



Northern Ireland
Assembly

Committee on Procedures

Inquiry into Legislative Consent Motions

Together with Minutes of Proceedings, Minutes of Evidence and other evidence
considered by the Committee

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Ordered by the Committee on Procedures to be published 28 February 2022.

**This report is embargoed until the commencement of the debate in the
Assembly**

Report: NIA 179/17-22 Committee on Procedures.

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Powers and Membership

Powers

The Committee on Procedures is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Order 54.

The Committee has power to:

- Consider and review, on an ongoing basis, the Standing Orders and procedures of the Assembly;
- Initiate inquiries and publish reports;
- Republish Standing Orders annually; and
- Call for persons and papers.

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Ms Carál Ní Chuilín MLA (Chairperson)^{1 2 3}
- Mr Tom Buchanan MLA (Deputy Chairperson)
- Ms Rosemary Barton MLA
- Ms Sinéad Bradley MLA
- Ms Nicola Brogan MLA⁴
- Ms Joanne Bunting MLA⁵
- Mr Gerry Carroll MLA
- Ms Ciara Ferguson MLA^{6 7 8}
- Mr William Humphrey MLA^{9 10 11 12}

¹ Mr John O'Dowd joined the Committee on Monday 21 September 2020

² Ms Carál Ní Chuilín replaced Mr John O'Dowd as a Member of the Committee on Monday 18 January 2021

³ From 20 January 2021 Ms Carál Ní Chuilín replaced Ms Linda Dillon as the Chairperson of the Committee

⁴ Ms Catherine Kelly left the Committee on Tuesday 3 November 2020 and was replaced by Ms Nicola Brogan on Monday 30 November 2020

⁵ From 21 June 2021 Ms Joanne Bunting replaced Mr Maurice Bradley as a member of the Committee

⁶ Ms Linda Dillon resigned as Chairperson of the Committee on Procedures on 20 January 2021

⁷ Ms Linda Dillon re-joined the Committee on Monday 1 February 2021

⁸ From 27 September 2021, Ms Ciara Ferguson replaced Ms Linda Dillon as a member of the Committee

⁹ Mr Harry Harvey left the Committee on 17 February 2020 and was replaced by Mr Gary Middleton

¹⁰ From 22 February 2021, Ms Paula Bradley replaced Mr Gary Middleton as a member of the Committee

¹¹ From 22 March 2021, Mr Gary Middleton replaced Ms Paula Bradley as a member of the Committee

¹² From 21 June 2021, Mr William Humphrey replaced Mr Gary Middleton as a member of the Committee

List of Abbreviations and Acronyms used in this Report

The Assembly: Northern Ireland Assembly

The Committee: Committee on Procedures

MLA: Member of the Legislative Assembly

ToRs: Terms of Reference

SO: Standing Order

DGN: Devolution Guidance Note

LCM: Legislative Consent Motion

MoU: Memorandum of Understanding

NI: Northern Ireland

OFMdfM: Office of the First Minister and deputy First Minister

RaISe: Research and Information Services

UKG: UK Government

Executive Summary

1. Devolution means that it is the responsibility of the Northern Ireland Assembly to legislate on devolved matters. The usual way in which this is done is that where new primary legislation on a devolved issue is required, the Executive Minister responsible for the area concerned, after consultation with the relevant Assembly statutory committee and agreement by the Executive, will bring forward a Bill to the Assembly. The Assembly will then carry out its scrutiny of the Bill, amending it as appropriate, before agreeing whether to pass it and bring it into law.
2. Although the Assembly has responsibility for legislating on matters within its devolved competence, the UK Parliament nevertheless retains the power to legislate on devolution matters in respect of Northern Ireland, Scotland and Wales.
3. However, when the UK Parliament wants to legislate on a devolution matter it will "not normally" do so without the relevant devolved legislature having passed a legislative consent motion (LCM). The UK Government has put in place working practices to support this principle.
4. It is not a legal requirement that a devolved legislature must give its consent for Parliament legislating on a devolution matter; rather it is a convention. The convention that the UK Parliament will not normally legislate with regard to devolved matters unless it has the consent of the relevant devolved legislature is known as the Sewel Convention.
5. At the Assembly, Standing Order 42A sets out the procedural arrangements for managing LCMs at the Assembly. Amongst other things, Standing Order 42A:
 - places a duty on Executive Ministers to inform the Assembly of any UK Government Bill that is introduced in the United Kingdom Parliament and which includes provisions that deal with a devolution matter;
 - places a duty on Executive Ministers to either seek the agreement of the Assembly to Parliament considering those provisions of the Bill (via an LCM) or explain to the Assembly why an LCM is not sought;

- provides for a specific memorandum to be laid by the Executive Minister and referred to the relevant statutory committee for scrutiny when an LCM is sought;
 - provides that the relevant statutory committee may, within 15 working days from the date of referral, consider those provisions of the Bill which deal with a devolution matter and report its opinion thereon to the Assembly;
 - provides that, in specified circumstances, a Private Member may lay a legislative consent memorandum and subsequently move an LCM
6. The Executive has advised the Committee that the principle which guides its approach to LCMs is that, where possible, legislation on devolved matters should be made by the Assembly. However, circumstances may arise, for example, in relation to parity or the need for simultaneous enactment across two or more jurisdictions and in these circumstances the use of the LCM is appropriate.
 7. The Committee agrees with this position. Whilst it will be appropriate for the Assembly to legislate on devolved matters in the majority of cases, there will be occasions where it is more appropriate for Parliament to do so. Of course, in order for the Assembly to determine whether Parliament should legislate in relation to a devolved matter, the Assembly needs to have sufficient information and time to inform its decision.
 8. The Executive has also advised that it is satisfied that the broader principles associated with LCMs, within which Assembly procedures play a key part, are sufficiently robust not to require fundamental reform at this time.
 9. The Committee notes this position and agrees that fundamental reform of the principles which underpin the Assembly procedures is unnecessary at this time. However, the Committee's inquiry has established a number of instances where either the Assembly's procedures have not been followed or where they have been followed but where issues have nonetheless arisen.
 10. The Committee noted with concern that there have been instances where legislation dealing with devolved matters has passed through Parliament

without the relevant Minister having informed the Assembly in line with the requirements of Standing Order 42A. There have also been instances when committees would have had additional time to carry out their scrutiny but where the provisions of Standing Order 42A have not allowed them to do so.

11. The Committee has also noted with concern the practice of the UK Government legislating on devolved matters either when the Assembly has not been made aware of a Bill that deals with a devolution matter and or has not given its consent.
12. The Committee therefore considers that there is scope to make some amendments to both the practice and the arrangements for managing LCMs at the Assembly which would enhance the ability of the Assembly to carry out its scrutiny and bring more transparency to the processes.
13. These enhancements include:
 - Strengthening of the arrangements to ensure that the Assembly is made aware in a timely manner of Bills in Parliament which require legislative consent
 - Improved communication from Ministers to the Assembly when normal timescales cannot be met
 - Flexibility to enable committees, where possible, to have additional time to carry out their scrutiny and report to the Assembly
 - Suggestions to Parliament about how it takes account of the Assembly's position in relation to legislative consent
 - Increased visibility in relation to Bills that require an LCM and the work undertaken by the Assembly in relation to this.
14. The specific recommendations arising from this inquiry are as follows:
 - **Recommendation 1:** The Committee concludes that Executive Ministers must improve the timeliness of when they lay memoranda under the provisions of Standing Order 42A(4). There is no reason why in normal circumstances such memoranda should not be laid within 10 working days.

- **Recommendation 2:** The Committee recommends that Standing Order 42A should be amended to include explicit provision for a Minister to lay a memorandum before the Assembly, normally within 10 working days, where a relevant Bill has been introduced to Parliament and where the Minister has not yet taken any decision on whether to ask the Assembly to give its consent. This will remove any doubt on the part of Ministers that such an approach can and should be taken.
- **Recommendation 3:** The Committee also recommends that, in those exceptional circumstances in which it is not possible to lay a memorandum within 10 working days, any memorandum should be laid as soon as possible thereafter and should set out the reasons why the normal deadline of 10 working days was not met.
- **Recommendation 4:** The Committee concludes that instances of NI Ministers failing to comply with Standing Order 42A, and as a result Parliament legislating on devolved matters without either the Assembly's knowledge or approval, are unacceptable. The Committee has been offered no explanation for why this has been allowed to occur. It deprecates the practice and calls on Executive Ministers to ensure this never happens again.
- **Recommendation 5:** In response to the challenges around the reasonableness of timescales reflected in the responses from statutory committees, the Committee recommends that Standing Order 42A should be amended to allow for more flexibility in relation to timescales for committees (where this is possible) based on the planned timescale for the passage for the specific Bill through Parliament.
- **Recommendation 6:** The Committee notes with concern the practice of the UK Government legislating on devolved matters either when the Assembly has not been made aware of the Bill and / or has not given its consent. The Committee has corresponded with Parliament seeking procedural enhancements and improved communication and transparency in relation to Bills where LCMs are needed.

