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Questions

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

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

QUESTION TIME

The accountability of the Government is demonstrated most clearly and publicly at Question Time when, for at least 45 minutes on most sitting days, questions without notice are put to Ministers.[1] The importance of Question Time is demonstrated by the fact that at no other time in a normal sitting day is the House so well attended. Question Time is usually an occasion of special interest not only to Members themselves but to the news media, the radio and television broadcast audience and visitors to the public galleries. It is also a time when the intensity of partisan politics can be clearly manifested.

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

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

Some historical features

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

1 For statistics on questions *see* Appendix 22, Questions without notice may also, from time to time, be put to the Speaker and to private Members; *see below*—'Direction of questions'.

2 *May*, p. 287.

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

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

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

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

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

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

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

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

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

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4 H.R. Deb. (3.7.01) 1954–5.
5 VP 1962–63/10.
6 H.R. Deb. (3.7.01) 194–5; H.R. Deb. (2.10.13) 1762. *See also* statement by Speaker Child, H.R. Deb. (28.11.88) 3329–30.
7 H.R. Deb. (29.9.20) 5079.
8 H.R. Deb. (21.4.21) 7595.
9 *Standing Orders Committee Report*, H of R 1 (1962–63) 33.
10 H.R. Deb. (5.6.01) 688.
11 H.R. Deb. (8.7.15) 4714–21.
12 H.R. Deb. (28.9.32) 661.
13 H.R. Deb. (8.8.40) 329–37.

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

Duration of Question Time

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

Although having effective control over the duration of Question Time, the Government is, at the same time, subject to the influence of private Members from both sides of the House and public opinion. A Government which frequently refused to allow Question Time to proceed, or frequently restricted it to less than 45 minutes, would be exposed to considerable criticism. In recent years the average length of Question Time has been between 50 and 60 minutes. This increased to 74 minutes in 1996.

If Question Time is interrupted by such matters as the naming of a Member, a motion of dissent from the Speaker's ruling or a motion to suspend standing orders, it has not been usual for the Government to allow Question Time to continue for a period to compensate for the time lost.

When substantial time is spent on such a matter as a want of confidence motion prior to questions without notice being called on, it is usual for Question Time not to be proceeded with.[23]

Number of questions

From an average of 16 questions asked each Question Time during the late 1970s the number declined to about 12 in the years prior to 1996. This reduction was directly attributable to Ministers increasing the length of their answers. In 1986 the Procedure

14 H.R. Deb. (12.2.43) 651.
15 H.R. Deb. (17.3.43) 1864–7.
16 H.R. Deb. (29.10.20) 6079–80.
17 H.R. Deb. (22.11.20) 6770.
18 H.R. Deb. (9.9.13) 942.
19 H.R. Deb. (29.10.41) 18–19.
20 H.R. Deb. (29.3.73) 853–4; H.R. Deb. (28.11.88) 3329–30.
21 H.R. Deb. (4.5.60) 1332–3; H.R. Deb. (9.10.96) 5061–2.
22 H.R. Deb. (4.10.33) 3198.
23 VP 1974–75/1059–65; H.R. Deb. (29.10.75) 259.

Committee recommended that Question Time continue until a minimum of 16 questions had been answered.[24] Although no action was taken by the House on the recommendation, the Government of the day subsequently adopted an unofficial practice of permitting seven opposition questions each Question Time.[25] In 1993 the Procedure Committee again recommended a minimum of 16 questions.[26] In responding to the report the Government accepted a minimum of 14 (although again as an unofficial target rather than as a requirement of the standing orders).[27] In 1996, at the start of the 38th Parliament, the number of questions increased to an average of 19 per day.

Allocation of the call

The Speaker first calls an opposition Member, and the call is then alternated from right to left of the Chair, that is, between government and non-government Members.[28] With the opposition call priority is given to the Leader and Deputy Leader of the Opposition and, if two parties are in opposition, the Leader and Deputy Leader of the second coalition party. The Speaker records the number of calls given to each Member and, with the exception of the opposition leaders, allocates the call as evenly as possible. Independent Members receive the call in proportion to their numbers.[29]

When there is more than one party in government or opposition agreement is reached as to the ratio of questions to be permitted to the Members of each party.

In disallowing a question the Speaker may permit the Member to re-phrase the question and to ask it again, immediately[30] or later[31] in Question Time. This indulgence is not automatically extended.[32] Similarly the Speaker having ruled part of a question out of order may[33] or may not[34] choose to allow that part of the question which is in order.

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

In 1971 the House referred the question of the allocation of the call at Question Time to the Standing Orders Committee. The reference resulted from a complaint by a Member that the rigid procedure of alternating the call from left to right resulted in private Members on the government side having more frequent opportunities to ask questions without notice than opposition Members.[35] The Member suggested that each side of the House should be allotted questions on the basis of the number of 'back bench Members' it had. The Standing Orders Committee in reporting on the matter noted that even if a government Member were to rise each time the call passed to the government side, the Opposition would normally expect to receive, in total, more questions, as the first question, and often the last, would come from the Opposition. The committee decided that it would make no recommendation to vary the existing procedure for the

24 PP 354 (1986) 10.
25 H.R. Deb. (14.5.87) 3239–42.
26 PP 194 (1993) 24–25.
27 H.R.Deb. (10.2.94) 826.
28 Speaker Cameron did not necessarily alternate the call. *See* H.R. Deb. (25.5.50) 3280; H.R. Deb. (28.9.50) 76; H.R. Deb. (21.4.55) 75–6.
29 H.R.Deb. (7.5.92) 2631; H.R. Deb. (19.9.96) 4762–3.
30 H.R. Deb. (4.5.78) 1780.
31 H.R. Deb. (28.8.79) 625–6, 627; H.R. Deb. (22.11.73) 3679, 3681.
32 H.R. Deb. (6.6.78) 3075.
33 H.R. Deb. (15.3.78) 737–8; H.R. Deb. (11.9.96) 3995–6.
34 H.R. Deb. (7.11.78) 2441.
35 H.R. Deb. (23.8.71) 511–12.

distribution of the call.[36] The House considered the committee's decision and referred the matter back to it for further consideration.[37] The Standing Orders Committee did not report on the matter again.

In 1986 the Procedure Committee further considered the allocation of the call. While again noting that the majority of questions (54 per cent) were asked by the Opposition, the committee pointed out that the practice of giving priority to opposition leaders meant a consequent reduction in opportunities for opposition backbenchers. However, the committee concluded that the apportioning of questions within parties was a matter for the parties to decide and recommended that the current provisions for the allocation of the call remain unchanged.[38]

Supplementary questions

At the discretion of the Speaker supplementary questions without notice may be asked to elucidate an answer.[39]

When first introduced into the standing orders in 1950, the term 'supplementary question' was not intended to signify an immediate follow-up question by the original questioner. Rather it was intended that Members could henceforth ask questions without notice based upon answers to earlier, but not necessarily immediately preceding, questions.[40] Prior to 1950 questions without notice based on the answers to questions asked in the same session had been disallowed.[41] The purpose of the restriction was to avoid a series of questions on the same subject which would develop into a debate.[42] A similar concern was probably in mind in 1950 when the House amended the standing orders to permit supplementary questions but to limit them to one for each answer. However, the Chair found it impracticable to limit supplementary questions in this way. In practice further questions could be, and were, asked provided Members did not describe them as supplementary questions. In 1962, on the recommendation of the Standing Orders Committee, the standing orders were amended to permit more than one supplementary question.[43]

In view of the wording of standing order 151 it is within the discretion of the Speaker to permit immediate supplementary questions. However, until very recently, change was resisted in favour of maintaining rigid adherence to the principle of alternating the call between the left and right of the Chair.[44] In 1993 the Procedure Committee recommended that supplementary questions be allowed.[45] In responding to the report the Government stated its preference for the traditional arrangement.[46]

In 1996, using the discretion bestowed by the standing order, Speaker Halverson commenced a practice of allowing immediate supplementary questions.[47] In response to questions on the subject he stated[48]:

36 PP 20 (1972) 12–13.
37 H.R. Deb. (18.4.72) 1745–50; VP 1970–72/1013–14.
38 Standing Committee on Procedure, *Standing orders and practices which govern the conduct of Question Time*. PP 354 (1986) 50–1.
39 S.O. 151.
40 H.R. Deb. (22.3.50) 1055.
41 H.R. Deb. (22.10.36) 1194.
42 H.R. Deb. (2.4.41) 511.
43 H of R 1 (1962–63) 33.
44 H.R. Deb. (27.2.80) 406.
45 PP 194 (1993) 24–25.
46 VP 1993–95/752.
47 H.R. Deb. (28.5.96) 1493.
48 H.R. Deb. (17.6.96) 1960.

