

# Amending Standing Orders 26.86–26.94: Member Bills

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## Purpose

01. In accordance with Standing Order 11.7(iv), the Business Committee is responsible for making recommendations on the general practice and procedures of the National Assembly, including any proposals for the re-making or revision of Standing Orders.
02. The report recommends amendments to Standing Order 26, related to the Member Bills process. The changes agreed by Business Committee are found in Annex A, and the proposals for the new Standing Order are at Annex B.

## Background

03. During the Fourth Assembly nine ballots were held for Member Bills. Of these:
- two proposals did not receive leave from the Assembly to introduce a Bill;
  - one proposal was withdrawn;
  - one proposal received leave to be introduced, but the Member in charge chose not to;
  - three proposals were introduced, but fell at the end of the Fourth Assembly; and
  - two proposals became Acts.
04. The Business Committee considered and agreed a number of proposed changes related to the selection and development of Member Bills, following a review of the current Member Bill process.
05. The Fourth Assembly's Business Committee had previously recommended that the Member Bill process be reviewed, endorsing a range of recommendations from the Fourth Assembly's Constitutional and Legislative Affairs Committee ("the CLA Committee"). The CLA Committee had recommended that the Business Committee: "reviews the process for Member Bills taking account of the evidence we have received from Assembly Members and their suggestions for improving the process".<sup>1</sup>
06. The changes agreed by Business Committee are set out below. This report also describes the Business Committee's consideration of suggestions from Assembly Members that were not taken forward.

## Changes agreed by Business Committee

### *Tabling a proposal*

07. Business Managers considered that it was important to maximise the flexibility available to Members in the initial stages of the Member Bill process.

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<sup>1</sup> CLA Committee, [Making Laws in Wales](#), October 2015, Recommendation 30, page 102.



08. As such, Standing Order 26.90 has been amended to remove the requirement to set out details of any support received for a proposed Bill, including details of any consultation carried out. The requirement for a proposed title and policy objectives has been retained.

### *Leave to proceed*

09. Business Managers considered that a Member drawn in the ballot should still be required to provide the National Assembly with a degree of clarity on their envisaged Bill. As such, Business Managers determined that a new Standing Order (26.91A) should specify that a Member drawn in the ballot is required to table (alongside their motion seeking leave to introduce a Bill) an Explanatory Memorandum, setting out:

- the proposed title of the Bill;
- the proposed policy objectives of the Bill;
- details of any support received for the Bill, including details of any consultation carried out; and
- an initial assessment of any costs and/or savings arising from the Bill.

10. The proposed policy objectives set out in this Explanatory Memorandum should be broadly consistent with those provided as part of the pre-ballot information.

11. The initial assessment of costs and/or savings is not expected to go into any detail at this early stage, but rather would give an indication of the Member's early considerations. In practical terms, it would be impossible for a Member to accurately set out the costs of a Bill which had not been developed. The purpose of providing an initial assessment of costs and/or savings is to give a general indication of the likely financial impact of the Bill. No detailed cost estimates or impact assessments are required and Members should not be bound by the general costs provided at this stage in developing their Bill proposals.

12. Notably, a Member whose motion is agreed by the National Assembly, will (under the amended Standing Order 26.93) have leave to introduce a Bill that gives effect to the proposed policy objectives set out in the Explanatory Memorandum, rather than the pre-ballot information, as has historically been the case. In the course of a number of Member Bills' development in the Fourth Assembly, it was considered appropriate to change their name from that stated at pre-ballot stage. For example, the Minimum Nurse Staffing Levels (Wales) Bill was introduced as the Safe Nurse Staffing Levels (Wales) Bill. Similarly, the Financial Literacy Bill was introduced as the Financial Education and Inclusion (Wales) Bill.

### *Time available for developing a Bill*

13. Business Managers considered that if the National Assembly agrees that a Member should have leave to introduce a Bill, they should have thirteen months to develop



their Bill, rather than nine, as is currently the case. Standing Order 26.93 has been amended to reflect this change.

