

National Assembly for Wales

Guidance to Assembly Members on the proper conduct of proceedings under Standing Order 25.19 to 25.24 (petitions and counter-petitions relating to Special Assembly Procedure Orders referred to a committee)

(Issued by the Presiding Officer under Standing Order 2.17)

Introduction

1. Since the coming into force of the Government of Wales Act 2006 the function of making decisions relating to planning and similar applications and appeals has passed from the Assembly to the Welsh Ministers. For example, called-in planning applications under the Town and Country Planning Act 1990 are no longer decided by Assembly Planning Decision Committees but by the Minister for Environment, Sustainability and Housing.
2. There is however a small class of proposals to make changes to the physical environment which can only be implemented with the approval of a Committee of the Assembly (or, under certain limited circumstances, of the Assembly in plenary session). These cases have a number of common features:
 - The proposal is one which might adversely affect interests which are entitled to special protection.
 - There is an objection to the proposal from the body whose duty it is to safeguard those interests (e.g. a local authority).
 - The proposal can only be implemented through the making of a piece of legislation which affects a particular locality – an order which has to be made by the Welsh Ministers or sometimes an order made by a local authority or similar body but which has to be confirmed by the Welsh Ministers.
 - The particular Act of Parliament (or Assembly Measure) which authorises the making of the Order requires the Assembly to scrutinise in detail the decision to make or confirm it.
3. In such a case, the particular form of detailed scrutiny to which the Assembly must subject the proposed Order is called “Special Assembly Procedure” and is governed by Standing Order 25. Orders to which this kind of scrutiny apply are called “Special Procedure Orders”.
4. When Special Assembly Procedure applies to a proposed Order this is an additional safeguard to any other statutory requirements. These usually mean that the proposed Order must have been subject to a formal procedure, often including the holding of a local inquiry, before the Welsh Ministers (or other body) decide to make or confirm the order. These procedures must have been fully complied with before a Special Procedure Order is submitted to the Assembly.

The purpose of this Guidance

5. Special Procedure Orders place particular constraints on the way in which Assembly Members may conduct themselves which do not apply in the case of other legislation. This Guidance gives advice as to how Members should conduct themselves when a Special Procedure Order has been submitted for consideration by an Assembly Committee.
6. It supplements the provisions of Standing Order 31 relating to the interests of Members and the rules laid down in the Code of Conduct for Assembly Members which amongst other things requires Assembly Members to observe the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The quasi-judicial nature of Special Assembly Procedure

7. When scrutinising a Special Procedure Order the Assembly Committee is not exercising a purely political judgement. This does not mean that issues of policy are not important. But the decision which has to be made also involves investigating and considering the effect of the proposed Order on the interests of particular individuals and bodies (the petitioners and any counter-petitioners).
8. This kind of decision, involving assessing the impact of proposed legislation on particular individual and local interests is sometimes described as “quasi-judicial” because it has features analogous to the role of a court when deciding a dispute between two parties. As a result, the courts can intervene in the process in order to make sure that decisions have been taken fairly, rationally and objectively. Conduct by Members which could be interpreted as casting doubt on those qualities could therefore result in the decision in relation to the Order being set aside by the courts.

Application of this Guidance

9. Assembly Members may be involved in considering Special Procedure Orders in one of two different ways:
 - i) the Procedure requires objections to proposed Orders, in the form of petitions against the Order (and in some cases counter-petitions opposing such petitions) to be scrutinised in detail by a Committee elected for the purpose. There are particular rules which apply to an Assembly Member who serves on such a committee;
 - ii) in most cases it is only those Assembly Members who serve on the Committee who will have any role in relation to the proposed Special Procedure Order. However, in one kind of case a proposed Order may ultimately be voted on by plenary. This can arise if the Committee recommends that an Order should only be made if amended in some way, to give effect to an amendment requested by a petitioner. The Welsh Ministers may then, if they do not agree that the suggested amendments should be made, ask plenary to permit them to make the Order without having to make those amendments.

10. This Guidance only relates to consideration of a Special Procedure Order by a Committee but it contains some rules which apply to all Assembly Members in relation to their dealings with those Assembly Members who are on the Committee.

General Principles

11. The law requires that the interests of parties who are affected by a proposed Special Procedure Order are dealt with fairly, justly and openly; that all the evidence is fully considered and that decisions are based only on material considerations to which all the parties have had access. The Assembly's decisions, and hence any Order which is authorised by the Assembly, can be challenged in the courts if these principles are not followed.

