



The Scottish Parliament
Pàrlamaid na h-Alba

Martin Whitfield MSP
Convener
Standards, Procedures and Public Appointments
Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

By email only

CEEAC.committee@parliament.scot

15 February 2023

Dear Mr Whitfield

Standing Orders Rule 9B.2 Legislative consent motions

Having published the findings from our consideration of the [LCM](#) for the [Retained EU Law \(Revocation and Reform\) Bill](#), and given the interest of your Committee in the Standing Orders as they relate to the parliamentary consideration of legislative consent motions, I draw your attention to paragraphs 195-197 of our [Legislative Consent Memorandum for the Retained EU Law \(Revocation and Reform\) Bill \(UK Parliament legislation\)](#) report.

You will be aware, having contributed to the debate which took place on 29 November 2022, that the Scottish Government lodged a motion on the Bill while both this Committee and the DPLR Committee were still in the process of undertaking scrutiny of the evidence and yet to complete our reports on the LCM (as we are required to do under Rule 9B.3.5 of the Standing Orders).

I note that in response to a point of order from yourself immediately before that debate, the Presiding Officer said—

“There have been instances when the Parliament has debated matters that are the subject of committee scrutiny prior to committee reports being published, and I can confirm that there are no procedural limitations on the Parliament debating this topic today. This afternoon’s business was agreed by the Parliamentary Bureau and then voted on by the Parliament last week. The member may be interested to know that

the Scottish Government has confirmed its intention to bring forward a debate following the conclusion of the committee's consideration."¹

We of course fully accept that ruling and note the intention of the Scottish Government to bring forward a debate on the findings of our report. The issue we wish to highlight relates to sequencing and specifically with regard to LCMs; in that our work and that of the DPLR Committee would usually be expected to have been completed before a Chamber debate, thereby allowing that work to frame and inform that debate.

Rule 9B.2 of the Standing Orders sets out that "a legislative consent motion shall not normally be lodged until after the publication of the lead committee's report" and "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...is published."

However, as you will be aware, a legislative consent motion seeks the Parliament's consent, not its refusal of consent. As the Scottish Government recommended in its LCM that the Parliament not give its consent to the Bill, there was no requirement to lodge a legislative consent motion, and Rule 9B.2 of the Standing Orders did not apply in relation to this Bill. The Standing Orders are silent regarding the scenario of consent not being sought.

We suggest that this could be considered an anomaly, particularly in the post-EU landscape in which the consent of the devolved administrations to LCMs has been withheld with far more frequency than was the case pre-Brexit. There have been six Brexit-related Bills passed at Westminster without the consent of the Scottish Parliament since 2018, with the number of such instances before 2018 being just one.

We wish therefore to highlight our concern regarding this matter and recommend that your Committee considers undertaking a review of the relevant provisions of Standing Orders.

Yours sincerely



Clare Adamson MSP, Convener of the Constitution, Europe, External Affairs and Culture Committee

CC: Alison Johnstone MSP, Presiding Officer; and Stuart McMillan, Convener, DPLR Committee

¹ <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-29-11-2022?meeting=14017&iob=126993>