

# FINANCIAL RESOLUTIONS

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

Unless otherwise stated:

- references to Erskine May are to the 25th edition (2019),
- references to Commons Standing Orders are to the Standing Orders of the House of Commons relating to Public Business of 5 November 2019 and the addenda up to 1 December 2022, and
- references to the *Guide to Making Legislation* are to the August 2022 edition.

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## **CHAPTER 1 INTRODUCTION**

### **Scope of pamphlet**

1.1 This pamphlet deals principally with the financial resolutions that are required in the House of Commons in connection with public bills.

1.2 These are:

- money resolutions, which authorise new charges upon the public revenue (broadly speaking, new expenditure), and
- ways and means resolutions, which authorise new charges upon the people (broadly speaking, new taxation).

1.3 This pamphlet does not consider in detail founding resolutions for Finance Bills or for other bills brought in on resolutions.

1.4 For information about the general principles relating to financial matters, including the role of the House of Lords, see Appendix A.

### **Role of OPC**

1.5 OPC's role depends on whether the bill starts in the Commons or the Lords.

#### *Commons Bills*

1.6 Before introducing a bill in the House of Commons:

- consider whether a money resolution (Chapters 2 and 3) or ways and means resolution (Chapter 4) is required (or, indeed, whether the bill needs to be brought in on resolutions);
- consider which provisions ought to be italicised and whether to add a financial provisions clause to the bill (see paragraphs 5.1 to 5.13);
- draft any financial resolution that is required (see paragraphs 5.19 to 5.43);
- draft the paragraphs of the explanatory notes that relate to approval for financial costs or for charges imposed (see paragraphs 5.14 to 5.18);
- consult the Commons PBO on the first three points.

1.7 Ensure that any necessary financial resolution is tabled in time to be taken immediately after second reading of the bill (in the case of a government bill not founded on resolutions). For the tabling of resolutions, see paragraphs 5.44 to 5.61.

1.8 Consider whether a financial resolution (or additional financial resolution) is needed to cover any government amendment in the House of Commons or any other amendment that the government wishes to accept in that House. Draft and table any such resolution.

1.9 Consider whether any amendment made in the Lords will need a financial resolution in order for the amendment to be considered by the Commons on the return of the bill to that House. Again, draft and table any necessary resolution.

1.10 Similarly, consider whether any amendment made on ping-pong requires a financial resolution.

*Lords Bills*

1.11 Before introducing a bill in the House of Lords:

- consider whether the bill will need a privilege amendment on third reading (see paragraphs [A.11](#) to [A.13](#) in Appendix A) and inform the Lords PBO;
- if it does, ensure that the breach of privilege involved is capable of being waived by the House of Commons (this would not, for example, be possible in the case of a bill of aids and supplies).

OPC does not draft the privilege amendment and is not responsible for adding it to the bill.

1.12 The precise detail of what resolutions are required for a Lords bill can be left until the bill reaches the House of Commons, although it is often convenient to discuss this on a provisional basis with the Commons PBO before the bill is introduced in the House of Lords. More detailed discussions might be falsified by subsequent amendments in the House of Lords.

1.13 Consider the financial implications of any amendments in the House of Lords.

1.14 Draft and table any necessary financial resolution in time for it to be taken immediately after second reading in the House of Commons.

1.15 Table an amendment in committee in the House of Commons removing the “privilege amendment” (see paragraphs [A.14](#) and [A.15](#) in Appendix A).<sup>1</sup>

1.16 Consider whether a resolution is required for any amendment made in the House of Commons or by the Lords on ping-pong.

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1. Note that this means that a Lords bill that requires a privilege amendment will always be amended in Committee. So, if committed to Committee of the whole House, it will have a Report stage, even if there are no other amendments.

## **CHAPTER 2 MONEY RESOLUTIONS: CHARGES ON THE PUBLIC REVENUE**

### **Introduction**

2.1 Commons SO No. 49 provides that any charge on the public revenue must be authorised by a resolution of the House. Commons SO No. 48 provides that Crown recommendation is required for any such resolution.

2.2 This Chapter explains what is a charge on the public revenue for the purposes of money resolutions.

2.3 Chapter 3 explains when a money resolution is, and is not, required.

### **Charges on the public revenue**

#### *Kinds of charges on the public revenue*

2.4 Commons SO No. 49 divides charges on the public revenue into—

- expenditure payable out of money to be provided by Parliament (often referred to as “Votes”),
- expenditure payable out of the Consolidated Fund or the National Loans Fund, and
- releasing or compounding any sum of money owing to the Crown.

These different types of charge are explained in more detail below.

2.5 All expenditure in bills is payable out of money provided by Parliament unless there is specific provision for that expenditure to be payable out of the Consolidated Fund or the National Loans Fund. Expenditure out of money provided by Parliament is therefore the default setting, and a bill does not need to provide for this. It is assumed that this must have been Parliament’s intention if no other source for the money has been identified.

### **Expenditure out of money provided by Parliament (“Votes”)**

2.6 Expenditure out of money provided by Parliament is often referred to as expenditure out of “Votes”. This is a reference to the fact that Parliament votes money to individual departments each year to meet their budgets. The amount that Parliament votes to each department is based on an estimate of its needs.<sup>2</sup> For more information about estimates, see Appendix A.

2.7 Expenditure authorised by Votes is given a final sanction in a Supply and Appropriation Act.

2.8 The money can then be drawn from the Consolidated Fund so far as it is not appropriated in advance from receipts that have not reached the Fund.

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2. For expenditure out of Votes, see *Erskine May* paras 34.7 to 34.21. For details of Supply procedure, see *Supply Estimates: a guidance manual* (HM Treasury, July 2011). Note that recent changes to supply procedure post-date this guidance.

## **Expenditure payable into or out of the Consolidated Fund**

2.9 The Consolidated Fund is, in effect, the government’s bank account kept at the Bank of England.

2.10 A department obtains money required for “expenditure payable out of the Consolidated Fund” directly from the Consolidated Fund without the need for the annual approval of an estimate and its enactment in a Supply and Appropriation Act. The department can, in effect, go straight to the Fund for its payment.

2.11 Examples of expenditure charged directly to the Consolidated Fund include payments to the European Union and the salaries and pensions of holders of certain judicial offices.

### *Payments into the Consolidated Fund*

2.12 Departments must pay into the Consolidated Fund any income that they receive, unless authorised by or under an Act to deal with it in another way (see section 5(5) of the Supply and Appropriation (Main Estimates) Act for the year).

2.13 Taxes and other HMRC receipts are payable into the Consolidated Fund by virtue of section 44 of the Commissioners for Revenue and Customs Act 2005, which provides that the Commissioners for Her Majesty’s Revenue and Customs must pay into the Fund money received in the exercise of their functions other than the receipts specified in subsection (2) of that section and after the deduction of the disbursements specified in subsection (3) of that section.

2.14 In other cases, section 10 of the Exchequer and Audit Departments Act 1866 provides that “All public moneys payable to the Exchequer shall be paid into the Consolidated Fund....”.

2.15 The hereditary revenues of the Crown are directed to be paid into the Exchequer and made part of the Consolidated Fund under section 1 of the Civil List Act 1952.

2.16 Fines for criminal offences committed in England and Wales end up in the Consolidated Fund.<sup>3</sup>

2.17 Provision is on occasion made for fines that would not otherwise be paid into the Consolidated Fund to be paid into it. This is included so that fines for offences committed in Scotland go into the UK Consolidated Fund rather than into the Scottish Consolidated Fund. It is usual for the provision to make express reference to offences committed in Scotland.<sup>4</sup>

2.18 Other Acts also specifically direct that particular items of revenue are payable into the Consolidated Fund. Section 1(8) of the National Loans Act 1968 ensures that, where the intention is that money be paid into the Consolidated Fund, it is sufficient to enact that it be paid into the Consolidated Fund (instead of enacting that it be paid into the Exchequer).

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3. See section 38 of the Courts Act 2003 as regards fines imposed by a magistrates’ court. A combination of section 38 of the 2003 Act, section 140 of the Powers of Criminal Courts (Sentencing) Act 2000 and section 17(2) of the Interpretation Act 1978 seems to produce the same result as regards fines imposed by the Crown Court (by treating them as if they were imposed by a magistrates’ court).

4. See, for example, section 109 of the Wireless Telegraphy Act 2006. But section 56(3) of the Vehicle Excise and Registration Act 1994 refers simply to fines “which (apart from this subsection) would not be paid into the Consolidated Fund”.

*Payments out of the Consolidated Fund*

2.19 Expenditure payable out of the Consolidated Fund by virtue of an enactment is met directly out of that Fund without the need for an Estimate.

2.20 There are various ways in which an enactment might make provision for expenditure to be payable out of the Consolidated Fund:

- the imposition of an annual charge on the Consolidated Fund;
- contingent or prospective charges on the Consolidated Fund (such as might arise from a Treasury guarantee);
- the issue of money from the Consolidated Fund to the Contingencies Fund;
- the making of advances out of the Consolidated Fund to be repaid out of moneys provided by Parliament;
- the authorisation of a single payment out of the Consolidated Fund.

2.21 Section 13 of the Exchequer and Audit Departments Act 1866 requires the Comptroller and Auditor General, on receipt of a requisition from the Treasury in respect of services which (under an Act) are payable out of the Consolidated Fund, to grant the Treasury a credit on the Exchequer account. Where a credit has been granted, issues must be made from time to time on orders given to the Bank of England by the Treasury.

2.22 Section 15 of the 1866 Act requires the Comptroller and Auditor General, on receipt of a requisition from the Treasury in respect of sums which Parliament has authorised (by Act or resolution of the House of Commons) to be issued out of the Consolidated Fund, to grant the Treasury a credit on the Exchequer account. Where a credit has been granted, issues must be made from time to time on orders given to the Bank of England by the Treasury.

### **The National Loans Fund**

2.23 The National Loans Fund is an account of the Treasury at the Bank of England established under the National Loans Act 1968.

2.24 The Act transferred to the National Loans Fund almost all government lending to nationalized industries and other bodies which had previously been financed by advances out of the Consolidated Fund. The National Loans Fund continues to be used to lend money under the terms of the 1968 Act.

2.25 Where the amount of money paid into the Consolidated Fund exceeds amounts to be paid out of it, the excess must be paid into the National Loans Fund.

2.26 Section 1(3) of the 1968 Act requires the Comptroller and Auditor General to grant credits from time to time at the request of the Treasury for sums payable out of the National Loans Fund under the 1968 Act or any other Act. The Treasury then makes payments out of the National Loans Fund in accordance with the credits granted.

