



Cabinet Office

# Guide to Making Legislation

2025



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# SECTION A

## INTRODUCTION TO THE LEGISLATIVE PROCESS AND BIDDING FOR LEGISLATION

# 1. HOW TO USE THIS GUIDE AND THE ROLE OF THE PBL SECRETARIAT

- 1.1 The Guide to Making Legislation was prepared by the Secretariat to the Parliamentary Business and Legislation (PBL) Cabinet Committee, a part of the Cabinet Secretariat at the Cabinet Office. It was produced with the advice of Parliamentary Counsel and the Offices of the Commons Chief Whip, Lords Chief Whip, Leader of the House of Commons, Leader of the House of Lords, the Public Bill Offices of both Houses and officials in other government departments.
- 1.2 It covers the procedures to be followed in preparing primary legislation and taking it through Parliament, setting out what is required of bill teams at each stage of the process. It should answer the most commonly asked questions but should not be regarded as an authoritative statement of parliamentary practice. Parliamentary Counsel (who may in turn consult the House authorities) or the Whips Offices should always be consulted on matters of procedure.
- 1.3 The Guide is written with the needs of departmental teams in mind, to help them manage their work effectively throughout the process of preparing legislation and taking it through Parliament. It describes the main features of the normal legislative process but cannot cover every possible circumstance: every bill is different.
- 1.4 The different stages are dealt with in chronological order. Bill teams starting out on the process of preparing legislation, particularly those new to bill work, would be well advised to read through the main sections to familiarise themselves with the tasks ahead and help plan their work effectively. However, it is also designed for officials to consult quickly during the legislative process to identify the key points and actions required at each stage. A summary of key points is provided at the start of each chapter and checklists for each stage are included in Appendix G.

1.5 The main part of the Guide deals with conventional government bills and will be the sections used by most bill teams. Section G deals with certain other types of government bill: hybrid bills, Law Commission bills and consolidation bills. Section H deals with private members' bills and will be of use to departmental parliamentary clerks and to policy officials and private secretaries advising and supporting ministers responsible for responding on behalf of the Government to private members' bills, particularly where the Government is supporting a private member's bill.

1.6 This Guide does not cover:

- finance bills;
- supply and appropriation bills;
- bills relating exclusively to Scotland, Wales or Northern Ireland, which are now increasingly rare;
- private bills (bills promoted by a body outside of Parliament and distinct from private members' bills, which are public bills) where the Government is normally represented by parliamentary agents. Guidance should be sought from departmental legal advisers in the first instance, or from the Private Bill Offices as far as parliamentary processes are concerned;
- secondary legislation. Departmental parliamentary branches or legal advisers should hold copies of the [Statutory Instrument Practice](#), which provides guidance on the parliamentary process of secondary legislation. Departmental officials should contact their departmental SI lead, PBL Secretariat for information on the Statutory Instrument Capability Programme and internal guidance including on seeking collective agreement for secondary legislation; or
- legislative reform orders (LROs). See the [Legislative Reform Order-making Powers guidance](#).

1.7 While the Secretariat will always endeavour to alert current bill teams to relevant changes in procedure, please note that the electronic version is the most up-to-date version and any queries on parliamentary procedure should be addressed to Parliamentary Counsel or the Whips Offices.



## **Role of the PBL Secretariat**

- 1.8 The Parliamentary Business and Legislation (PBL) Secretariat is part of the Cabinet Secretariat. It provides the secretariat to the PBL Cabinet Committee, advice to the Leader of the House of Commons (who chairs PBL Committee) on clearance of legislative proposals (including amendments to bills) and advice to other ministers on the legislative programme. The full list of Cabinet committees can be found on [GOV.UK](https://www.gov.uk).
- 1.9 Bill teams, secondary legislation teams or other officials working on legislation can contact the Secretariat (contact details at Appendix B) with any queries relating to their legislation or the legislative programme. The Secretariat should be notified as early as possible of all requests for clearance and prior to clearance being sought.

# 2. THE GOVERNMENT'S LEGISLATIVE PROGRAMME AND THE WORK OF THE PARLIAMENTARY BUSINESS AND LEGISLATION (PBL) COMMITTEE

## Key points

- Parliamentary time available for government legislation is extremely limited. Departmental bill and secondary legislation teams should remember that delays to their legislation may cause delays across the rest of the programme.
- In devising a legislative programme to reflect the Government's priorities and seeking to resolve handling issues, the PBL Committee aims to ensure that time is used as efficiently as possible.

## The PBL Committee and the Government's legislative programme

2.1 The Government normally introduces a wide-ranging series of bills in each session of Parliament. It also lays secondary legislation in each session, the most common of which are statutory instruments (SIs). These are typically used to enable bills (later Acts) to be implemented and operate on a daily basis.

2.2 Each bill and piece of secondary legislation is part of the wider legislative programme and cannot be considered in isolation. The PBL Committee manages the Government's legislative programme on behalf of Cabinet. It aims to ensure that the legislative programme reflects the Government's overall priorities and that the passage of each of those bills through Parliament is as smooth as possible.

2.3 The Committee's systems for scrutinising bids for legislation and managing the programme are intended to balance the interests of departments and the interests of the Government as a whole, within the constraints of parliamentary capacity. They involve setting the Government's priorities for what the programme should deliver, rigorous scrutiny of preparedness and

progress throughout the drafting process and sanctions for failure to translate policy into drafted legislation to a satisfactory timetable, including removing legislation or postponing it to a future session.

2.4 The PBL Committee usually receives around twice as many bids for legislative slots as there are slots available in each session. Many potential bills are therefore not awarded a place in the programme and ministerial agreement for secondary legislation is only given where there is a clear requirement for it. It is crucial that bills are ready for introduction at the start of the session and secondary legislation is laid in Parliament on the date requested by departments unless the committee specifically agrees otherwise. Bills and SIs that are awarded a slot but are not ready on time waste opportunities that could otherwise have been awarded to other legislation.

2.5 Bills that require amendments after introduction also place additional pressure on parliamentary time and drafting resources. No more than one third of time in the Chamber of the House of Commons tends to be available for scrutiny of government legislation. Often less is available. The PBL Secretariat supports the PBL Committee in the management of the programme to ensure that this limited time is used as effectively as possible. Departments **must** be well prepared for each stage of their bill's passage through Parliament and manage it effectively, keeping the number of amendments to a minimum. If amendments must be made it is important that the Secretariat and the Whips are alerted at the earliest opportunity.

2.6 Timetabling of bill stages across the two Houses is a complex exercise and time lost on one bill has a knock-on impact on the programme as a whole. Poor management will reflect badly on the Government and on the departments and ministers concerned. In the case of major delays, bills could be lost from the programme altogether.

2.7 Producing papers for collective agreement, preparing briefing material for ministers, MPs, peers and stakeholders and speaking notes on amendments, adhering to procedure and, above all, sharing information with parliamentary Business Managers in good time, are the keys to a successful bill team. Frequent and frank communication between bill teams and their ministers, and between bill teams and PBL Secretariat, is critical. During the drafting phase, PBL Secretariat will want to meet regularly with bill teams to monitor progress in preparing the bill. Bill teams should always alert the Secretariat to any significant changes to the bill delivery plan, such as delays in delivering instructions to Parliamentary Counsel, any political changes that may impact on the bill, and any other emerging risks. This information will assist the committee in planning for the session ahead.

# 3. SUMMARY OF STAGES IN THE LEGISLATIVE PROCESS

## Key points

- This chapter provides a summary of the key actions and issues to be considered at each stage in the preparation and passage of primary legislation through Parliament. It precedes more detailed guidance and checklists to support each stage throughout this guide.
- These will usually have been preceded by the normal stages in policy development: a green paper discussion or consultation document, a white paper (major policy proposals set out in more detail) and one or more rounds of public consultation.
- This chapter is intended to give an at-a-glance overview of all stages, but it is not definitive. Officials involved in work on a bill should read individual chapters for guidance on procedure at each stage (and consult Parliamentary Counsel and the Whips Offices for guidance on parliamentary procedure).

## Before introduction

**3.1 Securing a slot in the legislative programme:** departments must bid for a slot in the legislative programme for any bills they wish to introduce. Normally this will be through a bidding round when the Leader of the House of Commons, as chair of the PBL Committee, invites Cabinet colleagues to submit bids for bills for the following session of Parliament.

**3.2** Bids must be by letter to the chair of the PBL Committee and accompanied by a bid template (which will be available from the Secretariat). The PBL Committee will assess bids on their priority and state of readiness and advise Cabinet on the contents of the programme. The programme will be reviewed in preparation for the King's speech, in the light of any emerging bids and progress in preparing those bills already provisionally in the programme. Late bids must have a very strong case, as other bills are likely to have to be removed to accommodate them.

**3.3 Public commitment to legislate:** ministers should not make a public commitment to legislate in the forthcoming session of Parliament unless or until PBL Committee has agreed the inclusion of a bill. The Government's announcement of its intention to legislate on a particular issue will normally be made as part of the King's speech. Prior to this, ministers should use the standard wording that they intend to legislate "when parliamentary time allows" (and then only if the policy content has already been collectively agreed).

**3.4 Setting up the bill team:** A well-resourced bill team is critical. A dedicated bill manager and team should be appointed as soon as the department secures a slot in the forthcoming legislative programme, and appropriately trained. The bill manager will need to produce and monitor progress against a delivery plan, coordinate all work on the bill and provide regular updates to ministers, officials involved in work on the bill, departmental lawyers, the departmental parliamentary branch and the PBL Secretariat. A senior project board should be established to monitor progress on the bill, in most cases reporting in to a strategic legislation board overseeing the department's wider legislative programme.

**3.5 Collective agreement:** The relevant policy Cabinet committee must agree the policy content of the bill before drafting instructions can be sent to Parliamentary Counsel and must also agree any amendments to the bill that represent a significant change in policy. Collective agreement from the PBL Committee is required at the following stages:

- bidding for a slot in the programme;
- publishing a bill or clauses in draft;
- announcing the intention to legislate to a specific timetable, or in a specific bill;
- before introduction, to approve the final text of the bill; and
- for any amendments to the bill after introduction.

**3.6 Drafting instructions to Parliamentary Counsel:** Parliamentary Counsel draft bills on the basis of instructions from departments. Drafting work can begin when the bill has been allocated a slot in the programme and its policy content has collective agreement. Bill team and departmental lawyers should meet Parliamentary Counsel at an early stage to discuss a timetable for sending instructions to them, and this should also be agreed with PBL

Secretariat. Parliamentary Counsel will produce draft clauses on the basis of these instructions, which the department will consider and comment on. Re-drafting will continue until a final version of the bill is agreed.

**3.7 Publication in draft:** A bill may be published in draft. PBL Committee agreement is needed to the principle of publication in draft, usually as part of the annual bidding round for bills. Once drafting reaches an advanced stage, Business Managers will seek agreement through the usual channels to a plan for pre-legislative scrutiny and then make the necessary arrangements with the House authorities. When the bill is ready for publication in draft, it must be circulated to the PBL Committee for clearance, along with a covering memorandum which should include parliamentary handling, explanatory notes, impact assessment, legal issues memorandum, and delegated powers memorandum. Draft bills should be presented to Parliament and published as command papers, with the delegated powers memorandum sent to the DPRRC. Your departmental parliamentary clerk can advise on publishing command papers.

**3.8 Explanatory notes:** Explanatory notes must be published alongside every government bill and are drafted by the bill team in consultation with departmental lawyers. They must be ready by the time the bill comes to the PBL Committee for approval for introduction and should be published at the same time as the bill. They must be approved for publication by the Clerk of Legislation in both Houses, and so the final draft needs to be sent to the Public Bill Office no later than two to three working days before the text of a bill is handed in by Counsel (the 'Notice of Presentation') to allow time for feedback from the Public Bill Office and necessary revisions. The final explanatory notes need to be sent to the Clerk of Legislation, the Clerk of Publishing, and both Public Bill Offices before introduction. Explanatory notes are updated by the department at various points during the passage of a Bill, with a final version published alongside the Act after Royal Assent.

**3.9 European Convention on Human Rights:** Departmental legal advisers will need to prepare a legal issues memorandum for the PBL Committee before the bill is introduced, setting out, among other things, the bill's compatibility with the European Convention on Human Rights (ECHR). The minister in charge of the bill in each House must also sign a statement as to the bill's compatibility with the ECHR. This appears on the front page of a bill as introduced, and as reprinted for the second House. As part of this, the department should provide analysis of why the Bill is considered ECHR compliant and whether the Bill's provisions engage

Convention rights and if so, what those issues are. This is either done through the explanatory notes (if not too lengthy an analysis) or a separate human rights memorandum (often called a JCHR or ECHR memorandum). The Secretariat can provide further advice on a case by case basis.

**3.10 Other legal issues:** The department must also consider other legal issues, and produce an internal legal issues memorandum for consideration by the Law Officers. Specific consent must be obtained from the Law Officers to any retrospective provisions or early commencement of provisions. New legislative proposals which relate to the processing of personal data should be compatible with data protection legislation. To ensure that the proposals are read as being subject to the data protection legislation, specific wording should be used to make this clear<sup>1</sup>. The Data Protection Policy Team in DSIT can provide further advice and support if required. Parliamentary Counsel should be able to advise on suitable wording. There are also legal requirements to consult the Information Commissioner's Office on the development of such proposals, as set out in Article 36(4) of the UK General Data Protection Regulation (UK GDPR).

**3.11 Environmental provision:** Departments must consider whether the bill contains environmental law under section 20 of the Environment Act 2021. If a bill contains environmental law, the Minister in charge of the bill must state that this is so, and also state either that the provision will not lower the current level of environmental protection provided for in existing environmental law or that they are unable to make a statement to such effect, but that the Government nevertheless wishes the House to proceed with the Bill. Ministers will need to sign a statement which appears on the front page of the bill.

**3.12 Provisions affecting trade between Northern Ireland and other parts of the UK:** In accordance with the requirement in section 13C of the European Union (Withdrawal) Act 2018 (EUWA), if a bill contains provisions which the Minister in charge of the bill considers, if enacted, would affect trade between Northern Ireland and other parts of the United Kingdom, then that Minister must make a statement as to whether that provision would have a significant adverse effect on such trade. The statement appears on the front of the bill.

**3.13 Impact assessments:** Impact assessments are generally required for all UK government interventions of a regulatory nature that affect the private sector, civil society organisations and

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<sup>1</sup> Sometimes this is referred to as the 'statutory override' because it makes it clear that the provisions should be read as being subject to the data protection legislation. For example, see section 49(2) and (3) of the Agriculture Act 2020.

public services (full details available in the [impact assessment guidance](#)). The final impact assessment must be circulated to the PBL Committee alongside the bill and other papers when it is considered for approval for introduction. It is published alongside the bill and the final document should be shared with the Public Bill Office together with the explanatory notes and Delegated Powers Memorandum.

**3.14 Impact on the devolved governments:** Departments must identify from an early stage whether or not their legislation will apply in devolved or transferred areas of competence, or will impact the executive or legislative powers of the devolved institutions; in these circumstances, legislative consent motions (LCMs) will be required from the devolved legislatures. Officials in the Union and Devolution Directorate, along with officials in the Scotland, Wales and Northern Ireland Offices should be engaged from the outset if departments believe that their legislation will engage the LCM process and will have implications for the devolved governments. Before a bill's introduction, the PBL Committee will also expect the devolved governments to have been consulted on the bill's devolved provisions, with all devolution-related issues substantively resolved (unless there are exceptional circumstances). Departments should also remember that the devolution settlements in Scotland, Wales and Northern Ireland are unique and asymmetrical, and so departmental policy and legal officials will need to consider carefully the implications the provisions within their bill will have under each of the devolution settlements.

**3.15 Delegated powers:** Departments must consider what degree of parliamentary scrutiny is considered appropriate for any delegated powers in the bill, and produce a delegated powers memorandum for the PBL Committee, justifying the inclusion of powers and addressing any concerns that might be raised. Particular attention should be given to 'Henry VIII' powers (powers to amend primary legislation through secondary legislation) that the bill seeks to confer. The memorandum must be published on introduction in the first House and should be shared with the Public Bill Office together with the explanatory notes and the Impact Assessment. It should also be formally submitted to the Lords Delegated Powers and Regulatory Reform Committee (DPRRC) on the day of introduction in the House of Lords. If the House of Commons is the first House and amendments are made in the first House, the memorandum should be updated on introduction to the House of Lords and formally submitted to the Lords DPRRC. Where a bill is published in draft before introduction, a completed delegated powers memorandum should be published alongside and a copy sent to the DPRRC.



- 3.16 If the Bill will change the regulation of digital technologies, such as adding a new regulatory burden, departments should contact the Digital Regulation Team in the Department for Science, Innovation & Technology to ensure the measures are in line with collectively-agreed digital regulation principles.
- 3.17 **National Security:** New policy, powers and legislation may impact the UK's National Security capabilities, even where there is not an immediately obvious link to national security. Departments should therefore consider any read across to national security carefully and can contact colleagues in the National Security community to discuss any proposed measures. The key stakeholders in this area are the United Kingdom Intelligence Community (known as UKIC and consisting of MI5, SIS (MI6) and GCHQ), the Home Office, Foreign, Commonwealth and Development Office and Cabinet Office. The Cabinet Office can provide contact details if needed. You should adhere to departmental security advice when discussing sensitive matters.
- 3.18 It is important to consider what can and cannot be discussed in public and parliamentary handling may seem challenging. However, there are many options that can be considered, such as briefing individuals on Privy Council terms. Departments should seek advice from the National Security community on options and advice on what information can be disclosed.
- 3.19 The work of the intelligence Agencies and various other parts of Government's national security machinery is overseen by the Intelligence and Security Committee (ISC) of Parliament, which has members from the House of Commons and the House of Lords. The ISC has special arrangements and facilities to handle highly classified material. Proactive briefing is often helpful and support from Committee members can be very useful. The Cabinet Office coordinates the relationship across the Agencies and departments within the ISC's remit.
- 3.20 **Impact on Overseas Territories:** Departments must identify the implications, if any, of their legislation for the Overseas Territories (Anguilla; Bermuda; the British Indian Ocean Territory; the British Antarctic Territory; the Cayman Islands; Gibraltar; the Falkland Islands; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and the South Sandwich Islands; the Sovereign Base Areas of Akrotiri and Dhekelia (on the island of Cyprus); St Helena, Ascension Island and Tristan da Cunha; the Turks and Caicos Islands; and the Virgin Islands (commonly known as the British Virgin Islands)). It is for departments to ensure they consult the Overseas Territories on proposals with implications for them.

- 3.21 **Application to the Crown:** Departments should decide early on whether the obligations or restraints that the proposed legislation will impose are to apply to the Crown, to servants or agent of the Crown or in relation to Crown property. The policy as regards Crown application will be something that will need to be considered carefully with departmental lawyers and the decisions taken will need to be set out in the instructions to Parliamentary Counsel.
- 3.22 **King's and Prince of Wales' consent:** Departments should identify at an early stage whether Kings or Prince of Wales' consent are required. Advice should be sought from Parliamentary Counsel as these may be required in some unexpected cases and the agreement of the House authorities will be required. The department must then seek these consents, which are signified at Third Reading. If there is any doubt as to whether these consents are required, Parliamentary Counsel will consult the two Public Bill Offices.
- 3.23 **Tax and public expenditure implications:** The agreement of the relevant HM Treasury minister must be obtained to any tax proposal, or to tax implications of new activities or bodies proposed. HM Treasury agreement must also be obtained to the bill's public expenditure and public service manpower implications. Bilateral agreement with HM Treasury should have been reached before collective agreement for the policy is sought. Departments must also ensure they observe the guidance on expenditure propriety in the [Managing Public Money](#) guidance. Departments cannot normally incur expenditure in advance of both Royal Assent of the enabling legislation and any necessary parliamentary authority through the Supply and Appropriation Act.
- 3.24 **Application in relation to Parliament:** Departments must identify the implications, if any, of their legislation for Parliament and the Parliamentary estate. The areas of law where issues of this kind might arise include employment, health and safety, enforcement regimes, rights of entry, licensing, advertising, contracting, planning and public order aspects of criminal law. If there are implications, Departments are expected to give the House Authorities an opportunity to comment on the proposals at an early stage.
- 3.25 **Handling strategies:** bill teams will need to prepare a parliamentary handling strategy and a wider stakeholder/media handling strategy in consultation with the Government Whips' Offices in the Commons and Lords and with the departmental press office respectively (see Appendix B for contact details for the Commons/Lords Whips' Offices).

**3.26 PBL Committee approval for introduction:** When a bill is ready for publication or introduction it must be circulated to the PBL Committee, accompanied by a covering memorandum and the supporting documents mentioned above, including: explanatory notes, impact assessment, legal issues memorandum, parliamentary handling strategy and delegated powers memorandum. The Committee will usually meet to agree to a bill's introduction.

### Summary of parliamentary stages

**3.27** The bill will start in either the Commons or the Lords. The House and date of introduction will be agreed by the PBL Committee on advice from the Business Managers. Bills starting in the Lords must complete broadly the same stages. There are five key stages in each House (summarised below).

#### Summary of a bill's stages:

- 1. First Reading** – formal presentation of the bill (no debate)
- 2. Second Reading** – debate on general principles of the bill
- 3. Committee Stage** – detailed clause-by-clause examination of the bill, consideration of amendments, and in the Commons oral evidence heard and written evidence published (if necessary)
- 4. Report Stage** – Further opportunity to consider amendments
- 5. Third Reading** – Final consideration of the bill

#### Detail of each stage:

**3.28** Introduction and First Reading: In the Commons, the Clerk at the Table will read out the short title of the bill, and a minister nods, after which the bill is deemed to have been read the first time. There is no debate. In the Lords, the minister in charge of the bill is called by the Lord Speaker or Deputy on the woolsack, normally at the beginning of public business after oral questions and after any formal business. The minister then introduces the bill by saying: *"My Lords, I beg to introduce a bill to [long title of bill]. I beg to move that this bill be now read a first time."* The motion is then agreed without debate.

3.29 Introduction is supported by the provision and publication of various documents:

- The final text of the bill is supplied by Parliamentary Counsel to the Public Bill Office the day before introduction and ahead of publication.
- The department is responsible for supplying the final text of the explanatory notes to the Public Bill Office the day before introduction (having cleared the draft version with them in advance) for publication overnight after introduction.
- The department should also ensure that the minister who will be in charge of the bill has signed the ECHR statement and that confirmation that this has been signed has been sent to Parliamentary Counsel. If a separate ECHR memorandum has been prepared (setting out the ECHR impacts separately to the explanatory notes) this should be published on GOV.UK but also shared with the Public Bill Office alongside the explanatory notes.
- The department is also responsible for the publication of an impact assessment, which should be published on GOV.UK and also shared with the Commons' Public Bill Office to be uploaded on the bill's page on the Parliament website, and for ensuring the appropriate availability of relevant older papers and revised editions of Acts.
- The department must also formally submit their delegated powers memorandum to the Delegated Powers and Regulatory Reform Committee:
  - For bills starting in the House of Commons: the memo should be sent to the Commons Public Bill Office for publication on introduction. When the bill moves to the House of Lords, the memo should be updated to reflect any amendments made in the Commons and formally submitted to the DPRRC on the day of Lords introduction. The DPRRC will formally consider the memo when the Bill is in Lords, but nonetheless it should be published on Commons introduction to enable scrutiny in the first House.
  - For bills starting in the House of Lords: the memo should be formally submitted to the DPRRC on the day of introduction.

- Supporting papers must be delivered to the Vote Office (who will be able to advise on how many copies are required); it is not sufficient to refer members to a website.

3.30 **Commons Second Reading:** There is a convention that the debate will not usually take place until two weekends have passed following the publication of the bill. Speaking notes and briefing need to be prepared for both the minister opening (usually the relevant Secretary of State) and the minister (usually the lead bill minister) winding up the debate. Programme motions are normally taken immediately after Second Reading without debate, followed by money resolutions, ways and means resolutions and, if necessary, carry over motions. Their preparation is a matter for Parliamentary Counsel.

3.31 **Commons Committee Stage:** This is the principal stage for detailed scrutiny and amendment of the bill and can usually begin the week after Second Reading. Scrutiny normally takes place in a public bill committee, which in most cases will take evidence from experts and interest groups, including from the minister and officials before beginning clause-by-clause scrutiny of the bill and considering amendments selected for debate according to the programme resolution.

