

HANDLING A BILL

This pamphlet is intended for members of the Office of the Parliamentary Counsel. It is not a substitute for the *Guide to Making Legislation* (available at <https://www.gov.uk/government/publications/guide-to-making-legislation>).

Unless otherwise stated—

- references to Commons standing orders are to the Standing Orders of the House of Commons relating to Public Business of 23 October 2023,
- references to Lords standing orders are to the Standing Orders of the House of Lords relating to Public Business of 22 February 2021, with amendments agreed up to 28 February 2024,
- references to the Companion to the Standing Orders are to the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (26th edition amended on 26 February 2024),
- references to Erskine May are to the 25th edition (2019), with updates up to July 2022, and
- references to the *Guide to Making Legislation* are to the August 2022 edition.

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CHAPTER 1 INSTRUCTIONS AND DRAFTING

Summary

1.1 This Chapter touches on a number of general drafting and other matters that may arise in relation to a particular bill.

1.2 The main matters mentioned in this Chapter that the drafter needs to be aware of when preparing a bill are –

- whether King’s and Prince’s consent is likely to be required for any of the bill’s provisions (see paras 1.8 to 1.14);
- whether any of the instructions indicate possible hybridity (paras 1.15 to 1.19);
- whether the bill or any of its provisions applies to the Crown (paras 1.20 and 1.21);
- in connection with powers to make subordinate legislation etc, things that are likely to be of interest to the Delegated Powers and Regulatory Reform Committee (paras 1.68 to 1.74);
- the need for the department to engage with the Office of the Advocate General, in relation to provisions that extend to Scotland (paras 1.31 to 1.33), and the need for the drafter to share drafts of provisions that extend to Scotland or Northern Ireland with drafters in Edinburgh or Belfast (paras 1.107 to 1.119).

1.3 This Chapter deals with a range of other matters that the drafter should take care not to overlook. While some of those matters are primarily the responsibility of the instructing department, a reminder from the drafter may nonetheless be welcome.

Introductory meeting

1.4 It is good practice, at an early stage, to discuss methods of working and the likely timetable relating to a bill with the principal members of the bill team. It is often worth proposing an introductory meeting with the bill team for the purpose of dealing with those and other relevant matters.

Cross-references

1.5 Cross-references can be created manually in Lawmaker by copying and pasting from the “select x-ref to copy” menu in the Structure View, or automatically using “tag x-refs”. In both cases, the system will create a link to the target provision so that if it were to change the system will detect the change and either update or flag the change following an “update” operation.

1.6 You will need to use the manual cross-referencing method to insert cross-references in quoted structures (including amendments): “tag x-ref” will not attempt to identify cross-references that appear within quoted structures. “Update x-ref” will, though, work the same way in amendments, amendment lists and quoted structures.

1.7 You can use the manual paste method to insert cross references to provision in other documents in the system. If you use “Update x-ref” they will change from “Valid” (orange text) to “Invalid” (grey highlighted text) as the target provision does not exist in the document you are updating. However, the link to the target provision will be preserved so that once the provision containing the cross reference ends up in the same document as the target provision

and “update x-ref” is run the cross reference will change back to “Valid”. This can be useful for us when drafting a large bill in separate documents, and also for the PBOs when they are applying amendments to a bill.

King’s and Prince’s consent

1.8 Consider if this is likely to be needed - for, broadly, provisions affecting the prerogative, hereditary revenues, personal property or interests of the Crown, the Duchy of Lancaster or the Duchy of Cornwall.¹ The fact that a bill applies to the Crown does not necessarily mean that it needs King’s consent.

1.9 If needed, King’s or Prince’s consent is signified on third reading in each House, whatever the nature and extent of the prerogatives or interests engaged.

1.10 Where it appears that consent will be needed, tell the department at an early stage that it must take steps to obtain it (the Palace likes to be given as much time as possible and never less than 14 days). At the same time, let the Whips’ Office know. There is a template letter for bill teams seeking consent - PBL Secretariat will be able to supply the template if the bill team does not already have it. See para 2.58 as to the need for consent to be obtained, in general, before a bill is introduced.

1.11 Where the bill affects the Crown Estate,² advise the department of that fact (as it will need to inform the Secretary to the Crown Estate Commissioners).

1.12 Where consent is required, remind the department that it is responsible for its signification in each House. The department’s Parliamentary branch should be aware of what needs to be done, but if in doubt PBL Secretariat can be contacted.

1.13 If, after consent has been obtained, the provisions of the bill requiring it are materially altered, further consent may have to be sought unless the original consent was wide enough to cover the alteration.

1.14 The Palace should be kept informed by the department of any developments subsequent to their original approach which fall outside the terms of the original consent. Thus, for example, new consent issues might arise after the Palace has given its original consent and before the bill is introduced and the Palace should be kept informed of these. Similarly, once the bill has been introduced, the Palace should be kept informed of any subsequent amendments that raise further issues of consent.

Hybridity

1.15 A hybrid bill is (broadly speaking) a public bill that adversely affects particular private or local interests, as distinct from all such interests of a specified class or category.

1.16 Thus a bill which would be hybrid if framed in one way may not be hybrid if framed in more general terms.

1.King’s or Prince’s consent is not nowadays needed for provisions affecting Crown servants (e.g. Ministers of the Crown or the Armed Forces) or property belonging to them as Crown servants (e.g. property of a government department).

2.See the King’s and Prince’s consent pamphlet and www.thecrownestate.co.uk for more information about what “the Crown Estate” is.

1.17 A bill which is judged to be hybrid is to some extent subject to the rules of procedure applicable to private bills.

1.18 The department should be warned at an early stage if the instructions indicate possible hybridity.

1.19 In general, the Houses tend to follow the advice given by the Public Bill Office (PBO) as to whether a bill should be referred to the examiners as potentially hybrid. So if you have any concerns about hybridity, discuss the approach proposed to be taken with both PBOs. Ultimately –

- the question whether a bill should be referred to the examiners is a decision for the House in question, and
- the question whether a bill is in fact hybrid is one for the examiners.

Application to Crown

1.20 If the bill applies to the Crown, send a copy of it at an early stage to the Cabinet Office Legal Director, and keep that person informed on this aspect of the bill. See the Crown Application pamphlet for further information.

1.21 There is no need to send a copy of the bill to the Cabinet Office Legal Director merely because it confers power to hold land on the Crown or an emanation of the Crown having Crown status.

Application to Parliament

1.22 If the department's proposals are likely to have effects on the Houses of Parliament or the Parliamentary estate, check that the department (a) has considered what result it wants to achieve as regards the application of its proposals to Parliament (or the Parliamentary estate) and (b) has approached the House authorities (i.e. the PBOs in both Houses) to give them an opportunity to comment on the proposals.

Law Officers: retrospectio, early commencement and other matters of concern

Retrospective provisions

1.23 Remind the department that it needs to obtain the consent of the Law Officers to the inclusion in primary legislation of any provisions that are retrospective or will allow or enable retrospectio in secondary legislation.

1.24 Any procedural or substantive safeguards intended to protect individuals, where provisions of a bill operate retrospectively, should in general appear on the face of the bill.

Early commencement

1.25 Where appropriate, remind the department that:

- an Act should not be brought into force earlier than two months after Royal Assent (three months for a consolidation Act) unless there is good reason for earlier commencement;
- where earlier commencement is required, the consent of the Law Officers must be obtained, subject to some limited exceptions.

1.26 The aim is to enable copies of the Act to be published in time to allow a reasonable interval between publication and commencement.

1.27 Postponed commencement may be unnecessary where the Act does not affect the general public.

Other matters of concern to the Law Officers

1.28 Encourage the instructing department to keep the Law Officers informed of anything in which the Law Officers may have an interest (see para 2.38 onwards) and to seek the Law Officers' views where appropriate. Ask the department to copy you in on correspondence with the Law Officers.

1.29 If the bill contains anything that may be of interest to the Law Officers, make sure that they have been alerted to it well in advance of PBL Committee. If the point is one on which the Law Officers may wish to intervene, they will generally welcome OPC's advice on what action they might want to take.

1.30 For example, if something in the department's draft legal issues memorandum³ gives cause for concern, mention it to the Law Officers so that the issue can be dealt with early (possibly by three-way discussion between the drafter, the Law Officers and the department).

Bills that extend to Scotland: engagement with Office of the Advocate General

1.31 The Office of the Advocate General (OAG) is a UK government department (and therefore nothing to do with the Scottish Government). OAG is responsible, among other things, for providing legal advice to departments on policy and legislation affecting Scotland and the Scottish devolution settlement.

1.32 The instructing department may not be aware of OAG's role and of the need for OAG to be treated as an extended member of the bill team. So check at an early stage that the department is aware of OAG's role and of the need for it to engage with OAG in preparing instructions, particularly where the instructions indicate that –

- the bill is likely to extend to Scotland,
- the department is proposing to make provision for England and Wales only in relation to a matter that is reserved to Westminster, or
- the department is proposing to make reference to the functions of the Lord Advocate in addition to references to the functions of the Scottish Ministers collectively.

³The department prepares the legal issues memorandum for submission to PBL Committee in the lead-up to introduction of a bill.

1.33 See also para 1.116, which deals with sending drafts (together with related instructions) to lawyers at OAG.

Bills likely to give rise to a request for consent under Schedule 7B to GOWA 2006

1.34 If the department's proposals seem likely to give rise to a request for consent under paragraph 8, 10 or 11 of Schedule 7B to GOWA 2006, ask the department to discuss the proposals with the Wales Office.

1.35 By way of background, those paragraphs of Schedule 7B provide that an Act of Senedd Cymru cannot make certain provision without the consent of the UK Government. The provisions that require consent include, amongst others –

- provisions removing or modifying a function of a Minister of the Crown that is exercisable concurrently or jointly with the Welsh Ministers,
- provisions removing or modifying a function of a Minister of the Crown that consists of giving consent to the exercise of a function of the Welsh Ministers,
- provisions removing or modifying a function of a public authority apart from a devolved Welsh authority,
- provisions conferring or imposing a function on a Minister of the Crown, a government department or other public authority apart from a devolved Welsh authority.

Matters of concern to MoJ

1.36 The instructing department should be reminded to consult the Ministry of Justice in good time about the matters set out below.

Channel Islands and Isle of Man

1.37 If there is a proposal for the bill to extend or to be capable of extension to the Channel Islands or the Isle of Man (“the Islands”), or to amend or repeal any enactments that extend (or may be extended) to any of the Islands, remind the department to consult MoJ on policy as regards the bill's extension there. MoJ should be consulted at an early stage.

1.38 Note:

- there is agreed standard wording as regards the extension of Acts to the Islands and the conferral of powers to extend Acts to the Islands - see the OPC Drafting Guidance;
- an Order in Council extending an Act to the Islands should not be made subject to any Parliamentary procedure;
- there is agreed standard wording for cases where a bill amends or repeals an Act that extends, or may be extended, to the Islands - see the OPC Drafting Guidance.

Offences and penalties

1.39 MoJ's criminal offences gateway has been discontinued, and under the arrangements that replace the gateway the government's Home Affairs Committee now provides the main focus for the clearance of new offences.⁴ When creating a new offence, the department must be satisfied that doing so is both proportionate and necessary to the policy objective it is trying to achieve.

1.40 MoJ does, however, plan to continue to scrutinise the creation of new offences through the Home Affairs Committee clearance process. The department should engage with MoJ on the content and implications of proposed new offences, and proposed amendments to existing criminal offences, by completing a Justice Impact Test before seeking policy clearance for its proposals.⁵

1.41 MoJ also has an interest in the drafting of offences (in particular whether what is proposed will provide sufficient legal certainty). So the department should share the proposed drafting with MoJ when it is reasonably settled, and should make MoJ aware of anything relevant to why a particular approach has been taken in relation to the drafting. MoJ might in turn want to give the Crown Prosecution Service an opportunity to comment on what is proposed.

1.42 MoJ should also be consulted about any proposal to re-enact an existing offence or to confer a power to create or amend an offence.

1.43 Any penalties for new or re-enacted offences, and any changes in penalties for existing offences, should be discussed with MoJ.

1.44 The bill should make it clear that increased penalties and procedural changes related to offences are not retrospective.

1.45 Absolute offences should not be created unless there is a good reason to do so.

1.46 Scrutiny of new offences and penalties for Scotland is a responsibility of the Scottish Government. There are separate arrangements, administered by the Scottish Government, for offences under the law of Scotland. See para 1.116 for more on sharing drafts with drafters in Scotland.

Courts, tribunals and other matters

1.47 MoJ have an interest in the following matters –

- proposals that might affect the practice, procedure and workload of the civil and criminal courts or tribunals (e.g. conferral of new civil or tribunal jurisdiction; creation of indictable offences; proposals entailing specific provision in a bill about procedure or which may call for amendment to rules of court);
- proposals that might affect expenditure incurred in operating courts or tribunals (e.g. proposals affecting the appointment or terms and conditions of office of tribunal judiciary) or expenditure on legal aid and legal advice and assistance;
- proposals to create new tribunals (including tribunals consisting of a single commissioner or adjudicator);
- proposals for legislation affecting tribunals, inquiries or administrative justice generally;
- proposals relating to civil evidence, registration of local land charges or interests in land, and various other matters including the question of civil liability for breach of statutory duty;
- ECHR issues.

4. Joint MoJ/Cabinet Office guidance on the arrangements is at www.gov.uk/government/uploads/system/uploads/attachment_data/file/481126/creating-new-criminal-offences.pdf.

5. Guidance on the Justice Impact Test is at www.justice.gov.uk/legislation/justice-impact-test

Contracting out

1.48 Where a body is to be capable of exercising the functions of another body, the extent of the liabilities of the contractor and of the authority should be made clear. For example, it should be clear whether the liability of the authority is intended to absolve the contractor from liability. Equally, the authority should not be liable under the Human Rights Act 1998 for things which the contractor does without liability under that Act (even if, were they done by a core authority, there would be liability). In any event, MoJ should be consulted about such provisions.

Amending sentencing legislation

1.49 The Sentencing Act 2020 consolidates sentencing legislation. Key principles for drafters when operating in the field of sentencing law are –

- Parts 2 to 13 of the 2020 Act are “the Sentencing Code” and are defined as such in Schedule 1 to the Interpretation Act 1979; sections of, or Schedules to, the Sentencing Code can be referred to without definition;
- new sentencing provisions that are within the ambit of the Sentencing Code should be added to the Code and not drafted as free-standing provisions;
- the Sentencing Code should state on its face the cases to which it applies; readers should not have to rely on separate transitional or commencement provision.

1.50 Further guidance on the Sentencing Code and preparing amendments to it is available on gov.uk.⁶

Matters of concern to Home Office (including powers of entry, search and seizure)

1.51 The Home Office have policy responsibilities in relation to:

- powers of entry, search and seizure,
- stop and search powers, and
- powers to obtain information.

1.52 Remind the department to clear its policy on any of these matters with the Home Office.

1.53 When dealing with a proposal to create, amend or re-enact a power of entry, remind the department of the Home Office’s guidance on powers of entry.⁷ The guidance does not apply to cases where the subject matter is devolved.

Matters of concern to Cabinet Office

1.54 As well as having an interest in bills that apply to the Crown (see para 1.20), the Cabinet

6. <https://www.gov.uk/government/publications/the-sentencing-code-guidance-for-drafters>

7. The guidance (revised December 2018), and the form to be submitted by departments in connection with a proposal for a new power of entry, are available at www.gov.uk/guidance/powers-of-entry.

Office has an interest in proposals relating to –

- freedom of information;
- elections;
- exercise of the royal prerogative;
- establishing corporations or other public bodies,

and departments should consult the Cabinet Office to the extent that proposals relate to any of the above matters.

1.55 Where it is proposed to require appointments to be made by Letters Patent, the proposal should be discussed with the Privy Council Office (which is part of the Cabinet Office).

Matters of concern to Ministry of Defence

1.56 If dealing with a bill which relates to the criminal justice system (including criminal procedure, evidence and sentencing) or which creates or changes criminal offences, remind the instructing department to inform the Director of Legislation and the Director General of Service Personnel Policy at MOD.

Data protection

1.57 Article 36(4) of the General Data Protection Regulation requires consultation with the Information Commissioner during the preparation of a proposal for a legislative measure that relates to the processing of personal data. So the department should be reminded of this requirement where such a proposal is in view.

1.58 DCMS has an interest in proposals relating to data protection (in particular anything to do with information gateways). The department should therefore be in touch with DCMS about any such proposal.

Attorney General’s Office: consent to prosecution

1.59 The Attorney General’s Office must be notified of any proposal to create an offence that requires consent from the Attorney General or the Director of Public Prosecutions to bring a prosecution.

Administrative redress systems (including ombudsmen)

1.60 If instructions contain proposals that might create a new, or affect an existing, administrative redress system (an “AR system”, whether or not that system is described as an “ombudsman” system), remind the instructing department to consult the Propriety and Ethics Team in the Cabinet Office, which has policy responsibility for securing the constitutional independence of ombudsmen.⁸

⁸Guidance for departments on AR schemes can be found at www.gov.uk/government/publications/new-ombudsman-schemes-guidance/guidance-on-new-ombudsmen-scheme

1.61 Proposals might affect an ombudsman’s independence by –

- affecting the independence of the proposed or existing AR system from either government or those whose activities would be subject to investigation (including proposals to subject an office-holder under the AR system or their organisation to a system of administrative oversight or other regulation);
- affecting the existing accountability of a person acting under an AR system to Parliament or another legislative body;
- creating an AR system that overlaps with the remit of an existing AR system or amending an existing AR system in a way that will create such an overlap;
- creating an AR system under which an office-holder might be inappropriately styled (for instance, by suggesting that the office-holder has a degree of independence that is not supported by the provisions of the AR system);
- overlapping or conflicting with the other judicial or administrative routes for the investigation and resolution of complaints (bearing in mind, in particular, the devolution settlements);
- assuming that there will be awards of financial compensation to be paid as *ex gratia* payments.⁹

Matters of concern to the Foreign and Commonwealth Office

1.62 Remind the department of the need to consult the Foreign and Commonwealth Office if the bill –

- extends or is capable of extension to overseas territories (or affects enactments that so extend or are capable of such extension), or
- implements or affects enactments that implement the UK’s obligations under an international agreement.

