

CSO(2)-07-06 (p2) Annex

Standing Order 2 - First Minister and Assembly Cabinet	(Change title if no provisions are made regarding the Cabinet)
Election of and Responsibilities of First Minister	(Should be "Nomination" and probably no need for "responsibilities")
2.1 As soon as may be after the election of the Presiding Officer and the Deputy under Standing Order 1.1, or after the office becomes vacant, the Assembly shall elect a First Minister.	This will need to be amended to reflect the fact that the Assembly will "nominate" an FM not "elect" and the timescale for doing this (i.e. within 28 days from "the event"), Clauses 47 (1) & (3).
2.2 The Presiding Officer shall invite nominations. If only one nomination is made, the Presiding Officer shall declare the Member nominated to be elected as First Minister. If more than one nomination is made, the Presiding Officer shall by roll call in alphabetical order of the membership invite each Member present to vote for a candidate (except that neither the Presiding Officer nor the Deputy may vote). If two Members have been nominated, the Presiding Officer shall declare elected the candidate who has received the greater number of votes cast.	Will need amendment as above to reflect that the Assembly "nominates" rather than "elects" FM. Q – Should the vote be by roll call as in the current SO? Q – Should the PO and DPO be excluded from voting as at present? N.B Members who have not yet taken the oath or made an affirmation will not be able to take part in the nomination of FM. [Clause 23(4)]
2.3 If more than two Members have been nominated and no Member receives more than half of the votes cast by roll call, the candidate who has received the smallest number of votes shall be excluded and further votes by roll call taken until one candidate obtains more than half of the votes cast; and the Presiding Officer shall declare that Member elected. If there is an equality of votes between the two remaining candidates (or the only two candidates) a further vote by roll call shall take place.	This will need amendment as above to reflect that the Assembly "nominates" rather than "elects" FM. There is no provision in the event of a tie, but this has not been an issue so far, so SOs are probably best left silent on this.
Assembly Cabinet	

<p>2.4 As soon as possible after being elected the First Minister shall appoint Ministers and allocate responsibilities and accountability to them. The First Minister shall notify the Assembly of the membership of the Assembly Cabinet and of each member's responsibilities and accountability, and shall also notify the Assembly of any changes as soon as possible after they have been made.</p>	<p>Q – Is this necessary in new SOs?</p>
<p>2.5 There shall be no more than nine members of the Assembly Cabinet, including the First Minister; and the maximum number of Ministers who are not members of Subject Committees under section 57(4) of the Act shall be two. The First Minister shall designate one of the members of the Assembly Cabinet to have particular responsibility for the proper management of the Assembly's business, and one such member to have particular responsibility for its finances.</p>	<p>No longer necessary. Determined by clause 51 of the Bill.</p>
<p>2.6. The Assembly Cabinet may meet in private or in public as it determines and shall determine its own procedure. Standing Order 8 shall not apply to the Assembly Cabinet.</p>	<p>No longer necessary.</p>
<p>2.7 The First Minister shall prepare, and submit to the Assembly for its approval, guidance for Ministers on the proper discharge of their responsibilities and accountability. The First Minister shall issue a copy of the guidance to each Minister following his or her appointment, and shall seek to ensure that each Minister complies with it.</p>	<p>Q – Is this a matter for SOs? What involvement should the Assembly have in contributing to the Ministerial Code? There is no mention of the Ministerial Code in either the Scottish or Commons SOs. Decisions made on SO 16 relating to Standards Committee will also impact on this.</p>
<p>2.8 In the exercise of his or her responsibilities a Minister shall not make any decision or determination on any matter where a particular decision or determination might result in a direct financial advantage to the Minister, or to the Minister's knowledge, the Minister's partner or any dependent child of the Minister (as respectively defined in paragraphs III(i) and III(ii) in the General introduction to the Annex to Standing Order 4) greater than that which might accrue to persons affected by the decision</p>	<p>Q – Is this necessary? This point is also made on the similar provision for the PO and DPO in SO 1.10.</p>

generally; but shall refer the matter to the First Minister. If the First Minister is precluded from acting, he or she shall designate another Minister to perform the function.

Resignation of First Minister

2.9 A First Minister may resign by giving notice in writing to the Presiding Officer. If the Assembly resolves that it has no confidence in its First Minister, he or she shall give such notice immediately.

FM gives notice of his resignation to Her Majesty. The Bill makes provision for Welsh Ministers to resign if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly. Clause 48(5).

While the FM no longer has to give notice to the Presiding Officer SOs may provide for him to notify the Assembly. The Scottish SOs state that if the FM tenders his or her resignation to Her Majesty, the Presiding Officer shall, notify the Parliament (rule 4.8). It does not state that the FM has to notify the PO but this is implicit in the SO. This also applies when any other member of the Scottish Executive resigns.

Q - should the new SO have a similar provision

2.10 Where a First Minister has resigned (or if the office otherwise becomes vacant), other Ministers shall remain in office until the Assembly elects a new First Minister; and the Assembly Cabinet shall elect one of its members to chair its meetings and discharge the First Minister's responsibilities until the Assembly elects a new First Minister.

This is covered in Clauses 46(5) & (7) in the Bill. The PO is to designate a person to exercise the functions of FM if the office is vacant etc. on the recommendation of the Welsh Ministers. Probably not necessary to re-state this in SOs.

Q – Is it necessary to state the provisions in the Bill in this regard?

Other issues for consideration

Appointment of Counsel General

It is anticipated that a separate SO will be needed to cover the appointment of the CG and his/her participation in proceedings.

Appointment of CG

Clause 49 of the Bill covers the appointment of the Counsel General (CG). The CG is appointed by Her Majesty on the recommendation of the FM. The FM can make no recommendation for the appointment (or removal) of the CG without the agreement of the Assembly. It is expected that this would be done through an un-amendable motion. This is the position in Scotland for Scottish Law Officers. (rule 4.3)

Q – Should SOs set out the procedure for agreement of the FM's nomination for the CG?

Participation in proceedings

SOs will need to make provision for participation in Assembly Proceedings in the event that the CG is not an Assembly Member. Clause 34 (1) states the CG may participate in Assembly proceedings to the extent permitted by SOs but may not vote. Clause 34 (2) allows SOs to provide that they apply to the CG who is not an Assembly member in the same way as if the CG were an Assembly member.

Q – The Committee will need to consider whether a CG who is not an Assembly Member can participate fully in Assembly proceedings (other than voting). Do SOs need to state anything other than, "if not an Assembly Member, the CG may participate in Assembly proceedings but may not vote"?