

Business Committee

Meeting Venue:
Committee Room 4 - Ty Hywel

Meeting date:
12 July 2011

Meeting time:
08:50

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

1. Apologies & announcements

2. Proposed changes to Standing Orders following the Assembly powers referendum

2 (i) Mechanisms for individual Members to propose Orders in Council to be made under section 109 of the Government of Wales Act 2006

BC(4)07-11 Paper 1

BC(4)07-11 Paper 1 – Annex A

BC(4)07-11 Paper 1 – Annex B (Pages 1 - 13)

Agenda Item 2(i)

To: Business Committee

From: Business Committee Secretariat

Date: 12 July 2011

Mechanisms for individual Members to propose Orders in Council to be made under section 109 of the Government of Wales Act 2006

Purpose

1. The Business Committee considered proposed changes to Standing Orders in light of the 'yes' vote in the Assembly powers referendum on 21 June 2011. A motion to amend Standing Orders, including some sections of Standing Order 25, will be put before Plenary for approval on 13 July.
2. Members requested a further paper outlining options for individual Members to propose Orders in Council under section 109 of the Government of Wales Act 2006 ("the Act"). That paper was considered at the meeting of 28 June 2011 and an outline approach agreed. This paper sets out the proposed detailed changes to Standing Orders 25.26 – 25.34 that would establish such a mechanism.

Background

3. During the Third Assembly, the successful passage of a Member proposed Order was heavily dependent on negotiations with relevant departments of the UK Government. During the Third Assembly, two Member proposed Orders received Royal Approval: Jonathan Morgan AM's Order relating to the provision of mental health services and Ann Jones AM's Order relating to domestic fire safety.
4. In considering options for individual Members to propose section 109 Orders, the Business Committee decided that a continuation of the ballot system would be inappropriate given that there is less of an expectation for schedule 7 to be amended as a routine matter as compared with arrangements under Part 3 for the amendment of schedule 5. Further, if and when the need to amend schedule 7 arises, this will only be possible on the basis of consensus between the respective legislatures and governments. The generating of proposals for section 109 Orders via a ballot held by the Presiding Officer was therefore viewed as out of keeping with the settlement as outlined under Part 4.

Proposal

5. The proposed text for the new Standing Orders 25.26 – 25.34 is found at Annexes A and B.
6. The proposed changes reflect the Business Committee's decision on 28 June 2011 that in the absence of a Ballot process, there should be a formal mechanism in place to allow a Member to propose that the Welsh Government should bring forward a Section 109 Order.
7. The new Standing Orders as drafted provide for a mechanism that involves:
- A Member tabling a motion calling on the Government to introduce a proposed Order under Section 109 of the Act. The motion will need to be accompanied by an Explanatory Memorandum providing information on the effect the proposed Order will have on the Assembly's legislative competence; an explanation as to why the proposed Order is necessary; and, details of any support received for the proposal, including details of any consultation carried out;
 - Business Committee having to refer any such motion that has achieved a certain level of support (paragraphs 8 & 9 below) to a committee or committees for more detailed consideration. The purpose of such a referral would be to request that the Committee reports on the merits of the proposal by a certain date so that the report can inform subsequent consideration and decision by the Assembly relating to the proposal for a section 109 Order;
 - Once the committee or committees have reported on the merits of the proposal for an Order, or the deadline for them doing so has passed, the Business Committee having to make time available to debate the motion.

Criteria for referral

8. As currently drafted, revised Standing Order 25.29 sets the criteria of a motion having the support of at least ten members belonging to at least three different parties before Business Committee must refer the motion to a committee for detailed consideration. That support could either be made clear at the time of tabling, or could result from Members adding their names to the motion after it has been tabled. The criterion of the motion having support from at least three different parties mirrors that set by Business Committee for considering general individual member motions for debate.

9. Business Managers will wish to consider whether these criteria are appropriate, or whether different ones should be set. Business Managers may wish to consider using only one criterion and/or setting different thresholds.

Introducing a Bill

10. Should Business Committee agree the proposed changes to Standing Orders 25.26 – 25.34, Business Managers will need to consider whether a Member who was responsible for initiating a proposal under Standing Order 25.27 which subsequently became an Order in Council under section 109 of the Act should have the right to introduce a Bill relating to that Order.

11. As currently drafted, the revised Standing Order 26.86 would allow a Member to introduce such a Bill within a period of nine months of the Order being made. Should Business Managers decide that no such right should exist, SO 26.86 will need to be deleted.

12. Unlike Member proposed LCOs during the Third Assembly, the Order in this case will in fact be taken forward by the Welsh Government. It is possible that the final Order will be very different to the one originally intended by the individual Member. Subjects could have been added to or removed from the Order, the meaning of ‘related to’ could be difficult to define. On the other hand, removing the provision may have the effect of being a disincentive to an individual Member initiating an Order.

13. In addition, section 109 Orders will by their nature be different to Legislative Competence Orders, which were drafted with a view to introducing a specific Measure and could be quite narrow or specific in scope, in particular Member proposed LCOs.

Consequential change

14. Should Business Managers decide that the revised Standing Order 26.86 should stand as currently drafted, SO 24.14 – 24.17 will need to be amended to include Members who introduce a Bill under SO 26.86 within the definition of a ‘Member in charge of legislation’.

Tabling a general motion

15. The proposed changes to Standing Orders regarding section 109 Orders do not affect a Member’s general right to table a motion calling for the introduction of a section 109 Order. As with any individual Member no named day motion, it would be a matter for Business Committee to decide whether time be made available for such a motion to be debated in Plenary.

Decision

16. Business Managers are invited to:

- (i) consider and agree in principle any proposed changes to Standing Orders 25.26 to 25.34;
- (ii) decide which criteria should apply under SO 25.29 before Business Committee has to refer the motion to a committee (paragraphs 8 & 9);
- (iii) consider whether to retain the provision in Standing Order 26.86 for the introduction of a Bill (paragraphs 10 - 13);
- (iv) and the consequential changes in light of this (Standing Orders 24.14 - 24.17).

STANDING ORDER 25 – Legislative Competence Orders in Council to be made under section 109 of the Act	
<p>Member Proposed and Draft Orders <u>Proposals for an Order by a Member, other than a member of the Government</u></p>	<p>Amend these Standing Orders Standing Orders 25.26 – 25.34 provided procedures for Members of the Third Assembly to propose Legislative Competence Orders under Part 3 of the Government of Wales Act 2006.</p> <p>Given that the Assembly is now able to legislate within the 20 subject areas listed in schedule 7 to the Act, it is anticipated that the need to bring forward Orders in Council to amend Schedule 7 is likely to be reduced in comparison with the level of Legislative Competence Orders brought forward during the Third Assembly to amend schedule 5.</p> <p>The new draft SOs provide a mechanism for Members other than Members of the Government to table a motion proposing that the Welsh Government should bring forward a proposed Order.</p>
<p>25.26 Standing Orders 25.27 to 25.34 apply only to Member proposed and draft Orders</p>	<p>Delete this Standing Order</p> <p>This Standing Order is no longer necessary</p>
<p>25.27 The Presiding Officer must from time to time hold a ballot to determine the name of a Member, other than a member of the government, who may seek agreement to lay a Member proposed Order under Standing Order 25.30.</p> <p><u>Any Member, other than a member of the government, may table a motion calling on the government to introduce a proposed Order under Section 109 of the Act.</u></p>	<p>Replace this Standing Order</p>
<p>25.28 The Presiding Officer must include in the ballot the names of</p>	<p>Replace this Standing Order</p>

<p>all those Members who have applied to be included and who have applied to be included and who have provided an outline proposed Order and an Explanatory Memorandum.</p> <p><u>At the same time that a Member tables a motion under 25.27, he or she must also table an explanatory memorandum which must provide the following information:</u></p> <ul style="list-style-type: none"> <u>i) the impact the proposal for an Order would have on the Assembly’s legislative competence;</u> <u>ii) an explanation of why the Member considers the Order to be necessary;</u> <u>iii) details of any support received for the proposal, including details of any consultation carried out.</u> 	<p>Any Member tabling a motion under SO 25.27 will need to provide an explanatory memorandum including information similar to that which needs to be provided before entering the ballot for a Member proposed Bill.</p> <p>This both prevents spurious motions being tabled, and ensures that sufficient information is made available so that other Members can come to an informed decision about whether to support the motion or not.</p>
<p>25.29 No Member who has previously had agreement to lay a proposed Order in that Assembly may apply to be included in the ballot.</p> <p><u>If a motion tabled under Standing Order 25.27 has the support of at least ten Members who together belong to at least three different political groups, the Business Committee must refer the motion and explanatory to a committee or committees for consideration.</u></p>	<p>Replace this Standing Order</p> <p>It is proposed that a motion must achieve a certain level of support, both in terms of absolute number of Members and cross-party support, before Business Committee has to refer the motion to a committee or committees for detailed consideration.</p> <p>That support could either be made clear at the time of tabling, or could result from Members adding their names to the motion after it has been tabled.</p> <p>A total of ten Members representing three different parties is suggested as a starting point for discussion.</p>

