

National Assembly for Wales

[Business Committee](#)

September 2018

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



## Amending Standing Orders: Implementation of European Union (Withdrawal) Act 2018

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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 Assembly, including any proposals for the re-making or revision of Standing Orders.
2. The report recommends:
  - amendments to Standing Order 21: Constitutional and Legislative Affairs;
  - amendments to Standing Order 27: Subordinate Legislation (Other than Subordinate Legislation Subject to Special Assembly Procedure);
  - a new Standing Order 30B: Statutory Instruments made by UK Ministers under the Act temporarily restricting the Assembly's legislative competence or the Welsh Ministers' executive competence; and
  - a new 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 Assembly.

3. The changes agreed by Business Committee are found in Annex A, and the amended Standing Orders are at Annex B.

## Background

4. Business Committee considered the changes to Standing Orders required to implement the provisions in the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) which have implications for Assembly procedure, in the light of the Constitutional and Legislative Affairs Committee’s [report](#) on ‘Scrutiny of regulations made under the European Union (Withdrawal) Act 2018: operational matters’.
5. In summary, the Withdrawal Act creates new categories of subordinate legislation:
  - regulations made by the Welsh Ministers which need to be subject to a new process of “sifting” (i.e. recommending whether the negative or the affirmative procedure should apply) by a committee;
  - regulations made by UK Ministers temporarily restricting the Assembly’s competence, which require the Assembly’s consent; and
  - other regulations made by UK Ministers which do not require Assembly consent but which should be notified to the Assembly.
6. The changes thus required to Standing Orders are summarised below:

Changes to Standing Order 21	<ul style="list-style-type: none"><li>• Assembly sifting committee to report on sift regulations (i.e. all regulations that will come to the Assembly under the sift process), and to report within 14 calendar days.</li><li>• Standing Orders which apply to regulations after sifting are disapplied for the sifting process.</li><li>• Sifting criteria set out in Standing Orders..</li></ul>
Changes to Standing Order 27	<ul style="list-style-type: none"><li>• Explanatory Memorandum that accompanies regulations to be sifted to include: (a) the statement the Welsh Ministers have to make when laying the draft regulations as to why they think it should follow the negative procedure, and (b) the reasons for that opinion.</li></ul>

	<ul style="list-style-type: none"> <li>• Where the Welsh Ministers disagree with the opinion of the sift committee as to what procedure should apply, they must explain why.</li> </ul>
<b>New Standing Order 30B</b>	<ul style="list-style-type: none"> <li>• The process for section 109A and 80(8) regulations / restrictions on competence, and associated consent decisions.</li> <li>• Welsh Ministers' statements on why the Assembly has refused consent to be laid before the Assembly.</li> <li>• Welsh Ministers to lay the UK Government's 3-monthly reports on competence restrictions.</li> <li>• Welsh Ministers to inform the Assembly when competence restrictions are lifted.</li> </ul>
<b>New Standing Order 30C</b>	<ul style="list-style-type: none"> <li>• Welsh Ministers to inform Assembly of SIs made by UK Ministers in devolved areas where the SIs are laid before UK Parliament only.</li> </ul>

## Action

The Business Committee formally agreed the changes to Standing Orders on 25 September 2018 and the Assembly is invited to approve the proposals at Annex B.

## Annex A

### Draft Standing Order Changes for Scrutiny of Regulations made under the EU Withdrawal Bill – Standing Orders 21 and 27

21. 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”).	<b>Retain Standing Order</b>
21.2	A responsible committee must consider all statutory instruments or draft statutory instruments required by any enactment to be laid before the Assembly and report on whether the Assembly should pay special	<b>Retain Standing Order</b>

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;

	<p>(vii)that there appear to be inconsistencies between the meaning of its English and Welsh texts;</p> <p>(viii)that it uses gender specific language;</p> <p>(ix)that it is not made or to be made in both English and Welsh;</p> <p>(x)that there appears to have been unjustifiable delay in publishing it or laying it before the Assembly; or</p> <p>(xi)that there appears to have been unjustifiable delay in sending notification under section 4(1) of the Statutory Instruments Act 1946 (as modified).</p>	
<p><b>21.3</b></p>	<p>A responsible committee may consider and report on whether the Assembly should pay special attention to any statutory instrument or draft statutory instrument required by any enactment to be laid before the Assembly on any of the following grounds:</p>	<p><b>Retain Standing Order</b></p>

- (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 Assembly;
- (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) that it inappropriately implements European Union legislation; or
- (v) that it imperfectly achieves its policy objectives.

