



Canolfan Llywodraethiant Cymru Wales Governance Centre

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- **Introduction – Consideration of the Committee’s general principle.**

1. The letter from the Constitutional and Legislative Affairs Committee inviting submissions to this inquiry states that in making its recommendations that the Committee ‘will be guided by the general principle that powers should only be granted to Welsh Ministers in devolved areas with the informed consent of the National Assembly which should be able to exercise appropriate scrutiny over the process concerned.’ For the reasons set out in this submission, we support the first part of this general principle.
2. We consider that an Act of Parliament which makes provision in relation to Wales which is within the legislative competence of the Assembly or which has a negative impact on its legislative competence has the same effect as an Order in Council made under section 109 of GOWA 2006. Such an Order in Council which affects Schedule 7 to GOWA 2006, by amending the legislative competence of the Assembly cannot normally, be made without the consent of the Assembly under section 109 (4) of the Act

s.109(4) of GOWA 2006 provides that ‘No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council—(a)has been laid before, and approved by a resolution of, each House of Parliament, and (b) except where the Order in Council is the first of which a draft has been laid under paragraph (a), has been laid before, and approved by a resolution of, the Assembly.’

3. It is therefore perfectly acceptable that if it is proposed that a UK Bill would affect the legislative competence of the Assembly, then the Assembly should be given the opportunity of deciding whether or not to consent to such provisions.
4. However, we have reservations about the apparent wide statement in the second part of the Committee’s principle that the National Assembly ‘should be able to exercise appropriate scrutiny over the process concerned.’ This would seem to imply that it would be for the Assembly alone and not the UK Parliament to decide what should be the procedure for the making of subordinate legislation. We believe that the procedure for scrutinising the powers of the Welsh Ministers should be included on the face of the UK Bill and therefore decided by Parliament. In devolved areas such procedure could then be changed by a Welsh Act. Our argument is detailed below.

We now turn to each specific item which the Committee would like views about.

- **The extent of the current National Assembly scrutiny of delegated powers given to Ministers through provisions in UK Acts**

5. The procedure for giving consent to powers proposed to be given to Welsh Ministers through provisions in UK Bills is set out in the Assembly's Standing Order 29. It reflects the first part of the principle set out in the Committee's letter that 'powers should only be granted to Welsh Ministers in devolved areas with the informed consent of the national Assembly.' Standing Order 29.6 provides that 'the government must table a motion ('a legislative consent motion') which must seek the Assembly's agreement to the inclusion of a relevant provision in a relevant Bill.' The Assembly's Standing Order 30 provides for the Assembly to be notified of provisions in UK Bills which make provision in relation to Wales '(i) which has a significant impact on the functions of the Welsh Ministers or of the Counsel General; or (ii) which has an impact on the legislative competence of the Assembly (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions).' A member of the government must just lay a written statement which must summarise the policy objectives of the Bill; specify the extent to which the Bill makes (or would make) relevant provision; and explain whether it is considered appropriate for that provision to be made and for it to be made by means of the Bill.'
6. Rule 9B of the Scottish Parliament Rules makes no such distinction. A Legislative Consent Motion is required for a Bill 'under consideration in the UK Parliament which makes provision [...] applying to Scotland for any purpose within the legislative competence of the Parliament, or which alters that legislative competence or the executive competence of the Scottish Ministers.'
7. Paragraph 17 of the current DGN 9 relating to Welsh devolution gives no explanation as to why it is considered that Assembly Legislative Consent Motions should be limited to provisions in UK Bills that have a negative effect on the competence of the Assembly or which relate to matters within the legislative competence of the Assembly. Equally no explanation is given in the equivalent DGN 10 about the Scottish devolution as to why such motions in the Scottish Parliament cover much wider provisions in UK Bills.
8. Legislative devolution in Wales was considerably more limited under the initial provisions of Part 3 of and Schedule 5 to GOWA 2006 (there being no powers at all in some Fields and limited competencies in other Fields). Legislative devolution continues to be limited by the nature of the provisions of Schedule 7. Subject to some quite considerable exceptions in both Parts 1 and 2 of the Schedule, the Assembly can only exercise those legislative powers which are listed under the 20 Subjects. In this context of limited competence given to Wales, there are strong arguments for considering that any provisions in UK Bills which do not affect the powers which the UK Parliament has agreed should be within the Assembly's competence should continue to be matters solely for the UK Parliament to decide without the prior consent of the Assembly.
9. We need to consider whether the principle should continue to be that, unlike Scotland, the Assembly should not be administratively permitted to give any form of consent to provisions or decisions which are outside its competence especially now Part 4 is in force.
10. In coming to our conclusion that the Assembly should not be permitted to give consent to provisions or decisions which are outside its competence, we have first considered possible reasons for and against allowing the Assembly not only to debate but to decide whether to consent to UK legislation which give powers to the Welsh Ministers in non-devolved matters.
11. The reasons for recommending that the situation in the Assembly should be the same as in the Scottish Parliament include:

