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Standards, Procedures and Public Appointments Committee

Standards, Procedures and Public Appointments Committee report on a Proxy Voting pilot



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Standards, Procedures and Public Appointments Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) the practice and procedures of the Parliament in relation to its business;
- (b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
- (c) the adoption, amendment and application of any Code of Conduct for members;
- (d) matters relating to public appointments in Scotland; and
- (e) matters relating to the regulation of lobbying.
- (f) matters relating to local government elections, Scottish general elections, implementation of the Referendums (Scotland Act) 2020 and Freedom of Information and open government falling within the responsibility of the Minister for Parliamentary Business.

2. Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.



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Introduction

1. The Standing Orders of the Scottish Parliament do not currently provide for proxy voting.
2. A proxy vote is a vote cast by one person on behalf of another person. A number of legislatures have proxy voting arrangements that allow an elected member to give their vote to a nominated proxy when they are unable to vote in plenary votes for certain response.
3. In our inquiry report on Future Parliamentary Procedures and Practices, we made a number of recommendations about hybrid working practices. These included the recommendation that MSPs should have the option to participate remotely in Chamber and committee business in “situations in which illness, bereavement, caring commitments, travel or weather disruption, or personal commitments inhibit their ability to come to the Parliament.”¹
4. We also concluded that there were “strong arguments about the potential for hybrid arrangements to make the Parliament more inclusive and accessible: developments which accord with the founding principles of the Parliament.” In particular, we believed that continuing hybrid arrangements could be “a means of encouraging a more diverse range of people to stand for election to the Parliament” and provide “the Parliament with the flexibility in the future to offer alternative means of participating in parliamentary business.”²
5. In addition, our report made specific recommendations in relation to proxy voting in the Chamber. These recommendations responded to the evidence that we collected from MSPs, which pointed to certain circumstances in which an MSP might need to step away from the obligations and responsibilities of being an MSP for a period of time due to illness, parental or caring responsibilities or bereavement.
6. This report draws on evidence from our inquiry, the Chamber debate on our inquiry report and further consultation of the Parliamentary Bureau and the Presiding Officer on the key elements of a proxy voting scheme for the Chamber. As Standing Orders allow for the nomination of committee substitutes and for the participation of substitutes in committee meetings in certain circumstances when a Member is absent, the proposed pilot does not extend to committees.

Our inquiry report on Future Parliamentary Procedures and Practices

7. The evidence we gathered from other MSPs for our inquiry report confirmed the value of providing alternative means for MSPs unable to cast their vote personally. A proxy voting scheme was regarded as complementing the voting platform and the informal pairing arrangements reached between some parties. It was seen as an institutional provision that would provide an additional route for MSPs in certain circumstances – for example, in relation to parental leave or illness – to vote.
8. The Parliamentary Bureau considered that the introduction of a system of proxy voting should be further investigated. It noted that “the informal pairing arrangements that are currently in place between the Scottish National Party and the Scottish Conservative and Unionist Party which provide some flexibility in circumstances where Members are not able to vote and that a formal proxy system may provide more certainty than these informal arrangements.”³
9. We heard from the Rt Hon Karen Bradley MP in her capacity as Chairman of the House of Commons Procedure Committee. She told the Committee that:
 - ” “Currently, only one category of MP can apply for a proxy vote, which is those who are taking baby leave. Baby leave is for fathers, mothers, adoptive parents and those who have had a miscarriage. We have tried to mirror the length of parental leave that a new parent would receive as an employee in the public or private sector, which is six months for a mother and two weeks for a father.
 - ” “If someone has a proxy vote for baby leave, there is a provision that states that they are not allowed to participate in the proceedings of the house on the day on which they have that proxy vote, although the committee is looking at that issue, because there have been representations that that is not acceptable.”
10. We noted that in some legislatures during the Covid pandemic, large numbers of proxy votes were provided to party whips or certain individual elected members. Our proposal is specifically to provide an institutional mechanism by which an individual Member, in certain personal circumstances, can ask another Member to vote on their behalf in the Chamber. This would be similar to the system which the House of Commons currently uses, allowing for the Member to give their proxy to a Member of their choice: “someone whom they trust and who perhaps is of the same political persuasion in terms of moral issues.”⁴ We would not wish to see a situation in which large numbers of votes were in the hands of a small number of elected Members. For this reason, we recommend that a Member should be allowed to exercise no more than two proxy votes on behalf of other Members.
11. In our report, we recognised that while informal pairing arrangements between the political parties might mean the absence of an MSP did not impact on the results of parliamentary votes, it remained an informal arrangement and did not provide the MSP with the opportunity to represent their constituents by exercising their vote in Chamber votes. We therefore concluded that there was a value in piloting a proxy voting scheme and that we would consult on “how such a scheme would function

