



The Scottish Parliament
Pàrlamaid na h-Alba

Guidance on Legislative Consent

Stiùireadh air
Cead
Reachdail



Session 6 Edition
Version 1, November 2025

Contents

Foreword

Part 1: Introduction and background

- The origin of the Sewel Convention
- Early application of the Convention
- Scrutiny by the Procedures Committee
- Legal entrenchment of the Convention and its implications
- The Convention during and since Brexit

Part 2: Triggering the Scottish Parliament scrutiny process

- Relevant Bills
- Government Bills
- Private Members' Bills
- Bills that require further consent as a result of amendments
- The two-week preparation period

Part 3: Legislative consent memorandums

- Scottish Government LCMs
- LCMs lodged by individual MSPs
- Supplementary LCMs

Part 4: Committee scrutiny of LCMs

- Referral to lead committee
- Scrutiny by lead committee
- Scrutiny by DPLR Committee

Part 5: Timescales for LCM scrutiny and consent decisions

Part 6: Motions on legislative consent

- Motions and their consequences
- Expectation that the Parliament will make a consent decision
- Content of motions on legislative consent
- Preparation and lodging of motions on legislative consent
- Scheduling of motions on legislative consent
- Chamber proceedings on a motion on legislative consent
- Amendments to legislative consent motions
- Outcome of Chamber proceedings
- Communication with the UK Parliament

Annex A: Legislative consent process diagram

Annex B: List of key terms

Foreword

This is one of a number of volumes of Guidance published by the Scottish Parliament, each one covering a distinct area of Parliamentary proceedings.

Legislative consent is the process by which the Scottish Parliament considers whether to consent to the UK Parliament legislating on devolved matters (or to alter the Parliament's legislative competence or the executive competence of Scottish Ministers), in accordance with the Sewel Convention. The Parliament's process is governed by [Chapter 9B](#) of the standing orders.

The main aim of this Guidance is to explain the Sewel Convention, and how the Rules in Chapter 9B operate in practice.

The description given in the text is supplemented by the diagram in Annex A, which illustrates a particular example of the legislative consent process.

Where what the Guidance describes has a source in the standing orders, the relevant Rule is mentioned in parentheses. Footnotes provide additional detail (including examples) and sources. Annex B includes a list of key terms used in the text, together with definitions.

The Guidance is primarily intended as a source of reference for MSPs and Parliamentary staff but should also be useful for anyone wishing to follow this important aspect of the Parliament's business.

Individual legislative consent memorandums (LCMs) are available on the Parliament's website (under Bills and Laws / [Legislative consent memorandums](#)). The web-pages for each LCM provides links to the associated UK Parliament Bill and to scrutiny work undertaken by committees and to relevant Chamber proceedings.

This Guidance is published only in electronic format and every effort will be made to ensure that it reflects current practices and procedures.

If you have any comments on this Guidance, please send them to:

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Guidance on Legislative Consent
Foreword

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Part 1: Introduction and background

The origin of the Sewel Convention

1.1 The Scottish Parliament was established in 1999 as a devolved legislature within the United Kingdom. Its power to legislate, or make law, derives from the Scotland Act 1998, which not only confers power on the Parliament but establishes the limits within which that power may be exercised.

1.2 During the passage of the Scotland Bill, a key focus of debate was on clause 27 (which in due course became section 28 of the Act), subsection (1) of which gave the Scottish Parliament law-making powers (within limits specified elsewhere in the Bill), while subsection (7) asserted the continued power of the UK Parliament to make laws for Scotland.¹

1.3 It was acknowledged in the Parliamentary debates on the Bill that there was a tension between these two provisions, and that the overlapping powers of the UK Parliament and the new Scottish Parliament to legislate on the same issues could lead to a form of “legislative ping-pong”, with each Parliament taking turns to amend or repeal legislation passed by the other.

1.4 It was to address this issue that Lord Sewel – who, as a junior Scottish Office minister, was responsible for steering the Bill through its House of Lords stages – said:

“Clause 27 makes it clear that the devolution of legislative competence to the Scottish parliament does not affect the ability of Westminster to legislate for Scotland even in relation to devolved matters. Indeed, as paragraph 4.4 of the White Paper explained, we envisage that there could be instances where it would be more convenient for legislation on devolved matters to be passed by the United Kingdom Parliament. However, as happened in Northern Ireland earlier in the century, we

¹ Subsection (1) of [section 28](#) states that: “Subject to section 29, the Parliament may make laws, to be known as Acts of the Scottish Parliament.” Subsection (7) states “This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.”

would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish parliament.”²

1.5 This statement created what became known as the Sewel Convention. It was subsequently embedded in a Memorandum of Understanding (MoU) between the UK Government and the three devolved administrations.³ This was described as a statement of political intent rather than a binding legal agreement. Much of it is concerned with inter-governmental relations, communications and dispute resolution.

1.6 The MoU was fleshed out by a number of “devolution guidance notes” for UK Government departments, one of which dealt with post-devolution primary legislation affecting Scotland (DGN 10).⁴

1.7 Significantly, DGN 10 extended the scope of the Convention so that the consent of the Scottish Parliament is normally required not just for UK Parliament Bills legislating on devolved matters, but also for Bills that would alter either the Scottish Parliament’s legislative competence or the executive competence of the Scottish Ministers.

1.8 The rationale for this extension of the scope of the Convention is understood to be as follows. The Scotland Act gives the UK Government powers to alter the Parliament’s legislative competence (by means of an Order in Council under section 30) or the executive competence of the Scottish Ministers (by means of an Order in Council under section 63). The Act also provides (in Schedule 7) that an Order of either sort can only be made if a draft is approved not only by the two Houses at Westminster but also by the Scottish Parliament – thus giving the Parliament a veto over competence changes made through this route. However, it is sometimes more convenient for the UK Government, if it wishes to alter the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers, to include the relevant provision in a Government Bill – but if it uses that route,

² House of Lords Debates (Hansard), [21 July 1998, col 791](#).

³ The [Memorandum of Understanding](#) is available on the UK Government website. This version was published in 2013 superseding the original published in 2001. The Sewel Convention is referred to in paragraph 14.

⁴ [DGN 10](#) is available on the UK Government website.

the Scottish Parliament does not have (and could not be given) a similar veto. Accordingly, extending the Sewel Convention to cover such competence-changing provisions in UK Parliament Bills was a means of giving the Parliament a say, albeit by means of a non-binding convention rather than a statutory veto.

1.9 The presumption in DGN 10 is that it is for UK Government departments to identify when consent is required and then to liaise with the Scottish Government⁵, leaving it to the Scottish Government in turn to seek that consent from the Parliament.

Early application of the Convention

1.10 The Convention was put into practice in the early years of the Parliament by the then Scottish Executive, by means of a largely ad hoc process. In practice, this process was followed only where the Executive had already reached agreement with the UK Government to make changes to a devolved area of law by means of Westminster legislation. The Executive would then provide a memorandum to explain its reasoning, and subsequently lodge a motion formally seeking the Parliament's consent.⁶ In some cases, an opportunity was provided for committee scrutiny before the Chamber proceedings on the motion, but timescales were usually short and scrutiny limited. The frequency of use of this process, and the limited opportunities it afforded for scrutiny, made it the subject of considerable controversy.

Scrutiny by the Procedures Committee

1.11 The Session 1 Procedures Committee undertook some scrutiny of the operation of the Convention as part of a wider inquiry into the Parliament's procedures. This led to some changes – in particular, agreement that the normal deadline for obtaining the Parliament's consent should be the final amending stage in the House in which the Bill was introduced, in order to

⁵ DGN 10 refers to the "Scottish Executive", that being the original name given to the devolved administration before it was changed informally (in 2007) and then formally (in 2012) to "the Scottish Government".

⁶ At the time, these motions were sometimes referred to as "Sewel motions".

increase the time available for scrutiny in the Parliament.⁷ It was also agreed that proposals for consent should routinely be considered by a committee first, and only then taken in the Chamber.

1.12 In Session 2, the Procedures Committee considered the Sewel Convention in depth. The main outcome of the Committee's report (published in October 2005)⁸ was the creation of a new Chapter 9B in the standing orders, which came into effect in November 2005. The core elements of the Chapter are:

- a requirement on the Scottish Government to lodge legislative consent memorandums (LCMs) in relation to UK Parliament Bills that contain "relevant provision", whether or not the Scottish Government intends to seek the Parliament's consent by means of a motion – in effect, an early warning system for the Parliament
- requirements as to what information must be included in a LCM
- a requirement on the Parliamentary Bureau to refer every LCM to a lead committee, a requirement on that committee to report, and an expectation that the Parliament will not debate a legislative consent motion until after the committee has reported
- a right for any MSP to lodge a legislative consent motion (but only after first lodging a legislative consent memorandum).

1.13 The report also made a number of recommendations about practice, including in particular that the Scottish Government should write to the Presiding Officer after each Queen's Speech (as it was then called) to flag up which of the new Bills announced in the UK Government's legislative programme were likely to require legislative consent.

