



The Scottish Parliament
Pàrlamaid na h-Alba

Conveners Group

Agenda

3rd Meeting, 2023 (Session 6) Wednesday 1 March 2023

The group will meet at 12.30pm in Committee Room 2.

- 1. Minutes**
- 2. Minister for Parliamentary Business**

Next meeting – Wednesday 29 March

The papers for this meeting are as follows –

- | | |
|--|--------------|
| 1. Minutes of last meeting | CG/S6/23/2/M |
| 2. Minister for Parliamentary Business | CG/S6/23/3/1 |

Committee debates this Parliamentary year

1	22/09/2022	Standards, Procedures & Public Appointments Committee	Debate its report on future procedures and practices
2	01/11/2022	Social Justice and Social Security Committee	Robbing Peter to pay Paul: Low income and the debt trap
3	10/11/2022	Health, Social Care & Sport Committee	Inquiry into alternative pathways to primary care
4	17/11/2022	Constitution, Europe, External Affairs & Culture Committee	The impact of Brexit on devolution
5	14/12/2022	Health, Social Care & Sport Committee	Debate on its health inequalities inquiry
6	17/01/2022	Citizen Participation & Public Petitions Committee	petition PE:1865 Suspend all surgical mesh and fixation devices
7	28/02/2023	Economy & Fair Work Committee	Debate on its inquiry report on Retail and Town Centres in Scotland
8	14/03/2023	Net Zero, Energy & Transport Committee	The role of local government and its cross-sectoral partners in financing and delivering a net-zero Scotland
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Contact details for the clerk

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The Scottish Parliament
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Conveners group

Minutes

2nd Meeting, 2023 (Session 6) Wednesday 22 February 2023

Present:

Liam McArthur MSP, Convener
 Clare Adamson MSP, Constitution, Europe, External Affairs and Culture Committee
 Claire Baker MSP, Economy and Fair Work Committee
 Siobhian Brown MSP, COVID-19 Recovery Committee
 Ariane Burgess MSP, Local Government, Housing & Planning Committee
 Finlay Carson MSP, Rural Affairs and Islands Committee
 Natalie Don MSP, Social Justice and Social Security Committee
 Joe Fitzpatrick MSP, Equalities, Human Rights & Civil Justice Committee
 Kenneth Gibson MSP, Finance & Public Administration Committee
 Richard Leonard MSP, Public Audit Committee
 Gillian Martin MSP, Health, Social Care and Sport Committee (virtual)
 Stuart McMillan, Delegated Powers & Law Reform Committee
 Edward Mountain MSP, Net Zero, Energy & Transport Committee
 Martin Whitfield MSP, Standards, Procedures & Public Appointments Committee

Apologies were received from:

Sue Webber MSP, Jackson Carlaw MSP and Audrey Nicoll MSP

1. **Minutes:** The Conveners Group agreed the minutes of the last meeting.
2. **Net zero scrutiny - Progress report on CG Session 6 Strategic Priority: update on action taken on net zero scrutiny:** The Group noted and welcomed the report on action taken on net zero scrutiny.
3. **Post-EU scrutiny – progress on CG Session 6 Strategic Priority: update on action taken on post-EU scrutiny:** The Group discussed the issues set out in the paper on post-EU scrutiny.
4. **Agenda item 4: Engagement with UK Government: consideration of correspondence:** The Group discussed the attendance of UK Ministers before

Scottish Parliament Committees and agreed to keep it under review and consider it again at a future meeting.

Date of Next Meeting: 1 March 2023

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Conveners Group

3rd Meeting, 2023 (Session 6), Wednesday 1 March 2023

Meeting with Minister for Parliamentary Business

Introduction

1. The Minister for Parliamentary Business has been invited to attend the meeting to discuss issues relating to the management of parliamentary business.
2. This paper sets out some issues that Conveners may wish to raise with the Minister. These are based on issues that have either been raised by committees or came up during consideration of other matters as part of the Group's strategic priorities.
3. The following paper sets out these issues in more detail. This is intended to provide a framework for discussion but does not preclude Conveners from raising other issues with the Minister.

Current issues

Legislative workload

4. Conveners will be aware of the forthcoming legislative workload of their committees. One challenge committees regularly experience is balancing referred work against the need for committees to be able to initiate their own inquiry work. This meeting provides the opportunity to raise any concerns in this area.
5. The need for realistic timetables to be agreed is also vital in order to allow for effective scrutiny of legislation. This challenge and any possible ways in which to resolve these are matters which the Group may wish to explore with the Minister.
6. **Conveners may wish to take the opportunity to raise any legislation timetabling issues with the Minister.**

LCMs

Context

7. At its meeting in April, the Group considered the management of LCMs. In particular, issues were raised around the timetable for LCMs, with a significant

number of them missing the lodging deadline set out in standing orders. This in turn impacted on the time available for committees to scrutinise legislation.

