

OFFICE OF THE CLERK OF TYNWALD

Publication of diary information and Members’ circulars

Practice Note

22nd December 2022

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I. APPROVAL AND COMMENCEMENT

1. This Practice Note is issued by the Clerk of Tynwald pursuant to Tynwald Standing Order 10.18(11). It was approved by the President on 19th December 2022 and by the Speaker on 22nd December 2022.
2. The arrangements in this Practice Note have immediate effect and apply to:
 - diary information on room bookings in the Legislative Buildings from 1st October 2022 onwards; and
 - Members' circulars issued from 1st October 2022 onwards.

II. INTRODUCTION

3. As component parts of an ancient parliament, Tynwald Court and its Branches and Committees have an inherent right to sit in private and to hold information in confidence. On the other hand, the majority of parliamentary business is today conducted in public and a large part of the role of the Clerk of Tynwald's Office involves the publication of information. By enacting the Freedom of Information Act 2015, Tynwald has established the principles that –
 - (a) information held by public authorities should be available to the public to promote the public interest; and
 - (b) exceptions to the right of access are necessary to maintain a balance with rights to privacy, effective government, and value for the taxpayer.¹
4. The Clerk of Tynwald's Office manages the diary for the Legislative Buildings. The buildings are used for parliamentary proceedings and for other purposes including education and training, interparliamentary and community engagement activities, and administration.
5. The Clerk of Tynwald is a public authority for the purposes of the Freedom of Information Act 2015 and a controller for the purposes of data protection legislation. A parliamentary privilege exemption exists within both of these statutory frameworks. While these exemptions may be applicable in certain specific circumstances, the general position is that the Clerk of Tynwald's Office is bound by the same law as everyone else.
6. Before October 2022 the Clerk of Tynwald operated on the basis of a presumption that information circulated by Members (including Ministers) to all Members was to be held in confidence and was not published unless an express instruction had been given to do so. This presumption was applied to all such information including diary information about Tynwald Members' briefings.
7. From October 2022 the presumption has been reversed. The Clerk now assumes that the information circulated by Members (including Ministers) to all Members may be made

¹ See Freedom of Information Act 2015, section 3.

available to the public unless an express instruction has been given to hold the information in confidence.

8. It is now the practice of the Clerk of Tynwald to publish diary information on room bookings in the Legislative Buildings, and certain other information which has been circulated to all Members of Tynwald. Publication is undertaken monthly, three months in arrears. Diary information is published by the Clerk of Tynwald under the Clerk's own authority as a public authority under the Freedom of Information Act 2015. Members' circulars are published by authority of Tynwald under Standing Order 10.18, which was approved by Tynwald on 15th November 2022.
9. Standing Order 10.18 has been introduced to ensure that the publication of circulars by the Clerk is done under the appropriate authority. From a political point of view this is important in circumstances where there is any dispute between Members as to what should be published and what should not. From a legal point of view it is important because:
 - the existence of a formal procedural framework brings Members' circulars clearly within the ambit of "proceedings in parliament" for the purposes of the law of parliamentary privilege.²
 - where information is published under the authority of Tynwald, the originator of the information is protected from any action in defamation.³
 - to the extent that circulars include personal data, the exercise of a function of Tynwald or the branches is a lawful basis for processing for the purpose of data protection legislation.⁴
10. Standing Order 10.18 and this Practice Note are intended to safeguard against –
 - the erosion of Members' right to meet in private;
 - any breach of the legal obligations of the Clerk of Tynwald; and
 - any accidental disclosure of information.
11. The arrangements described in this Practice Note apply equally to information circulated by or on behalf of presiding officers, parliamentary committees and backbenchers.
12. Anyone producing information which is to be circulated to all Members should bear in mind that the information will ultimately be published. Personal data should not be included unless necessary.

² See Tynwald Proceedings Act 1876, section 6B

³ Privileges of Tynwald (Publications) Act 1973

⁴ See GDPR and LED Implementing Regulations 2018 ([SD 2018/0145](#)), Regulation 10.

III. DIARY INFORMATION

13. It is the practice of the Clerk of Tynwald to publish diary information at the time shown in the Annex.
14. “Diary information” is the date, time, title and location for each entry in the “What’s On” calendar held by the Office of the Clerk of Tynwald which relates to an event which has taken place in a bookable meeting room.
15. The “bookable meeting rooms in the Legislative Buildings” are the Chambers, the Barrool Suite, the Millennium Room, Committee Rooms 1 and 2 and the Members’ Room.

