

Report on the anticipation rule

Tabling statement

I present the Procedure Committee's report on the anticipation rule. The committee has considered the issues carefully and concludes that the so-called anticipation rule is no longer used primarily to fulfil its intended purposes – which are to contribute to the good governance of the House and the efficient use of its time.

The committee hopes to persuade the House to change the relevant standing orders to achieve a better balance between upholding efficient House practices on the one hand – and supporting the ability of Members to scrutinise public administration and policies, on the other.

The anticipation rule involves two standing orders – one applying generally and one to questions. The general rule – encompassed in standing order 77 – provides that a Member may not anticipate discussion of a subject on the Notice Paper. It applies only to matters likely to be brought before the House within a reasonable time. This is intended to prevent frivolous use of the standing order by Members trying to stifle debate.

In relation to questions – standing order 100(f) states that questions must not anticipate discussion on “an order of the day or other matter”. The standing order has proved a boon to Members on both sides of the House who would prefer certain subjects not to be aired during the political hothouse that Question Time has become.

The rule was never intended to impair scrutiny or otherwise prevent discussion of sensitive issues. It is meant to support good meeting procedures including an orderly management of the House's business.

The anticipation rule ensures that all Members know when a matter will be addressed, so they can participate in the debate and any vote relating to the matter. Dealing with a matter according to an agreed timetable and not, additionally, at other times, protects Members' interests and also saves the time of the House.

This is the theory — but tacticians from both sides have used the anticipation rule, for very different purposes — mostly in order to make a political point (or to prevent one being made).

Points of order on anticipation were raised persistently last November and December, resulting in a statement by the Speaker on 6 December 2004. The Speaker noted the particular difficulty caused by raising the rule in relation to questions and asked the Procedure Committee to consider the matter.

In reviewing the history and application of the rule, the committee notes that successive Speakers have sought to prevent misuse of the rule by rulings which have seen a more liberal and flexible interpretation over the past 20 years. Rulings have drawn a distinction between incidental and substantive anticipation of a matter. In relation to Bills, Speakers are likely to allow questions on, or discussion of, the subject matter of a Bill, and have applied the anticipation rule only against discussion of the detail of the Bill.

If Chairs applied the rule rigidly there would be no problem — unfortunately, there wouldn't be many topics the House could safely discuss either.

There are three main difficulties in applying the standing orders on anticipation

First — is a subject listed on the Notice Paper likely to come before the House in a reasonable time?

While this will always be uncertain to some extent, the committee considers that the standing orders should provide more certainty. We recommend that the phrase — “reasonable time” — should be replaced by — “the same or next sitting day”. In deciding whether a matter will come before the House on that day or the next, the Speaker can have some certainty by referring to the daily program, known as the “Blue”. While the “Blue” is an unofficial program and subject to change, it is still an excellent guide to the timetable and program.

The **second** difficulty relates to the reason for raising the issue of anticipation. Is the point of order aimed at supporting good governance principles including saving the time of the House, or is it merely a blocking tactic?

The committee considers that the standing orders should offer more guidance on when the anticipation rule should be applied. Some proceedings including Question Time, Members’ statements, Ministerial statements and Matters of Public Importance take the same amount of time regardless of the subject matter. It cannot be argued that applying the anticipation rule to these proceedings saves the time of the House. The committee considers that nothing is gained by applying the anticipation rule to these periods. The general rule, standing order 77, should therefore be restricted to debates when there is a question before the House. If this recommendation is adopted by the House, standing order 100(f) relating to questions would be omitted for the rest of the session.

This change would go a considerable way to promoting the usefulness of Question Time as a time of scrutiny. In this context the committee notes that a complementary improvement would be to avoid referring to new

policies during Question Time and ensuring that Ministerial Statements are used for this purpose.

The **third** issue relates to whether the reference to an anticipated matter is incidental or substantive?

While it has become House practice to apply the anticipation rule only to substantive pre-emption of forthcoming debates, the opportunity should be taken to incorporate this limitation in the standing orders.

The committee considers that these amendments will improve the standing orders and assist the House in carrying out its functions. We recommend that the changes be introduced on a trial basis for the remainder of the 41st Parliament. This will give the committee a chance to evaluate the amendments before making a recommendation to the House about the ongoing future of the rule.

I thank all the committee members and staff for their contribution to the inquiry. Thanks also the Clerk of the House and to the Manager of Opposition Business for helping the committee reach these conclusions.