

## Summary of parliamentary stages

3.26 The bill will start in either the Commons or the Lords. The House and date of introduction will be agreed by the PBL Committee on advice from the Business Managers. Bills starting in the Lords must complete the same stages. There are five key stages in each House (summarised below).

### Summary of a bill's stages:

1. **First Reading** – formal presentation of the bill (no debate)
2. **Second Reading** – debate on general principles of the bill
3. **Committee Stage** – detailed line-by-line examination of the bill, consideration of amendments, oral evidence heard and written evidence published (if necessary)
4. **Report Stage** – Further opportunity to consider amendments made in Committee and to amend the bill
5. **Third Reading** – Final consideration of the bill

### Detail of each stage:

3.27 Introduction into the Commons and First Reading: the Clerk at the Table will read out the short title of the bill, a minister nods, after which the bill is deemed to have been read the first time. There is no debate. Introduction is supported by the provision and publication of various documents:

- The final text of the bill is supplied by Parliamentary Counsel to the Public Bill Office the day before introduction and ahead of publication.
- The department is responsible for supplying the final text of the explanatory notes to the Public Bill Office the day before introduction (having cleared the draft version with them in advance).
- The department should also ensure that the minister who will be in charge of the bill has signed the ECHR statement and that confirmation that this has been signed has been

# 7. COLLECTIVE AGREEMENT

## Key points

- Collective agreement for legislation must be obtained from the PBL Committee and other relevant Cabinet committees. Agreement is needed to announce the intention to legislate to a certain timescale or in a specific vehicle, for the detailed legislative proposals and bills before introduction and for government tabled or supported amendments during parliamentary passage.
- Relevant Cabinet committees will consider the content of the proposals, including any changes before or after introduction which amend the policy or introduce significant new provisions, in line with their terms of reference while the PBL Committee will consider the state of preparation and handling. If policy clearance has not been obtained through this process when a slot in the programme is allocated, this should be a priority although not at the expense of giving proper consideration to the policy and its implications. Other departments should be consulted at official level as early as possible, before seeking formal policy agreement.
- Where collective agreement is sought via correspondence through the write round process, five working days after the letter has been issued should be allowed for ministers to comment on requests for formal policy agreement; nine working days during parliamentary recess. The chair of the committee will also need four days to confirm clearance.
- The full list of Cabinet committees and their terms of reference are available on [GOV.UK](https://www.gov.uk). The Cabinet Secretariat can provide more guidance on seeking collective agreement and which committees you should write to.

## When collective agreement is required

7.1 The Cabinet Secretariat should provide the final steer on whether collective agreement is needed on a specific issue, using the Cabinet Manual and considering the Ministerial Code. For legislation the PBL Committee's agreement is broadly needed to:

- Agree a slot in the legislative programme in a specific session and to start drafting legislation;
- Announce the intention to legislate to specific timescales or in a specific vehicle;

- Agree in principle that a bill should be published in draft;
- Approve publication in draft for pre-legislative scrutiny when the final text of the draft bill is available and, particularly if it is proposed that a joint committee should be established to consider the draft bill, the form of pre-legislative scrutiny;
- Make significant changes to the content of the bill after a slot in the programme has been allocated and in particular changes which would significantly widen the scope of the bill require clearance from PBL Committee. Smaller additions or omissions arising from further policy development do not need to be cleared by the PBL Committee at this stage, only by the relevant policy committee (see below);
- Approve a bill's introduction into Parliament; and
- To table any government amendments or accept any opposition or backbench amendments to a bill, except where the PBL Secretariat and Parliamentary Counsel have both agreed that the amendments (whether government or non-government) can be considered minor and technical. Clearance may still be required if a large number of minor and technical amendments are proposed given the time these may take to debate.

7.2 Broadly speaking, the agreement of other relevant Cabinet committees is needed to:

- Approve the policy contained within a bill (whether introduced or published in draft);
- Announce the intention to legislate on a particular issue; and
- Agree any changes to a bill, either before or after introduction, which amend the policy or introduce significant new provisions.

7.3 It is important that bill teams factor collective agreement into the overall project plan and develop policy and concessions in good time to enable collective agreement processes. Often this will require contingent planning and processes.



