

Control and conduct of debate

The term ‘debate’ is a technical one meaning the argument for and against a question. The proceedings between a Member moving a motion and the ascertainment by the Chair of the decision of the House constitute a debate. A decision may be reached without debate. In addition, many speeches by Members which are part of the normal routine of the House are excluded from the definition of debate, because there is no motion before the House. These include the asking and answering of questions, ministerial statements, matters of public importance, and personal explanations. However, the word ‘debate’ is often used more loosely, to cover all words spoken by Members during House proceedings.

It is by debate that the House performs one of its more important roles, as emphasised by Redlich:

Without speech the various forms and institutions of parliamentary machinery are destitute of importance and meaning. Speech unites them into an organic whole and gives to parliamentary action self-consciousness and purpose. By speech and reply expression and reality are given to all the individualities and political forces brought by popular election into the representative assembly. Speaking alone can interpret and bring out the constitutional aims for which the activity of parliament is set in motion, whether they are those of the Government or those which are formed in the midst of the representative assembly. It is in the clash of speech upon speech that national aspirations and public opinion influence these aims, reinforce or counteract their strength. Whatever may be the constitutional and political powers of a parliament, government by means of a parliament is bound to trust to speech for its driving power, to use it as the main form of its action.¹

The effectiveness of the debating process in Parliament has been seen as very much dependent on the principle of freedom of speech. It has been said that without this privilege ‘parliaments probably would degenerate into polite but ineffectual debating societies’.² Freedom of speech in the Parliament is guaranteed by the Constitution,³ and derives ultimately from the United Kingdom Bill of Rights of 1688.⁴ The privilege of freedom of speech was won by the British Parliament only after a long struggle to gain freedom of action from all influence of the Crown, courts of law and Government. As Redlich said:

... it was never a fight for an absolute right to unbridled oratory . . . From the earliest days there was always strict domestic discipline in the House and strict rules as to speaking were always enforced . . . the principle of parliamentary freedom of speech is far from being a claim of irresponsibility for members; it asserts a responsibility exclusively to the House where a member sits, and implies that this responsibility is really brought home by the House which is charged with enforcing it.⁵

The Speaker plays an important role in the control and conduct of debate through the power and responsibilities vested in the Chair by the House in its rules and practice. The difficulties of maintaining control of debate, and reconciling the need for order with the

1 Josef Redlich, *The Procedure of the House of Commons*, Archibald Constable, London, 1908, vol. III, pp. 42–3.

2 Enid Campbell, *Parliamentary Privilege in Australia*, Melbourne University Press, Carlton, 1966, p. 28; and see Ch. on ‘Parliamentary privilege’.

3 Constitution, s. 49, (that is, unless Parliament ‘otherwise provides’).

4 For further discussion of the privilege of freedom of speech see chapter on ‘Parliamentary privilege’.

5 Redlich, vol. III, p. 49.

rights of Members, ‘requires a conduct, on the part of the Speaker, full of resolution, yet of delicacy . . .’⁶

MANNER AND RIGHT OF SPEECH

When Members may speak

The standing orders provide that a Member may speak to any question before the Chair which is open to debate, when moving a motion which will be open to debate, when moving an amendment, when rising to order, upon a matter of privilege or upon a matter of public importance, but not otherwise.⁷

This statement is, however, not definitive—other standing orders in fact provide additional opportunities for Members to speak. A Member may make a statement to the House on the presentation of a committee or delegation report,⁸ during the periods for Members’ 90 second statements in the House⁹ and three minute statements in the Main Committee,¹⁰ and when introducing a private Member’s bill¹¹—in none of these instances is there a motion before the Chair. The standing orders also provide for questions to be asked and answered. A Member may also speak to explain matters of a personal nature, to explain himself or herself in regard to some material part of his or her speech which has been misquoted or misunderstood, when granted leave of the House to make a statement, and by indulgence of the Chair.

Matters not open to debate

The following matters are not open to debate, must be moved without argument or opinion being offered, and must be put immediately by the Chair without amendment:

- question that a Member ‘be now heard’ or ‘do now speak’(S.O. 61);
- question that a Member be further heard (S.O. 85);
- motion for adjournment of debate (S.O. 87);
- motion for extension of time (S.O. 91);
- question put following declaration of urgency (S.O. 92);
- motion that the question be now put (S.O. 93);
- motion that a Member be not further heard (S.O. 94);
- motion that the business of the day be called on (S.O. 107);
- question that a bill be reported to the House (S.O. 234);
- motion that amendments made by the Main Committee be agreed to (S.O. 236);
- motion that a bill (reported by Main Committee) be agreed to (S.O. 236);
- motion that further proceedings (on an item of Main Committee business) be conducted in the House (S.O. 270);
- motion that a Member be suspended (S.O. 304);
- question that strangers be ordered to withdraw (S.O. 314);¹² and

⁶ John Hatsell, *Precedents of Proceedings in the House of Commons*, 4th edn, London, 1818, vol. II, p. 232. (Reprinted, Irish University Press, Shannon, Ireland, 1971.)

⁷ S.O. 63.

⁸ S.O. 102B.

⁹ S.O. 106A.

¹⁰ S.O. 275A.

¹¹ S.O. 104A.

¹² S.O. 86.

- if required by a Minister, the question for the adjournment of the House under the automatic adjournment provisions (S.O. 48A).

Mover and seconder of motions and amendments

A Member may speak when moving a motion which is open to debate¹³ but loses the right to speak to the motion, except in reply, if he or she does not speak immediately. Similarly, a Member who moves an amendment must speak to it immediately, if wishing to speak to it at all. This rule does not apply during the consideration in detail stage of bills or during the consideration of Senate amendments and requests.

A Member who seconds a motion or amendment before the House may speak to it immediately or at a later period during the debate.¹⁴ It is common practice for seconders not wishing to speak immediately to state that they reserve the right to speak later. However, such action does not ensure that a Member will be able to speak later in the debate (if, for example, the debate is curtailed by the closure).

Question on motion or amendment before the House or Main Committee

A Member may speak only once to a question before the House, except in explanation or reply, or during consideration in detail of a bill or consideration of Senate amendments and requests (when Members may speak for an unspecified number of periods).¹⁵ In special circumstances, a Member may be granted leave to speak again.¹⁶

This limitation places restrictions on Members moving and speaking to amendments (other than during consideration in detail or consideration of Senate amendments and requests). When a Member speaks to a question and then sits without moving an amendment that he or she intended to propose, the Member cannot subsequently move the amendment, having already spoken to the question before the House. If a Member has already spoken to a question, or has moved an amendment to it, the Member may not be called to move a further amendment or the adjournment of the debate, but may speak to any further amendment which is proposed by another Member. A Member who moves or seconds an amendment cannot speak again on the original question after the amendment has been disposed of, because he or she has already spoken while the original question was before the House and before the question on the amendment has been proposed by the Chair. When an amendment has been moved, and the question on the amendment proposed by the Chair, any Member speaking subsequently is considered to be speaking to both the original question and the amendment and cannot speak again to the original question after the amendment has been disposed of. A Member who has already spoken to the original question prior to the moving of an amendment may speak to the question on the amendment, but the remarks must be confined to the amendment.¹⁷ A Member who has spoken to neither the motion nor the amendment may speak to the original question after the amendment has been disposed of. A Member who has spoken to the original question and the amendment may speak to the question on a further amendment, but must confine any remarks to the further amendment.¹⁸

13 S.O. 63.

14 S.O. 70.

15 S.O. 65.

16 VP 1974–75/874; VP 1993–95/2668; VP 1996–98/281 (Main Committee).

17 H.R. Deb. (6.5.20) 1881.

18 H.R. Deb. (13.7.22) 443–4.

Speaking in reply

The mover of a substantive motion or the second or third reading of a bill may speak on a second occasion in reply, but must confine any remarks to matters raised during the debate.¹⁹ The mover of an amendment has no right of reply as an amendment is not a substantive motion. The reply of the mover of the original question closes the debate. However, the mover may speak to any amendment moved without closing the debate, but his or her remarks must be confined to the amendment.²⁰ The speech of a Minister acting on behalf of the mover of the original motion does not close the debate.²¹ The right of reply of the mover has been exercised even though the original question has been rendered meaningless by the omission of words and the rejection of proposed insertions.²²

The Chair has ruled that a reply is permitted to the mover of a motion of dissent from a ruling of the Chair.²³

The mover of a motion is not entitled to the call to close the debate while any other Member is seeking the call.²⁴ When a mover received the call and stated that he was not speaking to an amendment before the House but to the motion generally and wished to close debate, he was directed by the Chair to speak to the amendment only, in order that the rights of others to be heard were not interfered with.²⁵ A Member closing the debate by reply cannot propose an amendment.²⁶

Misrepresentation

Pursuant to standing order 66, a Member who has spoken to a question may again be heard to explain some material part of his or her speech which has been misquoted or misunderstood but cannot introduce any new matter, interrupt any Member who has the call nor bring forward any debatable matter, and no debate may arise following such an explanation. The correct procedure to be followed by a Member is to rise after the Member speaking has concluded and to inform the Chair that he or she has been misrepresented. The Chair will then permit the Member to proceed with the explanation. It helps in the conduct of the proceedings if Members notify the Chair in advance that they intend to rise to make an explanation. The Chair will seek to ensure that the Member confines himself or herself to correcting any misrepresentation and will not allow wider matters to be canvassed.

Personal explanations

Pursuant to standing order 64, a Member, having obtained leave from the Chair, may explain matters of a personal nature, although there is no question before the House. Such matters may not be debated. Although in practice such leave is freely given, Members have no right to expect it to be granted automatically.²⁷ It is the practice of the House that any Member wishing to make a personal explanation should inform the

19 S.O. 67.

20 H.R. Deb. (11.11.20) 6418.

21 H.R. Deb. (3.12.47) 3118.

22 VP 1908/54; H.R. Deb. (21.10.08) 1402.

23 H.R. Deb. (14.3.50) 685.

24 H.R. Deb. (19.11.14) 841.

25 H.R. Deb. (21.8.23) 3133; H.R. Deb. (19.9.24) 4569.

26 H.R. Deb. (28.5.14) 1637.

27 H.R. Deb. (5.5.92) 2355–8.

Speaker beforehand.²⁸ The Speaker has refused to allow a Member to make a personal explanation when prior notice has not been given.²⁹

Personal explanations may be made at any time with the permission of the Chair, provided that no other Member is addressing the House.³⁰ However, recent practice has been for them to be made soon after Question Time.³¹ Personal explanations claiming misrepresentation may arise from reports in the media, Senate debates, the preceding Question Time, and so on.³² One of the reasons for personal explanations being sought soon after Question Time is that, when a personal explanation is made in rebuttal of a statement made in a question or answer, the question and answer are excluded from any rebroadcast of Question Time. This exclusion is subject to the discretion that the Speaker has to refer a particular case to the Joint Committee on the Broadcasting of Parliamentary Proceedings.³³

In making a personal explanation, a Member must not debate the matter,³⁴ and may not deal with matters affecting his or her party or, in the case of a Minister, the affairs of the Minister's department—the explanation must be confined to matters affecting the Member personally.³⁵ A Member cannot make charges or attacks upon another Member under cover of making a personal explanation.³⁶ A personal explanation may be made in the House regarding events in the Main Committee but in making an explanation the Member may not reflect on the Chair of the Committee.³⁷ The indulgence granted by the Chair for a personal explanation may be withdrawn if the Member uses that indulgence to enter into a general debate.³⁸ A Member has been permitted to make a personal explanation on behalf of a Member who was overseas.³⁹

If the Speaker refuses leave to a Member to make a personal explanation, or directs a Member to resume his or her seat during the course of an explanation, a motion 'That the Member be now heard' is not in order, nor may the Member move a motion of dissent from the Speaker's 'ruling' as there is no ruling.⁴⁰

Other matters by indulgence of the Chair

Although the standing orders make provision for Members to speak with leave of the Chair only in respect of a matter of a personal nature (*see above*), the practice of the House is that, from time to time, the Speaker or Chair grants indulgence for Members to deal with a variety of other matters. The term 'indulgence', used to cover the concept of leave from the Chair as distinct from leave of the House,⁴¹ is a reminder that its exercise is completely at the Chair's discretion. It is, as the term suggests, a special concession. Indulgence has been granted, for example, to permit:

28 H.R. Deb. (10.11.76) 2521–2.

29 H.R. Deb. (3.5.78) 1699.

30 H.R. Deb. (20.11.79) 3176; H.R. Deb. (22.8.96) 3523.

31 H.R. Deb. (13.4.2000) 15963.

32 H.R. Deb. (10.10.47) 633; H.R. Deb. (11.9.73) 743; H.R. Deb. (19.9.96) 4452–3.

33 VP 1948–49/346.

34 S.O. 64.

35 H.R. Deb. (18.10.83) 1821; H.R. Deb. (22.9.22) 2621; H.R. Deb. (19.3.74) 533.

36 H.R. Deb. (30.10.13) 2716–17.

37 By extension of ruling relating to former committee of the whole. H.R. Deb. (11.11.04) 6883–4.

38 H.R. Deb. (12.9.79) 996.

39 H.R. Deb. (19.10.83) 1924.

40 H.R. Deb. (1.6.77) 2280–1.

41 The unqualified use of the term 'leave' may at times lead to confusion—e.g. H.R. Deb. (17.2.88) 119–33.

- A Minister to correct⁴² or add to⁴³ an earlier answer to a question without notice;
- the Prime Minister to add to an answer given by another Minister to a question without notice;⁴⁴
- the Prime Minister to answer a question without notice ruled out of order;⁴⁵
- Members to put their views on a ruling by the Speaker relating to the sub judice convention;⁴⁶
- Members to comment on a privilege matter;⁴⁷
- a Member to seek information on a matter not raised in a second reading speech;⁴⁸
- Members to speak to a paper tabled by the Speaker;⁴⁹
- a Minister to correct a figure given in an earlier speech;⁵⁰
- a Member to comment on or raise a matter concerning the conduct of proceedings or related matters;⁵¹
- the Prime Minister and Leader of the Opposition to congratulate athletes representing Australia;⁵²
- the Prime Minister and Leader of the Opposition to welcome visiting foreign dignitaries present in the gallery;⁵³
- Members to extend good wishes to persons present in the gallery;⁵⁴
- questions to⁵⁵ and statements by⁵⁶ the Leader of the House relating to the order of business, the Government's legislative program, etc;
- a Member to ask a question of the Speaker or raise a matter for the Speaker's consideration;⁵⁷
- Members to comment in the House on the operations of the Main Committee;⁵⁸
- Members to extend good wishes to a Member about to retire,⁵⁹ or to comment on significant achievements by colleagues;⁶⁰
- the Prime Minister and Leader of the Opposition to make valedictory remarks;⁶¹ and
- the Prime Minister and Leader of the Opposition to make statements in relation to natural⁶² or other⁶³ disasters, or to speak on matters of significance.⁶⁴

42 H.R. Deb. (19.9.79) 1266.

43 H.R. Deb. (8.6.94) 1672–3; H.R. Deb. (19.6.96) 2273–4; H.R. Deb. (2.6.99) 5814.

44 H.R. Deb. (20.9.79) 1359; H.R. Deb. (25.6.92) 3948; H.R. Deb. (7.2.94) 420–1.

45 H.R. Deb. (6.3.80) 731.

46 H.R. Deb. (13.11.79) 2883, 2917, 2926–32.

47 H.R. Deb. (13.9.79) 1129; H.R. Deb. (23.11.93) 3401–2; H.R. Deb. (4.4.2000) 15149.

48 H.R. Deb. (26.11.80) 85.

49 H.R. Deb. (15.4.80) 1711.

50 H.R. Deb. (12.9.79) 995.

51 H.R. Deb. (10.3.81) 562; H.R. Deb. (9.5.85) 1951; H.R. Deb. (20.2.86) 1009; H.R. Deb. (11.4.86) 2129; H.R. Deb. (31.1.95) 1; H.R. Deb. (7.12.98) 1502.

52 H.R. Deb. (18.8.92) 1.

53 H.R. Deb. (4.5.92) 2258.

54 H.R. Deb. (24.3.92) 984.

55 H.R. Deb. (8.5.91) 3246–8; H.R. Deb. (25.2.92) 30.

56 H.R. Deb. (17.12.93) 4335–7; H.R. Deb. (9.12.99) 13288–9.

57 H.R. Deb. (25.11.93) 3626–7.

58 H.R. Deb. (30.6.94) 2429–30; H.R. Deb. (13.10.94) 2022–3.

59 H.R. Deb. (25.6.98) 5435–6.

60 H.R. Deb. (29.3.99) 4571.

61 H.R. Deb. (9.12.99) 13298, 13301.

62 For example, flood or cyclone damage, H.R. Deb. (25.6.98) 5422, H.R. Deb. (24.3.99) 4222.

63 For example, deaths and injuries to naval personnel in a shipboard explosion, H.R. Deb. (12.5.98) 2973–5, VP 1996–98/2975.

