

ANNEX A

The following documents relating to query 3 are contained in this Annex A:

- [Document 1](#) – Submission on Crown consent procedures (including Annexes A to D)
- [Document 2](#) – Submission on Crown consent procedures and proposed GIQ
- [Document 3](#) – Cabinet information note
- [Document 4](#) – Note to the First Minister
- [Document 5](#) – Email chain preparing response to First Minister and agreeing approach to advising the Presiding Officer re the GIQ
- [Document 6](#) – Email chain confirming Document 3 (following submission of Document 1) and discussing approach to Presiding Officer
- [Document 7](#) – Email chain discussing timing of GIQ
- [Document 8](#) – Second note to the First Minister
- [Document 9](#) – Email providing final written answer to S6W-11314
 - [9a\)](#) Written response
 - [9b\)](#) Background note
- [Document 10](#) – Shared final written answer to S6W-11314
- [Document 11](#) – Email advising Royal Household of Scottish Government approach
- [Document 12](#) – Email submitting Document 3 for clearance
- [Document 13](#) – FMQ note for 6 October 2022
- [Document 14](#) – FMQ note for 20 October 2022
- [Document 15](#) – Email to Minister for Parliamentary Business providing a summary of the pre-introduction correspondence between Parliamentary Counsel Office (PCO) and the Parliament relating to the Cost of Living (Tenant Protection) (Scotland) Bill, together with copies of the relevant letters.
 - [15a\)](#) Extract from summary providing views on Crown consent (the rest of the document is outwith the scope of the request)
 - [15b\)](#) Extract of Crown consent content from exchange between PCO and the Scottish Parliament's Group Head of Chamber and Reporting Group (the rest of the document is outwith the scope of the request)
 - [15c\)](#) Extract of Crown consent content from the Group Head of Chamber and Reporting Group's response to PCO (the rest of the document is outwith the scope of the request)
- [Document 16](#) – Email to Minister for Parliamentary Business providing a summary of the pre-introduction correspondence between PCO and the Parliament relating to the Patient Safety for Scotland Bill.
 - [16a\)](#) Extract from summary providing views on Crown consent (the rest of the document is outwith the scope of the request)

The following documents relating to query 4 are contained in this Annex A:

- [Document 17](#) – Email from Scottish Government officials to Scottish Parliament clerks
- [Document 18](#) – Email from Scottish Government officials to Scottish Parliament clerks

- [Document 19](#) – Extract of Crown consent content from exchange between PCO and the Scottish Parliament’s Group Head of Chamber and Reporting Group on the Patient Safety for Scotland Bill (the rest of the document is outwith the scope of the request)
- [Document 20](#) – Extract of Crown consent content from the Group Head of Chamber and Reporting Group’s response to PCO on the Patient Safety for Scotland Bill (the rest of the document is outwith the scope of the request)

Document 1 – Submission on Crown consent procedures

[REDACTED]
Constitution and Cabinet Directorate,
Cabinet, Parliament and Governance
Division

11 July 2022

Minister for Parliamentary Business

PRIMARY LEGISLATION – CROWN APPLICATION AND CROWN CONSENT

Purpose

1. This submission seeks your agreement to:
 - proposed Scottish Government action to coincide with Scottish Parliament plans to indicate on its website information about the likelihood of Crown consent being required for Bills on introduction;
 - a proposed response to Alex Cole-Hamilton on making specific Crown consent-related information publicly available.

Priority

2. **Routine.** The response to Alex Cole-Hamilton is due for issue by 1 August. If you agree to proposed Scottish Government action, we would like to make preparations to begin new arrangements after summer recess.

Background

3. As you are aware, since the beginning of 2021 the Scottish Government has received numerous Freedom of Information (FoI), Parliament Questions (PQs) and correspondence from MSPs on the topic of Crown consent. In July 2021, Mr Yousaf commented that the Scottish Government would consider increasing transparency over the application of Crown consent, including publishing some or all of the correspondence with the Royal Household on Crown consent. As a result, many of the queries received ask about the Government's plans to increase transparency. Most recently, you responded to a query from Katy Clark MSP on 27 June 2022, the same day that a new [story in the Guardian](#) was published.

4. That same story prompted Alex Cole-Hamilton to raise a Point of Order in Parliament on 30 June (more detail is available in Annex C). Following on from this Point of Order, Alex Cole-Hamilton has written to the First Minister asking if the Government will list all the changes that have been made to legislation at the request of the Queen's Solicitor prior to Bills being introduced to Parliament, and whether the Government will commit to listing any such changes going forward. A copy of that letter is attached at Annex A. It appears likely that the Scottish Government will continue to receive PQs, Fols and MSP correspondence on this subject.

5. Crown consent is required where a Bill affects directly, indirectly or by implication, the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Crown. If a Bill requires Crown consent this is signified by a Cabinet Secretary, normally ahead of the Stage 3 debate beginning. Despite it being open to MSPs and Committees to raise questions as to whether and why Crown consent is required during any Bill's parliamentary passage this rarely occurs.

6. The issue of Crown consent is often confused with the separate question of how any legislation should apply to the Crown. While the Crown can mean more than just Her Majesty (see paragraphs 1 and 2 of Annex C), Fols and PQ almost invariably ask only about disapplication or modification of provisions as they apply to the Queen. It is Scottish Government policy that the Crown (including Her Majesty) should be subject to regulatory requirements on the same basis as everyone else unless there is a legitimate reason for an exemption.

7. Discussions between the Scottish Government and the Queen about Crown consent are usually carried out by correspondence between SGLD and the Queen's Solicitor in Scotland. Discussions between the Scottish Government and the Queen about how legislation should apply to Her Majesty may also take place between the Queen's Solicitor and SGLD or between the palace and policy colleagues. Previous advice has been given on potentially increasing transparency over Crown consent, including publishing some or all of the correspondence with the Royal Household on Crown consent, and you will remember that, when responding to Fols, the formal correspondence between the First Minister's Private Office and the Palace has been published. Correspondence between SGLD and the Queen's Solicitor is generally withheld in its entirety under section 41(a) of FOISA which states that information is exempt from release if it relates to "communications with Her Majesty, with other members of the Royal Family or with the Royal Household", although this is subject to a public interest test and each case is considered on its own merits. This is consistent with the position under the UK's Freedom of Information Act 2000, where section 37 provides that information is exempt from release if it relates to, amongst other things, communications with the Sovereign.

8. Correspondence can similarly be withheld by the Scottish Government where it is requested under the Environmental Information (Scotland) Regulations 2004 (EIR). Correspondence between SGLD and the Queen's Solicitor has been withheld under section 10(5)(d) of EIRS (confidentiality of proceedings).

9. The Scottish Government does not hold a list of changes made to Bills prior to their introduction. There is therefore no list of changes made to Bills in relation to their application to the Crown whether as a consequence of discussions with the Queen's Solicitor or otherwise. However, the Scottish Government does expect any Bill introduced to be fully scrutinised by MSPs during its Parliamentary passage, including in relation to their application to the Crown and whether consent is required.

Scottish Parliament plans and proposed Scottish Government action

10. As you are aware, Parliament intends to include a short, factual statement on relevant Bill pages about the need for Crown consent to make things more transparent

for the public. Where relevant, any such statement is likely to say “This Bill will require Crown consent. It is expected that this will be confirmed and signified at Stage [1 or 3].” This statement will be updated during a Bill’s parliamentary progress to reflect any changes to the requirement for consent. More details are available in Annex D.

11. The action proposed by the Scottish Parliament may draw increased attention to the issue of Crown consent at the point of a Bill’s introduction. However, the Parliament’s action does not address the question of having increased transparency about how a Bill applies to the Crown and the reasons for this. We have therefore considered what parallel steps it might be logical for the Scottish Government to take in Bill documentation.

12. For the reasons discussed at paragraphs 7, 8 and 9 we would not recommend providing a list of all changes that have been made to legislation at the request of the Queen’s Solicitor prior to Bills being introduced or committing to listing any such changes going forward. A draft response to Alex Cole-Hamilton is attached at **Annex B**. If you are content with this proposed response, this can be issued by your Private Office via the MiCase system.

13. Rather than making available any such lists, or making available, as a matter of course, correspondence between SGLD and the Queen’s Solicitor in Scotland or the Queen’s Solicitor, or between policy colleagues and the palace, we propose making clear in a Bill’s accompanying documents how provisions in a Bill apply to the Crown and whether Crown consent is required.

14. In terms of being more transparent in relation to Crown application, and to ensure as much clarity as possible, you are asked to agree that officials should request that Parliamentary clerks update the Explanatory Notes template to include a standalone ‘Crown application’ section/heading for completion by the Scottish Government. Similarly, in terms of Crown consent, you are asked to agree that officials should request that the Parliament should update its Policy Memorandum template to include a standalone ‘Crown consent’ section/heading for completion for each Bill. Full details on these proposals, including potential largely standardised wording to be included under these new sections, can be found in Annex D.

15. If you agree to this information being included in the accompanying documents on introduction, we will make the Royal Household aware of the Government’s intentions.

16. Further, if you agree to these proposals, the Crown Application and Crown Consent sections of the Government’s Bill Handbook will be updated to make clear the need to include this information in the Explanatory Notes and Policy Memorandum, respectively. PLU will ensure this is covered in Bill seminar sessions and that it is raised directly with Bill teams, particularly to highlight the need to ensure Ministers are appropriately briefed ahead of Committee appearances or Parliamentary debates in case the issue is raised or if amendments will change the position on either application or consent. PLU will also update Bill Management Meeting templates to ensure information relating to Crown consent and Crown application are covered in briefings for relevant meetings ahead of introduction. SGLD will similarly update their Billskill note on Crown application and consent. Officials will also make the Royal Household

aware of our intentions to include this information in Bill documentation in order to coincide, as far as possible, with relevant parliamentary statements.

Recommendation

17. I recommend that you:

- **Note** the Scottish Parliament’s plans to indicate on its website the likelihood of Crown consent being required for Bills on introduction;
- **Note** that Alex Cole-Hamilton has written requesting specific details of Bills as they are developed should be made available publicly and agree the response included at Annex B;
- **Agree** that a Bill’s accompanying documents should make clear how provisions in a Bill apply to the Crown and whether Crown consent is required, and that a request should be made for clerks to update the Explanatory Notes and Policy Memorandum templates to include new standalone sections/ headings to allow for this (paragraph 14);
- **Note** that, if you agree to the proposed improvements, internal guidance will be updated, including ensuring sufficient briefing is made available to Ministers at appropriate times (paragraph 16)

[REDACTED]

Parliament and Legislation Unit

11 July 2022

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Deputy First Minister and Cabinet Secretary for Covid Recovery					X

DG Strategy and External Affairs James Hynd Alison Irvine [REDACTED] [REDACTED] [REDACTED] Chief Parliamentary Counsel Ian Young Solicitor to the Scottish Government Alison Coull [REDACTED] John McFarlane	1.
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ANNEX A

[REDACTED AS NOT WITHIN SCOPE OF REQUEST]

ANNEX B

[REDACTED AS NOT WITHIN SCOPE OF REQUEST]

ANNEX C

ADDITIONAL BACKGROUND

Meaning of the Crown in the context of consent and application

1. For clarity, in the context of consent (and especially in the context of personal property and interests), the “Crown” means the Queen (and Prince of Wales) but, in the context of application, the “Crown” means the State/Government (including the Queen). Royal prerogative is not just about Her Majesty and the same applies to hereditary revenues, which includes things dealt with by the Crown Estate Commissioners and hereditary revenues surrendered to the Treasury in return for payments under the civil list.

