

## Questions

One of the more important functions of the House is its critical review function. This includes scrutiny of the Executive Government, bringing to light issues and perceived deficiencies or problems, ventilating grievances, exposing, and thereby preventing the Government from exercising arbitrary power, and pressing the Government to take remedial or other action. Questions are a vital element in this function.

It is fundamental in the concept of responsible government that the Executive Government be accountable to the House. The capacity of the House of Representatives to call the Government to account depends, in large measure, on its knowledge and understanding of the Government's policies and activities. Questions without notice and on notice (questions in writing) play an important part in this quest for information.

### QUESTION TIME

The accountability of the Government is demonstrated most clearly and publicly at Question Time when, for a period (currently usually over an hour) on most sitting days, questions without notice are put to Ministers.<sup>1</sup> The importance of Question Time is demonstrated by the fact that at no other time in a normal sitting day is the House so well attended. Question Time is usually an occasion of special interest not only to Members themselves but to the news media, the radio and television broadcast audience and visitors to the public galleries. It is also a time when the intensity of partisan politics can be clearly manifested.

The purpose of questions is ostensibly to seek information or press for action.<sup>2</sup> However, because public attention focuses so heavily on Question Time it is often a time for political opportunism. Opposition Members will be tempted in their questioning to stress those matters which will embarrass the Government, while government Members will be tempted to provide Ministers with an opportunity to put government policies and actions in a favourable light or to embarrass the Opposition.<sup>3</sup>

However, apart from the use of Question Time for its political impact, the opportunity given to Members to raise topical or urgent issues is invaluable. Ministers accept the fact that they must be informed through a check of press, television or other sources of possible questions that may be asked of them in order that they may provide satisfactory answers.

### Some historical features

Although the original standing order covering the order of business of the House referred only to 'Questions on notice', in practice questions without notice were answered from the outset. During the first sitting days of the first Parliament the Speaker made the

1 For statistics on questions see Appendix 21. Questions without notice may also, from time to time, be put to the Speaker and to private Members; see below—'Direction of questions'.

2 *May*, 23rd edn, p. 345.

3 Questions which Ministers have arranged for government Members to ask in order to provide such opportunities are known colloquially as 'Dorothy Dixers'. The allusion is to a magazine column of advice to the lovelorn.

following statement in reply to a query from the Leader of the Opposition as to whether a practice of asking questions without notice should be created:

There is no direct provision in our standing orders for the asking of questions without notice, but, as there is no prohibition of the practice, if a question is asked without notice and the Minister to whom it is addressed chooses to answer it, I do not think that I should object.<sup>4</sup>

The practice of Members asking questions without notice developed in a rather ad hoc manner. It was not until 1950 that the standing orders specifically permitted questions without notice or included them in the order of business, despite their long de facto status.

It was not until 1962<sup>5</sup> that a reference to questions without notice was made in the Votes and Proceedings. This long term absence from the official record of proceedings is perhaps indicative of the somewhat unofficial nature of Question Time, its features having always been heavily influenced by practice and convention.

From the outset it was held that Ministers could not be compelled to answer questions without notice.<sup>6</sup> Rulings were given to the effect that questions without notice should be on important or urgent matters, the implication being that otherwise they should be placed on the Notice Paper, particularly if they involved long answers.<sup>7</sup> This requirement presented difficulties of interpretation for the Chair and the rule was not enforced consistently.<sup>8</sup> When questions without notice were specifically mentioned as part of the order of business for the first time in 1950, it was also provided that questions without notice should be 'on important matters which call for immediate attention'. These qualifying words were omitted in 1963, the Standing Orders Committee having stated:

Occupants of the Chair have found it impracticable to limit such questions as required by these words. This difficulty is inherent in the nature of the Question without Notice session which has come to be recognised as a proceeding during which private Members can raise matters of day-to-day significance.<sup>9</sup>

The proportion of the time of the House spent on Question Time and the number of questions dealt with varied considerably. On some days in the early Parliaments no questions without notice were asked,<sup>10</sup> and on others there were only one or two questions. By the time of World War I several questions without notice were usually dealt with on a typical sitting day<sup>11</sup> and the period gradually tended to lengthen. During the early 1930s the record indicates that 18 and 19 questions were able to be asked in the period,<sup>12</sup> and, on one occasion in 1940, 43 questions without notice were asked in approximately 50 minutes.<sup>13</sup> As could be expected the questions in the main were short and to the point, as were the answers.

Prior to the introduction of the daily Hansard in 1955, related questions without notice were grouped together in Hansard in order to avoid repeated similar headings. This meant that, until 1955, the order in which questions appeared in Hansard did not necessarily reflect the order in which they were asked.

4 H.R. Deb. (3.7.01) 1954-5.

5 VP 1962-63/10.

6 H.R. Deb. (3.7.01) 194-5; H.R. Deb. (2.10.13) 1762. *See also* statement by Speaker Child, H.R. Deb. (28.11.88) 3329-30.

7 H.R. Deb. (29.9.20) 5079.

8 H.R. Deb. (21.4.21) 7595.

9 Standing Orders Committee, *Report*, H of R 1 (1962-63) 33.

10 H.R. Deb. (5.6.01) 688.

11 H.R. Deb. (8.7.15) 4714-21.

12 H.R. Deb. (28.9.32) 661.

13 H.R. Deb. (8.8.40) 329-37.

There appears to have been a greater tendency in the past to interrupt Question Time with other matters, such as the presentation of documents,<sup>14</sup> statements by leave and sometimes replies to them,<sup>15</sup> motions<sup>16</sup> and even the presentation of a bill,<sup>17</sup> despite rulings that such interruptions were irregular.<sup>18</sup> In addition there have been instances where Ministers, on being asked a question, offered, or were prompted by the Chair, to make a statement by leave on the matter during Question Time.<sup>19</sup>

### Duration of Question Time

Question Time is a period during which only questions without notice may be asked and answered. While a Question Time of at least 45 minutes duration normally takes place on each sitting day, technically it is entirely within the discretion of the Prime Minister or the senior Minister present as to whether Question Time will take place and, if so, for how long.<sup>20</sup> In order to bring Question Time to a conclusion the Prime Minister or the senior Minister present may, at any time, rise and ask that further questions be placed on notice, even if a Member has already received the call<sup>21</sup> or asked a question.<sup>22</sup> The Speaker is then obliged to call on the next item of business. If the Government does not want Question Time to take place on a particular sitting day, the Prime Minister or senior Minister asks, as soon as the Speaker calls on questions without notice, that questions be placed on notice. The basis of this discretion of the Prime Minister is that, as Ministers cannot be required to answer questions, it would be pointless to proceed with Question Time once the Prime Minister has indicated that questions, or further questions, without notice will not be answered.<sup>23</sup>

Although having effective control over the duration of Question Time, the Government is, at the same time, subject to the influence of private Members from both sides of the House and public opinion. A Government which frequently refused to allow Question Time to proceed, or frequently restricted it to less than 45 minutes, would be exposed to considerable criticism. Since 1996 the average length of Question Time has been about 75 minutes.<sup>24</sup> Question time has extended, without substantial interruption, for up to 107 minutes.<sup>25</sup>

If Question Time is interrupted by such matters as the naming of a Member, a motion of dissent from the Speaker's ruling or a motion to suspend standing orders, it has not been usual for the Government to allow Question Time to continue for a period to compensate for the time lost. When substantial time is spent on such a matter as a no confidence motion prior to questions without notice being called on, it is usual for Question Time not to proceed.<sup>26</sup>

14 H.R. Deb. (12.2.43) 651.

15 H.R. Deb. (17.3.43) 1864–7.

16 H.R. Deb. (29.10.20) 6079–80.

17 H.R. Deb. (22.11.20) 6770.

18 H.R. Deb. (9.9.13) 942.

19 H.R. Deb. (29.10.41) 18–19.

20 H.R. Deb. (29.3.73) 853–4; H.R. Deb. (28.11.88) 3329–30.

21 H.R. Deb. (4.5.60) 1332–3; H.R. Deb. (9.10.96) 5061–2. *But see* H.R. Deb. (10.12.2002) 9986—Speaker permitted Member given the call to ask his question.

22 H.R. Deb. (20.3.2003) 13155–6.

23 H.R. Deb. (4.10.33) 3198. *And see* VP 1993-95/814-6; 2689; H.R. Deb. (29.10.75) 2593; H.R. Deb. (24.3.2003) 13302, *and see* Ch on 'Order of business and the sitting day'.

24 1996–2004 figures.

25 On 28.8.2000.

26 VP 1974–75/1059–65; H.R. Deb. (29.10.75) 259.

## Number of questions

From an average of 16 questions asked each Question Time during the late 1970s the number declined to about 12 in the years prior to 1996. This reduction was directly attributable to Ministers increasing the length of their answers. In 1986 the Procedure Committee recommended that Question Time continue until a minimum of 16 questions had been answered.<sup>27</sup> Although no action was taken by the House on the recommendation, the Government of the day subsequently adopted an unofficial practice of permitting seven opposition questions each Question Time.<sup>28</sup> In 1993 the Procedure Committee again recommended a minimum of 16 questions.<sup>29</sup> In responding to the report the Government accepted a minimum of 14 (although again as an unofficial target rather than as a requirement of the standing orders).<sup>30</sup> Since 1996 there has been an average of 18 questions per sitting.<sup>31</sup>

## Allocation of the call

The Speaker first calls an opposition Member, and the call is then alternated from right to left of the Chair, that is, between government and non-government Members.<sup>32</sup> With the opposition call priority is given to the Leader and Deputy Leader of the Opposition and, if two coalition parties are in opposition, the Leader and Deputy Leader of the second party. The number of calls given to each Member is recorded and, with the exception of the opposition leaders, the Speaker allocates the call as evenly as possible. Independent Members receive the call in proportion to their numbers.<sup>33</sup> When two questions have come from one side consecutively, the Speaker may then take two calls in succession from the other side.<sup>34</sup> When there is more than one party in government or opposition agreement is reached as to the ratio of questions to be permitted to the Members of each party. In special circumstances, when government members have not sought the call, consecutive questions have come from non-government members.<sup>35</sup>

In disallowing a question the Speaker may permit the Member to re-phrase the question and to ask it again, immediately<sup>36</sup> or later<sup>37</sup> in Question Time. This indulgence is not automatically extended.<sup>38</sup> Similarly the Speaker, having ruled part of a question out of order, may<sup>39</sup> or may not<sup>40</sup> choose to allow that part of the question which is in order. If the Speaker considers that Members have been unable to hear a question the Speaker may permit the Member to repeat it.<sup>41</sup>

27 PP 354 (1986) 10.

28 H.R. Deb. (14.5.87) 3239–42.

29 PP 194 (1993) 24–25.

30 H.R. Deb. (10.2.94) 826.

31 1996–2004 figures.

32 Speaker Cameron did not necessarily alternate the call. *See* H.R. Deb. (25.5.50) 3280; H.R. Deb. (28.9.50) 76; H.R. Deb. (21.4.55) 75–6.

33 H.R. Deb. (7.5.92) 2631; H.R. Deb. (19.9.96) 4762–3.

34 E.g. H.R. Deb. (29.6.99) 7691–3; H.R. Deb. (20.8.2003) 19048–19050.

35 E.g. H.R. Deb. (15.10.2002) 7581–3; H.R. Deb. (24.3.2003) 13301–2; H.R. Deb. (25.3.2003) 13411–413.

36 H.R. Deb. (4.5.78) 1780; H.R. Deb. (30.3.99) 4663.

37 H.R. Deb. (28.8.79) 625–6, 627; H.R. Deb. (22.11.73) 3679, 3681; H.R. Deb. (9.3.2000) 14336–8.

38 H.R. Deb. (6.6.78) 3075; H.R. Deb. (30.3.99) 4669.

39 H.R. Deb. (15.3.78) 737–8; H.R. Deb. (11.9.96) 3995–6; H.R. Deb. (8.12.98) 1559; H.R. Deb. (17.8.2000) 19275.

40 H.R. Deb. (7.11.78) 2441.

41 H.R. Deb. (11.10.99) 11198.

As the allocation of the call is within the Speaker's discretion, the Speaker may choose 'to see' or 'not to see' any Member. The Speaker's decision to exercise this discretion has at times been based on a desire to discipline a Member.