- **Recommendation 7:** The Committee recommends that, in the interests of improved transparency in relation to Bills that require legislative consent, the Assembly should introduce enhanced recording, reporting and publication arrangements in relation to LCMs.
15. If the Assembly is content to agree the Committee's recommendations an amended version of Standing Order 42A should be brought forward for the Assembly's agreement.

Introduction and Terms of Reference

16. When the Assembly resumed in early 2020, one of the first tasks for the Committee on Procedures was to identify its strategic priorities and agree a forward work programme for the remainder of the 2020-2022 mandate.
17. Collation of topics for consideration on the forward work programme was ongoing when, on 10 March 2020, the Speaker wrote to the Committee reflecting on a recent quadrilateral meeting which had taken place with counterparts in Scotland, Wales and England. In this correspondence the Speaker fed back to the Committee that *“it is clear that the context created by Brexit has created pressure on LCM procedures in all of the devolved legislatures and they are all considering whether improvements are needed. In addition, I believe that there is a recognition in Westminster that procedures around the handling and communication of decisions on legislative consent from the devolved legislatures may have to be reviewed to take account of the new political circumstances.”*
18. The Committee subsequently agreed to prioritise this inquiry and agreed Terms of Reference, on 25 March 2020. The terms of reference were agreed as follows:
 - i. review the circumstances in which use of a Legislative Consent Motion is considered appropriate;
 - ii. review the processes through which Legislative Consent Motions are introduced to the Assembly;
 - iii. review the mechanisms by which the Assembly specifically gives, or does not give, its consent;
 - iv. review the arrangements for consultation with and consideration and reporting by committees of the proposed legislation and its out workings; and
 - v. to consider the need to introduce a Standing Order/amendments to Standing Orders to address the issues identified within the inquiry

Background

19. Following Committee agreement to prioritise an inquiry into Legislative Consent Motions in March 2020, research was commissioned from the Assembly's RaISe team and a briefing provided to the Committee in October 2020. The full research paper can be found at Appendix 5 or can be reviewed via the following link:
<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2020/procedures/5920.pdf>
20. The Committee agreed that it should consult with all of the other stakeholders involved in the handling of LCMs, to gather their perspectives and to understand better whether the current arrangements were working well or not. The Committee sought the views of the Executive and all of the Political Parties and Independent MLAs in the Assembly as well as those of the Statutory Committees dealing with LCMs.
21. Although progress on the inquiry slowed in late 2020 whilst the Committee was diverted to making amendments to Standing Orders in order for Assembly Business to continue as the pandemic endured, Committee returned to its considerations in February 2021 when it agreed to "...liaise with other legislatures, including *Westminster Committees and the House of Lords, to seek their views on the current LCM procedures. In particular, whether there is scope to take more time in scrutinising LCMs.*" In the months which followed the Committee considered a broad range of evidence in relation to this inquiry.

Further Background Context

22. The existing arrangements which are set out in Standing Order 42A (SO 42A) were originally put in place following an inquiry undertaken in 2009 by the then Committee on Procedures. The outcome of that inquiry was nine recommendations and the introduction of Standing Order 42A making specific arrangements for the handling of LCMs in the NI Assembly as well as notification of the details of decisions taken in the Assembly to Westminster.
23. SO 42A was agreed by the Assembly on 24 January 2012 and has remained as follows since that date:

SO 42A: Legislative Consent Motions

- (1) *A legislative consent motion is a motion which seeks the agreement of the Assembly to the United Kingdom Parliament considering provisions of a Bill which deal with a devolution matter.*
- (2) *A legislative consent memorandum shall be laid in respect of any devolution matter for which a legislative consent motion is proposed.*
- (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.*
- (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.*
- (6) *Upon a legislative consent memorandum being laid before the Assembly, those provisions of the Bill dealing with a devolution matter shall stand referred to the appropriate statutory committee unless the Assembly shall order otherwise.*
- (7) *The committee may, within 15 working days from the date of referral, consider those provisions of the Bill which deal with a devolution matter and report its opinion thereon to the Assembly.*
- (8) *A legislative consent motion shall not normally be moved until at least—*
- (a) *5 working days after publication of the committee report; or*
 - (b) *20 working days after the date of referral to the committee.*
- (9) *A subsequent legislative consent motion may be moved if appropriate, having regard to the nature of any amendment dealing with a devolution matter made, or proposed to be made, to the Bill. Paragraphs (4) to (8) shall not apply to that motion.*
- (10) *In this order a “devolution matter” means—*
- (a) *a transferred matter, other than a transferred matter which is ancillary to other provisions (whether in the Bill or previously enacted) dealing with excepted or reserved matters;*
 - (b) *a change to—*
 - (i) *the legislative competence of the Assembly;*
 - (ii) *the executive functions of any Minister;*
 - (iii) *the functions of any department.*
- (11) *In this order the “relevant day” means—*
- (a) *in respect of a Bill other than a Private Member’s Bill—*
 - (i) *the day the Bill is introduced in the United Kingdom Parliament; or*

(ii) *the day the Bill completes the stage in the United Kingdom Parliament during which an amendment is made to the Bill which makes it a Bill to which this order applies;*

(b) *in respect of a Bill which is a Private Member's Bill—*

(i) *the day the Bill completes the first stage at which it may be amended in the House of the United Kingdom Parliament in which it was introduced; or, if later,*

(ii) *the day the Bill completes the stage in the United Kingdom Parliament during which an amendment is made to the Bill which makes it a Bill to which this order applies.*

(12) *This order does not apply in respect of Bills which are consolidation Bills or Statute Law Revision Bills.*

24. The report of the 2009 Inquiry noted that; “While the current processes are adequate, they are Executive-driven and the majority of Assembly members lack the information necessary to contribute effectively to the debates. Better information for members will bring better decision making. The Committee believes that adoption of its recommendations will bring about not only clarity, through new Standing Orders and processes, but an increased understanding of the issues.”
25. It is noteworthy that the findings of an inquiry dating back more than 12 years identified the need for Members to have better information, to have early notification of forthcoming LCMs as well as the need for increased awareness of the individual devolution issues, in the hope that this would lead to more involved debates on matters pertaining to legislative consent.
26. As the Committee received and considered the responses received from the statutory committees in the Assembly, they agreed that it would be useful to understand the experience of handling of LCMs in the other devolved legislature and agreed that the methodology for the inquiry should include;
- comparative research on legislative consent procedures and developments in Scotland and Wales;
 - taking oral evidence from a small number of informed witnesses, including the Institute for Government;

- seeking further written submissions those committees of the Assembly which have particular recent experience of dealing with LCMs (since January 2020); and
- engaging with the Procedures Committee in the House of Commons and the Constitution Committee in the House of Lords, with particular suggestions in relation to their own inquiries which related to LCMs and the Sewel Convention.

27. Responses were received from the following Assembly committees reflecting on their experience of dealing with legislative consent motions and making constructive comments in terms of how the current arrangements could be improved or amended:

- Committee for Justice – including correspondence from the Justice Minister
- Committee for Agriculture, Environment and Rural Affairs;
- Committee for Communities
- Committee for the Economy
- Committee for the Executive Office
- Committee for Finance

28. Responses were also received from a range of other stakeholders, sharing specific insight and experience of LCMs from their relative perspectives. These contributions can be found at Appendix 2 and were received from:

- The First Minister and deputy First Minister (on behalf of the Executive)
- A number of the NI Assembly political parties including Sinn Fein, Alliance and the SDLP
- The Convenor of the Scottish Parliament
- The Minister of State (on behalf of the Secretary of State for NI)

Current Position

Legislative Consent (The Sewel Convention)

29. Legislative consent relates to the convention that the UK Government would not normally legislate on devolved matters without first gaining the agreement of the devolved legislature – i.e. the Scottish Parliament, National Assembly for Wales or the Northern Ireland Assembly. This agreement is often referred to as the Sewel Convention. The convention is based on a statement made by Lord Sewel, the UK Government Minister, when the Scotland Bill was going through Parliament in 1998.
30. The convention was subsequently underpinned in an MoU in 2013 between the UK Government and the Scottish Ministers, Welsh Ministers and the NI Executive, as follows;

“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 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.”
31. 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.
32. 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].