### **Releasing or compounding any sum of money owing to the Crown**

2.27 Releasing or compounding any sum of money owing to the Crown is a head of expenditure for the purposes of Commons SO No. 49.<sup>5</sup>

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5. The ensuing resolution appears to be a motion “authorising expenditure” for the purposes of Commons SO No. 52.

2.28 An example of a provision of this type which required a money resolution is section 1 of the Commonwealth Development Corporation Act 2017, which amended section 15 of the Commonwealth Development Corporation Act 1999 to increase the limit on government assistance which may be provided to the Commonwealth Development Corporation. That limit applies, *inter alia*, to the amount of liabilities which may be extinguished under section 14 of the 1999 Act.

2.29 Another example is section 68 of the Welfare Reform and Pensions Act 1999, which provides that, where certain benefits payable under Part III of the Social Security Administration Act 1992 have been overpaid, the overpayment is not recoverable.

2.30 Less obvious examples are listed in paras 35.10 and 35.11 of *Erskine May*. Those examples are, in essence –

- the extension of the period within which sums issued to the Contingencies Fund are to be repaid to the Exchequer;
- the reduction of repayments due to the Consolidated Fund;
- the remission of statutory contributions from salaries;
- the reduction of the commencing capital debt of a nationalized industry to a Minister;
- the conversion into public dividend capital of amounts outstanding by way of initial loan forming part of an NHS trust's originating capital debt; and
- the disposal of, or disclaimer of title to, property vesting in the Crown.

2.31 Other examples include the following:

- ability of the Secretary of State to direct that certain treasure may be transferred or otherwise disposed of; treasure comes to the Crown as part of the hereditary revenues, which are paid into the Consolidated Fund; the House authorities ruled that the disposals authorised by the bill (for the Treasure Act 1996) would require cover and suggested that this was analogous to the remission of debt;
- statutory body to be able to release a non-resident parent from liability to the Crown under the Child Support Act 1991 (ruling on the bill for the Child Maintenance and Other Payments Act 2008).

## CHAPTER 3 MONEY RESOLUTIONS: GENERAL

### Introduction

3.1 A resolution is required under Commons SO No. 49 for any charge on the public revenue.

3.2 In practice, a money resolution for sums payable out of Votes, the Consolidated Fund or the National Loans Fund is only required for:

- a new head of expenditure (e.g., the setting up of a new publicly funded body or the creation of a new regulatory regime), or
- an increase in an existing head of expenditure (e.g., adding to the functions of an existing publicly funded body, extending the classes of persons entitled to a statutory grant or extending the range of circumstances in which statutory grants are payable).

3.3 The test is whether any such expenditure *might* arise. It is irrelevant that the department concerned has no plans to incur the expenditure if the bill gives them the power to incur it. It is also irrelevant that the department plans to fund the new expenditure out of existing resources or counterbalancing savings or fees provided for elsewhere in the bill.

3.4 However, no money resolution is required if, as very occasionally happens, the expenditure is already covered by an existing statute and its accompanying money resolution. See, for example, the bills for the Early Parliamentary General Election Act 2019,<sup>6</sup> the European Union (Withdrawal) Act 2019<sup>7</sup> and the Education Act 2011.<sup>8</sup>

3.5 For more information on money resolutions, see Chapter 35 of *Erskine May*.

### Administrative expenses

3.6 Administrative expenses need cover if significant.

3.7 *Erskine May* (at para 35.15) explains what is insignificant as follows:

“Where the implementation of legislation will entail administrative work by the government department which is unlikely to impose more than a minimal continuing demand on its resources, a

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6. Although the election would cost a considerable amount of money, those costs did not represent new expenditure and were already authorised by the money resolution for the Representation of the People Act 1949 (which was the precursor of the Representation of the People Act 1983 (a consolidation Act)).

7. Section 1 of that Act required the Prime Minister to seek an extension of the negotiating period specified under Article 50(3) of the Treaty on European Union. On second reading, certain Members queried whether the bill required cover of a money resolution on the basis that extending the period under Article 50 could have substantial consequences for both spending and taxation. The Speaker held that the financial resolutions passed in connection with section 20(3) and (4) of the European Union (Withdrawal) Act 2018, which confer on a Minister of the Crown the power to amend the definition of “exit day”, provided adequate cover for any potential increase in expenditure as a result of the extension.

8. This bill abolished the Training and Development Agency for Schools (the “TDA”) and provided for many of its functions to be transferred to the Secretary of State. The House authorities were asked to consider whether a money resolution would be needed to cover expenditure of the Secretary of State in respect of the functions being transferred, or whether the spending was already covered by the resolution taken for the Education Act 2005, which set up the TDA. They took the view that a level transfer from a statutory body to a Minister could be covered by the resolution for the bill under which the body was established, but subject to the terms of that resolution. The resolution for the bill for the 2005 Act referred simply to expenditure by the Secretary of State, without any mention of the TDA. So, in this case, they thought that a further money resolution was not necessary.



Money resolution is not required to authorise the notional costs of the work involved. For this purpose likely annual expenditure of less than £500,000 is generally treated as notional, although regard is had to the nature and scale of the public body incurring the expenditure.”

3.8 The figure of £500,000 should be treated with caution. Much will depend upon the particular facts of each case and it will be for the Commons PBO to decide where to draw the line. Their attention should therefore always be drawn to any administrative expenses of which we are aware.

3.9 It is, though, clear that the cost to HMRC of collecting and administering a new tax is not a charge.<sup>9</sup>

### **Increases under existing legislation**

3.10 Any increase made by the bill in expenditure under existing legislation needs cover whether it is due to any explicit amendment of existing legislation made by the bill or whether the link is more hidden than this.

3.11 Examples of less obvious links include the following:

- The benefits mentioned in section 163(2) of the Social Security Administration Act 1992 (e.g., child benefit) are all paid out of money provided by Parliament and so any bill resulting in a significant increase in these benefits will require a money resolution.
- There is a hidden link, provided by section 2 of the Social Security Act 1993, between certain benefits and Exchequer contributions (see paragraphs 3.37 and 3.38 below).
- An increased burden on a special fund may impose a charge if that fund is fed from the Consolidated Fund or its solvency is guaranteed by the government.
- MPs salaries and allowances are paid under ss.4 and 5 of the Parliamentary Standards Act 2009 and so a money resolution may be required for a bill affecting the number of MPs.<sup>10</sup>

### **Amendments of the general law**

3.12 An amendment of the general law, e.g., the law of contract or tort, does not need to be covered merely because it affects local authorities or binds the Crown and therefore affects revenue support grant (see paragraphs 3.22 and 3.23) or otherwise occasions public expenditure.

3.13 Thus, for example, no money resolution is required if a liability arises on the Crown or local authorities to pay costs, compensation or damages as an incidental consequence of a proposal to apply or modify the general law.<sup>11</sup>

3.14 Equally, cover is not needed for additional expenditure on police or prison services

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9. So, for example, when VAT was established as a new tax in 1972, no money resolution was taken for anything except the sums paid to or in respect of the members of VAT tribunals and the expenses of witnesses.

10. As it was, for example, for the bill for the Parliamentary Constituencies Act 2020 (which reversed the proposed reduction in the number of constituencies).

11. But in the case of the bill for the Crown Proceedings (Armed Forces) Act 1987 a resolution was needed for an amendment of the law that was specifically aimed at making the Crown liable in certain circumstances in tort.

resulting from the creation of new offences.<sup>12</sup>

### **Subordinate legislation**

3.15 A money resolution is needed for a bill conferring power to make orders or regulations which can impose a charge on the public revenue.

3.16 It is worth considering, in particular, powers that are so wide that, though not mentioning expenditure, they could nevertheless impose it. An example might be a general power to amend existing legislation.

### **Re-enactment of existing charges**

3.17 No cover is needed unless the charge is new.

3.18 Money resolutions are therefore not needed for consolidations or re-enactments so long as they do not change the law. This applies even if the old law is in a local Act.

3.19 In checking a bill, account must therefore be taken of the law which the bill, by repeal or otherwise, supersedes as well as of the new law.

### **Intercepts**

3.20 Legislation financing expenditure by intercepting the proceeds of taxation or other sources of revenue before they are paid into the Consolidated Fund may not need cover by a money resolution, because this use of money is not a charge on the public revenue as defined in Commons SO Nos. 48 and 49.

3.21 This use of money is called “an intercept”. Examples include section 2 of the Isle of Man Act 1979 and section 49(5) of the Transport Act 1980.

### **Revenue support grant (local authority functions)**

#### *Functions of local authorities in England*

3.22 A money resolution is required in respect of provisions of a bill which confer on local authorities in England functions involving them in significant expense.

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<sup>12</sup>But a resolution is required for a change in the criminal law likely to give rise to a need for substantial and quantifiable extra resources: *Erskine May* para 35.15.

3.23 The reasoning is as follows:

- The Secretary of State has the power to pay revenue support grant, out of money provided by Parliament, to local authorities in England under Part 5 of the Local Government Finance Act 1988.
- The expectation is that the Secretary of State will have regard to the level of local authority expenditure in determining whether to pay revenue support grant to a local authority (and if so how much).
- This expectation is the justification for requiring a money resolution in respect of provisions of a bill which confer on local authorities in England functions involving them in significant expense.<sup>13</sup>

#### *Functions of other local authorities*

3.24 No money resolution is required in respect of a bill conferring functions on local authorities in Scotland, Wales or Northern Ireland.

3.25 This is because these local authorities are funded by payments from the devolved administrations of money ultimately deriving from the Scottish Consolidated Fund, the Welsh Consolidated Fund or the Consolidated Fund of Northern Ireland. The House of Commons financial procedures are not concerned with those Funds or the payment by the Secretary of State of a block grant into those Funds (see paragraphs 6.1 and 6.2).

#### **Loans**

3.26 Loans need cover whether made out of one of the Funds or out of money provided by Parliament.

3.27 Also consider:

- changes in the terms of a loan which may favour the borrower;
- more generally, acceleration of payment out or postponement of payment in.

#### **Increases of expenditure by extension of time**

3.28 A money resolution is required for an increase in a defined period for which a service, function or purpose of expenditure has previously been authorised. The same principle applies to the removal of a restriction which produces the same result.

3.29 Examples include:

- the continuation of expiring enactments involving expenditure;
- an increase in potential expenditure through postponement of a date appointed for the commencement of a previous enactment;
- provision for increasing expenditure with retrospective effect from a date before that on which the bill becomes law.

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13. See *Erskine May* para 35.8 and the Speaker's ruling of 6.12.89 (Hansard HC Vol.163 col.448.). The Local Government Finance Act 2012 has not changed the position on this.

