



Cynulliad National  
Cenedlaethol Assembly for  
Cymru Wales

**A Guide to**

**the Legislative Process in the**

**National Assembly for Wales**

**Legislation Office**

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# **A Guide to the Legislative Process in the National Assembly for Wales**

Legislation Office

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If you would like further information, please contact:

Legislation Office 029 2089 8224 / 8008 / 8144 / 8032

Or email: [legislationoffice@wales.gsi.gov.uk](mailto:legislationoffice@wales.gsi.gov.uk)



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# A Guide to the Legislative Process in the Assembly

## Introduction

This guide explains the procedure for the consideration of legislation by the Assembly.

## 1. Background

- 1.1 The [Government of Wales Act 2006](#) ("the 2006 Act") provides a mechanism for the Assembly to acquire, on a case-by-case basis, more powers to make its own laws.
- 1.2 The ability of the Assembly to make these laws is known as its "legislative competence".
- 1.3 In the Government of Wales Act, the legislative competence of the Assembly is defined by reference to "fields" and "matters":
  - A "field" is a broad subject area, e.g. highways and transport, housing;
  - A "matter" is a specific defined policy area within a field.
- 1.4 In the areas in which it has legislative competence, the Assembly can make its own laws, known as "Measures". A Measure will have similar effect to an Act of Parliament.
- 1.5 The fields and matters are listed in **Schedule 5 to the 2006 Act**.
- 1.6 The current fields are:

Field 1: agriculture, fisheries, forestry and rural development	Field 11: housing
Field 2: ancient monuments and historic buildings	Field 12: local government
Field 3: culture	Field 13: National Assembly for Wales
Field 4: economic development	Field 14: public administration
Field 5: education and training	Field 15: social welfare
Field 6: environment	Field 16: sport and recreation
Field 7: fire and rescue services and promotion of fire safety	Field 17: tourism
Field 8: food	Field 18: town and country planning
Field 9: health and health services	Field 19: water and flood defence
Field 10: highways and transport	Field 20: Welsh language

- 1.7 Within each of the above fields, specific matters will be listed which give the Assembly the power to make Measures within the policy area defined by the matter, e.g.

**“Field 5: education and training**

Matter 5.1

Provision about the categories of school that may be maintained by local education authorities;

Matter 5.2

Provision about the establishment and discontinuance of schools maintained by local education authorities, their change from one category to another and their alteration in other respects.”

- 1.8 A full list of the matters is available [here](http://www.assemblywales.org/bus-home/buslegislation/business-legislation-schedule-5.htm).  
<http://www.assemblywales.org/bus-home/buslegislation/business-legislation-schedule-5.htm>
- 1.9 Schedule 5 may be amended to add more matters within fields, thereby extending the legislative competence of the Assembly and providing more policy areas in which it is possible to make Measures.
- 1.10 Schedule 5 may be amended by either:
- A new Act of Parliament; or
  - A Legislative Competence Order (LCO) (subject to approval by both the Assembly and the UK Parliament).
- 1.11 Section 2 of this guide explains more about LCOs and the Assembly’s procedures for approving them (the House of Commons and House of Lords have their own procedures).
- 1.12 Section 3 explains more about Measures and the Assembly’s procedures for approving them.

## 2. Legislative Competence Orders

### What is a Legislative Competence Order (LCO)?

- 2.1 Legislative Competence Orders are a type of secondary (or 'subordinate') legislation which transfer specific powers from Parliament to the Assembly.
- 2.2 In practice, this will mean that each new LCO will add a new matter (or matters) into the relevant field in Schedule 5 (as in the example provided in paragraph 1.7 above), providing the Assembly with the power to make Measures within the policy areas defined by the matter.

### Who can propose a Legislative Competence Order?

- 2.3 An LCO can be proposed by:
  - the Welsh Government;
  - an Assembly committee; or
  - an individual Member, if their name is drawn from a ballot (see below for further details).

### What is the process for considering an LCO?

- 2.4 In the Assembly, there will be a 2-stage process for considering an LCO, involving:
  - (i) the 'pre-legislative scrutiny' of a **proposed** LCO by a committee; and
  - (ii) the approval, by the Assembly, of a **draft** LCO.

