

THE FINANCIAL CONTENT OF EXPLANATORY MEMORANDA FOR ASSEMBLY BILLS

1. In order to support wider work on contributing to National Assembly consultations on Assembly Bills, the WAO's Compliance Section has undertaken a brief review of the financial content of the Explanatory Memoranda that have accompanied Assembly Bills since November 2011.
2. Two main findings arise from the review:
 - a. a general lack of clarity in the presentation of estimates of costs and timescales within Explanatory Memoranda regarding the proposed legislation;
 - b. variations in the completeness of estimates of costs, leading to a lack of an overall view of the cost of the legislation
3. This paper explains these findings and suggests some potential means of addressing them.

Lack of clarity of estimates of costs and timescales within Explanatory Memoranda

4. Standing Order 26.6 requires the Member in charge of a Bill to lay an Explanatory Memorandum to accompany the Bill. Standing Order 26.6 (vi) requires the Explanatory Memorandum to set out:

...best estimates of:

 - (a) *the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;*
 - (b) *the timescales over which such costs would be expected to arise; and*
 - (c) *on whom the costs would fall...*
5. This requirement is entirely appropriate, given that the Assembly does not just make laws but also determines overall how much money the Welsh Government and other relevant bodies can spend on particular purposes. Clearly, the Assembly needs information on the expected costs that arise from its legislation if it is to legislate responsibly and for the overall benefit of the people of Wales.
6. The Explanatory Memoranda are all quite extensive documents containing sections labelled "Costs and Benefits". In most cases, those sections together with supporting annexes run to some 30 pages. Yet the information required by Standing Order 26.6(vi) is usually not readily apparent. Much relevant information is provided, but even for a Bill of limited scope, the reader has to do a fair amount of work to arrive at an overall understanding of the estimates of (a) the costs, (b) the timescales and (c) on whom the costs would fall.

7. Examples of this include:
- a. **The Qualifications Wales Bill Explanatory Memorandum**—this provides a table that, at first reading, could be taken to summarise the costs of the Bill (Table 4 on page 56). However, in order to identify the real cost of the Bill, the totals in Table 1 (on page 52) must be subtracted from the totals in Table 4. The need for this is only evident from a careful reading of para 228, which says, “the highest costs shown relate to staffing costs which, for functional staff, are largely already met from Welsh Government budgets”. Table 4 also does not have a title to make clear what it is setting out, although its position in the text indicates that it is the costs of “option 3”, which is elsewhere indicated as the option pursued by the Bill. And to find the table requires the reader to consider most of the Costs and Benefits section of the Memorandum. The five year period for costs is also not explained, which could lead to an inference that costs will only be incurred for five years, unlikely though that may seem.
 - b. **The Renting Homes (Wales) Bill Explanatory Memorandum**—this identifies costs for 2015-16 to 2019-20 for the Welsh Government, private landlords, community landlords, third sector organisations and legal professionals. It considers these costs in some detail not just in terms of the option represented by the Bill but also in terms of an alternative option, as well giving some cost consideration to the “do nothing option”. Consequently, the cost information covers 27 pages, and unfortunately there is no summary table to encapsulate the estimated cost of the Bill. Again, a five year costing is given without explanation.
 - c. **The Higher Education (Wales) Bill Explanatory Memorandum**—this provides extensive cost analysis for three options. The 36 page “Costs and benefits” section provides 22 tables, and, as a result, table 8, which provides an estimate of the cost of the Bill from 2015-16 to 2019-20, is rather lost in the detail.
8. As indicated by these examples, the cost information provided in Explanatory Memoranda is in practice set out as part of an analysis of options, with such options generally including “do nothing”, “introduce legislation” (ie introduce legislation as per the Bill) and often a mid-way or enhanced variation on this. The complex and inconsistent layout means that the reader needs to exercise considerable care to avoid confusing costs that are attributable to other options with those attributable to the Bill as introduced.
9. Such detailed option analysis is not strictly required by Standing Order 26.6, though it is relevant to Standing Order 26.6(iii), which requires the Explanatory Memoranda to:
- ...set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted...*

10. It therefore appears that, as the detail of the option analysis that meets Standing Order 26.6(iii) provides material that is relevant to requirements of Standing Order 26.6(iv), those who draft Explanatory Memoranda consider that Standing Order 26.6(iv) is adequately met by such option analysis. However, it is arguable that even where such option analysis does contain all the relevant estimates, this is not a satisfactory approach because of the considerable burden it places on the reader, as explained above. It risks creating confusion amongst AMs when considering Bills and hampers effective scrutiny.
11. Given the importance of Assembly Members being informed of the cost of legislation, it is a matter of some concern that identifying the estimates of costs, timescales and those on whom costs fall in respect of individual Assembly Acts and Bills from looking at the Explanatory Memoranda laid before the Assembly is not straightforward. One solution to this problem would be amendment of Standing Order 26.6(iv) so as to provide greater clarity. Such an amendment could specifically require the completion of a table summarising the estimates of (a) the costs of the legislation, (b) the timescales for those costs and (c) on whom the costs would fall. Such a table, in a standard format, should enable all AMs to be clear about the main cost implications of each Bill that they vote on. A potential template is set out in the Annex to this paper.
12. As indicated in the Annex, given the recent passage of the Well-being of Future Generations (Wales) Bill, it might also be appropriate for there to be an additional cell to summarise the environmental and social dis-benefits that cannot be quantified financially. However, this would require an addition to the list of items currently contained in Standing Order 26.6(iv).
13. Though in some cases it might be appropriate to include a summary table for each main policy/Part of a Bill, in any event it would be helpful to have one overall summarising table for each Bill as a whole.