64 H.R. Deb. (22.11.99) 12257.

When the Prime Minister makes a statement by indulgence on an issue, the Leader of the Opposition is commonly also granted indulgence to speak on the same matter. On occasion, indulgence may be extended to a series of Members—for example, after a Member has made a statement to the House announcing his intention to resign, other Members have spoken to pay tribute to the Member or offer their best wishes for the future.⁶⁵

Statements by leave

A frequently used practice is to seek the leave of the House—that is, permission without any dissentient voice⁶⁶—to make a statement when there is no question before the House. This procedure is used, in the main, by Ministers to announce domestic and foreign policies and other actions or decisions of the Government. It is usual for a copy of a proposed ministerial statement to be supplied to the Leader of the Opposition or the appropriate shadow minister some minimum time before the ministerial statement is made. At the conclusion of the Minister's speech, he or she may table a copy of the statement and move 'That the House take note of the paper'. The shadow minister or opposition spokesperson may then speak to that motion, with, commonly, standing orders being suspended to permit a speaking time equal to that taken by the Minister. If a motion to take note is not moved it is usual for leave to be given for the opposition spokesperson to speak on the same subject. The procedure is also used by Members when presenting to the House a report of a committee or of a parliamentary delegation at a time other than that provided by standing order 102A.

Members seeking leave to make statements must indicate the subject matter in order that the House can make a judgment as to whether or not to grant leave. When a Member has digressed from the subject for which leave was granted, the Chair has:

- directed the Member to confine himself to the subject for which leave was granted;⁶⁷
- directed the Member to resume his or her seat;⁶⁸ and
- expressed the opinion that a Member should not take advantage of leave granted to make a statement (in response to another) to raise matters that had no direct relationship to that statement.⁶⁹

If a Member does not indicate the subject matter of a proposed statement when responding to a statement just made, difficulties may arise for the Chair and these are exemplified by the following case. A Member having been granted leave to respond to a statement made by a Minister and the point having been made that he should remain relevant to the Minister's statement, the Chair stated that whilst it may be argued that in spirit the leave to respond was related to the Minister's statement, that was not specifically stated. The Chair had no authority to require the Member to be any more relevant than he saw fit, it being in the hands of the House through the standing orders to take the steps necessary to bring the Member's remarks to a conclusion.⁷⁰ Greater control over relevancy can be preserved if, where Members rise to seek leave to make

⁶⁵ H.R. Deb. (10.2.94) 770–82.

⁶⁶ S.O. 111.

⁶⁷ H.R. Deb. (21.11.34) 412.

⁶⁸ VP 1970–72/514; H.R. Deb. (7.4.71) 1558; H.R. Deb. (16.10.95) 2110; H.R. Deb. (18.10.95) 2347.

⁶⁹ H.R. Deb. (20.10.49) 1748–9.

⁷⁰ H.R. Deb. (18.10.79) 2198–9, *see also* H.R. Deb. (27.9.88) 911.

statements following, for example, a ministerial statement, the Chair asks ‘Is the honourable Member seeking leave to make a statement on the same matter?’.

A request for leave cannot be debated, nor can leave be granted conditionally, for example, on the condition that another Member is allowed to make a statement on the same subject.

If leave is not granted, a Minister or Member, on receiving the call, may move ‘That so much of the standing (and sessional) orders be suspended as would prevent the Minister for . . . [the Member for . . .] making a statement’. This motion must be agreed to by an absolute majority of Members. Alternatively, in the case of a Minister, the printed statement may be tabled.

The fact that leave is granted or standing orders are suspended to enable a Member to make a statement only affords the Member an opportunity to do that which would not be ordinarily permissible under the standing orders—that is, make a statement without leave. The normal rules of debate, and the provisions of the standing orders generally, still apply so that if, for example, the automatic adjournment interrupts the Member’s speech, the speech is then terminated unless the adjournment proposal is negated.

A Member cannot be given leave to make a statement on the next day of sitting in reply to a statement just made, but must ask for such leave on the next day of sitting.⁷¹ It is not in order for a motion to be moved that a Member ‘have leave to make a statement’,⁷² or, when leave to make a statement is refused, to move that the Member ‘be now heard’,⁷³ as the latter motion can only be moved to challenge the call of the Chair during debate.⁷⁴ When a statement is made by leave, there is no time limit on the speech, but a motion may be made at any time that the Member speaking ‘be not further heard’.⁷⁵ Once granted, leave cannot be withdrawn.⁷⁶

In the House of Commons leave is not required to make a ministerial statement. In 1902 Prime Minister Barton claimed that it was the inherent right of a leader of a Government to make a statement on any public subject without leave of the House. The Speaker ruled that no Minister had such a right under the standing orders of the House of Representatives.⁷⁷

Allocation of the call

The Member, upon whose motion any debate is adjourned by the House, is entitled to the first call on the resumption of the debate.⁷⁸ If the Member does not take up that entitlement on the resumption of the debate, this does not impair his or her right to speak later in the debate.⁷⁹ However, when a Member is granted leave to continue his or her remarks and the debate is then adjourned, the Member must take the entitlement to pre-audience on the resumption of the debate, otherwise he or she loses the right to continue.

Although the Chair is not obliged to call any particular Member, except for a Member entitled to the first call as indicated above, it is the practice for the Chair, as a matter of courtesy, to give priority to:

71 H.R. Deb. (22.2.17) 10574–5.

72 VP 1970–72/21; H.R. Deb. (5.3.70) 99–100.

73 H.R. Deb. (12.10.71) 2154.

74 S.O. 61.

75 S.O. 94; VP 1968–69/592.

76 H.R. Deb. (13.3.53) 1044.

77 H.R. Deb. (14.1.02) 8738–9; H.R. Deb. (16.1.02) 8859–60.

78 S.O. 88.

79 H.R. Deb. (19.8.54) 446.

- the Prime Minister or a Minister over other government Members⁸⁰ but not if he or she proposes to speak in reply;⁸¹ and
- the leader or deputy leader of opposition parties over other non-government Members.⁸²

A Minister (or Parliamentary Secretary) in charge of business during the consideration in detail of a bill or consideration of Senate amendments (when any Member may speak as many times as he or she wishes) would usually receive priority over other government Members whenever wishing to speak.⁸³ This enables the Minister to explain or comment upon details of the legislation as they arise from time to time in the debate. Speakers have also taken the view that in respect of business such as consideration of Senate messages, the call should, in the first instance, be given to the Minister or Parliamentary Secretary expected to have responsibility for the matter.

When two or more Members rise together to speak, the Speaker shall call upon the Member who, in the Speaker's opinion, first rose in his or her place.⁸⁴ The decision of the Chair may be challenged by a motion that any Member who rose 'be now heard' or 'do now speak', and that question must be put forthwith and determined without amendment or debate.⁸⁵ A Member may move either of these motions in respect of himself or herself.⁸⁶ It is not in order to challenge the Chair's decision by way of moving that the Member who received the call 'be not further heard'.⁸⁷ A motion of dissent from the Chair's allocation of the call should not be accepted, as the Chair is exercising a discretion, not making a ruling.

Standing order 86 provides that if, among other things, a motion that a Member be now heard is negatived, no similar proposal shall be received if the Chair is of the opinion that it is an abuse of the orders or forms of the House or is moved for the purpose of obstructing business.⁸⁸

Although the allocation of the call is a matter for the discretion of the Chair, it is usual, as a principle, to call Members from each side of the House, government and non-government, alternately. Within this principle minor parties and any independents are given reasonable opportunities to express their views.⁸⁹

Because of coalition arrangements between the Liberal and National Parties, the Chair has allocated the call between these two parties in proportion to their numbers, for example:

- 30th Parliament: 91 government Members—68 Liberal Party, 23 National Country Party: Liberals received the call on the basis of a 3:1 ratio.
- 38th Parliament: 94 coalition Members—76 Liberal Party, 18 National Party: Liberals received the call on the basis of a 4:1 ratio (a ratio also applicable in the 39th Parliament), and independent Members were called with regard to their numbers as a proportion of the House.

80 H.R. Deb. (26.2.53) 415.

81 H.R. Deb. (21.8.23) 3133.

82 H.R. Deb. (8.3.32) 775–6.

83 VP 1951–53/703; H.R. Deb. (6.10.53) 1031; H.R. Deb. (25.11.53) 500–1; H.R. Deb. (22.9.55) 883.

84 S.O. 61. The Speaker calls Members by the name of their electoral Division or office, i.e. 'the Member (Minister) for . . .'.

85 S.O. 61.

86 VP 1959–60/138; VP 1996–98/410, 419, 461.

87 H.R. Deb. (25.11.53) 500–1.

88 VP 1996–98/462–3, the Chair having ruled that a further motion under S.O. 61 was out of order as an abuse of the forms of the House, a motion of dissent was moved. *And see* H.R. Deb. (12.9.96) 3995–9.

89 H.R. Deb. (17.6.31) 2744; H.R. Deb. (19.5.33) 1598–9; H.R. Deb. (18.10.77) 2103.

Throughout the history of the House of Representatives a list of intending speakers has been maintained to assist the Chair in allocating the call. As early as 1901 the Speaker noted that, although it was not the practice for Members to send names to him and to be called in the order in which they supplied them, on several occasions when a group of Members had risen together and had then informed the Chair that they wished to speak in a certain order, they had been called in that order so that they might know when they were likely to be called on.⁹⁰

By the 1950s the Chair was allocating the call with the assistance of a list of speakers provided by the party whips. Speaker Cameron saw this as a perfectly logical and very convenient method of conducting debates. He added that, if they were not adhered to or Members objected to the practice, the House would revert to a system under which there was no list whatsoever and the Chair would call the Member he thought had first risen in his place. He saw this procedure as awkward as some Members were more alert than others and for that reason he thought it better that the Chair be made aware of the intentions of the parties, each party having some idea of their Members best able to deal with particular subjects.⁹¹ Although he welcomed lists provided by the whips as useful guides, he stressed that he was not bound by them and indicated that, if it came to his knowledge that certain Members were being precluded from speaking, he would exercise the rights he possessed as Speaker.⁹² In essence this continues to be the practice followed by the Chair.

Manner of speech

Remarks addressed to Chair

A Member wishing to speak rises and addresses himself or herself to the Speaker.⁹³ By the indulgence of the House a Member unable conveniently to stand by reason of sickness or infirmity may be permitted to speak sitting.⁹⁴ It is regarded as disorderly for a Member to address the House in the second person and Members have often been admonished when they have lapsed into this form of address.⁹⁵ As remarks must be addressed to the Chair, it is not in order for a Member to turn his or her back to the Chair and address party colleagues.⁹⁶ A Member should not address the listening public while the proceedings of the House are being broadcast.⁹⁷

Place of speaking

Standing order 61 provides that when two or more Members rise to speak the Speaker shall call upon the Member who, in the Speaker's opinion, first rose 'in his or her place', and standing order 58 requires every Member, when coming into the Chamber, to 'take his or her seat'. The implication is that a Member should address the House from his or her own seat. Ministers and shadow ministers speak from the Table. Parliamentary Secretaries are allowed to speak from the Table when in charge of the business before the House but at other times are required to speak from their allocated places. The same

⁹⁰ H.R. Deb. (12.9.01) 4860.

⁹¹ H.R. Deb. (15.5.52) 410.

⁹² H.R. Deb. (6.3.53) 684, 686.

⁹³ S.O. 59. At the election of a Speaker at the meeting of a new Parliament or whenever that office becomes vacant, Members address themselves to the Clerk who acts as Chair.

⁹⁴ S.O. 60, e.g. VP 1912/32.

⁹⁵ E.g. H.R. Deb. (18.10.95) 2407, 2430; H.R. Deb. (19.10.95) 2473; H.R. Deb. (9.9.96) 3683; H.R. Deb. (12.4.2000) 15880.

⁹⁶ H.R. Deb. (5.6.56) 2773-4.

⁹⁷ H.R. Deb. (7.5.52) 108.

practice applies in respect of opposition Parliamentary Secretaries.⁹⁸ An opposition Member, who is not a member of the opposition shadow ministry and who is leading for the Opposition in a particular debate, is permitted to speak either from his or her allotted seat or from the Table.⁹⁹

Reading of speeches

Until 1965 the standing orders provided that ‘A Member shall not read his speech’. In 1964, the Standing Orders Committee recommended that:

As Parliamentary practice recognizes and accepts that, whenever there is reason for precision of statement such as on the second reading of a bill, particularly those of a complex or technical nature, or in ministerial or other statements, it is reasonable to allow the reading of speeches and, as the difficulty of applying the rule against the reading of speeches is obvious, e.g. “reference to copious notes”, it is proposed to omit the standing order.¹⁰⁰

The recommendation of the committee was subsequently adopted by the House.¹⁰¹

Language of debate

Although there is no specific rule set down by standing order, the House follows the practice of requiring all speeches to be in English. Other Members and those listening to proceedings are entitled to be able to follow the course of a debate, and it is unlikely that the Chair would know whether a speech is in order unless it is delivered in English. It is in order, however, for a Member to use or quote phrases or words in another language during the course of a speech.

Incorporation of unread material into Hansard

In one form or another the House has always had procedures for the incorporation of unread material into Hansard but there were, until recent years, considerable variations in practice and the Chair from time to time expressed unease at the fact that the practice was allowed and in respect of some of the purposes for which it was used.

Answers to questions on notice are required to be printed in Hansard¹⁰² and Budget tables were in the past permitted to be included unread in Hansard.¹⁰³ The terms of petitions have been incorporated since 1972,¹⁰⁴ and the terms of notices not given openly in the House have been included since 1978; in more recent years all notices have been included. The terms of amendments moved are also printed in Hansard, despite the common practice being for Members moving them to refer to previously circulated texts of proposed amendments rather than to read them out in full.

Underlying the attitude of the Chair and the House over the years has been the consistent aim of keeping the Hansard record as a true record of what is said in the House. Early occupants of the Chair saw the practice of including unread matter in Hansard as fraught with danger¹⁰⁵ and later Speakers have voiced more specific objections.¹⁰⁶ For example, a ‘speech’ may be lengthened beyond a Member’s entitlement under the standing orders, or the incorporated material may contain

98 H.R. Deb. (10.5.90) 267.

99 H.R. Deb. (18.10.79) 2273.

100 *Standing Orders Committee Report*, PP 129 (1964–66) 6.

101 VP 1964–66/266. In 1986 the Procedure Committee recommended that the prohibition on the reading of speeches be reintroduced, with certain exceptions. ‘Days and hours of sitting and the effective use of the time of the House’, *Standing Committee on Procedure*, PP 108 (1986) 34. The House did not accept the recommendation.

102 S.O. 150. This has been a requirement since 1931. The question must also be included with the reply, VP 1930–31/693.

103 H.R. Deb. (13.6.24) 1292–3. The practice was discontinued in 1987 for reasons of economy.

104 Also ministerial responses to petitions since 1992.

105 H.R. Deb. (9.8.10) 1256; H.R. Deb. (4.12.11) 3638.

106 H.R. Deb. (5.8.31) 4976–7; H.R. Deb. (15.9.32) 556.

irrelevant or defamatory matter or unparliamentary language; other Members will not be aware of the contents of the material until production of the daily Hansard next morning when a speech may be discovered to have matter not answered in debate and so appear more authoritative. Similarly, a succeeding Member's speech may appear to be less relevant and informed than it would have been if he or she had known of the unspoken material before speaking.¹⁰⁷

The modern practice of the House on the incorporation of other material, defined by Speakers Snedden and Jenkins in statements on the practice, is based on the premise that Hansard, as an accurate as possible a record of what is said in the House, should not incorporate unspoken material other than items such as tables which need to be seen in visual form for comprehension.¹⁰⁸

It is not in order for Members to hand in their speeches as is done in the Congress of the United States of America,¹⁰⁹ even when they have been prevented from speaking on a question before the House,¹¹⁰ nor can they have the balance of an unfinished speech incorporated.¹¹¹ Ministerial statements may not be incorporated,¹¹² nor may Ministers' second reading speeches¹¹³ or explanatory memoranda to bills.¹¹⁴ Matter irrelevant to the question before the House is not permitted to be incorporated.¹¹⁵

Apart from offending against the principle that Hansard is a report of the spoken word, items may also be excluded on technical grounds. Thus, for example, photographs, drawings, tabulated material of excessive length and other documents of a nature or quality not acceptable for printing or which would present technical problems and unduly delay the production of the daily Hansard are not able to be incorporated. In cases where permission has been granted for such an item to be incorporated (usually with the proviso from the Chair that the incorporation would occur only if technically possible), it has been the practice for a note to appear in the Hansard text explaining that the proposed incorporation was omitted for technical reasons. However, in recent years developments in printing technology have made possible the incorporation of a wider range of material—for example, graphs, charts and maps—than was previously the case.