### **Re-imposition of a charge which has been temporarily suspended**

3.30 It appears that no money resolution is required for the re-imposition of a charge on public revenue which has been temporarily suspended.<sup>14</sup>

### **Reversing a planned reduction in expenditure**

3.31 Reversing a change required by statute that would reduce expenditure is likely to require the cover of a money resolution, even if the change has not yet taken place.<sup>15</sup>

### **Exemption from penalties due to the Crown**

3.32 A bill which exempts persons or bodies from financial penalties which would otherwise be payable is not regarded as falling within the terms of Commons SO No. 49.

### **Shifting burdens between Votes and Funds**

3.33 Shifting a burden from money provided by Parliament to the Consolidated Fund or the National Loans Fund needs cover but not a shift in the opposite direction or a shift between Funds.

3.34 The thinking seems to be as follows:

- a transfer from money provided by Parliament to one of the Funds provides for an indefinitely continuing charge and accordingly requires a resolution;
- a transfer from one of the Funds to money provided by Parliament amounts to converting the expenditure from indefinitely continuing to annually renewable expenditure - this can be seen as an instance of reducing the duration of expenditure, and accordingly does not require a resolution;
- transfers between Funds leave the nature of the charge unaltered (i.e., a permanent standing charge) and so no resolution is required.

### **National Insurance Fund**

3.35 The National Insurance Fund is maintained under Part 12 of the Social Security Administration Act 1992. It is funded primarily by National Insurance contributions and contributory benefits are paid out of it.

3.36 No money resolution is required to frank any new payments, or increase in existing payments, out of the National Insurance Fund merely because they are payments out of that Fund.

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14. See *Erskine May*, para 35.15. In 1955, an amendment to a bill to provide that section 31 of the Road Traffic Act 1934, which had been suspended during the war, should come into operation again was considered. That section required drivers of heavy goods vehicles to have special driving licences, the obtaining of which involved the taking of a test. The administration of the section involved the expenditure of public money. No money resolution was required, on the footing that the resolution for the 1934 Act authorised the particular charge, and the suspension of the section did not do away with the authorisation, which was available for when the section was brought into operation by further legislation.

15. As it was, for example, for the bill for the Parliamentary Constituencies Act 2020 (which reversed the a proposed reduction in the number of constituencies).

3.37 However, section 2 of the Social Security Act 1993 enables the income of the National Insurance Fund to be supplemented by Exchequer contributions payable out of money provided by Parliament. The contributions are limited to a maximum of 17 per cent of benefit expenditure in any particular year.

3.38 The result is that any bill which has the effect of increasing in any particular year any of the payments out of the National Insurance Fund referred to in section 2(4) of the 1993 Act (for example, a bill increasing any of the benefits payable under Part 2 of the Social Security Contributions and Benefits Act 1992) has an impact (at least in theory) on the amount of Exchequer contributions payable out of money provided by Parliament in that year. For that reason, any increase in these benefits requires authorisation by a money resolution.

3.39 A money resolution is required for a bill which provides for the National Insurance Fund to be used for purposes other than those covered by existing social security legislation.

### **Increased expenditure on the administration of justice**

3.40 Cover is not needed for additional court expenses attributable to an increase in the jurisdiction of a court. The same goes for an increase in the jurisdiction of a judicial tribunal.<sup>16</sup>

3.41 Increased expenditure on the administration of justice resulting from the creation of a new offence does not need money cover.<sup>17</sup>

3.42 By extension it would seem that the increased costs arising from increasing the maximum sentence available for an existing offence would also not require money cover.<sup>18</sup>

3.43 However, *Erskine May* suggests that a money resolution is needed if a change in the criminal law is likely to give rise to a need for substantial and quantifiable extra resources.<sup>19</sup>

### **Legal aid**

3.44 A bill does not need a money resolution merely because it increases a litigant's costs in a class of proceedings in which the litigant may be given legal aid.

3.45 Although this might increase the charge on the Legal Aid Fund (which is fed entirely out of votes) legal aid is treated as a standing service authorised once and for all to cover whatever costs a litigant might incur (whether legally aided or not) under the law as it stands from time to time.

### **Armed forces**

3.46 The rules of financial procedure are the same for armed forces legislation as for other legislation.

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16. What counts as a judicial tribunal is not entirely clear. Refer to the Commons PBO.

17. See *Erskine May*, paragraph 35.15.

18. See e.g., the Counter-Terrorism and Border Security Act 2019, which increased the sentences applicable for a number of terrorism offences. A money resolution was not required.

19. See *Erskine May*, paragraph 35.15. What counts as “substantial and quantifiable extra resources” depends on the facts in each case. For example, money resolutions were required for the Crime (Sentences) Act 1997 and the Criminal Justice and Courts Act 2015 but not for the Terrorist Offenders (Restriction of Early Release) Act 2020.

3.47 Note that:

- no money resolution was needed for the Bill (as introduced) for the Armed Forces Act 2006 or for the bills for its predecessors (the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957);
- no money resolution is required for a provision which merely continues in force the Armed Forces Act 2006 because this does not by itself involve new or increased expenditure.

### **Government trading funds**

3.48 The extinguishment of “indebtedness” of a trading fund established for the operations of a government department under the Government Trading Funds Act 1973 does not need cover since the fund is only a matter of internal accounting (see, for example, section 4(1) of the Property Services Agency and Crown Suppliers Act 1990).

### **Reduction of assets of the National Loans Fund or Consolidated Fund**

3.49 Bills releasing an obligation to repay loans which have been made out of the National Loans Fund often provide for a corresponding reduction in the assets of the Fund.

3.50 Public dividend capital of a public body is sometimes described as an asset of the Consolidated Fund and a bill extinguishing liability in respect of such capital will provide for a consequent reduction of those assets.

3.51 Cover is not needed for the reduction of assets as distinct from the release or extinguishment of assets.

### **House of Commons expenditure**

3.52 No money resolution is required for House of Commons expenditure under the House of Commons Administration Estimate or the Members’ Estimate.<sup>20</sup>

### **Paying-in resolutions**

3.53 It is common for a money resolution to include a limb dealing with any provision in a bill directing sums to be paid into the Consolidated Fund or the National Loans Fund where this is the only ways and means matter that requires cover and the receipts are minor matters incidental to the exercise of functions which involve expenditure.

3.54 See paragraphs 4.41 to 4.50 for more details about paying-in resolutions.

### **Annotated example of money resolution**

3.55 Appendix B contains an annotated example of a money resolution.

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<sup>20</sup>See Erskine May para 35.15.

## **CHAPTER 4 WAYS AND MEANS RESOLUTIONS**

### **Introduction**

4.1 This Chapter contains material about:

- ways and means resolutions in respect of new charges on the people, and
- paying-in resolutions (paragraphs 4.41 to 4.50).

4.2 For more information on ways and means resolutions, see Chapter 36 of *Erskine May*.

### **Crown initiative in relation to ways and means resolutions**

4.3 There are no standing orders in relation to charges on the people which correspond to Commons SO No. 48 (Crown recommendation required for money resolution) and Commons SO No. 49 (resolution required for charge on the public revenue).

4.4 However, the traditional practice of the House produces a similar result –

- the House requires any charge on the people to be authorised by a ways and means resolution, and
- the government’s initiative is preserved not by requiring the Crown’s recommendation but by a rule that ways and means resolutions can only be moved by a Minister of the Crown.

### **Charges on the people: introduction**

4.5 *Erskine May* (at para 36.2) summarizes charges on the people as –

- the imposition of taxation, including the increase in rate or extension in incidence or duration, of existing taxation and the re-imposition of a repealed tax;
- the repeal or reduction of existing alleviations of taxation such as exemptions or drawbacks;
- the delegation of taxing powers within the United Kingdom; and
- the imposition of levies, charges, fees or other payments which are akin to taxation in their effect and characteristics.

4.6 It also states that other matters, while not “charges on the people” in a direct sense, relate to the raising of revenue and so come within the scope of ways and means resolutions. These matters are –

- the granting of borrowing powers to the Crown; and
- provision for the payment into the Consolidated Fund or the National Loans Fund of receipts which do not arise from taxation.

4.7 Broadly speaking, “charges on the people” means charges imposed generally and intended to be used for general purposes. Thus, local taxation and loans and even burdens imposed by Parliament, the proceeds of which are payable to local funds, fall outside the scope of ways and means resolutions.

4.8 So, for example, council tax is not a charge on the people because it is payable directly to local authorities.

- 4.9 But the imposition of a liability to non-domestic rates is a charge on the people because:
- central rates in England are payable to the Secretary of State who must pay them into the Consolidated Fund, and
  - as regards local rates, local authorities in England are required to pay a percentage of their non-domestic rating income to the Secretary of State who must pay it into the Consolidated Fund.<sup>21</sup>

4.10 Again, broadly speaking, impositions are charges on the people only if the proceeds are payable into the Consolidated Fund (so, for example, amounts payable into the National Insurance Fund are excluded).

4.11 However, the fact that money is not to be channelled into the Consolidated Fund is not by itself conclusive that there is no charge on the people. If, for example, money raised by a statutory imposition is not to be channelled through the Consolidated Fund but is nevertheless to be used for the benefit of the public or for purposes which might otherwise have been required to be financed from the Consolidated Fund, that imposition is likely to need authorisation by a ways and means resolution.<sup>22</sup>

## **Taxation**

4.12 *Erskine May* (at paras 36.4 to 36.12) gives specific examples of the categories of taxation that require a ways and means resolution.

4.13 There are no real surprises and it will generally be clear whether an ordinary programme bill contains pure taxing provisions. For these purposes, it is immaterial whether a tax is solely intended to provide revenue for the public service, or whether its primary purpose is to regulate imports or to promote other public policy objectives.

4.14 Difficult cases to spot include those where there is an incidental taxing effect arising out of a broadly tax relieving provision. Generally speaking, provisions for the alleviation of taxation (such as the repeal or reduction of taxation or the granting or extension of exemptions) do not require ways and means cover. However, this is only the case if the scheme for the alleviation of taxation does not include any incidental increase of the burden upon the taxpayer, however indirect or relatively insignificant that increase may be.

4.15 A provision intended to secure tax neutrality in the event of a transfer of assets from one body to another will usually require ways and means cover (because such a provision often results in a reduced tax charge to one person and a potentially increased tax charge to another).

## **Levies, charges, fees etc. akin to taxation**

### *General*

4.16 The test usually applied is whether levies, charges, fees or other payments amount to

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21. See sections 54 and 148 of, and Schedule 7B to, the Local Government Finance Act 1988.