Tax provisions (other than in Finance Bill)

1.63 If asked to draft a provision relating to general taxation in a bill other than a Finance Bill, ensure that the department has consulted the Treasury and has reminded the Treasury to discuss any changes to the tax regime with HMRC.

Powers to make subordinate legislation: general

1.64 Check all provisions that confer power to make subordinate instruments so as to ensure that, where appropriate, instruments made under them will be statutory instruments. This is easily overlooked (e.g. when inserting an appointed day provision in a rush).

1.65 When conferring a power to make orders, schemes etc which is not to be exercisable by statutory instrument, consider whether an express power to revoke or amend is needed - section 14 of the Interpretation Act 1978 (implied power to revoke, amend or re-enact) does not apply to such powers.

1.66 If the point is not covered in the instructions, consider checking with the department

9.Note: expenditure on such awards will require legislative cover (i.e. *Baldwin* agreement cover) if it exceeds, or has the potential to exceed, £1.75m per year or will, or is likely to, continue for a period of more than two years. See *Managing Public Money* (www.gov.uk/government/publications/managing-public-money), paras 2.5.4 and A2.4.2.

whether any powers to make subordinate legislation need to allow for sub-delegation.

1.67 Keep in mind any points of general interest in reports of the Joint Committee on Statutory Instruments.

Powers to make subordinate legislation: matters of concern to the DPRRC

1.68 The Delegated Powers and Regulatory Reform Committee (DPRRC) of the House of Lords scrutinises all bill provisions which delegate legislative power. It is important to be aware of the DPRRC's Guidance for Departments¹⁰ and of areas of concern to the DPRRC.¹¹

1.69 The DPRRC - together with the Secondary Legislation Scrutiny Committee and the Constitution Committee - recently expressed concern about skeleton bills (and skeleton provisions) "in which broad delegated powers are sought in lieu of policy detail."¹²

1.70 Proposals for bills (or provisions) that may be characterised as skeleton bills (or skeleton provisions) should be drawn the attention of 1st PC and the Office of the Leader of the House of Commons.

1.71 The DPRRC has also recently expressed concern about bills conferring power to make what it considers to be "disguised legislation". Disguised legislation refers to material in a non-legislative instrument (such as a code of practice) that is legislative in character and ought instead to be contained in normal legislation.¹³

1.72 The DPRRC takes a particularly close interest in the justification for, and parliamentary procedure attaching to, so-called Henry VIII powers (*i.e* powers to amend, repeal or otherwise alter the effect of an Act).

1.73 The DPRRC's Guidance for Departments recognises that the appropriate level of parliamentary scrutiny for Henry VIII powers will not always be the affirmative procedure. But it applies a presumption that the affirmative procedure will apply to Henry VIII powers and so where such a power is subject to a level of scrutiny other than the affirmative procedure the department should explain fully its reasons for adopting that other procedure in its memorandum for the Committee.¹⁴

1.74 Powers to make supplementary and/or incidental provision and/or powers to give full effect to an Act (in particular powers which can be used to amend or modify primary legislation) should not be taken just in case - departments should be asked to explain the need for such a power.

10.The DPRRC's Guidance for Departments (November 2021) is available on the Parliament website.

11. See, in particular, the DPRRC's 12th Report of Session 2021-22 entitled "Democracy denied? The urgent need to rebalance power between Parliament and the executive" and the Government's response of 24 January 2022. See also, the Secondary Legislation Scrutiny Committee's 12th Report of Session 2021-22 entitled "Government by diktat: a call to return power to Parliament" and the Government's response of 24 January 2022.

12.See the joint letter from the Chairs of the three Committees to the Minister for the Cabinet Office and the Leader of the House of Commons (25 September 2020), the Minister's reply (19 October 2020) and the joint response to that reply from the Chairs of the DPRRC and SLSC (10 November 2020), all of which are available on the Parliament website. See also paras. 8 and 9 of the DPRRC's Guidance for Departments (November 2021).

13. See para 10 of the Committee's Guidance for Departments (November 2021).

14.See para 7 of the Committee's Guidance for Departments (November 2021).

Powers to make subordinate legislation: consolidated fund standing charges

1.75 It is HMT policy that a standing charge on the consolidated fund should normally be in primary legislation.

1.76 Exceptionally, a bill may confer a power to make subordinate legislation that creates a standing charge on the consolidated fund where there is a necessary or compelling case to do so. But HMT¹⁵ should be consulted in all cases before the drafting of the power is settled.

Possibly hybrid instruments

1.77 If a bill confers power to make subordinate legislation and there is a possibility that an instrument under the power will be subject to the hybrid instruments procedure in the Lords (Lords Private Business SOs 216 and 216A), consider whether provision should be included in the bill to disapply that procedure.

Prescription of forms by statutory instrument

1.78 Query requests by the department for forms to be prescribed by SI (or set out in the bill) in cases where the forms are to be physically provided by a government department or agency. Cabinet Office policy on this is to enable forms of this kind to be altered informally.

Use of guidance and codes of practice

1.79 If required to draft provisions conferring power to make codes of practice or to issue guidance, it may be necessary to remind the department of the principles set out in Annex E of the *Guide to Making Legislation* (codes of practice and legislation), and the desirability of ensuring that documents of this kind are not used to impose obligations of a kind that ought to be imposed by primary or secondary legislation.

Civil liability for breach of statutory duty

1.80 Where a statutory duty is to be imposed, consider whether anything needs to be said about civil liability for its breach.

“The Secretary of State”, “Ministers of the Crown” etc

1.81 In general our practice is to confer functions on “the Secretary of State” (or, in the case of a department headed by a minister other than a Secretary of State, on whichever minister is in charge of the department). That is largely for reasons relating to the *Carltona* principle, under which junior ministers and civil servants in a department may exercise powers of the minister in charge of the department. Any proposal to confer functions on “a Minister of the Crown”, as opposed to “the Secretary of State”, should therefore be discussed with 1st PC.

1.82 It may be helpful to refer to a Minister of the Crown where it is desired that the reference should include not only Secretaries of State, but also the Treasury and other bodies which are brought within the meaning of that expression in the Ministers of the Crown Act

15. Specifically, the Public Finance & General Team in the Treasury Legal Advisers, the Exchequer Funds and Accounts Team and the Treasury Officer of Accounts.

1975.

1.83 In general, it is desirable to avoid conferring functions on named Secretaries of State (e.g. “the Secretary of State for Work and Pensions”). Conferring functions on named Secretaries of State prevents statutory functions from being re-allocated by non-legislative means.

Treasury consent

1.84 In general, a request for a Treasury consent requirement on the face of a bill should be resisted, except where the Treasury has a compelling reason in a particular case for the inclusion of such a requirement. If the department insists on having a Treasury consent requirement, discuss the matter with the 1st PC and ensure that the matter has been referred to the AGO in good time before introduction.

Translating amendments into Welsh

1.85 A bill may need to amend an Act or Measure of Senedd Cymru. The text of this legislation is bilingual and both language versions will need to be amended by the bill. OPC draft the English language version of any amendment. It is for the instructing Department to make arrangements for obtaining the Welsh language version, and to pay for the cost of any translation work. Wales Office Legal Advisers can provide the instructing Department with contact details of a translator. The Office of the Legislative Counsel in Cardiff cannot be expected to supply Welsh language versions of text for UK Government Departments.

Short and long titles

1.86 A short title needs to give a good idea of what the bill is mostly about (but does not need to be comprehensive).

1.87 The short title is ultimately a matter for the minister. But it is OPC’s function to advise ministers on what is appropriate and to pass on any points made by the PBOs (who may object if they think a short title is misleading).¹⁶

1.88 The long title should cover everything in the bill but should not mention significant purposes which are not covered by the bill.

Temporary enactments

1.89 Commons SO No. 81 requires the duration of every temporary law or enactment to appear in a distinct clause or subsection.

Relation to other bills

1.90 Although there has in the past been some suggestion that a bill should only refer to another after that other bill has had second reading in its second House, there is no rule of Parliamentary procedure or practice to this effect. One bill can refer to another, whatever stage either bill is at.

16. See para 26.6 of *Erskine May* for more on short titles.

1.91 Obviously, when one bill refers to another it will be necessary to avoid the risk of the reference being falsified at a point when it can no longer be corrected. But dealing with this is just a question of risk management in the particular context.

1.92 Similar points may be made about references in a bill to an SI that has been laid in draft.

1.93 There are constraints on proceeding with a bill that contains provisions that are substantially the same as those contained in another bill of the same session (see *Erskine May* para 28.17). In addition to the examples discussed there of what is and is not possible, it may be possible to strip out one clause of a bill and then, before the point at which it is too late to reinstate the lost clause, introduce that clause as a separate bill.

Amending the Public Records Act 1958

1.94 Remind the Department of the need to consult The National Archives and DCMS legal (DCMS being the sponsoring department for TNA) about any proposal to amend the Public Records Act 1958¹⁷.

Relationship with the European Union

1.95 The Retained EU Law (Revocation and Reform) Act 2023, the European Union (Future Relationship) Act 2020, the European Union (Withdrawal Agreement) Act 2020 and the European Union (Withdrawal) Act 2018 are statutes of constitutional significance. For this reason Cabinet Office Europe Legal Group, the Foreign and Commonwealth Office, and the Law Officers must be consulted about any changes to these Acts before instructions are sent to OPC, in order to ensure proper cross-departmental coordination.

Procedural requirements for legislation imposing technical barriers to trade

1.96 There are procedural requirements under the EU Trade Agreement and under WTO rules that must be met in relation to certain legislation that imposes technical barriers to trade. In summary, there are consultation and notification requirements for certain kinds of technical regulations (in particular those that may have a significant impact on trade), including allowing at least 60 days for comments and ensuring that there is at least 6 months between publication of any regulation subject to the requirements and its coming into force. It is the responsibility of departments to ensure the requirements are complied with, but Counsel should alert departments to any instructions that might engage the new procedures.

European Convention on Human Rights

General

1.97 The drafter is not responsible for ensuring that the bill is compatible with the ECHR, but should make sure that the department is aware of any possible conflict.

17. Typically a bill creating a new body will add a reference to the body to the listing in paragraph 3 of Schedule 1 to the PRA 1958, thereby making the body's records subject to the PRA 1958. Difficult issues can arise if TNA is not consulted; for example, provisions in the bill may frustrate important parts of the purpose of making the body's records subject to the PRA1958 (e.g. confidentiality provisions relating to information received by the body which do not include a saving for the PRA 1958).

Law Officers' role

1.98 The Law Officers' role in relation to PBL Committee is not to certify that a bill is compatible with the ECHR, but merely to consider whether the department has adequately demonstrated the reasoning which underlies the department's conclusion that the bill is compatible.

Explanatory notes

1.99 At an early stage, remind the department of the need to produce explanatory notes. The notes need to be prepared using the template. There is some short-form guidance on preparing the notes (which the department should receive from PBL Secretariat) and more detailed guidance in the *Guide to Making Legislation*.

Electronic documents etc

1.100 The government is committed to facilitating electronic working within government and between the government and the public, and also to encouraging electronic commerce generally. New legislation should be consistent with that commitment.

1.101 Legislation should be construed as allowing electronic transactions (documents and service) unless the context clearly indicates to the contrary (e.g. a provision for service by post). But that may not always be the best way to draft new provisions in accordance with the government's commitments.

1.102 The use of electronic documents may give rise to difficult questions about the effectiveness, time and location of electronic service. Promoting the use of electronic methods of operating under a piece of new legislation may require thought to be given to these questions.

Office of the Leader of the House of Commons

1.103 Concerns about whether what a department has asked for accords with good legislative policy (e.g. where the request is for what may be considered unnecessary legislation) should be raised, first, with 1st PC. If necessary those concerns may then be raised with the private secretary to the Leader of the House of Commons (who will then raise the matter with Economic and Domestic Affairs Secretariat and/or the Leader). This does not affect OPC's ability to approach the Law Officers on such points (see para 2.38 onwards).

1.104 For a further matter that should be drawn to the attention of the Office of the Leader of the House of Commons, see para 1.70.

Inform 1st PC of matters of special interest

1.105 Inform 1st PC of anything that is likely to have a special interest for 1st PC or about which 1st PC may wish to consult other members of OPC. Also inform whoever is responsible for the relevant Office know-how, or the chair of the relevant Office group, if appropriate.

1.106 Examples are –

- amendments of the Interpretation Act 1978 or anything else that modifies or otherwise affects the statute book generally;
- noteworthy innovations in drafting techniques;
- Law Officer rulings;
- bills requiring section 19(1)(b) Human Rights Act statements;
- anything involving constitutional questions;
- questions about the Parliament Acts and about proposals for their use, but not questions about whether individual bills should be certified as money bills unless they raise important points of principle;
- any direct contact between the drafter and ministers.

Drafting offices in Scotland, Northern Ireland and Wales

Roles of the drafting offices

1.107 OPC provides drafting services to the UK government and it is part of OPC's duties in doing so to protect the confidences of that government.

1.108 In the Scottish Government's Parliamentary Counsel Office, those drafters who are part of the Parliamentary Counsel to the Office of the Advocate General for Scotland (formerly SPC(UK)) are responsible in that capacity to the UK government. They also advise the Scottish Government when not acting in that capacity.

1.109 Drafters in the Office of the Legislative Counsel in Northern Ireland (OLC) are responsible to the Northern Ireland Executive.

1.110 Welsh drafters are responsible to Welsh Ministers.

Dealings with other offices - protection of confidences

1.111 When consulting drafters in other drafting offices, be aware of the potential for conflicts of interest to arise.

1.112 Care is needed, in particular, where consultation with a devolved administration about the provisions of a bill has yet to be completed at the political level within the UK government.

1.113 So, for example, it is sensible to tell the drafter at Parliamentary Counsel to OAG, or at OLC, if a draft should not be shared with the Scottish Government or the Northern Ireland Executive (as the case may be). In the case of OLC, it is best if this is done before the draft is actually sent so as to give the drafter at OLC an opportunity to refuse to accept the draft on this basis if they need to.

1.114 Documents relating to the UK government's internal deliberations are not to be circulated to the devolved administrations.

1.115 This does not prevent a drafter referring in correspondence to PBL Committee - some references are inevitable, because drafters will need to resolve issues relating to the devolved administrations for the purposes of PBL Committee. But a PBL Committee print circulated to

the devolved administrations would, for instance, be better if it did not have a footer indicating that fact. If in doubt, consult PBL Secretariat.

Sending drafts to Scotland and Northern Ireland drafters

1.116 Where provisions of a bill extend to Scotland or Northern Ireland, send draft provisions (or, where appropriate, drafts of the bill as a whole) to Parliamentary Counsel to OAG or to OLC in Belfast. So far as Scotland is concerned, drafts - together with the instructions to which they relate, if OAG have not already seen them - should also be copied to the relevant lawyer at OAG.

1.117 It is advisable to engage with drafters in Scotland or Northern Ireland as early as possible. It is sometimes better to send a less polished draft early than to send a polished draft with a tight deadline for comments.

1.118 Before sending a draft to Parliamentary Counsel to OAG or to OLC, make sure the instructing department consents to this (and to the sending of any other material proposed to be sent with the draft, and to the saying of anything that may be said about dealings between the UK government and a devolved administration in connection with the bill).

1.119 There may also be cases where a bill does not extend to Scotland or Northern Ireland but where drafting might need to be done on a contingency basis e.g. if there are discussions just before introduction about the possibility of extending the bill to Scotland or Northern Ireland. Drafts should also be shared with the Scotland or Northern Ireland drafters in such cases.

Sending drafts to Welsh drafters

1.120 Drafters at the Office of the Legislative Counsel in Cardiff expect to be consulted about any amendment (textual or otherwise) of an Act or Measure of Senedd Cymru - particularly given that such an amendment would usually require an amendment to text in the Welsh language¹⁸. They are also happy to assist with drafting queries that have a specifically Welsh aspect.

1.121 Subject to that, OPC do not routinely send drafts to OLC in Cardiff, relying instead on the instructing department to consult the relevant legal and policy teams in the Welsh Government about provisions that apply in Wales.

1.122 Instructions for provisions in Westminster bills which are to apply in Wales will usually be provided by UK government officials following consultation with officials in the Welsh Government. But it has been agreed that officials in the Welsh Government may where appropriate provide OPC with instructions directly; they should state the scope of their authority to provide instructions directly and OPC is not obliged to go behind any such statement, nor should OPC draft provisions in excess of it.

Devolution issues

1.123 Remind the department of the need to mention any devolution issues to the relevant co-ordinating department (i.e. the Scotland Office, the Wales Office or the Northern Ireland Office) and to seek to ensure that these issues are resolved as early as possible.

18. For information about obtaining the Welsh translation of an amendment to an Act or Measure of Senedd Cymru, see paragraph 1.85

Reprinting of Acts

1.124 The following points are relevant if you are operating on provisions of an Act which have been heavily amended and of which up-to-date copies are not readily available (though this is unlikely to be a problem now that www.legislation.gov.uk is mostly up to date) –

- remind the department that it is expected to make available an up-to-date text of the Act (or, if appropriate, of the relevant provisions);
- copies of that text need to be supplied - before or soon after second reading in the first House - to the Clerk of Legislation in the Commons, the Clerk of Public Bills in the Lords and the Librarians in each House;
- where the first House is the Commons and the bill is committed to a public bill committee, the Clerk needs enough copies to supply each member of the committee with a personal copy;
- if the bill is committed to a committee of the whole House, copies should be provided by the department through the Vote Office. In this case ask the PBO when, and how many, copies should be supplied.