Legal entrenchment of the Convention and its implications

1.14 In the aftermath of the independence referendum in 2014, the Smith Commission was established to review the Parliament's powers. One of its

⁷ This was a departure from the position set out in DGN 10, which envisaged consent normally being obtained ahead of Second Reading in the first House.

⁸ Procedures Committee, [7th Report, 2005 \(Session 2\)](#), *The Sewel Convention*.

recommendations was for the Sewel Convention to be “put on a statutory footing”.⁹ This recommendation was implemented by means of section 2 of the Scotland Act 2016, which added a new subsection (8) to section 28 of the Scotland Act 1998, reading as follows:

“But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.”

1.15 The UK Supreme Court considered the legal status of the Convention in 2017 and concluded that the UK Parliament, in adding subsection (8), was “not seeking to convert the Sewel Convention into a rule which can be interpreted, let alone enforced, by the courts; rather, it [was] recognising the convention for what it is, namely a political convention, and [was] effectively declaring that it is a permanent feature of the ... devolution settlement”.¹⁰

The Convention during and since Brexit

1.16 Before 2018, the Scottish Parliament had withheld consent to a relevant Bill only once, and then only in part.¹¹ Consent was then withheld from five UK Government Bills introduced in the 2017-19 session of the UK Parliament, all relating to the implementation of Brexit. With four of these Bills, the Scottish Government outlined its opposition in the LCM and no motion (to give consent)

⁹ [Smith Commission report](#) (November 2014), paragraph 22.

¹⁰ UK Supreme Court judgement in [R \(on the application of Miller and another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\)](#), [2017] UKSC 5, paragraph 148.

¹¹ Motion on the Welfare Reform Bill, passed on [22 December 2011](#), which withheld consent for specified provisions of the Bill only. The provisions from which consent was withheld were later removed from the Bill by amendment. The Parliament subsequently passed the Welfare Reform (Further Provision) (Scotland) Act 2012, making provision broadly equivalent to that removed from the UK Parliament Bill.

was lodged.¹² In respect of the European Union (Withdrawal) Bill, the Scottish Government lodged a motion refusing consent, and this was agreed to.¹³ The Bill was then passed by the UK Parliament despite the Scottish Parliament not having consented, the first time this had happened. The UK Parliament subsequently passed, in its 2019-21 session, three other Brexit-related Bills to which the Parliament had withheld its consent.¹⁴ Two further Brexit-related Bills were passed in the 2021-22 session despite the Scottish Parliament withholding or refusing its consent.¹⁵

1.17 Commenting on these developments, the Parliament's Constitution, Europe, External Affairs and Culture Committee, in a report published in September 2022, noted that "the Sewel Convention is under strain following Brexit" and called for a "wider public debate about where power lies within the devolution settlement following the UK's departure from the EU".¹⁶

¹² These were the Agriculture Bill 2018, the Fisheries Bill 2018, the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019 and the Trade Bill 2017 – although the UK Government did not accept that consent was required for the first of these. All four Bills fell at the end of the 2017-19 session, and similar Bills were introduced in the 2019-21 session (with the UK Government agreeing that consent was required for the Agriculture Bill 2020). The Scottish Parliament gave consent to the 2020 Agriculture, Fisheries and Trade Bills. Changes made to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2020 meant it was no longer a relevant Bill, so no consent decision was required.

¹³ On [15 May 2018](#).

¹⁴ The UK Internal Market Bill, the European Union (Future Relationship) Bill and the European Union (Withdrawal Agreement) Bill; in all three cases, the Parliament passed motions denying consent. The European Union (Withdrawal Agreement) Bill was the first Bill passed by the UK Parliament despite the withholding of consent by all three devolved legislatures.

¹⁵ The Professional Qualifications Bill and the Subsidy Control Bill.

¹⁶ Constitution, Europe, External Affairs and Culture Committee, [5th Report, 2022 \(Session 6\)](#), *The impact of Brexit on Devolution*.

Part 2: Triggering the Scottish Parliament scrutiny process

2.1 One of the key features of Chapter 9B is that it requires the Scottish Government to monitor all the Bills being considered at Westminster, and to bring to the Parliament's attention (by means of a "legislative consent memorandum" or LCM) those Bills that engage the Sewel Convention (described in the Rules as "relevant Bills"). The aim is to ensure that this happens in good time, so as to maximise the time available for scrutiny.

2.2 Under Rule 9B.3.1, there are three distinct circumstances in which the Scottish Government is required to lodge an LCM. These vary according to what type of Bill is involved and the stage of the legislative process it has reached. The circumstances are:

- where a Government Bill is introduced that is a relevant Bill on introduction
- where a Private Member's Bill that was a relevant Bill on introduction remains a relevant Bill after completion of the first amending stage in the House in which it was introduced
- where a Bill (of either sort) is amended to make it a relevant Bill for the first time, or beyond the limits of any consent already given by the Parliament.

2.3 In each case, the LCM that is required should normally be lodged no later than two weeks after the relevant "trigger event" occurs.

Relevant Bills

2.4 A Bill is a relevant Bill if it makes provision ("relevant provision") applying to Scotland:

- for any purpose within the legislative competence of the Parliament (which means, in broad terms, that the outcome that the "relevant provision" in the Bill seeks to achieve could also be achieved by means of provision in an Act of the Scottish Parliament)

- which alters the Scottish Parliament's legislative competence (which means that it adds to or reduces that competence, or in any way alters the boundary between what is reserved and what is devolved)
- which alters the executive competence of the Scottish Ministers (which means that it gives them new powers, removes powers, or otherwise alters the nature or extent of their powers).

2.5 Accordingly, a Bill would not be a relevant Bill if it does not apply to Scotland, or if it applies to Scotland but only relates to reserved matters. So long as the purpose of the Bill is limited to changing the law on reserved matters, any changes it makes to devolved matters that are incidental to, or consequential on, those changes to reserved matters do not make it a relevant Bill.

2.6 A Bill may be a relevant Bill for only one of the above three reasons, or for more than one reason. For example, a Bill may include provision on devolved matters, and also confer new executive functions on the Scottish Ministers.

2.7 Sometimes it is just one or more individual provisions within a Bill that make it a relevant Bill. It is also possible, although unusual, for a Bill to be a relevant Bill by virtue of its central purpose – that is, where the Parliament's consent is needed for the whole Bill, rather than just for specific provisions within it.¹⁷

2.8 Relevant Bills may be Government Bills or Private Members' Bills, and they may be introduced either in the House of Commons or the House of Lords. Some may be relevant Bills by virtue of provision included at the time they are introduced, others by virtue of provision added later, by amendment. (Relevant provision in a Bill may also be removed, or modified, by amendment; and the complexities of the amendment process means that the extent of relevant provision in a Bill may change on a number of occasions during its passage.)

¹⁷ The clearest examples of this were the Bills that became the Scotland Acts of 2012 and 2016, whose central purpose was to alter the legislative competence of the Parliament (and the executive competence of the Scottish Ministers).

2.9 Deciding whether a Bill is a relevant Bill, or whether provision within such a Bill is relevant provision, is not always straightforward. On occasion, different views may be taken by the UK Government and by the Scottish Government.¹⁸ The UK Government's view is set out in the Explanatory Notes which accompany the Bill; the Scottish Government's view is set out in the LCM (which should explain any difference of view that has arisen – see also paragraph 3.3).

2.10 In any case of dispute about whether a UK Parliament Bill is a “relevant Bill”, it is for the Presiding Officer (who is the final arbiter on the interpretation of the Parliament's standing orders) to decide whether the procedures of Chapter 9B apply to the Bill.¹⁹

Government Bills

The King's Speech

2.11 The UK Government's legislative programme is announced annually through the King's Speech, and the Scottish Government's practice is for the Minister for Parliamentary Business to write to the Presiding Officer as soon as possible after the Speech setting out a list of the Bills announced that are likely to engage the Sewel Convention and so require legislative consent. The same information is provided to MSPs and others more generally, usually in the form of a written answer to a Government-initiated Parliamentary Question (a PQ lodged by a Government-party MSP to enable an announcement to be made).

¹⁸ For example, the UK Government did not consider the Parliament's consent was required for the Social Security (Additional Payments) Bill introduced in June 2022, but the Scottish Government took the view that the whole Bill related to devolved matters. There was a similar disagreement over the Levelling-up and Regeneration Bill, introduced in July 2022, but this concerned only whether Part 1 of the Bill was “relevant provision”; there was no dispute that the Bill was a “relevant Bill”.

¹⁹ In December 2015, the Scottish Government tried to lodge an LCM in relation to the Trade Union Bill, which it opposed, but the Presiding Officer ruled that the Bill was not a relevant Bill and that it was therefore not competent to lodge an LCM. Similarly, in 2023, the Presiding Officer ruled that it was not competent for the Scottish Government to lodge an LCM in relation to the Illegal Migration Bill. In any such situation, it remains open to the Scottish Government to express its views on the UK Parliament Bill in other ways. For example, the Parliament debated Scottish Government motions on the Trade Union Bill in November 2015 and January 2016.