<p><b>21.3A</b></p>	<p><u>Standing Orders 21.2 and 21.3 do not apply to any draft statutory instrument laid before the Assembly to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018 applies.</u></p>	<p><b>New Standing Order</b></p> <p>The new 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 at that point that the committee would consider these issues.</p>
<p><b>21.3B</b></p>	<p><u>A responsible committee must report on the appropriate procedure to apply to any draft statutory instrument laid before the Assembly to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018 applies.</u></p>	<p><b>New Standing Order</b></p> <p>The new Standing Order requires a responsible committee to undertake the ‘sifting’ of particular SIs as required by the EU Withdrawal Act 2018.</p> <p>This reflects the CLA Committee recommendation:</p> <p>“Recommendation 1. We recommend that the National Assembly’s Standing</p>



		<p>Orders should be amended to provide that the function of making a recommendation as to the appropriate procedure to apply to regulations subject to the sifting process under the 2018 Act is assigned to a committee.”</p>
<p><b>21.3C</b></p>	<p><u>The responsible committee under Standing Order 21.3B must report on the appropriate procedure using the following criteria:</u></p> <ul style="list-style-type: none"> <li>(i) <u>whether the memorandum is sufficiently clear and transparent about why the government is of the opinion that the negative resolution procedure should apply;</u></li> <li>(ii) <u>whether the memorandum is sufficiently clear and transparent as to the changes that are being made by the regulations;</u></li> <li>(iii) <u>whether there has been adequate consultation on the regulations;</u></li> </ul>	<p><b>New Standing Order</b></p> <p>The new Standing Order sets out the criteria the responsible committee must use to undertake sifting. These criteria are based on those recommended by the CLA Committee in its report, with the addition of a provision that the committee can also consider any other matters it considers appropriate.</p>

	<p>(iv) <u>whether the memorandum is sufficiently clear and transparent about the impact the regulations may have on equality and human rights;</u></p> <p>(v) <u>whether the regulations raise matters of public, political or legal importance; and</u></p> <p>(vi) <u>any other matters the committee considers appropriate.</u></p>	
<b>21.4</b>	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.	<b>Retain Standing Order</b>
<b>21.4A</b>	Where the enactment requiring the statutory instrument or draft statutory instrument to be laid before the Assembly specifies timings in relation to the Assembly's consideration of the statutory instrument or draft statutory instrument, then:	<b>Retain Standing Order</b>

	<p>i) the time limit in Standing Order 21.4 does not apply;</p> <p>ii) the Business Committee may establish and publish a timetable for the responsible committee or committees to report.</p>	
<b>21.4B</b>	<p><u>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.</u></p>	<p><b>New Standing Order</b></p> <p>The new Standing Order reflects the requirements of the EU (Withdrawal) Act, which stipulates that the committee has 14 days to report on draft SIs subject to the sifting process.</p>
<b>21.5</b>	<p>In calculating for the purposes of Standing Order 21.4 or <u>21.4B</u> any period of days, no account is to be taken</p>	<p><b>Amend Standing Order</b></p>

	of any time during which the Assembly is dissolved or is in recess for more than 4 days.	Amended to make clear that the 14 days provided for in 21.4B does not include periods of recess of dissolution. This is consistent with the provisions of the EU (Withdrawal) Act.
<b>21.6</b>	Standing Orders 21.2 and 21.3 do not apply to proposed or draft Orders in Council to be made, in accordance with Standing Order 25, under section 109 of the Act or subordinate legislation subject to Special Assembly Procedure under Standing Order 28.	<b>Retain Standing Order</b>
<b>21.7</b>	A responsible committee may consider and report on:  (i) any other subordinate legislation laid before the Assembly other than that subject to Special Assembly Procedure under Standing Order 28;  (ii) the appropriateness of provisions in Assembly Bills and in Bills for Acts of the United Kingdom	<b>Retain Standing Order</b>

	<p>Parliament that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General;</p> <p>(iii)any statutory instrument consent memorandum laid in relation to a relevant statutory instrument under Standing Order 30A;</p> <p>(iv)the exercise of commencement powers by the Welsh Ministers;</p> <p>(v)any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers; or</p> <p>(vi)draft legislation which is the subject of consultation.</p>	
21.8	<p>A responsible committee may consider draft European Union legislation relating to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel</p>	<p><b>Retain Standing Order</b></p>

	General in order to consider whether it complies with the principle of subsidiarity.	
<b>21.9</b>	If a responsible committee considers that draft European Union legislation does not comply with the principle of subsidiarity it may make written representations, on behalf of the Assembly, to the relevant committee of the House of Commons or the House of Lords with a view to having those representations incorporated into a reasoned opinion to be submitted by that committee to the relevant European Union authorities.	<b>Retain Standing Order</b>
<b>21.10</b>	If a responsible committee makes written representations in accordance with Standing Order 21.9, it must lay a copy of those written representations before the Assembly.	<b>Retain Standing Order</b>
<b>21.11</b>	A responsible committee may, to enable its functions under Standing Order 21.9 to be exercised during any non-sitting week, delegate those functions to the chair	<b>Retain Standing Order</b>