with a view to proposing a temporary rule which would provide for a scheme that would permit Members, in certain defined circumstances including parental leave and long-term illness, to nominate a proxy.”⁵

12. The report also proposed that an evaluation of the pilot be undertaken with a view to proposing any permanent Standing Order rules changes.

The Committee debate

13. Following the publication of its inquiry report, we held a debate in the Chamber on 22 September 2022.⁶
14. The MSPs who spoke in the debate broadly supported our recommendation that a proxy voting pilot should take place.
15. Stephen Kerr MSP indicated his support for proxy voting, particularly in the case of parental leave. He also stated that he believed “the party whips’ offices should not be in charge of allocating proxy votes” and the “member on leave should be the one to choose who will vote for them”.
16. Rhoda Grant MSP referenced the use of the informal pairing system for those who were on maternity leave but noted “a proxy system could work just as well, and it could also be used during sick leave and compassionate leave, when remote voting does not work.”
17. Katy Clark MSP confirmed her support for the proposed pilot of proxy voting and indicated that this should be “particularly for members who are suffering from long-term illness, having an operation or taking maternity leave.” She also believed that the member themselves should choose their proxy.
18. Gillian Mackay MSP asked for bereavement leave to be added to the list of eligible circumstances for a proxy vote as nobody “in the chamber would expect a member to have to be present after the loss of a loved one.” She cautioned that: “we should be aware that caring or parental responsibilities that would stop a member being able to vote might need to be met suddenly, and whatever approach we design should be adaptable to such situations.”
19. Daniel Johnson MSP stated that it was “vital that members are given the ability to do the most fundamental part of our job, which is to vote, while we are not in the Parliament.”

Correspondence

20. Following the debate, we discussed the key elements of a scheme and sought the views of the Parliamentary Bureau and the Presiding Officer. This correspondence is attached at Annexe C. We have been cognisant of the views of the Parliamentary Bureau and the Presiding Officer in preparing the proposal below for a temporary pilot of a proxy voting scheme. In particular, we note that the Presiding Officer has indicated that she is content that it is appropriate to require Members to notify her of their designation of a proxy and of the timescales for which this is required. We also note the Bureau's view that a proxy vote should have the same status as a vote cast in person to avoid a two-tier system and that proxy votes should count for the purposes of super-majorities, absolute majorities and quorum.

Proposal for a temporary pilot of a proxy voting scheme

21. To allow a pilot to take place, we propose that the following Temporary Rule be agreed and that it remain in force until 31 December 2023.
22. The proposed temporary rule provides for a member to arrange for their vote to be cast by another member acting as a proxy in any vote of a meeting of the Parliament or a Committee of the Whole Parliament. It also sets out that the Presiding Officer will issue a proxy voting scheme setting out details of how a proxy vote may be exercised.
23. The temporary rule also sets out that:
 - The Members concerned must comply with the terms of the scheme;
 - There must be a valid proxy in place at the point of voting;
 - A proxy may vote for one or two Members;
 - The proxy vote has the same status as a vote cast by a Member in person for the prevention of doubt; and
 - That the use of a proxy will be recorded in the minutes of a meeting to ensure transparency.

