

Motions

DEFINITION OF 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 question¹ 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 (counted vote) of the House. There is provision for some questions to be resolved by ballot² 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. 322). When a question on a motion is agreed to, that motion becomes an order or resolution of the House (*see* p. 306).

A motion does not necessarily lead to a decision of the House. In some circumstances it may be dropped, it may be withdrawn, or the question before the House may be superseded or deferred. The procedures involved in dealing with a motion, covered in detail in the following text, are outlined in diagrammatic form on page 282.

Motions may be conveniently classified into two broad groupings:³

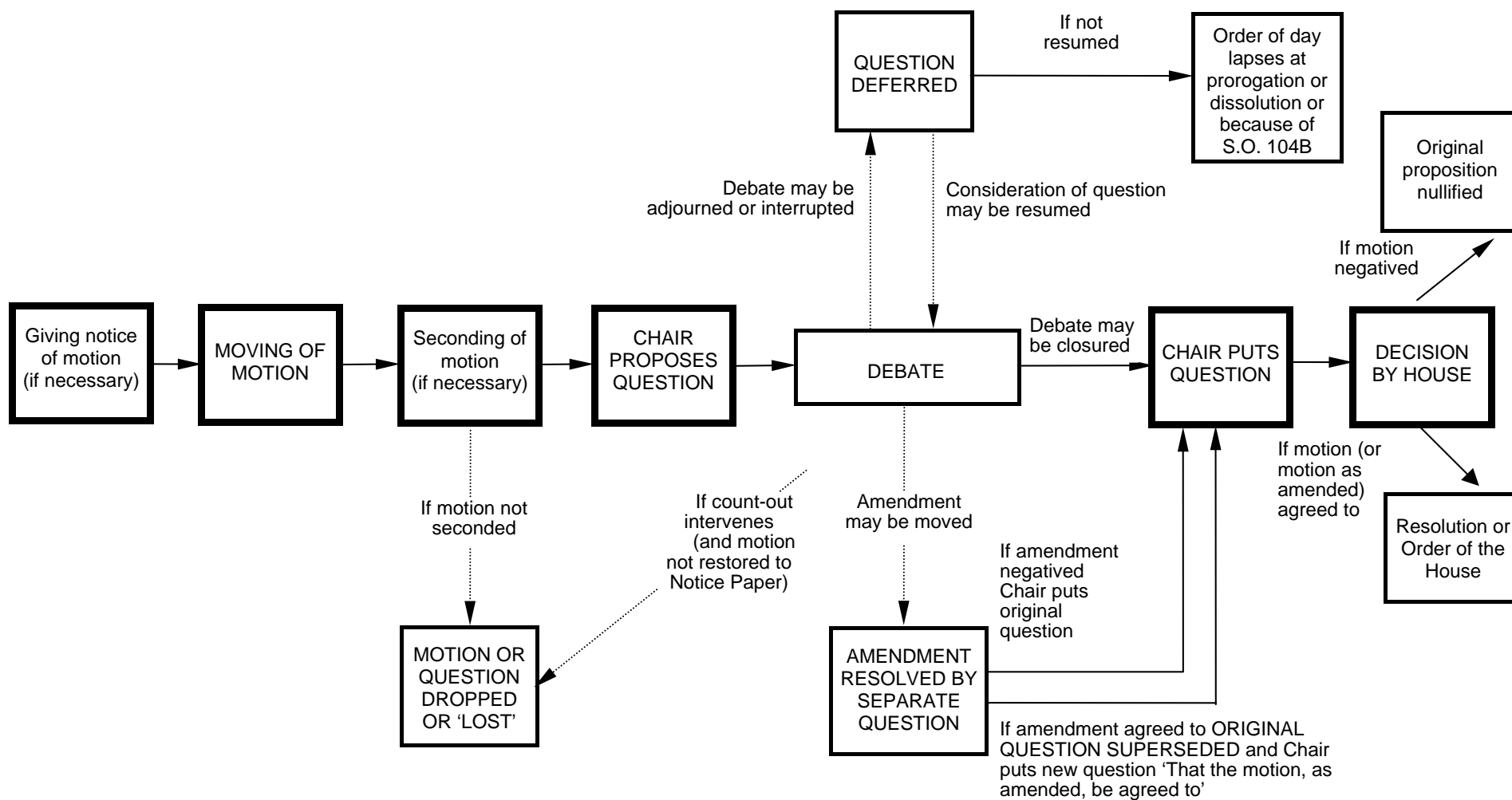
- **Substantive motions:** These are self-contained proposals and are drafted in such a way as to be capable of expressing a decision or opinion of the House.
- **Subsidiary motions:** These are largely procedural in character. Standing order 86 specifies a number of these procedural motions which are 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;
 - a motion made for the purpose of deferring a question, for example, a motion that the debate be now adjourned;
 - a motion dependent upon another motion, such as an amendment; and
 - 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.

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

² *See* Ch. on 'Routine of business and the sitting day'.

³ *May*, 22nd edn, pp. 328–9. The motion providing for the discussion of a matter of special interest under S.O. 108 (*see* p. 323) really fits neither of these definitions.

Procedure for dealing with a motion



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’).

Motions requiring notice

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.⁴ It is further provided that a notice of motion becomes effective only when it appears on the Notice Paper.⁵ 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.⁶

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. 309).⁷

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 ‘Non-government 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;

⁴ S.O. 154.

⁵ S.O. 141.

⁶ VP 1973–74/124; VP 1998–2001/1118.

⁷ S.O. 170.

- 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.⁸
- 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.⁹
- Two motions for the commitment of offenders found guilty of a breach of privilege were moved together and agreed to.¹⁰

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;
- further proceedings (on an item of Main Committee business) be conducted in the House;
- adjournment or suspension (under S.O. 282) of Main Committee;
- 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;
- 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 consideration in detail stage, 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;
- withdrawal of strangers; and

⁸ VP 1920–21/184.

⁹ VP 1954–55/180; H.R. Deb. (28.4.55) 230–1.

¹⁰ VP 1954–55/269–70; H.R. Deb. (10.6.55) 1629.

- suspension of standing or sessional orders, in cases of necessity (but absolute majority required).

Giving notice

A Member may indicate the intention to move a motion on the next day of sitting or on any other suitable day.¹¹

Delivering copy of terms to the Clerk

A notice of motion is given by a Member delivering its terms in writing 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 expresses a censure of, or want of confidence in, the Government, or any Member, has to be reported to the House by the Clerk at the first convenient opportunity. Other notices are not reported to the House.¹²

Openly

A Member may give a notice openly by stating its terms to the House during the 15 minute period for Members' 90 second statements, and delivering its terms in writing to the Clerk at the Table. This is rare.¹³

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. Oral notices were often used for the purpose of making a short statement rather than in any hope of having a motion moved. The removal of the oral notice period and the introduction of the 90 second statement procedure resulted in a considerable decrease in the number of notices given.

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.¹⁴

Member suspended

In 1984 Speaker Jenkins held that to allow a suspended Member to hand notices to the Clerk for reporting to the House 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.¹⁵ If the notice is given openly 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. A notice of motion given by a Minister, a Parliamentary Secretary or, in certain circumstances, the Chief Government Whip does not require a seconder (*see* p. 292). In 1992 the Procedure Committee recommended that

¹¹ H.R. Deb. (29.5.08) 11702.

¹² S.O. 133.

¹³ S.O. 133, VP 1987–89/302; H.R. Deb. (25.5.98) 3544, 3546.

¹⁴ S.O. 134.

¹⁵ S.O. 133.

standing orders be amended to allow Members to lodge a notice of motion without the need for a seconder. No action was taken on the recommendation.¹⁶

If the Member who has signed a notice as a seconder formally withdraws his or her support the notice is removed from the Notice Paper.

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.¹⁷

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.

Four contingent notices, each for the purpose of facilitating the progress of legislation, are normally given in the first week of each session:

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.¹⁸

This contingent notice covers the situation following the introduction of a bill where the standing orders provide that a future day shall be fixed for the second reading to be moved. The contingent notice enables a motion to be moved to by-pass the standing order and make the second reading an order of the day for a later hour the same day.

Contingent on any report relating to a bill being received from the Main Committee: Minister to move—That so much of the standing orders be suspended as would prevent the remaining stages being passed without delay.¹⁹

This contingent notice covers the situation where a bill is reported from the Main Committee with amendments or unresolved questions and copies of the amendments or unresolved questions are not available for circulation to Members. In such circumstance the standing orders provide that a future time shall be appointed to take the report into consideration.

Contingent on any bill being agreed to at the conclusion of the consideration in detail stage: Minister to move—That so much of the standing orders be suspended as would prevent the motion for the third reading being moved without delay.²⁰

This contingent notice is intended to overcome the situation where leave is not granted to move a motion for the third reading to be moved forthwith (the usual practice, even though the standing orders provide for a future day).

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.²¹

This contingent notice facilitates the speedy passage of a Senate bill without any of the normal delays between stages provided by the standing orders.

¹⁶ PP 102 (1992).

¹⁷ NP 1 (21.5.01) 1.

¹⁸ VP 1985–87/1071.

¹⁹ VP 1985–87/1547 (report from committee of whole).

²⁰ VP 1996–98/89; 836; VP 1998–2001/1033.

²¹ VP 1993–95/92.

