RESEARCH PAPER 99/85
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The Procedural Consequences of Devolution

On 1 July 1999, extensive powers were transferred to the Scottish Parliament and the National Assembly for Wales. Research Paper 99/84, *Devolution and Concordats*, discusses the devolved powers, the recent *Memorandum of Understanding* between the administrations of Scotland, Wales and the UK, and the implications for the executive branch of government.

This paper concentrates on the consequences of devolution in Scotland and Wales for the House of Commons. In particular, it discusses the May 1999 report of the Commons Procedure Committee, *The Procedural Consequences of Devolution*, which is due to be debated by the House on 21 October. The Committee made a number of recommendations for immediate action, on areas such as parliamentary questions, legislation and select committees.

The paper also covers the Government's proposal for the revival of the Regional Standing Committee; the implications for Parliament of the Memorandum of Understanding; the so-called "English Question"; the likely effects of devolution on Members' constituency role; and proposals that a reformed House of Lords should have a special role in the post-devolution political landscape.

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Summary of main points

On 1 July 1999, extensive powers were transferred to the Scottish Parliament and the National Assembly for Wales (hereafter Welsh Assembly). Research Paper 99/84, *Devolution and Concordats*, describes the devolved powers and the recent *Memorandum of Understanding* between the administrations of Scotland, Wales and the UK, and examines the implications for the executive branch of government.

This paper concentrates on the consequences of devolution in Scotland and Wales for the House of Commons.[1] Part I describes briefly the current arrangements for dealing with Scottish and Welsh business in the Commons. Part II discusses the May 1999 report of the Commons Procedure Committee, *The Procedural Consequences of Devolution*, which is due to be debated by the House on 21 October. The Committee, which intends to carry out a full review of the procedural consequences of devolution in due course, made a number of recommendations for immediate action, including:

- After devolution, the range and details of questions to be put to the Secretaries of State for Scotland and Wales should be reduced to matters relating to their new Ministerial responsibilities. Guidance should be provided to Ministers about the matters the House will expect them to deal with. Scottish Questions should be reduced to thirty minutes duration.

- There should continue to be Select Committees relating to Scotland and Wales.

- The House should not legislate on devolved matters without the consent of the legislature concerned.

- Bills relating exclusively to England, Scotland or Wales should usually be considered by an appropriately constituted Second Reading Committee. The Committee stage of such bills should be heard by Standing Committees containing at least sixteen Members from the area concerned.

Some of the Procedure Committee's recommendations are considered in detail in this Paper, including the experience of the House to date with post-devolution Scottish and Welsh questions (part II(B)). A previous Procedure Committee recommendation, that the Grand Committees be suspended for the period of the experiment with parallel sittings in Westminster Hall, and the Government's proposal for the revival of the Regional Standing Committee for an experimental period, are also described (part II(D)). The Government's response to the Procedure Committee's report is covered in part II(E) of the paper.

Part III deals with the implications for Parliament of the Memorandum of Understanding. The so-called "English Question", the implications for England of devolution in other parts of the UK, is discussed in Part IV. Finally, the Paper considers in Part IV the likely effects of devolution on Members' constituency role and notes briefly suggestions that a reformed House of Lords should have a special role in the post-devolution political landscape (Part V).

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[1] Devolution in Northern Ireland is not considered here as implementation of the Belfast Agreement has not yet taken place

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I Pre-Devolution Arrangements in the House of Commons

At present, Scottish and Welsh parliamentary business in the House of Commons is still, broadly speaking, dealt with as follows:

- *Scottish Questions and Welsh Questions*: questions to the Scottish and Welsh Secretaries and other Scottish and Welsh Office ministers, every four weeks

- *Scottish Affairs Committee* and *Welsh Affairs Committee*: select committees of 11 MPs (not necessarily from Scottish and Welsh constituencies) which examine the policy and administration of the Scottish and Welsh Offices respectively

- *Scottish Grand Committee*: committee of all 72 Scottish MPs dealing with a range of Scottish business

- *Welsh Grand Committee*: committee of all 40 Welsh MPs, together with not more than five other Members chosen by the Committee of Selection, dealing with a range of Welsh business

- *Scottish standing committees*: Two committees of between 16 and 50 MPs (with no fewer than 16 representing Scottish constituencies) to undertake the line-by-line scrutiny at committee stage of some exclusively Scottish legislation

The matters which may be dealt with by the Grand Committees are as follows:

- questions for oral answer
- short debates
- ministerial statements
- second reading, report and third reading stages of Bills relating exclusively to Scotland
- motions relating to delegated legislation
- substantive motions for the adjournment

In recent years the Grand Committees have regularly sat outside Westminster.

These arrangements are in addition to general Parliamentary business, from questions and debates to legislation and petitions, which may relate to Scotland and Wales as well as to some or all other parts of the UK.

II Post-Devolution Arrangements: The Procedure Committee report of May 1999

A. Introduction

The Procedure Committee announced its inquiry into the procedural consequences of devolution in a Press Notice dated 30 July 1998.[2] Its intention was not to reopen the constitutional and political arguments about devolution in Scotland, Wales and Northern Ireland, but "to ensure that the House has considered what changes are necessary in consequence of the legislation that it has itself passed."

The committee stated that

> The first issue to be addressed is whether it is possible to lay down clear principles as to the House's relationship with the new bodies, even if only in outline, or whether changes should be evolutionary and limited to particular responses to particular problems. If it is possible to determine clear principles, should the United Kingdom exercise a "self denying ordinance" on matters within the competence of the Scottish Parliament …. and if so, what should it cover, and how should it be policed?

In particular the committee wished to examine the following issues:

- Would it be appropriate to provide for consultation between Members of the Scottish Parliament, the Welsh or Northern Ireland Assembly and the United Kingdom Parliament? What should be the nature of any such consultation or joint operations? At what stage should formal provision for such consultation be made in the Standing Orders?
- Should the United Kingdom Parliament co-operate with the Northern Ireland and Welsh Assemblies and the Scottish Parliament on European Legislation? If so, how should this be done?
- To what extent will existing procedural arrangements remain appropriate; for example:
  - Should the regime for Questions be changed;
  - Will Grand Committees and/or the Select Committees on Scottish, Welsh or Northern Ireland Committees continue to have a role;
  - How should departmental select committees deal with reserved matters;
  - What financial scrutiny should the House maintain over monies distributed by the Northern Ireland and Welsh Assemblies and the Scottish Parliament;
  - Will changes to procedure be needed for those classes of subordinate legislation which are to be approved by both the United Kingdom Parliament and the Scottish Parliament or the Welsh Assembly;
  - Should private Members be restricted in their ability to bring forward legislation relating to devolved matters?

[2] Press notice no. 9 of 1997-98

After issuing two interim reports early in 1999, the Committee reported in late May 1999.[3] The Committee concluded, in common with the Government and the great majority of its witnesses, that there should be an "evolutionary" approach to the new post-devolution arrangements. Its recommendations were intended[4]

> to assist the House in the first stage of this evolution since some issues need to be resolved at a fairly early stage, even though the arrangements made may well have to be adapted in the light of experience. We do not attempt a definitive account of all the changes which might be needed; in the light of **this the Committee intends a full review of the procedural consequences of devolution in due course.**

As a general principle, the Committee did not believe any final statement could be made without experience of the new Scottish Parliament and Welsh Assembly. It wished "to provide the means for healthy dialogue" which would "be impossible if we do not take into account the views of the other legislatures within the United Kingdom." In the long run the Committee believed that it may be necessary for some sort of 'constitutional affairs committee' to be established to consider the relationships between the constituent parts of the United Kingdom (para 2). The report would concentrate on issues which needed to be considered before the devolved bodies became fully operational in July 1999.

The Committee noted that the powers to be given to the devolved bodies differed, perhaps the most crucial difference being that the Scottish Parliament has powers to make its own primary legislation while the Welsh Assembly will have to rely on Westminster to find time for any primary legislation it considers desirable. Nevertheless, the Committee sought to identify common principles which should underlie its recommendations. These principles were as follows:

- in passing the legislation which underlies devolution, Parliament has agreed that certain powers and responsibilities should pass from it to the devolved legislatures; parliamentary procedure or custom should not be called in aid to undermine that decision;

- there should be as few procedural barriers as possible to co-operation between Members of Parliament and Members of other legislatures, where such co-operation is desired;

- it is legitimate for all Members of the United Kingdom Parliament to have an interest in matters which remain the responsibility of the United Kingdom Parliament; however Members from an area to which powers have been devolved will have a particular interest in business affecting that area;

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3 *Procedural Consequences of Devolution*, 4th report, HC 185 of 1998-99, 24.5.99

4 Ibid, para 1

- even though uniformity is impossible, it is desirable that there should be as much consistency as possible in the way in which the House deals with matters relating to the devolved legislatures.

As many witnesses said, the House should respect the fact of devolution and try not to interfere with matters that are the responsibilities of the devolved legislatures. It will take time and tolerance on all sides to come to a satisfactory understanding of the boundaries between Westminster rights and responsibilities and the rights and responsibilities of the devolved legislatures; this Report suggests some of the places at which boundaries could be drawn and some places at which it may be premature to attempt a rigid division of responsibilities.

The Procedure Committee's report is due to be debated by the House on 21 October 1999. The Committee's summary of its conclusions and recommendations is reproduced below.

The Procedural Consequences of Devolution: Procedure Committee Report of May 1999, Summary and Conclusions[5]

1. The Committee intends a full review of the procedural consequences of devolution in due course (paragraph 1).

2. We recommend that the same principles as govern the admissibility of Questions after devolution should govern the admissibility of daily adjournment debates (paragraph 6).

3. We recommend that, after devolution, the range and details of questions to be put to the Secretaries of State for Scotland and Wales should be reduced to matters relating to their Ministerial responsibilities (paragraph 8).

4. We believe that any reformulation of the rules about Questions must

- recognise the fact of devolution, and limit the range of permissible questions accordingly;
- provide guidance to Ministers about the matters the House will expect them to deal with;
- avoid drawing Ministerial responsibility so tightly that questions about the relationship between the devolved legislatures and administrations and the United Kingdom government or parliament are ruled out of order.

To this end, we recommend the following resolution, drafted by the Clerk of the House.

