

Devolution Guidance Note 13

Handling of Parliamentary Business in the House of Lords

SUMMARY

- **The UK Government is not accountable to Parliament for those matters which have been devolved, and therefore, 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 guidance note covers:**
 - 1. Introduction Paragraphs 1-4**
 - 2. Bills 5-9**
 - 3. Examples A-F, 10-20**
 - 4. Parliamentary questions and debates 21-23**
 - 5. Examples 1-6 24-32**

Introduction

1. Although the UK Parliament remains sovereign, the UK Government is not accountable to Parliament for matters which have been devolved to the Scottish Parliament and the Scottish Government; the National Assembly for Wales and the Welsh Assembly Government; or the Northern Ireland Assembly and the Northern Ireland Executive. When conducting business in the House of Lords, Government Ministers should therefore 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.

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.

3. The Acts establishing the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly set out their respective responsibilities, either explicitly, or in providing for those responsibilities which have been retained by the UK Parliament. However questions or motions may, on occasion, be accepted in the House of Lords which, strictly, fall within the responsibilities of the devolved legislatures and executives although these have decreased over time as precedent has been established. This remains a possibility as 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.
4. 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.

Parliamentary questions and debates

5. 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.

6. 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 Government, 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.
7. 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”.

The following section gives a number of examples.

Example 1

8. 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 and Wales. 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 Welsh Assembly Government and the Scottish Government respectively. Results for 1998 for the whole of Great Britain are available in the Library in [name of publication].”

Example 2

9. 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.”

Example 3

10. The UK Government might be asked how many prosecutions were taken for credit card fraud in Northern Ireland. Northern Ireland has a separate criminal law system and Prosecution Service which, since devolution, come within the remit of the Northern Ireland Executive. If the question is for written answer, the answer might simply be: "This is a matter for the Northern Ireland Executive."
11. 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

12. 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:

"Prosecution for criminal offences is the responsibility of the Scottish Government".

13. 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

14. The UK Government might be asked whether it has made representations to the Welsh Assembly Government 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 Agriculture Minister in the Welsh Assembly Government with a view to ensuring the orderly lifting of the ban throughout the UK."

Example 6

15. 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 Minister from the relevant UK Government Department 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.

16. 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 Government and the Government has no formal powers to intervene”.

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