



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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# Legislative Consent Motions: January 2020 – November 2021

## 1 Introduction

This briefing paper has been prepared following a request from the Committee on Procedures, which asked for information on the following areas in order to clarify relevant details of figures in relation to LCMs [since January 2020] including;

(a) how many Bills have been introduced to Parliament during this period which require(d) the consent of the Northern Ireland Assembly; and of these

(b) on how many occasions Ministers have laid a memorandum (either in line with the requirements of Standing Order 42A(4) or not);

(c) how much time there was between the Bill's introduction and its final amending stage (which is the deadline by which the Assembly consent must be given).

The specific data requested is attached at Annex 1. Annex 2 demonstrates the progress of legislative consent motions in all devolved legislatures in respect of three separate pieces of legislation. This paper analyses the timelines illustrated by the data

in both Annexes, and considers the impact that the scheduling of legislative consent motions has on scrutiny.

## 2 Background

A legislative consent motion (LCM) is how a devolved administration grants or withholds legislative consent for primary legislation which deals with devolved competence. The Sewel convention underpins the concept of legislative consent. It is named after Lord Sewel who was the Parliamentary Under-Secretary of State at the Scottish Office and set out the policy during the passage of the Scotland Bill in 1997-98.<sup>1</sup>

*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 ... we 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<sup>2</sup>*

The UK Parliament retains the right to legislate in any aspect of devolved competence, with or without consent, as it is the sovereign parliament. There are circumstances where it is convenient for the UK Parliament to legislate on behalf of the devolved legislatures and the convention allows the relevant legislature, where it sees fit, to give consent.

Prior to the changes brought about by the UK's exit from the EU, legislative consent motions only applied to primary legislation, i.e. Bills rather than regulations made by ministers, and did so in one or more of three circumstances:

- where primary legislation deals with a matter of devolved competence.
- where primary legislation changes the competence of a devolved assembly
- where primary legislation changes the competence of a devolved government.

The convention was recognised in the Memorandum of Understanding (MoU) between the UK Government and the devolved governments, which stated:

*The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with*

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<sup>1</sup> House of Commons Library *The Sewel Convention* 25<sup>th</sup> November 2005, retrieved 17<sup>th</sup> September 2020 <https://commonslibrary.parliament.uk/research-briefings/sn02084/>

<sup>2</sup> HL Deb 21 Jul 1998 Vol 592 c 791

*regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.*<sup>3</sup>

The latest version of this MoU was published in 2013 and was followed by a number of Devolution Guidance Notes, written to provide civil servants and policy makers with advice when dealing with devolved matters. Devolution Guidance Note 8 addresses post-devolution primary legislation affecting Northern Ireland.<sup>4</sup>

The next significant developments with the convention occurred when it was written into statute in the Scotland Act 2016 and the Wales Act 2017. The provision stated:

*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 [devolved legislature].*<sup>5</sup>

There is no equivalent statutory provision in relation to N. Ireland, but the decision to put the Sewel convention on a statutory footing does not change its status as a convention. Previous research on legislative consent motions highlighted criticism of the decision to put the convention into statute<sup>6</sup>

The eventual inclusion of the provision in statute does not, in any case, limit the sovereignty of the UK Parliament. The Supreme Court in *R (Miller) v Secretary of State for Exiting the European Union* ruled that the Sewel convention remained just that, a convention, and so “policing the scope and manner of its operation does not lie within the constitutional remit of the judiciary”.<sup>7</sup>

It is also important to note that the Withdrawal Act(s) amended the devolution settlements for the three devolved parliaments. The effect was to give Ministers in the UK Government powers to pass statutory instruments (SIs) to deal with areas of devolved competence or alter the extent of devolved competence. Unlike Northern Ireland, both Scotland<sup>8</sup> and Wales<sup>9</sup> have procedures in their standing orders for granting consent to such to SIs. This briefing focuses on the use of LCMs to consent to primary legislation.

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<sup>3</sup> Cabinet Office *Memorandum of Understanding and Supplementary Agreements Between the UK Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee* (October 2013)

<sup>4</sup> Cabinet Office *Devolution Guidance Note 8 Post Devolution Legislation Affecting Northern Ireland*, retrieved 17th September 2020 <https://www.gov.uk/government/publications/devolution-guidance-notes>

<sup>5</sup> *Scotland Act 2016* c11 s2; *Wales Act 2017* c4 s2.

<sup>6</sup> House of Commons Library *Brexit: Devolution and Legislative Consent* 29<sup>th</sup> March 2018, retrieved 17<sup>th</sup> September 2020 <https://commonslibrary.parliament.uk/research-briefings/cbp-8274/>

<sup>7</sup> [2017] UKSC 5

<sup>8</sup> *Standing Orders of the Scottish Parliament* (2019) last accessed 24 November 2021.

<sup>9</sup> *Standing Orders of the Senedd* (March 2021) last accessed 24 November 2021.