"Subject always to the discretion of the Chair, and in addition to the established rules of order on the form and content of questions, questions may not be tabled on matters for which responsibility has been devolved by legislation to the

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[5] Ibid, pp xxi-xxiii

Scottish Parliament, the Northern Ireland Assembly or the Welsh Assembly unless the question—

a) seeks information which the UK Government is empowered to require of the devolved executive, or

b) relates to matters which –

i. are included in legislative proposals introduced or to be introduced in the UK Parliament,
ii. are subject to a concordat or other instrument of liaison between the UK Government and the devolved executive, or
iii. UK Government ministers have taken an official interest in, or

c) presses for action by UK ministers in areas in which they retain administrative powers" (paragraph 10).

5. We recommend that Scottish Questions be reduced to thirty minutes duration, but that they should continue to be taken once every four weeks, as now. In making this recommendation, we are mindful of the fact that it will be entirely in order for Scottish Members (as for any other Members) to table Questions about the operation of particular reserved matters in Scotland to the relevant departmental Minister (paragraph 12).

6. We recommend:
— that there should be Select Committees relating to Scotland and Wales;
— that these Select Committees should be concerned with the role and responsibilities of the relevant Secretary of State and on occasion, the policy of United Kingdom departments as it affects Scotland or Wales.

We recommend that such Committees liaise with colleagues in the Scottish Parliament or the Welsh Assembly, but it is not for Westminster to prescribe such liaison. Similar conditions should apply to any successor of the Northern Ireland Affairs Committee (paragraph 21).

7. We support the principles behind the Government statement on legislation and agree that the House should not legislate on devolved matters without the consent of the legislature concerned (paragraph 23).

8. We recommend that the provision allowing the Speaker to certify Bills as relating exclusively to Scotland be transferred to a new Standing Order and adapted so that the Speaker may certify that a bill relates exclusively to one of the constituent parts of the United Kingdom (paragraph 27).

9. We consider that it should be usual for bills relating exclusively to England, Scotland or Wales to be considered by an appropriately constituted Second Reading Committee, but this should not be an absolute requirement. We further recommend that the provisions of paragraph (1) of Standing Order No. 90 (Second reading committees) should be amended to provide that any Member, not just a Minister of the Crown, should have the power to set down a Motion

referring such a bill to a Second Reading Committee and that it should require a minimum of twenty Members to rise in their places to block such a Motion made by a private Member, as it does if a Minister makes it, rather than a single shout of 'object' (paragraph 29).

10. We recommend that Standing Committees on the Committee stage of bills certified by the Speaker under the new Standing Order should contain at least sixteen Members from the area concerned (paragraph 30).

11. We recommend that Money Resolutions should be required for Bills which imply an increase in the expenditure of the National Assembly for Wales (paragraph 31).

12. Erskine May states the principles to be followed in determining that a private Bill should not be allowed to proceed as such are:
(1) the magnitude of the area and the multiplicity of the interest involved;
(2) that the bill proposes to amend or repeal public Acts. In these cases, the nature and degree of the proposed repeal or amendment have to be considered;
(3) that public policy is affected".

These criteria clearly rule out the possibility of using the private legislation procedure as a means of initiating primary legislation of a public character for Wales as a whole (paragraph 32).

13. We endorse the Government's pragmatic approach to the procedures for dealing with delegated legislation (paragraph 33).

14. We recommend that Standing Order No. 151 should be amended to exclude orders passed by the devolved legislatures alone from the Joint Committee on Statutory Instrument's remit (paragraph 34).

15. Orders made under Section 85 of the Northern Ireland Act 1998 should not be excluded from the remit of the Joint Committee on Statutory Instruments (paragraph 35).

16. We recommend that Select Committees appointed under public business Standing Orders be given power to communicate documents to the devolved legislatures or their committees (paragraph 40).

17. Committees should not hold formal meetings in conjunction with Members of the devolved legislatures without the express authority of the House and Members should be aware that there is no guarantee that their words enjoy the protection of Article IX of the Bill of Rights in any informal joint meetings (paragraph 45).

18. We support the European Scrutiny Committee's readiness to work with our colleagues in devolved legislatures, and believe it is appropriate for the arrangements for such co-operation to be made by the committees concerned (paragraph 46)

B. Questions and Debate

The issue of Parliamentary Questions has, to date, proved the most controversial aspect of post-devolution procedure at Westminster. The Procedure Committee adopted a relatively relaxed approach regarding the rules of order in debate generally but saw a need for stricter guidelines on the admissibility of Questions.

In its general observations, the Committee's only specific recommendation was that the rules on the admissibility of Questions and of adjournment debates should be governed by the same principles:[6]

> Mr Atkinson, who has had the experience of membership of the Chairmen's panel, thought that it would be impracticable for occupants of the Chair themselves to rule supplementary questions out of order on the grounds that they related to the responsibilities of the devolved legislatures. It would be even harder for the Chair to prevent Members touching on devolved matters in the course of debate, and we believe it would be invidious to expect the Speaker and her colleagues to prevent every such reference, although they may wish to deprecate sustained discussion of devolved matters. Ministers may, of course, decline to respond substantively to points made in debate which relate to devolved matters, and Members may come to decide that it is not worthwhile to debate them. However, we draw attention to one implication of the existing rules. As *Erskine May* notes, matters for which the Government has no responsibility may not be raised on the adjournment; this may rule out many debates on devolved matters. We discuss the precise definition of Ministerial responsibility more fully below, but **we recommend that the same principles as govern the admissibility of Questions after devolution should govern the admissibility of daily adjournment debates**. Since Members must give notice of the subjects of these debates, enforcement of this rule should present few difficulties for the Chair. At this stage, we do not recommend any change to the rules of order in debate, although we are likely to return to the matter in the light of experience.

The Procedure Committee reached the conclusion, however, that an "evolutionary" approach to the rules on admissibility of Questions would not be appropriate. It felt that the so-called 'Stormont precedent' from the 1920s, that questions relating to matters transferred were disallowed, was unduly restrictive, particularly in relation to Scotland, since this would present very limited scope for questions relating to devolved areas.[7] Nonetheless, as the Clerk of the House said in his evidence to the Committee,[8]

> It is central to the rules relating to Parliamentary Questions that Questions should relate to matters of ministerial responsibility (Erskine May's *Parliamentary Practice*, 22nd Edition, p 295). If no change were made in the range and detail of

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6 *Procedural Consequences of Devolution*, 4th report, HC 185 of 1998-99, 24.5.99, para 6
7 Ibid, para 7
8 Ibid, Evidence, p115

> Questions tabled to Scottish, Welsh and Northern Ireland Ministers, the basic rules relating to Questions would be undermined. Moreover, if oral Questions were accepted on matters where responsibility lay entirely with the devolved legislatures, it would reduce the opportunities for Members to hold Ministers to account on matters for which they *are* responsible.

Accordingly, the Procedure Committee recommended that[9]

> **after devolution, the range and details of questions to be put to the Secretaries of State for Scotland and Wales should be reduced to matters relating to their Ministerial responsibilities.**

The post-devolution responsibilities of the Scottish and Welsh Secretaries are discussed in Research Paper 99/84, *Devolution and Concordats*. The Committee observed, however, that defining "ministerial responsibility" in the context of questions may not be straightforward.[10] Ministers might be tempted, out of political considerations, to answer on matters outside a strict interpretation of their remit. It would, in many cases, be unclear where the limits of ministerial responsibility lie. For the House to wait in order to detect emerging patterns on which questions the territorial Secretaries of State would answer would put great political pressure on the Table Office and could lead to Ministers imposing an unduly wide, or an unduly narrow, interpretation of their responsibilities on the House. The Committee therefore recommended that[11]

> **any reformulation of the rules about Questions must**
>
> - **recognise the fact of devolution, and limit the range of permissible questions accordingly;**
> - **provide guidance to Ministers about the matters the House will expect them to deal with;**
> - **avoid drawing Ministerial responsibility so tightly that questions about the relationship between the devolved legislatures and administrations and the United Kingdom government or parliament are ruled out of order.**

The resolution which the Committee recommended be adopted by the House is reproduced above, in Part II(A) of this Paper. The Scottish Parliament published *Detailed Guidance on Parliamentary Questions*[12] in July: this document is further discussed later in this section.

The Modernisation Committee rejected suggestions that after devolution there would be no need for Scottish Questions, quoting the evidence of a member of the Scottish Affairs

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9 Ibid, para 8
10 Ibid, para 8
11 Ibid, para 10
12 Available at www.scottish.parliament.uk/official_report/pq-procedures/dgpq.htm

Committee who said "it would be very strange for this House to decide that there should be a Secretary of State who should not be subject to the scrutiny of this House".[13] Nevertheless, the Committee asserted that the House "must… acknowledge the fact of devolution" and recommended that[14]

> **Scottish Questions be reduced to thirty minutes duration, but that they should continue to be taken once every four weeks, as now**

The Committee went on to point out that it will be entirely in order for Scottish Members (as for any other Members) to table Questions about the operation of particular reserved matters in Scotland to the relevant departmental Minister. On 26 July the Leader of the House, Mrs Beckett, said that some adjustment to the question rota would be discussed through the usual channels in the autumn to reflect the consequences of devolution.[15]

The first post-devolution Question Time for Scotland or Wales was on 7 July (Secretary of State for Wales). On three separate occasions, the Speaker cautioned Ministers not to answer questions on devolved matters:[16]

> 1. **Mr. Michael Fabricant (Lichfield):** If he will make a statement on the state of tourism in Wales, with particular reference to raising standards of bed-and-breakfast accommodation. [88521]
>
> **The Parliamentary Under-Secretary of State for Wales (Mr. Peter Hain):** I had responsibility for this matter until 1 July. In difficult circumstances, the industry in Wales has performed well. We have allocated an additional £1 million to the Wales tourist board. Quality standards in the bed-and-breakfast sector—
>
> **Madam Speaker:** Order. The Minister said that he had responsibility until 1 July. It is 7 July. Is it not a devolved matter?
>
> **Mr. Hain:** I understand that, Madam Speaker. I was just explaining that it is a devolved matter, but I was talking about what had gone on until 1 July.
>
> **Madam Speaker:** Yes, but if it is a devolved matter, we must pass on.
>
> **Mr. Hain:** It is indeed, from 1 July.
>
> **Madam Speaker:** Thank you.

