



[Business Committee](#)

July 2020

## **Amending Standing Orders: Standing Order 18B – Oversight of the Electoral Commission**

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### **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 Senedd, including any proposals for the re-making or revision of Standing Orders.
2. The report recommends introducing a new Standing Order 18B to establish the Llywydd's Committee, in accordance with the Senedd and Elections (Wales) Act 2020 ("SEA"). The changes agreed by Business Committee are found in Annex A.

### **Background**

3. The Senedd and Elections (Wales) Act 2020 ("the SEA") was passed by the Senedd on 27 November 2019 and received Royal Assent on 15 January 2020. The provisions relevant to this report will come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

4. SEA amends the Political Parties, Referendums and Elections Act 2000 (“PPERA”) to provide for the establishment of a Llywydd’s Committee in order for the Electoral Commission (“the EC”) to be accountable to the Senedd for devolved elections & referendums, and for the Llywydd’s Committee to approve the EC’s spending plans.

5. The First Minister requested that Business Committee initiates work to implement the relevant provisions of PERA (as amended by SEA) so that the EC is accountable to the Senedd for its activities in relation to devolved elections in the 2021 election year. In order for the Llywydd’s Committee to fulfil its role, for the 2021/2022 financial year, it must be established before 1 October 2020.

6. The Welsh Government must also lay the order to commence the relevant provisions of SEA, in order for the Llywydd’s Committee to begin exercising its functions. The First Minister has indicated that the Welsh Government will aim to give effect to the provisions so that the EC is accountable to the Senedd for the 2021 election year.

7. Given the statutory nature of the Llywydd’s Committee, it is proposed that it is provided for specifically in Standing Orders.

### **Functions relating to the oversight of the Electoral Commission**

8. PERA as amended by SEA requires that:

- by 1 October each year, the EC submits to the Llywydd’s Committee an estimate of the income and expenditure it expects to receive/incur for the next financial year with regard to its work on Welsh elections;
- the Llywydd’s Committee examine the estimate, in terms of economy, efficiency and effectiveness and makes any changes it considers appropriate taking into account the latest National Audit Office report and the views of the Welsh Ministers;

- the Llywydd's Committee lay the estimate before the Senedd. The Senedd will then approve the estimate as part of the annual budget motion.

9. PPERA allows the EC to revise an estimate during the financial year to which it relates. If it does this, the revised estimate will need to be scrutinised by the Llywydd's Committee following the process set out in paragraph 8 above.

10. PPERA also requires that the Llywydd's Committee:

- must periodically examine the EC's five-year work plan, in terms of economy, efficiency and effectiveness and makes any changes it considers appropriate, taking into account the latest National Audit Office report and the views of the Welsh Ministers. The five-year plan sets out the EC's aims, objectives and required resources in relation to the exercise of its functions with regard to devolved elections;
- must lay the scrutinised plan with or without modifications before the Senedd;
- can seek a further examination by the Wales Audit Office of any accounts audited by the NAO;
- must lay an annual report on its work before the Senedd.

11. PPERA provides for five-year plans to be submitted to the Llywydd's Committee:

- when the EC submits the first budgetary estimate;
- the estimate relates to the first financial year to begin after the day on which the Senedd meets following an ordinary general election of the Senedd, or
- the estimate relates to another financial year and the Llywydd's Committee requires the EC to submit a plan.

12. These functions are covered by the proposed new Standing Order 18B.2, which refers to the relevant legal provisions.

## Chair and Membership

13. SEA provides that the Llywydd's Committee must be chaired by the Presiding Officer or the Deputy Presiding Officer. It is proposed that the Standing Orders maintain this flexibility by enabling either to be nominated as Chair.

14. During the passage of the Act, a debate took place over which body should perform the relevant functions of holding the Electoral Commission accountable and agreeing their spending plans. This resulted in a broad consensus that a new committee be established on a 'non-partisan' basis, as opposed to an existing Committee, such as the Finance Committee (which reflects the political balance of the Senedd).

15. In order to maintain a link with the Finance Committee, given its role in maintaining oversight of all matters affecting financing, or relating to expenditure, of the Welsh Consolidated Fund, it is proposed that the Chair of Finance Committee be made an ex-officio Member of the Committee. The Business Committee has decided that the Finance Committee Chair will be additional to the representative for any political group to which they belong. This reflects the views expressed during the passage of the Act, including the strongly expressed view of the Finance Committee that the Chair should be an ex-officio member, in order to represent the views of the Finance Committee.

16. The Finance Committee Chair wrote to Business Committee on 1 July to request that the Finance Committee be represented separately from any political party representative. In the letter the Chair explained that, were the Chair to also represent their party, it would give rise to conflict between their cross-party role as Chair and their party role. It was noted that this would always adversely impact parties that are not in Government, given that the Chair of the Finance Committee cannot be a member of a political group with an executive role (Standing Order 18.13).

