

PP 2020/0068



**STANDING ORDERS
COMMITTEE OF TYNWALD**

**FIRST REPORT FOR THE
SESSION 2019-20**

EVOLVING PRACTICE

STANDING ORDERS COMMITTEE OF TYNWALD

FIRST REPORT FOR THE SESSION 2019-20: EVOLVING PRACTICE

There shall be a Standing Orders Committee of the Court to carry out the duties imposed upon it by Standing Orders 6.8 and 9.1, and to make recommendations to the Court for the revision of Standing Orders.

The Committee shall be chaired by the Speaker of the House of Keys, the Vice-Chairman shall be the President of Tynwald and it shall further be composed of the Members of the House of Keys Standing Orders Committee and the Members of the Legislative Council Standing Orders Committee.

Notwithstanding any other provisions in Standing Orders, the quorum of the Committee shall be three.

The powers, privileges and immunities relating to the work of a committee of Tynwald are those conferred by sections 3 and 4 of the Tynwald Proceedings Act 1876, sections 1 to 4 of the Privileges of Tynwald (Publications) Act 1973 and sections 2 to 4 of the Tynwald Proceedings Act 1984.

Committee Membership

The Hon J P Watterson SHK (Chairman) (Rushen)

The Hon S C Rodan OBE MLC (Vice Chairman)

Hon D J Ashford MHK (Douglas North)

Mr D C Cretney (former MLC)

Hon G D Cregeen MHK (Arbory, Castletown and Malew)

Hon R K Harmer MHK (Glenfaba and Peel)

Mr L L Hooper MHK (Ramsey)

Mrs K Sharpe MLC

Hon C C Thomas MHK (Douglas Central)

Copies of this Report may be obtained from the Tynwald Library, Legislative Buildings, Finch Road, Douglas, IM1 3PW (Tel 01624 685520) or may be consulted at www.tynwald.org.im

All correspondence with regard to this Report should be addressed to the Clerk of Tynwald, Legislative Buildings, Finch Road, Douglas, IM1 3PW.

Table of Contents

I. INTRODUCTION	1
II. ORDER OF BUSINESS	1
III. MOTIONS ON REPORTS: INTERPRETATION	2
IV. MOTIONS ON REPORTS: PRESENTATION ON THE ORDER PAPER	3
V. CIRCULATION OF DOCUMENTS TO BE REFERRED TO IN DEBATE	5
VI. COMMITTEES ON WHICH THE PRESIDENT MAY SERVE	6
VII. GENERAL DEBATES	6
VIII. RECOMMENDATIONS	7



**To: The Hon Stephen Rodan OBE MLC, President of Tynwald, and the
Hon Council and Keys in Tynwald assembled**

STANDING ORDERS COMMITTEE OF TYNWALD

FIRST REPORT FOR THE SESSION 2019-20: EVOLVING PRACTICE

I. INTRODUCTION

1. The practices and procedures of Tynwald Court are constantly evolving. In this report we recommend a series of changes to the Standing Orders which are designed to ensure that the Court's formal procedures reflect and respond to recent practical developments.

II. ORDER OF BUSINESS

2. Standing Order 2.2(4) sets out the order of business for monthly sittings in Douglas. The prescribed order is followed in broad terms but the list in the Standing Order contains certain anomalies:
 - there is a place for papers presented by command of the Governor but not for the other types of paper which are routinely laid by order of the President under Standing Order 10.11;
 - there is a place for statements by Members acting in a governmental capacity but not for statements by Members acting in a parliamentary capacity such as statements by Chairs of parliamentary committees, which occur relatively frequently;
 - there is a separate place at item (k) for motions relating to reports of Commissions appointed by the Governor. This appears unnecessary since item (i) already includes reports of Commissions.

