



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

A Guide to the Third Assembly

APS Procedures Unit

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A Guide to the Third Assembly

Introduction

This guide outlines the key changes that will take effect in the Third Assembly as a consequence of the new Standing Orders made in accordance with the Government of Wales Act 2006 ('the Act').

1. The National Assembly for Wales

Members

- 1.1 In the Third Assembly, the arrangements for Members will remain largely unchanged, except, as required by the Act, Standing Order 1 includes a new provision for the making of a code or protocol concerning the different roles and responsibilities of constituency and regional Members.
- 1.2 The code is to be drafted by the Committee on Standards of Conduct and must include provision for the 5 key principles set out in the Standing Order and its accompanying Annex.

Presiding Officer and Deputy

- 1.3 As required by the Act, the PO and Deputy will no longer be able to come from the same political group or groups who both have an executive role. Standing Order 2 goes further than the Act in requiring one to come from the government and one from the opposition (although this can be disapplied by a 2/3rds majority in plenary).
- 1.4 The PO and DPO will no longer have a vote (other than a casting vote) in plenary proceedings or a Committee of the Whole Assembly.

The Commission

- 1.5 The Act establishes an Assembly Commission to provide services and staff and hold property for the Assembly.
- 1.6 The Commission will comprise the Presiding Officer (as Chair) and four other Members, to be appointed by the Assembly.
- 1.7 Assembly staff, headed by the Clerk and Chief Executive, will be employed by the Commission and will not be civil servants, although the Act provides for their terms and conditions of service to be no less favourable than they were before the creation of the new Assembly.
- 1.8 The House Committee will cease to exist in the Third Assembly.

2. The Welsh Assembly Government

General

- 2.1 The Act creates a Welsh Assembly Government (WAG) legally distinct from the National Assembly for Wales. The First Minister is no longer elected by

the Assembly, but is appointed by the Queen, on the nomination of the Assembly. The First Minister subsequently appoints Welsh Ministers and Deputy Welsh Ministers, with the approval of Her Majesty, up to a statutory limit of 12.

The Welsh Ministers

- 2.2 The First Minister and his/her appointed Welsh Ministers are collectively known as 'the Welsh Ministers'.
- 2.3 The executive functions previously conferred on the Assembly as a corporate body will become the responsibility of the Welsh Ministers and new functions will be directly vested in Welsh Ministers, as appropriate.
- 2.4 Assembly Government staff will be able to exercise most of the functions of the Welsh Ministers to whom they work without requiring a specific delegation. Ministers may still retain some functions to exercise themselves.

Deputy Welsh Ministers

- 2.5 Unlike the First and Second Assemblies where Deputy Ministers had no legal status, in the Third Assembly, Deputy Welsh Ministers will have the statutory function of assisting the First Minister, a Welsh Minister or the Counsel General in the exercise of their functions. The Deputy Welsh Ministers may exercise functions and answer Assembly questions on any matter on which they assist the Welsh Ministers.

The Counsel General

- 2.6 The Act establishes the office of Counsel General, who will be the legal adviser to, and representative in the courts of, WAG.
- 2.7 The Counsel General is appointed by Her Majesty, on the recommendation of the First Minister, as approved by the Assembly.
- 2.8 The Counsel General may be, but need not be, a Member. If not a Member, he or she can participate in Assembly proceedings as if a Member but cannot vote.

3. Plenary and the control of Assembly Business

Organisation of Business

- 3.1 Standing Orders 6 and 7 provide for a new approach to the organisation of business in plenary, introducing the concept of -
 - 'government business', e.g. oral questions, Ministerial statements;
 - 'non-government business', e.g. non-government legislation, committee reports;
 - 'Assembly business', e.g. PO statements, obituary tributes.
- 3.2 The organisation of government business will be determined by the government; non-government business and Assembly business will be

determined by the Business Committee (see paragraph 4.11 for further details on the functions of the Business Committee).

