Llywodraeth Cymru
Welsh Government

Welsh Government

Legislation Handbook on Senedd Bills

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Introduction

This handbook is intended to be a helpful document, however, it is not intended to be an authoritative or definitive statement of Welsh Government and Senedd procedure and practice. This document has been partially updated, other updates are underway. The document will be republished when these have been completed.

i. This Legislation Handbook has been prepared to provide advice and guidance to those working on Senedd Bills.

ii. This handbook covers the processes to be undertaken and the procedures to be followed in preparing primary legislation and taking it through the Senedd. It aims to set out what is required of Bill teams at each stage of the process, from seeking inclusion in the Government's legislative programme through to commencing an Act of the Senedd.

iii. The Legislative Programme and Governance Unit (LPGU) should always be consulted on matters of Bill procedure. LPGU in turn may consult with the Senedd Commission.

iv. This guidance has been written with the needs of Bill teams in mind. It describes the main features of the usual process, but not every situation can be covered – it is certainly true that every Bill is different.

v. The different phases of work and the different Stages of Senedd consideration are dealt with in chronological order. Bill teams who are starting out on the process of preparing legislation, particularly those new to Bill work, are advised to read through the main chapters to familiarise themselves with the tasks ahead so as to help them plan effectively. The guidance is also designed for officials to consult quickly as they progress through the legislative process to identify key points and actions for each phase of work.

vi. This guide does not deal with –

- Private Bills (Bills promoted by a body outside of the Senedd and distinct from Member Bills which are public Bills), Hybrid Bills or Consolidation Bills. Guidance should be sought from Legal Services in the first instance or LPGU.

- Subordinate legislation, other than issues related to delegated powers in Senedd Bills.

- UK Parliamentary procedure.

- Bills relating exclusively to Scotland or Northern Ireland.

Examples

vii. Examples of past Bills, Policy Instructions, White Papers, Explanatory Memoranda and Explanatory Notes, etc. are available from LPGU.

Presentation

viii. Throughout this guidance Senedd Cymru is referred to as 'the Senedd' and the Welsh Government is referred to as 'the Government'. This guidance is primarily concerned with Government Bills (i.e. those brought forward by the Government), and reference to a "Bill" should be read as referring to a Government Bill unless the context otherwise dictates.

ix. A list of key words and phrases used in the Legislation Handbook is given at Appendix A.

Keeping the Legislation Handbook up to date

x. The Legislation Handbook will be reviewed periodically, and, where necessary, updated or corrected to reflect changes in procedure and practice as they occur. Whilst LPGU will also endeavour to alert current Bill teams to relevant changes, the electronic version of the Legislation Handbook is the most up-to-date version.

Chapter 1 – Acts of the Senedd and the Government's legislative programme

This Chapter explains what is meant by an 'Act of the Senedd' as well as what is meant by the 'legislative programme' and how proposals for Bills are included within it.

Acts of the Senedd

1.1 The Government of Wales Act 2006 (GoWA 2006) provides for the Senedd to make laws, known as 'Acts of the Senedd'. A Bill is a draft law. Once a Bill has been considered and passed by the Senedd, and given Royal Assent, it becomes an Act of the Senedd, and law. It (or provisions of it) may come into effect (or force) immediately on Royal Assent, or the time when it is to come into effect may be left to the Welsh Ministers to decide by order. This is referred to as commencement.

1.2 An Act of the Senedd is a single legislative instrument comprising of a Welsh and an English text. Bills are introduced into the Senedd in Welsh and in English, considered in Welsh and English, and if amended, amended in Welsh and English. GoWA 2006 provides that the Welsh and English texts of an Act of the Senedd enacted in Welsh and English are to be treated for all purposes as being of equal standing.

1.3 The Senedd can only make laws within its powers, or 'legislative competence'. The tests for the Senedd's legislative competence are set out in section 108A of GoWA 2006. The Senedd can make any law that does not:

(a) extend otherwise than only to England and Wales (so the Senedd cannot make laws which are enforceable outside the joint jurisdiction of England and Wales);

(b) apply, or change functions exercisable, otherwise than in relation to Wales;

(c) relate to any of the reserved matters listed in Schedule 7A to GoWA 2006;

(d) breach any of the restrictions in Schedule 7B to GoWA 2006 (e.g. a requirement for Minister of the Crown consent to changing the functions of a reserved authority); or

(e) breach EU law or Convention (human) rights.

1.4 In addition, the Supreme Court has said that an Act of the Senedd may be outside the legislative competence of the Senedd if it breaches fundamental common law rights or the rule of law.

1.5 The tests are complex. For example, there is some scope to make provision otherwise than in relation to Wales where necessary to enforce, or make

effective etc. another, devolved provision. And there are circumstances in which a provision may engage, or touch on, a reserved matter without 'relating to' it. Advice should be sought from Legal Services at an early stage if it is considered that a proposed Bill provision potentially engages any of these restrictions.

1.6 The Welsh and English texts of all Acts of the Senedd can be found at http://www.legislation.gov.uk/asc .

The Government's approach to legislation

1.7 Legislation is just one of a number of ways of giving effect to a policy proposal; it is necessary when the law needs to be changed – all legislation is policy, but not all policy is legislation.

1.8 Our aim is to produce good law: that is, law which is necessary, clear, coherent, effective and accessible. This aim should be a feature of the thinking at each phase of the Bill's development.

1.9 The legislative programme comprises those policy proposals which the Government intends to bring forward as draft legislation (i.e. Bills) and introduce into the Senedd so they may become Acts of the Senedd.

1.10 The other legislative vehicles, which enable the Government to take forward policies which are not included in the legislative programme, are subordinate legislation; and, where appropriate, UK Parliamentary Bills and Transfer of Functions Orders and Orders in Council.

Preparing the legislative programme

1.11 The Government has indicated that there will be an annual statement on the legislative programme which will set out those Bills to be introduced in the following 12 months.

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1.12 The legislative programme comprises of legislative proposals put forward by Ministers and the Counsel General. These proposals are considered by the First Minister, who then proposes a legislative programme to Cabinet. Cabinet may also consider provisional plans for future years of the legislative programme. Cabinet agree the final legislative programme which is announced by the First Minister in the annual statement on the legislative programme. Responsibility for supporting the First Minister in preparing the Legislative Programme sits with the Legislative Programme and Governance Unit (LPGU).

1.13 In addition to the planned work, the legislative programme also includes contingency to allow time for the Government consideration of Member Bills and other non-Government legislation.

1.14 Links to the First Minister's statements on the legislative programme are available on the Government's website.

Chapter 2 – Overview of preparing a Bill

This Chapter is intended to provide an at-a-glance overview of preparing a Bill and accompanying documentation in Welsh and English before it is introduced into the Senedd. It is important to remember that it is not a definitive account. It is designed to signpost readers to other Chapters within this Volume of the Handbook where detailed guidance is available.

Chapter 13 gives an Overview of the Stages of Senedd consideration.

Working on an Senedd Bill

2.1 The group of officials working on a Bill is commonly known as the 'Bill team'. Chapter 3 of this Handbook provides advice on the composition and resourcing of a Bill team, together with an explanation of the other individuals and teams who contribute to the development, preparation and consideration of a Senedd Bill.

2.2 Bill management and governance is an essential element to the delivery of a Bill, and further guidance on the principles, approach and documentation associated with this is given in Chapter 4 of this Handbook.

Key phases of work prior to introduction of the Bill

2.3 The key phases of work in preparing the Bill are explained in the table below, they are set out in sequential order and include signposts to further reading.

Phase of work	***What is happening in this phase***	***Signpost to further reading***
Development of the policy	During this phase the team is developing and setting out the policy goals and implications of legislation. The impact of the policy will need to be evaluated, and options for delivery considered. There will be consultation with stakeholders.	Chapter 5 signposts to guidance on impact assessments, and Chapter 6 gives guidance on preparing the Regulatory Impact Assessment (RIA). Chapter 7 gives guidance on policy development, as part of the wider guidance on instructing the drafter.

Phase of work	*What is happening in this phase*	*Signpost to further reading*
Instructing the drafter	The team will be developing a very detailed policy explanation of what the Bill will need to do and providing analysis of legal implications and any existing legislative framework. This is to inform the drafter of the Bill what the Bill will need to do.	Chapter 7 gives guidance on instructing. Consideration should also be given to Chapter 9 on delegated powers and Chapter 18 on commencement – both matters will need to be covered in the instructions.
Drafting and translation of the Bill and the Explanatory Memorandum	Bills are usually prepared in Welsh and English by specialist drafters and translators. The Explanatory Memorandum (which includes the RIA) and the Explanatory Notes to the Bill are usually prepared, in both Welsh and English, by the Bill team including the translators. Where there are powers in the Bill to make subordinate legislation, the Bill team will usually need to prepare a document in Welsh and English to explain to the Senedd how the powers are expected to be used – a statement of policy intent (SoPI).	Chapter 7 gives guidance on working with the drafter during the preparation of the Bill. Guidance on RIAs is given in Chapter 6, and Chapter 8 gives guidance regarding the Explanatory Memorandum. Chapter 9 provides guidance on preparing Explanatory Notes. Chapter 10 provides guidance on delegated powers generally, and Chapter 11 explains the statements of policy intent for subordinate legislation.
Clearances prior to introduction	Pre-introduction assessment meetings take place. Ministerial clearances of the Bill and Explanatory Memorandum in Welsh and English prior to introduction are secured. The documents are then sent to the Llywydd in Welsh and English for her determination prior to introduction.	Chapter 14 includes guidance on the steps taken prior to introduction of the Bill.

2.4 It is not possible to provide a general guide to the length of time necessary to develop a Bill ready for introduction in both Welsh and English – it is certainly months rather than weeks. For some Bills a couple of years may be required, for others eight to twelve months may be more appropriate. Occasionally, in very exceptional circumstances there will be a need to introduce emergency or 'fast-track' Bills, where different timescales are likely to apply (see chapter 16). Advice on understanding the likely timescales for an individual Bill is available from the Legislative Programme and Governance Unit (LPGU).

Chapter 3 – Who is who in the legislative process

This Chapter sets out the main individuals or groups within the Government involved in the preparation and consideration of a Bill. It is not an exhaustive list and Bill teams will need to consider who else will also need to be involved.

Ministers involved in Bills

3.1 The First Minister (FM) is responsible for the Government's legislative programme, and therefore takes a close interest in the development and delivery of Government Bills. The FM's agreement must be sought for:

a. seeking Cabinet agreement for a Bill to be included within the legislative programme;

b. the policy aims of the Bill, including any changes to it;

c. the timetable for the Bill, including any changes to it;

d. the date of introduction of the Bill into the Senedd; and

e. proposed Government amendments to the Bill, once it has been introduced.

3.2 For Government Bills the Lead Minister[1] for the Bill, sometimes also referred to as the Minister in charge of the Bill, is usually the Minister with portfolio responsibility for the policy of the Bill. When the Lead Minister introduces the Bill into the Senedd they will become known, to the Senedd for this purpose, as the Member in charge (of the Bill). Further advice on the Member in charge is given below.

3.3 There are occasions when more than one portfolio Cabinet Minister has an interest in the policy of the Bill. This could be because:

a. the Bill is being used as an opportunity to deliver policy which sits within the portfolio of another Minister, for example legislative changes required in relation to the appointment of HM Inspectors being included in an education Bill;

b. a mechanism for delivery of the policy intention of the Bill sits within the portfolio of another Minister, for example the inclusion in a housing Bill of a council tax premium on empty homes as a mechanism to make more housing stock available.

[1] The term Minister(s) is used throughout the handbook to refer to both Ministers and Deputy Ministers. Where specific reference is made to either one, it will be made explicit in the guidance.

In such cases the First Minister will have determined who the Lead Minister for the Bill is. Policy responsibility will continue to sit with the portfolio Minister, and their agreement should be sought in relation to policy decisions for those aspects of the Bill. However it will be for the Lead Minister of the Bill to take the Bill through the Senedd, and therefore their agreement will also be required.

3.4 Where the Lead for a Bill is a Deputy Minister, the Minister with portfolio responsibilities will also be involved in key decisions regarding policy, timetable and financial matters. All advice submitted to the Deputy Minister should also be copied to the Minister with portfolio responsibility. The practical working arrangements should be discussed at the outset of the project, with advice sought where necessary from the relevant Private Office.

3.5 Bill teams should be aware that there are also other occasions when more than one portfolio Minister has an interest in a Bill (Government or non-Government), in particular where:

a. budget responsibility for one or more aspects of the Bill sits under a different Minister to the Lead Minister. In such cases the agreement of the Minister with financial responsibility should be sought to those cost implications falling to their area(s);

b. the policy of the Bill is cross-cutting in nature. The Lead Minister will have overall responsibility for the Bill, but will wish to ensure that where the Bill affects the portfolio of other Ministers they are informed and involved in the development of the Bill.

3.6 For non-Government Bills it is usual for one Minister to be the Lead Minister for responding to the Bill during the Senedd's consideration of that Bill. Sometimes they will also be involved in engagement with the prospective Member in charge of that Bill prior to the Bill's introduction (for example, discussions with the Member who has been given leave to introduce a Bill by the Senedd, but who has not yet introduced that Bill). The Lead Minister for non-Government Bills is usually the Minister with portfolio responsibility for the subject matter of the Bill; there are occasions when this would fall to more than one Minister, and again in those cases the First Minister will determine the Lead Minister.

Counsel General

3.7 The Counsel General is the Government's Law Officer; he is responsible for the provision of legal advice to the First Minister and the rest of the Government. The Counsel General's legal advice is the final and authoritative legal advice within the Government.

3.8 Once a Bill is passed by the Senedd the Counsel General must decide whether to exercise his power under section 112 of the Government of Wales Act 2006 (GoWA 2006) to refer the question whether a Bill or any provision of the Bill would be within the Senedd's powers to the Supreme Court for

decision (see Chapter 17). In exercising this function the Ministerial Code provides that the Counsel General acts independently of the Government.

3.9 The Counsel General also has the power under section 111B of GoWA 2006 to refer to the Supreme Court the question of whether a Bill (or any provision of it) relates to a 'protected subject-matter'.

3.10 The list of 'protected subject-matters' is set out at section 111A(2) of GoWA 2006. It includes the franchise for Senedd elections; the system by which Senedd members are returned; the specification or number of constituencies and regions or other electoral areas, and the numbers of members to be returned in each electoral area. It also includes provision to change the name of the Senedd; and the number of persons who may hold the office of Welsh Minister or Deputy Welsh Minister. A Bill which contains provision about a protected subject-matter can only be passed if at least two-thirds of the total number of Senedd members vote for it at the final stage (a 'super-majority').

Member in charge (of the Bill)

3.11 Any Bill introduced to the Senedd has a Member in charge of it (in accordance with Standing Order 24).

3.12 For Government Bills, the Member in charge is:

a. the member of the Government who laid or introduced the legislation; or

b. a member of the Government who is authorised by the First Minister.[2]

3.13 In practice, for Government Bills, the Member in charge will usually be the Lead Minister for the portfolio in which the policy of the Bill falls (see also above).

3.14 In relation to non-Government Bills the Member in charge is:

a. a member of the Committee authorised by that Committee, for Committee Bills;

b. a member of the Commission authorised by the Commission, for Commission Bills; or

c. the Member who had the agreement of the Senedd to introduce the Bill or another Member authorised by the original Member, for Member Bills.

Further information on non-Government Bills is included at Chapter 19.

[2] For example, if there is a Ministerial reshuffle the original Member in charge of a Bill may no longer be in Cabinet or hold the same portfolio responsibilities. In such circumstances the First Minister would authorise a new Member in charge; the relevant practical arrangements for this are dealt with by the Legislative Programme and Governance Unit (LPGU).

Changes to the Member in charge

3.15 Government Bills can be transferred to any Member of the Government as authorised by the First Minister. Such changes may occur, for example, because of a change in the Portfolio Minister. A Member in charge of Government legislation must be a member of the Government (Standing Order 24.4).

3.16 Committee Bills can be transferred to another member of the Committee. Should the Committee no longer exist the Business Committee can specify another Committee to be responsible for the legislation. With the agreement of the Government (and authorisation of the First Minister) a Committee may also transfer an item of legislation to the Government through a unanimous vote of that Committee. When such a transfer takes place, the Bill is regarded (from then on) as a Government Bill.

3.17 Commission Bills can also be transferred to any member of the Commission but the Member in charge must be a member of the Commission (Standing Order 24.12).

3.18 The Member in charge of a Member Bill can transfer the Bill to another Member, or to a member of the Government if authorised by the First Minister. Where the Bill is transferred to the Government, it is regarded (from then on) as a Government Bill. This would mean certain procedural requirements are changed (see Chapters 15 and 19).

Bill team

3.19 The Bill team works to deliver a Bill, and is generally made up of a Bill Manager, policy lead(s) and officials, subject lawyer(s), drafting lawyers, translators (when appropriate, see 'Translation Service' below) and a Senior Responsible Owner(SRO). This team can change in size and make-up for different Bills and even at different points in the development of a Bill. The roles of each of the key members are laid out below, but it is appropriate to specify the responsibilities of the members of the Bill team in the terms of reference for the Bill project, and for these to be agreed by the project board (see Chapter 4).

Senior Responsible Owner (the SRO)

3.20 In line with standard programme and project management practice, the SRO is the individual responsible for ensuring that a project or programme of change meets its objectives and delivers the projected benefits. For Bill projects, this includes delivery of the Bill into and through the Senedd. They are usually the owner of the overall policy change of which the Bill forms part.

3.21 The SRO must be a senior official, and for Bill projects is usually a Director or Deputy Director, and will give account and assurance to Ministers for the delivery of the legislation project. They should be recognised as the owner throughout the organisation and should (where possible) remain in place

throughout the project, or change only when a distinct phase of Bill delivery has been completed.

3.22 The SRO should be prepared to take decisions and should be proactive in providing leadership and direction throughout the life of the Bill project.

3.23 The SRO role fits with existing project management methodologies because the SRO, as owner of the policy change, should be Chair of the Bill project board. The SRO should take a prominent role in the development of the Bill, particularly through attendance at project board meetings. Additionally the SRO will be expected to give direction where necessary and quality control the key documents (briefings, speeches, Ministerial advice, etc.).

Bill Manager

3.24 The Bill Manager manages the Bill's progress and production, working to the agreed timetable and ensuring deadlines are met. They act as the central point of contact for the Bill. The role can vary according to the Group's requirements and the nature of the Bill, but is essentially one of project management. Their work can include, but is not limited to:

a. pulling key documents together, including the Explanatory Memorandum;

b. preparing advice to Ministers;

c. ensuring all the necessary bill project documentation is prepared, and sometimes acting as the secretariat to the project board;

d. ensuring speaking notes, lines to take, briefing, amendment tables, other key documents are prepared to time during the Senedd Stages.

3.25 Although the Bill Manager can be a policy official, the role itself is only concerned with an objective overview of the process and not the policy details. They will highlight possible risks to the Bill and work on mitigating actions.

3.26 Bill Managers can be appointed early in the policy development phase, but certainly need to be in place as soon as it is agreed that a Bill will be one of the mechanisms used to deliver the policy change.

Policy teams, leads and officials

3.27 Policy officials (including leads), are responsible for developing and setting out the policy goals and implications. They will set out the initial case for change and explore the available options, considerations and impacts. They will ensure the Minister has well evidenced advice on different ways of achieving the objective with a firm recommendation.

3.28 Once a course of action has been set, the policy officials will prepare consultation papers and supporting documentation. They are also

responsible for preparing policy instructions – the level of detail and precision required for developing instructions for Bills should not be underestimated (further guidance is given in Chapter 7).

3.29 The policy team will remain involved throughout the process of the Bill's development and scrutiny. This will include arranging for policy checkpoints to take place, clarifying policy objectives and managing the developing business case.

3.30 Policy officials will also work on the Explanatory Memorandum to the Bill; prepare briefing and speaking lines for the Minister during the Senedd's consideration of the Bill as required; develop Government amendments; and provide responses to non-Government amendments.

Legal Services

3.31 Subject lawyers should be involved from the start of the project. They will have a detailed legal knowledge of the policy area. They will be able to advise on the current legal status of the policy area, legislative competence and the viability of the policy options that have been developed. They will normally be the official who works from the policy instructions to develop a set of instructions for the drafter – the person performing this role is known as the 'instructing officer'. The subject lawyer will also clear and provide legal advice in relation to all legislation related Ministerial advice, the Explanatory Notes and other key Bill documents (for example, Explanatory Memorandum, briefing packs, lines to take, Written Statements, etc.).

3.32 They will remain involved to respond to challenges raised by the Committees and the Senedd, instructing the drafter to prepare Government amendments, and scrutinising non-Government amendments. They may be called upon for clarification on provisions at any time during the Bills progress.

Office of the Legislative Counsel (OLC)

3.33 OLC is a specialised team of lawyers who draft and prepare Government Bills and are responsible for:

- drafting Bills and amendments to Bills to give effect to the policy;
- leading on matters of legislative drafting policy and practice, in particular in the collective effort to ensure that the Bill makes good law (law that is necessary, clear, coherent, effective and accessible);
- identifying any gaps in the instructions;
- raising and helping to resolve issues with the instructions that call into question whether any aspect of the proposal will deliver the policy or make good law;
- ensuring that the Bill is clear in both English and Welsh and that each language version produces the same legal effect.

3.34 OLC is a small office and is tasked with drafting all Government Bills and amendments in the legislative programme. The resources of the office are,

therefore, tightly scheduled and drafting windows are not easily moved or altered. OLC is led by the First Legislative Counsel.

Translation Service

3.35 Senedd's Standing Orders require that Bills, and most of their accompanying documents, are provided in both Welsh and English. Section 156 of the Government of Wales Act 2006 states that both language texts of Welsh legislation "are to be treated for all purposes as being of equal standing" and section 5 of the Legislation (Wales) Act 2019 also states that both language texts of legislation "have equal status for all purposes".

3.36 Translation Service can assist in the production of Welsh text. The Legislative Translation Unit specialise in the translation the Bill itself and the Explanatory Notes. OLC will organise the translation of the Bill, the Bill team will need to organise the translation of the Explanatory Notes. The General Translation Unit will work primarily on the Explanatory Memorandum and the Regulatory Impact Assessment (RIA), together with consultation papers, and Ministerial speeches. Bill teams should book translation requests for this work via e-forms on the Intranet. Translation Service also provides Welsh terminological and stylistic advice to assist other members of staff in the production of Welsh text and a text checking service for documents intended for the public.

3.37 Translation from English to Welsh by Translation Service is one option. There are other ways of producing text in Welsh e.g:

a. Non-translator members of the Bill team (e.g. policy officials, lawyers and drafters) could draft in Welsh and Translation Service could translate into English;

b. Non-translator members of the Bill team could co-draft text in both languages, with Translation Service providing advice on drafting the Welsh text, and/or checking it; or

c. the Bill team could provide the Welsh text without any recourse to Translation Service.

3.38 Bill teams are responsible for assessing their linguistic skillset and considering how to produce Bills and their documentation in both Welsh and English. This consideration involves determining how the Welsh and English documents accompanying Bills will be checked for accuracy and consistency. OLC undertakes this task for Bill texts in the legal equivalence process.

3.39 Translation Service resource is limited and the demand for its services from across the organisation is high. As soon as a Bill team is appointed, consideration needs to be given from the outset to how the Bill and its accompanying documents will be produced in Welsh and English. If translation services are required, the Bill team needs to engage with Translation Service from the outset of the project and include translators as part of the core Bill team. Translation Service will allocate a jurilinguist (i.e. a

senior member of the Legislative Translation Unit) and a translator (i.e. a member of General Translation Unit) to lead on each Bill. Bill teams should keep in regular contact with the jurilinguist and lead translator for a Bill, and provide updates on:

a. what work is likely to be sent;

b. the nature of the work (e.g. whether it amends other legislation, whether it contains new or complex terminology);

c. How many words will need to be translated;

d. when it will reach Translation Service; and

e. by what time the work needs to be returned.

If circumstances change, the jurilinguist and translator should be consulted so new arrangements can be considered and agreed upon.

3.40 When scheduling work with Translation Service the following points should be remembered:

a. sending finished text to Translation Service, rather than incomplete drafts, will make more efficient use of the resources available: each set of changes will cost in terms of time and/or money. If Bill teams have no other option than to send an unfinished draft for translation, Translation Service will need an indication of which elements are likely to change the most;

b. every text is different and it is not possible to tell in advance exactly how long Translation Service will need to do the work, but the jurilinguist or lead translator will be able to give more detailed advice.

Other individuals and teams supporting Senedd Bills – the wider Bill team

Welsh Treasury – Policy

3.41 Bills that introduce changes that may impact on the taxes devolved or partially devolved to Wales must be brought to the attention of the Welsh Treasury (Policy). The devolved and partially devolved taxes are land transaction tax, landfill disposals tax, income tax (on earnings, pensions and income from property) and the local taxes (council tax and non-domestic rates). This is because any such changes could alter the tax base of these taxes, directly or indirectly, and have wider revenue impacts for Wales.

3.42 Examples could include a reclassification of types of waste, proposals to create new schemes to provide access to home ownership, grants for the construction of new business properties and employment creation schemes. Judgement should be made as to the change the legislation proposes and the remoteness to the tax base. For example, programmes to enhance the skill

base in Wales, whilst potentially designed to impact on opportunities and attract high value jobs to Wales, are likely to be too remote from tax revenue outcomes to have an identifiable impact.

3.43 Discussion with Welsh Treasury (Policy) should commence early in the Bill process to identify any potential tax implications.

Welsh Treasury - Economists

3.44 The Chief Economist's team in Welsh Treasury provide specialist advice and guidance on the development of the Regulatory Impact Assessment (RIA) needed for each Bill. The economists can advise on the correct methodological approach, options to be included in the analysis, the data sources and evidence to be used to monetise costs and benefits and the completion of the RIA summary table.

3.45 There is an expectation that a draft RIA will be published as part of the consultation exercise for proposed Bills and so it is important that the economists are contacted at an early stage of the policy making process (see Chapter 6).

3.46 The Chief Economist is responsible for clearing the final RIA prior to the introduction of a Bill.

Knowledge and Analytical Services (KAS)

3.47 Knowledge and Analytical Services (KAS) is an extremely important resource when considering the evidence base for the Bill. It is vital to engage with KAS very early on in the policy development period. Where possible, this should be prior to inclusion of the Bill within the legislative programme. KAS are able to provide expertise in areas such as statistics, economics, social research, geographical technology and library services. For larger projects it may be appropriate to negotiate resource allocation for the Bill with KAS.

3.48 KAS provides the following expertise particularly relevant to working on Bills:

a. Statisticians – can help clarify data requirements, find what data already exists, set-up new data collections and decide how to collect data efficiently. Statisticians can assess data quality and decide whether it is fit for the intended purpose, and analyse the data to tell the story, generate further questions, draw inferences and inform decisions.

b. Social researchers – will measure, describe, explain and predict changes in social and economic structures, attitudes, values and behaviours and the factors which motivate and constrain individuals and groups in society.

c. Library Services – The Library offers useful resources to support policy development, as well as a range of services which may benefit Bill work. The Library is able to perform online information and literature searches.

3.49 Note also that analysts (who are economists, social researchers and statisticians) may also be embedded within Groups.

Strategic Budgeting

3.50 The Strategic Budgeting Division leads the Government's budget process to allocate resources in line with the Government's priorities for the people, communities and businesses in Wales. Its focus is on improving the use of evidence and analysis to support strategic decision making.

3.51 This means that Bill teams need to engage with Strategic Budgeting about the financial implications of a Bill early in the process, to ensure the policy ambitions can be delivered within the allocation of resources. Strategic Budgeting officials have responsibility for scrutiny and clearance of the financial implications of advice relating to Senedd Bills, before Ministerial approval is sought.

Communications Directorate

3.52 The Communications Directorate leads the development and delivery of external communications for the Welsh Government. Of particular relevance to those working on Senedd Bills is the Directorate's work covering web and digital communications, news, press and media relations, and communications planning, coordination, efficiency and effectiveness.

3.53 For those working on Bills one of the challenges is ensuring communication is developed and delivered in a way that is effective and provides the best possible value for money. In the first instance the Bill Manager will wish to engage with the Head of Communications and Marketing for the policy Group, who can provide advice, guidance and support on the communications approach for the Bill.

Private Offices

3.54 Each Minister is supported by a secretariat, which acts as the main liaison between the Minister and the organisation. Bill teams will need to work closely with the Private Office, who deal with all correspondence to the Minister, arrange meetings with and for them and organise their appearances before Committees. Early liaison with Private Offices is important so they can be kept aware of key dates for each of their Minister's Bills and in order to avoid diary clashes.

Special advisers

3.55 Special advisers add a political dimension to the advice and assistance available to Ministers while reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support.

3.56 They are appointed by the First Minister to help Ministers on matters where the work of Government and the work of the governing party overlap and where it would be inappropriate for permanent civil servants to become involved. They are an additional resource for the Minister providing assistance from a standpoint that is more politically committed and politically aware than would be available to a Minister from the permanent Civil Service.

3.57 It is helpful for Bill teams to engage with special advisers when preparing advice to Ministers in relation to Bills.

Specialist policy advisers

3.58 Specialist policy advisers are employed from time to time as temporary Civil Servants, often on secondment, to provide expert policy advice to Ministers and their Groups. Unlike special advisers, the advice they provide will be non-political, but their experience, knowledge and proximity to some Ministers could assist officials in preparing policy advice or briefing on specific issues.

Assuring delivery of the legislative programme

3.59 The Bill team are responsible for the delivery of an individual Bill; this Bill will form part of the wider legislative programme for the Government. The following groups and teams support and assure the delivery of the legislative programme.

Legislative Programme and Governance Unit (LPGU)

3.60 LPGU manages the delivery of the legislative programme, which includes providing advice and support to individual Bill teams, lead Ministers and special advisers, as required. LPGU also provides advice to the First Minister and the Minister with responsibility for Government Business on the legislative programme.

3.61 This work includes advice on early policy development, stakeholder engagement, timetabling and publication of Green and White Papers, Draft Bills and other consultations, as well as on the handling of each phase of the process, particularly the Senedd Stages. LPGU must be given the opportunity to comment on all Ministerial advice relating to Senedd legislation and will offer advice on relevant documents that must accompany legislation. Alongside providing training for individual Bill teams, LPGU will also attend project boards and Bill team meetings (including those held with Ministers) and ensure that planning and management principles are in place for each Bill. They closely monitor progress against agreed milestones to ensure that deadlines are met; and ensure consistency of approach across Government in relation to legislation.

3.62 LPGU will determine and set the timetable for each Bill (pre and post-introduction), taking into account the views of all relevant parties.

3.63 Part of the team supports the work of the Legislative Programme Board and its associated working groups by providing secretariat support, and by taking forward a range of improvement actions.

Legislative Programme Board

3.64 The Legislative Programme Board takes a central role in the overall management and monitoring of the legislative programme as part of the wider Programme for Government. It is made up of the senior officials from across the Welsh Government and is supported by associated working groups.

Constitution and Welsh Tribunals

3.65 Constitution and Welsh Tribunals includes two teams of particular relevance to those working on legislation:

a. A combined team dealing with constitutional affairs, parliamentary legislation and inter-governmental relations. The team is responsible for dealing with any UK parliamentary legislation affecting Wales, with constitutional issues relating both to the Welsh devolution settlement and to wider UK constitutional developments, and with relations with the UK Government and the other devolved administrations. The team has a significant network of senior and working level contacts with lead responsibility for devolution across UK Government departments;

b. The Justice Policy Team leads the development of justice capacity and capability across the Welsh Government and contributes to the effective delivery of justice in Wales through reform of devolved tribunals and working with external justice stakeholders. The Justice Policy Team is available to advise Bill teams, from an early stage in the policy or legislation development process, on justice considerations in their proposals and handling the potential impacts of proposals on the justice system.

They can also advise on interpretation of Devolution Guidance Notes and the '*Memorandum of Understanding between the UK Government and Devolved Administrations*'.

Resourcing the Bill team

3.66 The Bill team must be properly resourced, with a dedicated Bill Manager and SRO in place to oversee progress from an early stage. Bill management is an integral part of the process.

3.67 In a number of cases a small administrative team will support the Bill Manager. Even for a very large Bill it is not recommended to extend this team too far (e.g. no more than 1 or 2 support staff) – good communication and direct involvement with the Bill management function is essential, and the larger the team, the harder this becomes.

3.68 When considering how the full Bill team will be resourced there are a number of factors which should be considered, together with the actual requirements for the particular phase of the work in view. For example, it is not necessary to have dedicated OLC resource for a Bill at the point of initial policy development. The size of the Bill team, and the ratio of dedicated policy officials to lawyers, will vary from Bill to Bill. In each case it is a key responsibility of the Bill project board to address what composition is needed, in order to deliver the Bill to the required timetable and to keep the composition of the team under review as the Bill progresses. A ratio of 2 dedicated policy officials for each lawyer may be a useful starting point whilst recognising that this will inevitably vary having regard to the subject matter of the Bill.

3.69 Factors that will determine Bill team size include:

a. policy complexity – some Bills may deal with only one discrete policy area, others will have a number of policy intentions (sometimes very different policy areas), and some contain policy under the responsibility of different Groups or Ministers. There needs to be a sufficient number of policy officials, with experience and expertise in the subject, to understand and develop the policy or policies of the Bill. The need for comprehensive policy input should not be underestimated – as has been noted already in this Chapter (and elsewhere, particularly Chapter 7), the level of detail and precision required to prepare a Bill is significant. Experience has shown that strong policy knowledge and experience, together with sufficient staff available to undertake all of the work required, is a vital factor for Bill success;

b. legal complexity – such complexity could include matters relating to legislative competence, EU and human rights matters, Minister of Crown consents, or could relate to the breadth and detail of the existing legal framework into which the Bill will eventually sit. In all cases there needs to be sufficient input from lawyers. Consideration should also be given to the impact of the balance between the numbers of dedicated policy officials and lawyers on a given Bill, as insufficient resource, either policy or legal, could lead to challenges with delivering the Bill;

c. expected size of the Bill;

d. contentiousness – the attraction of public interest, the level of stakeholder, public and political support and full cross party support. Consideration needs to be given to the level of communications and stakeholder engagement that is necessary and the expected levels of correspondence which may be generated, and to have resource to reflect this; and

e. implementation planning – particular consideration will need to be given to the resources required to prepare and deliver the implementation programme which could include subordinate legislation and statutory or non-statutory guidance associated with the Bill. This will be particularly important where there is an expectation that subordinate legislation will be

developed alongside the Bill, and/or available for scrutiny at the same time as the Bill is being considered by the Senedd.

3.70 Some Bills will also have other considerations, such as:

a. how quickly the legislation will need to be brought forward;

b. the source of the Bill – does this derive from a manifesto commitment, is this a Member Bill, etc;

c. inter-Governmental considerations – how much engagement is required with the UK Government or the Governments of Northern Ireland or Scotland; and

d. the type of consultation that will be undertaken – preparing a draft Bill for consultation requires different resources to a Green Paper consultation.

Chapter 4 – Bill management and governance

This Chapter provides guidance in relation to Bill management, including some of the principles, processes and documentation which support and deliver Bill work. Separate guidance is given in later Chapters on preparing a Bill, and taking it through the Senedd. Bill management supports the work of preparing the Bill.

Guidance on who is who in a Bill team is given in Chapter 3.

Principles of Bill management

4.1 As noted in the previous Chapter of this handbook, Bill management is an integral and essential part of working on Senedd Bills – it is not an inconvenience or unnecessary overhead. Equally, Bill management should be proportionate to the actual project and should take the form of a supportive and guiding hand in the delivery of the Bill.

4.2 Good Bill management calls upon strong project management skills and a comprehensive understanding of the legislative and political process. Effective communication is essential to successful delivery. Bill teams will be working under great pressure for much of the time, and good Bill management will enable the policy officials and leads, lawyers, drafters, translators and all others involved in the process, to deliver the Bill to time, budget, policy intent and Ministerial expectations.

Working together to make good law

4.3 Bill teams should remain mindful of the statement on 'Civil Service support for Ministers in the development of government legislation'. This statement is included below: it is in line with the Ministerial Code and the Civil Service Code, and is intended to explain how officials will support Ministers in the delivery of legislation. Alongside this, the 'Guiding principles for collaborative working on government legislation', also included below, is intended to support officials in working collaboratively on legislation in accordance with the values of integrity, honesty, objectivity and impartiality set out in the Civil Service Code. These statements have both been adopted by the Welsh Government.

Civil service support for Ministers in the development of government legislation

4.4 *The statement sets out how Ministers can expect civil servants to support them in developing a Senedd Bill when that route has been determined as the most appropriate way of achieving a set policy objective, and in considering the need for primary legislation when options are being explored. The statement fits within the wider framework of the Civil Service Code and is as relevant to civil servants as it is to Ministers.*

4.5 *Many of the principles outlined below will also apply to the development of other legislation, although the development of such legislation will not necessarily be formally managed as a project.*

4.6 *In each case where legislating through a Senedd Bill has been agreed as the appropriate route, the consequent project to develop and deliver a government-proposed Bill will be thoroughly planned and managed. There will be a Senior Responsible Owner (SRO) for each project and a project board. Reporting arrangements will be built around a core of regular highlight reporting and tailored to Ministerial requirements. Some central resources, principally drafting lawyers and legislative translators, will remain centrally controlled and deployed across the legislative programme.*

4.7 *The SRO will give account and assurance to Ministers for the delivery of the legislation project.*

4.8 *The SRO (or a duly-appointed deputy), together with officials from all professions and specialisms, will make themselves available to explain advice and account for progress on the legislation project.*

4.9 *Officials will apply a consistent approach to all legislative proposals, whatever their source. Specifically:*

a. *The case for change will be examined: the issue which it is intended to solve or the advantages intended to arise will be clearly identified;*

b. *Through an appraisal of options, consideration will be given to alternative ways of solving that issue or delivering those advantages, and the comparative effectiveness, efficiency and affordability of these alternatives assessed;*

c. *Where legislation emerges as the preferred option (being effective, necessary, and a key contribution to the strategic priorities of the Welsh Government) the potential intended and unintended consequences of legislation will be considered; the proposals will be analysed with a view to achieving law which is clear, effective and accessible; and its fit with the existing body of law, forthcoming Bills and key policy imperatives will be tested;*

d. *In consequence of engagement in this testing process, proposals are likely to be refined and developed as an integral part of the process of making legislation, to deliver the best quality of product.*

e. *The effective implementation of this testing process will involve early engagement with specialists – in the fields of policy, law, and legislative drafting.*

f. *In order to support Ministers in the development and delivery of the best quality of legislative product, officials will continue to test robustly any new*

proposals for subject matter to be included in the Bill (for example at amending stages).

g. Appropriate engagement with relevant parties will have taken place in order to ensure the impact proposals have been tested.

4.10 *All advice from officials will be clear, accurate, robust and concise. Advice will take into account what is achievable within the timetables set for Senedd Bills. Any areas of risk or uncertainty will be clearly indicated and the advice will, where possible, separate out the advantages and disadvantages of possible decisions.*

4.11 *All advice will be subject to rigorous quality assurance and represent the considered advice of the wider Bill team involved in this testing process and cleared by the SRO. Early engagement will be sought from all parts of the wider Bill team. All advice will be submitted to the Minister after having had appropriate internal discussion and clearances. Where the SRO recommends a course of action and lawyers or other expert teams do not agree with the recommendation, the advice will make clear the reasoning behind the different views of those teams as well as the SRO's reasoning.*

4.12 *All advice and support to the Minister will be timely. Every effort will be made to manage the submission of advice in line with the Minister's availability and all advice will be drafted with clarity and accessibility to the Minister as a primary consideration.*

4.13 *All government-proposed Senedd Bills form part of the legislative programme. There will be occasions where strategic decisions about the legislative programme affect delivery of legislative proposals and policies within a Minister's portfolio. In these circumstances officials will seek to ensure Ministers are advised about the implications of these decisions.*

Guiding principles for collaborative working on government legislation

4.14 *In developing policy and legislation, all officials must serve Ministers as one team. For this reason all officials should follow these guiding principles for collaborative working on legislation in accordance with the values of integrity, honesty, objectivity and impartiality set out in the Civil Service Code.*

4.15 *All officials will continue to discharge their individual responsibilities while also engaging with and supporting colleagues to deliver theirs. In doing so they should bring the full range of their skills and abilities to bear to the range of tasks in producing effective policy and legislation. This requires:*

a) An understanding of individual and collective roles and responsibilities, including what to expect from particular professionals and specialists;

b) Mutual respect;

c) Striking a balance between timely and in-depth communication;

d) A shared understanding of individual and collective priorities and pressures;

e) An understanding of the big picture, and how each individual's contribution fits into this. The big picture includes the political and constitutional context; the fit with other parts of the current and prospective legislative framework; and approaches to implementation of legislation.

4.16 *All officials will seek to establish and build relationships based on trust, with each other and with Ministers. Officials will, in particular, ensure their communication with Ministers, and with each other, is timely, clear, effective and honest, particularly in respect of the following matters:*

a. Potential slippage in the timetable of a Bill – recognising its potential knock-on effect on others involved in the production of the Bill, the effects of delaying the delivery of the policy, and any potential impact on the wider legislative programme;

b. Dealing with risks, complex and sensitive issues, and problems – this requires both confidence and humility when discussing;

c. Resolving disputes – this requires a willingness to be pragmatic, open-minded and to reflect on the comments of colleagues.

4.17 *Officials should also work collaboratively with special advisers as part of their approach to developing policy and progressing legislation. Special advisers play a key role in supporting effective communication between officials and Ministers and in supporting Ministers in working with politicians and other stakeholders to ensure the delivery of legislative proposals.*

4.18 *All officials will work to support a learning culture. This includes:*

a) Taking responsibility for their own development – identifying their learning needs and actively pursuing opportunities to meet those needs;

b) Supporting the development of others and the organisation, including by freely sharing their own learning and experience.

Assuring delivery of the Bill

4.19 The Legislative Programme Board expects all Bill teams to have robust governance arrangements in place for the delivery of the Bill. It is recognised such governance arrangements may need to vary to suit the precise nature of individual Bills, and good governance is a means to enable effective delivery and not an end in itself.

Principles of governance

4.20 All Bill teams should take account of the following principles of Bill governance:

a. there should be a Senior Responsible Owner (SRO);

b. there should be a governance structure in place which facilitates operational delivery (project management and decision making) as well as wider influence and stakeholder management; and

c. there should be appropriate project documentation in place, which is agreed and approved by the body constituted under the governance structure (usually a project board, see below).

4.21 Some Bill projects may be part of a wider programme of delivery, but the principles of governance apply to all Bill projects.

Project board

4.22 Under the governance structure for the Bill project, there should be a decision-making forum responsible for taking key decisions in relation to the delivery of the Bill and keeping the project on track to deliver. This is usually a project board.

4.23 Each Bill project board should be part of a Group's governance arrangements for projects and delivery.

4.24 Project boards are typically chaired by the SRO, and are responsible (in accordance with their agreed terms of reference) for:

a. ensuring the delivery of the project to timetable;

b. addressing delays or problems with the quality of work;

c. helping to ensure that roles are filled and responsibilities are known and understood;

d. agreeing timescales, risks, issues and handling approaches;

e. managing and monitoring risks, progress against project plans and timetables, and handling issues;

f. ensuring that adequate resources (financial and people) are identified, considering associated risks and taking decisions to address these, including escalating where necessary; and

g. agreeing roles, training, collaboration and any sub-groups or work streams that may be required.

4.25 The matters which the project board will consider will change over the lifetime of the project, for example in the early phases the focus may be on policy aspects, whereas towards the end of the project the focus is likely to have moved to implementation issues.

4.26 Membership of project boards will vary dependent on the individual Bill requirements and the phase of work the Bill project is in, but should typically include the SRO, Legal Services, Office of the Legislative Counsel (OLC), Translation Service, Legislative Programme and Governance Unit (LPGU), Strategic Budgeting and key officials (sometimes from Welsh Government Groups outside the lead policy Group) with responsibility for the delivery of the Bill. Some project boards also include the special adviser. In some project boards the Bill team are part of the project board, in other cases they report to the project board.

4.27 It may prove helpful for the relevant communications representative to attend the project board as the communications strategy needs to be considered throughout the legislative process.