22. *Erskine May* para 36.2. Examples include section 2 of the Merchant Shipping Act 1974 (now section 173 of the Merchant Shipping Act 1995) and section 49 of the London Regional Transport Act 1984 (now repealed). The sole purpose of the London Regional Transport Act 1984 was to amend section 49 of the 1984 Act and so it was also construed as imposing a charge on the people and had to be brought in on a ways and means resolution.



taxation in the broadest sense of the term, i.e., whether they are akin to taxation in their effect and characteristics. If they are, they need a ways and means resolution. If not, they do not need a ways and means resolution.

4.17 It is therefore necessary to consider any power to charge fees and any other provisions requiring members of the public to pay money which, explicitly or not, will find its way into the Consolidated Fund.

4.18 Such fees and other imposed payments are regarded as charges on the people if they are intended to cover –

- the cost of a service previously paid for out of Votes (in other words, previously free when delivered) (see para 36.13 of *Erskine May*), or
- the cost of imposing, servicing or enforcing a new regulatory regime which is for the general benefit rather than for the benefit of the industry or profession subject to regulation (see para 36.14 of *Erskine May*).

4.19 For example:

- Cover was required for provisions imposing charges on certain postal operators to cover the cost of OFCOM’s regulation of the postal sector, on the basis that the regulation was for the general benefit (bill for the Postal Services Act 2011).
- Cover was not required for provisions relating to the levying powers of the scheme manager of the Financial Services Compensation Scheme, on the basis that the scheme was for the benefit of the financial services industry (bill for the Financial Services Act 2010).
- Cover was required for provisions of the Health and Social Care Act 2012 for the sector regulator to impose a levy on providers of NHS services, for the purpose of raising money to be used for ensuring continuity of service provision when providers go into special administration. This was on the basis that the levy had the characteristics of a tax, as it was not to the advantage of providing bodies as a whole to pay towards funding effectively bankrupt providers. A further factor was that the levy might replace funding which would normally be expected to come from general taxation.

4.20 Fees or other payments whose primary purpose, or a significant purpose of which, is to raise revenue over and above the cost of any service to which the payment is related are likely to require ways and means cover, particularly where no defined limit is set to the fees or payment. An example of this is a provision requiring the holders of broadcasting licences to make payments (of unspecified amounts) in respect of those licences.<sup>23</sup>

4.21 Subject to that, reasonable fees for services rendered (such as examinations, testing equipment, providing documents, registration or processing applications) will probably not be regarded as charges and nor will fees intended to meet administrative expenses if they are subject to a discernible and reasonable limit.

#### *Particular questions on the charging of fees*

4.22 Given the way a court might be expected to construe a power (without more) to charge a “fee”, it is not generally necessary for a bill to set out expressly a “discernible and reasonable limit” for fees charged under it.

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23. This point may arise where there is an element of cross-subsidy, i.e., where the fee for a service is intended to cover the cost of wider expenditure.

4.23 Where the power to charge fees is not expressly constrained by the bill, a statement as to the scope of the fee-charging provision, or as to the level at which the payments are to be set<sup>24</sup>, should be included in the Explanatory Notes.<sup>25</sup>

4.24 The Commons PBO has commented that it is the incidence of a charge on a case by case basis that is important. So ways and means cover will be required where:

- a charge is to be paid before the service is provided, and
- the amount of the charge is to be calculated by reference to certain matters which could change before the service is provided so as to make the charge excessive.

#### *Levy on an industry*

4.25 A resolution is not normally needed for a levy on an industry where the proceeds are payable into a fund to be used for that industry's benefit.

4.26 But this was not the case for the bill for the Air Travel Reserve Fund Act 1975, which required contributions from air travel organisers to a fund designed to compensate customers in the event of an organiser's financial failure. Even though the public confidence generated by such a fund was thought to be beneficial to the industry, the decisive factor was that the government had absolute discretion to dispose of the assets of the fund (to the benefit of the Consolidated Fund) if it were wound up.<sup>26</sup>

4.27 Nor was it the case for the bill for the Merchant Shipping (Pollution) Act 2006 which gave power to implement a treaty establishing a new international pollution compensation fund in relation to pollution claims where the limits provided for claims against ship-owners and the existing compensation fund were inadequate. Part of the scheme of the treaty was to require the new fund to be funded by oil importers, rather than the owners of the polluting ships.

4.28 Relevant factors in this decision were that the persons required to contribute were not in fact the persons liable for the pollution claims and the absence of any connection between the contribution and any specific fault relating to a pollution incident. In addition, the government was, in practice, currently meeting some of the liabilities which would, in future, be met by others under the new arrangements.

#### *Increase in existing levy on an industry*

4.29 A ways and means resolution may sometimes be required for an increase in an existing levy on an industry. Where there is no change to the circumstances in which a levy is payable, a reasonable starting point is that a ways and means resolution is not required.<sup>27</sup> However, a resolution may still be required if the increase in the levy is substantial.<sup>28</sup>

### **Subordinate legislation**

4.30 What is said at paragraphs 3.15 and 3.16 about money resolutions in relation to

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24. *Erskine May*, para 36.20.

25. See paragraph 10.84 of the *Guide to Making Legislation*.

26. *Erskine May*, para 36.14.

27. For example, a ways and means resolution was not required for the Pension Schemes Act 2021 in relation to an increase in the levy payable under section 175(1)(c) of the Pension Schemes Act 1993.

28. For example, a ways and means resolution was required for the Pension Schemes Act 2017 in relation to an increase in the levy payable under section 175(1)(c) of the Pension Schemes Act 1993.

subordinate legislation applies equally to matters requiring a ways and means resolution.

### **Re-enactment of existing charges**

4.31 What is said at paragraphs 3.17 to 3.19 about money resolutions in relation to the re-enactment of existing charges applies equally to matters requiring a ways and means resolution.<sup>29</sup>

### **National Insurance Fund**

4.32 To the extent that national insurance contributions are payable into the National Insurance Fund, they are not regarded as charges upon the people or as subject to the rules of financial procedure. No ways and means resolution is therefore required to cover any increase in National Insurance contributions payable into the Fund.

4.33 However, an amount known as the National Health Service allocation is deducted from National Insurance contributions and retained by the Secretary of State before the residue of the contributions is paid into the National Insurance Fund. Section 162 of the Social Security Administration Act 1992 provides for the National Health Service allocation.

4.34 A ways and means resolution is required to authorise an increase in the proportion of National Insurance contributions to be deducted by way of National Health Service allocation, even though that allocation does not pass through the Consolidated Fund.

### **Fees charged by trading funds**

4.35 In the context of the bill for the Trade Marks Act 1994, the status of the Patent Office as a trading fund meant that ways and means cover was required for what would otherwise have seemed like ordinary administrative fees.

4.36 One concern that the Commons PBO had was that, as a trading fund, there was an obligation on the Patent Office to set its fees at a level both to cover the costs of the operation and to make a return on capital employed.<sup>30</sup> The rate of return in 1994 was 6% per year. It was also possible in certain circumstances for part of the proceeds of the fees to reach the Consolidated Fund by ministerial direction under section 4(3) of the Government Trading Funds Act 1973 and for trading fund assets treated as public dividend capital to pay dividends to the Consolidated Fund out of the 6% operating surplus.

4.37 It is therefore necessary to consider ways and means cover carefully in the context of trading funds.

### **Provisions granting borrowing powers to the Crown**

4.38 A ways and means resolution is required to support any provision in a bill authorising government borrowing. However, since the passing of the National Loans Act 1968, such

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29. See also *Erskine May*, para 36.22: variant or substitution of provision authorised by a previous statute. And when re-enacting a fee or charge, note the effect of section 128 of the Finance Act 1990 (which applies to fees and charges under an enactment in existence when the Act was passed).

30. The result of section 4(1) of the Government Trading Funds Act 1973 and a Treasury minute of 02.09.91 setting, as a further financial objective, a 6% average annual return on capital employed.

provisions are likely to be rare.

### **Civil penalties**

4.39 Fines and civil sanctions equivalent to criminal penalties are not generally regarded as charges on the people.<sup>31</sup>

4.40 There are, however, examples of the PBO concluding that a ways and means resolution was required for certain fines and civil penalties on the basis that they were not equivalent to criminal penalties. For examples, see Part 2 of the Energy Act 2016 and sections 9 and 10 of the Digital Economy Act 2017.

### **Paying-in resolutions**

#### *General*

4.41 A ways and means resolution is required to support any provision in a bill expressly directing sums to be paid into the Consolidated Fund or the National Loans Fund. Such a resolution is sometimes called a paying-in resolution (as opposed to a charging resolution).

4.42 A paying-in resolution is necessary even if the sums are not themselves the result of a charge on the people, i.e., they are receipts which do not arise from taxation in the widest sense of the term.

#### *No need for a resolution when payment into Consolidated Fund not expressly directed*

4.43 No paying-in resolution is required for a bill which does not expressly direct sums to be paid into the Consolidated Fund but which produces the same result by silence.

4.44 Silence can produce this result because the default position (now given an explicit statutory footing each year by section 5(5) of the Supply and Appropriation (Main Estimates) Act for that year) is that a department must pay any surplus monies into the Consolidated Fund if it has no authority to spend them or keep them.

#### *Meaning of “expressly directing sums to be paid into the Consolidated Fund”*

4.45 There is often a question as to what amounts to “expressly directing sums to be paid into the Consolidated Fund”.

4.46 There may be an express direction even if there is no express provision to this effect in the bill itself. For example, a resolution may be needed where the bill amends or otherwise affects another Act which contains an express direction to this effect in relation to sums received under that Act.

4.47 But where –

- a bill increases amounts payable under another Act (which are payable into the Consolidated Fund), and
- there was a paying-in resolution for the bill for that Act,

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31. *Erskine May*, para 36.23. See the penalties under the Data Protection Act 2018 for a recent example.

it may well be that no resolution is required (on the footing that the additional payments into the Fund are authorised by the paying-in resolution for that Act).<sup>32</sup>

4.48 It is often difficult to know how remote an effect needs to be before one can safely disregard it for the purposes of financial resolutions. If in doubt, discuss with the Commons PBO.

*When payment in can be covered by a money resolution*

4.49 Where a bill requires a money resolution and a paying-in resolution represents the only ways and means matter in the bill, the Commons PBO usually allow it to be covered by the money resolution if the receipts are minor matters incidental to the exercise of functions which involve expenditure.

4.50 Apart from this, it is not possible to deal in a single resolution with matters calling for a money resolution and matters calling for a ways and means resolution.<sup>33</sup>

**Annotated example of ways and means resolution**

4.51 Appendix C contains an annotated example of a ways and means resolution.

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32. *Erskine May*, para 36.16. See paragraphs 2.12 to 2.18 for examples of Acts that provide for funds received by certain bodies or meeting a particular description to be paid into the Consolidated Fund.