33. There is no equivalent statutory provision in relation to Northern Ireland, but the decision to put the Sewel convention on a statutory footing does not change its status as a convention. The statutory provision does not 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”*.
34. This “convention” which underpins the management of LCMs worked apparently well and without much controversy until the last couple of years and changes required following the UK’s decision to exit the EU. The Institute for Government have described this emerging tension comprehensively in their 2020 report **Legislating by Consent: How to revive the Sewel convention**: *“from the point of view of the devolved administrations, Brexit has exposed the convention’s limitations as a guarantee of devolved autonomy.”* Concluding that, *“the legislative consent process should be strengthened and reformed, to rebuild consensus about the principles governing the UK–devolved relationship.”*

The Convention “Under Pressure”

35. The EU Withdrawal Act(s) amended the devolution settlements for the three devolved parliaments. These Acts also gave UK Ministers powers to temporarily “freeze” the ability of devolved institutions to modify retained EU law as well as 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 and Wales have procedures in their standing orders for granting consent to such to SIs.
36. The Committee sought evidence from the Institute for Government in relation to its review of Sewel in practice and the aforementioned report in which it warned that: *“if the UK government decides to make a habit of legislating without*

*consent in devolved areas, without making serious attempts to secure that consent, then the implications for the stability of the Union could be severe.*¹³

The Changing Context for the Inquiry

37. The Committee acknowledged as 2021 progressed that the context for its inquiry was changing externally and that it would be constructive to relate the findings and conclusions from its inquiry considerations to this evolving context and to consider whether suggestions or recommendations for improvements in the handling of devolved decisions should also come from the Committee to the relevant Committees in the Houses of Parliament.
38. To further inform its considerations of the wider context for its Inquiry, Committee sought a briefing directly from the authors of the IfG report, noting that they had concluded, amongst other things, that: “passing UK-wide legislation in Westminster without the consent of the devolved nations’ risks undermining the stability of *devolution and power-sharing in Northern Ireland*.” Akash Paun and Kelly Shuttleworth from the IfG provided a briefing to the Committee on the key elements of their report at its meeting on 19 May 2021, drawing attention to their eight key recommendations.¹⁴ The Hansard record of the briefing from the IfG representatives can be viewed at Appendix 6. During this briefing the Committee asked a number of questions to the report authors, seeking their perspectives on;
- Whether or not the Sewel Convention (as a Convention) is working well and if they thought it could continue in its current form?
 - How the reform of Sewel could strengthen accountability of UK and NI Ministers? and

¹³ Akash Paun and Kelly Shuttleworth, Institute for Government, *Legislating by consent: How to revive the Sewel convention* (September 2020)

¹⁴ Full report can be found via the following link:
<https://www.instituteforgovernment.org.uk/sites/default/files/publications/legislating-by-consent-sewel-convention.pdf>

- Whether there were any Northern Ireland specific considerations which the IfG would wish to highlight or recommend further consideration of?

39. It became apparent to the Committee at this stage in the inquiry that, although the inquiry was seeking to understand whether the existing procedures were adequate to support the effective handling of LCMs within the Assembly, that suggestions for improvements to the current arrangements should also be made to those other stakeholders in the overall process (whilst acknowledging that the Committee could not in any way require other institutions to make the suggested changes). By coincidence of timing, as the Committee continued its inquiry work in 2021, both the House of Commons Procedures Committee and the House of Lords Constitution Committee were also looking at Sewel and LCMs from their own perspectives.

Parliament, Devolution and the Sewel Convention

40. The House of Commons inquiry was entitled: ***The Procedure of the House of Commons and the Territorial Constitution***. The Committee Chair and Deputy Chair met with counterparts from the HoC Committee via video-conference in May 2021 and Committee agreed a written submission to the HoC inquiry in June 2021, which can be viewed at Appendix 1.
41. The House of Lords Inquiry came to the attention of the Committee more tangentially, in the Autumn term of 2021 as a consequence of a visit to the Assembly by the Lord Speaker (Lord McFall of Alcluith) when the subject of the handling of LCMs was discussed. The context for the visit was that one of the Lord Speaker's priorities is building stronger ties between the House of Lords and the devolved legislatures in order to improve how the respective governments or Executives are held to account. During his visit the Lord Speaker met with the Speaker of the Assembly and with a cross-party delegation to discuss options for doing this.
42. As part of this visit the Lord Speaker received a briefing from the Clerk Assistant on the Assembly's arrangements for considering LCMs. The Lord Speaker was informed about the Committee's Inquiry and where it had identified issues with the Assembly's procedures and where these overlap with the role of Parliament.

Having heard about the Assembly's experience, the Lords Speaker suggested that the Assembly might wish to also share its views on its experience of LCMs with the House of Lords Constitution Committee, which by coincidence of timing, was also conducting an Inquiry into the ***Future Governance of the UK***, an aspect of which involved the topic of legislative consent.

43. The Committee agreed to send correspondence to the HoL Constitution Committee and to reflect in it reference to those areas for reform which had the potential to improve the Assembly's experience of the LCM process and procedures and in relation to which it had corresponded with the House of Commons Procedures Committee.
44. As more than 18 months had passed since the Committee had commenced its Inquiry and as a result of further correspondence received from one of the Assembly's own statutory Committees in relation to LCMs, the Committee considered that it would be beneficial to ask the statutory Committees of the Assembly (again) for their recent perspective and experience of LCMs since the Assembly had returned in January 2020 and, in particular, whether they were experiencing an increase in the number of LCMs for consideration.
45. In order to provide a detailed evidential basis for the inquiry findings, the Committee also commissioned a further RaISe paper, seeking an analysis of the dates and timescales between a Bill commencing its passage in Parliament and the laying of a legislative consent memorandum in the Assembly and whether, consequently consent was consistently being sought from and provided by the Assembly. The Committee considered all of the information collated in that paper in December 2021 and noted a number of important issues for its Inquiry conclusions¹⁵.

Numbers of LCMs

46. The Committee has noted from the research papers provided to it that that the devolved administrations have observed a rise in LCMs and their associated workload, and that it is a reasonable assumption that this trend will continue in

¹⁵ The RaISe Paper can be found at Appendix 5

the wake of the UK's exit from the EU. Committee noted an analysis by the Institute for Government which outlined 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. However, 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.

47. The Committee did however note that, in the short term, this increase in number is an obvious outworking of the UK's exit from the EU and that legislation has been (and will most likely continue to be) passed which deals with any potential for divergence in devolved areas of competence previously dealt with by EU law.

Procedures for dealing with requests for Legislative Consent across the UK Legislatures

48. The Standing Orders of the Scottish Parliament, Senedd and Northern Ireland Assembly set out how each legislature deals with requests for legislative consent. 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
49. All three legislatures now have in place Standing Orders to regulate the process. The Scottish Parliament developed Standing Orders in 2005 and in 2009 the Northern Ireland Assembly followed Scotland's example to formalise the process. 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.

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.

50. **In the Scottish Parliament** Chapter 9B of the Standing Orders of the Scottish Parliament 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.
51. **In the Senedd**, a similar procedure applies and Standing Orders set out how the Senedd deals with requests for legislative consent. 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.
52. The Business Committee in the Senedd “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.
53. 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.

54. In common with the Standing Orders of the other devolved parliaments, **Standing Order 42A of the NI Assembly** 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. A legislative consent motion shall not normally be moved until at least (a) 5 working days after publication of the committee report; or (b) 20 working days after the date of referral to the committee.
55. Whilst the procedures for dealing with legislative consent appear to be similar in each of the devolved parliaments, the “practice” or discipline does appear to be different when a comparison of how each legislature handled one specific Bill is undertaken. See the example of the 2020 Trade Bill, below:

The Trade Bill 2020 was introduced to Parliament on 19 March 2020. The UK Government said that the Bill would require legislative consent.

- In Wales the Welsh Government laid a legislative consent memorandum on the Bill before the Senedd on 2 April 2020. The relevant committees reported in advance of their deadline on 1 October 2021. The Legislative Consent Motion for the Trade Bill was then agreed in Plenary by the Senedd on 12 January 2021.
- In Scotland the Scottish Government laid a legislative consent memorandum on the Bill before the Scottish Parliament on 18 August 2020. The relevant committees reported on 25 September and 7 October 2020. The Legislative Consent Motion for the Trade Bill was then agreed in Plenary by the Parliament on 8 October 2020.
- In Northern Ireland the Minister did not comply with the duty in Standing Order 42A to inform the Assembly about the Trade Bill. As a result, there was no memorandum referred to the relevant committee and no scrutiny carried out of the devolved matters within the bill. This was noted by Lord Grimstone on behalf of the UK Government who

said on 18 January 2021 at the third stage reading of the Bill in the House of Lords:

“I am pleased to say that the Senedd and the Scottish Parliament have both granted legislative consent, and I am grateful to colleagues in the Welsh and Scottish Governments, who have worked tirelessly to consider this Bill and schedule the necessary votes. However, the Northern Ireland Executive have not brought forward a legislative consent memorandum, and the Assembly has therefore not voted on legislative consent. I reassure noble Lords that the Government will continue to engage with the Northern Ireland Executive.”

The Trade Act received royal assent on 29 April 2021 without a memorandum ever having been laid by the Minister (and therefore without the Assembly having ever carried out scrutiny of the devolved matters within it).

Committee Considerations

56. The consultation responses expressed a range of perspectives on the current procedures for handling LCMs, from satisfaction with the status quo to dissatisfaction with the arrangements in relation to their use and pressure associated with the Assembly's own set time limits as set out in SO 42A. A number of Assembly parties and Committees did not respond to the consultation and a number of the Committees consulted did not agree a Committee position, instead agreeing that responses should come from political groupings.
57. All of the consultation responses received were considered by the Committee at its meetings in 2020, 2021 and early 2022. The detail of the responses received can be reviewed in the Appendices of the report at Appendix 2, extracts of which are set out in subsections I-V to follow, in line with each of the TORs of the Committee's inquiry.

