



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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# Information on proxy voting in other legislatures

**RaISe**

## 1 Introduction

This briefing paper has been prepared for the Committee on Procedures. The committee asked for information on the following:

- any permanent proxy voting procedures in other legislatures and to also include any temporary arrangements as a result of the Covid-19 pandemic.

The Northern Ireland Assembly has introduced temporary provisions in Standing Orders to allow proxy voting until January 2021. Standing Orders 112 and 115 allow for proxy voting in the chamber and committees respectively (along with other measures for committees including voting by video-link or telephone).<sup>1</sup>

The Committee is considering instances in which proxy voting could be retained on a more permanent basis and how this might be reflected in Standing Orders.

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<sup>1</sup> Northern Ireland Assembly Standing Orders: <http://www.niassembly.gov.uk/assembly-business/standing-orders/standing-orders/#a112>

## 2 Summary of provisions for proxy voting in the UK and Ireland legislatures

**Figure 1: summary of provisions available for proxy voting in legislatures in the UK and Ireland**

Legislature	Proxy voting	Comments
House of Commons	<p>Yes for parental absence and issues related to Covid-19.</p> <p>Proxy voting for parental absence has been made permanent.</p>	<p>The proxy voting arrangements for parental absence have been made permanent while those for Covid-19 are due to lapse on 31st March 2021.</p> <p>Proxy voting applies to both the chamber and legislative grand committees except for the purposes of counting a quorum or for allowing the closure. Proxy votes can also be exercised in secret ballots for electing a Speaker, Deputy Speaker, select committee chair or chair of the Backbench Business Committee.</p>
Scottish Parliament	No.	The matter has been raised and initial views have been sought from MSPs. Approach was to wait until House of Commons Procedure Committee had completed review of proxy voting and then return to the issue.
Welsh Parliament	Yes for parental absence but provisions will be reviewed.	<p>Welsh Parliament has agreed to look at proxy voting in two stages. Standing Orders have been implemented to allow proxy voting for parental absence until the end of this mandate.</p> <p>Planned Extension of the scheme to include proxy voting for health reasons or caring responsibilities once the House of Commons pilot has been reviewed.</p> <p>Proxy voting available for plenary and committees, with some exceptions.</p>
Dáil Eireann	No.	<p>The Constitution states that members must be present to cast votes. The Clerk of Dáil Eireann received legal advice at the beginning of the pandemic restrictions advising that proxy voting was not admissible. This is not a unanimously shared view.</p> <p>The issue was raised during the irregular voting controversy of October 2019 when it came to light that members had been voting on behalf of other members using the electronic voting systems at members' desks. During the subsequent review, members were reminded that proxy voting was contrary to the Constitution.</p>

## 3 House of Commons

### Background

The House of Commons passed the following resolution on 1 February 2018:

*That this House believes that it would be to the benefit of the functioning of parliamentary democracy that honourable Members who have had a baby or adopted a child should for a period of time be entitled, but not required, to discharge their responsibilities to vote in this House by proxy.*

The resolution had been informed by the independent report, *The Good Parliament*, (published in July 2016) which had looked at ways to make Parliament more representative and inclusive. The Commons Reference Group on Representation and Inclusion considered the recommendations of the report, and brought forward proposals reflecting *The Good Parliament's* recommendations on proxy voting for parental absence.<sup>2</sup>

### **Proxy voting pilot and review by the Procedure Committee**

A May 2018 report from the Procedures Committee set out how proxy voting arrangements for parental absence might work in practice.<sup>3</sup> That report did not find any procedural impediments to a proxy voting scheme for parental reasons.

In January 2019, the House of Commons approved pilot arrangements for Members with parental responsibilities and the necessary temporary modifications to standing orders were approved to allow the scheme to operate.

The Procedure Committee was directed to review the arrangements after a period of 12 months but the general election of December 2019 and subsequent impact of Covid-19 on parliamentary proceedings meant that the pilot was extended in January 2020 by six months. Given the impact of coronavirus and the extension of the proxy voting scheme, the new Procedure Committee appointed after the 2019 election sought and was granted an extension to September 2020 to evaluate the pilot. The report would now include consideration of the proxy voting arrangements introduced in June 2020 which were related to the pandemic.

The committee's review therefore considered two main aspects of proxy voting: proxy voting for parental absence and proxy voting for absences due to Covid-19.

### **Parental absence**

The committee's report was published in September 2020 and outlined the committee's key findings in relation to proxy voting for parental absence:

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<sup>2</sup> House of Commons Procedure Committee, Proxy voting and parental absence, May 2018: <https://publications.parliament.uk/pa/cm201719/cmselect/cmproced/825/825.pdf>

<sup>3</sup> As above.

- proxy voting for parental absence has been “to the benefit of parliamentary democracy”, to quote the aspiration from the February 2018 resolution of the House which first endorsed the principle;
- The implementation of proxy voting, through a scheme agreed by the Speaker and the leaders of the three largest parties in the House, has enabled Members who are new parents to carry out the duty of representing their constituents, by having their votes on decisions of the House recorded;
- In adopting the pilot, the House has also taken a step towards closing its ‘motherhood gap’: the number of new mothers in the House is increasing. We hope the availability of proxy voting has encouraged women who might have considered that a parliamentary career was incompatible with starting or continuing a family to think again and put themselves forward for election;
- Throughout our evaluation we heard no arguments against the principles of proxy voting for parental absence, and encountered no fatal flaws in the scheme; and
- We recommend that the House make permanent arrangements for proxy voting for parental absence, taking into account some technical modifications to the pilot which we consider would improve the efficiency and effectiveness of the scheme.<sup>4</sup>

The technical modifications proposed by the committee referred to in the last point include:

- any permanent scheme providing for proxy voting for parental absence should not have as a condition of eligibility a requirement to produce a certificate of pregnancy or a matching certificate. Members who meet the eligibility criteria for the scheme ought to be required to self-certify; **(this is now the case)**
- any future arrangements for proxy voting by Members should include provision for any Deputy Speaker to certify eligibility for a proxy vote, under the Speaker’s authority. **(in its response to the Committee’s report, the Government noted that this recommendation should only be undertaken in agreement with the Speaker.)**<sup>5</sup>
- the maximum duration of eligibility of a proxy vote for maternity absence should include a period of up to four weeks before the due date, together with a period of no more than six months commencing on the due date or the date of the birth, whichever is the later.