In 1971 the House referred the question of the allocation of the call at Question Time to the Standing Orders Committee. The reference resulted from a complaint by a Member that the rigid procedure of alternating the call from left to right resulted in private Members on the government side having more frequent opportunities to ask questions without notice than opposition Members.<sup>42</sup> The Member suggested that each side of the House should be allotted questions on the basis of the number of 'back bench Members' it had. The Standing Orders Committee in reporting on the matter noted that even if a government Member were to rise each time the call passed to the government side, the Opposition would normally expect to receive, in total, more questions, as the first question, and often the last, would come from the Opposition. The committee decided that it would make no recommendation to vary the existing procedure for the distribution of the call.<sup>43</sup> The House considered the committee's decision and referred the matter back to it for further consideration.<sup>44</sup> However, the committee did not report on the matter again.

In 1986 the Procedure Committee further considered the allocation of the call. While again noting that the majority of questions (54 per cent) were asked by the Opposition, the committee pointed out that the practice of giving priority to opposition leaders meant a consequent reduction in opportunities for opposition backbenchers. However, the committee concluded that the apportioning of questions within parties was a matter for the parties to decide, and recommended that the provisions for the allocation of the call remain unchanged.<sup>45</sup>

### Supplementary questions

The Speaker may allow supplementary questions to be asked to clarify an answer to a question asked during Question Time.<sup>46</sup>

When first introduced into the standing orders in 1950, the term 'supplementary question' was not intended to signify an immediate follow-up question by the original questioner. Rather it was intended that Members could henceforth ask questions without notice based upon answers to earlier, but not necessarily immediately preceding, questions.<sup>47</sup> Prior to 1950 questions without notice based on the answers to questions asked in the same session had been disallowed.<sup>48</sup> The purpose of the restriction was to avoid a series of questions on the same subject which would develop into a debate.<sup>49</sup> A similar concern was probably in mind in 1950 when the House amended the standing orders to permit supplementary questions but to limit them to one for each answer. However, the Chair found it impracticable to limit supplementary questions in this way. In practice further questions could be, and were, asked provided Members did not describe them as supplementary questions. In 1962, on the recommendation of the Standing Orders

42 H.R. Deb. (23.8.71) 511–12.

43 PP 20 (1972) 12–13.

44 H.R. Deb. (18.4.72) 1745–50; VP 1970–72/1013–14.

45 Standing Committee on Procedure, *Standing orders and practices which govern the conduct of Question Time*. PP 354 (1986) 50–1.

46 S.O. 101(b).

47 H.R. Deb. (22.3.50) 1055.

48 H.R. Deb. (22.10.36) 1194.

49 H.R. Deb. (2.4.41) 511.

Committee, the standing orders were amended to permit more than one supplementary question.<sup>50</sup>

In view of the wording of the standing order it is within the discretion of the Speaker to permit immediate supplementary questions. The fact that such a practice would be contrary to that of alternating the call between the left and right of the Chair counted against its adoption,<sup>51</sup> but in 1993 the Procedure Committee recommended that immediate supplementary questions be allowed.<sup>52</sup> In responding to the report the Government stated its preference for the traditional arrangement.<sup>53</sup>

In 1996, using the discretion bestowed by the standing order, Speaker Halverson commenced a practice of allowing immediate supplementary questions.<sup>54</sup> He required that the supplementary question should arise from the Minister's answer, that it be regarded as part of one question, that it should be in precise and direct terms without preamble and that it should be asked by the Member who had asked the original question. Subsequent Speakers discontinued this practice, favouring the traditional arrangement.<sup>55</sup>

## RULES GOVERNING QUESTIONS

The rules governing the form and content of questions are set down in standing orders or have become established by practice. In addition to rules specifically applying, the content of questions must comply with the general rules applying to the content of speeches.<sup>56</sup>

Questions without notice by their very nature may raise significant difficulties for the Chair. The necessity to make instant decisions on the application of the many rules on the form and content of questions is one of the Speaker's most demanding tasks. Because of the importance of Question Time in political terms, and because of the need to ensure that this critical function of the House is preserved in a vital form, Speakers tend to be somewhat lenient in applying the standing orders, with the result that, for example, breaches of only minor procedural importance have not prevented questions on issues of special public interest. The extent of such leniency varies from Speaker to Speaker and to some degree in the light of the prevailing circumstances. In addition, some latitude is generally extended to the opposition leaders in asking questions without notice and to the Prime Minister in answering them. The result of these circumstances is that rulings have not always been well founded and inconsistencies have occurred. Speakers have commented that only a small proportion of questions without notice are strictly in order and that to enforce the rules too rigidly would undermine Question Time.<sup>57</sup> Only those rulings which are technically sound and of continuing relevance are cited in this chapter without qualification.

The rules governing questions are applied strictly to questions in writing which are submitted to the Clerk before being placed on the Notice Paper (*see* p. 549).

50 H of R 1 (1962–63) 33.

51 H.R. Deb. (27.2.80) 406.

52 PP 194 (1993) 24–25.

53 VP 1993–95/752.

54 H.R. Deb. (28.5.96) 1493.

55 H.R. Deb (4.3.98) 394–5, 416–7; H.R. Deb (11.11.98) 107; H.R. Deb. (17.11.2004) 73.

56 *May*, 23rd edn, p. 346.

57 E.g. H.R. Deb. (31.8.61) 691; H.R. Deb. (6.11.91) 2423–4, 2429–30; H.R. Deb. (29.6.2000) 18718.

## Questioners

Although the standing orders place no restrictions on who may ask questions, the following is accepted practice.

### *Private Members*

Any private Member may ask a question.

### *Ministers*

Ministers do not ask questions, either of other Ministers, or where permitted, of private Members. However, on occasion Ministers have directed questions to the Speaker.<sup>58</sup>

### *Parliamentary Secretaries*

Parliamentary Secretaries do not ask questions, either of Ministers, or where permitted, of private Members.<sup>59</sup> This restriction is a recent development, accompanying the expansion of the role of Parliamentary Secretaries, who now perform some duties formerly performed exclusively by Ministers (*see* Chapter on ‘House, Government and Opposition’). Parliamentary Secretaries have, however, asked questions of the Speaker.<sup>60</sup>

### *Speaker*

It is not the practice for questions to be asked by the Speaker. Nevertheless Speaker Nairn, who, exceptionally, was a member of the Opposition, placed questions on notice during the period 1941 to 1943.<sup>61</sup>

## Direction of Questions

### *To Ministers*

All but a very small proportion of questions are directed to Ministers. Questions may not be put to one Minister, other than the Prime Minister, about the ministerial responsibilities of another<sup>62</sup> except that questions may be put to Ministers acting in another portfolio.<sup>63</sup> Where a question may involve the responsibility of more than one Minister, it should be directed to the Minister most responsible.

A Minister may refuse to answer a question.<sup>64</sup> He or she may also transfer a question to another Minister and it is not in order to question the reason for doing so.<sup>65</sup> If a question has been addressed to the incorrect Minister, the responsible Minister may answer, but if necessary the Member can be given an opportunity to redirect it.<sup>66</sup> In many instances the responsibilities referred to in a question may be shared by two or more Ministers and it is only the Ministers concerned who are in a position to determine authoritatively which of them is more responsible.<sup>67</sup> It is not unusual for the Prime Minister to refer questions

58 E.g. H.R. Deb. (8.11.2000) 22437; H.R. Deb. (27.6.2002) 4612–4. *And see* H.R. Deb. (19.8.2002) 4813–4.

59 H.R. Deb. (26.3.92) 1247.

60 *And see* H.R. Deb. (19.8.2002) 4813–4.

61 NP 48 (29.10.41) 173; NP 131 (17.3.43) 441.

62 H.R. Deb. (6.10.76) 1538.

63 H.R. Deb. (9.10.79) 1719.

64 H.R. Deb. (12.5.70) 1949; *May*, 23rd edn, p. 352.

65 H.R. Deb. (5.3.47) 352–3; H.R. Deb. (4.4.62) 1264–73; H.R. Deb. (22.8.79) 428–30. In the 1962 instance a motion of dissent from the Speaker’s ruling, which upheld the practice that Ministers may transfer questions to other Ministers, was defeated; *see also May*, 23rd edn, p. 344.

66 H.R. Deb. (27.3.95) 2134, 2137.

67 *See The Table XXIX*, 1960, pp. 150–1 for reference to House of Commons practice and its rationale.



addressed to him to the Minister directly responsible. No direct statement, request or overt action by the Prime Minister is required to indicate that another Minister will answer a question addressed to the Prime Minister.<sup>68</sup> The Prime Minister may also choose to answer a question addressed to another Minister.<sup>69</sup>

Misdirected questions in writing are transferred by the Table Office, upon notification by the departments concerned.

Questions relating to the responsibilities of a Minister who is a Senator are addressed to the Minister in the House representing the Senate Minister.

#### ROSTERING OF MINISTERS

Although there is no rule to this effect, it has been traditionally expected that all Ministers who are Members of the House, unless sick, overseas or otherwise engaged on urgent public business, will be present at Question Time.

In February 1994 a sessional order was agreed to providing for a roster of Ministers at Question Time.<sup>70</sup> The nature of the roster was not fixed by the sessional order, but in practice the Government rostered Ministers to appear two days each week (out of four), with the Prime Minister appearing on Mondays and Thursdays (the first and last sitting days). The roster to apply with effect from a particular date was presented by the Leader of the House, who attended each day.

These arrangements were introduced as a trial.<sup>71</sup> They followed Procedure Committee recommendations for a more limited experiment—the committee had proposed rostering on Monday sittings only and that the Opposition be able to request the presence of one non-rostered Minister.<sup>72</sup> Attempts were made (unsuccessfully) to require the attendance on a particular day of a Minister not rostered to attend.<sup>73</sup> The sessional order providing for the roster was not renewed in the following Parliament.

#### *To Parliamentary Secretaries*

It is considered that Ministers alone are responsible and answerable to Parliament for the actions of their departments. Even though the *Ministers of State and Other Legislation Amendment Act 2000* provided for the appointment of Parliamentary Secretaries to administer Departments of State, the standing orders do not provide for Parliamentary Secretaries to be questioned on matters of government administration. Standing order 98 specifically excludes the asking of questions of Parliamentary Secretaries.<sup>74</sup> Additionally, as Parliamentary Secretaries could be in charge of government business in the House without ultimately being responsible for it, they may not be questioned under the provision of standing order 99 applying to questions to private Members (*see below*). This exclusion makes Parliamentary Secretaries the only Members of whom questions cannot be asked under any circumstances. This is not to suggest that there is no accountability to the House, for the relevant Ministers may be questioned about matters in which Parliamentary Secretaries have been involved<sup>75</sup> and a Parliamentary Secretary's conduct can be

68 H.R. Deb (29.6.2000) 18718–9.

69 E.g. H.R. Deb. (6.11.2003) 22359; H.R. Deb. (18.2.2004) 25104.

70 Sessional order 151A, VP 1993–95/782.

71 H.R. Deb. (8.2.94) 538.

72 PP 194 (1993) 25–27.

73 VP 1993–95/1358–60, 1387–8.

74 VP 1993–95/25.

75 E.g. H.R. Deb. (9.12.2004) 77; H.R. Deb. (9.3.2005) 81.



challenged by substantive motion.<sup>76</sup> A Minister who has been a Parliamentary Secretary may not be asked questions directly about actions taken as a Parliamentary Secretary.<sup>77</sup> However, if a Minister has made a statement or given information, as a Minister, about actions taken as a Parliamentary Secretary, questions which refer to such statements or information may be permitted.<sup>78</sup>

### *To private Members*

Only rarely are questions directed to private Members, and even then they have often been disallowed for contravention of the strict limitations imposed by standing orders and practice. Standing order 99 provides that during Question Time, a Member may ask a question orally of another Member who is not a Minister or Parliamentary Secretary. Questions must relate to a bill, motion, or other business of the House or of a committee, for which the Member asked is responsible. There is no provision for questions in writing to private Members, the standing order refers to questions without notice only.