A Minister or Member seeking leave to incorporate material should first show the matter to the Member leading for the Opposition or to the Minister or Parliamentary Secretary at the Table, as the case may be,¹¹⁶ and leave may be refused if this courtesy is not complied with.¹¹⁷ Members must provide a copy of the material they propose to

107 H.R. Deb. (10.5.83) 341–2.

108 H.R. Deb. (21.10.82) 2339–40; H.R. Deb. (10.5.83) 341–2. In recent times graphs and maps have also been incorporated, e.g. H.R. Deb. (25.5.88) 2986; H.R. Deb. (2.3.89) 329.

109 H.R. Deb. (1.3.17) 10826. This practice has been advocated on at least one occasion, H.R. Deb. (9.9.09) 3263.

110 H.R. Deb. (8.3.29) 929. On one occasion, Hansard staff having been discharged from further attendance following a very long sitting, Members handed precis of speeches made in the House to reporters for subsequent inclusion, H.R. Deb. (6–8.12.33) 5898. A tribute from an absent Member was permitted to be incorporated during a condolence debate, H.R. Deb. (8.4.86) 1786.

111 H.R. Deb. (20.6.06) 452. Leave has been granted the Leader of the Opposition to incorporate the remainder of a statement, H.R. Deb. (19.9.79) 1294. Leave has been granted for a Minister to incorporate the balance of a lengthy answer to a question without notice, H.R. Deb. (26.8.82) 959.

112 On one occasion a Minister was granted leave to incorporate a statement, VP 1951–53/405; H.R. Deb. (5.9.52) 1051–2.

113 On one occasion leave was granted for a Minister to incorporate a series of second reading speeches, H.R. Deb. (27.8.80) 804–13.

114 Prior to the Standing Orders Committee opposing such action, PP 114 (1970) 9, leave was occasionally granted for the incorporation of explanatory memorandums, VP 1967–68/199.

115 H.R. Deb. (3.5.38) 725.

116 PP 129 (1964–66) 3.

117 H.R. Deb. (24.8.84) 368.

include at the time leave is sought,¹¹⁸ and copies of non-read material intended for incorporation must be lodged with Hansard as early as possible.¹¹⁹

The general rule is not interpreted inflexibly by the Chair. For example, exceptions have been made to enable schedules showing the progress on government responses to committee reports.¹²⁰ Although other exceptions may be made from time to time, this is not a frequent occurrence and it is common practice of the Chair in such circumstances to remark on, and justify, the departure from the general rule, or to stress that the action should not be regarded as a precedent. The main category of such exceptions in recent years has been in relation to documents whose incorporation has provided information from the Government to the House.¹²¹ Other exceptions have been made to facilitate business of the House,¹²² or to allow the incorporation of material which in other circumstances could have been incorporated as a matter of routine.¹²³ The contents of a letter stick from Aboriginal peoples of the Northern Territory have been incorporated.¹²⁴

The House has ordered that matter be incorporated.¹²⁵ Matter has been authorised to be incorporated by a motion moved pursuant to contingent notice, after leave for incorporation had been refused.¹²⁶ A motion to allow incorporation has also been moved and agreed to following suspension of standing orders.¹²⁷

On two occasions in 1979 standing orders were suspended to enable certain papers to be incorporated in Hansard, after leave had been refused.¹²⁸ This action was procedurally defective. The incorporation of unspoken matter in Hansard is, by practice, authorised by the House by its unanimous consent. The unanimous consent is obtained by asking for leave of the House. If leave is refused the authority of the House can only be obtained by moving a positive motion. In order to move a motion without leave it is necessary to suspend the standing orders. The suspension of standing orders opens the way to move a motion for incorporation; it does not of itself allow incorporation as there is no standing order relating to the incorporation of matter in Hansard.

The fact that the House authorises the incorporation of unread matter does not affect the rule that the final decision rests with the Speaker.

Display of articles to illustrate speeches

Members have been permitted to display articles to illustrate speeches. The Chair has been of the opinion that unless the matter in question had some relation to disloyalty or was against the standing orders the Chair was not in a position to act but hoped that Members would use some judgment and responsibility in their actions.¹²⁹ In 1980 the Chair ruled that the display of a handwritten sign containing an unparliamentary word by

118 H.R. Deb. (9.5.73) 1860–1.

119 VP 1974–75/157.

120 H.R. Deb. (9.5.96) 763–7.

121 E.g. government guidelines for official witnesses before parliamentary committees, H.R. Deb. (23.8.84) 290–6; Prime Minister's comments in response to a royal commission report, H.R. Deb. (6.12.83) 3251–70; the terms of reference of a royal commission, H.R. Deb. (17.5.83) 598.

122 E.g. lists of names of members of parliamentary committees, H.R. Deb. (8.10.87) 995–6; H.R. Deb. (29.5.96) 1767–8.

123 Proposed opposition amendments to a bill which were not moved because bill was under guillotine which had expired, e.g. H.R. Deb. (11.4.86) 2129; H.R. Deb. (15.5.97) 3737–42; H.R. Deb. (5.6.97) 5123; answers to questions on notice which had been withdrawn from the Notice Paper, H.R. Deb. (15.4.86) 2319–20.

124 H.R. Deb. (28.10.96) 5908.

125 Record of proceedings of the presentation of a resolution of thanks of the House to representatives of the Armed Forces, VP 1920–21/184. Report of the proceedings on the occasion of the presentation of the Speaker's Chair, VP 1926–28/343.

126 H.R. Deb. (28.9.88) 1011.

127 H.R. Deb. (21.9.77) 1418–19. However, because of technical difficulties the matter was not in fact incorporated.

128 VP 1978–80/875–6; H.R. Deb. (6.6.79) 2972–7; VP 1978–80/986–7; H.R. Deb. (13.9.79) 1080–4.

129 H.R. Deb. (25.9.70) 1698.

a seated Member was not permitted.¹³⁰ Since then the Chair has more than once ruled that the displaying of signs was not permitted.¹³¹ Scorecards held up following a Member's speech have been ordered to be removed.¹³² In 1985 the Speaker ordered a Member to remove two petrol cans he had brought into the Chamber for the purpose of illustrating his speech.¹³³ It is not in order to display a weapon¹³⁴ or play a tape recorder.¹³⁵

The wide range of items which have been allowed to be displayed has included items as diverse as a flag,¹³⁶ photographs and journals,¹³⁷ plants,¹³⁸ a gold nugget,¹³⁹ a bionic ear,¹⁴⁰ a silicon chip,¹⁴¹ a flashing marker for air/sea rescue,¹⁴² a synthetic quartz crystal,¹⁴³ superconducting ceramic,¹⁴⁴ hemp fibres¹⁴⁵ and a heroin 'cap'.¹⁴⁶ Although newspaper headlines have been displayed for the purpose of illustrating a speech (but not if they contain unparliamentary language),¹⁴⁷ more recent practice has been not to permit this.

Citation of documents not before the House

With certain exceptions, a document relating to public affairs quoted from by a Minister must, if required by any Member, be tabled.¹⁴⁸ This restraint has been seen by *May* as being 'similar to the rule of evidence in courts of law, which prevents counsel from citing documents which have not been produced in evidence'.¹⁴⁹ The rule does not apply to private Members.

A Member may quote from documents not before the House, but the quotation must be relevant to the question before the Chair.¹⁵⁰ It is not in order to quote words debarred by the rules of the House.¹⁵¹ It is not necessary for a Member to vouch for the accuracy of a statement in a document quoted from or referred to,¹⁵² but a Member quoting certain unestablished facts concerning another Member contained in a report has been ordered not to put those findings in terms of irrefutable facts.¹⁵³ It is not necessary for a Member to disclose the source of a quotation¹⁵⁴ or the name of the author of a letter from which he or she has quoted.¹⁵⁵ The Chair has always maintained that Members themselves

130 H.R. Deb. (21.8.80) 582.

131 E.g. H.R. Deb. (6.9.83) 435; H.R. Deb. (19.3.85) 466.

132 H.R. Deb. (13.11.86) 3036–7.

133 H.R. Deb. (16.5.85) 2547.

134 *May*, 22nd edn, p. 389. A similar view has been taken in the House, private ruling by Speaker Halverson. However, deactivated land mines have been displayed, H.R. Deb. (25.11.98) 653.

135 H.R. Deb. (13.11.74) 3503.

136 H.R. Deb. (25.9.70) 1697. The flag was exhibited in support of the allegation that the staff was for use as a weapon.

137 H.R. Deb. (17.9.64) 1283–5.

138 H.R. Deb. (25.11.65) 3168; H.R. Deb. (16.9.81) 1437; H.R. Deb. (1.5.86) 2949–50.

139 H.R. Deb. (20.10.81) 2250.

140 H.R. Deb. (25.5.83) 934.

141 H.R. Deb. (2.11.83) 2195.

142 H.R. Deb. (19.8.82) 687–8.

143 H.R. Deb. (1.12.83) 3166.

144 H.R. Deb. (8.10.87) 985.

145 H.R. Deb. (19.6.95) 1771–2.

146 H.R. Deb. (2.6.97) 4577.

147 H.R. Deb. (20.2.86) 996–7, 1009. For recent practice see H.R. Deb. (18.6.96) 2061; (19.6.96) 2243.

148 S.O. 321; see also Ch. on 'Papers and documents'.

149 *May*, 19th edn, p. 431.

150 H.R. Deb. (29.5.31) 2446.

151 H.R. Deb. (20.9.22) 2488; H.R. Deb. (10.9.25) 2415.

152 H.R. Deb. (17.11.20) 6584.

153 H.R. Deb. (27.9.79) 1635.

154 H.R. Deb. (12.5.32) 671.

155 H.R. Deb. (28.5.31) 2399.

must accept responsibility for material they use in debate, and there is no need for them to vouch for its authenticity. Whether the material is true or false will be judged according to events and if a Member uses material, the origin of which he or she is unsure, the responsibility rests with the Member.¹⁵⁶

Subject to the rules applying to relevance and unparliamentary expressions, it is not within the province of the Chair to judge whether a document declared to be confidential should be restricted in its use in the House. As the matter is not governed by standing orders, it must be left to the good sense and discretion of a Member to determine whether to use material in his or her possession.¹⁵⁷ However, the Chair has ruled that confidential documents submitted to Cabinet in a previous Government must, in the public interest, remain entirely confidential.¹⁵⁸

RULES GOVERNING CONTENT OF SPEECHES

Relevancy in debate

General principles and exceptions

Of fundamental importance to the conduct of debate in the House is the rule that no Member may digress from the subject matter of any question under discussion.¹⁵⁹ At the same time the standing orders and practice of the House make provision for some important exceptions to this principle when debates of a general nature may take place. These exceptions are:

- on the motion for the adjournment of the House (or of the Main Committee when the motion is debated) matters irrelevant thereto may be debated;¹⁶⁰
- on the motion for the second reading of an appropriation or supply bill which deals with the ordinary annual services of the Government, matters relating to public affairs may be debated;¹⁶¹
- on the motion that the Address in Reply be agreed to, matters in a wide field may be discussed;¹⁶² and
- on the question that grievances be noted, a wide debate is permitted.¹⁶³

The scope of a debate may also be widened by means of an amendment. There may also be a digression from the rule of relevancy during a cognate debate, when two or more items are debated together even though technically only one of the items is the subject of the question before the House.

Cognate debate

When two or more related orders of the day are on the Notice Paper,¹⁶⁴ it frequently meets the convenience of the House when debating the first of the orders to allow

¹⁵⁶ H.R. Deb. (25.11.53) 472–3; H.R. Deb. (26.9.79) 1550–1.

¹⁵⁷ H.R. Deb. (2.5.57) 1000–1; VP 1964–66/597; H.R. Deb. (10.5.66) 1601; H.R. Deb. (11.5.66) 1673.

¹⁵⁸ H.R. Deb. (20.5.42) 1440–1; *see also* H.R. Deb. (28.3.73) 767–8, H.R. Deb. (9.5.73) 1854–5, NP 80(13.12.73) 3480, *and* VP 1973–74/365–6 for other references relating to this question.

¹⁵⁹ S.O. 81; *see also* Josef Redlich, *The Procedure of the House of Commons*, Archibald Constable, London, 1908, vol. III, p. 56.

¹⁶⁰ S.O. 81; *see also* Ch. on 'Non-government business'.

¹⁶¹ S.O. 81.

¹⁶² *See* Ch. on 'The parliamentary calendar'.

¹⁶³ *See* Ch. on 'Non-government business'.

¹⁶⁴ All of the matters to be debated together may not appear on the Notice Paper. A cognate debate has taken place on an order of the day and on a motion to take note of a paper which had been moved that day, H.R. Deb. (10.4.78) 1306–7.

reference to the other related orders and one cognate debate takes place.¹⁶⁵ Cognate debates are usually agreed to by the Government and the Opposition as part of the programming process and the orders of the day then linked accordingly on the Daily Program. The Chair formally seeks the agreement of the House to the proposal when the first of the orders so linked is called on for debate.¹⁶⁶ Upon the conclusion of the debate separate questions are then put as required on each of the orders of the day as they are called on.

Almost all cognate debates occur on bills—for further discussion of cognate debate in relation to bills *see* Chapter on ‘Legislation’. However, motions are on occasion debated cognately. A bill has been debated cognately with a motion to take note of papers on a related subject.¹⁶⁷ A cognate debate has taken place on three committee reports on unrelated subjects (by the same committee).¹⁶⁸

The purpose of a cognate debate is to save the time of the House, but Members may still speak to the questions proposed when the other orders of the day encompassed in the cognate debate are called on.¹⁶⁹ However, this action is contrary to the spirit of a cognate debate and is an undesirable practice except in circumstances, for example, when a Member desires to move an amendment to one of the cognate orders.

Persistent irrelevance or tedious repetition

The Speaker or Chair, after having called attention to the conduct of a Member who persists in irrelevance or tedious repetition of either his or her own arguments or the arguments used by other Members in debate, may direct the Member to discontinue his or her speech. The action of the Chair may be challenged by the Member concerned who has the right to require that the question that he or she be further heard be put, and thereupon that question must be put forthwith without debate.¹⁷⁰ The action of the Chair in requiring a Member to discontinue a speech cannot be challenged by a motion of dissent from a ruling, as the Chair has not given a ruling but a direction under the standing orders.¹⁷¹ The Chair is the judge of the relevancy or otherwise of remarks and it is the duty of the Chair to require Members to keep their remarks relevant.¹⁷² Only the Member who has been directed to discontinue a speech has the right to move that he or she be further heard and must do so before the call is given to another Member.¹⁷³

On only two occasions has a Member been directed to discontinue a speech on the ground of tedious repetition¹⁷⁴ but on a number of occasions on the ground of persistent irrelevance. A Member has been directed to discontinue his speech following persistent irrelevance while moving a motion,¹⁷⁵ and in the former committee of the whole

165 A cognate debate has also taken place on a notice of motion and an order of the day, H.R. Deb. (10.3.81) 575; and a general (i.e. private Member’s) business notice of motion and a government business order of the day, VP 1980–83/174–5.

166 This procedure has not always been followed. The House has ordered that debate on certain orders of the day proceed concurrently, VP 1920–21/705; standing orders have been suspended to allow discussion of certain tariff proposals during debate on a motion to print an associated report, VP 1932–34/101; standing orders have been suspended to enable the scope of the debate on a general business notice to be extended to cover the subject matter of a government business order of the day, VP 1980–83/174.

167 Parliamentary Commission of Inquiry (Repeal) Bill 1986 and motion to take note of Parliamentary Commission of Inquiry Special Report and associated documents, H.R. Deb. (20.8.86) 291.

168 H.R. Deb. (8.12.94) 4580.

169 H.R. Deb. (26.11.53) 576–7; H.R. Deb. (10.4.78) 1314.

170 S.O. 85.

171 H.R. Deb. (9.11.04) 6753; H.R. Deb. (6.10.53) 1051; H.R. Deb. (4.5.60) 1382.

172 H.R. Deb. (20.11.35) 1838.

173 H.R. Deb. (6.10.53) 1051–2.

174 VP 1904/298; H.R. Deb. (12.10.78) 1822.

175 H.R. Deb. (2.6.55) 1360.

(although later the Member took his second turn to speak to the question).¹⁷⁶ On two occasions the direction of the Chair has been successfully challenged by a motion that the Member be further heard.¹⁷⁷

Anticipation

The so-called anticipation rule involves three standing orders—two applying generally and one applying specifically to questions:

- No Member may anticipate the discussion of any subject which appears on the Notice Paper: Provided that in determining whether a discussion is out of order on the ground of anticipation, regard must be had by the Speaker to the probability of the matter anticipated being brought before the House within a reasonable time (S.O. 82);
- A matter on the Notice Paper must not be anticipated by another matter contained in a less effective form of proceeding (S.O. 163);
- Questions cannot anticipate discussion upon an order of the day or other matter (S.O. 144).

