

Written Evidence to the Standing Order Committee 2006

The Assembly's new role in draft Orders in Council, draft Measures and Subordinate Legislation

David Lambert and Marie Navarro, Cardiff Law School

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Written Evidence to the Standing Order Committee 2006

The Assembly's new role in draft Orders in Council, draft Measures and Subordinate Legislation

Marie Navarro and David Lambert, Cardiff Law School

Introduction:

The existing SOs of the Assembly are only designed to cover the Assembly's current functions. Consideration will need to be given as to how they should be amended to cover the new functions set out in the new Government of Wales Act under which **the Assembly's focus will switch from policy consideration to law consideration.**

We understand that at this stage of its deliberations the Standing Orders Committee is considering matters of principle and that draft Standing Orders based on these principles will be produced at later stages on which we hope to have the opportunity of commenting. This paper therefore considers some of the principles which are set out in boxes through out our evidence. It also considers issues the Committee may wish to take into account when drafting the processes relating to the consideration of draft Orders in Council, draft Measures and the involvement of the Assembly in the consideration of the Executive's subordinate legislation. These are set out in boxes.

The paper does not seek to suggest drafts of the SOs which might apply to such processes.

The current work of the Assembly post May 2007.

The Assembly's current work as regards the accountability of the Executive will continue post May 2007. The only major difference is that the Assembly will no longer be making general Statutory Instruments. These will be made and implemented by the Executive, unless the enabling Act in certain cases requires the Assembly either to approve the legislation before it can operate or entitles the Assembly to annul the legislation.

The new work of the Assembly post May 2007.

Legislation Committee Report, June 2006

At that stage[post 2007], the Assembly as such will lose to Welsh Ministers the power to make statutory instruments, but will gain a power to pass Assembly Measures¹.

The Assembly's new legislative work will be mainly concerned with proposing, through the First Minister, draft Orders in Council to the Secretary of State for Wales who, if he agrees, will put such drafts before Parliament for approval. If approved the Assembly will be able to consider and make Measures within the enabling powers of the Order. Such Measures can

¹ National Assembly for Wales Legislation Committee, *The Technical Scrutiny of Legislation by the National Assembly from May 2007*, June 2006, paragraph 1.

8.National Assembly for Wales Legislation Committee, *The Technical Scrutiny of Legislation by the National Assembly from May 2007*, June 2006, paragraph 4.

9.National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 8.

make provisions equivalent to those made by an Act of Parliament, i.e. they can amend, add to or repeal parts or the whole of Acts and make new provisions in their stead.

Legislation Committee Report, June 2006

Legislation is the core work of a legislature. That cannot be said of the present Assembly. As the Chair of the Business Committee told us "during the First Assembly only 3% of Committee time and 9% of Plenary time was devoted to consideration of legislation. Even these figures disguise the fact that consideration of a draft Order often took the form of a broad debate...consideration of detailed textual amendments was very rare". By contrast **the White Paper describes the future role of the Assembly as "primarily legislative"**²

Our paper is designed to raise matters which the SO Committee might wish to take into account in its SOs in relation to its new legislative work. In drafting this paper we have sought to reflect the uniqueness of this exercise taking account of the new structure of the Assembly with its clear separation between the executive and the legislature as well as the limited resources available to the new Assembly.

Consideration has also been given to the results of the recent consultation exercise with various bodies in civic society carried out by Cymru Yfory/ Tomorrow's Wales (a body chaired by the Archbishop of Wales which has representatives from various aspects of Welsh life).

Consultation and engagement with civic society is considered to be crucial to the work of the Assembly in the devolution framework as it exists today. This will be reinforced post 2007.

Beyond Boundaries Citizen-Centred Local Services for Wales (Beecham Review)³, June 2006

2. Recommendations for the National Assembly for Wales

2. 1 Take the lead in encouraging greater citizen engagement, developing cross-cutting scrutiny and ensuring rigorous, evidence based challenge so that Wales can become an exemplar of effective small country governance, including by:

- leading a mature, informed and constructive public debate about the policy and investment choices facing Wales in both the short and long term;
- setting an example of citizen-centred scrutiny, geared to improvement, with no party whip and involving a wide range of stakeholders;
- **using the Government of Wales Bill powers to review procedures and Committee structures to ensure a cross-cutting citizen focus, across all public services, including non devolved services such as: policing, benefits, offender management and others which are critical to improving outcomes for people in Wales.**

i. The Uniqueness of the new Standing Orders relating to the Assembly's legislative functions:

The Committee has asked for our views specifically about the processes relating to Assembly legislation which will have to be included in the new standing orders.

The Assembly processes in general have to be regulated by standing orders as is the case for every Parliament or Assembly. This is also a statutory requirement imposed on the Assembly by the new Government of Wales Act.

² National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 56.

³ http://new.wales.gov.uk/docrepos/40382/403823121/40382213/528962/English_Report.pdf?lang=en

Government of Wales Act 2006: Section 31 Standing orders

(1) Assembly proceedings are to be regulated by standing orders (referred to in this Act as “the standing orders”).

Committee on the Better Governance for Wales White Paper Report, September 2005

Sir Christopher Jenkins argued persuasively for flexibility in Standing Orders and the Clerk of the House of Commons gave his advice to "leave plenty of space between the lines.... rather than being too detailed or prescriptive". We believe that this is wise advice. **Standing Orders set the tramlines within which an Assembly or Parliament operates.** They ought not to try to dot every "i" or cross every "t" in the way in which, for example, tax legislation must. **While they must give clarity to some procedures, they must also provide some growing room, and opportunities for interpretation which suit the variety of political circumstances with which Members are faced**⁴ Only those with experience of parliamentary institutions, whether Members or officials, have the understanding necessary to draw them up.

We understand from various reports that the view taken by most AMs and officials is that generally SOs must be drafted in a general manner and leave space for change.

We believe that there must be clarity in the procedures relating to Assembly Legislation. This is because such procedures are quite different from the current procedures of the Assembly and do not relate to the internal organisation of the running of the Assembly. The corresponding SOs have to be definite and very precise as the end result -the Orders in Council and the Measures- can be subject to judicial review not only as regards their contents but as to whether the prescribed procedure for their making has been followed. The same concept applies to those categories of the subordinate legislation which will be scrutinised by the Assembly. Case law shows that subordinate legislation which has been subject to a Parliamentary scrutiny procedure is not likely to be successfully challenged on judicial review.

Proposed principle 1:

The standing order provisions relating to the legislative processes should be very definite and precise and allow no room for doubt so as not to give ground for successful judicial review.

ii. Golden Thread: Civic Society's involvement in the law making process:

A Voice for Wales - The Government's Proposals for a Welsh Assembly, Cm 3718, Welsh Office, 1997

Part IV: The Assembly at Work: Paragraph 4.28 Openness and Accountability- Summary:

⁴ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 133.

The Assembly will operate under maximum openness and public accountability. The Bill establishing will specify the principles on which the Standing Orders must be based. In particular the Assembly will need to ensure that at all times its working arrangements comply with the principles of openness and accountability.

Report of the National Assembly Advisory Group, Welsh Office, August 1998.

“Our [NAAG] aim was: “to produce recommendations...which: - are democratic, effective, efficient and inclusive...and command the support of people in Wales”⁵.

Assembly Review of Procedures NAAG Report, 2002

Public Engagement/ Flexible Working

We received various suggestions relating to improved public access to/ participation in committees' activities and more flexible methods of working. These suggestions merit more detailed consideration⁶[...].

Final Report, Assembly Review of Procedure, February 2002

Paragraph 1.2 Our approach:

“The Group first priority was to listen to the views of outside bodies... In addition to taking written submissions the group also invited a range of organisations and individuals to attend meetings of the group and give their views in person.”

Proposed principle 2:

As suggested in a number of reports, the Assembly’s new legislative functions should provide for maximum consultation with and the involvement of civic society in all procedures involving the Assembly, its Committees and the individual Assembly Members.

iii. The Functions and Structure of the new Assembly:

Reports about the exercise of its functions under the new Act emphasise the need for the Assembly to balance its legislative and accountability functions, but always taking account of the particular emphasis that the new Act places on the legislative functions of the Assembly.

Committee on the Better Governance for Wales White Paper Report, September 2005

There is a considerable worry that committees will be overwhelmed with their legislative agenda - a legislative agenda which, moreover, would be set by the Assembly Government. In consequence, committee-initiated scrutiny may go by the board [...] **We believe that it will be vital to maintain what the Permanent Secretary described as "the balance ... between administrative oversight and scrutiny and legislative development and scrutiny"⁷.**

⁵ National Assembly Advisory Group, *Report of the National Assembly Advisory Group*, Welsh Office, August 1998

⁶ *Assembly Review of Procedures NAAG Report, 2002*, paragraph 6.16

⁷ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 50.

In taking account of its new legislative functions, the Assembly will need to bear in mind that it is legally separate from the Assembly Government. This means that it will need to have processes in place which ensure that it works independently of the Executive, in carrying out its legislative functions. While many legislative initiatives will come from the Executive, when they are placed before the Assembly they become the property of the Assembly.

Proposed Principle 3:

SOs relating to the new legislative functions should give every opportunity to the Assembly in plenary, its Committees and individuals AMs to contribute to the formulation of legislation so as to ensure that it is properly and clearly drafted and create as few ambiguities as possible.

As the Assembly is unicameral checks and balances have to be inbuilt in any procedure.

The SOC may need to consider what checks and balances it want to see in place in the legislative process.

Proposed principle 4:

At least two different parts of the Assembly have to be involved in any law making procedures.

iv. Scottish Standing Orders:

Both the Scotland Act and GOWA relate to the devolution of legislative powers. The statutory requirements in the Scotland Act for the making of SOs relating to legislation and those in the new GOWA are similar.

Except for Orders in Council which is a process for which no precedent can be found, the Standing Orders of the Scottish Parliament relating to the processing of Public and Private Bills and subordinate legislation contain a variety of procedures, some of which are complex. However, they could be a guide to the SOs Committee as to the possible nature of the Assembly's SOs.

The SOC may consider that the SOs of the Scottish Parliament relating to the making of Public Bills and the scrutinising of the Executive's subordinate legislation is a recent and relevant precedent to consider.

The SOC may wish to consider modifications to the Scottish Parliament SOs and that as regards the procedures for Private Measures the procedures in the Transport and Works Act 1992 might be partially adapted.

v. Limited resources available:

However, if consideration is given to that model, it has to be adapted to fit Wales post 2007 as there are far fewer AMs than MSPs that can be involved in these processes. Each legislative process in Scotland involves a considerable commitment of both the time of Members and of officials advising them.

Committee on the Better Governance for Wales White Paper Report, September 2005

Speculation about sitting times is premature at this stage. **But it is safe to say that proper legislative scrutiny will take time. Assuming that only three Orders in Council are made each year (this was the First Minister's lower estimate), and that each is followed by only one Measure, this means that six substantive pieces of legislative process will occur each year from about 2008 onwards. At the very minimum, we could expect ten hours in committee, and three hours in Plenary, on each of these Orders in Council or Measures, especially when pre-legislative scrutiny is included. Complex or controversial legislation will take longer. Taking into account the non-legislative scrutiny agenda as well, there will clearly be a major effect on current sitting patterns.**⁸

There are finite financial resources available to the Assembly which will have to take account of the statutory requirements that the Assembly processes will have to reflect the bilingual nature of the legislation (at least as regards Measures and subordinate legislation).

GOWA section 98: Proceedings on proposed Assembly Measures

(5) The standing orders must include provision for securing that the Assembly may only pass a proposed Assembly Measure if the text of the proposed Assembly Measure is in both English and Welsh, unless the circumstances are such as are specified by the standing orders as any in which the text need not be in both languages.

Assembly Legislation Committee report, June 2006

The Committee has also been mindful of the fact that legislation in Wales is made bilingually, which adds a further, crucial, element to the process of making legislation and to its technical scrutiny^{9,10}

vi. Other Matters:

There will also be a need to extend the sittings of the Assembly.

Committee on the Better Governance for Wales White Paper Report, September 2005

A new Assembly with new powers can be expected to meet for longer hours, both in plenary and committee. The present Assembly has been accused by the Secretary of State of not working hard enough. Certainly up until now, plenary sitting hours have been modest and committee meetings infrequent in comparison with other parliamentary bodies in the United Kingdom. We heard various estimates of what would be required in the future. The Chair of the Business Committee thought that the Assembly would in future be engaged in formal business for three whole days rather than the present two. The Leader of the Welsh Liberal Democrats thought committees would meet "on most days of the week". The Leader of Plaid Cymru also thought the Assembly would need to meet for "three full days",

⁸ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 142.

⁹ National Assembly for Wales, *Assembly Legislation Committee report*, June 2006, paragraph 4

which might call into question some current practices, such as the timing of party meetings. **One other change of practice** advocated by the Panel of Chairs **would be the freedom to hold committee meetings during Plenary.**¹¹

Proposed Principle 5

The processes involved in the consideration of draft legislation in the Scottish SOs will need to be amended or eliminated, while, at the same time complying with the express provisions of the new Act and enabling all Assembly Members, bodies and persons outside the Assembly to be involved in these procedures.

vii. Processes considered

This paper considers different legislative processes for which provision may need to be made in the SOs namely:-

- 1- **Draft Orders in Council** adding a
 - a. Adding a New matter
 - b. Adding a New field

- 2- **Measures**
 - a. General Public Measures
 - i. Introduced by the Executive
 - ii. Introduced by an AM
 - iii. Introduced by an Assembly Committee
 - b. Consolidation Measures
 - c. Repeals Measures
 - d. Revision Measures
 - e. Urgent Measures
 - f. Private Measures

- 3- **Subordinate legislation:**
 - a. Affirmative
 - i. General procedure
 - ii. Framework powers procedure
 - b. Super-affirmative
 - c. Negative
 - d. Laying
 - e. No process

¹¹ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 141

1. Orders in Council:

Under the new GOWA the Assembly will be able to make a new type of legislation that are Measures. In order to be able to exercise such powers the Assembly will have to be enabled to do so through a series of Orders in Council. This device has no precedent in Scottish devolution.

1.1 General Matters

1.1.1 GOWA:

The Act provides for some of the details of the procedure for formulating Orders in Council but not all. Under section 95, Orders in Council can add matters to the existing fields listed in Schedule 5 to the Act and, subject to section 95(2), they can add a new field to Schedule 5.

GOWA Section 95 Legislative competence: supplementary:

(5) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council-

(a) has been laid before, and approved by a resolution of, the Assembly, and
(b) having been so approved, has been laid before, and approved by a resolution of, each House of Parliament.

(6) As soon as is reasonably practicable after the draft of an Order in Council under this section has been approved by a resolution of the Assembly, **the First Minister must ensure that-**

(a) notice in writing of the resolution, and

(b) a copy of the draft,

is sent to the Secretary of State.

(7) **The Secretary of State must, before the end of the period of 60 days** beginning immediately after the day on which notice of the Assembly's resolution is received, either-

(a) lay the draft before each House of Parliament, or

(b) give notice in writing to the First Minister of the Secretary of State's refusal to do so and the reasons for that refusal.

(8) As soon as is reasonably practicable after **the First Minister receives notice of the Secretary of State's refusal to lay the draft before each House of Parliament and the reasons for that refusal-**

(a) the First Minister must lay a copy of the notice before the Assembly, and

(b) the Assembly must ensure that it is published.

(9) In reckoning the period of 60 days mentioned in subsection (7) no account is to be taken of any period during which Parliament is dissolved or prorogued or both Houses are adjourned for more than four days.

(10) The amendment of Schedule 5 by an Order in Council under this section does not affect-

(a) the validity of an Assembly Measure passed before the amendment comes into force, or

(b) the previous or continuing operation of such an Assembly Measure.

GOWA section 96: Scrutiny of proposed Orders in Council

The Counsel General or the Attorney General may refer to the Supreme Court for decision the question whether a matter which a proposed Order in Council under section 95 proposes to add to Part 1 of Schedule 5 relates to a field listed in that Part

The Act prescribes that a draft Order in Council has to be approved formally both by the Assembly and Parliament –section 95(5).

The procedure laid in section 95(6) is that after the Assembly has approved the draft, it is for the First Minister to notify the Secretary of State for Wales of the Assembly's approval. There is no requirement as to the procedure for the Assembly's approval.

This is followed by a 60 days period during which the Secretary of State for Wales either lays the draft before Parliament or refuses to do so.

It is for the First Minister to lay before the Assembly the notice of refusal by the Secretary of State and it is for the Assembly to publish the notice.

1.1.2 Letter from the Wales Office

Because GOWA does not provide for every detail of the procedure for formulating Orders in Council, the Parliamentary Under-Secretary of State in February set out in a letter to the Conservative Shadow Secretary of State for Wales the process to be followed prior to the submission of the draft Order to Parliament.

1.1.3 Civic Society through Tomorrow's Wales:

Organisations within Civic Society in Wales have shown a great interest in being involved in the procedure. They have particularly expressed the wish to be consulted at the pre-legislative stage where the contents of the draft are being considered prior to their submission to the Secretary of State. They consider that as they have experience in presenting their views about policy matters that they would have sufficient machinery available to comment on the contents of proposed Orders in Council. See Annex I (page 82).

Tomorrow's Wales Consultation, August-September 2006,

100% of the written evidence presented to Tomorrow's Wales suggests that civil society want to be involved with the legislative process for presenting Orders in Council. More specifically, 100% of the participants in the information gathering exercise, including participants at the briefing sessions, believe the opportunity for involvement in each stage ought to be provided in the Standing Orders regardless of whether involvement is subsequently pursued by individual organisations. Many organisations would like the consultation process to be entirely open, and not subject to the drawing up of consultation lists since there is some concern that these lists do not necessarily target the relevant stakeholders. Other organisations noted that from their understanding of the procedures for obtaining an Order in Council, they would require either additional resource to monitor and lobby the passage of Orders in Council at Westminster, or have to travel to London themselves to influence and ensure involvement. This is currently a resource most organisations do not have.

1.1.4 Scottish Standing Orders:

There is no equivalent procedure in the Scotland Act 1998 for the making of Orders in Council and therefore there is no precedent to be considered in their Standing Orders on which to base our proposals. **The Order in Council device is unique to the Government of Wales Act 2006.**

1.1.5 Official Reports:

Several reports deal with various aspects of the new and unique procedure of processing Orders in Council.

Assembly Legislation Committee Report, June 2006:

We recommend that when submitting a proposal for a draft Order in Council for pre-legislative scrutiny the Wales Office also provide a detailed explanatory note which should make clear the

scope of the proposal, the practical effects of the proposal on Wales, and the legislative authority that would pass to the National Assembly.(Paragraph 108)¹²

Committee on the Better Governance for Wales White Paper Report, September 2005

there will be a **need for proper consideration by the Assembly of any proposal for an Order in Council (and indeed, as we shall return to later, of any Measure made under that Order in Council)**. The importance of this scrutiny was emphasised to us by the Leaders of Plaid Cymru and of the Welsh Liberal Democrats. **As Professor Rawlings said "the more that Westminster can see that the Assembly as a whole has had an input, the more impressed Parliament is likely to be when it comes to judge the appropriateness question. This scrutiny will be a matter for Standing Orders. But we would envisage a norm of some form of scrutiny of the principle by Committee, involving the taking of evidence from interested parties, a report to Plenary and a vote in Plenary on an amendable motion"**¹³.

Committee on the Better Governance for Wales White Paper Report, September 2005

The White Paper says that the Secretary of State would be obliged to reply to the Assembly Government if he or she were unwilling to accede to a request for an Order in Council, but implies that the request for the Order in Council would come from the Assembly, not the Government. Several of our witnesses were concerned that the request should be one for the Assembly as a whole to make, and that **there should be mechanisms to allow Assembly Members other than Ministers or Committees, to initiate such requests**. The Leader of the Welsh Liberal Democrats believed that an "open model" where Members other than Ministers could table motions, and where proposals were subject to scrutiny in committee and amendment in Plenary, was desirable¹⁴.

Committee on the Better Governance for Wales White Paper Report, September 2005

We recommend that Standing Orders should make provision for Members to initiate proposals for Orders in Council.¹⁵

Committee on the Better Governance for Wales White Paper Report, September 2005

We recommend that Standing Orders should make provision for committees to initiate proposals for Orders in Council.¹⁶

Committee on the Better Governance for Wales White Paper Report, September 2005

it is possible to envisage a variety of different scenarios which will lead up to the request for an Order in Council. **In the majority of cases, the initial stage is likely to be private Government-to-Government dialogue [...], an agreed proposal will be presented to the Assembly. This will be for endorsement by Plenary, after some pre-legislative scrutiny, though this might have preceded or even initiated the Government-to-Government dialogue.** If endorsed, the formal request will then be transmitted to the Secretary of State, and the Order in Council laid before Parliament. There will be some scrutiny by parliamentary committee, before short debates in each House. Where **a proposal is a**

¹² National Assembly for Wales Legislation Committee, *The Technical Scrutiny of Legislation by the National Assembly from May 2007*, June 2006, paragraph 12.

¹³ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 83.

¹⁴ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 84.

¹⁵ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 85.

¹⁶ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 86

back bench initiative, it would be likely that there would be more extensive Assembly scrutiny before a final vote was taken in the Assembly on whether to endorse the proposal¹⁷.

Committee on the Better Governance for Wales White Paper Report, September 2005

The Clerk of the House of Commons was "sure that the **Select Committee on Welsh Affairs will want some kind of role** in considering which areas of legislative competence should be devolved to the Assembly", and he envisaged the possibility of **joint meetings between Assembly and Commons Committees in some circumstances**. Professor Rawlings believed that some form of pre-legislative scrutiny in Parliament was necessary "so that **parliamentarians have a genuine forum to discuss the question and suggest amendments**".¹⁸

Committee on the Better Governance for Wales White Paper Report, September 2005

On the other hand, Professor Patchett warned us that powers granted under Orders in Council could be "unduly restricted or coupled with limitations that power-retentive"¹⁹

1.1.6 Possible General Matters to be considered by the Committee:

The letter from the Parliamentary Under-Secretary of State at the Wales Office to Mrs Gillan the Conservative Shadow Secretary of State appears to exclude any involvement of the Assembly or Assembly Committees until the final draft Order is placed before the Assembly prior to its being sent via the First Minister to the Secretary of State for Wales (See box 9 on the flow chart below at paragraph 1.4 (page 18)).

The Standing Orders Committee may consider that this is a very late stage at which to involve the Assembly when what is being proposed are important powers which would enable the Assembly to make laws which can have provisions equivalent to Acts of Parliament.

The flow chart at 1.4 below suggests more involvement of the Assembly in the process of consideration of draft Orders.

