



National Assembly for **Wales**
Cynulliad Cenedlaethol **Cymru**

The Third Assembly: Changes arising from the *Government of Wales Act 2006* and the new Standing Orders

Abstract

The *Government of Wales Act 2006* provides for the separation of the National Assembly for Wales and the Welsh Assembly Government and gives the Assembly new "Measure powers". In March 2007 the Secretary of State made Standing Orders, drafted and approved by the Assembly, that take account of the changes provided for in the Act and set out new and amended procedures.

This paper provides a summary of the key changes in the Act and in the new Standing Orders.

March 2007



The Third Assembly: Changes arising from the *Government of Wales Act 2006* and new Standing Orders

Alys Thomas

March 2007

Paper number: 07/050

© Crown copyright 2007

Executive Summary

- ◆ The *Government of Wales Act 2006* received Royal Assent on 25 July 2006.
- ◆ The Act will bring into effect the legal separation of the executive (Welsh Assembly Government) and the legislature (National Assembly for Wales) after the 2007 Assembly Elections and creates an Assembly Commission and a Welsh Consolidated Fund.
- ◆ It allows the Assembly to make Measures on matters where it has been empowered to do so by a Legislative Competence Order. It also provides for the Assembly to assume primary legislative powers at a future date subject to a referendum.
- ◆ S.31 of the *Government of Wales Act 2006* requires Standing Orders for the Assembly to be made and paragraph 20 of Schedule 11 sets out how they are to be made.
- ◆ Standing Orders must be made by the Secretary of State by 31st March 2007 but this formal procedure allows for the current Assembly itself to draft them. The Assembly established the Standing Orders Committee for this purpose and its Report and draft Standing Orders were approved by Plenary on 7 February 2007. The Secretary of State made the new Standing Orders on 22 March 2007.
- ◆ The grid in Annex 1 of the paper highlights the key differences between the 1998 and 2006 *Government of Wales Acts* and the current and new draft Standing Orders.
- ◆ Annex 2 contains a Guide to the Third Assembly, prepared by the Procedures Unit of the Assembly Parliamentary Service.

Contents

1	Introduction	1
2	<i>The Government of Wales Act 2006</i>	1
3	Standing Orders	3
	Annex 1	5
	Annex 2: Procedures Unit's Guide to the Third Assembly	20

The Third Assembly: Changes arising from the *Government of Wales Act 2006* and new Standing Orders

1 Introduction

The *Government of Wales Act 2006*¹ ("the 2006 Act") received Royal Assent on 25 July 2006. It provides for the legal separation of the National Assembly for Wales and the Welsh Assembly Government, with an Assembly Commission being established to administer the former. It also gives new legislative "Measure powers" to the Assembly where it has Legislative Competence. These changes will take effect once the Third Assembly is elected in May 2007 and new Standing Orders have been prepared to take account of them and to outline new procedures.

This paper provides an overview of the key changes in the Act and in Standing Orders that will take effect in May 2007. These are set out in **Annex 1**.

The Assembly Parliamentary Service's Procedures Unit, which supported the Standing Orders Committee in drawing up the Draft Standing Orders, has produced *A Guide to the Third Assembly*. This is reproduced in **Annex 2**.

The Members' Research Service will also be publishing some shorter notes on aspects of the new constitutional and procedural arrangements.

2 *The Government of Wales Act 2006*

The main differences between the *Government of Wales Act 1998* and the *Government of Wales Act 2006* are summarised below:

- ◆ The 2006 Act effects a formal separation between the legislature and the executive. As a result of this, the existing institution called "the National Assembly for Wales" will cease to exist, and its body corporate status will disappear. A new legal personality must be created to enable the new legislature, also called the National Assembly for Wales, to enter contracts, hold property and perform other legal acts. The Act achieves this by establishing an Assembly Commission, modelled after the House of Commons Commission and the Scottish Parliamentary Corporate Body.
- ◆ Under the 2006 Act the Assembly will be able to pass an "Assembly Measure" to legislate, so long as it relates to a "Matter" in Schedule 5 of the Act. Legislative Competence Orders (a kind of Order in Council) amend Schedule 5 of the 2006 Act so that a "Matter" is added to the "Fields" listed therein.²
- ◆ The 2006 Act also provides for the Assembly to acquire primary legislative powers ("Acts of the Assembly"), but this will not come into force unless approved in a referendum and, before that, by both Houses of Parliament and by a two-thirds majority in the Assembly.

¹ *Government of Wales Act 2006* (Chapter 32)

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060032_en.pdf

² Schedule 5 of the *Government of Wales Act 2006* can also be amended by other Westminster Acts of Parliament. For example, the current *Local Government and Public Involvement in Health Bill* before Parliament, amends Schedule 5 of the 2006 Act so that the Assembly will be able to make "Measures" in relation to certain Local Government matters.

- ◆ From May 2007, most subordinate legislation, which is currently made by the Assembly, will be made by the Welsh Ministers.
- ◆ The 2006 Act provides for a Clerk of the Assembly, thereby making the post statutory which it was not under the 1998 Act.
- ◆ The 2006 Act establishes the Welsh Assembly Government as a separate entity from the National Assembly for Wales. The Welsh Assembly Government comprises the First Minister, other Welsh Ministers and Deputy Welsh Ministers and the newly created post of Counsel General to the Welsh Assembly Government. The Counsel General may, or may not be, an Assembly Member (AM).
- ◆ From May 2007, executive functions will be directly vested in the Welsh Ministers. It will still be possible for further transfers of executive functions from the UK Government to the Welsh Assembly Government to take place after May 2007. Such transfers will, under the *Government of Wales Act 2006*, be made directly to the Welsh Ministers (with their consent) by an Order in Council approved by Parliament or by Acts of Parliament.³
- ◆ A key difference from the *Government of Wales Act 1998* is the way in which the First Minister and the Cabinet are appointed. From 2007, the First Minister will be nominated by the Assembly and appointed by the Monarch. He or she will then appoint the Welsh Ministers and the Deputy Welsh Ministers, with the approval of the Monarch.
- ◆ The 1998 Act required the Assembly to establish subject committees and certain standing committees, including the Audit committee and a regional committee for north Wales. Only the Audit Committee is required by the 2006 Act.
- ◆ The 1998 Act required Ministers to be members of a subject committee. This requirement has been removed in the 2006 Act.
- ◆ Section 29 of the 2006 Act states that membership of each committee must reflect (so far as is reasonably practicable) the balance of the political groups to which Assembly members belong. If a proposal for the composition of a particular committee is not supported by two-thirds of the Assembly in a vote, then a d'Hondt formula will be used to determine the membership of that Committee.
- ◆ The 2006 Act also sets up a new Welsh Consolidated Fund (WCF) into which the funds voted by Parliament to the Secretary of State for Wales will be paid. Sums may normally only be paid out of the WCF on the authority of a Budget resolution passed by the Assembly. Thus, the creation of the WCF provides the mechanism whereby the Assembly will control the use of resources by the Welsh Ministers and other bodies and offices funded directly from the WCF.
- ◆ Section 74 of the *Government of Wales Act 1998* related to the power of the Assembly and its committees to require attendance and production of documents. These powers are limited to members and staff of bodies listed in Schedule 5 of the Act, such as bodies sponsored by the Assembly. The 2006 Act strengthens the power of the

³ Welsh Assembly Government, Constitutional Affairs Unit Bulletin, July 2006.

