

SECTION 2 OF THE PARLIAMENT ACT 1911

This pamphlet is intended for members of the Office of the Parliamentary Counsel.

References to Commons Standing Orders are to the Standing Orders of the House of Commons relating to Public Business of 1 May 2018 and the addenda up to 6 February 2019.

References to Lords Standing Orders are to the Standing Orders of the House of Lords relating to Public Business of 18 May 2016.

References to Erskine May are to Erskine May on Parliamentary Practice (25th edition, 2019).

Office of the Parliamentary Counsel

11 July 2019

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CHAPTER 1 INTRODUCTION

General

1.1 The Parliament Acts 1911 and 1949 were passed to restrict the power of veto of the House of Lords over legislation.¹

1.2 Section 1 of the 1911 Act is about securing Royal Assent to Money Bills to which the Lords have not consented. Section 2 of the 1911 Act, as amended by the 1949 Act, enables the Commons to secure, after some delay, the passage of almost any other kind of Bill even though the Lords have not consented to it.

1.3 No Bill has ever been enacted under section 1 and only 7 Bills have been enacted under section 2.²

1.4 This pamphlet is about the passage of non-Money Bills using the Parliament Act procedure.

Text of section 2

1.5 Section 2 of the 1911 Act reads as follows:

“Restriction of the powers of the House of Lords as to Bills other than Money Bills

2.-(1) If any Public Bill, (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in two successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the second time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless one year has elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the second of those sessions.

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.

1. The question arose, during the pre-legislative scrutiny of the draft House of Lords Reform Bill in the 2010-12 Session, as to whether the Parliament Acts would continue to apply if the House of Lords became a largely elected second chamber. The government view was that they would but contrary views were expressed by Lord Goldsmith and Lord Pannick in evidence to the Joint Committee considering the draft Bill (see paragraphs 359 to 368 of the First Report of the Joint Committee on the draft House of Lords Reform Bill (26.3.12)).

2. The Government of Ireland Act 1914, the Welsh Church Act 1914, the Parliament Act 1949, the War Crimes Act 1991, the European Parliamentary Elections Act 1999, the Sexual Offences (Amendment) Act 2000 and the Hunting Act 2004.

- (3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.
- (4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the second session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.”

Uses of section 2

1.6 Section 2, as originally enacted, provided that a Bill which had been passed by the Commons in three successive sessions was to be presented for Royal Assent and become an Act of Parliament without the consent of the Lords.

1.7 Two Acts were passed under that procedure in 1912-14, the Government of Ireland Act 1914 and the Welsh Church Act 1914 (which went through Parliament as the Established Church (Wales) Bill). Two other Bills in the same period were introduced in a second session with a view to passing under the procedure. Of these, one became the Temperance (Scotland) Act 1913, being passed by the Lords in the second session after government concessions. The other, the Plural Voting Bill, having been rejected by the Lords twice, was not taken up for a third time because of the outbreak of war.

1.8 The other Act to be passed under the 1911 procedure is the Parliament Act 1949 which reduced the requisite number of sessions from three to two.

1.9 The following Acts have been passed under this shortened procedure:

- the War Crimes Act 1991,
- the European Parliamentary Elections Act 1999,
- the Sexual Offences (Amendment) Act 2000, and
- the Hunting Act 2004.³

1.10 Two other Bills have been introduced in a second session with a view to being passed under the shortened procedure. Both were eventually agreed to by the Lords in the second session. They were the Bills for the Trade Union and Labour Relations (Amendment) Act 1976 and the Aircraft and Shipbuilding Industries Act 1977.

3. The House of Commons Library’s Briefing Paper on “The Parliament Acts” (No. 00675, 25 February 2016) contains a summary of proceedings on these Bills (see Chapter 3 of the Paper).

1.11 The possibility of using the Parliament Act procedure has been referred to on a number of other occasions, for example in connection with the Fraud (Trials without a Jury) Bill in 2007⁴ and the draft House of Lords Reform Bill in 2011⁵.

Role of First Parliamentary Counsel

1.12 First Parliamentary Counsel should be informed of questions about the Parliament Act procedure and of proposals for its use.

4. This Bill was introduced in the Commons on 16 November 2006 and brought to the Lords on 26 January 2007. Lord Kingsland tabled an amendment to the government's motion that the Bill be now read a second time, to leave out "now" and insert "this day six months". In the second reading debate, the Attorney General (Lord Goldsmith) maintained that the government would bring the Bill back in the same form in the next session. (Lords Hansard, 20 March 2007, col. 1151.) The amendment to the motion was carried, amounting to the rejection of the Bill by the Lords. The Bill was not in fact reintroduced.

5. See Oral Answers by the Deputy Prime Minister on 20.12.11 (at 1183).

CHAPTER 2 APPLICATION OF SECTION 2 OF THE PARLIAMENT ACT 1911

Key requirements

2.1 The key requirements for a Bill to be enacted under section 2 are that:

- the Bill must be a Bill to which the section applies,
- it must have passed the Commons in the first session and been sent to the Lords at least one month before the end of the session,
- it must have been rejected by the Lords in the first session,
- the same Bill must have passed the Commons in the second session and been sent to the Lords,
- it must have passed the Commons in the second session at least a year after its second reading in the Commons in the first session,
- it must have been sent to the Lords at least one month before the end of the second session,
- it must have been rejected by the Lords in the second session,
- the Commons must not have directed that the Bill should not be presented for Royal Assent, and
- the Bill must be presented for Royal Assent in accordance with the 1911 Act.

2.2 This Chapter considers each of these requirements in turn.

2.3 Chapter 3 considers the suggested amendment procedure under section 2(4) of the 1911 Act.

2.4 Chapter 4 considers other procedural issues that can arise in the second session in connection with section 2.

Bills to which section 2(1) applies

2.5 The first requirement is that the Bill must be a Bill to which section 2(1) applies.

2.6 Section 2(1) applies to all public Bills subject to a handful of express or implied exceptions.

2.7 Section 5 of the Act provides that a Bill for confirming a Provisional Order⁶ is not a public Bill for these purposes.

2.8 A hybrid Bill is still a public Bill.⁷

2.9 The procedure applies to private members' Bills as well as government Bills.⁸

6. Bills for confirming Provisional Orders are no longer common. No powers to make provisional orders have been conferred by public Acts since 1945 and very few powers to make provisional orders remain which require confirmation by confirming Act. An example of this type of power was section 12 of the Commons Act 1876 which envisaged a system whereby orders of the Inclosure Commissioners would be confirmed and given effect by further Acts of Parliament. These Acts, and other Acts made in pursuance of similar arrangements (whether about inclosure, compulsory purchase or other subjects), were known as Provisional Order Confirmation Acts.

7. See Erskine May para 30.57.

Express exceptions

2.10 Section 2(1) does not apply in two cases expressly mentioned in that provision:

- a Money Bill within section 1 of the 1911 Act, and
- a Bill which contains any provision to extend the maximum duration of Parliament beyond five years⁹.

Implied exceptions

2.11 It is also implicit in section 2(1) that the Bill must have been introduced in the Commons (otherwise it cannot be sent up to the Lords in each session). The result is that section 2(1) cannot apply to Bills introduced in the Lords.

2.12 In addition, it appears that there might be other types of Bills to which section 2(1) does not, by implication, apply.