17. During the Business Committee's discussions, there was some concern as to a situation such as which currently exists, where the Llywydd and the Chair of the Finance Committee belong to the same group, and so three of the six Llywydd's Committee members would be from the same group. As a result, the Llywydd proposed that the Committee agree in principle that in such circumstances the Llywydd's Committee should be chaired by the Deputy Presiding Officer. The Business Committee will therefore be proposing the Deputy Presiding Officer as Chair of the Llywydd's Committee for the Fifth Senedd.

18. It is therefore proposed that:

- the Committee must consist of one Member from each political group represented in the Senedd;
- the Llywydd or Deputy Presiding Officer, as Chair of the Committee, will not count toward political group representation on the Committee as they remain impartial in their role (in accordance with the Standing Order 6.19);
- the Chair of the Committee may only vote in the exercise of a casting vote; and
- the Chair of the Finance Committee will be an ex-officio Member of the Committee and will not count as the Member for any political group to which they belong.

19. This approach will ensure each political group in the Senedd is represented on the Committee.

### **Consequential Changes**

20. In addition to the new Standing Order 18B, a consequential change is required to Standing Order 17.10(ii). The amendment to 17.10(ii) excludes the membership of the Llywydd's Committee from the calculation of total committee places allocated to groups, given the specific rules around its membership and its narrow functions.

## **Action**

21. The Business Committee formally agreed the changes to Standing Order 18 on Monday 6 July 2020 and the Senedd is invited to approve the proposal at Annex B.

## Annex A

|                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                     |
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| <p><b>Standing Order 18B – Oversight of the Electoral Commission</b></p>                                                                                                                                                                                        | <p><b>Insert new Standing Order Title</b></p> <p>The title of the Standing Order is consistent with those used in Standing Orders 18 and 18A</p>                                                                                                                                    |
| <p><b>Llywydd’s Committee</b></p>                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                     |
| <p>18B.1 In proposing the remits of committees under Standing Order 16.2 or 16.3, the Business Committee must ensure that there is a committee, known as “the Llywydd’s Committee”, with responsibility for the functions specified in Standing Order 18B.2</p> | <p><b>New Standing Order</b></p> <p>SEA amends PPERA to provide for the establishment of a Llywydd’s Committee in order for the EC to be accountable to the Senedd for devolved elections &amp; referendums, and for the Llywydd’s Committee to approve the EC’s spending plans</p> |
| <p><b>Functions of the Llywydd’s Committee</b></p>                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                     |
| <p>18B.2 The functions of the Llywydd’s Committee (“the Committee”) are as set out in paragraphs 16A, 16B, 18 and 20B of Schedule 1 to the Political Parties, Elections and Referendums Act 2000’.</p>                                                          | <p><b>New Standing Order</b></p> <p>The Standing Order references the specific provisions in PPERA which relate to the functions of the Llywydd’s Committee.</p>                                                                                                                    |

Schedule 1 to PPERA as amended by SEA requires that:

- by the 1st of October each year, the EC submits to the Llywydd's Committee an estimate of the income and expenditure it expects to receive/incur for the next financial year with regard to its work on Welsh elections (paragraph 16A(3));
- the Llywydd's Committee examine the estimate, in terms of economy, efficiency and effectiveness and makes any changes it considers appropriate taking into account the latest National Audit Office report and the views of the Welsh Ministers (paragraphs 16A(7) and (8));
- the Llywydd's Committee lay the estimate before the Senedd. The Senedd will then approve the estimates as part of the annual budget motion (paragraph 16A(9)).

Schedule 1 to PPERA allows the EC to revise an estimate during the financial year to which it relates. If it does this, the revised estimate will need to be scrutinised by the Llywydd's Committee following the process set out



above. (paragraph 16A(4))

Schedule 1 to PPERA also requires that the Llywydd's Committee:

- must periodically examine the EC's five-year work plan, in terms of economy, efficiency and effectiveness and makes any changes it considers appropriate, taking into account the latest National Audit Office report and the views of the Welsh Ministers. The five-year plan sets out the EC's aims, objectives and required resources in relation to the exercise of its function with regard to devolved elections (paragraphs 16B(3) and (4));
- must lay the scrutinised plan with or without modifications before the Senedd (paragraph 16B(5));
- can seek a further examination by the Wales Audit Office of any accounts audited by the NAO (paragraph 18(3));
- must lay an annual report on its work before the Senedd (paragraph 20B(1)).

Schedule 1 to PPERA provides for five-year plans to be

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|                                                                                                                                                                                              | <p>submitted to the Llywydd's Committee:</p> <ul style="list-style-type: none"> <li>- when the EC submits the first budgetary estimate (paragraph 16B(1)(a));</li> <li>- the estimate relates to the first financial year to begin after the day on which the Senedd meets following an ordinary general election of the Senedd (paragraph 16B(1)(b), or</li> <li>- the estimate relates to another financial year and the Llywydd's Committee requires the EC to submit a plan (paragraph 16B(1)(c).</li> </ul> |
| <p><b>Membership of the Llywydd's Committee</b></p>                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>18B.3 The Committee must be chaired by the Presiding Officer or Deputy Presiding Officer, who may vote only in the exercise of a casting vote in accordance with Standing Order 6.20.</p> | <p><b>New Standing Order</b></p> <p>Schedule 1 to PPERA (paragraph 16A(6)) provides that the Llywydd's Committee must be chaired by the Presiding Officer or the Deputy Presiding Officer. It is proposed that the Standing Orders maintain this flexibility by enabling either to be nominated as Chair.</p> <p>The proposed Standing Order, coupled with the dis-application of Standing Order 17.37 below, provide for the Chair only to vote in committee when exercising a</p>                              |