2. A Bill that applies to the Crown mainly impacts on the government (the Scottish Government and UK government departments operating in Scotland). It will also apply to the Queen as the head of State. Bills that apply to the Crown sometimes contain exemptions for the Queen or special provisions that apply to Crown bodies and to the Queen.

Signifying Crown consent in Parliament and limited parliamentary interest

3. Although a Bill that requires Crown consent will have this signified in Parliament, normally ahead of the Stage 3 debate beginning, the wording used to indicate that Crown consent has been signified does not give any explanation as to the aspects of the Bill which triggered the need for such consent. Nevertheless, it is open to MSPs and Committees to raise questions as to whether and why Crown consent is required during any Bill’s parliamentary passage but this rarely occurs.

4. Indeed, despite Crown consent being signified at Stage 3 of the Coronavirus (Recovery and Reform) and Fireworks and Pyrotechnic Articles Bills on 28 and 29 June, respectively, immediately after publication of the latest Guardian story, no points were raised, or questions asked, about Crown consent in either debate.

5. However, following that story, Alex Cole-Hamilton did raise a Point of Order in Parliament on 30 June 2022 on Parliament’s rights to see changes made to Bills ahead of introduction where these changes have been made following discussion with the Queen’s Solicitor. The Presiding Officer made clear that changes made prior to introduction are a matter for the Government rather than the Parliament. For awareness, the exchange was as follows:

Point of Order 12:47 [Official Report \(parliament.scot\)](#)

- Alex Cole-Hamilton (Edinburgh Western) (LD): On a point of order, Presiding Officer. The Guardian has uncovered an internal Scottish Government memo that confirms that the Government “almost certainly” made changes to legislation at the request of the Queen’s lawyers. Alterations to exempt Crown interests in the royal household from certain aspects of law were made before legislation was introduced to the Parliament. We do not know what changes were made or even which bills were changed, and the Parliament and the public deserve to see and understand those changes. Presiding Officer, I ask for your guidance on how the Parliament and the people of this country can get sight of the changes that were made to legislation at the request of the Queen’s lawyers before it was introduced to the Parliament.
- The Presiding Officer (Alison Johnstone): I thank Mr Cole-Hamilton for his contribution. Parliament has, of course, taken steps to increase transparency and awareness of the process, but as this is a matter that relates to pre-introduction of bills, it is entirely a matter for the Government.

Drafting of Bills and changes made ahead of introduction in relation to the Crown

6. Bills may change during the drafting period until being introduced for all sorts of reasons based on different discussions with stakeholders, of whom the Queen may be one. What is important is that the content of the Bill on introduction can be justified from a policy perspective and can be fully scrutinised by MSPs during its Parliamentary passage.

7. The Scottish Government does not hold a list of changes that were made to Bills in relation to their application to the Crown whether as a consequence of discussions with the Queen’s Solicitor or otherwise. Given the numerous changes made as Bills are developed and refined, often for a variety of reasons, even if the Queen’s Solicitor raised a point during discussions with the Government, it would not automatically mean that a provision was subsequently changed simply at the request of the Queen. It would therefore not be possible to produce a list of the sort requested by Alex Cole-Hamilton.

Process in the UK Parliament

8. For your awareness, and in case raised by Opposition MSPs, in the UK Parliament, while Crown consent is signified at Third Reading, the need to secure Crown consent must be indicated as soon as the requirement is known. This is indicated under the relevant item in the Future Business section of the Order Paper in the Commons or in the Bills in Progress section of House of Lords Business if the requirement becomes known when the Bill is in the Lords.

9. Therefore, if agreed, where relevant, proposals to indicate on introduction that Crown consent will need to be sought would be consistent with processes in the UK Parliament.

Scottish Parliament plans

1. The Parliament has also been receiving queries regarding Crown consent to Bills and intends to include a short, factual statement on relevant Bill pages about the need for Crown consent to make things more transparent for the public as set out in paragraph 10 of the submission. As noted, this statement will be updated during a Bill's parliamentary progress e.g. if changes mean a Bill no longer requires Crown consent or it does require Crown consent due to changes or because a different view is taken of the position at introduction.
2. Officials have discussed these intentions with clerks to better understand how any follow up queries from MSPs or the public resulting from the statement on the website should be handled. It was agreed that officials will discuss who is best placed to respond to any questions on a case by case basis (either SG or parliamentary officials) but generally it is likely clerks will respond to queries using information in the 3-week correspondence (without releasing the confidential correspondence itself) if queries arise at the time of introduction while if queries arise at a later stage, officials will agree whether clerks should respond after checking the latest position with SG officials or if it would be more appropriate for Scottish Government Bill team to respond.
3. The Parliament is also intending to ensure that Committees scrutinising Bills have information about the position on Crown consent. The Scottish Government may be asked about this, for example, at Committee sessions.
4. Parliamentary clerks have advised the Royal household of their intentions and no concerns were raised.

Scottish Government action

5. Proposed steps to be taken by the Scottish Government are set out below.

Crown application

6. As already noted, the Scottish Government's policy is that the Crown (including Her Majesty) should be subject to regulatory requirements on the same basis as everyone else unless there is a legitimate reason for an exemption. The Policy Memorandum and Explanatory Notes accompanying a Bill should already explain any exemptions to this policy and the reasons for this, as appropriate. The accompanying documents should also explain any modifications that require to be made to legislation affecting the Crown to ensure that the legislation operates effectively. Parliamentary Counsel Office's guidance on [drafting legislation](#) sets out a range of matters where legislation may need to be modified to reflect the position of the Crown.
7. The templates for accompanying Bill documents are the property of the Scottish Parliament. To be more transparent, and to ensure as much clarity as possible, you are asked to agree that officials request that the Explanatory Notes template should be updated to include a standalone 'Crown application' section/heading.

8. If you agree to action being taken, it would be the intention that standard text would be included to indicate where the Crown is subject to regulatory requirements on the same basis as everyone else. This text will be considered further and will be kept under review but may at least initially say:

“Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 which provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish Statutory Instrument unless the provision expressly exempts it. This Bill applies to the Crown in the same way as it applies to everyone else.”

9. Where modifications are made, or exemptions applied, to this policy, the text could read:

“Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 which provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish Statutory Instrument unless the provision expressly exempts it. Section(s) [X,Y,Z] of this Bill exempt(s) the Crown [or the Queen]/ modifies/modify how the Bill applies to the Crown [or the Queen]. This/These provision(s) ...”

10. The policy reasons for any significant modifications or exemptions would need to be explained in the Policy Memorandum but no adjustment to the template is needed to accommodate this.

Crown consent

11. Although analysis on Crown consent is provided in the 3-week period confidential correspondence between Government and Parliament, no information is currently provided in the Policy Memorandum. Our view is that there would be merit in including basic information in the Policy Memorandum to Bills about whether and why Crown consent is likely to be sought. Doing so would mean that MSPs and other interested parties would have that explanation to coincide with the Parliament's action. You are therefore asked to agree that officials can request that the Parliament should update its Policy Memorandum template to include a standalone 'Crown consent' section/heading.

12. While Explanatory Notes are updated as the Bill progresses through the Parliament, the Policy Memorandum is not. Therefore, if you agree that information on Crown consent should be included in the Policy Memorandum, this would have to make clear this is the expected position as at introduction. Should the position change as the Bill progresses, this should be made clear in the speaking notes for relevant amendments. Officials would need to consider appropriate wording for standard text in the Policy Memorandum to ensure, as far as possible, consistency, but the options, depending on whether consent is required or not, could take the following form:

Consent not needed

“Paragraph 7 of Schedule 3 to the Scotland Act 1998 requires the Scottish Parliament and Government to seek Crown consent if the same Bill would need

such consent were it passed by the UK Parliament. Crown consent is therefore required where a Scottish Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign. As the Bill is drafted on introduction, it is the Scottish Government's view that it does not require Crown consent."

Consent needed

"Paragraph 7 of Schedule 3 to the Scotland Act 1998 requires the Scottish Parliament and Government to seek Crown consent if the same Bill would need such consent were it passed by the UK Parliament. Crown consent is therefore required where a Scottish Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign. As the Bill is drafted on introduction, it is the Scottish Government's view/expectation that, in order to comply with Rule 9.11 of the Parliament's Standing Orders, Crown consent will be required in relation to section(s) [X, Y, Z]. This is because ... "

13. Potential reasons for consent being required might include the following:
 - The power under section 1 includes power to make provision for enforcement which could impinge on Crown interests in relation to access to land. Although we cannot at this stage say with any certainty that the power will be used to alter in a significant way the law as it applies to the Crown Estate or the Queen's personal property, the potential is there;
 - The Bill introduces changes to appeal rights, giving communities a right of appeal in certain circumstances against the grant of planning permission, and restricting the circumstances in which applicants can appeal against refusal. This this would affect any applications for planning permission made in relation to Her Majesty's estates; or
 - The Bill dissolves a body established by Royal Warrant, or would affect a prerogative right to appoint an officeholder.

14. However, it should be noted that as at introduction, the issues relating to Crown consent may not have been discussed with the Royal Household and they may take a different view on the matters which require Crown consent. If discussions result in a change to the initial position adopted by the Scottish Government, this can be highlighted in a Minister's speaking note at the most appropriate stage in the Parliamentary process. We expect this would coincide with the Parliament updating its statement on its website.

Document 2 – Submission on Crown consent procedures and proposed GIQ

From: [REDACTED]
Cabinet, Parliament and Governance Division
5 September 2022

Minister for Parliamentary Business

GOVERNMENT INITIATED QUESTION – CROWN APPLICATION AND CONSENT

PRIORITY AND PURPOSE

1. Urgent. This urgent submission seeks ministerial clearance of a proposed Government Initiated Question on the topic of Crown application and consent by close on Wednesday, 7 September to allow publication of the question by Friday, 9 September.

RECOMMENDATION

2. I recommend that you:
- agree the text of the proposed Government Initiated Question (GIQ) and response at paragraph 5;
 - agree that Gordon MacDonald MSP should be approached to have the GIQ lodged in his name.

CONTEXT AND ISSUES

3. You are aware that since the beginning of 2021 the Scottish Government has received numerous Freedom of Information requests, Parliament Questions and correspondence from MSPs on the topic of Crown consent and Crown application.

OPTIONS CONSIDERED AND ADVICE

4. During July and August you corresponded with the First Minister to outline your planned approach to increase transparency about the Crown consent process and how a Bill applies to the Crown and the reasons for this. You indicated in your correspondence that, should she be supportive, you would to speak to the Presiding Officer about the Scottish Government's proposed approach and then make Parliament aware through a GIQ. The First Minister indicated she was content.

5. The proposed question and answer, cleared by John McFarlane, are:

Suggested GIQ: To ask the Scottish Government what it is doing to increase transparency about the Crown consent process and how Bills apply to the Crown.

Suggested response: Scottish Government policy is that legislation should apply to the Crown in the same way as any other person unless there is a legitimate reason for a different approach. It is the Government's intention that we will make clear in a Bill's accompanying documents how provisions in a

Bill apply to the Crown and why Crown consent is required. We are currently discussing with the Scottish Parliament exactly how this will be done.