3. We therefore propose an amended list as set out in Recommendation 1 below.

III. MOTIONS ON REPORTS: INTERPRETATION

4. Standing Orders 3.11(6)–(8) make provision for the interpretation of certain terms used in motions on reports – that a report be received or accepted, or that a recommendation be approved. Standing Order 3.11(6) also rules out the possibility of a motion simply that a report be received, in circumstances where the report contains conclusions or recommendations.
5. These Standing Orders were inserted in December 2004 after the President had referred to our predecessors the question of whether a vote to receive a report should be taken to imply any degree of approbation for it.¹ This referral arose after Mr Peter Karran MHK had tabled a Question for oral answer by the President in July 2004.
6. The political background was the Report of the Commission of Inquiry into Mount Murray. In Tynwald in July 2003 Mr Karran moved that the Commission’s first report be approved. The Chief Minister, Mr Corkill, successfully moved an amendment that the report be received and that the Council of Ministers report on the recommendations by October 2003. In 2004 the Commission of Inquiry published a further report in which it criticised the Government’s reaction to its first report; this was the subject of an oral Question by Mr Karran to the Chief Minister in July 2004.
7. Our predecessors’ intention was to reduce uncertainty in what they saw as three typical scenarios – that Tynwald might approve the whole report including all its content and any recommendations; that Tynwald might approve only the recommendations; or that Tynwald might not approve of anything in the report but might still wish to “receive” it.
8. Fifteen years on we do not consider that these Standing Orders have had the intended effect. In particular the notion that Tynwald could “receive” a report as a form of neutral acknowledgement without any sense of approbation has not caught on. Circumstances have arisen on at least one occasion where Tynwald has disapproved of a report and has decided not to receive it.²

¹ [First Report of the Standing Orders Committee of Tynwald for the Session 2004-2005](#)

² [See the debate on 20th November 2012 on the Report of the Select Committee on the Kirk Michael School Land Exchange Agreement \[PP No 0122/12\].](#)

9. In our view the interpretation of terms such as “received”, “accepted” and “approved” where they appear in motions and resolutions of Tynwald Court is an inherently political matter. We do not believe that the words added to the Standing Orders in 2004 have assisted in this process; on the contrary, they have placed constraints on the drafting of motions and reports which have yielded no clear benefit.
10. We therefore propose as part of Recommendation 2 below that Standing Orders 3.11(6)–(8) be removed.

IV. MOTIONS ON REPORTS: PRESENTATION ON THE ORDER PAPER

11. Standing Order 3.11(9) requires that where any Report or other document is before Tynwald on a motion for its recommendations or conclusions to be approved, the motion itself shall set out each item of such recommendations or conclusions. It was added in 2006 with the intention of formalising a practice which had, in any case, begun to be followed.³
12. The intention of this Standing Order is that it should be clear to Members of Tynwald what they are voting on. That is clearly desirable. However, the Standing Order has had unforeseen consequences.
13. In the first place, circumstances have arisen where a report has included a great many conclusions and, by application of Standing Order 3.11(9), these have been placed on the Order Paper. In extreme cases these have unbalanced the Order Paper which has not in practice been any more likely to be read than the report itself.
14. Moreover, various practices have arisen in order to work around the rule:⁴
 - in July 2017 Tynwald was asked to receive and approve a National Infrastructure Strategy. The strategy document included a series of “statements” of the Department of Infrastructure’s intention but the statements did not appear on the Order Paper. This was within the letter of the Standing Order but arguably not within its spirit.

³ PP 121/06

⁴ This implies no criticism of anyone. If such motions had been disorderly or wrong, then they would not have been allowed on the Order Paper. The point of mentioning this is that the Departments concerned had to use ways of overcoming an unhelpful rule that got in the way of debate rather than enhancing it. Motions of this sort were often the product of discussions with the Clerk. Some Government papers are just too long to include all the conclusions and recommendations as the letter of the rule provides.

- in October 2018 Tynwald was asked to approve a National Telecommunications Strategy. The strategy document included a series of “strategic actions” which the Department for Enterprise and the Communications Commission intended to take. The “strategic actions” did not appear on the Order Paper. This was within the letter of the Standing Order but arguably not within its spirit. It did not prevent the Chairman of the Communications Commission and the Commission itself (through HM Attorney General) from arguing during debate on the Communications Bill 2018 that the strategic actions represented Tynwald policy.
 - in March 2018 Tynwald was asked to approve a Harbours Strategy. The strategy document included a series of “statements” of the Department of Infrastructure’s intention but the statements did not appear on the Order Paper. This was within the letter of the Standing Order but arguably not within its spirit.
 - in May 2019 Tynwald was asked to receive the two reports on healthcare by the Public Accounts Committee and to approve their recommendations. The reports did not include any conclusions but instead presented “Committee findings”. The findings did not appear on the Order Paper. This was within the letter of the Standing Order but arguably not within its spirit.
15. While it is desirable for Members to know what they are voting on, it is undesirable to maintain a Standing Order whose effect is merely to send the drafters of reports to the thesaurus to seek out various synonyms for the word “conclusion”.
 16. Happily the development of technology since 2006 has made it easy for Members to know what they are voting on without the need to clutter the Order Paper with conclusions, recommendations, strategic actions or anything else extracted from a report. Today Members access the Order Paper electronically. When looking at a motion on a report, they are only a click away from the report itself.
 17. The inclusion of conclusions and/or recommendations in a report and the reproduction of those conclusions and/or recommendations within a motion remains an effective drafting style which is likely to lead to a clear understanding (before the event) of what Tynwald is being asked to decide, and (after the event) of what it has decided. However, in today’s world there is no longer any need for this style to be mandatory. Rather we consider that

