



# 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 question<sup>1</sup> being proposed by the Chair, the question then being put by the Chair after any debate and a decision being registered either on the voices or by a division (counted vote) of the House. There is provision for some questions to be resolved by ballot<sup>2</sup> and condolence motions are resolved not on the voices but by Members, at the suggestion of the Chair, rising in their places to indicate their support (*see* p. 327). When a question on a motion is agreed to, that motion becomes an order or resolution of the House (*see* p. 311).

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 In some circumstances it may be dropped, it may be withdrawn, or the question before the House may be superseded or deferred.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 286.

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

- **Substantive motions:** These are self-contained proposals drafted in a form capable of expressing a decision or opinion of the House.<sup>4</sup>
- **Subsidiary motions:** These are largely procedural in character. Standing order 78 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.

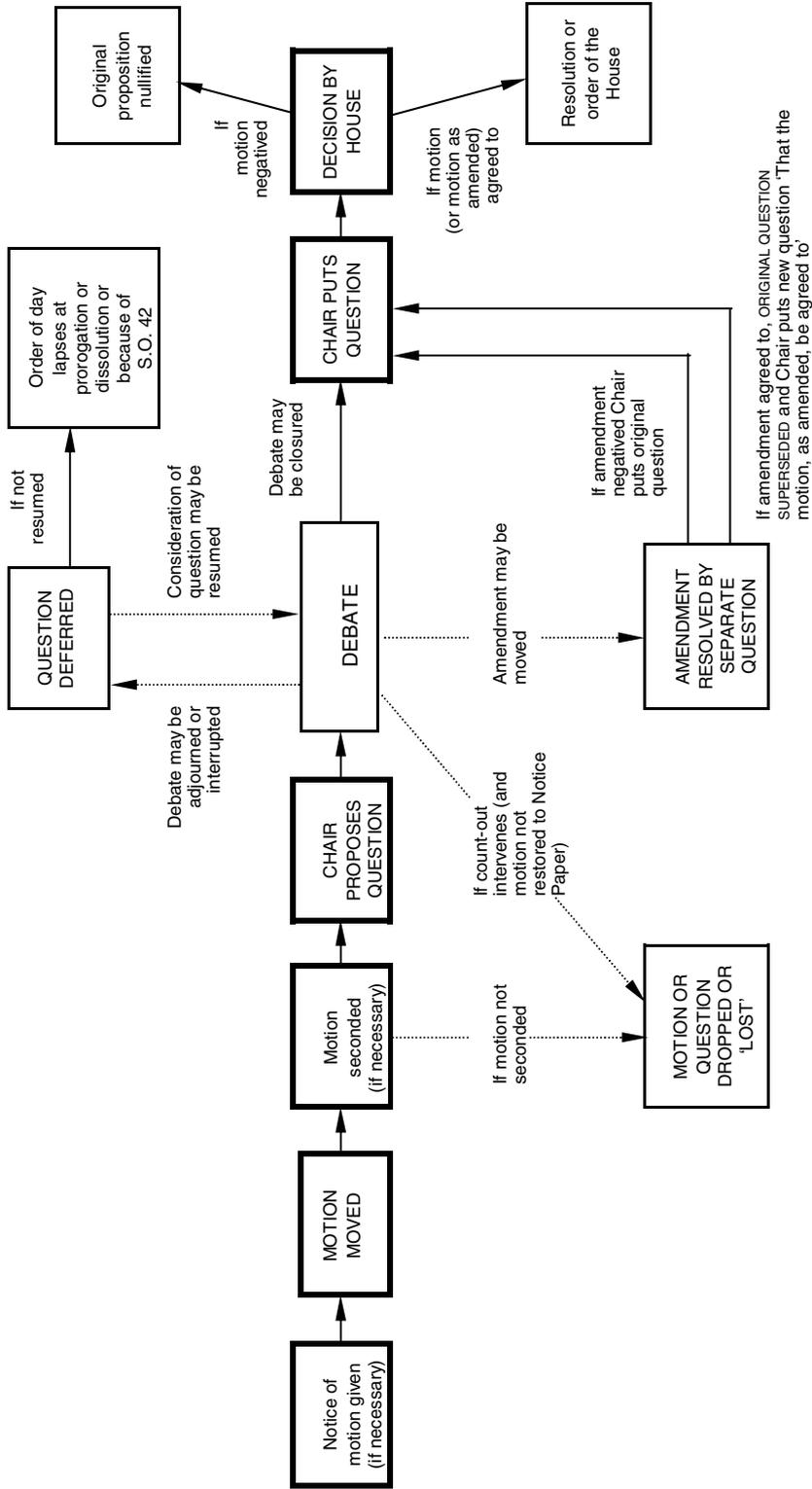
1 'Question' in this sense means the matter to be voted on.

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

3 *May*, 23rd edn, p. 382. The motion providing for the discussion of a matter of special interest under S.O. 50 (*see* p. 328) really fits neither of these definitions.

4 S.O. 2.

**The 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 a Member must not move a motion unless he or she has given a notice of motion and the notice has appeared on the Notice Paper, or he or she has leave of the House, or as otherwise specified in the standing orders.<sup>5</sup> It is further provided that a notice of motion becomes effective only when it appears on the Notice Paper.<sup>6</sup> When notice is required, the terms in which a motion is moved must be the same as the terms of the notice, although leave has often been granted to amend a notice when a motion is to be moved.<sup>7</sup>

A motion for the purpose of rescinding a resolution or other vote of the House during the same session requires seven days’ notice, provided that to correct irregularities or mistakes one day’s notice is sufficient, or the corrections may be made at once by leave of the House (*see* p. 314).<sup>8</sup>

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 immediately. On the other hand, a notice given by a private Member appears under private Members’ business and, because not all such notices are dealt with, may 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;
- motion 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;

<sup>5</sup> S.O. 111.

<sup>6</sup> S.O. 108.

<sup>7</sup> VP 1973–74/124; VP 1998–2001/1118.

<sup>8</sup> S.O. 120.

- a proposal dealing with taxation, for example, a customs or excise tariff proposal;
- leave of absence to a Member;
- leave of absence to all Members, prior to a long adjournment; and
- a motion fixing the next meeting of the House.

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

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

Subsidiary motions which are moved without notice include:

- adjournment of House;
- Member be heard now;
- Member be further heard;
- Member be no longer 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. 187(b)) of Main Committee;
- question be now put;
- 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 document;
- document be made a Parliamentary Paper;
- suspension of a Member after naming; and
- suspension of standing or sessional orders (but if moved without notice an absolute majority is required for the motion to be carried).

<sup>9</sup> VP 1920–21/184.

<sup>10</sup> VP 1954–55/180; H.R. Deb. (28.4.55) 230–1.

<sup>11</sup> VP 1954–55/269–70; H.R. Deb. (10.6.55) 1629.

## Giving notice

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

### *Delivering copy of terms to the Clerk*

A notice of motion is given by a Member delivering it in writing to the Clerk at the Table. It may specify the day proposed for moving the motion and must be authorised by the Member and a seconder. A notice which expresses a censure of or no confidence in the Government, or a censure of any Member, has to be reported to the House by the Clerk at the first convenient opportunity.<sup>13</sup> Other notices are not reported to the House. A notice is not effective until delivered to the Clerk in the Chamber and thus cannot be received when the House is not sitting. A notice lodged on a non-sitting day or outside the Chamber—for example, with the Table Office or with the Clerk of the Main Committee, or read out in the Main Committee<sup>14</sup>—is taken to the Chamber at the first opportunity.

A Minister has referred to the terms of a notice, which he handed to the Clerk, during an answer to a question.<sup>15</sup>

### *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 it in writing to the Clerk at the Table. This is rare.<sup>16</sup>

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 on behalf of the absent Member. The notice must show the name of the absent Member and the signature of the Member acting for him or her.<sup>17</sup> However, a Member may not lodge a notice while on leave, nor may another Member give a notice on his or her behalf.

### *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.

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

13 S.O. 106.

14 H.R. Deb. (10.3.2004) 26520.

15 H.R. Deb. (29.3.2004) 27401, 27511.

16 S.O. 106, e.g. VP 1987–89/302; H.R. Deb. (25.5.98) 3544, 3546.

17 S.O. 107.

*Notices of matters sponsored by more than one Member*

The standing orders make provision for notices from individual Members only. In a situation where two Members have jointly sponsored a private Members' bill, the notice was given by one of the Members concerned, and that Member presented the bill, but the bill was printed with the names of both Members as sponsors.<sup>18</sup>

**Need for seconder**

The standing orders require that a notice of motion must be signed by the Member proposing the motion and a seconder.<sup>19</sup> 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. 296). In 1992 the Procedure Committee recommended that 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.<sup>20</sup>

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.

The act of seconding a notice indicates support for the motion being put to the House and debated; it does not necessarily indicate support for the motion.

**Contingent notice**

Contingent notices are notices conditional upon an event occurring in the House which in fact may not eventuate. The practice of using contingent notices has operated from the very beginnings of the House, a contingent notice appearing on the first Notice Paper issued.<sup>21</sup>

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

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.<sup>22</sup>

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.<sup>23</sup>

18 Protection of Australian Flags (Desecration of the Flag) Bill 2003, H.R. Deb. (18.8.2003) 18671–3, VP 2002–04/1085. (Senate S.O. 76(4) provides for joint notices.)

19 S.O. 106.

20 PP 102 (1992).

21 NP 1 (21.5.01) 1.

22 VP 1985–87/1071.

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

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.<sup>24</sup>

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 immediately (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.<sup>25</sup>

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

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.<sup>26</sup>

## 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.<sup>27</sup> There are important provisos however in that:

- In relation to government business, the Leader of the House can arrange the order of notices on the Notice Paper as he or she thinks fit<sup>28</sup> 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 cause changes to the order of private Members' notices on the Notice Paper as a result of arranging the order of private Members' business for each sitting Monday.<sup>29</sup> Private Members' notices not called on after eight sitting Mondays are removed from the Notice Paper.<sup>30</sup>

24 VP 1996–98/89; 836; VP 1998–2001/1033; VP 1998–2001/2678 (in this case the bill had not been considered in detail).

25 VP 1993–95/92.

26 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.

