



The Scottish Parliament
Pàrlamaid na h-Alba

Conveners Group

Agenda

3rd Meeting, 2022 (Session 6) Wednesday 30 March 2022

The group will meet at 12.30pm in Committee Room 2.

1. Minutes
2. Post-EU scrutiny issues
 - Post-EU scrutiny issues
 - Post-EU subordinate legislation scrutiny protocols
3. The legislative consent process for UK Parliament Bills
4. Witness diversity

Next meeting – Wednesday 27 April

The papers for this meeting are as follows –

- | | | |
|----|---|--------------|
| 1. | Minutes of last meeting | CG/S6/22/2/M |
| 2. | Post-EU scrutiny issues | CG/S6/22/3/1 |
| 3. | Post-EU subordinate legislation scrutiny protocols | CG/S6/22/3/2 |
| 4. | The legislative consent process for UK Parliament Bills | CG/S6/22/3/3 |
| 5. | Witness diversity survey | CG/S6/22/3/4 |

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The Scottish Parliament
Pàrlamaid na h-Alba

Conveners group

Minutes

2nd Meeting, 2022 (Session 6) Wednesday 23 February 2022

Present:

Liam McArthur MSP, Convener

Clare Adamson MSP, Constitution, Europe, External Affairs and Culture Committee

Claire Baker MSP, Economy and Fair Work Committee

Siobhan Brown MSP, COVID-19 Recovery Committee

Ariane Burgess MSP, Local Government, Housing & Planning Committee

Finlay Carson MSP, Rural Affairs, Islands and Natural Environment Committee

Joe FitzPatrick MSP, Equalities, Human Rights and Civil Justice (virtual)

Kenneth Gibson MSP, Finance and Public Administration

Stuart McMillan MSP, Delegated Powers and Law Reform Committee

Audrey Nicoll MSP, Criminal Justice Committee

Martin Whitfield MSP, Standards and Procedures and Public Appointments Committee

Elena Whitham MSP, Social Justice and Social Security (virtual)

Apologies were received from Gillian Martin MSP, Stephen Kerr MSP, Richard Leonard MSP, Jackson Carlaw MSP and Dean Lockhart MSP.

1. **Minutes:** The Conveners Group agreed the minutes of the last meeting. The Group also agreed to continue its consideration of gender balance on Committees at a future meeting.
2. **Post-EU devolution issues (oral update):** The Group received a briefing on Post-EU devolution issues from Clare Adamson MSP, Convener of the Constitution, Europe, External Affairs and Culture Committee. Further consideration of these issues would be made at the Group's meeting in late March.
3. **Committee substitutes:** The Group discussed the temporary relaxation of the committee substitutes rule which has been in place during the pandemic. The Group recognised the benefit of the increased flexibility, but the majority did not believe it was necessary to retain the relaxation of the rule in its current form as it was rarely used. More importantly for the Group were the benefits to be gained

from consistency of committee membership and that it should continue to be the case that committee members should attend meetings as far as possible. It was noted that the retention of hybrid proceedings would help to facilitate this.

To achieve extra flexibility, while still largely adhering to 'consistency of membership' approach, some of the Group proposed having two named committee substitutes, rather than one. The Group agreed to ask the Standards, Procedures and Public Appointments Committee to consider this approach.

Date of Next Meeting: 30 March 2022

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Conveners Group

3rd Meeting, 2022 (Session 6), Wednesday 30 March 2022

Post-EU scrutiny issues

Introduction

1. The purpose of this paper is to invite the Conveners Group to consider scrutiny of post-EU issues.
2. In addition to this paper, the agenda includes another paper on this issue. It invites the Group to consider specific issues in relation to the operation of protocols currently in place for the scrutiny of post-EU secondary legislation.

Background

3. Conveners will recall at the start of the session that the Group identified cross-committee working as a strategic priority this session. This is particularly pertinent in complex areas of scrutiny such as post-EU scrutiny. The devolved landscape following the departure from the EU is complex and requires clear leadership in order to navigate these complexities.
4. This paper explores the scrutiny challenges involved and examines the respective roles the key players have to play. It also considers areas in which the Conveners Group may wish to develop its strategic role.
5. There are a number of bodies responsible for managing the scrutiny of post-EU issues within the Parliament.
6. This is clearly a central matter for the Constitution, Europe, External Affairs and Culture Committee (CEEAC). Other committees also have key roles to play in this area. Some more than others, however, these matters impact on all committee remits to a greater or lesser extent.
7. Post-EU issues are also core to the Parliament as a whole, particularly in relation to its scrutiny role and how it can properly hold government decision-making to account. It is proposed that the Conveners Group has a key role to play here.
8. At its simplest level, the Group has a role in raising awareness of and coordinating these issues. However, the Group also has a strategic role to play in preserving the Parliament's position to ensure that it has the means

to conduct effective scrutiny. This could involve ensuring that the necessary processes are in place to allow this scrutiny to take place or having a role in ensuring the effective operation of these processes.

9. The Group also has responsibility in ensuring the Parliament's relationship with the Scottish Government and with other legislatures in this area is clear.
10. This paper invites the Conveners Group to consider ways in which it can promote and enhance the Parliament's scrutiny role in relation to these issues.
11. To inform this process, the paper provides the Group with an overview of the key issues involved. In particular the scrutiny gaps identified in committee legacy papers at the end of Session 5 and by the CEEAC Committee at the start of Session 6.
12. In order to address these gaps, the paper also sets out new scrutiny processes required as well as changes to existing scrutiny processes. These points which are set out below were raised, and conclusions were reached, by the CEEAC Committee in its recent inquiry into the UK Internal Market.
13. The Group is invited to consider these points to inform its consideration of its role here.
14. In order to inform consideration of this complex area of scrutiny, the Group will receive a briefing on the key issues at the meeting from Kenneth Armstrong, Professor of EU Law, University of Cambridge.

Overview: scrutiny challenge

15. A key conclusion from the CEEAC Committee's inquiry was that "the primary risk for the Scottish Parliament arising from the impact of post-EU constitutional change is that the level of transparency and Ministerial accountability which existed while the UK was a Member State of the EU is either intentionally and/or unintentionally diluted post-exit."¹
16. In seeking to address this risk the CEEAC Committee identified a number of scrutiny gaps which require—
 - new scrutiny processes;
 - changes to existing scrutiny processes.
17. Further details of the Committee's conclusions are set out below.

New Scrutiny Processes

¹ [UK Internal Market Inquiry](#)

18. New scrutiny processes are required in the following areas—

- Alignment with EU Law;
- Operation of Common Frameworks;
- Trade and Co-Operation Agreement;
- International Treaties.

Alignment with EU Law

19. The Scottish Government's Programme for Government states that "with a view to re-joining the EU as soon as we are able to, we will preserve Scotland's good relations with the EU and implement our commitment to align with EU standards and laws."

20. The Scottish Government has committed to developing a decision-making framework which will facilitate an appropriate and proportionate level of parliamentary scrutiny of Ministerial decisions to align with EU law.

21. The CEEAC Committee recommended that agreement is needed between the Government and Parliament regarding the timing and level of Government information to support parliamentary scrutiny and stakeholder engagement. This applies to both the decision-making process around alignment with EU law and the implementation of decisions to align.

Operation of Common Frameworks

22. In its report, the CEEAC Committee recognises the need for confidentiality in inter-governmental discussions under the auspices of Common Frameworks. But if the operation of frameworks is viewed as being solely inter-governmental this may undermine the Scottish Parliament's commitment to being accessible, open and responsive.

