

# Motions

## WHAT IS A MOTION

In its widest sense a motion is any proposal made for the purpose of eliciting a decision of the House. It may take the form of a proposal made to the House by a Member that the House do something, order something to be done or express an opinion with regard to some matter. It must be phrased in such a way that, if agreed to, it will purport to express the judgment or will of the House. Almost every matter is determined in the House by a motion being moved, the question<sup>1</sup> being proposed by the Chair, the question then being put by the Chair after any debate and a decision being registered either on the voices or by a division (vote) of the House. There is provision for some questions to be resolved by ballot<sup>2</sup> and condolence motions are resolved not on the voices but by Members, at the suggestion of the Chair, rising in their places to indicate their support (*see p. 351*). When a question on a motion is agreed to, that motion becomes an order or resolution of the House (*see p. 334*).

After the question on a motion has been proposed by the Chair and prior to the putting of that question, the question may be superseded or set aside. The superseding of the original question usually occurs by way of an amendment, the question on the amendment becoming the immediate question before the House until disposed of. If the amendment is agreed to, the original question proposed by the motion is not put to the House for a decision; it is evaded by being replaced by another question (*see also p. 331*). A question on a motion may be deferred by reason of the adjournment of the debate, or when interrupted by the automatic adjournment provisions or at other times pursuant to standing orders. As well as the question being superseded or deferred, a motion may be dropped or 'lost' if, for example, it does not attract a seconder. There may be also procedural interruptions which temporarily suspend consideration of the question before the House (*see p. 332*). The process is illustrated on the following page.

Motions may be conveniently classified into two broad groupings:<sup>3</sup>

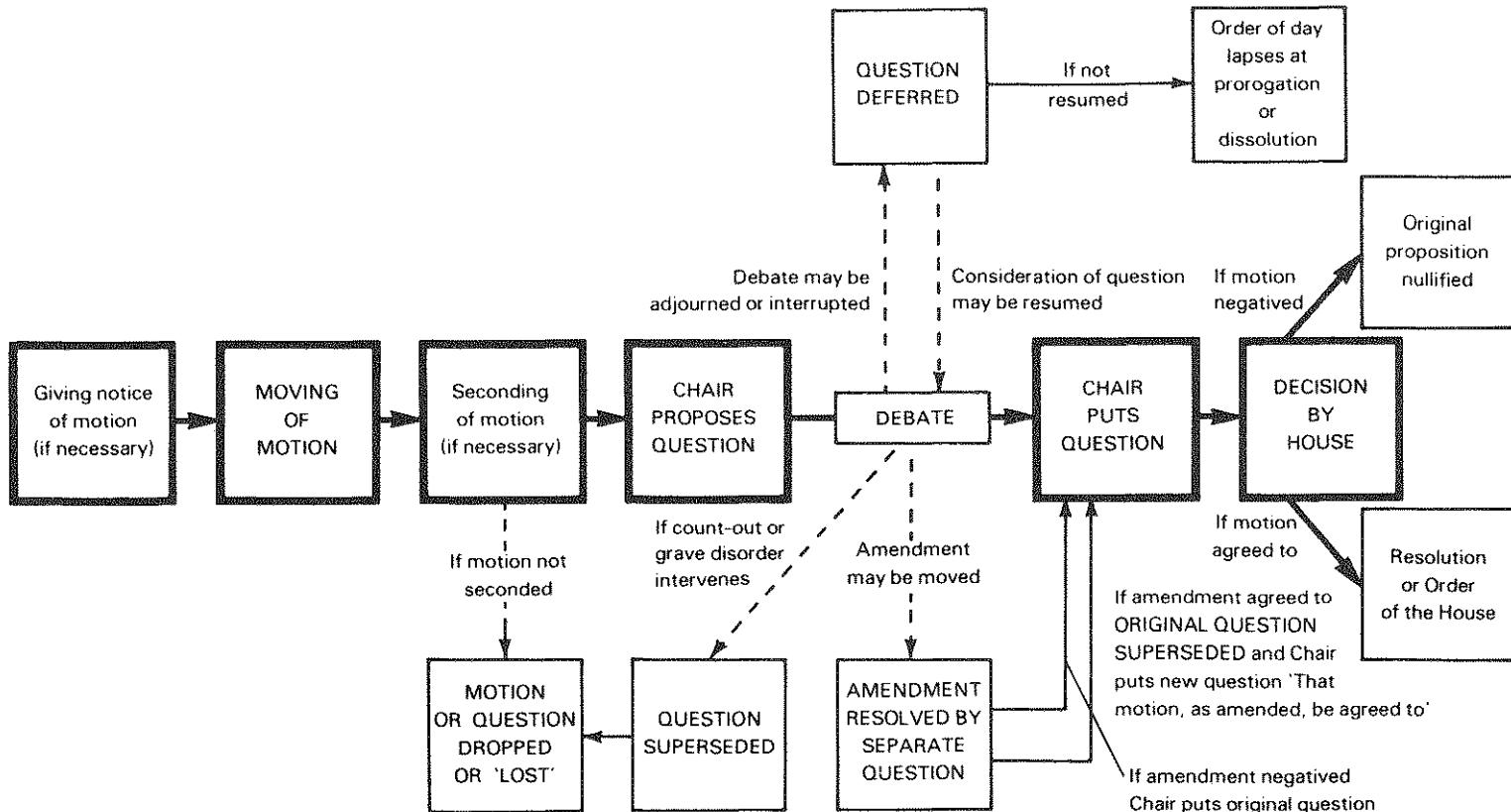
- **Substantive motions:** These are self-contained proposals and are drafted in such a way as to be capable of expressing a decision or opinion of the House.
- **Subsidiary motions:** These are largely procedural in character. Standing order 86 specifies a number of these procedural motions which are not open to debate or amendment. The term covers:
  - ancillary motions dependent upon an order of the day, for example, a motion that a bill be read a second or third time, or that the report of the committee of the whole be adopted;
  - a motion made for the purpose of deferring a question, for example, a motion that the debate be now adjourned or that the Chairman report progress;
  - a motion dependent upon another motion, such as an amendment, and

1 'Question' in this sense means the matter to be voted on.

2 *See Ch. on 'Business of the House and the sitting day'.*

3 *May*, pp. 374-5.

## The procedure for dealing with a motion



- a motion flowing from an occurrence in the House, for example, that a ruling be dissented from or that a Member be suspended from the service of the House after having been named.

Standing order 108 provides that at any time when other business is not before the House a Minister may indicate to the House that it is proposed to discuss a matter of special interest on which it is not desired to formulate a motion in express terms. The Minister may then move a motion specifying the time to be allotted to the debate. The Minister then moves 'That the [stating subject matter] be considered by the House'. This motion does not fall within the definition of either a substantive motion or a subsidiary motion and may be withdrawn by the Minister at the expiration of the time allotted to the debate.<sup>4</sup>

## RULES REGULATING REQUIREMENT OF NOTICE

### Motions requiring notice

A notice is a declaration of intent to the House by a Member to either move a motion or present a bill on a specified day. A notice must contain the terms of the motion or the long title of the bill. The standing orders are applied and read to the necessary extent as if a notice of presentation of a bill were a notice of motion (*see also* Chapter on 'Legislation').

It can generally be said that substantive motions require notice, whereas subsidiary motions do not. However, whether a motion requires notice or not depends to a large extent upon practical considerations relating to the efficient operation of the House, and the standing orders and practice of the House have been developed accordingly.

It is normal meeting procedure for notice to be given of motions proposed to be moved. This action alerts interested persons and avoids the possibility of business being conducted without the knowledge or due consideration of interested parties. The standing orders provide that no Member may, except by leave of the House, or unless it is otherwise provided by the standing orders, move any motion except in pursuance of notice appearing on the Notice Paper.<sup>5</sup> It is further provided that a notice of motion becomes effective only when it appears on the Notice Paper.<sup>6</sup> When notice is required, the terms in which a motion is moved must be the same as the terms of the notice, although leave has often been granted to amend a notice when a motion is to be moved.<sup>7</sup>

A motion for the purpose of rescinding a resolution or other vote of the House during the same session requires seven days' notice, provided that to correct irregularities or mistakes one day's notice is sufficient, or the corrections may be made at once by leave of the House (*see* p. 338).<sup>8</sup>

The conduct of the sovereign, the heir to the throne or other members of the Royal Family, the Governor-General, the Governor of a State, the President, the Speaker, the Chairman of Committees, Members of either House of the Parliament, or any member of the judiciary, cannot be criticised except upon a substantive motion on notice, drawn in proper terms, which admits of a distinct vote of the House. Whilst there are precedents to the contrary, amendments expressing censure

4 VP 1974-75/815-17.

7 VP 1973-74/124.

5 S.O. 154.

8 S.O. 170.

6 S.O. 141.

of Members are not consistent with this important principle and would be ruled out of order by the Chair.

A notice of motion appearing under government business is usually moved on the first sitting day that it appears on the Notice Paper, and is normally debated forthwith. On the other hand, a notice given by a private Member appears under private Members' business and may, because not all such notices are dealt with, remain on the Notice Paper without consideration until removed (see Chapter on 'Private Members' business') or until the Parliament is prorogued or the House is dissolved, when it will lapse.

### Motions moved without notice

The standing orders and practice of the House permit certain substantive motions to be moved without notice. The following are some examples:

- address to the Queen or the Governor-General (in case of urgency only);
- address of congratulation or condolence to members of the Royal Family;
- vote of thanks or motion of condolence;
- a motion declaring that a contempt or breach of privilege has been committed;
- referral of a matter to the Committee of Privileges;
- a specific motion in relation to a committee report;
- a proposal dealing with taxation, for example, a customs or excise tariff proposal;
- leave of absence to a Member;
- leave of absence to all Members, prior to a long adjournment, and
- a motion fixing the next meeting of the House.

From time to time other substantive motions have been moved, without notice or leave of the House:

- The Speaker having informed the House of the presentation of a resolution of thanks to representatives of the armed services following World War I, a motion that the record of proceedings on that occasion be inserted in Hansard was moved and agreed to.<sup>9</sup>
- The Speaker having sought the direction of the House on a matter, a motion clarifying the practice of the House was moved and agreed to.<sup>10</sup>
- Two motions for the commitment of offenders found guilty of a breach of privilege were moved together and agreed to.<sup>11</sup>

Subsidiary motions which are moved without notice include:

- adjournment of House;
- Member be now heard;
- Member be further heard;
- Member be not further heard;
- Member be granted an extension of speaking time;
- adjournment of debate;
- progress be reported from committee of the whole;
- Chairman leave the Chair;
- closure of debate;
- business of the day be called on;
- guillotine—questions relating to urgency and the allotment of time;
- allotment of time for debate on a matter of special interest;
- dissent from ruling;
- postponement of a government notice of motion;

9 VP 1920-21/184.

11 VP 1954-55/269-70; H.R. Deb. (10.6.55)1629.

10 VP 1954-55/180; H.R. Deb. (28.4.55)230-1.

- postponement of order of the day;
- discharge of order of the day on order of day being read;
- motions on the various stages of a bill, including questions in the committee of the whole, and motions arising from messages from the Senate and the Governor-General;
- motion by Minister to take note of paper;
- printing of paper;
- printing of petition;
- suspension of a Member after naming;
- strangers be ordered to withdraw, and
- suspension of standing or sessional orders, in cases of necessity (but absolute majority required).

### **Giving notice**

Under the practice which applied until February 1985, notices of motion could be given openly, or by delivering a copy of the terms to the Clerk. Notices given openly had to be given in the House and could not be given in the committee of the whole.

A Member may indicate the intention to move a motion on the next day of sitting or on any other suitable day.<sup>12</sup>

A matter on the Notice Paper must not be anticipated by another matter contained in a less effective form of proceeding, but one notice cannot block another, as at that stage they are an equally effective form of proceeding.

#### *Openly*

Under the practice which applied until February 1985 notices could be given openly when called on following the presentation of petitions early in each day's proceedings.<sup>13</sup> When called by the Speaker, a Member stated the terms of the notice to the House and the day proposed for moving the motion, usually the next day of sitting or a specific general business Thursday, and delivered a copy to the Clerk.<sup>14</sup> The notice had to be signed by the Member and seconder but the Member was not required to give the name of the seconder to the House.<sup>15</sup> A Member could give only one notice at a time if other Members desired to give notices also.<sup>16</sup> A motion 'That the Member be not further heard' could not be moved while a Member was giving a notice of motion.<sup>17</sup>

The Speaker has interrupted a Member who gave three consecutive notices of motion and would not allow him to take up additional time of the House with further notices. The Speaker stated that the Member could use the alternative method in respect of further notices by delivering copies of their terms to the Clerk.<sup>18</sup>

Under the sessional orders in effect from February 1985 to March 1988 (see below) notices were not given openly in the House. However, sessional orders for business on Thursday mornings, in effect from 15 March 1988, provided for a Member to give a notice openly by stating its terms to the House during the 15 minute period for Members' 90 second statements, and delivering a fair copy of its terms to the Clerk at the Table.<sup>19</sup>

12 H.R. Deb. (29.5.08)11702.

16 See H.R. Deb. (9.3.77)8.

13 S.O. 101.

17 S.O. 94.

14 S.O. 133.

18 H.R. Deb. (7.11.77)2941.

15 H.R. Deb. (20.11.79)3161.

19 VP 1987-89/302.

*Delivering copy of terms to the Clerk*

Under the practice which applied until February 1985 a notice of motion could be given by delivering it to the Clerk who reported it to the House at the first convenient opportunity. A notice given in this way could not be entered upon the Notice Paper until reported.<sup>20</sup> It was the usual practice for Ministers to give notice of motion in this way.

Until the opening of the 30th Parliament in 1976, notices of motion were received by the Clerk prior to the opening day of a session of Parliament. Following consideration by the Standing Orders Committee the Clerk was instructed not to receive notices prior to notices being called on by the Speaker at the first sitting of a new session.

Arrangements initiated by sessional order in February 1985 provided that—

- a notice of motion had to be given by a Member delivering a fair copy of the terms to the Clerk at the Table, duly signed by the Member and the seconder and showing the day proposed for moving the motion;
- a notice which expressed a censure of, or want of confidence in, the Government, or any Member, had to be reported to the House by the Clerk at the first convenient opportunity (other notices not being reported to the House) and
- the notices were to be entered on the Notice Paper, in priority of orders of the day, in the order in which they were received, provided that general business notices received on the first day of meeting of a new session were to be entered in such a way that, as far as possible, priority would alternate between Opposition and Government, and that two notices received from the same Member would not be placed consecutively in priority of a notice received from another Member during the same sitting.<sup>21</sup>

*Member absent*

If a Member is absent, another Member, at his or her request, may give a notice of motion for the absent member. The Member giving the notice on another Member's behalf must put his or her own signature and the name of the absent Member on the notice.<sup>22</sup>

*Member suspended*

In 1984 Speaker Jenkins held that to allow a suspended Member to hand notices to the Clerk for reporting to the House (as the arrangements at the time permitted) would not accord with the intention of the House in suspending the Member.

**Need for seconder**

The standing orders require that a notice of motion must be signed by the Member proposing the motion and a seconder.<sup>23</sup> The name of the seconder need not be stated to the House when the notice is given. For practical reasons the Chair does not insist that the actual seconder of the motion be the same Member who signed the notice of motion as seconder. According to practice a notice of motion given by a Minister does not require a seconder (*see* p. 329).

<sup>20</sup> S.O. 133.

<sup>21</sup> VP 1985-87/35-41.

<sup>22</sup> S.O. 134.

<sup>23</sup> S.O. 133.

### Contingent notice

Contingent notices are notices conditional upon an event occurring in the House which in fact may not eventuate. The practice of using contingent notices has operated from the very beginnings of the House, a contingent notice appearing on the first Notice Paper issued.<sup>24</sup>

In practice, the significance of the procedure is that a motion to suspend standing orders moved pursuant to a contingent notice only needs to be passed by a simple majority, whereas the same motion, if moved without notice, would require an absolute majority.

Three contingent notices, each for the purpose of facilitating the progress of legislation, are normally given in the first week of each session. The first of these covers the situation where a Minister introduces a bill but copies of it are not available. The standing orders provide that in this circumstance a future day shall then be fixed for the second reading to be moved. The contingent notice enables a motion to be moved to bypass the standing order and make the second reading an order of the day for a later hour the same day. The second contingent notice is intended to overcome the situations where leave is not granted to move a motion for the adoption of a report of the committee of the whole or a motion for the third reading, and the third enables standing orders to be suspended to allow a bill received from the Senate to be passed through all stages without delay. They appear on the Notice Paper in the following form:

*Contingent on any bill being brought in and read a first time:* Minister to move—That so much of the standing orders be suspended as would prevent the second reading being made an order of the day for a later hour.

*Contingent on any report being received from a committee or any report being adopted:* Minister to move—That so much of the standing orders be suspended as would prevent the remaining stages being passed without delay.

*Contingent on any message being received from the Senate transmitting any bill for concurrence:* Minister to move—That so much of the standing orders be suspended as would prevent the bill being passed through all its stages without delay.<sup>25</sup>

Any Minister may move a motion pursuant to a contingent notice; it is not necessary for the motion to be moved by the Minister who lodged the notice.

Contingent notices of motion are not now mentioned in the standing orders of the House, nor do they form part of House of Commons practice. While the three contingent notices mentioned above have been lodged as a matter of course for a considerable time, and whilst there is probably a recognition among Members that Governments are entitled to give such notices, in practice they are rarely used.