27 S.O. 108.

28 S.O. 45.

29 S.O.s 41, 222.

30 S.O. 42.

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.<sup>31</sup> However, in the case of private Members' business, as a notice is the possession of the Member who gave it, notices may only be taken otherwise than according to the order of precedence determined by the Selection Committee by:

- withdrawal of the notice, before being called on, by the Member who gave the notice (S.O. 110(c));
- postponement by motion moved (without notice) by the Member who gave the notice (S.O. 112), or
- the Member not moving the motion when it is called on, except if the Member who gave notice or another Member at his or her request sets a future time for moving the motion (S.O. 113).<sup>32</sup>

### Notice divided

The Speaker may divide a notice of motion which contains matters not relevant to each other.<sup>33</sup> This would not necessarily be done in the House.<sup>34</sup>

### Authority of the Speaker

The standing orders direct the Speaker to amend any notice of motion which contains inappropriate language or which does not conform to the standing orders.<sup>35</sup> The House in effect places an obligation on the Speaker to scrutinise the form and content of motions which are to come before the House.

It has been ruled that a notice of motion practically incorporating a speech cannot be given.<sup>36</sup> 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.<sup>37</sup> 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 as evident.

<sup>31</sup> *See* Ch. on 'Order of business and the sitting day'.

<sup>32</sup> VP 1996–98/ 1902.

<sup>33</sup> S.O. 109(b).

<sup>34</sup> H.R. Deb. (23.10.75) 2447.

<sup>35</sup> S.O. 109(a).

<sup>36</sup> H.R. Deb. (1.10.12) 3623.

<sup>37</sup> H.R. Deb. (4.5.77) 1510.

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.<sup>38</sup> Reinforcing this precedent was a decision of the House in 1920 negativing 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.<sup>39</sup>

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

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.<sup>41</sup> In 1983 a notice given openly was removed from the Notice Paper, with the authority of the Speaker, on the ground that it was frivolous.<sup>42</sup>

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.<sup>43</sup>

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 in time for the change to be published in the Notice Paper.<sup>44</sup> The altered notice becomes effective only after it appears on the Notice Paper.<sup>45</sup> An amended notice must not exceed the scope of the original notice. Provided that these rules are observed a notice may be altered at any time after it has been given. When a notice has been amended, the fact that it has been amended is indicated on the Notice Paper after the notice, together

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

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

40 VP 1934-37/38; H.R. Deb. (28.11.34) 582-3, 610. The Speaker first ruled that the Member was in order in giving the notice, but later made a statement that in its present form he would not allow it to be placed on the Notice Paper.

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

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

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

44 S.O. 110(a).

45 S.O. 108.

with the date that the alteration was made.<sup>46</sup> Leave has also been granted to amend a notice when it has been called on to be moved.<sup>47</sup>

### Withdrawal or removal of notice

A Member may withdraw a notice of motion he or she has given by notifying the Clerk in writing before the motion is called on.<sup>48</sup> The withdrawal of a notice is effective immediately notification is received. The Clerk is not required to announce the withdrawal of a notice to the House but may do so if it affects the programming of business before the House.

A notice of motion is also withdrawn from the Notice Paper, with immediate effect, if the Member who gave the notice does not move the motion when it is called on, unless he or she, or another Member at his or her request, sets a future time for moving the motion.<sup>49</sup> However, once the question on the motion has been proposed from the Chair it is in possession of the House and cannot be withdrawn without leave.<sup>50</sup>

Under standing order 42 the Clerk removes from the Notice Paper any item of private Member's business which has not been called on or which has been interrupted under standing order 41 and not re-recorded priority by the Selection Committee, for eight consecutive sitting Mondays.

## MOTIONS

### Rules regarding subject matter

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

- relates to a matter awaiting, or under, adjudication by a court of law (sub judice rule);<sup>51</sup>
- is the same in substance as a question (motion) resolved during the same session (same motion rule); or
- contains offensive or disorderly words.<sup>52</sup>

### Same motion rule

The Speaker may disallow any motion (or amendment) which is the same in substance as any question which has already been resolved in the same session. The application of the same motion rule is totally at the Chair's discretion.<sup>53</sup> The rule, in serving the purpose of preventing unnecessary obstruction or repetition, should not be held to restrict or prevent

46 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.

47 VP 1973–74/124; VP 1998–2001/1118.

48 S.O. 110(c). A private Member's notice may be withdrawn even after it has been accorded priority by the Selection Committee.

49 S.O. 113; VP 1983–84/915; VP 1996–98/1902.

50 H.R. Deb. (19.3.08) 9352; S.O. 117(b).

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

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

53 S.O. 114(b).

the House from debating important matters, particularly during a long session which can be of two to three years' duration.

The same motion rule has rarely been applied. 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 motion had been negatived on each of the two previous sitting days.<sup>54</sup> The Chair has prevented a Member moving for the suspension of standing orders to enable another Member to continue his speech as a motion for that purpose had been negatived previously.<sup>55</sup> A motion of dissent from a ruling has also been ruled out of order on the ground that a motion of dissent from a similar ruling had just been negatived.<sup>56</sup>

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

Two particular occurrences are worthy of note. On the first occasion a notice of motion was placed on the Notice Paper in exactly the same terms as a previously defeated amendment to a motion to adopt a Standing Orders Committee report. The notice remained on the Notice Paper until, following a suspension of standing orders, it was moved in the form of an amendment to a later motion proposing amendments to the standing orders and changes in practice. The amendment was again defeated.<sup>58</sup> On the second occasion a notice of motion which was the same in substance as a second reading amendment negatived earlier in the session was placed on the Notice Paper. Prior to the notice being called on, however, it was substantially altered and the necessity for a decision in the House did not arise.<sup>59</sup>

A question may be raised again if it has not been definitely decided. Thus, a motion or amendment which has been withdrawn or, in certain circumstances, has been superseded<sup>60</sup> (*see* p. 299) or, for example, where no decision was reached because of a lack of quorum in a division, may be repeated. Private Members' bills which have been dropped under the provisions of standing order 42 have been re-introduced, no decisions of substance having been taken on them.<sup>61</sup>

An extension of the same motion rule is contained in standing order 78 where a number of subsidiary motions and questions of a procedural nature are listed which, if put to the House and negatived, cannot be put to the House again if the Speaker or 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.<sup>62</sup> 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.

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

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

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

57 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.

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

59 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.

60 *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.

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

62 E.g. VP 1998-2001/832.

## Progress in House

### *Motion moved*

A Member must not move a motion unless he or she has given notice of the motion and the notice has appeared on the Notice Paper, unless he or she has leave of the House, or unless as otherwise specified in the standing orders.<sup>63</sup> A Member cannot move a motion while another Member is speaking,<sup>64</sup> except a closure motion pursuant to standing order 80 or 81. A Member cannot move a motion on behalf of another Member,<sup>65</sup> except that a motion standing in the name of a Minister may be moved by any other Minister.<sup>66</sup> Any motion before the House must be disposed of, or debate on the motion adjourned, before another (substantive) motion can be moved.<sup>67</sup>

While a Member is formally moving the terms of a motion allowed under the standing orders, a motion ‘That the Member be no longer heard’<sup>68</sup> may not be moved, 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.<sup>69</sup>

Members have been cautioned about the length of motions.<sup>70</sup>

It is in order for a Member to vote against a motion he or she has moved.<sup>71</sup>

### *Motion seconded*

After the mover of a motion has resumed his or her seat, if a seconder is required, the Chair calls for a Member to second the motion. If a motion is not seconded when a seconder is required it must not be debated, and it is not recorded in the Votes and Proceedings.<sup>72</sup> The Chair is not entitled to propose the question on a motion to the House until it has been moved and, if required, seconded.<sup>73</sup>

Because a Minister in proposing business before the House is assumed to have the backing of the Government, it has been the continuing practice of the House that motions (and amendments) moved by Ministers do not require a seconder,<sup>74</sup> and this exemption is now a provision of the standing orders.<sup>75</sup> The Chief Government Whip does not require a seconder to move motions relating to the sitting arrangements or conduct of business of the House or Main Committee, but not including motions relating to government bills.<sup>76</sup> Also it is not the practice to require a seconder for most procedural motions,<sup>77</sup> or for motions in

63 S.O. 111. See Ch. on ‘Order 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 However, this has been done by leave, e.g. VP 2002–04/1648. Standing orders have been suspended to permit a private Member’s bill to be presented by another Member, VP 2002–2004/510.

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

67 H.R. Deb. (17.3.44) 1563–4.

68 S.O. 80.

69 S.O. 81.

70 E.g. H.R. Deb. (17.9.2003) 20229.

71 *And see May*, 23rd edn, p. 404.

72 S.O. 116(a).

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

74 H.R. Deb. (21.9.09) 3608. This practice was formally extended to Assistant Ministers in 1972, VP 1970–72/1009–10; *Standing Orders Committee report*, PP 20 (1972) 1, 6–7; and, in 1990, to Parliamentary Secretaries, VP 1990–92/38, 1083–4.

75 S.O. 116(b).

76 S.O. 116(c). The exemption was originally provided by resolution of the House in 1994, VP 1993–95/982–3.

77 For example, the following motions: that a Member be heard now (S.O. 65(c)), that a Member be further heard (S.O. 75), that the debate be now adjourned (S.O. 79(a)), that a Member be granted an extension of time (S.O. 1), that the question be now put (S.O. 81), that a Member be no longer heard (S.O. 80) and that the business of the day be called on (S.O. 46(c)).

respect of the various stages of a private Member's bill except the motion for the second reading.<sup>78</sup> The contemporary practice in the case of privilege motions is that, because of their special nature, possibly only affecting an individual Member, the Chair does not call for, or insist upon, a seconder. A motion moved during the consideration in detail stage of a bill, or during consideration of Senate amendments, need not be seconded.<sup>79</sup>

Seconders are specifically required for motions of dissent to a ruling of the Speaker<sup>80</sup> and motions without notice to suspend standing orders.<sup>81</sup> 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 speak later during the debate.<sup>82</sup> For practical reasons it is the practice of the House for the Chair not to insist that the seconder of the motion be the same Member who signed the notice of motion.

It is in order for a Member to vote against a motion or amendment he or she has seconded.<sup>83</sup>

### *Motion dropped*

A motion not seconded (if seconding is required) is dropped and no entry is made in the Votes and Proceedings.<sup>84</sup> 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 1 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.<sup>85</sup>

A motion to suspend standing orders moved during debate of another item of business is dropped if a closure of the question before the House is agreed to before the question on the suspension motion is proposed from the Chair.<sup>86</sup>

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,<sup>87</sup> unless the motion for the adjournment is immediately negated in order to allow debate on the motion to continue.