A. The Scottish Government explains in its Key Facts sheet published in May 2008, about the Sewel Convention that the reason for the extent of the operation of the convention covering both devolved and non-devolved competences is that:

(a) it is ‘open and transparent, and fully reflects the Scottish Government’s accountability to Parliament,’ and

(b) ‘the use of a Legislative Consent Motion normally has no bearing whatever on the boundaries of reserved and devolved matters as set out in the Scotland Act.’¹

B. In exactly the same way that the Scottish Government is accountable to the Scottish Parliament, the Welsh Ministers are accountable to the Assembly for the exercise of their powers. The National Assembly for Wales’ documentation states that ‘the National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people [...] and holds the Welsh Government to account.’ The Annual Report and statement of accounts of the National Assembly for Wales for 2010-2011 gives examples of Committees which consider matters outside the Assembly’s legislative powers because these are matters affecting Wales.²

C. The Speaker of the House of Commons does not permit questions relating to the exercise of the powers of Welsh Ministers (however derived) to be put to Central UK Government Ministers for answer, it then can only be for the Assembly to put such questions in relation to both devolved and non-devolved matters.

D. The peculiarity of the present position is shown in Explanatory Memoranda which accompany UK Bills proposing to give powers to Welsh Ministers which are outside the Assembly’s legislative competence. An example is the current Localism Bill which on its first reading at the beginning of this year sets out the circumstances in the Bill where the National Assembly is or is not required to give a Legislative Consent Motion. The circumstances seem random depending on whether the particular provisions in particular clauses of the Bill fall within the competence of the Assembly or not. An example is the Explanatory Note which accompanied the introduction of the Decentralisation and Localism Bill: Wales³ which states that a Legislative Consent Motion is required for certain provisions of the Bill because they relate to matters in Wales within the legislative competence of the Assembly. Other provisions do not require such a consent motion as they confer additional legislative competence on the Assembly.

E. Professor Alan Page, a leading Scottish Devolution academic in giving evidence to a House of Lords Select Committee considered that it was ‘artificial to have separate procedures for these different types of provisions, particularly as they often featured in the same legislation. (paragraph 93 of the Scottish Procedures Committee Report on The Sewel Convention 2005)

11. The reasons against extending the Assembly’s ability to pass Legislative Competence Motions in non-devolved areas include:

A. in a debate in the House of Lords on Sewel Procedures, Lord Sewel stated that a Sewel Motion ‘as originally formulated was focused purely on legislation affecting the devolved areas.’ While it was necessary to have a mechanism for securing the Scottish Parliament’s consent where this was not the case and instead, the

¹ The Scottish Government, The Sewel Convention: Key Features May 2008
www.scotland.gov.uk/About/Sewel/KeyFacts

² The National Assembly for Wales, The year in review annual report and statement of accounts 2010-11
³³ www.rtpi.org.uk/item/4347/23/5/3

competence of Ministers or the Parliament itself were being altered, that process should have a different name – ‘call it something else but do not call it a Sewel motion.’ Lord Sewel uses the Gambling Bill, then going through Parliament, as an example of provisions giving Scottish Ministers powers which were not within the Scottish Parliament’s legislative competence. Nevertheless, these provisions were subject to a Sewel Motion. This is because in the Key Facts sheet produced by the Scottish Government about the Sewel Convention, it is stated that the Convention is ‘additionally taken to refer to matters will although reserved affect the breadth of the devolved institutions’ powers i.e. the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers. However he said that the result was ‘that the public debate became couched in terms that assumed gambling was a devolved matter, and confusion arose.’ (para 91 of the Scottish Procedures Committee Report on the Sewel Convention 2005)