The Act 2006 does not prevent the Assembly from being involved from the outset. The Assembly/Assembly Committees may wish to be involved in each stage of the development of the process leading to a draft order being finally placed by the Secretary of State for Wales before each House of Parliament under the affirmative resolution procedure in GOWA 2006.

The SOC may consider it necessary for the Assembly to be aware of and be able to comment from the outset about any proposal for a draft Order in Council, irrespective of who is the proposer.

¹⁷ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 87.

¹⁸ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 93.

¹⁹ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 73

1.2 Particular Matters

1.2.1 Initial Stage:

Neither the new GOWA nor the letter from the Under-Secretary of State give complete details of the Order in Council procedure. This gives rise to a number of considerations.

It will be seen below that Measures can be introduced by different bodies or persons in the Assembly even if the majority of such Orders would come from the Assembly Government. It might also be possible to allow outside bodies to propose Orders in Council.

The SOC may consider that the SOs should provide for the making of proposals for Orders in Council by Assembly Members or Committees .

The SOC may consider that the SOs should provide for the possibility of outside bodies making proposals to the Assembly for Orders in Council.

The new GOWA only requires the approval of the Assembly of draft Orders in Council. There are no details as to what form such an approval should take, or if a vote in plenary is sufficient.

The SOC may consider that the SOs should provide for initial consideration by an Assembly Committee with a duty to consult outside bodies whether a relevant subject based Committee or a Committee particularly appointed for this purpose- of all proposals from whatever source for Orders and the making of a report by the Committee to the Assembly and its consideration by plenary.

Proposed principle 6:

An AM or a Committee should be able to initiate proposals for an Order in Council.

1.2.2 Subsequent Stages:

If under box 3 of the flow chart at 1.4- the Secretary of State rejects the principle of the proposal:

The SOC may wish to consider whether as well as plenary's involvement, an Assembly Committee should consider the reasons for the rejection and after inviting outside representations suggest to the Assembly a modified draft with consideration by plenary of the Committee's report.

If under box 4 of the flow chart at 1.4 below, a proposal is forwarded by the Secretary of State for Wales to the Welsh Affairs Select Committee and an appropriate Committee of the House of Lords:

The SOC may wish to consider whether the Assembly should be able to appoint a Committee of Assembly Members to work jointly with the Parliamentary Committee if so requested and to report to the Assembly.

If either Parliamentary Committee makes suggestions for amendment or recommends rejection:

The SOC may wish to consider whether as well as plenary's involvement, the suggestions should be put to an Assembly Committee to consider the reasons for the suggestions, calling evidence and inviting outside representations and report to plenary with consideration by plenary of the report.

If the Assembly agrees to an amended proposal to meet the objections of the Parliamentary Committee:

The SOC may wish to consider whether provision should be made for sending the amended draft to the First Minister for submission to the Secretary of State for Wales

If both Parliamentary Committees support the draft Order without amendments,

The SOC may wish to consider whether provision should be made for consideration by the Assembly as to whether the draft should be sent to the First Minister for transmission to the Secretary of State for laying before Parliament.

The same procedure as above arises if the Secretary of State rejects the draft, or an amended draft with as well as plenary involvement, an Assembly Committee considering the written reasons for the rejection after inviting outside representations with a subsequent report to and debate by plenary.

If the Secretary of State for Wales submits the draft to each House of Parliament and the draft is rejected by either House:

The SOC may wish to consider whether there should be provision for a debate by an Assembly Committee and a report to the Assembly.

Even though a draft Order will usually be proposed by the Assembly Government, because it is the Assembly who will exercise the power to make Measures under the Order, the Assembly should be able to consider the extent of the draft Order from an early stage:

Proposed Principle 7:

The Assembly should be involved from the outset of the draft Order in Council procedure.

As the contents of such Order need to have as much support as possible to convince both the Secretary of State for Wales and Parliament of the merits for its making:

Proposed Principle 8:

An Assembly Committee should be created to consider draft Orders in Council and to take representations from AMs and outside bodies and report to Plenary.

So that the effects of an Order in Council can be widely considered and commented upon:

Proposed Principle 9:

The draft Orders in Council should be accompanied by a detailed explanatory note when first introduced into the Assembly.

1.3 One procedure or two?

GOWA Section 95 Legislative competence: supplementary:

- (1) Her Majesty may by Order in Council-
- (a) amend Part 1 of Schedule 5 to **add a matter** which relates to one or more of the fields listed in that Part, or to vary or remove any matter,
 - (b) amend that Part to **add a new field** or to vary or remove any field, or
 - (c) amend Part 2 or 3 of that Schedule.
- (2) An Order in Council under this section does not have effect to amend Part 1 of Schedule 5 by adding a field if, at the time when the amendment comes into force, no functions in the field are exercisable by the Welsh Ministers, the First Minister or the Counsel General
- (3) An Order in Council under this section may make such modifications of-
- (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
 - (b) any other instrument or document,
- as Her Majesty considers appropriate in connection with the provision made by the Order in Council
- (4) An Order in Council under this section may make provision having retrospective effect.

GOWA 2006 enables the Order in Council Procedure to make two different types of additions to Schedule 5 to the Act. The first type of Order enables matters to be added to the existing list of fields set out in the Schedule. The procedure for this has been considered above.

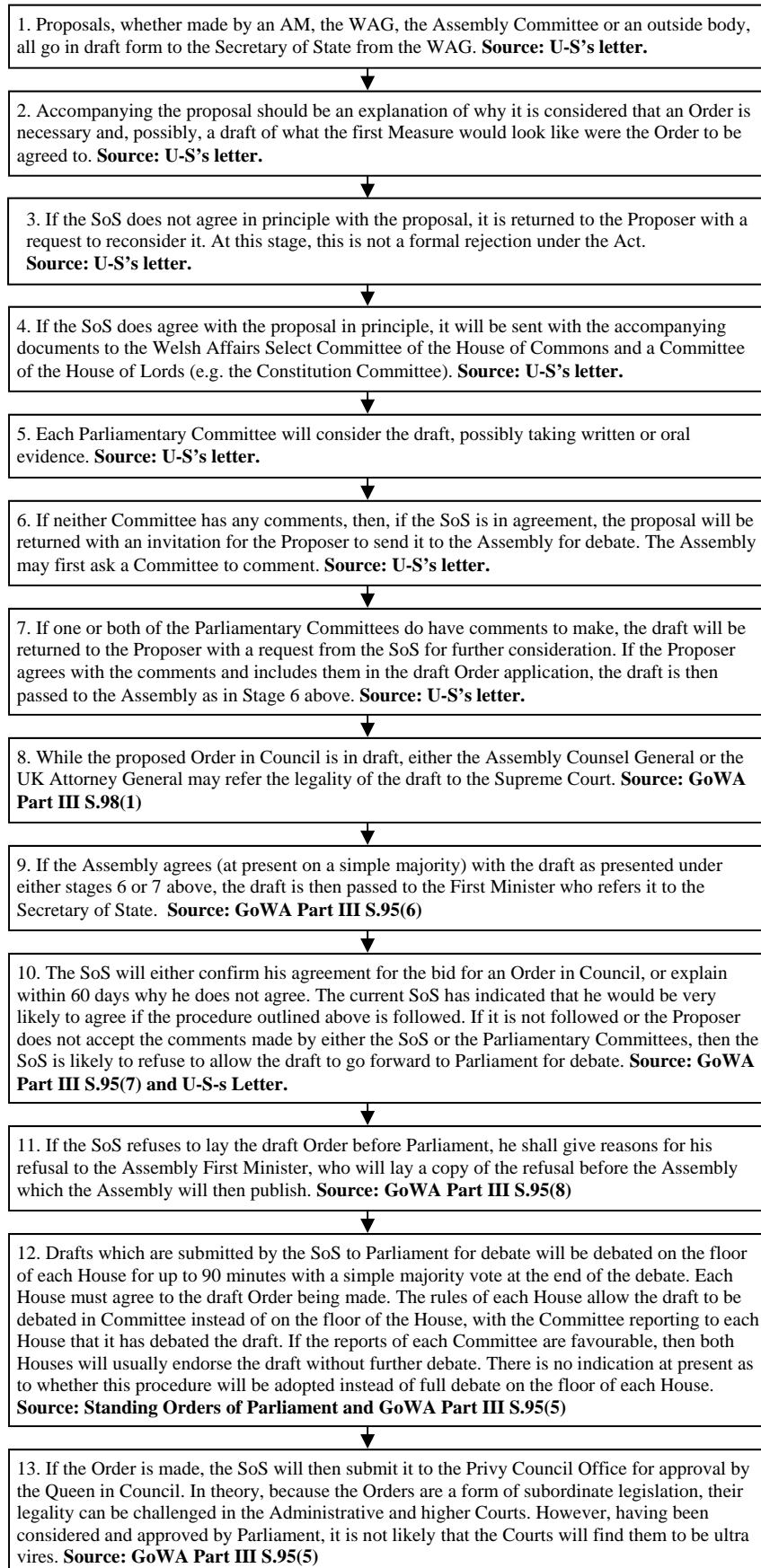
The second type of Order enables a new field to be added to the list, provided the Assembly Government has already been given functions in the new field by enabling legislation. The concept of adding a new field as contrasted with adding a matter coming within an existing field is different and may require separate consideration.

The SOC may wish to consider whether the same procedure should apply to both types of Orders.

The SOC may wish to consider whether different procedures should apply with, for example, the possible creation of an initial wide ranging inquiry by an Assembly Committee to take evidence as to the consequences of the Assembly being given powers to make Measures within an entirely new field.

1.4 Flow Chart: Possible Procedure for obtaining an Order in Council

The following procedural steps are derived from the Parliamentary Under-Secretary of State for Wales' letter to Mrs Gillan of February 2006 during Committee stage of the Bill in the Commons, except as otherwise shown.



2 Measures:

A Measure is very close to an Act of Parliament in its possible contents.

White Paper Better Governance for Wales Paragraph 3.16

“Orders in Council to give the Assembly **powers, in specified areas of policy, to modify – ie, amend, repeal or extend – the provisions of Acts of Parliament in their application to Wales, or to make new provision.**

This power of modification would apply to Acts currently in force and also to any Acts which Parliament might make in the future in the specified areas (unless a particular Act contained a specific prohibition precluding use of the Assembly’s modifying powers).”

A Measure is the new type of Legislation which the Assembly will be able to make under an Order in Council. The consideration and making of Measures will form a very substantial part of the legislative work of the Assembly post 2007.

There is considerable interest among Civic Society in being consulted at an early stage in the formulation of Measures.

Consultation Tomorrow’s Wales, August-September 2006,

100% of the written evidence presented to Tomorrow’s Wales suggests that civil society want to be involved with the legislative process for presenting Measure – public and private. More specifically, 100% of the participants in the information gathering exercise, including participants at the briefing sessions, believe the opportunity for involvement in each stage ought to be provided in the Standing Orders regardless of whether involvement is subsequently pursued by individual organisations. Many organisations would like for the consultation process to be entirely open, and not subject to the drawing up of consultation lists since there is some concern that these lists do not necessarily target the relevant stakeholders. 100% of participants were in favour of involvement at the pre-legislative stage. To quote one participant “*this seems to be the most important stage at which to input*”. In addition, 100% want to ensure the involvement of civil society in the legislative stage, as one recipient noted, “*If committees are to be structured on an ad-hoc basis, views of civic society in their respective fields would be valuable... civil society should be able to offer amendments through the formal consultative procedure. Any specific amendments proposed should be formally considered for adoption by the Committee*”.

2.1 Public and Private Measures:

There is a fundamental difference between a Public and a Private Measure which points to different procedures for each.

A public Measure would give power to a public statutory body exercisable over the whole or large areas of Wales.

A Private Measure would give powers either to a statutory public body or to a private body or person exercisable over a relatively small defined area of Wales. The Cardiff Bay Barrage Act is an example of this.

The SOC may wish to consider whether there are to be different procedures for processing public and private Measures.

GOWA makes the following provisions which apply to the making of all types of Measures. There are also provisions in the Act relating to legal and administrative proceedings relating to Measures which are analysed at paragraph 4.7 (page 82).

GOWA section 93 Assembly Measures

- (1) The Assembly may make laws, to be known as Measures of the National Assembly for Wales or Mesurau Cynulliad Cenedlaethol Cymru (referred to in this Act as "Assembly Measures")
- (2) A proposed Assembly Measure is enacted by being passed by the Assembly and approved by Her Majesty in Council
- (3) The validity of an Assembly Measure is not affected by any invalidity in the Assembly proceedings leading to its enactment
- (4) Every Assembly Measure is to be judicially noticed.
- (5) This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales

GOWA section 94 Legislative competence

- (1) Subject to the provisions of this Part, an Assembly Measure may make any provision that could be made by an Act of Parliament
- (2) An Assembly Measure is not law so far as any provision of the Assembly Measure is outside the Assembly's legislative competence.
- (3) A provision of an Assembly Measure is within the Assembly's legislative competence only if it falls within subsection (4) or (5).
- (4) A provision of an Assembly Measure falls within this subsection if
 - (a) it relates to one or more of the matters specified in Part 1 of Schedule 5, and
 - (b) it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.
- (5) A provision of an Assembly Measure falls within this subsection if-
 - (a) it provides for the enforcement of a provision (of that or any other Assembly Measure) which falls within subsection (4) or it is otherwise appropriate for making such a provision effective, or
 - (b) it is otherwise incidental to, or consequential on, such a provision.
- (6) But a provision which falls within subsection (4) or (5) is outside the Assembly's legislative competence if-
 - (a) it breaches any of the restrictions in Part 2 of Schedule 5, having regard to any exception in Part 3 of that Schedule from those restrictions,
 - (b) it extends otherwise than only to England and Wales, or
 - (c) it is incompatible with the Convention rights or with Community law.
- (7) For the purposes of this section the question whether a provision of an Assembly Measure relates to one or more of the matters specified in Part 1 of Schedule 5 is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

GOWA section 97 Introduction of proposed Assembly Measures

- (1) A proposed Assembly Measure may, subject to the standing orders, be introduced in the Assembly-
 - (a) by the First Minister, any Welsh Minister appointed under section 48, any Deputy Welsh Minister or the Counsel General, or
 - (b) by any other Assembly member.
- (2) The person in charge of a proposed Assembly Measure must, on or before the introduction of the proposed Assembly Measure, state that, in that person's view, its provisions would be within the Assembly's legislative competence.
- (3) The Presiding Officer must, on or before the introduction of a proposed Assembly Measure in the Assembly-
 - (a) decide whether or not, in the view of the Presiding Officer, the provisions of the proposed Assembly Measure would be within the Assembly's legislative competence, and
 - (b) state that decision.

- (4) A statement under this section must be made in both English and Welsh; but, subject to that, the form of the statement and the manner in which it is to be made are to be determined under the standing orders.
- (5) The standing orders-
- (a) may provide for a statement under this section to be published, and
 - (b) if they do so, must provide for it to be published in both English and Welsh.

GOWA section 98: Proceedings on proposed Assembly Measures

- (1) The standing orders must include provision-
- (a) for general debate on a proposed Assembly Measure with an opportunity for Assembly members to vote on its general principles,
 - (b) for the consideration of, and an opportunity for Assembly members to vote on, the details of a proposed Assembly Measure, and
 - (c) for a final stage at which a proposed Assembly Measure can be passed or rejected.
- (2) Subsection (1) does not prevent the standing orders making provision to enable the Assembly to expedite proceedings in relation to a particular proposed Assembly Measure.
- (3) The standing orders may make provision different from that required by subsection (1) for the procedure applicable to proposed Assembly Measures of any of the following kinds-
- (a) proposed Assembly Measures which restate the law,
 - (b) proposed Assembly Measures which repeal or revoke spent enactments, and
 - (c) private proposed Assembly Measures.
- (4) The standing orders must include provision for securing that the Assembly may only pass a proposed Assembly Measure containing provisions which would, if contained in a Bill for an Act of Parliament, require the consent of Her Majesty or the Duke of Cornwall if such consent has been signified in accordance with the standing orders.

GOWA section 102 Approval of proposed Assembly Measures

- (1) It is for the Clerk to submit proposed Assembly Measures for approval by Her Majesty in Council.
- (2) The Clerk may not submit a proposed Assembly Measure for approval by Her Majesty in Council at any time when-
- (a) the Attorney General or the Counsel General is entitled to make a reference in relation to the proposed Assembly Measure under section 99,
 - (b) such a reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or
 - (c) an order may be made in relation to the proposed Assembly Measure under section 101.
- (3) The Clerk may not submit a proposed Assembly Measure in its unamended form for approval by Her Majesty in Council if-
- (a) the Supreme Court has decided on a reference made in relation to the proposed Assembly Measure under section 99 that the proposed Assembly Measure or any provision of it would not be within the Assembly's legislative competence, or
 - (b) a reference made in relation to the proposed Assembly Measure under section 99 has been withdrawn following a request for withdrawal of the reference under section 100(2)(b).
- (4) Once an Assembly Measure has been approved by Her Majesty in Council, the Clerk of the Privy Council must send the Order in Council approving the Assembly Measure to the Clerk.
- (5) The date of the approval by Her Majesty in Council of an Assembly Measure is to be written on the Assembly Measure by the Clerk, and forms part of the Assembly Measure.
- (6) The Clerk must publish the Order in Council by which an Assembly Measure is approved.
- (7) The standing orders must include provision for the notification by the Clerk to the Assembly of the date of the approval of an Assembly Measure by Her Majesty in Council.
- (8) The validity of an Assembly Measure is not affected by any failure to comply with provision made by or by virtue of subsection (4), (5) or (7)

2.2 Public Measures:

2.2.1 General Matters

2.2.1.1 Types of Public Measures

A Public Measure will be the most common piece of legislation the Assembly is expected to produce under the interim framework proposed by the new GOWA.

Within the concept of public Measures there are different categories of Measures depending on their nature and the speed of procedures. They can be divided into three main categories:

- full procedure (Government Measures, AM or Committee Measures)
- speedier procedure (consolidation bills, statute repeals and amendment Measures)
- urgent procedure (in a day)

Within these categories there could be up to **7 different types of Measures** each subject to different procedures which we classified as follows:

- 1 general procedure	<ul style="list-style-type: none"> • Government Measure
- 6 different procedures for different Measures: (including 1 urgent procedure)	<ul style="list-style-type: none"> • Member • Committee • Consolidation Measure • Statute Law Repeals Measure • Statute Law Revision Measure • Urgent Measures

Each part of our evidence corresponds to each type as is developed below at paragraph 2.2.2.

The SOC may consider how many different procedures they think are necessary for Public Measures, classifying them either by their initiator or their contents.

2.2.1.2 GOWA:

The GOWA 2006 requires that the Standing Orders be made for each type of Measure.

GOWA section 98: Proceedings on proposed Assembly Measures

- (1) The standing orders must include provision-
- (a) for general debate on a proposed Assembly Measure with an opportunity for Assembly members to vote on its general principles,
 - (b) for the consideration of, and an opportunity for Assembly members to vote on, the details of a proposed Assembly Measure, and
 - (c) for a final stage at which a proposed Assembly Measure can be passed or rejected.
- (2) Subsection (1) does not prevent the standing orders making provision to enable the Assembly to expedite proceedings in relation to a particular proposed Assembly Measure.

(3) The standing orders may make provision different from that required by subsection (1) for the procedure applicable to proposed Assembly Measures of any of the following kinds-

- (a) proposed Assembly Measures which restate the law,
- (b) proposed Assembly Measures which repeal or revoke spent enactments, and
- (c) private proposed Assembly Measures.

2.2.1.3 Civic Society through Tomorrow's Wales:

Provided they are able to participate in the formulation of the policy and subsequent draft Measure, organisations in civic society are quite happy to see different procedures for different types of Measures and have expressed no particular views as to how many procedures should be available.

2.2.1.4 Scottish Standing Orders for Public Bills:

The Scottish SOs provide for 8 types of public Bills depending on the nature of the Bills which can be divided in 2 main categories according to their contents:

There are three types of general Bills which are identified according to who initiate them
General Bills:

- Government
- Member
- Committee

Specific Procedures for specific Bills:

- Consolidation Bill
- Statute Law Repeals Bill
- Statute Law Revision Bill
- Emergency Bill
- Budget Bill

For each type of Bill the Standing Orders provide for particular procedures. For general Bills there are different initial procedures (stages 0 and 1 below) according to their initiator (Government Minister, MSP or Committee).

	General Bill
Pre-introduction stage: Pre-drafting	Different
Pre-introduction stage: Pre-legislative stage	Different
INTRODUCTION STAGE	
Stage 1: second Reading- General principles	Common
Stage 2: Committee Stage- details	Common
Stage 3: Final Consideration stage	Common
Stage 4: Post consideration stage	Common

All the Scottish Public Bills share the same procedural stages for their passing through the Scottish Parliament at stages 1, 2, 3 and 4 above.

For general Measures which make new legislative provisions, the flow chart at paragraph 2.2.2.1.6 below (page 32) shows how if the Scottish procedures were adapted, the introduction stage of the draft legislation into the Assembly would differ according to whether the proposer of the legislation is the Government, Assembly Committee or an Assembly Member.

For the other 5 types of Bills which have specified contents there are completely different procedures from the general Bill procedure at each stage. See paragraphs 2.2.3 to 2.2.5 below.

2.2.1.5 Official Reports- The Legislation Process:

Committee on the Better Governance for Wales White Paper Report, September 2005

The Counsel General, as a Minister, will not be the appropriate source of legal advice to the Presiding Officer, committees, Members and the Legislature's staff. It will be very important, however, that sound legal advice is available to them. For example, we would expect the Presiding Officer to need to take advice on the legality of draft legislation, just as the Government does²⁰. This is what happens in Scotland.²¹

Committee on the Better Governance for Wales White Paper Report, September 2005

What we have said earlier about the rights of ordinary Assembly Members and of Committees to initiate proposals for Orders in Council also applies in the longer term to the initiation of Measures under Orders in Council²².

Committee on the Better Governance for Wales White Paper Report, September 2005

We asked our witnesses **how many Orders in Council or Measures** they anticipated each year. The First Minister thought that there might be **three to five**; the Leader of Plaid Cymru **three to six**; the Leader of the Welsh Liberal Democrats thought "**about seven**", based on Scottish experience; the Leader of the Welsh Conservatives spoke of **six or seven**; the Chair of the Business Committee thought up to 10. In a sense, discussion of the number of Orders in Council or Measures is of little point. [...], **an Assembly whose role is "primarily legislative" must expect a reasonable diet of substantial legislation²³**.. We return to the effects on the timetable of the Assembly later²⁴.

