



House of Commons  
Scottish Affairs Committee

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**The Sewel Convention:  
the Westminster  
perspective:  
Government Response  
to the Committee's  
Fourth Report of  
Session 2005–06**

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**Second Special Report of Session  
2005–06**

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## The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the office of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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### Committee staff

The current staff of the Committee are Mike Clark (Clerk), Diane Nelson (Committee Assistant) and Camilla Brace (Secretary).

### Contacts

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## Second Special Report

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1. The Scottish Affairs Committee published its Fourth Report<sup>1</sup> of Session 2005–06 on 19 June 2006. On 20 July 2006 we received a memorandum from the Scotland Office which contained a response to the Report. The memorandum is published as an Appendix to this Report.

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<sup>1</sup> Fourth Report from the Scottish Affairs Committee, Session 2005-06, *The Sewel Convention: the Westminster perspective*, HC (2005-06) 983.

# Appendix

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This memorandum provides the Government's response to the conclusions and recommendations in the Scottish Affairs Committee's report 'The Sewel Convention: the Westminster perspective' (HC 983), which was published on 19 June 2006.

## Introduction

1. The Government welcomes the Committee's interest in the Sewel Convention, which is an integral part of the devolution settlement. As a sovereign body, Parliament retains the right to legislate on all matters in Scotland. However, Parliament has exercised its sovereignty by devolving legislative competence in certain areas to the Scottish Parliament. The Convention is therefore an important tool in making devolution work; it is the means by which the UK Government proceeds in accordance with the convention that the UK Parliament respects the competence of the Scottish Parliament to legislate in matters devolved to it.

## Response to Recommendations and Findings

### *Recommendation 1: Communicating the Scottish Parliament's view*

**We recommend the introduction of a formal process whereby the Scottish Parliament notifies Westminster when a Sewel motion has been passed. Although we cannot, of course, insist on how the Scottish Parliament communicates its decisions to us, we trust that the Presiding Officer and the Clerk of the Scottish Parliament will note our view that the better way of letting the House of Commons and the House of Lords know that Holyrood had passed a Sewel motion would be for the Clerk of the Scottish Parliament to advise the Clerk of the House and the Clerk of the Parliaments that such a motion had been passed, rather than for the Presiding Officer to contact the Speaker and the Lord Chancellor (paragraph 17).**

2. While this recommendation is for the UK Parliament and the Scottish Parliament, the Government welcomes the introduction of a formal process of notification between the Parliament which, combined with the recommendation to "tag" relevant Bills, should serve to increase the awareness at Westminster of those Bills that include provisions that trigger the Sewel Convention and therefore require the consent of the Scottish Parliament.

### *Recommendation 2: "Tagging of relevant Bills"*

**We recommend that, following a communication from the Scottish Parliament that it had passed a Sewel motion, at the appropriate time a "tag" is placed on the Order Paper by the relevant House authority, alerting Members that the Scottish Parliament had agreed a Sewel motion in respect of a Bill, and that the text of resolution is made available in the Vote Office (paragraph 20).**

3. The Government welcomes the Committee's recommendation to "tag" the Order Paper in the relevant House to alert Members that the Scottish Parliament has agreed a Legislative Consent Motion in respect of provisions in a UK Bill. The Government also welcomes the recommendation that the text of the resolution be made available in the Vote Office.

### ***Recommendation 3: Improved Explanatory Notes***

**We support fully the Government in its attempts to ensure that all Explanatory Notes are explicit about which part or parts of the United Kingdom a Bill will affect, and could, therefore, trigger the Sewel Convention, and we recommend that the Explanatory Notes to the Equality Bill [Lords] and to the Police and Justice Bill be taken by Bill teams in all Departments as exemplars (paragraph 24).**

4. The Government is grateful to the Committee for its recognition of the value Explanatory Notes provide to Members of Parliament and lay-readers when understanding complex provisions in statute.

5. The Government acknowledged in both its written and oral evidence that Explanatory Notes could be improved, and cited the quality of the text in the Explanatory Notes to the Equality Bill before Parliament at that time. The Government welcomes the Committee's acceptance of this as an exemplar to other Bill teams.

6. It is the Government's intention to introduce a new section in Explanatory Notes that will state explicitly if the Scottish Parliament's consent is required for provisions in a Bill, when this is known at the time of Introduction. The relevant provisions will also be identified. This will supplement the existing Territorial Extent statement to be included in Explanatory Notes, by explaining which provisions, will trigger the Sewel Convention. The addition to Explanatory Notes should provide a greater degree of clarity to readers.

