

To: Business Committee

From: Business Committee Secretariat

Date: June 2011

Changes to Standing Orders following the Assembly powers referendum

Purpose

1. Business Managers are invited to consider the proposals for changes to Standing Orders in light of the 'yes' vote in the March 2011 Assembly powers referendum.
2. The changes relate to Standing Orders 21, 24, 25 and 26 and the interpretation section of Standing Orders. Consequential changes to terminology used in Standing Orders will also be necessary (e.g. Standing Order 11.22).

Procedure

3. In accordance with Standing Order 11.7(iv), Business Committee is responsible for making recommendations on the general practice and procedures of the Assembly, including any proposals for the re-making or revision of Standing Orders.
4. Any proposal to re-make or revise Standing Orders must be tabled and proposed in Plenary by the Business Committee in accordance with Standing Order 33. Any proposal must be supported by at least two-thirds of Members voting for it to have effect.

Background

5. The Third Assembly's Business Committee undertook a review of Standing Orders from May 2010 – March 2011. The Committee's proposals for changes were published on 9 March 2011 in its Report on the review.¹ The Assembly agreed to remake Standing Orders in accordance with the Committee's recommendations in Plenary on 16 March 2011.² The revised Standing Orders came into effect on 5 May 2011.
6. In its Report, the Committee recognised that Standing Orders would require further review and amendment to reflect the 'yes' vote in the

¹ Business Committee, [Review of Standing Orders in preparation for the Fourth Assembly](#), 9 March 2011

² RoP, p 42, 16 March 2011

Assembly powers referendum in March 2011. The Committee recommended that any changes necessary to Standing Orders as a result of the commencement of Part 4 provisions of the Government of Wales Act 2006 (“the Act”) should be presented to the Fourth Assembly for their consideration and agreement after the election in May 2011.

7. To enable the Assembly’s Standing Orders to cater for powers under Part 4 of the Act with immediate effect, transitional arrangements were included in the interpretation section of the revised Standing Orders. These arrangements provide that, as of 5 May 2011 and until the necessary revisions to Standing Orders are made, legislation can progress in accordance with Part 4 of the Act.

Proposal

8. Following the commencement of The Government of Wales Act 2006 (Commencement of Assembly Act Provisions, Transitional and Saving Provisions and Modifications) Order 2011, the Assembly is now able to pass legislation, in the form of “Acts of the Assembly”, under all of the areas outlined in the 20 subjects included in schedule 7 to the Act.

9. It is not proposed that the fundamental procedure for legislative scrutiny under Part 4 will differ from that under Part 3. The majority of changes necessary, therefore, relate to terminology. The detailed proposals and explanatory notes can be found in Annex A – E. A clean copy of relevant Standing Orders, reflecting all proposed changes, can be found in Annex F.

(i) Bills and Acts (Standing Order 26)

10. No significant changes to the procedures for the proposal and consideration of the Assembly’s primary legislation are necessary in light of the referendum result. Proposals for Assembly laws will still be subject to the same four-stage process as seen for proposed Measures during the Third Assembly.

Terminology

11. Following the ‘yes’ vote and in accordance with Part 4 (section 107(1)) of the Act, the Assembly may make laws to be known as “Acts of the National Assembly for Wales” or “Deddfau Cynulliad Cenedlaethol Cymru”. In accordance with section 107(2) of the Act, proposed Acts of the Assembly are to be known as Bills. As such, it is proposed that the same terminology is used in the Standing Orders and that:

- all current references to “Measures” are replaced with references to “Acts of the Assembly”; and
- all current references to “proposed Measures” are replaced with references to “Bills”.

12. Following the commencement of Part 4, and in accordance with section 115 of the Act, Bills will now be submitted for Royal Assent. This contrasts to the arrangements for proposed Measures under Part 3, which were submitted for Royal Approval by Her Majesty in Council.

13. Proposed amendments to effect these terminological changes to Standing Order 26 are detailed in Annex A.

Cross-referencing

14. References to Part 3 of the Act within Standing Orders will also need to be updated with correct cross-references to Part 4. Proposed amendments are detailed in Annex A.

(ii) Orders in Council to be made under section 109 of the Act (Standing Order 25)

15. Following the commencement of Part 4 provisions of the Act, schedule 7 defines the Assembly’s legislative competence. Schedule 7 can be amended (for example to add new subjects, to expand or clarify existing ones or to remove exceptions) by an Order in Council under section 109 of the Act (“section 109 Order”). This can only happen with the approval of the Assembly and both Houses of the UK Parliament.

16. This replaces the arrangement under Part 3 of the Act where the Assembly’s legislative competence was defined by schedule 5 and could be amended by an Order in Council under section 95 of the Act (referred to as a “Legislative Competence Order”).

Procedures for section 109 Orders

17. A process is required by which section 109 Orders can be proposed and considered by the Assembly. It is proposed that a similar process to that used during the Third Assembly for Legislative Competence Orders is retained in order to permit the Assembly to propose and consider Orders of this kind, where appropriate.

18. Retention of the process by which the Business Committee can either:

- refer Orders for detailed consideration by a committee; or
- propose (by motion in Plenary) that there should be no detailed consideration of the Order,

provides flexibility for the Business Committee, on an Order by Order basis, to assess the need for detailed scrutiny.

19. Proposed amendments to Standing Order 25 are detailed in Annex B.

Notice of refusal

20. The requirement to publish any notice of refusal by the Secretary of State for Wales to lay a draft Legislative Competence Order was a requirement under Part 3 of the Government of Wales Act 2006. There is no equivalent requirement under Part 4 provisions of the Act therefore Standing Order 25.19 is no longer necessary.

(iii) Members in charge (Standing Order 24 and consequential changes to Standing Orders 25 and 26)

21. During the Third Assembly, the Welsh Government, the Assembly Commission, committees and individual Members were permitted to propose Measures and Legislative Competence Orders, subject to specific Standing Order requirements. The Member responsible for steering the progress of any of the four types of proposed legislation was referred to as “the Member in charge”.

Bills

22. No changes are proposed to arrangements for proposing Bills. The Business Committee is invited to agree that the necessary technical changes are made to reflect the change in terminology i.e. Acts and Bills.

Section 109 Orders

23. The Business Committee is invited to consider arrangements for the proposal of section 109 Orders following the ‘yes’ vote in the March 2011 referendum and the commencement of Part 4 of the Act.

24. Given that the Assembly is now able to legislate within the 20 subject areas listed in schedule 7 to the Act, it is anticipated that the need to bring forward Orders in Council to amend schedule 7 is likely to be substantially reduced in comparison with the level of Legislative Competence Orders brought forward during the Third Assembly to amend schedule 5.

25. Given the difficulty experienced by individual Members in the Third Assembly in gaining legislative competence under schedule 5 Business Managers are invited to consider whether a mechanism for individual Members to propose section 109 Orders is necessary or whether Government proposed Orders and cross-party Committee proposed Orders are sufficient given the more limited likelihood of amendments to schedule 7 being required.

26. Options for amendment are detailed in Annex C. Consequential changes, should the Committee decide to narrow the ability to propose section 109 Orders to the government and committees only, are detailed in Annex A and B.

(iv) Constitutional and Legislative Affairs (Standing Order 21)

27. Standing Order 21 outlines functions relating to constitutional and legislative affairs which must be delivered by the Assembly's committee structure. The terminological changes outlined in paragraph 11 of this paper, and the introduction of section 109 Orders as explained in paragraph 16, need to be reflected in Standing Order 21. Proposed amendments are detailed in Annex D.

(v) Interpretation and consequential changes

28. The interpretation section of Standing Orders defines terms used within the Standing Orders themselves. To reflect the changes to terminology and process required in light of the 'yes' vote in the Assembly powers referendum, the interpretation section requires amendment. Proposed amendments to the interpretation section are detailed in Annex E.

29. Any other consequential terminological changes to Standing Orders – that is, replacing references to proposed Measures with references to Bills and references to legislative competence orders with references to Orders in Council to be made under section 109 of the Act – will also need to be made (e.g. Standing Order 11.22).

Decision

30. In relation to **Standing Order 26**, the Business Committee is invited to agree:

- (i) that it is amended to reflect the terminological changes required by the commencement of Part 4 of the Act, replacing references to proposed Measures and Measures with references

to Bills and Acts respectively (*as detailed in paragraph 11 and Annex A*);

- (ii) that it is updated to refer to Bills being submitted for Royal Assent in accordance with section 115 of the Act (*as detailed in paragraph 12 and Annex A*); and
- (iii) that it is updated with correct cross-references to Part 4 of the Act (*as detailed in paragraph 14 and Annex A*).

31. In relation to **Standing Order 25**, the Business Committee is invited to agree:

- (i) that it is amended to allow a process by which section 109 Orders are considered by the Assembly (*as detailed in paragraph 17 and 18 and Annex B*); and
- (ii) that it is updated to reflect the fact that there is no provision in Part 4 of the Act requiring the Secretary of State for Wales to lay a section 109 order within 60 days or give notice in writing of refusal to lay (*as detailed in paragraph 20 and Annex B*).

32. In relation to **Member proposed legislation**, the Business Committee is invited to:

- (i) consider whether a mechanism for individual Members to propose section 109 Order is necessary (*as detailed in paragraphs 23 - 25 and Annex B & C*).

33. In relation to **additional consequential changes**, the Business Committee is invited to agree:

- (i) that the 'interpretation' section of Standing Orders is updated to provide the necessary definitions of terminology used following the referendum (*as detailed in paragraph 28 and Annex E*); and
- (ii) that terminological changes in relation to Bills, Acts and section 109 Orders are reflected throughout Standing Orders (*as detailed in paragraph 27 and 29 and Annex D & F*).