The intention behind the rule is to protect matters which are on the agenda for deliberative consideration and decision by the House from being pre-empted by unscheduled debate. The Speaker's 'reasonable time' discretion is to prevent the rule being used mischievously to block debate on a matter.

The words 'any subject which appears on the Notice Paper' are taken as applying only to the business section of the Notice Paper and not to matters listed elsewhere—for example, under questions on notice or as subjects of committee inquiry.

The phrase 'effective form of proceeding' relates to whether the proceeding has potential to result in action—that is, decision—by the House on the matter concerned. Thus, in this context, matters of public importance, Members' statements, questions, and adjournment or grievance debates are less effective forms of proceeding. A bill or other order of the day is more effective than a motion,¹⁷⁸ a Senate message is more effective than a notice of motion,¹⁷⁹ and a substantive motion is more effective than a matter of public importance or an amendment.

A notice of motion has been held to prevent its subject matter being discussed by means of an amendment to a motion or by means of a matter of public importance. A notice of motion has been withdrawn prior to discussion of a matter of public importance on the same subject.¹⁸⁰ The rule has been applied to a personal explanation,¹⁸¹ a motion of censure or want of confidence,¹⁸² the adjournment debate¹⁸³ and grievance debate.¹⁸⁴ During the course of a grievance debate the Chair has prevented a Member from debating a certain matter because it related to the subject of a notice of motion appearing on the Notice Paper in the Member's name. On the basis that the notice had only been given three weeks previously, the Chair was not in a position at that stage to determine

176 H.R. Deb. (9.3.51) 275–7.

177 VP 1937–40/413, 418.

178 H.R. Deb. (18.9.13) 1322; *May*, 22nd edn, p. 335.

179 VP 1905/202; NP 82 (12.12.05) 513.

180 VP 1962–63/483; NP 85 (16.5.63) 1467.

181 H.R. Deb. (16.10.13) 2178.

182 H.R. Deb. (28.4.14) 369–71; H.R. Deb. (29.4.14) 432–3.

183 H.R. Deb. (22.3.35) 305.

184 H.R. Deb. (23.1.02) 9159.

whether or not the matter would be brought before the House within a reasonable time.¹⁸⁵

There has been a tendency in recent years for rulings concerning anticipation to be more relaxed. After a long period of sittings the Notice Paper may contain notices and orders of the day on many aspects of government responsibility, with the result that an overly strict application of the rule could rule out a large proportion of subjects raised in debate, Members' statements or questions without notice, or topics proposed for discussion as matters of public importance. In a statement relating to matters of public importance Speaker Child, who had at the previous sitting accepted a matter which dealt with a subject covered in legislation listed for debate as an order of the day, indicated that, in her view, the discretion available to the Speaker should be used in a very wide sense.¹⁸⁶

In general, the approach taken by the Chair has been that it is not in order while debating a question before the House to go into detailed discussion of other business on the Notice Paper. However, incidental reference is permissible.¹⁸⁷ Where the topic of a matter of public importance has been very similar to the subject matter of a bill due for imminent debate, the discussion has been permitted, subject to the proviso that the debate on the bill should not be canvassed,¹⁸⁸ or that the bill not be referred to in detail.¹⁸⁹

The effect of standing order 144, applying to the asking of questions, is discussed in the Chapter on 'Questions'.

Allusion to previous debate or proceedings

No Member may allude to any debate or proceedings of the same session unless the allusion is relevant to the matter under discussion.¹⁹⁰ This rule is not extended to the different stages of a bill. In practice, mere allusion to another debate is rarely objected to. However, debate on a matter already decided by the House should not be reopened. The Chair has stated that the basis of the rule is that, when a subject has been debated and a determination made upon it, it must not be discussed by any means at a later stage.¹⁹¹ The relevant standing order was far more strict in the past, the relevancy proviso being included when permanent standing orders were adopted in 1950. A previous restriction on allusions to speeches made in committee was omitted in 1963 on the recommendation of the Standing Orders Committee 'as it appeared to be out of date and unnecessarily restrictive'.¹⁹²

The application of this standing order most often arises when the question before the House is 'That the House do now adjourn' or 'That grievances be noted'. The scope of debate on these questions is very wide ranging and in some instances allusions to previous debates have been allowed,¹⁹³ although the Chair has also intervened to prevent

185 H.R. Deb. (29.4.76) 1752–7.

186 VP 1985–87/975, 977; H.R. Deb. (26.5.86) 3919.

187 H.R. Deb. (22.10.08) 1455–6.

188 H.R. Deb. (5.5.92) 2358. The MPI was on the control of entry for permanent settlement and the bill, the first order of the day on the Notice Paper, was the Migration Amendment Bill 1992.

189 H.R. Deb. (10.3.98) 845. The MPI was on aged care and the bill was the Aged Care Amendment Bill 1998—debate on the bill did not resume until two weeks later.

190 S.O. 71.

191 H.R. Deb. (27.3.42) 558.

192 H of R 1(1962–63) 19.

193 See Ch. on 'Non-government business'.

allusion to earlier debates.¹⁹⁴ Members may be able to overcome the restriction by referring to a subject or issue of concern without alluding to any debate which may have taken place on it. The problem of enforcing the standing order is accentuated by the fact that a session may extend over a three year period.

References to committee proceedings

Members may not disclose in debate evidence taken by any committee of the House or the proceedings and reports of those committees which have not been reported to the House, unless disclosure or publication has been authorised by the House or by the committee or subcommittee.¹⁹⁵ Members have thus been prevented from referring to evidence not disclosed to the House or basing statements on matters disclosed to the committee.¹⁹⁶ However, Members have, from time to time, made statements on the activities of a committee by leave of the House.¹⁹⁷ The Chair has permitted reference in debate to committee proceedings which (although unreported) had been relayed throughout Parliament House on the monitoring system.¹⁹⁸

Allusion to Senate debate or proceedings and to Senators

With the exception that a Member may refer to a ministerial statement in the Senate, no allusion may be made to any debate or proceedings of the current session of the Senate, or to any measure pending in the Senate, unless the allusion is relevant to the matter under discussion.¹⁹⁹ The Chair has ruled that the standing order extends to the proceedings of a Senate committee,²⁰⁰ but this extension may be regarded as unnecessarily restrictive.

In its original form the rule prevented any allusion to debate of the current session or matters pending in the Senate whatsoever, the basis of the rule being to prevent fruitless arguments between members of two distinct bodies who are unable to reply to each other, and to guard against recrimination and offensive language in the absence of the other party.²⁰¹ Perhaps also it was a reflection of what Redlich refers to, in another context, as 'the right, inherent in each House, to exclusive cognizance of matters arising within it'.²⁰²

Even though the Chair held the view, as early as 1916, that 'It would be suicidal for this House to rule that no reference may be made in any way to a statement made in another place',²⁰³ it was not until 1963, following a recommendation from the Standing Orders Committee, that the House amended the standing order to allow reference to a ministerial statement in the Senate.²⁰⁴

The Chair has ruled that a Member is in order in questioning the validity of an appointment to fill a casual vacancy in the Senate.²⁰⁵ Comments critical of the rate of

194 H.R. Deb. (26.5.87) 3365.

195 S.O. 346. *See also* Ch. on 'Parliamentary committees'.

196 H.R. Deb. (10.6.55) 1656.

197 E.g. VP 1977/112, 358.

198 H.R. Deb. (16.12.93) 4226.

199 S.O. 72.

200 H.R. Deb. (7.3.51) 56.

201 *May*, 22nd edn, p. 381.

202 Josef Redlich, *The Procedure of the House of Commons*, Archibald Constable, London, 1908, vol. II, p. 154.

203 H.R. Deb. (1.12.16) 9357.

204 VP 1962-63/455; H of R 1(1962-63) 19.

205 H.R. Deb. (28.4.32) 122-3.

progress of legislation in the Senate have been ruled to be in order.²⁰⁶ Leave has been given to Members to comment on procedures adopted by the Senate for consideration of the estimates. When this reference was questioned in the Senate, the Leader of the Government in that Chamber stated that it would be better if the Senate did not get into a disputation or argument.²⁰⁷

The House has passed a motion condemning a Senator for his action in disclosing, in the course of proceedings in the Senate, a person's tax file number.²⁰⁸ A Senator has also been censured by the House for 'failing to observe reasonable standards of behaviour'.²⁰⁹ Such action is open to criticism in terms of the principle that members of one House are not accountable to the other for their actions.

Other occasions when one House has commented on the proceedings of the other have been when the House debated a privilege motion regarding allegations of corruption against the Prime Minister raised in the Senate and involving the President of the Senate,²¹⁰ and when a matter of privilege was raised in the Senate regarding attacks made upon members of the Senate during House proceedings. On the latter occasion the President, having referred to the unusual proceedings in the House, stated that the Senate would best preserve its independence and dignity by refraining from making any reference to the debate in the House.²¹¹ Early in 1909 a formal adjournment motion was moved regarding 'certain public attacks made upon the Postal Commission', the Member concerned having raised the matter to protect himself and the commission, of which he was chairman, against personal charges made in the Senate. The Chair allowed discussion to proceed under cover of a point of order 'for the protection of honourable members'. Later, in a personal explanation in the Senate, the Senator concerned referred to 'quite severe attacks upon myself outside the chamber'.²¹²

Offensive words cannot be used against either the Senate or Senators.²¹³ It is important that the use of offensive words should be immediately reprovved in order to avoid complaints and dissension between the two Houses. Leave has been granted to a Member to make a statement in reply to allegations made in the Senate,²¹⁴ and to make a personal explanation after having been ruled out of order in replying in debate to remarks made about him in the Senate.²¹⁵

Offensive or disorderly words

Good temper and moderation are the characteristics of parliamentary language. Parliamentary language is never more desirable than when a Member is canvassing the opinions and conduct of his opponents in debate.²¹⁶

The standing orders contain prohibitions against the use of words which may be judged to be offensive or disorderly (the two Houses of the Parliament, Members and Senators, members of the judiciary and statutes being specifically protected—*see*

206 H.R. Deb. (7.9.93) 951–2.

207 VP 1961/221; H.R. Deb. (28.9.61) 1451–4; S. Deb. (12.10.61) 1056.

208 VP 1993–5/2011–3.

209 VP 1996–98/2772–4.

210 VP 1914–17/575; H.R. Deb. (2.3.17) 10888–911.

211 J 1909/249. The incident referred to was comment made on a formal adjournment motion after amendments had been made to a bill before the Senate, VP 1909/221; H.R. Deb. (4.12.09) 6980–1.

212 H.R. Deb. (5.11.09) 5426–36; S. Deb. (11.11.09) 5668.

213 S.O. 75.

214 VP 1961/184; H.R. Deb. (30.8.61) 661–3. In this case further statements were made in the House, VP 1961/186, 196.

215 H.R. Deb. (19.3.59) 885–7; *see also* VP 1978–80/848, 850, when a copy of a personal explanation was sent to the President by the Acting Speaker.

216 *May*, 22nd edn, p. 386.

below).²¹⁷ The determination as to whether words used in the House are offensive or disorderly rests with the Chair, and the Chair's judgment depends on the nature of the word and the context in which it is used. A list of unparliamentary expressions, where withdrawal has been requested by the Chair, appears in the index to Hansard volumes.

A Member is not allowed to use unparliamentary words by the device of putting them in somebody else's mouth,²¹⁸ or in the course of a quotation.²¹⁹

It is the duty of the Chair to intervene when offensive or disorderly words are used either by the Member addressing the House or any Member present.²²⁰ When attention is drawn by a Member to words used, the Chair determines whether or not they are offensive or disorderly.²²¹

Once the Chair determines that offensive or disorderly words have been used, the Chair asks that the words be withdrawn. It has been considered that a withdrawal implies an apology²²² and need not be followed by an apology unless specifically demanded by the Chair.²²³ The Chair may ask the Member concerned to explain the sense in which the words were used and upon such explanation the offensive nature of the words may be removed. If there is some uncertainty as to the words complained of, for the sake of clarity, the Chair may ask exactly what words are being questioned. This action avoids confusion and puts the matter clearly before the Chair and Members involved.

The Chair has ruled that any request for the withdrawal of a remark or an allusion considered offensive must come from the Member reflected upon, if present²²⁴ and that any request for a withdrawal must be made at the time the remark was made. This latter practice was endorsed by the House in 1974 when it negated a motion of dissent from a ruling that a request for the withdrawal of a remark should be made at the time the remark was made.²²⁵ However, the Speaker has later drawn attention to remarks made and called on a Member to apologise, or to apologise and withdraw.²²⁶ Having been asked to withdraw a remark a Member may not do so 'in deference to the Chair', must not leave the Chamber²²⁷ and must withdraw the remark immediately,²²⁸ in a respectful manner,²²⁹ unreservedly²³⁰ and without conditions²³¹ or qualifications.²³² Traditionally Members were expected to rise in their places to withdraw a remark.²³³ If a Member refuses to withdraw or prevaricates, the Chair may name the Member for disregarding the authority of the Chair. The Speaker has also directed, in special circumstances, that offensive words be omitted from the Hansard record.²³⁴

217 S.O.s 75, 76.

218 *May*, 22nd edn, p. 387.

219 H.R. Deb. (5.5.78) 1894–5.

220 S.O. 77.

221 S.O. 78. This provision was introduced on the recommendation of the Standing Orders Committee, following conflicting rulings on whether remarks regarded as offensive by any Member had to be withdrawn. H of R 1 (1962–63) 20; VP 1962–63/455. *See also* statement by Speaker Jenkins, H.R. Deb. (7.5.84) 1907.

222 H.R. Deb. (22.10.13) 2377.

223 H.R. Deb. (1.11.51) 1498.

224 H.R. Deb. (30.11.50) 3427.

225 VP 1974/41–2.

226 H.R. Deb. (21.4.55) 70; H.R. Deb. (25.8.55) 73.

227 H.R. Deb. (22.11.12) 5883.

228 H.R. Deb. (3.12.18) 8639.

229 H.R. Deb. (7.12.11) 3996.

230 H.R. Deb. (15.8.23) 2776.

231 H.R. Deb. (27.11.14) 1180.

232 H.R. Deb. (30.11.50) 3427.

233 H.R. Deb. (26.9.79) 1569.

234 *See* 'Hansard' in Ch. on 'Papers and documents'.

References to and reflections on Members

In the Chamber a Member may not refer to another Member by name, but only by the name of the electoral Division he or she represents. Certain office holders are referred to by the title of their office.²³⁵ The purpose of this rule is to guard against all appearances of personality in debate.²³⁶ However, it is the practice of the House that, when appointments to committees or organisations are announced by the Speaker or a Minister, the name of a Member is used.

Offensive words may not be used against any Member and all imputations of improper motives and all personal reflections on Members are considered to be highly disorderly.²³⁷ The practice of the House, based on that of the House of Commons,²³⁸ is that Members can only direct a charge against other Members or reflect upon their character or conduct upon a substantive motion which admits of a distinct vote of the House.²³⁹ Although a charge or reflection upon the character or conduct of a Member may be made by substantive motion, in expressing that charge or reflection a Member may not use unparliamentary words.²⁴⁰ This practice does not necessarily preclude the House from discussing the activities of any of its Members.²⁴¹ It is not in order to use offensive words, and so on, against another Member by means of a quotation or by putting words in someone else's mouth.

In judging offensive words the following explanation given by Senator Wood as Acting Deputy President of the Senate in 1955 is a useful guide:

... in my interpretation of standing order 418 [similar to House of Representatives standing order 76 in relation to Members], offensive words must be offensive in the true meaning of that word. When a man is in political life it is not offensive that things are said about him politically. Offensive means offensive in some personal way. The same view applies to the meaning of "improper motives" and "personal reflections" as used in the standing order. Here again, when a man is in public life and a member of this Parliament, he takes upon himself the risk of being criticised in a political way.²⁴²

It has also been regarded as disorderly to refer to the lack of sobriety of a Member,²⁴³ to imitate the voice or manner of a Member²⁴⁴ and to make certain remarks in regard to a Member's stature²⁴⁵ or physical attributes.²⁴⁶ Although former Members are not protected by the standing orders,²⁴⁷ the Chair has required a statement relating to a former Member to be withdrawn²⁴⁸ and on another occasion has regarded it as most unfair to import into debate certain actions of a Member then deceased.²⁴⁹

May classifies examples of expressions which are unparliamentary and call for prompt interference as:

- the imputation of false or unavowed motives;

235 See Ch. on 'Members'.

236 *May*, 22nd edn, p. 386.

237 S.O.s 75, 76.

238 *May*, 22nd edn, p. 332.

