

Memorandum to Procedure Committee from the Clerk of the House

Scope of this note

1. As we discussed last week your Committee is understandably taking a close interest in the changes to Chamber and Committee procedure and practice that might become necessary because of the Covid-19 pandemic. I thought it would be helpful to follow up with a short memorandum setting out some of the options available to the House in these circumstances.
2. Mr Speaker has already replied to your letter of 11 March relating to divisions, extension of proxy voting and pairing. He sets out important principles that need to be applied, in particular the fact that the House “will want to know that any changes made serve the purpose intended, that is to mitigate the risk of coronavirus being spread among members of the parliamentary community, and others thereafter.” Decisions therefore need to be made in consultation with the Government and Public Health England (PHE) “to ensure that we have the best and most up to date advice and then we act on the basis of that advice.”
3. In this memorandum I draw the Committee’s attention to a wider range of options directly relating to Chamber and Committee proceedings. Access for the public to view proceedings (such as from the galleries) was the subject of a further announcement from both Speakers on Friday and I will not cover that issue (it may of course be subject to further review).
4. As a general principle your Committee will want to bear in mind that there are many adjustments that could be made to the way Members work which could be achieved through political agreement (and in some circumstances the discretion of the Speaker and Deputy Speakers) rather than by motions on the floor of the House. Other options would be motions either to change (for example) dates, times and place of sitting, or amend Standing Orders themselves. As the Speaker put it in his letter, many relevant proposals “are more properly matters for the House or the usual channels.”
5. In terms of all services provided by Chamber-facing and Committee teams, your Committee will understand that it may become necessary to adjust the services we provide if significant numbers of staff are either unwell or needing to work at home. Some of these could themselves require Standing Orders to be changed (for example limiting the number of written questions that a Member can table on a particular day, changes to the arrangements for EDMs or in some circumstances office opening hours). Others (for example, having certain documents only available in digital form) could be done through management decision, having consulted your Committee, the Administration Committee, the Commission or Mr Speaker as appropriate. In circumstances of increased staff absence, we may need to liaise with business managers in making tough prioritisation decisions across the range of Chamber and Committee business.
6. As the situation evolves I am happy to return for more discussions. As the Committee will be aware, these issues are currently being discussed actively with the Commission, our colleagues in the House of Lords, Members, other parts of the House Service and Digital Service and the Government.

Potential changes to Chamber business unlikely to require changes to Standing Orders

7. In the event that advice from PHE places emphasis on measures such as social distancing it may be possible, informally, to find an accommodation by agreement between the parties that minimises prolonged periods of close contact between Members (and House staff). Measures could include agreement on what business will be conducted and postponing certain non-essential business. Similar arrangements could apply in Westminster Hall. If it were thought beneficial to reduce radically the number of Members present in the Chamber, assuming there was an agreement between the parties, a proportion representing the current party balance in the House could participate in the Chamber on a given day or for a given debate,
8. There are also measures that could be put in place by the Speaker and Deputies to ensure that Members' requirements to be present in the Chamber or Westminster Hall are minimised, for example, the Speaker/Deputies agreeing exceptions to the requirement for Members to return to the Chamber for windups and the convention on how long Members stay in the chamber around their speech, or not calling supplementaries during a Question Time.
9. Having fewer Members around the Chamber could require a change in the way that the House makes decisions. Again, this could be partly resolved through informal cooperation and political agreement. Some (or the majority of) decisions could be decided on voices—rather than by divisions. Pairing, a related issue, is (as May notes) an issue for individual Members or arranged by the political parties. Possible changes to division logistics are covered in the Speaker's letter. Failing that, attendance in the Chamber could be avoided with the adapted use of nodding through (although, under the current interpretation of the procedure, Members would still be required to be on the estate).
10. Both the Chamber and Westminster Hall are also used by a range of other people. A Clerk is required to produce an authoritative record of proceedings and to provide procedural advice. A Serjeant is required to maintain order and coordinate a response to any incident affecting the Chamber. Doorkeepers pass messages to and from Members. Broadcasters and Hansard reporters all require access to areas directly around the Chamber. While these ancillary roles are required, it may be worth considering the number and frequency of turnover (for example, it could be that only one Clerk should sit at the table at any time, and that their 'shifts' could be lengthened to reduce the number of times contact is made with those outside the Chamber). This will be a matter for discussion between me (as Head of the House Service), other members of the Commons Executive Board and Mr Speaker.

