

## **ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE**

**Date:** Wednesday 5 February 2003  
**Time:** 9.15 am to 12.15 pm  
**Venue:** Committee Room 2, National Assembly Building

Draft **08/01/03**

## **PLANNING DECISION COMMITTEE**

### **AMENDMENT TO STANDING ORDER 35**

#### **Purpose**

1. To agree recommendations to Business Committee for changes to Standing Orders aimed at speeding up Planning Decision Committee procedures and generally making the decision-making process more efficient.

#### **Summary/Recommendations**

2. To amend Standing Orders to:
  - a. remove the need for a Plenary Motion before each individual PDC is established (subject to there being no objection which triggers the need for a vote in Plenary);
  - b. allow for the substitution of PDC Members prior to the dispatch of papers);
  - c. remove the requirement that the Minister should automatically chair any PDC of which he/she is a member;
  - d. extend the remit of PDC to include consideration of Transport and Work Act (TWA) cases where the order has to be made by a UK Minister with the agreement of the Assembly ; and
  - e. limit the number of small cases that go to PDC by giving the Assembly Minister the power to decide whether certain types of minor cases, linked to other cases

which would not otherwise be dealt with by PDCs, should be handled in other ways.

1. If the Committee accepts the recommendations for change to Standing Orders, the proposals will be put to the Business Committee in accordance with SO34.

### **Background and Consideration**

2. EPT considered a paper on the Review of PDC in January 2001. The main conclusions agreed were:
  - o subject to changes being made to Standing Orders, a target is adopted for the time taken to make planning decisions. This should be that 80% of all called-in planning applications and recovered appeals are determined in 12 weeks; and
  - o amendments should be made to Standing Orders to speed up the procedure for establishing PDCs and make it more flexible.

The delay in bringing these proposals forward has been because of the volume of other work.

1. The proposals set out in this paper are put forward in the context of the National Assembly's declared intention that the more complex and important planning and related decisions are best determined by a Planning Decision Committee. The proposals consist of new procedures to speed up the system and to make it more flexible, and redefining the types of cases that must be referred to a PDC in order that it deals with all the larger planning cases and TWA Orders.
2. Procedures. Currently it can take 4-5 weeks to establish a PDC. Against a target of 12 weeks to determine a case, this is too long. The proposals set out in the revised Standing Orders removes the current need to place a motion before Plenary. Instead election to the PDC of the list of 4 proposed members , who will have been selected as at present, will be by negative procedure, i.e. will take effect unless 5 AMs object and require a vote in plenary .
3. The proposals also allow for a member to be substituted providing the Committee Clerk receives the request not less than 72 hours before the time fixed for a Committee to meet. In essence this means that no substitutions are made after papers relating to a case have been circulated. This change is meant to ensure that a meeting does not have to be cancelled because the Committee is not quorate due to the unavailability of a member, provided the substitute has had a proper opportunity to consider the relevant papers before the meeting.
4. There is no replication in the draft revised Standing order of the presumption that the

Minister will normally chair a Committee if present. In practice, I do not sit on Committees that consider a planning application that I have previously called-in. The Minister's position should be no different from that of any other member of the Committee.