I. Review the circumstances in which use of a Legislative Consent Motion is considered appropriate.

58. The written evidence received during the inquiry generally reflected that the appropriate use of LCMs can be expedient and negate the requirement for NI Committee scrutiny and resources when the legislative matter in question is a technical change or an update to legislation which is not contentious.
59. **Party and Committee** perspectives differed most with regard to this specific aspect of the TORs. The Alliance Party, SDLP and Sinn Fein provided written responses. Committee responses were received from Committees for the Executive Office, Economy, Finance, Justice, Communities and the Committee for Agriculture, Environment and Rural Affairs.

Party Responses

60. The SDLP response focussed on this specific Term of Reference, stating that: *The SDLP are of the firm opinion that the Northern Ireland Assembly should be charged with scrutinising and passing legislation that people here will be*

subjected to. This is particularly true when referencing matters that are devolved to our Institutions and Departments.

On that basis the SDLP believes Legislative Consent Motions should be avoided, when possible.

The SDLP however does recognise that a legislative overlap, may on occasions arise between devolved matters and issues that are legislated for in Westminster. We believe it is our duty to examine fully the possibility of dealing with such situations within the scrutiny role of the Northern Ireland Assembly before any consideration is given to the use of an LCM.

Only when it has been made abundantly clear that an LCM is the only suitable vehicle for delivery should it be allowable.

61. The Sinn Féin response also focused on this aspect of the TORs, outlining that: *Sinn Féin believes that legislation impacting people in the north of Ireland should, where possible, be taken through the Assembly and subjected to full democratic scrutiny and agreement.*

However, while the LCM process is not our preferred way to introduce legislation we will continue to assess LCMs on a case by case basis and will only consent to this process if an LCM is absolutely and demonstrably necessary?

62. The Alliance Party response included the following comment in relation to the circumstances and use of LCMs: *Alliance are supportive of the procedures in place to deal with 'normal' legislative consent motions, and would not seek to make changes. However, an addition which could be considered is the examination of how the Northern Ireland Assembly informs the UK Government of opposition to an LCM (although we recognise this is rare, it is worthwhile examining).*
63. The Executive response outlined a general level of satisfaction with the current arrangements, stating that: *we are satisfied that the broader principles associated with LCMs, within which Assembly procedures play a key part, are sufficiently robust not to require fundamental reform at this time.*

Committee Responses

64. The Committee for the Economy response provided perspective on each specific ToR. In relation to this aspect, the Committee for the Economy stated that: *The Committee will always be vigilant when the competence of the Assembly and, by extension, committees, is overridden by legislation by the UK Parliament. Members are keen to have a clear understanding of why this is necessary and the impact that it has, including whether it curtails the Assembly competence, either temporarily, in the longer-term, or permanently. In the majority of cases there is a logical and appropriate reason for the LCM, and Members can approach it as a piece of legislation which is subject to the usual rigorous level of Committee scrutiny.*
65. The Committee added further that: *Standing Order 42A paragraph (3) sets down what is required to ensure that the Committee is given the proper opportunity to scrutinise based on clear information and a sound justification for the need for the LCM. It is vital that the LCM is accompanied by this information so that the Committee can properly scrutinise this and any other piece of legislation....The circumstances in which the LCM is used are clearly set down in the Standing Order and, therefore, the Committee would not seek to change that.*
66. The Committee for Communities raised a number of concerns in its response: *Whilst the Committee understands the need for LCMs in certain circumstances, it would like to highlight a number of points:*
- *The Committee has some concern about their over-use – it feels that their use should be based on necessity, not convenience;*
 - *The Committee proposed that a Department or Minister should clearly demonstrate the need for the use of an LCM and suggested that this could be accomplished through an accompanying ‘statement of rationale’*

ToR I

SUMMARY OF EVIDENCE: the circumstances in which use of a Legislative Consent Motion is considered appropriate:

- Use of LCMs for technical changes and updates to legislation generally works without issue
- Concerns raised about “over-use”; lack of advance information and the associated ability of Committees to plan and manage their work
- Party Political views varied, reflecting a preference for decisions in devolved areas to be made in the NI Assembly.

II. Review the processes through which Legislative Consent Motions are introduced to the Assembly.

67. This second ToR of the inquiry drew less specific comment in terms of the written responses received, with the exception of a number of similar comments on the need for improved advance information sharing in order to enable better planning.
68. None of the written responses from the political parties made specific reference to this ToR although the Alliance Party expressed concerns in relation to a potential gap in procedures, in terms Statutory Instruments, commenting: *It is therefore important to have a mechanism by which the NI Assembly can scrutinise statutory instruments, which arise from the EU Withdrawal Act. Standing Orders similar to those in Scotland or Wales would be beneficial in order to ensure explicit options of scrutiny for the Assembly.*
69. In terms of Committee responses, the Committee for Economy response stated that: *The circumstances in which the LCM is used are clearly set down in the Standing Order and, therefore, the Committee would not seek to change that.* The Committee for Economy added further that: *[The Committee Inquiry] may wish to consider a mechanism for such a challenge function with greater public clarification regarding the perceived need for the LCM. The response from the Committee for the Economy further added: The Committee on Procedures may*

wish to consider stipulating a requirement for some level pre-legislative engagement by the relevant Executive minister with the relevant committee.

70. The Committee for the Executive Office response stated: *the Committee for the Executive Office wishes to highlight the need for early and full engagement between departments and committees on matters which may involve seeking legislative consent from the Assembly in the future. A similar point was made in the response received from the Committee for Communities which stated that: it would be very useful to know, as far in advance as possible, how many LCMs a Department is planning to introduce in order that it can devote sufficient time to scrutinise them properly.*
71. The further research papers which the Committee commissioned from RaSe highlighted that, in practice, Committees are working on the scrutiny of a (forthcoming) LCM often well in advance of the *laying of the legislative consent memorandum* with the Assembly. The response from the Committee for the Economy also stated: *Laying a LCM within 10 working days of the parent legislation is sometimes cut short, creating further pressure on the relevant committee.*
72. An analysis undertaken by RaSe of all of the dates for Bills requiring LCMs demonstrates that [In an examination of LCMs since January 2020]: *Of the 16 occasions on which the LCM was laid outside the 10 day period, on at least 14 occasions the Committee started work on the LCM before they had formal sight of it. On the occasions on which the time limit in the Standing Orders was complied with, (namely four) only one Bill took longer than a month to progress from introduction in the UK Parliament to Royal Assent. Where an LCM was laid outside the 10 working days, each associated Bill took longer than a month to complete its passage through Parliament.*¹⁶
73. A review of the data by RaSe demonstrates that the Assembly Committees often receive briefings on potential LCMs in advance of the formal tabling of the LCM in the Business Office.

¹⁶ January 2022 report from RaSe – Appendix 5

ToR II

SUMMARY OF EVIDENCE: the processes through which Legislative Consent Motions are introduced to the Assembly:

- Committees emphasised the need for advance information to enable better forward planning
- Early and full engagement needed between UKG Ministers and NI Executive Minister as well as between NI Minister and NI Assembly
- Research analysis demonstrates a lack of adherence to the requirements of existing SO 42A, identifying areas where current arrangements could be improved

III. Review the mechanisms by which the Assembly specifically gives, or does not give, its consent.

74. In terms of Party responses received, the Alliance and SDLP responses made specific comment on this aspect of the ToRs. The Alliance party expressed the view that: *an addition which could be considered is the examination of how the Northern Ireland Assembly informs the UK Government of opposition to an LCM (although we recognise this is rare, it is worthwhile examining).*
75. The SDLP comment was less specific in terms of a procedural mechanism for not providing consent, emphasising that: We believe it is our duty to examine fully the possibility of dealing with such situations within the scrutiny role of the Northern Ireland Assembly before any consideration is given to the use of an LCM...Only when it has been made abundantly clear that and LCM is the only suitable vehicle for delivery should it be allowable.
76. The responses received from Committees tended to focus on the issues of advance planning, adequate time for scrutiny and reporting as well as the possibility of introducing a procedural mechanism to support a Committee requesting a short extension for more thorough scrutiny of the devolved matter. The Committees for the Economy and Justice also described the challenges posed when changes to Bills for which an LCM is needed are made at later

stages of passage in Parliament, which could require further review or changes to LCM considerations previously carried out by the relevant scrutiny Committee.

77. The response from the Economy Committee did further suggest the need for a degree of challenge in the existing LCM process, suggesting: *the Committee on Procedures may wish to consider whether there should be a more transparent challenge function carried out by the relevant Executive minister. The LCM is a device that is not well-known or understood by the wider public and that lack of knowledge could create suspicion that the UK Parliament is not respecting the devolution settlement. Perhaps the Committee on Procedures may wish to consider a mechanism for such a challenge function with greater public clarification regarding the perceived need for the LCM.*

ToR III

SUMMARY OF EVIDENCE: the mechanisms by which the Assembly specifically gives, or does not give, its consent

- Party responses reflected the need to examine how to procedurally represent opposition to a motion [refusal of consent]
- Some Committee responses reflected that more “challenge” in the process and better publication of LCM information could improve public awareness of LCMs

IV. Review the arrangements for consultation with and consideration and reporting by committees of the proposed legislation and its out workings.

