

CHAPTER 8

Conduct of proceedings

This chapter describes how the Senate conducts its business once it has met, and how the business to be dealt with is determined.

Quorum

Section 22 of the Constitution provides:

Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

By the *Senate (Quorum) Act 1991*, which was introduced in accordance with a recommendation of the Senate Select Committee on Legislation Procedures in 1988, the quorum of the Senate was altered to one quarter of the senators, that is, 19 out of 76 senators.

The standing orders of the Senate contain provisions to ensure that a quorum is kept during a sitting of the Senate.

If a quorum is not present when the President takes the chair at the beginning of a sitting, the bells are rung for a further five minutes, and if a quorum is not then present, the President adjourns the Senate till the next sitting. A senator present at this time is not allowed to leave the chamber while a quorum is being formed.¹

At any time during a sitting, a senator may draw attention to the lack of a quorum, and for that purpose may interrupt a senator who is speaking.² The bells are then rung for four minutes, and if a quorum is still not present the President adjourns the Senate till the next sitting. The doors remain unlocked after the bells have been rung and when the senators are being counted. A senator who enters the chamber at that stage may be counted for the purpose of a quorum, but not one

1 SO 51.

2 SO 52(3), 197(1).

who enters after the President has finally declared that a quorum is not present.

If a division reveals that a quorum is not present, the President adjourns the Senate till the next sitting, and no decision is taken as a result of the division.³

If attention is drawn to the lack of a quorum in committee of the whole, and if a quorum is still not present after the bells have been rung for four minutes, or if a division in the committee reveals the lack of a quorum, the Chair of Committees leaves the chair and reports to the Senate.⁴ When that report is made the bells are rung for four minutes, and if a quorum is not then present the President adjourns the Senate till the next sitting day.⁵

A senator present in the chamber may not leave the chamber while a quorum is being formed.⁶ A senator who leaves or attempts to leave the chamber contrary to this standing order may be required by the chair to return.

If a quorum is called for when a senator is speaking, the time taken to form a quorum does not come out of the senator's speaking time. Nor does it reduce the time for a debate unless the Senate is operating under a limitation of debate under standing order 142.⁷

If the Senate is adjourned for lack of a quorum, which is called a "count-out", the names of the senators present are recorded in the Journals.⁸

Occasionally it is suggested that the ability of a senator to call attention to the lack of a quorum should be restricted, because the frequent use of that procedure may disrupt the transaction of business. The requirement for a quorum has been virtually eliminated in the British House of Commons for this reason. In view of the explicit terms of section 22 of the Constitution, however, any restriction on the right of a senator to call attention to the absence of a quorum may be regarded as unconstitutional, as a procedural rule of the Senate cannot be inconsistent with the Constitution.⁹

It is not the practice for the President to call attention to the absence of a quorum. The President must be satisfied that a quorum is present before taking the chair but, once the chair is taken, the

3 SO 52(1).

4 SO 147.

5 SO 52(2).

6 SO 52(4).

7 SO 52(7).

8 SO 52(6).

9 For a discussion of this point, see Finance and Public Administration Committee, additional estimates 2007-08 hearing, transcript, pp. 6-7.

presence of a quorum is the responsibility of the Senate.

The oftmade assertion that it is the responsibility of the government to maintain a quorum is not supported by the rules. The responsibility rests with all senators. This principle was affirmed by a resolution agreed to by the Senate on 4 October 1989.¹⁰

Notice Paper

On each sitting day a Notice Paper is issued showing all outstanding business on the Senate's agenda. There is no Notice Paper for the first sitting day of a new session, as the business before the Senate lapses on the previous day.¹¹ The full Notice Paper appears on the internet and an abbreviated version is issued in printed form.

In principle the business set out on the Notice Paper may be transacted on the day for which it is listed, which is usually the sitting day for which the Notice Paper is issued, and in the order indicated on the Notice Paper. Usually, however, the Senate has before it more business, particularly business initiated by senators who are not ministers, than can possibly be transacted over a session, and only a fraction of the business on the Notice Paper is reached on any sitting day. Business not reached remains on the Notice Paper for the next day of sitting and for each successive day until it is disposed of.¹²

The Notice Paper shows the order in which the listed business should be transacted, in accordance with the rules relating to the order of business set out in standing orders.

Ministers, however, may arrange the order of items of government business on the Notice Paper, which usually consist of government bills, in the order they choose.¹³ This provision is used by the government to rearrange the order of government business from day to day, so that government business does not appear on the Notice Paper in the same order from day to day.

It is also open to the Senate to rearrange the order of business,¹⁴ and therefore the Notice Paper does not necessarily indicate the order in which business will be transacted.