5. Membership of the Panel from which members of PDCs may be drawn is to be widened slightly, by including former members of the EPT Committee (who have undergone the necessary training) but subject to a cut-off of 12 months after they have ceased to be members of the Committee. This will improve continuity and assist the selection of PDC members, particularly after major changes in the membership of the EPT Committee.
6. The proposals also make provision for how decisions on the election of the chair are decided; and how decisions are to be handled when a Committee cannot determine an application for whatever reason, and when a Planning Decision Committee cannot be established.
7. The proposals provide more flexibility in those situations where, for unforeseen reasons, it proves impossible for a PDC to complete its deliberations as planned, for example because it requires further information.
8. Types of cases to be handled by a PDC. As currently drafted, Standing Orders require that all planning applications called in by the National Assembly under Section 77 of the Town and Country Planning Act 1990; appeals under Section 78 of the Act that have been recovered by the Assembly; and applications for Orders under sections 1 and 3 of the Transport and Works Act 1992, are passed for decision to a PDC. These tend to be the more significant cases that fall to the Assembly to determine. From time to time however, planning applications are called-in, not because of their size or importance, but because they are linked to other consents e.g. listed buildings consent. Because of the wording of Standing Orders all these cases have to go to a PDC. Examples of such cases are antennae on listed buildings, new doorways and windows. Such cases are a waste of PDC time and clearly not what was intended when the Assembly introduced the PDC procedure. We should take the opportunity to amend Standing Orders to leave the decision on whether to pass linked cases to a PDC to the Minister.
9. The Assembly decided that applications to the Assembly for Orders under the Transport and Works Act should be considered by a PDC. These are often complex cases and, as in the case of major planning applications and appeals, PDCs have demonstrated that they are able to bring a wider democratic input into the consideration of such cases in an effective way. However if an application for an Order is made to a UK Minister, and the development impacts on Wales, the Minister concerned is required to have the agreement of the National Assembly. Such confirmations are currently handled under the provisions of Standing Order 24 (Confirmation of Orders in Council). This requires a motion put before Plenary. I suggest that this is not an appropriate way to handle these cases and that instead, such Orders should be considered by a PDC in the same way that applications made for an Order to the Assembly itself are handled. This will enable

such proposals to be given full detailed scrutiny on behalf of the Assembly. The proposed changes to Standing Orders reflect this.

10. The proposals outlined above have been incorporated in the revised draft Standing Orders annexed to this Paper.

**Sue Essex**

**Assembly Minister for Environment**

Contact Points

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## **STANDING ORDER 35 – Planning Decision Committees**

35.1 There are to be:

- a) a Panel of members of the Assembly qualified for election to Planning Decision Committees, to be known as the Planning Decision Panel ("the Panel");
- b) committees to be known as Planning Decision Committees each of which is to consist of four members of the Panel, elected in accordance with the provisions of either paragraph 35.14 or paragraph 35.15, as the case may be;

35.2 In this Standing Order:

- a) "the Clerk" means the member of the staff of the Assembly responsible for providing administrative support to Planning Decision Committees or any person authorised to deputise for that person;
- b) unless the context requires otherwise, "Committee" means "Planning Decision Committee"; and

c) "the Minister" means the Assembly Minister having accountability for the field to which a case relates.

## **Functions to be discharged by Planning Decision Committees**

35.3 There are delegated to Planning Decision Committees, in accordance with the provisions of this Standing Order, and subject to the provisions of paragraphs 35.7, 35.13, 35.15 and 35.25, the Assembly's functions of determining cases falling within any of the following descriptions:

(i) appeals to the Assembly under section 78 of the Town and Country Planning Act 1990 (in those cases where the Assembly has recovered jurisdiction to determine the appeal from the appointed Inspector);

(ii) applications for planning permission which have been called in by the Assembly for decision under section 77 of the Town and Country Planning Act 1990;

(iii) determinations under section 13(1) of the Transport and Works Act 1992 ("the 1992 Act") in relation to applications to the Assembly for Orders under sections 1 or 3 of that Act (other than those cases where the application is required to be considered by a committee elected under Standing Order 25.7);

iv) requests by a Minister of the Crown for the agreement of the Assembly to the making by such Minister of Orders under sections 1 or 3 of the 1992 Act if the order may only be made with the agreement of the Assembly;

v) appeals or applications, of whatever kind, which do not themselves fall under (i) or (ii) but which are associated with cases which do ("associated appeals or applications").

35.4 The Assembly may by motion delegate to a Committee a case or cases of a similar kind which fall within any other description and the provisions of this Standing Order are thereupon to apply to that case or cases as if they fell within paragraph 35.3.