<p>25.30 A Member who is successful in a ballot may, within 25 working days of the date of the ballot, table a motion that the Assembly agrees that the Member may lay a proposed Order, to give effect to the outline proposed Order to which it relates, and an Explanatory Memorandum.</p> <p><u>Where a motion under Standing Order 25.27 is referred to a committee or committees for consideration in accordance with Standing Order 25.29, the Business Committee must establish and publish a timetable for the committee or committees to consider and report on it.</u></p>	<p>Replace this Standing Order</p> <p>This Standing Order ensures that the proposal is reported on within a reasonable timeframe, and is given appropriate priority by the committee or committees in question.</p>
<p>25.30A <u>Time must be made available for a motion referred to a committee or committees under Standing Order 25.29 to be debated, and such a motion cannot be moved until either:</u></p> <ul style="list-style-type: none"> (i) <u>the committee or committees have reported in accordance with Standing Order 22.59; or</u> (ii) <u>the deadline by which the committee or committees are required to report in accordance with Standing Order 25.30 has been reached.</u> 	<p>Introduce New Standing Order</p> <p>This Standing Order ensures that the proposal for an Order can be properly considered and scrutinised by the committee(s) in question before the motion calling on the Government to lay a proposed Order is debated.</p> <p>The Committee’s report will inform Members’ consideration of the motion.</p>

<p>25.31 A motion under Standing Order 25.3027 is not amendable</p> <p><u>No amendment to a motion under Standing Order 25.27 may be tabled if it would not be clear from a resolution of the Assembly approving the motion as amended by such an amendment how the Assembly wished to see its legislative competence altered.</u></p>	<p>Replace this Standing Order</p> <p>The new Standing Order ensures as much clarity as possible in the motion passed, while allowing the motion to be amended in light of the committee’s report.</p> <p>The new Standing Order gives the Presiding Officer discretion in the selection of amendments, and mirrors a similar provision which was in place during the Third Assembly for draft Orders.</p>
<p>25.32 Time must be made available for a motion tabled under Standing Order 25.30 to be debated within 35 working days of the date of the ballot (not counting working days in a non-sitting week).</p>	<p>Delete this Standing Order</p> <p>Delete this Standing Order</p>
<p>25.33 Unless a motion under Standing Order 25.30 is agreed to, no further proceedings are to be taken on the proposed Order.</p>	<p>Delete this Standing Order</p> <p>This Standing Order is no longer necessary</p>
<p>25.34 If a motion under Standing Order 25.3027 is disagreed to, then no Member may table a motion under enter any ballot held under Standing Order 25.27 for a period of six months after the motion has been disagreed to if, in the opinion of the Presiding Officer, the proposed Order which he or she is intending to lay motion seeks to confer the same, or substantially the same, legislative competence as the proposed</p>	<p>Amend this Standing Order</p> <p>The new Standing Order provides for the continuation of the previous provision which prevented substantially the same proposal being made again within a six month period of being rejected by the Assembly.</p>

Order referred to in the motion which has been disagreed to.	

SO 26 – Acts of the Assembly

26.86 Where a Member ~~was the Member in charge of a Member proposed Order~~ tabled a motion under Standing Order 25.27 which ~~became~~ led to an Order in Council made by Her Majesty under section ~~95~~109 of the Act, that Member may introduce ~~one Member proposed Measure a Bill~~ relating to that Order within nine months of the Order coming into force ~~being made~~. This does not affect a Member’s right to enter a ballot held under Standing Order 26.87.

Amend or Delete this Standing Order

Members of the Third Assembly were able to propose Legislative Competence Orders under Part 3 of the Government of Wales Act 2006. This Standing Order provided that any Member who successfully steered a Legislative Competence Order to Royal Approval would automatically be able to introduce a proposed Measure which related to his or her original Legislative Competence Order.

Business Committee will need to consider whether the same provision to introduce a related Bill should apply in the case of a Member tabling a motion which initiated a section 109 Order.

Unlike Member proposed LCOs during the Third Assembly, the Order in this case will in fact be taken forward by the Welsh Government. It is possible that the final Order will be very different to the one originally intended by the individual Member. Subjects could have been added to or removed from the Order, the meaning of ‘related to’ could be difficult to define.

On the other hand, removing the provision may have the effect of being a disincentive to an individual Member initiating an Order.

Should Business Committee decide that such a provision should not be included, then this SO will need to be deleted.