Because of this, another, briefer document, the Order of Business, or Senate "Red", is issued on each sitting day, showing the business which it is intended to deal with on that day and the order

10 J.2083-5.

11 See Chapter 7, Meetings of the Senate, under Meetings after prorogation or dissolution of House.

12 SO 80(2), 97(2).

13 SO 65.

14 See under Rearrangement of business, below.

in which it is expected that business will be transacted. Even this document, however, is not an infallible guide, because some business may not be reached and the order of business may be rearranged during the day.¹⁵

Although the Senate begins a new session after a prorogation with an empty Notice Paper, business which has lapsed because of a prorogation may be restored to the Notice Paper by motion on notice, and consideration of that business resumed where it was left off. It is the practice to restore such items of business to the Notice Paper at the beginning of each session.¹⁶

Routine of business

The routine in which the Senate deals with its business is set out in standing order 57. On each day, question time commences at 2 pm, and other items which are taken after question time then follow, such as debates on urgency motions and matters of public importance. The routine of business is as follows:

Monday:

- (i) Government business only
- (ii) At 2 pm, questions
- (iii) Motions to take note of answers
- (iv) Petitions
- (v) Notices of motion
- (vi) Postponement and rearrangement of business
- (vii) Formal motions - discovery of formal business
- (viii) Any proposal to debate a matter of public importance or urgency
- (ix) Government business
- (x) At 9.50 pm, adjournment proposed
- (xi) At 10.30 pm, adjournment

Tuesday:

- (i) Government business only

15 For further information on procedural publications, see Chapter 3, Publication of Proceedings.

16 See also Chapter 12, Legislation, under Revival of bills.

- (ii) At 2 pm, Questions
- (iii) Motions to take note of answers
- (iv) Petitions
- (v) Notices of motion
- (vi) Postponement and rearrangement of business
- (vii) Formal motions - discovery of formal business
- (viii) Any proposal to debate a matter of public importance or urgency
- (ix) Government business
- (x) At 6.50 pm, consideration of government documents for up to 30 minutes under standing order 61
- (xi) At 7.20 pm, adjournment proposed
- (xii) Adjournment.

Wednesday:

- (i) Government business only
- (ii) At 12.45 pm, matters of public interest
- (iii) At 2 pm, questions
- (iv) Motions to take note of answers
- (v) Petitions
- (vi) Notices of motion
- (vii) Postponement and rearrangement of business
- (viii) Formal motions - discovery of formal business
- (ix) Any proposal to debate a matter of public importance or urgency
- (x) Consideration of committee reports under standing order 62(4)
- (xi) Government business
- (xii) At 6.50 pm, consideration of government documents for up to 30 minutes under standing order 61
- (xiii) At 7.20 pm, adjournment proposed

- (xiv) At 8 pm, adjournment.

Thursday:

- (i) Consideration of orders of the day relating to private senators' bills¹⁷
- (ii) Petitions
- (iii) Notices of motion
- (iv) Postponement and rearrangement of business
- (v) Formal motions - discovery of formal business
- (vi) Consideration of committee reports under standing order 62(4)
- (vii) Government business
- (viii) At 2 pm, questions
- (ix) Motions to take note of answers
- (x) Any proposal to debate a matter of public importance or urgency
- (xi) Not later than 4.30 pm, general business
- (xii) Not later than 6 pm, consideration of government documents under general business
- (xiii) Not later than 7 pm, consideration of committee reports and government responses under standing order 62(1)
- (xiv) At 8 pm, adjournment proposed
- (xv) At 8.40 pm, adjournment.

Notices of motion, formal motions and postponement and rearrangement of business occur before the Senate embarks on any business for the day except for the “quarantined” government business on Monday, Tuesday and Wednesday; these matters are explained below.

Special precedence for certain business

Certain business is given special precedence over all other business.

A notice of motion for the reference of a matter of privilege to the Privileges Committee is listed on the Notice Paper as a matter of privilege and takes precedence over all other business on the day for which the notice is given, provided that the matter has been raised in writing with the

17 Pursuant to a temporary order of the Senate.

President and the President has given it precedence in accordance with standing order 81.¹⁸

Certain business is categorised as business of the Senate, a category separate from government business, that is, business introduced by ministers, and general business, that is, business which is introduced by senators who are not ministers. Business of the Senate takes precedence over government and general business on the day for which it is listed.¹⁹ The following matters are classified as business of the Senate:

- (a) a motion for leave of absence for a senator;
- (b) a motion concerning the qualification of a senator;
- (c) a motion to disallow, disapprove, or declare void and of no effect any instrument made under the authority of any Act of Parliament which provides for the instrument to be subject to disallowance or disapproval by either House of the Parliament, or subject to a resolution of either House of the Parliament declaring the instrument to be void and of no effect;²⁰
- (d) an order of the day for the presentation of a report from a committee;
- (e) a motion to refer a matter to a standing committee.

By special order of the Senate, other items of business may be classified as business of the Senate, and placed on the Notice Paper and given precedence accordingly. In recent years it has been the practice to make the consideration of reports from the Procedure Committee business of the Senate, particularly when there are multiple items for consideration.

A business of the Senate item which is adjourned continues to take precedence over government and general business on the day to which it is adjourned.

Government and general business

Government business (business initiated by ministers) takes precedence over general business (business initiated by other senators) at all times except for two and a half hours on Thursday at the stage indicated in the routine of business.²¹ In addition, under a temporary order agreed to in late 2010, general business orders of the day for the consideration of bills take precedence over all other business for a period of two hours and 20 minutes on Thursday mornings.²² This

18 See Chapter 2, Parliamentary Privilege, under Raising of privilege matters.

19 SO 58.

20 See Chapter 15, Delegated Legislation.

21 SO 59.

22 Adoption of Procedure Committee's Fourth report of 2010, PP305/10 22/11/2010, J.375-6.

arrangement gives effect to agreements reached after the 2010 election between the government and independent and minor party members for greater opportunities for the consideration of private members' and senators' bills.

