CHAPTER 19

Committees of the Whole House

COMMITTEES CONSISTING OF ALL MEMBERS

As well as considering and debating issues as a full House, the House establishes committees of members to consider issues more conveniently. The House appoints two types of committees: committees of the whole House, of which all the members of the House are members (in this case the House forms itself into a committee); and select committees, each of whose membership is confined to selected members of the House. (See Chapters 20–23 for select committees.) Formerly three distinct types of committee of the whole House were distinguished: a Committee of Supply (for taking decisions on public expenditure), a Committee of Ways and Means (for taking decisions on taxation), and other committees of the whole House. The Committee of Supply and the Committee of Ways and Means were abolished in 1967.

A different committee of the whole House is created every time the House forms itself into such a committee. “Committee of the whole House” is simply a shorthand expression for the various forms of proceedings that apply when the House goes into committee. Committees of the whole House sit in the Chamber of the House; they are said to meet “on the floor of the House”. As committees of the whole House consist of all members of the House and meet at the same venue as the House, it is physically impossible for the House to sit at the same time as a committee of the whole House meets.

The Speaker does not preside over a committee of the whole House. Indeed, this has been said to be the reason the House of Commons originally adopted the practice of going into committee. Speakers were regarded by members with some suspicion as the King’s or Queen’s men, who reported members’ (sometimes less than complimentary) deliberations to the Sovereign. Before legal immunity for parliamentary proceedings was established, this could be a dangerous matter for the individuals concerned. Going into committee to consider a matter without the Speaker in the Chair was a means of maintaining the privacy of the Commons’ proceedings from the Crown. (“Going into committee” has retained something of this sense of deliberating in private even today.) This explanation of the origins of the committee of the whole House has been disputed on the ground that it ignores the fact that the Speaker, even though not presiding, always had a right to attend.

debates held in a committee of the whole House and to speak and vote there.\(^2\) The practice may have originated from nothing more than a wish for more relaxed procedural rules for occasions when it was desirable for the whole House to be able to participate in discussion of matters needing detailed attention to drafting. This is close to the modern role of the committee of the whole House.

The committee of the whole House is an extremely significant part of the operation of the House. Each year, for example, as much as a quarter of the total sitting time of the House is spent in committee.

**THE HOUSE IN COMMITTEE**

Consideration of a matter in committee is set down on the Order Paper as an order of the day like any other item of business to be considered by the House. When the order of the day is reached, the Speaker directs the Clerk to call it, which the Clerk does by reading its description from the Order Paper. The Speaker thereupon declares the House in committee on the specified business and immediately quits the Chair. Formerly the Speaker proposed a question to the House on this point, “That the House do resolve itself into committee” and a debate was held on the question, but there is no longer any debate on whether the House should go into committee. When an order of the day for consideration in committee is reached, the House goes into committee automatically.\(^3\)

However, the House does not go into committee on an item of business if less than five minutes remains before it would adjourn in any case. If business that would require the House to go into committee is reached within five minutes of the adjournment, the Speaker adjourns the House automatically.\(^4\)

As the Speaker leaves the Chair, the Serjeant-at-Arms removes the Mace from its position on the Table of the House and places it under the Table on brackets suspended from the underside of the Table for the purpose.\(^5\) This signifies that the Speaker (or a member acting on behalf of the Speaker) is no longer presiding over the House. The presiding officer is the Chairperson (see below), who sits in the Clerk’s seat at the Table (though the Speaker may participate in the committee’s proceedings like any other member of the House). Also seated at the Table on the Chairperson’s right is the Minister or other member principally responsible for the business before the committee and, seated on the Chairperson’s left, one of the Clerk’s staff who acts as clerk to the committee.

**General rules for proceedings**

A committee of the whole House may not adjourn its own proceedings.\(^6\) An adjournment of the committee of the whole House would effectively adjourn the House. If the committee feels that it cannot proceed any further with the matter before it, its proper course is to report that fact to the House, whereupon the Speaker will resume the Chair and the House will decide the next step to take on it. Nor may a committee of the whole House subdelegate the task that has been given to it by appointing a subcommittee to consider the matter or by referring it to a select committee.\(^7\) If the House wishes to have a smaller group of members consider a matter, the House may refer the matter to a select committee. This is not a function of a committee of the whole House.

