailed proposal for legislation.

It is also possible that the UK Government will introduce Bills at Westminster later this month on electronic commerce and the regulation of financial services and markets.

The Electronic Commerce Bill would cover Electronic commerce refers to a new way of marketing goods and services, using electronic means. This entails buying and selling goods and services, money transfers, and advertising, and also includes transactions with Government. The Electronic Communications Bill would create a licensing regime for bodies offering electronic signature and confidentiality services. People would be able to check who has signed an electronic message, that it has not been tampered with, and that it has been kept confidential. The Bill would modernise the law by creating a presumption of legal recognition for electronic signatures produced by licensed companies, or those meeting equivalent standards. Where possible, it would remove obstacles in existing law which insist on the use of paper. The Bill is largely concerned with reserved matters, but includes devolved provisions in relation to the Scots law of contract and evidence. The provisions would allow electronic documents to be as validly formed as their paper counterparts and would allow for the recognition in Scots law of electronic signatures. This would be done by giving Ministers powers (by statutory instrument) to modify existing legislation for the purpose of authorising, facilitating or encouraging the use of electronic communications. In Scotland the powers would be exercisable by Scottish Ministers.

~~[summary of coverage], including the devolved matters of [what?].~~ The Financial Services and Markets Bill is almost entirely concerned with reserved matters, but would marginally affect the legislative competence of the Scottish Parliament in the field of Scots private law by enabling the new Financial Services Agency to petition for the bankruptcy of individuals. It would be outwith the competence of the Scottish Parliament to modify this new rule in making general provision about petitions for bankruptcy.

We suggest that it is not necessary to seek debates on these 2 Bills. Rather we suggest that [the First Minister] should table a motion that the Scottish Parliament [notes with approval

Handwritten signature

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By E-mail

Mr D Rogers, ES

5/2/13

Copy to: Mr Walford
Mr Jamieson
Mr Foubister
Mrs Brannan
Ms Hibbert
Mr G Burgess
Mr E Ferguson, LD

LEGISLATION AT WESTMINSTER ABOUT DEVOLVED MATTERS

1. Thank you for the copy of your minute of 27 May, together with the draft submission. I have seen some subsequent e-mail exchanges. Can I offer comments under three headings.

Westminster Convention

2. The OSSS would find it helpful to know whether The Scottish Office/Executive Secretariat believes any further action is necessary at Westminster (or in Whitehall) to establish more firmly the convention signalled by Lord Sewel and subsequently referred to by the Procedures Committee. Advice please.

Existing Westminster Legislation

3. As a general objective, I would suggest that the Scottish Parliament should be encouraged to view the legislation currently before Westminster, and therefore expected to be enacted this session, as part of its legislative inheritance. There should, therefore, be no need to reassure the SP of its powers to amend the legislation now before the UK Parliament: that general point applies to all the inherited legislation, and Mr Jamieson's remarks about the difficulties of amending existing legislation while acting within devolved competence is also a general consideration – and one which it will be difficult to explain, except in the context of a specific case, to the SP.

4. I would suggest that the Scottish Parliament should only be given a factual statement about each measure currently before the UK Parliament, which would include a short explanation of the extent to which the particular Bill deals with reserved or devolved matters.

Food Safety Bill

5. The Food Safety Bill, and any others that are planned for introduction this session in the UK Parliament, are to be treated under the convention announced by Lord Sewel. Unless you are clear how this convention will operate in practice, I suggest that you consider making clear in the First Minister's statement that the procedure for taking the SP's view on the handling of the Food Safety Bill should not be seen as setting a precedent for the future. In practice, that Bill has been drafted on the assumption that it will extend throughout GB/UK: and the First Minister must be expected to recommend the agreement of SP for this Bill to be considered by the UK Parliament.

*Mh
over
it
does.*

6. As regards the operation of this Westminster convention, you will need to consider exactly what can be said at this stage to the SP. Unless the SP's agreement is to be sought to a draft Bill, then agreement can only be given, on the basis of a general statement about the scope and intentions of such a Bill. I believe that the UK Government has indicated a willingness to publish a small number of Bills in draft before First Reading, but it is unlikely in general to want to prepare such Bills for devolved matters extending to GB/UK unless it has some assurance that the SP will agree that the Bill in question should indeed extend to Scotland. You will need to consider how to break into this "chicken and egg" cycle.

IAN GORDON
Head Designate,
OSSS
Dover House
01 June 1999

*That is
done &
political
agreement
between SE +
UK Govt.*

Mr Rogers

Copy to: Mr I Gordon
Mr Ferguson
Mr Walford
Mr Ewing, ES
Mr I Campbell, ES

LEGISLATION AT WESTMINSTER ABOUT DEVOLVED MATTERS

1. You minuted to Mrs Tyrrell and Mr Kernohan here on 27 May, enclosing the draft submission and arranged SPQ about inter alia the arrangements for Bills which will still be proceeding at Westminster on 1 July.

2. I am replying because of my interest in the Mental Health (Amendment) Scotland Bill.

3. I agree with the view that the Scottish Parliament should not be asked formally to consent to the legislative process at Westminster continuing for these Bills. I wondered, however, whether your sentence in square brackets in the draft SPQ about Scottish Ministers being consulted by The Scottish Office about the handling of the remaining stages of the legislation was a little obscure. MSPs are likely to put different constructions on a sentence of this kind. I would, therefore, prefer a rather franker approach which would replace the second, third and fourth sentences of your draft on the following lines:-

“Proceedings on some of these Bills will still be in train on 1 July and it is proposed that the remaining stages be completed at Westminster. The Table lists the Bills concerned”.

4. I confirm that I am happy with the description of the Mental Health Bill.



J T BROWN
PHPU1
Room 423d
SAH
☎ 42192

1 June 1999

Parliament debate between these two dates. I suggest you work this timing into paragraphs 2 and 8 of your draft.

b. **Cross Border Public Authority:** The proposed FSA is not a formal cross border public authority in the sense of sections 89 and 90 of the Scotland Act. It is of course such a body in a more general sense - but the key provisions to look after Scottish interests are included in the draft Bill itself, and do not rely on sections 89 and 90. You might like to nuance the CBPA reference at the end of paragraph 4 of your draft. I think probably the reference to "public bodies....with cross border responsibilities" in the SPQ Answer (final paragraph before list) is general enough not to require change.

3. Finally, I note that your draft simply refers to seeking the Scottish Parliament's consent to legislation at Westminster in devolved areas. Do you want to say anything about agreement to the general policy underlying the legislation as well? This is what we propose to ask the Parliament in relation to Food Standards Bill.

J R Wildgoose

J R WILDGOOSE
1 June 1999

AEFD Division A
Room 352
Pentland House
Ext 46159