During the three “quarantined” periods for government business, 12.30 pm²³ to 2 pm on Mondays and Tuesdays and 9.30 am to 12.45 pm on Wednesdays, only government business may be transacted, and everything else requires leave or a suspension of standing orders.²⁴

Ministers occasionally initiate business with an indication that they do so in a private and not a ministerial capacity. Such business is entered on the Notice Paper as general business.

A motion for the consideration or adoption of the report of a committee of the Senate and any government statement on such a report takes precedence over other general business on the day on which it is set down for consideration.²⁵

In practice, the order of business is usually rearranged to determine the items of general business which will be considered each Thursday. This is often done by a motion moved by a minister under standing order 56; the items of business specified in such a motion are the only items to be considered during the available time. The items to be considered are usually determined by agreement between the non-government parties in the Senate. Committee reports are usually not considered at the time for general business, but in accordance with the special provisions for their consideration under standing order 62 (see below).

If a business of the Senate item is under consideration or not reached at the time for the commencement of general business, it takes precedence in accordance with standing order 58, except for the period on Thursday mornings when, under a temporary order, only general business orders of the day for the consideration of bills may be dealt with.

The Senate may extend the time for consideration of general business.²⁶

23 As part of the arrangements for consideration of private senators' bills under the 2010 temporary order, the Senate meets at 10 am on Mondays and government business only is considered till 2 pm with no divisions before 12.30 pm.

24 For the presentation of a report, by leave, during time quarantined for government business, see 30/8/2004, J.3947.

25 SO 60.

26 11/4/1991, J.924-6.

Consideration of committee reports and Auditor-General's reports

There is a period of one hour on Wednesday and Thursday for debate on committee reports then presented, with a speaking time limit of 10 minutes for each senator speaking to a report.²⁷ This procedure applies to any document presented by a committee at that time.

Another period of one hour on Thursday is provided for consideration of committee reports and government responses to such reports, and each senator may speak to any adjourned debates on motions for the consideration or adoption of committee reports and government responses for not more than 10 minutes.²⁸ A senator who has already spoken in a debate may speak again under the standing order, and the exercise of the right to speak under the standing order does not prevent a senator speaking for a third time if a motion for the consideration or adoption of a committee report or a government response is called on during the consideration of general business. Because this third opportunity, “in the normal course of business”, does not in practice arise, senators are allowed to speak for a third time if an adjourned debate is called on again on Thursday.

Auditor-General's reports are also considered at this time, after committee reports.

Any outstanding notices of motion for the consideration or adoption of committee reports, which are relatively rare, are first considered at that time on Thursday because of the special precedence they are given.²⁹

Consideration of government documents

A special time is provided on Tuesday and Wednesday for the consideration of documents presented by ministers. Under standing order 61, 30 minutes are set aside for senators to move motions to take note of one or more of such documents, and each senator may speak for not more than five minutes to such a motion.

Documents which are presented at any time and not considered under the standing order are automatically placed on the Notice Paper for future consideration.

An hour of the time provided for general business on Thursdays is allocated for consideration of adjourned motions to take note of government documents or documents not considered in the 30 minute period. A senator who has already spoken in a debate during the 30 minute period may then speak again, and may speak for a third time if an adjourned debate is again called on. Because this third opportunity, “in the normal course of business”, does not in practice arise, senators are

27 SO 62(4).

28 SO 62.

29 SO 60.

allowed to speak for a third time if an adjourned debate is called on again on Thursday.

Documents tabled on any day of the week are carried over for consideration each day until they appear on the list for consideration under general business on Thursday.

A relevant amendment may be moved to a motion to take note of a document, but an amendment to take note of a different document is not a relevant amendment.³⁰

Curtailed of non-government business

The Senate sometimes dispenses with some or all of the elements of general business on Thursdays, usually to devote more time to government business.

If general business is dispensed with in advance by special order on Thursdays, government business automatically occurs at that time. This is because standing order 59 provides that general business takes precedence over government business at the time provided on Thursdays, but does not require that only general business be considered at that time. Business of the Senate takes precedence over both except on Thursday mornings under the 2010 temporary order. If, however, general business is not dispensed with by special order but is called on and concludes early, the consideration of committee reports then occurs and the question for the adjournment is then proposed in accordance with standing order 54(4). Dispensing with any element of business on Thursday afternoons after the commencement of general business has the same effect of the adjournment being proposed early. The basis of this distinction is that, once general business has commenced, there is no provision in the routine of business for government business to be resumed, and there is therefore an expectation that there will be no further government business considered that day. In contrast, if consideration of orders of the day for private senators' bills on Thursday mornings under the temporary order was dispensed with, the "normal" routine for Thursday mornings would be restored. For government business called on by leave after the conclusion of general business, see proceedings on 24 June 2010. The unsatisfactory nature of these proceedings was the subject of criticism in debate.³¹

If consideration of government documents at 6.50 pm on Tuesdays and Wednesdays is dispensed with by special order this results in the business before the Senate at 6.50 pm running to 7.20 pm. The basis of this is that there is then nothing to prevent the continuation of that business, and there is no possibility of senators being caught unawares by the resumption of business as there is on Thursdays.

