

Proposed standing order amendments

- 3.1 This chapter proposes standing order amendments based on the Committee's observations of the practices of this Parliament. Some proposals are in response to changes made in this Parliament and how these changes have worked in practice.
- 3.2 The chapter also proposes some items for consideration by the House or a future Procedure Committee that have arisen from practices of the House observed during this Parliament.

Statements by indulgence of the Chair

- 3.3 On occasion, the Chair grants indulgence for Members to speak on a range of matters. Members will seek indulgence, for example, to speak on matters of special significance, to make a personal explanation or to make valedictory remarks. Indulgence applies to permission or leave from the Chair as distinct from leave of the House. As such speeches are entirely within the discretion of the Speaker, time limits have not applied.
- 3.4 At the beginning of the 44th Parliament, however, the House agreed to amend standing orders to impose a 20 minute time limit specifically on valedictory remarks.¹ Such remarks remain at the discretion of the Speaker and the Committee is of the view that imposing a time limit conflicts with the concept of indulgence.
- 3.5 It has also been observed that, in practice, the time limit for valedictory remarks has not been generally enforced this Parliament.² The Committee therefore recommends that the time limit for valedictory remarks be omitted from the standing orders.

1 VP (13.12.13) 49; Standing order 1 at 26 March 2015.

2 See H.R. Deb (21.10.2015) 11947.

Recommendation 5

The Committee recommends that standing order 1 be amended to omit the time limit for valedictory remarks.

Return of items from the Federation Chamber

- 3.6 In prior Parliaments, it was the practice of the House that items of private Members' business were returned from the Federation Chamber by way of a formal report by the Speaker or a motion moved in the House. On suggestion of the Clerk, the Procedure Committee recommended that (the existing) standing order 197(a)³ instead be relied on to return private Members' business from the Federation Chamber.⁴
- 3.7 At the commencement of the 44th Parliament, Standing Order 197 (a) and (b) was amended such that 'any Member' was omitted and 'a Minister' was inserted in its place. This standing order has been relied upon for the return of business to the House.
- 3.8 As there is not always a Minister present in the Federation Chamber, the practical effect of this amendment is that in order to return an item of business to the House, leave must be granted to another Member to move this motion. This creates an awkward pause in proceedings and an additional unnecessary procedural step.
- 3.9 In the Committee's view, it is unnecessary for a Minister to be required to move this motion and would assist in the smooth flow of business between the Federation Chamber and the House if any Member could move to return items to the House.

Recommendation 6

The Committee recommends that Standing Order 197 be amended to omit 'a Minister' and insert 'any Member' in its place.

3 Standing and sessional orders as at 20 October 2010, standing order 197(a) provided for any Member to move 'that further proceedings be conducted in the House' and 197(b) provided for any Member to move that a matter be returned to the House.

4 *Maintenance of the standing and sessional orders*, June 2013, p. 6.

Successive divisions

- 3.10 Once a division is called for and accepted by the Chair the division bells are rung for four minutes before the doors are locked and tellers are appointed for each side to record the names of the Members voting. When successive divisions are taken, the Chair appoints tellers immediately and the bells are rung for one minute only.⁵
- 3.11 Previously, the procedures for a successive division were enacted when there was no intervening debate between a division and the call for a subsequent division. Standing orders were amended on 19 March 2014 to provide that procedures for a successive division be enacted when a division is called no more than three minutes following a division.⁶
- 3.12 On moving the amendments to the standing orders, the Leader of the House noted that there was often confusion around what constituted ‘intervening debate’ and subsequent uncertainty over whether a four-minute or one-minute division was required. He advised that the change was intended to save the time of the House, by not requiring that the bells be rung for four minutes shortly after a prior division, when all Members were already present in the chamber.
- I chose three minutes as a compromise to ensure that proceedings would move rapidly whilst preventing members who have left the chamber from getting too far away. Hopefully this will speed up successive divisions and enable us to get back to the business of debating legislation.⁷
- 3.13 If there is a successive division, Members who wish to vote in the same way as in the previous division must remain seated until the result of the division is announced. A Member must report to the tellers if he or she wishes to vote differently than in the previous division; voted in the previous division and does not wish to vote in the current division or did not vote in the previous division and wishes to vote in the current division.⁸
- 3.14 Previously, the standing orders provided that the tellers record each Member’s vote in a successive division as being the same as it was in the previous division unless a Member reports to them. In March 2014, the House amended this provision to clarify that tellers must, unless advised by the Member, take each Member’s vote as being the same as it was in the