3.32 For bills that have been subject to pre-legislative scrutiny, the committee may decide that oral evidence sessions will not be held. Oral evidence is not heard for bills that started in the Lords. The Committee Stage can also take place in 'Committee of the whole House', which is usually for bills of a financial or constitutional nature or for 'emergency' legislation that is being taken forward under the fast-track procedure. The Government, the opposition parties or backbenchers can table amendments. Clearance to table government (or to accept non-government) amendments must be obtained from the PBL Committee and from the relevant policy Cabinet committee if the amendments represent a change in policy. For both a public bill committee and a committee of the whole House, briefing and speaking notes must be produced for ministers on each clause (in case of debate on "clause stand part") and on any amendments tabled.

3.33 **Commons Report Stage:** A further chance to consider amendments to the bill, this happens on the floor of the House and can take place anytime from a week after Committee Stage (or sometimes even earlier). Debate is confined to amendments selected for debate, rather than a clause-by-clause examination of the bill. This is usually the final amending stage in the Commons.

**3.34 Commons Third Reading:** Normally takes place immediately after Report Stage. It is a further chance for the House to consider whether it wishes the bill as a whole to proceed, in the light of amendments at Committee and Report Stages. No amendments (other than 'purely verbal' amendments, which are extremely rare) are permitted at Third Reading.

**3.35 Transmission to the Lords and First Reading** (or introduction in the Lords, for those bills starting life in the Lords): When a bill is passed by the Commons, it is taken to the Lords by a Commons Clerk. The First Reading is moved immediately without debate and the bill is printed. If the bill comes from the Commons, the explanatory notes and impact assessment should be revised to take into account changes in the first House and a further ECHR statement etc must be signed by the minister who is in charge of the bill in the second House. The explanatory notes should be sent to the Lords Public Bill Office for publication (having first cleared the draft with them). The minister must also formally submit the delegated powers memorandum to the Lords' Delegated Powers and Regulatory Reform Committee, having updated it to reflect any changes made to the bill in the Commons. Where a bill starts its passage in the Lords, the bill minister reads out the long title of the bill at First Reading.

**3.36 Lords Second Reading:** This can take place once two weekends have elapsed since introduction. The procedure is similar to the Commons, with some minor differences including that the House of Lords does not vote on Second Reading<sup>2</sup>. There is also no programme motion or financial resolutions in the Lords, although an order of consideration motion may be moved to alter the order in which the bill will be considered in committee.

**3.37 Lords Committee Stage:** Either takes place on the floor of the House ('committee of the whole House'), or in a committee room ('grand committee') and can begin once 14 calendar days have elapsed since Second Reading. The requirement for producing speaking notes and background for ministers on clauses and amendments is the same as in the Commons. As in the Commons, PBL Committee clearance must be sought to table government amendments to the bill, and policy clearance is also necessary if the amendments would effect a change in government policy.

**3.38 Note:** A supplementary delegated powers memorandum should be submitted to the Delegated Powers and Regulatory Reform Committee in relation to any government amendments which include provision relating to delegated powers. Supplementary

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<sup>2</sup> Unless an amendment to the motion for Second Reading has been tabled.

memoranda, along with the text of the relevant amendments, must be received on (or before) the day an amendment is tabled. This also applies to government amendments tabled at Lords' Report Stage and Third Reading and for those considered at Lords' consideration of Commons amendments.

**3.39 Lords Report Stage:** For all bills of considerable length and complexity, Lords Report Stage takes place at least 14 calendar days after Committee Stage. Debate is limited to amendments before the House, so there is no need to debate each clause.

**3.40 Lords Third Reading:** 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. Amendments are restricted to technical points. An issue which has been fully debated and voted on or negatived at a previous stage of a bill may not be reopened by an amendment on Third Reading.

**3.41 'Ping-pong':** If the bill has been amended in the second House, it goes back to the House of introduction for consideration of the amendments in question ('Commons consideration of Lords' amendments' or 'Lords consideration of Commons' amendments'). The first House can accept, reject, amend or suggest an alternative to the amendments (amendment in lieu), which the second House will then consider. The matter goes back and forward between the two Houses ('ping pong') until agreement has been reached, or until there is 'double insistence'<sup>3</sup> and the bill falls.

**3.42** A final set of explanatory notes is usually required when a bill returns to the first House with amendments, which explains the amendments made by the second House.<sup>4</sup> These explanatory notes are published by the first House and a draft is to be checked by that House's Public Bill Office in advance of publication (the same with other explanatory notes). A supplementary delegated powers memorandum addressing any amendments which include provision relating to delegated powers made during Commons' consideration of Lords' amendments should be submitted to the Delegated Powers and Regulatory Reform Committee in advance of Lords' consideration of Commons' amendments.

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<sup>3</sup> The term 'double insistence' is used to describe a situation where one House insists on an amendment to which the other has disagreed, and the other House insists on its disagreement without any alternative proposal. If this point is reached the bill is lost.

<sup>4</sup> This may not be feasible if proceedings are moving very quickly, for instance on a fast track bill or during wash-up.

## On completion of parliamentary stages

- 3.43 **Royal Assent:** Takes place throughout the session by notification from the Speaker of each House or at prorogation. Requests for particular dates should be made through the Government Whips' Office in the Lords before the bill is introduced. Bill teams must make known to PBL Committee any requirements for Royal Assent by a particular date and the reasons for this requirement.
- 3.44 **Commencement:** Commencement dates should be specified in the Act where possible and appropriate. No substantive provision of an Act should be brought into operation earlier than two months after Royal Assent, although some sections of the Act can be brought into force on Royal Assent, typically sections setting out how the Act is to be cited and what the procedure is for making regulations or commencing the Act. In exceptional circumstances, approval for early commencement should be sought from the Law Officers and the chair of the PBL Committee. Retrospective provisions also need to be agreed by the Law Officers (contact details for the Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland can be found at Appendix B).
- 3.45 **Printing:** Departments should let Parliamentary Counsel and the Legislation Services Team in the National Archives know if an Act is expected to come into operation immediately. This is so that arrangements can be made for early clearance of the approved text, expedited printing and immediate publication of the Act on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website.
- 3.46 **Guidance and publicity:** Where new legislation affects business or civil society, guidance should be published as early as possible before the Act comes into effect and the changes in the law should be publicised. Departments should not leave preparation of guidance to the last minute. Departments should consider which other groups should be informed of the new legislation and how this can be achieved most effectively.



# 4. KEY PLAYERS IN MAKING LEGISLATION

- 4.1 Preparation and passage of legislation requires strong cross-departmental and government working. This section provides an overview of the different players across government and their role in the process.
- 4.2 The PBL Secretariat supports the PBL Cabinet Committee in the overall management of the Government's programme of legislation and provides advice to ministers on legislative issues. The Secretariat to the relevant policy sub-committee of Cabinet will coordinate the collective agreement process for the policy in the bill or piece of secondary legislation.
- 4.3 The Office of the Parliamentary Counsel is responsible for drafting the bill.
- 4.4 The Public and Private Bill Offices of the two Houses support the legislative process in Parliament and advise government and opposition members, and the chair in the House and in Committee Stage. The Clerk of Legislation in the Commons and the Clerk of Legislation in the Lords clear bills for introduction as conforming with the rules of each House. Their teams publish bills, explanatory notes and amendments. The Lords Public Bill Office supplies the final text of Acts to The National Archives for publication.
- 4.5 The Government Whips' Office in the Commons supports the government whips in liaising through the usual channels on programme motions and supporting ministers at all stages of the bill. It can also provide advice on the programming and timing of legislation and on parliamentary procedures for bills.
- 4.6 The Government Whips' Office in the Lords negotiates to secure time for bills in the Lords (where there is no programming) and negotiates the grouping of amendments. It offers advice and assistance with all aspects of parliamentary procedure and handling, including delegated powers, and will support the Lords minister in the chamber.

- 4.7 The Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland advise the Law Officers where bills raise issues of particular legal difficulty, disagreement or importance. They also advise on retrospectivity, early commencement, Crown immunity, devolution or ECHR compatibility and will work with departments and relevant centres of excellence when considering such legal issues. They advise on legal issues memorandum and will consider draft memorandums before consideration by the PBL Committee ahead of introduction.
- 4.8 Your departmental Better Regulation Unit advise on impact assessments, guidance for business and civil society, applicability of legislation to small firms and any other regulatory issues, including obligations in free trade agreements. They should agree the approach taken with the impact assessment and will want to be satisfied that the bill does not impose disproportionate burdens on business or civil society. They should also be able to advise on the process for submitting impact assessments to the Regulatory Policy Committee. The Digital Regulation Team in the Department for Science, Innovation & Technology can help advise on best practice when legislating to regulate digital technologies.
- 4.9 If your bill proposes to establish, disestablish, re-classify, or merge an arm's-length body (ALB), you must seek Cabinet Office and HM Treasury ministerial approval before taking steps to deliver the proposed change. Guidance is available in [The Approvals Process for the Creation of New Arm's-Length Bodies: Guidance for Departments](#). Your departmental ALB partnership team will be able to assist you in navigating this approval process in the first instance. They may then connect you with the Cabinet Office's Public Bodies Team ([publicbodiesreform@cabinetoffice.gov.uk](mailto:publicbodiesreform@cabinetoffice.gov.uk)) and HM Treasury.
- 4.10 If your bill impacts the United Kingdom Intelligence Agencies (MI5, SIS (MI6) and GCHQ), departments should contact colleagues to discuss the legislative proposals. The Foreign, Commonwealth & Development Office should be contacted in relation to SIS and GCHQ, and the Home Office for MI5. You should adhere to departmental security advice when discussing sensitive matters.
- 4.11 For proposals that may affect competition (for example, by raising barriers to entry or privileging one business model over another), Departments should discuss with the Competition and Markets Authority (CMA) and consider CMA's "competition assessment checklist" to assess the likelihood of impacts on competition and consider mitigations or alternative options, including those which could promote competition, supplementing the

analysis in the Regulatory Impact Assessment. Guidance on how to complete the checklist can be found in the [Competition impact assessment: guidelines for policymakers](#). Departments who are undertaking a competition assessment with complex issues should speak to the CMA for further guidance ([advocacy@cma.gov.uk](mailto:advocacy@cma.gov.uk)). The Competition Policy team at the Department for Business and Trade can also provide advice ([CompetitionPolicy@businessandtrade.gov.uk](mailto:CompetitionPolicy@businessandtrade.gov.uk)).

- 4.12 Your department's [equality and diversity lead](#) can advise on how to ensure that you properly consider the impact of your proposed policies on different groups – such as in regard to race, gender, disability, etc. Note that it is a statutory requirement to do this when developing new policies. Detailed [advice and guidance](#) is available from the Equality and Human Rights Commission. The Government Equalities Office can also assist, in the case of more complex enquiries.
- 4.13 The [Scotland Office](#) is the first port of call for discussing any provisions that may affect Scotland, including identifying where a legislative consent motion may be required if the bill touches on matters that are devolved to Scotland. It can also support departments in any negotiations with the Scottish Government.
- 4.14 [The Office of the Advocate General for Scotland](#) is part of the UK Government and provides legal advice on Scots law and associated devolution.
- 4.15 The [Wales Office](#) is the first port of call for discussing any provisions that may affect Wales, including identifying where a legislative consent motion may be required if the bill touches on matters that are devolved to Wales or where Welsh ministers should be consulted on provisions in the bill that extend to Wales. It can also support departments in any negotiations with the Welsh Government.
- 4.16 The [Northern Ireland Office](#) is the first port of call for discussing any provisions that may affect Northern Ireland, including identifying where a legislative consent motion may be required if the bill touches on matters that are transferred to Northern Ireland. It can also support departments in any negotiations with the Northern Ireland Executive.
- 4.17 The [parliamentary private secretary](#) to the bill minister or secretary of state will sit on the public bill committee and advise the minister on handling. Contact can be made through the bill minister's Private Office.

4.18 Departments should consult The National Archives and the legal team at the Department for Culture, Media & Sport at an early stage on any proposals to amend the Public Records Act 1958.

# 5. SECURING A SLOT IN THE LEGISLATIVE PROGRAMME

## Key points

- For primary legislation, the chair of the PBL Committee will request bids for legislation ahead of the next session. Bids should be made using the bidding template provided, setting out the broad policy objectives, the requirement for legislation and provisional timelines or deadlines.
- The PBL Committee will assess bids on their political importance, urgency and state of preparation. It will then make recommendations to Cabinet on the content of the legislative programme, providing drafting authority where appropriate. Late bids for legislation can be made but will need to have a strong case for inclusion in the programme as this may be at the expense of another bill.
- The PBL Committee will review the programme throughout the year and this may result in a bill being deferred to a later session if higher priorities emerge or if it is unlikely to be ready on time.
- Announcements about an intention to legislate in a particular session can only be made with the agreement of the PBL Committee or following an announcement in the King's speech.
- For secondary legislation, departments request a slot for their statutory instruments (SIs) by proactively engaging with PBL Secretariat's monthly SI triage process. The PBL Triage ministers, a subset of the full PBL Committee, review the SIs before providing departments with PBL clearance to proceed with the SI on the requested date. Officials responsible for delivering their department's secondary legislation programmes can obtain internal guidance on engaging formally with the SI triage process by contacting the PBL Secretariat on [pblsecondarylegislation@cabinetoffice.gov.uk](mailto:pblsecondarylegislation@cabinetoffice.gov.uk).

## Is a legislative slot necessary?

5.1 Before seeking a slot in the legislative programme, departments should consider whether legislation is necessary. Parliamentary time is limited and departments should always consider whether the ends they wish to achieve could be reached by purely administrative means. If it

is certain that legislation is required, departments should consider whether secondary legislation or a legislative reform order could be used.

5.2 When considering legislation, departments should be ready to challenge the content of their bills and SIs and ensure that bills and SIs introduced to Parliament are as clear, coherent and effective as possible.

5.3 Mistaken perceptions of what the law requires can encourage risk-aversion and inaction. Good law is: necessary, clear, coherent, effective and accessible (see the [Office of the Parliamentary Counsel website](#)). An understanding of 'good law' should underpin the preparation and promotion of legislation. It should be the default, with good law principles guiding all those involved at different stages and in various capacities in the making of legislation. Like open policy-making and the strategic use of digital technology, good law should be considered part of the user-centred approach across government.

#### **Preparation of the legislative programme and submitting a bid for legislation**

5.4 In order to ensure that the necessary Cabinet committees have all the information needed to assess the relative priority of bids for primary legislation, bids should be submitted using the bidding template provided by the PBL Secretariat which should include a summary of the bill, the driver for the bill and any proposed or imposed timelines. Departments should also consider at this stage whether their bill might be suitable for publication in draft for pre-legislative scrutiny.

5.5 Bids should be submitted by the deadline requested, so that the PBL Committee and Cabinet have a complete overview of all the likely requests for legislation on which to base their decisions about the programme. Even where details are still sketchy it is far better to submit a bid on time than to submit a bid later in the session, as accommodating a bill at that stage may well be at the expense of another bill.

5.6 Departments need to have systems in place to ensure that all likely bids are captured in the annual bidding round. Departments should have a nominated legislation coordinator, who will act as the point of contact for the PBL Secretariat. Departments should consider whether Law Commission recommendations accepted by the Government could be included in their bid as a standalone measure or part of a larger bill.

5.7 The PBL Secretariat will provide clear communications on the overall approach to a bidding round ahead of a new session, including deadlines throughout the process, but as an example:

## Example timetable for preparing and finalising the legislative programme

### 9-10 months before the start of the session

- Request bids for legislation
- The PBL Secretariat produces recommendations for the PBL Committee, in consultation with the Business Managers, No.10 and Parliamentary Counsel, taking into account political priorities and the state of preparation of bills
- Cabinet considers the PBL Committee's recommendations and reaches a provisional view on the contents of the following session's legislative programme
- At this point PBL will provide provisional drafting authority to departments to ready approved bills.

### 5-6 months before the start of the session

- The PBL Committee considers progress on bills in the programme and looks at any emerging bids. It considers whether any changes need to be made to the programme (this can happen more than once)

### One months before the start of the session

- Cabinet finalises the programme and agrees the content of the King's Speech
- Departments work on products to support the Speech

## Criteria for assessing bids

5.8 There are always more bids for legislation than there are places in the programme. The PBL Committee assesses the relative priority of each bid against criteria set out by the chair of the committee. These factors would normally include:

- Whether legislation is necessary: The PBL Committee will want to satisfy itself that the proposal cannot be implemented using another means, such as secondary legislation, a legislative reform order or a non-legislative mechanism;

- Political content and urgency of the proposed bills: Some may have a political priority (such as government priorities or manifesto commitments) and others may be essential (for example, to meet international obligations);
- How far advanced work is on the bill and how well prepared the bill is likely to be: significant progress in agreeing the policy content of the bill would normally be expected;
- Whether the bill has previously been published in draft for consultation and pre-legislative scrutiny. While publication in draft does not guarantee a place in the following year's programme, it is a factor that the PBL Committee will look on favourably;
- Any handling issues, parliamentary pressures and stakeholder opinion, including how the bill could be managed; and
- The devolution position and handling.

5.9 If it is politically important, a bill may be given a slot in the programme before many of the details have been fully worked out. If this is the case, the bill minister should submit a bid with a clear statement of what the bill is expected to contain and indicating the timetable for remaining stages of policy development. The PBL Committee can then consider whether there is room for the bill in the programme and if it would be feasible to prepare a bill in the time available. The PBL Committee will award such bills a slot in the programme only if it is confident that the remaining details could be worked out and the bill prepared in good time for introduction, including sufficient time for public consultation where appropriate.

5.10 When a department bids for more than one bill, it should rank them in order of priority and, as well as the need to legislate, should consider the workload on ministers and officials if they are involved in more than one bill at once. The Government Whips' Offices, the minister's Private Office and the departmental parliamentary branch can help develop a reasonable assessment of the difficulties involved and the time required.

5.11 Where the proposals are short and uncontroversial, departments should consider whether the bills would be suitable for the 'handout' route where a bill is given to a member who has been successful in the ballot for private members' bills and is not a minister, held at the start of each session.

### **Bidding outside of the annual bidding round**

5.12 Whilst every effort should be made to submit bids for legislation during the annual bidding round, urgent requirements for legislation can emerge at any time. In this case, the minister



should write to the chair of the PBL Committee to make a bid, completing the templates used by other departments in the annual bidding round and providing as much information as possible about the proposed legislation.

5.13 Any late bids should be made as soon as the need for legislation emerges, as other bills already awarded a slot may have to be dropped to accommodate the new priority. If the PBL Committee awards the late bid a slot for the following session, work on the bill will need to start immediately if it is to be ready for the start of the session.

### **Time of Royal Assent**

5.14 Departments should ensure that any absolute deadlines for Royal Assent are flagged in bids. Such requests should only be made where they are absolutely necessary, for instance, where the Government is legally vulnerable if it does not implement legislation by a certain date, there is an existing public commitment to implement the proposals by a given date, or any delay beyond this date would result in significant costs.

5.15 The more bills that require early Royal Assent, the less flexibility the Business Managers have in timetabling the programme. Desire for an early Royal Assent date simply to demonstrate political commitment or achieve early implementation will not normally be accommodated. While the Business Managers will make their best endeavours to meet any absolute deadlines for Royal Assent, no guarantees can be given as this will depend on the progress of the bill through Parliament.

# 6. THE BILL AND BILL TEAM MANAGEMENT

## Key points

- The bill team must be properly resourced, with a dedicated bill manager, separate to the policy team, in place to oversee progress from an early stage.
- The bill manager should be responsible to an SCS-level Senior Responsible Owner (SRO) who should convene a departmental project board for the delivery of the bill and its supporting documentation on introduction and throughout passage. The project board should be made up of the senior officials, and officials, with an interest in or responsibility for a bill's delivery.
- The Permanent Secretary must take responsibility for all the department's legislation. Departments will want to consider having an overall legislation board, overseeing the primary and secondary legislative programme.
- The bill team will need strong project management skills. All bills need a delivery plan and a risk register, to be agreed with the SRO and bill minister.
- Good communications within the bill team and the much wider group of officials involved in the bill are key to success. Policy leads and bill legal advisers will be heavily involved in work on the bill and are likely to need extra resources for the lifetime of the bill. Extra policy and legal resources may also be needed for implementation and this should be included in bill resource planning.
- Bill teams will be working under great pressure for much of the time, in particular during parliamentary stages, and it is crucial they have adequate administrative support and excellent IT, printing and photocopying facilities. Bill teams should work with their departmental parliamentary branches to discuss parliamentary processes.
- Teams should have regular meetings with their Private Office leads. The bill will need regular political oversight from special advisers and ministers. The bill minister must maintain oversight of the development, in particular on preparations for parliamentary and stakeholder handling.

## Importance of providing sufficient resource and oversight

- 6.1 A properly resourced team, with clear lines of accountability and oversight, is vital to the successful preparation and delivery of **all** legislation (however short or uncontroversial) and is one of the factors which will be considered by the PBL Secretariat in advising the committee on the content of the programme and in monitoring bill progress. Bill management must not be seen by senior management as an overhead: providing sufficient staff resources and expertise, including administrative capacity, is an integral part of the process and should not be ignored or left to chance.
- 6.2 Many others beyond the bill team will be involved. Policy and legal teams closely involved in the bill may also need to be equipped with extra resources for the lifetime of the bill.
- 6.3 It is important to appoint a bill manager early in the process and departments should not wait until all policy is finalised before doing so. This may seem a diversion of resources while departments are still engaged in producing a white paper and finalising the detail of a new policy, but good planning and preparation at this stage is crucial for the success of the bill later on. Even if policy to be included in the bill is still at an early stage, as soon as a bill has been allocated a slot in the programme, a bill team manager should be appointed to ensure that good progress is made.
- 6.4 Although the bill manager must have a good understanding of the content of the bill, the role of the bill manager is to maintain an eye on the parliamentary timetable and an objective overview of the entire bill, rather than getting caught up in the detail of the policies. At its core, the role involves ensuring the bill is ready for every stage, a handling plan is in place and that appropriate advice is provided to the right people at the right time during the passage of the bill.
- 6.5 The bill manager will be responsible for day-to-day management of all bill work streams. Good project management and communication skills are critical and the bill manager (and bill team) should be recruited with these requirements in mind. The bill manager will work closely with the bill minister, with the bill's SRO and with senior officials in the department and the centre of government and will need to be able to provide them with robust advice. They should be of sufficient seniority to deal robustly with colleagues across the department and in other departments, for example when it is necessary to request speaking notes, briefing and other material for the minister at very short notice.

6.6 A senior civil servant must also be appointed as SRO for each bill, with direct oversight of the bill manager and bill team. As with any project SRO, their role will be to ensure the project remains on track, i.e. that the legislation is developed on time and that any issues are handled in a timely manner.

6.7 The bill manager should be responsible to the SRO and a departmental project board for the delivery of the bill and its supporting documentation. The bill manager must ensure that all those involved in work on the bill are clear about the tasks they have been allocated and the deadlines for completing them. They should maintain regular contact with all the key players to monitor progress against deadlines and actively manage risks to the project, escalating risks to the project board where necessary.

6.8 A senior civil servant should similarly be appointed as SRO for secondary legislation, responsible for their department's governance arrangements and ultimately for the delivery of their secondary legislation programme. This may be a separate role and person to the individual SRO for each bill but it is important that there is sufficient continuity and effective handover between the bill team and those responsible for its implementation after Royal Assent

## **The Bill Team**

6.9 In most cases the bill manager will be a Grade 6 or 7 and supported by a small team, usually consisting of one or two EOs and two SEO/HEOs (often including a specific deputy bill manager). For major bills or those covering controversial issues that are likely to engender significant debate in Parliament or attract numerous amendments, a larger or more senior team may be needed.

6.10 The key to an effective bill team is good communication within the team, and the larger the team, the harder this becomes.

6.11 A bill team should be small enough to function as a 'hub' but large enough to cope with the burden of work at the busiest period (although there will be no avoiding working longer hours than normal during those peaks and bill teams must be prepared for this). Three to five people should be sufficient for the vast majority of bills; the very largest bills might necessitate a larger team.

6.12 A strong supporting team is required to keep on top of large volumes of paperwork, coordinate large amounts of briefing and speaking notes from across the department and respond to requests from ministers at short notice.