23. It may also undermine its ability to develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation.

24. The Committee believes that stakeholders and the Parliament must be involved at appropriate points in order to facilitate proper policy making and robust scrutiny.

25. The Committee is strongly of the view that it would be highly unfortunate if, having left the EU, there was a decrease in public access for businesses and citizens to influence regulatory policy.

26. As part of the Common Frameworks process there is an agreement between the UK, Scottish and Welsh Governments to "maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules."² The Committee

² [Joint Ministerial Committee \(European Negotiations\)](#), October 2017

recommends that there should be a similar agreement between the Scottish Government and Scottish Parliament that, as a minimum, there should be no dilution of public consultation or of parliamentary scrutiny.

27. The CEEAC Committee recommends that there needs to be a formal agreement with the four legislatures across the UK that each government will provide detailed information on the outcome of common framework discussions which impact on significant policy areas, such as single-use plastics.
28. The Committee is very supportive of inter-parliamentary working and agrees that it is essential in developing more effective scrutiny of inter-governmental relations.

Trade and Co-Operation Agreement (TCA)

29. The Committee's view is that the Parliament's scrutiny of the implementation of the TCA requires transparency in relation to the Scottish Government's position in areas of devolved competence considered by the Partnership Council and the Specialised Committees³.
30. The Committee recommends that a formal parliamentary process needs to be developed in relation to the communication to the relevant subject committee of binding decisions of the Partnership Council and the Specialised Committees which relate to matters within devolved competence.

International Treaties

31. Obligations arising under international treaties may impact directly on devolved competencies and could limit the scope for regulatory autonomy in practice including alignment with EU law.
32. The UK Trade Act 2021 provides for UK Government and Scottish Ministers to have powers to make regulations in order to implement new international trade agreements.
33. The Session 5 Europe and External Affairs Committee recommended in its legacy paper that scrutiny of new international trade agreements should be an on-going area of scrutiny.
34. **The Group is invited to note that the CEEAC Committee and the Cabinet Secretary for Constitution, External Affairs and Culture have agreed that Scottish Parliament and Scottish Government officials should work together to develop proposals for new scrutiny processes to address these scrutiny gaps.**

³ As part of the TCA's governance arrangements, the Partnership Council (which is jointly chaired by the EU and the UK Government) and a number of Specialised Committees have oversight of the operation of the agreement.

Changes to Existing Scrutiny Processes

35. The Parliament will need to be cognisant of the regulatory environment in each of Wales, Northern Ireland and England when considering the impact of regulatory change in Scotland especially where there is regulatory divergence. This will include the impact of the Protocol on Ireland/Northern Ireland.
36. For example, a lead committee in carrying out scrutiny of a Bill at Stage 1 will need to be aware of any impact of the market access principles on the legislative proposals. Especially where the effect of the Bill would be to introduce higher regulatory standards than exist in other parts of the UK.
37. Equally, a lead committee may need to be aware of inter-governmental agreements on regulatory divergence within a common framework. For example, a common framework may constrain, albeit voluntarily and subject to continued agreement, the Scottish Government's policy options in introducing the Bill.
38. Members may also need to be aware of these issues in relation to Members' Bills and secondary legislation. For example, the impact of the market access principles on regulatory proposals within a Members' Bill or on regulations within an SSI that comes before the Parliament for scrutiny

Legislative Process

39. The CEEAC Committee recommends that further consideration is given to the level of information which the Scottish Government is required to provide in supporting documents published alongside primary and secondary legislation relating to any consideration of the impact of—
 - The market access principles;
 - Common Frameworks;
 - The Ireland/Northern Ireland Protocol;
 - The TCA including binding decisions of the Partnership Council and the Specialised Committees;
 - Other international obligations and international trade agreements;
 - Reports and advice of the OIM.
40. Other committees have been scrutinising Legislative Consent Memorandums for UK Bills which confer new subordinate legislation powers on UK Ministers in devolved areas. The existing Protocols can only operate where the UK Government seeks the **consent** of the Scottish Ministers before exercising powers to make subordinate legislation.
41. The Parliament has considered Legislative Consent Motions for several UK bills so far this session in which the UK Government has signalled its intention to **consult** the Scottish Ministers and other devolved administrations before making regulations under the bill, but not to seek

their consent. The DPLRC has recommended that, as a matter of principle, such powers should be subject to a requirement for the Scottish Ministers' consent before they can be exercised.

42. The DPLRC has also written to the Scottish Ministers highlighting that a number of recent Bills⁴ have conferred devolved powers on UK Ministers which do not fall within the scope of SI Protocol 2 because they are not in former EU areas. This means that there is no current process for Scottish Parliament scrutiny of the exercise of such powers, or of decisions by Scottish Ministers to consent to the use of such powers.
43. The DPLRC has sought views from the Minister for Parliamentary Business on alternative opportunities for such scrutiny⁵, and discussions on this are to be taken forward by Scottish Parliament and Scottish Government officials.
44. Legislative Consent Memorandums lodged by the Scottish Government so far this session do not always explain why the Scottish Government considers it appropriate for powers to make provision within devolved competence to be conferred on UK Ministers. Committees may consider it useful to explore what criteria the Scottish Government takes into account in deciding whether to recommend consent to a Bill which confers devolved powers to make subordinate legislation on UK Ministers.

Next Steps

45. As the Group is aware, work is ongoing to understand and address these scrutiny gaps. The CEEAC Committee made a number of recommendations in its Internal Market report regarding transparency of intergovernmental decision-making and the information needed in order to facilitate effective scrutiny.
46. Previously the Committee noted in its scrutiny of the Continuity Act draft policy statement and draft annual report that the constitutional implications of leaving the EU for devolved policy-making and legislation are highly complex and raise a number of challenges in ensuring transparency and Ministerial accountability.
47. The Committee noted that the Scottish Parliament and the Scottish Government have yet to agree parliamentary procedures which will be sufficiently robust to address these challenges and recommended that proposals are developed as a matter of urgency by our respective officials.

Role of the CEEAC Committee

⁴ Police, Crime, Sentencing & Courts Bill; Health and Care Bill; Elections Bill; Public Service Pensions and Judicial Offices Bill; Building Safety Bill.

⁵ [Letter](#) from Convener of DPLR Committee to Minister for Parliamentary Business dated 6 October 2021; [Letter](#) from the Minister for Parliamentary Business to the DPLR Committee Convener dated 21 October 2022

48. The CEEAC Committee has the lead role in seeking to develop new scrutiny processes to address these gaps, in consultation with the Scottish Government. Scottish Parliament and Scottish Government officials have been asked to carry out this work in the first instance and draft proposals for consideration by the Cabinet Secretary for the Constitution, External Affairs and Culture and the CEEAC Committee.
49. The CEEAC Committee will then consult on these draft proposals including with other committees. The CEEAC Committee also has the lead role in co-ordinating concerns raised by other committees related to post-EU scrutiny. These concerns will also be taken into account when developing new post-EU scrutiny processes.

Role of Other Committees

50. While the development of post-EU scrutiny processes is being led by the CEEAC Committee it will be the other committees who will primarily deliver this work once the processes are agreed. It is likely that the committees who will be most engaged are the subject committees whose remits include significant policy areas previously within EU competence such as environment, agriculture and fisheries. But at the same time Conveners may wish to note that the market access principles apply to all devolved policy areas.
51. In addition, recent UK Bills in non-former EU areas such as policing, elections and building safety have all proposed granting new powers to make subordinate legislation to UK government ministers. Committees have the opportunity to consider the appropriateness of powers like these when scrutinising relevant LCMs.