4.28 It is important that the right people are part of the project board, but that efficiency and agility is not compromised. For this reason there may need to be a separation between membership, regular attendees and invited guests. The membership of the project board may need to be reviewed as the project moves between key phases of work, to ensure the membership remains appropriate to the project and the work being delivered at that point. Membership of a Bill project board requires an investment of time by each board member, together with a commitment to, and interest in, the project being delivered.

Cross-cutting and cross-Group matters

4.29 Attention must be given by the Bill team and the project board to the potential for cross-cutting matters arising from the Bill development process. These may be within a Group or affect other Groups and/or Bills. Early identification will assist in resolution, and an effective (cross Government) approach to delivery secured. However this is an on going process and Bill teams will need to be alive to the possibility of new cross-cutting matters arising.

4.30 Bill teams will need to invest time and effort in working across Groups to ensure that cross-cutting matters are fully considered by all interested persons in each Group, and where required decisions are put before all relevant Ministers.

4.31 The Bill Manager should, in the first instance, bring such matters to the attention of the Group Legislation Lead. Discussion with, amongst others, LPGU, Legal Services, OLC and Constitution and Welsh Tribunals may also be beneficial. The Legislative Programme Board and its associated working groups may be appropriate forums for these issues to be explored and resolved.

Bill timetable and key milestones

4.32 The “Bill timetable” is the term given to the overall time available, including deadlines, within which the key phases of work associated with preparing a Bill and its consideration by the Senedd are to be completed.

4.33 It is recognised that Bill work is only one element of the overall programme, and, therefore, fits inside the timescale for that programme. The timescale is the period of time it will take to deliver the entirety of the project (from conception into policy development through to implementation and review).

Setting the Bill timetable

4.34 LPGU is responsible for setting the Bill timetable for Bill preparation, and for managing the timetable for the overall legislative programme. The Bill Manager is responsible for setting the detailed project timetables, within the Bill timetable set by LPGU, required to deliver the different aspects of the Bill project (for example, the Bill Manager will prepare a detailed timetable for the development and production of the Explanatory Memorandum).

4.35 In order to develop an appropriate Bill timetable, LPGU will take account of the information provided by officials in preparation for, or at the time of, inclusion within the legislative programme. They will also take account of: any policy and legal constraints that may exist; the degree and progress of policy development; the limited windows for drafting and translation of Bills; the requirements of Standing Orders and the expectations of the Senedd; together with the need to progress Ministerial expectations and deliver legislation in accordance with the programme for government and other commitments.

4.36 The preparation of a Bill timetable is, therefore, a collaborative process, but one that ultimately has to be set in the context of other Bills, the overall programme and the First Minister’s expectations.

4.37 Once a Bill timetable has been settled, it will be agreed with the First Minister, and then monitored against delivery. Bill teams are expected to deliver against the key milestones, and failure to meet a key milestone could result in the essential resources (such as OLC or Translation Service) not being available for the Bill (or other Bills) and ultimately the Bill not being introduced (which could include losing the Bill from the programme entirely).

Changes to the Bill timetable

4.38 It is recognised that a Bill timetable set at the beginning of the process may need to be changed in light of new circumstances (for example, a new policy direction). Where a Bill team considers that the key milestones may need to be changed, or indicative introduction dates altered, contact should immediately be made with the relevant LPGU contact. Bill teams are not permitted to change the Bill timetable without the agreement of the Head of LPGU, who will provide advice to the First Minister. As such Bill teams are

not able to make commitments to Ministers about changes without first discussing these with LPGU. Such restrictions exist because of the potential impact a change for one Bill may have for other Bills or the legislative programme as a whole. It should also be noted that the final decision on Bill timetables is a matter for the First Minister, rather than individual Ministers.

Timetable for Senedd consideration

4.39 The timetable for Senedd consideration will be included in the overall Bill timetable. Guidance on the process for setting and agreeing this is included in Chapter 15. When a Bill has been introduced into the Senedd, LPGU will work with the Bill team to develop a timetable for the preparation of amendments to the Bill – see also Chapter 15.

Documentation

Bill project documentation

4.40 As noted above, Bill management should be proportionate. Part of this proportionality relates to the project documentation that will accompany the Bill work. There are no centrally set requirements for the format of the Bill project documentation (there are set requirements for other Bill documents, for example Explanatory Memoranda).

4.41 Although Bill teams are run differently, according to individual requirements, it is very important there is clarity on what Bill project documentation exists and what it aims to do and that common terms for documents are used to avoid confusion.

4.42 Project boards will need to agree the documentation that will be kept for the Bill project. Bill Managers are responsible for ensuring the quality of the Bill documentation, and that it meets the standards required by the Group's own governance arrangements. Bill Managers are also responsible for keeping the information up to date, monitoring and reporting against the documents, and maintaining an effective version control system. It is usual for Bill Managers to prepare regular highlight reports to the project board. Bill Managers should find the Government's project management guidance of assistance in developing the project documentation for the Bill.

4.43 As a minimum it is expected each Bill project will have the following documents:

a. Project plan – an overall plan for delivering the Bill project. It should set out the scope of the project and the methods by which the project will be delivered; assumptions; dependencies; key milestones; resources; reporting and governance; tolerances; and a critical path.

b. Work stream plans – large projects, and particularly Bill projects, can be broken down into work streams (i.e. a smaller project which contributes to

the delivery of the main project – for example a work stream on securing Minister of Crown consent, where this is required, e.g. for the conferral or modification of functions on, or in relation to, reserved authorities; or a work stream on preparing the Explanatory Memorandum). Each work stream should have its own plan which sets out how the work stream will be delivered. Work stream plans should feed into, and align with, the main project plan, and may include dependencies with wider programmes, or other Group priorities or needs.

c. Detailed project timetable – as noted above, the overall Bill timetable is set by LPGU, but Bill teams will need detailed timetables below for the delivery of the individual aspects of each phase of work. For example, a period of 12 weeks for instructions in the Bill timetable will need to be broken down into the activities necessary to develop, prepare, refine and clear the instructions, together with details of who is responsible for completing the tasks and any inter-dependencies (e.g. engaging with Legal Services, checking against the evidence base, and so on).

d. Risk register – this document sets out the risks to Bill delivery, and details the likelihood and impact of each risk, the proximity of the risk, and crucially the actions that will be taken to mitigate the risk, as well as any further actions required in the future to reduce the risk.

e. Issue log / Issue register – for some Bill teams this document acts as a repository of all (known) outstanding matters which need to be dealt with, including decisions which need to be taken. This is so the issues are not lost in the fast pace of work which can sometimes take place. For other Bill teams, the term refers to the document that captures those matters that are currently adversely affecting delivery – i.e. a materialised risk.

4.44 In addition to the Bill and the Explanatory Memorandum, all projects must also produce:

a. a communications strategy;

b. a record of lessons learned.

Fuller guidance on each is given below.

Communications strategy

4.45 An effective and well-delivered communication programme will support the delivery of the Bill project, and work towards the longer-term implementation of the policy. As such it is essential that such a programme, which delivers for both internal and external stakeholders, is an embedded part of the Bill project; a communications strategy will help achieve this.

4.46 A communications strategy sets out how the Bill team and the Minister (and in some cases other parts of the Welsh Government) will communicate with, primarily, external stakeholders (including the UK Government). The

communications strategy can also include information on working and communicating with internal stakeholders. How to communicate in Welsh and English must be considered from the outset. As with any plan or strategy, it is important that it is kept up to date, accurate and followed. The Minister will need to have sight of, and be advised on, the communications strategy.

4.47 The strategy is likely to identify:

a. what the key messages for the target audience are, when they will be given, how, and by whom;

b. what other communications need to take place alongside, and in addition to, the work on key messages;

c. key dates and communication activity proposed around those;

d. the resources for delivering communications activity;

e. media opportunities (including Welsh language press and media);

f. how risks to effective and successful communication could arise and how these could be mitigated (note, these risks may need to be added to the Bill project risk register); and

g. linkages to other communication strategies (be this other Bills, other Welsh Government projects, other policy work, etc.).

4.48 The Communications Team, including press teams, should be engaged in the development of the communications strategy, and the plans should draw on any stakeholder analysis work. Strong communications support should be maintained throughout the process, where possible.

Lessons learned

4.49 The successes and challenges of Bill work along the way will influence how each Bill team develops and provide an opportunity for the team to do something better at the next stage. It is important that other Bill teams are able to benefit from lessons learned, in order to improve their processes.

4.50 The Legislative Programme Board has agreed a corporate lessons learned system to share experiences and knowledge in order to inform, improve and maintain performance. Bill teams will want to review the lessons learned from previous Bill teams when planning risk responses for new projects in the form of a risk register.

Training on Bill work

4.51 It is recognised that for many Bill work will be a new part of their role, and a range of formal and informal training and education opportunities exist to provide support and improve capability.

4.52 Further information is available from the Head of LPGU.

Chapter 5 – Integrated Impact Assessment

Impact assessment is a means of judging the effect of policy on people, culture, the environment and the economy. Impact assessment should be undertaken when developing policy. For this reason, impact assessment is part of the process of preparing Senedd Bills.

The purpose of this Chapter is to signpost users to the guidance on the new Integrated Impact Assessment tool which officials need to use in the context of preparing Senedd Bills. The findings from using the Integrated Impact Assessment will inform the Regulatory Impact Assessments (RIAs) which accompany Senedd Bills. Comprehensive guidance on RIAs is provided in Chapter 6 of this Handbook.

Approach to impact assessment

5.1 Impact assessments have been developed to meet both the requirements of Ministers and requirements set out in statutes passed by the Senedd and by the UK Parliament. Policy makers are required to consider all the relevant issues before reaching and making a decision; impact assessments prompt and guide policy-makers to gather and, if necessary, seek evidence so as to improve the development of a policy or inform a change in policy direction.

5.2 Impact assessment is more effective when undertaken in an integrated way. The Integrated Impact Assessment tool is designed to support a way of working on impact assessment within the Welsh Government which avoids excessive procedure and replication, and which results in an integrated, accessible appraisal of the expected outcomes of a policy decision, legislation, or other activity. The Integrated Impact Assessment should also tell the story of how a proposal has been developed and how impacts have been considered. Full guidance can be found on the policy and delivery section of the intranet.

Making the findings available

5.3 Chapter 6 of this Handbook provides information on undertaking and preparing the RIA which will form part of the Explanatory Memorandum which accompanies the Bill on introduction to the Senedd. It explains that a summary of the impact assessments which have been undertaken should be provided within Chapter 8 of the Explanatory Memorandum. This can draw on the summary which will be produced as part of undertaking the Integrated Impact Assessment.

5.4 In addition, sometimes it may be appropriate for the Government to make available more detail on the findings of certain impact assessments within the Integrated Impact Assessment separately to the information in the Explanatory Memorandum for the Bill. The Integrated Impact Assessment

guidance, available on the policy and delivery area of the intranet, gives further information on making the findings of the assessment available.

5.5 When consulting on a proposal to legislate, it is good practice to seek comments on a draft RIA too. It is also good practice to consult on an early version of the findings from the Integrated Impact Assessment when consulting on a proposal to legislate.

Chapter 6 – Regulatory Impact Assessments

The purpose of the Regulatory Impact Assessment (RIA) is to provide the Welsh Ministers, the Accounting Officer and the Senedd with the best estimates of the likely impact of an Senedd Bill. It is required to satisfy Standing Order 26.6(iii), 26.6(viii), 26.6(ix), and sometimes also 26.6(xi), and will ultimately form part of the Explanatory Memorandum which must accompany the Bill on introduction to the Senedd in Welsh and English.

This Chapter provides guidance on how to prepare the RIA, and advice is also available from Welsh Government economists. Chapter 5 provides summary guidance on impact assessments more generally, and Chapter 8 gives detailed guidance on preparing the Explanatory Memorandum.

The guidance on format of the Explanatory Memorandum in Chapter 8 (see paragraphs 8.45 to 8.56) applies also to the format of the RIA.

Requirements of Standing Orders

6.1 In respect of the RIA, the relevant aspects of Standing Order 26.6 are:

"… [the Explanatory Memorandum] must:

..(viii) set out the best estimates of:

(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;

(b) the administrative savings arising from the Bill;

(c) net administrative costs of the Bill's provisions;

(d) the timescales over which all such costs and savings would be expected to arise; and

(e) on whom the costs would fall;

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

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

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

6.2 To clarify Standing Order 26.6(ix), the RIA should include quantified and unquantified economic, environmental, cultural and social benefits and dis-benefits.

6.3 Note the other requirements of Standing Order 26.6 are met through the Explanatory Memorandum, and Explanatory Notes – see Chapters 8 and 9 of this Handbook.

The need for an RIA

6.4 RIAs must be completed for proposed legislation which could affect the public or private sectors (with a particular focus on the impacts on small business), charities and the voluntary sector.

6.5 An RIA is needed whenever changes to the law are being considered and where costs or benefits could accrue. This includes changes made using both Bills and subordinate legislation. Where a Bill is to be followed by subordinate legislation, RIAs need to be carried out on both the Bill and on each subsequent piece of subordinate legislation (although it is not usually the case that an RIA is required for a Commencement Order).

6.6 Even in cases where there is no overall net change but some kind of redistribution (such as in cases where there is an exchange or 'transfer' of costs and benefits) the effects should be assessed through an RIA.

6.7 For a Bill which imposes no costs or savings, benefits or dis-benefits or only negligible costs, savings, benefits or dis-benefits on the public, private, charities and the voluntary sector or society in general, an RIA is not usually required. In such cases the remaining requirements of Standing Order 26.6 must still be met and captured in the Explanatory Memorandum. However, the basis for the judgment that the legislation imposes no, or negligible, costs, savings, benefits or dis-benefits needs to be clearly demonstrated and Table Office (who assess the compliance of the Explanatory Memorandum with Standing Orders prior to introduction of the Bill) will need to be satisfied the requirements of Standing Order 26.6(viii) are met.

6.8 As noted in Chapter 15 below, on introduction of a Bill, the Legislation Office (in the Senedd) will update the Senedd's website with information and all the documents relating to the Bill. This will include the Explanatory Memorandum, which will contain the RIA. It is very likely stakeholders will comment on the RIA and costings as part of their

evidence to the responsible Committee during the Senedd's consideration of the Bill.

Development of the RIA

6.9 The standard template for an Explanatory Memorandum includes the standard template for the RIA for a Bill (the template is available from the Legislative Programme and Governance Unit (LPGU)). The RIA forms Part 2 of the Explanatory Memorandum template, and is divided into the following Chapters:

a. Chapter 7 – Options: details the options considered to achieve the policy objectives, this will include the 'Business as Usual' (BAU) option and bringing forward the Bill. The level of detail required on alternative options will depend upon whether the RIA is being prepared for consultation or the introduction of a Bill (see Standing Order 26.6(iii) and paragraphs 6.19 – 6.27).

b. Chapter 8 – Costs and benefits: sets out the costs and benefits of the options considered, giving particular detail on the costs and benefits of the chosen option (i.e. the Bill). The requirements of Standing Order 26.6(viii) should be considered here.

c. Chapter 9 – Competition assessment: detail of the findings of the competition filter, and if used the findings of the competition assessment.

d. Chapter 10 – Post implementation review: a summary of the intended approach and timescales for undertaking a review of implementation, including any intentions to report on this to the Senedd.

Each of these elements is considered in more detail below.

6.10 To improve the accessibility of RIAs for the Fifth Senedd, a simple, two-page Summary Table has been developed within the template to provide a short summary of the assessment. The Summary Table has been designed to present, at a high level, the information required in Standing Orders and to be consistent across Bills. Guidance on completing the Summary Table is available from Welsh Government economists.

When and how to start development of the RIA

6.11 The RIA is best seen as the formal documentation of the evidence needed to ensure that legislation has been designed to be fit for purpose. The development of the RIA should be a continual part of the policy making process and started as early as possible. The following is a

summary of the evolution of an RIA and the main stages at which work on an RIA should be undertaken:

a) Development – The first stage of the process is focussed on defining the policy problem, establishing the rationale for Government intervention, identifying alternative options to address the policy problem and developing the evidence base. There should also be an initial attempt at a cost-benefit analysis including the identification of the main parties likely to be affected by the proposals and an initial estimate of the likely costs and benefits.

b) Consultation/Draft Bill – The Welsh Government has committed to including draft RIAs in future consultations on legislation. The initial option appraisal should be firmed up at this stage to provide a more detailed, quantified assessment of the costs and benefits associated with each option. This draft RIA should then be published as part of any consultation exercise to provide stakeholders with the opportunity to review the analysis and to provide additional/alternative data and evidence. This stage and the transparent consideration of alternative policy options is important from a Value for Money perspective.

c) Introduction – At this stage, the RIA should focus on the preferred option (which in the case of a Bill will be to introduce legislation). The cost-benefit analysis should be updated to reflect final policy details and any evidence/feedback received from stakeholders during the public consultation.The RIA should also provide details of the post implementation review, setting out the scope and timing of the review. The RIA will form Part 2 of the Explanatory Memorandum which is published on the Senedd website when the Bill is introduced.

d) Following Amendments – Standing Order 26.27 requires that where a Bill is amended at Stage 2 proceedings, a revised Explanatory Memorandum must be prepared unless the Committee in charge resolves that it is not required. As part of this, you will need to consider whether the amendments alter the impact assessments, revising the RIA as appropriate. The revised Explanatory Memorandum has to be laid before Stage 3 proceedings begin. If a Bill is amended during Stage 3 proceedings and the Senedd agrees to consider further amendments at Report Stage, the Explanatory Memorandum must be revised unless the Senedd agrees that a revised version is not required (Standing Order 26.46A). It is also best practice to publish an RIA after enactment to reflect the final Act.

6.12 A robust and meaningful RIA can take several months to complete. To gather sufficient evidence, it may be necessary to commission research from external experts, particularly where costs or benefits are expected to be significant. Policy impact assessments (covered in Chapter 5) can make a useful contribution to identifying costs and benefits within RIAs, particularly where these cannot be monetised. Thorough planning of

the RIA, including information on implementation and delivery, will help to ensure the right information is collected and analysed, and the findings are taken into account (including within the development of the Bill). Such an approach will contribute to the overall successful implementation of the future Act and facilitate post implementation review (see paragraphs 6.68 – 6.72).

Support from Welsh Treasury and Knowledge and Analytical Services (KAS)

6.13 A key role of analysts in Welsh Treasury and Knowledge and Analytical Services (KAS) is to provide support in developing policy. Advice is available from specialists such as economists, statisticians, social researchers, cartographers and the library to support the estimation of costs and the development of the RIA. Support is also available from Strategic Budgeting and finance representatives from Group Operations Teams. The analytical teams should be engaged as early as possible in the policy making process.

6.14 In the first instance, contact should be made with the Welsh Government economists.

6.15 The evidence and KAS support requirements for an RIA will need to be included as part of a Group's evidence planning process. A number of Bill teams have found it helpful to establish a 'steering group' comprised of policy officials and analysts to help develop the RIA.

6.16 In the early engagement with Welsh Treasury and KAS, policy officials and other members of the Bill team will need to consider the evidence base, options, costs and benefits. This should build upon the initial impact assessments undertaken as part of the process of seeking inclusion within the legislative programme.

6.17 The RIA will need to be cleared by the Chief Economist, and Strategic Budgeting will need to clear the accompanying advice, prior to final Ministerial clearances, and before the Bill and accompanying documentation are sent to the Llywydd for determination.

Additional guidance

6.18 Further guidance can also be found in HM Treasury's Green Book (the Green Book) and the '*Better Regulation Framework*'. However both are publications of the UK Government and some of the guidance (in the '*Better Regulation Framework*', in particular) such as the business cost threshold below which an RIA is not required, does not apply in relation to RIAs prepared in respect of Senedd Bills.

6.19 The rigorous assessment of alternative options is a key part of demonstrating that the policy proposals represent good Value for Money (VfM). To ensure that the assessment is transparent and based on the best available information, it is important that stakeholders have the opportunity both to contribute to, and to scrutinise, the option appraisal.

6.20 As set out above, the approach going forward will be for the appraisal of alternative options to be presented in a Consultation/Draft Bill stage RIA. Considering the alternative options at this earlier stage will enable the RIA which accompanies each Bill on introduction to focus on the preferred option (i.e. the expected impact of the Bill).

Development and Consultation stages

6.21 At the start of the policy development process a range of options that could potentially satisfy the policy objectives should be identified and considered. The list of options is likely to include both legislative and non-legislative proposals – the views of stakeholders on the potential interventions that could achieve a policy objective may assist the development of these.

6.22 Whilst considering a range of options as part of policy development it is recommended the RIA includes consideration of at least three options at the Development and Consultation/Draft Bill stages. One of these should be a 'Business As Usual' (BAU) option to act as the baseline against which the impact of the other options is assessed. This was previously termed a 'do nothing' option. It is usual for there to also be realistic 'do minimum' and 'do something' options which aim to test whether a large proportion of the claimed benefits of the preferred option can be delivered at a significantly lower cost.

6.23 If only two options (i.e. 'BAU' and 'the Bill') are presented, this should be explained.

6.24 There is no maximum number of options which can be considered, however, the assessment needs to remain manageable. Where there are more than 5 or 6 potential options, it may be appropriate to consider an initial short-listing exercise to reduce the number of options considered in the assessment of costs and benefits (see the Green Book for a recommended approach). In such instances, an explanation will need to be provided in the RIA as to why options have not been taken forward for further analysis.

6.25 Where a Bill contains a number of distinct policy changes, it is recommended that the RIA considers separate options for each policy change rather than presenting options for the Bill as a whole. This

approach simplifies the assessment of costs and benefits and improves clarity for the reader.

Introduction and Amendment stages

6.26 Provided that a robust assessment of alternative options has been published at the Consultation stage, the Introduction/Amendment stage RIA should focus on the costs and benefits associated with the preferred option (i.e. the Bill). Where this is the case, Chapter 7 of the Explanatory Memorandum should include:

- reference to the earlier Consultation RIA (including a web-link where possible);
- an outline of the alternative options which were considered;
- a brief summary of the costs and benefits associated with the alternative options, including any significant changes since the Consultation RIA;
- an explanation for the selection of the preferred option, and;
- confirmation that the original assessment (and selection of a preferred option) remains valid.

If the preferred option has changed between the consultation stage and introduction stage then the reasons for this need to be explained in detail.

6.27 The above assumes that a robust RIA has been published as part of a consultation exercise. If this is not the case, the Introduction stage RIA will need to include a full option appraisal (as was the approach during the Fourth Assembly). However, this approach has contributed to lengthy and complicated Explanatory Memoranda in the past.

Preparing Chapter 8 of the RIA – Costs

6.28 Once the options for delivering the policy have been identified, a detailed cost-benefit analysis (CBA) for each option will then need to be prepared. Option appraisal is usually focused on the additional costs and benefits incurred or generated from a policy proposal (i.e. those costs and benefits incremental to the baseline or 'BAU' option). However, it is strongly advised that Bill teams identify the costs incurred with the 'BAU' option, emphasising that such costs are not additional, as well as the 'additional' costs, so as to satisfy the requirements of Standing Orders, and in order to provide full and appropriate advice to Ministers.

6.29 Standing Orders and (consequently) the RIA Summary Table refer to administrative costs (and cost-savings) and compliance costs. Administrative costs are those expected to be incurred by the public sector (Welsh Government, local authorities, Natural Resources Wales, Welsh Revenue Authority and/or NHS, etc.) to administer, monitor and enforce the proposed policy. Compliance costs are those costs incurred

by businesses, consumers, and/or the public sector etc. in order to operate within the requirements of the proposed policy.

Cost-benefit analysis (CBA)

6.30 The following pointers should be followed in developing the CBA:

a. when making decisions on legislation, Ministers will be particularly interested in the Welsh impacts. However, the CBA should also encompass the perspective of the whole UK economy, in line with the requirements of the Green Book and Accounting Officer guidance. This means that the potential cost of Welsh legislation on UK Government departments and the potential impact on stakeholders across the UK will also need to be considered;

b. the CBA should be proportionate to the likely impact of the legislation. For example, if the proposal is likely to affect only a few firms, many firms to a very small degree, or if the costs and benefits are likely to be small, then the CBA can be quite short. However, where the impact is likely to be substantial, more data and depth of analysis will be required;

c. the assessment should focus on the additional (or marginal) costs and benefits of an option over and above what would accrue/be incurred in the 'do nothing' option (although note the 'BAU' option will still need to be costed) as explained at paragraph 6.28 above;

d. the distribution of costs and benefits between different industries, groups and/or sectors should be considered;

e. all costs and benefits should be monetised, or at least quantified, where possible. A qualitative assessment of costs and benefits should only be provided in situations where it is not possible to undertake a quantified assessment. The Government has previously been required to provide monetised or quantified amounts to be set out instead of terms such as "negligible costs" or "limited costs will arise". It is recognised there is a potential conflict here with proportionality and it may sometimes be acceptable to express a cost as negligible where this is clearly defined as being less than a certain threshold;

f. the costs should, where possible, be expressed in terms of the opportunity cost (i.e. the value of the next best use of the asset or resource). Further guidance on this can be sought from Welsh Government economists;

g. the RIA should, as far as is practicable, include consideration of any cultural change necessitated by the legislation and recognise the

aspirations of the legislation as well as the processes required to implement change.

Information sources to develop the cost-benefit analysis (CBA)

6.31 The information needed to complete the CBA will vary from one policy to another. However, it is likely that it will have to be gathered from a number of sources, such as Government colleagues (for example the Group Communications team will be able to advise on suitable communication activities and their associated costs), research reports, policy evaluations, statistics and external organisations, etc. The Library Service and other colleagues in KAS are able to help identify and access the required evidence, and advise on how research should be commissioned if this is necessary. Where use is made of evidence from specialist fields, the advice of the relevant professional experts within the Government should be sought and included explicitly in the RIA. If the required evidence is not available then it may be necessary to commission new research.

6.32 Data on some costs, such as Government or Local Authority staff costs and average salaries for various occupations has been required on a number of occasions. KAS are also able to advise on available data sources.

6.33 Stakeholder engagement is essential for the development of a robust RIA and, to be effective, that engagement needs to start at an early stage of the analysis. Stakeholders represent a significant source of information, and their experience and evidence needs to be taken into account.

6.34 If a stakeholder engagement or reference group has not yet been established, consideration should be given to setting up such a group to assist, particularly, in the RIA process. Members of such a group should include delivery partners (for example, local authority representatives, the Welsh Local Government Association, etc.) and the key groups affected by the proposals. All stakeholder evidence should be scrutinised appropriately. There is also a risk that impacts on stakeholders who have not chosen to participate in the process may be undervalued, and steps should be taken to guard against this.

6.35 In addition to using stakeholders as a source of data and evidence to inform an RIA, it is good practice for stakeholders to be given an opportunity to review and comment on the relevant sections of the final RIA before publication. This will provide an opportunity for any issues to be addressed before the Bill is introduced in the Senedd. It is important to retain a record of engagement with stakeholders.

Costs

6.36 Where the Bill will involve more than one policy change it is advised that a separate cost-benefit analysis for each policy is undertaken; the costs, benefits and preferred option for the first policy should be set out before moving onto the second policy, and so on. The RIA Summary Table provides a high-level outline of the costs and savings of a Bill, but particularly in cases where a Bill involves a number of policy changes, it will also be worth including a more detailed table in the main body of the RIA summarising the cost of each policy change made by the legislation as a whole, identifying on whom those costs fall and over what time period. Close collaboration is required between individuals/teams working on the analyses to ensure a consistent approach across the RIA.

6.37 The RIA should set out a best estimate of the cost of the legislation as a whole and this includes any associated subordinate legislation. Even where the precise detail of subordinate legislation has not been finalised, a best estimate of the likely costs and benefits is required to enable the Senedd to fully scrutinise the legislation. Where there is some uncertainty around the content of the subordinate legislation, the main areas of uncertainty and the basis of the cost estimates should be explained. As outlined in paragraph 6.5, a separate RIA will also need to be prepared for each piece of subordinate legislation. Where the RIA for the subordinate legislation identifies costs which are significantly different to those presented in the RIA for the primary legislation (and you are still within the original appraisal period), this should be identified in the RIA accompanying the subordinate legislation. The main reasons for the cost differences should also be outlined.

6.38 The appropriate appraisal period for each policy should be determined at an early stage. This appraisal period should cover the expected life of the policy. Where the appropriate appraisal period is not immediately obvious then a 10-year period would typically be used, however, an extended appraisal period may be necessary for policies with a longer-term focus. Most important, the appraisal period should be sufficiently long to ensure that a ‘steady state’ is reached on costs and benefits (in other words, recurrent costs should be broadly constant at the end of the appraisal period). Where costs will continue to be incurred beyond the end of the appraisal period, this should be made clear in the RIA narrative.

6.39 In order to assess costs (and to satisfy the requirements of Standing Orders), consideration will need to be given as to who will be affected by the policy proposals. As noted above, the RIA should encompass the perspective of the UK economy and so the groups affected could include Welsh Government, Local Authorities, UK Government departments, business, the Third Sector, consumers and/or society in general.

6.40 The assessment should consider the impact of the proposed policy on devolved and partially-devolved tax revenues, with a particular focus on the Welsh tax base. However, bear in mind that taxes are a transfer payment, with any increase in the amount of tax paid by one party resulting in an equivalent increase in tax receipts for a second party (e.g. the Welsh Revenue Authority or HM Revenue and Customs). The net economic impact of taxes is therefore zero, although any impact on tax revenues may have financial implications for the Welsh Government. Policy officials in Welsh Treasury should be contacted at an early stage to discuss the potential impact on the Welsh tax base.

6.41 When identifying the costs to be included in the analysis, it is necessary to consider both transition costs – typically one-off costs which relate to the implementation of the policy – and recurrent costs – those which are incurred on a frequent (typically annual) basis and usually relate to the ongoing costs of delivering the policy. Thinking about the costs in this way will be helpful when it comes to presenting the timescales over which costs are expected to arise.

6.42 The term 'sunk costs' refers to expenditure or payments that have already been incurred and such costs should be excluded from economic appraisal. The RIA is a forward looking assessment of costs and benefits and what matters are those costs and benefits which are affected by decisions still to be made – such as the decision of whether or not to pass a Bill. That said, Senedd Members are likely to have some interest in costs which have already been incurred (for example, if there has been a pilot scheme, if an IT system has been developed or if there has been staff training in anticipation of a Bill being enacted) and so it is recommended those costs are reported in a separate section of the RIA along with an explanation of why the costs have been incurred prior to the Bill being passed. However, the sunk costs should not be included in the main summary table for the Bill.

6.43 A distinction should be made between capital costs and revenue costs, with this split reported in the RIA summary table. Capital costs typically refer to one-off expenditure on an asset such as land, buildings, machinery/equipment and the development of an IT system or software, where that asset is expected to be utilised in more than one year. Revenue costs are typically ongoing costs such as salaries, rent, office running costs and communications.

6.44 A clear distinction should also be made in the RIA between cash costs (those where there is expected to be an actual financial outlay, for example, local authorities having to employ an additional member of staff) and non-cash costs which have been monetised (for example, the value of the time it takes for a business to apply for a license or the value of additional carbon emissions).

6.45 Costs should be based on the general price level at the time of Introduction (i.e. if a Bill is to be introduced in September 2019, the price base year will be 2019-20 and all costs should be expressed in 2019-20 prices). Historic costs (those pre-dating the price base year) should be uprated to reflect changes in general price levels. Welsh Government economists will be able to provide advice on the appropriate method for uprating historic costs.

6.46 Future costs should not include general price inflation. However, where future costs are expected to increase at a significantly higher or lower rate than general prices then the relative price change should be reflected in the calculations. Again, Welsh Government economists will be able to provide advice on this.

6.47 The actual costs to be included in an RIA will vary from one policy to another, however, the following table may be helpful in identifying the types of costs which could be incurred or accrued:

Transition costs	*Recurrent costs*
Guidance – will detailed guidance be required on how the policy should be delivered?	Compliance – the cost of meeting the requirements of a policy (e.g. local authorities providing homelessness services)
Familiarisation costs – stakeholders will need to familiarise themselves with any guidance	Administration – will the policy generate additional administrative burdens (e.g. form-filling, registration etc.?)
Communications – the cost of informing stakeholders about the policy changes	Monitoring and enforcement – costs associated with ensuring stakeholders comply with the policy requirements. How will compliance be monitored, who will be responsible for enforcement? Will there be additional data collection, reporting or mapping needs?
Training – delivery staff may need to be trained prior to the introduction of the new policy	
Premises – if the policy establishes a new organisation, or a new commissioner, for example, then there may be a cost to acquire and equip new premises	Sanctions and appeals – the cost of any sanction or appeal, for example Tribunal or Court costs

Information technology (IT) system – a new IT system or adaptations to an existing IT system may be required	Maintenance – new infrastructure (e.g. a cycle path) may require ongoing maintenance

6.48 Where relevant, the re-distributional impact of an economic transfer should be identified in the RIA as a cost to one party and a benefit to another. In certain circumstances, it may be appropriate for benefits to the gaining group to be given a higher weight than the costs to the losing group, for example where a policy is specifically aimed at aiding lower income households or disadvantaged geographic areas. Further guidance on this is available from the Green Book or from Welsh Government economists.

6.49 Costs should be presented in terms of the opportunity cost: an activity undertaken by an existing member of Government staff (e.g. producing guidance) and met from an existing Government budget should still be costed, because in the absence of having to undertake that activity the member of staff could have been doing something else of value instead. In this scenario, the cost would be calculated by estimating the proportion of staff time that would be taken up on the activity (e.g. 20%), over the period of time (e.g. 6 months) and at the grade of the member of staff (e.g. Management Band 2). When considering staff costs, 'on costs' as well as the salary itself should be captured. 'On costs' cover all of the additional costs associated with employing someone such as the employers' National Insurance Contributions and pension contributions. The Central Services Operations Team produce average pay band costs (including 'on costs') for the various staff grades in Government. These figures should be used to estimate Government staff costs in an appraisal.

6.50 Consideration also needs to be given to the potential impacts of Welsh Government policy and legislation on the devolved elements and the non-devolved elements of the justice system. These should be identified as part of the process of impact assessment. Where a cost or cost-saving to the justice system is identified, this should be reported alongside the other costs and benefits in Chapter 8 of the RIA. For example the proposed introduction of new or amended criminal offences or new or amended rights of appeal may increase the numbers of cases going through the courts and tribunals. The justice system covers:

a. all courts (criminal and civil);

b. all tribunals (devolved and non-devolved);

c. legal aid;

d. the judiciary;

e. prosecuting bodies; and

f. prisons and probation services.

6.51 Advice on assessing impacts on the justice system is available from the Justice Policy Team. Additionally, the Welsh Tribunals Unit can provide advice and support in relation to identifying potential impacts of proposals on devolved tribunals.

6.52 In addition to assessing financial costs, the appraisal should also include any environmental, health and/or social costs associated with the proposals. Due to the nature of these costs, there is often no readily available market data on which to base an assessment of value. Nevertheless, it is still important that these costs are included in the appraisal. There are a number of tools and techniques which can be used to produce a value for these non-market impacts. For example, contingent valuation studies or choice modelling could be used to estimate willingness-to-pay or willingness-to-accept value. It is acknowledged such studies include an element of subjectivity, but they are, if properly designed, generally accepted as a means of estimating values. Annex 2 of HM Treasury's Green Book discusses the various methods that can be used to value non-market impacts, including examples of where these methods have been applied. Further advice is also available from Welsh Government economists.

6.53 A detailed explanation of how the costs have been estimated, and the assumptions, if any, upon which the costs are based should be included in this Chapter of the RIA. It may be appropriate to give a range of costs, depending on any inherent uncertainties in the analysis. Even where a range is presented, it will always be necessary to present a 'best estimate'. Sensitivity analysis should be undertaken to test the impact of changing any of the key assumptions used in the calculations. A summary of the sensitivity analysis should be presented as part of the RIA.

6.54 If the policy proposals will involve recurring costs then these costs will need to be discounted (or adjusted to the Present Value) to reflect the social rate of time preference.[3] Costs (and monetised benefits) will need to be recorded in the RIA Summary Table in both undiscounted and Present Value terms. Guidance on this is available from Welsh Government economists and in the Green Book.

[3] There is evidence showing that society generally prefers to receive goods and services now rather than later and to defer expenditure until later years. This is known as time preference. In economic appraisal a declining weight is attached to costs and benefits that occur in future years to reflect this time preference.

Charging expenditure on the Welsh Consolidated Fund

6.55 The concept of expenditure being 'charged on the Welsh Consolidated Fund' (as set out in Standing Order 26.6(xi)) has a distinct meaning, rather than something which will incur expenditure. For the purposes of Standing Orders this means the expenditure in question can be paid out of the Fund without the need for it to be first authorised by a budget resolution passed by the Senedd.

6.56 Provisions in Senedd Bills for expenditure to be charged on the Fund are the exception, rather than normal practice. Such arrangements are usually reserved for expenditure on particularly important independent entities for which it is considered inappropriate that refusal to pass a budget resolution (by Senedd Members) could interfere. Examples of such provision include:

a. the remuneration of the Auditor General for Wales (see section 7(6) of the Public Audit (Wales) Act 2013);
b. the salaries and pension of the Llywydd and the Deputy Presiding Officer (section 20(5) of the Government of Wales Act 2006).

6.57 If expenditure is to be charged in this way, the relevant legislation will need to expressly say so.

6.58 The requirement of Standing Order 26.6(xi) enables the Senedd to see the views of the Auditor General for Wales on whether it is appropriate for expenditure to come straight from the Fund, rather than being politically scrutinised and authorised first.

6.59 Guidance should be sought from the subject lawyer as to whether the requirements of Standing Order 26.6(xi) are engaged. If a report of the Auditor General for Wales is required, this should be sought prior to the Explanatory Memorandum being submitted to the Llywydd, and the report should be annexed to the Explanatory Memorandum (see also Chapter 8).

Benefits

6.60 The creation of benefits is implicit in any proposal for legislation and it is, therefore, important these are included in the analysis. Bill teams should be able to demonstrate to Ministers, the Accounting Officer and other stakeholders that the proposals represent good value for money and that the anticipated benefits justify the additional costs that will be incurred.

6.61 Where possible the identified benefits should be quantified, and preferably monetised, so as to allow easy comparison across options. When identifying the benefits of the options these can take the form of economic, environmental and social gains. Environmental and social

benefits can often be harder to assess (and in particular, to quantify or monetise) but it is important they are included in the analysis.

6.62 Where there is uncertainty around the impact of the policy, it may be useful to think in terms of the minimum impact required to justify the costs.

6.63 Some consideration needs to be given to the presentation of monetised benefits in an RIA. The Auditor General for Wales raised concerns during the Fourth Assembly that the 'netting-off' of monetised benefits from cash costs was potentially misleading and recommended that the practice be avoided. However, the presentation of a 'net' cost and benefit figure is standard practice in economic appraisal and central to value for money considerations. As such, the RIA Summary Table has been designed to present cost and benefit figures both separately and as a net figure.

6.64 As with costs, where benefits have been monetised then it will be necessary to discount them and present them in Present Value terms.

Summary of the preferred option

6.65 At the end of the CBA, the preferred option should be identified and explanation given as to why that option has been selected. This selection should be supported by the preceding analysis. Where the preferred option is not the one with the highest Net Present Social Value (NPSV – calculated as the present value of benefits minus the present value of costs), this needs to be made explicit and the selection of the preferred option needs full justification in terms of qualitative evidence and considerations.

Preparing Chapter 9 of the RIA – Impact Assessments

6.66 The policy impact assessments signposted to in Chapter 5 of this Handbook and undertaken as part of an Integrated Impact Assessment will need to be considered as part of the process of policy and Bill development. A summary of the policy impact assessments (and in particular any on which an impact has been identified) will need to be provided within Chapter 9 of the RIA. This chapter should also include the Justice Impact Assessment as required by Standing Orders.

6.67 Every RIA needs to include the results of undertaking a Competition Assessment. This assesses the potential impact of the policy proposals on competition in Wales. A filter test (consisting of 9 yes/no questions) should be applied to each policy option – this test is included within the template for the RIA. The filter should be completed as early as possible to help identify any effects, adverse or beneficial. Depending on the findings of the filter test, it may be necessary to conduct a full Competition Assessment (following the Competition and Markets Authority guidance). Further advice is available from Welsh

Government economists. If a Competition Assessment is undertaken it should be included as part of this chapter.

Preparing Chapter 10 of the RIA – Post implementation review

6.68 The final chapter of the RIA should set out the planned approach for monitoring, reviewing and evaluating the policy. There needs to be sufficient planning and resources in place to carry out a post implementation review. The approach should aim to measure the effectiveness of the implemented policy and to capture its real impact. In particular, the arrangement should identify whether the policy aims are being met and if there have been any unintended consequences.

6.69 There is no 'one size fits all' approach to setting post implementation review commitments, as they will depend on the intention of the policy. In most cases there will be a need for data to be collected for monitoring purposes and for evaluation and/or reviews to be conducted during the life of the policy. The current advice, which is line with the Welsh Government's principles for research, is set out below:

a. Be clear on the aims of the post implementation review -

- what is the intended purpose of any review, including how and when it will take place;
- set clear criteria for measuring effectiveness/success;
- provide a rationale – be clear about why an approach is being taken, particularly if it departs from any perceived standard process or timeline;
- consider the estimated costs, savings, benefits and dis-benefits – any significant differences between the forecast costs, savings, benefits and dis-benefits included in the RIA and the outturn costs, savings, benefits and dis-benefits should be investigated and explained;
- consider reviewing the implementation of the intervention and the scope for simplifying or improving it;
- know the key stakeholders and ensure that arrangements are in place for engaging with them, including their role in the review;
- use the process to ensure that lessons are learned, shared across Groups and fed back into the decision making process.

b. Prepare from an early stage –

- consider the arrangements for monitoring, evaluation and review at the outset by making it an integral part of the development and implementation of the legislation;
- refer back to the intended objectives of the legislation, its evidence base and the rationale behind the legislation, to help determine the relevant information that could or should be collected (this should be contained within Part 1 of the Explanatory Memorandum);

- where data are to be collected identify how it will be gathered, how frequently and by whom but also consider the burden on those supplying the data and make sure it is justified;
- understand the baseline from which to measure effectiveness and make sure baseline information is collected prior to the legislation coming into effect;
- allow for the significant time that elements of the process can take, e.g. generating new data, commissioning research and analysis of costs;
- prepare a budget plan covering the scale and timing of any spend (e.g. for data collection, commissioned research and evaluation, etc.).

6.70 The Social Research Team in KAS can provide advice on data collection and evaluation requirements, likely costs and timings. In addition, guidance on reviewing and evaluating policy is available from HM Treasury's Magenta Book. Guidance on how to appraise proposals before committing funds is available from HM Treasury's Green Book.

6.71 Senedd Members will be particularly interested in the proposed arrangements for review, which will be viewed as Ministerial commitments. There have been occasions when Committees have made recommendations that the Welsh Government or Senedd undertake post implementation review, or that the Bill be amended to place commitments on the face of the Bill. These may be brought forward as proposed Government or non-Government amendments to the Bill during Stages 2 or 3.

6.72 The Welsh Government publishes an evidence plan each year and Bill teams should discuss with KAS social researchers whether the post-implementation review can be included in that plan.

Chapter 7 – Process of preparing a Bill for introduction

The guidance in this Chapter relates to key phases of work in preparing the Bill for introduction (rather than other aspects of Bill work). These phases are:

a. policy development and consultation;
b. instructions to the Office of the Legislative Counsel (OLC);
c. drafting and translating the Bill.

At the same time as the Bill is being prepared in Welsh and English, the Bill team will also need to develop the Explanatory Memorandum (including the Regulatory Impact Assessment (RIA) and Explanatory Notes) in Welsh and English, and Statements of Policy Intent for subordinate legislation in Welsh and English. Guidance on this work is given in Chapters 6, 8, 9 and 11. Work on these areas must begin early and continue alongside the development of the Bill – work on these must not wait until the Bill is complete.

Outline of phases for developing a Bill

7.1 Policy officials and, in some circumstances, the Bill Manager are responsible for developing the policy proposals for the Bill and engaging with the Minister and special adviser on managing the scrutiny process and dealing with internal and external engagement. The subject lawyers[4] advising the policy Group and Minister(s) are responsible for providing expertise on the legal subjects (housing law, education law, health law, etc.) covered by the Bill and on points of law more generally, including legislative competence. They use this expertise to inform, and if necessary challenge, the development of the policy to be given effect in the Bill. Usually, they also perform the role of instructing officers[5] to the drafters of the Bill in OLC.[6]

7.2 OLC are responsible for drafting the Bill. Part of the role of the subject lawyers and OLC is to challenge and help refine the policy, by testing the coherence of the proposals and advising on matters of legislative process, law and policy which arise. When those matters are clear and settled they begin the task of producing legal provisions to reflect the policy that are accurate, free from ambiguity and as accessible and understandable as possible.

