



Proposed amendments to Standing Orders 29 and 30: Consent in Relation to UK Parliament Bills

Purpose

1. In accordance with Standing Order 11.7(iv), the 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.
2. The report recommends amendments to Standing Orders 29 and 30 in relation to consent to and statements on UK Parliament Bills . The changes agreed by Business Committee are found in Annex A, and the proposal for a new Standing Order at Annex B.

Background

3. 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.
4. 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. The Business Committee 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.

5. At its meeting held in public of Monday 18 March 2013, the Business Committee considered changes to the Standing Orders that would implement recommendations 5, 6 and 7 of the CLAC report. The Business Committee will consider amendments to Standing Order that will put into effect CLAC's recommendation 11 in due course.

6. At that meeting, the Committee heard from the Minister for Government Business that the inter-governmental agreement required to effectively implement all the proposed changes had not thus far been forthcoming.

7. At its meeting of Tuesday 16 April 2013, the Business Committee formally agreed to the proposals made in this report, and agreed to return to the outstanding issues requiring inter-governmental agreement at a later date.

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.

8. 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.

9. 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.

10. In its response to the CLAC report, the Government noted that 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 would need to agree with the UK Government to amend Devolution Guidance Notice 9 (DGN9) in order to make it an effective process. At its meeting of 18 March 2013, the Minister for Local Government and Government Business informed Business Committee that the agreement required had not been forthcoming, and so the Government could not consent to this change at this time.

11. In line with the CLAC's recommendation, however, 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.

12. 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, the Business Committee proposes to retain the qualification in SO29.1 (i) 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.

13. At the same time, it is proposed to amend SO30.1 to provide greater clarity by using the same qualification as in SO29.1, and to substitute 'modify' for 'have an impact on'.

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.

14. 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.

15. 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.

16. 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.

17. Having considered the matter, Business Committee proposes 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.

18. 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.

19. The proposed amendment to SO 29.6 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.

20. Because the Government no longer has to table a motion for every memorandum, it is proposed that provision is made via a new SO 29.2A 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.

21. 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.

Other proposed change

22. There is one proposed change that lies outside the scope of the CLAC report.

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 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’.

Action

24. The Business Committee agreed the changes to Standing Orders on 16 April 2013 and the Assembly is invited to approve the proposal as at Annex B.

Annex A

<p>STANDING ORDER 29 – Consent in relation to UK Parliament Bills</p>	
<p>UK Parliament Bills Making Provision Requiring the Assembly’s Consent</p>	
<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"> (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 has a negative impact on <u>modifies</u> the legislative competence of the Assembly. 	<p>Amend this Standing Order</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>The Government made clear in its response that implementing this change would require the agreement of the Wales Office to amend DGN9. The Minister for Government Business has informed Business Committee that such agreement has not thus far been forthcoming and so this change cannot be implemented in full.</p> <p>The scope of Standing Order 29.1(ii) is however widened so that an LCM is required for provisions which modify the Assembly’s competence in any way. Currently, it is only provisions which</p>

	have a “negative impact” that require an LCM.
Legislative Consent Memorandum	
<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"> (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 Bill introduced into the UK Parliament that, by virtue of amendments: <ul style="list-style-type: none"> (a) agreed to; or (b) tabled by a Minister of the Crown or published with the name of a Minister 	No amendment

<p style="text-align: center;">of the Crown in support,</p> <p style="text-align: center;">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>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>New Standing Order</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 to do until the Government had laid their own memorandum in respect of that Bill.</p>

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; and
- (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.

Amend this Standing Order

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.

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.

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.

The provisions of this SO apply both to memoranda laid by the government under SO29.2 and to those laid by other members

	<p>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>
<p>29.4 The Business Committee must: may</p> <p>(i) normally refer any legislative consent memorandum to a committee or committees for consideration; and</p> <p>(ii) establish and publish a timetable for the committee or committees to consider and report on it.</p>	<p>Amend this Standing Order</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>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</p>	<p>Delete this Standing Order</p> <p>The provisions of this Standing Order are now contained in SO29.4 above.</p>

<p>consider and report on it.</p>	
<p>Legislative Consent Motion</p>	
<p>29.6 When a legislative consent memorandum is laid, the government must <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”) which must <u>seeking</u> the Assembly’s agreement to the inclusion of a relevant provision in a relevant Bill.</p>	<p>Amend this Standing Order</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>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>No amendment</p>
<p>29.8 If<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, the <u>a</u> related legislative consent motion must not be debated, until either:</p> <ul style="list-style-type: none"> (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. 	<p>Amend this Standing Order</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>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>

STANDING ORDER 30 – Notification in relation to UK Parliament Bills	
UK Parliament Bills Making Provision Requiring Notification to the Assembly	No amendment
<p>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) which has a significant impact on <u>modifies</u> the functions of the Welsh Ministers or of the Counsel General <u>(apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Assembly).</u> or</p> <p>which has an impact on the legislative competence of the Assembly (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions).</p>	<p>Amend this Standing Order</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>The Government made clear in its response that implementing this change would require the agreement of the Wales Office to amend DGN9. The Minister for Government Business has informed Business Committee that such agreement has not thus far been forthcoming and so this change cannot be implemented in full.</p> <p>Standing Order 30 is therefore retained. However, SO30.1(i) is amended to give greater clarity to its provisions and to make it consistent with SO29.1(i) while SO30.1(ii) is removed as its provisions are now included within the scope of the amended SO29.1(ii)</p>

Written Statements in Relation to Relevant UK Parliament Bills	No amendment
<p>30.2 A member of the government must lay a written statement in relation to:</p> <ul style="list-style-type: none">(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 Bill introduced into the UK Parliament that, by virtue of amendments:<ul style="list-style-type: none">(a) agreed to; or(b) tabled by a Minister of the Crown or published with the name of a Minister	No amendment

<p>of the Crown in support,</p> <p>in either House, makes (or would make) relevant provision, normally no later than two weeks after the amendments are tabled or agreed to.</p>	
<p>30.3 The written statement must:</p> <ul style="list-style-type: none">(i) summarise the policy objectives of the Bill;(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.	<p>No amendment</p>

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.

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;

(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; and

- (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 *[Standing Order removed by resolution of the Assembly on [date]]*

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, the 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.

STANDING ORDER 30 – Notification in relation to UK Parliament Bills

UK Parliament Bills Making Provision Requiring Notification to the Assembly

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) 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).

Written Statements in Relation to Relevant UK Parliament Bills

30.2 A member of the government must lay a written statement 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 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, normally no later than two weeks after the amendments are tabled or agreed to.

30.3 The written statement must:

(i) summarise the policy objectives of the Bill;

(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.