Proxy voting in divisions in the House

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Summary

On 5 July 2018, the Government has scheduled a debate on the principle of proxy voting in divisions in the House of Commons.

The debate will take place before the Government makes its response to the report from the Procedure Committee on Proxy voting and parental absence, which was published on 15 May 2018.

Andrea Leadsom, the Leader of the House of Commons, said that the debate would allow the constitutional issues of proxy voting to be discussed before she gave a considered response to the Procedure Committee.

The Procedure Committee’s inquiry followed a debate on baby leave on 1 February 2018, which supported calls for formalised arrangements for maternity, paternity and adoption leave for new parents in the House. The Good Parliament (July 2016) called for more formal arrangements. The Speaker’s Conference (on Parliamentary Representation) called on political parties to set out their policies on maternity, paternity and caring leave for Members; and invited the Independent Parliamentary Standards Authority to consider formal arrangements maternity, paternity and caring leave for Members.

Procedure Committee proposals

The Procedure Committee brought forward proposals for a non-compulsory scheme for proxy voting that would require some changes to Standing Orders. It recommended that “proxy voting ought to be available to new mothers, new fathers and adoptive parents”. The scheme should operate under the authority of the Speaker, who would certify the appointment of a proxy.

It recommended that:

- Eligibility would be confirmed by producing either a certificate of pregnancy or a ‘matching certificate’ from a registered adoption agency to the Speaker.
- The dispensation to vote by proxy would be:
  - “Six months for the biological mother of a baby, or for the primary or single adopter of a baby or child;
  - “Two weeks for the biological father of a baby, the partner of the person giving birth or the second adopter of a baby or child”.

The Committee said that the new system would have to operate in a transparent way.

The Committee also considered whether a proxy should be exercised in all divisions or whether there should be restrictions. It proposed that subject to certain limitations a proxy could be exercised in almost all divisions and deferred divisions in the House, although it said that the House might impose further restrictions. It recommended that proxy votes should not be used in votes for an early general election under the Fixed-term Parliaments Act 2011 or in determining whether fewer than 40 Members had participated in a division.

The Procedure Committee recommended that the decision should be one for the House.
1. Introduction

On 1 February 2018, at the conclusion of a Backbench Business debate, initiated by Harriet Harman, the House resolved that:

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.¹

Following that debate, the Procedure Committee conducted an inquiry in which it considered how the House’s decision in principle might operate in practice.

The Procedure Committee’s report, *Proxy voting and parental absence*, was published on 15 May 2018.² The Committee brought forward proposals for a non-compulsory scheme for proxy voting that would require some changes to Standing Orders. It recommended that the scheme should operate under the authority of the Speaker, who would certify the appointment of a proxy.

Before this, the Leader of the House of Commons, Andrea Leadsom had written to Charles Walker, the Chair of the Procedure Committee, in November 2017. She noted that the issue had become “increasingly prominent”.³ It had been raised in *The Good Parliament* report, which addressed diversity insensitivities in the House of Commons. The Commons Reference Group on Representation and Inclusion, convened to consider *The Good Parliament*, had “agreed that the solution to this issue would be to provide Baby Leave for MPs and adequate representation of their constituents in Parliament (proxy votes), through a resolution of the House”.⁴

Since the publication of the Procedure Committee’s report, there have been calls for it to be considered quickly as a number of MPs are expecting babies.

On 5 July 2018, the Government has scheduled a general debate on the principle of proxy voting. At Business Questions on 21 June, Andrea Leadsom, the Leader of the House noted that the Government is scheduled to reply to the Procedure Committee’s report by 15 July. She explained why she had provided time for the debate before the Government responded to the Procedure Committee:

> I wanted to have that general debate, so that the constitutional implications of proxy voting, as opposed to other forms of formalised pairing, for example, and who should operate proxy

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¹ HC Deb 1 February 2018 c1051  A debate pack was published in advance of this debate: *Baby leave for Members of Parliament*, CDP 2018-0023, 30 January 2018


voting if it were to be introduced and so on, can be properly aired in this place before I give a considered response to the work of the Procedure Committee, for which I am very grateful.\[5\]

In the *House Magazine*, 28 June 2018, Harriet Harman, Maria Miller and Hannah Bardell argued that the time has come to introduce proxy voting in the House of Commons. They argued that:

> Seeing an eight months pregnant Jo Swinson carefully navigate her way through the division lobby last week has given added impetus to cross party calls for MPs to be able to vote by proxy when they are having a baby or adopting a child.\[6\]

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\[5\] HC Deb 21 June 2018 c481

\[6\] Harriet Harman, Maria Miller and Hannah Bardell, “Cross-party call for proxy voting: it’s time to move into the 21st century”, *House Magazine*, 28 June 2018
2. Procedure Committee recommendations

In the light of the House’s decision on 1 February 2018 that it believed that Members who have had a baby or adopted a child should be entitled but not required to vote by proxy in the House, the Procedure Committee considered the matter.