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13 Ibid, para 11 and Q204
14 Ibid, para 12
15 HC Deb Vol 336, c44W
16 HC Deb Vol 334, 7.7.99, cc1013-5

3. **Ms Jackie Lawrence (Preseli Pembrokeshire):** When he next intends to meet the Assembly Secretary responsible for agricultural issues to discuss problems in the beef industry. [88524]

The Secretary of State for Wales (Mr. Alun Michael): This is a matter for the National Assembly for Wales, but I am delighted to see that Christine Gwyther, as the Assembly Secretary with responsibility for agriculture and the rural economy, has taken up her duties with such strength, integrity and determination.

Madam Speaker: Order. If the Minister announces that it is a matter for the National Assembly for Wales, I cannot allow the House to trespass on those responsibilities. *[Interruption.]* If the Minister tells me that it is a matter for the Assembly, it cannot be a matter for the House, correct?

Mr. Michael: Correct.

4. **Mr. Desmond Swayne (New Forest, West):** What representations he has received regarding the number of European Union export approved abattoirs in Wales. [88525]

The Parliamentary Under-Secretary of State for Wales (Mr. Jon Owen Jones): None.

Mr. Swayne: Will the Minister undertake to launch an investigation into the administrative and regulatory burdens that are faced by abattoirs in Wales as compared with the rest of the European Union? Will he undertake to publish the findings of those studies? Can he assure the House that the studies will be carried out by impartial and proper sources, not vegetarians?

Mr. Jones: This is a matter for my right hon. Friend the Minister of Agriculture, Fisheries and Food, or, in Wales, for the National Assembly.

Madam Speaker: Order. In that case, it is a matter for the Welsh Assembly. It cannot be the responsibility of both this House and the Assembly.

Later that day, at cc 1045-6, a number of Members raised points of order on this issue:

Mr. Ted Rowlands (Merthyr Tydfil and Rhymney): On a point of order, Madam Speaker. May I raise with you the issue that arose in Welsh questions today, especially on Question 3 from my hon. Friend the Member for Preseli Pembrokeshire (Ms Lawrence). The question was when the Secretary of State for Wales next intended to meet the Assembly Secretary responsible for agriculture. I did not quite catch all of my right hon. Friend's reply, but it appeared that he said that it was a matter for the Assembly. You subsequently intervened and said that we therefore could not continue to question him.
It is patently not a matter for the Assembly what action the Secretary of State for Wales in this House does or does not take. It is surely open to my right hon.

Friend as Secretary of State for Wales to seek a meeting of any kind. As he is accountable to this House, we are entitled to ask him about such meetings.
The question was put to the Table Office and approved. I hope that you will give us a ruling that a question such as Question 3 will be perfectly in order in future Welsh Question Times and that future Welsh Secretaries of State can come to this House and answer questions.

Sir Patrick Cormack (South Staffordshire) *rose--*

Madam Speaker: I think that the hon. Gentleman wishes to make a similar point of order.

Sir Patrick Cormack: We realise that after 1 July, with devolution, we are entering uncharted waters. We are grateful to you for the guidance that you gave the House this afternoon, but as the Welsh Assembly does not have primary legislative or tax-raising powers, Members of this House will obviously wish to ask questions and hold Ministers properly to account. I wonder whether you would be kind enough to give some thought to this matter, and to give some guidance to the Table Office so that inappropriate questions are not allowed on the Order Paper and so that all those that do appear on the Order Paper can be pursued.

Mr. Dafydd Wigley (Caernarfon): Further to that point of order, Madam Speaker. I come to this matter as a Member of the National Assembly as well, and questions have arisen as to what competence lies where. Will you discuss the implications of this matter informally with representatives of the parties--and, perhaps, with the usual channels--so that we can have some convention, whereby we know where responsibility lies?

Mr. Dale Campbell-Savours (Workington): Further to that point of order, Madam Speaker. If money is voted by Parliament, on what basis can there be any restriction on asking a Secretary of State questions on the use of those moneys?

Madam Speaker: The hon. Member for Merthyr Tydfil and Rhymney (Mr. Rowlands) asked for a ruling, and I am always prepared to give a ruling. On more than one occasion today, I heard a Minister of the Crown say at the Dispatch Box that, as of 1 July, matters had been devolved; therefore, it was not possible for the House to trespass on matters that are the responsibility of the Welsh Assembly. Of course there are bound to be some problems when such changes are being made. I thought that I had had proper discussions with the Department concerned, and with the Table Office. Obviously, we have a long way to go to bring about improvements. However, the House can be sure that I shall use my best endeavours to see that the matters are dealt with efficiently and properly at Question Time in future.

Mr. Campbell-Savours: Further to that point of order, Madam Speaker. Could I have a written, considered response to the question I asked of you--namely, the question of moneys voted by Parliament?

> **Madam Speaker:** Certainly. I shall look at the precise wording of the hon. Gentleman's question and see that he gets a written response.
>
> **Mr. Rowlands:** I am grateful for your initial response, Madam Speaker. However, my point is narrow and specific. Question 3 was about whether the Secretary of State for Wales would seek a meeting with X, Y or Z. That is a matter for the Secretary of State for Wales, who must be accountable and answerable to this House. I should have thought it possible for us to say that such a question was in order because it related directly to the activities of the Secretary of State, who is answerable to this House.
>
> **Madam Speaker:** I understand, and am sympathetic to, the hon. Gentleman's point, but I repeat what I said earlier. If a Minister of the Crown tells the House that an issue has been devolved, it is for that Minister of the Crown to know whether it is devolved or not. I cannot intervene on that. I am trying to be helpful, and I will look at the matter to see that we run smoothly in future.

On 12 July the Speaker made a Statement on this matter:[17]

> **Madam Speaker:** Following questions to the Secretary of State for Wales on 7 July, Members raised with me points of order relating to the matters on which the Secretary of State can be questioned following the transfer of powers on 1 July. This issue also applies to questions to the Secretary of State for Scotland. I should emphasise that I do not wish the rules relating to questions to become unduly restrictive; but a fundamental rule relating to questions is that they must relate to matters for which Ministers in this House are responsible.
>
> I also note that the Procedure Committee, whose report on the procedural consequences of devolution has still to be debated, recently concluded that the rules for questions must recognise the fact of devolution and limit the range of permissible questions to Ministers at Westminster.
>
> Where matters have been clearly devolved to the Scottish Parliament or to the Welsh Assembly, questions on the details of policy or expenditure would not be in order. Where Secretaries of State have a residual, limited or shared role, questions should relate to that role.
>
> Examples of such limited areas of responsibility are: information that the United Kingdom Government are empowered to require of the devolved Executive; matters that are included in UK legislation relating to Scotland; all primary legislation relating to Wales; matters subject to substantive liaison arrangements between UK Government and the devolved Executives; operation of any remaining administrative powers.
>
> In the case of reserved matters that are the responsibility of other Government Departments, questions should be tabled to the relevant Secretary of State. If questions are inappropriately directed to the Secretaries of State for Scotland or Wales, I would expect Ministers to transfer them to the responsible Department in the usual way.

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[17] HC Deb Vol 335, cc 21-2

> These guidelines follow directly from the decisions of the House in enacting the Scotland Act 1998 and the Government of Wales Act 1998, and will ensure that priority is given to questions on those matters for which Ministers here are responsible. The House will also be greatly helped if Ministers confine their answers to matters for which they have responsibility.
> I have offered this guidance to the House to enable the Table Office better to advise all Members on orderly questions. Once the House has had a chance to debate the fourth report of the Procedure Committee and the House has had some experience of the operation of the rules, I shall, of course, review the terms of my ruling.

The *Herald* reported the comments of one unnamed Member who felt that the Speaker's approach threatened to marginalise Scottish Members by restricting their ability to question Ministers on Scottish affairs.[18] The article suggested that the Scottish Parliament was likely to face pressure to enter into a reciprocal arrangement:

> Sir David Steel, the Presiding Officer of the Scottish Parliament, will now come under pressure from the Speaker to ensure MSPs discuss only devolved matters.
> Later, Linlithgow MP Tam Dalyell criticised [Madam Speaker's] ruling and called on Sir David to adopt the same rules for Holyrood.
> He said: "On reading the statement carefully, it is as plain as a pikestaff that whether the Speaker intended it or not she has indeed limited Westminster's powers of inquiry. There has to be a mirror image in Scotland. What is sauce for the Westminster goose should be sauce for the Holyrood gander."

In July the Scottish Parliament published *Detailed Guidance on Parliamentary Questions*[19] which is intended to assist Members of the Scottish Parliament, clerks and other staff of the Parliament. The seven criteria for the admissibility of questions, as set out in the Standing Orders, are discussed in section 2.1, including the rule that

> Questions shall relate to a matter for which the First Minister, the Scottish Ministers, or the Scottish Law Officers have general responsibility.

The following guidance on this rule was offered:

> Questions which should clearly be addressed to the Secretary of State for Scotland or are the responsibility of private individuals or bodies or non-governmental organisations are inadmissible. For example, questions about general policy relating to the Health Service, a devolved matter, are admissible, but questions relating to policy on abortion are inadmissible as this matter is reserved.

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[18] "Disorder erupts over Speaker's ruling on Scottish questions", 13.7.99. See also editorial on same day, "What MPs can ask: Ruling rewrites constitutional settlement"

[19] Available at www.scottish.parliament.uk/official_report/pq-procedures/dgpq.htm

However, the part of the Guidance which deals with decisions on admissibility [2.1.2.1] states:

> Clerks will generally seek to avoid outright rejection of questions under the seven admissibility criteria set out in Rule 13.3.3. Their approach will be to assist the member in making such adjustments as are necessary for their question to be admissible.

The *Herald* suggested on 14 July that Scottish MPs, in tabling Questions for the next Scottish Questions on 27 July, had made a concerted effort to prevent the problems encountered during Welsh Questions on 7 July from arising again:[20]

> With the full co-operation of the Common's tabling experts, the Scots have learned how to present questions in a way that will satisfy the Speaker without undermining the new settlement under the Scotland Act.
> One MP said it was about wording questions the right way. No longer is it acceptable to ask the Scottish Secretary about the length of hospital waiting lists in Scotland, for example. Instead, Mr Reid could be asked what discussions he has had with the First Minister about hospital waiting lists. Mr Reid would then be able to talk about hospital waiting lists in Scotland, although they are quite clearly a devolved issue.

