

## **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. If two or more committee remits are engaged, the Bureau is required to recommend to the Parliament which of them is to be designated as lead committee.

#### **TRADE (AUSTRALIA AND NEW ZEALAND) BILL (UK LEGISLATION)**

2. This Bill was introduced in the House of Commons on 11 May 2022.

3. An LCM was lodged by Kate Forbes MSP, Cabinet Secretary for Finance and the Economy, on 13 June 2022.

4. The Bill confers a power on Scottish Ministers to implement the procurement chapters of the UK's free trade agreements with Australia and New Zealand. The power can only be exercised jointly with UK Ministers, after consulting UK Ministers or with the consent of UK Ministers.

5. An LCM is required because the Bill includes provision that relates to devolved matters (procurement) and provision that alters the executive competence of Scottish Ministers.

6. The LCM indicates that the Scottish Government does not currently intend to lodge a motion seeking the Scottish Parliament's consent to the UK Parliament legislating on devolved matters in this Bill.

#### **Designation of lead committee**

7. The relevant provision in the Bill falls within the remit of the following committees:

- the Economy and Fair Work Committee – whose remit is “to consider and report on matters relating to the economy falling within the responsibility of the Cabinet Secretary for Finance and the Economy”. The Minister for Business, Trade, Tourism and Enterprise, who reports to the Cabinet Secretary, is responsible (amongst other things) for public procurement.
- the Constitution, Europe, External Affairs and Culture Committee – whose remit includes “policy in relation to the UK's exit from the EU” and other matters falling within the responsibility of the Cabinet Secretary for the Constitution, External Affairs and Culture; the Cabinet Secretary is responsible (amongst other things) for post-Brexit relations, and this Bill relates to trade agreements made possible by Brexit.

8. Of these, the Economy and Fair Work Committee's remit appears to be the more relevant, and it would be the Cabinet Secretary for Finance and the Economy who would exercise the powers conferred by the Bill.

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

### **Recommendation**

10. The Bureau is invited to recommend, under Rule 9B.3.5, that the Economy and Fair Work Committee be designated as lead committee on the LCM. A draft motion is set out below.

### **Draft Parliamentary Bureau motion:**

**Designation of Lead Committee** – That the Parliament agrees that the Economy and Fair Work Committee be designated as lead committee in consideration of the legislative consent memorandum relating to the Trade (Australia and New Zealand) Bill (UK Legislation).

## **LEVELLING-UP AND REGENERATION BILL (UK LEGISLATION)**

11. The Levelling-up and Regeneration Bill was introduced in the House of Commons on 11 May 2022.

12. An LCM was lodged by Kate Forbes MSP, Cabinet Secretary for Finance and the Economy, on 27 July 2022.

13. The Bill forms part of the wider UK Government programme to 'level up the country' as set out in the February 2022 Levelling Up White Paper. Part 1 of the Bill introduces statutory provision for the UK Government's "Levelling-up Missions" which cover many areas including justice, health, and education. It also includes provisions on Planning Data and on Environmental Outcome Reports to which the Scottish Parliament is being asked to consent.

14. The LCM indicates that the Scottish Government 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 concerns that UK Ministers are being given: a role in setting targets for devolved matters; the power to override existing environmental protections in Scotland; and powers to act in devolved areas without consent of the Scottish Government or Scottish Parliament.

### **Designation of lead committee**

15. The LCM engages the remit of a number of committees:

- The remit of the Net Zero, Energy and Transport Committee is to consider and report on matters falling within the responsibility of the Cabinet Secretary for

Net Zero, Energy and Transport. The Environmental Outcomes Reports provided for in Part 5 of the Bill fall within these responsibilities. Transport also falls within this remit (the Minister for Transport being a supporting Minister to this Cabinet Secretary) and this is one of the target areas of the levelling up missions in Part 1 of the Bill.

- The remit of the Local Government, Housing and Planning Committee includes to consider and report on matters relating to local government housing and planning falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government and the Cabinet Secretary for Finance and the Economy. The Planning Data provisions in Part 3 of the Bill relate to planning, which is within the responsibilities of the Minister for Public Finance, Planning and Community Wealth. This Minister supports the Cabinet Secretary for Finance and the Economy. As such, the remit of this committee is engaged. A further target area of the levelling up missions in Part 1 of the Bill is Housing, which also falls within this remit as being within the responsibilities of the Cabinet Secretary for Social Justice, Housing and Local Government.
- The remit of the Economy and Fair Work Committee is to consider and report on matters relating to the economy falling within the responsibility of the Cabinet Secretary for Finance and the Economy. The levelling-up missions in Part 1 aim to target economic development, skills and employment, which fall within the portfolio of that Cabinet Secretary (who lodged the LCM). The remit of this committee is therefore engaged.
- Part 1 of the Bill has potential to extend to many policy areas. As well as those mentioned above (transport, housing, economic development, skills and employment), justice and health are intended to be targeted by the levelling up missions. That would implicate the remits of the Criminal Justice Committee, the Equalities, Human Rights and Civil Justice Committee and the Health, Social Care and Sport Committee. Furthermore, as the provisions in Part 1 are just setting a framework for levelling up policy, it also has potential to impact other policy areas, for example social justice and social security, depending on how it is put into practice. It is therefore possible that several more committee remits could be engaged by Part 1 of the Bill.