### 3 Procedures for dealing with requests for legislative consent

The Standing Orders of the Scottish Parliament, Senedd and Northern Ireland Assembly set out how each legislature deals with requests for legislative consent (see Appendices 1-3). In broad terms, the process can be summarised as follows:

- Legislative consent memorandum lodged in the legislature by devolved Minister
- Memorandum referred to lead committee
- Lead committee reports or the time for report expires
- Vote in plenary on legislative consent motion

All three legislatures now have in place Standing Orders to regulate the process. The Scottish Parliament developed Standing Orders in 2005<sup>10</sup> and in 2009 the Northern Ireland Assembly followed Scotland's example to formalise the process.<sup>11</sup> Prior to 2011, the Senedd did not have the competence to make legislative Acts, but it formalised its own process in Standing Orders 29 and 30.<sup>12</sup> The Scottish Parliament also has Standing Orders which deal specifically with the process for legislative consent motions under the Public Bodies Act 2011, (Chapter 9BA) which broadly mirrors the procedure for legislative consent motions under Chapter 9B.

#### 3.1 Legislative Consent in the Scottish Parliament

Chapter 9B of the Standing Orders of the Scottish Parliament (hereafter known as 9B) deals with the process for obtaining legislative consent. It applies to Bills which are under consideration in the UK Parliament and deal with an area of devolved competence, alter the legislative competence of the Scottish Parliament, or the executive competence of Ministers. Within two weeks of such a Bill completing the first amending stage in the UK Parliament, a member of the Scottish Government shall normally lodge a legislative consent memorandum with the Clerk. Any member may lay a legislative consent memorandum and then table a legislative consent motion, but must wait until either a Scottish Minister has lodged a memorandum or the deadline for doing so has passed.

The memorandum should:

- (a) summarise what the Bill does and its policy objectives;
- (b) specify the extent to which the Bill makes provision—
  - (i) for any purpose within the legislative competence of the Scottish Parliament; or

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<sup>10</sup> As above, fn 8.

<sup>11</sup> [Standing Orders of the Northern Ireland Assembly](#) (2021) SO 42A last accessed 24 November 2021.

<sup>12</sup> As above, fn 9.

(ii) to alter that legislative competence or the executive competence of the Scottish Ministers;

(c) in the case of a memorandum lodged by a member (including a member of the Scottish Government) who intends to lodge a legislative consent motion, set out a draft of the motion and explain why the member considers it appropriate for that provision to be made and for it to be made by means of the Bill; and

(d) in the case of a memorandum lodged by a member of the Scottish Government who does not intend to lodge a legislative consent motion, explain why not.<sup>13</sup>

Any subsequent amendments to the Bill which would exceed the scope of the original consent must be subject to further consent motions.

The Parliamentary Bureau refers a legislative consent memorandum to the committee responsible for the subject, (“the lead committee”) which will consider it and provide a report. The timetable for consideration is also set by the Bureau, which is responsible for proposing the business programme in the Parliament.

A legislative consent motion is not normally lodged until after publication of the lead committee’s report and will always be considered in Parliament, usually after the fifth sitting day following publication. Legislative consent motions are open to amendment like any other motion.

The Motion is then lodged by the relevant Minister and voted upon. A simple majority is required.

### **3.2 Legislative Consent in the Senedd**

The Standing Orders set out how the Senedd deals with requests for legislative consent.<sup>14</sup> The process is largely similar to that in the Scottish Parliament, in that a member of the government must lay a legislative consent memorandum normally no later than two weeks after its introduction in the UK Parliament.

A legislative consent memorandum must:

- (i) summarise the policy objectives of the Bill;
- (ii) specify the extent to which the Bill makes (or would make) relevant provision;

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<sup>13</sup> As above, fn8

<sup>14</sup> As above, fn 9 SO 29-30.

- (iii) explain whether it is considered appropriate for that provision to be made and for it to be made by means of the Bill;
- (iv) where the Bill contains any relevant provision conferring power to make subordinate legislation on Welsh Ministers, set out the Senedd procedure (if any) to which the subordinate legislation to be made in the exercise of the power is to be subject; and
- (v) where a legislative consent memorandum has already been laid in relation to the same provisions in the same Bill, set out how and why the new memorandum differs from the previous memorandum.

If a memorandum is laid in respect of a Private Members' Bill, this will be done by the Presiding Officer.

The Business Committee “must normally” refer the Memorandum to a committee, and where it has done so there shall be no debate on the motion until a report has been published or the deadline for issuing such a report has expired. The Business Committee sets the timetable for the committee to consider and report on the memorandum. Once a memorandum has been referred to committee, a vote cannot be held until the committee reports, or the time for doing so expires.

As with Scotland, Standing Orders do not appear to prohibit amendments to legislative consent motions, and a simple majority is required. Only a Minister may normally lay the memorandum but, after the time for doing so has expired, any member may table the memorandum and subsequent motion.