30 See ruling of Deputy President West, SD, 24/3/1998, pp. 1152-3.

31 J.3775, 3776; SD, p. 4414.

On the same basis, if general business and consideration of committee reports on Thursdays are both dispensed with by special order together and in advance of their commencement, government business runs to 8 pm.³²

If there are no orders of the day relating to committee reports or government documents but consideration of them is not dispensed with by order, this is regarded as the equivalent of the item being called on and concluding early.

Presentation of other documents

Reports from committees and other documents ordered by the Senate to be produced may be tabled, documents may be presented by ministers (apart from those which have a specified time for consideration in the routine of business) and documents required by statute to be tabled may be presented, at any time when there is no other business before the chair.³³ Such documents are usually presented before business is commenced in the afternoon and may be debated on motions moved by leave. Such motions are subject to special time limits: 30 minutes per motion, 60 minutes for all motions moved consecutively and 5 minutes per speaker.³⁴

Matters of public interest

Between 12.45 pm and 2 pm on Wednesdays senators may speak on matters of public interest without any question before the chair, and with a time limit of 15 minutes for each speaker. Divisions are not permitted at this time.³⁵

Notices of motion and orders of the day

Within each category of business listed on the Notice Paper, there are two types of business: notices of motion and orders of the day.

A notice of motion is a statement of intention by a senator that the senator intends to move a motion in the terms of the notice on the day for which the notice is given. Notices of motion are given at the time indicated in the routine of business, and may not be given at other times except by leave.³⁶

32 For precedent, see 21/9/2011, J.1528-9.

33 SO 63 refers to reports of committees and documents ordered to be produced; SO 166 to documents tabled by ministers and under statute.

34 SO 169(2).

35 SO 57(2).

36 Except notices for references to legislative and general purpose standing committees: SO 25(11).

There is an opportunity, at the time indicated in the routine of business, for motions of which senators have given notice to be put and determined without debate or amendment, if no senator objects to that course.³⁷ At that time the President asks whether there are any formal motions, and a senator may ask that a motion of which the senator has given notice be taken as formal. If no senator present objects to that course, the motion is then put and determined without amendment or debate. Motions which are not determined in this way are dealt with in accordance with the rules relating to the routine and order of business.

Further information on notices of motion and formal motions is contained in Chapter 9, Motions and Amendments.

Orders of the day are items of business which the Senate has ordered to be taken into consideration on a particular day. Most orders of the day consist of adjourned debates on matters which have been considered earlier, and most are listed for the next day of sitting.

Notices of motion and orders of the day listed for a sitting day which are not reached on that day are automatically deferred till the next day of sitting and are listed on the Notice Paper accordingly.³⁸

A notice of motion may be withdrawn by a senator who has given the notice. As a notice of motion is simply a statement of intention by a senator to move a motion, it is entirely under the control of the senator who has given the notice, and who may choose not to carry out the stated intention.³⁹ A senator may also alter the terms of, or the day for moving, a motion of which notice has been given, provided that this is done at least a day before the motion is due for consideration.⁴⁰

An order of the day, being a matter which the Senate has ordered for consideration on a particular day, can be removed from the Notice Paper only by a motion duly moved to discharge the order of the day.⁴¹

New business

New business may not be commenced after the question for the adjournment of the Senate has been first put on any sitting day.⁴² The purpose of this rule is to promote certainty in the conduct of business; senators should be able to assume that business in which they have an interest will

37 SO 66.

38 SO 80(2), 97(2).

39 Special provisions apply to the withdrawal of notices of motion for the disallowance of delegated legislation: SO 78; see Chapter 9, Motions and Amendments, under Notice of motion.

40 SO 77.

41 SO 97(4).

42 SO 64.

not be commenced after the prescribed adjournment time. New business means any business on which the Senate is not engaged at the time when the adjournment is put. This means that, if the adjournment of the Senate is deferred and the Senate continues to transact business after that time, the only business dealt with is the business on which the Senate was engaged at that time.

This prohibition may, however, be suspended by motion on notice or by an absolute majority of senators (see under Suspension of standing orders, below), and this may occur at the end of a period of sittings due to the pressure of business.⁴³ Such a motion must be moved before the question for the adjournment is put, but there are precedents for the motion being moved by leave after the adjournment is put.⁴⁴

Rearrangement of business

As has been indicated, it is common for the Senate to rearrange the order of its business, so that business is dealt with in an order different from that specified by the standing orders.

There are two ways in which this can be done under the standing orders.

A minister may at any time without notice move a motion connected with the conduct of the business of the Senate. Standing order 56 empowers ministers to move motions at any time when there is no other business before the chair to rearrange any of the business before the Senate. The standing order thus confers upon ministers a special right which is not possessed by other senators.