Questions most often allowed have concerned private Members' bills listed as notices on the Notice Paper.<sup>79</sup> However, if the answer to such a question would require the Member to anticipate what he or she might say in the second reading speech, the question is anticipating debate and is therefore out of order (*see* p. 541). A question asking when the bill will be introduced, whether the bill has been drafted, or whether the questioner could see a copy of the bill would be in order.<sup>80</sup> A question of a wider scope has been allowed to a Member in charge of a bill actually before the House—for example, a Member who had already made his second reading speech has been permitted to explain the meaning of a clause of his bill<sup>81</sup>—but the Procedure Committee has indicated its support for such questions being confined essentially to matters of timing and procedure.<sup>82</sup> Questions may be asked in connection with a notice of motion, but the scope is very limited—for example, a question has asked whether there was any urgency in a matter and whether the Member could indicate when a motion might be debated.<sup>83</sup>

It has been ruled that a question could not be asked of a private Member about a question in writing in the Member's name<sup>84</sup>—such a matter is not regarded as business of the House for which the Member is responsible.

Questions not meeting the conditions of standing order 99, such as questions concerning party policies and statements made inside or outside the House, notably by the Members to whom such questions are directed, have been ruled out of order. The following cases are illustrative of the type of question which may not be asked:

- to a private Member asking if he had been correctly reported in a newspaper;<sup>85</sup>
- to a private Member regarding his statement outside the House on customs imports;<sup>86</sup>

76 H.R. Deb. (6.12.2004) 38.

77 VP 2004–05/95; H.R. Deb. (2.12.2004) 79; (6.12.2004) 38.

78 E.g. H.R. Deb. (8.12.2004) 68–71; (9.12.2004) 68–74; (9.3.2005) 76, 78.

79 H.R. Deb. (1.3.72) 410–12; H.R. Deb. (25.2.76) 259; H.R. Deb. (26.2.76) 313–15; H.R. Deb. (16.3.76) 625; H.R. Deb. (16.3.2000) 14894–5; 14897.

80 H.R. Deb. (16.3.76) 625.

81 H.R. Deb. (9.10.84) 1897–8.

82 Standing Committee on Procedure: *The operation of standing order 143: Questions to Members other than Ministers*, PP 115 (1996).

83 H.R. Deb. (23.10.95) 2664; H.R. Deb. (23.6.99) 7198.

84 H.R. Deb. (7.6.2000) 17227.

85 H.R. Deb. (3.8.26) 4769.

86 H.R. Deb. (21.6.12) 68.

- to the Leader of the Opposition as to whether he would ‘give a lead’ to the members of his party who were opposed to graft and corruption;<sup>87</sup>
- to the Leader of the Opposition with regard to his conduct in connection with a Royal Commission;<sup>88</sup>
- to a private Member concerning a petition he had just presented on the ground that the Member was no longer in charge of it once it had been presented;<sup>89</sup>
- to the Leader of the Opposition regarding his statements on television;<sup>90</sup>
- to the Deputy Leader of the Opposition regarding a statement he had made in the House;<sup>91</sup> and
- to the Deputy Leader of the Opposition concerning the platform of his party.<sup>92</sup>

It is not in order to question a private Member about matters with which he or she is, or has been, concerned as a member of a body outside the House, nor to question a private Member concerning the Member’s past actions as Prime Minister or Minister. Such questions would clearly contravene standing order 99. A Member’s responsibility to the House for ministerial actions, after ceasing to be a Minister, is more appropriately discharged by action pursuant to a substantive motion in the House.

In 1995<sup>93</sup> and 1996<sup>94</sup> Leaders of the Opposition were asked questions about private Member’s bills they had introduced, and gave answers which the Procedure Committee noted, in its 1996 report on the matter, as going beyond the previous limits. Following the 1995 occasions, the equivalent standing order to current standing order 99 was suspended, on the initiative of the Government, for the remainder of the period of sittings.<sup>95</sup> In its report the Procedure Committee recommended that the standing order be retained in its present form, but that the limits traditionally enforced should be enforced—that is, questions should be tightly confined, essentially to matters of timing and procedure, and occasionally to brief explanations of a particular clause. The committee stated that ‘Issues of substance and policy are addressed more appropriately in debate (such as a second reading debate on a bill) than in a question without notice’.<sup>96</sup>

### *To committee chairs, etc*

While questions in writing to committee chairs have never been accepted, it has been the practice to allow a question without notice of a strictly limited nature to be addressed to a Member in his or her capacity as chair of a committee. A question asking when a report would be tabled has been permitted.<sup>97</sup> A question to a committee chair asking if the committee intended to inquire into a certain matter has also been permitted,<sup>98</sup> although this may not have been acceptable in the House of Commons where a Member may not seek by means of a question to the chair to interfere in the proceedings of a Select Committee by

87 H.R. Deb. (25.11.53) 475.

88 H.R. Deb. (9.9.54) 1099.

89 H.R. Deb. (21.5.24) 778.

90 H.R. Deb. (14.5.58) 1758.

91 H.R. Deb. (31.8.61) 696.

92 H.R. Deb. (21.9.67) 1183–4.

93 H.R. Deb. (26.9.95) 1692–5; H.R. Deb. (28.9.95) 1988–90.

94 H.R. Deb. (19.6.96) 2252–3.

95 VP 1993–95/2557–8 (former S.O. 143).

96 Standing Committee on Procedure, *The operation of standing order 143: Questions to Members other than Ministers*, PP 115 (1996) 7. See also e.g. H.R. Deb. (16.2.2005) 66–7.

97 H.R. Deb. (18.2.48) 6. The chair was also Attorney-General.

98 H.R. Deb. (16.10.57) 1393–4.

suggesting a particular subject for inquiry.<sup>99</sup> The Speaker has ruled out of order a question to a chair which asked that the committee examine certain matters.<sup>100</sup> A question to the chair of a subcommittee has been ruled out of order on the ground that the chair is responsible to the committee and not to the House.<sup>101</sup> In any question to a chair of a committee it should be borne in mind that a chair should not make public pronouncements on behalf of the committee unless the committee has been consulted and given its permission beforehand (*see also* p. 540). A question addressed to a committee chair has been answered by a Minister, at the request of the committee chair, the Minister being able to respond to matters within his responsibility.<sup>102</sup>

Standing order 99 now allows questions without notice to any Member (other than a Minister or Parliamentary Secretary) relating to the business of a committee for which the Member asked is responsible.

Opportunities to ask questions about committee business are restricted by standing order 100(e), which prevents questions from referring to proceedings of a committee not reported to the House.<sup>103</sup>

### *To the Speaker*

At the conclusion of Question Time, Members may ask questions orally of the Speaker about any matter of administration for which he or she is responsible.<sup>104</sup> However, Members seeking information on a matter of order or privilege must raise the matter under the appropriate procedure; such matters cannot be put to the Speaker as questions.<sup>105</sup> Any Member may direct a question without notice to the Speaker, including Ministers and Parliamentary Secretaries.<sup>106</sup>

Once exceptional, questions without notice to the Speaker have become more frequent in recent years. Many of these questions have related to procedural rather than to administrative matters. As such they fall outside the provisions of standing order 103, and also deviate from established practice that a procedural matter should be raised at the point at which it occurs.<sup>107</sup>

In 1994 standing orders were amended to provide for questions to the Speaker to be taken at the conclusion of Question Time,<sup>108</sup> recognising what had in fact been the practice for some time. In earlier years the rare questions to the Speaker would be asked during Question Time proper, sometimes between questions directed to Ministers. When these arrangements operated Speakers suggested that Question Time was an inappropriate time to deal with minor or detailed matters of parliamentary administration and that they would be better dealt with by an approach to the relevant domestic committee, by correspondence or by personal interview with the Speaker.<sup>109</sup>

<sup>99</sup> *May*, 23rd edn, p. 345.

<sup>100</sup> H.R. Deb. (6.10.53) 1004–5; H.R. Deb. (7.10.53) 1064–5.

<sup>101</sup> H.R. Deb. (10.10.72) 2242.

<sup>102</sup> H.R. Deb. (15.5.2003) 14721–4; *and see* H.R. Deb. (27.5.2003) 15039–56.

<sup>103</sup> S.O. 100(e)—*and see* p. 540.

<sup>104</sup> S.O. 103. For a description of the Speaker's administrative responsibilities *see* Ch. on 'The Speaker, Deputy Speakers and officers'.

<sup>105</sup> *May*, p. 23rd edn, p. 344.

<sup>106</sup> H.R. Deb. (19.8.2002) 4814.

<sup>107</sup> *And see* statement by Speaker Hawker, H.R. Deb. (9.3.2005) 67.

<sup>108</sup> VP 1993–95/779 (sessional order, made permanent in 1996). Since 1992 questions to the Speaker had been separately identified in Hansard under the heading 'Questions to Mr Speaker'.

<sup>109</sup> H.R. Deb. (1.12.53) 707; H.R. Deb. (1.11.33) 4117.

Occurrences in committees may not be raised in questions to the Speaker as the Speaker has no official cognisance of such proceedings.<sup>110</sup>

Originally it was not the practice for questions in writing to be directed to the Speaker. In order that Members might obtain information relating to the Parliament, the practice had developed for a question in writing to be directed to the Leader of the House or the Prime Minister requesting that the information be obtained from the Presiding Officer(s). In 1980 Speaker Snedden, commenting on the inappropriateness of past practice, introduced a procedure whereby requests for detailed information relating to the administration of the parliamentary departments could be directed to the Speaker.<sup>111</sup> The current practice is that such requests are lodged with the Clerk in the same way as questions in writing addressed to Ministers. However, a question to the Speaker, if in order, is printed in the daily Hansard rather than the Notice Paper. Answers provided by the Speaker are also printed in Hansard.<sup>112</sup>

## Form and content of questions

### *To relate to Minister's public responsibilities*

A Minister can only be questioned on matters for which he or she is responsible or officially connected. Such matters must concern public affairs, administration, or proceedings pending in the House.<sup>113</sup> The underlying principle is that Ministers are required to answer questions only on matters for which they are responsible to the House. Consequently Speakers have ruled out of order questions or parts of questions to Ministers which concern, for example:

- statements, activities, actions or decisions of the Minister's own party or of its conferences, officials, representatives or candidates, or of those of other parties, including opposition parties;<sup>114</sup>
- what happens or is said in the party rooms or in party committees;<sup>115</sup>
- party leadership issues where there is no connection with a matter in respect of which the (Prime) Minister is responsible to the House.<sup>116</sup>
- statements by people outside the House<sup>117</sup> including other Members,<sup>118</sup> notably opposition Members;<sup>119</sup>
- statements in the House by other Members;<sup>120</sup>
- the attitude, behaviour or actions of a Member of Parliament<sup>121</sup> or the staff of Members;<sup>122</sup>

110 H.R. Deb. (16.4.64) 1136, 1138; H.R. Deb. (27.10.09) 5049.

111 H.R. Deb. (28.2.80) 499; e.g. *see* H.R. Deb. (26.11.80) 57–8, 118; H.R. Deb. (24.2.81) 43; H.R. Deb. (12.9.96) 4223.