- B. In the same House of Lords debate, other Members commented that ‘Sewel is getting a bad name because it is being used to do things that it was not originally envisaged it would do.’ It was considered that there was a ‘need to consider separate procedures for modifying or extending the powers of the Scottish ministers.’ (para 92 of the Scottish Procedures Committee Report on the Sewel Convention 2005)
- C. There might also be a capacity problem if the Assembly considered Legislative Consent Motions for all provisions in UK Bills whether or not they effected the legislative competence of the Assembly. Schedule 7 to GOWA 2006 has considerable exceptions in some subjects to the legislative competence of the Assembly. Additionally there are overall exceptions in Part 2 of Schedule 7 relating to pre-referendum functions of Central Government Ministers in Wales. The combined effect of these exceptions is to place certain powers in UK Bills outside the legislative competence of the Assembly. With 45 backbench Assembly Members to consider current Legislative Consent Motions as well as a possible considerable increase in such numbers if all powers in UK Bills were the subject of a motion, would we think might put a strain on the capacity of the members. This is particularly so because in our submission we recommend that all Legislative Consent Motions should first go to committees before being considered in Plenary.

12. On balance we consider that the criticism of Lord Sewel and other members of the House of Lords that a distinction should be made between provisions in UK Bills which affect the legislative competence of the Scottish Parliament and provisions which are outside this competence is justified. We do not see any reason why the Assembly should be able to consent to such provisions. That is not to say that they should be prevented from debating the provisions as we detail below. This points to continuing the distinction made in the Assembly Standing Orders between the requirement of a Legislative Consent Motion in the circumstances set out in Standing Order 29 and the absence of such a motion in Standing 30. However we consider that some enhanced involvement of the Assembly is justifiable as shown in our consideration of the extent to which there is robust scrutiny.

- **The extent of the current National Assembly scrutiny of delegated powers given to Welsh Ministers through statutory mechanisms other than UK Acts of Parliament**

13. With regard to other statutory mechanisms enabling the National Assembly to scrutinise delegated powers given to Welsh Ministers other than in Acts of Parliament.

14. In relation to Orders in Council amending Schedule 7 under section 109 of GOWA 2006 the Assembly has first to approve the Order.

15. As regards Transfer of Functions Orders transferring powers of Central Government Ministers to Welsh Ministers, section 58 of GOWA 2006 requires that an Order in Council making the transfer gives no role to the Assembly only to the Welsh Ministers.
16. Powers of the Welsh Ministers under section 59(6) of GOWA 2006 to designate functions relating to the European Community by Order under section 2(2) of the European Communities Act 1972 is subject to annulment by the Assembly.
17. In relation to Transfer of Functions Orders we cannot understand why it is the Welsh Ministers and not the Assembly who are involved in the consent. When both in relation to section 109 Orders in Council and Designation Orders under section 59 of the Act involve the Assembly. While some Transfer of Functions Orders can give powers to Welsh Ministers which are outside the legislative functions of the Assembly, so can Designation Orders under the European Communities Act 1972, the latter are always subject to annulment by the Assembly, but not Transfer of Functions Order.
18. We suggest that the procedure in section 58(4) is amended so that TFOs are subject to at least negative resolution procedure but preferably affirmative resolution procedure because of the procedure in section 109.

- **The Extent to which the National Assembly is able to exercise robust scrutiny of such processes through its Standing Orders**

19. Under the Assembly's Standing Order 30, the Assembly is given no part to play at all in relation to UK Bills making provisions which come within the remit of the Standing Order. While we do not consider that Assembly Legislative Consent Motions should be extended to such provisions, we do not think that this principle should exclude any involvement whatsoever by the Assembly as regards such consideration. We would suggest that while the principle enshrined in Standing Order 30 can continue to be justified, particular aspects could be amended.
19. Paragraph 22 of the current Memorandum of Understanding of June 2011 between the UK Government and the devolved administrations states that 'The devolved administrations agree to provide the UK Government with any factual information and expert opinion available to them relevant to non-devolved matters.'
20. So that the devolved administrations are more fully informed to enable them to provide such information, paragraph 16 of the Memorandum emphasises that 'the devolved legislatures will be entitled to debate non-devolved matters but the devolved executives will encourage each devolved legislature to bear in mind the responsibility of the UK Parliament in these matters.'
21. To enable a fully informed debate to take place in the Assembly, we consider that Standing Order 30 could be amended so that the Assembly, as part of such debate, would be able to consider UK Bill proposals which come within Standing Order 30. To achieve this, the Welsh Ministers should be required to lay before the Assembly all the information which they are required to under Standing Order 29. However the basic provisions of Standing Order 30 would continue in that there would continue to be no requirement for formal Legislative Consent Motions.
22. At present under the Standing Order there is no requirement for the Assembly to debate the written statement laid by the Welsh Ministers setting out the reasons for the powers in the UK Bill. We consider that the Assembly should be required to request consideration of the written