8. The Group wrote to the Minister seeking possible solutions to address this concern following this meeting. This letter and the Minister's response are attached in Annexe A to this paper.
9. While accepting that LCMs are complex and often require discussion and negotiation between Governments, the Group noted that an LCM could still be lodged in order to allow committee scrutiny to commence. If necessary, a supplementary LCM could be lodged once negotiations and discussions were concluded.
10. In his response, the Minister reiterated the Scottish Government's commitment to meeting requirements for the lodging of LCMs. He confirmed that this commitment would be raised with Scottish Ministers and officials and had also been drawn to the attention of the UK Government.
11. The Minister noted that there are situations where it is not always possible to meet the lodging deadline due to late notice of consent proposals from the UK Government. In those circumstances a letter of explanation is sent to the Presiding Officer. In his view that approach remained satisfactory if the Scottish Government expected to be able to lodge an LC Memorandum quickly thereafter.
12. However, he agreed with the proposal to lodge an interim LC Memorandum to enable the relevant committee to begin its scrutiny if a more significant delay was anticipated.

Current situation

13. The table attached in Annexe B sets out the position with LCMs since this commitment was made. It shows that five of the 17 LCMs lodged in the period March to February met the lodging deadline set out in Standing Orders.
- 14. The Conveners Group may wish to explore with the Minister any issues committees have been experiencing with the time available to scrutinise LCMs.**

Post-EU scrutiny

15. As part of its strategic priority on post-EU scrutiny, the Group may wish to raise with the Minister the expected impact on Committee work programmes over the coming 12 months arising from—
 - a. the Scottish Government's commitment to align with EU Law where appropriate;
 - b. the UK Government's Retained EU Law (Revocation and Reform) Bill.
16. Research commissioned by the CEEAC Committee identified at least 243 instruments of EU law as being potentially in the scope of the Scottish Government's alignment commitment. Those 243 legal instruments are now incorporated into the UK and Scottish statute book as Retained EU Law (REUL)

but “frozen” at the end of December 2020. Therefore, given EU law evolves continuously over time, REUL in its frozen form at the end of December 2020 will diverge from EU law as it develops, unless additional legislation is passed within the UK and devolved legislatures.

17. The Group will also be aware from the discussion at the previous meeting that the Retained EU Law (Revocation and Reform) Bill, if enacted in its current form, will remove REUL from the statute book by the end of 2023, unless it is preserved by legislation made by UK Ministers or Ministers from the devolved administrations.

18. This presents issues for the Parliament to consider. In order to find ways to facilitate scrutiny of this legislation, it would be helpful to explore with the Minister the points set out below.

19. The Group is invited to explore these points with the Minister—

- a. What processes the Scottish Government has in place to identify all the devolved REUL subject to the sunset—**
 - how that task is progressing, and
 - any steps being taken to mitigate against the risk of gaps arising.
- b. What the timescales are for decision-making by the Scottish Government on whether to preserve a piece of REUL or let it fall away.**
- c. Whether the Scottish Government anticipates using the powers to amend and replace REUL in addition to the power to preserve it, and when decisions will be taken on that.**
- d. How effective consultation on the policy implications of amending or replacing REUL will be achieved in the time available.**
- e. What discussions Ministers or their officials have had with UK Government counterparts, including through common frameworks, on any plans to extend the sunset date, and in relation to which REUL subject matter areas.**
- f. How the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of any decisions to let REUL fall away, given that such decisions will not be implemented through legislation.**
- g. What discussions Ministers or their officials have had with UK Government counterparts on the use of concurrent powers in the Bill (i.e., powers to preserve, amend or replace REUL which can be exercised by either UK Government or devolved Ministers).**
- h. Whether it is anticipated that the UK Government will seek the consent of the Scottish Ministers before exercising these powers, and in what circumstances the Scottish Ministers will agree to the UK Government legislating to preserve, amend or replace devolved REUL.**

- i. **When the Scottish Government anticipates that secondary legislation under the Bill will be laid in Parliament, any peaks in that programme, and an explanation of the anticipated workload across subject committees.**