Any Minister or Parliamentary Secretary and the Chief Government Whip 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 contingent notices mentioned above, or equivalents, 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 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 provide safeguards against hasty or ill-considered action, any extension of its use is questionable.²²

Order on the Notice Paper

As a general rule notices are entered on the Notice Paper, in priority of orders of the day, in the order in which they are received, provided that private Members' business notices are entered in such a way that, as far as possible, priority alternates between government and non-government Members, and that two notices received from the same Member are not placed consecutively in priority of a notice received from another Member during the same sitting.²³ 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 fit²⁴ and, as government business has priority on all sitting days except Mondays, government notices will normally take priority over notices given by private Members.
- In relation to private Members' business, the Selection Committee can, prior to the first sitting day of each week, arrange the order of private Members' notices.²⁵ Private Members' notices not called on after eight sitting Mondays are removed from the Notice Paper.²⁶

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 that 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.²⁷ 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 (without notice) by the Member who gave the notice (S.O. 155), or
- the Member not being in his or her place, or failing to rise, to move the motion. The notice is then withdrawn from the Notice Paper unless, when the notice is called on,

²² For examples of other contingent notices relating to specific occasions or items of business *see* NP 145 (8.12.71) 11529; NP 180 (15.8.72) 14646; NP 45 (5.12.74) 4942, VP 1974–75/422.

²³ S.O. 135.

²⁴ S.O. 105.

²⁵ S.O. 28D.

²⁶ S.O. 104B.

²⁷ *See* Ch. on 'Routine of business and the sitting day'.

the Member, or in his or her absence and at his or her request, another Member, fixes a future time for moving the motion (S.O.s 158, 159).²⁸

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.²⁹ This would not necessarily be done in the House.³⁰

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.³¹ 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.³² In 1977 the Speaker referred to the form of notices, noting that notices which were inordinately and unnecessarily long continued to be given, and that Members were tending to use notices to narrate a long argument rather than to put a concise proposition for determination by the House. The Speaker said that if Members continued to misuse the procedure he would have to intervene to have Members reform their notices or to have the Clerks eliminate the argument and unnecessary statements.³³ The view and direction put forward by the Speaker were adhered to and came to constitute the practice of the House.

Problems with the length and content of notices were most evident when notices were given openly, and this reflected the fact that the occasion of giving 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 abolition of the practice of the giving of notices openly, and the opportunity provided by Members' statements (*see* Chapter on 'Non-government business'), these problems were no longer evident.

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.

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 negatived.³⁴

²⁸ VP 1996–98/ 1902.

²⁹ S.O. 136.

³⁰ H.R. Deb. (23.10.75) 2447.

³¹ S.O. 137.

³² H.R. Deb. (1.10.12) 3623.

³³ H.R. Deb. (4.5.77) 1510.

³⁴ H.R. Deb. (1.10.12) 3621–3; VP 1912/161; H.R. Deb. (8.10.12) 3911–33.

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.³⁵

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.³⁶ The Speaker did not state his reasons but presumably it was ruled out of order because of the use of unparliamentary words.

In 1980 the Speaker directed the Clerk to remove a notice from the Notice Paper when his attention was drawn to unparliamentary words contained in it.³⁷ 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.³⁸

In 1995 the Speaker wrote to a Member, drawing the Member's attention to the fact that certain matters relevant to a notice lodged by the Member were sub judice and expressing the view that discussion of the matter should not take place. In the event the notice was amended and eventually debated.³⁹

In 1999 the Speaker held that a notice which referred to another Member in ironic terms could not be published without amendment.

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.⁴⁰ The altered notice becomes effective only after it appears on the Notice Paper.⁴¹ 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.⁴² Leave has also been granted to amend a notice when it has been called on to be moved.⁴³

Withdrawal or removal 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.⁴⁴ 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.

³⁵ H.R. Deb. (25.3.20) 881–2; VP 1920–21/91; H.R. Deb. (26.3.20) 906–10; (now) S.O. 300.

³⁶ 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.

³⁷ H.R. Deb. (17.9.80) 1364.

³⁸ NP 26 (5.10.83) 1044 (the notice did appear once before being removed).

³⁹ NP 167 (28.9.95) 8994; NP 176 (20.11.95) 9443–4; VP 1993–95/2573.

⁴⁰ S.O. 139.

⁴¹ S.O. 141.

⁴² 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.

⁴³ VP 1973–74/124; VP 1998–2001/1118.

⁴⁴ S.O. 140. A private Member's notice may be withdrawn even after it has been accorded priority by the Selection Committee.

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.⁴⁵ 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.⁴⁶ 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.⁴⁷

Under standing order 104B any private Member's business not called on or any private Member's business the consideration of which has been interrupted pursuant to standing order 104A and not reaccorded priority by the Selection Committee, on any of the next eight sitting Mondays, must be removed from the Notice Paper by the Clerk.

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);⁴⁸
- 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.⁴⁹

Same question rule

The Speaker may disallow any motion (or amendment) which is the same in substance as any question which has been resolved in the affirmative or negative during the same session. The application of the same question rule is totally at the Chair's discretion.⁵⁰ 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.

The same question rule has been rarely invoked. A motion to suspend standing and sessional orders to enable consideration of a general (i.e. private Member's) business notice of motion was ruled out of order as the same question had been negatived on each of the two previous sitting days.⁵¹ 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.⁵² A motion of dissent from a

⁴⁵ S.O. 159.

⁴⁶ S.O. 158; VP 1983–84/915; VP 1996–98/1902.

⁴⁷ H.R. Deb. (19.3.08) 9352; S.O.s 161, 162.

⁴⁸ For discussion see Ch. on 'Control and conduct of debate'.

⁴⁹ For discussion see Ch. on 'Control and conduct of debate'.

⁵⁰ S.O. 169.

⁵¹ VP 1946–48/119; H.R. Deb. (18.3.47) 741.

⁵² H.R. Deb. (12.8.54) 225.

ruling has also been ruled out of order on the ground that a motion of dissent from a similar ruling had just been negated.⁵³

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.⁵⁴

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 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.⁵⁵ On the second occasion a notice of motion which was the same in substance as a second reading amendment negated 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.⁵⁶

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 superseded⁵⁷ (*see* p. 295) or, for example, where no decision was reached because of a want of quorum in a division, may be repeated. Private Members' bills which have been dropped under the provisions of standing order 104B have been re-introduced, no decisions of substance having been taken on them.⁵⁸

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 negated, cannot be put to the House again if the Speaker or Chair 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.⁵⁹ This provision 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.⁶⁰ The practical effect of this restriction, in relation to the wording of motions, is that a matter already appointed for consideration by the House—that is, an order of the day—cannot be anticipated by a notice or a motion in the same terms. One notice cannot block another, as at that stage they are an equally effective form of proceeding.⁶¹

⁵³ H.R. Deb. (9.10.36) 1013.

⁵⁴ E.g. VP 1950–51/189; VP 1985–87/1307–9, 1512, 1541–2, 1544–8; VP 1996–98/1786, 2665–74, 2769; 2176, 2675, 2794.

⁵⁵ VP 1970–72/673–4, 1014; NP 111 (26.8.71) 8230; NP 165 (19.4.72) 13196.

⁵⁶ 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.

⁵⁷ *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.

⁵⁸ E.g. VP 1993–95/172, 211, 1616; VP 1998–2001/183, 1067.

⁵⁹ E.g. VP 1998–2001/832.

⁶⁰ S.O. 163.

⁶¹ *See* H of R 1 (1962–63) 34 for comment by Standing Orders Committee; *and see* H.R. Deb. (14.11.18) 7880.

The wider application of this rule and the related standing order on anticipating discussion⁶² is covered in detail in the Chapter on ‘Control and Conduct of Debate’.

Progress in House

Motion moved

A Member may move a motion only 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.⁶³ A Member cannot move a motion while another Member is speaking,⁶⁴ except 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.⁶⁵ Any motion before the House must be disposed of, or debate on the motion adjourned, before another (substantive) motion can be moved.⁶⁶

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,⁶⁷ 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 only be moved after the principal motion has been moved (and, where necessary, seconded) and the question has been proposed from the Chair.⁶⁸

It is in order for a Member to vote against a motion he or she has moved.⁶⁹

Motion seconded

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.⁷⁰ The Chair is not entitled to propose the question on a motion to the House until it has been moved and seconded.⁷¹

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.⁷² This practice was formally extended to Assistant Ministers by the House in 1972⁷³ and, in 1990, to Parliamentary Secretaries.⁷⁴ In 1994 the Chief Government Whip, not being a Minister or Parliamentary Secretary, was empowered by resolution of the House to move motions relating to the sittings or conduct of business of the House or Main Committee without the requirement for a seconder.⁷⁵ Also it is not the practice to require a seconder

62 S.O. 82.

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

64 VP 1974–75/338; H.R. Deb. (21.11.74) 3899.

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

66 H.R. Deb. (17.3.44) 1563–4.

67 S.O. 94.

68 S.O. 93.

69 May, 22nd edn, p. 350.

70 S.O. 160.

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

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

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

74 VP 1990–92/38, 1083–4.

75 VP 1993–95/982–3.

for most procedural motions,⁷⁶ or for motions in respect of the various stages of a private Member's bill except the motion for the second reading.⁷⁷ 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 during the consideration in detail stage of a bill, or during consideration of Senate amendments, need not be seconded.⁷⁸

Seconders are specifically required for motions of dissent to a ruling of the Speaker⁷⁹ and motions without notice to suspend standing orders.⁸⁰ 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.⁸¹ 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 a motion or amendment he or she has seconded.⁸²

Motion dropped

A motion not seconded (if seconding is required) is dropped and no entry is made in the Votes and Proceedings.⁸³ In certain circumstances, interruptions may occur before a 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 or grave disorder. In these cases the matter may be revived by renewal of the notice of motion.

