

## Devolution Guidance Note 13

### Handling of Parliamentary Business in the House of Lords

#### **SUMMARY**

- **Although the UK Parliament remains sovereign, the UK Government is not accountable to Parliament for those matters which have been devolved. When conducting business in the House of Lords, Ministers should avoid taking positions on matters for which they are not responsible.**
- **This note sets out how these general principles should be put into practice in business before the House of Lords.**
- **This note comprises two separate sections on Bills, and on parliamentary questions and debates. It gives a series of hypothetical examples of circumstances that may arise.**
- **The Government has agreed with the Scottish Executive and the Northern Ireland Executive that each party will proceed in accordance with the convention that the UK Parliament would not normally legislate on devolved matters in Scotland or Northern Ireland without the agreement of the Scottish Parliament or the Northern Ireland Assembly. This is set out in the Memorandum of Understanding between the UK Government and the devolved administrations, and reflected in the Companion to the Standing Orders of the House of Lords. In relation to Wales, all primary legislation is a matter for the UK Parliament.**
- **In the Commons, PQs can be ruled out of order because they relate to matters for which Ministers are not accountable. In the Lords, questions are addressed to the Government, rather than to specific Ministers, and should relate to matters for which the UK Government is responsible. Thus all Ministers should answer all questions on devolved matters to the effect that, following devolution, this is a subject no longer for the UK Government. The House of Lords Companion to the Standing Orders reflects this, declaring questions which relate to matters that are reserved to the devolved administrations or are not matters for which the Government is responsible as generally inadmissible.**

## Introduction

1. Although the UK Parliament remains sovereign, the UK Government is not accountable to Parliament for those matters which have been devolved to the Scottish Parliament and the Scottish Executive; the National Assembly for Wales; or the Northern Ireland Assembly and Executive Committee. When conducting business in the House of Lords, Government Ministers should avoid taking positions on matters for which they are not responsible.
2. This note sets out how these general principles should be put into practice in business before the House of Lords. It does not deal with legislation which deals with emergencies or is similarly exceptional. In such cases, departments should follow as much of the guidance as possible; but the nature of the situation may require a faster course of action to be followed.
3. The note comprises two separate sections on:
  - Bills; and
  - Parliamentary Questions and Debates

It gives a series of hypothetical examples of circumstances which may arise.

4. The Acts establishing the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly set out their responsibilities, either explicitly, or in relation to those responsibilities which have been retained by the UK Parliament. However questions or motions are still, on occasion, being accepted in the House of Lords which, strictly, fall within the responsibilities of the devolved legislatures and executives. Precedent is still being established; in the meantime consistency on the part of Ministers in declining to answer certain questions will help the House to recognise which questions or motions should not be tabled. This is particularly important since Lords procedures are less rigid than those in the Commons and there are always likely to be some questions or motions tabled on matters which the Government would consider are not its responsibility.
5. Details of ministerial responsibility after devolution is set out separately in guidance and is available as **Devolution Guidance Note 11 Ministerial Accountability after Devolution**. The definitions of devolved and non-devolved matters used in this note are the same as used in the Memorandum of Understanding.<sup>1</sup>

## Bills

6. In relation to Wales, all primary legislation is a matter for the UK Parliament. The UK Parliament is also responsible for legislating on non-devolved matters in relation to Scotland and Northern Ireland.

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<sup>1</sup> The three Acts of Parliament dealing with devolution – the Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998 - define the respective functions of the UK Government and the Devolved Administrations in different ways. The Memorandum of Understanding simply uses the terms 'devolved' and 'non-devolved'. Devolved means in the Scottish context any legislation's which the Scottish Parliament is not prevented from modifying under Schedule 4 to the Scotland Act or any function not reserved to the UK Government or Parliament under Schedule 5 of the Scotland Act or transferred to the Scottish Ministers under other legislation; in the Welsh context, any function transferred or conferred on the Assembly by Order or by primary legislation; and in the Northern Ireland context, any function which is not an excepted or reserved matter under Schedule 2 and 3 of the Northern Ireland Act. 'Non-devolved' means anything else.