2.13 This was considered by the House of Lords in 2005 in *Jackson and others v Her Majesty's Attorney General*.¹⁰

2.14 The case concerned a challenge to the validity of the 1949 Act on the basis that the section 2(1) procedure in the 1911 Act did not apply to Bills which amended that Act so as to make further inroads into the powers of the Lords. The argument was that this was an implied exception to the section 2(1) procedure because legislation under the 1911 Act was a kind of delegated legislation and, on general principles, a delegate (here the Queen and the Commons) cannot enlarge its own powers.

2.15 The House of Lords (sitting as a panel of 9) rejected this and associated arguments and found that the 1949 Act had been validly passed. But they did go on to consider whether there were any implied restrictions on the section 2(1) procedure. Their comments were obiter dicta.

2.16 A majority of their Lordships felt that there was an implied restriction for Bills removing the exception in the 1911 Act for Bills which extended the maximum duration of Parliament beyond five years.

2.17 Lord Bingham felt that it was possible (albeit unlikely ever to be an issue in practice) to extend the maximum duration of Parliament beyond five years by removing the exception in the 1911 Act and then having a Bill which extended the maximum duration of Parliament beyond five years.

2.18 However, he was in a minority and Lord Nicholls firmly disagreed on the basis that the express exclusion for Bills extending the maximum duration of Parliament beyond five years carried with it, by necessary implication, a like exclusion in respect of legislation aimed at achieving the same result by two steps rather than one. If this were not so, the express

8. It appears that this is a result that was intended, at least by the Commons, in 1911. On 20 April 1911, Lord Alexander Thynne moved an amendment in Commons committee to qualify the reference in section 2(1) to public Bills by the insertion of the words "introduced by a Minister on behalf of His Majesty's Government". The government resisted the amendment. In the course of the debate, the Solicitor General (Sir John Simon) was in no doubt that clause 2 was capable of applying to, in particular, a Bill introduced in one session by a private member and in the next by the government. The House divided on the amendment and it was defeated.

9. Five years is the limit which was set by section 7 of the 1911 Act - section 7 was repealed by the Fixed-term Parliaments Act 2011.

10. [2005] UKHL 56; [2005] 3 WLR 733; [2005] 4 All ER 1253.

legislative intention could readily be defeated.

2.19 Lord Steyn, Lord Hope, Baroness Hale and Lord Carswell were also of the view that it was not possible to extend the duration of Parliament beyond five years by legislating in two stages.

2.20 Lord Rodger accepted that, read literally, section 2(1) seems apt to cover a Bill to delete the exclusion for Bills extending the duration of Parliament beyond five years but wished to hear full argument before concluding that the safeguard of the consent of the Lords should not apply to such a Bill. Lord Brown was not prepared to sanction in advance the use of the 1911 Act to extend the duration of Parliament and said that these issues needed fuller argument than time allowed on the present appeal. Lord Walker expressed no view.

2.21 A natural further question for their Lordships was whether there were any other implied restrictions on the power of the Queen and the Commons to legislate under section 2(1). The Appendix contains a selection of their comments on this question. The precise extent of any other implied restrictions remains uncertain.

2.22 The question arose, during the pre-legislative scrutiny of the draft House of Lords Reform Bill, as to whether a Bill in the form of the draft could be presented for Royal Assent using the section 2(1) procedure. The government view was that it could. The Joint Committee considering the draft Bill received evidence from Lord Morris (who expressed doubts as to whether it could) and Lord Goldsmith and Lord Pannick (who considered that it could).¹¹

Sending up to Lords in first Session

2.23 The second requirement is that the Bill must have passed the Commons in the first session and been sent to the Lords at least one month before the end of the session.

2.24 “Month” means calendar month (the definition of “month” in the Interpretation Act 1978 applies).

2.25 The House of Commons Library’s Briefing Paper on “The Parliament Acts” (No. 00675, 25 February 2016) notes at paragraph 2.1 that the exact interpretation of “one month” has never been tested. It suggests that the safest assumption is likely to be to treat “one month” as meaning, in practice, one calendar month and one day.

2.26 The question may arise as to which day a Bill is sent up to the Lords if, when the Bill is passed by the Commons, the Lords is not sitting (for example, because at that time the Lords have adjourned to the next sitting day). Lords Standing Order No. 50(1) may be relevant to this question. It provides that—

“If a Public Bill is passed by the Commons and is carried up to the Office of the Clerk of the Parliaments at a time when this House is not sitting, and if it is for the convenience of this House that copies of the Bill should be circulated before the Bill is read a first time, the Bill shall be deemed to have been brought from the Commons and the Clerk of the Parliaments shall arrange for the printing and circulation of copies of the Bill and any Explanatory Notes thereto.”

2.27 Although there is no precedent, it would seem that if a Bill was carried over in the

11. See paragraphs 359 to 368 of the First Report of the Joint Committee on the draft House of Lords Reform Bill (26.3.12). There is an account of what happened in relation to the draft Bill in paragraph 3.9 of the House of Commons Library’s Briefing Paper on “The Parliament Acts” (No. 00675, 25 February 2016).

Commons from one session to the next, then the session into which the Bill was carried over would be the first session for the purposes of applying section 2 of the 1911 Act. And the various time limits would apply from the reintroduction of the Bill in that session. The other time limit to bear in mind would be that in Commons Standing Order No 80A(13), which provides for proceedings on a carried over Bill to lapse 12 months after the Bill's first reading in the session in which the Bill was first introduced unless that period is extended.

Rejection by Lords in first Session

2.28 The third requirement is that the Bill must have been rejected by the Lords in the first session.

2.29 A Bill passed by the Commons is treated as "rejected" by the Lords if the end of the session arrives and it has not been agreed between the two Houses.

2.30 This follows from section 2(3):

"A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses".

2.31 If the Bill has not been agreed by prorogation it does not matter what stage the proceedings have reached. At one extreme, this includes the case where the Lords have not embarked on consideration of the Bill. At the other extreme, it includes the case where the Lords have passed it with minor amendments which the Commons never consider.¹²

2.32 Both the Trade Union and Labour Relations (Amendment) Bill and the Aircraft and Shipbuilding Industries Bill were treated as rejected by the Lords in the first session when that came to an end following exchanges between the Houses. In the case of the Trade Union and Labour Relations (Amendment) Bill, the Lords message of 11 November 1975 kept the ball in play but the Commons took no further action and the session ended two days later.

Same Bill in second Session

2.33 The fourth requirement is that the Bill sent up to the Lords in the second session¹³ must be the same as that sent up in the first session, subject to two permissible kinds of alteration:

- alterations certified by the Speaker to be necessary owing to the time which has elapsed since the date of the Bill sent up to the Lords in the first session;
- alterations certified by the Speaker to represent any amendments which have been made by the Lords in the first session.

2.34 The point of reference is therefore the Bill as brought from the Commons in the first session. This is not affected by the fact that there may have been exchanges between the two Houses at a later stage in that session.

Lapse of time alterations

2.35 On almost every occasion¹⁴ an alteration in the year mentioned in the short title clause

12. This paragraph and paragraph 2.32 are cited in Erskine May para 30.51, FN5.

13. An intervening general election makes no difference to the operation of section 2 of the 1911 Act - note the words "(whether of the same Parliament or not)" in section 2(1) of the 1911 Act.

has been necessary. This is mentioned in the Speaker's certificate¹⁵ although in the case of an ordinary Bill in progress in either House on 31 December it is an alteration which is effected without formal amendment.

