

Amending Standing Orders:

The making of statutory instruments following EU withdrawal

September 2023

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.

This report recommends amendments to Standing Orders 21, 27, 30B and 30C following:

- the passing of the Retained EU Law (Revocation and Reform) Act 2023, specifically the provisions it contains requiring a sifting procedure for statutory instruments;
- the expiry/repeal of powers relating to the making of statutory instruments in the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020.

The Senedd is invited to approve the proposals to amend the Standing Orders as at Annex A. The amended Standing Orders, if approved, are at Annex B.



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1. Background

- 1.** The Retained EU Law (Revocation and Reform) Act 2023 (“the REUL Act”) became law on 29 June 2023. It makes significant changes to the domestic body of law referred to as “retained EU law” (“REUL”). REUL was created by the EU (Withdrawal) Act 2018 (“the EUWA”) and came into effect at the end of the UK’s post-Brexit transition period at the end of 2020.
- 2.** Paragraph 9 of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023 sets out a Senedd sift procedure for specific statutory instruments (“SIs”) made under it.
- 3.** The REUL Act sifting procedure is the same as that which applied to sifting under the European Union (Withdrawal) Act 2018 (“ the EUWA”)¹ and the European Union (Future Relationship) Act 2020 (“the Future Relationship Act”)², as covered in Standing Orders 21 and 27. These functions were the responsibility of the Fifth Senedd’s Constitutional and Legislative Affairs Committee. While the sift procedures under the REUL Act and the EUWA are the same, the passing of the REUL Act necessitates changes to the Senedd’s Standing Orders to reflect its new legislative basis.
- 4.** In addition, certain provisions within the EUWA and the Future Relationship Act relating to the making of SIs have now either expired or been repealed, necessitating changes to the Senedd’s Standing Orders.
- 5.** At its meeting on 12 September 2023, the Business Committee considered amendments to the Standing Orders to reflect the impact of the passing of the REUL Act and the expiry/repeal of relevant provisions with the EUWA and the Future Relationship Act on the making of SIs. The Business Committee agreed to consult the Legislation, Justice and Constitution Committee on its proposed amendments.
- 6.** The Legislation, Justice and Constitution Committee considered the proposed amendments on 18 September 2023 and responded to the Business Committee to confirm that it is content with the proposals.

¹ See paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018.

² See paragraph 9 of Schedule 5 to European Union (Future Relationship) Act 2020.

2. The Business Committee's consideration

The sift procedure

The REUL Act's sift provisions

7. Broadly, regulations under the REUL Act will be subject to the sift if the Welsh Ministers choose to use the negative procedure for regulations under:

- section 11 (powers to restate retained EU law),
- section 12 (powers to restate assimilated law or reproduce sunsetted retained EU rights/powers/liabilities etc.), or
- section 14 (powers to revoke or replace secondary REUL (or assimilated secondary law) after the end of 2023).

8. The Welsh Ministers only have this choice of procedure for:

- regulations under section 11 or section 12 which do not amend, repeal or revoke primary legislation,
- any regulations under section 14(1), and
- regulations under section 14(2) which do not confer a power to make subordinate legislation or create a criminal offence.

9. Where the sift procedure applies, the Welsh Ministers may not make the SI unless Condition 1, and either Condition 2 or Condition 3, is met:³

Condition 1⁴ is that the Welsh Ministers have:

- made a statement in writing that in their opinion the SI should be subject to the negative procedure, and
- laid before the Senedd a draft of the SI and a memorandum setting out the statement and the reasons for the Welsh Ministers' opinion.

³ Schedule 5, paragraph 9(2).

⁴ Schedule 5, paragraph 9(3).

Condition 2⁵ is that a Committee of the Senedd charged with doing so has made a recommendation as to the appropriate procedure for the SI.

Condition 3⁶ allows the Welsh Ministers to proceed to make the SI without any recommendation from the Committee where a period of 14 days has elapsed since the draft instrument was laid.

10. This means that the Senedd Committee will have 14 days (beginning with the day after the day on which the draft is laid, and not including any time during which the Senedd is dissolved or in recess for more than 4 days) to sift the instrument and make a recommendation as to the appropriate procedure. If the Committee does not make its recommendation within that time period, the Welsh Ministers can proceed to make the SI using the negative procedure.