The questions called during Scottish Questions on 27 July were as follows:[21]

> 1. **Mr. Michael Fabricant (Lichfield):** If he will make a statement on the operation of the substantive liaison arrangements between the Government and the Scottish Executive. [91598]
>
> 2. **Mr. Tom Clarke (Coatbridge and Chryston):** If he will publish a guide for the public on the reserved powers relevant to Scottish matters and how they are dealt with in the House. [91599]
>
> 3. **Mr. David Stewart (Inverness, East, Nairn and Lochaber):** What discussions he has had on the role of regional air services between Scotland and London in encouraging economic development. [91600]
>
> 4. **Mr. Russell Brown (Dumfries):** What discussions he had with the Chancellor of the Exchequer on the impact of the Budget on the Scottish economy. [91601]
>
> 5. **Mr. Archy Kirkwood (Roxburgh and Berwickshire):** When he expects to announce the areas in Scotland to be included in the next programme of *(a)* regional development area aid and *(b)* European structural funds; and if he will make a statement. [91602]

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20 "Scots MPs learn how to ask the right questions"

21 HC Deb Vol 336, cc101-112

> 6. **Mr. Paul Flynn (Newport, West):** If he will set up new websites for Government information on constitutional changes affecting Scotland. [91603]
>
> 7. **Mr. Tam Dalyell (Linlithgow):** If he will list the matters in respect of which he has a shared role with the First Minister and the Scottish Executive. [91604]

The next Oral Questions for the Welsh and Scottish Secretaries are on 27 October and 9 November respectively.

C. Legislation

While the UK Parliament retains full power to legislate on Scottish devolved matters,[22] devolution implies that the UK Parliament should not normally legislate in such areas, at least without the prior consent, or perhaps at the request of, the Scottish Parliament. The Government has accepted this approach. The memorandum of 24 November 1998 from the Leader of the House, Margaret Beckett, to the Procedure Committee stated:[23]

> None of the devolution legislation affects the House's ability to pass legislation on any matter. For all public bills, the Government would expect that a convention would be adopted that Westminster would not normally legislate with regard to devolved matters without the consent of the devolved body. The Government is likely to oppose any private Member's bill which seeks to alter the law on devolved subjects in Scotland or Northern Ireland. It will remain a question of judgement for individual Members whether to introduce legislation on an issue which Parliament has already decided should be devolved, unless it is clear that the proposal has the support of the devolved body concerned.

The Procedure Committee declared:

> **We support the principles behind this statement and agree that the House should not legislate on devolved matters without the consent of the legislature concerned.** Such matters have been dealt with by convention in the past, and we expect such a convention to be established once more.

Scotland's First Minister, during his statement to the Parliament on 9 June, provided some further information as to how the two governments saw this convention working in practice:[24]

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[22] Confirmed by s28(7) of the *Scotland Act 1998* and, as already noted, in the Memorandum of Understanding: see section II (B) above

[23] Procedure Committee First Report: *Procedural Consequences of Devolution: Interim Report*, HC 148 of 1998-99, 13.1.99, Appendix 1, para 15

[24] Scottish Parliament Official Report, 9 June 1999 vol 1 col 358. See also his statement on 16 June on the Executive's legislative programme and priorities. He also dealt, in his 9 June statement, with the more immediate question of legislation wholly or partly in devolved areas currently before Westminster.

> Following devolution, the Westminster Parliament will retain its competence to legislate about all matters. That will include matters that are within the legislative competence of the Scottish Parliament. In a devolved system, it could not be otherwise.
>
> However, the United Kingdom Government has made it clear that it expects a convention to be established whereby Westminster would not usually legislate on devolved matters in Scotland without the consent of the Scottish Parliament. Lord Sewel made that clear on 21 July last year during consideration of the Scotland Bill by the House of Lords. In a memorandum of evidence to the House of Commons Procedure Committee last November, the President of the Council indicated that the Government expected the convention to be adopted for all public bills.
>
> In addition, the Scottish Executive expects that the UK Government will oppose any private member's bill that seeks to alter the law on devolved subjects unless it is clear that the proposal has the support of the relevant devolved body. That is also the position of the UK Government. In its report on the procedural consequences of devolution, published on 24 May, the Procedure Committee stated that it supported the principles behind Mrs Beckett's statement and agreed that the House should not legislate without the consent of the devolved legislature concerned.
>
> Members may find it helpful if I explain how we envisage that the process of seeking consent will work in practice. Where the Scottish Executive and the United Kingdom Government agree that a policy in a devolved area should be given effect by an act of the Westminster Parliament, it would be for the Scottish ministers to put the proposal to the Scottish Parliament, and for the UK Government to manage its business at Westminster in a way that is consistent with the convention.
>
> The usual rule will be that legislation about devolved subjects in Scotland will be enacted by the Scottish Parliament. From time to time, however, it may be appropriate for a Westminster act to include provisions about such matters. That might be the case, for example, where the two Administrations agree that there should be one regime of regulation with application on a UK-wide or GB-wide basis……..
>
> I remind members that the Scottish Parliament will be able to amend or repeal legislation made at Westminster in so far as its provisions fall within this Parliament's competence. That is the case for existing legislation, for this session's bills at Westminster that affect Scotland and for future acts of the UK Parliament.

The situation in Wales is somewhat different, as the National Assembly does not have power to make primary legislation on devolved subjects. The White Paper, *A Voice for Wales*, set out the role which the Government expected the National Assembly to play in future legislation affecting Wales, while stressing Parliament's ultimate responsibility in this field:

> **A continuing role for the Secretary of State**

With the establishment of an Assembly, the Secretary of State for Wales will continue to participate fully in the Government's policy formulation, legislative and resource decisions, and to represent the needs of Wales in Cabinet and Cabinet Committees. The Secretary of State will also sit on relevant Standing Committees of the House of Commons considering legislation which affects Wales.

Under the Government's proposals the Secretary of State will be able to work in partnership with the Assembly. Informed by its views, the Secretary of State will be able to ensure that Wales's voice is heard more clearly on issues of major importance to Wales. While he will not be obliged to support the view which the Assembly has expressed, the voice of Wales should be heard much more strongly than under the present arrangements.

This partnership will need to be mirrored at official level. The Secretary of State's team of officials will work closely with officials in other government departments and the Assembly.

Legislation and the Assembly

Parliament will continue to be the principal law maker for Wales. The Assembly will need to establish a close partnership with Members of Parliament representing Welsh constituencies. They will continue to be involved in considering new legislation that applies to Wales, and to represent their constituents on all matters. Setting up the Assembly will not reduce Wales's representation in Parliament.

The Government's proposals will allow the Assembly to seek to influence legislation which is being considered at Westminster. The Bill will place a duty on the Secretary of State to consult the Assembly about the Government's programme for legislation after it has been announced in the Queen's Speech. It will be open to the Assembly to debate the programme and to prepare a response. The Secretary of State for Wales will be able to attend Assembly debates on the legislative programme. The Assembly will also have a general capacity to debate matters of interest to Wales, and to make its views known to Parliament.

New primary legislation often creates new powers to make secondary legislation in the areas for which the Assembly will be responsible. It has increasingly been the practice over recent decades for each new piece of legislation to devolve powers to Secretaries of State for Wales, including powers to make secondary legislation. This process will continue once the Assembly has been established. The Government will consider, in drafting each Bill that it introduces into Parliament, which of the new powers it contains should be exercised in Wales by the Assembly. This could include giving the Assembly responsibility for bringing the Bill's provisions into force in Wales. As a general principle, the Government expects Bills that confer new powers and relate to the Assembly's functions, such as education, health and housing, will provide for the powers to be exercised separately and differently in Wales; and to be exercised by the Assembly. The final terms on which an Act is implemented, including the means by which it is brought into force, will remain a matter for Parliament.

Section 31 of the *Government of Wales Act 1998* places a duty on the Secretary of State for Wales to consult the Assembly on the Government's legislative programme as soon as possible after the Queen's Speech. As part of the consultation process, he must attend and participate in at least one Assembly debate on the legislative programme. If the Government decides, mid-way through a Session of Parliament, to introduce a Bill which is not in the Queen's Speech, the Secretary of State must undertake such consultation with the Assembly as appears to him to be appropriate. Under section 31(4), the Secretary of State need not consult the National Assembly "if he considers that there are considerations relating to [a] Bill which make it inappropriate for him to do so". The then Home Office Minister, Lord Williams of Mostyn, said during the Lords Third Reading debate that this provision was intended to deal with Bills "which have to do only with England and which are of no interest, or relevance, or connection with Wales or the assembly".[25]

The Procedure Committee's report also makes a number of recommendations on detailed aspects of the legislative process: these are reproduced above, in part II(A) of this paper. See also section II(D)4 below.

D. Committees

1. Select Committees

The Procedure Committee's recommendations on select committees at Westminster were as follows:

> 6. We recommend:
> — that there should be Select Committees relating to Scotland and Wales;
> — that these Select Committees should be concerned with the role and
> — responsibilities of the relevant Secretary of State and on occasion, the policy of United Kingdom departments as it affects Scotland or Wales.
>
> We recommend that such Committees liaise with colleagues in the Scottish Parliament or the Welsh Assembly, but it is not for Westminster to prescribe such liaison. Similar conditions should apply to any successor of the Northern Ireland Affairs Committee (paragraph 21).

2. The Grand Committees

The memorandum of 24 November 1998 from the Leader of the House, Margaret Beckett, to the Procedure Committee supported the retention of the Grand Committees for the time being.

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[25] HL Deb Vol 592, 15.7.99, c313

> There will certainly be a continuing need for some Scottish, Welsh and Northern Ireland business to be taken in the grand committees. ... A regular pattern of meetings could be established to debate reserved matters. The Government expects that, in the light of experience, there will be a need to adjust the procedures of the grand committees, but it would prefer not to make any changes at this stage.[26]

The Modernisation Committee subsequently published a report on *Sittings of the House in Westminster Hall*.[27] The Committee called for the establishment, for an experimental period of one year, of a parallel chamber of the House (originally called the 'Main Committee') in the Grand Committee Room in Westminster Hall. This would be a subordinate chamber which all Members would be able to attend; which could debate matters agreed by all to be important but which do not readily find time on the floor of the House; to which business would be referred by agreement; and which would take decisions only with unanimity.[28] The sittings in Westminster Hall would thus offer "fresh opportunities to back-bench Members and enable the House to hold the Government to account on a wider range of issues".[29] The House debated the report and approved it, on a division, on 24 May 1999. The House resolved, also on a division, to put the experiment into effect for the 1999-2000 Session.[30] The chamber in Westminster Hall will sit on Tuesdays between 10 am and 1 pm, Wednesdays between 9.30 am and 2 pm, and Thursdays from 2.30 pm for up to three hours.