> I have allowed and will continue to allow supplementary questions at the discretion of the chair and subject to the following conditions: the supplementary question should arise from the Minister's response and will be regarded as part of the one question; the supplementary questions will be restricted to the person who asked the original question; and the supplementary question is to be put in precise and direct terms without preamble. I would also expect the Minister's response to be brief. I do not expect to permit a supplementary question on all occasions.

Following this statement there were indications that the practice of the House would continue to evolve in this matter.

RULES GOVERNING QUESTIONS

The rules governing the form and content of questions are set down in standing orders or have become established by practice. In addition to rules specifically applying, the content of questions must comply with the general rules applying to the content of speeches.[49]

Questions without notice by their very nature may raise significant difficulties for the Chair. The necessity to make instant decisions on the application of the many rules on the form and content of questions is one of the Speaker's most demanding tasks. Because of the importance of Question Time in political terms, and because of the need to ensure that this critical function of the House is preserved in a vital form, Speakers tend to be somewhat lenient in applying the standing orders with the result that, for example, breaches of only minor procedural importance have not prevented questions on issues of special public interest. The extent of such leniency varies from Speaker to Speaker. In addition, some latitude is generally extended to the opposition leaders in asking questions without notice and to the Prime Minister in answering them. The result of these circumstances is that rulings have not always been well founded and inconsistencies have occurred. Speakers have commented that only a small proportion of questions without notice are strictly in order and that to enforce the rules too rigidly would undermine Question Time.[50] Only those rulings which are technically sound and of continuing relevance are cited in this chapter without qualification.

The rules governing questions are applied strictly to questions on notice which are submitted to the Clerk in writing before being placed on the Notice Paper (*see* p. 519).

Questioners

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

Private Members

Any private Member may ask a question.

Ministers

Ministers do not ask questions, either of other Ministers, or where permitted, of private Members.

Parliamentary Secretaries, etc.

Parliamentary Secretaries do not ask questions, either of Ministers, or where permitted, of private Members.[51] This restriction is a recent development, accompanying the expansion of the role of Parliamentary Secretaries, who now perform some duties

49 *May*, p. 337.
50 H.R. Deb. (31.8.61) 691.
51 H.R. Deb.(26.3.92) 1247.

formerly performed exclusively by Ministers (*see* Chapter on 'House, Government and Opposition'). Since the introduction of this restriction Parliamentary Secretaries have on several occasions asked questions of the Speaker.

The former practice was that Members holding such positions as Assistant Minister, Parliamentary Secretary or Under-Secretary were permitted to ask questions, subject to any restrictions imposed by the Government appointing them. For example, in 1972, following the appointment of Assistant Ministers who were sworn as Executive Councillors, the Prime Minister stated that Assistant Ministers could ask questions of Ministers on matters outside the portfolio in which they were assisting.[52] Parliamentary Under-Secretaries and Parliamentary Secretaries, not members of the Executive Council, were permitted by the Government to ask questions, and, from time to time, addressed questions to Ministers they were appointed to assist.[53]

Speaker

It is not the practice for questions to be asked by the Speaker. Nevertheless Speaker Nairn, who, exceptionally, was a member of the Opposition, placed questions on notice during the period 1941 to 1943.[54]

Direction of Questions

To Ministers

All but a minute proportion of questions are directed to Ministers. Questions may not be put to one Minister, other than the Prime Minister, about the ministerial responsibilities of another[55] except that questions may be put to Ministers acting in another portfolio.[56] Where a question may involve the responsibility of more than one Minister, it should be directed to the Minister most responsible.

A Minister may refuse to answer a question.[57] He or she may also transfer a question to another Minister and it is not in order to question the reason for doing so.[58] If a question has been addressed to the incorrect Minister, the responsible Minister may answer, but if necessary the Member would normally be given an opportunity to redirect it.[59] In many instances the responsibilities referred to in a question may be shared by two or more Ministers and it is only the Ministers concerned who are in a position to determine authoritatively which of them is most responsible.[60] It is not unusual for the Prime Minister to refer questions addressed to him to the Minister directly responsible. Misdirected questions on notice are transferred by the Table Office, upon notification by the departments concerned.

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

52 H.R. Deb. (7.3.72) 590.

53 H.R. Deb. (28.2.50) 121; H.R. Deb. (3.10.51) 244; NP 44 (13.6.56) 252.

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

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

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

57 H.R. Deb. (12.5.70) 1949; *May*, p. 343.

58 H.R. Deb. (5.3.47) 352–3; H.R. Deb. (4.4.62) 1264–73; H.R. Deb. (22.8.79) 428–30. In the 1962 instance a motion of dissent from the Speaker's ruling, which upheld the practice that Ministers may transfer questions to other Ministers, was defeated; *see also May*, p. 336.

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

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

ROSTERING OF MINISTERS

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

In February 1994 a sessional order was agreed to providing for a roster of Ministers at Question Time.[61] The nature of the roster was not fixed by the sessional order, but in practice the Government rostered Ministers to appear two days each week (out of four), with the Prime Minister appearing on Mondays and Thursdays (i.e. the first and last sitting days). The roster to apply with effect from a particular date was tabled by the Leader of the House, who attended each day.

These arrangements were introduced as a trial.[62] They followed Procedure Committee recommendations for a more limited experiment—the committee had proposed rostering on Monday sittings only and that the Opposition be able to request the presence of one non-rostered Minister.[63] Attempts were made (unsuccessfully) to require the attendance on a particular day of a Minister not rostered to attend.[64] The sessional order providing for the roster was not renewed in the following Parliament.

To Parliamentary Secretaries, etc.

It is considered that Ministers alone are responsible and answerable to Parliament for the actions of their departments. The standing orders do not provide for Assistant Ministers and Parliamentary Secretaries or Under-Secretaries to be questioned on matters of government administration. The resolution of the House which empowers Parliamentary Secretaries to perform all other ministerial functions in the House, specifically excludes the answering of questions. Additionally however, as Assistant Ministers or Parliamentary Secretaries could be in charge of government business in the House, without ultimately being responsible for it, they may not be questioned under the provision of the standing order applying to questions to private Members (*see below*). This exclusion, inserted in 1972[65], made Assistant Ministers the only Members to whom questions could not be asked under any circumstances. The guidelines applying to Parliamentary Secretaries[66] now place Parliamentary Secretaries in this category as well.

A question directed to a Parliamentary Under-Secretary has been ruled out of order even though it concerned a matter relating directly to his work.[67] The Prime Minister had previously stated that he had never envisaged that Parliamentary Under-Secretaries should have the right to answer questions on behalf of a Minister.[68]

To private Members

Only rarely are questions directed to private Members and even then they have often been disallowed for contravention of the strict limitations imposed by standing orders and practice. Standing order 143 provides that questions may be put to a Member, who is not a Minister or an Assistant Minister, relating to any bill, motion or other public matter connected with the business of the House, of which the Member has charge. As noted above, Parliamentary Secretaries are also excluded from this provision. As it is the

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

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

63 PP 194 (1993) 25–27.

64 VP 1993–95/1358–60, 1387–8.

65 S.O. 143; *and see Standing Orders Committee Report*, PP 20 (1972) 6; H.R. Deb. (29.4.71) 2244; *see also* Ch. on 'House, Government and Opposition'.

