



The Scottish Parliament
Pàrlamaid na h-Alba

Published 7 December 2023
SP Paper 489
12th Report, 2023 (Session 6)

Standards, Procedures and Public Appointments Committee

Standing Order Rule changes - Proxy Voting



Published in Scotland by the Scottish Parliamentary Corporate Body.

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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;
- (e) matters relating to the regulation of lobbying; and
- (f) matters 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 Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion."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. A proxy vote is a vote cast by one person on behalf of another person.
2. A pilot of proxy voting was agreed to by the Parliament and came into effect on 4 January 2023 following recommendation's we made in our 7th Report 2022 on Proxy Voting Pilot. ¹
3. In advance of the pilot coming to an end on 31 December 2023 we agreed to conduct an evaluation and give consideration to permanent rule changes with regard to proxy voting.

Background

Future Parliamentary Procedures and Practices Report

4. 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.”²
5. 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.”³
6. 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.
7. The report concluded there was value in piloting a proxy voting scheme and that an evaluation of the pilot should be undertaken with a view to proposing any permanent Standing Order rule changes.

Proxy Voting Pilot Report 2022

8. Following our inquiry, a 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, our 7th Report 2022¹ on Proxy Voting Pilot set out detailed proposals for a pilot and the key elements of a proxy voting scheme.
9. The Parliament agreed Temporary Rule 5 for a pilot of proxy voting on 6 December 2022 and it came into effect on 4 January 2023.

Current proxy voting pilot system

Standing Order Temporary Rule 5

10. The current temporary rule for the proxy voting scheme (Temporary Rule 5) 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.
11. Designations of a proxy are to be made to the office of the Presiding Officer, who then directs parliamentary officials to verify the arrangement. The Presiding Officer has issued a proxy voting scheme which sets out how a proxy vote may be exercised.
12. 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.

Pilot Proxy voting scheme

Arrangement for proxy

13. The scheme requires Members to notify the Presiding Officer of their designation of a proxy and of the timescales for which this is required.

Eligibility criteria

14. The scheme states that a Member may designate another Member as their proxy to vote in a meeting of the Parliament or of a Committee of the Whole Parliament in the following circumstances:
 - Illness where the Member is unable to attend the Parliament (when a Member has a severe illness, requires medical intervention or has an illness that prevents them from attending the Parliament for a sustained period of time)
 - Parental leave (including 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 pregnancy)

- Bereavement
- Attending to a person who appears to be near the end of life

Operation of pilot proxy voting system

15. Designation of a proxy must be made by the Member from their Parliamentary email account by 10am on the Tuesday of the week during which votes will be held for which a Member wishes to designate a proxy.
16. When the pilot began proxy votes were recorded manually, using the point of order mechanism, with the Member holding the proxy being requested at the end of the voting period to confirm verbally how the vote is to be cast. Proxy votes were recorded before the votes of any Members who have been unable to vote using the digital voting application for technical reasons.

Pilot Proxy voting system development

17. During the course of the pilot there have been changes to how the proxy voting system has operated.
18. The pilot system enables the scheme to be varied by the Presiding Officer at any time, in consultation with the Parliamentary Bureau and the Standards, Procedures and Public Appointments Committee.
19. The scheme was varied with effect from 20 February 2023 to add the fourth criterion in which a Member may designate another Member as their proxy which is attending to a person at the end of life. This was added following requests by Members, and following consultation with us as a Committee.
20. We wrote to the Presiding Officer in February 2023 seeking information on the scheme's operation. This included a request that consideration be given to how a proxy vote could be exercised in a transparent but less time-consuming manner when the functionality of any new voting system is being assessed.
21. The Presiding Officer's response in June 2023 stated she had been awaiting progress in the development of proxy voting functionality in the digital voting system and that this was being progressed.
22. This has now been actioned and since September 2023 the digital voting system has been able to accommodate proxy votes. The Presiding Officer, Alison Johnston MSP in correspondence with the Committee in October stated:

” “When the proxy voting pilot was introduced, there was perhaps some frustration at the time taken to make points of order to record a proxy vote, particularly in the case of numerous votes during Stage 3 proceedings. It is very welcome that the digital voting application has since been updated so that Members can vote on behalf of another Member and the requirement to make a point of order has been removed. This has not been tested in practice as yet, but I would anticipate that it will speed up the casting of proxy votes while still retaining the transparency that a vote has been cast by proxy in the record of the vote in the Official Report”

Source: Presiding Officer correspondence dated 27 October 2023

Evaluation of pilot

23. We agreed at our meeting on 7 September 2023 to conduct an evaluation on the operation of the current proxy system.
24. As part of our evaluation we held an internal call for written views which ran from 13 September to 12 October 2023. The call for views was issued to all MSPs, each of the political parties, the Presiding Officer and the Parliamentary Bureau. The call for views invited MSPs to share their general views and provided the following points that they may wish to consider when making their response:
 - the eligibility criteria for proxy voting
 - the process of applying for a proxy vote
 - how a proxy vote is exercised in the Chamber
 - the variation or withdrawal of a proxy vote
 - circumstances in which a proxy vote would be deemed the most appropriate approach to use (i.e., the circumstances where joining remotely or using pairing arrangements may not be suitable).
25. Views were also sought from the two Members who have used proxy votes, including offering an opportunity to provide oral evidence should they wish. Both Members indicated informally that they had benefited from being able to use the proxy system and were supportive of it being continued.
26. The Committee received 9 responses in total, including a response from the Presiding Officer.