Role of Conveners Group

52. In considering ways in which it may address the points made in this paper, the Group may wish to—
- consider further its strategic leadership role in relation to cross-committee working on post-EU scrutiny given the scrutiny gaps identified above;
 - consider the extent to which Members on the relevant committees have sufficient awareness of the impact of Brexit on how devolution works and, in particular, the impact on the Scottish Parliament's legislative function and policy scrutiny roles;
 - consider its own role in ensuring that all committees are appropriately sighted as this work progresses and have sufficient understanding of how devolution will work in a post-EU environment;
 - indicate its support for the need to address the post-EU scrutiny gaps and agree to continue to monitor this work as it progresses.

Decision

- 53. These are complex issues and need careful consideration and are areas on which further work is being taken forward by officials. Proposals will be brought forward to a future meeting once further scoping has been carried out.**
- 54. As part of this, the Group may wish to explore ways to develop its interparliamentary role and seek to develop a working relationship with its counterparts in other legislatures.**
- 55. It is recommended that a further paper on how the Group can take this work forward and an update on progress being made on addressing scrutiny gaps be provided to the Group at a future meeting.**

**Conveners Group clerking team
March 2022**

Summary of actions on Post-EU scrutiny issues

Body	Role	Actions for Now	Further scoping work required	Recommended Action for CG at 30/3 Meeting
CEEAC Committee (lead committee)	<p>To provide an overview of ongoing scrutiny issues, including coordinating concerns of other committees</p> <p>Issues to be referred to CG as necessary</p>	Develop new scrutiny processes to address scrutiny gaps		<p>Note decision by CEEAC that SP and SG officials will work to develop processes to address scrutiny gaps in transparency & accountability of post EU decision-making (para 34)</p>
Other committees	<p><u>Relevant subject committees</u>: to deliver scrutiny once processes are developed</p> <p><u>DPLRC</u>: actions in relation to scrutiny of LCMs which confer new subordinate legislation powers on UK Ministers in devolved areas</p>			<p>Discussion at CG as to whether CPD should be offered to Members/committee on the post-EU landscape (para 52)</p> <p>Note that discussions on alternative opportunities for scrutiny of LCMs which confer new subordinate legislation powers on UK Ministers in devolved areas this are to be taken forward by Scottish Parliament and Scottish Government officials (para 56)</p>

Conveners Group	To provide strategic leadership to ensure necessary procedures are in place to enable the Parliament to carry out effective scrutiny in these areas		<p>Consider further CG's strategic leadership role in this area in addressing the scrutiny gaps identified above</p> <p>Consider whether Members have sufficient awareness of the impact Brexit has had on the Scottish Parliament's legislative function and policy scrutiny roles</p> <p>Consider its own role in ensuring that all committees are appropriately sighted as this work progresses and have sufficient understanding of how devolution will work in a post-EU environment;</p>	<p>Provide support for the need to address the post-EU scrutiny gaps and agree to continue to monitor this work as it progresses (para 52)</p> <p>Consider ways to develop Group's interparliamentary role and seek to develop a working relationship with its counterparts in other legislatures (para 56)</p> <p>Note update on issues raised to be provided at future meeting (before summer recess) (para 55)</p> <p>Agree recommendations made by CEEAC on review of SSI Protocol and SI Protocol 2 (see separate paper)</p>
Parliament	To carry out effective scrutiny of post-EU matters			

Conveners Group

3rd Meeting, 2022 (Session 6), Wednesday 30 March 2022

Post-EU scrutiny: subordinate legislation protocols

Introduction

1. The purpose of this paper is to invite the Conveners Group to consider a review of the subordinate legislation protocols which allow for scrutiny of legislative proposals in areas formerly governed by EU law.

Background

2. Conveners will be aware of the protocols that are currently in place which allow for scrutiny of secondary legislation in former areas of EU law. This scrutiny is carried out under the Scottish Statutory Instrument (SSI) Protocol and Statutory Instrument (SI) Protocol 2.
3. The Constitution, Europe, External Affairs and Culture Committee (CEEAC) recently considered a review carried out by officials on the current arrangements in place under these protocols.
4. The findings and recommendations are attached as **Annexe A**.

Decision

5. **The Group is invited to support the recommendations of the CEEAC Committee in relation to the review of the subordinate legislation protocols. In summary, these are—**
 - that the SSI Protocol should be discontinued as it no longer facilitates proportionate or effective scrutiny,
 - that the formal review of SI Protocol 2 should be undertaken by Scottish Parliament officials on behalf of committees,
 - that committees could be broadly content with the current operation of SI Protocol 2 while recognising its limited scope and effectiveness.

Annexe A

Post EU-legislative scrutiny: Review of subordinate legislation Protocols

Purpose

1. The purpose of the paper is to
 - inform the Conveners Group of the arrangements which currently exist, under the Scottish Statutory Instrument (SSI) Protocol and Statutory Instrument (SI) Protocol 2, for scrutiny of legislative proposals in areas formerly governed by EU law,
 - invite the Conveners Group to consider and agree with the recommendations of the CEEAC Committee regarding next steps.
2. The recommendations are made in the context of the CEEAC Committee's recent report on its UK Internal Market inquiry. Also, in the context of wider work ongoing within the Parliament and across committees to promote more effective scrutiny of devolved policy-making and legislation, and ensure transparency and accountability.

SSI Protocol

Background

3. The [SSI Protocol](#) applies to SSIs made under the European Union (Withdrawal) Act 2018 ("the 2018 Act"). It was agreed between the Scottish Parliament and Scottish Government in January 2019, with the aim of enabling effective parliamentary scrutiny of SSIs made under the very wide powers in that Act, in novel and complex areas of retained EU law. It was anticipated that the Parliament would require to consider large numbers of these instruments in a very short space of time.
4. The principal features of the SSI Protocol are as follows:
 - Sift: In certain limited circumstances, it enables Committees to recommend that the parliamentary procedure to which the instrument is subject is changed. This is known as the sifting mechanism.
 - Categorisation: It establishes categories of significance to help Committees determine their approach to scrutiny.
 - Additional information: It sets out the additional information Scottish Government will provide when laying SSIs under the 2018 Act.
5. During the time in which the SSI Protocol has been operating, the additional information provided by the Scottish Government in Policy Notes has been valuable in assisting understanding and scrutiny of the instrument. The sifting mechanism however has not been used, with Committees not having recommended any changes to parliamentary procedure over the period. And the

Scottish Government's categorisation of an instrument does not appear to have determined subject committees' approach to scrutiny.

6. The focus of most of the instruments made under the 2018 Act has been correcting deficiencies to provide for the smooth operation of law following withdrawal from the EU or implementing technical aspects of the UK-EU Withdrawal Agreement. The deficiencies task in particular involved committees considering lots of technical legislation in a short space of time. The SSI Protocol process was designed to ensure that any significant issues were flagged to committees in pressured periods, such as in the lead-up to the various exit days.
7. More recently however the Parliament has seen a move towards instruments which set the new policy direction in post-EU areas. These instruments are made under powers in retained EU law¹ or under existing UK or Scottish Acts, such as the Environmental Protection Act 1990 or the Climate Change (Scotland) Act 2009. It is in these areas that committees are beginning to see more substantive policy changes. However, the SSI Protocol does not apply to regulations made under this legislation.