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

67 H.R. Deb. (16.9.52) 1451. *See* Ch. on 'House, Government and Opposition' for duties of Parliamentary Under-Secretaries.

68 H.R. Deb. (27.8.52) 620.

established practice of the House not to permit questions on notice to private Members, the standing order is considered to refer to questions without notice only.

Questions most often allowed have concerned private Members' bills listed as notices on the Notice Paper.[69] However, if the answer to such a question would require the Member to anticipate what he or she might say in the second reading speech, the question is anticipating debate and is therefore out of order (*see* p. 511). A question asking when the bill will be introduced, whether the bill has been drafted, or whether the questioner could see a copy of the bill would be in order.[70] A question of a wider scope has been allowed to a Member in charge of a bill actually before the House. For example, a Member who had already made his second reading speech has been permitted to explain the meaning of a clause of his bill[71] and to comment on differences between provisions of his bill and another proposal, and to comment on whether further amendments would be moved to his bill.[72] Questions may be asked in connection with a notice, but the scope is very limited—for example, a question has asked whether there was any urgency in a matter and whether the Member could indicate when a motion might be debated.[73]

Questions not meeting the conditions of standing order 143, such as questions concerning party policies and statements made inside or outside the House, notably by the Members to whom such questions are directed, have been ruled out of order. The following cases are illustrative of the type of question which may not be asked:

- to a private Member asking if he had been correctly reported in a newspaper[74];
- to a private Member regarding his statement outside the House on customs imports[75];
- to the Leader of the Opposition as to whether he would 'give a lead' to the members of his party who were opposed to graft and corruption[76];
- to the Leader of the Opposition with regard to his conduct in connection with a Royal Commission[77];
- to a private Member concerning a petition he had just presented on the ground that the Member was no longer in charge of it once it had been presented[78];
- to the Leader of the Opposition regarding his statements on television[79];
- to the Deputy Leader of the Opposition regarding a statement he had made in the House[80]; and
- to the Deputy Leader of the Opposition concerning the platform of his party.[81]

It is not in order to question a private Member concerning the Member's actions as a former Prime Minister or Minister as such Members cease to be responsible to the House for their ministerial actions when they cease to be Ministers. Such a question would

69 H.R. Deb. (1.3.72) 410–12; H.R. Deb. (25.2.76) 259; H.R. Deb. (26.2.76) 313–15; H.R. Deb. (16.3.76) 625.
70 S.O. 144; H.R. Deb. (16.3.76) 625.
71 H.R. Deb. (9.10.84) 1897–8.
72 H.R.Deb. (26.9.95) 1692–5.
73 H.R.Deb. (23.10.95) 2664.
74 H.R. Deb. (3.8.26) 4769.
75 H.R. Deb. (21.6.12) 68.
76 H.R. Deb. (25.11.53) 475.
77 H.R. Deb. (9.9.54) 1099.
78 H.R. Deb. (21.5.24) 778.
79 H.R. Deb. (14.5.58) 1758.
80 H.R. Deb. (31.8.61) 696.
81 H.R. Deb. (21.9.67) 1183–4.

clearly contravene standing order 143.[82] It is not in order to question a private Member about matters with which he or she is, or has been, concerned as a member of a body outside the House.[83]

In 1995[84] and 1996[85] Leaders of the Opposition were asked questions about private Member's bills they had introduced, and gave answers which the Procedure Committee noted, in its 1996 report on the matter, as going beyond the previous limits.[86] Following the 1995 occasions, standing order 143 was suspended, on the initiative of the Government, for the remainder of the period of sittings.[87] In its report the Procedure Committee recommended that the standing order be retained in its present form, but that the limits traditionally enforced should be enforced.

To committee chairs

While questions on notice to committee chairs have never been accepted, it has been the practice to allow a question without notice of a strictly limited nature to be addressed to a Member in his or her capacity as chair of a committee. A question asking when a report would be tabled has been permitted.[88] A question to a committee chair asking if the committee intended to inquire into a certain matter has also been permitted[89], although this may not have been acceptable in the House of Commons where a Member may not seek by means of a question to the chair to interfere in the proceedings of a Select Committee by suggesting a particular subject for inquiry.[90] The Chair has ruled out of order a question to a chair which asked that the committee examine certain matters.[91] A question to the chair of a subcommittee has been ruled out of order on the ground that the chair is responsible to the committee and not to the House.[92] In any question to a chair of a committee it should be borne in mind that a chair should not make public pronouncements on behalf of the committee unless the committee has been consulted and given its permission before hand (*see also* p. 511).

To the Speaker

A question without notice may be put to the Speaker relating to any matter of administration for which the Speaker is responsible[93] or on an urgent matter which concerns the proceedings of the House for which the Speaker is responsible. However, Members seeking information on a matter of order or privilege must raise the matter under the appropriate procedure; questions on such matters cannot be put to the Speaker as questions.[94]

Once exceptional, questions without notice to the Speaker have become more frequent in recent years—152 in 1966 compared with 2 in 1984. Many such questions relate to procedural rather than to administrative matters.

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82 *And see May*, p. 286.

83 *May*, p. 286.

84 H.R. Deb.(26.9.95) 1692-5; H.R. Deb.(28.9.95) 1988-90.

85 H.R. Deb.(19.6.96) 2252-3.

86 Standing Committee on Procedure, *The operation of standing order 143: questions to Members other than Ministers*, September 1996.

87 VP 1993–95/2557–8.

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

89 H.R. Deb. (16.10.57) 1393–4.

90 *May*, p. 287.

91 H.R. Deb. (6.10.53) 1004–5; H.R. Deb. (7.10.53) 1064–5.

92 H.R. Deb. (10.10.72) 2242.

93 S.O. 152. For a description of the Speaker's administrative responsibilities *see* Ch. on 'The Speaker, Deputy Speakers and Officers'.

94 *May*, p. 285.

In 1994 standing order 152 was amended to provide for questions to the Speaker to be taken at the conclusion of Question Time,[95] recognising what had in fact been the practice for some time. In earlier years the rare questions to the Speaker would be asked during Question Time proper, sometimes between questions directed to Ministers. When these arrangements operated Speakers suggested that Question Time was an inappropriate time to deal with minor or detailed matters of parliamentary administration and that they would be better dealt with by an approach to the relevant domestic committee, by correspondence or by personal interview with the Speaker.[96]

Occurrences in committees may not be raised in questions to the Speaker as the Speaker has no official cognisance of such proceedings.[97]

Originally it was not the practice for questions on notice to be directed to the Speaker. In order that Members might obtain information relating to the Parliament, the practice had developed for a question on notice to be directed to the Leader of the House or the Prime Minister requesting that the information be obtained from the Presiding Officer(s). In 1980 Speaker Snedden, commenting on the inappropriateness of past practice, introduced a procedure whereby requests for detailed information relating to the administration of the parliamentary departments could be directed to the Speaker.[98] The current practice is that such requests are lodged with the Clerk in the same way as questions on notice addressed to Ministers. However, a question to the Speaker, if in order, is printed in the daily Hansard rather than the Notice Paper. Answers provided by the Speaker are also printed in Hansard.[99]

Form and content of questions

To relate to Minister's public responsibilities

Questions may be put to a Minister relating to public affairs with which he or she is officially connected, to proceedings pending in the House, or to any matter of administration for which the Minister is responsible.[100]

The underlying principle is that Ministers are required to answer questions only on matters for which they are responsible to the Parliament. Consequently Speakers have ruled out of order questions to Ministers which concern, for example:

- statements, actions or decisions of the Minister's own party or of its conferences or officials, or of those of other parties, including opposition parties[101];
- statements by people outside the House[102] including other Members[103], notably opposition Members[104];
- statements in the House by other Members[105];

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

96 H.R. Deb. (1.12.53) 707; H.R. Deb. (1.11.33) 4117.

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

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

99 H.R. Deb. (6.10.87) 827; H.R. Deb. (17.9.96) 4491–2.

100 S.O. 142. For statistics *see* Appendix 22.

101 H.R. Deb. (6.4.67) 970; H.R. Deb. (22.11.73) 3679; H.R.Deb. (10.9.75) 1194; H.R. Deb. (19.4.88) 1748; H.R. Deb. (9.10.96) 5051.

