



Amending Standing Orders: Standing Order 12 – Proxy Voting

Purpose

1. In accordance with Standing Order 11.7(iv), the Business Committee is responsible for making recommendations on the general practice and procedures of the Assembly, including any proposals for the re-making or revision of Standing Orders.
2. The report recommends amendments to Standing Orders 12 and 17. The changes agreed by Business Committee are found in Annex A, and the proposals for new Standing Orders are at Annex B. At Annex C is the accompanying Guidance, issued by the Llywydd, which sets out further detail on how the procedure will operate in practice.

Background

3. In 2016 Professor Sarah Childs produced an independent report [The Good Parliament](#) which made 43 recommendations on how to make the House of Commons more representative and inclusive. Much of the research and conclusions are relevant to Wales and the report compared the

Assembly's maternity and paternity leave provision against other parliaments. It identified that Wales does not have a formal process; arrangements are instead made between the individual member and their parties.

4. On 28 January 2019 the House of Commons unanimously decided to introduce a proxy voting scheme for MPs who are new parents. The temporary Standing Order lapses automatically upon the expiry of the scheme (originally 12 months) and the motion directed the Procedure Committee to review arrangements within this time. On 16 January 2020, due to the General Election, a six month extension was approved to give the Procedure Committee until the summer recess to complete its review of arrangements and report to the House.

5. Some other Westminster-model parliaments also have provisions for proxy voting, including the lower houses in both Australia and New Zealand. Like the House of Commons, proxy voting arrangements in these parliaments are limited to parental absence.

Developments in the Assembly

6. In November 2019, the Business Committee agreed to look at introducing proxy voting in the Assembly 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. The Llywydd wrote to all Assembly Members inviting comments both on implementing a scheme for parental leave in the first instance, and also about the question of wider eligibility for proxy voting in the longer term.

7. In January 2020, Business Managers agreed in principle to introduce a proxy voting scheme for parental leave on a trial basis until the end of the fifth Assembly, and at their meeting of 3 March 2020 agreed the Standing

Order changes proposed in this report, and the Guidance to accompany the changes.

Proposals for Changes to Standing Orders

Voting by Proxy for parental leave

8. The proposed new Standing Order 12.41A 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.

9. The scheme is not compulsory and qualifying Members are free to continue to vote in person or use any other informal pairing arrangements available to them.

10. It is proposed that new Standing Orders 12.41A – 12.41H (and the consequential changes to Standing Orders 12.41 and 17.48) cease to have effect on 6 April 2021, the end of the Fifth Assembly. Business Managers agreed to introduce a scheme for a trial period, and it will be for any successor Business Committee to determine whether they wish to review or extend the scheme beyond that date.

Eligibility

11. Under proposed Standing Order 12.41E, a proxy vote may only be cast if the Llywydd has deemed the absent Member is eligible. The eligibility criteria can be found at paragraphs 1–4 of the Guidance at Annex C.

Maximum Durations

12. The maximum durations of the scheme are set out in paragraphs 5–9 of the Guidance. They are the same as those applied in the House of Commons

procedure and are based on the legal definitions of ‘ordinary maternity leave’ and ‘statutory paternity leave’.

Scope of the procedure

13. In accordance with proposed new Standing Orders 12.41A–G, 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 (Standing Order 12.41C).

14. Whilst there are no legal barriers or limits to a proxy voting procedure on any votes in the Assembly, this restriction is consistent with practice elsewhere – notably the House of Commons and the Australian House of Representatives. Both of which exempt votes by proxy for motions which require either the support of two thirds of all Members or more than half of all Members (respectively, votes under the Fixed Term Parliament Act, and on the third reading of a bill which proposes an alteration of the Constitution).

15. The proposed new Standing Order 12.41D states that a proxy vote must not count towards the numbers for quorum; again, this is consistent with practice elsewhere.

Guidance

16. The proposed Standing Order 12.41G directs the Llywydd, having consulted the Business Committee, to issue written guidance to Members on the operation of the proxy voting procedure. That guidance can be found at Annex B and covers practical and procedural arrangements such as eligibility, maximum durations, designation of a proxy, publishing and varying the arrangement, and principles for exercising the proxy vote. It gives the Llywydd discretion to determine compliance with the scheme in the event of any ambiguity.

Consequential amendments

17. The consequential change to Standing Orders 12.41 enables the proxy voting procedure to over-ride the general requirement Members to vote in person in Plenary. The change to Standing Order SO17.48 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.

Action

18. The Business Committee formally agreed the changes to Standing Orders on 3 March 2020 and the Assembly is invited to approve the proposals at Annex B.

Annex A

Annex A – Proposed Standing Order changes

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| | STANDING ORDER 12 – Business in Plenary Meetings | |
| | Decisions on Motions and Amendments | |
| 12.41 | <u>Subject to Standing Orders 12.41A–H,</u> Members must cast their votes individually and in person (but are not obliged to vote). | <p>Amend Standing Order temporarily</p> <p>Standing Orders 12.41A–H remove the need for Members eligible to vote by proxy to be present in person.</p> <p>The temporary amendment to Standing Order 12.41 will cease to have effect at the same time as Standing Orders 12.41A–H (6 April 2021).</p> |
| | STANDING ORDER 17 – Operation of Committees | |
| | Substitutions at Meetings | |
| 17.48 | A committee member who has given advance notice to the chair may be represented at a meeting, or a part of a meeting, | Amend Standing Order temporarily |

