



Bermuda's Legislature

Understanding the Standing Orders

Members' Manual

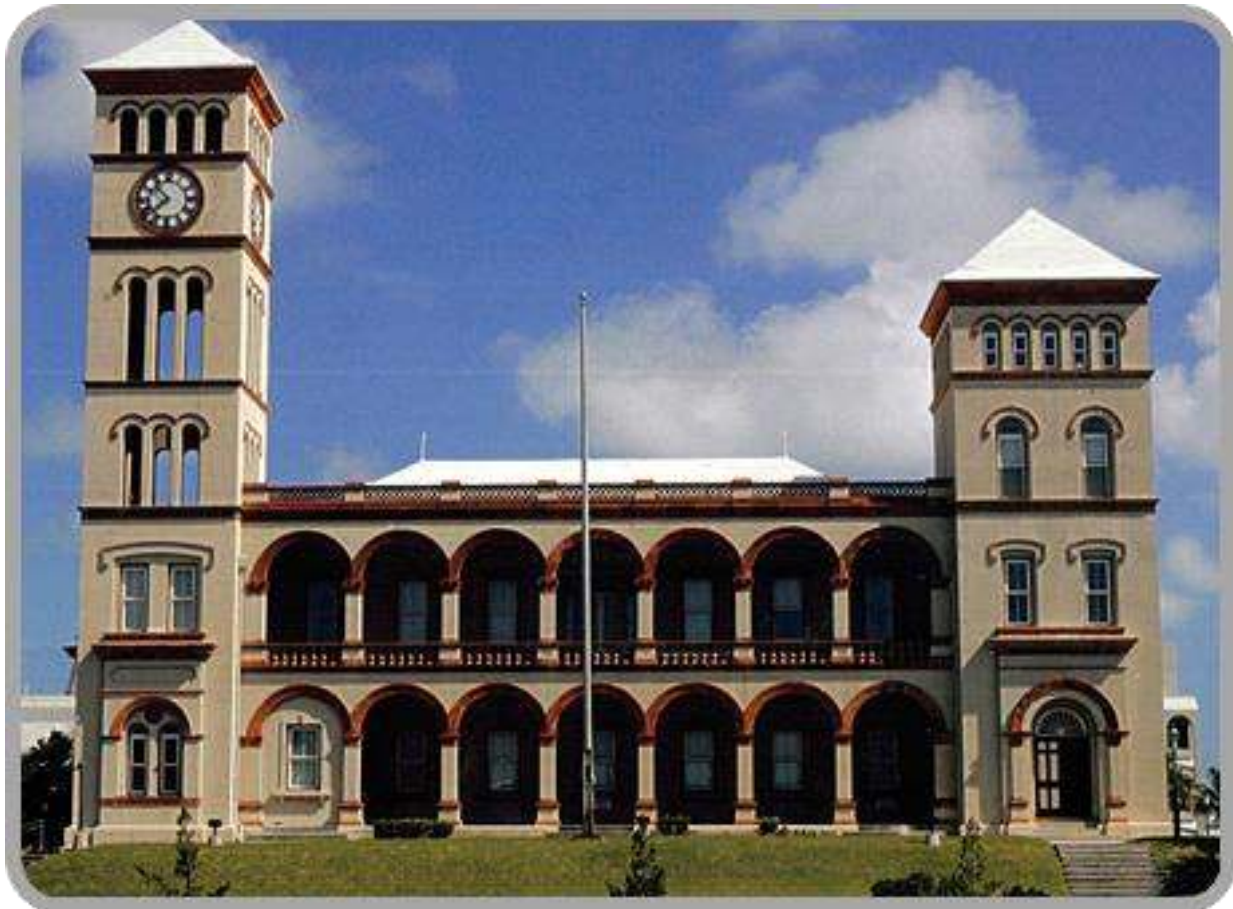


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CONSTITUTIONAL FRAMEWORK AND POWERS

It is within the framework provided by the Bermuda Constitution Order 1968 (BCO) (Section 45) that the Standing Orders (SO) of the Legislature of Bermuda have been formulated. Under the Westminster system, the three arms of Government are the Executive (the Cabinet), the Legislature and the Judiciary.