- 3.3 The Minister with responsibility for government business will, for each week the Assembly meets in plenary, make a statement on the organisation of government business in plenary and announce the organisation of non-government and Assembly business in plenary, for the following three weeks.
- 3.4 There will be no vote on the Minister's statement on the organisation of government business or the accompanying announcement about non-government and Assembly business. Instead, half an hour will be allocated for questions to the Minister with responsibility for government business about the organisation of that business. This is a change to the practice in the First and Second Assemblies, where Members would vote on the weekly Business Statement.
- 3.5 Time allocated in plenary for government and non-government business will be in the proportion of 3:2 respectively, calculated over the period of an Assembly year.

Plenary times

- 3.6 Standing Order 7 sets out new arrangements for plenary meetings:

On a Tuesday, plenary will meet from 2pm - 5.30pm to consider government and Assembly business only;

On a Wednesday, plenary will be extended to meet from 12.30pm - 2pm to consider government business and from 2pm - 5.30pm to consider non-government and Assembly business.

The Standing Order provides for these meetings to be extended in certain circumstances if necessary.

The Business Notice

- 3.7 Standing Order 6 imposes a new requirement on the Clerk to publish a Business Notice, which must include the notice of plenary and committee agendas, together with information about questions, motions, legislation, amendments and documents which have been tabled or laid before the Assembly since the last Business Notice.

4. Committees

General

- 4.1 The Act specifies only one committee; the Audit Committee, but provides for the Assembly to establish such other committees as necessary.
- 4.2 Membership of a committee will be determined by the Assembly on a vote requiring a 2/3rds majority, on a motion tabled by the Business Committee. Such a motion cannot be passed unless it recommends membership which reflects (so far as reasonably practicable) party balance within the

Assembly. If any such motion is not agreed by the Assembly, membership of that committee will be determined according to the d'Hondt formula.

- 4.3 Standing Orders provide for scrutiny committees to be set up but do not specify the number or their remit - a decision to be taken by the Third Assembly.
- 4.4 Standing Orders also provide for ad-hoc committees to be established to scrutinise Assembly legislation and other matters.
- 4.5 Committees will determine when and how often they meet, within blocks of time allocated for committee business.
- 4.6 Ministers and Deputy Ministers will not be barred from being members of committees other than the Audit Committee, but it is expected that, in practice, they will only sit on Measure or Order committees.

Scrutiny Committees

- 4.7 Although the Standing Orders do not prescribe the number of scrutiny committees that will exist at any one time, the size of the Assembly may restrict the number that can sit in practice. As a result, there is expected to be a smaller number of cross-cutting scrutiny committees, covering wider subject areas.
- 4.8 The role of committees will be decided by Members of the Third Assembly, but is likely to include the scrutiny of Ministerial policies and the development of proposals for Assembly legislation on any matter within their remit. It is unlikely that Ministers will sit as members of these committees, but they may still be invited to give evidence for specific policy inquiries or to be questioned generally on their portfolios.

Measure/Order Committees

- 4.9 Separate Measure or Order committees will be established as required to scrutinise proposed Assembly Measures and undertake pre-legislative scrutiny of proposed Legislative Competence Orders (Orders in Council).
- 4.10 It is likely that Ministers will sit on such committees.

Business Committee

- 4.11 The Business Committee in the Third Assembly will comprise the Presiding Officer (as Chair) and one Member from each political group (providing 2/3rds of the Assembly voting support the nominations). There is also a new provision for representation of independent Members and parties with fewer than 3 Members.
- 4.12 Decisions in the committee will be made by weighted voting, based on party representation in the Assembly.
- 4.13 The Business Committee may meet in private to determine the organisation of non-government and Assembly business in plenary. The weighted vote of the WAG member of the Business Committee on decisions concerning the

organisation of non-government business will be based on his/her party's backbench representation only.