- 6.13 The bill manager will want to consider allocating specific responsibilities within the bill team, for example one person who (among other things) is responsible for the delivery plan, one person who is responsible for stakeholder management / communications strategy and liaison with Press Office and one person who is responsible for liaising with the Business Managers (the PBL Secretariat and officials in the Government Whips' Offices in the Commons and Lords).
- 6.14 The bill manager will also want to consider whether one member of the team will act as first point of contact on devolution issues and on delegated powers. Someone within the bill team should also have responsibility for ensuring that detailed records are kept throughout the process, and that copies of all briefing and speaking notes are filed.
- 6.15 For major amending stages, the bill team may want to consider colocation with other officials involved in the bill work - including the legal advisers and policy team.
- 6.16 For 'joint' bills where more than one department has a core interest in the bill one department should assume the lead on the bill, with the bill team based in that department but working very closely with colleagues in the other key departments.

### **Managing multi-departmental bills**

- 6.17 Depending on the bill's policy content, scope and/or handling issues throughout passage, bill teams may need to work with other government departments. There are a couple of scenarios which would necessitate working with other government departments: one department's measures may be packaged with another's, either by the department's request or by the PBL Secretariat, or bill passage could lead to pressure on a policy area which would require another department's specific input on amendments or concessions.
- 6.18 Although the type of joint working will depend on the level of interest another department has in the bill, it is essential to have cohesive and clear working relationships between ministers, senior officials and officials in every circumstance. Where a bill is jointly owned between two departments, or another department has a significant chunk of measures in the Bill, having a shared expectations and a joint understanding of the bill team, project management and decision making structures is even more important.
- 6.19 There is no set team structure for joint bills - some departments may appoint one main bill manager and one bill SRO for each department, whilst other bills may have a bill manager situated in one department, with deputies from both departments reporting into them and a

project board which sits above both departments. Regardless of structure, it is essential that the bill team operate as one, rather than parallel teams.

6.20 Where a bill team is working with another department on a few measures, it is recommended that the team work directly with policy teams, or a named contact who can provide a coordinating function for the whole department.

6.21 Effective working requires practical steps too. Where departments operate on different IT systems, teams should explore whether external access can be given to shared drives and workspaces to avoid version control issues and delays. Establishing virtual communication channels for day-to-day working and 'virtual boxes' is also necessary. Physical co-location, particularly on the days leading up to bill stages, will facilitate stronger working relationships and improve understanding of bill processes. If a bill manager is situated in one department, they should make sure they spend time with, and be visible to, both departments. Inviting both departments to bill meetings or training is another way to foster relationships. Ways of working should be agreed early on, with regular check points to review if these are still working, as the bill moves through passage.

6.22 Having agreed ministerial ownership and decision-making processes are essential. Early on, the bill team should agree which department leads on specific clauses and policy issues. As a general rule, policy decisions should be made by the responsible policy minister, in conjunction, where applicable, with the bill minister. If there are disagreements or conflicting steers on a shared piece of policy, the bill team should try to resolve disagreements at an official level before escalating to Special Advisers and ministers. Regular reviews throughout passage to ensure these decision making processes continue to be appropriate is important.

6.23 The department which owns the majority of the measures will generally have overall responsibility for bill strategy and will approve handling advice, the PBL Committee papers, and supplementary products. For joint bills, strategy decisions should be made by ministers in both departments in parallel. Bill teams should ensure that both ministers have the same information and products at the same time, preferably submitted on the same email chain to record an audit and assist with version control. This may be a lengthy, difficult process, so teams should build in plenty of time. Encouraging each Private Office to build relationships with each other can assist, as can clear commissioning emails that set out the specific asks for each minister. This also enables ministers to take decisions cognisant of their impact across the bill.

6.24 Facilitating relationship building between ministers is also critical. Joint, in person, briefings with officials from both departments are a useful tool and will help smooth decision making and engagement.

6.25 In addition, if a bill spans multiple topics or might have wider stakeholder interest, engagement with various departments prior to introduction to Parliament is useful, even where there is no formal role for those departments. This will allow the department to understand other areas of interest and lead to closer working relationships in the event amendments are tabled.

6.26 During passage of a bill, it may become necessary for departments to work together, for example, as a result of amendments tabled by backbenchers. In such instances, a clear understanding of timescales and options are needed. It may also be necessary to upskill departments on parliamentary procedure to support a shared understanding, particularly where amendments affect teams who have not worked on primary legislation recently.

### **Project management – delivery plan and risk register**

6.27 While previous experience of working on a bill is desirable – any bill team should ideally include at least one person who has worked on a bill before – strong project management skills, and an ability to assimilate information rapidly and to adapt to change, are essential. Even the smallest of bills is a project, relying on a large number of different people for successful delivery, with fixed milestones such as the date of introduction and a fixed end date (end of the parliamentary session) that mean compromises on scope may need to be made. As a project, a Bill must have a clear delivery plan and risk register.

6.28 For each part of the bill, the delivery plan should set out who is responsible for doing what and as an example include the timetable for:

- ministerial clearance within the department;
- collective agreement by the relevant Cabinet committee(s);
- development of a robust parliamentary handling strategy, covering the content of the bill and other issues that parliamentarians may raise;
- publication of relevant policy documents (e.g. green / white papers);
- public consultation;
- government response to the consultation;

- delivery of policy instructions to legal advisers;
- delivery of legal instructions to Parliamentary Counsel;
- draft clauses and clauses finalised;
- resolving other issues, for example, with other government departments or external stakeholders;
- production of explanatory notes, an impact assessment, legal issues memorandum, delegated powers memorandum and clause stand part notes;
- completion of other tasks required ahead of each new parliamentary stage and immediately after Royal Assent;
- completion of other tasks required before the act comes into force, for example, preparation of guidance or statutory instruments (regulations) - do not assume that implementation planning can be left until late in the passage of the bill – it needs to form part of the delivery plan from the outset; and
- contingency to resolve any issues that may emerge.

6.29 The delivery plan should help the bill team to identify any quieter periods that can be used to prepare ahead for subsequent stages and for the various products that are required post-Royal Assent and to ensure filing is in order. The delivery plan should also cover resourcing (budget, administrative and most importantly staffing).

6.30 Once a bill is awarded a place in the provisional programme, the PBL Secretariat will call a meeting with the bill team and Parliamentary Counsel to discuss the delivery plan and timetable for sending instructions to Parliamentary Counsel. This will be followed by further meetings as needed and as work on the bill progresses. If deadlines are missed, the bill's place in the programme may be at risk therefore project boards should be careful to ensure that they are not signing up to targets that are unrealistic or undeliverable.

6.31 Some departments have developed standard tools for their bill teams (bill teams should check with their departmental parliamentary clerks or legislation lead) but there is no set format – bill teams should use whatever tools are most helpful to them in managing the work.

6.32 Risks post-introduction will later form the basis of the parliamentary handling strategy that must be produced for the PBL Committee when it considers the bill prior to introduction. This will need to include any issue where there is likely to be significant push back on the



Government's position and what steps are being taken to win the argument with stakeholders. It should also include what concession the Government would be prepared to make in order to avoid an outright defeat, and whether, if defeated, the Government would seek to reverse the defeat outright or to offer a concession. During parliamentary stages, things can move rapidly, so contingency plans (a concession strategy) should be in place at an early stage.

## **Project board**

6.33 Departments should take a reasoned judgement as to what form of project board is appropriate given the size, complexity and political priority of the bill in question but, as with any project, it is critical for success that senior management demonstrates absolute engagement with and commitment to the bill - and its resourcing - right from the start.

6.34 When a bill covers issues that are the responsibility of more than one department the project board should reflect interdepartmental interests. If a bill relates to the work of an executive agency or non-Departmental Public Body (NDPB) these bodies should also be represented.

6.35 It should include one board member without direct responsibility for delivery of the bill, for example someone from the department's central strategy unit, to provide an external perspective on progress or 'project assurance' and who can act as a 'critical friend'. It may also be helpful to include a customer representative on the board, i.e. a representative of a stakeholder group affected by the bill.

6.36 The project board's role is to ensure that the bill remains on course for delivery to the timetable agreed between the bill minister and the PBL Committee. It will take an active interest in overseeing progress and addressing any delays or problems with the quality of the work. In particular, the board should:

- ensure that all bill team roles are filled and that the individuals concerned have the relevant skills and know the areas for which they are responsible and the relative priority they should afford, particularly if work on the bill does not constitute their sole work;
- be satisfied that the necessary structures and systems are in place to deliver the bill and provide regular progress reports;
- identify and quickly address any problems that emerge, such as insufficient policy or legal resources or specific policy or handling issues;
- regularly consider key risks and proposed actions to manage these; and

- address any changes in ministerial priorities for a bill that may affect its resourcing.

6.37 Members of the board, particularly the chair, may also need to be involved in between formal meetings to address urgent issues.

### **Policy leads**

6.38 The official(s) with lead responsibility at working level for the policy or policies in a bill must be fully engaged and sufficiently resourced in order to be able to meet the exacting deadlines of bill work, as well as carrying on routine work. Lead policy officials must deliver policy instructions to the bill team and departmental legal advisers on time and respond quickly to draft clauses and questions posed by Parliamentary Counsel. They will be responsible for producing an impact assessment for the policies for which they are responsible, and will also need to contribute to the explanatory notes and wider supporting documents for the bill.

6.39 Once the bill is introduced, policy leads will continue to play a central role in developing solutions to outstanding or arising policy issues, continuing engagement with stakeholders, and drafting notes on amendments and other briefing material for ministers. They will need to be available to attend briefing meetings, debates and Committee sessions. Because of the burdens of bill work, which can be considerable, on top of normal responsibilities, for the life of a bill policy teams are likely to require additional resources.

### **Bill legal advisers and others instructing Parliamentary Counsel**

6.40 At the initial resourcing meeting on the project, it will be decided who is the most appropriate person to instruct Parliamentary Counsel. In many cases, this will be the departmental lawyer (who will draft instructions based on policy instructions provided by policy leads), as they will be able to provide advice to Parliamentary Counsel on the current legislation and matters related to it that Parliamentary Counsel will need to know, such as how the legislation operates in practice, what case-law is relevant and how the legislation fits into wider departmental policy.

6.41 However, in some cases, such as where Parliamentary Counsel is already familiar with the legislation and its background, it may be more efficient for all or some aspects of the instructions to be provided to Parliamentary Counsel directly by a policy official, in order to avoid duplicating legal resources (or perhaps for instructions to be primarily dealt with by a policy official, but with input from a departmental lawyer where necessary). There should be

flexibility within the bill team about who is best placed to deal with Parliamentary Counsel, which may differ depending on the issue under consideration.

6.42 But even where instructions to Parliamentary Counsel are not provided by the departmental lawyer, departmental legal advisers will continue to have a key role in the bill process, providing legal advice to policy clients in connection with the preparation of the bill (and in many cases also the instructions to Parliamentary Counsel), drafting the legal issues memorandum and advising on ECHR issues (see Chapter 11) and continuing to advise as the Bill goes through Parliament and during the implementation stage, after the bill has received Royal Assent.

6.43 On a bill where different sets of instructions to Parliamentary Counsel are drafted by different people, it is usually helpful for one of those people to be identified as a contact point both for Parliamentary Counsel and for the bill manager and to be responsible for coordinating instructions to Counsel, keeping track of progress on the legal side and identifying any problems as they emerge, working in partnership with the bill manager and clearing speaking notes before they are passed to ministers. The importance of this is due to the ruling of *Pepper v Hart* where parliamentary material may be used to assist in the interpretation of legislation in cases where such legislation is ambiguous or obscure.

6.44 The role of those producing instructions to Parliamentary Counsel does not diminish once the bill is introduced. It is vital that they are sufficiently resourced to engage in policy discussions as issues arise, to draft instructions on amendments and to very quickly clear speaking material, briefing etc. They will also need to attend debates and Committee sessions.

### **Top logistical tips – ensuring the team is prepared**

6.45 Bill teams will be working under great pressure for much of the time, in particular during parliamentary stages. This section offers some practical tips to help make bill work easier.

6.46 Parliament will not postpone its scrutiny of the bill because the photocopier has broken down – the importance for a bill team of excellent IT, printing and copying facilities cannot be underestimated. Bill teams will often need to print / copy a large amount of material at short notice, for example several complete sets of notes on amendments and clause stand part notes immediately before a ministerial briefing or Committee session, and nor should bill teams underestimate how long this task can take. The bill team will need to have dedicated printing and copying facilities (for its own benefit but also for the benefit of others as the bill

team may well need to use the printer and copier for several hours at a time). It should also have ready access to back-up printers and copiers.

6.47 Bill teams should arrange with their department's IT Support Team for the team, policy leads and legal advisers to be priority customers so that requests for assistance can be dealt with urgently. Bill teams should also request an increase to their email inbox limit, as once bill drafts in pdf format and scanned-in copies of amendments from the order paper start coming in these will fill up an inbox very quickly.

6.48 There will be occasions when neither the team, nor policy leads will be located in the same building as the minister(s). On occasions, especially during the Committee stages, the team will need to be close to the minister and Parliament and therefore space, such as a meeting room, should be reserved.

6.49 Bill teams may also need to ensure sufficient desk space in the office. Though the flexibility of hybrid and remote working can be helpful, substantial amounts of bill management requires physical presence, for example to paper briefing packs, meet ministers and attend meetings and debates on the parliamentary estate.

6.50 The use of spreadsheets will be useful for tracking progress of draft clauses and later on speaking notes for amendments.

6.51 There will be times when the team, and their policy and legal colleagues, will be required to work long hours, so bill managers should ensure that they understand their department's policy on overtime payment, travel and subsistence or make special arrangements if necessary, for example for booking taxis home after any late finishes in Parliament.

6.52 Key players on the bill (key policy leads and legal advisers as well as members of the bill team) should apply for a standing (pink) parliamentary pass in good time. Your departmental parliamentary branch or security team can assist with applications.

6.53 Other officials who may need to attend Parliament from time to time can obtain visitor passes from the main visitor entrance. This allows access to all the public areas of Parliament, including Committee rooms. It can take some time to pass through security - over 30 minutes at busy times, so you should be prepared and allow plenty of time. Officials briefing ministers should be given priority so if the visitors' entrance is particularly busy with tourists, explain your business, show your departmental pass and ask to be fast-tracked.

- 6.54 Details for officials who require additional support to access the estate in order to attend parliamentary proceedings can be found in the [Guide to Parliamentary Work](#).
- 6.55 If you require access to ministerial offices or other places outside of the public areas of Parliament you will need a day pass. There is no need to request a day pass a long time in advance: it is normally fine for officials to ask the parliamentary branch that they need a pass for the following day (or in extremis even for the same day). Day passes must be collected in person from the Pass Office located at 1 Parliament Street. Further information on day passes can be found in the [Guide to Parliamentary Work](#). Officials must have their departmental security pass with them for identification. They are valid for the whole day so if it is more convenient they can be picked up some time before they are needed that day.
- 6.56 When Parliament is sitting the Pass Office at 1 Parliament Street opens at 8am and closes at 6pm (except on Fridays when it closes at 4pm), so officials wanting to enter after 6pm must remember to collect their pass earlier in the day. During recess there are reduced opening hours – check with the Pass Office. Officials should allow an absolute minimum of 15 minutes to get from the Pass Office at 1 Parliament Street to the House of Commons or House of Lords.
- 6.57 Bill teams and officials who will need to sit in the Officials Gallery (i.e. 'the box') in either chamber to support their minister during debate should ask the departmental parliamentary clerk to arrange access to the box for them on those days. Special permits are required for those without day passes and you will also need to show your departmental pass. These arrangements are subject to change so always check with your parliamentary clerk.

## Training

- 6.58 A great deal can be learnt from departmental colleagues who have worked on bills in the past. Parliamentary clerks and legislation strategy teams should have their contact details, and may also have formal 'lessons learnt' documents from previous bill teams.
- 6.59 The Parliamentary Capability Team offers specific training and learning resources designed for new bill teams and prospective bill teams. Teams can join regular open courses or request a closed course i.e. a course exclusively for those who will be working on a particular bill. Joint training for a bill and policy/legal team who are new to working together can be a useful way of bringing the team together early on. You can contact [parliamentarycapability@cabinetoffice.gov.uk](mailto:parliamentarycapability@cabinetoffice.gov.uk) for more information.

6.60 Bill managers are encouraged to run a session themselves for their wider team, to give the departmental officials involved in the bill a broad introduction to bill work. The PBL Secretariat are happy to help run these sessions as appropriate.

6.61 Parliamentary Counsel and departmental lawyers can also assist in providing training to bill teams and policy colleagues working on a bill either on the bill process as a whole or on specific aspects such as how to handle amendments or the ping pong stage. This includes the option of “just in time training” during the passage of the bill (e.g. training on Ping Pong as the bill reaches the end of its passage through the second House). There are also useful materials on [gld.digital](http://gld.digital). Do not hesitate to ask if you think your bill team or the wider team involved in preparing for a bill would benefit from training.

# 7. COLLECTIVE AGREEMENT

## Key points

- Collective agreement for legislation must be obtained from the PBL Committee and other relevant Cabinet committees. Agreement is needed to announce the intention to legislate to a certain timescale or in a specific vehicle, for the detailed legislative proposals and bills before introduction and for government tabled or supported amendments during parliamentary passage. The Government should not preempt the contents of the King's Speech - doing so is a breach of collective agreement.
- Relevant Cabinet committees will consider the content of the proposals, including any changes before or after introduction which amend the policy or introduce significant new provisions, in line with their terms of reference while the PBL Committee will consider the state of preparation and handling. If policy clearance has not been obtained through this process when a slot in the programme is allocated, this should be a priority although not at the expense of giving proper consideration to the policy and its implications. Other departments should be consulted at official level as early as possible, before seeking formal policy agreement.
- Where collective agreement is sought via correspondence through the write round process, five working days after the letter has been issued should be allowed for ministers to comment on requests for formal policy agreement; nine working days during parliamentary recess. The chair of the committee will also need four days to confirm clearance.
- The full list of Cabinet committees and their terms of reference are available on [GOV.UK](https://www.gov.uk). The Cabinet Secretariat can provide more guidance on seeking collective agreement and which committees you should write to.

## When collective agreement is required

7.1 The Cabinet Secretariat should provide the final steer on whether collective agreement is needed on a specific issue, using the Cabinet Manual and considering the Ministerial Code. For legislation the PBL Committee's agreement is broadly needed to:

- Agree a slot in the legislative programme in a specific session and to start drafting legislation;
- Announce the intention to legislate to specific timescales or in a specific vehicle;
- Agree in principle that a bill should be published in draft;
- Approve publication in draft for pre-legislative scrutiny when the final text of the draft bill is available and, particularly if it is proposed that a joint committee should be established or a departmental select committee be invited to consider the draft bill, the form of pre-legislative scrutiny;
- Make significant changes to the content of the bill after a slot in the programme has been allocated and in particular changes which would significantly widen the scope of the bill require clearance from PBL Committee. Smaller additions or omissions arising from further policy development do not need to be cleared by the PBL Committee at this stage, only by the relevant policy committee (see below);
- Approve a bill's introduction into Parliament; and
- To table any government amendments or accept any opposition or backbench amendments to a bill, except where the PBL Secretariat and Parliamentary Counsel have both agreed that the amendments (whether government or non-government) can be considered minor and technical (see 22.1). Clearance may still be required if a large number of minor and technical amendments are proposed given the time these may take to debate.

7.2 Broadly speaking, the agreement of other relevant Cabinet committees is needed to:

- Approve the policy contained within a bill (whether introduced or published in draft);
- Announce the intention to legislate on a particular issue; and
- Agree any changes to a bill, either before or after introduction, which amend the policy or introduce significant new provisions.

7.3 It is important that bill teams factor collective agreement into the overall project plan and develop policy and concessions in good time to enable collective agreement processes. Often this will require contingent planning and processes.



## SECTION B

# PREPARING THE BILL FOR INTRODUCTION

# 8. DRAFTING THE BILL

## Key Points

- Government bills are drafted by the Office of the Parliamentary Counsel (OPC) on the basis of instructions provided by the department.
- It is essential to the overall success of a bill project that the department provides OPC with good quality instructions and that it does so in good time. OPC has produced this and the following chapter to help departmental officials with this task and with other aspects of the bill drafting process.
- This chapter includes:
  - Information about the essential components of good law;
  - background information about OPC;
  - information about the role of the drafter of the bill in relation to policy making;
  - advice about when the department should first involve OPC in the bill project;
  - advice about when the department should send instructions to OPC;
  - advice about how to go about preparing the instructions;
  - information about what the drafter will do with the instructions;
  - advice about commenting on draft provisions and responding to questions from the drafter;
  - advice about how much time to allow for preparing the instructions and drafting the bill; and
  - advice about involving the minister in the drafting process.
- The next chapter contains detailed advice about the form, structure and content of instructions to OPC.

## **Good law**

8.1 Everyone working on a bill should keep in mind the essential components of good law. Good law is law which is necessary, clear, coherent, effective and accessible.

## **Background information about OPC**

8.2 OPC is part of the Cabinet Office. It has around 50 legally qualified drafters who are responsible for drafting all government bills, including those that are to be published in draft for public consultation or pre-legislative scrutiny.

8.3 In addition to drafting the Government's bills, OPC is responsible for a range of other matters relating to the bill process that are mentioned elsewhere in this Guide. For example, the drafter of a bill will be responsible for providing the department concerned with advice about certain matters of Parliamentary procedure and will act as the channel of communication between the department and officials in Parliament.

8.4 Drafters tend not to specialise in particular areas of law. So those from within the department who are instructing OPC (often, but not always, the departmental lawyers) are responsible for providing the drafter of the bill with advice about the operation of the existing law, in so far as it is relevant to the department's proposals. The principal way in which this advice is provided will be in the instructions.

8.5 Drafters in OPC is organised into four teams, each of which is allocated the responsibility of drafting bills for particular departments. Each team is headed by a Team Leader.

## **The role of the drafter in relation to policy making**

8.6 Whilst working on a bill the department will sometimes have questions about the role the drafter of the bill will play in policy-making.

8.7 It is of course the department, rather than the drafter, that is responsible for deciding the policy. This responsibility rests with the department because its officials have the evidence on which policy decisions can be based. Also, officials in the department will know their minister's priorities and will be best placed to judge how alternative policy options will be

viewed by MPs, peers, other government departments, the devolved governments, interest groups and the public.

8.8 The drafter will often be able to make a valuable contribution to policy-making whilst respecting the fact that final decisions must be made by the department.

8.9 The principal contribution the drafter will make will be to test the department's policy proposals, as set out in the instructions. The drafter's experience in analysing legislative proposals means that they will sometimes be able to spot potential difficulties that may not have been obvious to the department.

8.10 In exercising this challenge function the drafter may identify inconsistencies or flaws in what the department proposes. The drafter may spot factual permutations that the proposals do not cater for or may see avoidance possibilities that the department has not considered.

8.11 From time to time the department may find itself struggling to devise a policy that will meet its objectives or it may be having difficulty deciding between a range of different policy options. In these circumstances the drafter will be happy to discuss the various issues with the department and may sometimes be able to suggest a way forward.

### **When should the department first involve OPC in the bill project?**

8.12 As soon as the department decides to pursue a bill it should start to engage with OPC and set up an initial resources meeting. If departments do not know who to contact in the first instance to set up this meeting, advice can be obtained by contacting [opc@cabinetoffice.gov.uk](mailto:opc@cabinetoffice.gov.uk) or 0207 276 6541. The basic rule is that the department should not normally send instructions to OPC until the PBL Committee and the relevant policy committee of Cabinet have taken certain decisions. Nonetheless, the department should not wait for these decisions to be taken before getting in touch with OPC.

8.13 The resources meeting should be attended by the bill team manager, a departmental lawyer, the policy leads and a member of OPC (either the Team Leader or, if already allocated, the drafter). The meeting will be an opportunity for the following matters to be discussed:

- the department and OPC can discuss any concerns OPC has about the proposals and how best to use the legal resource available;

- OPC can discuss with the relevant policy officials and departmental lawyers who is best placed to provide instructions to Parliamentary Counsel. This will often be the departmental lawyer, but for some bills or some subject areas within bills (for example where Parliamentary Counsel has a wide knowledge of the subject area), it may be more efficient for instructions to come directly from policy officials;
- the drafter can discuss with the person instructing OPC the appropriate level of detail for the instructions;
- OPC can gauge the size and complexity of the proposed bill and the resources needed to draft it;
- OPC can provide initial advice about how long it may take to draft the bill. This will help the department prepare a project plan; and
- the department can discuss with OPC any concerns it has about its proposals, and the drafter or Team Leader will be able to say if they foresee any difficulties with the proposals and may be able to suggest alternatives.