78. The responses from Committees in relation to this aspect of the inquiry were the most extensive in terms of identifying aspects of the existing arrangements for the handling of LCMs which would benefit from amendment or changes. The Party responses did not address this particular ToR.
79. The Committee responses varied in the extent of examples and details provided and can be found at Appendix 3. All of the responses received did however

refer to the time-constraints placed on them as a result of the current arrangements. The Committee for Finance response outlined that: *included within the 15-day timescale, is the scheduling of witnesses, consideration of the evidence received and subsequent findings and agreement of a Committee report to inform the Assembly.* The Committee for Finance further added that: *the current timescales do not seem to be appropriate to provide sufficient opportunity for a statutory committee to properly scrutinise the impacts of provisions within a LCM which may, where relevant, require evidence from interested parties or groups with particular experience or expertise.*

80. In the latter stages of the Inquiry the Committee for Justice wrote for a second time to the Committee in order to highlight a recent example of the challenges which the current arrangements present. The evidence provided described the experience of LCM considerations in relation to the Police, Crime, Sentencing and Courts Bill and is summarised below.

Police, Crime, Sentencing and Courts Bill

- Jan 21 - Committee is first briefed by officials from the Department of Justice on the relevant provisions in the Bill
- March 21 – Bill introduced at Westminster
- March 21- Sept 21: Committee had detailed engagement with the Department and key stakeholders including the NI Human Rights Commission on a number of issues relating to those provisions.
- Committee was advised during that time of additional provisions that either the Department of Justice had requested should be included in the Bill or which may be made by amendment at Westminster.
- 12 October 2021- Legislative Consent Memorandum laid by the Minister of Justice

81. The Committee for Justice reflected that it; *is fortunate to have had the opportunity on this occasion to undertake scrutiny in advance of the LCM being laid. It would otherwise not be possible for the Committee to consider the*

devolved provisions to be included in the LCM fully and properly and report to the Assembly within the 15 days that will be allowed under Standing Order 42A(7) once the LCM has been laid. As a result, the Committee for Justice agreed to: underline the inadequacy of the timeframe provided for in Standing Orders for Committees to consider provisions which deal with a devolution matter and report to the Assembly, especially when dealing with LCMs that are of particular significance or complexity.

82. Committee has reflected this experience of the NI Statutory Committees in its submissions to the House of Commons and the House of Lords, emphasising that if there is not good advance communication of forthcoming LCMs to the NI Assembly, then it can be the case that, where bills proceed very quickly through Parliament then, on occasion, there may not even be fifteen days for committees to carry out scrutiny.
83. The Committee acknowledged that if a Bill is going to progress very slowly through Parliament – and some Bills can take up to a year – then it seems only reasonable that there should be some way of the devolved legislatures having additional time to consider the matter and agreed to consider possible amendments to existing arrangements as part of its inquiry.
84. In order for the Committee to form an evidence-based view on whether or not the experience outlined by the Justice Committee is a common one, a specific piece of further research analysis was commissioned by the Committee from RaISe to establish whether the current timescales set out in SO42A are unhelpful to Committees and whether there might be scope to change them, seeking specific data on the details in relation to LCMs [since January 2020] to include;
 - 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); and

- 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).
85. In December 2021 the Committee received a briefing on this information from RaISe which also set out the progress of LCMs in each of the three devolved legislatures of the UK Parliament, highlighting the differences in approach by each legislature in relation to three separate pieces of legislation. The full RaISe report can be reviewed at Appendix 5. The document analyses the timelines illustrated by the data set out in tables and also considers the impact that the scheduling of LCMs (and the associated timeframes) has on committee scrutiny. A number of examples underlined for the Committee a lack of adherence to SO 42A by Ministers and the consequential pressure this places the relevant scrutiny committee under.
86. This information demonstrated clearly for the Committee that there had been a number of occasions where NI Ministers had not acted in accordance with the requirements of Standing Order 42A (4), by laying a legislative consent memorandum before the Assembly within the 10 working days prescribed, outlining (on page 3) that; *Within the period for which data was collected (i.e. January 2020-November 2021), Ministers complied with the 10 working day period on 4 occasions. On 11 occasions no LCM was laid. On 16 occasions the LCM was laid outside the 10 working day period.* This information made it clear for the Committee that the parameters set out in SO 42A(4) are, in the majority of cases, not being adhered to.

ToR IV

SUMMARY OF EVIDENCE: the arrangements for consultation with and consideration and reporting by committees of the proposed legislation and its out workings

- Committees reported not having adequate time to undertake timely and robust scrutiny of a devolution matter once an LCM is laid

- There are examples of NI Ministers not acting in accordance with SO 42A by either not laying the LCM within 10 days (SO 42A(4)) AND, not laying an LCM at all
- There have been a number of Bills passed in Parliament, where an LCM was required and in relation to which a Memorandum was not laid in the Assembly

V. To consider the need to introduce a Standing Order/amendments to Standing Orders to address the issues identified within the inquiry.

87. Having considered all of the evidence provided in response to the Committee's consultation exercise as well as the information received via correspondence and in the additional research and analysis reports from RaISe, a number of issues with the current arrangements can be identified. Addressing the issues identified will extend beyond the direct remit of the Committee, particularly in terms of communications with UKG and Parliament, but the Committee has taken the opportunity provided by the engagements associated with this inquiry to already make a number of suggestions for enhancements to the current arrangements in direct communication with both the House of Commons Procedures Committee and the House of Lords Constitution Committee.
88. Each of the issues identified by the Committee is addressed in turn in the sections which follow, forming the Conclusions and Recommendations of the Committee in relation to its inquiry.

Conclusions and Recommendations

89. The Committee on Procedures has concluded that whilst Standing Order 42A has worked reasonably well since its development and implementation, that after more than ten years, there is scope to make some amendments to both the practice and the arrangements for managing LCMs at the Assembly that would enhance the ability of the Assembly to carry out its scrutiny. The conclusions and recommendations of the inquiry are set out below grouped according to whom they relate.

Role of Executive Ministers

90. Standing Order 42A provides that: *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.*
91. Standing Orders specifically provide that these timescales shall *normally* apply. However, its provisions also allow that, where exceptional circumstances arise, Ministers may lay a memorandum after this deadline. This reflects the fact that there may be occasions when there are unplanned or emergency bills dealing with devolution matters that are introduced to Parliament without there having been prior engagement between the relevant department here and the relevant UK Government department.
92. Devolution Guidance Note 8 - which sets out guidance for UK Government departments on the handling of legislation affecting Northern Ireland – provides that *prior to the introduction of a relevant Bill to Parliament any devolution-related issues are required to have been substantively resolved between the UK Government department and the relevant department here*. Consequently, if this approach is being observed by the UK Government, the circumstances in which an NI Department finds itself having to react to a Bill about which it has

not had a prior opportunity to determine whether it wishes to give consent, should be rare.

93. A report from a previous Committee on Procedures set out the steps to be undertaken by an NI department further to engagement between it and the relevant UK department. Prior to the introduction of a Bill in Parliament which contains provisions relevant to Northern Ireland, the NI Minister should consult with the relevant statutory committee on the policy content and on the principle of these provisions. The Minister should then seek agreement from the Executive to:
 - i. the policy content of the provisions
 - ii. these provisions being carried in a Westminster bill, and
 - iii. consent of the Assembly being sought.
94. Following consultation and subject to agreement, the NI Minister should confirm the Executive's agreement to devolved provisions being carried in a Westminster Bill to the UK Government.
95. Therefore, by the time of a relevant bill's introduction to Parliament, an NI Minister should be well placed to lay a memorandum in a timely manner (i.e. within 10 days) setting out why the Assembly's consent is sought. In theory, a Bill containing a devolution matter would not be introduced in Parliament if the relevant NI Minister has not already confirmed that there is Executive agreement for this approach.
96. Despite these arrangements which should ensure that, in the majority of cases, the process of informing the Assembly about a Bill which requires legislative consent is a straightforward matter, the Committee has established that Ministers are routinely not laying legislative consent memoranda in line with the normal requirements.
97. As previously outlined, RaISe undertook an analysis of all Bills introduced to Parliament since January 2020 which required the legislative consent of the Assembly. In this analysis RaISe confirmed that:

“...within the period for which data was collected (i.e. January 2020-November 2021), Ministers complied with the 10 working day period on 4 occasions. On 11 occasions no LCM was laid. On 16 occasions the LCM was laid outside the 10 working day period.”

One recent example was the Advanced Research and Invention Agency Bill:

The Advanced Research and Invention Agency Bill was introduced to Parliament on 1 March 2021. The UK Government said that the Bill would require legislative consent.