Legislation Committee, June 2006

6(ii) In addition to any policy scrutiny by the Assembly, there may well be a need for a more technical scrutiny, particularly of amendments (both Assembly Government and back-bench) and of non-government Measures, to consider in particular whether all necessary consequential amendments have been addressed.²⁵

²⁰ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 18.

²¹ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 18.

²² National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 98.

National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 113.²³

²⁴ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 100

²⁵ National Assembly for Wales Legislation Committee, *The Technical Scrutiny of Legislation by the National Assembly from May 2007, June 2006*, paragraph 6(ii).

2.2.1.6 Possible Involvement of Civic Society:

It is public Measures which are of most interest to the civic society in Wales. Annex 1 (page 82) shows that many bodies hope to be consulted upon and to make contributions to such Measures which will affect many people and institutions in Wales.

Until recently, the UK Parliament, unlike the Scottish Parliament made no general provision for contributions from outside bodies or persons to the consideration of Bills. A start is to be made this autumn in the UK Parliament, when 15 persons who are not members of either House of Parliament will consider a Bill before it is introduced into Parliament.

Equally there is no general convention for Government Departments to submit legislative proposals to outside bodies prior to the legislation being introduced into Parliament.

2.2.1.7 Possible application to Public Measure of the Scottish Parliament's Standing Orders Procedures on Public Bills:

As the flow chart below at paragraph 2.2.2.1.6 (page 32) shows, if general public Measures were to follow the Scottish SOs there would be no involvement with outside bodies after the introduction of the draft legislation into the Assembly. This is in contrast to its pre-introduction stage. However Members are involved in all the stages through the Scottish Parliament, but even though there may be considerable changes made to the draft as it proceeds through its legislative stages, there are no SO procedures for outside involvement.

The other flow chart below at paragraph 2.2.5.1.6 (page 43) also shows how, if the Scottish procedures were adapted, draft Measures would proceed through the Assembly if they only consolidate existing law; repeal existing law, make minor revisions to existing law, or are Urgent Measures. In these cases, civil society would not be involved.

2.2.1.8 Suggested General Principles for Consideration of the SOC

Because of the different effect of Public and Private Measures:

Proposed Principle 10:

There should be two types of separated procedures established by the SOs.

As the Assembly is uni-cameral, there will be no second chamber to objectively assess the contents of a draft Measure.

Proposed Principle 11:

SOs should therefore seek to set out a comprehensible system of checks and balances both before and after introduction in the Assembly of a draft.

Even though there is no requirement in GOWA 2006, it would considerably assist the clarity of the contents of a Measure if the SO processes allowed comment from civic society on the proposals at an early stage in the formulation of the legislation and possibly when being considered in detail by Committee after the draft Measure's second reading.

Proposed Principle 12:

There should be an early opportunity for civic society involvement/consideration of draft Measures as well as at a Committee stage.

The new GOWA permits the SOs to provide for different and therefore less structured stages for the processing of urgent Measures and those which only consolidate the law or repeal or revoke spent enactments.

Proposed Principle 13:

The SOs should provide for there to be different procedures for these types of Measures.

At all the stages of a draft Measure, whether pre or post introduction into the Assembly, the wording should be in both English and Welsh, even though GOWA only requires drafts as finally approved to be bilingual.

Proposed Principle 14:

At all the stages of a draft Measure, whether pre or post introduction into the Assembly, the wording should be in both English and Welsh.

It is compulsory under the new GOWA that any type of Measure be subject to reconsideration if rejected after being made by the Assembly.

Proposed Principle 15:

The SOs will need to provide procedure for their reconsideration if they are rejected by means of one of the statutory mechanisms referred to in section 98(6).

For clarity:

Proposed Principle 16:

SOs should provides for the reprinting of a draft Measure at each stage of its process through the Assembly.

Unless a Measure is considered to be urgent it should be subject to full consideration by a Committee at the Committee stage. It is only at this stage that elected Members can assess the full implications of the complete Measure. There should be no procedure whereby any Member on the Committee can prevent this full consideration by proposing a “guillotine” whereby the proceedings are shortened. Such procedures are used too frequently in UK Parliament to the detriment of proper democratic scrutiny of legislation following the devolution philosophy:

Proposed principle 17:

SOs should not provide for a guillotine motion.

2.2.2 General Types Of Public Measures and their Respective Processes:

2.2.2.1 Government Measure:

2.2.2.1.1 GOWA:

GOWA does not require SOs for a preliminary stage. It requires SOs for-second reading detailed consideration (Standing Committee), final consideration (third reading) Section 98(1). SOs are also required for a post making stage i.e. finding of illegality by Supreme Court Section 98(6), Secretary of State refusal to allow Measure to be submitted to Her Majesty in Council or withdraw of Measure by Assembly Section 102(b)

GOWA section 98: Proceedings on proposed Assembly Measures

- (1) The standing orders must include provision-
- (a) for general debate on a proposed Assembly Measure with an opportunity for Assembly members to vote on its general principles,
 - (b) for the consideration of, and an opportunity for Assembly members to vote on, the details of a proposed Assembly Measure, and
 - (c) for a final stage at which a proposed Assembly Measure can be passed or rejected.
- (2) Subsection (1) does not prevent the standing orders making provision to enable the Assembly to expedite proceedings in relation to a particular proposed Assembly Measure.
- (6) The standing orders must provide for an opportunity for the reconsideration of a proposed Assembly Measure after its passing if (and only if)-
- (a) the Supreme Court decides on a reference made in relation to the proposed Assembly Measure under section 99 that the proposed Assembly Measure or any provision of it would not be within the Assembly's legislative competence,
 - (b) a reference made in relation to the proposed Assembly Measure under section 99 is withdrawn following a request for withdrawal of the reference under section 100(2)(b), or
 - (c) an order is made in relation to the proposed Assembly Measure under section 101.
- (7) The standing orders must, in particular, ensure that any proposed Assembly Measure amended on reconsideration is subject to a final stage at which it can be approved or rejected.
- (8) References in subsections (4), (5) and (6) of this section and sections 93(2) and 95(10) to the passing of a proposed Assembly Measure are, in the case of a proposed Assembly Measure which has been amended on reconsideration, to be read as references to its approval.

GOWA section 102 Approval of proposed Assembly Measures

- (1) It is for the Clerk to submit proposed Assembly Measures for approval by Her Majesty in Council.
- (2) The Clerk may not submit a proposed Assembly Measure for approval by Her Majesty in Council at any time when-
- (a) the Attorney General or the Counsel General is entitled to make a reference in relation to the proposed Assembly Measure under section 99,
 - (b) such a reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or
 - (c) an order may be made in relation to the proposed Assembly Measure under section 101.
- (3) The Clerk may not submit a proposed Assembly Measure in its unamended form for approval by Her Majesty in Council if-
- (a) the Supreme Court has decided on a reference made in relation to the proposed Assembly Measure under section 99 that the proposed Assembly Measure or any provision of it would not be within the Assembly's legislative competence, or
 - (b) a reference made in relation to the proposed Assembly

Measure under section 99 has been withdrawn following a request for withdrawal of the reference under section 100(2)(b).

(4) Once an Assembly Measure has been approved by Her Majesty in Council, the Clerk of the Privy Council must send the Order in Council approving the Assembly Measure to the Clerk.

(5) The date of the approval by Her Majesty in Council of an Assembly Measure is to be written on the Assembly Measure by the Clerk, and forms part of the Assembly Measure.

(6) The Clerk must publish the Order in Council by which an Assembly Measure is approved.

(7) The standing orders must include provision for the notification by the Clerk to the Assembly of the date of the approval of an Assembly Measure by Her Majesty in Council.

(8) The validity of an Assembly Measure is not affected by any failure to comply with provision made by or by virtue of subsection (4), (5) or (7)

2.2.2.1.2 Civic Society through Tomorrow's Wales:

This is the main legal process in which civic society wishes to be involved. They wish to contribute to this procedure at every stage, and particularly in the early stages which they consider as the most important stages they can seek to influence. See Annex I (page 82).

Tomorrow's Wales Consultation, August-September 2006.

100% of the participants were of the opinion that the Assembly Standing Orders should ensure civil society involvement in the passage of Government Measures at all stages – in particular the pre-legislates stage and the amending stage. There was real concern that, considering the number of AMs available to scrutinise legislation, involvement of experts in their fields was the only way to ensure good, practical law for Wales.

2.2.2.1.3 Scottish Steering Group and Scottish Standing Orders:

The flow chart at paragraph 2.2.2.1.6 below (page 32) shows, how if the Scottish SOs were adopted the procedure might apply to Assembly Government Measures.

2.2.2.1.4 Possible Matters to be considered by the Committee:

The matters which the SOC may wish to consider are listed in the right hand column of the table below which follow the different stages in the left hand column, the draft could go through under the procedure:

<p>Preliminary Stage- Prior to introduction</p>	<p>Pre-legislative stage: the Assembly Government proposes the Measure:</p> <ul style="list-style-type: none"> • Is a pre-legislative stage required? • If yes, are one or two processes required- <ul style="list-style-type: none"> - policy consideration by an Assembly Committee ; and/or - preliminary consideration of draft Measure by an Assembly Committee? • Is a consultative process with civic society needed for either or both processes? • Can oral or written representations be made to the Committee?
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Introduction	Draft laid before the Assembly- Automatic stage
Stage 1	Second Reading: Plenary agrees on principles and goes to a Committee <ul style="list-style-type: none"> • Is a Committee required to prepare a Report for the Assembly prior to the Assembly's consideration? • Is a particular majority required to approve Measure in principle?
Stage 2	Committee Stage <ul style="list-style-type: none"> • Which sort of Committee does it go to- a specific Standing Committee or Subject Committee? • Should it also go to a Legislation Committee? • Should civic Society be able to put amendments? • <u>Should Civic Society be able to be non-voting members of the Committee?</u> • Can any member put amendments? • Should there be outside representations? If yes, compulsory or discretionary?
Stage 3	Third Reading: Assembly considers report of Committee , and decides whether to pass the Measure in Plenary: <ul style="list-style-type: none"> • Can outside bodies make representations about the proposed amendments? • Is a particular majority required to finally approve the Measure? • Can amendments be made by Members at this stage?
Stage 4	Reconsideration Stage: Supreme Court considers Measure to be illegal, Secretary of State prohibits the Measure, or Assembly withdraws the Measure. Assembly decides possible amendments. <ul style="list-style-type: none"> • How many stages are involved in the reconsideration- three stages to which Measure has already been subject (goes back to second reading) or only one final stage? • Is there a preliminary stage with an Assembly Committee considering and reporting to the Assembly as to whether Measure should be amended? • How can amendments be made to the rejected Measure? • Any involvement of Civic Society in this?

2.2.2.1.5 Possible Principles

As the Assembly and the Assembly Government are legally separate there should be independent consideration by the Assembly of Government proposed Measures. This will be assisted by a preliminary pre-legislative scrutiny.

Proposed Principle 18:

There should be a pre-legislative scrutiny by Assembly of Assembly Government Measures.

Because the Assembly is independent of the Assembly Government and to ensure effective scrutiny:

Proposed Principle 19:

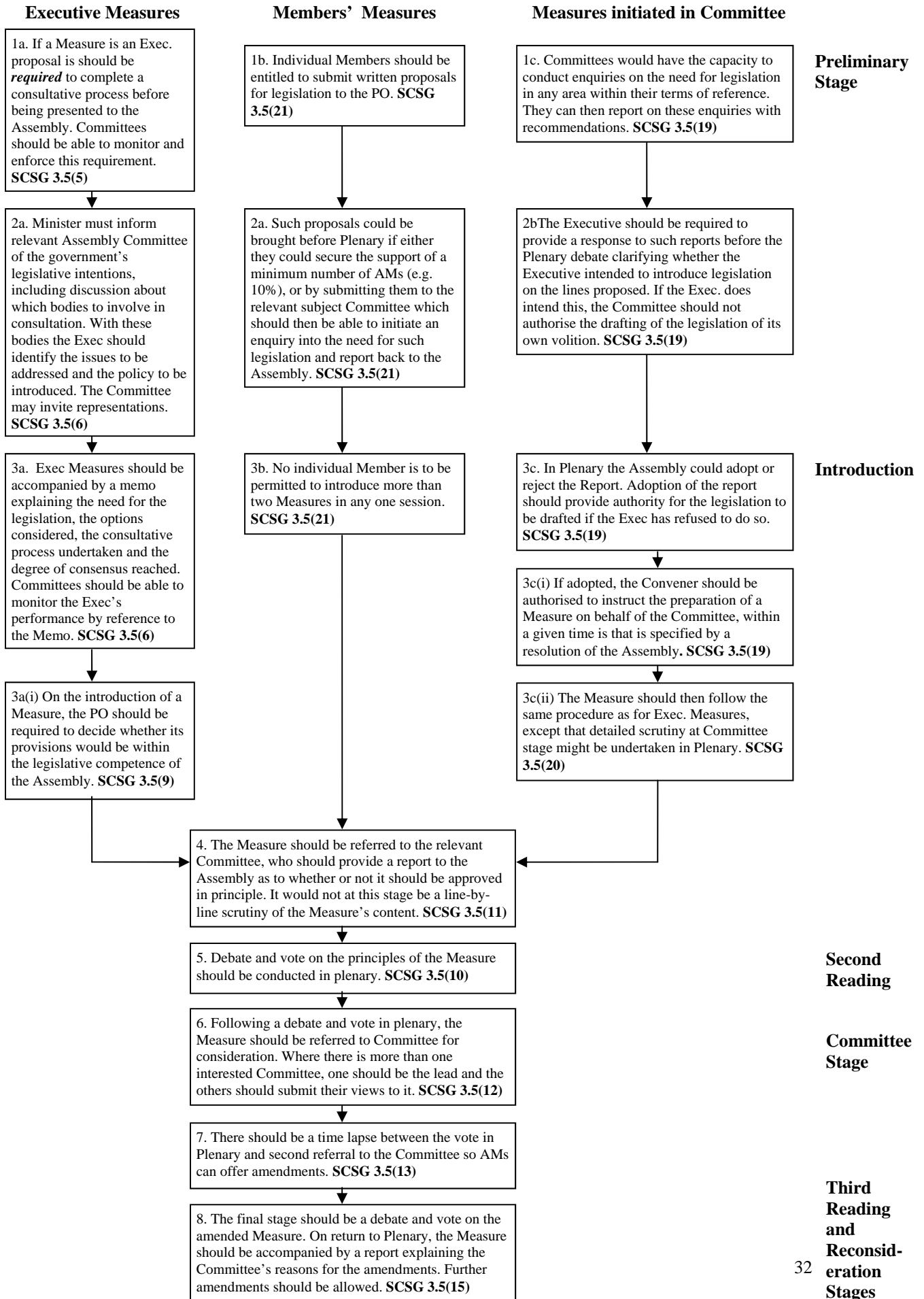
Every possible assistance should be given for amendment to be made to Government Measures.

Because of the limited resources of the Assembly:

Proposed Principle 20:

There should only be a one step reconsideration stage at stage 4.

2.2.2.1.6 Flow Chart



2.2.3 Assembly Member's Measure

As regards a Measure proposed by an Assembly Member, if the Scottish SOs precedent is adapted the changes to the procedures for a Government measure only arise at the preliminary stages before the introduction of the Measure into the Assembly. Both Assembly Member and Committee Measures would share the post introduction stages 1 onwards with the Government Measure table- See paragraph 2.2.2.1.4 (page 23).

2.2.3.1 GOWA:

The same GOWA provisions as for Government and Committee Measures apply. GOWA does not require SOs for a preliminary stage. It requires SOs for-second reading, detailed consideration, final consideration (third reading)-Section 98(1). SOs are also required for a reconsideration stage post making stage i.e. finding of illegality by Supreme Court Section 98(6), Secretary of State refusal to allow Measure to be submitted to Her Majesty in Council or withdrawal of Measure by Assembly under section 102(b).

2.2.3.2 Civic Society through Tomorrow's Wales:

The civic society organisations consulted show support for such procedure and they would especially like to be involved in the preliminary stages. See Annex I (page 82).

Tomorrow's Wales Consultation, August-September 2006,

The Assembly Member Measure mechanism was highlighted as a potentially efficient way of proposing legislation by some representatives for three reasons. Working in partnership with AMs in this way would provide their proposals with gravitas. Secondly, some organisations - if not most - believe they have established and maintained good relationships with certain Assembly Members who have developed significant expertise in the relevant field. Proposing legislation in this way then would allow them to maintain good working relationships, and produce good well informed law eg some organisations referred to AMs as "Champions" of their cause. Thirdly, working in partnership, not exclusively on introducing legislation, was welcomed if you consider the resource implication of "going it alone" as one participant noted.

2.2.3.3 Scottish Standing Orders:

The flow Chart at paragraph 2.2.2.1.6 (above at page 32) shows how, if the Scottish SOs were adapted, the procedure might apply to Assembly Members' procedures.

2.2.3.4 Possible Matters to be considered by the SOC:

The matters which the SOC may wish to consider are listed in the right hand column of the table below which follows the different stages the draft could go through under the procedure.

Pre-drafting Stage:	<p>Assembly Member submits general proposal to a Committee. Committee reports to the Assembly in Plenary. The Committee not only considers the reasons but also the principles of the proposed Measure.</p> <ul style="list-style-type: none"> • Is a pre-legislative stage with consultation needed before any preliminary stage? • If yes, who is involved in the consultation and who can make representations in writing or orally? • If yes, who enforces this requirement? • Should there be a minimum number of AMs proposing the Measure or just one?
Preliminary stage Prior to Introduction	<p>Committee considers contents of draft Measure</p> <ul style="list-style-type: none"> • Is a pre-legislative scrutiny Committee needed? • Should representation be possible to the Committee? • Should the Committee consult? • Should the Committee (if Committee there is) scrutinise on merits?
Introduction	Draft laid before Assembly – Automatic stage
Stage 1	Same
Stage 2	Same
Stage 3	Same
Possible Stage 4	Same

2.2.3.5 Possible Principles

To reduce the pressure on the Assembly:

Proposed Principle 21:

Only a prescribed number of AMs should be able to present proposals for a draft Measure.

Because of the special nature of drafting Measures, which are equivalents to an Act of Parliament an Assembly Member should not present a draft Measure, the Measure is drafted by Assembly Officials specially skilled.

Proposed Principle 22:

All such Measures should be drafted only by Assembly Officials.

This points to necessity for a Committee to make a preliminary assessment of the policy proposed by the Assembly Member and to report to plenary on feasibility of a Measure.

Proposed Principle 23:

A specific Committee should be established for pre-legislative scrutiny of policy behind AM proposals and to report on feasibility of such Measure.

The Government must be involved in the pre-introduction consideration of a proposed AMs Measure because it may be considering such a Measure itself or it may consider that there is no finances available to carry out the provisions.

Proposed Principle 24:

There should be an involvement of the Assembly Government who should be able to make representations.

Because of GOWA when introduced to the Assembly draft Measure should be subject to the same stages as a Government Measure.

Proposed Principle 25:

Same stages 1 to 4 as Government Measure.

Again, to ensure effective scrutiny by the Assembly as a whole of the proposal:

Proposed Principle 26:

Amendments should be possible in the same way as for Government Measures, there is no distinction between the two.

2.2.4 Committee Measure

If the Scottish SOs precedent is adapted for Measures proposed by Assembly Committees, the changes to the procedures for a Government measure only arise at the preliminary stages before the introduction of the Measure into the Assembly. Committee Measures would share stages 1 onwards with the Government Measure table. See paragraph 2.2.2.1.4 (page 23).

2.2.4.1 GOWA:

The statutory provisions are the same as for Government Measures and Assembly Member Measures.

GOWA does not require SOs for a preliminary stage. It requires SOs for-second reading, detailed consideration, final consideration (third reading)-Section 98(1). SOs are also required for a reconsideration stage i.e. finding of illegality by Supreme Court Section 98(6), Secretary of State refusal to allow Measure to be submitted to Her Majesty in Council or withdraw of Measure by Assembly Section 102(b).

2.2.4.2 Civic Society through Tomorrow's Wales:

The organisations consulted show support for such procedures and want to be involved in the preliminary stages.

2.2.4.3 Scottish Standing Orders:

The flow Chart at paragraph 2.2.2.1.6 (above at page 32) shows how, if the Scottish SOs were adapted, the procedure might apply to Assembly Committee procedures.

2.2.4.4 Possible Matters to be considered by the Committee:

The matters which the SOC may wish to consider are listed in the right hand column of the table below which follows the different stages set out in the left hand column the draft could go through under the procedure.

Pre-drafting Stage	Inquiry by Committee as to need for legislation <ul style="list-style-type: none"> • Should a Committee be able to conduct an inquiry and report to plenary on the need for particular legislation? • If so, what sort of Committee – Subject Committee or specifically created Committee?
Pre-report consultation: Stage:	Committee considers contents of draft Measure and reports to Assembly <ul style="list-style-type: none"> • Is a pre-legislative scrutiny Committee needed? • Should representation be possible to the Committee? • Should the Committee consult? • Should the Committee (if Committee there is) scrutinise on merits?

Stage 1	Same
Stage 2	Same
Stage 3	Same
Possible Stage 4	Same

2.2.4.5 Possible Principles

Because a Committee may be aware as parts of its general work of the need for a particular piece of legislation:

Proposed Principle 27:

A Committee should be able to introduce a Measure.

Because of the special nature of drafting Measures, which are equivalents to an Act of Parliament, a Committee does not present a draft Measure, the Measure is drafted by skilled Assembly Officials:

Proposed Principle 28:

All such Measures should be drafted only by Assembly Officials.

In order to have an objective preliminary assessment of the contents of a draft Measure a different Committee to the Committee which made the original proposal may be required to assess the draft:

Proposed Principle 29:

Another Committee should be established to look at the draft Measure.

The Government must be involved in the pre-introduction consideration of a proposed Committee Measure because it may be considering such a Measure itself or it may consider that there is no finances available to carry out the provisions.

Proposed Principle 30:

There should be an involvement of the Assembly Government who should be able to make representations.

Because of the newGOWA, when introduced to the Committee draft Measure should be subject to the same stages as a Government Measure.

Proposed Principle 31:

Same stages 1 to 4 as Government Measure.

Again, to ensure effective scrutiny by the Assembly as a whole of the proposal:

Proposed Principle 32:

Amendments in Committee and in plenary should be possible in the same way as for Government Measures, there is no distinction between the two.

2.2.5 Specific Measures defined by their contents:

The Scottish Parliament SOs identify five specific types of Bills. Each type has different procedures. Each is more condensed than the procedures for the three types of general Bills.