Although committees of the whole House operate in a less formal way than the House itself, most of the formal rules for the House’s proceedings also apply in


\(^3\) SO 170.

\(^4\) SO 51(2).

\(^5\) SO 171.

\(^6\) SO 180.

\(^7\) (16 February 2005) 623 NZPD 18723 Simich (Chairperson).
committee. Except where the Standing Orders expressly provide to the contrary, these general rules for the conduct of business apply in committee as they do in the House.\(^8\)

**Call in committee**

The proceedings of the House in committee are differentiated from proceedings in the House itself principally by the fact that members make shorter and more frequent contributions to the debate. Unlike in the House, members may speak more than once to a question before the committee.\(^9\) This allows members to re-enter the debate to deal with points that have already been raised earlier in the debate. This is a particularly important relaxation of debating rules from the point of view of the Minister in charge of the bill or business under consideration, because it enables the Minister to respond to questions or points made by members in the course of the debate. All speeches in committee are limited to a maximum of five minutes.\(^10\)

**CHAIRPERSONS**

The Deputy Speaker is the chief presiding officer when the House goes into committee, presiding over each committee as Chairperson.\(^11\)

In committee, the Chairperson performs the role played in the House by the Speaker. The Chairperson is the sole judge of all matters arising in committee: for example, the relevancy of debate, the acceptability of amendments, the grouping and selection of amendments;\(^12\) whether there is tedious repetition and when to accept a closure motion. The Chairperson can also suspend the committee temporarily in specified circumstances: if grave disorder arises, in accordance with a decision of the House or the Business Committee, or in the event of an emergency situation.\(^13\) In these circumstances the Speaker automatically resumes the Chair, as appropriate.\(^14\) No individual member can appeal to the Speaker from a ruling of the Chairperson.\(^15\) If a ruling given by the Chairperson is seriously disputed, a motion may be made that the Chairperson report progress to take the Speaker’s ruling on the matter. This motion is moved on a point of order. It is not subject to amendment or debate.\(^16\)

It has been the practice that the motion moved in a case of genuine dispute is not opposed, though on occasion it has been defeated.\(^17\) The Speaker has warned members not to abuse the right to recall the Speaker to review a Chairperson’s ruling. Invoking it inappropriately or too frequently could bring the practice of the majority agreeing to the Speaker’s recall into question.\(^18\) Even when the Speaker is recalled to rule on a matter that has arisen in committee, his or her role is limited. Speakers have consistently ruled that they cannot alter a decision of the Chairperson on a question of relevancy in debate or the admissibility of an amendment, whether or not they consider the Chairperson to have been wrong. Such a decision could be reversed only by the House itself passing a motion after notice of that motion had been given.\(^19\) In respect of other matters, the Speaker, if appealed to by the committee, will give guidance as to the proper procedure to be followed in a committee of the whole House.

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\(^8\) SO 173.
\(^9\) SOs, App A.
\(^10\) SO 307(4) and (5).
\(^11\) SO 172(1).
\(^12\) SO 307(4) and (5).
\(^13\) SO 177(1).
\(^14\) SO 177 (2) and (3).
\(^15\) (1881) 40 NZPD 97 O’Rorke.
\(^16\) SO 178.
\(^19\) (1910) 153 NZPD 961 Guinness; (1957) 313 NZPD 2118 Oram.
Reflections on the actions of the Chairperson or on any other member chairing the committee, such as insinuating that the Chairperson exercised rights he or she was not entitled to exercise under the Standing Orders, are not in order. Any questioning of the impartiality of the Chairperson is regarded extremely seriously and may constitute a breach of privilege.