2.36 The possibility of a more substantial lapse of time alteration was contemplated in connection with the transfer date in the Bill for the Iron and Steel Act 1949 (that is the date for transferring securities and other assets to the new Iron and Steel Corporation of Great Britain). The Bill as introduced on 27 October 1948 provided that the transfer date should be 1 May 1950 or such later date within 18 months as might be appointed. By the following August the Lords had passed the Bill but with amendments unacceptable to the Commons. The most important of these, and the likely sticking point, was an amendment postponing the operation of the Act until 1 July 1951, in effect until after the general election which had to be held no later than July 1950.

2.37 The first session was expected to end in December 1949 and the prospect had to be faced that if the second session ran its normal course up to the general election the Bill would receive Royal Assent after 1 May 1950. This would mean the transfer was deemed already to have taken place. In reality, the Act would be inoperable. One possibility which was considered was whether in these circumstances the Speaker would be likely to certify that a deferment of the transfer date was an alteration necessary due to the lapse of time. In the end, the Speaker was not approached to give a view because the Bill was eventually passed in the first session (with a transfer date of 1 January 1951 or such later date within 12 months as might be appointed). The problem would not, of course, have arisen if, rather than specifying a transfer date, the Bill had conferred a power to appoint a commencement date.

2.38 In the case of the Bill for the Sexual Offences (Amendment) Act 2000, the House of Commons Library's Briefing Paper on "The Parliament Acts" (No. 00675, 25 February 2016, at paragraph 2.5) draws attention to an issue that arose as a result of Scottish devolution coming into effect during the course of the two sessions during which the Bill was before Parliament. The Bill as introduced in the 1998/99 session extended to Scotland but its subject-matter became devolved as a result of the Scotland Act 1998. The Briefing Paper notes that changing the Bill's extent would not have constituted a lapse of time alteration.

Printing corrections (other than lapse of time)

2.39 On the Bill for the Sexual Offences (Amendment) Act 2000, the House Authorities agreed that alterations to marginal references did not amount to amendments to the Bill for Parliament Act purposes.¹⁶

14. In the case of the Bill for the European Parliamentary Elections Act 1999, there was no alteration to the year mentioned in the short title clause and so no need to mention it in the Speaker's certificate. This was because, when the Bill was first introduced in October 1997, the year mentioned in the short title was 1998 and it was unnecessary to alter this when the Bill was reintroduced into the Commons in late November 1998 and sent to the Lords in early December 1998. In the event, the Bill received Royal Assent in January 1999 and so the year mentioned in the short title clause was corrected as a matter of printing on the Royal Assent proof.

15. See, for example, the certificate for the Sexual Offences (Amendment) Bill 2000; CJ 1999-2000 p188 (29.02.00).

16. In the case of that Bill, the marginal references on page 5 of the second session Bill as introduced into the Commons were not identical to those in the text of the first session Bill as brought to the Lords on 2 March 1999. The first session Bill had a marginal reference at line 33 against the Registered Home (Northern Ireland) Order 1992. This reference was wrong; the correct reference was made in the second session Bill at line 18. In addition, the marginal reference against the National Health Service Act 1977 in line 3 was the same in the second session Bill as introduced into the Commons as in the first session Bill but it was wrong (although no-one could be in any doubt as to the Act being referred to). This reference was corrected in the second session Bill when it was brought to the Lords.

2.40 It may be that other printing corrections would not constitute amendments for Parliament Act purposes either.

Lords amendments

2.41 The government is not obliged to include in a Bill any Lords amendments from the first session but it is free to do so. The cases referred to below are all cases where rejection of the Bill by the Lords in the first session happened during ping-pong (also known as to-and-fro), such that the Commons had had an opportunity in the first session to consider the Lords amendments.

2.42 The government might include all of the amendments. It seems that the government might also include some but not all of the Lords amendments. The Temperance (Scotland) Bill in 1913 included a Lords amendment to which the Commons had agreed. Other Lords amendments had been made to which the Commons did not agree and which were not included.

2.43 In the Aircraft and Shipbuilding Industries Bill, a Lords amendment was included to which the Commons had disagreed in the first session.

2.44 If amendments made by the Lords in the first session are to be included in the Bill as reintroduced in the second session, they must be complete amendments.

2.45 In moving the second reading of the Temperance (Scotland) Bill in 1913, Mr Mackinnon Wood apologised for the absence of the Lords amendment which the government had been prepared to concede. The clause had been altered by the Lords in other particulars and the amendment in question was not the complete amendment.¹⁷

2.46 In the case of the Bill for the Trade Union and Labour Relations (Amendment) Act 1976, a new clause had been moved as a government new clause in Lords committee and had later been substantially amended. The complete Lords amendment was the clause as amended.

2.47 On the other hand, if the Lords have in fact made two distinct amendments at the same point in the Bill the fact that they appear as one amendment in the list of Lords amendments sent to the Commons does not, presumably, mean that they have to be considered as a single amendment for Parliament Act purposes.

2.48 It is interesting to note that on the 11th day of Committee on the Parliament Bill in 1911 Mr Asquith said:¹⁸

“... as to the use of the word ‘represent’, the object and use of that word is not to confine the test of identity to the actual verbal reproduction of the Amendments which may have been made in the House, but to enable the identity to be so far extended as to include anything which substantially embodies the same principle.”

2.49 Approaching the substance of the matter in this way would certainly solve any problems about the textual integrity of amendments. It would also solve the converse problem to that mentioned above, namely, where there is a “complete amendment” in the textual sense which is in fact part of a group of amendments and to include it without its companions would produce a result different from that intended by their Lordships.

17.HC Deb (1913) 54, col. 679.

18.HC Deb (1911) 25, col. 153.

2.50 This substantive approach derives support from the Speaker's ruling on 8 December 1976 in connection with the Aircraft and Shipbuilding Industries Bill that it is permissible to include—

- (a) an amendment made by the Commons in lieu of a Lords Amendment and agreed to by the Lords; and
- (b) an amendment made by the Commons to a Lords Amendment and agreed to by the Lords.

2.51 His reasoning was that the operative word is “represents”. An amendment in lieu or an amendment to an amendment could not exist without the first Lords amendment and, when agreed to by the Lords, “represents in the fullest sense the original Lords amendment”.¹⁹

Judicial review of Speaker's certificate?

2.52 It seems that there is no scope for the Speaker's certificate under section 2(4) of the 1911 Act to be questioned in judicial review proceedings.²⁰ Lord Nicholls of Birkenhead made it clear in the *Jackson* case²¹ that, in accordance with the constitutional principle that courts will not look behind an Act of Parliament and investigate the process by which it was enacted, it would not be open to a court to investigate the conduct of proceedings in Parliament on the Bill for the 1949 Act to see whether they complied with section 2 of the 1911 Act. He pointed out that section 3 of the 1911 Act expressly provides that the Speaker's certificate shall be conclusive “for all purposes” and “shall not be questioned in any court of law”. Lord Nicholls' comments were in the context of the Speaker's certificate under section 2(2) of the 1911 Act but the same points would seem to be equally applicable to the certificate under section 2(4) of the Act. Lord Hope of Craighead agreed that “matters of parliamentary procedure are reserved for decision by parliamentary machinery”.²²

Passing Commons in second Session

2.53 The fifth requirement is that the date when the Bill passes the Commons in the second session must be at least a year after the date of second reading in the Commons in the first session.

2.54 The House of Commons Library's Briefing Paper on “The Parliament Acts” (No. 00675, 25 February 2016) notes at paragraph 2.1 that the exact interpretation of “one year” has never been tested. It suggests that the safest assumption is likely to be to count “one year” from the day after the Bill receives its second reading in the Commons in the first session (i.e. one calendar year and one day).