35.5 (a) The delegation to a Committee of the function of determining a case of a description falling within paragraph 35.3 takes effect, in relation to that case when:

(i) the Minister has referred that case to the Panel in accordance with paragraph 35.7; and

(ii) a Committee for the purpose of determining that case is elected in accordance

with paragraphs 35.14 or 35.15, as the case may be;

(b) Upon the reference of a case to the Panel under sub-paragraph (a)(i), the function of determining that case ceases, subject to paragraphs 35.13, 35.15 and 35.25, to be exercisable by anyone other than the Committee elected for that purpose but the delegation of any other function relating to the case continues to be in force in accordance with any general delegation of the functions of the Assembly relating to that description of case under section 62 of the Act;

(c) Upon the reference to the Panel of a request by a Minister of the Crown for the agreement of the Assembly to the making by that Ministers of an Order under sections 1 or 3 of the 1992 Act, the provisions of Standing Order 24 cease to apply to that Order;

(d) If the Minister decides, in accordance with paragraph 35.7, not to refer a case to the Panel, all functions relating to that case continue to be exercisable in accordance with any general delegation of the functions of the Assembly relating to that description of case under section 62 of the Act and to be subject to the right of the Assembly, in the exercise of its general powers, to make such provision as it may by resolution decide for delegating its functions relating to that individual case in some other manner.

### **Reference of a case to the Panel**

35.6 Subject to paragraph 35.7, the Minister must, as soon as is reasonably practicable after receiving the report of the Inspector or other person appointed to report on the case, and, if the case falls under paragraph 35.3 (iv) the request of the Minister of the Crown, refer the matter to the Panel by sending to the Clerk a brief statement identifying the location and nature of the development (or other subject matter) to which the case relates.

35.7 The Minister is not required to refer a case to the Panel:

a) if it is an associated appeal or application (as defined by paragraph 35.3 (v)) and the Minister is satisfied, having regard to the subject-matter of the case, that it is not appropriate for determination by a Committee; or

b) if it is an appeal or application falling under paragraph 35.3 (i) or (ii), and there is, in respect of it, an associated appeal or application, and the Minister is satisfied, having regard to the subject-matter of the case, that neither the appeal or application in question nor the associated appeal or application are appropriate for determination by a Committee; or

c) if, after consulting the Clerk, the Assembly Minister is satisfied that it would not be reasonably practicable to elect a Committee to determine the case or that it would not be reasonably practicable for a Committee so elected to complete its deliberations without undue delay.



## **Membership of the Panel**

35.8 The members of the Panel are to be all those Members of the Assembly who:

- i) are, or have at any time within the previous 12 months, been, members of the Subject Committee having responsibility for planning matters; and
- ii) have completed a course of relevant training approved by the Chair of the Subject Committee having responsibility for planning matters; and
- iii) have agreed to be bound by the current Code of Conduct for members of Planning Decision Committees issued under the authority of the Presiding Officer.

## **Membership of a Planning Decision Committee**

35.9 A member of the Panel is disqualified from being a member of a particular Committee if:

- a) the site of the development or other subject matter to which the appeal or application relates falls wholly or partly within the constituency or electoral region of that member; or
- b) the member has an interest in the subject matter of the appeal or application which, if that member were to take part in the proceedings of that Committee, the member would be obliged to declare under Standing Order 4.5 or which would prohibit the member from voting on that matter under Standing Order 4.7; or
- c) there are other circumstances (as set out in the Code of Conduct referred to in paragraph 35.8 (iii) above) which could reasonably be seen to call into question the ability of the member to consider the appeal or application objectively and impartially.

35.10 Upon a case being referred to the Panel in accordance with paragraph 35.6 the Clerk must, by applying the procedure set out in Annex A to this Standing Order, draw up a provisional list of members of the proposed Committee to which that case is to be allocated. The Clerk may draw up a single list for the purpose of more than one case referred to the Panel.

35.11 The Clerk must notify each member of the Panel whose name appears on a provisional list of that fact and provide that member with a copy of the statement provided by the Assembly Minister under paragraph 35.6.