Other Chairpersons
In the Deputy Speaker’s absence an Assistant Speaker acts as Chairperson of a committee of the whole House.19 The Deputy Speaker and the Assistant Speakers are completely interchangeable as Chairpersons, and all exercise the full powers of the office. There cannot, for example, be any appeal from one Chairperson to another. The only appeal from a ruling given in committee by whoever is in the Chair is to the Speaker in the House, if the committee decides to seek it. In practice, before the House goes into committee, the Deputy Speaker and the Assistant Speakers will decide between them who will preside and for what periods of time.

Temporary Chairpersons
As in the House, the member presiding in committee may at any time ask another member to take over the duty of presiding over the committee. This is done without any formal communication to the committee; the member concerned simply takes the Chair at the Table as temporary Chairperson.20 There is no restriction on who may take the Chair as temporary Chairperson; the decision lies with the Chairperson who invites the member to do so. A whip has taken the Chair as temporary Chairperson.21 A temporary Chairperson is in the same position as any other Chairperson except that a temporary Chairperson cannot accept a closure motion;22 however, in an exceptional case the House has given a temporary Chairperson the power to accept a closure motion.23

Acting Chairperson
Before the House can go into committee there must be a member present who can take the Chair as Chairperson. If neither the Deputy Speaker nor an Assistant Speaker is present, the House must appoint a member as acting Chairperson before the Speaker leaves the Chair. This can be done by leave of the House, otherwise the Speaker will accept a motion for the appointment of an acting Chairperson.24 A member who has been appointed acting Chairperson by the House exercises all the powers of the office while presiding, including that of accepting a closure motion. Appointment as acting Chairperson in these circumstances lasts only for the life of the particular committee of the whole House in respect of which it was made.

Participation in debate
When he or she is not occupying the Chair, the extent to which a Chairperson participates in debates or other proceedings of the House is entirely a matter for the member holding that office to determine.25 In practice, it is not regarded as consonant with the office for the Chairperson (who is also Deputy Speaker) to play a robust political role in the House.

An Assistant Speaker is less constrained in participating in debate in the House, although it is not regarded as good practice for an Assistant Speaker to debate in the House procedural issues that were dealt with in committee. If an Assistant

20 (1913) 167 NZPD 200–201 Lang
21 SO 172(1).
22 SO 172(3).
24 SO 136(4).
26 SO 172(2); see, for example: (21 October 1982) [1982] JHR at 298; (16 March 2004) 616 NZPD 11686.
Speaker is also the chairperson of a select committee, there is no convention that the Assistant Speaker refrain from taking the Chair on a bill that has been considered by that committee.  

**MAINTENANCE OF ORDER**

The maintenance of order in a committee of the whole House is the responsibility of the Chairperson. (See pp 154–155.)

**BUSINESS CONSIDERED IN COMMITTEE**

Several types of business are considered in committees of the whole House and the precise rules for the conduct of the committee differ accordingly.

The most frequent use of a committee of the whole House is to consider a bill—the committee stage in passing legislation. (See Chapter 26.) The committee stage of the first or main Appropriation Bill of each financial year is the Estimates debate, when the committee goes through the various departmental votes seeking authority to spend money or incur expenses up to specified amounts. The annual review debate is held in a committee of the whole House, which is the committee stage of the annual Appropriation (Confirmation and Validation) Bill. Annual reviews of Crown entities, public organisations and State enterprises are also debated in the committee of the whole House. The Business Committee has in recent times determined that these annual review debates should be taken together. Major revisions of the Standing Orders have also been considered in a committee of the whole House before their adoption by the House. Finally, the House may conduct an examination of witnesses in a committee of the whole House. (See pp 492–493.) The individual speaking times for these items of business and the particular rules applying to them are dealt with in the respective sections of this book.

**ARRANGEMENTS FOR CONSIDERATION IN COMMITTEE**

Where practicable, the Government advises the Business Committee which bills are intended by the Government to be considered in committee in the next week the House will sit. This advice is noted on the Order Paper. While failure to give such notice does not prevent the Government from taking a bill’s committee stage, it provides less opportunity for members to submit their amendments as coherent alternative propositions.

