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Legislative Consent: Timetabling Committee Scrutiny

1 Background

This paper expands upon a series of previous papers on legislative consent procedures across the devolved administrations. In particular, this paper addresses the following points:

- How consistently Executive Ministers comply with the time limits in the Standing Orders for tabling a legislative consent memorandum (i.e. 10 working days from the first reading of the Bill).
- The time usually available for the Assembly to make its views known on a particular Bill. – i.e. the working days between the date the Bill first appears in Parliament and the final amending stage.
- Practice for scheduling scrutiny of LCMs in other devolved administrations
- Analysis around what might be a reasonable timeframe for Assembly Standing Orders to allow the relevant Committee for scrutiny of LCMs.

In doing so, this paper begins with the caveat that the devolved administrations have observed a rise in LCMs and their associated workload, and it is a reasonable assumption that this trend will continue in the wake of the UK's exit from the EU.

2 Compliance with Standing Orders

The Standing Orders of the Northern Ireland Assembly state that:

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 (...)

(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**.

.....

(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.¹

In this case, the relevant day is the date the Bill is introduced in the UK Parliament, or the day on which the Bill is amended so as to make an LCM necessary.² Working days are days which are “neither a Saturday, Sunday, public holiday nor day when the Assembly is in recess”.

¹ [Standing Orders of the Northern Ireland Assembly](#) – last accessed on 18 January 2022. Emphasis added and (3) and (5) removed for clarity.

² As above, fn 1 SO42A(11). Similar rules apply for Private Member’s Bills but this paper does not consider that case as it rarely applies. LCM procedures do not apply to consolidation bills or statute law revision bills, both of which are “tidying up” exercises to either consolidate existing clauses or remove obsolete ones.

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.³

3 Time Available for Scrutiny

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.

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 237,⁴ the average being approximately 100 days.

A review of the data in the table below and included as an Appendix⁵ shows that Committees have already developed practices to counter the limited time available, notably with the practice of departmental briefings in advance of the formal tabling of the LCM.

One report⁶ refers to the Minister having the support of the Committee to bring the Memorandum forward in respect of a Memorandum which was laid on 22 May 2020. The date the memorandum was tabled to the Business Office is 12 June 2020, the Committee report is dated 11 June 2020. The LCM itself is dated 21 May 2020. On querying whether the date recorded on Assembly Hansard pages as “Date Tabled to Business Office” was the date the memorandum was laid, assurances were received that this was the case. Similarly, the Private International Law (Implementation of Agreements) Bill 2020⁷ is recorded as having its consent memorandum laid on 20 April 2020 in the Committee Report (which was published on 4 May 2020). Per the data gathered, the date tabled to the Business Office is recorded as 12 May and the LCM

³ While collating the data used in this paper it was noted that Committee Reports referred to memoranda being tabled at different dates than those published by the Assembly via [AIMS](#). Both dates have been reflected in the Appendix and the difference does not significantly change the overall trend of the data.

⁴ [Air Traffic Management and Unmanned Aircraft Act 2021](#) does not seem to have been the subject of a carryover motion, but started in the Lords in January 2020, where it completed its stages before being brought to the Commons in January 2021.

⁵ Appendix 1

⁶ The [Justice Committee report](#) on the LCM in respect of the Air Traffic Management and Unmanned Aircraft Act 2021, last accessed 25 January 2022 NIA 27/17-22

⁷ The Justice Committee report on the [Legislative Consent Motion – Private International Law \(Implementation of Agreements\) Bill](#) 4 May 2020 last accessed on 25 January 2022, NIA 18/17-22

was granted on 19 May 2020.⁸ The earliest Committee meeting which was noted in the report as relevant was 20 February 2020.

This data, even where it has inconsistencies, highlights the ways in which Committees are dealing with LCMs – regardless of when they are formally tabled, work often begins well in advance of their arrival. This can make establishing time available for review more complex, because informal workarounds alleviate the challenges the timetabling in the Standing Orders pose to committee workloads. Equally, the vagaries of the parliamentary timetable can mean that LCMs which are brought early in the process are agreed a year in advance of the Bill receiving Royal Assent.⁹ It also illustrates the importance of ensuring information about this procedure is published effectively, so that the electorate can understand the process easily.

The table below reviews this data with particular focus on time available for scrutiny. Appendix 1 contains the full dataset.

⁸ Please see the linked [data](#) from AIMS, last accessed 25 January 2022

⁹ This is most frequently seen in the case of carryover Bills, where, although fresh LCMs are raised, the point stands that the first LCM was granted long before it became necessary.