LEGISLATURE OF BERMUDA

Section 26 (BCO): There shall be a Legislature for Bermuda which shall consist of Her Majesty, a Senate and a House of Assembly.

The main functions of the Legislature are:

1. To enact laws for the good governance of Bermuda;
2. To implement taxes;
3. To evaluate Government policies and proposals for expenditure;
4. To hold the Government accountable (scrutinising role).

In discharging these functions, the Legislature helps to bring the relevant facts and issues before the electorate.

CABINET

Section 57 (2) (BCO): The Cabinet is **collectively responsible to the Legislature** for any advice given to the Governor by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office. **The Cabinet is responsible to the Legislature.**

POWERS TO MAKE LAWS

Section 34 (BCO): Subject to the provisions of this Constitution, the Legislature may make laws for the peace, order and good governance of Bermuda.

Section 35 (1) (BCO): Subject to the provisions of sections 37 and 38 of this Constitution, the power of the Legislature to make laws shall be

exercised by Bills passed by both Houses, either without amendment or with such amendments only as are agreed to by both Houses, and assented to, by Her Majesty or by the Governor on behalf of Her Majesty.

The Standing Orders of the House of Assembly and the Senate are made by each House under Section 45 of the Bermuda Constitution.

The Standing Orders promote the following key principles:

- Accountability of the Executive to Parliament;
- Procedures and powers of Parliament;
- Freedom of speech for each Member;
- Equality of status for all Members.

This manual is designed to highlight the way in which these principles are maintained and operated in the Legislature.

ACCOUNTABILITY

In the Legislature, as in most Westminster-styled Legislatures, there are several mechanisms through which Members can hold the Government accountable.

ACCOUNTABILITY MECHANISMS

- Parliamentary Question to Ministers/Question Period
- Motions on topical issues/matters of concern
- Ministerial Statements
- Parliamentary Committees

QUESTION PERIOD

While the House or Senate is in session, questions may be answered by Ministers or Junior Ministers either in writing or answered on the floor of the House (oral answers). These questions and answers relate to public affairs for which they are responsible. Ministers or Junior Ministers may also be asked on-the-spot questions based on Statements presented to the House or Senate. **Supplementary questions** to elicit further information may also be asked.

QUESTIONS TO MINISTERS

HOA STANDING ORDERS 17 -18

SENATE STANDING ORDERS 65 - 66

The Presiding Officer (Speaker of the House or President of the Senate) will be the sole judge as to whether a question meets the required criteria.

Some of the guidelines to be observed in drafting a question are as follows:

- The question should refer to just one (1) issue and should not be of excessive length;
- A question should not contain arguments, inferences, opinions, imputations, or ironical or offensive expressions;
- A question should not reflect on the decisions of a court of law or be likely to prejudice a matter which is under trial and therefore sub judice;
- The question should not ask whether statements in the press or of private individuals, or unofficial bodies are accurate;
- The question should not raise an issue already decided by the House/Senate during same session.

Questions can be categorised as either “with notice” or “without notice” and answers to questions can be given either in oral or written form.

Note: If the subject matter of a Question does not fall under the portfolio of the Minister to whom it is addressed, it is the responsibility of that Minister and the Secretary to the Cabinet to redirect the question to the substantive Minister.

QUESTIONS WITHOUT NOTICE (MATTERS OF URGENT PUBLIC IMPORTANCE)

A Member may ask a question without notice if it is of “urgent public importance” and the Member has **obtained the leave of the Speaker.**

Any such question allowed under this guideline must be framed (or aimed) at determining Government’s position or policy in respect of the matter concerned; and be directed at the Minister or Junior Minister under whose portfolio responsibility for the matter(s) lies.

