

National Assembly for Wales
Presiding Officer's Guidance

**Presiding Officer's Guidance to
Assembly Members on the
proper conduct of proceedings
under Standing Order 28.19 to 28.26
(petitions and counter-petitions
relating to Special Assembly
Procedure Orders referred to a
committee)**

April 2016

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Introduction

(Issued by the Presiding Officer under Standing Order 6.17)

- 01.** Since the coming into force of the Government of Wales Act 2006 the function of making decisions relating to planning and similar applications and appeals has passed from the Assembly to the Welsh Ministers.
- 02.** However, an Act of the Assembly, or of the UK Parliament, can require that a particular proposal to make changes to the physical environment be made in an Order subject to “Special Assembly Procedure”. In that case, the proposal can be implemented only with the approval of a Committee of the Assembly (or, under certain limited circumstances, of the Assembly in plenary session).
- 03.** Normally, this requirement is included in an Act only for proposals that have the following features:
 - The proposal might adversely affect interests which are entitled to special protection;
 - The proposal can be implemented only through the making of a piece of subordinate legislation which affects a particular locality – an order which has to be made by the Welsh Ministers, or by a local authority or similar body and confirmed by the Welsh Ministers.
- 04.** “Special Assembly Procedure” is a particular form of detailed scrutiny to which the Assembly must subject the proposed Order. It is governed by Standing Order 28. Orders to which this kind of scrutiny apply are called “Special Procedure Orders”.
- 05.** When Special Assembly Procedure applies to a proposed Order this is an additional safeguard to any other statutory requirements, such as a requirement for consultation or the holding of a local inquiry, before the Welsh Ministers (or other body) decide to make or confirm the order. All these requirements must have been fully complied with before a Special Procedure Order is submitted to the Assembly.

The purpose of this Guidance

- 06.** Special Procedure Orders place particular constraints on the way in which Assembly Members may conduct themselves, which do not apply in the case of other legislation. This Guidance gives advice as to how Members should conduct themselves when a Special Procedure Order has been submitted for consideration by an Assembly Committee.
- 07.** It supplements the provisions of Standing Order 2 relating to the interests of Members and the rules laid down in the Code of Conduct for Assembly Members which amongst other things requires Assembly Members to observe the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The quasi-judicial nature of Special Assembly Procedure

- 08.** When scrutinising a Special Procedure Order the Assembly Committee (or the Assembly in plenary) is not exercising a purely political judgement. This does not mean that issues of policy are not important. But the decision which has to be made also involves investigating and considering the effect of the proposed Order on the interests of particular individuals and bodies (the petitioners and any counter-petitioners).
- 09.** This kind of decision, involving assessing the impact of proposed legislation on particular individual and local interests is sometimes described as “quasi-judicial”, because it has features analogous to the role of a court when deciding a dispute between two parties. As a result, the courts can intervene in the process in order to make sure that decisions have been taken fairly, rationally and objectively. Conduct by Members which could be interpreted as casting doubt on those qualities could therefore result in the decision in relation to the Order being set aside by the courts.
- 10.** Quasi-judicial decisions must be made in accordance with the rules of natural justice and the principles of administrative law. That means that:
- the interests of parties who are affected by a proposed Special Procedure Order must be dealt with fairly, justly and openly;
 - all the evidence must be fully considered;
 - decisions must be based only on relevant considerations; and
 - all the interested parties have had equal access to the decision-making process and to the evidence considered in that process.
- 11.** The Assembly’s decisions, and hence any Order which is authorised by the Assembly, can be challenged in the courts if these principles are not followed.

Application of this Guidance

- 12.** Assembly Members may be involved in considering Special Procedure Orders in one of two different ways:
- a. the Procedure requires objections to proposed Orders, in the form of petitions against the Order (and in some cases counter-petitions opposing such petitions) to be scrutinised in detail by a Committee elected for the purpose. There are particular rules which apply to an Assembly Member who serves on such a committee;
 - b. in most cases it is only those Assembly Members who serve on the Committee who will have any role in relation to the proposed Special Procedure Order. However, in one kind of case, a proposed Order may ultimately be voted on by plenary. This is where the Committee recommends that an Order should only be made if amended in some way, to give effect to an amendment requested by a petitioner or counter-petitioner. The Welsh Ministers may then, if they do not agree that the suggested amendments should be made, ask plenary to permit them to make the Order without having to make those amendments.

- 13.** This Guidance relates only to consideration of a Special Procedure Order by a Committee but it contains some rules which apply to all Assembly Members in relation to their dealings with those Assembly Members who are on the Committee.