The standing order is now regarded as permitting any motion to specify the order in which the Senate will deal with business which is before it, to postpone any business at any time, to adjourn debate on any business before the Senate, or to have the question before the Senate put.⁴⁵

The standing order does not allow a motion to bring on for consideration some matter of business not in some sense before the Senate. Nor does it allow a motion to dispense entirely with a category of business which the Senate has ordered (including by standing order) to be dealt with at a particular time. For example, it does not allow a motion to dispense with questions, with the reporting of a proposal for an urgency motion or a matter of public importance or with general business, but it would allow a motion to postpone any of those matters to a particular time later in a day. Once a category of business has been commenced, a minister may, under standing order 56, move a motion (but not so as to interrupt the consideration of a particular item of business without first adjourning the debate) that that business not be further proceeded with; for example,

43 A contingent notice has been used for this purpose: 16/6/1992, J.2444.

44 See under Leave of the Senate, below.

45 In relation to the adjournment of debate and the closure, see SO 199(3) and 201(6).

when general business is under consideration a minister may move that general business not be further proceeded with. The rationale of this is that it is analogous to adjourning a debate, and those senators who have an interest in general business would then be in attendance.

In earlier times the provision in the standing order was regarded as allowing a minister to move virtually any motion to have the Senate consider any business and in any order regardless of the standing orders. In more recent times questions of interpretation have arisen because of the provisions now in the standing orders which fix the order of business in much greater detail than formerly, in particular, provisions which require that particular business be taken at particular times or stages in the routine of business. Because the power conferred by standing order 56 is not a power to suspend standing orders without notice and without an absolute majority, and because the rights of senators could be severely infringed by, for example, a motion to dispense with the consideration of government documents, some refinement of the interpretation of the standing order has occurred.

The other method by which business may be rearranged under the standing orders is by the postponement of business by a senator who has charge of it. Before the time provided in the routine of business a senator may lodge with the Clerk a notice that any notice of motion standing in the senator's name, or order of the day of which the Senator is in charge on the Notice Paper for that day, be a notice of motion or order of the day for a subsequent day. At the time provided the Clerk reads a list of the postponement notices, and the items of business are postponed accordingly, but at the request of any senator the question is put on any item, and such a question is determined without amendment or debate.⁴⁶ Before an amendment of the standing order in 1999, the senator in charge of any particular item of business had to move a motion for a postponement. In the absence of the senator in charge of any business, a postponement may, at the request of such senator, be made by any other senator. Normally the Senate accepts a postponement by a senator under this standing order.⁴⁷

If a senator moves a motion by leave to postpone business at other times, it is regarded as a motion to rearrange business (see below) and therefore subject to debate.

In addition to exercising these rights under the standing orders, senators may seek to rearrange business by leave of the Senate or by the suspension of standing orders.⁴⁸

46 SO 67.

47 For a postponement notification required to be put, see 18/8/2003, J.2178; 19/8/2003, J.2213.

48 See below; for rearrangement of government business by non-government senators, see Chapter 12, Legislation, under Control of bills.

Interruption of business

Business the consideration of which is interrupted, for example, by the calling on of other business at a prescribed time or the putting of the question for the adjournment of the Senate at the time specified in the standing orders, is deemed to have been adjourned. If the interruption occurs in the course of the day the adjournment is till a later time of the day. If interrupted business is not reached later in the day, or the adjournment of the Senate intervenes, the business is listed on the Notice Paper as business for the next day of sitting.⁴⁹

In practice, where debate is on a non-substantive question which does not require a definite decision of the Senate, and it would not be rational to retain the item on the Notice Paper, the Chair puts the question when the time for debate has expired. An example is a motion to take note of a question after question time.

Standing order 68(2)(c) provides that if a vote is being taken the vote shall be completed. This is taken to refer to the whole process of determining a question, so that if the process of determining the question has commenced it is concluded when the time has expired. Thus, on 28 August 1997 in debate on an opposition general business motion concerning tariffs, the motion to close debate was put just before the time for the debate expired. The division on the closure was then concluded. That motion having been carried, this started the process of determining the question. The process was then completed by putting the amendment on the question and then putting the main question.

Urgency motions under standing order 75 are subject to the special provision in paragraph (7) whereby the question on an urgency motion is put when the time expires.

Resumption of postponed and adjourned business

Normally business is postponed or adjourned till the next day of sitting, and therefore remains on the Notice Paper to be called on in its due order. Sometimes, however, business is postponed till a later hour, that is, later on the same day. This includes business interrupted in the course of a day, which is deemed to be adjourned till a later hour. There is then a question of when it is to be called on.

Where a government business notice of motion or order of the day is postponed or adjourned till a later hour, it is called on during a time when government business may be considered, when a minister indicates that it is to be called on.

Where an item of general business is postponed or adjourned till a later hour, it is not called on

49 SO 68.

unless and until it is reached in the normal course of consideration of general business (which in practice does not happen), or unless the order of business is rearranged to have it called on.

A business of the Senate item which is postponed or adjourned till a later hour is called on when the senator in charge of the item indicates that it is to be called on, provided only that it does not interrupt the consideration of business which, under a standing or other order, is considered at a fixed time or place in the routine of business, such as questions, a matter of public importance or urgency, consideration of government documents under standing order 61 and consideration of committee reports under standing order 62. Such a business of the Senate item is called on at the direction of the senator in charge of it notwithstanding that it intrudes upon the time available for government business or general business; the rationale of this is that business of the Senate takes precedence over government and general business under standing order 58. A business of the Senate item which is interrupted is called on again when business other than fixed-time business is resumed, regardless of whether government or general business would otherwise be considered at that time.