2.55 It is worth noting that the relevant date here is when the Bill passes the Commons and not when the Bill is sent to the Lords. In modern practice this means the date of third reading since the separate question “That this Bill do now pass” is not now put.²³ Erskine May²⁴ records that “a bill, when read the third time, is recorded in the Votes and Proceedings and Journal as having been read the third time and passed”.

19.HC Deb (1976) 922, cols. 451-454.

20.Erskine May para 30.55.

21.[2005] UKHL 56 at paras 49-51.

22.As above at para 116.

23.This question appears to have been last put by Mr Speaker Brand at the conclusion of the protracted proceedings on the Protection of Person and Property (Ireland) Bill on 28 February 1881 - Parl. Deb. 3s. 258, c. 1832.

24.See para 28.151.

2.56 The overall effect of these provisions is that the period from second reading in the Commons in the first Session to Royal Assent under the Parliament Acts must be, at the least, something over 13 months even if the second session is a short session. The period may be getting on for two years if the second session runs its normal course.²⁵

Sending up to Lords in second Session

2.57 The sixth requirement is that the Bill passed by the Commons in the second session must be sent to the Lords at least one month before the end of the second session.

2.58 Again, “month” means calendar month (see paragraphs 2.24 to 2.26 above).

Rejection by Lords in second Session

2.59 The seventh requirement is that the Bill must have been rejected by the Lords in the second session.

2.60 As mentioned above, “rejection” is glossed in section 2(3) as follows:

“A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.”

2.61 The problem, in relation to the second session, is that, while the Act directs that the Bill shall be presented for Royal Assent “on its rejection”, it provides no easy way of ascertaining at what point in time the “rejection” occurs. The practical importance of this is that the Bill may be enacted several months earlier if it can be said to have been rejected at some point prior to the end of the second session.

Rejection at end of session

2.62 There is a preliminary question as to whether, and if so how, the gloss in section 2(3) is to be applied in the second session. In the first session there is no problem: if the session has ended without the Bill passing into law then it is deemed to have been rejected by the Lords. In the second session it is not so easy.

2.63 Royal Assent must be signified in Parliament.²⁶ It follows that the prorogation of Parliament makes it impossible for Royal Assent to be signified. And, of course, on prorogation “all Bills, or other proceedings, depending in either House of Parliament, in whatever state they are, are entirely put an end to”.²⁷

2.64 The sequence of events on a prorogation is described in Erskine May.²⁸ The Queen having been advised to prorogue Parliament, certain Lords are authorised by commission under the great seal to signify Royal Assent to any remaining Bills waiting for Royal Assent and to prorogue Parliament to a certain day. Before 1968 there were two separate commissions, one for Royal Assent and one for prorogation, but otherwise this has been the procedure on every prorogation since 1854 - the last occasion on which the Sovereign

25. There is a worked example in the House of Commons Library’s Briefing Paper on “The Parliament Acts” (No. 00675, 25 February 2016) - see Box 3 in paragraph 2.1.

26. As to proceedings on Royal Assent, see Erskine May paras 30.36 to 30.40.

27. Hatsell, vol. II, p. 336. This is subject to exceptions for carry-over and in certain other cases.

28. See para 8.8.

prorogued Parliament in person. The Commons are summoned to attend in the Lords where the sequence of events is (a) Royal Assent, (b) Queen's Speech and (c) prorogation.

2.65 So, the theoretical dilemma is that you have to wait until the end of the session to know whether the Bill is rejected, but it is then too late to present the Bill for Royal Assent. This dilemma seemed to exercise Mr Speaker Lowther.²⁹ The practical solution is to treat a Bill as having been rejected in the second session by the Lords when the last possible moment has been reached at which further progress on the Bill could practically be made in order to permit its submission for Royal Assent before the end of the session.³⁰ Erskine May identifies this "last possible moment" as the eve of prorogation³¹ and says that "if the bill has not been passed by the day before prorogation, the Speaker instructs the Clerk of the House to write to the Clerk of the Crown stating that he or she intends to certify the Bill for Royal Assent on the following day and asking for confirmation of the intention to issue a Royal Commission. If such confirmation is forthcoming, the Clerk of the House writes to the Clerk of the Parliaments requesting return of the bill."³²

2.66 But the latest practical time for making further progress on a Bill may not be the end of business on the day before prorogation. In the case of the Bill for the Hunting Act 2004, there was an exchange of messages between the Houses on the day of prorogation itself and it only became clear after this exchange that the Houses were deadlocked.

2.67 In cases where prorogation can take place on alternative days,³³ it may not be possible to say on the day before prorogation that a Bill has been rejected simply because it may not be clear at that stage when prorogation is, in fact, to take place. On the Sexual Offences (Amendment) Bill 2000, it was not known until the last Thursday of the session whether prorogation would be on that day or the Friday. In fact, Thursday was the last day and, on that day, the Bill was treated as rejected. On that day, the Speaker said:³⁴

"It is now clear that the House of Lords will not pass the Sexual Offences (Amendment) Bill in the Current Session. That will constitute rejection of the Bill for the purposes of the Parliament Acts. The House has not directed that the Bill should not be passed for Royal Assent. It is therefore my duty to follow the procedure laid down. Accordingly, the House of Lords was asked to return the Bill to this House. In strict compliance with the requirements of the Parliament Acts, I have certified the Bill and I will ensure that it is submitted for Royal Assent at the time of prorogation."

2.68 The Bill was therefore enacted under the Parliament Acts and it was the first time that a Bill passed under the Parliament Acts had been treated as rejected in the Lords in the second session when no formal steps were taken by that House for rejection. In the Lords, in the second session, the Bill was given a second reading in April 2000 and had one day in committee in November when opposition amendments were carried into the Bill. But no other time was given to the Bill in the Lords in the second session.

Rejection at second reading

2.69 There are circumstances in which the Lords can be said to have rejected a Bill at second

29. See his memoirs "A Speaker's Commentaries" (1925) Vol 2 at pp113-115.

30. Erskine May para 30.51.

31. See para 30.51.

32. See para 30.55.

33. The instrument authorising prorogation can either name a single day for prorogation or provide alternative days for prorogation.

34. Commons Hansard, 30.11.00, col. 1137.

reading so that the Bill can be presented for Royal Assent without having to await the end of the session.

2.70 The Companion to the Standing Orders and Guide to the Proceedings of the House of Lords (2017) states (at para 8.39) that –

“A bill may be opposed on second reading by an amendment to the effect that “this House declines to give the bill a second reading”. The amendment may add a reason (a “reasoned amendment”). The agreement of the House to such an amendment, with or without a reason, means automatic rejection of the bill. The question as amended is not put, and the bill is removed from the list of bills in progress in *House of Lords Business*.”

2.71 This happened in the case of the Bill for the European Parliamentary Elections Act 1999. In the Bill’s second session, on 15 December 1998, an amendment to the motion that the Bill be read a second time was agreed to. The amendment was “to leave out all the words after “that” and insert “this House declines to give the European Parliamentary Elections Bill a Second Reading on the grounds that it includes an undemocratic “closed list” system providing for the selection of MEPs by party choice, an approach which would end the historic right of the British people to choose the candidates they wish to be elected, a step for which the House notes with great concern no mandate was sought or given at the last General Election.”” Royal Assent was signified (under the Parliament Act procedure) on 14 January 1999. The session did not end until 11 November 1999.