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

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

104 H.R. Deb. (12.10.77) 1892–3.

105 H.R. Deb. (5.5.64) 1489–90.

- the attitude, behaviour or actions of a Member of Parliament[106] or the staff of Members[107];
- anything of a private nature that is not related to the public duties of a Minister[108];
- what happens or is said in the party rooms or in party committees[109];
- arrangements between parties, for example, coalition agreements on ministerial appointments[110];
- policies of previous governments[111];
- the internal affairs of a foreign country[112], unless the information can be obtained from international organisations of which Australia is a member; and
- matters in State Parliaments[113] or State matters.[114]

As mentioned in the cases above, it is not in order for the personal conduct or private affairs of a Minister to be criticised by way of a question. A charge of a personal nature can only be raised by way of a direct and substantive motion. This fundamental parliamentary rule was re-iterated by Speaker Snedden:

> . . . Standing Order 142 provides that a question may be put to a Minister relating to public affairs with which he is officially connected or to any matter of administration for which he is responsible.
>
> . . . Standing Order 153 states that questions shall not be asked which reflect on or are critical of the character or conduct of those persons whose conduct may be challenged only on a substantive motion. Among those persons are the Speaker, Chairman and members of both Houses of Parliament. I have not prevented honourable members from criticising a Minister or any other person. I have upheld the rules of the House so as to ensure that any criticism of a Minister or any other person takes place in the established parliamentary form for which there is a sound procedural reason.[115]

Statutory authorities

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

In one case, a Minister answered that publication of information sought by a Member might be to the commercial disadvantage of an authority. He had therefore asked that the information be provided direct to the Member on a confidential basis.[116]

Questions to seek factual information or press for action

The purpose of questions is to enable Members to obtain factual information or press for action on matters for which the Minister questioned is responsible to the House. The standing orders, particularly standing order 144, contain many detailed provisions,

106 H.R. Deb. (26.5.81) 2519.
107 H.R. Deb. (8.9.81) 991.
108 H.R. Deb. (12.11.65) 2680.
109 H.R. Deb. (6.6.78) 3075; H.R. Deb. (25.10.79) 2481.
110 H.R. Deb. (26.10.78) 2338.
111 H.R. Deb. (21.8.75) 382.
112 H.R. Deb. (5.5.64) 1480.
113 H.R. Deb. (31.3.71) 1206.
114 H.R. Deb. (6.10.76) 1537.
115 H.R. Deb. (23.11.78) 3333.
116 H.R. Deb. (22.11.79) 3425–6.

outlined in subsequent sections of this Chapter, whose primary objective is to ensure that this purpose is given effect. In particular, they attempt to restrain the questioner from giving unnecessary information or introducing or inviting argument and thereby initiating a debate.

Debate, argument, etc.

Questions cannot be debated[117], nor can they contain arguments[118], comments[119] or opinions.[120] They may not become lengthy speeches[121] or statements and they may not in themselves suggest an answer.[122] In short, questions should not be used as vehicles for the discussion of issues.

References to debates and committee proceedings

References in questions to debates in the current session, concluded or adjourned, are out of order.[123] The Chair has interpreted this rule as applying equally to debates in the Senate.[124] The rule does not preclude questions on the subject matter of such debates, which may be so broad as to cover, for example, the country's whole foreign policy, but rather precludes reference to the debate itself and to specific statements made in it.

It has also been held to be out of order to ask a question repetitive of a matter already determined by the House[125], which reflects upon any vote of the House[126] or which refers to proceedings in committee, including select committees, not reported to the House.[127]

In relation to the proceedings of a committee not reported to the House, no exception has been taken to questions merely coinciding in subject matter with current committee inquiries.[128] The following private ruling of President Cormack has equal relevance to the House:

> ... if I were to rule that questions should not be allowed on any matters which may be under examination by committees, such a rule strictly applied would operate to block questions on a very wide variety of subjects.
>
> The practice which I follow, and which I shall continue to follow unless otherwise directed by the Senate, is to allow questions seeking information on public affairs for which there is ministerial responsibility provided that such questions are not of a nature which may attempt to interfere with a committee's work or anticipate its report.[129]

Anticipation of business

Standing order 144 provides that questions cannot anticipate discussion upon an order of the day or other matter. A clear distinction can be made between this rule and standing order 142, which permits questions to Ministers on 'proceedings pending in the House'. The principle established by rulings from the Chair is that questions seeking to **elicit information about proceedings** pending in the House are permissible provided they do not **anticipate the discussion itself** or invite a Minister to do so.[130] For example, in 1976,

117 S.O. 144.
118 S.O. 144; *and see* H.R. Deb. (26.8.82) 960; H.R. Deb. (14.12.82) 3396.
119 H.R. Deb. (13.4.61) 799; H.R. Deb. (10.10.96) 3819.
120 H.R. Deb. (5.7.49) 1927.
121 H.R. Deb. (31.8.66) 584.
122 H.R. Deb. (5.5.78) 1880.
123 S.O. 144; H.R. Deb. (21.5.75) 2545; H.R. Deb.(25.8.76) 525; H.R. Deb. (26.6.96) 2788–9.
124 H.R. Deb. (20.8.69) 431.
125 H.R. Deb. (16.11.78) 2892.
126 S.O. 73; *May*, p. 293.
127 S.O. 144.
128 E.g. H.R. Deb. (27.10.87) 1482; H.R.Deb. (16.2.88) 13; H.R.Deb. (8.2.94) 505, 507, 508.
129 *Odgers*, 6th edn, p. 309.
130 H.R. Deb. (26.6.30) 3317.

Speaker Snedden disallowed a question because it invited anticipation of the second reading speech and the arguments and principles upon which the legislation was based. However, he later permitted a question asking whether certain people would be disadvantaged under legislation then before the House. The Speaker ruled, in response to a point of order alleging inconsistency in the two rulings, that the second question was in order as it was simply seeking information about the legislation.[131] Questions have been permitted where a notice of intention to present a bill has been listed on the Notice Paper, the view being taken that this was different from an order of the day, where consideration of a measure was in fact before the House.[132] The distinction can be difficult to make in some circumstances, but the cardinal rule is to avoid the anticipation of discussion of orders of the day.

Information in questions

Questions should not contain statements of fact unless they are strictly necessary to render the question intelligible and can be authenticated.[133] Thus, Members may not give information under the guise of asking a question, otherwise questions cease to be questions and can become excessively long and so help limit the number of questions that can be asked at Question Time. The Chair frequently interrupts Members to warn them that their questions are excessively long and requires them to come to the point quickly. A Member who persists in giving information may have the question ruled out of order. Alternatively, if enough has been said to make the point of the question clear, the Speaker may require the Member to resume his or her seat and ask the Minister to respond.[134]

The requirement that information contained in a question be authenticated by the questioner is rarely applied unless the accuracy of the information is challenged. In such cases the Speaker simply calls on the questioner to vouch for the accuracy of the statement and, if the Member cannot do so, the question is disallowed.[135] If the Member vouches for the statement's accuracy, the Speaker accepts the authentication.[136] Questions based on rumour, that is, unsubstantiated statements, are not permissible.[137]

References to newspaper reports, etc.