Review

8. Parliamentary officials supporting this area of scrutiny have found that the SSI Protocol creates additional work for committees and their support teams which may be considered disproportionate to the benefit derived, especially now that the project to fix deficiencies in retained EU law is largely complete.
9. For example, the sifting mechanism requires DPLRC and lead committees to programme consideration of the choice of procedure and minute their decisions, separately to their usual scrutiny of the instrument. DPLRC requires to do the same thing for categorisation of an SSI. As noted above, these tools have not determined committee approaches to scrutiny. The additional processes can cause confusion, particularly now that instruments are increasingly made partly under the 2018 Act and partly under other powers, meaning that the SSI Protocol only applies to parts of the instrument.
10. Instead of investing committee time in technical and process matters, Committees may prefer to focus their scrutiny effort on new policy choices being made in former EU areas. They may also wish to consider the impacts of the UK internal market, common frameworks and the Trade & Cooperation Agreement on the governance landscape and the Scottish Ministers' regulatory autonomy, in order to fully understand the policy approaches being taken.
11. Such an approach aligns with the recommendation in the Finance & Constitution Committee Session 5 [legacy report](#), and highlighted by the CEEAC Committee's Convener in her [letter](#) to the Cabinet Secretary for Constitution, External Affairs and Culture², on the need for an overall approach to the scrutiny of the policy

¹ "Retained EU law" is a "snapshot" of EU law as it applied in the UK on 31 December 2020, brought into domestic law, and sometimes amended to ensure correct operation in domestic law. See further SPICe [Frequently asked questions: session 6 new constitutional arrangements](#)

² 22 September 2021

development process in areas previously within EU competence, which takes account of the whole range of interconnected factors and which is proportionate and deliverable.

12. In his [response](#) to that letter³, the Cabinet Secretary stated:
13. “The Scottish Government agrees with the predecessor constitution committee’s legacy report’s assessment that “...if there is to be meaningful scrutiny of Brexit-related developments, the Parliament cannot merely continue with the existing approach to its scrutiny function. The future scrutiny burden arising from Brexit is so great that if it is carried out in an ad-hoc manner it is unlikely that it will be done effectively””.
14. The Cabinet Secretary added that Parliament and Scottish Government officials had been liaising to address the points raised in the Convener’s letter and that agreed outputs of these discussions “should include consideration of updated processes to support meaningful scrutiny, reflecting the changed constitutional position and the Scottish Government’s strategic priorities for its UK and external relations.”

Current scrutiny developments: SSIs

15. Where the SSI Protocol does not apply, Committees do not routinely receive briefing on subordinate legislation. However, in relation to all SSIs resulting from EU exit and flagged to them by legal advisers, SPICe researchers are currently trialling a process of determining whether a proposed change has sufficient policy significance to require a briefing for the relevant subject Committee, in addition to the policy note provided by the Scottish Government. If so, SPICe may provide a briefing. In some cases, a SPICe briefing covering a number of SSIs may be provided as a more general note on context⁴.
16. Scottish Government Policy Notes accompanying instruments generally explain the reasons for and effect of proposed changes in the law in former EU areas, whether or not the instrument falls under the SSI Protocol. It is anticipated that this practice will continue.
17. However, as the CEEAC Committee has recently reported⁵, the regulatory environment within Scotland is increasingly complicated. Understanding policy decisions made by Scottish Ministers requires knowledge of a range of interrelated factors including policy and legislative developments in the EU and

³ 3 November 2021

⁴ In effect this means that officials in Legal Services and SPICe will initiate briefing to subject Committees only where the significance lever requires it. This approach is deemed necessary to keep the scrutiny effort targeted and proportionate. This approach is currently being undertaken on a trial basis, and whether it is an appropriate use of limited resources will be assessed after an initial trial period.

Whilst all SSIs require a subject Committee’s attention, additional briefing is a means to draw a committee’s attention to a particular issue or wider background and contextual matters with a SSI or a group of SSIs which it might find useful to understand, or beneficial to its consideration of the instrument.

⁵ [CEAAC Report: UK Internal Market Inquiry](#), para. 237

the rest of the UK, market access principles, common frameworks and trade agreements. The CEEAC Committee accordingly recommended⁶ in its report that further consideration is given by Scottish Government and Scottish Parliament officials to the level of information which the Scottish Government is required to provide in supporting documents published alongside primary and secondary legislation in relation to such impacts.

Recommendations

18. The CEEAC Committee agreed to recommend to the Conveners' Group that the SSI Protocol should be discontinued as it no longer facilitates proportionate or effective scrutiny.

19. The Conveners Group is invited to support that recommendation.

SI Protocol 2

Background

20. During the process of EU withdrawal and since the end of the transition period, there has been an increase in the use of UK statutory instruments to make provision within the legislative competence of the Scottish Parliament. The Scottish Parliament has no formal role in relation to subordinate legislation in devolved areas made by UK Ministers, as that legislation is laid in the UK Parliament alone.

21. The first SI Protocol was agreed between Scottish Ministers and the Scottish Parliament in November 2018 and applied to UK SIs made under powers in the 2018 Act. Its purpose was to enable the Scottish Parliament to hold the Scottish Ministers to account for their decisions on whether or not to consent to UK Ministers making such legislation. A revised protocol ([SI Protocol 2](#)) was agreed in January 2021⁷ with an extended scope applying to all powers to make UK SIs in devolved areas formerly governed by EU law, as noted in the Committee's UK Internal Market report⁸.

22. SI Protocol 2 is subject to a formal review by both parties. This was initially scheduled to take place within 6 months of January 2021. However as a result of the Scottish Parliament election and other intervening factors, the pace of post-EU SIs made so far this session has been relatively slow and the review has been delayed accordingly.

Review

23. SI Protocol 2 gives the Scottish Parliament a role in relation to UK subordinate legislation where it would otherwise have none. It enables Committees to be sighted on and ask questions about devolved policy developments which are

⁶ [CEAAC Report: UK Internal Market Inquiry](#), para. 244

⁷ And updated in June 2021 to include a list of relevant UK Acts passed since January 2021

⁸ See further SPICe [Frequently asked questions: session 6 new constitutional arrangements](#)

proposed to be regulated through the UK Parliament rather than the Scottish Parliament. And where committees do not agree with a proposal to include the devolved matter in UK regulations, they can recommend that the Scottish Ministers refuse consent and either make the provision in Scottish legislation, or do not proceed with the provision at this time⁹.

24. There are however several limitations on transparency and accountability which are inherent in the design of the SI Protocol, and in its operation in practice:

- Scrutiny of the Scottish Ministers' decisions whether or not to consent generally takes place prior to the legislation itself being available for consideration.
- Not all the powers within the scope of the Protocol contain a statutory requirement for Scottish Ministers' consent. Where the UK Government does not in practice seek consent, there is no decision for the Scottish Parliament to scrutinise under the Protocol.
- Proposals are often notified to the Parliament with far less than the 28-day period provided for in the Protocol, leading to insufficient time for committee scrutiny.

25. Further limitations have emerged since the end of the EU transition period, as the focus has shifted away from withdrawal from the EU and the legislation needed to ensure transition, towards policy-making and consideration of policy divergence or alignment between Scotland and the EU, and within the UK.

26. An example is the interaction between intergovernmental mechanisms for agreeing common frameworks and the SI Protocol 2, as discussed in the Committee's Internal Market report. A process has been agreed between the four UK governments for the exclusion of matters falling within agreed common frameworks from the market access principles in the UK Internal Market Act 2020. The output from that process will be UK SIs which specify the matters to be excluded. While the SI Protocol will apply to those UK SIs, the scope for influence by the Scottish Parliament will be small, given that matters will have already been agreed between the four governments.