it should be open to the authors of reports and the movers of motions to choose whichever style is best suited to the material in each individual case.

18. We therefore propose as part of Recommendation 2 below that Standing Order 3.11(9) be replaced with the words: “Where any report or other document is before the Court on a motion for approval the motion itself shall indicate the particular items for which approval is being sought”.⁵

V. CIRCULATION OF DOCUMENTS TO BE REFERRED TO IN DEBATE

19. Standing Order 3.23(7) provides that, unless it is of such a nature that its publication would be inconsistent with the public interest, no document may be referred to until a copy has been distributed to all Members. It was backed up in 2006 by a practice direction stating that papers for distribution should be in the hands of the Clerk of Tynwald by 5pm the day before the item they relate to is to be debated. The practice direction has been editorially annexed to recent editions of the Standing Orders.
20. At the time the practice direction was issued, the circulation of papers had been used in some cases to circulate, under cover of parliamentary privilege, statements or letters prepared by persons outside the Court which were not in the event adopted by the Member circulating them. In some cases, these documents had contained very serious allegations or claims. President Cringle believed it wrong, and an abuse of the privilege of Tynwald, for allegations or claims of this sort to be put into circulation when they could not be tested and when no Member was actually adopting them as part of his or her case in debate. The primary purpose of the practice direction was to allow time for the President to examine any papers in order to ensure that they would actually support the debate.
21. Since 2006 the practice of circulating papers in hard copy has all but disappeared. The formal circulation of papers for sittings by the Clerk of Tynwald is done electronically; and moreover, all Members have at their disposal the means of circulating a document electronically to all other Members. This is now often done long after the 5pm deadline referred to in the practice direction.

⁵ This will not affect the ability of Members to amend any aspect of the Report for which approval is sought.

22. Where Members wish to circulate information which they intend to refer to in a debate, we would regard it as a courtesy to other Members to do this well in advance. However, in today's world we do not believe that it would be practical to set a strict time limit for this.
23. We are not aware of any recent instance of the potentially abusive practice referred to in the practice direction. Nevertheless the potential for abuse still exists. While we have no wish to impose constraints on Members' communication with other Members, we consider that where proceedings in Tynwald are concerned, the traditional practice of circulating papers via the Clerk of Tynwald has continuing value. Whether asked to circulate a document electronically or in hard copy, we would expect the Clerk or his staff to read it before circulation and, if they detect any risk of abuse, to advise the President accordingly.
24. We therefore propose in Recommendation 3 below that any distribution of documents pursuant to Standing Order 3.23(7) should be done through the Clerk (or his staff) with the consent of the President.
25. If this recommendation is carried, as a consequence the 2006 Practice Direction would be removed from future editions of the Standing Orders.

VI. COMMITTEES ON WHICH THE PRESIDENT MAY SERVE

26. Standing Order 5.1(2) sets out the principle that President may not serve on Committees and lists a series of exceptions. The lists needs to be updated because
 - in 2016 the Tynwald Members' Pension Scheme Management Committee was disbanded as part of the reform of Members' pensions;
 - in 2018 the Tynwald Honours Committee was disbanded and its functions were transferred to the Tynwald Management Committee; and
 - in 2018 the President became an *ex officio* member of the reformed Tynwald Standing Orders Committee.
27. Recommendation 4 below is intended to bring Standing Order 5.1(2) up to date in the light of these changes.