14. Business Managers considered that the proposed increase of four months would reflect the CLA Committee’s recommendation that there should be a presumption in favour of publishing draft Bills, and that:

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“in view of this recommendation, the Business Committee will need to consider extending the time available for an Assembly Member to introduce a Bill”.<sup>2</sup>

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15. Business Managers also noted the emphasis that the CLA Committee had placed on maximising opportunities for engagement between citizens, the Welsh Government and the National Assembly. In particular, they endorsed the generation of more ideas for legislation from society through engagement.
16. It is anticipated that this increase of four months will enable Members to maximise the opportunity for citizens to engage with their legislative proposals, through consultation.
17. Business Managers also reflected on the comments made by Mick Antoniw AM in evidence to the CLA Committee inquiry about the lack of a mechanism for a Member to conduct the type of negotiations which took place in relation to his Recovery of Medical Costs for Asbestos Diseases (Wales) Bill “over the drafting of certain areas that potentially impacted on UK areas of either administration or responsibility”.<sup>3</sup> Business Managers concluded that this is properly a matter for inter-governmental discussion, but that where the National Assembly grants leave for a Member Bill to be introduced, it is expected that the Welsh Government will take appropriate steps to liaise with the UK Government, and keep the Member in charge and the National Assembly informed.

### *Taxation*

18. Business Managers noted that, currently, Standing Orders do not stipulate that a Member Bill could not be proposed on a devolved tax area.
19. Business Managers noted that where a devolved tax replaces an existing UK tax there will be a corresponding deduction to the Welsh block grant. Therefore the introduction of Member Bills related to devolved taxes could be seen as compromising the Welsh Government’s capacity to control public finances.
20. Business Managers agreed that it would be appropriate to amend the Assembly’s existing procedure to clarify that a Member cannot use a Member Bill for the purpose of introducing tax legislation. This follows a precedent established in

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<sup>2</sup> CLA Committee, [Making Laws in Wales](#), October 2015, paragraph 79, page 35.

<sup>3</sup> CLA Committee, Record of Proceedings, [24 November 2014](#), paragraph 223.



Westminster. In considering this issue, Business Managers reflected on the need to strike a balance between:

- the parliamentary principle of enabling Members to develop and introduce legislative proposals in their own right, and
- the practicalities of involving individual Members in processes requiring government resources and expertise, as well as intergovernmental negotiations, and the wider implications of changes to the tax system for funding in Wales.

### *Consequential Changes*

21. Standing Order 26.91 has been amended to reflect that information relating to the proposed Bill will now be set out in an Explanatory Memorandum accompanying the motion under Standing Order 26.91A, rather than having to refer back to the information provided pre-ballot.

## **Other issues considered by Business Committee, which did not result in specific changes to Standing Orders**

### *The mechanism by which proposed Bills are selected*

22. Business Managers noted that in the CLA Committee's October 2015 report, it was suggested that they review the mechanism by which proposed Bills were selected. Business Managers noted practice on this matter in other Parliaments, and in particular considered the potential of moving to a name-only ballot system.

23. However, Business Managers considered that it would be appropriate to retain the current system of requiring Members to submit pre-ballot information. In making this decision, Business Managers noted that citizens would still have opportunity to engage with Members before a ballot was drawn, and in the process suggest ideas for legislation. Business Managers also noted that it would be possible for the Llywydd to give advance notice of her intention to draw a ballot, thereby giving both citizens and Members an opportunity to discuss citizens' legislative ideas before Members submitted their pre-ballot proposals.

### *Financial Resolutions*

24. Business Managers considered that the existing legislative process would apply to a Member Bill following its introduction.

25. This includes it only being possible for the Welsh Government to move a financial resolution on a Member Bill. Legislation which could result in new or additional expenditure payable out of the Welsh Consolidated Fund can only proceed if the Welsh Government moves (and the National Assembly passes) a financial resolution.

26. During the CLA Committee's inquiry into Making Laws, Peter Black AM recommended that there should be the capacity for:



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“the Member in charge of the Bill... to introduce that financial resolution, because, at the end of the day, if the Government does not support it, it will not support it and it will vote it down, but at least you will have the debate in the Assembly on that”.<sup>4</sup>

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27. However, the equilibrium of only an executive being able to request the use of resources, and only a parliament being able to authorise such, is a long-standing ‘check-and-balance’ in parliamentary democracies. This ensures that neither the executive Government, nor the parliamentary body, lose control over public finances.

28. As such, Business Managers considered that it would be appropriate to retain the requirement that only the Welsh Government can move a financial resolution.