Any Member who asks a question is permitted **two (2) follow-up supplementary questions**. At the discretion of the Speaker/President, other Members may be permitted follow up questions on the same subject.

QUESTIONS WITH NOTICE (ORAL AND WRITTEN)

ORAL QUESTIONS AND ANSWERS

A Member who wishes to have a question answered orally will mark his/her notice (submitted to the Clerk) with an asterisk. If a Member does not mark the question with an asterisk, the answers will be received in written form.

WRITTEN QUESTIONS

Notice of a question should be in writing and signed by the Member concerned and submitted to the Clerk by 12:00 noon not less than nine clear days before the day on which the answer is required in the House; and six clear days before the answer is required in the Senate.

MINISTERIAL STATEMENTS

Ministers may make statements to Parliament to discuss issues or initiatives in their respective Ministries. All Ministerial Statements must be in writing and read by the Minister/Junior Minister during the House or Senate sitting.

Occasionally, a Personal Explanation may be made by a Member of the House or Senate to explain an issue or topic associated with him/her.

QUESTIONS ON MINISTERIAL STATEMENTS

Members may ask questions related to matters arising out of Ministerial Statements. In the House, Members should notify the Speaker/Clerk as early as possible that he or she intends to ask questions relating to a particular statement. The question must arise directly from the contents of the Ministerial Statement and be directed to the Minister concerned. Questions must be short and to the point.

In the Senate, questions can be put to the Minister/Junior Minister concerned during Question Period. No prior notice to the President is required.

e.g. “With respect to the matter raised by the Minister in his/her Statement [*the Member may quote the relevant portions*], would the Honourable Minister please (inform/tell/clarify) for this Honourable House etc.”

MOTIONS

HOA STANDING ORDER 21

SENATE STANDING ORDER 70

A Motion is a formal proposal that the House or Senate take action of some kind. The moving of and voting on motions are the basic building blocks of parliamentary procedure.

Notice of Motion	A Notice of Motion must be given in writing and signed by the Member and addressed to the Clerk.
Period of Notice	<ul style="list-style-type: none"> • Government Motion – one (1) day • Opposition Motion – one (1) day • Committee Business – one (1) day
Examples of Motions Exempt from Notice	<ul style="list-style-type: none"> • Motion for adjournment of the House or a debate • Motion for suspension of a Member • Motion for withdrawal of visitor • Motion for amendment of any motion • Motion to commit a Bill • Motion to withdraw a Bill • Motion of privilege

Examples of Debate Motions

Government

- Motion to consider House/Senate amendments to a Bill

Private

- Motion to establish a Joint Select Committee to propose legislative framework to govern financing of election campaigns
- Motion to censure a Minister

Committee Business

- Adoption of a Report of a Joint Select Committee appointed to consider and report on the establishment of a living wage

MOTION TO ADJOURN

HOA STANDING ORDER 9

SENATE STANDING ORDER 75

An adjournment debate is a way in the House/Senate of enabling a debate to take place but without a question which the House/Senate must then decide. An adjournment debate is held on the motion 'that the House/Senate do now adjourn'.

There is an adjournment debate at the end of each day's sitting. This is an opportunity for all Members to raise an issue and possibly receive a response from the relevant Minister. During Motion to Adjourn, Members in the House are given twenty (20) minutes to speak and Senators are given fifteen (15) minutes.

PARLIAMENTARY PRIVILEGE

HOUSE STANDING ORDER 13

Privileges are the rights enjoyed by both Houses collectively, and are conferred by the Bermuda Constitution Order 1968 and the Parliament Act 1957.

Parliamentary privilege exists to ensure that each House (House of Assembly and Senate) can perform its functions effectively. Freedom of speech is one such privilege belonging to the House as a whole. All Members under Section 13 of the Standing Orders and Section 46 of the Bermuda Constitution Order have immunity from prosecution on all speeches made in the House.