Assembly to summon people to give evidence and to produce documentation, extending the power to "any person" and specifies certain exemptions.

- ◆ The 2006 Act places a prohibition on candidates simultaneously standing in a constituency election and on a regional list.
- ◆ The *Government of Wales Act 1998* established the National Assembly for Wales as a fixed term Assembly with elections every 4 years, without the possibility of early dissolution. The 2006 Act maintains the Assembly as, essentially, a fixed-term institution but provides a mechanism for an *extraordinary* general election to take place before the next scheduled ordinary general election in extraordinary circumstances.

3 Standing Orders

S.31 of the *Government of Wales Act 2006* requires Standing Orders to be made and paragraph 20 of Schedule 11 sets out how they are to be made. They must be made by the Secretary of State by 31st March 2007 but this formal procedure allows for the current Assembly itself to draft the Standing Orders of the new body. In making the Standing Orders, the Secretary of State must give effect to proposals submitted to him by the Assembly (as currently established), provided that those proposals have been approved by a two-thirds voting majority in the Assembly. As a minimum, the Standing Orders have to include the mandatory provisions required by the Act. Both the Standing Orders made by the Secretary of State, and the Assembly's proposals as to what provisions they should include, must be made in both English and Welsh.

The National Assembly, therefore, established an advisory committee, under Standing Order 8.1, to recommend Standing Orders for the newly constituted Assembly.

The committee's terms of reference were to:

- ◆ Make every effort to recommend new Standing Orders, which are capable of securing a two thirds majority approval by Plenary;
- ◆ Prepare a report, which shall set out proposed new Standing Orders for consideration by plenary.

The Committee's Report was approved by Plenary on 7 February 2007.⁴

The main differences between the current Standing Orders and the new Standing Orders made by the Secretary of State for the Third Assembly on 22 March 2007, are:

- ◆ New Standing Orders setting out procedures for the scrutiny, and making, of Legislative Competence Orders (LCOs) and Assembly Measures.
- ◆ Provision for the establishment of committees to scrutinise Measures and LCOs and separate scrutiny committees.

⁴ RoP, 7 February 2007, p.39.

<http://www.wales.gov.uk/documents/cms/2/ChamberSession/380313AC00046B17000028C30000000/0b60b13013f03fb5551bc819a9abe59e.pdf>



- ◆ Provision for a Finance Committee which will, as one of its functions, consider the use of resources and payments out of the Welsh Consolidated Fund reported to the Assembly by Welsh Ministers.
- ◆ The new Standing Orders relating to Members include a new provision for the making of a code or protocol to be prepared by the Standards of Conduct Committee outlining different roles and responsibilities for constituency and regional Members. The new Standing Orders set out principles that should underpin the Protocol.
- ◆ Procedures relating to the Assembly **nominating** the First Minister for appointment by the Monarch, rather than **appointing** him or her.
- ◆ The 2006 Act requires that the Presiding Officer (PO) and Deputy Presiding Officer (DPO) must be not be appointed from the same political group, nor can they both be from political groups with an executive role. Standing Orders require that one from the Executive and one from the Opposition and further specify that they will no longer be able to vote in any Plenary proceedings, except to exercise a casting vote.
- ◆ Changes to the way that the Business Committee operates and Assembly business is organised, including different categories of business and the allocation of time in Plenary split 3:2 between the Welsh Assembly Government and non-Government business.
- ◆ The process for public petitions to the Assembly is strengthened. The Assembly must consider any admissible petition.

Annex 1

Shaded text relates to the Act and unshaded text to Standing Orders.

Current Position	Changes for the Third Assembly
<p>Presiding Officer and Deputy</p> <p>The current SO1 sets out procedures for the election of the Presiding Officer (PO) and Deputy Presiding Officer (DPO) and outlines their functions.</p>	<p>S.25 of the 2006 Act provides for the election of a Presiding Officer (PO) and a Deputy Presiding Officer (DPO) but modifies the requirement in the 1998 Act that the PO and DPO should not 'represent the same party', to require that they should not be from the same political group or both be members of political groups with an executive role.</p> <p>These issues are dealt with in SO2 of new Standing Orders which state that the PO and DPO should not belong to:</p> <ul style="list-style-type: none"> (i) the same political group; (ii) different political groups both of which have an executive role; or (iii) different political groups neither of which has an executive role. <p>Also, other than to exercise a casting vote, they are prevented from voting at all in Plenary proceedings, whether they are in the chair or not.</p>
<p>Assembly Commission</p> <p>Not applicable</p>	<p>S.27 of the 2006 Act provides for the creation of corporate body to be known as "the Assembly Commission" and which will consist of the PO and 4 other Assembly Members.</p> <p>SO3 sets out arrangements for the Assembly Commission required by the 2006 Act. It specifies that of the four Members,</p>



Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil

	not more than one (other than the Presiding Officer) may belong to any one political group.
First Minister and Cabinet	
SO2 sets out procedures for the election of the First Minister by the Assembly and his or her requirement to inform the Assembly of the appointment of and allocation of responsibilities and accountability to the cabinet.	<p>Ss.46 and 47 of the 2006 Act provide for the appointment of the First Minister by the Monarch and the nomination of the First Minister by the Assembly.</p> <p>SO4 sets out procedures for the nomination of the First Minister. It also sets out procedures for the notification of the resignation of the First Minister and other Welsh Ministers and Deputy Ministers.</p>
Counsel General	
Not applicable	<p>S.49 of the 2006 Act provides for the appointment of a Counsel General to the Welsh Assembly Government who will act as its legal adviser and its representative in the courts.⁵ This role is analogous with the role of the Attorney-General and Solicitor General in the UK Government.</p> <p>The Counsel General will be appointed by the Monarch on the recommendation of the First Minister but the recommendation for the appointment must be approved by the Assembly. The person appointed need not be a member of the Assembly, although an Assembly Member could serve as Counsel General (the First Minister, Ministers and Deputy Ministers are expressly forbidden to do so in the Act). The Explanatory Notes to the Act describe the office as "of 'ministerial' status" but the holder is not one of the 'Welsh Ministers'.⁶</p> <p>SO5 sets out procedures for the appointment of the Counsel General and his or her participation in Assembly proceedings.</p>

⁵ *Government of Wales Act 2006* (Chapter 32), s. 49.

⁶ *Government of Wales Act 2006* (Chapter 32), Explanatory Notes, paras. 230-234.



Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil

<p>Members</p>	
<p>SO3 sets out determination of salaries, allowances and pensions of Members' and procedures for their resignation.</p>	<p>Ss.14-15 of the 2006 Act deals with the duration of membership of AMs; ss. 16-19 deals with the disqualification of AMs and ss.20-24 deals with remuneration, oaths etc.</p> <p>SO1 deals with the determination of Members' salaries, allowances and pensions of members and procedures for their resignation.</p> <p>It also sets out procedures for taking the oath of allegiance is or making the corresponding affirmation.</p> <p>It defines a political group as:</p> <ul style="list-style-type: none"> (i) a group of Members belonging to the same registered political party having at least three Members in the Assembly; or (ii) three or more Members who, not being members of a registered political party, have notified the Presiding Officer of their wish to be regarded as a political group. <p>The Presiding Officer must decide any question as to whether any Member belongs to a political group or as to which political group he or she belongs.</p> <p>S.36(6) of the 2006 Act states:</p> <p><i>“The Standing Orders must include provision about (or for the making of a code or protocol about) the different roles and responsibilities of Assembly constituency members and Assembly regional members; and-</i></p> <p><i>(a) Assembly constituency members must not describe themselves in a manner which suggests that they are Assembly</i></p>



	<p><i>regional members, and</i></p> <p><i>(b) Assembly regional members must not describe themselves in a manner which suggests that they are Assembly constituency members.</i></p> <p>To discharge the obligation in the Act, SO1 makes provision for the making of a Protocol setting out the different Roles and Responsibilities for Constituency Members and Regional Members to be drafted by the Committee on Standards of Conduct. The code or protocol must include provision in line with the following five key principles:</p> <ul style="list-style-type: none"> (i) all Members have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously; (ii) in approaching the Member of their choice, the wishes of constituents and/or the interests of a constituency or locality are of paramount importance; (iii) all Members have equal status; (iv) Members should not misrepresent the basis on which they are elected nor the area they serve; and (v) no Member should deal with a constituency case or constituency issue that is not within his or her constituency or region (as the case may be), unless by prior agreement. <p>Annex 1 to SO1 sets out some provisions that must be covered in the protocol.</p>
<p>Financial and other Interests of Members</p>	
<p>SO4 requires the Presiding Officer to maintain a register of interests; requires Members to declare an interest before taking part in proceedings; sets out circumstances where a Member should not vote if they have declared an interest and arrangements for the exclusion of a Member in breach of these requirements.</p>	<p>s.36 (1) of the 2006 Act requires Standing Orders to provide for a register of Members' interests.</p> <p>SO31 largely replicates SO4 of the current Standing Orders.</p>



Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil

Includes Annex of interests to be registered.	
Assembly Business	
<p>SOs 5 & 6 deal with Assembly Business and Business in Plenary. SO13 establishes a Business Committee. It advises the Business Minister on the management of the Assembly's business, advise the DPO on the exercise of his or her function of deciding whether an item of subordinate legislation should be considered by the Subject Committee, and make recommendations to the Assembly on the general practice and procedure of the Assembly.</p> <p>The Business Minister proposes outline timetables of business for the Assembly for periods of not less than three months, having regard to the advice of the Business Committee.</p> <p>The Business Minister also makes weekly business statements about the proposed organisation of business for the coming week, and provisional organisation for the two subsequent weeks. These statements can be put to the vote in plenary. Plenary usually meets 2pm-5.30pm on Tuesday and Wednesday.</p> <p>Standing Orders require time in a certain number of plenary meetings each year to be set aside for non-government parties and for debates on committee reports. Time is also allocated for AMs' Short Debates.</p> <p>Standing Orders require the PO to circulate in advance notice of the business for each plenary meeting, plus other information on future business. Questions, documents laid, and motions and amendments are organised under separate sections of the Assembly's internet site. The Agenda for each day of plenary contains links to all relevant AOs and supporting documents.</p>	<p>SO6 deals with the Organisation of Business in the Assembly. SO7 with Business in Plenary. There are changes to the way that the Business Committee operates and Assembly business is organised, including different categories of business and the allocation of time in Plenary split 3:2 between the Welsh Assembly Government and non-Government business</p> <p>There will be a Business Committee comprising the Presiding Officer as Chair and one Member from each political group, subject to approval by a two-thirds majority of the Assembly (SO11). There is also provision for representation of independent members and parties with fewer than 3 members. Decisions will be made by weighted voting, based on representation in the Assembly.</p> <p>Provision is made to permit the Business Committee to meet in private to determine the organisation of non-government and Assembly business in plenary. It will be entirely up to the Government to organise Government business, the Business Committee has no say in this. The weighted vote of Welsh Assembly Government members of the Business Committee on decisions concerning the organisation of non-government business will be based on backbench representation only.</p> <p>Other important functions of the Committee will include proposing the size and membership of committees, for approval by plenary; and a number of functions in relation to the timetable and consideration of proposed Legislative Competence Orders and proposed Measures.</p> <p>The new Business Committee will continue to have responsibility for procedural matters, including recommending changes to the</p>



Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil

	<p>Standing Orders, and will meet in public for this part of its work.</p> <p>Plenary will meet on Tuesday, 2pm-5.30pm and for slightly longer on Wednesday, 12.30pm-5.30pm (with scope as now to run later in certain circumstances, if necessary). The total time available in plenary will be split 3:2 between the Welsh Assembly Government and non-Government business. Government business will be considered on Tuesdays and from 12.30pm to 2pm on Wednesdays.</p> <p>The business statement will continue in its three-weekly format. Members will be able to question the Business Minister about the business statement, including the Government's intentions for use of its time, but it will <u>not</u> be subject to a vote in plenary. Periodic timetable statements will be made on a six-monthly basis and will not be subject to a vote in plenary.</p> <p>Time must still be made available in each Assembly year for debates on certain items of business, including the Assembly Government's policy objectives and legislative programme; the UK Government's legislative programme; committee reports; and non-government legislation. Short Debates will continue.</p> <p>Standing Orders will require the Clerk to publish a Business Notice, which must include the notice of plenary and committee Agendas, together with information about questions, motions, legislation, amendments and documents which have been tabled or laid before the Assembly since the last Business Notice.</p> <p>SO9 sets out procedures for Written Questions, Statements and Statements of Opinion. Members can put questions to the Assembly Commission.</p>
Order in Plenary	



Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil

SO7 sets out requirements for the orderly conduct of business in Plenary.	SO8 largely replicates SO7 in the current Standing Orders.
<p>Committees</p> <p>The ss. 56-61 of the 1998 Act specified that the Assembly must have subject committees, of which the relevant Minister must be a Member; a subordinate legislation committee and an audit committee. It also required the Assembly to establish a north Wales Committee and committees for other regions of Wales.</p> <p>SO8 sets out procedures for the creation and conduct of Committees.</p> <p>SO9 refers to Subject Committees. There are seven of these, which must mirror the number and scope of Ministerial portfolios and include Ministers as members. Regular Ministerial scrutiny sessions are held alongside work on policy reviews and scrutiny of subordinate legislation, ASPBs, public appointments and the Budget.</p>	<p>S.28 of the 2006 Act provides for the Assembly to establish committees and sub-committees but does not specify what they should be.</p> <p>S.29 of the 2006 Act states that membership of each committee must reflect (so far as is reasonably practicable) the balance of the political groups to which Assembly members belong. If a proposal for the composition of a particular committee is not supported by two-thirds of the Assembly in a vote, then the d'Hondt formula will be used to determine the membership of that Committee.</p> <p>SO10 sets out procedures for appointment and conduct that will apply to every committee of the Assembly. This includes the circumstances in which the d'Hondt procedure for determining committee membership applies.</p> <p>SO12 states that there must be <u>scrutiny committees</u>.</p> <p>SO21 allows for the creation of committees, other than those established under the Standing Orders, on a motion tabled by any Member.</p> <p>SO21, therefore, allows for the creation of <u>committees</u> to scrutinise proposed Assembly Measures and undertake pre-legislative scrutiny of proposed "Legislative Competence Orders", which will amend the scope of the Assembly's competence to make Measures.</p>
<p>Audit Committee</p>	
<p>S.60 of the 1998 Act requires an Audit Committee.</p> <p>SO 12 sets out procedures for the Audit Committee. It meets monthly. Standing Orders require between 7 and 11 members.</p>	<p>An Audit Committee is required by s.30 the 2006 Act.</p> <p>SO13 sets a size of 10 members. It will have the same functions as before, plus new functions of considering proposed supplementary budget motions affecting provision for the</p>



Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil

	Auditor-General, and considering and reporting to the Assembly on unauthorised use of excess resources.
Mandatory Committees	
Mandatory Committees on European and External Affairs (SO15), Equality of Opportunity (SO14), Standards of Conduct (SO16), Scrutiny of the First Minister (SO18A) are established by Standing Orders.	Committees with the same titles but different remits will continue to be required by the new Standing Orders. (SOs 18,17, 16 and 19) The remit of the Standards of Conduct Committee will be extended to cover the proposed new code on the roles and responsibilities of Members.
Legislation Committee	
Legislation Committee (SO11) is required by the 1998 Act, to undertake technical scrutiny of Assembly subordinate legislation referred to it.	<p>A Subordinate Legislation Committee will be established by Standing Orders (SO15) to undertake technical <u>and policy</u> scrutiny of statutory instruments (SIs) made by the Welsh Ministers that are subject to Assembly procedure. The Committee may report on whether the Assembly should pay special attention to particular SIs or draft SIs on certain grounds, set out in the Standing Orders, that relate to policy and technical matters.</p> <p>This Committee may also consider certain other matters, including any other subordinate legislation laid before the Assembly and “any legislative matter of a general nature relating to the competence of the Assembly or Welsh Ministers.” It will also assess the appropriateness of provisions in proposed Measures that grant powers to make subordinate legislation to Welsh Ministers (e.g. by considering whether the function in question should be an executive function, and whether the Assembly procedure specified for the function is suitable).</p>
House Committee	
House Committee is established by Standing Orders to exercise delegated functions relating to services for Members. Chaired by Deputy Presiding Officer. (SO18)	The Act establishes the National Assembly for Wales Commission to provide services and staff and hold property for the Assembly (SO3). [see above]
Regional Committees	
The 1998 Act provided for Regional Committees (s.61).	The Standing Orders will not directly establish any regional



<p>Regional committees (SO17) are established by the Standing Orders to cover the whole of Wales, to advise the Assembly on matters affecting their regions, the effect of Assembly policies in those regions and the work of public bodies there.</p>	<p>committees. However, if a majority of constituency and regional members representing an electoral region wish to set up a Regional Committee, a motion to that effect (requiring a two thirds majority) will be tabled for the Assembly's approval.</p>
<p>Planning Decision Committee</p>	
<p>SO17 sets out procedures for the election and conduct of a Planning Decision Committee to consider appeals under section 78 of the <i>Town and Country Planning Act 1990</i>.</p>	<p>This function now falls on Welsh Ministers so the Standing Order has been deleted.</p>
<p>Finance Committee</p>	
<p>Current Standing Orders do not provide for a Finance Committee.</p>	<p>There will also be a new <u>Finance Committee</u>. SO14 sets out its role and functions. In addition to scrutinising the Welsh Ministers' budget proposals, this Committee will also be able to report on financial information accompanying proposed Measures, the handling of financial business and any other matter concerning the expenditure of the WAG or other expenditure from the Welsh Consolidated Fund.</p>
<p>Primary Legislation</p>	
<p>There are currently no Standing Orders relating to this. Primary legislation for Wales is made in the UK Parliament. Where the Welsh Assembly Government wants new primary legislation for Wales, it must seek the agreement of the Wales Office or other Whitehall Department to include those provisions in a Westminster Bill (e.g. <i>Public Audit (Wales) Bill 2004</i>).</p>	<p>The Act enables the Assembly to make "Assembly Measures" in Matters where it has Legislative Competence. Legislative Competence may be conferred by amending the Schedule of the Act either by an Act of Parliament or by a Legislative Competence Order which must be approved by both Houses of Parliament.</p> <p>Part 3 of the 2006 Act set out basic procedures for the making of Legislative Competence Orders and Assembly Measures. S.98 requires that the latter must undergo a 3 stage process of consideration of general principles; detailed consideration by AMs and a final stage where the Measure may be passed or rejected.</p> <p>SO22 sets out the procedures for the scrutiny of Legislative Competence Orders in the Assembly prior to being laid before</p>



	<p>Parliament.</p> <p>SO23 sets out the procedures for the passage of Assembly Measures through the Assembly. This includes consideration of General Principles, detailed scrutiny by committee, detailed consideration in Plenary and a further Plenary stage.</p>
<p>Subordinate Legislation</p>	
<p>SOs 24-32 deal with procedures for Subordinate legislation which is made by the Assembly. The 1998 Act (ss.64-68) and Standing Orders require that Assembly general subordinate legislation must be:</p> <ul style="list-style-type: none"> ◆ subject to regulatory appraisal, unless the Minister considers that it would be inappropriate or not reasonably practicable; ◆ submitted to the Business Committee with an explanatory memorandum; ◆ considered by Subject Committee, if the DPO so decides; ◆ considered by the Legislation Committee; ◆ approved by plenary. 	<p>SO24 outlines procedures for dealing with Subordinate Legislation.</p> <p>Subordinate legislation will be made by the Welsh Ministers. Essentially, subordinate legislation will be subject to either negative resolution procedure, affirmative resolution procedure or no procedure by the Assembly. Where there is an equivalent Minister of the Crown function, the Assembly equivalent of the procedure that applies in Westminster will apply here.</p> <p>The bulk of SIs will be subject to the negative resolution procedure. This means that they are made before being laid before the Assembly (but should not, other than exceptionally and with reasons, come into force within 21 days of being laid). Within 40 days of the SI being laid, a Member may table a plenary motion proposing that the SI be annulled.</p> <p>Some SIs will be subject to affirmative resolution procedure. This usually means that the SI is laid in draft and cannot be made before it is approved by the Assembly in plenary. A motion to approve cannot be debated until the Subordinate Legislation Committee (or any other committee) has reported on the draft SI, or at least 20 days have elapsed since laying (whichever is the earlier).</p> <p>There will no longer be a fast track “executive procedure”. Urgent SIs to be made under the negative procedure can be</p>