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

79 S.O. 151, 159.

80 S.O. 87.

81 S.O. 47.

82 S.O. 70.

83 *May*, 23rd edn, pp. 404–5.

84 S.O. 116(a), e.g. second reading amendment not seconded, H.R. Deb. (13.10.2003) 21260.

85 VP 1998–2001/1936.

86 H.R. Deb. (12.8.2004) 32979–80.

87 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 31(c) 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.<sup>88</sup>

### *Question proposed—motion in possession of House*

Standing order 117 provides that once a motion has been moved and seconded (if necessary), the Speaker shall propose the question to the House. Once the question has been 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 78 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 by leave of the House or by amendment.<sup>89</sup>

The normal position is that the mover of a motion, with the exceptions in standing order 1 and subject to any determination by the Selection Committee, may speak for a maximum of 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, a Member, at any time, except when another Member is addressing the House, may request the Speaker to state the question or matter under discussion.<sup>90</sup>

### *Withdrawal of motion*

A motion (or amendment) cannot be withdrawn without leave of the House,<sup>91</sup> nor can it be withdrawn except by the Member who moved it<sup>92</sup> in the case of a private Member’s motion or by a Minister in the case of a government motion. A motion has been withdrawn, by leave, before being seconded.<sup>93</sup> When leave was not granted to withdraw a motion of dissent from a ruling of the Chair, standing orders were suspended to enable the Member to move a motion for the withdrawal of the motion.<sup>94</sup> Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has

88 VP 1987–89/978; VP 1996–98/1327.

89 H.R. Deb. (11.11.13) 3008–9.

90 S.O. 67. 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.

91 S.O. 117(b).

92 *May*, 23rd edn, p. 393.

93 VP 1970–72/127.

94 VP 1929–31/302.

been first disposed of by being agreed to, withdrawn, or negated, as the question on the amendment stands before the main question.<sup>95</sup>

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

### *Question superseded or dropped*

The principal means by which a question may be superseded is by way of amendment. Once an amendment is moved and the question on the amendment proposed to the House the original question is temporarily superseded. If the amendment is negated, 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 finally disposed of.<sup>98</sup>

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 or by leave<sup>99</sup> (*see* p. 297 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 immediately and the adjournment is negated, 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. 97).

A question in the Main Committee may be deferred by the motion ‘That further proceedings be conducted in the House’,<sup>100</sup> by the Committee being unable to reach agreement on a matter and reporting the question back to the House as ‘unresolved’, or by interruption in order that an adjournment debate may be held (*see* p. 301).

### *Consideration of question interrupted*

Consideration of a question may be interrupted by a motion arising out of a matter of order, a motion to suspend standing orders, or a matter of privilege. As these matters have

<sup>95</sup> *May*, 23rd edn, p. 393.

<sup>96</sup> S.O. 50.

<sup>97</sup> VP 1974–75/815–17.

<sup>98</sup> S.O.s 146, 155(b); *and see* Ch. on ‘Legislation’.

<sup>99</sup> E.g. VP 1993–96/2360.

<sup>100</sup> S.O. 197(a).

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.<sup>101</sup> 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.<sup>102</sup>

Once a motion of any kind has been moved a Minister may at any time declare it to be urgent and on such a declaration being made the question ‘That the motion be considered an urgent motion’ is put immediately without amendment or debate. If the question is agreed to, a Minister may move immediately a motion specifying times for the motion. The provisions for the motion for the allotment of time are the same as for a bill. At the end of the time allotted, the Chair first puts immediately any question already proposed from the Chair followed by any other question required to dispose of the urgent motion. A motion ‘That the question be now put’ may not be moved while a motion is under guillotine.<sup>103</sup>

### *Complicated question divided*

A Member may move that a complicated question be divided.<sup>104</sup> Relevant precedents for divided questions are:

- a complex motion to endorse in principle certain sections of a Standing Orders Committee report and amend other standing orders as recommended;<sup>105</sup>
- a motion for leave of absence to two Members;<sup>106</sup>
- a motion to ratify a report of a conference on dominion legislation;<sup>107</sup>
- a motion proposing a conference to select the site of the Federal Capital;<sup>108</sup>
- motions proposing the appointment of a select,<sup>109</sup> and a joint select committee;<sup>110</sup> and
- a motion that a Printing Committee report, recommending that certain papers be printed and that the House reconsider its decision to print a paper, be agreed to.<sup>111</sup>

The usual procedure is that, following the suggestion of a Member, the Chair ascertains, either on the voices or by division, whether it is the wish of the House that the question be divided as suggested.<sup>112</sup>

Standing orders have been suspended to allow separate questions to be put on two distinct propositions contained in the two paragraphs of a motion. To suit the convenience of the House the question on an amendment to the original motion which related only to paragraph (2) of the motion was put after the question on paragraph (1) had been put and

101 S.O. 83.

102 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.

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

104 S.O. 119.

105 VP 1970–72/242–3.

106 VP 1906/55.

107 VP 1929–31/748.

108 VP 1903/144.

109 VP 1905/136.

110 VP 1978–80/366.

111 VP 1920–21/659.

112 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.

agreed to.<sup>113</sup> Standing orders were suspended in this instance because it was not considered that the motion could be regarded as complicated.

### *Question put and result determined*

Once debate upon a question has been concluded—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 for decision.<sup>114</sup> The question is resolved in the affirmative or negative, by the majority of voices, ‘Aye’ or ‘No’. The Speaker then states whether the ‘Ayes’ or the ‘Noes’ have it and, if the Speaker’s opinion is challenged, the question must be decided by division of the House.<sup>115</sup> 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.<sup>116</sup>

### Consideration in the Main Committee

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.<sup>117</sup> 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 any motions.<sup>118</sup> Motions referred for debate 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. The House may require matters referred to be returned to the House

Unless otherwise provided in the standing orders, Main Committee procedure in respect of motions is the same as that applying in the House.<sup>119</sup> 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

113 VP 2002–04/1550–2, H.R. Deb. (30.3.2004) 27592–5.

114 S.O. 117(c).

115 S.O. 125. For a full discussion of division procedures *see* Ch. on ‘Order of business and the sitting day’.

116 VP 1908/53–4.

117 S.O. 183. Members’ statements may also be made and adjournment debates may take place.

118 S.O. 183. Before 2004–05 only motions moved in connection with committee and delegation reports and motions to take note of papers were provided for. The Address in Reply debate was also referred (VP 1998–2001/129)—the motion ‘That the Address (reported by the Address in Reply Committee) be agreed to’, being a regarded as a motion in connection with a committee report. Restrictions on Main Committee business were circumvented by the device of presenting and moving to take note of a range of documents to enable debate or further debate on various matters to be referred. Examples of this practice included copies of motions moved (and already passed) in the House (VP 2002–04/691; 1064; 1233–4, 1552), and copies of announcements of the death of a former Member or other notable person, to provide, in effect, the opportunity for a condolence debate (VP 2002–04/1401, 1428, 1713).

119 S.O. 185.

‘unresolved’.<sup>120</sup> 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 speaking on the adjournment be no longer heard—and in such a case the matter is not put to the House.<sup>121</sup> Standing orders have been suspended to permit debate on a bill to continue regardless of any unresolved questions.<sup>122</sup> When an unresolved question that the question be now put has been referred to the House and resolved in the negative, debate on the question has continued in the House.<sup>123</sup>

Any Member may move without notice, at any time,<sup>124</sup> 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 put 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.<sup>125</sup>

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 by:

- omitting certain words; and/or
- inserting or adding words.<sup>126</sup>

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

- the motion for the adjournment of the House;<sup>127</sup> and
- the procedural questions and motions listed in standing order 78.

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

An amendment must be in writing and must be signed by the mover and (if a seconder is required—*see below*) a seconder.<sup>128</sup> Notice is not required of an amendment, but notice has been given on occasions.<sup>129</sup> The modern practice is to have an amendment printed and

120 S.O. 188(b), e.g. VP 1993–95/2470, 2478, 2504–5, 2516; VP 1996–98/380, 387.

121 E.g. VP 1998–2001/2034—matter not referred to House. VP 2002–04/386; H.R. Deb. (29.8.2002) 6192–3—several unresolved questions not put to House; statement by Speaker (standing orders had been suspended to allow progress despite unresolved questions).

122 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. VP 2002–04/357–8, 367; H.R. Deb. (26.8.2002) 5676–88 (on this occasion debate continued despite a series of unresolved questions on procedural matters).

123 VP 2002–04/742.

124 In practice, this motion is not moved so as to interrupt a Member’s speech.

125 S.O. 197, e.g. VP 1993–95/2470, 2477; *but see* VP 1996–98/273 (question put again and negatived).

126 S.O. 121(a).

127 S.O. 32(a).

128 S.O. 121(b).

129 NP 78 (22.11.07) 352.

circulated to Members to enable it to be assessed before the question on it is put to the House, although this is not required by the standing orders. In the absence of a Member who has circulated an amendment, another Member, with the proposer's permission, may move it on his or her behalf.<sup>130</sup>

Any amendment must be moved before the mover of a motion speaks in reply to the original question.<sup>131</sup> 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.

### Secunder required

An amendment moved by a Minister or Parliamentary Secretary does not require a secunder.<sup>132</sup> An amendment moved during the consideration in detail stage of a bill, or during the consideration of Senate amendments, does not require a secunder.<sup>133</sup> In all other cases a secunder is required.

A Member who has already spoken to the original question may not second an amendment moved subsequently.<sup>134</sup> An amendment moved, but not seconded, must not be

130 VP 1951-53/133.

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

132 S.O. 116(b).

133 S.O.s 151, 159.

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

debated and is not recorded in the Votes and Proceedings.<sup>135</sup> An amendment has lapsed after the seconder, by leave, withdrew as the seconder.<sup>136</sup>

The seconder has the right to speak to the amendment at a later period during the debate,<sup>137</sup> or may choose to speak immediately after seconding the amendment.