STANDING ORDER 24 – Definition of Member in Charge of Legislation	
Member Legislation Bills	Amend Sub-heading Replace “Legislation” with “Bills”
24.14 Legislation Bills , which is <u>are</u> neither government legislation Bills , committee legislation Bills nor Commission legislation Bills , is <u>are</u> referred to as “Member <u>Bills</u> legislation ”.	Amend this Standing Order Replace “legislation” with “Bills” Replace “is” with “are”
24.15 The Member in charge of an item of a Member Bill <u>legislation</u> is: (i) the Member who laid or introduced the legislation, or who has had agreement to introduce or lay the legislation a Bill under Standing Orders 25.30 or 26.91 (or, in the case of a draft Order, the Member who introduced the proposed Order to which the draft Order relates); (ii) another Member authorised by the Member under Standing Order 24.15(i), by means of a statement to that effect laid by that Member; or (iii) if no such authorisation is made, any Member authorised by the Assembly.	Amend this Standing Order As Members will no longer be able to introduce proposed or draft Orders, this Standing Order required amending to reflect the fact that Bills will now be the only type of Member Legislation. Should Business Committee decide that a Member who initiated an Order should have the right to introduce a Bill under Standing Order 26.86, then this Standing Order will need to be amended further to refer to SO 26.86.
24.16 A Member may transfer an item of Member legislation a Bill to a member of the government authorised by the First Minister, by means of a statement to that effect laid by that Member.	Amend this Standing Order Replace “an item of Member legislation” with “a Bill”
24.17 When a Member transfers an item of Member legislation a Bill to a member of the government (in accordance with Standing	Amend this Standing Order Replace “an item of Member legislation” with “a Bill”

<p>Order 24.16), that item of legislation <u>Bill</u> is to be regarded, from then on, as an item of a government <u>Bill</u> legislation.</p>	<p>Replace "item of legislation" with "Bill" Replace "an item of government legislation" with "a government Bill"</p>
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ANNEX B – Revised Standing Orders reflecting changes proposed**STANDING ORDER 25 – Orders in Council to be made under section 109 of the Act****Proposals for an Order by a Member, other than a member of the Government**

25.26 Any Member, other than a member of the government, may table a motion calling on the government to introduce a proposed Order under Section 109 of the Act.

25.27 At the same time that a Member tables a motion under 25.27, he or she must also table an explanatory memorandum which must provide the following information:

- i) the impact the proposal for an Order would have on the Assembly's legislative competence;
- ii) an explanation of why the Member considers the Order to be necessary;
- iii) details of any support received for the proposal, including details of any consultation carried out.

25.28 If a motion tabled under Standing Order 25.27 has the support of at least ten Members who together belong to at least three different political groups, the Business Committee must refer the motion and explanatory to a committee or committees for consideration,

25.29 Where a motion under Standing Order 25.27 is referred to a committee or committees for consideration in accordance with Standing Order 25.29, the Business Committee must establish and publish a timetable for the committee or committees to consider and report on it.

25.30 Time must be made available for a motion referred to a committee or committees under Standing Order 25.29 to be debated, and such a motion cannot be moved until either:

- (i) the committee or committees have reported in accordance with Standing Order 22.59; or
- (ii) the deadline by which the committee or committees are required to report in accordance with Standing Order 25.30 has been reached.

25.31 No amendment to a motion under Standing Order 25.27 may be tabled if it would not be clear from a resolution of the Assembly approving the motion as amended by such an amendment how the Assembly wished to see its legislative competence altered.

25.32 If a motion under Standing Order 25.27 is disagreed to, then no Member table a motion under Standing Order 25.27 for a period of six months after the motion has been disagreed to if, in the opinion of the Presiding Officer, the motion seeks to confer the same, or substantially the same, legislative competence.

STANDING ORDER 24 – Definition of Member in Charge of Legislation

Member Bills

24.14 Bills, which are neither government Bills, committee Bills nor Commission Bills, are referred to as “Member Bills”.

24.15 The Member in charge of a Member Bill is:

- (i) the Member who has had agreement to introduce a Bill under Standing Orders 26.91;
- (ii) another Member authorised by the Member under Standing Order 24.15(i), by means of a statement to that effect laid by that Member; or
- (iii) if no such authorisation is made, any Member authorised by the Assembly.

24.16 A Member may transfer a Bill to a member of the government authorised by the First Minister, by means of a statement to that effect laid by that Member.

24.17 When a Member transfers a Bill to a member of the government (in accordance with Standing Order 24.16), that Bill is to be regarded, from then on, as a government Bill.

SO 26 – Acts of the Assembly

26.86 Where a Member tabled a motion under Standing Order 25.27 which led to an Order in Council made by Her Majesty under section 109 of the Act, that Member may introduce a Bill relating to that Order within nine months of the Order coming into force. This does not affect a Member’s right to enter a ballot held under Standing Order 26.87.