VII. GENERAL DEBATES

28. In the course of a Continuing Professional Development meeting for Members the question of General Debates arose. These are debates without a resolution, in the same way as Adjournment Debates in the House of

Commons at Westminster. There is wide-spread agreement among Members that it would be to the advantage of Tynwald if certain matters could be debated without the distractions of a motion that indicated any fixed decision.

29. Recommendation 5 below proposes a new opportunity for Members to put down matters for General Debate; recommendation 1 includes provision for General Debates in the list setting out the order of business.

VIII. RECOMMENDATIONS

Recommendation 1

That the list in Standing Order 2.2(4) be replaced with the following list:

- “(a) statements by the President;**
- (b) signing of Bills noted on the Order Paper or, with the consent of the Court, circulated on the instructions of the President;**
- (c) announcement to Tynwald of Royal Assent to Acts;**
- (d) papers presented to Tynwald by command of the Governor;**
- (d1) laying of other papers;**
- (e) Questions;**
- (f) statements by Members ~~acting in a governmental capacity;~~**
- (g) motions for the levying of taxes;**
- (h) motions for the voting of money;**
- (i) motions relating to reports presented to Tynwald by the Council of Ministers, Departments, Statutory Boards, Commissions or committees;**
- (j) motions relating to reports of committees of Tynwald;**
- ~~(k) motions relating to reports of Commissions appointed by the Governor;~~**
- (l) other motions;**
- (l1) general debates;**
- (m) public petitions;**
- (n) private petitions;**

(o) other private business.”

Recommendation 2

That Standing Orders 3.11(6)–(8) be removed and Standing Order 3.11(9) be replaced with the words: “Where any report or other document is before the Court on a motion for approval the motion itself shall indicate the particular items for which approval is being sought”.

Recommendation 3

That Standing Order 3.23(7) be amended to read as follows:

“Unless it is of such a nature that its publication would be inconsistent with the public interest, no document may be referred to until a copy has been distributed to all Members by the Clerk of Tynwald with the consent of the President.”

Recommendation 4

That Standing Order 5.1(2) be amended to read as follows:

The President shall not be eligible for membership of any committee of the Court, except the Standing Orders Committee, the Tynwald Ceremony Arrangements Committee (of which the President is chairman ex officio) and the Tynwald Management Committee, ~~the Tynwald Honours Committee and the Tynwald Members’ Pension Scheme Management Committee.~~

Recommendation 5

That Standing Orders be amended to insert in III: General Rules of Procedure a new section:

4A General Debates

3.20B (1) Two Members (a Proposer and Seconder) may put down a matter for General Debate.

(2) No motion or amendment shall be moved in General Debate, with the exception of a motion for Closure of Debate (see paragraph 9 below), and no resolution shall be agreed to at the end of any such General Debate.

(3) Subject to paragraphs (4) and (5), a Member may speak only once in a General Debate.

- (4) The Proposer may reply to the General Debate.**
- (5) A Member who has spoken in a General Debate may speak again, with the leave of the President, to explain some material point but, in doing so, may not introduce any new matter.**
- (6) No General Debate shall anticipate a matter already tabled for consideration of Tynwald, except by leave of Tynwald supported by a quorum of each Branch.**
- (7) No General Debate shall be permitted at any time on a matter tabled for consideration by a Branch, except by leave of Tynwald supported by a quorum of each Branch.**
- (8) The subject matter of a General Debate shall not refer to any matter which is *sub judice*, subject to the discretion of the President. In the course of a General Debate no reference shall be made to a matter which is *sub judice*, subject to the discretion of the President.**
- (9) During a General Debate, a motion for Closure of Debate may be made: "That the General Debate be now concluded", no amendment or debate being allowed.**
- (10) Unless it appears to the President that such motion is an abuse of the rules of Tynwald or an infringement of the rights of the minority, it shall be put forthwith.**
- (11) If such motion is decided in the affirmative by a quorum of each Branch, the President shall call upon the mover of the General Debate to reply, after which the General Debate shall end.**

J P Watterson MHK

S C Rodan OBE MLC

D J Ashford MHK

D C Cretney

G D Cregeen MHK

R K Harmer MHK

L L Hooper MHK

K Sharpe MLC

CC Thomas MHK

March 2020

Parliamentary Copyright

Available from:

The Tynwald Library
Legislative Buildings
Douglas
Isle of Man IM1 3PW
British Isles
Tel: 01624 685520
e-mail: library@tynwald.org.im

March 2020

Price: £2.75