

**To:** Business Committee

**From:** Business Committee Secretariat

**Date:** 18 March 2013

## **Amending Standing Orders 29 and 30: Consent in Relation to UK Parliament Bills**

### **Purpose**

1. The Business Committee is invited to consider proposals to amend Standing Orders 29 and 30 regarding Consent in Relation to UK Parliament Bills. The proposals for change are found at Annexes A and B.

### **Background**

2. In March 2012, the Constitutional and Legislative Affairs Committee published its report 'Inquiry into powers granted to Welsh Ministers in UK Laws'. Several of the Committee's recommendations called for amendments to the Assembly's Standing Orders, and so required a response by the Business Committee.
3. The Business Committee considered the report at its meetings of 12 and 19 June 2012, and was able to take the Welsh Government's own response to the report into account in its discussions. In its response, the Business Committee welcomed the opportunity provided by the report to review the Assembly's procedures in this area, and responded positively to all the recommendations that called for the Assembly's Standing Orders to be revised. In its response, the Committee also noted that:

*How exactly those recommendations are implemented will require further discussion, both within the Assembly and at an*

*inter-governmental level, and for this reason our response is often one of accepting 'in principle' the CLAC's recommendations. The Business Committee is however committed to taking forward those changes that are required to meet our common objective of ensuring robust scrutiny processes in the Assembly of relevant UK legislation.*

4. Since then, officials from the Business Committee Secretariat have been working with Welsh Government officials to draft a set of proposed amendments that implement the CLAC's recommendations.
5. The proposals in this paper are designed to implement recommendations 5, 6 and 7 of the CLAC report. Work is continuing on drafting a new Standing Order that will put into effect CLAC's recommendation 11, and proposals to this end will be brought to the Business Committee in due course.

### **Proposed Changes arising from CLAC Report and the Business Committee's response**

*Recommendation 5 – We recommend that Standing Order 30 should be removed and Standing Order 29 amended so that the consent of the Assembly is required for UK Parliament legislation on any matter affecting the legislative competence of the Assembly or affecting the powers of Welsh Ministers.*

6. This was a key recommendation of the CLAC's report. Currently, an LCM under Standing Order 29 is required where a UK Bill makes provision within the Assembly's legislative competence or which has a negative impact upon that competence. On the other hand, where a Bill makes provision affecting the functions of Welsh Ministers, or has an impact (other than negative) on the Assembly's legislative

competence, no LCM is required but the Government simply lays a statement Standing Order 30 informing the Assembly of the provision.

7. The CLAC's recommendation was that any provision in a UK Bill which is within the Assembly's competence or impacts upon it, or which modifies the functions of Welsh Ministers, should require the Assembly's consent via an LCM. The proposed amendments to Standing Order 29.1, alongside the deletion of Standing Order 30, would implement this recommendation, which was accepted by the Business Committee in its response to the CLAC report. The proposed amendments would bring the scope of the Assembly's procedures in line with those of the Scottish Parliament and the Northern Ireland Assembly.
8. In line with the CLAC's recommendation, it is proposed that the scope of Standing Order 29.1(ii) is widened so that an LCM is required for provisions which modify the Assembly's competence in any way. Currently, it is only provisions which have a "negative impact" that require an LCM.
9. An LCM would in future also be required for provisions in UK Bills that modify the functions of Welsh Ministers (new SO 29.1(iii)). Such provisions are currently subject only to a statement under Standing Order 30 which the Government is required to lay, with no requirement for the Assembly to give its consent via an LCM.
10. As this expands the scope of the LCM process beyond the current inter-government agreement as set out in Devolution Guidance Notice 9 (DGN9), the Welsh Government needs to agree with the UK Government to amend Devolution Guidance Notice 9 (DGN9) in order to make it an effective process. The Business Committee noted this in

its response to the CLAC report and agreed to take this into account in deciding when the change should be implemented.

11. While the CLAC's recommendation could be interpreted as suggesting that *all* matters within the Assembly's competence, modifying its competence or the functions of Welsh Ministers should require legislative consent, it is proposed that provisions which are "incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Assembly" should not require an LCM. Therefore the qualification that currently exists in SO29.1(i) is retained and is extended to the proposed new SO29.1(iii).

*Recommendation 6: We recommend that Standing Order 29 should be amended so that all Legislative Consent Memorandums (including matters now covered by Standing Order 30) are, apart from in exceptional circumstances, referred to an Assembly Committee for scrutiny.*

12. In its response, the Business Committee agreed that referral of LCMs to a committee should be the norm, and committed to working with the Government to agree appropriate wording for a revised Standing Order that will put this principle into effect.
13. The proposed changes to Standing Order 29.4 put this recommendation into effect.

*Recommendation 7: We recommend that Standing Order 29 should be amended so that a Legislative Consent Motion cannot be tabled by the Welsh Government until after the relevant Committee has reported on the Legislative Consent Memorandum.*

14. In its response to the CLAC report, the Government stated that it would wish to qualify any such limitation by stating that the Motion would not 'normally' be tabled until the committee has reported. At

the time, the Business Committee agreed to give consideration to which wording would provide the most appropriate safeguard to ensure proper and timely scrutiny by the Assembly.

15. Following discussions with the Government, we propose that no amendment is made to SO 29.8 regarding the timing of the tabling and debating of a motion. We suggest that the current provision that a motion 'must not be debated' is a better safeguard of proper and timely scrutiny by the Assembly than would be 'must not normally be tabled', and so propose that it is retained.
16. The Business Committee also agreed to give consideration to the proposal made by the Government in their own response to the CLAC report, for an amendment to Standing Orders to remove the requirement on the Welsh Government to lay a Legislative Consent Motion in relation to each and every Legislative Consent Memorandum that is laid.
17. The proposed amendment to SO29.6 removes the compulsion on the Government to lay a motion for every memorandum laid. The intention is that this would allow the government to table a memorandum early on, before it had necessarily formed a view on the details of a motion, and to table further supplementary/revised memoranda before tabling a motion should it so wish.
18. Because the Government no longer has to table a motion for every memorandum, it is proposed that provision is made via a new SO29.2A for any other Member to do so should they so wish. Any Member wishing to do so would need to lay a memorandum of their own, but would not normally do until the Government had laid their own memorandum in respect of that Bill.

19. We envisage that this procedure would be used by Members if the Government, for whatever reason, had indicated that it did not intend to lay a motion in relation to a particular Bill. Such a procedure already exists in Scotland, but has been used only once – in relation to the Scotland Bill, where the Scottish Government did not wish to give consent to the provisions it contained.
20. These changes would together bring the Assembly's procedures in line with those in Scotland, where the Government does not have to lay a motion for every memorandum laid and where other Members may do so.

#### **Other proposed changes**

21. There are two proposed changes that lie outside the scope of the CLAC report and the Business Committee's response to it.
22. The proposed amendment to SO29.2 extends its scope to include Private Bills in the UK Parliament. At the time of the CLAC report, the Assembly did not have provisions of its own for dealing with Private Bills. The new provisions on Private Bills in Standing Order 26A were agreed by the Assembly in June 2012.
23. The proposed new provision in SO29.3(iv) implements a recommendation made by the CELG Committee in their report on the Local Government Finance Bill LCM on 25 June 2012<sup>1</sup> that 'any LCM must contain details of the Assembly procedures that would be applicable to all legislative powers to be granted to Welsh Ministers by a Westminster Bill'.

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<sup>1</sup> <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=235615&ds=6/2012>

## **Action**

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

## Annex A

<b>STANDING ORDER 29 – Consent in relation to UK Parliament Bills</b>	
<b>UK Parliament Bills Making Provision Requiring the Assembly’s Consent</b>	
<p>29.1 In Standing Order 29, “relevant Bill” means a Bill under consideration in the UK Parliament which makes provision (“relevant provision”) in relation to Wales:</p> <ul style="list-style-type: none"> <li>(i) for any purpose within the legislative competence of the Assembly (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Assembly); or</li> <li>(ii) which <del>has a negative impact on</del> modifies the legislative competence of the Assembly; <u>or</u></li> <li>(iii) <u>which modifies the functions of the Welsh Ministers or of the Counsel General (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative</u></li> </ul>	<p><b>Amend this Standing Order</b></p> <p>The CLA report’s Recommendation 5 stated that ‘Standing Order 30 should be removed and Standing Order 29 amended so that the consent of the Assembly is required for UK Parliament legislation on any matter affecting the legislative competence of the Assembly or affecting the powers of Welsh Ministers.’ This recommendation was accepted by both the Government and the Business Committee.</p> <p>These amendments extend the classes of ‘relevant Bills’ under Standing Order 29 to include those previously included under Standing Order 30. This means that, in future, any provision in a UK Bill which is within the Assembly’s competence or impacts upon it, or which modifies the functions of Welsh Ministers, should require the Assembly’s consent via an LCM.</p> <p>The criteria listed in points (i), (ii) and (iii), are cumulative in effect, and it is expected that most Bills having an impact on the functions of Welsh Ministers will in any case fall within criterion (i). Criterion (iii) will therefore primarily apply to Bills which have an impact on the functions of Welsh Ministers, where those</p>



<p><u>competence of the Assembly):</u></p>	<p>functions are outside the legislative competence of the Assembly.</p> <p>The scope of Standing Order 29.1(ii) is widened so that an LCM is required for provisions which modify the Assembly’s competence in any way. Currently, it is only provisions which have a “negative impact” that require an LCM.</p> <p>The new SO29.1(iii) means that an LCM would in future also be required for provisions in UK Bills that modify the functions of Welsh Ministers (new SO 29.1(iii)). Such provisions are currently subject only to a statement under Standing Order 30 which the Government is required to lay, with no requirement for the Assembly to give its consent via an LCM.</p>
<p><b>Legislative Consent Memorandum</b></p>	
<p>29.2 A member of the government must lay a memorandum (“a legislative consent memorandum”) in relation to:</p> <ul style="list-style-type: none"> <li>(i) any UK Government Bill that is a relevant Bill on its introduction to the first House, normally no later than 2 weeks after introduction;</li> <li>(ii) any UK Private Member’s Bill that was a relevant</li> </ul>	<p><b>Amend this Standing Order</b></p> <p>After the move to Part 4 of GOWA ’06 and the introduction of procedures under Standing Order 26A that enables the Assembly to deal with Private Bills, we consider it appropriate that any Private Bills introduced in Westminster whose provisions fall within the scope of Standing Order 29.1 are</p>

<p>Bill on introduction and remains a relevant Bill after the first amending stage in the House in which it was introduced, normally no later than 2 weeks after it completes that stage;</p> <p><u>(iii) any UK Private Bill that is a relevant Bill on its introduction to the first House, normally no later than 2 weeks after introduction;</u></p> <p><u>(iv)</u> any Bill introduced into the UK Parliament that, by virtue of amendments:</p> <ul style="list-style-type: none"><li>(a) agreed to; or</li><li>(b) tabled by a Minister of the Crown or published with the name of a Minister of the Crown in support,</li></ul> <p>in either House, makes (or would make) relevant provision for the first time or beyond the limits of any consent previously given by the Assembly, normally no later than two weeks after the amendments are tabled or agreed to.</p>	<p>covered by this Standing Order.</p> <p>The draft sets the timeframe for Private Bills the same as for Government Bills.</p>
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<p>29.2A <u>Any member, other than a member of the government, who intends to table a legislative consent motion in relation to a relevant Bill must first lay a legislative consent memorandum, but must not normally do so until after a member of the government has laid a legislative consent memorandum in respect of that Bill.</u></p>	<p>The Government must lay a memorandum whether they intend to table a motion or not. Other members, however, may only lay a memorandum if they intend to table a motion.</p> <p>The provision for a Member other than a member of the Government to lay an LCM is new, and is introduced because the proposed amendments to SO29.6 means that the Government will no longer have to table a motion for every memorandum. Any Member wishing to lay an LCM would need to lay a memorandum of their own, but would not normally do until the Government had laid their own memorandum in respect of that Bill.</p>
<p>29.3 A legislative consent memorandum must:</p> <ul style="list-style-type: none"> <li>(i) summarise the policy objectives of the Bill;</li> <li>(ii) specify the extent to which the Bill makes (or would make) relevant provision;</li> <li>(iii) explain whether it is considered appropriate for that provision to be made and for it to be made by means of the Bill;</li> <li>(iv) <u>where the Bill contains any relevant provision</u></li> </ul>	<p><b>Amend this Standing Order</b></p> <p>A new point (iv) has been inserted in line with the suggestion made by the CELG Committee in their report on the Local Government Finance Bill LCM that ‘any LCM must contain details of the Assembly procedures that would be applicable to all legislative powers to be granted to Welsh Ministers by a Westminster Bill’. The provision replicates that in 26.6 (vii) in relation to Assembly Bills.</p>

<p><u>conferring power to make subordinate legislation on Welsh Ministers, set out the Assembly procedure (if any) to which the subordinate legislation to be made in the exercise of the power is to be subject;</u></p> <p>(v) <u>where a legislative consent memorandum has already been laid in relation to the same provisions in the same Bill, set out how and why the new memorandum differs from the previous memorandum.</u></p>	<p>As it is no longer necessary for every memorandum to be followed/accompanied by a motion, there is scope for the government to lay a revised memorandum should their intentions, or the content of the Bill, change before they lay a motion. Any revised memorandum would be subject to the same procedures as the original one. Sub-point (v) has been added to make it clear that where a 'revised' memorandum is laid, it must set out the changes that have been made since the original memorandum.</p> <p>Unlike the Scottish SOs, the draft does not propose that a memorandum should include a draft motion. This is to allow the Government more flexibility and to encourage the laying of memoranda at an earlier point, before the details of the motion have necessarily been worked out.</p> <p>The provisions of this SO apply both to memoranda laid by the government under SO29.2 and to those laid by other members under SO29.2A.</p> <p>The requirements of this SO are minimum requirements, and as made clear in the DPO's ruling of 26.06.12, Ministers 'are at liberty to provide more information than what is set out as a minimum in Standing Orders if they so wish and if they believe that it helps the Assembly in deliberating on any particular matter'.</p>
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<p>29.4 The Business Committee <del>must</del>: <del>may</del></p> <p>(i) <del>_____</del> <u>normally</u> refer any legislative consent memorandum to a committee or committees for consideration <u>and</u></p> <p>(ii) <u>establish and publish a timetable for the committee or committees to consider and report on it.</u></p>	<p><b>Amend this Standing Order</b></p> <p>The amendment means that Business Committee must normally refer an LCM to a committee. The draft is in line with the Government's preference as outlined in their response to the CLAC's report.</p>
<p><del>29.5 If a legislative consent memorandum is referred to a committee or committees for consideration in accordance with Standing Order 29.4, the Business Committee must establish and publish a timetable for the committee or committees to consider and report on it.</del></p>	<p><b>Delete this Standing Order</b></p> <p>The provisions of this Standing Order are now contained in SO29.4 above.</p>
<p><b>Legislative Consent Motion</b></p>	
<p>29.6 <del>When a legislative consent memorandum is laid, the government must</del> <u>After a legislative consent memorandum has been laid, any member may, subject to Standing Order 29.2A,</u> table a motion ("a legislative consent motion") <del>which must</del></p>	<p><b>Amend this Standing Order</b></p> <p>This change breaks the link between the motion and the memorandum in terms of timing, stating clearly that the motion is laid after the memorandum, but not putting any deadlines on it.</p>

<p>seek<u>ing</u> the Assembly's agreement to the inclusion of a relevant provision in a relevant Bill.</p>	<p>The change also removes the compulsion on the government to table a motion for every memorandum laid. The intention is that this would allow the government to table a memorandum early on, before it had necessarily formed a view on the details of a motion, and to table further supplementary/revised memoranda before tabling a motion should it so wish.</p> <p>Since the government will no longer necessarily table a motion every time, provision is made for any member to table a legislative consent motion. We envisage that this procedure would be used by Members if the Government, for whatever reason, had indicated that it did not intend to lay a motion in relation to a particular Bill.</p>
<p>29.7 The Assembly must consider a legislative consent motion which has been tabled.</p>	<p><b>Retain this Standing Order</b></p>
<p>29.8 <del>If</del><u>When</u> a legislative consent memorandum is referred by the Business Committee for consideration by a committee or committees in accordance with Standing Order 29.4, <del>the</del> <u>a</u> related legislative consent motion must not be debated, until either:</p>	<p><b>Amend this Standing Order</b></p> <p>CLAC recommended that the motion should not be tabled until after the committee has reported, while the Government responded that they would want this qualified with 'normally'.</p>

<p>(i) the committee or committees have reported in accordance with Standing Order 29.4; or</p> <p>(ii) the deadline by which a committee is required to report in accordance with Standing Order 29.4 has been reached.</p>	<p>The Business Committee stated that it would ‘need to give consideration to which wording will provide the most appropriate safeguard to ensure proper and timely scrutiny by the Assembly’.</p> <p>In drafting, we have come to the view that the current provision provides a better safeguard than a motion ‘not normally being tabled’ would.</p>
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<del>STANDING ORDER 30 – Notification in relation to UK Parliament Bills</del>	Delete heading
<del>UK Parliament Bills Making Provision Requiring Notification to the Assembly</del>	Delete sub-heading
<p><del>30.1 — In Standing Order 30, “relevant Bill” means a Bill under consideration in the UK Parliament which makes provision (“relevant provision”) in relation to Wales (other than a provision which is a relevant provision within Standing Order 29.1):</del></p> <ul style="list-style-type: none"> <li><del>(i) — which has a significant impact on the functions of the Welsh Ministers or of the Counsel General; or</del></li> <li><del>(ii) — which has an impact on the legislative competence of the Assembly (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions).</del></li> </ul>	<p><b>Delete Standing Order</b></p> <p>The provisions of this Standing Order are now included in Standing Order 29</p>
<del>Written Statements in Relation to Relevant UK Parliament Bills</del>	Delete sub-heading
<p><del>30.2 — A member of the government must lay a written statement in relation to:</del></p> <ul style="list-style-type: none"> <li><del>(i) — any UK Government Bill that is a relevant Bill on</del></li> </ul>	Delete Standing Order