Membership of the Committee

- 14.** Committees consider petitions (and any counter-petitions) relating to proposed Orders in detail, taking evidence from interested parties, and their recommendations must be made in line with the principles of natural justice.
- 15.** Standing Order 28 sets out the situations in which the right to present a petition against a Special Procedure Order arises, when someone may present a counter-petition to such a petition, and when such petitions and counter-petitions have to be considered by an Assembly Committee. When this occurs it means that these petitioners and counter-petitioners, as well as the Minister or other body who wish to make the Order or have it confirmed, have the right to present their cases to the Committee, either in person or through a representative and to see and comment on the cases of the other parties.
- 16.** The quasi-judicial nature of the Committee's consideration means that certain Members should not serve on the Committee. These include Members with a direct constituency or electoral region interest and other Members who have a conflict of interest arising out of involvement in the matter being considered, for example because they are members of a local authority which has petitioned against the Order, or of a non-governmental organisation that has lobbied against it.
- 17.** Where a Special Procedure Order is being promoted by the Welsh Government it would not be appropriate for Ministers to be members of the Committee- although Standing Order 28.21 gives the Minister who has responsibility for the making or confirmation of the Order (as well as petitioners and counter-petitioners and any other authority who is promoting the Order) a right to be heard by the Committee either in person or by representative.
- 18.** The fact that a Member should not serve on the Committee for one of the reasons referred to in paragraphs 16 and 17 above will be a matter of record. But there are other reasons which may not be so obvious.
- 19.** Any Member who has, or may be expecting to have, or to the Member's knowledge, the Member's partner or any dependent child has, or may be expecting to have, an interest required to be registered by Standing Order 2 that may be seen to prejudice the impartial consideration of the Special Procedure Order, must not be a member of the Committee.
- 20.** Any Member whose name is proposed for membership of a Committee established to consider a Special Procedure Order should inform the Business Committee of any interest of the kind referred to in Paragraph 19, and also of any other relevant personal, constituency or regional interest, that the Member, or to their knowledge, a family member, has or is expecting to have which might reasonably be thought by others to prejudice the impartial consideration of the Order. If the Business Committee decides that the nature of this interest calls into question the ability of the Member to consider the matter fairly, rationally and objectively then the Member will not serve on the Committee.
- 21.** Such interests could include the Member (or a family member) having been actively involved in supporting or opposing the particular proposal under consideration in some capacity - as an Assembly Member, an MP, or in a private capacity. This does not mean however that general

support for a policy on which the proposal is based, for example when campaigning in support of policy contained in a party manifesto, would prevent a Member from serving on the Committee. This kind of case will need to be considered on its particular facts. It is essential that the process is both fair, and seen to be fair.

- 22.** The Committee's recommendation must not be based on information other than the evidence which is formally put before it. Its members must not act on the basis of private representations. If a Member has taken part in any private discussion with an interested party in relation to the proposed Order the Member must inform the Business Committee. If the Business Committee decides that the nature of this discussion calls into question the ability of the Member to consider the matter fairly, rationally and objectively the Member should not serve on the Committee.
- 23.** A Member who- after being elected- becomes aware of having any of the kinds of interest referred to in paragraphs 19 to 22, must immediately make it known to the Chair of the Committee. A Member who is unsure as to whether their particular circumstances would make it inappropriate for that Member to serve on the Committee (for example because it falls within paragraph 21 above) should consult the Assembly's Director of Legal Services for advice on the matter.

Maintaining the fairness of the Committee's consideration

- 24.** Every care must be taken by the Committee to avoid giving any cause for suspicion that private representations have been made and taken into account. If, during the process of formulating a recommendation, new evidence comes to light which would affect that recommendation, it must be shared with all those parties entitled to present their cases to the Committee, in order that they may comment on it if they wish.
- 25.** Members of the Committee must not discuss the proposed Order with any interested party and must decline requests for meetings with other Assembly Members, MPs, delegations of local people, persons whose interests are affected by the proposed Order, pressure groups or any other person who wishes to make representations about the matter. This applies to all forms of contact with interested parties, including telephone calls.

Particular Obligations of Committee Members

- 26.** Because of the quasi-judicial nature of the Committee's role in hearing and considering evidence and in reporting to the Assembly on the basis of its assessment of that evidence, there are particular obligations which must be accepted by Members who agree to be elected to the Committee. They must make sure that they are able to listen to all the evidence which is presented orally. Standing Order 28.20 does not therefore permit other Members to substitute for members of the Committee as can be done in the case of other committees. Neither is it possible for Members to absent themselves from the Committee while it is hearing evidence or other representations from the parties. Members must therefore accept the obligation of making themselves available to attend all meetings of the Committee. If they do not do so then this is likely to result in a meeting having to be postponed, possibly causing hardship to those who had arranged to be present or to be represented.

Assembly Members generally

- 27.** Assembly Members who have not been elected to serve on the Committee considering a proposed Special Procedure Order are, provided they observe the rules set out in the following paragraphs, free to make representations for or against a proposed Order.
- 28.** Assembly Members must respect the principles set out above in relation to Committee Members. They must not therefore attempt to make private representations to Assembly Members who are members of the Committee.
- 29.** When representing the interests of their electors, when supporting causes in which they are interested, and, in the case of Assembly Members who are members of the Assembly Government, when supporting Government policy, Assembly Members may properly form and express a view on a proposal to which a Special Procedure Order relates, in any way that does not contravene paragraph 28.