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<sup>4</sup> House of Commons Procedure Committee, *Proxy voting: review of pilot arrangements*, September 2020: <https://committees.parliament.uk/publications/2464/documents/24399/default/>

<sup>5</sup> House of Commons Procedure Committee, *Proxy voting: review of pilot arrangements: Government Response to the Committee’s Fourth Report of Session 2019–21*, September 2020: <https://committees.parliament.uk/publications/2748/documents/27187/default/>

- a Member who is a new father, partner or second adopter ought, when certifying eligibility for a proxy vote, give the date of birth or adoption. Any permanent scheme for proxy voting for parental absence ought to provide that eligibility for a proxy vote for new fathers, partners or second adopters ceases six months after the stated date of birth. (*this is to prevent potential abuse of the scheme*).
- under any permanent proxy voting scheme to be established by the House, the information contained in every proxy voting certificate issued under the Speaker's authority ought to be made available on a dedicated page on the Parliament website.
- any permanent proxy voting scheme should be amended to clarify that a Member may nominate only one proxy at any one time.

The committee highlighted the general success of the scheme:

*The pilot has been popular and well used. 30 Members have claimed eligibility for proxy votes for parental absence to date: 12 expectant mothers and 18 new fathers. Among these are three women elected to the House for the first time in December 2019. Ministers, and Members who have gone on to become Ministers, have used the scheme, demonstrating that parental absence is not a barrier to achieving or continuing in Ministerial office.<sup>6</sup>*

It went on to say:

*Our overall evaluation is that the system of proxy voting for parental absence has benefitted the House and the broader objectives of parliamentary democracy, by making the House a more inclusive place for new mothers and fathers. We recommend that provision for proxy voting for parental absence be made in the standing orders of the House, subject to the recommendations made in this report.<sup>7</sup>*

### **Proxy voting for public health reasons**

The committee also considered the arrangements for proxy voting during the ongoing public health crisis. The House of Commons had introduced temporary orders on 22<sup>nd</sup> and 23<sup>rd</sup> April, which established 'hybrid' proceedings that allowed members to "participate in proceedings in person in the Chamber and remotely via videolink under strict parity of treatment. They had also allowed for a system of remote voting in divisions via mobile phone, tablet or other digital device instead of voting in person through the lobbies vote."<sup>8</sup>

<sup>6</sup>House of Commons Procedure Committee, *Proxy voting: review of pilot arrangements*, September 2020

<sup>7</sup> House of Commons Procedure Committee, *Proxy voting: review of pilot arrangements*, September 2020

<sup>8</sup> As above.

On 12 May, the Leader of the House announced the Government's intention not to renew these provisions, which was viewed by some as disadvantaging "Members unable to travel to Westminster, either because they were following public health advice and shielding at home, or because caring or other responsibilities restricted their ability to travel away from their constituencies...".<sup>9</sup>

On 4 June the Government introduced a new proposal that proxy voting would be allowed for members "at high risk from coronavirus for reasons that they are either 'clinically extremely vulnerable' or 'clinically vulnerable'".<sup>10</sup> The House agreed this but some Members expressed concern that it did not go far enough. Subsequently a revised and wider proxy voting scheme for members who were 'shielding' for health reasons came into effect on 10<sup>th</sup> June and on "11 June 2020, the Speaker issued 135 certificates to Members"<sup>11</sup> under this scheme.

The Speaker made a statement on 16 June as to what was required of Members availing of the scheme:

*I remind colleagues that the expanded proxy voting scheme applies to Members who are unable to attend Westminster for medical or public health reasons relating to the pandemic. If an hon. Member applies for a proxy vote, this means that they have given me and the House a commitment that they are not able to attend Westminster. It is therefore important that colleagues with proxies do not take part in any physical proceedings or come on to the Estate while they have a proxy vote in operation.<sup>12</sup>*

Members must demonstrate their eligibility for the scheme by writing to the Speaker and assuring him that they qualify for a proxy vote on medical or public health grounds related to the pandemic. No proof is required and Members do not have to provide reasons. The committee felt that this approach was reasonable:

*The ability of Members to self-certify is reasonable and proportionate, under present circumstances, and should not be changed. Members should not be in a position where they have to disclose medical, caring or other personal responsibilities in order to be eligible for a proxy vote.<sup>13</sup>*

Turning to the duration of the proxy voting scheme, the committee recognised that:

*conditions requiring a number of Members to stay away from Westminster will persist for some time to come. No reliable prospect has been given of a date*

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<sup>9</sup> As above.

<sup>10</sup> House of Commons Library, *Proxy voting in divisions in the House*, October 2020: <https://researchbriefings.files.parliament.uk/documents/CBP-8359/CBP-8359.pdf>

<sup>11</sup> As above.

<sup>12</sup> As above.