- In Wales the Welsh Government laid a legislative consent memorandum on the Bill before the Senedd on 9 July 2021. The relevant committees reported in advance of their deadline on 21 October 2021. The Legislative Consent Motion for the Advanced Research and Invention Agency Bill was then agreed in Plenary by the Senedd on 7 December 2021.
- In Scotland the Scottish Government laid a legislative consent memorandum on the Bill before the Scottish Parliament on 2 September 2021. The relevant committee reported on 2 December 2021. The Legislative Consent Motion for the Advanced Research and Invention Agency Bill was then agreed in Plenary by the Parliament on 7 December 2021.
- In Northern Ireland the Minister laid a legislative consent memorandum on the Bill before the Assembly on 29 November 2021 and moved the Legislative Consent Motion on 7 December 2021. As a result, there was no time for the relevant committee to undertake its scrutiny and report to the Assembly. The Chairperson told the Assembly that the Committee had very limited time in which to scrutinise the relevant provisions. The Minister acknowledged that the legislative consent motion was moved in breach of the normal timescales in Standing Order 42A. The Legislative Consent Motion for the Advanced Research and Invention Agency Bill was agreed in Plenary on 7 December 2021.

98. The Committee was very concerned to learn this and to note how long it took on many occasions for a memorandum to be laid. It is clear that, rather than normally complying with the requirements of Standing Order 42A, it has become normal for Executive Ministers to fail to do so. The Committee has been offered no explanation as to why this should be the case. The Committee believes that one particular reason for Ministers failing to lay memoranda within the normal 10 day timescales may be to do with difficulties in obtaining the required Executive approval in sufficient time.
99. The Committee noted that, in their response, the First Minister and deputy First Minister pointed out that for some Bills there has been a need for *prolonged quadripartite discussions over the policy underlying the proposed devolved provisions before these can be finalised, and an Executive department cannot therefore proceed unilaterally until these issues have been resolved.*
100. The Committee notes and accepts that this may happen occasionally. However, this does not explain the number of occasions on which the normal timescales have not been met, nor the many instances when for the same Bill¹⁷, the Scottish Parliament and Senedd/Welsh Parliament have been informed in a timely manner by their respective administrations but the Assembly has not.
101. **The Committee concludes that Executive Ministers must improve the timeliness of when they lay memoranda under the provisions of Standing Order 42A(4).** There is no reason why in normal circumstances such memoranda should not be laid within 10 working days.
102. The Committee also noted correspondence from the Speaker in December 2021 in relation the UK Government's Subsidy Control Bill, a Bill for which the UK Government said it would seek the legislative consent of the Assembly. The Speaker pointed out that, as per Standing Order 42A(4), the relevant Minister should have laid either one of the two memoranda required in respect of this bill, normally not later than 7 September 2021. However, that had not happened in late December 2021 [and at the time of agreeing this report in February 2022, had still not happened].

¹⁷ Annex I of December 2021 RaISe report - See Appendix 5

103. The Minister had informed the Speaker that he considered that he did not yet have sufficient information to allow him to take any decision on whether to ask the Assembly to give its consent. The Speaker had explained that this did not negate either the need for the Assembly to be made aware of the Bill at the earliest opportunity nor the requirements of Standing Order 42A.
104. The Speaker also explained that a memorandum under SO42A(4)(b) may set out the reasons why a legislative consent motion is not sought at that time. He said that laying such a memorandum – which would serve the purpose of alerting the Assembly to the existence of a relevant Bill and the Minister’s current position in relation to it – would not preclude a Minister, should circumstances change, from subsequently laying a legislative consent memorandum before the Assembly.
105. The Committee welcomes this clarification. It accepts that on rare occasions there may be bills introduced to Parliament about which the relevant NI Minister and the Executive need time to establish their position on legislative consent. However, it is inappropriate for the Assembly to remain in the meantime “un-alerted” to a Bill in relation to which the UK Government has said it will seek (via the NI Minister) the Assembly’s consent. This is particularly problematic when the effect of the delay is to reduce the time available to the Assembly to carry out its scrutiny.
106. The Committee notes the Speaker’s pragmatic position that a Minister laying a memorandum under SO42A(4)(b) setting out why a legislative consent motion was not sought at that time would not preclude a Minister, should circumstances change, from subsequently laying a legislative consent memorandum before the Assembly. This approach would ensure the Assembly remained informed of any Bills which required legislative consent, even in those exceptional circumstances when a Minister had not (yet) decided whether he or she intended to seek consent.
107. **The Committee recommends that Standing Order 42A should be amended to include explicit provision for a Minister to lay a memorandum before the Assembly, normally within 10 working days, where a relevant Bill has been introduced to Parliament and where the Minister has not yet taken**

any decision on whether to ask the Assembly to give its consent. This will remove any doubt on the part of Ministers that such an approach can and should be taken.

108. **The Committee also recommends that, in those exceptional circumstances in which it is not possible to lay a memorandum within 10 working days, any memorandum should be laid as soon as possible thereafter and should set out the reasons why the normal deadline of 10 working days was not met.**

109. While the Committee was concerned to note the scale of non-compliance with the normal timescales set out in Standing Order 42A, a matter of even greater concern was learning about a number of bills dealing with devolution matters which had completed their passage through Parliament without the relevant NI Minister ever drawing the Assembly's attention to them under Standing Order 42A. These included the Trade Bill (previously set out in the example on page 24-25) and the Internal Market Bill (set out below).

The United Kingdom Internal Market Bill was introduced in the House of Commons on 9 September 2020. The UK Government said that the Bill would require legislative consent.

- The Welsh Government laid a legislative consent memorandum on the Bill before the Senedd on 25 September 2020. This memorandum explained that the Welsh Government would not be in a position to recommend that consent be given unless the Bill was substantially amended to address their significant concerns. The relevant committees carried out scrutiny and reported by their deadline of 26 November 2020. There were supplementary memorandums laid by the Welsh Government as the Bill was amended and further scrutiny carried out by relevant committees. On 9 December 2020 the Senedd withheld its consent for the Bill.
- In Scotland the Scottish Government laid a memorandum in respect of the Bill before the Scottish Parliament on 28 September 2020. The memorandum said that the Scottish Government could not recommend

support for this Bill. It was referred to the relevant committees and on 7 October 2020, the Scottish Parliament agreed not to consent to the United Kingdom Internal Market Bill.

- In Northern Ireland the Minister did not comply with the duty in Standing Order 42A to inform the Assembly about the United Kingdom Internal Market Bill. As a result, there was **no memorandum referred to the relevant committee and no scrutiny carried out of the devolved matters within the bill**. This was noted by Lord Callan on behalf of the UK Government who said on 2 December 2020 at the third stage reading of the Bill in the House of Lords:

“The Senedd and Northern Ireland Assembly have not yet voted on legislative consent, but we have continued to engage with both Administrations on the Bill’s contents in recent weeks.”

(NB - The Senedd’s withholding of consent on 9 December was then noted in the House of Lords on 9 December 2020)

The United Kingdom Internal Market Act received royal assent on 19 December 2020 without a memorandum ever having been laid by the Minister (and therefore without the Assembly having ever carried out scrutiny of the devolved matters within it).

110. It is unacceptable that Parliament should legislate on devolved matters without the relevant NI Minister drawing the bill’s attention to the Assembly under Standing Order 42A.
111. **The Committee concludes that instances of NI Ministers failing to comply with Standing Order 42A, and as a result Parliament legislating on devolved matters without either the Assembly’s knowledge or approval, are unacceptable.** The Committee has been offered no explanation for why this has been allowed to occur. It deprecates the practice and calls on Executive Ministers to ensure this never happens again.
112. If it was the case that the UK Government had declined to liaise with the local department and ask the Minister to seek consent then this would clearly be an unacceptable breach of the well-established working practices designed to

support the Sewel convention. It would also be in sharp contrast to what happens with the other devolved administrations who appear to have been able to inform their respective legislatures about all relevant bills. However, the Committee has heard no evidence to suggest that this is the case.

113. The Committee considers that a further safeguard to prevent this scenario from occurring is for Parliament to inform the Assembly directly about any bill dealing with a devolution matter. However, the introduction of such an arrangement – which is a matter for Parliament and is considered further below – is no substitute for the duty upon Ministers to inform the Assembly, as per the provisions of Standing Order 42A.

Role of Private Members

114. Standing Order 42A(5) provides, in specific circumstances, for a Member other than the relevant Minister to be able to lay a legislative consent memorandum. Such a Member may not do so until either;

- a. the Minister has laid a legislative consent memorandum;
- b. the Minister has laid a memorandum explaining that consent is not sought; or
- c. the 10 working days for a Minister to do either of these things have expired.

115. The Committee has not received any evidence during the inquiry as to whether this provision either works well, remains necessary or could be amended. On this basis the Committee is content to leave it in place. However, in doing so, the Committee noted that, under the Sewel Convention, as articulated within Devolution Guidance Note 8, responsibility for seeking the devolved administration's agreement to Westminster legislating on devolved matters lies solely with the Executive Minister responsible for the matter concerned. Specifically, it says:

“The UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters

except with the agreement of the devolved legislature. The devolved administrations (i.e. the Minister) will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government”.

116. The underlying premise of the convention is therefore that the UK Government, UK Parliament, the relevant Executive Minister and the Assembly should all agree before Parliament legislates on a devolved matter. Therefore, in a case where the Assembly has agreed an LCM brought by a Private Member but where the Minister is opposed to consent being sought, the UK Government may well decide to remove Northern Ireland from the scope of a bill as the convention requirements would not have been met. That being the case, there may be little value in a Private Member moving a legislative consent motion.

