

PBMB09 Chief Executive and Clerk of the Senedd

Senedd Cymru | Welsh Parliament

Y Pwyllgor Busnes | Business Committee

Adolygiad o'r broses ar gyfer Biliau Cyhoeddus a Biliau Aelod | Review of the Public Bill and Member Bill processes

Ymateb gan: Prif Weithredwr a Chlerc y Senedd | Evidence from: Chief Executive and Clerk of the Senedd

Manon Antoniazzi

Prif Weithredwr a Chlerc y Senedd
Chief Executive and Clerk of the Senedd

3 April 2025

Rt Hon Elin Jones MS
Chair of the Business Committee

Dear Llywydd,

Business Committee review of the Public Bill and Member Bill processes

Thank you for the opportunity to submit evidence to the Business Committee's reviews of the Public Bill process and the Member Bill process.

The design of the Senedd's procedures and processes is a matter for the Senedd. Senedd Commission officials' role is to advise, and to implement the procedural framework.

The annexed submission draws on the professional views, experience and expertise of Commission officials on matters relevant to the areas of focus identified by the Business Committee in its letter of 21 January 2025.

It focuses in particular on areas where officials believe changes should be considered based on both our own experience and an understanding of the issues Members face (including firsthand feedback).

I would be happy to provide more detailed commentary and advice on any of these matters as and when Business Committee wishes to pursue them in the course of its work.

Yours sincerely,



Manon Antoniazzi

Prif Weithredwr a Chlerc y Senedd / Chief Executive and Clerk of the Senedd

Croesewir gohebiaeth yn Gymraeg neu Saesneg. We welcome correspondence in Welsh or English.



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Public Bill process

Summary

1. The Senedd's procedure for considering Bills has been designed to ensure that decisions may be informed by contributions from the public, people and groups affected by Bills, and those with technical, policy, academic and lived experience and expertise (stakeholders). Overall, the scrutiny processes operate smoothly and in line with established parliamentary practice.

2. There are some aspects of the process and procedures that the Business Committee may wish to consider further.

Stage 1 scrutiny: timetabling and opportunities for the public and stakeholders to contribute

3. There is currently variation in the approach taken to counting sitting weeks for the purposes of proposing reporting deadlines.¹ The methodology for counting sitting weeks for the purposes of setting reporting deadlines should be consistent and maximise the relevant committee's time for scrutiny of the general principles.

4. If any changes are considered that would affect the allocation of time for committees to report on the general principles of Bills, the Business Committee should consider the implications this would have for meaningful and accessible opportunities for the public and stakeholders to contribute.

Amending stages

5. Procedural and practical implications would arise from any changes that affect the timescales associated with amending stages (including changes to the format or nature of documentation, or the time available for Members to seek and receive advice on potential amendments). If considering any such changes, the Business Committee may wish to consider these implications, as well as any pressures that could result for Members and officials.

¹ The Welsh Government's standard approach is to count the week of introduction as week 0, although this methodology has not been applied for every Bill. The approach taken by the Members in charge of non-government Bills usually, but not always, reflects the Welsh Government's standard approach.



Explanatory memoranda

6. There are a number of areas in Standing Orders relating to explanatory memoranda where further clarity might be helpful. These include:

- Whether the wording of SOs 26.6 to 26.6C is sufficiently clear.
- Whether the information requirements in Standing Orders, and the approach to presenting the information taken by Members in charge, is providing the Senedd with the information it needs to inform its scrutiny.
- Whether any of the requirements currently in Standing Orders are no longer needed, and/or any additional requirements should be added.
- Whether any changes made to SOs 26.6 to 26.6C should be reflected in the broadly equivalent provision in SOs 26A, 26B and 26C (relating to Private Bills, Hybrid Bills and Consolidation Bills respectively).

Admissibility of amendments

7. The interpretation of the admissibility criteria in SO 26.61 is a matter for the Presiding Officer, with advice from clerks. While some information is currently included in published guidance, it may help Member and stakeholder understanding if more detail were published about how the criteria are interpreted.

8. The established practice that amendments are inadmissible if they are identical to amendments already tabled (or differ only in trivial respects that would have no legal effect) should be more explicitly recognised, either in Standing Orders or formal guidance.

Financial resolutions

9. Financial resolutions are distinct from the annual budget process, which determines the amounts of funding allocated for particular services or functions in specific financial years. The use of financial resolutions during the scrutiny of a Bill is a longstanding parliamentary provision which serves two purposes:

- Giving the Senedd the opportunity to decide whether or not to agree to the financial implications arising from a Bill.



- Giving the Welsh Government control over Bills which give rise to certain financial implications (reflecting the executive's right of financial initiative, only a member of the Welsh Government can move a financial resolution).