### 3.3 Legislative Consent in the Northern Ireland Assembly

The Assembly adopted specific standing orders to deal with legislative consent following an inquiry by the Committee on Procedures in 2009. The Scottish Parliament and Senedd had, by that stage, developed standing orders of their own to govern the LCM process. The Committee on Procedures found that “procedures around legislative consent motions are Executive driven and while most of those consulted [as part of the Inquiry] were reasonably content with the current procedures it was considered that the provision of Standing Orders would go some way to giving a degree of ownership to the Assembly”.<sup>15</sup>

Standing Order 42A deals with Legislative Consent motions and follows a similar procedure to that laid down in the Standing Orders of the Welsh and Scottish administrations'. As above, where a Bill of the UK Parliament deals with “a devolution

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<sup>15</sup> Northern Ireland Assembly Committee on Procedures *Inquiry into legislative consent motions* (2009)

matter”<sup>16</sup> a Memorandum is laid before the Assembly by the relevant Minister. This should occur normally no later than 10 working days from the date of its introduction at Westminster.

The information to be included in the memorandum is detailed in the Standing Order and, like the Welsh and Scottish equivalent, states -

- (3) A legislative consent memorandum may include the Bill and any explanatory notes attached to the Bill and shall include—
- (a) a draft of the legislative consent motion;
  - (b) sufficient information to enable debate on the legislative consent motion;
  - (c) a note of those provisions of the Bill which deal with a devolution matter; and
  - (d) an explanation of—
    - (i) why those provisions should be made; and
    - (ii) why they should be made in the Bill rather than by Act of the Assembly.

LCMs are open to amendment in the Assembly, but this is not a frequent occurrence. In common with the Standing Orders of the other devolved parliaments, Standing Order 42A requires sufficient information to be included in the Memorandum to allow debate.

Once the Memorandum is laid before the Assembly, the provisions of the Bill which are subject to a legislative consent motion shall “stand referred to the appropriate statutory committee” unless the Assembly orders otherwise. The Committee has 15 working days from the date of referral to consider the Provisions of the Bill and report to the Assembly. If they do not do so within 20 working days, the legislative consent motion may be moved. If the Committee does report, the motion shall not normally be moved until 5 working days after the report is published.

The table attached as Annex 1 is the data specifically requested by the committee, which is summarised in the table below. It demonstrates that the time between consent being formally granted by the Assembly and the final amending stage can vary widely, between one day and 10 months. It also shows a number of Acts which, according to their explanatory note, required consent from the Assembly, against which no LCM is recorded, and no LCM can be found in the Assembly Hansard.

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<sup>16</sup> As above, fn 11. SO42(a)(1)

	Explanatory Note - LCM required?	Date Bill Introduced	Consent Memorandum laid	Committee Consideration	Committee Report	LCM agreed by Assembly	final amending stage	royal assent
<a href="#">Agriculture Act 2020</a>	Yes	16.1.20	1.3.20	13.2.20; 20.2.20	19.3.20	31.3.20	4.11.20	11.11.20
<a href="#">Air Traffic Management and Unmanned Aircraft Act 2021</a>	Yes	9.1.20	22.5.20	14.5.20	11.6.20	24.6.20	22.3.21	29.4.21
<a href="#">Birmingham Commonwealth Games Act 2020</a>	Yes	7.1.20	28.5.20	9.6.20	3.6.20	9.6.20	11.6.20	25.6.20
<a href="#">Business and Planning Act 2020</a>	Yes	25.6.20	25.6.20	7.7.20	1.7.20	7.7.20	20.7.20	22.7.20
<a href="#">Compensation (London Capital &amp; Finance plc and Fraud Compensation Fund) Bill</a>	Yes	12.5.21	27.5.20	27.5.21;28.06.21	17.6.21	28.6.21	19.10.21	20.10.21
<a href="#">Coronavirus Act 2020</a>	Yes	19.3.20	23.3.20	24.03.20	n/a	24.3.20	23.3.20	25.3.20
<a href="#">Corporate Insolvency and Governance Bill</a>	Yes	20.5.20	21.5.20	2.6.20	26.5.20	2.6.20	23.6.20	25.6.20
<a href="#">Domestic Abuse Act 2021</a>	Yes	3.3.20	26.5.20	30.4.20; 23.06.20	19.6.20	23.6.20	26.4.21	29.4.21
<a href="#">Environment Act 2021</a>	Yes	30.1.20	13.9.21	27.2.20; 11.6.20	18.6.20	20.9.21	8.11.21	9.11.21
<a href="#">Fisheries Act 2020</a>	Yes	29.1.20	21.9.20	5.3.20	1.7.20	29.9.20	12.10.20	23.11.20
<a href="#">Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020</a>	Yes	5.3.20	11.6.20	11.6.20; 28.09.20	8.7.20	28.9.20	21.10.20	11.11.20
<a href="#">Medicines and Medical Devices Act 2021</a>	Yes	13.2.20	5.11.20	12.11.20; 30.11.20	19.11.20	30.11.20	27.1.21	11.2.21
<a href="#">Pension Schemes Act 2021</a>	Yes	7.1.20	19.10.20	16.9.20; 17.9.20; 23.9.20 30.9.20; 8.10.20; 22.10.20; 2.11.20	19.11.20	2.11.20;	16.11.20	11.2.21
<a href="#">European Union Withdrawal Agreement Act 2020</a>	Yes	19.12.19	17.01.20	-	-	20.1.20	22.1.20	23.1.20

