

PBMB12 Welsh Government

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: Llywodraeth Cymru | Evidence from: Welsh Government



The Rt Hon Elin Jones MS
Chair of the Business Committee
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8 April 2025

Dear Elin,

Thank you for your letter of 21 January 2025 to Jane Hutt MS, Cabinet Secretary for Social Justice, Trefnydd and Chief Whip regarding the Business Committee review of the Public Bill and Member Bill processes. I am pleased to respond as Minister responsible for Delivery.

Annexed to this letter is a Government response which includes several areas where the Government would welcome further discussion. For ease of reference, these areas are:

- a) Whether Standing Order 26.6 could be amended to reset the level of prescription required for the Explanatory Memorandum and Regulatory Impact Assessment which has been added to over time.
- b) As part of the wider discussion on Standing Order 26.6 explore the use of 'best estimates' and whether there is scope to agree a level of costs below which defining costs as 'minimal' or 'negligible' would be acceptable.
- c) The admissibility criteria for amendments.
- d) Broadening the application of the Further Stage 3 procedure.
- e) Building a greater level of iteration into the Member Bill process.

More generally, the Government would also welcome a discussion between officials regarding the practical application of Standing Orders.

If there are any changes proposed to Standing Order 26 as a result of this review, for example in relation to the timetabling or admissibility of amendments, consideration should be given to making similar changes to SO26C ahead of the planned review of that Standing Order following the second consolidation project being considered by the Senedd.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Thank you for the opportunity to engage in this work.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS

Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery

Senedd Public Bill and Member Bill Process Review Government Response

1. Public Bill Process

1) Timetable for consideration of a Bill

The Business Committee must establish and publish a timetable for the consideration of a Bill, except for any stage taken in plenary. In making these decisions, Business Committee must consider:

- the need for sufficient time to be given to enable Bills to be scrutinised fully;
- any views or information put forward by the Member in Charge in relation to the proposed timetable.

The normal convention is that Bills are referred to a responsible committee for consideration of their general principles and that the timetable for a Bill will allow at least 10 sitting weeks for Stage 1 scrutiny. However, allowing 12 sitting weeks for Stage 1 has become the usual practice for most Bills and consequently some Business Committee members have clearly stated their expectation that 12 weeks should be the minimum for Stage 1.

Given that agreeing Stage 1 and Stage 2 timetables is ultimately a matter for Business Committee, the Member in charge is expected to appropriately and fully justify any proposal to diverge from the usual process. At its meeting on 23 April 2024, the Business Committee agreed a decision-making tool to help it to make future decisions on timetables for Bills that propose less than 10 sitting weeks for Stage 1 scrutiny.

The Government would argue that it is imperative that we move away from the expectation that there is a minimum or standard timescale for Stage 1 scrutiny of any Bill, irrespective of size, scope or complexity. Arguably the Stage 1 process risks duplicating the Government's consultation process – involving the same stakeholders – on the general principles of the reforms. Adopting a tailored approach would realise an opportunity cost to the Senedd enabling more time for other matters including the scrutiny of subordinate legislation and Act implementation. It may also allow for better and additional scrutiny later in the Bill process; for instance, if some of that time was used to have a Report Stage more frequently.

The Future Senedd Committee is considering the organisation of committee business in the Seventh Senedd. If Senedd committees are to have greater autonomy over when they meet and Members will generally sit on only one 'policy'

committee then they would have more time with which to work, which could mean they are able to 'intensify' their work, or diversify their approach to Bill scrutiny, or be more able to accommodate Bill scrutiny within a wider programme of policy scrutiny work. Sitting on one committee would also allow Members to specialise and dedicate more of their time to that scrutiny.

The Government has typically avoided bringing legislation forward in the final year of recent Senedd terms as there is a finite amount of time to complete the scrutiny process before the Senedd is dissolved. However, in future Senedd terms of four rather than five years, it will be necessary to use the final year to introduce and scrutinise legislation, to avoid significantly reducing the Senedd's legislative output.

The Counsel General attended Business Committee on 4 February 2025 and indicated that the Government will trial publishing a draft of each Year 5 Bill on its website, at the same time that it is submitted to the Llywydd for determination (usually four weeks prior to the planned date of introduction to the Senedd). This will inform considerations by Chairs and Members of the relevant Senedd Committees of the scrutiny time needed that is then proposed to Business Committee. This will also potentially enable other activities to take place during the determination window, such as Committees issuing their calls for evidence, identifying stakeholders to invite to Committee sessions and technical briefings for Committee staff or Members.