2.72 There is also scope for amendments to be moved that do not seek to negative second reading but “invite the House to put on record a particular point of view in agreeing to the second reading” (see para 8.41 of the Companion). Such amendments do not amount to a rejection of the Bill.

2.73 The Companion also refers (at para 8.43) to the possibility of moving that the second reading debate be adjourned³⁵, with or without notice or reasons, and states that –

“A motion to adjourn the debate, if agreed to, does not prevent the motion for the second reading being put down for a subsequent day.”

On this basis, it would seem that the passing of such a motion also cannot amount to rejection of a Bill.

2.74 A motion adjourning the second reading debate is distinguished in Erskine May from a “dilatatory amendment” putting off second reading for six months, the intention of such a motion being to deny the Bill a second reading during the current session. On second reading of the War Crimes Bill in the Lords in 1991 (i.e. the second session), a delaying motion (“That the Bill be read a second time this day six months”) was carried. This motion amounted to rejecting the Bill both in terms of Lords procedure³⁶ and in terms of section 2 of the Parliament Act 1911. The Speaker accordingly certified that the provisions of section 2 of the Act had been complied with.³⁷ Erskine May states that a delaying amendment (to put off second reading for six months) is now an obsolete procedure.³⁸

35. In the case of the Government of Ireland Bill and the Established Church (Wales) Bill in the 1914 session the second reading debate was adjourned *sine die* (i.e. without assigning a date for the adjourned debate). Mr Speaker Lowther appears to have taken the view that adjournment *sine die* is no different from adjournment from month to month or from week to week. See his memoirs “A Speaker’s Commentaries” (1925) Vol 2 at p113.

36. See p101 of the Companion to the Standing Orders and Guide to the Proceedings of the House of Lords, 2007 edition.

37. On 30 April 1991.

38. See para 29.16, FN1.

2.75 It seems possible, in theory, for the Lords simply to negative the motion for second reading. But Erskine May states that “it is uncommon for such opposition to take place, because notice of it, which is desirable in the interests of good order, cannot be given on the order paper”.³⁹ An earlier edition of Erskine May (23th edition, 2004) stated that if the motion for second reading was disagreed to, “the second reading is in theory negatived only for that particular day but in practice the Bill is treated as having been rejected and is removed from the list of Bills in progress.”

Another early rejection?

2.76 It may, of course, be necessary to consider on occasions other than second reading whether a Bill can be treated as rejected before the end of the session for the purposes of section 2.

2.77 For example, the question might arise where the Lords have passed the Bill with amendments to which the Commons disagree.

2.78 In a given case, consideration would have to be given to whether it was possible to establish that there was rejection before the end of the session by virtue of a deadlock having been reached between the two Houses.

Commons directions

2.79 The eighth requirement for a Bill to be enacted under section 2 of the 1911 Act is that the Commons must not have given a direction to the contrary.

2.80 The Commons have never exercised this power to direct to the contrary but the Speaker needs to be satisfied that they will not so direct before he releases the Bill to be presented for Royal Assent.

2.81 Although it is open to any member to put down a motion for this purpose (such a motion was tabled on the War Crimes Bill and appeared among the Early Day Motions on 1 May 1991⁴⁰), it can only be debated if the government decides to give it time. The government therefore controls whether there is any debate on the question as well as being likely to command a majority in the House for its view.

2.82 In the event, on the War Crimes Bill, the Leader of the Commons told the House immediately after the Speaker’s statement that the government saw no need to make time available for the Bill to be considered further. The Speaker was thus able to be satisfied that the Commons would not direct that the Bill should not be presented for Royal Assent.

2.83 If there were ever to be a Commons direction tabled by the government, OPC might be asked to draft and advise on the motion.

Royal Assent

2.84 The final requirement is that the Bill must be presented for Royal Assent in accordance with the 1911 Act.

³⁹See para 29.16. The Lords negatived the second reading of the Parliament Bill in the third session on 29 November 1949 but it seems from what is said in Erskine May that this is unlikely to occur again.

⁴⁰The motion read “That this House believes that the War Crimes Bill should not be presented to Her Majesty for Her Assent”. It had 14 signatures.

2.85 The duty in section 2(1) to present the Bill for Royal Assent (unless the Commons direct to the contrary) presumably lies on all the various officers who are concerned with the process of presenting Bills for Royal Assent. These are the Lord Chancellor, the Clerk of the Parliaments and the Clerk of the Crown in Chancery. An account of their respective functions is given in Erskine May.⁴¹

2.86 In addition, the Speaker has certain statutory functions where the Bill is presented for Royal Assent under section 2.

2.87 The text which is to be presented for Royal Assent is that sent up to the Lords subject to the changes required by the 1911 Act.

2.88 First, the enacting words must in every case be those provided for in section 4(1) which omit mention of the Lords. Section 4(2) provides that any alteration to give effect to this requirement does not count as an amendment of the Bill.

2.89 Second, section 2(4) requires any amendments which are certified by the Speaker to have been made by the House of Lords in the second session and agreed to by the House of Commons to be included in the text. This covers –

- (a) any amendments actually agreed as described, and
- (b) by virtue of the proviso to section 2(4), any amendments suggested by the Commons on the passage of the Bill through the House in the second session and agreed to by the Lords. These suggested amendments are treated as having been made by the Lords and agreed to by the Commons (see further Chapter 3).

2.90 These requirements must, at least in part, be directed to the Clerk of the Parliaments who is responsible for compiling the Royal Assent copy of a Bill.

2.91 But in addition section 2(2) provides:

“When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.”

2.92 In satisfying himself that the provisions of section 2 have been complied with, the Speaker must therefore have to satisfy himself that the text of the Act to be presented for Royal Assent is the correct one.

2.93 In 1991 the Speaker made a brief statement about the mechanics of dealing with a Bill after its rejection by the Lords as follows:⁴²

“The rejection of the War Crimes Bill for a second time by another place brings into play the provisions of the Act. The House of Lords will be asked to return the Bill to this House where it will be prepared for Royal Assent. No further proceedings are required in this House.”

See also paragraph 2.65 and the quote at paragraph 2.67 from the Speaker in the context of the Sexual Offences (Amendment) Bill.

2.94 The form of words to be used for signifying Royal Assent (see Part 4 of the Schedule to the Crown Office (Forms and Proclamations Rules) Order 1992) contains alternative wording to be used for Parliament Act cases.

41. See para 30.36.

42. HC Deb 1 May 1991, col 315.

CHAPTER 3 SUGGESTED AMENDMENTS

3.1 The suggested amendment procedure is contained in the proviso to section 2(4):

“Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.”

3.2 This procedure offers a way for the Commons to suggest amendments to a Bill without actually making them (meaning that the Commons could insist on the enactment of the unamended Bill under section 2). It is a way of enabling the Lords to take informed decisions when considering what sort of compromises to offer the Commons because it makes clear to the Lords what the Commons think on particular issues.

3.3 To date there have been no cases of the Lords rejecting a Bill without passing it but agreeing to a suggested Commons amendment or of the Lords agreeing a Commons suggested amendment but then going on to return the Bill to the Commons without amendments or with other amendments.

Commons timing and procedure

3.4 The proviso to section 2(4) speaks, in relation to the Commons, of the suggestions being made “on the passage of [the Bill] through the House”.

3.5 It would clearly be inappropriate to consider amendments before second reading in the Commons.

3.6 On the other hand, Mr Speaker Lowther ruled in 1914⁴³ that “on the passage” does not mean the moment at which the Bill passes, in other words immediately after third reading, but rather while the Bill is before the House.