Because the use of the device of a contingent notice may cut across or defeat the normal operation of certain standing orders, which generally have been framed for sound reasons and which build in safeguards against hasty or ill-considered action, any extension of its use is questionable.<sup>26</sup>

### Order on the Notice Paper

As a general rule notices are entered on the Notice Paper by the Clerk in priority of orders of the day and in the order in which they are given, except that two notices received from the same Member are not placed consecutively in priority

24 NP 1(21.5.01).1.

25 See NP 103(7.3.89)4559-60.

26 For examples of contingent notices see NP 145(8.12.71)11529; NP 180(15.8.72)14646.

of a notice received from another Member during the same sitting.<sup>27</sup> There are important provisos however in that:

- In relation to **government business**, Ministers may arrange the order of notices on the Notice Paper as they think fit<sup>28</sup> and, as government business has priority on all sitting days except Thursdays, government notices will normally take priority over notices given by private Members.
- In relation to **private Members' business**, under sessional orders in effect from March 1988, the Selection Committee can, prior to the first sitting day of each week, arrange the order of private Members' notices.<sup>29</sup> The sessional orders also provide that private Members' notices not called on after eight sitting Thursdays are to be removed from the Notice Paper.<sup>30</sup>

Subject to these provisos, notices appear on the Notice Paper as Notice No. 1, 2, 3, and so on, and must be called on and dealt with by the House in order before the orders of the day are called on. If it is desired not to proceed with a notice or with notices generally, an appropriate postponement motion may be moved, without notice.<sup>31</sup> However, in the case of private Members' business, as a notice is the possession of the Member who gave it, notices may only be taken otherwise than according to the order of precedence determined by the Selection Committee by:

- withdrawal of the notice, before being called on, by the Member who gave the notice (S.O. 140);
- postponement by motion moved by the Member who gave the notice (S.O. 155), or
- the Member not being in his place, or failing to rise, to move the motion (S.O.s 158, 159).

### Notice divided

The Speaker may instruct the Clerk to divide into two or more notices any notice of motion which contains matters not relevant to each other.<sup>32</sup> This would not necessarily be done in the House.<sup>33</sup>

### Authority of the Speaker

The standing orders direct the Speaker to amend any notice of motion containing unbecoming expressions or which offends against any standing order of the House, before it appears on the Notice Paper.<sup>34</sup> The House in effect places an obligation on the Speaker to scrutinise the form and content of motions which are to come before the House. It has been ruled that a notice of motion practically incorporating a speech cannot be given.<sup>35</sup> In 1977, the Speaker referred to the form of notices in the following terms:

On 30 March 1977 . . . I drew the attention of the House to the need to have the recitals of notices examined in order to ensure they were necessary to make the motion meaningful and that they did not amount to a speech or argument in support of the motion.<sup>36</sup> Since that time I have noticed that honourable members are continuing to give notices which are inordinately and unnecessarily long. Honourable members are

27 S.O. 135, as amended by sessional order.

32 S.O. 136.

28 S.O. 105.

33 H.R. Deb. (23.10.75)2447.

29 Sessional order 28D, VP 1987-89/298.

34 S.O. 137.

30 Sessional order 104B, VP1987-89/300.

35 H.R. Deb. (1.10.12)3623.

31 See Ch. on 'Routine of business and the sitting day'.

36 See H.R. Deb. (30.3.77)721.

tending to use this form of the House to narrate a long argument—in effect, a speech anticipating a debate—when they should be putting a concise proposition for determination by the House. I have a discretionary power under the Standing Orders and practices of the House to direct that a notice be not received in an inappropriate form or that its terms be corrected before it is placed on the notice paper. If honourable members continue to misuse that form of the House, I shall have to intervene to have the honourable member concerned reform his notice or alternatively to have the Clerks eliminate the argument and unnecessary statements of fact.<sup>37</sup>

The view and direction put forward by the Speaker were adhered to and came to constitute the practice of the House.

The fact that a notice was disallowed when given openly did not prevent it appearing in amended form on the Notice Paper. A Member could amend a notice and give it openly in an acceptable form when he or she next obtained the call when notices were being given or the Member could hand it to the Clerk in amended form at any time.

Problems with the length and content of notices were most evident when notices were given openly, and this reflected the fact that the actual giving of a notice orally did present Members with the opportunity to convey the substance of a proposition or a proposal at a time when attendance in the Chamber and the galleries was high, and often when proceedings were being broadcast. After the introduction of sessional orders abolishing the provision for the giving of notices openly from February 1985, these problems were no longer evident.

In 1912, a notice of motion to the effect that an address be presented to the Governor-General informing him that the Opposition merited the censure of the House and the country for a number of stated reasons (which parodied the Leader of the Opposition's amendment to the Address in Reply) was ruled out of order on the ground that it was frivolous. Subsequently a motion stating that the Speaker's action in endeavouring to prevent the Member from reading a notice of motion, and in refusing to accept the notice ' . . . was a breach of the powers, privileges and immunities of Members' was moved and negated.<sup>38</sup>

Reinforcing this precedent was a decision of the House in 1920 when it negated a motion that the Speaker had infringed the privileges of Members by ruling out of order a notice of motion given openly, thus preventing the notice coming before the House. The notice was ruled out of order as it proposed to give an instruction to a committee to do something which it already had power to do and thereby infringed the standing orders.<sup>39</sup>

In 1938, the Speaker stated that he would not allow a notice of motion of privilege accusing a Member of 'blasphemous and treasonable statements of policy and intention' to be placed on the Notice Paper in that form.<sup>40</sup> The Speaker did not state his reasons but presumably it was ruled out of order because of the use of unparliamentary words.

The Speaker directed the Clerk, in 1980, to remove a notice from the Notice Paper when his attention was drawn to unparliamentary words contained in it.<sup>41</sup> In 1983 a notice given openly was removed from the Notice Paper, with the authority of the Speaker, on the ground that it was frivolous.<sup>42</sup>

37 H.R. Deb. (4.5.77)1510.

38 H.R. Deb. (1.10.12)3621-3; VP 1912/161; H.R. Deb. (8.10.12)3911-33.

39 H.R. Deb. (25.3.20)881-2; VP 1920-21/91; H.R. Deb. (26.3.20)906-10; (now) S.O. 300.

40 VP 1934-37/38; H.R. Deb. (28.11.34)582-3,610. The Speaker first ruled that the Member was in

order in giving the notice, but later made a statement that in its present form he would not allow it to be placed on the Notice Paper.

41 H.R. Deb. (17.9.80)1364.

42 NP 26 (5.10.83)1044 (the notice did appear once before being removed).

### Notice altered by Member

A Member may alter the terms of a notice of motion he or she has given by notifying the Clerk in writing within such time as will enable the alteration to be made in the Notice Paper.<sup>43</sup> The altered notice becomes effective only after it appears on the Notice Paper.<sup>44</sup> An amended notice must not exceed the scope of the original notice. Provided that these rules are observed a notice may be altered at any time after it has been given. When a notice has been amended, the fact that it has been amended is indicated on the Notice Paper after the notice, together with the date that the alteration was made.<sup>45</sup> Leave has also been granted to amend a notice when it has been called on to be moved.<sup>46</sup>

### Withdrawal of notice

A Member may withdraw a notice of motion he or she has given by notifying the Clerk in writing at any time prior to that proposed for moving the motion.<sup>47</sup> The withdrawal of a notice is effective immediately notification is received. The Clerk is not required to announce the withdrawal of a notice to the House but may do so if it affects the programming of business before the House.

A notice of motion is also withdrawn from the Notice Paper, with immediate effect, if the Member who gave the notice fails to rise and move the motion when it is called on, unless he or she then fixes a future time for moving the motion.<sup>48</sup> If a Member is not in his or her place when a notice is called on, it is also withdrawn, unless another Member, at his or her request, thereupon fixes a future time for moving the motion.<sup>49</sup> However, once the question on the motion has been proposed from the Chair it is in possession of the House and no Member may withdraw the question from the consideration of the House without the consent of the House itself.<sup>50</sup>

## MOTIONS

### Rules regarding subject matter

A number of general rules of debate have equal application to the content of a motion. For example a motion may not be brought forward which:

- relates to a matter awaiting, or under, adjudication by a court of law (sub judice rule).<sup>51</sup>
- is the same in substance as a question (motion) resolved during the current session (same question rule);
- anticipates another matter on the Notice Paper unless it is an equally or more effective form of proceeding (anticipation rule), or
- contains offensive or disorderly words.<sup>52</sup>

43 S.O. 139.

44 S.O. 141.

45 NP 91(4.4.79)4984; NP 92(5.4.79)5011. This is also a case of where a notice, first given over a year earlier, was altered by omitting all words after 'That' and substituting other words as subsequent events had overtaken the purpose of the original notice. The amendment was considered acceptable as it covered the same subject matter, together with subsequent events. A proposal to substitute words which had no relationship to the original notice would not have been in order.

46 VP 1973-74/124.

47 S.O. 140.

48 S.O. 159.

49 S.O. 158; VP 1983-84/915.

50 H.R. Deb. (19.3.08)9352; S.O.s 161, 162.

51 For discussion see Ch. on 'Control and conduct of debate'.

52 For discussion see Ch. on 'Control and conduct of debate'.

### Same question rule

The Speaker has the discretion to disallow any motion (or amendment, *see* p. 362) which is the same in substance as any question which has been resolved in the affirmative or negative during the same session.<sup>53</sup> A question may be raised again if it has not been definitely decided. Thus, a motion or amendment which has been withdrawn or, in certain circumstances, has been superseded<sup>54</sup> (*see* p. 331) may be repeated.

Prior to 1963, a motion or amendment was automatically out of order if it was the same in substance as any question resolved during the same session. In that year the House agreed in its revised standing orders that flexibility should be provided by granting a discretion to the Chair. The Standing Orders Committee in recommending the change referred to the complexity of determining the 'same question' in relation to a question decided earlier in the session and noted that the House or committee retained the power to determine finally any particular case, as any ruling from the Chair could be dissented from.<sup>55</sup> The rule, in serving the purpose of preventing unnecessary obstruction or repetition, should not be held to restrict or prevent the House from debating important matters, particularly during a long session which can be of two to three years' duration in the Australian scene.

The 'same question' rule has been rarely invoked in the House. A motion to suspend standing and sessional orders to enable consideration of a general business notice of motion was ruled out of order as the same question had been negatived on each of the two previous sitting days.<sup>56</sup> The Chair has prevented a Member moving for the suspension of standing orders to enable another Member to continue his speech as a motion for that purpose had been negatived previously.<sup>57</sup> A motion of dissent from a Chairman's ruling has also been ruled out of order on the ground that a motion of dissent from a similar ruling had just been negatived.<sup>58</sup>

The rule does not prevent the provisions of section 57 of the Constitution from being fulfilled, and a second bill the same as one passed previously but which the Senate has rejected, failed to pass or passed with amendments not acceptable to the House may be introduced and passed by the House.<sup>59</sup>

Two particular occurrences are worthy of note. On the first occasion a notice of motion was placed on the Notice Paper in exactly the same terms as a previously defeated amendment to a motion to adopt a Standing Orders Committee report. The notice remained on the Notice Paper until, following a suspension of the standing orders, it was moved in the form of an amendment to a later motion proposing amendments to the standing orders and changes in practice. The amendment was again defeated.<sup>60</sup> On the second occasion a notice of motion which was the same in substance as a second reading amendment negatived earlier in the session was placed on the Notice Paper. Prior to the notice being called on, however, it was substantially altered and the necessity for a decision in the House did not arise.<sup>61</sup>

53 S.O. 169.

54 *See* VP 1912/56,165-6 where a motion approving the electoral distribution of a State was superseded when the House agreed to an amendment referring the report back to the commissioners. A motion approving the fresh distribution was later submitted and agreed to.

55 *Standing Orders Committee Report*, H of R 1(1962-63)35.

56 VP 1946-48/119; H.R. Deb. (18.3.47)741.

57 H.R. Deb. (12.8.54)225.

58 H.R. Deb. (9.10.36)1013.

59 VP 1950-51/189; VP 1985-87/1307-9, 1512, 1541-2, 1544-8.

60 VP 1970-72/673-4,1014; NP 111(26.8.71)8230; NP 165(19.4.72)13196.

61 VP 1973-74/171-2,325-6; NP 29(24.5.73)1149; NP 32(30.5.73)1294-5; NP 42(13.9.73)1657-8.

As mentioned earlier a question may be raised again if it has not been definitely decided. Thus a motion or amendment which has been withdrawn or on which no decision was reached because of a want of quorum in division may be repeated.<sup>62</sup> Also a motion which has been superseded by a temporising or non-committal amendment has not, in a strict sense, been decided and may be submitted again in substance to the decision of the House. So also can a motion which has been superseded by a conditional prohibition as soon as that condition has ceased to operate. However, a motion which has been superseded by a 'hostile' amendment, that is, an amendment which contains a conflicting or incompatible proposition, cannot be repeated in the same session. Even when such an amendment has not been fully agreed to by the House, the fact that words have been omitted by the amendment has been treated in practice as equivalent to a decision against the original motion. It is important to observe that the question whether the proposition contained in a superseded motion has been decided depends, not upon the fact that its words have been omitted, but rather upon the nature of the amendment by which the motion has been superseded.<sup>63</sup>

An extension of the same question rule is contained in standing order 86 where a number of subsidiary motions and questions of a procedural nature are listed which, if put to the House and negatived, cannot be put to the House again if the Speaker or Chairman is of the opinion that it is an abuse of the orders or forms of the House, or the motion is moved for the purpose of obstructing business. This procedure is of transient application as a motion may be out of order in its purpose and timing at one time but in order if moved for a different purpose or at a different time.

### Anticipation

A matter on the Notice Paper must not be anticipated by another matter contained in a less effective form of proceeding.<sup>64</sup> Conversely a matter on the Notice Paper may be anticipated by another matter contained in an equally or more effective form. This rule also applies to forms of proceedings other than motions. One notice cannot block another, as at that stage they are an equally effective form of proceeding.<sup>65</sup> A bill or other order of the day is more effective than a motion<sup>66</sup>, a Senate message is more effective than a notice of motion<sup>67</sup>, and a substantive motion is more effective than a matter of public importance or an amendment. A notice of motion has been held to prevent its subject matter being discussed by means of an amendment to a motion or by means of a matter of public importance. In May 1986 a matter of public importance, the terms of which partly overlapped the substance of legislation covered by orders of the day then on the Notice Paper, was accepted and discussed. In a significant statement on the matter Speaker Child said that she would use her discretion in this area in its widest sense, and noted the immediacy attaching to the particular topic in question and the distinctive nature of the public importance procedure in the House.<sup>68</sup> In determining whether a matter

62 *May*, p. 379.

63 *May*, p. 387; *see also* statement by Speaker Aston, H.R. Deb. (2.6.70)2714.

64 S.O. 163.

65 *See* H of R 1(1962-63)34 for comment by Standing Orders Committee; *and see* H.R. Deb. (14.11.18)7880.

66 H.R. Deb. (18.9.13)1322; *May*, p. 381.

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

68 H.R. Deb. (26.5.86)3919.

is out of order on the ground of anticipation, the Speaker has regard to the probability of the matter anticipated being brought before the House within a reasonable time.<sup>69</sup>

## Progress in House

### *Motion moved and seconded*

A Member may only move a motion pursuant to a notice appearing on the Notice Paper unless he or she does so by leave of the House or as otherwise provided in the standing orders.<sup>70</sup> No Member can interrupt a Member speaking for the purpose of moving a motion<sup>71</sup>, except to move a closure motion pursuant to standing order 93 or 94. A Member cannot move a motion on behalf of another Member, except that a motion standing in the name of a Minister may be moved by any other Minister.<sup>72</sup> Any motion before the House must be disposed of, or debate on the motion adjourned, before another (substantive) motion can be moved.<sup>73</sup> While a Member is formally moving the terms of a motion allowed under the standing orders, a motion 'That the Member be not further heard' may not be moved<sup>74</sup>, but such a motion may be moved after the Member has formally moved the motion and is speaking to it. A motion 'That the question be now put' may not be moved until after the question has been proposed from the Chair, that is, not until after the motion has been moved and seconded (where necessary).<sup>75</sup>

After the mover of a motion has resumed his or her seat the Chair calls for a Member to second the motion and, with certain exceptions, any motion not seconded may not be further discussed. The motion is then dropped and no entry of it is made in the Votes and Proceedings.<sup>76</sup> The Chair is not entitled to propose the question on a motion to the House until it has been moved and seconded.<sup>77</sup>

Because a Minister in proposing business before the House is assumed to have the backing of the Government, it has been the continuing practice of the House that motions (and amendments) moved by Ministers do not require a seconder (*but see below*).<sup>78</sup> This practice was formally extended to Assistant Ministers by the House in 1972.<sup>79</sup> Also it is not the practice to require a seconder for most procedural motions<sup>80</sup>, or for motions in respect of the various stages of a private Member's bill except the motion for the second reading.<sup>81</sup> The contemporary practice in the case of privilege motions is that, because of their special nature, possibly only affecting an individual Member, the Chair does not call for, or insist upon, a seconder. A motion moved in committee need not be seconded.<sup>82</sup>

69 S.O. 82.

70 S.O. 154. See Ch. on 'Routine of business and the sitting day' for the order in which the Chair calls on motions.

71 VP 1974-75/338; H.R. Deb. (21.11.74)3899.

72 H.R. Deb. (15.6.18)6206.

73 H.R. Deb. (17.3.44)1563-4.

74 S.O. 94.

75 S.O. 93.

76 S.O. 160.

77 H.R. Deb. (4.5.78)1814.

78 H.R. Deb. (21.9.09)3608.

79 VP 1970-72/1009-10; *Standing Orders Committee Report*, PP 20(1972)1,6-7.

80 For example the following motions: that a Member be now heard (S.O. 61), that a Member be further heard (S.O. 85), that the debate be now adjourned (S.O. 87), that a Member be granted an extension of time (S.O. 91), that the question be now put (S.O. 93), that a Member be not further heard (S.O. 94) and that the business of the day be called on (S.O. 107).

