



Constitutional QuickGuide 3

Legislative Competence Orders

What is a Legislative Competence Order (LCO)?

Under Part 3 of the *Government of Wales Act 2006* (“the Act”) the Assembly can pass legislation, known as “Assembly Measures”, in matters where it has legislative competence (see Constitutional QuickGuide 2) .

Section 95 of the Act, along with Schedule 5, set out the extent of the Assembly's legislative competence by listing devolved “Fields” and “Matters” within each Field. Schedule 5 may be amended to add “Matters” and thus extend the legal competence of the Assembly. This may be done **either** by an Act of Parliament, **or** by a **Legislative Competence Order (LCO)** approved by the National Assembly for Wales and by both Houses of Parliament .

LCOs are a particular kind of Order in Council. Orders in Council are a type of secondary legislation and are issued by the Monarch and with the advice of the Privy Council and made under powers given in a parent Act. They are most frequently used when the use of a general Statutory Instrument would be inappropriate, such as the transfer of responsibilities between Government Departments or in relation to the constitution. Orders in Council were used to transfer powers from Ministers of the UK government to those of the National Assembly for Wales in 1999 through the *National Assembly of Wales (Transfer of Functions) Order 1999*.¹

LCOs, therefore, are Orders in Council made specifically in relation to the legislative competence of the National Assembly for Wales under provisions in the *Government of Wales Act 2006*.

Approval of LCOs

The Act provides for the Assembly and both Houses of Parliament to approve draft Orders in Council before they are recommended to be made by the Monarch in Council.²

In circumstances where the Welsh Assembly Government has initiated the proposal, Explanatory Notes to the Act³ state that the main procedural stages will normally include:

- ◆ Preparation of a proposed LCO following discussion between the Welsh Assembly Government, relevant Whitehall Departments, and the Wales Office. This will focus on ensuring there is clarity about the scope of the LCO and

¹ HC Factsheet, Statutory Instruments, L7, January 2007

² The Monarch in Council, or more commonly termed “Queen in Council”, refers to the practice of making Orders “by and with the advice of the Privy Council.

³ *Government of Wales Act 2006* (Chapter 32), Explanatory Notes, para.317

confidence that it will give the necessary legislative competence to enable the Assembly Government's policy objective to be achieved;

- ◆ Pre-legislative (non-statutory) scrutiny of a proposed draft LCO by the Assembly and Parliament. These processes are not prescribed in the Act;
- ◆ The formal (statutory) processes for the Assembly and both Houses of Parliament to give their approval to the final draft LCO, modified as appropriate following the pre-legislative scrutiny processes. At this stage the draft LCO will not be able to be amended as both the Assembly and Parliament will need to approve identical text;
- ◆ When a draft LCO has been approved by the Assembly, the First Minister will be required, as soon as reasonably practicable, to give notice in writing of that fact to the Secretary of State, who must, by the end of 60 days either have laid the draft LCO before both Houses of Parliament or have given the First Minister written reasons for not being prepared to do so;
- ◆ Once an LCO conferring enhanced legislative powers (by adding a Matter or Matters into Schedule 5 of the 2006 Act) has been made, the competence conferred will be of a continuing character. This means that the Assembly could make other Measures in relation to that Matter if it so wished.

Assembly Procedures for approving LCOs

Standing Order 22 deals with the procedures for pre-legislative scrutiny of LCOs and for the approval of LCOs by the Assembly.

Pre-Legislative Scrutiny in the Assembly

Standing Order 22 includes procedures for the pre-legislative scrutiny of LCOs, referred to as “**proposed Orders**”. Proposed Orders may be laid by Members of the Welsh Assembly Government, a Committee or an individual Member.

At the same time as a Member lays a proposed Order he or she must lay an **Explanatory Memorandum**. A proposed Order must not be laid unless it is in proper form in accordance with any determinations made by the Presiding Officer.

The Business Committee must either refer the proposed Order for detailed consideration (pre-legislative scrutiny) to an LCO Committee or by motion in plenary, propose that there should be no detailed consideration of the proposed Order.

Where the proposed Order has been referred for detailed consideration, the LCO Committee must consider and report on the proposed Order. In preparing its report on the proposed Order, the committee must take into account:

- ◆ any recommendation on the proposed Order that has been made by any other committee of the Assembly; and

- ◆ 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.

If the motion to bypass detailed consideration is agreed, the Member in charge of the proposed Order may introduce a draft Order relating to that proposed Order (see below). If the motion is not agreed, the Business Committee must refer the proposed Order for detailed consideration to an Committee.

The passage of Draft LCOs through the Assembly

Once a proposed Order has either received detailed consideration or such consideration has been bypassed, the proposed Order (as amended) is introduced as a draft Order. The text of the draft Order **cannot** be amended.

Draft Orders may be introduced either by members of the Welsh Assembly Government, a Committee or an individual Member.

At the same time as a draft Order is introduced, an **Explanatory Memorandum** must be laid, which must include an explanation of how account has been taken of any recommendation made by any Assembly committees that considered the proposed Order and the reasons for any significant differences between the draft Order and the proposed Order to which it relates.

Not later than 40 working days after a draft Order has been introduced, the Assembly must consider a motion that the draft Order be approved.

Members' Ballot for a Member proposed Order

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 wishes to lay a Member proposed Order.

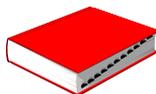
The Presiding Officer must include in the ballot the names of all those Members who have applied to be included and who have provided an outline proposed Order and an Explanatory Memorandum. If successful in the ballot, a Member must seek the agreement of the Assembly to lay a proposed Order.

No Member who has previously won the ballot during the lifetime of an Assembly can apply.



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