<sup>13</sup> House of Commons Library, *Proxy voting in divisions in the House*, October 2020

*on which the majority, or indeed all, coronavirus restrictions which inhibit travel to Westminster can be expected to cease.*<sup>14</sup>

It took into account local lockdowns and the various guidance issued by the devolved governments and recommended that proxy voting for public health reasons continue for as long as guidance and statutory provisions restrict Members' travel to Westminster.

It also urged the House to ascertain the position of Members currently restricted from travelling to Westminster for public health reasons so that this could inform eligibility criteria "which are appropriate to current requirements and sufficiently flexible to take future changes in restrictions in all four nations into account."<sup>15</sup>

The committee also raised concerns about the lack of physical distancing when Members are asked to vote in the lobbies, as well as questioning the reliability of the pass-reader system.

Originally, proxy votes were not eligible for votes under section 2(2) of the Fixed Term Parliaments Act 2011 which is a motion calling for an early general election. It requires a two-thirds majority to pass and: "It was initially thought that allowing a proxy vote for such a decision, which requires a certain majority specified in legislation, might leave a decision of the House on such a motion open to judicial review if the decision turned on the use of proxy votes."<sup>16</sup>

However, the current Procedure Committee stated that it was "confident that the courts will not seek to question the outcome of any votes which utilised the proxy voting scheme. It is clear that this would constitute a proceeding in Parliament and is covered by parliamentary privilege."<sup>17</sup> The reference to the Fixed Term Parliaments Act 2011 was removed from the revised Standing Order.

## **Making parental absence proxy voting permanent and extending pandemic proxy voting**

On 23 September, the House agreed to make voting by proxy for parental absence permanent. MPs also agreed to extend proxy voting for reasons related to the pandemic to 3<sup>rd</sup> November.<sup>18</sup> On 22<sup>nd</sup> October, this was further extended until 31<sup>st</sup> March 2021.<sup>19</sup>

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<sup>14</sup> House of Commons Procedure Committee, *Proxy voting: review of pilot arrangements*, September 2020

<sup>15</sup> As above.

<sup>16</sup> As above.

<sup>17</sup> House of Commons Procedure Committee, *Proxy voting: review of pilot arrangements*, September 2020

<sup>18</sup> The scheme can be viewed at: <https://www.parliament.uk/globalassets/documents/commons-public-bill-office/proxy-voting-scheme-23-september-2020.pdf>

<sup>19</sup> House of Commons Library, *Proxy voting in divisions in the House*, October 2020

The Standing Order<sup>20</sup> providing for proxy voting for parental absence and the pandemic is reproduced at figure 2. It essentially allows a “proxy vote to be cast in any division of the House or in any legislative grand committee, except for the purposes of counting a quorum or for allowing the closure.”<sup>21</sup>

**Figure 2: House of Commons Standing Order on proxy voting**

### 39A. Voting by proxy

(1) A Member eligible under paragraph (2) may arrange for their vote to be cast by one other Member acting as a proxy (a proxy vote) under a scheme drawn up by the Speaker in accordance with this order and published by him.

(2) A Member is eligible for a proxy vote by reason of absence from the precincts of the House for childbirth or care of an infant or newly adopted child, or for medical or public health reasons related to the pandemic, subject to the conditions set out in the scheme published under paragraph (1) of this order.

(3) A proxy vote may be cast—

(a) in any division, including a deferred division, in the House, in Committee of the whole House, or in any legislative grand committee, save as provided in paragraph (4) below; and

(b) in a ballot cast in an election under Standing Order No. 1B (Election of Speaker by secret ballot), Standing Order No. 2A (Election of the Deputy Speakers), Standing Order No. 122B (Election of select committee chairs) and Standing Order No. 122D (Election of Chair of Backbench Business Committee).

(4) No proxy vote shall be reckoned in the numbers participating in a division for the purposes of— (a) Standing Order No. 41(1)(Quorum), and (b) Standing Order No. 37 (Majority for closure or for proposal of question).

(5) (a) A proxy vote may be cast only if the Speaker has certified that the Member for whom the vote is to be cast is eligible under the terms of this order.

(b) The Speaker shall cause that certificate, including the name of the Member nominated as a proxy, to be entered in the Votes and Proceedings no later than the sitting day on which it takes effect.

(5A) The Speaker may certify that a Member’s eligibility for a proxy vote for medical or public health reasons related to the pandemic should take effect before the certificate is published in the Votes and Proceedings, or that a certificate already granted should be varied, if satisfied there are urgent and unforeseeable circumstances to justify this.

(6) A vote cast by a proxy shall be clearly indicated as such in the division lists published under the authority of the House.

(7) A Member is also eligible for a proxy vote by reason of absence from the precincts of the House in circumstances where there have been complications relating to childbirth; and the Speaker may make appropriate provision for the exercise of a proxy vote in such circumstances in the scheme drawn up under paragraph (1) above.

