Draft 3

**DRAFT GUIDELINES REQUIRED BY THE RULES**

**For consideration by the Subcommittee on the Review of the National Assembly Rules**

1. **Guidelines for Removal of Speaker and Deputy Speaker**
2. **Guidelines for the Appointment of Whips to Smaller Parties**
3. **Guidelines on the Dress Code (To be developed)**
4. **Guidelines on Notices of Motion**
5. **Guidelines for Motions of No Confidence**
6. **Guidelines for Questions**

**A. Guidelines for the Removal of Speaker or Deputy Speaker (Rule 18A)**

1. Notice of a motion to remove the Speaker or Deputy Speaker, as the case may be, must be given in the House or in writing on any other parliamentary working day.
2. The notice of motion to remove the Speaker or Deputy Speaker must comply with the rules on notices of motion generally, must contain the specific grounds for removal but may not:
3. Contain unbecoming or offensive expressions
4. Contain statements, arguments or other matters not strictly necessary to make the proposed resolution intelligible

**Optional addition:**

1. If notice is given in the House, take longer than 90 seconds to read out.
2. If the notice of motion relates to the removal of the Speaker for alleged improper or unethical conduct, the motion must comply with Rule 63A, namely: It must -
	1. Contain *prima facie* evidence of wrong doing and specify clearly formulated charges; and
	2. Propose that a committee of the National Assembly investigate the charges.
3. Notice of a motion in the House to remove the Speaker or Deputy Speaker must be delivered during the time allocated to parties by the Rules Committee for members of political parties to give notices of motions.

(5) A member may propose an amendment to a motion to remove the Speaker or Deputy Speaker provided it complies with the rules for amendments to motions generally.

(6) The Speaker should not preside in the House when a motion to remove the Speaker is debated or voted on. The Deputy Speaker may not preside when a motion to remove the Deputy Speaker is debated or voted on.

**B. Guidelines for the Appointment of Whips to Smaller Parties (Rule 21C)**

1. The number of whips to be allocated to represent the interests of parties which do not qualify for a whip is determined by the Rules Committee in terms of Rule 21A(1).
2. Parties which do not qualify for a whip may jointly submit a written request to the Speaker to appoint one or more whips, in line with the formula agreed to by the Rules Committee in terms of Rule 21A(1), from amongst their number to represent their interests.
3. A request to appoint a whip must –
	1. contain the name(s) of the member(s) nominated for appointment as a whip; and
	2. be endorsed [signed] by the leaders or duly authorised persons of the majority of the relevant parties affected by such request/nomination.
4. Parties which do not qualify for a whip may jointly submit a written request to the Speaker to alter appointments previously made under Rule 21A(3).
5. A request to alter an appointment previously made under Rule 21A(3) must be endorsed [signed] by the leaders or duly authorised persons of the majority of the parties affected by such request.
6. In considering a request to appoint a whip or to alter an appointment previously made in terms of Rule 21A(3), the Speaker must ensure that –
	1. the member nominated for appointment as a whip is a member of one of the relevant parties affected by such nomination;
	2. the parties are entitled to the number of whips nominated for appointment, in line with the formula agreed to by the Rules Committee in terms of Rule 21A(1); and
	3. the request and nomination have been endorsed [signed] by the leaders or duly authorised persons of the majority of the parties affected by such request/nomination.
7. Once the Speaker is satisfied that the request and nomination complies with the rules and guidelines of the House, the Speaker must appoint the whip(s) and thereafter publish the name(s) of the appointed whip(s) in the ATC in terms of Rule 21A.

**C. Guidelines on the Dress Code (Rule 45)**

*These must still be developed.*

**D. Guidelines for Notices of Motion**

1. **Guidelines for Notices of Motion (Rule 98 and 100)**

 (Mainly based on Guidelines of October 2012)

The Rules provide for two types of motions to come before the House, namely subjects for discussion (debate only) and draft resolution for consideration (decision with or without debate).

***(a)*****Guidelines for draft resolutions**

a. Generally, draft resolutions should be short and succinct and framed so as to express with as much clarity as possible the distinct opinion or decision of the House.

b. Draft resolutions must comply with the criteria and other requirements as incorporated in the Rules themselves, and more particularly Rules 97(2)(c) and 98(4).

c. When notice has been given of a motion, the full text is printed on the Order Paper once. Thereafter it is listed as a page reference under Further Business, until it is programmed for debate when it will once again be published in full.