7. The UK Parliament is able to enact legislation with or without the consent of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. However, the Scottish Parliament and the Northern Ireland Assembly respectively are able to amend or repeal provisions in UK legislation relating to devolved matters in Scotland or Northern Ireland.
8. The UK Government has agreed with the Scottish Executive and the Northern Ireland Executive that each party will proceed in accordance with the convention that the UK Parliament would not normally legislate on devolved matters in Scotland or Northern Ireland without the agreement of the Scottish Parliament or Northern Ireland Assembly, as the case may be. The Devolution Guidance Notes (DGNs 8 *Post- Devolution Primary Legislation affecting Northern Ireland* and 10 *Post-Devolution Primary Legislation affecting Scotland*) set out the detailed arrangements for the application of this convention (known as the Sewel Convention) in relation to Northern Ireland and Scotland which is set out in the Memorandum of Understanding between the UK Government and the devolved administrations, and reflected in the Companion to the Standing Orders of the House of Lords (para 6.12). In practice, this means that the UK Government should not normally invite the House to enact legislation on devolved matters in Scotland or Northern Ireland unless:
  - it is for a non-devolved purpose and makes only incidental or consequential changes to Scots law or Northern Ireland law on devolved matters; or
  - it is done with the agreement of the Scottish Parliament or Northern Ireland Assembly, as appropriate.
9. The Government will not be concerned by the way in which the agreement is given. Agreement relates to the UK Parliament legislating for a devolved purpose, not to the precise detail of each provision. The convention and the Memorandum of Understanding cover relations between UK Ministers on the one hand and Scottish or Northern Ireland Ministers on the other.
10. The following section provides a number of hypothetical examples.

#### **Example A**

11. The UK Government introduces a Bill on Welfare Reform (not a devolved matter in Scotland). It contains minor consequential provisions on family law in Scotland (a devolved matter). During the second reading debate it is argued that, under the Sewel convention, the Bill requires the consent of the Scottish Parliament and that this has not been given. The Minister replies:

"The Bill is for a reserved purpose and makes only incidental or consequential changes to Scots law on devolved matters. The Scottish Executive is aware of the Bill and of our view that this legislation does not require the consent of the Scottish Parliament".

#### **Example B**

12. The UK Government introduces a Bill to set up a Food Standards Agency. Competence for food standards has been devolved to the Scottish Parliament and the Northern Ireland Assembly. The Bill would therefore make provisions squarely within devolved competence in Scotland and Northern Ireland. By the time of second reading, the UK Government should be able to tell the House that the Scottish Executive and Northern Ireland Executive have notified it of the agreement of the Scottish Parliament and Northern Ireland Assembly. If, perhaps in relation to a Bill starting in the Lords, one or other devolved administration has not yet been able to do so, the UK Government can:

- delay second reading; or
  - tell the House that the relevant devolved administration expects agreement to be given before the Bill completes its passage.
13. If pressed on this, the Minister may say "The Scottish Executive/Northern Ireland Executive has been consulted about these provisions and supports them. The House will not be asked to (i) take this part of the Bill in committee or (ii) proceed to report stage until the agreement of the Scottish Parliament/Northern Ireland Assembly has been obtained."
14. A peer asks whether the National Assembly for Wales has given its agreement. Unlike the position in Scotland, the consent of the Assembly is not required for primary legislation at Westminster on devolved matters. However, the Minister might reply:

"The Bill's provisions relating to Wales were drafted in consultation with the Welsh Assembly Government".