### Amendment in possession of House

Once an amendment is moved and seconded, the question on the amendment must then 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.<sup>138</sup>

### Form and content of amendment

#### *Relevancy*

An amendment must be relevant to the question which it is proposed to amend.<sup>139</sup> The only exception to this rule is that an irrelevant amendment may be moved to the question ‘That grievances be noted’.<sup>140</sup>

#### *Legible and intelligible*

The Chair has refused to accept an illegible amendment.<sup>141</sup> An amendment proposed to be made, either to the original question or to a proposed amendment, must be framed so that, if it is agreed to, the question or amendment, as amended, would be intelligible and internally consistent.<sup>142</sup>

#### *Consistency*

An amendment must not be moved which is inconsistent with a previous decision on the question.<sup>143</sup> The Chair having been asked whether a proposed amendment upon an amendment was inconsistent with an amendment already agreed to, the Speaker stated that as the proposed amendment was an addition and did not cut down on the words agreed to, he could see no alternative but to accept it.<sup>144</sup> After an amendment proposing to limit the application of a motion (granting precedence to government business by 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.<sup>145</sup>

135 S.O. 121(b).

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

137 S.O. 70.

138 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. For more recent example see VP 2002–04/1625.

139 S.O. 121(c); and see Ch. on ‘Legislation’ regarding second reading amendment.

140 S.O. 44(b); and see Ch. on ‘Financial legislation’ regarding scope of amendment on appropriation and supply bills.

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

142 *May*, 23rd edn, p. 401.

143 S.O. 123(a).

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

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

### *Same amendment*

The Speaker may disallow any motion or amendment which he or she considers is the same in substance as any question already resolved in the same session.<sup>146</sup>

### *Amendment to earlier part of question*

An amendment may not be moved to an earlier part of a question after a later part has been amended, or after an amendment to a later part has been proposed, and the proposal has not, by leave, been withdrawn.<sup>147</sup> It has been the practice to interpret this rule so as to allow an amendment to a part of the question back to the point where the last amendment was actually made. Leave of the House has been granted to allow an amendment to be moved to an earlier part of the question. When notice has been given of amendments or Members have declared their intention of moving amendments, the Chair has declined to put the question on an amendment in a form which would exclude the moving of other amendments. The Chair has divided an amendment into parts and submitted only the first part so as not to preclude other Members from submitting amendments which they had expressed a desire to propose.<sup>148</sup> When several Members have proposed to move amendments to an earlier part of a motion, the Chair has declined to submit an amendment to a later part until these amendments were disposed of.<sup>149</sup> When notice has been given of amendments proposing to add words to a motion, the Chair has given precedence to an amendment proposing to omit all words after ‘That’ with a view to inserting other words.<sup>150</sup>

### *Amendment to words already agreed to*

Only an amendment which adds other words may be moved to words which the House has resolved stand part of the question or which have been inserted in, or added to, a question.<sup>151</sup>

### *Direct negative*

Although there is no reference in the standing orders to an amendment which is a direct negative of the question before the House, the House has followed the parliamentary rule that such amendments are not in order if they are confined to the mere negation of the terms of a motion. The proper mode of expressing a completely contrary opinion is by voting against a motion without seeking to amend it.<sup>152</sup> Many amendments are moved which seek to reverse completely the thrust of motions. Whilst it may be claimed that such amendments are out of order as direct or expanded negatives, they usually seek to put an alternative proposition to the House and so are in order (*and see below*). A working rule for determining whether an amendment is a direct negative is to ask the question whether the proposed amendment would have the same effect as voting against the motion. If it would, it is a direct negative.

146 S.O. 114(b), (subject to S.O. 150 in relation to the consideration in detail stage of bills).

147 S.O. 123(b).

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

149 VP 1929–31/903.

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

151 S.O. 123(d).

152 *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.

*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.<sup>153</sup>

This practice of the House has been supported since 1905 when, on a motion that an Address be presented to the King expressing the hope that a measure of home rule be granted to Ireland, an amendment was moved to omit all words after ‘That’ in order to insert words to the effect that the House declined to petition His Majesty either in favour of or against a change in the parliamentary system which then prevailed in the United Kingdom. Having been asked for a ruling as to whether the amendment was in effect a negative of the motion, the Speaker stated that the amendment was in order as it came between the two extremes of either declaring in favour of the petition (motion) as it stood or negating the proposal altogether.<sup>154</sup>

Other relevant rulings have been:

- In 1949, a want of confidence motion having been moved in the Deputy Speaker (listing four reasons), an amendment was moved to omit all words after ‘That’ with a view to inserting words ‘this House declares its determination to uphold the dignity and authority of the Chair . . .’. The Chair dismissed a point of order that the amendment was a direct negative of the motion and ruled it in order.<sup>155</sup>
- In 1970 an amendment was moved adding words to a motion to take note of a paper (relating to Commonwealth–State discussions on off-shore legislation) which expressed a lack of confidence in the Prime Minister and his Cabinet for their failure to honour a certain commitment made to the States. This was accepted as a want of confidence amendment. To this amendment a further amendment (to omit words with a view to inserting other words) was moved declaring that the House did not believe there had been any failure on the part of the Government to honour any commitments;

153 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.

154 H.R. Deb. (28.9.05) 2967–8.

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

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.<sup>156</sup>

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.<sup>157</sup> There have been a number of subsequent precedents.<sup>158</sup> 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—*see* ‘Censure of a Member or Senator’ and ‘Censure of the Opposition’ at pp. 321–322.

### *Other restrictions*

A Member cannot move an amendment:

- to his or her own motion<sup>159</sup> unless he or she does so by leave;<sup>160</sup>
- if debate on a question has been closed by the mover speaking in reply;<sup>161</sup>
- if he or she has already spoken to the main question,<sup>162</sup> or the original question and an amendment;<sup>163</sup> or
- if he or she has seconded the motion (even formally) which he or she proposes to amend.<sup>164</sup>

It is not in order to move for the omission of all words of a question without the insertion of other words;<sup>165</sup> the initial word ‘That’ at least must be retained. Amendments have been moved to omit all words after ‘That’<sup>166</sup> without the substitution of other words in their place. On one such amendment being successful, the Speaker agreed with the proposition that the omission of the words was the same as if the motion had been directly negated and it was so recorded in the Votes and Proceedings.<sup>167</sup> On another occasion, words having been omitted from a motion with a view to inserting other words, and two proposals to insert other words having been negated, the Speaker drew attention to the fact that what

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

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

158 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.

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*, 23rd edn, p. 401.

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. 319.

was left of the motion was meaningless. He then said that he presumed the House would not desire him to put the question. The House agreed with this assessment.<sup>168</sup>

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 rule<sup>169</sup> or the same question rule (*see* p. 294).

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

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

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.<sup>174</sup>

### Order of moving amendments

Each proposed amendment must be disposed of before another amendment to the original question can be moved.<sup>175</sup>

An amendment may not be moved to words already agreed to, except by way of an addition, or moved to an earlier part of a question after a later part has been amended or such an amendment has been proposed (and not by leave been withdrawn).<sup>176</sup> 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.<sup>177</sup>

In cases where a number of amendments have been foreshadowed to a particular motion, standing orders have been suspended to enable a cognate debate on the motion and the circulated amendments, and, at the conclusion of the debate, to enable the Chair to put questions on the circulated amendments such as were capable of being put, in the order determined by the Chair.<sup>178</sup>

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. 123(e).

176 S.O. 123(b).

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

178 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.<sup>179</sup> Amendments may be withdrawn temporarily, and then moved again at a later stage.<sup>180</sup> An amendment has been moved subject to the temporary withdrawal of another amendment.<sup>181</sup>

### Amendment to proposed amendment

Amendments may be moved to a proposed amendment as if the proposed amendment were an original question.<sup>182</sup> In effect not only is the original question temporarily superseded but so is the question on the first amendment. The questions put by the Chair deal with the first amendment as if it were a substantive question itself and with the second amendment as if it were an ordinary amendment. An amendment to a proposed amendment is moved after the question ‘That the amendment be agreed to’ has been proposed by the Chair. The effect of moving the subsidiary amendment is to interpose a further question ‘That the amendment to the proposed amendment be agreed to’. The latter question must be disposed of before the question on the primary amendment is put to the House.

When it has been moved to omit words in the main question in order to insert or add others, no amendment to the words proposed to be inserted or added can be moved until the question ‘that the words proposed to be omitted stand part of the question’ has been determined.<sup>183</sup> This rule means that, first, the question ‘That the words proposed to be omitted stand’ must be resolved in the negative and, second, that the question ‘That the words proposed be inserted (added)’ must be proposed by the Chair, before a further amendment can be moved to insert (add) words to the words proposed to be inserted (added). Subsequently an amendment on the further amendment to insert (add) words can be moved. This is a case of an amendment to an amendment to an amendment.<sup>184</sup>

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

### Putting question on amendment

When the purpose of a proposed amendment is to *omit certain words*, the Chair puts the question ‘That the words proposed to be omitted stand part of the question’.<sup>185</sup>

When the purpose of a proposed amendment is to *omit certain words in order to insert or add other words*, 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 be inserted (added)’.<sup>186</sup>

An advantage of the question being put in the form ‘That the words proposed to be omitted stand’, is that, in the majority of cases, it enables Members to vote from their

179 S.O. 121(d).

180 VP 1973–74/221–2.

181 VP 1917–19/23.

182 S.O. 124.

183 S.O. 123(c).

184 VP 1907–08/284–5.

185 S.O. 122(a)(i).

186 S.O. 122(a)(ii).

normal seats in the Chamber. The ‘ayes’ who go to the right of the Speaker on a division can usually be presumed to be government Members—that is, in the common scenario of government motion (or bill) and opposition amendment.<sup>187</sup>

Another effect of the question being put in this form is that, once the question ‘That the words proposed to be omitted stand part of the question’ has been agreed to, not only is the amendment disposed of, but Members are precluded from moving any further amendment (apart from the addition of words) by the provisions of S.O. 123(d).<sup>188</sup>

When the purpose of the proposed amendment is to *insert or add certain words* the Chair puts the question ‘That the words proposed be inserted (added)’.<sup>189</sup>

If no Member objects the Chair may put the question ‘That the amendment be agreed to’ in place of the question or questions stated above.<sup>190</sup> 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 question<sup>191</sup> or to allow further amendments to be moved to a question.<sup>192</sup> In considering the use of this short alternative the principle that the mover of a motion is entitled to a distinct vote of the House on his or her motion must be remembered. Thus, in the case of motions of censure to which an amendment as an alternative proposition has been moved, 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.<sup>193</sup>

However on other occasions the simpler form has been used.<sup>194</sup> Members wishing to have the question on an amendment put in the alternative form are advised to make a request to the chair before the question is first proposed to the House.<sup>195</sup> The Speaker has considered it inappropriate to change the question before the House after debate has occurred on the question as stated.<sup>196</sup>

When amendments have been made, the main question is put as amended.<sup>197</sup> 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.<sup>198</sup> With the concurrence of the House the Chair has declined to put the question on a motion, as amended, when it had been so amended that what remained of the motion was meaningless.<sup>199</sup> On another occasion, the

187 The two stage method of putting the question on an amendment was ancient UK House of Commons practice, said to derive from an era when the phrasing of the question would determine which group of Members would have to leave the Chamber for a division, *see* Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, London, Macmillan, 1958, p. 19–20. The UK House has now changed to putting the question in the terms ‘That the amendment be made’ in almost all cases. *May*, 23rd edn, p. 399. In the Senate, the form ‘That the amendment be agreed to’ is always used (Senate S.O. 91— for background *see* *Oggers*, 6th edn, p. 387).