33. An example of a separate ways and means resolution for paying in only is that for the bill for the Pensions Act 2008. The bill made provision for penalties recoverable by the Pensions Regulator to be paid into the Consolidated Fund. The payment in needed to be covered by a resolution, and since it was not incidental to the exercise of functions covered by the money resolution, it was dealt with separately in a ways and means resolution.

## **CHAPTER 5 FINANCIAL RESOLUTIONS: PRACTICE AND PROCEDURE**

### **Italics for Commons bills, financial provisions clauses and explanatory notes**

#### *Italics in a Commons bill*

5.1 In a Commons bill, provisions which need to be covered by a financial resolution are printed in italics. This is to show that they are only provisionally part of the bill and will be removed if no financial resolution authorising them is passed before they are reached in committee.

5.2 The italics are removed when the bill is reprinted after committee stage.

5.3 Where a bill is brought in on resolutions, no italics are required for the provisions covered by the resolutions.

5.4 Agree the necessary italics with the Commons PBO, and incorporate them into the text of the bill, before handing the text in.

5.5 Common sense is required in deciding which provisions should be italicised. Too many italics tend to detract from their value and, indeed, it can be positively unhelpful if every single provision is italicised which might theoretically give rise to a charge on the people or the public revenue. Equally, it is important to ensure that the key charging provisions are brought to the attention of members.

#### *Financial provisions clause*

5.6 It is common to italicise the main charging provisions (including provisions which expressly refer to grants or other payments) and to rely upon a financial provisions clause (or “sink clause”) to sweep up the other charges in the bill.

5.7 An example of a sink clause in a bill which confers new functions on a department is a clause which directs the Minister’s expenditure under the bill to be paid out of money provided by Parliament.

5.8 Such a clause is legally unnecessary because silence would produce the same result, but the clause exists to be italicised. Once it is italicised, it is not necessary to italicise all the provisions which confer the new functions.

5.9 What is appropriate will depend on the individual bill. For example, a sink clause might not be worth having if there are very few substantive provisions which need to be italicised or if all of the substantive provisions are ones that need to be italicised because of their importance.

5.10 Occasionally, there may be a legal or policy reason, as distinct from a Parliamentary reason, for a financial provisions clause. For example, the clause may provide for certain expenditure to be met directly out of the Consolidated Fund (e.g., salaries of certain office-holders are charged on that Fund to emphasise their independence).

#### *Lords bills*

5.11 Lords bills have no italics, as the privilege amendment (see paragraphs [A.11](#) to [A.13](#) in

Appendix A) notionally negatives all charges arising under the bill. There is therefore no Parliamentary reason for having a financial provisions clause in a Lords bill (although there may of course occasionally be a legal or policy reason for such a clause).

*Financial provisions clause that differs from the money resolution*

5.12 A sink clause will occasionally cover different ground from that covered by the money resolution. For example, the government may decide to table a relatively narrowly drawn money resolution which highlights the particular heads of expenditure in the bill. However, it may not be easy or desirable to replicate this level of detail in the financial provisions clause. In such a case, there might be a wide clause covering, say, all departmental expenditure occasioned by the bill and a narrower money resolution confined to the specific heads of expenditure in the bill.

*Drafting*

5.13 As regards the drafting of financial provisions clauses, see the OPC Drafting Guidance.

*Explanatory notes*

5.14 When a bill is introduced in the Commons, or first transferred from the Lords, the Explanatory Notes should include a section on financial resolutions, confirming whether or not a money resolution or ways and means resolution is required, or both.

5.15 Where a resolution is required, this section should also indicate which provisions of the bill require a resolution, giving clause numbers and a brief description of the subject matter of the provisions concerned. As with italics, it is not necessary to itemise every single provision of the bill which requires the cover of a resolution, but the main provisions which do so must be described (see paragraph 5.5 above). Note that it is not sufficient to indicate that a resolution is required without giving further details.

5.16 Where a bill is introduced in the House of Lords, this section should contain wording to the effect that the section will be completed when the bill transfers to the House of Commons.

5.17 Where the House of Lords is the second House, on transfer to the second House this section should be retained in the notes and the wording should be updated as required. The updated wording should either be drafted by or cleared by Parliamentary Counsel. It is helpful to specify the dates on which any financial resolutions were passed.

5.18 Example – based on the notes for the bill for the Higher Education and Research Act 2017:

“A money resolution and a ways and means resolution are required for the bill. (A money resolution is required where a bill authorises new charges on the public revenue – broadly speaking, new public expenditure – and a ways and means resolution is required where a bill authorises new charges on the people – broadly speaking, new taxation or other similar charges.)

There is potential expenditure by the Secretary of State under various provisions of the bill.

In particular, there is power under clauses 66 and 93 for the Secretary of State to pay grants to the OfS and the UKRI. There are also provisions in the bill which may lead to increases in public expenditure under other Acts, in particular under section 22 of the Teaching and Higher Education Act 1998 (see clause 78).

Under clauses 27(2)(b) and 61(1), bodies designated under the bill to perform certain functions may charge annual fees to registered higher education providers. Clause 63 enables the OfS to charge initial and ongoing registration fees.”

## **Preparation of financial resolutions**

### *Preparing the draft resolution*

5.19 The first draft of a financial resolution is usually prepared without instructions but, except in obvious cases, consult the instructing department about the various heads of expenditure in a bill.

5.20 The Explanatory Notes, if available in time, are helpful but care needs to be taken because, even if the Notes dismiss certain heads of expenditure as “insignificant”, they may still be significant for the purposes of financial resolutions.

### *Draft to Commons Public Bill Office*

5.21 Send a draft of the proposed resolution to the Commons PBO for their comments.

5.22 Send a copy to the department for information, indicating (where this is the case) that the draft has not yet been cleared by the PBO.

### *The Treasury’s role*

5.23 The Treasury are responsible for substantive decisions on financial resolutions. The Office of the Financial Secretary to the Treasury normally expects to receive from the drafter resolutions that are settled and ready for initialling. If, in special circumstances, a drafter is sending the Treasury a draft resolution which is not yet ready for initialling by the Financial Secretary, the drafter should indicate that is the case in the covering letter or e-mail.

5.24 If in need of instructions on the form (restrictive or otherwise) of the resolution, the drafter should write to the department asking their views and send the Treasury a copy of any letter or draft resolution sent to the department for that purpose.

5.25 The Treasury’s approval is given by the Financial Secretary to the Treasury initialling a copy of the resolution. The FST will do this whether the resolution is a money or ways and means resolution and, in both cases, the initialling is authority to table the resolution. In the case of a money resolution, the initialling is also a part of the process leading to Queen’s recommendation being signified.

5.26 If the FST is unavailable, any other Treasury minister can authorise the tabling of a financial resolution; it is the responsibility of the FST’s office to find another Treasury minister if necessary. The resolution will still be tabled in the FST’s name.

### *Arranging for financial resolutions to be initialled by the FST*

5.27 The FST’s office has asked that the drafter gives them as much notice as possible of any financial resolutions which the drafter to be sending for initialling (i.e., even before the resolution is ready) and likely timing.

5.28 When sending resolutions to the FST’s office for initialling, include in the covering



email a brief description of the Bill and the financial implications covered by the resolution.

### *Changes in the FST*

5.29 If the FST changes after the resolution is tabled the options are:

- substitute on the Order paper the name of the new FST for that of the former FST<sup>34</sup> (this is often the most appropriate course of action and is the default option the Office adopts: see paragraph 5.31 below),
- add the name of the new FST to the resolution,<sup>35</sup> or
- leave the resolution in the name of the former FST (only possible if the former FST remains a member of the government<sup>36</sup>) on the basis that resolutions can be moved by one minister on behalf of another.<sup>37</sup>

5.30 If the FST changes after the initialling of the resolution but before it is tabled<sup>38</sup> the advice of the FST's office and the PBO should be obtained. Options include:

- arranging for the resolution to be initialled by the new FST, and
- obtaining authorisation from the new FST to the tabling of the resolution initialled by the former FST.<sup>39</sup>

5.31 Where there is a change in FST a member of the Office's constitutional law team will liaise with the FST's office and the PBO to ensure that the name of the new FST is substituted on the Order paper for all bills affected. The relevant counsel will inform the Office before doing this. If something different is required for a particular bill the lead drafter will need to speak to the member of the constitutional law team.

5.32 In the rare case where a resolution has been initialled but not tabled the lead drafter should make the member of the constitutional law team aware of this and agree who should discuss the issue with the FST's office and PBO.

### *Communicating Crown recommendation to the House*

5.33 *Erskine May* says (at para 9.5):

“The Queen's recommendation is normally notified by the Office of the Parliamentary Counsel on behalf of a responsible Minister to the Commons Public Bill Office when [a motion requiring such recommendation] is tabled. The fact that the recommendation has been signified is entered on the Order Paper on which appears the notice of motion to which it relates.”

5.34 In practice, the Commons PBO, acting on behalf of the Clerk of the House, take our letter to them asking for the money resolution to be tabled as notification of the Queen's recommendation. The letter carries with it the implicit assumption that the money resolution has been initialled.

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34. It does not matter that the resolution was initialled by the former FST. The initialling was correct at the time and gave authority to table the resolution and as a result signify the Queen's recommendation.

35. In relation to the Data Protection and Digital Information Bill, the Commons PBO agreed to change the name on the financial resolutions from the former FST to the new FST without needing to retable the motions.

36. A member of the government cannot move a motion in the name of a backbencher (see *Erskine May* para 20.18).

37. The Commons PBO agreed that this approach could be taken in relation to the Financial Services and Markets Bill and the Social Security (Special Rules for End of Life) Bill.

38. This is likely to be a rare occurrence as tabling will generally occur shortly after initialling.

39. Discussion with the PBO would be necessary to decide in whose name the motion would then appear on the Order paper.

5.35 Strictly speaking, our letter is therefore the signification of the Queen’s recommendation for the purposes of the House authorities. “Signify” in this context therefore means not only an indication of the Queen’s recommendation (i.e., the initialling) but also carries with it the idea of communicating or making known the initialling.

#### *Private bills*

5.36 A money or ways and means resolution for a private bill, for instance a bill promoted by a local authority, follows a rather different procedure. The resolution is cleared with the Commons Private Bill Office instead of the Commons Public Bill Office and is tabled by the sponsoring department and not by the drafter.

#### **Wide and narrow resolutions**

5.37 Since the terms of a money resolution determine which amendments are in order, narrow resolutions can prevent some amendments being debated.