Guidance on Legislative Consent

Part 2: Triggering the Scottish Parliament scrutiny process

2.12 In preparing this letter, the Scottish Government will liaise with UK Government departments about the purpose and likely content of the proposed Bills. In some cases, it will be clear from the outset that particular Bills will be “relevant Bills” and so will require the Parliament’s consent. In other cases, however, it may not yet be clear whether particular Bills will include relevant provision; and in some cases there may be differences of interpretation between the UK and Scottish Governments as to whether provision of a particular sort counts as “relevant provision”. For this reason, the Scottish Government’s letter may sometimes include both a list of Bills that will require consent and a second list of Bills that may or may not do so.

2.13 While the King’s Speech usually gives a good indication of the majority of planned UK Government legislation, there will often be other Bills introduced during a session that were not anticipated at the time of the Speech; and sometimes Bills that are announced in the Speech are later dropped from the programme (or the policy is changed in ways that alter whether the Parliament’s consent is required). As a result, it may be necessary for the Scottish Government to update the information provided in the original post-King’s Speech letter. If the new information is very substantial, this may be done by means of a further letter to the Presiding Officer (coupled with a Government-initiated PQ); but it is normally done by means of a letter from the relevant Scottish Government minister (i.e. the one whose portfolio covers the subject matter of the “relevant provision” in the UK Parliament Bill) to the convener of the relevant committee (i.e. the committee to which any LCM is liable to be referred). Any such minister-to-convener letter is published on the committee web-page so that the information is available to committee members and stakeholders.

Government Bills that are “relevant Bills” on introduction

2.14 One of the assumptions underlying Chapter 9B is that UK Government Bills are very likely to be passed within a reasonable timescale. Accordingly, under Rule 9B.3.1(a), if a UK Government Bill is a “relevant Bill” on introduction, the requirement on the Scottish Government to lodge a legislative consent memorandum is triggered immediately (subject only to the normal two-week period for preparation).

2.15 UK Government Bills are normally introduced in the House of Commons, but some are introduced in the House of Lords. The House of

introduction makes no difference to the application of Rule 9B.3.1. The information that is available about the Bill (on the UK Parliament's website, or through the relevant UK Government department), and the extent of liaison that normally takes place between the UK and Scottish Governments, should be the same in either case.

Government Bills that become “relevant Bills” after amendment

2.16 Even if a UK Government Bill is not a relevant Bill on introduction, it is possible for it later to be amended so it becomes a relevant Bill for the first time. To allow for this, Rule 9B.3.1(c) requires the Scottish Government to lodge a LCM in relation to such a Bill, normally no more than two weeks after:

- the amendments are tabled²⁰, if they are tabled by a UK Government minister²¹ or if such a minister adds his or her name in support of amendments tabled by someone else (that is, if they are Government-supported amendments), or
- the amendments are agreed to, in any other case (that is, if they are not Government-supported).

2.17 Here, too, the Rules are based on the assumption that the UK Government generally secures its legislative objectives. So with Government-supported amendments, the need for a LCM is triggered just by the tabling of the amendments, without waiting for them to be agreed to, whereas with amendments that are not Government-supported, it is only if and when they are agreed to that the need for an LCM is triggered.

2.18 Circumstances can, of course, arise where these assumptions don't hold. The UK Government sometimes changes its policy, and it can be defeated; amendments that have been tabled can be withdrawn before the debate or disagreed to; amendments agreed to at one stage of the process can be reversed at a later stage. It would be impossible for the Scottish

²⁰ In Westminster, amendments are “tabled”. The equivalent term in a Scottish Parliament context is “lodged”. This is when amendments are handed in by a member and found to be admissible, following which they are published.

²¹ The Rule uses the more formal term “a Minister of the Crown”. Ministers of the Crown include the Prime Minister, Secretaries of State and junior ministers (Minister of State, Parliamentary Under-Secretaries of State, etc.).

Parliament's system of LCM-scrutiny to adapt constantly to all such eventualities, so once the requirement for an LCM has been triggered, it continues to apply even if circumstances at Westminster change.

Private Members' Bills

2.19 A Private Member's Bill (PMB) is any Bill introduced by a member of the UK Parliament (MP or peer, of any party or none) who is not a Government minister.²² MPs whose names are drawn high in the annual Commons ballot, and members of either House whose Bills are actively supported by the UK Government, have the best chance of their Bills becoming law; most others have very little chance.

Private Members' Bills that are "relevant Bills" on introduction

2.20 For PMBs that are relevant Bills on introduction, Rule 9B.3.1(b) requires a LCM to be lodged only if the Bill remains a relevant Bill after the first amending stage in the House in which the Bill was introduced, normally within two weeks of the completion of that stage.

2.21 By starting the two-week countdown only after a PMB has completed its first amending stage, this Rule avoids the need for any scrutiny in the Scottish Parliament of those PMBs that make little or no progress after introduction, together with any that include "relevant provision" on introduction but where that provision is then removed at the first amending opportunity.

2.22 The Rule also recognises that most PMBs are introduced without prior consultation with the UK Government, and that the full text of the Bill may not be available for some time after it is formally introduced. PMBs are not always professionally drafted, and the accompanying documents may not include as much detail as those accompanying Government Bills, which may make it more difficult for the UK and Scottish Governments to assess the Bill's implications for devolution and to decide whether the Bill can be supported.

²² The equivalent in the Scottish Parliament is referred to as a Member's Bill.

Private Members' Bills that become “relevant Bills” after amendment

2.23 As with Government Bills, PMBs that were not relevant Bills on introduction can become such Bills later, if amended to include “relevant provision”. The triggers for the Scottish Government to lodge an LCM are the same as they are where it is a Government Bill that is amended – that is, if the amendments are Government-supported, the requirement is triggered as soon as the amendments are tabled; but if they are not Government-supported, the requirement is triggered only if and when the amendments are agreed to.

2.24 This reflects the fact that, although PMBs generally have a much lower success rate than Government Bills, those that reach the amending stages are the ones most likely to become law. If a PMB reaches those stages, that is generally because the UK Government is prepared to back it, and to table whatever amendments it considers necessary to ensure it can be implemented consistently with Government policy, including in relation to the Bill’s likely impact on matters that engage the Sewel Convention.

Bills that require further consent as a result of amendments

2.25 It is also possible for Rule 9B.3.1(c) to be triggered by amendments to a Bill that was a relevant Bill on introduction (i.e. where the amendments do not make it a relevant Bill for the first time). That would be the case where the Parliament had given its consent to the relevant provision originally in the Bill, but where the effect of subsequent amendments is that the Bill contains new relevant provision, beyond the scope of that earlier consent. This could be because:

- the motion on legislative consent listed or described the provisions in the Bill to which consent applied, and the amendments add “relevant provision” elsewhere in the Bill, or add “relevant provision” of a different sort (not matching the description given in the motion), or
- consent was made subject to specified conditions, and the effect of the amendments is that the Bill no longer meets those conditions.

The two-week preparation period

2.26 In each case where the Scottish Government is required to lodge a LCM because of the occurrence of a “trigger event” at Westminster, the Rules require it to do so “normally no later than two weeks after” that event occurs.

2.27 This is a period of two calendar weeks and takes no account of periods of recess or dissolution – so if the trigger event occurs on (say) 10 March, the last day of the two-week period would be 24 March.

2.28 However, the inclusion of the word “normally” allows for some flexibility. This may be necessary, for example, if the Scottish Government has been unable to obtain detailed information about the Bill ahead of the trigger event occurring, or if the Bill’s size and complexity makes it difficult to finalise the Scottish Government’s position on the Bill within a two-week timescale.

2.29 Although there is no breach of the Rule if an individual LCM is lodged more than two weeks after the trigger event, this should happen only occasionally. If the LCM can’t be lodged on time, the Scottish Government should alert the Presiding Officer (copied to the relevant committee) before the two-week deadline expires, explaining why the delay has arisen and indicating when the LCM can be expected.

Part 3: Legislative consent memorandums

Scottish Government LCMs

Content

3.1 As noted in Part 2, the Scottish Government is required to lodge an LCM in a range of specific circumstances, normally within two weeks of a particular “trigger event” at Westminster (such as the introduction of a Government Bill that makes relevant provision). The minimum requirements for such an LCM are set out in Rule 9B.3.3.

3.2 Firstly, the LCM must summarise what the Bill does and its policy objectives. While some explanation should be included of the Bill as a whole, the main focus is likely to be on those elements of the Bill that apply to Scotland and, in particular, those that make “relevant provision” (provision for which the Scottish Parliament’s consent is required).

3.3 Secondly, the LCM must specify the extent of the “relevant provision”, distinguishing between provision that relates to devolved matters, and provision that alters the Parliament’s legislative competence or the executive competence of the Scottish Ministers. In most cases, this will be done by reference to specific provisions of the Bill (such as Parts, Chapters or individual clauses). If the Scottish Government’s view on the extent of “relevant provision” in the Bill differs from that of the UK Government, the difference should be explained.

3.4 Clarity about the extent of a Bill’s relevant provision allows MSPs to focus their scrutiny on those aspects of the Bill that require their consent. This does not of course prevent MSPs from having a view on the general merits of the Bill, but helps ensure any such view is kept distinct from the arguments for or against giving consent (which may be much more narrowly focused).