5 See standing orders 126-131 at 26 March 2015.

6 Votes and Proceedings, 19 March 2014, p. 391. Standing order 131 (a) at 26 March 2015.

7 HR Deb, 19 March 2014, 2397.

8 Standing order 131(b) at 26 March 2015.

previous division. The Leader of the House described the purpose of the change as follows:

Members will be well aware that in cases of successive divisions a significant amount of time is taken up in counting votes, even though in almost all cases the results are identical. This amendment substitutes the word 'take' for 'record' in standing order 131(b). It clarifies that the tellers should consider votes in such divisions to be identical to the preceding vote unless members have reported to the tellers. It will decrease the amount of time spent on counting divisions, meaning that there will be more time for debate in the chamber.⁹

- 3.15 A full count should, however, be carried out in a successive division if it is clear to the Chair that most Members wish to vote differently or if there is confusion or error in the count by the tellers.¹⁰
- 3.16 It is now two years since the reforms to successive divisions were adopted and the House is well-placed to reflect on their effectiveness in practice. While the Committee accepts that the intent of the changes was to improve efficiency in voting procedures, it is concerned that an unintended consequence could be the inaccurate recording of some divisions.
- 3.17 Firstly, the Committee sees a clear issue with allowing three minutes between a division and a successive division. This potentially creates a scenario in which a Member leaves the Chamber directly after a division, walks away for three minutes and is unable to return to the Chamber in time when the bells are rung for one minute for a successive division. Under the current standing orders, if the Member fails to report to the tellers which, presumably they will have had no opportunity to unless they have anticipated a successive division, their vote is likely to be taken even if they are not present in the Chamber. This essentially provides an absent vote. It cannot have been the intention of the House to provide for a vote to be recorded for a Member in these circumstances.
- 3.18 It is the Committee's view that the House should return to the previous requirement that there be no intervening debate between a division and a successive division. It may be that the Speaker should have certain limited discretion over what constitutes 'intervening debate' in these situations. If the House prefers the certainty of a set time period, it would be more appropriate if there was a maximum of one minute allowed between a

9 H.R. Deb. (19.3.14) 2395.

10 Standing order 131(c) at 26 March 2015.

division and a successive division, ensuring that all Members who wish to attend a vote are able to do so.

Recommendation 7

The Committee recommends that standing order 131(a) be amended to provide that if a division is called following a division and there is no intervening debate, the Speaker shall appoint tellers immediately and the bells shall be rung for one minute.

- 3.19 The Committee is also concerned that removing the discretion of tellers to count the vote in successive divisions could lead to errors in the official record. The Committee considers that the requirement that tellers take each Member's vote in a successive division as the same as it was in the previous division unless advised by the Member is inherently flawed. Accurate recording of the votes of the House of Representatives is an issue of integrity and should not be compromised for reasons of efficiency. It is therefore the view of the Committee that the tellers should have the discretion to record the vote in a way that is efficient but, more importantly, accurate.

Recommendation 8

The Committee recommends that standing order 131(b) be amended to provide that, in a successive division, the tellers may record each Member's vote as being the same as it was in the previous division unless a Member reports to them.