	<p>of the responsible committee who must, if they are exercised, report that fact to the responsible committee as soon as possible.</p>	
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<b>STANDING ORDER 27 – Subordinate Legislation (Other than Subordinate Legislation Subject to Special Assembly Procedure)</b>		
	<b>Explanatory Memoranda</b>	
<b>27.1</b>	<p>Any statutory instrument or draft statutory instrument laid before the Assembly must be accompanied by an Explanatory Memorandum, which must include any Regulatory Impact Assessment prepared in relation to the instrument.</p>	<b>Retain Standing Order</b>
<b>27.1A</b>	<p><u>Any Explanatory Memorandum accompanying a draft statutory instrument laid before the Assembly to which paragraph 4 of Schedule 7 to the European (Withdrawal) Act applies must include the statement and reasoning</u></p>	<b>New Standing Order</b>  <p>The new provision reflects the requirement of the EU (withdrawal) Act, that the Welsh Ministers must explain their reasons for stating that a draft SI should be subject to the negative procedure.</p>

	<u>required by paragraph 4(3) of Schedule 7 to the European Union (Withdrawal) Act 2018.</u>	
	<b>Motion for Annulment (Negative Resolution Procedure)</b>	
<b>27.2</b>	<p>In the case of any statutory instrument which:</p> <p>(i) is subject to annulment in pursuance of a resolution of the Assembly; or</p> <p>(ii) is laid in draft but cannot be made if the draft is disapproved,</p> <p>the Assembly may, not later than 40 days after the instrument is laid, resolve that the instrument be annulled or, as the case may be, that the draft be disapproved.</p>	<p><b>Retain Standing Order</b></p> <p>As SIs laid for sifting are not subject to annulment or laid in draft but cannot be made if the draft is disapproved – but are simply laid for consideration under the sifting procedure – they do not fall under this Standing Order.</p>
<b>27.3</b>	Any Member may table a motion for resolution under Standing Order 27.2.	<b>Retain Standing Order</b>



27.4	A motion for resolution under Standing Order 27.2 is not amendable.	<b>Retain Standing Order</b>
<b>Motion for Approval (Affirmative Resolution Procedure)</b>		
27.5	<p>In the case of any statutory instrument or draft statutory instrument laid before the Assembly which, unless the Assembly by resolution approves it, cannot:</p> <ul style="list-style-type: none"> <li>(i) be made;</li> <li>(ii) come into force; or</li> <li>(iii) remain in force beyond the period specified in the enactment conferring the power to make the instrument,</li> </ul> <p>any member of the government may table a motion under Standing Order 27.5 that the instrument or draft instrument be approved.</p>	<b>Retain Standing Order</b>
27.6	A motion under Standing Order 27.5 is not amendable.	<b>Retain Standing Order</b>

<p><b>27.7</b></p>	<p>No motion under Standing Order 27.5 may be considered in plenary until either:</p> <ul style="list-style-type: none"> <li>(i) the committee responsible for the functions specified in Standing Orders 21.2, 21.3 and 27.8A (where relevant) and any other committee, which has given the notice mentioned in Standing Order 27.8, has reported on the instrument or draft; or</li> <li>(ii) 20 days have elapsed since the instrument or draft instrument was laid;</li> </ul> <p>whichever is the earlier.</p>	<p><b>Retain Standing Order</b></p>
<p><b>27.7A</b></p>	<p>Where the enactment requiring the statutory instrument or draft statutory instrument to be laid before the Assembly specifies timings in relation to the Assembly's consideration of the statutory instrument or draft</p>	<p><b>Retain Standing Order</b></p>

	statutory instrument, Standing Order 27.7 does not apply.	
<b>27.8</b>	If any committee, other than the committee responsible for the functions specified in Standing Orders 21.2 and 21.3, intends to report on an instrument or draft instrument to which Standing Order 27.5 applies, it must give notice to the government of its intention to do so no later than seven days after the instrument or draft has been laid.	<b>Retain Standing Order</b>
<b>27.8A</b>	Any instrument or draft instrument relating to devolved taxes <u>to which Standing Order 27.5 applies</u> may be considered by the responsible committee under Standing Order 19, as well as the committee responsible for the functions specified in Standing Orders 21.2 and 21.3. Standing Order 27.8 does not apply to the responsible committee under Standing Order 19 in relation to any such instrument or draft instrument.	<b>Amend Standing Order</b>  The change to this Standing Order clarifies that it only applies to affirmative SIs and therefore does not apply to SIs laid for sifting.

