

**Consultation – Review of Standing Orders**

**Evidence Submitted to the Business Committee Consultation**

**by Professor Laura McAllister and Dr Diana Stirbu**

This evidence to the review on the National Assembly Standing Orders is submitted jointly and draws upon several research projects conducted by the authors around the constitutional infrastructure and internal architecture of the Assembly (some of these are referenced at the end and we are happy for the Committee to use any of our published work as supplementary evidence should they be of use).

**Preamble**

1. We concur that no significant overhaul of the Standing Orders is required at this stage in the National Assembly's development. The last major revision of the Standing Orders (in 2006-2007) clearly addressed the requirements of the Government of Wales Act 2006 (GWA 2006) with regards to the legal separation of the National Assembly and the Welsh Assembly Government. They also established the legal and administrative basis of the Assembly's new administration – the Assembly Commission. Given the GWA 2006 also gave legislative powers (through Assembly Measures) in areas where Wales has legislative competence, the Standing Orders made substantial provisions around this change. Serious consideration of principles was also undertaken by the Standing Orders Committee. We regard these guiding principles to be innovative and to allow for ongoing changes.
2. It is our view that 'fit for purpose' Standing Orders for a developing institution like the National Assembly should be flexible and avoid being unduly prescriptive. They should have 'space between the lines', so to speak, and allow scope for incremental adjustment as the Assembly's operation develops. This review thus offers an opportunity to shed any prescriptive requirements that have not been used, been ignored or have caused procedural motions to be regularly requested.
3. We also highlight the necessity for any institutional adjustment – such as those for the fourth Assembly – to take a long term rather than a short term perspective. Any changes to the Standing Orders should therefore be guided by longer institutional aims – in accordance with the National Assembly Commission's Strategy for the Assembly, its purpose, goals and values.
4. Equally, effective Standing Orders should chime with, and reflect, wider political and governmental contexts and rhythms. Of course, this is not to suggest that changes should be made in response to electoral or political shifts. Rather, the current electoral system for Assembly elections and ensuing voting trends means that single party majority government is increasingly unlikely. As Wales's government and

legislature adjust to an emerging, 'soft' pluralism, we regard it important that the new Standing Orders source evidence from other states where power sharing coalitions (with all they entail) are the norm. This might have relevance for areas such as section 2.12 regarding the nominations for the Presiding Officer and Deputy Presiding Officer, and SO 4.1 (based on S 47 of the GWA 2006) specifying a restriction of 28 days for nominations for the appointment of the First Minister. Clearly, Westminster continues to offer valuable and long established practice from which we might borrow. However, we regard it an important principle that the evidence net is cast wider to ensure institutional learning comes from multiple sources.

### **Capacity**

1. We regard as easily the most fundamental design flaw of the Assembly to be the small number of elected members. We concur with both the Richard Commission in 2004 and the Independent Panel on AMs' Pay and Allowances in 2009 (IRP 2009) as to the operational difficulties that cascade from this. We would also suggest that the Assembly is probably short of capacity (at least bespoke legislative expertise) on the administrative side.

Given this is likely to be the reality for the foreseeable future, we support the following recommendations, many of which have been made elsewhere:

- 1.1. Consider Section 6 of the existing Standing Orders, as to Assembly Business in the round, by adopting a holistic approach to time management and priorities between Plenary and Committees. We support the view that "integrated change as a holistic package with a clear strategic focus, rather than a set of individual ideas cherry picked because they are perceived to be potentially popular or relatively easy to implement" (Hansard Society 2009, p1). Whilst not underestimating the difficulties of undertaking a holistic review of business in the round, this appears crucial to facilitate the next stages in the Assembly's development. In our view, the concept of 'government business', 'non government business' and 'Assembly business' has benefits, but limitations too.
- 1.2 In particular, there should be some clarification and extrapolation of the role of Assembly 'backbenchers'. We believe it would greatly benefit the system if 'backbenchers' are given some clearer identity by allowing them to introduce their own business (other than short debates), for example, End of Day or Closing debates, Statements of Opinion etc. as Ruth Fox of the Hansard Society suggested at the Expert Panel event at the Pierhead on the 2<sup>nd</sup> July 2010). Similar trends toward empowering and revitalising the role of

backbenchers are also central to the House of Commons' reform agenda under the leadership of Speaker John Bercow (Speaker's Lecture, June 2009).