statement by an Assembly Committee together with the subsequent consideration of the Committee's report in Plenary – basically what happens in Standing Order 29 except that the debate would not be in the form of a Legislative Consent Motion. Such a change in procedure would ensure that consideration had been given by the Assembly and that it was aware of such provision.

23. In relation to Standing Order 29 we consider that, as with the procedure for Legislative Consent Motions under Standing Order 9B in the Scottish Parliament, the Business Committee should be required to refer the Legislative Consent Memorandum of the Welsh Ministers to a Committee or Committees for consideration and only after such consideration, should the Assembly be entitled to decide whether to consent to such a motion or not.
24. Such a committee before reporting to the Assembly would liaise with relevant committees in the House of Lords and House of Commons in particular the Delegated Powers and Regulatory Reform Committee of the House of Lords which as our previous evidence⁴ has shown regularly analyses and comments upon and seeks to set out principles relating to the extent of the delegated powers of Ministers in UK Bills.
25. Additionally Rule 9B.3(6) provides that the Scottish Parliament's Subordinate Legislation Committee shall consider provisions in UK Bills conferring on Scottish Ministers powers to make subordinate legislation, 'in any case where the Bill that is the subject of the memorandum contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Subordinate Legislation Committee shall consider and may report to the lead committee on those provisions.' We consider that the Constitutional and Legislative Affairs Committee of the Assembly should likewise be involved in the scrutiny in Wales.
26. Our reason for advocating a Committee stage is that it seems that apart from possibly one occasion when a Committee considered a Legislative Consent Memorandum that being the Constitutional and Legislative Affairs Committee which only spent a short time discussing the motion, the Assembly has only spent very little time in plenary session debating whether a motion should or should consent should be given. One example being the Legislative Consent Motion in respect of the Education Bill where the Presiding Officer said in Plenary on Thursday 1 March 2011 'as there is no speakers on this item, I take it that there is no objection. Therefore, I declare, in accordance with Standing Order No. 7.35, that the motion is agreed.' We are of the opinion that it is difficult for the Assembly without the report received by a Committee to decide particularly in such a short time provisions which may be complex and far reaching in a UK Bill giving powers to Welsh Ministers.
27. Our research has found that Committees in the Scottish Parliament invite evidence from the public, have sessions where the public appear and give thoughtful and reasoned consideration to the provisions in the Bill. Only after this stage is completed does the matter transfer to the plenary Scottish Parliament. See for example the Equal Opportunities Committee debate on the legislative consent memorandum (LCM (S3) 20.2) on the Equality Bill 2010 where the Committee took evidence from the Minister for Housing and Communities and considered written evidence from a number of stakeholders, and sought clarification 'on a range of issues' and sought 'further information from the Scottish Government' on several provisions. Only after raising these concerns and further debate did they recommend that the draft motion set out in the legislative consent memorandum be agreed by Parliament.

⁴ Constitutional Affairs Committee, Inquiry into the Drafting of Welsh Government Measures: Lessons from the first three years, February 2011