7.3 As the different phases of work are undertaken, policy officials will provide input throughout. Policy officials will have the primary

[4] The term subject lawyer is used throughout this chapter to describe the Legal Services lawyer involved, who may or may not be instructing.
[5] The term instructing officer is used throughout this chapter to describe the person writing the instructions for OLC, whether the subject lawyer or not.
[6] For a summary of OLC's role see Chapter 3, paragraphs 3.31-3.32 above.

responsibility for policy development work, but experience has shown that engaging with subject lawyers – and where practicable OLC – early on can be extremely beneficial. Whilst the subject lawyers are not responsible for developing the policy, their input will contribute to the success of the development of options and identification of the legislative changes necessary. The detailed legal analysis will be led by the subject lawyers, but will require the close engagement of policy officials who are able to provide direction and advice on intended effect and impact, together with experience and knowledge of the field.

7.4 OLC will not usually be involved in the very early stages of policy development, but as the policy becomes more refined, and as the legal analysis begins to be shaped, their input is likely to increase. The resources of OLC are primarily built around the drafting window for the programmed Bills, so they cannot be heavily involved in the detailed policy development and legal advice needed to work up proposals for Bills. But they will be able to offer some support in the early stages for the following purposes –

a. to gauge the size and complexity of a proposed Bill and the resources needed to draft it;

b. to provide an estimate of how long it may take to draft a Bill;

c. to discuss any concerns or known difficulties about the plans and consider alternative general approaches.

7.5 As the drafting of the Bill is undertaken by OLC, policy officials and subject lawyers will be actively involved in considering the draft sections and parts of the Bill, seeking to test the drafting against policy intent and practical implementation. There will be a need for discussion, joint ownership and collaboration in preparing the Bill.

7.6 It is through robust engagement at each phase by the partners in the process, that an effective, deliverable, and well-drafted Bill is prepared.

Good law

7.7 An important consideration for everyone working on a Bill is that, although the focus of the team may be on the particular policy proposal being advanced, each law-making project is part of the Government's wider shared endeavour of maintaining the rule of law. Building and maintaining an effective system of law to safeguard freedoms and rights and promote social, economic and environmental well-being is a key role of government. Each Bill will form a relatively small part of the wider system of law and will need to work well for those who will use it within that context. It is often the case that Bill proposals throw up issues which touch on matters relevant to the efficacy of the legal system as a whole.

7.8 The aim is to produce good law: that is, law which is necessary, clear, coherent, effective and accessible. This aim should be a feature of the thinking at each phase of the Bill's development.

7.9 A special consideration in relation to Wales is that much of the current primary legislation applicable to Wales in devolved subjects is still to be found in Acts of the UK Parliament applicable to England and Wales (and often other parts of the UK), which was of course developed in English only. As a result of the legislative change that has happened since devolution (for England or Wales, or both), the current primary legislation applicable to Wales has become difficult for the public to access in some areas. It is the Welsh Government's policy that opportunities should be taken when they arise to simplify and separately define the legislation applicable to Wales. This will improve accessibility– particularly where it will provide for a more coherent story on the face of an Act of the Senedd made in Welsh and English.

Policy development and consultation

7.10 The development and setting out of the policy goals and implications of legislation is primarily the responsibility of policy leads and officials, although input from legal advisers will usually be needed on these matters. It includes setting out the initial case for change, exploring the available options in sufficient detail and ensuring the Minister has well-evidenced advice on ways of achieving the objective.

7.11 The policy lifecycle is seen as having five stages:

a. case for change;

b. options;

c. developing the preferred option;

d. implementation; and

e. evaluation.

7.12 Ideally the stages should be tackled sequentially, but it is accepted that they often have to be considered and documented simultaneously in order to meet the required timescales. This is essential to ensure the preferred option of legislation is properly tested and can be justified in terms of policy, cost and legality. This means the analysis of the case for change or option appraisal must be done with sufficient robustness to have the capability of challenging the preferred option. This case forms the basis of the Explanatory Memorandum and RIA (see chapters 6 and 8).

7.13 Each stage should be founded on appropriate engagement with stakeholders and on the best available evidence. In the case of legislation, Ministers have said that this engagement will include at least one public consultation (but this is not the only process of consultation or engagement that would normally be used in the development of complex policy). The stakeholders should typically include the people the policy is meant to benefit, the people and organisations that will deliver the policy, and the people and organisations with the most expertise in the subject concerned.

7.14 At each stage, proportionate consideration needs to be given to the:

a. fit with the Government's strategic objectives (the programme for government or Ministerial priorities);

b. impact on the people of Wales and the supporting evidence;

c. cost of the investment, and how it can be financed;

d. mechanisms available to realise or incentivise change;

e. management of the work.

7.15 These elements are also sometimes referred to as the "policy making principles".

7.16 The Well-being of Future Generations (Wales) Act 2015 requires public bodies (including the Welsh Government) to work towards a common set of seven well-being goals. The Act also sets out the sustainable development principle, the way in which organisations should work (the five ways of working), in order to achieve these objectives. In thinking about our policies we should increasingly be considering whether we are doing the right things, in the right way, in the context of the Act. When considering the appropriateness of legislation through the options appraisal process, we should be doing so within the context of the well-being goals and ways of working. When developing legislation, officials will need to consider whether the proposed legislation will help to contribute to delivery and how the proposed legislation will enable others to maximise their contribution to the seven well-being goals or support them to further embed the five ways of working.

7.17 Extensive guidance about making policy is available on the intranet, supplemented with guidance on required impact assessments. Further information on impact assessments when preparing Senedd Bills can be found in Chapter 5 of this Handbook.

7.18 Experience has demonstrated that policy development for drafting legislation requires a high level of precision and detail. In particular, the fit with the Government's overall objectives; the likely impacts on

different groups of people and types of organisation; and the possible mechanisms for achieving the desired result, need to be considered in as much detail as possible and with reference to the best available evidence. This not only helps in preparing instructions (see below), but is also invaluable later on in determining how to respond coherently to amendments (see Chapter 15). Evidence may also be important in consideration of legislative competence.

7.19 Quality assurance is particularly important where a policy is to be implemented through legislation. It is expected there will be proportional checkpoints at appropriate points.

7.20 Proportionality is important both in building up the case for a policy and in terms of assurance. Senior Responsible Owners (SROs) are expected to use their judgement about what would be proportional to the issue at hand. Since legislation is high profile and requires detailed policy underpinning, a detailed case and thorough assurance are normal practice.

Useful thinking tool

7.21 As the policy is being developed, it may be helpful to consider the following questions, which could help drive the examination of the evidence base and direct future thinking:

a. who must and who might be affected, and who must not;

b. where must and where might they be affected, and where not;

c. how must and how might they be affected, and how not;

d. when must and when might they be affected, and when not;

e. why must and why might they be affected, and why not;

f. what would be the consequences of their being affected or not being affected – legal, social, economic, financial, environmental and political consequences need to be considered.

Legislative competence

7.22 Section 108A(1) of the Government of Wales Act 2006 (GoWA 2006) provides that "*An Act of the Senedd is not law so far as any provision of the Act is outside the Senedd's legislative competence.*"

7.23 The tests for the Senedd's legislative competence are set out in section 108A of GoWA 2006 (see also Chapter 1 above). These are complex legal tests, on which the subject lawyers can advise further.

7.24 The legislative competence of a policy and resulting provisions will need to be considered. To do this thoroughly and in a timely manner, detailed policy instructions will be required as soon as possible.

Changes to policy and/or the extent of the Bill

7.25 The inclusion of the Bill in the legislative programme is on the basis of the information provided in the legislative proposal, or update, and as agreed by Cabinet. Adding significant new policy to the Bill may affect the scope and size of the Bill, which in turn will affect timetabling for the legislative programme as a whole. This must, therefore, be cleared through Legislative Programme and Governance Unit (LPGU) who will provide advice on the implications for the legislative programme, before agreement of the Minister, and then the First Minister, is sought.

7.26 Removal of key aspects of the policy of the Bill will also need Ministerial agreement, and may also require the agreement of the First Minister. Bill teams should be aware that where the intention is to remove a policy from the Bill and bring forward a separate Bill, then that new Bill will have to be agreed by the First Minister and it may not be possible to include it within the current legislative programme or indeed add the policy to another Bill.

7.27 No commitment should be made by the Bill team to a Minister that a change to a proposal in the Bill will not affect the drafting time, or the introduction date, unless this has been discussed and agreed with LPGU and OLC beforehand.

Instructions

7.28 Drafting of the Bill is undertaken by OLC on the basis of a document prepared on behalf of the Lead Minister for the Bill that provides instructions to the drafter on what changes to the law are required to achieve the Government's policy objectives.

Approach to preparing the instructions

7.29 The production of instructions to OLC is a co-operative effort between the instructing officer (who is often a subject lawyer) and policy officials. Subject lawyers bring legal expertise and policy officials bring policy expertise, but there is no rigid demarcation line between both roles. Knowledge of the law is needed to develop an effective policy and many matters which might be thought of as 'legal' are in fact driven by policies about how the law should be drafted, organised or made. Both subject lawyers and policy officials need to understand each other's perspectives to some degree in order to produce good instructions that properly explain the Minister's policy intentions to the drafter.

7.30 Legislation gives effect to a policy, expressing the will of the legislature that something must be done, may be done or may not be done. The purpose of the instructions is to explain all relevant aspects of the policy to the drafter so that:

a. problems can be identified and resolved; and

b. the policy, as refined, is fully expressed as a set of clear legislative propositions in a Bill.

7.31 The policy for a Bill will always have a number of aspects which need to feature in the policy and legal thinking and the story conveyed in the instructions:

a. social policy – what is the mischief to be addressed and what is to be done about it?

b. political policy – what are Ministers' particular priorities and concerns in respect of the policy?

c. administrative policy – what new offices, bodies, systems and processes, or what changes to such things are needed to address the mischief?

d. legal policy – will the proposal make good law? What legal considerations constrain or shape what to do or how to go about doing it? What mechanisms of law (rights, powers, duties, appeals systems, etc.) are to be used to achieve other aspects of the policy? What consequential changes to the law are desirable/necessary? Are any transitional or saving provisions needed?

e. legislative policy – what balance should there be between primary and secondary legislation? If any secondary legislative powers are required, what should they allow? What Senedd procedures should apply? To what extent should there be consolidation of existing law? How will commencement of the Bill be dealt with? How clear, accessible and user-friendly will the new law be?

f. communications policy – are there considerations relating to the audience for the legislation, stakeholders or political handling that might affect the drafting?

g. enforcement policy – how are duties to be enforced (e.g. new crimes, civil penalties, judicial review, creation of enforcement authorities or adjustment of the functions of existing authorities)?

7.32 There is usually a contribution to be made by both the policy officials and subject lawyers in dealing with each aspect of the policy and law to be explained. The question of whether the main contribution comes

from a subject lawyer or a policy official (or any one of them at all) will depend on the knowledge, skills and experience needed to deal with the particular issue.

7.33 The usual practice is for a lawyer to be responsible for instructing OLC. OLC will usually send their correspondence and draft provisions to the instructing officer, with copies sent to other officials with an interest (including those outside the Bill team where appropriate). It is the role of the instructing officer to co-ordinate Group responses to Counsel on the draft provisions and any queries raised by Counsel on the instructions (including any additional instructions).

7.34 For large Bills, particularly with multiple policy elements, the production of instructions may involve more than one instructing officer and a number of policy leads and officials, possibly spread across more than one Group. The Bill team is responsible for co-ordinating this process and ensuring that all of the instructions are produced according to the agreed deadlines. It is a good idea to appoint a lead policy official and a lead instructing officer to facilitate co-ordinated and authoritative responses to issues raised by Counsel (this becomes particularly important close to the deadlines for the production of the Bill and amendments to Bills).

7.35 It is up to the instructing officer and his or her policy officials to decide how best to work together in the production of the instructions. Although the instructing officer is responsible for preparing the final instructions, their preparation in practice usually starts with policy officials providing as much material as possible for the instructions (often referred to as "the policy instructions") before the instructing officer completes the story in the final version (often referred to as "the legal instructions"). There is usually a stage at which the policy needs to have been developed in order for that policy to be considered from a legal perspective. Inevitably, however, at the various stages of Bill development there will need to be iterations between policy officials, Legal Services and OLC. The key thing is that policy officials explain in detail precisely what objective they wish to achieve and how they propose to achieve it.

7.36 Once the policy has been explained, the lawyer will work with the policy officials to deal with any gaps, inconsistencies, flaws or ambiguities in the policy. The lawyer will then prepare the instructions to OLC. The main purpose of these instructions is to explain the policy, set out the existing state of the law and explain what changes to the law are needed to give effect to the policy. It is important the "policy instructions" and the "legal instructions" are not presented as two free standing documents. Rather they should be seen as two phases in the production of one document: the instructions to Counsel.

7.37 Pushing the consideration of key issues forward to the drafting window is liable to adversely affect the quality outcome and might mean failure to deliver some or even all of what is wanted in the Bill.

7.38 Guidance on what the instructions should cover is given below.

Involving other Groups

7.39 Often the policy Group with overall responsibility for a Bill will not be the only Group with an interest in the policy. Where this is the case the lead Group should give the other Group(s) with an interest an opportunity to comment on the policy before the instructions are finalised.

Involving the UK Government

7.40 Senedd Bills often engage policy interests that have not been devolved. This means that Senedd Bills often need to include provisions that are about maintaining the current effect of the law in relation to England or ensuring that non-devolved policy secured by legislation is maintained in effect in Wales. Issues of legislative competence may also arise which need to be discussed with UK Government departments before the instructions can be finalised or the Bill drafted.

7.41 Bill teams should ensure they are familiar with the Welsh Government's reciprocal guidance on *'Liaison with the UK Government on Senedd Bills, Parliamentary Bills, Orders modifying the Senedd's legislative competence and changes to the Welsh Ministers' executive functions'*. See also further guidance in Chapter 12.

The time needed for preparing instructions and drafting the Bill

7.42 It is essential to the success of a Bill project that the team does not underestimate the time needed for preparing instructions and drafting the Bill. If insufficient time is allowed for this a number of difficulties may arise: the Bill may not be ready in time for introduction to the Senedd, meaning that it has to be abandoned by the Government; the Bill may be introduced to the Senedd with errors or omissions that need to be dealt with during the passage of the Bill – this could reflect badly on the Government and will result in Senedd time being spent unnecessarily on Government amendments; or the Bill may contain errors or omissions which are not spotted until after its enactment with the result that the Government's policy is not delivered.

7.43 When decisions are being made on how much time is needed for preparing instructions and drafting the Bill, the following factors should be remembered:

a. First, it is necessary for the policy to be developed for draft legislation to a high level of precision and detail. Even once the policy has been

developed to the satisfaction of policy officials in the Group, it is likely that it will need to be revised (sometimes substantially) to reflect the advice of legal advisers and the views of other Groups with an interest – all this will take time.

b. Secondly, it may not be possible for drafting to begin as soon as OLC receives the instructions. The First Legislative Counsel or the lead drafter allocated to the Bill will be able to indicate whether this will be the case.

c. Thirdly, the process of turning the instructions into workable sections is often a lengthy and complex one. It will usually take the drafter some time to become familiar with the instructions and the existing law before draft sections can be produced and it will frequently be necessary for there to be numerous rounds of correspondence between the drafter and the other members of the Bill team in order for the first draft to be refined into something everyone is happy with.

d. Lastly, in the course of drafting, the drafter will often raise unforeseen policy and legal questions which require an answer before progress can be made. Sometimes answering these questions requires consultation with Ministers, other Groups and stakeholders. Therefore, time needs to be factored in for this.

Sending the instructions to OLC

7.44 Initially the drafting instructions should be sent to the First Legislative Counsel, who will allocate the project to a drafting team (usually a pair of Legislative Counsel). The Bill Manager and instructing officer(s) will be informed as soon as the First Legislative Counsel has allocated the Bill to one or more drafters. Thereafter all future instructions and correspondence can be addressed to those drafters.

7.45 Ideally, all the instructions for a Bill should be sent to OLC at the same time. However, Bills tend to be required against short deadlines and in those circumstances it is unhelpful to hold back instructions in order to be able to send everything together. In deciding whether it is appropriate to send instructions in instalments, the Bill Manager and instructing officer may find it helpful to talk to the First Legislative Counsel or the allocated lead drafter of the Bill.

7.46 Factors to bear in mind when considering such an approach will include:

a. whether each instalment can be properly understood by the drafter without the instructions that are still to come;

b. whether there is a risk that provisions drafted in response to one instalment might need to be reworked in the light of subsequent

instalments and, if so, whether that risk is outweighed by the need to give the drafter an opportunity to make progress;

c. whether the drafter's other priorities would enable work to start on the instalment if it was sent in advance of the other instructions.

7.47 Where instructions are sent in instalments, it is helpful if the Group can provide a brief overview of the number of instalments that are likely and what each instalment will be about. This will give the drafter an idea of how any particular instalment will fit into the Bill as a whole.

7.48 The Bill Manager should aim to ensure that all those with an interest in the policy have signed off the instructions, or an instalment of the instructions, before they are sent to OLC. Similarly, the efforts should be taken to ensure that the policy has been comprehensively developed before the instructions are sent. However, it is recognised that where deadlines are particularly tight consideration may need to be given to sending instructions to the drafter even though the policy has not been finally signed off or even though there are gaps in the policy. If in doubt about whether it is appropriate to send instructions in these cases, the Bill Manager should seek advice from the First Legislative Counsel or the drafters allocated to the Bill.

7.49 Where instructions are sent before the policy has been finally signed off the instructions should make it clear that this is the case.

Changes to the policy after the instructions are sent

7.50 If policy is changed after instructions have been sent, it is essential that the drafter is informed as soon as possible to avoid wasted work. The Bill Manager and instructing officer will also need to discuss with the drafter the most appropriate way of providing instructions on the revised policy. See also paragraph 7.25.

Content of the instructions

General points

7.51 An early discussion with the instructing officer on what is expected will prove invaluable to the policy team. It is also worth spending time on planning how the final instructions for OLC will be developed, checked, and cleared (including by the SRO).

7.52 Although LPGU can provide examples of instructions, all Bills are different. The material in the instructions should be organised in the way the instructing officer thinks 'tells the story' best: the important thing is the content not the form.

7.53 It helps when it comes to writing instructions to OLC to stand back and try to imagine what it will be like for the drafter starting on the subject from scratch. A person who has been immersed in a subject for some time often needs to take care to ensure they are being clear to someone new to it.

7.54 The instructing officer should try to ensure that the policy is fully thought through and analysed before the instructions to OLC are finalised. But having said this, where there are particular pressures on the timetable that impact on the preparation of instructions, it will help to discuss these difficulties with the drafter and agree the best way to deal with them.

7.55 When writing instructions it is important to remember that the drafter is part of the Bill team too. This means that the instructions should be candid about any known difficulties with what is being proposed. For example, it may be that there is a gap in the policy or a flaw that has not yet been ironed out. By airing these sorts of difficulties in the instructions you will save the drafter the trouble of discovering them. And it may be that the drafter is able to offer a solution or a way forward that has not previously been considered.

7.56 It is important to keep in mind the general rule that a Bill should only contain legislative propositions. These are propositions that change the law – they bring about a legal state of affairs that would not exist apart from the Bill. Instead of asking for non-legislative provisions to be included in the Bill, consideration should be given to whether the point can be made in another way, such as in a Ministerial Statement to the Senedd, in the Explanatory Notes to the Bill or in guidance.

Structure and content of the instructions

7.57 The instructing officer should structure the instructions and decide their contents on the basis of what seems likely to be most useful to the drafter. The guidance below should help in deciding what will be most useful but the instructing officer should feel free to depart from the guidance if there appears to be a better way of dealing with things. The instructing officer should also feel free to discuss how best to structure the instructions with OLC.

7.58 A helpful way to structure the instructions will often be to divide them into five parts:

a. introduction;

b. existing law;

c. detailed proposals;

d. supplemental and incidental matters;

e. Senedd and other handling matters.

Guidance on each part follows.

Part 1 of the Instructions – Introduction

7.59 The main purpose of this part of the instructions is to provide the drafter with a brief summary of the policy the Minister wishes to pursue. The summary need not be detailed – the aim is simply to provide the drafter with an indication of where the instructions are headed. For example (only), the summary of the policy may say something like this:

"The Government wishes to regulate the activities of people who sell fireworks. For this purpose, the Government wishes to prevent anyone selling fireworks without a licence issued by the Welsh Ministers. The Bill will need to make provision about the making of applications for licences and the criteria that must be satisfied for an application to be successful. The Government want the Welsh Ministers to be able to impose conditions on licence-holders and to be able to inspect the activities of licence-holders. The Government want it to be possible for people to appeal to the First-tier tribunal against certain decisions made by the Welsh Ministers in connection with the licensing regime."

7.60 In addition, this part of the instructions should:

a. briefly set out the factual and political background to the proposal to legislate. To continue the example above, the instructions might mention the recent problems that have arisen in connection with the sale of fireworks. The instructions might mention the results of any consultation carried out into the establishment of the proposed licensing regime and any Ministerial commitments to establish it. If the proposal to legislate is a response to recent case law this fact should be mentioned.

b. include a warning in the introductory part of the instructions if the instructions are likely to give rise to particularly difficult legislative competence, EU law or European Convention on Human Rights (ECHR) issues (although a detailed explanation should be left until later on).

c. mention if there is any particular reason to think the proposals may change. For example, it should mention if any of the proposals have not yet been approved by the Minister, do not yet have agreement of other Ministers or are the subject of an ongoing consultation.

d. set out any other information that the author thinks it is helpful for the drafter to know from the outset. For instance, it may be helpful to

mention any acronyms or abbreviations used in the instructions. It might be a good idea to provide a web link to any consultation documents or other relevant publications.

Part 2 of the Instructions – Existing law

7.61 This part of the instructions should identify and explain the existing law which is relevant to the proposals. Drafters in OLC tend not to specialise in particular areas of law. The drafter may need to rely on this part of the instructions in order to get to grips with the legal landscape in which he or she is being asked to operate. Even if the drafter happens to have some experience of the area of law concerned, a statement of the law by someone who is familiar with it can be invaluable.

7.62 The instructing officer will need to:

a. in deciding which existing laws should be covered and how much detail to go into. What is appropriate in any given case will depend upon the nature of the proposals and what it is that the drafter is going to be asked to do. For example, if the nature of the proposals mean the drafter is going to be asked to prepare a wide range of amendments to an existing statutory regime it will be necessary to provide a thorough explanation of the regime which focuses, in particular, on the aspects of it that will need amending. By contrast, if the proposals will involve repealing an existing statutory regime altogether it may be that all the drafter needs to be given is an indication of where the existing regime can be found and a brief explanation of what the regime is concerned with.

b. seek to explain the existing law rather than simply copy out or paraphrase every statutory provision that is thought to be relevant. What the drafter will find helpful is something that, in particular: identifies the salient features of the existing law and facilitates a rapid understanding of its structure and effect; identifies subtleties or nuances in the existing law which might easily be missed; draws attention to any conflicting decisions or opinions affecting the interpretation of the existing law; highlights features of the existing law which are of particular importance in the context of the proposals.

c. explain how the existing law works in practice if this is not obvious. This is particularly important if, as is sometimes the case, the existing law operates in a way that might come as a surprise to the drafter.

d. consider if it would be helpful to provide some history of the existing law. For instance, if the existing legislation was the result of a consolidation exercise it may be helpful for the drafter to be told this and to be told where to find the original legislation from which the existing legislation was derived. It may be helpful to let the drafter

know if the purpose of the existing legislation was to give effect to proposals contained in a Law Commission report. Sometimes the drafter may be assisted by an explanation of why a previous amendment to the existing legislation was made (e.g. to reverse the effect of an unwelcome court decision or to implement an international obligation).

e. mention any relevant changes to the existing law in the pipeline. For example, the drafter should be told if the existing law is going to be changed by another Bill or by a statutory instrument that the Welsh Government is working on or the UK Government are developing.

7.63 While it is important the drafter is given a good grounding in the area he or she is going to be operating in, it is not necessary to provide a treatise on the existing law. Care needs to be taken to avoid the trap of including material in this part of the instructions which is of no relevance to the proposals just for the sake of being comprehensive. It is a waste of the author's time to produce a lengthy description of legislation or case law if it will ultimately have no effect on the drafting.

7.64 If the instructing officer is unsure about how much detail to go into in this part of the instructions, it may be helpful to discuss the matter with the drafter or (if a drafter has not yet been assigned to the Bill) the First Legislative Counsel.

Part 3 of the Instructions – Detailed proposals

7.65 This part of the instructions should explain in detail:

a. the policy objective that the Group wishes to achieve, and

b. the changes in law that the Group wants to make in order to achieve that objective.

7.66 It is sometimes tempting to skip the first element and go straight to describing the changes in law that the Group wants. There are two reasons why it is important to include a detailed explanation of the policy objective. The first is that the explanation will enable the drafter to assess whether the requested changes in law will achieve the objective. The second reason is that the explanation may enable the drafter to suggest an alternative change in law in the event that the drafter identifies a difficulty with the change suggested in the instructions.

7.67 When it comes to describing the changes in law that the Group wants, the key is to concentrate on the substance of the proposed changes. In other words, on what legal effect the Group wants the Bill to produce (e.g. *"the Bill should make it a criminal offence to do A, B or C*"; *"the Bill should confer a power on the Welsh Ministers to do A, B, and C"; "the Bill should abolish body A"* etc.).

7.68 However, once the instructing officer has set out the substance of the proposed changes there is no reason not to go on to mention any views he or she happens to have about the form that the changes should take. For example, if the author thinks the proposed changes should take the form of a freestanding provision rather than an amendment to an existing Act then the author should feel free to say so. If the instructing officer thinks the proposed changes should take a similar form to an existing statutory provision, he or she should refer the drafter to the provision concerned. If the instructing officer has in mind a particular form of words which might capture the essence of a proposed test or rule he or she should not feel any hesitation in setting out the words in the instructions. The drafter will be more than happy to consider these types of drafting suggestions, if the author of the instructions chooses to make them.

7.69 It is important to remember though that providing drafting suggestions of this sort is not a substitute for clearly explaining the substance of the proposed change that is wanted. The drafter will be unable to produce draft provisions, or assess the merits of any drafting suggestions made, unless the drafter has been given a clear explanation of what substantive change in the law is trying to be achieved.

7.70 In describing the substantive changes in law that are wanted, it is necessary to spell out the details in full. If there are gaps in the details provided, the drafter may need to revert to the instructing officer and policy officials for the gaps to be filled before being able to proceed with drafting. Alternatively, the drafter may continue drafting on the basis of his or her best guess as to what will be wanted – but there will then be a risk that his or her guess will be incorrect and the draft will need to be revised.

7.71 When describing the proposed changes in law the instructing officer will, of course, need to exercise his or her judgement to determine how much detail is required. But a good starting point is for the instructing officer to think about what he or she would want to know if asked to draft provisions to give effect to the change. The following illustrates the level of detail that is needed, by reference to particular types of legal changes that are commonly sought:

a. *A new criminal offence* – the instructions will need to spell out the acts or omissions that are to be forbidden, the mental element of the offence, the mode of trial for the offence (i.e. summary only, triable either way or indictable only), the proposed penalty for the offence and whether the consent of any person is needed for a prosecution to be brought. If defences are wanted, the circumstances in which the defences should be available will need to be set out. It will also be necessary to set out, in relation to both the offence, and any defences, where the burden of proof should fall and the standard of

proof that is to apply. The instructions should also say if special provisions are wanted to deal with vicarious liability or the liability of company directors.

b. *A new power to make subordinate legislation* – the instructions will need to spell out the intended scope of the power, how it is thought the power will be used, the person on whom the power should be conferred and whether that person should be able to delegate the power to someone else, the Senedd scrutiny to which the power is to be subject (taking into consideration the factors for negative and affirmative procedure set by the Welsh Government (see Chapter 10)), and whether the power is to be exercised by statutory instrument (so that the Statutory Instruments Act 1946 applies).

c. *New duties* – the instructions will need to set out the circumstances in which the duty is to arise, the precise nature of the duty and the person on whom the duty is to be imposed. But it will also be necessary for the instructions to explain how the duty is to be enforced. It may be the intention is for enforcement by a criminal penalty or a civil sanction, or by making compliance with it a pre-condition to the accrual of some right or benefit. If the duty is a public law duty, the intention may be to rely on judicial review for enforcement. If the duty is a duty to comply with a court order, reliance on the law governing contempt of court may be proposed. Even where the means of enforcement chosen will not need to be expressed in the Bill an explanation of the means of enforcement should still be set out in the instructions so that the drafter is clear about what is intended.

d. *New decision-making powers* – where it is intended the Bill confers a decision-making power on someone it will be necessary, among other things, for the instructions to set out the details of any procedural requirements the Bill should impose as a pre-condition to the exercise of the power. It will be necessary for the instructions to say if the decision-making power should be capable of being delegated. It will also be necessary for the instructions to set out the details of any appeal or review mechanism that needs to be provided for in the Bill.

7.72 In describing the parameters of a proposed change in the law it is sometimes helpful to set out examples of the type of case that the change in law is to affect and of the type of case that should not be affected. So when requesting the creation of a criminal offence it may be helpful to give examples of the sort of conduct that should and should not be criminalised. When this approach is taken the instructions should also contain analysis of what it is that distinguishes the two sorts of case.

7.73 Sometimes there will be several ways in which the law could be changed in order to meet the policy objective. In this situation the

instructing officer should briefly explain why the chosen option has been preferred to the others. This is particularly useful if one of the alternative options might appear at first sight to be more attractive or straightforward than the chosen option.

Part 4 of the Instructions – Supplemental and incidental matters

7.74 The instructing officer should consider if anything needs to be said about any of the supplemental and incidental matters listed below.

7.75 If the Bill is being instructed on in instalments, it may be that some of the supplemental and incidental matters can be addressed in a general instalment that applies to the whole Bill so that they do not need to be addressed separately in each of the remaining instalments.

7.76 In relation to some of the supplemental and incidental matters – such as commencement – something will always need to be said in the instructions (unless those matters have already been covered in a general instalment). But some of the matters will only occasionally need to be addressed.

7.77 The supplemental and incidental matters are as follows:

a. EU law issues;[7]

b. ECHR compatibility;

c. the territorial extent of the proposals (including whether the proposals should extend to the territorial sea);

d. legislative competence issues;

e. application to the Crown;

f. consequential amendments and repeals;

g. transitional, transitory and saving provisions;

h. commencement; and

i. retrospection.

7.78 Many of the matters listed above speak for themselves or are the subject of detailed guidance elsewhere. But a number of the matters require some additional commentary:

[7] Although the UK Government triggered Article 50 of the Treaty on European Union on 29 March 2017, the UK remains part of the EU at the time of writing and continues to observe EU law, and GoWA 2006 continues to require Acts of the Senedd to be compatible with EU law. The handbook will be updated to reflect any changes on this subject in the future.

a. *EU law issues* – on some occasions EU law issues will go to the very heart of the proposals. For example, it may be that the very purpose is to implement a Directive. On these occasions it will be more appropriate for the relevant EU law to be dealt with earlier in the instructions; on other occasions it will be more appropriate for the EU law issues to be dealt with in this part of the instructions. For further guidance about EU law generally and about its domestic implementation, see the European Law area on LION (Legal Information Online Network), which can be accessed via Legal Services.

- An example of an EU law issue which may arise from time to time is compatibility with the E Commerce Directive (2000/12/EC). This Directive contains provisions restricting the power of member states to impose obligations, broadly speaking, on internet activity. Where the proposals may affect internet activity the instructions should explain whether the Directive affects the proposals and whether any provisions are needed to make the Bill consistent with it.

- Another Directive that may need to be considered is the Technical Standards Directive (Directive 98/34/EC, as amended by Directive 98/48/EC). This Directive requires Departments to notify the Commission of any "technical standards" that they are proposing to create. (Examples of technical standards include laying down characteristics required of a product before it can be marketed; requiring approval of a product before it can be marketed; prohibiting the marketing of a product; and imposing requirements as to the composition of a product.) The Technical Standards Directive also requires the Commission to be notified of certain requirements that are to be imposed on the use of information society services (broadly, internet-based services). Responsibility for identifying and notifying technical standards rests with the Department, but the instructions should say if proposals will constitute a technical standard.

b. *ECHR compatibility* – the drafter needs to understand the analysis as to whether the proposals engage any of the rights under the ECHR and, if so, whether the proposals are compatible with those rights. It is not part of the drafter's role to confirm whether such analysis is correct, but a short explanation of the analysis is needed so as to let the drafter know that the necessary issues have been considered.

c. *Consequential amendments and repeals* – the proposals will often give rise to the need for consequential amendments or repeals of existing statutory provisions. The consequential amendments and repeals that are needed should be included in the Bill itself. If there is a concern that a need for additional consequential amendments or repeals may be identified after Royal Assent then it may also be

appropriate for the Bill to include a power to make additional consequential amendments and repeals by regulations.

- In exceptional circumstances the Bill may confer a power enabling all the necessary consequential amendments and repeals to be made by regulations. This option may initially seem attractive where there is a limited amount of time for instructions to be prepared. But it is important to remember that if the drafting of consequential amendments and repeals is left until after Royal Assent, OLC will not be responsible for preparing the drafting. More immediately, such an approach may give rise to criticism of the government, not least because sight of the consequential amendments may be necessary to fully understand the change in the law sought. Also, it is sometimes the case that the process of drafting the consequential amendments and repeals reveals problems with or omissions from the main provisions of the Bill – if the drafting of the consequential amendments and repeals is left until after Royal Assent it will be too late to sort these problems or omissions out. Finally, it should be remembered that if the drafting of consequential amendments and repeals is left until after Royal Assent, it can cause a delay in implementation.

- It may be sufficient for the instructions on consequential and incidental amendments to simply provide a list of all the existing provisions that need to be amended or repealed. For example, if the proposal is to abolish an existing statutory body and transfer its functions to a new body it may be sufficient for the instructions to simply provide a list of all the existing statutory provisions which refer to the old body on the basis it will be obvious to the drafter the listed provisions need to be amended to refer to the new body. However, on some occasions it will not be immediately obvious how the listed provisions should be amended and so it will be necessary for the instructions to go on to explain precisely what effect is being sought.

d. *Transitional, transitory and saving provisions* – the instructions should say if the proposals give rise to the need for transitional, transitory or saving provisions.

- A *transitional provision* is a provision that deals with how a case that begins under the existing law is to be treated when the new law in the Bill is commenced. For example, if the Bill is to replace an existing licensing regime with a new licensing regime, a transitional provision may be necessary to ensure that an application for a licence under the existing regime which has not been determined is treated as an application for a licence under the new regime.

- A *transitory provision* is one that states a provision in the Bill will have effect with modifications for a limited period (perhaps until the coming into force of some other enactment). An example would be a

provision that says that until the coming into force of a general increase in penalties effected by some other Act, the reference in a provision of the Bill to a maximum of 12 months imprisonment will have effect as a reference to 6 months.

- A *saving provision* is a provision that keeps an enactment, which is repealed by the Bill, alive for certain, limited purposes. An example of a saving provision is one that says the repeal by the Bill of an existing enactment does not affect any right (such as a right to a payment) which accrued under the enactment prior to the commencement of the repeal.

  As with consequential amendments and repeals, the transitional, transitory and saving provisions that are needed should be included in the Bill itself wherever possible (perhaps with a regulation-making power if there is a concern that a need for such provisions may be identified after Royal Assent). Please also see paragraph 10.15 on commencement orders. The other possibility is for the Bill to confer a power enabling all such provisions to be made later by regulations. Again, this option may seem initially attractive where there is a limited amount of time for instructions to be prepared. But it is important to remember that if the drafting of such provisions is left until after Royal Assent this can result in a delay in implementation. It should also be borne in mind that the transitional provisions needed are often very complex and if the drafting is deferred until after Royal Assent OLC will not be responsible for the drafting.

  The instructions should tell the drafter which option is to be pursued.

e. *Commencement* – the instructions should tell the drafter what is wanted as regards commencement of the requested provisions. There are a range of options here but it is usual that provisions are commenced on a day appointed by order made by the Welsh Ministers; on a calendar date specified in the Bill; on the day after the day on which the Bill receives Royal Assent; at the end of a specified period beginning with Royal Assent. Further information on commencement is given in Chapter 18.

   Where possible, the day when the requested provisions come into force should be determined by the Bill itself (rather than by orders made under the Bill) – this provides greater certainty to those who are going to be affected by the provisions and also saves putting the reader to the trouble of looking up orders. However, it is recognised flexibility to be able to determine the date of commencement in orders can be required. The instructing officer should remember the convention concerning the early commencement of provisions in Bills/Acts – see Chapter 18.

Part 5 of the Instructions – Senedd and other handling matters

7.79 This part of the instructions should set out anything the instructing officer thinks the drafter should know about the proposed handling of the Bill. For example, it should set out (in so far as they are known to the instructing officer):

- any plans for the Bill to be published in draft for consultation or pre-legislative scrutiny and the timetable for this;
- any matters likely to attract particular consideration, and the current policy position; and
- any pressing need for the Bill to reach Royal Assent by a particular date.

Ministerial clearance of policy

7.80 The final policy will need to be cleared by the Lead Minister for the Bill. It is good practice for Ministers to hear directly from lawyers about any significant legal matters arising or issues relating to the deliverability of aspects of legislation as work progresses. Where the lead is a Deputy Minister, the Minister with portfolio responsibility must also clear the policy. Where an element of the Bill falls to a different portfolio Minister, they will also need to clear the policy. For examples of such occasions see paragraph 3.5.

7.81 The First Minister has overall responsibility for the legislative programme and will also need to clear all final policies (including any policy in significant supplemental instructions).

Drafting the Bill

An initial meeting with the drafters

7.82 Before or shortly after the instructions, or the first instalment of them, have been sent to OLC it may be helpful for a meeting to be held between the drafters, the instructing officer, the policy leads and the Bill Manager. Such a meeting could be used to discuss: what the drafter and the other parts of the Bill team are expecting of each other; the political background to the Bill; the timetable for sending the remaining instructions and drafting the Bill (and how any risks to the timetable can be managed); proposed methods of working (for example, where instructions are being sent in instalments, in what order the drafter will deal with the instructions, the use of meetings etc.).

Responding to the instructions

7.83 Usually a pair of Legislative Counsel will be assigned to look at each set of instructions – one will lead the drafting and associated advice, and where resources allow one or both drafters will be proficient in the

Welsh language (if that is not practical, another drafter within OLC will deal with terminology issues and ensuring that the Welsh and English language texts of the Bill are of equivalent effect at the appropriate time). See paragraphs 7.120-121 below for detail on the legal equivalence process.

7.84 As the drafters examine the instructions they may well have initial questions which need to be answered before progress with the drafting can be made. In order to avoid unnecessary delays, it is important that a lawyer and a policy official are able to answer these questions quickly.

7.85 The drafter will then produce draft provisions in response to the instructions. The Bill Manager should feel free to discuss with the drafter when this first draft can be expected.

7.86 Except in the most straightforward of cases, the first draft will be accompanied by a memorandum which will do two things:

a. explain the drafting where the drafter thinks this may speed understanding of how the provisions have been constructed.

b. set out any questions the drafter has about the policy, the existing state of the law and related matters.

Commenting on draft provisions and replying to the accompanying memo

7.87 Often there will be a range of officials who need to be given an opportunity to comment on the draft provisions and provide answers to the drafter's questions. The instructing officer and the Bill Manager need to ensure that all the responses are co-ordinated.

7.88 Although it is important that the drafter's questions are answered, the primary focus should be on the draft provisions. The draft provisions should not be viewed as merely being the responsibility of the drafter. It is essential that the draft is studied carefully to check it does precisely what is wanted. If there is any doubt about whether the draft achieves the policy, this should be raised in the response to the drafter.

7.89 Policy officials and subject lawyers will need to think carefully about drafts in the context of their subject expertise, with a view to identifying unintended consequences that the drafters cannot reasonably discover by themselves. It is recommended that draft sections are tested against practical scenarios to ensure they meet the policy aims; this allows the Bill team to comment by explaining what they want a provision to do and what they think it might not do and why (rather than asking what it does).

7.90 Responses to the drafter should avoid asking questions about the effect of a draft provision without also making clear what effect is actually

sought, as the drafter will be uncertain about whether an alteration is needed. So, for example, instead of asking, “does the section make it a criminal offence to do XYZ?” the Group should say, “we would like it to be a criminal offence to do XYZ; is that the effect of the section as drafted?”

7.91 The response to the drafter need not be confined to commenting on whether the draft provisions achieve the policy. The drafter will be very keen to hear any comments on the readability and clarity of the draft provisions. If the Bill team considers there is a way in which the draft provisions could be made clearer they should not hesitate to say so. Similarly, if there are any presentational concerns about the draft provisions the reasons for the concerns should be explained to the drafter.

7.92 The Bill team should also tell the drafter about the parts of the Bill which are, or may, come under the most pressure. The drafter will be able to help the Bill team with this, and will take this into account when preparing drafts of the relevant sections. Drafters should similarly tell Bill teams about any aspects of the drafting of the Bill they consider to be vulnerable to difficulties and which may (for example) need further clarification in the Explanatory Notes.

7.93 Once a response to the first draft and the accompanying memo has been provided the drafter will start work on a further draft. A number of rounds may be needed before the draft is finalised.

7.94 The Bill Manager may find it helpful to set up a Bill Mailbox to ensure that all correspondence on drafting is received and responded to through a central point; this will also help during the Senedd consideration process where there will be significant email traffic – often whilst working within very tight timescales – and a central email, which is monitored by more than one person, could assist.

7.95 Bill Managers may also wish to consider using tools to keep track of which elements of the instructions have been dealt with, correspondence to/from drafters, state of completeness of the Bill, etc. LGPU can provide examples used by other teams. The need to reply swiftly to OLC is also necessary, and Bill Managers will need to monitor this.

Ministerial oversight during drafting

7.96 The Bill team should ascertain early exactly how the Minister wishes to exercise his or her responsibility for the Bill, including how he or she should be kept in touch with the progress of drafting. Major issues that arise must be referred to Ministers, and they must be informed immediately if the date aimed at for introduction is not going to be

achieved. It is also important to inform LPGU as soon as such issues come to light.

7.97 Bill teams should ensure that the Minister has sufficient time and information to become familiar with the provisions of the Bill. Opportunities to go through the Bill with the Minister, including with OLC present, are likely to be helpful to all.

Short and long title of the Bill

7.98 OLC will give the Bill its short and long title, once the content of the Bill is known (not before). For example –

Short title – "Social Partnership and Public Procurement (Wales) Bill"
Long title – "An Act of Senedd Cymru to make provision about sustainable development in accordance with a principle of social partnership; about socially responsible public procurement; establishing a Social Partnership Council for Wales; and for connected purposes."

7.99 The short title should not be confused with the working title of the Bill; the latter is the common name used by the Bill team and LPGU to identify the Bill before it is drafted and ready for introduction. There is a temptation to become very wedded to the working title, using it in communications with external stakeholders, and Ministerial correspondence. This is understandable, but it should be made clear to all (internal and external stakeholders, and the Minister) that the working title is just that, and can change (preferably working titles should not be used externally). For this reason using the expression "A Bill on X" is preferable.

7.100 By convention it is OLC who decide on the name of the Bills during the drafting process, subject to any later views expressed by Ministers. This is because the short title is part of the Bill, just like any other provision, and can be used as an aid to construction – it is, therefore, to that extent a technical (drafting) issue. The title must also conform to the Llywydd's rules on the 'proper form' of Bills (something which also falls within the drafter's responsibility). Translation Service can assist in deciding on the Welsh version of the short title.

7.101 There are three main things needed to achieve the wording of the short title, it should –

a. be short so that it provides a convenient citation label for future users of the legislation;

b. encompass all that is going on in the Bill (and where the policy is not settled might be going on in the Bill); and

c. place the Bill clearly within any closely related corpus of law (for example, environmental law) and be consistent with previous titles used.

