

Standards, Procedures and Public Appointments Committee

17th Meeting 2022 (Session 6), Thursday 8 September 2022

Correspondence from the Chair of the Conveners Group on the procedures on consent in relation to UK Parliament Bills

Background

1. At its meeting on Thursday 30 June, the Committee considered the letter attached in Annexe from the from the Chair of the Conveners Group on the procedures on consent in relation to UK Parliament Bills. The Committee agreed to consider the letter following the summer recess.

Consideration

2. The letter from the Chair of the Conveners Group invites the Committee to consider two key issues:

- Chapter 9B of Standing Orders only makes provision for a motion to be lodged in relation to an LCM where that motion seeks the Parliament's consent. Where the Scottish Government is not seeking consent, there is no provision in Chapter 9B requiring a vote or debate on that issue. In session 6 so far there have been a number of cases where the Scottish Government has lodged a standard motion to allow for a debate and vote relating to an LCM, but such motions and debates are outwith the legislative consent process set out in Chapter 9B.
- Where the original LCM did not recommend consent and therefore no consent motion has been lodged, it is unclear whether a supplementary LCM would be required whether the Bill is amended to include relevant provision, but the Scottish Government still does not intend to recommend consent.

3. The letter also includes an exchange of correspondence on the timescales for lodging LCMs and the impact that this has on committee scrutiny.

Decision

4. In accordance with the request of the Chair of the Conveners Group, the Committee is invited to discuss the points made in the letter and any further action it wishes to take in relation to the issues raised.

**SPPA Committee Clerks
September 2022**

Annexe



The Scottish Parliament
Pàrlamaid na h-Alba

Conveners Group

Martin Whitfield MSP
Convener
Standards, Procedures and Public
Appointments Committee

Liam McArthur MSP
Chair of Conveners Group
The Scottish Parliament

By email only

ConvenersGroup@Parliament.Scot

27 April 2022

Dear Martin,

You will recall that, at its meeting on 30 March, the Conveners Group considered some issues that had arisen in relation to the rules governing Legislative Consent Memoranda (LCMs).

Where a Bill makes relevant provision (or is amended to do so), the Scottish Government must lodge an LCM, regardless of whether it recommends consent. However, Standing Orders only provide for a 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 requires a debate or vote on the issue.

There have been a number of cases in Session 6 so far and in these circumstances the Scottish Government has lodged a standard motion to allow for a debate and vote on the issue. However, such motions and debates sit outwith the legislative consent process set out in Chapter 9B.

Another issue that has arisen in this context is circumstances where the original LCM did not recommend consent and therefore no consent motion has been lodged. It is unclear whether 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.

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 is 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.

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 that the Parliament is informed of new developments as this may impact on its view on consent. However, the exact drafting of the rules does not explicitly cater for this situation.

These are clearly complex procedural issues which impact on committee and Parliamentary scrutiny of LCMs.

We would welcome the Standards, Procedures and Public Appointments Committee's consideration of these points.

On a related issue, you may wish to note that I have also written to the Minister for Parliamentary Business raising the Group's concerns regarding the timescales which have applied for the lodging of some LCMs and the impact this has had on time for committee scrutiny.

Yours sincerely

Liam McArthur MSP

Chair, Conveners Group



The Scottish Parliament
Pàrlamaid na h-Alba

Conveners Group

George Adam MSP
Minister for Parliamentary Business
Scottish Government

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Chair of Conveners Group
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By email only

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27 April 2022

Dear Minister,

I am writing on behalf of the Conveners Group with regard to an ongoing issue in relation to the timescale for lodging Legislative Consent Memoranda (LCMs).

You will be aware that, where a UK Government Bill containing a relevant provision is introduced or amendments to a Bill containing relevant provision are tabled, the Scottish Government should normally lodge an LCM no later than two weeks after introduction of the Bill or the amendments containing relevant provision are tabled.

Since the beginning of the session, there have been many examples where this timescale for lodging LCMs has not been adhered to, often leaving committees with very little time to carry out scrutiny of LCMs.

This issue was first raised with the Conveners Group on 23 February in relation to LCMs referred to the Economy and Fair Work Committee. However, it was clear from discussion at that meeting that this is an issue which has been affecting a number of committees. The Group agreed to investigate this further.