11. It is open to the Welsh Ministers to change their minds during the sift process, and to choose to use the affirmative procedure instead.⁷

12. There is nothing in the REUL Act to prevent the Welsh Ministers from deciding to continue to use the negative procedure despite a recommendation from the Committee that the affirmative procedure would be appropriate.

Standing Orders 21 and 27

13. Given that the procedural steps for the sifting procedure under the REUL Act are the same as those for the EUWA and the Future Relationships Act, the Business Committee proposes that the Senedd amend Standing Orders 21 and 27 to delete references to the EUWA and Future Relationships Act and replace with references to the REUL Act. In practice, this would mean that:

- the sifting procedure would remain the same for SIs under the REUL Act as those under the EUWA and the Future Relationships Act previously;
- the responsible committee for the sifting of SIs under the REUL Act would be the Legislation, Constitution and Justice Committee, mirroring the responsibilities held by the Constitutional and Legislative Affairs Committee in the Fifth Senedd.

⁵ Schedule 5, paragraph 9(4)

⁶ Schedule 5, paragraph 9(5)

⁷ Schedule 5, paragraph 9(7)

14. Existing provision in Standing Order 27.9B requires that the Welsh Ministers, in the event that they do not agree with the responsible committee's recommendation that the appropriate procedure for an instrument is the affirmative procedure, must explain why in the relevant Explanatory Memorandum. While this is not required by the sift procedure set out in the legislation (either under the old procedures in the EUWA/the Future Relationship Act or under the procedure in the REUL Act), it was included by the Senedd in SO 27.9B on the recommendation of the Fifth Senedd's Constitutional and Legislative Affairs Committee. This was to ensure that the Senedd could properly scrutinise any decision by the Welsh Ministers to go against a committee recommendation.⁸

15. The Business Committee believes that the provision in Standing Order 27.9B should remain in place to ensure that the Senedd's approach to the sift procedure under the REUL Act mirrors that in place under the EUWA and the Future Relationships Act.

Other changes

Standing Order 30B

16. Standing Order 30B relates to statutory instruments made by UK Ministers to temporarily restrict (in relation to retained EU law) the Senedd's legislative competence or the Welsh Ministers' executive competence.⁹ No regulations were ever made using these powers, and the relevant legislative provisions have now been repealed.¹⁰

17. Standing Order 30B also makes reference to written statements that needed to be laid in relation to these SIs,¹¹ and reports that were required in connection with retained EU law restrictions,¹² both of which have also now been repealed.¹³

⁸ See Business Committee, [Amending Standing Orders: Implementation of European Union \(Withdrawal\) Act 2018](#), September 2018.

⁹ Regulations made by a Minister of the Crown under sections 109A or 80(8) of the Government of Wales Act 2006.

¹⁰ Provisions were repealed by the European Union (Withdrawal) Act 2018 (Repeal of EU Restrictions in Devolution Legislation, etc.) Regulations 2022 (SI 2022/357).

¹¹ Section 157ZA(2)(b)(ii) of the Government of Wales Act 2006.

¹² Paragraph 4(4) of Part 2 of Schedule 3 to the European Union (Withdrawal) Act 2018.

¹³ Provisions were repealed by the European Union (Withdrawal) Act 2018 (Repeal of EU Restrictions in Devolution Legislation, etc.) Regulations 2022 (SI 2022/357).

18. As all the relevant legislative provisions referred to in Standing Order 30B have been repealed, the Standing Order is no longer necessary. As such, the Business Committee proposes the deletion of Standing Order 30B in its entirety.

Standing Order 30C

19. Standing Order 30C relates to regulations made by a UK Minister acting alone under sections 8 or 23 of, or Schedule 4 to, EUWA:

- Section 8 (Dealing with deficiencies arising from withdrawal) is technically still in force, but the power to make regulations expired on 31 December 2022 (two years after Implementation Period (“IP”)¹⁴ Completion Day) so the provision is effectively inert.
- Section 23 (Consequential and transitional provision) remains in force. The power to make consequential provision will expire 10 years after IP Completion Day (31 December 2030). The power to make transitional, transitory or saving provision does not have an expiry date.
- Schedule 4 (Powers in connection with fees and charges) remains in force. Some of the powers within Schedule 4 expired on 31 December 2022 (two years after IP completion day), but others remain available to be exercised.