7.102 These considerations will guide OLC's advice to Ministers on the short title. The Minister is likely to take a particular interest in the short title, given possible presentation issues. The final decision on the Government's proposed short title to the Bill, where there is not agreement, lies with the First Minister.

7.103 Ultimately, however, as the Llywydd considers both the short and long title to be part of the proper form of a Bill, the Llywydd may overrule the Government's proposed titles.

Divisions and sub-divisions of legislative instruments

7.104 The following table (which for the sake of completeness includes primary as well as secondary legislation) shows the names commonly used for the divisions and sub-divisions of legislative instruments.

Instrument	*First division (numbered 1, 2, 3, etc.)*	*Second division (numbered (1), (2), (3), etc.)*	*Third division (lettered (a), (b), (c), etc.)*
Act	section	subsection	paragraph
Bill (in the Senedd)	section*	subsection	paragraph
Order	article	paragraph	sub-paragraph
Regulations	regulation	paragraph	sub-paragraph
Rules	rule	paragraph	sub-paragraph
Schedule	paragraph	sub-paragraph	paragraph

* this is referred to as a clause in a Bill in the UK Parliament

Producing the Welsh text of the Bill

Initial considerations

7.105 A Bill in Welsh and English is provided to the Llywydd for determination. Standing Orders require that Bills are introduced in Welsh and English (except under certain circumstances) and that a Bill is available in English and in Welsh before it can be passed (except under certain circumstances). The Welsh and English text of Acts of the Senedd have the same legal effect.

7.106 If OLC decide to produce both texts of the Bill, in Welsh and English, themselves, the Legislative Translation Unit can support this by providing advice on Welsh terminology and house style and by providing a second-eye check of the Welsh language text drafted by OLC.

7.107 If OLC decides to produce the text of the Bill in English only, the Legislative Translation Unit can translate the text into Welsh.

7.108 Once a decision has been taken on how the Welsh text will be produced, the Bill team needs to discuss with OLC and the Legislative Translation Unit (if the Legislative Translation Unit are to provide the Welsh language text) the time needed to do this and agree on a timetable signed off by LPGU to allow the process described in this section to be carried out. The steps taken to produce the Welsh language version of the text should ensure that the Welsh language is not treated less favourably than the English language.

7.109 All parties involved in the production of the Bill will need to adhere to the agreed timetable to ensure enough time is available to produce the Welsh language text, or agree a new timetable with the Legislative Translation Unit. If the Legislative Translation Unit are involved in producing the Welsh text, translators will be core members of the Bill team and will need to be included in all discussions which affect the production of the Welsh language text. The Legislative Translation Unit will need to be updated regularly with the following information:

a. what work is likely to be sent to the Legislative Translation Unit;

b. the nature of the work (e.g. whether it amends other legislation, whether it contains new or complex terminology);

c. how much of it there will be (in words, not pages);

d. when it will reach the Legislative Translation Unit; and

e. by what time the work needs to be returned.

7.110 The translation process typically involves:

a. leading on the standardisation of the Welsh terminology for a Bill;

b. producing a first draft;

c. revising the draft;

d. bringing multiple drafts together into a consistent and coherent whole document;

e. ensuring that the text is in the correct format; and

f. responding to issues raised by OLC as part of the legal equivalence process.

7.111 Bill teams must ensure that sufficient time is scheduled and protected for all of these tasks to be carried out to the required standard.

Preparatory terminology work

7.112 As soon as first drafts of key parts of the Bill are available, OLC should send them to the lead jurilinguist for the Bill so that she or he can forward them to the Terminologist in Translation Service. This will enable the Terminologist to co-ordinate the preparatory work on standardizing the key terms for the Welsh language text of the Bill. The Terminologist will liaise with the Legislative Translation Unit, OLC, Legal Services and other members of the Bill team as part of the standardization process. The standardised terms are published in TermCymru, the Welsh Government's terminology database, which is available on the intranet.

First draft of the Welsh text

7.113 It is much more efficient for the Legislative Translation Unit to provide a Welsh language text using a single, complete and settled English language text. This would always be the Legislative Translation Unit's preferred option, though it is accepted that this is not always practical.

7.114 OLC sends the translation request to Translation Service via the request form on the Intranet.

7.115 As the Legislative Translation Unit translates the Welsh language text, the lead jurilinguist or legislative translator may have questions or comments for OLC which need to be resolved in order to complete the Welsh text. This may also lead to changes in the English language text.

Further changes to the Welsh language text

7.116 For a number of reasons, the English text of a Bill may change once it has been sent for translation, translated and checked. OLC will inform the Legislative Translation Unit of the changes and indicate them clearly so that the corresponding changes can be made to the Welsh language text.

Linguistic check (whole document)

7.117 Once all the various topics have been translated and possibly undergone a preliminary check, the lead jurilinguist will bring the whole Welsh language text together and check the whole document for

linguistic accuracy and consistency. This is an important part of the process which is intended to mitigate the disadvantages of translating various parts of a Bill by different translators over an extended period of time. This final checking process is a prerequisite to providing the draft of the Welsh language text to OLC for the legal equivalence process. If the Legislative Translation Unit is not afforded time to complete the final check of the completed Welsh text, OLC would be required to use the time allocated for legal equivalence to edit the Welsh language text as well as conduct the legal equivalence process – this should be avoided as it risks inaccuracies in the Bill.

7.118 As the Welsh language text is checked the lead jurilinguist may have questions or comments for OLC which need to be resolved in order to complete the Welsh language text. This may also lead to changes in the English language text.

Legal equivalence check of the Bill

7.119 The process of checking the equivalence of the Welsh and English language texts is vital in order to ensure that legislation has the same legal effect in both languages. OLC leads on this process and consults with the Legislative Translation Unit on questions regarding the Welsh text.

7.120 Each drafting team should include at least one drafter with the skills to undertake this task and it should be ensured that the timetable will allow sufficient time for OLC and the Legislative Translation Unit to be able to complete the task to a high standard. If the timetable does not allow for this, the Bill Manager and LPGU should be alerted. Failure to fully check the equivalence of the text may lead to criticism about the standard of the Bill and to the need for improvements to correct the shortcomings. It can lead, in addition to the risk that the Bill will not be interpreted by the public and the courts in the manner intended and that can, in turn, undermine the Government's policy objectives. The validation will often lead to a need for amendments to the Welsh language text (and sometimes to the English language text as well). It is important that the window of equivalence allows for OLC to provide an opportunity for the Legislative Translation Unit to consider any comments regarding the Welsh text and any proposed amendments in order to ensure that they are linguistically correct and consistent with the remainder of the text.

Additional matters to be aware of during the preparation of the Bill

Revenue streams and legislation (hypothecation)

7.121 In certain circumstances legislation may propose measures which will generate revenue. This may be a specific intention of the legislation or, more often, financial penalties to encourage compliance are included.

7.122 If the legislation itself directs any revenue stream to be utilised to support specific expenditure it is regarded as directly hypothecated. Therefore, that income stream is in effect removed from both Ministerial control and the usual budgetary conventions of the Senedd.

7.123 The Government operates under the general principle that budgetary decisions are made by the Welsh Ministers and any income is directed via the Government's Budget Motions. Direct hypothecation risks complicating the Government's budget, reducing flexibility and tying the current and future Governments' hands unnecessarily.

7.124 Whilst hypothecation may appear attractive from the perspective of the individual policy objective, Ministers have made it clear that they do not wish to directly hypothecate income through individual Bills, but rather retain the flexibility to allocate any resources as appropriate through existing budgetary procedures.

7.125 Further advice on revenue streams, hypothecation, and the budget process is available from Strategic Budgeting.

Working with Inspectorates during the development of the Bill

7.126 Care Inspectorate Wales (CIW), Healthcare Inspectorate Wales (HIW), Estyn (Her Majesty's Inspectorate for Education and Training in Wales) and the Wales Audit Office (WAO) are the four main inspection, audit and review bodies in Wales. They can be an invaluable resource for Bill teams on matters such as who uses public services in Wales, who will need them in the future, and how those services are working on the ground but also as experts in the process and underpinning methodologies of inspection, audit and review. Bill teams are therefore encouraged to work closely with these bodies where the policy of the Bill will impact upon the areas of work where CIW, HIW, Estyn or the WAO have experience, knowledge and expertise.

7.127 Engagement could happen in a number of different ways – from working with individual inspectors or reviewers to understand day to day experiences, through to engaging with Chief Executives and other senior managers to ensure they are aware of the proposals, and have had an opportunity to comment on them.

7.128 It is often the case that CIW, HIW, Estyn or the WAO are invited to give evidence to the Senedd during its scrutiny of the Bill, and engagement across the management structure of the bodies will also support those members of the inspectorates giving evidence to be familiar with the overarching rationale and policy intent, as well as the fine detail of the Bill.

Engagement with the Lord Chief Justice

7.129 There are crucial points during the consultation process, introduction of the Bill, passage of the Bill through the Senedd and in developing subordinate legislation where the Lord Chief Justice ("LCJ") may need to be consulted. The Welsh Government has made a commitment to consult the LCJ which is separate from, and additional to, the requirement in Standing Orders to complete a justice impact assessment (for which see Chapter 6), although this consultation may inform the justice impact assessment. The consultation with the LCJ is in respect of any proposals which affect the administration of the courts system and the tribunal system, which are likely to bring changes to the criminal law, or which are likely to have any effect on the operation of the judicial system. Bill teams can seek advice from Legal Services on when engagement with the LCJ may be appropriate.

Sharing information with stakeholders during the preparation of the Bill

7.130 There is a fine balance to be struck between providing enough information to keep stakeholders informed and ensuring good communications on the one hand and providing too much detail about the proposals too far in advance of introduction on the other.

7.131 There are risks when the policy intention is still to be tested by Legal Services or where the Bill is yet to be drafted by OLC, or the Explanatory Memorandum yet to be finalised or cleared; all of which could lead to changes by the time of introduction.

7.132 Officials should be mindful of the Ministerial Code in relation to public announcements about proposed government legislation, and ensure that the advice provided to their Minister, including statements and speaking notes, adhere to its requirements. LPGU can provide further advice.

Chapter 8 – Explanatory Memorandum

This Chapter provides an overview of the requirements for the Explanatory Memorandum which must accompany the Bill on introduction to the Senedd.

When the Explanatory Memorandum is submitted to the Senedd it includes a Regulatory Impact Assessment (RIA) and a copy of the Explanatory Notes.

Chapter 6 provides detailed guidance on how to prepare the RIA, and Chapter 9 covers the preparation and revision of Explanatory Notes.

Requirements of Standing Orders

8.1 Standing Order 26.6 requires that when the Member in charge introduces a Bill, he or she must also lay an Explanatory Memorandum before the Senedd. The Explanatory Memorandum must be laid in both English and Welsh.

8.2 The detail of Standing Order 26.6 is set out below:

"… [the Explanatory Memorandum] must:

(i) state that in his or her view the provisions of the Bill would be within the legislative competence of the Senedd;

(ii) set out the policy objectives of the Bill;

(iii) set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted;

(iv) set out the consultation, if any, which was undertaken on:

(a) the policy objectives of the Bill and the ways of meeting them;

(b) the detail of the Bill, and

(c) a draft Bill, either in full or in part (and if in part, which parts);

(v) Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended;

(vi) If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision;

(vii) summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill;

(viii) set out the best estimates of:

(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;

(b) the administrative savings arising from the Bill;

(c) net administrative costs of the Bill's provisions;

(d) the timescales over which all such costs and savings would be expected to arise; and

(e) on whom the costs would fall;

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

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

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

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

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

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

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

8.3 Standing Orders also require the following:

(26.6A) The Explanatory Memorandum to the Bill must state precisely where each of the requirements of Standing Order 26.6 can be found within it, by means of an index or otherwise.

(26.6B) Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.

(26.6C) Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.

8.4 Note that Standing Order 26.6(vii) is satisfied by attaching the Explanatory Notes as an Annex to the Explanatory Memorandum (see chapter 9), and Standing Order 26.6(viii) and Standing Order 26.6(ix) by the inclusion of the RIA into the Explanatory Memorandum (see Chapter 6).

8.5 If the Senedd Commission's Table Office considers that the requirements of Standing Orders are not met, they will not accept the document in order that it may be laid, thus jeopardising introduction of the Senedd Bill.

Member in charge's statement

8.6 To satisfy Standing Order 26.6(i), the first page of the Explanatory Memorandum is a statement by the Member in charge:

"In my view the provisions of the [short title of Bill], introduced by me on [date of introduction], would be within the legislative competence of Senedd Cymru."

8.7 In order for the Minister – who will be the Member in charge of the Bill – to make this statement, advice will need to have been provided to them as part of the development process of the Bill.

8.8 Additionally, it is important that in the advice seeking clearances for introduction of the Bill and Explanatory Memorandum:

a. the Minister's particular attention is drawn to the statement, and agreement is sought to making this; and

b. advice regarding legislative competence is included.

Content and form of the Explanatory Memorandum

8.9 The Legislative Programme and Governance Unit (LPGU) will provide Bill teams with the current template for the Explanatory Memorandum, which is designed to meet the requirements of Standing Order 26.6, as well as providing assistance in completing the form if necessary.

8.10 The Explanatory Memorandum is currently divided into two Parts:

a. Part 1 – Explanatory Memorandum;

b. Part 2 – RIA (see Chapter 6).

8.11 The Explanatory Notes (see Chapter 9) are presented as one of the Annexes to the document. Other annexes required are outlined in paragraphs 8.41-8.44.

Preparing the Explanatory Memorandum in Welsh and English

8.12 Standing Orders require the Explanatory Memorandum to be tabled in both English and in Welsh. Bill teams will have considered from the outset of the project how the Welsh and English texts will be prepared. If it has been decided to use the Translation Service to provide, or help provide, texts, the General Translation Unit will undertake this work. The Bill team must allow sufficient time for this process – see paragraph 3.40 above.

8.13 Early and ongoing engagement with Translation Service will support the effective and timely translation of what can be a very lengthy and complex document. This can enable methods such as phased translation of Chapters and version control of documents to be mutually agreed and planned, which can assist with the development of a high-quality document according to the legislative timetable.

Content of Part 1 of the Explanatory Memorandum

Chapter 1 – Description

8.14 The description chapter is included within the Explanatory Memorandum to give a concise outline, usually no more than a paragraph, of what the Bill does and why. It should be written without policy justification, aiming to be a simple factual summary.

8.15 It can be thought of as setting out the general principles of the Bill – although it is not where such principles are drawn from, for the purpose of the general principles debate at the end of Stage 1.

Chapter 2 – Legislative Competence

8.16 As noted earlier, this Chapter details the enabling powers that give the Senedd the legislative competence to pass the Bill. This Chapter should not be used to give the legislative history of a particular policy area, but if such wider information would assist, consideration could be given to including such information in an Annex.

8.17 The information used to prepare this Chapter can be gleaned from the legal instructions and from the legal advice elements of the Ministerial advice.

8.18 Template text can be obtained from LPGU and this standard text should be used for all Bills. Additional information may need to be added about legislation and circumstances specific to the Bill. It is usual for Legal Services to take the lead in preparing this Chapter, and it is certainly the case that they should clear it.

Chapter 3 – Purpose and intended effect of the legislation

8.19 This Chapter should be prepared so as to meet the requirements of Standing Order 26.6(ii), and also, in part, Standing Order 26.6(iii).

8.20 There is sometimes a temptation to write this Chapter as a form of Explanatory Notes – a section-by-section explanation of the Bill; however, this is not the purpose of this Chapter. Rather this is where the policy objectives are set out. In doing this, the Bill team should prepare a detailed explanation of why the Government intervention is considered necessary (what problem or issues the Bill is trying to resolve, and the evidence for this) and what the Bill is intended to achieve (including the best evidence available for the approach being taken). The explanation should also:

- set out the scale of the issue and identify who or what is affected;
- provide a clear, brief statement of the objectives – where there are multiple objectives, these should be prioritised and any conflicts identified;
- set out a detailed implementation and delivery plan; and
- set out any instances of market failure that have led to government intervention e.g. where the market has not and cannot deliver efficient outcomes for citizens, consumers and producers. A more detailed explanation of market failure can be provided by the Welsh Government economists.

8.21 Other factors which should be considered are:

- what are, or will be, the risks or hazards if legislation is not made;
- will the legislation enable sectors to operate more efficiently, and if so how?

- will the legislation improve access or outcomes for disadvantaged or excluded sections of society, and if so how?
- if the Bill has a specific territorial extent please outline here (i.e. if it affects just certain areas of Wales);
- if there is a need for the Bill to be passed within a certain timescale or by a particular date, please specify this and give reasons.

8.22 It is appropriate, and sometimes necessary, to repeat some of the elements of the RIA, for example, in setting out some of the evidence base being relied upon and some of the alternative options that were considered. It is also acceptable to cross-refer to elements of the RIA.

8.23 Where a Bill covers more than one policy element, it is important to ensure that all of the policy objectives and rationales are explained. At the same time, it is important to remember that this is an Explanatory Memorandum for the Bill as a whole, so this Chapter needs to ensure the Bill as a whole is also explained.

8.24 Where there are a number of matters dealt with in this Chapter, a general overview of what the Bill does and a summary of what will be included in the Chapter is helpful.

8.25 The policy instructions should assist in the preparation of this Chapter.

Chapter 4 – Consultation

8.26 Designed to address the requirements of Standing Order 26.6(iv), a summary of the consultation undertaken on the policy objectives, and the outcomes of that consultation, should be set out here. For some Bills, there will have been a number of formal consultations, such as on a Green Paper, White Paper or a draft Bill. It is appropriate to provide information on all of these.

8.27 However, this Chapter does not need to be limited to formal consultation. Information can also be given on how the Bill team and/or Minister have engaged more widely in the development and refinement of the policy proposals.

8.28 To satisfy Standing Order 26.6 (v), the Explanatory Memorandum will need to include a summary of the consultation responses. Many Bill teams will have published consultation summary reports prior to the introduction of the Bill into the Senedd. In such circumstances, inclusion of links to these published reports within Chapter 4 of the Explanatory Memorandum will satisfy Standing Orders. In addition, this Standing Order requires the Explanatory Memorandum to set out how any Draft Bill consulted upon has been amended. The Explanatory Memorandum template provides a table where this information can be set out. It is not necessary to set out every change, but the table should set out

substantive changes to policy or drafting and any changes to key terminology and key concepts.

8.29 For cases where there was no consultation on a Draft Bill, or consultation on only a part of a draft of the Bill to be introduced, there is a requirement in Standing Order 26.6 (vi) to clearly explain why the Government chose not to undertake such a consultation. Where there has been consultation on a Draft Bill, but the Bill to be introduced contains new sections or parts of significance that were not considered as part of this consultation, the additional sections or Parts can be highlighted within the table of amendments to the Draft Bill, setting out the reasons why these were not included in the consultation.

Chapter 5 – Power to make subordinate legislation

8.30 When considering which powers to make subordinate legislation should be included, the first consideration should be 'what is meant by subordinate legislation'. Under Standing Orders this means:

"… an Order in Council, order, rule, regulation, scheme, warrant, bye-law and other instrument made or to be made under any Act of the Senedd, Act of the UK Parliament or Senedd Measure, or made or to be made under subordinate legislation;"

8.31 On this basis, it is recommended the subordinate legislation which clearly falls within the definition of Standing Orders (i.e. regulations, rules and orders) is set out in Chapter 5 and presented in the first table in the template provided by LPGU to satisfy Standing Order 26.6(x).

8.32 In this first table, for each power in the Bill to make subordinate legislation, it is necessary to set out (in the order in which they are found in the Bill):

a. the provision in the Bill where the power sits (for example "Section 14(b)(iii)" or "Schedule 2, paragraph 8");

b. the person upon whom, or body upon which, the power is conferred (for example "Welsh Ministers");

c. the form the subordinate legislation will take when made, in other words what type of instrument (for example "Regulations" or "Order", etc.);

d. why it is appropriate for this power to be conferred, rather than for the information, detail, or scheme, to be set out in the Bill itself (for example "Suitable for regulations as will accommodate significant detail which would encumber the reading of the Bill", or "Suitable for regulations as arrangements need to be flexible to respond to future changes in professional practice", etc.);

e. the procedure for making the subordinate legislation – this will usually be negative, affirmative or no procedure;

f. the reason for that procedure being applied – reasons should be consistent with the factors for negative and affirmative procedure set by the Welsh Government (see Chapter 10).

8.33 The rationale for the appropriateness of the delegated powers, and indeed the procedure to be applied, can be drawn from the instructions given to the Office of the Legislative Counsel (OLC) for the preparation of the Bill.

8.34 It is necessary to set out the reasons for any powers in the Bill which allow making ancillary provision in commencement orders. The Senedd will have approved the substantive provisions of an Act, usually leaving the Welsh Ministers to set the commencement date in an order subject to no Senedd procedure. Since any ancillary provisions in a commencement order must be made in connection with commencement, it is appropriate for them to be included in a commencement order. In particular, transitional, transitory or saving provisions are very often needed to make clear whether the old law or the new Act will apply to things taking place at the time of commencement. Other types of consequential, incidental and supplementary provision can also be needed less often in connection with commencement. It is expected that careful consideration is taken as to whether powers to make these types of provision in commencement orders are needed, and for the Explanatory Memorandum to set out why such powers are included in the Bill.

8.35 Where a Bill also contains powers to issue guidance, codes or directions, separate mention is made of these in the next table in Chapter 5 within the template.

8.36 This second table will set out each of the elements listed at paragraph 8.33 above for quasi legislation (those types not explicitly listed in the meaning of subordinate legislation set out in Standing Orders, including directions, guidance and codes of practice).

8.37 Given the information for this Chapter of the Explanatory Memorandum is presented in table format, it is recommended succinct drafting is employed.

8.38 Where there are powers to make subordinate legislation the reader will also need to refer to Chapter 10 on delegated powers and Chapter 11 on statements of policy intent.

Content of Part 2 of the Explanatory Memorandum (RIA)

8.39 Detailed guidance on developing the RIA (part 2), and the information to be included within each Chapter of this Part of the Explanatory Memorandum is given in Chapter 6 of this Handbook. In summary, Part 2 is divided into the following Chapters –

a. Chapter 6 – the template includes standard text to indicate whether or not the requirement under Standing Order 26.6(xi) for a report from the Auditor General for Wales on the appropriateness of charging expenditure of the Welsh Consolidated Fund from provisions in the Bill applies to the Bill. The template also includes a Summary Table to provide a short summary of the RIA;

b. Chapter 7 – Options: this details the options considered to achieve the policy objectives;

c. Chapter 8 – Costs and benefits: sets out the costs and benefits of each of the options considered;

d. Chapter 9 – Impact assessments: this summarises the policy impact assessments and details the findings of the competition filter, and if used the findings of the competition assessment;

e. Chapter 10 – Post implementation review: a summary of the intended approach and timescales for undertaking a review of implementation.

Annexes to the Explanatory Memorandum

8.40 As noted earlier in this chapter, the Explanatory Notes will be an Annex to the main document and should be included as Annex 1.

8.41 An Index of where the requirements of Standing Orders 26.6, 26.6B and 26.6C are met within the Explanatory Memorandum is also required (under Standing Order 26.6A) and should be included as Annex 2.

8.42 Additional annexes may be required by Standing Orders, depending on the detail and content of the Explanatory Memorandum and/or the RIA:

a. A schedule of a table of derivations (see Annex 3 of the Explanatory Memorandum template) – derivation information (required under Standing Order 26.6B) provides a link between old and new law where a statute is repealed and consolidated in a new statute. A derivation table allows readers to trace backwards from new law to old. The subject lawyer for the Bill will advise if a table of derivations is required, and it is usual for Legal Services to prepare this information. The approach to populating the table should be proportionate; i.e.it is sufficient only to set out the details of those

chapters, parts and/or schedules of a Bill that derive from existing legislation. Where Acts will be listed in the table on a number of occasions, provision of a summary of abbreviations used can be helpful. It should be noted that where a table of derivations is not being provided, Table Office has asked that the Explanatory Memorandum should set out why a table is not necessary. This information can be included in Annex 2, the index of Standing Order requirements;

b. amendments (see Annex 4 of the Explanatory Memorandum template) – under Standing Order 26.6C, this should be provided where the Bill proposes to significantly amend existing primary legislation and the intended effect of the amendments is best understood when seen within the context of the provisions of that legislation. A schedule should be prepared by officials within policy departments in the first instance. Further information on preparation of a schedule is available in the Explanatory Memorandum template. It is unlikely that a schedule or schedules will be required where:

   i. the amendments made to existing primary legislation are of a minor or consequential nature, for example to reflect the change in name of a post or organisation being brought about by the Bill; or where
   ii. the intended effect of the amendments to the existing primary legislation is clear on the face of the Bill, even where they are substantial in size, for example the complete removal of a Part of or Schedule to an Act;

   If it is still unclear whether a schedule is needed, notify LPGU who can seek advice from Table Office if appropriate. Where a schedule is not being provided, an explanation as to why a schedule has not been provided should be included in the index of Standing Order requirements in Annex 2 to the Explanatory Memorandum.

c. a report of the Auditor General for Wales, if required under Standing Order 26.6(xi), if Chapter 6 of the Explanatory Memorandum states this report is needed (paragraph 8.39(a) refers).

8.43 There is nothing to prevent the Bill team from choosing to have additional annexes, as they consider to be appropriate – e.g. flow charts, list of references or detailed tables of costings.

Format of the Explanatory Memorandum

8.44 The Government has adopted the 'See it Right' clear print guidelines published by the Royal National Institute for the Blind (RNIB). The RNIB recommends Arial 12 point as a minimum for visual accessibility, and it is therefore recommended the text of the Explanatory Memorandum and

annexes (with the exception of the Explanatory Notes) be in Arial font with a minimum size of 12 point.

8.45 Using larger sizes or the bold version, for example to help headings, can vary the font but using italics should be avoided. The RNIB guidelines recommend headings about 15% larger than the body text type size.

8.46 When preparing headings and body text it is recommended the Styles function within Word is used. This ensures consistency of approach within the document, aids with formatting, and makes the preparation of a table of contents at the beginning of the document much easier.

8.47 The text should be left aligned, rather than centred or justified. This assists with visual accessibility, as does the good use of white space (both on the page as well as between paragraphs and in table cells).

8.48 Each paragraph of the Explanatory Memorandum should be numbered, using sequential numbering of the paragraphs throughout the whole document. In other words, the first paragraph of the document will start with paragraph 1, and each Chapter of the document will follow on from the immediately preceding paragraph number.

8.49 Tables, diagrams and flowcharts should be numbered and titled, and positioned in line with the body text. Tables should be prepared as tables (using the table function in Word), rather than using spaces and tabs. However, it may be worth considering preparing the table in Excel, and then inserting – this can make it easier to update if required.

8.50 If images are required for the Explanatory Memorandum, fuller guidance (including on copyright laws) is available from the Design Team.

8.51 Separate formatting advice applies to the Explanatory Notes (see Chapter 9 of this Handbook), in order to comply with the requirements of The National Archives.

8.52 Because the Explanatory Memorandum will incorporate the RIA and Explanatory Notes into one document, and the Notes use a different format, familiarity with how to use section breaks is recommended. This will allow different styles to be used across the documents.

Writing style

8.53 Although the Explanatory Memorandum is prepared to meet the requirements of Standing Orders, it is a key opportunity to help the reader discern the key aims and objectives of the Bill and to set out the messages the Minister and the Bill team wish to convey. The Government writing guide stresses that plain English and Welsh should be used, which means using a style which gets the message across without over-simplifying.

8.54 The audience for the Explanatory Memorandum is anyone who will have an interest in the legislation. This includes the Senedd Members who will be considering the Bill, whether they are members of the responsible Committee, the Finance Committee, the Legislation, Justice and Constitution Committee, or those who will be considering the Bill during Plenary sessions.

8.55 The audience also includes the stakeholders of the Bill: the people and bodies affected by the legislative proposals. Some of these stakeholders will be giving evidence to the responsible Committee, and will therefore pay particular attention to the Explanatory Memorandum and may well refer to this in their written or oral evidence.

Clearance for introduction

Officials' clearance

8.56 In addition to clearance by the Senior Responsible Owner (SRO) for the Bill and any standard clearances within individual Groups, the Explanatory Memorandum and RIA must be cleared by:

a. Strategic Budgeting;

b. LPGU;

c. Legal Services;

d. OLC; and

e. the Chief Economist (in relation to the RIA only).

8.57 Working with all these teams during the development of the documents will speed up the clearance process at the end. Indeed all teams welcome early engagement on the drafting approach, and are content to consider working drafts to support the development phase.

8.58 Legal Services will need to be content with Part 1 of the Explanatory Memorandum in particular, but they are likely to also have an interest in the RIA. Time for their consideration should be factored into the development phase.

8.59 It should be noted that, some Groups have additional clearance requirements.

8.60 Clearance should be sought at an official level prior to submission to Ministers for clearance.

8.61 In addition, relevant special advisers also need to be given the opportunity to comment on the Explanatory Memorandum, including the RIA, before it is submitted to Ministers for clearance.

Ministerial clearance

8.62 The Lead Minister, the Counsel General and the First Minister must clear the Explanatory Memorandum and the RIA prior to introduction. In practice this is cleared about five or six weeks before the date of introduction, as, once cleared, it will be submitted to the Llywydd for her determination (see Chapter 14). Ministerial clearance is sought as part of the process of seeking clearance for introduction.

8.63 It is recommended that Bill Managers discuss with Private Office whether the Minister would wish to see early working versions of key aspects of the Explanatory Memorandum and the RIA. A number of Ministers have found this particularly helpful in developing their familiarity with the detail of both the Explanatory Memorandum and the Bill, and have also used this as an opportunity to draw the attention of the Bill team to specific points the Minister considers may need to be drawn out in the Explanatory Memorandum.

Revising the Explanatory Memorandum

Revisions prior to introduction

8.64 During the period the Explanatory Memorandum is with the Llywydd for determination, Table Office will contact LPGU with any changes they consider necessary in order to comply with Standing Orders. LPGU will liaise with the Bill team to ensure these are completed and provided to Table Office within the timetable for introduction.

8.65 Additionally, the Bill team may note that minor revisions of the document are necessary. It is possible for minor changes of this kind to be made to the Explanatory Memorandum, provided it is to the version being checked by Table Office. LPGU will alert Table Office to these, when advised by the Bill team.

Revisions when the Bill moves to Stage 3 and to Report Stage

8.66 If the Bill is amended at Stage 2 of the Senedd's consideration the Minister will be required to prepare a revised Explanatory Memorandum, unless the Committee resolves otherwise (see Standing Order 26.67).

8.67 Even though the Explanatory Memorandum is being revised to take account of changes at Stage 2, changes can also be made in light of evidence received during Stage 1 of the Senedd's consideration (for example: where it becomes clear during Stage 1 that there are minor

inconsistencies or errors within the document, that information needs expanding or further explanation should be provided; or to respond to a recommendation from one of the Committees that considered the Bill for clarification or additional information). Amendments to the Explanatory Memorandum can also be made to reflect changed circumstances, such as updating costs following the revision of data used in the evidence base of the RIA.

8.68 Similarly, if the Bill proceeds to Report Stage, a revised Explanatory Memorandum will need to be prepared to take account of changes made at Stage 3, unless the Senedd resolves otherwise (see Standing Order 26.46A). An Explanatory Memorandum revised and laid after Stage 2 (and Stage 3 where there is a Report Stage) should contain all of the elements required by Standing Orders.

8.69 The changes will again need to be cleared as described in paragraphs 8.56 – 8.61. The revised Explanatory Memorandum must be submitted to the Minister, Counsel General and First Minister for clearance prior to tabling.

8.70 The revised Explanatory Memorandum must be laid at least five working days before the date of the Plenary consideration at Stage 3 or Report Stage, as the case may be (see Standing Order 26.28).

8.71 When a revised Explanatory Memorandum which includes significant changes to the RIA is laid before the Senedd, the Welsh Government has committed to writing to the subject Committee responsible for scrutinising the Bill, and the Finance Committee, setting out the changes made.

8.72 It is also considered best practice to revise the Explanatory Memorandum following Royal Assent for publication on the Law Wales website. This ensures there is an Explanatory Memorandum which reflects the final form of the Act.

Translation

8.73 The revised Explanatory Memorandum will need to be produced in both English and in Welsh. Translation Service has requested they are provided with a tracked change version of the Explanatory Memorandum to work from.

Chapter 9 – Explanatory Notes

Explanatory Notes are prepared in Welsh and English to accompany a Bill on introduction to the Senedd; they are also published in Welsh and English by The National Archives alongside the final Act of the Senedd. They do not form part of the Bill or Act. Explanatory Notes objectively explain the sections of the Bill or Act in clear and accessible language, and they give other information necessary to explain the effect of the legislation.

This chapter explains the purpose and readership of Explanatory Notes, what Explanatory Notes should look like and how to produce them to ensure a good end product, and when they need to be updated.

Purpose and effect of Explanatory Notes

9.1 For Senedd Bills, Explanatory Notes are included as Annex 1 to the Explanatory Memorandum in order to satisfy the requirement in the Senedd's Standing Order 26.6(vii):

"*At the same time as the Member in charge introduces a Bill, he or she must also lay an Explanatory Memorandum which must […] summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill […]*"

9.2 The main purposes of the Explanatory Notes are to:

a. help the reader, including those who are not legally qualified or who do not have specialised knowledge of the subject area, to understand the Bill or Act they accompany;

b. help explain the Bill (both as introduced and as amended) to Senedd Members, supporting the scrutiny process;

c. help explain any complex legal matters relating to the Bill or Act for general readers, specialists who are not legally qualified, and members of the legal profession; and

d. provide other background information where it helps to explain the purpose and effect of the Bill or Act.

9.3 The Notes are not intended to be an exhaustive description of the Bill or Act or to be a substitute for it. They should be read in conjunction with the Bill or Act, so they must avoid simply repeating or paraphrasing its provisions.

Readership

9.4 There is a need to consider various audiences when producing Explanatory Notes: general readers; professionals who may have sector specific knowledge, such as teachers, landlords or local government officials; and lawyers or a legally-trained readership. The subject matter of an individual Bill must be considered in determining who its primary audience (or audiences) is likely to be.

Legal status of the Notes

9.5 The Notes are not legislation and they are not amended by the Senedd. They are not designed to resolve ambiguities in the text of the Bill or Act.

9.6 After Royal Assent, the final version of the Notes will be published alongside the Act. The Notes will be read by practitioners who need to implement the law, and judges and others who need to interpret the law. Occasionally it may be that the Notes are relied on by the courts. So it is important the Notes do not mislead, and they do not include material which appears to take the law further than the Bill or Act does.

Bills which amend existing Acts (of Parliament or of the Senedd/ Assembly)

9.7 The Explanatory Notes are prepared for the Bill only. Where the Bill amends existing Acts of Parliament, Acts of the Senedd/ Assembly, or Measures of the Assembly, the Explanatory Notes for those Acts and Measures are not amended.

9.8 It is important, however, that the Notes for the Bill explain what changes are being made to other legislation and the effect of those changes (and perhaps why such changes are required). It can be helpful to practitioners reading Explanatory Notes, including lawyers, to provide an explanation of the context of a Bill or Act by cross referencing to other legislation to which it relates.

9.9 Standing Order 26.6C requires that where a Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill. Bill teams may want to consider what information from this schedule may be useful to include in the Explanatory Notes. However, the schedule would not normally be included in full in the Explanatory Notes.

What Explanatory Notes should look like

9.10 It is essential that the Explanatory Notes are neutral in tone. Explanatory Notes are a Senedd document and copyright is assigned to the Senedd while the Bill is before the Senedd. It is open to the Senedd Clerks to refuse to publish the Notes if the Notes attempt to 'sell' the Bill, that is, go beyond a neutral account of the Bill and into promoting it. For example, it is important to say what the provisions are designed to do, but it would not be permissible to say that provision "deals comprehensively with the problem by…".

9.11 It is also important to avoid jargon and 'legalese' in the Notes. They should assist readers without legal training and perhaps also unfamiliar with the subject matter of the Bill or Act. Experience shows that the most successful Notes are written in plain language, with short sentences and paragraphs.

9.12 Examples of Explanatory Notes are available from Legislative Programme and Governance Unit (LPGU).

9.13 There are no fixed rules governing the contents of the Notes: exactly what is covered will depend on the Bill. But they should usually contain the following items, each of which is covered in more detail below: Introduction; Summary and a brief background; and Commentary.

Content – introduction

9.14 All Explanatory Notes should begin with an introduction which makes it clear that they have been prepared by the Group and do not form part of the Bill. The introduction should take the following standard form in English:

These Explanatory Notes are for the [insert Bill title] which was introduced into Senedd Cymru on [insert date of introduction]. They have been prepared by the [insert department name] of the Welsh Government in order to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.

And in Welsh:

Mae'r Nodiadau Esboniadol hyn ar gyfer [mewnosoder enw llawn y Bil] a gyflwynwyd i Senedd Cymru ar [mewnosoder dyddiad ei gyflwyno]. Fe'u lluniwyd gan [enw'r adran] Llywodraeth Cymru er mwyn cynorthwyo'r sawl sy'n darllen y Bil. Dylid darllen y Nodiadau Esboniadol ar y cyd â'r Bil ond nid ydynt yn rhan ohono.

Content – summary and background

9.15 In order to provide the reader with sufficient information to grasp what the legislation is about, the Notes should include a short summary of the purpose and effect of the legislation as a whole. It should include any relevant background information that may be useful in helping the reader understand the purpose, effect or content of the Bill or Act, and describe in broad terms how the legislation goes about achieving its aims.

9.16 This should not be a detailed discussion of the policy options which were considered, though reference can be made to policy material (e.g. Green and White Papers; Ministerial statements). The place for such discussion is the Explanatory Memorandum.

9.17 A useful technique is to describe the present situation and how the Bill would change it. Provide examples or discuss what the practical implications are likely to be.

Content – section by section commentary

9.18 This section gives more detailed information about the legislation. The point is to provide additional information and to explain what the Bill would do in simple terms.

9.19 When preparing the commentary, bear the following general points in mind:

a. Explanatory Notes are to be read together with the Bill or Act so do not paraphrase the provisions in the Bill or Act (that is, do not restate the provisions in different words);

b. Explanatory Notes should be only as long as the individual Bill requires – grouping a discussion of a number of sections (and related schedules) may help with this;

c. Explanatory Notes do not need to explain sections of a Bill or Act where no further explanation is needed;

d. Explaining complex matters or processes is valuable – you will want to use existing material to identify where Explanatory Notes may need to explain issues, and they may contain helpful explanations already which could be a starting point. Sources would include:
   i. Consultation documents;
   ii. Policy instructions;
   iii. Legal instructions;
   iv. Memos from the Office of the Legislative Counsel (OLC);
   v. Explanatory material;

vi. Impact assessments;
vii. Speeches; and
viii. Speaking notes.

e. When explaining the legal context of a particular section or group of sections, it may be appropriate to first provide a general explanation in the Explanatory Notes, followed by further detail which may be useful to legally-trained or specialist readers;

f. It can be helpful to practitioners reading Explanatory Notes, including lawyers, to explain the context of a section of a Bill or Act by cross-referencing to other legislation to which it relates;

g. Different approaches to Explanatory Notes may be required for different types of legislation – an amending Bill or Act may require a different approach in its Explanatory Notes from one restating provisions from other Acts, and a different approach again may be needed where legislation is being consolidated;

h. It is important to provide an explanation of technical terms, terminology or acronyms used in the Bill (bear in mind this may be different for Welsh and English texts of the Explanatory Notes – where there are particular issues relating to terminology in one language, the English and Welsh texts can have different content to respond to the different needs of the different readerships);

i. Practical, real life examples of how the Bill would work in practice are valued in Explanatory Notes and can be extremely helpful;

j. Where listing all relevant examples is not possible, it is important to make clear that any list of examples is not exhaustive in order to minimise the risk that the list could be misinterpreted;

k. Using tables, flowcharts, other diagrams, or pictures can provide a clear way of setting out complicated explanations;

l. When Explanatory Notes are drafted, they need to be treated as a stand-alone document – it is not necessary to avoid repetition between an Explanatory Memorandum and Explanatory Notes where this serves a genuine purpose in both documents;

m. It is important to consider how the Explanatory Notes will be read in the future alongside the Act, not just at the point in time when they are drafted and the Bill is before the Senedd.

9.20 This is not a rigid list and not all of the points above will be relevant to all Bills. Sufficient time should be given to thinking about how to present complex issues in the Explanatory Notes.

Formatting and layout

9.21 There are fixed format and layout requirements for the Explanatory Notes, which have been agreed with The National Archives. Bill teams must follow these format and layout requirements closely. It is important that Explanatory Notes for an Act are formatted correctly; failure to adhere to these requirements will result in the Notes being returned to be reformatted.

9.22 The template for completion is available from LPGU. However, the basic requirements include:

a. page size as A4 portrait and document margins of 2.54 cm all sides (top, bottom, left and right);

b. font used should be Book Antiqua;

c. the font size for sub-headings within the Notes varies (the detail is available on the Explanatory Notes template), but the main text is in 11pt, single line spacing, justified;

d. the sub-heading of the Notes should be in bold capitalised text. Headings for the individual sections should also be bold, sentence case only. Headings and sub-headings are 12 point, single line spacing, justified;

e. paragraph indentation should remain consistent throughout the document;

f. every paragraph should be numbered, and the first paragraph of the Explanatory Notes should begin at number 1. Sub-paragraphs should be indented by one tab stop, and bullets or numbers should be applied, with hanging indents;

g. diagrams, tables and charts should be enclosed in a box of 0.5-line;

h. ‘Bill’ is always capitalised; ‘section’ and ‘schedule’ are not (unless referring to a particular schedule);

i. any dates for days of a month which are given should just specify the number in the month: ‘th’, ‘rd’, ‘nd’ and ‘st’ should not be used, e.g., ’17 March’ rather than ‘17th March’;

j. titles of papers referred to in the Notes should be in italics rather than between inverted commas; and

k. any images to be included, such as flowcharts and pictures, should be provided as high-resolution TIFF files.

9.23 A page header on each page is required; this should take the following standard form in English:

These notes refer to the [name of] (Wales) Bill which was introduced to the Senedd on [date].

And in Welsh:

Mae'r nodiadau hyn yn cyfeirio at [enw'r Bil] a gyflwynwyd ''r Senedd ar [dyddiad].

Approach to preparing Explanatory Notes

Producing the Explanatory Notes

9.24 The following points are important to consider when producing Explanatory Notes:

a. The Bill team is responsible for preparing the Explanatory Notes in both Welsh and English. Policy officials with a clear understanding of the policy intent of the Bill need to lead on producing them. Drafters of the Notes are strongly encouraged to discuss the intent and detail of the sections of the Bill with Legal Services and OLC to ensure, firstly, the sections are as required, and, secondly, to help with the preparation of effective Explanatory Notes;

b. Start early – officials should not wait until a full draft of the Bill is ready before starting on the work, but should start preparing material which will become part of the Explanatory Notes as soon as instructions are available (while recognising that a settled draft cannot be created at this point);

c. Sufficient time and space should be given to thinking about how to present complex issues in the Explanatory Notes – reflecting on the points highlighted earlier in this chapter;

d. For reviewing a first draft of the Explanatory Notes to consider whether it achieves its purposes, meets the needs of the readership, and is consistent with good practice, a fresh pair of eyes is always valuable – possibly someone from a different Bill team who can provide objective input;

e. The production of Explanatory Notes should be overseen by an official acting as an editor of the Explanatory Notes to manage and

maintain parameters on style, content, context, version control and timescales;

f. Senior Responsible Owners (SROs) and editors should consider how they will ensure consistency and coherence between the Welsh and English versions when planning the production of Explanatory Notes;

g. The SRO should also ensure that the production of Explanatory Notes is understood and adopted as a shared task by the wider Bill team. They should ensure that project boards are used to monitor the progress of Explanatory Notes as they are developed;

h. Make sure all policy officials involved have a common understanding of their role in contributing to the production of Explanatory Notes;

i. Engage early and collaborate with lawyers in Legal Services, OLC, LPGU, and the jurilinguists in the Legislative Translation Unit, to agree both a clear and shared understanding of what the Explanatory Notes should look like, and how these should be produced in the context of the individual Bill (informed by the general points already discussed in this chapter);

j. These early discussions should include consideration of the main points in a Bill where further explanation would be needed. Officials should agree who would be best placed to provide such explanation, based on both suitability and resource considerations. Usually this would be the policy team, but in some cases it could be the lawyers;

k. These early discussions should also identify:
   i. The audience(s) and approach for each Part of the Bill;
   ii. What material was already available to draw on for Explanatory Notes;
   iii. Where Explanatory Notes would probably not be needed;
   iv. How the Explanatory Notes will be prepared in Welsh and English; and
   v. Timescales for producing and reviewing drafts of Explanatory Notes;

l. Follow this up with ongoing engagement, and ensure lawyers and jurilinguists are given the opportunity to review and make changes to drafts of Explanatory Notes in accordance with timescales which have previously been agreed by all involved;

m. Sometimes it is unavoidable that lawyers and jurilinguists need to review and make changes to multiple versions. In these cases, tracked changes need to make clear all changes within the Explanatory Notes since a version was last reviewed and changed by those lawyers and jurilinguists (and only those changes, not any earlier changes). The same approach should be taken at the

amending stages and after a Bill is passed. Each version should be complete and coherent. This should be part of the role of the editor for the Explanatory Notes.