	<p>made and brought into force immediately, if necessary. For urgent legislation subject to affirmative procedure, rapid Assembly consideration would have to be arranged through political negotiation.</p> <p>Subordinate legislation laid before the Assembly will still have to be accompanied by an Explanatory Memorandum, which must include any Regulatory Impact Assessment that has been prepared.</p> <p>All SIs or draft SIs laid before the Assembly will be subject to technical scrutiny by the Subordinate Legislation Committee. That Committee may also undertake policy scrutiny of those instruments (see above). No other committee is given a specific role in this respect, but it would be open to them to scrutinise any item of subordinate legislation.</p> <p>These procedures will also apply to non-SI subordinate legislation (such as a Code of Practice) that is required by primary legislation to be laid and subject to an affirmative or negative resolution procedure. Other non-SI subordinate legislation will not be subject to any Assembly procedure, but may be scrutinised by the Subordinate Legislation Committee if laid before the Assembly.</p>
<p>Consent in relation to UK Parliament Bills</p>	
<p>Not applicable</p>	<p>SO26 is a new provision related to proposals by the UK Government to legislate within areas where the Assembly has legislative competence. The Assembly Government will be obliged to lay a memorandum explaining the proposals and to seek the Assembly's agreement to them.</p>
<p>Public Appointments</p>	
<p>Standing Order 22 provides for the Assembly to adopt and keep under review a Code of Practice governing the procedures for public appointments. The Code requires that Subject Committee nominees are consulted on all public</p>	<p>Apart from the appointment of the Auditor General and the Public Services Ombudsman, appointments will be made by the Welsh Ministers. The role of the Assembly's committees will be</p>



Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil

<p>appointments made by Ministers in the name of the Assembly.</p>	<p>to scrutinise the operation of appointments procedures, not participate in making appointments. Many public appointments made by the Welsh Ministers will continue to be subject to monitoring and regulation by the Commissioner for Public Appointments.</p>
<p>Petitions</p>	
<p>SO34 explains procedures for petitions to the Assembly. The Presiding Officer receives petitions to the Assembly and informs the Assembly of their content and numbers of signatures. Any AM may propose that the Assembly debate a petition, and committees may also consider any such petition, but this rarely happens.</p>	<p>SO28 deals with procedures for public petitions. The Assembly <u>must</u> consider any admissible petition. The PO will refer a petition to the relevant Assembly committee. The committee may in turn refer it to the Assembly Government, any other Assembly committee or any other person or body for them to take such action as they consider appropriate. The committee could also decide to take evidence from the petitioners and others.</p>
<p>Finance and Budget Procedures</p>	
<p>The Secretary of State for Wales makes payments to the Assembly, out of money provided by Parliament, of such amounts as he may determine. SO21 sets out procedures for laying, scrutiny and approval of the Budget.</p>	<p>The 2006 Act establishes a Welsh Consolidated Fund which, from April 2007, will be the neutral “pot” where the money voted by Parliament to Wales will be stored. The Auditor General for Wales (AGW) will authorise payments out of the Welsh Consolidated Fund to the Welsh Ministers in accordance with budget motions and supplementary budget motions approved by the Assembly. The separate expenditure of each of the Assembly Commission, the Auditor General for Wales (AGW) and the Public Services Ombudsman for Wales will also come out of the Welsh Consolidated Fund, and will need to be authorised by the AGW.</p> <p>The budget process will start with a Welsh Minister laying a draft budget. The new <u>Finance Committee</u> must then consider and report to the Assembly on the draft budget before it is debated in plenary. Other committees may also consider the draft budget and make recommendations to the Finance Committee before it reports. Plenary may approve changes to the draft budget,</p>



	<p>provided that the net effect of those changes would not alter the aggregate amounts of resources or cash proposed.</p> <p>No later than 3 December a Welsh Minister will table the annual budget motion, which cannot be amended, for the Assembly to authorise the amount of resources that may be used in the financial year “for the services and purposes specified in the motion”. These are covered by detailed ambits for each Department (or portfolio or MEG). Variations to the approved final budget can be authorised by the Assembly through supplementary budget motions.</p>
<p>Inspection of Assembly Documents</p>	
<p>Standing Order 19 provides for Members' access to documents relating to Assembly proceedings, reflecting the corporate nature of the Assembly and the fact that Welsh Assembly Government documents are documents of the Assembly as a whole. Access to information held by the Assembly Government in a timely manner through different routes is dealt with by the Code of Practice on Members' Access to Information.</p>	<p>Flowing from separation, there will be no provision equivalent to SO19 giving Members a right to inspect WAG documents relating to Assembly proceedings.</p> <p>The 2006 Act, however, does give the Assembly, or its committees, the power to call witnesses to give evidence or produce documents (s.37). This power is specifically limited to scrutiny of matters relating to the exercise by Welsh Ministers of their functions. The power to call extends to Welsh Ministers and staff of the Welsh Assembly Government, but a Welsh Minister will be able to nominate a different official, or to account to the committee themselves.</p>
<p>Reports of Proceedings</p>	
<p>SO20 requires that the Assembly shall, as soon as practicable after each plenary meeting publish a record of speeches electronically in the languages in which they were made and at a later stage, publish an edited, fully translated, verbatim record of proceedings.</p> <p>It also requires that minutes of each committee and sub committee's public proceedings be published bilingually and where evidence has been given in public,</p>	<p>SO30 replicates SO20 in current Standing Orders.</p>



Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil

publish an edited verbatim record of that evidence, with translations into English of evidence given in Welsh and translations into Welsh of evidence given in English	
Complaints	
SO23 sets out procedures for dealing with complaints about the Assembly. The Permanent Secretary is tasked with ensuring that procedures are in place so that: (i) complaints about the Assembly's actions or omissions are acknowledged and properly investigated; and (ii) complainants are kept informed about the progress of investigations and replied to, with remedies provided as appropriate.	There is no specific Standing Order making reference to procedures for dealing with complaints against the Assembly. However, the complaints against individual Assembly Members will be dealt with by Commissioner of Standards (SO33) and the Committee on Standards of Conduct (SO16).
Notification, Tabling and Laying of Documents	
SO35 and SO36 deal with Notification and Tabling Procedures and Laying of Documents.	SO29 deals with Laying and Tabling and revises SO35 and SO36 to reflect changes in the Act.
Revision and Suspension of Standing Orders	
SO37 sets out procedures for revising and suspending Standing Orders. At least a two-thirds majority of Members is required in both cases.	SO35 mainly replicates SO37 in current Standing Orders.
Membership of Societies	
SO38 requires a notification to be made by Member of any membership of a private society or a private club which has entry requirements for membership. The Presiding Officer must maintain and publish a record of the notifications by Members.	SO32 mainly replicates SO38 in the current Standing Orders.
Conduct of the Public	
SO7.14 and SO7.15 allow the Presiding Officer to make rules relating to the Conduct of the Public	SO34 allows the Presiding Officer to make rules relating to the Conduct of the Public.

Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales



Annex 2: Procedures Unit's Guide to the Third Assembly

A Guide to the Third Assembly

CONTENTS

Introduction

1 The National Assembly for Wales

- 1.1 Members
- 1.3 Presiding Officer and Deputy
- 1.5 The Commission

2 The Welsh Assembly Government

- 2.1 General
- 2.2 The Welsh Ministers
- 2.5 Deputy Welsh Ministers
- 2.6 The Counsel General

3 Plenary and the Control of Assembly Business

- 3.1 Organisation of Business
- 3.6 Plenary times
- 3.7 Business Notice

4 Committees

- 4.1 General
- 4.7 Scrutiny Committees
- 4.9 Measure/Order Committees
 - 4.11 Business Committee
 - 4.16 Other Committees -
 - Audit Committee
 - Finance Committee
 - Subordinate Legislation Committee
 - Committee on Standards of Conduct
 - Equality of Opportunity Committee, European and External Affairs Committee, Committee for the Scrutiny of the First Minister
 - Regional Committee
 - Other Committees

5 Legislation

- 5.1 General
- 5.5 Legislative Competence Orders
- 5.11 Measures
- 5.17 Subordinate Legislation
 - 5.21 Bills in Parliament conferring new powers and Assembly Legislative Consent Motions

6 Finance and the Welsh Consolidated Fund

7 Engaging with the Public

8 The Welsh Language



9 Access to Information

10 Public Appointments

A Guide to the Third Assembly

Introduction

This guide outlines the key changes that will take effect in the Third Assembly as a consequence of the new Standing Orders made in accordance with the Government of Wales Act 2006 ('the Act').

1. The National Assembly for Wales

Members

- 1.1 In the Third Assembly, the arrangements for Members will remain largely unchanged, except, as required by the Act, Standing Order 1 includes a new provision for the making of a code or protocol concerning the different roles and responsibilities of constituency and regional Members.
- 1.2 The code is to be drafted by the Committee on Standards of Conduct and must include provision for the 5 key principles set out in the Standing Order and its accompanying Annex.

Presiding Officer and Deputy

- 1.3 As required by the Act, the PO and Deputy will no longer be able to come from the same political group or groups who both have an executive role. Standing Order 2 goes further than the Act in requiring one to come from the government and one from the opposition (although this can be disapplied by a 2/3rds majority in plenary).
- 1.4 The PO and DPO will no longer have a vote (other than a casting vote) in plenary proceedings or a Committee of the Whole Assembly.

The Commission

- 1.5 The Act establishes an Assembly Commission to provide services and staff and hold property for the Assembly.
- 1.6 The Commission will comprise the Presiding Officer (as Chair) and four other Members, to be appointed by the Assembly.
- 1.7 Assembly staff, headed by the Clerk and Chief Executive, will be employed by the Commission and will not be civil servants, although the Act provides for their terms and conditions of service to be no less favourable than they were before the creation of the new Assembly.
- 1.8 The House Committee will cease to exist in the Third Assembly.

2. The Welsh Assembly Government

General

- 2.1 The Act creates a Welsh Assembly Government (WAG) legally distinct from the National Assembly for Wales. The First Minister is no longer elected by the Assembly, but is appointed by the Queen, on the nomination of the Assembly. The First Minister subsequently appoints Welsh Ministers and Deputy Welsh Ministers, with the approval of Her Majesty, up to a statutory limit of 12.

The Welsh Ministers

- 2.2 The First Minister and his/her appointed Welsh Ministers are collectively known as 'the Welsh Ministers'.
- 2.3 The executive functions previously conferred on the Assembly as a corporate body will become the responsibility of the Welsh Ministers and new functions will be directly vested in Welsh Ministers, as appropriate.
- 2.4 Assembly Government staff will be able to exercise most of the functions of the Welsh Ministers to whom they work without requiring a specific delegation. Ministers may still retain some functions to exercise themselves.

Deputy Welsh Ministers

- 2.5 Unlike the First and Second Assemblies where Deputy Ministers had no legal status, in the Third Assembly, Deputy Welsh Ministers will have the statutory function of assisting the First Minister, a Welsh Minister or the Counsel General in the exercise of their functions. The Deputy Welsh Ministers may exercise functions and answer Assembly questions on any matter on which they assist the Welsh Ministers.

The Counsel General

- 2.6 The Act establishes the office of Counsel General, who will be the legal adviser to, and representative in the courts of, WAG.
- 2.7 The Counsel General is appointed by Her Majesty, on the recommendation of the First Minister, as approved by the Assembly.
- 2.8 The Counsel General may be, but need not be, a Member. If not a Member, he or she can participate in Assembly proceedings as if a Member but cannot vote.

3. Plenary and the control of Assembly Business

Organisation of Business

- 3.1 Standing Orders 6 and 7 provide for a new approach to the organisation of business in plenary, introducing the concept of -

- 'government business', e.g. oral questions, Ministerial statements;
 - 'non-government business', e.g. non-government legislation, committee reports;
 - 'Assembly business', e.g. PO statements, obituary tributes.
- 3.2 The organisation of government business will be determined by the government; non-government business and Assembly business will be determined by the Business Committee (see paragraph 4.11 for further details on the functions of the Business Committee).
- 3.3 The Minister with responsibility for government business will, for each week the Assembly meets in plenary, make a statement on the organisation of government business in plenary and announce the organisation of non-government and Assembly business in plenary, for the following three weeks.
- 3.4 There will be no vote on the Minister's statement on the organisation of government business or the accompanying announcement about non-government and Assembly business. Instead, half an hour will be allocated for questions to the Minister with responsibility for government business about the organisation of that business. This is a change to the practice in the First and Second Assemblies, where Members would vote on the weekly Business Statement.
- 3.5 Time allocated in plenary for government and non-government business will be in the proportion of 3:2 respectively, calculated over the period of an Assembly year.

Plenary times

- 3.6 Standing Order 7 sets out new arrangements for plenary meetings:

On a Tuesday, plenary will meet from 2pm - 5.30pm to consider government and Assembly business only;

On a Wednesday, plenary will be extended to meet from 12.30pm - 2pm to consider government business and from 2pm - 5.30pm to consider non-government and Assembly business.

The Standing Order provides for these meetings to be extended in certain circumstances if necessary.

The Business Notice

- 3.7 Standing Order 6 imposes a new requirement on the Clerk to publish a Business Notice, which must include the notice of plenary and committee agendas, together with information about questions, motions, legislation, amendments and documents which have been tabled or laid before the Assembly since the last Business Notice.