Legislative Consent Motions – handling issues

117. Where a Minister does not wish to seek the Assembly’s consent for Parliament legislating on a devolved matter, it is unnecessary for a motion to be tabled. The appropriate memorandum laid in the Assembly by the relevant Minister should explain why legislative consent is not sought. At that point, having informed the Assembly of the position, the Minister should then write to their counterpart in the UK Government explaining that consent is not being sought. In response, and in line with the Sewel Convention, it is expected that the UK Government Minister would inform Parliament and would table amendments to remove the devolved matters relating to Northern Ireland from the Bill.
118. There has been an example of Ministers bringing a motion to the Assembly seeking a resolution that explicitly sets out that the Assembly’s consent is being withheld. While such motions are unnecessary, it is open to Ministers to take this approach if they consider it to be appropriate. Presumably the purpose of this approach is that the Assembly not giving consent becomes something that is actively asserted, rather than a default position arising from the Minister not seeking consent. However, caution should be exercised when taking this approach as there may be the potential for confusion about whether consent has been given if such a motion was not agreed.

119. Standing Order 42A does not provide for a defined form of words to be used when the consent of the Assembly is sought. Consequently, it has been for Ministers to determine the wording of their specific legislative consent motions (while still complying with Assembly rules and guidance on the wording of motions). As a result, the approach taken by various Ministers to the wording of legislative consent motions has often differed and the reason for this is not always evident.

120. The key point, as far as Parliament is concerned, is that any expression of consent by the Assembly should be clear and unambiguous. Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament provides the following example, used at the Scottish Parliament, for the usual wording of a legislative motion:

“That the Parliament agrees that the relevant provisions of the Bill, introduced into the House of Commons [or the House of Lords] on [a certain date], relating to [a specified matter], so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament”¹⁸

121. This form of wording is useful in that it clarifies that the devolved legislature is not being asked to agree the specific provisions within a Bill but instead to consent to Parliament considering the relevant provisions of the Bill. Departments may wish to consider using this form of words on a consistent basis for future LCMs.

122. It is usually sufficient for a single legislative consent motion to seek consent for Parliament considering all the relevant devolved provisions within a single Bill. However, there are occasionally Bills that progress through Parliament that deal with more than one devolved matter which are discrete and independent of each other. Such matters may even be the responsibility of more than one Executive Minister. In these circumstances it may be appropriate for there to be more than one legislative consent memorandum and one more than one

¹⁸ <https://erskinemay.parliament.uk/section/5198/legislative-consent-motions-of-the-devolved-legislatures/?highlight=legislative%20consent>

legislative consent motion. The Assembly may give consent in respect of one discrete issue in a Bill and withhold its consent in respect of another.

123. This does not mean, however, that the Assembly has the authority to give approval for individual clauses in a Bill and withhold consent for others. It is the role of Parliament to carry out scrutiny of the individual clauses in a Bill. Agreeing a legislative consent motion means the Assembly giving authority to Parliament to carry out the scrutiny of the Bill. If the Assembly does not agree with individual clauses in a Bill it should withhold its consent. The matters could then be addressed instead in an Assembly Bill.

Bill amendments and subsequent LCMs

124. Standing Order 42A(9) provides that a subsequent legislative consent motion may be moved if appropriate, having regard to the nature of any amendment dealing with a devolution matter made, or proposed to be made, to the Bill. In these circumstances it is unnecessary for a Minister to take the steps required.
125. This provision recognises that during the passage of the Bill, there may be UK Government amendments (or any other amendments which the UK Government is minded to accept). Where these amendments fall within the scope of an existing legislative consent motion agreed by the Assembly then no further action is necessary. However, where there are substantive amendments which relate to a devolution matter and which fall outside the scope of the existing legislative consent motion then it is necessary for the Minister to return to the Assembly and seek explicit approval for consent. The Standing Order recognises that these may either be amendments that are made or amendments that are proposed to be made.
126. In these circumstances, time pressures are likely to prevent any significant time for consultation with committees prior to debating the subsequent legislative consent motion. For that reason, there are not the same requirements in standing orders to lay a memorandum in relation to the subsequent motion or for the Committee to have time to carry out its scrutiny and report to the Assembly. However, it is still expected that the Minister would inform the

Committee of how he/she intends to proceed (and the reasons for this) before coming back to the Assembly with a second legislative consent motion.

127. The Committee is content that these arrangements remain appropriate at this time.
128. The Committee also recognises that, where the need for a legislative consent motion arises initially as a result of amendments to a Bill, Standing Order 42A(10) provides that the “relevant day” is “...*the day the Bill completes the stage in the United Kingdom Parliament during which an amendment is made to the Bill which makes it a Bill to which this order applies.*” This differs from the position in Scotland and Wales where there is also explicit provision for the relevant day to be the day on which an amendment tabled by a Minister of the Crown or published with the name of a Minister of the Crown in support. The approach in Scotland and Wales expressly recognises that an amendment from the UK Government is likely to be made and that there should be the opportunity at that point for the relevant Minister to bring the matter to the attention of the devolved legislature. This enables earlier consideration. For that reason it would be sensible to consider making similar explicit provision when Standing Order 42A is amended.

Timing of any debate on an LCM

129. Standing Order 42A(8) provides that a legislative consent motion shall not normally be moved until at least (a) 5 working days after publication of the committee report; or (b) 20 working days after the date of referral to the committee.
130. The Committee is satisfied that these timescales remain appropriate albeit that where in future a committee has more than 15 working days to carry out its scrutiny and report to the Assembly, the 20 working days timescale for the motion to be moved will need to be consequently adjusted. An amended standing order should make the necessary provision to allow for this.
131. The Committee is satisfied that it remains appropriate that these timescales should apply in “normal” circumstances but that, exceptionally, where flexibility may be required a motion may be moved sooner. Current practice is that when

the normal timescales cannot be complied with, the relevant Minister should advise the Speaker, in writing, of the reasons why this is the case. Then, when moving the legislative consent motion, the relevant Minister has informed the Assembly in his/her opening remarks of the circumstances that have led to compliance with the 'normal' timescales in Standing Order 42A not being possible. The Committee considers this approach to be sensible but considers that it would be clearer if this was explicitly reflected in the amended Standing Order.

132. Given the rules relating to the timings of LCMs, it would not be in order for a Member to table and seek to have scheduled a motion that would in any way pre-empt a Minister's ability to bring an LCM.

Role of Committees

133. The Assembly's Standing Orders provide that, following the laying of a legislative consent memorandum, those provisions of the Bill dealing with a devolution matter shall stand referred to the appropriate statutory committee unless the Assembly shall order otherwise.
134. The committee may, within 15 working days from the date of referral, consider those provisions of the Bill which deal with a devolution matter and report its opinion thereon to the Assembly.
135. Of course, if the pre-introduction arrangements set out earlier are observed by the UK Government and the NI Departments, statutory committees should have had an opportunity in advance of the memorandum being laid to be briefed on the policy content and on why it is more appropriate for the devolved matter to be legislated on by Parliament. This should mean that during the 15 working days the Committee is returning to an issue on which it has already been briefed and on which it has already formed a preliminary view.
136. As part of this inquiry, a number of statutory committees have indicated that the 15 working days available to it under SO42A to carry out its scrutiny and report to the Assembly are insufficient. This is particularly the case when LCMs relate to a complex Bill and there has been no advance engagement on it by the department in advance of the Bill's introduction.

137. Standing Order 42A does not provide for a statutory committee to have additional time beyond the 15 working days if required. The provisions, as currently drafted, reflect the fact that it is necessary for there to be some sort of deadline in order to ensure that at a fixed point a Minister can then return to the Assembly to move an LCM.
138. The Assembly needs to give its consent to an LCM prior to the Bill's final amending stage in Parliament. Different Bills will move through Parliament at varying speeds. In many cases, the timescales provided for in Standing Order 42A require a committee to report on its scrutiny well in advance of the time necessary in order to enable a Minister to move an LCM in advance of the Bill's final amending stage. Analysis undertaken by RaISe confirms that on many occasions the passage of a Bill through Parliament is at such a pace that there would have been no issue with a committee having more than 15 working days to carry out its scrutiny. Specifically, the analysis notes that:
- The range of time available for the Assembly to make its views known, i.e. the time for the passage of a Bill which requires legislative consent through Parliament (excluding carryover Bills), is between 1 and 237, the average being approximately 100 days...*
139. In these circumstances a maximum of 15 working days for committees to carry out their scrutiny on all occasions appears unnecessary. The difficulty, however, is that on other occasions the UK Government will seek to progress Bills more quickly and there may not be the opportunity for the committee to have even the 15 working days provided for in Standing Order 42A.
140. The Committee has asked the House of Commons Procedures Committee whether there would be any way that Parliament's procedures could provide more certainty or clarity about **how long** a devolved legislature has to consider each specific legislative consent issue. The Committee considers that an indication of Westminster timeframes for passage of the Bill could then be reflected in the amount of time afforded to the relevant Committee for scrutiny of the devolved matter. This suggested enhancement is referred to further below.
141. In response to the challenges around the reasonableness of timescales reflected in the responses from statutory committees, **the Committee**

recommends that Standing Order 42A should be amended to allow for more flexibility in relation to timescales for committees (where this is possible) based on the planned timescale for the passage for the specific Bill through Parliament.