A motion may also be dropped if, for some reason, the time permitted by standing order 91 for a whole debate expires before the question has been proposed from the Chair. For example, a motion for suspension of standing orders has been dropped, the question not having been proposed to the House, because the time for the debate was taken up by proceedings resulting from a motion of dissent.⁸⁴

In some cases a motion may also be dropped because of the automatic adjournment provision. If, for example, the mover, or the seconder, is speaking to a motion to suspend standing orders, and is interrupted by the automatic adjournment provisions, the motion is dropped,⁸⁵ unless the motion for the adjournment is immediately negated in order to allow debate on the motion to continue.

76 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).

77 H.R. Deb. (26.9.74) 1859; H.R. Deb. (17.10.74) 2507–9.

78 S.O. 232.

79 S.O. 100.

80 S.O. 399.

81 S.O. 70.

82 *May*, 22nd edn, p. 350.

83 S.O. 160.

84 VP 1998–2001/1936.

85 H.R. Deb. (2.4.81) 1316. The motion to suspend standing orders moved immediately prior to the automatic adjournment was dropped.

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. This action is pursuant to the provision of standing order 48A(d) that ‘any business under discussion and not disposed of at the time of adjournment shall be set down on the Notice Paper for the next sitting’. In this context an item of business is treated as ‘under discussion’ even if the question has not yet been put from the Chair.

If the mover, or the seconder, of a private Member’s motion is still speaking to the motion at the expiry of the time available, 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. The motion is not dropped in these circumstances.⁸⁶

Question proposed—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.⁸⁷

The normal position is that the mover of a motion, with the exceptions in standing order 91 and subject to any determination by the Selection Committee, 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 Chair at any time during the debate, but not so as to interrupt a Member speaking.⁸⁸

Withdrawal of motion

A motion (or amendment) cannot be withdrawn without leave of the House,⁸⁹ nor can it be withdrawn except by the Member who moved it⁹⁰ in the case of a private Member’s motion or by a Minister in the case of a government motion. A motion has been withdrawn, by leave, before being seconded.⁹¹ 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.⁹² Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the

⁸⁶ VP 1987–89/978; VP 1996–98/1327.

⁸⁷ H.R. Deb. (11.11.13) 3008–9.

⁸⁸ S.O. 83. H.R. Deb. (10.6.99) 6655–6. The Speaker has directed the Clerk to read the terms of a matter under discussion, H.R. Deb. (7.12.04) 8016.

⁸⁹ S.O. 162.

⁹⁰ May, 22nd edn, p. 339.

⁹¹ VP 1970–72/127.

⁹² VP 1929–31/302.

amendment has been first disposed of by being agreed to, withdrawn, or negatived, as the question on the amendment stands before the main question.⁹³

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.⁹⁴ 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.⁹⁵

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 the question on the amendment is agreed to, 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.⁹⁶

In certain circumstances questions may be dropped. If the Speaker adjourns the House following a count out the order of the day (or motion) under discussion becomes a dropped order. An order dropped in these circumstances may be revived on motion after notice (*see* p. 293 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 item of business 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. Consideration of an item of private Members' business which the Selection Committee has determined should continue on another day is deferred when the debate concludes or the time expires. Consideration of a matter before the House at the time of interruption for Question Time is also deferred (S.O. 101A).

A question in the Main Committee may be deferred by the motion 'That further proceedings be conducted in the House',⁹⁷ by the Committee being unable to reach agreement on a matter and reporting the question back to the House as 'unresolved', or by interruption at 12.30 p.m. on a Thursday in order that an adjournment debate may be held (*see* p. 297).

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

⁹³ *May*, 22nd edn, p. 339.

⁹⁴ S.O. 108.

⁹⁵ VP 1974–75/815–17.

⁹⁶ S.O. 219; and *see* Ch. on 'Legislation'.

⁹⁷ S.O. 270.

have their own question or requirement, they must be resolved first 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.⁹⁸ The only precedent for this procedure in relation to a motion was in 1921 when a motion was declared urgent merely as a precaution to ensure that a vote was taken by a certain time.⁹⁹

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.¹⁰⁰

Complicated question divided

The House or Main Committee may order a complicated question to be divided.¹⁰¹ 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;¹⁰²
- a motion for leave of absence to two Members;¹⁰³
- a motion to ratify a report of a conference on dominion legislation;¹⁰⁴
- a motion proposing a conference to select the site of the Federal Capital;¹⁰⁵
- a motion proposing the appointment of a select committee¹⁰⁶ and a joint select committee;¹⁰⁷ 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.¹⁰⁸

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.¹⁰⁹

⁹⁸ S.O. 92(c).

⁹⁹ 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 mandate for the German possessions in the Pacific.

¹⁰⁰ For full discussion on the limitation of debate procedure *see* Ch. on ‘Legislation’.

¹⁰¹ S.O. 166.

¹⁰² VP 1970–72/242–3.

¹⁰³ VP 1906/55.

¹⁰⁴ VP 1929–31/748.

¹⁰⁵ VP 1903/144.

¹⁰⁶ VP 1905/136.

¹⁰⁷ VP 1978–80/366.

¹⁰⁸ VP 1920–21/659.

¹⁰⁹ 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.

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.¹¹⁰ The question is resolved in the affirmative or negative, by the majority of voices, ‘Aye’ or ‘No’. 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.¹¹¹ Decisions in the Main Committee can only be decided on the voices. If any Member dissents from the result announced by the Chair, the question is recorded in the minutes as unresolved and reported back to the House for decision there (*see below*).

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.¹¹²

Consideration in the Main Committee

The Main Committee is an extension of the Chamber of the House, operating in parallel to allow two streams of business to be debated concurrently.¹¹³ The range of motions which can be moved in the Main Committee is limited, as the committee can only consider matters referred to it by the House.¹¹⁴ Such matters are confined to the second reading and consideration in detail stages of bills, and orders of the day for resumption of debate on motions moved in connection with committee and delegation reports and motions to take note of papers.¹¹⁵

Unless otherwise provided in the standing orders, Main Committee procedure in respect of motions is the same as that applying in the House.¹¹⁶ Where the standing orders ‘otherwise provide’ it is to reflect the principle that the House itself is the proper forum for the resolution of contentious matters.

A unique feature of Main Committee procedure is the provision for unresolved questions. Decisions in the Committee are taken only ‘on the voices’. If any Member dissents from the result announced by the Chair—that is, in situations which would cause a division in the House—the Committee must report the matter back to the House as ‘unresolved’.¹¹⁷ In practice, in some circumstances it may make no sense for the House to determine an unresolved question—for example, on a motion that a Member

¹¹⁰ S.O. 165.

¹¹¹ S.O.s 167, 168. For a full discussion of division procedures *see* Ch. on ‘Routine of business and the sitting day’.

¹¹² VP 1908/53–4.

¹¹³ All Members are members of the Main Committee (S.O. 271). The quorum is three, including the occupant of the Chair and one government Member and one non-government Member (S.O. 272)—the requirement for the presence of Members from both sides of the House has been suspended for the consideration of a private Member’s bill, VP 1996–98/551. The Committee may meet at any time during a sitting of the House (S.O. 274), although in practice it does not meet during Question Time and at other times when all or most Members’ presence might be expected in the Chamber.

¹¹⁴ S.O. 275. However, Members’ statements may be made and on Thursdays an adjournment debate may take place.

¹¹⁵ S.O. 270. The Address in Reply debate has also been referred (VP 1998–2001/129)—the motion ‘That the Address (reported by the Address in Reply Committee) be agreed to’, is a motion in connection with a committee report. The standing order also provides that the House may require matters referred to be returned to the House. Motions to take note are not resolved in the Main Committee, in accordance with the philosophy that it is a forum for debate of such matters and not their determination.

¹¹⁶ S.O. 280.

¹¹⁷ S.O. 276, e.g. VP 1993–95/2470, 2478, 2504–5, 2516; VP 1996–98/380, 387.

speaking on the adjournment be no longer heard—and in such a case the matter is not put to the House.¹¹⁸ Standing orders have been suspended to permit debate on a bill to continue regardless of any unresolved questions.¹¹⁹

Any Member may move without notice, at any time, in relation to a bill or other order of the day being considered ‘That further proceedings be taken in the House’. No seconder is required. This motion must be determined without amendment or debate, and the bill or order of the day must be returned to the House (anyway) in the event of the Committee being unable to resolve the question.¹²⁰

The Committee is adjourned on the completion of the consideration of all matters referred to it by the House, upon the adjournment of the House, or by motion moved without notice by any Member. In case of a lack of quorum the Chair may adjourn the Committee or suspend proceedings until a stated time.¹²¹ Proceedings are also suspended in cases of disorder (at the initiative of the Chair or on motion without notice by any Member)¹²² and for the duration of any division occurring in the House.¹²³ Following any suspension or adjournment of the Main Committee, the Committee may resume proceedings at the point at which they were interrupted.¹²⁴

A motion moved in the Main Committee must not be contradictory of a previous decision of the Committee.¹²⁵ Motions for the suspension of standing orders, which are orders of the House, may not be moved in the Main Committee, which is a subsidiary body. Any decision taken in the Committee is subject to the approval of the House.

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:

- by omitting certain words only;
- by omitting certain words in order to insert or add others; or
- by inserting or adding words.¹²⁶

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

- the motion for the adjournment of the House;¹²⁷ and
- the procedural 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.