- 4.14 Other important functions of the Business Committee will include proposing the size and membership of committees for approval by plenary and a number of functions in relation to consideration of proposed Legislative Competence Orders and proposed Measures, e.g. setting the timetable for committee stages.
- 4.15 The new Business Committee will continue to have responsibility for procedural matters, including recommending changes to the Standing Orders and will meet in public for this part of its work.

Other Committees

- 4.16 Standing Orders provide for there to be a number of specific committees:

Audit Committee

The Act requires there to be an Audit Committee with the same functions as the pre-2007 committee plus new functions relating to the Auditor General's budget and considering and reporting to the Assembly on unauthorised use of excess resources.

The Standing Orders require the number of members of the committee to be 10.

Finance Committee

The newly established Finance Committee is designed to introduce more rigour and openness to the budgeting process.

In addition to scrutinising the Welsh Ministers' budget proposals, this Committee will also be able to report on any other matter concerning the expenditure of the Assembly Government.

Subordinate Legislation Committee

The new Subordinate Legislation Committee has an enhanced remit which provides for technical **and policy** scrutiny ('merits' function') and reporting of statutory instruments (SIs) made by the Welsh Ministers that are subject to Assembly procedure.

This Committee may also consider certain other matters, including any other subordinate legislation laid before the Assembly and any other general legislative matter affecting the competence of the Assembly or Welsh Ministers.

It will also assess the appropriateness of provisions in proposed Measures that grant powers to make subordinate legislation to Welsh Ministers (e.g. whether the function in question should be an executive function and whether the Assembly procedure specified for the function is suitable).

Committee on Standards of Conduct

The remit of the Standards of Conduct Committee will be extended to cover the proposed new code or protocol on the roles and responsibilities of regional and constituency Members.

Equality of Opportunity Committee, European and External Affairs Committee and Committee for the Scrutiny of the First Minister

These committees have a wide remit to allow them to develop their own roles in the Third Assembly.

Regional Committees

Standing Orders no longer require there to be regional committees, instead providing for them to be established if a majority of constituency and regional Members representing an electoral region wish there to be one. In such case, a motion to establish a committee for the region will be tabled for Assembly approval.

Other Committees

Standing Orders make provision for other committees to be set up during an Assembly, including a Committee of the Whole Assembly to consider legislation.

5. Legislation

General

- 5.1 The legislative competence of the Third Assembly is expressed in terms of 'matters' within 'fields':
 - A 'field' is a broad subject area, e.g. highways and transport, housing;
 - A 'matter' is a specific defined policy area within a field.
- 5.2 In the matters within which it has legislative competence, the Assembly can make its own laws, known as 'Measures'. A Measure will have similar effect to an Act of Parliament.
- 5.3 The fields and matters currently within the legislative competence of the Assembly are set out in Schedule 5 to the Act.
- 5.4 Schedule 5 may be amended (i.e. additional Measure-making powers can be conferred) by either:
 - Act of Parliament; or
 - Legislative Competence Order (subject to approval by both the Assembly and the UK Parliament)

Legislative Competence Orders (LCOs)

- 5.5 Legislative Competence Orders are a type of Order in Council which will transfer specific legislative competence from Parliament to the Assembly by amending Schedule 5 to the Act.

- 5.6 An LCO can be proposed by the Assembly Government, an Assembly committee, or, if successful in a ballot drawn from time to time by the Presiding Officer, an individual Member.
- 5.7 In the case of a Member proposed LCO, the Member may only enter the ballot if they have submitted the required documentation - an outline of a proposed LCO and an Explanatory Memorandum. If successful in the ballot, the Member will seek the Assembly's agreement to lay their proposed LCO.
- 5.8 In the Assembly, there will be a 2-stage process for approving an LCO, involving:
- (i) pre-legislative scrutiny of a **proposed** LCO by an ad-hoc Order committee; and
 - (ii) approval in plenary of a **draft** LCO (which cannot be amended).
- 5.9 Provision has been made for joint working on pre-legislative scrutiny with committees of the House of Commons, House of Lords or a joint committee of both Houses.
- 5.10 Once agreed by the Assembly, the draft LCO is sent to the Secretary of State to be laid before both Houses of Parliament and, if approved, made by Her Majesty in Council. (The Secretary of State can refuse to lay the draft LCO before Parliament and must give notice in writing to the First Minister of any such refusal).