Preparing Explanatory Notes in Welsh and English

9.25 The Explanatory Notes must be available in both English and in Welsh. Bill teams will have considered from the outset of the project how the Welsh and English texts will be prepared. If it has been decided to use the Translation Service to provide, or help provide, texts, the Legislative Translation Unit will undertake this work. The Bill team must allow sufficient time for the translation of the Explanatory Notes and make arrangements for the checking of the Welsh and English texts of the Notes against each other and with the Bill. See Chapter 3 for further advice. This also applies where the revised Explanatory Notes are produced after Stage 2 or Stage 3 of the Senedd's consideration, and when they are published after Royal Assent (see below).

9.26 If Translation Service is involved in the preparation of the Notes, early and ongoing engagement will support the effective and timely production of the document. Translation Service prefers to translate a complete and settled document. However, if insufficient time has been allowed to enable this, the Notes may be produced on a phased basis. If this method is adopted:

a. the phases need to be planned and agreed beforehand with Translation Service;

b. version control of the documents must be strictly maintained with all relevant changes tracked;

c. Translation Service must be allowed sufficient time to pull the whole document together to ensure a cohesive whole document before it is checked.

Clearances

9.27 The instructing officer, OLC and LPGU must clear the drafts of the Explanatory Notes, unless they inform Bill teams otherwise.

9.28 The Explanatory Notes must be cleared internally (i.e. before being sent to Ministers):

a. prior to the introduction of the Bill;

b. after Stage 2, and prior to being tabled ahead of Stage 3;

c. after Stage 3, and prior to being tabled ahead of Report Stage – if Report Stage is being used;

d. after the Bill has been passed.

9.29 The instructing officer(s), OLC and LPGU will not be able to clear the Explanatory Notes unless they are satisfied that the Explanatory Notes:

a. are in the correct format (see paragraphs 9.21 – 9.23 above) and in the correct template (as provided by LPGU);

b. do not contain material designed to persuade readers of the merits of the policy or 'sell' the Bill (as opposed to explaining what the policy is); and

c. do not misrepresent the effect or purpose of any provisions of the Bill (as agreed in discussion with OLC), or contain any inaccuracies.

9.30 In addition to satisfying themselves about the above matters, the instructing officer(s), OLC and LPGU are likely to draw attention to any passages in the Explanatory Notes that they find hard to understand, or which they feel may be confusing for lay readers, or which indicate possible misunderstandings between the drafter and the Bill team.

Revisions when the Bill moves to Stage 3 (or Report Stage)

9.31 There is a requirement in Standing Orders (see Standing Order 26.27) to amend the Notes (as part of the Explanatory Memorandum) where the Bill is amended at Stage 2 (or, under Standing Order 26.46A at Stage 3 where the Bill moves to Report Stage) to take account, where needed, of:

a. all amendments made to the Bill in Stage 2 (or Stage 3); and

b. any additions or revisions to the Notes which may be needed, for example to improve accuracy or clarity, or to incorporate new points of fact or explanation which have emerged during the scrutiny of the responsible Committee and the Legislation, Justice and Constitution Committee.

9.32 Sometimes an amendment will be made in Stage 2, which the Government has said it will seek to overturn in Stage 3. In such circumstances the Notes should give a neutral description of the amendment and its effect.

9.33 The revised Notes must be tabled, in both English and Welsh, at least 5 working days before the Stage 3, or Report Stage, debate (as part of the revised Explanatory Memorandum). Time and resources should be planned to accommodate changes to Explanatory Notes, and associated translation requirements, at amending stages.

9.34 The introduction and header will need to be revised to read in English:

These Explanatory Notes are for the [insert Bill title] which was introduced into the Senedd Cymru on [insert date] and amended following Stage 2/Stage 3 [delete as appropriate] proceedings on [insert date]. They have been prepared by [insert department name] of the Welsh Government to assist the reader. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.

These notes refer to the [insert name of Bill] which was amended following Stage 2/Stage 3 [delete as appropriate] proceedings on [insert date].

And in Welsh:

Mae'r Nodiadau Esboniadol hyn ar gyfer [mewnosoder enw llawn y Bil] a gyflwynwyd i Senedd Cymru ar [mewnosoder dyddiad ei gyflwyno] ac a ddiwygiwyd ar ôl trafodion Cyfnod 2/Cyfnod 3 [dileer yn ôl yr angen] ar [mewnosoder y dyddiad]. Fe'u lluniwyd gan [enw'r adran] Llywodraeth Cymru er mwyn cynorthwyo'r sawl sy'n darllen y Bil. Dylid darllen y Nodiadau Esboniadol ar y cyd â'r Bil ond nid ydynt yn rhan ohono.

Mae'r nodiadau hyn yn cyfeirio at [enw'r Bil] a ddiwygiwyd ar ôl trafodion Cyfnod 2/Cyfnod 3 [dileer yn ôl yr angen] ar [dyddiad].

Revisions when the Bill becomes an Act

9.35 When the Senedd passes the Bill the Bill team will need to prepare the Explanatory Notes for publication. Time and resources need to be planned for, to ensure that these final changes can be made. The rules regarding format and layout must be followed (the correct template is available from LPGU), and certain standard text paragraphs will need to be included.

9.36 The Bill team should revise the Explanatory Notes to reflect changes made at the last amending Stage, and ensure the format is correct. Other changes will include:

a. revising the header for each page to read in English:

These notes refer to the [name of] Act [year] (asc [number]) which received Royal Assent on [date].

And in Welsh:

Mae'r nodiadau hyn yn cyfeirio at [enw'r Ddeddf] [blwyddyn] (dsc [rhif]) a gafodd y Cydsyniad Brenhinol ar [dyddiad].

Note – in this header the acronym ‘asc’ in the English text stands for Act of Senedd Cymru and ‘dsc’ in the Welsh text stands for Deddf gan Senedd Cymru. In each calendar year, the Acts which are passed are given a number - numbers begin at 1 and are allocated based on the order in which Acts are made. LPGU will be able to advise the asc number for the purposes of revising the Notes.

b. The introduction should be revised to read in English:

These Explanatory Notes are for the [name of Act] which was passed by Senedd Cymru on [insert date] and received Royal Assent on [insert date]. They have been prepared by the [insert department name] of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

And in Welsh:

Mae'r Nodiadau Esboniadol hyn ar gyfer [enw’r Ddeddf] a basiwyd gan Senedd Cymru ar [mewnosoder y dyddiad] ac a gafodd y Cydsyniad Brenhinol ar [mewnosoder y dyddiad]. Fe'u lluniwyd gan [mewnosoder enw’r adran] Llywodraeth Cymru er mwyn cynorthwyo'r sawl sy'n darllen y Ddeddf. Dylid darllen y Nodiadau Esboniadol ar y cyd â'r Ddeddf ond nid ydynt yn rhan ohoni.

c. References in the English text of the Notes to the ‘Bill’ should be changed to references to the ‘Act’ and in the Welsh text ‘Bil’ should be changed to ‘Deddf’ and the consequential grammatical changes made;

d. The text of the Notes should be amended to reflect the fact that these will continue to be read for the lifetime of the Act – for example, Explanatory Notes for a Bill may talk about replacing a “current system”, while the Act’s Explanatory Notes may focus instead on explaining the system which the Act establishes;

e. At the end of the Notes, a table should be inserted giving the details of the Act’s passage through the Senedd along with a link to the Senedd’s webpage for the Bill. The standard text for the paragraph and the table are included in the template provided by LPGU.

Explanatory Notes for non-Government Bills

9.37 The Member in charge of a non-Government Bill will prepare the Explanatory Notes for their Bill for introduction, and revise these following the amending Stages. However, once the Bill has been passed The National Archives will expect the Government to review the Notes and make any necessary changes to bring them in line with the format, and standards, required by The National Archives for

publication. It is, therefore, prudent for those officials working on a non-Government Bill to familiarise themselves with the Notes whilst the Bill is being considered by the Senedd, and seek to identify areas which will need revision if the Bill is passed.

9.38 LPGU will formally commission those officials to revise the Notes once the Bill has been passed, ready for publication on the Bill receiving Royal Assent.

Publication and copyright (for Acts)

9.39 LPGU send the final version of the Explanatory Notes in English and Welsh for publication alongside the Act. The Act and Explanatory Notes will be made available in Welsh and English on the legislation.gov.uk website. Versions published on legislation.gov.uk are recognised by the courts and any corrections that are subsequently required to the Act or Explanatory Notes will be incorporated into the texts published on legislation.gov.uk. Groups should, therefore, provide links to these texts from their own websites, rather than publishing them separately on their own websites.

Chapter 10 – Delegated powers in Senedd Bills

Matters of detail are often dealt with by way of regulations or other forms of subordinate/secondary legislation. This Chapter provides guidance relating to delegated powers (i.e. the powers in Senedd Bills to make these regulations or other forms of subordinate/secondary legislation).

Making provision in primary or secondary legislation

10.1 There are a range of factors to consider when deciding whether to make provision in primary or secondary legislation. These may include the following:

a. the matters in question may need adjusting more often than it would be sensible for the Senedd to legislate for by primary legislation;

b. there may be rules which will be better made after some experience of administering the new Act and which it is not essential to have as soon as it begins to operate;

c. the use of delegated powers in a particular area may have a strong precedent and be uncontroversial;

d. there may be transitional and technical matters which it would be appropriate to deal with by delegated powers.

10.2 Careful thought will need to be given to whether –

a. Senedd to decide once in principle, rather than the matters, although detailed, are so much of the essence of the Bill that the Senedd ought to consider them along with the rest of the Bill;

b. the matters may raise controversial issues running through the Bill which it would be better for the returning to several times over (and using scarce Senedd time in the process).

See also Chapter 7 which deals with instructions for Bills.

Form of subordinate legislation

10.3 The subordinate legislation is usually made by way of a Statutory Instrument, and these are made in a variety of forms, of which the more common in Senedd Bills are regulations, rules and orders. It is usual for the form to be prescribed in the enabling Act.

10.4 The Office of the Legislative Counsel (OLC) will be able to advise on the appropriate form of subordinate legislation.

Procedure for Senedd scrutiny of subordinate legislation

10.5 The Senedd will take a close interest in the nature and extent of Senedd control over subordinate legislation, and the Government will need to justify any delegated powers and the chosen level of Senedd scrutiny. The Bill team should, therefore, make sure the Minister is content with what is proposed, and alerted to any use of delegated powers which may prove controversial.

Forms of procedure

10.6 The most common form of procedure is the 'negative resolution procedure'. This does not delay the coming into operation of an instrument but, if within 40 days of it being laid before the Senedd (excluding any time during which the Senedd is in recess for more than 4 days), an annulment motion is tabled against the instrument by a Senedd Member and carried the instrument ceases to have effect.

10.7 The other principal form of procedure is the 'affirmative resolution procedure', whereby the instrument cannot be made unless it has been laid before the Senedd in draft and the motion to agree it approved.

10.8 Some instruments are not laid before the Senedd, and have no procedure attached to them. This is commonly the case with commencement orders for Acts.

10.9 In some other, exceptional, cases there may be provision for additional Senedd control (so-called 'super affirmative' procedure). Such provision adds to the complexity of Senedd processes and has a considerable impact on future business management. For these reasons such procedures are not usually appropriate.

10.10 The Welsh Government has published guidance on the factors which would tend to indicate whether the affirmative or negative procedure should be applied.

10.11 Factors that indicate that the affirmative procedure should be applied are:

a. powers that enable provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Senedd/ Assembly;

b. powers, the main purpose of which is, to enable the Welsh Ministers, First Minister or Counsel General to confer further significant powers on themselves;

c. powers to apply in Wales provisions of, for example, Acts of Parliament that in England, Scotland or Northern Ireland are contained in the Act itself (whether with or without modifications);

d. powers to impose or increase taxation or other significant financial burdens on the public;

e. provision involving substantial Government expenditure;

f. powers to create unusual criminal provisions or unusual civil penalties;

g. powers to confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion;

h. powers that impose onerous duties on the public (e.g. a requirement to lodge sums by way of security, or very short time limits to comply with an obligation).

i. powers involving considerations of special importance not falling under the headings above (e.g. where only the purpose is fixed by the enabling Act and the principal substance of the legislative scheme will be set out in subordinate legislation made in exercise of the power).

10.12 Factors indicating that the negative procedure would include where:

a. the subject-matter of the subordinate legislation is relatively minor detail in an overall legislative scheme or is technical;

b. it may be appropriate to update the subject-matter of the subordinate legislation on a regular basis;

c. it may be appropriate to legislate swiftly (e.g. to avoid infraction proceedings or for the protection of human or animal health or of the environment);

d. the discretion of the Welsh Government over the content of the subordinate legislation is limited (e.g. legislation that gives effect to some provisions of EU law);

e. it would be appropriate to combine provision to be made under the power with provision that can be made under another power where the latter may be subject to negative procedure.

10.13 Bill teams should consider these factors carefully, and discuss them with the instructing officer. The experience of OLC will also prove helpful here.

10.14 The need for subordinate legislation, the type of subordinate legislation and the likely procedure should all be set out in the instructions to OLC to prepare the Bill. It is also important to explain what the powers will be used for, so OLC are able to draft the powers sufficiently wide to do all that is envisaged but not so wide that the Senedd are likely to consider the nature or extent of the powers to be inappropriate.

Commencement orders

10.15 The government's position is that provisions in Bills to make transitional, transitory or saving provision in commencement orders are normal practice. Where any powers allow the making of consequential, supplementary or incidental provision in commencement orders, this should be explained in the Explanatory Memorandum of the Bill (i.e. within Chapter 5 of that document).

10.16 Further guidance on commencement orders is given in Chapter 18 of this Handbook. OLC will also be able to advise on powers to include ancillary provisions in commencement orders.

Consideration of the powers during the passage of the Bill

10.17 The responsible Committee (at Stage 1) is likely to be interested in the nature and extent of the subordinate legislation powers in the Bill, and (as outlined in Chapters 11 and 15) this will be of particular interest to the Legislation, Justice and Constitution Committee.

10.18 Standing Order 26.6(x) requires the Explanatory Memorandum to set out, in relation to any provision conferring power to make subordinate legislation –

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

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

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

10.19 For Government Bills, this information is set out in Chapter 5 of the Explanatory Memorandum (for more information see Chapter 8 of this Handbook).

Chapter 11 – Draft subordinate legislation and Statements of Policy Intent

This Chapter provides guidance on preparing draft subordinate legislation and Ministerial statements of policy intent for delegated powers to make subordinate legislation within Senedd Bills.

Requirement for draft subordinate legislation or a statement of policy intent (SoPI)

11.1 It is helpful for the Senedd to have sight of the draft regulations which are central to a Bill's effect when the responsible Committee considers the Bill. It is the government's position that where possible such subordinate legislation will be available to the responsible Committee considering the Bill in Stage 1, in draft form. Where this is not possible, Ministers must set out their policy intentions for the subordinate legislation.

11.2 A statement of policy intent (SoPI) is the mechanism by which Ministers will set out the policy intentions for the subordinate legislation.

Purpose of the SoPI

11.3 The Senedd, and other stakeholders, will wish to understand how the Bill will work in practice, if passed. Part of that will often include the making of subordinate legislation, and therefore the SoPI should attempt to explain what the subordinate legislation will cover and how it will work. If the Bill is enacted, Committees may refer back to the SoPI when scrutinising the subsequent subordinate legislation.

Draft subordinate legislation

11.4 If the Minister intends to provide draft regulations for all of the substantive powers within the Bill, then a SoPI is not also required (but can be provided – see below).

11.5 Where draft regulations for some of the substantive powers are available, then a SoPI should be prepared which covers the other substantive powers, and any additional information.

11.6 In both cases a SoPI can be prepared to provide additional explanation, and context, for the draft regulations.

11.7 Where no draft regulations will be available, a SoPI must be prepared.

11.8 In advising Ministers on whether draft subordinate legislation or a SoPI will be most appropriate, the Bill team will need to consider a number of factors, including:

a. the number of provisions for subordinate legislation contained within the Bill, and the nature of the powers (for example, it could be more appropriate to have draft versions of subordinate legislation integral to the delivery of the Bill available for scrutiny, so the Committee can fully understand the policy and implementation intentions);

b. whether the power to make the subordinate legislation is discretionary or mandatory;

c. the level of policy development that has been undertaken, or needs to be undertaken, in respect of the subordinate legislation;

d. the resource implications for preparing the draft subordinate legislation at the same time as the Bill, particularly for colleagues in Legal Services, Policy and Translation; and

e. the timescales for implementation of the Bill.

Content of the SoPI

11.9 There is, at present, no prescribed format for the SoPI, but in terms of content it should:

a. identify the provisions for delegated legislation in the Bill (powers to give directions, issue Codes of Practice, etc. can sometimes be delegated legislative powers);

b. explain why the power is required and how it is intended to be used, by reference to the policy expected to be delivered. Using examples of what the regulations may cover, referring to policy consultations that have taken place on the topic, or referring to similar regulations made under existing legislation, will all assist in describing and explaining what the Government intends to do with the powers.

11.10 Remember the Committee will also have Chapter 5 of the Explanatory Memorandum available to them, which provides tables of all the powers in the Bill, together with detail on the form and procedure to be applied when exercising those powers. There is, therefore, no need to repeat this information within the SoPI, but if it assists appropriate cross-referencing can be made.

11.11 When structuring the SoPI, Bill teams have flexibility to set this out in whichever way most clearly explains the Government's intentions. For example, it may sometimes be appropriate to cover each power in the order it appears within the Bill, while for other Bills it may be appropriate to put powers together into topics or themes.

11.12 A number of Bill teams have included information within the SoPI on the implementation timetable following the passing of the Bill – for example, indicative dates when elements of the Act would come into force, and when the corresponding subordinate legislation would be made or when consultations will take place. They have found this has assisted with the Committee's understanding of how the Bill will work in practice, and Ministers have been able to refer to this information in their evidence to the Committee.

11.13 Information in the policy and legal instructions for the Bill should assist in the development of the SoPI, as will the subsequent memos from the Office of the Legislative Counsel (OLC) as they prepare the Bill.

11.14 The SoPI is part of the package of information and communication from the Government to the Senedd, when a Bill is introduced. As such it needs to be considered within the context of the communications strategy. The primary audience for the SoPI is the responsible Committee, but other Senedd Members will also have access to the information, as will external stakeholders when the Committee publishes it.

11.15 Examples of SoPIs are available from the Legislative Programme and Governance Unit (LPGU).

Practicalities

11.16 The Bill team will need to prepare the SoPI prior to the Bill's introduction into the Senedd, and it will need to be agreed with the instructing officer, checked with LPGU and cleared by the SRO.

11.17 The Minister will need to clear the SoPI before it is submitted to the responsible Committee.

11.18 The SoPI should be made available in both English and Welsh and sufficient time should be allowed within the project timetable for this to take place.

11.19 It is usual for the SoPI to be made available to the responsible Committee at the beginning of Stage 1 of the Senedd's consideration, but ultimately this is a matter for the Lead Minister for the Bill to decide.

11.20 The SoPI is not laid before the Senedd, but rather provided to the responsible Committee under a covering letter from the Minister to the Chair of the Committee (copied to the Chair of the Legislation, Justice and Constitution Committee).

11.21 The SoPI does not have to be considered by the Llywydd, or by Table Office, before being sent to the Committee. It therefore does not have

to be ready by the time the Bill and Explanatory Memorandum are sent to the Llywydd prior to introduction (see Chapter 14).

11.22 The SoPI does not have to be updated following amendments made to the Bill at Stages 2 or 3, although Bill teams may wish to do this if it would assist with communications (particularly with external stakeholders).

Further guidance

11.23 Bill teams may find it helpful to discuss the content, handling and presentation of the SoPI with LPGU in the early stage of development. LPGU can also put Bill teams in touch with officials who have worked on SoPIs in the past, to enable learning to be shared.

Chapter 12 – Consents, and requirements to consult with UK Ministers on Senedd Act provisions

This Chapter provides guidance in relation to requirements to consult with UK Ministers or seek their consent and the consent of His Majesty the King and/or the Duke of Cornwall, in respect of certain Senedd Act provisions.

12.1 Even where a Senedd Act provision does not relate to any of the reserved matters set out in Schedule 7A of GoWA 2006, it may still be outside competence if it breaches the restrictions in Part 1 of Schedule 7B (unless one of the exceptions in Part 2 of Schedule 7B apply).

12.2 The restrictions in Schedule 7B include some which require UK Ministerial consent to be provided to certain Senedd Act provisions, and others which require consultation to take place with UK Ministers.

12.3 These restrictions are summarised below, but if it is considered that a proposed Bill provision potentially engages any of these, Bill teams should discuss with Legal Services at an early stage. Legal Services will be able to advise further, including on whether any exceptions from the need for consent apply.[8]

12.4 It is important to note that if a Bill confers, imposes, modifies or removes a function for which consent is required, but this has not been obtained, it will mean the Bill or part of the Bill is not within the Senedd's legislative competence (if passed by the Senedd).

12.5 All necessary consents for the Bill as introduced should normally be in place by the Bill's introduction. Sufficient time should be allowed for this process. The UK Government has committed to responding to requests for consents within a maximum of 60 working days. The Welsh Government has undertaken to allow sufficient time for the UK Government to decide if it agrees to the change, and in practice should engage with the relevant department(s) and the Wales Office as part of its policy development process.

Minister of the Crown Consent - Reserved Authorities

12.6 An Act of the Senedd can do the following (subject to certain listed exceptions[9]) only with the consent of the appropriate UK Minister:[10]

[8] See paragraphs 9 and 10(2) of Schedule 7B.

[9] The exceptions can be found at paragraph 9 of Schedule 7B to GoWA 2006.

[10] Where the authority in question is HM Revenue and Customs, the Treasury; otherwise, the Secretary of State.

a. confer or impose a new function on a reserved authority (or confer power by subordinate legislation to do so);

b. modify the constitution of a reserved authority, or confer power to do so (this will include modifications relating to its assets and liabilities and its funding and receipts);

c. confer, impose, modify or remove functions specifically exercisable in relation to a reserved authority, (or confer power to do so).

12.7 A "reserved authority" in this context is:

a. a Minister of the Crown; or

b. a UK government department; or

c. any other public authority[11] apart from a devolved Welsh authority.

12.8 The definition of "a devolved Welsh authority" for these purposes (i.e. a public authority not subject to these consent requirements) can be found in section 157A of GOWA 2006. In summary, a devolved Welsh authority means:

a. an authority which is listed in Schedule 9A to GOWA 2006;

b. an authority whose functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters; or

c. a governing body of an institution within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.

12.9 A provision of an Act of the Senedd also cannot remove or modify (or confer power by subordinate legislation to do so) any function of a public authority other than a devolved Welsh authority, unless the appropriate UK Minister consents to the provision. Certain authorities are however excluded from this restriction and the need to seek consent when removing or modifying their functions.[12]

[11] "Public authority" means a body, office or holder of an office that has functions of a public nature.

[12] Other exceptions can be found in paragraph 10(2)-(6) of Schedule 7B.

Removing or modifying certain UK Ministerial functions – requirements for UK Ministerial consent

12.10 An Act of the Senedd can do the following only with the consent of the appropriate UK Minister:[13]

a. remove or modify any function of a Minister of the Crown[14] that relates to a "qualified devolved function",[15] or confer power by subordinate legislation to do so;

b. remove or modify any function of a Minister of the Crown exercisable in relation to the Welsh language, or confer power to do so;

c. remove or modify any function of a Minister of the Crown exercisable in relation to water supply, water quality, water resources management, sewerage, control of pollution of water resources, sewerage, rivers and other watercourses, land drainage, flood risk management or coastal protections, or confer power to do so;

d. remove or modify any function of a Minster of the crown under Chapter 1 of Part 3, or section 58, of the Marine and Coastal Access Act 2009, or confer power to do so;

e. remove or modify any power of the Secretary of State under section 6 of the Railways Act 2005 (financial assistance relating to railway services etc), or confer power to do so; or

f. remove or modify any function of the Treasury under section 138(2) or 141(4) of GoWA 2006, or confer power to do so.

Removing or modifying other UK Ministerial functions – requirement to consult the appropriate UK Minister

12.11 A provision of an Act of the Senedd cannot remove or modify any other function of a Minister of the Crown (i.e. other than those listed in paragraph 12.10), or confer power by subordinate legislation to do so,

[13] The appropriate Minister is the Secretary of State (in practice this is likely to be the Secretary of State for Wales), unless the relevant functions relate to HM Revenue and Customs, in which case it will be the Treasury.

[14] A Minister of the Crown is a Minister in the UK Government, including HM Treasury.

[15] "Qualified devolved function" is defined in paragraph 11(3) of Schedule 7B to GoWA 2006.

unless the Welsh Ministers have consulted the appropriate Minister about the provision in question.

Further guidance

12.12 Bill teams should ensure they are familiar with the guidance, *'Liaison with the UK Government on Senedd Bills, Parliamentary Bills, Orders modifying the Senedd's legislative competence and changes to the Welsh Minister's Executive Functions'* (commonly referred to as the 'Reciprocal Guidance').

12.13 The guidance is reciprocal to the UK Government's Devolution Guidance Note to UK Government departments on handling *'Parliamentary and Senedd Primary Legislation Affecting Wales'*.

12.14 The 'Reciprocal Guidance' should also be read in conjunction with the *'Memorandum of Understanding between the UK Government and Devolved Administrations'*.

12.15 Further advice is also available from Legal Services, from the Legislative Programme and Governance Unit (LPGU) and from Constitution and Welsh Tribunals.

Signifying consent to the Senedd

12.16 When the Bill is sent to the Llywydd for her determination (see Chapter 14), the covering letter from the First Minister should identify where consents are required and provide copies where available. It would only be in exceptional circumstances, outside the Welsh Government's control, that it might not be possible to signify all consents at this stage.

Amendments to Bills

12.17 UK Ministerial consent may also be required for amendments to a Bill – see Chapter 15.

Consent of His Majesty the King and/or the Duke of Cornwall

12.18 The consent of His Majesty the King (commonly referred to as 'King's Consent') is required when a Bill, a provision of a Bill or an amendment to a Bill would:

a. affect the prerogative of the Crown;

b. affect the hereditary revenues, personal property or personal interests of the Crown, and the Duchy of Lancaster and, if there is no Duke of Cornwall or if the Duke of Cornwall is not of age, the Duchy of Cornwall.

12.19 Prerogative of the Crown (or more commonly 'the royal prerogative') refers to those powers belonging to the sovereign alone. Examples of the power include the making of certain appointments (including royal commissions) or the exercise of the prerogative of mercy (for example to pardon convicted offenders).

12.20 The process of King's Consent is separate from Royal Assent, which is the means by which the monarch agrees that a Bill may become an Act – see Chapter 17.

12.21 The Duke of Cornwall's consent is required for Bills that expressly mention the Duchy of Cornwall or otherwise have a special application to it.[16] The eldest surviving son of the monarch, who is also Heir Apparent to the throne, inherits the title of Duke of Cornwall and the estate of the Duchy of Cornwall. If the monarch does not have a son, there is no Duke of Cornwall and the Duchy of Cornwall reverts to the Crown.

12.22 The requirement for King's Consent also applies in the UK and Scottish Parliaments.

Signifying King's Consent to the Senedd

12.23 In line with section 111 of GoWA 2006, and under Standing Order 26.67, the Senedd must not pass a Bill which requires such Consents to be passed until a Member of the Government has signified that Consent has been given during a meeting of the Senedd. For those Bills where Consent has been signified. This can been done at the end of the Stage 3 proceedings.

12.24 Although King's Consent is not required to introduce a Bill, when the Bill is sent to the Llywydd for her determination, the covering letter from the First Minister should identify where consents from the King and/or Duke of Cornwall may be required. LPGU will provide a template of this letter which includes text regarding these consents.

Amendments

12.25 The King's and/or Duke of Cornwall's Consent may also be required for amendments to a Bill – see Chapter 15.

Further advice

12.26 Further advice on all of these matters is available from Legal Services.

[16] The last occasion on which Prince's Consent alone was signified was for the Pilotage Bill in 1987; this was required because the Duke of Cornwall is the harbour authority for the Isles of Scilly.

Chapter 13 – Overview of the Stages of Senedd consideration

This Chapter is intended to provide a helpful at-a-glance overview of the Senedd Stages. It is not definitive and so Bill teams should also read:

- ***a. Chapter 14 which deals with the Introduction of a Bill into the Senedd;***
- ***b. Chapter 15 which considers each of the Senedd Stages in more detail, together with the key actions and issues to be considered. Separate guidance on the Senedd Stages for fast-track and emergency Bills is provided in Chapter 16.***

Guidance on what happens to a Bill after Stage 4 has concluded is given in Chapter 17, and commencement of an Act of the Senedd is dealt with in Chapter 18.

Standing Order 26 governs the Senedd procedures relating to the introduction and consideration of public Bills.

Summary of the Senedd Stages

13.1 The usual Stages of the Senedd's consideration of a Bill are known as Stage 1, Stage 2, Stage 3 and Stage 4. Some Bills may go through an additional amending stage prior to Stage 4, which is known as Report Stage.

Brief overview

Stage	*Activity*
Introduction	Bill introduced and announced in Welsh and English (Written and Oral Statements made by the Lead Minister)
Stage 1	Consideration of the Bill by a Committee of the Senedd
General Principles	Senedd is asked to agree the general principles of the Bill (if agreed the Bill proceeds to Stage 2, if not agreed the Bill falls)
Stage 2	Detailed consideration by a Committee of the Senedd (the Bill can be amended during this Stage)
Stage 3	Detailed consideration by Plenary (the Bill can be amended during this Stage)

Stage	*Activity*
Stage 4	Senedd is asked to pass the Bill as amended (if agreed the Bill proceeds towards Royal Assent, if not agreed the Bill is rejected)

Introduction

13.2 In order for a Bill to be considered by the Senedd, it must be formally introduced into the Senedd. In practice, this means the Bill is laid with officials in the Table Office, who will arrange for the Bill to be published on the Senedd's website by the following day.

13.3 Bills must be available in English and Welsh and the Llywydd must publish a statement setting out whether, in her opinion, the Bill and its provisions are within the legislative competence of the Senedd. Each Bill must also be accompanied by an Explanatory Memorandum that will set out its policy objectives, details of any consultation already undertaken on the Bill, estimates of the costs of implementing the Bill and any other relevant information.

13.4 At the first meeting of the Senedd in Plenary after the Bill has been tabled, the Lead Minister will usually make a Legislative Statement. The statement sets out the main purpose and effect of the Bill. It is not required by Standing Orders, but represents an opportunity for the Senedd to be informed of the Bill.

Stage 1 – Consideration of general principles

13.5 This Stage normally involves the consideration of the general principles of a Bill by a Committee (or Committees), followed by the agreement of the general principles by the Senedd. The Committee will focus on the main purpose(s) of the Bill, rather than the fine detail (which is a matter for later Stages). The Committee may also invite representations from interested parties and may take written and oral evidence to inform its work.

13.6 Once the Committee has reported, the Senedd will be asked to debate and agree the Bill's general principles – the Stage 1 debate.

Stage 2 – Detailed consideration by Committee

13.7 This Stage follows the completion of Stage 1 and involves the detailed consideration, by a Committee of a Bill and any amendments proposed by Senedd Members. Any Senedd Member may table amendments to the Bill and there is no limit to the number of amendments that can be tabled. However, only Committee members may move and vote on amendments. This Stage ends when all the amendments have been considered.

Stage 3 – Detailed consideration by the Senedd

13.8 Stage 3 follows the completion of Stage 2 and involves the detailed consideration, by the Senedd, of the Bill and any amendments proposed by Senedd Members. Any Member may table amendments to the Bill, but the Llywydd will decide which amendments the Senedd will consider.

Report Stage

13.9 Some Bills may require a further detailed consideration of the Bill by the Senedd, known as Report Stage, which is similar to Stage 3. It will follow the completion of Stage 3 and will consider any amendments proposed by Senedd Members and selected by the Llywydd.

Stage 4 – Final Stage

13.10 This is the last Stage of the process and follows the completion of Stage 3 (or Report as the case may be). At this Stage, there is a recorded vote by the Senedd to pass the final text of the Bill.

13.11 If the Llywydd's view is that any provision of a Bill relates to a protected subject-matter (such as the name of the Senedd, the persons entitled to vote in Senedd elections, and the size of the Senedd)[17], the Bill is only passed if the number voting in favour of it is at least two-thirds of the total number of Senedd seats. This is known as the super-majority requirement.

13.12 Where a super-majority is not required, a simple majority vote is required to pass the Bill (i.e. more Members vote in favour of passing the Bill than against). In the event of a tied vote, the Llywydd is required to exercise her casting vote against the Bill, and the Bill will be rejected.

After Stage 4

13.13 If the Senedd passes a Bill at Stage 4, the Bill will enter into a four-week period (referred to as the period of intimation) during which the Attorney General and/or the Counsel General may refer the Bill, or any of its provisions, to the Supreme Court. Under section 112 of GOWA 2006 they may refer the question whether a Bill, or any provision of a Bill, would be within the Senedd's legislative competence. Under section 111B they may also refer the question of whether any provision of a Bill relates to a protected subject-matter to the Supreme Court for decision.

[17] The protected subject-matters are set out in full in section 111A of GOWA 2006.

13.14 The Secretary of State for Wales may also intervene during this four week period by making an order to prevent the Bill gaining Royal Assent.

13.15 If the Bill is referred and the Supreme Court subsequently determines the Bill or its provisions are outside the legislative competence of the Senedd or that a provision of the Bill relates to a protected subject-matter, or the Secretary of State makes an order preventing the Bill being sent for Royal Assent, the Senedd may reconsider the Bill during a process known as the Reconsideration Stage. Further detail on the Reconsideration Stage can be found in Chapter 17 of this Handbook.

13.16 If the Bill is not referred to the Supreme Court, or the Supreme Court finds the Bill and its provisions are within the legislative competence of the Senedd, and the Secretary of State does not intervene, the Bill will proceed to gain Royal Assent. This is the Monarch's agreement to make a Bill into an Act of the Senedd. Royal Assent is conferred by the Monarch signing the Letters Patent under the Welsh Seal and is received when the Clerk to the Senedd is notified of this.

Chapter 14 – Introduction of the Bill

This Chapter covers the phase of work immediately prior to Senedd consideration of the Bill and the announcement of the Bill to the legislature (known as introduction).

Pre-introduction assessment meetings

14.1 The internal approach to pre-introduction assessment of Bills, ahead of formal Ministerial agreement to introduce, has been refined and strengthened. Pre-introduction assessment meetings are held on each Government Bill to enable Ministers to discuss a Bill and its supporting documentation ahead of formal agreement to introduce.

Seeking agreement to introduce the Bill

14.2 When the Bill is complete and ready to be introduced, formal agreement to introduction of the Bill in Welsh and English must be sought from the Counsel General, the Lead Minister[18] and the First Minister. At the same time, the Minister and the First Minister will be asked to clear the Explanatory Memorandum[19] in Welsh and English for laying with the Bill on introduction.

14.3 At least one week should be allowed for Ministerial clearances to be secured following a Ministerial pre-introduction assessment meeting, although longer may be required during recess periods. This time will be planned on the timetable provided to the Bill team by the Legislative Programme and Governance Unit (LPGU). However, Bill teams will need to speak with Ministerial Private Offices to discuss clearance times, particularly during recess periods, with plenty of notice.

Llywydd's determination

14.4 On the introduction of a Bill to the Senedd it must be accompanied by a statement in English and in Welsh by the Llywydd. This statement must:

a. indicate whether or not the provisions of the Bill would be, in the Llywydd's opinion, within the legislative competence of the Senedd; and

[18] Also known as the Member in charge once the Bill has been introduced but is referred to in the Handbook (in relation to Government Bills) as Lead Minister or Minister.

[19] Reference to the Explanatory Memorandum in this Chapter is to the document which contains the Explanatory Memorandum, the Regulatory Impact Assessment (RIA) and the Explanatory Notes.

b. indicate any provisions which, in the Llywydd's opinion, would not be within the legislative competence of the Senedd and the reasons for that opinion.

14.5 In order for the Llywydd to prepare this statement the Bill and the Explanatory Memorandum must be submitted to her by the First Minister, under cover of a letter. The Llywydd will require sufficient time to reach her opinion, and it has been agreed that the Government will give at least four weeks prior to introduction for this to be achieved.

14.6 The Bill team will need to prepare the covering letter for the First Minister to send to the Llywydd; this will need to be prepared in Welsh and English. If translation is required, the General Translation Unit will arrange it. A standard template is available from LPGU. The letter should be submitted to the First Minister as part of the Ministerial advice that is seeking agreement to introduce the Bill (see above).

14.7 During the period of the Llywydd's determination the Lead Minister may engage with opposition spokespeople on the content of the Bill. LPGU will provide further advice to Bill teams on this before the determination period begins.

14.8 During this period Table Office (in the Senedd Commission) will also be considering the Explanatory Memorandum to ensure it meets the requirements of Standing Orders. Table Office may raise queries on, or request changes to, any part or element of the Explanatory Memorandum, and Bill teams should be ready to act on such requests swiftly, so as to not delay Table Office's clearance. If Table Office are not content that the Explanatory Memorandum meets the requirements of Standing Orders it cannot be laid, and thus the Bill cannot be introduced.

14.9 At the end of the Llywydd's determination she will write back to the First Minister with her views; once this is received the Bill team will be ready to introduce the Bill into the Senedd. When the Llywydd writes to the First Minister it is usual for her to indicate whether or not a Financial Resolution for the Bill will be required during the passage of the Bill through the Senedd – see Chapter 15 for further information.

Laying the Bill

14.10 A Bill must be introduced by being laid in Table Office. This must be done on a working day in a sitting week. LPGU lays Bills on behalf of the Welsh Government.

14.11 When a Bill is laid an Explanatory Memorandum must accompany it, and both the Bill and the Explanatory Memorandum must be laid in

Welsh and English.[20] The Bill must also be accompanied by the Llywydd's statement (see above).

14.12 To lay the Bill and the Explanatory Memorandum LPGU will liaise with the Bill team and the Office of the Legislative Counsel (OLC) to obtain pdf and drafting software versions of the Bill, and pdf versions of the Explanatory Memorandum (all in both Welsh and English).

14.13 It is usual for Government Bills to be laid on a Monday, so as to enable the Legislative Statement (see below) to be delivered the next day in Plenary.

14.14 As soon as the Bill has been laid, LPGU will notify the Bill team and will issue a Written Statement to all Senedd Members (see below). The Llywydd will lay her statement on legislative competence alongside the Bill. She may also write to the relevant Committee and/or the Legislation, Justice and Constitution Committee setting out a summary of issues she considered in reaching her view on legislative competence, so that its members can decide whether or not to examine these issues further as part of the scrutiny process.

Written Statement to all Senedd Members

14.15 It is customary for Senedd Members to be notified a Bill has been introduced to the Senedd. The Lead Minister of a Government Bill does this by way of a Written Statement.

14.16 The Written Statement will need to be prepared in both Welsh and English, and be agreed formally by the Minister. If translation is required, the General Translation Unit will provide it. Because there will also be an Oral Statement (see below), consideration will need to be given to the balance of information between the two statements. Examples of previous Written Statements for Bills are available from LPGU.

14.17 Press and communications work should take place only once Senedd Members have been notified of the Bill by way of the Written Statement, in line with paragraph 7.9 of the Ministerial Code. Because the Written Statement can only be issued when the Bill has been laid, and the time of laying can vary, it is not possible to be definitive as to when press and communications work can take place.

[20] Standing Order 26.5 provides for some limited circumstances when a Bill may be laid in one language only; Standing Order 26.96 provides that for a Government Emergency Bill an Explanatory Memorandum may not be required (if this has been agreed by the Senedd).

14.18 It is usual for the Lead Minister of the Bill to deliver an Oral Statement at the first meeting of Plenary after the Bill has been introduced. For a Government Bill laid on a Monday, this would mean the following day (Tuesday afternoon).

14.19 LPGU will ensure appropriate time (usually 60 minutes) is available in the Plenary programme for the Oral Statement. A 60-minute statement and discussion will mean the Minister will have about 10 minutes of speaking time. The remaining 50 minutes will be used by Senedd Members to comment on the statement and ask the Minister questions about what the Bill does and does not include. As such appropriate briefing and lines to take should be prepared for the Minister to support this.

14.20 When the Oral Statement is delivered, Cabinet, Plenary and Committee Secretariat will issue a copy of the statement to all Senedd Members via the Leader of the House. It is usual for the statement not to exceed 1,000 words.

14.21 Most Ministers will deliver the Statement in English and a Welsh translation would not therefore be required. However, you will need to consult Private Office beforehand as some Ministers may choose to deliver the Statement, or part of it, in Welsh. If this is the case, the Statement will need to be translated, as both versions need to be provided to the Senedd. If translation is required, the General Translation Unit will provide it.

14.22 It is important to remember that any documents not already in the public domain referred to during the Oral Statement must be supplied to Senedd Members in advance of the statement being delivered. The Bill and the Explanatory Memorandum will have already been provided, and are considered to be in the public domain once they have been laid.

14.23 Careful attention should be paid by the Bill team to the statement and debate on the day, so as to:

a. respond to any Ministerial commitments (for example, the Minister may wish to write to a Member, or meet with them);

b. identify the areas in the Bill of particular interest to Members (which can influence how the responsible Committee at Stage 1 considers the Bill); and

c. identify any misunderstandings about the Bill, the Explanatory Memorandum, the financial implications or the policy, which can then be taken into account in the Communications Strategy (as necessary) or addressed through other means, such as correspondence.

Chapter 15 – Senedd scrutiny

This Chapter provides detailed guidance on the process of Senedd consideration of a Bill, once it has been introduced, and includes information on the key activities and considerations which Bill teams will need to follow during this period. Although this is primarily written to guide Bill teams working on Government Bills, it will still be relevant to those working on non-Government Bills who will also wish to read Chapter 19.

Amongst other matters this Chapter covers:

- ***a. the timetable for Senedd consideration;***
- ***b. Stage 1;***
- ***c. Financial Resolution;***
- ***d. amendments to a Bill;***
- ***e. Stage 2;***
- ***f. speaking notes for the amending stages;***
- ***g. Stage 3, including further Stage 3;***
- ***h. Report Stage, including further Report Stage;***
- ***i. Stage 4;***
- ***j. revisions to the Explanatory Memorandum;***
- ***k. King and Duke of Cornwall consent; and***
- ***l. fall, rejection or withdrawal of a Bill.***

Timetable for Senedd consideration

15.1 The indicative timetable for the consideration of a Government Bill by the Senedd is developed by the Legislative Programme and Governance Unit (LPGU)[21] and takes account of the Bill team's requirements for Royal Assent, the Act coming into force, other government business and other legislative commitments.

15.2 The final timetable for consideration will be set by the Senedd's Business Committee, who are required under Standing Order 26.7 to establish and publish a timetable for the consideration of the Bill (except for any Stages in Plenary).[22] LPGU will inform the Bill team when the timetable has been set by Business Committee.

Agreement to the timetable

15.3 LPGU will prepare a timetable for the Minister with responsibility for Government Business to take to Business Committee.[23] Business Committee usually meets on a Tuesday morning in sitting weeks. The

[21] The indicative timetable for non-Government Bills is developed by the Senedd Commission.

[22] The dates and times for consideration of Government Bills in Plenary are set by the Government; these usually take place on a Tuesday afternoon.

