

Quick guide

Legislative Consent Motions

February 2011

Introduction

When the UK Parliament wishes to legislate on a subject matter which has already been devolved to the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, convention requires it to receive the consent of the relevant devolved legislature before it may pass the legislation in question. Such consent is given by the devolved legislatures through Legislative Consent Motions (LCMs).

This guide provides background information on LCMs, the scrutiny processes to which they are subject in the Welsh context and a summary of their use in the National Assembly since the enactment of the *Government of Wales Act 2006* ("the 2006 Act").¹

Background: The "Sewel Convention" in Scotland

LCMs originated as *Sewel Motions* in relation to the Scottish devolution settlement. The *Sewel Convention* was named after Lord Sewel (Minister of State in the Scottish Office during the passage of what became the *Scotland Act 1998*²), who stated during the Lords Committee stage of the Bill that the 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".³

In practice, as well as applying when Westminster legislates on devolved matters, the *Sewel Convention* also applies when Westminster legislates to alter the legislative competence of the Scottish Parliament or to amend the devolved responsibilities of Scottish Ministers. Under the convention, if the UK Government and the Scottish Executive agree that it is appropriate to include in a Westminster Bill provisions affecting devolved matters, the Executive invites the Scottish Parliament to give consent to those provisions being dealt with by Westminster. This usually involves the following stages:

- The Scottish Executive providing a memorandum about the UK Bill within two weeks of its introduction (in the UK Parliament);
- The consideration of the memorandum by a relevant Committee of the Scottish

¹ [Government of Wales Act 2006 \(c.32\)](#)

² [Scotland Act 1998 \(c.46\)](#)

³ [HL Debates, 21 July 1998, c791](#)

Parliament;

- The tabling of a LCM by the Scottish Executive, following the publication of the Committee Report, which the Scottish Parliament as a whole is invited to agree.

Further guidance outlining when LCMs would be required was provided by the UK Government in a Memorandum of Understanding between the UK Government and the Devolved Administrations (MoU)⁴, which was first agreed back in 2001:

The United Kingdom Government 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.

Prior to 30 November 2005, the motion was known as a *Sewel Motion* and the memorandum was known as a *Sewel Memorandum*. From 30 November 2005, following recommendations by the Scottish Parliament's Procedures Committee, the motion is now known as a Legislative Consent Motion and the memorandum as a Legislative Consent Memorandum.⁵

Legislative Consent Motions and the National Assembly

Since the National Assembly acquired primary legislative powers (in matters where it has legislative competence) through the 2006 Act, the principles of LCMs have also been extended to Wales.

The UK Government's Devolution Guidance Note on post-devolution primary legislation affecting Wales also emphasises the importance of dialogue between Whitehall Departments and the Welsh Government when formulating legislative proposals. It states:

The implementation of the Government of Wales Act 2006 therefore places new responsibilities upon Whitehall Departments to consult the Welsh Assembly Government, to obtain the agreement of the Welsh Ministers in certain circumstances and to only proceed with certain provisions in Parliamentary Bills if the National Assembly for Wales agrees to their inclusion.⁶

Ministry of Justice, *Devolution: Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee*, March 2010, Paragraph 14 [Accessed 6 October 2010]

⁵ Scottish Parliament Fact Sheet, *Sewel Convention Bibliography*, 15 April 2008 [Accessed 6 October 2010]

Ministry of Justice, *Devolution Guidance Note 9: Post-Devolution Primary Legislation Affecting Wales*, Paragraph 1 [Accessed 8 October]

The details of how the National Assembly deals with LCMs are outlined under Standing Order 26.⁷ It states that:

- The Welsh Government must lay a memorandum in relation to a UK Bill which makes provision, either directly or by virtue of amendments, in relation to Wales for any purpose within the legislative competence of the National Assembly or which has a negative impact on the legislative competence of the National Assembly. This should normally happen no later than two weeks after its introduction in the UK Parliament.
- The Welsh Government, in laying the memorandum, must at the same time table an LCM which must seek the National Assembly's agreement to the inclusion of the provision in question within the relevant Bill.
- The National Assembly must then consider the LCM. To date, this has usually consisted of a 15 minute debate in Plenary followed by a vote on the motion.

Situations where LCMs are required in the Welsh context

Under normal circumstances, LCMs apply when UK Bills make provision specifically on matters within the areas where the National Assembly has legislative competence or the Welsh Ministers have executive functions. It does not apply when Bills deal with such matters only incidentally to, or consequentially upon, a provision made in relation to a non-devolved matter. Even in these circumstances however, the Welsh Government and the Wales Office should be consulted by Whitehall departments.