The Procedure Committee’s report, *Proxy voting and parental absence*, was published on 15 May 2018. The Committee brought forward proposals for a non-compulsory scheme for proxy voting that would require some changes to Standing Orders. It recommended that the scheme should operate under the authority of the Speaker, who would certify the appointment of a proxy.

**Eligibility for and duration of the availability of proxy voting**

The Procedure Committee recommended that “proxy voting ought to be available to new mothers, new fathers and adoptive parents”.8

In line with proposals from the Commons Reference Group on Representation and Inclusion:

- Eligibility would be confirmed by producing either a certificate of pregnancy or a ‘matching certificate’ from a registered adoption agency to the Speaker.
- The dispensation to vote by proxy would be:
  - “Six months for the biological mother of a baby, or for the primary or single adopter of a baby or child;
  - “Two weeks for the biological father of a baby, the partner of the person giving birth or the second adopter of a baby or child”.9

The Committee recommended that any period of absence should be continuous. For a mother or primary adopter that period should be six months and for a father, partner or second adopter it should be two weeks. The Member would specify the start and end dates to the Speaker who would issue a certificate. The certificate would be recorded in the *Votes and Proceedings*.10

The Committee proposed that an extension to the period should be permitted. It cited the example of an expectant mother being unable to travel to Westminster by air, and proposed that the period in which the proxy vote was valid be extended by four weeks.11

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8 *Ibid*, para 44
9 *Ibid*, paras 45-46
10 *Ibid*, paras 47-49
11 *Ibid*, para 50
Appointment of a proxy
The Committee concluded that “Members ought to be free to choose any other Member of the House who is eligible to vote in divisions to act as a proxy. That Member will be named in the certificate issued by the Speaker”.12

The Committee also suggested that if the Member wished to vote in person at any time, they should be able to but would need to give notice to the Speaker on the previous sitting day. This would allow a new certificate to be recorded in the Votes and Proceedings.13

Recording the proxy vote
Although the Committee said that detailed arrangements for recording votes would be arranged by officials, it said that “Where a proxy vote is cast, it must be recorded in a transparent way”.14

When could a proxy vote be exercised?
The Committee heard a range of views on when a proxy vote ought to be available for use. The Committee recommended that the House consider three options for the categories of business where proxy voting may be used:

• Decisions on all items of public and private business;
• Decisions on all items of public and private business taken on Mondays, Tuesdays, Wednesdays and Thursdays; or
• Decisions on all items of Government business (that is, all orders of the day on Government bills and all motions moved by a Minister of the Crown).15

The Committee identified two occasions when a proxy vote should not be used and also discussed when a proxy vote ought not be used.

It considered that a proxy vote should not be used on a vote for an early general election, when a majority voting in favour of the motion has to be equal to or greater than two-thirds of the number of seats in the House. It echoed the Clerk of the House’s concern that because the two-thirds majority was a statutory provision, a decision taken on the basis of proxy votes would be open to judicial review. The Committee did not consider that “a similar risk of challenge arises to decisions with statutory effect which are taken in the House by simple majority”.16

In relation to calculating a quorum in the House, the Committee commented and concluded that:

The Clerk of the House observed that: “It would be odd if absent people constituted what is effectively a quorum”. We agree. **We recommend that votes cast by proxy shall not be reckoned for the purposes of ascertaining, under Standing Order No. 41(1), whether fewer than forty Members have taken part in a division.**17

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12 Ibid, para 53
13 Ibid, paras 56-57
14 Ibid, paras 58-60
15 Ibid, para 68
16 Ibid, paras 71-73
17 Ibid, para 75
The Committee concluded that the House ought to determine whether proxy votes ought to be counted in reckoning the majority for a closure.

In addition to these procedural questions, the Committee reported that:

Some witnesses considered that certain types of decision ought not to be taken on the strength of proxy votes. In particular there were strong reservations about the use of proxy votes on decisions to commit troops to combat, particularly where a motion might pass or fail on the strength of proxies. 18

It concluded that:

There is an inherent risk to the House’s reputation of Members away from the House casting votes as if they are present in the Chamber and actively following debates. For example, it would be unthinkable, in our view, for a motion on committing military personnel to armed conflict to be carried on the basis of proxy votes. We are confident that Members will bear the reputation of the House in mind when choosing whether to use a proxy vote, and weigh this factor in their decision making. 19

The Committee undertook to review any arrangements introduced and report on them within 12 months of their introduction. 20

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18 Ibid, para 82
19 Ibid, para 83
20 Ibid, para 92
3. Debate on Baby leave in the House of Commons (1 February 2018)

3.1 Background

The debate on baby leave for Members of Parliament took place on 1 February 2018. The subject of the debate was determined by the Backbench Business Committee, following an application from Harriet Harman, on 5 December 2017.21

Currently, arrangements regarding maternity, paternity, parental, adoption, and caring leave for Members are informal and operate at the party level.

