

Senedd

[Business Committee](#)

September 2020

Amending Standing Orders: Oversight of the Electoral Commission

Purpose

1. In accordance with Standing Order 11.7(iv), the Business Committee is responsible for making recommendations on the general practice and procedures of the Senedd, including any proposals for the re-making or revision of Standing Orders.
2. In accordance with the Senedd and Elections (Wales) Act 2020 (“SEA”), the report recommends:
 - amendments to Standing Order 20.20 in relation to the Llywydd’s Committee and its oversight of the Electoral Commission (“the EC”),
 - amendments to Standing Order 20.28 in relation to the information produced in support of an annual budget motion; and
 - a new Standing Order 20.34A in relation to supplementary budget motions.
3. The changes agreed by Business Committee are found in Annex A.

Background

4. SEA was passed by the Senedd on 27 November 2019 and received Royal Assent on 15 January 2020. The provisions relevant to this report will

come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

5. SEA amends the Political Parties, Referendums and Elections Act 2000 (“PPERA”) to provide for the establishment of a Llywydd’s Committee in order for the EC to be accountable to the Senedd for devolved elections & referendums, and for the Llywydd’s Committee to approve the EC’s spending plans.

6. On 15 July, the Senedd agreed the amendments to Standing Orders necessary to provide for the establishment of the Llywydd’s Committee. Further changes to Standing Orders are required to update the Senedd’s financial procedures, in accordance with the relevant provisions of PERA. The proposed changes set out below are designed to align Standing Orders with the relevant provisions of the Act and have been drafted in consultation with the Welsh Government, to ensure they are fit for purpose.

7. The Welsh Government must also lay the order to commence the relevant provisions of SEA. The First Minister has indicated that the Welsh Government will aim to lay the order to give effect to the provisions in order for the Senedd to agree the EC’s 2021–2022 budget in relation to devolved matters as part of the autumn 2020 budget round.

Functions relating to the oversight of the Electoral Commission

8. PERA as amended by SEA requires that:

- by 1 October each year, the EC submit to the Llywydd’s Committee an estimate of the income and expenditure it expects to receive/incur for the next financial year with regard to its work on Welsh elections;
- the Llywydd’s Committee examine the estimate, in terms of economy, efficiency and effectiveness, and make any changes it considers appropriate, taking into account the latest report of the Comptroller and Auditor General and the views of the Welsh Ministers;

- the Llywydd's Committee lay the estimate before the Senedd. The Senedd will then approve the estimate as part of the annual budget motion.

9. PPERA allows the EC to revise an estimate during the financial year to which it relates. If it does this, the revised estimate will need to be scrutinised by the Llywydd's Committee following a similar the process to that set out in paragraph 8 above. The approved estimates would then be considered by the Senedd as part of a supplementary budget motion.

10. PPERA also requires that the Llywydd's Committee:

- must periodically examine the EC's five-year work plan, which sets out the EC's aims, objectives and required resources in relation to the exercise of its functions with regard to devolved elections, in terms of economy, efficiency and effectiveness, and make any changes it considers appropriate, taking into account the latest report of the Comptroller and Auditor General and the views of the Welsh Ministers;
- must lay the scrutinised plan with or without modifications before the Senedd;
- can seek a further examination by the Wales Audit Office of any accounts audited by the NAO;
- must lay an annual report on its work before the Senedd.

11. PPERA provides for five-year plans to be submitted to the Llywydd's Committee when:

- the EC submits the first budgetary estimate;
- the estimate relates to the first financial year to begin after the day on which the Senedd meets following an ordinary general election of the Senedd, or
- the Llywydd's Committee requires the EC to submit a plan with its estimate.

12. These functions in so far as they relate to the Llywydd's Committee remit are covered by Standing Order 18B.2, agreed by the Senedd on 15 July 2020, which refers to the relevant legal provisions. The further changes to Standing Orders necessary to align the Senedd's financial procedures are set out below.

Proposals for changes to Standing Orders

Budget timetable

13. The Act requires that the EC submits to the Llywydd's Committee an estimate of its income and expenditure for the next financial year with regard to its work on devolved Welsh elections and referendums by 1 October each year.