81 H.R. Deb. (26.9.74)1859; H.R. Deb. (17.10.74)2507-9

82 S.O. 279.

In the case of a motion of condolence, a seconder is always called for to indicate the general support of the House, even though the motion is moved by a Minister. Motions of condolence are traditionally seconded by the Leader of the Opposition. The name of the seconder is recorded in the Votes and Proceedings.

When a Member seconds a motion (or amendment) without speaking to it immediately, he or she may reserve the right to address the House on the subject at a later stage of the debate.<sup>83</sup> For practical reasons it is the practice of the House for the Chair not to insist that the seconder of the motion be the same Member who signed the notice of motion. It is in order for a Member to vote against his or her own motion or amendment.<sup>84</sup>

In 1971, the Standing Orders Committee considered a proposition that the requirement for the seconding of motions and amendments be dispensed with. The committee noted, *inter alia*, that in regard to such motions as dissent from the Speaker's ruling, suspension of the standing orders and amendments, the requirement for a seconder allows the supporting party to have two speakers in succession (should it so desire) before the question can be proposed from the Chair or a reply made from the opposing side. Nor can the question 'That the question be now put' be moved until after the question has been proposed by the Chair. Despite these observations the committee recommended no change except in relation to Assistant Ministers.<sup>85</sup>

#### *Motion dropped*

A motion not seconded is dropped.<sup>86</sup> In certain circumstances, interruptions may occur before the motion is seconded or the question is proposed by the Chair which would also result in the motion being dropped. These circumstances are:

- the Speaker adjourning the House because of a count out, and
- the Speaker adjourning the House because of grave disorder.

In these cases the matter may be revived by renewal of the notice of motion.

If the mover, or the seconder, is speaking to a motion moved without notice, for example, a motion to suspend standing orders, and is interrupted by the automatic adjournment provision, the motion is dropped<sup>87</sup>, unless the motion for the adjournment is immediately negatived in order to allow debate on the motion to continue.

If the mover or seconder of a business motion or amendment is still speaking to the motion or amendment at the time of interruption by the automatic adjournment provisions, the motion or amendment is not dropped. The motion or the motion and amendment are set down automatically as an order of the day for the next sitting.

If the mover, or the seconder, of a motion under private Members' business is still speaking to the motion at the time of interruption, the Member is given leave to continue his or her remarks by the Chair, and the motion is set down automatically as an order of the day for the next sitting Thursday. The motion is not dropped in these circumstances.<sup>88</sup>

<sup>83</sup> S.O. 70.

<sup>84</sup> *May*, p. 390.

<sup>85</sup> PP 20(1972)6-7; VP 1970-72/1009-10.

<sup>86</sup> S.O. 160.

<sup>87</sup> H.R. Deb. (2.4.81)1316. The motion to suspend standing orders moved immediately prior to the automatic adjournment was dropped.

<sup>88</sup> VP 1987-89/978.

### *Motion in possession of House*

Standing orders 161 and 162 provide that once a motion has been moved, seconded (if necessary), and accepted by the Chair the question is then proposed by the Chair. Once proposed by the Chair the motion is deemed to be in possession of the House and, with the exception of those motions which under standing order 86 may not be debated, open to debate. The House must dispose of the motion in one way or another before it can proceed with any other business. It cannot be withdrawn without the leave of the House or altered, even to correct an error, except with the concurrence of the House or by amendment.<sup>89</sup>

The mover of a motion, with the exceptions in standing order 91, may speak for 20 minutes and any other Member for 15 minutes. When speaking in reply the mover may speak for 15 minutes only.

If the terms of a motion do not appear on the Notice Paper or have not been previously circulated in the Chamber, the Chair usually proposes the question in the full terms of the motion, otherwise the simple form 'That the motion be agreed to' may suffice. If the terms of a question or matter under discussion have not been circulated among Members, any Member may require the terms to be read by the Speaker or Chairman at any time during the debate but not so as to interrupt a Member speaking.<sup>90</sup>

### *Withdrawal of motion*

A motion (or amendment) cannot be withdrawn without leave of the House<sup>91</sup> nor can it be withdrawn except by the Member who moved it<sup>92</sup> in the case of a private Member's motion.

A motion has been withdrawn, by leave, before being seconded.<sup>93</sup> When leave was not granted to withdraw a motion of dissent from a ruling of the Chair, standing orders were suspended to enable the Member to move a motion for the withdrawal of the motion.<sup>94</sup>

Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn, or negatived, as the question on the amendment stands before the main question.<sup>95</sup>

In the case of a matter of special interest a Minister, without leave, may withdraw the motion at the expiration of the time allotted to the debate by previous order of the House.<sup>96</sup> On the one occasion that a matter of special interest has been considered the motion was withdrawn by a Minister other than the mover. The withdrawal meant that an amendment which had been moved to the motion was automatically lost.<sup>97</sup>

### *Question superseded or dropped*

The principal means by which a question may be superseded is by way of amendment. Once an amendment is moved and the question on the amendment proposed to the House the original question is temporarily superseded. If the amendment is negatived, the original question is again proposed to the House. If

89 H.R. Deb. (11.11.13)3008-9.

92 *May*, p. 385.

90 S.O. 83. The Speaker has directed the Clerk to read the terms of a matter under discussion, H.R. Deb. (7.12.04)8016; *see also* Ch. on 'Control and conduct of debate'.

93 VP 1970-72/127.

91 S.O. 162.

94 VP 1929-31/302.

95 *May*, p. 385.

96 S.O. 108.

97 VP 1974-75/815-17.

the question on the amendment is agreed to (see p. 366 for the form of putting the question on amendments), the Chair must then propose the question 'That the motion, as amended, be agreed to', the original question having been superseded. If the question 'That the bill be now read a second (or third) time' is superseded by an amendment omitting the word 'now' and substituting the words 'this day six months' being agreed to, the bill is regarded as having been finally disposed of.<sup>98</sup>

In certain circumstances questions may not only be superseded but dropped. If the Speaker adjourns the House following a count out or grave disorder arising, the order of the day (or motion) under discussion becomes a dropped order. In committee the proceedings are superseded and the order of the day dropped, if a motion 'That the Chairman do now leave the Chair' is agreed to. An order dropped in these circumstances may be revived on motion after notice (see p. 330 regarding motions dropped).

#### *Question deferred*

The question before the House may be deferred by the House agreeing to the adjournment of the debate and setting a time for its resumption. The automatic adjournment provisions automatically defer any question in the possession of the House. The deferred matter is set down on the Notice Paper for the next sitting, but if a Minister requires the question for the adjournment of the House to be put forthwith and the adjournment is negatived, consideration of the interrupted question is immediately resumed at the point at which it was interrupted. A question in committee may be deferred by the committee agreeing to the motion 'That the Chairman do report progress and ask leave to sit again'. On the Chairman reporting progress the Speaker must put a question to fix a time for the House to resolve itself again into the committee.

#### *Consideration of question interrupted*

Consideration of a question may be interrupted by a motion arising out of a matter of order, a motion to suspend standing orders, or a matter of privilege. As these matters have their own question or requirement, they must be first resolved by the House. Such an interruption is of a temporary nature and once resolved consideration of the original question is resumed.

#### *Motion declared urgent*

The limitation of debate or 'guillotine' procedure applies to motions *per se* as well as motions connected with the passage of a bill or tariff resolution.<sup>99</sup> The only precedent for this procedure was in 1921 when a motion was declared an urgent motion merely as a precaution to ensure that a vote was taken by a certain time.<sup>100</sup>

98 S.O. 219; and see Ch. on 'Legislation'.

99 S.O. 92(c).

100 VP 1920-21/498-500; H.R. Deb. (21.4.21)7663. The declaration was made on a motion to print a paper relating to the League of Nations man-

date for the German possessions in the Pacific and an amendment moved to the effect that any commitments made by the Australian representative at the forthcoming Imperial Conference would be subject to approval and ratification of the people of Australia.

Once a motion of any kind has been moved a Minister may at any time declare it to be an urgent motion and on such a declaration being made the question 'That the motion be considered an urgent motion' is put forthwith without amendment or debate. On the question being agreed to, a Minister may move forthwith a motion specifying the time to be allotted for debate on the motion. The provisions for the motion for the allotment of time are the same as for a bill. In order to bring to a conclusion any proceedings which are to be brought to a conclusion on the expiration of the allotted time, the Chair first puts forthwith any question already proposed from the Chair followed by any other question requisite to dispose of the motion. A motion 'That the question be now put' may not be moved while a motion is under guillotine.<sup>101</sup>

#### *Complicated question divided*

The House or committee may order a complicated question to be divided.<sup>102</sup> Relevant precedents for divided questions are:

- a complex motion to endorse in principle certain sections of a Standing Orders Committee report and amend other standing orders as recommended<sup>103</sup>;
- a motion for leave of absence to two Members<sup>104</sup>;
- a motion to ratify a report of a conference on dominion legislation<sup>105</sup>;
- a motion proposing a conference to select the site of the Federal Capital<sup>106</sup>;
- a motion proposing the appointment of a select committee<sup>107</sup> and a joint select committee<sup>108</sup>, and
- a motion that a Printing Committee report, recommending that certain papers be printed and that the House reconsider its decision to print a paper, be agreed to.<sup>109</sup>

The usual procedure is that, following the suggestion of a Member, the Chair ascertains, either on the voices or by division, whether it is the wish of the House that the question be divided as suggested.<sup>110</sup>

#### *Question put and result determined*

Once debate upon a question has been concluded, either by no Member rising to speak, the mover of the original question having spoken in reply, the House agreeing to the motion 'That the question be now put', or the time allotted under guillotine or the standing orders having expired, the Chair must put the question to the House.<sup>111</sup> The question is resolved in the affirmative or negative, by the majority of voices, 'Aye' or 'No'.<sup>112</sup> The Speaker then states whether in his or her opinion the 'Ayes' or the 'Noes' have it and, if the opinion is challenged, the question is decided by division.<sup>113</sup>

101 For full discussion on the limitation of debate procedure *see* Ch. on 'Legislation'.

102 S.O. 166.

103 VP 1970-72/242-3.

104 VP 1906/55.

105 VP 1929-31/748.

106 VP 1903/144.

107 VP 1905/136.

108 VP 1978-80/366.

109 VP 1920-21/659.

110 H.R. Deb. (18.11.59)2822. A Member objecting to a suggestion that a question be divided, the Speaker has ruled that the motion be voted on as submitted, H.R. Deb. (18.12.14)2269.

111 S.O. 165.

112 S.O. 167.

113 S.O. 168. For a full discussion of division procedures *see* Ch. on 'Routine of business and the sitting day'.

Any amendment must be moved before the mover of a motion speaks in reply to the original question.<sup>114</sup> The Member speaking in reply cannot propose an amendment.

Apart from the occasions when a motion has been withdrawn, there have been other occasions when the Chair has not put the question. In 1908, a motion having been amended by the omission of words and two proposed insertions having been negatived, the Speaker called attention to the fact that what was left of the motion was worthless and presumed the House would not desire him to put the question. The House agreed with this assessment.<sup>115</sup>

### Consideration in committee of the whole

The committee of the whole can only consider matters referred to it by the House.<sup>116</sup> The primary purpose of the committee of the whole is to examine, and if necessary amend, legislation referred to it from the House but it may consider in detail other matters referred to it. Any decision taken in committee is in fact inconclusive in that it is subject to the approval of the House.

A motion moved in the committee of the whole need not be seconded.<sup>117</sup> Such a motion must not be contradictory of a previous decision of the same committee.<sup>118</sup> The sessional orders relating to estimates committees operative in the 31st Parliament enabled reports to the House to contain resolutions or expressions of opinion. Proposed amendments to the standing orders have been referred to the committee of the whole for detailed consideration.<sup>119</sup>

### Orders and resolutions of the House

A motion proposed to the House must be phrased in such a way that, if passed, it will purport to express the judgment or will of the House. Every motion, therefore, when agreed to, assumes the form of an order or of a resolution of the House.

By its orders the House directs its committees, its Members, its officers, the order of its own proceedings and the acts of all persons whom those orders concern. By its resolutions the House declares its own opinions and purposes, and its relationships with matters external to itself. In practice, however, the terms are often used almost synonymously.

Ordinarily the orders and resolutions of the House are singular in effect. There are those orders that are of a machinery nature, for example, an order of the House that a bill be read a second or third time, or that a paper be printed, and there are those that are more specific in nature, for example, an order that the Speaker, in the name of the House, take some particular action.<sup>120</sup> A 'singular' resolution of the House would be one agreeing to a motion of condolence on the death of a Member.

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

115 VP 1908/53-4

116 S.O. 275.

117 S.O. 279.

118 S.O. 278.

119 VP 1903/167,176. On a later occasion in the House suggestion was made that consideration of a proposed standing order be remitted to the

committee of the whole. The Speaker stated that this purpose could have been achieved by the carrying of an amendment to that effect earlier in debate but as that had not been done and as discussion had progressed so far he could not conceive how the motion could be referred to committee for final consideration, H.R. Deb. (21.11.05)5514-15.

120 VP 1950-51/217; VP 1962-63/500.

The great majority of the orders and resolutions of the House are of the singular type.

There are orders and resolutions which can, and do, have a more general application and are, by parliamentary custom, effective only for the session in which they are made. For example, by order of the House, the Speaker, in 1918, was given authority to censor Hansard.<sup>121</sup> Resolutions that have effect for a session only are exemplified by the resolutions of appointment of select committees.

Some resolutions are couched in terms that express the opinion of the House on a matter and as a result may not have any directive force. However, this is not to say that the opinions of the House are to be disregarded, as it is incumbent upon the Executive Government and its officers and others concerned with matters on which the House has expressed an opinion to take cognisance of that opinion when contemplating or formulating any future action.

Some orders and resolutions are seen to have effect from one session to the next, prorogation notwithstanding. The most pertinent examples relate to the resolutions of appointment of standing committees, other than those provided for in the standing orders.<sup>122</sup> On 17 September 1980, the House passed two resolutions, concerning reports of the Committee of Privileges, which expressed the opinion that the reports of the committee should be considered early in the 32nd Parliament (the next Parliament).<sup>123</sup> Some orders and resolutions expressly state that they are to have a continuing and binding, or standing, effect. The obvious examples of this are the standing orders themselves, which are to 'continue in force until altered, amended or repealed'.<sup>124</sup> In 1984, the terms of resolutions adopted relating to the registration and declaration of Members' interests specified that they were 'to have effect from the commencement of the 34th Parliament and to continue in force unless and until amended or repealed by the House of Representatives in this or a subsequent Parliament'.<sup>125</sup>

Other orders and resolutions, whilst they may not contain such explicit provisions, are taken to have a continuing, and a binding, effect as evinced by the following example from the House of Commons: a resolution of that House, on 16 July 1971, read, in part, 'That, notwithstanding the Resolution of the House on 3rd March 1762 and other such Resolutions . . .'<sup>126</sup>, which was a clear indication that a resolution of 200 years ago was regarded as binding on the House in 1971. In more recent years the House of Commons has passed resolutions on the general attitude to be taken with regard to the exercise of its penal jurisdiction, and the process of petitioning the House in connection with the use of House records in court, and such resolutions are considered to have continuing effect.<sup>127</sup>

In 1957, the House of Representatives agreed to the following resolution:

That the House approves that, in lieu of the presentation of Supplementary Estimates and the introduction of Supplementary Appropriation Bills, the following procedure be adopted:

(1) That there be presented to the House after the end of each financial year a Statement prepared by the Treasurer showing the Heads of Expenditure and the Amounts charged thereto pursuant to Section 36A of the *Audit Act* 1901-1957.

121 VP 1917-19/301-2.

126 CJ (1970-71)548.

122 See S.O.s 25-28.

127 CJ (1979-80)823, H.C. Deb. (31.10.80)916;

123 VP 1978-80/1672-3.

'Recommendations of the Select Committee on

124 S.O. 402.

Parliamentary Privilege', *Committee of Privi-*

125 VP 1983-84/945-6.

*leges, Third report*, HC 417(1976-77); CJ (1977-

78)170.

(2) That the Statement be referred for the consideration of the Committee of the whole House.

(3) That a Resolution of the Committee be reported to the House for its adoption.<sup>128</sup>

This resolution has been in force since 1957 although the practice, after 1973, was that while the statement, covering what is now known as the 'Advance to the Minister for Finance', was referred to the committee of the whole, consideration did not take place and a resolution for adoption by the House was not reported.<sup>129</sup>

The binding force of this type of resolution on a continuing basis is implicit rather than explicit in that it relies on the acquiescence of the House for its continuing operation. Such acquiescence does not deny the power of the House simply to ignore the resolutions of previous sessions; to state explicitly that such resolutions have no effect in succeeding sessions; to rescind them explicitly; or, as above, to pass other resolutions, notwithstanding them. The types of orders and resolutions which have or are most commonly regarded as having continuing effect are those which are concerned with the practice and procedure of the House, that is, those relating to the internal workings of the House. These fall into three broad categories:

- standing orders and resolutions expressed so as to have continuing effect;
- sessional orders, and
- orders and resolutions undetermined in regard to duration.<sup>130</sup>

**Standing orders:** These are the permanent rules for the guiding and the control of the House in the conduct of its business. They are regulatory rules which have been expressly declared and intended to bind all future Parliaments. They may be repealed, amended and, in certain circumstances, suspended.