27.9	If any committee considers any instrument or draft instrument to which Standing Order 27.5 applies, the member of the government who laid it (or another member of the government nominated by the First Minister to have responsibility for it) may attend the committee and participate in its proceedings relating to the instrument or draft but may not vote.	<b>Retain Standing Order</b>
	<b><u>Draft Statutory Instruments to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Bill applies</u></b>	<b>New Heading</b>
27.9A	<u>A member of the government must lay any draft statutory instrument to which paragraph 4 of Schedule 7 to the European (Withdrawal) Act applies before the Assembly.</u>	<b>New Standing Order</b>
27.9B	If:  (i) <u>the responsible committee under Standing Order 21.3B reported in accordance with Standing Order 21.4B with a recommendation that the appropriate</u>	<b>New Standing Order</b>  The new Standing Order is based on a provision that was inserted into the Withdrawal Act during

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 must explain why the Welsh Ministers do not agree with the committee's recommendation.

ping-pong in relation to the UK Parliament. As there was no time to get consent from the devolved parliaments, no such provision was added in relation to the Assembly.

It is proposed to include the new Standing Order both to maintain consistency and to ensure the maximum transparency of the sifting process in the Assembly.

The CLA Committee recommended:

“Recommendation 3. If the National Assembly is content for our recommendations as the sifting committee not to be binding, we recommend its Standing Orders should be amended to place a requirement on the Welsh Ministers to explain why they do not agree with our

recommendations (as applies to UK Ministers in paragraph 3(7) of Schedule 7 to the 2018 Act).”

Business Committee considered replicating the requirement which the Act places on UK Ministers to account to the legislature for its decision not to agree with a recommendation *before* the act of making the instrument.

However, Business Committee decided that the benefits of separating the statement and the instrument were outweighed by the practical advantages of an alternative proposal from the Welsh Government, which was to instead require that the Welsh Ministers account to the legislature for its decision not to agree with a recommendation by setting out its explanation in the explanatory memorandum alongside the other information provided to assist scrutiny of the instrument when laid.

	<b>No Amendment of Instruments</b>	
<b>27.10</b>	A statutory instrument or draft statutory instrument, to which Standing Orders 27.2 or 27.5 apply, cannot be amended.	<b>Retain Standing Order</b>
	<b>Withdrawal of Instruments</b>	
<b>27.11</b>	A statutory instrument or draft statutory instrument laid before the Assembly may be withdrawn at any time by the member of the government with responsibility for that instrument.	<b>Retain Standing Order</b>
	<b>Calculation of Days</b>	
<b>27.12</b>	In calculating for the purposes of Standing Order 27 any period of days, no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than four days.	<b>Retain Standing Order</b>

	<b>Other Motions in Respect of Instruments or Draft Instruments</b>	
<b>27.13</b>	Standing Orders 27.1 to 27.9 are without prejudice to the right of any Member to table any other motion in respect of an instrument or draft instrument.	<b>Retain Standing Order</b>
	<b>Application to Other Subordinate Legislation</b>	
<b>27.14</b>	<p>Standing Orders 27.1 to 27.13 also apply with such modifications as are necessary, to any other subordinate legislation (other than that subject to Special Assembly Procedure under Standing Order 28) in the form of a report, guidance, code of practice or other document that is required by any enactment to be:</p> <p>laid before the Assembly; and</p> <p>subject to any form of Assembly procedure having the same or equivalent effect to those mentioned in Standing Orders 27.2 or 27.5.</p>	<b>Retain Standing Order</b>



<p><b><u>STANDING ORDER 30B -Statutory Instruments made by UK Ministers under the Act temporarily restricting the Assembly’s legislative competence or the Welsh Ministers’ executive competence</u></b></p>	<p>New Standing Order Heading</p>	
	<p><b><u>Regulations made by a Minister of the Crown under sections 109A and 80(8) of the Act</u></b></p>	<p>New Heading</p>
<p><b>30B.1</b></p>	<p><b><u>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.</u></b></p>	<p><b>New Standing Order</b></p> <p>Sections 109A and 80(8) were inserted into GOWA (the Act) by the EU Withdrawal Act. Regulations laid by UK Ministers under sections 109A or 80(8) temporarily restrict the Assembly’s legislative competence and the Welsh Government’s executive competence respectively.</p>

This Standing Order and those that follow reflect the CLA Committee recommendations:

“Recommendation 9. We recommend that the National Assembly’s Standing Orders should be amended to provide a procedure in respect of the provisions contained in section 109A of the Government of Wales Act 2006, in particular:

- to require an explanatory memorandum that:
- summarises the effect of regulations that UK Ministers propose to lay under section 109A(3) of the 2006 Act;
- makes a recommendation as whether the relevant draft regulations should be subsequently made by UK Ministers;
- explains the reasons for the recommendation made;

		<ul style="list-style-type: none"> <li>- to require that the Business Committee refers that explanatory memorandum to a committee or committees;</li> <li>- requires the Welsh Ministers to lay before the National Assembly any written statement provided to UK Ministers (i.e. the statement mentioned in new section 157ZA(2)(b)(ii) of the 2006 Act), no later than one working day after the statement is provided by the Welsh Ministers.”</li> </ul> <p>“Recommendation 10. We recommend that the detail of recommendation 10 applies equally in respect of the provisions contained in section 80 of the Government of Wales Act 2006.”</p>
30B.2	<p><u>The Welsh Ministers must lay relevant draft regulations before the Assembly 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.</u></p>	<p><b>New Standing Order</b></p> <p>The Act requires UK Ministers to provide a copy of any draft regulations to the Welsh Ministers. The new Standing Order required Welsh Ministers</p>

		to lay these before the Assembly within one working day of receiving them.
	<b><u>Consent Decision Memorandum</u></b>	<b>New Heading</b>
30B.3	<u>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.</u>	<p><b>New Standing Order</b></p> <p>The Act requires that the Assembly be given the opportunity to make a consent decision in relation to any such draft regulations.</p> <p>The new Standing Order builds on the existing provisions of Standing Orders 29 and 30A by requiring the government to lay a memorandum as a basis for the Assembly’s consideration of whether to give consent.</p>
30B.4	<p><u>A consent decision memorandum must:</u></p> <p>(i) <u>summarise the effect of the relevant draft regulations on the Assembly’s legislative competence and/or the Welsh Ministers’ functions;</u></p>	<p><b>New Standing Order</b></p> <p>The information set out in the memorandum would assist the Assembly in coming to an</p>

	<p>(ii) <u>make a recommendation as to whether the relevant draft regulations should be subsequently approved by the UK Parliament;</u></p> <p>(iii) <u>explain the reasons for the recommendation made in (ii).</u></p>	<p>informed decision in relation to the consent decision memorandum.</p>
30B.5	<p><u>The Business Committee must refer any consent decision memorandum to a committee or committees for consideration.</u></p>	<p><b>New Standing Order</b></p> <p>As in Standing Orders 29 and 30A, it is proposed that the Business Committee decides which committee should consider the consent decision memorandum. Unlike in SOs 29 and 30A, this requirement on the Business Committee is not qualified by ‘normally’, as the window for the Assembly’s consideration of the consent decision is protected by statute, unlike in the case of LCMs and SICMs. For the same reason, the Business Committee is not required in this case to set a timetable for the committee’s consideration.</p>
	<p><b><u>Consent Decision Motion</u></b></p>	<p><b>New Heading</b></p>

30B.6	<p><u>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) 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 Assembly’s consent to the relevant draft regulations being laid before the UK Parliament.</u></p>	<p><b>New Standing Order</b></p> <p>The new Standing Order requires the Welsh Government to table a motion to enable the Assembly to reach a consent decision within the 40-day deadline set out in the Act.</p> <p>This approach is different from the procedures for other types of Assembly consent, such as Legislative Consent Motions under Standing Order 30A, and while appropriate for these circumstances (which are set out in detail in statute), it does not set a precedent in relation to those other procedures.</p>
30B.7	<p><u>The Assembly must consider a consent decision motion which has been tabled.</u></p>	<p><b>New Standing Order</b></p> <p>Replicates the provisions of SOs 29 and 30A in requiring that such a motion be considered.</p>
30B.8	<p><u>A consent decision motion must not be debated until either:</u></p>	<p><b>New Standing Order</b></p> <p>Unlike for LCMs and SICMs under SOs 29 and 30A, it is not proposed that the Business</p>

	<p>(i) <u>the committee or committees have reported on the related consent decision memorandum; or</u></p> <p>(ii) <u>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.</u></p>	<p>Committee sets a timetable for the committee’s consideration of a memorandum, as that timetable is set out in statute.</p> <p>The Standing Order therefore states that the consent decision motion cannot be considered until either the committee has reported, or 33 days have elapsed since the Welsh Ministers were provided with a copy of the regulations, thus ensuring that the 40–day deadline in the EU (Withdrawal) Bill is met.</p>
	<b><u>Calculation of Days</u></b>	<b>New Heading</b>
30B.9	<u>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 Assembly is dissolved or is in recess for more than four days.</u>	<p><b>New Heading</b></p> <p>Reflects the provisions of the EU (Withdrawal) Act, and of usual practice set out in the Assembly’s Standing Orders.</p>
	<b><u>Written Statements</u></b>	<b>New Heading</b>
30B.10	<u>A member of the government must lay before the Assembly any written statement provided by the Welsh</u>	The EU Withdrawal Act requires UK Ministers to lay before Parliament any statement received by