	Explanatory Note - LCM required?	Date Bill Introduced	Consent Memorandum Laid	Committee Consideration	Committee Report	LCM agreed by Assembly	final amending stage	royal assent
<a href="#">Private International Law (Implementation of Agreements) Act 2020</a>	Yes	27.2.20	20.4.20	12.3.20; 23.4.20	4.5.20	19.05.20	19.11.20	14.12.20
<a href="#">Public service pensions and judicial offices Bill</a>	Yes	19.7.21	6.9.21	4.11.20; 10.3.20; 1.4.21; 22.9.21; 01.11.21	6.10.20	1.11.21	-	-
<a href="#">Sentencing (Pre-consolidation Amendments) Act 2020</a>	Yes	21.1.20	27.4.20	13.3.20; 2.4.20; 30.4.20	22.5.20	2.6.20	3.3.20	8.6.20
<a href="#">The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill</a>	Yes	12.5.20	21.05.21	4.5.21; 21.5.21; 26.5.21;	2.6.21	28.6.21	-	-
<a href="#">Trade Act 2021</a>	Yes	19.3.20	-	-	-	-	22.3.21	29.4.21
<a href="#">United Kingdom Internal Market Act 2020</a>	Yes	9.9.20	-	-	-	-	15.12.20	17.12.20
<a href="#">Police, Crime, Sentencing and Courts</a>	yes	9.3.21	-	14.1.21 12.10.21 21.10.21	4.11.21	-	-	-
<a href="#">Professional Qualifications Bill</a>	Yes	12.5.21	-	-	-	-	-	-
<a href="#">Subsidy Control Bill</a>	yes	30.6.21	-	-	-	-	-	-
<a href="#">Advanced research and invention agency bill 2021</a>	yes	1.3.21	-	-	-	-	-	-
<a href="#">Commercial Rent (Coronavirus) Bill 2021</a>	yes	9.11.21	-	-	-	-	-	-
<a href="#">Elections Bill 2021</a>	yes	5.7.21	-	-	-	-	-	-
<a href="#">Health and Care Bill 2021</a>	Yes	6.7.21	14.10.21	14.10.21	11.11.21	15.11.21	-	-
<a href="#">European Union (Future Relationship) Act 2021</a>	yes	30.12.20	-	-	-	-	30.12.20	30.12.20

One clear example of the advantages of the more flexible systems employed by the devolved administrations is the European Union (Future Relationship) Act (2021). Although the bill itself was passed in one day in Parliament, the Scottish Parliament accelerated its mechanism to allow for an LCM to be debated and a vote held on the 29 and 30 December 2020. This was obviously a Bill which dealt with a politically-charged subject. A debate was held and an extract of the proceedings, together with a letter notifying the Clerk of the House of Commons that consent had not been granted, is now recorded on the bill pages on the parliament.uk website.

To contrast this with the Northern Ireland Assembly's views on the same bill, no legislative consent memorandum was lodged, so none was reported on the bill pages. The Assembly did have a debate on an Executive motion. It resolved:

*That this Assembly takes note of the trade and cooperation agreement between the United Kingdom and the European Union; rejects Brexit, in line with the democratically expressed view of the people of Northern Ireland; notes that this deal will mean new barriers to trade and other negative consequences for Northern Ireland's economy and society; and calls for the implementation of the protocol on Ireland/Northern Ireland, positive efforts to make arrangements work for all the people of Northern Ireland, and for this Assembly to decline legislative consent to the British Government to impose the European Union (Future Relationship) Bill, their inferior trade deal and their Brexit against the will of the people of Northern Ireland.*

The Speaker in that debate undertook to write to the relevant authorities to notify them of the Assembly's view. The motion does not appear to have been framed as a legislative consent motion, it hasn't been recorded as such on the bill pages of the UK Parliament, or indexed as a legislative consent motion in the Assembly's Hansard.

Given the fact that the granting or withholding of legislative consent does not, in itself, permit or prevent legislation being passed in areas of devolved responsibility; the LCM serves to indicate the views of the devolved legislature and have those formally recorded. They may change government approach and have done so in the past,<sup>17</sup> but they also perform a representative function.

A further comparison of the approaches of the devolved legislatures can be seen in the graphics in Annex 2. This compares the approach of the devolved legislatures to three different pieces of primary legislation. It must be stated that the information included is that published on the websites of each legislature, and each takes different approaches to how that information is detailed. In particular, the Welsh Committees include agenda even if the whole session was not devoted to the issue. In replicating the information available, the intention is to illustrate the additional scrutiny opportunities provided by a

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<sup>17</sup> See earlier paper

more elastic timescale for committee reporting, but also the impact of a publication scheme in demonstrating that scrutiny.