3.7 Therefore, if a suggestions stage is to be had in the Commons, it must be taken between second and third reading.⁴⁴ Any suggestions agreed to are sent up with the Bill to the Lords after third reading.

3.8 It is, in practice, a matter for the government whether there is a suggestions stage at all and, if so, how long it is.⁴⁵

3.9 The suggestions stage is not part of the proceedings on the Bill. Each House is simply considering one or more motions suggesting amendments to the Bill and the suggested amendments do not form part of the Bill. However, despite this, any suggested amendments still need to be approved by the Parliamentary Business and Legislation Committee as if they were actual amendments of the Bill.

3.10 A procedure motion will also be necessary if it is intended to interpose the suggestions

43. See the ruling by Mr Speaker Lowther: HC Deb. (1914) 62, col 931.

44. Erskine May para 30.53.

45. HC Deb (1914) 61, cols 1348-51.

stage between proceedings on the Bill. In the case of the Hunting Bill, this was dealt with by the procedure motion governing the proceedings on the Bill (see Chapter 4).

3.11 Some of the other procedural considerations were the subject of a ruling by Mr Speaker Lowther in 1914.⁴⁶ The government determines the order in which the motions are considered and can also select certain motions and not others.

3.12 Commons Standing Order No 32 gives the Speaker power to select amendments to motions which includes amendments to suggested amendments. Although the Speaker has no power of selection over motions for suggested amendments, it is possible that they may in some circumstances be out of order.

3.13 Each suggested amendment is moved as a separate resolution. Suggested amendments can be moved only if they are included among the effective orders of the day. The Speaker has ruled that suggested amendments cannot be moved without notice.⁴⁷

3.14 Where the suggested amendment is a new clause and amendments are proposed to it, the debate may take place back to front with consideration of detailed amendments to the clause before consideration of the principle of the clause.⁴⁸ If a new clause is moved as an amendment to a Bill (rather than as a motion for a suggested amendment), amendments to it cannot be moved until it has been debated in principle on the question that it be read a second time. But this is not so for motions, for an amendment can be moved at any time whereupon discussion is confined to the subject of that amendment.

3.15 It is thought that a suggested amendment cannot be tabled on the day on which Notice of Presentation is handed in (day 1) but can be tabled immediately after first reading on day 2 so as to appear on the Order Paper on day 3.

3.16 If a motion for a suggested amendment is rejected, one option might be for the member in charge to consider seeking to withdraw the Bill before third reading.

3.17 Scope The government's suggested amendment to the Bill that became the Trade Union and Labour Relations (Amendment) Act 1976 raised a question about the scope of the Bill. It was thought that the clause in question would have been beyond the scope of the Bill had it simply been brought forward as an amendment in the Commons. In fact it had been inserted by the Lords in the first session and had been extensively discussed in the Commons as a Lords amendment. It was brought forward as a suggested amendment in the Commons in the second session. It is thought that the usual rules of scope do not apply to motions for suggested amendments.

3.18 Money resolution It seems likely that suggested amendments need to be covered by the money resolution for the Bill given the width of Commons Standing Orders Nos 48 and 49. (See also chapter 4 concerning money resolutions.)

Function of the procedure

3.19 The government in 1913-14, while pointing to the suggested amendment procedure to justify dispensing with a committee stage, appears to have acted on a narrow view of the proper function of the procedure.

46.HC Deb (1914) 61, cols 1348-51.

47.HC Deb (1948) 456, col 713.

48.An example appears in HC Deb (1913) 55, cols 479-504; see Mr Speaker Lowther's observations at col 480.

3.20 Mr Asquith, speaking in 1913 on the procedure motion in that session, described the suggested amendment procedure as intended to give an opportunity for “changes in the Bill consistent with its governing purpose and seen upon reflection to be improvements either as correcting inadvertencies and mistakes, or as modifying and making more acceptable its substantial provisions”.⁴⁹ In response to Opposition concerns that if they were to put down suggested amendments it might appear that they were accepting the Bill in principle⁵⁰, Mr Asquith said that all he had meant was that a rule should be observed similar to that which prevents the moving of amendments in Committee which run counter to the principle of the Bill as agreed to by the House on second reading.⁵¹

3.21 In the 1914 session large numbers of suggested amendments to the Bills for the Government of Ireland Act and the Welsh Church Act were tabled but the government refused to find time for any of them. Mr Asquith, opening a heated debate on that session’s procedure motion⁵², elaborated his earlier view of the function of the procedure. It was intended, he said,⁵³ for amendments “having regard to which time and discussion have shown that there was something, at any rate, in the nature of general agreement”.

3.22 He went on to say that any agreed compromise on the Government of Ireland Bill would have to be dealt with by an amending Bill. Ten or twelve pages of suggested amendments had been tabled to the Bill for the Welsh Church Act (some by government supporters, but mainly by the Opposition) which taken as a whole would, it was alleged, reconstruct the Bill from top to bottom. “That has not been”, he said,⁵⁴ “and never can be regarded as within the proper purview of a suggestion stage”.

3.23 In 1975 and 1976 Mr Asquith’s narrow view was in effect departed from and the suggestions stage made to perform new functions. In the case of both the Trade Union and Labour Relations (Amendment) Bill and the Aircraft and Shipbuilding Industries Bill time was found to debate Opposition suggestions which the government had no intention of agreeing to. To this extent there was a committee stage of sorts.

3.24 In addition, in the former case, the government used the suggested amendment procedure to put forward again the compromise proposal originally put forward as a government amendment in committee in the Lords in the first session which their Lordships had amended on Report and Third Reading and which the Commons had then disagreed to in its amended form.

3.25 No suggested amendments were tabled for the Bills that became the War Crimes Act 1991, the European Parliamentary Elections Act 1999 or the Sexual Offences (Amendment) Act 2000.

3.26 In 2004, the government tabled a suggested amendment about commencement for the Hunting Bill. It suggested a delay to the commencement of certain provisions of the Bill and so went beyond a simple tidying up amendment. There is no suggestion that the use of the procedure for this sort of case was in the least controversial.

49.HC Deb (1913) 54, col 819.

50.Mr Bonar Law, HC Deb (1913) 55, cols 75-77.

51.Ibid cols 85-86.

52.HC Deb (1914) 62, cols. 948-1082.

53.Ibid col 952.

54.Ibid col 956.

Form of suggested amendment

3.27 In the case of the Bill for the Hunting Act 2004, the form of the motion in the Commons for the suggested amendment was:

“HUNTING BILL
COMMONS’ SUGGESTED AMENDMENT

Alun Michael

To move, That pursuant to section 2(4) of the Parliament Act 1911 this House suggests to the Lords the following Amendment to the Hunting Bill –

[and then the amendment set out as if for Committee].”

Lords duty to consider

3.28 Section 2(4) places the Lords under a duty to consider any suggested amendments. It is difficult to see how, in practice, the duty on the Lords to consider suggested amendments is enforceable although their Lordships would be unlikely lightly to decide to defy a statutory duty.

3.29 In the case of the Trade Union and Labour Relations (Amendment) Bill, the government tabled two motions in the Lords - a motion that the Bill be read a second time and a motion that the Commons suggested amendments be considered. It was explained by Lord Shepherd in moving the second reading of the Bill on 10 February 1976⁵⁵ that the practical object of the motion to consider the Commons suggestions was to enable their Lordships in the second reading debate to “consider as a whole the final form in which another place would wish the Bill to go forward”. Subsequently the Commons suggested amendments were moved, in identical form, as Lords amendments to the Bill and they were agreed to in this manner. The Bill received Royal Assent in the usual way.

