

## **'THERE ARE NO MEMBERS OF THE SCOTTISH PARLIAMENT': MIND THE GAP?**

*Eberhard Bort*

'As required by the new standing orders agreed yesterday, I wish to inform members that this session of the parliament ends at midnight on 31 March 2003 and dissolution therefore begins immediately thereafter on 1 April.' This statement was made in the Scottish Parliament Debating Chamber by the Presiding Officer, Sir David Steel, on 6 March 2003. At the same time, he announced that the newly elected Parliament would have its first meeting on Wednesday, 7 May 2003, six days after the election (Scottish Parliament 2003).

In accordance with the stipulations of the Scotland Act (1998) and the Standing Orders of the Scottish Parliament, the term of the Parliament and the term of the MSPs thus ends on 31 March:

The term of office of a member of the Parliament begins on the day on which the member is declared to be returned and ends with the dissolution of the Parliament.  
(Scotland Act 1998 Chapter 46, 13)

A session of the Parliament shall be the period from the date of the first meeting of the Parliament following a general election until the Parliament is dissolved.  
(Standing Orders of the Scottish Parliament, Ch 2, 2.1)

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**DO'S AND DON'T'S FOR MSPS AND THEIR STAFF**

In December, the Presiding Officer issued a document entitled **Guidance for Members and their Staff during an Election Campaign**, detailing the rules and regulations governing the period of dissolution (Scottish Parliament 2002). These are the main points summarised:

- During dissolution there are no Members of the Scottish Parliament. Members cease to be Members at 00.01 hours on 31 March. The title of MSP must not be used during dissolution (business cards, correspondence, etc).
- Members and their staff may not work on the Parliament estate (Headquarters, Committee rooms, Chamber, etc) or use any of its equipment (telephones, computers, etc).
- MSPs who stand in the election will get their salaries during dissolution; MSPs who do not stand are entitled to pensions and resettlement grants.
- Ongoing constituency business (i.e. cases taken up before the 31 March) may be pursued; no new constituency casework is to be accepted during dissolution.
- The use of parliamentary resources for party political and election campaign purposes is prohibited.
- The parliamentary IT services for MSPs are disabled during dissolution.
- Allowances may not be claimed for party activities or activities connected with the election.
- Members' staff paid for by the Parliament must not canvass or campaign during contract hours; they may take leave to participate in the election campaign.
- Constituency office accommodation paid for by the Members Support Allowance cannot be used for canvassing, campaigning or party activity related to the election.
- Along with the Parliament and its committees, cross-party groups cease to exist on dissolution.
- Petitions may not be lodged during dissolution.

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Legally, the dissolution period has to be a minimum of 21 days (Statutory Instrument 2002). De facto, this particular dissolution after the first Parliament lasted five weeks, from 31 March to 2 May; in terms of the Parliament nearly six weeks, until constitution on 7 May.

What are we to make of this? Is it the bare necessity in order to guarantee a fair and level competitive playing field between candidates and (ex) MSPs, or is it civil service self-protection running rampant? A mere nuisance or, more to the point, a constitutional problem?

### **EQUALITY BETWEEN MSPS AND CANDIDATES?**

The **Guidance** leaves no doubt about the rationale behind the arrangements. They are in place 'to ensure that all candidates or prospective candidates are treated equally and that candidates who before dissolution were Members or staff of Members of the Scottish Parliament are not seen to have any advantage over those candidates who were not previously Members or staff of Members of the Scottish Parliament' (**Guidance**, p.1). It also makes the point, at the very beginning, that the second election to the Scottish Parliament is the first with sitting Members, 'and therefore there is likely to be considerable public and media scrutiny of the election campaign.'

Why then, one might ask, do Members cease to be Members but are still paid as Members? And if they're paid as Members, should they not do their duties vis à vis their constituents while they receive their salary? Is there, also, not a difference between parties with strong representation at every level (local and UK as well as the Scottish Parliament) and the smaller parties? If a constituent approaches, say, a Labour (ex) MSP who cannot take up the case during dissolution, there is a high probability that there are Labour representatives on the local council and MP level which the constituent might be referred to. But will a Glasgow SNP MSP or a Robin Harper in Edinburgh really be expected to turn away a constituent and point him or her in the direction of a representative of a competing party – weeks or even days before a crucial election?