### *Post-legislative scrutiny*

29. During the CLA Committee’s inquiry into Making Laws, Bethan Jenkins AM commented that:

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“if we are going to be putting ideas forward and they are successful, then we need to be seeing progress of implementation from the Welsh Government.”<sup>5</sup>

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30. Business Managers considered that committees should continue to have flexibility as to whether or not they conducted post-legislative scrutiny, and that the Welsh Government should continue to provide timely updates to the National Assembly on implementation.

### **Action**

31. The Business Committee formally agreed the changes to Standing Orders on 15 November 2016 and the National Assembly is invited to approve the proposals at Annexe B.

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<sup>4</sup> CLA Committee, Record of Proceedings, [24 November 2014](#), paragraph 255.

<sup>5</sup> CLA Committee, Record of Proceedings, [24 November 2014](#), paragraph 282.



**Annex A**

**Specific changes to Standing Orders**

**STANDING ORDERS 26.85–94 – Member Bills**

<b>Member Bills</b>		
26.85	Standing Orders 26.86 to 26.94 apply only to Member Bills.	<b>Retain Standing Order</b>
26.86	<i>[Standing Order removed by resolution of the Assembly on 16 November 2011]</i>	N/A
26.87	The Presiding Officer must from time to time hold a ballot to determine the name of a Member, other than a member of the government, who may seek agreement to introduce a Bill.	<b>Retain Standing Order</b>
26.88	The Presiding Officer must include in the ballot the names of all those Members who have applied to be included and who have tabled the pre-ballot information required by Standing Order 26.90.	<b>Retain Standing Order</b>
26.89	No Member who has previously won the ballot in that Assembly may so apply.	<b>Retain Standing Order</b>
26.90	The required pre-ballot information is: (i) the proposed title of the Bill; and (ii) <u>the proposed policy objectives of the Bill.</u> <del>an Explanatory Memorandum which must contain:</del> <del>a) the policy objectives of the Bill; and</del>	<b>Amend this Standing Order</b>  The proposed change reduces the threshold of pre-ballot information to provide greater flexibility to Members in the initial stages of the process, whilst retaining a minimum requirement for a proposed title and policy objectives.

<p>(b) details of any support received for the Bill, including details of any consultation carried out.</p>	
<p>26.91 A Member who is successful in a ballot may within 25 working days of the date of the ballot table a motion seeking the Assembly's agreement to introduce a Bill <del>to give effect to the pre-ballot information tabled under Standing Order 26.90.</del></p>	<p><b>Amend Standing Order</b>  <u>The amendment reflects the fact that information relating to the proposed Bill will now be set out in an Explanatory Memorandum accompanying the motion under Standing Order 26.91A, rather than having to refer back to the information provided pre-ballot.</u></p>
<p><u>26.91A The motion must be accompanied by an Explanatory Memorandum setting out:</u></p> <ul style="list-style-type: none"> <li>i) <u>the proposed title of the Bill;</u></li> <li>ii) <u>the proposed policy objectives of the Bill;</u></li> <li>iii) <u>details of any support received for the Bill, including details of any consultation carried out; and</u></li> <li>iv) <u>an initial assessment of any costs and/or savings arising from the Bill</u></li> </ul>	<p><b>New Standing Order</b>  The proposed requirements for an explanatory memorandum include the current requirements under Standing Order 26.90, along with a new requirement on financial information.</p> <p>The purpose of providing an initial assessment of costs and/or savings is to give a general indication of the likely financial impact of the Bill. No detailed cost estimates or impact assessments are required and Members should not be bound by the general costs provided at this stage in developing their Bill proposal.</p>
<p><u>26.91B The proposed title and policy objectives set out under Standing</u></p>	<p><b>New Standing Order</b></p>

<p><u>Order 26.91A (i) and (ii) must be broadly consistent with those provided under Standing Order 26.90. The reasons for any changes must be set out in the Explanatory Memorandum under Standing Order 26.91A.</u></p>	<p>The proposed title and policy objectives provided should be broadly consistent with what was provided under 26.90. The Member should explain the reasons for any changes in the Memorandum.</p>
<p>26.92 Time must be made available for a motion tabled under Standing Order 26.91 to be debated within 35 working days of the date of the ballot (not counting working days in a non-sitting week).</p>	<p><b>Retain Standing Order</b></p>
<p>26.93 If a motion under Standing Order 26.91 is agreed to, then the Member who has had agreement to introduce a Bill may within <del>nine</del> <u>thirteen</u> months of the motion being agreed introduce a Bill to give effect to <del>the pre-ballot information tabled under Standing Order 26.90.</del> <u>the proposed policy objectives set out in the Explanatory Memorandum outlined in Standing Order 26.91A.</u></p>	<p><b>Amend Standing Order</b></p> <p>The proposed increase of four months reflects the Constitutional and Legislative Affairs Committee’s recommendation that there should be a presumption in favour of publishing draft Bills, and that “in view of this recommendation, the Business Committee will need to consider extending the time available for an Assembly Member to introduce a Bill”. The Llywydd would also expect to see the draft Bill and accompanying Explanatory Memorandum at least four weeks in advance of introduction in order to take a view on its legislative competence; this adds weight to the proposal for a time increase.</p> <p>The second proposed change removes the reference to pre-ballot information under Standing Order 26.90, and replace with</p>