112 E.g. H.R. Deb. (6.10.87) 827; H.R. Deb. (17.9.96) 4491–2.

113 S.O. 98(c). For statistics *see* Appendix 21.

114 H.R. Deb. (6.4.67) 970; H.R. Deb. (22.11.73) 3679; H.R. Deb. (10.9.75) 1194; H.R. Deb. (19.4.88) 1748; H.R. Deb. (9.10.96) 5051; H.R. Deb. (30.3.99) 4668; H.R. Deb. (10.4.2000) 15553; H.R. Deb. (28.8.2001) 30365, 30374–5; H.R. Deb. (10.8.2004) 32555; H.R. Deb. (17.11.2004) 80; H.R. Deb. (18.11.2004) 1.

115 H.R. Deb. (6.6.78) 3075; H.R. Deb. (25.10.79) 2481.

116 E.g. H.R. Deb. (4.3.2004) 26024–5; H.R. Deb. (9.3.2004) 26267–8; H.R. Deb. (10.3.2004) 26437–9.

117 H.R. Deb. (4.5.77) 1512.

118 H.R. Deb. (22.10.74) 2617.

119 H.R. Deb. (12.10.77) 1892–3.

120 H.R. Deb. (5.5.64) 1489–90.

121 H.R. Deb. (26.5.81) 2519.

122 H.R. Deb. (8.9.81) 991.

- matters of a private nature not related to the public duties of a Minister;<sup>123</sup>
- arrangements between parties, for example, coalition agreements on ministerial appointments;<sup>124</sup>
- policies of previous governments;<sup>125</sup>
- actions taken by the Minister when a Parliamentary Secretary;<sup>126</sup>
- the internal affairs of a foreign country,<sup>127</sup> although it is in order to ask a Minister, for example, about the Government's position or action on a matter arising in or concerning a foreign country;<sup>128</sup> and
- matters in State Parliaments<sup>129</sup> or State matters,<sup>130</sup> but this rule does not prevent questions about State matters where there is a connection with Commonwealth Government activities.<sup>131</sup>

As mentioned in the cases above, it is not in order for questions to reflect on or be critical of the character, conduct or private affairs of a Minister. A Minister's conduct may only be challenged on a substantive motion.<sup>132</sup>

### *Statutory authorities*

The nature and degree of ministerial responsibility for the policies and operations of statutory authorities or corporations varies. The practice of the House has been to allow questions about such bodies and substantive replies have usually been provided. However, a Minister may choose not to answer any question or may answer it as he or she sees fit. Ministers have exercised this discretion in relation to some questions on statutory authorities, particularly in instances where a large degree of autonomy exists or where an answer may be to the commercial disadvantage of an authority operating in a competitive commercial environment.

A Minister has answered that publication of information sought by a Member might be to the commercial disadvantage of an authority and asked that the information be provided direct to the Member on a confidential basis.<sup>133</sup>

### *Questions to seek factual information or press for action*

The purpose of questions is to enable Members to obtain factual information or press for action on matters for which the Minister questioned is responsible to the House. The standing orders, particularly standing orders 98 and 100, contain detailed provisions, outlined in subsequent sections of this chapter, whose primary objective is to ensure that this purpose is given effect. In particular, they attempt to restrain the questioner from giving unnecessary information or introducing or inviting argument and thereby initiating a debate.

123 H.R. Deb. (12.11.65) 2680; H.R. Deb. (29.8.2000) 19519; H.R. Deb. (29.8.2002) 6163–5.

124 H.R. Deb. (26.10.78) 2338.

125 H.R. Deb. (21.8.75) 382.

126 E.g. H.R. Deb. (2.12.2004) 78–9, 87–9; H.R. Deb. (7.12.2004) 5–18.

127 H.R. Deb. (5.5.64) 1480.

128 H.R. Deb. (3.4.2000) 15007.

129 H.R. Deb. (31.3.71) 1206.

130 H.R. Deb. (6.10.76) 1537.

131 H.R. Deb. (16.2.2000) 13583.

132 S.O.100(c).

133 H.R. Deb. (22.11.79) 3425–6.

*Debate, argument, etc.*

Questions must not be debated,<sup>134</sup> nor can they contain arguments,<sup>135</sup> comments<sup>136</sup> or opinions.<sup>137</sup> They may not become lengthy speeches<sup>138</sup> or statements and they may not in themselves suggest an answer.<sup>139</sup> In short, questions should not be used as vehicles for the discussion of issues. The call may be withdrawn from a Member who prefaces a question with an extraneous remark.<sup>140</sup>

*Inferences, etc.*

Questions must not contain inferences,<sup>141</sup> imputations,<sup>142</sup> insults, ironical expressions<sup>143</sup> or hypothetical matter;<sup>144</sup> nor may they be facetious or frivolous<sup>145</sup> or attribute motive.<sup>146</sup> Speaker Andrew acknowledged that many questions convey an element of imputation; and that his general attitude was not to intervene where the imputation was directed to a difference in philosophy or viewpoint, but to intervene where the attribution of personal motive was such that it could not be ignored.<sup>147</sup> A question has been ruled out of order on the ground that it contained scorn and derision.<sup>148</sup>

*References to debates and committee proceedings*

References in questions to debates in the current session, concluded or adjourned, are out of order.<sup>149</sup> The rule does not preclude questions on the subject matter of such debates, which may be so broad as to cover, for example, the country's whole foreign policy, but rather precludes reference to the debate itself and to specific statements made in it. The Chair has interpreted this rule as applying equally to debates in the Senate.<sup>150</sup> Questions mentioning decisions of the Senate are permitted where they are connected with a Minister's area of responsibility.<sup>151</sup>

It has also been held to be out of order to ask a question repetitive of a matter already determined by the House,<sup>152</sup> or which reflects upon any vote of the House.<sup>153</sup>

Questions must not refer to proceedings of a committee not reported to the House.<sup>154</sup> However, no exception has been taken to questions merely coinciding in subject matter with current committee inquiries.<sup>155</sup> The following private ruling of President Cormack has equal relevance to the House:

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134 S.O. 100(a).

135 S.O. 100(d); *and see* H.R. Deb. (26.8.82) 960; H.R. Deb. (14.12.82) 3396; H.R. Deb. (18.10.99) 11728; H.R. Deb. (16.6.2003) 16400.

136 H.R. Deb. (13.4.61) 799; H.R. Deb. (10.10.96) 3819.

137 H.R. Deb. (5.7.49) 1927.

138 H.R. Deb. (31.8.66) 584.

139 H.R. Deb. (5.5.78) 1880; H.R. Deb. (18.11.2004) 91.

140 H.R. Deb. (9.3.2000) 14336–7.

141 H.R. Deb. (18.10.99) 11728; H.R. Deb. (28.8.2001) 30360.

142 H.R. Deb. (18.10.99) 11728; H.R. Deb. (30.8.2000) 19681; H.R. Deb. (20.8.2001) 29712–3; H.R. Deb. (28.5.2003) 15200, 15203; H.R. Deb. (17.9.2003) 20309–10; H.R. Deb. (11.3.2004) 26637–8.

143 H.R. Deb. (24.8.99) 8889.

144 S.O. 100(d); H.R. Deb. (13.4.67) 1212; H.R. Deb. (8.12.98) 1559; H.R. Deb. (8.6.2000) 17443.

145 H.R. Deb. (1.7.41) 591; H.R. Deb. (8.10.36) 898; H.R. Deb. (12.2.2003) 11642.

146 H.R. Deb. (26.4.77) 1198.

147 H.R. Deb. (7.12.2000) 23808–9; H.R. Deb. (28.5.2003) 15200.

148 H.R. Deb. (30.3.99) 4668.

149 S.O. 100(e); H.R. Deb. (21.5.75) 2545; H.R. Deb. (25.8.76) 525; H.R. Deb. (26.6.96) 2788–9.

150 H.R. Deb. (20.8.69) 431.

151 H.R. Deb. (31.8.2000) 19867.

152 H.R. Deb. (16.11.78) 2892.

153 S.O. 74; *See also* May, 23rd edn, p. 352.

154 S.O. 100(e).

155 E.g. H.R. Deb. (27.10.87) 1482; H.R. Deb. (16.2.88) 13; H.R. Deb. (8.2.94) 505, 507, 508.

... if I were to rule that questions should not be allowed on any matters which may be under examination by committees, such a rule strictly applied would operate to block questions on a very wide variety of subjects.

The practice which I follow, and which I shall continue to follow unless otherwise directed by the Senate, is to allow questions seeking information on public affairs for which there is ministerial responsibility provided that such questions are not of a nature which may attempt to interfere with a committee's work or anticipate its report.<sup>156</sup>

### *Anticipation of business*

Standing order 100(f) provides that questions must not anticipate discussion on an order of the day or other matter. A clear distinction can be made between this rule and standing order 98(c), which permits questions to Ministers on 'proceedings pending in the House'. The principle established by rulings from the Chair is that questions seeking to elicit information about proceedings pending in the House are permissible provided they do not anticipate the discussion itself or invite a Minister to do so.<sup>157</sup> For example, in 1976 Speaker Snedden disallowed a question because it invited anticipation of the second reading speech and the arguments and principles upon which the legislation was based. However, he later permitted a question asking whether certain people would be disadvantaged under legislation then before the House. The Speaker ruled, in response to a point of order alleging inconsistency in the two rulings, that the second question was in order as it was simply seeking information about the legislation.<sup>158</sup> Consistent with this principle questions have been permitted in respect of the impact of budget proposals, even though relevant bills may be listed as orders of the day. Questions have been permitted where a notice of intention to present a bill has been listed on the Notice Paper, the view being taken that this was different from an order of the day, where consideration of a measure was in fact before the House.<sup>159</sup> The listing on the Notice Paper of orders of the day for the consideration of legislation on a matter has not been held to prevent Ministers referring to government policy in the area,<sup>160</sup> but a question may not refer to the detail of a bill before the House.<sup>161</sup> The listing of a matter on the Daily Program does not have the same technical significance as a listing on the Notice Paper.<sup>162</sup> Speaker McLeay observed, in response to a point of order, that a too literal interpretation of the rule would mean that opposition Members would be very constrained in the questions they asked during Question Time.<sup>163</sup>

While the cardinal rule is to avoid the anticipation of discussion of orders of the day, other matters could also cause the rule to be invoked—for example, the Speaker has terminated the answer to a question covering similar ground to a private Member's motion listed for debate immediately after Question Time.<sup>164</sup> In practice the Speaker pays attention to the principle reflected in standing order 77 and considers the probability of the matter anticipated being brought before the House within a reasonable time—for example, questions have been permitted relating to private Members' orders of the day, in view of the

156 *Odgers*, 6th edn, p. 309.