It is established practice that, provided the Member asking a question takes responsibility for the accuracy of the facts upon which the question is based, he or she may direct attention to a statement, for example, in a newspaper or a news report, but may not quote extracts.[138] It has been held that the questioner must vouch for the accuracy of any such report referred to, not simply for the accuracy of the reference to it. If a Member cannot do so a question has been ruled out of order.[139]

In 1977 a Member's authentication of a newspaper report referred to in his question was challenged by the Member whose speech was the subject of the report. As he was in no position to adjudicate on the matter the Speaker accepted the questioner's authentication at face value and suggested that if any misrepresentation was involved

131 H.R. Deb. (25.3.76) 1005.
132 H.R. Deb. (23.5.96) 1275, 1276.
133 S.O. 144.
134 H.R. Deb. (7.9.77) 802.
135 H.R. Deb. (7.9.77) 801.
136 H.R. Deb. (29.3.77) 645–7.
137 H.R. Deb. (19.9.78) 1105.
138 *Standing Orders Committee Report*, H of R 1 (1962–63) 32.
139 H.R. Deb. (7.9.77) 801; *but see* for example H.R. Deb. (11.9.96) 3984–5.

this could be corrected in a personal explanation after Question Time. Instead leave was granted for the full text of the reported statement to be incorporated in Hansard.[140] In a similar case in 1978 when leave was not granted for incorporation of the reported statement the Member concerned made a personal explanation.[141] In 1981 the Speaker stated that he only asked for Members to vouch for the accuracy of press reports over which there was clearly controversy.[142]

The restriction on quotations in questions, which reflects House of Commons practice[143], has always been applied to questions on notice but the Chair has often chosen not to apply it to questions without notice, perhaps on the basis that, where a statement of fact is strictly necessary to render a question intelligible, a succinct quotation may more readily achieve this objective.[144] In permitting quotations the Chair has ruled that they may not contain matter which would otherwise be ruled out of order, for example, comment, opinion, argument or unparliamentary language.[145] In 1962 the Standing Orders Committee recommended that standing order 144 be amended to make explicit provision for questions not to contain quotations. Consideration of the proposal was deferred by the House and subsequently lapsed.[146]

It has been the practice, following that of the House of Commons[147], that it is not permissible to ask whether a reported statement is correct.[148] A Minister, although he or she may have responsibility for a matter, does not have responsibility for the accuracy of reports by others on the matter.

Questions seeking opinions

Questions may not ask Ministers for an expression of opinion[149], for comment[150], or for justification of statements made by them.[151]

Legal opinions should not be sought in questions[152] such as the interpretation of a statute, or of an international document, or of a Minister's own powers. Ministers may be asked, however, by what statutory authority they have acted in a particular instance, and the Prime Minister may be asked to define a Minister's responsibilities. Speaker Morrison of the House of Commons explained the basis for not permitting questions seeking an expression of opinion on a question of law:

> A Question asking a Minister to interpret the domestic law offends against the rule of Ministerial responsibility, since such interpretation is not the responsibility of a Minister . . . But it also offends against the rule that a Question may not ask for a Minister's opinion. The interpretation of written words is a matter of opinion. It is for the latter reason, I think, that the rule has been applied to the interpretation of an international document.[153]

Questions asking about the extent to which federal legislation would prevail over State legislation or administrative action have been permitted.[154] In addition it has been

140 H.R. Deb. (29.3.77) 645–7.
141 H.R. Deb. (24.5.78) 2390–1, 2395, 2396–7.
142 H.R. Deb. (4.3.81) 415.
143 *May*, p. 287.
144 H.R. Deb. (14.10.85) 1937–8.
145 H.R. Deb. (13.12.34) 1205; H.R. Deb. (7.6.45) 2685; H.R. Deb. (29.9.48) 937.
146 H of R 1 (1962–63) 32.
147 *May*, p. 289.
148 H.R. Deb. (16.6.39) 2085; H of R 1 (1962–63) 32; H.R.Deb. (27.9.60) 1329 (statement by the Speaker).
149 S.O. 144.
150 H.R. Deb. (25.8.77) 628; H.R. Deb. (19.5.88) 2674.
151 H.R. Deb. (20.11.57) 2322.
152 S.O. 144.
153 H.C. Deb. 543 (5.7.55) 961–2.
154 H.R. Deb. (6.10.76) 1542.

ruled that in response to a question dealing with the law a Minister may provide any facts, as opposed to legal opinions, the Minister may wish to give.[155] A question asking whether legislation existed on a specified subject has been permitted.[156]

In 1951, a question seeking a legal opinion from the Prime Minister having been disallowed, a Member asked the Prime Minister if he would table legal opinions he had received on the matter specified. The Prime Minister declined, stating that it was not his practice to table opinions received from the Crown's legal advisers.[157] The Attorney-General has also answered a question on notice (which did not explicitly seek a legal opinion), stating that he did not consider it appropriate to provide the substance of a legal opinion in response to a question on notice.[158]

Announcement of government policy

Members should not ask Ministers to announce the Government's policy, but may seek an explanation to clarify policy and its application and may ask the Prime Minister whether a Minister's statement in the House represents government policy.[159]

This rule is often misunderstood but the practice of the House is quite clear. A question which directly asks a Minister to state new policy is obviously out of order but a request for an explanation regarding existing policy and its application, or regarding the intentions of the Government is in order. Many questions ask whether a Minister will consider certain matters. Whether an answer to such a question would involve the Minister in a policy matter or in a form of words which may appear to disclose some point of policy can be determined only by the Minister. The Speaker is not in a position to decide.

Inferences, etc.

Questions should not contain inferences, imputations, epithets, ironical expressions or hypothetical matter[160]; nor may they be facetious[161], frivolous[162] or attribute motive.[163]

Identification of people in questions

A question with or without notice which is laudatory of a named individual[164] or contains the name of an individual in order to render the question intelligible is permissible.[165]

Questions may not be asked which reflect on, or are critical of, the character or conduct of those people whose conduct may only be challenged on a substantive motion.[166] Such people include the Sovereign, the heir to the throne, other members of the Royal Family, the Governor-General[167], the Governor of a State, the Speaker, Members of either House[168] and members of the judiciary.[169] In the past the rule was also

155 H.R. Deb. (4.4.79) 1474.
156 H.R. Deb. (5.5.76) 1926.
157 H.R. Deb. (6.11.51) 1542. It has been stated that questions seeking information about advice given to the Crown by law officers are in fact out of order, Campion, p. 151.
158 H.R. Deb. (19.9.96) 4853.
159 S.O. 144; *see also Standing Orders Committee Report*, PP 129 (1964–66) 9.
160 S.O. 144; H.R. Deb. (13.4.67) 1212.
161 H.R. Deb. (1.7.41) 591.
162 H.R. Deb. (8.10.36) 898.
163 H.R. Deb. (26.4.77) 1198.
164 *See* H of R 1 (1962–63) 33.
165 S.O. 144; H.R. Deb. (4.11.77) 2882.
166 S.O. 153.
167 H.R. Deb. (7.10.76) 1622.
168 H.R. Deb. (30.5.78) 2721.
169 *May*, pp. 379–80.

held to apply to the Chairman of Committees, and with the creation of the positions of Deputy Speaker and Second Deputy Speaker, it is considered these positions would also be covered by the practice. This rule applies to both questions without notice and questions on notice.

Questions critical of the character or conduct of other persons cannot be asked without notice.[170] Although this rule is generally applied to named persons, it has also been applied to unnamed, but readily identifiable, persons.[171] Such questions may, however, be placed on the Notice Paper. The purpose of the rule is to protect a person against criticism which could be unwarranted. A question on notice does not receive the same publicity and prominence as a question without notice and the reply can be more considered.