Table 1: LCMs in the Assembly 2020-21

	Explanatory Note LCM required?	Date Bill Introduced	Consent Memorandum tabled (AIMS)	Consent Memorandum tabled (per committee report)	Within 10 working days?	Committee Report Published	LCM agreed by Assembly	Assembly Working days between Bill introduction and final amending stage
Agriculture Act 2020	Yes	16.1.20	24.3.20	3.3.20	N	19.3.20	31.3.20	164
Air Traffic Management and Unmanned Aircraft Act 2021	Yes	9.1.20	12.6.20	22.5.20	N	11.6.20	24.6.20	237
Birmingham Commonwealth Games Act 2020	Yes	7.1.20	28.5.20	15.5.20	N	3.6.20	9.6.20	119
Business and Planning Act 2020	Yes	25.6.20	30.6.20	unclear	Y	1.7.20	7.7.20	5
Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill	Yes	12.5.21	21.6.21	unclear	N	17.6.20	28.6.20	84
Coronavirus Act 2020	Yes	19.3.20	19.3.20 (normal procedures did not apply)	N/A	Y	n/a	24.3.20	1
Corporate Insolvency and Governance Bill	Yes	20.5.20	22.5.20	21.5.20	Y	26.5.20	2.6.20	8
Domestic Abuse Act 2021	Yes	3.3.20	12.6.20	26.5.20	N	19.6.20	23.6.20	29
Environment Act 2021	Yes	carryover	13.9.21	19.3.20	N	18.6.20	20.9.21	carryover
Environment Bill 2020	Yes	30.1.20	15.06.20	-	N	18.6.20	30.6.20	carryover
Fisheries Act 2020	Yes	29.1.20	17.9.20	24.3.20	N	1.7.20	29.9.20	166
Immigration and Social Security Coordination (EU Withdrawal) Act 2020	Yes	5.3.20	18.9.20	1.7.20	N	8.7.20	28.9.20	117
Medicines and Medical Devices Act 2021	Yes	carryover	20.11.20	5.11.20	N/A	19.11.20	30.11.20	carryover
Medicines and Medical Devices Bill	Yes	13.2.20	27.5.20	27.5.20	N	15.06.20	16.6.20;	carryover
Pension Schemes Act 2021	Yes	carryover	19.10.20	unclear	N/A	19.11.20	2.11.20;	carryover
The Pension Schemes Bill	Yes	7.1.20	22.5.20	20.4.20	N	29.4.20	1.6.20	carryover
Private International Law (Implementation of Agreements) Act 2020	Yes	27.2.20	12.5.20	20.4.20	N	4.5.20	19.05.20	130
Public service pensions and judicial offices Bill	Yes	19.7.21	6.10.21	6.9.21	N	6.10.21	1.11.21	N/A

Sentencing (Preconsolidation Amendments) Act 2020	Yes	21.1.20	26.5.20	27.4.20	N	22.5.20	2.6.20	99
The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill	Yes	12.5.20	21.5.21	20.5.21	Y	2.6.21	29.6.21	N/A
Trade Act 2021	Yes	19.3.20	N/A	N/A	N/A	N/A	N/A	181
United Kingdom Internal Market Act 2020	Yes	9.9.20	N/A	N/A	N/A	N/A	N/A	61
Police, Crime, Sentencing and Courts	yes	9.3.21	16.11.21	12.10.21	N	4.11.21	23.11.21	N/A
Professional Qualifications Bill	Yes	12.5.21	N/A	N/A	N/A	N/A	N/A	N/A
Subsidy Control Bill	yes	30.6.21	N/A	N/A	N/A	N/A	N/A	N/A
Advanced research and invention agency bill 2021	yes	1.3.21	N/A	N/A	N/A	N/A	N/A	N/A
Commercial Rent (Coronavirus) Bill 2021	yes	9.11.21	N/A	N/A	N/A	N/A	N/A	N/A
Elections Bill 2021	yes	5.7.21	N/A	N/A	N/A	N/A	N/A	N/A
Health and Care Bill International Health Arrangements 2021	Yes	6.7.21	08.11.21	unclear	N	11.11.21	16.11.21	N/A
Health and Care Bill Regulation of Healthcare and Associated Professions 2021	Yes	6.7.21	08.11.21	unclear	N	11.11.21	16.11.21	N/A
Health and Care Bill Medicine Information Systems 2021	Yes	6.7.21	08.11.21	unclear	N	11.11.21	16.11.21	N/A
European Union (Future Relationship) Act 2021	yes	30.12.20	N/A	N/A	N/A	N/A	N/A	N/A
European Union Withdrawal Agreement Act 2020	Yes	19.12.19	N/A	N/A	N/A	N/A	N/A	7