**(b) Subject for discussion**

a. The wording of a subject for discussion should be limited to identifying the topic, which should be clearly established. The wording determines the scope and focus of the debate. A topic that is too vague or broad will lead to an unstructured general debate.

b .A member proposing such a motion should identify it as a subject for discussion**.**

**Motions of Condolence**

a. The Assembly should always stand to acknowledge the passing of a serving member of the House but this should be accompanied by an appropriate motion on the Order Paper and a debate. This would include members of the executive who are not members of the National Assembly.

b. The Assembly should stand to acknowledge the passing of a former member of the House (after 1994), a debate on the motion will only take place on the recommendation of the Chief Whips’ Forum to the National Assembly Programming Committee.

c. For the purposes of these Guidelines the reference to members should include members of the National Council of Provinces.

Option, to add the guideline as previously in place:

**E. Guidelines for Motions of No Confidence in the President and Cabinet (Rule 102A)**

The guidelines for motions of no confidence in terms of Rule 102A are the same as those for other motions, as applicable.

**F. Guidelines for Questions (Rule 110)**

**Background:**

1. In accordance with the new proposed Rules with regard to questions, provision is made for guidelines that may be approved by the Rules Committee that will guide the practice on questions.
2. The guidelines that were drafted were mainly extracted from the National Assembly Guide to Procedure, 2004, page 191ff.
3. The recorded practice in the NA Guide to Procedure, 2004, is based on the recorded practice from 1994 and is further based generally on the practice as it pertains in the UK House of Commons where it developed over centuries.

**Editing of Questions:**

Whenever questions are edited they are done under the authority of the Speaker[[1]](#footnote-1) and the guidelines as approved by the Assembly.

**Object of Questions:**

The purpose of a parliamentary questions is to:

* 1. obtain information; and/or
	2. Press for action[[2]](#footnote-2) on matters related to the official responsibility of Cabinet members[[3]](#footnote-3).

**General Form and Content of Questions:**

1. A question must:
	1. deal with only one substantive matter;
	2. comply with the Constitution, the law and the Rules;
	3. be subject to the sub judice rule;[[4]](#footnote-4)
	4. be subject to the rule of anticipation;[[5]](#footnote-5)
	5. not contain unbecoming or offensive expressions.
2. A question is not permissible which –
	1. Contains offensive expressions[[6]](#footnote-6).
	2. Casts a reflection on the conduct or character of persons – whose conduct may only be challenged in a substantive motion[[7]](#footnote-7).
	3. Anticipates discussion of matters on the Order Paper or that is scheduled to be placed on the Order Paper within a reasonable time[[8]](#footnote-8).
	4. Repeats in substance questions already answered in that annual session, or that is awaiting an answer, or that the Minister has refused to answer or that is a class of question substantively the same as another.[[9]](#footnote-9) However, a similar question different in some respects may be asked and the same question may be put to different members of the Cabinet to the extent that they have a responsibility in terms of their portfolios.[[10]](#footnote-10)
	5. Criticise decisions of either House of Parliament.[[11]](#footnote-11)
	6. Publishes any name or statement not strictly necessary to make the question intelligible, unless the Cabinet member has used the name or statement or it has been cited in a charge before the court.[[12]](#footnote-12)
	7. Refers to the merits of a sub judice matter.[[13]](#footnote-13)
	8. Makes discourteous references to a friendly foreign country or its Head of State.[[14]](#footnote-14)
	9. Is of a statistical nature when put as a question for oral reply by asking for more than two figures (dates are not regarded as statistical).[[15]](#footnote-15)
3. Questions may not –
	1. Express an opinion or seek the expression of one.[[16]](#footnote-16)
	2. Contain arguments, inferences or imputations.
	3. Contain unnecessary descriptive words or phrases added to or substituted for a person’s name (epithets).
	4. Contain rhetorical, controversial, ironical or offensive expressions.[[17]](#footnote-17)
	5. Contain extracts from newspapers or books, or paraphrases or quotations from speeches. The facts on which a question is based may be set out briefly, but the questioner is responsible for ascertaining the accuracy of the facts.[[18]](#footnote-18)
4. Questions may not –
	1. Only provide information;
	2. Convey a particular point of view;
	3. Constitute a speech, or be excessively long;
	4. Refer to communications between an individual member (other than the questioner) and a Cabinet member;
	5. Be based on a hypothetical proposition;
	6. Seek an opinion on a question of law, such as an interpretation of a statute, an international document or a Cabinet member’s own powers. However it is in order to ask under what statutory authority a Cabinet member acted in a particular instance;
	7. Seek a solution to a legal question;
	8. Raise questions which would require an impractically extensive answer;
	9. Seek information on matters of past history for the purposes of argument;[[19]](#footnote-19)
	10. Be trivial, vague or meaningless; or
	11. Be a repeat of other questions with some trivial variations.
5. While it is the basic tenet of all questions that a question should be related to a Cabinet member’s official responsibility the following criteria are applied –
	1. Requests for information are not usually accommodated in respect of matters falling under local or other statutory authorities.
	2. It is not in order to ask for information about matters that are the responsibility of bodies or persons not responsible to the Government, such as banks, the Stock Exchange, employers’ organizations and trade unions.
	3. Questions relating to semi-state bodies are restricted to matters for which Cabinet members are responsible by statute or other legislation. However, questions on national statistics in relation to these bodies are in order.[[20]](#footnote-20)
	4. Questions may not refer to the consideration of matters by a commission or a parliamentary committee or deal with matters within the jurisdiction of the chairperson of a parliamentary committee or a House of Parliament.
	5. Questions may not be asked about the action of a Cabinet member for which he or she is not responsible to Parliament.
	6. It is not in order to put a question to a Cabinet member for which another Cabinet member is more directly responsible, or to ask a Cabinet member to influence a colleague.
	7. Questions suggesting amendments to a Bill before the Assembly or in Committee are inadmissible unless such amendments may only be moved by a Cabinet member.
	8. It is inadmissible to ask a Cabinet member whether statements in the Press or by private persons or unofficial bodies are accurate, or to call for comment on statements by persons in other countries (unless the statement is contained in a message from another government).
	9. Questions may not seek information about the internal affairs of other independent countries, unless such countries form part of a common organization through which the information is obtainable.
	10. It is permissible to ask questions calling on Cabinet members to grant relief to South African citizens in foreign countries who are under arrest, or to protect persons or companies from discrimination in foreign countries; but questions on the actions of foreign states in refusing entry to South African citizens have not been allowed.[[21]](#footnote-21)
	11. Questions that require information that is readily accessible are not allowed.
	12. It is in order to ask for a Cabinet member’s intentions with regard to matters for which they are officially responsible and to ask for administrative or legislative action in regard to such matters.
6. The form and content recorded herein may be further developed by Rulings of the Speaker with regard to any matter not recorded herein.