14. The subsequent timetable by which the Llywydd's Committee must report on and lay their financial estimates must also be set out in Standing Orders to ensure that it fits in with the timetable for the consideration of the annual budget motion. This also provides clarity and transparency on the process. Equivalent provisions are set out in Standing Order 20.22 for the Auditor General for Wales and Wales Audit Office ("AG/WAO") and in Standing Order 20.24 for the Public Services Ombudsman for Wales ("PSOW").

15. Standing Orders require the AG/WAO and the PSOW to submit their estimates by 1 November each year. Standing Order 20.22 and Standing Order 20.24 then specify that, in relation to the annual estimates of the AG/WAO and PSOW, the responsible committee must consider and lay before the Senedd, no later than 22 November, the estimate, with any modifications which the Committee, having consulted and taken into account any representations made by the AG/WAO and PSOW, considers appropriate.

16. Standing Orders 20.22 and 20.24 have therefore been used as the basis for the proposed equivalent Standing Order relating to the annual estimates of the EC, whereby the Llywydd's Committee must consult Welsh Ministers and have regard to any reports made to it by the Comptroller and Auditor

General, before it considers and lays the EC's annual estimates (in accordance with PPERA).

17. In addition, the proposed Standing Order specifies that, if the Llywydd's Committee proposes any modification to the EC's annual estimate, they must also consult with the EC. Although this is not a legal requirement, it is consistent with the equivalent procedures relating to the AG/WAO and PSOW and ensures that the EC is aware and has an opportunity to comment on the impact of any proposed changes to its budget.

Annual Budget Motions

18. In a letter to the Llywydd (shared with the Business Committee on 8 June) the First Minister confirmed that the Welsh Government will administer the payments to the EC on an interim basis, to enable the relevant provisions of SEA to be brought into force quickly. The First Minister also stated that the Welsh Government's intention is to "...continue to explore an alternative option which would involve bringing forward primary legislation to amend GoWA to add the EC to the list of payee bodies in s129(4) GoWA so that funds from the WCF, once approved, could be paid directly to the EC."

19. Although the EC is an independent body, which will be accountable to the Senedd for its actions in relation to devolved elections, under the interim arrangement, the EC will not be funded directly from the Welsh Consolidated Fund. However, Welsh Government officials have confirmed that the Annual Budget Motion template will be amended so that the EC will have a separate ambit but will appear under 'Welsh Ministers' (not under 'Direct Funded Bodies'). Welsh Government officials have also confirmed that a memorandum of understanding is being prepared to ensure the EC's political independence is safeguarded whilst the Welsh Government are administering the payments.

20. It is therefore proposed that Standing Order 20.26 is amended to require that the EC's annual estimate is included in the Annual Budget Motion. Under the interim arrangement the annual estimate will appear

under the Welsh Ministers, rather than under 'Direct Funded Bodies'. Then, if and when legislation is brought forward to allow the EC to be paid directly from the Welsh Consolidated Fund, the proposed Standing Order would require no amendment; the EC's annual estimate would then be incorporated into the Annual Budget Motion as a Direct Funded Body.

Supplementary Budget Motions

21. The timetable by which the Llywydd's Committee must consider a supplementary budget motion proposing a variation to the budget of the EC must also be set out, to ensure that it aligns with the timetable for the consideration of the supplementary budget motion, and to provide clarity and transparency on the process.

22. The proposed Standing Order is equivalent to those for the AG/WAO (Standing Order 20.35) and PSOW (Standing Order 20.36).

23. If the EC requires a variation to its budget, the proposed Standing Order provides that the EC must submit a revised estimate to the Llywydd's Committee stating why the variation to its budget is required and that the Llywydd's Committee must lay before the Senedd a report on the proposed variation within three weeks of the supplementary budget motion being tabled. The supplementary budget motion will then reflect the revised estimate.

24. In accordance with PPERA, the proposed Standing Order requires the Llywydd's Committee to consult Welsh Ministers and have regard to any reports made to it by the Comptroller and Auditor General and to explain any modifications to the supplementary budget motion.

25. As with the EC's annual estimate, although it is not a legal requirement, the proposed Standing Order requires that, if the Llywydd's Committee proposes any modifications to the proposed variation of the EC's budget, the Llywydd's Committee must consult the EC, taking any representations made into account.