3.5 It is also important in this context for MSPs to be aware of the basis on which consent is required in each instance. In particular, if consent is required because the relevant provision relates to devolved matters, then the Parliament (at least in principle) would have the option of legislating itself to the same or similar effect. (In practice, that may not always be a realistic option – for example, if there would not be time for an equivalent Scottish

Guidance on Legislative Consent

Part 3: Legislative consent memorandums

Parliament Bill to complete its passage in the time available, or without some other legislative priority being abandoned to make room.) Where that applies, MSPs who are supportive of the Bill's policy aims may still choose to withhold consent because they believe it is generally better for the law on devolved matters to be made at Holyrood rather than at Westminster. However, if the relevant provision in the UK Parliament Bill is provision to alter the Parliament's legislative competence or the executive competence of the Scottish Ministers, the option of pursuing Scottish Parliament legislation instead would not be available, even in principle.

3.6 Thirdly, if the Scottish Government intends to lodge a motion on legislative consent (inviting the Parliament to give or refuse consent to the "relevant provision" being made by the Bill), it must include a draft of the motion. Where the draft motion proposes giving consent to relevant provision, the LCM must explain why the Scottish Government considers it appropriate for that provision to be made by means of the Bill; where the draft motion proposes refusing consent to relevant provision, the LCM must explain why the Scottish Government considers it appropriate for that provision not to be made by means of the Bill.

3.7 However, if the Scottish Government does not intend to lodge a motion on legislative consent, at least for the time being, the LCM must explain why not. (Normally, under Rule 9B.2.1C, the Scottish Government is required to lodge a motion on legislative consent in respect of every relevant Bill – but the inclusion of the word "normally" allows for some exceptions. It may also be that, while it intends to lodge a motion in due course, it is not yet in a position, at the time the LCM is lodged, to provide a draft.)

Lodging and publication

3.8 A Scottish Government LCM is prepared by officials and lodged in the name of the responsible Cabinet Secretary. (LCMs cannot be lodged by junior Ministers.) The clerks in the Legislation Team check the LCM to ensure it complies with the standing orders, and then arrange for it to be published on the Parliament's website (under Bills and Laws / Legislative Consent Memorandums).

LCMs lodged by individual MSPs

3.9 While the vast majority of LCMs are lodged by the Scottish Government, LCMs may be lodged by any MSP (Rule 9B.3.2). This is most likely to be because the MSP takes an opposing view to the Scottish Government on whether the Parliament should give or refuse consent. Lodging a separate LCM allows the MSP to explain his or her reasons in writing and to have those considered by the lead committee; it also allows the MSP then to lodge his or her own motion (as an alternative to simply opposing or seeking to amend the Scottish Government's motion). However, an individual MSP's LCM should not normally be lodged until after the Scottish Government's LCM in relation to the Bill has been lodged (Rule 9B.3.2).

Content

3.10 An LCM lodged by an individual MSP must comply with the same Rule (9B.3.3) as to content as the Scottish Government's LCM. Accordingly, an individual MSP's LCM must summarise the Bill and its policy objectives, specify the extent and nature of the relevant provision, include a draft of the proposed motion and an explanation of why the MSP supports or opposes consent. Unlike in the case of a Scottish Government LCM, it is not an option for an LCM lodged by an individual MSP not to include a draft motion.

3.11 As any such LCM needs to be scrutinised alongside the original Scottish Government LCM, it need not include as much detail as the original LCM (and to some extent can replicate or cross-refer to paragraphs of the original).

Lodging and publication

3.12 Like Scottish Government LCMs, LCMs by individual MSPs are lodged with the clerks in the Legislation Team, who check them for compliance with the Rules, and then arrange for their publication on the Parliament's website. The Legislation Team can also provide support to individual MSPs in the preparation of their LCMs.

Supplementary LCMs

3.13 In some instances, more than one LCM may be lodged in relation to the same Bill. One example is where the Scottish Government's LCM is followed by an LCM lodged by an individual MSP (as outlined above). But the Scottish Government may itself be required to lodge more than one LCM in relation to the same Bill, if further "trigger events" occur. This can happen because the Bill is later amended to add in new "relevant provision", or to modify existing "relevant provision", beyond the scope of any consent already given (as outlined in paragraph 2.23).

3.14 Another possibility is that a supplementary LCM is required because the Scottish Government's position on consent has changed. The most likely scenario is that it initially opposed giving consent to certain elements of the Bill, but the UK Government has since made changes to the Bill, or given assurances, as a result of which the Scottish Government is able to lodge a supplementary LCM inviting the Parliament to give consent to the provisions to which it originally objected.²³

3.15 Any supplementary LCM is subject to the same requirements as to content as the original (under Rule 9B.3.3). Here, too, while it is necessary to include some material covering each of the requirements of the Rule, it can be more concise than in the original, and cross-refer to the original where appropriate. In any case, the amendments to the Bill that have triggered the need for the supplementary LCM are likely to make necessary some updating of the material in the original that explained what the Bill does and the nature of the relevant provision it contains.

²³ An example is the Health and Care Bill, introduced in July 2021. The Scottish Government's original position, set out in its first LCM, was to oppose all the relevant provision in the Bill (as introduced), but after negotiation with the UK Government, it lodged a supplementary LCM recommending consent to some of those provisions (and to others since added by amendment). Two more supplementary LCMs were later lodged, further extending the list of provisions to which the Scottish Government recommended consent.

Part 4: Committee scrutiny of LCMs

Referral to lead committee

4.1 Under Rule 9B.3.5, each LCM that is lodged must be referred to a committee (the “lead committee”) which has the subject-matter of the LCM within its remit. If there is only one such committee, the referral is made by the Parliamentary Bureau. If there is more than one, the Bureau must recommend to the Parliament (by motion) which committee is to be the lead committee; the other committees may also scrutinise the LCM and report their views to the lead committee.

4.2 If there is insufficient time for lead committee scrutiny before a decision on consent is required, Rule 9B.3.5 can be suspended.²⁴

4.3 For LCMs of major significance, an option is to establish a new ad hoc committee to scrutinise it. This is what was done in Sessions 3 and 4 when a Scotland Bill Committee was established to consider the implications of the Bill that became the Scotland Act 2012. That Act made a number of substantial changes to the original Scotland Act of 1998, extending both the legislative competence of the Parliament and the executive competence of the Scottish Ministers, based on recommendations by the Commission on Scottish Devolution (the “Calman Commission”).

4.4 In any situation where more than one LCM is lodged in relation to the same UK Parliament Bill, any supplementary LCM is normally referred to the same lead committee as the original, for coherence of scrutiny. However, if the Bill is wide in scope, and the relevant provision to which the supplementary

²⁴ This is what happened in June 2022 with the Social Security (Additional Payments) Bill, which was subject to an expedited timetable at Westminster. The Scottish Government lodged a LCM and a legislative consent motion on 21 June. A Bureau motion to suspend Rule 9B.3.5 was lodged, moved and agreed to on 22 June, and the legislative consent motion was then moved and agreed to later the same day.

LCM relates is different in subject-matter from that of the original LCM, it may be necessary to refer it to a different lead committee.²⁵

Scrutiny by lead committee

4.5 Where an LCM is referred to a lead committee, the committee is required to “consider and report” on it (Rule 9B.3.5). The nature of the scrutiny this involves varies greatly according to the circumstances.

4.6 With uncontroversial LCMs, the scrutiny may be conducted at a single meeting, and the report may be very short. At the other extreme, the Scotland Bill Committees in Sessions 3 and 4 undertook full-scale inquiries involving extensive oral and written evidence, input by multiple advisers and the publication of substantial, detailed reports.

4.7 As well as taking evidence from Scottish Government ministers on the LCM, lead committees may also wish to invite evidence from UK Government ministers (and their officials) on the Bill itself.²⁶

4.8 A lead committee report on a Scottish Government LCM should:

- give a brief overview of the UK Parliament Bill and the “relevant provision” it contains
- outline the main points made in evidence to the committee, and the views of any other committees (including the DPLR Committee) that have reported to it
- indicate whether and to what extent the lead committee agrees with the Scottish Government’s position (as set out in the LCM) on the merits of the relevant provision made in the Bill and whether a UK Parliament Bill is the appropriate vehicle for making such provision

²⁵ An example of this was the Employment Rights Bill, introduced in 2024. The original LCM was referred to the Economy and Fair Work Committee but two supplementary LCMs, which related specifically to new provisions, added by amendment, on “social care negotiating bodies”, were referred to the Health, Social Care and Sport Committee.

²⁶ Both of the Scotland Bill Committees (in Sessions 3 and 4) took oral evidence from the Secretary of State for Scotland and other UK Government ministers.

- indicate the committee's view on the wording of any draft motion on legislative consent included in the Scottish Government's LCM (or in any LCM lodged by an individual MSP).

4.9 It is normal, though not a requirement, for the lead committee's report to end with a recommendation to the Parliament as to whether it should give or refuse consent to the UK Parliament Bill (which may be expressed in terms of whether the Parliament should agree to the draft motion).

