

On 7 December, Business Committee considered proposals relating to Standing Order 26 ([BC\(3\)33-10 Paper 4 – Annex A](#)). These proposals included:

- (a) broadening the scope of Standing Order 26 to provide a systemic mechanism for the Assembly to be notified of any UK Bill that alters the legislative competence of the Assembly or the executive functions of the Welsh Ministers;
- (b) providing a mechanism by which Business Committee, where appropriate, could refer any legislative consent memorandum relating to an alteration to the legislative competence of the Assembly could be referred for consideration by a relevant committee;
- (c) providing a requirement whereby no legislative consent motion relating to a legislative consent memorandum referred for committee consideration could be debated in plenary until that committee had either reported or the deadline by which they were due to report had passed.

Business Managers agreed in principle the proposals outlined in points (b) and (c) above but requested that further discussions take place between Assembly and Government Officials and a revised proposal brought forward. The revised proposal:

- amends current Standing Order 26 (which deals exclusively with the Assembly’s legislative competence); and
- inserts a new Standing Order 26A to make provision for the Assembly to be notified of any significant modifications to the executive functions of the Welsh Ministers (but does not make provision for the Assembly to give its consent to such modifications).

6.1: Consent in relation to the UK Parliament Bills: Standing Order 26

See paper BC(3)03-11 Paper 5: Paragraph 6

Standing Order 26 – Consent in relation to UK Parliament Bills

UK Parliament Bills Making Provision Requiring the Assembly’s

It is proposed that the scope of Standing Order 26 is broadened

Consent	<p>beyond its current scope so that it provides a systematic mechanism for the Assembly to be notified of any UK Bill that alters the legislative competence of the Assembly. This would include any changes to Schedule 5 (conferring Measure making powers on the Assembly, referred to as “framework powers”) - currently it only applies where a Bill would have a negative impact on the Assembly’s legislative competence. This is proposed to address the points made in responses to the to review of Standing Orders, as outlined below:</p> <ul style="list-style-type: none">• <i>Constitutional Affairs Committee</i> stated their view that there is a scrutiny gap which relates to Westminster Bills that grant powers to the Assembly. They have requested that Standing Orders are amended to require Welsh Ministers to inform Committees when Westminster Bills have implications for the powers of Welsh Ministers or the Assembly (SOR18);• the <i>WLGA</i> note that there is limited scope for scrutiny of framework powers (i.e. Measure making powers) included in Westminster legislation and call on the Business Committee to consider providing mechanisms for the Assembly to better scrutinise Bills which either give the Assembly legislative powers or give executive powers to Welsh Ministers (SOR 12);• <i>Public Affairs Cymru</i> state that “there should be a mechanism for the National Assembly for Wales to scrutinise and contribute to the process of framework powers being given to Wales via Acts of Parliament. It is inconsistent that, despite the sometime lengthy scrutiny of LCOs, framework provisions which provide the same legislative transfers can avoid any specific scrutiny” (SOR 7); and• the <i>WCVA</i> note that “there should be more opportunity for the National Assembly for Wales to scrutinise framework powers being given to Wales via UK Bills” (SOR 10).
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<p>26.1 In Standing Order 26, “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>Current SO 26 requires the Welsh Government to lay a legislative consent memorandum when a UK Bill:</p> <ul style="list-style-type: none"> • seeks to legislate in an area where legislative competence is already devolved to the NAW; or • has a “negative impact” on the legislative competence of the NAW. <p>In response to matters raised in the public consultation, it is proposed that this Standing Order is amended and broadened to require the Welsh Government to lay a memorandum when a provision in a UK Bill:</p> <ul style="list-style-type: none"> (i) seeks to legislate in an area where legislative competence is already devolved to the NAW [as per the status quo] (ii) modifies the legislative competence of the Assembly [amending the current wording whereby a memorandum is only laid if provision within a Bill is deemed to have “a negative impact” on the legislative competence of the Assembly] <p>This change is proposed to broaden the Assembly’s ability to signify its consent to UK Bills that makes provision applying to Wales for <i>any purpose</i> within the legislative competence of the Assembly. This would now cover any changes to Schedule 5 of the Government of Wales Act i.e. any proposals to grant framework powers to the Assembly via UK Bills.</p>
<p>Legislative Consent Memorandum</p>	<p>No amendment to sub-heading necessary</p>

<p>26.2 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 of the Crown in support, <p>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> 	No amendment necessary
<p>26.3 A legislative consent memorandum 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 	No amendment necessary

<p>by means of the Bill.</p>	
<p><u>26.3A The Business Committee may refer any legislative consent memorandum to a committee or committees for consideration.</u></p>	<p>Insert new Standing Order</p> <p>In accordance with the Constitutional Affairs Committee response to the review (SOR18) and responses to the public consultation as referred to above, it is proposed that Standing Orders are amended to include a mechanism by which legislative consent memoranda which relate to provisions requiring the Assembly’s consent may be referred for committee scrutiny by the Business Committee. The Business Committee would be able to refer memoranda relating to relevant provisions as defined under 26.1 (i) and (ii) for committee scrutiny but would have the discretion to decide:</p> <ul style="list-style-type: none"> • whether consideration by a committee or committees is necessary; • to whom a legislative consent memorandum would be referred if necessary; and • the timescale for committee consideration. (see SO 26.3B below) <p>The purpose of this proposal is to allow opportunity for committee consideration, where deemed appropriate by the Business Committee, to inform any subsequent debate on the related legislative consent motion.</p>
<p><u>26.3B If a legislative consent memorandum is referred to a committee or committees for consideration in accordance with Standing Order 26.3A, the Business Committee must establish and publish a timetable for the committee or</u></p>	<p>Insert new Standing Order</p> <p>If SO 26.3A is agreed, it is proposed that the Business Committee should be required to set a deadline by which a committee must</p>