This privilege is essential to allow Members to speak freely and undeterred from possible civil or criminal proceedings being instituted against them. Members should use sound judgment and not misuse or abuse this right.

RULES OF DEBATE

HOUSE STANDING ORDER 19

SENATE STANDING ORDERS 49 & 50

During debates in the House and Senate, Members discuss Acts (existing laws), propose new legislation and current issues. Debate assist both Houses on reaching informed decisions.

IMPORTANT RULES OF DEBATE

A Member desiring to speak shall first rise in his/her place, and when called upon, shall address the Chair. No Member shall speak unless called upon by the Speaker/President or Chair.

If two (2) or more Members rise at the same time, the Speaker/President or Chair shall call upon the Member who first catches his/her eye. No Member shall speak more than once on any question except: in reply, in the case of the mover of a substantive Motion or the Member in charge of a

Bill (the Members right to reply); or to a Point of Order. In Committee, a Member may speak more than once on any question.

No Member may speak on any question after it has been fully put to the vote by the Speaker/President or Chair, that is, after the voices of the Ayes and Nays have been collected.

The mover of a Motion may reply after all the other Members present have had an opportunity of addressing the House.

A Minister, with the consent of the Speaker/President, may conclude a debate on any motion which is critical of the Government, or reflects adversely on, or is **calculated to bring discredit upon the Government or a public officer.**

It is out of order to use offensive and insulting, or disrespectful language about Members of the House or which tends to bring the House of Assembly into disrepute.

Ministers shall be referred to by the designation of their office, other Members shall be referred to by the name of the constituency which they represent. Senators (other than Ministers) shall be referred to by name.

The names of Her Majesty the Queen, His Excellency the Governor and the Speaker of the House shall not be used to influence the House.

No Member in the House shall allude to any debate of the Senate; and no Member in the Senate shall allude to any debate in the House.

A Member, while speaking to a question, may not use offensive or insulting words against the character or proceedings of either House or against particular parties or Members of either House. Every Member shall address his/her observations to the Chair.

No Member may speak to any question after the same has been fully put by the Chair; a question is fully put when the voices of both of the Ayes and Nays have been given thereon.

A Member shall not read his/her speech, except for statements presented by Ministers or Junior Ministers, the submission of the Estimates of Revenue and Expenditure, Opposition Statements in reply, or Ministerial briefings presented in support of a Bill or subsidiary legislation. **When the Speaker is on his feet or the President speaking, he/she must be heard in silence (out of respect).**

TIME LIMITS ON SPEECHES

HOUSE STAND ORDERS 14 & 19

The first speaker for any recognized Party in the House may not speak for more than sixty (60) minutes in the following circumstances:

- debate on second reading of a Government Bill;
- debate on third reading of a Government Bill;
- debate on any other Motion.

All other Members shall speak for no more than thirty (30) minutes.

After seven (7) hours of debate, a Member can speak for only twenty (20) minutes on the second or third reading of a Government Bill.

No Member shall speak for more than three (3) minutes on any congratulatory and/or obituary speech.

SENATE STANDING ORDER 50

Except where otherwise expressly provided by the Standing Orders or by leave of the Senate President, no Member shall speak in the Senate for more than 45 minutes during any debate.

The first speaker for the Government and/or the first speaker for the Opposition in the Senate shall not speak for more than sixty (60) minutes in the following circumstances:

- debate on second reading of a Government Bill;
- debate on any other Motion.

The first speaker for the Government shall have an additional thirty (30) minutes in the right to reply.

No Member shall speak for more than thirty (30) minutes after five (5) hours of debate on the second reading of a Government Bill, or debate on any other Motion.

No Member shall speak for more than five (5) minutes on any congratulatory and/or obituary speech.

VOTING OR DIVISIONS

HOA STANDING ORDERS 19 & 26 SENATE STANDING ORDERS 14 – 15 & 19 – 20

HOUSE

A division may be requested if the result of a vote is in doubt, or if Members want the record to show how each Member voted.

