



The Scottish Parliament  
Pàrlamaid na h-Alba

**Standards, Procedures and Public Appointments Committee**

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By email

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Dear Ms Dillon,

**Review of Legislative Consent Motions**

I am writing in the context of your review of legislative consent motions. I thought it might be helpful to set out some information on the procedures for consent in relation to UK Parliament Bills that are in place at the Scottish Parliament for you to consider in the context of your review of your own procedures.

The legislative consent processes in the Scottish Parliament derive from the Sewel Convention (primary legislation) and the Public Bodies Act 2011 (secondary legislation).

The Sewel Convention, named after Lord Sewel, Minister of State in the Scottish Office, who stated in the Lords Committee stage of the Scotland Bill that the UK Government expected:

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

As you will be aware, the principle of legislative consent was then developed and a Memorandum of Understanding (MoU) was signed between the UK Government and the devolved administrations in 2001, with the latest version published in October 2013. The MoU as supplemented by a series of Devolution Guidance notes, notably DGN 10 on Post-Devolution Primary Legislation affecting Scotland, which was last updated in 2005.

Following the Scottish Independence Referendum in 2014, the Smith Commission, which had been tasked with overseeing the process to take forward the devolution commitments on further powers for the Scottish Parliament, recommended that the Sewel Convention was put on a statutory footing. This was implemented by the insertion of a new Section 28(8) in the Scotland Act 1998, which states:

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

The Rules relating to legislative consent are set out in [Chapter 9B](#) of the Scottish Parliament’s Standing Orders. The requirement for consent only relates to primary legislation (bills) which has been introduced in the UK Parliament, the requirement to consent does not apply to secondary legislation (statutory instruments). Consent is also only required for UK bills which make ‘relevant provision’, which means provision which applies to Scotland in any of the following ways: The requirement for consent only relates to primary legislation (bills) which has been introduced in the UK Parliament, the requirement to consent does not apply to secondary legislation (statutory instruments). Consent is also only required for UK bills which make ‘relevant provision’, which means provision which applies to Scotland in any of the following ways:

- for any purpose within the legislative competence of the Scottish Parliament
- to alter that legislative competence of the Scottish Parliament
- to alter the legislative or executive competence of the Scottish Ministers.

Executive competence relates to the devolution of powers to Scottish Ministers, including some responsibilities in reserved matters.

The limits on the legislative competence of the Scottish Parliament (reserved matters) are currently outlined in sections 29 and 30 and Schedules 4 and 5 of the Scotland Act 1998. For example, the Scottish Parliament has no power to legislate on constitutional matters.

The Standing Order rules make no mention of how the information on the decision made in the Scottish Parliament is to be conveyed to the UK Parliament. In practice, the Clerk of the Scottish Parliament writes to the Clerks of the two Houses of the UK Parliament to inform them of the outcome of the decision taken on a legislative consent motion. The Scottish Parliament also maintains a webpage for each of the UK Bills subject to legislative consent, arranged by the UK Parliament session date, with a link to the Bill’s page on the UK Parliament website. This webpage also details the scrutiny of the memorandum carried out by Scottish Parliament Committees.

I hope that this information is helpful to your inquiry.

Yours sincerely

*Bill Kidd MSP.*

Bill Kidd MSP

Convener

Standards, Procedures and Public Appointments Committee

## **Annexe – Rule 9B of the Scottish Parliament’s Standing Orders**

### **Rule 9B.1 UK Parliament Bills making provision requiring the Parliament’s consent**

1. In this Chapter, a “relevant Bill” is a Bill under consideration in the UK Parliament which makes provision (“relevant provision”) applying to Scotland for any purpose within the legislative competence of the Parliament, or which alters that legislative competence or the executive competence of the Scottish Ministers.

### **Rule 9B.2 Legislative consent motions**

1. A motion seeking the Parliament’s consent to relevant provision in a relevant Bill shall be known as a legislative consent motion. A legislative consent motion shall identify the relevant Bill by reference to its short title and the House of the UK Parliament in which and the date on which it was introduced.

2. A legislative consent motion shall not normally be lodged until after the publication of the lead committee’s report.

3. Every legislative consent motion lodged shall be taken in the Parliament. The Parliament shall not normally take such a motion earlier than the fifth sitting day after the day on which the lead committee’s report under Rule 9B.3.5 below is published.

### **Rule 9B.3 Legislative consent memorandums**

1. A member of the Scottish Government shall lodge with the Clerk a memorandum (“a legislative consent memorandum”) in relation to—

(a) any Government Bill that is a relevant Bill on introduction, normally no later than 2 weeks after introduction;

(b) any Private Member’s Bill that was a relevant Bill on introduction and remains a relevant Bill after the first amending stage in the House in which it was introduced, normally no later than 2 weeks after it completes that stage;

(c) any Bill that, by virtue of amendments—

(i) agreed to; or

(ii) tabled by a Minister of the Crown or published with the name of a Minister of the Crown in support,

in either House, makes (or would make) relevant provision for the first time or beyond the limits of any consent previously given by the Parliament, normally no later than 2 weeks after the amendments are tabled or agreed to.

2. Any member (other than a member of the Scottish Government) who intends to lodge a legislative consent motion in relation to a relevant Bill shall first lodge with the Clerk a legislative consent memorandum, but shall not normally do so until after a member of the Scottish Government has lodged a legislative consent memorandum in respect of that Bill.

3. A legislative consent memorandum shall—

(a) summarise what the Bill does and its policy objectives;

(b) specify the extent to which the Bill makes provision—

(i) for any purpose within the legislative competence of the Scottish Parliament; or

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

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

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

4. Notice of any legislative consent memorandum lodged shall be given in the Business Bulletin. The Clerk shall arrange for the memorandum to be published.
5. The Parliamentary Bureau shall refer any legislative consent memorandum to the committee within whose remit the subject matter of the relevant provision falls. That committee (referred to as “the lead committee”) shall consider and report on the legislative consent memorandum. Where the subject matter of the relevant provision falls within the remit of more than one committee the Parliament may, on a motion of the Parliamentary Bureau, designate one of those committees as the lead committee. The other committee or committees (“the secondary committee or committees”) may also consider the legislative consent memorandum and report its or their view to the lead committee.
6. In any case where the Bill that is the subject of the memorandum contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the committee mentioned in Rule 6.11 shall consider and may report to the lead committee on those provisions.