

National Assembly for Wales

[Business Committee](#)

March 2018

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Amending Standing Orders: Standing Orders 26, 26A and 26B – Requirement for Justice Impact Assessments (s110A of the Act)

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 Assembly, including any proposals for the re-making or revision of Standing Orders.
2. The report recommends amendments to Standing Orders 26, 26A and 26B – for Public, Private and Hybrid Bills – to provide for a new requirement for Justice Impact Assessments for all Assembly Bills (section 110A of the Government of Wales Act 2006 (GoWA)). The changes agreed by Business Committee are found in Annex A, and the proposals for new Standing Orders are at Annex B.

Background

3. Section 110A of GoWA was inserted by section 11 of the Wales Act 2017, and comes into effect on the Principal Appointed Day of 1 April 2018 by way of a Commencement Order. It will require that a Justice Impact Assessment (JIA) is published for every Assembly Bill on or before its introduction. The Member in charge of the Bill must make a written statement setting out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill. Under the Act, the new provision must be included in the Assembly's Standing Orders, which must also determine the form of the JIA and the manner in which it is to be made.

4. The Business Committee has considered how this new statutory requirement should be reflected in the Assembly's Standing Orders for legislation, with the changes to take effect from 1 April 2018, in order for Bill teams to have prepared JIAs for Bills to be introduced from that date.

Proposals for Changes to Standing Orders

5. The existing requirements for documentation to accompany an Assembly Bill at introduction are set out in Standing Order 26 – Acts of the Assembly, and mirrored in Standing Orders 26A and 26B for Private and Hybrid Bill procedures. In addition to the requirement for a statement from the Llywydd on legislative competence (SO 26.5), the majority of other requirements must be included in the Explanatory Memorandum (EM) that accompanies every Bill on introduction.

6. The Explanatory Memorandum accompanying a Bill contains the Regulatory Impact Assessment for that Bill and details of other specific Impact Assessments required or desirable to have been carried out pre-introduction (e.g. on equality, Welsh Language, health impacts etc.). It is therefore proposed that it would be appropriate for the Justice Impact Assessment to also be required to be laid as part of the EM, as set out in the proposed Standing Order changes at Annex A. As the EM must be laid, and

will always be published on the Assembly's website alongside the Bill, this approach also ensures that the statutory requirement for the JIA to be published will automatically be met.

7. The drafting of section 110A states that the form and manner of the JIA must be determined in Standing Orders, but leaves it to the Assembly to set this out. Standing Orders are currently silent on the form and manner of other regulatory impact assessments, and it is a matter for members of the responsible committee to judge whether the information provided to them is adequate for proper scrutiny of an Assembly Bill. The changes being proposed to Standing Orders do not therefore extend beyond what will be necessary to comply with the requirements of section 110A, and allow for a flexible approach. As noted above, officials will liaise with the Ministry of Justice to develop a common format for JIAs, with content expected to vary significantly depending on the nature of the Bill concerned and its likely justice impact. Once JIAs for Bills start to come forward it will be for committees to seek further information or a change of approach if they judge it necessary.

Action

8. The Business Committee formally agreed the changes to Standing Orders 26, 26A and 26B on 6 March 2018 and the Assembly is invited to approve the proposals at Annex B to take effect from 1 April 2018.

Annex A

Proposed changes to Standing Orders 26, 26A and 26B

STANDING ORDER 26 – Acts of the Assembly		
	Documentation to Accompany a Bill	
26.6	<p>At the same time as the Member in charge introduces a Bill, he or she must also lay an Explanatory Memorandum which must:</p> <ul style="list-style-type: none">(i) state that in his or her view the provisions of the Bill would be within the legislative competence of the Assembly;(ii) set out the policy objectives of the Bill;(iii) set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted;(iv) set out the consultation, if any, which was undertaken on:<ul style="list-style-type: none">(a) the policy objectives of the Bill and the ways	<p>Amend Standing Order</p> <p>It is proposed to add an additional point (xii) to the elements that must be set out in the Explanatory Memorandum for the Bill, to include the statutory requirement for a Justice Impact Assessment (JIA) set out in the new section 110A of the Act. As the EM must be laid, and will always be published on the Assembly’s website alongside the Bill, this approach ensures that the requirement for the JIA to be published will automatically be met.</p> <p>NB: An editorial correction has also been</p>