All questions shall be determined by a majority of votes of the Members present; a Member may abstain from voting by so declaring to the Speaker, or when the House is in Committee, to the Chair.

A Member shall not vote on any subject in which he or she has a direct personal or pecuniary interest. If the right of any such Member to vote is challenged by any other Member on this ground, the Member is not entitled to vote if the Speaker so determines.

The Speaker, or the Chair, cannot vote on any Bill or motion unless the votes are equally divided, in which case the Speaker or the Chair, as the case may be, will have a casting vote.

At the conclusion of a debate on any question, the Speaker or the Chair shall put the question for the decision of the House. If there is no objection voiced to the question, the Speaker or Chair shall declare it carried. If an objection is voiced, the Speaker or Chair shall collect the voices of the “Ayes” and the “Nays” and offer an opinion of the voice vote by stating: “In my opinion the ‘Ayes’/or the ‘Nays’ have it.”

When a voice vote has been taken, any three (3) Members may challenge the opinion of the voice vote by standing in their places and requesting a recorded division. No Member may speak to any question after the same has been fully put from the Chair. A question is fully put when the Chair has taken the collective voice vote of both the “Ayes” and the “Nays”.

Where a division is called, the Speaker or the Chair, will ring the warning bell and the voting will take place after **two (2) minutes**. Names will be recorded by the Clerk, whom will ask each Member separately how he/she desires to vote; the Member shall answer either “Aye” or for the “Nay” or shall declare that he/she wishes to abstain from voting.

SENATE

When voting on matters under debate in the Senate, all Senators present, including the Presiding Officer, vote on Motions. All questions are determined by a majority of votes of Members present. A Senator may abstain from voting by declaring to the President, or when in Committee of the Whole, to the Chair. A Motion is lost in the case of a tie vote (SO15); the President does not hold an extra casting vote in the case of a tie.

When putting a question at the conclusion of any debate, the President (or the Chair in Committee) will inquire whether there is any objection to the Motion (SO14). If no Members object, the Motion is agreed to. If one (1) Member objects, the Motion is recorded in the minutes as “**Agreed to, Senator objecting**”. If more than one Member objects, then a division shall be taken, with each Member in turn, beginning with the Opposition Members, followed by the Government Members and then by the Independent Members, all declaring their vote to the Clerk. The result

of a division will be declared either as “affirmed” or “lost” or “a tie”; and the names of Members and how they voted are recorded in the Minutes.

A Senator cannot vote on any matter in which he/she has a direct personal or direct pecuniary interest (SO 19). If the right of any Member to vote is challenged by any other Member on this ground, the President will determine if such a Member is qualified or disqualified from voting under SO 19. Any Senator who believes or knows himself/herself to be disqualified from voting under the provision of SO 19 & SO 20, must declare to the President (or the Chair in Committee).

THE BERMUDA CONSTITUTION AND LEGISLATURE

The core features of Bermuda’s Constitution are the provision of a Governor who represents the Monarch; a Parliament which has a legal supremacy within the framework of the Constitution; Cabinet Ministers who collectively serve as the Executive of the country and are responsible to the Legislature and the electorate. The Executive power is vested in the elected representatives of the people (i.e the Cabinet Ministers); the Governor’s role is the ceremonial head of the Government, rather than the effective administrator of it.

Under the Constitution, the Legislature consists of Her Majesty (represented by the Governor), the Upper House (the Senate) and the Lower House (the House of Assembly). The main functions of the Legislature are to pass laws regulating the life of the country, to make finances available for the needs of government and to act as a forum for public debate of issues of importance to the community.

THE LEGISLATIVE PROCESS

The Legislature may make laws for the peace, order and good governance of Bermuda. The Legislature makes laws via Bills passed by the House of Assembly and the Senate, and assented by the Governor.