157 H.R. Deb. (26.6.30) 3317.

158 H.R. Deb. (25.3.76) 1005.

159 H.R. Deb. (23.5.96) 1275, 1276.

160 H.R. Deb. (31.3.99) 4859, 4863–5; H.R. Deb. (29.6.99) 7677.

161 H.R. Deb. (2.12.98) 1144.

162 H.R. Deb. (9.12.2004) 81–2.

163 H.R. Deb. (6.11.91) 2423–4, 2429–30.

164 E.g. H.R. Deb. (1.3.2004) 25404–5.



fact that they are not usually listed by the Selection Committee for further discussion.<sup>165</sup> The rule does not prevent questions about matters scheduled for discussion as matters of public importance.<sup>166</sup>

In early 2005 the application of the anticipation rule was reviewed by the Procedure Committee. The House adopted the committee's recommendation that standing order 100(f) be suspended, as a trial, for the remainder of the 41st Parliament.<sup>167</sup>

### *Information, comment, etc. in questions*

Questions must not contain statements of fact unless they can be authenticated and are strictly necessary to render the question intelligible.<sup>168</sup> Thus, Members may not give information under the guise of asking a question—otherwise questions cease to be questions and can become excessively long and so help limit the number of questions that can be asked. While short introductory words may be tolerated, the use of prefaces is to be avoided and a Member called to ask a question places the retention of the call at risk if comment is made relating to an answer just given or some other extraneous matter. Similarly, rhetorical questions should not be asked, these have been seen as a device to put information forward.<sup>169</sup> A question seen as producing an orchestrated chorus of support has been disallowed.<sup>170</sup> The Chair frequently interrupts Members to warn them that their questions are excessively long and requires them to come to the point quickly. A Member who persists in giving information or who does not come to the point of the question when asked to do so may have the question ruled out of order.<sup>171</sup> Alternatively, if enough has been said to make the point of the question clear, the Speaker may require the Member to resume his or her seat and call the Minister to respond.<sup>172</sup>

The requirement that information contained in a question be authenticated by the questioner is rarely applied unless the accuracy of the information is challenged. In such cases the Speaker simply calls on the questioner to vouch for the accuracy of the statement and, if the Member cannot do so, the question is disallowed.<sup>173</sup> If the Member vouches for the statement's accuracy, the Speaker accepts the authentication.<sup>174</sup> Questions based on rumour—that is, unsubstantiated statements—are not permissible.<sup>175</sup>

### *References to newspaper reports, etc.*

It is established practice that, provided the Member asking a question takes responsibility for the accuracy of the facts upon which the question is based, he or she may direct attention to a statement, for example, in a newspaper or a news report, but may not quote extracts.<sup>176</sup> It has been held that the questioner must vouch for the accuracy of any such report referred to, not simply for the accuracy of the reference to it. When a Member

165 E.g. H.R. Deb. (2.3.2004) 25525–6.

166 E.g. H.R. Deb. (9.3.2004) 26274–6.

167 Standing Committee on Procedure, *The anticipation rule*, PP 82 (2005). Sessional orders adopted 17.3.2005. The committee also recommended changes to S.O. 77, see Ch. on 'Control and conduct of debate'.

168 S.O. 100(d).

169 H.R. Deb. (7.12.2000) 23810.

170 H.R. Deb. (27.5.2004) 29388.

171 H.R. Deb. (18.11.2004) 91.

172 H.R. Deb. (7.9.77) 802.

173 H.R. Deb. (7.9.77) 801.

174 H.R. Deb. (29.3.77) 645–7.

175 H.R. Deb. (19.9.78) 1105.

176 Standing Orders Committee, *Report*, H of R 1 (1962–63) 32.

could not do so a question has been ruled out of order,<sup>177</sup> but Speaker Andrew indicated he would not seek to impose a strict application of past practice.

In 1977 a Member's authentication of a newspaper report referred to in his question was challenged by the Member whose speech was the subject of the report. As he was in no position to adjudicate on the matter the Speaker accepted the questioner's authentication at face value and suggested that if any misrepresentation was involved this could be corrected in a personal explanation after Question Time. Instead leave was granted for the full text of the reported statement to be incorporated in Hansard.<sup>178</sup> In a similar case in 1978, when leave was not granted for incorporation of the reported statement, the Member concerned made a personal explanation.<sup>179</sup> In 1981 the Speaker stated that he only asked for Members to vouch for the accuracy of press reports over which there was clearly controversy.<sup>180</sup>

The restriction on quotations in questions, which reflects House of Commons practice,<sup>181</sup> has always been applied to questions in writing but the Chair has often chosen not to apply it to questions without notice, perhaps on the basis that, where a statement of fact is strictly necessary to render a question intelligible, a succinct quotation may more readily achieve this objective.<sup>182</sup> In permitting quotations the Chair has ruled that they may not contain matter which would otherwise be ruled out of order, for example, comment, opinion, argument or unparliamentary language.<sup>183</sup> In 1962 the Standing Orders Committee recommended that standing orders be amended to make explicit provision for questions not to contain quotations. Consideration of the proposal was deferred by the House and subsequently lapsed.<sup>184</sup>

It has been the practice, following that of the House of Commons,<sup>185</sup> that it is not permissible to ask whether a reported statement is correct.<sup>186</sup> A Minister, although he or she may have responsibility for a matter, does not have responsibility for the accuracy of reports by others on the matter. It is in order to ask whether a Minister's attention has been drawn to a report concerning a matter for which the Minister has responsibility and to ask a question in connection with the subject of the report.<sup>187</sup>

### *Questions seeking opinions*

Questions may not ask Ministers for an expression of opinion, including a legal opinion,<sup>188</sup> for comment,<sup>189</sup> or for justification of statements made by them.<sup>190</sup>

Legal opinions, such as the interpretation of a statute, or of an international document, or of a Minister's own powers, should not be sought in questions. Ministers may be asked, however, by what statutory authority they have acted in a particular instance, and the Prime Minister may be asked to define a Minister's responsibilities. Speaker Morrison of the

177 H.R. Deb. (7.9.77) 801; *but see* for example H.R. Deb. (11.9.96) 3984–5, and statement by Speaker Andrew, H.R. Deb. (7.12.2000) 23810.

178 H.R. Deb. (29.3.77) 645–7.

179 H.R. Deb. (24.5.78) 2390–1, 2395, 2396–7.

180 H.R. Deb. (4.3.81) 415.

181 *May*, 23rd edn, p. 346.

182 H.R. Deb. (14.10.85) 1937–8.

183 H.R. Deb. (13.12.34) 1205; H.R. Deb. (7.6.45) 2685; H.R. Deb. (29.9.48) 937.

184 H of R 1 (1962–63) 32.

185 *May*, 23rd edn, p. 348.

186 H.R. Deb. (16.6.39) 2085; H of R 1 (1962–63) 32; H.R. Deb. (27.9.60) 1329 (statement by the Speaker).

187 H.R. Deb. (10.2.97) 471.

188 S.O. 98(d).

189 H.R. Deb. (25.8.77) 628; H.R. Deb. (19.5.88) 2674.

190 H.R. Deb. (20.11.57) 2322.

House of Commons explained the basis for not permitting questions seeking an expression of opinion on a question of law:

A Question asking a Minister to interpret the domestic law offends against the rule of Ministerial responsibility, since such interpretation is not the responsibility of a Minister . . . But it also offends against the rule that a Question may not ask for a Minister's opinion. The interpretation of written words is a matter of opinion. It is for the latter reason, I think, that the rule has been applied to the interpretation of an international document.<sup>191</sup>

Questions asking about the extent to which federal legislation would prevail over State legislation or administrative action have been permitted.<sup>192</sup> In addition it has been ruled that in response to a question dealing with the law a Minister may provide any facts, as opposed to legal opinions, the Minister may wish to give.<sup>193</sup> Questions asking whether legislation existed on a specified subject,<sup>194</sup> whether an agency was entitled to take a particular action,<sup>195</sup> whether certain actions were in breach of regulations,<sup>196</sup> whether offences against Commonwealth laws may have been committed,<sup>197</sup> and what the consequences of certain actions had been,<sup>198</sup> have been permitted.

In 1951, a question seeking a legal opinion from the Prime Minister having been disallowed, a Member asked the Prime Minister if he would table legal opinions he had received on the matter specified. The Prime Minister declined, stating that it was not his practice to table opinions received from the Crown's legal advisers.<sup>199</sup> The Attorney-General has also answered a question in writing (which did not explicitly seek a legal opinion), to the effect that that he did not consider it appropriate to provide the substance of a legal opinion in response to a question in writing.<sup>200</sup>

### *Announcement of government policy*

Members must not ask Ministers to announce government policy, but may seek an explanation about the policy and its application, and may ask the Prime Minister whether a Minister's statement in the House represents government policy.<sup>201</sup>

This rule is often misunderstood but the practice of the House is quite clear. A question which directly asks a Minister to announce new policy is obviously out of order but a request for an explanation regarding existing policy and its application, or regarding the intentions of the Government is in order. Many questions ask whether a Minister will consider certain matters.

### *Identification of people in questions*

Questions must not contain names of persons unless they can be authenticated and are strictly necessary to render the question intelligible.<sup>202</sup> A question with or without notice which is laudatory of a named individual<sup>203</sup> or contains the name of an individual in order

191 H.C. Deb. 543 (5.7.55) 961–2.

192 H.R. Deb. (6.10.76) 1542.

193 H.R. Deb. (4.4.79) 1474.

194 H.R. Deb. (5.5.76) 1926.

195 H.R. Deb. (8.6.2000) 17442.

196 H.R. Deb. (7.3.2000) 14020.

197 H.R. Deb. (8.10.2003) 20841–2.

198 H.R. Deb. (15.2.2000) 13424.

199 H.R. Deb. (6.11.51) 1542. It has been stated that questions seeking information about advice given to the Crown by law officers are in fact out of order, Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, p. 151.

200 H.R. Deb. (19.9.96) 4853.

201 S.O. 98(d); see also Standing Orders Committee, *Report*, PP 129 (1964–66) 9.

202 S.O. 100(d).

203 See H of R 1 (1962–63) 33.

to render the question intelligible is permissible.<sup>204</sup> A Member has been warned after repeating the name of a person in a question after the Speaker had stated that the inclusion of the name was not necessary,<sup>205</sup> and a Minister has been asked to ignore a sentence in a question containing the name of a person.<sup>206</sup>

Questions must not reflect on or be critical of the character or conduct of a member of either House,<sup>207</sup> the Queen, the Governor-General,<sup>208</sup> a State Governor, or a member of the judiciary.<sup>209</sup> Their conduct may only be challenged on a substantive motion.<sup>210</sup> This rule applies to both questions without notice and questions in writing.

Questions critical of the character or conduct of other persons must be in writing.<sup>211</sup> Although this rule is generally applied to named persons, it has also been applied to unnamed, but readily identifiable, persons.<sup>212</sup> Such questions may, however, be placed on the Notice Paper. The purpose of the rule is to protect a person against criticism which could be unwarranted. A question in writing does not receive the same publicity and prominence as a question without notice and the reply can be more considered.

The standing orders do not prevent criticism of Ministers or others in high office but rather preclude such criticism from being aired in questions.<sup>213</sup> A substantive motion relevant to the criticism must be moved so that the House may then debate the criticism and make its decision.<sup>214</sup> It has been held that once the House has made a decision on the matter, further questions, whether containing criticism or not, are out of order on the ground that the House has made its determination.<sup>215</sup> In modern practice, in matters such as the actions of a Member of the Government, questions having a somewhat critical cast have been permitted although the House may have made a decision on the matter.<sup>216</sup>

In 1976 Speaker Snedden, referring to a question about the Chief Justice of the High Court of Australia, said:

I have ruled that the reference in *May's Parliamentary Practice* which would prevent even the mention of such an office holder . . . is far too restrictive and that there can be discussion about such an office holder provided that the discussion relates to a statement as to whether the actions were right or wrong, is conducted in a reasonable fashion and does not attribute motive to or involve criticism of the office holder.<sup>217</sup>

Although not specifically referred to in the standing orders, it has been a practice of the House that opprobrious reflections may not be cast in questions on rulers or governments of Commonwealth countries or other countries friendly with Australia, or on their representatives in Australia.<sup>218</sup> The application of this rule has, however, tended to vary according to particular considerations at the time. A recommendation by the Standing

204 H.R. Deb. (4.11.77) 2882.

205 H.R. Deb. (20.8.2002) 5188, and, for example, *see* H.R. Deb. (20.6.2001) 28095.

206 H.R. Deb. (20.8.2002) 5199.

207 E.g. H.R. Deb. (30.5.78) 2721; H.R. Deb. (4.6.2003) 16005–6.

208 H.R. Deb. (7.10.76) 1622. Questions have been permitted concerning matters in which a Governor-General had been involved before appointment to the office, e.g. H.R. Deb. (13.5.2003) 13961–74.