The standing orders do not prevent criticism of Ministers or others in high office but rather preclude such criticism from being aired in questions.[172] A substantive motion relevant to the criticism must be moved so that the House may then debate the criticism and make its decision.[173] It has been held that, once the House has made a decision on the matter, further questions, whether containing criticism or not, are out of order on the ground that the House has made its determination.[174]

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

> I have ruled that the reference in *May's Parliamentary Practice* which would prevent even the mention of such an office holder . . . is far too restrictive and that there can be discussion about such an office holder provided that the discussion relates to a statement as to whether the actions were right or wrong, is conducted in a reasonable fashion and does not attribute motive to or involve criticism of the office holder.[175]

Although not specifically referred to in the standing orders, it has been the general practice of the House that opprobrious reflections may not be cast in questions on sovereigns and rulers over, or on governments of, independent Commonwealth countries or other countries friendly with Australia, or on their representatives in Australia.[176] The application of this rule has tended to vary according to particular considerations at the time. A recommendation by the Standing Orders Committee to include such a requirement in the standing orders was rejected by the House in 1963.[177] In 1986, the Procedure Committee stated its opinion that the rule was unduly restrictive and recommended it be discontinued[178], but no action was taken on this recommendation.

Questions concerning the Crown

Questions may be asked of Ministers, who are the confidential advisers of the Crown, about matters relating to those public duties for which the Queen or her representative in the Commonwealth, the Governor-General, is responsible.[179] However, just as in debate, no Member in putting a question may use the name of Her Majesty, her representative in the Commonwealth, or her representative in a State, disrespectfully nor for the purpose

170 S.O. 153.
171 H.R. Deb. (5.4.79) 1560.
172 H.R. Deb. (23.11.78) 3333.
173 *See* Ch. on 'Motions'.
174 H.R. Deb. (16.11.78) 2892.
175 H.R. Deb. (7.10.76) 1628–9.
176 VP 1951–53/117; H.R. Deb. (10.10.51) 459–60.
177 VP 1962–63/455.
178 PP 354 (1986) 32.
179 *May*, p. 288.

of influencing the House in its deliberations.[180] Nor may a Member in a question cast reflections on or make critical references to the Crown or its representative.

In 1956 Prime Minister Menzies tabled documents relating to the double dissolution of the Senate and the House by the Governor-General in 1951. The documents referred to an interview which the Prime Minister had had with the Governor-General and contained copies of a letter from the Prime Minister to the Governor-General and the latter's reply.[181] Questions seeking the tabling of these documents had been asked by the Leader of the Opposition some five years earlier. In answer to those questions the Prime Minister acknowledged the importance of making the documents public as historical records and guides to constitutional practice but indicated that he would not table them until the Governor-General concerned had left office so that they would not involve the incumbent Governor-General in public debate.[182] In 1979 Prime Minister Fraser tabled documents relating to the dissolution of the House in 1977 and the double dissolution of 1975. These included correspondence between the Prime Minister and the Governor-General relating to the grounds for the dissolutions.[183] He indicated that he was tabling the documents in response to a question asked earlier by the Deputy Leader of the Opposition.[184] Documents concerning the 1983 and 1987 double dissolutions were also tabled.[185]

The practice in the House of Commons not to permit questions to the Prime Minister on advice given to the Crown concerning the granting of honours has not been followed in the House of Representatives, although care has been taken to ensure that nothing in such a question could bring the Queen into disrespect.[186]

The sub judice convention

Questions may not raise matters awaiting or under adjudication in a court of law. In such cases the House imposes a restriction upon itself to avoid setting itself up as an alternative forum to the courts and to ensure that its proceedings are not permitted to interfere with the course of justice. This restriction is known as the sub judice rule or, more properly, as the sub judice convention. The convention, which is discussed in detail in the Chapter on 'Control and conduct of debate', also applies to questions and answers.

Language

The Speaker may direct that the language of a question be changed if it seems unbecoming or not in conformity with the standing orders.[187]

Repetition of questions

A question fully answered cannot be renewed.[188] A question may however contain a reference to a question already answered. Members occasionally place questions on notice asking Ministers to up-date information provided in answer to earlier specified questions.

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180 S.O. 74.

181 VP 1956–57/167.

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

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

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

185 VP 1983–84/721; VP 1987–89/249.

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

187 S.O. 147.

188 S.O. 146; H.R. Deb. (27.8.58) 777.

House of Commons practice provides that Members are out of order in renewing questions to which an answer has been refused. Where a Minister has refused to take the action or give the information asked for in a particular question, he or she may be asked the same question again after three months. A question which one Minister has refused to answer cannot be addressed to another Minister.[189] However, Ministers rarely refuse to answer questions in the House of Representatives and circumstances in which these House of Commons rules could have been applied do not appear to have arisen.

Question without notice similar to question on Notice Paper

It has been the general practice of the House that questions without notice which are substantially the same as questions already on the Notice Paper are not permissible. It is not relevant that the questions on and without notice may be addressed to different Ministers.[190] In 1986 however the Speaker ruled such a question acceptable, as it had been asked by the Member who had placed the original question on the Notice Paper. In that case the Speaker's view was that the purpose of the rule was to prevent a Member asking a question on notice from being disadvantaged and the Member's question being pre-empted, and logic and common sense dictated that the practice should not apply in respect of a Member's own question.[191] The Procedure Committee subsequently recommended that past practice be continued, despite this precedent to the contrary.[192] A Member may withdraw a question on notice at any time by informing the Clerk of the House, and the withdrawal is effective immediately. As the withdrawal could take place as a preface to a question without notice, the previous restriction could be easily circumvented.

Questions requiring detailed response

If a question cannot reasonably be expected to be answered without notice, it is disallowed, and the Chair suggests that it be placed on the Notice Paper.[193] This rule is mainly applied to questions seeking excessively detailed replies or to questions with many parts. Ministers themselves occasionally indicate that they are unable to answer a question without notice and ask that the Member place it on notice or, alternatively, they undertake to provide the Member with the information in writing. In the latter case, if the Minister provides a copy of the reply to the Clerk of the House, the question and reply are printed in Hansard.

Personal interest

A Member asking a question need not disclose any personal interest he or she may have in the subject matter of the question. The resolution of the House effective from 1984 until 1988 providing for the oral declaration of interests by Members participating in debate and other proceedings specifically excluded the asking of questions.[194]

QUESTIONS ON NOTICE

'Questions on notice' were originally part of the routine of business in the House, a period during which Ministers read to the House answers to questions, the terms of

189 *May*, p. 292.
190 H.R. Deb. (10.5.79) 2058; H.R. Deb. (25.5.88) 2975, 3047.
191 H.R. Deb. (25.9.86) 1433, 1484; VP 1985–87/1166–7.
192 PP 354 (1986) 36.
193 H.R. Deb. (9.3.71) 698.
194 *May*, p. 294. VP 1983–84/946; VP 1987–89/961.

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

Over the years more and more time was taken up with questions without notice, and in order to save the time of the House, a new standing order was adopted in 1931 to provide that the reply to a question on notice could be given by delivering it to the Clerk, who would supply a copy to the Member concerned and arrange for its inclusion in Hansard.[195] Soon afterwards answers, which until then had been printed in Hansard immediately after questions without notice, were added at the end of the report of the day's proceedings. Questions themselves, however, remained listed prominently as the first item of business on the Notice Paper until 1950 when 'Questions without notice' replaced 'Questions on notice' in the routine of business.

By the early 1980s an average of 50 questions was being asked each sitting day, with a record number of 711 questions being placed on a single day's Notice Paper.[196] The average for the 37th Parliament was 14 questions on notice each sitting day.