In particular there are no preliminary stages prior to the introduction of the Bill into Parliament and the Committee stage plays a different role.

The five types comprise:

- consolidation legislation;
- legislation which repeals enactments;
- legislation revising enactments;
- urgent legislation;
- Budget legislation.

Sections 98(2) and (3) of the new GOWA would allow different procedures to apply to Measures which restate the law, which repeal or revoke spent enactments and which need to be fast tracked.

Shortened procedures for the making of the first three types of specific Measures can be justified because such legislation is not implementing new policy. It is either restating, with or without ancillary amendments, the existing law or repealing laws. The three types of General Measures are implementing new provisions to reflect new policies. Urgent legislation has its own objective for speedy implementation.

2.2.5.1 Consolidation Measure

A Consolidation Measure would restate the existing law by repealing a number of existing enactments covering an area of law and setting out the law in that particular area in one piece of legislation. Examples have been the Housing Act 1984 and the Education Act 1996. While some ancillary amendments would be made in Consolidation Measures to existing enactments, for example where there is duplication of legislation, such Measures do not set out new legal provisions, they restate the existing law.

Consolidation often arises as a result of a report from the Law Commission.

2.2.5.1.1 GOWA

The new GOWA anticipates the making of “proposed Assembly Measures which restate the law”:

SOs are required to be made for this type of legislation but there are no provisions for the compulsory three stage procedures of General Measures. However it is necessary for there to be a post-making- final stage if the Measure has to be reconsidered either because of legal proceedings or if the Secretary of State for Wales prohibits the Order from receiving approval by Her Majesty in Council.

GOWA section 98: Proceedings on proposed Assembly Measures

- (3) The standing orders may make provision different from that required by subsection (1) for the procedure applicable to proposed Assembly Measures of any of the following kinds-
- (a) **proposed Assembly Measures which restate the law,**
 - (b) proposed Assembly Measures which repeal or revoke spent enactments, and
 - (c) private proposed Assembly Measures.
- (6) The standing orders must provide for an opportunity for the reconsideration of a proposed Assembly Measure after its passing if (and only if)-
- (a) the Supreme Court decides on a reference made in relation to the proposed Assembly Measure under section 99 that the proposed Assembly Measure or any provision of it would not be within the Assembly's legislative competence,
 - (b) a reference made in relation to the proposed Assembly Measure under section 99 is withdrawn following a request for withdrawal of the reference under section 100(2)(b), or
 - (c) an order is made in relation to the proposed Assembly Measure under section 101.
- (7) The standing orders must, in particular, ensure that any proposed Assembly Measure amended on reconsideration is subject to a final stage at which it can be approved or rejected.
- (8) References in subsections (4), (5) and (6) of this section and sections 93(2) and 95(10) to the passing of a proposed Assembly Measure are, in the case of a proposed Assembly Measure which has been amended on reconsideration, to be read as references to its approval.

2.2.5.1.2 Civic Society through Tomorrow's Wales:

Civic society's particular interest is to be involved in the considerations of General Measures. Consolidation of the existing law is not felt to be something to which they could usefully contribute, though they would wish to inform.

2.2.5.1.3 Scottish Standing Orders:

The flow Chart at paragraph 2.2.5.1.6 below (page 40) shows that there are different procedures for Scottish Consolidation Bills to those relating to general Bills. The flow chart shows their possible adaptation for Assembly SOs for Consolidation Measures.

2.2.5.1.4 General Matters for consideration by SOC

The SOC might wish to consider, following the Scottish precedent whether the Assembly SOs should have different processes for specific Measures defined by their contents because they are technical and do not reflect new policies.

If there are to be different procedures for Consolidation Measures:

The SOC might wish to consider whether there should be:

- initial consultation with civic society
- a preliminary consideration stage on submitting the draft Measure to the Assembly (stage 3 in the flow chart below at page 40).

The SOC might also wish to consider whether there should be limited legislative stages – boxes 6 and 7 in the flow chart below at page 40- or if there should be no debate in plenary.

Because of the new GOWA provisions at sections 98(6) and (7), a Consolidation Measure, like all Assembly Measures, must contain the procedure of a post making consideration stage of the Measure (Stage 4 in the General Measures procedures) if it is successfully questioned in legal proceedings or if the Secretary of State makes an Order prohibiting its being sent to the Privy Council for consideration.

2.2.5.1.5 Proposed Principles

Because consolidation measures do not reflect new policies and could be considered as technical refinements of existing legal provisions:

Proposed Principle 33:

Consolidation Measures should follow a more restrictive procedure than General Measures which has less stages in its the consideration and making.

To save plenary's time:

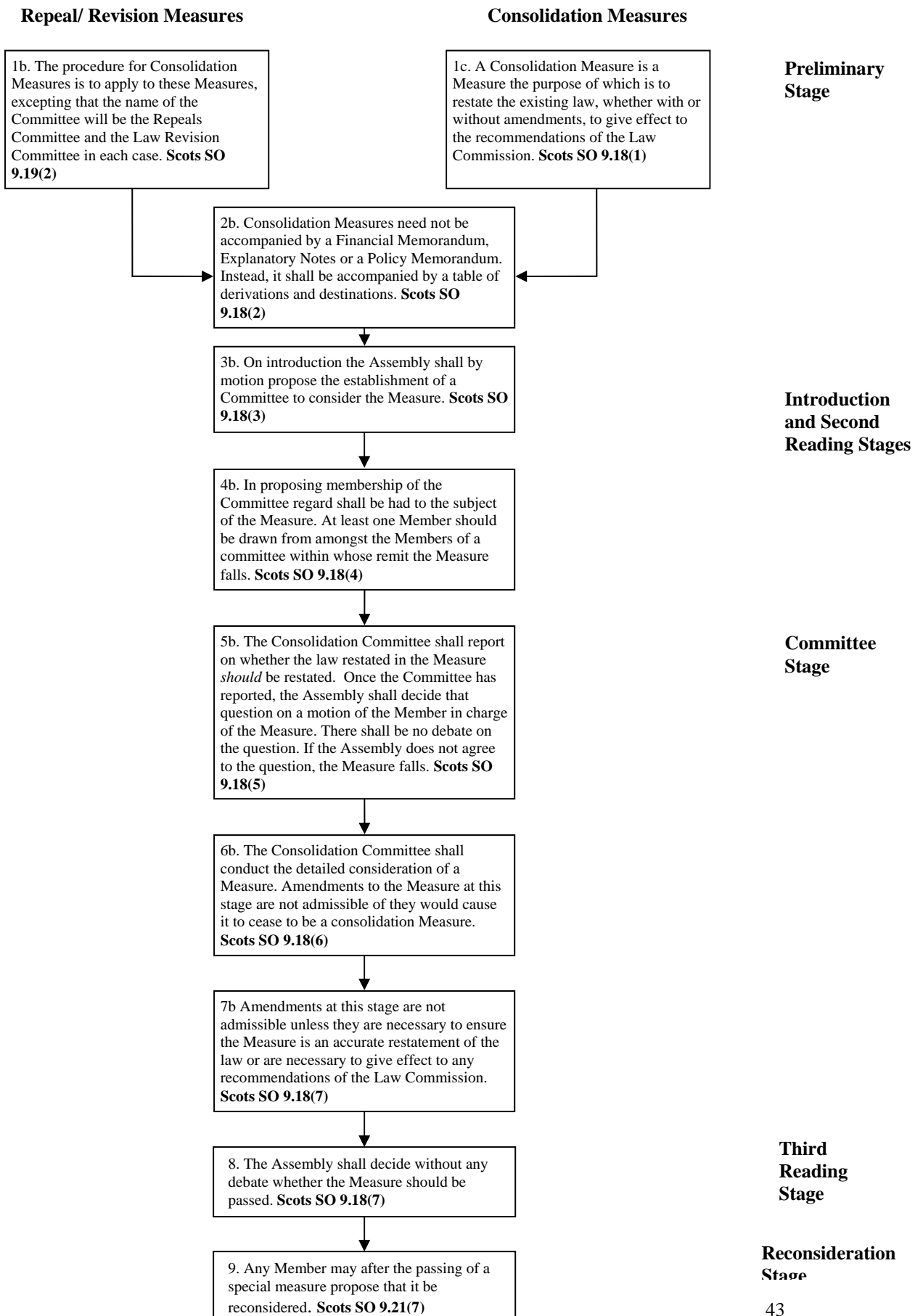
Proposed Principle 34:

Detailed consideration of the Measure should take place only in Committee and plenary should decide without debate whether the Measure should be passed.

Proposed Principle 35:

Amendments to the Measure in plenary should be allowed only in very defined circumstances relating to the accuracy of the law.

2.2.5.1.6 Flow Chart: Proposed Procedures for special Measures:



2.2.6 Statute Law Repeals Measure

A Repeals Measure would repeal existing enactments which are considered to be of no further usefulness –“spent” enactments. A repealing Act of Parliament usually arises from the recommendations of the Law Commission that certain Acts or parts of Act have no longer any operational usefulness. Their repeal helps to achieve less complexity in the listing of statute law.

2.2.6.1 GOWA

The new GOWA anticipates the making of Assembly Measures which repeal existing law – “proposed Assembly Measures which repeal or revoke spent enactments”- section 98(3).

GOWA section 98: Proceedings on proposed Assembly Measures

- (3) The standing orders may make provision different from that required by subsection (1) for the procedure applicable to proposed Assembly Measures of any of the following kinds-
- (a) proposed Assembly Measures which restate the law,
 - (b) **proposed Assembly Measures which repeal or revoke spent enactments**, and
 - (c) private proposed Assembly Measures.

2.2.6.2 General Comment:

The provisions and our comments are the same as those formulated for Consolidation Measures.

Sections 98(6) and (7) require there to be a post making reconsideration stage in the circumstances specified above for Consolidation Measures (stage 4 of General Measures procedures).

2.2.6.3 Flow Chart:

The proposed procedure for Statute Law Repeals Measures is set out above at paragraph 2.2.5.1.6 (at page 43).

2.2.7 Statute Law Revision Measure:

Consolidation Measures restate the existing law and a Repeal Measure repeals spent enactments without putting any provisions in the place of the repealed enactments. A revision Measure would “revise statute law by repealing enactments which are no longer in force or have become unnecessary and re-enacting provisions of Acts which are otherwise spent” (definition in the Scottish SOs).

Such Measures are a half way house between Consolidation Measures and Repeal Measures.

2.2.7.1 GOWA:

The new GOWA anticipates the making of Assembly Measures which both repeal and revise (but make no new provision) in the place of enactments which have otherwise ceased to apply, because, for example they refer to bodies which are no longer in existence.

GOWA section 98: Proceedings on proposed Assembly Measures

(3) The standing orders may make provision different from that required by subsection (1) for the procedure applicable to proposed Assembly Measures of any of the following kinds-

- (a) proposed Assembly Measures which restate the law,
- (b) proposed Assembly Measures which repeal or revoke spent enactments, and
- (c) private proposed Assembly Measures.

Section 98(3)(a) in referring to Measures which restate the law does not prevent a restatement making such modifications to the existing law as are not prevented by Part 2 of Schedule 5-

GOWA Schedule 5, paragraph 9- Exception from Part 2

Part 2 does not prevent a provision of an Assembly Measure-

- (a) restating the law (or restating it with such modifications as are not prevented by that Part), or
- (b) repealing or revoking any spent enactment,

or conferring power by subordinate legislation to do so

2.2.7.2 Generality:

The provisions and our comments are the same as those formulated for Consolidation Measures at paragraphs 2.2.5.1 to 5.

Sections 98(6) and (7) require there to be a post-making reconsideration stage in the circumstances specified above for Consolidation Measures (stage 4 of the General Measures procedures).

2.2.7.3 Flow Chart:

The proposed procedure for Statute Law Revision Measures is set out above with at paragraph 2.2.5.1.6 (page 43).

2.2.8 Urgent Measures

There will be occasions when it will be necessary to “expedite proceedings in relation to a particular proposed Assembly Measure” – section 98(2) of the new GOWA.

Such expedition may mean that the usual procedural stages for a General Measure should not be followed.

2.2.8.1 GOWA:

The new GOWA allows for such an expedited procedure- different procedure provisions can be made in such circumstances- section 98(2).

GOWA section 98: Proceedings on proposed Assembly Measures

(2) Subsection (1) does not prevent the standing orders making provision to enable the Assembly to expedite proceedings in relation to a particular proposed Assembly Measure.

However sections (98(6) and (7) require that there to be a post-making reconsideration stage in the circumstances specified above for Consolidation Measures.

2.2.8.2 Civic Society through Tomorrow’s Wales:

No particular wish has been demonstrated by Civic Society to be involved in the consideration of an Urgent Measure, provided that it is possible; the proposed Measure is made publicly known.

Bodies would not be prevented from approaching individual Assembly Members if they had concerns about the provisions.

2.2.8.3 Scottish Standing Orders:

The flow Chart at paragraph 2.2.8.6 (page 48) shows that if the Scottish SOs were adapted in relation to urgent Measures, the three stages of consideration of such draft Measure would be taken by plenary alone.

2.2.8.4 Matters for consideration by the SOC:

As speedier procedures are necessary:

The SOC may wish to consider following the Scottish precedent, whether at all stages of an urgent Measure should be taken in plenary alone.

The SOC may wish to consider whether the three stages applicable to General Measures should also apply to urgent Measures.

The SOC may wish to consider whether all stages should be taken on the same day, if plenary agrees.

The SOC may wish to consider whether amendments should be permitted to such Measures. If so at which stage.

Because of the new GOWA provisions sections 98(6) and (7), an Urgent Measure like all Assembly Measures must contain a post-making reconsideration stage in the circumstances specified above for Consolidation Measures procedure of a stage post the making of the procedure (stage 4 of the General Measures procedures).

2.2.8.5 Proposed Principles:

Given the nature of an Urgent Measure:

Proposed Principle 36:

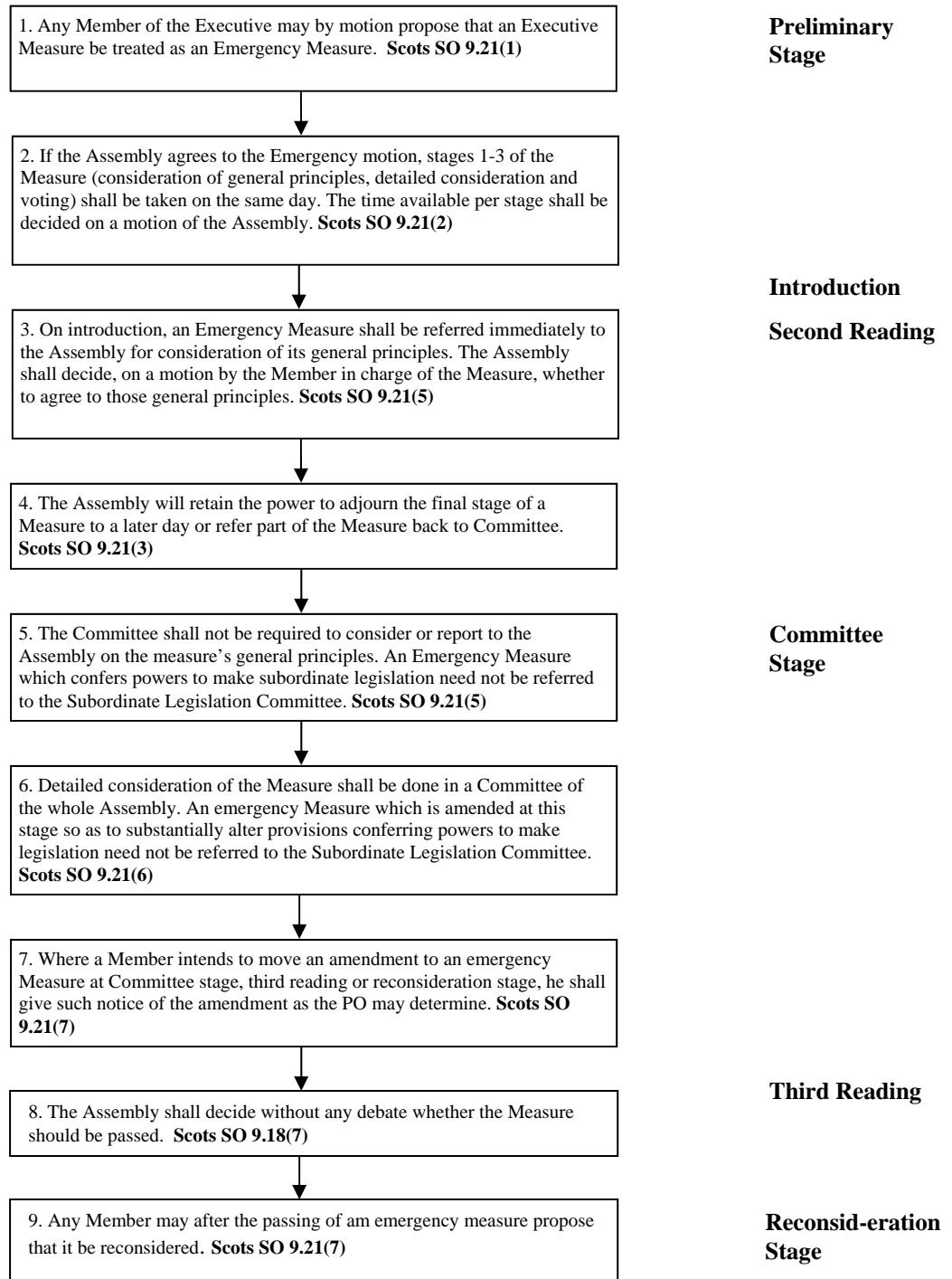
There should be the three stages of consideration of a General measure all taking place, if necessary in one day.

Although an Urgent Measure should be taken through the Assembly as soon as possible, Assembly Members should not be prevented from exercising their normal democratic entitlements of moving amendments:

Proposed Principle 37:

Amendments to draft Urgent Measures should be permitted at the final stage (third reading) of the draft Measure.

2.2.8.6 Flow Chart: Proposed Urgent Measure Procedure:



2.2.9 Budget Motions:

The Scottish Parliament's procedure for passing the annual budget involves legislation in the form of a Bill. The Scottish Parliament's SOs provide for legislation to be made for the annual budget of the Scottish Executive. If this was adapted for Wales, there should be special Measures for budget matters.

However there is no such provision in the new GOWA for the making by the Assembly of the annual and supplementary budget to be in the form of a Measure. Instead the procedure is governed by motions which could follow the current procedures for placing motions before the Assembly at present.

2.2.9.1 GOWA

GOWA section 125 Annual Budget motions

- (1) For each financial year there is to be moved in the Assembly a motion (referred to in this Act as an "annual Budget motion") for the purpose of authorising-
- (a) the amount of resources which may be used in the financial year by the relevant persons, or pursuant to a relevant enactment, for the services and purposes specified in the motion,
 - (b) the amount of resources accruing to the relevant persons in the financial year which may be retained by them to be used for the services and purposes so specified (rather than being paid into the Welsh Consolidated Fund), and
 - (c) the amount which may be paid out of the Welsh Consolidated Fund in the financial year to the relevant persons, or for use pursuant to a relevant enactment, for the services and purposes so specified.
- (2) An annual Budget motion may only be moved by the First Minister or a Welsh Minister appointed under section 48.
- (3) An annual Budget motion must be accompanied by a written statement made by the Welsh Ministers showing-
- (a) the total amount of the payments which they estimate will be made for the financial year under section 118(1),
 - (b) the total amount of the payments which they estimate will be made to the Welsh Ministers, the First Minister or the Counsel General for the financial year by Ministers of the Crown and government departments, and
 - (c) the total amount of the payments which they estimate will be made to the Welsh Ministers, the First Minister or the Counsel General for the financial year otherwise than by a Minister of the Crown or government department.
- (4) In this Act a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

GOWA section 126 Supplementary Budget motions

- (1) For any financial year there may be moved in the Assembly one or more motions (referred to in this Act as a "supplementary Budget motion") for either or both of the purposes specified in subsections (2) and (3).
- (2) A supplementary Budget motion may approve a variation in any one or more of the following-
- (a) the amount of resources authorised to be used in the financial year by a relevant person, or pursuant to a relevant enactment, for any service or purpose,
 - (b) the amount of resources accruing to a relevant person in the financial year and authorised to be retained by that person to be used for any service or purpose, and
 - (c) the amount authorised to be paid out of the Welsh Consolidated Fund in the financial year to a relevant person, or for use pursuant to a relevant enactment, for any service or purpose.
- (3) A supplementary Budget motion may authorise any one or more of the following-
- (a) the amount of resources which may be used in the financial year by a relevant person, or pursuant to a relevant enactment, for a service or purpose specified in the motion,
 - (b) the amount of resources accruing to a relevant person in the financial year which may be retained by that person to be used for a service or purpose so specified, and
 - (c) the amount which may be paid out of the Welsh Consolidated Fund in the financial year to a relevant person, or for use pursuant to a relevant enactment, for a service or purpose so specified.
- (4) A supplementary Budget motion for any financial year may be expressed to have effect from a time before it is made; but that time may not be earlier than-
- (a) the date on which the last supplementary Budget motion for the financial year was passed, or
 - (b) (if none has) the date on which the annual Budget motion for the financial year was passed.

(5) A supplementary Budget motion may only be moved by the First Minister or a Welsh Minister appointed under section 48.

GOWA section 127 Appropriation without Budget resolution

(1) If a Budget resolution for a financial year is not passed before the beginning of the financial year, the following are deemed to have been authorised by a Budget resolution of the Assembly for that year-

- (a) the use in the year for any service or purpose of the relevant percentage of the amount of the resources authorised to be used in the preceding financial year for the service or purpose,
- (b) the retention in the year for use for any service or purpose of the relevant percentage of the amount of the resources authorised to be retained in the previous financial year for use for the service or purpose, and
- (c) the payment out of the Welsh Consolidated Fund in the year for any service or purpose of the relevant percentage of the amount authorised to be paid out of the Fund in the previous financial year for the service or purpose.

(2) "The relevant percentage" is-

- (a) where a Budget resolution for the financial year is not passed before the end of July in the financial year, 95%, and
- (b) otherwise, 75%.

Sections 125-127 of the new GOWA provide for the making by the Assembly of annual and supplementary Budget motions.

2.2.9.2 Matters for consideration by the SOC:

Unlike Scotland there is no provision for such motions to be passed in the form of Measures.

Therefore there appears to be no requirement for consideration to be given to this type of procedure forming part of the SOs for the making of Measures.