# 14. DEVOLVED LEGISLATURES AND ADMINISTRATIONS

## Key points

- The UK Parliament remains sovereign, but will ‘not normally’ pass primary legislation in areas of devolved or transferred competence without legislative consent and agreement from the devolved legislatures<sup>6</sup>. This is known as the ‘Sewel Convention’.
- The UK has asymmetrical devolution: the settlements of the three devolved legislatures in Scotland, Wales and Northern Ireland hold different powers, responsibilities and competencies over public services.
- Legislative consent is obtained in the form of a Legislative Consent Motion (LCM), which is usually tabled before the relevant devolved legislature by their corresponding devolved administration (DAs)<sup>7</sup>.
- An LCM should normally be sought in the devolved legislature if any provisions or clauses in a Westminster bill relate to devolved matters in Wales and Scotland or if the bill makes provisions specifically for transferred purposes in Northern Ireland. Equally, legislative consent from the devolved legislatures will also be required if a Westminster bill seeks to alter or change the powers, responsibilities or competence of either the devolved administrations and/or the devolved legislatures.
- A devolved administration cannot seek to table an LCM for a Westminster bill until the bill has been formally introduced to the UK Parliament.
- At an early stage and before parliamentary introduction, UK Government (UKG) departments will need to determine both the territorial extent and application of their bill and provide a devolution analysis to the relevant legal teams in the Office of the Advocate General (OAG),

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<sup>6</sup> <https://www.parliament.uk/site-information/glossary/sewel-convention/>

<sup>7</sup> Collectively the Scottish Government, Welsh Government and Northern Ireland Executive are referred to as the devolved administrations (DAs).

Wales Office Legal Advisers (WOLA) and/or Northern Ireland Office Legal Advisers (NIOLA) to determine whether each provision or clause in the bill relates to devolved, reserved or transferred matters under each settlement.

- The Union and Constitution Group (UCG), together with the Office of the Secretary of State for Scotland (OSSS), the Office of the Secretary of State for Wales (OSSW) and the Northern Ireland Office (NIO)<sup>8</sup> can assist bill teams and departments in this process.
- Following discussions with the UCG and the territorial offices, UKG departments should hold policy discussions with devolved administration counterparts to test UKG's devolution analysis of bill's considered to engage the LCM process. The devolution analysis will identify whether or not legislative consent will be required by the relevant devolved legislature for each provision or clause (depending on the bill's scope and the territorial extent/application).
- The recess dates in the UK Parliament are often different to the devolved legislatures. Recess dates for the devolved legislatures are usually available online, but the territorial offices will be able to help if any further clarity is needed. Bill teams will therefore need to carefully coordinate the LCM process within the early stages of the Westminster bill's passage through the UK Parliament.
- When legislative consent has been refused or not yet granted by the devolved legislatures by the time the bill is in the final amending stages in the second House (for both Houses, this is taken as Report Stage), UKG is obliged to make a statement to the House before Third Reading commences to inform the House of the bill's present LCM status. This was agreed by the Lords Procedures Committee, following a recommendation from the Constitution Committee.<sup>9</sup> The practical implication of this is that the bill's lead Minister in the Lords will need to include a statement in their speech to this effect.

## Background

14.1 The Memorandum of Understanding<sup>10</sup> between the UK Government and the devolved administrations states that:

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<sup>8</sup> Collectively the Office of the Secretary of State for Scotland (OSSS), the Office of the Secretary of State for Wales (OSSW) and the Northern Ireland Office (NIO) are known as the territorial offices.

<sup>9</sup> <https://publications.parliament.uk/pa/ld5801/ldselect/ldconst/71/7105.htm>

<sup>10</sup> [www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement](http://www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement)

*“The United Kingdom Parliament 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.”*

14.2 Each devolution settlement has different characteristics and gives different powers to the devolved legislatures and administrations in question. One consequence is that an LCM may be sought in one devolved legislature but not in another. The devolution settlements are complex and this chapter provides only a general introduction. Bill teams are strongly advised to read the more detailed Devolution Guidance Notes (DGNs) for taking forward primary legislation which seeks to legislate within devolved or transferred areas of competence in Scotland, Wales and Northern Ireland. These can be found on the [GOV.UK](https://www.gov.uk) website.

### **General principles**

14.3 Officials in the UCG and the territorial offices should be the first port of call for bill teams on any devolution issues. It is advisable to contact them early on in the development of the bill, even if the bill does not appear to have any obvious devolution implications. In addition to devolution issues, there may be drafting issues to take into account (for instance, with regard to the appropriate drafting under the separate Scottish and Northern Irish legal systems).

14.4 With the support of the UCG, the territorial offices and their respective legal advisers (OAG, WOLA and NIOLA), bill teams should identify at an early stage the territorial extent of the bill, whether or not the bill’s provisions relate to reserved, devolved or transferred matters in each part of the UK, along with whether or not the provisions engage the LCM processes in the devolved legislatures. This should involve the bill teams and their departmental lawyers producing an initial analysis of the devolution implications of the bill. It is likely to involve sharing policy intent and drafting instructions for bills with UCG, the territorial offices and with relevant legal advisers to ensure that they have the clearest possible understanding of the proposed legislation before they can help bill teams fully assess the devolution implications. In general, UKG departments should also consult the relevant territorial offices before making initial contact with counterparts in the devolved administrations to discuss the bill.

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14.5 Bill teams (with assistance from the territorial offices, where necessary) should then hold policy discussions with devolved administration counterparts to understand if DA Ministers will be content for the bill to extend and apply to devolved and/or transferred areas in Scotland, Wales and/or Northern Ireland. Equally, DA Ministers may request that provisions that relate to England-only are extended to apply to their own respective nations. Bill teams should also be clear with the devolved administrations over matters for which UKG remains responsible for and matters for which the devolved administrations are responsible for. If differences in interpretations or boundaries arise, bill teams should work with the relevant territorial offices and with UCG to reach an agreed solution.

14.6 Even if the bill does not appear to have any obvious devolution implications, it is crucial that bill teams discuss the provisions with colleagues in both the UCG and the territorial offices to confirm that this is the case. In particular, while a bill might not deal substantially with devolved matters, it may touch on devolved or transferred matters which could result in the LCM process being engaged within a devolved legislature. The UCG and the territorial offices can advise on whether or not the LCM is likely to be engaged before provisions in the bill are shared with the devolved administrations.

14.7 If provisions in the bill relate to devolved or transferred matters, UKG departments should consider whether UKG's preferred position would be to legislate for England only (or England and other parts of the UK where the topic is reserved and not devolved/transferred) or to seek to extend the provisions to other parts of the UK, bearing in mind that this may engage the LCM process in the relevant devolved legislatures. Bill teams should seek agreement and clearance from the relevant territorial offices before sharing a bill's provisions and clauses (relating to devolved or transferred matters) with the devolved administrations ahead of introduction. However, copies of the relevant provisions/clauses that are likely to engage the LCM process in the devolved legislatures should only be shared with the agreement of UKG Ministers.

14.8 If the provisions relate to reserved matters, UKG departments should be aware that a failure to apply a bill's reserved provisions/clauses in the devolved nations will mean that the devolved legislatures will have no way of passing equivalent legislation.

14.9 It is not only important that engagement with the devolved administrations takes place at an early stage (following discussion with the territorial offices), but equally important that bill teams and sponsoring departments decide on a contingency position if they are unable to secure LCM support from one or all of the devolved administrations over provisions/clauses relating to devolved or transferred matters. This might mean having a view on what a bill could look like with such provisions excised from it. In some exceptional circumstances, it is possible to proceed without LCMs from the devolved legislatures. Bill teams should first discuss the appropriate next steps with the UCG, EDS, the relevant territorial offices and with Business Managers' offices.

14.10 If a bill applies and extends to Scotland, Wales and/or Northern Ireland, UKG departments should keep in mind the need to consult relevant interest groups in those parts of the UK including, in particular, the judiciary in Scotland and Northern Ireland, on the same basis as their equivalents in England and Wales. Further information on engaging with relevant interest groups can be found in the DGNs.

14.11 A devolved administration cannot seek to table or take forward an LCM until the bill has been formally introduced to the UK Parliament. As a result, the relevant UKG Bill Minister should first secure agreement in principle from DA Ministers that the relevant devolved administrations will table and support an LCM in their devolved legislatures in respect of the bill.

14.12 Following the introduction of a bill at Westminster, the devolved administrations are expected to table a legislative consent memorandum (which is a precursor to an LCM) in their devolved legislatures. Bill teams should continue to take on board views, and work with devolved administration counterparts on the bill according to the established practices.

14.13 Although the timing and passage of LCMs is firmly a matter for the devolved legislatures, bill teams should work closely with devolved administration counterparts with the aim of securing passage as soon as possible. The final vote on the LCM must take place in the devolved legislatures before the final amending stage in the Second House in Parliament<sup>11</sup>. This is to ensure that UKG has the contingency option of tabling amendments to the bill to remove or amend the relevant provisions/clauses, in the event that a devolved legislature

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<sup>11</sup> In the case of the House of Lords, the final amending stage should be considered as Report Stage (and not Third Reading).

chooses to withhold legislative consent. However, UKG's aim and first preference remains for the LCMs to be passed by the devolved legislatures while the bill is in the First House in Parliament.

14.14 Bill teams will need to remain in contact with the UCG and the territorial offices throughout the passage of the bill to ensure that any amendments tabled to the bill during passage are fully considered from a devolution perspective.

### **Devolution and PBL Committee**

14.15 The PBL Committee, prior to considering a bill ready for introduction, will expect the devolved administrations to have been consulted on a bill's devolved provisions and clauses. The PBL Committee will also expect all devolution-related issues to have been substantively resolved, unless there are exceptional circumstances. This will form part of the PBL clearance process.

14.16 By the time the bill goes to PBL Committee for approval for introduction, the sponsoring UKG department must be in a position to state whether the provisions of the bill will apply and extend to England only, to England and Wales, to England and Wales and/or Scotland and/or Northern Ireland, or to the whole of the UK. Different provisions within the same bill may have different territorial extent and application.

14.17 If the bill extends to Scotland, Wales and/or Northern Ireland, the PBL Committee will also wish to know whether it deals with matters which are reserved wholly to the UK Government or whether it has implications for the devolved legislatures and/or administrations. For example, it may extend their powers or duties or the provisions may have a consequential impact on devolved responsibilities i.e. such as local government in Scotland, Wales or Northern Ireland.

14.18 If provisions extending to one or more of the devolved administrations relate directly to matters that are devolved or transferred, the PBL Committee will wish to know whether the relevant devolved administrations have expressed support or agreement in respect of the relevant provisions/clauses which will engage the LCM process.. If the provisions relate to the executive powers of DA Ministers, the Committee will also wish to know whether this has been agreed by the relevant devolved administrations. Once the Westminster bill has been

introduced, a legislative consent memorandum should normally be laid by the devolved administrations in their devolved legislatures no later than two weeks after introduction. The legislative consent memorandum (which is the precursor to the LCM) will indicate if the devolved administration agrees with the UKG's devolution analysis of the bill, along with indicate if they intend to recommend that consent be given to the bill's devolved provisions/clauses.

14.19 If the bill (or part of the bill) deals with devolved or transferred matters, PBL Committee will expect the devolved administrations concerned to have been fully consulted; in practice, this means extensive engagement at official-level and appropriate engagement at ministerial-level. The PBL Committee will also expect the responsible UKG Bill Minister to write to their DA ministerial counterparts seeking 'agreement in principle' to take forward the LCM process in the devolved legislatures. The relevant DA Minister will then consult with their ministerial colleagues and officials to reach agreement on the proposal. This is then usually confirmed in writing in response to the relevant UKG Bill Minister.

14.20 The expectation of the PBL Committee is that devolution issues will have been substantively resolved by the time the Committee considers whether a bill is ready for parliamentary introduction. If any devolution issues remain outstanding, the PBL Committee may decide to delay the introduction of the bill. This is to ensure that the progress of other legislative vehicles at Westminster is not delayed.

14.21 UKG departments should also note that any legislative amendments made to a bill while it progresses through Parliament may have implications on a bill's devolution analysis and status. Bill teams should do their utmost to ensure that the devolved administrations are consulted on all devolution-related amendments tabled by UKG and that, where necessary, supplementary LCMs are obtained.

14.22 The territorial offices are part of the Westminster decision-making process and will be involved in PBL write-rounds and clearance processes. However, the devolved administrations are not part of the Westminster decision-making process. As a result, Cabinet committee correspondence or papers should not be copied to them, although UKG Ministers may write to DA ministerial counterparts in the devolved administrations in similar terms when writing to Cabinet committees. Likewise, internal government legal advice should **not** be shared directly with the devolved administrations without agreement from both the UKG and the relevant

territorial office. Details on handling correspondence can be found in the DGNs and UCG can advise on other protocols in corresponding and managing relations with the devolved administrations.

14.23 PBL Secretariat in the Cabinet Office should also be kept informed of any devolution issues in bills.

### **Devolution implications of bills to be published in draft**

14.24 The same principles apply where a bill is being prepared for publication in draft. The bill team should discuss the proposed provisions with the UCG and the territorial offices as early as possible, so that discussions with the devolved administrations can start in good time with the aim of reaching an agreed position before publishing the bill in draft.

14.25 It is preferable to reach an agreed position before publishing the bill in draft. However, if the devolution issues prove complex and risk significantly delaying publication of the draft bill, it may be possible to publish the bill in draft form, stating that the devolution issues remain to be resolved through discussion with the devolved administrations. This can be explained in the bill's accompanying explanatory notes. Publication in draft may, in itself, help to resolve any outstanding issues.

### **Engaging with the Scottish Government and Parliament**

14.26 Under the DGNs, the UK Parliament does 'not normally' legislate without the consent of the Scottish Parliament on provisions which:

- are for a devolved purpose;
- modifies/alters the executive competence of Scottish Ministers; or
- modifies/alters the legislative powers of the Scottish Parliament.

14.27 To secure legislative consent in Scotland, an LCM must be tabled and voted on (in favour) by the Scottish Parliament; the LCM is normally tabled and promoted by the Scottish Government. In theory, it is possible for any member of the Scottish Parliament (who is not a member of the Scottish Government) to table an LCM before the Scottish Parliament, though UKG departments will normally only deal with the Scottish Government in order to agree the

tabling of an LCM. Appendix E provides more detail on the process in the Scottish Parliament for considering LCMs.

14.28 Where it is proposed to include provisions/clauses which fall within the competence of the Scottish Parliament within a Westminster bill, the Office of the Secretary of State for Scotland (OSSS) should be consulted in the first instance. The Office of the Advocate General (OAG), who advises UKG on Scots law, should also be consulted on drafting matters and on establishing whether such provisions will engage the LCM process in the Scottish Parliament. It is critically important that bill teams discuss the potential need for LCMs, along with DA engagement, with OSSS and OAG at an early stage. Equally, OAG will be able to support departmental lawyers in conducting a devolution analysis on each bill. Any LCM support must then be agreed by the relevant Scottish Minister. If the Scottish Government agrees to supporting an LCM, they will then lay an LCM before the Scottish Parliament, together with a detailed memorandum, which will recommend that the Scottish Parliament agrees to providing legislative consent for the bill.

14.29 LCMs must be passed by the Scottish Parliament before the final amending stage in the Second House in Parliament. This is to ensure that UKG has the contingency option of tabling amendments to the bill to remove or amend the relevant provisions/clauses in relation to Scotland, in the event that the Scottish Parliament chooses to withhold legislative consent.

14.30 Legislative amendments made (both by UKG or by backbench/opposition MPs) during parliamentary proceedings can alter a bill's devolution status and engage the LCM process. The same procedure, as described above for securing the agreement of the Scottish Government would then apply, but would need to be accelerated. As such, legislative amendments that are likely to impact upon the handling and passage of a bill should be discussed with PBL Secretariat, OSSS and the UCG in the first instance.

### **Engaging with the Welsh Government and Senedd Cymru/Welsh Parliament**

14.31 Under the DGNs, the UK Parliament does 'not normally' legislate without the consent of the Senedd Cymru/Welsh Parliament on provisions which:

- are for a devolved purpose;
- modifies/alters the executive competence of Welsh Ministers; or
- modifies/alters the legislative powers of the Senedd Cymru/Welsh Parliament.

14.32 To secure legislative consent in Wales, an LCM must be tabled and voted on (in favour) by the Senedd Cymru/Welsh Parliament; the LCM is normally tabled and promoted by the Welsh Government. Appendix E provides more detail on the process in the Senedd Cymru/Welsh Parliament for considering LCMs.

14.33 Where it is proposed to include such provisions/clauses which fall within the competence of the Senedd Cymru/Welsh Parliament within a Westminster bill, the Office of the Secretary of State for Wales (OSSW) should be consulted in the first instance. Wales Office Legal Advisers (WOLA) should also be consulted on drafting matters and on establishing whether or not the LCM process is engaged in the Senedd Cymru/Welsh Parliament. It is critically important that bill teams discuss the potential need for LCMs, along with DA engagement, with OSSW and WOLA at an early stage. Equally, WOLA will be able to support departmental lawyers in conducting a devolution analysis on each bill. Any LCM support must then be agreed by the relevant Welsh Minister. If the Welsh Government agrees to supporting an LCM, they will then lay an LCM before the Senedd Cymru/Welsh Parliament, together with a detailed memorandum, which will recommend that the Senedd Cymru/Welsh Parliament agrees to providing legislative consent for the bill.

14.34 LCMs must be passed by the Senedd Cymru/Welsh Parliament before the final amending stage in the Second House in Parliament. This is to ensure that UKG has the contingency option of tabling amendments to the bill to remove or amend the relevant provisions/clauses in relation to Wales, in the event that the Senedd Cymru/Welsh Parliament chooses to withhold legislative consent. Bill teams should consult with the Office of the Secretary of State for Wales (OSSW) on timings with regard to tabling an LCM before the Senedd Cymru/Welsh Parliament as there are different recess times in Wales and limited slots for the Senedd Cymru/Welsh Parliament to consider and debate LCMs. Appendix E provides more detail on the process in the Senedd Cymru/Welsh Parliament for considering LCMs.

14.35 Legislative amendments made (both by UKG or by backbench/opposition MPs) during parliamentary proceedings can alter a bill's devolution status and engage the LCM process. The same procedure, as described above for securing the agreement of the Welsh Government would then apply, but would need to be accelerated. As such, legislative amendments that are likely to impact upon the handling and passage of a bill should be discussed with PBL Secretariat, OSSW and UCG in the first instance.

