

To: Business Committee

From: Business Committee Secretariat

Date: May 2012

Amending Standing Orders: Private Bills

Purpose

1. This paper introduces the draft Standing Orders for Private Bills found in the Annexes and outlines the approach taken by the secretariat. A flowchart showing the process is at Annex A, and the draft Standing Orders themselves at Annex B.

Background

2. Section 111(3) of the Government of Wales Act 2006 permits the Assembly's Standing Orders to make provision for Private, Hybrid and Consolidation Bills which are different to those for Public Bills.
3. The issue of separate Standing Orders for Private, Hybrid and Consolidation Bills was not addressed at the time of the Review of Standing Orders in 2010 – 11. Such Bills are more likely to come forward now that we have moved to Part 4 of the Government of Wales Act 2006
4. As a result, work has been underway since the summer on drafting Standing Orders for these types of Bills.
5. The lodging of the University of Wales: Trinity Saint David Bill at Westminster in December 2011, its subsequent withdrawal and indications that the University may wish to introduce the Bill in the Assembly gave greater urgency to the drafting of Standing Orders for Private Bills in particular, and this work stream was therefore prioritised.

University of Wales: Trinity Saint David Bill

6. Private Bill procedure is not straightforward and needs to be appropriate to all purposes for which private legislation can be sought. In due course, we may require procedures to deal with more complicated private legislation (for example, relating to construction projects). The University of Wales: Trinity St David Bill is more straightforward and we have focussed our efforts on developing a procedure to handle it and others of its type.

7. Assuming the University of Wales: Trinity St David Bill comes forward, we would envisage revisiting, and potentially extending, the capacity of the procedure after that process has been completed so as also to address any lessons learned.

The nature of Private Bills

8. A Private Bill is a Bill promoted by individuals or organisations outside the Assembly (for example, local authorities or companies) for the purpose of obtaining powers for themselves that are in excess of, or in conflict with, the general law.
9. Private Bills differ from Public Bills in that they are introduced by a private individual or body outside the legislature and involve measures sought in the private interests of the promoter, to which others may object. Public Bills are introduced by the government, individual Members, or committees.
10. Making the case for a Private Bill is therefore in the hands of a promoter and the traditional approach to private legislation assumes that making the case against the Bill can be left to those affected by it – the objectors. Private Bill proceedings are therefore adversarial in nature.
11. Given that only AMs can participate in plenary sessions, promoters and objectors must feed their evidence into the process through committees. There is therefore an even greater emphasis on Committee scrutiny than is the case for Public Bills. The Committee stage is very much a quasi-judicial one and the process itself can be subject to challenge in the courts.

Proposed Procedure

12. The flowchart at Annex A depicts the essential elements of the procedure that the draft Standing Orders at Annex B would put in place. The main features of the procedure are outlined below.
13. These draft Standing Orders are in line with the approach agreed by Business Committee on 10 January, and borrow from the procedures used in other Parliaments including Westminster and the Scottish Parliament, while also seeking to develop a Welsh solution that is simpler, builds on best practice elsewhere and is, as far as is possible, consistent with the Assembly's procedures for Public Bills.

Key features of the proposed procedure

14. The procedure as drafted gives a central role to the Private Bill Committee in hearing objections, considering the general principles, and making amendments to the Bill. The procedure by which the general principles are

deemed agreed (para. 30 below) puts the onus firmly on the committee, though its conclusions can be over-ruled by the Assembly. The Assembly in plenary also has a more limited amending role than is the case for public Bills under Standing Order 26.

15. This procedure reflects the quasi-judicial nature of Private Bill proceedings, and seeks to ensure that, wherever possible, the key decisions are taken by Members who have given impartial consideration to all of the arguments and evidence submitted by the promoter and objectors.

i) Introduction of a Private Bill (SO 26A.3 – 26A.14)

16. The first stage in the suggested process is for the Promoter to submit the Bill and accompanying documents to the Presiding Officer prior to introduction seeking her approval for the Bill to be introduced. The Bill cannot be introduced without the Presiding Officer's agreement. This is similar to the process for public Bills.
17. A Private Bill must be introduced by being laid by or on behalf of the promoter. On its introduction, a Private Bill must be in its proper form, and be accompanied by a statement by the Presiding Officer indicating that the provisions of the Bill would be within the legislative competence of the Assembly. It must also be accompanied by an Explanatory Memorandum.
18. The Assembly Commission may set a fee to be charged to the promoter for the introduction of a Private Bill.

ii) Objection Period (SO 26A.15 – 26A.24)