Leave of the Senate

A motion otherwise requiring notice may be moved without notice by leave of the Senate.⁵⁰ Senators may also seek leave to take other courses of action which would not otherwise be in accordance with standing orders, for example, to make a statement or to present a document.

Leave of the Senate means unanimous consent of senators present, and is granted when no senator present objects to the course of action for which leave is sought.

A senator seeking leave must make clear to the Senate the course of action for which leave is sought. The President then asks: "Is leave granted?". A senator may object simply by saying "no". If there is no objection, the President states: "There being no objection, leave is granted", and the senator granted leave then proceeds on the course of action for which leave has been granted.

Leave is restricted to the particular purpose for which it has been sought, and is subject to any limitations contained in the application for leave. Thus a senator granted leave to make a statement cannot then move a motion, and a senator granted leave to move a motion relating to one subject cannot then move a motion relating to another subject; similarly, a senator who has successfully sought leave to speak for two minutes cannot speak for longer than that time.

The granting of leave does not suspend the other requirements of the standing orders. For example, a senator who has successfully sought leave to make a statement cannot in the course of the statement

50 SO 88.

make any remarks which would be out of order under the rules of debate in standing order 193.

In practice, a great deal of the Senate's business is transacted by leave, and during any typical sitting senators frequently seek leave to move motions, make statements and take other actions which would not be permissible under the standing orders. A senator normally cannot move a motion without giving notice, and a motion of which notice has been given by a senator who is not a minister would normally not be reached in the course of a session because of the large number of notices of motion and other business on the Notice Paper. The granting of leave therefore provides an expeditious and convenient way of transacting business by unanimous consent.

Suspension of standing orders

Another method of transacting business which would not otherwise be in accordance with standing orders is for the Senate to suspend its standing orders to allow a particular course of action to be undertaken.

In cases of urgent necessity standing orders may be suspended on motion without notice if the motion is carried by an absolute majority of the whole number of senators.⁵¹ The proviso relating to urgent necessity is a matter for the Senate to judge. If a senator moves the suspension of standing orders, the Senate determines whether the matter for which the suspension is sought is a matter of urgent necessity by its determination of the motion.⁵²

If notice of a motion to suspend standing orders is given, however, the motion may be carried by a simple majority, that is, a majority of the senators present and voting. Such a notice of motion has no special precedence over other business, so that if a senator who is not a minister gives such a notice it is placed on the Notice Paper as general business and in all likelihood will not be reached in the normal course of business.

In order to move for the suspension of standing orders and to avoid the requirement for an absolute majority, which is difficult to achieve, senators have devised a number of contingent notices of motion. These notices indicate that, contingent on a particular stage being reached in the Senate's business, the senators will move the suspension of standing orders in order to allow a particular course of action.

This device of moving for the suspension of standing orders under a contingent notice is particularly used for the rearrangement of business. As has been explained above, a minister may move a motion relating to the rearrangement of business before the Senate at any time without notice

51 SO 209.

52 Ruling of President Gould, SD, 21/7/1909, p. 1378.

under standing order 56, but a senator who is not a minister may move only to postpone items of business of which the senator has charge. There is no right of a senator who is not a minister to move for the rearrangement of business. Thus party leaders and independent senators usually place on the Notice Paper contingent notices that they will move to suspend standing orders to allow them to move a subsequent motion to rearrange business before the Senate. A notice of motion which allows this to be done at the time for the postponement for business is in the following terms:

LEADER OF THE OPPOSITION IN THE SENATE: To move (contingent on the President proceeding to the placing of business on any day)—That so much of the standing orders be suspended as would prevent the Leader of the Opposition in the Senate moving a motion relating to the order of business on the Notice Paper.

Pursuant to this notice, at the time for the postponement of business a senator may move that so much of the standing orders be suspended as would prevent the senator moving a motion relating to the order of business on the Notice Paper. This motion requires only a simple majority to be carried, and if it is agreed to the senator may then move a motion to rearrange the business of the Senate, for example, to give precedence over all other business to some item of business standing on the Notice Paper in the senator's name.

Senators have also devised contingent notices to allow them to bring on for consideration some completely new item of business which is not on the Senate Notice Paper, for example, some completely new motion. This contingent notice is in the following terms:

LEADER OF THE OPPOSITION IN THE SENATE: To move (contingent on the Senate on any day concluding its consideration of any item of business and prior to the Senate proceeding to the consideration of another item of business)—That so much of the standing orders be suspended as would prevent the Leader of the Opposition in the Senate moving a motion relating to the conduct of the business of the Senate or to provide for the consideration of any other matter.

It will be seen that the suspension of standing orders sought by a motion moved pursuant to this notice would allow a senator to move any motion which a minister may move under standing order 56 or a motion to give precedence to some completely new item of business. Because standing order 56 is not interpreted as allowing a minister to move for the consideration of a completely new item of business, a contingent notice in the following terms is employed by ministers:

LEADER OF THE GOVERNMENT IN THE SENATE: To move (contingent on the Senate on any day concluding its consideration of any items of business and prior to the Senate proceeding to the consideration of another item of business)—That so much of the standing orders be suspended as would prevent a Minister moving a motion to

provide for the consideration of any matter.