On the publication of the Modernisation Committee's report on Westminster Hall, the Procedure Committee published an interim report on the implications of this proposal, and of devolution, for the Grand Committees.[31] The Committee noted the view of the Leader of the House on the continuing need for the Grand Committees after devolution (reproduced above), but suggested that devolution should, logically, markedly reduce Grand Committee business.[32] It stated:

> **We are attracted by the idea that the sittings in Westminster Hall could provide a forum for debate on territorial matters. If the experiment of sittings in Westminster Hall is successful, there may be no need for the Grand Committees to continue**.
>
> 5. There are a number of reasons why this might be desirable. As Mr Maxton said:

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26 Procedure Committee First Report: *Procedural Consequences of Devolution: Interim Report*, HC 148 of 1998-99, 13.1.99, Appendix 1, para 6

27 HC 194 of 1998-99, 24.3.99

28 Ibid, para 1

29 Ibid, para 23

30 HC Deb Vol 332, cc 81-133

31 *Procedural Consequences of Devolution: Second Interim Report*, HC 376 of 1998-99, 15.4.99

32 Ibid, para 4

> "[Devolution] is about giving power to somebody else and accepting that they are going to use it".

There is a danger that the Grand Committees may be seen as an attempt by Westminster MPs from Scotland, Wales or Northern Ireland to retain powers that have been given up. The Grand Committees were appropriate when the Westminster Parliament was the sole Parliament of the United Kingdom. Then special measures to ensure that the perspective of Scotland, Wales or Northern Ireland were not lost were appropriate. The Scottish Parliament and the Assemblies for Wales and Northern Ireland will now to a large extent articulate that voice, and Westminster should respect their right to do so.

6. The second argument against the retention of the Grand Committees is the imbalance between England and other parts of the United Kingdom that their continuation would cause. It would be inappropriate to retain special bodies for debate in which members of the United Kingdom Parliament participated according to the location of their constituency, without creating a similar body for England. As Mr Atkinson said "If you put 500 English Members of Parliament into an English Grand Committee, it would be a fairly lively and chaotic body. It simply would not work." We are also attracted to the principle that Members from all parts of the United Kingdom should be able to participate in debates held in the United Kingdom Parliament.

7. This does not mean that there should be no debates on matters relating principally or even solely to individual parts of the United Kingdom at Westminster, or that the ability of current Members of the Grand Committees to participate in such debates should be reduced. Debates on matters in relation to their effects on particular parts of the United Kingdom are intrinsically likely to be dominated by Members from the area concerned, although others may participate.

8. We are aware that, in potential at least, Grand Committees could deal with legislation. (It is possible that there will eventually be more legislation relating solely to Wales as a result of devolution.) We do not believe this is a significant reason for their retention. We will discuss legislation more fully in our next report; here we merely note that it would be possible to send legislation to second reading committees made up largely of Members from England, Northern Ireland, Scotland or Wales as appropriate, and that Standing Order No. 86 (Nomination of Standing Committees) already makes special provisions for bills relating solely to Scotland or Wales; it would be possible to reform these procedures and introduce similar ones for legislation relating solely to Northern Ireland.

9. At this stage our views are not finalised. We will be keeping the consequences of devolution under review for some time, and it may be that we will reconsider our suggestions in the light of experience. However, we note that the Northern Ireland Affairs Committee, which submitted evidence some months ago, suggested that a "Main Committee" "might provide a suitable alternative forum for debating Northern Ireland matters currently debated in the Grand Committee".

> At the moment it is not certain how great the demand for debates on territorial matters will be in future. It is possible that there will be too much business to be accommodated in Westminster Hall in the hours available for the experimental period, particularly since the Modernisation Committee sees Westminster Hall as "a forum for novel kinds of business which at present finds no place whatever in the time of the House". However, the Modernisation Committee also noted that, if the experiment succeeded, Westminster Hall might provide opportunities for simplifying the Committee structure. **We recommend that, once devolved government is in place and for the period of the experiment with sittings in Westminster Hall, the Grand Committees be suspended.**

3. The Regional Standing Committee

Standing Order No 117 provides for a *Standing Committee on Regional Affairs*. This was convened several times between 1975 and 1978 to discuss the problems of specific regions, but has not met since then. Its composition is all Members from English constituencies plus up to five Members nominated by the Committee of Selection, giving a current potential membership of 534. Matters could be referred to the Committee on a Government motion put without debate in the House. The Committee considered subjects on a motion "That the Committee has considered the matter…" and debates lasted for two and a half hours. At the end of proceedings the Committee reported that it had considered the matter, without any further question being put.

On 10 February the Leader of the House, Margaret Beckett, submitted a memorandum on the Regional Standing Committee to the Modernisation Committee, inviting it to examine the options for reviving and updating the Committee for an experimental period:[33]

> 1. Government is pledged to modernise the way in which Parliament conducts its business. In this connection, I have been considering means of improving the way in which Parliament can debate the affairs of the English regions.
>
> 2. Scotland, Wales and Northern Ireland have Grand Committees and we have recently improved the arrangements for European matters to be considered by the House. The English regions have been somewhat disadvantaged, however, in that the existing Standing Order 117, which relates to a Standing Committee on Regional Affairs, has not been used since 1978. In the Government's view, this is not because of lack of demand for a discussion of English regional issues in the House. It is therefore right that we should look at this now.
>
> 3. To this end, I invite the Modernisation Committee to examine the options for reviving and updating, for an experimental period, Standing Order 117.
>
> Objective

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[33] The Memorandum was placed in the Vote Office by the Government

4. The aim of reviving, a regional standing committee would be to provide a forum in which MPs could debate, in a more focused way, matters affecting a specific region or touching on regional affairs generally. Committee meetings could be convened later this session.

Format of meetings

5. The committee might adopt procedures used in the European Standing Committees and the Grand Committees, for example:

- a short statement followed by a question and answer session involving a Minister from the relevant department (this would be a different procedure from that used by the committee which met previously under Standing Order 117) - possibly followed by -

- a short time-limited debate or a longer general debate, with in either case no question being put. The subject or subjects debated could be, for example, an RDA annual report, the economy of the region, structure plans, transport needs etc.

6. The exact procedures followed by the Committee could be flexible and could respond to the particular subject(s) or region(s) to be debated. They could also evolve over time in the light of experience.

7. As a departure from the procedures under Standing Order 117, we propose that the pattern of meetings throughout the year and the subject(s) for debate, could be decided by the regional standing committee itself or a business sub-committee of it, following bids to it from members. These would then be put before the House for approval by a Minister of the Crown. The Government would not regard any committee debates as an alternative to debates on the floor - they would be instead a sensible recognition of what a modem legislature can and should do.

8. It need not be the case that such a committee would be convened to consider every region each year - that could be for the committee to consider.

Membership

9. Also as a departure from the procedures under Standing Order 117, we propose that the regional standing committee could have a core membership, reflecting party representation in the House, which would be able to build up an expertise in regional affairs. There may be advantage in some members of the core group being drawn from the membership of the Environment, Transport and Regional Affairs Select Committee. Non-committee Members would be able to attend and speak when the affairs of their region were being debated.

The Government's proposal for reviving the Regional Standing Committee had been anticipated by the press on 15 January 1999, where it was interpreted as "part of Government efforts to head off a potential backlash over the setting up of the new

Scottish Parliament and the Welsh Assembly".[34] The Modernisation Committee has not made any recommendation regarding this proposal but the Regional Standing Committee could, in practice, simply be revived using the existing Standing Order No 117 (although not in the precise form suggested in the Leader of the House's memorandum).

4. Standing Committees

The Procedure Committee considered that the provision in SO no 97 to allow the Speaker to certify a bill if its provisions relate exclusively to Scotland and referred to the Scottish Grand Committee should be adapted to allow its use for any bill relating exclusively to one of the constituent parts of the UK. Its detailed proposals were as follows:

> 32. Although we anticipate that it would be usual for bills certified by the Speaker as relating solely to one of the constituent parts of the United Kingdom to be referred to a second reading committee, we do not recommend that such a referral should be automatic. It would be possible for a United Kingdom Government to introduce a bill to implement, say, the proposals of the Welsh Assembly, even though the House and the Assembly were not of the same political complexion. Moreover, since the Assembly (and the Scottish Parliament) will be elected every four years, there may be occasions when the Assembly will have a distinctly different balance from not only the United Kingdom Parliament as a whole, but from the group of MPs sitting for Welsh seats at Westminster. In such circumstances, the Government might expect to have to ask the House to override a recommendation from the second reading committee that a bill be not read a second time. The question on such a decision would be put forthwith. It would be possible to disapply the Standing Order to allow a debate on the Question, but, if this were done, the debate in the second reading committee would be duplicated. In this case it would be preferable for the arguments in favour of or against a certified bill being aired in a forum in which all Members of the House could participate. **We consider that it should be usual for bills relating exclusively to England, Scotland or Wales to be considered by an appropriately constituted Second Reading Committee, but this should not be an absolute requirement. We further recommend that the provisions of paragraph (1) of Standing Order No. 90 (Second reading committees) should be amended to provide that any Member, not just a Minister of the Crown, should have the power to set down a Motion referring such a bill to a Second Reading Committee and that it should require a minimum of twenty Members to rise in their places to block such a Motion made by a private Member, as it does if a Minister makes it, rather than a single shout of 'object'.**

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[34] *Daily Telegraph*, "English regions to have a voice at Westminster". See also *Guardian*, "English MPs to get revived committee for regions in Commons devolution shake-up" and *Times*, Regions of England to be given a voice"

> 33. The House's Standing Orders currently provide for Bills relating exclusively to Scotland to be dealt with by a Scottish Standing Committee which must be "so constituted as to include not fewer than sixteen Members representing Scottish constituencies". Although in theory this provision could cut across the need to have regard to the composition of the House, it does not appear to have caused the Committee of Selection problems in the past. **We recommend that Standing Committees on the Committee stage of bills certified by the Speaker under the new Standing Order should contain at least sixteen Members from the area concerned.**

