

Amending Standing Orders

Sub judice

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 recommends amendments to Standing Orders 13.15 and 17.28 to amend the Senedd's sub judice rule by providing the Llywydd or committee chairs with discretion to determine whether a matter that is sub judice may be raised in the Senedd.

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. Background

1. Section 31 of the Government of Wales Act 2006 requires Senedd proceedings to be regulated by Standing Orders and states:

(2) The standing orders must include provision for preserving order in Senedd proceedings, including provision for—

(a) preventing conduct which would constitute a criminal offence or contempt of court, and

(b) a sub judice rule.

2. The purpose of the sub judice provisions is to balance the privilege of Members to raise any matter with the responsibility of the Senedd with ensuring that, in doing so, it does not give rise to a ‘real and substantial risk’ of prejudicing matters before the courts.

3. Standing Order 13.15, relating to sub judice in plenary proceedings, states that:

Subject to the right of the Senedd to legislate on any matter or to discuss subordinate legislation, a Member must not raise or pursue in plenary meetings any matter which relates to active proceedings (as defined by Schedule 1 to the Contempt of Court Act 1981), or where the Children’s Commissioner for Wales, the Commissioner for Older People in Wales, or the Public Services Ombudsman for Wales has decided to conduct an examination of a case, until the time when judgement has been given or a report has been made by either Commissioner or Ombudsman, unless the Presiding Officer is satisfied that:

(i) the matter is clearly related to a matter of general public importance or a ministerial decision is in question;

(ii) the matter does not relate to a case which is to be heard, or is being heard, before a criminal court or before a jury or to a case which is to be heard, or is being heard, in family proceedings; and

(iii) the Member does not, in his or her comments, create a real and substantial risk of prejudice to the proceedings

of a court either generally or in respect of a particular case.

- 4.** Standing Order 17.28, relating to sub judice in committee proceedings, is similar, with reference to the Committee Chair instead of the Presiding Officer.
- 5.** These Standing Orders set out both a definition of matters which are sub judice, and the circumstances in which the Llywydd or a committee chair may allow such issues to be raised.

2. Business Committee consideration

Matters sub judice

6. At the meeting of 26 March 2020, Business Committee noted that Standing Orders refer to cases under examination by the Children’s Commissioner for Wales, the Commissioner for Older People in Wales, or the Public Services Ombudsman for Wales, but did not include the other Commissioners with power to examine individual cases.

7. At its meeting of 18 January 2021, the Business Committee decided that rather than revise the text to include additional Commissioners it would be preferable to future-proof the Standing Orders by removing all reference to the Commissioners and Ombudsman, and refer only to the relevant provisions of the Contempt of Court Act. This would bring the Senedd’s Standing Orders into line with those of the Scottish Parliament and Northern Ireland Assembly. The new provision satisfies the statutory requirement for the Senedd to have a sub judice rule relating to matters before the courts.

The exemptions to sub judice

8. Standing Orders 13.15 and 17.28 contain reasons the Presiding Officer (or Chair) may allow a matter which is sub judice to be raised:

- (i) *the matter is clearly related to a matter of general public importance or a ministerial decision is in question;*
- (ii) *the matter does not relate to a case which is to be heard, or is being heard, before a criminal court or before a jury or to a case which is to be heard, or is being heard, in family proceedings; and*
- (iii) *the Member does not, in his or her comments, create a real and substantial risk of prejudice to the proceedings of a court either generally or in respect of a particular case.*

9. Rather than specify reasons, the Scottish and Northern Irish Standing Orders state that such matters can be raised ‘to the extent permitted by the Presiding Officer/Speaker’.

10. Business Committee proposes the Senedd adopts a similar approach by removing these provisions from the Standing Orders and including them instead as examples in the Llywydd’s Guidance on the Proper Conduct of Senedd

Business, issued under Standing Order 6.17. The relevant revised section of the Guidance is at Annex C.

3. Decision

11. The Business Committee formally 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, and to note the revised Guidance at Annex C.