142. This approach would require the relevant Executive Minister to establish from the UK Government the latest date by which consent was needed. Where the timescales were such that a committee could have additional time to carry out its scrutiny, this should be set out in the legislative consent memorandum.

Communications with Parliament

143. As previously outlined, the Committee considered that one way to improve arrangements would be for the Assembly to be notified directly by Parliament when a Bill which requires legislative consent is introduced. Although the Committee recognises that it does not have direct remit to make this happen, it has corresponded with the Houses of Parliament to this effect.

144. Specifically, the Committee has, in written submission to the House of Commons Procedures Committee and to the House of Lords Constitution Committee, asked whether consideration could be given to amending procedures in a way that would allow the Assembly to be informed directly (and at the same time as the NI Minister) about any Bills being introduced to Parliament that require legislative consent.

145. Committee reflected in correspondence to the HoC Procedures Committee that it considers that this type of direct notification would also assist in bringing transparency and accountability to the NI arrangements if the relevant NI Minister was unsure of whether to seek consent or whether consent might be provided in a timely way. In order to also improve transparency, the Committee has written to the HoC suggesting that the introduction of a procedural requirement (in Standing Orders) for an explanation to be provided by the UKG Minister to the House in the event that consent has not been received by the date of the final stage in the HoC. The Committee recognises that this is a matter for decision outside of the Assembly.

146. A range of other issues arose which relate primarily to Parliament and its role. The Committee received briefing from the Institute for Government (IfG) on its report ***Legislating by Consent: How to revive the Sewel Convention***. The Committee agreed with a number of the IfG's proposals for reform of the Convention, particularly recommendations 7 and 8¹⁹ agreeing that; *if UKG ministers wish to proceed with legislation in devolved areas without consent, they should make a statement to parliament justifying their decision; and that there should be fuller public information provided by the UK parliament about the consent status of each Bill.*
147. Although again out-with the remit of the Committee, the inquiry did draw the Committee's attention to the question of what happens in Parliament when an LCM is agreed by the Assembly. The Committee is aware that, when a legislative consent motion is passed by the Assembly, notification is sent to Parliament, along with any associated memoranda received laid by the relevant Minister. The Committee is advised that these letters and memoranda are then published on the relevant Bill's page of the UK Parliament website, and may also be 'tagged' on the Order Paper in the HoC. A similar procedure would be followed in the event that a Minister moved an LCM but it was not agreed by the Assembly.
148. Where there appears to be a gap, however, is where the Assembly has not given its consent either because a Minister has laid a memorandum before the Assembly explaining why a legislative consent motion is not sought or because the Assembly has never been informed by the Minister about a Bill. In these cases, where there is no consent as a result of there being no Assembly position to communicate, the position of the UK Government should be to amend the Bill in question so as to not legislate on the devolved matter. However, despite the provisions of the Sewel Convention, the UK Government continues to legislate on devolved matters without the consent of the Assembly.

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<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2020/procedures/5920.pdf>

149. **The Committee therefore notes with concern the practice of the UK Government legislating on devolved matters either when the Assembly has not been made aware of the Bill and / or has not given its consent.**
150. The Committee considered whether, in whatever circumstances the Assembly has not given its consent, there might be a way in which the procedures of the House of Commons' might better reflect this. The Committee noted that the House of Lords Procedure and Privileges Committee had agreed on 20 October 2020 that: *“when legislative consent has been refused, or not yet granted by the time of third reading, a minister should orally draw it to the attention of the House before third reading commences. In doing this the Minister should set out the efforts that were made to secure consent and the reasons for the disagreement.”*
151. The Committee concludes that such a procedure, if adopted by both Houses of the UK Parliament, would better ensure that the views of the devolved legislatures are respected throughout the legislative process. The Committee has therefore written to the Committee on Procedures at the House of Commons, indicating that it may wish to consider the merits of introducing such a procedure to formally recognise whether or not devolved legislatures have given their consent for the UK Parliament to legislate on devolved matters.
152. The House of Lords Constitution Committee recently published its inquiry report on the future governance of the UK, entitled *Respect and Co-operation: Building a Stronger Union for the 21st Century*²⁰ in which it offers comment on the future of Sewel, given the recent rise in the number of LCMs. Committee noted the assertion of the Constitution Committee in its report (at para. 137) that; *“... the absence of any meaningful dialogue between Parliament and the devolved legislatures on legislative consent matters is a gap in the legislative process. While we welcome the obligation on ministers to notify the House of Lords at third reading if consent has not been obtained for a relevant Bill, this limits opportunities for meaningful parliamentary scrutiny at an earlier stage in the Bill's consideration and lacks transparency.”*

²⁰ See Appendix 5 for link to HoL Constitution Committee report: *Respect and Cooperation: Building a Stronger Union*

153. The Lords Committee report goes on to further recommend an urgent updating of the Cabinet Manual and the Devolution Guidance Notes, stating; “...*the changes we propose to the operation of the Sewel convention should be reflected in an updated version of the Cabinet Manual and the Guide to Making Legislation. In the meantime, as the Devolution Guidance Notes do not reflect the current devolution arrangements, they should be updated as a priority.*” The Committee notes this recommendation and concurs that any clarity and transparency which can be brought to the relative roles and responsibilities in the effective handling of LCMs, would be of benefit.

Publication of information relating to LCMs

154. **The Committee recommends that, in the interests of improved transparency in relation to Bills that require legislative consent, the Assembly should introduce enhanced recording, reporting and publication arrangements in relation to LCMs.**

155. As a result of the challenges involved in locating timely and robust information relating to the relevant stages of the legislative consent process in the Assembly, the Committee concludes that a central resource on the Assembly’s website, collating the relevant information on all Bills dealing with devolution matters that have been introduced to Parliament and for which require legislative consent is required, should be published on the NI Assembly website.

156. These pages should contain the links to all relevant memoranda, records of committee reports and the debates on motions in plenary as well as any subsequent correspondence between the Assembly and Parliament in order to facilitate greater transparency and strengthen confidence in the arrangements for scrutiny in relation to LCMs.

Summary of Recommendations

- **Recommendation 1:** The Committee concludes that Executive Ministers must improve the timeliness of when they lay memoranda under the provisions of Standing Order 42A(4). There is no reason why in normal circumstances such memoranda should not be laid within 10 working days.
- **Recommendation 2:** The Committee recommends that Standing Order 42A should be amended to include explicit provision for a Minister to lay a memorandum before the Assembly, normally within 10 working days, where a relevant Bill has been introduced to Parliament and where the Minister has not yet taken any decision on whether to ask the Assembly to give its consent. This will remove any doubt on the part of Ministers that such an approach can and should be taken.
- **Recommendation 3:** The Committee also recommends that, in those exceptional circumstances in which it is not possible to lay a memorandum within 10 working days, any memorandum should be laid as soon as possible thereafter and should set out the reasons why the normal deadline of 10 working days was not met.
- **Recommendation 4:** The Committee concludes that instances of NI Ministers failing to comply with Standing Order 42A, and as a result Parliament legislating on devolved matters without either the Assembly's knowledge or approval, are unacceptable. The Committee has been offered no explanation for why this has been allowed to occur. It deprecates the practice and calls on Executive Ministers to ensure this never happens again.
- **Recommendation 5:** In response to the challenges around the reasonableness of timescales reflected in the responses from statutory committees, the Committee recommends that Standing Order 42A should be amended to allow for more flexibility in relation to timescales for committees (where this is possible) based on the planned timescale for the passage for the specific Bill through Parliament.

- **Recommendation 6: The Committee notes with concern the practice of the UK Government legislating on devolved matters either when the Assembly has not been made aware of the Bill and / or has not given its consent. The Committee has corresponded with Parliament seeking procedural enhancements and improved communication and transparency in relation to Bills where LCMs are needed.**
- **Recommendation 7: The Committee recommends that, in the interests of improved transparency in relation to Bills that require legislative consent, the Assembly should introduce enhanced recording, reporting and publication arrangements in relation to LCMs.**

Links to Appendices

Appendix 1: Committee Correspondence

[View the Committee's Correspondence](#)

Appendix 2: Written Submissions

[View Written Submissions received in relation to the report](#)

Appendix 3: Minutes of Proceedings

[View Minutes of Proceedings of Committee meetings related to the report](#)

Appendix 4: Minutes of Evidence

[View Minutes of Evidence from evidence sessions related to the report](#)

Appendix 5: Research Papers

[View Research Papers produced by the Assembly's Research and Information Service \(RaISe\) in relation to the report](#)

Appendix 6: List of Witnesses who gave evidence to the Committee

[View the list of witnesses who gave evidence to the Committee](#)

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