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| | <p>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. <u>Subject to Standing Orders 12.41A–H for a Committee of the Whole Assembly, n</u>No Member may represent more than one committee member at a meeting.</p> | <p>Standing Orders 12.41A–H allow a Member nominated as proxy to represent (cast a vote for) both themselves and the absent Member at a Committee of the Whole Assembly meeting, which is otherwise not possible under SO17.48 as drafted.</p> <p>The temporary amendment to Standing Order 17.48 will cease to have effect at the same time as Standing Orders 12.41A–H (6 April 2021).</p> |
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| | STANDING ORDER 12 – Voting by proxy for parental leave | New Temporary sub-heading |
| <u>12.41A</u> | <u>A Member may, by reason of absence from the Assembly for parental leave, arrange for their vote to be cast by another Member acting as a proxy (a proxy vote).</u> | New temporary Standing Order This temporary Standing Order will cease to have effect on 6 April 2021. |
| <u>12.41B</u> | <u>Subject to Standing Order 12.41C, a proxy vote may be cast on all business in Plenary (including secret ballots under</u> | New temporary Standing Order |

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| | <u>Standing Order 6 and Standing Order 17) and a Committee of the Whole Assembly.</u> | This temporary Standing Order will cease to have effect on 6 April 2021. |
| <u>12.41C</u> | <u>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 Assembly seats.</u> | New temporary Standing Order This temporary Standing Order will cease to have effect on 6 April 2021. |
| <u>12.41D</u> | <u>A proxy vote must not count towards the numbers participating in a vote for the purposes of Standing Order 12.46.</u> | New temporary Standing Order This temporary Standing Order will cease to have effect on 6 April 2021. |
| <u>12.41E</u> | <u>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.</u> | New temporary Standing Order This temporary Standing Order will cease to have effect on 6 April 2021. |
| <u>12.41F</u> | <u>A 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 Assembly.</u> | New temporary Standing Order This temporary Standing Order will cease to have effect on 6 April 2021. |

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| <p><u>12.41G</u></p> | <p><u>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.</u></p> | <p>New temporary Standing Order</p> <p>This temporary Standing Order will cease to have effect on 6 April 2021.</p> |
| <p><u>12.41H</u></p> | <p><u>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.</u></p> | <p>New temporary Standing Order</p> <p>This temporary Standing Order will cease to have effect on 6 April 2021.</p> |

Annex B

STANDING ORDER 12 – Business in Plenary Meetings

Decisions on Motions and Amendments

12.41 Subject to Standing Orders 12.41A–H, Members must cast their votes individually and in person (but are not obliged to vote).

STANDING ORDER 17 – Operation of Committees

Substitutions at Meetings

17.48 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. Subject to Standing Orders 12.41A–H for a Committee of the Whole Assembly, no Member may represent more than one committee member at a meeting.

STANDING ORDER 12 – Business in Plenary Meetings

Voting by proxy for parental leave

12.14A A Member may, by reason of absence from the Assembly 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 Assembly.

- 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 Assembly 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.
- 12.41F A 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 Assembly.
- 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.

Annex C

Guidance issued by the Llywydd under Standing Order 12A.2

A. Eligibility

1. Proxy voting is available to 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.
2. 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.
3. The scheme is not compulsory and Members are free to vote in person or use any other informal pairings available to them.
4. In the event of any ambiguity, the Llywydd will use his or her discretion to determine compliance with the proxy voting scheme.

B. Duration

5. 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.
6. 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.

That period may be of up to a maximum of six months, including periods when the Assembly is in recess or dissolved.

7. Any period of proxy voting taken by the biological father or the partner of the person giving birth who has parental responsibility for the child; the second adopter; or the secondary carer in a surrogacy arrangement 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.
8. A Member must specify in writing to the Llywydd the dates on which the absence will begin and end, subject to the maximum durations permitted (paragraphs 6 and 7). During that period the Member is entitled to cast a vote by proxy.
9. The Llywydd's discretion will be used to determine eligibility and maximum durations for proxy voting when Members or their partners have suffered a miscarriage or stillbirth. In determining such factors, the Llywydd will be mindful of statutory entitlements.

C. Designation of a proxy

10. 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.
11. A Member is free to choose any other Member to carry out their proxy vote, subject to the agreement of the other Member and notification to the Llywydd.

D. Publishing the arrangement

12. On receipt of this information, and once the Llywydd has determined compliance, the Llywydd will lay a certificate setting out the name of the Member nominated as proxy and the start and end dates.
13. The 'votes summary' for each Plenary or Committee of the Whole Assembly meeting will note that a proxy vote has been cast by listing

the Member and how they voted in the usual way, in accordance with Standing Orders 12.48 and 17.35, and by noting which Member cast a proxy vote on their behalf.

E. Varying the arrangement

14. 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.
15. The Llywydd will issue and lay a new certificate under paragraph 12 if required.
16. Changes of proxy made for a specified period will take effect from the start (or end) of the day(s) specified.

F. Exercising the proxy vote

17. 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 on each vote.
18. A Member designated as a proxy must act in strict accordance with the instruction given by the absent Member.
19. A Member designated as a proxy may cast their own vote one way and the proxy vote in the other, and may cast a proxy vote without casting their own vote at all.
20. A Member registered as voting by proxy who wishes to vote in person will be entitled to do so, provided that the Llywydd has been notified as soon as is reasonably practicable after the circumstances that have led to the request became known (paragraph 14). The Llywydd's discretion will be used to determine compliance in these circumstances.

21. A Member eligible to vote by proxy must inform the Member nominated as their proxy of any relevant interest which prohibits them from voting under Standing Order 2.9.

G. Practical arrangements for voting by proxy

22. The Clerk will make practical arrangements with the Member nominated as proxy to exercise the proxy vote.