- 1.3 Use more widely, proactively and imaginatively external expertise to address capacity constraints, through policy commissions and secondments for example (IRP 2009). Examples of good practice in this regard can be drawn from other parliaments around the world that have tried to deal with expertise constraints in particular policy areas, most notably technology. The Danish *Folketing*, for example, draws heavily on external logistical support provided by the independent Danish Board of Technology in setting up and facilitating expertise panels and other public engagement/evidence based policy tools (DBT 2010)
- 1.4 Develop Job Profiles for AMs (regional and constituency).
- 1.5 Consider further the reach of the timetable and the use of Assembly time (for example, the Independent Panel's recommendation for 36 weeks of sitting with shorter recesses and longer plenary sittings, mindful of the commitment to 'family friendly hours'). We see there being no need for the Standing Orders to specify a 17.30 curfew, without a specific order to suspend.

### **Assembly Committees**

We take as our basic assumption that scrutiny, in the broadest sense, is the paramount business for the Assembly committees. It is encouraging that there is little evidence of partisan activity in the committee environment and this assists effective scrutiny, in our view. Given our point above regarding the interdependency of all aspects of Assembly business, any restructuring of the committees should be closely linked with the work of plenary. This might help confirm a more powerful committee-based focus to the work of the Assembly, in line with reviews of parliamentary business in New Zealand and Sweden. With this in mind, we suggest the following changes:

1. Clarify what the specific objectives of the non-legislative committees are as this will help encourage a tighter focus for their work and especially committee inquiries. This is in line with the House of Commons where a House resolution specifies the core functions of the Select Committees, rather than the Standing Orders. This could be further helped by greater input at an early stage from expert bodies (third sector, business, AGSBs etc.) and a clearer steer from the chair of the perils of committees trying to do too much. There is also a role for enhancing the co-ordinating role of the Clerks working with all of the committee chairs.
2. Beyond those specified in Section 10 of the GWA 2006, consider streamlining the number of committees through identification of clearer rationale for their existence. We estimated that there are around 470 timetabled slots for committees to meet, which seems to us excessive. Though the committee system has been streamlined,

we believe there is scope for greater simplification to make the committees more efficient. Some committees are indeed entrenched in the operation of the National Assembly and would be difficult to remove. However, institutional ‘stickiness’ and personal affinities for certain committees should not be the guiding rationale for maintaining them.

3. Ensure that political representation is applied across the piece, rather than on an individual committee basis, to ensure members are not overloaded. Clearly, S29 of the GWA 2006 requires the use of the d’Hondt formula in the event of no agreement being reached as to party places on committees. We accept that across the piece representation is possible only with party political consensus but this would, in our opinion, be a major boost to capacity.
4. Given the GWA 2006 gave the Assembly committees the power to call witnesses (S37), the fourth Standing Orders offer a useful moment to employ a more formal distinction between the type of witnesses giving evidence to the committees, that is, between expert, disinterested and interested witnesses. This might also improve capacity by reducing overload (which seems particularly acute in the voluntary sector) and allow witnesses to be handled differentially and in a manner that encourages bespoke input to enquiries and reviews.

#### **Other**

1. Seek improvements to parliament to parliament communications as these are too government focused currently (based on the fact that most powers have been devolved to the executive side).
2. Standing Orders aside, we believe that the culture and the practice of the National Assembly should reflect the core values of the institution. Thus, we see a greater role for AMs in enhancing the public profile of the National Assembly – as backbenchers, promoting their own legislative initiatives or committee roles, and as committee chairs, helping to promote the work and the profile of the committees on which they serve.
3. In line with common standards for democratic legislatures (CPA/WBI 2006), ensure that there is a sense of ownership of the Assembly Standing Orders. With the precondition that the role of the backbenchers is further strengthened, we think it is worth considering establishing a principle that the responsibility for reviewing Standing Orders is passed to a committee of backbenchers only, with no executive involvement.

## References

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