16. It is considered that the NZET Committee has the primary interest in this LCM due to the significance of the provisions on Environmental Outcome Reports. However, formal designation of that committee as lead committee does not, of course, preclude any other committee whose remit is engaged from considering the LCM if it so wishes. It is understood that the Local Government, Housing and Planning Committee will also consider the LCM in respect of the Planning Data provisions.

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

## **Recommendation**

18. The Bureau is invited to consider recommending to the Parliament by motion that it agrees, under Rule 9B.3.5, to designate the Net Zero, Energy and Transport Committee as the lead committee to consider and report on the LCM.

19. A draft motion is provided below.

**Draft Parliamentary Bureau motion on the Levelling-up and Regeneration Bill (UK Legislation):**

**Designation of Lead Committee** – That the Parliament agrees that the Net Zero, Energy and Transport Committee be designated as the lead committee in consideration of the legislative consent memorandum in relation to the Levelling-up and Regeneration Bill (UK Legislation).

**UK INFRASTRUCTURE BANK BILL (UK LEGISLATION)**

**Introduction**

20. This Bill was introduced in the House of Lords on 11 May 2022.

21. An LCM was lodged by Kate Forbes MSP, Cabinet Secretary for Finance and the Economy on 2 September 2022.

22. The Bill puts the UK Infrastructure Bank on a statutory footing. This includes provision about: its objectives; transparency, accountability and governance; and financial assistance from the Treasury. The UK Government's stated objectives for the Bank are to help tackle climate change and to support regional and local economic growth by providing access to financial instruments, including loans to local authorities to enable investment in infrastructure.

23. The LCM indicates that the Scottish Government does not intend to lodge a motion seeking the Scottish Parliament's consent to the UK Parliament legislating on devolved matters in this Bill at this time due to its view that some clauses raise constitutional concerns.

**Designation of lead committee**

24. The LCM engages the following remits:

- a. The remit of the Economy and Fair Work Committee is to consider and report on matters relating to the economy falling within the responsibility of the Cabinet Secretary for Finance and the Economy. That Cabinet Secretary is responsible for the LCM and has responsibility for economic growth, an objective of the bank. The remit of the Economy and Fair Work Committee is therefore engaged.

- b. The remit of the Net Zero, Energy and Transport Committee is to consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero, Energy and Transport. As another of the bank's objectives is to tackle climate change, this remit is engaged.

25. The Economy and Fair Work Committee is considered to have the primary interest in this LCM. Designation of that committee as lead committee does not, of course, preclude any other committee whose remit is engaged from considering the LCM if it so wishes.

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

### **Recommendation**

27. The Bureau is invited to consider recommending to the Parliament by motion that it agrees, under Rule 9B.3.5, the LCM on the UK Infrastructure Bank Bill to the Economy and Fair Work Committee to consider and report on it.

### **Draft Parliamentary Bureau motion on the Levelling-up and Regeneration Bill (UK Legislation):**

**Designation of Lead Committee** – That the Parliament agrees that the Economy and Fair Work Committee be designated as the lead committee in consideration of the legislative consent memorandum in relation to the UK Infrastructure Bank Bill (UK Legislation).

### **NORTHERN IRELAND PROTOCOL BILL (UK LEGISLATION)**

28. The Northern Ireland Protocol Bill was introduced in the House of Commons on 13 June 2022.

29. An LCM was lodged by Angus Robertson MSP, Cabinet Secretary for the Constitution, Europe and External Affairs on 19 August 2022.

30. The Bill provides that certain elements of the Northern Ireland Protocol (forming part of the withdrawal agreement with the European Union) are “excluded provision” which the European Union Withdrawal Act 2018 does not apply to – giving them no effect in domestic law.

31. The LCM indicates that the Scottish Government does not intend to lodge a motion seeking the Scottish Parliament's consent to the UK Parliament legislating on devolved matters in this Bill. It states this is due to concerns that the Bill may break international law and/or lead to a trade dispute.

### **Designation of lead committee**

32. The Bill falls within the responsibilities of the Cabinet Secretary for the Constitution, External Affairs and Culture as it relates to the UK's withdrawal from the European Union. The remit of the Constitution, Europe, External Affairs and Culture Committee includes to consider and report on "the Scottish Government's EU and external affairs policy", "policy and relation to the UK's exit from the EU" and "any other matter falling within the responsibility of the Cabinet Secretary for the Constitution, External Affairs and Culture". The remit of the Constitution, Europe, External Affairs and Culture Committee is therefore engaged.

33. No other committee remit appears to be engaged.

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

### **Recommendation**

35. The Bureau is invited to agree to refer, under Rule 9B.3.5, the LCM on the Northern Ireland Protocol Bill to the Constitution, Europe, External Affairs and Culture Committee to consider and report on it.

**Parliamentary Business Team**  
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