19. Once a Private Bill is laid, the Promoter must publish in relevant publications a notice stating, amongst other things, the general effect of the Bill, where it may be inspected, and how objections may be made.
20. On the day that such a notice is published, a forty working day period for making objections starts. No further proceedings may be taken on the Private Bill until the end of this forty working day period.
21. To be admissible, an objection must comply with any guidance published by the Presiding Officer and must specify how the objector's interests would be adversely affected by the Bill; i.e. that his or her property or interests would be affected by the Private Bill.
22. Provision is made for late objections to be accepted, should the Presiding Officer be satisfied that certain criteria have been met.

iii) Initial Consideration (SO 26A.37 – 26A.44)

23. Once a Private Bill has been introduced, the Business Committee must refer the Bill to a Private Bill Committee ('the committee'). We envisage that this would be a bespoke committee established under SO 16.5 to consider whether the Bill should proceed as a Private Bill. In doing so the committee must consider:
- whether the provisions of the Bill make it appropriate for it to be considered in accordance with the Standing Order on Private Bills; and
 - whether the accompanying documents laid in accordance with Standing Order are adequate to allow the committee to make such a decision.
24. In deciding whether the provisions of the Bill make it appropriate for it to be considered as a Private Bill, the committee will have particular regard to the extent to which its provisions affect issues of public policy, the extent to which its provisions amend or repeal other legislation, the size of the area to which it relates and the number of interests which it affects.
25. Should the committee feel that the documentation is inadequate to allow proper scrutiny of the Bill at this stage, it may request that the promoter provides such further information as it considers necessary.
26. In coming to its decision, the committee may have regard to the nature of the objections that have been received, though it will not consider their individual merits at this stage.
27. Once the committee has reported, the Business Committee may propose that the Assembly agrees that the Bill may proceed as a Private Bill. Should the motion be passed, the Bill is referred back to the Private Bill Committee for Detailed Consideration. Should the motion not be passed, the Bill falls.

iv) Detailed Committee Consideration (SO26A.45 – 26A.70)

28. At Detailed Consideration, the Private Bill Committee considers the objections that have been submitted and hears evidence from both the objectors and from the promoter. Objectors and promoters may be accompanied by their legal representatives.
29. The promoter and any objectors that the committee considers have substantial grounds for objection have a right to be heard before the committee. It is up to the committee to decide what constitutes 'substantial grounds'. A member of the Welsh Government also has a right to be heard. The committee may also hear evidence from such other persons as it considers appropriate.

30. The committee must lay its report on the general principles of the Bill, and on the objections received before the Assembly. Within five working days of the report being laid, any Assembly Member may propose that the Bill proceed no further. Should such a motion be passed, the Bill falls. Should such a motion be rejected, or should no such motion be tabled, the general principles of the Bill are deemed agreed by the Assembly. This procedure allows the Assembly to over-rule the Private Bill Committee's recommendations on the general principles of a Private Bill, while maintaining the committee's pre-eminence in considering the merits of the Private Bill.
31. No earlier than 25 days after tabling its report, and if the general principles are deemed agreed by the Assembly, the committee may consider amendments to the Private Bill. Amendments are disposed of in the same way as for Stage 2 of Public Bills.

v) Detailed Assembly Consideration (SO26A.71 – 26A.83)

32. Detailed Assembly Consideration is considered by the Assembly in plenary.
33. In addition to the usual criteria for Public Bills, amendments at this stage are only admissible if they are to clarify the wording of a provision of a Private Bill, give effect to commitments given on behalf of the promoter at Detailed Committee Consideration, or give effect to any recommendations made by the committee in its report at Detailed Committee Consideration (SO26A.80).

vi) Final Stage (SO26A.84 – 26A.88)

34. The Final Stage is taken in Plenary and consists of a debate and vote on a motion that the Private Bill be passed.

Private Bill Committees

35. Due to the nature of Private Bill proceedings, and the greater possibility of legal challenge to a decision of the Assembly, it is proposed that the membership of Private Bill Committees is subject to certain restrictions. Such restrictions are common in other Parliaments.
36. Any Member who is to be nominated as a member of a Private Bill Committee must inform the Business Committee of any interest, including an interest registered under Standing Order 2, that may be relevant to the consideration of the Private Bill. Information about interests other than those required to be registered under Standing Order 2 must then be published alongside the motion to determine the membership of the Private

Bill Committee.

37. No Member who has a registered interest under Standing Order 2 that may be relevant to the consideration of the Private Bill may be a member of the Private Bill Committee.
38. Due to the unique nature of the Private Bill procedure, Members of a Private Bill Committee will be required to undertake a training course before undertaking their duties.
39. Since the Private Bill Committee will need to operate in a quasi-judicial manner there will be other considerations for Members such as making a declaration to act impartially and the need to hear all of the evidence provided.

Action

40. Business Managers are invited to consider and **agree in principle** the proposed draft Standing Orders at Annex B.