Temporary Rule 5 – Proxy Voting Pilot

1. This Rule applies to any voting at a meeting of the Parliament or of a Committee of the Whole Parliament. It ceases to have effect on 31 December 2023.
2. A member may arrange for their vote to be cast by another member acting as a proxy (a "proxy vote"), but only where —
 - (a) the Presiding Officer has issued a scheme setting out details of how such a proxy vote may be exercised, including the circumstances in which it can be exercised, the designation process, details of how a proxy may be withdrawn and the manner in which a proxy vote is to be cast;
 - (b) the members concerned (which means both the member and the proxy) have complied with the terms of that scheme; and
 - (c) there is a valid proxy in place at the point of voting.
3. A proxy may vote for one or two members.
4. A proxy vote has the same status as a vote cast by a member in person.
5. A member shall vote only once on any question except where the Presiding Officer asks members to cast their vote again under Rule 11.7.3. For the avoidance of doubt, where a member casts their own vote, any proxy vote cast on their behalf shall have no effect.
6. A proxy vote must be clearly indicated as such in the minutes of the meeting of the Parliament or of the Committee of the Whole Parliament, as appropriate.
7. Where provisions contained in this temporary rule are in conflict with other standing order provisions, those in the temporary rule have precedence.

24. If the Parliament agrees the temporary rule and that it should come into effect from early 2023, we would invite the Presiding Officer to develop and issue the scheme in the end of 2022 to provide clarity on the details of how the scheme will function.

Key elements of a proxy voting scheme

25. The following sections of this report set out the key elements that we recommend should be covered in a proxy voting scheme. While some of the elements restate provisions that are in the temporary rule, we consider it is useful to include them in the scheme in order that all of the information on the functioning of the scheme is available in one place.

Circumstances in which a member may arrange for a proxy vote

26. We propose that there are three circumstances in which a Member may request that their vote to be cast by another member acting as a proxy under the proposed proxy voting scheme: illness, parental leave and bereavement. We suggest that broad descriptions should be used for the eligibility criteria in order that they do not prove to be restrictive in relation to individual circumstances.
27. We do not think that a specific timeframe should be applied to a Member's application for a proxy vote. Instead, we are of the view that a timeframe should be noted informally to the Presiding Officer by the Member concerned. In cases of a potentially long period of absence, it would be at the discretion of the Presiding Officer to agree an initial timeframe for the period of absence. The Committee suggests that the timeframe would then be subject to a review between the Presiding Officer and the Member concerned. The Committee believes that the privacy of the Member requesting, and then exercising a proxy, should be respected and protected.

Illness where the Member is unable to attend the Parliament

28. We believe that when a Member has a severe illness, requires a medical intervention, or has an illness that prevents them from attending the Parliament for a sustained period of time, they should be able to request a proxy. The Member may wish to provide information on their illness to the Presiding Officer when requesting the proxy.

Parental leave

29. We recommend that the scheme should cover parental leave. We propose that this should include mothers and fathers taking leave in relation to the birth or adoption of a child; members fostering or taking on a kinship role; and members who experience complications relating to a pregnancy.

Bereavement leave

30. We propose that a proxy vote should be available to Members experiencing a bereavement. The scheme should not be prescriptive about the relationship of the

Member to the person who has passed away.

Designation of a proxy

31. We recommend that a Member should be able to designate any other Member as their proxy and it is for the Member to decide who to nominate. In accordance with the proposed temporary rule, the Members concerned must comply with the terms of the scheme.
32. We suggest that a request to designate a proxy should be addressed to the Presiding Officer. To protect the privacy of the Member, the reason for a proxy being provided or the length of the arrangement would be a confidential matter between the Presiding Officer and the Member concerned.
33. As highlighted earlier in this report, we believe that a proxy should vote for no more than two Members so that a large number of votes do not rest in the hands of a single or limited number of Members. Allowing for a Member to hold two proxies will ensure that the scheme is not too restrictive for Members in political parties with fewer numbers of Members.
34. In accordance with other parliamentary processes, the request for a designation of a proxy should be made by the Member from their Parliamentary email account as a means of ensuring that the Member has requested a proxy. We would propose that an appropriate deadline is included in the scheme for requesting the designation of a proxy to allow the arrangement to be put in place before the relevant vote.
35. We recognise that a check would need to be carried out by parliamentary officials on behalf of the Presiding Officer to ensure that the respective Members agree to the proposed proxy arrangements. The Presiding Officer will also need to confirm her agreement to the requested arrangement to the Members concerned before voting takes place. This will ensure that a designated member holds a valid proxy at the point of casting the vote.
36. In order to provide a degree of flexibility for Members if they are able to participate in parliamentary business again for a period of time when the proxy is in place, or if they wish to end the arrangement, we recommend that a Member who has designated a proxy should be able to withdraw that designation to allow them to participate in Chamber business. We recommend that the detailed arrangements for doing this should be set out in the Presiding Officer's scheme.
37. We consider that it is crucial that there is transparency about how a proxy vote has been exercised and this is reflected in the drafting of the proposed temporary rule which indicates that where a proxy is exercised in a vote, this should be recorded in the minute of the relevant meeting of the Parliament.