**Sessional orders:** These are orders and resolutions the duration of which is expressly, or by implication, limited to that session in which they were made.

**Orders and resolutions undetermined in regard to duration:** Such orders and resolutions, which affect the practice and procedure of the House without any period of duration being fixed, are often regarded as having permanent validity; and, although according to the custom of Parliament their effectiveness is concluded by prorogation, they may, by virtue of continuous practice, acquire the force of customary law.

In the House of Commons many such orders and resolutions, whose validity is still recognised, are to be found in the Commons Journals of the 17th century. Even from the mid 19th century (the beginning of the 'standing order period') to the present day, examples are to be found of such orders and resolutions of the House of Commons with permanent effect. For example, on 31 October 1980, the House of Commons agreed to a resolution giving leave for reference to be made in future court proceedings to the official reports of debates of the House and to the published reports and evidence of the committees, and declaring that the practice of presenting petitions for leave to refer to parliamentary papers be discontinued. It is obvious from its terms that this resolution was meant to have permanent force.<sup>131</sup>

128 VP 1957-58/332-3.

129 For current practice see Ch. on 'Legislation'.

130 Sir William R. Anson, *The Law and Custom of the Constitution*, 4th edn, Clarendon Press, Ox-

ford, 1911, vol. I, Parliament, p. 296; Campion, p. 105; May, pp. 212-13 (10th edn, p. 144); Quick and Garman, p. 507; Redlich, vol. II, pp. 6-7.

131 H.C. Deb. (31.10.80)916.

That such orders and resolutions of the House of Representatives will have continuing validity is implied in section 50 of the Constitution.<sup>132</sup> The standing orders of the House also imply the continuing validity of such orders and resolutions. Standing order 1 says, in part, 'In all cases not provided for hereinafter, or by sessional or other orders . . .' [emphasis added].

The House has the power, within constitutional limits, to make a determination on any question it wishes to raise, to make any order, or to agree to any resolution. In the conduct of its own affairs the House is responsible only to itself. However, the effect of such orders and resolutions of the House on others outside the House is a limited one.

Other than its powers in regard to enforcing its privileges, decisions of the House alone have no legal efficacy on the outside world. The House has no power to take any administrative action beyond its own borders in carrying out any decision at which it has arrived. The House, as a rule, can only bring its power of direction into play in the form of an Act of Parliament, that is, only in concert with the other two components of the legislature, the sovereign and the Senate. This is the only means by which the House can direct that departments of State, the courts and other outside bodies change or amend their modes of operation. However, to remain in office a Government needs the support of the House. Thus the House has the power of sanction (the withholding of its support) over a Government and, because of this ultimate power, can bring strong pressures to bear on government policy and administration. Although in the ordinary course, because of the strength of party discipline in Australia, the ability of individual Members to influence government directly is limited, party processes do provide opportunities for members of the governing party or parties to have a direct influence on government. The power of sanction also means that, in the ultimate, should the House desire, it can make its own will the will of the Government. In theory the House itself cannot act administratively outside its own borders, but in practice it has a power of sanction by which to direct those of its Members with executive responsibilities, that is, the Ministry, to take action.<sup>133</sup> This is the force behind the resolution of the House of 17 September 1980 seeking to direct the Public Service Board. The resolution said, in part, ' . . . (2) the Public Service Board be requested to do all within its power to restore Mr Berthelsen's career prospects in the Public Service and ensure that he suffers no further disadvantage as a result of this case . . .' [emphasis added].<sup>134</sup> The response of the Public Service Board to the request was tabled on 24 February 1981.<sup>135</sup>

The limitation on the efficacy of orders of the House of Commons on others outside the House was demonstrated in the decisions of the court of Queen's Bench in the cases of *Stockdale v. Hansard* (1836-40). The court ruled that an order of the House of Commons alone was not a sufficient cause to protect a person, carrying out that order, from the due processes of the law. In response to argument that the courts of law had no jurisdiction Lord Denman CJ said:

The grievance complained of appears to be an act done by order of the House of Commons, a court superior to any court of law, and none of whose proceedings are to be questioned in any way . . . It is a claim for an arbitrary power . . . The supremacy of Parliament, the foundation upon which the claim is made to rest, appears to me to completely overturn it, because the House of Commons is not the Parliament, but only a co-ordinate and component part of the Parliament. That sovereign power

132 See also Quick and Garran, pp. 507-8.

134 VP 1978-80/1673.

133 See Redlich, vol. II, pp. 223-4.

135 VP 1980-81/80.

can make or unmake the laws; but the concurrence of three legislative estates is necessary: the resolution of any one of them cannot alter the law or place anyone beyond its control. The proposition is, therefore, wholly untenable, and abhorrent to the first principles of the constitution of England.

As a consequence of the decisions in these cases the objectives of the House in the area were effected by legislation—the Parliamentary Papers Act 1840—as it was only by legislating with the other constituent parts of the Parliament that the House could give sufficient authority to its wishes.<sup>136</sup>

*Resolution or vote of the House rescinded or varied*

Any resolution or vote of the House may be rescinded, but not during the same session unless seven days' notice is given. If the rescission is to correct irregularities or mistakes one day's notice is sufficient or the correction may be made at once by leave of the House.<sup>137</sup> This procedure is rarely invoked in the House of Representatives. The requirement for seven days' notice reflects the situation when, at one time, rescission of a resolution or discharge of an order of the current session offered great difficulty when Parliament in the United Kingdom was regarded rather as a court of law than a legislative body. The view was that a question, once decided, could not be questioned again but had to stand as a judgment of the House.<sup>138</sup> The reason why motions to rescind a vote or resolution are rare is that the House instinctively realises that parliamentary government requires the majority to abide by a decision which has been made in a regular manner, however unexpected that decision may be, and it is unfair to resort to methods to reverse such a decision. The practice, resulting from this feeling, is essentially a safeguard for the rights of the minority, and a contrary practice should not be normally resorted to, unless in a particular case those rights are not threatened.<sup>139</sup>

For practical convenience the requirement for seven days' notice for a rescission motion is often avoided by suspending the relevant standing order or by a motion moved by leave, especially when orders of the House are rescinded as a preliminary to making a different order on the same subject. However, the latter course would be strictly against the spirit of the standing order unless the rescission is to correct an irregularity or mistake.

In order that the House may easily make changes to its sessional orders, the strictures of standing order 170 are overcome by using the words “unless otherwise ordered” in the resolution adopting the sessional orders.

The following are cases of the House having rescinded resolutions or orders:

- all resolutions of the House and committee from a certain point relating to a particular appropriation bill to enable a new bill to be introduced (standing orders suspended)<sup>140</sup>;
- the third reading of a bill to enable a message from the Governor-General recommending an appropriation to be announced (standing orders suspended)<sup>141</sup>;
- to enable the question to be put again on the third reading of a Constitution alteration bill (the division bells were not rung for the required time when the original vote was taken and an absolute majority was not established) (standing orders suspended)<sup>142</sup>;

136 *May*, pp. 190-1, 195.

137 S.O. 170.

138 *May*, p. 392.

139 *May*, p. 394-5.

140 VP 1903/181; H.R. Deb. (21.10.03)6382.

141 VP 1945-46/213.

142 VP 1974/28-9; H.R. Deb. (6.3.74)132.

- to enable a division to be taken on a question, the Chair not hearing earlier the call for a division when the question was decided (by leave)<sup>143</sup>;
- to enable the second readings of certain bills which had been made orders of the day for the next sitting to be made orders of the day for the current sitting (by leave)<sup>144</sup>;
- to enable the consideration of a report of the Committee of Privileges which had been made an order of the day for a particular date to be made an order of the day for the current sitting (by leave)<sup>145</sup>;
- to enable the orders of the day on the second readings of certain bills which had been postponed to the next sitting to be made orders of the day for the current sitting (by leave)<sup>146</sup>;
- resolution referring a petition to the Committee of Privileges (by leave)<sup>147</sup>;
- resolutions regarding reference of work to the Public Works Committee (seven days' notice<sup>148</sup> and by leave<sup>149</sup>), including a resolution agreed to during the previous session (on notice)<sup>150</sup>, and
- the second and third readings of a bill following the realisation that the second reading had not been moved (by leave).<sup>151</sup>

The House has on occasion effectively rescinded an order of the House by ordering papers to be printed in substitution for papers previously ordered to be printed, no notice being given of the motions.<sup>152</sup> When the House repeals or amends standing or sessional orders it effectively rescinds or varies previous orders of the House. Apart from amendments to standing or sessional orders the House has varied resolutions of the same session relating to the electoral redistribution of two States, standing orders having first been suspended to allow the motion to be moved.<sup>153</sup>

#### *Resolution expunged from records*

On 29 April 1915, the House agreed to the following motion:

That the resolution of this House of the 11th November, 1913 "That the honorable Member for Ballarat be suspended from the service of this House for the remainder of the session unless he sooner unreservedly retracts the words uttered by him at Ballarat on Sunday, the 9th November, and reflecting on Mr. Speaker, and apologizes to the House" be expunged from the Journals of this House, as being subversive of the right of an honorable Member to freely address his constituents.

The Speaker stated that, as it would be impossible to recall all relevant copies of Hansard and the Votes and Proceedings, the incident would be expunged from the record kept by the Clerk of the House.<sup>154</sup>

143 VP 1974-75/467; H.R. Deb. (19.2.75)474-5.

144 VP 1974-75/105.

145 VP 1978-80/147.

146 VP 1978-80/1093.

147 VP 1978-80/975.

148 VP 1976-77/389.

149 VP 1974-75/521.

150 VP 1922/93. Seven days' notice was not required because it was a resolution of the previous session.

151 VP 1985-87/893.

152 VP 1907-08/268; VP 1914-17/571; VP 1920-21/155.

153 VP 1968-69/230.

154 VP 1914-17/181; H.R. Deb. (19.4.15)2748-9.

## SPECIAL TYPES OF MOTIONS

### Want of confidence and censure

#### *The Government*<sup>155</sup>

Perhaps the most crucial motions considered by the House of Representatives are those which express a want of confidence in, or censure of, a Government, as it is an essential tenet of the Westminster system that the Government must possess the confidence of the lower (representative) House. By convention, loss of the confidence of the House normally requires the Government to resign in favour of an alternative Government or to advise a dissolution of the House of Representatives. The importance of such motions or amendments is recognised by the rule that any motion of which notice has been given or amendment<sup>156</sup> which expresses a censure of, or want of confidence in, the Government, and is accepted by a Minister as a want of confidence or censure motion or amendment, takes precedence of all other business until disposed of.<sup>157</sup> A notice of motion not accepted by a Minister in the terms of standing order 110 is treated in the same manner as any other notice given by a private Member and is entered on the Notice Paper under private Members' business, although action may be taken to bring the matter on for debate forthwith or at an early stage, despite the fact that the notice is not recognised for the purposes of standing order 110. Such a motion does not attract the increased speaking times of an accepted want of confidence or censure motion.<sup>158</sup> The Government may not accept a notice as a want of confidence motion immediately, but it may be accepted on the next sitting day<sup>159</sup> or some future day<sup>160</sup>, after which it takes precedence until disposed of.

The mover of the motion is usually the Leader of the Opposition who may speak for 30 minutes. The Prime Minister or a Minister deputed by him may also speak for 30 minutes, and any other Member for 20 minutes.<sup>161</sup> Since 1901 (up to the end of 1988) there have been 104 motions or amendments which have expressed want of confidence in, or censure of, the Government, or have been treated as such. The historic importance with which want of confidence motions were regarded is reflected in the fact that on occasions, the last being in 1947, the House has adjourned until the next sitting day following notice being given of such a motion.<sup>162</sup> Also, it was often the case in the past that the Senate remained adjourned while the Government was under challenge in this way in the House.<sup>163</sup> However, the importance of these motions, from both a parliamentary and public point of view, appears to have been lessened in more recent years because of their increasing frequency; 15 motions and two amendments were moved in the period 1981-88.<sup>164</sup> In the modern House, pressure of business is such as to preclude an adjournment.

<sup>155</sup> See also Ch. on 'The role of the House of Representatives'. Motions censuring or expressing lack of confidence in the occupant of the Chair are dealt with in Ch. on 'The Speaker, the Chairman of Committees and Officers'.

<sup>156</sup> VP 1970-72/445-6.

<sup>157</sup> S.O. 110.

<sup>158</sup> NP 14(17.9.74)1128. For further discussion of the time for moving see Ch. on 'Routine of business and the sitting day'.

<sup>159</sup> VP 1974-75/61.

<sup>160</sup> VP 1974-75/167.

<sup>161</sup> S.O. 91.

<sup>162</sup> VP 1946-48/250.

<sup>163</sup> See *Odgers*, pp. 617-18.

<sup>164</sup> See Ch. on 'The role of the House of Representatives' for comparisons.

The withdrawal by the House of its confidence in the Government may be shown:

- By a direct vote of want of confidence in, or censure of, the Government, usually for certain specified acts or omissions. A want of confidence motion however does not always contain reasons in its terms.<sup>165</sup>
- By defeating an issue central to government policy or rejecting a legislative measure proposed by the Government, the acceptance of which the Government has declared to be of vital importance. Conversely, a vote by the House agreeing to a particular legislative measure or provision contrary to the advice and consent of the Government could similarly be regarded as a matter of confidence. Following defeat a Government may choose to resign, as in April and August 1904, 1929 and 1941 (see pp. 342 ff.), or to seek a direct vote of confidence.
- By defeat of the Government on a vote not necessarily central to government policy but accepted by the Government as one of confidence, as in 1905, 1908, 1909 and 1931 (see pp. 343 ff.).

Any defeat of the Government in the House of Representatives does not necessarily mean it has lost the confidence of the House or that it ought to resign. As Jennings states:

It must not be thought . . . that a single defeat necessarily demands either resignation or dissolution. Such a result follows only where the defeat implies loss of confidence . . .<sup>166</sup> What a Government will treat as a matter of sufficient importance to demand resignation or dissolution is, primarily, a question for the Government. The Opposition can always test the opinion of the House by a vote of no confidence. No Government [in the United Kingdom] since 1832 has failed to regard such a motion, if carried, as decisive. A House whose opinion was rejected has always at hand the ultimate remedy of the refusal of supply.<sup>167</sup>

Contemporary thinking indicates that, when a Government is defeated on a matter which it deems to be of sufficient importance, it should seek the feeling of the House at the first opportunity by means of a motion of confidence.

In 1903, the Government was defeated on an important amendment to a Conciliation and Arbitration Bill. Prime Minister Barton stated that the vote created a situation of some gravity and the Ministry would consider its position before any further business was undertaken. The next day he announced that the Government could not accept the amendment or proceed with the bill as amended and, therefore, the Government intended to drop the bill.<sup>168</sup> The same Government also decided not to proceed with the Papua (British Papua New Guinea) Bill after the Government was defeated on certain amendments.<sup>169</sup> Government defeats on tariff matters were not uncommon during this period<sup>170</sup> and in 1904 the Watson Government suffered other defeats to its conciliation and arbitration legislation prior to the defeat that led to its resignation.<sup>171</sup>

It has been claimed that the loss of control of the business of the House is a matter over which Governments should resign. In 1908, Prime Minister Deakin resigned when he accepted that any amendment to a motion to alter the hour of

<sup>165</sup> VP 1970-72/471.

<sup>166</sup> Jennings, *Cabinet Government*, p. 493.

<sup>167</sup> Jennings, *Cabinet Government*, p. 495.

<sup>168</sup> VP 1903/216; H.R. Deb. (8.9.03)4788; H.R. Deb. (9.9.03)4838-40. Ironically the amendment

was very similar to that which led to the resignation of the Deakin Ministry in 1904.

<sup>169</sup> VP 1903/205, 207; H.R. Deb. (9.9.03)4838.

<sup>170</sup> VP 1901-02/386, 387, 388, 718, 726, 728.

<sup>171</sup> VP 1904/279, 280, 283, 287.

next meeting was a challenge to his Government, and the 1909 and 1931 resignations of Governments followed from similar acceptances. In each case the Governments were on the point of losing the necessary support to remain in power (see p. 344). In 1923, however, the Government having lost control of the business of the House the previous evening, Prime Minister Bruce confidently assured the Opposition 'the Government will very soon take it back into its own hands today'.<sup>172</sup> During 1962 and 1963, when the Menzies Government had a floor majority of one, it suffered a number of defeats<sup>173</sup> and, although it did not resign, its precarious majority was a factor which led to the early dissolution of the House.<sup>174</sup>

A motion (or amendment) expressing *censure* of the Government, although slightly different from one expressing a want of confidence, is still of vital importance. A censure motion, as the words imply, expresses more a disapproval or reprimand at particular actions or policies of the Government and, although such a motion or amendment has never been successful in the House, it would:

. . . ordinarily lead to [the Government's] retirement from office, or to a dissolution . . . unless the act complained of be disavowed, when the retirement of the minister who was especially responsible for it will propitiate the House, and satisfy its sense of justice.<sup>175</sup>

On no occasion has a *direct* vote of want of confidence in, or censure of, a Government been successful in the House of Representatives.<sup>176</sup> On eight occasions however Governments have either resigned or advised a dissolution following their defeat on other questions in the House:

● **Deakin Ministry, 21 April 1904.**

The Government was defeated 29:38 in committee on an amendment moved by the Opposition to the Commonwealth Conciliation and Arbitration Bill, the Prime Minister considering that the effect of the amendment was unconstitutional. Immediately following the vote the committee reported progress and the Prime Minister moved the adjournment of the House to allow the Government to take the action called for by the decision of the committee. On the next sitting day Mr Deakin informed the House of the resignation of his Ministry and Mr Watson announced that he had been invited by the Governor-General to form a new Ministry.<sup>177</sup>

● **Watson Ministry, 12 August 1904.**

The Government resigned following its defeat 34:36 on an amendment to its motion that the Commonwealth Conciliation and Arbitration Bill (which it inherited from the previous Government and carried through the committee stage) be recommitted for consideration of certain clauses and a schedule. The amendment was to the effect that clause 48 be omitted from the clauses proposed to be recommitted.<sup>178</sup>

The background was that the Government had been earlier defeated on an amendment to clause 48<sup>179</sup> after which Prime Minister Watson stated that the Government regarded the amendment as of very serious import and would

<sup>172</sup> H.R. Deb. (17.8.23)2964.