118 E.g. VP 1998–2001/2034—matter not referred to House.

119 VP 1996–98/551–5. The context was the referral to the Main Committee of a bill which many Members wished to debate in the House. Subsequent proceedings in the Committee (suspended because of disorder, VP 1996–98/765) emphasised the extent to which Main Committee operations depend on general co-operation.

120 S.O. 270, e.g. VP 1993–95/2470, 2477; *but see* VP 1996–98/273 (question put again and negated).

121 S.O. 285, e.g. VP 1998–2001/1942.

122 S.O. 282, *see* ‘Disorder in the Main Committee’ in Ch. on ‘Control and conduct of debate’.

123 S.O. 274, e.g. VP 1993–95/2477; VP 1996–98/212; VP 1998–2001/1044.

124 S.O. 286.

125 S.O. 278.

126 S.O. 171.

127 S.O. 50.

An amendment to any motion before the House must be in writing and must be signed by the mover and seconder.¹²⁸ Notice is not required of an amendment, but notice has been given on occasions.¹²⁹ 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.¹³⁰

Any amendment must be moved before the mover of a motion speaks in reply to the original question.¹³¹ The Member speaking in reply cannot propose an amendment.

Restrictions on Members in moving and speaking to amendments

It is a strictly observed parliamentary rule that, except when a reply to the mover is permitted (or during the consideration in detail stage of a bill or consideration of Senate amendments or requests), a Member may not speak more than once to the same question, unless he or she has been misquoted or misunderstood in regard to a material part of a speech, when he or she 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, 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 again 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.

Seconder required

It is the practice of the House that an amendment moved by a Minister, Parliamentary Secretary or an Assistant Minister does not require a seconder. An amendment moved during the consideration in detail stage of a bill, or during the consideration of Senate amendments, does not require a seconder.¹³² In all other cases a seconder is required.

¹²⁸ S.O. 172 (a seconder is not required in the case of an amendment moved by a Minister).

¹²⁹ NP 78 (22.11.07) 352.

¹³⁰ VP 1951–53/133.

¹³¹ H.R. Deb. (19.11.14) 841.

¹³² S.O. 232.

A Member who has already spoken to the original question may not second an amendment moved subsequently.¹³³ An amendment moved, but not seconded, may not be entertained by the House nor entered in the Votes and Proceedings.¹³⁴ An amendment has lapsed after the seconder, by leave, withdrew as the seconder.¹³⁵

The seconder has the right to speak to the amendment at a later period during the debate,¹³⁶ 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, the closure motion ‘That the question be now put’ may not be moved, but a Member speaking to an amendment he or she has moved may be interrupted by a closure motion. If this is 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 yet been proposed from the Chair.¹³⁷

Form and content of amendment

Relevancy

Every amendment must be relevant to the question which it is proposed to amend.¹³⁸ The only exception to this rule is that an irrelevant amendment may be moved to the question ‘That grievances be noted’.¹³⁹

Legible and intelligible

The Chair has refused to accept an illegible amendment.¹⁴⁰ 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, as amended, would be intelligible and internally consistent.¹⁴¹

Consistency

No amendment may be moved which is inconsistent with a previous decision on the question.¹⁴² 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.¹⁴³ After an amendment proposing to limit the application of a motion (granting precedence to government business by

¹³³ H.R. Deb. (11.8.10) 1439.

¹³⁴ S.O. 174.

¹³⁵ VP 1929–31/581; H.R. Deb. (21.4.31) 1065. The amendment was recorded in the Votes and Proceedings.

¹³⁶ S.O. 70.

¹³⁷ 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.

¹³⁸ S.O. 173; and see Ch. on ‘Legislation’ regarding second reading amendment.

¹³⁹ S.O. 106; and see Ch. on ‘Financial legislation’ regarding scope of amendment on appropriation and supply bills.

¹⁴⁰ H.R. Deb. (27.5.75) 2872.

¹⁴¹ May, 22nd edn, p. 346.

¹⁴² S.O. 179.

¹⁴³ H.R. Deb. (16.11.05) 5383.

making it apply only after a certain date) had been negatived, a further amendment seeking to impose a lesser limitation (an earlier date) was ruled to be in order.¹⁴⁴

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.¹⁴⁵

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.¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸ 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.¹⁴⁹

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.¹⁵⁰

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.¹⁵¹ 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 an amendment is a direct negative is to

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

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

146 S.O. 180.

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

148 VP 1929–31/903.

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

150 S.O. 181.

151 *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.

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 then traditionally proposed is ‘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. Where a motion has been moved by an opposition Member and a government Member moves an amendment in the form of an alternative proposition the question has been put in the terms ‘That the amendment be agreed to’, and if this question is agreed to, the further question ‘That the motion, as amended, be agreed to’ has been put.¹⁵²

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.¹⁵³

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.¹⁵⁴
- 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

¹⁵² E.g. VP 1993–95/1283–5; VP 1998–2001/594–8; *but see also* VP 1983–84/820–1; VP 1996–98/293–6.

¹⁵³ H.R. Deb. (28.9.05) 2967–8.

¹⁵⁴ VP 1948–49/381; H.R. Deb. (8.9.49) 119.

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 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 negated.¹⁵⁵

Following the latter 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.¹⁵⁶ There have been a number of subsequent precedents.¹⁵⁷ It is now not uncommon for motions critical of or censuring the Government or a Minister to be amended by way of an alternative proposition changing the target of the criticism or censure to the Opposition or Leader of the Opposition.¹⁵⁸

Other restrictions

A Member cannot move an amendment:

- to his or her own motion¹⁵⁹ unless he or she does so by leave;¹⁶⁰
- if debate on a question has been closed by the mover speaking in reply;¹⁶¹
- if he or she has already spoken to the main question,¹⁶² or the original question and an amendment;¹⁶³ or
- if he or she has seconded the motion (even formally) which he or she proposes to amend.¹⁶⁴

It is not in order to move for the omission of all words of a question without the insertion of other words;¹⁶⁵ the initial word ‘That’ at least must be retained. Amendments have been moved to omit all words after ‘That’¹⁶⁶ 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 negated and it was so recorded in the Votes and Proceedings.¹⁶⁷ 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 negated, the Speaker

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

156 VP 1970–72/171; H.R. Deb. (2.6.70) 2712–17.

157 E.g. VP 1974–75/879; VP 1977/406; VP 1978–80/1283–4, 1290; VP 1990–92/1352, H.R. Deb. (4.3.92) 708; VP 1990–92/1752–3, H.R. Deb. (8.10.92) 1769.

158 E.g. VP 1993–95/1964–7; VP 1998–2001/957.

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

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

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

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

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

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

165 May, 22nd edn, p. 346.

166 VP 1908/79; VP 1913/204.

167 VP 1908/79; H.R. Deb. (10.11.08) 2140. The amendment resulted in the fall of the Deakin Government, *see* p. 314.

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.¹⁶⁸

Certain matters that cannot be debated except on a substantive motion cannot be raised by way of amendment, nor can an amendment infringe upon the sub judice rule¹⁶⁹ or the same question rule (*see* p. 290). An amendment cannot anticipate a matter already appointed for consideration by the House (*see* p. 291).

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

- was frivolous;¹⁷⁰
- was tendered in a spirit of mockery;¹⁷¹
- did not comply with an Act of Parliament;¹⁷² or
- concerned a matter which was the exclusive prerogative of the Speaker.¹⁷³

An amendment should not be accepted by the Chair if, when considered in the context of the motion proposed to be amended, and with regard to the convenience of other Members, it could be regarded as of undue length. It is not in order for a Member to seek effectively to extend the length of his or her speech by moving a lengthy amendment, without reading it, but relying on the fact that the amendment would be printed in Hansard.¹⁷⁴

Order of moving amendments

Any amendment proposed must be disposed of before another amendment to the original question can be moved.¹⁷⁵

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 thus 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 by the circulation of amendments beforehand, which assists the Chair in allocating the call. However, it has been ruled 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.¹⁷⁶

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 such as were capable of being put, in the order determined by the Chair.¹⁷⁷

¹⁶⁸ VP 1908/53–4.

¹⁶⁹ *See* Ch. on ‘Control and conduct of debate’.

¹⁷⁰ H.R. Deb. (26.10.27) 749; H.R. Deb. (26.3.31) 665.

¹⁷¹ H.R. Deb. (21.5.14) 1392, 1395; *and see* VP 1929–31/503.

¹⁷² 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.

¹⁷³ VP 1929–31/601–02.

¹⁷⁴ Private ruling, Speaker Halverson.

¹⁷⁵ S.O. 182.

¹⁷⁶ VP 1943–44/93; H.R. Deb. (15.3.44) 1360–1.

¹⁷⁷ 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).

Withdrawal of proposed amendment

A proposed amendment may be withdrawn, by leave.¹⁷⁸ Amendments may be withdrawn temporarily, and then moved again at a later stage.¹⁷⁹ An amendment has been moved subject to the temporary withdrawal of another amendment.¹⁸⁰

Amendment to proposed amendment

An amendment may be moved to a proposed amendment as if the proposed amendment were the original question.¹⁸¹ 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 the main question, has been determined.¹⁸² 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.¹⁸³

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’.¹⁸⁴

When a proposed amendment is to *omit words in order to insert or add others*, normally 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)’.¹⁸⁵

¹⁷⁸ S.O. 183.

¹⁷⁹ VP 1973–74/221–2.

¹⁸⁰ VP 1917–19/23.

¹⁸¹ S.O. 184.

¹⁸² S.O. 185.

¹⁸³ VP 1907–08/284–5.

