

# EXPLANATORY NOTES PILOT: OFFICE OF THE PARLIAMENTARY COUNSEL RESPONSE TO CONSULTATION

## Introduction

1 A review group based in the Office of the Parliamentary Counsel (OPC), but with members from other government departments and from other parts of the Cabinet Office, has been reviewing the format and content of Explanatory Notes for Bills and Acts (of the UK Parliament) to consider how they could be made more helpful to those who use them.

2 As part of the review, Explanatory Notes in a new format were piloted for two short Government Bills of the 2014-15 Parliamentary Session: the Armed Forces (Service Complaints and Financial Assistance) Bill and the Lords Spiritual (Women) Bill.

## Conducting the consultation exercise

3 The Explanatory Notes were published in the normal way, both online in the Bills area of the Parliament website (<https://www.parliament.uk>) and in hard copy by the Stationery Office Ltd. On the Parliament website, those accessing the Notes were alerted to the fact that a new format was being piloted, and were invited to send comments to an OPC email address. The hard copies of the Notes published by the Commons for the Armed Forces (Service Complaints and Financial Assistance) Bill and the Notes published by each House for the Lords Spiritual (Women) Bill included on the front page a note inviting comments on the new format to the same email address.

4 In the case of the Armed Forces (Service Complaints and Financial Assistance) Bill, the pilot was also mentioned in a Written Statement made by the Leader of each House<sup>1</sup>.

5 Comments were sought by a deadline of 31 January 2015. 11 written responses were received. In addition, some comments were given directly to officials at a DEFRA Better Regulation Roadshow.

## Content of responses

### *The format of the pilot Explanatory Notes*

6 All those who commented on the new format preferred it to the existing format.

7 One respondent suggested that the font size was too small. Another praised the “good line spacing and font size, use of headings and sub-headings” but expressed a preference for the use of a sans serif font such as Arial for the main text.

8 Several respondents mentioned the E:W:S:NI icon that was used in both sets of pilot

<sup>1</sup>House of Lords Official Report, 5 June 2014 WS 17; House of Commons Official Report, 22 October 2014 72 WS.

Notes. Comments included the following:

- the markers “are interesting but there is no key so I have absolutely no idea what they mean”;
- “the ‘at a glance’ symbols showing territorial extent are especially welcome”.

9 Various respondents welcomed the inclusion of flow-charts, though one suggested that the diagram at Annex B to the Notes on the Armed Forces (Service Complaints and Financial Assistance) Bill was difficult to follow.

#### *Online functionality*

10 One respondent mentioned the absence from the Notes on the Lords Spiritual (Women) Bill of any material about the human rights implications of the Bill. This respondent also mentioned the fact that the link provided was to a general government publications webpage.

11 Another respondent suggested that a hyperlink should be provided to the text on [www.legislation.gov.uk](http://www.legislation.gov.uk) of all primary and secondary legislation referred to in the Bill. The same respondent also suggested that the online version of Act notes should include links to secondary legislation made under it.

#### *Content: general*

12 Several respondents welcomed the inclusion of material under the headings “Policy background” and “Legal background”.

13 One respondent suggested that further explanation could have been provided in some cases, for example explaining why clause 4 of the Armed Forces (Service Complaints and Financial Assistance) Bill was needed.

14 Comments about readability and the language used in the Notes varied. Examples included:

- “The notes are written in readable English which is commendable. But sometimes the English is a little colloquial.”;
- “We... urge the Government to simplify both the technical content of the sentences and the actual words used.”

#### *Other points*

15 One respondent (a firm of solicitors) mentioned the fact that explanatory notes are not produced for consolidation Bills or Acts. Their view was that the absence of such notes was unhelpful. They referred in particular to the Charities Act 2011. They commented that “If the aim of the explanatory notes is to make Bills generally more accessible and understood, we consider this should apply to all Bills, including consolidations.”

### **OPC Response to comments received**

16 OPC is grateful to those who commented on the pilot Explanatory Notes, and for the level of detail in their comments. We have considered the comments carefully.

### *Format of explanatory notes*

17 We note that the new format was welcomed and intend to put it into general use in the new Parliament. We think that the font size in the hard copy strikes a good balance between the demands of legibility and the need to avoid an excessively long document in the case of a large Bill.

18 We have reconsidered the use of the E:W:S:NI icon that was used in the pilot Notes to indicate the parts of the United Kingdom to which a particular clause extended (in other words, the part of the United Kingdom in which the clause was to form part of the law). It seems to us that its use may be confusing rather than helpful. The fact that a provision extends to a particular part of the UK does not mean that it has any practical application there. Application is a less clear-cut concept than extent and we do not think that the icon could helpfully be used to indicate application. We have therefore decided:—

- that general information about extent and application should instead be presented in Explanatory Notes in tabular form, and
- that the commentary on each provision of the Bill should include a sentence explaining the extent and application of the provision.

### *Online functionality*

19 We note the demand for better online functionality and better hyperlinks and are working to produce this.

### *Content: general*

20 We note that the material under the headings “Policy background” and “Legal background” was welcomed and we intend to use these headings.

21 We aim to provide improved guidance to Departments with a view to improving the substantive content of Explanatory Notes.

### *Other points*

22 We considered carefully in consultation with Parliamentary Counsel based at the Law Commission the question of Explanatory Notes for consolidation Bills. For any other Bill, the purpose of Explanatory Notes for a Bill is to explain the change in the law that the Bill would produce. Since a consolidation Bill is not intended to change the law, the need for Notes of this kind is less. The Notes would merely be a commentary on the existing law and would have no special value. We are concerned that if all consolidation Bills were required to be accompanied by full Explanatory Notes this would add to the expense of a consolidation project and discourage Departments from undertaking projects of this kind. We do not therefore recommend that consolidation Bills should be accompanied by full Explanatory Notes.

*Office of the Parliamentary Counsel*

*April 2015*