209 *May*, 23rd edn, pp. 347, 386–7.

210 S.O. 100(c).

211 S.O. 100(c). E.g. H.R. Deb. (4.3.98) 400; H.R. Deb. (1.12.2003) 23299–300.

212 H.R. Deb. (5.4.79) 1560.

213 H.R. Deb. (23.11.78) 3333.

214 *See* Ch. on 'Motions'.

215 H.R. Deb. (16.11.78) 2892.

216 E.g. H.R. Deb. (20.10.99) 11982 (critical reference in question the day after a censure motion was defeated); *and see* H.R. Deb. (7.12.2000) 23808–10.

217 H.R. Deb. (7.10.76) 1628–9.

218 VP 1951–53/117; H.R. Deb. (10.10.51) 459–60.

Orders Committee to include such a requirement in the standing orders was rejected by the House in 1963.<sup>219</sup> In 1986 the Procedure Committee stated its opinion that the rule was unduly restrictive and recommended it be discontinued,<sup>220</sup> but no action was taken on this recommendation.

### *Questions concerning the Crown*

Questions may be asked of Ministers about matters relating to those public duties for which the Queen or her representative in the Commonwealth, the Governor-General, is responsible.<sup>221</sup> However, just as in debate, a Member in putting a question must not refer disrespectfully to the Queen, the Governor-General, or a State Governor, in debate or for the purpose of influencing the House in its deliberations.<sup>222</sup> As noted above, a question must not reflect on or be critical of the character or conduct of the Queen, the Governor-General or a State Governor. Their conduct may only be challenged on a substantive motion.<sup>223</sup>

In 1956 Prime Minister Menzies presented documents relating to the double dissolution of the Senate and the House by the Governor-General in 1951. The documents referred to an interview which the Prime Minister had had with the Governor-General and contained copies of a letter from the Prime Minister to the Governor-General and the latter's reply.<sup>224</sup> Questions seeking the tabling of these documents had been asked by the Leader of the Opposition some five years earlier. In answer to those questions the Prime Minister acknowledged the importance of making the documents public as historical records and guides to constitutional practice but indicated that he would not present them until the Governor-General concerned had left office so that they would not involve the incumbent Governor-General in public debate.<sup>225</sup> In 1979 Prime Minister Fraser presented documents relating to the dissolution of the House in 1977 and the double dissolution of 1975. These included correspondence between the Prime Minister and the Governor-General relating to the grounds for the dissolutions.<sup>226</sup> He indicated that he was presenting the documents in response to a question asked earlier by the Deputy Leader of the Opposition.<sup>227</sup> Documents concerning the 1983 and 1987 double dissolutions were also presented.<sup>228</sup>

The practice in the House of Commons not to permit questions to the Prime Minister on advice given to the Crown concerning the granting of honours has not been followed in the House of Representatives, although care has been taken to ensure that nothing in such a question could bring the Queen into disrespect.<sup>229</sup>

### *The sub judice convention*

Questions should not raise matters awaiting or under adjudication in a court of law. In such cases the House imposes a restriction upon itself to avoid setting itself up as an

219 VP 1962–63/455.

220 PP 354 (1986) 32.

221 *May*, 23rd edn, p. 347.

222 S.O. 88.

223 S.O. 100(c).

224 VP 1956–57/167.

225 H.R. Deb. (13.6.51) 49; H.R. Deb. (26.9.51) 37.

226 H.R. Deb. (20.2.79) 17; VP 1978–80/616.

227 H.R. Deb. (23.11.78) 3276.

228 VP 1983–84/721; VP 1987–89/249.

229 E.g. H.R. Deb. (25.8.54) 587; H.R. Deb. (19–20.8.59) 393; H.R. Deb. (29.9.60) 1579–80; H.R. Deb. (31.8.61) 787; H.R. Deb. (12.9.61) 1081; H.R. Deb. (19.11.87) 2466.

alternative forum to the courts and to ensure that its proceedings are not permitted to interfere with the course of justice. This restriction is known as the sub judice rule or, more properly, as the sub judice convention. The convention, which is discussed in detail in the Chapter on ‘Control and conduct of debate’, also applies to questions and answers. It is for the Speaker to determine whether a question (or an answer) which may touch on matters before, or due to come before, a court may be permitted, just as the application of the convention in debate is subject to the discretion of the Speaker.<sup>230</sup>

### *Language*

The Speaker may direct a Member to change the language of a question asked during Question Time if the language is inappropriate or does not otherwise conform with the standing orders,<sup>231</sup> and may, on the same grounds, change the language of a question in writing.<sup>232</sup>

### *Repetition of questions*

A question fully answered must not be asked again.<sup>233</sup> A question may however contain a reference to a question already answered. Members occasionally place questions in writing asking Ministers to up-date information provided in answer to earlier specified questions.

House of Commons practice is that Members are out of order in renewing questions to which an answer has been refused; that where a Minister has refused to take the action or give the information asked for in a particular question, he or she may be asked the same question again after three months; and that a question which one Minister has refused to answer cannot be addressed to another Minister.<sup>234</sup> However, Ministers rarely refuse to answer questions in the House of Representatives and circumstances in which these House of Commons rules could have been applied do not appear to have arisen.

### *Question without notice similar to question on Notice Paper*

It has been the general practice of the House that questions without notice which are substantially the same as questions already on the Notice Paper are not permissible.<sup>235</sup> It is not relevant that the questions on and without notice may be addressed to different Ministers.<sup>236</sup> However, in 1986 the Speaker ruled such a question acceptable, as it had been asked by the Member who had placed the original question on the Notice Paper. In that case the Speaker’s view was that the purpose of the rule was to prevent a Member asking a question in writing from being disadvantaged and the Member’s question being pre-empted, and logic and common sense dictated that the practice should not apply in respect of a Member’s own question.<sup>237</sup> The Procedure Committee subsequently recommended that past practice be continued, despite this precedent to the contrary.<sup>238</sup> A Member may withdraw a question in writing at any time by informing the Clerk of the House, and the withdrawal is effective immediately. As the withdrawal could take place as

230 H.R. Deb. (28.5.98) 4135; H.R. Deb. (9.8.99) 8095.

231 S.O. 101(a). E.g. H.R. Deb. (23.3.2004) 26907.

232 S.O. 101(c).

233 S.O. 100(b); H.R. Deb. (27.8.58) 777; H.R. Deb. (23.3.2004) 26909–10; 26911–12.

234 *May*, 23rd edn, pp. 351–2.

235 H.R. Deb. (30.8.2000) 19683–4, and see H.R. Deb. (23.3.2004) 26903.

236 H.R. Deb. (10.5.79) 2058; H.R. Deb. (25.5.88) 2975, 3047.

237 H.R. Deb. (25.9.86) 1433, 1484; VP 1985–87/1166–7.

238 PP 354 (1986) 36.

a preface to a question without notice, the previous restriction could be easily circumvented.

### *Questions requiring detailed response*

If a question cannot reasonably be expected to be answered without notice, it is disallowed, and the Chair suggests that it be placed on the Notice Paper.<sup>239</sup> This rule is mainly applied to questions seeking very detailed replies or to questions with many parts. Ministers themselves occasionally indicate that they are unable to answer a question without notice and ask that the Member place it on notice or, alternatively, they undertake to provide the Member with the information in writing. In the latter case, if the Minister provides a copy of the reply to the Clerk of the House, the question and reply are printed in Hansard.

### *Personal interest*

A Member asking a question need not disclose any personal interest he or she may have in the subject matter of the question. The resolution of the House effective from 1984 until 1988 providing for the oral declaration of interests by Members participating in debate and other proceedings specifically excluded the asking of questions.<sup>240</sup>

## QUESTIONS IN WRITING

‘Questions on notice’ were originally part of the order of business in the House, a period during which Ministers read to the House answers to questions in writing, the terms of which had been printed on the Notice Paper. Questions were placed on notice to be answered on a particular day, either the next or one in the near future, and were commonly answered on the day for which notice had been given. Questions without notice were also asked during this item of business. In the early Parliaments relatively few questions on notice were asked, only two or three usually appearing on the Notice Paper for a particular day and more than eight or nine being unusual. These figures included any questions remaining unanswered from the previous sitting.

Over the years more and more time was taken up with questions without notice, and in order to save the time of the House, a new standing order was adopted in 1931 to provide that the reply to a question in writing could be given by delivering it to the Clerk, who would supply a copy to the Member concerned and arrange for its inclusion in Hansard.<sup>241</sup> Soon afterwards answers, which until then had been printed in Hansard immediately after questions without notice, were added at the end of the report of the day’s proceedings. Questions themselves, however, remained listed prominently as the first item of business on the Notice Paper until 1950 when ‘Questions without notice’ replaced ‘Questions on notice’ in the order of business.

By the early 1980s an average of 50 questions was being asked each sitting day, with a record number of 711 questions being placed on a single day’s Notice Paper.<sup>242</sup> The average for the 40th Parliament was 37 questions in writing each sitting day.

239 H.R. Deb. (9.3.71) 698.

240 VP 1983–84/946; VP 1987–89/961. In the House of Commons a declaration of relevant interest is required, although it is recognised that this is often impractical in the case of oral questions, *May*, 23rd edn, pp. 340, 354.

241 VP 1929–31/693; H.R. Deb. (25.6.31) 3029–30; H.R. Deb. (26.6.31) 3127–9. There were however earlier instances of incorporation, H.R. Deb. (10.9.15) 6913, 6924.

242 NP 23 (9.4.81) 1347–1430—691 by one Member.



## Notice of question

Members may ask questions in writing by having them placed on the Notice Paper. Neither the question nor the answer is read in the House. There is no rule limiting the number of questions a Member may place on the Notice Paper at any time or on the length of a question, although in very extraordinary circumstances practical considerations, such as printing arrangements, could impose a limit.

A Member lodging a question for the Notice Paper must deliver it in writing, to the Clerk at the Table or to the Table Office. The question must be authorised by the Member. Questions for the next Notice Paper must be lodged by the cut off time determined by the Speaker, otherwise they will be included in the Notice Paper for the following sitting.<sup>243</sup> The Speaker has determined that questions for the next day's Notice Paper should, in normal circumstances, be lodged by 4 p.m. Authorisation generally implies a signature. However, this is not insisted on when the Member delivers the question in person. Questions forwarded by e-mail are accepted if the message comes from the Member's official e-mail address or the Member's office.

Until 2001 the standing orders required each notice of question to show the day proposed for asking the question.<sup>244</sup> However, it was the practice to ignore this requirement, which originated when questions on notice were asked for oral answer in the Chamber, as it was taken that the notice was for the next sitting unless the Member stated otherwise. However, from time to time a notice of question could still be given for a particular date<sup>245</sup>—for example, to permit a question to be placed on the Notice Paper about events expected to occur on a future date, thus alerting the Minister and facilitating an early reply.

Questions are not accepted from Members while they are suspended from the service of the House.