Post-legislative scrutiny

- 20. At its previous meeting, the Group agreed a number of recommendations in order to encourage an increase in the amount of post-legislative scrutiny being undertaken by committees.
- 21. The Group agreed that one way to support this work is to build in post-legislative scrutiny plans into Stage 1 scrutiny during the initial passage of the bill. In order for this to be successful the Group agreed that committees will need to consider what data and other information will be necessary in order to carry out this post-legislative scrutiny work.
- 22. The Group noted that it would be necessary to incorporate aspects of data gathering and review mechanisms into Bill scrutiny work to facilitate PLS in future years. This could include asking the member in charge what outcomes they expected the bill to deliver and also what data or information the government intended to use or gather to measure whether these outcomes have been achieved.
- 23. The Group may wish to ask the Minister to support the proposed approach that when committees are undertaking Stage 1 scrutiny of legislation, they build in mechanisms to facilitate post-legislative scrutiny. This includes establishing with the member in charge what outcomes the bill is expected to deliver and what data the government intended to use to measure whether that has been achieved.**
- 24. Another issue to consider is how to effect legislative change on the back of PLS recommendations. It may be that legislative change is required following a PLS exercise which is not always easy for a committee to take forward on its own. A much more efficient way of achieving this is to seek Government support in bringing forward legislative change within the SG's programme for government.
- 25. Conveners may wish to seek the Minister's support for the Government to bring forward legislative change arising for post-legislative scrutiny work in the programme for government.**

Recommendation

- 26. The Conveners Group is invited to consider raising these issues with the Minister for Parliamentary Business.**

**Conveners Group clerking team
February 2023**

ANNEXE A**Letter from Chair of Conveners Group to Minister for Parliamentary Business: 27 April 2022**

I am writing on behalf of the Conveners Group with regard to an ongoing issue in relation to the timescale for lodging Legislative Consent Memoranda (LCMs).

You will be aware that, where a UK Government Bill containing a relevant provision is introduced or amendments to a Bill containing relevant provision are tabled, the Scottish Government should normally lodge an LCM no later than two weeks after introduction of the Bill or the amendments containing relevant provision are tabled.

Since the beginning of the session, there have been many examples where this timescale for lodging LCMs has not been adhered to, often leaving committees with very little time to carry out scrutiny of LCMs.

This issue was first raised with the Conveners Group on 23 February in relation to LCMs referred to the Economy and Fair Work Committee. However, it was clear from discussion at that meeting that this is an issue which has been affecting a number of committees. The Group agreed to investigate this further.

Analysis carried out by parliamentary officials has shown that, at the point at which the Conveners Group considered this issue, of the LCMs and supplementary LCMs lodged this session over half had not been lodged within the timescales set out in the rules.

I am sure you will agree that this is a significant proportion of LCMs where there has been a delay in lodging. This delay is having a detrimental impact on the ability of committees to carry out their scrutiny role.

We recognise that there is sometimes need for discussions and negotiations between the Scottish and UK Governments to take place. However, it is also important for committees to have adequate time to consider LCMs referred to them.

There is nothing to prevent an LCM being lodged while these discussions are ongoing. If following these discussions the Scottish Government wishes to update the Parliament on the position it has taken on an LCM, it can do this by lodging a supplementary LCM.

Taking this approach would allow committees to begin their scrutiny of LCMs at the earliest possible stage and also enable later developments to be considered.

You will be aware that I made this suggestion to the First Minister when she met with the Conveners Group earlier this year. She undertook to raise this with you.

This is clearly a matter of concern. I would welcome your response to this proposed approach.

On a related issue, you may also wish to note that the Conveners Group agreed to invite the Standards, Procedure and Public Appointments Committee to consider situations where the Scottish Government is not recommending consent to an LCM.

As you will know, where a Bill makes relevant provision the Scottish Government must lodge an LCM which committees will scrutinise. However, Standing Orders only provide for a motion to be lodged where that motion seeks the Parliament's consent. There have been a number of these cases in Session 6 so far and in these circumstances the Scottish Government has lodged a standard motion to allow for a debate and vote on the issue. However, such motions and debates sit outwith the legislative consent process set out in Chapter 9B.

I have written to the SPPA Committee inviting it to consider this issue.

Response from Minister for Parliamentary Business to Chair of Conveners Group: 16 May 2022

On 2 March, at the conclusion of the First Minister's appearance before the Conveners' Group, you raised the issue of delays in the lodging of Legislative Consent Memorandums (LCMs) and the challenges this creates for parliamentary committee scrutiny of requests from the UK Government for Scottish Parliament consent to provision in relevant UK Bills (I also acknowledge your letter dated 27 April concerning same). The First Minister committed to raise this issue with me and this letter sets out the Scottish Government's response.

