

Assembly Proposals for Primary Legislation

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Draft Protocol with the Secretary of State for Wales

Introduction

1. This protocol is made in accordance with the resolution of the Assembly of 8 December 1999 regarding proposals for primary legislation. Standing order *[to be proposed]* governs its application in the Assembly.
2. The parties to this protocol are the National Assembly for Wales ('the Assembly') and the Secretary of State for Wales ('the Secretary of State'). References to the Assembly or the Secretary of State include references to their respective officials.
3. This protocol deals only with proposals for public Bills (or amendments to them). The Assembly's powers to promote or oppose private Bills are set out in section 37 of the Government of Wales Act, and governed by standing orders 23.6 to 23.8.

Primary legislation and the Assembly

4. Under the terms of the Welsh devolution settlement, the passing of primary legislation covering Wales remains a matter for the UK Parliament. In practice, the UK Government brings forward most such legislation for Parliament's approval. Among the duties of the Secretary of State under the devolution settlement are:
 - to consult the Assembly on the Government's legislative programme;
 - to ensure that the interests of Wales are considered during the development and drafting of proposals for legislation;
 - to steer through Parliament legislation relating solely to the Assembly.

It is for the Assembly to exercise powers conferred by primary legislation in Wales as it sees fit. However, the Assembly retains a close interest in the terms of primary legislation as it affects Wales, whether or not such legislation bears on, or confers functions on, the Assembly.

The Assembly's Bill Proposals

5. The Assembly may propose Bills, or amendments to Bills, in accordance with standing

orders [*to be proposed*] at any time. In accordance with section 33 of the Government of Wales Act, such proposals may deal with any matter affecting Wales, ie they may suggest any primary legislation which would have effect in Wales, whether or not it would have a direct impact on the Assembly. However, the Assembly agrees to have regard to the guidance at annex 1 to this protocol in formulating proposals for primary legislation.

6. The Assembly agrees as far as possible to co-ordinate such proposals with the UK Government's internal consideration of its legislative programme, and will aim to will bring forward an agreed set of proposed Bills each year as follows.
7. The Assembly will normally submit to the Secretary of State its proposals for Bills during its first session each calendar year, in line with the UK Government's own timetable for considering future legislation. These will be in the form of outline descriptions of the purpose and effect of the measures concerned. The Secretary of State undertakes to consider such proposals fully, and to convey them to his or her Ministerial colleagues as appropriate. In particular, the Secretary of State agrees to bring the proposals to the attention of the UK Cabinet Committee on The Queen's Speech and Future Legislation (QFL). Where the Secretary of State or any of his or her colleagues require further information from the Assembly to support consideration of any of the Assembly's proposals, the Secretary of State will ensure that such a request is conveyed to the Assembly as soon as practicable.
8. Where the UK Government agrees in principle to take forward any of the Assembly's Bill proposals, the Secretary of State will maintain close contact with the Assembly on the action required. In particular, the Secretary of State will ensure that any request for further information about any of the Assembly's proposals is brought to the Assembly's attention as soon as practicable, and that it is kept informed of progress made in consideration of the proposal.
9. Where the Assembly proposes Bills other than in accordance with the above timetable, the Secretary of State agrees to follow the procedures set out above as far as possible. The Assembly notes, though, that there is a lower chance of securing the UK Government's agreement to include proposals in its legislative programme when these are made at a time which is inconsistent with the UK Government's own consideration of future legislative matters.
10. The content of The Queen's Speech is necessarily confidential, and can in no circumstances be made known to the Assembly or more generally before it is delivered. The above procedures are thus without prejudice to the UK Government's ultimate right to determine the final content of its legislative programme for each Parliamentary session without informing the Assembly.
11. Both parties recognise that pressure for Parliamentary time, and for space in the UK Government's legislative programme, is invariably intense. The Secretary of State accordingly cannot guarantee that any of the Assembly's proposals made under this protocol will be included in the UK Government's legislative programme, and this protocol does not contain or imply any such guarantee. In certain circumstances, it may instead be appropriate for the Assembly's proposals to be taken forward in the form of a

Private Member's Bill with UK Government backing. This protocol applies to such cases as it applies to Government Bills.

Involving the Subject Committees

12. Under Standing Order *[to be adopted]*, the Assembly Cabinet must bring forward proposals for primary legislation each year for approval in Plenary. Nonetheless, the Assembly strongly supports the involvement of the subject committees in formulating and developing possible primary legislation. The relevant Assembly Secretary will thus consult the relevant subject committee where appropriate on each of the Cabinet's proposals for primary legislation. If approved by the Assembly, such proposals may, by agreement in the usual way, form part of each committee's forward work programme.

The Assembly's proposals for amendments to Bills

13. The Assembly may also propose amendments to Bills before either House of Parliament, whether or not such Bills were originally proposed by the Assembly. Except as specified below, the preceding terms of this protocol apply to proposed amendments as they apply to proposed Bills.
14. The Assembly notes that Bills can only be amended at certain stages of their Parliamentary passage, and that the timetable for tabling and debating amendments in Parliament is often very tight. Where possible, the Assembly will propose amendments to Bills in outline before they reach Committee stage in the House in which they were introduced. The Assembly may propose amendments at any later stage, but will do so in recognition of the Parliamentary timetable which applies in each case.
15. When the Assembly resolves to propose amendments, the First Secretary will inform the Secretary of State as soon as practicable. The Secretary of State will consider the proposed amendments fully, and will convey them to his or her Ministerial colleagues as appropriate. Where the Secretary of State or any of his or her colleagues require further information from the Assembly to support consideration of any of the Assembly's proposals, the Secretary of State will ensure that such a request is conveyed to the Assembly as soon as practicable.
16. Where the UK Government agrees to bring forward amendments proposed by the Assembly, the Secretary of State will ensure that the Assembly is informed of the date of tabling, and the outcome of Parliament's consideration.
17. Where the UK Government declines to bring forward amendments proposed by the Assembly, the Assembly may approach any Member of Parliament to seek the tabling of the amendments concerned. The First Secretary will inform the Secretary of State of the Assembly's action in such cases.