239 H.R. Deb. (16.10.57) 1416; H.R. Deb. (2.3.72) 478.

240 H.R. Deb. (25.6.96) 2641, 2654-5.

241 H.R. Deb. (25.10.50) 1395.

242 S. Deb. (2.6.55) 629; *Odgers*, 6th edn, p. 213.

243 H.R. Deb. (2.11.77) 2736.

244 H.R. Deb. (25.9.08) 403. On another occasion a Member apologised after having imitated another Member's accent, although the Chair had not intervened. H.R. Deb. (11.10.85) 1907, 1929.

245 H.R. Deb. (9.9.04) 4508.

246 H.R. Deb. (28.8.79) 669.

247 H.R. Deb. (5.11.87) 2093.

248 H.R. Deb. (1.4.30) 724-5.

249 H.R. Deb. (26.5.55) 1204.

- the misrepresentation of the language of another and the accusation of misrepresentation;
- charges of uttering a deliberate falsehood; and
- abusive and insulting language of a nature likely to create disorder.²⁵⁰

In accordance with House of Commons practice, for many years it was ruled that remarks which would be held to be offensive, and so required to be withdrawn, when applied to an identifiable Member, did not have to be withdrawn when applied to a group where individual Members could not be identified. This rule was upheld by distinct votes of the House.²⁵¹ This did not mean, however, that there were no limits to remarks which could be made reflecting on unidentified Members. For example, a statement that it would be unwise to entrust certain unnamed Members with classified information was required to be withdrawn,²⁵² and Speaker Aston stated that exception would be taken to certain charges, the more obvious of which were those of sedition, treason, corruption or deliberate dishonesty.²⁵³ Speaker Snedden supported this practice when he required the withdrawal of the term ‘a bunch of traitors’²⁵⁴ and later extended it:

The consequence is that I have ruled that even though such a remark may not be about any specified person the nature of the language [the Government telling lies] is unparliamentary and should not be used at all.²⁵⁵

In the past there has been a ruling that it was not unparliamentary to make an accusation against a group as distinct from an individual. That is not a ruling which I will continue. I think that if an accusation is made against members of the House which, if made against any one of them, would be unparliamentary and offensive, it is in the interests of the comity of this House that it should not be made against all as it could not be made against one. Otherwise, it may become necessary for every member of the group against whom the words are alleged to stand up and personally withdraw himself or herself from the accusation... I ask all honourable members to cease using unparliamentary expressions against a group or all members which would be unparliamentary if used against an individual.²⁵⁶

This practice has been followed by succeeding Speakers.

References to the Queen, the Governor-General and State Governors

Members may not use the name of the Queen, the Governor-General or a State Governor disrespectfully in debate, nor for the purpose of influencing the House in its deliberations.²⁵⁷ According to *May* the reasons for the rule are:

The irregular use of the Queen’s name to influence a decision of the House is unconstitutional in principle and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorized mode of communicating Her Majesty’s recommendation or consent, through one of her Ministers; but Her Majesty cannot be supposed to have a private opinion, apart from that of her responsible advisers; and any attempt to use her name in debate to influence the judgment of Parliament is immediately checked and censured. This rule extends also to other members of the royal family, but it is not strictly applied when one of its members has made a public statement on a matter of current interest so long as comment is made in appropriate terms.²⁵⁸

Members have been prevented from introducing the name of the sovereign to influence debate,²⁵⁹ canvassing what the sovereign may think of legislation introduced in the

250 *May*, 22nd edn, pp. 386–7.

251 VP 1968–69/413, 499; VP 1970–72/43–5.

252 H.R. Deb. (4.5.67) 1793–7.

253 PP 153 (1970) 43–8.

254 H.R. Deb. (27.2.80) 431.

255 H.R. Deb. (10.9.80) 1076.

256 H.R. Deb. (12.3.81) 709.

257 S.O. 74.

258 *May*, 22nd edn, p. 382.

259 H.R. Deb. (24.4.18) 4120.

Parliament²⁶⁰ and referring to the sovereign in a way intended to influence the reply to a question.²⁶¹ The rule does not exclude a statement of facts by a Minister concerning the sovereign,²⁶² or debate on the constitutional position of the Crown.

In 1976 Speaker Snedden prohibited in debate any reference casting a reflection upon the Governor-General, unless discussion was based upon a substantive motion drawn in proper terms. He made the following statement to the House based on an assessment of previous rulings:

Some past rulings have been very narrow. It has, for instance, been ruled that the Governor-General must not be either praised or blamed in this chamber and, indeed, that the name of the Governor-General must not be brought into debate at all. I feel such a view is too restrictive. I think honourable members should have reasonable freedom in their remarks. I believe that the forms of the House will be maintained if the Chair permits words of praise or criticism provided such remarks are free of any words which reflect personally on His Excellency or which impute improper motives to him. For instance, to say that in the member's opinion the Governor-General was right or wrong and give reasons in a dispassionate way for so thinking would in my view be in order. To attribute motive to the Governor-General's actions would not be in order.²⁶³

Some previous rulings have been:

- it is acceptable for a Minister to be questioned regarding matters relating to the public duties for which the Governor-General is responsible, without being critical or reflecting on his conduct;²⁶⁴
- restrictions applying to statements disrespectful to or critical of the conduct of the Governor-General apply equally to the Governor-General designate;²⁶⁵
- reflections must not be cast on past occupants of the position or the office as such;²⁶⁶
- the Governor-General's name should not be introduced in debate in a manner implying threats;²⁶⁷
- statements critical of and reflecting on the Governor-General's role in the selection of a Ministry are out of order;²⁶⁸ and
- it is considered as undesirable to introduce into debate the names of the Governor-General's household.²⁶⁹

Petitions have been presented praying for the House to call on the Governor-General to resign.²⁷⁰

Reflections on members of the judiciary

Both standing orders and the practice of the House place certain constraints upon references in debate to members of the judiciary. Under the standing orders no Member may use offensive words against any member of the judiciary.²⁷¹ This provision was not included in the standing orders until 1950 but prior to then the practice, based on that of the House of Commons, was that, unless discussion was based upon a substantive

260 H.R. Deb. (20.6.51) 142.

261 H.R. Deb. (24.11.36) 2170.

262 E.g. VP 1934–37/805–6.

263 H.R. Deb. (19.2.76) 131.

264 H.R. Deb. (25.2.69) 5–6, 12–13.

265 H.R. Deb. (26.2.69) 207.

266 H.R. Deb. (1.4.30) 705–6.

267 H.R. Deb. (10.6.14) 1982.

268 H.R. Deb. (15.1.18) 2971, 2992; H.R. Deb. (18.1.18) 3218; H.R. Deb. (9.7.19) 10517.

269 H.R. Deb. (14.8.07) 1870.

270 E.g. VP 1976–77/577; and see 'Petitions' in Ch. on 'Papers and documents'.

271 S.O.s 75, 77, 78.

motion, reflections could not be cast in debate upon the conduct, including a charge of a personal character, of a member of the judiciary. This practice still continues. Decisions as to whether words are offensive or cast a reflection rest with the Chair.²⁷²

Rulings of the Chair have been wide ranging on the matter, perhaps the most representative being one given in 1937 that ‘From time immemorial, the practice has been not to allow criticism of the judiciary; the honourable member may discuss the judgments of the court, but not the judges’.²⁷³ In defining members of the judiciary, the Chair has included the following:

- a Public Service Arbitrator;²⁷⁴
- an Australian judge who had been appointed to the international judiciary;²⁷⁵
- a Conciliation and Arbitration Commissioner;²⁷⁶ and
- magistrates.

The Chair has also ruled that an electoral distribution commission is not a judicial body and that a judge acting as a commissioner is not acting in a judicial capacity.²⁷⁷ When judges lead royal commissions or special commissions, they are exercising executive power, not judicial power, and therefore do not attract the protection of standing order 75. The rule has not prevented criticism of the conduct of a person before becoming a judge.²⁷⁸

Judges are expected, by convention, to refrain from politically partisan activities and to be careful not to take sides in matters of political controversy. If a judge breaks this convention, a Member may feel under no obligation to remain mute on the matter in the House.²⁷⁹

Reflections on the House, statutes and votes of the House

The standing orders provide that offensive words may not be used against the House of Representatives.²⁸⁰ It has been considered unbecoming to permit offensive expressions against the character and conduct of the House to be used by a Member without rebuke, as such expressions may serve to degrade the legislature in the eyes of the people. Thus, the use of offensive words against the institution by one of its Members should not be overlooked by the Chair.

No Member may reflect upon any vote of the House except upon a motion that the vote be rescinded.²⁸¹ Under this rule a proposed motion of privilege, in relation to the suspension of two Members from the House in one motion, was ruled out of order as the vote could not be reflected upon except for the purpose of moving a rescission motion.²⁸² A Member, speaking to the question that a bill be read a third time, has been ordered not to reflect on votes already taken during consideration of the bill,²⁸³ and a Member has been ordered not to canvass decisions of the House of the same session.²⁸⁴

272 S.O.s 77, 78.

273 H.R. Deb. (28-9.6.37) 577; *see also* H.R. Deb. (18.3.80) 836.

274 H.R. Deb. (7.12.21) 13924.

275 H.R. Deb. (2.10.57) 1005.

276 H.R. Deb. (4.6.52) 1399.

277 H.R. Deb. (24.5.65) 2076.

278 H.R. Deb. (12.4.2000) 15883.

279 H.R. Deb. (28.11.95) 3964.

280 S.O. 75; H.R. Deb. (21.8.73) 23.

281 S.O. 73.

282 VP 1946-48/43.

283 H.R. Deb. (13.12.34) 1217.

284 H.R. Deb. (24.2.72) 235.

This rule is not interpreted in such a way as to prevent a reasonable expression of views on matters of public concern.

Although standing order 75 provides that the use of offensive words against a statute is prohibited, for the theoretical reason that it imputes discredit to the legislature that passed that statute, modern practice would not call for its application. The rule is no longer applied in the House of Commons and any Act of Parliament can be criticised as strongly as Members desire.²⁸⁵

References to other governments and their representatives

Although there is no provision in the standing orders prohibiting opprobrious references to countries with which Australia is in a state of amity or to their leaders, governments or their representatives in Australia, the Chair on numerous occasions has intervened to prevent such references being made, on the basis that the House was guided by House of Commons usage²⁸⁶ on the matter.²⁸⁷ However, from time to time, much latitude has been shown by the Chair and on the one occasion when the House has voted on the matter it rejected the proposed inclusion of this rule into the standing orders. In 1962 the Standing Orders Committee recommended amendments to standing order 144, including one to give effect to the House of Commons practice that questions should not contain discourteous references to a friendly country or its representative.²⁸⁸ The House rejected the recommendation.²⁸⁹

In more recent years the Chair has declined to interfere with the terms of a notice of motion asking the House to censure an ambassador to Australia ‘for his arrogant and contemptuous attitude towards Australia and . . . his provocative public statements’.²⁹⁰ A notice of motion asking the House to condemn a diplomatic representative for ‘lying to the Australian public’ has also been allowed to appear on the Notice Paper.²⁹¹

In 1986 the Procedure Committee recommended that restrictions relating to reflections in debate on governments or heads of governments, other than the Queen or her representatives in Australia, be discontinued.²⁹² In practice, the latitude referred to earlier has continued to be evident, even though the Procedure Committee recommendation has not been acted upon.

The standing orders and practice of the House do not prevent a Member from reflecting on a State Government or Member of a State Parliament, no matter how much such a reference may be deprecated by the Chair.²⁹³

Sub judice convention

Notwithstanding its fundamental right and duty to consider any matter if it is thought to be in the public interest, the House imposes a restriction on itself in the case of matters awaiting or under adjudication in a court of law. This is known as the sub judice convention. The convention is that, subject to the right of the House to legislate on any matter, matters awaiting adjudication in a court of law should not be brought forward in

285 *May*, 22nd edn, p. 383.

286 *May*, 22nd edn, p. 385.

287 E.g. VP 1951–53/117, 327.

288 H of R 1 (1962–63) 32.

289 VP 1962–63/455; H.R. Deb. (1.5.63) 896. For later comment *see* H.R. Deb. (19.8.76) 368.

290 NP 148 (28.2.80) 8700; H.R. Deb. (4.3.80) 580.

291 NP 168 (30.4.80) 10257.

292 *Standing Committee on Procedure*, 3rd report, PP 354 (1986) 32.

293 H.R. Deb. (21.8.80) 590–1; H.R. Deb. (30.6.31) 3169; H.R. Deb. (25.9.18) 6368.

debate, motions or questions. Having no standing order relating specifically to sub judice matters the House has been guided by its own practice. Regard has also been had to that of the House of Commons as declared by resolutions of that House in 1963 and 1972.²⁹⁴

The origin of the convention appears to have been the desire of Parliament to prevent comment and debate from exerting an influence on juries and from prejudicing the position of parties and witnesses in court proceedings.²⁹⁵ It is by this self-imposed restriction that the House not only prevents its own deliberations from prejudicing the course of justice but prevents reports of its proceedings from being used to do so.

The basic features of the practice of the House of Representatives are as follows:

- The application of the sub judice convention is subject to the discretion of the Chair at all times. The Chair should always have regard to the basic rights and interests of Members in being able to raise and discuss matters of concern in the House. Regard needs to be had to the interests of persons who may be involved in court proceedings and to the separation of responsibilities between the Parliament and the judiciary.
- As a general rule, matters before the criminal courts should not be referred to from the time a person is charged until a sentence, if any, has been announced; and the restrictions should again apply if an appeal is lodged and remain until the appeal is decided.
- As a general rule, matters before civil courts should not be referred to from the time they are set down for trial or otherwise brought before the court and, similarly, the restriction should again be applied from the time an appeal is lodged until the appeal is decided.
- In making decisions as to whether the convention should be invoked in particular cases, the Chair should have regard to the likelihood of prejudice to proceedings being caused as a result of references in the House.²⁹⁶

The convention has also been applied in respect of royal commissions. The key feature is that decisions are made on a case by case basis, in light of the circumstances applying.²⁹⁷

The principal distinctions that have been recognised have been that:

- Matters before royal commissions or other similar bodies which are concerned with the conduct of particular persons should not be referred to in proceedings if, in the opinion of the Chair, there is a likelihood of prejudice being caused as a result of the references in the House.
- Matters before royal commissions or similar bodies dealing with broader issues of national importance should be able to be referred to in proceedings unless, in the opinion of the Chair, there are circumstances which would justify the convention being invoked to restrict reference in the House²⁹⁸ (*and see below*).

The sub judice convention can also be invoked in respect of committee inquiries, although, having the ability to take evidence in camera, committees are able to guard against any risk of prejudice to proceedings as a result of evidence given or the reporting of such evidence by the media. During the Transport, Communications and Infrastructure Committee inquiry into aviation safety in 1994–95, for example, the

294 *May*, 22nd edn, pp. 383–4.

295 *House of Commons Select Committee on Procedure*, 4th Report, HC 298 (1971–72) vii–viii.

296 H.R. Deb. (27.6.94) 1978–9 (statement by Speaker Martin).

297 H.R. Deb. (18.9.95) 1049–51.

298 H.R. Deb. (27.6.94) 1979.

committee decided that it should not receive evidence in public concerning two particular matters, one being the subject of a coronial inquiry and the other the subject of a judicial inquiry.

Right to legislate and discuss matters

The right of the House to debate and legislate on matters without outside interference or hindrance is self-evident. Circumstances could be such, for example, that the Parliament decides to consider a change to the law to remedy a situation which is before a court or subject to court action.

Discretion of the Chair

The discretion exercised by the Chair must be considered against the background of the inherent right and duty of the House to debate any matter considered to be in the public interest. Freedom of speech is regarded as a fundamental right without which Members would not be able to carry out their duties. Members must be able to speak without hope of favour or fear of retribution. Imposed on this freedom is the voluntary restraint of the *sub judice* convention, which recognises that the courts are the proper place to judge alleged breaches of the law. It is a restraint born out of respect by Parliament for the judicial arm of government, a democratic respect for the rule of law and the proper upholding of the law by fair trial proceedings. Speaker Snedden stated in 1977:

The question of the *sub judice* rule is difficult. Essentially it remains in the discretion of the presiding officer. Last year I made a statement in which I expanded on the interpretation of the *sub judice* rule which I would adopt. I was determined that this national Parliament would not silence itself on issues which would be quite competent for people to speak about outside the Parliament. On the other hand, I was anxious that there should be no prejudice whatever to persons faced with criminal action. Prejudice can also occur in cases of civil action. But I was not prepared to allow the mere issue of a writ to stop discussion by the national Parliament of any issues. Therefore I adopted a practice that it would not be until a matter was set down for trial that I would regard the *sub judice* rule as having arisen and necessarily stifle speeches in this Parliament. There is a stricter application in the matter of criminal proceedings.²⁹⁹

The major area for the exercise of the Chair's discretion lies in the Chair's assessment of the likelihood of prejudice to proceedings.