188 Members prevented from moving a further amendment have read the words of the amendment they would have moved into the Hansard record, and have sought leave to incorporate them, e.g. H.R. Deb. (8.10.2003) 20792.

189 S.O. 122(a)(iii).

190 S.O. 122(b). 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, e.g. VP 1962–63/279–80; VP 1974–75/646–8.

191 VP 1978–80/1290.

192 E.g. VP 1962–63/276; *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.

193 VP 1983–84/882–5; VP 2002–04/914–7.

194 E.g. VP 1993–95/1283–5; VP 1998–2001/957–62.

195 E.g. H.R. Deb. (30.3.2004) 27568.

196 H.R. Deb. (18.9.2002) 6609–10, 6643.

197 S.O. 118(a).

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

199 VP 1908/54.

effect of an amendment was seen as having negated a motion, as only the word ‘That’ remained.<sup>200</sup>

When amendments have been moved but not made, the main question is put as originally proposed.<sup>201</sup> Debate may then continue on the original question or a further amendment moved, providing it is in accord with the standing orders.<sup>202</sup>

The question on a second reading amendment to a bill is traditionally put in the form ‘That the words proposed to be omitted stand part of the question’—*see* ‘Second reading amendment’ in Chapter on ‘Legislation’.

## 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.

An order has been described as a command, and a resolution as a wish.<sup>203</sup> By its orders the House directs its committees, its Members, its staff, 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.<sup>204</sup> In practice, however, the terms are often used synonymously,<sup>205</sup> 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—and there are those that are more specific in nature—for example, an order that the Speaker, in the name of the House, take some particular action.<sup>206</sup> An example of a ‘singular’ resolution of the House would be one agreeing to a motion of condolence. 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).<sup>207</sup> 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

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

201 S.O. 118(b).

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

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

204 *May*, 23rd edn, p. 418.

205 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’, *see May*, 19th edn (1976), p. 382.

206 VP 1950–51/217; VP 1962–63/500.

207 VP 1978–80/1672–3.

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,<sup>208</sup> which are ‘of continuing effect and apply until changed by the House in this or a subsequent Parliament’.<sup>209</sup> In 1984 the terms of resolutions adopted relating to the registration and declaration of Members’ interests specified that they were ‘to have effect from the commencement of the 34th Parliament and to continue in force unless and until amended or repealed by the House of Representatives in this or a subsequent Parliament’.<sup>210</sup> The resolutions have since been amended on several occasions. More recent resolutions of continuing effect were those of:

- 5 May 1993 concerning Parliamentary Secretaries;<sup>211</sup>
- 2 May 1994 concerning the Chief Government Whip;<sup>212</sup> and
- 5 December 1994 concerning the Votes and Proceedings.<sup>213</sup>

Each of these resolutions provided that it ‘continue in force unless and until amended or rescinded by the House in this or a subsequent Parliament’. These resolutions became unnecessary when their provisions were incorporated into the standing orders coming into effect in the 41st 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. That is, they may, by virtue of continuous practice, acquire the force of customary law.

That such orders and resolutions of the House of Representatives will have continuing validity is implied in section 50 of the Constitution.<sup>214</sup> The standing orders of the House also imply the continuing validity of such orders and resolutions. Standing order 3(e) says, in part, that in deciding cases not otherwise provided for, the Speaker shall have regard to established practices of the House.

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

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

209 S.O. 3(a).

210 VP 1983–84/945–6.

211 VP 1993–95/25.

212 VP 1993–95/982–3.

213 VP 1993–95/1620.

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

returning to the House because of doubts as to whether the previous resolution would cover the new Parliament.<sup>215</sup>

## 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 employees 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, documents 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 (then) 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 . . .’.<sup>216</sup> The response of the Public Service Board to the request was presented on 24 February 1981.<sup>217</sup>

The limitation on the efficacy of orders of the House of Commons on others outside the House was demonstrated in the decisions of the court of Queen’s Bench in the cases of *Stockdale v. Hansard* (1836–40). The court ruled that an order of the House of Commons alone was not a sufficient cause to protect a person, carrying out that order, from the due processes of the law. As a consequence of the decisions in these cases the objectives of the House in the area were effected by legislation—the Parliamentary Papers Act 1840—as it was only by legislating with the other constituent parts of the Parliament that the House could give sufficient authority to its wishes.<sup>218</sup>

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.

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

216 VP 1978–80/1673.

217 VP 1980–81/80.

218 *May*, 23rd edn, pp. 184–7.

## Resolution or vote of the House rescinded or varied

A resolution or other vote of the House may be rescinded during the same session if seven days' notice is given. If the rescission is to correct irregularities or mistakes one day's notice is sufficient or the correction may be made at once by leave of the House.<sup>219</sup> 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 regularly come to, however unexpected, and that it is unfair to resort to methods, whether direct or indirect, 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 is not normally resorted to, unless in the circumstances of a particular case those rights are in no way threatened.<sup>220</sup>

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

In order that the House may easily make changes to its sessional orders, the strictures of standing order 120 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);<sup>221</sup>
- the third reading of a bill to enable a message from the Governor-General recommending an appropriation to be announced (standing orders suspended);<sup>222</sup>
- 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);<sup>223</sup>
- to enable a division to be taken on a question, the Chair not hearing earlier the call for a division when the question was decided (by leave);<sup>224</sup>
- to enable the second readings of certain bills which had been made orders of the day for the next sitting to be made orders of the day for the current sitting (by leave);<sup>225</sup>
- to enable the consideration of a report of the Committee of Privileges which had been made an order of the day for a particular date to be made an order of the day for the current sitting (by leave);<sup>226</sup>

219 S.O. 120.

220 *May*, 23rd edn, p. 423.

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

222 VP 1945-46/213.

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

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

225 VP 1974-75/105.

226 VP 1978-80/147.

- to enable the orders of the day on the second readings of certain bills which had been postponed to the next sitting to be made orders of the day for the current sitting (by leave);<sup>227</sup>
- resolution referring a petition to the Committee of Privileges (by leave);<sup>228</sup>
- resolutions regarding reference of work to the Public Works Committee (seven days' notice<sup>229</sup> and by leave<sup>230</sup>), including a resolution agreed to during the previous session (on notice);<sup>231</sup>
- the second and third readings of a bill following the realisation that the second reading had not been moved (by leave);<sup>232</sup>
- 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);<sup>233</sup>
- resolution of earlier session (in force until amended or rescinded) referring certain matters to the Public Accounts Committee (on notice);<sup>234</sup>
- 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);<sup>235</sup>
- consideration in detail stage and third reading of bill following realisation that intended amendments had not been moved (standing orders suspended);<sup>236</sup>
- resolution to lay aside a bill (standing orders suspended) in order to permit reconsideration of Senate amendments and the moving of further amendments;<sup>237</sup> and
- resolution concerning committee membership (by leave).<sup>238</sup>

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.<sup>239</sup> 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.<sup>240</sup>

### Resolution expunged from records

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

That the resolution of this House of the 11th November, 1913 "That the honourable Member for Ballarat<sup>241</sup> be suspended from the service of this House for the remainder of the session unless he

227 VP 1978–80/1093.

228 VP 1978–80/975.

229 VP 1976–77/389.

230 VP 1974–75/521. VP 2002-04/1748.

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

232 VP 1985–87/893.

233 VP 1987–89/907–9, 925–7.

234 VP 1987–89/1055.

235 VP 1990–92/1645–54.

236 VP 1993–95/1803–4.

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

238 VP 1998–2001/1784.

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

240 VP 1968–69/230.

241 Division name changed to Ballarat in 1977.

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.

The Speaker stated that, as it would be impossible to recall all relevant copies of Hansard and the Votes and Proceedings, the incident would be expunged from the record kept by the Clerk of the House.<sup>242</sup>

## MOTIONS OF NO CONFIDENCE AND CENSURE

### The Government

Perhaps the most crucial motions considered by the House of Representatives are those which express censure of or no confidence in a Government,<sup>243</sup> as it is an essential tenet of the Westminster system that the Government must possess the confidence of the lower (representative) House. By convention, loss of the confidence of the House normally requires the Government to resign in favour of an alternative Government or to advise a dissolution of the House of Representatives. The importance of such motions or amendments is recognised by the rule that any motion of which notice has been given, or amendment,<sup>244</sup> which expresses censure of or no confidence in the Government, and is accepted by a Minister as a motion or amendment of censure or no confidence, takes precedence of all other business until disposed of.<sup>245</sup> 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.<sup>246</sup>

A notice of motion not accepted by a Minister in the terms of standing order 48 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 immediately or at an early stage, such a motion does not attract the increased speaking times of an accepted censure or no confidence motion.<sup>247</sup> The Government may not accept a notice as a no confidence motion immediately, but it may be accepted on the next sitting day<sup>248</sup> or some future day,<sup>249</sup> after which it takes precedence until disposed of.

The importance with which no 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.<sup>250</sup> Also, it was often the case in the past that the Senate remained adjourned while the Government was under challenge in this way in the House.<sup>251</sup> However, the importance of these motions, from both

242 VP 1914–17/181; H.R. Deb. (29.4.15) 2748–9.

243 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’.

244 VP 1970–72/445–6.

245 S.O. 48. The acceptance is by way of a Minister’s formal statement to the House, for example, ‘I inform the House that I accept the notice of motion as a motion of censure of the Government for the purpose of standing order 48’, H.R. Deb. (19.3.85) 461.