## 4 Informing the UK Parliament

None of the Standing Orders in the three devolved legislatures refer to how the UK Parliament should be informed following the outcome of a debate on a legislative consent motion. A research paper produced by the Scottish Parliament's research service noted that:

*In practice, the Clerk of the Scottish Parliament writes to the Clerks of the two Houses of the UK Parliament to inform them of the outcome of the decision taken on a legislative consent motion.*

*The Clerk also sends a copy of the relevant Scottish Parliament Minutes and a copy of the legislative consent memorandum.*

*When a motion is decided on in the Scottish Parliament, a copy of the memorandum and the Clerk's letter on the outcome of the decision on the motion should appear on the Bill Documents' page on the UK Parliament's website.*

*The decision on a motion is also indicated next to the relevant Bill in the Bills in Progress section of the House of Lords Business and the Bill should be tagged in the House of Commons' Order Paper.<sup>18</sup>*

The Parliament at Westminster is notified of an LCM being granted by the Clerk / Chief Executive of the Northern Ireland Assembly writing to the Clerk of the House. The Senedd has notified the House when the LCM has failed to pass.<sup>19</sup> The Scottish legislature has also given notice that consent has been withheld. Legislative consent motions, or notification that consent has been withheld, are published alongside the explanatory notes and other bill papers on the Parliament website.<sup>20</sup> With respect to the Assembly, however, there does not appear to be a practice of notifying that consent has been withheld. For example, it is not clear from examining bill pages and Hansard if the Assembly debated the provisions of the UK Internal Market Bill with a view to granting consent, or if the relevant minister has explained why no LCM was sought. It is clear that both the Scottish and Welsh legislatures withheld consent.

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<sup>18</sup> SpICE [Factsheet on Legislative Consent Motions](#) last accessed 23 November 2021

<sup>19</sup> See, for example, the UK Internal Market Act [bill pages](#) – last accessed 23 November 2021

<sup>20</sup> As above, fn 19.

The UK Parliament's method of recording LCMs is to note the LCM on the order paper. There is no requirement for either House to acknowledge that consent has been granted or withheld. The Institute for Government has argued that:

*the absence of a direct procedural link between consent decisions taken by legislatures at the devolved level and proceedings in the Westminster parliament is a weakness of the process, especially since the convention is an expression of the relationship between legislatures rather than executives*

## 5 Frequency of legislative consent motions.

Analysis by the Institute for Government showed that, in the first 20 years of devolution, 220 Acts were passed at Westminster which required the consent of a devolved administration, for an average of approximately 11 a year.<sup>21</sup> Since January 2020, there have been approximately 30 Acts which have required the consent of the Assembly. Of those 30, three Acts related to coronavirus, leaving 27 in just under two years. From the number that remained some dealt with the implementation of the UK's exit from the EU, such as the EU (Withdrawal Agreement) Act 2020, or set up arrangements for the future, such as the Internal Market Act 2020, the Subsidy Control Bill and the Trade Act 2021. Should this indicate the beginning of a larger trend, there are obvious implications for committee workload. However, it must be noted this is, in the short term, an obvious outworking of the UK's exit from the EU, legislation has been (and will most likely continue to be) passed which deals with the potential for divergence in devolved areas of competence previously dealt with by EU law. UK governments of the future may have different approaches to dealing with divergence, but it is likely to be an ongoing concern for both devolved and central governments.

## 6 Improving scrutiny of legislative consent motions

Although the other devolved legislatures do allow for scheduling of their legislative consent motions, by placing responsibility for scheduling committee scrutiny on the business committee or equivalent, none replicate the constraint placed on committees by standing orders of the Northern Ireland Assembly. When reviewing Annex 1, the impact of this becomes clear – committee consideration is either compressed into 15 working days, or dealt with by unconnected hearings which are later relied after the memorandum is seen. This impacts on committee and plenary consideration, but has no clear rationale, because the grant or withholding of consent by devolved institutions does not halt the progress of legislation through Westminster.

Similarly, the Senedd and Scottish Parliament make it clear in their standing orders that a legislative consent motion shall be brought before their respective parliaments when

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<sup>21</sup> J.Sargeant et al [Sewel Convention](#) Institute for Government, 8 December 2020 last accessed 24<sup>th</sup> November 2021

the UK Parliament passes legislation dealing with areas of devolved competence. For example, the Scottish standing orders state “A member of the Scottish Government shall lodge with the Clerk a ... legislative consent memorandum.”<sup>22</sup> If not, a member of the legislature may do so. This ensures that the granting or withholding of consent is communicated to the Clerks in the usual way if the Minister is unable to lodge the memorandum. Similar language is used in the Northern Ireland Assembly Standing Orders:

(4) The Minister whom the devolution matter concerns shall, normally not later than 10 working days after the relevant day, either—

(a) lay a legislative consent memorandum before the Assembly; or

(b) lay a memorandum before the Assembly explaining why a legislative consent motion is not sought.

(5) A member of the Assembly other than the Minister whom the devolution matter concerns may lay a legislative consent memorandum but shall not do so until—

(a) the Minister has laid a legislative consent memorandum under paragraph(4)(a);

(b) the Minister has laid a memorandum under paragraph (4)(b); or

(c) the 10 working days provided for in paragraph (4) have expired.

