

National Assembly for Wales

[Business Committee](#)

November 2019

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Amending Standing Orders: Standing Order 18A – Oversight of the Public Services Ombudsman for Wales

Purpose

1. In accordance with Standing Order 11.7(iv), the Business Committee is responsible for making recommendations on the general practice and procedures of the Assembly, including any proposals for the re-making or revision of Standing Orders.
2. The report recommends introducing a new Standing Order 18A to enable the Assembly to delegate functions under the Public Services Ombudsman (Wales) Act 2019 (PSOW Act) relating to the oversight of the Public Services Ombudsman for Wales to responsible committees. The changes agreed by Business Committee are found in Annex A.

Background

3. The Public Services Ombudsman (Wales) Act was passed by the Assembly on 19 March 2019, received Royal Assent on 22 May 2019, and the

provisions relevant to this report were commenced by regulations made by the Welsh Ministers on 23 July 2019.

4. The Act confers a number of functions on the Assembly. Under section 76 of the Act, the Assembly may make provision through Standing Orders regarding the exercise of some of the functions conferred upon it by the Act, including “delegating functions to a committee or subcommittee of the Assembly or the chair of such a committee or sub-committee”.

Functions relating to the oversight of the Public Services Ombudsman for Wales

5. The main purpose of the Act is to give new powers to the Ombudsman, including to:

- accept oral complaints;
- undertake own initiative investigations;
- investigate private medical treatment including nursing care in a public/private health pathway;
- undertake a role in relation to complaints handling standards and procedures.

6. The Act also sets out accountability and governance arrangements relating to the Ombudsman, and it is in relation to these provisions that some functions are conferred on the National Assembly. Some of these provisions are new or changed, while others have been carried over from the Public Services Ombudsman (Wales) Act 2005.

7. The relevant functions, which may be delegated by Standing Orders are:

- section 73(1): places a duty on the Assembly to prepare and publish a report on the operation and effect of the Act, after the Act has been in force for 5 years;

- section 73(2): gives a discretionary power to the Assembly to review the Act at any time;
- section 73(3): imposes a duty on the Assembly to consult when preparing a report under this section;
- schedule 1, para 5: requires the Assembly to determine the terms of appointment of the Ombudsman or any acting Ombudsman, including their pay;
- Schedule 1, para 8(1): under paragraph 8, a person who used to be the Ombudsman or used to be the acting Ombudsman is disqualified from certain offices, such as being a listed authority, unless the Assembly approves otherwise.

Delegation of Functions to Responsible Committees

8. The draft new Standing Order 18A delegates these functions to a responsible committee, or responsible committees. The approach taken is consistent with that for other comparable legislation, in particular the Public Audit (Wales) Act 2013 which conferred many functions on the Assembly, which in turn are delegated to a committee by Standing Order 18.10 & 18.11.

9. The PSOW Act does not allow the Assembly to delegate its power to nominate to Her Majesty a person for appointment as Ombudsman. For consistency with Standing Order 18 in relation to the Chair of the Wales Audit Office and the Auditor General for Wales however, it is proposed that the new Standing Order delegates to a responsible committee the function of advising the Assembly on that nomination, in accordance with Standing Order 10.

10. Also, to maintain consistency with Standing Order 18, it is proposed that the new Standing Order 18A includes the function of considering the estimates of the PSOW as part of the annual budget process. That function currently sits with the responsible committee under Standing Order 20, and so there will be consequential changes to Standing Order 20.

Committee Remits

11. If the new Standing Order is agreed, the Assembly would need to amend the remit of one or more of its committees to include the new functions. The Business Committee would table a motion to give effect to such changes.

12. Business Committee considered this issue, and agreed that the two relevant committees are the Finance Committee, who introduced the Bill and which considers the PSOW's estimates as part of the budget process, and the Equalities, Local Government and Communities Committee, which currently considers the PSOW's annual report and accounts and has previously been the responsible committee for appointing the PSOW.

13. As well as the estimates for the PSOW, the Finance Committee also considers the estimates for the Wales Audit Office, and the draft budgets for the Welsh Government and Assembly Commission. Business Committee considers it sensible to keep all such functions with the same committee, and so agreed to delegate those budgetary functions to the Finance Committee, and the other non-budget functions to the Equalities, Local Government and Communities Committee.

14. Both Committees have confirmed that they are content with the proposed Standing Order changes, and the related changes to their remits.

Action

15. The Business Committee formally agreed the changes to Standing Order 18 on Tuesday 5 November 2019 and the Assembly is invited to approve the proposal at Annex B, and to note the other information in this report.

Annex A

	STANDING ORDER 18A – Oversight of the Public Services Ombudsman for Wales	
	Committee or Committees	
18A.1	In proposing the remits of committees under Standing Order 16.2 or 16.3, the Business Committee must ensure that responsibility for the functions in Standing Order 18A is assigned to a committee or committees (referred to within Standing Order 18A as “a responsible committee”).	Introduce New Standing Order This Standing Order follows the model of a number of other Standing Orders in assigning functions to a responsible committee or committees. As drafted, the Standing Order provides for the possibility of the functions being assigned either all to the same committee, or split between two or more.
	Functions	
18A.2	A responsible committee must: (i) exercise the functions set out in section 73 of the Public Services Ombudsman (Wales) Act 2019 in relation to reviewing the operation and effect of that Act; (ii) exercise the functions set out in Paragraph 5 of Schedule 1	Introduce New Standing Order This Standing Order sets out the functions to be delegated to the responsible committee or committees.