20. The likelihood, in practice, of UK Ministers continuing to exercise these remaining powers to make provision within the legislative competence of the Senedd or the executive competence of the Welsh Ministers such that SO 30C is engaged remains unclear. However, as it remains a possibility under the legislation as currently in force, Standing Order 30C may still be needed.

21. As some of the relevant legislative provisions referred to in Standing Order 30C remain active, the Business Committee believes that the Standing Order needs to remain. However, it proposes that Standing Order 30C be amended to remove reference to the inactive powers (section 8 of the EUWA).

¹⁴ IP Completion day was 31 December 2020.

3. Decision

22. On 19 September 2023 the Business Committee formally agreed to propose the changes to Standing Orders outlined in this report. The Senedd is invited to approve the proposed new Standing Orders at Annex B.

Annex A: Proposed changes to Standing Orders 21, 27, 30B and 30C, and explanatory notes

STANDING ORDER 21 – Constitutional and Legislative Affairs		
	Committee or Committees	Retain sub-heading
21.1	In proposing the remits of committees under Standing Order 16.2 or 16.3, the Business Committee must ensure that responsibility for the functions in Standing Order 21 is assigned to a committee or committees (referred to within Standing Order 21 as “a responsible committee”).	Retain Standing Order Standing Order included for information
	Functions	Retain sub-heading
21.2	A responsible committee must consider all statutory instruments or draft statutory instruments required by any enactment to be laid before the Senedd and report on whether the Senedd should pay special attention to the instrument or draft on any of the following grounds: <ul style="list-style-type: none"> (i) that there appears to be doubt as to whether it is intra vires; (ii) that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made; 	Retain Standing Order Standing Order included for information



	<ul style="list-style-type: none"> (iii) that the enactment which gives the power to make it contains specific provisions excluding it from challenge in the courts; (iv) that it appears to have retrospective effect where the authorising enactment does not give express authority for this; (v) that for any particular reason its form or meaning needs further explanation; (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements; (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts; (viii) that it uses gender specific language; (ix) that it is not made or to be made in both English and Welsh; (x) that there appears to have been unjustifiable delay in publishing it or laying it before the Senedd; or (xi) that there appears to have been unjustifiable delay in sending notification under section 4(1) of the Statutory Instruments Act 1946 (as modified). 	
21.3	<p>A responsible committee may consider and report on whether the Senedd should pay special attention to any statutory instrument or draft statutory instrument required by any enactment to be laid before the Senedd on any of the following grounds:</p>	<p>Retain Standing Order Standing Order included for information</p>

	<ul style="list-style-type: none"> (i) that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment; (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd; (iii) that it is inappropriate in view of the changed circumstances since the enactment under which it is made or is to be made was itself passed or made; (iv) <i>[Standing Order removed by resolution in Plenary on 24 March 2021];</i> (v) that it imperfectly achieves its policy objectives. 	
21.3A	<p>Standing Orders 21.2 and 21.3 do not apply to any draft statutory instrument laid before the Senedd to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018 or paragraph 9 of Schedule 5 to the European Union (Future Relationship) Act 2020 <u>9 of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023</u> applies.</p>	<p>Amend Standing Order</p> <p>The Standing Order dis-applies the above requirements for draft SIs which come to the committee to be sifted, as those issues will not need to be considered at that point.</p> <p>If and when the SIs return to the committee after sifting, as part of the usual scrutiny process of SIs, it is</p>

		<p>at that point that the committee would consider these issues.</p> <p>As the sift procedures in the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020 have now expired, they can be removed from the Standing Order. As the Retained EU Law (Revocation and Reform) Act 2023 includes an identical sifting procedure, a reference to the Retained EU Law (Revocation and Reform) Act 2023 is inserted instead.</p>
21.3B	<p>A responsible committee must report on the appropriate procedure to apply to any draft statutory instrument laid before the Senedd to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018 or paragraph 9 of Schedule 5 to the European Union (Future Relationship) Act 2020 <u>9 of Schedule 5 of the Retained EU Law (Revocation and Reform) Act 2023</u> applies.</p>	<p>Amend Standing Order</p> <p>The amended Standing Order requires a responsible committee to undertake the ‘sifting’ of particular SIs as required by the Retained EU Law (Revocation and Reform) Act 2023.</p> <p>As the sift procedures in the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020 have now expired, they can be removed</p>