Analysis carried out by parliamentary officials has shown that, at the point at which the Conveners Group considered this issue, of the LCMs and supplementary LCMs lodged this session over half had not been lodged within the timescales set out in the rules.

I am sure you will agree that this is a significant proportion of LCMs where there has been a delay in lodging. This delay is having a detrimental impact on the ability of committees to carry out their scrutiny role.

We recognise that there is sometimes need for discussions and negotiations between the Scottish and UK Governments to take place. However, it is also important for committees to have adequate time to consider LCMs referred to them.

There is nothing to prevent an LCM being lodged while these discussions are ongoing. If following these discussions the Scottish Government wishes to update the Parliament on the position it has taken on an LCM, it can do this by lodging a supplementary LCM.

Taking this approach would allow committees to begin their scrutiny of LCMs at the earliest possible stage and also enable later developments to be considered.

You will be aware that I made this suggestion to the First Minister when she met with the Conveners Group earlier this year. She undertook to raise this with you.

This is clearly a matter of concern. I would welcome your response to this proposed approach.

On a related issue, you may also wish to note that the Conveners Group agreed to invite the Standards, Procedure and Public Appointments Committee to consider situations where the Scottish Government is not recommending consent to an LCM.

As you will know, where a Bill makes relevant provision the Scottish Government must lodge an LCM which committees will scrutinise. However, Standing Orders only provide for a motion to be lodged where that motion seeks the Parliament's consent. There have been a number of these cases in Session 6 so far and in these circumstances the Scottish Government has lodged a standard motion to allow for a debate and vote on the issue. However, such motions and debates sit outwith the legislative consent process set out in Chapter 9B.

I have written to the SPPA Committee inviting it to consider this issue.

Yours sincerely

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Chair, Conveners Group

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16 May 2022

LEGISLATIVE CONSENT MEMORADUMS

On 2 March, at the conclusion of the First Minister's appearance before the Conveners' Group, you raised the issue of delays in the lodging of Legislative Consent Memorandums (LCMs) and the challenges this creates for parliamentary committee scrutiny of requests from the UK Government for Scottish Parliament consent to provision in relevant UK Bills (I also acknowledge your letter dated

27 April concerning same). The First Minister committed to raise this issue with me and this letter sets out the Scottish Government's response.

I recognise the concerns raised by the Conveners' Group and I should firstly wish to reiterate Scottish Ministers' commitment to meeting, wherever possible, requirements for the lodging of LCMs in respect of 'relevant Bills' as defined in Standing Orders. I believe that is reflected in the improvements the Scottish Government has already made since the turn of the year in meeting that requirement. To ensure that trend continues, I am taking steps to ensure the importance of meeting the Standing Orders requirement wherever possible is understood by relevant Scottish Government Ministers and officials. The Conveners' Group's concerns have also been brought to the attention of the UK Government, and I will take the opportunity to do so again following publication of this year's Queen's Speech.

One of the challenges which the Scottish Government faces is that, regrettably, circumstances do still arise whereby the Scottish Government is informed of consent proposals much later than it would hope (sometimes very close to a Bill's introduction). In those situations it is often simply not possible for the Scottish Government to fully analyse the policy, legal and devolution implications of a Bill and develop, clear and lodge a comprehensive LC Memorandum within 10 working days of that Bill's introduction at Westminster. In recognition of that, a process is already in place to ensure that the Scottish Government will send a letter of explanation to the Presiding Officer in situations in which it does not expect to lodge an LC Memorandum within 10 days. My view is that approach remains satisfactory if the Scottish Government expects to be able to lodge an LC Memorandum quickly thereafter. However, I agree with the proposal you make that if it is anticipated that there is likely to be a more significant delay in a full LC Memorandum being lodged then consideration should be given to lodging an interim Memorandum to enable the relevant committee to begin its scrutiny. I intend to proceed on that basis.

I note that the Conveners Group has invited the Standards, Procedures and Public Appointments Committee to look at the procedural implications of situations in which the Scottish Government does not recommend consent for relevant UK Bills, and I would of course be happy to contribute to the committee's considerations if that would be helpful.

I hope that you will take this response as reassurance that the Scottish Government recognises, and intends to address, the concerns expressed by the Conveners Group. I have asked my officials to maintain a dialogue on these issues with their parliamentary counterparts.

I would of course be happy to discuss these matters further with you.



GEORGE ADAM