Provisions rendering consolidation urgent

1.125 Where the bill is likely to create an urgent need for consolidation of part of the statute book, tell the drafter in charge at the Law Commission. This is also the sort of point that the department should mention in its legal issues memorandum.

Confidential documents

1.126 If dealing with material classified as “Secret” or “Top Secret”, be aware of the restrictions applying to the transmission of such material.

CHAPTER 2 TOWARDS PBL COMMITTEE

PBL Committee “gateway” meeting

2.1 A PBL Committee “gateway” meeting may be held - generally 6 to 8 weeks before a bill’s intended introduction date - for the purpose of considering whether the bill is on track for introduction.

2.2 Whilst the drafter is unlikely to be asked to prepare any readiness statement or other note for PBL Committee ahead of the meeting, the drafter is expected to attend the meeting and may be asked about matters such as progress on the bill, its likely scope and size, and whether it is on course for introduction on the intended timetable. Before the meeting, the drafter should therefore:

- tell the department what the drafter proposes to say about the readiness of the bill (if asked at the meeting),
- ask the department to make sure that the minister attending the meeting is aware of what the drafter proposes to say, and
- offer to meet the minister before the meeting to discuss the bill’s readiness, if the minister would find that helpful.

Otherwise there is a risk of the minister and the drafter giving PBL Committee different views about the readiness of the bill.

OPC readers’ panel

2.3 When the bill is in a reasonably settled state - but there is still time to make alterations to the text (including to the structure) - send the latest draft to the person responsible for organising meetings of a “readers’ panel”. The purpose of a panel is to get input from other drafters on how the bill is drafted (rather than to discuss the policy and whether the bill gives effect to it).

2.4 If in doubt about when to submit the bill to a panel, speak to your team leader or the person responsible for organising meetings.

Lead-up to pre-introduction meeting of PBL Committee

2.5 The following steps, described in more detail below, should be taken in the run-up to the meeting at which PBL Committee will consider whether to clear the bill for introduction:

- write to the PBO of the first House (copied to the second House);
- send the PBL Committee print to PBL Secretariat;
- send a note on the bill’s state of readiness to the Leader’s Office (with copies as mentioned below);
- where appropriate, send a print to Scotland/Northern Ireland/Wales;
- write to the Attorney General’s Office (copied as mentioned below);
- if possible, check the department’s legal issues memorandum and PBL Committee memorandum before they are sent, and be prepared to comment (if asked) on any of the other documents that the department needs to send to PBL Committee (ideally, before they are sent).

Write to PBO with copy of draft bill

2.6 Email the Clerk of Legislation at the PBO for the proposed House of introduction with—

- the draft bill, and
- the drafter’s views on the matters mentioned in para 2.10, para 2.11 (for a Commons starter) and para 2.12 (for a Lords starter). The drafter may find it convenient to deal with those matters in a letter, but the PBOs are happy for them to be dealt with in the email itself.

2.7 The email should also mention—

- whether a statement under section 20 of the Environment Act 2021 is to be made in respect of the bill¹⁹,
- whether a statement under section 13C of the European Union (Withdrawal) Act 2018 is to be made in respect of the bill²⁰, and
- if the bill is drafted in FrameMaker rather than Lawmaker.

2.8 The email should be sent early enough to leave time for resolving any issues before introduction - this usually means sending it before the PBL Committee meeting. Ideally the bill and email should be sent sufficiently in advance of the meeting to enable House matters to be resolved before the meeting.²¹ The PBO find it helpful if we give them a deadline for a reply.

2.9 Copy the email to the PBO for the proposed second House.

2.10 The following matters need to be covered in all cases—

- the bill’s scope or, in the Lords, what amendments would be regarded as relevant to its subject-matter (see below);
- the adequacy of the long title;
- whether King’s or Prince’s consent is needed;
- hybridity;
- whether legislative consent motions will be required (even if the bill extends to England and Wales only and there is clearly no need for such a motion).²²

19. For more on section 20 of the 2021 Act, see paras 3.38 to 3.46 of Chapter 3.

20. For more on section 13C of the 2018 Act, see paras 3.38 to 3.46 of Chapter 3.

21. On occasion, drafters have been asked at PBL Committee whether King’s or Prince’s consent is required (see para 2.58). A firm answer can be given if the PBO has responded before the committee meeting.

22. In doubtful cases all OPC needs to do is to tell the PBO what OPC knows about what is agreed between Westminster and the devolved administration on the need for a motion - OPC is not to be understood to be giving the PBO authoritative advice on the underlying constitutional issues.

- 2.11 If the bill is to be introduced in the Commons, the email/letter should also –
- consider whether any financial resolutions are needed and, if so, attach draft resolutions (see below);
 - state what provisions, if any, require italicisation as needing a financial resolution before they can be considered in committee;²³
 - where appropriate, ask whether the bill is likely to be certified as a money bill;²⁴
 - where the bill falls within SO No. 50 (i.e. has as its main object the creation of a charge), mention that fact.

2.12 If the bill is to be introduced in the Lords, the email should also indicate whether a privilege amendment is likely to be required on third reading. For more on this, see paras 6.50 to 6.52 below.

2.13 If the main purpose of the bill is to implement a Law Commission report, that should also be mentioned.²⁵

2.14 The PBO find it helpful if any email attachments sent to them include in their filename the short title of the bill to which they relate.

Scope and relevance

2.15 For an amendment to a bill to be admissible, it must be within the scope of the bill (in the Commons) or relevant to the subject-matter of the bill (in the Lords). The question whether an amendment is within scope, or relevant, is determined by the relevant PBO by reference to the contents of the bill.

- 2.16 In ascertaining the scope of a bill from its contents, the starting point is as follows:
- in the case of a bill with one topic, the scope of the bill is limited to that topic;
 - in the case of a bill with two clearly defined topics, the scope of the bill is likely to be limited to those two topics;
 - in the case of a bill with three or more topics, the scope of the bill is not limited to those topics, and consists of the whole range of matters of which those topics constitute examples. The scope of a multi-topic bill may be difficult to determine, and amendments not directed to objects specifically covered by the bill may be found to be within scope.

2.17 In the Commons, the scope of a bill may be extended at committee or report stage so as to bring within its scope amendments that are not “relevant” to the bill but that are “cognate” to its general purposes. See paras 5.29 and 5.30 below.

23.Note that even if there is a financial provisions clause, other provisions that deal expressly with money are likely also to require italicisation. For further information on italicisation see Chapter 5 of the Financial Resolutions pamphlet.

24.For further information, see the Money Bills pamphlet.

25.In the Commons, SO No. 59 applies to most such bills. Similarly, the Lords have special procedures for Law Commission bills (these are recorded in the Lords Procedure Committee 1st report of 2007-08 session (trial); 2nd report of 2010-11 session (recommendation that trial be made permanent); approved by House 7.10.10).

Financial resolutions

2.18 Consider whether there is a need for –

- a money resolution (for charges on the public revenue), or
- a ways and means resolution (for taxation and other ways of raising revenue for central finance).

For more detail see the Financial Resolutions pamphlet.

2.19 A resolution is needed to cover express provision for payments into the Consolidated Fund or the National Loans Fund, and may be required even where this result is produced by silence.

2.20 The draft resolution should be sent to the Commons PBO soon enough to allow time for vetting. A copy should also go to the department for information. Indicate to the department, if need be, that the draft has not yet been cleared with the PBO.

2.21 If you need instructions on the form (restrictive or otherwise) of the resolution, write to the department asking for its views. Send the Financial Secretary to the Treasury's office a copy of any letter or draft resolution sent to the department for this purpose.

2.22 OPC usually sends a resolution to the FST's office only when it is settled and ready to be initialled by the FST (see para 4.36). If, unusually, you send a draft resolution to the FST's office which is not yet ready for initialling, the covering email should indicate that.

Prepare text for PBL Committee

Text to PBL Secretariat

2.23 Send the text of the bill to PBL Secretariat by email, except where the bill is classified as "Secret" or "Top Secret" or where it is to be dealt with by correspondence (see para 2.25). Where for security reasons a hard copy is sent instead, the drafter can give a single copy of the text to the Private Office, who will send it to PBL Secretariat.

2.24 Ask PBL Secretariat about the deadline for delivering the text (usually a few days before the PBL Committee meeting).

2.25 Where PBL Committee is to deal with a bill by correspondence (as is usual for hand-out bills):

- the department will circulate the text of the bill (and other papers), and
- bear in mind that the process of obtaining approval will take longer.

Format of PBL Committee text

2.26 When preparing the text for PBL Committee:

- check that the long title fits the contents of the bill and that any square brackets have been removed;
- if the bill has up to now been classified as “Official-Sensitive” (or higher), see if the department is content for it to be reclassified as “Official” before the PBL Committee version, in order to facilitate circulation of the bill;
- there is no need to remove j-references from clause and Schedule headings;
- where drafts of the bill are sent to other drafting offices, it is best not to distinguish the PBL Committee text by putting a reference to that Committee in the footer, as a PBL Committee document should not be circulated to the devolved administrations.

Submission on state of readiness of bill

2.27 For any bill that is going to a meeting of PBL Committee for clearance to introduce, the drafter needs to prepare a short note assessing the bill’s state of readiness. The note should include information on the size of the bill, the likelihood of amendment and scope. It should also mention anything else that the drafter considers is likely to be of interest.

2.28 The readiness note should be cleared by the relevant team leader.

2.29 Send the note to the Commons Leader’s Office at least two days before the PBL meeting. It should be addressed to the Commons Leader and copied by email to –

- 1st PC and your team leader;
- the Principal Private Secretaries in the Commons and Lords Whips’ Offices;
- the designated contact at the Attorney General’s Office;
- the Secretary to PBL Committee;
- the Private Secretary in the Leader’s Office.

2.30 A readiness note is unlikely to be needed for a bill to be cleared by correspondence (which generally includes private members’ bills). If one is required, check with PBL Secretariat about the deadline for sending it to the Leader’s Office.

Write to the Attorney General’s Office

Timing and copy recipients

2.31 Write to the designated contact at the Attorney General’s Office with the PBL Committee text of the bill. A short email will usually suffice.

2.32 The email and bill should be sent to the AGO and copied to:

- those in the Legal Secretariat to the Advocate General for Scotland who appear on the OPC “useful contacts” list (whether or not the bill extends to Scotland);
- 1st PC (with any earlier correspondence referred to in the letter to the Attorney);
- MoJ, if there is anything that needs to be drawn to MoJ’s attention (e.g. any question about whether a statement under section 19(1)(a) of the Human Rights Act 1998 can be signed).

2.33 The email should be sent a few days ahead of the PBL Committee meeting (it makes sense to send it at more or less the same time as delivering the PBL text of the bill).

Contents of email

2.34 Do not summarise the contents of the bill or what it does, as the Law Officers will have the bill, the explanatory notes and other associated papers (including the department's legal issues memorandum).

2.35 If you have written to the Attorney General earlier on, mention any significant changes in the bill, or confirm your earlier report.

2.36 The Law Officers are keen that OPC should say no more than is necessary. So if you have seen the legal issues memorandum before it was submitted to PBL Committee and you have nothing to add, or where there is nothing in particular to say, the Law Officers will welcome a succinct statement to that effect.

2.37 If there are points to add to the legal issues memorandum, focus on those (rather than going over ground that has already been covered).

2.38 Ensure that the following matters, so far as relevant - and only so far as the AGO is not already aware of them - are brought to the AGO's attention –

- any provision that sets a target;
- any amendment to legislation that may be regarded as constitutionally significant (such as the Human Rights Act 1998);
- any provision that deals with a subject on which the Law Officers have advised, or that is likely to give rise to requests for their advice in future;
- any retrospective provision or provision for early commencement (the Law Officers' specific consent is required for such provisions - this will normally have been resolved between the department and the Law Officers);
- any power to amend primary legislation otherwise than by statutory instrument subject to the affirmative procedure;
- other potentially controversial powers to make secondary legislation e.g. a power that appears to be unusual or novel in scope or nature or that is subject to an unusual or novel procedure;
- any provision touching on the Law Officers' own functions;
- any provision concerning the way in which legal advice is given within government or to Parliament;
- any provision that the drafter considers to be legally otiose or to be included for presentational purposes only;
- any wording that the drafter has been instructed to use despite considering that the wording is unclear;
- any provision amending or touching upon Article 9 of the Bill of Rights (or the corresponding provision in the Claim of Right) in relation to freedom of speech and debate in Parliament;
- any provision that causes devolution difficulties or that deals with devolution issues in an unusual or novel way.

2.39 The Advocate General for Scotland has asked OPC to draw his attention to any provision which deals with jurisdiction in a way which is unusual - e.g. provision which allows a court in England and Wales to have jurisdiction over a matter occurring in Scotland

or in “Scottish waters”.

2.40 The Law Officers recognise that there is a residual category of matter which may need to be drawn to their attention. This consists of any provision of the bill which the drafter is concerned may be contrary to legal policy or the rule of law and which the drafter considers sufficiently important or troubling to bring to their attention.

2.41 The following issues no longer need to be drawn to the Law Officers’ attention, unless the drafter considers the provision in question to be novel, unusual or a cause for concern –

- the application of the bill to the Crown;
- matters of concern to MoJ and the Home Office, including matters of evidence; offences and penalties; defences; powers of arrest, entry or obtaining information; and procedure (e.g. need for consent to proceedings and absence of right of appeal);
- ECHR issues;
- whether the bill mentions more than one minister in juxtaposition, or names individual Secretaries of State;
- civil liability for breach of statutory duty;
- TUPE.

Other points

2.42 Before writing to the AGO, check with the department whether it has had any other dealings with the AGO that are relevant to the bill, in case there have been dealings of which the drafter is not aware.

Explanatory notes

2.43 For the most part, OPC is no longer involved in preparing or checking explanatory notes; or in sending them to PBL Secretariat (for circulation to PBL Committee) or to the relevant PBO (for approval and for introduction). Departments now deal directly with PBL Secretariat and with the PBO.

2.44 However –

- (i) The drafter should be prepared to give input if consulted about particular aspects of the notes e.g. sections relating to territorial extent and application.
- (ii) The section of the notes headed “Parliamentary approval for financial costs or for charges imposed” should either be written by the drafter or, if written by the department, cleared by the drafter.²⁶ Since this section of the notes will be of particular interest to the Commons PBO, where financial resolutions are needed it would be sensible for the drafter to check the proposed text with the PBO, before settling it with the department.

²⁶See Chapter 10 of the *Guide to Making Legislation*, in particular the section dealing with “Parliamentary approval for financial costs or for charges imposed”.

Other PBL documents

Legal issues memorandum

2.45 Remind the department to have its legal issues memorandum ready in time. It may also be helpful to remind the department that the memorandum ought to mention –

- whether the bill is affected by EU considerations (and any particular effects these have had on the drafting),
- whether any devolution issues arise (and, if so, whether their handling has been agreed with the relevant territorial departments),
- anything in the bill involving a risk of challenge in the courts (and anything in the bill that is designed to reduce that risk), and
- either that no difficulty is foreseen about postponing commencement for at least two months after Royal Assent or why earlier commencement is or may be required.

PBL Committee memorandum

2.46 It is advisable to check in advance what the department is going to say in its PBL Committee memorandum about the bill's readiness for introduction and the likely need for amendments during its passage. This enables steps to be taken, ahead of the PBL Committee meeting, to ensure that the drafter and the department share the same understanding of the bill's state of readiness. It may also be worth checking the minister's brief to see what is said about this (particularly where new issues have arisen since the memorandum was circulated).

Delegated Powers and Regulatory Reform Committee memorandum

2.47 The department must deposit copies of the delegated powers memorandum in the Vote Office and the Libraries of both Houses at the time when the bill is published, with updates as the bill transfers to the second House.²⁷

2.48 While the department is responsible for the contents of the memorandum, it is helpful for the drafter to review it (ideally before it is sent to PBL Committee).

Impact assessments

2.49 OPC is not generally involved in the impact assessments which departments have to prepare for PBL Committee and the Houses of Parliament.

2.50 There is guidance for departments about the justice impact test they have to perform as a mandatory part of their impact assessment.²⁸

PBL Committee papers

2.51 PBL Committee papers are circulated by email to 1st PC and the drafters responsible for the bill.

²⁷See Chapter 15 of the *Guide to Making Legislation*.

²⁸See www.justice.gov.uk/legislation/justice-impact-test.

Parliamentary Business & Legislation Committee

2.52 PBL Committee’s function in relation to bills is to decide whether they are authorised to be introduced.

2.53 PBL Committee normally decides whether a bill is to be introduced in the Commons or in the Lords.

2.54 While Commons SO No. 80 enables all bills other than bills of aids and supplies to start in the Lords, there are cases where this is likely to be thought inappropriate – notably bills whose main object is to impose a charge on public funds.²⁹

2.55 PBL Committee also decides the broad timing of introduction.

2.56 Instructions on the precise dates for notice of presentation, presentation, and publication should be obtained from the department responsible for the bill (who will have agreed the arrangements with No. 10).

2.57 The Committee’s approval is always given “subject to any minor or drafting amendments”, so these can be made up to the time of handing in (as of course can anything else that the Committee has agreed to or required to be done).