These contingent notices have virtually overcome the safeguard contained in standing order 209, that a motion for the suspension of standing orders moved without notice requires an absolute majority. It may seem at first sight, therefore, that that safeguard could be removed. If the safeguard were removed, it might also appear that, to avoid complexity in the proceedings, senators should be allowed to rearrange the business without a suspension of standing orders. The requirements to give a contingent notice and to suspend the standing orders before a motion to rearrange the business can be moved, however, still provide some safeguard. The Senate must make a deliberate decision to depart from the standing orders in order to allow some course of action to be undertaken, and the Senate has an opportunity to determine whether standing orders should be suspended, that is, whether the matter proposed to be raised is of urgent necessity, before making a decision on the merits of that matter. It is therefore considered that the limitations contained in standing order 209 should be maintained.⁵³

It has been ruled that a contingent notice of motion of this type may be used only once by any senator at each occurrence of the contingency to which it refers. The rationale of this ruling is that once the Senate has been asked to suspend the standing orders to depart from the order of business on one such occasion and has declined to do so, the request should not be capable of being repeatedly made, because this would provide a means of permanently obstructing the business of the Senate.⁵⁴

These general purpose contingent notices for suspension of standing orders are designed to allow the rearrangement of business to bring on any item of business, which of course is not specified in the contingent notices. The use of such notices therefore involves suspending standing orders first, then moving to rearrange the business, then moving the motion concerned. Contingent notices designed to deal with particular circumstances often have suspension of standing orders built into their terms, so that the intermediate step is not necessary.⁵⁵

53 For precedents for suspensions of standing orders moved pursuant to standing order 209 in circumstances not covered by any of the available contingent notices see proceedings on 25/11/2010, J.434, 437-9, and 26/11/2010, J.470.

54 The rulings, and expositions of them, occurred on 3/12/1991, J.1826; 5/12/1991, J.1870-1; 16/11/1992, J.3063-4; 30/11/1992, J.3157; the Procedure Committee recommended that the Senate uphold the rulings: 1st Report of 1993, PP 158/1993, 28/9/1993. See also ruling of President Sibraa, 20/12/1993, J.1106; ruling of President Calvert, 14/9/2005, J.1108-9; 15/9/2005, J.1141-2; ruling of President Hogg, 25/11/2010, J.439; Procedure Committee, 2nd Report of 2005, PP 280/2005, endorsed by the Senate 9/11/2005, J.1380-1. As a result of the last decision of the Senate, the Chair is able to exercise a discretion in applying the ruling to ensure that adequate opportunity is given to senators to state a case for a suspension of standing orders.) The principle has also been applied to repeated suspensions of standing orders moved other than pursuant to contingent notice, 25/11/2010, J.439.

55 18/10/1996, J.756.

A motion for suspension of standing orders moved during consideration of a matter must be relevant to that matter.⁵⁶ This means that contingent notices of motion to suspend standing orders to rearrange the business can be employed only when there is no other business before the chair.

Suspension of standing orders is limited to the particular purpose for which the suspension has been sought.⁵⁷ Thus, if a senator is successful in moving a motion to suspend standing orders to allow the moving of a substantive motion, the only standing orders which are suspended are those which would prevent the moving of the motion, and the motion and any debate on it are still subject to all other provisions of the standing orders, such as standing order 193 relating to rules of debate.

Debate on a motion to suspend standing orders is limited to five minutes for each senator speaking and 30 minutes in total.⁵⁸ This limitation does not suspend the requirement for relevance to the question of whether standing orders should be suspended.⁵⁹ A compound motion incorporating a suspension of standing orders is subject to these time limits only if the suspension is its primary purpose and not merely incidental to the motion.

A motion for suspension of standing orders may be moved in committee of the whole, provided that it is relevant to the matter under consideration in the committee.⁶⁰ It may be regarded as anomalous that a committee of the whole can suspend the standing orders, but standing order 144(7) provides that in committee of the whole the same rules of procedure apply as in the Senate, except where the standing orders explicitly otherwise provide. Moreover, in dealing with a motion to adopt a report of a committee of the whole the Senate has the opportunity to approve of anything the committee has done in considering the matters referred to it.⁶¹

A question arises as to the effect of the procedural motion to allow a substantive motion to be moved, or some item of business to be called on, after standing orders are suspended. This procedural motion takes the form: "That a motion to may be moved immediately (or, that the order of the day relating to be called on immediately) and have precedence over all other business this day till determined". The question is whether this motion has the effect of suspending the consideration of all other items in the routine of business, such as question time, or whether it merely gives precedence over other business in the strict sense of the word, that is, government and general business. The interpretation which has been followed is that if such a motion is passed

56 SO 209(3).

57 SO 210.

58 SO 209(4).

59 Ruling of President Sibraa, 20/12/1993, J.1106.

60 SO 209(3). Precedents: 23/10/1956, J.185; 4/6/1969, J.521; 9/11/1977, J.396; 16/5/1980, J.1349; 26/11/2010, J.468-9.

61 See Chapter 14 on Committee of the Whole Proceedings.

before any business is embarked upon, the subsequent substantive motion has precedence over all other business including business which has a fixed place or time in the routine of business. This was the case with the motions agreed to on 9 December 1991, 5 November 1992 and 25 November 2010.⁶² If, however, the procedural motion is passed at discovery of formal business, at the placing of business or during consideration of government business, the subsequent substantive motion has precedence only over business in the narrow sense, and may be interrupted by other items in the routine of business which have a fixed place or time in the routine, such as question time. This was the case with the motion agreed to on 25 June 1992.⁶³

In neither circumstance does continuing debate on the substantive motion interfere with suspensions of the sitting or the putting of the question for the adjournment of the Senate.