Excess use of resources

26. If the audited accounts of the Senedd Commission (“SC”), the WAO or the PSOW for any financial year record an excess of resources, Standing Orders 20.38 and 20.39 currently place a requirement on the Welsh Government, if requested to do so by the SC, WAO or PSOW, to table a supplementary budget motion seeking retrospective authorisation for the excesses recorded.

27. As described above, under the interim arrangement the EC will not be funded directly from the WCF. Instead the Welsh Government will act as paymaster to draw funds from the WCF on behalf of the EC. As payments will be administered by the Welsh Government, Welsh Ministers will be accountable for any excess expenditure in accordance with Standing Order 20.37A. However, the EC will still be accountable to the Senedd for any excess expenditure. It is therefore not necessary to make an equivalent provision in Standing Orders for the EC at this stage. Therefore, no change to Standing Orders is proposed in relation to excess use of resources by the EC.

Action

28. The Senedd is invited to approve the changes to Standing Orders proposed at Annex B.

Annex A

STANDING ORDER 20 – Finance Procedures	
Electoral Commission	New Heading
<p><u>20.20A The Electoral Commission must submit an estimate of its income and expenditure that is attributable to the exercise of the its functions in relation to devolved Welsh elections and referendums, as required under paragraph 16A of Schedule 1 to the Political Parties, Elections and Referendums Act 2000, to the Llywydd’s committee under SO 18B.2 as soon as reasonably practicable but no later than 1 October.</u></p>	<p>PPERA (as amended by SEA) requires that the EC submits to the Llywydd’s Committee an estimate of the income and expenditure it expects to receive/incur for the next financial year with regard to its work on Welsh elections by 1 October each year.</p>
<p><u>20.20B The Llywydd’s Committee must, having:</u></p> <ul style="list-style-type: none"> i) <u>consulted and taken into account any advice given to it by the Welsh Ministers, and;</u> ii) <u>had regard to any reports made to it by the Comptroller and Auditor General and to any recommendations contained in the reports;</u> <p><u>consider and lay before the Senedd, no later than 22 November, a report including the estimate, with any modifications which the Committee, having consulted and taken into account any representations made by the Electoral Commission, considers appropriate.</u></p>	<p>The timetable by which the Llywydd’s Committee must report on and lay the EC’s financial estimates must also be set out to ensure that it fits in with the timetable for the consideration of the annual budget motion, and to provide clarity and transparency on the process. This is equivalent to the provision set out in Standing Order 20.24 for the Public Services Ombudsman for Wales (PSOW) and SO 20.22 for the Auditor General/WAO, whereby the estimates must be submitted by 1 November each year and the responsible committee must lay the estimates no later than 22 November.</p> <p>The Llywydd Committee must consult Welsh Ministers (in accordance with the Act). In addition, the proposed</p>

	<p>Standing Order specifies that the Llywydd's Committee must also consult with the EC. Although this is not a legal requirement it is consistent with the equivalent procedures relating to the AG/WAO and PSOW and ensures that the EC is aware and has an opportunity to comment on the impact of any proposed changes to its budget.</p> <p>In accordance with PPERA, the proposed Standing Order also requires the Llywydd's Committee to have regard to any reports made it to it by the Comptroller and Auditor General and to any recommendations contained in the reports, before it considers and lays the EC's estimates.</p>
<p>Annual Budget Motion</p>	
<p>20.26 An annual budget motion must incorporate:</p> <ul style="list-style-type: none"> i) the final budget for the government; ii) the final budget for the Commission as agreed by the Senedd under Standing Order 20.16 or 20.17, or as determined under Standing Order 20.19; iii) the estimate for the Wales Audit Office, as laid before the Senedd under Standing Order 20.22; and 	<p>Under the interim arrangement, the EC will not be funded directly from the Welsh Consolidated Fund. However, Welsh Government officials have confirmed that the Annual Budget Motion template will be amended so that the EC will have a separate ambit but will appear under the Welsh Ministers (not under 'Direct Funded Bodies').</p> <p>The proposed Standing Order, if agreed, will ensure that the EC's annual estimate is included in the Annual Budget Motion, though it will appear under the Welsh Ministers,</p>