[23] The Member in charge of a non-Government Bill will propose the timetable to Business Committee.

timetable will normally be agreed by the Business Committee two sitting weeks before introduction, after consultation with the likely responsible Committee (see below).

15.4 The timetable set by Business Committee is at a relatively high level, and the actual dates and times for proceedings are set by the Committee Clerks in discussion with LPGU. LPGU will ensure the Bill team are notified of this information as and when it becomes available.

Changes to the timetable

15.5 Once set by Business Committee, the timetable can be changed for periods of non-Plenary consideration (i.e. Committee consideration and proceedings), but such a change would require the agreement of the Business Committee. It can also change in relation to Plenary consideration and proceedings, but this would be a matter for the Government in discussion with the Senedd Commission.

15.6 The responsible Committee can propose changes to the timetable, for example if they wish to increase the time allocated to Stage 1 consideration in light of emerging evidence from stakeholders. Changes can also be proposed by the Government, but it should not be assumed that Business Committee will agree to such a change, and the handling implications of the Government requesting a change to a timetable it originally proposed should be assessed and understood. The Minister with responsibility for Government Business will propose changes which need to go to Business Committee,[24] and will need to be engaged in discussions about all timetable changes once the Bill has been introduced. Bill teams should raise any potential need for a change of timetable with LPGU at the earliest opportunity, as LPGU will take forward discussions on this with the Commission and relevant Ministers, including the First Minister.

Senedd website

15.7 Once a Bill has been introduced the Legislation Office (in the Senedd Commission) will update the Senedd's website with information and all the documents relating to the Bill. Each Bill will have its own webpage.[25]

15.8 Where a link to the Bill or Explanatory Memorandum is required in correspondence or Written Ministerial Statements, the link should be to

[24] The Member in charge of a non-Government Bill may propose any changes to the timetable, but it is also open to the Government (through the Minister with responsibility for Government Business) to propose changes.

[25] Information on the progress of Bills introduced to the Senedd can be found at: http://www.assemblywales.org/en/bus-home/bus-legislation/bus-legislation-progress-bills/Pages/bus-legislation-progress-bills.aspx

the Senedd webpage for the Bill (rather than the Senedd's "Documents Laid" pages).

15.9 The Welsh Government's legislation webpages only provide links to the relevant Senedd webpage for the Bill, along with any policy pages where other material to support the Bill, for example impact assessments or case studies, may be published.

15.10 Once the Bill has been passed by the Senedd and gained Royal Assent, links to the Act and Explanatory Notes should be to the relevant page on www.legislation.gov.uk

Correspondence with Committees

15.11 During the passage of the Bill through the Senedd it is likely the Minister will either provide additional written advice to Committees, or be requested to write on a particular matter. Bill teams will need to prepare correspondence and written evidence in both English and in Welsh as they are likely to be published to either the Bill's or the Committee's webpage where they will become public documents. If translation is required, the General Translation Unit will arrange it.

15.12 In addition, Bill teams should be aware Ministers should write to Members in both English and Welsh, except when replying to an individual Member who has written in either English or in Welsh. If translation is required, the General Translation Unit will arrange it.

15.13 LPGU will issue correspondence from the Government to the Committee Clerks. LPGU will also liaise between Committee staff and Government officials, as required.

Stage 1

15.14 This is the first Stage of Senedd consideration and begins when the Bill is introduced into the Senedd. It usually involves an examination by a committee of the general principles of the Bill (which includes policy, intended effect and costs).

'Responsible Committee' consideration

15.15 The Business Committee must, under Standing Order 26.9, decide whether or not to refer consideration of the general principles of the Bill to a 'responsible Committee'. If such a referral is made the responsible Committee must consider and report on the general principles.

15.16 Stage 1 usually lasts for around 10-12 sitting weeks (subject to recess dates); but Business Committee will set the actual duration.

15.17 Committees which consider Bills include:

a. Children, Young People and Education Committee;

b. Local Government and Housing Committee;

c. Economy, Trade and Rural Affairs Committee;

d. Climate Change, Environment and Infrastructure Committee;

e. Health and Social Care Committee;

f. Culture, Communications, Welsh Language,Sport and International Relations Committee;

g. Equality and Social Justice Committee.

15.18 However the Legislation Justice and Constitution Committee, the Finance Committee and the Public Accounts Committee have also acted as a responsible Committee for Government Bills. Committees may also form sub-committees for the purpose of scrutinising a specific Bill. A sub-committee of the External Affairs and Additional Legislation Committee was formed to consider the Regulation of Registered Social Landlords (Wales) Bill at Stage 1. The full Committee agreed and published the Stage 1 report and undertook Stage 2 scrutiny.

15.19 If the Business Committee decides not to refer consideration of the general principles to a responsible Committee, and has stated the reasons for that decision in accordance with Standing Order 26.10A, the Member in charge may propose that the Senedd agree to the general principles of the Bill. Such agreement would be sought in the 'general principles debate' (see below). See also guidance on 'fast track' and 'emergency' Bills in Chapter 16.

15.20 There are occasions when more than one Committee may have an interest in a Bill – for example, in the Fourth Assembly the Social Services and Well-being (Wales) Bill made provision in respect of both adults and children. The responsible Committee for that Bill was the then Health and Social Care Committee, but the then Children and Young People Committee was also interested in the Bill and its provisions from the perspective of how children and young people were affected by it. In cases such as this the Business Committee will still name only one Committee to be the responsible Committee, but this does not prevent other Committees considering the Bill during the same period of time set for the responsible Committee's deliberations. The other Committee(s) may request the Member in charge and other stakeholders to give evidence to them. The other Committee(s) may

produce a report or may write to the responsible Committee with their findings.

15.21 Where there is more than one Committee considering the Bill, the Bill team should be aware that:

a. Committee meetings may be held close to one another, and apart from the need to provide multiple briefing packs and lines for the Minister, this will also mean that the evidence of one Committee could be taken into account in the questions posed by another Committee; and

b. Members sitting on one Committee may also sit on the other Committee, and may therefore continue asking questions on themes already discussed or highlight differences in views between the two Committees.

Approach of the responsible Committee to stakeholder evidence

15.22 To be able to consider and report on the general principles of the Bill, it is usual for the responsible Committee to consider:

a. the aims and policy objectives of the Bill;

b. whether a legislative approach is necessary to achieve those aims and objectives; and

c. whether the Bill, as drafted, is capable of achieving those aims and objectives.

15.23 The responsible Committee will usually take oral and written evidence from key stakeholders in order to inform their considerations. At the beginning of the process of consideration, the responsible Committee will usually issue a letter to stakeholders inviting the submission of written evidence against a number of questions. The consultation questions vary dependent on the subject matter and provisions of the Bill, but may cover matters such as:

a. the need for the Bill;

b. whether the Bill meets the stated objectives;

c. views on particular provisions or parts of the Bill;

d. potential barriers to implementation and whether the Bill addresses these;

e. how the Bill would affect particular groups (of stakeholders);

f. what would have to change in practice for the Bill to work;

g. powers to make subordinate legislation;

h. financial implications;

i. legislative competence of the Senedd.

15.24 As the written evidence comes in to the responsible Committee it will be published on the Senedd web page for the Bill. Bill teams will need to keep such evidence under review as this will help them to prepare for the Minister's attendance before the Committee (see below), in identifying potential areas where both the Committee may report on at the end of Stage 1 and where Members may wish to see amendments made to the Bill at the next Stage.

15.25 The responsible Committee will also invite selected stakeholders to give oral evidence to them. Again, Bill teams will need to monitor the sessions where evidence is being given by stakeholders. It is preferable that this is done in person, by sitting in the gallery to the Committee room. This will allow the interaction between Committee members and witnesses to be observed and provide an immediate indication of the issues being raised.

15.26 When Bill teams review the written and oral evidence given to the Committee by stakeholders they may identify misunderstandings about the intent or effect of the Bill, the Explanatory Memorandum, the financial implications or the policy. Identifying these will help the Bill team to consider whether the Minister would wish to clarify and place on record the Government's position on such matters (for example, during his or her evidence session to the Committee – see below), to write to the stakeholder and/or the responsible Committee to explain the Government's position, or take no further action. In any case this will be helpful information to take into consideration in the Communications Strategy.

Approach of the responsible Committee to Ministerial evidence

15.27 The Minister will be invited to give evidence to the responsible Committee during Stage 1; usually there will be two invitations to attend – one at the beginning of the Committee's consideration, and again towards the end (usually after the other witnesses have given their evidence). The dates for attendance will be arranged by LPGU in discussion with the Committee Clerks and the Minister's Private Office.

15.28 Because of the time available to the Committee to scrutinise the Bill, particularly when their other work programme is taken into account, there is very little scope for flexibility when setting the dates of the Minister's attendance, or to change those dates once set.

15.29 It is usual for up to two officials to sit at the Committee table in support of the Minister, with the agreement of the Chair of the Committee. Usually this will be the lead policy official and the lead subject lawyer, but this is a matter for discussion with the Minister. Officials may address the Committee when invited to do so by the Minister.

15.30 If required, LPGU can discuss with the Committee Clerks the potential for more than two officials to support, although the Clerks have indicated this will not normally be possible. However, it is more likely to be possible for additional officials to sit behind the Minister during the Committee session, which would allow for notes to be passed forward should this be necessary. Officials sat behind will not be able to address the Committee.

15.31 In readiness for the Minister's attendance at Committee, briefing and lines to take will need to be prepared. LPGU can provide advice on previous evidence sessions, and examples of likely areas of interest. Bill Managers may also wish to read the transcripts of Stage 1 proceedings on other Bills for examples of the nature and type of questions asked.

15.32 Briefing should be prepared which addresses the questions raised by the Committee in their call for evidence (see paragraph 15.24 above), and in the opening legislative statement; the Bill team should find the work undertaken to prepare the Explanatory Memorandum particularly helpful here.

15.33 The briefing for the second appearance of the Minister before the Committee will need to address the oral and written evidence already given by stakeholders to the Committee.

15.34 There may be a need for correspondence between the Minister and the Committee following the Minister's attendance and evidence. It is usual for the reply to need to be with the Committee within ten working days of attendance at the Committee, or the date of the letter from the Chair, but there have been occasions when an earlier response is required.

15.35 Following the meeting a draft transcript will be sent to the Minister and attending officials by the Committee Clerks for checking, with a deadline for responding with comments or amendments. The Bill team will need to read the draft version of the record and identify any errors. There are two types of corrections; those of fact where the contributions have been mis-transcribed or mis-typed, and those where the evidence given could benefit from additional explanation or clarification, but where this would materially alter the general sense of any answer. In the first case, amendments can be suggested by officials to the Clerks. In the second, the Government may seek to clarify the evidence by requesting a footnote is added to the transcript. In addition, or as an alternative

approach to using footnotes, teams should also consider whether a letter of clarification to the Committee from the Minister would be helpful. This will ensure the clarification comes to the attention of Committee Members, as a footnote may not be seen by them. The suggested changes will then be cleared with the Minister, via LPGU, before being returned to the Clerks.

Legislation, Justice and Constitution Committee

15.36 The remit of the Legislation, Justice and Constitution Committee includes the consideration of, and reporting on, the appropriateness of provisions in Senedd Bills that grant powers to make subordinate legislation. Where a Bill makes such provision it is likely that this Committee will wish to take evidence from the Minister on those provisions. This is usually undertaken via an oral evidence session. The date for attendance will be arranged by LPGU in discussion with the Committee Clerks and the Minister's Private Office.

15.37 This Committee is likely to be interested in matters such as:

a. the balance between what is on the face of the Bill and what is to be specified in subordinate legislation;

b. the choice of procedure (affirmative, negative, etc.) attached to subordinate legislation;

c. commencement provisions;

d. legislative competence;

e. changes to the Bill that may be made at Stage 2, and whether these would have an effect on the subordinate legislation powers;

f. any cross border issues which could impact on the subordinate legislation;

g. Convention Rights and rule of law considerations;

h. Minister of the Crown consents;

i. Power in subordinate legislation to amend primary legislation (Henry VIII powers).

15.38 When preparing briefing and lines to take for the Minister, the Bill team will find Chapter 5 of the Explanatory Memorandum and the Statement of Policy Intent (for subordinate legislation) of particular assistance. The Bill team will also wish to be familiar with the Welsh Government's guidance on the factors which would tend to indicate whether the affirmative or negative procedure should be applied (see Chapter 10).

15.39 As with the responsible Committee, up to two officials may accompany the Minister to the Committee session, with the agreement of the Chair of the Committee. These officials may address the Committee when invited to do so by the Minister.

15.40 The advice at paragraphs 15.32 to 15.36 above also applies in relation to the Minister's attendance at the Legislation, Justice and Constitution Committee.

Finance Committee

15.41 This section applies where the Finance Committee is not the responsible committee.

15.42 The Finance Committee may choose to invite the Minister to attend to answer questions about, primarily, the financial implications of the legislative proposals. There have also been occasions where the Finance Committee has sought evidence through written correspondence.

15.43 When preparing briefing and lines to take for the Minister, the Bill team will find the Regulatory Impact Assessment (RIA) particularly useful, as well as the written or oral evidence given to the responsible Committee by stakeholders on their views on the financial implications.

Reports of the Committee(s)

15.44 Each Committee considering the Bill will be able to report upon the Bill, but the responsible Committee must make a report. Committees may also feed their findings into the report of the responsible Committee; for example, the Finance Committee could write to the responsible Committee with their findings for inclusion in the main report.

15.45 All reports must be published by the date set by the Business Committee.

15.46 The reports will usually summarise the evidence gathered and the views of the Committee on a range of aspects relating to the Bill, the Explanatory Memorandum and the RIA. The reports may contain a recommendation that the Senedd does or does not agree the general principles of the Bill and may make recommendations for amendments to the Bill and other non-legislative actions.

15.47 Bill teams will need to provide advice to the Minister on the report, including whether the recommendations should be accepted, accepted in principle, or not accepted. Such advice will need to be provided in a timely manner, and therefore it will assist if Bill teams anticipate the likely areas of reporting and consider (together with instructing officers

and Office of the Legislative Counsel (OLC)) where amendments may be required to the Bill.

15.48 The Government will have the opportunity to respond to the reports of the Committees in the general principles debate (see below) – responses can include commitments to seek to amend the Bill, to revise the Explanatory Memorandum, take other actions or reject the recommendation. There have been occasions when the Government's response in the debate has been supplemented by a letter to the Chair of the Committee, and this approach could be of assistance for detailed explanation or to provide points of clarification. However, in contrast to the way the Government usually responds to other reports (not dealing with legislation) made by Committees, a formal written response to every recommendation is not required.

General principles debate

15.49 Standing Orders require there to be at least 5 working days between the date of the report of the responsible Committee and the date of the Stage 1 debate. However, in practice there will usually be around 10 calendar days between the date by which the Committee must report and the Plenary debate.

15.50 During this time the Bill team will need to provide the Minister with advice on the Committee report(s), briefing and lines to take, and a speech for the actual debate.

15.51 It is usual for the debate to be listed for 60 minutes, and therefore the Minister will have around 15 minutes of speaking time. This will be divided, according to Ministerial preference, between opening and closing remarks. In the closing remarks, the Minister will be expected to respond to points raised by Members during the debate. It is therefore essential that Bill teams anticipate likely areas of questions in advance and provide appropriate lines to take.

15.52 When preparing the speeches for the Minister, it is important the lines to take advocate for the general principles of the Bill, as well as responding to the key Committee recommendations.

15.53 During the debate Members may raise questions or make observations regarding the financial implications of the Bill, or these may be reserved until any discussion of the Financial Resolution (see below); it is prudent for the Bill team to ensure the briefing and lines to take include information on costings, and address any recommendations made by the Committee in their reports.

15.54 Careful attention should be paid by the Bill team to the debate, firstly so they are able to respond to any Ministerial commitments and secondly because Members often set out matters which they would expect to see

amended at Stage 2. This can help the Bill team to identify likely non Government amendments, and appropriate planning for the handling of these can then take place.

15.55 At the end of the debate the Senedd will be asked to agree the motion, which will be along the lines of:

"Motion to agree the general principles of the [short title] (Wales) Bill"

15.56 This motion can be amended; in other words Senedd Members may table amendments to the motion, which means those amendments will be debated during the general principles debate and then voted upon by Members before the motion itself is voted upon. Any amendments must be tabled at least three working days before the date of the debate, and LPGU will advise the Bill team if this happens. The Bill team will need to ensure the speech for the Minister addresses any amendments to the motion.

15.57 If there are no objections to the motion it will go through 'on the nod'; where there are objections the Senedd will vote upon the motion:

a. a simple majority will determine whether the motion is agreed or not. If the motion is agreed the Bill will proceed to Stage 2; where the motion is not agreed the Bill will fall;

b. where voting is tied, the Llywydd will exercise her casting vote. In this case she will cast her vote in the affirmative (in accordance with Standing Order 6.20(i)). This means the motion is agreed and the Bill will proceed to Stage 2.

15.58 As soon as the Record of Proceedings is available (i.e. within 24 hours of the debate) the Bill team will need to check the Record to identify any errors and consider whether a clearer response could have been given (see paragraph 15.36). LPGU will need to be notified immediately of any errors so that these may be corrected by Chamber Secretariat (in the Senedd Commission).

Financial Resolution

15.59 Under Standing Order 26.69 there is a requirement for a Financial Resolution motion to be tabled where a Bill has, or is likely to have, an impact on the Welsh Consolidated Fund. The Llywydd determines whether such a resolution is required.

15.60 The Llywydd considers the need for a Financial Resolution when considering the matters which will lead to her determination on legislative competence. It is usual for the Llywydd to tell the First Minister of her decision as to the need for a Financial Resolution at

introduction of the Bill, but she may decide to defer the decision, to allow her to take account of the consideration of the Bill by the responsible Committee.

15.61 If a Financial Resolution is required, no Stage 2 proceedings on a Bill may take place until it is agreed.

15.62 When a Financial Resolution is required, LPGU prepare the motion and seek formal Ministerial clearance to table the motion. The advice will include a summary of the financial implications of the Bill based on the RIA. A slot in Plenary will be booked to debate the Financial Resolution: where possible this will be the same day as the debate of the general principles and will usually follow immediately afterwards.

15.63 The motion will be tabled in the name of the Minister with responsibility for Government Business, but the Lead Minister for the Bill will actually move the motion to be debated. Bill teams may need to prepare speaking notes for the Minister to use in relation to the Financial Resolution motion, particularly where there are indications that Members may not be content to agree the motion. Further advice is available from LPGU.

15.64 If there are no objections to the motion it will go through 'on the nod'; where there are objections the Senedd will vote upon the motion and the same rules apply as set out in paragraph 15.58.

15.65 If a Financial Resolution is not tabled and agreed within 6 months of the completion of Stage 1 then the Bill falls.

Amendments to a Bill after introduction

15.66 Once the Bill has been introduced into the Senedd, it can only be amended with the agreement of the Senedd. This is usually done during Stages 2 and 3 of the Senedd's consideration; amendments can also be made at Further Stage 3 and Report Stage where undertaken.

Why the Government might seek to amend a Bill

15.67 The Government should seek to ensure the Bill delivers the intended policy effectively. In order, to do so, the Bill will need to work properly and communicate the policy clearly. The Government may need to table amendments to the Bill to achieve this result.

15.68 However, the tabling of Government amendments can create the impression a Bill has not been properly prepared and may also hinder the progress of a Bill, take up Committee and Plenary time and cause ill-feeling in the Senedd. Even if the individual amendments, in themselves, are small and uncontroversial and unlikely to take up much

time, their cumulative impact can be more serious. Government amendments to Bills should, therefore, be kept to a minimum and sought only if necessary to ensure the Bill delivers its policy effectively, to avoid a Government defeat, or otherwise to support the effective handling of the Bill and other Government business in the Senedd.

15.69 There are a number of situations in which the Government may seek to amend a Bill:

a. Circumstances may have arisen since the introduction of the Bill which has led to the pressing need to amend the Bill in order to deliver the intended policy effectively. Amendments may also be necessary to insert provisions which could not be included in the Bill at introduction;

b. Technical changes may need to be made to make the Bill work properly and communicate the policy clearly: for example, typographical corrections, changes to ensure the English and Welsh versions of the Bill convey the same meaning, the renumbering or reordering, changes to ensure there is consistency of expression within the Bill and/or with existing legislation, or changes to update references within the Bill (e.g. to bodies that have changed name since the Bill was introduced);[26]

c. Concessions may be necessary to secure support for the Bill. They may be brought forward directly to address a point raised during Stage 1 or offered as an alternative to expected non-Government amendments if the Government considers it is likely to be defeated. An amendment may also be considered to be concessionary if it is brought forward in response to a point raised about the Bill from outside the Senedd, but only if there is likelihood that this point would be raised by Members at Stages 2 or 3;

d. To remove elements of the Bill which have not been well received by stakeholders and/or the responsible Committee, where such removal is considered prudent to secure support for the Bill;

e. To include new (or more accurately expanded) areas of policy, even if they do not widen the Bill's scope.

15.70 Careful consideration will need to be given by Bill teams to the matters mentioned above in deciding whether to bring forward Government amendments and they will also need to consider the rules of admissibility for amendments (see paragraph 15.75).

[26] Renumbering as a consequence of amendments made to the Bill, and certain types of typographical corrections, will be made as part of the reprinting process on request to the Legislation Office by OLC, and do not require explicit amendments to the Bill.

Timetable for preparation of amendments

15.71 LPGU will agree with the Bill team, Legal Services and OLC the timetable for preparation of amendments. This timetable will include the deadlines for instructing OLC (who prepare Government amendments), preparing the amendments in both languages, completion of English/Welsh equivalence checks and Ministerial and Counsel General clearance to table the amendments. Where consideration is being given to tabling amendments in more than one tranche (see paragraph 15.98 below) the timetable will reflect this.

Form of amendments

15.72 Amendments identify the section, page and line number of the Bill to which they relate, and will propose to do one of the following:

a. leave out words;

b. leave out some words and insert others;

c. insert or add new words.

15.73 An amendment can propose to leave out a specified section or schedule, or an element within a section or schedule, such as a subsection, paragraph or sub-paragraph.

Admissibility of amendments

15.74 Standing Order 26.61 states that for all amendments (considered at any of the amending Stages) an amendment is not admissible[27] if:

"…
i) it is not in its proper form in accordance with Standing Order 26.58;
ii) it is not relevant to the Bill or the provisions of the Bill which it would amend;
iii) it is inconsistent with the general principles of the Bill as agreed by the Senedd; or
iv) it is inconsistent with a decision already taken at the Stage at which the amendment is proposed."

15.75 In addition, an amendment is likely to be ruled inadmissible if it:

a. is identical to an amendment that has already been tabled;

b. is not substantially different in legal effect from another amendment which has already been tabled;

[27] In this context 'admissible' means permitted to be considered (i.e. an amendment is admissible and therefore permitted to be considered during proceedings).

c. seeks to amend the instruction for another amendment (e.g. so that a new sub-section is inserted in a different position within the relevant section);

d. amends another amendment in such a way that is too substantially different from the original amendment.

The Senedd also has its own guidance on the admissibility of amendments on its website.

15.76 In addition to what might be considered the 'general rules' for admissibility of amendments (i.e. those set out in paragraphs 15.75 and 15.76 above), there are further rules of admissibility with amending Stages, in particular:

a. At Stage 3 or Report Stage (but not at Stage 2) the Llywydd may accept a 'late amendment', in other words an amendment proposed after the tabling deadline has passed. Such an amendment is only admissible if, in addition to the criteria in Standing Order 26.61, the Llywydd is satisfied there are exceptional circumstances as to why the amendment should be accepted (as set out in Standing Order 26.35). It is for the Llywydd to decide whether the reasons for seeking a late amendment amount to exceptional circumstances.

b. At further Stage 3 or further Report Stage (but not at Stage 2, Stage 3 or Report Stage) an amendment is admissible if, in addition to the criteria in Standing Order 26.61, it is for the purpose of: clarifying a provision of a Bill (including ensuring consistency between the English and Welsh texts); or giving effect to commitments given at the earlier Stage 3 or Report Stage proceedings, as set out in Standing Order 26.41.

c. At Reconsideration Stage (see Chapter 17) an amendment is admissible if, in addition to the criteria in Standing Order 26.61, and in the opinion of the Llywydd, is solely for the purpose of resolving the issue which is the subject of: the reference for a preliminary ruling; the decision of the Supreme Court; or the Order under section 114 of the Act – as set out in Standing Order 26.55.

15.77 Note that Standing Orders do not include provision about whether an amendment being tabled would (if agreed by the Senedd) be within the legislative competence of the Senedd, so this will require separate consideration.

15.78 Further advice on admissibility of amendments is available from OLC and LPGU.

Non-Government amendments

15.79 Non-Government amendments to the Bill will also be tabled during Stages 2 and 3 (and Report Stage if applicable). Bill teams should anticipate likely areas for non-Government amendments by considering the evidence sessions during Stage 1, the reports of the Committees at the end of Stage 1, monitoring Plenary debates, looking at Senedd Questions, and keeping up to date with stakeholder's views on the Bill (through evidence sessions at Stage 1, direct contact with key stakeholders, monitoring key stakeholder websites to see stakeholder briefings) and the media. Stakeholder views and media interest are likely to influence the amendments tabled by non-Government Members.

15.80 It is worth remembering a Member may table amendments which appear to contradict one another – for example, one amendment seeks to remove a whole section and the other amendment seeks to amend the section. Clearly such an approach provides the Member with two (or more) opportunities to debate a point, and provides a 'fall back position' in case their first choice for change is not agreed. Speaking notes will need to cover both (or all) potential outcomes.

Amendments to amendments

15.81 An amendment can be proposed to an amendment. For example, the Government tables an amendment and then a member of the Opposition tables an amendment to the Government amendment. Both the main amendment, and the proposed change to it, will be considered in the Stage 2, 3 or Report proceedings (as applicable).

15.82 The Government can also table amendments to amendments, although where the Government wishes to amend one of its own amendments it would do so by withdrawing the original amendment and tabling a fresh amendment.

Numbering of amendments

15.83 Each amendment will be allocated a unique identifying number by the Legislation Office (in the Commission), by which it is always referred. The numbering of amendments reflects the order in which the amendments were tabled.

15.84 Amendments to amendments are numbered using the number of the main amendment and then a letter (beginning with A). For example if two amendments to amendment 17 are tabled these will be numbered as 17A and 17B respectively.

15.85 Bill Managers may wish to assign a 'dummy' number or letter to Government amendments which have yet to be tabled and published,

so they can be assigned to provisional groups and sent out for speaking notes to be drafted (see below for guidance on groupings and speaking notes). Using a dummy reference in this way can help avoid confusion with actual amendment numbers, which are frequently different to what is expected.

Stage 2

15.86 This Stage follows the completion of Stage 1 and involves the detailed consideration, by a committee, of the Bill and Government and non-Government amendments proposed by Senedd Members (not just those members of the Committee). This is the first of the amending Stages for the Bill.

'Responsible Committee'

15.87 The 'responsible Committee' is the Committee which will consider the Bill at Stage 2; where a responsible Committee has considered the Bill at Stage 1, this will be the same Committee.

15.88 Where there was no Committee consideration at Stage 1, the Business Committee will refer the Bill to a responsible Committee for the purposes of Stage 2. Alternatively the Business Committee can refer the Bill to a 'Committee of the Whole Senedd', which is a Committee comprising all Senedd Members and is usually held in the Siambr.

15.89 For a Government Emergency Bill a Committee of the Whole Senedd will consider the Bill at Stage 2; this is still a Committee (i.e. it is not Plenary) – see Chapter 16.

15.90 Bill teams should ensure they are familiar with the Standing Orders governing proceedings by Committees (particularly Standing Order 17).

15.91 The Lead Minister for the Bill is not a member of the Committee (unless it is a Committee of the Whole Senedd), but will attend all of the Stage 2 proceedings on a Bill, with the agreement of the Chair of the Committee.

Start and end of Stage 2

15.92 Stage 2 begins on the first working day after Stage 1 concludes. For Government Bills this would usually mean that Stage 2 would begin on a Wednesday. However at least 15 working days must elapse between the start of Stage 2 and the date of the first meeting of the responsible Committee.

15.93 The deadline by which Stage 2 consideration must conclude is set by the Business Committee, but there is no limit placed by that Committee on how many times the responsible Committee may meet in the period

of consideration. LPGU will advise Bill teams of the actual dates for the proceedings; there will be no flexibility on Ministerial attendance as these dates are set fairly early on in the Bill's consideration by the Committee and (for Government Bills) reflect the timetable proposed by the Government to Business Committee. Stage 2 ends when all the amendments have been considered.

Tabling amendments

15.94 Any Senedd Member can table amendments from the first day on which Stage 2 starts (i.e. the first working day after Stage 1 is completed).

15.95 Standing Order 26.59 requires amendments to be tabled no later than five working days before consideration, and this is the final deadline for submission of amendments at this Stage. The Government has agreed it will table amendments no later than seven working days before they are due to be debated. This convention is in place to ensure Members have sufficient time to consider the amendments before they are debated, and to allow Members to propose amendments to Government amendments within the tabling deadlines.

15.96 It is important to note that Bill teams will normally begin to prepare amendments during Stage 1, so they may be tabled from the beginning of Stage 2 (i.e. Bill teams do not work to the latest date for tabling), this is for a number of reasons:

a. the Government may wish to demonstrate to Members that undertakings made to seek to amend the Bill are being delivered, which in turn can help reassure Members of the Government's commitment to effectively deliver the policy of the Bill and/or ensure the Bill works; and

b. early tabling can reduce the risk of a Government amendment being ruled inadmissible (and therefore not capable of being tabled) because it is of the same or similar legal effect to an amendment already tabled (see paragraph 15.76 above).

15.97 It may be appropriate to consider tabling amendments in 'tranches'; for example to ensure significant policy amendments are tabled as early as possible (for the reasons above). Tranching in this way can assist with the management of the very limited time available to the Bill team in Stage 2. The approach to tabling should be discussed with LPGU in order for advice to be given to the Minister and for an appropriate timetable for the preparation of amendments to be set (see paragraph 15.72 above).

15.98 Government amendments are tabled by OLC, once the Counsel General has considered and the Lead Minister and the First Minister have given approval to table. Sufficient time should be afforded for

Ministerial consideration of amendments before the tabling deadline, and as such it is helpful to liaise with Private Offices over deadlines for Ministerial clearances.

'Purpose and effect' table of Government amendments

15.99 Each time Government amendments are tabled, the Minister with responsibility for Government Business will write to all Senedd Members to provide information on the amendments and explain their purpose and intended effect. The template for the letter and table of information is available from LPGU, and clearance for this should be included in the advice which seeks Ministerial clearance to the tabling of the amendments. The table must be provided in Welsh and English. If translation is required, the General Translation Unit will arrange it.

15.100 Preparation of the 'purpose and effect table' is a significant task, both in terms of the accuracy of representing the actual wording and format of each amendment (shown in both English and in Welsh), and also the drafting of the text explaining the purpose of the amendment and its effect. In this context:

a. the purpose of the amendment is an explanation of what the amendment does to the content of the Bill (for example *"The purpose of this amendment is to include foster parents within the definition of carers in section 5 of the Bill"*); and

b. the effect of the amendment is an explanation of the intended result arising from the amendment. This should be described in neutral policy terms (for example *"The effect of this amendment is to ensure that the definition of carers includes, where appropriate, a foster parent as appointed by the local authority"*).

15.101 Bill Managers will need to ensure sufficient time is given to the preparation, checking and clearing of this table before it is submitted to Ministers for clearance. Legal Services and LPGU will clear this table before it is submitted, and then LPGU will hold the working version until it is ready to be issued in the name of the Minister with responsibility for Government Business. This is because, between the clearance and tabling of amendments, minor technical changes may be made to the amendments by OLC (after their discussions about the form of the amendment with the Legislation Office in the Commission). LPGU will ensure these minor 'tweaks' are reflected in the final version of the purpose and effect table before it is issued; LPGU will also ensure dummy amendment numbers in the table are updated to reflect the actual amendment numbers allocated by the Clerks; including any cross-referencing, before issuing.

15.102 Once the table has been issued, the Legislation Office (in the Senedd Commission) will publish it on the web-page for the Bill. This is then

available to the public, so the Bill team may wish to consider drawing this to the attention of those stakeholders who have a particular interest in one or more proposed Government amendments.

15.103 Members are not required to prepare purpose and effect tables for their amendments, although they are encouraged to provide additional information on the intent of their amendments when they table them. If this is available the Legislation Office will include this on the Marshalled List (see paragraphs 15.116 to 15.118 below), rather than with the daily Notice of Amendments or as a separate document.

Supporting amendments

15.104 Under Standing Order 26.60 any Senedd Member can add his or her name to an amendment by notifying the Clerk (in practical effect this is the Legislation Office in the Senedd) at any time until the end of the working day before the Committee meeting when the amendment is to be considered. This is then shown on the revised Notice of Amendments as supporting the amendment.

15.105 Because of the rules around withdrawal of amendments (see below), the main effect of the Member adding their name to the amendment is that their agreement must be sought to the withdrawal of that amendment prior to the Committee proceedings.

15.106 Supporting amendments in this way tends to be undertaken by opposition parties in relation to opposition amendments; for Bill teams it also shows the political support for an amendment which will help in preparing voting advice, speaking lines, and advising the Minister on handling the amendments.

15.107 There may, rarely, be occasions when it is advisable the Lead Minister puts their name in support of an amendment. As noted above, where a proposed amendment has the same or similar legal effect to an amendment already tabled, the proposed amendment is not admissible. Therefore, should a non-Government amendment have been tabled which the Government would have wished to have tabled itself, the Government could choose to support the non-Government amendment to avoid the tabling Member later withdrawing this (and particularly withdrawing it after the tabling deadline has passed, meaning the Government could not then put down its own amendment). As situations such as this occur rarely, Bill teams should discuss this option with LPGU before advising a Minister whether to support an amendment.

Withdrawal of amendments

15.108 Amendments can be withdrawn prior to, and during, the Committee proceedings. However, the rules for doing this differ depending on when the amendment is withdrawn:

a. Prior to Committee proceedings – the Member who tabled the amendment can, at any time before the day on which it is considered, withdraw that amendment. Where another Member has added their name in support of the amendment (see below), the withdrawal can only be with their agreement (and the agreement of any other Members who have supported it). If such agreement is not given, then the amendment becomes an amendment in the name of the Member who first added his or her name (and who does not agree to the withdrawal of the amendment).

b. During the Committee's proceedings – an amendment which has been moved can be withdrawn by the Member who moved it, but only if no other Member of that Committee objects. A Member can also choose not to move their amendment when called to do so, however, in these circumstances, another Member of the Committee can move the amendment instead.

15.109 In relation to Government amendments, withdrawal of amendments is undertaken:

a. prior to Committee proceedings by OLC (in writing to the Legislation Office), once formal approval of the withdrawal has been given by the Minister in whose name the amendment has been tabled;

b. during the Committee's proceedings by the Chair of the Committee, on the request of the Minister.

15.110 Note: if an amendment to an amendment has been proposed (see paragraph 15.87 above), that amending amendment will fall if the original amendment is withdrawn.

Notice of amendments

15.111 For each day amendments are tabled, the Senedd Commission's Legislation Office will publish a Notice of Amendments detailing the amendments to the Bill tabled for that day. Amendments tabled before 12.30pm will be included in the Notice of Amendments published the following working day; amendments tabled after 12.30pm will be included on the Notice of Amendments published the working day after the following working day. Changes to amendments once tabled (for

example, the amendment being supported by an AM, or the amendment being withdrawn) will be shown on the Notice of Amendments by an asterisk (*). When a Notice of Amendments for a particular day is reissued, a version number is usually included at the footer of the revised Notice.

15.112 Bill teams will find the Notice of Amendments on the Senedd's webpage for the Bill. Bill teams need to check the webpage each day, so that new amendments can be swiftly responded to. For example, Bill teams may need to consider making amendments to non-Government amendments. Such secondary amendments will need to be tabled within the usual tabling deadlines.

'All amendments' table

15.113 Bill teams are required to prepare an 'all amendments' table for the Minister, as part of the advice for the Committee proceedings. LPGU will provide the template for this. This document lists all of the amendments tabled, in the order they have been tabled, and provides a brief explanation of what each amendment seeks to do. This table ensures that the Minister has advice on each amendment.

15.114 Bill teams will find the purpose and effect table a helpful source of information to explain each Government amendment, but the text of explanation to each amendment in the 'all amendments' table does not need to be set out in the same formulation (i.e. purpose and then effect); a simple line or two explaining the amendment is all that is usually required.

Marshalled list

15.115 The numbering of amendments reflects the order in which the amendments were tabled. A marshalled list shows all of the amendments in the order in which they will be considered by the Committee and voted upon, which is usually the order in which they will affect the Bill. Within the marshalled list each amendment will still retain its unique identifying number (allocated when tabled).

15.116 Voting is usually done in the order of the marshalled list and not in tabling order.

15.117 The marshalled list will be generated and published by the Legislation Office (in the Senedd). A number of versions of the list may be prepared and published (as amendments are tabled), but the final list will usually be available three to four days before the Committee meets. Bill teams will find the marshalled list on the Senedd's webpage for the Bill.

Order of consideration

15.118 Under Standing Order 26.21 amendments are disposed of *"…in the order in which the sections and schedules to which they relate arise in the Bill, unless the committee considering Stage 2 proceedings has decided otherwise"*. It is therefore open to the Committee to determine the order of consideration; they may choose to discuss sections and schedules in a different order to that of the Bill, for example so that a Schedule is considered alongside the section which introduces it, or so that amendments to substantive provisions are considered before any connected amendments to sections which provide an overview of a Bill's contents.

Groupings

15.119 Amendments will be grouped for discussion where they all bear on one subject of debate. Therefore 'groupings' is the common term given to the grouping of related amendments for debate. A group can include both Government and non-Government amendments within it.

15.120 The Committee Chair has the final decision on groupings.

15.121 The final groupings will be published three working days before the Committee meeting.

15.122 Inside a group, the amendments are listed in the order in which they fall to be considered, not numerical order. The order of consideration of amendments in the group follows the marshalled list; the order in which groups will be considered also follows the marshalled list.

Acceptance of non-Government amendments

15.123 Officials will need to provide advice to the Minister on non-Government amendments. This advice will need to take into account the order of marshalled list, groupings and any pre-emptions (see paragraphs 15.151 to 15.153).

15.124 Legal Services will need to be engaged in discussions to consider whether the Minister should accept a non-Government amendment.

Speaking notes

15.125 Standing Orders refer to this Stage as 'detailed consideration by Committee', which could be read as detailed consideration of each line of the Bill. In reality, it is the amendments which the Committee considers here in detail. As such, Bill teams need to ensure there are comprehensive speaking notes and background briefing for the Minister on all of the amendments, and not just those tabled by the Government. These will need to cover all amendments, any new

sections and any new schedules, as all amendments tabled at this Stage will be debated by the Committee.

15.126 Guidance on preparation of speaking notes for the amending Stages, including Stage 2, is given at paragraphs 15.139 to 15.155 below.

Committee proceedings, including attendance and voting

15.127 The Minister is not a member of the responsible Committee,[28] therefore cannot move the amendments in his or her name and cannot vote on amendments.

15.128 Officials may attend the Committee in support of the Minister. However, unlike at Stage 1, officials cannot speak to the Committee and may not address Members. Sitting at the table with the Minister is usually acceptable to the Committee, but does not confer speaking rights. Places at the table are extremely restricted (e.g. two officials only is the expected position, although there have been examples when more officials have been able to sit behind the Minister). The Bill team need to give careful consideration as to how the Minister is to be supported in light of this.

15.129 The Chair of the Committee will proceed through the grouped amendments, by asking the Member with the lead amendment in a Group to move that amendment and, as such, open the debate. The debate will cover all the amendments in that Group.

15.130 Voting will take place at the end of the discussion of each group. As noted above, voting is in the order of the Marshalled list and as such not all amendments will be voted upon at the end of a group discussion. This is because some amendments in a Group may appear later in the marshalled list (i.e. after the start of the next or subsequent Group(s)). At this Stage, an amendment is:

a. agreed, if there is majority of voting members in favour of the amendment. This will mean the Bill is changed;

b. not agreed, if there is not a majority of voting members in favour or the amendment, or there is a tied vote. Where there is a tied vote the Chair of the Committee is obliged to cast his or her vote against the amendment (in accordance with Standing Order 6.20(ii)).

15.131 LPGU will prepare a 'Likely Order of Proceedings' guidance note for the Minister and officials attending – this will explain when amendments will be moved, debated and voted on, and also cover the speaking order and the impact of pre-emptions (see paragraphs 15.151 to 15.153 below).

[28] Unless the Stage 2 proceedings are taking place before a Committee of the Whole Senedd.

15.132 Proceedings in Committee may take place over more than one meeting.

15.133 After each Committee meeting, a record of the meeting will be prepared. The Bill team will need to read the draft version of the record on behalf of Ministers, and identify any errors. Please also refer to the advice at paragraph 15.36.

15.134 The Minister may wish to send a letter to the Chair of the Committee summarising the commitments given, and/or providing additional clarity on any points, at the end of the Committee's consideration. This is not a required part of the process, but Bill teams may wish to consider advising the Minister of this option where a number of commitments have been given.

15.135 The Bill team should keep a list of commitments made by the Minister in Committee and action should be taken immediately on these points: for example, OLC may be asked to draft necessary amendments; or officials to prepare letters for the Minister to send to a Member, which will generally be copied to the Chair and other Members of the Committee.

Agreement of sections

15.136 In accordance with Standing Order 26.24, where any amendment is tabled to a section or schedule of the Bill, once the final amendment to that section or schedule has been disposed of, the section or schedule is deemed agreed.

15.137 Similarly, Standing Order 26.25 makes clear that where no amendment is tabled to a section or schedule, that section or schedule is deemed agreed by the Committee once that section or schedule has been reached in the order of consideration.

Preparation of Speaking Notes for the amending Stages

Approach to preparation

15.138 Frequent contact with the Minister and Special Adviser is recommended, so as to settle the lines to be taken on each amendment. Time is often so short at this Stage that a good understanding with the Minister about what needs to or does not need to be cleared by him or her is invaluable. Scheduling Ministerial pre-meetings in the week prior to the Committee or Plenary proceedings will help to move things along more swiftly.

15.139 A large number of amendments may be tabled at each amending Stage. A good system for keeping track of each amendment is therefore critical, especially as the actual number of the amendment will only be known when the Senedd Commission's Legislation Office has processed the amendments and published the (daily) Notice of Amendments. This can make it hard to keep track of amendments, evolving groupings and the drafting of speaking notes.

15.140 Bill teams may wish to adopt a spreadsheet to record amendments as they come in, and to provide a means of checking preparatory speaking notes for each amendment have been drafted. A spreadsheet allows amendments to be sorted into groups, and these groups to be assigned to an official for drafting. It also allows Bill managers to assign a 'dummy' number or letter to amendments yet to appear on the Notice of Amendments, so they can be assigned to provisional groups and sent out for speaking notes to be drafted. When the marshalled list arrives the Bill team should carefully cross-check, amending any dummy numbers/letters used in speaking notes and go through the groupings again.

15.141 Managing the drafting of speaking notes for amendments is one of the most challenging responsibilities for a Bill team. The end product is a 'grouped speaking note' – this is the document which provides the Minister with the speaking lines for a group of amendments, and there will be a grouped speaking note for each group of amendments.

Content of the grouped speaking note

15.142 LPGU has a standard template for drafting grouped speaking notes using a format understood by Ministers and officials alike. Putting to one side the formatting and design aspects, the significant elements are:

a. Summary of group – on the front sheet of each grouped speaking note a short summary of what the group of amendments cover. This enables the Minister to quickly familiarise themselves with the content of the group and the key aspects to be conveyed should the full speaking note not be utilised;

b. Speaking lines – The lines need to address the key amendments within the group, and provide cogent reasons for accepting/rejecting the amendments. Where amendments are consequential on other amendments, it is acceptable for these to be referenced as consequential (however, the Committee may still wish to have detail on the consequential amendments);

c. Supplementary Q&A – during a debate on a Group of amendments the Minister may be asked questions, to which a response will need to be given in the debate on that Group. Potential questions and

additional lines to take will therefore need to be considered and included within the grouped speaking note.

