

150306 SUBRULES.

National Assembly Review of Rules

Rules Committee responses to Substantive Proposed Rule Changes – 4 February 2015

The Rules Committee met on 4 February 2015 to consider the Subcommittee's report on Chapters 1 to 9 of the Rules. In response to an appeal not to take any decisions until the entire Rule Book including all chapters (1 – 15) was presented for approval on the basis that the Chapters were interlinked, it was agreed to engage with the Subcommittee's proposals as a Progress Report only.

The Committee then focused on the list of substantive proposed rule changes as provided and members made inputs as indicated below. These inputs are to be considered further by the Subcommittee; then the Subcommittee's complete report is to go to parties before final consideration by the Rules Committee.

1. Definitions (R1)

Consideration of the definitions stood over.

2. Sources of authority (R1A)

No issues.

3. Rules suspension: special majority (R3(3))

Issues for further consideration:

- Rules should not be suspended arbitrarily, but could the special majority requirement result in constraining parliamentary work?
- Protect the interests of minority parties by increasing the special majority even more, eg two-thirds (DA)
- What is meant by “business or proceedings” in Rule 3(1)?

4. Opening of Parliament once per term (R9A)

This proposal to be looked at pertinently, separately from the changes to Rules 10 and 10A.

5. Rule covering general authority of Speaker (R17A)

Issues for further consideration:

- Overlaps with separate written submission regarding Speaker's powers to suspend a member in the House (EFF) – although that issue is covered separately under items 17 and 18 below.
- Proposed removal of “strict” in subrule (4) (EFF)
- “Decorum” in subrule (3) should be defined (EFF).

6. Removal of Speaker or Deputy Speaker (R18A)

Consider this rule further, and in particular:

- The rule covers only removal on political grounds, which is subjective; but should cover Speaker's failure to apply Rule 17A properly (ANC)
- Does the rule introduce a limitation and therefore not comply fully with the Constitution? (DA)
- Should we be prescriptive and require grounds to be provided? (IFP)
- Removal by secret ballot requires further consideration but may need constitutional amendment (IFP)
- Check consistence with Constitution, the extent to which the rules cover eventualities, and articulate better (ANC).

7. Declaration of private interests by members (R19A)

The principle is agreed to, but further issues are:

- What is the distinction between “personal” and “private” interest? (EFF)

- What would constitute a conflict of interest? Lawyers should look at the wording. (IFP)
- Insert “direct” before “interest” (DA) or “direct or indirect” (EFF).

8. Raising a question of privilege (R19B)

- Would threats cover revealing information from another member? (IFP)
- Wording of the rule to be looked at again, with Legal Services assistance (ANC).

9. Appointment and functions of whips (with option) (R21A)

Issues raised for further consideration:

- Meaning of “decorum” in subrule (5) (ANC)
- Wouldn't agree with “Option” for Speaker to request the removal of a party whip (DA, FF+)
- Arbitrary appointments provided for in subrule (3) could upset the balance affecting other parties (DA)
- The functions of the whippersy should not be raised to the Speaker's level but could be left to the Chief Whips (ANC)
- Subrule (5) is not consistent with the whips for small parties: perhaps omit appointment (omit subrule (2)) and removal provisions (EFF)
- Rotation proposal in (3) disruptive; Speaker should not interfere and matter left for affected parties to decide on and communicate (ACDP)

10. Members' attendance (RR 21CA – 21CG)

It was agreed that as some parties were not in Parliament when the policy was developed, those parties could still make policy inputs to the Subcommittee. Further issues:

- May need to revisit some policy issues, as indicated in the Notes accompanying the Rules (ANC)
- Do not micro-manage but leave for party whips to manage (EFF)

11. Arrangement of business (R24A)

No issues.

12. Sequence of proceedings (with option) (R29)

Further issues:

- Need to balance government business and majority party interests with opposition party business (FF+)
- Ministers unlikely to be present if members' statements are taken at the end of the day (DA)
- Clarify links with other rules (ANC)
- Retain principle that main item of business for the day is place first (ANC)
- Maintain existing rule and give precedence to particular items by resolution (DA)
- Motions are for all MPs and must be treated seriously as they are about people's issues; Government business is being prioritised over people's business (DA)

13. Mini Plenary Sessions (former epc's) (RR 31 – 38)

The principle is agreed to. Further issues:

- Add definition of mini plenary session (IFP)
- Use speakers' lists, otherwise too open-ended (DA)
- Ensure sessions representative and multi-party (EFF)
- Parties should be left to decide which of their members must attend (COPE)
- Specify minimum members' attendance (eg 50 members) to provide dignity to such sessions (EFF).