<p><del>its introduction to the first House, normally no later than 2 weeks after introduction;</del></p> <p><del>(ii) any UK Private Member's Bill that was a relevant Bill on introduction and remains a relevant Bill after the first amending stage in the House in which it was introduced, normally no later than 2 weeks after it completes that stage;</del></p> <p><del>(iii) any Bill introduced into the UK Parliament that, by virtue of amendments:</del></p> <p style="padding-left: 40px;"><del>(a) agreed to; or</del></p> <p style="padding-left: 40px;"><del>(b) tabled by a Minister of the Crown or published with the name of a Minister of the Crown in support,</del></p> <p><del>in either House, makes (or would make) relevant provision, normally no later than two weeks after the amendments are tabled or agreed to.</del></p>	
<p><del>30.3 The written statement must:</del></p> <p style="padding-left: 40px;"><del>(i) summarise the policy objectives of the Bill;</del></p>	<p><b>Delete Standing Order</b></p>

~~(ii) — specify the extent to which the Bill makes (or would make) relevant provision; and~~

~~(iii) — explain whether it is considered appropriate for that provision to be made and for it to be made by means of the Bill.~~

## **Annex B**

### **STANDING ORDER 29 – Consent in relation to UK Parliament Bills**

#### **UK Parliament Bills Making Provision Requiring the Assembly’s Consent**

29.1 In Standing Order 29, “relevant Bill” means a Bill under consideration in the UK Parliament which makes provision (“relevant provision”) in relation to Wales:

- (i) for any purpose within the legislative competence of the Assembly (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Assembly); or
- (ii) which modifies the legislative competence of the Assembly; or
- (iii) which modifies the functions of the Welsh Ministers or of the Counsel General (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Assembly);

#### **Legislative Consent Memorandum**

29.2 A member of the government must lay a memorandum (“a legislative consent memorandum”) in relation to:

- (i) any UK Government Bill that is a relevant Bill on its introduction to the first House, normally no later than 2 weeks after introduction;
- (ii) any UK Private Member’s Bill that was a relevant Bill on introduction and remains a relevant Bill after the first amending stage in the House in which it was introduced,

normally no later than 2 weeks after it completes that stage;

- (iii) any UK Private Bill that is a relevant Bill on its introduction to the first House, normally no later than 2 weeks after introduction;
- (iv) any Bill introduced into the UK Parliament that, by virtue of amendments:
  - (a) agreed to; or
  - (b) tabled by a Minister of the Crown or published with the name of a Minister of the Crown in support,

in either House, makes (or would make) relevant provision for the first time or beyond the limits of any consent previously given by the Assembly, normally no later than two weeks after the amendments are tabled or agreed to.

29.2A Any member, other than a member of the government, who intends to table a legislative consent motion in relation to a relevant Bill must first lay a legislative consent memorandum, but must not normally do so until after a member of the government has laid a legislative consent memorandum in respect of that Bill.

29.3 A legislative consent memorandum must:

- (i) summarise the policy objectives of the Bill;
- (ii) specify the extent to which the Bill makes (or would make) relevant provision;
- (iii) explain whether it is considered appropriate for that provision to be made and for it to be made by means of the Bill;
- (iv) where the Bill contains any relevant provision conferring power to make subordinate legislation on Welsh Ministers,

set out the Assembly procedure (if any) to which the subordinate legislation to be made in the exercise of the power is to be subject;

- (v) where a legislative consent memorandum has already been laid in relation to the same provisions in the same Bill, set out how and why the new memorandum differs from the previous memorandum.

29.4 The Business Committee must:

- (i) normally refer any legislative consent memorandum to a committee or committees for consideration and
- (ii) establish and publish a timetable for the committee or committees to consider and report on it.

29.5 [Removed by resolution of the Assembly]

### **Legislative Consent Motion**

29.6 After a legislative consent memorandum has been laid, any member may, subject to Standing Order 29.2A, table a motion (“a legislative consent motion”) seeking the Assembly’s agreement to the inclusion of a relevant provision in a relevant Bill.

29.7 The Assembly must consider a legislative consent motion which has been tabled.

29.8 When a legislative consent memorandum is referred by the Business Committee for consideration by a committee or committees in accordance with Standing Order 29.4, a related legislative consent motion must not be debated, until either:

- (i) the committee or committees have reported in accordance with Standing Order 29.4; or

- (ii) the deadline by which a committee is required to report in accordance with Standing Order 29.4 has been reached.