15.143 The substance of the notes on amendments needs to be carefully thought out. For Government amendments this should be straightforward; but for non-Government amendments it is not always easy to work out just what the member is trying to achieve or why. For most amendments, the structure would be:

a. This amendment... [and then summarise what it says];

b. The practical effect of the amendment would be to... [and then spell out the consequences];

c. The intention is thought to be... [and then have an informed guess and say what it is based on, e.g. discussions during Stage 1].

15.144 Having analysed the amendment in this way, the note should then set out the line or lines of argument recommended.

15.145 Remember that at Stage 2 the Committee will be very familiar with the detail of the Bill, and of stakeholders' views on it, having worked on the Bill during Stage 1. All Members are usually keen to see that the Bill is improved by the Committee's scrutiny. The Minister will wish to respond accordingly.

15.146 Do provide full factual analysis and give reasons why an amendment is to be resisted in as much detail as possible. In line with the Civil Service Code and the Ministerial Code, civil servants should not prepare any party political lines within the briefing, although special advisers may provide these for inclusion. Similarly the lines should not suggest the Minister commit to look again at an issue unless policy really will be reconsidered, nor without consideration of the points regarding non-government amendments set out in paragraphs 15.124 to 15.125.

15.147 Where several amendments are consequential on an earlier substantive amendment and the whole group is likely to be considered together, they may all be covered by the same note. If this is done it must be made clear that the note does in fact cover a number of amendments.

Speaking order

15.148 Where a Minister has the lead amendment in the group (usually this is the first amendment), they will be invited to speak first. Members will then be invited to speak, and the Minister will close the discussions. Where a Member other than the Minister has the lead amendment, the Minister will be the penultimate speaker for the group.

15.149 Speaking notes must reflect speaking order:

a. where the Minister opens and closes a Group, opening and closing speeches are required;

b. where the Minister is responding, prior to the Member with the lead amendment closing, only a responding speech is required.

Regardless of speaking order, it is important that the Minister deals with all the amendments in the group (not just the Government amendments).

Impact of 'pre-emptions'

15.150 As noted above, an amendment is not admissible if *"…it is inconsistent with a decision already taken at the Stage at which the amendment is proposed."* (Standing Order 26.61(iv)). This criterion is intended to prevent decisions taken on one amendment effectively being overturned by a subsequent amendment at the same Stage.

15.151 It is therefore possible that an amendment that was admissible when it was tabled could become inconsistent with a decision taken on a previous amendment, i.e. during the proceedings in Committee or Plenary as the case may be. In such cases the later amendment would be pre-empted by the earlier amendment and would not be called for a decision (i.e. if it has already been debated it would not be voted on; or it may fall before it is even discussed).

15.152 The Legislation Office (in the Senedd Commission) will identify any pre-emptions, and will notify LPGU of the same. LPGU will then advise the Bill team, and will advise whether pre-emptions could require more than one version of a grouped speaking note to be prepared. Because amendments will only become inadmissible in these circumstances during the actual proceedings, there is usually no opportunity for the speaking notes to be re-written during those proceedings[29]. Therefore, to avoid the Minister referring to amendments which have become inadmissible during proceedings, alternative speaking notes will need to be held in reserve for use if required.

Clearance of speaking notes

15.153 Speaking notes will need to be considered and cleared by the instructing officer and LPGU, and sufficient time should be made available for Bill Managers to respond to the comments made before

[29] The exception, of course, is when proceedings are taking place over more than one meeting and the pre-emptions affect amendments being dealt with on a second or subsequent meeting.

the speaking notes are finalised and signed off by the SRO. Co-locating teams when preparing the speaking notes can assist – for example colleagues from Legal Services and LPGU may wish to join policy officials on the days when the speaking notes are being finalised.

15.154 Speaking notes should be submitted to the Minister in sufficient time for them to be considered before the proceedings take place so any amendments required by the Minister can be dealt with.

Revising the Explanatory Memorandum after Stage 2

15.155 If the Bill is amended at Stage 2 the Member in charge must prepare a revised Explanatory Memorandum in Welsh and English, unless the responsible Committee resolves that a revised Memorandum is not required (see Standing Order 26.27 and paragraphs 8.64 - 8.73 in Chapter 8).

15.156 The Bill Manager will need to ensure the revised Explanatory Memorandum is prepared and available in Welsh and English. If translation is required, the General Translation Unit has requested they are provided with a tracked change version of the Explanatory Memorandum to work from. The changes will need to be cleared by Legal Services, LPGU and others as necessary (for example Welsh Government economists and Strategic Budgeting if the RIA has changed). Additionally, clearance by OLC will be required for changes to the Explanatory Notes. The revised Explanatory Memorandum must be submitted to the Minister and First Minister for clearance prior to laying.

15.157 If the revised Explanatory Memorandum laid before the Senedd includes significant changes to the RIA, the Welsh Government has committed to writing to the subject Committee responsible for scrutinising the Bill, and the Finance Committee, setting out the changes made. Where this applies, draft letters should be provided to the Minister for agreement as part of the clearance process for laying the revised Explanatory Memorandum.

15.158 The revised Explanatory Memorandum must be laid at least five working days before the date of the Plenary consideration at Stage 3 (see Standing Order 26.28).

15.159 As well as revising the Explanatory Memorandum, policy impact assessment should also be reviewed in light of amendments agreed at Stage 2 and consideration given to the publication of a revised version, or to publication of the assessment where it was not previously considered necessary.

Preparing a revised Bill after Stage 2

15.160 The Legislation Office (of the Senedd Commission) will prepare a revised version of the Bill so as to include all agreed amendments. They will provide a copy of this to OLC for checking, and will then publish this to the Senedd webpage for the Bill. There are no actions arising for the Bill team (apart from OLC) in this regard.

Stage 3

15.161 This Stage follows the completion of Stage 2 and involves the detailed consideration, in Plenary, of the Bill and amendments proposed by Senedd Members and selected by the Llywydd. This is usually the last amending Stage for the Bill.

Start and end of Stage 3

15.162 Stage 3 begins on the first working day after Stage 2 concludes. However, at least 15 working days must elapse between the start of Stage 3 and the date of the first Plenary consideration of the Bill.

15.163 For Government Bills the timetabling of the Plenary consideration is a matter for the Government (rather than Business Committee). Notice of the Plenary consideration will need to be given, in the usual way for notice of business. Stage 3 ends when all the amendments have been considered.

Considerations in preparing amendments

15.164 As Stage 3 is likely to be the last amending Stage before the Bill is passed, it is important that the Bill team assesses what Government amendments (if any) are needed for Stage 3, how controversial the Bill has been, and what non-Government amendments are likely. LPGU should be involved in any such discussion.

15.165 Part of this discussion will be used to consider whether there is adequate time allowed for the remainder of the Bill's passage, and the likelihood of the need to hold either further Stage 3 proceedings or a Report Stage (see below). A key determinant will be the number of Government amendments and the potential need to accept non-Government amendments which may require further amendment to ensure the Bill is effective. An extension to the time identified for the Stage 3 debate can be sought if it is considered the Stage 3 proceedings will need to be held over more than one meeting, and the overall timetable for consideration can also be reviewed. This will necessitate a discussion with the Minister with responsibility for Government Business which will be undertaken by LPGU, following conversations with Senedd officials.

15.166 There is a need to consider carefully whether proposed amendments at this Stage raise issues of consent (Minister of Crown or King/Duke of Cornwall Consent), as the Bill cannot be passed if such consents are not in place. OLC, Legal Services and LPGU should be involved in discussions where this may be an issue.

15.167 Similarly, where there is no Financial Resolution in place for this Bill (as it has not been required so far), any amendments, which would necessitate having a Financial Resolution, cannot proceed until a motion for the Financial Resolution has been passed. LPGU will provide further advice to Bill teams on process and timetable implications, should this situation arise.

Tabling amendments

15.168 Any Member can table amendments from the first day on which Stage 3 starts (i.e. the first working day after Stage 2 is completed). However, in practice these are more likely to be tabled when the Bill as amended at Stage 2 is available (usually within 48 hours of completion of Stage 2).

15.169 As with Stage 2, the Standing Orders require amendments to be tabled no later than five working days before consideration, although the Government has agreed it will table amendments no later than seven working days before they are due to be debated. Government amendments are tabled by OLC, once approval to table has been given by the Counsel General, Lead Minister and the First Minister. The Bill team seeks such clearances. Ministers should be afforded sufficient time to consider the amendments before the tabling deadline.

15.170 When the Government's amendments have been tabled, the Minister with responsibility for Government Business will again write to all Senedd Members to provide information on the amendments, and their purpose and intended effect. Guidance on preparing this information is given at paragraphs 15.100 to 15.102 above.

15.171 In exceptional circumstances the Llywydd may accept an amendment at Stage 3 after the tabling deadline has passed (this is not the case in Stage 2). Such an amendment is known as a 'late amendment'. It is for the Llywydd to decide whether the reasons for seeking a late amendment amount to exceptional circumstances. If it appears possible the Government may need to table a late amendment, LPGU will discuss this with OLC and Senedd officials. Guidance regarding 'further Stage 3 proceedings' (which may be an alternative to seeking to table a late amendment) is given below.

Arrangements for Stage 3

15.172 In relation to:

a. supporting amendments;

b. withdrawal of amendments;

c. notice of amendments;

d. ‘all amendments’ table;

e. marshalled list;

f. groupings; and

g. voting advice,

the guidance given above in relation to Stage 2 also applies for Stage 3 (adjusting any references to ‘Committee’ to read ‘Plenary’).

15.173 Similarly, in relation to agreement of sections, the guidance above also applies to Stage 3, but references to Standing Orders should be read as 26.42 and 26.43 respectively.

15.174 As at Stage 2 it is open to the Senedd to determine the order of consideration of amendments at Stage 3. However, at Stage 3 it is the Minister with responsibility for Government Business, for Government Bills, or the Business Committee, for non-Government Bills, who brings forward a motion proposing an order. Such a motion would usually be agreed in advance of the first meeting of the Senedd at which amendments are to be considered, in order for the marshalled list to reflect the new order. LGPU will lead on making the arrangements for this motion.

15.175 At Stage 3 the Llywydd may select the amendments which are to be considered, (under Standing Order 26.36) but this is not usually adopted.

Acceptance of non-Government amendments

15.176 As this is likely to be the last amending Stage for the Bill, careful and early consideration will need to be given to non-Government amendments. It is imperative advice is sought from OLC on whether the wording is in an appropriate form; if not, it may be necessary to consider further Stage 3 proceedings. Similarly, the only opportunity for the Minister to ‘return to the matter at a later Stage’ (i.e. where the policy of the amendment is one which the Minister wishes to accept,

but the drafting needs further consideration) will be at a further or new amending Stage. Both will have implications for the timetable of Senedd consideration; advice is available from LPGU.

Speaking notes

15.177 As at Stage 2, although the Standing Orders refer to this Stage as 'detailed consideration by Plenary', in reality Members consider amendments to the Bill in detail only. Bill teams therefore need to ensure that there are comprehensive speaking notes and briefing for the Minister on all of the amendments, not just those tabled by the Government.

15.178 The advice given above in relation to Speaking Notes applies to Stage 3 also. Given it is often the case that a number of the non-Government amendments tabled at Stage 2 (but not accepted) will also be tabled again at Stage 3, speaking notes should be updated to reflect the debate at Stage 2, including counter arguments, and may need to provide more detail as the Minister will be addressing all Members not just those who sat on the Committee.

15.179 Again, frequent contact with the Minister and Special Adviser is recommended, so as to settle the lines to be taken on each amendment. Because it is likely to be the last amending Stage, it is extremely important that commitments to "return to this at a later Stage" are only used where Report Stage is proposed.

Plenary proceedings, including support for the Minister

15.180 Unlike at Stage 2, the Minister can move and vote on amendments at Stage 3.

15.181 Officials will not be able to attend Plenary, but may be able to support the Minister via email. Arrangements must be made for officials to watch the Plenary proceedings and provide advice (as required) via email to the Minister or as may be preferred by the Minister. LPGU will prepare a 'Likely Order of Proceedings' guidance note for the Minister to explain when amendments will be moved, debated and voted on, and this will also cover speaking order and the impact of pre-emptions (see paragraphs 15.149 to 15.153 above).

15.182 The Llywydd will proceed through the grouped amendments, and voting will take place at the end of a discussion of a group. As at Stage 2, voting is in the order of the marshalled list and not all amendments will be voted upon at the end of a group discussion. An amendment is:

a. agreed, if there is majority of voting members in favour of the amendment. This will mean the Bill is changed;

b. not agreed, if there is not a majority of voting members in favour of the amendment, or there is a tied vote. Where there is a tied vote the Llywydd is obliged to cast her vote against the amendment (in accordance with Standing Order 6.20(ii)).

15.183 The Senedd can resolve to place time limits on debates of groups of amendments (under Standing Order 26.37), but this is not usually adopted. It is for the Minister with responsibility for Government Business (for Government Bills), or the Business Committee (for non-Government Bills), to propose these limits. The Llywydd will generally allow around 10 minutes per speaker, and the Member opening and closing the Group will have up to 10 minutes per speech in that Group.

15.184 The Record of Proceedings will be published within 24 hours of Plenary concluding; the Bill team will need to check this and identify any errors.

Revisions to the Explanatory Memorandum after Stage 3

15.185 If the Bill is amended at Stage 3 and the Senedd agrees to consider amendments at Report Stage (see below), the Member in charge must prepare a revised Explanatory Memorandum in Welsh and English, unless the Senedd resolves that a revised Memorandum is not required (see Standing Order 26.46A and paragraphs 8.64 - 8.72 in chapter 8). The revised Explanatory Memorandum must be laid at least five working days before the date of the Plenary consideration at Report Stage (see Standing Order 26.46B).

15.186 If the revised Explanatory Memorandum laid before the Senedd includes significant changes to the RIA, the Welsh Government has committed to writing to the subject Committee responsible for scrutinising the Bill, and the Finance Committee, setting out the changes made. Where this applies, draft letters should be provided to the Minister for agreement as part of the clearance process for laying the revised Explanatory Memorandum.

15.187 If Stage 3 is the final amending Stage, and the Bill will next be considered at Stage 4, there is no requirement to update the Explanatory Memorandum prior to (or after) Stage 4. However, it is considered best practice to publish a revised Explanatory Memorandum to the Law Wales website following Royal Assent which reflects the final form of the Act.

15.188 As well as revising the Explanatory Memorandum, policy impact assessments should also be reviewed in light of amendments agreed at Stage 3 and consideration given to the publication of a revised

version, or to publication of an assessment where this was not previously considered necessary.

Further proceedings at the end of Stage 3

15.189 Further Stage 3 proceedings allow the Member in charge or any member of the Government (only) to table amendments to be considered at further Stage 3 proceedings. Such amendments are only admissible if, in addition to the usual admissibility requirements (see paragraphs 15.75 to 15.76 above) they are:

a. for the purpose of clarifying a provision of the Bill; or

b. to give effect to a commitment given during the (earlier) Stage 3 proceeding.

15.190 Such further Stage 3 proceedings could be needed, for example, if a non-Government amendment is accepted at Stage 3 which requires further amendment to ensure the Bill is technically effective, and the Government needs to rectify this before the Bill is passed – i.e. to clarify the provision. Alternatively, if it becomes clear during Stage 3 the amendments brought forward by the Government are unlikely to be agreed, and the Minister makes a commitment during the Stage 3 proceedings to look at them again, they may trigger a further Stage 3 proceeding to do so.

15.191 To move to further Stage 3 proceedings requires the agreement of the Senedd. Under Standing Order 26.39 the Member in charge, or any member of the government, may without notice move that the Senedd consider further amendments at further Stage 3 proceedings. The motion must be moved when all amendments have been disposed of, but prior to the Llywydd announcing the completion of Stage 3 proceedings.

15.192 LPGU will provide detailed advice on further Stage 3, including the:

a. lines to be used by the Minister, in the relevant speaking notes, to signal the intention to trigger further Stage 3;

b. impact for timetable (including tabling of amendments and the date the further Stage 3 proceedings will take place).

Preparing a revised Bill after Stage 3

15.193 The Legislation Office (of the Senedd Commission) will prepare a revised version of the Bill so as to include all agreed amendments. They will provide a copy of this to OLC for checking and will then

publish this to the Senedd webpage for the Bill. There are no actions arising for the Bill team (apart from OLC) in this regard. Agreement between OLC and the Legislation Office must be reached in time for the Bill to be published at least one working day prior to Stage 4 proceedings, otherwise those proceedings cannot take place.

Report Stage

15.194 Standing Order 26.45 provides for an additional amending Stage in the scrutiny process, which may be used if required – this is known as the Report Stage. It is not a routine part of the Senedd consideration process.

15.195 The Report Stage provides additional flexibility to the scrutiny process so the Senedd is able to return to certain issues in relation to a Bill if it wishes, particularly where substantial or significant changes (such as the insertion of a new Part or Chapter) have been agreed at Stage 3.

15.196 If it is considered a Report Stage may be required, LPGU must be informed immediately so they may make the appropriate arrangements with the Senedd Commission and find an appropriate slot in Plenary.

15.197 Report Stage, unlike further Stage 3 proceedings, opens the entire Bill to being amended and any Member may table amendments.

Start and end of Report Stage

15.198 Once Stage 3 is completed, the Member in charge (and only the Member in charge) may move without notice for the Senedd to consider amendments at a Report Stage. The motion does not have to be moved on the same day as Stage 3 is completed, allowing for consideration of next steps in light of the outcome of Stage 3 proceedings. If a simple majority of the Senedd agree the Bill will move into the Report Stage. Report Stage commences on the first working day a motion under Standing Order 26.45 is agreed and ends when all the amendments have been considered.

Standing Orders

15.199 In accordance with Standing Order 26.46, the Standing Orders for Stage 3 (26.29 to 26.44) are to be read as applying to Report Stage, and references to ‘Stage 3’ and ‘further Stage 3’ are construed as references to ‘Report Stage’ and ‘further Report Stage’ accordingly.

15.200 Therefore, the advice in this Handbook relating to Stage 3 applies to Report Stage also. It should be noted, however, that there can be no further full amending stages after Report Stage, although additional

amendments can be considered at further Report Stage, in an identical manner as further Stage 3 (see paragraphs 15.186 to 15.188).

Signifying King/Duke of Cornwall Consent

15.201 Where a Bill requires the consent of Her Majesty, or the Duke of Cornwall (see Chapter 12), Standing Orders prevents the Senedd from debating the question whether the Bill be passed (i.e. Stage 4) unless such consent has been signified by a member of the Government.

15.202 Therefore, where a Government Bill is affected in this way, the Member in charge will normally notify the Senedd that consent has been given immediately after the last amendment at Stage 3 (or Report Stage) or immediately before Stage 4 (although consent may be notified at any meeting of the Senedd). LPGU will notify the Llywydd's officials, in advance, so as to ensure the Member in charge is able to do so. LPGU will also provide the correct wording (as agreed with Legal Services) for the Minister.

Stage 4

15.203 Section 111(1)(c) of the Government of Wales Act 2006 (GoWA 2006) requires Standing Orders to include a final Stage at which the Bill can be passed or rejected by the Senedd – this is Stage 4. Stage 4 follows the completion of Stage 3 (or Report Stage where that has been undertaken) and is the vote on the Bill as amended. It is the last stage for the Bill.

Timing of Stage 4

15.204 Any Member may table a motion that a Bill be passed, but under Standing Order 26.47 the motion cannot be considered until at least five working days after the completion of Stage 3 (or Report Stage). The motion can be tabled at any time up to the working day before it is debated.

15.205 However, Stage 4 can immediately follow Stage 3 (or Report Stage) on the same day if any Member, with the agreement of the Llywydd, moves without notice that the Bill be passed.

15.206 Given the requirements of Standing Orders, the usual effect is that there is at least a week between Stage 3 (or Report) and Stage 4 proceedings.

15.207 No motion that a Bill be passed may be moved unless the text of the Bill is available in both English and Welsh.

15.208 The motion must be considered in Plenary; it cannot be considered in a committee or amended.

15.209 It is usual for around 15 minutes of Senedd time to be given to short speeches before the vote on the motion.

Vote at Stage 4

15.210 Section 111A(3) of GoWA requires the Llywydd to make a statement as to whether or not any provision of an Senedd Bill relates to a protected subject-matter, before the Bill can be voted on at Stage 4. Protected subject-matters are those that would modify, or confer power to modify, specific matters listed in the Bill, namely:

a. the name of the Senedd,

b. the persons entitled to vote as electors at an election for membership of the Senedd,

c. the system by which members of the Senedd are returned,

d. the specification or number of constituencies, regions or any equivalent electoral area,

e. the number of members to be returned for each constituency, region or equivalent electoral area, and

f. the number of persons who may hold the office of Welsh Minister appointed under section 48 or the office of Deputy Welsh Minister.

15.211 The Llywydd's decision as to whether or not a Bill relates to a protected subject-matter must be taken after the last time when a Bill may be amended but before the decision whether to pass or reject it: in other words between Stage 3/Report Stage and Stage 4. The current practice is for the Llywydd to lay a statement on the day of Stage 4 proceedings.

15.212 If the Llywydd decides that any provision of a Bill relates to a protected subject-matter, section 111A(4) of GoWA states that the Bill cannot be passed unless the number of Senedd Members voting in favour of it at the final stage is at least two-thirds of the total number of Senedd seats (i.e. currently 40 or more).

15.213 If the Llywydd decides that no provision of a Bill relates to a protected subject-matter a simple majority will determine whether the Stage 4 motion is agreed or not.

15.214 If the motion is agreed the Bill will be passed; where the motion is not agreed the Bill will be rejected.

15.215 Where voting is tied, the Llywydd will exercise her casting vote. In this case she will cast her vote in the negative (in accordance with Standing Order 6.20(ii)). This means the motion is not agreed and the Bill will be rejected.

15.216 Standing Order 26.50C requires there to be a recorded vote at Stage 4; it is not possible for a Bill to be passed 'on the nod'.

Preparing the speech

15.217 As part of the debate, the Minister will be expected to speak immediately before the vote. The Bill team will need to prepare a short speech, which needs to serve two functions: firstly, to place on record the importance of the Bill and why it should be passed; secondly, to enable them to give their thanks to the Committees, Members and stakeholders who have contributed to the scrutiny of the Bill. If the speech is to be in Welsh or partially in Welsh, and translation is required, the General Translation Unit will arrange it.

15.218 The Bill team should check with the Minister's Private Office whether any additional briefing or lines to take will be required for the Stage 4 debate.

The effect of Stage 4

15.219 When the motion at Stage 4 is agreed, it means the Senedd has passed the Bill; it does not mean that the Bill is now an Act, nor does it mean that its provisions are in force. Bill teams will need to ensure their communications plans reflect this.

15.220 Once passed by the Senedd the Bill will enter the 'period of intimation' – further guidance on this is given in Chapter 17.

Preparing a revised Bill after Stage 4

15.221 When the Bill has been passed, the Legislation Office (of the Senedd Commission) will prepare a revised version of the Bill to include all agreed amendments. They will provide a copy of this to OLC for checking and will then publish this to the Senedd webpage for the Bill. Although there are no actions arising for the Bill team in the preparation of the revised Bill, the Bill team will need to ensure the Explanatory Notes to the Bill are updated to reflect the final version of the Bill (see Chapter 9).

Fall, Rejection or Withdrawal of Bills

15.222 If a Bill falls or is rejected by the Senedd, no further proceedings may be taken on that Bill or a Bill which, in the opinion of the Llywydd, is in the same or similar terms. The Bill (or similar Bill) cannot be introduced into the same Senedd within the period of 6 months from the date on which the Bill fell or was rejected.

15.223 There is an exception to this rule relating to Bills which were rejected as they were deemed to require, but did not achieve, a super-majority. If the Supreme Court then decides on a reference made under section 111B(2)a of GOWA that no provision of the Bill related to a protected subject-matter, it can then be proposed that such a Bill be reconsidered (see Chapter 17).

15.224 A Bill may be withdrawn at any time by the Member in charge during Stage 1, but may not be withdrawn after Stage 1 has been completed except with the agreement of the Senedd.

15.225 Where a Bill has not been passed by the Senedd or approved (following reconsideration) before the end of that Senedd, it will fall. The Bill, or a similar Bill, can be introduced in any subsequent Senedd.

Chapter 16 – Emergency Bills and Bills proceeding through a 'fast track' procedure

This Chapter provides an overview of Government Emergency Bills, and Bills which go through the Senedd scrutiny process quicker than usual (i.e. they are fast-tracked).

This Chapter does not cover the preparation of a Bill and supporting documentation, which is covered elsewhere in this Handbook; similarly in providing guidance on the process of Senedd scrutiny, it only refers to the key differences from the usual process of scrutiny (as set out in Chapter 15).

If a Group is considering the need for an Emergency Bill or utilising an expedited timescale for Senedd consideration, contact should be made with the Legislative Programme and Governance Unit (LPGU) in the first instance for advice and support.

Emergency Bill

16.1 An Emergency Bill is a Government Bill that needs to be enacted more quickly than the Senedd's usual legislative process allows. A definition of an Emergency Bill is not provided in the Government of Wales Act 2006 (GoWA 2006) or in the Senedd's Standing Orders, however Standing Order 26.95 states that:

"If it appears to a member of the government that an Emergency Bill is required, he or she may by motion propose that a government Bill, to be introduced in the Senedd, be treated as a government Emergency Bill."

16.2 Only a member of the Government may bring forward an Emergency Bill.

16.3 Guidance on special considerations in relation to Emergency Bills is given below, paragraphs 16.19 to 16.24.

Scrutiny of an Emergency Bill

16.4 As the purpose of introducing an Emergency Bill is to enable the quick enactment of urgent legal provisions, the Senedd's Standing Orders set out a streamlined version of the Senedd's usual legislative processes to avoid any time delays.

16.5 Prior to the introduction of an Emergency Bill in the Senedd, the Lead Minister must first propose a motion asking for it to be treated by the Senedd as an Emergency Bill. Under Standing Order 26.95A, the motion must be accompanied by a statement explaining why the Bill should be treated as an Emergency Bill and the estimated cost and

other consequences of not doing so. The content of the statement would be a matter for the Lead Minister, but could be scrutinised by other Members, and could therefore inform their consideration of whether the Bill should be allowed to proceed as an Emergency Bill. The motion can also propose:

a. the Emergency Bill is introduced without an Explanatory Memorandum (under Standing Order 26.96) – but the Government would usually seek to prepare an Explanatory Memorandum (including a Regulatory Impact Assessment (RIA)); and

b. the Bill is introduced in one language only (under Standing Order 26.5) – but the Government would usually seek to prepare the Bill in both Welsh and English.

The Senedd must agree the motion before an Emergency Bill can proceed.

16.6 As with other Bills introduced into the Senedd, a Government Emergency Bill will need to be considered by the Llywydd, so she may make a statement under Standing Order 26.4, before it can be introduced; however, the period of determination is likely to be considerably less than the usual four weeks (see Chapter 14). The overall timetable for the Bill, including the period of determination, will be prepared by LPGU.

16.7 On introduction in the Senedd, an Emergency Bill must be accompanied by a statement from the Lead Minister stating that, in his or her view, the provisions of the Bill are within the legislative competence of the Senedd (as is the case with non-Emergency Bills).

16.8 At the same time, the Lead Minister must also propose a motion to agree a timetable for the consideration of Stages 1 to 4 of the Emergency Bill – this is different from the usual process for establishing a timetable for the consideration of a non-emergency Bill, where the Business Committee decides this. Standing Orders provide that all of the Stages can be taken on a single day in a sitting week, although the Government could propose consideration over a longer period (for example, a week or two), to allow Members time to look at the Bill and prepare any amendments to it.

16.9 The way in which the Senedd considers an Emergency Bill broadly follows the usual four stage legislative process, but with some significant alterations to speed them up. These are outlined below:

a. At Stage 1, the Lead Minister must table a motion proposing that the Senedd agree to the general principles of the Emergency Bill. No option exists for the Bill to be referred to an Senedd Committee for detailed consideration;

b. If the Bill requires a Financial Resolution this will still need to be agreed before Stage 2 proceedings can be held; the debate for agreement of the Financial Resolution would take place immediately after the Stage 1 debate;

c. Stage 2 requires an Emergency Bill to be considered by a Committee of the Whole Senedd (as opposed to another Senedd Committee), to be chaired by the Llywydd. This takes place in the Siambr, and the rules applicable to the conduct of Committee business apply (as set out in Standing Order 17);

d. If a Bill is amended at Stage 2, there is no requirement for the Lead Minister to prepare a revised Explanatory Memorandum;

e. A gap of 15 working days between Stages 2 and 3 is not required when considering an Emergency Bill. Stage 3 proceedings can therefore take place immediately following the completion of Stage 2. The timescales for amending stages would be considered by the Senedd when it is asked to agree the timetable;

f. There is no option for a Report Stage during the consideration of an Emergency Bill;

g. The usual requirement for amendments to be tabled at least five days before they are due to be considered is dis-applied in relation to the consideration of Emergency Bills. Instead, the Llywydd is allowed discretion to determine the amount of notice an Senedd Member must give if he or she intends to table an amendment to an Emergency Bill;

h. The text of an Emergency Bill does not have to be available in both English and Welsh for it to be passed by the Senedd at Stage 4.

16.10 The use of Emergency Bills in the UK Parliament and at the other devolved legislatures is rare.

Fast-track or expedited procedure Bills

16.11 The term ‘fast-track’ or ‘expedited’ is given to Bills which follow the usual four stage legislative process, but do so in the shortest time possible. They are not Emergency Bills, and do not attract the same requirements and differences in Standing Orders which have been outlined above.

16.12 A fast-track Bill moves through the Stages as quickly as possible but still according to the requirements of Standing Orders for a normal Bill. Therefore expediting legislation is more of a question of managing timing than of a formalised procedure. If a Bill usually takes between 6

and 8 months to pass through the Senedd, a fast-track Bill could take around 3 months.

16.13 Guidance on special considerations in relation to fast-tracking legislation is given below at paragraphs 16.19 to 16.24.

Scrutiny of fast-track Bills

16.14 Prior to introduction of the Bill into the Senedd, the Minister with responsibility for Government Business will propose a timetable for consideration of the Bill to Business Committee. The Minister would, in all likelihood, also propose the Bill is not referred to an Senedd Committee for detailed consideration (the Bill would therefore proceed straight to the Stage 1 general principles debate after being introduced).

16.15 On introduction into the Senedd, the Bill is accompanied by an Explanatory Memorandum (which includes the RIA) in the usual way.

16.16 The way in which the Senedd would then consider the Bill will follow the usual four stage legislative process, but the time between Stages will follow the minimum as set out in Standing Orders. These are outlined below:

a. After Introduction and in Stage 1, the Lead Minister must table a motion proposing that the Senedd agree to the general principles of the Bill;

b. If the Bill requires a Financial Resolution it will still need to be agreed before Stage 2 proceedings can be held. The debate for agreement of the Financial Resolution would take place immediately after the Stage 1 debate;

c. If the general principles (and a Financial Resolution, if required) are agreed, the Bill would enter Stage 2. It is likely the timetable would allow for just one meeting of the Committee, which would take place no sooner than fifteen working days after the Stage 1 debate – but as soon as possible after that period has elapsed;

d. There would then be a second gap of 15 working days between Stages 2 and 3, and again the Stage 3 consideration would be timetabled to take place as soon as possible;

e. Report Stage could take place for the Bill, if it is was considered necessary;

f. The agreement of the Presiding Officer would, in all likelihood, be sought for Stage 4 to take place on the same day as Stage 3 (or Report Stage) concludes.

16.17 As with Emergency Bills, the use of fast-track Bills is rare. The Welsh Government has to date brought forward two such Bills, both of which were passed by then National Assembly for Wales they have become the National Health Service Finance (Wales) Act 2014 and the Control of Horses (Wales) Act 2014.

16.18 In both cases, although the Bills were not referred to responsible Committees for consideration in Stage 1, the Members in charge of those Bills chose to speak with subject Committees with an interest in the Bill. This was not a formal part of the process of consideration, but allowed Members of those Committees to learn more about each Bill. Those Members were then well informed for the Stage 2 consideration. Evidence was also given to the Constitutional and Legislative Affairs Committee.

Special considerations for emergency bills and those which are fast-tracked

16.19 As noted above, neither GoWA 2006 nor Standing Orders provide a definition of what is to be considered as an 'Emergency' Bill. Research into emergency bills brought forward in the UK Parliament and other devolved legislatures shows that they usually occur in response to crises, specific events or court rulings.

16.20 In 2009 the House of Lords Constitution Committee considered[30] such legislation and gave a number of reasons why Bills had been fast-tracked in the UK Parliament. These included:

a. remedying an anomaly, oversight, error or uncertainty that has come to light in legislation;

b. responding to the effects of a court judgment;

c. ensuring legislation is in force in time for a forthcoming event;

d. dealing with economic crisis;

e. changing a public authority's borrowing or lending limit or other funding issues;

f. dealing with a crisis in prisons as a result of industrial action;

g. responding to international agreements;

[30] House of Lords: Select Committee on the Constitution *'Fast-track Legislation: Constitutional Implications and Safeguards'* (July 2009) HL Paper 116-1.

g. implementing Treasury announcements in the Budget or autumn statement.

16.21 However, the single largest category in terms of expedited bills in the UK Parliament related to the Northern Ireland peace process and devolution settlement.

16.22 If the Government is proposing a Bill be treated as a Government Emergency Bill, the Senedd will need to be satisfied that there is a genuine need for such a Bill to be considered in this way. Although not definitive, it is likely the Senedd would see a Bill as suitable for being treated in such an expedited way, if the reasons given clearly correlated with the reasons other legislatures have accepted emergency provisions – for example, those set out above in paragraph 16.20.

16.23 If the Government is proposing a Bill be fast-tracked through the consideration process (rather than be treated as a Government Emergency Bill), the Senedd is likely to wish to be satisfied that there are good grounds for not having a full Stage 1 consideration. Such grounds could include:

a. the content of the Bill being limited to a single, narrowly drawn, topic;

b. the policy of the Bill to be one which has previously been considered by a Committee of the Senedd (for example, as part of an inquiry by a Committee and where the Bill is responding to the recommendations of that inquiry); or

c. the Bill dealing with matters which follow well-established precedents, systems or legislation, and as such not introducing significant changes to existing regimes.

16.24 Fast-tracking legislation can place enormous pressure on Bill teams, and significant demands on drafters and translators, and those who work alongside Bill teams. The impact for the Bill team, and for other Bills within the Government's legislative programme, will need to be assessed as part of the consideration of whether such an approach is the right one in all of the circumstances. During an Emergency or fast-track Bill's development and progress, it is essential to keep the Office of the Legislative Counsel and Translation Service informed of anticipated work so they are able to plan their resources to manage the demand.

Chapter 17 – Intimation, Reconsideration and Royal Assent

This Chapter provides guidance on the immediate period following the passing or rejection of the Bill by the Senedd, and the process around seeking Royal Assent. It is not intended to be a comprehensive guide, and further advice is available from the Legislative Programme and Governance Unit (LPGU) and Legal Services.

Period of intimation – where the Senedd passes a Bill

17.1 After the Senedd passes a Bill there is a period of intimation. This is a four week period beginning with the passing of the Bill during which time the Counsel General or the Attorney General, under section 112 of the Government of Wales Act 2006 (GoWA 2006), may refer the Bill to the Supreme Court. Such a referral would be made for a ruling on whether the Bill or any of its provisions are within the legislative competence of the Senedd. The Supreme Court can in turn refer the issue to the European Court of Justice for a preliminary hearing if the competence issue involves an issue of EU law.

17.2 During this period of intimation, the Counsel General and the Attorney General may also under section 111B of GOWA 2006 refer the question of whether any provision of a Bill relates to a protected subject-matter[31] to the Supreme Court for decision.

17.3 During the same period of intimation the Secretary of State (for Wales) may make an order under section 114 of GoWA 2006. Such an order[32] prevents the Bill from being submitted to Her Majesty for Royal Assent, on the grounds that it:

a. would have an adverse effect on a reserved matter;

b. would have an adverse effect on the operation of the law as it applies in England; or

c. would be incompatible with any international obligation or the interests of defence or national security.

[31] The protected subject-matters are listed in section 111A of GOWA 2006 and include matters such as the name of the Senedd, the persons entitled to vote as electors at an election for membership of the Senedd, and the system by which members of the Senedd are returned.

[32] The order is subject to annulment in pursuance of a resolution of either House in Parliament, commonly referred to as the negative procedure.

Period of intimation – where the Senedd reconsiders a Bill or where it has been considered by the Supreme Court

17.4 In addition to the period of intimation following the passing of the Bill, the Secretary of State could make an order during a period of four weeks beginning with:

a. any subsequent approval by the Senedd of a Bill which has been through the Reconsideration Stage; or

b. the Supreme Court deciding or otherwise disposing of a reference of a Bill by the Attorney General or Counsel General under sections 111B or 112 of GoWA 2006.

17.5 The Secretary of State cannot make an order if he/she has notified the Llywydd that no order is to be made in relation to the Bill (that letter will normally be received before the end of the intimation period beginning with the passing of the Bill). In these circumstances, there is no requirement to wait a further four weeks once the Supreme Court has decided a reference.

Period of intimation – where the Llywydd has decided that a provision of the Bill relates to a protected subject-matter and the Senedd subsequently rejects the Bill

17.6 Under section 111B of GoWA 2006 the Counsel General or the Attorney General may make a reference to the Supreme Court in relation to a Bill at any time during the period of four weeks beginning with the rejection of the Bill, if the Llywydd has decided that a provision of the Bill relates to a protected subject-matter (see chapters 13 and 15).

Process

17.7 After the Bill has been passed by the Senedd (or approved following Reconsideration Stage (see below)), the Llywydd will write to the Counsel General and the Attorney General (copied to the Wales Office) reminding them they have four weeks in which to refer the question of the Senedd's competence to the Supreme Court. The Llywydd will also write to the Secretary of State in relation to his/her power to make an order preventing the Bill from being submitted for Royal Assent.

17.8 If the Counsel General, Attorney General (or Solicitor General) and the Secretary of State all confirm, before the end of the four-week period, that a referral or intervention will not be made, the Bill can be submitted for Royal Assent at that time. Once the Counsel General or

Attorney General (or Solicitor General) have told the Clerk they do not intend to make a reference to the Supreme Court, they cannot subsequently make a reference.

17.9 The Bill team should plan on the basis that the Bill will need to wait for the full 4 weeks before it can be submitted for Royal Assent. Once the 4 weeks have expired the Bill can be submitted for Royal Assent – this is the case even if the Counsel General, Attorney (or Solicitor) General or Secretary of State have not responded.

Referral to the Supreme Court

17.10 If the Counsel General or the Attorney General refers a Senedd Bill to the Supreme Court, the Director of Legal Services will arrange for appropriate Legal Services resources to be available for the litigation.

17.11 The Supreme Court will hear representations from the Attorney General, the Counsel General and any other interested parties in a hearing and will then – after a period of time – issue its judgment.

17.12 Where the Supreme Court finds the Bill and/or its provisions within the legislative competence of the Senedd, the Bill will, in due course go onto the process of receiving Royal Assent (see below), provided the Secretary of State does not make an Order to prevent this (see paragraph 17.3 above). Where the Supreme Court finds the Bill and/or its provisions outside the legislative competence of the Senedd, or the reference is withdrawn in the circumstances set out in GoWA 2006, there is an opportunity for the Senedd to reconsider the Bill (this is known as 'Reconsideration of Bills Passed' in Standing Orders – see below).

Secretary of State intervention

17.13 If the Secretary of State makes an intervention under section 114 of GoWA 2006 and makes an Order prohibiting the Llywydd from submitting the Bill for Royal Assent, the Bill may be reconsidered again at the Reconsideration Stage.

Reconsideration Stage

17.14 In cases where:

a. the Supreme Court decides on a reference made under section 111B(2)a of GOWA 2006 in relation to a Bill rejected by the Senedd, that no provision of the Bill that is subject to the reference relates to a protected subject-matter;

b. the Bill has been referred to the Supreme Court and the Court has made a reference to the European Court of Justice for a preliminary hearing, but neither reference has been decided or disposed of; or

c. the Supreme Court has decided that the Bill or any provision of it is not within the legislative competence of the Senedd; or

d. the Secretary of State has made an order under section 114 of GoWA 2006;

any Member may, by motion, propose the Senedd reconsiders the Bill.

17.15 In the situation described in paragraph 17.14(b), if the Senedd resolves that it wishes to reconsider the Bill, the Clerk must notify the Counsel General and the Attorney General of that fact, and the person who made the reference in relation to the Bill must request the withdrawal of the reference.

17.16 In all cases, if the Senedd agrees the motion, the Bill will enter the Reconsideration Stage. This Stage takes place in Plenary and is an amending Stage.

17.17 Only amendments which, in addition to the usual rules of admissibility – see paragraphs 15.74 and 15.75 above – are solely for the purpose of resolving the issue may be tabled. The issue is the reason the Bill has not progressed to Royal Assent.

17.18 Once the amendments have been dealt with, any Member can then propose the Senedd approves the Bill as amended. Note this time it is approval of the Bill, rather than passing of the Bill.

17.19 A motion that a reconsidered Bill be approved may not be moved until the Llywydd has stated whether or not any provision of the Bill relates to a protected subject-matter. A vote to approve a Bill after reconsideration is subject to the same rules as that to pass a Bill at stage 4, see paragraphs 15.210 – 15.216 in Chapter 15 above.

17.20 If the Bill is approved, it will then enter a further period of intimation before Royal Assent (during which a further referral or intervention could occur). If the Bill is not approved, it will fall.

17.21 Following reconsideration, the Bill may again be subject to legal challenge and there is no limit to the number of times a Bill may be reconsidered following approval by the Senedd

17.22 When the Senedd has agreed the final text of the Bill and the period of intimation has ended, the Bill is submitted for Royal Assent (whereupon the Bill will become an Act).

Preparing the Bill for Royal Assent

17.23 The Legislation Office of the Senedd Commission prepares a 'Royal Assent version' of the Bill in both Welsh and English. This will contain all of the agreed amendments to the Bill, the relevant renumbering of sections and Schedules, and any printing changes.

17.24 Legal Services prepares the Letters Patent (the document which is signed by Her Majesty in her own hand) and deliver it to the Legislation Office usually during the third week of the period of intimation.

17.25 The Legislation Office then submits the Bill and the Letters Patent in Welsh and English to Her Majesty's Principal Private Secretary. At the same time The National Archives are sent a certified copy of the official print of the Act, and informed of the expected date of Royal Assent. The National Library of Wales is also notified of when the Letters Patent have been sent. The Legislative Translation Unit checks the Welsh text if required.

The Welsh Seal

17.26 Once the signed Letters Patent and Royal Assent version of the Bill are returned, the First Minister will apply the Welsh Seal to the Letters Patent. The notification to the Senedd by the Clerk to the Senedd of the application of the Welsh Seal means the Bill has received Royal Assent, and is now an Act of the Senedd.

17.27 The Act and the Letters Patent will be sent to the National Library of Wales, where they are preserved and open to public inspection in accordance with section 115(5F) of GoWA 2006.

17.28 Legal Services arrange for the Letters Patent to be published in the Edinburgh, London and Belfast Gazettes – this is a public announcement of the new Act. The Clerk to the Senedd will notify the Senedd that the Bill has received Royal Assent, by laying a Written Statement. It is usual for the Llywydd to make a short announcement of this at the first available Plenary meeting.

17.29 The National Archives will publish the Act and the Explanatory Notes (see below) to www.legislation.gov.uk where it will be available in its final form, together with any subsequent changes to it made by later legislation.

Explanatory Notes

17.30 As set out in Chapter 9, the final version of the Explanatory Notes will need to be prepared by the Bill team in readiness for Royal Assent and publication by The National Archives. This is normally the key activity for the Bill team during the period of intimation.

Dissolution

17.31 A Bill which has been passed by the Senedd, and not challenged on competence grounds, can receive Royal Assent after dissolution.

17.32 It is then for the Llywydd to submit the Bill for Royal Assent, and it is the Clerk to whom notice of Royal Assent will be given (section 115 of GoWA 2006); those functions do not depend on the Senedd. So if a Bill is passed immediately before the Senedd is dissolved, the Llywydd can submit it for Royal Assent at any time thereafter (subject, of course, to the timing restrictions in section 115 of GoWA 2006).