I recognise the concerns raised by the Conveners' Group and I should firstly wish to reiterate Scottish Ministers' commitment to meeting, wherever possible, requirements for the lodging of LCMs in respect of 'relevant Bills' as defined in Standing Orders. I believe that is reflected in the improvements the Scottish Government has already made since the turn of the year in meeting that requirement. To ensure that trend continues, I am taking steps to ensure the importance of meeting the Standing Orders requirement wherever possible is understood by relevant Scottish Government Ministers and officials. The Conveners' Group's concerns have also been brought to the attention of the UK Government, and I will take the opportunity to do so again following publication of this year's Queen's Speech.

One of the challenges which the Scottish Government faces is that, regrettably, circumstances do still arise whereby the Scottish Government is informed of consent proposals much later than it would hope (sometimes very close to a Bill's introduction). In those situations it is often simply not possible for the Scottish Government to fully analyse the policy, legal and devolution implications of a Bill and develop, clear and lodge a comprehensive LC Memorandum within 10 working days of that Bill's introduction at Westminster. In recognition of that, a process is already in place to ensure that the Scottish Government will send a letter of explanation to the Presiding Officer in situations in which it does not expect to lodge an LC Memorandum within 10 days. My view is that approach remains satisfactory if the Scottish Government expects to be able to lodge an LC Memorandum quickly thereafter. However, I agree with the proposal you make that if it is anticipated that there is likely to be a more significant delay in a full LC Memorandum being lodged then consideration should be given to lodging an interim Memorandum to enable the relevant committee to begin its scrutiny. I intend to proceed on that basis.

I note that the Conveners Group has invited the Standards, Procedures and Public Appointments Committee to look at the procedural implications of situations in which the Scottish Government does not recommend consent for relevant UK Bills, and I would of course be happy to contribute to the committee's considerations if that would be helpful.

I hope that you will take this response as reassurance that the Scottish Government recognises, and intends to address, the concerns expressed by the Conveners Group. I have asked my officials to maintain a dialogue on these issues with their parliamentary counterparts.

I would of course be happy to discuss these matters further with you.

ANNEXE B

LCM TRACKER: MAY 2022 TO FEBRUARY 2023

LCM Number	Westminster Bill name	Date Bill introduced	Date LCM lodged	Within 2-week window	Lead committee
LCM-S6-19	Social Security (Special Rules for End of Life) Bill	11 May 2022	25 May 2022	Y	Chamber
LCM-S6-20	Procurement Bill	11 May 2022	25 May 2022	Y	Economy and Fair Work
LCM-S6-21	Trade (Australia and New Zealand) Bill	11 May 2022	13 June 2022	N	Economy and Fair Work
LCM-S6-22	Social Security (Additional Payments) Bill	15 June 2022	21 June 2022	Y	Chamber
LCM-S6-23	Levelling-Up and Regeneration Bill	11 May 2022	27 July 2022	N	Net Zero, Energy and Transport
LCM-S6-24	Northern Ireland Protocol Bill	13 June 2022	19 August 2022	N	Constitution, Europe, External Affairs and Culture
LCM-S6-25	UK Infrastructure Bank Bill	11 May 2022	2 September 2022	N	Economy and Fair Work
LCM-S6-26	Energy Bill	6 July 2022	28 September 2022	N	Net Zero, Energy and Transport
LCM-S6-27	Northern Ireland Troubles (Legacy and Reconciliation) Bill	17 May 2022	20 October 2022	N	Criminal Justice
LCM-S6-28	Energy Prices Bill	12 October 2022	20 October 2022	Y	Chamber

LCM-S6-29	Retained EU Law (Revocation and Reform) Bill	22 September 2022	8 November 2022	N	Constitution, Europe, External Affairs and Culture
LCM-S6-30	Public Order Bill	11 May 2022	23 November 2022	N	Criminal Justice
LCM-S6-31	Shark Fins Bill	15 June 2022	30 November 2022	N	Rural Affairs, Islands and Natural Environment
LCM-S6-32	Genetic Technology (Precision Breeding) Bill	25 May 2022	12 December 2022	N	Rural Affairs, Islands and Natural Environment

SUPPLEMENTARY LCMS MAY 2022 TO FEBRUARY 2023

Supp Number	Westminster Bill name	Date amendments lodged	Date Supp lodged	Within 2-week window	Lead committee
LCM-S6-25a	UK Infrastructure Bank Bill	22 November 2022	13 December 2022	N	Economy and Fair Work
LCM-S6-26a	Energy Bill	9 January 2023	25 January 2023	N	Net zero, Energy and Transport
LCM-S6-20a	Procurement Bill	24 January 2023	3 February 2023	Y	Economy and Fair Work