3.30 In the case of the Hunting Bill, the government similarly tabled a motion for the second reading of the Bill and a motion for consideration of the suggested amendment. In practice, both motions were debated together and the second motion was taken formally. A motion to agree the suggested amendment was not moved until the to and fro stage of the Bill. It was disagreed to.

Procedure in Lords

Moving motion to agree

3.31 It is thought that a free-standing motion to agree with a suggested Commons amendment can only be moved once and when the Bill is in the Lords.

3.32 In the case of a Bill that has been returned to the Commons, the Bill is only again “in the Lords” when a message from the Commons relating to the Bill is being considered by the Lords or awaits consideration by them (and not otherwise). This would mean that a motion to agree with a suggested amendment could not, for example, be taken in the Lords if a Commons message caused the double insistence rule to operate resulting in there being nothing for the Lords to consider (and so the Bill not being in the Lords). That is unless a motion is passed reviving the Bill as happened in the case of the Planning and Compulsory

55.HL Deb (1975-76) 368, cols 9-17.

Purchase Bill in 2004. The motion passed by the Lords was in the following terms –

“That it is desirable to vary the normal practice of the House when considering Commons reasons and amendments, whereby no further consideration of a Bill can take place in the event that –

(i) the Lords insists on an amendment;

(ii) the Commons insists on its disagreement to that amendment; and

(iii) neither House has offered alternative proposals;

to allow the House to consider the Commons reason and amendment to the Bill.”

Same question, same session

3.33 The “same question, same session” rule (i.e. that the House cannot be asked to decide the same question as one it has already decided in the same session) does not prevent a decision on an ordinary amendment and a decision on a motion for the same suggested amendment.

Timing of final decision

3.34 The Parliament Act does not impose any constraints on the timing of the Lords decision to agree or disagree to suggested amendments. It will be a matter of political judgment.

No amendment of suggestions

3.35 There is no provision in section 2(4) for the Lords to amend the Commons suggestions.

Accept some or all?

3.36 There are no examples to date of the Lords having accepted some but not all of the Commons suggested amendments.

CHAPTER 4 OTHER PROCEDURAL ISSUES IN THE SECOND SESSION

Procedure motions in Commons

General

4.1 The existence of the suggested amendment procedure means that it can be said, as Mr Asquith said in 1913,⁵⁶ that a committee and Report stage were not contemplated as part of the normal procedure for Bills proceeding under the 1911 Act. To put the same point another way, as did Sir Hartley Shawcross in 1949,⁵⁷ it would be fruitless to discuss amendments which could not be made without thwarting the will of the House expressed on second reading that the Bill should go forward under the Parliament Act.

4.2 Accordingly, it has generally been the practice to take a procedure motion, either before or after second reading, which in effect dispenses with committee and Report. The Bill will, of course, have gone through these stages in the first session.

4.3 The suggestions stage, if there is one, is customarily shorter than a normal committee and Report stage.

Types of motion

4.4 Before 1991, the procedure motion provided for a formal committee stage. The most recent example of a motion of this kind before 1991 was that taken on 1 December 1976 in relation to proceedings on the Aircraft and Shipbuilding Industries Bill.⁵⁸

4.5 In 1991, the proceedings in the Commons on the War Crimes Bill in the second session were confined to second reading and a formal third reading.

4.6 The procedure motion to achieve this was as follows -

“That if the War Crimes Bill is read a second time, no order shall be made for the committal of the Bill and it shall be ordered to be read the third time upon a future day; and upon a motion being made for Third Reading the Question thereon shall be put forthwith and may be decided, though opposed, after the expiration of the time for opposed business.”⁵⁹

4.7 The reasoning behind this was that a formal committee stage served no useful purpose and there was also no point in having a third reading debate given that the Bill was necessarily incapable of alteration between second reading and third reading.

4.8 A virtually identical motion was passed in 2000 in relation to the Sexual Offences (Amendment) Bill.⁶⁰ The second reading debate on that Bill on 10 February 2000 lasted 4 hours and forty minutes before the vote and on 28 February 2000 there was a vote but no debate on third reading.

4.9 However, a different approach was followed on the Bill for the European Parliamentary

56.HC Deb (1913) 54, col 818.

57.HC Deb (1949) 469, col 1696.

58.HC Deb (1976-77) 921, cols 934-938.

59.HC Deb 12 March 1991, col 901.

60.CJ 1999-2000, p141 (7 February 2000).

Elections Act 1999 where proceedings on second reading, in committee, on consideration and on third reading were limited to 4 hours from the beginning of proceedings on the allocation of time motion.⁶¹

4.10 The allocation of time motion also provided for proceedings on the Bill to be postponed while the question was put in accordance with Commons Standing Order No 52(1) on any financial resolution relating to the Bill.

4.11 In the event, second reading of the Bill was still in progress when the four hours expired and so remaining proceedings on the Bill, and in relation to the money resolution, took place in accordance with the terms of the allocation of time motion. No amendments were made in committee.

4.12 On the Bill for the Hunting Act 2004, yet another type of procedure motion was taken.⁶²

4.13 In this case, the motion⁶³:

- allocated five hours for second reading after the commencement of proceedings on the motion;
- deemed the Bill to have then been committed to a Committee of the Whole House and to have been reported from the committee without amendment;
- required the House then to consider any motion in the name of a Minister of the Crown under section 2(4) of the 1911 Act for a suggested amendment to the Bill (three hours after the commencement of proceedings on the motion under section 2(4) was allocated for this);
- allocated half an hour to proceedings on third reading (which could be taken immediately after the conclusion of proceedings on the motion for the suggested amendment);
- prevented any motion to recommit the Bill;
- closed off various other avenues for delaying proceedings.

4.14 It was not treated as an allocation of time motion under Commons SO No 83 because of the provision about a suggested amendment and so no time limit applied to proceedings on the motion.

Who tables?

4.15 The motion for the War Crimes Bill was put down in the name of the Leader of the House. The procedure motion for the Trade Union and Labour Relations (Amendment) Bill had been put down in the name of the Leader of the House and the Secretary of State for Employment and then moved by the Secretary of State for Employment (who was the Minister in charge of the Bill). This attracted adverse comment from the Opposition.⁶⁴

4.16 The motion for the Sexual Offences (Amendment) Bill was put down in the name of a junior Minister in the Home Office (Paul Boateng).

4.17 The allocation of time motion for the European Parliamentary Elections Bill was put down in the name of the Leader of the House and the Minister in charge of the Bill.

61.CJ 1998-1999, pp20-21 (2 December 1998).

62.The introduction in the meantime of the regime for the programming of Bills meant that the House was now used to seeing detailed procedural provisions for every Bill.

63.CJ 2003-04, pp519-520 (15 September 2004).

64.HC Deb (1975-76) 902, cols 381-3.

4.18 The procedure motion for the Hunting Bill was put down in the name of the Leader of the House and a junior Minister in DEFRA.

4.19 In the case of any future Bill, it will be important to check in whose name the motion should be tabled. The current practice whereby the name of the Leader of the House no longer appears on programme motions and allocation of time motions may now be relevant in this context as well.

Further motions

4.20 On the Hunting Bill, a second procedure motion was agreed to that allocated time to the debate on Commons consideration of Lords amendments.⁶⁵ A money resolution was also agreed to, providing cover for some of the Lords amendments; without it the Lords amendments which involved the expenditure of money could not have been discussed. The procedure motion provided for three hours for consideration of Lords amendments after the commencement of proceedings on the money resolution.