Items of business taken together

By special order of the Senate items of business may be taken together. Usually such an order provides for the items to be considered together but for the questions in relation to them to be put separately.⁶⁴ This procedure of ordering items to be taken together is to be distinguished from the procedure known as a cognate debate, whereby separate items of business remain as separate items but by leave are debated together when one of them is before the Senate.⁶⁵

Questions to senators concerning business

Questions to senators and chairs of committees at question time were abolished in 2009.⁶⁶

Recording of proceedings

The proceedings of the Senate are recorded in the Journals of the Senate, which are kept by the Clerk and published.⁶⁷ The Journals record the proceedings only, that is, matters considered by the Senate and action taken in relation to them; they do not record debate, which is recorded in the transcript known as Senate Debates or Hansard.

The Journals show all votes taken by division in the Senate and how senators present have voted.

62 9/12/1991, J.1885; 5/11/1992, 2965; 25/11/2010, 432-7.

63 J.2610.

64 For examples see 14/4/1988, J.628; 19/10/1988, J.1031; 23/11/1988, J.1143, 1144; 13/6/1989, J.1862; 29/8/2000, J.3139-40; 27/11/2000; J.3573.

65 19/5/1988, J.727; 26/5/1988, J.765; 23/11/1988, J.1146. For the procedures for taking bills together, see Chapter 12, Legislation, under Initiation.

66 Adopted 10/3/2009, J.1657-8. For earlier practice, see 12th edition, pp. 136, 171.

67 SO 43.

The Journals also record the attendance of senators; this is important because, under section 20 of the Constitution, the place of a senator becomes vacant if the senator is absent from the sittings of the Senate for two consecutive months without the Senate's permission.⁶⁸

Section 15AB of the *Acts Interpretation Act 1901* provides that the Journals of the Senate may be referred to by courts to assist in interpretation of statutory provisions in accordance with that section.

Further information on publication of proceedings is contained in Chapter 3.

68 See also Chapter 6, Senators, under Leave of absence.

Senate Routine of Business

MONDAY	TUESDAY		WEDNESDAY	THURSDAY
		9.30 am	Prayers Government documents <i>Presented pursuant to order</i> Government business only	Prayers Petitions Notices of motion Placing of business Discovery of formal business Tabling and consideration of committee reports <i>Time limit 1hr (SO 62(4))</i> Committee membership Messages from the House of Representatives Order of business
		12.30 pm		
Prayers Government business only	Prayers Government documents <i>Presented pursuant to order</i> Government business only	12.45 pm	Discussion of matters of public interest <i>SO 57(2)</i>	If agreed to, 'non-controversial' legislation
		2 pm		
Questions Motion to take note of answers <i>Time limit: 30 mins</i> Petitions Notices of motion Placing of business Discovery of formal business MPI or urgency motion <i>Time limit: 1 hr, or if no motions to take note, 90 mins (SO 75)</i> Ministerial statements Tabling of documents Committee membership Messages from House of Representatives Order of business	Questions Motion to take note of answers <i>Time limit: 30 mins</i> Petitions Notices of motion Placing of business Discovery of formal business MPI or urgency motion <i>Time limit: 1 hr, or if no motions to take note, 90 mins (SO 75)</i> Ministerial statements Tabling of documents Committee membership Messages from House of Representatives Order of business		Questions Motion to take note of answers <i>Time limit: 30 mins</i> Petitions Notices of motion Placing of business Discovery of formal business MPI or urgency motion <i>Time limit: 1 hr, or if no motions to take note, 90 mins (SO 75)</i> Tabling and consideration of committee reports <i>Time limit: 1 hr (SO 62(4))</i> Ministerial statements Tabling of documents Committee membership Messages from House of Representatives Order of business	Questions Motion to take note of answers <i>Time limit: 30 mins</i> MPI or urgency motion <i>Time limit: 1 hr, or if no motions to take note, 90 mins</i> Ministerial statements Government responses to parliamentary committee reports Tabling of documents
		not later than 4.30 pm		General Business <i>Notices of motion and orders of the day</i>
		not later than 6 pm		
Sitting Suspended (Dinner Break) 6.30 - 7.30 pm		6.30 pm		General Business cont. <i>Time limit: 1 hr (SO 61(3)) - consideration of government documents)</i>
	Consideration of government documents tabled earlier in the day <i>Time limit: 30 mins (SO 61)</i>	6.50 pm	Consideration of government documents tabled earlier in the day <i>Time limit: 30 mins (SO 61)</i>	
		not later than 7 pm		
	Adjournment proposed <i>No time limit</i>	7.20 pm	Adjournment proposed <i>Time limit: 40 mins</i>	Consideration of committee reports and government responses and Auditor-General's reports <i>Time limit: 1 hr (SO 62)</i>
Order of business cont.		7.30 pm		
		8 pm		
		9.50 pm		Adjournment proposed <i>Time limit: 40 mins</i>
Adjournment proposed <i>Time limit: 40 mins</i>				