To help maximise the time spent in debate rather than in voting, the Chairperson may group a member’s amendments when putting the question, if this does not detract from their intent. Schedules of amendments may be prepared in the Clerk’s Office to assist in this regard, and members are encouraged wherever possible to have their amendments published by putting them on a Supplementary Order Paper. This too is aimed at encouraging the submission of coherent alternative propositions, rather than numerous minor amendments.

28  (1986) 473 NZPD 3496 Wall.
29  SO 347(1).
30  SO 349(1).
31  (28 April 2015) 704 NZPD 2918 Borrows (Chairperson); Business Committee determinations for 11 March and 1 April 2015. See also Chapter 35.
32  (1931) 227 NZPD 544–545 Statham.
33  SO 174.
34  SO 301(3).
35  SO 307(4); (19 June 2012) 681 NZPD 3098 Roy (Chairperson).
36  See also: Office of the Clerk of the House of Representatives, annual report (20 October 2014) NZPP A.8 at 5 and 16 (growth of Supplementary Order Papers drafted for members).
It reflects a change in the proceedings in the committee of the whole House. The Standing Orders Committee has recognised that since bills are now routinely considered part by part in committee, the committee stage lends itself to wider discussion. Members who have not spoken in first or second reading debates have an opportunity to take part in debate, and alternative propositions can be raised in a public forum for the record.38

The Business Committee can also determine how a committee will consider a bill. Committee stages might be organised by issues, through the grouping of parts, or by separating debates on in-principle decisions and from those on amendments to implement them.39 A determination may be varied by a decision of the committee of the whole House or by an instruction of the House. The member in charge of the bill still has the right to postpone consideration of the bill’s provisions.40

**INSTRUCTIONS**

A committee of the whole House may consider only those matters that have been referred to it by the House.41 Apart from referring particular items of business to the committee, the House directs and guides its committees by means of instructions. It does so by way of resolution of the House or by a determination of the Business Committee. An instruction may relate to the scope of the business to be considered by the committee—extending or restricting consideration of that business—or it may relate to the procedure the committee is to follow in considering the business referred to it.42

An instruction must be relevant to the subject matter of the bill or other business that has been referred to the committee. It must not be foreign to it or destructive of it.43 If the instruction relates to an amendment, the amendment must similarly be consistent with the bill and not foreign to it for the instruction to be in order.44

An instruction must not be supererogatory—if the committee already possesses power to or is required by the Standing Orders to proceed in the way proposed in the instruction, the instruction cannot be given.45 An instruction must extend or restrict the committee’s powers, or require that they be exercised in a particular way and thus withdraw a discretion from the committee. An instruction must be supplementary to the task with which the committee is charged, not contrary to the functions of the committee as such. For example, an instruction seeking to permit the committee of the whole House to set up a subcommittee to report back to it and to embody the subcommittee’s report in its own report to the House was found to be not in order.46 The question of setting up subcommittees is one to be dealt with by the Standing Orders, not by means of an instruction. Similarly, a motion to report progress cannot include an instruction to refer a bill to a select committee, as this is beyond the competence of the committee.47

Most instructions relate to the way in which the committee is to consider a bill that has been referred to it. (See pp 428–429.)

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38 Ibid, at 44.
39 SOs 301(1) and 303(1)(c). See, for example, Business Committee determinations for 7 and 21 March 2012 (Alcohol Reform Bill); and Business Committee determination for 11 March 2015 (debate on annual reviews).
40 SO 301(2)(b), (c) and (d).
41 SO 175.
42 SO 176(1).
43 (1931) 227 NZPD 436 Statham (Finance Bill); (1993) 534 NZPD 14421 Gray (Taxation Reform Bill (No 6)).
44 (9 December 2010) 669 NZPD 16257 Barker (Assistant Speaker) (State Sector Management Bill).
45 (27 October 2010) 668 NZPD 14878 Roy (Assistant Speaker) (Rugby World Cup 2011 Empowering Bill).
46 (1933) 236 NZPD 896 Statham (Reserve Bank of New Zealand Bill).
Instructions with or without notice