The table at Annex 1 shows that in some cases (perhaps because a positive granting of consent has not been recorded or because no motion was ever lodged), no legislative consent motion has been recorded on the Bill pages of the UK Parliament, or is returned as an LCM when searching the Assembly Hansard and Committee pages. As discussed above, LCMs can have persuasive weight when it comes to government policy, but they also have value in terms of articulating and recording the views of the legislature. Accordingly, given the complexity where devolution, the Protocol and post EU-exit UK legislation meet, improved scrutiny and governance processes may improve overall transparency and help avoid the risk of error.

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<sup>22</sup> As above, fn.8, 9B.3

	Explanatory Note - LCM required?	Date Bill Introduced	Consent Memorandum laid	Departmental Briefing	Committee Consideration	Committee Report	LCM agreed by Assembly	Commons third reading	final amending stage Commons	final amending stage Lords	royal assent
<a href="#">Agriculture Act 2020</a>	Yes	16.1.20	1.3.20	20.2.20	13.2.20; 20.2.20	19.3.20	31.3.20	13.5.20	4.11.20	9.11.20	11.11.20
<a href="#">Air Traffic Management and Unmanned Aircraft Act 2021</a>	Yes	9.1.20	22.5.20	Not required	14.5.20	11.6.20	24.6.20	22.3.21	22.3.21	20.4.21	29.4.21
<a href="#">Birmingham Commonwealth Games Act 2020</a>	Yes	7.1.20	28.5.20	correspondence between 5-14 May	5.5.20; 14.5.20	3.6.20	9.6.20	11.6.20	11.6.20	11.6.20	25.6.20
<a href="#">Business and Planning Act 2020</a>	Yes	25.6.20	25.6.20	written only	1.7.20	1.7.20	7.7.20	29.6.20	21.7.20	20.7.20	22.7.20
<a href="#">Compensation (London Capital &amp; Finance plc and Fraud Compensation Fund) Bill</a>	Yes	12.5.21	27.5.20	27.5.21	28.06.21	17.6.20	28.6.20	22.09.21	22.09.21	19.10.21	20.10.21
<a href="#">Coronavirus Act 2020</a>	Yes	19.3.20	23.3.20 (normal procedures did not apply)	-	24.03.20	n/a	24.3.20	23.3.20	23.3.20	24.3.20	25.3.20
<a href="#">Corporate Insolvency and Governance Bill</a>	Yes	20.5.20	21.5.20	-	2.6.20	26.5.20	2.6.20	3.6.20	25.6.20	23.6.20	25.6.20
<a href="#">Domestic Abuse Act 2021</a>	Yes	3.3.20	26.5.20	written 30.4.20	23.06.20	19.6.20	23.6.20	26.4.21	26.4.21	27.4.21	29.4.21
<a href="#">Environment Act 2021</a>	Yes	carryover	13.9.21	27.2.20; 11.6.20	27.2.20; 11.6.20	18.6.20	20.9.21	26.5.21	8.11.21	9.11.21	9.11.21
<a href="#">Environment Bill 2020</a>	Yes	30.1.20	19.3.20	27.2.20; 11.6.20	27.2.20; 11.6.20	18.6.20	30.6.20	-	-	-	-
<a href="#">Fisheries Act 2020</a>	Yes	29.1.20	24.3.20	5.3.20	5.3.20	1.7.20	29.9.20	13.10.20	13.10.20	12.11.20	23.11.20
<a href="#">Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020</a>	Yes	5.3.20	1.7.20	11.6.20	1.7.20; 8.7.20	8.7.20	28.9.20	30.6.20	21.10.20	5.11.20	11.11.20
<a href="#">Medicines and Medical Devices Act 2021</a>	Yes	carryover	5.11.20	12.11.20	30.11.20	19.11.20	30.11.20	23.6.20	27.1.21	2.2.21	11.2.21
<a href="#">Medicines and Medical Device</a>	Yes	13.2.20	27.5.20	4.6.20	4.6.20; 15.06.20	15.06.20	16.6.20;	-	-	-	-
<a href="#">Pension Schemes Act 2021</a>	Yes	carryover	19.10.20	17.9.20; 23.9.20	16.9.20; 30.9.20; 8.10.20; 22.10.20; 2.11.20	19.11.20	2.11.20;	16.11.20	16.11.20	19.1.21	11.2.21
<a href="#">The Pension Schemes Bill</a>	Yes	7.1.20	12.3.20	22.4.20; 17.6.20	22.4.20; 17.6.20	29.4.20	2.11.20	-	-	-	-
<a href="#">Private International Law (Implementation of Agreements) Act 2020</a>	Yes	27.2.20	20.4.20	12.3.20	23.4.20	4.5.20	19.05.20	6.10.20	24.11.20	19.11.20	14.12.20
<a href="#">Public service pensions and judicial offices Bill</a>	Yes	19.7.21	6.09.21	22.9.21	4.11.20; 10.3.20; 1.4.21; 22.9.21; 01.11.21	6.10.21	1.11.21	-	-	-	-
<a href="#">Sentencing (Pre-consolidation Amendments) Act 2020</a>	Yes	21.1.20	27.4.20	Written 13.3.20	2.4.20; 30.4.20	22.5.20	2.6.20	4.6.20	4.6.20	3.3.20	8.6.20
<a href="#">The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill</a>	Yes	12.5.20	21.5.21	4.5.21	21.5.21 (consultation); 26.5.21; no oral evidence - time.	2.6.21	29.6.21	8.12.21	n.a	n.a	n.a
<a href="#">Trade Act 2021</a>	Yes	19.3.20	n.a	n.a	n.a	n.a	n.a	20.7.20	22.3.21	23.3.21	29.4.21
<a href="#">United Kingdom Internal Market Act 2020</a>	Yes	9.9.20	n.a.	n.a	n.a	n.a	n.a	29.9.20	16.12.20	15.12.20	17.12.20
<a href="#">Police Crime, Sentencing and Courts</a>	yes	9.3.21	12.10.21	12.10.21	14.1.21 - 21.10.21	4.11.21	23.11.21	5.7.21	-	-	-
<a href="#">Professional Qualifications Bill</a>	Yes	12.5.21	-	-	-	-	-	-	-	-	-
<a href="#">Subsidy Control Bill</a>	yes	30.6.21	-	-	-	-	-	26.10.21	-	-	-
<a href="#">Advanced research and invention agency bill 2021</a>	yes	1.3.21	-	-	-	-	-	7.6.21	-	-	-
<a href="#">Commercial Rent (Coronavirus) Bill 2021</a>	yes	9.11.21	-	-	-	-	-	-	-	-	-
<a href="#">Elections Bill 2021</a>	yes	5.7.21	-	-	-	-	-	-	-	-	-
<a href="#">Health and Care Bill 2021</a>	Yes	6.7.21	14.10.21 (3)	14.10.21	14.10.21 (and by correspondence)	11.11.21	15.11.21	-	-	-	-
<a href="#">European Union (Future Relationship) Act 2021</a>	yes	30.12.20	-	-	-	-	-	30.12.20	30.12.20	30.12.20	30.12.20
<a href="#">European Union Withdrawal Agreement Act 2020</a>	Yes	n.a	17.01.20(p)	n.a	-	n.a	n.a	19.12.19	22.1.20	22.1.20	23.1.20