2.58 On occasions in the past drafters have been asked at PBL Committee whether King’s or Prince’s consent is necessary and, if so, whether it has been obtained. Para 17.15 of the *Guide to Making Legislation* states that, where consent is required, it should normally be sought before a bill is introduced and that, when considering whether to approve the bill for introduction, PBL Committee will expect to hear that consent has been obtained. In practice it may not always be practicable to obtain consent before the PBL Committee meeting, though an assurance that the Palace has been approached or that the matter is in hand may be sufficient. But in cases where the bill affects His Majesty personally, PBL Committee is likely to expect an assurance that consent has been obtained.

Bills published in draft

PBL clearance

2.59 The department must obtain clearance from PBL Committee before publishing a bill (or part of a bill) in draft.

2.60 The draft bill will be circulated to the members of PBL Committee. This is usually done by the department (rather than PBL Secretariat) for clearance by correspondence. The drafter is not required to produce a submission on a bill’s state of readiness before publication of the bill in draft.

2.61 The drafter should write to the Attorney General about the bill (see paras 2.31 and 2.32).

2.62 A bill which has been published in draft for consultation is subject to the normal PBL Committee procedure when it comes to introduction.

²⁹The convention that anticipatory spending on the implementation of an Act should not take place before second reading in the House of Commons, mentioned in Box 2.7 of *Managing Public Money* (www.gov.uk/government/publications/managing-public-money), may also be relevant here.

Contact with PBOs

2.63 Where a bill is to be published in draft, there is no general requirement to show the draft bill to the PBO before it is published.

2.64 Consultation with the PBOs before publication will however sometimes be advisable (for example, if advice on procedural questions could affect the wording of the text to be published).

2.65 Later, once the bill is intended for introduction in either House, it will be necessary to write to the PBO in the normal way.

Preparing large-print versions for publication

2.66 Check in good time whether the bill team need to be provided with a large-print version of the bill for publication in draft. Producing a large-print version can be tricky and the drafter may need to seek IT support.³⁰

30. For bills being introduced into Parliament the PBO take care of producing a large-print version.

CHAPTER 3 TOWARDS INTRODUCTION

Summary

3.1 The following steps (which are covered in more detail below) should be taken when heading towards introduction –

- ascertain from the department the date of introduction (and, for a Commons bill, whether it is to be published on the day of introduction or the next day);
- inform the PBO of the proposed timetable;
- for a Commons bill, ask the department how many copies of the bill and explanatory notes (up to a maximum of 30) it would like;
- ascertain from the department the name of the presenter (and, for a Commons bill, the names of the supporters);
- remind the department about the signing of the Human Rights Act statement and (where they are necessary) the Environment Act and European Union (Withdrawal) Act statements and the fact that OPC needs confirmation that the statement(s) has been signed before the text of the bill is handed in;
- finalise all relevant matters with the PBO (see paras 2.10 to 2.13) that have not already been finalised, including the long title and (for a Commons bill) any financial resolutions;
- in the case of a multi-volume bill, inform the PBO of the length of the bill and ask them when the text of the bill needs to be handed in.

Planning for introduction - Commons

3.2 Consult the department about the timetable for introduction and what procedure is wanted. Keep the PBO informed. Note that day 1, in the case of either of the available procedures, could be the day of the King’s Speech. It could also be the day of the PBL Committee meeting, in which case you may need to liaise closely with the PBO about the timing of handing-in.

“3-day procedure”

3.3 The “3-day procedure” (which is now fairly unusual) is as follows:

- notice of presentation of the bill is handed in on day 1,
- the bill is presented, read the first time and ordered to be printed on day 2, and
- the bill is published on the morning of day 3.

3.4 Under this procedure, the text need not be handed in until day 2 and copies of the bill cannot be made available for a press conference until day 3.

3.5 Day 3 can be a non-sitting Friday.

3.6 The general rule is that the PBO will not embargo a bill so that the time of its publication on day 3 coincides with the time of a ministerial press conference.

“2-day procedure”

3.7 The “2-day procedure” is as follows:

- notice of presentation of the bill is handed in on day 1, together with the text of the bill,
- the bill is presented, read the first time and ordered to be printed on day 2, and
- the bill is published immediately afterwards, the print having been produced in anticipation of the formal order to print, but embargoed until the moment of presentation. (This sort of embargo is done so as not to pre-empt presentation in the House.)

3.8 Under this procedure, the press conference can be on day 2, but it will not be possible to be sure in advance at exactly what time copies of the bill can be made available because of the inevitable uncertainty about the precise time of presentation.

3.9 Presentation normally follows question time, which ends –

- at 3.30pm on Monday,
- at 12.30pm on Tuesday or Wednesday (except on a Tuesday or Wednesday following an adjournment of more than two days, in which case it ends at 3.30pm),
- at 10.30am on Thursday.

But there might be a ministerial statement or other business after questions and before presentation.

3.10 On Friday presentation takes place soon after the House meets at 9.30 am.

Copies of bill and notes

3.11 The Commons PBO will, at OPC’s request, arrange for up to 30 copies of a bill and of the explanatory notes to be made available in the Vote Office free of charge to the member in charge of the bill. Ask the department what is wanted in this regard.

3.12 The Vote Office may also be willing to print further copies of the bill after each amending stage. Departments should contact the Vote Office by email to discuss what is possible.

Planning for introduction - Lords

3.13 There is no formal notice of presentation (unlike in the Commons).

3.14 Bills are usually presented at the beginning of public business. Lords SO No. 39(3) also enables a bill to be presented at the end of public business, but this is rarely done.³¹

31. See para 8.17 of the *Companion to the Standing Orders*.

- 3.15 Public business normally begins—
- at 2.30pm on a Monday or Tuesday,
 - at 3pm on a Wednesday,
 - at 11am on a Thursday,
 - at 10am when the Lords sit on a Friday.

The time for handing in the text of the bill is therefore earlier on a Thursday or Friday (see Chapter 11).

3.16 In general, the Lords will publish a bill in hard copy on the day it is presented only if there is good reason to do so and doing so is practical ³².

3.17 This means that the usual procedure for introducing a bill in the Lords is essentially the same as the 3-day procedure for introducing a bill in the Commons:

- write to the PBO with the short and long titles on day 1;
- the bill is presented, read the first time and ordered to be printed on day 2 (so the text is handed in that day);
- the bill is published in hard copy³³ on day 3.

3.18 Any press conference or press release must therefore be delayed until the day after presentation, but needs to occur early on that day if it is to coincide with publication in hard copy of the bill.

3.19 See also paras 4.13 and 4.17 for further details about the information to be provided to the PBO on days 1 and 2.

3.20 The department must make its own arrangements to obtain copies of a Lords bill (and explanatory notes) for a press conference from the Stationery Office or the printers.

Bills over 600 pages long

3.21 Bills up to 600 pages long can be published in a single volume by either House.

3.22 When dealing with a bill that is likely to exceed 600 pages (including the cover and the arrangement), consult the relevant PBO well in advance of the proposed date of introduction, and expect them to require the text of the bill to be handed in at least a day before it would need to be handed in if it were a single-volume bill.

3.23 The PBO will want to discuss the division between the volumes.

3.24 Warn the PBO if late additions to a single-volume bill may take it over the limit.

3.25 It may be possible for the explanatory notes for a multi-volume bill to be handed in after the bill itself (and still be published at the same time). That would need to be discussed with the PBO.

32. The Further and Higher Education Bill 1991/2 is a rare example of a bill introduced and published on the same day (4 November 1991).

33. The Lords Public Bill Office have confirmed that a bill will usually be made available online at some point in the evening of day 2 or overnight.

Names of presenter and supporters

3.26 Ask the department for the name of the presenter and, for a Commons bill, the names of the supporters.

3.27 In the Commons, the minister named on the back of the bill as presenter is generally the Secretary of State or, where the Secretary of State is a peer, the most senior Commons minister.

3.28 However, it is for the minister in charge of the department to decide which minister is to present the bill in each House. So the normal practice (namely that the bill is presented in the Commons by the most senior minister) may be departed from without obtaining permission from PBL Committee. Where departing from normal practice, the minister who is to present the bill in the Commons should write to PBL Committee informing the Committee of the proposed departure.

3.29 In the Lords, the presenter should normally be the person expected to move second reading³⁴.

3.30 For the form as regards ministers' names etc, see Chapter 10.

Human Rights Act statements

General

3.31 Remind the department that the drafter needs to receive - no later than the morning of the day on which the text of the bill is handed in, but preferably a couple of days before that - confirmation that the minister in charge of the bill (see paras 3.33) has personally signed the Human Rights Act statement. Without that confirmation the bill cannot be printed with the Human Rights Act statement in the usual form.

3.32 The department should make its own arrangements for retaining the original statement. OPC does not need to receive a copy of the signed statement - merely confirmation that it has been personally signed. The statement is usually undated.

Who should sign the statement

3.33 The statement must be signed by the minister in charge of the bill. This is usually the person named on the back of the bill as presenter and - at least in the Commons - is generally the Secretary of State or, in a department without a Secretary of State, other minister in charge of the department (even where the intention is for the Secretary of State/other minister in charge to play a minimal role in taking the bill through Parliament).³⁵

34.The guidance in paragraph 3.29 was originally the logical result of two separate things. First, the presenter of the bill is usually taken to be the minister "in charge of the bill" for the purposes of section 19 of the Human Rights Act 1998 and therefore makes the statement of compatibility. Secondly, para. 8.27 of the *Companion to the Standing Orders* stated that the minister who makes the statement of compatibility should under normal circumstances move the second reading of the bill. In the 26th edition of the *Companion to the Standing Orders* what was para. 8.27 was omitted, but the Lords Whips Office have confirmed that the guidance in paragraph 3.29 still stands.

35.It is worth noting here, although the case concerned was about the take-up of a bill on its transfer from the Lords, that where the person named on a take-up slip as the member in charge was on paternity leave at the time the take-up slip was filled in, another minister was regarded as being in charge of the bill while that member was on paternity leave. The other minister signed the HRA statement.

Form of the statement

3.34 The precise form of the statement is set out at para 11.19 of the *Guide to Making Legislation*.

3.35 The statement may be signed by the Minister in hard copy or electronically.

Publication of the statement

3.36 The statement is normally published on the cover of the bill. Electronic publication suffices (this is relevant where a House decides not to print a bill).

3.37 If the statement is made after the bill is published, or the bill is not published, a written ministerial statement will need to be made about the Human Rights Act statement.

Environment Act and European Union (Withdrawal) Act statements

3.38 Section 20 of the Environment Act 2021 imposes a duty on the minister in charge of a bill³⁶ in either House to make a statement before Second Reading if the minister is of the view that the bill contains provision which would be environment law.

3.39 Section 13C of the European Union (Withdrawal) Act 2018 imposes a duty on the minister in charge of a bill³⁷ in either House to make a statement before Second Reading if the minister is of the view that the bill contains provision which would affect trade between Northern Ireland and other parts of the United Kingdom.

3.40 If a statement under section 20 or section 13C is required it must published, and this will normally be achieved by the statement being included on the front of the bill in the same way as the Human Rights Act statement.

3.41 Remind the department that if the bill contains provision which would be environment law, or which would affect trade between Northern Ireland and other parts of the United Kingdom, the drafter needs to receive - no later than the morning of the day on which the text of the bill is handed in- confirmation that the minister in charge of the bill has personally signed the Environment Act or European Union (Withdrawal) Act statement. Without that confirmation the bill cannot be printed with the statement on the cover.

3.42 What is said in paragraphs 3.32, 3.33 and 3.35 to 3.37 in relation to a Human Rights Act statement applies equally in relation to an Environment Act or European Union (Withdrawal) Act statement.

3.43 If your bill needs an Environment Act statement, the front cover of the bill will say either –

[Name of Minister] has made the following statements under section 20(2)(a) and (3) of the Environment Act 2021.

36. The duty applies in relation to all government bills from the 2022/23 session onwards, including carry-over bills and hybrid bills. The duty does not apply in relation to Private Members' Bills.

37. The duty applies in relation to all government bills from 20 February 2024 onwards (the day after the day on which the Windsor Framework (Constitutional Status of Northern Ireland) Regulations 2024 were made).

In my view-

(a) the [name of the bill] contains provision which, if enacted, would be environmental law, and

(b) the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law.

Or

[Name of Minister] has made the following statements under section 20(2)(a) and (4) of the Environment Act 2021.

In my view the [name of the bill] contains provision which, if enacted, would be environmental law. I am unable to make a statement under section 20(3) of the Environment Act 2021 [copy any explanation in the original statement] but the Government nevertheless wishes the House to proceed with the Bill.

3.44 If your bill needs a European Union (Withdrawal) Act statement, the front of the bill will say either –

[Name of Minister] has made the following statement under section 13C(2)(a) of the European Union (Withdrawal) Act 2018.

In my view the [name of the Bill] does not contain provision which, if enacted, would have a significant adverse effect on trade between Northern Ireland and the rest of the United Kingdom.

Or

[Name of Minister] has made the following statement under section 13C(2)(b) of the European Union (Withdrawal) Act 2018.

I am unable to make a statement under section 13C(2)(a) of the European Union (Withdrawal) Act 2018 [copy any explanation in the original statement] but the Government nevertheless wishes the House to proceed with the Bill.

3.45 The wording of each of the statements has been agreed with the PBOs and should not be changed.

3.46 In Lawmaker, the wording for Environment Act and European Union (Withdrawal) Act statements can be found in a bill folder entitled “Model statements (Environmental statements and Section 13C EUWA statements)” on the Lawmaker bill projects page. Copy and paste the wording onto the front cover of the bill. The wording should appear below the Human Rights Act statement under the heading “ENVIRONMENTAL STATEMENTS” or “NORTHERN IRELAND-GREAT BRITAIN TRADE STATEMENT”, as appropriate.

Finalise draft financial resolutions (Commons introduction only)

3.47 If you have not already done so, ensure that the PBO (and department) are content with any financial resolutions that are required.

Press releases etc

3.48 A minister or department should not normally make copies of a bill available to the public or issue press releases about its provisions before the bill is available to members of the

House in which the bill is introduced. That will not happen until the bill has been published following an order to print given by that House. Any proposals to depart from this normal practice should be discussed first with the PBO concerned.

CHAPTER 4 INTRODUCTION TO SECOND READING

Summary

- 4.1 The following steps need to be taken to introduce the bill:
- write, as described below, to the PBO for the House of introduction;
 - for a Commons bill, hand in a notice of presentation to the PBO;
 - hand in the bill to the PBO.
- 4.2 Check whether the department has sent its explanatory notes to the PBO.
- 4.3 The following steps need to be taken at or shortly after introduction:
- Commons bill: send any financial resolution to the Financial Secretary to the Treasury’s office for initialling, and table the resolution once you are informed that it has been initialled;
 - Commons bill: send any programme motion to the Whips for tabling (NB an initial programme motion can be tabled only on a sitting day);
 - Lords bill: send any order of consideration motion to the Whips.

Presentation in the Commons

- 4.4 For the purposes of presenting a bill in the Commons, the following are required –
- a notice of presentation (giving the short and long titles);
 - the information described in paras 4.7, 4.8 and 4.11;
 - the text of the bill (see below for the mechanics of handing-in).

If the “2-day procedure” is being used (see para 3.7), it is usual to give the Commons PBO all of the above at the same time.

4.5 The notice of presentation (in FrameMaker or Word) should be emailed to the Clerk of Publishing and the Commons PBO’s general email address.

4.6 Notice of presentation cannot be handed in on a non-sitting Friday or in a recess. This means that, on the day of the King’s Speech, the most a minister can do is hand in the notice of presentation, for presentation and first reading the following day.

4.7 Time of publication and copies: Let the Commons PBO know what (if anything) is wanted as regards time of publication of the bill and availability of copies in the Vote Office. It is usual to provide this information to the PBO when handing in the notice of presentation. A suitable form of words to use when making a request for copies, where the 2-day procedure is used, is:

“would like the Bill to be published immediately after it is presented, and would like you to arrange for [*the desired number, not more than 30*] copies of the Bill [and the Explanatory Notes] to be available in the Vote Office at that time, addressed to [*name of Minister*]”.

The copies are provided free of charge. There may be no need to refer to the explanatory notes, as practicalities relating to the notes are likely to have been dealt with by the department directly with the PBO. But it would be as well to check.

4.8 Names of presenter and supporters: Let the Commons PBO have the names of the

presenter of the bill and those supporting it. The maximum number of names is 12. It is usual to give the names to the PBO at the same time as handing in the notice of presentation, though where the bill is only handed in to the PBO on the day of presentation (i.e. where the 3-day procedure is being used), supporters' names may be supplied as late as the morning of that day.

4.9 Check that names are in the proper form and that supporters' names are in the right order (see Chapter 10).

4.10 The minister in whose name the notice of presentation is given is not required to be available in the House on the day of presentation - any other member of the government can present the bill on the named minister's behalf.

4.11 Other information: Tell the PBO –

- the position as regards the matters mentioned in paras 2.10 to 2.13, so far as relevant to the Commons (or say that these matters have already been cleared) - if King's or Prince's consent is required, the PBO also find it helpful to be reminded of the need for signification;
- the position as regards the Human Rights Act statement and any Environment Act or European Union (Withdrawal) Act statements;
- whether the bill gives rise to the need for a legislative consent motion in any of the devolved legislatures (this could be done by reference to the relevant para(s) of the explanatory notes, if you have seen the final version).

Presentation in the Lords

4.12 For the purposes of presenting a bill in the Lords, the usual procedure is as follows –

- on day 1, give the Lords PBO the information described in para 4.13;
- on day 2, hand in the bill to the Lords PBO (see below for the mechanics of handing in) and give the Lords PBO the information described in para 4.17.

The bill is then published in hard copy³⁸ on day 3.

4.13 On day 1, email the Lords PBO with the name of the presenter of the bill, the date of intended presentation and the long and short titles. The Lords PBO expect to receive this information by 5pm on the working day before the intended presentation date. If it is not possible to give this information to the Lords PBO by that deadline then make sure to discuss the matter with them before the deadline as the PBO may be prepared to operate to a shorter timescale.

