

## **LAYING OF REPORTS**

1. This note provides guidance on the requirements and mechanisms for laying reports in the Westminster and Scottish Parliaments.
2. Many statutes require reports or accounts to be laid before Parliament. In some cases, these will be reports prepared by the Minister which are then to be laid before Parliament by him, but in many cases there will be a 2-stage requirement for a body to produce a report and send it to the Minister, with the Minister then being required to lay the report before Parliament.
3. The Scotland Act 1998 essentially provides for reports dealing with devolved matters in Scotland to be laid before the Scottish Parliament instead of the Westminster Parliament, but special arrangements are required for-
  - a) reports which deal with both reserved and devolved matters;
  - b) reports relating to cross-border public authorities;
  - c) reports which deal with periods straddling D-day; and
  - d) financial accounts and reports on accounts.

This guidance is not directly applicable to any non-statutory provisions about laying of reports and documents, e.g. where reports are laid before Parliament only as a result of administrative arrangements. However, the principles set out here should be of assistance in determining who such reports should be sent to and which Parliament(s) they should be laid before. Similarly the guidance does not directly apply to requirements imposed by prerogative instruments such as Royal Charters.

### **Statutory Background**

4. Existing statutory requirements dealing with reports need to be read together with the following sections of the Scotland Act or orders made under the Scotland Act. The texts of these are to be found in the Annex :-
  - Section 53 of the Scotland Act, which transfers functions from UK Ministers to the Scottish Ministers. This will include functions of making, directing the form of, or receiving reports, and of laying reports before Parliament.
  - Section 63 of the Scotland Act, which provides for the transfer of additional functions (in reserved areas) to the Scottish Ministers, together with the orders (“Executive Devolution Orders”) made under that section. Functions relating to reports can be transferred as under section 53, and sections 119 to 121 (see below) are applied as if the function had been devolved under section 53. Examples in the current EDO include receiving and laying reports for the National Lottery Commission, the Radio Authority and Independent Television Commission.

- Section 88 of the Scotland Act which provides that functions relating to “cross-border public authorities” will not transfer to the Scottish Ministers but requires reports relating to such bodies to be laid before the Scottish Parliament by whoever is required to lay them before the UK Parliament. These arrangements can be adjusted by orders under section 89 – this has been done for several of the bodies.
- Section 121 of the Scotland Act, which deals with cases where a “pre-commencement enactment” (essentially existing legislation) provides for a report to be laid before Parliament and that report concerns “Scottish functions”<sup>1</sup>. Scottish functions, by definition, mean only matters after D-day. If such a report concerns only Scottish functions, it is to be laid before the Scottish Parliament instead of the UK Parliament. If the report concerns Scottish and other functions, it is to be laid before both Parliaments. “Report” is defined as including accounts and any statement.
- The Scotland Act 1998 (Transitory and Transitional Provisions) (Standing Orders and Parliamentary Publications) Order 1999 (S.I. 1999/1095). Articles 4 and 5 deal with protection from defamation proceedings for reports published under the authority of the Scottish Parliament. Chapter 14 of the Standing Orders deals with the laying and publication of documents.
- The Scotland Act 1998 (Transitory and Transitional Provisions) (Laying of Reports) Order 1999 (S.I. 1999/1594) puts in place transitional arrangements for laying of reports, particularly where a report falls to be laid after D-day but relates to a period before D-day (eg a report for 1998). It defines “pre-Scottish functions” as those functions which become Scottish functions on D-day e.g. functions exercised by the Secretary of State for Scotland or a Scottish public authority prior to 1 July in relation to matters which then become devolved. If a report concerns such pre-Scottish functions, it is to be laid before the Scottish Parliament and the Westminster Parliament. An exception is made for accounts or reports on accounts dealing with a period wholly before D-day – these are to be laid before Westminster only.
- The Scotland Act 1998 (General Transitory, Transitional and Savings Provisions) Order 1999 (S.I. 1999/901) provides a general saving for the transfer of functions to the Scottish Ministers under section 53 of the Scotland Act. Article 2(3) essentially provides that things done by UK Ministers before D-Day can continue in force thereafter as if done by the Scottish Ministers. This will be of relevance where eg the Secretary of State has given a direction as to the form of a report (a common statutory provision) but the report is presented to the Scottish Ministers after D-day.

## Checklist

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<sup>1</sup> “Scottish functions is defined in section 119 to mean functions of the Scottish Ministers, the First Minister or the Lord Advocate which are exercisable within devolved competence, and functions of any “Scottish public authority with mixed functions or no reserved functions”. “Scottish public authority” is defined in section 126(1) as being “any public body (except the Parliamentary corporation), public office or holder of such an office whose functions (in each case) are exercisable only in or as regards Scotland. Scottish public authorities with mixed functions or no reserved functions include bodies such as local authorities.

5. In working out who a particular report should be submitted to, and which Parliament it should be laid before, follow the checklist set out below. This is based on the position after D-day (1 July 1999).

6. Who should the report be submitted to?

Check whether the function of receiving such a report has been transferred to the Scottish Ministers under section 53 of the Scotland Act or by the Executive Devolution Order under section 63. If it has, the report should be submitted to the Scottish Ministers.

Does the report relate to a cross-border public authority? Section 53 does not apply in relation to cross-border public authorities, and functions remain with the UK ministers. Therefore, the report should be submitted to the UK Minister. But check whether any alternative provision, which may override this, has been made in the order under section 89 of the Scotland Act.

Has bespoke provision been made for the report concerned e.g. in any consequential amendments order? For instance, the Law Commissions Act 1965 has been amended to ensure that reports of the Scottish Law Commission are laid before the Scottish Parliament.

7. Which Parliament(s) should the report be laid before?

Does the report relate to a cross-border public authority? If so, it will be laid before both Parliaments (unless alternative provision has been made in the order under section 89).

Does the report deal only with matters after D-day? If it deals only with “Scottish functions”, then it is to be laid before the Scottish Parliament only. If it deals with a mixture of functions, it should be laid before both Parliaments.

Does the report deal with matters before D-day? If it deals (wholly or partly) with “pre-Scottish functions” (functions which are devolved on D-day) then it should be laid before the Scottish Parliament and Westminster. There is an exception for accounts and reports on accounts relating only to periods before D-day – these are laid at Westminster only.

### **Voluntary Provision of Reports to Parliament**

8. The above paragraphs deal with statutory requirements for reports to be laid before Parliament. There is nothing, however, to prevent other reports and documents being made available to either the Westminster or Scottish Parliaments as a courtesy. These will not be formally “laid”, but simply made available to members. For instance, reports of bodies operating in reserved areas in Scotland may be sent to the Scottish Parliament, or reports of devolved bodies may be sent to Westminster.

9. Where such courtesy copies are to be provided for Westminster, 5 copies should be sent to George Skelton for onward transmission to the House Libraries. Where such courtesy copies are to be provided for the Scottish Parliament, 2 copies should be sent to George Skelton to be sent to the Scottish Parliament Library, and additional copies may be provided for issue to members through the Document Supply Centre. Members will be alerted to the existence of these documents via the Business Bulletin.

### **Arrangements for Laying of Reports at Westminster**

10. During the transitional phase, and occasionally thereafter, it will be necessary for reports which have been “processed” by officials in the Scottish Administration to be laid before the Westminster Parliament by the Scottish Ministers.

11. Arrangements for these remain essentially as at present. Eight copies of the report should be sent to George Skelton, who will arrange for the reports to be laid. You should give Mr Skelton at least 7 days notice and provide details of the statutory powers under which the report is to be laid. Reports which are also laid before the Scottish Parliament may need an additional number in that system (see para. 13).

### **Arrangements for Laying of Reports in the Scottish Parliament**

12. Practical arrangements for laying of reports in the Scottish Parliament are governed by Chapter 14 of the Standing Orders (which are contained in the Scotland Act 1998 (Transitory and Transitional Provisions) (Standing Orders and Parliamentary Publications) Order 1999 (S.I. 1999/1095). Reports are to be lodged with the Clerk and may be laid at any time when the office of the Clerk is open. Rule 14.1.4 provides that reports and documents are only to be laid before the Parliament if it is required or authorised to be laid under an enactment or otherwise or it is laid by a member of the Scottish Executive.

13. Reports which are laid in the Scottish Parliament will be numbered in either a “SE” or a “SP” series, depending on whether they originate with the Scottish Executive or Scottish Parliament. The number for a given report should be obtained in advance from Mr Skelton, as soon as you know when the report is to be laid. Reports which are also laid before Westminster may need an additional Command Paper or House of Commons Paper number.

14. At Westminster, Command Papers (eg White or Green Papers) or House of Commons Papers will indicate on the front page that they are “Presented to Parliament by the [name of Minister(s)] by Command of Her Majesty [Month] 1999” (or similar). For reports which are laid in the Scottish Parliament, these should instead bear the words “Laid before the Scottish Parliament by the Scottish Ministers [month] 1999”. As at Westminster, it may be appropriate to include a reference to the statutory power/requirement under which the report is being laid. Where a report is also laid before Westminster, it will also require the form of words used for Command Papers or House of Commons Papers. For consistency, it is suggested that references to the Westminster Parliament should appear above/before references to the Scottish Parliament.

15. Copies of the report should be sent to George Skelton. One copy is required to be formally laid, with a further 20 copies being required for the Document Supply Centre in the

Parliament. Where a report is likely to generate particular interest, you should consider providing the DSC with a greater number of copies, and be ready to supply further copies of reports to the DSC at short notice in response to requests from members. You should give Mr Skelton at least 7 days notice and provide details of the statutory powers under which the report is to be laid and the date on which it is to be laid. All copies of the reports will be submitted to the Clerks in one batch.

### **Defamation**

16. It may be necessary for some reports, e.g. reports of inquiries, to gain the protection afforded to parliamentary publications for the purposes of the law of defamation. Section 41 of the Scotland Act 1998 provides that the publication of any statement under the authority of the Parliament is absolutely privileged. Rules 14.3 and 14.4 of the Standing Orders provide a mechanism for the Parliament to decide that the Clerk shall publish any report or other document laid before the Parliament. Where this is done, the report is then published under the authority of the Parliament and gains the benefit of the protection. In the rare circumstances where this is mechanism may need to be invoked, please contact George Burgess well in advance.

### **Further Information**

17. If you have any queries on the legislation or the application of it in a particular case, please contact George Burgess, Executive Secretariat, Rm 044, St. Andrew's House, Edinburgh, (Tel. 0131 244 7432; email [George.Burgess@scotland.gov.uk](mailto:George.Burgess@scotland.gov.uk)). If you have any queries on the practical arrangements for laying of reports, please contact George Skelton, SI Clerk, Area G-C, Victoria Quay, Edinburgh, (Tel. 0131 244 0585).

## ANNEX

### Scotland Act 1998

#### General transfer of functions.

**53.**—(1) The functions mentioned in subsection (2) shall, so far as they are exercisable within devolved competence, be exercisable by the Scottish Ministers instead of by a Minister of the Crown.

(2) Those functions are-

(a) those of Her Majesty's prerogative and other executive functions which are exercisable on behalf of Her Majesty by a Minister of the Crown,

(b) other functions conferred on a Minister of the Crown by a prerogative instrument, and

(c) functions conferred on a Minister of the Crown by any pre-commencement enactment,

but do not include any retained functions of the Lord Advocate.

(3) In this Act, "pre-commencement enactment" means-

(a) an Act passed before or in the same session as this Act and any other enactment made before the passing of this Act,

(b) an enactment made, before the commencement of this section, under such an Act or such other enactment,

(c) subordinate legislation under section 106, to the extent that the legislation states that it is to be treated as a pre-commencement enactment.

(4) This section and section 54 are modified by Part III of Schedule 4.

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#### Power to transfer functions.

**63.**—(1) Her Majesty may by Order in Council provide for any functions, so far as they are exercisable by a Minister of the Crown in or as regards Scotland, to be exercisable-

(a) by the Scottish Ministers instead of by the Minister of the Crown,

(b) by the Scottish Ministers concurrently with the Minister of the Crown, or

(c) by the Minister of the Crown only with the agreement of, or after consultation with, the Scottish Ministers.

(2) Where an Order is made under subsection (1)(a) or (b) in relation to a function of a Minister of the Crown which is exercisable only with the agreement of, or after consultation with, another Minister of the Crown, the function shall, unless the Order provides otherwise, be exercisable by the Scottish Ministers free from any such requirement.

(3) An Order under this section may, in particular, provide for any function exercisable by the Scottish Ministers by virtue of an Order under subsection (1)(a) or (b) to be exercisable subject to a requirement for the function to be exercised with the agreement of, or after consultation with, a Minister of the Crown or other person.

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#### Cross-border public authorities: initial status.

**88.**—(1) Sections 53 and 118 to 121 shall not apply in relation to any function which is specifically exercisable

in relation to a cross-border public authority; and section 118 shall not apply in relation to any function of such an authority.

(2) A Minister of the Crown shall consult the Scottish Ministers before he exercises, in relation to a cross-border public authority, any specific function-

(a) which relates to any appointment or removal of the cross-border public authority concerned or of any members or office-holders of the cross-border public authority concerned, or

(b) whose exercise might affect Scotland otherwise than wholly in relation to reserved matters.

(3) Any cross-border public authority or other person which is required by a pre-commencement enactment or a prerogative instrument to lay any report relating to a cross-border public authority before Parliament or either House of Parliament shall also lay the report before the Scottish Parliament.

(4) Subsections (1) to (3) are subject to any Order in Council made under section 89.

(5) In this Act "cross-border public authority" means any body, government department, office or office-holder specified in an Order in Council made by Her Majesty under this section.

(6) Such an Order may only specify a body, government department, office or office-holder which (at the time when the Order is made) has, in addition to other functions, functions which are exercisable in or as regards Scotland and do not relate to reserved matters.

(7) In this section-

"office-holder" includes employee or other post-holder,

"report" includes accounts and any statement.

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#### **Consolidated Fund etc.**

**119.**—(1) In this section "Scottish functions" means-

(a) functions of the Scottish Ministers, the First Minister or the Lord Advocate which are exercisable within devolved competence,

(b) functions of any Scottish public authority with mixed functions or no reserved functions.

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#### **Requirements to lay reports etc. before Parliament.**

**121.**—(1) This section applies where-

(a) a pre-commencement enactment makes provision for any report to be laid before Parliament or either House of Parliament, and

(b) the report concerns Scottish functions.

(2) If the report only concerns Scottish functions, it shall be laid instead before the Scottish Parliament.

(3) In any other case, it shall be laid before the Scottish Parliament as well as before Parliament or (as the case may be) either House of Parliament.

(4) In this section-

"report" includes accounts and any statement,

"Scottish functions" has the same meaning as in section 119.

## **The Scotland Act 1998 (General Transitory, Transitional and Savings Provisions) Order 1999 (S.I. 1999/901)**

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### **Transfer of Functions to the Scottish Ministers**

3. - (1) The transfer, by virtue of section 53 of the Act, of any function exercisable by a Minister of the Crown to the Scottish Ministers shall not affect the validity of anything done (or having effect as if done) by or in relation to a Minister of the Crown before the date on which the transfer takes effect.

(2) Anything (including legal proceedings) which, at the time when that transfer takes effect, is in the process of being done by or in relation to a Minister of the Crown may, so far as it relates to any function transferred, be continued by or in relation to the Scottish Ministers.

(3) Anything done (or having effect as if done) by or in relation to a Minister of the Crown for the purposes of or in connection with any function transferred to the Scottish Ministers by virtue of section 53 of the Act shall if in force at the time when that transfer takes effect, have effect as if done by or in relation to the Scottish Ministers in so far as that is required for continuing its effect after that time.

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## **The Scotland Act 1998 (Transitory and Transitional Provisions) (Laying of Reports) Order 1999 (S.I. 1999/1594)**

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### **Interpretation**

2.—(1) In this Order—

“the Act” means the Scotland Act 1998;

“pre-Scottish functions” are functions which will on the principal appointed day become Scottish functions;

“report” includes accounts and any statement; and

“Scottish functions” has the same meaning as in section 119 of the Act.

