

Interim Subordinate Legislation Committee remit

June 2021

Purpose

1. The paper sets out the remit and responsibilities of the Interim Subordinate Legislation Committee.

Recommendation

2. The Committee is invited to note its remit.

Background

3. The rules and procedures of the Senedd are laid out in Standing Orders. Standing Order 16.1 requires the Senedd to establish committees with power within their remit to:

“(i) examine the expenditure, administration and policy of the government and associated public bodies;

(ii) examine legislation;

(iii) undertake other functions specified in Standing Orders; and

(iv) consider any matter affecting Wales.”

4. In doing this, the Business Committee has to ensure that every area of responsibility of the Welsh Government and associated public bodies, and all matters relating to the legislative competence of the Senedd and functions of the Welsh Ministers and of the Counsel General, are subject to committee scrutiny.



Committee remit

- 5.** The remit of this Committee, as agreed by the Senedd on 26 May 2021, is:
to carry out the functions of the responsible committee set out in Standing Order 21.
- 6.** Standing Order 21 is attached at Annex 1.

Annex 1: Standing Order 21 – Constitutional and Legislative Affairs

Committee or Committees

21.1 In proposing the remits of committees under Standing Order 16.2 or 16.3, the Business Committee must ensure that responsibility for the functions in Standing Order 21 is assigned to a committee or committees (referred to within Standing Order 21 as “a responsible committee”).

Functions

21.2 A responsible committee must consider all statutory instruments or draft statutory instruments required by any enactment to be laid before the Senedd and report on whether the Senedd should pay special attention to the instrument or draft on any of the following grounds:

- i. that there appears to be doubt as to whether it is intra vires;
- ii. that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made;
- iii. that the enactment which gives the power to make it contains specific provisions excluding it from challenge in the courts;
- iv. that it appears to have retrospective effect where the authorising enactment does not give express authority for this;
- v. that for any particular reason its form or meaning needs further explanation;
- vi. that its drafting appears to be defective or it fails to fulfil statutory requirements;
- vii. that there appear to be inconsistencies between the meaning of its English and Welsh texts;
- viii. that it uses gender specific language;
- ix. that it is not made or to be made in both English and Welsh;
- x. that there appears to have been unjustifiable delay in publishing it or laying it before the Senedd; or
- xi. that there appears to have been unjustifiable delay in sending notification under section 4(1) of the Statutory Instruments Act 1946 (as modified).

21.3 A responsible committee may consider and report on whether the Senedd should pay special attention to any statutory instrument or draft statutory instrument required by any enactment to be laid before the Senedd on any of the following grounds:

- i. that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- ii. that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd;
- iii. that it is inappropriate in view of the changed circumstances since the enactment under which it is made or is to be made was itself passed or made; or
- iv. [Standing Order removed by resolution in Plenary on 24 March 2021]
- v. that it imperfectly achieves its policy objectives.

21.3A Standing Orders 21.2 and 21.3 do not apply to any draft statutory instrument laid before the Senedd to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018 or paragraph 9 of Schedule 5 to the European Union (Future Relationship) Act 2020 applies.

21.3B A responsible committee must report on the appropriate procedure to apply to any draft statutory instrument laid before the Senedd to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018 or paragraph 9 of Schedule 5 to the European Union (Future Relationship) Act 2020 applies.

21.3C The responsible committee under Standing Order 21.3B must report on the appropriate procedure using the following criteria:

- i. whether the memorandum is sufficiently clear and transparent about why the government is of the opinion that the negative resolution procedure should apply;
- ii. whether the memorandum is sufficiently clear and transparent as to the changes that are being made by the regulations;
- iii. whether there has been adequate consultation on the regulations;

- iv. whether the memorandum is sufficiently clear and transparent about the impact the regulations may have on equality and human rights;
- v. whether the regulations raise matters of public, political or legal importance; and
- vi. any other matters the committee considers appropriate.

21.4 A responsible committee must make any report under Standing Order 21.2 or 21.3 in respect of any statutory instrument or draft statutory instrument no later than 20 days after the instrument or draft has been laid.

21.4A Where the enactment requiring the statutory instrument or draft statutory instrument to be laid before the Senedd specifies timings in relation to the Senedd's consideration of the statutory instrument or draft statutory instrument, then:

- i. the time limit in Standing Order 21.4 does not apply;
- ii. the Business Committee may establish and publish a timetable for the responsible committee or committees to report.

21.4B A responsible committee must make any report under Standing Order 21.3B in respect of any relevant draft statutory instrument no later than 14 days after a draft of the instrument has been laid. Standing Order 21.4A(ii) does not apply to those draft statutory instruments.

21.5 In calculating for the purposes of Standing Order 21.4 or 21.4B any period of days, no account is to be taken of any time during which the Senedd is dissolved or is in recess for more than 4 days.

21.6 Standing Orders 21.2 and 21.3 do not apply to proposed or draft Orders in Council to be made, in accordance with Standing Order 25, under section 109 of the Act or subordinate legislation subject to Special Senedd Procedure under Standing Order 28.

21.7 A responsible committee may consider and report on:

- i. any other subordinate legislation laid before the Senedd other than that subject to Special Senedd Procedure under Standing Order 28;
- ii. the appropriateness of provisions in Senedd Bills and in Bills for Acts of the United Kingdom Parliament that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General;

- iii. any statutory instrument consent memorandum laid in relation to a relevant statutory instrument under Standing Order 30A;
- iv. the exercise of commencement powers by the Welsh Ministers;
- v. any legislative matter of a general nature within or relating to the competence of the Senedd or Welsh Ministers; or
- vi. draft legislation which is the subject of consultation.

21.8 [Standing Order removed by resolution in Plenary on 24 March 2021]

21.9 [Standing Order removed by resolution in Plenary on 24 March 2021]

21.10 [Standing Order removed by resolution in Plenary on 24 March 2021]

21.11 [Standing Order removed by resolution in Plenary on 24 March 2021]