<sup>173</sup> VP 1962-63/194, 217-18, 307-8, 348-9.

<sup>174</sup> H.R. Deb. (15.10.63)1790.

<sup>175</sup> Alpheus Todd, *Parliamentary Government in England* (New edition, Spencer Walpole), Sampson Low, Marston and Company, London, 1892, vol. II, p. 121.

<sup>176</sup> On 11 November 1975, a motion of want of confidence in the Prime Minister was agreed to, VP 1974-75/1125-7. For discussion of the events preceding the motion and the reasons it was unsuccessful see Ch. on 'Disagreements between the Houses'.

<sup>177</sup> VP 1904/49, 273; H.R. Deb. (19.4.04)1043,1047; H.R. Deb. (21.4.04)1247.

<sup>178</sup> VP 1904/147.

<sup>179</sup> VP 1904/284.

gauge how far it affected the measure and would consider whether Members would be asked to reconsider their decision.<sup>180</sup> He later stated that the Government still held the same view but proposed to have the position reconsidered at the committee stage, it being his view that if the matter had been originally argued out Members would have arrived at a different conclusion.<sup>181</sup>

Although the Member who moved the amendment to the recommittal motion claimed that the Prime Minister had not said that he regarded the issue as vital to the Government<sup>182</sup>, the Prime Minister unequivocally declared himself stating:

I now say distinctly that I am not prepared to remain in office and take the responsibility for a measure which, according to my conception, will not be effective, especially if this provision, which, I contend, would be absolutely unworkable, be agreed to.<sup>183</sup>

On the sitting day following the defeat Mr Watson informed the House that he had waited on the Governor-General and offered certain advice which His Excellency did not see fit to accept. He had thereupon tendered the resignation of himself and his colleagues which had been accepted.<sup>184</sup>

• **Reid Ministry, 30 June 1905.**

Following a statement by Prime Minister Reid that the way to test whether the Government was in a position to command a majority in the House was by moving an amendment to the Address in Reply<sup>185</sup>, an amendment was moved proposing to add the words 'but are of the opinion that practical measures should be proceeded with' to the Address. The amendment was agreed to 42:25.<sup>186</sup> At the next sitting the Prime Minister informed the House that after the division Ministers had considered the position and had decided to tender to the Governor-General advice for a dissolution. The advice was not accepted and Ministers had tendered their resignations.<sup>187</sup>

• **Deakin Ministry, 10 November 1908.**

On 10 November 1908, Prime Minister Deakin made a ministerial statement in the House with reference to the political situation (the Leader of the Labour Party had made a statement at the previous sitting to the effect that his party was no longer able to support the Ministry and when asked by the Prime Minister whether he wished to take any further step he replied 'not now'<sup>188</sup>). The Prime Minister stated he would accept any amendment to the motion to alter the hour of next meeting as a challenge to the Government.

180 H.R. Deb. (24.6.04)2689-90.

181 H.R. Deb. (28.6.04)2697.

182 H.R. Deb. (10.8.04)4039. It has been suggested that the purpose of the manoeuvre to have the question debated in the House on the motion for recommittal was to procure the vote of the Chairman of Committees who was known to be against the Government on the question, but who would not have had a deliberative vote if the clause was reconsidered in committee, Sawyer, *Australian Federal Politics and Law* 1901-1929, p. 38.

183 H.R. Deb. (10.8.04)4044.

184 VP 1904/149.

185 H.R. Deb (29.6.05)41. The speech of the Governor-General at the opening of the 2nd Session of the 2nd Parliament dealt only with a redistribution of electoral divisions, VP 1905/2. The reason for this was that the Government, having realised it had lost the support of the House, set aside a speech detailing intended public business and placed in the Governor-General's hands one 'which would show that we would only stay in office to bring about an appeal to the country'. Sir George Houstoun Reid, *My Reminiscences*, Cassell, London 1917, pp. 241-2.

186 VP 1905/7.

187 VP 1905/9.

188 VP 1908/78; H.R. Deb. (6.11.08)2136.

Mr Fisher moved, as an amendment to a motion for that purpose, that all words after 'That' be omitted and the Government lost the ensuing division 13:49.<sup>189</sup> Mr Deakin announced the resignation of his Ministry at the next sitting.<sup>190</sup>

● **Fisher Ministry, 27 May 1909.**

Following defeat, 30:39, on a motion moved by a private Member to adjourn debate on the Address in Reply, Prime Minister Fisher stated that he regarded the vote as one of want of confidence in the Government and ascertained that the motion had been submitted with the concurrence of the Leader of the Opposition.<sup>191</sup> At the next sitting, in a ministerial statement, he stated that due to the House's declaration that it was not disposed to continue the discussion of the proposed Address in Reply and as that course was taken in opposition to the Ministry, the Government did not propose to proceed further with the sitting.<sup>192</sup> At the following sitting he informed the House that the Government had considered its position and advised the Governor-General to dissolve the House and, the Governor-General not having seen fit to accept the advice, Ministers had officially tendered their resignations. He had been informed that Mr Deakin had been commissioned to form a new administration.<sup>193</sup>

● **Bruce-Page Ministry, 10 September 1929.**

During consideration in committee of the Maritime Industries Bill (certain sections of which repealed the Commonwealth Conciliation and Arbitration Acts and Industrial Peace Acts and largely abandoned the field of industrial legislation to the States<sup>194</sup>) an amendment was moved to the effect that proclamation of the Act would not be earlier than its submission to the people either at a referendum or a general election.<sup>195</sup>

Prime Minister Bruce stated that, if by carrying the amendment the committee declared that the Parliament should go to the country, the Government would offer not the slightest opposition to that course.<sup>196</sup> After the amendment was agreed to 35:34 (the Speaker, Sir Littleton Groom, refusing to depart from his practice of not voting in committee), the Prime Minister moved the adjournment of the House to give the Government an opportunity to consider its position.<sup>197</sup> Two sitting days later the Prime Minister read to the House the advice he had tendered to the Governor-General and the Governor-General's reply accepting the advice that the House of Representatives be dissolved.<sup>198</sup>

● **Scullin Ministry, 25 November 1931.**

During debate on a motion for the adjournment of the House to discuss a definite matter of urgent public importance (relating to the federal grant for the relief of unemployed)<sup>199</sup>, Prime Minister Scullin in response to an interjection replied to the effect that if Members wished to take the business of the House out of the hands of the Government there would be an election.<sup>200</sup> The

189 VP 1908/79; H.R. Deb. (10.11.08)2139-40.

190 VP 1908/81.

191 VP 1909/7; H.R. Deb. (27.5.09)126, 169.

192 VP 1909/9; H.R. Deb. (28.5.09)169.

193 VP 1909/11.

194 Sawyer, *Australian Federal Politics and Law* 1901-1929, p. 308.

195 VP 1929/118; H.R. Deb. (10.9.29)841.

196 H.R. Deb. (10.9.29)850.

197 H.R. Deb. (10.9.29)867.

198 VP 1929/121; H.R. Deb. (12.9.29)873-4.

199 This form of procedure has, since 1952, been in the nature of discussion on which no vote is taken (S.O. 107).

200 H.R. Deb. (25.11.31)1899.

Opposition successfully moved the closure motion and the question that the House do now adjourn was agreed to, 37:32, against the wishes of the Government.<sup>201</sup>

In consequence of the vote, Prime Minister Scullin waited upon the Governor-General and advised him to grant a dissolution, which advice was accepted.<sup>202</sup>

● **Fadden Ministry, 3 October 1941.**

On the Budget debate in committee of supply, an opposition amendment to the effect that the first item in the estimates be reduced by a nominal sum (£1) was agreed to 36:33. Progress was reported and in moving a motion for the alteration of the day of next meeting Prime Minister Fadden stated that in consequence of the vote just taken the Government desired an opportunity to consider its position.<sup>203</sup>

At the next meeting of the House Mr Curtin, as Prime Minister, informed the House that Mr Fadden had submitted the resignation of his Government to the Governor-General who had then commissioned him (Mr Curtin) to form a Ministry.<sup>204</sup>

There have been other cases of interest which did not lead to a change of Government:

- In 1908, the Government lost a division 28:31 on the question that the debate be adjourned on a motion and amendment. Prime Minister Deakin issued a challenge of confidence on the next division which was decided in favour of the Government.<sup>205</sup>
- The Hughes Ministry resigned in January 1918 following the defeat of its proposals in the second conscription plebiscite in December 1917. Prime Minister Hughes gave the Governor-General no advice as to what should be done and after seeking advice from representatives of all sections of the House the Governor-General commissioned Hughes to form another Ministry.<sup>206</sup>
- In 1921, the Hughes Government was defeated on a motion to adjourn the House to discuss an urgent matter of definite public importance, the Country Party having voted with the Labor Party Opposition. The next day, Prime Minister Hughes stated that the Government would seek an opportunity of ascertaining what the vote meant. The House then adjourned for five days and on its resumption the Prime Minister gave Members an opportunity of expressing and registering their opinion by a vote on a motion to print a paper, to which the Opposition moved an amendment seeking the resignation of the Prime Minister. The amendment was defeated 46:23, and the original motion agreed to on the same figures.<sup>207</sup> The Country Party later made it clear that it never intended to bring about the Government's resignation and the Leader of the Opposition regarded the whole proceedings as a farce.<sup>208</sup> Sawer comments that Prime Minister Hughes went through the process of adjourning the House for five days to discomfit the Country Party and extract an undertaking that the Government would not be unduly harassed while he was absent in London at an Imperial Conference.<sup>209</sup>

In October 1975, Prime Minister Whitlam, following an announcement of the Opposition's intention to delay in the Senate bills appropriating money for the

201 VP 1929-31/945.

202 VP 1929-31/947, 948; H.R. Deb. (26.11.31)1926-7.

203 VP 1940-43/193; H.R. Deb. (3.10.41)720.

204 VP 1940-43/195.

205 VP 1907-08/377-8; H.R. Deb. (9.4.08)10451-60.

206 VP 1917-19/157-8.

207 VP 1920-21/489-94; H.R. Deb. (15.4.21)7466; H.R. Deb. (20.4.21)7497-9.

208 H.R. Deb. (20.4.21)7498-9.

209 Sawer, *Australian Federal Politics and Law* 1901-1929, pp. 208-9.

ordinary annual services of the Government, moved a motion of confidence in the Government. An amendment was moved and negatived and the original motion agreed to.<sup>210</sup>

#### *Ministers*

From time to time a specific motion of want of confidence in, or censure of, a particular Minister or Ministers may be moved by the Opposition. The first case occurred in 1941, but the motion lapsed for the want of a seconder.<sup>211</sup> During the 1981-88 period, 35 such motions and two amendments were moved, 13 of them involving the Prime Minister. While the standing orders provide that a motion of want of confidence in the Government may attract precedence over all other business if it is accepted by a Minister as a want of confidence motion, there is no similar provision in respect of a motion of want of confidence in a Minister. The motion is, therefore, treated in the same way as any other private Member's motion, including the speech times applicable to an ordinary motion. After notice of a motion has been given, it is often the practice for the Government to suspend standing orders to enable the motion to be moved forthwith.

No motion of want of confidence in, or censure of, an individual Minister, except for the resolution of 11 November 1975 following the dismissal of the Whitlam Government, has been successful in the House. The solidarity of the Ministry and the government party or parties will normally ensure that a Minister under attack will survive a censure motion in the House. The effect of carrying such a motion against a Minister may be inconclusive as far as the House is concerned as any further action would be in the hands of the Prime Minister, but parliamentary pressure has caused the resignation or dismissal of Ministers on a number of occasions.<sup>212</sup>

A vote against the Prime Minister, depending on the circumstances, would be expected to have serious consequences for the Government. If the House expressed want of confidence in the Prime Minister, convention would require that, having lost the support of the majority of the House of Representatives, the Ministry as a whole should resign, or alternatively the Prime Minister may advise a dissolution. On 11 November 1975 a motion of want of confidence in the Prime Minister was agreed to. The terms of the motion also requested the Speaker to advise the Governor-General to call another Member, the former Prime Minister, to form a Government. The sitting was suspended to enable the Speaker to convey the resolution to the Governor-General, but did not resume as the House was dissolved by proclamation of the Governor-General.

As mentioned above, if a motion of want of confidence in, or censure of, a Minister were successful and its grounds were directly related to government policy, the question of the Minister or the Government continuing to hold office would be one for the Prime Minister to decide. If the grounds related to the Minister's administration of his department or his fitness otherwise to hold ministerial office, the Government would not necessarily accept full responsibility for the matter, leaving the question of resignation to the particular Minister or to the Prime Minister to appease the House and satisfy its sense of justice.

210 VP 1974-75/987-90.

211 VP 1940-43/105; and see VP 1913/46-7; VP 1978-80/1020-3.

212 For a summary of cases see Ch. on 'House, Government and Opposition'. For details of the events of 11.11.75 see Ch. on 'Disagreements between the Houses'.

A motion of lack of confidence in a Senate Minister has been moved in the House, and negatived.<sup>213</sup> Motions have been moved expressing want of confidence in, or censure of, both the Prime Minister and another Minister.<sup>214</sup>

In 1973, an amendment expressing want of confidence in the Attorney-General (Senator Murphy) was agreed to in the Senate. On the following sitting day a motion of confidence in the Attorney-General was agreed to in the House.<sup>215</sup> In 1974, a motion was moved in the Senate that the Minister for Foreign Affairs (Senator Willesee) was 'deserving of censure and ought to resign' because of three separate issues. The question was divided and the motion as it related to one of the issues was agreed to.<sup>216</sup> On 13 September 1984 the Senate agreed to a motion of censure of the Minister for Resources and Energy (Senator Walsh), and on 7 April 1989 agreed to a motion of censure of the Minister for Resources (Senator Cook).

#### *Censure of a Member*

A motion of censure of a private Member has been moved on only one occasion. The motion was agreed to.<sup>217</sup> A motion has been agreed to censuring the Leader of the National Party, then in opposition, for conduct unworthy of a Member.<sup>218</sup> On a further occasion a motion was put to the House condemning the Leader of the National Party for reflecting on the Speaker, but the motion was withdrawn, by leave, after the Leader had apologised for and withdrawn his remarks.<sup>219</sup> On a number of occasions a motion of censure of the Leader of the Opposition, or an amendment expressing censure in the form of an alternative proposition, has been agreed to.<sup>220</sup> These are considered to be bad precedents. Such resolutions, as distinct from a resolution of the House suspending or expelling a Member, are of no substantive effect and are only regarded as an expression of opinion by the House. A motion in the form of a censure of a Member, such as the Leader of the Opposition, not being a member of the Executive Government, is not consistent with the parliamentary convention that the purpose of a vote of censure is to question or bring to account a Minister's responsibility to the House. Furthermore, given the relative strength of the parties in the House, and the strength of party loyalties, in ordinary circumstances it could be expected that a motion or amendment expressing censure of an opposition leader or another opposition Member would be agreed to, perhaps regardless of the circumstances or the merits of the arguments or allegations. Whilst there are precedents for amendments expressing censure of private Members, they may be considered bad precedents and undesirable as they do not constitute good practice in terms of the principle that charges of a personal character should be raised by way of substantive and direct motions.<sup>221</sup> On one occasion a notice of motion for the purpose of moving that an Address be presented to the Governor-General informing him that the Opposition invited the censure of the House was ruled out of order on the ground that it was frivolous (*see* p. 325).

#### **Addresses**

An Address to the sovereign or the Governor-General is the method normally employed by the House for making its desires, feelings and opinions known to the

213 VP 1968-69/150-1.

219 VP 1985-87/1101-2.

214 VP 1978-80/133-6, 917.

220 VP 1970-72/81-3; VP 1974-75/518-20 (together

215 J 1973-74/91-2, 93-4; VP 1973-74/104-6.

with the Leader of the Country Party); VP

216 J 1974-75/195-7.

1977/406-8; VP 1978-80/156-7; VP 1985-87/

217 VP 1977/300-1.

1721-2; VP 1987-89/77-80; VP 1987-89/1225-7.

218 VP 1983-84/475.

221 *May*, p. 378.