<p><u>committees to consider and report on it.</u></p>	<p>report if it chooses to refer a legislative consent memorandum for consideration. Such a deadline could consider factors such as the Westminster timetable for the passage of the Bill.</p> <p>If the Business Committee refers a memorandum for committee consideration, it is proposed that no associated legislative consent motion could be debated until after the deadline for the committee to report. This would be done through inserting new SO 26.6 below.</p>
<p>Legislative Consent Motion</p>	<p>No amendment to sub-heading necessary</p>
<p>26.4 When a legislative consent memorandum is laid the government must at the same time table a motion (“a legislative consent motion”), which must seek the Assembly’s agreement to the inclusion of a relevant provision in a relevant Bill.</p>	<p>Amend this Standing Order</p> <p>If the Business Committee agrees to new SO 26.3A (the option to refer legislative consent memoranda to committees) this Standing Order would require amendment to remove the requirement on the Government to table a legislative consent motion at the same time they lay the legislative consent memorandum. This would allow the Government to decide when to table the motion, taking account of any reporting deadlines the Business Committee may set if it chooses to refer the memorandum for committee consideration.</p>
<p>26.5 The Assembly must consider a legislative consent motion which has been tabled.</p>	<p>No amendment necessary</p>
<p><u>26.6 If a legislative consent memorandum is referred by the Business Committee for consideration by a committee or committees in accordance with Standing Order 26.3A, the related legislative consent motion must not be debated until either:</u></p> <p>(i) <u>the committee has reported in accordance with</u></p>	<p>Insert new Standing Order</p> <p>As proposed above (SO26.3A and 26.3B), this new Standing Order introduces a requirement that no legislative consent motion can be debated until either the deadline for a committee to report on the relevant legislative consent memorandum has been reached or, if the</p>

<p>(ii) <u>Standing Order 26.3A; or</u> <u>the deadline by which a committee is required to report in accordance with Standing Order 26.3B has been reached.</u></p>	<p>relevant committee has reported before the deadline, once that committee has reported.</p>
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<p>6.2: Notification in relation to UK Parliament Bills: Standing Order 26A</p> <p>See paper BC(3)03-11 Paper 5: Paragraph 7</p>	
<p><u>Standing Order 26A - Notification in relation to UK Parliament Bills</u></p>	<p>Insert new Standing Order</p>
<p><u>UK Parliament Bills Making Provision Requiring Notification to the Assembly</u></p>	<p>Insert new sub-heading</p> <p>It is proposed that a new Standing Order is introduced to build on the provision of Standing Order 26. This new Standing Order would provide a systematic mechanism for the Assembly to be <u>notified</u> of any UK Bill that <u>significantly</u> modifies the executive functions of Welsh Ministers.</p> <p>This Standing Order is proposed in order to address the points made in responses to the review of Standing Orders, as outlined on pages 1-2 of this document. It also relates directly to the Wales Governance Centre’s written evidence which expresses the view that the Assembly is not able to be fully effective in holding the government to account without scrutiny of executive powers sought in UK Bills (SOR 5).</p>

<p><u>26A.1</u> <u>In Standing Order 26A, “relevant Bill” means a Bill under consideration in the UK Parliament which makes provision (“relevant provision”) in relation to Wales which significantly modifies the executive functions of the Welsh Ministers.</u></p>	<p>Insert new Standing Order</p> <p>This Standing Order mirrors the wording used in current Standing Order 26.1 but refers to changes to the executive functions of Ministers only (as opposed to the legislative competence of the Assembly). Under this proposal the Government would only be required to lay a memorandum providing notification of a modification to the Welsh Ministers’ executive functions to the Assembly under circumstances where such modifications are deemed to be significant.</p> <p>In contrast to Standing Order 26, under this proposal, a memorandum relating to the Welsh Ministers’ executive functions would:</p> <ul style="list-style-type: none"> • be laid for information only, not as a basis for a decision, on a motion, by the Assembly; • not be subject to committee consideration; and • only be required where modifications are deemed to be significant by the Welsh Ministers
<p>Executive Functions Memorandum</p>	<p>Insert new sub-heading</p>
<p><u>26A.2</u> <u>A member of the government must lay a memorandum (“an executive functions memorandum”) in relation to:</u></p> <p style="padding-left: 40px;"><u>(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;</u></p> <p style="padding-left: 40px;"><u>(ii) any UK Private Member’s Bill that was a relevant Bill on introduction and remains a relevant Bill</u></p>	<p>Insert new Standing Order</p> <p>This Standing Order mirrors wording used in current SO 26.2 and outlines when the government would be required to lay an executive functions memorandum.</p>

<p><u>after the first amending stage in the House in which it was introduced, normally no later than 2 weeks after it completes that stage:</u></p> <p><u>(iii) any Bill introduced into the UK Parliament that, by virtue of amendments:</u></p> <p style="padding-left: 40px;"><u>(a) agreed to; or</u></p> <p style="padding-left: 40px;"><u>(b) tabled by a Minister of the Crown or published with the name of a Minister of the Crown in support,</u></p> <p><u>in either House, makes (or would make) relevant provision, normally no later than two weeks after the amendments are tabled or agreed to.</u></p>	
<p><u>26A.3 An executive functions memorandum must:</u></p> <p>(i) <u>summarise the policy objectives of the Bill;</u></p> <p>(ii) <u>specify the extent to which the Bill makes (or would make) relevant provision; and</u></p> <p>(iii) <u>explain whether it is considered appropriate for that provision to be made and for it to be made by means of the Bill.</u></p>	<p>Insert new Standing Order</p> <p>This Standing Order mirrors wording used in current SO 26.3 and outlines what information would be required within a executive functions memorandum.</p>