Membership of the Committee

12. Committees consider petitions (and any counter-petitions) relating to proposed Orders in detail, taking evidence from interested parties, and their recommendations must be made in line with the principles of natural justice.
13. Standing Order 25 sets out the situations in which the right to present a petition against a Special Procedure Order arises, when someone may present a counter-petition to such a petition, and when such petitions and counter-petitions have to be considered by an Assembly Committee. When this occurs it means that these petitioners and counter-petitioners, as well as the Minister or other body who wish to make the Order or have it confirmed, have the right to present their cases to the Committee, either in person or through a representative and to see and comment on the cases of the other parties.
14. The quasi-judicial nature of the Committee's consideration means that certain Members should not serve on the Committee. These include Members with a direct constituency or electoral region interest and other Members who have a conflict of interest arising out of direct involvement in the matter being considered, for example because they are members of a local authority which has petitioned against the Order.
15. Where a Special Procedure Order is being promoted by the Welsh Assembly Government it would not be appropriate for Ministers to be members of the Committee although Standing Order 25.20 gives the Minister who has responsibility for the making or confirmation of the Order (as well as petitioners and counter-petitioners and any other authority whose Order it is) a right to be heard by the Committee either in person or by representative.
16. The fact that a Member should not serve on the Committee for one of the reasons referred to in paragraphs 14 and 15 above will be a matter of record. But there are other reasons which may not be so obvious.
17. A Member should not be a member of the Committee if that Member has an interest in the subject matter of the Order which, if that Member were to take part in the proceedings of the Committee, would have to be declared under Standing Order 31.6.
18. There may be other circumstances which mean that a Member should not serve on the Committee because those circumstances may appear to

compromise the Member's ability to consider the proposed Order fairly, rationally and objectively. Examples of such circumstances are referred to in paragraphs 19 and 20 below but there may be others.

19. A Member may be seen to have an interest in the matter as a result of having been actively involved in supporting or opposing the particular proposal under consideration in some capacity - as an Assembly Member, an MP, or in a private capacity. This does not mean however that general support for a policy on which the proposal is based, for example when campaigning in support of policy contained in a party manifesto, would prevent a Member from serving on the Committee. This kind of case will need to be considered on its particular facts.
20. The Committee's recommendation must not be based on information other than the evidence which is formally put before it. Its members must not act on the basis of private representations. If a Member has taken part in any private discussion with an interested party in relation to the proposed Order the Member must declare it and if its nature calls into question the ability of the Member to consider the matter fairly, rationally and objectively the Member should not serve on the Committee.
21. A Member who is aware of having any of the kinds of interest referred to in paragraphs 17 to 20 above must decline to be nominated for election to the Committee and, if the Member becomes aware of such an interest after being elected, must immediately make it known to the Chair of the Committee. A Member who is unsure as to whether their particular circumstances would make it inappropriate for that Member to serve on the Committee (for example because it falls within paragraph 19 above) should consult the Assembly's Chief Legal Adviser for advice on the matter.

Maintaining the fairness of the Committee's consideration

22. Every care must be taken by the Committee to avoid giving any cause for suspicion that private representations have been made and taken into account. If, during the process of formulating a recommendation, new evidence comes to light which would affect that recommendation, it must be shared with all those parties entitled to present their cases to the Committee, in order that they may comment on it if they wish.
23. Members of the Committee must not discuss the proposed Order with any interested party and must decline requests for meetings with other Assembly Members, MPs, delegations of local people, persons whose interests are affected by the proposed Order, pressure groups or any other person who wishes to make representations about the matter. This applies to all forms of contact with interested parties, including telephone calls.

Particular Obligations of Committee Members

24. Because of the quasi-judicial nature of the Committee's role in hearing and considering evidence and in reporting to the Assembly on the basis of its assessment of that evidence there are particular obligations which must be accepted by Members who agree to be elected to the Committee. They must

make sure that are able to listen to all the evidence which is presented orally. Standing Order 25.19A does not therefore permit other Members to substitute for members of the Committee as can be done in the case of other committees. Neither is it possible for Members to absent themselves from the Committee while it is hearing evidence or other representations from the parties. Members must therefore accept the obligation of making themselves available to attend all meetings of the Committee. If they do not do so then this is likely to result in a meeting having to be postponed, possibly causing hardship to those who had arranged to be present or to be represented.

Assembly Members generally

25. Assembly Members who have not been elected to serve on the Committee considering a proposed Special Procedure Order are, provided they observe the rules set out in the following paragraphs, free to make representations for or against a proposed Order.
26. Assembly Members must respect the principles set out above in relation to Committee Members. They must not therefore attempt to make private representations to Assembly Members who are members of the Committee.
27. When representing the interests of their electors, when supporting causes in which they are interested, and, in the case of Assembly Members who are members of the Assembly Government, when supporting Government policy, Assembly Members may properly form and express a view on a proposal to which a Special Procedure Order relates.