### What will pre-legislative scrutiny of a proposed LCO involve?

- 2.5 Pre-legislative scrutiny allows Members the opportunity to consider the provisions of an LCO before it becomes law.
- 2.6 Once a **draft** LCO has been introduced, the Assembly can only vote to accept or reject that LCO in its entirety. It cannot amend the draft LCO in any way.
- 2.7 In order to allow the Assembly an opportunity to consider the LCO before having to vote on it, a **proposed** LCO is laid first.
- 2.8 This proposed LCO is considered by a committee (pre-legislative scrutiny), who report their findings and any recommendations to the Assembly.
- 2.9 At this stage, it is possible to amend the proposed Order to take account of the recommendations of the committee, or any other considerations.

As indicated above, as well as being approved by the Assembly, LCOs must be approved by Parliament. Because of this, it is possible for Assembly committees to undertake pre-legislative scrutiny jointly with committees of the House of Commons and House of Lords.

### **What does the approval of a draft LCO involve?**

- 2.10 Having been subject to pre-legislative scrutiny and amended (if appropriate), a draft LCO is formally laid before the Assembly, along with an Explanatory Memorandum.
- 2.11 The Assembly then vote to approve or reject the draft Order, which cannot be amended.

### **What happens if the draft Order is approved?**

- 2.12 If the draft Order is approved by the Assembly, it is the responsibility of the Secretary of State to lay the draft Order before Parliament for approval by both the House of Commons and the House of Lords.
- 2.13 If approved by both Houses, it is formally approved by the Queen. It then becomes law, amending Schedule 5 to the 2006 Act and providing the Assembly with more powers to make Measures.

### **What happens if the draft Order is not approved?**

- 2.14 If the Assembly does not approve the draft Order, it falls and no further action is taken in relation to it.
- 2.15 If the Assembly approves the draft Order, but the Secretary of State refuses to lay the draft Order before Parliament, he must give his reasons in writing to the First Minister.
- 2.16 If the Assembly approves the draft Order, but it is subsequently rejected by Parliament, the draft Order falls and no further action is taken on it.

### **What is the process for a Committee proposed or draft LCO?**

- 2.17 Any committee may prepare a proposed LCO and then introduce a draft LCO for approval by the Assembly, providing that LCO is within the remit of the particular committee.
- 2.18 The proposed or draft Order is subject to broadly the same procedure as outlined above.

### **What is the process for a Member proposed or draft LCO?**

- 2.19 Any Member may bring forward a proposed LCO for consideration, provided their name has first been drawn from the ballot by the Presiding Officer.

### **What does the ballot involve?**

- 2.20 In order to qualify for the above ballot, a Member wishing to bring forward a proposed LCO must first submit the following documents:
  - an outline of a proposed LCO; and
  - an Explanatory Memorandum, explaining the purpose of the proposed LCO.

- 2.21 The Presiding Officer will give Members at least 7 days notice of his intention to run a ballot, to allow Members to prepare the required documents.
- 2.22 The Member whose name is drawn from the ballot will have the opportunity to present their case for legislation to the Assembly and the Assembly will be able to vote on whether the outline proposal can proceed any further.
- 2.23 If the Assembly approves the outline proposed LCO (submitted as part of the ballot), the Member may then formally bring forward a proposed Order, which will be considered by the Assembly as set out above.

### 3. Measures

#### What is a Measure/proposed Measure?

- 3.1 A Measure is a piece of law made by the Assembly. It has similar effect to an Act of Parliament.
- 3.2 The Assembly is able to pass Measures on any 'matter' listed in Schedule 5 to the 2006 Act.
- 3.3 While a Measure is in progress through the Assembly, it is known as a **proposed Measure**.

#### Who can introduce a proposed Measure?

- 3.4 A proposed Measure may be introduced by:
  - the Welsh Government;
  - an Assembly committee;
  - an individual Member, if their name is drawn from a ballot (see below for further details);
  - the Assembly Commission.

#### How is a proposed Measure introduced?

- 3.5 To be introduced, a proposed Measure must be:
  - laid in English and Welsh;
  - accompanied by a 'statement of legislative competence' by the Presiding Officer setting out whether in his opinion the Assembly has the power to make the proposed Measure;
  - accompanied by an Explanatory Memorandum.
- 3.6 The Explanatory Memorandum sets out the following information:
  - the policy objectives of the proposed Measure;
  - whether any alternative ways of achieving the policy objectives of the proposed Measure were considered;
  - details of any consultation undertaken;
  - an objective summary of each provision of the proposed Measure and its intended effect;
  - best estimates of costs associated with the proposed Measure;
  - details about any subordinate legislation powers in the proposed Measure;

- details of any charge on the Welsh Consolidated Fund.