	<p><u>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.</u></p>	<p>Welsh Ministers regarding a consent decision by the Assembly, but does not <i>require</i> Welsh Ministers to provide such a statement.</p> <p>However, the Intergovernmental Agreement says that the Welsh Ministers <b>will</b> provide a written statement to the UK Parliament setting out why in their view the consent of the legislature has not been provided (2<sup>nd</sup> para 7 (e)).</p> <p>The proposed Standing Order requires any such statement provided by Welsh Ministers to be laid before the Assembly.</p>
	<p><b><u>Reports in Connection with Retained EU Law Restrictions</u></b></p>	<p><b>New Heading</b></p>
<p><b>30B.11</b></p>	<p><u>A member of the government must lay before the Assembly 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 (Withdrawal) Act 2018 no later than one working day after the report is received.</u></p>	<p><b>New Standing Order</b></p> <p>The EAAL Committee recommended that the Assembly “establish procedures for the provision of additional information to the Assembly relating to the new Section 109A process, including the UK Ministers’ three-monthly</p>



		<p>reports to Parliament and notification when specified restrictions are repealed or revoked” and that “the Welsh Ministers lay reports in connection with retained EU law restrictions before the Assembly as soon as they receive them from a Minister of the Crown. Any available legislative or procedural measures available to ensure this should be explored.”</p> <p>The CLA Committee subsequently recommended:</p> <p>“Recommendation 11. We recommend that the Welsh Ministers are required by the National Assembly’s Standing Orders to lay any report, provided to them in accordance with paragraph 4(4) of Part 2 of Schedule 3 to the 2018 Act, within one working day of its receipt.”</p>
30B.12	<p><u>In relation to any draft regulations that would, if approved by the UK Parliament, revoke retained EU law restrictions imposed on the Assembly or the Welsh Ministers under section 109A or 80(8) of the Act, a</u></p>	<p><b>New Standing Order</b></p> <p>CLA Committee recommended:</p>

member of the government must lay before the Assembly a statement explaining the effect that the draft regulations would have on the competence of the Assembly or the Welsh Ministers, no later than seven days after the draft regulations have been laid before the UK Parliament.

“Recommendation 12. When the UK Government repeal or revoke retained EU law restrictions (in respect of legislative and executive competence), we recommend that the Welsh Ministers are required by the National Assembly’s Standing Orders to make a written statement:

– that EU law restrictions have been lifted, no later than 7 calendar days after

the relevant regulations have been laid;

– that explains the impact of the removal of the restrictions on the competence of the National Assembly or the Welsh Ministers.

<p><b>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 Assembly</b></p>	<p><b>New Standing Order</b></p>
<p><b><u>Statutory Instruments Requiring Notification to the Assembly</u></b></p>	<p><b>New Heading</b></p>
<p><b>30C.1</b> <u>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, 9 or 23 of, or Schedule 4 to, the European Union (Withdrawal) Act 2018 which contains provision within the legislative competence of the Assembly or the executive competence of the Welsh Ministers.</u></p>	<p><b>New Standing Order</b></p> <p>The proposed Standing Order defines the SIs that this procedure applies to. They are SIs made by UK Ministers acting alone, within the Assembly or the Welsh Ministers’ competence, under the EU Withdrawal Act.</p>
<p><b><u>Written Statements in Relation to Relevant Statutory Instruments</u></b></p>	<p><b>New Heading</b></p>
<p><b>30C.2</b> <u>A member of the government must lay a written</u></p>	<p><b>New Standing Order</b></p>

statement giving notification of any relevant statutory instrument, normally within three working days of it being laid before the UK Parliament.

The proposed Standing Order requires a member of the government to lay a statement before the Assembly in relation to any relevant SI. This and the SO below reflect the CLA Committee recommendations with some adjustments to the format and timescales for what is required to take account of practical considerations:

“Recommendation 7. We recommend that the National Assembly’s Standing Orders require that, where UK Ministers acting alone in devolved areas lay before the UK Parliament regulations in areas within the legislative competence of the National Assembly or the executive competence of the Welsh Ministers, and where the Welsh Ministers are required to give their consent to the making of those regulations:

- the Welsh Ministers notify the National Assembly within one working day of the regulations being laid; and

– such notification is accompanied by an explanatory memorandum summarising the purpose and impact of the regulations and explaining why the Welsh Ministers have given their consent.”