4.21 A third procedure motion was agreed to that dealt with consideration of any Lords message (one hour after commencement of proceedings on such consideration).⁶⁶

Money Resolutions

4.22 Any money resolution for the Bill passed in the first session will have lapsed with the end of the session and so a further resolution will need to be tabled in the second session.

4.23 It is thought that the terms of the money resolution in the second session will govern the permissible scope of suggested amendments. It was assumed in debate in 1913 on the resolution for the Government of Ireland Bill that its form affected what suggested amendments were permissible.⁶⁷

4.24 Any amendment moved to a money resolution could be carried into effect in the Bill only by a suggested amendment.⁶⁸

Queen's and Prince's Consent

4.25 If required, Queen's or Prince's consent will need to be signified for the second session Bill as for the first session's Bill.

4.26 It is important not to overlook this, particularly in the Commons given the abbreviated procedures for a re-introduced second session Bill.

To and Fro (or "ping-pong")

4.27 There are a number of potential pitfalls when, for example, the Commons are considering Lords amendments as part of the to and fro process.

65.CJ 2003-04, pp616-617 (16 November 2004).

66.CJ 2003-04, p629 (18 November 2004).

67.HC Deb (1913) 54, cols 996-7, 1003, 1010-12 and 1037-38.

68.Ibid cols 1010-12.

4.28 Anything agreed by the Commons will be included in the text of the Act because section 2(4) of the 1911 Act directs that agreed amendments are to be included in the Bill for Royal Assent. The Commons therefore need to be very careful not to agree some amendments and propose others in lieu in case the Lords reject the amendments proposed in lieu and the agreed amendments go forward to Royal Assent leaving the Bill in a mess.

4.29 To avoid these difficulties it is thought that the Commons can reject all the Lords amendments and then propose an alternative in lieu that can (if need be) include near identical changes and that can only be accepted or rejected in its entirety.

4.30 In the case of the Hunting Bill, on 16 November 2004, the Commons were given the opportunity to vote on amendments in lieu that would, if accepted by the Lords, have reinstated registered hunting. The amendments in lieu formed a package that was a single unit of one new clause and one new schedule in lieu of a large number of Lords amendments. The package could either have been accepted or rejected by the Lords. However, in the event, the Commons voted against the package and, instead, simply disagreed with each of the Lords amendments. Further rounds of to and fro followed.

APPENDIX JACKSON CASE: IMPLIED RESTRICTIONS UNDER SECTION 2(1)

[The below follows on from paragraph 2.21]

1 Lord Bingham thought that there were no implied restrictions on the power of the Queen and the Commons to legislate under section 2(1).

2 Lord Nicholls argued that the only implied restriction was against extending the duration of Parliament beyond five years by legislating in two stages. He argued that this restriction arose from the express exception in the Act and that, as there were no other significant express exceptions, no other implied restrictions could be deduced.

3 Lord Rodger did not think that it was necessary to decide what limits, if any, there might be to the scope of section 2(1). Lord Walker also expressed no view.

4 However, all the other judges suggested, however tentatively, that there might be implied restrictions on the scope of the powers under the 1911 Act in addition to an implied restriction against extending the duration of Parliament beyond five years.

5 In suggesting this, most of the judges seemed to acknowledge (whether expressly or by implication) that these restrictions would have to be found through the application of general legal and constitutional principles rather than as a simple matter of construction of the 1911 Act.

6 Thus, for example, Lord Steyn said that, while strict legalism suggests that the Attorney General may have been right to suggest that the 1911 Act procedure could be used to abolish the House of Lords, he was deeply troubled about assenting to the validity of such an exorbitant assertion of government power in our bi-cameral system. He went on to say that “it may be that such an issue would test the relative merits of strict legalism and constitutional legal principle in the courts at the most fundamental level”.

7 Lord Steyn was also concerned that the 1911 Act could be used to introduce oppressive and wholly undemocratic legislation. For example, that it could theoretically be used to abolish judicial review of flagrant abuse of power by a government or even the role of ordinary courts in standing between the executive and citizens.

8 His conclusion was:

“The classic account given by Dicey of the doctrine of the supremacy of Parliament, pure and absolute as it was, can now be seen to be out of place in the modern United Kingdom. Nevertheless, the supremacy of Parliament is still the *general* principle of our constitution. It is a construct of the common law. The judges created this principle. If that is so, it is not unthinkable that circumstances could arise where the courts may have to qualify a principle established on a different hypothesis of constitutionalism. In exceptional circumstances involving an attempt to abolish judicial review or the ordinary role of the courts, the Appellate Committee of the House or a new Supreme Court may have to consider whether this is a constitutional fundamental which even a sovereign Parliament acting at the behest of a complaisant House of Commons cannot abolish.”

9 Lord Hope also expressed reservations as to whether there was unlimited Parliamentary sovereignty. He pointed out restrictions imposed on it by the European Communities Act 1972, the Human Rights Act 1998 and the Acts of Union 1707. He also said that we should not overlook that one of the guiding principles identified by Dicey was “the universal rule or supremacy throughout the constitution of ordinary law”. Lord Hope went on to say that the same point was made by Owen Dixon when he said “that it is of the essence

of supremacy of the law that the courts shall disregard as unauthorised and void the acts of any organ of government, whether legislative or administrative, which exceeds the limits of the power that organ derives from the law.”

10 Lord Hope concluded this part of his analysis by saying:

“In its modern form, now reinforced by the European Convention on Human Rights and the enactment by Parliament of the Human Rights Act 1998, this principle protects the individual from arbitrary government. The rule of law enforced by the courts is the ultimate controlling factor on which our constitution is based. The fact that your Lordships have been willing to hear this appeal and to give judgement upon it is another indication that the courts have a part to play in defining the limits of Parliament’s legislative sovereignty.”

11 However, at the end of his judgment, he did seem to draw back a little by saying that the final exercise of judgement as to whether to risk popular resistance or enact exorbitant or not proportionate measures under section 2(1) must be left to the Commons as the elected chamber: “it is for that chamber to decide where the balance lies when that procedure is being resorted to.”

12 Baroness Hale stated that Parliament can do anything but then went on to say that the courts would treat with particular suspicion (and might even reject) any attempt to subvert the rule of law by removing governmental action affecting the rights of the individual from all judicial scrutiny. She also acknowledged the restraints imposed by the European Communities Act 1972 and the Human Rights Act 1998 and the special position of Scotland and accepted that other qualifications on Parliamentary sovereignty might emerge in due course.

13 She did also say that “not having excepted a bill to modify the procedure in section 2, Parliament must be taken to have authorised the use of the procedure for that purpose”. This suggests that she also might have to plead in aid general legal and constitutional principles to found restrictions in the 1911 Act which are not express in, and cannot easily be implied from, the text of that Act.

14 Lord Carswell did not attempt to give a definite answer to the question of whether there were any further restrictions on the use of section 2 of the 1911 Act but inclined very tentatively to the view that the Court of Appeal’s instinct may have been right that there may be a limit somewhere to the powers contained in that section although the boundaries appear extremely difficult to define.

15 Lord Brown also would not give a definite answer but was not prepared to give a ruling that would sanction in advance the use of the 1911 Act for all purposes, for example to abolish the House of Lords or prolong the life of Parliament.

16 For an analysis of the Parliament Acts 1911 and 1949 in the light of the *Jackson* case, see Richard Ekins’s article in the (2007) 123 LQR.