8.14 Of course, the use of legal resources should be kept under review for the duration of the bill project and there should be flexibility about the decisions taken at the initial resources meeting if it transpires that there is a more efficient way of doing things. It will often be appropriate for there to be further discussions about the allocation of legal resources (either informally or at a further resources meeting) as the project progresses.

### **When should instructions be sent to OPC?**

8.15 The basic rule is that instructions should not normally be sent to OPC until:

- the PBL Committee has decided to allocate the bill a slot in the Government's legislative programme **or** has decided to give authority for the bill to be drafted in advance of a slot being allocated; and
- the relevant policy committee of Cabinet has decided to give collective agreement to the policy.

8.16 The department will usually need to start preparing its instructions well in advance of these decisions being taken - this is because these decisions will often not be taken until a few months before the bill has to be ready to be introduced to Parliament. Departments may

therefore find it helpful to engage with OPC during the process of drafting instructions. For further information about securing a slot in the legislative programme and receiving collective agreement from the relevant policy committee, see Chapters 5 and 7 of this Guide.

8.17 Once the PBL Committee has allocated the bill a slot in the legislative programme (or has given drafting authority), its secretariat will arrange a meeting with the bill team, the lead legal adviser, the drafter and the secretariat of the relevant policy committee. At this meeting the PBL Secretariat will expect to see that good progress has been made with the preparation of the instructions and will agree with the department and the drafter deadlines for sending the instructions to the drafter.

8.18 The PBL Secretariat will arrange further meetings to monitor progress.

### **How to go about preparing the instructions**

8.19 There are no hard and fast rules as to how the department should go about preparing its instructions to OPC.

8.20 The first step will always be for the policy to be worked out in detail. If instructions are being provided by the departmental lawyer, policy officials will have to explain the policy to the lawyer. This might be done over the phone, in meetings, by email or in a set of formal policy instructions. The method chosen will depend on the complexity and scale of the proposals and the time that is available. If instructions are being provided to Parliamentary Counsel directly by policy officials, the same process of working out the policy in sufficient detail for Parliamentary Counsel to start drafting will be needed. The key thing is that policy officials explain in detail precisely what objective they wish to achieve and how they propose to achieve it. Policy officials who have worked on bills in the past have reported that when working on a bill it is necessary to develop the policy in much greater detail than when pursuing a policy by other means.

8.21 It is essential that before instructing Parliamentary Counsel the person instructing has considered how to deal with any gaps, inconsistencies, flaws or ambiguities in the policy.

8.22 The lawyer or policy official will then prepare the instructions to OPC. The main purpose of the instructions will be to explain the policy, set out the existing state of the law and explain what changes to the law are needed to give effect to the policy.

8.23 The next chapter contains detailed advice about the form, structure and content of the instructions. Anyone instructing Parliamentary Counsel will need to familiarise themselves with this before starting work on a bill. But even where it has been decided that instructions will be drafted by the departmental lawyer, policy officials will also find the next chapter of use because it will help them to anticipate the sorts of information that their lawyer will need.

8.24 The bill team will be responsible for co-ordinating the work being done by policy officials and lawyers to ensure that the instructions are ready to be sent to OPC on or before the deadline agreed with the PBL Secretariat.

### **Involving other departments with an interest**

8.25 Often the department with overall responsibility for a bill will not be the only department with an interest in the policy.

8.26 Where this is the case the lead department should give the other department(s) with an interest an opportunity to comment on the policy before the instructions are finalised.

8.27 Remember that the Scotland Office, the Office of the Advocate General for Scotland, the Northern Ireland Office and the Wales Office will have an interest from the UK perspective in proposed changes to the law affecting Scotland, Northern Ireland and Wales respectively. So, where appropriate, it will be necessary to ensure that those Offices are content with the department's policy before the instructions are finalised.

### **Involving the devolved governments**

8.28 If the department's proposals will give rise to the need for a legislative consent motion it will be necessary for the department to ensure that the devolved government(s) concerned are content with the department's proposals. See Chapter 14 and Appendix D for further information on working with the devolved governments and legislatures.

8.29 So far as possible, disagreements with the devolved governments should be identified and resolved before the instructions are sent to the drafter.

## **Who in OPC should drafting instructions be sent to?**

8.30 Initially the drafting instructions should be sent to the appropriate Team Leader within OPC. The department will be informed as soon as the Team Leader has allocated the bill to one or more drafters within the team. Thereafter all future instructions and correspondence can be addressed to those drafters.

## **Sending drafting instructions to OPC in instalments**

8.31 Ideally, all the instructions for a bill should be sent to OPC at the same time.

8.32 Bills tend to be required against deadlines that are shorter than ideal and, in those circumstances, it is unhelpful to hold back instructions in order to be able to send everything together.

8.33 In deciding whether it is appropriate to send instructions in instalments the department may find it helpful to talk to the appropriate Team Leader or the drafter of the bill. Factors to bear in mind will include:

- whether each instalment can be properly understood by the drafter without the instructions that are still to come;
- whether there is a risk that provisions drafted in response to one instalment might need to be reworked in the light of subsequent instalments and, if so, whether that risk is outweighed by the need to give the drafter an opportunity to make progress; and
- whether the drafter's other priorities would enable work to start on the instalment if it was sent in advance of the other instructions.

8.34 Where instructions are sent in instalments it is helpful if the department can provide a brief overview of the number of instalments that are likely and what each instalment will be about. This will give the drafter an idea of how any particular instalment will fit into the bill as a whole.

## **Sending drafting instructions to OPC prior to policy sign-off etc.**

8.35 The department should aim to ensure that the policy has been signed off by all those with an interest before the instructions or an instalment of the instructions are sent to OPC.



8.36 Similarly, the department should aim to ensure that the policy has been comprehensively developed before the instructions are sent.

8.37 But where deadlines are particularly tight the department may need to think about sending instructions to the drafter even though the policy has not been finally signed off or even though there are gaps in the policy.

8.38 If in doubt about whether it is appropriate to send instructions before the policy has been finally signed off, or before the policy has been comprehensively developed, the department should seek advice from the appropriate Team Leader or the drafters allocated to the bill.

8.39 Where instructions are sent before the policy has been finally signed off etc. the instructions should make it clear that this is the case.

### **Changes to the policy after the instructions are sent**

8.40 If the department changes its policy after sending instructions to OPC it is essential that the drafter is informed as soon as possible to avoid wasted work.

8.41 The department will also need to discuss with the drafter the most appropriate way of providing instructions on the revised policy.

### **An initial meeting with the drafters**

8.42 Before or shortly after the instructions, or the first instalment of them, have been sent to OPC it may be helpful for a meeting to be held between the drafters, the departmental legal advisers, the policy leads and the bill team manager. At this meeting it may be useful to discuss:

- whether the decisions taken at the initial resources meeting continue to be appropriate;
- what the drafter and the departmental team are expecting of each other;
- the political background to the bill;
- the timetable for sending the remaining instructions and drafting the bill (and how any risks to the timetable can be managed);

- proposed methods of working (for example, whether instructions should be sent in instalments, in what order the drafter will deal with the instructions, the level of detail required in the instructions, the use of meetings etc.); and
- which particular officials in the department will deal with the drafter in relation to particular matters. In many cases, departmental lawyers will be instructing Parliamentary Counsel, but in some, this will be done by policy officials. But even when departmental lawyers are instructing, it may be appropriate for policy officials or other members of the bill team to deal with the drafter on other matters. The drafter and the department should agree whatever will work best for them.

### **What will the drafter do with the instructions?**

8.43 Usually two drafters will be assigned to look at each set of instructions sent by the department. One will draft and the other will check and comment.

8.44 As the drafters study the instructions they may well have initial questions which need to be answered before progress with the drafting can be made. In order to avoid unnecessary delays, it is important that someone from within the department with a firm grasp on the policy is on hand to answer these questions.

8.45 The drafter will then produce draft provisions in response to the instructions. The department should feel free to discuss with the drafter when it can expect this first draft.

8.46 Except in the most straightforward of cases, the first draft will be accompanied by a letter which will do two things. Firstly, it will explain the drafting where the drafter thinks this may speed the department's understanding of how the provisions have been constructed. Secondly, it will set out any questions the drafter has about the policy, the existing state of the law and related matters.

### **Commenting on draft provisions and replying to the accompanying letter**

8.47 Often there will be a range of officials, both in the instructing department and in other departments, who need to be given an opportunity to comment on the draft provisions and provide answers to the drafter's questions. The department needs to ensure that all the responses are co-ordinated.

8.48 Although it is important that the drafter's questions are answered, the department's primary focus should be on the draft provisions. It is essential that the department studies the draft carefully to check it does precisely what they want. If the department has any doubts about whether the draft achieves the policy these doubts should be raised in the response to the drafter.

8.49 In responding to the drafter the department need not confine itself to commenting on whether the draft provisions achieve its policy or on matters mentioned in the drafter's letter. The drafter will be very keen to hear any comments the department may have on the readability and clarity of the draft provisions. If the department thinks there is a way in which the draft provisions could be made clearer they should not feel any hesitation in saying so. If the department has any presentational concerns about the draft provisions the reasons for the concerns should be explained to the drafter.

8.50 The department should avoid asking questions about the effect of a draft provision without also making clear what effect is actually sought. If the department merely asks about the effect of a draft provision the drafter will be uncertain about whether an alteration is needed. So, for example, instead of asking "does the clause make it a criminal offence to do XYZ" the department should say "we would like it to be a criminal offence to do XYZ; is that the effect of the clause as drafted?".

8.51 Once the department has provided a response to the first draft and the accompanying letter the drafter will start work on a further draft. A number of rounds may be needed before the draft is settled.

### **Sharing draft clauses with drafters in Scotland and Northern Ireland**

8.52 Where a draft provision will extend to Scotland the drafter will wish to share the provision with the Parliamentary Counsel to the Office of the Advocate General for Scotland so that that team of drafters can advise as to whether the provision will operate properly in Scotland. Similarly, where a draft provision will extend to Northern Ireland the drafter will wish to share the provision with the Office of the Legislative Counsel in Northern Ireland.

8.53 It is relevant here to note that drafters who are part of the Parliamentary Counsel to the Office of the Advocate General for Scotland are responsible in that capacity to the UK government rather than to the Scottish Government (although they also advise the Scottish

Government when not acting in that capacity). By contrast, the Office of the Legislative Counsel works exclusively for the Northern Ireland Executive.

8.54 Before the first occasion on which the drafter shares provisions with drafters in Scotland or Northern Ireland they will confirm with the department that it is content for this to happen.

### **Welsh translation of elements of bills**

8.55 A bill may need to include a Welsh translation if it has measures that modify legislation made by the Senedd Cymru or by Welsh Ministers. This is because Senedd legislation and legislation made by Welsh Ministers usually consists of two distinct texts in English and Welsh, both of which have equal status in law, and would therefore both require modification. The Office of the Parliamentary Counsel will draft the English language version of the Bill. It is for the instructing department to make arrangements for obtaining the Welsh language version (this should not happen until the text of the clauses has been finalised), and to pay for the cost of any translation work. The Office of the Legislative Counsel in Cardiff is not able to supply Welsh language versions of text for UK Government departments.

8.56 Departments should also note that they may, on occasion, look to publish a consultation ahead of drafting the bill or in relation to the bill and may want that to be translated into Welsh. Some departments will have a contracted provider that can be used for this work or the PBL Secretariat can be contacted for a list of other providers. These providers will not necessarily have the expertise to translate legislation. While the consultation document should be bilingual, the accompanying draft bill would not need to be (unless provisions do the above).

### **How much time should be set aside in the project plan for preparing instructions and drafting the bill?**

8.57 It is essential to the success of a bill project that the department does not underestimate the time needed for preparing instructions and drafting the bill. If insufficient time is allowed for this in the department's project plan the following difficulties may arise:

- the bill may not be ready in time for introduction to Parliament meaning that it has to be abandoned by the Government;
- the bill may be introduced to Parliament with errors or omissions that need to be dealt with during the passage of the bill. This will reflect badly on ministers and on

the department and will result in parliamentary time being spent unnecessarily on government amendments; or

- the bill may contain errors or omissions which are not spotted until after its enactment with the result that the Government's policy is not delivered.

8.58 In deciding how much time to set aside in the project plan for preparing instructions and drafting the bill the following things in particular should be remembered:

- First, experience shows that when working on a bill it is necessary for the policy to be developed in much greater detail than when pursuing a policy that does not require legislation. Even once the policy has been developed to the satisfaction of policy officials in the department it is likely that it will need to be revised (sometimes substantially) to reflect the advice of departmental lawyers and the views of other departments with an interest. All of this will take time.
- Secondly, it may not be possible for drafting to begin as soon as the department sends instructions to OPC. The Team Leader or the drafter concerned will be able to indicate whether this will be the case.
- Thirdly, the process of turning the department's instructions into workable draft clauses is often a lengthy and complex one. It will usually take the drafter some time to become familiar with the instructions and the existing law before draft clauses can be produced and it will frequently be necessary for there to be numerous rounds of correspondence between the drafter and the department in order for the first draft to be refined into something everyone is happy with.
- Fourthly, in the course of drafting the drafter will often raise unforeseen policy and legal questions which require an answer before progress can be made. Sometimes answering these questions requires the department to consult their minister, other departments and stakeholders. Time needs to be factored in for this.

8.59 As mentioned above, the time that should be set aside in the project plan for drafting the bill is something the department is encouraged to discuss at an early stage with the appropriate Team Leader in OPC.

## **Monitoring drafting progress**

8.60 The bill team will need to monitor progress with the drafting. One way to do this is to keep a progress chart which records the stage reached in relation to each topic (e.g. instructions sent to OPC; first draft provided; reply to first draft sent etc).

8.61 The drafter will find it helpful to be given a copy of the progress chart so that they can see where things stand.

### **Ministerial involvement in the drafting process**

8.62 The bill team should ascertain early on exactly what involvement the minister wishes to take in the drafting process. For example, they should ascertain how often the minister wishes to be updated on the progress that is being made with drafting and how often the minister wishes to see the latest draft of the bill.

8.63 The minister may, for presentational reasons, have strong views about the short title and the structure of the bill. If this is the case the minister's views should be passed on to the drafter.

8.64 The minister in charge of the bill is always welcome to ask the drafter to meet to discuss the bill. Equally, the drafter may occasionally request a meeting with the minister.

8.65 Major issues which arise on the bill must be referred to the minister and the minister must be informed at once if the bill is not going to be ready in time for it to be introduced to Parliament on the date agreed.

# 9. DRAFTING THE BILL: STRUCTURE AND CONTENT OF INSTRUCTIONS TO OPC

## Key points

- This chapter has been produced by the Office of the Parliamentary Counsel (OPC) to help with the task of writing instructions for OPC to draft a bill. It needs to be read in conjunction with the preceding chapter, which gives an overview of the bill preparation process.
- This chapter should also be read in conjunction with [Common Legislative Solutions: a guide to tackling recurring policy issues in legislation](#). This guide identifies issues that may need to be addressed when working up and instructing on the proposed solution to certain commonly occurring policy issues.
- The task of writing instructions to OPC is not an easy one. The quality of the instructions will have a direct effect on the quality of the bill and the time it takes to prepare. Any person preparing instructions for OPC is therefore encouraged to look at this chapter on each occasion they are asked to work on a bill.
- Policy officials who are not directly instructing OPC may also find this chapter of use. It will help them anticipate the sorts of information the person instructing OPC will need to be able to complete their instructions to OPC.

## General observations and guidance

9.1 Some general observations and guidance can be offered at the outset. First, it helps when it comes to writing instructions to OPC to stand back and try to imagine what it will be like for the drafter starting on the subject from scratch. A person who has been immersed in a subject for some time often needs to take pains to get it across to someone just coming to it.

9.2 Secondly, the departmental lawyer should structure the instructions and decide their contents on the basis of what seems likely to be most useful to the drafter. The guidance in this chapter should help in deciding what will be most useful but the departmental lawyer should feel free to depart from the guidance if there appears to be a better way of dealing with things. The departmental lawyer should also feel free to discuss how best to structure the instructions with the appropriate Team Leader or drafter in OPC.

9.3 Thirdly, the departmental lawyer should try to ensure that the policy is fully thought through and analysed before the instructions to OPC are finalised. Nonetheless, OPC do appreciate that the conditions for preparing instructions are seldom ideal and that it is not unusual for compromises to have to be made to cope with the pressures of the timetable or a delay in decision making. Where this is the case it will help to discuss these difficulties with the drafter and agree the best way to deal with them.

9.4 Fourthly, when writing instructions it is important to think of the drafter as a part of the bill team. This means that the instructions should be candid about any known difficulties with what is being proposed. For example, it may be that there is a gap in the policy or a logical wrinkle in the department's thinking that has not been ironed out. By airing these sorts of difficulties in the instructions you will save the drafter the trouble of discovering them. It may be that the drafter is able to offer a solution or a way forward that has not previously been considered by the department.

9.5 Finally, when writing instructions it is important to keep in mind the general rule that a bill should only contain legislative propositions. These are propositions that change the law: they bring about a legal state of affairs that would not exist apart from the bill. It can sometimes be tempting to ask the drafter to prepare a provision that is not intended to change the law but is instead designed to serve some political purpose or to explain or emphasise an existing law. However, non-legislative provisions of this sort are likely to go wrong because the courts will be inclined to attribute legal effect to them on the grounds that Parliament does not legislate unnecessarily and the legal effect attributed may be one the Government could not have predicted. Instead of asking for non-legislative provisions to be included in the bill, consider whether the point the department wishes to make can be made in another way, such as in a ministerial statement to Parliament, in the explanatory notes to the bill or in guidance.

## **Form of the instructions**



9.6 OPC is sometimes asked how to format the instructions. Here is some guidance about what most drafters find helpful:

- it is helpful if both the pages and paragraphs of the instructions are numbered or lettered as these are easier to refer to than unnumbered or bulleted paragraphs;
- if the instructions are lengthy, headings and a table of contents are helpful;
- instructions are easier to read if they are typed in 1.5 or double spacing, in a legible 12-point font and with margins wide enough to allow the noting of comments and questions; and
- if it is necessary to provide the drafter with supplementary documents, it is preferable for the documents to be attached to the email sending the instructions rather than for a link to the document on the Department's server to be embedded in the instructions.

### **Structure and content of the instructions**

9.7 As has already been said, instructions should be structured in whatever way the author thinks will be most useful to the drafter.

9.8 Nevertheless, a good way to structure the instructions will often be to divide them into five parts, as follows:

- introduction;
- existing law;
- detailed proposals;
- supplemental and incidental matters; and
- parliamentary and other handling matters.

9.9 The remainder of this chapter describes what each of these parts should deal with.

### **Part 1 - Introduction**

9.10 The main purpose of this part of the instructions is to provide the drafter with a brief summary of the policy that the department wishes to pursue. The summary need not be

detailed. The aim is simply to provide the drafter with an indication of where the instructions are headed. For example, the summary of the policy may say something like this:

*“The Government wishes to regulate the activities of people who sell fireworks. For this purpose, the Government wishes to prevent anyone selling fireworks without a licence issued by the Secretary of State. The bill will need to make provision about the making of applications for licences and the criteria that must be satisfied for an application to be successful. The Government want the Secretary of State to be able to impose conditions on licence-holders and to be able to inspect the activities of licence-holders. The Government want it to be possible for people to appeal to the First-tier tribunal against certain decisions made by the Secretary of State in connection with the licensing regime.”*

9.11 In addition, this part of the instructions should briefly set out the factual and political background to the proposal to legislate. So to continue the example above, the instructions might briefly mention the recent problems that have arisen in connection with the sale of fireworks. The instructions might mention the results of any consultation carried out into the establishment of the proposed licensing regime and any ministerial commitments to establish it. If the proposal to legislate is a response to recent case law this fact should be mentioned.

9.12 If the instructions are likely to give rise to particularly difficult devolution or ECHR issues a warning about this should appear in the introductory part of the instructions (although a detailed explanation of these issues should be left until later on).

9.13 This part of the instructions should mention if there is any particular reason to think the department’s proposals may change. For example, it should mention if any of the proposals have not yet been approved by the minister, do not yet have collective agreement or are the subject of an on-going consultation.

9.14 This part of the instructions can be used to set out any other information that the author thinks it is helpful for the drafter to know from the outset. For instance, it may be helpful to mention any acronyms or abbreviations used in the instructions. It might be a good idea to provide a web link to any consultation documents or other relevant publications.

## Part 2: Existing law

9.15 This part of the instructions should identify and explain the existing law which is relevant to the department's proposals.

9.16 Drafters in OPC tend not to specialise in particular areas of law. So the drafter may need to rely on this part of the instructions to get to grips with the legal landscape in which they are being asked to operate. Even if the drafter happens to have some experience of the area of law concerned, a statement of the law by someone who is familiar with it can be very valuable.

9.17 The author of the instructions will, of course, need to exercise judgment in deciding which existing laws should be covered and how much detail to go into. What is appropriate in any given case will depend upon the nature of the department's proposals and what it is that the drafter is going to be asked to do.

9.18 For example, if the nature of the department's proposals mean that the drafter is going to be asked to prepare a wide range of amendments to an existing statutory regime it will be necessary to provide a thorough explanation of the regime which focuses, in particular, on the aspects of it that will need amending. By contrast, if the nature of the department's proposals will involve repealing an existing statutory regime altogether it may be that all the drafter needs to be given is an indication of where the existing regime can be found and a brief explanation of what the regime is concerned with.

9.19 The author of the instructions should seek to explain the existing law rather than simply copy out or paraphrase every statutory provision that is thought to be relevant. What the drafter will find helpful is something that, in particular, does the following sorts of things:

- identifies the salient features of the existing law and facilitates a rapid understanding of its structure and effect;
- identifies subtleties or nuances in the existing law which might easily be missed;
- draws attention to any conflicting decisions or opinions affecting the interpretation of the existing law; and
- highlights features of the existing law which are of particular importance in the context of the department's proposals.

9.20 It is often helpful for the explanation of the existing law to say something about its practical operation. This is particularly important if, as is sometimes the case, the existing law is in practice operated by the department in a way that might come as a surprise to the drafter.

9.21 The author of the instructions should consider if it would be helpful to provide some history of the existing law. For instance, if the existing legislation was the result of a consolidation exercise it may be helpful for the drafter to be told this and to be told where to find the original legislation from which the existing legislation was derived. It may be helpful to let the drafter know if the purpose of the existing legislation was to give effect to proposals contained in a Law Commission report. Sometimes the drafter may be assisted by an explanation of why a previous amendment to the existing legislation was made (e.g. to reverse the effect of an unwelcome court decision or to implement an international obligation).

9.22 It is particularly important that the instructions mention any relevant changes to the existing law that are in the pipeline. For example, the drafter should be told if the existing law is going to be changed by another bill or by a statutory instrument that the department is working on.

9.23 If the author of the instructions is aware of any relevant Law Officer's advice about the effect of the existing law this should be brought to the drafter's attention.

9.24 While it is important that the drafter is given a good grounding in the area they are going to be operating in, it is not necessary to provide a treatise on the existing law. Care needs to be taken to avoid the trap of including material in this part of the instructions which is of no relevance to the department's proposals just for the sake of being comprehensive.

9.25 The initial resources meeting between OPC and the department will provide an opportunity for discussion of how much detail will be appropriate in any given set of instructions.

### **Part 3 - Detailed proposals**

9.26 **Introduction:** This part of the instructions should explain in detail (a) the policy objective that the department wishes to achieve and (b) the changes in law that the department wants to make in order to achieve that objective.

9.27 **Policy objective:** It is sometimes tempting to skip the first element and go straight on to describing the changes in law that the department wants. But there are two reasons why it is

important to include a detailed explanation of the policy objective. The first is that the explanation will enable the drafter to assess whether the requested changes in law will achieve the objective. The second reason is that the explanation may enable the drafter to suggest an alternative change in law in the event that the drafter identifies a difficulty with the change suggested in the instructions.

## Changes in law

9.28 When it comes to describing the changes in law that the department wants, the key is to concentrate on the substance of the proposed changes. In other words, the key is to concentrate on what legal effect the department wants the bill to produce (e.g. “the bill should make it a criminal offence to do A, B or C” / “the bill should confer a power on the Secretary of State to do A, B, and C” / “the bill should abolish body A”).