35.12 Each member so notified must notify the Clerk within 2 working days of receiving the notification under paragraph 35.11 if that member is disqualified under paragraph 35.9 from

serving on the proposed Committee or is otherwise unable to serve, in which case the Clerk must select and notify another member of the Panel by applying the procedure set out in Annex A and the provisions of this paragraph are then to apply to that member as if that member had been notified under paragraph 35.11.

35.13 The Clerk must compile a final list of 4 members selected and notified in accordance with paragraphs 35.10 to 35.12 above and who do not appear to the Clerk to be disqualified or otherwise unable to serve on the proposed Committee and must then draw up and circulate to all members of the Assembly a notice in accordance with Annex B to this Standing Order. If for any reason the Clerk is unable to compile a final list of 4 members, the Clerk must forthwith notify the Business Minister of that fact and the reasons and the Business Minister must, as soon as is reasonably practicable, table a motion for consideration by the Assembly in plenary session, proposing an alternative means by which the Assembly is to discharge its functions in relation to the matters referred to the Panel in accordance with paragraph 35.6.

35.14 Unless, within 5 working days of notice having been given under paragraph 35.13, a notice on behalf of at least 5 members of the Assembly objecting to the membership of the proposed Committee is tabled, those members named on the notice circulated under paragraph 35.13 are to stand elected to the Committee in question.

35.15 If a notice of objection under paragraph 35.14 is tabled the Business Minister must forthwith table a motion for election by the Assembly in plenary of the members named in the notice circulated under paragraph 35.13 as members of the Committee in question. In the event of such a motion being defeated the functions of the Assembly which would have been discharged by the Committee are delegated to the First Minister.

35.16 There may be substituted for a member elected to a Committee another member of the Panel who is a member of the same political group and who is not disqualified under this Standing Order from being a member of that Committee, provided notice of the proposed substitution is given to the Clerk by the Business Manager of the political group to which the member who was elected to the Committee belongs not less than 72 hours before the time appointed for the Committee to first meet. If such notification is given the member substituted is to be treated as if that member had been elected to the Committee under paragraph 35.14.

### **Consideration by a Planning Decision Committee**

35.17 Each Committee is to be identified by a reference comprising the year in which it was elected and a serial number.

35.18 The Clerk must, after consulting the members of the Committee, fix a place and time (which need not be during a week when the Assembly holds a plenary session) for the Committee to first meet. Thereafter the Committee may meet at such places and times as it determines.

35.19 The Committee must elect one of its members as Chair. If, because of an equality of votes, the members of the Committee are unable to do so, a Chair is to be selected by lot.

35.20 The Chair may vote and if there is an equality of votes may in addition exercise a casting vote at his or her discretion.

35.21 Where there has been delegated to the Committee the determination of more than one case, the absence of a member during consideration of a case is not to prevent that member from participating in consideration by the Committee of another case but only those members who have been present throughout the consideration of a case may participate in any decision relating to that case.

35.22 A Committee must meet in private and its members are to be under an obligation to observe the confidentiality of any discussion by the Committee and of any documents (other than those already made public) which have been considered by the Committee, with the exception of any decision letter adopted and published by the Committee together with any documents to which it refers.

35.23 Members of the staff of the Assembly whose assistance is required for the purpose of advising the Committee, preparing any decision letter giving the Committee's reasons for its decisions and otherwise recording its decisions, may attend its meetings, and the Committee may delegate to members of the staff of the Assembly any action necessary to give effect to its decisions.

35.24 The functions of a Committee in relation to a particular case cease when there have been determinations in respect of all matters delegated to it in respect of that case in accordance with this Standing Order. Where a decision of the Committee is provisional and is subject to confirmation upon some further step being taken, it is not necessary for the members of the Committee to meet for the purpose of such confirmation and the Committee may agree that such confirmation may be given by its members in such manner as it may determine.