The Select Committee on Procedure of the House of Commons put the following view as to what is implied by the word 'prejudice':

In using the word "prejudice" Your Committee intend the word to cover possible effect on the members of the Court, the jury, the witnesses and the parties to any action. The minds of magistrates, assessors, members of a jury and of witnesses might be influenced by reading in the newspapers comment made in the House, prejudicial to the accused in a criminal case or to any of the parties involved in a civil action.³⁰⁰

It is significant that this view did not include judges but referred only to magistrates, as it could be less likely that a judge would be influenced by anything said in the House. In 1976 Speaker Snedden commented:

... I am concerned to see that the parties to the court proceedings are not prejudiced in the hearing before the court. That is the whole essence of the *sub judice* rule; that we not permit anything to occur in this House which will be to the prejudice of litigants before a court. For that reason my attitude towards the *sub judice* rule is not to interpret the *sub judice* rule in such a way as to stifle discussion in the national Parliament on issues of national importance. I have so ruled on earlier occasions. That is only the opposite side of the coin to what is involved here. If I believed that in any way the discussion of this motion or the passage of the motion would prejudice the parties before the

299 H.R. Deb. (24.3.77) 558.

300 *House of Commons Select Committee on Procedure*, 1st Report, HC 156 (1962–63) v.

court, then I would rule the matter *sub judice* and refuse to allow the motion to go on; but there is a long line of authority from the courts which indicates that the courts and judges of the courts do not regard themselves as such delicate flowers that they are likely to be prejudiced in their decisions by a debate that goes on in this House. I am quite sure that is true, especially in the case of a court of appeal or, if the matter were to go beyond that, the High Court. I do not think those justices would regard themselves as having been influenced by the debate that may occur here.³⁰¹

The Chair has permitted comments to be made pertaining to a matter subject to an appeal to the High Court, a decision perhaps reflecting the view that High Court judges would be unlikely to be influenced by references in the House.³⁰²

The Speaker has allowed a matter of public importance critical of the Government's handling of an extradition process to be discussed, despite objection from the Attorney-General on *sub judice* grounds, on the basis that Members refrain from any comment as to the guilt or innocence of the person named in the proposed matter.³⁰³

A matter before the courts has been brought before the House as an item of private Member's business, the Speaker having concluded that the *sub judice* rule should not be invoked so as to restrict debate.³⁰⁴ It was noted that the matter was a civil one and that a jury was not involved.

Debate relating to the subject matter of a royal commission has been permitted on the grounds that the commissioner would not be in the least influenced by such remarks (*and see below*).³⁰⁵

Civil or criminal matter

A factor which the Chair must take into account in making a judgment on the application of the *sub judice* rule is whether the matter is of a criminal or a civil nature. The practice of the House provides for greater caution in the case of criminal matters. First, there is an earlier time for exercising restraint in debate in the House, namely, 'from the moment a charge is made' as against 'from the time the case is set down for trial or otherwise brought before the court' in the case of a civil matter. In the case of a civil matter it is a sensible provision that the rule should not apply 'from the time a writ is issued' as many months can intervene between the issue of a writ and the actual court proceedings. The House should not allow its willingness to curtail debate so as to avoid prejudice to be convoluted into a curtailment of debate by the issue of a 'stop writ', namely, a writ the purpose of which is not to bring the matter to trial but to limit discussion of the issue, a step sometimes taken in defamation cases. Secondly, there is the greater weight which should be given to criminal rather than civil proceedings. The use of juries in criminal cases and not in civil matters and the possibility of members of a jury being influenced by House debate is also relevant to the differing attitudes taken as between civil and criminal matters.

Chair's knowledge of the case

A significant practical difficulty which sometimes faces the Chair when application of the *sub judice* convention is suggested is a lack of knowledge of the particular court proceeding or at least details of its state of progress. If present in the Chamber, the Attorney-General can sometimes help, but often it is a matter of the Chair using its

301 H.R. Deb. (4.6.76) 3048; *see also* Sir Billy Snedden, 'Sub judice rule', *Report of 6th Conference of Commonwealth Speakers and Presiding Officers*, 1981, Ottawa.

302 H.R. Deb. (25.11.86) 3618.

303 H.R. Deb. (19.11.97) 10788-9.

304 H.R. Deb. (22.11.99) 12277.

305 H.R. Deb. (22.9.87) 501-2.

judgment on the reliability of the information given; for example, the Chair has accepted a Minister's assurance that a matter was not before a court.³⁰⁶

Matters before royal commissions and other bodies

Although it is clear that royal commissions do not exercise judicial authority, and that persons involved in royal commissions are not on trial in a legal sense, the proceedings have a quasi-judicial character. The findings of a royal commission can have very great significance for individuals, and the view has been taken that in some circumstances the sub judice convention should be applied to royal commissions.

In 1954 Speaker Cameron took the view that he would be failing in his duty if he allowed any discussion of matters which had been deliberately handed to a royal commission for investigation.³⁰⁷ The contemporary view is that a general prohibition of discussion of the proceedings of a royal commission is too broad and restricts the House unduly. It is necessary for the Chair to consider the nature of the inquiry. Where the proceedings are concerned with issues of fact or findings relating to the propriety of the actions of specific persons the House should be restrained in its references.³⁰⁸ Where, however, the proceedings before a royal commission are intended to produce advice as to future policy or legislation they assume a national interest and importance, and restraint of comment in the House cannot be justified. In 1978 Speaker Snedden drew a Member's attention to the need for restraint in his remarks about the evidence before a royal commission. Debate was centred on a royal commission appointed by the Government to inquire into a sensitive matter relating to an electoral re-distribution in Queensland involving questions of fact and the propriety of actions of Cabinet Ministers and others.³⁰⁹ The Speaker said:

I interrupt the honourable gentleman to say that a Royal Commission is in course. The sub judice rules adopted by the Parliament and by myself are such that I do not believe that the national Parliament should be deprived of the opportunity of debating any major national matter. However, before the honourable gentleman proceeds further with what he proposes to say I indicate to him that in my view if he wishes to say that evidence ABC has been given he is free to do so. The Royal Commissioner would listen to the evidence and make his judgment on the evidence and not on what the honourable gentleman says the evidence was. But I regard it as going beyond the bounds of our sub judice rules if the honourable gentleman puts any construction on the matter for the simple reason that if the Royal Commissioner in fact concluded in a way which was consistent with the honourable gentleman's construction it may appear that the Commissioner was influenced, whereas in fact he would not have been. So I ask the honourable gentleman not to put constructions on the matter.³¹⁰

The question as to whether the proceedings before a royal commission are sub judice is therefore treated with some flexibility to allow for variations in the subject matter, the varying degree of national interest and the degree to which proceedings might be or appear to be prejudiced.

The application of the convention became an issue in 1995 in connection with a royal commission appointed by the Government of Western Australia. In this case, although the terms of reference did not identify persons, the Royal Commissioner subsequently outlined issues which included references to the propriety of the actions of a Minister at the time she had been Premier of Western Australia. In allowing Members to continue to refer to the commission's proceedings, the Speaker noted that the terms of reference did

306 E.g. H.R. Deb. (19.9.85) 1320.

307 H.R. Deb. (12.8.54) 222.

308 The same rule has been held to apply to judicial inquiries into the actions of specific persons, H.R. Deb. (5.3.84) 511. *See also* H.R. Deb. (1.12.88) 3649–50 where the question arose in connection with a State commission of inquiry.

309 *See* Ch. on 'Elections and the electoral system'.

310 H.R. Deb. (30.5.78) 2780.

not require the royal commission to inquire into whether there had been any breach of a law of the Commonwealth, to the fact that the issues had a highly political element, to the publicity already given to the matter and to the purpose of the convention. Nevertheless the Speaker rejected the view that the convention should not continue to be applied to royal commissions, and stated that each case should be judged on its merits.³¹¹

When other bodies have a judicial or quasi-judicial function in relation to specific persons the House needs to be conscious of the possibility of prejudicing, or the appearance of prejudicing, their case. When the judicial function is wider than this—for example, a matter for arbitration or determination by the Industrial Relations Commission—there would generally be no reason for restraint of comment in the House. To disallow debate on such issues would be contrary to one of the most important functions of the House, and the view is held that anything said in the House would be unlikely to influence the commissioners, who make their determinations on the facts as placed before them.

The discretion of the Chair, and the need to recognise the competing considerations, is always at the core of these matters.

INTERRUPTIONS TO MEMBERS SPEAKING

No Member may interrupt another Member whilst speaking unless:

- to call attention to a point of order;
- to raise a matter of privilege suddenly arising;
- to call attention to the want of a quorum;
- to call attention to the presence of strangers;
- to move a closure motion under standing order 93 or 94; or
- to move ‘That the business of the day be called on’ in order to end or preclude discussion of a matter of public importance.³¹²

Also whenever the Speaker rises during a debate, any Member then speaking, or offering to speak, must sit down so that the Speaker may be heard without interruption.³¹³ A Member has been ordered to withdraw from the Chamber under S.O. 304A for having interjected a second time after having been reminded that the Speaker had risen.³¹⁴

Members may also be interrupted by the Chair on matters of order and at the expiration of time allotted to debate. It is not in order to interrupt another Member to move a motion, except as outlined above.³¹⁵

It is not the practice of the House for Members to ‘give way’ in debate to allow another Member to intervene or interpose to make an explanation, although this practice occurs in the House of Commons and some other Parliaments.³¹⁶ However, in 2000 the Procedure Committee recommended the adoption of such a practice on a trial basis in the Main Committee.³¹⁷

311 H.R. Deb. (18.9.95) 1049–52.

312 S.O. 84.

313 S.O. 53.

314 H.R. Deb. (16.3.2000) 14910 (the Member was then named on further interjecting).

315 VP 1974–75/338.

316 H.R. Deb. (7.10.08) 861.

317 Standing Committee on Procedure, *The Second Chamber: Enhancing the Main Committee*, PP 158 (2000) 36–8.

Interjections

When a Member is speaking, no Member may converse aloud or make any noise or disturbance to interrupt the Member.³¹⁸ Should Members wish to refute statements made in debate they have the opportunity to do so when they themselves address the House on the question or, in certain circumstances, by informing the Chair that they have been misrepresented (*see* p. 472).

In order to facilitate debate the Chair may regard it as wise not to take note of interjections.³¹⁹ Deputy Speaker Chanter commented in 1920:

I call attention to a rule which is one of the most stringent that we have for the guidance of business [now S.O. 84]. I may say that an ordinary interjection here and there is not usually taken notice of by the Chair, but a constant stream of interjections is decidedly disorderly.³²⁰

The Chair, although recognising all interjections as disorderly, has also been of the opinion that it should not interfere as long as they were short and did not interrupt the thread of the speech being delivered.³²¹ The fact that an interjection has been directly invited by the remarks of the Member speaking in no way justifies the interruption of a speech,³²² and the Chair has suggested that Members refrain from adopting an interrogatory method of speaking which provokes interjections.³²³ It is not uncommon for the Chair, when ordering interjectors to desist, to urge the Member speaking to address his or her remarks through the Chair and not to invite or respond to interjections.³²⁴ Interjections which are not replied to by the Member with the call or which do not lead to any action or warning by the Chair are not recorded in Hansard.

It may be accepted that, as the House is a place of thrust and parry, the Chair need not necessarily intervene in the ordinary course of debate when an interjection is made. Intervention would be necessary if interjections were, in the opinion of the Chair, too frequent or such as to interrupt the flow of a Member's speech or were obviously upsetting the Member who had the call. The Chair has a duty to rebuke the person who interjects rather than chastise the Member speaking for replying to an interjection.

CURTAILMENT OF SPEECHES AND DEBATE

Curtailmnt of speeches

A speech is terminated when a Member resumes his or her seat at the conclusion of his or her remarks, when the time allowed for a speech under the standing orders expires, or when the House agrees to the question 'That the Member be not further heard'. Speeches may also be terminated when the time allotted to a particular debate expires, when the House agrees to the question 'That the question be now put', or when the House agrees to a motion 'That the business of the day be called on' during discussion of a matter of public importance.

318 S.O. 55.

319 H.R. Deb. (14.8.03) 3664; H.R. Deb. (16.6.15) 4014; H.R. Deb. (18.6.15) 4229–30.

320 H.R. Deb. (14.7.20) 2707.

321 H.R. Deb. (12.9.01) 4810.

322 H.R. Deb. (28.9.05) 2986; H.R. Deb. (1.5.96) 107.

323 H.R. Deb. (1.5.14) 539.

324 H.R. Deb. (5.5.83) 250; H.R. Deb. (10.11.83) 2630–1; H.R. Deb. (1.5.96) 107; H.R. Deb. (8.12.98) 1589.

Time limits for speeches

Time limits for speeches in the House were first adopted in 1912.³²⁵ Following a recommendation from the Standing Orders Committee that the House adopt a specific standing order limiting the time of speeches,³²⁶ the House agreed to a motion that ‘in order to secure the despatch of business and the good government of the Commonwealth’ the standing orders be immediately amended in the direction of placing a time limit on the speeches delivered in the House and in committee.³²⁷ The standing order, as amended, is now standing order 91 and, unless the House otherwise orders, time limits now apply to all speeches with the exceptions of the main Appropriation Bill for the year, where there is no time limit for the mover of the second reading and for the Leader of the Opposition or one Member deputed by the Leader of the Opposition when speaking to the second reading.

The House may agree to vary, for a specific purpose, time limits provided by standing order 91. As examples of variations in time limits for speeches on bills *see* Appropriation Bill (No. 1) 1978–79,³²⁸ and a package of bills considered together in 1998 to provide for new taxation arrangements.³²⁹ Time limits have also been varied for debate on a motion to suspend standing orders.³³⁰

In relation to committee and private Members’ business on Mondays the Selection Committee may allot lesser speaking times than provided by the standing order (*see* Chapter on ‘Non-government business’).

Time limits do not apply when statements are made by leave of the House.³³¹ It is the practice of the House that time limits are not enforced during debate on motions of condolence or on valedictory speeches made at the end of a period of sittings.

The period of time allotted for a Member’s speech is calculated from the moment the Member is given the call³³² (unless the call is disputed by a motion under standing order 61³³³) and includes time taken up by interruptions such as divisions³³⁴ (but not suspensions of Main Committee proceedings caused by divisions in the House), quorum calls,³³⁵ points of order,³³⁶ motions of dissent from rulings of the Chair,³³⁷ and proceedings on the naming and suspension of a Member.³³⁸ The time allotted is not affected by a suspension of the sitting.

Extension of time

It is not unusual before or during important debates for the standing orders to be suspended to grant extended or unlimited time to Ministers and leading Members of the

325 The provisional standing orders adopted on 6 June 1901 only contained time limits for speeches on what is now known as a matter of public importance. The limitations were 30 minutes for the mover and 15 minutes for any other Member speaking.

326 H of R I (1912).

327 VP 1912/38, 42–5. The motion was originally moved by a private Member from the Opposition and it was agreed to by the House with amendments.

328 VP 1978–80/370.

329 VP 1998–2001/207.

330 VP 1998–2001/1347.

331 H.R. Deb. (28.11.47) 2918.

332 H.R. Deb. (14.11.79) 2970.

333 H.R. Deb. (9.9.96) 3735.

334 H.R. Deb. (17.11.20) 6587.

335 VP 1912/226.

336 H.R. Deb. (10.5.45) 1571.

337 H.R. Deb. (1.10.53) 885. In this case the Member who received the call did not get to speak.

338 H.R. Deb. (8.7.31) 3561.

Opposition.³³⁹ Sometimes in these circumstances a simple motion for extension of time may be more suitable.

After the maximum period allowed for a Member's speech has expired the standing order provides that, with the consent of the majority of the House or Main Committee, the Member may be allowed to continue a speech for one period not exceeding 10 minutes, provided that no extension shall exceed half of the original period allotted.³⁴⁰ The motion 'That . . . be granted an extension of time' may be moved without notice by the Member concerned or by another Member, and must be determined without amendment or debate.³⁴¹ An extension of time for a specified period, less than the time provided by the standing order, has been granted on a motion moved by leave.³⁴² The granting of a second extension requires the suspension of the standing order,³⁴³ but the House has granted leave for a Member to continue his speech in this circumstance.³⁴⁴ The Main Committee cannot suspend standing orders but the Committee may grant leave for the time of a speech to be extended. A Member cannot be granted an extension on the question for the adjournment of the House.³⁴⁵ If there is a division on the question that a Member's time be extended, the extension of time is calculated from the time the Member is called by the Chair.³⁴⁶ Where a Member's time expires during the counting of a quorum, after a quorum has been formed a motion may be moved to grant the Member an extension of time.³⁴⁷ Where a Member's time has expired during more protracted proceedings, standing orders have been suspended, by leave, to grant additional time.³⁴⁸

Despite Selection Committee determinations in relation to private Members' business, Members have spoken again, by leave,³⁴⁹ or spoken by leave after the time allocated for the debate had expired.³⁵⁰ Similarly, despite Selection Committee determinations on times for the consideration of committee and delegation reports, extensions of time have been granted to Members speaking on these items³⁵¹ and Members have also been given leave to speak again.