4.10 A single lead committee report may cover more than one LCM – either because an individual MSP has lodged an LCM in addition to the LCM lodged by the Scottish Government, or because the Scottish Government lodged a supplementary LCM while the lead committee's scrutiny was in progress. It is also possible that the lead committee may need to report more than once on the same Bill – if, for example, the Bill is amended, after publication of the committee's initial LCM report, in ways that trigger the need for a further Scottish Government LCM to be lodged.

Scrutiny by DPLR Committee

4.11 If a UK Parliament Bill confers power on the Scottish Ministers to make subordinate legislation (which counts as "relevant provision" as it would alter the executive competence of those Ministers), the Delegated Powers and Law Reform (DPLR) Committee must consider the provision in question, and may (but need not) report its views to the lead committee (Rule 9B.3.6).

4.12 The DPLR Committee's scrutiny of a UK Parliament Bill under Rule 9B.3.6 is similar in many respects to the "delegated powers scrutiny" that it conducts on Scottish Parliament Bills. Its role is to consider the technical aspects of the provisions in question – for example, whether the nature and extent of the delegated powers are sufficiently clear; whether the Bill makes the exercise of the powers subject to an appropriate level of parliamentary procedure – leaving it to the lead committee to consider the policy implications and merits of the delegated power provisions.

4.13 The DPLR Committee has also adopted the practice of scrutinising (as part of its legislative consent scrutiny) any provisions in the Bill that confer power on UK Ministers to legislate in devolved areas. This is not part of its role under Rule 9B.3.6 but is instead done under the element of its remit that

allows it to consider “proposed powers to make subordinate legislation in particular Bills or other proposed legislation” (Rule 6.11.1(b)). Such provisions engage the Sewel Convention as their purpose relates to matters within the legislative competence of the Parliament.

4.14 Whether the DPLR Committee is required to scrutinise a Bill again, following amendments that trigger the need for a supplementary LCM, depends on the circumstances. It could be, for example, that the Bill, although a relevant Bill when introduced, did not originally contain provisions giving the Scottish Ministers powers to make subordinate legislation, but such provisions are later added by amendment. In that case, the DPLR Committee would only require to consider those provisions at the time a supplementary LCM is lodged.

Part 5: Timescales for LCM scrutiny and consent decisions

5.1 It is not always a simple matter to work out how long the Parliament has to scrutinise an LCM and reach a decision about consent. The two main variables are how much scrutiny is needed, and how much time is likely to be available. The first depends primarily on how many relevant provisions are in the Bill and on how complex and politically controversial they are. The second depends on what stage the Bill is at when the need for consent first arises, how soon after that an LCM can be lodged and how quickly the Bill is then expected to make progress at Westminster.

5.2 In favourable circumstances, there may be plenty of time for the Parliament to conduct thorough scrutiny and reach a decision on consent while the Bill is still at a relatively early stage in its passage through the UK Parliament. In less favourable circumstances, it may be difficult or impossible to reconcile the competing interests at stake – that is, the UK Government's interest in securing consent at the earliest possible stage, and the Parliament's interest in maximising the time available for scrutiny.

5.3 By virtue of an agreement reached early in Session 2 with the then Scottish Executive, the Parliament normally aims to make consent decisions ahead of the final amending stage in the first House (taken to mean Report Stage in the House of Commons or Third Reading in the House of Lords).²⁷

5.4 The final deadline for the Parliament is the last point at which any decision to withhold consent could be acted upon by the UK Government. For the purposes of the Convention, this is normally taken to mean the final

²⁷ Prior to this agreement, the expectation was that consent decisions were made ahead of Second Reading in the first House for Government Bills of major significance, and ahead of Committee Stage in the first House in other cases. That remains the position set out in DGN 10, which was not updated to reflect the agreement. See the Annexe ("stages of Bills") for a summary of the Westminster Bill-scrutiny process.

Guidance on Legislative Consent

Part 5: Timescale for LCM scrutiny and consent decisions

amending stage in the second House – meaning, again, Report Stage in the Commons or Third Reading in the Lords.²⁸

5.5 It is generally good practice to plan for LCM scrutiny to be completed earlier rather than later, rather than allowing the scrutiny timetable to expand to fit the time available. This is particularly the case where there is a real prospect of consent being refused (or being made subject to limits or conditions), as in that case the UK Government will need additional time to consider the necessary implications and work out how to respond (for example, by preparing and then tabling amendments). On the other hand, it may be difficult for committees to finalise their scrutiny while negotiations between the Scottish and UK Governments are ongoing.

5.6 An associated difficulty is that the speed at which Bills progress through the Westminster scrutiny process is variable and difficult to predict. It therefore makes sense for those involved in planning LCM scrutiny at Holyrood to build in some headroom to accommodate any unexpected changes.

5.7 Committee clerks seeking to establish how much time for scrutiny is likely to be available can seek information either from Scottish Government officials (who in turn can liaise with UK Government departments) or from the Legislation Team.

²⁸ This may not, in practice, be the final amending opportunity, as many Bills also go through the so-called “ping pong” process aimed at resolving differences between the two Houses. In March 2022, the UK Government tabled an amendment to the Health and Care Bill, after it had completed its passage through both Houses, which added new “relevant provision” to the Bill. This triggered a requirement on the Scottish Government to lodge a supplementary LCM, and the Parliament was able to consider and agree to a legislative consent motion before the ping pong process was completed.

Part 6: Motions on legislative consent

6.1 The agreed means by which the Scottish Parliament gives (or refuses) its consent to the UK Parliament legislating in ways covered by the Convention is by passing a motion expressing that consent (or that refusal) – a “motion on legislative consent” (see Rule 9B.2.1).²⁹

Motions and their consequences

6.2 A motion is a written proposition through which the Parliament is invited to make a decision or express a view. If the Parliament agrees to a motion, whether unanimously or by division (i.e. after a process of voting on the motion), the outcome is a resolution of the Parliament.

6.3 Scottish Parliament resolutions, while important expressions of MSPs’ collective political opinion, normally have no binding legal effect. Exceptions arise where there is statutory authority for a resolution of the Parliament to be treated in law as decisive – as when a decision of the Parliament to pass one of its own Bills allows the Presiding Officer to submit it for Royal Assent, or when a decision by the Parliament to approve a draft statutory instrument allows the instrument to be made. In a Sewel context, this does not apply since (as noted in Part 1) the Convention is a non-binding political commitment by the UK Government that does not alter the UK Parliament’s legislative powers, and this remains the case notwithstanding the Convention’s entrenchment in law in 2016, as the UK Supreme Court has confirmed (see paragraph 1.15).

Expectation that the Parliament will make a consent decision

6.4 Because of the way in which the Sewel Convention is expressed³⁰, the Scottish Parliament does not need to pass a motion actively refusing consent

²⁹ Until July 2024 these were known as “legislative consent motions” and were limited to motions expressing consent for at least some of the relevant provisions in the Bill.

³⁰ That is, that the UK Parliament “does not normally legislate on devolved matters [or to alter the legislative competence of the Parliament or the executive competence of Scottish Ministers] **without** the consent of the Scottish Parliament.”

in order to create an obstacle to the UK Parliament proceeding with a relevant Bill.

6.5 Rather, all it need do is withhold consent to the Bill, either by disagreeing to any motion proposing consent that is lodged, or – if no such motion is lodged – by doing nothing.

6.6 To reflect this, Chapter 9B originally provided only for motions giving consent. However, early in Session 6, there were a number of instances where the Scottish Government sought to express its opposition to certain controversial UK Government Bills not just by withholding its consent (by not lodging any motion) but by actively refusing consent. Because such motions could not be lodged under Chapter 9B, but only under more general rules (in Chapter 8), there was no link with the procedures for committee scrutiny of LCMs – which created some uncertainty and practical difficulties for committees.

6.7 To address this, the Standards, Procedures and Public Appointments Committee carried out an inquiry and recommended various changes to Chapter 9B. One of those was the introduction of a new Rule (9B.2.1C) requiring the Scottish Government normally to lodge a motion on legislative consent (i.e. a motion giving consent or refusing it) in relation to each relevant Bill.³¹ Coupled with the existing Rule (9B.2.3) requiring all such motions to be taken in the Chamber, this creates a presumption that the Parliament will always make an active consent decision – i.e. by passing a resolution giving or refusing consent – rather than passively withholding consent.

Content of motions on legislative consent

6.8 Under Rule 9B.2.1, a motion on legislative consent must identify the relevant Bill by reference to its short title, which House of the UK Parliament it was introduced in, and the date of introduction.

6.9 A motion on legislative consent must express the Parliament's consent, or its refusal of consent, to (at least some) relevant provision in the Bill – and

³¹ The qualification “normally” was included to allow for situations where it may be impossible for the Parliament to make a consent decision in the time available.

the same motion may do both (i.e. consent to some relevant provisions and refuse consent to others) (Rule 9B.2.1A). A motion that does neither of these things does not qualify as a motion on legislative consent (as defined in Rule 9B.2.1). However, the motion need not express either consent or the refusal of consent to every relevant provision in the Bill.³²

6.10 The motion must identify the relevant provision (if any) in relation to which the Parliament is invited to give consent, as well as the relevant provision (if any) in relation to which the Parliament is invited to refuse consent (Rule 9B.2.1B). The motion can identify the relevant provision either in terms of its subject-matter or purpose or by reference to numbered Parts, Chapters, clauses or schedules.