4.14 There are no supporting names on the bill, and no formal notice of presentation.

4.15 The Lords PBO wish to have the long title confirmed in advance of the date of presentation so that a brief can be prepared for the peer in charge of the bill.

4.16 Although there are no known precedents, it is possible for a bill to be presented on the day of the King's Speech. But this is possible only if the day of the King's Speech is the last sitting day of the week.³⁹

38. The Lords Public Bill Office have confirmed that a bill will usually be made available online at some point in the evening of day 2 or overnight.

39. *Erskine May* para 8.36.

- 4.17 Other information: When handing in the text of the bill on day 2, tell the PBO:
- the position as regards the matters mentioned in paras 2.10 to 2.13, so far as relevant to the Lords (or say that these matters have already been cleared) - if King's or Prince's consent is required, the PBO also find it helpful to be reminded of the need for signification;
 - the position as regards the Human Rights Act statement and any Environment Act or European Union (Withdrawal) Act statements;
 - whether the bill gives rise to the need for a legislative consent motion in any of the devolved legislatures (this could be done by reference to the relevant para(s) of the explanatory notes, if you have seen the final version).

Handing in the bill

Time for handing in

4.18 In the Commons, the bill is usually handed in at the same time as the notice of presentation, where the 2-day procedure is being used; but there can be - and, in the case of a private member's bill, usually is - an interval between handing in the notice and handing in the bill.

4.19 The Lords normally expect to receive the text of the bill a while before the time of presentation for publication the following day.

4.20 The tables in Chapter 11 give the handing-in deadlines.

Mechanics of handing-in

4.21 In Lawmaker, in the "Document information" tab, in the "Printed by" box select the House of introduction; complete the "Introduced/presented by" and (for a Commons bill) "Supporters" boxes (names and titles will auto-correct but you will need to correct the order of precedence for supporters).

4.22 Renumber your provisions and update cross references. Remove any j-refs, comments or tracked changes.

4.23 If there are any error messages, try to fix them before handing the bill in. (Some error messages will report as an error something you have deliberately chosen to do e.g. having definitions out of alphabetical order. Errors of that kind can be ignored although you may want to warn the PBO about them when you hand in the bill).

4.24 Insert a front cover, which will include reference to the explanatory notes and the usual ECHR statement (you will need to add the Minister's name). Where an Environment Act or European Union (Withdrawal Act) statement is necessary, copy and paste the relevant wording (see paragraph 3.46). The front cover will include the arrangement. Note that the arrangement does not update automatically. To update the arrangement, select "Insert table of contents" to insert a new one.

4.25 Insert a back cover - note that the long title of the bill will not display correctly until a PDF is rendered. The back cover does not update automatically so will need to be reinserted following a change to the long title or list of supporters.

4.26 Renumbering, updating cross-references and inserting front and back covers can all be

done without opening the bill by using the “Finalise provisions” option on the “Actions” menu of the project tab.

4.27 Share the bill with the PBO for the House of introduction. A greyed-out (read-only) version of the bill will then appear on the right-hand side of the project tab.

4.28 Email the PBO to alert them to the fact that you have shared the bill with them. Attach to the email a PDF of the bill as handed-in. For the Commons PBO, send the email to pbohoc@parliament.uk, copied to the Clerk of Publishing. For the Lords PBO, send the email to lords-tabling@cabinetoffice.gov.uk. The PBOs find it helpful if any email attachments sent to them include in their filename the short title of the bill to which they relate.

Short title

4.29 Where it is clear that a bill will not become law until after the start of next year, it is normally helpful to give the bill from the outset a short title referring to next year (instead of the year in which the bill is introduced) - this means the short title (and any references in the bill to the short title) will not need to be changed by way of printing in the next year. If in doubt whether it is appropriate to do this, consult the relevant PBO.⁴⁰

Explanatory notes

4.30 The department sends the explanatory notes directly to the PBO, rather than via OPC.

4.31 Where an error in the notes is discovered after they have been published, it may be possible for the PBO to issue a correction slip or to reissue the notes. However, this is rare - and whether a particular error calls for a correction slip or the reissuing of the notes is a matter for the department to raise with the relevant PBO.

4.32 A correction slip would be circulated by making copies available to members and peers (through the Lords Printed Paper Office or the Commons Vote Office). It may be sufficient for a minister to point out the error at the beginning of a debate.

The “Two Weekend Rule”

4.33 Two weekends should intervene between publication and second reading.

4.34 Although this is not always possible, in the Lords the rule is almost always observed.

4.35 For the recommended minimum intervals between stages in the Lords, see para 8.04 of the *Companion to the Standing Orders*, or Erskine May *para 29.3*.

Financial resolutions (Commons only)

Authority to table

4.36 Email a pdf of the final version of any financial resolution to the FST’s office, asking for

40. For instance, in the case of the Welfare Reform Bill (session 2006-07), where the Bill was introduced in the summer with a view to being carried over, the Commons PBO preferred a reference to the current year as it “assumed less” about future progress.

confirmation that the FST has initialled the resolution (this is authority to table it).

4.37 OPC does not need to be given the original initialled resolution (or any copy of it).

4.38 To avoid delay, it is helpful to give advance notice to the FST's office that a financial resolution will need initialling. It is also helpful to provide one or two paragraphs explaining the nature of the resolution concerned to assist the FST's office with briefing the FST.

4.39 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. It will still be tabled in the FST's name.

Tabling

4.40 Financial resolutions should be emailed to the Clerk in charge of the bill, copied to pbohoc@parliament.uk. A suggested form of words for the email is:

“Please arrange for the attached notice[s] of motion to appear [on Future Business]⁴¹ in the [name of Minister] or [name shown].”

4.41 Financial resolutions should be emailed in PDF. (Do not forward a scanned copy of an initialled resolution received from the FST's office, as the text of a scanned copy cannot be copied and pasted into the Order Paper.) The PBO find it helpful if any email attachments sent to them include in their filename the short title of the bill to which they relate.

4.42 The earliest possible time for handing in a financial resolution is with the notice of presentation. If handing in a financial resolution at that time, the email should be sent to the Clerk of Publishing (copied to pbohoc@parliament.uk), as no Clerk is likely to have been allocated to the bill before it has been presented.

4.43 Financial resolutions for government bills are normally taken after second reading (this means they are taken forthwith - SO No. 52(1)(a)). Where they are to be taken at that time, they should be tabled at least a few days before second reading (and ideally they should appear on the order paper at least 5 clear days before second reading).

4.44 Procedurally, it is sufficient if a resolution is passed before any provisions in the bill which necessitate it are reached in committee. But a resolution that is not taken at second reading may be debated for up to 45 minutes (SO No. 52(1)(b)).

4.45 Financial resolutions cannot be tabled in a recess or on a non-sitting Friday.⁴² So where second reading is the first day back after a recess, the motion must be tabled before the recess.

4.46 SO No. 51(1) allows a ways and means resolution to be moved without notice at any time after the end of the debate on the Address in reply to the King's Speech at the beginning of a Session but, except in the case of Budget resolutions, notice is normally given of all resolutions.

4.47 Financial resolutions for private members' bills are almost always tabled after second reading and moved shortly before committee. In all cases, the Whips' office should be consulted before tabling a financial resolution for a private member's bill.

41. Where, unusually, the motion is to form part of the Main Business for the following day, this should be made clear (and these words should be omitted).

42. SO No. 64 (amendments etc to bills during a recess) does not extend to financial resolutions. Similarly, SO No. 12(3) provides that certain things, but not financial resolutions, can be tabled on a non-sitting Friday.

Programme motion (Commons only)

4.48 The Whips table programme motions.

4.49 The initial programme motion must be tabled before second reading.

4.50 An initial programme motion cannot be tabled during a recess or on a non-sitting Friday.⁴³ So where second reading is the first day back after a recess, the motion must be tabled before the recess.

4.51 The Whips usually take the lead in instructing, but the department may have a role. A draft of the motion should be sent to the Commons PBO, the Whips and the department for approval.

4.52 Where the programme motion is drafted in FrameMaker, send the Whips a pdf version and a version saved with the .rtf suffix. (The file with the .rtf suffix can be altered by them using any version of Word.)

Order of consideration motion (Lords only)

4.53 In the Lords, OPC is expected to provide the Whips, before second reading, with an order of consideration motion for committee stage. This is to enable them to move the motion on the day of second reading (immediately after the motion to commit), if they wish to do so.

4.54 For more on order of consideration motions, see para [6.1](#) onwards.

⁴³SO No. 64 does not extend to programme motions; and SO No. 12(3) does not apply to programme motions (other than those relating to public bill committee).

CHAPTER 5 COMMITTEE, REPORT AND THIRD READING - COMMONS

Public bill committee

Programming sub-committee (PSC) resolution

5.1 The detailed programming of proceedings in a public bill committee is usually achieved by means of a programming sub-committee resolution. The Programming of Bills pamphlet contains more detail on programming sub-committees.

5.2 Where a PSC resolution is wanted:

- the Whips usually instruct OPC, but some matters of detail may be dealt with by the department;
- send the draft resolution to the PBO, the Whips and the department for approval;
- send the final version to the PBO (copied to the Whips and the department), for them to take to the PSC meeting.

5.3 The PBO may ask OPC if a “spoof” order of consideration is wanted, in order to enable amendments to be marshalled before the public bill committee’s first sitting. In such a case, check with the Whips, who will confirm –

- whether a spoof order is wanted,
- what the order should be (usually, Schedules to be brought up to be considered with the clauses to which they relate), and
- when it should be tabled.

5.4 Note:

- generally, an order of consideration motion cannot be tabled while the House is not sitting (SO No. 64 does not extend to such notices); but
- programme and order of consideration motions relating to a bill committed to a public bill committee can be tabled on a non-sitting Friday by virtue of SO No. 12(3)(b) and can be tabled at any point after second reading (but cannot be tabled during a recess).

Order of consideration motion

5.5 For a bill that is not programmed (e.g. a private member’s bill), an order of consideration motion and/or a sittings motion may be wanted. The Whips generally instruct OPC if any such motions are needed.

Evidence motions (to be tabled before first meeting of public bill committee)

5.6 Table a motion in the following terms before the first meeting of the public bill committee –

“That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.”⁴⁴

44. The committee has the power to report written evidence to the House (SO No. 84A(3)), but this motion requires written evidence to be reported unless the chair decides otherwise (e.g. because it is irrelevant or libellous).

5.7 If the public bill committee is to hear oral evidence, also table a motion in the following terms before the first meeting of that committee –

“That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.”⁴⁵

5.8 The motions are tabled in the name of the minister taking the bill through the committee. OPC accordingly needs to obtain the department’s authority to table the motions. These motions can be tabled by email (to the Commons PBO).

5.9 Motions concerning evidence are not necessary for a private member’s bill (even where the bill is a government hand-out bill).

5.10 Letters from a bill minister to the committee form part of the written evidence and may be admissible (under the rule in *Pepper v Hart*) for the purposes of construing the bill.

Before report: looking ahead to next stages

5.11 In the case of a Commons starter, this is the time to begin to consider some of the matters mentioned in Chapter 7 (transfer to second house).

5.12 In the case of a Lords starter, this is the time to begin to consider Chapter 8 (to and fro or “ping-pong”). Where the printing of the Act will need to be given priority, see para 9.7 onwards.

Report

Supplementary programme motion

5.13 The Whips generally instruct OPC if a supplementary programme motion is needed.

Changes to the order of consideration

5.14 The case for changing the normal order of consideration on report is seldom as strong as in committee, particularly if everything is being debated on the same day.

Recommittal

5.15 This is occasionally done to enable a new clause or amendment to be dealt with after committee stage but in accordance with committee (rather than report) procedure. A supplementary programme motion is usually needed. For other circumstances in which recommittal may be wanted see *Erskine May* para 28.141.

5.16 A motion to recommit can be made at any time before third reading (and can be made before or after report). Notice of such a motion must be given.

45.This allows the committee to discuss the allocation of questions etc in private.

Third reading amendments

5.17 In practice, amendments may not be made at third reading.

5.18 SO No. 77 allows only “merely verbal” (i.e. non-material) amendments. The PBO has indicated that the words are now effectively redundant as the only amendments that might be permitted are things that could be done by way of printing (as to which see para 5.89).

Removal of privilege amendment (Lords bills only)

5.19 A Lords bill is never italicised in the Commons, thanks to the privilege amendment, but such a bill may need one or more financial resolutions before the common-form subsection inserted by way of privilege amendment can be removed.

5.20 If there has been a privilege amendment in the Lords, table an amendment for committee to leave out the relevant subsection.

5.21 An amendment that removes the provision inserted by the Lords by way of privilege amendment counts as an amendment for the purposes of Commons SO No. 71 (Report of bill from committee of the whole House). So a bill amended in this way will have a report stage even if this is the only amendment made in committee of the whole House.

Programming committee

5.22 In the rare case of a bill being subject to a programme order that does not disapply SO No. 83B (programming committees), consider whether a motion is required for that committee (in respect of proceedings in committee of the whole House or later stages). If in doubt, consult the Whips.

Points to consider before tabling amendments

5.23 In summary, the following points should be considered before tabling:

- ensure the department obtains any necessary PBL Committee clearance (see paras 5.24 to 5.27);
- where appropriate, ensure the department obtains clearance from the relevant policy committee;
- ensure amendments are in order (paras 5.28 to 5.32);
- distinct matters should be dealt with by different amendments (para 5.33);
- deal with any hybridity concerns (para 5.34);
- consider whether any amendment requires King’s or Prince’s consent (para 5.35);
- check whether any financial resolution is needed (para 5.36);
- where appropriate, remind the department to liaise with the Law Officers (para 5.37);
- where appropriate, send draft amendments to drafters in Scotland, Northern Ireland or Wales (para 5.38);
- where appropriate, remind the department of the need to update the delegated powers memorandum for the Delegated Powers and Regulatory Reform Committee (para 5.39);
- prepare explanatory statements to cover each amendment (paras 5.40 to 5.44).

PBL Committee clearance etc

5.24 Remind departments of the need to obtain the agreement of PBL Committee (and if necessary the relevant policy committee) before amendments are tabled (or commitments to table amendments are given).

5.25 The agreement of PBL Committee is not required for minor and technical amendments. But this exception applies only to amendments in respect of which PBL Secretariat confirms in writing that PBL Committee clearance is not required (on the basis that PBL Secretariat regards the amendments as minor and technical).

5.26 Remind departments to ensure that the Whips are made aware when the volume of amendments is likely to be significant relative to the size of the bill. It cannot be assumed that this will be clear to the Whips from PBL Committee correspondence sent to them.

5.27 PBL Committee clearance is required for government amendments that are to be handed out to backbenchers to table, and for the decision to hand them out.

Orderliness

5.28 Clear with the PBO, in advance, any question as to whether a proposed amendment is in order. Para 28.105 of *Erskine May* lists the grounds on which an amendment might be out of order. In particular, check a proposed amendment has not already been tabled by another Member.

5.29 Where amendments are not “relevant” to a bill but are “cognate” to its general purposes, it is possible to extend the scope of a bill by means of an instruction to the committee. This enables the committee to consider the amendments.⁴⁶

5.30 This is also possible on report, though the procedure involves a resolution rather than an instruction.⁴⁷

5.31 If the Department is proposing to extend the scope of the bill by using such an instruction or resolution, advise the Department to consult the Whips Office before putting the proposal to their Minister.

5.32 There is no equivalent procedural device in the Lords.

Amendments in the same place on distinct matters

5.33 To facilitate debate, two or more matters that are quite distinct should where possible be dealt with by separate amendments, even if they are to be inserted at the same place in the bill.

Other points to consider before tabling

5.34 Hybridity: Discuss with the PBO any amendment that might hybridise the bill.

46. See the instructions in relation to the Crime and Security Bill 2009-10 (10.2.10), the Welfare Reform Bill 2011-12 (9.5.11), the Local Audit and Accountability Bill 2013-14 (28.10.13) and the Elections Bill 2021-22 (20.09.21).

47. See SO No. 75. See the resolution of 31.10.11 on the Legal Aid, Sentencing and Punishment of Offenders Bill and the resolution of 1.3.23 on the Social Housing (Regulation) Bill.

5.35 Consider whether an amendment might give rise to a need for King’s or Prince’s consent (see paras 1.8 to 1.13). That may be necessary, for example, if an amendment makes significant changes to provisions in respect of which such consent has already been given.

5.36 Consider whether any government amendment (or other amendment that the government wishes to accept) needs a financial resolution or additional financial resolution to cover it. If so, ensure that the resolution is tabled and passed in time to enable the amendment to be called. For further information, see para 4.36 onwards.

5.37 Law Officers: Remind the department to obtain the Law Officers’ agreement to any amendment that makes retrospective provision or involves early commencement (see paras 1.23 onwards). If proposed amendments raise a matter of interest to the Law Officers and on which they would be expected to have a view, remind the department to consult the Law Officers and ask to be copied in on correspondence with the Attorney General’s Office.

5.38 Scotland, Northern Ireland and Wales: If the bill extends to Scotland or Northern Ireland, check with Parliamentary Counsel to the Office of the Advocate General (in Edinburgh) or the Office of Legislative Counsel (in Belfast) that amendments are apt for them. Subject to the general constraints on disclosure (see para 1.107 etc) this is best done by sending them copies of the amendments as they are prepared. Over time, there is likely to be an increasing need to consult the Office of the Legislative Counsel in Cardiff on a similar basis.

5.39 Supplementary memorandum for DPRRC: Where the bill is amended in a way that affects delegated powers, the department should update its delegated powers memorandum accordingly and provide that updated memorandum to the Delegated Powers and Regulatory Reform Committee when the bill transfers to the Lords. See para 31 of the Committee’s Guidance for Departments (November 2021).