Evaluation findings

Usage of the pilot proxy voting system

Requests for a proxy vote

27. As detailed in the SPICe summary of the proxy voting scheme's operation five members have made requests for a proxy vote that were allowed under the terms of the scheme.⁴
28. Two further members made requests that were not allowable under the terms of the scheme at the time of request. These requests related to attending to someone near the end of life. As detailed above the scheme was subsequently amended to include such a circumstance as a qualifying reason for seeking a proxy vote.

Votes cast by proxy

29. Only two Members (out of the five approved requests) proceeded to cast their votes by proxy. The two Members who used the proxy voting system were Stuart

McMillan MSP (with Kaukab Stuart MSP voting on the Member's behalf) and Jamie Hepburn MSP (with George Adam MSP voting on the Member's behalf).

30. Two Members with approved requests for a proxy withdrew their requests prior to any decisions being taken. There were no votes held over the period for which the remaining request was valid. ⁴
31. Proxy votes have been used on:
 - 10, 11, 12 January
 - 17, 18, 19 January
 - 24, 25, 26 January
 - 2 February 2023.
32. A proxy vote has only been used during one set of Stage 3 proceedings. This was for the Hunting with Dogs (Scotland) Bill on 24 January 2023.
33. Proxy votes have been used twice for votes on business motions.
34. All other proxy votes have been used during Decision Time.

Permanent provision


35. The majority of respondents to the Committee’s consultation made a comment indicating support for the provisions of the temporary system. The Parliamentary Bureau indicated that the system was working well and did not have any concerns about its operation. The Bureau was also supportive of the intention to make permanent Standing Orders Rule changes based on the current temporary rule, and for that to be complemented by the Presiding Officer’s scheme.
36. The Presiding Officer gave a positive response to the Committee on how the system had been operating and stated within the options open to members unable to attend a vote in person using a proxy vote:
- ” “has the benefit of allowing transparency that they are not able to be present but that their constituents are still being represented in the vote.”
- Source: Presiding Officer correspondence dated 27 October 2023
37. We consider that the proxy voting system has been used appropriately and proportionately since its introduction. We also note the positive statements regarding the scheme being made permanent by those who responded to our consultation.
38. We consider, therefore that a permanent proxy voting system should be introduced.
39. The UK Parliament, Senedd and Northern Ireland Assembly all have proxy voting systems (although how they operate and requirements for use vary between legislatures).
40. The Presiding Officer in her response to our consultation highlights the “A Parliament for All”: Report of the Parliament’s Gender Sensitive Audit recommendation that we as a committee propose a permanent Standing Order rule to introduce a proxy voting system. The Gender Sensitive Audit states that while remote voting provides a certain amount of flexibility in that Members do not have to be present in the Chamber to vote, proxy voting allows Members to replicate aspects of parental leave in that there is no expectation they will be available to vote in such circumstances.⁵
41. We believe that proxy voting should be recognised as an important component of ensuring a Parliament is inclusive and accessible.

Proposed rule changes

42. The proposed rule changes to give effect to the provision of a permanent proxy voting system are attached at Annexe A. This is accompanied by the Presiding Officer Scheme.
43. When considering the detail of proxy voting we wish the permanent system to broadly mirror the current temporary arrangements, namely that the Standing Orders sets out the principle that a Member may arrange for their vote to be cast as a proxy, but the details of how such a vote may be exercised, are set out in a separate scheme administered by the Presiding Officer.
44. The current temporary arrangements provide that any changes to the Presiding Officer's Scheme require to be endorsed by both the SPPA Committee and the Bureau and we consider that the same arrangement should be put in place for a permanent system of proxy voting.
45. Having a separate scheme allows for some of the detailed practical and administrative details of the proxy voting arrangements to be kept out of Standing Orders, this is in line with the general approach taken in Standing Orders which does not normally set out these detailed administrative arrangements.

Eligibility criteria

46. Where the current pilot system differs from the proposed permanent system is with regards to eligibility criteria. Under the current pilot the eligibility criteria is set out in the Presiding Officer's scheme. Under the permanent system we propose that the criteria are set out in Standing Orders. We believe this will give the criteria a more permanent status. It is also an approach taken elsewhere including in relation to committee substitutes where the specific circumstance when it can be used by an individual member are set out.
47. A separate issue is what eligibility criteria should be i.e. in what circumstance should a Member be allowed to exercise a proxy vote. Some responses to the consultation suggested extending the criteria beyond those set out in the current pilot, while other responses suggested that the criteria should be tightened. As such there was not a consensus in relation to making changes to the criteria which are currently used in the temporary scheme. The Presiding Officer in her response states:

 "The eligibility criteria were drafted with the aim of striking an appropriate balance between allowing Members flexibility and treating their right to vote in the Chamber with the significance it deserves. They seem to be generally accepted and work well."