5.38 The government has undertaken to ensure that its financial resolutions are not overly restrictive and do not unduly hinder debate on amendments to bills.<sup>40</sup>

5.39 Accordingly, money resolutions tend not to be framed narrowly, but there are exceptions (e.g., where the government’s responsibility for public expenditure calls for a restrictive resolution).<sup>41</sup>

5.40 So, for example, it would almost always be regarded as appropriate for a resolution to include (and therefore to entrench) any upper limit on expenditure, whether by way of grant or loan, set by provisions in a bill.<sup>42</sup>

5.41 Where a resolution is drafted narrowly it will usually be desirable to draw it to the attention of Ministers before it is tabled.

5.42 The government gave an undertaking in 1949<sup>43</sup> that any resolution covering an increase in equalisation grant (the ancestor of revenue support grant) would be drafted in wide terms, and it is now the practice to draft the part of a money resolution dealing with revenue support grant in terms permitting any enlargement of the functions of local authorities.

5.43 Except in the case of Finance Bills, it is only rarely that anything turns on the width of a ways and means resolution.

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40. Hansard HC (5th Series) Vol 328 col 1595 (9 November 1937). By Treasury Circular No. 24/37 all departments were instructed to comply with the principles set out in there. The statement was reaffirmed by the Home Secretary on 4 December 1957: Hansard HC (5th Series) Vol 579 col 490 (4 December 1957).

41. See also the resolution for the Personal Care at Home Act 2010, which restricted cover for increases in expenditure under other Acts to the particular purpose of the Bill as introduced: Hansard HC (6th Series) Vol 502 col 746 (14 December 2009). The Bill contained a number of italicised provisions on introduction, without a “sink” clause.

42. See the resolution for the Commonwealth Development Corporation Act 2017, which restricted cover by reference to the upper limit of expenditure specified in the Bill. See also the resolution for the NHS Funding Act 2020, which restricted cover for the allocation of funding to the NHS to amounts specified in the resolution.

43. Hansard HC (5th Series) Vol 464 col 1664 (10 May 1949).

## **Tabling of financial resolutions**

### *Deadlines for passing of resolutions*

5.44 Provisions creating a charge on the people or public revenue in a bill introduced into the House of Commons must be authorised by a financial resolution before they can be considered in committee.

5.45 Any amendment in the House of Commons to a bill must be authorised by a financial resolution before the amendment is moved if the amendment creates a charge on the people or public revenue.

5.46 Provisions creating a charge on the people or public revenue in a bill brought from the House of Lords must be authorised by a financial resolution before the privilege amendment for the bill can be removed in committee.

5.47 A charge in a Lords amendment to a Commons bill must be authorised by a financial resolution before the amendment can be agreed to in the House of Commons. (This includes charges in Lords amendments made during ping-pong.)

5.48 Financial resolutions therefore need to be tabled and passed in advance of these deadlines.

### *Guidelines as to when to table resolutions*

5.49 In the case of a government bill in the Commons, any resolutions are normally tabled soon after introduction and taken immediately after second reading (when they can be taken without debate - see paragraph 5.63).

5.50 However, there are precedents for tabling a resolution simultaneously with the Notice of Presentation<sup>44</sup> and/or taking a resolution before second reading.<sup>45</sup>

5.51 In the case of a private member's bill in the Commons, any resolutions are normally tabled after second reading and moved shortly before committee.

5.52 In the case of a Lords bill, it is not possible to table a resolution before the bill has transferred to the Commons because the Commons should not take notice of a bill pending in the other House.

5.53 Here, any necessary resolutions are normally tabled soon after the bill is brought from the House of Lords and are normally taken immediately after second reading (when, again, they can be taken without debate).

5.54 Where financial resolutions are to be taken immediately after second reading, they should be tabled at least a few days beforehand (ideally, they should appear on the order paper at least 5 clear days before second reading).

5.55 A sensible period of notice should also be allowed for financial resolutions which deal

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44. Recent examples include the Contingencies Fund (No. 2) Bill 2021 and the Social Security (Additional Payments) Bill 2022. In each case, the Bill was being fast-tracked and a separate motion was tabled to allow amendments to be tabled before Second Reading. In those circumstances, it was thought appropriate to give Members as much notice of the terms of the resolution as possible.

45. Prevention of Terrorism (Temporary Provisions) Bill 1972 (money resolution passed on day bill introduced - votes for 27.11.74).

with amendments to bills, although shorter notice than usual may be given where the need for a resolution becomes apparent only at a late stage in proceedings. If there is doubt as to what is an appropriate period of notice in these circumstances, consult the Whips.

5.56 Although it will usually be on the Order Paper for longer, a money resolution technically only requires notice, i.e. to be tabled in time to appear on the Order Paper for the day on which it is to be taken. And a ways and means resolution does not even require notice if it is taken at any time after the end of the debate on the address in reply to the Queen's Speech (whether on the final day of the debate or a subsequent day).<sup>46</sup> However, the House expects reasonable notice for all financial resolutions on ordinary bills (Budget resolutions are a special case) and amendments to bills - and it is good practice to abide by this.

5.57 The requirement for notice applies to resolutions passed during ping-pong. Note that a resolution required in respect of an amendment made in the Lords may be tabled and passed before the bill is returned from the Lords.<sup>47</sup>

#### *Practicalities of tabling resolutions*

5.58 OPC is responsible for tabling financial resolutions.

5.59 A resolution should be tabled upon receipt of confirmation that it has been initialled by the FST. OPC does not need to be given the original signed resolution (or a copy of it).

5.60 Financial resolutions can only be tabled when the House is sitting. Commons SO No. 64 (amendments etc to bills during a recess) does not apply to financial resolutions and the Commons PBO have confirmed that financial resolutions cannot be tabled on a non-sitting Friday.

5.61 The only exception to this rule is under Commons SO No. 13, which enables the House to be re-convened when it is adjourned and to take any business put on the Order Paper for the day on which it meets.

### **Proceedings on financial resolutions**

#### *Commons SO No. 52*

5.62 Commons SO No. 52 contains rules about proceedings on money resolutions and ways and means resolutions in connection with bills.

5.63 Under Commons SO No. 52(1) the Speaker has to put the questions necessary to dispose of proceedings on motions for resolutions –

- (a) forthwith, if the motion is made at the same sitting as that at which the bill has been read a second time, or
- (b) not later than 45 minutes after the commencement of the proceedings, if the motion is made otherwise.

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46. Commons SO No. 51(1): "A ways and means resolution may be made in the House without notice on any day as soon as an address has been agreed to in answer to Her Majesty's speech". There was, in the past, a doubt as to whether Commons SO No. 51(1) precluded the moving of a resolution even with notice before the end of the debate on the address in reply to the Queen's Speech. However, the Commons Public Bill Office agreed in June 1987 that the standing order does not preclude this. It also does not preclude tabling during the debate a resolution that will be taken after the end of the debate.

47. This was done in the case of the bill for the Pensions Act 2004.

5.64 SO No. 52(1) refers to motions authorising “expenditure in connection with a bill”. This is read as covering all matters requiring a money resolution including the release or compounding of a sum of money owing to the Crown.

5.65 Under Commons SO No. 52(2) business to which the standing order applies may be proceeded with at any hour, though opposed.

#### *Programme motions*

5.66 Programme motions are also taken after second reading, but unlike financial resolutions are to be taken “immediately after” (see Commons SO No. 83A(1)). They are therefore taken before financial resolutions.

#### *Amendments to a resolution*

5.67 Amendments to a resolution cannot increase the charge authorised by the resolution, whether it is a charge on the public revenue or a charge on the people. Amendments are therefore rare and the proceedings are often formal. The government cannot amend its own resolution but can always take an additional resolution to cover a new proposal or to remedy an oversight.

### **Effect of not having a financial resolution**

#### *Committee - clauses and schedules*

5.68 If a clause or schedule in a bill requires a financial resolution but does not have one by the time that it is reached at committee stage, the question that the clause or schedule stand part of the bill will not be put. The committee may decide to postpone consideration of the clause or schedule in the hope or expectation that an appropriate financial resolution will be agreed by the House. If the committee is not adjourned, the bill will be reported without the clause or schedule. The question on any amendment to the clause or schedule will also not be put unless the amendment is designed to remove the charge which gives rise to the need for a resolution.

5.69 The test seems to be whether the provision requires a financial resolution and not whether it has been italicised. Thus it seems that the question will not be put even if the italics have been inadvertently omitted.

5.70 The question that the clause or schedule stand part of the bill will not be put even if it is only a particular subsection or paragraph that requires a financial resolution. This is because there is no way to distinguish the relevant parts of the clause or schedule in putting the question that the clause or schedule stand part of the bill.

5.71 It is, of course, possible to table an amendment omitting the offending subsection or paragraph (or indeed an offending clause or schedule). But it is not always easy to isolate a subsection or paragraph and argue that, without it, the bill does not impose a charge. Where other provisions impose a charge by implication even if the main charging subsection or paragraph is omitted, one would generally expect the question not to be put on those provisions as well.

*Committee and Report - amendments*

5.72 In the case of amendments to bills in committee or on report, amendments which would entail expenditure not covered by a money resolution, or taxation not covered by a ways and means resolution, are ruled out of order.<sup>48</sup>

*Ping-pong*

5.73 If the House of Lords amends a Commons bill so as to impose a charge on the public revenue but the government do not propose a money resolution authorising the charge, the amendment is deemed to have been disagreed to under Commons SO No. 78(3).<sup>49</sup>

5.74 As regards a Lords amendment relating to charges on the people, there is no equivalent of Standing Order No. 78(3), but the position is similar. If the amendment is not covered by an appropriate ways and means resolution, the Speaker calls upon the member in charge of the bill forthwith to move to disagree to the Lords amendment. The motion is debatable.<sup>50</sup>

*After Royal Assent*

5.75 Financial resolutions are entirely a matter of House procedure, so the absence of a resolution would not affect the validity of an Act.

**Inadvertent proceeding without necessary resolution**

5.76 If, by inadvertence, a committee reports a bill containing provisions not duly sanctioned by a financial resolution, the House will normally order the bill to be recommitted to the former committee in respect of the clause or schedule concerned. The committee will not be able to proceed to consider those provisions until the necessary resolution has been agreed to.

5.77 However, the House authorities indicated that recommitment was not required in the case of a private member's bill (the Consumer Guarantees Bill 1989-90), where the government proposed to table an amendment at Report stage removing the provision that should have been sanctioned by a money resolution, because:

- if the government amendment were agreed to, the problem of the missing money resolution would disappear, and
- if it were not, and the provision was not otherwise removed, the bill would not be allowed to proceed to third reading.

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48. *Erskine May*, paras 35.27 and 36.1.

49. *Erskine May*, para 30.11. See eg. proceedings on the bill for the Agriculture Act 2020 on 12.10.20 (Lords Amendment 18). Notwithstanding SO No. 78(3), it may sometimes still be helpful to table a motion to disagree to the amendment e.g. against the possibility that the Speaker may decide that SO No. 78(3) does not apply or to make the government's intention as regards the proposed amendment clear. If SO No. 78(3) applies, such a motion will not be selected.