2.3 Private Measures

2.3.1 General Matters:

A private Measure would give powers to either a statutory public body, private body or person in relation usually to a defined area of Wales. The power could be exercised by the Assembly or the Assembly Government or by a local authority in Wales. A particular local authority might seek a private Measure to carry out specific works in a particular area. At present the Assembly has powers to approve such works to be carried out by particular private or public bodies if they relate to certain railways lines. For example the Welsh Highland Railway was given powers to rebuild a railway in North Wales under this procedure which derives from the Transport and Works Act 1992.

Committee on the Better Governance for Wales White Paper Report, September 2005

One issue raised in our inquiry was whether the Assembly would have any power to pass private legislation - that is legislation which is not public and general but which confers private or particular rights or is local in effect [...]The Chair of the House Committee believed that private legislation powers were desirable, **but that a truncated procedure, similar to that at Westminster since the passage of the Transport and Works Act 1992 rather than the full-blown and time-consuming Scottish procedure, was desirable.**²⁶

A private Measure would not be limited to railways and could be much wider in its application and its subject matter, for example, the Conway Tunnel as part of the A55 was built by the Secretary of State for Wales under a procedure which was a mixture of a public and a private bill procedure.

From this example it will be seen that a private Measure can affect the interest of other people including land owners and persons adjoining the proposed development. There were considerable objections by such persons to the private Bill to build the Cardiff Bay Barrage by Cardiff Bay Development Corporation.

There is a flexibility which the Assembly may wish to possess in adopting the concept of private Measures to enable particular developments to proceed, but equally any procedures relating to the making of private Measures need to take account of interests who may be adversely affected by the proposals.

The Committee may therefore consider that there should be SOs for the making of private Measures, and that unlike public Measures there need only be one set of procedures governing their making, but with particular consultation requirements where a person's land or other interests are affected.

Proposed Principle 38:

There should be one unique procedure for Private Measures including protection for affected people.

²⁶ National Assembly for Wales, Committee on the Better Governance for Wales White Paper Report, September 2005, paragraph 113.

2.3.2 GOWA:

The Act provides for the possibility of the making of private Measures. Section 98(3)(c) requires there to be Standing Orders if the Assembly agrees to process Private Measures. Such Standing Orders do not require the same post introduction procedural stages as those applicable to general Public Measures, except that the final stage – the post consideration stage (Reconsideration stage)- has to be provided for in the SOs.

GOWA section 98: Proceedings on proposed Assembly Measures

(3) The standing orders may make provision different from that required by subsection (1) for the procedure applicable to proposed Assembly Measures of any of the following kinds-

- (a) proposed Assembly Measures which restate the law,
- (b) proposed Assembly Measures which repeal or revoke spent enactments, and
- (c) **private proposed Assembly Measures.**

Matter 13.6 of Field 13 of Schedule 5 to the Act enables the Assembly at any time from May of next year to make a Measure providing for the procedures for dealing with proposed Private Measures. If such a Measure is made it will probably be necessary to amend the SOs already, by then in existence, relating to such procedures.

2.3.3 Civic Society through Tomorrow's Wales:

Civic Society would like the opportunity of presenting Private Measures and of being consulted on the proposals. The Transport and Works Order procedure and the Private Bill procedure of the UK and Scottish Parliaments provide for outside consultation. It is probable that, based on the number of private bills that are introduced into Parliament from bodies based in Wales, there will be very few, if any, requests to the Assembly for private Measures each year. See Annex I (page 82).

Tomorrow's Wales Consultation, August-September 2006

Most participants believe that a mechanism enabling organisations to introduce legislation themselves should be embedded in the Standing Orders. However, general responses can also be categorised as follows:

- Those who would like the ability to introduce legislation in specialised fields, but were more likely to do so through an AM on more general issues
- Those who would want to introduce legislation where there was firm evidence for it, and on the basis of pressure from wider constituency support. One participant noted that this could be modelled either along the lines of Private Member's bills at Westminster, or a totally new procedure e.g. a petitioner's bill.

In all contexts however there were serious concerns regarding the resources currently available to some organisations, the voluntary sector in particular to do this. Some participants thoughts that specific sector umbrella organisations might be the best way to take such proposals forward.

2.3.4 Scottish Standing Orders for Private Measures:

The Private Bill procedures of the UK Parliament are reflected in the Scottish Private Bill procedure.

The Scottish SOs on the processing of Private Bills are complex and staff and time consuming.

The Scottish Parliament and UK procedures are different to the Public Bill procedures because:

- the purpose of a private Measure is to give particular legal powers in the nature of an Act of Parliament to a person or body which are not available to a public body such as a Government Department, the Assembly or local government. The request for such powers therefore have to be considered very carefully, particularly if the powers which are being sought affect the legal interests of other persons or bodies;
- there have to be the detailed notification requirements and the careful consideration by the body being asked to make the legislation as to the fulfilling of the requirements.
- it is necessary to have adequate consultation with possible affected persons and bodies by the body making law with the opportunity of those affected to make written representations and to appear before a Committee, with witnesses to fully explain their points of view.

This detailed procedure to which the Cardiff Bay Barrage Bill was subject enabled landowners and residents within a large area of central Cardiff to make their views known to independent committees in both Houses of Parliament who imposed wide ranging conditions on the promoters to safeguard the interests of the residents and landowners.

The flow chart below at paragraph 2.3.7 (page 55) shows what the procedures would be for Private Measures if the Scottish SOs were adapted.

2.3.5 Orders under the Transport and Works Act:

The flow chart below at paragraph 2.3.8 (page 56) shows what the procedures would be if the provisions of the Transport and Works Act were at least partly adapted.

The difference between the procedure adapted from the TWA and that adapted from the Scottish Parliament SOs is that the transport procedure is less complex, in that it does not involve stages of consideration by the Assembly in plenary (only consideration by a specially established Committee). This is because the UK Parliament considered that the particular types of works which now come under the transport procedure did not necessitate the full consideration by Parliament required under the Private Bill procedure. Too many Private Bills were being put to Parliament covering such matters.

It is important to note that the Private Bill Procedure continues in the UK Parliament for all types of proposals other than those under the Transport and Works Act. This is the same situation in Scotland.

2.3.6 Possible Matters to be considered by the Committee:

Two model procedures are available for the Committee's consideration.

The Assembly Committee on the Better Governance for Wales White Paper in its Report September 2005 (see above) considered that the truncated procedure under the Transport and Works Act was preferable to the “full blown and time consuming Scottish Procedure”.

Indeed the flow chart below at paragraph 2.3.8 (page 56) shows that there would only be 12 stages if the Works Order procedure was adapted. This contrasts to 15 stages if the Scottish SO Procedure at paragraph 2.3.7 (page 55) were adopted.

The Works Order Procedure omits any involvement by the Assembly as a whole in Plenary in considering a Private Measure. There is no third reading stage and no reconsideration stage. The whole procedure is only considered by a specially constituted Committee after which the Measure would become law.

It may be considered that given the possible consequences to other bodies and people of granting powers in a private Measure, the procedure for their making might comprise, as with a Public Measure, three legislative stages- the Scottish Parliament’s SOs for private Bills have a preliminary stage in principle, a detailed consideration stage by a specially appointed Committee and a final stage. The Transport and Works Act procedure covers the first 2 stages with a specially appointed Committee but not the third – the consideration of the final draft of the legislation by plenary. To show what an Assembly third stage might comprise, the flow chart at paragraph 2.3.8 (page 56) has added a procedure involving the Assembly in plenary (boxes 8 to 11).

The SOC may wish to consider that such reconsideration can only be carried out properly by plenary because it is only plenary which does this in relation to public Measures.

If the SOC accepts this suggestion, then it seems that plenary must also be involved in a final consideration of the Private Measure before it is made, so that all aspects of its legality and its extent can be considered by the Members as a whole.

Consequently boxes 8 to 11 are shown in the Chart Below as a way of involving the Assembly as a whole in the final stage.

Furthermore GOWA requires that in the same circumstances that a public Measure has to be reconsidered after it has been made if it come within one of the three circumstances set out in section 98(6) so a Private Measure has similarly to have to opportunity of reconsideration. Box 12 shows how the reconsideration stage might involve the Assembly in plenary the same way that are involved in a public Measure.

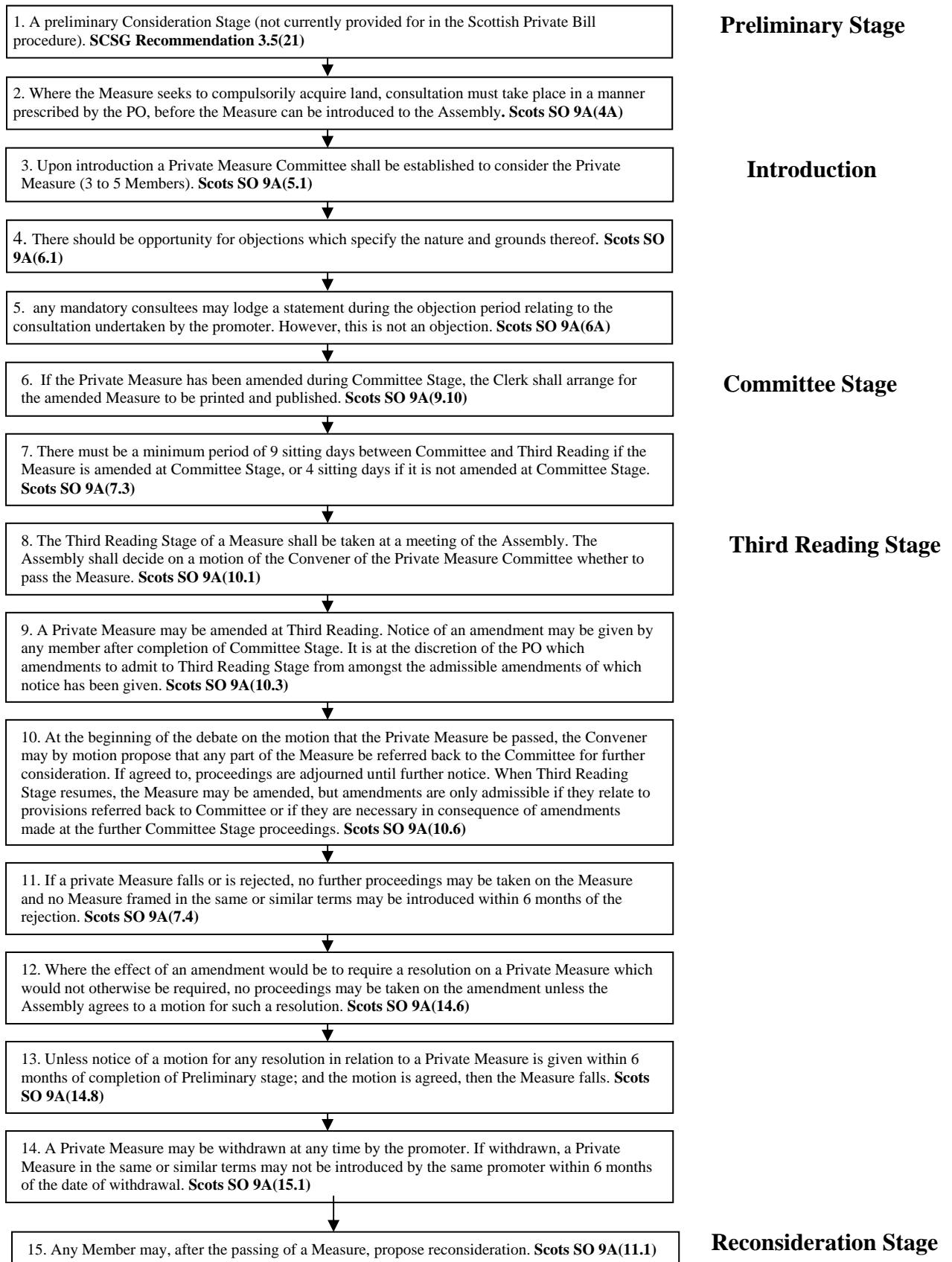
Proposed principle 40:

There should be an opportunity for affected persons to make written representations and to appear before a Committee.

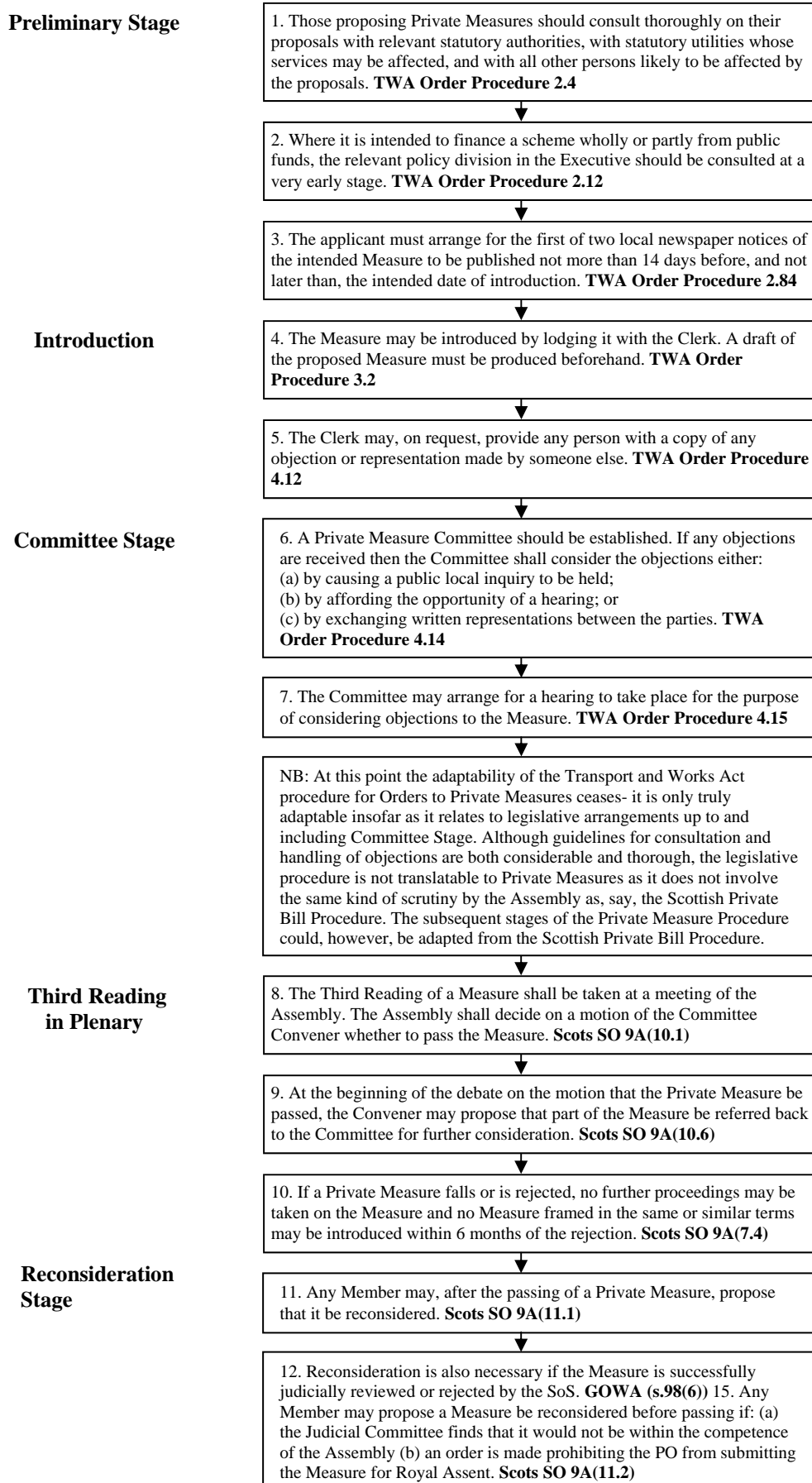
Proposed Principle 39:

The Transport Order Procedure has to be added to, in order to incorporate the necessary role of plenary in the Measure making process.

2.3.7 Flow Chart following Scottish Standing Orders:



2.3.8 Flow Chart following the TWA:



3 Subordinate Legislation

3.1 Introduction

Under the 2006 Act, the executive powers of the Assembly, extending over some 500 Acts of Parliament and EU Directives, will be transferred to the Ministers in the Assembly Government.

One result of this is that all subordinate legislation made under Acts will no longer be made in the name of the Assembly but in the name of the Assembly Government Ministers.

Depending on the provisions of the Act under which the subordinate legislation is made there can be:

- various classes of subordinate legislation
- various types of parliamentary procedures

Subordinate legislation can be in the form of a general statutory instrument i.e. affecting the whole or most of Wales, a local statutory instrument i.e. affecting a particular area of Wales or a non- statutory instrument affecting either the whole or a particular area of Wales. It is the enabling provision in the Act which determines whether the legislation is by SI. Whether a legislative instrument is an SI depends on whether it is so categorised in the enabling legislation under which it is made.

The only difference between subordinate legislation which is declared to be an SI and legislation which is not an SI is that an SI is statutorily required, under the Statutory Instruments Act 1946, to be numbered by the Statutory Instruments Office to be registered and to follow a prescribed layout. There are no such provisions for non-SI subordinate legislation.

The types of Assembly control, if any, over the Executive's subordinate legislation will depend on the provisions relating to such control, if any, in the enabling legislation under which the subordinate legislation is made. However there are no statutory provisions in the new GOWA relating to the procedure for making subordinate legislation under enabling powers in Measures.

3.1.1 New Framework

3.1.1.1 GOWA:

Under the present GOWA, the Assembly makes most general subordinate legislation. Under the new GOWA subordinate legislation made under Acts will be made by Assembly Government Ministers. The Assembly will only have to be involved in the consideration of the Executive's subordinate legislation if the Act under which the legislation is made provides for the UK Parliament to be involved in its making.

In such circumstances, the new GOWA substitutes the Assembly for the UK Parliament in relation to Wales under paragraph 9 of Schedule 3.

The limited and different involvement of the Assembly under the new GOWA provisions contrasts with the extensive involvement the present Assembly has with most general statutory instruments. The present procedures are prescribed in GOWA 1998 and are reflected in the complex Standing Orders 22 to 29 of the current Assembly. The different involvement

of the Assembly in the new GOWA means that the present SOs will have to be replaced by new SOs.

GOWA Schedule 3, Paragraph 9: Parliamentary and Assembly procedure

- (1) This paragraph applies **where a function to make subordinate legislation** (including a function conferred or imposed by or by virtue of this Act or an Act passed after this Act) **is transferred to, or made exercisable by, the Welsh Ministers, the First Minister or the Counsel General** by an Order in Council under section 58.
- (2) If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of any of the descriptions specified in sub-paragraph (3) applied to its exercise by a Minister of the Crown-
- (a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) applies, but
- (b) (whether or not the case is one to which that sub-paragraph applies) that provision has effect in relation to its exercise by the Welsh Ministers, the First Minister or the Counsel General as if any reference in it to Parliament or either House of Parliament were (or, if it is such a case, included) a reference to the Assembly.
- (3) The descriptions of provision referred to in sub-paragraph (2) are-
- (a) provision requiring any instrument made in the exercise of the function, or a draft of any such instrument, to be laid before Parliament or either House of Parliament,
- (b) provision for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either House of Parliament or of both Houses, and
- (c) provision prohibiting the making of any such instrument without such approval.
- (4) If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of either of the descriptions specified in sub-paragraph (5) applied to its exercise by a Minister of the Crown-
- (a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) or (7) applies, but
- (b) (whether or not the case is one to which either of those sub-paragraphs applies) any instrument made in the exercise of the function by the Welsh Ministers, the First Minister or the Counsel General is (or, if it is such a case, is also) subject to the procedure in the Assembly specified by the standing orders.
- (5) The descriptions of provision referred to in sub-paragraph (4) are-
- (a) provision for any instrument made in the exercise of the function to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament), and
- (b) provision requiring any order (within the meaning of the Statutory Orders (Special Procedure) Act 1945 (9 & 10 Geo. 6 c. 18)) made in the exercise of the function to be subject to special parliamentary procedure.

The 2006 Act lays down no provisions for the involvement of the Assembly in subordinate legislation made under Measures enacted by the Assembly Government. The Assembly can therefore decide what, if any, are appropriate procedures under each Measure or under Measures generally.

Proposed Principle 41:

Totally new SOs are required for the scrutiny of subordinate legislation coming before the Assembly for consideration.

3.1.1.2 Scottish Standing Orders:

The new GOWA means that the Assembly's more limited consideration of subordinate legislation parallels that of the UK and Scottish Parliaments whose main role is to make primary not subordinate legislation. For this purpose it is helpful to consider the SOs of the Scottish Parliament which are comprehensive and reflect statutory provisions similar to those in the new GOWA.

Proposed Principle 42:

The Scottish SOs to be used as a model to devise the new Assembly scrutiny of subordinate legislation SOs.

3.1.2 Scrutiny of Subordinate Legislation: New Assembly Scrutiny systems:

3.1.2.1 GOWA:

The new GOWA introduces a new more limited form of Assembly control which follows from its being a maker of primary rather than secondary legislation in relation to certain subordinate legislation. Such legislation mostly comprises general SIs. In each case the legislation is first made or made in draft by the Assembly Government.

There would be different Assembly procedures depending on the provisions in the enabling provisions of the particular Act under which the subordinate legislation is made (listed below). Not every Act lays down a requirement for there to be an Assembly procedure for all subordinate legislation made under the Act.

- Affirmative Procedures
- Negative Procedures
- Laying Procedures

If the enabling Act makes no specific provision for Parliamentary or Assembly control then under GOWA it is not statutorily required to be placed before the Assembly.

GOWA does not prevent the provision of other scrutiny provisions in addition to the procedures prescribed under the enabling Act.

It is entirely for the Assembly to decide what if any scrutiny provisions should there be for subordinate legislation made under Measures.

3.1.2.2 Other non statutory scrutiny Procedures:

Super-affirmative Procedures

Additional procedures to those contained in GOWA and the enabling Acts can be considered. This includes possible consultation with outside bodies before the instrument is placed before the Assembly. Such consultation is referred to in the Scottish Parliament as a “super-affirmative” procedure: a Committee or Committees for example a Legislation Committee and/or a Subject Committee could be empowered to consider and report on such legislation before the instrument is considered by the Assembly in plenary.

Urgent Procedure

GOWA does not prevent the making of SOs providing for a different type of procedure for an instrument if it is urgent, provided that the statutory role of the Assembly is preserved in those circumstances where it has the power to consider the Executive's subordinate legislation.