## NI Assembly

- **16.1.2020** – Agriculture Bill introduced in the House of Commons
- **13.2.2020** - Committee on Agriculture, Environment and Rural Affairs (CAERA) take evidence from stakeholders.
- **20.2.2020** CAERA take evidence from stakeholders.
- **21.2.2020** Legislative Consent Memorandum introduced.
- **19.3.2020** CAERA publish report on LCM
- **24.3.20** Consent memorandum tabled in NI Assembly.
- **31.3.20** LCM agreed by Assembly
- **11.11.20** Agriculture bill receives Royal Assent.



## Scottish Parliament

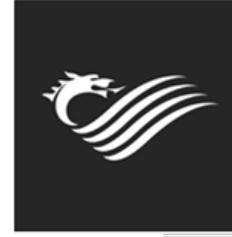
- **16.1.2020** – Agriculture Bill introduced in Commons
- **4.5.2020** – Legislative Consent Memorandum introduced.
- **5.5.2020** Committee Scrutiny begins – Delegated Powers and Law Reform Committee on balance of powers.
- **13.5.2020** – Rural Economy and Connectivity Committee are appointed lead committee.
- **15.5.2020** – RE&C Committee issue report and recommendations on legislative consent.
- **18.8.2020** Supplementary Legislative Consent Memorandum from Scottish Government
- **26.8.2020** RE&C committee are lead committee
- **28.8.2020** RE&C Committee report and recommendations
- **1.9.2020** Resolution Motion Lodged and Agreed
- **28.9.2020** Supplementary Legislative Consent Memorandum from Scottish Government
- **29.9.2020** Resolution Motion lodged
- **30.9.2020** RE&C Committee take evidence and issue recommendation.
- **30.9.2020** Resolution Motion agreed.



## Senedd

- **16.1.2020** – Agriculture Bill introduced in the House of Commons
- **12.2.2020** Legislative Consent Memorandum introduced.
- **24/02/2020** - Legislation, Justice and Constitution Committee (LJCC) approach to scrutiny
- **26/02/2020** - Climate Change, Environment and Rural Affairs Committee (CCERA) - evidence session
- **05/03/2020** – CCERA evidence session, numerous written briefings received.
- **16/03/2020** – CCERA evidence session
- **16/03/2020** - LJCC evidence session
- **04/05/2020** -, LJCC draft report.
- **07/05/2020** – CCERA draft report.
- **11/05/2020** – LJCC draft report.
- **11/06/2020** – Supplementary LCM laid
- **15/06/2020** - Business Committee consideration.
- **22/06/2020** - LJCC Consideration.
- **25/06/2020** – CCERA consideration
- **25/06/2020** – Inter-committee correspondence.
- **06/07/2020** - LJCC consideration of draft report
- **09/07/2020** – CCERA consider Govt. response to draft report

- Annex 2 – Comparison of LCMs



# Senedd

- 13/07/2020 - LJCC- consideration of draft report
- 17/09/2020 - CCERA- Consideration of Govt. response to draft report
- 17/09/2020 -14/01/2020 both committees correspond with the Minister for Environment, Energy and Rural Affairs on the Basic payment scheme and rural support legislative framework
- 29/09/2020 - Plenary - LCM on the Agriculture Bill
- 11/11/2020 Royal assent granted to Agriculture Act 2020, no LCM recorded as received from the Senedd.

