

PARLIAMENTARY BUREAU

LEGISLATIVE CONSENT MEMORANDUMS

Introduction

1. Under Rule 9B.3.5, the Parliamentary Bureau is required to refer any legislative consent memorandum (LCM) that has been lodged with the Parliament to the committee within whose remit the subject matter of the relevant provision falls.
2. There are three LCMs to be considered at today's meeting.

LCM on Data Protection and Digital Information (No. 2) Bill

3. This Bill was introduced in the House of Commons on 8 March 2023.
4. An LCM was lodged by Neil Gray MSP, Cabinet Secretary for Wellbeing Economy, Fair Work and Energy on 15 May 2023. It is supported by Richard Lochhead, Minister for Small Business, Innovation and Trade.
5. The Bill is intended to enable data-driven innovation, reduce data protection-associated burdens on businesses, and empower people to take control of their data, within a trusted data regime.
6. In particular, relevant provisions include:
 - Digital verification services and powers for a public authority to disclose information to registered persons.
 - Secure sharing of customer data at the customer's request with authorised third party providers of services.
 - Sharing of data including disclosure of information to improve public service delivery to undertakings and implementation of agreements on sharing information for law enforcement purposes.
7. The LCM indicates that the Scottish Government intends to lodge a motion seeking the Scottish Parliament's consent to the relevant provision in this Bill, with the exclusion of clause 93. Clause 93 confers a power on the Secretary of State to make regulations to implement future international agreements relating to the sharing of information for law enforcement purposes. The Scottish Government recommends withholding consent to this provision unless it is amended to include a consultation requirement with the Scottish Ministers, or a parallel power is granted to the Scottish Ministers.

Lead committee

8. The LCM relates to digital economy and strategy, matters falling within the responsibility of the Minister for Small Business, Innovation and Trade (who supports the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy). The relevant provision in the Bill falls within the remit of the Economy and Fair Work Committee.

9. The LCM will also be considered by the Delegated Powers and Law Reform Committee in relation to any provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation.

LCM on Electronic Trade Documents Bill

10. This Bill was introduced in the House of Lords on 12 October 2022.

11. An LCM was lodged by Neil Gray MSP, Cabinet Secretary for Wellbeing Economy, Fair Work and Energy on 16 May 2023.

12. The Bill is designed to modernise trade processes by allowing certain trade documents in electronic form to be recognised in law so that they can have the same legal status as paper versions of the same document. This gives businesses the choice whether to use electronic or paper documents. In particular:

- Clause 1 sets out what is meant by “paper trade document” for the purposes of the Bill.
- Clause 2 sets out what is meant by “electronic trade document” for the purposes of the Bill.
- Clause 3 gives legal effect to electronic trade documents and enables them to be used in the place of paper trade documents.
- Clause 4 provides that a trade document in paper form may be “converted” to an electronic trade document, and vice versa.
- Clause 5 sets out exceptions whereby a paper trade document may not be held in electronic form.
- Clause 6 makes consequential provision.
- Clause 7 contains provides for the Bill’s extent, commencement and short title.

13. The LCM indicates that the Scottish Government does not intend to lodge a motion seeking the Scottish Parliament’s consent to the relevant provision in this Bill due to concerns that the delegated powers in the Bill can be exercised without the consent of the Scottish Ministers, and without those powers being conferred concurrently on the Scottish Ministers.

Lead committee

14. The LCM relates to support for business, industry and manufacturing, matters falling within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy. The relevant provision in the Bill falls within the remit of the Economy and Fair Work Committee.

15. The LCM will also be considered by the Delegated Powers and Law Reform Committee in relation to any provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation.

LCM on Retained EU Law (Revocation and Reform) Bill

16. This Bill was introduced in the House of Commons on 22 September 2022.

17. An LCM was lodged by Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture on 8 November 2022. A supplementary LCM was subsequently lodged on 24 May 2023.