## Engaging with the Northern Ireland Executive and Assembly

14.36 Under the DGNs, the UK Parliament does 'not normally' legislate without the consent of the Northern Ireland Assembly on provisions which:

- are for a transferred (ie: devolved) purpose;
- modifies/alters the competence of Northern Ireland Ministers or the executive functions of the departments; or
- modifies/alters the legislative powers of the Northern Ireland Assembly.

It does not apply when legislation deals with transferred matters only incidentally or consequentially upon provision made in relation to a reserved or excepted matter.

14.37 To secure legislative consent in Northern Ireland, an LCM must be tabled and voted on (in favour) by the Northern Ireland Assembly; the LCM is normally tabled and promoted by the Northern Ireland Executive. Appendix E provides more detail on the process in the Northern Ireland Assembly for considering LCMs.

14.38 Where it is proposed to include such provisions/clauses which fall within the transferred competence of the Northern Ireland Assembly within a Westminster bill, Northern Ireland Office (NIO) officials should be consulted in the first instance. Northern Ireland Office Legal Advisers (NIOLA) should also be consulted on drafting matters and on establishing whether or not the LCM process is engaged in the Northern Ireland Assembly. It is critically important that bill teams discuss the potential need for LCMs, along with DA engagement, with NIO and NIOLA at an early stage. Equally, NIOLA will be able to support departmental lawyers in conducting a devolution analysis on each bill. Any LCM support must then be agreed collectively by Northern Ireland Executive Ministers. If the Northern Ireland Executive agrees to supporting an LCM, the relevant Minister will then lay an LCM before the Northern Ireland Assembly, together with a detailed memorandum, which will recommend that the Northern Ireland Assembly agrees to providing legislative consent for the bill.

14.39 LCMs must be passed by the Northern Ireland Assembly before the final amending stage in the Second House in Parliament. This is to ensure that UKG has the contingency option of tabling amendments to the bill to remove or amend the relevant provisions/clauses in relation to Northern Ireland, in the event that the Northern Ireland Assembly chooses to withhold legislative consent. Appendix E provides more detail on the process in the Northern Ireland Assembly for considering LCMs.



14.40 Legislative amendments made (both by UKG or by backbench/opposition MPs) during parliamentary proceedings can alter a bill's devolution status and engage the LCM process. The same procedure, as described above for securing the agreement of the Northern Ireland Executive would then apply, but would need to be accelerated. As such, legislative amendments that are likely to impact upon the handling and passage of a bill should be discussed with PBL Secretariat, NIO and UCG in the first instance.

# 21. PUBLICATION IN DRAFT AND PRE-LEGISLATIVE SCRUTINY

## Key points

- The Government is committed to, wherever possible, publishing bills in draft for pre-legislative scrutiny; the minister should write to the PBL Committee seeking initial agreement to the principle of publishing the bill in draft for pre-legislative scrutiny before a bill is drafted.
- Pre-legislative scrutiny is normally carried out by the relevant Commons departmental select committee, or an ad hoc joint committee of both Houses. This will be subject to negotiation with the usual channels but agreement in principle should be obtained before seeking final PBL Committee approval to publish the bill in draft (working with the Whips offices).
- When the bill is ready to be published in draft the minister must seek clearance to do so, circulating a PBL Committee memorandum including the draft bill, explanatory notes, impact assessment and legal issues memorandum.
- Draft bills should be published in time to give the committee carrying out scrutiny at least three to four months (excluding parliamentary recess) to carry out its work and still report in time for the department to make any necessary changes before the bill is introduced.
- Publication in draft does not guarantee introduction in the next session, so the department must bid for a slot for a programme bill even as it is preparing a draft bill.
- Further guidance is available from the PBL Secretariat and the Cabinet Office Parliamentary Adviser. You should contact your departmental parliamentary clerk in good time for information on laying documents before Parliament.

## Suitability of bills for publication in draft

21.1 The Government is committed to publishing more of its bills in draft before they are formally introduced to Parliament, and to submitting them to a parliamentary committee for parliamentary pre-legislative scrutiny where possible.

21.2 The PBL Committee will give consideration to proposals to publish parts of a bill in draft where it is not feasible to publish the whole bill in draft.

21.3 The chair of the PBL Committee will ask ministers to consider whether bills for which they are bidding for legislative time are suitable for publication in draft, as well as inviting bids for bills specifically intended for publication in draft in the first instance.