### **What is the process for considering a proposed Measure?**

3.7 There is a 4-stage process for the consideration of a Measure involving:

- Stage 1 - consideration of the general principles of the proposed Measure by a legislation committee, and the agreement of those general principles by the Assembly;
- Stage 2 - detailed consideration, by a legislation committee, of the proposed Measure and any amendments tabled - this involves line-by-line examination of the text of the proposed Measure by the committee;
- Stage 3 - detailed consideration, by the Assembly, of the proposed Measure and any selected amendments - this involves line-by-line examination of the text of the proposed Measure by the Assembly;
- Stage 4 - a vote by the Assembly to pass the final text of the proposed Measure.

### **What happens at Stage 1?**

- 3.8 At Stage 1, the Business Committee refers the proposed Measure to a legislation committee to consider the general principles of the Measure.
- 3.9 The committee may wish to invite representations from interested parties and stakeholders, and may take written and oral evidence.
- 3.10 The committee will produce a report at the end of its considerations which may contain recommendations for amendments to the proposed Measure.
- 3.11 Once the committee has reported, the Assembly will consider the general principles of the proposed Measure, taking account of the report of the committee.
- 3.12 If the Assembly agrees the general principles, the Measure progresses to Stage 2. If not, the Measure falls.

### **What happens at Stage 2?**

- 3.13 At Stage 2, a legislation committee considers and disposes of any amendments tabled to the proposed Measure.
- 3.14 Any Member, regardless of whether they are a member of the committee considering the proposed Measure, may table an amendment but only committee members may vote on amendments. At Stage 2, all admissible amendments are considered by the committee.
- 3.15 Stage 2 is completed when all the amendments have been disposed of.

### **What happens at Stage 3?**

- 3.16 At Stage 3, the Assembly considers and disposes of any amendments tabled to the proposed Measure (which may have been revised as a result of any amendments passed at Stage 2).
- 3.17 At Stage 3, any Member may table an amendment to a proposed Measure, but the Presiding Officer will select those amendments to be considered by the Assembly. Amendments on similar topics may be grouped for debate.
- 3.18 Stage 3 is completed when all amendments have been disposed of, unless the Assembly agrees to Further Stage 3 proceedings, which provide the final opportunity for any technical or consequential amendments to be considered by the Assembly.

### **What happens at Stage 4?**

- 3.19 Stage 4 is the final stage in the process of considering a proposed Measure. At this stage, the Assembly will vote on whether or not to approve the proposed Measure in its final form.

### **What happens if the proposed Measure is passed?**

- 3.20 If passed by the Assembly, the proposed Measure must then receive Royal Approval from the Queen before formally becoming a piece of law.

### **What happens if the proposed Measure is not passed?**

- 3.21 If the Assembly does not pass the proposed Measure, it falls and no further action can be taken on it.

### **What is the Re-consideration Stage?**

- 3.22 After a proposed Measure has been passed by the Assembly, it may be required to go through a further stage if there has been any question raised, either by the Secretary of State or the Supreme Court, about whether the Assembly had the power (i.e. legislative competence) to make the Measure or certain aspects of it.

### **What is the process for a Committee proposed Measure?**

- 3.23 Any committee may introduce a proposed Measure relating to the remit of that committee.
- 3.24 Once introduced, the proposed Measure is subject to the procedure for proposed Measures outlined above except that there is no consideration of the general principles by a legislation committee, as the committee will have been expected to undertake this work as part of the preparation of its proposal.

### **What is the process for a Member proposed Measure?**

- 3.25 Any Member may introduce a Member proposed Measure provided their name has first been drawn from the ballot by the Presiding Officer.

### What does the ballot involve?

- 3.26 In order to be eligible for the ballot, a Member wishing to introduce a proposed Measure must first submit the following documents:
- the title of the proposed Measure; and
  - an Explanatory Memorandum.
- 3.27 The Presiding Officer will give Members at least 7 days notice of his intention to run a ballot, to allow Members to prepare the necessary documents.
- 3.28 The Member whose name is drawn from the ballot will have the opportunity to present their case for legislation to the Assembly, who will vote on whether the proposal can proceed any further.
- 3.29 If the Assembly approves the proposal, the Member may formally introduce a proposed Measure, which will be considered by the Assembly in the usual way.