



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

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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