E. The Government's Response to the Procedure Committee Report

The Government's response to the Fourth Report of the Procedure Committee, *Procedural Consequences of Devolution,* was ordered to be printed on 19 October.[35] The Government agreed, broadly or in full, with many of the Committee's recommendations. The four common principles set out by the Committee[36] were endorsed by the Government.[37]

The Government broadly accepted the Procedure Committee's approach to parliamentary questions, noting that it provided the House with an opportunity to set out the guidelines for questions. Nevertheless, the Government queried part (b)(ii) of the Committee's recommended resolution at paragraph 10. The provision in question set out one of the possible exceptions to the proposed general rule that questions should not be tabled on matters for which responsibility has been devolved by legislation to the Scottish Parliament, the Northern Ireland Assembly or the Welsh Assembly. Part (b)(ii) relates to "matters which are subject to a concordat or other instrument of liaison between the UK Government and the devolved executive". The Government believed that this provision was "too widely drawn - since the system of concordats is intended to encourage consultation across the range of Government business".[38]

The Government had reservations about suspending or abolishing the Grand Committees at this stage, since they offered "a useful mechanism for debating issues of particular interest to those parts of the UK," although it had recognised that the role and procedure of the Grand Committees would have to be adapted in the light of experience with devolution.[39]

The Government was not persuaded that the Procedure Committee's recommendation in paragraph 27, that the Speaker should be able to certify that a bill relates exclusively to one of the constituent parts of the United Kingdom, was either "necessary or practical".[40]

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35 Procedure Committee, First Special Report, HC 814 of 1998-99
36 See pp 9-10 above
37 page iii
38 page iv
39 page v
40 page vi

The Government also had doubts about the proposed referral of such certified bills to an appropriately constituted second reading committee (paragraph 29), preferring to retain the option of referring Bills to one of the three Grand Committees for a second reading debate.[41]

Finally, the Government observed that[42]

> The Committee did not make any specific recommendations on two other matters mentioned in the Government's memorandum which were designed to promote amicable relations between the House of Commons and the devolved legislatures. The Government hoped that a practice would arise at Westminster and in the devolved legislatures of not criticizing the other elected chambers and expressing any comments on individuals in moderate terms, preferably in a substantive motion. There was never any intention that this should be mandatory or would curb the freedom of speech of Members of Parliament.
>
> The Government also suggested that members of the devolved legislatures should have similar access to the precincts as that accorded to members of the European Parliament. The Procedure Committee consulted the Administration Committee, which is primarily responsible for this point. The Administration Committee's initial view was that only MPs and MEPs representing the whole of the UK should have access to the House of Commons and the use of its facilities. They deferred a final decision until it became apparent what reciprocal arrangements are proposed for MPs in the devolved legislatures. The Government hope that a mutually satisfactory solution will be found.

III The Memorandum of Understanding

A Command Paper was published on 1 October 1999, which contained a Memorandum of Understanding and other concordats between the administrations of Scotland, Wales and the UK.[43] The agreements set out principles by which the three administrations intend should underlie working relations between them. The Memorandum of Understanding (MU) referred to parliamentary business as follows:

> 13. The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with

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41 page vii

42 page ix

43 Cm 4444 *Memorandum of Understanding and Supplementary Agreements*. Research Paper 99/84 gives further details on concordats

> regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.
>
> 14. The United Kingdom Parliament retains the absolute right to debate, enquire into or make representations about devolved matters. It is ultimately for Parliament to decide what use to make of that power, but the UK Government will encourage the UK Parliament to bear in mind the primary responsibility of devolved legislatures and administrations in these fields and to recognise that it is a consequence of Parliament's decision to devolve certain matters that Parliament itself will in future be more restricted in its field of operation.
>
> 15. The devolved legislatures will be entitled to debate non-devolved matters, but the devolved executives will encourage each devolved legislature to bear in mind the responsibility of the UK Parliament in these matters.
>
> 16. These same principles will be applied to other aspects of each administration's responsibilities towards its Parliament or Assembly. The administrations will provide each other, so far as appropriate and practicable, with information necessary to meet these responsibilities.

In the debate in the Welsh Assembly on 7 October, Andrew Davies, the Business Secretary, said:[44]

> We might wish to have formal interparliamentary links with the UK and Scottish Parliaments, whether as a corporate body or between Subject Committees here and their counterparts in London and Edinburgh

This was in response to an amendment proposed by Mike German of the Liberal Democrats which called for protocols for communication between the Assembly as a whole with the UK Government and the other devolved administrations. Dayfdd Wigley, for Plaid Cmyru, expressed concerns about the phrasing of paragraph 14, as allowing too much latitude to Westminster. In response Alun Michael, the First Secretary, said:[45]

> As one who has been a Member in Westminster longer than I have, you know very well what Betty Boothroyd would say if there was not sufficient respect shown to what Westminster was allowed to debate. She has begun to rule on matters that have been devolved, but that is Westminster's power and not the Government's. The said paragraph simply respects this difference.

Dafydd Wigley's comments were also supported by the Conservative leader, Nick Bourne later in the debate.

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44 Record of Proceedings, National Assembly of Wales, 7 October 1999
45 Ibid

When the MU was debated in the Scottish Parliament concern was expressed about the lack of parliamentary input into the drafting of the concordats, but this aspect of the MU did not attract detailed debate.[46] There are no official plans as yet for concordats between the various devolved assemblies, as opposed to administrations. One of the possible functions of the Secretariat to the Joint Ministerial Committee[47] outlined in the MU will be to review 'guidelines for officials of one administration who have to give evidence before the legislature of a different administration'.[48] This will presumably be one or more 'devolved' versions of the 'Osmotherly Rules' which currently apply for civil servants appearing before Westminster committees.[49] These rules have never been officially endorsed by the Westminster Parliament.

The supplementary agreements contained in the Command Paper envisage occasions when ministers from devolved administrations would represent the UK at the EU Council of Ministers and related meetings. Decisions on attendance would be taken on a case by case basis by the lead UK Minister. The relevant concordat states: 'The role of Ministers and officials from the devolved administrations will be to support and advance the single UK negotiating line which they will have played a part in developing'.[50] However there is likely to be criticism of the lack of accountability to Westminster when a minister from a devolved legislature is the attendee, since that minister would not be expected to make a statement to the Westminster Parliament. The *Daily Telegraph*[51] reported John Maples, Shadow Foreign Secretary, as saying that the plan was 'completely unacceptable' because ministers who negotiated on behalf of Britain should be accountable to Parliament.

IV The "English Question"

There has been much discussion of the implications for England of devolution in other parts of the UK. The unsuccessful *Referendum (English Parliament) Bill* [Bill 9 of 1997-98], presented by Teresa Gorman, provided for a referendum to be held on the creation of an English Parliament.[52] In a recent adjournment debate on constitutional reform for England, James Gray regretted the fact that the Procedure Committee's report on the *Procedural Consequences of Devolution* did not mention "the English Question".[53]

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46 see Research Paper 99/84 for other aspects of the debate, such as the legal enforceability of concordats

47 see Research Paper 99/84 for further details about the Joint Ministerial Committee

48 Cm 4444 A2.2

49 For further details of the Osmotherly rules see Research Paper 97/5 *The Accountability Debate: Codes of Guidance and Questions of Procedure for Ministers*

50 Cm 4444 B3.14

51 *Daily Telegraph* 11 October 1999 'Scots and Welsh MPs to speak for UK abroad'

52 See Research Paper 98/9, which also discusses the Government's policy on devolution to the English regions

53 HC Deb, Vol 332, 9.6.99, c581

The primary objections raised are the perceived under-representation at Westminster of English voters, ie. Scotland has more MPs per head of population, and the "West Lothian Question" – the fact that Scottish Members may vote on matters solely affecting England but English Members may no longer vote on matters solely affecting Scotland.[54] The Leader of the Opposition, William Hague, has set out four principal options for correcting the perceived imbalance created by the Government's constitutional reforms in speeches to the Centre for Policy Studies:[55]

> First, the strengthening of English local government and a further devolution of decisions about health and education to hospitals and schools.
>
> Second, a substantial reduction in the number of Scottish MPs.
>
> Third, the creation of an English Parliament with similar powers to those of the Scottish Parliament.
>
> Fourth, restricting the voting rights of Scottish MPs - what I shall call: English votes on English laws.

In addition, the creation of elected regional assemblies in England has been suggested as a possible solution by others. The Government's policy is to create such assemblies "where public demand exists". [56]

In his speech to the Centre for Policy Studies on 15 July 1999, Mr Hague set out his conclusions on this issue. He suggested that strengthening the powers of English local government and devolving further powers to local institutions like schools, although desirable, "can only provide part of the answer to the English Question" since they "can never provide an adequate counter-balance to the considerable legislative powers of the Scottish Parliament, nor will they realistically provide an outlet to the growing feelings of English identity".

Nor would elected regional assemblies provide the answer, since "there is simply no demand and no interest in this country for a Wessex Wittan or a Mercian Moot". Most English people, he suggested, would not identify with "some artificial regional entity drawn up by government draftsmen in London". Furthermore, since no-one contemplated devolving legislative powers to regional assemblies, "even on paper they do not provide an answer".

Regarding the relative number of Scottish and English MPs, Mr Hague referred to the fact that under section 86 of the *Scotland Act 1998* the current electoral quota (the number of

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54 The West Lothian Question is dealt with in more detail in Research Papers 99/7, 98/3 and 97/92

55 15.7.99, based on a passage from a speech on 24.2.98

56 Research Paper 98/9 discusses the Government's policy on regional assemblies

voters per Member) in Scotland is due to be increased to the same level as in England. At current population levels, this would lead to a reduction in the number of Scottish MPs from 72 to around 58. Mr Hague criticised the fact that this was not due to be implemented in time for the next election.[57] Some people advocated a much more dramatic cut in the number of Scottish MPs "on the grounds that one English MP must deal with the problems of his or her 72,000 constituents, whereas each Scottish MP will have up to four Members of the Scottish Parliament dealing with the bulk of the work from their 72,000 constituents". Hague dismissed this proposal, claiming that it "deals with one unfairness, the under-representation of the English, by creating another, the under-representation of the Scots. On vital Westminster issues like foreign policy, national defence, tax and spending, and social security, Scots would with some justification say that they were being denied a fair say".