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                   | casting vote.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>18B.4 The motion tabled by the Business Committee to agree the membership of the Committee must propose as members of the Committee:</p> <ul style="list-style-type: none"> <li>i) either the Presiding Officer or Deputy Presiding Officer as chair of the committee;</li> <li>ii) the chair of the responsible committee under Standing Order 19; and</li> <li>iii) one member of each political group represented in the Senedd.</li> </ul> | <p><b>New Standing Order</b></p> <p>Given the specific function of the Llywydd's Committee, and that it be established on a non-partisan basis, it is proposed that the Committee must consist of one Member from each political group represented in the Senedd.</p> <p>In order to maintain a link with the Finance Committee, given its role in maintaining oversight of all matters affecting financing, or relating to expenditure, of the Welsh Consolidated Fund, it is proposed that the Chair of Finance Committee be made an ex-officio Member of the Committee.</p> <p>The Finance Committee Chair will not be the representative for any political group to which they belong.</p> |
| <p>18B.5 Standing Orders 17.2A – 17.2T, Standing Order 17.6(i), Standing Orders 17.7 and 17.8, Standing Orders</p>                                                                                                                                                                                                                                                                                                                                | <p><b>New Standing Order</b></p> <p>As the Llywydd's Committee will be chaired by the</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

17.21 and 17.22, and Standing Order 17.37 do not apply to the Llywydd's Committee.

Llywydd or Deputy Presiding Officer, the standard procedures set out by Standing Orders 17.2A - 17.2T, relating to electing committee chairs, must be disapplied.

Standard Orders 17.7 and 17.8, relating to the membership of committees, must be disapplied as the membership of the Llywydd's Committee will be provided for in the new Standing Order 18B.4.

Standing Order 17.21 must be disapplied as the Chair of the Llywydd's Committee will not be appointed by Standing Orders 17.2E or 17.2T

Standing Order 17.22 must be disapplied as, in accordance with PPERA, only the Llywydd or Deputy Presiding Officer may chair the Llywydd's Committee.

Standing Order 17.37 must be disapplied as the new Standing Order 18B.3 provides that the Chair of the Llywydd's Committee may only vote in the exercise of a casting vote.

## CONSEQUENTIAL CHANGES

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| <b>STANDING ORDER 17 – OPERATION OF COMMITTEES</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                      |
| <b>Membership of Committees</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                      |
| <p>17.10 Any motion under Standing Order 17.3 or 17.7 must (so far as is reasonably practicable, having regard to the total number of places on committees) ensure that:</p> <ul style="list-style-type: none"><li>i) every Member who does not belong to a political group is offered a place on at least one committee; and</li><li>ii) the total number of places on committees <u>(not including the Llywydd’s Committee)</u> allocated to Members belonging to each political group is at least as great as the number of Members belonging to the political group.</li></ul> | <p><b>Amend Standing Order</b></p> <p>The amendment to 17.10(ii) excludes the membership of the Llywydd’s Committee from the calculation of total committee places allocated to groups, given the specific rules around its membership and its narrow functions.</p> |

## **Annex B**

### **New Standing Order 18B**

18B.1 In proposing the remits of committees under Standing Order 16.2 or 16.3, the Business Committee must ensure that there is a committee, known as “the Llywydd’s Committee”, with responsibility for the functions specified in Standing Order 18B.2.

18B.2 The functions of the Llywydd’s Committee (“the Committee”) are as set out in paragraphs 16A, 16B, 18 and 20B of Schedule 1 to the Political Parties, Elections and Referendums Act 2000’.

18B.3 The Committee must be chaired by the Presiding Officer or Deputy Presiding Officer, who may vote only in the exercise of a casting vote in accordance with Standing Order 6.20.

18B.4 The motion tabled by the Business Committee to agree the membership of the Committee must propose as members of the Committee:

- i) either the Presiding Officer or Deputy Presiding Officer as chair of the committee;
- ii) the chair of the responsible committee under Standing Order 19; and
- iii) one member of each political group represented in the Senedd.

18B.5 Standing Orders 17.2A – 17.2T, Standing Order 17.6(i), Standing Orders 17.7 and 17.8, Standing Orders 17.21 and 17.22, and Standing Order 17.37 do not apply to the Llywydd’s Committee.

### **Amended Standing Order 17.10**

17.10 Any motion under Standing Order 17.3 or 17.7 must (so far as is reasonably practicable, having regard to the total number of places on committees) ensure that:

- i) every Member who does not belong to a political group is offered a place on at least one committee; and

- ii) the total number of places on committees (not including the Llywydd's Committee) allocated to Members belonging to each political group is at least as great as the number of Members belonging to the political group.