



Business Committee Response to the Constitutional and Legislative Affairs Committee's Inquiry into Powers granted to Welsh Ministers in UK Laws

Background

1. In March 2012, the Constitutional and Legislative Affairs Committee (CLAC) published the report of its 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.
2. Under Standing Order 33.2, any motion to revise Standing Orders must be tabled and proposed by the Business Committee. The Business Committee is pleased to respond to the relevant recommendations in the CLAC report, and to set out our intentions and approach to taking forward the CLAC's proposals.
3. The Business Committee considered this issue at its meetings of 12 and 19 June, and was able to take the Welsh Government's own response to the report into account in its discussions.
4. The Committee wishes to thank the members of the CLAC for conducting this timely inquiry and for producing a report that will be valuable in informing future consideration, both in the Business Committee and elsewhere, of the issues surrounding how the Assembly deals with the various types of UK legislation that affect the Assembly's legislative competence.

The Committee's Response

5. Since we moved to Part 4 of the Government of Wales Act 2006 in May 2011, with full primary legislative powers devolved to the Assembly, it has become ever more important that the Assembly is able to give its consent when the UK Parliament and Ministers legislate in areas within the Assembly's competence. We believe therefore that it is now timely to look again at our procedures in this area.

6. We are pleased to be able to respond positively to all the report's recommendations that call for the Assembly's Standing Orders to be revised. 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.

7. It is the Business Committee's view that a key part of improving the scrutiny process is to establish a procedure that allows the Government to share as much information as possible with the Assembly at an early stage regarding relevant provisions in Bills, while not impacting on the necessary constraints of confidentiality surrounding inter-governmental negotiations. These will be our guiding principles as we consider proposals for change over the coming months.

8. The Committee's detailed response to each relevant recommendation is as follows.

Recommendation 1 – We recommend that the Welsh Government should ask the Assembly to consider a “declaratory” resolution setting out the Assembly's understanding of the Sewel convention as it applies to the Assembly.

Response: Note

9. The Business Committee notes both the recommendation and the Government's response that it 'would be happy to lay a memorandum before the Assembly setting out our understanding of the convention as it applies/will apply in Wales'.

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.

Response: Accept

10. The Business Committee agrees 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 the powers of Welsh Ministers.

11. We agree that our own procedures should be brought in line with those that already operate in Scotland and Northern Ireland.

12. We understand that the Welsh Government will need to negotiate with the UK Government to amend Devolution Guidance Notice 9 (DGN9). The Business Committee will take this into account in considering when any changes to the Standing Orders should be implemented.

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.

Response: Accept in principle

13. The Business Committee agrees with the CLAC's recommendation that referral of Legislative Consent Memoranda should be the norm, and that this principle needs enshrining in Standing Orders.

14. The Committee notes that the Welsh Government's response that it would 'be content with a change to Standing Orders so that Legislative Consent Memorandums are normally referred to an Assembly committee'.

15. We agree that referral of LCMs to a committee should be the norm, and so the Business Committee will work with the Government to

agree appropriate wording for a revised Standing Order that will put this principle 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.

Response: Accept in principle

16. We note that current Standing Order 29.8 prevents a Legislative Consent Motion from being *debated* before a committee has reported, where the Business Committee has referred the Memorandum to a committee. The Government has responded that it would wish to qualify any such limitation by stating that the Motion would not 'normally' be tabled until the committee has reported. The Business Committee will need to give consideration to which wording will provide the most appropriate safeguard to ensure proper and timely scrutiny by the Assembly.

17. We note that the CLAC, in its report, considers that Standing Order 29.6 currently requires the Government to lay the Memorandum and to table the Motion at the same time. We accept that there is a lack of clarity in this Standing Order which needs rectifying so that it is clear that this is not the case.

18. Business Committee also gave consideration to the proposal made by the Government in their own response, 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. We will give this proposal further consideration, alongside the recommendations made by the CLAC.

Recommendation 11: We recommend that the Assembly's Standing Orders should be amended:

- **to require the Welsh Government to seek the consent of the Assembly to any subordinate legislation made by UK Ministers alone that has an impact on the Assembly's legislative competence; and**
- **so that the procedures for considering subordinate legislation are extended along the lines of the temporary**

procedure recently agreed by the Business Committee for considering Public Bodies Act Orders.

Response: Accept in principle

20. The Business Committee agrees that the Assembly should be required to give consent to subordinate legislation made by the UK Ministers that has an impact on the Assembly's legislative competence. We will look at how the temporary procedure agreed for consideration of Public Bodies Act Orders might be extended to cover subordinate legislation made by UK Ministers alone which falls within or affects the Assembly's competence.

21. In doing so, we believe that it would be useful to review the temporary process as it has worked so far, and we invite the CLAC for their view with respect to this.

22. We note the Government's response that any such process would require the agreement of the UK Government, and need to be flexible enough to take account of the different subordinate legislation procedures and timelines in Parliament.