- Scrutiny of the Agriculture Act (2020)



# NI Assembly

- **9/9/2020** – Bill introduced in the House of Commons
- No LCM is laid before the NI Assembly.
- **17/12/2020** Bill receives Royal Assent.



# Scottish Parliament

- **9/9/2020** – Bill introduced in the House of Commons
- **28/9/2020** – Legislative Consent Memorandum introduced.\*
- **30/9/2020** Committee Scrutiny begins – Lead Committee – Finance and Constitution - hold an evidence session.
- **6/10/2020** – F&C Committee hold a private evidence session
- **6/10/2020** - Delegated Powers and Law Reform Committee hold private evidence session.
- **7/10/2020** – F&C Committee hold a private evidence session.
- **7/10/2020** Legislative consent refused.

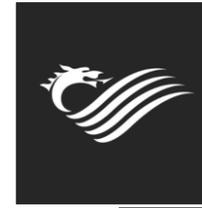
• \* NB Scottish Govt advised withholding consent



# Senedd

- **9/9/2020** – Bill introduced in the House of Commons
- **08/10/2020** - External Affairs and Additional Legislation Committee (EALC) consideration of the Committee's approach
- **12/10/2020** - Legislation, Justice and Constitution Committee –(LJCC) considers correspondence
- **15/10/2020** - EALC consideration of correspondence and papers.
- **19/10/2020** LJCC -Briefing from Welsh Government.
- **02/11/2020** - LJCC Consideration of evidence
- **02/11/2020** - Finance Committee - UK Internal Market Bill: Evidence session
- **09/11/2020** LJCC Consideration of draft report
- **12/11/2020** - EALC evidence, consideration of evidence, and approach to reporting.
- **16/11/2020** LJCC Consideration of draft report and update on the Bill's progress in the House of Lords.
- **19/11/2020** - EALC consideration of draft report.
- **23/11/2020** – LJCC consideration of draft report.

- Annex 2 – Comparison of LCMs



Senedd

- **30/11/2020** – LJCC UK Internal Market Bill - update
- **07/12/2020** - LJCC- Supplementary Legislative Consent Memorandum on the UK Internal Market Bill
- **08/12/2020** - Plenary - **Legislative Consent Motion on the United Kingdom Internal Market Bill-Not Approved.**
- **10/12/2020** - EALC - considered papers and correspondence.
- **14/12/2020** - LJCC- UK Internal Market Bill - update
- **11/01/2021** – LJCC - Statement by the UK Government: Update on the UK Internal Market Bill.
- **25/01/2021** – LJCC - Welsh Government written statement: Legal challenge to the UK Internal Market Act 202025/01/2021
- **01/02/2021** – LJCC briefing.
- **08/02/2021** – LJCC briefing
- **22/02/2021** - LJCC- Correspondence with the SoS Wales: Sewel Convention
- **08/03/2021** – LJCC Correspondence

- Scrutiny of the United Kingdom Internal Market Act (2020)



## NI Assembly

- **4.11.2020/ & 10/3/2021** - Committee for Finance takes evidence on pension reform
- **21/5/2021** Department updates Committee that a draft Executive paper for agreement to lay an LCM in respect of the bill has been circulated.
- **3/6/2021** - Executive agrees to seek LCM.
- **19/7/2021** –Bill introduced in the House of Lords
- **6/09/2021** LCM laid before Assembly.
- **22/9/2021** - “owing to the constrained timescales” the Committee sought the views of relevant statutory committees and undertook a limited number of oral briefings
  - Assembly Research Service
  - IC-ICTU
  - Department of Finance.
- **6.10.2021** Committee considers a draft of the report and orders that it be published.
- **01/11/2021** Legislative Consent Motion agreed by Assembly.



## Scottish Parliament

- **19/7/2021** –Bill introduced in the House of Lords
- As yet no LCM lodged.



## Senedd

- **19/7/2021** –Bill introduced in the House of Lords
- **11/8/2021** – LCM laid before Senedd
- **14/9/2021** –Business Committee assigns LCM to Legislation, Justice and Constitution Committee (LJCC) and Equality and Social Justice Committee (ESJC)
- **11/10/2021** LJCC considers Legislative Consent Memorandum on the Public Service Pensions and Judicial Offices Bill.
- **18/10/2021** - LJCC consideration of draft report
- **01/11/2021** – ESJC consideration of draft report.
- **01/11/2021** – LJCC consider correspondence in relation to LCM.
- **15/11/2021** – LJCC consider correspondence in relation to LCM.