Potential changes to Chamber business likely to require changes to Standing Orders

11. The majority of proceedings in the Chamber require the relevant Member to be physically present. This may not have to be the case. For example, during oral questions the House of Commons could adapt to the model used by the House of Lords where provision has been made in its Standing Orders for Questions to be asked by one Peer on behalf of another. The current arrangements permitting one Member to present another Members' ballot bill could also be extended (or presentation bills could be introduced by means of a formal book entry). Members could be required to use the "bagging" procedure for public petitions, rather than present them through a speech.

Making decisions

12. The Speaker's letter to your Committee notes that the current proxy voting system "requires a Speaker's certificate and I would need to be very clear about what categories of Members would be included if proxy voting were to be extended in this case. The current system is designed for use by a limited group of identified individuals and could not readily operate in place of pairing, for example." It is also worth noting in this context that, under the existing scheme, proxy votes are declared and counted in the division lobby
13. There are examples from the Commonwealth whereby the Whips operate as proxies for all Members of their Parties, but changes to quorum requirements would be required if this House wished to introduce such a system. Standing Order No. 41 indicates that if fewer than 40 Members had taken part in a division the business under consideration would be stood over. Additionally, there is a requirement under Standing Order No. 37 for any division on a closure motion ("That the question be now put") to be decided with at least 100 Members voting in the affirmative. The current provisions do not allow proxy votes to count toward quorum under S.O. No. 41(1) (Quorum) or S.O. No. 37 (Majority for closure or for proposal of question).
14. Standing Order No. 24 requires not fewer than 40 Members to rise in their place in support to secure an emergency debate, or between 10 and 39 Members to rise to secure a division to determine the question. You may wish to consider whether these arrangements require modification in the event that Member presence is much restricted.

Delegated Legislation

15. Delegated legislation (largely statutory instruments) is normally debated in a Delegated Legislation Committee. For the delegated legislation that needs to be considered and approved, two options present themselves. The first would be to take much more (or all) delegated legislation on the floor of the House. The second would be to reduce the quorum of Delegated Legislation Committees (currently one third of the membership) to three (the same as Westminster Hall).
16. It is also worth noting the important role which the Joint Committee on Statutory Instruments (JCSI) plays in scrutinising delegated legislation on behalf of both Houses. Options for ensured continued committee working are set out below. Applying them to the work of the JCSI would require consultation with the Lords but might be considered a priority.

Changes to Committee business

Motions to enable Committees to work flexibly

17. It is possible that two of the principal formal activities undertaken by select committees—taking oral evidence and making reports to the House—will be made difficult as a result of the long-standing procedural requirement for Members physically be in the Committee room in order to provide the quorum necessary for those activities to happen. A number of possible procedural workarounds are considered below. They are predicated on two assumptions: these workarounds are sub-optimal, procedurally, politically and pragmatically, to the conventional approach and would be time limited; there is both demand for, and staff and other resources available to facilitate, such arrangements—the latter is not a given.

18. Committees are likely to look to make greater use of video-conferencing to take evidence remotely from witnesses, and, as noted below, to allow Members to participate remotely. Steps are being taken to further enhance the House's capacity to hold video conferencing meetings, but there will be a limit to the number of sessions that can be simultaneously supported by both the equipment and the expert staff available. Depending on the appetite of Committees to continue to meet using this technology, Committees may be asked to book specific time slots for evidence sessions that may not correspond precisely to their regular meeting times. Our capacity to organise such meetings will be limited by the fact that for Hansard, Broadcasting and Committee Office colleagues, each meeting is likely to be more labour intensive than a conventional meeting.
19. The House can decide to vary its arrangements in any way it chooses, and circumstances may well dictate innovation in any number of areas. Below I set out two suggestions whereby current procedures could be fairly simply adapted but there may well be other options.