Notice of question

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

Questions on notice should be clearly written or typed, signed by the Member and delivered to the Clerk within such time as will enable them to be printed on the Notice Paper.[197] The Speaker has determined that questions for the next day's Notice Paper should, in normal circumstances, be lodged by 4 p.m. In practice the Member's signature is not insisted upon when the Member delivers the question in person, the main purpose of the signature being to authenticate the question. Although the standing orders require that each notice of question shall show the day proposed for asking the question[198], it is the practice to ignore this requirement, which originated when questions on notice were asked for oral answer in the Chamber, as it is taken that the notice is for the next sitting, unless the Member states otherwise. From time to time however a notice of question may be still given for a particular date[199], for example, to permit a question to be placed on the Notice Paper about events expected to occur on a future date, thus alerting the Minister and facilitating an early reply.

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

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

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

197 S.O. 148. For statistics *see* Appendix 22.

198 S.O. 148.

199 NP 64 (16.10.70) 4351.

Form and content

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

The Speaker is responsible for ensuring that questions conform with the standing orders[200], but, in practice, this task is performed by the Clerks who have traditionally had the Speaker's authority to amend questions submitted before placing them on the Notice Paper. The Clerks also edit questions to adapt them to the style of the Notice Paper, to eliminate unnecessary words, to put them into proper interrogative form, and to ensure that they are addressed to the correct Ministers. Where changes of substance are involved, if practicable the amendments are discussed with the Member concerned or a person on the Member's staff. No question is amended so as to alter its sense without the Member's consent. Only in instances where agreement cannot be reached does the Speaker become personally involved, and any decision then made is final.[201]

Order of questions

The Clerk is required to place notices of questions on the Notice Paper in the order in which they are received.[202] Each question is numbered, and the question retains the same number until it is fully answered and the reply is delivered to the Clerk. On the first sitting day of each week all unanswered questions appear in full on the Notice Paper. On subsequent days only new questions for that week appear, along with the identifying numbers of unanswered questions placed on notice in earlier weeks.

Removal of questions from Notice Paper

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

Any questions remaining on the Notice Paper at the time when the Parliament is prorogued or the House is dissolved lapse.[203] In recent Parliaments (32nd–37th) some seven per cent of questions on notice have so lapsed.

ANSWERS

No obligation to answer

It is the established practice of the House, as it is in the House of Commons, that Ministers cannot be required to answer questions.[204] Outright refusal to answer questions is relatively rare, being restricted largely to questions dealing with clearly sensitive and confidential matters such as security arrangements, Cabinet and Executive Council deliberations, and communications between Ministers and their advisers. Further, if a

200 S.O. 147.

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

202 S.O. 149. For further details concerning the format of the Notice Paper *see* Ch. on 'Papers and documents'.

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

204 H.R. Deb. (12.5.70) 1949; H.R. Deb. (28.11.88) 3329. *May*, p. 293.

Minister does not wish to reply to a question on the Notice Paper ultimately he or she may chose simply to ignore it (despite any reminders given in accordance with standing order 150—*see* p. 525). The question then eventually lapses on prorogation of the Parliament or dissolution of the House.

Occasionally Ministers reply to questions on notice by stating, for example, that the information sought by a Member is unavailable or that the time and staff resources required to collect the information cannot be justified.[205] Ministers have refused to answer questions on notice which a public servant had admitted to preparing.[206] A Minister has declined to supply information which was considered to be readily obtainable by other means, for example, in response to a question on notice a Minister has suggested that a Member use the resources of the Parliamentary Library rather than those of his department.[207] Ministers have also stated in answer to a question on notice that the question or part of the question sought, for example, a legal opinion or an answer to a hypothetical situation, and a substantive reply has not been given.[208]

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

Answers to questions put to Ministers representing Senate Ministers

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

Answers to questions without notice

Ministers' answers to questions without notice are given orally and immediately. When a Minister is occasionally unable to provide an immediate substantive answer, he or she may either undertake to supply the Member with the requested information in writing at a later date[209] or suggest that the Member place the question on the Notice Paper. When the former option is taken, a Minister will usually treat the question as if it were a question on notice and will deliver a copy of the reply to the Clerk in order that the question and answer may be printed in Hansard.

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

206 *The Table* XLVI, 1978, p. 109.

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

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

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

Ministers are not normally permitted to answer questions which have been ruled out of order.[210] Answers have however often been permitted, for example, when the Minister or third parties have been criticised and the Minister has sought an opportunity to refute the criticism.[211]

More than one Minister has answered a particular question without notice in the case of shared responsibility. In 1970 a question was directed to and answered by the Minister for the Army. Upon completion of the answer the Minister for Defence indicated that the subject of the question lay more within his ministerial responsibilities and proceeded to add to the information already supplied.[212] A Minister has also answered a question addressed to another. In 1987 the Treasurer responded to questions directed to the Minister Assisting the Treasurer on Prices, saying that questions should not be directed to a Minister Assisting when the Minister was in the House.[213] It is in order for the Prime Minister, who has overall responsibility for the Government, to add to the answer to a question addressed to another Minister.[214]

Ministers may seek and be granted the indulgence of the Chair after Question Time or later in the day, to add to or correct an answer given to a question without notice asked on that day[215] or even a previous day.[216] Alternatively the additional or corrected information may be given to the Clerk in writing who will treat it in the same manner as an answer to a question on notice.[217] In answering a question later a Minister has provided additional comment and information on a question asked of her earlier on the same day.[218] In the case of additional information, the Minister may choose simply to write directly to the Member concerned.

Content of answers

The standing orders and practice of the House have been criticised in that restrictions similar to those applying to the form and content of questions do not apply to answers. For instance, Ministers have not been prevented from introducing argument into their answers. Although it has been argued that the standing order provision that 'questions cannot be debated' should be read as meaning a prohibition of debate in answering, as well as in putting, a question, it has not been so interpreted by the Chair.[219]

The only provision in the standing orders which deals specifically with the form and content of answers to questions is the requirement that an answer shall be relevant to the question.[220]

May supplements the standing order:

> An answer should be confined to the points contained in the question, with such explanation only as renders the answer intelligible, though a certain latitude is permitted to Ministers of the Crown.[221]

The latitude permitted to Ministers has often been quite considerable in the House of Representatives. Speakers have ruled consistently that provided the answer is relevant

210 H.R. Deb. (2.5.78) 1591.
211 H.R. Deb. (21.11.78) 3075; H.R. Deb. (13.10.94) 2005–6.
212 H.R. Deb. (3.3.70) 19–20; H.R. Deb. (30.4.87) 2278–9.
213 H.R. Deb. (18.3.87) 1026–28.
214 H.R. Deb. (25.6.92) 3948; H.R. Deb. (7.2.94) 420–1, 423; H.R. Deb. (10.9.96) 3834.
215 H.R. Deb. (31.5.73) 2938–9; H.R. Deb. (11.9.96) 4060.
216 H.R. Deb. (14.8.69) 255; H.R. Deb. (23.3.94) 1981–3 (Minister's previous rostered day); H.R. Deb. (17.9.96) 4408.
217 H.R. Deb. (21.9.76) 1276; H.R. Deb. (18.8.77) 496.
218 H.R. Deb. (17.10.95) 2204.
219 H.R. Deb. (4.5.87) 2487; H.R. Deb. (12.5.87) 2972.
220 S.O. 145.
221 *May*, p. 295.

and is not couched in unparliamentary language Ministers may virtually answer questions without notice in any way they choose. The interpretation of 'relevant' has at times been very wide[222], and in practice the word has been frequently accepted by the Chair as meaning relevant in some way or relevant in part, rather than directly or completely relevant. On the other hand, although the test of relevance can be difficult to apply, Ministers have been asked to resume their seats as their answers were not relevant.[223] The Chair has also upheld points of order contesting the relevancy of a Minister's answer.[224] Such instances have, however, been somewhat rare. It has been held that a Minister 'should not engage in irrelevances', such as contrasting the Government and Opposition, and the Speaker has directed a Minister so doing not to proceed[225], although on other occasions such comments have been permitted.[226]

In response to the suggestion that the provisions of standing order 85, dealing with irrelevance and tedious repetition, could apply to answers, the Speaker has noted that the standing orders concerning questions and answers did not provide a complete statement of the rules governing Question Time (for example, the sub judice rule). The Speaker intimated however that she did not see the provisions of standing order 85 as applying to answers.[227] It is considered nevertheless that the Chair has sufficient authority to deal with irrelevance or tedious repetition in answers.