Annex 1

Guidance on proposed Bills and amendments

1. This guidance outlines the preferred terms and content of motions proposing Bills or amendments to them. It is not binding on Members, although under standing order [*to be proposed*], Members should have regard to it in formulating any such motions.

Bills

2. Government Bills are drafted by Parliamentary Counsel on instructions from UK Government departments. The same will apply to any Bill proposed by the Assembly which the UK Government agrees to take forward. It follows that there is no need for a motion proposing a Bill to include, or to be accompanied by, the detailed terms of the Bill itself. Rather, such a motion should set out the purpose and effect of the Bill in sufficient detail to enable the precise provisions to be drafted. The protocol includes arrangements for the Assembly to be involved in the production and agreement of these provisions.
3. In strict constitutional terms, Parliament may legislate on any matter. However, the pressure of Parliamentary time means that it will not normally do so where the objectives concerned could be achieved by existing powers. For instance, there is no need to include in a Bill provisions which could be delivered by current powers (of Ministers or of the Assembly) to make subordinate legislation; the UK Government will not normally support any such proposals which the Assembly brings forward. There is thus, for example, no need to propose a Bill to transfer further powers to the Assembly, as this can be done by an Order in Council under section 22 of the Government of Wales Act.
4. Members are encouraged to consult the Library to ensure that any proposals for a Bill which they intend to bring forward would comply with the above.

Amendments

5. Government amendments are also drafted by Parliamentary Counsel, so the terms of paragraph 2 above apply to proposed amendments as they apply to Bills. However, if a motion would propose merely technical or drafting amendments to a Bill in progress, it might usefully include their exact terms.
6. All Bills follow broadly the same route through Parliament, although most Bills can be introduced in either the Commons or the Lords. They can only be amended at certain stages:
 - on introduction, a Bill receives a formal **first reading**. No debate or amendment is possible in either House at this stage;
 - the **second reading** of a Bill is the main debate on its principle. No amendments to its terms can be made in either House;
 - a Bill then proceeds to **committee**. This is the main stage for making amendments in both Houses;
 - if (as is usually the case) a Bill is amended in committee, it then proceeds to **report**

stage. Amendments can be made in either House at this stage. A Bill which has not been amended in committee proceeds directly to the following stage;

- a Bill then proceeds to **third reading**. At this stage, amendments can be made in the Lords (but see below) but not in the Commons;

- a Bill then repeats the above stages in the other House. Where both Houses agree on the exact terms of the Bill, it is submitted for **Royal Assent** and becomes law.

7. Under the terms of the protocol, the Assembly undertakes as far as possible to bring forward proposed amendments before the Bill concerned reaches committee in the House in which it was introduced. Members may bring forward proposed amendments at any other time, but should do so in recognition of the timetable which applies to each Bill. In particular, they should allow the UK Government sufficient time to consider, draft and table proposed amendments prior to the relevant stage of the Bill. For instance, if a Bill is close to completing its committee stage, proposed amendments should be brought forward in plenty of time to allow their consideration on report.
8. The Cabinet Secretariat will shortly establish a database on the Assembly intranet showing the broad terms of each Bill and the stage which it has reached. Members can also find some of this information via the Commons' weekly information bulletins. These are available on the Parliamentary website at:

<http://www.publications.parliament.uk/pa/cm199900/cmwib/>

Members are encouraged to consult these sources, and the text of the Bill concerned (also on the Parliamentary website) before tabling a motion proposing amendments.

9. The terms of amendments are much more constrained than those which apply to Bills. While Members may bring forward proposed amendments on any matter, there is clearly little point in doing so if the Parliamentary authorities would rule them out of order. Members should thus have regard to the following principles in formulating proposals:

⊆ all amendments must be 'within scope', ie they must fall within the broad purposes of the Bill concerned. The scope of the Bill is effectively defined by its 'long title', which precedes its first clause. For instance, the long title of the current Local Government Bill is, *"To make provision with respect to the functions and procedures of local authorities and provision with respect to local authority elections; to make provision with respect to grants and housing benefit in respect of certain welfare services; and for connected purposes."* It would thus probably not be in order to try to amend the Bill to merge individual local authorities;

⊆ where amendments are in the form of textual changes to a particular clause of a Bill, they must be consistent with the broad terms of that clause. It is not in order to negate the terms of a clause by proposing an amendment to insert the word 'not', for instance;

⊆ amendments may insert wholly new provisions in a Bill (in which case they are known as 'new clauses' in the Commons, but not in the Lords). Such amendments must, though, still remain within the scope of the Bill;

⊆ an amendment may not be proposed if the same House has already voted on the

matter concerned. So if the House votes down an amendment at committee stage, it cannot be re-tabled at report;

∪ the Lords (only) can amend a Bill at third reading. Even then, though, such amendments should be only of a minor or textual nature: it is not in order to introduce wholly new provisions.

The UK Government will not support proposed amendments which appear to contravene the above guidelines.