If this approach proves successful and the post-election Government agrees to continue it into the Seventh Senedd, combined with more proactive official level engagement during the pre-introduction period, it will allow the Seventh Senedd's Business Committee to take a more tailored approach to agreeing timetables for Government Bills, reflecting the scale and complexity of each proposal.

Adopting a tailored approach to timetabling Bills wouldn't require a change to the Senedd's Standing Orders but the Senedd Commission and Members would need to support a change in working practices.

2) The Explanatory Memorandum

The Government would welcome a discussion about whether Standing Order 26.6 could be amended to remove the level of prescription required for the Explanatory Memorandum and Regulatory Impact Assessment.

The Standing Order has been added to incrementally over the course of Assemblies and Seneddau to address particular concerns at the time or to ensure that certain information is easily accessible to Members. However, it has become cumbersome and overly / unnecessarily prescriptive. Considerable work is required to produce the extensive documentation, and the level of detail required means that the Explanatory

Memorandum is often unwieldy which arguably makes it less accessible to Members and stakeholders.

The Government would argue that the Standing Order should be re-written to be more strategic in its requirements. This would be more proportionate and give Members in charge (primarily the Government but also Members leading on Private Member Bills) greater flexibility and discretion over what is provided and how it is provided, depending on the nature of the Bill. This should fundamentally then be a matter for scrutiny, e.g. if the respective committees do not consider that sufficient information has been provided or the information provided is deemed to be deficient that should be raised with the Minister during scrutiny.

Standing Order 26.6(viii) notes that the Explanatory Memorandum must set out the best estimates of:

- (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;*
- (b) the administrative savings arising from the Bill;*
- (c) net administrative costs of the Bill's provisions;*
- (d) the timescales over which all such costs and savings would be expected to arise; and*
- (e) on whom the costs would fall.*

The reference to 'best estimates' is generally interpreted by the Senedd Commission as requiring a monetised estimate of costs in all cases. As part of a wider discussion, the Government would welcome exploring whether there is scope to agree a level of costs below which defining costs as 'minimal' or 'negligible' would be acceptable. Such an approach is used by the UK Government when costing measures in Finance Bills.

Consideration could be given as to whether it would be appropriate to introduce a de minimis threshold below which a full impact assessment is not required. Such an approach exists in UKG where the threshold is currently set at a cost to business of £5 million per annum. Where the expected impact of proposed legislation is below the threshold, UKG departments are required to produce a more proportionate de minimis assessment. The Senedd may wish to consider whether a similar approach, with a threshold and focus appropriate to the situation in Wales, could apply to both primary and secondary legislation.

3) Stage 1 consultation

The normal practice is that the timetable for a Bill will allow 10-12 sitting weeks for Stage 1 scrutiny. This time could be used to seek evidence from a more diverse

range of witnesses, including witnesses from beyond the specific sector impacted by the legislation, to ensure that the wider public interest is heard.

The current approach to engaging with stakeholders during Stage 1 can be rather formulaic and passive (i.e. inviting people to provide evidence). The Senedd and its Committees could be more innovative in how they engage with the public and may wish to consider, depending on the Bill and the time available for Stage 1 scrutiny, other ways - proportionate to the task - to engage, including roadshows, town halls, or citizens assemblies. There could also be greater use made of the Youth Parliament in terms of representing young people's views.

The Senedd may also wish to explore whether the approach to gathering evidence could be modernised. Currently responding to a consultation involves typing responses to a list of questions into a text box. More contemporary approaches could be considered such as surveys, interactive polls or using a 'citizen's jury' approach, where members of the public hear expert advice then deliberate on the issue. Exploring the use of other methods of providing feedback, possibly in lieu of the traditional call for evidence on some Bills (i.e. where the Government has already consulted on numerous occasions), may encourage greater and more diverse participation and avoid consultation fatigue.

4) Responding to Stage 1 committee reports

In contrast to the way the Government usually responds to other reports (not dealing with legislation) made by Committees, a formal written response is not required to the Stage 1 Committee reports. Instead, the Government has the opportunity to respond to the reports of the Committees in the general principles debate.

In most, but not all, circumstances the lead Member in Charge has also provided further detailed explanation or points of clarification through a formal letter either in advance of or after the General Principles debate and Financial Resolution.

While this Government has committed to endeavour to respond to the Finance Committee's Stage 1 reports in writing as soon as reasonably possible, it is not always practical owing to the complexity of some Bill proposals for Welsh Ministers to do this prior to the Stage 1 debate for every Bill. There may be circumstances where more time is required to consider the implications of the recommendations or where the detail needed to provide an informed response is not available in advance of the Stage 1 debate.