LEGISLATION

A Bill is defined as a draft or proposed law that is before Parliament. Bills can be public, which means they address matters that affect the wider society, or private, which affects a specific group or organisation. Public Bills are submitted by either the Government (by a Minister) or by Private Members (a backbencher of either party).

TYPES OF LEGISLATION

HOA STANDING ORDER 28

SENATE STANDING ORDERS 23 - 39

GOVERNMENT BILLS

A Government Bill refers to a Public Bill introduced by a Minister or Junior Minister.

PRIVATE MEMBERS BILL

HOUSE SO 33

A Private Members' Bill refers to a Public Bill introduced by a Member who is not a Minister or Junior Minister. For example; the Human Rights Amendment Act 2016 introduced by the Hon. Wayne Furbert, JP, MP.

PRIVATE BILL

A Private Bill affects or benefits some particular person, association or corporation and private rights or property. This type of Bill is ordinarily presented by a backbencher, normally the Chairman or a member of the Private Bills Committee. The Private Bills Committee has the duty of vetting the particulars of Private Bills and reporting to the House and Senate on their findings.

STATUTORY INSTRUMENTS

HOUSE SO 16 & 35

It is a time honoured method of implementing legislative change by enacting supplementary legislation; also referred to as Statutory Instruments. This is a legislative expedient which is often resorted to, especially with respect to provisions in existing laws which are subject to amendment on a recurring basis. According to the Interpretation Act 1951, a Statutory Instrument refers to any rule, regulation, order, bye-law or notice made under a written law.

Statutory Instruments can only be passed under the authority of an enabling Act, sometimes referred to as the "Parent Act". This is an Act which delegates to a particular Minister the power or authority to make a Statutory Instrument. Statutory Instruments can be made through either the Affirmative Resolution Procedure or the Negative Resolution Procedure.

AFFIRMATIVE RESOLUTION

Affirmative Resolution ("laid then made") Regulations, rules, orders, etc. subject to the affirmative resolution procedure are laid in draft in the House of Assembly and Senate and cannot be made until "a resolution approving the draft has been passed by both Houses and communicated to the Governor by message" (see Section 7 of the Statutory Instruments Act 1977). They are made by signing and must be published in the Gazette (whole text) before they can come into force.

NEGATIVE RESOLUTION

Negative Resolution ("made then laid") Regulations, are made by a Minister using his/her authority under the enabling Act. They cannot come into force before being published in the Gazette (whole text). The regulations, must then be laid "as soon as practicable after making" before both Houses and may be annulled in whole or part by resolution of either House within the period of "twenty-one (21) days... or the third sitting day... whichever is the later". If this happens, the maker must Gazette

notice of the annulment of the statutory instrument or part, but this does not affect anything already done under the instrument (see Section 8 of the Statutory Instruments Act 1977).

THE LEGISLATIVE PROCESS

HOA STANDING ORDER 19, 24 AND 27 - 32 SENATE STANDING ORDERS 23 - 39

THE STAGES OF A BILL

First Reading - Formal presentation and tabling of a Bill for the information of the House after a Bill is tabled, Members examine the Bill for the debate.

- Copies of the Bill are circulated to all Members (electronic copies are preferred)
- The Bill is published on the Parliament website for the public
- A Bill cannot be debated less than seven (7) days after being tabled (SO 28)

Second Reading – This is a debate on the general principles of a Bill. Members can talk about anything in reference to the Bill. The mover of the Bill has sixty (60) minutes to speak during this stage and all other members have thirty (30) minutes.

Committee – Detailed examination of the clauses; Members ask questions and thoroughly explain all aspects of the Bill. During this stage, Members can also propose amendments. This stage is also called Committee of the Whole House. This Committee is normally chaired by the Deputy Speaker.

Report of Committee – Agreement of a Bill and or consideration of Committee amendments and the opportunity to implement any additional changes.

Third Reading and Passing – The Bill is read by its title and passed.