Personal explanations

- 3.20 Standing order 68 has been amended to provide:
- If a Member has given a personal explanation to correct a misrepresentation and another Member subsequently repeats the matter complained of, the Speaker may intervene.
- 3.21 In moving the amendment to the standing order, the Leader of the House stated that this was intended to prevent a Member having to continuously rise to correct misrepresentations on the same matter. He said:
- The Speaker will be able to decide that, if a misrepresentation has already been corrected, the continued making of that misrepresentation is disorderly.¹¹
- 3.22 The standing order as written presents some difficulties for the Speaker. It has always been the responsibility of Members to explain how they have been misrepresented as permitted by standing order 68 and Members also have recourse under standing order 69(e) to speak a second time if they have been misunderstood or misrepresented during a debate.
- 3.23 The inclusion of the above clause in standing order 68 places the onus on the Speaker to intervene. With no clear sanction, it is unclear what sort of intervention the Speaker is expected to make and the Committee considers the sanctions available to the Speaker for disorderly conduct under standing order 94 or even withdrawing the call would be extreme in these circumstances.
- 3.24 Speaker Smith has noted that 'it is a difficult standing order. ... Apart from the fact it is difficult enough to know every word that is being said, it is unreasonable to expect the Hansard reporters to capture every part of an interjection.'¹²
- 3.25 The Committee understands the intent of the insertion to standing order 68 but considers that its implementation has posed unintended difficulties for the Speaker. The Committee will continue to monitor the situation.

Library Committee

- 3.26 Standing order 217 provides for a Library Committee to be appointed to consider matters about the provision of library services to Members. No Members have been appointed to this committee since 2006.¹³ Instead

11 H.R. Deb. (13.03.2013) 91.

12 H.R. Deb. (02.03.2016) 2828.

13 *House of Representatives Practice*, 6th edn, p. 644.

these duties are now undertaken by the Joint Standing Committee on the Parliamentary Library which was established in late 2005.¹⁴

- 3.27 As this is the case, the Committee considers that there is no longer any need for Standing Order 217 to be in effect.

Recommendation 9

The Committee recommends that Standing Order 217 be omitted.

Minor technical amendments

- 3.28 A number of minor technical amendments are proposed in order to clarify certain standing orders, and as consequential changes reflecting amendments made to related standing orders. These are:
- the definition of ‘visitor’ in **standing order 2** needs to be amended in order to reflect the definition in standing order 257 that ‘a visitor does not include an infant being cared for by a Member’.
 - The definition ‘present a document’ in **standing order 2** should be amended to clarify that a document presented in the Federation Chamber is taken to have been presented to the House. It is the practice of the House that documents may be presented in the Federation Chamber.¹⁵ Explicit provision is made for the presentation in the Federation Chamber of committee reports under SO 39(b), and petitions under SO 207(b). However, in other cases (S.Os 28, 143, 199, 200–203, 209, 215, 219, 245) standing orders refer only to documents being presented to the House. In practice the relevant standing order is understood to also apply to documents presented in the Federation Chamber. However, it would be best to make this clear in order to prevent misunderstandings, for example, over whether only documents presented in the House are authorised for publication under SO 203, or are in the custody of the Clerk under SO 28, or whether only petitions presented in the House are referred to Ministers under SO 209.
 - **standing order 34 – Figure 2. House order of business.** It is proposed that ‘Documents’ be reinstated to the routine of business under standing order 34. The presentation of documents was omitted from the order of business under SO 34 at the start of the current Parliament,

¹⁴ *House of Representatives Practice*, 6th edn, p. 649.

¹⁵ *House of Representatives Practice*, 6th edn, p. 602.

when the cells in Figure 2 after 'Question Time', formerly labelled 'Documents, Ministerial statements, MPI' were relabelled 'Ministerial statements, MPI'. However, standing order 202 continues to refer to 'the period for presentation of documents under standing order 34'. In addition, the resolution of the House 'Procedures for tabling ministerial papers' of 9 December 1987 (page 108 of current edition of the Standing Orders) refers to 'the procedures for the tabling of ministerial papers following questions without notice, pursuant to standing order 101.' SO 101 is footnoted as referring to current SO 34. The usual practice continues to be that documents are in fact presented after Question Time according to a previously circulated list, and it would be helpful if this was recognised in the order of business. The provision in Figure 2 for presentation of documents at this time does not prevent Ministers presenting documents at other times (S.O. 199(b)).