Personal data

16. Personal data is not normally published as part of diary information. The exceptions are that –
 - in the case of a room booking made by an individual Tynwald Member, the name of the Member will be published as part of the title of the meeting
 - in the case of a meeting convened to hear from a campaigner or expert, or from an organisation whose name incorporates the name of a person, then the name of that campaigner, expert or organisation may be published as part of the title of the meeting.
17. Where a Member books a room in the Legislative Buildings to meet a constituent, the Member does not have to provide the constituent’s name to the Clerk of Tynwald’s Office, and should not do so. In the rare circumstances where there was a business reason for the Office to hold the name of a constituent, the name is not published as part of “diary information”.

IV. MEMBERS’ CIRCULARS

18. Standing Order 10.18 authorises the Clerk of Tynwald to publish “Members’ circulars”. A “Members’ circular” in this context includes any electronic or hard copy document which is sent –
 - by or behalf of a Member of Tynwald;
 - to all Members of Tynwald, or all Members of the House of Keys, or all Members of the Legislative Council; and
 - to the Clerk of Tynwald.
19. Circulation “by or on behalf of” a Member of Tynwald includes circulation by an officer of a Government Department, Board or Office provided that it is made clear, as part of the circular, that circulation of the information has been approved by a Tynwald Member. A circular issued by an officer on behalf of a Member should refer to the Member by name, not just by job title and not just by implication on the basis of their role in a public body. For example, it should say “This information is circulated on behalf of Minister [surname]”, not

“This information is circulated on behalf of the Treasury Minister” and not “This information is circulated on behalf of the Treasury”.

20. Circulation “to all Members” includes any circulation where it is reasonable to infer that the intention of the person sending the circular was to send it to all Members. It does not matter if an incomplete or out-of-date circulation list was used, as long as the intention is clear.
21. An item will be treated as having been “sent to the Clerk of Tynwald” as long as it is sent –
 - to the Clerk of Tynwald or Deputy Clerk of Tynwald personally;
 - to any member of staff in the Clerk of Tynwald’s Office using an official address (whether physical or electronic); or
 - to any email address ending @tynwald.org.im
22. On the consequences of excluding the Clerk of Tynwald’s Office from circulation lists, see paragraph 26 below.

Certain circulars published as a matter of routine

23. It is the practice of the Clerk of Tynwald to publish, as a matter of routine, the following types of information at the times shown in the Annex –
 - Presentations. This includes information in any format which has been circulated in connection with a meeting of all Members. An “instruction not to publish” (see below) may be given.
 - Unpublished documents referred to in debate which have been circulated by the Clerk under Tynwald Standing Order 3.23(7) or for by the equivalent officer for an equivalent purpose in either Branch and have in fact been referred to in debate. In principle an “instruction not to publish” (see below) may be given in relation to a document referred to in debate but in practice this is expected to be rare. However, information in this category will not be published if the relevant presiding officer is of the opinion that publication would be an abuse of privilege or would for some other reason be contrary to the public interest.
 - Follow-up information (also known as “Hansard Appendices”). This is information which has been directly referred to by a Member during proceedings in either Tynwald or a Branch and which is circulated afterwards in fulfilment of a commitment given during those proceedings. In principle an “instruction not to publish” (see below) may be given in relation to follow-up information but in practice this is expected to be rare. Hansard Appendices have been published since October 2014.

Other circulars published by exception only

24. Members’ circulars other than those referred to in paragraph 23 are not published as a matter of routine. They may however be published on an exceptional basis with the

approval of the Clerk or Deputy Clerk of Tynwald. Some of them may, in some circumstances, be required to be disclosed by operation of the Freedom of Information Act 2015, data protection legislation, or another legal requirement. They may include:

- emails about matters discussed in sittings of Tynwald and the Branches, or in other meetings of all Members, whether sent before or after the discussion
- campaigning information (whether originated by a Member, or originated by another person and forwarded or responded to by a Member)
- Teams chats from remote or hybrid meetings
- personal communications between Members such as information on charitable or community activities.