Casting of votes

38. We consider that it is essential that the Presiding Officer's scheme includes

reference to how a Member holding a proxy or proxies will be invited to exercise their vote to provide transparency on how a vote will be cast.

Application of the scheme

39. As indicated in the proposed Temporary Rule, the Committee recommends that the scheme should apply in relation to any meeting of the Parliament and a Committee of the Whole Parliament and the vote should have the same status as a vote cast in person.

Recommendation

40. The Standards, Procedures and Public Appointments Committee recommends to the Parliament the Standing Orders temporary rule set out in Annexe A.

Annexe A: Temporary Rule 5 - Proxy Voting Pilot

Temporary Rule 5 – Proxy Voting Pilot

1. This Rule applies to any voting at a meeting of the Parliament or of a Committee of the Whole Parliament. It ceases to have effect on 31 December 2023.
2. A member may arrange for their vote to be cast by another member acting as a proxy (a "proxy vote"), but only where —
 - (a) the Presiding Officer has issued a scheme setting out details of how such a proxy vote may be exercised, including the circumstances in which it can be exercised, the designation process, details of how a proxy may be withdrawn and the manner in which a proxy vote is to be cast;
 - (b) the members concerned (which means both the member and the proxy) have complied with the terms of that scheme; and
 - (c) there is a valid proxy in place at the point of voting.
3. A proxy may vote for one or two members.
4. A proxy vote has the same status as a vote cast by a member in person.
5. A member shall vote only once on any question except where the Presiding Officer asks members to cast their vote again under Rule 11.7.3. For the avoidance of doubt, where a member casts their own vote, any proxy vote cast on their behalf shall have no effect.
6. A proxy vote must be clearly indicated as such in the minutes of the meeting of the Parliament or of the Committee of the Whole Parliament, as appropriate.
7. Where provisions contained in this temporary rule are in conflict with other standing order provisions, those in the temporary rule have precedence.

Annexe B: Extract from minutes

18th Meeting, 2022, Thursday, September 29, 2022

Correspondence: The Committee considered correspondence it had received in relation to proxy voting

21st Meeting 2022, Thursday, November 10, 2022

Correspondence (In Private): The Committee considered a proxy voting scheme

22nd Meeting, 2022, Thursday, November 24, 2022

Future parliamentary procedures and practices (In Private): The Committee considered a draft report on proxy voting. Various changes were agreed to, and the report was agreed for publication

Annexe C: Correspondence

Letter from Scottish Parliamentary Labour Party – 12 July 2022

Martin Whitfield MSP

Convenor

SPPA Committee

12 July 2022

Dear Martin,

Thank you for your letter to Anas Sarwar seeking the views of the SPLP regarding a proxy voting scheme, Anas has asked me to respond in my role as the Chief Whip.

We are keen that the provision of proxy voting should be introduced and are happy that the scheme is to be introduced as soon as possible.

The SPLP are happy with the recommendations of the committee that the scheme would be in place for any Members taking parental leave or due to illness for as long as required and the process suggested to put a proxy vote in place.

The SPLP would hope that the scheme would be extended beyond the 12-month period and a permanent rule change would be put in place.