Explanatory statements on government amendments

5.40 OPC is expected to draft explanatory statements on government amendments at committee and report stage. The statement should be of no more than around 50 words per amendment, and should describe the amendment’s intended effect (without arguing for its adoption).

5.41 Explanatory statements are not required for amendments to bills committed to a select committee (e.g. a hybrid bill). But they are required for government amendments to a private member’s bill.

5.42 Explanatory statements must be tabled with the amendments themselves. A statement should be given for each amendment, except where several amendments are tabled which are introductory to, consequential upon or closely related to another amendment (in which case the statement should state that fact and will be printed only with the first amendment in the sequence, unless it is required to enable a later amendment to be understood).

5.43 Other practical points on explanatory statements –

- statements may describe the effect of amendments in the indicative mode (“this amendment changes *x* to *y*”) and so differ from explanatory notes on amendments made in the second House, for which the conditional mode (“this amendment would change *x* to *y*”) is required;
- it may be useful for a statement to indicate where a new clause is to go;
- a standard statement is generally used for the amendment removing the Lords’ privilege amendment.⁴⁸

5.44 For more on the content and form of statements, see Chapter 22 of the *Guide to Making Legislation* and the Commons PBO guidance for members on explanatory statements.

Tabling amendments

Authority

5.45 Table amendments only when the department has informed you that the minister has authorised them to be tabled. The minister needs to have given authority in relation to the specific amendments. Oral authority from the department is normally good enough, but if in doubt ask for written confirmation.

5.46 Inform the PBO in good time that you intend to put down amendments that day, especially if they are to be tabled close to a deadline or late in the day.

Ministerial names

5.47 For the correct style, see Chapter 10.

5.48 The normal practice is to table amendments in the name of a single minister, namely the minister in charge of the bill (or, for public bill committee, the minister leading in committee).

5.49 Any request to have more than one name, or to table in the name of a different minister, should be considered in consultation with PBL Secretariat, and in the light of para 29.42 of the *Guide to Making Legislation*.

When amendments can be tabled

5.50 Amendments tabled on a sitting day must be tabled while the House is sitting (subject to the point about Westminster Hall - see para 5.55).

5.51 The House normally sits:

- on Mondays (and on a Tuesday or Wednesday which immediately follows an adjournment for more than two days or is the first day of the Session), until 10.30pm;
- on ordinary Tuesdays and Wednesdays, until 7.30pm;⁴⁹
- on Thursdays, until 5.30pm;
- on Fridays, until 3pm.

5.52 An early end to the day's business will (unless the circumstances are exceptional) start the adjournment debate, giving at most half an hour before the House rises. If you know that the adjournment debate has just begun it is vital to act quickly if you are to have any chance of tabling amendments before the House rises. The Whips may warn OPC if the House is likely to rise or be suspended at an entirely unexpected time.

5.53 If intending to table amendments after 6pm, let the PBO know.

48.The statement says that the amendment in question “would remove the privilege amendment inserted by the Lords.”

49.On Tuesdays and Wednesdays the House quite frequently sits later. Where this might be relevant, liaise with the PBO/Whips to ascertain when the House is expected to rise.

5.54 If you expect to have to table amendments late in the day, it may also be worth asking the Whip's Office whether they expect that the day's business may finish early.

5.55 It is possible to table amendments when Westminster Hall is sitting, even if the House has risen. That may come in handy if the House unexpectedly rises early but business in Westminster Hall continues.

5.56 Amendments may be tabled on a non-sitting Friday until 3pm.

5.57 Amendments can be tabled during a recess until 4.30pm on the last day of the recess.⁵⁰ Amendments accepted during a recess are not circulated until near the end of the recess, unless special arrangements are made. (See para 5.65 below for arrangements made to ensure that the starring of amendments does not cause too many difficulties as regards amendments tabled in recess.)

5.58 An amendment cannot be tabled before the bill has had its second reading unless a motion authorising the tabling of amendments before that time has been agreed.⁵¹

5.59 If amendments for committee are to be tabled on the day of second reading, they must be handed in to the Clerks at the Table (and not to the PBO or Table Office).⁵² The Whips can arrange this.

Timing

5.60 Departments should if possible aim for government amendments to be tabled at least one sitting week before they are due to be debated.

Starring of amendments

5.61 The system of starring is used to indicate whether amendments have met the minimum notice requirements. Starred amendments are not normally selected.

5.62 In order to be unstarred, an amendment must be tabled 3 sitting days before it is reached. This rule applies to notices of amendments and new clauses and new Schedules to be considered in public bill committee, committee of the whole House and report stage (and it applies whether or not the bill is programmed).⁵³

5.63 An amendment is marked with a solid star on the first day it appears on the amendment paper and with an empty star on the second day on which it appears. For these purposes a non-sitting Friday is treated as a sitting day.⁵⁴

5.64 In practice this means that (assuming all the relevant days are sitting days or are treated

50.SO No. 64.

51.See e.g. the motion for the Finance (No. 2) Bill on 23.3.15.

52.*Erskine May* para 28.98. Where other stages of a bill are being taken on the same day as second reading, it is advisable to consult the PBO about arrangements for tabling amendments, as the PBO may want to accept amendments itself in the interests of making them available as quickly as possible.

53.See Votes and Proceedings for 23.5.2016, para 3. See also paras. 28.98 and 28.135 of *Erskine May*.

54.SO No. 12(3).

as sitting days) –

<i>Where the PBC sitting is on...</i>	<i>The last day for tabling is...</i>
a Monday	the preceding Wednesday
a Tuesday	the preceding Thursday
a Wednesday	the preceding Friday
a Thursday	the preceding Monday
a Friday	the preceding Tuesday

5.65 The PBO makes arrangements to ensure that amendments tabled during recess can be taken when the House returns. It does this by arranging for amendments tabled up to a certain time (towards the end of recess) to be printed during recess.⁵⁵ The PBO circulates an email setting out the arrangements, before each recess.

Last-minute amendments

5.66 Amendments of which notice has not been given (“manuscript amendments”) can, in principle, be moved at committee stage or on report.

5.67 A manuscript amendment is taken only if selected: selection is in the discretion of the chair (or, on report, the Speaker).

5.68 Warn the PBO if proposing to make manuscript amendments, and ask them when they need to receive them.

Mechanics of tabling amendments

5.69 Amendments are tabled by submitting them to the PBO within Lawmaker. A list of amendments can be submitted by pressing the “Submit List” button on the “Document Information” tab. Remove any hard amendment numbering before submitting a list. Amendments for tabling on the same day need not be submitted as a single batch or at the same time.

5.70 Email the PBO to notify them that you have submitted the amendments and attach a PDF of each sheet of amendments you have submitted on which the “D-numbers” / “OPC numbers” are visible. The PBO find it helpful if any email attachments sent to them include in their filename the short title of the bill to which they relate.

5.71 Manuscript amendments (see paras 5.66 to 5.68) can be tabled by email in the same way.

5.72 Cross-references to other amendments in explanatory statements may, in the Commons, use the “D-number” / “OPC number” of the target amendment.

⁵⁵For example, where the House returns on a Monday, amendments tabled in recess before the “printing day” for public bill committee would usually be printed in recess with a solid star, so as to appear on the Monday with an empty star and be unstarred on the Tuesday.

Withdrawing amendments

5.73 It is possible to withdraw an amendment that has been tabled. To do so the following process should be followed –

- consent to withdraw the amendment should be obtained from the Whips and from PBL;
- authority to withdraw the amendment should be obtained from the relevant Minister;
- the PBO should be informed by email, with sufficient notice, that the relevant amendment is to be withdrawn.

5.74 Any withdrawn amendment will continue to appear on the amendment list with a note indicating that it has been withdrawn.

Selection and grouping of amendments

5.75 A draft of each selection and grouping is produced by the clerk in the PBO and sent to the drafter. In the absence of a supplementary programme motion (see para 5.13), the now usual practice on report is to have one single group of all amendments, new clauses and new Schedules.

5.76 The drafter should send each draft selection and grouping on to the department. Alternatively, the drafter may ask the clerk to send it directly to the department (as well as to the drafter) in order to avoid delay in the department seeing what is proposed.

5.77 The drafter is responsible for considering *selection* and raising any points with the clerk, taking into account any comments the drafter receives from the department.

5.78 The drafter should discuss with the bill team who is to be responsible for providing comments to the clerk on *grouping* and the related practical arrangements. In appropriate cases, it can work well for the Department to take the lead in relation to grouping.

5.79 The PBO clerk will say if the chair of the committee (or, exceptionally, the Speaker) wishes to confer with the drafter about the selection or grouping of amendments.⁵⁶

5.80 Make sure to forward to the Whips the PBO's draft grouping and selection, where the bill is at report stage or in committee of the whole House.

Moving amendments

5.81 In public bill committee, an amendment may be tabled by any MP, though only a member of the committee can move it. (Indeed, an amendment will not usually be selected unless a member of the committee puts their name to it.)

5.82 Subject to this, government amendments and new clauses or Schedules can, at all stages, be moved by any member of the government and an amendment or new clause or Schedule, if not moved by a member whose name appears on it, can be moved by any other member.

56. On report the PBO clerk submits a draft selection to the Clerk Assistant who in turn advises the Speaker.

Non-government amendments

5.83 Remind the department that it should seek the drafter’s advice, as well as getting any necessary PBL Committee clearance, before:

- accepting a non-government amendment, or
- giving an undertaking to table government amendments to produce the same effect as a non-government amendment.⁵⁷

5.84 Consider (and remind the department to consider) the points mentioned at para 5.23 when advising the department about accepting such amendments or giving such undertakings.

5.85 The department should consult the drafter as soon as possible after:

- an amendment has been successfully moved against the government, or
- a minister has unexpectedly accepted an amendment.

Keeping PBO informed

5.86 Inform the PBO as soon as possible of any decision by the department to accept non-government amendments or not to move government amendments. This information assists the PBO in briefing the chair and in preparing a proof of the bill as amended.

5.87 It also helps the PBO to know of any government amendments handed out to a backbencher to be tabled.

5.88 Where possible, give the PBO advance notice of any proposal to table government amendments that may turn a single-volume bill into a multi-volume bill, or increase the number of volumes (see para 3.21).

“Printing” changes

5.89 Before the end of each stage, the PBO clerk needs to be told what “printing” changes need to be made when the bill is reprinted (misprints, positioning of new clauses, renumbering, punctuation etc).

5.90 If the bill has been or is likely to be amended during a particular stage, the PBO clerk will send the drafter an “as amended” proof of the bill for checking before the bill is reprinted. The drafter should –

- give the department the opportunity to comment on the proof;
- check that cross-references have been updated (though the use of automatic cross-references should reduce the likelihood of incorrect cross-references).

5.91 Printing changes may be wanted even where the bill is not amended in the Commons. Those changes need to be communicated to the Commons PBO before it produces the print that gets sent to the Lords PBO.

5.92 For bills whose progress spans the year’s end, references to the old year may need changing for the first print in the new year. Remember to check any cross-references to the bill

⁵⁷A department may wish to give an undertaking if the drafter advises that a non-government amendment cannot be accepted as it stands - see paras 22.27 and 22.31 *et seq* of the *Guide to Making Legislation*.

in textual amendments.

CHAPTER 6 COMMITTEE, REPORT AND THIRD READING - LORDS

Order of consideration

6.1 The normal order of consideration (in essence, all clauses then all Schedules⁵⁸) may be altered by a motion. But altering the order of consideration to do anything other than bring up Schedules so they are considered after the clauses to which they relate on report is unusual⁵⁹, and it is not the usual practice of the Lords to alter the order of consideration on third reading.⁶⁰

6.2 Where the motion relates to proceedings in committee, the motion is for an instruction to the committee that the bill be considered in the order set out in the motion.

6.3 Also, where the motion relates to proceedings in committee the current practice is for the motion to be combined with the motion to commit. The combined motion should be in the following form—

“If the bill is read a second time, [minister] to move that the bill be committed to a [Grand Committee/Committee of the Whole House], and that it be an instruction to the Grand Committee/Committee of the Whole House] that they consider the bill in the following order...”

6.4 An order of consideration motion needs to provide expressly for the “Title” to be considered at the end (whether for committee of the whole House, Grand Committee or report stage). The same applies to a preamble, in the unlikely case of a bill that contains one.

6.5 Unlike in the Commons, an order of consideration motion in the Lords does not provide for when new clauses or new Schedules are to be considered. In the Lords, an amendment to insert a new clause or new Schedule states that it is to be inserted before or after an existing clause or Schedule and so it falls to be considered before or after the existing clause or Schedule concerned.

6.6 Templates for order of consideration motions are available through the Bill/Act menu in Framemaker.

6.7 The altered order of consideration can itself be changed by a further motion.⁶¹

6.8 A draft of the motion should be emailed to the Lords Whips’ Office and the department.

6.9 Where the motion is drafted in FrameMaker, send the Whips both a pdf version and a version saved with the .rtf suffix. (The .rtf file can then if necessary be altered by them using any version of Word.)

6.10 The Whips’ Office will arrange for the motion to be tabled at the appropriate time.

58.For further information, see *Erskine May* paras 29.35 to 29.44 (committee of whole House), para 29.49 (Grand Committee), paras 29.55 to 29.61 (report), paras 29.62 to 29.65 (third reading).

59. For a recent example, see the order of 4.07.23 in relation to the bill for the Online Safety Act 2023.

60.But an order of consideration for Lords third reading is not unheard of. In the case of the bill for the Legal Aid, Sentencing and Punishment of Offenders Act 2012, such an order was made at the request of the opposition.

61.This was, for instance, done in relation to the bill for the Health and Care Act (order of 18.01.22) and the bill for the European Union (Withdrawal) Act 2018 (order of 25.04.18). The first motion referred to the revocation of the original instruction to the Committee of the Whole House and the second referred to the vacating of the previous order of consideration motion for Report.

6.11 A combined order to commit/order of consideration motion⁶² needs to be sent to the Whips' Office (with a copy to the department) before second reading so that it can be taken immediately after second reading.

6.12 An order of consideration motion for Lords report stage should be sent to the Whips (and the department) as soon as possible after the end of committee stage. The PBO accept that nothing can be tabled until the bill as amended is available.

6.13 The House authorities in the Lords regard instructions and orders which involve substantive re-arranging of the order in which provisions are taken as highly undesirable, as they may confuse the House and make marshalling errors more likely. If any substantive re-arrangement must be done, the necessary motion should be tabled as early as possible.

Split committal etc

6.14 Committee stage on a bill in the Lords can be split between committee of the whole House and Grand Committee.⁶³ And an order to commit a bill to one committee can be discharged and the bill be recommitted to another committee.⁶⁴

Points to consider before tabling amendments

6.15 Consider the points mentioned in paras 5.23 to 5.35, 5.37 and 5.38.

6.16 A supplementary delegated powers memorandum must be provided to the Delegated Powers and Regulatory Reform Committee where the government amends the bill in a way that introduces a significant new delegated power or in a way that significantly amends an existing one. Similarly, a supplementary memorandum will be required where the government supports a non-government amendments having either of those effects. But a supplementary memorandum is not required if the amendments are giving full effect to a recommendation of the Committee. See para 32 of the Committee's Guidance for Departments (November 2021).

6.17 There are no financial resolutions, but consider whether any amendment affects the need for a privilege amendment (see paras. 6.50 onwards) and, if so, inform the PBO.

6.18 If the normal order of consideration has been altered (see paras. 6.1), consider the effect of the alteration in relation to any government amendment to insert a new Schedule after an existing Schedule. Sometimes the effect will be that the amendment to insert the new Schedule will fall to be considered before the associated amendment that inserts a provision into the bill that introduces the new Schedule. This effect can be avoided by altering the amendment to insert a new Schedule so that it inserts the new Schedule before (rather than after) an existing Schedule.

6.19 Following a report of the Procedure Committee of the House of Lords⁶⁵, amendments at

62. See para 6.3.

63. Recent examples of bills with split committal in the Lords are the Bill for the Deregulation Act 2015 (see the motion agreed to on 30.7.2014) and the Bill for the Protection of Freedoms Act 2012 (see the motion agreed to on 8.11.11).

64. A recent example of this is the order of 23.05.2023 on the bill for the Levelling-up and Regeneration Act 2023 which discharged the order of commitment (which committed the bill to committee of the whole House) and committed the remainder of the bill to a Grand Committee.

65. See the Sixth Report of the 2017-19 session. The Committee is now known as the Procedure and Privileges Committee.

committee⁶⁶, report and third reading may include an explanatory statement. The expectation is that all government amendments will include an explanatory statement. OPC is responsible for their preparation.

6.20 As in the Commons, an explanatory statement should be no more than around 50 words per amendment and should describe the amendment’s intended effect or purpose (without arguing for its adoption). It would appear from the explanatory statements tabled to date that it is permissible to adopt either the indicative mode (“this amendment changes *x* to *y*”) or the conditional mode (“this amendment would change *x* to *y*”).

6.21 Amendments tabled before the deadline indicated in para 6.27 will be published later that day and, on the following day, will be printed in the Lords daily sheet (unless a marshalled list is published on that following day, in which case they will appear on that list instead). They are not assigned a number when they appear in the Lords daily sheet, but only later when they are later included in the marshalled list (which will appear on the day before the bill is due to be considered and which includes all amendments tabled up until that point).

6.22 This means that an explanatory statement for one amendment cannot cross-refer to another amendment in the Minister’s name by citing the other amendment’s number; some alternative way of cross-referring to the other amendment will need to be used (such as referring to “my other amendment to this Clause”, “my third and fourth amendments to Schedule 5”, or “my amendment at page 7, line 16”)⁶⁷.