21.4 There are a number of reasons why publication in draft for pre-legislative scrutiny is desirable. It allows thorough consultation while the bill is in a more easily amendable form, and makes it easier to ensure that both potential parliamentary objections and stakeholder views are elicited. This can assist the passage of the bill when it is introduced to parliament at a later stage and increases scrutiny of government legislation.

21.5 The decision on which bills will be published in draft is for the PBL Committee, taking into account the overall requirements of the legislative programme. Some bills may not be suitable for publication in draft, for example bills that are needed to meet international commitments where there is little flexibility around implementation, bills to implement budget commitments, or bills which must reach the statute book quickly.

#### **PBL Committee approval for publication in draft**

21.6 PBL Committee agreement is needed to draft any bill, whether for publication in draft or to introduce a final bill into Parliament.

21.7 After the Queen's Speech, the Leader of the House of Commons writes to the House of Commons Liaison Committee listing the bills which the Government expects to publish in draft that session, and their provisional date of publication. The Leader of the House of Lords will also write to the Liaison Committee in that House in similar terms. This allows the usual channels to negotiate scrutiny arrangements for a package of draft bills.

21.8 In advance of the Queen's Speech, the PBL Secretariat will assess the progress of all bills being prepared for publication in draft and confirm with departments which bills will be included in the list sent to the Liaison Committee. In the light of consultations, the business managers will bring forward proposals for the establishment of ad hoc joint committees to undertake pre-legislative scrutiny in the course of the session. Other draft bills are likely to be subject to pre-legislative scrutiny by an existing select committee.

21.9 The Government may publish further draft bills or draft clauses during the session which were not included in the letter to the Liaison Committee. The Leaders in each House will write to the Commons and Lords Liaison Committee to update them on this.

21.10 Draft bills are normally cleared by the PBL Committee by correspondence rather than in a meeting. The bill minister will need to write to the PBL Committee, allowing at least six sitting days for colleagues to comment (nine working days over a recess period) and four days for clearance to be arranged in time for the draft bill to be published on the date agreed. Clearance is not granted until the chair of the committee has signed a letter confirming agreement to publication. The bill minister should attach the following papers to the letter seeking clearance:

- the latest draft of the bill;
- explanatory notes;
- bill memorandum;
- delegated powers memorandum;
- legal issues memorandum; and
- impact assessment (if needed).

21.11 In place of a parliamentary handling strategy, details of the proposed arrangements for pre-legislative scrutiny (which should be agreed with the business managers and subject to agreement with the usual channels) should be included in the PBL Committee memorandum. This should include the preferred timetable for completion of pre-legislative scrutiny and the Government's response to the recommendations, and any public consultation.

21.12 Draft bills should be published and laid before Parliament as command papers. This need not require costly white paper-style publication. The explanatory notes and impact assessment should be published alongside the draft bill. Where a draft bill includes delegated powers, a delegated powers memorandum should be published alongside the draft bill and a copy sent to the DPRRC. Departments should discuss laying command papers with their departmental parliamentary clerk.

21.13 There is no requirement to seek Queen's consent before a draft bill is published, though out of courtesy the department might wish to alert the Palace to any draft bill which significantly affects the Crown's interests.

### **Parliamentary pre-legislative scrutiny**

21.14 Parliamentary pre-legislative scrutiny may be carried out by a variety of types of committee. The options are:

- Commons departmental (or cross-cutting) select committee;
- Joint committee of both Houses (usually ad hoc);
- Ad hoc Commons or Lords committee;
- Separate but parallel committees in each House; or
- Two or more existing committees meeting concurrently.

21.15 The bill minister should indicate the preferred option even at the early stage of seeking agreement to the principle of publication in draft, as business managers will take this into account whilst considering the overall needs of the legislative programme. Once the PBL Committee has agreed a preferred option, the choice of route will still be subject to negotiation with the usual channels and discussions with the relevant committee who may, for example, press for Lords involvement. The factors to consider include:

- whether the draft bill is likely to be of particular interest to one House rather than the other;
- whether the Government declining to initiate the appointment of a joint committee will lead to later handling difficulties;
- whether the bill engages the responsibilities of more than one department; and
- whether an existing select committee has already built up expertise in the area through a previous inquiry such as an inquiry into a related green paper.

21.16 In general there is an expectation that the Commons departmental select committee will be the chosen route unless there is reason to the contrary, though there is also something of an expectation that if possible there will be two/ three joint committees in any one session. Departments should bear in mind, however, that, in the case of an existing select committee, it is for the committee to decide whether it wishes to undertake this work. In contrast, an ad-hoc committee is tasked specifically to carry out the work. An existing select committee is more likely to be willing to do so if it has sufficient warning that it can build scrutiny of the draft bill into its programme of work for the session.