		from the Standing Order and replaced by the Retained EU Law (Revocation and Reform) Act 2023.
21.3C	<p>The responsible committee under Standing Order 21.3B must report on the appropriate procedure using the following criteria:</p> <ul style="list-style-type: none"> (i) whether the memorandum is sufficiently clear and transparent about why the government is of the opinion that the negative resolution procedure should apply; (ii) whether the memorandum is sufficiently clear and transparent as to the changes that are being made by the regulations; (iii) whether there has been adequate consultation on the regulations; (iv) whether the memorandum is sufficiently clear and transparent about the impact the regulations may have on equality and human rights; (v) whether the regulations raise matters of public, political or legal importance; and (vi) any other matters the committee considers appropriate. 	<p>Retain Standing Order</p> <p>Standing Order included for information</p>
21.4	A responsible committee must make any report under Standing Order 21.2 or 21.3 in respect of any statutory instrument or draft	Retain Standing Order

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	statutory instrument no later than 20 days after the instrument or draft has been laid.	Standing Order included for information
21.4A	Where the enactment requiring the statutory instrument or draft statutory instrument to be laid before the Senedd specifies timings in relation to the Senedd's consideration of the statutory instrument or draft statutory instrument, then: <ul style="list-style-type: none"> (i) the time limit in Standing Order 21.4 does not apply; (ii) the Business Committee may establish and publish a timetable for the responsible committee or committees to report. 	Retain Standing Order Standing Order included for information
21.4B	A responsible committee must make any report under Standing Order 21.3B in respect of any relevant draft statutory instrument no later than 14 days after a draft of the instrument has been laid. Standing Order 21.4A(ii) does not apply to those draft statutory instruments.	Retain Standing Order This Standing Order reflects the requirements of the Retained EU Law (Revocation and Reform) Act 2023, which stipulates that the committee has 14 days to report on draft SIs subject to the sifting process.
21.5	In calculating for the purposes of Standing Order 21.4 or 21.4B any period of days, no account is to be taken of any time during which the Senedd is dissolved or is in recess for more than 4 days.	Retain Standing Order This Standing Order ensures that the 14 days provided for in 21.4B does not include periods of recess longer than 4 days or dissolution. This is consistent with the provisions

		of the Retained EU Law (Revocation and Reform) Act 2023.
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STANDING ORDER 27 – Subordinate Legislation (Other than Subordinate Legislation Subject to Special Senedd Procedure)		
	Explanatory Memoranda	Retain sub-heading
27.1	Any statutory instrument or draft statutory instrument laid before the Senedd must be accompanied by an Explanatory Memorandum, which must include any Regulatory Impact Assessment prepared in relation to the instrument.	Retain Standing Order Standing Order included for information
27.1A	Any Explanatory Memorandum accompanying a draft statutory instrument laid before the Senedd to which paragraph 4 of Schedule 7 to the European (Withdrawal) Act 2018 <u>paragraph 9(3) of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023</u> applies must include the statement and reasoning required by paragraph 4(3) of Schedule 7 to the European Union (Withdrawal) Act 2018 <u>paragraph 9(3) of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023</u> .	Amend Standing Order The provision reflects the requirement in the Retained EU Law (Revocation and Reform) Act 2023 that the Welsh Ministers must explain their reasons for stating that a draft SI should be subject to the negative procedure.
27.1AA	Any Explanatory Memorandum accompanying a draft statutory instrument laid before the Senedd to which paragraph 9 of Schedule 5 to the European Union (Future Relationship) Act 2020	Delete Standing Order Provisions in paragraph 9 of Schedule 5 to the European Union (Future Relationship) Act 2020 have expired

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	applies must include the statement and reasoning required by paragraph 9(3) of Schedule 5 to the 2020 Act.	and therefore this Standing Order is no longer required.
27.1B	<p>In the case of any draft Order in Council to be made under section 116C of the Act, the Explanatory Memorandum must provide the following information:</p> <ul style="list-style-type: none"> (i) the impact the draft Order would have on the Senedd's legislative competence; (ii) an explanation of why the draft Order is appropriate; (iii) the policy objectives of devolving the tax; and (iv) details of any consultation carried out and a summary of the outcome of that consultation. 	<p>Retain Standing Order</p> <p>Standing Order included for information</p>
	<p>Draft Statutory Instruments to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018 or paragraph 9 of Schedule 5 to the European Union (Future Relationship) Act 2020 <u>9 of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023 applies</u></p>	<p>Amend sub-heading</p> <p>As the procedures for laying SIs under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020 have now expired, references to them can be removed from the Standing Order and replaced by the Retained EU Law (Revocation and Reform) Act 2023.</p>
27.9A	<p>A member of the government must lay any draft statutory instrument to which paragraph 4 of Schedule 7 to the European (Withdrawal) Act 2018 or paragraph 9 of Schedule 5 to the European Union (Future Relationship) Act 2020 <u>9 of Schedule 5 to</u></p>	<p>Amend Standing Order</p> <p>As the procedures for laying SIs under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020 have now</p>