¹⁸⁴ S.O. 175.

¹⁸⁵ S.O. 176.

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)’.¹⁸⁶

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.¹⁸⁷ This alternative form of putting the question is sometimes used to avoid the necessity of Members changing to different sides of the Chamber to vote in a division on a question¹⁸⁸ or to allow further amendments to be moved to a question.¹⁸⁹ 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.¹⁹⁰ 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 has moved an amendment as an alternative proposition, three questions have been 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.¹⁹¹

However on more recent occasions the simpler form has been used.¹⁹²

When an amendment has been made, the main question is put, as amended.¹⁹³ The fact that an amendment has been made does not necessarily preclude the 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.¹⁹⁴ 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.¹⁹⁵ On another occasion, the effect of an amendment was seen as having negated a motion, as only the word ‘That’ remained.¹⁹⁶

When amendments have been moved but not made, the main question is put as originally proposed.¹⁹⁷ Debate may then continue on the original question or a further amendment moved, providing it is in accord with the standing orders.¹⁹⁸

MOTIONS AGREED TO — RESOLUTIONS AND ORDERS 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.

¹⁸⁶ S.O. 177.

¹⁸⁷ S.O. 178.

¹⁸⁸ VP 1978–80/1290.

¹⁸⁹ 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.

¹⁹⁰ VP 1962–63/279–80; VP 1974–75/646–8.

¹⁹¹ VP 1983–84/882–5.

¹⁹² VP 1993–95/1283–5; VP 1998–2001/957–62 (another Minister).

¹⁹³ S.O. 186.

¹⁹⁴ H.R. Deb. (8.10.08) 961; H.R. Deb. (21.11.05) 5515; VP 1996–98/3031.

¹⁹⁵ VP 1908/54.

¹⁹⁶ VP 1908/79; H.R. Deb. (10.11.08) 2140.

¹⁹⁷ S.O. 187.

¹⁹⁸ H.R. Deb. (15.8.68) 252.

An order has been described as a command, and a resolution as a wish.¹⁹⁹ 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 they concern. By its resolutions the House declares its own opinions and purposes.²⁰⁰ In practice, however, the terms are often used synonymously,²⁰¹ resolution being the term most generally used.

Duration

Ordinarily the orders and resolutions of the House are singular or ‘one off’ 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.²⁰² An example of a ‘singular’ resolution of the House would be one agreeing to a motion of condolence on the death of a Member. The great majority of the orders and resolutions of the House are of the singular type.

Orders and resolutions of the non-singular type may be of unspecified, limited or continuing duration.

Some singular orders and resolutions are seen to have effect from one session to the next, prorogation notwithstanding. For example, 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).²⁰³ The terms of a resolution may state that it is to have effect for a limited time—for example, until a specific date, or for the remainder of a session. Resolutions appointing standing committees, as a matter of routine, contain the words ‘until the House of Representatives is dissolved or expires by effluxion of time’; resolutions appointing select committees sometimes do so. 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. These are the permanent rules for the guiding and control of the House in the conduct of its business,²⁰⁴ which are to ‘continue in force until altered, amended or repealed’.²⁰⁵ 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’.²⁰⁶ The resolutions have since been amended on several occasions. More recent resolutions of continuing effect are:

- that of 5 May 1993, declaring that for the purposes of the procedures of the House references to Ministers shall be taken to include Parliamentary Secretaries (with the exception of references to questions seeking information);²⁰⁷

199 Josef Redlich, *The Procedure of the House of Commons*, Archibald Constable, London, 1908, vol. II, p. 222.

200 *May*, 22nd edn, p. 365.

201 Recent editions of *May* have omitted the statement that ‘the application of the term is carefully regulated with reference to the content of the motion.’ *May*, 19th edn (1976), p. 382.

202 VP 1950–51/217; VP 1962–63/500.

203 VP 1978–80/1672–3.

204 See section on ‘Sources of procedural authority’ in Ch. on ‘The Speaker, Deputy Speakers and Officers’.

205 S.O. 402.

206 VP 1983–84/945–6.

207 VP 1993–95/25.

- that of 12 May 1994, empowering the Chief Government Whip to move motions, without the requirement for a seconder, relating to the business and sittings of the House;²⁰⁸ and
- that of 5 December 1994, declaring the Votes and Proceedings to be the record of the proceedings of the House.²⁰⁹

Each of these resolutions provides that it ‘continue in force unless and until amended or rescinded by the House in this or a subsequent Parliament’.

Other orders and resolutions, whilst they may not contain such explicit provisions, have been taken to have a continuing effect. The binding force on a continuing basis of resolutions which may be seen as having continuing effect although their terms do not indicate this, 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 to pass other resolutions, notwithstanding them. 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, although according to the custom of Parliament their effectiveness is concluded by prorogation.²¹⁰ That is, 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.²¹¹ 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.²¹² It is obvious from its terms that this resolution was meant to have permanent force.

That such orders and resolutions of the House of Representatives will have continuing validity is implied in section 50 of the Constitution.²¹³ 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 . . .’.

However, despite the historical merit of such arguments, to avoid doubt it has become the practice to make the duration of effect explicit in the terms of the resolution itself. The development of this practice may be seen in the history of the resolution of 5 May 1993, referred to above, relating to Parliamentary Secretaries. A resolution in identical terms (apart from the provision for continuing effect) had been agreed to in the preceding Parliament. In moving the new motion the Leader of the House explained that it was returning to the House because of doubts as to whether the previous resolution would cover the new Parliament.²¹⁴

208 VP 1993–95/982–3.

209 VP 1993–95/1620.

210 May, 22nd edn, p. 6. Josef Redlich, *The Procedure of the House of Commons*, Archibald Constable, London, 1908, vol. II, p. 6.

211 May, 22nd edn, pp. 6–7.

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

213 See also *Quick and Garran*, pp. 507–8.

214 H.R. Deb. (5.5.93) 89.

Effect

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 may be a limited one. 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.

Other than in relation to matters such as its power to send for persons, papers and records and its powers in regard to enforcing its privileges, decisions of the House alone have no legal efficacy on the outside world. 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 (rather than influence) departments of State, the courts and other outside bodies to take action or to change their modes of operation. However, while the House may not have the power to make a direction, a resolution phrased in other terms may in practice be as effective. For example, the resolution of the House of 17 September 1980 seeking to direct the Public Service Board 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 ...’.²¹⁵ The response of the Public Service Board to the request was tabled on 24 February 1981.²¹⁶

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. 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.²¹⁷

Section 47 of the *Acts Interpretation Act 1901* provides that where a resolution has been passed by either House of the Parliament in purported pursuance of any Act, then, unless the contrary intention appears, the resolution shall be read and construed subject to the Constitution and to the Act under which it purports to have been passed, to the intent that where the resolution would, but for this section, have been construed as being in excess of authority, it shall nevertheless be a valid resolution to the extent to which it is not in excess of authority.

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

²¹⁵ VP 1978–80/1673.

²¹⁶ VP 1980–81/80.

²¹⁷ *May*, 22nd edn, pp. 161–3.

mistakes one day's notice is sufficient or the correction may be made at once by leave of the House.²¹⁸ This procedure is rarely invoked. *May* states that the reason motions to rescind a vote or resolution are rare is that the Houses instinctively realise 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 that 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.²¹⁹

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 of the whole from a certain point relating to a particular appropriation bill, to enable a new bill to be introduced (standing orders suspended);²²⁰
- the third reading of a bill to enable a message from the Governor-General recommending an appropriation to be announced (standing orders suspended);²²¹
- to enable the question to be put again on the third reading of a constitution alteration bill (the division bells had not been rung for the required time when the original vote was taken and an absolute majority was not established) (standing orders suspended);²²²
- 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);²²³
- 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);²²⁴
- 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);²²⁵
- 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);²²⁶
- resolution referring a petition to the Committee of Privileges (by leave);²²⁷

218 S.O. 170.

219 *May*, 22nd edn, p. 370.

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

221 VP 1945–46/213.

222 VP 1974/28–9; H.R. Deb. (6.3.74) 132.

223 VP 1974–75/467; H.R. Deb. (19.2.75) 474–5.

224 VP 1974–75/105.

225 VP 1978–80/147.

226 VP 1978–80/1093.

227 VP 1978–80/975.

- resolutions regarding reference of work to the Public Works Committee (seven days' notice²²⁸ and by leave²²⁹), including a resolution agreed to during the previous session (on notice);²³⁰
- the second and third readings of a bill following the realisation that the second reading had not been moved (by leave);²³¹
- the committee, report and third reading stages of a bill, following realisation that opposition amendments the Government had not intended to accept had been recorded as having been agreed to (standing orders suspended);²³²
- resolution of earlier session (in force until amended or rescinded) referring certain matters to the Public Accounts Committee (on notice);²³³
- resolution agreeing to Senate amendments to a bill following message from the Senate that an earlier message forwarding the amendments had mistakenly included proposed amendments the Senate had not in fact agreed to (standing orders suspended);²³⁴
- consideration in detail stage and third reading of bill following realisation that intended amendments had not been moved (standing orders suspended);²³⁵
- resolution to lay aside a bill (standing orders suspended) in order to permit reconsideration of Senate amendments and the moving of further amendments;²³⁶ and
- resolution concerning committee membership (by leave).²³⁷

The House has on occasion in effect 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.²³⁸ When the House repeals or amends standing or sessional orders it in effect 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.²³⁹

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 honourable 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 honourable Member to freely address his constituents.

228 VP 1976–77/389.

229 VP 1974–75/521.

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

231 VP 1985–87/893.

232 VP 1987–89/907–9, 925–7.

233 VP 1987–89/1055.

234 VP 1990–92/1645–54.

235 VP 1993–95/1803–4.

236 Native Title Amendment Bill 1997 [No.2], VP 1996–98/3202.

237 VP 1998–2001/1784.

238 VP 1907–08/268; VP 1914–17/571; VP 1920–21/155.

239 VP 1968–69/230.

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.²⁴⁰

SPECIAL TYPES OF MOTIONS

Want of confidence and censure

The Government

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,²⁴¹ 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 amendment²⁴² 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.²⁴³ Additional speaking time is allotted to these motions—the mover of the motion, who is usually the Leader of the Opposition, may speak for 30 minutes; the Prime Minister or a Minister deputed by the Prime Minister may also speak for 30 minutes, and any other Member for 20 minutes.²⁴⁴

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, such a motion does not attract the increased speaking times of an accepted want of confidence or censure motion.²⁴⁵ The Government may not accept a notice as a want of confidence motion immediately, but it may be accepted on the next sitting day²⁴⁶ or some future day,²⁴⁷ after which it takes precedence until disposed of.

The importance with which want of confidence motions were regarded historically 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.²⁴⁸ 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.²⁴⁹ However, the importance of these motions, from both a parliamentary and public point of view, has lessened in more recent years because of the increasing frequency of censure motions generally (mostly censure of the

240 VP 1914–17/181; H.R. Deb. (19.4.15) 2748–9.

241 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, Deputy Speakers and Officers'.

242 VP 1970–72/445–6.

243 S.O. 110.

244 S.O. 91.

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

246 VP 1974–75/61.

247 VP 1974–75/167.

248 VP 1946–48/250.

249 See *Odgers*, 6th edn, pp. 967–8.

Prime Minister or Ministers, rather than of the Government).²⁵⁰ In the modern House, pressure of business is such as to preclude an adjournment.

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.²⁵¹
- 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 below*), 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 below*).

A 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 . . .²⁵²

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.²⁵³

A Government may consider it appropriate, if it is defeated on a matter which it deems to be of sufficient importance, to 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.²⁵⁴ The same Government also decided not to proceed with the Papua (British Papua New Guinea) Bill after the Government was defeated on certain amendments.²⁵⁵ Government defeats on tariff matters were not uncommon during this period²⁵⁶ and in 1904 the Watson Government suffered other defeats to its conciliation and arbitration legislation prior to the defeat that led to its resignation.²⁵⁷

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

²⁵⁰ An average over the ten years from 1991 to 2000 of about six per year (not including motions directed at the Chair, the Opposition or private Members).

²⁵¹ VP 1970–72/471.

²⁵² Jennings, *Cabinet Government*, p. 493.

²⁵³ Jennings, *Cabinet Government*, p. 495.

²⁵⁴ 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.

²⁵⁵ VP 1903/205, 207; H.R. Deb. (9.9.03) 4838.

²⁵⁶ VP 1901–02/386, 387, 388, 718, 726, 728.

²⁵⁷ VP 1904/279, 280, 283, 287.

he accepted that any amendment to a motion to alter the hour of next meeting was a challenge to his Government, and the 1909 and 1931 resignations of Governments followed from similar acceptances (*see below*). In each case the Governments were on the point of losing the necessary support to remain in power. 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’.²⁵⁸ During 1962 and 1963, when the Menzies Government had a floor majority of one, it suffered a number of defeats²⁵⁹ and, although it did not resign, its precarious majority was a factor which led to the early dissolution of the House.²⁶⁰

A motion (or amendment) expressing censure of the Government, although not seen in the same light as 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, an early authority has stated that 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.²⁶¹

On no occasion has a direct vote of want of confidence in, or censure of, a Government been successful in the House of Representatives. 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 resigned following its defeat 29:38 in committee on an amendment moved by the Opposition to the Commonwealth Conciliation and Arbitration Bill.²⁶²
- 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.²⁶³
- Reid Ministry, 30 June 1905—The Government resigned following the House agreeing 42:25 to an amendment to the Address in Reply (proposing to add the words ‘but are of the opinion that practical measures should be proceeded with’).²⁶⁴
- Deakin Ministry, 10 November 1908—The government resigned following its defeat 13:49 on an amendment to the motion to alter the hour of next meeting.²⁶⁵
- Fisher Ministry, 27 May 1909—The Government resigned following defeat, 30:39, on a motion moved by a private Member to adjourn debate on the Address in Reply.²⁶⁶

258 H.R. Deb. (17.8.23) 2964.

259 VP 1962–63/194, 217–18, 307–8, 348–9.

260 H.R. Deb. (15.10.63) 1790.

261 Alpheus Todd, *Parliamentary Government in England* (New edition, Spencer Walpole), Sampson Low, Marsden and Company, London, 1892, vol. II, p. 121.

262 VP 1904/49, 273; H.R. Deb. (19.4.04) 1043, 1047; H.R. Deb. (21.4.04) 1247.

263 VP 1904/147, 149.

264 VP 1905/7, 9.

265 VP 1908/78–79, 81; H.R. Deb. (6.11.08) 2136; (10.11.08) 2139–40.

266 VP 1909/7, 9, 11; H.R. Deb. (27.5.09) 126; (28.5.09) 169.

- Bruce–Page Ministry, 10 September 1929—The Governor-General accepted the Prime Minister’s advice to dissolve the House after an amendment had been agreed to in committee to the Maritime Industries Bill (35:34). The amendment was 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.²⁶⁷
- Scullin Ministry, 25 November 1931—The Governor-General accepted the Prime Minister’s advice to dissolve the House after the question ‘That the House do now adjourn’ was agreed to 37:32, against the wishes of the Government.²⁶⁸
- Fadden Ministry, 3 October 1941—The Government resigned when, during 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 36:33.²⁶⁹

These cases are outlined in more detail in previous editions.

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.²⁷⁰
- 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.²⁷¹
- In 1921 the Hughes Government was defeated on a motion to adjourn the House to discuss an urgent matter of definite public importance. The House then adjourned for five days and on its resumption the Prime Minister gave Members an opportunity of 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.²⁷²
- In October 1975 Prime Minister Whitlam, following an announcement of the Opposition’s intention to delay in the Senate bills appropriating money for the 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.²⁷³

Prime Minister and other 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

267 VP 1929/118, 121; H.R. Deb. (10.9.29) 841, 850, 867. H.R. Deb. (12.9.29) 873–4.

268 VP 1929–31/945, 947, 948; H.R. Deb. (25.11.31) 1899; H.R. Deb. (26.11.31) 1926–7.

269 VP 1940–43/193, 195; H.R. Deb. (3.10.41) 720.

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

271 VP 1917–19/157–8.

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

273 VP 1974–75/987–90.

occurred in 1941, but the motion lapsed for the want of a seconder.²⁷⁴ Such motions have become comparatively frequent in recent years, on average about three a year being directed at the Prime Minister and three a year at other Ministers.²⁷⁵ While the standing orders provide that a motion of want of confidence in or censure of the Government may attract precedence over all other business if it is accepted by a Minister as a want of confidence or censure motion, there is no similar provision in respect of a motion of want of confidence in or censure of a Minister. Such a motion is, therefore, at least in theory, treated in the same way as any other private Member's motion, including the speech times applicable to an ordinary motion, although after such a notice of motion has been given, standing orders may be suspended to enable the motion to be moved forthwith.²⁷⁶ It is common for Members, instead of lodging notices of such motions, to move to suspend standing orders to enable them to be moved forthwith,²⁷⁷ or for the substantive motion to be moved by leave.²⁷⁸

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. The only occasion that a motion of want of confidence in or censure of a Prime Minister has been successful was on 11 November 1975, when, following the dismissal of the Whitlam Government, a motion of want of confidence in newly commissioned Prime Minister Fraser 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.²⁷⁹

No motion of want of confidence in, or censure of, an individual Minister (other than the occasion mentioned in respect of the Prime Minister in 1975) 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.²⁸⁰

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 or her department or 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.

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

275 1991–2000 figures (almost all censure motions).

276 E.g. VP 1987–89/461.

277 E.g. VP 1993–95/1964–7; VP 1998–2001/341.

278 E.g. VP 1993–95/1781–3; VP 1998–2001/581.

279 For details of the events of 11.11.75 see Ch. on 'Disagreements between the Houses'.

280 For a summary of cases see 'Cessation of ministerial office' in Ch. on 'House, Government and Opposition'.

A motion of lack of confidence in a Senate Minister has been moved in the House, and negatived.²⁸¹ Motions have been moved expressing want of confidence in, or censure of, both the Prime Minister and another Minister.²⁸²

Censure of Minister or Government by Senate

Once rare,²⁸³ censure motions in the Senate against Ministers or the Government are now a relatively common occurrence. The first successful Senate censure of a Minister occurred in 1973 when an amendment expressing want of confidence in the Attorney-General (Senator Murphy) was agreed. On the following sitting day a motion of confidence in the Attorney-General was agreed to in the House.²⁸⁴ 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.²⁸⁵ On 13 September 1984 the Senate agreed to a motion of censure of the Minister for Resources and Energy (Senator Walsh). Since then the Senate has agreed to over a dozen such motions. Apart from motions censuring Senate Ministers, these have included motions directed at House Ministers,²⁸⁶ House Ministers together with the Senate Ministers representing them in the Senate,²⁸⁷ the Prime Minister,²⁸⁸ and the Government.²⁸⁹ The passage of a censure motion in the Senate would appear to have no substantive effect. However it may, depending on the circumstances, be seen as contributing to the parliamentary and other pressures leading to a Minister's resignation or dismissal.²⁹⁰

Censure of a Member or Senator

Apart from motions against the Leader of the Opposition a motion of censure of a private Member has been moved on only two occasions. Both motions were agreed to.²⁹¹ A motion has been agreed to censuring the Leader of the National Party, then in opposition, for conduct unworthy of a Member.²⁹² 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 he had apologised for and withdrawn his remarks.²⁹³ 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.²⁹⁴

281 VP 1968–69/150–1.

282 VP 1978–80/133–6, 917.

283 *Odgers*, 6th edn, p. 967; 9th edn, p. 459.

284 J 1973–74/91–2, 93–4; VP 1973–74/104–6.

285 J 1974–75/195–7.

286 J 1987–90/1399–1400 (condemning Minister, inter alia, for criticising the Senate committee system); J 1993–95/2262–3 and J 1999/1545–6 (censuring Ministers for handling of portfolio responsibilities).

287 J 1987–90/1712 (for failing to answer a question); J 1993–95/1641–2 (for failing to comply with Senate order to table documents).

288 J 1990–92/2965, 2966–7 (for 'contemptuous abuse of the Senate').

289 J 1987–90/123–4 (for attack on Senate); J 1990–92/1509–10 (for failing to comply with Senate order to table a tape recording); J 1987–90/2055 (handling of industrial dispute).

290 E.g. resignation of Senator G.F. Richardson on 19.5.92 subsequent to censure on 7.5.92, J 1990–92/2298.

291 VP 1977/300–1 (for allegedly economically subversive public statements); VP 1993–95/1905 (for allegedly misleading the House—the Member subsequently resigned from his shadow portfolio position); and see VP 1993–95/2345–9 for motion of condemnation of private Member.

292 VP 1983–84/475.

293 VP 1985–87/1101–2.

294 VP 1970–72/81–3; VP 1974–75/518–20 (together with the Leader of the Country Party); VP 1977/406–8; VP 1978–80/156–7; VP 1985–87/1721–2; VP 1987–89/77–80; VP 1987–89/1225–7; VP 1990–92/1228–30, 1888–90; VP 1993–95/1283–5, 1889, 1964–7, 2325–7; VP 1996–98/700; 2816–8; VP 1998–2001/350–3.

Such resolutions, as distinct from a resolution of the House suspending a Member, for example, do not have a substantive effect and are regarded rather 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 traditional 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. It is acknowledged, however, that ultimately the House may hold any Member accountable for his or her actions.

The House has agreed to a motion condemning a private Senator, *inter alia*, for 'commission of an act, the disclosure of . . . [a person's] tax file number, which would have been a crime if done outside the Parliament'.²⁹⁵ A private Senator has also been censured by the House for 'failing to observe reasonable standards of behaviour . . .'.²⁹⁶

Whilst there are precedents for amendments expressing censure of private Members, they may also 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.²⁹⁷

Censure of the Opposition

The House has agreed to a motion censuring the Opposition collectively,²⁹⁸ and on other occasions motions of censure directed at the Prime Minister or another Minister have been amended to become motions censuring,²⁹⁹ expressing concern over,³⁰⁰ or condemning³⁰¹ the Opposition. Again, the passage of a motion censuring the Opposition has no substantive effect. 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. 288).

Addresses

An Address to the Sovereign or the Governor-General is a method traditionally employed by the House for making its desires, feelings and opinions known to the Crown. The standing orders make provision for Addresses to Her Majesty, the Governor-General and members of the Royal Family.³⁰²

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

- an Address to a former Governor-General on his departure from Australia was moved and agreed to; this should have been more properly termed a resolution;³⁰³

²⁹⁵ VP 1993–95/2011–12.

²⁹⁶ VP 1996–98/2772–4.

²⁹⁷ *May*, 22nd edn, pp. 332–3.

²⁹⁸ VP 1990–92/692–3.

²⁹⁹ VP 1987–89/939–41; VP 1990–92/1351–3, 1793–6; VP 1996–98/1134–7.

³⁰⁰ VP 1987–89/1651–4.

³⁰¹ VP 1990–92/1701–3.

³⁰² S.O.s 393–398.

³⁰³ VP 1908/5.

- an Address of welcome from the Parliament in connection with the visit of an American fleet to Australia; the Speaker tabled the Address which had been presented in the Senate Chamber; there had been no formal consideration of the Address by the House prior to its presentation;³⁰⁴ 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 Millennium of the Tynwald was announced by the Speaker; the Address had not been considered by the House.³⁰⁵

With the exception of the Address in Reply,³⁰⁶ an Address to the Sovereign or Governor-General is moved, except in cases of urgency, after notice in the usual manner,³⁰⁷ but Addresses of congratulation or condolence to members of the Royal Family may be moved by a Minister without notice.³⁰⁸ An Address to the Governor-General has been moved as an amendment to a motion to print papers.³⁰⁹

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 and other matters concerning the Royal Family;³¹⁰
- the cessation of wartime hostilities;³¹¹
- praying that the Sovereign give directions that a Mace be presented by and on behalf of the Parliament to another legislature;³¹² and
- on the subject of home rule for Ireland.³¹³

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.³¹⁴

To members of the Royal Family

On three occasions Addresses of welcome have been presented to members of the Royal Family.³¹⁵

To the Governor-General

Apart from the Address in Reply, Addresses have been presented to Governors-General on their departure from the Commonwealth³¹⁶ and requesting that the Governor-

304 VP 1908/3–4.

305 VP 1978–80/930.

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

307 S.O. 393.

308 S.O. 394.

309 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.

310 VP 1901–02/439; VP 1911/2 (joint Address); VP 1937/3 (joint Address); VP 1970–72/1159; VP 1974–75/9; VP 1978–80/959; VP 1996–98/1903; VP 1946–48/406 (joint Address); VP 1960–61/2 (joint Address); VP 1964–66/33 (joint Address); VP 1934–37/189 (joint Address); VP 1948–49/157; VP 1951–53/81 (resolution as distinct from an Address); VP 1910/37–8.

311 VP 1917–19/357; VP 1945–46/221.

312 VP 1964–66/41; VP 1978–80/319–20 (joint Addresses).

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

314 VP 1978–80/319; J 1978–80/265.

315 VP 1920–21/185–6; VP 1926–28/349; VP 1934–37/6–7 (joint Address).

316 VP 1903/183; VP 1908/5.

General forward to the King, for communication to the President of the United States, a resolution of sympathy following the assassination of President McKinley.³¹⁷

On two occasions the House has ordered that resolutions of the House be forwarded by Address to the Governor-General.³¹⁸ 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.³¹⁹

The Constitution and various 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, for example:

- Justices of the High Court and other federal courts (Constitution, s. 72);
- Auditor-General and Independent Auditor (*Auditor-General Act 1997*, schedules 1 and 2);
- Public Service Commissioner (*Public Service Act 1999*, s. 47);
- Australian Statistician (*Australian Bureau of Statistics Act 1975*, s. 12);
- Member of the Administrative Appeals Tribunal (*Administrative Appeals Tribunal Act 1975*, s. 13); and
- Ombudsman (*Ombudsman Act 1976*, s. 28).

There is no precedent for any such Address in the Commonwealth Parliament.

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 or concerning the Sovereign or Royal Family in other ways;³²⁰
- expressing the House's determination that World War I continue to a victorious end;³²¹
- thanking the Sovereign for the gift of despatch boxes;³²² and
- thanking the Sovereign for his message on the occasion of the establishment of the seat of Government in Canberra.³²³

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.³²⁴

Resolutions have been forwarded to the Governor-General:

- on the death of a member of his family;³²⁵
- requesting him to summon the first meeting of the 10th Parliament at Canberra;³²⁶ and

317 VP 1901–02/161.

318 VP 1903/34, 63; VP 1905/109, 119–20.

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

320 VP 1910/7; VP 1934–37/512; VP 1951–53/81; VP 1910/8; VP 1934–37/512; VP 1951–53/259; VP 1940–43/377; VP 1929/7; VP 1951–53/81.

321 VP 1914–17/315.

322 VP 1926–28/349.

323 VP 1926–28/348.

324 VP 1910/7; VP 1934–37/511; VP 1937/2.

325 VP 1940–43/477; VP 1974–75/153.

326 VP 1923–24/74.

- relating to arrangements for the opening of future sessions of the Parliament.³²⁷

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.³²⁸ Unless the House otherwise orders, Addresses to the Governor-General are presented by the Speaker.³²⁹ 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.³³⁰ 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.³³¹ The Speaker has personally presented Addresses to members of the Royal Family.³³² 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.³³³

Reply

The Governor-General's answer to any Address presented by the whole House must be reported by the Speaker.³³⁴ 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.³³⁵

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.³³⁶ 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:

³²⁷ VP 1987–89/433, 445.

³²⁸ S.O. 395.

³²⁹ S.O. 396.

³³⁰ S.O. 397.

³³¹ VP 1917–19/359.

³³² VP 1926–28/354; VP 1934–37/13.

³³³ VP 1934–37/239.

³³⁴ S.O. 398; VP 1978–80/87; VP 1998–2001/221.

³³⁵ VP 1978–80/327, 981.

³³⁶ See Ch. on 'Members'.