246 S.O. 1.

247 NP 14 (17.9.74) 1128. For further discussion of the time for moving see Ch. on ‘Order of business and the sitting day’.

248 VP 1974–75/61.

249 VP 1974–75/167.

250 VP 1946–48/250.

251 See *Odgers*, 6th edn, pp. 967–8.

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 Prime Minister or Ministers, rather than of the Government).<sup>252</sup> 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 censure of or no confidence in the Government, usually for certain specified acts or omissions. A no confidence motion, however, does not always contain reasons in its terms.<sup>253</sup>
- By defeating an issue central to government policy or rejecting a legislative measure proposed by the Government, the acceptance of which the Government has declared to be of vital importance. Conversely, a vote by the House agreeing to a particular legislative measure or provision contrary to the advice and consent of the Government could similarly be regarded as a matter of confidence. Following defeat a Government may choose to resign, as in April and August 1904, 1929 and 1941 (*see 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 . . .<sup>254</sup>

What a Government will treat as a matter of sufficient importance to demand resignation or dissolution is, primarily, a question for the Government. The Opposition can always test the opinion of the House by a vote of no confidence. No Government [in the United Kingdom] since 1832 has failed to regard such a motion, if carried, as decisive. A House whose opinion was rejected has always at hand the ultimate remedy of the refusal of supply.<sup>255</sup>

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. A motion of confidence could also be used pre-emptively—for example, 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.<sup>256</sup>

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

252 An average over the last ten years of about six per year (not including motions directed at the Chair, the Opposition or private Members). The most recent occasion of a motion being accepted under standing order 48 was in 1985. VP 1985–87/81; H.R. Deb. (19.3.85) 461.

253 VP 1970–72/471.

254 Jennings, *Cabinet government*, p. 493.

255 Jennings, *Cabinet government*, p. 495.

256 VP 1974–75/987–90.

drop the bill.<sup>257</sup> The same Government also decided not to proceed with the Papua (British Papua New Guinea) Bill after the Government was defeated on certain amendments.<sup>258</sup> Government defeats on tariff matters were not uncommon during this period<sup>259</sup> and in 1904 the Watson Government suffered other defeats to its conciliation and arbitration legislation prior to the defeat that led to its resignation.<sup>260</sup>

It has been claimed that the loss of control of the business of the House is a matter over which Governments should resign. In 1908 Prime Minister Deakin resigned when he accepted that any amendment to a motion to alter the hour of 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’.<sup>261</sup> During 1962 and 1963, when the Menzies Government had a floor majority of one, it suffered a number of defeats<sup>262</sup> and, although it did not resign, its precarious majority was a factor which led to the early dissolution of the House.<sup>263</sup>

A motion (or amendment) expressing censure of the Government, although not seen in the same light as one expressing no 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.<sup>264</sup>

On no occasion has a direct vote of censure of or no confidence in 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.<sup>265</sup>
- Watson Ministry, 12 August 1904—The Government resigned following its defeat 34:36 on an amendment to its motion that the Commonwealth Conciliation and Arbitration Bill (which it inherited from the previous Government and carried through the committee stage) be recommitted for consideration of certain clauses and a schedule.<sup>266</sup>

257 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.

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

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

260 VP 1904/279, 280, 283, 287.

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

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

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

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

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

266 VP 1904/147, 149.

- 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’).<sup>267</sup>
- 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.<sup>268</sup>
- 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.<sup>269</sup>
- 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.<sup>270</sup>
- 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.<sup>271</sup>
- 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.<sup>272</sup>

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.<sup>273</sup>
- The Hughes Ministry resigned in January 1918 following the defeat of its proposals in the second conscription plebiscite in December 1917. Prime Minister Hughes gave the Governor-General no advice as to what should be done and after seeking advice from representatives of all sections of the House the Governor-General commissioned Hughes to form another Ministry.<sup>274</sup>
- In 1921 the Hughes Government was defeated on a motion to adjourn the House to discuss an urgent matter of definite public importance. The 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.<sup>275</sup>

267 VP 1905/7, 9.

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

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

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

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

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

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

274 VP 1917–19/157–8.

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

## Prime Minister and other Ministers

From time to time a specific motion of censure of or no confidence in a particular Minister or Ministers may be moved by the Opposition. The first case occurred in 1941, but the motion lapsed for the want of a seconder.<sup>276</sup> Such motions have become comparatively frequent in recent years,<sup>277</sup> often being directed at the Prime Minister. While the standing orders provide that a motion of censure of or no confidence in the Government may attract precedence over all other business if it is accepted by a Minister as a censure or no confidence motion, there is no similar provision in respect of a motion of censure of or no confidence in 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 immediately.<sup>278</sup> It is common for Members, instead of lodging notices of such motions, to move to suspend standing orders to enable them to be moved immediately,<sup>279</sup> or for the substantive motion to be moved by leave.<sup>280</sup> A motion of censure of a Minister has been initiated by government action—the Leader of the House moving to suspend so much of standing orders as would prevent a shadow minister being compelled to move a motion of censure of the Minister ‘in place of the innuendo and imputation he is attempting to make by means of questions without notice’.<sup>281</sup>

A vote against the Prime Minister would have serious consequences for the Government. If the House expressed no 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 censure of or no confidence in a Prime Minister has been successful was on 11 November 1975, when, following the dismissal of the Whitlam Government, a motion of no 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.<sup>282</sup>

No motion of censure of or no confidence in 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.<sup>283</sup>

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

277 Almost all censure motions.

278 E.g. VP 1987–89/461.

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

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

281 The resultant censure motion was amended to censure the shadow minister and agreed to, VP 2002–04/914.

282 For details of the events of 11.11.75 see Ch. on ‘Disagreements between the Houses’.

283 For a summary of cases see ‘Cessation of ministerial office’ in Ch. on ‘House, Government and Opposition’.

If a motion of no 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.

A motion of lack of confidence in a Senate Minister has been moved in the House, and negated.<sup>284</sup> Motions have been moved expressing no confidence in, or censure of, both the Prime Minister and another Minister.<sup>285</sup>

### Censure of Minister or Government by Senate

Once rare,<sup>286</sup> 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.<sup>287</sup> In 1974 a motion was moved in the Senate that the Minister for Foreign Affairs (Senator Willesee) was 'deserving of censure and ought to resign' because of three separate issues. The question was divided and the motion as it related to one of the issues was agreed to.<sup>288</sup> 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 several such motions. Apart from motions censuring Senate Ministers, these have included motions directed at House Ministers,<sup>289</sup> House Ministers together with the Senate Ministers representing them in the Senate,<sup>290</sup> the Prime Minister,<sup>291</sup> and the Government.<sup>292</sup> 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.<sup>293</sup>

### 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.<sup>294</sup> A motion has been agreed to censuring the Leader of the National Party, then in opposition,

284 VP 1968-69/150-1.

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

286 *Odgers*, 6th edn, p. 967; 11th edn, p. 457.

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

288 J 1974-75/195-7.

289 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).

290 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).

291 J 1990-92/2965, 2966-7 (for 'contemptuous abuse of the Senate'); J 2002-04/216 (for not taking certain action in relation to a Senator, who was also censured), 2463 (for 'misleading the Australian Parliament and the Australian people').

292 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).

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

294 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.

for conduct unworthy of a Member.<sup>295</sup> On a further occasion a motion was put to the House condemning the Leader of the National Party for reflecting on the Speaker, but the motion was withdrawn, by leave, after he had apologised for and withdrawn his remarks.<sup>296</sup> On a number of occasions a motion of censure of the Leader of the Opposition, or an amendment expressing censure in the form of an alternative proposition, has been agreed to.<sup>297</sup>

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'.<sup>298</sup> A private Senator has also been censured by the House for 'failing to observe reasonable standards of behaviour . . .'.<sup>299</sup>

Whilst there are precedents for amendments expressing censure of private Members,<sup>300</sup> 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.<sup>301</sup>

### Censure of the Opposition

The House has agreed to a motion censuring the Opposition collectively,<sup>302</sup> and on other occasions motions of censure directed at the Prime Minister or another Minister have been amended to become motions censuring,<sup>303</sup> expressing concern over,<sup>304</sup> or condemning<sup>305</sup> the Opposition. Again, such motions and amendments are not consistent with the traditional parliamentary convention noted in the preceding section, and 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. 293).

295 VP 1983–84/475.

296 VP 1985–87/1101–2.

297 E.g. VP 1998–2001/2424–8 (motion), 2490–92 (amendment), 2517–20 (motion); VP 2002–04/76–8, 142–6 (amendments).

298 VP 1993–95/2011–12.

299 VP 1996–98/2772–4.

300 Motions censuring Ministers amended to censure opposition Members (and then agreed to), VP 1998–2001/957–63; VP 2002–04/914–7.

301 *May*, 23rd edn, pp. 386–7.

302 VP 1990–92/692–3.

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

304 VP 1987–89/1651–4.

305 VP 1990–92/1701–3.

## 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.<sup>306</sup>

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

- an Address to a former Governor-General on his departure from Australia was moved and agreed to; this should have been more properly termed a resolution;<sup>307</sup>
- an Address of welcome from the Parliament in connection with the visit of an American fleet to Australia; the Speaker presented 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;<sup>308</sup> and
- the terms of an Address of congratulations from the Parliament to the Lieutenant-Governor, Legislature and people of the Isle of Man on the occasion of the Millennium of the Tynwald was announced by the Speaker; the Address had not been considered by the House.<sup>309</sup>

With the exception of the Address in Reply,<sup>310</sup> an Address to the Sovereign or Governor-General is moved, except in cases of urgency, after notice in the usual manner,<sup>311</sup> but Addresses of congratulation or condolence to members of the Royal Family may be moved by a Minister without notice.<sup>312</sup> An Address to the Governor-General has been moved as an amendment to a motion to print papers.<sup>313</sup>

### To the Sovereign

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

- the coronation of the Sovereign and other matters concerning the Royal Family;<sup>314</sup>
- the cessation of wartime hostilities;<sup>315</sup>
- praying that the Sovereign give directions that a Mace be presented by and on behalf of the Parliament to another legislature;<sup>316</sup> and
- on the subject of home rule for Ireland.<sup>317</sup>

306 S.O.s 267–70.

307 VP 1908/5.

308 VP 1908/3–4.

309 VP 1978–80/930.

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

311 S.O. 267(a).

312 S.O. 267(b).

313 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.