### ***Recommendation 4: Queen's Speech***

**We therefore, recommend that, instead of a simple statement saying such a list is available in the Library, a list of those Bills which affect Scotland is included in the Official Report with the Secretary of State for Scotland's Written Ministerial Statement following the Queen's Speech, and that the list summaries each Bill's implications for Scotland (paragraph 27).**

7. In its written evidence the Government brought to the Committee's attention that the Scotland Office does outline in general terms how the legislative programme will apply in Scotland. A copy of this briefing note has in the past been placed in the Libraries of both Houses. The Government is, however, happy to accept the Committee's recommendation to include a list of Bills with the Secretary of State for Scotland's Written Ministerial Statement that are identified at the time of the Queen's Speech as including provisions which trigger the Sewel Convention.

8. The Government wishes the Committee to note that such a list will not necessarily be exhaustive. This reflects the fact the Legislative Programme needs to retain flexibility and

additional measures can be brought in to meet emerging priorities. It is also the case that detailed information about specific Bills will need to be sought from the lead Government department.

## **Additional Findings of the Committee**

### ***Private Members' Bills***

**We consider that the current information procedures for how the House deals with those Private members' Bills which might apply to matters devolved to the Scottish Parliament are appropriate and work well, and we do not, therefore, recommend any change to those arrangements (paragraph 33).**

9. The Government welcomes the Committee's acknowledgement of the success of the procedures in place for Private Members' Bills (PMBs). The Devolution Guidance Note, Post-Devolution Primary Legislation Affecting Scotland (DGN 10), clearly states the Government's position in respect of the handling of PMBs.

### ***Closer ties to the Scottish Parliament***

**We consider that there could be merit in the House of Commons establishing a "Super" Scottish Grand Committee, composed of Scottish MPs, MSPs and Scottish MEPs that could meet to discuss matters of mutual interest although, like the proposed Parliamentary European Committee, they could not come to decisions on behalf of the House of Commons, or participate in any decision-making process, although it could seek to inform and influence through debate decisions made by either Westminster or HM Government (paragraph 43).**

**Although we do not make a formal recommendation that such a "Super" Scottish Grand Committee be introduced, we hope that the relevant Committees of the House of Commons, such as the Modernisation Committee or the Procedure Committee, might pick up and consider our suggestion for one of their future inquiries (paragraph 44).**

10. The Government believes that the extent and way in which Parliaments and parliamentarians communicate with each other is rightly a matter for those bodies and individuals.

11. It is not clear from the Committee's statement on the possibility of a "Super" Scottish Grand Committee if this would be convened for the purpose of considering provisions in UK Bills that trigger the Sewel Convention or simply to discuss wider matters of mutual interest as they affect Scotland. The Government would not support the former for the reasons set out in its written memorandum to the Committee. Provisions that trigger Sewel will like any other provisions already be scrutinised in the normal way as part of the legislative process. It would be difficult to factor into business management a Committee to look at Sewel provisions separately from the rest of the Bill and such provisions are often very minor within the overall scope of the Bill. There would also be the danger in parallel scrutiny of producing different versions of the same Bill.

12. If it is the Committee's intention that a "Super" Scottish Grand Committee be convened for the purpose of considering wider matters of interest, then this would rightly be a matter for Parliament. The Government believes, however, that a joint committee of Scottish MPs, MSPs and MEPs could put at risk the distinction between legislatures' responsibilities and would potentially blur lines of accountability.

### ***West Lothian Question***

**In order to address the West Lothian Question, there are usually four solutions proffered: the dissolution of the United Kingdom; English devolution; fewer Scottish MPs; or English votes on English laws. Although we make no recommendation on how to resolve this question, we considered it worth noting our concerns, with the hope that matter will be comprehensively debated, and resolved, before the situation is reached whereby it could actually undermine the whole devolution settlement (paragraph 50).**

13. The Committee raised the question of the West Lothian Question in its Report; however, it made no request for any written or oral evidence on this matter.

14. The Government's position on the West Lothian Question is a matter of public record and the subject has been comprehensively debated inside and outside of Parliament for well over a hundred years. The Government remains as committed now to devolution as it was in 1997, just as it remains committed to a single class of member in the UK Parliament.

*Scotland Office*

*20 July 2006*