

pt .4 . 5/2/13 (16)

**Rogers DA (David)**

**From:** Jamieson JL (Iain)  
**Sent:** 28 May 1999 16:12  
**To:** Rogers DA (David); Gordon IW (Ian); Ewing JA (John); Ferguson EW (Eric); Wildgoose JR (James); Kernohan G (Gerry); Aldridge JS (John); Campbell I (Ian)(Exec Sec); Goodall WH (Hamish); Duncan SC (Susan); Stevens M (Mike); Tripp DJ (David); Parr PM (Paul); Gregson L (Linda); Kernohan N (Norrie); Tyrrell FA (Fiona); Callaghan AJ (Ann); Fleming W (William); ParlyClerk Scotland  
**Cc:** Walford IN (Ian); Brannan MH (Micheline); Foubister SR (Stuart); Hibbert EW (Ewa); Burgess WG (George)  
**Subject:** RE: Westminster Bills about devolved matters



Westminster legislation.doc

David. I am away on leave next week and just have time to make some comments on the attached revised draft of your PS minute and SPQ. However, there are some big questions buried in the comments.

Please also note that, in the case of the UK FOI Bill, the Cabinet Office appear to have agreed with us that it is the scope of the Bill which matters not the provisions in it. Therefore, even if the Westminster Bill does not contain any provisions relating to devolved matters but it confers powers (eg to make regulations) which are capable of relating to devolved matters ( eg by a regulation making power), then it is caught by the convention. In that case, the result was that the UK FOI Bill was amended prior to the publication of the Bill in draft to make it clear that it excluded devolved matters.

Please also note for the future ( even although it may not be relevant now to the SPQ) that we need a similar convention in the case of regulations made in the exercise of concurrent powers, particularly those made by MAFF in the case of fisheries/agriculture under section 57(1). We need to ensure that the practice develops that these are not made except with the agreement of Scottish Ministers - unless they are being used for override purposes. Iain

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

<< File: 0524wesl.doc >> << File: 0527spq.doc >>

Minute and draft submission attached

- FSA debate Finny

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 Westminster Bill covering relating to 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. [David. This is a hollow explanation. How many of the existing/future examples fall within this description?]

~~the~~ (o.k. - add more examples)

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 introducing the Bill at Westminster. [David. Surely the convention means that the Scottish Parliament must agree to Westminster legislating before the Bill is introduced into the Westminster Parliament. Otherwise, it is a waste of time because the Scottish Parliament is being presented with a fait accompli. The proposal as I last understood it was that the SP was being asked to agree to agree to the draft consultative FSA Bill being introduced and dealt with at Westminster. This paragraph and paragraph 8 indicates that this may have changed. Has it and if so why?] 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 [David. Has it been decided that the departments of the SE will not be known as the Scottish office ? If not, I do not think that it is appropriate to speak of Scottish Office Ministers in this way. You should refer to the Secretary of State. This applies to such references throughout this draft] 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.

Ok

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 Government's intention to proceed with them.

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:

~~1.1~~1.1 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;

~~1.2~~1.2 agree that the statement should be made on [ ], before the expected debate on the FSA Bill on [];

~~1.3~~1.3 agree that we may copy the proposed statement in advance to the Secretary of State for Scotland;

~~1.4~~1.4 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. [David. Not always because the nature of the provision made might put it beyond competence eg to have a special rule of SPL where none existed before. In the case of the FSA we might like Canute say no but it is doubtful how far we could amend it or confer Scottish functions upon the FSA]

Re - draft  
Stewart

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. [David, Same comment as in para 3 above. In any event, it is required when you go on to describe the nature of the provision in the Bills in question, not many of which fall within such description]

ok  
all  
~~from~~  
order

*[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.]*

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

**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.]*

**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?]*

**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 pedal cycles and to permit the provision of devices for securing motor cycles or pedal cycles.

**[Scottish Enterprise Bill.** This Bill makes provision to increase the limit of central government funding which SE can receive from £3bn to £4bn.] *[Is this one now enacted?]*

**Water Industry Bill.** This Bill includes provision about the regulation of the Scottish water industry. It winds up the present Customers Council and establishes the Water Industry Commissioner for Scotland.

**Welfare Reform and Pensions Bill.** This Bill is largely concerned with reserved matters but it includes provision in relation to devolved matters in the area of Scottish family law in order to allow sharing of pensions on divorce. In the reserved area of insolvency it also provides for tax-approved personal pensions to be protected on bankruptcy.

**Youth Justice and Criminal Evidence Bill.** This Bill includes provision in relation to devolved matters in the area of criminal evidence and insolvency, for example to restrict the use by prosecutors of answers and statements given under compulsion.