314 VP 1901–02/439; VP 1910/37–8; VP 1911/2 (joint Address); VP 1934–37/189 (joint Address); VP 1937/3 (joint Address); VP 1946–48/406 (joint Address); VP 1948–49/157; VP 1960–61/2 (joint Address); VP 1964–66/33 (joint Address); VP 1970–72/1159; VP 1974–75/9; VP 1978–80/959; VP 1996–98/1903; VP 2002–04/10, 157, 240, 326.

315 VP 1917–19/357; VP 1945–46/221.

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

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

The House and Senate have often agreed to joint Addresses to the Sovereign, the Addresses being drafted in the form of joint Addresses before being considered by each House separately and no message passing between the Houses requesting concurrence.<sup>318</sup>

### To members of the Royal Family

On three occasions Addresses of welcome have been presented to members of the Royal Family.<sup>319</sup>

### To the Governor-General

Apart from the Address in Reply, Addresses have been presented to Governors-General on their departure from the Commonwealth<sup>320</sup> and requesting that the Governor-General forward to the King, for communication to the President of the United States, a resolution of sympathy following the assassination of President McKinley.<sup>321</sup>

On two occasions the House has ordered that resolutions of the House be forwarded by Address to the Governor-General.<sup>322</sup> On neither occasion did the House consider the Address as such, nor were replies from the Governor-General announced to the House.

The Constitution and various Commonwealth statutes 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);<sup>323</sup>
- 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 otherwise concerning the Sovereign or Royal Family;<sup>324</sup>
- expressing the House's determination that World War I continue to a victorious end;<sup>325</sup>
- thanking the Sovereign for the gift of despatch boxes;<sup>326</sup>
- thanking the Sovereign for his message on the occasion of the establishment of the seat of Government in Canberra;<sup>327</sup> and

318 VP 1978–80/319; J 1978–80/265.

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

320 VP 1903/183; VP 1908/5.

321 VP 1901–02/161.

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

323 For Parliamentary Service Commissioner *see* p. 326.

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

325 VP 1914–17/315.

326 VP 1926–28/349.

327 VP 1926–28/348.

- expressing congratulations on the 50th anniversary of Her Majesty's coronation.<sup>328</sup>

On occasions when Parliament has not been meeting, messages have been sent to the Sovereign on the Sovereign's accession to the throne and in respect of the death of the Sovereign's predecessor.<sup>329</sup>

Resolutions have been forwarded to the Governor-General:

- on the death of a member of his family;<sup>330</sup>
- requesting him to summon the first meeting of the 10th Parliament at Canberra,<sup>331</sup> and
- relating to arrangements for the opening of future sessions of the Parliament.<sup>332</sup>

## Presentation of Addresses

Addresses to the Sovereign or members of the Royal Family are transmitted by the Speaker to the Governor-General (usually by letter) with the request that they be sent for presentation.<sup>333</sup> Unless the House otherwise orders, Addresses to the Governor-General are presented by the Speaker.<sup>334</sup> When an Address is ordered to be presented by the whole House, the Speaker proceeds with Members to a place appointed by the Governor-General and reads the Address to the Governor-General. The standing orders provide that the Members who moved and seconded the Address stand on the left hand side of the Speaker.<sup>335</sup> In practice, they have stood behind the Speaker.

The Address to the King on the cessation of hostilities at the end of World War I was presented to the Governor-General on the steps of Parliament House by the Speaker, accompanied by Members.<sup>336</sup> The Speaker has personally presented Addresses to members of the Royal Family.<sup>337</sup> On the occasion of a joint Address to King George V on the 25th anniversary of his accession to the throne, the Governor-General suggested that the Prime Minister (at that time in the United Kingdom) hand the Address to the King. The Speaker agreed to the proposal, assuming the suggestion would meet with the concurrence of Members.<sup>338</sup>

## Reply

The Governor-General's answer to any Address presented by the whole House must be reported by the Speaker.<sup>339</sup> A reply from the Sovereign to any Address is also announced to the House by the Speaker. The reply is transmitted to the Speaker through the Governor-General.<sup>340</sup>

328 VP 2002–2004/922.

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

330 VP 1940–43/477; VP 1974–75/153.

331 VP 1923–24/74.

332 VP 1987–89/433, 445.

333 S.O. 268.

334 S.O. 269(a).

335 S.O. 269(b).

336 VP 1917–19/359.

337 VP 1926–28/354; VP 1934–37/13.

338 VP 1934–37/239.

339 S.O. 270; VP 1978–80/87; VP 1998–2001/221.

340 VP 1978–80/327, 981.

## Address to the Presiding Officers

The Presiding Officers may remove the Parliamentary Service Commissioner from office if each House presents an Address praying for removal.<sup>341</sup>

## MOTIONS OF CONDOLENCE

It is the practice of the House to move a motion of condolence on the death of the Governor-General or a sitting Member or Senator.<sup>342</sup> The practice is also extended to those who formerly held the following offices:

- Governor-General
- Prime Minister
- Speaker of the House
- President of the Senate<sup>343</sup>
- Leader of the Opposition
- Leader of a 'recognised' political party
- Leader of the Government in the Senate
- Leader of the Opposition in the Senate.

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

- the person ceased to be a Senator or Member during the current Parliament;
- the person 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.<sup>344</sup> This practice has sometimes been criticised, on the ground that the House should show more recognition of the services of a former Member or Senator.<sup>345</sup> 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,<sup>346</sup> 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.<sup>347</sup>

In 2004 the practice commenced of presenting documents notifying the deaths of persons in order to facilitate motions to take note which could be referred to the Main Committee for later debate. During such debates conventions applying to a condolence motion were

341 *Parliamentary Service Act 1999*, s. 45.

342 See Ch. on 'Members'.

343 The death of a former Senate President has been announced but, at the request of the deceased, no condolence motion moved, VP 1993–95/1618.

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

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

346 VP 1980–81/10.

347 VP 1990–92/481.

observed—no time limits were placed on speeches and Members stood in silence when the debates were adjourned.<sup>348</sup>

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.<sup>349</sup>

In 1920, at the initiative of a private Member, Members stood in silence for one minute in memory of members of the Australian Imperial Force who fell in World War I.<sup>350</sup> On the 80th anniversary of Remembrance Day on 11 November 1998, proceedings were interrupted by the Chair at 11 a.m. and Members stood for a minute's silence.<sup>351</sup> On another Remembrance Day, pursuant to a motion moved by a private Member, the House was suspended for two minutes at 11 a.m., with Members standing in silence in commemoration.<sup>352</sup>

In 2002, on a motion in remembrance of the terrorist attacks in the United States on 11 September 2001 being agreed to, Members rising in silence, at the Speaker's invitation people in the gallery also rose in their places as a mark of respect.<sup>353</sup>

A motion of condolence, by practice of the House, is moved without notice. It is usually moved by the Prime Minister and seconded by the Leader of the Opposition, and is ordinarily given precedence.<sup>354</sup> Time limits do not apply, although individual speeches are normally quite brief. Debate on a condolence motion may be adjourned after a small number of Members (for example, party leaders) have spoken and resumed at a later hour the same day.<sup>355</sup> 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 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.

348 E.g. Copy of Speaker's announcement of the death of a former Member, VP 2002–04/1401, 1428; H.R. Deb. (12.02.2004) 24695–716. Copy of a Tasmanian Government Press release paying tribute to former Premier, VP 2002–04/1713, 1729. Copy of the condolence motion moved (and passed) on the death of former Speaker, VP 2002–04/1763.

349 VP 1968–69/43.

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

351 VP 1998–2001/22. A Member then read the ode, H.R. Deb. (11.11.98) 69.

352 VP 1990–93/1877, 1878.

353 VP 2002–04/385; H.R. Deb. (29.8.2002) 6190.

354 S.O. 49; *and see* Ch. on 'Order of business and the sitting day'.

355 E.g. VP 1993–95/1345, 1347; VP 2002–04/1249, 1252 (Members stood as mark of respect when debate was adjourned).

## MOTIONS OF THANKS

As with motions of condolence, precedence is ordinarily given to a motion of thanks of the House.<sup>356</sup> Motions of thanks (formerly called votes of thanks) have been comparatively rare and are confined to the following cases:

- to members of the Armed Forces and others following World Wars I and II,<sup>357</sup>
- recording the gratitude of the House to the International Health Board (Rockefeller Institute) for assistance in connection with the public health of the Commonwealth;<sup>358</sup>
- to the United Kingdom Branch of the Empire Parliamentary Association in relation to its offer to present a Speaker's Chair;<sup>359</sup>
- to presenters of gifts to Australia's new Parliament House; and
- to persons and organisations associated with the planning and construction of the new Parliament House;<sup>360</sup>
- on the 60th anniversary of VE day, honouring and remembering Australians who fought in the war and gave their lives, and recording the gratitude of the House for 60 years of relative peace.<sup>361</sup>

Motions, not being motions of thanks, but containing sentiments of congratulation, appreciation or gratitude, have in practice received similar precedence. Such motions have for the most part been moved by leave, although they have also been moved following a motion being agreed to for the suspension of standing orders.<sup>362</sup> Contrary to the usual practice of such motions being moved by the Prime Minister or a Minister, a case has occurred of such a motion being moved by an opposition leader.<sup>363</sup>

On recent occasions on the retirement of Clerks of the House motions 'of appreciation' have been moved without notice or leave of the House and agreed to.<sup>364</sup>

## MOTION TO DISCUSS MATTER OF SPECIAL INTEREST

Standing order 50 provides that at any time when other business is not before the House a Minister may state to the House a proposal to discuss a matter of special interest in preference to moving a specific motion. The Minister must then move a motion specifying the time to be allotted to the debate. The Minister then moves 'That [stating subject matter] be considered by the House'. The motion may be withdrawn, without leave, by a Minister at the expiration of the time allotted to the debate. A matter of special interest has been

356 S.O. 49.

357 VP 1920–21/137; VP 1945–46/222. On the former occasion the motion of thanks was presented by the Speaker, accompanied by Members, to representatives of the services in Queen's Hall (Melbourne), VP 1920–21/184.

358 VP 1923–24/197.

359 VP 1925/67.

360 VP 1987–89/621.

361 VP 2004–05/285.

362 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).

363 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.

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

discussed by the House on only one occasion, when it was discussed early in the order of business prior to the giving of notices.<sup>365</sup>

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’).