An instruction can be moved on notice as a Government or Member’s motion. But an instruction may also be moved immediately after the order of the day for the committee stage of the business to which it relates.\(^48\) This is how an instruction is commonly moved. While, in general terms, motions require notice, the House has expressly provided that notice is not required for instructions when the order of the day is called. This exemption is consistent with the principle that notice for legislative stages is given through their being set down on the Order Paper;\(^49\) a motion for an instruction therefore is permissible without notice if it is reasonable to associate it with the order of the day. A motion that was not reasonably associated with the order of the day, such as a motion to convert a bill into an omnibus bill or to inject a completely foreign subject-matter into the bill, would require a separate notice of motion or would need to follow the special procedure for motions to suspend Standing Orders.\(^50\)

Moving an instruction

The initiative for moving an instruction at this point lies with individual members. Frequently, the Speaker will have received advance warning that a member intends to move an instruction, but this is not essential. What is essential is that the motion is moved before the House goes into committee.\(^51\) But a member is not prevented from moving an instruction by a point of order being raised immediately after the order of the day is read; indeed a member wishing to move an instruction usually attracts the Speaker’s attention by taking a point of order and moving the motion on being called by the Speaker to speak to the point of order.\(^52\) An instruction relating to a Supplementary Order Paper may not be moved unless the Supplementary Order Paper has been printed and circulated to members.\(^53\)

A member can only move one instruction to a committee on any one occasion. The Speaker will give preference to the member in charge of the business (usually a bill) if more than one member wishes to move an instruction on the same occasion, but more than one instruction can be moved on each occasion, provided that a later instruction is not inconsistent with a previous instruction already agreed to. An instruction given to a committee of the whole House on one day endures into a future day if the committee does not complete the pertinent business at one sitting and the House goes into committee on it again.

Debate on instruction

The debate on a motion for an instruction is restricted to the subject matter of the motion and may not extend to the principles, objects or provisions of the bill or other matter to which the motion relates. Debate must be solely directed to the power or restriction that it is proposed to confer upon the committee.\(^54\) One particular type of instruction—to consider a bill clause by clause—is not subject to debate or amendment at all.\(^55\)

Variation of an instruction

The House can vary or revoke an instruction. This can be done on notice as a Government or Member’s motion, or as a further instruction before the House goes into committee to consider the business again.

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\(^{48}\) SO 176(2); (16 November 2010) 668 NZPD 15441 (Employment Relations Amendment Bill (No 2)).

\(^{49}\) See Chapter 15 (“Giving notice about motions relating to stages of legislation”).

\(^{50}\) Ibid.

\(^{51}\) (2000) 582 NZPD 902 Hunt.

\(^{52}\) Ibid.

\(^{53}\) SO 176(3).

\(^{54}\) SO 176(5); (1 July 2008) 648 NZPD 17044 Simich (Deputy Speaker) (Land Transport Management Amendment Bill); (13 July 2011) 674 NZPD 20070 Tisch (Deputy Speaker) (Smoke-free Environments Amendment Bill).

\(^{55}\) SO 176(6).
As a committee of the whole House consists of all members of the House, it can, by leave of the committee, vary the terms of an instruction given to it.\(^{56}\) An instruction cannot be varied by a motion moved in committee.

**Repetition of an instruction**

An instruction cannot be repeated. Where the House has given an instruction or defeated a motion for an instruction on a bill or other piece of business, a motion for a similar instruction on the same bill or business cannot be moved again in the same calendar year.\(^ {57}\)

**REPORTS**

The committee must report the results of its deliberations to the House, whether they are final\(^ {58}\) or interim (referred to as “progress” or “no progress”).\(^ {59}\)

**Motions to report**

The Chairperson may be directed by the committee to report to the House at any time during the committee’s consideration of the matter before it. A motion to report progress may be moved to take the Speaker’s ruling on a disputed point,\(^ {60}\) or it may simply be moved with the intention of bringing the committee’s deliberations to an end.\(^ {61}\) In the latter case the member moves, “That the committee report progress”. Only a member who has been given the call to speak in the ordinary way can move this motion; it cannot be done on a point of order.\(^ {62}\) A member who moves a motion for progress to be reported does so as an alternative to speaking to the question. When such a motion has been moved, the question on it is put at once without amendment or debate.\(^ {63}\) If the motion is lost, another member will be called to speak. Where a committee has defeated a motion to report progress, a further motion to report progress may not be moved while the committee continues to consider the same substantive question proposed by the Chair.\(^ {64}\) If a motion to report progress is agreed to, further consideration of that business ends and the Chairperson reports it to the House accordingly. Once reported, the business is then set down for resumption on a future day.