4. Committees

General

- 4.1 The Act specifies only one committee; the Audit Committee, but provides for the Assembly to establish such other committees as necessary.
- 4.2 Membership of a committee will be determined by the Assembly on a vote requiring a 2/3rds majority, on a motion tabled by the Business Committee. Such a motion cannot be passed unless it recommends membership which reflects (so far as reasonably practicable) party balance within the Assembly. If any such motion is not agreed by the Assembly, membership of that committee will be determined according to the d'Hondt formula.
- 4.3 Standing Orders provide for scrutiny committees to be set up but do not specify the number or their remit - a decision to be taken by the Third Assembly.
- 4.4 Standing Orders also provide for ad-hoc committees to be established to scrutinise Assembly legislation and other matters.
- 4.5 Committees will determine when and how often they meet, within blocks of time allocated for committee business.
- 4.6 Ministers and Deputy Ministers will not be barred from being members of committees other than the Audit Committee, but it is expected that, in practice, they will only sit on Measure or Order committees.

Scrutiny Committees

- 4.7 Although the Standing Orders do not prescribe the number of scrutiny committees that will exist at any one time, the size of the Assembly may restrict the number that can sit in practice. As a result, there is expected to be a smaller number of cross-cutting scrutiny committees, covering wider subject areas.
- 4.8 The role of committees will be decided by Members of the Third Assembly, but is likely to include the scrutiny of Ministerial policies and the development of proposals for Assembly legislation on any matter within their remit. It is unlikely that Ministers will sit as members of these committees, but they may still be invited to give evidence for specific policy inquiries or to be questioned generally on their portfolios.

Measure/Order Committees

- 4.9 Separate Measure or Order committees will be established as required to scrutinise proposed Assembly Measures and undertake pre-legislative scrutiny of proposed Legislative Competence Orders (Orders in Council).
- 4.10 It is likely that Ministers will sit on such committees.

Business Committee

- 4.11 The Business Committee in the Third Assembly will comprise the Presiding Officer (as Chair) and one Member from each political group (providing 2/3rds of the Assembly voting support the nominations). There is also a new provision for representation of independent Members and parties with fewer than 3 Members.
- 4.12 Decisions in the committee will be made by weighted voting, based on party representation in the Assembly.
- 4.13 The Business Committee may meet in private to determine the organisation of non-government and Assembly business in plenary. The weighted vote of the WAG member of the Business Committee on decisions concerning the organisation of non-government business will be based on his/her party's backbench representation only.
- 4.14 Other important functions of the Business Committee will include proposing the size and membership of committees for approval by plenary and a number of functions in relation to consideration of proposed Legislative Competence Orders and proposed Measures, e.g. setting the timetable for committee stages.
- 4.15 The new Business Committee will continue to have responsibility for procedural matters, including recommending changes to the Standing Orders and will meet in public for this part of its work.

Other Committees

- 4.16 Standing Orders provide for there to be a number of specific committees:

Audit Committee

The Act requires there to be an Audit Committee with the same functions as the pre-2007 committee plus new functions relating to the Auditor General's budget and considering and reporting to the Assembly on unauthorised use of excess resources.

The Standing Orders require the number of members of the committee to be 10.

Finance Committee

The newly established Finance Committee is designed to introduce more rigour and openness to the budgeting process.

In addition to scrutinising the Welsh Ministers' budget proposals, this Committee will also be able to report on any other matter concerning the expenditure of the Assembly Government.

Subordinate Legislation Committee

The new Subordinate Legislation Committee has an enhanced remit which provides for technical and policy scrutiny ('merits' function') and reporting of statutory instruments (SIs) made by the Welsh Ministers that are subject to Assembly procedure.

This Committee may also consider certain other matters, including any other subordinate legislation laid before the Assembly and any other general legislative matter affecting the competence of the Assembly or Welsh Ministers.

It will also assess the appropriateness of provisions in proposed Measures that grant powers to make subordinate legislation to Welsh Ministers (e.g. whether the function in question should be an executive function and whether the Assembly procedure specified for the function is suitable).

Committee on Standards of Conduct

The remit of the Standards of Conduct Committee will be extended to cover the proposed new code or protocol on the roles and responsibilities of regional and constituency Members.

Equality of Opportunity Committee, European and External Affairs Committee and Committee for the Scrutiny of the First Minister

These committees have a wide remit to allow them to develop their own roles in the Third Assembly.

Regional Committees

Standing Orders no longer require there to be regional committees, instead providing for them to be established if a majority of constituency and regional Members representing an electoral region wish there to be one. In such case, a motion to establish a committee for the region will be tabled for Assembly approval.

Other Committees

Standing Orders make provision for other committees to be set up during an Assembly, including a Committee of the Whole Assembly to consider legislation.

5. Legislation

General

- 5.1 The legislative competence of the Third Assembly is expressed in terms of 'matters' within 'fields':
- A 'field' is a broad subject area, e.g. highways and transport, housing;
 - A 'matter' is a specific defined policy area within a field.

- 5.2 In the matters within which it has legislative competence, the Assembly can make its own laws, known as 'Measures'. A Measure will have similar effect to an Act of Parliament.
- 5.3 The fields and matters currently within the legislative competence of the Assembly are set out in Schedule 5 to the Act.
- 5.4 Schedule 5 may be amended (i.e. additional Measure-making powers can be conferred) by either:
- Act of Parliament; or
 - Legislative Competence Order (subject to approval by both the Assembly and the UK Parliament)

Legislative Competence Orders (LCOs)

- 5.5 Legislative Competence Orders are a type of Order in Council which will transfer specific legislative competence from Parliament to the Assembly by amending Schedule 5 to the Act.
- 5.6 An LCO can be proposed by the Assembly Government, an Assembly committee, or, if successful in a ballot drawn from time to time by the Presiding Officer, an individual Member.
- 5.7 In the case of a Member proposed LCO, the Member may only enter the ballot if they have submitted the required documentation - an outline of a proposed LCO and an Explanatory Memorandum. If successful in the ballot, the Member will seek the Assembly's agreement to lay their proposed LCO.
- 5.8 In the Assembly, there will be a 2-stage process for approving an LCO, involving:
- (i) pre-legislative scrutiny of a **proposed** LCO by an ad-hoc Order committee; and
 - (ii) approval in plenary of a **draft** LCO (which cannot be amended).
- 5.9 Provision has been made for joint working on pre-legislative scrutiny with committees of the House of Commons, House of Lords or a joint committee of both Houses.
- 5.10 Once agreed by the Assembly, the draft LCO is sent to the Secretary of State to be laid before both Houses of Parliament and, if approved, made by Her Majesty in Council. (The Secretary of State can refuse to lay the draft LCO before Parliament and must give notice in writing to the First Minister of any such refusal).