6.11 It is only since July 2024 that the Standing Orders have allowed a motion under Rule 9B.2.1 to express refusal of consent instead of (or as well as) the giving of consent. Prior to this date, motions under this rule (then known as “legislative consent motions”) had to give consent to at least some relevant provisions in a Bill. Motions to refuse consent were possible (under more general rules for motions in Chapter 8) but were not linked to any prior committee scrutiny of an LCM.³³ The Rule-changes were recommended by the Standards, Procedures and Public Appointments Committee in order to “provide more clarity to the Parliament’s procedures” and to give “greater protection to the important scrutiny function performed by committees”.³⁴

6.12 Typical wording for motions on legislative consent is as follows:

- Motion giving consent (to all relevant provision in the Bill)

That the Parliament agrees that all relevant provision in the [title] Bill, introduced in the House of Commons/Lords on [date], so far as these matters [fall within the legislative competence of the Parliament] *and/or*

³² Standards, Procedures and Public Appointments Committee, 4th Report, 2024 (Session 6), *Standing Order rule changes – Procedures on consent in relation to UK Parliament Bills*, paragraph 39.

³³ The Parliament agreed motions refusing consent to the European Union (Withdrawal) Bill (motion S5M-12223) on 15 May 2018, the Elections Bill (motion S6M-03009) on 1 February 2022 and the Subsidy Control Bill (motion S6M-03647) on 17 March 2022. None of these were motions under Rule 9B.2.1.

³⁴ SPPA Committee, 4th Report, 2024 (Session 6), paragraph 37.

[alter the legislative competence of the Parliament] *and/or* [alter the executive competence of the Scottish Ministers], should be considered by the UK Parliament.

- Motion giving consent to specified provisions

That the Parliament, in relation to the [title] Bill introduced in the House of Commons/Lords on [date], consents to Clauses [specify], so far as these matters [fall within the legislative competence of the Scottish Parliament] *and/or* [alter the legislative competence of the Parliament] *and/or* [alter the executive competence of the Scottish Ministers], being considered by the UK Parliament.”

- Motion refusing consent to specified provisions

That the Parliament, in relation to the [title] Bill, introduced in the House of Commons/Lords on [date], refuses to consent to Clauses [specify], so far as they [fall within the legislative competence of the Scottish Parliament] *and/or* [alter the legislative competence of the Parliament] *and/or* [alter the executive competence of the Scottish Ministers], being considered by the UK Parliament

Motions expressing conditional consent

6.13 It is also possible for consent to be made subject to stated conditions. For example, if the Bill imposes new obligations on dog-owners, but with an exemption for the owners of assistance dogs, the Parliament may wish to give consent to the obligations only on condition that the exemption is maintained. However, it is important that any such condition does not make the consent that is offered provisional, in the sense that changes would have to be made to the Bill before the Parliament could be deemed to have consented. So a motion that offered consent only on condition that the other categories of dog-owner were also exempted would not be appropriate, as it would no longer give consent to the Bill that is the subject of the motion, but only to some hypothetical future version of that Bill.

6.14 The ability to include conditions in a legislative consent motion can be important in situations where the subject-matter is controversial or the considerations for or against consenting are finely balanced, and where unconditional consent might seem too much like the writing of a blank cheque.

But care is also needed to ensure any conditions are reasonable in the circumstances and not unduly restrictive. Any decision to give consent under the Convention necessarily involves ceding a substantial degree of control to the UK Parliament, so carries with it a tacit recognition that it is thereafter for MPs and peers to make decisions on the detail within the limits set by their own rules of procedure. A legislative consent motion, in other words, cannot be used as a tool to micro-manage the Westminster legislative process.

6.15 Including conditions in a legislative consent motion cannot prevent the UK Parliament amending the Bill in whatever way it chooses, but it does mean that any amendments that breach the conditions set by the Parliament are likely to trigger the need for a further LCM, and hence create a further opportunity for the Parliament to make a consent decision.

6.16 There is a more general point here that applies even where (as is normally the case) a legislative consent motion does not make consent subject to any specific conditions. The expectation under the Convention is that the Parliament usually makes a one-off decision whether or not to give consent relatively early in the Westminster legislative process. Since Bills are routinely amended as they progress through the UK Parliament, it would be unreasonable to regard consent as attaching to a Bill only in its original “as introduced” version, or consent to a particular provision as attaching only to that provision in its original, unamended form. The implication of such a narrow interpretation would be that consent needs to be updated or confirmed every time a Bill is amended, even if the amendments are minor or technical – something that would quickly become unworkable in practice.

6.17 To avoid this, the Parliament’s consent needs to be understood in sufficiently broad-brush terms that its continued application isn’t called into question just by the normal amending process that Bills routinely undergo.

6.18 That does not mean, however, that the UK Parliament can amend Bills without limit and take the Scottish Parliament’s continued consent for granted. In particular, if relevant provision for a whole new purpose is added to a Bill by amendment, this is likely to trigger the need for a further LCM on the basis that the new provision goes beyond the limits of any consent already given (since it didn’t form part of the Bill described in the original LCM, or the committee scrutiny that informed the consent decision).

6.19 Ultimately it is a matter of political judgement when amendments to a relevant Bill take it beyond the limits of the Parliament's previously-agreed consent. Both the UK and Scottish Governments will need to take a view on that, and while the wording of the Parliament's resolution is likely to be a relevant factor, they will also consider the wider political context, and may arrive at different conclusions. Rule 9B.3.1(c) requires the Scottish Government to monitor amendments at Westminster and to prepare a further LCM if it considers that the need for one has been triggered under the Rule.³⁵

Preparation and lodging of motions on legislative consent

6.20 Most motions on legislative consent are lodged by the Scottish Government. They are prepared by officials and usually lodged by the same minister who lodged the Scottish Government LCM.

6.21 All motions on legislative consent are lodged with the Chamber Desk, and checked for compliance with the Rules. In the case of a motion lodged by an individual MSP, the Chamber Desk clerks can also assist with the wording of the motion.

6.22 A motion on legislative consent should not normally be lodged until after the lead committee report has been published (Rule 9B.2.2).³⁶ This is to allow the wording of the motion to be adjusted to reflect any comments made by the lead committee about the draft motion that was included in the LCM. If there were no such comments, the motion that is lodged should be in similar terms to the draft, but need not be identical.

Scheduling of motions on legislative consent

6.23 Under Rule 9B.2.3, every motion on legislative consent that is lodged needs to be taken in the Parliament. This means it must be included in the

³⁵ As noted above (paragraph 2.10), the Presiding Officer is the final arbiter in a case of dispute about the application of the Rules.

³⁶ The word "normally" allows room for exceptions. For example, the Scottish Government lodged a legislative consent motion on the British Sign Language Bill on 21 April 2022, the day after the lead committee considered the LCM, and the day before its report was published.

Parliament's business programme, providing an opportunity for it to be moved and for the Parliament to make a consent decision.

6.24 The date on which the motion is taken should not normally be earlier than the fifth sitting day after the lead committee's report is published. The five-day interval allows time for the lead committee's conclusions to be taken into account, while the word "normally" ensures there is flexibility to allow for situations where a consent decision is needed more quickly.³⁷ Rule 9B.3.2 does not specify a maximum number of sitting days after a motion on legislative consent is lodged by which it must be taken, since the deadline in any particular case is determined by the progress of the Bill at Westminster, combined with the requirements of the Convention itself.

6.25 Prior to scheduling a motion on legislative consent, discussion among business managers will establish whether time needs to be set aside to debate the motion. This is not normally considered necessary where the Scottish Government has recommended giving consent and this view has been endorsed by the lead committee. In such uncontroversial cases, the committee's report is considered a sufficient record of the reasons for the Parliament's decision.³⁸

6.26 Time would normally be set aside for a Chamber debate where one or more of the following applies:

- the Scottish Government has lodged a motion to refuse consent
- the Scottish Government has lodged a motion to give consent, and an individual MSP has lodged an alternative motion (or an amendment to the Government motion) proposing the refusal of consent

³⁷ For example, the legislative consent motion on the British Sign Language Bill was taken in the Chamber on 26 April 2022, only two sitting days after the lead committee report was published. (See also footnote 25.)

³⁸ An example was the Building Safety Bill, introduced in July 2021. The Scottish Government recommended consent, the lead committee agreed, and the legislative consent motion was taken in the Chamber without debate.

- the lead committee was unable to reach a consensus position on the question of consent, particularly if the majority view was opposed to that of the Scottish Government
- the Bill (or its relevant provision) is of major political or constitutional significance (for example, if it gives effect to a UK Government manifesto commitment or makes substantial changes to the Parliament's legislative competence).³⁹

Chamber proceedings on a motion on legislative consent

6.27 In uncontroversial cases, proceedings on a motion on legislative consent consist simply of the relevant Scottish Government minister moving the motion formally (without making a speech). The question on the motion is then taken at Decision Time.