<sup>20</sup> House of Commons Addendum to Standing Orders, October 2020:

<https://publications.parliament.uk/pa/cm5801/cmstords/addenda/Addendum201002.pdf>

<sup>21</sup> House of Commons Library, *Proxy voting in divisions in the House*, October 2020



The scheme referred to in figure 2 sets out the process for obtaining and exercising a proxy vote. The key points in terms of designation of a proxy and using the vote are:

- **Designation of proxy:** When applying for a proxy vote, the Member eligible for proxy voting shall name the Member who has agreed to carry her or his proxy vote, thereby vouching that an agreement has been entered into.
  - A Member shall be free to choose any Member of the House who is eligible to vote in divisions to act as a proxy.
  - A Member may nominate no more than one proxy at a time.
- **Exercising the proxy vote:** A Member eligible to vote by proxy must agree with the Member nominated as their proxy when the proxy vote will be cast and how it will be exercised.
  - A proxy vote may be cast according to the provisions of the Standing Order (Voting by proxy). A Member designated as a proxy will be expected to act in strict accordance with the instruction given by the absent Member.
  - A Member designated as a proxy may cast their own vote one way and the proxy vote the other, and may cast a proxy vote without casting their own vote at all.
  - A Member registered as voting by proxy who wishes to vote in person shall be entitled to do so, provided that the Speaker has been notified by the rise of the House on the previous sitting day or by 3pm on a non-sitting day that the proxy arrangement is to be suspended.
  - In divisions in legislative grand committees, a Member who is not a member of the committee shall be entitled to cast a proxy vote for a committee member.

Proxy voting in public bill committees and select committees is not permissible. The Procedure Committee, in its May 2018 report, commented:

*We expect that a Member nominated to a public bill committee who then takes a period of paternity absence will in the normal course of events be replaced on the committee, either temporarily or permanently...*

*Divisions in select committees, when they occur, take place when the Committee is meeting in private and deliberating, typically on a draft report. We do not think it appropriate in these circumstances for a committee member absent from such a deliberative meeting, and by definition unable to*

*participate in the deliberation, to be able to cast a vote on any question by proxy.*<sup>22</sup>

In its subsequent report of September 2020, the “Committee committed to examining whether there should be other grounds for qualifying for a proxy vote once arrangements for proxy voting for public health reasons had ended”.<sup>23</sup>

## 4 Scottish Parliament

To date, the Scottish Parliament has not introduced proxy voting arrangements as a result of the Covid-19 pandemic.

The issue of proxy voting was first raised in March 2019 in a letter to the Standards, Procedures and Public Appointments Committee from an MSP asking for the Committee to consider the introduction of proxy voting.<sup>24</sup> This was, of course, unrelated to Covid-19 at the time. In response, the Committee advised that it would await the outcome of the pilot programme at the House of Commons which at that stage had just commenced.<sup>25</sup>

In March 2020 the Convenor of the Standards, Procedures and Public Appointments Committee corresponded<sup>26</sup> with all MSPs to seek their views on the potential introduction of proxy voting. The correspondence asked the following questions:

*Q1: In principle, do you support the introduction of proxy voting in the Scottish Parliament?*

*Q2: If proxy voting is introduced, in what circumstances do you think it should be allowed?*

*Q3: Are there alternatives to proxy voting which should be considered?*

*Q4: Do you have any other comments about proxy voting?*

However, it appears that this specific issue has not been progressed. Instead the Scottish Parliament moved to introduce a suite of measures to allow the functioning of parliamentary business during the pandemic. This included virtual question times and the introduction of digital voting. A guide for Members on digital voting has been produced and is reproduced at Appendix 1.

<sup>22</sup> House of Commons Procedure Committee, *Proxy voting and parental absence*, May 2018

<sup>23</sup> House of Commons Library, *Proxy voting in divisions in the House*, October 2020

<sup>24</sup> Letter to the Convenor of the Standards, Procedures and Public Appointments Committee, 5 February 2019: [https://www.parliament.scot/S5\\_Standards/General%20Documents/Letter\\_to\\_SPPA\\_-\\_Proxy\\_Voting.pdf](https://www.parliament.scot/S5_Standards/General%20Documents/Letter_to_SPPA_-_Proxy_Voting.pdf)

<sup>25</sup> Letter from the Convenor of the Standards, Procedures and Public Appointments Committee, 5 March 2019: [https://www.parliament.scot/S5\\_Standards/General%20Documents/20190304ConvtoDavidStewart.pdf](https://www.parliament.scot/S5_Standards/General%20Documents/20190304ConvtoDavidStewart.pdf)

<sup>26</sup> Letter from the Convenor of the Standards, Procedures and Public Appointments Committee, 12 March 2020: [https://www.parliament.scot/S5\\_Standards/Inquiries/20200312ConvenerProxyVoting.pdf](https://www.parliament.scot/S5_Standards/Inquiries/20200312ConvenerProxyVoting.pdf)

## 5 Welsh Parliament (Senedd)

The National Assembly for Wales (as it was then known) was identified by *The Good Parliament* report, published in 2016, as not having any formal proxy voting arrangements in place. In November 2019, the Business Committee of the Assembly agreed to look at the issue in two stages:

*Firstly, to consider implementing it for parental leave only, and secondly to look at the possibility of extending it to long-term illness and other caring responsibilities, after the House of Commons have reviewed their scheme.*

Views were sought from members on both aspects of potential proxy voting – parental absence and long-term illness and other caring responsibilities.

In January 2020, it was agreed to introduce proxy voting for parental absence until the end of the current mandate. Then in March, the proposed changes to Standing Orders were agreed along with accompanying guidance. A paper from the Business Committee set out how the scheme would operate. Its key points are summarised below:

- it introduces a proxy voting procedure in the Assembly for Members who are absent from the Assembly for reasons of childbirth, care of an infant or child as a result of a new adoption or surrogacy arrangement, or who have suffered a miscarriage or stillbirth.
- a Member must demonstrate eligibility for the scheme by notifying the Llywydd (the Speaker) of their intention to take parental leave, and providing any additional documentation or forms of notification that the Llywydd deems appropriate.
- a proxy voting procedure will be available for all types of votes in Plenary or a Committee of the Whole Assembly, except for votes where legislation requires a resolution or motion to be passed on a vote in which the number of Members voting in favour is not less than two-thirds of the total number of Assembly seats
- a proxy vote must not count towards the numbers for quorum; this is consistent with practice elsewhere
- a Member must demonstrate eligibility for the scheme by notifying the Llywydd of their intention to take parental leave, and providing any additional documentation or forms of notification that the Llywydd deems appropriate.
- the maximum duration of the dispensation to vote by proxy is:
  - six months for the biological mother of a baby; the primary or single adopter of a baby or child; or the primary or single carer of a baby or child in a surrogacy arrangement; and