Measures

- 5.11 In the matters within which it has legislative competence, the Third Assembly will make its own legislation, known as 'Assembly Measures', which will have similar effect to an Act of Parliament.
- 5.12 Measures may be proposed by the Assembly Government, Assembly Committees, the Assembly Commission or, if successful in a ballot, an individual Member.
- 5.13 As with the Order in Council ballot, a Member may only enter the Measures ballot if they have submitted the required pre-ballot information - the title of the proposed Measure and an Explanatory Memorandum. If successful in the ballot, the Member will seek leave of the Assembly to introduce their Measure.
- 5.14 Any Member who has successfully brought forward an LCO will have an automatic right to introduce a Measure consequential to that LCO.
- 5.15 In the Assembly, there will be a 4-stage process to pass a Measure, involving:
- (i) Stage 1 - consideration in ad-hoc Measure committee (this stage can be by-passed with the agreement of the Business Committee) and agreement of the general principles of the Measure in plenary;
 - (ii) Stage 2 - detailed consideration by ad-hoc Measure committee of the Measure and any amendments tabled;
 - (iii) Stage 3 - detailed consideration in plenary of the Measure and any selected amendments;
 - (iv) Stage 4 - passing of the final text of the Measure.
- 5.16 If passed by the Assembly at the end of Stage 4, the Measure is submitted to Her Majesty in Council for Royal Approval.

Subordinate Legislation

- 5.17 Subordinate legislation will be made by the Welsh Ministers and will be subject to either negative resolution procedure, affirmative resolution procedure or no procedure. The parent Act or Measure will specify the appropriate procedure. Where there is an equivalent UK Ministerial function, the Assembly equivalent of the procedure that applies in Westminster will apply here.

Negative resolution procedure - a statutory instrument (SI) will be made before being laid before the Assembly (but should not, other than exceptionally and with reasons, come into force within 21 days of being laid). Within 40 days of the SI being laid, a Member may table a plenary motion proposing that the SI be annulled.

Affirmative resolution procedure - an SI is laid in draft and cannot be made until approved by the Assembly in plenary. A motion to approve cannot be debated until the Subordinate Legislation Committee (or any other committee)

has reported on the draft SI, or at least 20 days have elapsed since laying (whichever is the earlier).

- 5.18 There will no longer be a fast track "executive procedure". Urgent SIs to be made under the negative procedure can be made and brought into force immediately, if necessary. Urgent legislation subject to affirmative procedure will require rapid Assembly consideration, to be arranged through political negotiation.
- 5.19 Subordinate legislation laid before the Assembly will still have to be accompanied by an Explanatory Memorandum, which must include any Regulatory Impact Assessment that has been prepared.
- 5.20 All SIs or draft SIs laid before the Assembly will be subject to technical scrutiny by the Subordinate Legislation Committee. That Committee may also undertake policy scrutiny of those instruments (see above). No other committee is given a specific role in this respect, but it would be open to them to scrutinise any item of subordinate legislation.

Bills in Parliament conferring new powers and Assembly Legislative Consent Motions

- 5.21 Although the Assembly will have powers akin to primary legislation, Westminster Bills will continue to be important vehicles for conferring new or amended executive powers on the Welsh Ministers and conferring Measure-making powers on the Assembly in relation to specified matters.
- 5.22 It is expected that Westminster will only legislate on devolved matters with the Assembly's consent - an arrangement similar to the Sewel Convention operating in relation to the Scottish Parliament. (This is with the exception of minor, consequential and incidental provisions, on which only the Welsh Ministers must be consulted.)
- 5.23 In addition, any provisions which would have a negative effect on the Assembly's legislative competence will also require the Assembly's consent.
- 5.24 Where such consent is required, the Assembly Government will be obliged to lay a memorandum explaining the legislative proposals and to seek the Assembly's agreement by means of a Legislative Consent Motion.

6. Finance and the Welsh Consolidated Fund

- 6.1 The Act establishes a Welsh Consolidated Fund which, from April 2007, will be the neutral 'pot' into which the money voted by Parliament to Wales (as part of the Barnett formula) will be paid.
- 6.2 The Auditor General for Wales (AGW) will authorise payments out of the Welsh Consolidated Fund to the Welsh Ministers in accordance with budget motions and supplementary budget motions approved by the Assembly.

- 6.3 The separate expenditure of each of the Assembly Commission, the Auditor General for Wales and the Public Services Ombudsman for Wales will also come out of the Welsh Consolidated Fund and will need to be authorised by the AGW.
- 6.4 The Standing Orders provide for there to be a dedicated Finance Committee to scrutinise and report on the Welsh Ministers' budget proposals before they are submitted for final approval by the Assembly.
- 6.5 Plenary may approve changes to the draft budget, provided that the net effect of those changes would not alter the total amounts of resources or cash proposed.
- 6.6 Variations to the approved final budget can be authorised by the Assembly throughout the year by means of supplementary budget motions.

7. Engaging with the public

- 7.1 New arrangements for public petitions mean that the Assembly must consider any admissible petition.
- 7.2 A petition will be inadmissible if it fails to comply with the criteria provided for in Standing Orders, including containing fewer than 10 signatures, containing offensive language or requesting the Assembly do anything which it does not have the competence to do.
- 7.3 The Presiding Officer will refer a petition to the relevant Assembly committee, who may, in turn, refer it to WAG, any other Assembly committee or any other person or body for them to take such action as they consider appropriate.
- 7.4 The relevant committee can also take evidence from the petitioners and other relevant persons.

8. Welsh Language

- 8.1 All Assembly Measures must be made bilingually but it will be for the Welsh Ministers to determine whether subordinate legislation should be made bilingually.
- 8.2 The proposed Welsh Language Scheme for WAG provides that all subordinate legislation made by SI will be made in Welsh and English, unless not appropriate or reasonably practicable.
- 8.3 The requirement for equal treatment of English and Welsh has been replicated in relation to the conduct of Assembly proceedings and the exercise of the Assembly Commission's functions. All documents laid or business tabled in the Assembly by the Presiding Officer, the Commission, the government, any committee or the Clerk must be in English and Welsh, so far as appropriate and reasonably practicable.

- 8.4 The Assembly Commission intends to publish a Welsh Language Scheme which will specify the measures they propose to take for the purpose of giving effect (as far is appropriate and reasonably practicable) to the principle that English and Welsh should be treated on a basis of equality in the conduct of business in the Assembly.

9. Access to Information

- 9.1 As a result of separation, the provisions of Standing Order 19 giving Members a right to inspect WAG documents relating to Assembly proceedings will not be replicated.
- 9.2 However, the Act gives the Assembly the power to call witnesses to give evidence or produce documents. This power is specifically limited to scrutiny of matters relating to the exercise by Welsh Ministers of their functions. The power to call extends to staff of the Welsh Assembly Government, but a Welsh Minister will be able to nominate a different official, or to account to the committee themselves. UK Ministers and their civil servants will not be subject to this power.

10. Public Appointments

- 10.1 Apart from the appointment of the Auditor General and the Public Services Ombudsman, where there is a role for the Assembly, appointments will be made by the Welsh Ministers.
- 10.2 Assembly committees may scrutinise the operation of appointments procedures. In addition, many public appointments made by the Welsh Ministers will continue to be subject to monitoring and regulation by the Commissioner for Public Appointments.

Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales