

# Reconsideration of Assembly Bills passed

Quick Guide

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## Introduction

Once a Bill is passed by the Assembly at Stage 4,<sup>1</sup> the Government of Wales Act 2006<sup>2</sup> (“the 2006 Act”) provides that it may be submitted for Royal Assent<sup>3</sup> by the Clerk of the Assembly, but only after the expiry of a four week window known as the “period of intimation”.

During this period, the 2006 Act allows an Assembly Bill to be challenged through one of two ways:

- A referral to the Supreme Court by either the Counsel General of the Welsh Government or the Attorney General of the UK Government.
- An order made by the Secretary of State prohibiting the Clerk of the Assembly from submitting a Bill for Royal Assent.

If either challenge is successful, the 2006 Act enables the Assembly to reconsider the Bill in order to allow those provisions of a Bill that was subject to challenge to be amended so that the problem which led to the reference or order being made is removed, thus enabling the Bill to proceed.

## Referrals to the Supreme Court by the Counsel General or the Attorney General

The 2006 Act provides a mechanism whereby either the Counsel General or the Attorney General may challenge an Assembly Bill on legal grounds by referring a question as to whether the Bill is within the Assembly’s legislative powers to the Supreme Court for a decision.

If the Supreme Court decides that the Bill (or part of the Bill) is outside the legislative powers of the Assembly, then Standing Orders enable any Assembly Member to bring forward a motion instigating reconsideration proceedings. If the Supreme Court rules that the relevant provisions in the Bill are within the Assembly’s powers, the Bill may proceed without further Assembly or parliamentary involvement to receive Royal Assent and become law.

In certain instances however, obtaining a decision by the Supreme Court can take a significant amount of time, particularly if the Supreme Court refers a question to the European Court of Justice (“ECJ”) for a preliminary hearing. To avoid unnecessary time delays therefore, the 2006 Act provides a mechanism for the Assembly to reconsider the Bill immediately.

If the Assembly resolves to reconsider the Bill, the Clerk of the Assembly must inform the law officer who made the original challenge (either the Counsel General or the Attorney General) who must then request withdrawal of the

<sup>1</sup> See **Quick Guide: The Constitution Series 9 - Assembly Acts and the Legislative Process** for more information about the different stages in the Assembly’s legislative process.

<sup>2</sup> **Government of Wales Act 2006** (Chapter 32)

<sup>3</sup> See **Quick Guide: The Constitution Series 8 – The Welsh Seal and Letters Patent** for more information about Royal Assent.

reference to the Supreme Court. In such circumstances, the Reconsideration Stage of the Bill may not take place in the Assembly until the withdrawal of the reference has been formally confirmed by the Supreme Court.

## Orders made by the Secretary of State

A Bill may also be subject to reconsideration if an order is made by the Secretary of State during the four week window after the Bill is passed prohibiting the Clerk of the Assembly from submitting it for Royal Assent. The Secretary of State may make such an order if he or she has reasonable grounds to believe that the Bill:

- Would have an adverse effect on any matter which is not within the Assembly's legislative powers;
- Might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England;
- Would have an adverse effect on the operation of the law as it applies in England; or
- Would be incompatible with any international obligations or the interests of defence or national security.

Such an order would have to identify the specific reasons for prohibiting the Clerk from submitting the Bill and would be subject to the negative procedure at either House of the UK Parliament. The order would have to be in force before the Assembly would be able to proceed with the reconsideration of the Bill in question.

## What happens at Reconsideration Stage?

The procedures for the reconsideration of a Bill are outlined in Standing Orders 26.52 to 26.56 and are set out below:

- Following a Supreme Court decision or the coming into force of an order by the Secretary of State which prohibits a Bill from receiving Royal Assent, Standing Orders enable any Assembly Member to propose a motion initiating reconsideration proceedings.
- If the motion is agreed, reconsideration proceedings in relation to the Bill may take place. Standing Orders require proceedings at Reconsideration Stage to be considered by a full meeting of the Assembly in plenary.
- A Bill may not be amended at Reconsideration Stage unless the amendments are solely for the purpose of resolving the issue which is the subject of the decision of the Supreme Court or an Order by the Secretary of State.
- In contrast to Stage 3 proceedings (where the Presiding Officer has the power to select and deselect admissible amendments), there is no selection of amendments at Reconsideration Stage, so all admissible amendments tabled may be moved.
- Following the consideration of the amendments moved, no further debate on the Bill can take place. Instead, the Assembly is required only to approve the amended Bill. Standing Orders state that such a motion may not be amended.

The above differences aside, procedures at Reconsideration Stage (including tabling arrangements for amendments) are essentially the same to those at Stage 3 of the legislative process.

## Further reconsideration

A Bill approved by the Assembly at Reconsideration Stage is again subject to legal challenge by the Counsel General or the Attorney General or to the making of an order by the Secretary of State in exactly the same way as it was after it was first passed. There is no limit to the number of times a Bill may be reconsidered following approval by the Assembly.

## Further information

For further information about **RECONSIDERATION OF BILLS PASSED**, please contact **OWAIN ROBERTS** ([owain.roberts@Wales.gov.uk](mailto:owain.roberts@Wales.gov.uk)), Research Service.

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