Referrals to the Supreme Court

17.33 Where a Bill is found to be within competence, or the Supreme Court has decided on a reference made under section 111A(3) of GOWA 2006 that no provision of the Bill relates to a protected subject-matter, or a referral is withdrawn, as long as the Bill has been passed by the Senedd in which it was introduced, Royal Assent can be obtained at any time thereafter (subject to the restrictions in section 115 of GoWA 2006). According to Standing Order 26.77, a Bill only falls if it has not been passed or approved before the Senedd is dissolved. It then falls to the Llywydd to submit the Bill for Royal Assent and the Clerk to receive notice that Royal Assent has been given, as above.

17.34 Where a Bill requires reconsideration, Standing Order 26.77 states that a Bill falls if it is not passed or approved by the end of the Senedd in which it was introduced.

Chapter 18 – Commencement

Once a Bill has gained Royal Assent, and become an Act of the Senedd, it may be commenced. This Chapter provides guidance on conventions on commencement, and on how an Act may be commenced.

18.1 Commencement is part of the implementation of an Act, and it is essential the implementation programme is considered as part of the early development of the Bill project. This is because the timescales and arrangements for implementation will have a bearing on, amongst other matters: the instructions to the Office of the Legislative Counsel (OLC) for preparing the Bill; the plans for evaluation of the project which will be set out in the Regulatory Impact Assessment (RIA); the development of the subordinate legislation and the Statements of Policy Intent; and the development and execution of the communications strategy. It is therefore vital that the Bill team keeps commencement and implementation, and the guidance in this Chapter, under consideration during the lifetime of the development of the Bill and its consideration in the Senedd – rather than turning to these matters only once the Senedd has passed the Bill.

Conventions on commencement

18.2 The rule of law requires that the law should be fair and certain. Any person affected by a law should have access to that law so that they know what it is and have a period in which to adjust their behaviour to comply with it.

18.3 There is a presumption that all legislation will have prospective effect - that is it will change the law with regard to events that occur on and after the day it comes into force.

Commencing an Act

18.4 At the time of instructing OLC in respect of the Bill, the Bill team will need to provide instructions in relation to commencement. The instructions should explain the plans for implementation and how it is intended to move from the current system to the new one. The instructions will need to identify any provisions that are to be commenced earlier than two months after Royal Assent or which are to have retrospective effect.

18.5 The commencement section in the Act will set out how the Act (or provisions therein) will commence; typical examples include:

a. immediately when the Act is made (i.e. on Royal Assent);

b. at a point in the future (i.e. the date is prescribed on the face of the Act);

c. with retrospective effect (i.e. from a past time);

d. only if and when some future event occurs, for example the making of a commencement order.

Commencement orders

18.6 A commencement order is one which exercises a power to appoint the day on which an Act, or part of an Act, is to come into force. Such powers are exercised in a separate order or series of orders, not by a provision in a statutory instrument dealing with other matters.

18.7 The enabling powers (in the Act) will sometimes allow transitional, transitory, saving, consequential, incidental or supplementary matters (collectively referred to as ancillary matters) to be included. These terms are explained below:

a. transitional – provision about moving from one state of affairs to another, e.g. about when and how the new law applies to existing circumstances;

b. transitory – provision that is intended to apply only temporarily, e.g. until new provisions come fully into force;

c. saving – provision to preserve the effects of things done under the old law once the new law comes into force;

d. consequential – provision that is a consequence of the main provisions;

e. incidental – provision that is an incidental or minor aspect of the main provisions;

f. supplementary – provision adding something to the main provisions in order to fill in details.

18.8 The team responsible for implementation of the Act will need to instruct Legal Services to prepare one or more commencement orders in the usual way for instructing in relation to subordinate legislation. Advice should be sought, in the first instance, from the relevant subject lawyer.

Consideration of commencement provisions by the Senedd

18.9 The Government considers provisions in Bills to make transitional, transitory or saving provision in commencement orders to be normal practice. Where any powers include consequential, supplementary or

incidental provision in commencement orders, these will be explained in the Explanatory Memorandum of the Bill (i.e. within Chapter 5 of that document).

Chapter 19 – Non-government Bills

The Government introduces most Bills into the Senedd but an individual Senedd Member, the Senedd Commission or an Senedd Committee can also introduce a Bill. This Chapter provides guidance on Member, Commission and Committee Bills.

Non-government Bills: introduction and context

19.1 Non-government Bills are those Bills proposed by an Senedd Member (AM), an Senedd committee or the Senedd Commission. An individual AM may seek agreement of the Senedd to introduce a Bill (known as 'leave to introduce') if successful in a ballot held by the Llywydd, while a Committee Bill or a Commission Bill may be introduced by a Member authorised by the relevant Committee or by the Commission (though under the Standing Orders the Commission's remit in this regard is limited to provision relating to the Commission's functions).

19.2 The potential for Members who are not in Government to introduce legislation is something that is common to most legislatures. However, non-government bills have been more likely to become law in the Senedd than in many other legislatures.

19.3 This has important implications for the Counsel General and for the Welsh Ministers, due to the Government's overarching responsibility for the rule of law. The Government bears overall responsibility for the statute book, and therefore must seek to ensure that all legislation (whether the Government agrees with the effect of it or not) is both technically sound and workable.

Member Bills

Llywydd's ballot

19.4 Standing Orders state that "*from time to time*", the Llywydd must *"hold a ballot to determine the name of a Member, other than a member of the government, who may seek agreement to introduce a Member Bill"*.

19.5 The ballot must include the names of all those Members who have applied to be included and who have tabled the required pre-ballot information (see below).

19.6 The ballot is held at the Llywydd's discretion. During the Fourth Assembly it tended to be held once a term (i.e. three times in each legislative year), whereas in the Fifth Assembly a ballot has been held

approximately once in each legislative year. The result of the ballot is announced by the Llywydd in Plenary and published on the Senedd's website.

19.7 The Legislative Programme and Governance Unit (LPGU) monitors the ballot process, and will engage with the relevant policy Group and team within Legal Services when the name of a Member is selected.

Pre-ballot information

19.8 Any Senedd Member who is not a member of the Welsh Government, and not previously selected in a ballot during the Senedd, but who wishes to introduce a Bill in the Senedd, must first submit a proposal for a Bill into a ballot.

19.9 Standing Orders require Members who wish to be included in the ballot to provide particular 'pre-ballot information', namely:

a. the proposed title of the Bill; and

b. the proposed policy objectives of the Bill.

19.10 All pre-ballot information tabled is published in a list on the Senedd's website. Members can only enter one proposal for any ballot but may enter different proposals for different ballots.

19.11 Standing Orders also prohibit Member Bills from seeking to amend existing taxes or introduce new taxes.

Debate seeking the Senedd's agreement to introduce a Bill

19.12 A Member who is successful in a ballot can table a motion (within 25 working days of the date of the ballot) seeking the Senedd's agreement to introduce a Bill.

19.13 Standing Orders state that the motion must be accompanied by an Explanatory Memorandum. This is not the same as an Explanatory Memorandum laid on introduction of the Bill. Instead significantly less detail is required, as it only needs to set out:

a. the proposed title of the Bill;

b. the proposed policy objectives of the Bill;

c. details of any support received for the Bill, including details of any consultation carried out; and

d. an initial assessment of any costs and/or savings arising from the Bill.

19.14 The proposed title and policy objectives provided should be broadly consistent with what was provided in the pre-ballot information. The Member should explain the reasons for any changes in the Explanatory Memorandum.

19.15 Standing Orders state that time must be made available for such a motion to be debated within 35 working days of the date of the ballot (not counting working days in a non-sitting week). The purpose of the debate is to provide the Member with an opportunity to make their case for the Bill and to convince other Members to support the motion. [33]

19.16 The motion is then moved: if there are no objections to the motion it will go through 'on the nod'; where there are objections the Senedd will vote upon the motion:

a. a simple majority will determine whether the motion is agreed or not. If the motion is agreed permission to formally introduce the Bill (in due course, see below) is given; where the motion is not agreed no permission is given and the Bill will not be introduced;

b. where voting is tied, the Llywydd will exercise her casting vote. In this case she will cast her vote in the affirmative (in accordance with Standing Order 6.20(i)). This means the motion is agreed and permission to formally introduce the Bill (in due course) is given.

19.17 The agreement to the motion does not mean the Bill will be introduced immediately. However, Standing Orders provide that the Member must introduce the Bill within 13 months of leave being given, otherwise the opportunity to bring forward the Bill will fall.

19.18 Also note that Standing Orders prohibit any Member from resubmitting a proposal with similar policy objectives within 6 months of the motion being disagreed.

Government's response to the ballot

19.19 As noted above, LPGU will advise the relevant policy Group if a Member has been selected in the ballot, so that policy officials and lawyers can provide advice to the relevant portfolio Minister on the policy objectives set out in the Explanatory Memorandum. This involves assessing the merits of each proposal from a policy, political

[33] It should be noted that there are also, separately, opportunities for MSs to table a motion for debate on a legislative proposal during Senedd business in Plenary. Unlike debates following a Member Bill ballot, those debates do not give an MS leave to introduce a Bill and any motions agreed by the Senedd during those debates do not bind the Government.

and financial perspective. Advice is to be provided to Cabinet ahead of the leave to introduce debate, in order for the government to decide whether or not to support the Bill.

19.20 Following a ballot, and ahead of Cabinet consideration preceding the leave to introduce debate, it is recommended the relevant portfolio Minister (with support from officials) meet with the Member successful in the ballot. This is to gain further information about the proposed Bill and to understand better its policy intent, and will help Cabinet to make an informed decision about the Bill.

19.21 It is vital that policy officials and lawyers engage quickly and fully in the development of advice to the Minister in the period leading up to the Cabinet discussion and the debate seeking leave to introduce, so as to ensure that all of the key implications of a Member Bill proceeding are clearly understood before that debate. The Minister will need advice, amongst other things, on:

a. whether the proposal is consistent or not with existing Government policy;

b. any clear concerns about whether the proposal would be within the legislative competence of the Senedd, if these can be identified through the information provided;

c. the possible financial implications of legislative change, as far as they can be ascertained from the information provided;

d. the impact on the Government of the Bill proceeding to introduction and Senedd consideration – such impacts will include staff resources for policy development, financial assessment, legal analysis, drafting of any Government amendments,[34] and translation, as well as in supporting the Minister with the process of Senedd consideration. Experience has shown there is a significant amount of work required by officials if a Member Bill proceeds and this should be assessed as part of the advice to the Minister; and

e. the impact on the Government's own legislative programme – such impacts will include a possible diversion of drafting and translation resource away from Government Bills, possible delays to the introduction of Government Bills, as well as a potential impact on the timetable for Senedd consideration of Government Bills: and

[34] The Senedd Commission prepare the Bill for the Member, not the Office of the Legislative Counsel, but significant work will be required once the Bill has been introduced to assess whether or not proposals to amend the Bill should be made by the Government, and to prepare any Government amendments.

f. the likelihood of the proposal being successful were it to be introduced.

19.22 Cabinet must decide whether it wishes to support the Bill or to oppose it. Remaining neutral should only be an option where the Bill concerns a matter of conscience.

19.23 Should Cabinet decide to support a Bill, this will have resource implications which may impact on the Government's own legislative programme. Policy, legal, drafting and financial analysis expertise would need to be committed to the Bill. The same type of support would need to be provided to Ministers as for a Government Bill.

19.24 In light of the Government's overarching responsibility for the Statute Book and the wider rule of law, much of the same resource would also need to be committed if, despite the Government opposing the Bill, it has a reasonable prospect of becoming law.

19.25 In dealing with any non-government Bill that is likely to become law the Government must ensure as a minimum that:

a. the policy objective is understood and is given effect by the Bill,

b. the Bill is within competence and consistent with the rule of law,

c. the Bill is clearly drafted, and

d. the financial implications and the regulatory impact are understood.

19.26 LPGU can provide further advice on the nature of Government support, the resource implications, and securing a Cabinet decision.

19.27 The Minister whose portfolio the policy lies within will be expected to participate in the debate seeking leave to introduce, so as to set out to the Senedd the Government's position in relation to the proposed Bill. Again, advice and speaking lines will need to be provided to the Minister in advance of this debate.

Development of the Bill

19.28 If a Member secures leave to introduce a Member Bill, prior to introduction of the Bill into the Senedd, the Member in charge may wish to consult with potential stakeholders. While there is no requirement in Standing Orders for a Member to consult on a legislative proposal, there is an expectation that the Member would probably consult on a Draft Bill during the 13 month period following leave to introduce and prior to its formal introduction. There is no

requirement for any consultation to take the usual approach taken by the Government.

19.29 The Senedd Commission will generally arrange for the Bill to be drafted for the Member, rather than it being drafted by the Office of the Legislative Counsel (OLC). In consequence, the first time the Government may see the Bill is when it is introduced into the Senedd. The Member in charge will also have to prepare an Explanatory Memorandum, which meets the requirements of Standing Order 26.6, for introduction of the Bill. There is no requirement for the Member to use the same template as the Government uses, and again there is no requirement that drafts of the Explanatory Memorandum be shared with the Government. Officials might be approached to provide costs, or information to support the development of the Explanatory Memorandum. Such approaches will be made through LPGU, who will then contact the policy Group. Requests for information should be handled in the same way as requests for information by Senedd Members or their support staff.

19.30 The engagement of the Government during this period will vary from Bill to Bill, depending on whether or not the Government supports the policy proposal.

19.31 Once final versions of the Bill and Explanatory Memorandum (in both English and in Welsh) have been drafted, they will be sent by the Member to the Llywydd for her determination (in the same way as for a Government Bill).

Introduction of the Bill

19.32 As with Government Bills, a Member Bill is formally introduced into the Senedd by being laid, along with accompanying documentation, in the Senedd's Table Office.

19.33 The Member in charge will make a legislative statement in Plenary on the Bill's main aims and objectives shortly after its introduction. This will take place during Senedd time (i.e. a Wednesday). During the time allocated to the statement, other Senedd Members may ask questions to the Member in charge in relation to the Bill or raise issues of their own in relation to its content, aims and objectives.

19.34 It is expected that the Minister will also ask a question or raise an issue with the Member in charge. Officials will therefore need to provide advice and speaking lines for this debate. It is likely the Minister will only have a short time allocated to speak, perhaps 2 to 3 minutes, and as such the response should be concise. It is also important to

remember that this is not a debate, but instead a statement by a Member – the Minister's intervention should, therefore, lead to asking a question or two of the Member, rather than only stating the Government's position (which would be the approach if this was a debate).

19.35 It is important to note that the introduction of the Bill, and accompanying Explanatory Memorandum, may be the first time that the Government sees these documents. If this is the case, policy officials and Legal Services will need to be prepared to analyse the Bill quickly once it is available in order to provide advice to the Minister ahead of the Member's legislative statement being delivered.

Senedd consideration of the Bill

19.36 Once introduced, a Member Bill is subject to the same four stage legislative process in the Senedd as a Government Bill (as set out in Chapter 15).

19.37 Therefore, the Bill will usually be referred to a responsible Committee for their consideration during Stage 1. Consideration during this period will usually take around 10-12 sitting weeks, and the Member in charge and other stakeholders will be invited to give evidence to the Committee. The Minister will also be invited to give evidence. Officials will need to provide advice for this, and are likely to be required to attend the Committee in support of the Minister.

19.38 Again it is essential policy officials and lawyers engage fully in the evaluation of the Bill and the development of advice to the Minister during this period, so as to ensure that the impact of the legislative proposals are understood together with the implications of the Bill proceeding past Stage 1 of the Senedd's consideration.

19.39 The responsible Committee will report on the Bill to the Senedd, ahead of the general principles debate at the end of Stage 1. The Minister will be expected to speak in this debate, to set out whether or not the Government supports the general principles of the Bill (and if it does, to possibly also outline areas where the Government might seek to make amendments at Stages 2 or 3).

19.40 Stage 1 is completed when the Senedd votes on the general principles of the Bill. If the Senedd agrees to the general principles of the Bill, it proceeds to Stage 2. If the Senedd does not agree to the general principles of the Bill, the Bill falls and no further action can be taken in relation to it. In the event of a tied vote at Stage 1, the Llywydd will exercise her casting vote in the affirmative (in accordance with Standing Order 6.20(i)). This means the motion is agreed and the Bill will proceed to Stage 2.

19.41 All Bills that give rise to the raising of revenue or require new or increased demand for funding must have the consent of the Senedd, by means of a Financial Resolution, before they can proceed beyond Stage 1. It is for the Llywydd to determine whether a financial resolution is necessary.

19.42 Although it is for the Senedd to collectively sanction the raising of revenue or the use of resources through a vote, it is the Government which accepts the financial consequences of a Bill. This is because the Government is responsible for the management of public funds and so must have control over the raising of revenue and the use of resources within devolved areas. Therefore, a motion for a Financial Resolution may only be moved by a member of the Government, irrespective of the origins of the Bill.

19.43 As with Government proposed Bills, Standing Orders state that a Bill will fall if the Financial Resolution is not in place within six months of the completion of Stage 1. Therefore if the Government does not bring forward a Financial Resolution, the Bill will fall.

19.44 The First Minister must agree any decision to move, or not to move, a financial resolution for a non-Government Bill.

19.45 Subject to the agreement of a Financial Resolution (if required), the Bill will then proceed into Stage 2. As this is an amending stage, the Government may wish to table amendments to the Bill.

19.46 These will need to have been prepared OLC on instruction by the Bill team. Chapter 15 provides information in relation to the handling of Stage 2, including the preparation, tabling and management of amendments.

19.47 The Minister will be invited to the Committee's Stage 2 proceedings to present the Government's position regarding the proposed amendments to the Bill.

19.48 Where the Minister has the lead amendment in the group, they will be invited to speak first. Members will then be invited to speak, the Member in charge will be invited to reply and the Minister will close the discussions. Where the Member in charge has the lead amendment in the group, they will be invited to speak first, then other Members will then be invited to speak. The Minister will be the penultimate speaker, and the Member in charge will close the discussion. Where a Member other than the Minister or Member in charge has the lead amendment, the Minister will speak before the Member in charge, who will be the penultimate speaker. The discussion will be closed by the Member with the lead amendment

19.49 Following the completion of Stage 2 proceedings, the Member in charge will be required to prepare a revised Explanatory Memorandum (unless the Committee resolves otherwise). This will need to be laid at least 5 working days before the Senedd meets to consider Stage 3 proceedings.

19.50 Stage 3 is the second amending Stage; any Member may table an amendment and these will be considered and voted upon by all Senedd Members in Plenary. Again the Government may wish to table amendments to the Bill, and Chapter 15 provides information on Stage 3. The speaking order will follow the same pattern as Stage 2.

19.51 Stage 4 is the last stage of the Senedd's legislative process and involves a vote on whether the final text of the Bill should be passed or not. The requirements of a vote at Stage 4 for a Member Bill are the same as those for a Government Bill, as set out in Chapter 15.

19.52 It has become custom for the Member in charge to make a short statement on the Bill at Stage 4 to mark the end of its passage through the Senedd's legislative processes. It is likely the Minister will also wish to contribute briefly to the Stage 4 statement before it is closed by the Member in charge.

19.53 Should the Bill be passed by the Senedd, the Bill will enter the period of intimation (see Chapter 17). Subject to the period of intimation the Bill will then be submitted for Royal Assent, and once this has been received it becomes an Act of the Senedd.

19.54 Note also that during the period of intimation the Government (and not the Member in charge) is responsible for updating and revising the Explanatory Notes to the Bill, as passed – see Chapter 9 for further information.

Committee Bills

19.55 Under Standing Order 26.81, *"Any committee may introduce a committee Bill relating to the committee's remit".* Therefore to do this, a Committee does not require a ballot or the Senedd's leave to introduce.

19.56 The process of preparing, introducing and scrutinising a Committee Bill is otherwise the same as for Member Bills. This includes the requirements for a Financial Resolution. A Member in charge of a Committee Bill will be a nominated member of that Committee.

19.57 The process for determining the Government's response to a Committee Bill is also the same as for a Member Bill.

19.58 If the Senedd passes the Bill, it will enter the period of intimation before receiving Royal Assent.

Commission Bills

19.59 Under Standing Order 26.84, *"The Commission may introduce a Bill relating to the Commission's functions".* Therefore to do this, the Commission does not require a ballot or the Senedd's leave to introduce.

19.60 The process of preparing, introducing, and scrutinising a Commission Bill is otherwise the same as for Member Bills. This includes the requirements for a Financial Resolution.

19.61 It is possible that a Commission Bill may touch on one or more of the protected subject-matters set out in Section 111A of the Government of Wales Act 2006. If it does so it will trigger the requirement for a super-majority to be passed (see Chapter 15 above, at paragraphs 15.210-15.212 and 15.223). This means that the Bill is not passed unless two-thirds of the total number of Senedd Members vote in favour of it at Stage 4 (i.e. currently forty out of sixty).

19.62 If the Senedd passes the Bill, it will enter the period of intimation before receiving Royal Assent.

Appendix A: Glossary of key words and phrases

Acts of the Senedd
Laws made by the Senedd under Part 4 of the Government of Wales Act 2006. Proposals for new laws (Bills) are considered by the Senedd, and if a Bill is agreed by the Senedd at the end of this process, that Bill is passed and may become an Act. It can only be described as an Act when it has received Royal Assent from the Monarch.

Acts of Parliament
Laws made by the UK Parliament. Proposals for new laws (Bills) are debated by both the House of Commons and the House of Lords. If, after considering the proposals, both Houses of Parliament vote for and agree the proposals, then the Bill is passed and may become an Act. It can only be described as an Act when it has received Royal Assent from the Monarch.

Admissible
In the context of this Handbook, 'admissible' means permitted to be considered (i.e., an amendment is admissible and therefore permitted to be considered during proceedings).

Affirmative instrument
Subordinate legislation that the parent Act requires the Senedd to explicitly approve before it is able to come into effect (through the 'affirmative procedure').

Affirmative procedure
The 'affirmative procedure' refers to the process by which some statutory instruments must be approved by the Senedd to become law. (Conversely the 'negative procedure' refers to statutory instruments which automatically become law unless there is an objection from the Senedd). Affirmative and negative procedures are set out in Standing Order 27.

All-Party Groups
Cross-party groups of Senedd Members who share a particular interest in a subject or country and hold meetings related to their shared interest.

Amendments (to a Bill)
Suggested changes to the text of a Bill which are proposed by Senedd Members (including those who are Welsh Ministers). Amendments can be suggested at Stages 2 and 3 of the Senedd's legislative process, where Senedd Members vote on whether they should be agreed or not.

Amendments (to Motions)
Suggested changes to the text of a motion debated in Plenary. Except where Standing Orders provide otherwise, Senedd Members can propose amendments to any motion.

Assembly Measure
A Measure of the National Assembly for Wales is primary legislation of a category lower than an Act of Parliament.

Measures were made in the Third Assembly if the legislative competence to pass the Measure had been granted to the Assembly in a Legislative Competence Order or Act of Parliament which amended Schedule 5 to the Government of Wales Act 2006.

Following a referendum held in 2011, the Assembly gained powers to make primary legislation (Acts of the Assembly) and the Assembly no longer passes Measures. Existing Assembly Measures remain valid unless repealed by the Assembly and can be amended by Acts of the Assembly.

Backbenchers
Term (inherited from language used in the UK Parliament) to describe those Senedd Members who are neither a Minister nor a Spokesperson for their party.

Bill
A proposal for legislation formally presented to the Senedd (or the UK Parliament). An Senedd Bill has to be passed by the Senedd before it receives Royal Assent and becomes an Act of the Senedd. Public Bills alter the general law, and Private Bills affect private interests.

Business Committee
The Business Committee is responsible for the organisation of Senedd Business. Its role is to facilitate the effective organisation of Senedd proceedings.

Business Managers
Collective term for representatives from each of the political parties in the Senedd who are members of the Business Committee.

Calendar day
Any day of the week, month or year, including weekends and public holidays.

Casting vote
The casting vote is the vote that decides an issue when two sides have exactly the same number of votes. In the Senedd the casting vote is held by the Llywydd (or by the Deputy Presiding Officer if chairing the proceedings) in Plenary, and by the Chair of a committee. The convention is that the casting vote is to maintain the status quo, unless there is another chance to discuss the subject before any final decision is taken.

Chief Whip
The head whip in each political party. Whips are Senedd Members appointed by each party to maintain party discipline. Part of their role is to encourage members of their party to vote in the way their party would like in important

votes. Whips also manage the pairing system when Members need to be absent from Plenary.

Clause
See the definition of 'section'.

Commencement
The coming into effect of legislation. In the absence of a specific commencement provision an Act comes into force from the beginning of the day on which Royal Assent was given (at midnight).

Commission Bill
A Bill introduced by an Senedd Member in his or her capacity as a Member of the Senedd Commission.

Committees
Committees scrutinise legislation introduced in the Senedd and the policies of the Welsh Government.

Committee Bill
A Bill introduced by an Senedd Committee (not a member of the Government).

Committee of the Whole Senedd
A committee of all Senedd Members considering legislation in detail at Stage 2 proceedings (most committees do not include all Senedd Members).

Consolidation Bills
Consolidation Bills bring together a number of existing pieces of primary legislation on the same subject into one Act without making substantial changes to the law. They are used to improve access to legislation by tidying-up areas of statute law that may have become fragmented over time.

Constitution
A constitution is a set of laws, rules, principles and procedures that specify how a state is to be governed. In doing so it normally defines the relationship between the executive branch of government, the legislature and the judiciary; and between government and the individual. Most countries have a constitution written down in a single document but the UK is said to have an "uncodified" constitution. The UK's constitution derives from a range of sources including legislation, case law, custom and precedent.

Cost-Benefit Analysis (CBA)
Analysis which quantifies in monetary terms as many of the costs and benefits of a proposal as feasible, including items for which the market does not provide a satisfactory measure of economic value.

Convention Rights
Rights and freedoms are set out in the European Convention on Human Rights, which were incorporated into UK law by the Human Rights Act 1998. See also the definition of 'European Convention on Human Rights'.

Counsel General
Section 49 of the Government of Wales Act 2006 provides for the appointment of a Counsel General to the Welsh Government who will act as its chief legal adviser and representative in the courts. The Counsel General is the Welsh Government's Law Officer. The Counsel General is not a Welsh Minister but is a member of the Welsh Government. The Counsel General need not be an AM.

Delegated legislation
See the definition of 'subordinate legislation'.

Deputy Welsh Ministers
Appointed by the First Minister, with the approval of the Monarch, from among Senedd Members. They form part of the Welsh Government, but are not included in the definition of Welsh Ministers included in the Government of Wales Act 2006. There are to be no more than 12 Welsh Ministers (not including the First Minister) and Deputy Welsh Ministers in total at any time. Deputy Welsh Ministers are now normally referred to as 'Ministers' by the Welsh Government.

Devolved and reserved (or non-devolved) matters
These terms describe the distribution of powers between UK Government and Parliament and the devolved institutions in the UK. Devolved matters are the responsibility of the devolved administrations and legislatures. Reserved or non-devolved matters remain with the UK Government and Parliament.

Draft Bill
A Bill that is consulted upon before introduction into the Senedd. This term is not applied to a Bill which has been introduced into the Senedd, but not passed.

Duke of Cornwall's Consent
Agreement by the Duke of Cornwall that the Senedd may proceed to pass legislation that would affect his interests (see also King's Consent).

European Convention on Human Rights (ECHR)
An international treaty to protect human rights and fundamental freedoms in Europe. Rights and freedoms are set out in the Convention. The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law. See also the definition of 'Convention Rights'.

Exceptions (to reservations)
Policy areas contained in the exceptions to the reserved matters included in Schedule 7A to the Government of Wales Act 2006 in relation to which the Senedd can legislate.

Executive
A term used to describe a government and to distinguish it from the legislature. It formulates policy and introduces and implements legislation. In Wales, the executive is the Welsh Government.

Explanatory Memorandum
An Explanatory Memorandum to an Senedd Bill explains, amongst other matters, the purpose and intended effect of the Bill. The requirements for an Explanatory Memorandum for a Bill are set out in Standing Order 26.6. For Government Bills the Explanatory Memorandum will also contain a Regulatory Impact Assessment and the Explanatory Notes to the Bill. The term Explanatory Memorandum can also refer to the information required for Member Bills as set out in Standing Order 26.91A when a Member is seeking the Senedd's agreement to introduce a Bill.

Explanatory Notes
A document which objectively summarises and explains the effect of a Bill, intended to assist those who scrutinise the Bill and those who use it when it becomes an Act. Explanatory Notes are laid alongside every Bill on introduction, and are amended as necessary after each amending Stage. They are published by The National Archives when the Bill receives Royal Assent. The Notes should not be read as a stand-alone document, but referred to alongside the Bill or Act itself.

Financial Resolution
A motion to authorise expenditure from the Welsh Consolidated Fund in relation to a Bill; when the motion is approved it becomes a resolution.

First Minister
An AM appointed by the Monarch to be First Minister, following nomination by the Senedd. The First Minister is the head of the Welsh Government, who then appoints the other Welsh Ministers with the approval of the Monarch.

Government of Wales Act 2006
This Act superseded the Government of Wales Act 1998 which created the Assembly. It separated the executive and legislative branches of the former corporate body; it gave the Assembly enhanced legislative powers and made changes to the electoral system for Assembly elections. This Act has been amended by the Wales Act 2017.

Grouping
Bringing together related amendments for debate. In Stage 2, groups are agreed by the Chair of the responsible Committee; in Stage 3 (and Report Stage if used), groups are agreed by the Llywydd.

Henry VIII power
A provision which enables the Government to repeal or amend primary legislation using subordinate legislation. The name derives from the Statute of Proclamations 1539, which gave King Henry VIII power to legislate by proclamation.

Hybrid Bills
A Bill which has a general application as well as affecting certain private interests. Standing Order 26B defines what Bills would be categorised as Hybrid Bills in the Senedd and sets out the procedure for passing such Bills.

Instructing officer
The official writing the instructions for OLC, whether the subject lawyer or not.

Introduction
The introduction of the Bill into the Senedd; the Bill is laid in Table Office after which the Bill will begin its passage through the Senedd.

Jurilinguist
Jurilinguists in Wales play a key role in producing bilingual Welsh law. They are linguists who have a specialist knowledge of Welsh and English legal language supported by a working knowledge of relevant fields of law. They provide advice related to the terminology, syntax, phraseology, organisation of ideas and style that are appropriate to legal language, specifically to legislative language and to the subjects dealt with in legislation. In the Welsh Government, jurilinguists also translate, revise translations and manage teams of legislative translators.

Laid documents
These include most documents relating to Senedd business such as Senedd Committee reports, Welsh Government papers or documents from external organisations which are required to report to the Senedd. 'Laying' is the formal procedure by which documents are presented to the Senedd's Table Office for consideration.

Lead Minister
The member of the Government with primary policy responsibility for a Government Bill, or with responsibility for the policy portfolio affected by a non-Government Bill (e.g. a Member Bill).

Legislation Office
Office of the Senedd Commission which supports the passage of legislation through the Senedd. The Office provides secretariat support to the Senedd's committees and procedural advice to committee chairs, Members and the Llywydd. It also supports the development of legislative proposals by individual Members.

Legislative competence
The term used to describe the scope of the Senedd's power to legislate. The Senedd's legislative competence to pass Acts is currently set out in section 108A of, and Schedules 7A and B to, the Government of Wales Act 2006.

Legislative Consent Motion (LCM)
Motion through which the Senedd can give or refuse to give permission for the UK Parliament to legislate in areas which are devolved.

Legislative Programme and Governance Unit (LPGU)
A team of staff within the Welsh Government who provide advice, guidance and support on Senedd legislative processes and procedures (see paragraphs 3.61 – 3.64).

Legislature
A law-making body where new laws are debated and agreed; it also scrutinises the Government's decisions and holds it to account. In Wales, the devolved legislature is the Senedd.

Letters Patent
Legal instrument issued under the prerogative powers of the Monarch ("royal prerogative").Letters patent are used to grant Royal Assent to Acts of the Senedd (see also the definition of 'Welsh Seal').

Llywydd
The Llywydd (or Presiding Officer) is the highest authority in the Senedd and chairs the meeting of all 60 Senedd Members in Plenary, remaining politically impartial at all times.

The functions of the Llywydd are:

- to chair Plenary meetings;
- to determine questions as to the interpretation or application of Standing Orders;
- to represent the Senedd in exchanges with any other bodies, whether within or outside the United Kingdom, in relation to matters affecting the Senedd;
- chairing the Senedd Commission; and
- such other functions conferred by any enactment, by the Senedd or by its Standing Orders.

Long title
The passage at the start of a Bill that begins 'An Act to ….' which describes the content of a Bill.

Manifesto
A manifesto is a public declaration of the ideas and policies of a political party. It is usually published during the campaign before an election and contains a description of what the party plans to do if it wins the election and becomes the Government.

Marshalled list
A list of amendments proposed for a Bill arranged in the order in which they will be considered by the Committee or Plenary.

Member in charge
Usually the AM who has introduced the Bill to the Senedd and takes the Bill through its passage. The Member in charge of a Bill can change at any point between a Bill's introduction and its passing. The Member in charge for Member Bills at Introduction must always be the Member who has had agreement to introduce the Bill.

Members' Ballot for a Member Bill
A ballot which may be held by the Llywydd from time to time to determine the name of an AM (other than a member of the Welsh Government) who may introduce a Members' Bill on a specified topic.

Member Bill
A Public Bill introduced by an Senedd Member who is not a member of the Government or acting as Member in charge of a Commission or Committee Bill.

Minister
For the purposes of this handbook, Minister(s) is used generically to refer to both Ministers and Deputy Ministers, unless otherwise stated. (Cabinet Secretary was the title previously (between May 2016 and December 2018) used instead of "Minister" for those Senedd Members appointed as Welsh Ministers, and Minister was the title previously (between May 2016 and December 2018) used instead of "Deputy Minister" for those Senedd Members appointed as Deputy Welsh Ministers under the Government of Wales Act 2006.) Deputy Ministers are appointed to exercise functions on behalf of Ministers (see 'Welsh Ministers') in particular areas of work.

Minister of the Crown
Members of Parliament (MPs) and Peers appointed by the Prime Minister as members of the UK Government.

Mischief
The wrongs intended to be redressed by a statute; the gist or real purpose and object of it.

Motion
A proposal made for the purpose of obtaining a decision from the Senedd.

Negative instrument
Subordinate legislation that may be made and come into effect unless the Senedd decides otherwise (under the 'negative procedure').

Negative procedure
A procedure under which some statutory instruments are made. Under this procedure a statutory instrument will automatically become law unless objected to by the Senedd. (Conversely 'affirmative procedure' refers to a procedure where a statutory instrument must be approved by Senedd Members before becoming law). Affirmative and negative procedures are set out in Standing Order 27.

Non-Government Bills
This general term refers to Member Bills, Commission Bills, Committee Bills and Private Bills.

Office of the Legislative Counsel (OLC)
An office of specialist lawyers who specialise in drafting legislation; they draft all Government Bills.

Parliamentary sovereignty
The doctrine of UK constitutional law that the Parliament of the United Kingdom is the sovereign law making body.

Plenary
All 60 Senedd Members meeting in the Siambr (the main chamber of the Senedd) to conduct business. Plenary meetings currently take place on Tuesday and Wednesday afternoons.

Pray against
Tabling a motion to annul a statutory instrument subject to the negative resolution procedure (see 'negative procedure').

Pre-legislative scrutiny
Consideration of draft legislation by a Senedd Committee before the formal legislative process begins.

Presiding Officer
See the definition of 'Llywydd'.

Primary legislation
For most purposes in relation to Wales, an Act of the Senedd or an Act of Parliament.

Private Bill
A Bill that would only have a local or personal effect, rather than a general effect. Such Bills are promoted by individuals or organisations seeking specific, often local, powers Special procedures govern Private Bills in order to protect the rights of individuals and groups whose interest is directly affected. In the Senedd this procedure is set out in Standing Order 26A.

Privy Council
A meeting of the King and his Privy Counsellors.

Protected matter
Protected subject-matters are those that would modify, or confer power to modify, specific matters set out in Section 111A(3) of the Government of Wales Act 2006. These matters relate to the constitution and electoral arrangements of the Senedd and the number of Welsh Ministers and Deputy Welsh Ministers.

Public Bill
A Bill which is intended to alter the general law, i.e a Bill of general effect which relates to public policy.

King's Consent and Duke of Cornwall's Consent
Agreement by the King that the Senedd may pass legislation that would affect the prerogative, hereditary revenues, personal property or interests of the Crown, or the Duchy of Lancaster. In the case of the Duchy of Cornwall, the Duke of Cornwall's agreement is required. See Chapters 12 and 15.

Record of Proceedings
An official record of plenary meetings which includes all statements, speeches and interventions made by Senedd Members and the details of any votes taken. It is published within 24 hours of the end of the meeting.

Regulatory Impact Assessment (RIA)
An analysis of the likely impact of a range of options for implementing a policy change. This must be produced for any proposal for legislation which has an impact on business, the public sector, charities or the voluntary sector.

Reserved Matters
In relation to the Senedd's legislative competence, the matters listed in Schedule 7A to the Government of Wales Act 2006 and which are reserved to the UK Parliament.

See also the definition of 'Devolved and reserved (non-devolved) matters'

Royal Assent
Royal Assent is the Monarch's agreement to make a Bill into an Act of the Senedd or an Act of Parliament. Royal Assent is conferred by the Monarch signing Letters Patent under the Welsh Seal in relation to Acts of the Senedd.

Schedule
Generally, Schedules to a Bill or Act contain detailed provisions expanding on a general proposition set out in a section or sections, or details of minor amendments required to be made to other Acts in consequence of the provisions of the Bill/Act. They are found at the end of the Bill/Act.

Scope
The extent of the subject matter of a Bill (outside of which amendments to the Bill are inadmissible).

Secondary or delegated legislation
See the definition of 'subordinate legislation'.

Section
The basic unit of an Act, which may be divided into subsections, then paragraphs, then sub-paragraphs. Traditionally sections of a Bill were referred to as "clauses" (later to be referred to as sections once the Bill was enacted); but this is no longer the general practice.

Secretary of State for Wales
A member of the UK Government, whose role is to ensure that the interests of Wales are fully taken into account by the UK Government in making decisions that will have effect in Wales; to represent the UK Government in Wales; and to be responsible for ensuring the passage of (non-devolved) Wales-only legislation through the UK Parliament.

Senedd
The unincorporated association of 60 Senedd Members which is the legislature established under the Government of Wales Act 2006 – its purpose is to pass laws and hold the Welsh Government to account.

Senedd Business
The collective term used to describe the work carried out by Senedd Members through Plenary and Committee meetings.

Senedd Commission
The corporate body for Senedd Cymru. The Commission consists of the Presiding Officer and four other Members nominated by the main political parties. The staff of the Commission are employees of the Commission and are headed by the Chief Executive and Clerk of the Senedd.

Senedd Members (AMs)
The 60 elected representatives forming the Senedd.

Senedd proceedings
Any proceedings of the Senedd (i.e. Plenary, Committees or Sub-Committees).

Senior Responsible Owner (SRO)
The Senior Responsible Owner is a senior official responsible for the delivery of a Bill project (see paragraphs 3.20 to 3.23).

Short title
The title by which the Bill or Act is known and may be referred to (for example in the courts).

Siambr
The main chamber of the Senedd, the building where the Senedd meets.

Sitting day
A sitting day is a weekday when the Senedd is able to consider its business – so Monday to Friday in any sitting week (as defined in the interpretation section of Standing Orders), but not a bank holiday in a sitting week or a recess day.

Stages of consideration
A Bill goes through a number of stages in the Senedd before it can become law:

Stage 1 – Consideration of general principles: This Stage normally involves the consideration of the general principles of a Bill by a Committee (or Committees), followed by the agreement of the general principles by the Senedd. The Committee will focus on the main purpose(s) of the Bill, rather than looking at the fine detail (which is a matter for later Stages). The Committee may also invite representations from interested parties, and may take written and oral evidence to inform its work.

Stage 2 – Detailed consideration by Committee: consideration of the Bill in detail, by a Committee, and of any amendments proposed by Senedd Members.

Stage 3 – Detailed consideration by the Senedd: consideration of the Bill in detail, by the Senedd, and of any amendments proposed by Senedd Members and selected by the Llywydd.

Report Stage: Some Bills may require a further detailed consideration of the Bill by the Senedd, known as Report Stage. It will follow the completion of

Stage 3 and will consider any amendments proposed by Senedd Members and selected by the Llywydd.

Stage 4 – Final Stage: This is the last Stage of the process and is a vote by the Senedd to pass the final text of the Bill.

Standing Orders (SOs)
The written rules under which the Senedd conducts its business. They regulate, amongst other matters, the way Senedd Members behave, Bills are processed and debates are organised.

Statement
Statements made by a Minister or Deputy Minister usually relate to matters of policy or government actions. Both Oral and Written Statements may be made.

A Business Statement announces the future Government business of the Senedd and usually takes place on Tuesdays.

Statement on the legislative programme
A statement made by the First Minister, in Plenary, setting out the details of the Government's proposed legislative programme. It lists the Bills which the Government intends to introduce.

Statutory Instrument
Statutory Instruments (SIs) are a form of legislation which allow the provisions of an Act of the Senedd or of the UK Parliament to be brought into force, expanded upon or (where necessary) altered without the Senedd or the UK Parliament having to pass a new Act.

Subject lawyers
The term subject lawyer is used to describe the Legal Services lawyer involved, who may or may not be the instructing officer.

Subordinate legislation
Also known as secondary legislation or delegated legislation; legislation made by a Minister, or occasionally by a public body, under powers given to them by Acts of Parliament, Assembly Measures and Acts of the Senedd/ Assembly in order to implement and administer the requirements of primary legislation. Different types of subordinate legislation may be called orders, rules, regulations, schemes or codes, most of which are Statutory Instruments.

Sunset provision
A provision in legislation that gives it an 'expiry date' once it is passed into law. They are included in legislation when it is considered that the Senedd should have the opportunity to further consider its merits after a fixed period.

Super majority
A requirement that at least two-thirds of the total number of Senedd seats (i.e. currently 40 or more) vote in favour of a motion; this applies to the passing or approval of Bills which relate to protected matters.

Table
Tabling refers to the formal procedure by which motions, amendments, questions or other business is scheduled for debate by any Senedd Member.

Table Office
Office of the Senedd Commission which provides advice and arbitrates on the admissibility and handling of questions and motions; publishes the Register of Members' Interests; gives guidance on the registration and declaration of interests; and provides support to the Standards Commissioner.

Welsh Government
The body with executive responsibilities established under the Government of Wales Act 2006, to administer Wales, develop policies and take decisions. The members of the Welsh Government are:

- The First Minister;
- The Welsh Ministers;
- The Counsel General; and
- The Deputy Welsh Ministers.

Welsh Government staff are members of the Home Civil Service.

Welsh Consolidated Fund
A fund into which is paid public money allocated to Wales by the UK Government, via the Secretary of State for Wales; as well as any funds received from other sources.

Welsh Minister
An Senedd Member appointed as Welsh Minister by the First Minister, with the approval of the Monarch, forming part of the Welsh Government.

Welsh Seal
Used by the First Minister to seal (and so bring into force) Letters Patent signed by the King giving Royal Assent to Bills passed by the Senedd. Section 116(2) of the Government of Wales Act 2006 provides that the First Minister is the Keeper of the Welsh Seal.

Working day
For the purposes of the Senedd's Standing Orders, a working day means any day unless it is:

- a Saturday or Sunday;
- Christmas Eve, Christmas Day, Maundy Thursday or Good Friday;
- a day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971; or
- a day appointed for public thanksgiving or mourning.

By way of comparison, see also the definition of 'sitting day'.

Appendix B: List of acronyms

SM	Senedd Member
BAU	Business as Usual
CBA	Cost-benefit analysis
CIW	Care Inspectorate Wales
ECHR	European Convention on Human Rights
EU	European Union
GoWA 2006	The Government of Wales Act 2006
HM	Her Majesty's
HIW	Healthcare Inspectorate Wales
IT	Information technology
KAS	Knowledge and Analytical Services
LCJ	Lord Chief Justice
LPGU	Legislative Programme and Governance Unit
NPSV	Net Present Social Value
OLC	Office of the Legislative Counsel
PV	Present Value
RIA	Regulatory Impact Assessment
SO	Standing Order
SoPI	Statement of policy intent
SRO	Senior Responsible Owner
TIFF	Tagged Image File Format
UK	United Kingdom