Measures

- 5.11 In the matters within which it has legislative competence, the Third Assembly will make its own legislation, known as 'Assembly Measures', which will have similar effect to an Act of Parliament.
- 5.12 Measures may be proposed by the Assembly Government, Assembly Committees, the Assembly Commission or, if successful in a ballot, an individual Member.
- 5.13 As with the Order in Council ballot, a Member may only enter the Measures ballot if they have submitted the required pre-ballot information - the title of the proposed Measure and an Explanatory Memorandum. If successful in the ballot, the Member will seek leave of the Assembly to introduce their Measure.
- 5.14 Any Member who has successfully brought forward an LCO will have an automatic right to introduce a Measure consequential to that LCO.
- 5.15 In the Assembly, there will be a 4-stage process to pass a Measure, involving:
- (i) Stage 1 - consideration in ad-hoc Measure committee (this stage can be by-passed with the agreement of the Business Committee) and agreement of the general principles of the Measure in plenary;

- (ii) Stage 2 - detailed consideration by ad-hoc Measure committee of the Measure and any amendments tabled;
 - (iii) Stage 3 - detailed consideration in plenary of the Measure and any selected amendments;
 - (iv) Stage 4 - passing of the final text of the Measure.
- 5.16 If passed by the Assembly at the end of Stage 4, the Measure is submitted to Her Majesty in Council for Royal Approval.

Subordinate Legislation

- 5.17 Subordinate legislation will be made by the Welsh Ministers and will be subject to either negative resolution procedure, affirmative resolution procedure or no procedure. The parent Act or Measure will specify the appropriate procedure. Where there is an equivalent UK Ministerial function, the Assembly equivalent of the procedure that applies in Westminster will apply here.

Negative resolution procedure - a statutory instrument (SI) will be made before being laid before the Assembly (but should not, other than exceptionally and with reasons, come into force within 21 days of being laid). Within 40 days of the SI being laid, a Member may table a plenary motion proposing that the SI be annulled.

Affirmative resolution procedure - an SI is laid in draft and cannot be made until approved by the Assembly in plenary. A motion to approve cannot be debated until the Subordinate Legislation Committee (or any other committee) has reported on the draft SI, or at least 20 days have elapsed since laying (whichever is the earlier).

- 5.18 There will no longer be a fast track "executive procedure". Urgent SIs to be made under the negative procedure can be made and brought into force immediately, if necessary. Urgent legislation subject to affirmative procedure will require rapid Assembly consideration, to be arranged through political negotiation.
- 5.19 Subordinate legislation laid before the Assembly will still have to be accompanied by an Explanatory Memorandum, which must include any Regulatory Impact Assessment that has been prepared.
- 5.20 All SIs or draft SIs laid before the Assembly will be subject to technical scrutiny by the Subordinate Legislation Committee. That Committee may also undertake policy scrutiny of those instruments (see above). No other committee is given a specific role in this respect, but it would be open to them to scrutinise any item of subordinate legislation.

Bills in Parliament conferring new powers and Assembly Legislative Consent Motions

- 5.21 Although the Assembly will have powers akin to primary legislation, Westminster Bills will continue to be important vehicles for conferring new or amended executive powers on the Welsh Ministers and conferring Measure-making powers on the Assembly in relation to specified matters.