50. *Erskine May*, para 30.11.

## **CHAPTER 6 MISCELLANEOUS**

### **Effect of devolution on financial resolutions**

6.1 The Commons rules of financial procedure are not concerned with expenditure out of, or payments into, the following funds:

- the Scottish Consolidated Fund,
- the Welsh Consolidated Fund,
- the Consolidated Fund of Northern Ireland.

6.2 Although those funds are fed by grants paid by the Secretary of State out of money provided by Parliament, no financial resolution is needed for the conferral of functions on devolved administrations as there is no necessary link between functions and the amount of the grant.

6.3 A financial resolution is accordingly likely to be needed only in respect of a provision relating to a devolved administration which specifically provides for payments out of “Westminster” money.

### **Anticipatory resolutions**

6.4 Where:

- a bill as introduced does not have anything in it requiring a ways and means resolution, but
- it is proposed to add in provisions requiring such a resolution in committee,

a resolution may be tabled before second reading and taken at second reading (where it is taken forthwith).<sup>51</sup>

6.5 Clearly, this sort of approach is only possible where:

- the ways and means resolution can be drafted in sufficiently general terms, and
- there is a clear and settled intention to introduce charging amendments at a later stage in the bill’s passage through the House.

### **Money resolution covering two bills**

6.6 It is, in theory, possible to table a money resolution covering two bills, but this should be discussed with the PBO if this course of action is contemplated.

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51. This was done in the case of the Crossrail Bill 2005. The bill contained provisions about transfer schemes and it was intended that provision about the tax treatment of schemes etc. would be added at a later stage. The PBO advised that the Minister should mention during the second reading debate that it was proposed to bring forward such provisions at a later stage in the bill’s passage through the House. This was also done in the case of the Pension Schemes Bill 2014.

## **EU matters**

### *EU treaties*

6.7 While the UK was a member of the European Union, complex questions arose as to whether financial resolutions were needed for bills dealing with the implementation of EU treaties (whether bills adding new accession treaties to the list of Community treaties in the European Communities Act 1972 or bills implementing wider changes to EU structures). For example –

- (a) It seemed that the addition of a treaty to the list in section 1(2) of the European Communities Act 1972 did not in itself require financial cover. No money resolution was required for the European Communities (Amendment) Act 2002, the European Union (Accessions) Acts 2003 and 2006, the European Union (Amendment) Act 2008 or the European Union (Croatian Accession and Irish Protocol) Act 2013, each of which added to the list of treaties in that section.
- (b) A money resolution was, however, required for the bill for the European Union Act 2011. The bill provided for the Protocol that made provision for an increase in the number of UK MEPs to be approved and added to the list in section 1(2) of the European Communities Act 1972. Financial cover was required for the potential increase in the sums payable out of the Consolidated Fund under the European Parliamentary Elections Act 2002 in the event that a by-election was needed to fill the new seat. Although these provisions inevitably followed from the allocation of an additional seat under the Protocol, the Commons PBO agreed that the additional expenditure arose under the Bill, rather than simply by virtue of the Protocol. Accordingly section 2(3) of the 1972 Act<sup>52</sup> was not relevant.
- (c) Comprehensive money and ways and means resolutions were required for the European Union Bill (2005). This was seeking to implement the new European constitution and, although its financial consequences were relatively minor, it was nevertheless altering the basis of existing financial arrangements by establishing a new legal order for the European Union. It was therefore felt appropriate to take financial cover of the same width as that required for the European Communities Act 1972. The bill could not simply be treated as the re-enactment of existing charges.

### *Directly applicable EU law*

6.8 The fact that a provision was merely declaratory and duplicated the effect of a directly applicable provision of EU law did not remove the need for a money resolution nor a ways and means resolution. Even if the cost or charge would arise irrespective of the bill, once a Minister had decided to include provision in a bill, the Minister needed to fulfil the usual requirements as regards money resolutions and ways and means resolutions.

## **Bills brought in on resolutions**

6.9 The only bills which must be brought in on resolutions are bills of aids and supplies (such as Supply and Appropriation Bills and Finance Bills).

6.10 Very few bills need to be brought in on money resolutions. This is largely because Commons SO No. 50 ensures that the main candidates for this, government bills whose main

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52. Section 2(3) of the 1972 Act provided that expenses incurred under or by virtue of the treaties listed in section 2(1) of that Act may be paid out of moneys provided by Parliament.



object is the creation of a public charge, do not need to be brought in on such resolutions (see below).

6.11 A bill whose main object is to impose a charge on the people must be brought in on a ways and means resolution. The Finance Bill is always brought in like this but other bills may also have to proceed in this way.<sup>53</sup>

6.12 Where a bill which is required to be brought in on a ways and means resolution also needs a money resolution it can be brought in on both. This is commonly done with Finance Bills. But there is nothing to prevent the money resolution being taken after introduction and before committee.<sup>54</sup>

6.13 Where a bill is to be brought in on a series of ways and means motions, and the question has been decided on the first motion, Commons SO No. 51(3) requires the question on each further motion to be put forthwith or, in the case of a motion to which Commons SO No. 83U applies, forthwith on the announcement of the Speaker's decision on certification.<sup>55</sup> This is of particular significance for Finance Bills.

#### **Commons SO No. 50 and Commons SO No. 80**

6.14 It should be noted that only the government can take advantage of:

- Commons SO No. 80 in the case of a Lords bill whose main object is the imposition or alteration of a charge on the people or on public funds, and
- Commons SO No. 50 in the case of a bill whose main object is to create a public charge (that is, a charge on the public revenue).

6.15 Commons SO No. 80 permits the Commons to proceed with a public bill brought from the Lords (other than a bill of aids and supplies) provided that:

- it is so framed that no charge upon the people or upon public funds (unless it is a pecuniary penalty under Commons SO No. 79) is imposed or altered, and
- in the case of a bill which, if it were not so framed, would have as its main object the imposition or alteration of such a charge, a Minister of the Crown has informed the Clerk at the Table of his intention to take charge of it.

6.16 SO No. 50 ensures that a bill (other than a bill which is required to be brought in upon a ways and means resolution) whose main object is the creation of a public charge can only be presented, or brought in upon an order of the House, by a Minister of the Crown.

6.17 In addition, the creation of the charge does not require to be authorised by a resolution of the House until the bill has been read a second time. After the charge has been so authorised, the bill is proceeded with in the same manner as a bill which involves a charge that is subsidiary to its main purpose.<sup>56</sup>

6.18 These rules also apply to any bill brought from the Lords of which a Minister of the Crown has informed the clerks at the Table of his intention to take charge.<sup>57</sup>

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53. The Taxation (Cross-border Trade) Bill 2018 is a recent example.

54. For example, this was done in the case of the bill for the Rating (Empty Properties) Act 2007.

55. Commons SO No. 83U requires the Speaker to consider the motions on which a Finance Bill is brought in and to certify those which would authorise provision relating exclusively to England, to England and Wales or to England, Wales and Northern Ireland.

56. Two examples of bills introduced in reliance on SO No. 50 are the bills for the State Pension Credit Act 2002 and the Age Related Payments Act 2004.

**Non-financial business between ways and means resolutions**

6.19 It appears that the rule against two ways and means resolutions appearing “above the line” on the Order Paper on one day (i.e., listed for business on that day) being interpolated with non-financial business may now have disappeared.

6.20 This may be useful in the case of a bill passed at speed as it opens up the possibility of dealing with the ways and means resolutions for more than one bill on the same day with other non-financial business being taken between the resolutions.

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57. Commons SO No. 50(2).

## **APPENDIX A GENERAL PRINCIPLES RELATING TO FINANCIAL MATTERS**

### **Introduction**

A.1 The central historical and constitutional principle, common to both taxation and expenditure, is that the Crown (which today means Ministers of the Crown) demands money, the Commons grant it and the Lords assent to the grant.

A.2 Three important consequences flow from this.

A.3 The first is the financial initiative of the Crown. All proposals for taxation or expenditure are sought or recommended by the Crown before they can be considered in Parliament.

A.4 The second is that the House of Commons controls the amount of money raised or spent.

A.5 The third is that the House of Lords respects the primary role of the House of Commons in relation to taxation and expenditure.

### **The financial initiative of the Crown**

A.6 Historically, it has been for the Crown to propose taxation or expenditure and for Parliament to decide whether to grant it.

A.7 This financial initiative of the Crown now rests with Ministers and, to preserve it, the financial procedure of the House of Commons reserves to the Minister –

- the right to propose new charges on the public revenue, and
- the right to propose new charges on the people.

### **Control of money spent and raised**

A.8 The House of Commons controls the amount of money spent and raised by the government in a variety of ways. These include:

- approving estimates of each department's annual expenditure (see paragraphs [A.19](#) to [A.26](#));
- scrutinising each proposal for new expenditure or taxation as part of the process of considering the bill that contains the proposal (see paragraphs [A.27](#) to [A.34](#));
- scrutinising the public accounts and other aspects of financial administration and calling Ministers and officials to account.

A.9 Chapter 33 of *Erskine May* contains an explanation of the general principles underpinning the financial procedure of the House of Commons.<sup>58</sup>

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58. See also, for example, Chapter 6-176 to 179 of *Griffith & Ryle on Parliament: Functions, Practice and Procedures* (Blackburn and Kennon (eds.), 2<sup>nd</sup> Edition, London, 2002) and Chapter 1 of Part 11 of Volume 3 of the *Procedure of the House of Commons*, Josef Redlich, 1908. Note that recent changes to supply procedure post-date these texts.

## **The role of the House of Lords**

A.10 The House of Lords is careful not to infringe the financial privileges of the House of Commons.

### *General approach as regards Lords bills*

A.11 The House of Lords maintains a fiction that any bill originating in that House does not impose a charge on the people or on the public revenue. It does this by means of a privilege amendment.

A.12 A privilege amendment is a formal amendment made in the Lords to a Lords bill which negatives the provisions of the bill which infringe the privilege of the Commons. These provisions include not only the “money” in the bill but also any charge on, or provision about, local revenues or charges such as the council tax or land drainage rates. The test is whether anything in the bill, if presented as a Lords amendment to a Commons bill and disagreed to by the Commons, would require a privilege reason.<sup>59</sup>

A.13 The privilege amendment is added as a subsection to the final clause of the bill on third reading, by silent procedure, and says (often in direct contradiction to the express provisions of the bill) –

“Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.”