No obligation to issue circulars

25. Members who make presentations to other Members are under no obligation to circulate their slides or handouts before or after the event. The Clerk of Tynwald's Office does not chase people who have made presentations, neither does it encourage them either to circulate their material or to avoid circulating it. When anyone gives a presentation, it is entirely up to them how much, if any, material they also circulate, and when.

Excluding the Clerk of Tynwald's Office from distribution lists

26. It is possible for a Member to circulate information to other Members and to exclude the Clerk of Tynwald's Office from the circulation list. The Clerk of Tynwald's Office does not know how often this is done. If it is done –
- there is no prospect of the information being published by the Clerk of Tynwald under Standing Order 10.18; but
 - the Clerk of Tynwald's Office cannot exercise its normal function of holding the information for future reference by Members and Committees; and
 - parliamentary privilege does not apply.
27. If the Office of the Clerk of Tynwald receives a request under the Freedom of Information Act 2015 for information which the Office does not hold, a practical refusal reason will apply. The Clerk will not ask Members to search their records, because each Member is a separate legal person. However, the Clerk may suggest to the requestor to try directing their query to any relevant public authority.

Instruction not to publish

28. Standing Order 10.18(2) provides that a person circulating information may give an instruction to the Clerk of Tynwald that the information is not to be published. The Clerk is required to follow any such instruction except in certain limited circumstances (see "Disregarding an instruction" below).

29. An instruction must be explicit and should ideally use the word “instruct” or “instruction”. It is not enough for a presentation or paper to have a “Confidential” watermark or running header. See also paragraph 37 below on information which appears inherently unsuitable for publication.
30. An instruction given by an officer on behalf of a Member should refer to the Member by name, not just by job title and not just by implication on the basis of their role in a public body. For example, it should say “Minister [surname] instructs the Clerk that this presentation is not to be published before the end of the Budget debate”, not “The Treasury Minister instructs the Clerk...”, and not “The Treasury instructs the Clerk”.
31. An instruction should ideally be given at the same time as the information is circulated, and should be included as part of the same circular so that all recipients are made aware of the sensitivity of the information.
32. However, an instruction may be modified at any time. For example, in the case of a lunchtime presentation preceding a debate, the Minister might initially be of a mind to prevent an entire presentation from being published, but might decide after the debate that a part it should be published. Or in the event of a change of Minister, a new Minister might take a different view on publication.
33. An instruction should ideally be given by the person who circulated the information. In the case of official business, however, an instruction sent separately by a more senior officer on behalf of a Tynwald Member is acceptable. So for example, if after a lunchtime meeting a technical specialist in a Department (on behalf of a Minister) circulates a presentation, then it would be acceptable for the relevant Chief Executive (on behalf of the same Minister) to add an instruction not to publish.
34. An instruction should be time-limited if possible. For example, in the case of a lunchtime presentation concerning a capital project, a Minister might wish the presentation not to be published before a procurement exercise has taken place, but might be happy for it to be published after the project has been completed. This should be made clear at the time of circulation.
35. An instruction need not refer to a whole document, but may instead identify a particular part of a document which is not to be published. For example, a Minister might circulate a 50-slide presentation and give an instruction that just one of those slides be withheld from publication.
36. Parliamentary privilege provides a bar to legal proceedings in respect of the publication of information by the Clerk of Tynwald under the authority of Tynwald.⁵ Information whose disclosure is subject to copyright or to any other legal restriction should seldom be circulated to all Tynwald Members. In the rare circumstances where this is considered necessary, it should be done deliberately and carefully, with an instruction being given to the Clerk if appropriate.

⁵ Privileges of Tynwald (Publications) Act 1973

37. In circumstances where a Members' circular contains information which appears to the Clerk to be inherently unsuitable for publication, but no instruction has been given, the Clerk may invite the Member who issued the circular to consider giving an instruction. This does not affect the general position as set out in paragraph 36 above.
38. If the Clerk of Tynwald's Office appears to have published something in contravention of an instruction this should be flagged up immediately so that any error can be corrected.