**Form and Content of Questions to the President**

While the above criteria on form and content apply to questions generally, some additional specific criteria have been established in respect of questions to the President.

The President represents the executive authority[[22]](#footnote-22) of the Republic, and while delegating these responsibilities to members of his Cabinet, he does not abdicate overall responsibility. He performs the powers and functions[[23]](#footnote-23) and the executive authority within a unitary state.

 Questions to the President may relate to -

1. Matters in respect of the powers and functions of the President and the executive authority of the Republic that he represents.[[24]](#footnote-24)
2. Matters for which the Government is responsible – this may include line function responsibilities of Ministers where they give rise to issues of national or international concern.[[25]](#footnote-25)
3. Broad matters of national or international importance that is topical.
4. Matters of provincial or local concern to the extent that such questions give effect to the unitary nature of the Constitution of the RSA, 1996, that provides for intervention in the affairs of provincial and local spheres of government.[[26]](#footnote-26)
5. The granting of honours.
6. The dissolution of Parliament.
7. The definition of the responsibilities of Cabinet members.
8. Statements made by Cabinet members (not Deputy Ministers, who are not members of the Cabinet) on public occasions and whether such statements represent the policy of the Government.
9. A speech made by the President on a public occasion outside Parliament and whether it represents Government policy.

**Guidelines on Criteria for Questions to the Deputy President**

*[Query: On what are these detailed guidelines for questions to the Deputy President based? What is their source and current validity, given that such responsibilities are allocated “from time to time”? Should the LoGB be required to keep Parliament informed for purposes of these questions?]*

While the President is assisted by the Deputy President in the execution of the functions of government[[27]](#footnote-27), the President allocates the following responsibilities to the Deputy President from time to time:

* 1. Executing duties as LOGB in the National Assembly:
		1. He is responsible for the affairs of the national executive in Parliament;
		2. Liaises between the executive and Parliament;
		3. Programming of parliamentary business initiated by the executive, within the time allocated for that purpose;
		4. Arranging attendance of Cabinet members as appropriate in respect of parliamentary business;
		5. Performing any other function provided for by the Joint Rules or a resolution the NA or NCOP or adopted by both Houses;
		6. Improve the quality of the legislative programme;
		7. Building stronger relations between the executive and the legislature;
		8. Building stronger relations between the executive and the political parties represented in Parliament.
		9. Encouraging Ministers to respond promptly to matters raised by Parliament, e.g parliamentary questions and reports to the NA and NCOP;
		10. Improving quality of legislation to reduce litigation and comebacks; and
		11. Improving political management of legislative programme through interaction with Presiding Officers, Whips, Committee Chairs and Opposition Party Leaders.
	2. Social Cohesion: Moral Regeneration Movement (MRM) and engagement of Traditional, Religious, Linguistic and Communities:
		1. The Deputy President provides leadership in the areas of traditional, cultural and linguistic affairs in pursuit of socio-economic transformation;
		2. He pursues moral regeneration, anti-poverty and social cohesion by engaging the largest organized segment of society, i.e. the religious community; and
		3. Promotes all official languages.
	3. South African National Aids Council (Sanac):
		1. The Deputy President chairs Sanac and heads the Presidential Task Team on HIV/Aids;
		2. Strengthens partnerships through Sanac and its structures;
		3. Strengthens and profiles work of provincial and district structures;
		4. Guiding the public HIV/Aids campaigns to achieve behavioural change; and
		5. Supporting NGO’s to access funds to imp-lement programmes.
	4. Human Resource Development Council:
		1. The Council determines the agenda for scarce and priority skills;
		2. The Council comprises senior leaders and experts from:
			1. Business
			2. Organised Labour
			3. SA FET College Principals
			4. Higher Education SA
			5. SOEs and Science Councils;
			6. Departments of HE and Basic Education; and
			7. Other relevant government departments.
		3. Engaging relevant stakeholders on the envisaged relationship between the HRD Council and the National Planning Commission.
	5. Anti-Poverty Programme and Short-term Job Creation:
		1. Provision of social infrastructure, e.g. schools and clinics;
		2. Pursuing universal access to basic services such as water and electricity;
		3. Roll-out of expanded public works campaign to create work opportunities;
		4. Accelerating Community Works Programme (including non-state sector);
		5. Improving access to micro-financing; and
		6. Skills development through initiatives like FET colleges recapitilisation, vocational training and enhanced/remodeled learnerships (second chance opportunities for school drop-outs).
	6. Areas of International Relations and Cooperation:
		1. The President appointed the Deputy President as envoy to South Sudan and Sri Lanka
		2. Chairs bi-national commissions
		3. Works closely with DIRCO in strengthening and consolidating bilateral relations with other countries.
	7. Dialogue on Wage Inequalities with Nedlac Social Partners:
	8. Sectoral Engagement, e.g. professional bodies, NGOs, Working Groups, etc:
	9. Institutionalising Best Practice Models in the Public Service:

**An Authorised Representative - Rule 108(7):**

* + - 1. The person designated by a party to deal with its questions is deemed to be the authorized representative.
			2. The party will advise the Speaker in writing of its authorized representative at the beginning of each Parliament.
			3. Such a person will liaise with the Speaker with regard to the all matters related to the questions of the members of its party.
			4. The Speaker will also liaise with the relevant representative in the event that any matters may arise with regard to the questions of the members of the relevant party.

*[Query: Provide that liaison would be either with “the authorised representative” or, in the case of a particular question, with the member putting the question?]*

