

Elin Jones AM
Llywydd and Chair of Business Committee

11 October 2019

Annwyl Lywydd

Draft Standing Orders for a Consolidation Bills procedure

Thank you for the information provided to us in your letter of 10 July 2019. We were also grateful to the Assembly Commission and Welsh Government officials who provided a technical briefing to us on the proposed procedure for the scrutiny of Consolidation Bills on 16 September 2019.

It is our intention to consider the Counsel General's position statement on Consolidation and Codification, which we anticipate will be released shortly, before providing final comments to you on the draft Standing Order. However, in the meantime, we would like to share with you our initial views.

Standing Order 26C.1

We wish to draw your attention to Standing Order 26C.1, particularly in terms of whether it is necessary and appropriate for the consolidation of common law to be included within its scope.

Standing Order 26C.2

We wish to draw your attention to a number of points relating to Standing Order 26C.2:

- Standing Order 26C.2(i) - the information provided in the draft guidance indicates that this Standing Order would permit the changing of conjunctions in an existing provision in an Act. As 'and' and 'or' have different meanings and affects when used in a list of provisions, we are mindful that such a change could amount to policy reform.
- Standing Order 26C.2(iii) - the information provided in the draft guidance indicates that this Standing Order would permit the omission of provisions in existing Acts where there is no longer an intention to commence that provision. We respectfully suggest that 'intention' is something that will be dictated by



policy choices. It may, therefore, not be considered appropriate to enable a present government to use a Consolidation Bill to remove legal duties which it has no intention to use, but which others may wish to utilise in the future.

- Standing Order 26C.2(iv):
 - o the draft Standing Order uses the words 'minor' and 'satisfactory'. Given that the meaning of these terms is subjective, we suggest that this drafting is considered further;
 - o the information provided in the draft guidance states that this Standing Order would enable provisions to be moved from primary to secondary legislation. Again, given that this amounts to a significant change, we suggest that this is given further consideration.
- Standing Order 26C.2(vi) – it is unclear to us why transitional arrangements would be needed during the act of consolidation.

Standing Order 26C.3

We note that Standing Order 26C.3 enables the Presiding Officer to issue written guidance to Assembly Members on the interpretation of Standing Orders 26C.1 and 26C.2, and the operation of SO 26C generally. Given that Standing Order 6.17 already enables the Presiding Officer to “issue written guidance to Members for the proper conduct of Assembly proceedings”, it is not clear to us why Standing Order 26C.3 is necessary.

Standing Order 26C.6

The note accompanying Standing Order 26C.6 states that the Presiding Officer will need to consider whether the determination for Bills will need to be amended in any way for Consolidation Bills. We are not clear why the form of a Consolidation Bill should be different to that of a public bill, particularly as a purpose of consolidation is meant to bring provisions in older Acts in line with modern and accessible drafting styles which are already enabled by the determination on the proper form of public Bills.

Standing Order 26C.9

We would like to draw attention to two points that relate to Standing Order 26C.9:

- Standing Order 26C.9(v) has the effect of allowing an Explanatory Memorandum that accompanies a Consolidation Bill to not include information about transitional provisions, consequential amendments and repeals of existing legislation. We suggest that this Standing Order should capture 26C.2(ii) to (vi), and not just 26C.2(ii) to (v).
- Standing Order 26C.9(vii) requires an Explanatory Memorandum to confirm that the provisions of the Consolidation Bill give rise to no additional significant expenditure payable out of the Welsh Consolidated Fund. It is not clear to us how



a Consolidation Bill, which does not change policy, may give rise to additional expenditure.

Dealing with consequential provisions

Paragraphs 44 to 47 of the paper considered by Business Committee set out a proposal which involves a separate Bill to the main Consolidation Bill that would include “consequential provisions that are tangential to its purpose”. We suggest that further detail on this proposed procedure is needed; in particular the proposals that these Bills would be grouped by motions and would therefore stand and fall together, and the proposal for consecutive amending stages. We also believe that it would be helpful if examples of this procedure working in practice elsewhere could be provided. Finally, we suggest clarity is provided on how both Bills would appropriately fall within the current proposed definition of a Consolidation Bill, as set out in Standing Order 26C.1.

It is our intention to provide additional comments to you once we have had the opportunity to consider the draft Standing Order and guidance in the context of the Welsh Government’s plans for consolidation and codification.

Yours sincerely



Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