<p>iv) the estimate for the Ombudsman as laid before the Senedd under Standing Order 20.24; <u>and</u></p> <p>v) <u>the estimate for the Electoral Commission, as laid before the Senedd under Standing Order 18B.</u></p>	<p>rather than under “Direct Funded Bodies”. If and when legislation is brought forward to allow the EC to be paid directly from the Welsh Consolidated Fund, the Standing Order would require no amendment; the EC’s annual estimate would then be incorporated into the Annual Budget Motion as a Direct Funded Body.</p>
<p>Supplementary Budget Motions</p>	
<p><u>20.34A If the supplementary budget motion proposes a variation to the budget for the Electoral Commission:</u></p> <p>i) <u>the Electoral Commission must submit a revised estimate to the Llywydd’s Committee stating why the variation to the budget is required;</u></p> <p>ii) <u>the Llywydd’s Committee must consider and lay before the Senedd within three weeks of the supplementary budget motion being tabled, a report including the revised estimate, with any modifications which the Committee considers appropriate:</u></p> <p style="padding-left: 40px;">(a) <u>having consulted and taken into account any advice given to it by the Welsh Ministers; and,</u></p>	<p>The timetable by which the Llywydd’s Committee must consider a supplementary budget motion proposing a variation to the budget of the EC must also be set out, to ensure that it fits in with the timetable for the consideration of the supplementary budget motion, and to provide clarity and transparency on the process. The proposed Standing Order is equivalent to those for the WAO (Standing Order 20.35) and PSOW (Standing Order 20.36).</p> <p>The proposed Standing Order provides that when the supplementary budget motion proposes a variation to the budget of the EC, the EC must submit a revised estimate to the Llywydd’s Committee stating why the variation to its budget is required and that the Llywydd’s Committee must lay before the Senedd a report on the proposed variation within three weeks of the supplementary budget motion being tabled.</p>

(b) having had regard to any reports made to it by the Comptroller and Auditor General and to any recommendations contained in the reports;

iii) If the report proposes any modifications to the revised estimate, the Llywydd's Committee must have consulted and taken into account any representations made by the Electoral Commission.

As with the EC's annual estimate, the proposed Standing Order requires the Llywydd's Committee to have regard to any advice given by the Welsh Ministers, the EC, and any representations made by the Comptroller and Auditor General and to explain any modifications to the supplementary budget motion.

Annex B

New Standing Order 20.20A

20.20A The Electoral Commission must submit an estimate of its income and expenditure that is attributable to the exercise of its functions in relation to devolved Welsh elections and referendums, as required under paragraph 16A of Schedule 1 to the Political Parties, Elections and Referendums Act 2000, to the Llywydd's committee under SO 18B.2 as soon as reasonably practicable but no later than 1 October.

New Standing Order 20.20B

20.20B The Llywydd's Committee must, having:

- i) consulted and taken into account any advice given to it by the Welsh Ministers, and;
- ii) had regard to any reports made to it by the Comptroller and Auditor General and to any recommendations contained in the reports;

consider and lay before the Senedd, no later than 22 November, a report including the estimate, with any modifications which the Committee, having consulted and taken into account any representations made by the Electoral Commission, considers appropriate.

New Standing Order 20.34A

20.34A If the supplementary budget motion proposes a variation to the budget for the Electoral Commission:

- i) the Electoral Commission must submit a revised estimate to the Llywydd's Committee stating why the variation to the budget is required;
- ii) the Llywydd's Committee must consider and lay before the Senedd within three weeks of the supplementary budget motion being tabled, a report including the revised estimate, with any modifications which the Committee considers appropriate:
 - (a) having consulted and taken into account any advice given to it by the Welsh Ministers; and,
 - (b) having had regard to any reports made to it by the Comptroller and Auditor General and to any recommendations contained in the reports;

- iii) If the report proposes any modifications to the revised estimate, the Llywydd's Committee must have consulted and taken into account any representations made by the Electoral Commission.

Amended Standing Order 20.26

20.26 An annual budget motion must incorporate:

- i) the final budget for the government;
- ii) the final budget for the Commission as agreed by the Senedd under Standing Order 20.16 or 20.17, or as determined under Standing Order 20.19;
- iii) the estimate for the Wales Audit Office, as laid before the Senedd under Standing Order 20.22;
- iv) the estimate for the Ombudsman as laid before the Senedd under Standing Order 20.24; and
- v) the estimate for the Electoral Commission, as laid before the Senedd under Standing Order 18B.