1. Rule 107(6) of Draft 9 for consideration of Rules Committee. See also E Erskine May: Parliamentary Practice, Twenty-third edition, 2004, p 342 – 343; and Helen Irwin, Andrew Kennon, David Natzler and Robert Rogers: Evolving Rules, p 31, in Parliamentary Questions, Edited by Mark Franklin and Phillip Norton, 1993 [↑](#footnote-ref-1)
2. Erskine May: Parliamentary Practice, Twenty-third edition, 2004, p 345 [↑](#footnote-ref-2)
3. Erskine May: Parliamentary Practice, Twenty-third edition, 2004, p 344 [↑](#footnote-ref-3)
4. Rule 67 in Draft 9 before the Rules Committee for consideration. See also Question 25 for Oral Reply to the Deputy President, Question Paper, No 19, Thursday, 12 November 2015 in Unpublished Hansard of 12 November 2015. [↑](#footnote-ref-4)
5. Rule 68 of Draft 9 for consideration of the Rules Committee. [↑](#footnote-ref-5)
6. NA Rule 63 in Draft 9 for consideration of the Rules Committee. [↑](#footnote-ref-6)
7. National Assembly Guide to Procedure, 2004, p 158 - 160 [↑](#footnote-ref-7)
8. Rule 68 of Draft 9 for consideration of the Rules Committee [↑](#footnote-ref-8)
9. Question No 2 on Question Paper, No 3, of 15 March 2012, p 21 and also Question No 2466 on the Internal Question Paper, No 29, of 7 September 2012, p 1043 are the same class of questions which the Speaker permitted in lieu of the sensitive nature of the matter. [↑](#footnote-ref-9)
10. Questions 2885 to 2950, Internal Question Paper, No 35, Friday, 25 October 2013, pp 1034 to 1046. [↑](#footnote-ref-10)
11. Rule 64A of Draft 9 for consideration of the Rules Committee [↑](#footnote-ref-11)
12. Speaker Ginwala ruled that where a name had been given to the Minister in confidence for the purpose of a reply a member may not request the Minister to disclose the name unless the House take a motion to that effect – Annotated Digest of Rulings, 1994-99, p 40. See also Venter’s Practech (p N1, date unknown) which establishes that it is admissible if: the person was involved in proven irregularities and eg appears in court records, person is generally known to have been involved in proven irregularities, eg former National Police Commissioner Jackie Selebi and the name has been furnished in a previous reply. Where there is a prima facie case against a person to be heard in court the name of the person may be cited, if there is uncertainty the name is not included and it is send to the department under “name furnished” or “details furnished”. [↑](#footnote-ref-12)
13. Rule 67 of Draft 9 for consideration of the Rules Committee. See also Question No 3 on Internal Question Paper No 4 of Monday, 25 February 2008, p 49 was found to be **sub judice** as the Minister for Justice and Constitutional Development lodged an appeal against the finding of the Pretoria High Court in the week when the President was to reply to the question. The question fell off -Question Paper [REPRINT] No 2 of Thursday, 6 March 2008, and the IFP forfeited their opportunity to put a question to the President. [↑](#footnote-ref-13)
14. National Assembly Guide to Procedure, 2004, item 8, p193. This provision does not appear in Erskine May’s later editions of Parliamentary Practice. This provision appears in Erskine May’s Parliamentary Practice, 16th edition, 1957, p 360, but is absent from later editions like Erskine May’s 21st edition of Parliamentary Practice, 1989, as well as the Twenty Third edition of 2004. Consonant with this development some opposition party questions critical both of Mr Mugabe and Mr Omar Al Bashir were permitted on the Question Paper that were otherwise friendly nations. [↑](#footnote-ref-14)
15. National Assembly Guide to Procedure, 2004, p 199. [↑](#footnote-ref-15)
16. The primary purpose of a question is to obtain information or press for action see NA Guide to Procedure, 2004, p 192, Helen Irwin, Andrew Kennon, David Natzler and Robert Rogers: Evolving Rules, p 66, in Parliamentary Questions, Edited by Mark Franklin and Phillip Norton, 1993; Erskine May: Parliamentary Practice, Twenty third edition, 2004, p 345. [↑](#footnote-ref-16)
17. Question of Mr Waters to Minister Tshabalala-Msimang was considered offensive and ruled out of order. [↑](#footnote-ref-17)
18. Where the facts are particularly significant to the question, the Speaker has required prima facie proof of their authenticity – Erskine May: Parliamentary Practice, Twenty third edition, 2004, p 346-347. [↑](#footnote-ref-18)
19. Erskine May, Parliamentary Practice, Twenty third edition, 2004, p353 – The History rule was modified to permit for questions on a factual and statistical nature within the 30-year limit. [↑](#footnote-ref-19)
20. This includes bodies like the public broadcaster (SABC), Telkom, Icasa, etc. [↑](#footnote-ref-20)
21. Questions have recently been permitted on visa applications for South Africans visiting the UK [↑](#footnote-ref-21)
22. Section 85 of the Constitution of the Republic of South Africa, 1996 [↑](#footnote-ref-22)
23. Section 84 of the Constitution of the Republic of South Africa, 1996 [↑](#footnote-ref-23)
24. Sections 84 and 85 of the Constitution of the Republic of South Africa, 1996 [↑](#footnote-ref-24)
25. See Question 2466 in the Internal Question Paper, No 31, Friday, 20 September 2013, p 896 [↑](#footnote-ref-25)
26. Sections 100 and 139 of the Constitution of the RSA, 1996. See Question No 3, in Internal Question Paper, No 3, Thursday, 15 March 2012, p 22 (The national Government had a section 100 intervention in the Eastern Cape). [↑](#footnote-ref-26)
27. Section 91(5) of the Constitution of the Republic of South Africa, 1996 [↑](#footnote-ref-27)