	the Retained EU Law (Revocation and Reform) Act 2023 applies before the Senedd.	expired, they can be removed from the Standing Order and replaced by the Retained EU Law (Revocation and Reform) Act 2023.
27.9B	<p>If:</p> <p>(i) the responsible committee under Standing Order 21.3B reports in accordance with Standing Order 21.4B with a recommendation that the appropriate procedure for an instrument is the affirmative procedure; and</p> <p>(ii) the Welsh Ministers are nevertheless of the opinion that the appropriate procedure for the instrument is the negative resolution procedure;</p> <p>the Explanatory Memorandum laid in accordance with Standing Order 27.1 must explain why the Welsh Ministers do not agree with the committee’s recommendation.</p>	<p>Retain Standing Order</p> <p>It is proposed that the existing procedure for circumstances in which a Welsh Minister does not agree with the recommendation of the responsible committee is retained.</p>

STANDING ORDER 30B – Statutory Instruments made by UK Ministers under the Act temporarily restricting the Senedd’s legislative competence or the Welsh Ministers’ executive competence		
	Regulations made by a Minister of the Crown under sections 109A and 80(8) of the Act	Delete sub-heading

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30B.1.	In Standing Order 30B, “relevant draft regulations” means draft regulations that a Minister of the Crown proposes to lay before the UK Parliament, in accordance with section 109A or 80(8) of the Act.	Delete Standing Order
30B.2.	The Welsh Ministers must lay relevant draft regulations before the Senedd no later than one working day after they are provided with a copy of them in accordance with section 109A(6)(a) or 80(8F)(a) of the Act.	Delete Standing Order
	Consent Decision Memorandum	Delete sub-heading
30B.3.	A member of the government must lay a memorandum (“a consent decision memorandum”) in relation to any relevant draft regulations no later than seven days after the Welsh Ministers are provided with a copy of the relevant draft regulations in accordance with section 109A(6)(a) or 80(8F)(a) of the Act.	Delete Standing Order
30B.4.	A consent decision memorandum must: <ul style="list-style-type: none"> (i) — summarise the effect of the relevant draft regulations on the Senedd’s legislative competence and/or the Welsh Ministers’ functions; (ii) — make a recommendation as to whether the relevant draft regulations should be subsequently approved by the UK Parliament; (iii) — explain the reasons for the recommendation made in (ii). 	Delete Standing Order
30B.5.	The Business Committee must refer any consent decision memorandum to a committee or committees for consideration.	Delete Standing Order
	Consent Decision Motion	Delete sub-heading
30B.6.	After a consent decision memorandum has been laid, and no later than 33 days after the Welsh Ministers were provided with a copy of the relevant draft regulations in accordance with section 109A(6)(a)	Delete Standing Order

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	or 80(8F)(a) of the Act, a member of the government must table a motion (“a consent decision motion”) for a decision either giving or refusing the Senedd’s consent to the relevant draft regulations being laid before the UK Parliament.	
30B.7.	The Senedd must consider a consent decision motion which has been tabled.	Delete Standing Order
30B.8.	A consent decision motion must not be debated until either: (i) the committee or committees have reported on the related consent decision memorandum; or (ii) 33 days have elapsed since the Welsh Ministers were provided with a copy of the relevant draft regulations in accordance with section 109A(6)(a) or 80(8F)(a) of the Act	Delete Standing Order
	Calculation of Days	Delete sub-heading
30B.9.	In calculating for the purposes of Standing Order 30A any period of days, no account is to be taken of any time during which the Senedd is dissolved or is in recess for more than four days.	Delete Standing Order
	Written Statements	Delete sub-heading
30B.10.	A member of the government must lay before the Senedd any written statement provided by the Welsh Ministers to a Minister of the Crown as mentioned in section 157ZA(2)(b)(ii) of the Act, normally no later than one working day after the statement is provided.	Delete Standing Order
	Reports in Connection with Retained EU Law Restrictions	Delete sub-heading
30B.11.	A member of the government must lay before the Senedd a copy of any report provided to the Welsh Ministers in accordance with paragraph 4(4) of Part 2 of Schedule 3 to the European Union	Delete Standing Order