“Recommendation 8. We recommend that the National Assembly’s Standing Orders require that, where UK Ministers acting alone lay before the UK Parliament regulations in areas within the legislative competence of the National Assembly or the executive competence of the Welsh Ministers, and where the Welsh Ministers are not required to give their consent to the making of those regulations:

– the Welsh Ministers notify the National Assembly within one working day of the regulations being laid; and

– such notification is accompanied by an explanatory memorandum summarising the purpose and impact of the regulations.”

30C.3	<p><u>The written statement must:</u></p> <ul style="list-style-type: none"><li>(i) <u>summarise the purpose of the statutory instrument;</u></li><li>(ii) <u>specify any impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence; and</u></li><li>(iii) <u>where the Welsh Ministers consented to UK Ministers making the relevant statutory instruments, explain the reasons why consent was given.</u></li></ul>	<p><b>New Standing Order</b></p> <p>The proposed Standing Order sets out the information that must be provided in the statement under SO30C.2.</p>

## Annex B

# 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 Assembly and report on whether the Assembly 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 Assembly; 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 Assembly should pay special attention to any statutory instrument or draft statutory instrument required by any enactment to be laid before the Assembly 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 Assembly;
- (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) that it inappropriately implements European Union legislation; or

(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 Assembly to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018 applies.

21.3B A responsible committee must report on the appropriate procedure to apply to any draft statutory instrument laid before the Assembly to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018 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 Assembly specifies timings in relation to the Assembly'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 Assembly is dissolved or is in recess for more than 4 days.

21.6 Standing Orders 21.2 and 21.3 do not apply to proposed or draft Orders in Council to be made, in accordance with Standing Order 25, under section 109 of the Act or subordinate legislation subject to Special Assembly Procedure under Standing Order 28.

21.7 A responsible committee may consider and report on:

- (i) any other subordinate legislation laid before the Assembly other than that subject to Special Assembly Procedure under Standing Order 28;
- (ii) the appropriateness of provisions in Assembly Bills and in Bills for Acts of the United Kingdom Parliament that grant

powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General;

- (iii) any statutory instrument consent memorandum laid in relation to a relevant statutory instrument under Standing Order 30A;
- (iv) the exercise of commencement powers by the Welsh Ministers;
- (v) any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers; or
- (vi) draft legislation which is the subject of consultation.

21.8 A responsible committee may consider draft European Union legislation relating to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General in order to consider whether it complies with the principle of subsidiarity.

21.9 If a responsible committee considers that draft European Union legislation does not comply with the principle of subsidiarity it may make written representations, on behalf of the Assembly, to the relevant committee of the House of Commons or the House of Lords with a view to having those representations incorporated into a reasoned opinion to be submitted by that committee to the relevant European Union authorities.

21.10 If a responsible committee makes written representations in accordance with Standing Order 21.9, it must lay a copy of those written representations before the Assembly.

21.11 A responsible committee may, to enable its functions under Standing Order 21.9 to be exercised during any non-sitting week, delegate those functions to the chair of the responsible

committee who must, if they are exercised, report that fact to the responsible committee as soon as possible.

## **STANDING ORDER 27 – Subordinate Legislation (Other than Subordinate Legislation Subject to Special Assembly Procedure)**

27.1 Any statutory instrument or draft statutory instrument laid before the Assembly 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 Assembly to which paragraph 4 of Schedule 7 to the European (Withdrawal) Act applies must include the statement and reasoning required by paragraph 4(3) of Schedule 7 to the European Union (Withdrawal) Act 2018.

### **Motion for Annulment (Negative Resolution Procedure)**

27.2 In the case of any statutory instrument which:

(i) is subject to annulment in pursuance of a resolution of the Assembly; or

(ii) is laid in draft but cannot be made if the draft is disapproved,

the Assembly may, not later than 40 days after the instrument is laid, resolve that the instrument be annulled or, as the case may be, that the draft be disapproved.

27.3 Any Member may table a motion for resolution under Standing Order 27.2.

27.4 A motion for resolution under Standing Order 27.2 is not amendable.

### **Motion for Approval (Affirmative Resolution Procedure)**

27.5 In the case of any statutory instrument or draft statutory instrument laid before the Assembly which, unless the Assembly by resolution approves it, cannot:

(i) be made;

(ii) come into force; or

(iii) remain in force beyond the period specified in the enactment conferring the power to make the instrument,

any member of the government may table a motion under Standing Order 27.5 that the instrument or draft instrument be approved.