## Form and content

In general, the rules governing the form and content of questions without notice apply equally to those asked on notice, but they are able to be applied more strictly to the latter because of the opportunity to examine them closely.

The Speaker has authority to ensure that questions conform with the standing orders,<sup>246</sup> but, in practice, this task is performed by the Clerks, who have traditionally had the Speaker's authority to amend questions submitted before placing them on the Notice Paper. The Clerks also edit questions to adapt them to the style of the Notice Paper, to eliminate unnecessary words, to put them into proper interrogative form, and to ensure that they are addressed to the correct Ministers. Where changes of substance are involved, if practicable the amendments are discussed with the Member concerned or a person on the Member's staff. No question is amended so as to alter its sense without the Member's consent. Only in instances where agreement cannot be reached does the Speaker become personally involved, and any decision then made is final.<sup>247</sup>

243 S.O. 102. For statistics *see* Appendix 21.

244 Former S.O. 148.

245 NP 64 (16.10.70) 4351.

246 S.O. 101(c).

247 H.R. Deb. (12.12.14) 1689.

## Printing of questions on Notice Paper

Notices of questions are placed on the Notice Paper in the order in which they are received.<sup>248</sup> Each question is numbered, and the question retains the same number until it is fully answered and the reply is delivered to the Clerk. On the first sitting day of each sitting fortnight all unanswered questions appear in full on the Notice Paper. On other days only new questions for that day are printed, along with a list identifying by number the unanswered questions not printed. An electronic ‘questions paper’ on the House website, updated daily, gives the full text of all unanswered questions.

## Removal of questions from Notice Paper

A Member may withdraw a question appearing on the Notice Paper in his or her name by informing the Clerk. Withdrawal does not need to be notified in writing; oral advice is sufficient. The withdrawal is effective immediately, and the responsible department is advised as soon as practicable. When a Member ceases to be a Member or becomes a Minister, any questions appearing on the Notice Paper in his or her name are automatically removed.

Any questions remaining on the Notice Paper at the time when the Parliament is prorogued or the House is dissolved lapse.<sup>249</sup>

## ANSWERS

### No obligation to answer

It is the established practice of the House, as it is in the House of Commons, that Ministers cannot be required to answer questions.<sup>250</sup> Outright refusal to answer questions is relatively rare, being restricted largely to questions dealing with clearly sensitive and confidential matters such as security arrangements, Cabinet and Executive Council deliberations, and communications between Ministers and their advisers. Further, if a Minister does not wish to reply to a question on the Notice Paper ultimately he or she may choose simply to ignore it (despite any reminders given in accordance with standing order 105—*see* p. 556). The question then eventually lapses on prorogation of the Parliament or dissolution of the House.

Occasionally Ministers reply to questions in writing by stating, for example, that the information sought by a Member is unavailable or that the time and staff resources required to collect the information cannot be justified.<sup>251</sup> Ministers have refused to answer questions in writing which a public servant had admitted to preparing.<sup>252</sup> A Minister has declined to supply information which was considered to be readily obtainable by other means—for example, in response to a question in writing a Minister has suggested that a Member use the resources of the Parliamentary Library rather than those of his department.<sup>253</sup> Ministers have also stated in answer to a question in writing that the question or part of the question

248 For further details concerning the format of the Notice Paper *see* Ch. on ‘Documents’.

249 *See* Ch. on ‘The parliamentary calendar’.

250 H.R. Deb. (12.5.70) 1949; H.R. Deb. (28.11.88) 3329. *May*, 23rd edn, p. 352.

251 H.R. Deb. (30–31.5.72) 3289; H.R. Deb. (18.2.88) 404.

252 H.R. Deb. (25.5.77) 1897–1903, and *see The Table XLVI*, 1978, p. 109.

253 H.R. Deb. (18.2.88) 403.

sought, for example, a legal opinion or an answer to a hypothetical situation, and a substantive reply has not been given.<sup>254</sup>

The fact that a question which contravenes the standing orders appears on the Notice Paper from time to time is no reflection on the Speaker or the Clerks, as it is not always possible for them to understand the full implications of a question—only the Minister or his or her staff may have this knowledge. Ministers in replying to such questions generally recognise this situation and are careful in their answers that they do not reflect on the Speaker by suggesting, through implication or otherwise, that he or she has been negligent in permitting a question.

### Answers to questions put to Ministers representing Senate Ministers

When a question without notice is addressed to a Minister in his or her capacity as Minister representing a Senate Minister, the Minister provides, if possible, a substantive and immediate answer. If the Minister cannot do so, but wishes the question to be answered, he or she undertakes to seek an answer from the responsible Minister and to pass it on to the questioner. In the case of questions in writing the question is also directed to the Minister representing the Senate Minister in the House but the answer is prepared under the authority of the responsible Minister. When the question and answer are printed in Hansard, the answer is prefaced with a statement along the following lines: ‘The Minister for . . . [the responsible Minister in the Senate] has provided the following answer to the honourable Member’s question: . . .’

### Answers to questions without notice

Ministers’ answers to questions without notice are given orally and immediately. There is no prohibition on a Minister reading an answer.<sup>255</sup> When a Minister is occasionally unable to provide an immediate substantive answer, he or she may either undertake to supply the Member with the requested information in writing at a later date<sup>256</sup> or suggest that the Member place the question on the Notice Paper. When the former option is taken, a Minister will usually treat the question as if it were a question in writing and will deliver a copy of the reply to the Clerk in order that the question and answer may be printed in Hansard.

Ministers are not normally permitted to answer questions which have been ruled out of order.<sup>257</sup> However, answers have often been permitted, for example, when the Minister or third parties have been criticised and the Minister has sought an opportunity to refute the criticism.<sup>258</sup>

More than one Minister has answered a particular question without notice in the case of shared responsibility. In 1970 a question was directed to and answered by the Minister for the Army. Upon completion of the answer the Minister for Defence indicated that the subject of the question lay more within his ministerial responsibilities and proceeded to add

254 H.R. Deb. (5.9.67) 823; H.R. Deb. (26.3.69) 954.

255 H.R. Deb. (3.12.98) 1350, 1358–9.

256 E.g. H.R. Deb. (30.5.77) 2099; H.R. Deb. (18.8.77) 496; H.R. Deb. (10.9.96) 3823–4; H.R. Deb. (12.9.96) 4269–70; H.R. Deb. (7.11.96) 6825.

257 H.R. Deb. (2.5.78) 1591.

258 H.R. Deb. (21.11.78) 3075; H.R. Deb. (13.10.94) 2005–6; *and see* statement by Speaker Andrew and references to questions containing imputation, H.R. Deb. (7.12.2000) 23808–10.

to the information already supplied.<sup>259</sup> A Minister has also answered a question addressed to another.<sup>260</sup> In 1987 the Treasurer responded to questions directed to the Minister Assisting the Treasurer on Prices, saying that questions should not be directed to a Minister Assisting when the Minister was in the House.<sup>261</sup> It is in order for the Prime Minister, who has overall responsibility for the Government, to add to the answer to a question addressed to another Minister, but a Minister may not add to an answer by the Prime Minister unless requested to do so by the Prime Minister.<sup>262</sup>

Ministers may seek and be granted the indulgence of the Chair after Question Time or later in the day, to add to or correct an answer given to a question without notice asked on that day<sup>263</sup> or even a previous day.<sup>264</sup> Alternatively, the additional or corrected information may be given to the Clerk in writing who will treat it in the same manner as an answer to a question in writing.<sup>265</sup> A Minister, providing additional information by indulgence, has added to an answer given by another Minister.<sup>266</sup> A Minister has added to answer he had given while in a previous portfolio.<sup>267</sup> In answering a question Ministers have provided additional comment and information on another question asked of them earlier on the same day,<sup>268</sup> or on an earlier day.<sup>269</sup> A Minister has also by leave added to an answer given the previous day.<sup>270</sup> In the case of additional information, the Minister may choose simply to write directly to the Member concerned.

### Content of answers

The standing orders and practice of the House have been criticised in that restrictions similar to those applying to the form and content of questions do not apply to answers. For instance, Ministers have not been prevented from introducing argument into their answers. Although it has been argued that the standing order provision that ‘questions cannot be debated’ should be read as meaning a prohibition of debate in answering, as well as in putting, a question, it has not been so interpreted by the Chair.<sup>271</sup>

The only provision in the standing orders which deals specifically with the form and content of answers to questions is the requirement that an answer must be relevant to the question.<sup>272</sup> The latitude permitted to Ministers has often been quite considerable in the House of Representatives. Speakers have ruled consistently that provided the answer is relevant and is not couched in unparliamentary language Ministers may virtually answer questions without notice in any way they choose.

259 H.R. Deb. (3.3.70) 19–20; H.R. Deb. (30.4.87) 2278–9.

260 H.R. Deb. (8.6.2000) 17449.

261 H.R. Deb. (18.3.87) 1026–28.

262 H.R. Deb. (25.6.92) 3948; H.R. Deb. (7.2.94) 420–1, 423; H.R. Deb. (10.9.96) 3834; H.R. Deb. (17.2.2000) 13784, 89; H.R. Deb. (29.6.2000) 18719.

263 E.g. H.R. Deb. (31.5.73) 2938–9; H.R. Deb. (11.9.96) 4060; H.R. Deb. (22.6.99) 6986, 6994–5; H.R. Deb. (17.2.2000) 13788. A debate has been adjourned to facilitate this, although this may not be necessary, H.R. Deb. (10.2.2004) 24187.

264 E.g. H.R. Deb. (14.8.69) 255; H.R. Deb. (23.3.94) 1981–3 (Minister’s previous rostered day); H.R. Deb. (17.9.96) 4408; H.R. Deb. (23.11.99) 12359–60; H.R. Deb. (4.12.2003) 23843–4.

265 E.g. H.R. Deb. (21.9.76) 1276; H.R. Deb. (18.8.77) 496; H.R. Deb. (30.10.96) 6249–50.

266 H.R. Deb. (9.12.98) 1730.

267 H.R. Deb. (10.2.2004) 24109.

268 H.R. Deb. (17.10.95) 2204; H.R. Deb. (16.6.2003) 16399.

269 H.R. Deb. (9.9.2003) 19511.

270 H.R. Deb. (2.9.99) 9816–7.

271 H.R. Deb. (4.5.87) 2487; H.R. Deb. (12.5.87) 2972.

272 S.O. 104. *May* states ‘An answer should be confined to the points contained in the question, with such explanation only as renders the answer intelligible, though a certain latitude is permitted to Ministers of the Crown’. *May*, 23rd edn, p. 354.

Even though a question may invite a ‘yes or no’ answer, Members cannot demand that an answer be in such terms.<sup>273</sup> Further, the Speaker has remarked that, where a question has a preamble or a quotation of some length, it is not reasonable for a Member to conclude with a short sharp question and to then claim that the answer should be limited to the contents of the conclusion.<sup>274</sup>

The interpretation of ‘relevant’ has at times been very wide,<sup>275</sup> with a basic requirement being that an answer must maintain a link to the substance of the question.<sup>276</sup> In practice the word has been frequently accepted by the Chair as meaning relevant in some way or relevant in part, rather than directly or completely relevant. Nevertheless, although the test of relevance can be difficult to apply, Ministers have been ordered to conclude their answers or resume their seats as their answers were not relevant.<sup>277</sup> The Chair has also upheld points of order or intimations contesting the relevancy of a Minister’s answer,<sup>278</sup> for example, directing a Minister to ‘come to the question’.<sup>279</sup> Such instances have, however, been somewhat rare. It has been held that a Minister ‘should not engage in irrelevances’, such as contrasting the Government and Opposition, and the Speaker has directed a Minister so doing not to proceed.<sup>280</sup> On other occasions such comments have been permitted,<sup>281</sup> although a question should not ask a Minister about opposition policy as the Minister is not responsible for it.