6.28 If time is set aside for debate, the normal debate structure is followed, adjusted in accordance with the amount of time available:

- opening speeches, beginning with the minister or MSP who lodged the motion moving and speaking to it, followed by other party spokespersons
- an “open debate” for backbench MSPs of all parties (or none), perhaps including the convener of the lead committee
- closing speeches by party spokespersons, with the final speech given by the same minister or MSP who opened the debate.⁴⁰

Amendments to legislative consent motions

6.29 As Chapter 9B makes no specific provision about amendments to motions on legislative consent, the normal rules about motions (in Chapter 8) apply. As a result, any MSP may lodge an amendment to a motion on

³⁹ A Chamber debate would also be needed where there had been no prior scrutiny by a lead committee (following the suspension of Rule 9B.3.5 – see paragraph 4.2).

⁴⁰ For more information about Chamber debates, see Part 6 of the Guidance on Chamber Business, available on the Parliament's website under About / [Rules and guidance](#).

legislative consent, at any time after the motion itself has been lodged. Amendments are taken only if selected by the Presiding Officer (Rule 8.5.6).

6.30 Where a motion has been lodged to give consent to the relevant provision in the Bill, an amendment that does nothing more than reverse the terms of that motion – i.e. to turn it into a motion refusing consent – is unlikely to be selected. The better course for the member who opposes consent is either to vote against the motion or to lodge an alternative motion refusing consent (having first lodged an LCM that explains the member's rationale). Similarly, where a motion has been lodged to refuse consent to the relevant provision in the Bill, an amendment to reverse the terms of that motion – i.e. to turn it into a motion giving consent – might also not be selected, on the grounds that the better course for any member who favours giving consent would have been to lodge a motion to that effect (again, having first lodged an LCM).

6.31 More likely to be selected are amendments that seek to alter the extent of the consent given or refused by the motion, for example by:

- adding to or subtracting from the relevant provision in the Bill to which the motion gives or refuses consent, and/or
- adding or removing conditions on the consent given

so long as (in either case) the amendment wouldn't create doubt as to where the boundaries of consent lie.

6.32 Also potentially selectable are "reasoned amendments", that is:

- amendments that add reasons for giving or refusing consent (which might be reasons for or against the legislative outcome proposed by the Bill, or might be reasons for or against securing that outcome by other means)
- amendments that reverse the terms of the motion (turning it from a motion giving consent into a motion refusing consent, or vice versa) and then give reasons why (which, again, might be reasons for or against the legislative outcome proposed, or reasons for or against securing that outcome by other means).

6.33 Reasoned amendments would not, however, be selected if their effect would be to cast doubt on the outcome (by making it unclear whether or to what extent the amended motion gives consent or refuses it). They might in any case not be selected if the Presiding Officer considers them unnecessary (for example because the arguments they express could equally well be expressed during the course of the debate).

6.34 A reasoned amendment is unlikely to be selected if it refers mainly or exclusively to aspects of the Bill that fall outside the scope of the Convention – for example, the likely effect of the Bill on reserved matters or in other parts of the UK. Such an amendment would generally be considered irrelevant to the issue to be decided (namely, whether to give or refuse consent to relevant provision in the Bill).

6.35 If an amendment is selected, it is taken immediately after the motion itself is moved (Rule 8.6.1). The MSP who moves the amendment would therefore be called as the second speaker in the debate, and would be invited to speak to and move the amendment (while also speaking to the motion more generally). At Decision Time, the question would be put on the amendment first and then on the motion (or, if the amendment has been agreed to, on the motion as amended).

Outcome of Chamber proceedings

6.36 The main possible outcomes of Chamber proceedings on a motion on legislative consent are:

- a resolution through which the Parliament consents to all of the relevant provision in the Bill
- a resolution through which the Parliament consents to some relevant provision and refuses consent to other such provision
- a resolution through which the Parliament refuses consent to all of the relevant provision in the Bill
- no resolution in relation to consent – for example because there was no majority in favour of any motion moved.

Outcome of refusal (or lack) of consent

6.37 Under the Sewel Convention, if and to the extent that the Parliament refuses consent (by resolution), the normal outcome should be that the UK Government tables amendments to the Bill to remove or alter the relevant provision to which the Parliament refused consent – assuming, that is, that the Bill has not proceeded beyond its final amending stage.

6.38 Similarly, if the Parliament is unable to pass a resolution at all (either giving or refusing consent), the expectation under the Convention is that the UK Government tables amendments to remove or alter the relevant provision in the Bill – on the grounds that to proceed with the Bill unamended would be to legislate without the Parliament's consent.

6.39 An alternative outcome, in either case, is that the UK Government proceeds with the Bill despite the Parliament's refusal of consent (or despite the lack of consent).

6.40 For the UK Government to proceed in this way does not necessarily amount to a breach of the Convention, given that the word “normally” has always been part of how the Convention is expressed. The Convention, in other words, does not commit the UK Government to complying every time with the expressed view of the Parliament, but only to doing so on most occasions, allowing for some exceptions.

6.41 It has never been entirely clear how much latitude the word “normally” gives, or what should count as an exception (i.e. an abnormal case).⁴¹ The guidance for UK Government departments (DGN 10) does not apply to legislation that “deals with emergencies or is similarly exceptional” – which might include a situation where a tight legislative timetable at Westminster coincides with a period when the Scottish Parliament is dissolved. It might also be claimed that proceeding in the absence of consent is consistent with the UK Government's commitment under the Convention if the circumstances are unique or unprecedented, a departure from legislative routine.

⁴¹ For discussion of this question (the meaning of “not normally”) see in particular the Constitution, Europe, External Affairs and Culture Committee's [5th Report, 2022 \(Session 6\)](#), *The Impact of Brexit on Devolution*, paragraphs 82-93.

6.42 On the one hand, the inclusion of the word “normally” must mean that the Convention allows scope for at least some exceptions, without these amounting to a breach of the Convention itself. On the other hand, the whole purpose of the Convention would be frustrated if the Parliament’s decisions to withhold consent were routinely or regularly disregarded. There is clearly a middle ground, but the political nature of the Convention, and controversy around its use in some instances, make it difficult to secure agreement on exactly where the limits lie.

Outcome of giving consent

6.43 Where the Parliament gives consent (by resolution) to relevant provision in the Bill, this allows the UK Government, within the terms of the Convention, to proceed with the Bill as drafted (that is, with the relevant provision still included).

6.44 It is worth noting, however, that there is no breach of the Sewel Convention if, the Parliament having given its consent to the relevant provision in a Bill, the UK Government later withdraws the Bill, or amends it to remove the relevant provision. Although such an outcome would be unusual, it could arise for a number of possible reasons:

- the UK Government alters its policy and no longer wishes to proceed with the Bill, or the provision, at all (for reasons that may be unrelated to the Parliament’s position on consent)
- while the Scottish Parliament consents, one of the other devolved legislatures does not, and the UK Government does not wish to pursue the legislation other than on a UK-wide basis
- the Parliament consents to some relevant provision in the Bill (A) but refuses or withholds consent from other such provision (B), and the UK Government is only prepared to legislate for A and B together
- the Parliament consents to the relevant provision in the Bill, but only subject to conditions, and the UK Government is not prepared to accept those conditions.

Communication with the UK Parliament

6.45 Each time the Scottish Parliament considers a motion on legislative consent, the outcome is communicated by the Clerk of the Parliament to the Clerks of the two Houses at Westminster. If the Parliament has given consent, or if consent has been refused, this fact is flagged in the House of Commons Order Paper⁴² (the Order of Business, or Future Business) and in House of Lords Business⁴³ (list of Bills in progress). The letter from the Clerk of the Scottish Parliament, attaching the terms of any resolution, is also made available on the Bill's web-page⁴⁴. This information helps to ensure that MPs and peers can take the Parliament's view into account in subsequent proceedings on the Bill.

6.46 It is also now an established procedure in the House of Lords that, if a Bill (other than a Lords Private Member's Bill) that engages the Convention has not been consented to before Third Reading, the responsible Minister should draw this to the House's attention before the stage begins, explaining what efforts were made to secure consent and the reasons for the disagreement.