3.1.2.3 Civic Society through Tomorrow's Wales:

Tomorrow's Wales, August-September 2006

Participants were also supportive of the ideal to involve civil society in consultation on the new framework powers granted to the Assembly in the Government of Wales Act. There was a general understanding that most organisations are currently geared towards the drafting and implementation of policy and not necessarily legislation. Some GB / UK organisations were perhaps more familiar with the concept of scrutinising and suggesting amendments to law, however the vast majority were not, and are now considering how they need to adapt their ways of working to meet this new challenge.

Those bodies who have been consulted also want a super affirmative procedure in as many cases as possible. See Annex I (page 82).

3.1.2.4 Official Reports:

Committee on the Better Governance for Wales White Paper Report, September 2005

The Assembly should certainly not simply follow the parliamentary model of dealing with statutory instruments. "Technical scrutiny", as the Clerk of the House of Commons described it, is done well in the Commons, but, according to a leading study of Parliament **"there remains universal acceptance of the inadequacy of parliamentary scrutiny of secondary or delegated legislation" so far as the merits of the instruments are concerned.** This has been ameliorated somewhat by the establishment in 2003 by the House of Lords of its Merits of Statutory Instruments Committee which can draw the special attention of the House to (among other matters) any instrument which it regards as politically or legally important.²⁷

Committee on the Better Governance for Wales White Paper Report, September 2005

We accept that not all secondary legislation will be examined post- 2007 in the same way by Members as it has been in the past. There is bound to be displacement by the meatier proposals for Orders in Council and Measures. We also accept that delegated legislation will be a matter for Ministers primarily. However, **Assembly Members will not be doing their duty if they simply wave through Ministerial Orders.** As the Clerk of the House of Commons told us, " you have to be selective and accept ... that... you are delegating a power and there has to be a safety net to catch the really bad ones that might otherwise slip through". We also note **Professor Patchett's advice that it will help the Assembly to meet any concerns about Orders in Council in Parliament if "the scrutiny procedures in relation to secondary legislation are robust and effective and are seen to be much more meaningful, perhaps, than those that exist in relation to secondary legislation in London.** While we accept that appropriate secondary legislation will in future be made by Welsh Ministers, **we recommend that the Standing Orders of the New Assembly make provision for both the technical examination of secondary legislation and the examination of the merits of important instruments. We welcome the First Minister's acknowledgement that this was a question for the Legislature, not for the Government to decide.**²⁸

Legislation Committee Report, June 2006.

8(1) The committee recommends that a Legislation committee be established and be given the following responsibilities- the continuation of its current role of the technical scrutiny of

²⁷ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 106

²⁸ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 108

subordinate legislation, with the freedom to consider the merits of occasional items of legislation. It would not question the policy objective, but consider whether the legislation was the most effective way of achieving that objective²⁹.

WAG Commentary on White Paper Committee Report, January 2006

Other Legislative Matters:

42. We recommend that the Standing Orders of the New Assembly make provision for both the technical examination of secondary legislation and an examination of the merits of important instruments. *Page 47; paragraph 108*

Comment: This will be a matter for Standing Orders (Clause 31 and Schedule 11, paragraph 18).³⁰

3.1.2.5 Matters for consideration by the SOC:

Particular Types of non statutory procedure:

To ensure an appropriate level of scrutiny of WAG subordinate legislation both for the law and for the merits:

The SOC may wish to consider whether a Legislation Committee should be established (see paragraph 5.1 below page 71 below)

The SOC may wish to consider whether the non statutory procedure of consultation before laying the instrument before the Assembly is necessary for all procedures.

The SOC may wish to consider whether there should be a requirement of public notification of the deposit of the instrument before the Assembly.

The SOC may wish to consider whether there should be a Subject Committee involved in all procedures?

The SOC may wish to consider whether for all procedures a Subject Committee should be required to take representations from outside bodies and other AMs to the Committee as part of its deliberations?

²⁹ National Assembly for Wales Legislation Committee, *The Technical Scrutiny of Legislation by the National Assembly from May 2007*, June 2006, paragraph 8(I).

³⁰ WAG, Constitution Unit, *Committee on the Better Governance for Wales White Paper: Commentary on the Committee's Report*, 12 January 2006, Not published.

3.2 Particular types of Assembly Scrutiny:

3.2.1 Affirmative Procedure

3.2.1.1 General procedure:

An affirmative procedure is where a Parliament or, after May 2007, the Assembly, is given statutory power to approve a legislative instrument (usually a general statutory instrument) made by the Executive. Without such approval the instrument either cannot operate, or, if it can it has no lasting effect and in either case cannot be valid law.

This procedure is the most important subordinate legislative control exercised over the Executive and covers roughly eight percent of all general SIs. It is particularly used where an Act gives power to the Executive to amend or repeal an Act of Parliament or to make new provision in its place.

It will usually be the Assembly alone not the UK Parliament which approves of the making of such legislation by the Assembly Executive under the new GOWA.

Acts of Parliament have three different ways by which the UK Parliament (and therefore the Assembly post May 2007) affirms instruments:

- Instrument is laid before the Parliament in draft and cannot be made until the draft is approved by resolution of Parliament
- Instrument is laid before the Parliament after making but cannot come into force unless and until it is approved by resolution of the Parliament
- Instrument is laid before the Parliament after making and may come into force but cannot remain in force after a specified period (usually 28 days from the date on which it was made) unless approved by resolution of the Parliament within that period.³¹

3.2.1.1.1 GOWA:

While some limited exceptions, paragraph 9 of Schedule 3 puts the Assembly in place of Parliament in relation to the affirmative procedure when this procedure is specified in an Act.

3.2.1.1.2 Scottish Standing Orders:

It will be seen from the flow chart at paragraph 3.2.1.3 (page 67) in relation to affirmative procedures that the Scottish Parliament SOs require four stages before a vote is taken in plenary as to whether the instrument should be affirmed.

It is only the final stage of affirmation in plenary that is statutorily required to be carried out by GOWA in Wales.

All the other stages apart from the final stage are for the SOC to decide.

3.2.1.1.3 Official Reports:

³¹ Annex to the Legislation Committee Report, June 2006, *Scottish Legislation Committee, Inquiry into the Regulatory Framework in Scotland* LEG(2) 13-06.

Legislation Committee Report, June 2006

6(l) In the case of those subject to affirmative procedures, it may be appropriate to retain a procedure that makes the assembly resolution conditional on the minister dealing with the points raised in a report before making the order, if that can be achieved within the provisions of the statutory instruments Act as applied to the assembly. The committee also noted the work of the house of lords committee on the merits of statutory instruments and considered **that there should be a process for the assembly sometimes to scrutinise statutory instruments made by welsh Ministers in the same way- to review whether the proposed legislation is a good way of achieving the policy objective** ³².

3.2.1.1.4 Matters for consideration by the SOC:

An inquiry into the Regulatory Framework of subordinate legislation in Scotland has been carried out by the Scottish Subordinate Legislation Committee. The report considers the present procedures of the Parliament in relation to the consideration of the legality and substance of subordinate legislation coming before Parliament for consideration. The relevant Paper can be found at: <http://www.wales.gov.uk/keypubassemlegislation2/content/reviews-e.htm>

The questions which the report raises may be a matter for consideration by the SOC in relation to the new affirmative resolution procedure:

1-Should the Assembly be given powers to amend instruments or drafts, or to recommend such amendments; and
2- Should the Assembly be given the power to recommend certain changes being made to an instrument, before the instrument will achieve Parliamentary approval.” Para. 1.8

3-Should the Assembly Government consult the Assembly on all draft instruments which are to be laid before the Assembly?
4-Should the super-affirmative procedure be used by requiring the Executive to consult outside bodies and persons on draft instruments before they coming to the Parliament?
And if so, in what circumstances? From Para.2.

5-What period is required for the Assembly to properly consider an instrument prior to deciding whether it should be affirmed?
6-Arising from that consideration, how long should Committees be given to consider the instrument before reporting to the Assembly?
 From Para. 4.6

3.2.1.1.5 Other Particular Matters

As shown above the only statutorily prescribed stage is a vote of plenary as to whether to approve the instrument.

Therefore the following additional matters are for consideration by the SOC:

³²National Assembly for Wales Legislation Committee, *The Technical Scrutiny of Legislation by the National Assembly from May 2007*, June 2006, paragraph 6(l).

The SOC may also wish to consider whether there should be a Subject Committee and a Legislation Committee to consider the subordinate legislation to be then affirmed by plenary.

The SOC may also wish to consider whether such Committees should be required to invite representations on the legislation.

The SOC may also wish to consider whether such Committees should be able to recommend to the Assembly Government that it considers making amendments to the legislation.

The SOC may also wish to consider whether a debate on the legislation in Subject Committees and a Legislation Committee should be a sufficient consideration of the legislation, unless either Committee decides that, in the particular circumstances, the Assembly in plenary should also debate.

The SOC may also wish to consider whether when debated in each Committee a report of each Committee is placed before the Assembly who either vote immediately on whether to confirm the legislation (if the procedure suggested above is accepted) or debate the legislation.

The SOC may also wish to consider whether a simple majority of Assembly Members is sufficient for either for or against affirmation.

Proposed principle 43:

There should be a Legislation Committee which should be required to invite representations on the legislation. (see paragraph 4.1 page 74).

Proposed Principle 44:

There should be a possibly for amendments.

Proposed Principle 45:

There should be time limits built in the procedure to allow better efficiency.

Proposed Principle 46:

There should be an involvement of Committees as well as plenary to guarantee an appropriate level of quality of the legislation.

3.2.1.2 Framework Powers Procedure

The legislation made under framework powers may contain provisions similar to those which could be found in an Assembly Measure. Because of the extent of these powers, it is customary for framework powers in an Act to be exercised subject to affirmative resolution of both Houses of Parliament.

Committee on the Better Governance for Wales White Paper Report, September 2005

Secondary legislative powers can be framed narrowly or widely. Traditionally Parliament has been careful to ensure that Ministers are not given powers which are too wide. That is entirely right. "Henry VIII clauses", for example - the power to amend primary legislation by means of secondary legislation - have been used very sparingly. **But it has been a major challenge for the Assembly to secure for itself wider secondary legislative powers than Whitehall Ministers despite the fact that these powers would be subject to a form of scrutiny in Plenary and Committees way above the perfunctory level of scrutiny to which secondary legislation is subject in the House of Commons.** As the White Paper puts it "the Assembly is a democratically elected body, with checks and balances built into it through its robust legislative procedures - quite different in nature from an individual Secretary of State". The deduction from this is that "that consideration should be the basis underlying Parliament's deliberations when conferring powers on the Assembly"³³.

Committee on the Better Governance for Wales White Paper Report, September 2005

What is now proposed is, in effect, what was hoped would happen when the 1998 Act was passed, as Sir Christopher Jenkins pointed out to us.¹¹¹ **From time to time, the Assembly has been given greater latitude to make secondary legislation, including legislation which amends primary legislation**³⁴. The Education Act 2002 is quoted in the White Paper, and was referred to by David Lambert and Marie Navarro as one of the "very limited occasions" when this has happened.¹¹² Other Acts have not been so permissive as the Education Act 2002. Although there have been a number of Wales-only Bills, and some specific Welsh clauses in England and Wales Bills, the use of framework clauses has nevertheless been disappointing. "Few and far between" was the judgement of the Leader of Plaid Cymru.¹¹³³⁵ **According to the White Paper, this will now change: "the Government intends for the future to draft Parliamentary Bills in a way which gives the Assembly wider and more permissive powers to determine the detail of how the provisions should be implemented in Wales"**³⁶.¹¹⁴ We welcome this intention³⁷.

Committee on the Better Governance for Wales White Paper Report, September 2005

We agree with this analysis, and we take it a step further backwards. Where the Assembly has already been given powers which are more extensive than Whitehall Ministers, those powers should, post 2007, reside with the Assembly as a whole, rather than the Welsh Ministers. These framework powers should be implemented by Assembly Measure, a process which we will describe when we discuss Stage 2. We do not underestimate the difficulties in drafting the forthcoming Wales Bill which this will cause, but we recommend that any secondary legislative power which has been given to the Assembly since 1999 or which will be given by primary legislation from now on should, if that power is more extensive than powers given to Whitehall Ministers, only be exercisable by Assembly Measure after 2007, and **that Standing Orders ensure effective scrutiny of any powers directly vested in Assembly Ministers by Westminster** .

³³ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 60

³⁴ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 61.

³⁵ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 61.

³⁶ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 61.

³⁷ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 61.

Under GOWA 2006, it will be the Assembly in plenary which will have to decide whether to confirm such framework legislation in relation to the exercise by the Assembly Government of such powers- paragraph 9 of Schedule 3.

However the Act does not lay down any prior procedure to this final approval.

The SOC may wish to consider whether:

- subordinate legislation made under framework legislation should be subject only to the procedures applicable to the general Assembly procedure relating to affirmative resolution generally.
- should there be stages additional to such general Assembly affirmative resolution procedure.

If so, given the parallel of legislation made under framework legislation with Measures, should some or all of the stages relating to the consideration of Measures be applicable to framework legislation

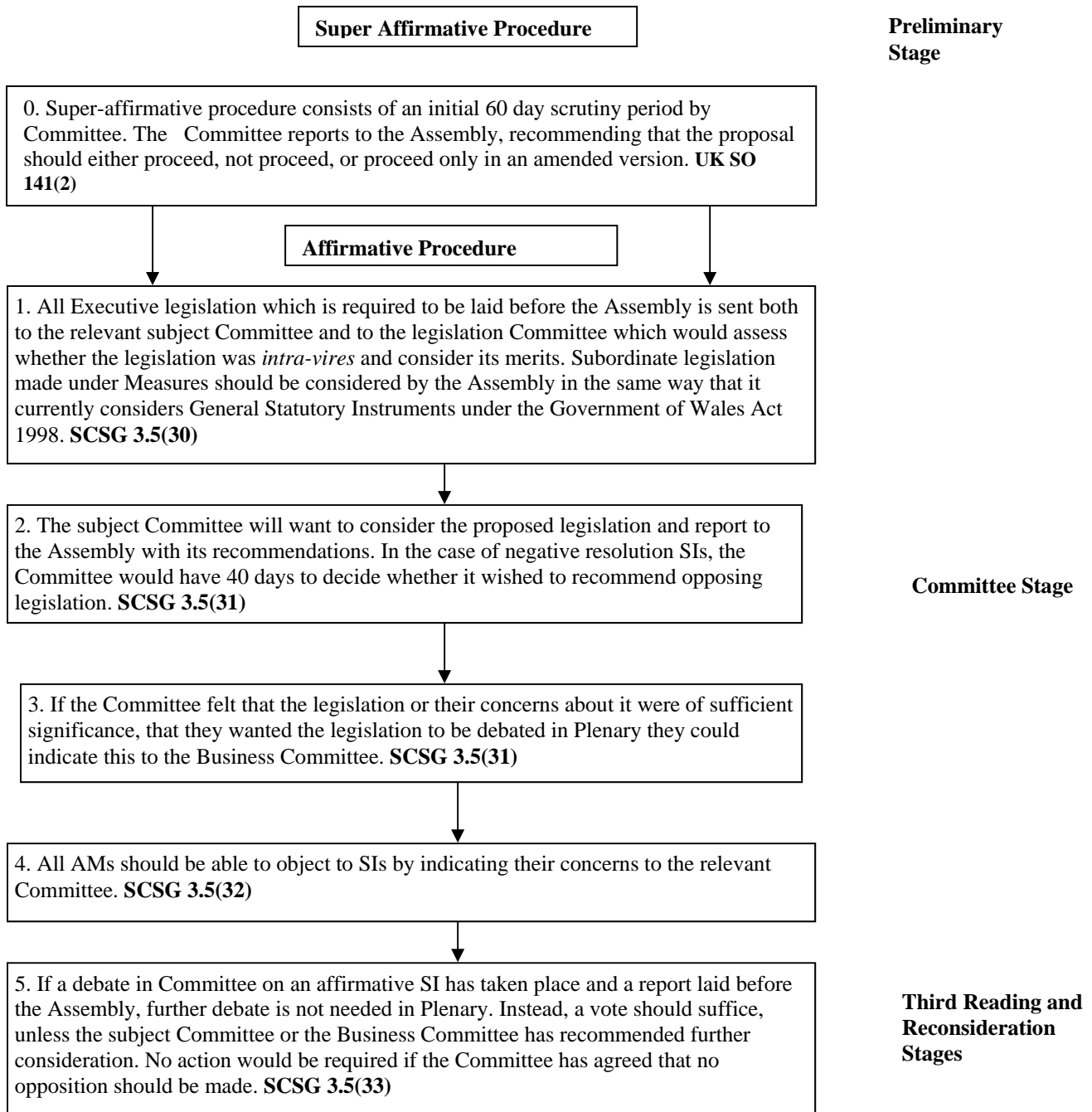
If so, should such procedure be mandatory in all cases involving subordinate legislation under framework powers, or should it be discretionary such that, for example, the legislation would only be committed to a standing committee for detailed scrutiny of each provision before consideration in plenary if either the Subject Committee considering the instrument or the Legislation Committee so recommended.

Proposed Principle 47:

As Framework Legislation is so important it should be subject to a procedure similar to that of Measures and not to the procedure for affirmative resolution procedure for subordinate Legislation.

3.2.1.3 Flow chart: Proposed Affirmative Procedure following the Scottish Precedent:

SCSG- recommendations of the Scottish Consultative Steering Group for Scottish Standing Orders, as published in '*Report of the Consultative Steering Group on the Scottish Parliament*' available at <http://www.scotland.gov.uk/library/documents-w5/rcsg-00.htm>



3.3 Negative Procedure

A negative procedure is where an Act of Parliament gives Parliament and after May 2007 the Assembly power to annul an instrument after it has been made. In this case the instrument can come into force and will continue to be valid unless it is annulled. Under the procedures in Parliament any decision to annul must occur within 40 days after the laying of the instrument before Parliament.

Any Member of either House can put down a motion to annul the instrument. However there is no guarantee that the motion will be debated. It depends on the decision of the Business Manager (who in the Commons is the Lord President and a member of Government) whether the motion is called for debate.

Although the Scottish Parliament's SOs relate to two statutory negative procedures, under modern Acts of Parliament there is only one negative procedure, which is a motion placed before either House of Parliament to annul the instrument after it has been made.

3.3.1 GOWA:

With limited exceptions, paragraph 9 of Schedule 3 puts the Assembly in the place of Parliament in relation to the negative procedure when this procedure is specified in an Act.

3.3.2 Scottish Standing Orders:

It will be seen from paragraph 3.3.5 (page 76) that in relation to negative procedures the Scottish Parliament SOs require four stages before annulment can take place.

It is only the final stage of annulment in plenary that is required to be carried out by GOWA in Wales.

3.3.3 Matters for consideration by SOC:

As with the affirmative procedure, the report of the Scottish Subordinate Legislation Committee raises matters for possible consideration by the SOC:

**1- Should the Assembly be given powers to amend instruments or drafts, or to recommend such amendments; and
2- Should the Assembly be given the power to recommend certain changes being made to an instrument, before the instrument will achieve Parliamentary approval.” Para. 1.8**

3-Should the Assembly Government consult the Assembly on all draft instruments which are to be laid before the Assembly?
4-Should the super-affirmative procedure be used by requiring the Executive to consult outside bodies and persons on draft instruments?
And if so, in what circumstances? From Para.2.

5-What period is required for the Assembly to properly consider an instrument prior to deciding whether it should be affirmed?
6-Araising from that consideration How long should Committees be given to consider the instrument before reporting to the Assembly?
From Para. 4.6

7-Should SOs require that for the period that a negative instrument is before the Assembly for consideration as to whether it should be annulled, the instrument should not come into force?
From Part 4, para. 4.6

Proposed Principle 48:

There should be a possibility of suggesting amendments.

Proposed Principle 49:

There should be time limits built in the procedure to allow better efficiency.

3.3.4 Particular Matters:

As shown above the only statutory stage is the possibility of moving a motion in plenary to annul the instrument.

Therefore the following matters are for consideration by the SOC:

The SOC may also wish to consider whether there should be a Subject Committee and a Legislation Committee to consider the subordinate legislation subject to the annulment procedure.

The SOC may also wish to consider whether such Committees should be required to invite representations on the legislation.

The SOC may also wish to consider whether such Committees should be able to recommend to the Assembly Government that it considers making amendments to the legislation.

The SOC may also wish to consider whether a debate on the legislation in Subject Committees and a Legislation Committee should be a sufficient

consideration of the legislation, unless either Committee decides that, in the particular circumstances, the Assembly in plenary should also debate.

Proposed Principle 50:

There should be an involvement of a subject and legislation Committees as well as plenary to guarantee an appropriate level of scrutiny of the legislation.

The SOC may also wish to consider whether when debated in each Committee a report of each Committee is placed before the Assembly who only considers the legislation if there is an annulment motion.

Proposed Principle 51:

Because of the potential high number of annulment motions, there should be no automatic debate.

The SOC may also wish to consider whether in the event of an annulment motion a simple majority of Assembly Members is sufficient either for or against annulment.

The SOC may also wish to consider whether the period within which a motion can be tabled be limited to 40 as in Parliament, or another number of Assembly working days, calculated from what date.