Speakers have noted that the standing orders concerning questions and answers did not provide a complete statement of the rules governing Question Time—for example, the sub judice rule and the prohibitions on the use of offensive words, imputations, etc. apply to answers.<sup>282</sup> However, Speakers have not accepted that the provisions of standing order 75, dealing with irrelevance and tedious repetition in debate, apply to answers.<sup>283</sup> In any case, standing order 75 suggests an earlier intervention of the Chair. Its application is at the discretion of the Speaker and not the opinion of an individual. It is considered nevertheless that the Chair has sufficient authority to deal with irrelevance or tedious repetition in answers.

The issue of anticipation has also arisen in respect to answers. When answering questions Ministers have been directed to keep away from specific provisions of legislation to come before the House later in the day.<sup>284</sup>

In 1986 the Procedure Committee recommended that standing orders be amended to provide that answers to questions must be relevant, not introduce matter extraneous to the question and should not contain arguments, imputations, epithets, ironical expressions or discreditable references to the House or any Member thereof or any offensive or

273 H.R. Deb. (29.6.99) 7680.

274 H.R. Deb. (29.6.2000) 18718; H.R. Deb. (7.12.2000) 23809.

275 H.R. Deb. (10.9.81) 1158.

276 H.R. Deb. (29.6.2000) 18718.

277 H.R. Deb. (13.9.79) 1077–9; H.R. Deb. (18.9.80) 1470; H.R. Deb. (24.5.88) 2863; H.R. Deb. (9.3.99) 3438; H.R. Deb. (6.9.2000) 20270, 20271; H.R. Deb. (20.6.2002) 4072.

278 H.R. Deb. (22.8.79) 429; H.R. Deb. (25.8.88) 382–4; H.R. Deb. (11.2.99) 2508–12, 2519; H.R. Deb. (17.2.99) 3006; H.R. Deb. (9.3.99) 3438.

279 H.R. Deb. (11.10.99) 11202, 11203; H.R. Deb. (13.5.2003) 13977.

280 H.R. Deb. (27.8.81) 856, 857; H.R. Deb. (9.9.81) 1063–4.

281 E.g. H.R. Deb. (10.9.81) 1160; H.R. Deb. (4.4.84) 1352; H.R. Deb. (24.11.88) 3208; H.R. Deb. (17.8.2000) 19277–8.

282 H.R. Deb. (28.11.88) 3329, *and see* statement by Speaker Andrew, H.R. Deb. (7.12.2000) 23809.

283 H.R. Deb. (28.11.88) 3329; H.R. Deb. (28.6.2000) 18475–6.

284 H.R. Deb. (24.11.88) 3210–12; H.R. Deb. (9.5.91) 3402; *and see* H.R. Deb. (9.12.2004) 81–2. However, note suspension of S.O. 100(f) *see* p. 542.

unparliamentary expressions.<sup>285</sup> The Procedure Committee of a later Parliament (1992) while not in favour of such strict provisions, nevertheless recommended that the relevant standing order be amended to read ‘The answer to a question without notice (a) shall be concise and confined to the subject matter of the question, and (b) shall not debate the subject to which the question refers’.<sup>286</sup> No action was taken by the House on either of the recommendations. In revisiting the subject in 1993 the Procedure Committee of the 37th Parliament concluded that, however much the requirements of the standing orders were to be tightened up, relevance would continue to be a matter of opinion, and that significant change in the nature of answers would depend more on changes of attitudes than on changes to rules.<sup>287</sup>

### Length of answers

The Speaker has no specific power under the standing orders to require a Minister to conclude an answer on the grounds of its length and in the past has only exercised persuasion.<sup>288</sup> In exerting its influence the Chair has emphasised the need for questions and answers to be brief if maximum benefit is to be derived from the limited time allocated to questions. Ministers have often been advised that, should a question require a lengthy response, the proper procedure is for the Minister to state that fact and to seek leave to make a statement after Question Time.<sup>289</sup> While the Speaker may urge a Minister to conclude his or her answer on the ground of its length, Speakers have taken the view that the Chair has no power to require that it be followed. From the early 1980s the length of Ministers’ answers at Question Time increased significantly, the increase being directly responsible for the decline in the number of questions it was possible to ask in the time available. This situation gave rise to considerable dissatisfaction among Members, at one stage to a point where opposition Members adopted an unofficial practice of calling a quorum later in the day for each occasion a Minister’s reply in Question Time had exceeded five minutes.<sup>290</sup> Motions have been moved that a Minister giving a lengthy answer be no longer heard.<sup>291</sup> The Speaker has observed that it is not reasonable for a Member to expect a short answer when his or her question has contained a lengthy preamble.<sup>292</sup>

A number of proposals have been advanced over the years to control the length of answers, three minutes being the usual time limit envisaged.<sup>293</sup> However, when Procedure Committees have considered the subject in recent years they have perceived a need for flexibility in the answering of questions and concluded that the setting of time limits on answers was not the most effective way of dealing with the problem. They have recommended instead that there be a set minimum number of questions answered each Question Time<sup>294</sup> (*see* p. 530).

285 PP 354 (1988) 45.

286 PP 179 (1992) 15.

287 PP 194 (1993) 22–3. At the time of publication no action had been taken to implement the recommendations.

288 H.R. Deb. (25.10.78) 2259.

289 H.R. Deb. (19.8.76) 365.

290 H.R. Deb. (23.9.86) 1274–5.

291 (Negatived on division) VP 1985–87/1558, H.R. Deb. (26.3.87) 1596; VP 1993–94/1638–9, H.R. Deb. (6.12.94) 4014; VP 1998–2001/830.

292 H.R. Deb. (29.6.2000) 18718.

293 H.R. Deb. (25.2.82) 596; NP 32 (19.10.83) 1442–3.

294 PP 354 (1986) 41; PP 194 (1993) 24–25. No formal action was taken on these recommendations, although Governments have at times set their own unofficial targets for numbers of questions.

## Answers and the authority of the Chair

The above paragraphs relating to answers to questions without notice reflect the attitudes of successive Speakers over a number of years. However, it is important to recognise that, as a consequence of a lack of provisions in the standing orders relating to answers, the Chair has a considerable degree of discretion in developing the practice of the House in this area. Thus the Chair may assume the authority to make a ruling or decision which the Chair thinks appropriate and then leave it to the House to challenge that ruling or decision if it does not agree with it. In this way a more effective Question Time could be developed.

## Answers to questions in writing

An answer is given by delivering it to the Clerk, who must supply a copy to the Member who asked the question and arrange for both question and reply to be printed in Hansard.<sup>295</sup> In addition the Clerk arranges for copies to be supplied to the press. Answers are neither read nor presented to the House. Answers delivered to the Clerk after the prorogation of the Parliament or dissolution of the House cannot be accepted. In these circumstances the Minister concerned may supply the answer directly to the questioner and, if he or she wishes, to the press. However, it has been considered that absolute privilege might not attach to the distribution of copies of the answer, and the answer would not be published in Hansard (*and see Parliamentary Privileges Act 1987*).

Answers received by the Clerk subsequent to the last sitting of a session or Parliament but prior to prorogation or dissolution are published if they are received in time to be included in the final weekly edition of Hansard for that session or Parliament. Answers which miss this deadline are not published in the Hansard of the next session or next Parliament.

Occasionally Ministers supply interim answers to questions in writing. Interim answers are published in Hansard but the relevant questions are not removed from the Notice Paper until they are fully answered. The following guidelines are used in determining what constitutes an interim, as opposed to a final, reply. Any answer which makes a real attempt to supply the information sought in a question is considered fully answered. An answer to a question seeking information about an area outside a Minister's administrative responsibilities is considered fully answered if the Minister replies that he or she is having inquiries made and will provide the information. Similarly an answer to a question seeking information about various matters both within and outside a Minister's responsibility is considered fully answered if an answer is supplied to those parts within the Minister's administrative responsibility. An example of such a question would be one seeking statistical information on activities of the Australian Government and overseas governments within a field for which the Minister is responsible in Australia.<sup>296</sup> However, if the question concerns matters wholly within a Minister's administrative responsibility, a reply that the Minister will provide the information at a later date is insufficient and the question remains on the Notice Paper. A statement by a Minister that he or she refuses to answer a question, with or without reasons, is considered to fully answer the question.

<sup>295</sup> S.O. 105(a).

<sup>296</sup> H.R. Deb. (9.12.76) 3688–9.



A Minister has answered a question in writing on behalf of another.<sup>297</sup>

The answer to a question in writing may refer the Member to the answer to another question if relevant.<sup>298</sup> This approach should be adopted if, for example, an answer applies equally to two questions.<sup>299</sup> It is unacceptable to give a single reply to two (or more) separate questions.

Supplementary answers adding to or correcting information contained in earlier answers to questions in writing are themselves dealt with as answers to questions in writing. The original question number is used for identification.<sup>300</sup>

If a Minister relinquishes a portfolio before an answer to a question has been published in Hansard, the answer is returned to the former department or to the new Minister. The answer should then be re-submitted under the new Minister's name if he or she is satisfied with the answer, or alternatively the answer resubmitted may be prefaced 'The answer provided by my predecessor ( . . . ) to the honourable Member's question is as follows: . . .',<sup>301</sup>

In 1975 an answer to a question was submitted by a Minister who had resigned as a Member. The answer was not accepted because, while the Minister could continue to act in his executive capacity, he could no longer act in his parliamentary capacity. The Minister resigned from the Ministry soon afterwards and an answer to the question was submitted by his successor.

From time to time answers have not been printed in Hansard because of their extreme length and the difficulties which would be created in producing Hansard. The answer recorded by Hansard has been along the following lines:

The information which has been collated for the honourable member is too lengthy to be published in Hansard. A copy of the reply is filed in the Table Office of the House of Representatives where it can be read or a copy of it obtained.<sup>302</sup>

This practice was first approved by Speaker McLeay in 1966 and has been continued under subsequent Speakers. In such cases the Member who asked the question is given a copy of the full answer.

It is not in order for a Minister to supply an abbreviated reply to the Clerk for publication in Hansard and a full reply to the Member concerned, even if a further copy of the full reply is placed in the Parliamentary Library or the House of Representatives Table Office. Any decision to exempt an answer from publication in Hansard lies with the Speaker, not Ministers.

Hansard's objective is to publish on the first day of a period of sittings answers to questions in writing which are provided during a non-sitting period. However the volume of answers is sometimes so large that some answers must be held over for publication in subsequent issues of Hansard.<sup>303</sup>

### *Unanswered questions*

As noted earlier, there is no obligation on Ministers to answer. Members' expectations that Ministers will or should provide answers are not always realised. If a reply has not

297 H.R. Deb. (16.2.82) 144.

298 H.R. Deb. (7.4.70) 781, question No. 1.

299 See H.R. Deb. (26.11.2003) 23105.

300 H.R. Deb. (15.8.72) 147–8.

301 H.R. Deb. (16.2.71) 73, question No. 1570.

302 H.R. Deb. (28.11.86) 4028, question No. 1239.

303 H.R. Deb. (3.6.86) 4497–8.

been received 60 days after a question first appeared on the Notice Paper, the Member who asked the question may, at the conclusion of Question Time, ask the Speaker to write to the Minister concerned, seeking reasons for the delay in answering.<sup>304</sup> Any response to the Speaker's letter is forwarded to the Member concerned.

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304 S.O. 105(b). *See also* Procedure Committee reports, PP 179 (1992) 18; PP 194 (1993) 29.