	<p>to the Public Services Ombudsman (Wales) Act 2019 in relation to determining the terms that apply to an appointment made under paragraph 1 or paragraph 4(1) of that Act;</p> <p>(iii) exercise the functions set out in Paragraph 8(1) of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019 in relation to disqualification;</p> <p>(iv) exercise the functions set out in Paragraph 16 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019 relating to the estimate of income and expenses for the Ombudsman’s office for each financial year;</p> <p>(v) consider any supplementary budget motions tabled under section 126 of the Act that seek to amend amounts previously authorised by a budget resolution or supplementary budget resolution in respect of the Ombudsman;</p> <p>(vi) in accordance with Standing Order 10, advise the Assembly in the exercise of its functions under the Public Services Ombudsman (Wales) Act 2019 relating to the appointment and removal from office of the Public Services Ombudsman</p>	<p>Points (i), (ii) and (iii) delegate functions introduced by the Public Services Ombudsman (Wales) Act 2019, and which the Act specifies may be delegated to a committee.</p> <p>Points (iv) and (v) delegate functions that currently fall within the remit of the responsible committee under Standing Order 20 in relation to the Ombudsman’s budget. As a result there are consequential changes to Standing Order 20.</p>
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	for Wales or an Acting Public Services Ombudsman for Wales.	
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CONSEQUENTIAL CHANGES

STANDING ORDER 20 – Finance Procedures	
Ombudsman	
<p>20.23 The Ombudsman must submit the estimate of income and expenses required under paragraph 15 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005 <u>Paragraph 16 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019</u> to the responsible committee <u>under Standing Order 18A.2(iv)</u> as soon as practicable but in any event no later than 1 November in each financial year.</p>	<p>Amend Standing Order</p> <p>Amendments update the reference to the new Act, and the fact that the estimates must now be submitted to the responsible committee under Standing Order 18A, rather than the responsible committee under Standing Order 20 (though they may in practice be the same committee).</p>

<p>20.24 The responsible committee <u>under Standing Order 18A.2(iv)</u> must consider and lay before the Assembly, no later than 22 November, the estimate, with any modifications which the Committee, having consulted and taken into account any representations made by the Ombudsman, considers appropriate.</p>	<p>Amend Standing Order</p> <p>Reflects the fact that responsibility for this function now rests with the responsible committee under Standing Order 18A.</p>
<p>Supplementary Budget Motions</p>	
<p>20.36 If the supplementary budget motion proposes a variation to the budget for the Ombudsman:</p> <ul style="list-style-type: none"> (i) the Ombudsman must provide an explanatory memorandum to the responsible committee <u>under Standing Order 18A.2(v)</u> stating why the variation to the budget is required; (ii) the responsible committee <u>under Standing Order 18A.2(v)</u> may lay before the Assembly a report on the proposed variation within three weeks of the 	<p>Amend Standing Order</p> <p>Reflects the fact that responsibility for this function now rests with the responsible committee under Standing Order 18A.</p>

supplementary budget motion being tabled. The report may propose any modifications to the proposed variation which the responsible committee, having consulted and taken into account any representations made by the Ombudsman, considers appropriate.

Annex B

New Standing Order 18A

18A.1 In proposing the remits of committees under Standing Order 16.2 or 16.3, the Business Committee must ensure that responsibility for the functions in Standing Order 18A is assigned to a committee or committees (referred to within Standing Order 18A as “a responsible committee”).

18A.2 A responsible committee must:

- (i) exercise the functions set out in section 73 of the Public Services Ombudsman (Wales) Act 2019 in relation to reviewing the operation and effect of that Act;
- (ii) exercise the functions set out in Paragraph 5 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019 in relation to determining the terms that apply to an appointment made under paragraph 1 or paragraph 4(1) of that Act;
- (iii) exercise the functions set out in Paragraph 8(1) of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019 in relation to disqualification;
- (iv) exercise the functions set out in Paragraph 16 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019 relating to the estimate of income and expenses for the Ombudsman’s office for each financial year;
- (v) consider any supplementary budget motions tabled under section 126 of the Act that seek to amend amounts previously authorised by a budget resolution or supplementary budget resolution in respect of the Ombudsman;
- (vi) in accordance with Standing Order 10, advise the Assembly in the exercise of its functions under the Public Services Ombudsman (Wales) Act 2019 relating to the appointment

and removal from office of the Public Services Ombudsman for Wales or an Acting Public Services Ombudsman for Wales.

Consequential changes – Standing Order 20

20.23 The Ombudsman must submit the estimate of income and expenses required under Paragraph 16 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019 to the responsible committee under Standing Order 18A.2(iv) as soon as practicable but in any event no later than 1 November in each financial year.

20.24 The responsible committee under Standing Order 18A.2(iv) must consider and lay before the Assembly, no later than 22 November, the estimate, with any modifications which the Committee, having consulted and taken into account any representations made by the Ombudsman, considers appropriate.

20.36 If the supplementary budget motion proposes a variation to the budget for the Ombudsman:

- (i) the Ombudsman must provide an explanatory memorandum to the responsible committee under Standing Order 18A.2(v) stating why the variation to the budget is required;
- (ii) the responsible committee under Standing Order 18A.2(v) may lay before the Assembly a report on the proposed variation within three weeks of the supplementary budget motion being tabled. The report may propose any modifications to the proposed variation which the responsible committee, having consulted and taken into account any representations made by the Ombudsman, considers appropriate.