Proposed Principle 52:

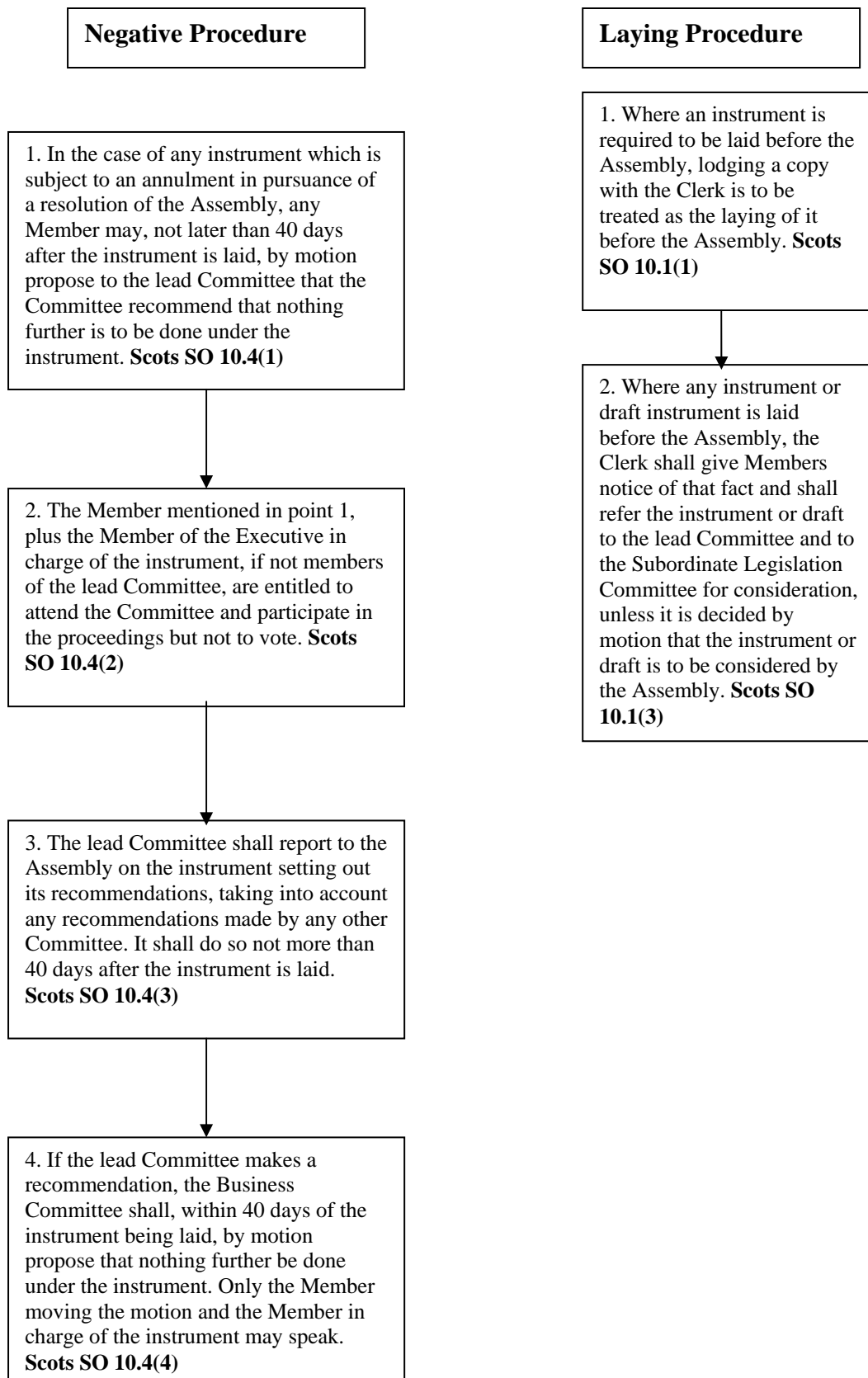
It should be a requirement for more than one AM to propose a motion for annulment.

The SOC may wish to consider whether only one AM should be able to propose a motion for annulment or whether there should be more as is the case where it is required under the existing SOs for the Assembly to debate a local SI.

The SOC may wish to consider if a motion is put down to annul will it automatically be debated in plenary or, as in the House of Commons, will the Business Minister be able to propose whether or not it is debated?

The SOC may also wish to consider whether a Committee which has considered the legislation should have a limited time within which it can report its findings to the Assembly (as in the Scottish Parliament).

3.3.5 Flow Chart: Proposed Negative Procedure and Laying Procedure:



3.4 Laying before Parliament

Under certain statutory provisions some legislative instruments have to be laid before Parliament (the Assembly post May 2006) after their making but there is no provision for any consideration by Parliament as to whether the instrument should be approved or annulled.

With some limited exceptions under GOWA, such provisions will apply with the requirement of laying such instruments before the Assembly instead of Parliament.

There are some matters for consideration in relation to such procedure:

The SOC may wish to consider whether there should be formal procedures whereby the attention of the Assembly or a relevant Assembly Committee is drawn to such instrument at the time of laying.

Proposed Principle 53:

There should be a formal procedure whereby the attention of the Assembly can be drawn to such instruments at the time of laying.

The SOC may wish to consider whether plenary should have the discretion to debate such an instrument.

If so, the SOC may wish to consider whether there should be provision for report and debate by a Committee.

If so, the SOC may wish to consider whether an Assembly Member, Assembly Members should have the right to require a debate in a Committee or in plenary.

3.5 No Legislative Procedure

Most local SIs and some general SIs and most subordinate legislation not made in the form of an SI are not statutorily required to be laid before Parliament or the Assembly.

The new GOWA does not require the laying of such instrument before the Assembly.

The current Assembly has used its powers under SO No 31 to require that all non-SI subordinate legislation made after 1st January 2006 should be made in a form which is similar to the form statutorily prescribed for SIs.

The SO does not however require such instruments to be placed before the Assembly.

Under the existing SOs five Assembly Members may require a subordinate instrument which is not a general SI to be considered by the Assembly.

Because AMs will have no formal machinery for being informed of such subordinate legislation when made by or proposed to be made by the Assembly Government:

The SOC may wish to consider whether there should be any procedure whereby the Assembly Government informs the Assembly that it proposed to make or has made an instrument which is not required to be laid before the Assembly.

The SOC may decide that it has no power to require the Assembly Government to continue with the current requirements for publishing non SI legislative instruments in the form prescribed by the Assembly. This is because under the new GOWA such legislation will not automatically come before the Assembly for consideration and therefore their form is outside the ambit of the Assembly SOs.

However, the SOC may wish to consider inviting the Assembly Government to continue with the present arrangements.

Because all the instruments which are not required to be laid before the Assembly are nevertheless law and because some may contain important legal provisions, such as grants for agriculture, housing or other matters, the Assembly should be able to scrutinise them.

The SOC may consider a procedure whereby one or more AMs can require a Committee or the Assembly in plenary to debate an instrument which is not required to be laid before the Assembly.

Proposed Principle 54:

There should be machinery in place by which WAG informs the Assembly of the existence of subordinate legislation not subject to any statutory procedures before the Assembly.

3.6 Procedures for Subordinate Legislation made under Assembly Measures

As stated in paragraph 3.1 it is only under Acts of Parliament that the Assembly will be governed by the procedure, if any, which has to be followed in considering certain subordinate legislation.- Paragraph 9 of Schedule 3 of the new GOWA.

Such procedures do not apply to subordinate legislation which the Assembly Government will be empowered to make under Assembly Measures.

WAG Commentary on White Paper Committee Report, January 2006

30. We recommend that any secondary legislative power given to the Assembly since 1999 or which will be given by primary legislation in the future, if that power is more extensive than powers given to Whitehall Ministers, should only be exercisable by Assembly Measure after 2007. Standing Orders to ensure effective scrutiny of any powers vested directly in Assembly Ministers by Westminster Page 32; paragraph 69

Comment: This recommendation has been given effect in the Bill. From May 2007, **the intention is that any wider and more permissive powers which Parliament has considered it appropriate to confer on the Assembly, with its own scrutiny procedures, and which are contained in Acts of Parliament enacted before the Government of Wales Bill itself becomes an Act would transfer to the Assembly, rather than to the Welsh Ministers. This would be achieved by converting them, by means of an Order in Council, into Assembly Measure-making powers (under the provision contained in Schedule 11, paragraph 29 of the Bill).**³⁸

GOWA 2006 makes no provision as to what procedures, if any, should apply to this subordinate legislation.

GOWA, Schedule 5, Part 2, Paragraph 10: Subordinate legislation

Part 2 does not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes-

- (a) making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,
- (b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and
- (c) applying any enactment comprised in or made under an Assembly Measure relating to the documents by which such powers may be exercised.

The SOC may consider that it is for the Assembly as a whole rather than the Committee to decide the procedure or procedures to which such subordinate legislation is to be subject on a Measure by Measure basis. If it is decided that such procedure is affirmative, negative, or laying before the Assembly, the SOs already drawn up for these procedures will automatically apply.

Different SOs will only be necessary if the Assembly decides that there should be an entirely different procedure for the involvement of the Assembly in considering subordinate legislation made. Such decision is a matter for the future under specific Measures or Measures generally.

³⁸ WAG, Constitution Unit, *Committee on the Better Governance for Wales White Paper: Commentary on the Committee's Report*, 12 January 2006, Not published.

A further important consideration which the Scottish Subordinate Legislation Committee inquiry considers is whether the present uncertain demarcation between subordinate legislation which is made in the form of an SI and legislation not made in such form is continued.

Scottish Subordinate Legislation Committee Inquiry

3.2 However, there are other kinds of instruments made under delegated powers which are not subject to any procedures at all, such as directions, schemes, codes of conduct, guidelines etc. **Some of these can be regarded as being instruments of a legislative character** and the Parliament is frequently not given the opportunity to subject them to any form of supervision.
Comments are invited on—

Whether **all instruments of a legislative character**, for example, guidelines and codes of conduct, should require to be SIs.

Again this may not be a matter for the SOC but any SOs will have to reflect such a future change.

Proposed Principle 55:

The SOs provisions and the procedure applying under statutory requirements for affirmative, negative and laying procedure would automatically apply to subordinate legislation made under Measures if the Assembly so decides after May 2007.

4 Other Matters connected with the exercise of the Assembly's legislative functions:

This submission to the SOC has raised certain general matters to which consideration might wish to be given.

4.1 Legislation Committee

Unlike the current GOWA, the new GOWA does not require there to be a Legislation Committee or any other Committee to consider subordinate legislation. However the creation of such a Committee is not prevented..

Committee on the Better Governance for Wales White Paper Report, September 2005

7. Moving on to the way in which technical scrutiny is carried out, the Committee noted that the Northern Ireland legislation provides for the Examiner of Statutory Rules (the equivalent of the Legal Advisers to our Legislation Committee) to report to subject committees. **The Committee nevertheless considers that the alternative model of a Legislation Committee with Legal Advisers (as in Scotland) is a better option. It provides a greater degree of flexibility** in the way in which the technical scrutiny of legislation is carried out. In particular, without the restriction of section 58, **it would be able to advise the Assembly on all legislative matters that would not be more appropriately or conveniently dealt with by another committee**³⁹

Legislation Committee, June 2006

8. The Committee recommends that a Legislation Committee be established and be given the following responsibilities-

- (i) **the continuation of its current role of the technical scrutiny of subordinate legislation, with the freedom to consider the merits of occasional items of legislation;**
- (ii) **to review and report on all provisions in Assembly Measures that grant powers to make subordinate legislation to Welsh Ministers;**
- (v) **to review the use of commencement powers in Assembly Measures and Acts of Parliament of particular application to Wales**
- (vi) to consider and advise the Assembly on any other matter of a legislative nature of general application, including in particular the operation of bilingual legislation.**⁴⁰

107 The Chair of the Legislation Committee told us that the "big benefit of the Committee at present is the fact that it is there". Although he was interested in other possibilities for the technical scrutiny of statutory instruments, perhaps by officials, **he thought that the work of the Legislation Committee would remain necessary after 2007.** However, his Committee did not believe that there needed to be a statutory requirement for the Committee (as there is at present) - this should be a matter for Standing Orders. **He also suggested that the Committee's role might be expanded to be "judgmental" about statutory instruments, and, in a personal capacity, he said that he favoured the Committee having a role more akin to that of the Merits Committee in the House of Lords.**²¹⁸ The Leader of the Welsh Liberal Democrats also favoured expanding the role of the Legislation Committee in this way.²¹⁹ The Leader of the Welsh Conservatives was concerned that there simply would not be any time for secondary legislation to be considered post- 2007, and the Leader of Plaid Cymru was worried that Assembly Ministers would be subject to as few checks in making secondary legislation as the Secretary of State was before 1997.²²⁰

³⁹ National Assembly for Wales, *Committee on the Better Governance for Wales White Paper Report*, September 2005, paragraph 7.

⁴⁰ National Assembly for Wales Legislation Committee, *The Technical Scrutiny of Legislation by the National Assembly from May 2007*, June 2006, paragraph 7.

Consideration of the current Legislation Committee's Report of June 2006, may lead to the conclusion that, there should be a continuation of the Legislation Committee particularly with regard to the questions about the legality and possibly the merits of the Executive's subordinate legislation which comes before the Assembly.

The new GOWA does not require the creation of a Legislation Committee or any other Committee to consider subordinate legislation subject to Assembly scrutiny. However such Committees are not prevented from being established.

The SOC may wish to consider whether there should be a Legislation Committee to consider the legality of the instrument in all procedures.

The SOC may wish to consider whether a Legislation Committee should also consider the merits of the instrument.

The Legislation Committee has carried out important work since 1999, particularly considering those instruments which because of time constraints could not be fully considered by the relevant Subject Committees or Plenary.

Proposed Principle 56:

A Legislation Committee should be established.

Because of time constraints on other Committees and Plenary it should also been given jurisdiction to consider the merits of subordinate legislation as well as the legality.

Proposed Principle 57:

The Legislation Committee should consider both merits and law of subordinate legislation.

This is particularly important in regard to the extent of the subordinate legislation powers to be sought by the Assembly Government under its proposed Measures.

4.2 Staffing

There are a number of matters relating to the staffing which the Assembly may wish to consider:

If a separate independent legislative office is not to be established on the lines of the UK and Scottish Parliamentary Counsel Office, the Assembly would seem to need legal advice separate to that available to the Assembly Government on legislation coming before the Assembly for its consideration. The legality of such legislation, possible amendments to such legislation, and the meaning of such legislation will all need separate legal advice. It should also be considered that not all proposed legislation will come from the Assembly Government. If the Scottish Parliament SOs are considered, Assembly Members and

Assembly Committee will also be able to make proposals and outside bodies will be able to present private Measures.

Welsh Affairs Committee, January 2006

It would be undesirable to include in the Bill provisions for specific increases in staff for the National Assembly as they have yet to be identified in detail. Furthermore, future demand will best dictate the level of necessary resources. However, **it is clear that in moving from the corporate body model to a "free-standing" legislature, enhancements will be necessary to support Assembly Members in their new tasks**⁴¹. We look to the government to provide those resources where they are clearly necessary.(PARAGRAPH 85)

The government agrees the working of the assembly as a legislative and examining body, needs to be underpinned with an appropriate level of human resources. For this reason, the Bill makes provision relating to the status of staff of the assembly, including setting up an Assembly Commission which will employ the staff who support the assembly. The government itself, however, would not make specific provision for increases in number of staff or other resources, rather the government believes the allocation of resources to the Assembly Commission for the employment of staff, or provision of services to assembly Members, should be a matter for the assembly's budget procedures.

Committee on the Better Governance for Wales White Paper Report, September 2005

The Chair of the House Committee raised the issue of whether statutory instruments might be amendable.²²⁴ Under current Assembly procedures, if an amendment to a draft Order is passed by Plenary, the Minister is obliged to "prepare a revised draft Order which takes account of the amendments agreed by the Assembly".²²⁵ **We would envisage a similar procedure applying after 2007, with Plenary being able to pass an amendment to a motion to approve a statutory instrument to the effect that it "declines to approve X order unless amendments A,B and C are made to it". For annulment, the Assembly could pass an annulment resolution with an explanatory addition explaining its reasons for doing so.**

WAG Commentary on White Paper Committee Report, January 2006

6. We recommend that the role of the Counsel General be clearly separated from any legal advice provided to the Assembly *Page 14; paragraph 18*

Comment: The Bill provides that the Counsel General be the legal adviser to the Welsh Assembly Government and not to the Assembly (Clause 49). The Assembly would need to consider the employment of its own legal advice.⁴²

In the absence of an independent legislature drafting office, it will be necessary for the Assembly to provide drafting expertise for Members and Committees wishing to promote Measures and possibly assistance to bodies wishing to promote Private Measures.

The SOC OR ASSEMBLY may wish to consider whether a Parliamentary Counsel Office for the Assembly should be created.

Advice will also be necessary prior to such drafting as to whether it is possible for policy objectives which Members or Committees or outside bodies wish to pursue are capable of being transformed into law by means of Measures.

The present complement of the staff only reflects the current work of the Assembly. This work will continue, with only a potential diminution in the involvement of the Assembly (and

⁴¹ House of Commons, *Welsh Affairs Committee Government White Paper: Better Governance for Wales :Government Response to the Committee's First Report of Session 2005 -06* Third Special Report of Session 2005-06, 18 January 2006, paragraph 19

⁴² WAG, Constitution Unit, *Committee on the Better Governance for Wales White Paper: Commentary on the Committee's Report*, 12 January 2006, Not published.

its committees) in considering general SIs. This would seem to mean that additional staff should be appointed with legislative experience, or at least a willingness to immerse themselves in such matters including dealing with legislation in both Welsh and English.

Proposed Principle 58:

There should be established a new Assembly Office in charge of the Parliamentary drafting provided with new specially trained staff.

4.3 Law Commission

The contents of an Order in Council may be sufficiently wide to encompass the contents of a number of Acts of Parliament. An example is referred to in the June 2005 White Paper Better Governance for Wales. There it is suggested that the subject of an Order in Council could be “Protection and Welfare of Children in Wales”. The Cardiff Law School Website (www.wales-legislation.org.uk) demonstrates that there are some 29 Acts of Parliament giving powers to the Assembly in this area. To remove the complexity of finding the Assembly’s powers, by Measure within the number of Acts, the new GOWA permits the Assembly among other powers to repeal the relevant provisions in these Acts and to set them out in one central piece of law.

The SOC or the Assembly may wish to consider whether a Law Commission should be requested for Wales

Such work, though necessary, is complex. It is work which is currently carried out by the Law Commission in England and Wales and by the Scottish Law Commission. Though the first piece ever of consolidated legislation applicable to Wales will be shortly enacted – the NHS (Wales) Bill, for which there is a parallel English consolidation Bill, the Law Commission has no proposals to consolidate the legislation only in its application to Wales.

The procedure for Consolidation and Law Review Measures will be very demanding on the Assembly legislative work.

Proposed Principle 59:

An equivalent of the Scottish Law Commission should be established for Wales.

4.4 Explanatory Notes to Measures:

The recent practice of publishing Explanatory Notes with Bills is of considerable benefit to all reading the legislation. This practice is helping to contribute to making the law more accessible.

Explanatory notes for UK Government Bills are prepared by the relevant Government Department and printed by HMSO.

The Assembly may wish to require the Assembly Government to make arrangements for the preparation of such Notes accompanying Measures and that the Assembly itself arranges for the preparation of such Notes as regards draft Measures which are not introduced by the Assembly Government.

Proposed Principle 60:

Any Assembly Measure when introduced in draft or when enacted should be published with accompanying Explanatory Notes

4.5 Printing of Draft Measures

Parliament makes arrangements for the printing of a Bill at various stages on its progress through the two Houses. The first print is on the introduction of the Bill into Parliament.

Will there be an Assembly print on introduction?

As the Bill progresses, further prints are issued by the UK Parliament. This enables information to be given in one central document of all the amendments which have currently been voted on for inclusion in the Bill. Amendments are possible in the progress of Measures through the Assembly at the detailed consideration of the Measure after second reading.

Will there be a new print of the Bill following this stage, rather than, or as well as, a separate list of amendments made in Committee?

Proposed principle 61:

There should be several separate prints of a Measure as it proceeds through the Assembly.

4.6 The Handling of the Legislative Proposals:

In the Assembly's report on the White Paper of June 2005, Assembly Members are reported as considering that once the new legislative procedure have settled down, there could be up to 6 pieces of legislation comprising both draft Orders in Council and Measures before the Assembly at any time together with a number of important general SIs for consideration.

This seems to raise the possible need for a central Legislative Unit to handle all the aspects of the various pre and post legislative procedures involved, including arranging for consultation with outside bodies and persons under the new procedures.

Will there be a central Legislative Office established in the new Assembly?

Proposed principle 62:

There should be a central Legislative body to handle internal and external procedural stages documents.

4.7 Legal Proceedings

4.7.1 GOWA:

GOWA section 96: Scrutiny of proposed Orders in Council

The Counsel General or the Attorney General may refer to the Supreme Court for decision the question whether a matter which a proposed Order in Council under section 95 proposes to add to Part 1 of Schedule 5 relates to a field listed in that Part

GOWA section 99 Scrutiny of proposed Assembly Measures by Supreme Court

- (1) The Counsel General or the Attorney General may refer the question whether a proposed Assembly Measure, or any provision of a proposed Assembly Measure, would be within the Assembly's legislative competence to the Supreme Court for decision.
- (2) Subject to subsection (3), the Counsel General or the Attorney General may make a reference in relation to a proposed Assembly Measure at any time during-
 - (a) the period of four weeks beginning with the passing of the proposed Assembly Measure, and
 - (b) any period of four weeks beginning with any subsequent approval of the proposed Assembly Measure in accordance with provision included in the standing orders in compliance with section 98(7).
- (3) No reference may be made in relation to a proposed Assembly Measure-
 - (a) by the Counsel General if the Counsel General has notified the Clerk that no reference is to be made in relation to it by the Counsel General, or
 - (b) by the Attorney General if the Attorney General has notified the Clerk that no reference is to be made in relation to it by the Attorney General.
- (4) But subsection (3) does not apply if the proposed Assembly Measure has been approved as mentioned in subsection (2)(b) since the notification.

GOWA section 1000 ECJ references

- (1) This section applies where-
 - (a) a reference has been made in relation to a proposed Assembly Measure under section 99,
 - (b) a reference for a preliminary European Court ruling has been made by the Supreme Court in connection with that reference, and
 - (c) neither of those references has been decided or otherwise disposed of.
- (2) If the Assembly resolves that it wishes to reconsider the proposed Assembly Measure-
 - (a) the Clerk must notify the Counsel General and the Attorney General of that fact, and
 - (b) the person who made the reference in relation to the proposed Assembly Measure under section 99 must request the withdrawal of the reference.
- (3) In this section "a reference for a preliminary European Court ruling" means a reference of a question to the European Court under Article 234 of the Treaty establishing the European Community, Article 41 of the Treaty establishing the European Coal and Steel Community or Article 150 of the Treaty establishing the European Atomic Energy Community.

GOWA section 101 Power to intervene in certain cases

- (1) This section applies if a proposed Assembly Measure contains provisions which the Secretary of State has reasonable grounds to believe-
- (a) would have an adverse effect on any matter which is not specified in Part 1 of Schedule 5
 - (b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England,
 - (c) would have an adverse effect on the operation of the law as it applies in England, or
 - (d) would be incompatible with any international obligation or the interests of defence or national security.
- (2) The Secretary of State may make an order prohibiting the Clerk from submitting the proposed Assembly Measure for approval by Her Majesty in Council.
- (3) The order must identify the proposed Assembly Measure and the provisions in question and state the reasons for making the order.
- (4) The order may be made at any time during-
- (a) the period of four weeks beginning with the passing of the proposed Assembly Measure,
 - (b) any period of four weeks beginning with any subsequent approval of the proposed Assembly Measure in accordance with provision included in the standing orders in compliance with section 98(7), or
 - (c) if a reference is made in relation to the proposed Assembly Measure under section 99, the period of four weeks beginning with the reference being decided or otherwise disposed of by the Supreme Court.
- (5) The Secretary of State must not make an order in relation to a proposed Assembly Measure if the Secretary of State has notified the Clerk that no order is to be made in relation to the proposed Assembly Measure.
- (6) Subsection (5) does not apply if the proposed Assembly Measure has been approved as mentioned in subsection (4)(b) since the notification.
- (7) An order in force under this section at a time when such approval is given ceases to have effect.
- (8) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

When a Measure has been made and has come into operation, questions as to the legality of the exercise of powers contained in or under the Measure will be a matter for the Assembly Government and its legal advisers.