9.29 However, once the author of the instructions has set out the substance of the proposed changes there is no reason not to go on to mention any views they happen to have about the form that the changes should take. For example, if the author thinks the proposed changes should take the form of a freestanding provision rather than an amendment to an existing act then the author should feel free to say so. If the author thinks the proposed changes should take a similar form to an existing statutory provision then they should refer the drafter to the provision concerned. If the author has in mind a particular form of words which might capture the essence of a proposed test or rule they should not feel any hesitation in setting out the words in the instructions. The drafter will be more than happy to consider these sorts of drafting suggestions, if the author of the instructions chooses to make them.

9.30 It is important to remember though that providing drafting suggestions of this sort is not a substitute for clearly explaining the substance of the proposed change that is wanted. The drafter will be unable to produce draft provisions, or assess the merits of any drafting suggestions made by the author of the instructions, unless the drafter has been given a clear explanation of what substantive change in the law the department is trying to achieve.

9.31 In describing the substantive changes in law that the department wants it is necessary to spell out the details in full. If there are any gaps in the details provided the drafter may need to revert to the department for the gaps to be filled before being able to proceed with drafting. Alternatively, the drafter may continue drafting on the basis of their best guess as to what the

department will want but there will then be a risk that their guess will be incorrect and the draft will need to be revised.

9.32 When describing the proposed changes in law the author of the instructions will, of course, need to exercise judgment to determine how much detail is enough but a good starting point is for the author to think about what they would want to know if asked to draft provisions to give effect to the change. The next four paragraphs illustrate the level of detail that is needed, by reference to particular types of legal changes that are commonly sought by instructing departments.

### **New criminal offence**

9.33 If the department wants to create a new criminal offence the instructions will need to spell out the acts or omissions that are to be forbidden, the mental element of the offence, the mode of trial for the offence (i.e. summary only, triable either way or indictable only), the proposed penalty for the offence and whether the consent of any person is needed for a prosecution to be brought. If defences are wanted, the circumstances in which the defences should be available will need to be set out. It will also be necessary to set out, in relation to both the offence and any defences, where the burden of proof should fall and the standard of proof that is to apply. The instructions should also say if special provisions are wanted to deal with vicarious liability or the liability of company directors.

### **New power to make subordinate legislation**

9.34 If the department wants to create a new power to make subordinate legislation the instructions will need to spell out the intended scope of the power, how it is thought that the power will be used, the person on whom the power should be conferred and whether that person should be able to delegate the power to someone else, the parliamentary scrutiny to which the power is to be subject and whether the power is to be exercised by statutory instrument (so that the Statutory Instruments Act 1946 applies). If the power is to be subject to the affirmative resolution procedure and it is possible that the power may be used to make legislation that would (if included in a bill) make a bill hybrid, the instructions should indicate whether provision is wanted in the bill to disapply the special House of Lords procedure that applies to hybrid instruments. It will be important to ensure that all delegated powers can be appropriately justified to Parliament.

## **New duties**

9.35 If the department wants to create a new duty of any kind the instructions will need to set out the circumstances in which the duty is to arise, the precise nature of the duty and the person on whom the duty is to be imposed. But it will also be necessary for the instructions to explain how the duty is to be enforced. The department may wish the duty to be enforced by a criminal penalty or a civil sanction. It may want to enforce the duty by making compliance with it a pre-condition to the accrual of some right or benefit. If the duty is a public law duty, the department may want to rely on judicial review for enforcement. If the duty is a duty to comply with a court order the department may wish to rely on the law governing contempt of court. Even where the means of enforcement chosen will not need to be expressed in the bill an explanation of the means of enforcement should still be set out in the instructions so that the drafter is clear about what is intended.

## **New decision-making powers**

9.36 If the department wants the bill to confer a decision-making power on someone it will be necessary, among other things, for the instructions to set out the details of any procedural requirements that the bill should impose as a pre-condition to the exercise of the power. It will be necessary for the instructions to say if the decision-making power should be capable of being delegated. It will also be necessary for the instructions to set out the details of any appeal or review mechanism that needs to be provided for in the bill.

## **Use of examples**

9.37 In describing the parameters of a proposed change in the law it is sometimes helpful to set out examples of the sort of case that the change in law is to affect and of the sort of case that should not be affected. When requesting the creation of a criminal offence it may be helpful to give examples of the sort of conduct that should and should not be criminalised. When this approach is taken the instructions should also contain analysis of what it is that distinguishes the two sorts of case.

## **Alternatives**

9.38 Sometimes there will be several ways in which the law could be changed in order to meet the department's policy objective. In this situation the author of the instructions should briefly

explain why the chosen option has been preferred to the others. This is particularly useful if one of the alternative options might appear at first sight to be more attractive or straightforward than the chosen option.

#### **Part 4 – Supplemental and incidental matters**

9.39 The author of the instructions should consider whether anything needs to be said about any of the supplemental and incidental matters listed below.

9.40 If the bill is being instructed on in instalments it may be that some of the supplemental and incidental matters can be addressed in a general instalment that applies to the whole bill so that they do not need to be addressed separately in each of the remaining instalments.

9.41 In relation to some of the supplemental and incidental matters, such as territorial extent and commencement, something will always need to be said in the instructions (unless those matters have already been covered in a general instalment). But some of the matters will only occasionally need to be addressed.

9.42 The supplemental and incidental matters are as follows:

- ECHR compatibility;
- the territorial extent of the proposals (including whether the proposals should extend to the Channel Islands, the Isle of Man or the British Overseas Territories);
- the territorial application of the proposals (including application to the territorial sea);
- devolution issues;
- application to the Crown;
- application in relation to Parliament;
- consequential amendments and repeals;
- transitional, transitory and saving provisions;
- commencement; and
- retrospection (see Chapter 12 of this Guide).



9.43 Many of the matters listed above speak for themselves or are the subject of detailed guidance elsewhere. But a number of the matters require some additional commentary.

9.44 **ECHR compatibility:** The instructions should explain the department's analysis as to whether its proposals engage any of the rights under the ECHR and, if so, whether its proposals are compatible with those rights. It is not part of the drafter's role to confirm whether the department's analysis is correct. However, a short explanation of the department's analysis is needed so as to let the drafter know that the necessary issues have been considered.

9.45 **Application to the Crown:** The instructions should state whether or not the obligations or restraints that the proposed legislation will impose should apply to the Crown, to servants or agents of the Crown or in relation to Crown property. The drafter will then be in a position to consider with the departmental lawyer what, if anything, needs to be said in the bill to ensure that the government's policy as regards Crown application is achieved. In considering this question the drafter and departmental lawyer will take account of the general rule of statutory construction that legislation does not apply to the Crown or in relation to Crown property unless it does so expressly or by necessary implication.

9.46 **Application in relation to Parliament:** If the department's proposals are intended to apply to Parliament or the Parliamentary estate the department is expected to approach the House authorities to give them an opportunity to comment on the proposals. The instructions should confirm that this has been done or is in hand.

9.47 **Consequential amendments and repeals:** The department's proposals will often give rise to the need for consequential amendments or repeals of existing statutory provisions.

9.48 Wherever possible the consequential amendments and repeals that are needed should be included in the bill itself. (If there is a concern that a need for additional consequential amendments or repeals may be identified after Royal Assent then it may also be appropriate for the bill to include a power to make additional consequential amendments and repeals by regulations.)

9.49 The other option is for the bill to confer a power enabling all the necessary consequential amendments and repeals to be made by regulations. This option may seem attractive to the department where there is a limited amount of time for instructions to be prepared. However, it

is important to remember that if the drafting of consequential amendments and repeals is left until after Royal Assent the department (rather than OPC) will be responsible for preparing the drafting. Also, it is sometimes the case that the process of drafting the consequential amendments and repeals reveals problems with or omissions from the main provisions of the bill – if the drafting of the consequential amendments and repeals is left until after Royal Assent it will be too late to sort these problems or omissions out. Finally, it should be remembered that if the drafting of consequential amendments and repeals is left until after Royal Assent this can cause a delay in implementation. It is important that delegated powers should not be wider than needed to deliver the policy. The full width of all delegated powers needs to be justified to the Delegated Powers and Regulatory Reform Committee. Whilst precedents can be helpful to provide background and context, they are not in themselves sufficient justification for a delegated power or the parliamentary procedure attached to it.

9.50 The instructions should tell the drafter which option the department wishes to pursue. If the department wants the consequential amendments and repeals to be included in the bill it may be sufficient for the instructions to simply provide a list of all the existing provisions that need to be amended or repealed. (For example, if the department's proposal is to abolish an existing statutory body and transfer its functions to a new body it may be sufficient for the instructions to simply provide a list of all the existing statutory provisions which refer to the old body on the basis that it will be obvious to the drafter that the listed provisions need to be amended to refer to the new body.) However, on some occasions it will not be immediately obvious how the listed provisions should be amended and so it will be necessary for the instructions to go on to explain precisely what effect the department wishes to achieve.

9.51 **Transitional, transitory and saving provisions:** the instructions should say if the department's proposals give rise to the need for transitional, transitory or saving provisions.

9.52 A transitional provision is a provision that deals with how a case that begins under the existing law is to be treated when the new law in the bill is commenced. For example, suppose that the department wants the bill to replace an existing licensing regime with a new licensing regime, a transitional provision may be necessary to ensure that an application for a licence under the existing regime which has not been determined is treated as an application for a licence under the new regime.

9.53 A transitory provision is a provision that states that a provision in the bill will have effect with modifications for a limited period (perhaps until the coming into force of some other

enactment). An example of a transitory provision would be a provision that says that until the coming into force of a general increase in penalties effected by some other act, the reference in a provision of the bill to a maximum of 12 months' imprisonment will have effect as a reference to 6 months.

9.54 A saving provision is a provision that keeps an enactment which is repealed by the bill alive for certain limited purposes. An example of a saving provision is a provision which says that the repeal by the bill of an existing enactment does not affect any right (such as a right to a payment) which accrued under the enactment prior to the commencement of the repeal.

9.55 As with consequential amendments and repeals, the transitional, transitory and saving provisions that are needed should be included in the bill itself wherever possible (perhaps with a regulation-making power if there is a concern that a need for additional transitional etc. provisions may be identified after Royal Assent).

9.56 The other option is for the bill to confer a power enabling all the necessary transitional etc. provisions to be made later by regulations. Again, this option may seem attractive where there is a limited amount of time for instructions to be prepared. It is important to remember that if the drafting of transitional etc. provisions is left until after Royal Assent this can result in a delay in implementation. In addition, it is necessary to bear in mind that the transitional provisions needed are often very complex and if the drafting is put off until after Royal Assent the department (rather than OPC) will be expected to do the drafting.

9.57 The instructions should tell the drafter which option the department wish to pursue.

9.58 **Commencement:** The instructions should tell the drafter what is wanted as regards commencement of the requested provisions. There are a range of options here but usually departments ask that their provisions be commenced:

- on a day appointed by regulations made by the Secretary of State;
- on a calendar date specified in the bill;
- on Royal Assent of the bill; or
- at the end of a specified period beginning with Royal Assent.

9.59 Where possible the day when the requested provisions come into force should be determined by the bill itself (rather than by regulations made under the bill). This provides greater certainty to those who are going to be affected by the provisions and also saves putting the reader to the trouble of looking up regulations. However, it is recognised that the department will frequently need the flexibility to be able to determine the date of commencement in regulations.

9.60 The author of the instructions should remember the convention concerning the early commencement of provisions in bills/acts. The convention is that, subject to certain exceptions, provisions in bills/acts should not be commenced before the end of the period of 2 months following Royal Assent, unless the Law Officers consent. In the case of provisions in a consolidation bill the relevant period is 3 months following Royal Assent. Further information on this convention can be obtained from the Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland and the Law Officers' pages on LION.

9.61 If the department proposes that the provisions requested in the instructions be commenced (whether by the bill itself or by regulations made under it) before the end of the two-month period the instructions should say whether the author considers that one of the exceptions to the convention applies. If none of the exceptions apply the instructions should tell the drafter what stage the department has reached in seeking the Law Officers' consent to early commencement.

9.62 The author of the instructions should also remember that if the requested provisions will have a bearing on business it is likely that the provisions will have to be commenced on one of the "common commencement dates" (i.e. 6 April or 1 October). The Department for Business, Energy & Industrial Strategy has issued detailed guidance on common commencement dates which can be accessed from its website or from the LION intranet site.

#### **Part 4 – Parliamentary and other handling matters**

9.63 This part of the instructions should set out anything the author thinks the drafter should know about the proposed handling of the bill. For example, it should set out the following sorts of things (in so far as they are known to the author):

- any plans for the bill to be published in draft for consultation or pre-legislative scrutiny and the timetable for this;

- the timetable for the PBL Committee and introduction to Parliament;
- any matters on which the department expects to have to make concessions in Parliament;  
and
- any pressing need for the bill to reach Royal Assent by a particular date.

9.64 This part of the instructions may also be a good place to raise any questions the department has about Parliamentary procedure. The drafter will, in particular, be able to answer questions on the following sorts of things (after consultation with the House authorities):

- the likely scope of the bill;
- whether the bill will require King's or Prince's consent;
- whether there is a risk that the bill will be treated as a hybrid bill; and
- whether the bill will require a money resolution or a ways and means resolution.

9.65 If the bill is being instructed on in instalments it may be that the matters mentioned in the preceding two paragraphs can be addressed in a general instalment that applies to the whole bill so that they do not need to be addressed separately in each of the remaining instalments.

# 10. EXPLANATORY NOTES

## Key points

- Explanatory notes (commonly referred to as ENs or ExNotes) are required for all bills introduced in either House by a government minister with the exception of finance bills and consolidation bills, for which different explanatory material is provided. Explanatory notes (ENs) are also required for all government bills published in draft and should normally be provided for handout bills.
- ENs are not intended to be an exhaustive description of the bill or to be a substitute for it. Good explanatory notes put a bill into context, explaining what is not apparent from the provisions of the bill itself and giving examples of how the bill will operate in practice. They are neutral in tone and should be written in plain language.
- ENs are not legislation. They do not form part of the bill and are not amendable by Parliament nor endorsed by it.
- The department is responsible for drafting the ENs.
- ENs are updated by the department at various points during the passage of a Bill, with a final version published alongside the Act after Royal Assent. As a result, a point of contact in the bill team needs to be identified at an early stage to take responsibility for producing and ensuring the notes are updated.

## Part 1 – Purpose and Process

10.1 The purpose of ENs is to make the bill accessible to readers who may not be legally qualified or have specialised knowledge of the subject area. Good explanatory notes can:

- assist in communicating the department's messages about the bill (whilst remaining neutral in tone and without seeking to promote the bill or the policy underlying it);
- result in more valuable feedback from the consultation or pre-legislative scrutiny process;

- assist in the passage of a bill through Parliament; and
- after enactment of a bill (when the notes will become explanatory notes to the resulting Act) help members of the public to understand the law as it applies to them.

10.2 Good explanatory notes can achieve these outcomes by putting a bill into context, explaining what is not apparent from the provisions of the bill itself and giving examples of how the bill will operate in practice. They can answer the reader's questions and prevent misconceptions. Explanatory notes which merely repeat, in slightly different words, what is said in the bill are not helpful. They should be written in plain language.

### **Legal status of the notes**

10.3 ENs are not legislation. They do not form part of the bill and are not amendable by Parliament nor endorsed by it. They are not designed to resolve ambiguities in the text of the bill. The notes must not purport to give authoritative rulings on the interpretation of the proposed legislation as only the courts can give these.

10.4 After Royal Assent, the final version of the notes will be published alongside the Act. Occasionally it may be that the notes are referred to in litigation (on a basis analogous to that which allows Hansard to be taken into account under the conditions contained in the rule in *Pepper v Hart*). Therefore, it is important that the notes do not mislead, are neutral in tone, do not seek to promote the bill or the underlying policy, and that they do not include material which seems to take the law further than the bill or act does.

### **Who should write the notes?**

10.5 The department sponsoring the bill is responsible for preparing the notes to accompany it. ENs should be written by someone within the department who is experienced in the policy area in which the bill operates and who has a substantial involvement with the development of the bill.

10.6 The appropriate person to write the ENs might be the bill team manager or the lead policy official. The bill team should identify that person at an early stage.

10.7 If a bill covers a range of different policy areas, the notes will, of necessity, be written by a number of different people but that number should be kept to the minimum possible. Where there are multiple authors, someone must be identified to act as the editor of the notes. The role of editor is not an administrative one; someone else can take responsibility for collecting (and chasing) contributions and bringing them together in the same document. The editor

needs to take overall responsibility for the content of the ENs, making sure that the style of the notes is consistent throughout and that the notes are clear, fluent and readable.

### **Point of contact with the Public Bill Offices**

10.8 It is essential that one person, usually a member of the bill team, acts as a point of contact with the Public Bill Offices and ultimately has the responsibility for sending the final version of the notes to the relevant Public Bill Office. This could be the editor of the notes (see the preceding paragraph) or a different person. It is important that the Public Bill Office in the House of introduction receives the contact details of this person at an early stage.

10.9 Although prepared by departments, ENs are a parliamentary document and copyright is assigned to Parliament whilst the bill is before it. The Public Bill Office in each House arranges publication as a separate document alongside the bill and makes the bill and its notes available on the Bills before Parliament section of the [parliamentary website](#). Even if the bill is not amended, the notes must be updated at certain stages of parliamentary passage and the most recent version will always be published on the parliamentary website (along with previous versions).

10.10 Departments should not publish the bill and the ENs on their own departmental website (for which copyright permission would need to be obtained by contacting the Policy Team in The National Archives). Instead departments should simply provide a link to the parliamentary website page about their bill.

### **Templates**

10.11 ENs must be written using the latest version of the Word template. This is available from the PBL Secretariat. Technical assistance with the template is available and the PBL Secretariat will know who to contact for this purpose. When completing notes for submission to the House of Commons Public Bill Office a second version in Arial font size 20 is required in addition to the regular template.

### **When to start writing the notes**

10.12 Writing ENs should not be left until the last minute even though they often cannot be finalised until then. Work on the part of the notes that explains the policy background and the legal background to the bill can begin alongside work on the instructions to Parliamentary Counsel.



10.13 Work can also start at an early stage on the part of the notes that provides commentary on particular provisions of the bill. This can start as soon as the policy behind the provision, and the drafting approach to be taken to deliver the policy, is sufficiently settled. In some cases, it may even be possible to draft a note on a proposed provision without sight of a draft of the provision.

### **The role of departmental lawyers, Parliamentary Counsel, the Territorial Offices and the Office of the Advocate General**

10.14 Departmental lawyers are the primary source of advice on the notes, and they should be involved in commenting on all aspects, ensuring in particular that the notes are accurate and neutral in tone.

10.15 Departmental lawyers will in particular be the primary source of advice on technical aspects of the notes, such as territorial extent and application and compatibility with the European Convention on Human Rights.

10.16 Departmental lawyers should engage early with Territorial Office lawyers - for Scotland the Office of the Advocate General, for Northern Ireland the Northern Ireland Office Legal Advisers, and for Wales the Wales Office and Information Law team - to discuss the extent and application of the bill.

10.17 It is not necessary for the department to clear the notes with Parliamentary Counsel but the drafter responsible for the bill will normally expect to be given the chance to comment on the parts of the notes dealing with territorial extent and application and the related annex. The drafter will need either to draft or clear the wording for the section on Parliamentary approval for financial costs or for charges imposed.

10.18 The department may of course contact Parliamentary Counsel about aspects of the notes other than those mentioned in the preceding paragraph but the extent to which Parliamentary Counsel is able to provide comments or advice on other aspects will depend on competing priorities and the time available.

### **PBL Committee meetings before introduction**

10.19 The ENs must be provided alongside the bill before the PBL Committee will clear the bill for introduction. In the run-up to introduction, the PBL Secretariat may ask the department for updates on the state of the notes, as well as the bill.

10.20 The bill team should find out whether the bill minister wishes to approve the text of the notes before they are submitted to the PBL Committee and ensure that there is sufficient time for ministerial clearance.

10.21 Before the draft notes are ready to send to the PBL Committee, there are a number of checks that must be made:

- the notes must be proof-read to pick up spelling mistakes, grammatical mistakes and consistency points, and to check cross-references;
- the notes must be finally cleared by departmental lawyers;
- the notes should be clear on why the bill is considered ECHR compliant (and where analysis is lengthy, a separate memorandum with detailed arguments should be provided); and
- any outstanding devolution points must be settled with the Scotland, Wales and Northern Ireland offices (as relevant) and, as regards Scotland, with the Office of the Advocate General.

10.22 Remember that it may take some time to ensure that the notes are formatted correctly using the template. It is strongly advised not to leave this until the last minute.

10.23 The relevant Public Bill Office will wish to have an opportunity to comment on the draft notes (either before or after PBL Committee consideration of the bill, as time allows). You should send a draft version of the notes as early as possible, no later than two days before introduction.

10.24 For the Public Bill Office in the House of Commons, send the notes to: [pbohoc@parliament.uk](mailto:pbohoc@parliament.uk). For the Public Bill Office in the House of Lords, send to: [hpublicbills@parliament.uk](mailto:hpublicbills@parliament.uk). You should also copy the particular clerk dealing with your bill (if known).

10.25 When the bill is ready to be introduced, the final version of the notes should be sent to the Public Bill Office in the House of introduction by the person acting as the point of contact. The Public Bill Office deals with publication. When submitting notes to the House of Commons' Public Bill Office a second version in Arial font size 20 is required in addition to the regular template notes.

10.26 The Public Bill Office will not arrange for the notes to be published unless they are satisfied that the notes:

- are in the correct template and format;
- are neutral in tone;
- do not contain material designed to persuade readers of the merits of the policy of the bill (as opposed to explaining what that policy is); and
- do not misrepresent the effect or purpose of any provisions of the bill.

10.27 Late publication of ENs can lead to serious complaint from MPs and peers, so every effort should be made to avoid this. If, in exceptional circumstances, publication is likely to be delayed, the bill team should contact the PBL Secretariat as soon as possible who will ensure that PBL Committee and the Business Managers are informed. You should also inform the Public Bill Office in the House of introduction.

### Updating the notes

10.28 The ENs must be revised at least twice:

- to accompany the first print of the bill in the second House; and
- at the time of Royal Assent.

10.29 The need to update the notes when a bill moves from the first House to the second House should not be seen as an opportunity to provide notes to the first House “that will do” on the basis that they will be “sorted out” when the bill moves to the second House.

10.30 In the Commons, if a bill is amended significantly during one of its stages in a House (for example, in Committee) the department may wish to consider updating the notes in time for the next stage of that House's consideration of the bill, though this additional updating is highly unusual. However, in practical terms, it will be easiest for bill teams to revise their working version of the ENs as the bill is amended, rather than waiting until the end of the first House. Updating the ENs between stages is not permitted in the House of Lords.

10.31 The Public Bill Office in the second House will wish to have an opportunity to comment on the draft notes. You should send a draft version of the notes as early as possible, no later than two days before the bill is to be sent from the first House to the second.

10.32 There is a separate document (ENs on amendments) that must be produced if a bill is amended in the second House.

10.33 A checklist of tasks for preparing and finalising ENs is provided in Appendix G.

## Part 2 – Content of Notes

10.34 It is essential that the notes are neutral in tone. ENs for bills are a Parliamentary document therefore it is open to the House authorities to refuse to publish the notes and they have made it clear that they will do so if the notes attempt to ‘sell’ the bill, that is, go beyond a neutral account of the bill and into promoting it. For example, it is permissible to say what the provisions are designed to do, but not to say that a measure “deals comprehensively with the problem by...” The practical risk, of course, is that the notes will be published late if revisions have to be made in response to comments from the House authorities.

10.35 Experience shows that the most successful notes are ones written in plain language, with short sentences and paragraphs. It is important to avoid jargon and to explain the meaning of any technical or legal terms and any acronyms or other abbreviations. The notes are designed to assist readers who do not have legal training and are unfamiliar with the subject matter of the bill.

10.36 It may be helpful to include, as the first annex to the notes, a glossary of terms including acronyms and abbreviations.

10.37 Thought should be given to whether including diagrams, flow charts etc. in the notes will help explain provisions of the bill. This may be in place of or in addition to a block of text. For example, the ENs for the [Enterprise and Regulatory Reform Act 2013](#) use flow charts to help explain the effect of certain textual amendments made by Part 4 of the Act (competition reform) – see the commentary on sections 32, 35 and 38. See also the ENs for the [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) (2014-15 Session) which included at Annex B a flow chart illustrating a new complaints process (the flow chart does not appear in the Act version of these notes).