18. In summary, the Bill as introduced would:

- Repeal or assimilate retained EU law (REUL), within a defined scope, by the end of 2023.
- Repeal the principle of supremacy of EU law from UK law by the end of 2023.
- Facilitate domestic courts departing from retained case law.
- Provide a mechanism for UK government and devolved administration law officers to intervene in cases regarding retained case law, or refer them to an appeal court, where relevant.
- Repeal directly effective EU law rights and obligations in UK law by the end of 2023.
- Abolish general principles of EU law in UK law by the end of 2023.
- Establish a new priority rule requiring retained direct EU legislation (RDEUL) to be interpreted and applied consistently with domestic legislation.
- Downgrade the status of RDEUL for the purpose of amending it more easily.
- Create a suite of powers that allow REUL to be revoked or replaced, restated or updated and removed or amended to reduce burdens.

19. On 10 May, the UKG tabled a number of amendments to the Bill accompanied by a Written Statement to the House of Commons. These amendments were agreed to by the House on 15 May 2023. In summary, they modify the Bill in the following ways:

- The sunset: The automatic sunset of REUL is removed.
- Revocation Schedule: Instead of the automatic sunset of REUL, the Bill instead provides that 587 specific instruments listed in a new Schedule are revoked, in a “sunset” list.
- Preservation and extension powers: The power to preserve REUL is replaced with a new power which relates to instruments listed in the Schedule. Anything in the Schedule which is specified in regulations made by a relevant national authority will not be revoked (including the Scottish Ministers when exercising the power to the extent that instruments to be revoked are within devolved competence).

- Consequential amendment powers: The Scottish Ministers, together with other devolved governments, are conferred the consequential amendment powers at clause 20 and clause 23 of the Bill.

20. The original LCM indicated that the Scottish Government did not intend to lodge a motion seeking the Scottish Parliament's consent to the UK Parliament legislating on devolved matters in this Bill due to "its deregulatory agenda; its undermining of devolution; and the risk posed by the sunset provision to automatically repeal this body of law unless Ministers take legislative action and the date of sunset which will disrupt Scottish Government work, including the legislative programme."

21. The supplementary LCM indicates that the Scottish Government still does not intend to lodge a motion seeking the Scottish Parliament's consent to the UK Parliament legislating on devolved matters in this Bill "due to the significant undermining of devolution demonstrated by the refusal to seek consent from the Scottish Parliament and Scottish Government and the disrespect to both shown by UK Government in pursuing Royal Assent for the Bill; the UK Government's refusal to commit to a consent requirement when acting in devolved areas; and the overall divergent and deregulatory intent of the Bill alongside the Scottish Government's fundamental opposition to it".

Lead committee

22. The relevant provision in the Bill falls within the remit of the Constitution, Europe, External Affairs and Culture Committee. The Committee's remit includes to consider and report on the Scottish Government's EU and external affairs policy, and policy in relation to the UK's exit from the EU, as well as any other matter falling within the responsibility of the Cabinet Secretary for the Constitution, External Affairs and Culture.

23. No other committee remit appears to be engaged by the relevant provisions of the Bill directly. However, it is possible that the powers in the Bill could be used in such a way as to impact on all devolved policy areas that were formerly EU competences. Other committees may therefore wish to explore this potential impact. The referral to the Constitution, Europe, External Affairs and Culture Committee as lead committee would not preclude any other committee from exploring the potential for the Bill to impact on its remit.

24. The LCM will also be considered by the Delegated Powers and Law Reform Committee in relation to any provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation.

Recommendations

25. The Bureau is invited to refer, under Rule 9B.3.5, the LCM on the Electronic Trade Documents Bill to the Economy and Fair Work Committee as lead committee.

26. The Bureau is invited to refer, under Rule 9B.3.5, the LCM on the Data Protection and Digital Information (No. 2) Bill to the Economy and Fair Work Committee as lead committee.

27. The Bureau is invited to refer, under Rule 9B.3.5, the supplementary LCM to the Constitution, Europe, External Affairs and Culture Committee as lead committee.

Parliamentary Business Team
May 2023