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	(Withdrawal) Act 2018 no later than one working day after the report is received.	
30B.12.	In relation to any draft regulations that would, if approved by the UK Parliament, revoke retained EU law restrictions imposed on the Senedd or the Welsh Ministers under section 109A or 80(8) of the Act, a member of the government must lay before the Senedd a statement explaining the effect that the draft regulations would have on the competence of the Senedd or the Welsh Ministers, no later than seven days after the draft regulations have been laid before the UK Parliament.	Delete Standing Order

STANDING ORDER 30C – Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Senedd

	Statutory Instruments Requiring Notification to the Senedd	Retain sub-heading
30C.1.	In Standing Order 30C, “relevant statutory instrument” means a statutory instrument, or draft statutory instrument, made, or to be made, by a UK Minister acting alone under sections 8 or section 23 of, or Schedule 4 to, the European Union (Withdrawal) Act 2018 contains provision within the legislative competence of the Senedd or the executive competence of the Welsh Ministers.	Amend Standing Order The power to make regulations under Section 8 (Dealing with deficiencies arising from withdrawal) expired on 31 December 2022. Therefore, it is proposed that reference to Section 8 is removed.
	Written Statements in Relation to Relevant Statutory Instruments	Retain sub-heading
30C.2.	A member of the government must lay a written statement giving notification of any relevant statutory instrument, normally within three working days of it being laid before the UK Parliament.	Retain Standing Order Standing Order included for information

STANDING ORDER 30C – Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Senedd

30C.3.	The written statement must: <ul style="list-style-type: none">(i) summarise the purpose of the statutory instrument;(ii) specify any impact the statutory instrument may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence; and(iii) where the Welsh Ministers consented to UK Ministers making the relevant statutory instruments, explain the reasons why consent was given.	Retain Standing Order Standing Order included for information
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Annex B: Standing Orders 21, 27, 30B and 30C as amended

STANDING ORDER 21 – Constitutional and Legislative Affairs

Committee or Committees

21.1 In proposing the remits of committees under Standing Order 16.2 or 16.3, the Business Committee must ensure that responsibility for the functions in Standing Order 21 is assigned to a committee or committees (referred to within Standing Order 21 as “a responsible committee”).

Functions

21.2 A responsible committee must consider all statutory instruments or draft statutory instruments required by any enactment to be laid before the Senedd and report on whether the Senedd should pay special attention to the instrument or draft on any of the following grounds:

- (i) that there appears to be doubt as to whether it is intra vires;
- (ii) that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made;
- (iii) that the enactment which gives the power to make it contains specific provisions excluding it from challenge in the courts;
- (iv) that it appears to have retrospective effect where the authorising enactment does not give express authority for this;
- (v) that for any particular reason its form or meaning needs further explanation;
- (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;
- (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts;

- (viii) that it uses gender specific language;
- (ix) that it is not made or to be made in both English and Welsh;
- (x) that there appears to have been unjustifiable delay in publishing it or laying it before the Senedd; or
- (xi) that there appears to have been unjustifiable delay in sending notification under section 4(1) of the Statutory Instruments Act 1946 (as modified).

21.3 A responsible committee may consider and report on whether the Senedd should pay special attention to any statutory instrument or draft statutory instrument required by any enactment to be laid before the Senedd on any of the following grounds:

- (i) that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd;
- (iii) that it is inappropriate in view of the changed circumstances since the enactment under which it is made or is to be made was itself passed or made;
- (iv) [Standing Order removed by resolution in Plenary on 24 March 2021];
- (v) that it imperfectly achieves its policy objectives.

21.3A Standing Orders 21.2 and 21.3 do not apply to any draft statutory instrument laid before the Senedd to which paragraph 9 of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023 applies.

21.3B A responsible committee must report on the appropriate procedure to apply to any draft statutory instrument laid before the Senedd to which paragraph 9 of Schedule 5 of the Retained EU Law (Revocation and Reform) Act 2023 applies.