Will regional MSPs really be expected to advise their constituency that there are no surgeries during dissolution – and run the risk of disappointing those who turn up anyway? Most MSPs, even if they support the principle behind the rules, find them 'a nuisance' (Angus MacKay, Labour), 'extremely

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tedious' (Robin Harper, Green Party)), 'causing serious difficulty' (Bill Aitken, Conservatives), 'full of contradictions' (Kenneth Gibson, SNP) and a sign of the 'obsession that we might abuse public funds without very prescriptive guidelines' (Sarah Boyack, Labour). In the words of Tavish Scott (Lib Dem), the approach 'is whiter than white, and yet will probably still fall foul of the **Daily Mail**.' But his 'major gripe is on emails where after a tremendous fight, people who email their MSP will eventually receive a message saying here's a list of all the MSP's email addresses – find your one. I think that just makes us all look unprofessional.'

Bill Aitken MSP sees the problems with the dissolution regime as just one of many indications that there is 'so much wrong with the practices of the Parliament.' He blames the Consultative Steering Group and its members' ('who've never been elected') 'anti-Westminster' ethos for the 'unworkable rigidities' of the Parliament's proceedings. Not to be able to deal with constituents' concerns could, in extremis, become a 'matter of life and death'. After all, that was an important function of MSPs: to articulate the concerns of constituents who were not able to do so themselves, and to deal on their behalf with the bureaucratic system. He also mentions the rigours of the parliamentary time-table (unflexible sitting hours) and the overregulated limitations of speaking time in the Chamber as 'part of a whole package of necessary revisions.'

In contrast, Robin Harper MSP does not see the regulations as 'unworkable'. A 'nuisance', yes, and even a potential 'minefield', but not a 'particular practical problem'. There had, he maintains, been 'ample warning' so that MSPs could prepare for the dissolution period. 'We've closed the constituency office,' he says, 'and turned it over to the party.' If the government, though, did infringe upon the dissolution period by putting out planning advice notes or by committing spending, 'all we could do is huff and puff.' Kenneth Gibson MSP criticises the 'muddle' – 'all or nothing' he could live with, i.e. either the way local councillors are treated (in office until the election count is concluded) or completely out of office, without pay or privileges. Why, he asks, do we trust governments, but not Members and their ability to distinguish between parliamentary and campaign work? The guidelines 'have civil service self-protection written all over them,' agrees Angus MacKay MSP: 'They are not particularly user-friendly.'

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## **FIVE WEEKS WITHOUT REPRESENTATION?**

But there are questions that go beyond the inconvenience of sitting MSPs during dissolution. Comparisons with local council elections, Westminster and international practice reveal substantial differences in handling the period between dissolution and election. In the local elections, held on 1 May as the Scottish Parliament elections, local councillors are in the job until the election itself – the regulations are far less prohibitive than those for MSPs. Likewise, the Government of Wales Act 1998 states for the National Assembly for Wales that

The term of office of an Assembly member-

- (a) begins when he is declared to be returned as an Assembly member, and
- (b) continues until the end of the day before the day of the poll at the next ordinary election.

(Government of Wales Act 1998, Part I, Section 2.5)

At Westminster, the term of parliament and dissolution are not codified as in Scotland and, most importantly, Westminster can be recalled during dissolution, if needs be. The Scottish Parliament cannot.

For five weeks, therefore, the Scots had no Parliament (well, you might say, they didn't have one for nearly 300 years, they could survive five weeks without one) and no MSPs to represent them. War in Iraq is not a devolved matter, but what if a terrorist attack happened during dissolution? Or if – it is springtime – a natural catastrophe, like a massive flood, or a major accident had hit the country during those five weeks? Clearly, during the campaign the MSPs and candidates need to be in their constituencies, but none of them would not want to come back to Edinburgh if the gravity of the situation made an emergency meeting of the Parliament necessary. Only – such a meeting is impossible. 'There are no Members of the Scottish Parliament.' (Scottish Parliament 2002, p.3)

While the Parliament is dissolved, the Scottish Executive remains in office. Analogous to Westminster convention, it is expected that the executive will only administer during this period, not take any controversial or contentious decisions. But there is no Parliament to scrutinise or control this. Likewise, there are Westminster and the UK Government, and European policy-

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making certainly did not stop while the Scottish Parliament was dissolved. What if Westminster passed legislation affecting Scotland? During First Minister's Question Time on 20 March 2003, in the context of the dispute about a wage settlement for the fire fighters, Jack McConnell unequivocally stated that 'no attempt would be made to impose legislation UK-wide' (Scott 2003): 'We've had an absolute assurance from our colleagues in London that there will be no legislation that covers Scotland in the UK parliament during dissolution.' (Summers and Briggs 2003)