21.17 An ad hoc joint committee requires a series of motions in each House and complex negotiation with the usual channels (over membership etc.), although departments can express their preferences on who might be suitable to chair the committee and the date by which it could report. The necessary negotiations and motions take time.

21.18 The bill team should discuss the options with the PBL Committee, the Cabinet Office Parliamentary Adviser and the Government Whips' Offices in the early stage of planning pre-legislative scrutiny. In cases where the usual channels propose a joint committee, existing committees cannot, if they so wish, be prevented from carrying out their own inquiry in parallel, but effective early informal discussions can help to prevent this.

21.19 Depending on other priorities in the session, a draft bill may not be picked up for formal parliamentary pre-legislative scrutiny by any committee but will still benefit from having been published in draft, given the opportunity for informal scrutiny by parliamentarians and for public consultation.

### **Timetable for parliamentary pre-legislative scrutiny**

21.20 Parliamentary pre-legislative scrutiny should be completed in time for any resulting amendments to the bill to be made in time for introduction to Parliament to the timetable agreed with the PBL Committee (assuming the bill is to be introduced to Parliament the following session).

21.21 If the bill is to be taken by an existing committee, departments should liaise with the committee clerk to identify a mutually convenient timetable. If an ad hoc committee is to be appointed to examine the bill, additional time needs to be allowed for parliamentary agreement of the motions to establish the committee.

21.22 A date for the ad hoc committee to report will probably be set in the motions appointing it. The bill team may wish to discuss timings with the Government Whips Office on what is a realistic deadline. Motions are required in both Houses and tabled by the Whips' Offices.

21.23 It may also be helpful to discuss practicalities with the Scrutiny Unit in the House of Commons and, where a joint committee is a possibility, with the relevant clerk in the House of Lords.

21.24 Generally a committee will need at least three to four months to take evidence and report (not including long recesses). Where draft bills have not given committees sufficient time to scrutinise, this has led to serious criticism.

21.25 Earlier publication means the committee will report earlier, giving the department more time to make any changes to the bill as a result of pre-legislative scrutiny before introducing the bill to Parliament at the beginning of the next session.

## The committee inquiry

21.26 A committee inquiry will usually involve the following stages:

- **Initial information:** The department may be asked for background information in advance of publication of the draft bill. Early and co-operative engagement with the committee staff is recommended.
- **Evidence to the committee:** the Minister is likely to be asked to give oral evidence to the committee at some stage during the inquiry;
- In addition to the draft bill and explanatory notes, the department may be asked to submit additional written evidence;
- If the draft bill amends existing legislation, the committee is likely to request a consolidated version of the existing legislation, which highlights the amendments proposed by the draft bill (see information on 'Keeling Schedules');
- Evidence is usually taken in public; and
- Bill teams may be asked to attend the public evidence sessions and even to respond to questions during them. This also helps keep the department informed of issues likely to be raised in the committee's report.
- **Committee report:** Committees decide for themselves how to work, and actual practice will vary, but it is generally expected that the committee will not challenge the overall aim of the bill or become too involved in detailed drafting points. However, the committee may recommend that amendments be made to the bill before introduction, or propose that additional matters should be included in the bill.
- **Government's response:** It is for the Government to decide whether or not to accept the committee's recommendations
- In some cases, for example where all the committee's recommendations were accepted or where there is very little time, the bill itself may be sufficient as a response. It is usual, however, for the Government to make a formal response to the committee's report;
- In the case of an ad hoc or joint committees, it will not be possible to respond with a memorandum, as the committee will no longer exist, and the response should be published as a command paper (the clerk of the former committee should be kept fully informed). Copies should also be sent to the members of the former committee;
- While the usual two-month deadline for responses to committee reports applies, the committee may be willing to allow longer, perhaps to fit the timetable for introduction;

and

- The committee and wider stakeholders will want to know how the bill has changed as a result of pre-legislative scrutiny, so departments should have a list of changes available on introduction, perhaps in a narrative document accompanying publication of the final bill.

### **Wider pre-legislative scrutiny – public consultation**

21.27 Parliamentary pre-legislative scrutiny is only one part of pre-legislative scrutiny. Even if the bill is not formally scrutinised by a committee there is still value to publishing it in draft for stakeholders and those who will be affected by the bill.

21.28 Departments may therefore wish to publish a consultation document or white paper at the same time as, or before, the draft bill. This should include a copy of the impact assessment. The normal arrangements for public consultation, as set out in the [Consultation principles](#) apply.

21.29 Departments will need to consider how this public consultation fits in with the timetable for parliamentary pre-legislative scrutiny, bearing in mind that the committee may wish to see the results of the public consultation before reporting.