- two weeks for the biological father or the partner of the person giving birth who has parental responsibility for the child; the second adopter of a baby or child; or the secondary carer of a baby or child in a surrogacy arrangement. It must be taken in one continuous period of up to two weeks and must end within 56 days of a child's birth or placement for adoption
- Subject to the Llywydd's discretion, any period of proxy voting taken by the biological mother of a baby; the primary or single adopter; or primary or single carer in the case of a surrogacy arrangement must normally start at or before the relevant date (the due date, adoption date, or surrogacy date) and should be taken as a continuous period.
- when specifying the dates of absence, the Member eligible for proxy voting must name the Member who has agreed to carry out their proxy vote, thereby vouching that an agreement has been entered into.
- a Member who wishes to change the Member who is their proxy, to end their period of proxy voting earlier than originally notified, or to cast a vote in person on (a) specific item(s) of business, or suspend the arrangement for a period of time, must give written notice to the Llywydd as soon as is reasonably practicable after the circumstances that have led to the request become known (for example, publication of Plenary agenda, tabling of motion). The Llywydd will use his or her discretion to determine compliance in these circumstances.<sup>27</sup>

A motion to approve the report and changes to Standing Orders was debated and approved on 11 March 2020.

New Standing Order 12.41A establishes the proxy voting mechanism within the Welsh Parliament:

**Figure 3: Welsh Parliament Standing Order on proxy voting**

12.41A A Member may, by reason of absence from the Senedd for parental leave, arrange for their vote to be cast by another Member acting as a proxy (a proxy vote).

12.41B Subject to Standing Order 12.41C, a proxy vote may be cast on all business in Plenary (including secret ballots under Standing Order 6 and Standing Order 17) and a Committee of the Whole Senedd.

<sup>27</sup> Paper from the Business Committee of the National Assembly for Wales, March 2020:

<https://business.senedd.wales/documents/s101203/11%20March%202020%20-%20Amending%20Standing%20Orders%20Standing%20Order%2012%20-%20Proxy%20Voting.pdf>

12.41C No proxy vote may be cast where legislation requires a resolution or motion to be passed on a vote in which the number of Members voting in favour of it is at least two-thirds of the total number of Senedd seats.

12.41D A proxy vote must not count towards the numbers participating in a vote for the purposes of Standing Order 12.46.

12.41E A proxy vote may be cast only if the Presiding Officer has certified that the Member for whom the vote is to be cast is eligible under the terms of Standing Order 12.41A

12.41FA vote cast by a proxy must be clearly indicated as such in the report of plenary proceedings or minutes of the Committee of the Whole Senedd.

12.41G The Presiding Officer, having consulted the Business Committee, must issue written guidance to Members under Standing Order 6.17 on the operation of voting by proxy for parental leave.

12.41H Standing Orders 12.41A – 12.41H, and the references to them in Standing Orders 12.41 and 17.48, will cease to have effect on 6 April 2021.

12.42 Where legislation requires a resolution or motion to be passed on a vote in which the number of Members voting in favour of it is not less than two-thirds of the total number of Senedd seats, a recorded vote must be taken

There was also a consequential amendment to Standing Order 17.48 (substitutions). This Standing Order states that:

*A committee member who has given advance notice to the chair may be represented at a meeting, or a part of a meeting, by another Member from the same political group who has been identified in advance. The nominated representative may participate in the meeting of the committee in all respects as if he or she were a member of it.*<sup>28</sup>

The amendment to Standing Order 17.48 enables a member to “represent more than one committee member when voting in a Committee of the Whole Assembly, where the proxy voting procedure applies.”<sup>29</sup>

The proxy voting arrangements will cease to have effect on 6 April 2021.

## 6 Republic of Ireland

At the beginning of the Covid-19 pandemic, it was deemed necessary for Dáil Eireann to find alternative accommodation so that Members could adhere to social distancing measures. This would apply to those occasions when all members of the Dáil had to be present for voting (for example for the election of the Taoiseach).

<sup>28</sup> Standing Orders of the Welsh Parliament:

[https://senedd.wales/NAfW%20Documents/Assembly%20Business%20section%20documents/Standing\\_Orders/Clean\\_SOs.eng.pdf](https://senedd.wales/NAfW%20Documents/Assembly%20Business%20section%20documents/Standing_Orders/Clean_SOs.eng.pdf)

<sup>29</sup> Paper from the Business Committee of the National Assembly for Wales, March 2020.

The Clerk of Dáil Eireann received legal advice to the effect that remote or virtual sittings were precluded due to Article 15.<sup>3031</sup> Article 15 of the Irish Constitution (Bunreacht na hÉireann) states:

*The Houses of the Oireachtas shall sit in or near the City of Dublin or in such other place as they may from time to time determine.*

After consideration of 13 sites, it was agreed that the Dublin Convention Centre “was the best choice when considering both size, availability and cost.”<sup>32</sup>

There was also agreement that the Dáil would meet in reduced numbers on those occasions when it sat in Leinster House, with proportionate representation from each political party.