So far, so good. But it is an emerging convention. Unlike in India, where the Electoral Commission and the President guard the constitutionally binding rule that national governments might not pass any law during the dissolution of regional parliaments which would affect that region, there are no constitutionally binding rules in the UK and there was no Scottish Parliament which could challenge any break of the convention by Westminster. And what about Gordon Brown's moving of the budget from March to 9 April – right in the middle of the campaign for the Scottish Parliament, Welsh Assembly and local council elections on 1 May? In India, that would be unthinkable, contends Madhurendra Prasad Sinha, the editor of the Delhi-based **Sandhya Times**. Welsh and Scottish Nationalists questioned the legality of the move (Settle 2003). Alex Salmond MP, the SNP's Westminster leader, called it 'totally unacceptable' and 'virtually improper' to have such a major government announcement during an election campaign: 'It is an abuse of democracy and secondly I think there'll be major questions to be asked about the balance of coverage for any such event.' The deputy leader of the Scottish Liberal Democrats and chairman of the party's election campaign, Michael Moore MP, concurred. He said the decision appeared flawed: 'Who knows whether this will be a popular budget or an unpopular one – that doesn't matter. What matters is that it is a very unwise decision to move the Budget from the usual March date to a date in the middle of the Scottish and Welsh election campaign.' (BBC News Online 2003).

In Germany, Land MPs as well as Bundestag MPs are in office until the newly elected Parliament's first meeting. During the election campaign, explains Katrin Budde MdL, a former economics minister in Saxony-Anhalt's Landtag, all MPs have access to their parliamentary offices, receive their salaries and may use parliamentary stationery, as well as the parliamentary infrastructure. Parliament is not dissolved before the election although, according to Wolfgang Bebbler MdL, a former junior minister in the Stuttgart

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Landtag, there are no meetings in the 'hot phase' of the campaign. But there are exceptions: during the last federal election, there was a Bundestag meeting on Iraq six days before polling day. In short, there is no hiatus, no vacuum between parliaments. There are rules, though: parliamentary stationery may only be used for parliamentary business, for example, but not for campaign purposes.

In Catalonia, the newly elected Parliament, as soon as it is constituted (within 20 days after the elections), nominates from its midst a 'Diputació Permanente', a permanent delegation comprising 23 Members, proportionally to the political strength of the parties represented, and with the President of the Parliament at its head. This body acts during recesses and 'when one parliament is dissolved until another is constituted'. The mandate of the Members of the 'Diputació Permanente' is therefore extended till the new House is constituted. They keep their privileges (including immunity) during this period. Once the new Parliament is constituted, the Diputació reports the business it has conducted and explains the decisions it has taken in the first meeting of the full Parliament. The body is either convened by the President of the parliament, or by petition of three parliamentary groups or one fifth of its members. This regulation resembles the practice in most of the autonomous communities and in the Spanish Cortes.

Robin Harper MSP calls the Catalan practice a 'brilliant idea' and suggests that in the region of 20% of the Scottish Parliament's Members – say, 25 to 29 – could form such a 'caretaker committee'.

## **BABY AND BATHWATER?**

Considering that in Britain politicians have, over the past 20 years, consistently scored the lowest level of public trust ratings – under 20% compared with up to 90% for medical doctors (Hall 2001; Mori 2003) – the precautions reflected in the **Guidance** and the principle behind it might be understandable and command popular support. But is it, constitutionally, the best possible practice? Or is it a case of throwing the baby out with the bathwater? As we do not trust politicians (and government ministers, with a trust-rating of about 20%, are only a whisker ahead of the ordinary politicians) not to misuse parliamentary resources for campaign purposes, we cut off the Parliament altogether and go five weeks without Scottish Parliament representation? Would that attitude change if 'events' or

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experience – either from outside, or personal frustration at not being able to approach an MSP in a particular case, or a break of convention by the Scottish or UK governments – raised awareness of the implicit democratic deficit? Would we begin to mind the gap?

#### **NOTES**

Interviews with Angus MacKay MSP (3 February 2003), Sarah Boyack MSP (6 March 2003), Bill Aitken MSP (11 March 2003), Robin Harper MSP (12 March 2003), Kenneth Gibson MSP (20 March 2003) and Tavish Scott MSP (25 March 2003).

Interviews with Wolfgang Bebbler MdL and his assistant Ingo Rust (Baden-Württemberg) and Katrin Budde MdL (Saxony-Anhalt), on 18 February and 11 March 2003, respectively.

Interview with Mr Madhurendra Prasad Sinha, the Editorial Head of the **Sandhya Times** (Times of India Publication), 20 March 2003.

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