A.14 To make sense of the bill, the House of Commons removes the privilege amendment in committee. By this stage, the financial provisions in the bill (though not any provisions about council tax etc. - see paragraphs 4.7 and 4.8) should have been authorised by a financial resolution.

A.15 The removal of the text of the privilege amendment is not a silent procedure. The government must table an amendment to remove it.

A.16 As regards Lords Amendments to a bill originating in the Commons which impose a charge on the people or on the public revenue but fall outside the terms of financial resolutions for the bill agreed to by the Commons, see paragraphs 5.73 and 5.74.

### *Other procedural rules etc. relating to bills*

A.17 Other procedural rules which are relevant to the subsidiary role of the House of Lords in financial matters are –

- no bill of aids and supplies (e.g., a Supply and Appropriation Bill or Finance Bill) may be proceeded with in the House of Commons if brought from the House of Lords,
- the Lords cannot amend a bill of aids and supplies, although they can reject it entirely, and
- no bill whose main object is the imposition or alteration of a charge upon the people or public funds can be brought from the House of Lords and taken up by a private member in the House of Commons.<sup>60</sup>

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59. See Erskine May para 37.19.

60. Commons SO No. 80.

A.18 In addition, under the Parliament Act 1911, a money bill must be passed by the House of Lords without amendment within one month and, if not, it is presented for Royal Assent bypassing the House of Lords. A money bill is a public bill which, in the opinion of the Speaker of the House of Commons, contains only provisions dealing with (broadly) taxation or charges on public funds.

## **Estimates**

A.19 The House of Commons approves estimates for each department's annual expenditure. The estimates authorise the expenditure of individual amounts on specific services and the vast majority of a department's expenditure needs to be approved in this way. Estimates are given statutory effect through Supply and Appropriation Acts.

A.20 Parliament votes on what are known as the Supply Estimates. These are estimates of what resources (both for capital and current purposes) and cash a department will need and are divided into –

- ordinary annual estimates (main estimates),
- votes on account,
- supplementary estimates and new estimates, and
- excess votes.

A.21 Since 2016/17, the *main Supply Estimates* have been presented and published in April - shortly after the beginning of the financial year to which they relate.<sup>61</sup> Each Ministerial and non-Ministerial department which is not accounted for as a trading fund will normally have a single Estimate. For example, there were 57 separate Main Estimates presented for 2017-18 (including 5 independent bodies, such as the National Audit Office). The departmental Estimates include the spending plans for the relevant department, in addition to those of any other central government body for which the department has policy responsibility (mainly, but not necessarily exclusively, NDPBs).

A.22 *Votes on Account* are required because the House of Commons does not authorise expenditure for which authority is sought by the main Estimates until after the start of the financial year to which the main Estimates relate. It is therefore established practice, during one financial year (usually in February), to seek authority for some provisional allocation of amounts for the financing of the public service during the next financial year, pending parliamentary approval of the corresponding Main Estimates. Accordingly, special Estimates are presented seeking "Votes on Account".

A.23 *Supplementary Estimates* may be presented to authorise further amounts or reductions for an existing service (amending amounts already sought for that financial year) or to authorise further amounts required for a new object of expenditure the requirement for which has arisen since the presentation of the Main Estimates.

A.24 A *New Estimate* is required if a new department is established after the Main Estimates for the year have been presented to Parliament and the new department is not replacing a previous department.

A.25 *Excess Votes* are required where a department has incurred expenditure or other use of resources upon an existing service beyond the amounts authorised for it during the financial year in question, or where there is no proper parliamentary authority for the service.

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61. This changed when the Budget was fixed to take place in the autumn; previously, the main Supply Estimates were presented within 25 working days of the Budget - usually also in April.

A.26 The Treasury may authorise cash advances (i.e. loans) from the Contingencies Fund up to a statutory limit to meet urgent expenditure in advance of the granting of parliamentary authority. Parliament gives retrospective approval to such spending with the passage of the relevant Supply and Appropriation Act and enabling legislation. Exceptionally, Parliament may also be asked for a Vote of Credit (to meet unexpected demands in times of national emergency which, because of their size or indefinite nature, cannot be stated with the detail given in an ordinary Estimate).

### **Money resolutions and ways and means resolutions**

A.27 One of the general rules of financial procedure of the House of Commons is:<sup>62</sup>

“A charge .... [upon public funds or upon the people] must first be considered in the form of a resolution (a “charging” or “founding” resolution), which, when agreed to by the House, forms a necessary preliminary to the bill or clause by which the charge is authorized.”

A.28 One consequence of this general rule is that some special types of bills are brought in upon financial resolutions. For example, Finance Bills and other taxing bills are brought in upon ways and means resolutions and Supply and Appropriation Bills are brought in upon supply resolutions (see paragraphs 6.9 to 6.13).

A.29 Another consequence of this general rule is that financial resolutions are needed to authorise the taxation or spending provisions of any other kind of bill before they can be considered in committee.

A.30 In the case of taxation provisions, these resolutions are known as ways and means resolutions and, in the case of spending provisions, they are known as money resolutions.

A.31 These resolutions are part of the general financial procedure of the House of Commons and, as such, reflect some of the general principles that underpin that system.

A.32 Thus, at least in part, they represent a form of control by Parliament over proposals by the government for taxation or expenditure. However, in practice, the degree of scrutiny that they permit over such proposals is now limited by the fact that they are usually taken without debate immediately after second reading of the bill to which they relate.<sup>63</sup>

A.33 They are also a means of giving practical effect to the financial initiative of the Crown. Thus:

- in the case of expenditure, Commons SO No. 48 requires that the Queen’s recommendation is signified for a money resolution;
- in the case of taxation, there is a rule of practice that a ways and means resolution can only be moved by a Minister of the Crown.

A.34 Financial resolutions also act as a simple indication to Parliament that particular provisions of a bill involve new expenditure or taxation.

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62. *Erskine May*, para 33.7.

63. Commons SO No. 52(1)(a).

## **APPENDIX B EXAMPLE OF A MONEY RESOLUTION**

### **KNOW-HOW BILL(1): MONEY (2)**

#### **[Name of the Financial Secretary to the Treasury]**

That, for the purposes of any(3) Act resulting from the Know-How Bill,(4) it is expedient to authorise:

- (1) the payment out of money provided by Parliament of:(5)
  - [(a) grants by [the Secretary of State] to political parties,]
  - (b) any [other] expenditure incurred under [or by virtue of] the Act by [the Secretary of State] [a Minister of the Crown] [a person holding office under Her Majesty] [or by a government department](6)(7), and
  - (c) any increase attributable to the Act in the sums payable under [or by virtue of] any other Act out of money so provided,(8)(9)(10) and
- [(2) the payment of sums into the Consolidated Fund.(11)]

#### **Notes:**

Queen’s Recommendation signified.(12)

#### **– NOTES –**

##### *Note 1*

In the case of a Lords bill, add “[LORDS]” in the heading (after “BILL”) and “[Lords]” in the body of the resolution (after “Bill”). A resolution for a Lords bill must be framed so as to cover the bill when the privilege amendment has been deleted in the House of Commons.

##### *Note 2*

In the rare case of a resolution dealing only with the remission of debt, raise with the Commons PBO whether (as has happened in the past) the motion should be described as a “RESOLUTION FOR REMISSION OF DEBT”.

##### *Note 3*

“any Act” is used, following an agreement with the PBO in 1983, because:

- the bill may not pass, and
- this wording covers the rare case in which a bill is divided into two or more bills.

*Note 4*

The amendment of the short title, or the division of the original bill into two or more bills with different titles, will not break the link with the resolution (which operates for the purposes of all bills and Acts of the same session “resulting from” the bill named in the resolution).

*Note 5*

Sometimes, a short and specific resolution is all that is required. On other occasions, a more general resolution (eg something along the lines of paragraphs (1)(b) and (c)) may be more appropriate or necessary (eg because of the range of expenditure to be covered). See paragraphs 5.37 to 5.43 on wide and narrow resolutions.

When using general wording, consider whether particular heads of expenditure ought to be highlighted (eg along the lines of paragraph (1)(a) of the draft).

*Note 6*

The assumption is that “[things done] by virtue of [a provision]” is wider than “[things done] under [that provision]”; the former being thought to catch a more indirect relationship than the latter.<sup>64</sup> In this context, that may be particularly useful in catching expenditure which is not strictly speaking incurred under the Act; for example, where the expenditure is incurred under regulations made under the Act. For such cases, including “by virtue of” may provide some reassurance that such expenditure is covered by the money resolution.

*Note 7*

“a person holding office under Her Majesty” has been used to cover officers of the Crown such as the Registrar General for England and Wales.

*Note 8*

It may sometimes be best to highlight particular expenditure incurred under other Acts.

For example, where the main new expenditure is incurred by virtue of the bill inserting a wholly new topic into an existing Act, the resolution could pick out this expenditure and add “other” to paragraph (1)(c).

*Note 9*

See the discussion in Note 6 in relation to whether to include “by virtue of” in limb (c).

*Note 10*

If expenditure will be incurred only by bodies that are funded through arrangements in existing Acts, it may well be that limb (c) is all that is required. For example, local authorities in England and Wales are generally funded through grants under the Local Government Act 2003 and HMRC is funded through section 43 of the Commissioners for Revenue and

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<sup>64</sup>*Craies on Legislation*, para 8.2.3.



Customs Act 2005.

*Note 11*

This paragraph may be included if:

- there is no ways and means resolution, and
- the Commons PBO have agreed that a paying-in provision can properly be included in the money resolution (see paragraph 4.49).

The wording of paragraph (2) covers all payments into the Consolidated Fund, whether required under the bill or under another Act. (Some resolutions spell this out, but there is no need to do so.)

*Note 12*

The Queen's recommendation must always be signified for a money resolution.

## **APPENDIX C EXAMPLE OF A WAYS AND MEANS RESOLUTION**

### **KNOW-HOW BILL(1): WAYS AND MEANS**

**[Name of the Financial Secretary to the Treasury]**

That, for the purposes of any Act resulting from the Know-How Bill,(2) it is expedient to authorise:

- (1) the charging of fees under the Act; and
- (2) the payment of sums into the Consolidated Fund.(3)(4)

### *– NOTES –*

#### *Note 1*

See note 1 in Appendix B.

#### *Note 2*

See notes 3 and 4 in Appendix B.

#### *Note 3*

The wording of paragraph (2) covers all payments into the Consolidated Fund, whether required under the bill or under another Act. (Some resolutions spell this out, but there is no need to do so.)

#### *Note 4*

“Queen’s Recommendation signified” does not appear as a note to the resolution because there is no Crown recommendation for ways and means resolutions. The government’s control over such resolutions is achieved instead by the rule that only a Minister of the Crown may move a ways and means resolution.