6.23 Before tabling amendments for third reading, check with the PBO that the amendments fall within one or more of the grounds mentioned in the second bullet point in para 6.46. The explanatory statement for a Government amendment at third reading should where possible indicate which of those grounds is applicable.

6.24 Where proceedings on a stage are not completed in one day and further amendments are tabled on or after the first day of proceedings, those amendments will appear on daily lists that are supplementary to the marshalled list and on further marshalled lists that will be published ahead of the days on which the proceedings continue.

Tabling of amendments

Authority, ministerial names and timing

6.25 See paras 5.45 to 5.49 and 5.60. In particular, amendments tabled for proceedings before Grand Committee or committee of the whole House may be tabled in the name of the minister leading in committee.

6.26 Para. 5.60 says that departments should if possible aim for government amendments to be tabled at least one sitting week before they are due to be debated. But in the Lords there have been recent requests for amendments to be tabled a week before the start of the relevant stage of proceedings. If the drafter is told that amendments need to be tabled earlier than a week before they would be debated and more time is needed for their preparation it is worth discussing with the Whips Office whether tabling later is possible.

66. The report of the Procedure Committee clarifies that an explanatory statement may be added to a notice of an intention to oppose the question that a clause stand part of a bill.

67. This issue does not arise in the Commons because amendments are numbered on the first occasion they are printed.

4pm tabling deadline for publication the next working day

6.27 Amendments must be tabled by 4pm in order to be published and then printed the next working day.⁶⁸ This applies on sitting and non-sitting days and also during a recess.

6.28 However, the PBO no longer publish amendments on every working day of a recess. Instead, ahead of each recess publishing days are agreed with the usual channels. The PBO and the Whips Office will be able to advise on what has been agreed ahead of each recess and, during recess, the House of Lords duty clerk will be able to advise further.

Starring of amendments

6.29 New or altered amendments that appear for the first time on a marshalled list are starred. The same applies to new or altered amendments that appear for the first time on any supplementary sheet (produced where amendments are tabled after the marshalled list is produced but before the amendments in the marshalled list are considered) or any supplementary marshalled list (produced where proceedings go over a day and where not all amendments for those proceedings are considered). Amendments are not starred on Lords daily sheets.

6.30 The marshalled list will appear the day before the bill is due to be considered. So, in order to ensure that an amendment that will be considered on working day 4 appears without a star it must be tabled on working day 1. This will mean that the amendment will appear for the first time in the Lords daily sheet and will then appear in the marshalled list on working day 3 without a star.

6.31 In the Lords, starring has no procedural significance and a starred amendment will be taken in the same way as any other amendment. To avoid criticism, however, the government generally agrees to table amendments so as to ensure that they are not starred when reached.

6.32 In the unusual case where proceedings on a particular stage are to take place on consecutive days the usual channels would usually agree a bespoke arrangements for the printing of amendments. The PBO and the Whips Office will be able to advise on what has been agreed.

Manuscript amendments

6.33 Wherever possible, amendments should be tabled in time for inclusion in the marshalled list. However, amendments of which notice has not been given (“manuscript amendments”) can be moved in committee or on report, but not on third reading (SO No. 47).⁶⁹

Mechanics of tabling amendments

6.34 Amendments are submitted within Lawmaker in the same way as in the Commons (see paragraphs 5.69 and 5.70).

68. See the 1st Report of Session 2021-22 of the House of Lords Procedure and Privileges Committee, para 20.

69. Companion to the Standing Orders, para 8.74.

Withdrawing amendments

6.35 Amendments may be withdrawn in the same way as in the Commons (see paragraphs 5.73 and 5.74).

Moving amendments

6.36 An amendment or new clause, if not moved by a peer whose name appears on it, can be moved by any other peer.

Non-government amendments

6.37 See para 5.83 onwards.

6.38 There are no financial resolutions, but consider whether any amendment affects the need for a privilege amendment (see paras. 6.50 onwards) and, if so, inform the PBO.

6.39 Tell the Lords Whips as soon as possible if the government is defeated on an amendment that is likely to be designated in the Commons as infringing privilege (and accordingly disagreed to on that ground when the bill returns to the Commons).

Grouping of amendments

6.40 Amendments are grouped for discussion, by agreement between the department and the House. This is arranged by the Whips' Office. OPC should be prepared to advise the department if consulted.

6.41 There is no selection of amendments in the Lords, though OPC should be prepared to raise any concerns with the Lords PBO about whether a particular amendment is relevant to the subject-matter of the bill.

Keeping PBO informed

6.42 See para 5.86 onwards.

“Printing” changes

6.43 See para 5.89 onwards.

Before report: looking ahead to next stages

6.44 In the case of a Lords starter, this is the time to begin to consider some of the matters mentioned in Chapter 7 (transfer to second House).

6.45 In the case of a Commons starter, this is the time to begin to consider Chapter 8 (to and fro). Where the printing of the Act will need to be given priority, see para 9.7 onwards.

Third reading

General

6.46 In the Lords - unlike in the Commons - it is possible to make amendments on third reading, subject to the following:

- the practice of the House is normally to resolve major points of difference by the end of report stage, and to use third reading for tidying up the bill;
- the principal purposes of amendments on third reading are to clarify any remaining uncertainties, to improve the drafting, and to enable the government to fulfil undertakings given at earlier stages of the bill;
- an issue that has been fully debated and decided upon at an earlier stage may not be re-opened by an amendment on third reading (but this rule may be disapplied by a motion moved by the Leader of the House);
- unlike at other stages, manuscript amendments (other than privilege amendments) are not in order.

See para 29.65 of *Erskine May* and paras 8.151-155 of the *Companion to the Standing Orders*.

6.47 The government may wish to use third reading to tidy up the bill following a defeat at an earlier stage that would otherwise leave the bill in an unsatisfactory state. However, the government does not generally use third reading to tidy up the bill in these circumstances if it expects to be able to overturn the defeat in the Commons.

6.48 Where it becomes apparent that significant amendments are wanted for third reading, advise the department to liaise with the Lords Whips at an early stage. As mentioned in para 6.23, it is also sensible to check with the Lords PBO that amendments fall within one or more of the grounds mentioned in the second bullet point in para 6.46.

6.49 In exceptional circumstances, a non-fatal dilatory amendment may be moved to the motion “*That this bill be now read a third time*”, which is taken at the start of proceedings on third reading.⁷⁰ Such an amendment might be tabled e.g. to allow more time for amendments to be tabled.

Privilege amendment (Lords bill)

6.50 On third reading in the Lords of a Lords bill, a privilege amendment may need to be made in order to negative any taxing or spending provisions, or provisions dealing with rates or council tax, that would otherwise infringe the privileges of the Commons.

6.51 If any amendment made during the bill’s passage through the Lords affects the need for a privilege amendment, warn the Lords PBO about it.

6.52 The drafter is not responsible for the form of the amendment, which consists of a common-form subsection (inserted on a motion, moved without notice, “That the privilege amendment be agreed to”). OPC does not table the amendment.

70. This occurred in relation to the European Union (Amendment) Bill 2007-2008 (where the exceptional circumstance was the outcome of the referendum in Ireland). See para 8.149 of the *Companion to the Lords Standing Orders* and para 29.62 of *Erskine May*.

Recommitment

6.53 This is occasionally done to enable a new clause or amendment to be dealt with after the end of the committee stage but in accordance with committee (rather than report) procedure. For other cases in which recommitment may be wanted see para 29.54 of *Erskine May*.

6.54 A motion to recommit can be made, with notice, at any time between the end of committee and the beginning of third reading.

6.55 The following points apply to recommitment in the Lords:

- (a) The decision whether to recommit is for the Chief Whip, in consultation with Cabinet colleagues. If aware of a proposed recommitment, OPC should inform the Chief Whip of any difficulties that such a step might cause - whether to the future progress of that bill or other bills before Parliament or to bills being drafted.
- (b) The Whips' Office draft the motion to recommit. The Whips may consult the drafter if there is time.
- (c) If any amendments have been tabled before a motion to recommit a bill (or part of a bill) is tabled, explain to the department the effect of recommitment on the amendments (or the amendments relating to that part). Amendments already tabled do not usually need to be retabled as amendments for committee on recommitment, but it is necessary to check with the Lords PBO in each case. Changes to the form of the amendments may be needed.

CHAPTER 7 TRANSFER TO SECOND HOUSE

Liaising with PBO for second House

7.1 Before a bill is introduced in its first House the drafter needs to be in touch with the PBO for that House in connection with a range of matters (see paras 2.10 to 2.13). Generally the same does not apply in connection with the bill's transfer to its second House, but the drafter will nonetheless need to confirm to the PBO for the second House –

- on or before the day of the bill's transfer, that a section 19 statement has been signed (para 7.7);
- on or before the day of the bill's transfer, whether an Environment Act or European Union (Withdrawal) Act statement is needed and, if so, that it has been signed (7.9);
- on the day of the bill's transfer, which minister is to be in charge of the bill (para 7.19);
- in the case of a bill moving to the Commons, whether the department wants up to 30 copies of the bill and explanatory notes (para 7.15).

7.2 There may be other matters that need to be brought to the PBO's attention in a particular case. In particular, in the case of a bill moving to the Commons, it will be necessary to discuss with the Commons PBO whether any financial resolutions are needed (see the first bullet points in para 2.11). Where such a bill does require financial resolutions, it will not be necessary to italicise any of its provisions (assuming the bill moves to the Commons containing a privilege amendment).

Explanatory notes

7.3 Remind the department to revise the explanatory notes for the second House. The revised notes should take account of amendments made in the first House.

7.4 Where the Commons is the second House, the section of the notes headed "Parliamentary approval for financial costs or for charges imposed" will need to be written or cleared by the drafter⁷¹; if financial resolutions are needed it would be sensible for the drafter to check the proposed text with the Commons PBO before settling it with the department. Where the Lords is the second House, this section of the notes may need to be updated, with any update written or cleared by the drafter.

7.5 It is for the department to send the revised text of the notes to the PBO in the second House. The PBO in the second House will review the changes in the notes before publishing them.

Human Rights Act statement

7.6 Remind the department in good time that the minister who is to be in charge of the bill in the second House needs to sign a statement for the purposes of section 19 of the Human Rights Act 1998 (see para 3.31 onwards). In the case of a Lords starter that is transferring to the Commons, see in particular para 3.33 regarding who is to be the minister in charge for the

71. Where the Lords is the first House, this section in the notes for the Lords states that it will be completed when the bill transfers to the Commons. For further information on this section of the notes, see Chapter 10 of the *Guide to Making Legislation*.

purposes of signing the statement.

7.7 The drafter needs to confirm to the PBO in the second House, on or before the day the bill is transferred, that the Human Rights Act statement has been made.

Environment Act and European Union (Withdrawal) Act statements

7.8 If the department takes the view that the bill contains provision which would be environment law, or which would affect trade between Northern Ireland and other parts of the United Kingdom, remind the department in good time that the minister who is to be in charge of the bill in the second House needs to sign either or both a statement for the purposes of section 20 of the Environment Act 2021 or section 13C of the European Union (Withdrawal) Act 2018 (see para 3.38 onwards).

7.9 The drafter needs to confirm to the PBO in the second House, on or before the day the bill is transferred, that any such statement have been made.

Speaker’s Certificate on money bill (Commons starter only)

7.10 A money bill (within the meaning of the Parliament Act 1911) should be certified as such by the Speaker on leaving the Commons. Chapter 1 of the Money Bills pamphlet contains more information on the meaning of “Money Bill”.

7.11 The drafter is not responsible for this but will need to have been in contact with the PBO about the likelihood of certification.

Taking up in second House

Commons starters

7.12 A bill brought to the Lords from the Commons is read a first time and printed.

7.13 It needs to be “taken up” (by the peer in charge giving notice of second reading on the Order Paper) within 12 sitting days; otherwise the bill cannot be proceeded with except after 8 days’ notice (Lords SO No. 48).

Lords starters

7.14 A bill brought to the Commons from the Lords gets its first reading only when a member takes it up (Commons SO No. 57A(1)). This process is dealt with by the Whips.

7.15 The bill will be sent for printing on the day of third reading in the Lords or the day after that. The Commons PBO will, on request, arrange for up to 30 copies of the bill and explanatory notes to be made available at the Vote Office, addressed to the member in charge of the bill.

7.16 The Vote Office may also be willing to print further copies of the bill after each amending stage. Departments should contact the Vote Office by email to discuss what is possible.

Printing of bill where second House not sitting

7.17 Commons SO No. 57A(2) allows a bill to be printed when brought from the Lords at a time when the Commons is not sitting. Lords SO No. 49(1) makes corresponding provision for when a bill is brought from the Commons to the Lords.

Roles

7.18 The Whips look after the taking-up of government bills, but a reminder to the department may be useful for a private member's or private peer's bill.

7.19 Given the potential on occasion for confusion as to who is to be the minister in charge of a bill in the second House, it is worth (at least in cases where there may be confusion) confirming to the PBO in the second House, on the day of the bill's transfer to that House, who is to be the minister in charge of the bill.

7.20 In the Commons, this confirmation should be given to the Clerk of Publishing.

Motions and resolutions

Commons starters

7.21 Consider whether an order of consideration motion is needed for the bill in the Lords (see para 4.53).

Lords starters

7.22 Consider whether a programme motion (para 4.48 onwards) is needed and discuss with the Commons PBO whether any financial resolutions are needed (see para 4.36 onwards and para 7.2).

CHAPTER 8 TO AND FRO (OR “PING-PONG”)

Introduction

- 8.1 The following matters arise in connection with the return of a bill to the first House:
- offer to give the department advice about to and fro;
 - check the consolidated list of amendments made by the second House;
 - the department needs to produce explanatory notes on those amendments, which must be given to the PBO in the first House;
 - for a Commons bill, liaise with the Commons PBO about whether any Lords amendment infringes Commons privilege and consider whether a financial resolution is needed;
 - consider whether a supplementary programme motion (or order of consideration motion) is needed;
 - for a Commons bill, ask the department for proposed groupings of amendments;
 - consider whether King’s or Prince’s consent is needed for any amendments;
 - draft motions (unless agreeing to all amendments made by the second House) and reasons (where there is simple disagreement in the Commons);
 - for a Lords bill, note the special treatment of the Commons amendment to remove any provision inserted in the Lords by way of privilege amendment.
 - the department may need to produce a supplementary delegated powers memorandum where a Lords bill is returned by the Commons with significant new, or significantly amended, delegated powers.

Procedural advice to bill team

8.2 Offer to talk to the department (including private offices and parliamentary branch) about the process, in advance of ping-pong.

8.3 It is also useful to involve PBL Secretariat and the Whips.

8.4 This is particularly useful where the to-and-fro stages are likely to be speedy or complicated.

Consolidated list of amendments made in second House

8.5 The second House will provide a proof of the consolidated list of amendments made by that House. The list is prepared by reference to the bill as first printed in that House. The proof needs to be checked carefully.

Explanatory notes on amendments made in second House

8.6 Remind the department to produce explanatory notes on the amendments made by the second House (and remind them to use the template). The notes are prepared by reference to the consolidated list of amendments.

8.7 Explanatory notes are required only when the amendments are first considered by the first House (and not at any subsequent stages).

8.8 The department should give the PBO in the first House a draft of the notes by (at the latest) the morning of the final stage in the second House.

8.9 Chapter 10 of the *Guide to Making Legislation* contains useful guidance on—

- the contents and style of the notes - in particular the “key points” at para 10.106, and
- practical points (including timing).

Amendments that infringe Commons privilege

Inform Commons PBO & Lords Whips

8.10 Decisions about financial privilege are for the Commons Clerk of Legislation, under the authority of the Speaker. Inform the Commons PBO of any Lords amendments that may infringe Commons privilege.

8.11 The Lords Whips should be alerted to any defeat in the Lords on an amendment that is likely to be designated in the Commons as infringing privilege (and accordingly disagreed to on that ground) (see para 6.39).

Need for financial resolutions

8.12 If a Lords amendment to a Commons bill involves a charge not covered by a financial resolution passed while the bill was in the Commons, a resolution covering the charge must be passed before the Lords amendment can be considered by the Commons.

8.13 In the absence of a necessary money resolution an amendment is deemed to be disagreed to (Commons SO No. 78(3)).

8.14 In the absence of a necessary ways and means resolution the House will disagree to the amendment on the direction of the Speaker.

Other points

8.15 A Lords amendment to a Commons bill, or to a Commons amendment to a Lords bill, may (even if covered by a money resolution) infringe the financial privilege of the Commons. Furthermore, it seems that amendments each of which taken individually does not infringe privilege may infringe privilege when taken together.

8.16 If the Commons wish to disagree to an amendment that infringes privilege, the disagreement must be on that ground (see *Erskine May* para 37.19), and the reason for disagreement must be drafted accordingly.

8.17 The Commons can normally waive their privilege by agreeing to an amendment or by agreeing to offer an amendment in lieu of an amendment - though this is not possible if the amendment “materially” infringes their privilege.⁷²

72. See HL Deb. (1963) Vol. 252, col. 480 and HC Deb. (1984-85) Vol. 78, col. 220.

Supplementary programme motion / order of consideration motion

8.18 A supplementary programme motion may be required in the Commons to deal with:

- for a Commons bill, the consideration of Lords amendments and further messages and the order in which amendments and messages are considered, or
- for a Lords bill, the consideration of Lords messages.

See the Programming pamphlet.

8.19 Notice of any supplementary programme motion must be given - this means it is sometimes necessary to table a motion before the Lords Message has arrived.

8.20 The order in which Lords amendments are considered in the Commons can also be altered by an order of consideration motion.

8.21 In the Lords, the order in which Commons amendments are considered can be altered by an order of consideration motion (though this is rare).

