



Chapter 16 – Procedures

16.1 The most important influences on the effectiveness of the reformed second chamber will be its *powers*, the *characteristics* of its members and the perceived *legitimacy* of its overall membership. Nevertheless, the ability of the chamber to fulfil its remit will be greatly affected by the *procedures* by which it conducts its business.

16.2 The procedures followed by the House of Lords have developed over centuries, in response to changes in the composition and in the nature of the chamber. The further evolution of these procedures must be a matter for the reformed second chamber to determine, as the effects of changes in its functions and membership become apparent. It would not, therefore, be appropriate for us to make recommendations on procedural details, other than the few specific points made in earlier chapters. We do, however, make some general points about whether the reformed second chamber should seek to continue the House of Lords' tradition of open procedures, which give considerable freedom to individual members.

Open procedures

16.3 Until the end of the 19th century, the conduct of business in the two Houses of Parliament had many similarities. All stages of Bills were debated on the floor of both Houses, with any member able to move and speak to amendments, and there was no selection or obligatory grouping of amendments. In addition, Government business enjoyed no formal preference and any member could raise any issue, speaking without time limits and calling for votes as desired.

16.4 In the Commons, the growth of party feeling and the obstructionist tactics of Irish Nationalist MPs led to the rights of individual MPs being progressively restricted to ensure that the Government's business was processed. The guillotine, time limits, selection and grouping of amendments, and controls on opportunities for debate were the main tools employed. As a result, the Speaker was granted substantial powers, including responsibility for controlling debate and the conduct of MPs in the chamber. The only major aspect of the chamber not under the Speaker's authority is the business of the House, which remains in the hands of the Leader of the House of Commons on behalf of the Government. Similar trends have been observed in lower chambers around the world.

16.5 It is, however, a feature of second chambers, including, for example, the French Sénat and the United States Senate, that their members retain considerable procedural freedoms. That is certainly true of the House of Lords, where 19th century and earlier practice has largely been retained. The House cannot meet unless the Speaker or a deputy is present, but beyond that the Speaker has minimal powers: Standing Order 18¹ states that the Speaker may do nothing "without the consent of the Lords first had" and that any difference of opinion among the Lords is to be put to the vote. The Speaker's only role is to put the question. That the office is held by the Lord Chancellor, a Minister of the Crown, rather than by an impartial officer of the House, is therefore of no practical concern. Having no Speaker with powers of order, the House of Lords is self-regulating,

¹ Dated 27 March 1621.

working on the basis of consensus, guided by the Leader of the House. As the *Companion to the Standing Orders* notes, the Leader “advises the House on matters of procedure and order and has the responsibility of drawing attention to transgression or abuse”. However, the Leader of the House has no formal authority either and his or her advice usually reflects the wishes of all sides. Responsibility for the maintenance of order therefore lies with the House itself. For example, when two peers stand up to speak at the same time, it is for the other members to make clear who should speak first.

16.6 The freedom given to individual members of the House of Lords is an important element in its ability to scrutinise legislation and hold the Government to account. With the Government unable to insist on its business having priority, and the Speaker having no powers of order, the chamber can linger over important issues, even if the Government would rather it did not. Any member who wishes to raise a point has the opportunity to do so. Such procedures are particularly suited to a revising chamber, whose main role is to improve the quality of legislation, rather than to sustain a Government in office. Several submissions pointed out that a number of professional bodies or organisations have found it more effective to raise their concerns with a peer than with an MP, on account of these greater rights. We therefore recommend that the second chamber should seek to continue the House of Lords’ tradition of open procedures.

Recommendation 116: The second chamber should seek to continue the House of Lords’ tradition of open procedures.

16.7 One consequence of the variation in procedural styles adopted by the two Houses is that they may reach different decisions on procedural matters with regard to legislation. For example, in the Commons, the decision whether a proposed amendment is relevant or should be called for debate is the Speaker’s alone. In the Lords, the relevance of amendments is decided by the House as a whole, while the member moving an amendment can insist on it being debated and decided separately. As a result, an amendment ruled out of order in the Commons may be debated and passed in the Lords. Similarly, while the rules as to whether a Bill is hybrid² are the same in both Houses, the Government can use its majority in the Commons to dispense with the relevant Standing Order, and so treat the Bill as if it were not hybrid. The Government cannot rely on being able to do this in the Lords.³ Although these features may appear somewhat inconsistent, they are an inevitable consequence of the different approaches to procedure taken by the two Houses. The benefits for the work of the second chamber flowing from open procedures are such that inconsistencies of this sort are a relatively minor price to pay.