35.25 If it appears to the Clerk that there are circumstances whose effect may be that it will not be reasonably practicable for the Committee to complete its deliberations in relation to a case or cases, or to do so without undue delay, the Clerk must forthwith notify the Business Minister, if satisfied that the effect of those circumstances will, in fact, be that those

deliberations will not be completed, or will not be completed without undue delay, must, as soon as is reasonably practicable, table a motion for consideration by the Assembly in plenary session, proposing an alternative means by which the Assembly is to discharge its functions in relation to the matters referred to the Panel in accordance with paragraph 35.6. Upon the passing of a motion proposed pursuant to this paragraph the functions of the Committee in question cease.

## **Transport and Works Act 1992 Orders**

35.26 Where a Committee has determined that an Order should be made by the Assembly under sections 1 or 3 of the 1992 Act, without modification, it may be made by being signed by the Presiding Officer or (in the absence of the Presiding Officer by the Deputy, the First Minister or a member of the Assembly Cabinet).

35.27 Where the Committee has determined, having complied, if necessary, with section 13(4) of the 1992 Act, that an Order should be made by the Assembly with modifications, the Assembly Minister must prepare a draft of the Order incorporating those modifications and the Order as modified may be made by being signed by the Presiding Officer or (in the absence of the Presiding Officer by the Deputy, the First Minister or a member of the Assembly Cabinet).

35.28 Where the Committee has determined whether it agrees that an Order which a Minister of the Crown wishes to make under sections 1 or 3 of the 1992 Act should be made, the Minister must transmit the decision of the Committee to the Minister of the Crown.

## **Revisions to Annex A**

35.29 The provisions of Annex A to this Standing Order are only to continue in force (unless previously revoked) until the next ordinary election for Assembly members is held. As soon as possible after the holding of such election the Business Minister must submit to the Business Committee a proposal for a procedure for compiling provisional lists of members of Committees to remain in force until the next ordinary election. The provisions of Standing Order 34 are to apply to the proposal, which, if adopted in accordance with the provisions of that Standing Order, are henceforward to constitute Annex A for the purposes of this Standing Order.

## **Application of Standing Order 8**

35.30 Only the following provisions of Standing Order 8 are to apply to a Planning Decision Committee:

- i) paragraphs 8.7 to 8.13;
- ii) paragraphs 8.18 and 8.19;

iii) paragraphs 8.23 and 8.24.

## **Annex A**

### **Procedure for compiling provisional lists of members of Planning Decision Committees**

1. The Clerk must maintain separate lists (in alphabetical order where a list includes more than one person) of members of the Panel in accordance with the political groups to which they belong, as follows:

List A The Labour Party

List B Plaid Cymru

List C The Conservative Party

List D The Liberal Democrat Party

2. The Clerk must compile a provisional list comprising two members from List A, one from List B and a member from either List C or List D.

3. In selecting the member or members from Lists A and B the Clerk must select names in rotation except that where a member would have served on a Committee but was disqualified from doing so, or was otherwise unable to serve, that member is to be treated as the member on that list next due for selection.

4. In selecting the member from either List C or List D the Clerk must, in relation to successive Committees select members from each list alternately but if all members on the appropriate list are disqualified the Clerk must proceed to select a member from the other list.

5. If all members from Lists C and D are disqualified or otherwise unable to serve the Clerk must select an additional name from List B.

## **Annex B**

### Notice under Standing Order 35.13

Take notice that the members of the Planning Decision Panel listed in Schedule 1 to this Notice have been selected in accordance with the provisions of Standing Order 35 to serve on a Planning Decision Committee (reference 200X / Y) to which the determination of the matters referred to in Schedule 2 is to be delegated.

Unless, within 5 working days of the giving of this Notice, a notice on behalf of at least 5 members of the Assembly objecting to the membership of the proposed Planning Decision Committee is tabled, those members named in Schedule 1 will stand elected to the Planning Decision Committee in question.

Schedule 1

AB, CD, EF and GH

Schedule 2

*(brief description of the cases to be determined)*