### **Example C**

15. The UK Government introduces a Bill to set up an Education Standards Agency. The Bill makes provisions of major significance on devolved matters in Scotland and Northern Ireland. Before second reading, the UK Government is informed of the opposition of the Scottish Parliament or Northern Ireland Assembly. The UK Government should normally tell the House that it will either withdraw and reintroduce the Bill or table amendments to remove from the Bill any coverage in Scotland/Northern Ireland. If it proceeds regardless, the Scottish Parliament/Northern Ireland Assembly may subsequently repeal the Act as regards Scotland/Northern Ireland.
16. The Scottish Executive has signalled that they are content with the proposals to legislate on this matter at Westminster. If it is argued that the proceedings on this item in the Scottish Parliament do not constitute full consent, the Minister may say:

"It is not for me to interpret the proceedings in the Scottish Parliament. I understand from the Scottish Executive that, for the purposes of the Sewel convention, (i.e. the convention that the UK Parliament will normally legislate on Scottish matters only with the consent of the Scottish Parliament), consent has been given".

### **Example D**

17. The UK Government introduces a Bill on Financial Services relating largely to non-devolved matters. One minor clause confers a power on the Scottish Ministers within devolved competence and that provision is not incidental or consequential. At the time of second reading, the UK Government might explain that it hopes to secure the SE's consent before the Bill completes its passage. If it fails to secure such consent, it should normally table amendments to omit this provision.

### **Example E**

18. A private peer introduces a Bill making major provisions on education in Scotland (a devolved matter). The Scottish Parliament has not given its consent. Assuming there is no other reason for opposing the Bill, the Minister should say:

"This Bill clearly relates to a devolved matter. The Government will not be able to support the Bill at this or subsequent stages unless it is informed by the Scottish Executive that the Scottish Parliament has consented to Westminster legislating in this way".

## **Example F**

19. The UK Government introduces a Bill in the House of Lords on Maritime Safety (which is not devolved). The opposition tables an amendment providing for Scottish Ministers to make regulations on the safety of fishing vessels throughout UK waters surrounding Scotland.

20. If the UK policy were in principle to favour the amendment, the Minister might say:

"This is clearly a matter on which the consent of the Scottish Parliament should be sought as it confers functions on the Scottish Ministers. I hope this issue will not be pressed today before the Scottish Executive can be consulted".

21. In committee he might add:

"Another opportunity will arise to make this amendment at report stage or at third reading".

22. If the amendment was not tabled until report or third reading, he might say:

"We should not amend the Bill at this late stage without the consent of the Scottish Executive and Parliament. There will be an opportunity to make an amendment in another place, and I would urge your Lordships to allow this decision to be delayed, in order to allow the Scottish Executive to be consulted".

## **Parliamentary questions and debates**

23. In the Commons, PQs can be ruled out of order because they relate to matters for which Ministers are not accountable (procedures in the Scottish Parliament and the National Assembly for Wales achieve a similar effect). In the Lords, questions are addressed to the Government, rather than to a specific Minister, and should relate to matters for which the United Kingdom Government is responsible. Thus UK Government have answered all questions on devolved matters to the effect that, following devolution, this subject is not one for the UK Government. The Companion to the Standing Orders of the House of Lords (para 4.88) reflects this, declaring questions which relate to matters that are reserved to the devolved administrations or are not matters for which the Government is responsible as generally inadmissible.

24. If a question is tabled in the House of Lords or a subject put down for debate on a matter which is devolved, the UK Government should communicate with the peer concerned as soon as possible saying that this is not a matter for which a UK Minister has responsibility. The department should query it with the Government Whips Office, who will pass the query on to the Peer concerned, copied to the Clerks. The relevant provisions of the devolution legislation should be cited, together with any precedents from previous business in either House. The department concerned should provide this information to the Whips Office. The peer should be informed that if the question or debate is proceeded with, the Minister's reply will therefore be limited to saying that it is a matter for the Scottish Executive, the Welsh Assembly Government or the Northern Ireland Executive Committee, as the case may be. It may well be that the peer will not withdraw the question or debate and that this reply will have to be used on the floor of the House.