Yours sincerely,

Rhoda Grant MSP

Chief Whip

Scottish Parliamentary Labour Party

Letter from the Parliamentary Bureau - 28 September 2022

Martin Whitfield MSP

Convenor

Standards, Procedures and Public Appointments Committee

28 September 2022

Dear Convenor

Thank you for your letter of 7 July setting out the Committee's proposals for a proxy voting scheme, which The Bureau discussed at its meeting on 6 September.

The Bureau is broadly supportive of a pilot proxy voting scheme and notes the features of such a scheme that you detailed in your letter. To assist your Committee's further consideration, the Bureau offers a number of observations as set out below.

Criteria and duration

The Bureau was supportive of the provision for a proxy vote for MSPs on parental leave. In terms of duration of a proxy arrangement in such circumstances, the Bureau was broadly agreed that mirroring statutory parental leave arrangements would be appropriate.

The Bureau reflected that determining the criteria and duration of a proxy vote for illness presented greater difficulty. It agreed that proxy votes should not be utilised for Members with short, mild illnesses but recognised that there are privacy considerations when putting arrangements in place for a longer-term illness.

The Bureau also considered whether a proxy scheme could recognise the sometimes variable nature of physical or mental ill-health and that this should be considered in establishing a proxy scheme. For example, if a Member was on a phased return to work, it may be that some scope for flexibility would need to be built into the terms of a proxy scheme.

Business Managers also discussed the role of informal pairing arrangements and noted that, in some circumstances such as short-term illnesses or other issues that can arise at short notice, such arrangements offered greater flexibility than a proxy vote. However, the Bureau also noted that a proxy voting scheme would provide a greater degree of transparency than pairing.

Flexibility

In addition to flexibility in relation to circumstances such as a phased return to work from illness, the Bureau also considers that flexibility should be built into a proxy scheme to allow a Member who has been granted a proxy for a period of time to provide notification of their intention to vote at a particular meeting without that triggering the end of the proxy arrangement.

Authorisation and transparency

The Bureau noted your Committee's recommendation that the Presiding Officer should be responsible for the consideration and authorisation of requests for a proxy vote. Business Managers did not reach a conclusive view on this but noted that an alternative option would be for consideration and authorisation of requests to be a role for the Clerk, with an option of referral to the Presiding Officer where necessary. In terms of evidencing any requests for a proxy, the Bureau notes that there may be privacy considerations in requiring the presentation of such evidence. Moreover, the Bureau notes that such evidence is not required, for example, in relation to the rules on attendance by committee substitutes.

The Bureau also considered transparency around proxy voting arrangements and is of the view that notification of the terms of the proxy, and any variation, to it could be notified to the Parliament via the Business Bulletin and that the Minutes of meetings of the Parliament should detail any votes that were cast by proxy at that meeting.

Practical operation and method of voting

The Bureau considers that it should be a choice for each Member who should hold a proxy on their behalf. However, consideration should be given to the maximum number of proxies that a Member can hold at any one time. The Bureau notes that there is a difference between proxy voting and bloc voting and that it would therefore not be

desirable for Business Managers to exercise a high number of proxy votes.

The Bureau also discussed the practical operation of a proxy voting scheme under the digital voting system. At present, as you may be aware, that system does not make provision for proxy voting. The Bureau understands that it would be possible for development of the system to be taken forward that would enable proxy voting but that it would not be possible to assess how long this development would take until the parameters of a scheme are agreed. As an interim measure, the Bureau notes that it would be possible for proxy votes to be recorded using the Point of Order mechanism that enables Members to record their votes if they are unable to connect to the digital voting system.

Other issues

The Bureau also considered the issue of parity of votes cast by proxy with votes cast by Members on their own behalf. The Bureau is of the view that a proxy vote has the same status as a vote cast in person to avoid the perception of a two-tier system. Proxy votes should therefore count for the purposes of super-majorities, absolute majorities and quorum. In reaching this view, the Bureau recognises that consideration would need to be given to ensuring that such an approach was consistent with the legal framework in which the Parliament operates.