10. The Standing Orders relating to financial resolutions have not been substantively amended since the Senedd gained primary law-making powers or taxation powers. It would be beneficial to review these Standing Orders to ensure they still meet the needs of the Senedd. Specifically:

- Whether the wording of Standing Orders relating to financial resolutions (SOs 26.68 to 26.74) is sufficiently clear.
- Whether the financial resolution criteria in Standing Orders adequately reflect the Senedd's taxation powers.
- Whether a numerical definition of the term "significant" in SOs 26.69 and 26.71, or further guidance on how the Presiding Officer interprets this term, would be helpful.
- Issues regarding the wording, interpretation and operation of SO 26.72 relating to amendments that may give rise to a need for a financial resolution that a Bill would not otherwise require. For example, the scrutiny of the Legislation (Procedure, Publication and Repeals) (Wales) Bill has highlighted the pressures the procedures in their current formulation can place on Members and officials, practical obstacles associated with the timescales, and risks that Members may be deterred from tabling amendments (with potential implications for the Senedd's ability to debate relevant issues).
- Whether any changes made to SOs 26.68 to 26.74 should be reflected in the broadly equivalent provision in SOs 26A and 26B (relating to Private Bills and Hybrid Bills).²

² There is no provision in SO26C (which relates to Consolidation Bills) for financial resolutions, as such Bills are not expected to give rise to significant additional expenditure. However, the term "significant" is used in SO 26C.9(vii) which requires the explanatory memorandum for a Consolidation Bill to include confirmation from the Member in charge that the Bill will give rise to no significant additional expenditure.



'Further' amending stages

11. The Senedd has never considered a Bill at further Stage 3 or further Report Stage proceedings, so the procedures have not been tested. However, there is ambiguity about the interpretation and operation of these Standing Orders, and they should be reviewed to ensure they still meet the needs of the Senedd.

12. This should include consideration of whether any changes made would also be applicable to SOs 26A, 26B and 26C (relating to Private Bills, Hybrid Bills and Consolidation Bills respectively).

Emergency Bills

13. The emergency Bill procedure has generally operated smoothly on the three occasions on which it has been used, although it inevitably places pressures on Members, committees and officials, and limits the opportunity for the Senedd's decisions to be informed by stakeholders.

14. To ensure that the Senedd's procedures comply with the requirements of the Government of Wales Act 2006, an amendment to SO 26 may be appropriate to provide that any emergency Bill that the Senedd has agreed may be introduced without an explanatory memorandum³ is nevertheless accompanied on introduction by a statement setting out the potential impact of the Bill on the justice system in England and Wales.

Legislating in a hybrid context

15. While the guidance on hybrid meetings gives Members flexibility about their mode of participation, there are significant risks associated with virtual participation during amending stage proceedings. Clerks will continue to strongly advise Members to participate in person during Stage 2 proceedings.

³ SO 26.95 provides that the Welsh Government may propose by motion that a Bill is treated as an emergency Bill. SO 26.96 provides that such a motion may also propose that an emergency Bill may be introduced without the explanatory memorandum required by SO 26.6. It is therefore possible that some emergency Bills will be introduced with explanatory memoranda and others without an explanatory memorandum. In circumstances where an emergency Bill is introduced without an explanatory memorandum, SO 26.97 provides that the Member in charge must provide a statement that the Bill is, in their view, within legislative competence.



Data

16. It might be helpful for officials to routinely gather and report data on Bill timetables to assist the Business Committee in its decision-making on timetables for Bills. This might also apply to the scheduling of Stage 3 proceedings and the volume and source of amendments which could inform future decisions about Bill processes. I would be happy to discuss further the nature of the data that might prove useful.

Member Bill process

Summary

17. The Member Bill process and procedures have remained broadly consistent since their introduction as Member Proposed Measure procedures in 2007. While significant work by the Members in charge and Commission officials has gone into all Member Proposed Measures and Member Bills, of the 25 Members selected in ballots since 2007, only two Member Proposed Measures and two Member Bills have become law.⁴ Members selected in ballots have also achieved a range of other outcomes including amendments to government Bills, changes to Welsh Government policy or spending, and commitments for other government action. Members have also been able to use the procedures to bring profile to issues, draw out government positions, and provide opportunities for groups and communities to be heard. The fact that relatively few proposals have become law should not, therefore, be seen in isolation or necessarily as negative. The process gives Members a platform to promote their objectives.

18. The types and level of support and resourcing available to Members vary significantly across different legislatures, both because of the different ways in which the Member Bill procedures operate and differences in parliamentary culture and Member expectations. The approach taken in the Senedd means that Commission officials are heavily involved in supporting Members who are selected in a ballot, including:

- Preparation for the initial 'leave to proceed' debate.

⁴ One further Member Bill was passed by the then Assembly, but was ruled out of legislative competence following a referral to the Supreme Court.



- If leave to proceed is granted, support in developing and consulting on the proposals, the drafting of the Bill and the preparation of its accompanying explanatory memorandum.
- If a Bill is introduced, support throughout the scrutiny process.

19. This provides a unique position on which to advise on the relevant Standing Orders.

Overall aim and effectiveness

20. The aims and outcomes of the Member Bill process have inevitably changed since its introduction for Member Proposed Measures in 2007. In a larger Senedd, Members' expectations from the Member Bill process may increase. Depending on future Welsh Government's legislative programmes, the move to four-year terms may increase pressure on the Senedd's overall legislative capacity, including its capacity to accommodate Member Bills.