21.3C The responsible committee under Standing Order 21.3B must report on the appropriate procedure using the following criteria:

- (i) whether the memorandum is sufficiently clear and transparent about why the government is of the opinion that the negative resolution procedure should apply;
- (ii) whether the memorandum is sufficiently clear and transparent as to the changes that are being made by the regulations;
- (iii) whether there has been adequate consultation on the regulations;
- (iv) whether the memorandum is sufficiently clear and transparent about the impact the regulations may have on equality and human rights;
- (v) whether the regulations raise matters of public, political or legal importance; and
- (vi) any other matters the committee considers appropriate.

21.4 A responsible committee must make any report under Standing Order 21.2 or 21.3 in respect of any statutory instrument or draft statutory instrument no later than 20 days after the instrument or draft has been laid.

21.4A Where the enactment requiring the statutory instrument or draft statutory instrument to be laid before the Senedd specifies timings in relation to the Senedd's consideration of the statutory instrument or draft statutory instrument, then:

- (i) the time limit in Standing Order 21.4 does not apply;
- (ii) the Business Committee may establish and publish a timetable for the responsible committee or committees to report.

21.4B A responsible committee must make any report under Standing Order 21.3B in respect of any relevant draft statutory instrument no later than 14 days after a draft of the instrument has been laid. Standing Order 21.4A(ii) does not apply to those draft statutory instruments.

21.5 In calculating for the purposes of Standing Order 21.4 or 21.4B any period of days, no account is to be taken of any time during which the Senedd is dissolved or is in recess for more than 4 days.

STANDING ORDER 27 – Subordinate Legislation (Other than Subordinate Legislation Subject to Special Senedd Procedure)

Explanatory Memoranda

27.1 Any statutory instrument or draft statutory instrument laid before the Senedd must be accompanied by an Explanatory Memorandum, which must include any Regulatory Impact Assessment prepared in relation to the instrument.

27.1A Any Explanatory Memorandum accompanying a draft statutory instrument laid before the Senedd to which paragraph 9 of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023 applies must include the statement and reasoning required by paragraph 9(3) of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023.

27.1AA *[This Standing Order was removed by resolution in Plenary on 27 September 2023]*

27.1B In the case of any draft Order in Council to be made under section 116C of the Act, the Explanatory Memorandum must provide the following information:

- (i) the impact the draft Order would have on the Senedd's legislative competence;
- (ii) an explanation of why the draft Order is appropriate;
- (iii) the policy objectives of devolving the tax; and
- (iv) details of any consultation carried out and a summary of the outcome of that consultation.

Draft Statutory Instruments to which paragraph 9 of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023 applies

27.9A A member of the government must lay any draft statutory instrument to which paragraph 9 of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023 applies before the Senedd.

27.9B If:

- (i) the responsible committee under Standing Order 21.3B reports in accordance with Standing Order 21.4B with a recommendation that

the appropriate procedure for an instrument is the affirmative procedure; and

(ii) the Welsh Ministers are nevertheless of the opinion that the appropriate procedure for the instrument is the negative resolution procedure;

the Explanatory Memorandum laid in accordance with Standing Order 27.1 **Error! Reference source not found.** must explain why the Welsh Ministers do not agree with the committee's recommendation.

30B. STANDING ORDER 30B – Statutory Instruments made by UK Ministers under the Act temporarily restricting the Senedd's legislative competence or the Welsh Ministers' executive competence

[This Standing Order was removed by resolution in Plenary on 27 September 2023]

30C. STANDING ORDER 30C – Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Senedd

Statutory Instruments Requiring Notification to the Senedd

30C.1. In Standing Order 30C, "relevant statutory instrument" means a statutory instrument, or draft statutory instrument, made, or to be made, by a UK Minister acting alone under section 23 of, or Schedule 4 to, the European Union (Withdrawal) Act 2018 contains provision within the legislative competence of the Senedd or the executive competence of the Welsh Ministers.

Written Statements in Relation to Relevant Statutory Instruments

30C.2. A member of the government must lay a written statement giving notification of any relevant statutory instrument, normally within three working days of it being laid before the UK Parliament.

30C.3. The written statement must:

- (i) summarise the purpose of the statutory instrument;
- (ii) specify any impact the statutory instrument may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence; and

- (iii) where the Welsh Ministers consented to UK Ministers making the relevant statutory instruments, explain the reasons why consent was given.