Annex A – Proposed changes to Standing Orders 13 and 17, and explanatory notes

Standing Order 13 – Order in Plenary Meetings

	Sub Justice	Retain heading
13.15	<p>Subject to the right of the Senedd to legislate on any matter or to discuss subordinate legislation, a Member must not raise or pursue in plenary meetings any matter which relates to active proceedings (as defined by Schedule 1 to the Contempt of Court Act 1981), <u>except to the extent permitted by the Presiding Officer.</u> or where the Children’s Commissioner for Wales, the Commissioner for Older People in Wales, or the Public Services Ombudsman for Wales has decided to conduct an examination of a case, until the time when judgement has been given or a report has been made by either Commissioner or Ombudsman, unless the Presiding Officer is satisfied that:</p> <ul style="list-style-type: none"> (i) — the matter is clearly related to a matter of general public importance or a ministerial decision is in question; (ii) — the matter does not relate to a case which is to be heard, or is being heard, before a criminal court or before a jury or to a case which is to be heard, or is being heard, in family proceedings; and (iii) the Member does not, in his or her comments, create a real and substantial risk of prejudice to the proceedings of a court either generally or in respect of a particular case. 	<p>Amend Standing Order</p> <p>The amendment removes all reference to the Commissioners and Ombudsman, referring only to the relevant provisions of the Contempt of Court Act, bringing the Standing Order into line with those in Scotland and Northern Ireland. The new provision satisfies the statutory requirement for the Senedd to have a sub justice rule relating to matters before the courts.</p>

Standing Order 17 – Operation of Committees

	Sub Justice	Retain heading
17.28	<p>Subject to the right of the Senedd to legislate on any matter or to discuss subordinate legislation, a Member must not raise or pursue in committee meetings any matter which relates to active proceedings (as defined by Schedule 1 to the Contempt of Court Act 1981), <u>except to the extent permitted by the Chair</u>, or where the Children’s Commissioner for Wales, the Commissioner for Older People in Wales, or the Public Services Ombudsman for Wales has decided to conduct an examination of a case, until the time when judgement has been given or a report has been made by either Commissioner or Ombudsman, unless the Presiding Officer is satisfied that:</p> <ul style="list-style-type: none"> (i) — the matter is clearly related to a matter of general public importance or a ministerial decision is in question; (ii) — the matter does not relate to a case which is to be heard, or is being heard, before a criminal court or before a jury or to a case which is to be heard, or is being heard, in family proceedings; and (iii) the Member does not, in his or her comments, create a real and substantial risk of prejudice to the proceedings of a court either generally or in respect of a particular case. 	<p>Amend Standing Order</p> <p>The amendment removes all reference to the Commissioners and Ombudsman, referring only to the relevant provisions of the Contempt of Court Act, bringing the Standing Order into line with those in Scotland and Northern Ireland. The new provision satisfies the statutory requirement for the Senedd to have a sub justice rule relating to matters before the courts.</p>

Annex B – Standing Orders 13.15 and 17.28, as amended

Standing Order 13.15

13.15 Subject to the right of the Senedd to legislate on any matter or to discuss subordinate legislation, a Member must not raise or pursue in plenary meetings any matter which relates to active proceedings (as defined by Schedule 1 to the Contempt of Court Act 1981), except to the extent permitted by the Presiding Officer.

Standing Order 17.28

17.28 Subject to the right of the Senedd to legislate on any matter or to discuss subordinate legislation, a Member must not raise or pursue in committee meetings any matter which relates to active proceedings (as defined by Schedule 1 to the Contempt of Court Act 1981), except to the extent permitted by the Chair.

Annex C – Revised Guidance on the proper Conduct of Senedd Business

Sub justice

201. In accordance with **Standing Order 13.15**, Members are forbidden from raising or pursuing in Plenary meetings any matter which relates to active court proceedings as defined by **Schedule 1 to the Contempt of Court Act 1981**, ~~or where the Children’s Commissioner for Wales, the Commissioner for Older People in Wales, or the Public Services Ombudsman for Wales has decided to conduct an examination of a case, until the time when judgement has been given or a report has been made by either Commissioner or Ombudsman, unless the Presiding Officer is satisfied that:~~ except to the extent permitted by the Presiding Officer. Before permitting such matters to be raised, the Presiding Officer would wish to be satisfied that:

- i. the matter is clearly related to a matter of general public importance or a ministerial decision is in question;
- ii. the matter does not relate to a case which is to be heard, or is being heard, before a criminal court or before a jury or to a case which is to be heard, or is being heard, in family proceedings; and
- iii. the Member does not, in his or her comments, create a real and substantial risk of prejudice to the proceedings of a court either generally or in respect of a particular case.