10.38 The use of hyperlinks is encouraged.

10.39 Each provision in a bill is assigned a j-reference number by Parliamentary Counsel. This number always stays the same, whereas the clause or Schedule number is likely to change during the drafting process. It is advisable to use the j-reference number in the ENs and then, when the notes are being finalised, replace the j-reference number with the appropriate clause

or Schedule number. It is also advisable to minimise the number of places in the body of the notes where clauses or Schedules are referred to by number.

10.40 Many bills amend existing legislation and it can be difficult for the reader to work out what the amended legislation will look like. Where it is likely to be helpful to the reader, revised passages showing important amendments to key extracts of existing legislation may be annexed to the ENs. However, the notes should **not** include lengthy annexes setting out existing legislation as amended. If the department feels that these would be helpful to MPs and peers, they should be made available separately and published by the department concerned on GOV.UK. The occasional practice of including this material in bills ('Keeling Schedules') has largely been discontinued, because of the practical difficulties of keeping them up to date.

10.41 Remember that within three to five years of Royal Assent the Government will be required to submit a memorandum to the relevant departmental select committee with a preliminary assessment of how the Act has worked out in practice to allow the committee to decide whether it wishes to conduct further post-legislative scrutiny (see Chapter 40 for further information on post-legislative scrutiny). The ENs (along with the impact assessment) must therefore provide sufficient information about the objectives of the Act to allow any post-legislative reviewing body to make an effective assessment as to how an Act is working out in practice.

### Structure of the notes

10.42 The template is structured such that ENs must contain the following sections, each of which is covered in more detail below:

- What these notes do;
- Table of Contents;
- Overview of the bill;
- Policy background;
- Legal background;
- Territorial extent and application, including an Annex on territorial extent and application in the United Kingdom;
- Commentary on provisions of the bill;

- Commencement;
- Financial implications of the bill;
- Parliamentary approval for financial costs or for charges imposed;
- Compatibility with the European Convention on Human Rights;
- Whether the bill includes provisions that would be environmental law; and
- Related documents with hyperlinks when possible.

10.43 For those bills whose parliamentary progress is to be expedited, the notes must contain an additional section entitled ‘Fast-track legislation’, which is inserted after the ‘Territorial extent and application’ section. PBL Committee clearance will only be granted for a bill that is to be fast-tracked if the notes include this section.

#### **Preliminary parts of the notes (What these notes do; table of contents; footer)**

10.44 The first page of the template includes an introduction which makes it clear that the notes have been prepared by the department and do not form part of the bill. The template contains macros which are to be filled with the relevant text (see squared brackets in the box below). These will populate the table of contents and the footer of the notes. Should you face technical issues with the template, contact the PBL Secretariat for support.

#### What these notes do

These Explanatory Notes relate to the [name of bill] as introduced in the House of [Lords/Commons] on [date] ([bill reference number]).

- These Explanatory Notes have been prepared by [name of department] in order to assist the reader of the bill and to help inform debate on it. They do not form part of the bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the bill will mean in practice; provide background information on the development of policy; and provide additional information on how the bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the bill. They are not, and are not intended to be, a comprehensive description of the bill.

10.45 The table of contents will be generated automatically by the template.

10.46 The template provides for the notes on introduction to have the following footer on each page:

“These Explanatory Notes relate to the [name of] Bill as introduced in the House of [Lords/Commons] on [date] ([bill reference number])”

10.47 The Public Bill Office will insert the bill reference number.

### **Overview of the Bill section**

10.48 This section should provide a very brief summary of what the bill does. A sentence or two should suffice.

#### **Example 1 – from the explanatory notes for the Financial Guidance and Claims Bill (2017/19 Session)**

“The Bill’s focus is on ensuring members of the public are able to access free and impartial money guidance, pensions guidance and debt advice. It also ensures that they are able to access high- quality claims handling services by strengthening the regulation of claims management companies.

To enable this the Bill provides in two areas:

- Creation of a Single Financial Guidance Body
- Transfer of claims management regulation from the Claims Management Regulation Unit of the Ministry of Justice to the Financial Conduct Authority.”

#### **Example 2 – from the explanatory notes for the Parliamentary Buildings (Restoration and Renewal) Bill (2017/19 Session)**

“The Bill establishes the statutory bodies that will be responsible for the works for the restoration and renewal of buildings within the Parliamentary estate (defined as the Parliamentary building works). It also establishes the governance structure within which those bodies will operate.”

## Policy background section

10.49 This section of the notes should provide a high-level description of the present situation, how the bill would change it and the reasons for the change. When updating the notes to accompany an Act post Royal Assent, this section should reference previous or other legislation as opposed to existing legislation.

10.50 If there is a relevant green or white paper or a ministerial statement, refer to it in this section and include a hyperlink. Titles of papers referred to should be in italics rather than between inverted commas. Put in the references (HC/HL/Cm numbers etc.).

10.51 If a bill has been through parliamentary pre-legislative scrutiny, this section of the notes should provide brief details of the scrutiny process and of the Government's response to it.

## Legal background section

10.52 In this section of the notes it may be helpful to refer to any pieces of primary and secondary legislation, or other legal obligations, that are relevant to the area of law in which the bill operates. See, for example, this section of the notes to the [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) (2014-15 Session) and what was called the "previous legislation" section of the notes to the [Pension Schemes Bill](#) (2014-15 session).

10.53 Where relevant, departments should also set out in this section of the notes any obligations relating to Article 2 of the Windsor Framework (see Chapter 12 for further details).

10.54 Where, however, there is nothing to add to what has been said in the policy background section of the notes, say something along the lines of "The relevant legal background is explained in the policy background section of these Notes".

## Territorial extent and application section

10.55 This section of the notes must deal with three issues:

- territorial extent and application of the bill;
- which provisions (if any) touch on matters that are devolved to Scotland or Wales or transferred to Northern Ireland; and
- whether any provision of the bill gives rise to the need for a legislative consent motion in any of the devolved legislatures.



10.56 This section of the notes should first briefly summarise what the territorial extent and application of the bill is. The clause(s) of the bill dealing with extent and application should be identified. Deal with extent and application separately if necessary.

10.57 Some suggested wording regarding extent and application is included below:

"Clause [ ] sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. [*Summarise extent and application of bill where possible.*] The commentary on individual provisions (or groups of provisions) of the Bill includes a paragraph explaining their extent and application."

10.58 It is important to remember that there may be a mismatch between the extent and application of a bill's provisions, because, for example:

- a provision is a free-standing provision that applies only, say, to schools in England but has to extend to England and Wales because England and Wales is a single legal jurisdiction;
- a provision is amending an Act that has UK extent (and so itself has UK extent) but is only changing the law for England (albeit that, for drafting reasons, it restates the existing law in Wales, Scotland or Northern Ireland); or
- a provision amends a devolution settlement and has UK extent but no practical application outside the area concerned.

10.59 Where the territorial extent and application of the bill is different from one clause to the next, it will be difficult to provide a meaningful summary in this section of the notes. In that case it is appropriate to refer to the commentary on individual provisions of the bill which explains their extent and application.

10.60 If the bill extends (or is capable of extension) outside the UK, this should be noted in the territorial extent and application section and, where relevant, in the commentary on individual provisions of the bill.

10.61 The territorial extent and application section of the notes should also set out which provisions, if any, touch on matters that are devolved to Scotland or Wales or transferred to Northern Ireland.

10.62 This section of the notes should also indicate whether a legislative consent motion is being sought from the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly. In all cases it is suggested that the notes might include the following wording:

"There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned/"

10.63 If a legislative consent motion is being sought in relation to any provision of the bill, the notes should give details. If the bill as introduced does not give rise to any need for a legislative consent motion in any of the devolved legislatures, include the following wording:

"The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments."

10.64 In the exceptional circumstance that it is not possible to resolve the question of whether a legislative consent motion is needed before introduction of the bill, it would be appropriate to state the UK Government's view together with a caveat to the effect that the position is stated at introduction and is subject to change.

10.65 The last paragraph of the territorial extent and application section should introduce the related annex on territorial extent and application in the UK. Wording is already provided in the template, as follows:

"See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom."

#### **Annex A: territorial extent and application in the United Kingdom**

10.66 The annex should contain the table only and must be completed.

10.67 Each clause and schedule of the bill must be considered separately for the purposes of analysing what ought to be entered in the table.

10.68 The starting point is that each clause and schedule of the bill should occupy a separate row of the table. However if, for example, the entries would be the same for all clauses in one part of the bill, that part as a whole should be dealt with in one row of the table. It may be helpful to aggregate entries for smaller groups, for example a chapter or a part, or simply a number of consecutive clauses, where the entries are the same for all component provisions.

10.69 There are various columns relating to extent and application (“extends to E & W and applies to England”; “extends to E & W and applies to Wales”; “extends and applies to Scotland”; “extends and applies to Northern Ireland”).

10.70 The possible entries are “Yes”, “No” or “In part”.

10.71 The entry “Yes” is appropriate only where the whole of the provision extends and applies as stated in the column heading. For example, if two subsections of a clause extend and apply to the UK and the other subsections extend to England and Wales and apply to England only, the entry in the column “extends to E & W and applies to England” should be “Yes”, and the entries in the other three columns should be “In part”.

10.72 The question is about both extent and application. In many cases the two will coincide. But they may not. For example, where a provision extends to England and Wales but applies only in England, the entry in the column “extends to E & W and applies to Wales” should be “No”. And where for example a bill amending the Government of Wales Act 2006 has UK extent but no practical application outside Wales, the entries in the columns “extends to E & W and applies to England”, “extends and applies to Scotland” and “extends and applies to Northern Ireland” should be “No”. (Note that in this latter case the territorial extent and application section of the notes should make it clear that the bill extends to the UK; this may not be apparent from the Table, but that is answering a question about both extent and application and so there may in a minority of cases be some apparent inconsistency).

10.73 In deciding whether a provision applies to England, Wales, Scotland or Northern Ireland, ignore minor or consequential effects of the provision.

10.74 If a provision does not change the law in an area, it should not be considered to apply to that area.

10.75 The “Legislative Consent Motion process engaged?” column of the Table must be completed in all cases, with either “Yes” or “No”, as appropriate.

### **Fast-track legislation section**

10.76 This section must be included if Parliament is to be asked to expedite the parliamentary progress of the bill. It should begin with the following statement (including the footnotes). The reference to the report should be hyperlinked.

“The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards<sup>1</sup>, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked<sup>2</sup>”.

<sup>1</sup>House of Lords’ Constitution Committee, 15th report of session 2008/09, HL paper 116-I

<sup>2</sup> House of Lords’ Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

10.77 The statement should be followed by paragraphs answering each of the questions set out in paragraph 186 of the committee's report, fully but concisely. Each question should be set out as a heading. The questions are:

- Why is fast tracking necessary?
- What is the justification for fast-tracking each element of the bill?
- What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?
- To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?
- Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?
- Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?
- Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?
- Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

### **Commentary on provisions of bill section**

10.78 This section of the notes should provide commentary on the individual provisions of the bill. To assist with the presentation of information on legislation.gov.uk (the intention is that notes will be hyper-linked with their related provisions) a note should be included for each clause and schedule, or for groups of clauses or schedules if it is felt more appropriate to provide commentary on a group of provisions.

10.79 If there is nothing useful to be added to what the bill itself says, the commentary need say no more than that “This provision / group of provisions is self-explanatory.” The commentary must never simply restate what the bill says.

10.80 Where a provision is not self-explanatory, and so warrants something more by way of commentary, it is still not necessary to say much by way of summary of what the provision does. The writer of the commentary should stand back from the detail of the provision and try to summarise it in one or two sentences, using everyday language. It will rarely be appropriate for the commentary to go through a clause subsection by subsection or a Schedule paragraph by paragraph.

10.81 The purpose of the commentary is to add value – what will it be helpful for the reader to know that is not apparent from reading the bill itself? Information that it might be helpful to include is:

- factual background;
- an explanation of how the provision interacts with other legislation (whether other provisions of the bill or of existing legislation);
- definitions of technical terms used in the bill;
- illustrative examples of how the bill will work in practice (these might perhaps be worked examples of a calculation or examples of how a new offence might be committed); and
- an explanation of how the department plans to use a regulation making power.

10.82 In answering the questions that might occur to the reader, thought should be given as to whether any material that has been prepared for other purposes (for example, for inclusion in a briefing document) might usefully be incorporated into the explanatory notes. ENs have to be neutral in tone but this does not prevent the use of existing material that meets this test.

10.83 In the case of the bill’s substantive provisions, the commentary on an individual provision or group of provisions should usually include a separate paragraph at the end explaining the extent and application of the provision(s). As regards extent, use the form of words “This [clause] [Part] [Schedule] forms part of the law of ...”. It may be appropriate not to include this information for each individual provision or group of provisions if the bill is fairly short and all the provisions have the same extent and application.

10.84 If the bill imposes fines which are expressed by reference to amounts determined under subordinate legislation (e.g. a fine at a level on the standard scale) the notes should state the current amount.

10.85 Where a bill is silent as to the nature of any fees to be charged under the bill, the notes should explain the scope of the fee-charging provisions.

### **Commencement section**

10.86 The proposed commencement date for the legislation (or dates, where different commencement dates are proposed for different provisions) should be set out in this section of the notes.

### **Financial implications of the bill section**

10.87 If the bill has no financial implications, this section of the notes should say so. If it does have financial implications, this section of the notes should give an overview of what those financial implications will be both in terms of expenditure expected to be incurred and sums expected to be raised as a result of the bill. Estimates should be provided wherever possible.

10.88 In terms of estimated expenditure, deal separately with expenditure expected to fall on:

- the Consolidated Fund, distinguishing between standing charges enacted once and for all and charges by means of annual votes; and
- the National Loans Fund: in estimating their own costs, departments should bear in mind the impact on repayment services and accommodation costs.

10.89 Also, the notes should give an estimate of the financial consequences of the bill in terms of total public expenditure, where this differs from the direct cost to the Consolidated Fund or the National Loans Fund. Such costs should normally relate to the full year costs of implementing the new statute.

### **Parliamentary approval for financial costs or for the charges-imposed section**

10.90 The department should make contact with Parliamentary Counsel about this section of the notes. Parliamentary Counsel will be happy to provide draft wording if asked. If the department draft the wording for this section, it should be cleared with Parliamentary Counsel.

10.91 Where a bill is introduced in the House of Commons, or on transfer to the House of Commons as the second House, this section of the notes must state whether either (or both) of the following is required to authorise any provision of the bill:

- Money resolution (authorising new charges on the public revenue – broadly speaking, new public expenditure);
- Ways and means resolution (authorising new charges on the people – broadly speaking, new taxation or other similar charges).

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

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

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

#### Example from notes for the Environment Bill 2020

**1784** The House of Commons passed a money resolution for this Bill on 26 February 2020, to cover: expenditure by the Secretary of State, including in particular the cost of establishing and funding the Office for Environmental Protection (clause 21(1) and paragraph 12 of Schedule 1), and a power to make grants or loans to the operator of an electronic waste tracking system (clause 57(2), inserted section 34CA(11));

**1785** Increased expenditure under other Acts, arising from the costs to public authorities of functions conferred or imposed on them by virtue of the Bill (for example, local authorities' new duties in relation to separate waste collection under clause 56.

**1786** The House of Commons a ways and means resolution for this Bill on 26 February 2020, to cover:

- the provisions about producer responsibility for disposal costs, under which producers can be required to make payments in respect of the costs of disposing of products and materials (clause 50 and Schedule 5);
- a number of provisions allowing fees and charges to be imposed in connection with the exercise of functions (for example, clause 63 extends the Environment Agency's charging powers under section 41 of the Environment Act 1995); and
- charges for biodiversity credits made by the Secretary of State under clause 94 of the Bill.

### **Compatibility with the European Convention on Human Rights**

10.95 This section should record the fact that a statement has been made pursuant to section 19 of the Human Rights Act 1998 and what this statement was. It is not necessary to give the name of the person making the statement. If the name is included, remember that this must be updated when the bill moves from the first House to the second House and also potentially when a carry over bill is re-introduced in its second session.

10.96 Previous governments gave a commitment to give an assessment of the most significant human rights issues thought to arise from each bill. In addition to recording the fact that a section 19 statement has been made, the explanatory notes should elaborate on the ECHR analysis. This could involve any one of the following:

- stating that the department does not consider that the provisions of the bill engage Convention rights and explaining why;
- in a case where any ECHR issues are not significant and the department has not prepared any separate memorandum on human rights issues, dealing with the issues briefly (a paragraph or two should suffice); and
- where significant ECHR issues arise, stating that issues arising as to the compatibility of the bill with the Convention rights are dealt with in a separate memorandum and provide a web address at which the memorandum can be accessed.

### **Environmental law**

10.97 This section should record one of the following:

- a) That the bill includes provisions which would be environmental law, and the level of environmental protection provided by existing environmental law is not reduced;
- b) That the bill includes provisions which would be environmental law, and the Minister is



unable to make a statement that the level of environmental protection provided by existing environmental law is not reduced; or

- c) That the bill does not include provisions which would be environmental law.

Further information on environmental law, including the form of words to be used in the statements, can be found in Chapter 12.

10.98 In either of the first two cases above, it is not envisaged that the statements specify exactly which provision of the bill is environmental law. That is not what section 20(2)(a) of the Environment Act 2021 requires and to do so will add unnecessary complexity. However, the Explanatory Notes could contain that information.

10.99 If the bill does not include provisions which could be considered environmental law, it must be indicated that the question has been considered. This should be recorded in the Bill's Explanatory Notes, with a paragraph in the following terms:

*"[Name of Minister] is of the view that the Bill as introduced into the House of [Commons/Lords] does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made."*

## **Bills affecting trade between Northern Ireland and other parts of the UK**

10.100 This section should record one of the following:

- a) That the bill includes provisions which, if enacted, would affect trade between Northern Ireland and other parts of the UK, but that the minister in charge of the bill can state that this would not result in a significant adverse effect on that trade;
- b) That the bill includes provisions which, if enacted, would affect trade between Northern Ireland and other parts of the UK, and that the minister in charge of the bill is unable to make a statement that this will not result in a significant adverse effect on that trade; or
- c) That the bill does not include provisions which, if enacted, would affect trade between Northern Ireland and other parts of the UK.

10.101 In either of the first two cases set out above, a written statement is required. If (c) applies, then this must be recorded in the Bill's explanatory notes to indicate that the question has been considered. Further information on provisions impacting trade between Northern Ireland and other parts of the UK, as well as template text for the statements, can be found in Chapter 12.

## Related documents section

10.102 This section of the notes should list the documents that are relevant to the bill and provide a web address at which the documents can be accessed. Typically this might be:

- impact assessment and Regulatory Policy Committee opinion (if applicable);
- delegated powers memorandum;
- any draft regulations that have been published; and
- any relevant report by a parliamentary select committee.

## Part 3 – After Introduction

### Revisions when the bill moves from the House of introduction to the other House

10.103 The template provides for the footer and the first sentence of the “What these notes do” section to be revised to read:

"These Explanatory Notes relate to the [name of] Bill as brought from the House of [Lords/Commons] on [date] [bill reference number]."

10.104 The rest of the notes should be checked and amended to take account of:

- all amendments made to the bill in the first House (government and non-government amendments);
- any additions or revisions to the notes which may be needed, for example to improve accuracy or clarity, or to incorporate new points of fact or explanation which have emerged during the passage of the bill through the first House; and
- if relevant, where legislative consent motions from the devolved governments have been obtained.

10.105 The revised notes should be cleared with departmental lawyers and with the Public Bill Office in the second House.

10.106 As at introduction, the final version of the notes should be sent by the person acting as the point of contact to the Public Bill Office in the second House. The Public Bill Office will arrange publication.

10.107 The revised notes should be published as soon as the bill passes to the second House. However, if a bill starting in the Lords was amended at Third Reading, or during Report Stage in the Commons, there may need to be a short delay in publishing the explanatory notes to allow time for them to be updated to reflect the amendment. This is acceptable.

### **Explanatory notes on amendments made in the second House**

10.108 If the bill is amended in the second House, it must return to the first House for those amendments to be considered. Departments must submit explanatory notes on the second House amendments (whether government or non-government). This is a separate document from the bill notes. Notes are required only on the first passage of amendments back to the first House and they are not required on subsequent stages of ping-pong.

10.109 ENs on second House amendments may not be required in urgent cases (for example, where consideration of the amendments takes place on the same day as the last amending stage in the second House, or during any accelerated consideration of second House amendments during a ‘wash-up’ period before a dissolution of Parliament in advance of a general election). A decision not to produce such notes should only be taken after consultation with the Public Bill Office and with the Leader of the House of Commons through the PBL Secretariat.

10.110 ENs on second House amendments must be cleared by departmental lawyers and the Public Bill Office in the first House. As with bill notes, the final version of the notes on second House amendments should be sent by the person acting as the point of contact to the Public Bill Office in the first House. The Public Bill Office will arrange publication.

10.111 An example is set out below.

## **Commons Amendment to Clause 5: Extent, commencement and short title**

### **Commons Amendment 2**

7 Subsection (9) is repealed to remove the privilege amendment inserted in the Lords. Parliamentary procedure requires a privilege amendment to be included when a Bill starts in the Lords and has financial implications. It is then removed in the Commons.

## **Commons Amendments to Schedule 1: Commons Amendments 41, 47, 40, 42 and 3: expansion of the role of the Approved Mental Capacity Professional**

8 Amendments 41, 40, 42 and 3 (which are consequential on 41) provide for situations other than cases of objection in which the pre-authorisation review must be completed by an Approved Mental Capacity Professional. These are that the arrangements provide for the person to receive care or treatment mainly in an independent hospital, or that the case is referred by a responsible body (and the Approved Mental Capacity Professional accepts the referral).

9 Amendment 47 expands the duty to refer to an Approved Mental Capacity Professional on a review. This enables certain cases to be referred where a pre-authorisation review under paragraph 21 of the new Schedule AA1 has already been carried out by an Approved Mental Capacity Professional.

### **Commons Amendment 4**

10 This amends the definition of "care home manager", in Wales, so it will be the person who is the registered service provider. This mirrors the approach taken for England.

## **Commons Amendments 5-10, 12-14, 16, 17, 19 and 21-23: Responsible body for independent hospitals**

11 Amendment 12 amends paragraph 6(a) so that a hospital manager will only be the responsible body when the arrangements are being carried out mainly in an NHS hospital, and amendment 19 amends paragraph 7 to state this. Where arrangements are carried out mainly in an independent hospital, the responsible body for those arrangements will not be the hospital manager but instead the local authority in England, or the Local Health Board in Wales. Amendments 6 to 10 and 21 are consequential to these amendments.

12 Amendment 13 makes provision for who the responsible body will be for cases where arrangements are carried out mainly in an independent hospital in England or Wales: in England it will be the responsible local authority as determined by paragraph 8A (Amendment 22) and in Wales it will be the Local Health Board for the area in which the hospital is situated. Amendments 14, 16 and 17 are consequential on Amendment 13.

13 Amendment 22 makes provision as to who the responsible body will be in cases where arrangements are carried out mainly in an independent hospital in England. Amendments 5 and 23 are consequential on amendment 22.

### **Commons Amendment 15**

14 This amendment makes provision for who the responsible body will be for cases where arrangements are carried out mainly in an independent hospital in England or Wales.

*These Explanatory Notes relate to the Commons amendments to the Mental Capacity (Amendment) Bill [HL] as brought from the House of Commons on 13 February 2019 (HL Bill 161).*

## Second House amendments

10.112 Below are some key points to note when preparing explanatory notes on second House amendments.

- The notes should indicate which amendments deal with non-government amendments. An asterisk should appear in the heading of each paragraph dealing with non-government amendments and this should be mentioned in the introduction.
- The word ‘amendment’ should begin with a capital letter where it is used with a number.
- The conditional mode (e.g. ‘Lords Amendment 1 would do such-and-such’, not ‘will’) should be used to describe the effect of all amendments, including government ones.
- It is normally acceptable for the notes to deal with a number of amendments together.
- A section on financial implications should be included if that section of the original explanatory notes has become incomplete or inaccurate as a result of the amendments. In particular, where a House of Lords amendment may be relevant to the issue of financial privilege, include an accurate summary of the financial implications of the Lords amendment.
- When dealing with more than one amendment, the format should be as follows:

Lords Amendments 7 and 8 (where there are two amendments);

Lords Amendments 23, 25 and 45 (when there is any number of non-consecutive amendments);

Lords Amendments 1 to 7 (when dealing with consecutive amendments).