16.8 This approach to procedure provides for a more relaxed pace of business and allows greater time for detailed consideration and reflection than does the more hurried and regulated approach generally adopted by first chambers. It does, however, increase the risk of filibustering. The absence of any mechanism to ensure that Government business is dealt with within a reasonable time frame can result in deadlock, such as is regularly experienced in the United States Congress. In the case of the second chamber, it is necessary that the freedoms associated with open procedures should be tempered with

² A public Bill is considered to be hybrid, and special procedures therefore apply to it, when it “affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class.” *Erskine May*, p.554.

³ In the case of the Aircraft and Shipbuilding Industries Bill 1976/77, the Government was by this means forced to remove the hybridising provisions.

an acknowledgement of political reality. Most legislation is proposed by a Government which has a majority in the House of Commons, the pre-eminent House of Parliament, that is based upon its victory in a general election. As we have noted in earlier chapters, it would not be appropriate in these circumstances for the second chamber to seek to delay Government business purely by procedural means. Therefore, while the benefits of open procedures are significant, we reaffirm our earlier recommendation (Chapter 4) that it is essential they be accompanied by a convention that all Government business be considered within a reasonable time.

Pressures on open procedures

16.9 It is necessary to consider, however, whether the time pressures on the reformed second chamber may in due course reach the point where the current approach of self-regulation, guided by advice from the Leader of the House, will no longer be sufficient to ensure the smooth and fair conduct of business.

16.10 The growing workload of the House of Lords has led to progressive restrictions on its members. These have usually been in the form of ‘guidance’ rather than a formal reduction in rights. The number of Questions for Written Answer that a peer can table is now limited to six per day, while the number of Starred (Oral) Questions which each peer is entitled to ask has been reduced from two per day: each peer is now permitted only one on the Order Paper at any one time. A limit of 30 minutes is also observed at Question Time. Numerous other examples exist, covering all aspects of members’ involvement in the business of the House. Even where formal restrictions have not been imposed, the guidance has become firmer in tone and the scope and detail significantly expanded. The *Companion to the Standing Orders*, for example, has grown from 30 pages in 1955 to 247 pages today, while the Leader of the House has had to intervene more frequently to arbitrate between those competing for the floor. In short, there appear to be significant pressures on the existing system of conventions and procedures governing members’ behaviour.⁴ While recognising these pressures, the value of the current system of open procedures is such that any restrictions which become necessary should be designed to preserve the essential character of what exists at present.

Recommendation 117: Any restrictions to the rights of members of the second chamber should be designed to preserve the essential character of what exists at present.

16.11 The self-regulatory nature of the House of Lords is a distinctive feature, shared with several other second chambers overseas. It is entirely in keeping with the maturity which members of a second chamber should be expected to show. It is also consistent with the relative lack of political passion, which we hope the reformed second chamber will display. Accordingly, we would regard it as a retrograde step if any pressures on the second chamber were to lead to a breakdown in its ability to be self-regulating and so require the introduction of a Speaker with powers of order. Indeed, it may be the absence of such a Speaker that encourages the Lords to conduct their business with courtesy. If members could rely on the Speaker to enforce order, they might feel less responsible themselves

⁴ The March 1999 report of the Group on Procedure in the Chamber (HL34) felt it necessary to remind peers of the importance of adhering to the existing conventions on procedure if these were to be maintained without further restrictions.

to behave in an orderly fashion and be more likely to push at the limits of behaviour in order to secure party political advantage. The proceedings of the second chamber would consequently become more like those in the House of Commons, which would be in complete contrast to the nature of the second chamber we would like to emerge from our work. Although this is a matter for the second chamber itself to settle, we recommend that every effort should be made to maintain an approach to the conduct of business which would allow the second chamber to remain self-regulating.



Presiding over the House of Lords

Recommendation 118: The second chamber's approach to the conduct of business should be such as to allow the chamber to remain self-regulating.