27. It is also important to note that the SI Protocol does not apply in a number of devolved areas where policy is developed by the UKG, or by the UKG and devolved governments working jointly:

- It applies only to legislative proposals. As noted in the Committee's Internal Market report, many decisions in the post-EU context are taken administratively or through intergovernmental decision-making. Even where decisions taken by governments result in implementing SIs, such as under common frameworks or further to trade deals like the Trade & Cooperation Agreement, the scope for influence by the SP will be small as decisions will already have been taken.

⁹ There is an exception for SIs containing minor or technical provision which does not involve a policy decision. The Scottish Parliament is notified of these SIs *after* they have been made.

- The Protocol does not apply to UK Government subordinate legislation in devolved areas which were not previously within the competence of the EU. The DPLRC has noted a number of recent UK Bills where new powers to make this sort of devolved provision in UK regulations are being conferred on the UK Government.

Recommendations

28. The CEEAC Committee agreed to recommend to Conveners Group that—

- **the formal review of SI Protocol 2 should be undertaken by Scottish Parliament officials on behalf of committees,**
- **committees could be broadly content with the current operation of SI Protocol 2 while recognising its limited scope and effectiveness,**
- **that there are a number of other scrutiny gaps which need to be addressed.**

Conveners Group

3rd Meeting, 2022 (Session 6), Wednesday 30 March 2022

The legislative consent process for UK Parliament Bills

Purpose of paper

1. The Conveners Group will recall issues in relation to the lodging of LCMs was raised at a previous meeting. It was agreed to explore issues in relation to LCMs further with a view to bringing this issue back to the Group for consideration.
2. This paper provides detail on some issues that have arisen this session in relation to the legislative consent process for UK Parliament Bills. In particular, it covers:
 - timescales for lodging legislative consent memorandums (LCMs) and the impact of delays on Parliamentary scrutiny;
 - issues arising where the Scottish Government does not propose to consent to a UK Parliament Bill.

Timescales for lodging LCMs

3. The legislative consent process applies to UK Parliament Bills which make provision (“relevant provision”) applying to Scotland for any purpose within the legislative competence of the Parliament, or which alters that legislative competence or the executive competence of the Scottish Ministers. The process is set out in Chapter 9B of Standing Orders.
4. Rule 9B.3.1 sets out the timescales for lodging LCMs:
 - where the UK Government introduces a Bill which contains relevant provision on introduction, the Scottish Government should normally lodge an LCM no later than two weeks after introduction;
 - where a Private Member’s Bill was a relevant Bill on introduction and remains so after the first amending stage in the House in which it was introduced, the Scottish Government should lodge an LCM normally no later than two weeks after it completes that first amending stage;
 - some Bills may not contain relevant provision at introduction but are amended to do so. Where this occurs, the Scottish Government should lodge

an LCM normally no later than two weeks after the amendments are tabled (if they are UK Government amendments) or agreed to (if they are not UK Government amendments);

- in some circumstances an LCM may already have been lodged but amendments tabled or agreed to mean that a supplementary LCM is required. Rule 9B.3.1(c) requires a supplementary LCM to be lodged normally no later than two weeks after amendments have been tabled or agreed to, where such amendments make provision beyond the limits of any consent previously given by the Scottish Parliament.
5. A supplementary LCM may also be lodged by the Scottish Government where it wishes to change its position on consent, for example, following assurances from the UK Government on a particular issue.
 6. The inclusion of the word “normally” in the rules means that Standing Orders do not need to be suspended if an LCM is to be lodged after the two-week deadline. However, it is common practice that the Minister for Parliamentary Business writes to the Presiding Officer, copying in the relevant lead committee Convener, if there is to be a delay in lodging an LCM.

Timescales for Parliamentary scrutiny

7. Rule 9B.3.5 provides that the Parliamentary Bureau shall refer any LCM to the committee within whose remit the subject matter of the relevant provision falls. That committee must consider and report on the LCM.
8. Where the UK Parliament Bill contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, Rule 9B.3.6 provides that the Delegated Powers and Law Reform (DPLR) Committee must consider the LCM and may report to the lead committee (although it does not have to report).
9. Standing Orders do not provide any timescales for this scrutiny by committees. However, it is accepted practice that the DPLR Committee should normally consider the LCM before the lead committee.
10. Rule 9B.2.2 provides that a legislative consent motion shall not normally be lodged until after the publication of the lead committee’s report. Rule 9B.2.3 provides that the Parliament shall not normally take such a motion earlier than the fifth sitting day after the day on which the lead committee’s report is published.
11. It is established practice that the Parliament should consider the legislative consent motion before the last amending stage in the Second House. This is to ensure that any views expressed by the Parliament could still be responded to by way of an amendment to the UK Bill. In practice, this means that the lead committee should report in time to allow the Parliament to consider the legislative consent motion before the last amending stage at Westminster. The date for the final amending stage is not always known or certain at the time the LCM is

lodged, and clerks rely on updates from the Scottish Government about the proposed timetable at Westminster.

12. The inclusion of the word “normally” in Rule 9B.2.2 means that, where timescales are tight, the motion can be lodged before the lead committee has reported. The inclusion of the word “normally” in Rule 9B.2.3 means that the motion can be taken earlier than the fifth sitting day after that report. There have been occasions where the lead committee’s report has been published in the morning and the motion taken in the Chamber in the afternoon.
13. There can often be discussions between the UK and Scottish Governments about legislative consent. However, this does not prevent an LCM being lodged while these discussions are ongoing. If, following such discussions, the Scottish Government wishes to update an LCM, for example, to alter its position on consent, it can do this via a supplementary LCM. This would allow committees to begin their scrutiny of LCMs at the earliest possible stage, while still enabling later developments to be considered.

LCMs lodged in Session 6

14. The table below contains information on the LCMs that have been lodged so far in Session 6.
15. In summary, a total of 23 LCMs (including seven supplementary LCMs) have been lodged so far in Session 6. Over half of these (12) have been lodged late (highlighted in the table). In relation to the vast majority of late LCMs, the Scottish Government did not recommend consent.
16. The information in the table illustrates that the window for Parliamentary scrutiny of LCMs is often tight. If the LCM is not lodged early in the Westminster process, then this narrows the time for scrutiny between the lodging date the final amending stage.
17. There are particular challenges in relation to supplementary LCMs, given that these are usually lodged in response to a Bill being amended and come later in the Westminster process. Any delay in lodging supplementary LCMs can therefore exacerbate the time pressures on committees.

Next steps

18. Members will recall that the Deputy Presiding Officer raised the timescales for lodging LCMs with the First Minister when she met with the Group at the beginning of March. She undertook to raise this issue with the Minister for Parliamentary Business.
19. **It would be worth pursuing this point further and so the Group is invited to agree to write to the Minister seeking a response to these concerns. In particular, to note that, while there may be discussions taking place between the UK and Scottish Governments about legislative consent, this**

does not prevent an LCM being lodged while these discussions are ongoing.

LCM	2-week date	Actual lodging date	Bill stage when lodged	Start date of final amending stage	SG consent	Parliamentary scrutiny
Animal Welfare (Kept Animals) Bill	22 June 2021	22 June 2021	1st House 2nd Reading	Ongoing	Yes	<ul style="list-style-type: none"> • DPLRC considered on 26 Oct and reported on 5 Nov. • Lead committee considered on 17 Nov and reported on 24 Nov. • Consent motion taken on 11 Jan.
Environment Bill (supp) (original LCM lodged Session 5)	11 Dec 20 (27 Nov amdts) 22 June 2021 (8 June amdts)	9 July 2021	2nd House Cttee Stage	6 Sept 2021	No	<ul style="list-style-type: none"> • Covered amendments tabled by UK Govt on 2 different dates: 27 Nov 2020 and 8 June 2021. • DPLRC considered on 7 Sept. • Lead committee considered at 3 meetings in Sept and reported on 29 Sept. • SG lodged a motion calling on UK Govt to amend the Bill; debated 5 Oct.
Professional Qualifications Bill	26 May 2021	12 July 2021	1st House Cttee Stage	14 March 2022	No	<ul style="list-style-type: none"> • DPLRC considered on 21 Sept and reported on 23 Sept. • Lead committee considered at 3 meetings in Sept-Nov and reported on 22 Nov.
Professional Qualifications Bill (supp)	16 Nov 2021	27 Jan 2022	2nd House Report Stage	14 March 2022	No	<ul style="list-style-type: none"> • UK Govt tabled relevant amendments. • DPLRC considered on 1 Feb and reported on 4 Feb. • Lead committee considered at 2 meetings in Feb and reported on 9 Feb. • SG lodged a motion calling on UK Govt to amend the Bill; debated 10 Feb.

LCM	2-week date	Actual lodging date	Bill stage when lodged	Start date of final amending stage	SG consent	Parliamentary scrutiny
Police, Crime, Sentencing and Courts Bill	23 March 2021	5 Aug 2021	2nd House 2nd Reading	8 Dec 2021	Yes (in relation to most provisions)	<ul style="list-style-type: none"> • DPLRC considered on 28 Sept and reported on 4 Oct. • Lead committee considered at 2 meetings in Sept/Oct and reported on 8 Oct. • Consent motion taken on 3 Nov.
Police, Crime, Sentencing and Courts Bill (supp)	N/A	6 Dec 2021	2nd House Report Stage	8 Dec 2021	Yes	<ul style="list-style-type: none"> • Following discussions with UK Govt, SG changed its position to support consent in relation to the remaining relevant provisions. • Standing Orders do not specify a timeframe in which a supplementary LCM should be lodged where there has been no amendment to the Bill but the position on consent has changed. • DPLRC considered on 14 Dec. • Lead committee considered on 14 Dec and reported on 17 Dec. • Consent motion taken on 21 Dec.
Health and Care Bill	20 July 2021	31 Aug 2021	1st House Cttee Stage	1 March 2022	No	<ul style="list-style-type: none"> • DPLRC considered on 28 Sept and reported on 4 Oct. • Lead committee considered at 3 meetings in Sept/Oct and reported on 26 Oct.

LCM	2-week date	Actual lodging date	Bill stage when lodged	Start date of final amending stage	SG consent	Parliamentary scrutiny
Health and Care Bill (supp)	1 Dec 2021	10 Dec 2021	2nd House Cttee Stage	1 March 2022	Yes (in relation to some provisions)	<ul style="list-style-type: none"> Following amendments, SG recommended consent in relation to some of the relevant provisions in the Bill.
Health and Care Bill (2nd supp)	7 Feb 2022	27 Jan 2022	2nd House Cttee Stage	1 March 2022	Yes (in relation to remaining provisions)	<ul style="list-style-type: none"> Following further amendments, SG recommended consent in relation to other relevant provisions in the Bill. DPLRC considered both supplementary LCMs on 1 Feb and reported on 3 Feb. Lead committee considered both supplementary LCMs on 8 Feb and reported on 9 Feb. Consent motion taken on 10 Feb.
Advanced Research and Invention Agency Bill	16 March 2021	2 Sept 2021	2nd House 2nd Reading	14 Dec 2021	No	<ul style="list-style-type: none"> Lead committee considered on 27 Oct.
Advanced Research and Invention Agency Bill (supp)	24 Nov 2021	18 Nov 2021	2nd House Cttee Stage	14 Dec 2021	Yes	<ul style="list-style-type: none"> SG changed position to recommend consent following a UK Govt amendment. Lead committee considered on 1 Dec and reported on both the original and supplementary LCMs on 2 Dec. Consent motion taken on 7 Dec.
Social Security (Up-rating of Benefits) Bill	22 Sept 2021	10 Sept 2021	1st House 2nd Reading	2 Nov 2021	Yes	<ul style="list-style-type: none"> Fast-tracked Bill at Westminster. Lead committee considered and reported on the morning of 16 Sept. Consent motion taken in the afternoon of 16 Sept.

LCM	2-week date	Actual lodging date	Bill stage when lodged	Start date of final amending stage	SG consent	Parliamentary scrutiny
Elections Bill	19 July 2021	21 Sept 2021	1st House Cttee Stage	Ongoing	No	<ul style="list-style-type: none"> • DPLRC considered on 9 Nov and reported on 19 Nov. • Lead committee considered at 4 meetings in Nov/Dec and reported on 22 Dec. • SG lodged a motion withholding consent; debated on 1 Feb 2022.
Subsidy Control Bill	14 July 2021	25 Oct 2021	1st House Cttee Stage	22 March 2022	No	<ul style="list-style-type: none"> • Lead committee considered at 3 meetings in Jan/Feb 2022 and reported on 9 Feb. • SG lodged a motion withholding consent; debated on 17 March.
Judicial Review and Courts Bill	4 Aug 2021	17 Nov 2021	1st House Cttee Stage	31 March 2022	Yes	<ul style="list-style-type: none"> • Lead committee considered on 15 Dec and reported on 17 Dec. • Consent motion taken on 18 Jan 2022.
Cultural Objects (Protection from Seizure) Bill	1 Dec 2021	1 Dec 2021	1st House Report Stage	Ongoing	Yes	<ul style="list-style-type: none"> • Private Member's Bill. • DPLR considered on 18 Jan and reported on 24 Jan. • Lead committee considered on 3 March and reported on 4 March. • Consent motion taken on 17 March.
Public Service Pensions and Judicial Offices Bill	2 Aug 2021	21 Dec 2021	2nd House 2nd Reading	22 Feb 2022	Yes	<ul style="list-style-type: none"> • DPLRC considered on 18 Jan and reported on 20 Jan. • Lead committee considered on 26 Jan and reported on 27 Jan. • Consent motion taken on 1 Feb.

LCM	2-week date	Actual lodging date	Bill stage when lodged	Start date of final amending stage	SG consent	Parliamentary scrutiny
Building Safety Bill	26 Jan 2022	26 Jan 2022	2nd House 2nd Reading	29 March 2022	Yes	<ul style="list-style-type: none"> Lodged following UK Govt amendments making relevant provision for 1st time. DPLRC considered on 22 Feb and reported on 24 Feb. Lead committee considered at 2 meetings in Feb/March and reported on 2 March.
Nationality and Borders Bill	20 July 2021	1 Feb 2022	2nd House Cttee Stage	28 Feb 2022	No	<ul style="list-style-type: none"> Lead committee had evidence sessions already scheduled as part of its planned work programme, which it used to cover the LCM. Lead committee reported on 21 Feb. SG lodged a motion withholding consent; debated on 22 Feb.
High Speed Rail (Crewe – Manchester) Bill	7 Feb 2022	7 Feb 2022	1st House 2nd Reading	Ongoing	Yes	
Economic Crime (Transparency and Enforcement) Bill	15 March 2022	4 March 2022	1st House 2nd Reading	14 March 2022	Yes	<ul style="list-style-type: none"> Fast-tracked Bill at Westminster. Given limited time for scrutiny, Standing Orders were suspended so that the lead committee did not have to consider and report. DPLRC considered on 8 March. Consent motion taken on 8 March.
British Sign Language Bill	9 March 2022	9 March 2022	1st House 3rd Reading	Ongoing (expected to be end April)	Yes	<ul style="list-style-type: none"> Private Member's Bill.