Most Bills go through the same stages in both Houses. Bills can also start in either House, but traditionally Bills are tabled in the House of

Assembly. Once a Bill has passed through the House, the Bill will then be signed by the Speaker and sent to the Senate. The Bill will then go through the same stages as listed below, (Bills can be tabled and debated in the same sitting in the Senate: suspension of rules). After the Bill has been approved in both Houses, it will go to the Premier and then to the Attorney General Chambers for review and then finally sent on to the Governor where it will be signed and given assent by the Governor.

ASSENT

Every Bill which is passed by both Houses (House of Assembly and Senate) must be submitted to the Governor for his signature. Once the Bill is signed by the Governor, it may come into effect immediately, or during a set period as included in the Bill. **Once a Bill is officially assented and Gazetted it is called an Act.**

ACT

An Act of Parliament creates a new law or changes an existing law. An Act is a Bill that has been approved by both Houses and has been given Royal Assent by the Governor.

ORDER IN THE HOUSE

HOA STANDING ORDER 10, 11, 19 & 21 SENATE STANDING ORDERS 48, 49 & 65

The Presiding Officer/Chairman is responsible for maintaining order and decorum. Their duty is to ensure that Members observe the rules and that the dignity of both Houses is not compromised.

It is out of order to use offensive, insulting, or disrespectful language about Members of the House/Senate or which tends to bring the House/Senate into disrepute.

ENFORCING ORDER

The Presiding Officer/Chairman exercises their power in a fair and responsible manner; if a Member acts in an unparliamentary manner he/she is warned and the attention of the House is drawn to the offending behavior.

The Presiding Officer/Chairman may direct a Member to stop his speech and take their seat, or, to leave the Chamber for a specific period of time if his/her behavior constitutes a breach of the Standing Orders. They include:

- Using objectionable, abusive, or insulting words
- Unparliamentary language
- Refusing to apologise or withdraw remarks
- Engaging in excessive crosstalk
- Conversing nosily with other Members
- Disturbing the proceedings of the House

NAMING

A Member can be “named” where the Member persists in disobeying the instructions of the Presiding Officer or Chairman, after having been repeatedly warned by the Presiding Officer or Chairman. When the Presiding Officer must resort to referring to a Member by name, it is an indication he/she is no longer behaving in an honourable manner (Senate SO 48 (3) and HOA SO 10 (5)).

COMMITTEES

Parliamentary Committees are effective and powerful accountability mechanisms. Parliamentary Committees are small groups of Parliamentarians established to consider, inquire and investigate and report to Parliament on a particular matter which cannot be dealt with on the floor of the House. The bipartisan groups of Parliamentarians work together to achieve a common goal. Aside from examining issues and gathering evidence, an important function of Parliamentary Committees is to scrutinise government’s activities including legislation, the conduct of public administration and policy issues and public expenditure.

Under HOA SO 34 the following Standing Committees are established at the beginning of each new Parliament and they continue to function until the dissolution of the Legislature:

- The Private Bills Committee
- The Public Accounts Committee
- Committee on the Office of the Auditor General
- Committee on Register of Members' Interests

Note: The Public Accounts Committee (PAC) exercises a vital role in scrutinising government expenditure.

SESSIONAL SELECT COMMITTEES

HOUSE STANDING ORDER 35

These Committees are established under the Standing Orders and are appointed after the beginning of each session.

- The Standing Orders Committee
- The House and Grounds Committee
- The Regulations Committee

JOINT SELECT COMMITTEES

HOUSE STANDING ORDER 37

SENATE STANDING ORDER 52

Joint Select Committees (JSC's) are committees comprising both MP's and Senators. JSC's are established by a Motion originating in one House and agreed to on the same terms by the other House.

OTHER SELECT COMMITTEES

HOUSE STANDING ORDER 36

SENATE STANDING ORDER 56

Special Select Committees, other than a Standing Select Committee are appointed by order of the House to carry out a specific mandate stemming from a motion agreed to by the House.

Note: Special Select Committees and Joint Select Committees cease to exist upon the action of their final report.



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