Grouping

Commons

8.22 In the Commons, it is the prerogative of the member in charge of the bill to propose groupings of Lords amendments for the purposes of debate. The initial proposed groupings should be shared with the Commons PBO as soon as practicable.

8.23 The power of selecting (and, therefore, of grouping) amendments to Lords amendments and motions relating to the Lords amendments rests with the Speaker.

8.24 For convenience, the PBO produces a combined grouping list, covering both the Lords amendments and the Speaker’s selection of amendments and motions relating to those Lords amendments.

Lords

8.25 In the Lords, Commons amendments can be grouped in much the same way.

8.26 The Whips’ Office deals with grouping (and the drafter has no formal role).

King’s and Prince’s consent

8.27 King’s or Prince’s consent may occasionally need to be signified on Commons consideration of Lords amendments (or vice versa).

8.28 This arises where the amendments made by the second House make consent necessary where it was not needed before.

8.29 It can also arise where an amendment made in the second House affects the King’s interests or prerogative in a way which, having regard to the subject matter of the bill, was unforeseen. See the pamphlet on King’s and Prince’s Consent.

Options available on considering amendments made by second House

Options

8.30 On Commons consideration of Lords amendments (or vice versa), the main options open to the government are to:

- agree to an amendment,
- disagree to it,
- amend it,
- disagree to it and make a different amendment in lieu.

8.31 Consequential amendments can also be moved.

8.32 Things get more complicated at subsequent stages.

Motions and reasons

8.33 The drafter will need to produce and (when authorised) table suitable motions to give effect to whichever of the options set out in para 8.30 are chosen.

8.34 Where simple disagreement is proposed in the Commons, the drafter must (in consultation with the department and PBO) produce draft reasons for submission to the “reasons committee” which, if the motion is carried, will be forthwith appointed to draw up reasons for the disagreement.

8.35 By contrast, where there is a simple disagreement in the Lords a standard reason is given in the following terms: “because the Lords wish the Commons to consider the matter again”⁷³.

8.36 Notice of a motion to agree with an amendment is not normally given when the second House’s amendments are first considered by the first House (but, where such a motion is to be moved at subsequent stages, notice is often given).

8.37 For further information on the various ways in which agreement may be reached, see *Erskine May* paras 30.5 to 30.26.

Privilege amendment (Lords bill only)

8.38 On Lords consideration of Commons amendments, the form of Lords proceedings in relation to a Commons amendment to leave out the privilege amendment inserted by the Lords depends on whether there are other Commons amendments to the bill.

Supplementary delegated powers memorandum (Lords bill only)

8.39 Where a Lords bill is returned by the Commons with amendments which introduce significant new delegated powers, or which significantly amend existing ones, a supplementary delegated powers memorandum should be provided to the Delegated Powers and Regulatory Reform Committee. See para 32 of the Committee’s Guidance for

73. For further explanation, see para 8.185 of the *Companion to the Standing Orders* and paras 31 to 36 of the 1st Report of Session 2021-22 of the House of Lords Procedure and Privileges Committee.

Departments (November 2021).

CHAPTER 9 ON PASSING

Royal Assent

9.1 This is usually signified in both Houses on the same day.⁷⁴

9.2 On some occasions assent has been signified on different days. In this case the Act is treated as receiving Royal Assent on the later of the two days.

Correcting Royal Assent proof

9.3 The Lords PBO will send the drafter a proof of the King's Printer's copy of the Act for checking by the drafter.

9.4 A note of any corrections should be sent to the Lords PBO. The risk of misprinting makes the PBO reluctant at this stage to accept corrections that are not strictly necessary.

9.5 With a large or heavily-amended Act, it is advisable to arrange for the proof to be checked by the department as well as by the drafter. In Acts extending to Scotland or Northern Ireland, consider sending a copy of the proof to the drafter who has been dealing with Scottish or Northern Ireland aspects of the bill. OPC is responsible for passing all corrections to the PBO.

Special arrangements for expedited publication of Act

9.6 The Lords PBO aims to publish Acts within 4 working days of both Royal Assent and sign-off by the drafter, though publication often follows within a day or so of Royal Assent.

9.7 When the bill is reaching its final stages in the second House, consider whether there is a need to inform the Lords PBO that the resulting Act deserves priority for publication because it has practical effect soon after Royal Assent (whether as a result of the Act itself or an intended early commencement of which OPC is aware). The Lords PBO will arrange for expedited publication only on rare occasions - where it feels that a valid reason for expedited publication has been given, and depending on other competing demands.

9.8 It is necessary to consider whether the Act needs to be published in hard copy quickly and, if so, whether there is also a need for even quicker publication online. One consequence of early publication is that all printing points must be picked up before Royal Assent.

9.9 Problems arising from a delay in publication of the Nationality, Immigration and Asylum Act 2002 were considered by the Court of Appeal in *R (on the application of L) v Secretary of State for the Home Department* [2003] EWCA Civ 25, [2003] 1 WLR 1230.

Statutory instruments made before publication of the Act

9.10 Occasionally, the department may plan to make a statutory instrument under the Act shortly after Royal Assent and before the Act has published⁷⁵. Where this is likely to be the

74. For the purposes of Royal Assent, calendar days (not sitting days) are what is relevant.

75. This is most likely to occur at the end of a Session. At the end of a Session a large number of Acts may receive Royal Assent around the same time resulting in a slight delay in their publication.

case, remind the department to check with the drafter that in citing the *vires* the statutory instrument refers to the correct section of the Act. It is easy for the wrong section to be referred to if the statutory instrument is prepared by reference to a version of the bill that is amended shortly before Royal Assent.

Explanatory notes for Act

9.11 Remind the department to prepare a revised version of the explanatory notes referring to the Act. Chapter 10 of the *Guide to Making Legislation* contains details about the form of Act notes. Whilst the ideal is for the explanatory notes for an Act to be published at the same time as the Act itself, in practice it may be acceptable for the notes to be published a short time after the Act has been published.

Lessons learnt

9.12 A department should consider holding a “lessons learnt” exercise after one of its bills has received Royal Assent. Part of the review of a particular bill will relate to dealings between the department and the drafter. The drafter should offer to participate in the department’s review. The department should send a report on the review to PBL Secretariat.

9.13 If the department or drafter separately produces anything that sets out lessons of general application, that document should be sent to 1st PC.

Consolidation and statute law repeal

9.14 At the conclusion of a bill project, send an email to the First Parliamentary Counsel (copied to the Private Office) indicating whether you have identified any areas of law which might benefit from consolidation or whether, at any stage during proceedings on a bill, the government indicated that it may be willing to consider the case for consolidating an area of the law. Nil returns should also be sent.

9.15 Similarly, mention any such points to the drafter in charge at the Law Commission (in case he or she is not already aware).

9.16 You could also mention to the drafter in charge at the Law Commission anything that would benefit from being brought to the attention of the statute law repeals team at the Law Commission (e.g. provisions of the Act that are likely in due course to become spent, provisions of existing legislation that you think are or may become spent, whether because of the Act or otherwise).

Archiving

9.17 Make sure that the electronic archive for the bill is complete.

Correction slips etc

9.18 If, after an Act has been printed, you think it needs to be corrected, contact the Clerk of Public and Private Bills in the Lords PBO about the possibility of issuing a correction slip.

9.19 In the case of really minor corrections, it may be appropriate to suggest that no

correction slip is issued, and that the correction can simply be made to the online version of the pdf.

CHAPTER 10 MINISTERIAL NAMES - PRECEDENCE AND STYLE

Precedence

10.1 The list of the cabinet on the Parliament website⁷⁶ gives the current order of precedence of Cabinet ministers.

10.2 There is no list available showing the order of precedence of ministers who are not part of the cabinet. It is therefore necessary to list these ministers in an order that seems appropriate, having regard to their role in Government.

Style - Commons

10.3 How ministers (and, indeed, other members) are named on the back of a bill, or in a notice of an amendment or motion, depends to some extent on their personal preferences. If in doubt, check with the Commons PBO.

10.4 The form is, generally speaking, as follows –

The Prime Minister

The Chancellor of the Exchequer (whether titled or not)

Secretary [surname] *or* Secretary [forename] [surname] (depending on what is shown in the laying ministers list produced by the Commons Journal Office)⁷⁷

The Chairman of Ways and Means

The Attorney General

The Solicitor General

10.5 The following (among others) are *not* used –

The Minister of/for . . .

Mr. Chancellor of the Duchy of Lancaster

The President of the Council

The Lord Privy Seal

The Paymaster General

The Chief Secretary to the Treasury

10.6 For these (and other members) use –

Mr/Mrs/Miss/Ms (or Sir/Lady if titled) [surname] *or* [forename] [surname]

10.7 If the member is on the laying ministers list, that list should be used to ascertain which of these alternatives should be used. If not, refer to the yellow list, which sets out the name and form for individual MPs.

10.8 It is worth being aware that the laying ministers list is not intended to be authoritative.

76. <https://members.parliament.uk/Government/Cabinet>

77. Do not include a title such as “Mr” or “Miss” alongside “Secretary” (even if the title appears in the laying ministers list or the yellow list).

So whilst it can usually be relied upon to contain the correct information, on occasion the department or the House authorities might point out the need to alter the way in which a particular minister is referred to.

Style - Lords

10.9 The form is as follows –

Lord . . . (for Barons)

Baroness....

The Duke of/The Marquess of/The Earl of/The Countess of/The Viscount ...
of. . ./

Earl .../Viscount...

10.10 Ministerial titles are not used in the Lords.

10.11 The PBO has indicated that OPC should follow the styles used in HL Paper 1, printed at the start of each session.⁷⁸ The current practice is, therefore, that all Archbishops, Bishops, Dukes and Marquesses, and those Earls, Viscounts and Countesses who are “of” somewhere will have the definite article included in their title (e.g. “The Earl of Sandwich”).

⁷⁸www.parliament.uk/business/publications/house-of-lords-publications/records-of-activities-and-membership/house-of-lords-list-of-members/

CHAPTER 11 TIMES FOR HANDING IN AND TABLING

11.1 Most of the timings mentioned below are fixed, but a few are negotiable to some extent. If you will, or may, be unable to meet a particular time the PBO will advise whether and how far they can be flexible on that occasion.

11.2 During a recess it is best to forewarn the PBO that you intend to send something down. For the Commons ring 020 7219 3320/3394 and ask for the duty clerk (10am-5pm); for the Lords ring 020 7219 3000 and ask for the Lords duty clerk.

11.3 “Recess” here means a period where the House adjourns for more than one working day.

11.4 Where business on the floor of the House of Commons has ended but business in Westminster Hall continues, the House of Commons is treated as sitting for the purposes of the deadlines in the table below (see para 5.55).

COMMONS - times for tabling and handing in

	Outside recess						During recess
	Mon	Tues ¹	Wed ¹	Thurs	Fri (sitting)	Fri (non-sitting)	Mon-Fri
Text of bill for publication next day	3.30pm	3.30pm	3.30pm	3.30pm	while sitting - normally sits until 3pm; if sits later check with PBO	Unlikely to arise: discuss with PBO ²	
Amendments for publication next day	while sitting - normally sits until 10.30pm ³	while sitting - normally sits until 7.30 pm (but sometimes later)		while sitting - normally sits until 5.30pm		3pm (SO No. 12(3)) ^{4 5}	SO No. 64 (last day: 4.30pm) ^{6 7}
Notice of presentation Financial resolutions	while sitting ⁸					cannot table	cannot table
Programme motions ⁹ Order of consideration motions Evidence motions Notices of motions relating to proceedings on bills	while sitting ⁸					cannot table, except where relating to bill committed to public bill committee, when 3pm (SO No. 12(3)(b))	cannot table

1. Commons SO No. 9 makes special provision for a Tuesday or Wednesday sitting which immediately follows a periodic adjournment of more than 2 days or is the first day of the Session. In this case, all the relevant times are as for a Monday.

Handling a Bill – CHAPTER 11 Times for handing in and tabling

2. This does not arise frequently (since a notice of presentation cannot be handed in on a non-sitting Friday or in a recess). Finance Bills are sometimes handed in during a recess. The PBO agreed in February 2005 that the Prevention of Terrorism Bill could be handed in during a recess for publication on the first day back (though in the event it was not). In February 2009 the notice of presentation for the Northern Ireland Bill was handed in on the last sitting day before the recess, the Bill was handed in on the last day of the recess and the Bill was presented and published on the first day back. In November 2023, the notice of presentation for the Leasehold and Freehold Reform Bill was handed in Thursday 22 November (Friday 23 November being a non-sitting Friday), the text of the Bill and the explanatory notes were handed in on Friday 23 November and the Bill had its first reading on Monday 27 November. Always discuss this well in advance with the PBO, and agree timing etc. In the Northern Ireland Bill case, the House authorities were content to allow handing-in during the recess provided there were special circumstances that made it necessary and urgent to do so.

3. Inform the PBO in good time if amendments are not to be tabled until the evening.

4. Check with the PBO if intending to table amendments on a non-sitting Friday preceding a non-sitting Monday.

5. Commons SO No. 12(3)(b) includes a reference to “amendments to Lords amendments”, which the Commons PBO regards as also covering motions, amendments in lieu etc. So a motion containing an amendment for to and fro can be tabled.

6. You can table up until 4.30pm on the last day on which the House is not sitting; but amendments accepted in a recess will not be circulated until near the end of the recess unless special arrangements are made.

7. Commons SO No. 64 (which, like SO No. 12(3)(b), refers to “amendments to Lords amendments”) is considered by the Commons PBO to apply to motions on to and fro.

8. The Clerk of Legislation usually looks at notices of presentation, financial resolutions and order of consideration motions – it is therefore helpful to table by 5.45/6pm.

LORDS - times for tabling and handing in

9. Programme motions are tabled by the Whips’ Office.

	Outside recess				During recess
	Mon-Wed	Thurs	Fri (sitting)	Fri (non-sitting)	Mon-Fri
Text of bill for publication next day ^{1 2}	2pm	10am ³	9.30am	n/a	n/a
Amendments for publication next day ⁴	4pm	4pm	4pm	4pm	4pm
Order of consideration motions & instructions ⁵	Check with Whips’ Office.				Can table; check with Whips’ office.

1. These timings assume presentation at 2.30pm on Monday or Tuesday, 3pm on Wednesday, 11am on Thursday and 10am on Friday.

2. The Lords may sit earlier than usual on the day before a recess and, occasionally, on other days. When planning to hand in a bill on a particular day it may be sensible to check the sitting time for that day with the Lords Whips Office, in case the bill needs to be handed in earlier than the time indicated in the table.

3. A bill handed in on a Thursday will be published the following day even if it is a non-sitting Friday.

4. See *the 1st Report of Session 2021-22 of the House of Lords Procedure and Privileges Committee*, para 20.

5. These go to the Whips’ Office.

CHAPTER 12 PRE-INTRODUCTION CHECKLIST

BEFORE PBL COMMITTEE

<i>Explanatory notes</i>	Remind department to complete, using template (and up-to-date guidance)
<i>Legal issues memo</i>	Remind department of guidance about drafting legal issues memo and circulating it to AGO and LSAG
<i>PBL Committee memo</i>	Remind department to prepare PBL Committee memo
<i>Delegated powers memo</i>	Review anything in memo about readiness of bill and likely need for amendments and ensure minister's brief is accurate on this Remind department to prepare delegated powers memo for PBL Committee. Try to comment on memo before it is submitted to PBL Committee.
<i>Financial resolutions</i>	Consider need for money and/or ways and means resolution Consult Commons PBO about need for resolutions If writing to department for instructions on the form of the resolution, copy to Treasury Send draft resolutions to Commons PBO and department for comment
<i>PBO</i>	Write to PBO about matters at paras 2.10 to 2.13 (scope, King's and Prince's consent, money, hybridity etc) Enclose copy of bill
<i>Submit papers to PBL Committee</i>	Send text of bill to PBL Secretariat (for information on deadline, see para 2.24) Send note on state of readiness of bill to Leader's Office (see paras 2.27 to 2.30), with copies as mentioned Remind department to submit other required documents, including explanatory notes
<i>Attorney General</i>	Email Attorney General's Office (attaching PBL Committee text of bill), with copies as mentioned in para 2.32 .
<i>King's and Prince's consent</i>	At PBL Committee meeting be ready to confirm status of request for consent

FOR INTRODUCTION

<i>Plan timing of introduction</i>	Obtain instructions on exact timing for presentation and publication Check what is wanted against rules of House of introduction concerning handing in/presentation/publication
<i>Multi-volume bills</i>	Discuss printing arrangements with PBO if bill likely to exceed 600 pages
<i>Section 19 statement</i>	Obtain confirmation that statement has been signed

<i>Environment Act statement</i>	Obtain confirmation as to whether an Environment Act statement is needed and, if so, that the statement has been signed
<i>European Union (Withdrawal) Act statement</i>	Obtain confirmation as to whether a European Union (Withdrawal Act) statement is needed and, if so, that the statement has been signed
<i>Presenter and supporters</i>	Obtain names from department (no supporters for Lords bill)
<i>Financial resolutions</i>	Finalise resolutions (Commons bill only) Get resolutions initialled by FST
<i>Delegated powers memo</i>	Comment on department's memorandum before delivery to Vote Office and Libraries of both Houses (see paras 2.47 and 2.48)
<i>Press conferences & press releases</i>	Remind department that ministers should not make bill available to public or issue press releases about contents before copies are printed for members of House in which bill to be introduced
<i>PBO</i>	Email Clerk in charge (see Chapter 3) For Commons bill, enclose notice of presentation Confirm to PBO that section 19 statement signed Confirm to PBO whether an Environment Act statement is required and, if so, that it has been signed Confirm to PBO whether a European Union (Withdrawal) Act statement is required and, if so, that it has been signed
<i>Text of bill</i>	Hand in the bill to PBO