3.2 The Debate

The motion for the debate was:

That this House believes that it would be to the benefit of the functioning of parliamentary democracy that hon. 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.

In her introductory remarks, Harriet Harman, who opened the debate, noted the widespread support she had received in applying for the debate. She then outlined why she had made the application to the Backbench Business Committee:

This motion asks the House for its in-principle agreement to make arrangements for when a Member has a baby or adopts a child. At the moment, we have no such arrangements. In this House, we set the rules for parents outside the House having babies or adopting a child, and we do so because we think that it is important for the child and for the parents. We do it because we want new parents not to have to ask for favours, but to be clear about where they stand. But there is no such system for Members of this House.22

During the course of the debate, Cat Smith, who was “one of those Members with a growing bump” highlighted the urgency of the issue. Harriet Harman reported that “There have already been 17 babies born to women Members since 2010”.23

Andrea Leadsom highlighted some of the issues that would need to be considered by the Procedure Committee in the course of its inquiry:

The motion before the House presents two issues for consideration. The first is the need for Members of Parliament to take baby leave. I think we can all agree that new parents must spend time with their babies and be enabled to do that. The second issue concerns how we reconcile that with the question of

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21 Backbench Business Committee, *Representations, 5 December 2017*, Qq1-6
22 HC Deb 1 February 2018 c1013
23 HC Deb 1 February 2018 c1013; HC Deb 1 February 2018 c1016
how and whether Members should be able to vote in the House of Commons during any such leave.  

She said that giving Members the right to baby leave raised the following potential questions about the duties of Members:

- “Introducing baby leave might lead some to suggest that MPs should be treated as employees, which could of course have wider implications”.
- “The introduction of proxy voting would also mark a departure from conventional voting practices in the House in several ways. For example, when Members vote in a Division, it is expected that they do so having had the opportunity to attend the Chamber.”
- “It is important to note that Members of Parliament are elected by their constituencies as individuals, so it is implied upon their election that their votes cannot be transferred to another MP. The appointment of a proxy voter could be perceived as a reduction of personal accountability. Any changes will therefore need to ensure that personal accountability is maintained”.

She also noted that alternative approaches to meeting the needs of new parents were available.

An alternative approach suggested on many occasions is to strengthen the pairing arrangements, whereby an MP on each side of the Commons is permitted to miss a vote. However, concerns have been expressed that pairing lacks transparency, although on some occasions this is deliberate to protect private personal or family information.

At the end of the debate, the motion was agreed to without a debate.

**Background information**

4. Current arrangements and calls for change

4.1 Current arrangements for MPs who become parents

Maternity and paternity leave
Members, as office holders, do not qualify for maternity or paternity leave. They continue to receive their parliamentary salary unless they are suspended from the service of the House.27

Arrangements regarding maternity, paternity, parental, adoption, and caring leave for Members are informal and operate at the party level.28

The 2010 report of the Speaker’s Conference on Parliamentary Representation noted that

Such arrangements as there are to support Members who have caring responsibilities are in the hands of the party whips (the business managers), who have to ensure sufficient Members are present in the House for decisions to be made, and arrange for their parties to be properly represented on all official groups and committees.29

Voting in divisions
In the past Members, with young children, who wished to vote, had been “nodded through” the division lobbies. The procedures have been used by Members within the Parliamentary precincts who were not physically able to go through the division lobbies. These procedures are described by Erskine May:

If any Members who are disabled by infirmity from passing through the lobby are present in the precincts of the House and wish to vote, their names are communicated to the clerks and to the tellers, and are included in the numbers counted.30

In a footnote at the end of this extract, Erskine May indicates that “nodding through” was a practice of the House, not a rule.

However, practice has changed and the press has reported occasions when Members have carried babies through the division lobbies.31 At its meeting on 28 March 2017, the Commons Reference Group on

27 Under Standing Order No 45A, “The salary of a Member suspended from the service of the House shall be withheld for the duration of his suspension”
28 Sarah Childs, The Good Parliament, July 2016, p20
29 Speaker’s Conference (on Parliamentary Representation), Final Report, 11 January 2010, HC 239-I 2009-10, para 257. The Speaker’s Conference was appointed to “Consider, and make recommendations for rectifying, the disparity between the representation of women, ethnic minorities and disabled people in the House of Commons and their representation in the UK population at large”
30 Erskine May, Parliamentary Practice, 24th edition, 2011, p413
31 Mikey Smith, “Labour MP posts adorable picture as he takes baby son to vote against Tory immigration bill”, Mirror, 15 October 2015 [on Jonathan Reynolds]; and Rosamund Urwin, “Lib Dem MP makes history by bringing his baby into Commons for vote”, Evening Standard, 17 July 2014 [on Duncan Hames]
Representation and Inclusion\textsuperscript{32} endorsed Mr Speaker’s approach to allowing children up to the age of five in the Division Lobbies and into and through the Chamber whilst a vote was underway.\textsuperscript{33}