14. Public access (R40, and preceding note on searching or screening of members)

There were no concerns about Rule 40 and security measures for the public. Concerning members, further issues were raised:

- Delicate balancing act between members' rights and security challenges: any measures must be consistently applied to all (DA, COPE), and members only to be searched in particular circumstances (DA) and then only once on entering the precincts and not in moving from one building to another (DA)
- Accept integrity of members (EFF, DA) and for members in any case does not need to be put in the rules (EFF)
- Searching of members is a separate issue; perhaps not even for Rules Committee (ANC).

15. Conduct of members, including reference to dress code (R45)

Further issues:

- On dress code, agree to minimum standards (ANC)
- Do not include dress code in this Rule but provide for in separate rule, indicating that members must show respect (ANC)
- No party regalia and no distasteful or offensive clothing (DA)
- On dress code, members to dress respectably but do not put in rules or be prescriptive (EFF); members answerable to voters (ACDP)
- Limit regulation to allowing formal office wear or traditional attire, and no party regalia (ANC, COPE)
- On dress code, retain existing wording as shown in bold print in par (f) (IFP)
- Not comfortable bowing to anyone (EFF)
- Respect authority of Chair and bow on entering Chamber (ANC, IFP)
- Consider “dangerous weapons” further (EFF).

16. Grossly disorderly conduct (with option) (R50A)

There is some broad agreement; further issues:

- Limit discretion of presiding officers and therefore provide certainty by including sufficient detail in the rules (DA), but par (f) still leaves assessment to presiding officer (EFF)
- relook par (f) (IFP, EFF)
- par (c) is too restrictive (EFF)
- Some of the conduct listed is indeed wrong but does not qualify as “grossly disorderly” (EFF); drop the word “grossly” (IFP)
- a member interrupted by another is not covered by this rule (EFF)
- in par (e) change “threatening violence” to “threatening physical violence” (EFF)
- are presiding officers covered by this rule, or must that be separately considered? (DA, EFF)
- the rule aids general understanding in the House; providing clarity in this way is not a limitation (ANC).

17. Removal of member from Chamber (R53A)

There was agreement that the presiding officer must be able to order a member out of the House in order to ensure that the House can continue to function and to protect other members' rights. The Subcommittee needs to look further at matters of detail and then present options to the Rules Committee. Consideration of Rule 53A to **include Rules 52 and 54**. Issues to be considered include:

- Provide for procedural fairness and disciplinary process; what if the presiding officer is wrong? (EFF: *see their separate submission*)
- Subcommittee to look further at mechanism to contest a presiding officer's ruling (ANC)
- Physical removal not good for democracy except when threat of physical violence (EFF)

- When ordered out, a member should leave; thereafter another process can be followed (ANC)
- Relook definition of “parliamentary protection services”; must exclude SAPS because of separation of powers principle, but SAPS can be used on perimeter (DA)
- On **Rule 51**, a member ordered out of the Chamber should not be required to leave the precincts (EFF)

18. Period of suspension (with 3 alternatives) (R52 and R54)

To be considered together with Rule 53A, above.

19. Control of microphones (R59A)

Responses to this proposed rule included:

- The rule is superfluous: If a member continues to speak when told to sit down, deal with it as disorderly conduct (DA)
- Don't make a rule about current technology; it's a process of managing the House (EFF)
- If it's not in the rules but accepted as part of managing the House, that's fine (ANC)
- Not dignified for presiding officer to order a microphone switched off, and whips should assist to manage the House (DA)
- Floor microphones are shared; switching one off would lead to chaos. The presiding officer should activate an override switch (FF+)
- A separate issue of cutting the feed from the House is on the agenda of the POA (Speaker).

20. Reference to members as “honourable” (R61)

Further issues:

- Referring to each other as “honourable” indicates acknowledgement that members are participating with good intentions (DA)
- Retain the current rule and maintain the convention that members must refer to each other respectfully; do not make it a rule (EFF)
- This was put into the rule because rulings from the chair on the matter were challenged (ANC)
- “Hon” puts us all on a par; addressing each other “respectfully” is not enough (FF+)
- Members could alternatively address each other as “Member XYZ” and any additional reference according to personal preference (ACDP)
- If “hon” is accepted as a convention, that is fine; if not, it may be necessary to put it in the rules (ANC).

21. Substantive motions (R63A) and additionally Rules 63 and 64.

- On **Rule 63**, some applications of the unparliamentary language rule are excessive or over-sensitive; perhaps review applications as recorded in the Digest of Rulings (DA)
- In **Rule 63A(1)**, perhaps tighten up “impute improper motives”; unfounded allegations are obviously unacceptable.
- On **Rule 64, Reflections upon decisions or statutes of same annual session**, timeframe of “remainder of the term of the House” in (a) is problematic (DA). This Rule is to be reviewed by the Subcommittee.