## Revisions when the bill becomes an Act

10.113As soon as the bill has completed its passage through Parliament, the department will need to finalise the revised version of the notes to accompany the Act (work on this version should start whilst the bill is in the second House). For this version please ensure that all of the changes listed in paragraphs 108-117 are made. After clearing them internally, including with departmental lawyers, the department should email the final explanatory notes to [publishing.legislation@nationalarchives.gov.uk](mailto:publishing.legislation@nationalarchives.gov.uk). The Legislation Services Team in The National Archives will check that the formatting and contents are correct, and then make the notes (together with the Act, impact assessments and Regulatory Policy Committee opinion (if

applicable), available on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website. Versions published on [www.legislation.gov.uk](http://www.legislation.gov.uk) are recognised by the Courts and any corrections that are subsequently required to the Act or explanatory notes will be incorporated into the texts published on [www.legislation.gov.uk](http://www.legislation.gov.uk).

10.114 Compared with the bill version, the following changes should be made:

- The template provides for the footer to be updated to read: “These Explanatory Notes refer to the [name of] Act [year] which received Royal Assent on [date] ([Act chapter number])”.
- The template also provides for the “What these notes do” section to be updated to read:

#### What these notes do

These Explanatory Notes relate to the [name of Act] which received Royal Assent on [date] ([Act chapter number]).

- These Explanatory Notes have been prepared by [name of department] in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

10.115 The notes should be updated to reflect any changes made in the bill since the last version was prepared (whether during any of the amending stages in the second House or on ping-pong).

10.116 References in the notes to the “bill” should be changed to references to the “Act”; and references to “clauses” should be changed to “sections”.

10.117 The notes should be written in present tense, as opposed to future tense for bill notes. References should be made to what the Act does, not what it will do. References to previously existing legislation should be made in the background policy information.

10.118 Delete the sections on the financial implications of the bill, compatibility with the European Convention on Human Rights, obligations under Article 2 of the Windsor Framework, and environmental law. If the parliamentary progress of the bill was expedited, the section in the notes justifying fast-tracking of the bill should also be deleted.

10.119 Delete the section on parliamentary approval for financial costs or for charges imposed. Where the Act contains a financial provisions section which was included in the bill for parliamentary purposes, to signal that a financial resolution was needed and to reduce the number of other provisions of the bill which needed to be italicised (as having financial implications) when the bill was introduced, it will be sufficient for the notes to use the following wording about the financial provisions section:

Section [ ] recognises that as a matter of House of Commons procedure, a financial resolution needed to be agreed for the Bill from which the Act resulted."

10.120 Parliamentary Counsel can advise if there is any doubt as to whether a section of an Act is a financial provisions section as described here.

10.121 The department must include as an annex to the notes a table giving details of the bill's passage through Parliament (including hyperlinks to the various prints of the bill, the Hansard references and Hansard hyperlinks for each stage and, if appropriate, hyperlinks to any other key documents relating to the passage of the bill). The template includes an outline table.

10.122 The template includes a second outline table as an annex showing the origin of each section as a numbered clause in each version of the bill. It will normally be helpful to include this table; but if the numbering of a bill has not changed since introduction, there is no need to include this.

10.123 The following material relating to territorial extent and application should be omitted from the Act version of the notes:

- Delete all material about legislative consent motions in the territorial extent and application section. In the related Annex, delete the column of the table about legislative consent motions.
- In the case of a bill for which the remaining columns of the table about territorial extent and application reveal a simple picture which is accurately summarised in the narrative, there is no need to retain the Table.

- However, be careful not to omit general information about territorial extent and application of the bill (including outside the United Kingdom), and about matters devolved to Scotland or Wales or transferred to Northern Ireland; such information must remain in the Act version of the notes.

## Carry over bill

10.124 Where a bill is carried over from one session to the next, revised ENs are required for re-introduction in the next session (unless the text of the bill has not changed since introduction in the previous session, and the Public Bill Office agrees that revised notes are not required). As well as reflecting changes to the bill itself (for example, as a result of amendments in committee), the notes should mention that the bill has been carried over.

10.125 When the revised notes are ready, the point of contact in the department should send them to the relevant Public Bill Office, which will arrange for publication of the notes.

## Part 4: Explanatory notes for private members' 'handout' bills

10.126 Departments should not provide ENs for private members' bills that the Government does not support. If a department wishes to provide ENs for a private member's bill that is being supported by the Government but is not a 'handout' bill, the Public Bill Office should be consulted in advance. Further information on private members' bills can be found in Section H.

10.127 The Government should prepare ENs for all handout bills. These are private members' bills which the Government has decided to support and which have been drafted or redrafted by Parliamentary Counsel on instructions from the relevant department. With the exception of the points listed below, notes for handout bills should be prepared in the same way as for government bills.

10.128 To make it clear that the Government is volunteering the notes, not responding automatically to requests from the MP or peer in charge of the bill, the first bullet point of the "What these notes do" section of the notes should begin as follows:

"These Explanatory Notes have been provided by [name of department], with the consent of [name of MP/peer], the [member/peer] in charge of the Bill, in order to assist the reader of the Bill."



- 10.129 When the bill is brought to the second House, an MP / peer in that House will take charge of the bill and when the revised notes are published the sentence above should be amended accordingly.
- 10.130 Information about territorial extent and application and matters devolved to Scotland or Wales or transferred to Northern Ireland, and information about legislative consent motions, should be included.
- 10.131 The Public Bill Office in each House will not print the notes for handout bills without the consent of the MP or peer in charge of the bill. Departments should therefore ensure that the MP or peer in charge is content that the notes should be provided and has informed the Public Bill Office of this in writing.
- 10.132 It is a matter for departments whether they wish to give the MP or peer in charge of the bill the opportunity to see and comment on the notes in draft. This will normally be possible when the bill is first introduced, but there may not be time for it when the bill is brought from one House to the other.

# 11. THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

## Key points

- The Human Rights Act 1998 makes it unlawful for public authorities to act in a manner that is incompatible with certain rights drawn from the European Convention on Human Rights (the Convention rights) and requires legislation to be interpreted compatibly with the Convention rights so far as it is possible to do so. Consideration of the impact of legislation on Convention rights is an integral part of the policy-making process, not a last-minute compliance exercise.
- Legislative provisions should contain appropriate safeguards and limitations to ensure compliance with the Convention rights but these should not repeat the more general safeguards already guaranteed by the Human Rights Act and the Convention rights.
- Early discussion with departmental legal advisers is essential.
- A legal issues memorandum setting out the legal issues the bill raises must be produced for the PBL Committee **before** it will approve a bill for introduction or publication in draft.
- Section 19 of the Human Rights Act 1998 requires that, for every government bill, the Secretary of State for the relevant department must make a statement in the Commons that in their view the bill's provisions are compatible with the Conventions rights. In the Lords this statement is to be made by the relevant departmental Lords minister. Alternatively, if they are not able to provide that personal assurance, they must state that the Government nevertheless wishes the House to proceed with the bill.
- If it appears likely that there are **any** provisions in the bill which the minister will not be able to declare compatible, the PBL Secretariat should be informed immediately.
- The explanatory notes should contain a section on compatibility with the Convention rights setting out why the department has determined the position. This should set out whether Convention rights are engaged, any relevant case law, as well as an explanation for how any interference can be justified and proportionate. If the analysis is too lengthy to be included in the notes (for example, if it requires more than a few paragraphs) a separate ECHR memorandum should be prepared for publication alongside the bill and submission to the

Joint Committee on Human Rights when the Bill is introduced. If the topic may raise questions as regards compatibility with the UN Convention on the Rights of the Child, this analysis should also be contained in the ECHR memorandum.

- The Joint Committee on Human Rights is likely to examine closely the arguments put forward by the department justifying interference with a Convention right and if it has concerns, will report on the ECHR issues raised by a bill. It may ask for additional memoranda on particular points.
- A section 19 statement is not required for private members' bills but if a department wishes to support a private member's bill it must produce a legal issues memorandum for the PBL Committee. A legal issues memorandum may also be required where the Government wishes to take a neutral position on a private member's bill but this should be decided on a case-by-case basis with the Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland.
- For further guidance contact the Ministry of Justice Human Rights Division, the Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland.

## **Background on the Human Rights Act 1998 and interpretation in case law**

11.1 The Human Rights Act 1998 gives further effect to the European Convention on Human Rights (ECHR) to which the UK has been party since 1951. The Human Rights Act makes it unlawful for public authorities to act in a manner that is incompatible with a Convention right and requires legislation to be interpreted compatibly with the Convention rights so far as it is possible to do so.

11.2 The main Convention rights are: life; freedom from torture and inhuman and degrading treatment or punishment; liberty and security (i.e. freedom from wrongful arrest and detention); fair trial; respect for private and family life (which may include the protection of personal data), home and correspondence; religion, thoughts and belief; expression and information; peaceful assembly and association; marriage; property; education; and free elections. Very few of the rights are 'absolute'. Most are either 'limited' or 'qualified'.

11.3 Absolute rights, such as the right not to be tortured (Article 3), cannot be infringed or derogated from in any circumstances. Limited rights, such as the right to liberty (Article 5), are limited only in explicit and finite circumstances, set out in the article itself. Qualified rights, which include the right to respect for private and family life (Article 8) and peaceful enjoyment of property (Protocol 1, Article 1), may be interfered with only if what is done:

- has a basis in law;
- is done to secure a legitimate aim set out in the relevant article, e.g. the prevention of crime; and
- is necessary in a democratic society, which means it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued.

11.4 The last of these, known as the proportionality test, is of critical importance. If a particular policy or action interferes with a Convention right, pursuant to a legitimate aim, it will not be justifiable if the means used to achieve the aim are excessive in the circumstances.

11.5 There is a considerable and growing body of case law on the interpretation of Convention issues in UK courts, in addition to that from the European Court of Human Rights in Strasbourg. The case law confirms that the Convention rights can also imply a positive obligation, not readily apparent on the face of the article. For example, the right to life requires not only that the state not take life, but also that it is under an obligation to take positive steps to protect life. Therefore, in addition to having a law that prohibits the taking of life, the state, for example through the agency of the police, is under a duty to protect a life where there is a known risk to that life.

11.6 It should be standard practice, when preparing a policy initiative, for officials to consider the impact of the proposed policy on people's Convention rights. Officials therefore need awareness of the Convention rights, and of key concepts such as proportionality. Such consideration must not be left to legal advisers (though they should be involved throughout) or to a last-minute 'compliance' exercise.

11.7 Legal advice on Convention matters will come primarily from departmental legal advisers, who may wish to instruct counsel, or seek an informal view on particularly tricky issues from legal advisers in the Ministry of Justice who coordinate human rights legal issues across government. The Law Officers are the ultimate source of legal advice within government, on human rights questions as on other matters, although the fact that advice has been sought, and the content of that advice, should not be disclosed outside government without the Law Officers' consent. Where Law Officers advice is being sought on human rights matters departments should normally discuss the question with legal advisers in the Ministry of Justice Human Rights Division first. The team should also be contacted where significant, novel or cross-cutting human rights issues are raised, or where a department is proposing to make a

legislative reference to the Human Rights Act but the MoJ does not need sight of all legal issues memoranda.

### **Legal issues memoranda for the PBL Committee**

- 11.8 A memorandum setting out the legal issues raised by the bill is one of the papers required by the PBL Committee before the bill can be approved for introduction or publication in draft.
- 11.9 The department should send the memorandum along with the latest copy of the bill to the Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland for consideration at least three weeks before documents are sent to PBL Secretariat for the PBL Committee meeting at which the bill is to be considered. They will comment on the memorandum in draft to help departments to get it in the best possible shape. It should be emphasised that three weeks is the minimum period to allow for any difficulties to be addressed before the bill comes to the PBL Committee. For larger bills, or bills contain challenging legal issues, the Law Officers should be given more time to consider the memorandum. Officials in the Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland will also be happy to look at a draft of the memorandum at an earlier stage or to discuss specific issues if this is helpful.
- 11.10 If the Government proposes to table or accept a significant amendment to the bill which would in any way change the position in relation to legal issues or raise new legal issues, a further legal issues memorandum may be necessary either as a supplement to the original or as a separate document, and circulated to the PBL Committee when clearance is sought to table or accept the amendment. Liaison with the Attorney General's Office and the Legal Secretariat to the Advocate General in advance of the write round would be advisable here. Private members' bills which the Government proposes to support (including handout bills) have the same requirements.
- 11.11 Memoranda should cover the legal issues raised, with a full and frank assessment by the department of legal risk arising from the issues. Therefore the memoranda should set out not only the bill's vulnerability to challenge in legal and policy terms but also the risk of any such challenge being successful and, if successful, what that would mean for the bill. The legal issues memorandum cannot be disclosed and should address the weaknesses as well as the strengths in a department's position. It can assume a basic knowledge of the law and should be supported by any significant cases that may affect the analysis. It should not, however, be a compendious discussion of the case law. Over-lengthy memoranda are likely to be

unwelcome and attract criticism at PBL. What is needed is a clear and succinct statement of the legal considerations. Where advice has been sought from Counsel or from the Law Officers it will often be helpful to refer to the advice received in the memorandum or, in some cases, annex the advice to the memorandum (see paragraph 2.12 of the Ministerial Code).

11.12 Departmental legal advisers should prepare the legal issues memorandum with input from policy officials. Further information is available from the Attorney General's Office, the Legal Secretariat to the Advocate General and from the Law Officers pages on LION (the intranet for government legal advisers).

11.13 Departments should be aware that the role of the PBL Committee and of the Law Officers is to ensure that the memorandum is comprehensive and contains credible arguments. In doing this, PBL and the Law Officers are not endorsing the human rights analysis of the department or expressing any conclusion on whether a court would take the same view. Ultimately, it is the minister in charge of the bill who is accountable to Parliament for stating that the bill is compatible with the Convention rights. If the minister wishes to seek formal advice from the Law Officers on any particular concerns before making the compatibility statement, the minister should do so in the usual way.

### **Statements of compatibility ('section 19 statements')**

11.14 Section 19 of the Human Rights Act 1998 requires that, for every government bill, the Minister in charge of the Bill in each House make a statement that in their view the bill's provisions are compatible with the Convention's rights.

11.15 Alternatively, if they are not able to provide that personal assurance, they must state that, nevertheless, the Government wishes the House to proceed with the bill; this does not however amount to a positive statement that the bill is incompatible.

11.16 In the House of Commons, "the minister in charge of the Bill" typically means the Secretary of State for the department that is sponsoring the bill (or where that department does not have a Secretary of State, the minister in charge of that department); this is the case even where the intention is for the Secretary of State (or other minister in charge of the department) to play only a minimal role in taking the bill through the Commons. In the Lords, "the minister in charge of the Bill" will typically be a relevant departmental Lords minister. If in any doubt as to who should be signing the section 19 statement, consult Parliamentary Counsel.

11.17 Departmental legal advisers will take the lead in providing the formal advice required to justify the section 19 statements, seeking assistance from legal advisers in the Ministry of Justice Human Rights Division and, ultimately, the Law Officers as necessary.

11.18 The statement must be made before Second Reading in each House. This means that when the bill passes from one House to the other, a second statement will have to be made, taking into account any amendments (including non-government amendments) made in the first House. As soon as the bill completes its Third Reading in the House of introduction, a new statement must be signed by the minister in charge of the bill in the second House and Parliamentary Counsel informed that it has been made.

11.19 The minister in charge of the bill must personally sign a statement in the following terms:

European Convention on Human Rights

Statement under section 19(1)(a) of the Human Rights Act 1998

In my view the provisions of the .... Bill are compatible with the Convention rights.

[signed] ..... Secretary of State / Minister for .....

or

European Convention on Human Rights

Statement under section 19(1)(b) of the Human Rights Act 1998

I am unable to make a statement that, in my view, the provisions of the .... Bill are compatible with the Convention rights but the Government nevertheless wishes to proceed with the .... Bill.

[signed] ..... Secretary of State / Minister for .....

11.20 In the case of a section 19(1)(b) statement, it is permissible to indicate the provision in the bill giving rise to the compatibility problem by inserting words such as “but only because of clause 8” after “I am unable”.

11.21 The most common (but not the only) situation in which a section 19(1)(b) statement will be necessary is on entry to the second House, where a first House amendment has been made which the Government does not support and which it considers to be incompatible with the

Convention rights. In this case, the reason for the certification as non-compatible can be explained at Second Reading and the minister can indicate whether or not the House is to be invited to remove the amendment in question.

11.22 The statement will be published on the face of the bill. For these reasons, the statement should be signed by the minister before the bill is published and, ideally, before it is considered for introduction by the PBL Committee. Parliamentary Counsel should be informed that the statement has been made.

11.23 If for any reason the statement will not be signed before the bill is first printed in either House, Parliamentary Counsel and the relevant Whips Office should be consulted immediately. Where a statement is not made on Bill introduction in either House, a written ministerial statement must be made before Second Reading.

11.24 There is no legal obligation on the minister to give a view on compatibility other than as required by section 19, nor is there a specific requirement for the minister to reconsider compatibility issues at a later stage. Nonetheless, were a minister to reach the conclusion that the provisions of a bill, whether as originally introduced or as amended, no longer met the standards required for a section 19 statement to be given, it would be a breach of the ministerial Code to proceed towards Royal Assent without either amending the provisions or informing Parliament of the issue.

11.25 The section 19 statement should be printed on good-quality paper and signed by the minister, the relevant Secretary of State in the Commons, or relevant departmental Lords minister, in black ink before the bill is introduced to Parliament.

11.26 If it appears likely that there are provisions in the bill which the minister will not be able to declare compatible, the PBL Secretariat should be informed immediately and advice should be sought from the Ministry of Justice Human Rights Division in the first instance.

11.27 No section 19 statement is needed for private members' bills. However, where it is proposed that the Government supports the bill, it should be in a position to make a statement concerning the compatibility of the bill, and the department will need to produce a legal issues memorandum which addresses ECHR issues for the PBL Committee before it gives clearance to support the bill. Where the Government decides to take a genuinely neutral stance on a private members' bill (for example, by permitting a free vote), as opposed to the neutrality demanded by convention when opposing a private members' bill in the House of Lords, it will be appropriate for the Government to be in a position to indicate to the House its view on



Convention compatibility. The lead department should therefore inform the PBL Committee of its view when seeking agreement to the position of neutrality. It may not be necessary to produce a separate legal issues memorandum for the purpose but the precise approach should be decided on a case-by-case basis with the Attorney General's Office and Legal Secretariat to the Advocate General for Scotland.

## **Explanatory notes**

11.28 Chapter 11 contains guidance on what to include in the section of the explanatory notes headed "Compatibility with the European Convention on Human Rights".

11.29 The Government has made a commitment to give due consideration to the articles of the UN Convention on the Rights of the Child (UNCRC) when making new policy and legislation. In doing so, the Government has stated that it will always consider the UN Committee on the Rights of the Child's recommendations but recognise that, like other state signatories, the Government and the UN committee may at times disagree on what compliance with certain articles entails. It would be helpful to Parliament and the Joint Committee on Human Rights (JCHR) if explanatory notes included a summary of the anticipated effects of legislation on children and on the compatibility of draft legislation with the UNCRC.

## **The Joint Committee on Human Rights**

11.30 The JCHR is likely to examine closely the arguments put forward by the department justifying interference with a Convention right and where there are concerns, it will report on the ECHR issues raised by a bill. It will also look at whether there are sufficient safeguards to ensure a proper guarantee of human rights in practice, regardless of whether the absence of safeguards is strictly a compatibility issue. The JCHR's approach to legislative scrutiny is set out in detail at paragraphs 18-51 of the committee's Twenty-third Report of Session 2005-06 at [The Committee's Future Working Practices](#).

11.31 If the JCHR considers that the explanatory notes or separate ECHR memorandum provided to the committee do not adequately set out the Convention issues, it will ask the responsible minister for a memorandum on particular points, which will need to be produced extremely quickly. It is clearly advantageous if the JCHR is satisfied about human rights compatibility early in the bill's passage, and departments should attempt to identify areas likely to concern the committee and prepare briefing ahead of time, if possible.

11.32 If the analysis of potential human rights issues is too detailed or substantial to be covered in a few paragraphs in the explanatory notes then departments should prepare a separate

ECHR memorandum. This should be published on GOV.UK but also shared directly with the JCHR and sent to the relevant Public Bill Office at introduction of the bill so it can be put on the bill's page on the Parliament website.

11.33 The JCHR may also ask about compliance with any international human rights instrument which the UK has ratified; it does not regard itself as limited to the ECHR. In particular, the JCHR will expect ECHR memorandums to highlight any issues relating to compliance with international human rights instruments, and in particular the UN Convention on the Rights of the Child.

11.34 Bill teams should contact the Clerk to the JCHR to find out if the committee is likely to report on the bill, and ask to be advised when the report is published (as departmental parliamentary branches are unlikely to be alerted to any reports until much later).

11.35 It is not always necessary for the department to respond to the committee's report in writing when the Bill's passage through Parliament is very fast. Moreover, members of the committee will often move amendments to give effect to the committee's conclusions and recommendations; the minister will be expected to give a full response at that time. However, if the response to a conclusion or recommendation is particularly legal or technical or requires a more in depth response on the policy, it may be more appropriate for the department to respond in writing; advice on this point can be sought from the Human Rights Division of the Ministry of Justice. Responses can be emailed to the JCHR, that will normally publish them, and bill teams should alert the committee Clerk that a response is coming (contact details at Appendix B). If a Response is sent shortly before the next stage of a bill, making it unlikely that the committee will be able to publish it before the debate, bill teams should also consider laying a copy it in the library of the appropriate House.

## Acts

11.36 A statement about ECHR compatibility is not required for acts. Nor should the explanatory notes for acts make any reference to ECHR compatibility or the fact that a section 19 statement was made.

# 12. OTHER LEGAL ISSUES

## Key points

- Departments should consider any implications for the UK's international legal obligations, including in relation to WTO rules and any legal obligations arising as a result of UK withdrawal from the EU.
- Departments should consider any risk of legal challenge and the impact of a successful challenge. They should ensure that the way the bill is drafted reduces this risk as far as possible.
- Any proposal for a provision to have retrospective effect, to be formally retrospective or to commence earlier than two months after Royal Assent must be agreed by the Law Officers.
- Departments should also consider whether their bills contain provisions which, if enacted, would affect trade between Northern Ireland and other parts of the UK.
- Departments should also consider whether their bills contain environmental law under section 20 of the Environment Act 2021.
- Any proposal for a provision which involves the processing of personal data must be consistent, and made explicitly subject to, with the data protection legislation (including the UK General Data Protection Regulation (GDPR) and Data Protection Act 2018).

## Legal challenge to actions carried out under legislation

### 12.1 Points to be aware of include:

- to reduce the risk of challenge, legislation should be expressed in the clearest possible language. Courts are reluctant to interfere with an action which is clearly in accordance with the express wish of Parliament. Courts will also be influenced by provisions such as those providing for avenues of appeal;

- legal advisers and Parliamentary Counsel should be alerted to aspects of policy which are likely to attract opposition so that Parliamentary Counsel can focus on the likely areas of technical challenge. In case of difficulty, legal advisers should seek the Law Officers' advice, and should do so as early as possible in the drafting process;
- where there is a history of legal challenges being mounted in a particular area, there may be advantage, after consulting Parliamentary Counsel, in instructing outside Counsel expert in the field; and,
- The Legal Issues Memoranda (LIM) accompanying which accompanies bills submitted to the PBL Committee should draw attention to any steps taken to reduce such legal risks. It is important to discuss the LIM with the Attorney General's Office (AGO) and the Legal Secretariat to the Advocate General (LSAG) in early course and a draft should be submitted to the AGO and LSAG **at least three weeks** before the bill is sent to the PBL Committee. The content of the LIM will then be discussed and agreed with the AGO and LSAG before the bill documents are sent to PBL. More information on working with the Law Officer Departments, including further detail on what should be discussed in the LIM, can be found in [Working with the Law Officers on Legislation: A Guide for Departments](#) (please note this website is only available to Government lawyers with a current department or agency email account). Significant legal issues in the bill should be raised with the AGO and LSAG, and other departments with a policy interest (e.g. FCDO for international issues, DIT for trade issues, MoJ for HR issues) in advance of sending the AGO and LSAG the draft LIM.