4 Practice in other devolved administrations¹⁰

Following the Committee's request, correspondence was entered into with staff at the Welsh and Scottish Parliaments to better understand their processes around scrutiny of LCMs. The responses have been summarised below:

Wales

Scrutiny timescales:

- In theory, Welsh Government provides advice to the Business Committee on committee reporting deadlines on the basis of the Bill timetable at Westminster, and the need for the LCM to be reported on and debated in time to influence the outcome of the UK Parliament process.
- In practice, the timing of the various stages of the Bill scrutiny in Westminster is often not known when the LCM is laid. In those circumstances, Welsh Government's fallback position is to propose a six week scrutiny period for Senedd committees as a 'reasonable' period for most LCMs. Business Committee is also open to requests from committees to extend the scrutiny period, and in those cases Welsh Government advises on the implications of extensions with reference to the Bill timetable (if it can).

The correspondence went on to identify an increase in the "volume, length and complexity of LCMs", which has raised questions about the adequacy of the default six week period, given pressures on committee workload.

Scotland

The Standing Orders of the Scottish Parliament Rule 9B.3(5) sets out the role of the Parliamentary Bureau in relation to LCMs.

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.

¹⁰ This paper acknowledges a grateful debt to the research teams at the Scottish Parliament and the Clerk of the Senedd Business Committee, who were kind enough to answer questions and provide data on this subject.

Correspondence with colleagues in Scotland confirmed that Committees set their own schedule, which is quoted below:

There are no firm deadlines on when committees must report on LCMs. Ideally, committees should aim to report before the final amending stage in the first House – e.g. where the Bill was introduced in the House of Commons, the committee should aim to report before the Report Stage. This is, however, best practice and not a rule.

At the very latest, committees should report in time to allow Parliament to vote on a legislative consent motion before the final amending stage in the second House. This is to ensure that the UK Government still has time to respond to any concerns raised by the Scottish Parliament and amend the Bill.

Scheduling of LCM consideration by the lead Committee is a matter for the Committee.

5 Analysis: a reasonable timeframe for scrutiny

The Scottish and Welsh legislatures adopt slightly different models in timetabling the scrutiny of LCMs, but the common feature is that where there is flexibility in the system, it is to provide more time for scrutiny.

The Scottish approach is to cap consideration of the Bill with reference to a parliamentary vote on the LCM before the final amending stage in the second House. The advantage of this approach is that it allows scrutiny to be tailored to the LCM in question by the Committee responsible for reporting on it to the Parliament. This process takes automatic account of the political and legal complexities that can attach to a UK-wide bill, and gives representatives on the Committee a chance to fully air devolved concerns, or establish an alternative way forward. It also works with certain parliamentary realities – simple bills progress quickly, complex or controversial bills can often be delayed.

By contrast, a default period might assist in timetabling the work of the Assembly, and could be easily accommodated in the average time taken for a Bill to reach third reading. A default period need not be inelastic, as details provided by the Senedd illustrate, and may be preferable in some circumstances (for example in the event that several Committees are engaged in scrutiny of a particular LCM and disagree on the time that should be allotted) as well as in setting expectations and demonstrating the level of scrutiny that should apply to LCMs. A default period would also enable a Committee to approach a Department in advance if they knew, for example, that a Bill to which an LCM should attach is less than six weeks from its scheduled third reading.

Equally, however, allowing the scrutinising Committee to set the time-frame could ensure that Committee would have a strong basis on which to question a Minister if the LCM was delayed. Ministers and Departmental officials could be questioned by

Committees on LCMs received since their last appearance, and when Committees could expect to have them tabled.

Given the models outlined above, it is clear that the divergence in practice between the Assembly and the other devolved legislatures centres around the limited time available for Committee scrutiny. Although there is a powerful argument to be made that the views of the Assembly should be known far enough in advance to influence debate in the UK Parliament, the burden of compliance is, as things stand, falling on Assembly Committees.

In considering next steps, the experience of the Senedd shows that default periods can create difficulties when workload suddenly increases. Despite the difference between the two models, the feature they share, which is not present in the Assembly standing orders, is that there is flexibility built into the procedure which works in favour of allowing committees more time to carry out scrutiny.

The data reviewed at 2 and 3 above shows that Committees have already developed practices, which might fairly be described as workarounds, expanding the short period allowed for scrutiny in the Assembly Standing Orders. This Committee may wish to consult on whether a default scrutiny period (with the option to extend) is preferred, or whether individual Committees would rather set their own schedules as far as LCMs are involved.