Crown. The standing orders make provision for Addresses to Her Majesty, the Governor-General and members of the Royal Family.<sup>222</sup>

From time to time what have purported to be Addresses to other persons have been entered in the Votes and Proceedings:

- an Address to the former Governor-General on his departure from Australia was moved and agreed to; this should have been more properly termed a resolution<sup>223</sup>;
- an Address of welcome from the Parliament in connection with the visit of the American fleet to Australia; the Speaker tabled the Address which had been presented to Rear-Admiral Sperry in the Senate Chamber; there had been no formal consideration of the Address by the House prior to its presentation<sup>224</sup>, and
- the terms of an Address of congratulations from the Parliament to the Lieutenant-Governor, Legislature and people of the Isle of Man on the occasion of the Millenium of the Tynwald was announced by the Speaker; the Address had not been considered by the House.<sup>225</sup>

With the exception of the Address in Reply<sup>226</sup>, an Address to the sovereign or Governor-General is moved, except in cases of urgency, after notice in the usual manner<sup>227</sup>, but addresses of congratulation or condolence to members of the Royal Family may be moved by a Minister without notice.<sup>228</sup> An Address to the Governor-General has been moved as an amendment to a motion to print papers.<sup>229</sup>

#### *To the sovereign*

Addresses which have been agreed to by the House and presented to the sovereign have included the following subjects:

- the coronation of the sovereign<sup>230</sup>;
- death of member of the Royal Family<sup>231</sup>;
- Royal marriage<sup>232</sup> and births<sup>233</sup>;
- the 25th anniversary of the sovereign's accession to the throne<sup>234</sup>;
- the cessation of wartime hostilities<sup>235</sup>;
- expressing sympathy in the sovereign's state of health<sup>236</sup>;
- praying that the sovereign give directions that a Mace be presented by and on behalf of the Parliament to another legislature<sup>237</sup>;
- on the subject of home rule for Ireland<sup>238</sup>, and
- in respect of the coronation oath.<sup>239</sup>

222 S.O.s. 393-398.

223 VP 1908/5.

224 VP 1908/3-4.

225 VP 1978-80/930.

226 See Ch. on 'The parliamentary calendar' for full details of the Address in Reply.

227 S.O. 393.

228 S.O. 394.

229 The proposed Address was moved as an amendment to the motion to print the reports of a royal commission and prayed that His Excellency would refer the inquiry back to the royal commission for particular action to be taken. Consideration of the motion and amendment lapsed at the prorogation of the Parliament, VP 1934-37/255,ci.

230 VP 1901-02/439; VP 1911/2 (joint Address); VP 1937/3 (joint Address).

231 VP 1978-80/959; VP 1974-75/9; VP 1970-72/1159.

232 VP 1946-48/406 (joint Address).

233 VP 1964-66/33 (joint Address); VP 1960-61/2 (joint Address).

234 VP 1934-37/189 (joint Address).

235 VP 1917-19/357; VP 1945-46/221.

236 VP 1948-49/157; VP 1951-53/81 (resolution as distinct from an Address).

237 VP 1964-66/41; VP 1978-80/319-20 (joint Addresses).

238 VP 1905/29, 123-5. An earlier proposed Address on home rule for Ireland lapsed, VP 1904/247,xl.

239 VP 1910/37-8.

The House and Senate have often agreed to joint Addresses to the sovereign, the Addresses being drafted in the form of joint Addresses before being considered by each House separately and no message passing between the Houses requesting concurrence.<sup>240</sup>

*To members of the Royal Family*

The following Addresses have been presented to members of the Royal Family:

- Address of welcome to the Prince of Wales<sup>241</sup>;
- Address of welcome to the Duke of York on the occasion of the establishment of the seat of Government in Canberra<sup>242</sup>, and
- Address of welcome to the Duke of Gloucester.<sup>243</sup>

*To the Governor-General*

Apart from the Address in Reply, Addresses have been presented to Governors-General on their departure from the Commonwealth<sup>244</sup> and requesting that the Governor-General forward to the King, for communication to the President of the United States, a resolution of sympathy following the assassination of President McKinley.<sup>245</sup>

On two occasions the House has ordered that resolutions of the House be forwarded by Address to the Governor-General. The first case related to the adoption of the metric system of weights and measures within the Empire. It was ordered that the resolution be communicated by Address to His Excellency for transmission to the Secretary of State for Colonies. The Senate concurred with the resolution.<sup>246</sup> On the second occasion the House resolved that resolutions regarding the erection of a memorial to Queen Victoria be transmitted by Address to His Excellency.<sup>247</sup> On neither occasion did the House consider the Address as such, nor were replies from the Governor-General announced to the House.

The standing orders provide that when the Royal prerogative is concerned in any papers that the House requires, an Address be presented to the Governor-General praying that such paper be laid before the House.<sup>248</sup>

The Constitution and certain Commonwealth statutes also provide for Addresses to the Governor-General from both Houses in respect of the removal of certain persons from office under special circumstances:

- Justices of the High Court and other federal courts (Constitution, s. 72);
- Auditor-General (*Audit Act 1901*, s. 7), and
- Member of the Administrative Appeals Tribunal (*Administrative Appeals Tribunal Act 1975*, s. 13).

*Resolutions to sovereign and Governor-General*

Resolutions as distinct from Addresses have been agreed to by the House and forwarded to the sovereign:

- on the death of a sovereign<sup>249</sup>;
- accession to the throne by a sovereign<sup>250</sup>;

240 VP 1978-80/319; J 1978-80/265.

246 VP 1903/34,63.

241 VP 1920-21/185-6.

247 VP 1905/109, 119-20.

242 VP 1926-28/349.

248 S.O.s 317,318; *see also* Ch. on 'Papers and documents'.

243 VP 1934-37/6-7 (joint Address).

249 VP 1910/7; VP 1934-37/512; VP 1951-53/81.

244 VP 1903/183; VP 1908/5.

250 VP 1910/8; VP 1934-37/512; VP 1951-53/259.

245 VP 1901-02/161.

- expressing the House's determination that World War I continue to a victorious end<sup>251</sup>;
- thanking the sovereign for the gift of despatch boxes<sup>252</sup>;
- thanking the sovereign for his message on the occasion of the establishment of the seat of Government in Canberra<sup>253</sup>;
- expressing condolence on the death of a member of the Royal Family<sup>254</sup>, and
- expressing sympathy in the illness of the sovereign.<sup>255</sup>

On occasions when Parliament has not been meeting, messages have been sent to the sovereign on the sovereign's accession to the throne and in respect of the death of the sovereign's predecessor.<sup>256</sup>

Resolutions have been forwarded to the Governor-General:

- on the death of a member of his family<sup>257</sup>, and
- requesting him to summon the first meeting of the 10th Parliament at Canberra.<sup>258</sup>

#### *Presentation of Addresses*

Addresses to the sovereign or members of the Royal Family are transmitted by the Speaker to the Governor-General (usually by letter) with the request that they be forwarded for presentation.<sup>259</sup> Unless the House otherwise orders, Addresses to the Governor-General are presented by the Speaker.<sup>260</sup> When an Address is ordered to be presented by the whole House, the Speaker proceeds with Members to a place appointed by the Governor-General and reads the Address to the Governor-General. The standing orders provide that the Members who moved and seconded the Address stand on the left hand side of the Speaker.<sup>261</sup> In practice, they stand behind the Speaker.

The Address to the King on the cessation of hostilities at the end of World War I was presented to the Governor-General on the steps of Parliament House by the Speaker, accompanied by Members.<sup>262</sup> The Speaker has personally presented Addresses to members of the Royal Family.<sup>263</sup> On the occasion of a joint Address to King George V on the 25th anniversary of his accession to the throne, the Governor-General suggested that the Prime Minister (at that time in the United Kingdom) hand the Address to the King. The Speaker agreed to the proposal, assuming the suggestion would meet with the concurrence of Members.<sup>264</sup>

#### *Reply*

The Governor-General's answer to any Address presented by the whole House must be reported by the Speaker.<sup>265</sup> A reply from the sovereign to any Address is also announced to the House by the Speaker. The reply is transmitted to the Speaker through the Governor-General.<sup>266</sup>

251 VP 1914-17/315.

252 VP 1926-28/349.

253 VP 1926-28/348.

254 VP 1940-43/377.

255 VP 1929/7; VP 1951-53/81.

256 VP 1910/7; VP 1934-37/511; VP 1937/2.

257 VP 1940-43/477; VP 1974-75/153.

258 VP 1923-24/74.

259 S.O. 395.

260 S.O. 396.

261 S.O. 397.

262 VP 1917-19/359.

263 VP 1926-28/354; VP 1934-37/13.

264 VP 1934-37/239.

265 S.O. 398; VP 1978-80/87.

266 VP 1978-80/327, 981.

## Motion of condolence

It is the practice of the House to move a motion of condolence on the death of the Governor-General or a sitting Member or Senator.<sup>267</sup> The practice is also extended to those who formerly held the following offices:

Governor-General

Prime Minister

Speaker of the House

President of the Senate

Leader of the Opposition

Leader of a 'recognised' political party

Leader of the Government in the Senate

Leader of the Opposition in the Senate

A condolence motion may also be moved following the death of a former Senator or Member when:

- the person ceased to be a Senator or Member during the current Parliament;
- the person had had previous distinguished ministerial service or other distinguished service in Australia, or
- the death of the former Member or Senator coincides with the death of another person in respect of whom a motion of condolence is to be moved.

However, in normal circumstances the death of a former Member or Senator is announced by the Speaker who refers to the death without a motion being moved. The Speaker then asks Members to rise in their places for a short while as a mark of respect.<sup>268</sup> This practice has sometimes been criticised, on the ground that the House should show more recognition of the services of a former Member or Senator.<sup>269</sup> On the opening day of the 32nd Parliament, the Speaker, by indulgence, allowed Members to pay tribute to former colleagues, there being no question before the House<sup>270</sup>, and the speeches were bound and forwarded to the next of kin.

From time to time condolence motions may also be moved following the deaths of distinguished Australians, heads of Government of Commonwealth countries or foreign countries, and other distinguished persons overseas whose achievements are considered to have some direct relevance to Australia.

The guidelines for the moving of condolence motions have, in practice, been determined by the Government and, depending on the circumstances, the details may not always be observed. At the request of a Member, during questions without notice, and with the agreement of the Prime Minister and Speaker, Members stood in silence as a mark of respect to Dr Martin Luther King, a world figure who had been assassinated in the United States of America. There was an understanding that this departure from practice should not be considered to be a precedent.<sup>271</sup> There was a similar earlier precedent initiated by a private Member, when Members stood in silence for one minute in memory of members of the Australian Imperial Force who fell in World War I.<sup>272</sup>

A motion of condolence, by practice of the House, is moved without notice. It is usually moved by the Prime Minister and seconded by the Leader of the Opposition, and is ordinarily given precedence.<sup>273</sup> At the conclusion of the speeches

267 See Ch. on 'Members'.

271 VP 1968-69/43.

268 VP 1978-80/1243.

272 VP 1920-21/119; H.R. Deb. (23.4.20) 1488.

269 H.R. Deb. (20.2.80) 158,161; H.R. Deb. (2.4.80) 1664.

273 S.O. 157; and see Ch. on 'Routine of business and the sitting day'.

270 VP 1980-81/10.

the Speaker puts the question and asks Members to signify their approval of the motion by rising in their places for a short period of silence. Depending on the circumstances a condolence motion may be followed by a suspension of the sitting to a later hour. The death of personages of the highest order may be marked by an adjournment to the next sitting. However, there has been a tendency for the periods of suspension or adjournment to be reduced with the increase in pressure on the time of the House.

It is usual for bound copies of motions of condolence and extracts from the Hansard together with tapes of speeches delivered on condolence motions to be presented to the next of kin of deceased Members and former Members. In the case of other persons, bound copies of the motions and Hansard extracts are forwarded to the next of kin of the deceased or through diplomatic representatives of the country of the deceased, as appropriate.

### **Vote of thanks**

As with motions of condolence, precedence is ordinarily given to a motion or vote of thanks of the House.<sup>274</sup> Votes of thanks have been comparatively rare and are confined to the following cases:

- to members of the Armed Forces and others following World War I and World War II<sup>275</sup>;
- recording the gratitude of the House to the International Health Board (Rockefeller Institute) for assistance in connection with the public health of the Commonwealth<sup>276</sup>;
- to the United Kingdom Branch of the Empire Parliamentary Association in relation to its offer to present a Speaker's Chair.<sup>277</sup>
- to presenters of gifts to Australia's new Parliament House, and
- to persons and organisations associated with the planning and construction of the new Parliament House.<sup>278</sup>

Motions, not being votes of thanks, but containing sentiments of congratulation, appreciation or gratitude, have in practice received similar precedence. Such motions have for the most part been moved by leave, although they have also been moved following a motion being agreed to for the suspension of standing orders.<sup>279</sup> Contrary to the usual practice of such motions being moved by the Prime Minister or a Minister, a case has occurred of such a motion being moved by an opposition leader.<sup>280</sup>

<sup>274</sup> S.O. 157.

<sup>275</sup> VP 1920-21/137; VP 1945-46/222. On the former occasion the vote of thanks was presented by the Speaker, accompanied by Members, to representatives of the services in Queen's Hall (Melbourne), VP 1920-21/184.

<sup>276</sup> VP 1923-24/197.

<sup>277</sup> VP 1925/67.

<sup>278</sup> VP 1987-89/621.

<sup>279</sup> Such motions have included: a motion expressing congratulations and gratitude to General MacArthur at the end of World War II (VP

1945-46/222); motions of congratulation on Australian sporting successes—Americas Cup (VP 1983-84/253), ascent of Mt Everest (VP 1983-84/929)—moved after suspension of standing orders; a motion congratulating and expressing appreciation of the Royal Military College on the occasion of its 75th anniversary (VP 1985-87/1234).

<sup>280</sup> A motion congratulating the Navy on the occasion of its 75th anniversary and expressing thanks to allied naval forces for participation in the celebrations, VP 1985-87/1169.

On recent occasions on the retirement of Clerks of the House 'votes of appreciation' have been moved without notice or leave of the House and agreed to.<sup>281</sup>

### **Motion to suspend standing or sessional orders**

The standing orders provide that:

- In cases of necessity, any standing or sessional order or orders of the House may be suspended on motion, duly moved and seconded, without notice, provided that such motion is carried by an absolute majority of Members having full voting rights.<sup>282</sup>
- When a motion for the suspension of any standing or sessional order or orders appears on the Notice Paper, such motion may be carried by a simple majority of votes.<sup>283</sup>
- The suspension of standing orders is limited in its operation to the particular purpose for which such suspension has been sought.<sup>284</sup>

Thus, like any other motion, a motion to suspend standing orders is moved pursuant to notice or by leave of the House. However, it can also be moved without notice in cases of necessity.

Motions to suspend the standing orders are most commonly moved in order to:

- facilitate the progress of business through the House;
- extend time limits for speeches;
- enable a particular item of business to be called on forthwith, and
- enable a motion without notice to be moved.

The standing or sessional orders may be suspended by the House only, and not by a committee of the whole House. The position is summarised in the following statement from the Chair:

The standing orders are established by the House sitting as a House and cannot be amended or suspended by a Committee of the Whole. The Committee is a creature of the House and has no right or power to vary a decision of the superior body.<sup>285</sup>

The House may, of course, suspend standing or sessional orders in relation to proceedings that may take place later in committee.<sup>286</sup>

As with other motions, a motion to suspend standing or sessional orders requires a seconder, with the exception that a seconder is not required for a motion moved by a Minister or Assistant Minister.<sup>287</sup> A motion may relate to matters not yet before the House<sup>288</sup> and the standing orders may be suspended for more than one purpose.<sup>289</sup> While other business is before the House, a motion to suspend standing orders will not be received by the Chair unless the substance of the motion is relevant to the item of business. If it is not relevant to the item of business, it cannot be moved until the item is disposed of, that is, between items of business.<sup>290</sup>

<sup>281</sup> VP 1980-83/905; VP 1985-87/319.

<sup>282</sup> S.O. 399.

<sup>283</sup> S.O. 400.

<sup>284</sup> S.O. 401.

<sup>285</sup> VP 1970-72/827; H.R. Deb. (9.11.71)3181.

<sup>286</sup> VP 1954-55/286.

<sup>287</sup> S.O. 399. On one occasion, a motion not seconded was agreed to by the House and the

Speaker later stated that he was satisfied that the will of the House had been discharged. H.R. Deb. (27.10.77)2557-8; H.R. Deb. (1.11.77)2593-4.

<sup>288</sup> H.R. Deb. (3.11.15)7131; H.R. Deb. (10.11.15)7406-7.

<sup>289</sup> H.R. Deb. (11.8.04)4149.

<sup>290</sup> VP 1983-84/543; H. R. Deb. (27.3.84)803.

A particular standing or sessional order may be suspended in order to achieve a single object. More commonly however the object is achieved by a motion expressed in the terms 'That so much of the standing (and sessional) orders be suspended as would prevent . . .'.<sup>291</sup>

#### *Pursuant to notice*

The spirit of the standing orders is more properly met when a motion to suspend standing orders is brought before the House after notice has been given. A motion appearing on the Notice Paper may be carried by a simple majority of those voting.<sup>291</sup> A more regular use is made of notices at times when the Government has a small majority, in order to avoid the requirement that a motion moved without notice must be carried by an absolute majority. (*And see* contingent notices, p. 323.)

