

STANDING ORDER 22 - Legislative Competence Orders

- 22.1 Standing Order 22 applies only to Orders in Council within the meaning of section 95 of the Act.
- 22.2 A “proposed Order” is a proposal for an Order in Council that is to be subject to pre-legislative scrutiny under Standing orders 22.13 to 22.22.
- 22.3 A “draft Order” is a draft Order in Council that is to be subject to approval by the Assembly under Standing Order 22.34.

Proposed Orders

Member in charge of a proposed Order

- 22.4 A proposed Order laid by a member of the government is referred to as a “government proposed Order” .
- 22.5 The “Member in charge” of a government proposed Order is:
- (i) the member of the government who laid the proposed Order; or
 - (ii) a member of the government who is authorised by the First Minister.
- 22.6 A proposed Order laid by a committee is referred to as a “committee proposed Order” .
- 22.7 The “Member in charge” of a committee proposed Order is:
- (i) the member of the committee authorised by the committee which laid the proposed Order; or
 - (ii) if that committee no longer exists and another committee is, for the purposes of Standing Order 22, specified by the Business Committee, a member of that other committee authorised by that other committee.
- 22.8 A proposed Order laid by a Member, which is not a government proposed Order or a committee proposed Order, is referred to as a “Member proposed Order” .
- 22.9 The “Member in charge” of a Member proposed Order is—
- (i) the Member who laid the proposed Order;
 - (ii) another Member authorised by that Member; or

(iii) if no such authorisation is made, any Member authorised by the Assembly.

- 22.10 A member of the government cannot be the Member in charge of a committee proposed Order or a Member proposed Order.
- 22.11 A Member who ceases to be a member of the government can no longer continue to be the Member in charge of a government proposed Order.
- 22.12 An authorisation under Standing Order 22.7 no longer has effect if the Member so authorised ceases to be a member of the committee.

Form and laying of proposed Orders

- 22.13 Subject to Standing Orders 22.42 to 22.54, a proposed Order may be laid on any working day in a sitting week.
- 22.14 At the same time as a Member lays a proposed Order under Standing Order 22.13, he or she must lay an Explanatory Memorandum.
- 22.15 A proposed Order must not be laid unless it is in proper form in accordance with any determinations made by the Presiding Officer.

Detailed consideration of a proposed Order

- 22.16 The Business Committee must either:
- (i) refer the proposed Order for detailed consideration to a committee to be established in accordance with Standing Order 21; or
 - (ii) by motion in plenary propose that there should be no detailed consideration of the proposed Order.
- 22.17 If a motion under standing order 22.16 (ii) is agreed, the Member in charge of a proposed Order may introduce a draft Order, which relates to the proposed Order, under Standing Order 22.31.
- 22.18 If a motion under Standing Order 22.16 (ii) is proposed but not agreed, the Business Committee must refer the proposed Order for detailed consideration to a committee to be established in accordance with Standing Order 21;
- 22.19 A committee set up as a consequence of Standing Order 22.16(i) or 21.18 must consider and report on the proposed Order.
- 22.20 The Business Committee must establish a timetable for the committee's consideration of a proposed Order and may make

subsequent changes to that timetable as it considers appropriate but must give reasons for such changes.

- 22.21 In preparing its report on the proposed Order, the committee must, so far as is reasonably practicable, take into account:
- (i) any recommendation on the proposed Order that has been made by any other committee of the Assembly; and
 - (ii) any recommendation on the proposed Order that has been made by any committee of the House of Commons or the House of Lords or any Joint Committee of both Houses of Parliament.

Draft Orders

Member in charge of a draft Order

22.22 A draft Order introduced by a member of the government is referred to as a "government draft Order".

22.23 The "Member in charge" of a government draft Order is:

- (i) the member of the government in charge of the proposed Order to which the draft Order relates; or
- (ii) a member of the government who is authorised by the First Minister.

22.24 A draft Order introduced by a committee is referred to as a "committee draft Order."

22.25 The "Member in charge" of a committee draft Order is:

- (i) the member of the committee authorised by the committee which laid the proposed Order to which the draft Order relates; or
- (ii) if that committee no longer exists and another committee is, for the purposes of Standing Order 22, specified by the Business Committee, a member of that other committee authorised by that other committee.

22.26 A draft Order introduced by a Member, which is not a government draft Order or a committee draft Order, is referred to as a "Member draft Order".

22.27 The "Member in charge" of a Member draft Order is:

- (i) the Member who laid the proposed Order to which the draft Order relates;
- (ii) the Member in charge of the proposed Order to which the draft Order relates;
- (iii) another Member authorised by the Member referred to in standing order 22.27(i) or 22.27(ii); or
- (iv) if no such authorisation is made, any Member authorised by the Assembly.