According to information provided to the Inter-Parliamentary Union:

*Voting was either by voice vote or roll call vote with Members remaining in their seats. The use of roll call votes was an innovation due to COVID-19 for a full division. The usual manual vote where members walk through the lobbies was not in use.*

There is no provision for proxy voting during the Covid-19 pandemic and nor has there historically been any provision for this method of voting.

The Dáil was embroiled in controversy in October 2019, when it emerged that Members had been voting on behalf of colleagues using their electronic voting system located at each seat in the chamber. A subsequent report by the Clerk highlighted Article 15.11.1 of the Constitution which states:

*All questions in each House shall, save as otherwise provided by this Constitution, be determined by a majority of the votes of the members present and voting other than the Chairman or presiding member.*

Among the report's conclusions, it stated:

*...the practice of Members voting on behalf of their colleagues who are present in the Dáil Chamber has developed significantly in recent years. There is a general acceptance among Members that this is not good practice and must be discontinued. Furthermore, it doesn't align with the Constitutional requirement imposed by Article 15.11.1°...*

During an interview with one of the Members involved in the voting controversy, the Clerk of the House, who was appointed by the Ceann Comhairle to review the Matter,

<sup>30</sup> Hansard Society, Ireland's new Parliament: *Political and physical change coincide amid Covid-19 crisis*, July 2020:

<https://www.hansardsociety.org.uk/blog/irelands-new-parliament-political-and-physical-change-coincide-amid-covid-19>

<sup>31</sup> Not all analysts agree with this interpretation. See for example: <http://constitutionproject.ie/?p=770>

<sup>32</sup> Press release from Dáil Eireann, *Dáil Business Committee approves use of Convention Centre for occasions on which all TDs need to be present and voting*, 8 April 2020: <https://www.oireachtas.ie/en/press-centre/press-releases/20200408-dail-business-committee-approves-use-of-convention-centre-for-occasions-on-which-all-tds-need-to-be-present-and-voting/>

put it to the Member that: “The Constitution says that members should be present and voting and doesn’t make provision for proxy voting”. The Member replied: “Yes I understand that.”<sup>33</sup>

## 7 New Zealand and Australia

The New Zealand Parliament’s House of Representatives system of proxy voting was introduced in 1996 and has been amended to suit the circumstances brought about by Covid-19. It is related to the system of party votes, introduced in the same year in anticipation of the first mixed-member proportional representation election. When a party vote is held, votes are cast as a block by party representatives on behalf of each of the various parties recognised in the House.

Chapter 17 of the guide to parliamentary practice sets out how the proxy voting system works and its relation to party votes<sup>34</sup> and personal votes. The key points are reproduced below:

### *Personal votes and proxy voting*

- If the issue on which a vote is to be held is a conscience issue, the alternative to a party vote is a personal vote. A personal vote may also be held in addition to a party vote if the Speaker considers that a personal vote might make a material difference to the result.
- Proxy voting is a means by which a Member who is absent from the Chamber and cannot vote in person has his or her vote recorded. A proxy vote cannot be recorded for a Member who has not taken the Oath of Allegiance. A proxy on a personal vote cannot be recorded if the Member is actually present in the Chamber, but a Member in a part of the House from which it is impossible to vote, such as in the gallery, can have a vote recorded by proxy.
- A proxy is an authority given by one Member to another authorising the other to cast a vote or record an abstention in the Member’s name. The leader or whips possess a general proxy under the Standing Orders in respect of members of their party voting in party votes, though a Member may withdraw this. This general proxy does not apply on personal votes. A proxy for a personal vote must be issued from one individual to another. A proxy must be signed and dated by the Member giving it, recording the Member’s name and

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<sup>33</sup> Dáil Éireann, *Report of the Committee on Procedure on the Review by the Clerk of Dáil Éireann of Electronic Voting in Dáil Éireann on Thursday 17 October 2019*, 24<sup>th</sup> October 2019: [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee\\_on\\_procedure\\_dail\\_eireann/reports/2019/2019-10-24\\_report-on-the-review-by-the-clerk-of-dail-eireann-of-electronic-voting-in-dail-eireann-on-thursday-17-october-2019\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_on_procedure_dail_eireann/reports/2019/2019-10-24_report-on-the-review-by-the-clerk-of-dail-eireann-of-electronic-voting-in-dail-eireann-on-thursday-17-october-2019_en.pdf)

<sup>34</sup> The leader of the party or the senior whip of the party, or any member acting for the time being in the House as leader or senior whip, holds a standing authority to exercise a proxy vote for all members of the party, unless a member directs otherwise. Members do not need to give their whip specific authority to vote on their behalf in a party vote. That is inherent in membership of the party.

the name of the member to whom it is given, and stipulating the period or business in respect of which it is given.

### *Changes due to Covid-19*

The New Zealand Parliament, as with other legislatures, has introduced a number of changes to deal with the Covid-19 pandemic, one of which relates to proxy voting. On 19<sup>th</sup> March 2020, all parties in the Parliament:

*supported a motion by the Leader of the House for the adoption of certain procedures “to facilitate the activities of the House and its committees during the current epidemic.” These include allowing the Business Committee to adjust or waive the limit on proxy votes that may be cast by a party during a party vote; allowing oral questions to be lodged electronically; allowing select committees, including the Business Committee, to conduct meetings and other forms of decision-making by electronic means; and giving the Assistant Speaker the power to perform all duties and exercise the authority of the Speaker during an adjournment of the House, if both the Speaker and the Deputy Speaker are absent from duty.<sup>35</sup>*

The motion resulted in a sessional order, which can supplement or suspend the Standing Orders for the House of Representatives for the remainder of the session. Therefore Standing Order 155, which relates to proxy voting, is now read alongside the rule in the motion allowing the Business Committee to waive or adjust the rules on proxy voting.<sup>36</sup>