- the person ceased to be a Senator or Member during the current Parliament;
- the person has 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 time as a mark of respect.³³⁷ 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.³³⁸ Sometimes Members have chosen to refer to the deaths of former Members at a suitable time later—for example, on the adjournment debate. 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,³³⁹ and the speeches were bound and forwarded to the next of kin. The Speaker has announced the death of a former Member, foreshadowing a condolence motion at a later date.³⁴⁰ The death of a former Senate President has been announced but, at the request of the deceased, no condolence motion moved.³⁴¹

From time to time condolence motions may also be moved following the deaths of distinguished Australians, Heads of State or Government of other 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 but, depending on the circumstances, they 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.³⁴² 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.³⁴³

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.³⁴⁴ Time limits do not apply, although individual speeches are normally quite brief. Debate on a condolence motion may be interrupted and resumed at a later hour the same day.³⁴⁵ At the conclusion of the speeches 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. Some deaths have been marked by an adjournment to the next sitting. However, over the years there has

337 VP 1978–80/1243; VP 1998–2001/646.

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

339 VP 1980–81/10.

340 VP 1990–92/481.

341 VP 1993–95/1618.

342 VP 1968–69/43.

343 VP 1920–21/119; H.R. Deb. (23.4.20) 1488.

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

345 VP 1993–95/1345, 1347.

been a tendency for the periods of suspension or adjournment to be reduced with the increase in pressure on the time of the House, and neither is now usual.

It is usual for bound copies of motions of condolence and extracts from the Hansard together with a video recording of proceedings on condolence motions to be presented to the next of kin of the deceased person.

Vote of thanks

As with motions of condolence, precedence is ordinarily given to a motion or vote of thanks of the House.³⁴⁶ 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;³⁴⁷
- recording the gratitude of the House to the International Health Board (Rockefeller Institute) for assistance in connection with the public health of the Commonwealth;³⁴⁸
- to the United Kingdom Branch of the Empire Parliamentary Association in relation to its offer to present a Speaker's Chair;³⁴⁹
- 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.³⁵⁰

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.³⁵¹ 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.³⁵²

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.³⁵³

Matter of special interest

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'. The motion may be withdrawn, without leave, by a Minister at the expiration of the time

346 S.O. 157.

347 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.

348 VP 1923–24/197.

349 VP 1925/67.

350 VP 1987–89/621.

351 Such motions have included: a motion expressing congratulations and gratitude to General McArthur 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); 15th Commonwealth Games (VP 1993–95/1259); a motion congratulating and expressing appreciation of the Royal Military College on the occasion of its 75th anniversary (VP 1985–87/1234); motions recognising the success of the Sydney 2000 Olympic and Paralympic Games, and congratulating athletes, organisers and volunteers (VP 1998–2001/1749–50, 1819).

352 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.

353 VP 1980–83/905; VP 1985–87/319; VP 1990–92/598; VP 1996–98/1817.

allotted to the debate. A matter of special interest has been discussed by the House on only one occasion, when it was discussed early in the routine of business prior to the giving of notices.³⁵⁴

This procedure may be regarded as corresponding, from a ministerial point of view, to a matter of public importance (the practice of the House being that Ministers do not submit MPIs—see Chapter on ‘Non-government business’).

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;³⁵⁵
- 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;³⁵⁶ and
- the suspension of standing orders is limited in its operation to the particular purpose for which such suspension has been sought.³⁵⁷

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 to be moved without notice.

The standing or sessional orders may be suspended by the House only, and not by the Main Committee. The position is summarised in the following statement from the Chair (in relation to the former committee of the whole):

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.³⁵⁸

The House may, of course, suspend standing or sessional orders in relation to proceedings that may take place later in the Main Committee.³⁵⁹

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 (or Parliamentary Secretary) or the Chief Government Whip.³⁶⁰ A motion may relate to matters not yet before the House³⁶¹ and the standing orders may be suspended for more than one purpose.³⁶² While other business is before the House, a motion to suspend standing orders will not be received by the Chair unless

354 VP 1974–75/815–17; H.R. Deb. (9.7.75) 3556.

355 S.O. 399.

356 S.O. 400.

357 S.O. 401.

358 VP 1970–72/827; H.R. Deb. (9.11.71) 3181.

359 VP 1954–55/286 (committee of the whole); VP 1996–98/551.

360 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.

361 H.R. Deb. (3.11.15) 7131; H.R. Deb. (10.11.15) 7406–7.

362 H.R. Deb. (11.8.04) 4149.

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.³⁶³ 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 . . .’.

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.³⁶⁴ 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. 286.)

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 to suspend standing orders may be carried by a simple majority of those voting, but when leave has been given a division is not normally called for.³⁶⁵

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.³⁶⁶

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.³⁶⁷

A motion has been ruled out of order because:

- it contravened the ‘same question rule’;³⁶⁸
- there were no standing orders relating to the purpose for which the motion was proposed;³⁶⁹

³⁶³ VP 1983–84/543; H. R. Deb. (27.3.84) 803.

³⁶⁴ S.O. 400.

³⁶⁵ H.R. Deb. (2.8.05) 471.

³⁶⁶ S.O. 84.

³⁶⁷ H.R. Deb. (28–29.10.70) 2969; VP 1983–84/543; H.R. Deb. (27.3.84) 803.

³⁶⁸ VP 1946–48/119.

³⁶⁹ 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.

- there was already a motion to suspend standing orders before the House;³⁷⁰
- it was unrelated to the question before the House;³⁷¹
- it covered the same subject on which the House had just voted to adjourn debate;³⁷² and
- at the time the Member sought to move it another Member was speaking to a motion he had moved.³⁷³

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 103.³⁷⁴ 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 the specified time has been used and is less objectionable.³⁷⁵

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.³⁷⁶ 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.³⁷⁷

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 matters which it considers to be of national, parliamentary or political importance at the time. The use of such tactics has become frequent in recent years. At times, the Government has apparently considered these tactical diversions to be so prevalent and disruptive to its program of business that, for some periods, standing order 399 itself has been suspended except when a motion was moved pursuant to the standing order by a Minister.³⁷⁸ On other occasions a notice of motion to suspend standing order 399 in this way has remained on the Notice Paper but not in fact been moved³⁷⁹—the obvious intention of the notices being 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.³⁸⁰ The House adopted

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

371 H.R. Deb. (28–29.10.70) 2969.

372 VP 1977/115.

373 VP 1993–95/2345.

374 See Ch. on ‘Routine of business and the sitting day’.

375 VP 1978–80/1416.

376 H of R 1 (1962–63) 66.

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

378 VP 1970–72/607, H.R. Deb. (6.5.71) 2720–3—for remainder of period of sittings (pursuant to notice); VP 1978–80/1028–9, H.R. Deb. (26.9.79) 1562—for remainder of day (without notice by absolute majority); VP 1993–95/177–8 (on notice)—this was 19 August 1993, the period covered was ‘all sittings up to and including Thursday, 28 October 1993’; VP1996–98/1038–40.

379 H.R. Deb. (20.12.90) 4719–24, 4889—on each Thursday for remainder of the Parliament (notice given by private Member following disruption to private Members’ business period); H.R. Deb. (30.5.91) 4504—until commencement of next period of sittings; H.R. Deb. (25.2.92) 105—for remainder of sitting; H.R. Deb. (4.3.92) 765—for duration of questions without notice at each sitting for remainder of period of sittings; H.R. Deb. (24.6.99) 7494—for remainder of period of sittings.

380 PP 20 (1972) 7–8.

the recommendation.³⁸¹ 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, restrictions on the timing of such motions. In view of 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. He stated that 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.³⁸² This has become the firm 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.³⁸³ An amendment may be moved to a motion to suspend standing orders.³⁸⁴

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.³⁸⁵ This rule is, however, not always strictly enforced.

Absolute majority

Most decisions of the House are decided by a simple majority—that is, a majority of the Members actually voting. An absolute majority is a majority of the membership of the House. In a House of 148 Members an absolute majority of Members, including the Speaker, is 75 Members. Excluding the Speaker it is 74.

Any motion moved without notice and without leave 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’.

CONSTITUTIONAL VALIDITY

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

³⁸¹ VP 1970–72/1012; H.R. Deb. (18.4.72) 1702–3.

³⁸² H.R. Deb. (27.3.84) 803.

³⁸³ S.O. 91.

³⁸⁴ VP 1970–72/544.

³⁸⁵ H.R. Deb. (22.7.21) 10517–19.

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 reply the Solicitor-General stated:

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.³⁸⁶

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 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.³⁸⁷

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.

During a debate on corresponding procedures in the Senate in 1969 a joint opinion by the Attorney-General and the Solicitor-General was incorporated in Hansard. The essence of the opinion was that the Senate standing order 448 (motions without notice

³⁸⁶ Opinion of Solicitor-General, dated 17 September 1935.

³⁸⁷ VP 1950–51/36; H.R. Deb. (21.3.50) 945, 947–51.

for the suspension of standing orders) 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 it was argued that the essential character of the standing order was that it enabled the procedural requirements of Senate standing order 115 (which stipulated that no Senator should, 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. The law officers 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.³⁸⁸

SPEAKER'S VOTE

The second question raised by standing order 399 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.

It would be consistent with the view of the Standing Orders Committee in respect of Members who have not been sworn in, that where a vacancy exists—for example, by reason of resignation—the total in respect of which the calculation is made should be reduced by one.³⁸⁹

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

³⁸⁸ 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 opinion of Solicitor-General Sir George Knowles and also commented on the possibility of severing the absolute majority proviso from Senate standing order 448.

³⁸⁹ This view was taken by Speaker Snedden, 7th Conference of Presiding Officers and Clerks, 1976, p. 143. PP 24 (1977).

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 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. 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.