In 1986 the Procedure Committee recommended that standing orders be amended to provide that answers to questions must be relevant, not introduce matter extraneous to the question and should not contain arguments, imputations, epithets, ironical expressions or discreditable references to the House or any Member thereof or any offensive or unparliamentary expressions.[228] The Procedure Committee of a later Parliament (1992) while not in favour of such strict provisions, nevertheless recommended that the relevant standing order be amended to read 'The answer to a question without notice (a) shall be concise and confined to the subject matter of the question, and (b) shall not debate the subject to which the question refers'.[229] No action was taken by the House on either of the recommendations. In revisiting the subject in 1993 the Procedure Committee of the 37th Parliament concluded that, however much the requirements of the standing orders were to be tightened up, relevance would continue to be a matter of opinion, and that significant change in the nature of answers would depend more on changes of attitudes than on changes to rules.[230]

Length of answers

The Speaker has no specific power under the standing orders to require a Minister to conclude an answer on the grounds of its length and in the past has only exercised persuasion.[231] In exerting its influence the Chair has emphasised the need for questions and answers to be brief if maximum benefit is to be derived from the limited time allocated to questions. Ministers have often been advised that, should a question require a lengthy response, the proper procedure is for the Minister to state that fact and to seek

222 H.R. Deb. (10.9.81) 1158.
223 H.R. Deb. (13.9.79) 1077–9; H.R. Deb. (18.9.80) 1470; H.R. Deb. (24.5.88) 2863.
224 H.R. Deb. (22.8.79) 429; H.R. Deb. (25.8.88) 382–4.
225 H.R. Deb. (27.8.81) 856, 857; H.R.Deb. (9.9.81) 1063–4.
226 E.g. H.R. Deb. (10.9.81) 1160; H.R. Deb. (4.4.84) 1352; H.R. Deb. (24.11.88) 3208.
227 H.R. Deb. (28.11.88) 3329.
228 PP 354 (1988) 45.
229 PP 179 (1992) 15.
230 PP 194 (1993) 22–3. At the time of publication no action had been taken to implement the recommendations.
231 H.R. Deb. (25.10.78) 2259.

leave to make a statement after Question Time.[232] While the Speaker may urge a Minister to conclude his or her answer, Speakers have taken the view that the Chair has no power to require that it be followed. From the early 1980s the length of Ministers' answers at Question Time increased significantly, the increase being directly responsible for the decline in the number of questions it was possible to ask in the time available. This situation gave rise to considerable dissatisfaction among Members, at one stage to a point where opposition Members adopted an unofficial practice of calling a quorum later in the day for each occasion a Minister's reply in Question Time had exceeded five minutes.[233] Motions have been moved that a Minister giving a lengthy answer be not further heard.[234]

A number of proposals have been advanced over the years to control the length of answers, three minutes being the usual time limit envisaged.[235] However, when Procedure Committees have considered the subject in recent years they have perceived a need for flexibility in the answering of questions and concluded that the setting of time limits on answers was not the most effective way of dealing with the problem. They have recommended instead that there be a set minimum number of questions answered each Question Time[236] (*see* p. 501).

Answers and the authority of the Chair

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

Answers to questions on notice

An answer is given by delivering it to the Clerk who must supply a copy to the Member who asked the question and arrange for both question and reply to be printed in Hansard.[237] In addition the Clerk arranges for copies to be supplied to the press. Answers are neither read nor tabled in the House. Answers delivered to the Clerk after the prorogation of the Parliament or dissolution of the House cannot be accepted. In these circumstances the Minister concerned may supply the answer directly to the questioner and, if he or she wishes, to the press. However it has been considered that absolute privilege would not attach to the distribution of copies of the answer, and the answer would not be published in Hansard (*and see Parliamentary Privileges Act 1987*).

Answers received by the Clerk subsequent to the last sitting of a session or Parliament but prior to prorogation or dissolution are published if they are received in time to be included in the final weekly edition of Hansard for that session or Parliament. Answers

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

233 H.R. Deb. (23.9.86) 1274–5.

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

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

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

237 S.O. 150.

which miss this deadline are not published in the Hansard of the next session or Parliament.

Occasionally Ministers supply interim answers to questions on notice. Interim answers are published in Hansard but the relevant questions are not removed from the Notice Paper until they are fully answered. The following guidelines are used in determining what constitutes an interim, as opposed to a final, reply. Any answer which makes a real attempt to supply the information sought in a question is considered fully answered. An answer to a question seeking information about an area outside a Minister's administrative responsibilities is considered fully answered if the Minister replies that he or she is having inquiries made and will provide the information. Similarly an answer to a question seeking information about various matters both within and outside a Minister's responsibility is considered fully answered if an answer is supplied to those parts within the Minister's administrative responsibility. An example of such a question would be one seeking statistical information on activities of the Australian Government and overseas governments within a field for which the Minister is responsible in Australia.[238] However if the question concerns matters wholly within a Minister's administrative responsibility, a reply that the Minister will provide the information at a later date is insufficient and the question remains on the Notice Paper. A statement by a Minister that he or she refuses to answer a question, with or without reasons, is considered to fully answer the question.

A Minister has answered a question on notice on behalf of another.[239]

The answer to a question may refer the Member to the answer to another question if relevant.[240] This approach should be adopted if, for example, an answer applies equally to two questions on notice. It is unacceptable to give a single reply to two separate questions.

Supplementary answers adding to or correcting information contained in earlier answers to questions on notice are themselves dealt with as answers to questions on notice. The original question number is used for identification.[241]

If a Minister relinquishes a portfolio before an answer to a question has been published in Hansard, the answer is returned to the former department or to the new Minister. The answer should then be re-submitted under the new Minister's name if he or she is satisfied with the answer, or alternatively the answer resubmitted may be prefaced 'The answer provided by my predecessor (. . .) to the honourable Member's question is as follows: . . .'[242]

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

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

238 H.R. Deb. (9.12.76) 3688–9.
239 H.R. Deb. (16.2.82) 144.
240 H.R. Deb. (7.4.70) 781, question No. 1.
241 H.R. Deb. (15.8.72) 147–8.
242 H.R. Deb. (16.2.71) 73, question No. 1570.

> The information which has been collated for the honourable member is too lengthy to be published in Hansard. A copy of the reply is filed in the Table Office of the House of Representatives where it can be read or a copy of it obtained.[243]

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

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

Hansard's objective is to publish on the first day of a period of sittings answers to questions on notice which are provided during a non-sitting period. However the volume of answers is sometimes so large that some answers must be held over for publication in subsequent issues of Hansard.[244]

Unanswered questions

As noted earlier, there is no obligation on Ministers to answer. Members' expectations that Ministers will or should provide answers are not always realised. In 1996, following repeated Procedure Committee recommendations[245] and a trial as a sessional order, the relevant standing order was amended to provide that, if a question on notice has not been answered after 60 days, the Member who asked the question may rise in his or her place and request the Speaker to write to the Minister concerned, seeking reasons for the delay in answering.[246] This procedure is initiated by way of a question to the Speaker following Question Time. Any response to the Speaker's letter is forwarded to the Member concerned.

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

244 H.R. Deb. (3.6.86) 4497–8.

245 PP 179 (1992) 18; PP 194 (1993) 29.

246 S.O. 150. The sessional order in effect since 1994 had allowed 90 days, VP 1993–95/779.