Source: Presiding Officer correspondence dated 27 October 2023
48. Given this position, we consider it appropriate to translate the current criteria into the new permanent scheme. We plan to conduct a review of the eligibility criteria at a future date to ensure it remains robust and fit for purpose.

Other issues

49. The proposed rules would apply in instances where an absolute majority or a super majority is required. They would not apply in relation to any secret ballots. Election of the Presiding Officer and Deputy Presiding Officers are conducted by secret ballot. We do not think it appropriate that a proxy vote be used in these circumstances as there would be no mechanism to identify if the proxy vote had been used and no way to determine if it had been exercised in the way the Member who was using a proxy vote had requested.

50. With regards to the practical operation of the scheme the Presiding Officer in her response to the consultation drew attention to whether the requirement on a Member to send all emails relating to the arrangement of a proxy vote from their own email account is practical or appropriate in all circumstances. She told the Committee:

” “The circumstances in which a Member may wish to designate a proxy can be difficult and sensitive. The current arrangements are based on the principle that a Member’s right to vote should be treated as a privilege that only elected Members have and that assigning it to another Member should, therefore, be treated in a serious way and something that can only be done personally.”

Source: Presiding Officer correspondence dated 27 October 2023

51. We considered this issue and believe that the importance afforded to a Member’s right to vote is key and therefore is not something that can be done on their behalf by support staff.

52. Another practical aspect of the scheme we have considered is the period during the week that a proxy vote can be applied for. Under the pilot system it is only possible to apply for a proxy vote once a week, on a Tuesday. It has been suggested that this may cause difficulties if an issue emerges at short notice on a Wednesday or a Thursday which may require a Member to apply for a proxy vote. We believe that members should be provided with more flexibility and under the proposed permanent scheme Members can apply for a proxy vote on each day the Parliament is sitting.

Conclusion

53. The Committee recommends to the Parliament the Standing Order rule changes at Annexe A of this report.

Annexe A - Proposed Standing Order Rule

STANDING ORDER RULE CHANGES

Rule 11.5 Right to vote

For Rule 11.5.2, substitute –

“2. A member may vote in person or, where the criteria in Rule 11.5A are met, may arrange for their vote to be cast by another member acting as their proxy (a “proxy vote”).”

Points in relation to drafting

- This Rule change confirms proxy voting as an alternative to “in person” voting, provided the criteria set out in new Rule 11.5A are met.

After Rule 11.5 insert –

“ Rule 11.5A Proxy Voting

1. A member may arrange for their vote to be cast by a proxy where —

(a) the Presiding Officer has issued to members and made public a scheme setting out details including how such a proxy vote may be exercised, the designation process, how a proxy may be varied and withdrawn;

(b) the member is eligible under sub-paragraph 2; and

(c) the members concerned (which means both the member and the proxy) have complied with the terms of that scheme.

2. A member is eligible to vote by proxy for any of the following reasons –

(a) maternity leave, paternity leave, parental leave, adoption leave, or shared parental leave;

(b) complications arising from pregnancy;

(c) serious long-term illness or injury;

(d) bereavement; or

(e) attending to a person who is near the end of their life.

3. Except in the case of a vote at an election process under Rule 11.9, this Rule applies to any voting at a meeting of the Parliament or of a Committee of the Whole Parliament.

4. A proxy may vote for a maximum of 2 members.

5. A proxy vote has the same status as a vote cast by a member in person.

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.

Points in relation to drafting

- The purpose of this new Rule is to set out the specific circumstances and criteria within which a member is permitted to arrange for their vote to be cast by another member acting as their proxy in meetings of the Parliament or of the Committee of the Whole Parliament.

- [1] The Scottish Parliament Standards, Procedures and Public Appointments Committee. (2022). Proxy Voting Pilot. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/SPPAC/2022/11/29/02d73591-f3fc-4ac8-9a4a-f51698d95ca5>
- [2] Standards, Procedures and Public Appointments Committee 6th Report, 2022, (Session 6). (2022, July 6). Report on Inquiry into Future Parliamentary Procedures and Practices. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/SPPAC/2022/7/6/e5cd2e5a-9b82-41e1-b787-d5d3f169b22e-2#0b9ba056-9396-43d3-869d-001ae1e0d9ac.dita>
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- [5] The Scottish Parliament. (2023, March 1). A Parliament for All: Report of the Parliament's Gender Sensitive Audit . Retrieved from <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.parliament.scot/~media/files/spcb/gender-sensitive-audit.pdf> [accessed 6 December 2023]