22. Explanations (R69)

Further issues:

- Subrule (1) could lead to chaotic conditions; we must protect the dignity of the House (ACDP)
- Perhaps leave rule as is and allow explanations also during debate (DA)
- Amend subrule (1) in line with subrule (2), allowing an explanation either during or

after the debate (ANC).

23. Points of order (with option) (R70)

Further issues:

- The current rule is sufficient, and the presiding officer must allow points of order (EFF)
- In subrule (3), allow space for a point of order without reference to a particular rule (EFF)
- It was agreed to dispense with the option in (3) to insert “as far as possible”, as the rule goes on to refer to “at least the principle or subject matter”.
- Subrule (4) accepted on the basis that it refers to points by way of elaboration.
- The note after subrule (12) can be deleted as the level of detail should be available in the rule itself.

24. Voting (secret ballot alternative) (R76B)

It was agreed to refer this matter back to the Subcommittee for consideration of the options, including the possible amendment of the Constitution. Further discussion:

- Sec 89 of the Constitution provides for the removal of the President by resolution of the Assembly; it doesn't say how that resolution must be taken, so the Assembly can decide. The EFF proposes that if there is no consensus, a decision must be taken by secret ballot if 15% of members so request (EFF)
- Framers of Constitution envisaged members would not necessarily vote by party; so on such issues members should be allowed to vote in the best interests of the country. Voting by secret ballot would only apply to remove from office office-bearers elected by secret ballot (DA)
- Issue is whether it is implied in the Constitution. It would probably require a constitutional amendment (IFP)
- The Constitution doesn't say a secret ballot cannot be applied. Sec 57 says the Assembly can determine its own procedures and proceedings. Members are appointed by their parties in a system of proportional representation and could lose their membership if they vote against the party line (DA).
- It was agreed to get a legal opinion to get clarity on how members' voting is envisaged in the Constitution (ie individually or along party lines as suggested by the proportional representation system), together with provisions of the Powers and Privileges Act relating to improper interference with members voting on issues before Parliament.

25. Declarations of vote (options) (R81)

It was agreed that this Rule should be considered further by the Subcommittee. Issues raised include:

- Also allow declarations of vote on an amendment to a motion (DA)
- Time allocated to parties should be proportional (ANC), but the main question may be a motion by an opposition party (EFF)
- If there has been no debate, have a debate rather than declarations of vote (ACDP)
- Distinguish between debates and declarations of vote (EFF).

26. Members present must vote (with option) (R89)

Subcommittee to reflect further on the issues raised, including:

- Members should vote or leave the Chamber; otherwise the results as recorded will not tally (ANC)
- Members should not be forced to vote on a matter in which they have no interest and then be obliged to leave the chamber (EFF)
- Requirement that members present must vote would be impossible to police; omit

this requirement (ACDP)

- As an alternative, first establish the number of members present in the chamber and then proceed to vote on the question; but this would be time-consuming.

27. Amendments to motions (R96)

Subcommittee to look again at the spirit of this rule, including consideration of whether an amendment should be allowed only by agreement with the member in charge (EFF).

28. Amendments to committee reports (R96A)

This rule was accepted but should be looked at further under Rule 137 on reporting by committees.

29. Motions without notice (with option) (R97)

Reference should be had to the guidelines adopted on 22 October 2014 and the agreement reached in the Chief Whips' Forum on this matter. Further issues:

- Intention with motions without notice is to limit to non-contentious matters; avoid politics of ambush (ANC)
- Opportunity for members to bring people's issues into the House (DA)
- Proposed proportionality by party and time period are a problem because these could relate to individual members introducing people's issues; also it is not democratic to remove opportunities from smaller parties (DA)
- If objection indicated when motion without notice circulated in the morning, the member should still be able to read it out in the House (IFP, EFF)
- All motions require careful consideration before being adopted in the House; they could inadvertently give offence or cause other problems. House decisions should not be treated lightly (ANC)

30. Notices of motion (R98)

Subcommittee to consider further. Particular aspects include:

- Change "members" in subrule (1) to "any member" (DA)
- Members participate in their individual capacity and not necessarily for their party (DA, EFF)
- Setting of time limits not accepted (DA)

31. Debates on matters of urgent importance (R103)

This Rule was generally agreed, but it was proposed that the time limit of "four hours" in subrule (3)(a) be changed to "by midday" (DA).

Submitted by K Hahndiek