\subsection*{4.2 The Good Parliament (2016) - recommendations}

\textit{The Good Parliament} report was prepared by Professor Childs following her secondment to the House of Commons. The Report offered "a ‘menu’ of practical solutions – 43 recommendations – to address the diversity insensitivities that remain in the UK House of Commons".\textsuperscript{34}

It recommended that the Commons Reference Group on Representation and Inclusion should

\begin{itemize}
  \item Produce a House Statement on maternity, paternity, parental, adoption and caring leave. All parties represented in the Commons would be expected to sign up to this.
\end{itemize}

In her report, Professor Childs noted that:

\begin{quote}
Arrangements regarding maternity, paternity, parental, adoption, and caring leave for Members are informal and operate at the party level. This no doubt results from the historic maleness of the House. Yet, to become a truly inclusive institution the House of Commons must accommodate and facilitate both the pregnant woman Member and co-parenting and caring MP.
\end{quote}

She suggested three approaches to voting whilst MPs were on maternity, paternity, parental, adoption and caring leave:

\begin{itemize}
  \item For the period of leave, the MP might choose to:
    \begin{itemize}
      \item Vote remotely (i.e. off the Parliamentary Estate)
      \item Appoint a proxy from amongst fellow party MPs to vote and otherwise act for them in respect of tabling questions, amendments, etc. in Parliament
      \item Be formally and transparently ‘paired’ so that any absence from Parliament does not affect the balance of party representation in divisions.\textsuperscript{35}
    \end{itemize}
\end{itemize}

Sarah Childs reported data from a 2011 Inter-Parliamentary Union report showing that maternity provision for MPs followed provisions in national law in 62\% of parliaments. For paternity leave, the equivalent figure was 45\% and for parental leave it was 39\%.\textsuperscript{36}

\begin{flushright}
\textsuperscript{32} The Commons Reference Group on Representation and Inclusion was established following the publication of Professor Sarah Childs’ report, \textit{The Good Parliament}, July 2016
\textsuperscript{33} Commons Reference Group on Representation and Inclusion, \textit{Decisions}, November 2016 onwards
\textsuperscript{34} Sarah Childs, \textit{The Good Parliament}, July 2016, p9
\textsuperscript{35} Sarah Childs, \textit{The Good Parliament}, July 2016, pp20-21
\end{flushright}
4.3 Speaker’s Conference on Parliamentary Representation (2010) – recommendations

The Speaker’s Conference asked the whips of the Labour, Conservative and Liberal Democrat parties to outline the arrangements they had made to support parents and other carers. After hearing comments from them, the Speaker’s Conference noted that “we believe that maternity, paternity and caring leave is an issue which all three main parliamentary parties have as yet failed to take fully seriously”. And it recommended that:

Each Parliamentary party should draw up a formal statement of policy on maternity, paternity and caring leave. This should set out clearly the minimum level of support which an individual requesting leave may expect from his or her party, and the steps which the individual should take to arrange a period of leave. Such statements should be agreed by party leaders, and published on party websites and in the party whip, by the end of 2010.37

The Speaker’s Conference also considered the question of statutory maternity cover for MPs. The Conference noted that because MPs are held to be self-employed they are not entitled to statutory maternity cover. In addition, anyone “taking statutory maternity leave and claiming statutory maternity pay may not also work during the period of formal leave, except on ten days allowed for ‘keeping in touch’ and career development”. This would cause difficulties if Members were required to attend the House of Commons to vote. The Conference invited the Independent Parliamentary Standards Authority (IPSA), which is responsible for determining the salary of Members, to “consider the development of formal maternity, paternity and caring leave arrangements for MPs which are as closely equivalent to the general public sector provision as possible”.38

In October 2017, it was reported that IPSA had given its backing to proposals for six months paid maternity leave for MPs, “in principle”.39

37 Speaker’s Conference (on Parliamentary Representation), Final Report, 11 January 2010, HC 239-I 2009-10, paras 263-264
38 Speaker’s Conference (on Parliamentary Representation), Final Report, 11 January 2010, HC 239-I 2009-10, paras 265-268
39 Richard Vaughan, “MPs may be given six months maternity leave to promote more women entering politics”, i Newspaper, 18 October 2017
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