

Amending Standing Orders: Standing Order 29.1 (Consent in relation to UK Parliament Bills)

September 2024

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 an amendment to Standing Order 29.1 in order to clarify what kind of provisions require an LCM, and to what provisions the Senedd is consenting, or not consenting to, when it considers a related motion.

The Senedd is invited to approve the proposals to revise the Standing Orders as outlined at Annex A.



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1. Background

1. On 24 March 2024, in response to a letter from the Legislation, Justice and Constitution Committee (LJCC), the Business Committee agreed to review the operation of Standing Order 29.1, which sets out the circumstances in which the Welsh Government must lay a legislative consent memorandum (LCM).
2. The LJCC further wrote to the Business Committee on 10 May and 5 June, setting out how their consideration of the LCMs on the Criminal Justice Bill, the Renters (Reform) Bill and the Data Protection and Digital Information (DPDI) Bill had highlighted what they considered to be further issues with the LCM process. Further to the proposed change to Standing Order 29.1 proposed in this report, the Business Committee has agreed to consider whether a wholesale review of Standing Order 29 would be desirable, in the context of its wider procedural work programme. This report relates only to the outcome of the original review of Standing Order 29.1.

2. Current provisions

Standing Order 29.1

3. Standing Order 29 requires an LCM to be laid in relation to any 'relevant Bill', and Standing Order 29.1 defines what a relevant Bill is:

In Standing Order 29, "relevant Bill" means a Bill under consideration in the UK Parliament which makes provision ("relevant provision") in relation to Wales:

i) for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd); or

ii) which modifies the legislative competence of the Senedd.

4. Provisions relating to legislative consent were first introduced into the (then) National Assembly for Wales's Standing Orders in 2007, when the Assembly first gained limited primary law-making powers. Standing Order 29.1 itself, and the definition of 'relevant provision' has remained unchanged since then, except for an amendment in 2013 which made any modification of the Assembly's legislative competence a 'relevant provision' where previously it had only been

modifications that negatively impacted the Senedd's competence that required consent.

Wales Act 2017

5. The Wales Act 2017 put the 'Sewel convention' on a statutory footing by inserting a new subsection 107(6) into the Government of Wales Act 2006 (GOWA):

But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Senedd.

6. The Wales Act 2017 also changed the basis of the Senedd's legislative powers from a conferred powers model, as had existed since 2006, to a reserved powers model. Rather than the Senedd being able to legislate only on subjects listed in Schedule 7 of GOWA, since 2017 the Senedd has had law-making powers on all subjects except those specifically reserved to the UK Parliament in Schedule 7A.

7. Whilst it is not defined either in legislation nor elsewhere, 'devolved matters' is broader in scope than the two specific circumstances set out in Standing Order 29.1. As highlighted by the LJCC in its letters, it has become the Welsh Government's practice to include in LCMs provisions which fall within this broader definition, but which are not captured by the current 29.1 requirements. For example, where a UK Bill such as the Criminal Justice Bill confers reserved functions on devolved Welsh authorities, this has 'regard to devolved matters' even though it neither falls within the Senedd's legislative competence nor modifies that competence, which are the dual tests set out in Standing Order 29.1.

8. The UK government's interpretation, as set out in Devolution Guidance Notes is that 'devolved matters' comprise not only matters within the Senedd's legislative competence, and changes to that competence, but also modifications of the functions of the Welsh Ministers in non-devolved areas, and the conferral or imposition of reserved functions on Devolved Welsh Authorities. The latter two types of change are not currently captured by SO29.1, despite the UK government's own guidance stating that it would not normally legislate in these areas without the Senedd's consent.

9. This divergence of interpretations causes confusion not only as to which provisions require consent, but also as to which provisions the Senedd is actually giving consent when it passes a legislative consent motion. Additionally, given

that an LCM must include provisions of the type set out in Standing Order 29.1, the current situation raises questions of admissibility if an LCM were to include only provisions of the type that fall outside the Standing Order definition, even if they did clearly 'have regard to devolved matters'.

3. Decision

10. The Business Committee proposes that Standing Order 29.1 be updated to bring it into line with the provision of s107(6) of GOWA.

11. The change will provide clarity as to what kind of provisions require an LCM, and to what provisions the Senedd is consenting (or not consenting) when it considers a related motion. Given that Welsh Government practice is already to include all provisions that have regard to devolved matters in LCMs, it is not expected that this amendment will lead to an increase either in the number of LCMs, or in the number of provisions they include.

12. On 17 September 2024, the Business Committee formally agreed to propose the change to Standing Orders outlined in this report. The Senedd is invited to approve the proposed new Standing Orders at Annex B.

Annex A: Standing Order change and explanatory notes

STANDING ORDER 29.1 – Consent in relation to UK Parliament Bills	
UK Parliament Bills Making Provision Requiring the Senedd's Consent	Retain heading
<p>29.1. In Standing Order 29, “relevant Bill” means a Bill under consideration in the UK Parliament which makes provision (“relevant provision”) in relation to Wales: <u>that has regard to devolved matters.</u></p> <p>(i) for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd); or</p> <p>(ii) which modifies the legislative competence of the Senedd.</p>	<p>Amend Standing Order</p> <p>In order to clarify what kind of provisions require an LCM, and to what provisions the Senedd is consenting (or not consenting) to when it considers a related motion.</p>

Annex B: Standing Order 29.1 as amended

STANDING ORDER 29 – Consent in relation to UK Parliament Bills

UK Parliament Bills Making Provision Requiring the Senedd's Consent

29.1. In Standing Order 29, “relevant Bill” means a Bill under consideration in the UK Parliament which makes provision (“relevant provision”) in relation to Wales that has regard to devolved matters.