Issue 1: taking oral evidence.

20. Possible workaround: reduce quorum of Committee to one when taking evidence

Temporary Standing Order:

That for the time limits set in this order, for the purposes of taking evidence the quorum of any Committee empowered to take evidence under public business standing orders should be one

21. There would be no procedural bar to Members joining in remotely. In current practice they would currently technically count as witnesses, but would be able to join the questioning. This could be revisited, but it might seem unnecessary to make procedurally significant change without proper consideration when there is a precedented work around.
22. The Chair would constitute the quorum; if the Chair was not available we would expect Committees to have agreed who would be the person in charge beforehand. There are obviously considerable differences between remote and non-remote committee interactions, and sessions would have to be choreographed and structured to accommodate this. The assumption is that the Chair would call a meeting, attended by officials. If the Chair was incapacitated and the Committee had not previously made arrangements to cover his or her absence, the senior member of the Committee could call a meeting.

Issue 2: reporting to the House: Possible solution: Giving power to the Chair

23. The Banking Commission of 2012–13 operated under a number of innovative procedures, including giving enhanced abilities to its Chair and obviating the need for a quorum physically to be present in order to agree reports. It operated under the following terms:

That the Chair may report to the House an order, resolution or Special Report as an order, resolution or Special Report of the Commission which has not been agreed at a meeting of the Commission if he is satisfied that he has consulted all members of the Commission about the terms of the order, resolution or Special Report and that it represents a decision of the majority of the Commission.

24. This would appear largely to address a possible risk that in the absence of such a motion being agreed to by the House there might be legal and procedural uncertainty about whether activities undertaken are formal proceedings. A straightforward adaptation for Committees:

That the Chair of any select Committee appointed under public business standing orders may report to the House an order, resolution or Report as an order, resolution or Report of the Committee which has not been agreed at a meeting of the Commission if satisfied that all members of the Committee have been consulted about the terms of the order, resolution or Report and that it represents a decision of the majority of the Committee.

25. Agreed in this form, the motion would give a Chair the ability to take these steps unilaterally. If that is considered to be giving the Chair too much power, there are options for ensuring agreement to the procedures, or for nullifying them before they are used, for example the Committee could be required to agree them in advance, as follows:

That any select Committee appointed under public business standing orders may agree that its Chair shall have power to report to the House an order, resolution or Report as an order, resolution or Report of the Committee which has not been agreed at a meeting of the Committee if he has consulted all members of the Committee about the terms of the order, resolution or Report and that it represents the majority of the Committee.

26. However, this would require a Committee to agree such provisions under the conventional rules— it is possible to imagine that the provisions might be required after it has stopped being feasible for the Committee to meet as normal. One option for dealing with this would be to add a proviso to the motion that it may be used, subject to the agreement of the committee, including as determined by the process described in this order; i.e. if the Chair used the power to conduct formal proceedings without a physical quorum, the first question to be considered would be whether the Committee agreed. If not, no further use could be made of the powers.
27. An alternative approach would be to specify in the motion that the powers could be used by the Chair unless a specified number of Committee Members signed an EDM asking for the power to be withdrawn. The number specified might be standard across all Committees, or it might be the quorum of the Committee concerned.
28. Time limits for any such motions would be necessary: given current uncertainty this might be done by allowing them to subsist for two months and then be renewed monthly on the authority of the Speaker.

Other changes which may be required

29. The current arrangements for the election by ballot of select committee chairs, the Speaker and Deputy Speakers require Members to be physically present in a specified place between prescribed hours. Some variation of these arrangements might be appropriate if significant numbers of Members were absent.