

Amending Standing Orders

Early Business following a Senedd Election

March 2021

In accordance with Standing Order 11.7(iv), the Business Committee is responsible for making recommendations on the general practice and procedures of the Senedd, including any proposals for the re-making or revision of Standing Orders.

This report proposes amendments to Standing Orders 6, 7, 8 and 17, to add detail to the procedures for electing the Presiding Officer, Deputy Presiding Officer and committee chairs, and for nominating the First Minister. It also proposes removing the deadline for appointing Senedd Commissioners.

The Senedd is invited to approve the proposals to amend the Standing Orders as at Annex A. The amended Standing Orders, if approved, are at Annex B.



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1. Proposed changes

Nominating the First Minister and Electing the Presiding Officer and Deputy

1. The process for nominating a Member for appointment as First Minister is set out in Standing Orders (SO) 8.1–8.3 and the process for electing a Presiding Officer and Deputy set out in SO 6.1–6.10. There are some differences between the two procedures such as how a nomination is made, and how a vote is conducted. However, there is also overlap between the two procedures, and most of the areas reviewed apply in both cases.

Withdrawal of a nomination

2. Neither the First Minister nomination nor Presiding Officer election procedures makes specific provision for a nomination to be withdrawn, and both Standing Orders use mandatory language in requiring further rounds of voting in the event of no candidate being successful in a particular round of voting.

3. This became a pertinent issue in 2016, when there were two nominations for First Minister and the first vote resulted in a tie. Proceedings were adjourned for the day, and when the Senedd next met, one nomination was withdrawn. The Llywydd ruled at the time:

Members will appreciate that the Standing Orders do not go into detail on every conceivable scenario and, in such situations, it is my responsibility as Presiding Officer to interpret the Standing Orders and guide this Assembly as best I can. It would be unreasonable to force someone who no longer wishes to be nominated as First Minister to be a candidate in a vote on that question. (18 May 2016)

4. The Standing Orders of both the House of Commons and Scottish Parliament make express provision that a nominee for Presiding Officer/Speaker may withdraw their candidature in between rounds of voting, and the Scottish Parliament has the same provision for nominees for First Minister. Business Committee therefore considers it appropriate to codify the precedent set in 2016 by amending the Standing Orders to provide for a nomination to be withdrawn in between rounds of voting for both the First Minister and Presiding Officer or Deputy.

A majority of votes cast

5. Both Standing Order 6 and Standing Order 8 currently set different bars for nomination / election depending on whether there are two or more candidates. The relevant provisions in Standing Order 6 are as below (emphasis added), but the same effect applies in Standing Order 8:

SO 6.9 If two Members have been nominated, the chair must declare elected the Member who has secured the greater number of votes cast in the ballot.

SO 6.10 If more than two Members have been nominated and no Member receives more than half of the votes cast in a ballot, the candidate who has received the smallest number of votes is excluded and further secret ballots held until one candidate obtains more than half of the votes cast; and if there is an equality of votes between the two remaining candidates (or the only two candidates) a further secret ballot must take place.

6. If there are two candidates, the candidate who has secured the greater number of votes cast stands elected (or nominated).

7. If there are more than two candidates, the requirement is to ‘receive more than half the votes cast’. This also applies in a latter round of voting where only two candidates remain. If only votes cast either for or against are taken into account, the greatest number of votes cast will by definition be more than half the votes cast. However, this may not be the case if abstentions are taken into account.

8. For the avoidance of doubt, the Business Committee proposes that the Standing Orders are amended to clarify that a candidate is nominated (First Minister) or elected (Presiding Officer or Deputy) if they receive more votes than the total cast for other candidates.

Equality between lowest number of votes cast

9. Both Standing Order 6 and Standing Order 8 provide that in the event of there being more than two candidates, where no candidate receives more than half the votes cast, ‘the candidate who has received the smallest number of votes must be excluded’. Neither procedure provides for a situation where two (or more) candidates are tied on the lowest number of votes cast. It is not clear therefore whether both would be excluded or whether a further vote (or votes) should be conducted with the same candidates, until a single candidate has the lowest number of votes.

10. In this case, the Business Committee proposes different approaches for the election of Presiding Officer and for the nomination of a First Minister. For the election of a Presiding Officer, it is proposed that both lowest scoring candidates should be eliminated. But if such eliminations resulted in there being only one remaining candidate who had not received a majority of votes cast, there should be an opportunity for Members to object to that nomination and vote on it, as they would if there had only been one nomination to begin with. This is consistent with the procedure in the Scottish Parliament.

11. For the procedure for nominating a First Minister, as there is no opportunity to object to a single nomination in that procedure, it is proposed that if excluding two or more candidates would result in only one remaining candidate, neither candidate should be excluded and another vote held with the same candidates. The nomination of the First Minister is a political and 'open' process (i.e. not a secret ballot). As with a tie between two leading candidates, a political solution would need to be found to any such deadlock.

Electing committee chairs

12. The issues raised above in relation to the status of abstentions, and equality of lowest number of votes cast also apply to the procedure for electing committee chairs, therefore it is proposed that Standing Orders 17.2E-K (election of committee chairs) be amended as per proposed changes to Standing Order 6. In elections for committee chairs, there is only one round of voting, with candidates ranked in order of preference, thus provision for a candidate to withdraw is unnecessary.

Appointing the Senedd Commission

13. Standing Order 7.1 states (emphasis added):

As soon as reasonably practicable after a Senedd election, but no later than 10 days after the appointment of members of the Business Committee, the Senedd must consider a motion tabled by the Business Committee proposing the names of the four Members to be appointed as members of the Commission under section 27(2)(b) of the Act.

14. The 10 day deadline has no basis in statute. While it is desirable for a new Commission to be appointed as soon as possible after an election, as Commissioners elected in the previous Senedd remain in post until new Commissioners are appointed in the new Senedd, no legal vacuum is created by any delay.

15. In 2016, the process of nominating a First Minister took place over two weeks, consequently Business Committee was not established until the week before half term. It was therefore not possible for a motion to appoint the members of the Commission to be considered within 10 days. Standing Orders were suspended to enable Commissioners to be appointed after the deadline. Business Committee agreed to review the Standing Order before the next election.

16. The Business Committee proposes that the 10 day deadline be removed, leaving the requirement for a motion to appoint members of the Commission to be considered as soon as reasonably practicable after a Senedd election.

2. Decision

17. The Business Committee agreed the changes to Standing Orders on 2 March 2021. The Senedd is invited to approve the proposed new Standing Orders as at Annex B.

Annex A – Proposed amendments to Standing Order 6, 7, 8 and 17, and explanatory notes

Standing Order 6 – Presiding Officer and Deputy

Election of Presiding Officer and Deputy	Retain heading
<p>6.1 At its first meeting after a Senedd election, the Senedd must elect from its Members a Presiding Officer and a Deputy.</p>	<p>Retain Standing Order Standing Order included for information</p>
<p>6.2 If the office of the Presiding Officer or that of the Deputy becomes vacant, the Senedd must, as soon as possible, elect a Member to fill the vacancy. The election of a Presiding Officer takes precedence over all other business.</p>	<p>Retain Standing Order Standing Order included for information</p>
<p>6.3 Subject to Standing Order 6.4, the proceedings for the election of a Presiding Officer at the first meeting after a Senedd election are to be chaired by the Presiding Officer who held office immediately before the Senedd election (“the former Presiding Officer”).</p>	<p>Retain Standing Order Standing Order included for information</p>
<p>6.4 If:</p> <ul style="list-style-type: none"> (i) at the first meeting after a Senedd election the former Presiding Officer is unwilling or unable to act; or 	<p>Retain Standing Order Standing Order included for information</p>

	(ii) at any election of a Presiding Officer at any other time the Deputy is unwilling or unable to act, or there is no Deputy in office, the proceedings for the election of a Presiding Officer are to be chaired by the Clerk.	
6.5	No Member who chairs proceedings for the election of a Presiding Officer may be nominated for election as Presiding Officer in those proceedings.	Retain Standing Order Standing Order included for information
6.6	At the election of a Presiding Officer or a Deputy, the chair must invite nominations. A nomination is, in the first instance, valid only if seconded by a Member who is not a member of the political group to which the nominating Member belongs.	Retain Standing Order Standing Order included for information
6.7	If it appears that no Member is likely to be nominated and seconded by members <u>who do not belong to the same group</u> of different political groups , the chair must adjourn the proceedings and may, on their resumption, accept nominations which are seconded by members of the same political group as the nominating Member.	Amend Standing Order A change is proposed to make the wording of this Standing Order consistent with that in Standing Order 6.6, which refers to 'not a member of the same political group' rather than 'members of different political groups'. The change makes clear that Members who don't belong to any political group can nominate and second candidates.
6.8	If there is only one nomination, the chair must propose that the Member nominated be elected as Presiding Officer (or Deputy as the case may be). If that is opposed, or if there are two or more	Retain Standing Order Standing Order included for information.

	nominations, the chair must make arrangements for the election to take place by secret ballot.	
6.9	If two Members have been nominated, the chair must declare elected the Member who has secured the greater number of votes cast in the ballot.	Retain Standing Order Standing Order included for information.
6.10	If more than two Members have been nominated and no Member receives more <u>votes than the total number of votes cast for all the other candidates</u> than half of the votes cast in a ballot, the candidate <u>(or candidates)</u> who has received the smallest number of votes is excluded and further secret ballots held until one candidate obtains <u>more votes than the total number of votes cast for all the other candidates</u> than half of the votes cast ; and if there is an equality of votes between the two remaining candidates (or the only two candidates) a further secret ballot must take place.	Amend Standing Order The proposed changes clarify that: <ul style="list-style-type: none"> in the event of two or more candidates being tied on the lowest number of votes cast, all those candidates are excluded. This change is complemented by new Standing Order 6.10B to prevent a situation where a candidate could be elected without having secured more than half the votes cast in a ballot; to win, a candidate needs to secure more votes than are cast for all the other candidates, i.e abstentions are not to be counted in calculating whether a candidate has secured a majority of votes.
6.10A	<u>A candidate may withdraw their candidature following any secret ballot held under Standing Order 6.10.</u>	Introduce new Standing Order The new Standing Order clarifies that a candidate may withdraw their name in between secret ballots, where more than one secret ballot is held.
6.10B	<u>If, as a result of exclusions and withdrawals, there is one remaining candidate who has not secured more votes than the total number of votes cast for</u>	Introduce new Standing Order The change is proposed in light of the amendment to SO6.10 and the introduction of

<u>all the other candidates in any secret ballot, the chair must propose that the Member be elected as Presiding Officer. If that is opposed the chair must make arrangements for the vote to take place by secret ballot.</u>	SO6.10A, to give the Senedd the opportunity to object to the election as Presiding Officer of a candidate if withdrawals and exclusions mean that there remains one candidate who has not secured the necessary support to be elected in any secret ballot.
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Standing Order 7: The Senedd Commission

Appointment of Members	Retain heading
<p>7.1 As soon as reasonably practicable after a Senedd election, but no later than 10 days after the appointment of members of the Business Committee, the Senedd must consider a motion tabled by the Business Committee proposing the names of the four Members to be appointed as members of the Commission under section 27(2)(b) of the Act.</p>	<p>Amend Standing Order</p> <p>The 10 day deadline has no basis in statute, and while it is clearly desirable for a new Commission to be appointed as soon as possible after an election, Commissioners remain in post until new ones are appointed, and so no legal vacuum is created by any delay.</p> <p>The 10 day deadline is therefore removed so that the requirement is for a motion to appoint members of the Commission to be considered as soon as possible after a Senedd election.</p>

Standing Order 8: Welsh Ministers and Deputy Welsh Ministers

Nomination of First Minister	Retain heading
<p>8.1 Subject to section 47(3) of the Act, the Senedd must, within 28 days of an event specified in section 47(2) of the Act, nominate a Member for appointment as First Minister ("the nominee").</p>	<p>Retain Standing Order</p> <p>Standing Order included for information</p>

<p>8.2 The Presiding Officer must invite nominations. If only one nomination is made, the Presiding Officer must declare that Member to be the nominee. If more than one nomination is made, the Presiding Officer must, by roll call in alphabetical order of the membership, invite each Member present to vote for a candidate (except that neither the Presiding Officer nor the Deputy may vote). If two Members have been nominated, the Presiding Officer must declare the candidate who received the greater number of votes cast to be the nominee. If there is an equality of votes between the two candidates a further vote by roll call must take place.</p>	<p>Retain Standing Order</p> <p>Standing Order included for information</p>
<p>8.3 If more than two Members have been nominated and no Member receives more <u>votes than the total number of votes cast for all the other candidates</u> than half of the votes cast by roll call, the candidate <u>(or candidates)</u> who has received the smallest number of votes must be excluded and further votes by roll call taken until one candidate obtains more <u>votes than the total number of votes cast for all the other candidates</u> than half of the votes cast; and the Presiding Officer must declare that Member to be the nominee. If there is an equality of votes between the two remaining candidates, <u>or if excluding candidates who have received the smallest number of votes would leave only one remaining candidate</u>, a further vote by roll call must take place.</p>	<p>Amend Standing Order</p> <p>The proposed changes clarify that:</p> <ul style="list-style-type: none"> ▪ in the event of two or more candidates being tied on the lowest number of votes cast, all those candidates are excluded, unless that left only one candidate; ▪ to be nominated, a candidate needs to secure more votes than are cast for all the other candidates. I.e. abstentions are not to be counted in calculating whether a candidate has secured a majority of votes.

8.3A <u>A candidate may withdraw their candidature following any votes by roll call held under Standing Order 8.2 or 8.3.</u>	Introduce New Standing Order The new Standing Order clarifies that a candidate may withdraw their name in between votes, where more than one vote is held.
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Standing Order 17: Operation of Committees

Election of Committee Chairs	Retain heading
17.2E For each committee established by a resolution of the Senedd, the Senedd must elect a Member as chair of that committee.	Retain Standing Order Standing Order included for information
17.2F At a meeting of the Senedd in plenary, the Presiding Officer must invite nominations. Only a Member from the political group specified in the relevant motion under Standing Order 17.2A may be nominated, and only a Member of the same group may make the nomination.	Retain Standing Order Standing Order included for information
17.2G A nomination from a political group with more than 20 members must be seconded by a member of that group.	Retain Standing Order Standing Order included for information
17.2H Where nominations for the chairs of more than one committee are being taken at the same meeting of the Senedd, no Member may be nominated for more than one of those chairs.	Retain Standing Order Standing Order included for information
17.2I If there is only one nomination, the Presiding Officer must propose that the Member nominated be elected as chair of the committee. If that is opposed, or if there are two or more nominations,	Retain Standing Order Standing Order included for information

	the Presiding Officer must make arrangements for the election to take place by secret ballot.	
17.2J	If two Members have been nominated, the chair <u>Presiding Officer</u> must declare elected the Member who has secured the greater number of votes cast in the ballot. If there is an equality of votes between the two candidates, a further secret ballot must take place.	Amend Standing Order Correcting a reference to 'chair' which should say Presiding Officer
17.2K	If more than two Members have been nominated, Members must vote by ranking as many candidates as they wish in order of preference. If no Member receives more <u>votes than are cast for all the other candidates</u> than half the first preferences in a ballot, the candidate (or candidates) who has received the smallest number of first preferences must be excluded and their votes distributed among the remaining candidates according to the next preferences. This process of exclusion and distribution must be repeated until one candidate obtains more <u>votes than the total number of votes cast for all the other candidates</u> than half the votes cast . If there is an equality of votes between the two remaining candidates a further secret ballot must take place.	Amend Standing Order The proposed changes clarify that: <ul style="list-style-type: none"> in the event of two or more candidates being tied on the lowest number of votes cast, all those candidates are excluded. This change is complemented by the introduction of a new SO17.2KA to prevent a situation where a candidate could be elected without having secured more than half the votes cast in a ballot; to win, a candidate needs to secure more votes than are cast for all the other candidates, i.e. abstentions are not to be counted in calculating whether a candidate has secured a majority of votes.
17.2KA	If, as a result of exclusions, there is one remaining <u>candidate who has not secured more votes than the total number of votes cast for all the other candidates in any secret ballot</u> , the <u>Presiding Officer must propose that the Member nominated be elected as chair of the committee</u> . If that is	Introduce new Standing Order The change is proposed in light of the amendment to SO17.2K to give the Senedd the opportunity to object to the election of a candidate if exclusions mean that there remains one candidate who has not secured the necessary

opposed, the Presiding Officer must make arrangements for the vote to take place by secret ballot.

support to be elected. This would happen where the two candidates with the smallest number of votes are tied and excluded, leaving one remaining candidate who had not received a majority of votes.

Annex B – Standing Orders 6, 7, 8 and 17, as amended

Standing Order 6: Presiding Officer and Deputy

- 6.1 At its first meeting after a Senedd election, the Senedd must elect from its Members a Presiding Officer and a Deputy.
- 6.2 If the office of the Presiding Officer or that of the Deputy becomes vacant, the Senedd must, as soon as possible, elect a Member to fill the vacancy. The election of a Presiding Officer takes precedence over all other business.
- 6.3 Subject to Standing Order 6.4, the proceedings for the election of a Presiding Officer at the first meeting after a Senedd election are to be chaired by the Presiding Officer who held office immediately before the Senedd election (“the former Presiding Officer”).
- 6.4 If:
- (i) at the first meeting after a Senedd election the former Presiding Officer is unwilling or unable to act; or
 - (ii) at any election of a Presiding Officer at any other time the Deputy is unwilling or unable to act, or there is no Deputy in office,
- the proceedings for the election of a Presiding Officer are to be chaired by the Clerk.
- 6.5 No Member who chairs proceedings for the election of a Presiding Officer may be nominated for election as Presiding Officer in those proceedings.
- 6.6 At the election of a Presiding Officer or a Deputy, the chair must invite nominations. A nomination is, in the first instance, valid only if seconded by a Member who is not a member of the political group to which the nominating Member belongs.
- 6.7 If it appears that no Member is likely to be nominated and seconded by members who do not belong to the same group, the chair must adjourn the proceedings and may, on their resumption, accept nominations which are seconded by members of the same political group as the nominating Member.

- 6.8 If there is only one nomination, the chair must propose that the Member nominated be elected as Presiding Officer (or Deputy as the case may be). If that is opposed, or if there are two or more nominations, the chair must make arrangements for the election to take place by secret ballot.
- 6.9 If two Members have been nominated, the chair must declare elected the Member who has secured the greater number of votes cast in the ballot.
- 6.10 If more than two Members have been nominated and no Member receives more votes than the total number of votes cast for all the other candidates in a ballot, the candidate (or candidates) who has received the smallest number of votes is excluded and further secret ballots held until one candidate obtains more votes than the total number of votes cast for all the other candidates; and if there is an equality of votes between the two remaining candidates (or the only two candidates) a further secret ballot must take place.
- 6.10A A candidate may withdraw their candidature following any secret ballot held under Standing Order 6.10.
- 6.10B If, as a result of exclusions and withdrawals, there is one remaining candidate who has not secured more votes than the total number of votes cast for all the other candidates in any secret ballot, the chair must propose that the Member be elected as Presiding Officer. If that is opposed the chair must make arrangements for the vote to take place by secret ballot.