Mr Hague went on to reject the creation of an English Parliament, "with all the powers and responsibilities of the existing Scottish Parliament and an upgraded Welsh Parliament":

> Under the plan devised by Kenneth Baker, the English Parliament would be made up of members from each of the 529 English constituencies, and would sit at Westminster for three days a week. The majority party would appoint its own First Minister of England to run an English executive. There would also be a UK Parliament of some 350 members sitting at Westminster for the other two days, dealing with foreign policy, defence and economic affairs.
>
> This kind of English Parliament appears on paper to be a logical solution to the imbalances thrown up by devolution, which is one of the reasons that it has a number of supporters. An editorial in Scotland on Sunday argued recently that "the best way of securing the future of the UK is through a federal structure of equal partners, each dealing with its own domestic affairs, with Westminster left to concentrate on the macro-economy, defence and foreign affairs. It is the only solution which makes sense".
>
> Although I understand the force of the argument for an English Parliament, I am as yet unpersuaded.
>
> The United Kingdom is not easily suited to the federal model because 83 per cent of the population live in one part of it, England. The United States of America works because there are 50 different states and no one of them predominates. There are plenty of small states, but there are also plenty of large states.
>
> I am also concerned that by creating another Parliament, we would be creating more politicians and more bureaucracy, and could be confusing lines of

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[57] The *Scottish Parliamentary Constituencies Bill* [HL], a private Member's Bill, would implement this change before the next election. It was passed by the Lords in the current Session but has virtually no chance of becoming law.

> democratic accountability in the process. The English Parliament could become the dominant political force in the country, and Westminster could find itself emasculated and constantly second-guessed.
>
> There is also the danger that an English Parliament could provide a focus point for a form of English nationalism that could hasten the break up of the United Kingdom rather than prevent it.
>
> However, I have little doubt that the wholly respectable demands for an English Parliament will grow unless a proper debate is allowed to take place about the English Question, and unless we can provide an alternative constitutional solution to the unfair treatment of England.

Mr Hague's preferred solution to the "English Question" was the withdrawal of voting rights from Scottish MPs over all legislation that does not apply to Scotland, which he described as "English votes on English laws":[58]

> Bills which related only to England would be debated on and voted on by English MPs only at all stages - Second Reading, Committee Stage, Report Stage and Third Reading. There would not be an English executive initiating English legislation. Nor would this necessarily require special 'English Days' at Westminster, which might pose logistical problems for such things as emergency statements and select committees.
> Since the Welsh Assembly, unlike the Scottish Parliament, cannot pass primary legislation, the principle should be extended to include Welsh MPs for laws relating to England and Wales. And, of course, it would include Northern Irish MPs until the establishment of a devolved executive there.
> A possible scenario might be as follows. The Government introduces a Bill, which the Speaker certifies as applying exclusively to England and Wales. It automatically goes to a Second Reading Committee composed of all English and Welsh MPs and, if passed, that fact is reported to the House. It then goes to a Standing Committee composed solely of English and Welsh MPs in proportion to the Party balance among such MPs. When it emerges, it is given an automatic Third Reading, or the right to vote on the Third Reading is restricted to English an Welsh MPs, and then goes to the Second Chamber.
> The principle would need to be extended to secondary legislation that applies to England. It would mean, for example, that all members would vote on the Budget allocation of funding to the Department of the Environment, but only English members would vote when the Secretary of State presents the Order setting out the distribution of grants to individual English local authorities.
> Put simply, what this solution amounts too is this: English MPs would have an exclusive say over English laws and English spending. In other words, we would have English votes on English laws.

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[58] Earlier versions of this approach, including provision contained in the Scotland Act 1978, were known as the "in and out" solution

Mr Hague suggested that his proposal had a number of advantages over the other solutions he had discussed:

> It works within the conventions and traditions of the Westminster Parliament, and does not set up rival institutions. It is based on past precedents. It strengthens the powers of MPs at a time when Parliament is being emasculated. It should be accepted as fair north of the border.

He dismissed the possible objection that it could prevent a Government that did not have a majority of English MPs from getting its English legislation through:

> I say - should a Government without a majority in England be able to force laws on the English? There would be some hard bargaining between the Government and the English MPs, and the Government would have to choose between doing nothing and doing what England would accept. That would be a real check on the power of the executive, which in my experience both as an MP and as former Government Minister, is long overdue.

The policy was restated in the recent Conservative Party paper, *Common Sense Revolution*, under the general theme of restoring faith in politics:[59]

> English votes on English laws will help to restore the confidence of English voters that they are not unfairly treated under devolution, while fully respecting the new autonomy of Scotland and Wales.

An article in the *Scotsman* quoted a number of Labour Ministers as criticising Mr Hague for 'playing the nationalist card'.[60] The junior Minister Michael Wills wrote in the *Times* that "the so-called 'English question' does not exist".[61] Labour's constitutional reforms were designed to restore the rights and identities of the smaller nations in the United Kingdom:

> Under the Conservatives, a uniquely Englishly-minded Prime Minister in Margaret Thatcher, had ruthlessly centralised power in London. This inevitably triggered a reaction from the parts of the United Kingdom that felt ignored and threatened.
>
> If voting in the House of Commons had taken place solely on the basis of national identity, all the MPs from Scotland, Wales and Northern Ireland voting together could not have outvoted all the English MPs. Devolution was necessary to reassure those national minorities.

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59 October 1999, p42
60 "Tory call to ban Scots MPs voting 'divisive'", 16.7.99
61 "Marching to the nation's silent drums", 21.7.99

> William Hague now appears to believe that devolution has created the reverse image of what prevailed under the Conservative Government. Not true. Today, if voting in the House of Commons were to take place solely on the basis of national identity, there is no debate or piece of legislation on which English MPs could not outvote all the MPs from other parts of the United Kingdom voting together.

In a speech on 19 July, the Secretary of State for Scotland, John Reid, said:[62]

> Of course, there will need to be change at Westminster. If we are rearranging the base of politics and decentralising, then other changes can be examined. We can look at the number of Scottish MPs or the way we do business in the UK Parliament.
>
> But these changes should be brought forward in a considered manner. Fanning the flames of nationalism is not the way to advance constitutional change. Change should be considered, and part of a rational process. […]
>
> We all hope that it may yet be possible to devolve power to Northern Ireland. Next year will see the establishment of the Greater London Authority. And if there is demand for devolution to the regions of England, that is something which we can also consider. It is that evolutionary process which will begin to answer the West Lothian Question.

Professor Vernon Bogdanor, in a letter to the *Times* on 21 July 1999, criticised Mr Hague's proposal on the grounds that it would weaken government, and that Scotland and Wales have a vested in decisions on public expenditure in England:

> William Hague's proposal that only English MPs should vote on English legislation (report, July 16) is fundamentally misconceived.
>
> It would mean that, at times such as 1964 or October 1974, when there was a different majority in England from that in the United Kingdom as a whole, government would be bifurcated. There would be a Labour administration for United Kingdom issues, such as foreign affairs and defence, but a Conservative one for English domestic issues, such as health and education. It is not easy to see how effective government could continue under such circumstances.
>
> There is, moreover, an important reason why Scottish and Welsh MPs should continue to vote on English domestic affairs. It is that inevitably, given the relative size of England in the United Kingdom, public expenditure is driven by English needs.
>
> If, for example, the education budget in England were to be cut, there would be a cut in the moneys available to Scotland and Wales. Thus, issues at Westminster

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[62] Scottish Executive News Release, "Devolution – a partnership of Parliaments", 19.7.99

> involving public expenditure in England are of concern to all parts of the United Kingdom, since they may directly affect the level of block grant going to a devolved body.
>
> There are unlikely, then, to be any specifically English issues involving public expenditure which have no consequential effect in Scotland or Wales.

V Members' Constituency Role

A. Introduction

With the advent of devolution, there is potential for conflict between representatives over apportioning responsibility for constituency issues.[63] The question first arose in the Scottish Parliament where there was some initial tension between Members of the Scottish Parliament (MSPs) elected from regional lists and those representing individual constituencies.[64] The Allowances Code for MSPs, approved by the Scottish Parliament on 8 June (which dealt mainly with the relationship between constituency and regional MSPs, especially in their dealings with constituents and localities) contained the following (*para A6*):

> Any MSP who is approached by a constituent with an issue related to a reserved matter (e.g. social security) should consult with the appropriate Westminster MP.

The Commons Speaker has resisted calls from MPs to rule on the relationships between MPs and MSPs:[65]

> **Mr. Brian H. Donohoe (Cunninghame, South):** On a point of order, Madam Speaker. I have written to you in connection with the matter that I am about to raise. It concerns the role of Members of the Scottish Parliament in matters that are reserved in this House. Is it possible for you to have an early meeting with your counterpart in the Scottish Parliament to resolve what will become--if not nipped in the bud--a possible problem?
>
> **Madam Speaker:** I am grateful to the hon. Gentleman for giving me notice of the point that he has raised and I appreciate his concern. However, I must make it clear to him and to the House that it is not for me to arbitrate on relationships between constituents and those who represent them in whichever legislature they

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63 In evidence to the Scottish Affairs Select Committee inquiry *The Operation of Multi-Layer Democracy* HC 469 1997-8 Henry McLeish, then a junior minister, accepted that he would take the substantial part of his constituency work with him if elected as an MSP (Q372).

64 The Scottish Parliament was elected by the Additional Member System. Further details are given in Research Paper 98/113 *Voting Systems: The Government's Proposals* and 99/50 *Scottish Parliament Elections*

65 HC Deb vol 331 cc 641-2, 17.5.99

> may sit. That is a problem that will have to be resolved outside the House by good sense and mutual respect, not by me as Speaker of this House.

Subsequently there was an exchange of correspondence between Brian Donohoe and Dr Cunningham, then Minister for the Cabinet Office. Mr Donohoe asked that Westminster Ministers should 'only respond substantially to the appropriate constituency MP in reserved matters'.[66] In response, Dr Cunningham said that the situation had arisen before with MEPs raising non EU matters, where the approach of successive Governments had been to urge MEPs to advise constituents to raise the issue with appropriate constituency MPs. However guidance was being prepared by the Cabinet Office for departments on handling correspondence from MSPs and National Assembly Members and Members of the Northern Ireland Assembly, which should take these concerns into account.[67] In a subsequent exchange of correspondence Dr Cunningham said:[68]

> I should stress that what we are preparing is guidance for departments on handling correspondence, not guidance for MSPs and their counterparts in Wales and Northern Ireland. As Ministers, the best we can do if members of the devolved legislatures write to us on reserved matters is to ensure that replies urge them to advise their constituents to take the issue up with their Westminster MPs instead. I do not think that the UK Government can be any more prescriptive. We are not in a position to determine what representations it is appropriate for MSPs to make; that must surely be for the Scottish Parliament itself, in consultation with the House Authorities.