Disregarding an instruction

39. Standing Order 10.18(6)–(8) provide that –
- (6) The Clerk must disregard an instruction given under paragraph (2) to the extent that disclosure of the information is –*
 - (a) required by law;*
 - (b) ordered by Tynwald;*
 - (c) in a case where information was circulated to only one Branch, ordered by that Branch;*
 - (d) authorised by the relevant presiding officer.*
 - (7) Authorisation under paragraph (6)(d) may not be given unless the relevant presiding officer has consulted the other presiding officer and has obtained the consent of the person specified in paragraph (8).*
 - (8) The person specified in this paragraph, –*
 - (a) if the information was circulated by or on behalf of a Member acting in an official capacity, is the person for the time being holding that office;*
 - (b) if the information was circulated by or on behalf of a Member not acting in any official capacity, is the Member who circulated the information, provided that such consent need not be obtained if that person is no longer a Member of Tynwald.*
40. This is designed to ensure the Clerk can comply with any applicable legal obligations under the Freedom of Information Act 2015 and under data protection legislation, in circumstances where a request is received under freedom of information or data protection legislation for information which is subject to an instruction not to publish.
41. Standing Order 10.18(6)(d) is intended to dovetail with the provisions on parliamentary privilege in freedom of information and data protection legislation. Both statutory frameworks allow for parliamentary privilege to be asserted by the making of a certificate stating that certain information cannot be released without infringing parliamentary privilege. The Standing Order enables the relevant presiding officer to take a view on a case-by-case basis.

42. If the presiding officer is content to assert parliamentary privilege they can do so by making a certificate (or, in the case of data protection legislation, by authorising the proper officer to make one). If this happens, the Clerk of Tynwald will withhold the information.
43. Alternatively, the presiding officer can discuss the matter with the Member who would be most affected by release of the information. This will normally be the Member who originally circulated the information, if they are still a Member and still in the same role. If they were acting in an official capacity which they no longer hold, the presiding officer will have to talk to their successor in office. The effect is that for information circulated by Ministers, the Minister of the day remains in control. Without the consent of the Minister, the presiding officer cannot authorise release and would instead be expected to make a certificate.
44. If the Member who originally circulated the information was not acting in an official capacity when they circulated the information, and if they have since left Tynwald, then the presiding officer can decide on their own whether to assert privilege or authorise release of the information.
45. In a case where a Minister (or another Member) wishes to circulate sensitive information to all Members, the Minister (or other Member) is encouraged to discuss the sensitivity with the presiding officers and the Clerk of Tynwald before circulating the information. A certificate under the Freedom of Information Act will not be made in advance of a request being received under the Act, but any consideration of privilege issues by the presiding officers at the time of circulation may be recorded for future reference.
46. Standing Orders 10.18(6)(b) and (c) are unlikely to be relevant in a case where a request has been received under the Freedom of Information Act 2015 or data protection legislation. They could, however, be invoked in the event of a dispute between Members about whether a particular piece of information should be disclosed.

Personal data

47. Personal data included in Members' circulars is not normally published unless it is germane to the content of a document (for example, an invitation to hear from a visiting expert, or a presentation incorporating quotations from individual stakeholders). The Clerk of Tynwald's Office aims to redact personal data which appears to be unnecessary. People producing Members' circulars should as far as possible avoid including unnecessary personal information in the first place.

V. OTHER PUBLICATIONS

48. Standing Order 10.18 is not relevant to the following categories of information, which are already published as a matter of routine. The arrangements in this Practice Note do not apply to them. They are:
 - Order Papers and Question Papers, together with the associated Bills, Explanatory Notes and laid papers

- Votes and Proceedings, *Hansard* and “listen again” audio files
- Written evidence published by parliamentary committees
- Reports produced by parliamentary committees.

Clerk of Tynwald
22nd December 2022

ANNEX: PUBLICATION TIMES

Diary information (see paragraphs 13–17)

- (1) As soon as practicable after at least three clear calendar months have elapsed. The intention is that diary information for meetings held in October should be published during the month of February, and so on.

Presentation (see paragraph 23)

- (2) As soon as practicable after at least three clear calendar months have elapsed. The intention is that presentations and handouts from meetings held in October should be published during the month of February, and so on.

Unpublished document circulated under Standing Order 3.23(7) (see paragraph 23)

- (3) As part of the Hansard record of the debate.

Follow-up information (“Hansard Appendix”) (see paragraph 23)

- (4) As soon as practicable after the information has been circulated. There may be a delay during which the information will be checked by staff in the Clerk of Tynwald’s Office to see if any personal data needs to be redacted.