21. The process warrants a review and, in particular, reflection on what the process is aiming to achieve, the balance between opportunities for Members and the impact on the Senedd's legislative scrutiny capacity, and consideration by the Commission of what support is available from Commission services.

The 'scope' of Member Bills

22. In line with other legislatures, the Senedd has few formal rules to limit what can be included in a Member Bill as opposed to any other type of Bill.⁵ Consideration is needed of the extent to which there are shared expectations and understanding of the extent to which Member Bills are appropriate vehicles for broad or complex proposals, and whether the Business Committee wishes to influence the Senedd's parliamentary culture in this area.

23. Linked to this, the Business Committee may wish to explore whether or not, in situations where the Welsh Government chooses not to move a motion for a financial

⁵ Members may not introduce Hybrid or Consolidation Bills. They may not introduce Bills that seek to amend existing taxes or introduce new taxes. The Bill a Member introduces must give effect to the policy objectives set out in the explanatory memorandum tabled at leave to proceed stage, which must in turn be broadly consistent with the pre-ballot information tabled by the Member.



resolution for a Member Bill (or other non-government Bill),⁶ it should be required to explain its reasons.

Selection of Members

24. In 2016, the Fifth Senedd's Business Committee considered the potential to move to a name-only ballot, but decided to retain the current arrangements.⁷ In the Sixth Senedd, following representations from the Legislation, Justice and Constitution Committee about the use of ballots and the role of Member's Legislative Proposal debates,⁸ the Business Committee has agreed to consider the process by which Members are selected for the right to introduce a Member Bill.⁹ To inform this, the Business Committee may wish to seek further advice on how equivalent procedures operate in other legislatures and any procedural, practical or resourcing implications that could arise from changes to the selection process.

25. Should the use of the current ballot model continue, the Business Committee may wish to consider increasing the pre-ballot proposal requirements—for example, this might include mechanisms to assess the degree of political support at the pre-ballot stage, or requirements for additional information such as what the Member is seeking to achieve and why primary legislation is the appropriate vehicle. Requiring the provision of this additional information could help to ensure that pre-ballot proposals are more fully-developed, and increase the chances of the selected proposal being workable within the timescales and resource constraints of the Member Bill process. It would also give Members a more realistic indication of the workload, policy knowledge and commitment involved in being the Member in charge of a Member Bill, which could help them to decide whether engaging with the Member Bill process is the best way to achieve their objectives.

⁶ For example a committee Bill or a Commission Bill.

⁷ Business Committee, **Proposed amendments to Standing Order 26**, November 2016

⁸ **Letter from the Legislation, Justice and Constitution Committee to the Business Committee**, 10 May 2022

⁹ **Letter from the Business Committee to the Legislation, Justice and Constitution Committee**, 26 May 2022



'Leave to proceed' stage

26. There are a number of areas relating to the leave to proceed stage where further clarity might be helpful. These include:

- Bringing the 25 day timescale specified in SO 26.91 into line with the 35 day timescale specified in SO 26.92 by excluding working days in non-sitting weeks.
- Whether the SO 26.91B(iv) requirement introduced in the Fifth Senedd for the explanatory memorandum tabled at the leave to proceed stage to include an initial assessment of any costs and/or savings that could arise from their Bill is fulfilling the intended objective.
- Whether the 2014 'in principle' ruling on the exercise of the casting vote for motions under SO 26.91 should be revisited.

Development of a Bill and explanatory materials

27. There are a number of areas relating to development of Member Bills and explanatory materials where further clarity might be helpful. These include:

- The 13 calendar months specified in SO 26.93, including: whether a deadline is required, and if so, whether 13 months is the right timescale; whether there should be a mechanism by which Members could seek an extension to the deadline; and options for avoiding the deadline being artificially shortened if it expires during a recess period.
- The Welsh Government's approach to requests for information to inform the development of Member Bills and explanatory materials, regardless of whether or not the Welsh Government supports the Bill.¹⁰

¹⁰ In 2023, in **response** to a **recommendation** from the Finance Committee that the Welsh Government should commit to assisting Members by providing relevant financial information to inform regulatory impact assessments, the then First Minister said that Welsh Government officials would provide data if it was "centrally held, readily available and there are no barriers to sharing the data such as data protection requirements", but would not carry out additional data gathering or analysis.



Resourcing and support

28. While resourcing is a matter for the Senedd Commission rather than the Business Committee, I would welcome the Business Committee's view on the priority it believes should be afforded to supporting the Member Bill process in the allocation of Commission resources. If the Business Committee considers proposing any changes that would affect the Member Bill process or its operation, I would be happy to provide further advice on any implications for the provision of Commission support or resources.

29. I will also consider how training, induction and guidance could be improved for new and returning Members of the Senedd (and their staff) after the 2026 election, including how to ensure Members understand what is involved in being the Member in charge of a Member Bill and the level and types of parliamentary support and resource they can expect (including any changes in service provision in the Seventh Senedd).