Closure of Member

With the exceptions stated below, any Member may move at any time that a Member who is speaking 'be not further heard' and such question must be put forthwith and decided without amendment or debate.³⁵² The standing order was introduced at a time when there were no time limits on speeches and, in moving for its adoption, Prime Minister Deakin said:

The . . . new standing order need rarely, if ever, be used for party purposes, and never, I trust, will its application be dictated by partisan motives.³⁵³

339 VP 1978–80/1602, 1690; VP 1993–95/2686.

340 S.O. 91.

341 S.O. 86.

342 VP 1976–77/26.

343 VP 1970–72/242.

344 VP 1970–72/634.

345 S.O. 91.

346 H.R. Deb. (9.11.33) 4356.

347 VP 1985–87/1726, H.R. Deb. (3.6.87) 3909.

348 VP 1993–95/2347.

349 VP 1993–95/1258.

350 VP 1993–95/1617.

351 VP 1993–95/1343.

352 S.O. 94. The standing order was first adopted in 1905, VP 1905/181–3.

353 H.R. Deb. (24.11.05) 5762.

The motion cannot be moved when a Member is giving a notice of motion or is formally moving the terms of a motion allowed under the standing orders,³⁵⁴ or if, when the same question has been negatived, the Chair is of the opinion that the further motion is an abuse of the orders or forms of the House, or is moved for the purpose of obstructing business.³⁵⁵

The motion is not necessarily accepted by the Chair when a Member is speaking with the Chair's indulgence; or when a Member is taking or speaking to a point of order or making a personal explanation, as these matters are within the control of the Chair. In respect of a point of order the matter awaits the Chair's adjudication, and in respect of a personal explanation the Member is speaking with the Chair's indulgence under standing order 64. Thus, in both cases the discretion of the Chair may be exercised.³⁵⁶ The Speaker has declined to accept the motion while a Member who had moved a motion of dissent from the Chair's ruling was speaking, as he desired to hear the basis of the motion of dissent.³⁵⁷ The Chair is not bound to put the question on the motion if the Member speaking resumes his or her seat having completed the speech, the question having been effectively resolved by that action.³⁵⁸ A closure of Member motion may be withdrawn, by leave.³⁵⁹

When the motion has been agreed to, the closed Member has again spoken, by leave.³⁶⁰ The standing order has been interpreted as applying to the speech currently in progress—a closed Member has not been prevented from speaking again on the same question where the standing orders allow this (for example, during the detail stage of a bill).³⁶¹

Adjournment and curtailment of debate

Motion for adjournment of debate

A Member who has not spoken to a question before the House or who has the right of reply may move 'That the debate be now adjourned' and that question must be put without amendment or debate.³⁶² The motion cannot be moved while another Member is speaking. It can only be moved by a Member who is called by the Speaker in the course of the debate. There is no restriction on the number of times an individual Member may move the motion in the same debate. A motion for the adjournment of the debate on the question 'That the House do now adjourn' is not in order.

The standing orders provide that, if the question for the adjournment of a debate is agreed to, the Chair must then propose a further question to fix a time for the resumption of the debate.³⁶³ In practice, when a Member moves the motion 'That the debate be now adjourned' the Chair puts the question in the form 'That the debate be now adjourned and the resumption of the debate be made an order of the day for . . .'. The time fixed for the resumption of debate is either 'the next day of sitting', 'a later hour this day', or a

354 This provision was included in S.O. 94 in 1963 following the recommendation of the Standing Orders Committee, H of R 1 (1962–63) 25; VP 1962–63/201, 455.

355 S.O. 86; H.R. Deb. (19.10.77) 2171.

356 Private ruling by Speaker Snedden (17.2.78).

357 VP 1978–80/572.

358 VP 1929–31/484, 492; VP 1970–72/1060–1.

359 VP 1998–2001/1311.

360 H.R. Deb. (4.12.47) 3213–14, 3264.

361 H.R. Deb. (29.10.96) 6013–4.

362 S.O. 87.

363 S.O. 87.

specific day. It is only when there is opposition to the adjournment of the debate or to the time for its resumption that the two questions are put separately. When the question to fix a time for the resumption of the debate is put separately, the question is open to amendment and debate. Both debate and any amendment are restricted, by the rule of relevancy, to the question of the time or date when the debate will be resumed. For example, an amendment must be in the form to omit ‘the next sitting’ in order to substitute a specific day.³⁶⁴

If the motion for the adjournment of debate is agreed to, the mover is entitled to the first call when the debate is resumed.³⁶⁵ If the motion is negatived, the mover may address the House at a later period during that debate³⁶⁶—this provision has been interpreted as allowing the Member to speak immediately after a division on the motion for the adjournment.³⁶⁷ If the motion is negatived, no similar proposal may be received by the Chair if the Chair is of the opinion that it is an abuse of the orders or forms of the House or is moved for the purpose of obstructing business.³⁶⁸

Under standing order 104A, where the Selection Committee has determined that consideration of an item of private Members’ business should continue on a future day, at the time fixed for interruption the Chair must intervene and fix the next sitting Monday for further consideration of the matter.³⁶⁹ The Chair will also do this even if the time available has not expired but where there are no other Members wishing to speak.³⁷⁰

Standing order 102B allows a Member who has presented a committee or delegation report, after any statements allowed have been made, to move a motion in connection with the report. Debate on such a question must then be adjourned until a future day.³⁷¹

Leave to continue remarks

If a Member speaking to a question asks leave of the House to continue his or her remarks when the debate is resumed, this request is taken to be an indication that the Member wishes the debate to be adjourned. If leave is granted, the Chair proposes the question that the debate be adjourned and the resumption of the debate be made an order of the day for an indicated time.³⁷² If leave is refused, the Member may continue speaking until the expiration of the time allowed.³⁷³

A Member granted leave to continue his or her remarks is entitled to the first call when the debate is resumed, and may then speak for the remainder of his or her allotted time. If the Member does not speak first when the debate is resumed the entitlement to continue is lost.³⁷⁴

364 VP 1978–80/1473.

365 S.O. 88.

366 S.O. 89.

367 H.R. Deb. (4.9.2000) 20047.

368 S.O. 86. When an opposition Member was prevented from moving the adjournment of the debate a second time, the Chair immediately accepted a motion moved by a Minister which the House agreed to, H.R. Deb. (30.6.49) 1892–3.

369 VP 1993–95/2080.

370 VP 1993–95/1972.

371 VP 1993–95/2107.

372 VP 1978–80/1663; VP 1998–2001/1418.

373 VP 1976–77/173.

374 VP 1998–2001/1219, 1236.

Closure of question

After any question has been proposed from the Chair any Member³⁷⁵ may rise in his or her place and move ‘That the question be now put’ and the motion must be put forthwith and decided without amendment or debate. No notice is required of the motion and it may be moved irrespective of whether or not another Member is addressing the Chair.³⁷⁶ When the closure is moved, it applies only to the immediate question before the House.

The requirement for the closure motion to be put forthwith and decided without amendment or debate means that, until the question on this motion has been decided, there is no opportunity for a point of order to be raised or a dissent motion to be moved in respect of the putting of the motion. The closure thus takes precedence over other opportunities or rights allowed by the standing orders.³⁷⁷

The provision for the closure of a question, commonly known as ‘the gag’, was incorporated in the standing orders in 1905³⁷⁸ but was not used until 7 September 1909.³⁷⁹ Since then it has been utilised more frequently, particularly in more recent years.³⁸⁰ The closure has been moved as many as 41 times in one sitting³⁸¹ and 29 times on one bill.³⁸²

If a motion for the closure is negatived, the Chair shall not receive the same proposal again if of the opinion that it is an abuse of the orders or forms of the House or moved for the purpose of obstructing business.³⁸³ The closure of a question cannot be moved in respect of any proceedings for which time has been allotted under the guillotine procedure.³⁸⁴ This restriction has been held not to apply to a motion, moved after the second reading of a bill, to refer the bill to a select committee when that proposal had not been included in the allotment of time for the various stages of the bill.³⁸⁵ The closure cannot be moved on a motion in relation to which the Selection Committee has determined that debate should continue on a future day,³⁸⁶ as such matters cannot be brought to a vote without the suspension of standing orders.³⁸⁷ The Chair has declined to accept the closure on a motion of dissent from the Chair’s ruling.³⁸⁸

If a division on the closure motion is in progress or just completed when the time for the automatic adjournment is reached, and the motion is agreed to, a decision is then taken on the main question(s) before the House before the automatic adjournment procedure is invoked.³⁸⁹

When the closure is agreed to, the question is then put on the immediate question by the Chair. If the immediate question is an amendment to the original question, debate

375 During debate on the election of Speaker, the Deputy Speaker or the Second Deputy Speaker the closure may only be moved by a Minister. S.O.s 12(f), 13(f).

376 S.O. 93.

377 H.R. Deb. (15.3.2000) 14781–9; H.R. Deb. (3.4.2000) 15093.

378 The debate lasted over a week and amendments proposing to give the Chair a discretion not to accept the motion were defeated, VP 1905/167–78.

379 VP 1909/105.

380 See Appendix 20.

381 VP 1934–37/211–38.

382 VP 1923–24/25–48.

383 S.O. 86; e.g. H.R. Deb. (13.5.80) 2657.

384 S.O. 92(g).

385 VP 1934–37/483.

386 H.R. Deb. (9.3.98) 780–81.

387 VP 1996–98/495.

388 H.R. Deb. (16.11.78) 2893.

389 S.O. 48A(a); H.R. Deb. (4.4.73) 1102–3.

may then continue on the original question, or the original question as amended.³⁹⁰ From time to time interruptions have occurred between the agreement to the closure and the putting of the question to which the closure related.³⁹¹

If the closure is moved and agreed to while a Member is moving or seconding (where necessary) an amendment—that is, before the question on the amendment is proposed from the Chair—the amendment is superseded, and the question on the original question is put immediately.³⁹² However, the Chair has declined to accept the closure at the point when a Member was formally seconding an amendment, and then proceeded to propose the question on the amendment.³⁹³

Any Member may move the closure of a question in possession of the House, including a Member who has already spoken to the question.³⁹⁴ It may be moved by a Member during, or at the conclusion of, his or her speech, but no reasons may be given for so moving,³⁹⁵ nor may a Member take advantage of the rules for personal explanations to give reasons.³⁹⁶ If the seconder of a motion has reserved the right to speak, the closure overrides this right.³⁹⁷

Guillotine

From time to time the Government may limit debate on a bill, motion, or a proposed resolution for customs or excise tariff by use of the guillotine.³⁹⁸ This procedure is described in detail in the Chapter on ‘Legislation’.

Other provisions for the interruption and conclusion of debates

The standing orders provide for the period of certain debates to be limited in time or to be concluded by procedures not yet dealt with in this chapter. Time limits apply to debates on:

- the question ‘That the House do now adjourn’ (S.O. 48A);
- the question ‘That grievances be noted’ (S.O. 106);
- a motion for the suspension of standing orders when moved without notice under standing order 399 (S.O. 91);
- a motion for allotment of time under the guillotine procedures (S.O. 91);
- private Members’ business (S.O. 104);
- proceedings on committee and delegation reports on Mondays (S.O. 102C); and
- matters of public importance (S.O. 91).

A debate may also be concluded:

- at the expiration of the time allotted under the guillotine procedure (S.O. 92(e));
- on withdrawal of a motion relating to a matter of special interest (S.O. 108); or
- at the conclusion of the time determined by the Selection Committee (S.O.s 102C, 104A, 331).

390 E.g. VP 1956–57/42.

391 A Member has been named and suspended, VP 1954–55/123–4; a request has been made for leave to make a statement, VP 1932–34/114; the sitting has been suspended for a meal break and on resumption the Speaker has made a statement, VP 1951–53/609.

392 VP 1920–21/260; VP 1956–57/74; VP 1998–2001/1300.

393 H.R. Deb. (15.5.80) 2814.

394 VP 1943–44/57; H.R. Deb. (17.2.44) 279,284.

395 H.R. Deb. (20.3.47) 926–8; H.R. Deb. (27.3.47) 1229.

396 H.R. Deb. (21.2.47) 123.

397 H.R. Deb. (26.7.46) 3203.

398 S.O. 92.

A debate may be interrupted:

- by the automatic adjournment (S.O. 48A);
- when the time fixed for the conclusion of certain proceedings under the guillotine procedure has been reached (S.O. 92(f));
- by a motion ‘That the business of the day be called on’ in respect of a matter of public importance (S.O. 107); or
- at the conclusion of the time determined by the Selection Committee (S.O.s 102C, 104A, 331).

In all these cases the standing orders make provision as to how the question before the House is to be disposed of (where necessary).

In the Main Committee a time limit applies to debates on the question ‘That the Committee do now adjourn’ (S.O. 274A). A debate in the Main Committee may be interrupted by:

- the adjournment of the House (S.O. 274);
- the automatic adjournment, or the motion for the adjournment of the sitting of the Committee (S.O. 274); or
- the motion that further proceedings be conducted in the House (S.O. 270).

The Committee may resume proceedings at the point at which they were interrupted following any suspension or adjournment of the Committee (S.O. 286).

POWERS OF CHAIR TO ENFORCE ORDER

The Speaker and the Chair are responsible for the maintenance of order in the House and in the Main Committee respectively. This responsibility is derived specifically from standing order 52 but also from other standing orders and the practice and traditions of the House.

Naming of Members

Standing order 303 provides that a Member may be named by the Chair if the Member has:

- persistently and wilfully obstructed the business of the House;
- been guilty of disorderly conduct;
- used objectionable words, and has refused to withdraw them;
- persistently and wilfully refused to conform to any standing or sessional order; or
- persistently and wilfully disregarded the authority of the Chair.

The naming of a Member is, in effect, an appeal to the House to support the Chair in maintaining order. Its first recorded use in the House of Commons was in 1641.³⁹⁹ The first recorded naming in the House of Representatives was on 21 November 1901 (Mr Conroy). Mr Conroy apologised to the Chair and the naming was withdrawn.⁴⁰⁰ The first recorded suspension was in respect of Mr Catts on 18 August 1910.⁴⁰¹ A Member is usually named by the name of his or her electoral Division, the Chair stating ‘I name the

³⁹⁹ John Hatsell, *Precedents of Proceedings in the House of Commons*, 4th edn, London, 1818, vol. II, p. 238. Josef Redlich, *The Procedure of the House of Commons*, Archibald Constable, London, 1908, vol. III, p. 72 n 1.

⁴⁰⁰ H.R. Deb. (21.11.01) 7654.

⁴⁰¹ VP 1910/78.

honourable Member for . . .'. Office holders have been named by their title.⁴⁰² In 1927, when it was put to the Speaker that he should have named a Member by his actual name the Speaker replied:

It is a matter of identification, and the identity of the individual affected is not questioned. I named him as member for the constituency which he represents, and by which he is known in this Parliament.⁴⁰³

Before taking the final step of naming a Member, the Chair will generally first call a Member to order and sometimes warn the Member, but there is no obligation on the Chair to do so.⁴⁰⁴ The Chair also has the option of ordering a Member to withdraw from the Chamber for one hour pursuant to standing order 304A—*see* p. 512.

While the offences for which a Member may be named are set out in standing order 303, it is not uncommon for a Member to be named for an offence which is not specifically stated in the terms of the standing order but which is considered to be encompassed within its purview. For example, in regard to conduct towards the Chair, Members have been named for imputing motives to, disobedience to, defying, disregarding the authority of, reflecting upon, insolence to, and using expressions insulting or offensive to, the Chair. Since 1905 an unnecessary quorum call has been dealt with as a wilful obstruction of the business of the House⁴⁰⁵ and it is now an accepted procedure that a Member who calls attention to the want of a quorum when a quorum is in fact present is immediately named by the Chair and a motion moved for the Member's suspension.⁴⁰⁶

Office holders have been named, including Ministers,⁴⁰⁷ Leaders of the Opposition⁴⁰⁸ and party leaders.⁴⁰⁹ Members have been named together, but, except in the one instance, separate motions have been moved and questions put for the suspension of each Member.⁴¹⁰ No Member has been named twice on the one occasion, but the Chair has threatened to take this action.⁴¹¹

The naming of a Member usually occurs immediately an offence has been committed but this is not always possible. For example, Members have been named at the next sitting as a result of incidents that occurred at the adjournment of the previous sitting of the House.⁴¹² A Member has been named for refusing to withdraw words which the Chair had initially ruled were not unparliamentary. When that ruling was reversed by a successful dissent motion and the Chair then demanded the withdrawal of the words, the Member refused to do so.⁴¹³

402 E.g. H.R. Deb. (27.2.75) 824, but the identity of the Minister named is shown in the Votes and Proceedings as 'the honourable Member for . . .', VP 1974–75/502.