Ahead of the Seventh Senedd, relevant guidance should be updated to clearly articulate the Standing Order requirements.

5) Financial Resolution

At present, if the Llywydd decides that a Financial Resolution is required (SO 26.68), the Senedd consider the Financial Resolution motion after the Stage 1 debate. The cost implications of the legislation are not then reconsidered before the Senedd considers the Bill at Stage 4, despite the potential for significant amendments being made to the legislation. The Senedd may wish to consider whether this is the appropriate point for the motion to be debated.

There is typically little reference to the Financial Resolution during Stage 1. The Finance Committee may wish to consider including a recommendation in their Stage 1 report aimed at giving their view to Members, similar to the way relevant Committees advise Members to agree or otherwise the general principles of the Bill.

6) Amendment Tabling Deadlines

Under Standing Order 26.59, amendments must be tabled no later than five working days before they are to be considered:

No amendment, other than a late amendment, may be considered unless it has been tabled at least five working days before it is considered.

By convention, the Government tables their amendments two days earlier than the deadline. This is to enable Members to consider the amendments before finalising their own.

During the Sixth Senedd, Committees have typically met on either a Wednesday morning or on Thursdays. Stage 2 proceedings are normally scheduled on Thursdays to optimise the opportunity for the Committee to dispose of all the amendments in one sitting. Given the Standing Order, this means that Stage 2 tabling deadlines are typically 1700 on the previous Thursday. Amendments then need to be marshalled, and groupings consulted on and agreed, which often means that the final groupings and marshalled list are not available until the start of the week in which proceedings are due to be held. This places significant pressure on the Government and Members as the confirmed grouping and marshalled list inform their preparations to speak to amendments, particularly where they may be responsible for the lead amendment in a group.

Stage 3 proceedings are normally held on Tuesdays, which means that the tabling deadline is 1800 on the previous Tuesday. The groupings and Marshalled list are typically available towards the end of the week before proceedings. Although this arrangement provides the same number of working days for the Government and Members to prepare for proceedings as in Stage 2, the significant benefit is that the

information is available before the weekend, which provides some additional time for the Government and Members to fully consider and prepare their contributions.

Although the situation at Stage 3 is more manageable, it often relies on the Government and Members working over the weekend to prepare for proceedings.

The Government therefore proposes an amendment to Standing Order 26.59 to allow more time between amendment tabling deadlines and proceedings at Stage 2 and Stage 3. Amending the Standing Order to provide a minimum of seven working days, rather than five working days, would allow a full week between the publication of groupings and the marshalled list and proceedings themselves which would make the process more manageable for the Government and Members, and provide for more informed contributions and arguably an overall increase in the quality of the debate.

There could be an argument that, without an equivalent extension to the overall timetable for Stages 2 and 3, bringing forward the amendment tabling deadline in this way would result in a consequential reduction in the amount of time available for the Government and Members to develop their amendments, which could lead to poorer quality amendments, an increase in the number of late amendments or some amendments not being tabled at all.

However, in practice, considerably longer than the minimum 15 working days prescribed in Standing Orders 26.18 and 26.30 is allowed to elapse between the start of Stage 2 and Stage 3 and proceedings. The Business Committee are responsible for agreeing Bill timetables to the conclusion of Stage 2 proceedings, and as such – when considering timetables on a case by case basis, taking into account factors such as complexity, length and scope of a Bill – they will be able to consider whether there is any consequent loss of time for the preparation of amendments which might result from a change to the amendment tabling deadline. The Government would also take this into account when scheduling Stage 3 proceedings, as well as when proposing an initial timetable for Business Committee's consideration.

The Government would not support amendments to Standing Orders 26.18 and 26.30 as these may have unintended consequences for its overall legislative programme by unnecessarily building in more time. It would also constrain the Government's ability to 'fast track' legislation – with the agreement of Business Committee – where circumstances require.

7) Admissibility criteria

Although Standing Orders do include some of the admissibility criteria followed, overall, the rules applied do not form part of either the Standing Orders or the

Llywydd's guidance on the form of amendments. If there are further rules or criteria that Members need to comply with for their amendments to be admissible, these should be published and their status made clear.

Additionally, there is no way to appeal a decision on admissibility – either that an amendment has been deemed inadmissible, or that an amendment has been accepted that does not appear to meet the Standing Orders or Llywydd's guidance (for example, appears contrary to the general principles of the Bill as agreed at Stage 1). In order to ensure transparency, the Senedd may wish to consider introducing an appeal process.