Non-consent LCMs

20. Where a Bill makes relevant provision (or is amended to do so), the Scottish Government must lodge a legislative consent memorandum (LCM), regardless of whether it recommends consent. However, Standing Orders only provide for a legislative consent motion to be lodged where that motion seeks the Parliament's consent. While committees will still scrutinise the LCM, where the Scottish Government is not seeking consent there is no provision in Chapter 9B which allows for a debate or vote on the issue.
21. Out of the 17 UK Parliament Bills covered by LCMs so far in Session 6, the Scottish Government has not recommended consent in relation to five of these Bills. In these circumstances, it has lodged a standard motion to allow for a debate and vote on the issue. Such motions and debates sit outwith the legislative consent process set out in Chapter 9B. It is not possible to amend such a motion to grant consent. However, any other Member may (under Rule 9B.3.2) lodge a legislative consent motion seeking the Parliament's consent. This must be accompanied by an LCM.
22. Another issue that has arisen in this context is whether, if the original LCM did not recommend consent and therefore no consent motion has been lodged, a supplementary LCM would be required where the Bill is amended to include relevant provision but the Scottish Government still does not intend to recommend consent.
23. This arose in relation to the Profession Qualifications Bill. The Scottish Government had lodged an LCM which did not recommend consent. UK Government amendments were tabled which made relevant provision but did not alter the Scottish Government's position on consent.
24. Rule 9B.3.1(c) provides that an LCM should be lodged where amendments make relevant provision for the first time or beyond the limits of any consent previously given by the Parliament. On a strict reading of this rule, a supplementary LCM was not required because the Bill already made relevant provision (the amendments did not do so for the first time) and the amendments did not go beyond the limits of any consent as no consent had previously been granted. However, given that the amendments made new relevant provision, the Scottish Government accepted that it was appropriate to lodge a supplementary LCM in the circumstances. The same approach was taken in relation to the second supplementary LCM lodged for this Bill.
25. In these cases, while the amendments are not beyond the scope of consent granted (as no consent has been granted), they are beyond the scope of what the Parliament has previously considered. The spirit of the rules is to ensure the Parliament is informed of new developments as this may impact its view on consent. However, the exact drafting of the rules does not explicitly cater for this situation.

26. There are clearly complex procedural issues to consider. If the Group is minded to pursue this issue further, any procedural revisions would be a matter for the SPPA Committee.

Recommendation

27. The Conveners Group is invited to consider whether any steps should be taken to address the issues set out in this paper in relation to the legislative consent process. This could include:

- **writing to the Minister for Parliamentary Business on the issue of delays in lodging LCMs;**
- **considering whether it wishes to invite the SPPA Committee to consider whether Standing Orders should be revised to make specific provision for non-consent motions.**

Conveners Group

3rd Meeting, 2022 (Session 6), Wednesday 30 March 2022

Committee Survey – Witness Diversity

Purpose of paper

1. The purpose of this paper is to update Conveners on the proposed witness diversity survey for Committees.
2. It also invites Conveners to agree the proposed questions to be included in the survey.

Introduction

3. Diversity, inclusion and participation is one of the Group's strategic priorities. Work on the Parliament's diversity strategy is underway and a paper setting out a proposed approach will be presented to the Group for consideration following the summer recess.
4. Monitoring and collecting data on who Committees are hearing from is a key part of this work. This will inform any initiatives being taken forward to engage with hard-to-reach communities and will ensure that a diverse range of views are heard by Committees.

Conveners Group meeting

Outcome

5. The outcome of this session will be to enable the roll-out of the Committee witness diversity survey at the beginning of year two of the current parliamentary session (in May 2022). The Group will receive an annual progress update at future meetings.

Aim of the survey

6. The underlying aim is to help improve the diversity of voices and views Committees hear from. The survey will establish a baseline to enable our understanding of how diverse those appearing in front of Committees are and how that is changing over time. The information gathered should support Committees in thinking about how they might improve the diversity of those giving evidence and will inform our work to engage with hard to reach communities.

7. This stems from work commissioned by the Committee office: [Committee Witnesses: Gender and Representation](#) in 2018. That report detailed the advantages in hearing from a diversity of voices. It also recommended that Committees encourage organisations to think about who they are sending to give evidence. The House of Commons and Senedd have recently introduced similar surveys.

The questions

8. The proposed survey questions are set out in Annex A. These focus on the areas where Committees are likely to have greatest scope to influence. There is also merit in keeping the survey quite short to encourage completion rates and it has been structured with this in mind, and to avoid asking questions that may be sensitive to ask witnesses under 18. The survey includes questions on age, location, sex, disability and ethnicity.

9. There is an option to augment the survey with further questions if Conveners consider Committees would use that additional information and it would add value to their work.

10. Annex B sets out an option for an extended questionnaire which includes questions that could be asked in addition to those set out in Annex A. This includes additional questions on sexual orientation, religion and trans status. The Group may wish to add these questions to get a fuller picture of witness diversity.

11. An initial data protection impact assessment and an equalities impact assessment of the surveys has been carried out.

How the information will be collected, analysed and published

12. To seek to ensure a high response rate, witnesses will be asked to complete the survey directly before/after their Committee appearance via a link. The results will be anonymised and analysed by SPICe and a report provided to Committees on an annual basis. If required, Committees could request more frequent reporting. It is anticipated that the annual reports of Committees would contain a summary of key statistics.

13. As noted above, the Group will also receive an annual progress update at future meetings.

Recommendations

14. **The Group is invited to consider the proposed approach, in particular—**

- **to note the approach and agree the survey questions (set out in Annexe A)**

- **to consider whether to agree an augmented survey by including some or all of the questions set out in Annexe B**
- **to agree that witnesses should be offered the opportunity by email to respond directly via a survey link**

Conveners Group clerking team

Annex A

Witness diversity – Option 1: Focused Questions

1. Which committee will you or did you attend?				
Answer Choices			Response Percent	Response Total
1	Covid-19 Recovery Committee		0.00%	0
2	Citizen Participation and Public Petitions Committee		0.00%	0
3	Constitution, Europe, External Affairs and Culture Committee		0.00%	0
4	Criminal Justice Committee		0.00%	0
5	Delegated Powers and Law Reform Committee		0.00%	0
6	Economy and Fair Work Committee		0.00%	0
7	Education, Children and Young People Committee		0.00%	0
8	Equalities, Human Rights and Civil Justice Committee		0.00%	0
9	Finance and Public Administration Committee		0.00%	0
10	Health, Social Care and Sport Committee		0.00%	0
11	Local Government, Housing and Planning Committee		0.00%	0
12	Net Zero, Energy and Transport Committee		0.00%	0
13	Public Audit Committee		0.00%	0
14	Rural Affairs, Islands and Natural Environment Committee		0.00%	0
15	Social Justice and Social Security Committee		0.00%	0
16	Standards, Procedures and Public Appointments Committee		0.00%	0
			answered	0