For example, the usual practice is for proxy votes to be used for a maximum of 25 per cent of a party’s membership in the House. This has been suspended so that proxy votes can be used for the entirety of a party’s membership in the House, instead of the usual 25 percent limit: “This means that not all members need to attend, so the members who are present can observe social distancing in the Chamber.”<sup>37</sup>

There is significant accompanying guidance for the House of Representative’s proxy voting system. Some of the other key points from the guidance are:

- A proxy may be open in character, applying to all business for an indefinite period and leaving it to the proxy holder to decide how to use it;
- A proxy cannot be transferred by the named holder to another Member, but a member is at liberty to give out more than one proxy. If any dispute arose as to overlapping proxies, the Speaker would decide which, if any, applied;

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<sup>35</sup> Library of Congress, Continuity of Legislative Activities during Emergency Situations, accessed October 2020: <https://www.loc.gov/law/help/emergency-legislative-activities/newzealand.php>

<sup>36</sup> As above.

<sup>37</sup> Inter-Parliamentary Union, *Country compilation of parliamentary responses to the pandemic*, October 2020: <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic#N>



- A proxy can be withdrawn or amended at any time by the Member who gave it, provided this is done before it is exercised in any particular case. It cannot be withdrawn retrospectively so as to invalidate its exercise in a particular vote; and
- Withdrawal or amendment of a proxy does not have to be effected in writing. It can be done orally, for example by telephone, or by electronic means such as email or text. But it must always be communicated directly to the proxy holder. It is not sufficient that a Member has made public comments apparently inconsistent with the proxy or indicated to another Member an intention to withdraw a proxy. Withdrawal of a proxy or any qualification to be placed on a proxy's exercise must be conveyed directly to the proxy holder.<sup>38</sup>

There are no proxy votes in select committee meetings.<sup>39</sup>

### Australian House of Representatives

The House of Representatives Practice provides the following information on proxy voting:

*In 2008 the House agreed to a resolution making special provisions for nursing mothers, recognising that Members required to nurse infants may not always be able to attend the Chamber to vote in divisions. A Member nursing an infant at the time of any division (except that on the third reading of a bill to alter the Constitution) may give her vote by proxy – to the Chief Government Whip in the case of a government Member and to the Chief Opposition Whip in the case of a non-government Member. The proxy vote is treated as if the Member were present in the Chamber.*

*The resolution also expressed the opinion that the special provisions should not be extended or adapted to apply to Members not able to be present in the Chamber for other reasons.<sup>40</sup>*

The introduction of proxy voting for nursing mothers was considered by the Procedure Committee in 2007. The committee's deliberations were not unanimous, with some members expressing concern about setting a precedent for wider application of proxy

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<sup>38</sup> Parliamentary Practice in New Zealand, *Chapter 17: Voting*, accessed October 2020: <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-17-voting/>

<sup>39</sup> Parliamentary Practice in New Zealand, *Chapter 22 Select Committee Proceedings*, accessed October 2020: <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-22-select-committee-proceedings/>

<sup>40</sup> Australian House of Representatives Practice, 6<sup>th</sup> Edition, *Divisions*, accessed October 2020: [https://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/Practice6/Practice6HTML?file=Chapter8&section=09](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice6/Practice6HTML?file=Chapter8&section=09)

voting; the then lack of demand for the proposal; and the practical operation of the proposal.<sup>41</sup>

Nevertheless, a resolution was passed allowing proxy voting for nursing mothers but at the same time expressly prohibiting the extension of the scheme for other reasons. It contained no provision for proxy voting in committees.

**Figure 4: 2008 Resolution of the Australian House of Representatives in relation to proxy voting for nursing mothers**

(1) That the House, recognising that Members who are required to nurse infants may not always be able to attend in the Chamber to vote in divisions:

(a) agrees that, despite the provisions of the standing orders, a Member may give her vote by proxy for any division except that on the third reading of a bill which proposes an alteration of the Constitution if the Member is nursing an infant at the time of the division;

(b) determines that for the purposes of this resolution, a government Member may give her proxy to the Chief Government Whip, and that a non-government Member may give her proxy to the Chief Opposition Whip;

(c) determines that for the purposes of standing orders 129, 130 and 131 any proxy vote given in accordance with this resolution is to be treated as if it was a vote given by the Member present in the Chamber; and

(d) is of the opinion that the special provisions of this resolution should not be extended or adapted to apply to Members who are not able to be present in the Chamber for other reasons; and

(2) That this resolution has effect and continues in force unless and until amended or rescinded by the House in this or a subsequent Parliament.

In 2015 the Procedure Committee published its report, *Provisions for a more family-friendly Chamber*. This report supported the ongoing use of proxy voting but also recommended that Members should be allowed to bring infants into the Chamber and this was reflected in a subsequent amendment to Standing Orders. The Standing Order is not age-specific in relation to the infant or gender-specific in relation to the Member.<sup>42</sup>

<sup>41</sup> House Standing Committee on Procedure, Options for nursing mothers, 2007:

[https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=proc/nursingmothers/report/chapter%201.htm](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=proc/nursingmothers/report/chapter%201.htm)

<sup>42</sup> Evidence from the Clerk of the House, Australian House of Representatives to the House of Commons Procedure Committee's review of proxy voting:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/procedure-committee/voting-by-proxy-in-the-house-of-commons/written/79407.pdf>

## 8 Other European examples

A briefing produced by the European Parliament Research Service<sup>43</sup> highlighted some of the measures parliaments across Europe are taking to ensure that they can carry on business during the pandemic. Included in these are provisions for proxy voting.