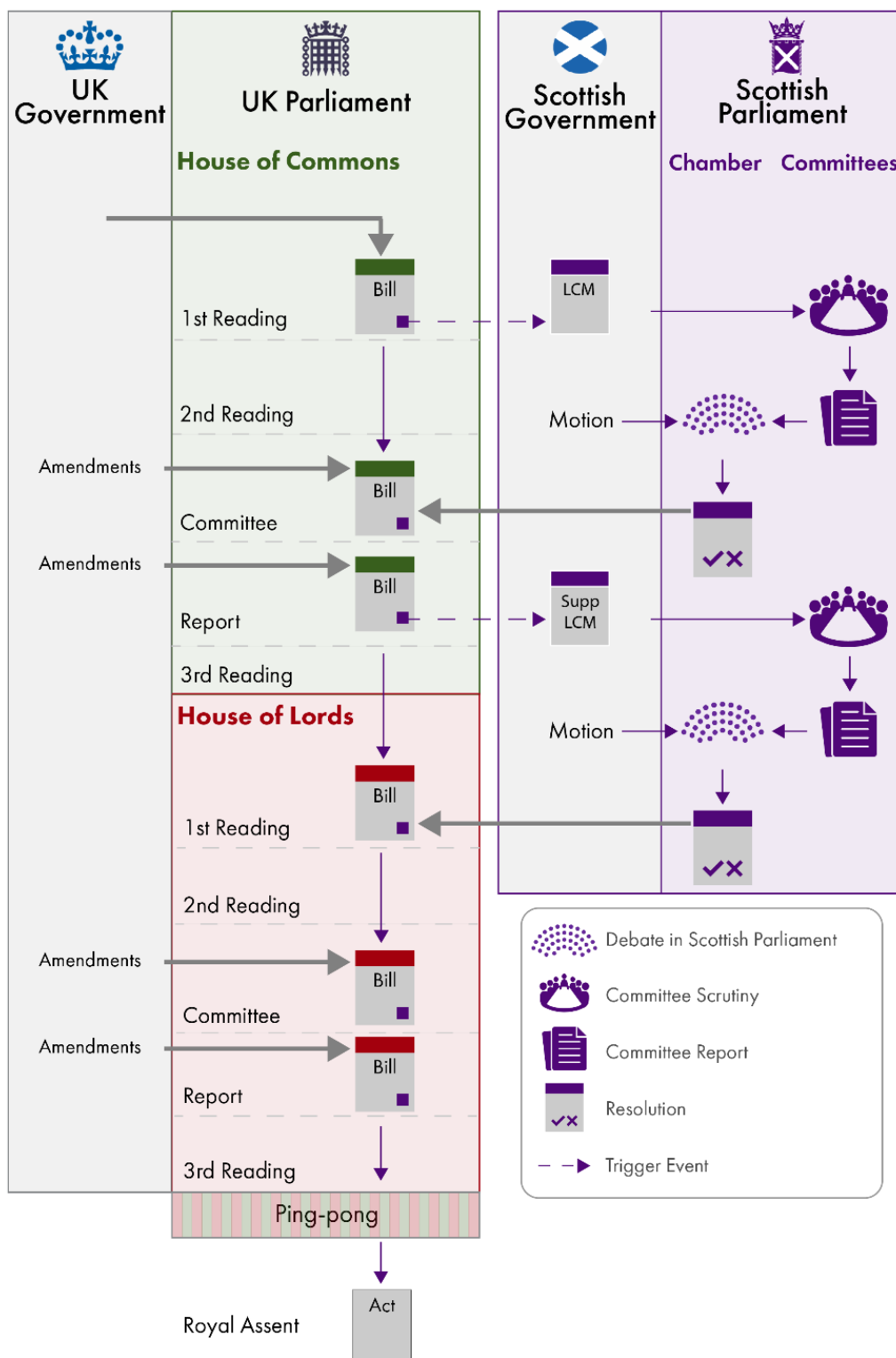
⁴² Available on the [Latest House of Commons business papers](#) page on the UK Parliament website.

⁴³ Available on the [House of Lords business](#) page on the UK Parliament website.

⁴⁴ This can be found under the "Publications" tab in an entry marked "Legislative consent motions – devolved legislatures".

Annex A: Legislative consent process diagram

This diagram illustrates the legislative consent process using the example of a Government Bill that includes “relevant provision” (symbolised by the small purple square) on introduction (in the House of Commons) and is then amended at Report stage in the Commons in such a way as to require the Scottish Government to lodge a supplementary LCM.



Annex B: List of key terms

Business Bulletin – a document published on each sitting day (and less frequently during recess) outlining the current and future business of the Parliament and committees, and listing new and current items of business; accessible on the Parliament's website under Chamber and committees / [What's On](#)

Chamber Desk – a team of clerks whose role includes assisting MSPs with the lodging of motions and amendments to motions

clerks – Parliamentary officials (not civil servants) who provide procedural advice and practical support to the Chamber and committees

convener – the MSP who convenes (calls) and chairs meetings of a committee

Decision Time – a time towards the end of each meeting of the Parliament when most decisions are taken, sometimes (but not always) by division

delegated powers – powers conferred on Ministers by an Act, including powers to make subordinate legislation

division – a decision-making process that involves members voting, used where consensus cannot be achieved

DPLR Committee – the Delegated Powers and Law Reform Committee

executive competence – the powers of the Scottish Ministers to make subordinate legislation, or otherwise to make decisions. As a general rule, wherever the Scottish Parliament has legislative competence, the Scottish Ministers have executive competence; but executive competence has also been extended into some reserved areas (i.e. areas where the Parliament cannot legislate). An example is the power to specify the drink-driving limit in Scotland, transferred to the Scottish Ministers by the Scotland Act 2012, even though it remains outside the Parliament's competence to legislate for drink-driving

first House – the House (of the UK Parliament) in which a Bill was originally introduced

King's Speech – formal speech by the monarch opening each new session of the UK Parliament and setting out the Government's main legislative and policy proposals.

LCM – a legislative consent memorandum

Legislation Team – the team of clerks that manages the legislative consent process, including the lodging and publication of LCMs (as well as being responsible for procedures associated with Scottish Parliament Bills)

legislative competence – the power of the Parliament to pass primary legislation in the form of Acts of the Scottish Parliament (ASPs), subject to the limits set out in [section 29](#) of the Scotland Act 1998

minister – an MSP appointed as a “Minister” (under s.47 of the Scotland Act) or as a “junior Scottish Minister” (under s.49). Since Session 3, Ministers have been known as Cabinet Secretaries and junior Scottish ministers as Ministers. Only Cabinet Secretaries, together with the First Minister and the Scottish Law Officers, qualify as “members of the Scottish Government” (also known collectively as “the Scottish Ministers”)

motion – a written statement by which an MSP invites the Parliament (or a committee) to express a particular view or agree to a course of action; if agreed to, becomes a resolution of the Parliament

MP – member of Parliament (in practice, a member of the House of Commons)

MSP – member of the Scottish Parliament

Parliamentary Bureau – the body within the Parliament responsible under Standing Orders (Chapter 5) for proposing the business of the Parliament, recommending the establishment of committees, and other related functions. It is not a parliamentary committee. It consists of the Presiding Officer (chair), a representative of each party that has five or more MSPs, and a representative of any group of five or more smaller-party members or independents. There is a system of weighted voting according to party strength. Information about the Bureau is available on the Parliament's website under About / How the Parliament works / Parliament organisations, groups and people / [Parliamentary Bureau](#)

peer – a member of the House of Lords

Private Member's Bill – a Bill introduced in the UK Parliament by an individual member (MP or peer) who is not a Government minister – see paragraph 2.19

recess – a period during which there is no Parliamentary business (in the Chamber), as decided by the Parliament under Rule 2.3, and when committees normally do not meet (Rule 12.3.3). The Parliament is typically in recess for a week in February, two weeks at Easter, in October and at Christmas, and for all of July and August. Dates of recess, and days on which the office of the Clerk is open, are listed on the Parliament's website, under About / [Recess dates](#)

relevant Bill – see paragraph 2.4

relevant provision – see paragraph 2.4

resolution (of the Parliament) – an expression of the Parliament's view or a decision made by the Parliament, as a result of it agreeing to a motion – see paragraph 6.2

Rule – an individual provision of the Parliament's standing orders

second House – in the context of a Bill introduced in the House of Commons, the House of Lords (and vice versa)

session – the period from when the Parliament first meets after a general election to when the Parliament is dissolved prior to the next election; originally 4 years, more recently 5 years in duration (by contrast with a session of the UK Parliament, which is normally around a year in duration)

Sewel Convention – see paragraph 1.5

Sewel motion – the original term for a motion expressing the Parliament's consent

sitting day – “any day when the office of the Clerk is open but not when the Parliament is in recess or dissolved” (Rule 2.1.3). In practice, this means most weekdays during a session, other than days of recess or public holidays.

Guidance on Legislative Consent

Annex B: List of key terms

Dates of recess, and days on which the office of the Clerk is open, are listed on the Parliament's website, under About / [Recess dates](#)

stages of Bills (in the UK Parliament) – following introduction of a Bill in either the House of Commons or House of Lords, Bills generally go through the following stages in each House: Second Reading (a general debate on the Bill's purpose), Committee Stage (the main amending stage, taken in a committee), Report Stage (a second amending stage, taken in the Chamber) and Third Reading (another general debate, preceding the decision whether to pass the Bill – which includes, in the House of Lords, a limited further opportunity for amendments). If the Bill is amended by the second House, the Bill cannot be submitted for Royal Assent until the two Houses have reached agreement (a process sometimes referred to as “ping pong”)

standing orders – the Parliament's rules of procedure, available on the Parliament's website under About / How the Parliament works / Rules and guidance / [Standing Orders](#)

subordinate legislation – a type of legislation made by Ministers under powers delegated to them in an Act (primary legislation)