2. On which date will you or did you appear before this committee?

Answer Choices		Response Percent	Response Total
1	*	0.00%	0
		answered	0
		skipped	0

3. What will you or did you provide evidence on? (tick as many as apply)

Answer Choices		Response Percent	Response Total
1	Primary legislation (Bill)	0.00%	0
2	Secondary or subordinate legislation (regulations, orders)	0.00%	0
3	Committee inquiry	0.00%	0
4	Petition	0.00%	0
5	Other (please specify):	0.00%	0
		answered	0
		skipped	0

4. What type of organisation do you represent?

Answer Choices		Response Percent	Response Total
1	Scottish Government (Minister)	0.00%	0
2	Scottish Government (Official)	0.00%	0
3	Scottish Parliament	0.00%	0
4	Other Central Government (eg, UK, Wales, Northern Ireland, etc)	0.00%	0
5	Other public sector (including local authorities and health boards)	0.00%	0
6	Private Sector	0.00%	0
7	Voluntary Sector	0.00%	0
8	Further or Higher Education institution	0.00%	0

4. What type of organisation do you represent?

9	Individual		0.00%	0
10	Other (please specify)		0.00%	0
			answered	0
			skipped	0

5. Which age group are you in?

Answer Choices		Response Percent	Response Total	
1	Under 18		0.00%	0
2	18-24		0.00%	0
3	25-34		0.00%	0
4	35-44		0.00%	0
5	45-54		0.00%	0
6	55-64		0.00%	0
7	65-74		0.00%	0
8	75 and over		0.00%	0
9	Prefer not to say		0.00%	0
			answered	0
			skipped	0

6. What is your sex?

Answer Choices		Response Percent	Response Total	
1	Male		0.00%	0
2	Female		0.00%	0
			answered	0
			skipped	0

7. If you are representing an organisation, which local authority are you based in? Or if you are attending in an individual capacity, which local authority do you live in?

Answer Choices		Response Percent	Response Total	
1	Aberdeen City Council		0.00%	0
2	Aberdeenshire Council		0.00%	0

7. If you are representing an organisation, which local authority are you based in? Or if you are attending in an individual capacity, which local authority do you live in?				
3	Angus Council		0.00%	0
4	Argyll and Bute Council		0.00%	0
5	City of Edinburgh Council		0.00%	0
6	Clackmannanshire Council		0.00%	0
7	Comhairle nan Eilean Siar		0.00%	0
8	Dumfries and Galloway Council		0.00%	0
9	Dundee City Council		0.00%	0
10	East Ayrshire Council		0.00%	0
11	East Dunbartonshire Council		0.00%	0
12	East Lothian Council		0.00%	0
13	East Renfrewshire Council		0.00%	0
14	Falkirk Council		0.00%	0
15	Fife Council		0.00%	0
16	Glasgow City Council		0.00%	0
17	Inverclyde Council		0.00%	0
18	Midlothian Council		0.00%	0
19	North Ayrshire Council		0.00%	0
20	North Lanarkshire Council		0.00%	0
21	Orkney Islands Council		0.00%	0
22	Perth and Kinross Council		0.00%	0
23	Renfrewshire Council		0.00%	0
24	Scottish Borders Council		0.00%	0
25	Shetland Islands Council		0.00%	0
26	South Ayrshire Council		0.00%	0
27	South Lanarkshire Council		0.00%	0
28	Stirling Council		0.00%	0
29	Highland Council		0.00%	0
30	Moray Council		0.00%	0
31	West Dunbartonshire Council		0.00%	0
32	West Lothian Council		0.00%	0
33	Outwith Scotland: Please specify		0.00%	0
			answered	0
			skipped	0

8. Do you have any of the following, which have lasted, or are expected to last, at least 12 months? Please tick all that apply.

Answer Choices		Response Percent	Response Total
1	Deafness or partial hearing loss	0.00%	0
2	Blindness or partial sight loss	0.00%	0
3	Full or partial loss of voice or difficulty speaking (a condition that requires you to use equipment to speak)	0.00%	0
4	Learning disability (a condition that you have had since childhood that affects the way you learn, understand information and communicate)	0.00%	0
5	Learning difficulty (a specific learning condition that affects the way you learn and process information)	0.00%	0
6	Developmental disorder (a condition that you have had since childhood which affects motor, cognitive, social and emotional skills, and speech and language)	0.00%	0
7	Physical disability (a condition that substantially limits one or more basic physical activities such as walking, climbing stairs, lifting or carrying)	0.00%	0
8	Mental health condition (a condition that affects your emotional, physical and mental wellbeing)	0.00%	0
9	Long-term illness, disease or condition (a condition, not listed above, that you may have for life, which may be managed with treatment or medication)	0.00%	0
10	Other condition (please specify):	0.00%	0
		answered	0
		skipped	0

9. What is your ethnic group?				
Answer Choices			Response Percent	Response Total
White				
1	Scottish		0.00%	0
2	Other British		0.00%	0
3	Irish		0.00%	0
4	Polish		0.00%	0
5	Gypsy/Traveller		0.00%	0
6	Roma		0.00%	0
7	Showman/Showwoman		0.00%	0
8	Other White ethnic group (please write in the comment box)		0.00%	0
Mixed or multiple ethnic group				
9	Any mixed or multiple ethnic group (please write in the comment box)		0.00%	0
Asian, Scottish Asian or British Asian				
10	Pakistani, Scottish Pakistani or British Pakistani		0.00%	0
11	Indian, Scottish Indian or British Indian		0.00%	0
12	Bangladeshi, Scottish Bangladeshi or British Bangladeshi		0.00%	0
13	Chinese, Scottish Chinese or British Chinese		0.00%	0
14	Other (please write in the comment box)		0.00%	0
African				
15	African, Scottish African or African British		0.00%	0
16	Please write in the comment box (for example Nigerian, Somali)		0.00%	0
Caribbean or Black				
17	Please write in the comment box (for example, Scottish Caribbean, Black Scottish)		0.00%	0
Other ethnic group				

9. What is your ethnic group?				
18	Arab, Scottish Arab or British Arab		0.00%	0
19	Other, please write in comment box (for example, Sikh, Jewish)		0.00%	0
20	Prefer not to say		0.00%	0
			answered	0
			skipped	0

Annex B

Witness diversity – Option 2 - Extended Questions

What, if any, religion, religious denomination or body do you belong to?				
Answer Choices			Response Percent	Response Total
1	Church of Scotland		0.00%	0
2	Roman Catholic		0.00%	0
3	Other Christian		0.00%	0
4	Muslim		0.00%	0
5	Hindu		0.00%	0
6	Buddhist		0.00%	0
7	Sikh		0.00%	0
8	Jewish		0.00%	0
9	Pagan		0.00%	0
10	Prefer not to say		0.00%	0
11	Other (please specify)		0.00%	0
			answered	0
			skipped	

How would you describe your sexual orientation?				
Answer Choices			Response Percent	Response Total
1	Straight/Heterosexual		0.00%	0
2	Gay or Lesbian		0.00%	0
3	Bisexual		0.00%	0
4	Other sexual orientation		0.00%	0
5	Prefer not to say		0.00%	0
			answered	0
			skipped	0

Do you consider yourself to be trans, or have a trans history? Trans is a term used to describe people whose gender is not the same as the sex they were registered at birth.			
Answer Choices		Response Percent	Response Total
1	Yes	0.00%	0
2	No	0.00%	0
3	Prefer not to say	0.00%	0
		answered	0
		skipped	0