403 H.R. Deb. (1.12.27) 2397.

404 *See* H.R. Deb. (5.6.75) 3404, where a Member was named for disorderly conduct without being called to order or warned. When an unnecessary quorum call is made, the usual procedure is that this results in an 'automatic' naming.

405 H.R. Deb. (24.8.05) 1478.

406 VP 1978–80/1277–8; VP 1993–95/194.

407 VP 1929–31/593, 828; VP 1937–40/135 (and suspended); VP 1961/36 (and suspended); VP 1974–75/502–3.

408 VP 1914–17/148–9; VP 1948–49/295–6; VP 1985–87/1151. On each occasion suspensions followed.

409 E.g. VP 1973–74/404–5; VP 1985–87/1081–2 (and suspended).

410 VP 1932–34/608–10; VP 1973–74/93–5; VP 1974–75/1068–9. On the occasion when two Members were suspended on one motion an attempt to raise the matter as one of privilege the next day was ruled out of order as the vote could not be reflected upon except on a rescission motion, VP 1946–48/40, 43.

411 H.R. Deb. (9.10.75) 1927; while bells were ringing for division on question for suspension, the Member reflected on the Chair.

412 VP 1934–37/361; VP 1974–75/154. On the latter occasion the Member was named for refusing to apologise for his conduct on the adjournment of the House at the preceding sitting.

413 VP 1937/106–7.

The Chair has refused to accept a dissent motion to the action of naming a Member on the quite correct ground that, in naming a Member, the Chair has not made a ruling.⁴¹⁴

Proceedings following the naming of a Member

Following the naming of a Member, the Speaker must forthwith put the question, on a motion being made, 'That the honourable Member for . . . be suspended from the service of the House'. No amendment, adjournment, or debate is allowed on the question.⁴¹⁵

It is not uncommon for the Chair to withdraw the naming of a Member or for the matter not to be proceeded with after other Members have addressed the Chair on the matter and the offending Member has apologised.⁴¹⁶ Such interventions are usually made by a Minister or a member of the opposition executive before the motion for suspension is moved, as it was put on one occasion 'to give him a further opportunity to set himself right with the House'.⁴¹⁷ The motion for suspension has not been proceeded with at the request of the Speaker,⁴¹⁸ when the Speaker stated that no further action would be taken if the Member (who had left the Chamber) apologised immediately on his return,⁴¹⁹ when a Member's explanation was accepted by the Chair,⁴²⁰ when the Chair thought it better if the action proposed in naming a Member were forgotten,⁴²¹ when the Chair accepted an assurance by the Leader of the Opposition that the Member named had not interjected,⁴²² when the Chair acceded to a request by the Leader of the Opposition not to proceed with the matter,⁴²³ when the Member withdrew the remark which led to his naming and apologised to the Chair⁴²⁴ and when the Member apologised to the Chair.⁴²⁵ On one occasion the motion for a Member's suspension was moved but, with disorder in the House continuing, the Speaker announced that to enable the House to proceed he would not put the question on the motion.⁴²⁶

A motion for the suspension of a Member has been moved at the commencement of a sitting following his naming during a count out of the previous sitting.⁴²⁷ Although the Chair has ruled that there is nothing in the standing orders which would prevent the House from proceeding with business between the naming of a Member and the subsequent submission of a motion for his suspension,⁴²⁸ the intention of the standing order, as borne out by practice, is presumably that the matter be proceeded with forthwith without extraneous interruption.

414 H.R. Deb. (24.9.86) 1316–18.

415 S.O. 304.

416 H.R. Deb. (29.11.01) 8056–7; VP 1970–72/1268; H.R. Deb. (19.10.72) 2955; VP 1983–84/916; H.R. Deb. (4.10.84) 1631; VP 1990–92/1899.

417 H.R. Deb. (4.7.19) 10464. On occasions the Chair has, initially at least, declined to allow Members to apologise, H.R. Deb. (1.10.12) 3622–3, H.R. Deb. (12.12.12) 6941. On other occasions Members named have been given no opportunity to apologise, H.R. Deb. (27.4.55) 218–21, 222–3; H.R. Deb. (5.6.75) 3404; H.R. Deb. (11.9.80) 1225–6.

418 VP 1937–40/233.

419 VP 1973–74/166.

420 VP 1974–75/109, 256. On the latter occasion the motion for the suspension had been moved but the question had not been put, H.R. Deb. (23.10.74) 2727. On an earlier occasion, a Member having apologised for his conduct after the suspension motion had been moved, the motion was withdrawn, by leave, VP 1970–72/324; H.R. Deb. (24.11.92) 3391. H.R. Deb. (11.8.99) 8386–8.

421 H.R. Deb. (30.8.62) 943–4.

422 VP 1964–66/153; H.R. Deb. (15.9.64) 1093.

423 VP 1964–66/626; H.R. Deb. (23.8.66) 307.

424 VP 1978–80/342.

425 VP 1983–84/216; H.R. Deb. (14.9.83) 750.

426 H.R. Deb. (18.2.82) 321–4, VP 1980–83/720–1.

427 VP 1914–17/567.

428 H.R. Deb. (16.3.44) 1473–4.

Following the naming of a Member it is usually the Leader of the House or the Minister leading for the Government at the particular time who moves the motion for the suspension of the Member⁴²⁹ and the Chair has seen it as within its right at any time to call on the Minister leading the House to give effect to its rules and orders.⁴³⁰ The motion for the suspension of a Member has been negated on two occasions, the first when the Government did not have sufficient Members present to ensure that the motion was agreed to,⁴³¹ and the second when the Government, for the only time, did not support the Speaker and the motion for the suspension of the Member was moved by the Opposition and negated. The Speaker resigned on the same day because of this unprecedented lack of support.⁴³²

A suspension on the first occasion is for 24 hours; on the second occasion in the same year, for three consecutive sittings; and on the third and any subsequent occasion in the same year, for seven consecutive sittings. Suspensions for three and seven sittings are exclusive of the day of suspension. Any suspension in a previous session or any order to withdraw pursuant to S.O. 304A (*see below*) is disregarded and a 'year' means a year commencing on 1 January and ending on 31 December.⁴³³ There is only one instance of a Member having been suspended on a third occasion.⁴³⁴

A Member has been suspended from the service of the House 'Until he returns, with the Speaker's consent, and apologises to the Speaker',⁴³⁵ and because of words spoken outside the House '... for the remainder of the Session unless he sooner unreservedly retracts the words uttered by him at Ballarat... and reflecting on the Speaker, and apologises to the House'.⁴³⁶ It should be noted in respect of the first example above that the relevant standing order at that time had a proviso that 'nothing herein shall be taken to deprive the House of power of proceeding against any Member according to ancient usages'.

Once the House has ordered that a Member be suspended he or she must immediately withdraw from the Chamber. When a Member has refused to withdraw, the Chair has directed the Serjeant-at-Arms to remove the Member.⁴³⁷ On one occasion, the Speaker having ordered the Serjeant-at-Arms to direct a suspended Member to withdraw, the Member still refused to leave and grave disorder arose which caused the Speaker to suspend the sitting. When the sitting was resumed, the Member again refused to leave the Chamber. Grave disorder again arose and the sitting was suspended until the next day, when the Member then expressed regret and withdrew from the Chamber.⁴³⁸

A Member suspended from the service of the House is excluded from the Chamber, all its galleries and any room where the Main Committee is meeting,⁴³⁹ and may not participate in Chamber related activities. Thus petitions, notices of motion and matters of

429 The motion has been moved by a Member other than a Minister, VP 1974–75/502, VP 1996–98/360; and has not been moved when it appeared that the Chair did not wish the Minister to do so, H.R. Deb. (27.4.55) 223.

430 H.R. Deb. (14.7.20) 2710; H.R. Deb. (28.7.20) 3015.

431 VP 1937–40/223.

432 VP 1974–75/502–3; and *see* Ch. on 'The Speaker, Deputy Speakers and Officers'.

433 S.O. 305 refers to "the same calendar year".

434 VP 1917–19/506.

435 VP 1914–17/148, 153. A letter of apology was submitted and accepted at the next sitting later that day.

436 The suspension did not follow a naming or an incident in the House and was later expunged from the record 'as being subversive of the right of an honourable Member to freely address his constituents', VP 1913/151–3; VP 1914–17/181.

437 VP 1914–17/567; VP 1920–21/213–14, 258–9, 386; VP 1923–24/159; VP 1990–93/757; VP 1996–98/3194–5.

438 VP 1970–72/76.

439 E.g. H.R. Deb. (1.12.88) 3667. S.O. 307. This standing order was adopted in the 1963 revision of the standing orders and followed a 1955 resolution to that effect, VP 1962–63/455; H of R 1 (1962–63) 55. Prior to this Members under suspension had on occasions been instructed to leave Parliament House.

public importance are not accepted from a Member under suspension. A suspended Member is not otherwise affected in the performance of his or her duties. In earlier years notices of questions have been accepted from a Member after his suspension,⁴⁴⁰ although this has not been the recent practice, and notices of motions standing in the name of a suspended Member have been called on, and, not being moved or postponed, have been lost, as have matters of public importance.⁴⁴¹ Suspension from the service of the House does not exempt a Member from serving on a committee of the House.⁴⁴² The payment of a Member's salary and allowances is not affected by a suspension.

Members have been prevented from subsequently raising the subject of a suspension as a matter of privilege as the matter has been seen as one of order, not privilege,⁴⁴³ and because a vote of the House could not be reflected upon except for the purpose of moving that it be rescinded.⁴⁴⁴ Members have also been prevented from subsequently referring to the naming of a Member once the particular incident was closed.⁴⁴⁵

A Member, by indulgence of the Speaker, has returned to the Chamber, withdrawn a remark unreservedly and expressed regret. The Speaker then stated that he had no objection to a motion being moved to allow the Member to resume his part in the proceedings, and standing orders were suspended to allow the Member to do so.⁴⁴⁶ On other occasions Members have returned and apologised following suspension of the standing orders⁴⁴⁷ and following the House's agreement to a motion, moved by leave, that 'he be permitted to resume his seat upon tendering an apology to the Speaker and the House'.⁴⁴⁸

Gross disorder by a Member

When the conduct of a Member is of such a grossly disorderly nature that the procedure provided in standing order 304 would be inadequate to ensure the urgent protection of the dignity of the House, the Chair shall order the Member to withdraw immediately from the Chamber and the Serjeant-at-Arms shall act on such orders as are received from the Chair. When the Member has withdrawn he or she must be named by the Chair and the proceedings shall then be as provided for in standing orders 304 and 305, except that the question for the suspension of the Member shall be put without a motion being necessary. If the question for the suspension of the Member is negatived, the Member may return to the Chamber forthwith.⁴⁴⁹ This standing order has never been invoked but its predecessor was used on a number of occasions. The standing order was amended in 1963 to make it quite clear that its provisions would apply only in cases which are so grossly offensive that immediate action was imperative and that it could not be used for ordinary offences. In addition, provision was made for the House to judge

440 NP 38 (6.9.60) 366–7; VP 1960–61/159.

441 VP 1974–75/788–90; NP 82 (5.6.75) 8523–4; VP 1987–89/527; 1987–89/1273.

442 *May*, 22nd edn, p. 399. Redlich comments on the adoption by the House of Commons of a resolution on this matter (later to constitute a standing order) 'The chief question which was raised upon this rule, and which led to some debate, was whether a suspended member was to be excused from serving upon committees, more particularly upon select committees on private bills. It was correctly argued by several speakers that, if he were so excused, suspension might in some cases afford a refractory member a very pleasant holiday from parliamentary work; it was therefore decided to retain the former practice, *i.e.*, that suspension should not release a member from the duty of attending committees upon which he had been placed'. Josef Redlich, *The Procedure of the House of Commons*, Archibald Constable, London, 1908, vol. I, p. 182.

443 VP 1917–19/509.

444 VP 1946–48/43.

445 H.R. Deb. (13.12.12) 7032–3.

446 VP 1970–72/327.

447 VP 1962–63/461; VP 1964–66/98.

448 VP 1959–60/15. In this case standing orders should have been suspended to enable the motion to be moved.

449 S.O. 306.

the matter by requiring the Chair to name the Member immediately after his or her withdrawal.⁴⁵⁰

Orders to withdraw from the Chamber

Pursuant to standing order 304A, if the Speaker considers a Member's conduct to be disorderly he or she may order the Member to withdraw from the Chamber for one hour. This action is taken as an alternative to naming the Member—the decision as to whether a naming or an order to withdraw is more appropriate is a matter for the Speaker's discretion. The order to withdraw is not open to debate or dissent. When so ordered, a Member failing to leave the Chamber immediately⁴⁵¹ or continuing to behave in a disorderly manner may be named.⁴⁵²

The Speaker has not proceeded with an order to a Member to withdraw under standing order 304A after the Member (the Leader of the Opposition) had apologised for interjecting in a disorderly manner.⁴⁵³ Six Members (including a Minister) have been ordered to withdraw on a single day.⁴⁵⁴

This procedure was introduced in 1994 following a recommendation by the Procedure Committee. The committee, noting the seriousness of a suspension and that the process was time-consuming and itself disruptive, considered that order in the House would be better maintained if the Speaker were to have available a disciplinary procedure of lesser gravity, but of greater speed of operation. The committee saw its proposed mechanism as a means of removing a source of disorder rather than as a punishment, enabling a situation to be defused quickly before it deteriorated, and without disrupting proceedings to any great extent.⁴⁵⁵

Grave disorder

In the case of grave disorder arising in the House the Speaker may adjourn the House without putting a question, or suspend any sitting for a time to be named by the Speaker.⁴⁵⁶ On four occasions when grave disorder has arisen the Chair has adjourned the House until the next sitting.⁴⁵⁷ The Chair has also suspended the sitting in such circumstances on six occasions.⁴⁵⁸

Disorder in the Main Committee

In the Main Committee the Chair is invested with the same authority for the preservation of order as the Speaker, but disorder in the Main Committee may be censured by the House only on receiving a report.⁴⁵⁹ The Chair of the Main Committee does not have the power to name a Member or to order a Member to withdraw for one hour pursuant to standing order 304A: standing order 282 provides that if any sudden disorder arises in the Main Committee, the Chair may, and on motion without notice by

450 VP 1962–63/455; H of R 1 (1962–63) 55; see also *Report of 2nd Conference of Presiding Officers and Clerks—at-the-Table*, Brisbane, 1969, PP 106 (1969) 120.

451 VP 1996–98/758–9, 2461–2 (the naming supersedes the order to withdraw).

452 VP 1998–2001/397–8, 2052, 2126.

453 VP 1998–2001/663.

454 VP 1998–2001/1548–50.

455 Standing Committee on Procedure, *About Time: Bills, Questions and Working Hours*. PP 194 (1993) 28.

456 S.O. 308.

457 VP 1954–55/351; VP 1956–57/169; VP 1973–74/405; VP 1985–87/1273.

458 VP 1917–19/453 (15 minutes); VP 1954–55/184 (until 2.30 p.m. the next day); VP 1970–72/76 (on two occasions, until the ringing of the bells and until 10.30 a.m. this day); VP 1970–72/209, 691 (until the ringing of the bells). The last two occasions followed grave disorder arising in the galleries.

459 S.O.s 52, 280.

any Member, shall, forthwith suspend the sitting and shall report the disorder to the House. Sittings of the Main Committee has been suspended because of disorder arising. On the first occasion, in reporting the suspension to the House the Main Committee Chair further reported that a Member had disregarded the authority of and reflected on the Chair. Following the report the Member concerned was named by the Speaker and was suspended.⁴⁶⁰ On the later occasion the Member concerned was named and suspended after the Main Committee Chair reported that the Member had defied the Chair by continuing to interject after having been called to order.⁴⁶¹

Other matters of order relating to Members

Standing order 79 provides that the House will interfere to prevent the prosecution of any quarrel between Members arising out of debates or proceedings of the House or of any committee thereof. The standing order has only once been invoked to prevent the prosecution of a quarrel⁴⁶² but the Chair has cited the standing order in admonishing Members for constantly interjecting in order to irritate or annoy others.⁴⁶³

If a Member wilfully disobeys any order of the House, he or she may be ordered to attend to answer for such conduct.⁴⁶⁴ When a Member (or other person) has been taken into custody by the Serjeant-at-Arms, the arrest must be reported to the House by the Speaker without delay.⁴⁶⁵

460 VP 1996–98/751, 765. *See also* VP 1926–28/421–2 (former committee of the whole).

461 VP 1998–2001/2076–7, 2090.

462 VP 1980–83/1118; H.R. Deb. (20.10.82) 2318.

463 H.R. Deb. (27.6.06) 751.

464 S.O. 309.

465 S.O. 311.