Variations in the completeness of estimates of costs

14. Explanatory Memoranda frequently say that estimates cannot be made for some effects of the legislation, and, as a consequence, no figures are given for those effects. It is certainly the case that it can be difficult to provide estimates when, for example, the level of take-up of a new programme is not known. However, the complete omission of any costing for some effects alongside the provision of detailed figures for other aspects (those that can be relatively easily estimated) can lead to a rather misleading picture of the overall costs of the legislation.
15. For example, the costing set out in the **Explanatory Memorandum for the Local Government (Wales) Bill** of January 2015 does not give a full overview of the likely gross or net costs of the Bill. This is not because of the understandable uncertainty about the future shape of local government in Wales, but because rather than clearly allowing for that uncertainty the Memorandum gives partial and not well-signposted information:

- a. Appendix A on page 104 of the Memorandum has the title “Costing the Options” but appears to be confined solely to the (relatively modest) cost of transition committees;
 - b. Tables 17 and 18 on pages 96 and 97 could be taken to summarise Welsh Government and local government costs, but para 208 on page 95 says “there are a few areas (notably policy intention 4) where it has not been possible to produce an estimate at this stage”;
 - c. The tables give the total additional costs for the Welsh Government and Local Government for the period 2015-16 to 2020-21 as £1.1 million and £1.2 million respectively (i.e. £2.3 million in total) on the basis of one voluntary merger. However, the Bill appears to provide complete primary legislative provision for voluntary mergers, and it would therefore be appropriate for the Explanatory Memorandum to give broad cost estimates for one or more such voluntary mergers (with the uncertainty noted);
 - d. The Memorandum provides no figures for an estimate of ongoing savings.
16. It is worth noting that, in contrast, the Assembly’s Research Service paper on the Local Government (Wales) Bill includes far more comprehensive cost estimates for local government restructuring overall. The Research Service paper refers to Chartered Institute of Public Finance & Accountancy (CIPFA) estimates for the transition costs of local government mergers (in terms of people, property, systems and programme costs) that range between £159.7 million and £267.9 million for nine mergers involving 19 authorities (and annual savings of £64.7 million a year after two or three years).
17. While not included in either CIPFA’s report or the Research Service paper, this would indicate broad brush costs of some £20 million for one merger (and annual savings of some £6 million). This indicates that the Explanatory Memorandum probably rather understates the likely initial cost, while also omitting to provide a figure for ongoing savings.
18. The Auditor General’s *Review of the Regulatory Impact Assessment of the Well-being of Future Generations (Wales) Bill* (4 December 2014), concluded that there was likely cost understatement within the Explanatory Memorandum, and that it did not present the estimates clearly enough. Furthermore, the Welsh Government’s view that the additional costs of the bill may need to be absorbed within existing resources, as expressed during the Environment and Sustainability Committee’s evidence session on 29 September 2014, was not made clear in the Explanatory Memorandum.
19. As the examples above show, there is a tendency for Explanatory Memoranda to provide an incomplete view of overall costs. To be fit for purpose, i.e. so that Assembly Members have an overall idea of the cost of the legislation, Explanatory Memoranda should give overall estimates of the costs. Clearly, this can be difficult for some effects, but it would also be more meaningful and useful for Explanatory Memoranda to give an overall broad brush estimate of a Bill’s gross cost (while acknowledging areas of

considerable uncertainty) than to provide very detailed figures on certain aspects but no overall estimate.

20. The current formulation of Standing Order 26.6 (vi) perhaps does not help ensure that an overall view of costs is given. The Standing Order requires the Explanatory Memorandum to set out "...best estimates of...the gross administrative, compliance and other costs to which the provisions of the Bill would give rise", but it does not specifically require the identification of such costs overall. It would seem relatively straightforward to include such a requirement in the Standing Order.
21. In order to improve the reasonableness of overall cost estimation it may be helpful for the Assembly to undertake or obtain some retrospective reviews of the actual costs arising against the estimates given in the relevant Explanatory Memorandum. Such reviews might well help identify some means of improving the cost estimation processes and presentation used. Another approach that might help ensure that Explanatory Memoranda include appropriate cost information would be for Standing Order 26.6 to require the inclusion of some form of certification that this is the case, as this would help AMs better understand the overall costs of the legislation they are being asked to vote on.

STANDING ORDER 26.6(IV) COST ESTIMATE SUMMARY TABLE TEMPLATE

	One-off amounts (eg initial set up costs, disposal proceeds and decommissioning costs) £M	Average annual recurring amounts £M	Number of years applying to annual recurring amounts	Total lifetime amount (lifetime of the legislation) (at Net Present Value) £M
A. Gross administrative cost of the Bill's provisions (ie the additional public expenditure arising as a consequence of the Bill before any financial savings): i) WG and related bodies, including NHS ii) Welsh local government iii) Other public bodies Total of i), ii) and iii)				
B. Estimate of administrative savings arising from the Bill: i) WG and related bodies, including NHS ii) Welsh local government iii) Other public bodies (specify) Total of i), ii) and iii)				
C. Net administrative cost of the Bill's provisions (i.e. the net additional public expenditure that will arise as a consequence of the Bill): i) WG and related bodies, including NHS ii) Welsh local government iii) Other public bodies Total of i), ii) and iii)				
D. Compliance costs (i.e. costs arising to members of public etc from complying with the Bill's requirements): i) general public; ii) businesses; iii) other non-public sector bodies (eg voluntary organisations) Total of i), ii) and iii)				
E. Any other financial costs (include brief description here)				
F. Brief description of environmental and social dis-benefits arising from the Bill that cannot be quantified financially: i) one-off ii) ongoing (Include estimates of tonnes of CO2)				