This guidance is now expected to be published on 20 October in response to a Written Question.[69] The Scottish Executive published guidance on 13 September on contacts between the Executive and MSPs.[70] The guidance did not consider whether civil servants should answer queries relating to reserved matters.

The Parliament's decision on allowances has prompted the Conservative Opposition at Westminster to seek to apply the 'level of workload' criterion, used by Labour in support of its argument for some differential rates of allowances for constituency and regional MSPs[71], to the position of Scottish MPs. An early day motion was put down on this topic, which arose during Business Questions on 10 June:[72]

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66 Letter to Jack Cunningham MP 18 May 1999 *Scottish Parliament- Reserved Matters*

67 Letter to Brian Donohoe 4 June 1999 *Scottish Parliament- Reserved Matters*

68 Letter to Brian Donohoe 28 June 1999 *Scottish Parliament – Reserved Matters*

69 Joan Ryan: "To ask the Minister for the Cabinet Office, what guidance has been given to Ministers on the handling of correspondence from Members of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly" [95070]

70 *Guidance on Contacts with Members of the Scottish Parliament* Scottish Executive September 1999

71 See, for example, the First Minister's article in the *Herald* on 8 June, "Why workload is the key to the money"

72 HC Deb vol 332 cols 794-5, 10.6.99

> **Mrs. Eleanor Laing (Epping Forest):** Will the Leader of the House make time in the near future for a debate on an important matter relating to the way in which Parliament spends taxpayers' money--namely, the subject matter of early-day motion 709 on allowances for hon. Members representing Scottish constituencies?
>
> [*That this House notes the decision of the Scottish Parliament to reduce the allowances of regional Members of the Scottish Parliament on the grounds that they do not have constituency responsibilities; further notes that honourable Members representing Scottish constituencies will also have fewer responsibilities after 1st July 1999; and consequently invites the Senior Salaries Review Board to consider whether it is appropriate for honourable Members representing Scottish constituencies to be paid an allowance similar to that of other honourable Members.*]
>
> The right hon. Lady may not as yet be aware that earlier this week the Scottish Parliament passed a motion that Members who sit for regional constituencies--those who have been elected on a list--should have a reduced allowance on the grounds that they do not have constituency responsibilities. Given that, after 1 July, Members of this House who sit for Scottish constituencies will have reduced constituency responsibilities because many of those responsibilities will be taken over by MSPs, surely the House ought to have an opportunity to debate whether Scottish Members of this House should continue to receive the same allowance as Members who still have full constituency responsibilities.
>
> **Mrs. Beckett:** I certainly cannot undertake to find time for such a debate in the near future. I strongly hold the view, as the hon. Lady will know, that there is not and should not be such a thing as two different kinds of Member of Parliament. I should be surprised if my hon. Friends who sit for Scottish and Welsh constituencies - of course, they are only hon. Friends; there are no Scottish or Welsh Members on the Conservative Benches - find their work loads reduced. The hon. Lady is asking me to comment on a decision made by the Scottish Parliament, for which I am happy to say that I do not have responsibility.

There has been press speculation about the future workload of Scottish MPs, with suggestions that Scottish MPs might not be considered in practice for ministerial posts in departments such as the Home Office or DETR which do not cover Scotland.[73] However, the appointment of Helen Liddell as Minister for Transport indicates that no hard and fast rule yet exists.[74] The SNP are reported to be creating a research unit to question the role and effectiveness of Scottish MPs at Westminster.[75]

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[73] *Financial Times* 28 April 1999 'Scottish and Welsh MPs face future of diminishing returns' *Scotland on Sunday* 7 August 1999 'Scots Labour MPs accused of 'doing nothing'

[74] *Herald 18 May 1999* 'Backlash to 'English' job for Liddell'

[75] *Herald* 16 August 1999 'Nats plan to find out if MPs give value for money'

The Presiding Officer of the Scottish Parliament has established an informal cross-party working group to consider issues of common concern to regional and constituency MSPs and MPs at Westminster.[76] The working group will consider the following:

- Arrangements between regional and constituency MSPs for responding to constituents' correspondence, the holding of Members' surgery meetings and the locations of their offices
- Whether Scottish Executive Ministers should respond directly to matters raised in correspondence by Scottish MPs on devolved matters
- Whether UK Ministers should respond directly to matters raised by MSPs on reserved issues affecting Scotland

The Group is due to report to the Presiding Officer who will decide how to implement any recommendations.

B. Dual Mandates

The 1998 Acts does not prohibit MSPs or Members of the Welsh Assembly (MAWs) simultaneously being members of either House of the UK Parliament at Westminster, or of the European Parliament.[77] Indeed such 'dual mandate' membership is contemplated in the remuneration provisions, which prevent the payment of full salaries in both capacities.[78]

In the first general election to the new devolved bodies, on 6 May 1999, the following 'dual mandates' emerged:

- 15 MSPs returned were also Westminster MPs (14 for the equivalent constituency, and one for a list seat in a different region)
- One MSP returned was also, at that time, an MEP
- Three MSPs returned were members of the House of Lords
- Seven MAWs returned were also Westminster MPs
- One MAW was also a member of the House of Lords

There has been some press comment about the extent to which dual mandate members can participate fully in each chamber.[79]

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[76] *Scottish Executive* 16 July 1999 'Sir David Steel established an informal cross-party group of MSPs and MPs

[77] MSPs and MAWs may also be members of local authorities

[78] And also for the purposes of the Scottish Parliamentary Pension Scheme: article F4, *Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order 1999* [SI 1999/1082].

[79] *Times* 9 July 1999 'Devolution has killed one-nation politics'

The number of MSPs and MAWs who are also MPs may well be significantly reduced after the next general election for the House of Commons, as it is expected that the political parties will discourage or prohibit the holding of dual mandates beyond the initial period.

C. Representational Issues

It is worth setting out some of the potentially different roles which MPs now have in relation to devolved or reserved areas. These roles, in general, remain to be worked out. The relationships can be described as follows:[80]

- Scottish and Welsh MPs and devolved matters
- Scottish and Welsh MPs and reserved matters
- Scottish and Welsh MPs and English matters
- English MPs and devolved matters
- English MPs and reserved matters
- English MPs and English matters

There are some important differences between Scottish and Welsh MPs, since the responsibility for all types of Welsh primary legislation (both on devolved and reserved matters) remain at Westminster. English MPs will continue to participate in the formulation of primary legislation for Wales in devolved areas. The West Lothian Question asks why or how Scottish MPs can continue to deal with domestic 'English' matters (such as health or education), when neither English MPs nor Scottish MPs at Westminster can deal with the same domestic matters as they affect Scotland.[81] Defenders of the current position argue that until now English MPs have always been able to involve themselves in Scottish matters, and because of their overwhelming numerical superiority, could override the clear wish of Scottish representatives. Part III of this Paper discusses the English Question, and possible solutions.

VI Devolution and a Reformed Second Chamber

One theme during the current debate on reform of the House of Lords is that a reformed second chamber could help underpin the programme of constitutional change currently being implemented. Some have seen it acting as a form of 'constitutional chamber', taking a particular interest in constitutional change and constitutional legislation. Further,

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[80] Scottish, Welsh and English are used as shorthand to describe members who sit for constituencies in the relevant countries.

[81] The West Lothian Question has been considered extensively in Research Papers 99/7, 98/3 and 97/92

the new chamber has been seen as a way of bringing together the various parts of the UK, especially those subject to forms of devolution.[82]

The January 1999 white paper on Lords reform stated:[83]

> By the time a fully reformed second chamber can be put in place, there will be devolved institutions in Scotland, Wales and Northern Ireland. London will have its directly elected Authority. English regionalism will be increasingly recognised through Regional Development Agencies and regional chambers. Some regions may be working towards regional assemblies of their own. The relationship of the second chamber to those bodies will need to be a significant part of the Royal Commission's deliberations; it could have a marked impact on both the second chamber's functions and how its members are selected.
>
> One question which therefore arises is whether the second chamber should have some overt role as the representative of the regions, or of the regional bodies. This is a very common role for second chambers overseas. The French Senate, for example, has a special function in representing the 'communities' of France, reflected in the make-up of the electoral college which selects members of the Senate. Using the second chamber in this way would give it a role distinct from that of the House of Commons, where the local links will continue to be the much more immediate one of the MP and his or her constituents. The second chamber could provide a forum where diversity could find expression and dialogue, and where such an expression could work towards strengthening the Union.

The Royal Commission's consultation document, published in March 1999, put the following questions:[84]

> **Representatives of the regions (and MEPs)**
>
> Should the reformed Second Chamber contain representatives of the nations and regions of the United Kingdom? If so, should they be directly or indirectly elected, or nominated? Taking account of the asymmetric nature of devolution within the United Kingdom, what influence should rest with the relevant executive authority, the relevant national/regional Assembly, all those holding elected office within the relevant area and the relevant electorate?
>
> Should any representatives of the nations and regions of the United Kingdom act as delegates serving the interests of those nations and regions, or of the relevant Parliament or Assembly, or executive; or should they be encouraged to fulfil a broader representative role?

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82 For a fuller discussion of this issue, see section IV (A) of Research Paper 99/7, *The House of Lords Bill: Lords reform and wider constitutional reform*

83 *Modernising Parliament: reforming the House of Lords*, Cm 4183, para 7.8-9,

84 www.lords-reform.org.uk/index/consul.htm

> Should British MEPs play a role in nominating or electing members of the reformed Second Chamber? Should they participate in any indirect election of national/regional representatives, or have the right directly to nominate or elect people to the Second Chamber? As an alternative, might MEPs have the right to contribute to relevant debates in the reformed Second Chamber or to attend relevant Committees?
>
> Should any representatives of the nations or regions of the United Kingdom (or of British MEPs) be drawn from the relevant executive authority or Assembly (or European Parliamentary group) or should they be nominated or elected by them? Should they be appointed or elected for life, or for a fixed term or until replaced by other representatives following a relevant election?

The Royal Commission held a programme of public hearings around the UK this summer. Its terms of reference require it to report by 31 December 1999.