The Welsh Ministers and the National Assembly have executive and legislative competence respectively in certain areas. It therefore follows from the commitment made by the UK Government in the Devolution Guidance Note on post-devolution primary legislation affecting Wales that it will not normally seek to legislate in relation to those matters without the agreement of the devolved institutions. For the purposes of the Welsh devolution settlement, UK Bills can include provisions in relation to Wales for a range of purposes. The different purposes are described here, together with the agreements that will normally be required in each different case:

- *Provisions that modify, impose, confer, remove, or otherwise affect executive functions of Welsh Ministers.* The consent of the Welsh Ministers should be obtained, through normal consultation between the UK and the Welsh Government, by the time a Bill is considered by the Cabinet Committee on the Legislative Programme. There is an exception to this, relating to areas where Welsh Ministers exercise functions, but which lie outside the areas where legislative competence could be conferred on the National Assembly. In these circumstances, **Welsh Ministers should be consulted but consent is not required.**
- *Provisions that add to the legislative competence of the Assembly.* The consent of the

⁷ [National Assembly for Wales, *Standing Orders of the National Assembly for Wales*, May 2010](#)

Welsh Ministers should be obtained, through normal consultation between UK and Welsh Governments by the time a Bill is considered by the Cabinet Committee on the Legislative Programme. **The consent of the National Assembly for Wales is not required.**

- *Provisions that have a negative effect on the legislative competence of the Assembly or which is on matters within the legislative competence of the Assembly: **The Welsh Ministers will need to obtain the consent of the Assembly.*** By the time a Bill is considered by the Cabinet Committee on the Legislative Programme agreement must be reached with Welsh Ministers to promote the relevant motion in the National Assembly for Wales as soon as possible after introduction. In the event that the motion was not passed in the National Assembly, the UK Government would, subject to collective agreement being secured, need to table an appropriate amendment removing the relevant provisions before the Bill reaches its final stage in the House of introduction. The Welsh Ministers will need to have regard to these timing requirements in tabling their motion. The same will apply if any significant amendments are made to the relevant provisions during a Bill's passage. The Wales Office will work with the Welsh Government to facilitate any consents required.
- *Provisions within the Assembly's legislative competence which are purely supplementary, consequential, incidental, transitional, transitory or saving provisions relating to provisions on non devolved matters. **The Welsh Ministers should be consulted, but consent is not required.*** UK Government departments should consult the Wales Office for a view on whether provisions fall into this category. ⁸

These consent requirements also apply where UK Ministers have the power to amend primary legislation by Order and it is proposed to make an Order which would have any of the effects set out in the four bullet points above. Where a Bill would confer wide-ranging powers on UK Ministers to amend primary legislation by Order, UK Government departments are advised to pay particular attention to how those provisions would interact with the functions of Welsh Ministers and the legislative competence of the National Assembly.⁹

⁸ [Ministry of Justice, Devolution Guidance Note 9: Post-Devolution Primary legislation Affecting Wales, Paragraph1 \[Accessed 8 October\]](#)

⁹ Ibid

Legislative Consent Motions considered by the National Assembly to date

Since the enactment of the 2006 Act in May 2007, the National Assembly has had 12 LCMs to consider¹⁰. These are outlined below:

Laying date of the LCM in the National Assembly	Title of the UK Bill related to the LCM
10.06.2008	<u>Education And Skills Bill</u>
12.01.2009	<u>Local Democracy, Economic Development and Construction Bill</u>
05.05.2009	<u>Welfare Reform Bill</u>
22.05.2009	<u>Apprenticeship, Skills, Children and Learning Bill</u>
16.06.2009	<u>Child Poverty Bill</u>
10.12.2009	<u>Personal Care at Home Bill</u>
03.12.2009	<u>Children, Schools and Families Bill</u>
21.01.2010	<u>Child Poverty Bill</u>
14.01.2011	<u>Energy Bill</u>
25.01.2011	<u>Localism Bill</u>
25.01.2011	<u>Police Reform and Social Responsibility Bill (provisions relating to Police and Crime Panels)</u>
25.01.2011	<u>Police Reform and Social Responsibility Bill (provisions relating to Byelaw powers)</u>

All of the LCMs considered to date have been approved by the National Assembly, apart from an LCM relating to Police and Crime Panel provisions in the *Police and Social Responsibility Bill*, which Assembly Members declined to approve on 8 February 2011.¹¹ This was the first time that an LCM was not been agreed by a devolved institution in the UK.

UK Bills that affect Wales are debated each year in a Queen's Speech Debate in Plenary, when the Secretary of State for Wales comes to the National Assembly and makes a

¹⁰ In comparison, there were 41 LCMs during the Second Scottish Parliament from 2003-07. There have so far been 29 in the Third Scottish Parliament since 2007.

¹¹ [RoP, 8 February 2011 \[Accessed 14 February 2011\]](#)

statement on the UK Government's legislative programme. Assembly Members have the opportunity to question the Secretary of State, along with the First Minister and Business Minister, in relation to Bills which may include provisions relating to Wales. None of the twelve LCMs considered by the National Assembly so far were trailed in a Queen's Speech Debate, although it was announced that the *Child Poverty Bill* would involve Westminster legislating on an area of Welsh competence, so a LCM could reasonably have been expected in that case.

Further information

For further information on aspects of the Constitution in Wales, please contact **Alys Thomas** (Alys.thomas@wales.gov.uk) or Owain Roberts (Owain.roberts@wales.gov.uk), Members' Research Service.

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