- **standing order 192, Figure 4. Federation Chamber order of business** should be amended to insert 'and/or Committee and delegation business' in the Monday afternoon 'Government business' time period. Current practice is that, if necessary, committee and delegation business is scheduled in this period and this provision needs to be inserted to match current practice. Further, the presentation of Figure 4 should be amended to clarify the indicative nature of business as previously recommended by the Procedure Committee;¹⁶
- **standing order 198(b)** needs to be amended to clarify that the role of the Clerk of the Federation Chamber is to certify bills or other items of business to be reported to the House. The current wording 'bill or other matter' could be read as encompassing matters that the Deputy Speaker must report to the House – disorder in the Federation Chamber, under SO 187(c) – which it is not subject to certification by the Clerk.
- **standing order 247** needs to be amended to reflect changes made to standing orders 39(b)(i) and 222(a)(i) to provide for committee reports to be tabled in the Federation Chamber. The words 'to the Federation Chamber' should be added to standing order 247 (a) and 247 (c) and the words 'to the House' should be omitted from 247(b).

16 Standing Committee on Procedure: *Role of the Federation Chamber: Celebrating 20 years of operation*. June 2015; *Maintenance of standing and sessional orders*, June 2013.

- 3.29 While these are minor amendments which make no changes to practice, the Committee is of the view that addressing these matters in the text of the standing orders would be helpful to Members and assist the House with the smooth conduct of its business.

Recommendation 10

The Committee recommends that standing orders 2, 34, 192, 198, and 247 be amended as outlined in Appendix A.

Matters for future consideration

- 3.30 The following matters are for future consideration by the House, draft standing orders are included at Appendix C in order to support deliberations.

Deferred divisions

- 3.31 The Committee has been concerned that, on several occasions in recent weeks, divisions have been called during periods that Members expected to be free from divisions – that is, periods where divisions are deferred in accordance with standing order 133. Unexpected divisions called during these periods are disruptive to Members' work outside the Chamber.
- 3.32 The culprits are generally procedural motions moved by a Minister in response to attempts to move motions to suspend standing orders to debate a matter. Standing order 133 provides for the automatic deferral of any division called for during these periods, except for divisions on a motion moved by a Minister during the period for deferred divisions.
- 3.33 The disruptive divisions took place because the motions were moved by a Minister, not because they were procedural motions – procedural motions moved by private Members have been deferred during these periods.¹⁷
- 3.34 To reduce the disruption called by unscheduled divisions during these protected periods the Committee proposes an amendment to standing order 133 to clarify a Minister's ability to have a division held on a motion moved by her/himself during the relevant period. This takes into account that there may be circumstances where the Minister may wish a division

17 E.g. VP (09.03.98) 2788 ('Question be now put' deferred); VP (09.12.96) 399 ('Member be now heard' deferred).

on her/his own motion to be deferred. A draft standing order is included at Appendix C for consideration.

- 3.35 While considering deferred divisions the Committee also considered whether the Question Time period should be included in standing order 133 as a period during which divisions are deferred. However, this matter is more than a technical amendment and the Committee will consider it during its concurrent Question Time inquiry.

Debate management motions

- 3.36 In view of the now well-established practice of debate management motions the Committee has considered the continuing need for standing orders 82 to 85 'Debate of urgent matters' – the formal guillotine procedure. In this context the Committee has also considered debate management motions themselves, and whether and how they should be covered in the standing orders.
- 3.37 For over 10 years, Leaders of the House in successive governments have developed the practice of moving what were originally referred to as 'programming motions following suspension of standing orders'.¹⁸ Since 19 March 2014 the procedure has been described in a new section in standing order 1 as 'suspension of standing or other orders on notice relating to the programming of government business'. However, the preferred term seems recently to have become 'debate management motion'.
- 3.38 Now that debate management motions have become established practice, it seems unlikely that the existing guillotine procedures in the standing orders will be used again. The most recent guillotine following a declaration of urgency occurred on 12 September 2005.
- 3.39 Rather than omitting the whole section in the standing orders 'Debate of urgent matters' (SOs 82 to 85) or allowing it to remain but in effect be redundant, it may be preferable to amend this section of the standing orders to recognise the use of debate management motions. The Committee has attempted this in its draft rewrite of SOs 82 to 85 which is included, for discussion, at Appendix C.

18 *House of Representatives Practice*, 6th edn, p. 392.

- 3.40 The Committee has concluded that this subject goes beyond the scope of a technical amendment and that it needs more detailed consideration. However it is raising the subject for discussion as a matter that could be further examined in future.

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Chair
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