(2) Unless otherwise provided, any reference in this Order to a numbered article is a reference to an article bearing that number in this Order and any reference in an article to a numbered paragraph is to a paragraph bearing that number in that article.

### **Laying of reports**

3.—(1) This article applies where—

(a) a pre-commencement enactment makes provision for any report to be laid before Parliament or either House of Parliament;

(b) the report concerns pre-Scottish functions (whether wholly or otherwise); and

(c) the report is to be laid on or after the principal appointed day.

(2) Subject to paragraph (3), the report shall be laid before the Scottish Parliament as well as before Parliament or (as the case may be) either House of Parliament.

(3) Paragraph (2) shall not apply in relation to any accounts relating only to a period ending before the principal appointed day or any report on such accounts.

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## **The Scotland Act 1998 (Transitory and Transitional Provisions) (Standing Orders and Parliamentary Publications) Order 1999 (S.I. 1999/1095)**

### **Publication of statements under the authority of the Parliament**

4.—(1) This article applies to any legal proceedings brought against a person for, on account of, or in respect of, the publication by that person-

(a) of a statement under the authority of the Parliament; or

(b) of a statement which has been published under the authority of the Parliament.

(2) In any legal proceedings to which this article applies, any person may produce to the court before which the proceedings are brought a certificate, sworn by the Clerk of the Parliament before a notary public, that the statement was published under the authority of the Parliament.

(3) On production of such a certificate the court shall order that, subject to paragraph (4), no further steps are to be taken in the proceedings and on the making of such an order the proceedings shall be treated as having been concluded.

(4) On the making of an order under paragraph (3), the court may make such ancillary orders as it considers appropriate.

(5) Any person intending to produce a certificate in accordance with paragraph (2) shall give at least 24 hours notice of his or her intention so to do to the other parties to the proceedings and to the court before which the proceedings are brought.

5. Any statement which is required or authorised to be published in pursuance of any of the rules set out in the Schedule to this Order shall be treated, for the purposes of section 41 of the Act (defamatory statements) and article 4 of this Order, as published under the authority of the Parliament.

## **CHAPTER 14: LAYING AND PUBLICATION OF DOCUMENTS**

### **Rule 14.1 Laying of reports and other documents**

1. Where, under an enactment or otherwise, a report or other document is required or authorised to be laid before the Scottish Parliament, the lodging of a copy of that report or document with the Clerk shall be treated for all purposes as being the laying of it before the Parliament.

2. The Clerk may require the person laying the report or document to provide such additional copies as he or she considers necessary.

3. A report or other document may be laid before the Parliament at any time when the office of the Clerk is open.

4. No report or other document shall be laid before the Parliament unless it is required or authorised to be laid under an enactment or otherwise or it is laid by a member of the Scottish Executive.

5. The Clerk shall ensure that notice of any report or other document laid before the Parliament is published in the Business Bulletin. The notice shall give the title of the report or document.

### **Rule 14.2 Laying of financial reports and documents**

1. Any documents laid before the Parliament containing outline proposals for public expenditure in any financial

year other than the financial year beginning 1 April 2000 shall not be considered, except with the agreement of the Parliament, unless they are laid before the Parliament no later than the preceding 20 April.

2. Any document laid before the Parliament setting out preliminary draft budgets of public expenditure in any financial year other than the financial year beginning on 1 April 2000 shall not be considered, except with the agreement of the Parliament, unless they are laid before the Parliament no later than the preceding 20 September.

#### **Rule 14.3 Publication of documents**

1. Where, under these Rules, the Clerk is required to publish any document, he or she shall arrange for publication through the Parliamentary corporation.

2. If the Parliament so decides, the Clerk shall publish any report or other document laid before the Parliament.

3. In these Rules, "document" means anything in which information is recorded in any form.

#### **Rule 14.4 Publication under the authority of the Parliament**

1. Any statement which is required or authorised to be published in pursuance of these Rules shall be published under the authority of the Parliament.

2. In these Rules, "statement" has the same meaning as in the Defamation Act 1996<sup>2</sup>.

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<sup>2</sup> Section 17 defines "statement" as meaning "words, pictures, visual images, gestures or any other method of signifying meaning"