## MOTIONS RELATING TO THE STANDING ORDERS

The standing orders are the rules of the House made under the power granted by section 50 of the Constitution. They are of continuing effect and apply until changed by the House.<sup>366</sup> Standing orders are made and amended, and may be suspended, by resolution of the House. Standing orders intended to apply only to the current Parliament or for a lesser period—for example, for the remainder of a year—are known as sessional orders.

The operation of a standing order can also, in effect, be suspended ‘by leave of the House’ without any motion being moved. While the subject of leave of the House does not fit entirely comfortably under the heading of ‘motions’, it is most appropriately covered here together with the suspension of standing orders, as the two procedures are so closely connected.

### Motions to make or amend standing or sessional orders

Standing orders are made and amended by motion moved on notice in the usual way; no special procedures are involved. At the start of a new Parliament, for example, standing order 215 is commonly amended to adjust the names and composition of the general purpose standing committees. Other changes and new standing orders are often made following recommendation by the Standing Committee on Procedure, and may be introduced for a trial period as sessional orders.

The Clerk has the authority to correct clerical errors or inconsistencies in wording in the standing orders, but not so as to cause a change to the meaning of any standing order.<sup>367</sup> In practice, the Clerk would only act on such a matter after consultation—for example, with the Speaker, the Leader of the House, the Manager of Opposition Business and the Procedure Committee.

### Leave of the House

The House or Main Committee may grant leave—that is, give its unanimous permission—to a Member to act in a manner not expressly provided for in, or contrary to, the standing orders.<sup>368</sup> A Minister or Member may ask for leave, or the Chair, sensing the feeling of the House or the Committee, may initiate the proposal; in either case the Chair seeks the agreement of Members. Leave may be granted only if no Member present objects.

Leave may be sought for a variety of purposes. Common examples are to enable the next stage of a bill to be taken immediately; to proceed immediately from the second reading of a bill to the third reading (that is, to bypass the consideration in detail stage);

<sup>365</sup> VP 1974–75/815–17; H.R. Deb. (9.7.75) 3556.

<sup>366</sup> S.O. 3(a).

<sup>367</sup> VP 2004–05/57.

<sup>368</sup> S.O. 63.

during the consideration in detail stage to take a bill as a whole or in parts together; to move a motion without notice; or to enable statements, including ministerial statements, to be made to the House. Leave is often sought to present papers to the House—while there is no provision for private Members to table papers, they may do so if they obtain leave of the House, and Ministers too require leave in some circumstances.

### Motion to suspend standing or sessional orders

Standing order 47 provides that:

- (a) A Member may move, with or without notice, the suspension of any standing or other order of the House.
- (b) If a suspension motion is moved on notice, it shall appear on the Notice Paper and may be carried by a majority of votes.
- (c) If a suspension motion is moved without notice it:
  - (i) must be relevant to any business under discussion and seconded; and
  - (ii) can be carried only by an absolute majority of Members.
- (d) Any suspension of orders shall be limited to the particular purpose of the suspension.

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 or reduce time limits for speeches;
- enable a motion to be moved without notice; and
- enable a particular item of business to be called on immediately.

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.<sup>369</sup>

The House may, of course, suspend standing or sessional orders in relation to proceedings that may take place later in the Main Committee.<sup>370</sup>

As with other motions, a motion to suspend standing or sessional orders requires a seconder, with the exception that a seconder is not required for a motion moved by a Minister (or Parliamentary Secretary) or the Chief Government Whip.<sup>371</sup> A motion may relate to matters not yet before the House<sup>372</sup> and the standing orders may be suspended for more than one purpose.<sup>373</sup> While other business is before the House, a motion to suspend standing orders will not be received by the Chair unless the substance of the motion is relevant to the item of business. If it is not relevant to the item of business, it cannot be moved until the item is disposed of—that is, between items of business.<sup>374</sup> A particular

<sup>369</sup> VP 1970–72/827; H.R. Deb. (9.11.71) 3181.

<sup>370</sup> VP 1954–55/286 (committee of the whole); VP 1996–98/551.

<sup>371</sup> S.O. 116. On one occasion a motion not seconded was agreed to by the House and the Speaker later stated that he was satisfied that the will of the House had been discharged, H.R. Deb. (27.10.77) 2557–8; H.R. Deb. (1.11.77) 2593–4.

<sup>372</sup> H.R. Deb. (3.11.15) 7131; H.R. Deb. (10.11.15) 7406–7.

<sup>373</sup> H.R. Deb. (11.8.04) 4149.

<sup>374</sup> VP 1983–84/543; H. R. Deb. (27.3.84) 803.

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. Such a motion appears on the Notice Paper and may be carried by a majority of those voting.<sup>375</sup> A more regular use is made of notices at times when the Government has a small majority, in order to avoid the requirement that a motion moved without notice must be carried by an absolute majority (*and see* contingent notices, p. 290.)

### *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.<sup>376</sup>

### *Without notice*

If a suspension motion is moved without notice it must be relevant to any business under discussion and seconded, and can be carried only by an absolute majority of Members.<sup>377</sup> If a Member wishes to move for the suspension of standing orders without notice, the Member—

- must first receive the call from the Chair; and
- may not interrupt a Member who is speaking.<sup>378</sup>

Such a motion can be moved during consideration of an item of business only if it is relevant to that item of business.<sup>379</sup> If the motion is not relevant to the item of business, it must be moved after the item is disposed of—that is, between items of business.<sup>380</sup>

A motion has been ruled out of order because:

- it contravened the same motion rule;<sup>381</sup>
- there were no standing orders relating to the purpose for which the motion was proposed;<sup>382</sup>

375 S.O. 47(b).

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

377 S.O. 47(c).

378 S.O. 66.

379 In such cases, until the question on the suspension motion has been proposed by the Chair, it can be superseded by the closure of the question currently before the House. E.g. H.R. Deb. (12.8.2004) 33002–3.

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

381 Cases described at p. 295.

382 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;<sup>383</sup>
- it was unrelated to the question before the House;<sup>384</sup>
- it covered the same subject on which the House had just voted to adjourn debate,<sup>385</sup> and
- at the time the Member sought to move it another Member was speaking to a motion he had moved.<sup>386</sup>

If standing orders have been suspended in order to permit certain action, a further motion to suspend standing orders for another unrelated purpose may not be moved until the action which was the subject of the first motion has been completed.<sup>387</sup> It is not in order to move a suspension of standing orders to vary the order of business when a motion to set the order of business has only just been agreed to.<sup>388</sup>

A motion to suspend standing orders should be moved before 9.30 p.m., as the motion itself constitutes new business under the terms of standing order 33.<sup>389</sup> However, a motion moved, by leave (and so by unanimous consent of the House), to enable certain orders of the day to be called on after the specified time has been used and is less objectionable.<sup>390</sup>

### *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, the relevant standing order (now S.O. 47) has itself been suspended except when a motion was moved pursuant to the standing order by a Minister.<sup>391</sup> On other occasions a notice of motion to suspend the standing order in this way has remained on the Notice Paper but not in fact been moved<sup>392</sup>—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 a time limit of 25 minutes on the whole debate on such a motion.<sup>393</sup> The House adopted the recommendation.<sup>394</sup> The committee did not attempt to prevent such a motion being moved by a private Member, regard being had to

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

384 H.R. Deb. (28–29.10.70) 2969.

385 VP 1977/115.

386 VP 1993–95/2345.

387 H.R. Deb. (4.12.2003) 23779.

388 VP 2002–04/969. For an acceptable form of motion later in the sitting *see* VP 2002–04/973.

389 *See* Ch. on ‘Order of business and the sitting day’.

390 VP 1978–80/1416.

391 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)—on 19 August 1993, the period covered was ‘all sittings up to and including Thursday, 28 October 1993’; VP 1996–98/1038–40.

392 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; H.R. Deb. (18.6.2003) 16899; H.R. Deb. (16.3.2005) 98—for remainder of period of sittings.

393 PP 20 (1972) 7–8.

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

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.<sup>395</sup> 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 47 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 or by leave of the House, the time limits are the same as for any other debate not otherwise provided for by the standing orders: whole debate without limitation of time; mover 20 minutes; any other Member 15 minutes.<sup>396</sup> An amendment may be moved to a motion to suspend standing orders.<sup>397</sup>

A Member debating a motion to suspend standing orders may not dwell on the subject matter which is the object of the suspension. The Chair has consistently ruled that Members may not use debate on a motion to suspend standing orders as a means of putting before the House, or canvassing, matters outside the question as to whether or not standing orders should be suspended.<sup>398</sup> 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, and has been defined as follows:

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.<sup>399</sup>

In a House of 150 Members an absolute majority is 76 Members.

Any motion moved without notice and without leave to suspend standing orders must be carried by an absolute majority of Members. If such a motion is agreed to on the voices, the chair being satisfied that an absolute majority of Members is present, the record notes that the question passed ‘with the concurrence of an absolute majority’.<sup>400</sup> If necessary the bells may be rung to bring sufficient Members into the Chamber,<sup>401</sup> although the House does not

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

396 S.O. 1.

397 E.g. VP 1970–72/544; VP 2002–04/793.

398 H.R. Deb. (22.7.21) 10517–19.

399 Advice of Attorney-General, dated 3 April 1962 (further cited at page 334).

400 E.g. VP 1968–69/499; VP 1971/634.

401 E.g. H.R. Deb. (4.4.1974) 1070–71, VP 1974/85.

proceed to a formal recorded vote as it does for unopposed third readings of constitution alteration bills, where the absolute majority is a constitutional requirement.

#### CONSTITUTIONAL VALIDITY

In 1935 the Solicitor-General advised that the absolute majority requirement for the suspension of standing orders appeared to be invalid:

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.<sup>402</sup>

The provision was considered by the Standing Orders Committee during the 1962 revision of the standing orders. 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, referring to what is now standing order 47(c), advised:

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.<sup>403</sup>

Senate standing orders have a similar requirement for an absolute majority for motions without notice to suspend standing orders (Senate S.O. 209), and also for motions to rescind an order of the Senate (Senate S.O. 87). As in the House, the Senate has accepted that such standing orders are in force, despite doubts raised in the past as to their constitutional validity.<sup>404</sup>

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

403 In a letter to the Treasurer, dated 3 April 1962.

404 *Odgers*, 11th edn, pp. 219–20.