The member in charge of a bill before the committee may move a motion “That the committee report progress and sit again presently”.\(^ {65}\) In this case, too, the question is put at once without amendment or debate.\(^ {66}\) If this motion is agreed to, the business can be resumed later in the same sitting.

**Obligation to report**

The committee of the whole House must report back to the House five minutes before the sitting is due to end; that is, at 9.55 pm on a Tuesday and Wednesday and at 5.55 pm on a Thursday.\(^ {67}\) For this purpose the Chairperson interrupts the business at that time and the Speaker automatically resumes the Chair. If the Speaker is already in the Chair five minutes before the sitting is to end to rule on a point of order that the committee has reported to the House in order to take the

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\(^ {56}\) SO 176(7).
\(^ {57}\) SO 176(4).
\(^ {58}\) SO 182(1).
\(^ {59}\) SO 182(2).
\(^ {60}\) SO 178.
\(^ {61}\) SO 181(1).
\(^ {62}\) (1985) 468 NZPD 8439–8441 Terris (Chairman).
\(^ {63}\) SO 181(3).
\(^ {64}\) (4 August 2011) 674 NZPD 20329–20330 Smith (Education (Freedom of Association) Amendment Bill).
\(^ {65}\) SO 181(2).
\(^ {66}\) SO 181(3).
\(^ {67}\) SO 52(1).
Speaker’s ruling, or because of any other temporary suspension of the proceedings of the committee, the Speaker has the option of ruling on the matter there and then, or of deferring a ruling. In these circumstances, the Speaker declares the House in committee again so that the committee can complete the formalities of reporting to the House as if it were five minutes before the conclusion of the sitting.68

Occasionally, the Chairperson may be required to report progress at a particular time for the House to go on to other business. This will happen whenever the House specifically orders, or the Business Committee determines, that a bill or debate is to be held at a particular time.69 In some cases the committee may resolve to report progress to allow an event such as the making of a personal explanation. Leave to give a personal explanation must be obtained from the House rather than the committee of the whole House.70

Whenever a vote is in progress five minutes before the conclusion of a sitting or a question is in the process of being put and a vote results, the interruption of proceedings by the Chairperson is postponed until after the vote is completed. No further question is put by the Chairperson unless a closure motion has been carried, in which case all consequential questions may be put (and voted on) in order to determine the original question before the committee reports to the House.71 Where there are many amendments to a question before the committee, this can considerably prolong the sitting.

Manner of reporting

When the Speaker resumes the Chair, the Chairperson stands on the floor of the House to the right of the Speaker’s Chair, reports on each of the matters referred to the committee by the House and moves that the report be adopted. Where the committee has not fully considered a bill or other matter, the Chairperson reports that the committee has made progress or, if the bill was not reached at all, no progress.72 The Speaker repeats the committee’s report to the House and then puts the question for its adoption. This question is not subject to amendment or debate.73 The motion to adopt the report is not usually opposed and so is not normally the subject of a vote. However, if the motion were to be defeated, the matter reported would be set down on the Order Paper for further consideration in committee next sitting day. The rejection of the committee’s report on a bill would not defeat the bill. In effect, the House would have rejected the committee’s report and required it to give the matter further consideration before reporting again.

68 SO 179.
69 SO 177(1)(b). See, for example, (23 September 2008) 650 NZPD 19029.
70 (27 March 2013) 688 NZPD 8973 Carter; (26 September 2012) 684 NZPD 5700–5701.
71 SO 53.
72 SO 182(2).
73 SO 183.