6. It is recommended that Gordon MacDonald MSP should be approached to have the GIQ lodged in his name. If you agree, John McFarlane will take this forward.

BUTE HOUSE AGREEMENT IMPLICATIONS

7. There are no specific implications for the Bute House Agreement. The approach for increasing transparency will be followed for all Government Bills.

FINANCIAL AND LEGAL CONSIDERATIONS

8. Legal implications were considered previously and set out in the submission of 11 July which outlined the planned approach to increasing transparency around Crown consent procedures.

9. There are no financial implications as accompanying documents are already completed for all Government Bills (with the exception of Budget Bills). There are therefore no additional documents being produced.

SENSITIVITIES

10. The templates for accompanying Bill documents are the property of the Scottish Parliament. Officials have approached relevant parliamentary officials to request that the Explanatory Notes template be updated to include a standalone 'Crown application' section/heading. A similar request has been made to update the Policy Memorandum template to include a standalone 'Crown consent' section/heading.

11. Clerks in the Parliament's Legislation Team have not yet confirmed they are content to amend the Explanatory Notes and Policy Memorandum templates in the way requested.

12. Regardless of whether the templates themselves are updated as requested, officials will ensure relevant information is included in accompanying documents as Standing Orders do not prohibit such information being included. For completeness, it should be noted that Standing Orders do not require this information to be included, either.

QUALITY ASSURANCE

13. This submission has been approved by the Deputy Director for Cabinet, Parliament and Governance.

CONCLUSION AND NEXT STEPS

14. I recommend that you:

- agree the text of the proposed Government Initiated Question (GIQ) and response at paragraph 5;
- agree that Gordon MacDonald MSP should be approached to have the GIQ lodged in his name.

[REDACTED]

Parliament and Legislation Unit

[REDACTED]

Copy List:	For action	For information		
		Portfolio interest	Constituency interest	General awareness
First Minister Deputy First Minister and Cabinet Secretary for Covid Recovery Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights Lord Advocate Solicitor General		X		X X X X
Permanent Secretary DG Strategy and External Affairs Parliamentary Clerk David Rogers James Hynd Alison Irvine [REDACTED] [REDACTED] [REDACTED] Solicitor to the Scottish Government Alison Coull [REDACTED] Graham Fisher Chief Parliamentary Counsel Ian Young Legal Secretariat to the Lord Advocate John McFarlane				

Document 3 – Cabinet information note

SCANCE Contribution

Cleared contributions must be with Cabinet Secretariat by 1pm on Mondays, (unless an extension has been agreed):

Send to your Cabinet Secretary and Cabinet Secretariat Inbox

A Government Initiated Question (GIQ) will be lodged in Parliament this week, asking what Scottish Government's plans are to increase transparency about the **Crown consent process and how Bills apply to the Crown**. This GIQ will be answered on Monday, 3 October, ahead of the first of the Government's Year 2 Bills being introduced that week. This is relevant to all Cabinet Secretaries and Ministers taking Bills through Parliament.

Despite Crown consent requirements being set out in the Scotland Act 1998 and remaining the same since 1999, the Scottish Government has received numerous Freedom of Information requests, Parliamentary Questions and correspondence from MSPs on the topic of Crown consent and Crown application since the beginning of 2021. To increase transparency, the GIQ will state that the Scottish Government will make clear in a Bill's accompanying documents how provisions in a Bill apply to the Crown and why Crown consent is required.

It remains Scottish Government policy that legislation should apply to the Crown in the same way as any other person unless there is a legitimate reason for a different approach. This will be reflected in a Bill's accompanying documents and appropriate wording is including in the documents accompanying the Cost of Living (Protection of Tenants) and Patient Safety Commissioner Bills due to be introduced on 4 and 6 October, respectively.

This approach will ensure MSPs have full information on the introduction of a Bill to enable them to scrutinise and debate this throughout the passage of the Bill. It will also coincide with the Scottish Parliament's planned action to make a statement on introduction of a Bill if it is expected to require Crown consent.

Officials in Parliament and Legislation Unit are ensuring Bill teams are aware of this approach and will support them in ensuring relevant updates are made to Bill documentation.

While it had previously been the Scottish Government's intention to make the Scottish Parliament aware of this approach to improve transparency during week commencing 5 September, that action was postponed following the death of The Queen. Officials have made the Royal Household aware of the Scottish Government's intended approach.

Speaking Note

A copy of this should be sent to Cabinet Secretariat when complete

Send to your Cabinet Secretary and Cabinet Secretariat Inbox

The written SCANCE note speaks for itself and no further points need to be added to it. Therefore, the item does **not** need to be discussed at Cabinet and can be taken as read.

The Minister may wish to point to the fact that the topic is covered in the SCANCE paper but requires no further discussion unless members have questions about it.

If necessary, the Minister may wish to note that in June 2022 Alex Cole-Hamilton asked the Scottish Government if it will list all the changes that have been made to legislation at the request of the Sovereign's Solicitor prior to Bills being introduced to Parliament, and whether the Government will commit to listing any such changes going forward.

If raised or queried, the Minister can make clear it would not be possible to produce a list of the sort requested. Bills may change for all sorts of reasons based on different discussions with stakeholders, which may include the sovereign. The Scottish Government does not hold a list of changes made to Bills in relation to their application to the Crown as a consequence of discussions with the sovereign's solicitor or otherwise. Given the numerous changes as Bills are developed and refined, often for a variety of reasons, even if a point was raised during discussions with the Government, it would not mean that a provision was changed at the request of the sovereign.

Also if raised or queried, the Minister might wish to note that the templates for accompanying Bill documents are the property of the Scottish Parliament. Officials have approached parliamentary officials to request that the Explanatory Notes and Policy Memorandum templates be updated. Clerks have confirmed they are content to amend the templates, although due to recent events templates have not yet been updated.

Links to further information (if applicable)

Link to the submission providing the wording of the GIQ to the Minister for Parliamentary Business:
<https://erdm.scotland.gov.uk:8443/documents/A40496214/details>

The wording of the GIQ itself has been updated since it was drafted prior to the death of the Queen.

Name of Official: [REDACTED]

Extension Number: [REDACTED]

Document 4 – Note to the First Minister

First Minister

PRIMARY LEGISLATION – CROWN APPLICATION AND CROWN CONSENT

I wanted to make you aware of steps I propose to take in order to increase transparency about the Crown consent process and how a Bill applies to the Crown and the reasons for this.

Since the beginning of 2021 the Scottish Government has received numerous Freedom of Information requests, Parliament Questions and correspondence from MSPs on the topic of Crown consent and Crown application. Most recently, Alex Cole-Hamilton wrote asking if the Government will list all the changes that have been made to legislation at the request of the Queen's Solicitor prior to Bills being introduced to Parliament, and whether the Government will commit to listing any such changes going forward.

From September, the Parliament intends to publish information about whether a Bill requires Crown consent on introduction. At present this information is normally only provided at Stage 3 of a Bill.

My officials are discussing with the Scottish Parliament how we can increase transparency in relation to the information that is currently provided to Parliament about the reasons why Crown consent is needed for any Bill. There is also an opportunity to take steps to provide more information about the way in which legislation applies to the Crown.

Scottish Government policy is that legislation should apply to the Crown in the same way as any other person unless there is a legitimate reason for a different approach. It is my intention that we would make clear in a Bill's accompanying documents how provisions in a Bill apply to the Crown and why Crown consent is required.

This would make clear that the issues of Crown application and consent are normal parts of a relevant Bill's passage.

By way of background, in the UK Parliament, while Crown consent is signified at Third Reading, the need to secure Crown consent must be indicated as soon as the requirement is known. This is indicated under the relevant item in the Future Business section of the Order Paper in the Commons or in the Bills in Progress section of House of Lords Business if the requirement becomes known when the Bill is in the Lords.

In the Welsh Parliament, Section 111 of the Government of Wales Act does not allow a debate on whether a relevant Bill should be passed to take place until Queen's consent (as it is known in the Welsh Parliament) is signified. This can be done at the end of the Stage 3 proceedings. Although Queen's consent is not required to introduce a Bill, the Welsh Government's Legislation Handbook on Assembly Bills makes clear that when the Bill is sent to the Llywydd for her determination, the covering letter from the First Minister should identify where consents from the Queen and/or Duke of Cornwall may be required.

Therefore, if progressed, where relevant, proposals to indicate on introduction that Crown consent will need to be sought would be consistent with processes in the UK and Welsh Parliaments.

Unless you have any objection to my proposed course of action, my officials will make the necessary requests of Parliament and will make the Royal Household aware of the Government's intentions.

GA
July 2022

Document 5 – Email chain preparing response to First Minister and agreeing approach to advising the Presiding Officer re the GIQ

From: ParlyClerk Scotland <[REDACTED]>
Sent: 23 September 2022 10:56
To: [REDACTED] <[REDACTED]>; ParlyClerk Scotland <[REDACTED]>
Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>; [REDACTED] <[REDACTED]>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

No problem thanks [REDACTED]

From: [REDACTED] <[REDACTED]>
Sent: 23 September 2022 10:52
To: ParlyClerk Scotland <[REDACTED]>
Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>; [REDACTED] <[REDACTED]>
Subject: FW: Note from Mr Adam - Crown Consent Procedures

HI [REDACTED],

Just to let you know, I'll shortly send up an email asking Mr Adam to clear a SCANCE note advising of this GIQ. The plan is for the SCANCE to go to Cabinet on Tuesday (27th) and for the GIQ to be answered on Monday 3rd October ahead of introduction of a Bill on Tuesday 4th.

The GIQ has been slightly amended and the updated version will be in the email to the Minister. It's still to be in Gordon Macdonald's name.

I'll copy you into that email so that you can see what's happening.

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business
Sent: 21 September 2022 13:51
To: ParlyClerk Scotland <[REDACTED]>;[REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

We're holding it just now – but will do it when things have settled. Likely the week after next – will let you know when we know!

Thanks [REDACTED].

[REDACTED]

[REDACTED] (she/her)

Private Secretary to Minister for Parliamentary Business

T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot

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From: ParlyClerk Scotland <[REDACTED]>

Sent: 21 September 2022 13:20

To: Minister for Parliamentary Business <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Can someone give me an update on what's to happen with this GIQ please.

Thanks

[REDACTED]

From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 03 September 2022 10:02

To:[REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison)

<Alison.Irvine@gov.scot>;[REDACTED] <[REDACTED]>; [REDACTED]

<[REDACTED]>;[REDACTED] <[REDACTED]>; Minister for Parliamentary Business <MinisterPB@gov.scot>; ParlyClerk Scotland <[REDACTED]>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi [REDACTED],

Do we have suggested wording for this GIQ yet (possible I've missed it, sorry!)? We'll need to get that on Monday/Tuesday this week if we want to publish on Thursday/Friday. Copying ParlyClerk so they have advance warning that we intend to do one towards the end of next week.

Thanks!

[REDACTED]

[REDACTED] (she/her)

Private Secretary to Minister for Parliamentary Business

T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot

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From:[REDACTED] <[REDACTED]>
Sent: 23 August 2022 17:26
To: Minister for Parliamentary Business <MinisterPB@gov.scot>; [REDACTED] <[REDACTED]>;[REDACTED] <[REDACTED]>
Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi [REDACTED],

As discussed, we should lodge the GIQ ahead of any Government Bills being introduced this session.

Mr Adam regularly meets with the Presiding Officer late on a Thursday afternoon therefore I would suggest the GIQ should be answered on the Friday morning to co-ordinate alongside that. Their first meeting will be on Thursday 8 September 2022; therefore, I would suggest the GIQ is answered on Friday 9 September 2022.

Subject to any further steer from FM, I would be grateful for a submission on the suggested GIQ by 12pm on Friday 2 September.

Thanks,
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From:[REDACTED] On Behalf Of Minister for Parliamentary Business
Sent: 23 August 2022 16:29
To: [REDACTED] <[REDACTED]>; Minister for Parliamentary Business <MinisterPB@gov.scot>;[REDACTED] <[REDACTED]>
Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>;[REDACTED] <[REDACTED]>; [REDACTED]

<[REDACTED]>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Thanks [REDACTED],

Mr Adam is content with the draft response and GIQ. He is also happy to speak with the presiding Officer.

Thanks,
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From:[REDACTED] <[REDACTED]>

Sent: 18 August 2022 14:57

To: Minister for Parliamentary Business <MinisterPB@gov.scot>; [REDACTED] <[REDACTED]>

Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi [REDACTED],

With apologies for the delay, please find attached a draft note for Mr Adam to consider sending back to FM.

You'll see this suggests the Minister should speak to the Presiding Officer and make the announcement through a GIQ. This has been cleared by John.

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From: [REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 17 August 2022 13:30

To: [REDACTED] <[REDACTED]>;[REDACTED] <[REDACTED]>
Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Minister for Parliamentary Business <MinisterPB@gov.scot>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi guys,

Reducing copy list for timebeing.

Can you give us an indication of when we'll be in a position to respond to FM please? Let me know if you want to discuss further with the Minister – he's keen that we get an answer back to FM as soon as possible.

Thanks,

[REDACTED]

[REDACTED] (she/her)
Private Secretary to Minister for Parliamentary Business
T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot
The Scottish Government | St Andrew's House, Regent Road, EDINBURGH EH1 3DG

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From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 09 August 2022 10:59

To: First Minister <firstminister@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSQR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [REDACTED] <[REDACTED]>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; McGill M (Max) <Max.McGill@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Thanks [REDACTED],

PLU, grateful if you could please respond to the additional point.

Thanks,
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From: [REDACTED] <[REDACTED]> **On Behalf Of** First Minister

Sent: 09 August 2022 10:45

To: Minister for Parliamentary Business <MinisterPB@gov.scot>; First Minister <firstminister@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [REDACTED] <[REDACTED]>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <>; [REDACTED] <[REDACTED]>; McGill M (Max) <Max.McGill@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Thanks [REDACTED] – FM has noted and agreed.

However, this does not cover the issue of the requests to set out whether any changes have been/are made at request of Crown solicitors. How do we intend to handle that?

Thanks,
[REDACTED]

[REDACTED]

Deputy Private Secretary to the First Minister
Office of the First Minister

5th Floor | St Andrews House | Regent Road | Edinburgh | EH1 3DG | [REDACTED]



Office of the First Minister of Scotland

FirstMinister.gov.scot

Prìomh Mhinistear na h-Alba

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

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From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 28 July 2022 20:02

To: First Minister <firstminister@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [REDACTED] <[REDACTED]>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; McGill M (Max) <Max.McGill@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Adding Colin to the chain.

Thanks,
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From: Minister for Parliamentary Business

Sent: 28 July 2022 17:01

To: First Minister <firstminister@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [REDACTED] <[REDACTED]>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>;

Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; McGill M (Max) <Max.McGill@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: FW: Note from Mr Adam - Crown Consent Procedures

Hi

Grateful if you could use this copy list going forward please.

Thanks again
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From: [REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 28 July 2022 13:37

To: First Minister <firstminister@gov.scot>

Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>

Subject: Note from Mr Adam - Crown Consent Procedures

Good Afternoon

Please find attached a note from Mr Adam to the First Minister regarding Crown consent procedures.

Thanks!
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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Document 6 – Email chain confirming Document 3 (following submission of Document 1) and discussing approach to Presiding Officer

From: [REDACTED] <[REDACTED]>

Sent: 22 September 2022 10:44

To: Minister for Parliamentary Business <MinisterPB@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>

Subject: RE: Urgent: Crown consent procedures - proposed GIQ - SCANCE note for comment by 11am Friday, 23 September

Thank you!

From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 22 September 2022 10:43

To:[REDACTED] <[REDACTED]>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>

Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: RE: Urgent: Crown consent procedures - proposed GIQ - SCANCE note for comment by 11am Friday, 23 September

He'll be speaking to her today!

[REDACTED] (she/her)

Private Secretary to Minister for Parliamentary Business

T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot

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From:[REDACTED] <[REDACTED]>

Sent: 22 September 2022 08:51

To: Minister for Parliamentary Business <MinisterPB@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>

Subject: FW: Urgent: Crown consent procedures - proposed GIQ - SCANCE note for comment by 11am Friday, 23 September

Hi [REDACTED], [REDACTED],

As you can see, John's asking if the Minister has spoken to the PO yet – can you let us know, please?

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>
Sent: 21 September 2022 18:22
To: [REDACTED] <[REDACTED]>; Fisher G (Graham) <Graham.Fisher@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; [REDACTED] <[REDACTED]>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>
Subject: RE: Urgent: Crown consent procedures - proposed GIQ - SCANCE note for comment by 11am Friday, 23 September

Do you know if the Minister has spoken to the Presiding Officer?

From: [REDACTED] <[REDACTED]>
Sent: 21 September 2022 17:08
To: Fisher G (Graham) <Graham.Fisher@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>
Cc: Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; [REDACTED] <[REDACTED]>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>
Subject: Urgent: Crown consent procedures - proposed GIQ - SCANCE note for comment by 11am Friday, 23 September

Afternoon all,

As you know, this GIQ was previously put on hold but Mr Adam's office has now confirmed we should do the SCANCE next week (Tue 27th) and then do the GIQ on Monday 3rd so that it's published in good time ahead of the emergency cost crisis Bill being introduced and published on morning of Tuesday 4th (and ahead of PSC Bill being introduced on 6th and published on 7th).

Therefore, grateful for comments on both the SCANCE note (Word and eRDM link included) and updated GIQ itself (below) which has been updated to reflect recent events. Sorry, but grateful for comments by 11am on Friday 23rd September.

John, grateful if you can confirm this should still be lodged in Gordon MacDonald's name?

Updated GIQ (removes reference to working with parly officials on how we will make this clear in acc docs since they've agreed to templates being updated in the way requested).

Suggested GIQ: To ask the Scottish Government what it is doing to increase transparency about the Crown consent process and how Bills apply to the Crown.

Suggested response: Scottish Government policy is that legislation should apply to the Crown in the same way as any other person unless there is a legitimate reason for a different approach. It is the Government's intention that we will make clear in a Bill's accompanying documents how provisions in a Bill apply to the Crown and why Crown consent is required.

Click on the link to open 'Cabinet - SCANCE - Crown consent' - <https://erdm.scotland.gov.uk:8443/documents/A40538488/details>

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From: [REDACTED]

Sent: 07 September 2022 12:14

To: Irvine A (Alison) <Alison.Irvine@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Fisher G (Graham) <Graham.Fisher@gov.scot>; [REDACTED] <[REDACTED]>

Subject: FW: Urgent: Crown consent procedures - proposed GIQ - SCANCE note for comment by close Thursday, 8 September

Hi all,

On the back of Mr Adam's request for a SCANCE note, I'd be grateful for thoughts on the attached. In particular, it'd be good to have thoughts on the approach to the speaking note. I've suggested this wouldn't be necessary but have included some additional points in case he's asked about recent requests for lists or which accompanying documents are to be updated.

PO are looking for this cleared SCANCE note by Friday so if possible can I have any comments by close on Thursday?

Click on the link to open 'Cabinet - SCANCE - Crown consent' - <https://erdm.scotland.gov.uk:8443/documents/A40538488/details>

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 06 September 2022 18:58

To:[REDACTED] <[REDACTED]>

Cc: First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights <MinisterZCBATTR@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; ParlyClerk Scotland <[REDACTED]>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED]<[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>; Fisher G (Graham) <Graham.Fisher@gov.scot>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <ian.Young@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: RE: Urgent: Crown consent procedures - proposed GIQ

Thanks [REDACTED].

Mr Adam is content with the question and answer, however he wants to amend handling slightly.

Can we please revise the plan as follows:

- We'll still inform the Presiding Officer this coming Thursday - intend to give the Minister the submission and draft GIQ for that discussion but let us know if you want to provide anything else.
- Can we also please prepare a SCANCE note for Cabinet next week please.
- GIQ will be lodged on the Tuesday afternoon following Cabinet.
- GIQ to be answered on the Wednesday or Thursday of next week.

Hope that's ok – let me know if you foresee any issues!

Thanks,

[REDACTED]

[REDACTED] (she/her)

Private Secretary to Minister for Parliamentary Business

T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot

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From: [REDACTED] <[REDACTED]>

Sent: 05 September 2022 19:15

To: Minister for Parliamentary Business <MinisterPB@gov.scot>

Cc: First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights <MinisterZCBATTR@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; ParlyClerk Scotland <[REDACTED]>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>; Fisher G (Graham) <Graham.Fisher@gov.scot>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>

Subject: Urgent: Crown consent procedures - proposed GIQ

PS/ Minister for Parliamentary Business

Copy: As above

Please find attached an urgent submission seeking ministerial clearance of a proposed Government Initiated Question on the topic of Crown application and consent by close on Wednesday, 7 September to allow publication of the question by Friday, 9 September.

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

Document 7 – Email chain discussing timing of GIQ

From:[REDACTED] <[REDACTED]>
Sent: 21 September 2022 15:08
To: Minister for Parliamentary Business <MinisterPB@gov.scot>; [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

Just to confirm I'll pick this up tomorrow morning.

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business
Sent: 21 September 2022 14:58
To:[REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; Minister for Parliamentary Business <MinisterPB@gov.scot>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

Okdoke. I think on that basis we should do the SCANCE next week (Tue 27th) and then do the GIQ on Monday 3rd so that it's in good time ahead of bill being introduced on morning of Tuesday 4th. Will clear that with the Minister but think we should work on that basis. I'll send a formal SCANCE commission if he agrees! Sorry to add to your load this week!

[REDACTED]

[REDACTED] (she/her)
Private Secretary to Minister for Parliamentary Business
T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot
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From:[REDACTED] <[REDACTED]>
Sent: 21 September 2022 14:23
To: Minister for Parliamentary Business <MinisterPB@gov.scot>
Cc: [REDACTED] <[REDACTED]>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi [REDACTED]

The first Bill (Cost of Living Crisis) is due for introduction Tue 4 October. Patient Safety Commissioner Bill may be introduced on Thu 6 October, but could fall to after recess.

Both bills currently have included sections on crown consent/application in their accompanying documents. Could the GIQ be done on 4th so it is published before the first Bill of the year is introduced?

[REDACTED]

From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 21 September 2022 13:54

To: [REDACTED] <[REDACTED]>

Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi guys,

Mr Adam would like to do the SCANCE and GIQ we planned the week after next – will that timing still work out ok with intro of upcoming bills etc?

[REDACTED]

[REDACTED] (she/her)

Private Secretary to Minister for Parliamentary Business

T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot

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From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 21 September 2022 13:51

To: ParlyClerk Scotland <[REDACTED]>;[REDACTED] <[REDACTED]>;

[REDACTED] <[REDACTED]>

Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

We're holding it just now – but will do it when things have settled. Likely the week after next – will let you know when we know!

Thanks [REDACTED].

[REDACTED]

[REDACTED] (she/her)

Private Secretary to Minister for Parliamentary Business

T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot
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From: ParlyClerk Scotland <[REDACTED]>
Sent: 21 September 2022 13:20
To: Minister for Parliamentary Business <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

Can someone give me an update on what's to happen with this GIQ please.

Thanks

[REDACTED]

From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business
Sent: 03 September 2022 10:02
To:[REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Minister for Parliamentary Business <MinisterPB@gov.scot>; ParlyClerk Scotland <[REDACTED]>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi [REDACTED],

Do we have suggested wording for this GIQ yet (possible I've missed it, sorry!)? We'll need to get that on Monday/Tuesday this week if we want to publish on Thursday/Friday. Copying ParlyClerk so they have advance warning that we intend to do one towards the end of next week.

Thanks!

[REDACTED]

[REDACTED] (she/her)
Private Secretary to Minister for Parliamentary Business
T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot
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From:[REDACTED] <[REDACTED]>

Sent: 23 August 2022 17:26

To: Minister for Parliamentary Business <MinisterPB@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi [REDACTED],

As discussed, we should lodge the GIQ ahead of any Government Bills being introduced this session.

Mr Adam regularly meets with the Presiding Officer late on a Thursday afternoon therefore I would suggest the GIQ should be answered on the Friday morning to co-ordinate alongside that. Their first meeting will be on Thursday 8 September 2022; therefore, I would suggest the GIQ is answered on Friday 9 September 2022.

Subject to any further steer from FM, I would be grateful for a submission on the suggested GIQ by 12pm on Friday 2 September.

Thanks,
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From:[REDACTED] **On Behalf Of** Minister for Parliamentary Business

Sent: 23 August 2022 16:29

To: [REDACTED] <[REDACTED]>; Minister for Parliamentary Business <MinisterPB@gov.scot>; [REDACTED] <[REDACTED]>

Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Thanks [REDACTED],

Mr Adam is content with the draft response and GIQ. He is also happy to speak with the presiding Officer.

Thanks,
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From:[REDACTED] <[REDACTED]>

Sent: 18 August 2022 14:57

To: Minister for Parliamentary Business <MinisterPB@gov.scot>; [REDACTED] <[REDACTED]>

Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi [REDACTED],

With apologies for the delay, please find attached a draft note for Mr Adam to consider sending back to FM.

You'll see this suggests the Minister should speak to the Presiding Officer and make the announcement through a GIQ. This has been cleared by John.

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From: [REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 17 August 2022 13:30

To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Hi guys,

Reducing copy list for timebeing.

Can you give us an indication of when we'll be in a position to respond to FM please? Let me know if you want to discuss further with the Minister – he's keen that we get an answer back to FM as soon as possible.

Thanks,

[REDACTED]

[REDACTED] (she/her)

Private Secretary to Minister for Parliamentary Business

T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot

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From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 09 August 2022 10:59

To: First Minister <firstminister@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [REDACTED] <[REDACTED]>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; McGill M (Max) <Max.McGill@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Thanks [REDACTED],

PLU, grateful if you could please respond to the additional point.

Thanks,

[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From: [REDACTED] <[REDACTED]> **On Behalf Of** First Minister
Sent: 09 August 2022 10:45
To: Minister for Parliamentary Business <MinisterPB@gov.scot>; First Minister <firstminister@gov.scot>
Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [REDACTED] <[REDACTED]>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <ian.Young@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <>; [REDACTED] <[REDACTED]>; McGill M (Max) <Max.McGill@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: RE: Note from Mr Adam - Crown Consent Procedures

Thanks [REDACTED] – FM has noted and agreed.

However, this does not cover the issue of the requests to set out whether any changes have been/are made at request of Crown solicitors. How do we intend to handle that?

Thanks,
[REDACTED]

[REDACTED]
Deputy Private Secretary to the First Minister
Office of the First Minister
5th Floor | St Andrews House | Regent Road | Edinburgh | EH1 3DG | [REDACTED]



Office of the First Minister of Scotland
FirstMinister.gov.scot
Prìomh Mhinistear na h-Alba

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From:[REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 28 July 2022 20:02

To: First Minister <firstminister@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [REDACTED] <[REDACTED]>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; McGill M (Max) <Max.McGill@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: RE: Note from Mr Adam - Crown Consent Procedures

Adding Colin to the chain.

Thanks,
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From: Minister for Parliamentary Business

Sent: 28 July 2022 17:01

To: First Minister <firstminister@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; DG Strategy and External Affairs <DGSEA@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [REDACTED] <[REDACTED]>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; McGill M (Max) <Max.McGill@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: FW: Note from Mr Adam - Crown Consent Procedures

Hi

Grateful if you could use this copy list going forward please.

Thanks again
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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From: [REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 28 July 2022 13:37

To: First Minister <firstminister@gov.scot>

Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>

Subject: Note from Mr Adam - Crown Consent Procedures

Good Afternoon

Please find attached a note from Mr Adam to the First Minister regarding Crown consent procedures.

Thanks!
[REDACTED]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

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Document 8 – Second note to the First Minister

First Minister

PRIMARY LEGISLATION – CROWN APPLICATION AND CROWN CONSENT

Following on from my note of July 2022, you sought clarification on how we intend to handle the issue of requests for the Scottish Government to set out whether any changes have been/are made at request of Crown solicitors.

Discussions between the Scottish Government and the Queen about Crown consent are usually carried out by correspondence between SGLD and the Queen's Solicitor in Scotland. Discussions between the Scottish Government and the Queen about how legislation should apply to Her Majesty may also take place between the Queen's Solicitor and SGLD or between the palace and policy colleagues. It would be a matter for Ministers to decide if they were content to agree any departure from the Scottish Government's policy that legislation should generally apply to the Crown in the same way that it applies to anyone else.

As you are aware, Bills may change during the drafting period until being introduced for all sorts of reasons based on different discussions with stakeholders, of whom the Queen may be one.

We do not hold a list of changes that were made to Bills in relation to their application to the Crown whether as a consequence of discussions with the Queen's Solicitor or otherwise. Given the numerous changes made as Bills are developed and refined, often for a variety of reasons, even if the Queen's Solicitor raised a point during discussions with the Government, it would not automatically mean that a provision was subsequently changed simply at the request of the Queen. It would therefore not be possible to produce a list of the sort requested by Alex Cole-Hamilton.

Whilst, the correspondence with the Queen's Solicitors is generally withheld to ensure that there is a private and confidential space for considering issues, the approach I am suggesting will ensure that the Government is open and transparent about how legislation applies to the Crown and whether Bills require Crown consent. It will be for the Government to justify the approach taken in each case and MSPs will have full information to enable them to scrutinise and debate this throughout the passage of a Bill.

Unless you have any objection, it is my intention to speak to the Presiding Officer about the Scottish Government's proposed approach. I would then make Parliament aware through a Government Inspired Question.

GA
August 2022

Document 9 – Email providing final written answer to S6W-11314

From: s0678a@gov.scot <s0678a@gov.scot>
Sent: 03 October 2022 09:00
To: [REDACTED] <[REDACTED]>
Subject: WRITTEN PQ Answers

Please find attached, the answers to the WRITTEN PQs processed on 03/10/2022:-

S6W-11314

Document 9a) Written response

SCOTTISH PARLIAMENT

WRITTEN ANSWER

3 October 2022

Index Heading: Constitution and External Affairs

Gordon MacDonald (Edinburgh Pentlands) (Scottish National Party): To ask the Scottish Government what it is doing to increase transparency regarding the Crown consent process and how bills apply to the Crown.

S6W-11314

George Adam: Scottish Government policy is that legislation should apply to the Crown in the same way as any other person unless there is a legitimate reason for a different approach. It is the Scottish Government's intention that we will make clear in a Bill's accompanying documents how provisions in a Bill apply to the Crown and why Crown consent is required.

Document 9b) Background note

BACKGROUND NOTE FOR S6W-11314

This GIQ will be answered on Monday, 3 October, ahead of the first of the Government's Year 2 Bills being introduced that week.

Despite Crown consent requirements being set out in the Scotland Act 1998 and remaining the same since 1999, the Scottish Government has received numerous Freedom of Information requests, Parliamentary Questions and correspondence from MSPs on the topic of Crown consent and Crown application since the beginning of 2021. To increase transparency, the GIQ states that the Scottish Government will make clear in a Bill's accompanying documents how provisions in a Bill apply to the Crown and why Crown consent is required.

It remains Scottish Government policy that legislation should apply to the Crown in the same way as any other person unless there is a legitimate reason for a different approach. This will be reflected in a Bill's accompanying documents.

This approach will ensure MSPs have full information on the introduction of a Bill to enable them to scrutinise and debate this throughout the passage of the Bill. It will also coincide with the Scottish Parliament's planned action to make a statement on introduction of a Bill if it is expected to require Crown consent.

The Royal Household has been made aware of the Scottish Government's intended approach.

Contact Name: [REDACTED]
Ext: [REDACTED]

Document 10 – Shared final written answer to S6W-11314

From: [REDACTED]
Sent: 04 October 2022 15:10
To: [REDACTED] <[REDACTED]>
Subject: FW: WRITTEN PQ Answers

[REDACTED],

This GIQ on new crown consent processes was answered and published on Monday ahead of this emergency Bill being introduced.

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From: s0678a@gov.scot <s0678a@gov.scot>
Sent: 03 October 2022 09:00
To: [REDACTED] <[REDACTED]>
Subject: WRITTEN PQ Answers

Please find attached, the answers to the WRITTEN PQs processed on 03/10/2022:-

S6W-11314

Document 11 – Email advising Royal Household of Scottish Government approach

From: [REDACTED] <[REDACTED]>

Sent: 23 September 2022 11:24

To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: Crown consent and application - Scottish Government approach

Dear [REDACTED],

Many thanks for letting me know, it is helpful to be aware. I will update colleagues here and make sure that they are aware of the plans for w/c 3rd October.

If there is anything else that you need from us, please do let me know.

With best wishes,
[REDACTED]



[REDACTED] | [REDACTED]

Secretariat | Private Secretary's Office

Ext: [REDACTED] | DDI: [REDACTED] | Mobile: [REDACTED] | [REDACTED]

Buckingham Palace, London, SW1A 1AA

    www.royal.uk

From: [REDACTED] <[REDACTED]>

Sent: 23 September 2022 11:20

To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: [REDACTED]; [REDACTED]; [REDACTED]

Subject: RE: Crown consent and application - Scottish Government approach

Some people who received this message don't often get email from [REDACTED]. [Learn why this is important](#)

Dear [REDACTED],

As a result of the death of The Queen, the Scottish Government postponed plans to make the Scottish Parliament aware of our approach during w/c 5th September. I wanted to advise you that the Scottish Government now intends that the Scottish Parliament will be made aware of our intended approach during the course of the week commencing 3rd October.

Best wishes,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From: [REDACTED] <[REDACTED]>
Sent: 06 September 2022 12:54
To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Crown consent and application - Scottish Government approach

Dear [REDACTED],

Thank you for your email regarding Crown consent and Crown application. It is incredibly useful to see the Scottish Government's plans with respect to improving transparency on this matter. I will brief my colleagues and will be in touch if we have any questions.

With best wishes,
[REDACTED]



[REDACTED] | [REDACTED]
Secretariat | Private Secretary's Office
Ext: [REDACTED] | DDI: [REDACTED] | Mobile: [REDACTED] | [REDACTED]
Buckingham Palace, London, SW1A 1AA
[f](#) [t](#) [v](#) [i](#) [www.royal.uk](#)

From: [REDACTED] <[REDACTED]>
Sent: 06 September 2022 12:28
To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]; [REDACTED]; [REDACTED]
Subject: Crown consent and application - Scottish Government approach

Some people who received this message don't often get email from [REDACTED]. [Learn why this is important](#)

In confidence – For information

Dear [REDACTED] and [REDACTED],

As you're aware from previous correspondence on this subject with some of my colleagues, since the beginning of 2021 the Scottish Government has received numerous Freedom of Information requests, Parliamentary Questions and correspondence from Members of the Scottish Parliament on the topic of Crown consent and Crown application.

We wanted to advise you that, in order to increase transparency about the Crown consent process and how a Bill applies to the Crown, and the reasons for this, it is the Scottish Government's intention that, from now on, we will make clear in a Bill's accompanying documents how provisions in a Bill apply to the Crown and why Crown consent is required. This is intended to ensure that Members of the Scottish Parliament will have full information on the introduction of a Bill to enable them to scrutinise and debate this throughout the passage of the Bill.

It is not, however, our intention that the accompanying documents will go into a great deal of detail.

As you're aware, the Scottish Government's policy is that the Crown (including Her Majesty) should be subject to regulatory requirements on the same basis as everyone else unless there is a legitimate reason for an exemption. To be more transparent, and to ensure as much clarity as possible, text will be included in a Bill's Explanatory Notes to indicate where the Crown is subject to regulatory requirements on the same basis as everyone else, or where modifications have been made or exemptions applied. The policy reasons for any significant modifications or exemptions will be explained in the Policy Memorandum as is already the case.

To increase transparency around whether and why Crown consent is likely to be sought, text will be added to a Bill's Policy Memorandum to set out the Government's view on introduction. If it is our view that we are likely to seek consent, keeping in mind that this might be before any discussions have taken place with The Queen's Solicitor, we will keep wording fairly high level. For example, potential reasons for consent being required might include text along the following lines:

- The power under section 1 includes power to make provision for enforcement which could impinge on Crown interests in relation to access to land. Although we cannot at this stage say with any certainty that the power will be used to alter in a significant way the law as it applies to the Crown Estate or The Queen's personal property, the potential is there;
- The Bill introduces changes to appeal rights, giving communities a right of appeal in certain circumstances against the grant of planning permission, and restricting the circumstances in which applicants can appeal against refusal. This this would affect any applications for planning permission made in relation to Her Majesty's estates; or
- The Bill dissolves a body established by Royal Warrant, or would affect a prerogative right to appoint an officeholder.

It is the Scottish Government's intention that the Scottish Parliament will be made aware of our intended approach during the course of the week.

We will, of course, continue to advise you if further Freedom of Information requests are received where we plan to release any information.

Best wishes,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

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Document 12 – Email submitting Document 2 for clearance

From: [REDACTED] <[REDACTED]>

Sent: 23 September 2022 14:07

To: Minister for Parliamentary Business <MinisterPB@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretariat inbox <[REDACTED]>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [REDACTED] <[REDACTED]>; Fisher G (Graham) <Graham.Fisher@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [REDACTED] <[REDACTED]>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; ParlyClerk Scotland <[REDACTED]>

Subject: RE: Cabinet: Tuesday, 27 September 2022 - Do you have any written SCANCE items? - Cleared contributions requested by 1pm on Monday, 26 September 2022

Hi [REDACTED],

Please find attached a SCANCE note for Mr Adam to consider.

Please also note that the GIQ referred to in this SCANCE item has been updated slightly since it was put on pause due to the death of the Queen. The only change is to remove a sentence saying we are discussing with clerks since the update to templates has now been agreed. The updated GIQ is below. This should still be in Gordon Macdonald's name.

GIQ: To ask the Scottish Government what it is doing to increase transparency about the Crown consent process and how Bills apply to the Crown.

Response: Scottish Government policy is that legislation should apply to the Crown in the same way as any other person unless there is a legitimate reason for a different approach. It is the Government's intention that we will make clear in a Bill's accompanying documents how provisions in a Bill apply to the Crown and why Crown consent is required.

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From: [REDACTED] <[REDACTED]> **On Behalf Of** Minister for Parliamentary Business

Sent: 22 September 2022 11:07

To: Cabinet Secretariat inbox <[REDACTED]>

Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>; [REDACTED] <[REDACTED]>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>

Subject: RE: Cabinet: Tuesday, 27 September 2022 - Do you have any written SCANCE items? - Cleared contributions requested by 1pm on Monday, 26 September 2022

Hi [REDACTED],

We'll have an item on Crown Consent. [REDACTED]/team are drafting.

[REDACTED]

[REDACTED] (she/her)

Private Secretary to Minister for Parliamentary Business

T: [REDACTED] M: [REDACTED] E: MinisterPB@gov.scot

The Scottish Government | St Andrew's House, Regent Road, EDINBURGH EH1 3DG

Scottish Ministers, Special Advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016.

See www.lobbying.scot.

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From: [REDACTED] <[REDACTED]> **On Behalf Of** Cabinet Secretariat inbox

Sent: 21 September 2022 08:22

To: DL Cabinet Secretaries; Minister for Environment and Land Reform <MinisterELR@gov.scot>; Minister for Mental Wellbeing & Social Care <MinisterMWSC@gov.scot>; Minister for Equalities and Older People <MinisterEOP@gov.scot>; Minister for Children & Young People <MinisterCYP@gov.scot>

Cc: Cabinet Secretariat inbox

Subject: Cabinet: Tuesday, 27 September 2022 - Do you have any written SCANCE items? - Cleared contributions requested by 1pm on Monday, 26 September 2022

Importance: High

Good morning,

SCANCE Commission: Cabinet Meeting 27 September 2022

We would be grateful if your **cleared** SCANCE contributions be returned to the **Cabinet Secretariat inbox by 1pm on Monday, 26 September 2022.**

Please also ensure that each **draft** SCANCE item, and any related correspondence, is copied to the 'Cabinet Secretariat inbox' as soon as you receive it from policy officials, as this should limit the need for too many follow-up calls when the SCANCE paper is being finalised.

If, as the deadline for submission approaches, you have an item in preparation, please let Cabinet Secretariat know, as we are generally happy to allow extra time for individual items **provided we know that they are coming** (please note, though, that **we will only be able to include late notes that arrive before 2:30 pm on Mondays**, as we aim to issue the SCANCE paper by **3.30 pm**).

As a general rule, we prefer to have as many items as possible as **written** (rather than oral) SCANCE items, as this allows other Cabinet members to take cognisance of any issues which will be raised **before** the Cabinet meeting. (Cabinet members are of course always free to raise any additional **oral** SCANCE items when urgent matters have arisen or when an item is sufficiently sensitive.)

For minute taking purposes, you should send any speaking notes (including for oral items) to the 'Cabinet Secretariat inbox' in advance of Cabinet, wherever these are available.

SCANCE notes received by private offices too late for inclusion in the SCANCE paper should still be sent to the Cabinet Secretariat Inbox as they help with the drafting of the minutes.

Template and Guidance

Please find attached the SCANCE template for completion. **Please make sure the contact details of the person who drafts the SCANCE note is included in the completed template – this makes it much easier for Cabinet Secretariat to provide feedback to the right person immediately after Cabinet.**

<< File: SCANCE Guidance - Top 10 Tips - April 2019.docx >> **[please forward this template and guidance note below to officials for completion]**

<< File: Shell - Cabinet - SCANCE Template (6th Administration - 2021).doc >> **[Guidance Note – 10 Top Tips]**

Many thanks, [REDACTED]

[REDACTED] | Scottish Government | Cabinet, Parliament and Governance Division | Tel: [REDACTED] | email: [REDACTED]

CROWN CONSENT

4 Oct: Media reports “**King Charles allowed to vet Rent Freeze Bill**” because it could affect tenants on the Balmoral estate, claiming that rule changes had been made in Parliament as a result of a Guardian investigation into the monarch’s power to influence laws across the UK.

- SG has recently made changes to the way that information on Crown consent is presented as Bills go through parliament with the Tenant Protection Bill being the first to adopt the new approach (of making the requirement for Crown consent clear in a Bill’s accompanying documents).
- Alex Cole-Hamilton lodge a motion during passage of emergency legislation that Parliament should know if laws are being changed at the request of the King.

TOP LINES

Seeking Crown consent is not a choice taken by the Scottish Government.

- The Scotland Act has required the Scottish Parliament and Government since 1999 to seek Crown consent following the same rules that apply to UK Bills.
- Where the need to seek consent is identified, the Scottish Government is required to obtain that consent (under the Parliament’s Standing Orders).
- It has always been open to MSPs and Committees to raise questions as to whether and why Crown consent is required during any Bill’s parliamentary passage – this has not changed.

The Cost of Living (Tenant Protection) Scotland Bill is not doing anything which would not have happened in the past in terms of the Parliament’s rules.

- The Bill contains provisions affecting private residential tenancies which could affect residential tenancies on His Majesty’s private estates and those on land forming part of the Scottish Crown Estate, therefore Crown consent is required.
- The Cost of Living (Tenant Protection) (Scotland) Bill applies to the Crown in the same way as it applies to everyone else.
- I would reiterate that the King’s consent to this Bill is expected to be signified to Parliament this afternoon ahead of the Bill being debated at Stage 3.

What is new, is the Scottish Government’s decision to make clear in a Bill’s accompanying documents how provisions in a Bill apply to the Crown and why Crown consent is required, in order to provide greater transparency.

- This will ensure MSPs have full information on the introduction of a Bill to enable them to scrutinise and debate this throughout the passage of the Bill.

Correspondence with the Royal household is confidential.

- In order to maintain the ability to hold free and frank discussions it is important that this confidentiality is recognised and respected.
- Given the legal requirements placed on the Scottish Government by the Scotland Act, a positive working relationship with the Royal Household is vital.

As made clear yesterday in the Chamber, Bills before they are published may change for all sorts of reasons based on different discussions with stakeholders.

- Yesterday's amendment lodged by Alex Cole-Hamilton sought to require the Government to report on various discussions that have been held and decisions that have been taken after the Bill has passed.
- It is difficult to see what purpose is served by requiring the Government to provide a report on these matters in relation to the King after the Bill has been passed.
- As Parliament knows, draft proposals, and early versions of Bills are not laws. Only proposals agreed and passed by Parliament are laws once they are enacted.

This process has not changed and is the process which has been followed by each Scottish Government since 1999, including previous Labour/Liberal Democrat coalition governments.

- It is for the Parliament to consider Bills brought forward and decide whether or not it is content with the way in which a Bill applies to the Crown.
- For the Tenant Protection Bill, Parliament should consider if it is content that the Bill applies to the Crown in the same way as anyone else.

CROWN CONSENT AND APPLICATION

3 Oct: PQ response set out that the Scottish Government will make clear in a Bill's accompanying documents **how provisions in a Bill apply to the Crown and why Crown consent is required.**

4 Oct: Media reports “**King Charles allowed to vet Rent Freeze Bill**” because it could affect tenants on the Balmoral estate, claiming that rule changes had been made in Parliament as a result of a Guardian investigation into the monarch's power to influence laws across the UK.

TOP LINES

Seeking Crown consent is not a choice taken by the Scottish Government.

- The Scotland Act has required the Scottish Parliament and Government since 1999 to seek Crown consent following the same rules that apply to UK Bills.
- Where the need to seek consent is identified, the Scottish Government is required to obtain that consent (under the Parliament's Standing Orders).
- The Parliament cannot debate whether the Bill should be passed unless the Scottish Government confirms that consent has been obtained.
- It has always been open to MSPs and Committees to raise questions as to whether and why Crown consent is required during any Bill's parliamentary passage – this has not changed.

This process has not changed and is the process which has been followed by each Scottish Government since 1999, including previous Labour/Liberal Democrat coalition governments.

- It is for the Parliament to consider Bills brought forward and decide whether or not it is content with the way in which a Bill applies to the Crown.

What is new, is the Scottish Government's decision to make clear in a Bill's accompanying documents how provisions in a Bill apply to the Crown and why Crown consent is required, in order to provide greater transparency.

- This will ensure MSPs have full information on the introduction of a Bill to enable them to scrutinise and debate this throughout the passage of the Bill.

The process for obtaining Crown consent is entirely separate from the application of legislation to the Crown.

- Scottish Government policy is that the Crown should be subject to regulatory requirements on the same basis as everyone else unless there is a legitimate reason for an exemption/modification to this.
- This policy was reflected in section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 which provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish Statutory Instrument unless the provision expressly exempts it.
- Where the Scottish Government decides there is a legitimate reason for an exemption/modification to this policy, we will explain this.
- This is therefore different from the position in UK legislation where the Crown is not bound by statutory provisions except where expressly provided.

- Information on the Scottish Government's policy in relation to Crown application can be found in our Drafting Matters guidance document published on the 6 December 2018.

The Cost of Living (Tenant Protection) Scotland Bill did not do anything which would not have happened in the past in terms of the Parliament's rules.

- The Bill contains provisions affecting private residential tenancies which could affect residential tenancies on His Majesty's private estates and those on land forming part of the Scottish Crown Estate, therefore Crown consent was required.
- The Cost of Living (Tenant Protection) (Scotland) Bill applies to the Crown in the same way as it applies to everyone else.
- The King's consent to this Bill was signified to Parliament ahead of the Bill being debated at Stage 3.

Bills before they are published may change for all sorts of reasons based on different discussions with stakeholders.

- The amendment lodged by Alex Cole-Hamilton at Stage 2 of the Tenant Protection Bill sought to require the Government to report on various discussions that have been held and decisions that have been taken after the Bill has passed.
- It remains difficult to see what purpose is served by requiring the Government to provide a report on these matters in relation to the King after a Bill has been passed.

Correspondence with the Royal household is confidential.

- In order to maintain the ability to hold free and frank discussions it is important that this confidentiality is recognised and respected.
- Given the legal requirements placed on the Scottish Government by the Scotland Act, a positive working relationship with the Royal Household is vital.

Document 15 – Email to Minister for Parliamentary Business providing a summary of the pre-introduction correspondence between Parliamentary Counsel Office (PCO) and the Parliament relating to the Cost of Living (Tenant Protection) (Scotland) Bill, together with copies of the relevant letters.

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 03 October 2022 22:32

To: Minister for Parliamentary Business <MinisterPB@gov.scot>

Cc: [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>

Subject: Cost of Living (Tenant Protection) (Scotland) Bill - summary of pre-introduction correspondence

Minister for Parliamentary Business,

I attach a summary of the pre-introduction correspondence between PCO and the Parliament relating to the Cost of Living (Tenant Protection) (Scotland) Bill, together with copies of the relevant letters.

[REDACTED]

Parliamentary Counsel

Tel. [REDACTED]



Document 15a) Extract from summary providing views on Crown consent (the rest of the document is outwith the scope of the request)

Cost of Living (Tenant Protection) (Scotland) Bill

[REDACTED AS NOT WITHIN SCOPE OF THE REQUEST]

**[REDACTED AS NOT
WITHIN SCOPE OF
THE REQUEST]**

[REDACTED AS NOT WITHIN SCOPE OF THE REQUEST]

Crown consent

Signification at Stage 3 required as the Bill may affect the private interests of the Sovereign and also the hereditary revenues of the Crown (principally the Scottish Crown Estate).

[REDACTED AS NOT WITHIN SCOPE OF THE REQUEST]

Document 15b) Extract of Crown consent content from exchange between PCO and the Scottish Parliament's Group Head of Chamber and Reporting Group (the rest of the document is outwith the scope of the request)

Parliamentary Counsel Office

E: [REDACTED]@gov.scot

BY EMAIL ONLY



Scottish Government
Riaghaltas na h-Alba
gov.scot

Tracey White
Group Head of Chamber and Reporting
Group
The Scottish Parliament
Holyrood
Edinburgh
EH99 1SP

27 September 2022

Dear Tracey

COST OF LIVING (TENANT PROTECTION) (SCOTLAND) BILL

[REDACTED AS NOT WITHIN SCOPE OF THE REQUEST]

Crown Consent

- The Bill binds the Crown by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010. While much of the rent freeze is achieved by modification of existing legislation, the moratorium on evictions is contained in the Bill itself and the modifications made to other legislation is designed to support that.
- The Private Housing (Tenancies) (Scotland) Act 2016 required Crown consent because Her Majesty let residential property on the Balmoral Estate (thus affecting Her personal interests). The Housing (Scotland) Act 1988 also applied to the Crown by virtue of section 51 of that Act and we presume (though have not had time to investigate) that Crown consent was also granted for that Act.
- While we do not know the exact basis on which the property at Balmoral is let, the Bill modifies the 2016 Act and the Housing (Scotland) Act 1988 to make significant (albeit temporary) adjustments that might have an impact on the interests of the Sovereign. We take the view that the rent freeze modifications in the Bill are not covered by the granting of consent in respect of the Bill for

the 2016 Act or the 1988 Act. Similarly, limiting the circumstances in which a tenant may be removed from those properties is also an interference with those interests which we think points to Crown consent being required.

- We suggest that signification at Stage 3 should be sufficient.

[REDACTED AS NOT WITHIN SCOPE OF THE REQUEST]

Yours sincerely,

[REDACTED]

[REDACTED]
Parliamentary Counsel

Document 15c) Extract of Crown consent content from the Group Head of Chamber and Reporting Group's response to PCO (the rest of the document is outwith the scope of the request)



The Scottish Parliament
Pàrlamaid na h-Alba

Chamber Office
Edinburgh
EH99 1SP
e-mail: tracey.white@parliament.scot
30 September 2022

[REDACTED]
Parliamentary Counsel Office
Victoria Quay
Edinburgh
EH6 6QQ

Dear [REDACTED],

COST OF LIVING (TENANT PROTECTION) (SCOTLAND) BILL

1. Thank you for your letter of 27 September 2022. My response to the issues you raise is as follows:

[REDACTED AS NOT WITHIN SCOPE OF REQUEST]

Crown consent

18. I agree with your assessment of Crown Consent and note this will be signified at Stage 3.

[REDACTED AS NOT WITHIN SCOPE OF REQUEST]

Your sincerely,

Tracey White
Group Head for Legislation and Parliamentary Business

Document 16 – Email to Minister for Parliamentary Business providing a summary of the pre-introduction correspondence between PCO and the Parliament relating to the Patient Safety for Scotland Bill, together with copies of the relevant letters.

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 06 October 2022 14:34

To: Minister for Parliamentary Business <MinisterPB@gov.scot>

Cc: [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Gough F (Fraser) <Fraser.Gough@gov.scot>

Subject: Patient Safety Commissioner for Scotland Bill - summary of 3 week correspondence

Good afternoon

I attach a brief summary of the pre-introduction correspondence relating to the Patient Commissioner for Scotland Bill (which was formally introduced to the Parliament today). If there is anything on which you would like further information or clarification, please let me or Fraser Gough (copied) know.

Kind regards

[REDACTED]

[REDACTED]

Parliamentary Counsel

Area 2-J (South), Victoria Quay, Edinburgh EH6 6QQ



Document 16a) Extract from summary providing views on Crown consent (the rest of the document is outwith the scope of the request)

Patient Safety Commissioner for Scotland Bill

[REDACTED AS NOT WITHIN SCOPE OF THE REQUEST]

**[REDACTED AS NOT WITHIN
SCOPE OF THE REQUEST]**

[REDACTED AS NOT WITHIN SCOPE OF THE REQUEST]

Crown consent

Not required.

[REDACTED AS NOT WITHIN SCOPE OF THE REQUEST]

Document 17 – Email from Scottish Government officials to Scottish Parliament clerks

From: [REDACTED]
Sent: 29 August 2022 15:23
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Requested changes to accompanying document templates - Crown application and consent

Thanks [REDACTED].

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 29 August 2022 15:07
To: [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@parliament.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Requested changes to accompanying document templates - Crown application and consent

Hi [REDACTED]

Thanks for the confirmation about the wording. Yes, as you say, they'll be discussion between SP/SG during the 3-week period if there is any disagreement, but we just need to discuss internally the statement on the SP website.

[REDACTED]

From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: Monday, August 29, 2022 2:28 PM
To: [REDACTED] <[REDACTED]@parliament.scot>; [REDACTED] <[REDACTED]@parliament.scot>
Cc: [REDACTED]@gov.scot
Subject: RE: Requested changes to accompanying document templates - Crown application and consent

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Hi [REDACTED],

Thanks for this. Happy to look at any comments on wording but as I say further thinking is still to be done on definite wording. Also, whatever that wording is, it'll make clear it's the SG's view on Crown consent – although I think this is something that's likely to be discussed during the 3-week period if there is any disagreement. I imagine those conversations will also impact on any statement made by the Parliament on its webpages?

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]@gov.scot

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From: [REDACTED <[REDACTED]@parliament.scot>
Sent: 29 August 2022 14:24
To:[REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@parliament.scot>
Cc:[REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Requested changes to accompanying document templates - Crown application and consent

Hi [REDACTED]

Just to update you on this. We've got a couple of comments on the proposed text for inclusion in the Policy Memorandum on Crown consent. We also need to discuss these developments with Tracey; in particular, how we would manage any situation where the SG and SP disagree on whether Crown consent is/is not required.

Tracey is out of the office this week, but I'll hopefully be in contact with you again later next week.

Thanks
[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: Wednesday, August 17, 2022 10:49 AM
To:[REDACTED] <[REDACTED]@parliament.scot>; [REDACTED] <[REDACTED]@parliament.scot>
Cc: [REDACTED]@gov.scot; [REDACTED]@gov.scot
Subject: Requested changes to accompanying document templates - Crown application and consent

CAUTION: This e-mail originated from outside of The Scottish Parliament. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi [REDACTED] and [REDACTED],

As discussed with [REDACTED] last week, we'd be grateful if the Policy Memorandum and Explanatory Notes templates could be updated as follows.

Explanatory Notes – Crown application

As you're aware, the Scottish Government's policy is that the Crown (including Her Majesty) should be subject to regulatory requirements on the same basis as everyone else unless there is a legitimate reason for an exemption. To be more transparent, and to ensure as much clarity as possible, we would like the

Explanatory Notes template to be updated to include a standalone 'Crown application' section/heading. It is the SG's intention that standard text would be included to indicate where the Crown is subject to regulatory requirements on the same basis as everyone else. This text will be considered further and will be kept under review but may at least initially say something along the following lines:

“Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish Statutory Instrument unless the provision expressly exempts it. This Bill applies to the Crown in the same way as it applies to everyone else.”

Where modifications are made, or exemptions applied, to this policy, the text could read:

“Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish Statutory Instrument unless the provision expressly exempts it. Section(s) [X,Y,Z] of this Bill exempt(s) the Crown [or the Queen]/ modifies/modify how the Bill applies to the Crown [or the Queen]. This/These provision(s) ... ”

As you're also aware, the policy reasons for any significant modifications or exemptions would need to be explained in the Policy Memorandum but we do not think any adjustment to the template is needed to accommodate this.

Policy memorandum – Crown consent

Although analysis on Crown consent is provided in the 3-week period confidential correspondence between Government and Parliament, we think that there would be merit in including basic information in the Policy Memorandum to Bills about whether and why Crown consent is likely to be sought. Doing so would mean that MSPs and other interested parties would have that explanation to coincide with the Parliament's planned action. We would therefore like the Policy Memorandum template to be updated to include a standalone 'Crown consent' section/heading.

As the Policy Memorandum is not updated as the Bill progresses through Parliament, any text included would have to make clear this is the expected position as at introduction. As with the above, more thought needs to be given to consider more exact appropriate wording but it could be along the following lines:

Consent not needed

“Paragraph 7 of Schedule 3 to the Scotland Act 1998 requires the Scottish Parliament and Government to seek Crown consent if the same Bill would need such consent were it passed by the UK Parliament. Crown consent is therefore required where a Scottish Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign. As the Bill is drafted on introduction, it is the Scottish Government's view that it does not require Crown consent.”

Consent needed

“Paragraph 7 of Schedule 3 to the Scotland Act 1998 requires the Scottish Parliament and Government to seek Crown consent if the same Bill would need such consent were it passed by the UK Parliament. Crown consent is therefore required where a Scottish Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign. As the Bill is drafted on introduction, it is the Scottish Government’s view/expectation that, in order to comply with Rule 9.11 of the Parliament’s Standing Orders, Crown consent will be required in relation to section(s) [X, Y, Z]. This is because ... ”

As discussed on the call with [REDACTED], we would not intend to go into too much detail. Therefore, potential reasons for consent being required might include text along the following lines:

- The power under section 1 includes power to make provision for enforcement which could impinge on Crown interests in relation to access to land. Although we cannot at this stage say with any certainty that the power will be used to alter in a significant way the law as it applies to the Crown Estate or the Queen’s personal property, the potential is there;
- The Bill introduces changes to appeal rights, giving communities a right of appeal in certain circumstances against the grant of planning permission, and restricting the circumstances in which applicants can appeal against refusal. This this would affect any applications for planning permission made in relation to Her Majesty’s estates; or
- The Bill dissolves a body established by Royal Warrant, or would affect a prerogative right to appoint an officeholder.

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]@gov.scot

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Document 18 – Email from Scottish Government officials to Scottish Parliament clerks

From:[REDACTED]

Sent: 12 September 2022 11:12

To:[REDACTED] <[REDACTED]@parliament.scot>; [REDACTED] <[REDACTED]@parliament.scot>

Cc:[REDACTED] <[REDACTED]@gov.scot>

Subject: RE: Requested changes to accompanying document templates - Crown application and consent

Hi [REDACTED],

Thanks for confirming. I'll let Fraser know you're content and ask him to make the necessary change now.

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]@gov.scot

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From:[REDACTED] <[REDACTED]@parliament.scot>

Sent: 12 September 2022 11:01

To: [REDACTED] <[REDACTED]@gov.scot>;[REDACTED] <[REDACTED]@parliament.scot>

Cc:[REDACTED] <[REDACTED]@gov.scot>

Subject: Re: Requested changes to accompanying document templates - Crown application and consent

Hi [REDACTED],

Yes, happy to update the templates. I think Fraser Gough in PCO usually inputs on template changes. Are you content for us to flag with him or has that been discussed already your end?

Thanks,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 12 September 2022 10:54

To:[REDACTED] <[REDACTED]@parliament.scot>; [REDACTED] <[REDACTED]@parliament.scot>

Cc: [REDACTED] <[REDACTED]@gov.scot>

Subject: RE: Requested changes to accompanying document templates - Crown application and consent

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Thanks for this [REDACTED], happy to look at your suggested wording. Can I ask if this means you'll be happy to update the templates?

And yes, I agree that would be extremely bad luck!!

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]@gov.scot

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From:[REDACTED] <[REDACTED]@parliament.scot>
Sent: 12 September 2022 10:43
To:[REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@parliament.scot>
Cc:[REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Requested changes to accompanying document templates - Crown application and consent

Hi [REDACTED],

We're aware we're expecting draft accompanying documents to be sent tomorrow for the Patient Safety Commissioner for Scotland Bill so just wanted to get our initial thoughts on wording to you – though appreciate you said the proposed wording wasn't final so perhaps you've moved on from the drafts below. Our comments relate to the text I've highlighted below on Crown consent. We'd prefer this more closely reflected the wording of the Scotland Act so that it stated "requires that Crown consent be signified to the Parliament if...".

We're still considering how we would manage any disagreement between SG and SP so we'll get back to you on that point later. As you suggest, how we represent matters on the Parliament website is part of that consideration. This is unlikely to be urgent though, since we've never disagreed previously it would be terribly bad luck for the next Bill to be the one where that happened!

Thanks,
[REDACTED]

[REDACTED] | Senior Clerk | Legislation Team | The Scottish Parliament | Tel: [REDACTED] | [REDACTED]@parliament.scot

From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: Monday, August 29, 2022 2:28 PM
To: [REDACTED] <[REDACTED]@parliament.scot>; [REDACTED]<[REDACTED]@parliament.scot>
Cc: [REDACTED]@gov.scot
Subject: RE: Requested changes to accompanying document templates - Crown application and consent

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Hi [REDACTED],

Thanks for this. Happy to look at any comments on wording but as I say further thinking is still to be done on definite wording. Also, whatever that wording is, it'll make clear it's the SG's view on Crown consent – although I think this is something that's likely to be discussed during the 3-week period if there is any disagreement. I imagine those conversations will also impact on any statement made by the Parliament on its webpages?

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[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]@gov.scot

I am currently working from home and can be contacted by email, phone (numbers above) or Teams

From: [REDACTED] <[REDACTED]@parliament.scot>

Sent: 29 August 2022 14:24

To: [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@parliament.scot>

Cc: [REDACTED] <[REDACTED]@gov.scot>

Subject: RE: Requested changes to accompanying document templates - Crown application and consent

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Tracey is out of the office this week, but I'll hopefully be in contact with you again later next week.

Thanks

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: Wednesday, August 17, 2022 10:49 AM

To: [REDACTED] <[REDACTED]@parliament.scot>; [REDACTED] <[REDACTED]@parliament.scot>

Cc: [REDACTED]@gov.scot; [REDACTED]@gov.scot

Subject: Requested changes to accompanying document templates - Crown application and consent

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Hi [REDACTED] and [REDACTED],

As discussed with [REDACTED] last week, we'd be grateful if the Policy Memorandum and Explanatory Notes templates could be updated as follows.

Explanatory Notes – Crown application

As you're aware, the Scottish Government's policy is that the Crown (including Her Majesty) should be subject to regulatory requirements on the same basis as everyone else unless there is a legitimate reason for an exemption. To be more transparent, and to ensure as much clarity as possible, we would like the Explanatory Notes template to be updated to include a standalone 'Crown application' section/heading. It is the SG's intention that standard text would be included to indicate where the Crown is subject to regulatory requirements on the same basis as everyone else. This text will be considered further and will be kept under review but may at least initially say something along the following lines:

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Where modifications are made, or exemptions applied, to this policy, the text could read:

“Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish Statutory Instrument unless the provision expressly exempts it. Section(s) [X,Y,Z] of this Bill exempt(s) the Crown [or the Queen]/ modifies/modify how the Bill applies to the Crown [or the Queen]. This/These provision(s) ... ”

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Consent needed

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As discussed on the call with [REDACTED], we would not intend to go into too much detail. Therefore, potential reasons for consent being required might include text along the following lines:

- The power under section 1 includes power to make provision for enforcement which could impinge on Crown interests in relation to access to land. Although we cannot at this stage say with any certainty that the power will be used to alter in a significant way the law as it applies to the Crown Estate or the Queen’s personal property, the potential is there;
- The Bill introduces changes to appeal rights, giving communities a right of appeal in certain circumstances against the grant of planning permission, and restricting the circumstances in which applicants can appeal against refusal. This this would affect any applications for planning permission made in relation to Her Majesty’s estates; or
- The Bill dissolves a body established by Royal Warrant, or would affect a prerogative right to appoint an officeholder.

Thanks,

[REDACTED]

[REDACTED] | Parliament and Legislation Unit | Cabinet, Parliament and Governance Division | Directorate for Constitution and Cabinet | Scottish Government | Tel: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]@gov.scot

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Document 19 – Extract of Crown consent content from exchange between PCO and the Scottish Parliament’s Group Head of Chamber and Reporting Group on the Patient Safety for Scotland Bill (the rest of the document is outwith the scope of the request)

Parliamentary Counsel Office



Scottish Government
Riaghaltas na h-Alba
gov.scot

E: [REDCATED]@gov.scot

BY EMAIL ONLY

Tracey White
Head of Chamber, Reporting and
Broadcasting Group
The Scottish Parliament
Holyrood
Edinburgh
EH99 1SP

13 September 2022

Dear Tracey

PATIENT SAFETY COMMISSIONER FOR SCOTLAND BILL

[REDACTED AS NOT WITHIN SCOPE OF REQUEST]

Crown application and Crown consent

19. The Bill binds the Crown by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010.

20. We do not believe that any of the provisions of the Bill affect the Crown in a way which leads to a requirement for Crown consent to be signified for this Bill.

[REDACTED AS NOT WITHIN SCOPE OF REQUEST]

Yours sincerely

[REDACTED]

Document 20 – Extract of Crown consent content from the Group Head of Chamber and Reporting Group’s response to PCO on the Patient Safety for Scotland Bill (the rest of the document is outwith the scope of the request)



The Scottish Parliament
Pàrlamaid na h-Alba

Chamber Office
Edinburgh
EH99 1SP
e-mail: tracey.white@parliament.scot
4 October 2022

[REDACTED]
Parliamentary Counsel Office
Victoria Quay
Edinburgh
EH6 6QQ

Dear [REDACTED],

PATIENT SAFETY COMMISSIONER FOR SCOTLAND BILL

1. Thank you for your letter of 13 September. My response to the issues you raise is as follows:

[REDACTED AS NOT WITHIN SCOPE OF REQUEST]

Crown application and Crown consent

15. I agree that there is nothing in the Bill which triggers the requirement for Crown consent.

[REDACTED AS NOT WITHIN SCOPE OF REQUEST]

Yours sincerely

TRACEY WHITE
Head of Legislation and Parliamentary Business