- 5.22 It is expected that Westminster will only legislate on devolved matters with the Assembly's consent - an arrangement similar to the Sewel Convention operating in relation to the Scottish Parliament. (This is with the exception of minor, consequential and incidental provisions, on which only the Welsh Ministers must be consulted.)
- 5.23 In addition, any provisions which would have a negative effect on the Assembly's legislative competence will also require the Assembly's consent.
- 5.24 Where such consent is required, the Assembly Government will be obliged to lay a memorandum explaining the legislative proposals and to seek the Assembly's agreement by means of a Legislative Consent Motion.

6. Finance and the Welsh Consolidated Fund

- 6.1 The Act establishes a Welsh Consolidated Fund which, from April 2007, will be the neutral 'pot' into which the money voted by Parliament to Wales (as part of the Barnett formula) will be paid.
- 6.2 The Auditor General for Wales (AGW) will authorise payments out of the Welsh Consolidated Fund to the Welsh Ministers in accordance with budget motions and supplementary budget motions approved by the Assembly.
- 6.3 The separate expenditure of each of the Assembly Commission, the Auditor General for Wales and the Public Services Ombudsman for Wales will also come out of the Welsh Consolidated Fund and will need to be authorised by the AGW.
- 6.4 The Standing Orders provide for there to be a dedicated Finance Committee to scrutinise and report on the Welsh Ministers' budget proposals before they are submitted for final approval by the Assembly.
- 6.5 Plenary may approve changes to the draft budget, provided that the net effect of those changes would not alter the total amounts of resources or cash proposed.
- 6.6 Variations to the approved final budget can be authorised by the Assembly throughout the year by means of supplementary budget motions.

7. Engaging with the public

- 7.1 New arrangements for public petitions mean that the Assembly must consider any admissible petition.
- 7.2 A petition will be inadmissible if it fails to comply with the criteria provided for in Standing Orders, including containing fewer than 10 signatures, containing offensive language or requesting the Assembly do anything which it does not have the competence to do.
- 7.3 The Presiding Officer will refer a petition to the relevant Assembly committee, who may, in turn, refer it to WAG, any other Assembly committee or any other person or body for them to take such action as they consider appropriate.

- 7.4 The relevant committee can also take evidence from the petitioners and other relevant persons.

8. Welsh Language

- 8.1 All Assembly Measures must be made bilingually but it will be for the Welsh Ministers to determine whether subordinate legislation should be made bilingually.
- 8.2 The proposed Welsh Language Scheme for WAG provides that all subordinate legislation made by SI will be made in Welsh and English, unless not appropriate or reasonably practicable.
- 8.3 The requirement for equal treatment of English and Welsh has been replicated in relation to the conduct of Assembly proceedings and the exercise of the Assembly Commission's functions. All documents laid or business tabled in the Assembly by the Presiding Officer, the Commission, the government, any committee or the Clerk must be in English and Welsh, so far as appropriate and reasonably practicable.
- 8.4 The Assembly Commission intends to publish a Welsh Language Scheme which will specify the measures they propose to take for the purpose of giving effect (as far is appropriate and reasonably practicable) to the principle that English and Welsh should be treated on a basis of equality in the conduct of business in the Assembly.

9. Access to Information

- 9.1 As a result of separation, the provisions of Standing Order 19 giving Members a right to inspect WAG documents relating to Assembly proceedings will not be replicated.
- 9.2 However, the Act gives the Assembly the power to call witnesses to give evidence or produce documents. This power is specifically limited to scrutiny of matters relating to the exercise by Welsh Ministers of their functions. The power to call extends to staff of the Welsh Assembly Government, but a Welsh Minister will be able to nominate a different official, or to account to the committee themselves. UK Ministers and their civil servants will not be subject to this power.

10. Public Appointments

- 10.1 Apart from the appointment of the Auditor General and the Public Services Ombudsman, where there is a role for the Assembly, appointments will be made by the Welsh Ministers.
- 10.2 Assembly committees may scrutinise the operation of appointments procedures. In addition, many public appointments made by the Welsh Ministers will continue to be subject to monitoring and regulation by the Commissioner for Public Appointments.

