

To: Business Committee

From: Business Committee Secretariat

Date: 1 November 2011

Mechanisms for individual Members to propose Orders in Council to be made under section 109 of the Government of Wales Act 2006

Purpose

1. The Business Committee considered proposed changes to Standing Orders in light of the 'yes' vote in the Assembly powers referendum on 21 June 2011. A motion to amend Standing Orders, including some sections of Standing Order 25 was agreed by the Assembly on 13 July.
2. Members requested a further paper outlining options for individual Members to propose Orders in Council under section 109 of the Government of Wales Act 2006 ("the Act"). That paper was considered at the meeting of 28 June 2011 and an outline approach agreed. This paper sets out the proposed detailed changes to Standing Orders 25.26 – 25.34 that would establish such a mechanism.

Background

3. During the Third Assembly, the successful passage of a Member proposed Order was heavily dependent on negotiations with relevant departments of the UK Government. During the Third Assembly, two Member proposed Orders received Royal Approval: Jonathan Morgan AM's Order relating to the provision of mental health services and Ann Jones AM's Order relating to domestic fire safety.
4. In considering options for individual Members to propose section 109 Orders, the Business Committee decided that a continuation of the ballot system would be inappropriate given that there is less of an expectation for schedule 7 to be amended as a routine matter as compared with arrangements under Part 3 for the amendment of schedule 5. Further, if and when the need to amend schedule 7 arises, this will only be possible on the basis of consensus between the respective legislatures and governments. The generating of proposals for section 109 Orders via a ballot held by the Presiding Officer was therefore viewed as out of keeping with the settlement as outlined under Part 4.

Proposal

5. The proposed text for the new Standing Orders 25.26 – 25.34 is found at Annexes A and B.
6. The proposed changes reflect the Business Committee's decision on 28 June 2011 that in the absence of a Ballot process, there should be a formal mechanism in place to allow a Member to propose that the Welsh Government should bring forward a Section 109 Order.
7. The new Standing Orders as drafted provide for a mechanism that involves:
 - A Member tabling a motion calling on the Government to introduce a proposed Order under Section 109 of the Act. The motion will need to be accompanied by an Explanatory Memorandum providing information on the effect the proposed Order will have on the Assembly's legislative competence; an explanation as to why the proposed Order is necessary; and, details of any support received for the proposal, including details of any consultation carried out;
 - Business Committee having to refer any such motion that has achieved a certain level of support (paragraphs 8 & 9 below) to a committee or committees for more detailed consideration. The purpose of such a referral would be to request that the Committee reports on the merits of the proposal by a certain date so that the report can inform subsequent consideration and decision by the Assembly relating to the proposal for a section 109 Order;
 - Once the committee or committees have reported on the merits of the proposal for an Order, or the deadline for them doing so has passed, the Business Committee having to make time available to debate the motion.

Criteria for referral

8. As currently drafted, revised Standing Order 25.29 sets the criteria of a motion having the support of at least ten members belonging to at least three different parties before Business Committee must refer the motion to a committee for detailed consideration. That support could either be made clear at the time of tabling, or could result from Members adding their names to the motion after it has been tabled. The criterion of the motion having support from at least three different parties mirrors that set by Business Committee for considering general individual member motions for debate.

9. Business Managers will wish to consider whether these criteria are appropriate, or whether different ones should be set. Business Managers may wish to consider using only one criterion and/or setting different thresholds.

Introducing a Bill

10. Should Business Committee agree the proposed changes to Standing Orders 25.26 – 25.34, Business Managers will need to consider whether a Member who was responsible for initiating a proposal under Standing Order 25.27 which subsequently became an Order in Council under section 109 of the Act should have the right to introduce a Bill relating to that Order.

11. As currently drafted, the revised Standing Order 26.86 would allow a Member to introduce such a Bill within a period of nine months of the Order being made. Should Business Managers decide that no such right should exist, SO 26.86 will need to be deleted.

12. Unlike Member proposed LCOs during the Third Assembly, the Order in this case will in fact be taken forward by the Welsh Government. It is possible that the final Order will be very different to the one originally intended by the individual Member. Subjects could have been added to or removed from the Order, the meaning of ‘related to’ could be difficult to define. On the other hand, removing the provision may have the effect of being a disincentive to an individual Member initiating an Order.

13. In addition, section 109 Orders will by their nature be different to Legislative Competence Orders, which were drafted with a view to introducing a specific Measure and could be quite narrow or specific in scope, in particular Member proposed LCOs.

Consequential change

14. Should Business Managers decide that the revised Standing Order 26.86 should stand as currently drafted, SO 24.14 – 24.17 will need to be amended to include Members who introduce a Bill under SO 26.86 within the definition of a ‘Member in charge of legislation’.

Tabling a general motion

15. The proposed changes to Standing Orders regarding section 109 Orders do not affect a Member’s general right to table a motion calling for the introduction of a section 109 Order. As with any individual Member no named day motion, it would be a matter for Business Committee to decide whether time be made available for such a motion to be debated in Plenary.

Decision

16. Business Managers are invited to:

- (i) consider and agree in principle any proposed changes to Standing Orders 25.26 to 25.34;
- (ii) decide which criteria should apply under SO 25.29 before Business Committee has to refer the motion to a committee (paragraphs 8 & 9);
- (iii) consider whether to retain the provision in Standing Order 26.86 for the introduction of a Bill (paragraphs 10 - 13);
- (iv) and the consequential changes in light of this (Standing Orders 24.14 - 24.17).