**Figure 5: Proxy voting provisions in European legislatures**

Legislature	Proxy voting Y/N
Belgium	N
Bulgaria	N
Czech Republic	Y
Germany	Y (votes of each Land can be cast by the Stimmenführer in Bundesrat)
Spain	N
Estonia	N
France	Y (Assemblée Nationale and Sénat)
Croatia	N
Italy	N
Cyprus	N
Latvia	N
Lithuania	N
Luxembourg	Y
Netherlands	Y (exceptionally, political group delegates vote for the members of their groups in the Tweede Kamer)
Austria	N
Poland	N
Portugal	N
Romania	N
Slovenia	N
Finland	N
Sweden	N

**Figure 6: further information on proxy voting in the parliaments of France and Luxembourg**

**France:** In France, where proxy voting in parliament has a long tradition, 15 MPs' right to vote is characterised by Article 27 of the Constitution as a personal right, although an MP may exceptionally delegate their vote under certain circumstances...

Members of both houses of the national parliament (Sénat and Assemblée nationale) are allowed to delegate their votes if illness, accident or a serious family event prevents them from attending parliamentary sessions; if they are

<sup>43</sup> Briefing from the European Parliament, *Parliaments in emergency mode: How Member States' parliaments are continuing with business during the pandemic*, 2020: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649396/EPRS\\_BRI\(2020\)649396\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649396/EPRS_BRI(2020)649396_EN.pdf)

doing their military service, or are on a temporary mission entrusted by the government; if they are participating in sessions of international assemblies under an appointment made by the French Parliament; for some extraordinary sessions; and in cases of force majeure when decided by the bureau of each of the houses of the national parliament.

Each member may delegate their vote to another member and the delegation must be notified to the president of the house indicating the identity of the member receiving the delegation and the reason why the delegating member cannot attend the session. Making use of these provisions on 17 March 2020, the Conference of Presidents of the Assemblée nationale decided to extend the possibilities for proxy voting and allowed a single member to cast the votes of all the members of his or her political group.

The **Luxembourg** parliament was already very lenient on proxy voting by absent members before the coronavirus pandemic. Delegation to one of the members present is possible, with no specification as to the situations in which this can take place, except that no member can be the delegate for more than one absent member (Article 65 of the Constitution of Luxembourg and Article 47 of the Standing Rules of the House of Representatives). The delegated member casts the vote of the absent member provided that this has been authorised in advance by the Bureau. Voting by delegation is not permitted in relation to specific matters (constitutional reform – Article 114 of the Constitution).

## Appendix 1

### DIGITAL VOTING – A GUIDE FOR MEMBERS (Scottish Parliament)

#### Introduction

This guide has been produced to assist Members in using the digital voting system. The system has been put into effect as the Presiding Officer, in consultation with the Parliamentary Bureau, is satisfied that the system is sufficiently secure and reliable.

It is intended that this guidance will be an evolving document. Any revised version of this guide will be sent to Members and the guide will also be available on the Parliament's website at—

<https://www.parliament.scot/parliamentarybusiness/chamber.aspx>.

#### Accessing the digital voting system

The digital voting system can be accessed at—

<https://vote.parliament.scot>

It is recommended that Members add a shortcut to the system on the device they will use for voting. Instructions on creating a shortcut is provided as the annex to this guidance. Members who would like assistance with creating a shortcut should contact the BIT Helpdesk.

#### Participation

**Only Members who are present at a meeting are entitled to vote. A Member is considered to be present at a meeting if they are in the Chamber or on the BlueJeans videoconference. Members will be emailed prior to Decision Time (or the first vote at a meeting) to alert them to the point at which they should join. Those in the Parliament will also be alerted in the normal manner by the Division Bell.**

**All Members who are present at a meeting will vote using the same system. Therefore, if the digital voting system is being used the Chamber voting system will not be used.**

**For the avoidance of doubt, Members who are present in the Chamber do not need to be on the BlueJeans videoconference at the same time.**

**It is recommended that Members accept the meeting request issued by the Business Team for each business day to ensure they have access to the BlueJeans videoconference for each day.**

**Members who have any concerns about connectivity may wish to consider whether they have any access to an alternative location from which they could take part in the meeting by videoconference.**

## **Voting**

Prior to Decision Time (or the first vote at a meeting) there will be a short technical break to ensure that Members who are present are logged into the voting system.

Members who are present will be provided with a PIN to access the system for that meeting during the technical break. There is a unique PIN for each meeting.

After entering the PIN, Members will be asked to select either 'Chamber' or 'Remote' to indicate whether they are taking part in the meeting in the Parliament or through BlueJeans videoconference.

After clicking 'Submit', Members should see a screen with the message "There are no votes currently open."

### **Members should not share the PIN.**

## **Management of Votes**

At each meeting, before any votes are conducted using the system there will be a short technical break which will include a test vote. The purpose of this break is to ensure that all Members present are able to access the system and are ready to vote.

Once a vote is open, the vote screen should appear automatically on Members' devices. Members should select either 'Yes', 'No' or 'Abstain'. Members can change their vote selection during the voting period. A countdown at the bottom of the screen will indicate how much time remains in the voting period.

If any Member experiences a difficulty during a vote they should bring this to the attention of the Presiding Officer by way of a point of order. Members taking part via BlueJeans should indicate any difficulties via the chat function. Such indications should be made before the Presiding Officer declares the result of the relevant vote.

If a Member is present in the meeting but is unable to access the digital voting system, the Presiding Officer may ask the Member to indicate their voting intention and may direct the Clerk to record that Member's vote.