	a reference to the policy objectives as set out in the Explanatory Memorandum at the leave to introduce stage.
<p>26.94 If a motion under Standing Order 26.91 is disagreed to, then no Member may enter any ballot held under Standing Order 26.87 for a period of six months after the motion has been disagreed to if the policy objectives of the Bill which he or she seeks agreement to introduce are substantially the same as those of the Bill referred to in the motion which has been disagreed to.</p>	<p><b>Retain Standing Order</b></p>
<p>26.94A <u>Member Bills may not seek to amend existing taxes, or introduce new taxes.</u></p>	<p><b>New Standing Order</b></p> <p>The proposed addition amends the Assembly’s existing procedure to clarify that a Member cannot use a Member Bill for the purpose of introducing tax legislation. This follows the precedent established in Westminster. It also reflects Business Committee’s previous consideration (on 5 July 2016) of how to strike a balance between the parliamentary principle of enabling Members to develop and introduce legislative proposals in their own right, and the practicalities of involving individual Members in processes requiring government resources and expertise, as well as intergovernmental negotiations, and the wider implications of changes to the tax system for funding in Wales.</p> <p>In cases where a devolved tax replaces an existing UK tax there will be a corresponding deduction to the Welsh block grant. Therefore the introduction of Member Bills related to devolved</p>

	taxes could be seen as compromising the Welsh Government's capacity to control public finances.
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## Annex B

### Member Bills

- 26.85 Standing Orders 26.86 to 26.94 apply only to Member Bills.
- 26.86 *[Standing Order removed by resolution of the Assembly on 16 November 2011]*
- 26.87 The Presiding Officer must from time to time hold a ballot to determine the name of a Member, other than a member of the government, who may seek agreement to introduce a Bill.
- 26.88 The Presiding Officer must include in the ballot the names of all those Members who have applied to be included and who have tabled the pre-ballot information required by Standing Order 26.90.
- 26.89 No Member who has previously won the ballot in that Assembly may so apply.
- 26.90 The required pre-ballot information is:
- (i) the proposed title of the Bill; and
  - (ii) the proposed policy objectives of the Bill.
- 26.91 A Member who is successful in a ballot may within 25 working days of the date of the ballot table a motion seeking the Assembly's agreement to introduce a Bill.
- 26.91A The motion must be accompanied by an Explanatory Memorandum setting out:
- (i) the proposed title of the Bill;
  - (ii) the proposed policy objectives of the Bill;
  - (iii) details of any support received for the Bill, including details of any consultation carried out; and
  - (iv) an initial assessment of any costs and/or savings arising from the Bill.
- 26.91B The proposed title and policy objectives set out under Standing Order 26.91A (i) and (ii) must be broadly consistent with those provided under Standing Order 26.90. The reasons for any changes must be set out in the Explanatory Memorandum under Standing Order 26.91A.
- 26.92 Time must be made available for a motion tabled under Standing Order 26.91 to be debated within 35 working days of the date of the ballot (not counting working days in a non-sitting week).
- 26.93 If a motion under Standing Order 26.91 is agreed to, then the Member who has had agreement to introduce a Bill may within thirteen months of the motion being agreed introduce a Bill to give effect to the proposed policy objectives set out in the Explanatory Memorandum outlined in Standing Order 26.91A.
- 26.94 If a motion under Standing Order 26.91 is disagreed to, then no Member may enter any ballot held under Standing Order 26.87 for a period of six months after the motion has been disagreed to if the policy objectives of the Bill which he or she seeks agreement to introduce are substantially the same as those of the Bill referred to in the motion which has been disagreed to.
- 26.94A Member Bills may not seek to amend existing taxes, or introduce new taxes.