25. Where the UK Government has advance notice of a devolved matter being raised in this way, it should always take the earliest opportunity to alert the peer and the House authorities to the difficulty which will arise. Problems are more likely to arise in cases where unexpected supplementary questions or points raised in debate touch on devolved matters. In that case, a Minister might simply say:

“This is a devolved matter and is therefore beyond the responsibility of the UK Government”.

26. The following section gives a number of examples.

#### **Example 1**

27. The UK Government is asked in a question for written answer to publish school examination results for all schools in Great Britain. The matter is fully devolved as regards Scotland. In Wales, although DfES might have access to the information, the matter is one for the National Assembly. A suitable answer might be:

“The Government expect to publish results for England in October. The publication of school examination results for Wales and Scotland is a matter for the National Assembly and the Scottish Executive respectively. Results for 1998 for the whole of Great Britain are available in the Library in [name of publication].”

#### **Example 2**

28. A question asks for comparative information between England, Scotland, Wales and Northern Ireland. Where it would be helpful in the exercise of UK Government responsibility to give the comparisons, and the Scottish, Welsh or Northern Ireland figures are in the public domain, the Minister may choose to answer the question directly. Otherwise the Minister may give the English information only and say:

“The information relating to Scotland/Wales/Northern Ireland is a matter for the devolved administrations.”

29. In the short term, some of the information requested may continue to relate to the period before devolution took effect i.e. the UK Government was still responsible. In such cases, Departments – typically the Scotland, Wales and Northern Ireland Offices – will be able to provide information, though this will frequently have to be supplied by the devolved administrations who still hold the data.

#### **Example 3**

30. The UK Government might be asked how many prosecutions were taken for credit card fraud in Scotland. The criminal law in Scotland and the Prosecution Service are both devolved. If the question is for written answer, the answer might simply be:

“This is a matter for the Scottish Executive.”

31. If it is for oral answer (starred) or for extended questions and debate (unstarred), the Minister should write to the peer concerned as soon as possible to inform him that it is on a devolved matter. If the question is not withdrawn, the Minister will have to respond with a string of courteous admissions of ignorance.

#### **Example 4**

32. A starred question is tabled about prosecution policy in relation to certain criminal offences. No indication of devolved matters is given. In the House, a peer asks a supplementary about prosecutions in Scotland. The Minister should say:

“That is a devolved matter which is now the responsibility of the Scottish Administration”.

33. Even if he knows the answer or has a view on the matter he should refrain from giving any substantive response. Otherwise he may be asked similar questions in future.

**Example 5**

34. The UK Government might be asked whether it has made representations to the National Assembly for Wales about the lifting in Wales of a ban on the sale of beef on the bone. Although this is a devolved matter, the UK Government must clearly take responsibility for its own actions in making or not making representations, for example as to the impact on England of arrangements in Wales. The answer might be:

“My hon. Friend the Secretary of State for the Environment, Food and Rural Affairs has held regular meetings with the Assembly’s Agriculture Minister with a view to ensuring the orderly lifting of the ban throughout the UK.”

**Example 6**

35. A substantive motion is tabled for debate on a Wednesday about tuition fees in Scotland. The Minister writes to the peer concerned pointing out that this is a devolved matter and saying that he will only intervene briefly in the debate to mention this. A DfES Minister speaks in the debate, perhaps picking up only points relevant to students from English education authorities or Scottish students being educated in England. Backbenchers may choose to comment on devolved matters and cannot be prevented from doing so in debate if they insist; but the sense of the House is likely to discourage such comments. Ministers should take the lead. The House can be expected to support this lead, particularly if reminded that it agreed to the devolution legislation.

36. Peers may suggest that policy in Scotland is undermining student funding arrangements in England; and press Ministers to raise the issue in the Joint Ministerial Committee (JMC). In response they might say:

“We shall certainly draw the House’s concerns to the attention of Scottish Ministers and consider whether the JMC procedures should be invoked. Ultimately, however, policy on devolved matters in Scotland is the responsibility of the Scottish Executive and the Government has no formal powers to intervene”.

**Department for Constitutional Affairs (Last Updated – November 2005)**