22.28 A member of the government cannot be the Member in charge of a committee draft Order or a Member draft Order.

22.29 A Member who ceases to be a member of the government can no longer continue to be the Member in charge of a government draft Order.

22.30 An authorisation under Standing Order 22.25 no longer has effect if the Member so authorised ceases to be a member of the committee.

Introduction of a draft Order

22.31 A draft Order may be introduced by being laid on a working day in a sitting week, provided that-

- (i) the draft Order is introduced in accordance with Standing Order 22.17;
- (ii) a committee has reported on a proposed Order to which the draft Order relates in accordance with Standing Order 22.19; or
- (iii) a committee has not so reported within the timetable set by the Business Committee in accordance with Standing Order 22.20.

Explanatory Memorandum to accompany a draft Order

22.32 At the same time as the Member in charge introduces a draft Order, he or she must lay an Explanatory Memorandum.

22.33 The Explanatory Memorandum must include:

- (i) an explanation of how account has been taken of any recommendation made by any of the committees referred to in Standing Order 22.21; and

- (ii) the reasons for any significant differences between the draft Order and the proposed Order to which it relates.

Final Consideration

22.34 Not later than 40 working days after a draft Order has been introduced, the Assembly must consider a motion proposed by the Member in charge that the draft Order be approved.

22.35 No amendment to a motion under Standing Order 22.34 may be tabled if

- (i) it would not be clear from a resolution of the Assembly approving the motion as amended by such an amendment that the Assembly has approved the draft Order; or
- (ii) it seeks to amend the draft Order.

22.36 A draft Order cannot be amended.

Publication of Notice of Refusal

22.37 The Presiding Officer must, as soon as reasonably practicable, publish any notice laid in accordance with section 95(8) of the Act.

Withdrawal of a proposed or draft Order

22.38 A proposed or draft Order may be withdrawn at any time by the Member in charge, except in the case of a committee proposed or draft Order, when the Member in charge must first obtain the consent of the committee before withdrawing the Order.

Fall of a proposed or draft Order

22.39 A proposed or draft Order falls at dissolution.

22.40 A proposed Order falls if the draft Order to which it relates is approved, or falls.

22.41 A draft Order falls if it is not approved by the Assembly.

Committee proposed and draft Orders

22.42 Standing Orders 22.43 to 22.45 apply only to Committee proposed and draft Orders.

22.43 Any committee other than a committee set up as a consequence of Standing Order 22.16(i), 22.18 or 23.22 or 23.31(ii) may:

- (i) lay a committee proposed Order relating to its remit; or

- (ii) subject to Standing Order 22.31, introduce a draft Order relating to its remit.

- 22.44 A committee may only have one committee proposed Order or committee draft Order in progress at any one time.
- 22.45 For the purposes of Standing Order 22.44 a committee proposed Order or committee draft Order is in progress from the time it has been laid or introduced, as the case may be, until it falls, is withdrawn or, in the case of a draft Order, is approved.

Member proposed and draft Orders

- 22.46 Standing Orders 22.47 to 22.54 apply only to Member proposed or draft Orders.
- 22.47 The Presiding Officer must from time to time hold a ballot to determine the name of a Member, other than a member of the government, who may seek leave to lay a Member proposed Order under Standing Order 22.50.
- 22.48 The Presiding Officer must include in the ballot the names of all those Members who have applied to be included and who have provided an outline proposed Order and an Explanatory Memorandum.
- 22.49 No Member who has previously won the ballot in that Assembly may so apply.
- 22.50 A Member who is successful in a ballot must, within 25 working days of the date of the ballot table a motion that the Assembly agrees that the Member may lay a proposed Order, to give effect to the outline proposed Order to which it relates, and an Explanatory Memorandum.
- 22.51 A motion under Standing Order 22.50 is not amendable.
- 22.52 Time must be made available for a motion tabled under Standing Order 22.50 to be debated within 35 working days of the date of the ballot (not counting working days in a week when there is no plenary meeting of the Assembly).
- 22.53 Unless a motion under Standing Order 22.50 is agreed to, no further proceedings are to be taken on the proposed Order.
- 22.54 If a motion under Standing Order 22.50 is disagreed to, then no Member may enter any ballot held under Standing Order 22.47 for a period of six months after the motion has been disagreed to if, in the opinion of the Presiding Officer, the proposed Order which he or she is intending to lay seeks to confer the same or substantially the same legislative competence as the proposed order referred to in the motion which has been disagreed to.