28. Under Assembly Standing Order 29.2 (i) any UK Bill that requires a Legislative Consent Motion must be the subject of a government memorandum ‘normally no later than two weeks after introduction’ to the first House of Parliament.
29. During the Scottish Procedures Committee consideration of the Sewel Convention, witnesses stressed the importance of ‘an ‘early warning system’ to enable the time required for scrutiny to be factored into committee’s forward work programmes.’ (para 61 Scottish Procedures Committee Report on the Sewel Convention 2005) It was apparent that some Committees did not hear about a Sewel motion until they were asked to decide whether they could consider it. It was felt that the UK Government should be able to provide advance information about the likely timetable for a Bill.. It is especially important that Sewel motions are flagged up well in advance of the passage of the Bills through Parliament. For example the Justice 2 Committee wanted to ‘have an opportunity to scrutinise forthcoming UK Bills when they are put out to consultation, which would allow the committee to take a more proactive role at an earlier stage of the development of legislation.’ Another suggestion was for MSPs to be sent consultation documents on any Bill considered appropriate for a Sewel motion, so that their objections and suggestions could be taken into account at the drafting stage of the Bill to encourage a ‘consensual approach’ (para 63 Scottish Procedures Committee Report on the Sewel Convention 2005).
30. We would therefore recommend that Standing Order 29.2 should be amended to require Welsh Ministers to lay a memorandum as soon as it has been agreed between the Welsh Ministers and Whitehall that a proposed UK Bill should give powers to the Welsh Ministers which in any way affects the legislative competence of the Assembly.

- **The relevance of the UK Government’s Devolution Guidance Notes in the light of recent Welsh constitutional development**

24. Overall we do not think that for the purpose of this enquiry there should be any substantial changes to be made to DGN 9 and in particular paragraph 17 which sets out the circumstances when the consent of the Assembly is required to provisions in a UK Bill giving powers to the Welsh Ministers.
25. However in the case of the Scottish Parliament, Rule 9B.1 (Consent in relation to UK Parliament Bills) requires a Legislative Consent Motion in relation to any UK Bill which proposes to alter the legislative competence of the Scottish Parliament. The second bullet point of paragraph 17 of DGN 9 does not recommend that the Assembly’s consent should be given in such circumstances. It only foresees that the consent of the Welsh Ministers should be obtained. We see no reason for there to be such distinction. This is different to proposals in UK Bills which do not affect the legislative competence of the Assembly and for reasons which we have already given, we consider that the Assembly’s consent would continue not to be required. A provision *adding* to the competence of the Assembly is something that the Assembly should at least be informed about and be able to debate by means of deciding whether or not to consent to. This would parallel the provision contained in the DGN 9 in relation to Bill provisions having a negative effect on the competence of the Assembly and also it would parallel the procedure whereby the Assembly has to consent before an Order in Council under section 109 amends Schedule 7.
26. All the above points should also apply to the subordinate legislation made by Ministers affecting the Assembly’s competence already contained in UK Acts as is referred to in the DGN 9 paragraph 17.

- **The procedures for Legislative Consent Motions compared to the position in the other devolved legislatures**

27. For the reasons stated above we consider that compared to the position in the Scottish Parliament the procedures for the Legislative Consent Motions in the National Assembly continue to be acceptable because we would support the two different procedures set out in Standing Orders 29 and 30 depending on the nature of the provisions in UK Bills.
28. Currently there are no formalised procedures in the NI Assembly with regards to Legislative Consent Motions. However the 'Outline of Assembly Procedures on Legislative Consent Motions' Guidance Note provides that the relevant NI Minister will notify the Speaker and the Chairperson of the relevant Assembly Committee of the intention of the UK Government to legislate on devolved matters as soon as they are aware of the proposals⁵. The Committee will then explore the proposals of the UK Bill. Once the Minister has gained the Committee's support, the Minister will lodge a Legislative Consent Motion for plenary debate.
29. The Northern Ireland Assembly Committee on Procedures recognised in September 2009 that 'the current procedures had been developed over time to meet circumstances. While they were adequate for purpose, there was potential to not only provide new and clearer guidance, but also to introduce processes which may encourage others to take a more active role.'⁶ The Committee recommended 'the introduction of Standing Orders to provide clarity and transparency on the procedures for legislative consent motions.'⁷ It is suggested that there would be a procedure (committee consultation and debate in plenary) when the UK Bills effects a devolved area, when the provisions alter the legislative competence of the Assembly or where the provisions alter the executive functions of NI Ministers⁸.
30. In October 2011 the Northern Ireland Committee on Procedures is expected to consider a draft Standing Order on Legislative Motions to formalise their present procedures which follows the Scottish model as was recommended by the Committee on Procedures.