There are three matters where the Government would welcome further discussion:

- a) where an amendment is to leave out words and insert new words, paragraph 31 of the current determination on form of amendments, prevents the first or last words of the text being inserted being the same as the first or last words to be left out. This often produces strange results, and it is unclear why the rule exists. However, if it is to be retained there should be scope for the Clerks to agree exceptions where not meeting that rule would make it easier to see what an amendment is doing.
- b) neither the admissibility criteria in Standing Orders nor the determination on form provide that a proposed amendment cannot be the same as or similar in effect to an amendment that has already been laid, however this has resulted in proposed Government amendments being deemed inadmissible. Even in cases where the Government argue the effect is different even though there are similarities in the wording between the two amendments.
- c) It is unclear why Standing Orders only permit late amendments for Stage 3 and Report Stage but not at Stage 2.

8) Scheduling of Stage 2 and Stage 3

Stage 2 and Stage 3 proceedings are not generally scheduled during the first sitting week following a recess. This is because there is a view that recess limits the ability of Members to table amendments or the procedural processes to be undertaken. As we move to four-year Senedd terms, arrangements should be made so that such impacts are not experienced and the Senedd is able to undertake proceedings on Bills in all sitting weeks.

9) The way amendments are debated and disposed of

Debating amendments by groups is supported by the Government, but disposing of amendments in the order in which the sections and schedules to which they arise in

the Bill (noting Standing Orders 26.21 and 26.36 may change this order) rather than as they are debated, can be confusing for those outside the immediate proceedings and does not encourage a wider engagement in the legislative process.

The term “marshalled list” and the process of consideration are both inherited from the UK Parliament model of considering and voting on amendments. In part that exists to accommodate the possibility of a Member proposing that a clause does not stand part of the Bill (and thus a clause stand part debate taking place). Clause stand part debates are not a feature of our system, and if a Member wished to remove one or more sections from a Bill then it would be necessary for them to table an amendment to that effect.

The Government would welcome exploring other ways in which amendments are grouped for debate but then disposed of. We recognise the value of agreeing sections and Schedules when proceedings are split over more than one meeting, but we believe this is not a sufficient reason to maintain the existing arrangements. There could for example be greater use of voting on ‘lead’ amendments, pre-emptions, and en bloc voting which would make proceedings easier to follow.

We also consider there are technological innovations that could be adopted, to make it easier for Members (and stakeholders) to understand the proposals to amend the Bill. The current system is rooted in a 19th and 20th century print system, despite voting (for example) in the Siambur being conducted electronically

10) Additional optional amending stages

Although Standing Orders are sufficiently clear when Further Stage 3 or Report Stage can be used, the Government would welcome a discussion about broadening the application of the Further Stage 3 procedure.

11) Information available on Senedd Bill webpages

The Senedd’s webpages act as a useful and accessible resource, and it is particularly helpful that these webpages are not archived once a Bill has been considered by the Senedd.

A record of the dates of the Stage 2 and Stage 3 proceedings, together with a link to the transcripts of the proceedings would be a helpful addition (similar to way it is done for Stage 1 proceedings). Currently a user has to find the date(s) of the proceedings (by working out the dates from marshalled lists, groupings etc.) and then search the relevant Committee’s webpage or the Record of Proceedings. Amendments also appear in isolation and so anyone trying to establish what impact any amendment has on the Bill would need to navigate a number of documents simultaneously to do so.

The practise of the Government to publish purpose and effect tables is important to try to increase transparency around amendments, and the Government would suggest that this should be a requirement when any Member tables an amendment.

The UK Parliament links to a HTML version of the Bill which allows the user to navigate to sections and Schedules from the table of contents. We recognise that the UK Government and UK Parliament use different drafting and legislation management software, so accept the current system may be a limitation of our existing software arrangements.

However, if the Senedd does retain pdf links to the Bill, the location of the Bill on the web-page is often quite obscured. It would seem more user friendly to have the current version of the Bill available at the start of the Senedd page.

Once consideration of a Bill has concluded, the Scottish Parliament produces a combined document (as a pdf) of the Bill and EM as introduced, the proceedings on the Bill and the final version of the Bill – a full record of the Parliament’s considerations¹. This serves as a very helpful record, and one that is fully searchable. The Senedd may wish to consider a similar document.

12) Reconsideration of a Bill passed by a previous Senedd

Section 111(6) and (7) of GoWA 2006 requires Standing Orders to provide for an opportunity for reconsideration of a Bill after it has been passed, where (amongst other things) the Supreme Court has decided that all or part of a Bill is outside competence following a reference under section 112. However, Standing Order 26.77 provides that “A Bill falls if it has not been passed or approved by the Senedd before the end of the Senedd in which it was introduced”. Therefore, a Senedd Bill which requires modification following a Supreme Court judgment will fall unless it has been approved prior to the dissolution of the relevant Senedd.