#### *By leave of the House*

A motion to suspend standing orders may also be moved following the granting of leave by the House. The granting of leave obviates the need for notice and can be taken to mean that the object of the motion, that is, the suspension of standing orders, meets with the unanimous consent of the House and, hence, the motion is unlikely to be opposed. This does not imply that once standing orders have been suspended to move a motion without notice or bring on an item of business, that the motion or item of business will not be opposed or challenged in the House. When leave is granted, the motion may be carried by a simple majority of those voting.<sup>292</sup>

#### *Without notice*

In cases of necessity any standing or sessional order or orders (all or several) of the House may be suspended on motion moved without notice, provided that the motion is carried by an absolute majority of Members. If a Member wishes to move for the suspension of standing orders without notice, the Member—

- must first receive the call from the Chair, and
- may not interrupt a Member who is speaking.<sup>293</sup>

Such a motion can be moved during consideration of an item of business only if it is relevant to that item of business. If the motion is not relevant to the item of business, it must be moved after the item is disposed of, that is, between items of business.<sup>294</sup>

A motion has been ruled out of order because:

- it contravened the 'same question rule'<sup>295</sup>,
- there were no standing orders relating to the purpose for which the motion was proposed<sup>296</sup>,
- there was already a motion to suspend standing orders before the House<sup>297</sup>,
- it was unrelated to the question before the House<sup>298</sup>, and
- it covered the same subject on which the House had just voted to adjourn debate.<sup>299</sup>

291 S.O. 400.

292 H.R. Deb. (2.8.05)471.

293 S.O. 84.

294 H.R. Deb. (28-29.10.70)2969; VP 1983-84/543; H.R. Deb. (27.3.84)803.

295 VP 1946-48/119.

296 VP 1967-68/50; the motion proposed to suspend standing orders to enable a Minister to complete an answer to a question without limitation of time. *See also* H.R. Deb. (20.3.80)1008; the motion proposed to suspend standing orders to enable matter to be incorporated in Hansard.

297 H.R. Deb. (12.10.72)2549.

298 H.R. Deb. (28-29.10.70)2969.

299 VP 1977/115.

A motion to suspend standing orders should be moved before 11 p.m. as the motion itself constitutes new business under the terms of standing order 103.<sup>300</sup> However, a motion moved, by leave (and so by unanimous consent of the House), to enable certain orders of the day to be called on after 11 p.m. has been used and is less objectionable.<sup>301</sup>

Prior to 1963 the terms of the relevant standing order stated that in cases of 'urgent necessity' motions to suspend standing or sessional orders could be moved without notice. In 1963 the word 'urgent' was omitted on the recommendation of the Standing Orders Committee as it was considered redundant.<sup>302</sup> The practice has been that the determination of 'necessity' is not a matter for the Chair to decide but a matter for the Member moving the motion and should the House wish to challenge it, it can do so by rejecting the motion.<sup>303</sup>

Any motion moved without notice to suspend standing orders must be carried by an absolute majority of Members having full voting rights. Questions have arisen as to whether this provision is in accord with the Constitution and whether the Speaker is included in the 'absolute majority of Members having full voting rights'.

In 1935, the Solicitor-General was asked for an opinion as to whether section 50 of the Constitution (enabling each House to make rules and orders with respect to the order and conduct of its business and proceedings) permitted the House to make standing orders requiring a certain number of votes to be given in favour of a motion when the provision in section 40 of the Constitution provided that questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. Included in the standing orders drawn to the notice of the Solicitor-General was the standing order which provided that a motion to suspend standing orders without notice had to be carried by an absolute majority of 'the whole number of Members of the House'. In his reply the Solicitor-General stated:

In order to advise upon this matter, it is necessary to consider the meaning of the word 'question' in section 40 of the Constitution, which is quoted in the foregoing letter. It is laid down in *Maxwell 'On the Interpretation of Statutes'* (7th edition, p. 2) that 'the first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one'. In my opinion, section 40 of the Constitution is a piece of technical legislation, and the word 'question' occurring therein must be understood, in the technical sense which it has acquired, as meaning a question proposed upon motion.

In my opinion, every matter before the House which is proposed in the form of a motion, and upon which a question is subsequently put, is a 'question arising' in that House, and must be determined by a majority of votes, as provided by section 40.

The power given by section 50 to each House to make rules and orders with respect to the order and conduct of its business and proceedings does not confer power to make rules and orders which are inconsistent with the Constitution. The provisions of section 40, interpreted in the manner I have shown, are of general application, and cannot be cut down by rules or orders made under section 50.

The Standing Orders referred to in your letter appear, therefore, to be invalid.<sup>304</sup>

The Standing Orders Committee reviewed the standing orders in 1937, 1943 and 1949 and in their reports the proposed standing orders omitted the necessity for an absolute majority of the whole number of Members of the House to carry a motion

300 See Ch. on 'Routine of business and the sitting day'.

301 VP 1978-80/1416.

302 H of R 1 (1962-63)66.

303 H.R. Deb. (25.7.01)3060.

304 Opinion of Solicitor-General, dated 17 September 1935.

for the suspension of standing orders without notice. These proposals were never considered by the House. In March 1950 the Standing Orders Committee considered the 1949 proposals and suggested the reinsertion of the provision requiring an absolute majority for a suspension of standing orders without notice. However, the wording of the proviso was altered, to its present terms, to make it clear that, in accordance with the then Territory Representation Acts, Members from the Australian Capital Territory and the Northern Territory were to be excluded from any determination of the total number of Members for the purpose of an absolute majority. Although the motion to adopt the standing orders was successful, some Members supported the view during debate that the proposed standing order was unconstitutional.<sup>305</sup>

The provision was next considered by the Standing Orders Committee during the 1962 revision of the standing orders, when full consideration was given to the interpretation which should be placed on the words in the proviso 'Members having full voting rights'. The question of omitting the absolute majority requirement in accordance with the 1935 opinion was canvassed, but no decision to alter the requirement was reached. During the committee's consideration, the Attorney-General, in a letter to the Treasurer, dated 3 April 1962, referring to what is now standing order 399, stated:

Strictly as a matter of law, I would myself think S.O. No. 400 is invalid, as being inconsistent with the express provisions of section 40 of the Constitution. That section, as quoted above, provides that questions arising in the House shall be determined by "a majority of votes". I do not myself think it is open to the House to adopt a Standing Order the effect of which is to declare that certain questions are to be determined not by a simple majority but only by an absolute majority. The then Solicitor-General so advised in 1935, and in my view correctly. But this is a matter for the House itself, and not for any court of law, and it is to be noted that in 1950 the House adopted S.O. No. 400 in its present form, thus, in substance, declining to give effect to the opinion that Sir George Knowles had expressed in 1935.

In these circumstances I think the Speaker has strong warrant for applying S.O. No. 400 when occasion arises, notwithstanding any doubts as to its validity.

The matter arose in the Senate during 1968 and 1969 when the validity of the Senate's equivalent standing order was challenged.<sup>306</sup> On two occasions when motions were carried by a simple majority only, the President declared the question in the negative as a motion moved without notice required an absolute majority to be carried. On each occasion a motion of dissent from the ruling was moved and agreed to. Following the second dissent, the President stated that he felt bound to take note of the Senate's twice expressed dissent and announced that, pending a report from the Standing Orders Committee and the Senate's determination on the matter, he proposed, unless otherwise directed, to regard as in abeyance any provisions in the standing orders requiring questions to be determined by other than a simple majority of votes, except in so far as any standing orders may express a constitutional requirement. The matter was considered by the Senate Standing Orders Committee without any finality being reached. *Odgers* states:

There has been reasonable time for the Standing Orders to be changed, if that were the will of the Senate, but no change has been made. In all the circumstances the Chair may feel bound to enforce the existing rule, unless otherwise ordered by the Senate.<sup>307</sup>

305 VP 1950-51/36; H.R. Deb. (21.3.50)945, 947-51.

306 Senate S.O. 448; *Odgers*, pp. 275-9.

307 *Odgers*, p. 279.

During debate on the matter a joint opinion by the Attorney-General and the Solicitor-General was incorporated in Hansard. The essence of the opinion was that Senate standing order 448 was valid on the basis that section 23 of the Constitution does no more than prescribe the means of ascertaining the answer to questions which arise for determination by the Senate; it does not prescribe the procedure according to which questions are to be brought forward for determination by the Senate, section 50 conferring on the Senate the power to make rules and orders regulating the order and conduct of its business. Thus they argued that the essential character of the standing order was that it enabled the procedural requirements of Senate standing order 115 (which stipulates that no Senator shall, unless by leave of the Senate or unless it is otherwise specifically provided by the standing orders, make any motion except in pursuance to notice) to be dispensed with, and that compliance with the standing order converted a motion without notice into a regular motion. They argued that in the case where a majority of Senators (but not an absolute majority) voted in favour of a motion to suspend standing orders the resolution was ineffective, not for lack of votes but for lack of notice.<sup>308</sup>

The second question raised by the standing order is whether the Speaker is to be included in an **absolute majority of Members having full voting rights**. Prior to 1950 the proviso read 'Provided that such a motion is carried by an absolute majority of the whole number of the Members of the House' and the purpose of the alteration was to make it clear that Territory Members were to be excluded in determining the total number of Members for the purposes of the standing order, except in those cases where they had a right to vote. This circumstance is now outdated as all Territory Members have full voting rights. The problem with regard to the Speaker is that, while there can be no doubt that he or she would be included in determining an absolute majority of the whole number of Members of the House, there is doubt as to whether he or she can be included in determining an absolute majority of **Members having full voting rights** as, under section 40 of the Constitution, questions arising in the House are determined by a majority of votes other than that of the Speaker. The Speaker cannot vote unless the numbers are equal and then he or she has a casting vote. Following consideration of the interpretation which should be placed on the words in the proviso, the Standing Orders Committee, in 1962, was of the view that Members who had not been sworn in and Territory Members (except to the limited extent then operating where they had a right to vote) should be excluded and that the question of the inclusion or otherwise of the Speaker should be left to the House to decide.

The Attorney-General's advice of 1962 on the standing order (now S.O. 399) which was given at a time when the Government had a very narrow majority in the House, included the following comments:

If therefore the question arises squarely for decision, I think the Speaker would not only be justified in ruling, but should rule, that by reason of the express provisions of section 40 of the Constitution the Speaker does not answer the description of a member "having full voting rights", and that he therefore ought to be excluded in determining the number of votes required for an absolute majority under S.O. 400.

The phrase "absolute majority" has different meanings in different contexts. In this context, however, it clearly means a majority not merely of the votes actually cast but of all the votes capable of being cast. Arithmetically expressed, this is usually said to

308 S. Deb. (20.5.69)1384-5. The opinion also reviewed the Canadian practice where sections 36 and 39 of the *British North America Act 1867* correspond to sections 23 and 40 of the Australian Constitution, commented on the 1935 opin-

ion of Solicitor-General Sir George Knowles and also commented on the possibility of severing the absolute majority proviso from Senate standing order 448.

mean one more than half the total votes eligible to be counted. If, however, the total is of uneven number, this formula is not really a happy one. An absolute majority is perhaps better expressed as a total vote which could not be exceeded if every other eligible vote were adverse.

The question of the Speaker's vote has not, as yet, arisen in the House in relation to this matter. In the present House of 148 Members an absolute majority of Members, including the Speaker, is 75 Members. Excluding the Speaker, it is 74. It is conceivable that, at some time in the future when party representation in the House may be very close, the question of the inclusion of the Speaker in the absolute majority calculation may have to be resolved in a very close voting situation.

#### *Without notice as a tactical measure*

In earlier years the procedure of moving for the suspension of standing or sessional orders was used sparingly by the Government mainly to facilitate the progress of business through the House. However, since the late 1960s the procedure has been used by the Opposition as a procedural device to attempt to bring forward for debate or highlight a matter which it considers to be of national or political importance at the time.

The number of times this procedure has been used in recent years has been as follows:

1966	1	(motion withdrawn)
1967	4	(1 agreed to)
1968	1	(negated)
1969	6	(2 agreed to)
1970	16	(3 withdrawn)
1971	34	(4 agreed to, 2 withdrawn)
1972	17	(1 agreed to, 2 withdrawn)
1973	21	(1 agreed to)
1974	12	(all negated)
1975	14	(1 agreed to, 1 lapsed for want of a seconder)
1976	13	(all negated)
1977	17	(2 agreed to)
1978	19	(1 agreed to)
1979	12	(3 agreed to, 1 lapsed for want of a seconder)
1980	10	(all negated)
1981	23	(3 agreed to)
1982	16	(2 agreed to, 1 withdrawn)
1983	3	(2 agreed to)
1984	8	(3 agreed to)
1985	9	(2 agreed to)
1986	10	(5 agreed to)
1987	12	(3 agreed to)
1988	31	(12 agreed to)

At times, the Government has considered these tactical diversions to be so prevalent and disruptive to its program of business that, for a period, standing order 399 itself has been suspended except when a motion was moved pursuant to the standing order by a Minister.<sup>309</sup> During the session 1974-75 a notice of motion to

<sup>309</sup> VP 1970-72/607; H.R. Deb. (6.5.71)2720-3; VP 1978-80/1028-9.

suspend standing order 399 in this way remained on the Notice Paper and, although it was not in fact moved, the obvious intention of the notice was to discourage undue use of the practice.

The frequency of these motions was considered by the Standing Orders Committee in 1972 and the committee recommended that standing order 91 be amended to provide for a time limit of 25 minutes on the whole debate on such a motion.<sup>310</sup> The recommendation was adopted by the House.<sup>311</sup> The committee did not attempt to prevent such a motion being moved by a private Member, regard being had to the consideration that Members should have a reasonable opportunity to express a view judged to be politically important at the time.

There are however important qualifications to this, as there have been conflicting precedents on the question of precisely when such motions may be moved. Speaker Jenkins clarified the matter and explained the position he intended to adopt on 27 March 1984: the correct interpretation and application of the standing order required that a motion without notice to suspend standing orders could only be moved (a) when other business was before the House if the motion was relevant to the item before the House at the time or (b) when there was no business before the House, that is, between items of business.<sup>312</sup> This reflects the current practice of the House.

#### *Debate on motion*

The time limits for debate on a motion moved without notice to suspend standing orders under standing order 399 are: whole debate 25 minutes; mover 10 minutes; seconder five minutes; Member next speaking 10 minutes; any other Member five minutes. When the motion is moved pursuant to notice under standing order 400 or by leave of the House, the time limits are the same as for any other debate not otherwise provided for by the standing orders: whole debate without limitation of time; mover 20 minutes; any other Member 15 minutes.<sup>313</sup>

An amendment may be moved to a motion to suspend standing orders.<sup>314</sup>

A Member debating a motion to suspend standing orders may not dwell on the subject matter which is the object of the suspension. The Chair has consistently ruled that Members may not use debate on a motion to suspend standing orders as a means of putting before the House, or canvassing, matters outside the question as to whether or not standing orders should be suspended.<sup>315</sup>

#### *Limitation of suspension*

Any suspension of the standing orders is limited in its operation to the particular purpose for which the suspension has been sought.<sup>316</sup>

### **AMENDMENTS TO MOTIONS**

#### **How to move**

An amendment is a subsidiary motion moved in the course of debate upon a principal motion, with the object of either modifying the question in such a way as to increase its acceptability or presenting to the House a different proposition as an alternative to the original question. Amendments may be moved in three ways:

310 PP 20(1972)7-8.

314 VP 1970-72/544.

311 VP 1970-72/1012; H.R. Deb. (18.4.72)1702-3.

315 H.R. Deb. (22.7.21)10517-19.

312 H.R. Deb. (27.3.84)803.

316 S.O. 401.

313 S.O. 91.

- by omitting certain words only;
- by omitting certain words in order to insert or add others, or
- by inserting or adding words.<sup>317</sup>

An amendment may not be moved to certain questions and motions:

- the motion for the adjournment of the House<sup>318</sup>, and
- the subsidiary questions and motions listed in standing order 86.

With these exceptions, an amendment may be moved to any other question, after it has been proposed by the Chair, provided that the amendment is relevant to the question to which the amendment is proposed.

An amendment to any motion before the House must be in writing and must be signed by the mover and seconder.<sup>319</sup> Notice is not required of an amendment, but notice has been given on occasions.<sup>320</sup> The modern practice is to have an amendment printed and circulated to Members to enable it to be assessed before the question on it is put to the House, although this is not required by the standing orders. In the absence of a Member who has circulated an amendment, another Member, with the proposer's permission, may move it on his or her behalf.<sup>321</sup>

### Restrictions on Members in moving amendments and speaking

It is a strictly observed parliamentary rule that, except when a reply to the mover is permitted, or in committee, no Member may speak twice to the same question, unless he or she has been misquoted or misunderstood in regard to a material part of a speech when a Member may again be heard to explain the correct position. Accordingly, when a Member speaks to a motion and resumes his or her seat without moving an amendment that had been intended, the Member cannot subsequently move the amendment as he or she has already spoken to the question before the House.

If a Member has already spoken to a question, or has moved an amendment to it, he or she may not be called to move a further amendment or the adjournment of the debate, but may speak to any further amendment which is proposed by another Member.

A Member who moves or seconds an amendment cannot speak again on the original question after the amendment has been disposed of, because he or she has already spoken while the original question was before the House and before the question on the amendment has been proposed by the Chair.

When an amendment has been moved, and the question on the amendment proposed by the Chair, a Member speaking subsequently is considered to be speaking to both the original question and the amendment. Accordingly, the Member cannot speak to the original question after the amendment has been disposed of.

A Member who has already spoken to the original question prior to the moving of an amendment may speak to the question on the amendment but must confine his or her remarks to the amendment.

A Member who has spoken to the original question and an amendment may speak to the question on any further amendment but must confine his or her remarks to the further amendment.

<sup>317</sup> S.O. 171.

<sup>320</sup> NP 78(22.11.07)352.

<sup>318</sup> S.O. 50.

<sup>321</sup> VP 1951-53/133.

<sup>319</sup> S.O. 172.