However the new GOWA contains provisions enabling the Measure itself to be challenged either on judicial Review before the newly established Supreme Court, by intervention of the Secretary of State for Wales or on a reference to the European Court of Justice.

The proceedings against the Assembly are instituted against the Assembly Commission as prescribed under section 41 of GOWA.

GOWA section 41: Proceedings by or against Assembly etc.

- (1) Proceedings by or against the Assembly are to be instituted by or against the Assembly Commission on behalf of the Assembly.
- (2) Proceedings by or against-
- (a) the Presiding Officer or Deputy Presiding Officer, or
 - (b) a member of the staff of the Assembly,
- are (unless instituted against or by the Assembly Commission) to be instituted by or against the Assembly Commission on behalf of the Presiding Officer, Deputy Presiding Officer or member of staff.
- (3) In any proceedings against the Assembly the court must not grant a mandatory, prohibiting or quashing order or an injunction, make an order for specific performance or stay the proceedings but may instead make a declaration.
- (4) In any proceedings against-
- (a) any Assembly member,
 - (b) the Presiding Officer or Deputy Presiding Officer,
 - (c) any member of the staff of the Assembly, or
 - (d) the Assembly Commission,

the court must not grant a mandatory, prohibiting or quashing order or an injunction, make an order for specific performance or stay the proceedings if the effect of doing so would be to give any relief against the Assembly which could not have been given in proceedings against the Assembly.
 (5) References in this section to an order include an order which is not final.

4.7.2 Matters for Consideration by the SOC or the Assembly:

It is the Assembly in the name of the Assembly Commission which will be challenged, as it made the Measure.

Will Assembly lawyers (and not Assembly Government lawyers) advise the Assembly as to what actions to take?

The Assembly will need to be represented at any judicial hearings including those before the ECJ. The Assembly Government will have the Counsel General on whom it can call to represent the Government in judicial proceedings.

Will a similar post be created in the Assembly.

Who will represent the Assembly in judicial procedures?

The Assembly will need to have procedures for working with the Secretary of State for Wales in any question under section 101 as to the legality of a Measure

Should SOs cover such procedures?

Procedures will have to be established for reconsidering with possible amendments or, alternatively, withdrawing Measures which, post their final approval by the Assembly are subsequently prevented from becoming law.

4.8 Continuing consultation

It is to be hoped that the consultation which SOC has carried out with academics will continue so that a link will be maintained between the Committee and these bodies and civic society as the drafting of the SOs relating to the processes of legislation continues. Civic Society has also expressed considerable interest and wishes to participate in this consultation process.

D.G.L and M.N.

Annexe 1: Tomorrow's Wales Consultation:



NAW's legislative procedures in the new GOWA 2006
Civil Society Input to Standing Orders and the post-2007 Order

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NAW's legislative procedures in the new GOWA 2006
Civil Society Input to Standing Orders and the post-2007 Order

1. Summary

This paper is produced by Tomorrow's Wales. It aims to provide the Standing Orders Committee with a brief overview of the considerations of a representative group of civil society on its potential involvement in the National Assembly for Wales' legislation process post May 2007.

On the evidence presented to Tomorrow's Wales, it is suggested that Welsh civil society:

- wants to be consulted on the drafting of the Standing Orders for the National Assembly for Wales post May 2007
- wants to be as involved as possible in all the legislative processes and stages of those processes post May 2007
- believes that the Assembly can only produce Welsh law that is good and practical if civil society's voice is heard, and if its passage to contribute is embedded in the legislation process itself.

Most organisations:

- are concerned at the lack of information they are receiving regarding the proposed changes to the structure and the procedures of the Assembly post May 2007
- are very concerned about lack of preparedness within civil society generally and also their individual organisations to engage with the challenges the post May 2007 Assembly brings
- have some or no current resource to prepare themselves for aforementioned future challenges, either for this financial year or the foreseeable future
- think there is scope for exploring the role of a single umbrella organisation to co-ordinate the dissemination and response of civil society organisations to Assembly legislative proposals.

2. Tomorrow's Wales

2.1 Background

Cymru Yfory – Tomorrow's Wales was established in July 2004 by the Archbishop of Wales as a positive response to the recommendations of the Richard Commission Report, published in March 2004. The movement hoped to encourage and support wider discussion in Welsh society of its recommendations on the powers of the National Assembly for Wales.

As agreed by the inaugural Executive meeting on July 21st 2004 the movement's mission statements is as follows: Looking ahead to tomorrow's Wales, we welcome the report of the Richard Commission and support primary law making powers for the National Assembly for Wales and invite others to do so.

2.2 Objectives

The movement's objectives are to:

- To encourage the implementation of the Richard Commission recommendations.
- To encourage Welsh civil society and the Welsh public to participate in an informed and open debate on the Richard Commission recommendations.
- To encourage interest within Welsh civil society in politics more generally, but to do so through reference to the Richard Commission recommendations.
- and, in the longer term to facilitate a meaningful conversation between the political establishment, wider civil society in Wales, the Welsh public and the press and media in Wales on Welsh governance.



NAW's legislative procedures in the new GOWA 2006
Civil Society Input to Standing Orders and the post-2007 Order

2.3 Membership

As of the 1st of September 2006, the following are members of Tomorrow's Wales' Executive:

Mr Siôn Brynach M.Litt Oxon

Mr Deian Creunant

Mr Cynog Dafis

Mr Gerald Davies

Parch Aled Edwards OBE

Ms Philippa Ford

Mr Michael German OBE AM

Mr Milwyn Jarman QC

Mr Saleem Kidwai OBE

Mr Gethin Lewis

Lord Richard Livsey of Talgarth

Ms Katie-Jo Luxton

Mr David Melding AM

Parchedicalaf Ddr Barry Morgan

Lord Elystan Morgan

Mr Jon Owen Jones

Mr Paul O'Shea

Mr Mike Ponton

Mr Peter Price

Most Rev Peter Smith Archbishop of Cardiff

Mr Geraint Talfan Davies

Mr Alan Trench

Mr Paul Valerio

Parch Gethin Abraham Williams

Secretariat: Dr Non Gwilym, Llinos Madeley, StrataMatrix.

3. Engaging Civil Society: David Lambert, Marie Navarro and Tomorrow's Wales

3.1 Background

David Lambert, Distinguished Law Fellow at Cardiff Law School and Marie Navarro the Devolution Unit research associate contacted Tomorrow's Wales during the first week of August 2006 having received an invitation to present evidence to the National Assembly's Standing Orders committee as they draft standing orders for the Assembly post May 2007, when part three of the Wales Act 2006 comes into force. More specifically, they were asked to present evidence on the consideration of standing orders in relation to the legislative processes of the Assembly post May 2007.

David Lambert and Marie Navarro were mindful that their evidence should reflect the principles set out in the Beecham Review. Part 2 of Chapter 7 of the "Review of Local Service Delivery: Report to the Welsh Assembly Government"- the Sir Jeremy Beecham Report published on July 10th summarises the report's recommendations, and is addressed to the Assembly rather than to the Assembly Government. The report recommends in paragraph 2.1 that the Assembly should : "Take the lead in encouraging greater citizen engagement.....and ensuring rigorous evidence based challenge so that Wales can become an exemplar of effective small country governance, including by ".. setting an example of citizen-centred scrutiny, geared to improvement, with no party whip and involving a wide range of stakeholders".

3.2 Engaging civil society: the plan

With this in mind, Tomorrow's Wales was contacted since it notes the engagement of civil society in discussion and debate on Welsh Governance amongst its objectives. Unaware of any form of engagement with civil society on the formation of standing orders to date, Tomorrow's Wales prepared the following plan of action:

- prepare briefing paper outlining the possible process' for developing legislation post May 2007
- engage as many civil society organisations as possible
- arrange three seminars in Cardiff to discuss the issues at stake
- summarise their comments and views



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Work on the briefing paper for the information of civil society including a series of related questions was prepared during the first week of August 2007. This document was then distributed to 82 organisations from the week commencing 8/8/06. Target organisations included voluntary organisations, charities, pressure groups, trade unions, profession organisations and individuals representing specific organisations, and representatives from faith communities. Targeted representatives were contacted, and they varied depending on the structure of the organisation. Parliamentary officers, policy officers, Assembly liaison officers,

public affairs officers/directors, Communications officers/directors, Directors, Chief Executives, Presidents and Wales Officers were amongst the recipients.

3.3 Reactions to the Invitation

The reaction was more or less universal. Most representatives did not realise that the process of creating Standing Orders for the Assembly post May 2007 was underway. They also strongly believed that they should be consulted on such matters, and had taken for granted that this would happen via the usual Assembly consultation process. Some enquired if a body such as the National Assembly Advisory Group of 1998 would be established? Moreover, concern was raised regarding the lack of information produced explaining the ramifications of the Government of Wales Act 2006 itself on Welsh political life.

Of the 82 organisations consulted, 35 replied to our request within the deadline. 35 contacts were either on annual leave and therefore unable to respond in time for our deadline and have been in touch since then, or were unable to respond or attend within the timescale. All 35 were interested in Tomorrow's Wales keeping them updated on any further opportunities to input, and on any other related developments. Amongst comments received were:

- *"if this was an official NA consultation exercise, our organisation has a procedure to deal with that. However, since it isn't it's a case of fitting it in, and we cannot do that. However we would like to be kept in touch."*
- *"I cannot work out if this is a work priority. Don't have the time to think about what to do with it"*
- *"Our organisation is too small to deal with these issues, and we have a lot of work to do to ensure that we can respond to the dozens of consultation documents we receive from the Assembly."*

3.4 Briefing Seminars

The first session was held on the 25th of August and attended by 21 representatives. The second and third were held on the 1st and 4th of September respectively, and attended by 33 representatives. We have also received another 2 submissions in written format.

During the briefing sessions:

- David Lambert and Marie Navarro provided an overview on the legislative powers of the GoWA 2006 and potential role of civil society
- Following the presentation, there was an opportunity for attendees to ask questions and obtain clarification on issues raised
- Attendees then considered and in most cases completed the question form. Some completed the forms following further discussion with colleagues after the session.
- Summaries were provided to David Lambert and Marie Navarro by the Tomorrow's Wales Secretariat.

4. Summary of Responses⁴³

⁴³ Where percentages are included, they reflect the comments of representatives who completed the questionnaires.

- There is overwhelming support (100% responses) for ensuring that civil society has the opportunity to be as involved as possible in pre-legislative scrutiny post May 2007. An open door policy for involvement with this stage was advocated by all.



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- There is overwhelming support (100% responses) for ensuring that civil society has the opportunity to be as involved as possible in the legislative process post May 2007. An open door policy for involvement with Orders in Council, Measures and Subordinate Legislation was advocated by all.
- Whilst happy to work on proposals through WAG/AMs/Committee, members of civic society also welcome the opportunity to propose their own Measures. (86% in favour of this - the remaining respondents either felt they could never realistically do this because of the resource available, or felt that working with AMs on private bills would be a better route for them to take).
- Organisations are unclear about the proposed changes in the legislative process, and wish to be kept informed by the Assembly so that they can plan for the changes they will/may have to implement internally.
- There is overwhelming support (100%) for providing a mechanism for pre-legislative scrutiny
- There is overwhelming support (100%) for the Assembly to receive amendments during the legislative stage
- Evidence suggests that organisations are geared towards influencing policy, not engaging with legislation. In that respect 93% believe their organisation is sufficiently organised to execute its lobbying role.
- Most organisations believe and understand that they are under prepared, and under resourced to face and deal with the challenges of scrutinising legislation. Responses varied from no preparation as yet to organisations that have already begun to draft ideas for Measures following May 2007.
- Overall however, most seemed to acknowledge the need to address these imminent challenges by at least developing the skills of current workers, but are yet to put in place strategies to achieve this. The majority of organisations believe they will require further resources to face the new challenges May 2007 will bring. There seems to be some uncertainty about the nature of the resource they will require.
- Respondents encouraged the SO Committee to develop clear, simple processes making it easier for them to respond to the legislative process, as and when necessary.
- There was a clear division between those organisations who believed it would be acceptable to work through a central umbrella body which would disseminate the Assembly legislative proposals and co-ordinate replies, and those who did not. Some,

Other statements noted take into consideration not only those comments, but also representations made at the briefing sessions, and are an accurate representation of the minutes of those meetings.

about half, believed that this would be the only way in which they'd be able to function post May 2007. However there was some concern that this "umbrella body" would somehow dilute the representations made by any given organisation, about how it would be funded and about the nature of its relationship with the user groups. Suggestions as to the work that such a body might undertake include:

- advising and assisting in the drafting and scrutinising of legislation through the provision of comprehensive Explanatory Notes and cost-benefit analysis;
- briefing organisations about specific legal issues;
- requesting information / views from the voluntary sector with regards to the implications of such legal issues.

Many representatives and responses inquired why the Assembly itself couldn't fulfil this role and function?

Other interesting comments included:

- enquiries as to the extent to which organisations / AMs / Committees / WAG will attempt to push the boundaries of the GoWA 2006 settlement in relation to the fields devolved to the Assembly
- confusion as to when exactly civic society's input would be most effectively executed – due to the currently unclear nature of post-May 2007 legislative procedures, organisations remain concerned about how best to allocate their limited resources.
- concerns regarding the National Assembly's ability and capacity to draft legislation in both Welsh and English languages



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- discussion on the extent to which Welsh bodies and organisations will have to engage with London in order to monitor legislative discussions relating to Wales at Westminster, and the extent to which London / Edinburgh / Belfast may have to increase their understanding of Welsh matters and discussions in Cardiff Bay.

5. Conclusions

On the evidence presented to Tomorrow's Wales, Welsh civil society:

- wants to be consulted on the drafting of the Standing Orders for the National Assembly for Wales post May 2007
- wants to be as involved as possible in all the legislative processes and stages of those processes post May 2007
- believes that the Assembly can only produce Welsh law that is good and practical if civil society's voice is heard, and if its passage to contribute is embedded in the legislation process itself.

Most organisations:

- are concerned at the lack of information they are receiving regarding the proposed changes to the structure and the procedures of the Assembly post May 2007
- are very concerned about lack of preparedness within civil society generally and also their individual organisations to engage with the challenges the post May 2007 Assembly brings
- have some or no current resource to prepare themselves for aforementioned future challenges, either for this financial year or the foreseeable future
- think there is scope for exploring the role of a single umbrella organisation to co-ordinate the dissemination and response of civil society organisations to Assembly legislative proposals.

Tomorrow's Wales intends to continue this dialogue with Welsh civil society in so far as it is noted amongst the objectives of the movement to : "facilitate a meaningful conversation between the political establishment, wider civil society in Wales, the Welsh public and the press and media in Wales on Welsh governance".

Tomorrow's Wales Secretariat
September 2006

Annex 2: Summary of Principles:

General:

Proposed principle 1:

The standing order provisions relating to the legislative processes should be very definite and precise and allow no room for doubt so as not to give ground for successful judicial review.

Proposed principle 2:

As suggested in a number of reports, the Assembly's new legislative functions should provide for maximum consultation with and the involvement of civic society in all procedures involving the Assembly, its Committees and the individual Assembly Members.

Proposed Principle 3:

SOs relating to the new legislative functions should give every opportunity to the Assembly in plenary, its Committees and individuals AMs to contribute to the formulation of legislation so as to ensure that it is properly and clearly drafted and create as few ambiguities as possible.

Proposed principle 4:

At least two different parts of the Assembly have to be involved in any law making procedures.

Proposed Principle 5

The processes involved in the consideration of draft legislation in the Scottish SOs will need to be amended or eliminated, while, at the same time complying with the express provisions of the new Act and enabling all Assembly Members, bodies and persons outside the Assembly to be involved in these procedures.

Orders in Council:

Proposed principle 6:

An AM or a Committee should be able to initiate proposals for an Order in Council.

Proposed Principle 7:

The Assembly should be involved from the outset of the draft Order in Council procedure.

Proposed Principle 8:

An Assembly Committee should be created to consider draft Orders in Council and to take representations from AMs and outside bodies and report to Plenary.

Proposed Principle 9:

The draft Orders in Council should be accompanied by a detailed explanatory note when first introduced into the Assembly.

Measures:

Public Measures:

Proposed Principle 10:

There should be two types of separated procedures established by the SOs.

Proposed Principle 11:

SOs should therefore seek to set out a comprehensible system of checks and balances both before and after introduction in the Assembly of a draft.

Proposed Principle 12:

There should be an early opportunity for civic society involvement/consideration of draft Measures as well as at a Committee stage.

Proposed Principle 13:

The SOs should provide for there to be different procedures for these types of Measures.

Proposed Principle 14:

At all the stages of a draft Measure, whether pre or post introduction into the Assembly, the wording should be in both English and Welsh.

Proposed Principle 15:

The SOs will need to provide procedure for their reconsideration if they are rejected by means of one of the statutory mechanisms referred to in section 98(6).

Proposed Principle 16:

SOs should provides for the reprinting of a draft Measure at each stage of its process through the Assembly.

Proposed principle 17:

SOs should not provide for a guillotine motion.

Government Measure:

Proposed Principle 18:

There should be a pre-legislative scrutiny by Assembly of Assembly Government Measures.

Proposed Principle 19:

Every possible assistance should be given for amendment to be made to Government Measures.

Proposed Principle 20:

There should only be a one step reconsideration stage at stage 4.

Assembly Members' Measure:

Proposed Principle 21:

Only a prescribed number of AMs should be able to present proposals for a draft Measure.

Proposed Principle 22:

All such Measures should be drafted only by Assembly Officials.

Proposed Principle 23:

A specific Committee should be established for pre-legislative scrutiny of policy behind AM proposals and to report on feasibility of such Measure.

Proposed Principle 24:

There should be an involvement of the Assembly Government who should be able to make representations.

Proposed Principle 25:

Same stages 1 to 4 as Government Measure.

Proposed Principle 26:

Amendments should be possible in the same way as for Government Measures, there is no distinction between the two.

Committee Measure

Proposed Principle 27:

A Committee should be able to introduce a Measure.

Proposed Principle 28:

All such Measures should be drafted only by Assembly Officials.

Proposed Principle 29:

Another Committee should be established to look at the draft Measure.

Proposed Principle 30:

There should be an involvement of the Assembly Government who should be able to make representations.

Proposed Principle 31:

Same stages 1 to 4 as Government Measure.

Proposed Principle 32:

Amendments in Committee and in plenary should be possible in the same way as for Government Measures, there is no distinction between the two.

Consolidation Measure:

Proposed Principle 33:

Consolidation Measures should follow a more restrictive procedure than General Measures which has less stages in its the consideration and making.

Proposed Principle 34:

Detailed consideration of the Measure should take place only in Committee and plenary should decide without debate whether the Measure should be passed.

Proposed Principle 35:

Amendments to the Measure in plenary should be allowed only in very defined circumstances relating to the accuracy of the law.

Urgent Measures:

Proposed Principle 36:

There should be the three stages of consideration of a General measure all taking place, if necessary in one day.

Proposed Principle 37:

Amendments to draft Urgent Measures should be permitted at the final stage (third reading) of the draft Measure.

Private Measure

Proposed Principle 38:

There should be one unique procedure for Private Measures including protection for affected people.

Proposed principle 40:

There should be an opportunity for affected persons to make written representations and to appear before a Committee.

Proposed Principle 39:

The Transport Order Procedure has to be added to, in order to incorporate the necessary role of plenary in the Measure making process.

Subordinate Legislation

Proposed Principle 41:

Totally new SOs are required for the scrutiny of subordinate legislation coming before the Assembly for consideration.

Proposed Principle 42:

The Scottish SOs to be used as a model to devise the new Assembly scrutiny of subordinate legislation SOs.

Affirmative Procedure

Proposed principle 43:

There should be a Legislation Committee which should be required to invite representations on the legislation. (see paragraph 4.1 page 74).

Proposed Principle 44:

There should be a possibly for amendments.

Proposed Principle 45:

There should be time limits built in the procedure to allow better efficiency.

Proposed Principle 46:

There should be an involvement of Committees as well as plenary to guarantee an appropriate level of quality of the legislation.

Framework Powers

Proposed Principle 47:

As Framework Legislation is so important it should be subject to a procedure similar to that of Measures and not to the procedure for affirmative resolution procedure for subordinate Legislation.

Negative Procedure

Proposed Principle 48:

There should be a possibility of suggesting amendments.

Proposed Principle 49:

There should be time limits built in the procedure to allow better efficiency.

Proposed Principle 50:

There should be an involvement of a subject and legislation Committees as well as plenary to guarantee an appropriate level of scrutiny of the legislation.

Proposed Principle 51:

Because of the potential high number of annulment motions, there should be no automatic debate.

Proposed Principle 52:

It should be a requirement for more than one AM to propose a motion for annulment.

Laying Procedure

Proposed Principle 53:

There should be a formal procedure whereby the attention of the Assembly can be drawn to such instruments at the time of laying.

No Procedure

Proposed Principle 54:

There should be machinery in place by which WAG informs the Assembly of the existence of subordinate legislation not subject to any statutory procedures before the Assembly.

Subordinate Legislation under Assembly Measures

Proposed Principle 55:

The SOs provisions and the procedure applying under statutory requirements for affirmative, negative and laying procedure would automatically apply to subordinate legislation made under Measures if the Assembly so decides after May 2007.

Other Matters

Legislation Committee

Proposed Principle 56:

A Legislation Committee should be established.

Proposed Principle 57:

The Legislation Committee should consider both merits and law of subordinate legislation.

Staffing

Proposed Principle 58:

There should be established a new Assembly Office in charge of the Parliamentary drafting provided with new specially trained staff.

Law Commission

Proposed Principle 59:

An equivalent of the Scottish Law Commission should be established for Wales.

Explanatory Notes to Measures:

Proposed Principle 60:

Any Assembly Measure when introduced in draft or when enacted should be published with accompanying Explanatory Notes

Printing of Draft Measures

Proposed principle 61:

There should be several separate prints of a Measure as it proceeds through the Assembly.

Proposed principle 62:

There should be a central Legislative body to handle internal and external procedural stages documents.