27.6 A motion under Standing Order 27.5 is not amendable.

27.7 No motion under Standing Order 27.5 may be considered in plenary until either:

(i) the committee responsible for the functions specified in Standing Orders 21.2, 21.3 and 27.8A (where relevant) and any other committee, which has given the notice mentioned in Standing Order 27.8, has reported on the instrument or draft; or

(ii) 20 days have elapsed since the instrument or draft instrument was laid;

whichever is the earlier.

- 27.7A Where the enactment requiring the statutory instrument or draft statutory instrument to be laid before the Assembly specifies timings in relation to the Assembly's consideration of the statutory instrument or draft statutory instrument, Standing Order 27.7 does not apply.
- 27.8 If any committee, other than the committee responsible for the functions specified in Standing Orders 21.2 and 21.3, intends to report on an instrument or draft instrument to which Standing Order 27.5 applies, it must give notice to the government of its intention to do so no later than seven days after the instrument or draft has been laid.
- 27.8A Any instrument or draft instrument relating to devolved taxes to which Standing Order 27.5 applies may be considered by the responsible committee under Standing Order 19, as well as the committee responsible for the functions specified in Standing Orders 21.2 and 21.3. Standing Order 27.8 does not apply to the responsible committee under Standing Order 19 in relation to any such instrument or draft instrument.
- 27.9 If any committee considers any instrument or draft instrument to which Standing Order 27.5 applies, the member of the government who laid it (or another member of the government nominated by the First Minister to have responsibility for it) may attend the committee and participate in its proceedings relating to the instrument or draft but may not vote.

**Draft Statutory Instruments to which paragraph 4 of Schedule 7 to the European Union (Withdrawal) Bill applies**

- 27.9A A member of the government must lay any draft statutory instrument to which paragraph 4 of Schedule 7 to the European (Withdrawal) Act applies before the Assembly.

27.9B If:

- (i) the responsible committee under Standing Order 21.3B reported 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 must explain why the Welsh Ministers do not agree with the committee's recommendation.

#### **No Amendment of Instruments**

27.10 A statutory instrument or draft statutory instrument, to which Standing Orders 27.2 or 27.5 apply, cannot be amended.

#### **Withdrawal of Instruments**

27.11 A statutory instrument or draft statutory instrument laid before the Assembly may be withdrawn at any time by the member of the government with responsibility for that instrument.

#### **Calculation of Days**

27.12 In calculating for the purposes of Standing Order 27 any period of days, no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than four days.

#### **Other Motions in Respect of Instruments or Draft Instruments**

27.13 Standing Orders 27.1 to 27.9 are without prejudice to the right of any Member to table any other motion in respect of an instrument or draft instrument.

#### **Application to Other Subordinate Legislation**

27.14 Standing Orders 27.1 to 27.13 also apply with such modifications as are necessary, to any other subordinate legislation (other than that subject to Special Assembly Procedure under Standing Order 28) in the form of a report, guidance, code of practice or other document that is required by any enactment to be:

laid before the Assembly; and

subject to any form of Assembly procedure having the same or equivalent effect to those mentioned in Standing Orders 27.2 or 27.5.



## **STANDING ORDER 30B –Statutory Instruments made by UK Ministers under the Act temporarily restricting the Assembly’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**

- 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.
- 30B.2 The Welsh Ministers must lay relevant draft regulations before the Assembly 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.

### **Consent Decision Memorandum**

- 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.
- 30B.4 A consent decision memorandum must:
- (i) summarise the effect of the relevant draft regulations on the Assembly’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).

30B.5 The Business Committee must refer any consent decision memorandum to a committee or committees for consideration.

### **Consent Decision Motion**

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) 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 Assembly’s consent to the relevant draft regulations being laid before the UK Parliament.

30B.7 The Assembly must consider a consent decision motion which has been tabled.

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 .

### **Calculation of Days**

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 Assembly is dissolved or is in recess for more than four days.

## **Written Statements**

30B.10 A member of the government must lay before the Assembly 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.

## **Reports in Connection with Retained EU Law Restrictions**

30B.11 A member of the government must lay before the Assembly 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 (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 Assembly or the Welsh Ministers under section 109A or 80(8) of the Act, a member of the government must lay before the Assembly a statement explaining the effect that the draft regulations would have on the competence of the Assembly or the Welsh Ministers, no later than seven days after the draft regulations have been laid before the UK Parliament.

# **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 Assembly**

## **Statutory Instruments Requiring Notification to the Assembly**

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, 9 or 23 of, or Schedule 4 to, the European Union (Withdrawal) Act 2018 which contains provision within the legislative competence of the Assembly 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 Assembly’s legislative competence and/or the Welsh Ministers’ executive competence; and
- (ii) where the Welsh Ministers consented to UK Ministers making the relevant statutory instruments, explain the reasons why consent was given.