Standing Order 7: The Senedd Commission

- 7.1 As soon as reasonably practicable after a Senedd election the Senedd must consider a motion tabled by the Business Committee proposing the names of the four Members to be appointed as members of the Commission under section 27(2)(b) of the Act.

Standing Order 8: Welsh Ministers and Deputy Welsh Ministers

- 8.1 Subject to section 47(3) of the Act, the Senedd must, within 28 days of an event specified in section 47(2) of the Act, nominate a Member for appointment as First Minister ("the nominee").
- 8.2 The Presiding Officer must invite nominations. If only one nomination is made, the Presiding Officer must declare that Member to be the nominee. If more than one nomination is made, the Presiding Officer must, by roll call in alphabetical order of the membership, invite each

Member present to vote for a candidate (except that neither the Presiding Officer nor the Deputy may vote). If two Members have been nominated, the Presiding Officer must declare the candidate who received the greater number of votes cast to be the nominee. If there is an equality of votes between the two candidates a further vote by roll call must take place.

- 8.3 If more than two Members have been nominated and no Member receives more votes than the total number of votes cast for all the other candidates by roll call, the candidate (or candidates) who has received the smallest number of votes must be excluded and further votes by roll call taken until one candidate obtains more votes than the total number of votes cast for all the other candidates; and the Presiding Officer must declare that Member to be the nominee. If there is an equality of votes between the two remaining candidates, or if excluding candidates who have received the smallest number of votes would leave only one remaining candidate, a further vote by roll call must take place.
- 8.3A A candidate may withdraw their candidature following any votes by roll call held under Standing Order 8.2 or 8.3.

Standing Order 17: Operation of Committees

- 17.2E For each committee established by a resolution of the Senedd, the Senedd must elect a Member as chair of that committee.
- 17.2F At a meeting of the Senedd in plenary, the Presiding Officer must invite nominations. Only a Member from the political group specified in the relevant motion under Standing Order 17.2A may be nominated, and only a Member of the same group may make the nomination.
- 17.2G A nomination from a political group with more than 20 members must be seconded by a member of that group.
- 17.2H Where nominations for the chairs of more than one committee are being taken at the same meeting of the Senedd, no Member may be nominated for more than one of those chairs.
- 17.2I If there is only one nomination, the Presiding Officer must propose that the Member nominated be elected as chair of the committee. If that is opposed, or if there are two or more nominations, the Presiding Officer must make arrangements for the election to take place by secret ballot.

- 17.2J If two Members have been nominated, the Presiding Officer must declare elected the Member who has secured the greater number of votes cast in the ballot. If there is an equality of votes between the two candidates, a further secret ballot must take place.
- 17.2K If more than two Members have been nominated, Members must vote by ranking as many candidates as they wish in order of preference. If no Member receives more votes than are cast for all the other candidates in a ballot, the candidate (or candidates) who has received the smallest number of first preferences must be excluded and their votes distributed among the remaining candidates according to the next preferences. This process of exclusion and distribution must be repeated until one candidate obtains more votes than the total number of votes cast for all the other candidates. If there is an equality of votes between the two remaining candidates a further secret ballot must take place.
- 17.2KA If, as a result of exclusions, there is one remaining candidate who has not secured more votes than the total number of votes cast for all the other candidates in any secret ballot, the Presiding Officer must propose that the Member nominated be elected as chair of the committee. If that is opposed, the Presiding Officer must make arrangements for the vote to take place by secret ballot.