## Seconder required

It is the practice of the House that an amendment moved by a Minister or an Assistant Minister does not require a seconder. It is also the practice that an amendment moved in committee does not require a seconder.

A Member who has already spoken to the original question may not second an amendment moved subsequently.<sup>322</sup> An amendment moved, but not seconded, may not be entertained by the House nor entered in the Votes and Proceedings.<sup>323</sup> An amendment has lapsed after the seconder, by leave, withdrew as the seconder.<sup>324</sup>

The seconder has the right to speak to the amendment at a later period during the debate<sup>325</sup>, or may choose to speak immediately after seconding the amendment.

## Amendment in possession of House

Once an amendment is moved and seconded, the question on the amendment must thereupon be proposed by the Chair. While a Member is moving an amendment, or speaking to an amendment which he or she has moved, the question 'That the question be now put' may be moved. If agreed to, the question on the original question is then put immediately. The motion for the closure may also be moved while the Member who has seconded an amendment is addressing the House and, once again, the closure applies to the original question as, in both cases, the question on the amendment has not been proposed from the Chair.<sup>326</sup>

## Form and content of amendment

### Relevancy

Every amendment must be relevant to the question which it is proposed to amend.<sup>327</sup> The only exception to this rule is that an irrelevant amendment may be moved to the question 'That grievances be noted'.<sup>328</sup>

### Legible and intelligible

The Chair has refused to accept an illegible amendment.<sup>329</sup>

An amendment proposed to be made, either to the original question or to a proposed amendment, must be framed so that, if it is agreed to, the question or amendment, so amended, is intelligible and consistent with itself.<sup>330</sup>

### Consistency

No amendment may be moved which is inconsistent with a previous decision on the question.<sup>331</sup> The Chair having been asked whether a proposed amendment upon an amendment was inconsistent with an amendment already agreed to, the Speaker stated that as the proposed amendment was an addition and did not cut down on the words agreed to, he could see no alternative but to accept it.<sup>332</sup> An amendment

322 H.R. Deb. (11.8.10)1439.

323 S.O. 174.

324 VP 1929-31/581; H.R. Deb. (21.4.31)1065. The amendment was recorded in the Votes and Proceedings.

325 S.O. 70.

326 See H.R. Deb. (12.4.56)1332. The amendment was recorded in the Votes and Proceedings as it had been properly moved and seconded, VP 1956-57/74.

327 S.O. 173.

328 S.O. 106; and see Ch. on 'Legislation' regarding scope of amendment on appropriation and supply bills.

329 H.R. Deb. (27.5.75)2872.

330 May, p. 397.

331 S.O. 179.

332 H.R. Deb. (16.11.05)5383.

proposing to limit the application of a motion, granting precedence to government business, by making it apply only after a certain date, having been negatived, a further amendment seeking to impose a lesser limitation (an earlier date) was ruled to be in order.<sup>333</sup>

#### *Same amendment*

An amendment is out of order if it is substantially the same as an amendment to the same motion which has already been negatived.<sup>334</sup>

#### *Amendment to earlier part of question*

No amendment may be moved to any part of a question after a later part has been amended, or after a question has been proposed on an amendment to a later part, unless that proposed amendment has been withdrawn by leave of the House or defeated.<sup>335</sup> It has been the practice to interpret standing order 180 so as to allow an amendment to a part of the question back to the point where the last amendment was actually made. Leave of the House has been granted to allow an amendment to be moved to an earlier part of the question. When notice has been given of amendments or Members have declared their intention of moving amendments, the Chair has declined to put the question on an amendment in a form which would exclude the moving of other amendments. The Chair has divided an amendment into parts and submitted only the first part so as not to preclude other Members from submitting amendments which they had expressed a desire to propose.<sup>336</sup> When several Members have proposed to move amendments to an earlier part of a motion, the Chair has declined to submit an amendment to a later part until these amendments were disposed of.<sup>337</sup> When notice has been given of amendments proposing to add words to a motion, the Chair has given precedence to an amendment proposing to omit all words after 'That' with a view to inserting other words.<sup>338</sup>

#### *Amendment to words already agreed to*

Except for the addition of words, no amendment may be moved to any words which the House has resolved shall stand part of a question or which have been inserted or added to a question.<sup>339</sup>

#### *Direct negative*

Although there is no reference in the standing orders to an amendment which is a direct negative of the question before the House, the House has followed the parliamentary rule that such amendments are not in order if they are confined to the mere negation of the terms of a motion. The proper mode of expressing a completely contrary opinion is by voting against a motion without seeking to amend it.<sup>340</sup> Many amendments are moved which seek to reverse completely the thrust of motions. Whilst it may be claimed that such amendments are out of order as direct or expanded negatives, they usually seek to put an alternative proposition to the House and so are in order (*and see* below). A working rule for determining whether

333 H.R. Deb. (15.9.09)3496.

334 S.O. 169. The standing order gives the Chair a discretion in this matter.

335 S.O. 180.

336 H.R. Deb. (21.11.05)5512,5514.

337 VP 1929-31/903.

338 H.R. Deb. (26.7.22)785; NP 12(26.7.22)65.

339 S.O. 181.

340 See also statement by Speaker Aston to the House, H.R. Deb. (2.6.70)2712-16. The precedents recorded with this statement generally indicate that the rule is best interpreted in a very precise way.

an amendment is a direct negative is to ask the question whether the proposed amendment would have the same effect as voting against the motion. If it would, it is a direct negative.

*Alternative propositions*

Amendments may be moved, however, which evade an expression of opinion on the main question by entirely altering its meaning and object. This is effected by moving the omission of all or most of the words of the question after the word 'That' and substituting an alternative proposition which must, however, be relevant to the subject of the question. The question is then proposed 'That the words proposed to be omitted stand part of the question'. What this does in effect is to place two alternative propositions before the House (the motion and the amendment) between which it must make a preliminary choice. If the question is negatived, this vote does not by itself express a decision against the motion, but only a preference for taking a decision upon the alternative proposition contained in the amendment. A question is then proposed 'That the words proposed to be inserted be so inserted' which, if agreed to, means that the original motion **may** be regarded as having been negatived by implication. This depends both upon the fact that the amendment has been agreed to and upon the fact that its terms are such as to imply disagreement with the motion. A final question 'That the motion, as amended, be agreed to' is then proposed.

This practice of the House has been supported since 1905 when, on a motion that an Address be presented to the King expressing the hope that a measure of home rule be granted to Ireland, an amendment was moved to omit all words after 'That' in order to insert words to the effect that the House declined to petition His Majesty either in favour of or against a change in the parliamentary system which then prevailed in the United Kingdom. Having been asked for a ruling as to whether the amendment was in effect a negative of the motion, the Speaker stated that the amendment was in order as it came between the two extremes of either declaring in favour of the petition (motion) as it stood or negating the proposal altogether.<sup>341</sup>

Other relevant rulings have been:

- In 1949, a want of confidence motion having been moved in the Deputy Speaker (listing four reasons) an amendment was moved to omit all words after 'That' with a view to inserting words 'this House declares its determination to uphold the dignity and authority of the Chair . . .' The Chair dismissed a point of order that the amendment was a direct negative of the motion and ruled it in order.<sup>342</sup>
- In 1970, an amendment was moved adding words to a motion to take note of a paper (relating to Commonwealth-State discussions on off-shore legislation) which expressed a lack of confidence in the Prime Minister and his Cabinet for their failure to honour a certain commitment made to the States. This was accepted as a want of confidence amendment. To this amendment a further amendment (to omit words with a view to inserting other words) was moved declaring that the House did not believe there had been any failure on the part of the Government to honour any commitments; that the House acknowledged that when the Government decided to change its policy it did not, at that time, inform the States of the change, and the House was of the opinion that this fact had led a Member (a former Cabinet Minister) into

341 H.R. Deb. (28.9.05)2967-8.

342 VP 1948-49/381; H.R. Deb. (8.9.49)119.

believing that an undertaking he had given to the States had been dishonoured. A point of order was taken that the amendment was a direct negative of the proposed amendment. The Speaker ruled that it was not a direct negative and not materially different in form from amendments which had been moved and accepted in previous years. The ruling was upheld by the House when a motion of dissent was negatived.<sup>343</sup>

Following this ruling, as subsequent comment showed, there was some misunderstanding of the practice on which the ruling was based. Speaker Aston made a statement referring to precedents and practice in both the House of Representatives and the House of Commons on which the ruling of the Chair was based, that is, the acceptability of amendments proposing alternative propositions.<sup>344</sup> There have been a number of recent precedents.<sup>345</sup>

#### *Other restrictions*

A Member cannot move an amendment:

- to his or her own motion<sup>346</sup> unless he or she does so by leave<sup>347</sup>;
- if debate on a question has been closed by the mover speaking in reply<sup>348</sup>;
- if he or she has already spoken to the main question<sup>349</sup>, or the original question and an amendment<sup>350</sup>, and
- if he or she has seconded the motion (even formally) which he or she proposes to amend.<sup>351</sup>

It is not in order to move for the omission of all words of a question; the initial word 'That' at least must be retained.<sup>352</sup> Amendments have been moved to omit all words after 'That'<sup>353</sup> without the substitution of other words in their place. On one such amendment being successful, the Speaker agreed with the proposition that the omission of the words was the same as if the motion had been directly negatived and it was so recorded in the Votes and Proceedings.<sup>354</sup> On another occasion, words having been omitted from a motion with a view to inserting other words, and two proposals to insert other words having been negatived, the Speaker drew attention to the fact that what was left of the motion was meaningless. He then said that he presumed the House would not desire him to put the question. The House agreed with this assessment.<sup>355</sup>

Certain matters that cannot be debated except on a substantive motion cannot be raised by way of amendment (*see* p. 319), nor can an amendment infringe upon the sub judice rule<sup>356</sup> or the same question rule (*see* p. 327). An amendment cannot anticipate a matter already appointed for consideration by the House (*see* p. 328).

An amendment has been ruled out of order on the ground that it:

- was frivolous<sup>357</sup>;
- was tendered in a spirit of mockery<sup>358</sup>;

343 VP 1970-72/153-4; H.R. Deb. (15.5.70)2304-23.

344 VP 1970-72/171; H.R. Deb. (2.6.70)2712-17.

345 VP 1978-80/1283-4,1290; VP 1977/406; VP 1974-75/879.

346 H.R. Deb. (23.9.03)5437.

347 H.R. Deb. (25.8.10)2088.

348 H.R. Deb. (19.10.05)3814.

349 H.R. Deb. (24.7.03)2609.

350 H.R. Deb. (13.4.61)894.

351 H.R. Deb. (5.7.06)1056.

352 May, p. 398.

353 VP 1908/79; VP 1913/204.

354 VP 1908/79; H.R. Deb. (10.11.08)2140. The amendment resulted in the fall of the Deakin Government, *see* p. 000.

355 VP 1908/53-4.

356 *See* Ch. on 'Control and conduct of debate'.

357 H.R. Deb. (26.10.27)749; H.R. Deb. (26.3.31)665.

358 H.R. Deb. (21.5.14)1392,1395; and *see* VP 1929-31/503.

- did not comply with an Act of Parliament<sup>359</sup>, and
- concerned a matter which was the exclusive prerogative of the Speaker.<sup>360</sup>

### Order of moving amendments

Any amendment proposed must be disposed of before another amendment to the original question can be moved.<sup>361</sup>

As an amendment may not be moved to words already agreed to, except by way of an addition, or moved to any part of a question after a later part has been amended or such an amendment has been proposed, Members may be precluded from moving proposed amendments because they have not received the call early enough and other decisions of the House or amendments have effectively blocked their proposals. This problem is overcome when amendments have been circulated beforehand which assists the Chair in allocating the call. However, it has been ruled in committee that prior circulation of a proposed amendment does not confer on a Member any right to the call and that the Member first receiving the call has the right to move his or her amendment.<sup>362</sup>

In cases where a number of amendments have been foreshadowed to a particular motion, standing orders have been suspended to enable a cognate debate on the motion and the circulated amendments, and, at the conclusion of the debate, to enable the Chair to put questions on the circulated amendments which were capable of being put, in the order determined by the Chair.<sup>363</sup>

### Withdrawal of proposed amendment

A proposed amendment may be withdrawn, by leave.<sup>364</sup> It is not uncommon in committee for amendments to be withdrawn temporarily, and then moved again at a later stage.<sup>365</sup> An amendment has been moved in committee subject to the temporary withdrawal of another amendment.<sup>366</sup>

### Amendment to proposed amendment

An amendment may be moved to a proposed amendment as if the proposed amendment were the original question.<sup>367</sup> In effect not only is the original question temporarily superseded but so is the question on the first amendment. The questions put by the Chair deal with the first amendment as if it were a substantive question itself and with the second amendment as if it were an ordinary amendment. An amendment to a proposed amendment is moved after the question 'That the amendment be agreed to' has been proposed by the Chair. The effect of moving the subsidiary amendment is to interpose a further question 'That the amendment to the proposed amendment be agreed to'. The latter question must be disposed of before the question on the primary amendment is put to the House.

When it has been moved to omit words in the main question in order to insert or add others, no amendment to the words proposed to be inserted or added can be received until the question, that the words proposed to be omitted stand part of

359 VP 1970-72/264. The amendment was to enable a recommendation of the Public Works Committee to be referred to a select committee of the House. The Speaker ruled that the proposed amendment did not comply with the provisions of the Public Works Committee Act.

360 VP 1929-31/601-02.

361 S.O. 182.

362 VP 1943-44/93; H.R. Deb. (15.3.44)1360-1.

363 VP 1974-75/639-40 (committee); VP 1978-80/683; H.R. Deb. (21.3.79)960; H.R. Deb. (22.3.79)1103 (House).

364 S.O. 183.

365 VP 1973-74/221-2.

366 VP 1917-19/23.

367 S.O. 184.

the main question, has been determined.<sup>368</sup> This rule means that, first, the question 'That the words proposed to be omitted stand' must be resolved in the negative and, second, that the question 'That the words proposed to be inserted (added) be so inserted (added)' be proposed by the Chair, before a further amendment can be moved to insert (add) words to the words proposed to be inserted (added). Subsequently an amendment on the further amendment to insert (add) words can be moved. This is a case of an amendment to an amendment to an amendment.<sup>369</sup>

When the proposed amendment is to omit certain words in order to insert (add) other words and the question 'That the words proposed to be omitted stand' is agreed to, the amendment is disposed of. The only further amendment that can then be proposed is by the addition of words. An amendment can be moved to the further amendment.

### **Putting question on amendment**

When a proposed amendment is to omit certain words, the Chair puts the question 'That the words proposed to be omitted stand part of the question'.<sup>370</sup>

When a proposed amendment is to omit words in order to insert or add others, the Chair first puts the question 'That the words proposed to be omitted stand part of the question' and if this is resolved in the affirmative, the amendment is disposed of. If the question is resolved in the negative, the Chair must then put the question 'That the words proposed to be inserted (added) be so inserted (added)'.<sup>371</sup>

When the proposed amendment is to insert or add certain words the Chair puts the question 'That the words proposed to be inserted (added) be so inserted (added)'.<sup>372</sup>

If no Member objects the Chair may put the question 'That the amendment be agreed to' in place of the question or questions stated above.<sup>373</sup> This alternative form of putting the question is sometimes used to avoid the necessity of Members changing sides to vote in a division on a question<sup>374</sup> or to allow further amendments to be moved to a question.<sup>375</sup> In order to avoid confusion as to which amendment is before the House, the Chair may include the name of the mover when putting the question.<sup>376</sup> In considering the use of this short alternative the principle that the mover of a motion is entitled to a distinct vote of the House on his or her motion must be remembered. Thus, in the case of a motion of censure of the Prime Minister to which the Prime Minister moved an amendment as an alternative proposition, three questions were put, namely:

- that the words proposed to be omitted stand,
- that the words proposed to be inserted be so inserted, and
- that the motion, as amended, be agreed to,

the simpler version not being appropriate.<sup>377</sup>

When an amendment has been made, the main question is put, as amended.<sup>378</sup> The fact that an amendment has been made does not necessarily preclude the

368 S.O. 185.

369 VP 1907-08/284-5.

370 S.O. 175.

371 S.O. 176.

372 S.O. 177.

373 S.O. 178.

374 VP 1978-80/1290.

375 VP 1962-63/276. In such cases if the question 'That the words proposed to be omitted stand part of the question' was agreed to, not only

would the amendment be disposed of, but Members would be precluded from moving any further amendment (apart from the addition of words) by the provisions of S.O. 181; and see H.R. Deb. (15.5.75)2347, H.R. Deb. (19.5.75)2415, H.R. Deb. (20.3.79)919-20 and H.R. Deb. (21.3.79)961 for discussion on the use of this alternative.

376 VP 1962-63/279-80; VP 1974-75/646-8.

377 VP 1983-84/882-5.

378 S.O. 186.

moving of a further amendment, providing it is in accord with the standing orders, nor does it preclude debate on the main question, as amended, taking place.<sup>379</sup> With the concurrence of the House the Chair has declined to put the question on a motion, as amended, when it had been so amended that what remained of the motion was meaningless.<sup>380</sup> On another occasion, the effect of an amendment was seen as having negatived a motion, as only the word 'That' remained.<sup>381</sup>

When amendments have been moved but not made, the main question is put as originally proposed.<sup>382</sup> Debate may then continue on the original question or a further amendment moved, providing it is in accord with the standing orders.<sup>383</sup>

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379 H.R. Deb. (8.10.08)961; H.R. Deb. (21.11.05)5515.

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382 S.O. 187.

383 H.R. Deb. (15.8.68)252.