	<p>of meeting them;</p> <p>(b) the detail of the Bill, and</p> <p>(c) a draft Bill, either in full or in part (and if in part, which parts);</p> <p>(v) set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended;</p> <p>(vi) if the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision;</p> <p>(vii) summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill;</p> <p>(viii) set out the best estimates of:</p> <p>(a) the gross administrative, compliance and other costs to which the provisions of the Bill</p>	<p>made to point (ix) for clarity.</p>
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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;

(ix) set out any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially;

(x) where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:

(a) the person upon whom, or the body upon which, the power is conferred and the form in

which the power is to be exercised;

(b) why it is considered appropriate to delegate the power; and

(c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure); and

(xi) where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate; and

(xii) set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.

STANDING ORDER 26A – Private Acts of the Assembly

	Documentation to Accompany a Private Bill	
26A.13	<p>At the same time as the promoter introduces a Private Bill, he or she must also lay an Explanatory Memorandum, in English and Welsh, which must:</p> <ul style="list-style-type: none">(i) state that, in the view of the promoter, the provisions of the Private Bill would be within the legislative competence of the Assembly;(ii) set out the reasons why the provisions of the Bill make it appropriate for it to proceed as a Private Bill, having particular regard to the criteria in Standing Order 26A.45;(iii) set out the objectives of the Private Bill;(iv) set out whether alternative ways of achieving the objectives were considered and, if so, why the approach taken in the Private Bill was adopted;	<p>Amend Standing Order</p> <p>It is proposed to add an additional point (vii) to the elements that must be set out in the Explanatory Memorandum for the Private Bill, to include the statutory requirement for a Justice Impact Assessment (JIA) set out in the new section 110A of the Act. As the EM must be laid, and will always be published on the Assembly’s website alongside the Bill, this approach ensures that the requirement for the JIA to be published will automatically be met.</p>

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| | <p>(v) set out the consultation that was undertaken on:</p> <ul style="list-style-type: none">(a) the objectives of the Private Bill and the ways of achieving them; and(b) the detail of the Private Bill, <p>together with a summary of the outcome of that consultation;</p> <p>(vi) summarise objectively what each provision of the Private Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill;
<u>and</u></p> <p><u>(vii) set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.</u></p> | |
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STANDING ORDER 26B – Hybrid Acts of the Assembly

	Documentation to Accompany a Hybrid Bill	
26B.9	<p>At the same time as the Member in charge introduces a Hybrid Bill, he or she must also lay an Explanatory Memorandum, in English and Welsh, which must:</p> <ul style="list-style-type: none">(i) state that, in his or her view, the provisions of the Hybrid Bill would be within the legislative competence of the Assembly;(ii) set out the reasons why the provisions of the Bill make it appropriate for it to proceed as a Hybrid Bill, having particular regard to the criteria in Standing Order 26B.43;(iii) set out the objectives of the Hybrid Bill;(iv) set out whether alternative ways of achieving the objectives were considered and, if so, why the approach taken in the Hybrid Bill was adopted;	<p>Amend Standing Order</p> <p>It is proposed to add an additional point (xiii) to the elements that must be set out in the Explanatory Memorandum for the Hybrid Bill, to include the statutory requirement for a Justice Impact Assessment (JIA) set out in the new section 110A of the Act. As the EM must be laid, and will always be published on the Assembly’s website alongside the Bill, this approach ensures that the requirement for the JIA to be published will automatically be met.</p> <p>NB: An editorial correction has also been made to point (x) for clarity.</p>

	<ul style="list-style-type: none">(v) set out the consultation that was undertaken on:<ul style="list-style-type: none">(a) the objectives of the Hybrid Bill and the ways of achieving them; and(b) the detail of the Hybrid Bill, and(c) a draft Bill, either in full or in part (and if in part, which parts);(vi) set out a summary of the outcome of that consultation, including how and why the Bill has been amended;(vii) if the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision;(viii) summarise objectively what each provision of the Hybrid Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill;(ix) in the case of a Bill to which Standing Order 26B.2	
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does not apply, 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;
- (x) set out any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially;
- (xi) where the Bill contains any provision conferring power to make subordinate legislation, set out, in

relation to each such provision:

(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;

(b) why it is considered appropriate to delegate the power; and

(c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure); ~~and~~

(xii) where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate; ~~and~~
and

(xiii) set out the potential impact (if any) on the justice

	<p><u>system in England and Wales of the provisions of the Bill</u> <u>(a “justice impact assessment”), in accordance with</u> <u>section 110A of the Act.</u></p>	
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Annex B

STANDING ORDER 26 – Acts of the Assembly

Documentation to Accompany a Bill

26.6 At the same time as the Member in charge introduces a Bill, he or she must also lay an Explanatory Memorandum which must:

- (i) state that in his or her view the provisions of the Bill would be within the legislative competence of the Assembly;
- (ii) set out the policy objectives of the Bill;
- (iii) set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted;
- (iv) set out the consultation, if any, which was undertaken on:
 - (a) the policy objectives of the Bill and the ways of meeting them;
 - (b) the detail of the Bill, and
 - (c) a draft Bill, either in full or in part (and if in part, which parts);
- (v) set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended;
- (vi) if the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision;
- (vii) summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill;

- (viii) 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;
- (ix) set out any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially;
- (x) where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:
 - (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;
 - (b) why it is considered appropriate to delegate the power; and
 - (c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);
- (xi) where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the

Auditor General setting out his or her views on whether the charge is appropriate; and

- (xii) set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.

STANDING ORDER 26A – Private Acts of the Assembly

Documentation to Accompany a Private Bill

26A.13 At the same time as the promoter introduces a Private Bill, he or she must also lay an Explanatory Memorandum, in English and Welsh, which must:

- (i) state that, in the view of the promoter, the provisions of the Private Bill would be within the legislative competence of the Assembly;
- (ii) set out the reasons why the provisions of the Bill make it appropriate for it to proceed as a Private Bill, having particular regard to the criteria in Standing Order 26A.45;
- (iii) set out the objectives of the Private Bill;
- (iv) set out whether alternative ways of achieving the objectives were considered and, if so, why the approach taken in the Private Bill was adopted;
- (v) set out the consultation that was undertaken on:
 - (a) the objectives of the Private Bill and the ways of achieving them; and
 - (b) the detail of the Private Bill,

together with a summary of the outcome of that consultation;

- (vi) summarise objectively what each provision of the Private Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill; and
- (vii) set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.

STANDING ORDER 26B – Hybrid Acts of the Assembly

Documentation to Accompany a Hybrid Bill

26B.9 At the same time as the Member in charge introduces a Hybrid Bill, he or she must also lay an Explanatory Memorandum, in English and Welsh, which must:

- (i) state that, in his or her view, the provisions of the Hybrid Bill would be within the legislative competence of the Assembly;
- (ii) set out the reasons why the provisions of the Bill make it appropriate for it to proceed as a Hybrid Bill, having particular regard to the criteria in Standing Order 26B.43;
- (iii) set out the objectives of the Hybrid Bill;
- (iv) set out whether alternative ways of achieving the objectives were considered and, if so, why the approach taken in the Hybrid Bill was adopted;

- (v) set out the consultation that was undertaken on:
 - (a) the objectives of the Hybrid Bill and the ways of achieving them; and
 - (b) the detail of the Hybrid Bill, and
 - (c) a draft Bill, either in full or in part (and if in part, which parts);
- (vi) set out a summary of the outcome of that consultation, including how and why the Bill has been amended;
- (vii) if the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision;
- (viii) summarise objectively what each provision of the Hybrid Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill;
- (ix) in the case of a Bill to which Standing Order 26B.2 does not apply, 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;

- (x) set out any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially;
- (xi) where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:
 - (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;
 - (b) why it is considered appropriate to delegate the power; and
 - (c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);
- (xii) where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate; and
- (xiii) set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.