

To: Business Committee
From: Business Committee Secretariat
Date: 18 March 2013

Amendments to Standing Orders 21 and 27: Reporting on Statutory Instruments

Purpose

1. The Business Committee is invited to consider proposals to amend the provisions of Standing Order 21 which sets deadlines for the responsible committee(s) to report on statutory instruments and draft statutory instruments which are subject to the affirmative resolution procedure. Consequential amendments are also proposed to Standing Order 27, which stipulates when a motion to approve such instruments may be considered in Plenary.

Background

2. Standing Order 21.4 currently stipulates that:

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.

3. The Public Bodies Act, however, sets out a procedure for the Assembly's consideration of draft Orders laid by Welsh Ministers under the Act that includes specific time limits both for the Assembly and the responsible committee to consider such Orders.
4. In his letter 21 November 2012 regarding the Committee's decision to use the full sixty days provided by for the Act to report on the Natural

Resources Body for Wales (Functions) Order 2012, the Chair of the Constitutional and Legislative Affairs Committee suggested that:

I think there is a strong case for amending standing orders to remove anomalies that can arise as a consequence of differing procedural requirements existing between primary legislation and our standing orders.

5. At its meeting of 27 November 2012, the Business Committee agreed to consider amending Standing Orders to deal with anomalies that arise from procedures in UK or Welsh legislation which impacts on the timing of reporting on subordinate legislation.

Proposals for Change

6. Amendments are proposed to the relevant Standing Orders to address the anomalies that have been identified. The proposed amendments are designed to be applicable not only to Orders made by Welsh Ministers under the Public Bodies Act, but also under any other Acts which may stipulate timings in relation to the Assembly's consideration of statutory instruments.
7. The proposed changes to Standing Order 21 provide for a process by which the Business Committee establishes a timetable for the responsible committee(s) to report on the (draft) statutory instrument. In establishing a timetable, the Business Committee will need to take into account the particular requirements of the enabling enactment.
8. The proposed change to Standing Order 27 make clear that Standing Order 27.7 does not apply to such statutory instruments, meaning that it is the provisions of the enabling enactment that will decide when a motion to approve the SI can be debated by the Assembly.

Action

9. Business Managers are invited to consider and **agree in principle** the proposed draft Standing Orders at Annex B.

Annex A

STANDING ORDER 21 – Constitutional and Legislative Affairs	
Functions	
<p>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.</p>	<p>No amendment</p>
<p>21.4A <u>Where the enactment requiring the statutory instrument or draft statutory instrument to be laid before the Assembly specifies timings in relation to the Assembly's consideration of the statutory instrument or draft statutory instrument, then:</u></p> <p style="padding-left: 40px;">i) <u>the time limit in Standing Order 21.4 does not apply:</u></p> <p style="padding-left: 40px;">ii) <u>the Business Committee may establish and publish a timetable for the responsible committee or committees to report.</u></p>	<p>Insert New Standing Order</p> <p>This new Standing Order gives Business Committee the power to set a timetable for CLA to report on any SI which is made under an Act which sets out a procedure that makes the usual 20-day limit for CLA to report inappropriate.</p> <p>In setting the timetable, the Business Committee will need to balance the need of the CLA to give the Order proper scrutiny, with allowing time for the Government and other Members to activate any roles they may have in the procedure.</p> <p>To take the example of the Public Bodies Act, this allows 30 days to trigger the “enhanced” affirmative procedure. While it may be reasonable to allow CLA more than 20 days to report, Business Committee may decide that CLA should report on that aspect well in advance of the 30th day, so as to allow the Assembly to reject that recommendation should the Government table to that end, as</p>

	<p>it is able to do under the Act. Conversely, should CLA report that the 'enhanced' procedure should not apply, it would need to have done so in time to allow another Member to table a motion for the Assembly to resolve that it should.</p> <p>Should the enhanced affirmative procedure be triggered, CLA will then be enabled to consider more fully other aspects of the draft legislation.</p> <p>The new SO will allow Business Committee to decide what the appropriate deadlines are for CLA to report in each case.</p>
21.5 In calculating for the purposes of Standing Order 21.4 any period of days, no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than 4 days.	No amendment

STANDING ORDER 27 – Subordinate Legislation (Other than Subordinate Legislation Subject to Special Assembly Procedure)	
Motion for Approval (Affirmative Resolution Procedure)	
<p>27.5 In the case of any statutory instrument or draft statutory instrument laid before the Assembly which, unless the Assembly by resolution approves it, cannot:</p> <ul style="list-style-type: none">(i) be made;(ii) come into force; or(iii) remain in force beyond the period specified in the enactment conferring the power to make the instrument, <p>any member of the government may table a motion under Standing Order 27.5 that the instrument or draft instrument be approved.</p>	No amendment
<p>27.6 A motion under Standing Order 27.5 is not amendable.</p>	No amendment
<p>27.7 No motion under Standing Order 27.5 may be considered in plenary until either:</p> <ul style="list-style-type: none">(i) the committee responsible for the functions specified in Standing Orders 21.2 and 21.3 and any other committee, which has given the notice mentioned in Standing Order 27.8, has reported on the instrument or draft; or	No amendment

<p>(ii) 20 days have elapsed since the instrument or draft instrument was laid;</p> <p>whichever is the earlier.</p>	
<p>27.7A <u>Where the enactment requiring the statutory instrument or draft statutory instrument to be laid before the Assembly specifies timings in relation to the Assembly's consideration of the statutory instrument or draft statutory instrument, Standing Order 27.7 does not apply.</u></p>	<p>Insert New Standing Order</p> <p>This Standing Order clarifies that SO27.7 does not apply in any case where time limits have been specified in the enabling enactment.</p> <p>In such cases, it is the timings in the enactment that will dictate when a motion under SO27.5 may be considered.</p>

Annex B

STANDING ORDER 21 – Constitutional and Legislative Affairs

Functions

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 Assembly specifies timings in relation to the Assembly'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.

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

STANDING ORDER 27 – Subordinate Legislation (Other than Subordinate Legislation Subject to Special Assembly Procedure)

Motion for Approval (Affirmative Resolution Procedure)

27.5 In the case of any statutory instrument or draft statutory instrument laid before the Assembly which, unless the Assembly by resolution approves it, cannot:

- (i) be made;

(ii) come into force; or

(iii) remain in force beyond the period specified in the enactment conferring the power to make the instrument,

any member of the government may table a motion under Standing Order 27.5 that the instrument or draft instrument be approved.

27.6 A motion under Standing Order 27.5 is not amendable.

27.7 No motion under Standing Order 27.5 may be considered in plenary until either:

(i) the committee responsible for the functions specified in Standing Orders 21.2 and 21.3 and any other committee, which has given the notice mentioned in Standing Order 27.8, has reported on the instrument or draft; or

(ii) 20 days have elapsed since the instrument or draft instrument was laid;

whichever is the earlier.

27.7A Where the enactment requiring the statutory instrument or draft statutory instrument to be laid before the Assembly specifies timings in relation to the Assembly's consideration of the statutory instrument or draft statutory instrument, Standing Order 27.7 does not apply.