The Bureau considered whether it should be possible to sanction a Member who does not cast a proxy vote as instructed by the Member conferring the proxy. It did not come to a position on this but would be interested to know your Committee's consideration of this point.

I hope this response is helpful for your Committee's deliberations.

Yours sincerely

Rt Hon Alison Johnstone MSP

Presiding Officer

Letter from the Parliamentary Bureau - 4 November 2022

Martin Whitfield MSP Convener

Standards, Procedures and Public Appointments Committee

4 November 2022

Dear Convener,

Thank you for your letter of 28 September, which sought the Bureau's view on the Committee's proposals for a proxy voting scheme. The Bureau discussed your letter at its meeting on 25 October.

Recording of proxy votes

The Bureau discussed the recording of votes cast by proxy in a way that distinguishes them from those cast in person and whether doing so may create an impression that such votes have a different status. The Bureau agrees with the Committee that proxy votes must have the same status as those cast in person.

The Bureau also considered whether recording proxy votes separately might draw attention to an MSP's absence from the Parliament and impinge on MSPs privacy.

On balance however, the Bureau sees the value in full transparency around how votes are cast and that this should be included in a published record of the meeting.

We note the suggestion in your letter that, where a proxy is exercised in a vote, this should be recorded in the Official Report record of the relevant vote. The Bureau understands that there may be technical issues with doing this that would require reconfiguration of the Parliament's IT systems. We understand, however, that it would be possible to add a note of votes cast by proxy to the Minutes of each meeting.

Accordingly, the Bureau would suggest that recording proxy votes in the Minute, either for the duration of the pilot or until IT systems can be reconfigured, is an approach that the Committee may wish to consider.

Other issues

The Bureau is content with the other key elements of the proposed pilot scheme set out in your letter on eligibility and designation of a proxy.

I hope this response is helpful in finalising your Committee's recommendations on the pilot scheme.

Yours sincerely

Rt Hon Alison Johnstone MSP

Presiding Officer

Letter from the Presiding Officer - 9 November 2022

Martin Whitfield MSP Convener

Standards, Procedures and Public Appointments Committee

9 November 2022

Dear Convener

Thank you for your letter of 28 September, which sought my view on the Committee's proposal for a proxy voting scheme.

On designation of a proxy, I am content that it is appropriate to require Members to notify me of their designation of a proxy and of the timescales for which this is required. This reflects the importance with which a Member's right to vote in the Chamber should be treated. I am content that parliamentary officials should then determine whether the designation complies with the administrative requirements of the scheme (such as ensuring that a Member does not hold more than two proxies).

I note the importance that the Committee places on the privacy of the Member. I agree and, for that reason, would not consider it appropriate for me to examine a Member's reasons for designating a proxy or to determine whether that designation is appropriate. That is a matter for which each Member themselves should be responsible.

I am content with what the Committee has proposed in regard to the other aspects of the scheme, such as eligibility and how proxy votes are to be cast. You will be aware that the Bureau has also suggested that it would be appropriate to record the proxy vote in the minutes of the Parliament.

I hope this is helpful in finalising your Committee's recommendations on the proxy voting scheme.

Yours sincerely

Rt Hon Alison Johnstone MSP

Presiding Officer

Standards, Procedures and Public Appointments Committee

Standards, Procedures and Public Appointments Committee report on a Proxy Voting pilot, 7th Report, 2022 (Session 6)

- 1 Report on inquiry into Future Parliamentary procedures and practices. 6 July 2022.
SP Paper 213.
- 2 Report on inquiry into Future Parliamentary procedures and practices. 6 July 2022.
SP Paper 213.
- 3 Report on inquiry into Future Parliamentary procedures and practices. 6 July 2022.
SP Paper 213.
- 4 Rt Hon. Karen Bradley, Standards, Procedures and Public Appointments Committee.
Official Report, 28 April, 2022.
- 5 Report on inquiry into Future Parliamentary procedures and practices. 6 July 2022.
SP Paper 213.
- 6 Meeting of the Parliament, Tuesday, November 22, 2022. Official Report.