- **Any other matters relevant to the Inquiry**

29. In the introduction to our evidence we stated that we have reservations about the apparent wide statement in the second part of the Committee's principle that the National Assembly 'should be able to exercise appropriate scrutiny over the process concerned.' This would seem to imply that it would be for the Assembly alone and not the UK Parliament to decide what should be the procedure for the making of subordinate legislation under powers given to Welsh Ministers in UK Acts. This was suggested by Lord Rowlands in a debate on the Public Bodies Bill which is report on pages 9 and 10 of the Assembly Research Service Paper which accompanies the call for evidence. This would mean that there would be no prescribed procedure set out in the UK Act itself but only a general power permitting the Assembly to decide the procedure. We are not aware of any precedent in any Act whereby the decision as to the procedure for making subordinate legislation is delegated to another body.
30. Part of the remit of the House of Lords Committee on Delegated Powers and Regulatory Reform is to consider and advise Parliament on the adequacy of the procedures in a Bill for controlling the exercise of delegated powers. We submitted evidence to a previous inquiry of

⁵ Outline of Assembly Procedures on Legislative Consent Motions Guidance Note, p.3, para.1

⁶ Northern Ireland Committee on Procedures, Inquiry into Legislative Consent Motions Report 34/08/09R September 2009 para 1

⁷ Recommendation 1

⁸ Northern Ireland Assembly Committee on Procedure Inquiry into Legislative Consent Motions Report 34/08/09R September 2009 para 9

the then Constitutional Affairs Committee of the Assembly (Inquiry into the Drafting of Welsh Government Measures: Lessons from their first three years) and in our submission we drew the Committee's attention to the principles which the House of Lords Committee apply to advising on the adequacy of delegated legislation procedures in Bills which depend on the nature and extent of the Ministerial powers. To do so the Committee has to assess the procedures which are set out in the particular Bill.

31. An example of such consideration is given on page 10 of the Assembly Research Services Paper which accompanies your Committee's current call for evidence. In this example, the House of Lords Committee on Delegated Powers is considering the adequacy of the procedure set out in the Public Bodies Bill to which the Welsh Ministers would be subject in exercising major powers given to them under the Bill. Given the extent of the powers, the Committee do not think that the procedure is sufficiently robust. The Committee would not have been able to make such assessment if, under the Bill, decisions on the procedure had been left entirely to the Assembly's discretion. This would be unacceptable to the Committee.
32. Annex 1 paragraph VII to DGN 9 supports the convention that UK Bills set out the procedure for the making of subordinate legislation by Welsh Ministers on the face of the legislation " Bills conferring subordinate legislation powers on the Welsh Ministers will need to be clear whether they are to be subject to affirmative, negative or no procedure in the Assembly." The paragraph makes no mention of the Assembly being able to decide the procedure. This implies that it is for Parliament in the exercise of its sovereignty to decide in all cases the appropriate procedure, irrespective of whether or not the particular powers to be given to the Welsh Ministers are within the legislative powers of the Assembly.
33. Paragraph VII also explains that the principles to be applied to the procedure relating to the subordinate legislative powers of Welsh Ministers in Bills 'will be similar to those applying to UK Ministers with the Assembly in a similar position to Parliament with respect to powers to approve or annul statutory instruments.' We agree with this paragraph. Parliament, having decided to give powers in a Bill which are usually similar in their extent both to central government Ministers and to Welsh Ministers should be able to decide upon the procedure to which the exercise of those powers are to be subject, both as regards central government Ministers and Welsh Ministers. If those powers relate to matters that are within the legislative competence of the Assembly, the Assembly can then change the procedure to which they are subject by a subsequent Assembly Act.
34. As a final but most important consideration we are of the view that there must be a mechanism for the Assembly to have continuing links with relevant Select Committees both in the Lords and in the Commons. At present there does not seem to be a mechanism for Parliament to receive the views of the Assembly and to consider them. While we do not believe that Parliament would allow Assembly Committees to present joint reports with Parliamentary Committees, committees of both legislatures could work on a consultation basis. This could be the subject of an informal agreement.
35. Finally Mr Alan Trench in the seminar he gave in the Pierhead on 1st July 2011 considers that the Sewel Motion procedure should be made a part of Parliament's Standing Orders. At present there is no machinery for Parliament to control the decision of the executive, either in Whitehall or in Cardiff as to whether provisions in a UK Bill should be subject to a Legislative Consent Motion. By placing such requirements in Parliamentary Standing Orders, Parliament would have to be satisfied that there were proper grounds for excluding the necessity for such provision in each case where it seems that provision may be required.