Neither GoWA 2006 nor the Standing Orders make any specific provision for the transfer of a Bill from one Senedd to the next. A future Senedd would be able to consider the same or similar Bill after a six month period, but such a Bill would normally be subject to the standard 4 stage scrutiny process.

It would seem that while GoWA is silent about being able to carry-over Bills, we would suggest therefore that it must be permissible for SOs to include provision about carry-over under the general power in s31(1) of GOWA.

¹ See for example [BBV-146 Final.pdf](#)

We consider, in order to meet the requirements of section 111(6) and (7), Standing Orders must provide an opportunity for reconsideration of a Bill after it has been passed, even in the event that reconsideration be undertaken by a future Senedd. This would mean amending Standing Orders so that they allow for a Bill to be carried over between Seneddau for the purposes of reconsideration, and so that they have the opportunity to approve such a Bill following reconsideration.

We would also note that the ability to have a Bill reconsidered by a new Senedd would not prevent that Senedd from simply rejecting the Bill submitted for reconsideration because it preferred to start afresh with a new Bill in similar terms so this proposal does not upset the constitutional principle that a Senedd cannot bind a future Senedd.

The Government would welcome further consideration as to how Standing Orders might be amended to give effect to this.

2. Other issues relating to the Public Bill process

The use of democratic innovations

Given the Senedd is a unicameral Parliament, there could be value in a model similar to the Legislation Advisory Committee that operates in New Zealand. A body that provides advice following a technical review of the legislation. We recognise the current role of the Legislation, Justice and Constitution Committee but propose consideration of an additional mechanism that considers the Bill from a technical legislative perspective (rather than legislative policy) and submits a report to the Senedd early in Stage 1 that would help inform Committees and the Senedd. It could be that the technical advisory body receives the Bill at the same time as it is sent for the Llywydd's determination, to enable the report to be presented early during Stage 1.

The use of technology

The systems adopted for the scrutiny of Bills and particularly the consideration of amendments is rooted in both UK Parliamentary practice and a print-based world. Consideration could be given to technology being used that supports line by line scrutiny with amendments displayed as they would amend the Bill, rather than as a series of printing instructions. The amendments tabled could be displayed in one colour for each Member, to enable understanding of who has tabled which amendment. Where more than one amendment to a provision has been tabled, multiple versions of the provision as could be amended to be shown. Similarly, amendments to amendments could be illustrated in this way. Overall, using technology to display amendments and support voting in line-by-line consideration could improve understanding of both the amendments themselves and the process of Bill scrutiny more widely.

Standing Order 26B

We note that Standing Order 26B is outside the scope of this review, but we would welcome clarity (preferably through published and publicly available guidance) on how decisions regarding hybridity are to be made and determined.

Standing Order 26C

We note that Standing Order 26C is also outside the scope of this review. But if there are any changes proposed to Standing Order 26 as a result of this review, for example in relation to the timetabling or admissibility of amendments, consideration should be given to making similar changes to SO26C ahead of the planned review of

that Standing Order following the second consolidation project being considered by the Senedd.

3. Member Bill Process

1) Effectiveness of the Member Bill process

There should be greater iteration built into the process to avoid a waste of valuable resources on both the part of the Senedd Commission and Welsh Government. The Government would welcome a further discussion.

2) The selection process

Holding a periodic ballot appears a satisfactory mechanism for Members to be selected. The Senedd may want to consider allowing debates to take place on legislative proposals, with Senedd agreement leading to Members being granted permission to take the next step, e.g. consulting on a proposal. This has the potential to create a more iterative approach to the development of backbench legislation.

The rationale for Members needing to include the pre-ballot information at SO26.90 seems unclear and could well stifle opportunities for Members to respond to current issues or minimise the opportunities for stakeholders to engage with a Member who has been successful in the ballot. Instead, the 25 working days (SO26.91) could be used to develop the equivalent of the pre-ballot information on a topic of the Members choosing which could then put to the Senedd for consideration.

3) Development of a Bill if successful in a Private Members' Bill ballot

If this Senedd were to adopt a more flexible system, it would allow the Member selected in a ballot and the Government to explore whether there is scope for the Government to prepare a short, single-issue Bill that could then be adopted by the Member, who would stay in charge of the Bill as a whole.

'Handout' Bills are common practice in other legislatures, such as the UK Parliament.

4) Financial implications of Member Bills.

The Government views the Financial Resolution as an important control which must be retained.