## Retrospectivity and Early Commencement

12.2 Where a department proposes to include a provision that would be retrospective (whether formally retrospective or with retrospective effect) or to include a provision which will commence earlier than two months after Royal Assent of the bill ("early commencement"), they must first seek the consent of the Law Officers and the PBL Committee will want assurances that this has been granted before it approves a bill for introduction. Agreement of the Law Officers should be sought in advance of the bill being presented to the PBL Committee for clearance. You should refer to the "[Working with the Law Officers on Legislation](#)" Guide for further information.

12.3 There are limited exceptions to the consent requirements. Therefore, in the first instance, departments should discuss their proposals with officials in the AGO and LSAG. Departments

should do this as early as possible, in case the Law Officers are not prepared to give their consent and the department will need to develop alternative proposals.

12.4 Any amendments to the bill after introduction that require consent would need to be agreed with the Law Officers in the same way, although such amendments are unlikely to be agreed to by the PBL Committee.

### **Article 2 of the Windsor Framework**

12.5 Under Article 2 of the Windsor Framework, the UK Government is committed to ensuring that there is no diminution of certain rights, safeguards and equality of opportunity protections set out in the chapter of the same name in the Belfast (Good Friday) Agreement, in Northern Ireland as a result of the UK leaving the EU. The Government's obligations under Article 2 must be considered when departments promote any primary, or make any secondary legislation that applies in Northern Ireland, for example legislation that applies UK-wide. If you have any questions about how best to consider Article 2 when developing policy and legislation, you should contact the Rights Team in the Northern Ireland Office at [crsg@nio.gov.uk](mailto:crsg@nio.gov.uk).

### **Statement affecting trade between Northern Ireland and other parts of the UK**

12.6 Section 13C of EUWA includes measures designed to place a transparency obligation with respect to legislation which affects trade between Northern Ireland and other parts of the UK. The purpose of this requirement is to ensure that whenever Parliament is considering new primary legislation, that it is informed about any impacts on the UK internal market and any measures necessary to protect Northern Ireland's place in the UK internal market.

12.7 Section 13C of EUWA applies a two-stage test to be discharged by the Minister in charge of the bill:

1. Would the bill affect trade between Northern Ireland and other parts of the UK?
  - a. If not, no statement is required and this should be recorded in the explanatory memorandum accompanying the bill.
  - b. If so, limb (b) applies.
2. Would the bill in question have a significant adverse effect on trade between Northern Ireland and the rest of the UK.
  - a. If not, the minister in charge of the bill makes a statement to that effect.

- b. Otherwise, the minister states that they are unable to make the statement in (b)(i), but that the Government nevertheless wishes the House to proceed with the bill.

12.8 The question of whether a bill would affect trade between Northern Ireland and other parts of the UK (and therefore whether a statement is necessary at all) is primarily an economic consideration, relating to trade in either goods or services within the UK internal market.

12.9 If a statement is needed, then the Minister in charge of the bill must decide whether they can make a statement to say that any effect on trade is not a ‘significant adverse effect’. In considering this, department officials may wish to consider a ‘significant adverse effect’ to be one that makes trade between Northern Ireland and the rest of the UK significantly more difficult or significantly less likely to take place in future. However department officials should also consider the overall net effect of any beneficial or positive effects on trade alongside any harmful or unfavourable effects on trade. For example, adverse effects in some areas may be outweighed by positive effects elsewhere in the bill.

12.10 Your Minister will be required to make a statement. If 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 UK (section 13C(2)(a)) and your Minister is making a statement, the following words should be used:

#### NORTHERN IRELAND - GREAT BRITAIN TRADE STATEMENT

“[Name of Minister] makes 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.

[Signature]”

Or

12.11 If the Minister is unable to make such a statement but His Majesty’s Government nevertheless wishes the House to proceed with the bill (section 13C(2)(b)):

## NORTHERN IRELAND - GREAT BRITAIN TRADE STATEMENT

“[Name of Minister] makes 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 [optional explanation] but the Government nevertheless wishes the House to proceed with the Bill.

[Signature]”

12.12 After the statement has been made, the fact that it has been made will be recorded on the front of the bill when it is published. The Office of the Parliamentary Counsel will arrange this.

12.13 It should be noted that this duty ensures Parliament is informed of the impact of primary legislation. However, it places no constraint on either officials or Ministers on what policy options are considered or pursued. Making a statement, either to confirm that a provision would not have a significant adverse effect or that the Minister is unable to make such a statement, does not prevent the Government or Parliament from proceeding with the bill.

12.14 If it is not readily apparent that the bill would affect trade between Northern Ireland and other parts of the United Kingdom, it is unlikely that a statement should be made. A statement should not be made as a precaution. However, if you are not sure whether your bill does or does not contain a provision which, if enacted, would affect trade between Northern Ireland and the rest of the UK, you should engage with the Windsor Framework Taskforce at [wftf-sgim@cabinetoffice.gov.uk](mailto:wftf-sgim@cabinetoffice.gov.uk).

### Environmental law

12.15 The Environment Act 2021 includes measures designed to protect and improve the natural environment in the UK with a new domestic framework for environmental governance to hold public authorities to account on environmental law. The department’s consideration of section 20 of the Act will need to be included in the legal issues memorandum, submitted to the PBL Committee before the bill can be approved for introduction or publication in draft.

12.16 [Section 20](#) applies where the Minister in charge of a bill in either House of Parliament considers that the bill contains environmental law. The purpose of section 20 is to help

maintain environmental protections through highlighting to both Houses when a bill may have the impact – intended or otherwise – of weakening or reducing the environmental level of protection provided for in existing environmental law. It ensures that Ministers consider environmental protections when bringing forward legislation and enables Parliament and stakeholders to hold the Government to account on maintaining environmental protections.

12.17 The Minister in charge of a bill in either House of Parliament must determine whether the bill contains environmental law. In such a case, the Minister must state that this is so, and also state either that the provision will not lower the current level of environmental protection provided for in existing environmental law or that they are unable to make a statement to such effect, but that the Government nevertheless wishes the House to proceed with the bill.

12.18 Section 20 is a two-stage process:

- Stage one is to decide whether a new bill includes provision(s) which would be environmental law. If the Minister is of the view that the bill does contain such a provision, they must then make a statement declaring so.
- Stage two is to decide whether the provision(s) have the effect of weakening or reducing environmental protections provided for in existing environmental law or not. In either case, the Minister must make a statement, either under subsection (3) (that the bill does not reduce such environmental protection) or subsection (4) (that it does but the government wants to proceed anyway).

12.19 Not every bill will need a statement. To establish if a statement is required, you need to determine whether your bill contains provisions which, if enacted, would be environmental law. Key definitions are contained in [sections 44 to 46](#) of the Environment Act 2021.

12.20 Firstly, [section 45](#) defines “environmental protection” as:

- protection of the natural environment from the effects of human activity;
- protection of people from the effects of human activity on the natural environment;
- maintenance, restoration or enhancement of the natural environment;
- monitoring, assessing, considering, advising or reporting on anything in relation to the previous bullets.

12.21 Secondly, “existing environmental law” is defined in section 20(8) as environmental law existing at the time that the bill to which the statement relates is introduced into the House, whether or not the environmental law is in force.



12.22 If your bill does not include provisions which could be considered environmental law, it must be indicated that the question has been considered in the bill's Explanatory Notes. The suggested text for this paragraph is as follows:

*"[Name of Minister] is of the view that the Bill as introduced into the House of [Commons/Lords] does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made."*

12.23 If your bill includes provisions which could be considered environmental law, a statement will need to be made and you must consider if the relevant clauses in any way lower the level of environmental protection provided for by any existing environmental law (at the time of the bill's introduction). It should be noted that the section 20 duty only applies when a bill is introduced to each House and does not need to be reconsidered if the bill is amended during passage through that House. The Explanatory Notes should include a reference that the Minister has made the statement, in the same manner used for statements under section 19 of the Human Rights Act 1998. Further information on what to include in the Explanatory Notes is in Chapter 10.

12.24 Your legal issues memorandum will need to include reference to environmental law and your Minister will be required to make a statement. If your bill includes environmental law and the Minister is making a statement under section 20(2)(a) and (3) (level of environmental production is not reduced), the following form of words should be used:

#### ENVIRONMENTAL STATEMENTS

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

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.

[Signature]"

Or

If your bill includes environmental law and the Minister is making a statement under section 20(2)(a) and (4) (level of environmental protection is reduced), the following form of words should be used:

#### ENVIRONMENTAL STATEMENTS

“[Name of Minister] makes 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 [optional explanation] but the Government nevertheless wishes the House to proceed with the bill.

[Signature]”

12.25 After the statement has been made, the fact that it has been made will be recorded on the front of the bill when it is published. Parliamentary Counsel will arrange this.

12.26 In order to keep the commitment proportionate, there is not a set requirement for any accompanying documents to support the statement in the bill. Select committees should be allowed to request any information they feel would be necessary rather than bill teams assume the extra workload of preparing a full set of documentation in advance. However, bill teams may decide to publish memorandums or notes to accompany the bill in anticipation of any likely discussion.

12.27 It should be noted that there is no legal obligation to take specific action following on from a decision to make a statement, regardless of which of the two statements is applied. However, it can be expected that passage of the bill may be eased via the prior preparation of memorandums or notes in anticipation of possible scrutiny.

12.28 If you are not sure or cannot establish with full certainty that your bill does not contain a provision which would be environmental law, it is strongly recommended that you seek legal

advice from your departmental lawyers. They may consult Parliamentary Counsel and / or lawyers at the Attorney General's Office / Legal Secretariat to the Advocate General. If consultation with departmental lawyers is unable to provide certainty, or if you have any further questions on this section of the Act and how it may affect your bill, you should contact the Defra Primary Legislation team at [primary.legislation@defra.gov.uk](mailto:primary.legislation@defra.gov.uk), who will be able to put you in touch with the relevant policy and legal contacts within Defra. In a rare instance where no consensus can be reached, it is recommended that a statement should be made.

## **Data protection legislation**

12.29 Where a department proposes to include a provision that involves the processing of personal data, they must first consult the Information Commissioner's Office (ICO). This is a specific requirement of the UK GDPR. The Data Protection Policy Team in the Department for Science, Innovation & Technology can offer advice on how to make sure that legislative proposals are consistent with data protection legislation and facilitate contact with the ICO where appropriate.

## **Amendments to sentencing law**

12.30 If the department is proposing to make amendments to sentencing law it should consider the Sentencing Act 2020. The 2020 Act consolidates sentencing law so as to create a "Sentencing Code". 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. Guidance about the ambit of the Sentencing Code and making amendments to it is available on [GOV.UK](https://www.gov.uk).

## **Codes of Practice**

12.31 A 'code of practice' is an authoritative statement of practice to be followed in some field. It typically differs from legislation in that it offers guidance rather than imposing requirements: its prescriptions are not hard and fast rules but guidelines which may allow considerable latitude in their practical application and may be departed from in appropriate circumstances. The provisions of a code are not directly enforceable by legal proceedings, which is not to say that they may not have significant legal effects. A code of practice, unlike a legislative text, may also contain explanatory material and argument.

12.32 Detailed guidance on codes of practice and legislation can be found at Appendix C. Where it is proposed to introduce a code of practice in a way or for a purpose that departs from that

guidance, Ministers should be aware that this is likely to be controversial, particularly in the House of Lords.

# 13. IMPACT ASSESSMENTS

## Key points

- Impact assessments are generally required for all UK government interventions of a regulatory nature that affect the private sector and/or civil society organisation or public services. The Government has international obligations in free trade agreements to conduct impact assessments on regulation that has an impact on trade.
- An impact assessment comprises a full assessment of economic, social and environmental impacts. Departments should ensure that they have covered all relevant points. Your departmental Better Regulation Unit will be able to provide guidance and the relevant template.
- There is a legal requirement for public bodies to demonstrate they are considering their responsibilities under the Equality Act 2010 (i.e. in relation to age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation).
- A development, options or consultation stage impact assessment must be submitted alongside any bids for legislation, and a final proposal stage impact assessment, also known as a Regulatory Impact Assessment, must accompany requests for collective agreement to the policy in a bill and must be submitted to the PBL Committee before it approves a bill for publication in draft or for introduction to Parliament.
- The final impact assessment must be made available alongside bills published in draft for pre-legislative scrutiny or introduced to Parliament, with 80 copies sent to the Vote Office (30 of which should be marked for the attention of the Public Bill Office), and will need to be updated during parliamentary passage to reflect any changes made to the bill. Impact assessments should be emailed to [pbohoc@parliament.uk](mailto:pbohoc@parliament.uk). An enactment impact assessment must be published alongside an Act of Parliament.

## What is an impact assessment?

13.1 An impact assessment is both:

- a continuous process to help think through the reasons for government intervention, to weigh up various options for achieving an objective and to understand the consequences of a proposed intervention; and
- a tool to be used to help develop policy by assessing and presenting the likely costs and benefits and the associated risks of a proposal that might have an impact on the public, a private or civil society organisation, the environment and wider society over the long term.

13.2 An impact assessment should cover the following seven steps:

Step 1: Identify the problem

Step 2: Specify desired objectives

Step 3: Identify viable options that achieve the objectives

Step 4: Identify the impacts (for example, economic, social and environmental)

Step 5: Value the costs and benefits of each option

Step 6: Consider enforcement and implementation issues

Step 7: Plan for evaluation and evaluate the chosen policy

13.3 The level of resources invested in the analysis in an impact assessment should be proportionate to the likely impact of the proposal. For example, if it is likely to affect only a few firms or organisations, or many firms or organisations but only to a very small degree, and / or the costs and benefits are likely to be very small, then the impact assessment should be quite short. Where the impact will be substantial, more data and analysis will be required. Full guidance is available from departmental Better Regulation Units.

## When is an impact assessment required?

Impact assessments are generally required for all government interventions of a regulatory nature that affect the private sector and/or civil society organisations.<sup>5</sup> If you answer 'yes' to any of the following questions then an impact assessment **is likely to be required**.<sup>6</sup>

### Will the regulatory proposal:

- Impose additional costs or reduce existing costs on businesses or civil society organisations (this includes national policy statements)?
- Have an impact on trade?
- Involve some kind of redistribution affecting public, private or civil society organisations? That is, where there is an exchange or 'transfer' of costs or benefits from one group to another, even where it does not yield an overall net change in costs and benefits, or a change in administrative costs?
- Introduce or amend enabling powers that, when used, could impose additional costs or reduce existing costs on business or civil society organisations, including where there is uncertainty regarding how the powers may be used?

### 13.4 For bills, this means:

- a development, options or consultation-stage impact assessment must be submitted alongside any bids for legislation;
- a final-stage impact assessment must be produced to accompany Cabinet or Cabinet committee correspondence when seeking collective agreement to the policy in the bill;
- a final impact assessment must be submitted to the PBL Committee before it approves a bill for publication in draft or for introduction to Parliament. Before giving its approval, the committee will want to be satisfied that sufficient work has been done on the impact assessment,<sup>7</sup> and the bill minister should be able to confirm at this point that they have seen the impact assessment and, on the basis of the available evidence, is satisfied that the benefits of the proposal outweigh the costs;

<sup>5</sup> Note in particular the definition of a 'regulatory provision' provided in the Better Regulation Framework guidance

<sup>6</sup> The Better Regulation Framework guidance provides further information on when an impact assessment is required for regulatory provisions. Impact assessments may be required for other reasons, such as informing stakeholders and Parliament.

<sup>7</sup> Sufficient work includes completing any relevant requirements from the Better Regulation Framework, such as Regulatory Policy Committee (RPC) scrutiny, for regulatory proposals that impose or remove significant costs. Where regulatory proposals include enabling powers that have the potential to impose or remove significant costs when used, or there is significant uncertainty regarding how the powers will be used, these should be subject to RPC scrutiny prior to being submitted to PBL Committee.

- the final impact assessment must be made available alongside bills published in draft for pre-legislative scrutiny or introduced to Parliament; and
- where a bill contains several different policies, an impact assessment must be completed for each policy in the bill.

13.5 An enactment impact assessment must be published alongside an Act of Parliament.

13.6 The Equality Duty requires public bodies to have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equalities Act 2010, advance equality of opportunity between people who share a protected characteristic and those who do not share it and foster good relations between people who share a protected characteristic and people who do not share it. This should be considered during the analysis of impacts.

13.7 There is a duty on Ministers of the Crown in [section 19](#) of the Environment Act 2021 to have due regard to the environmental principles policy statement when making policy, including proposals that lead to legislation. The [policy statement](#) explains how to interpret and proportionately apply the principles that will contribute to the improvement of environmental protection and sustainable development. The five principles are: integration, prevention, rectification at source, polluter pays, and the precautionary principle. You should contact [environmental.principles@defra.gov.uk](mailto:environmental.principles@defra.gov.uk) for further information.

## Developing an impact assessment

13.8 The **development stage** should focus on the definition of the policy problem, the rationale for government intervention, the identification of policy objectives and the gathering of evidence, including international evidence. The impact assessment does not need to be published at this stage and will usually be a ‘live’ working document.

13.9 The **options stage** should focus on the identification and development of options and the testing of these options through engaging with interested parties ahead of formal consultation. There should be initial estimates of costs and benefits. Alternatives to traditional regulation (for example, self-regulation or voluntary codes) need to be properly considered from the outset. For regulations in scope of the revised Better Regulation Framework, this is now a key stage where a specific ‘Options Assessment’ and corresponding independent scrutiny from the Regulatory Policy Committee may be required. The ‘Options Assessment’ scrutiny may be



after the consultation stage, depending on the circumstance. The [Better Regulation Framework guidance](#) has more details.

- 13.10 The **consultation stage** should focus on firming up the options considered, ensuring that there is greater quantification of costs and benefits of each option as far as possible, even if the numbers are indicative. You should use the consultation to seek stakeholders' views on your proposals for a review, your cost and benefit estimates, and the key assumptions and data that contribute to the analysis. When a policy proposal is taken out to public consultation proportionate analysis must be published.
- 13.11 The final impact assessment must be published first at the **final proposal stage**, when the Government announces its firm position on a single policy option (this will often be when it publishes its consultation response), and again when the proposal enters Parliament. An impact assessment must be published when a government bill or private members' bill with government support is introduced in either House. An impact assessment must also be published when a draft statutory instrument (that imposes or reduces costs on business or civil society organisations) is laid in Parliament.
- 13.12 The **enactment stage** requires revisions to the previous final proposal stage impact assessment to reflect the final contents of the act, statutory instrument or other regulatory measure, if changes have been introduced during the parliamentary process. When the legislation is enacted, the revised impact assessment needs to be published. For non-legislative-based measures the corresponding point for publication is the implementation of the measure.
- 13.13 The **review stage** requires a post-implementation review impact assessment (where applicable) to capture the actual impact of the implemented policy, and assess any modifications to the policy objectives or its implementation recommended as a result of the review. There are statutory requirements for post-implementation reviews. The [statutory guidance](#) should be followed and the review dates must be tracked in order not to miss the statutory deadlines. Once undertaken, and scrutinised by the Regulatory Policy Committee (where appropriate), the review and RPC opinion must be published on legislation.gov.uk. New policy development or a proposed policy change prompted by the post-implementation review should trigger a new impact assessment.

## Practicalities on introduction

- 13.14 A requirement for copies of the impact assessment to be placed in the Commons Vote Office (as opposed to simply being deposited in the House of Commons Library) has been specifically endorsed by the House. Eighty copies should be sent to the Vote Office, 30 of which should be marked for the attention of the Public Bill Office (these additional 30 copies are only required for bills in committee rooms, not for those that have their Committee Stages on the floor of the House – see below) on introduction to the Commons. Impact assessments should be emailed to [pbohoc@parliament.uk](mailto:pbohoc@parliament.uk).
- 13.15 Copies will also be required for the (Commons) Public Bill Office to make available in the public bill committee room or, subject to the agreement of the chair, copies may be sent to all members of the relevant public bill committee.
- 13.16 The impact assessment will need to be updated during parliamentary passage to reflect any amendments made to the bill and, when a revised version is published on entry to the second House, 50 copies should again be sent to the Vote Office. As above, it should be sent to [pbohoc@parliament.uk](mailto:pbohoc@parliament.uk).
- 13.17 In preparing an impact assessment, officials should remember that, within three to five years of Royal Assent, the Government will be required to submit a memorandum to the relevant departmental Select Committee with a preliminary assessment of how the act has worked out in practice (see chapter on Post-Legislative Scrutiny), to allow the committee to decide whether it wishes to conduct further post-legislative scrutiny. The impact assessment (along with the explanatory notes) must therefore provide sufficient information about the objectives of the act to allow any post-legislative reviewing body to make an effective assessment as to how an act is working out in practice.
- 13.18 For further guidance contact the Regulation Directorate (formerly the Better Regulation Executive) at the Department for Business and Trade. Contact details are available in Appendix B.

# 14. DEVOLVED LEGISLATURES AND GOVERNMENTS

## Key points

- The UK Parliament remains sovereign, but will ‘not normally’ pass primary legislation in areas of devolved or transferred competence without legislative consent and agreement from the devolved legislatures<sup>8</sup>. This is known as the ‘Sewel Convention’.
- The UK has asymmetrical devolution: the settlements of the three devolved legislatures in Scotland, Wales and Northern Ireland hold different powers, responsibilities and competencies over public services.
- Legislative consent is obtained in the form of a Legislative Consent Motion (LCM), which is usually tabled before the relevant devolved legislature by their corresponding devolved governments<sup>9</sup>.
- An LCM should be sought in the devolved legislature if any provisions or clauses in a Westminster bill relate to devolved matters in Wales and Scotland or if the bill makes provisions specifically for transferred purposes in Northern Ireland. Equally, legislative consent from the devolved legislatures will also be required if a Westminster bill seeks to alter or change the powers, responsibilities or competence of either the devolved governments and/or the devolved legislatures.
- At an early stage and before parliamentary introduction, UK Government (UKG) departments will need to determine both the territorial extent and application of their bill and provide a devolution analysis to the relevant legal teams in the Office of the Advocate General (OAG), Wales Office Legal Advisers (WOLA) and/or Northern Ireland Office Legal Advisers (NIOLA) to determine whether each provision or clause in the bill engages the legislative consent process.

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<sup>8</sup> <https://www.parliament.uk/site-information/glossary/sewel-convention/>

<sup>9</sup> Collectively the Scottish Government, Welsh Government and Northern Ireland Executive are referred to as the devolved governments.

- The Union and Devolution Directorate (UDD), together with the Office of the Secretary of State for Scotland (OSSS), the Office of the Secretary of State for Wales (OSSW) and the Northern Ireland Office (NIO)<sup>10</sup> can assist bill teams and departments in this process.
- Following discussions with the UDD and the territorial offices, UKG departments should hold policy discussions with devolved government counterparts to test UKG's devolution analysis of bill's considered to engage the LCM process.
- A devolved government cannot seek to table an LCM in their legislature for a Westminster bill until the bill has been formally introduced to the UK Parliament.
- In the House of Lords, UKG is obliged to make a statement to the House before Third Reading commences to inform the House of the bill's present LCM status where consent has not yet been received or has not been granted. This is required whether the bill started in the House of Commons or the House of Lords. This was agreed by the House of Lords<sup>11</sup>, following a recommendation from the Lords Procedures and Privileges Committee<sup>12</sup> and the Lords Constitution Committee. The practical implication of this is that the bill's lead Minister in the Lords will need to make a statement in their speech to this effect before any Third Reading amendments are considered. See 36.12.
- The recess dates in the UK Parliament are often different to the devolved legislatures. Recess dates for the devolved legislatures are usually available online, but the territorial offices will be able to help if any further clarity is needed. Bill teams will therefore need to carefully coordinate the LCM process within the early stages of the Westminster bill's passage through the UK Parliament.

## Background

14.1 The Memorandum of Understanding<sup>13</sup> between the UK Government and the devolved governments states that:

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<sup>10</sup> Collectively the Office of the Secretary of State for Scotland (OSSS), the Office of the Secretary of State for Wales (OSSW) and the Northern Ireland Office (NIO) are known as the territorial offices.

<sup>11</sup> [Debate in the Lords on the Lords Procedure and Privileges Committee report, 22 October 2020](#)

<sup>12</sup> [House of Lords Procedure and Privileges Committee, Fourth session of Session 2019-21, paragraph 43](#)

<sup>13</sup> [www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement](http://www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement)

*“The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved governments will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.”*

14.2 Each devolution settlement has different characteristics and gives different powers to the devolved legislatures and governments in question. One consequence is that an LCM may be sought in one devolved legislature but not in another. The devolution settlements are complex and this chapter provides only a general introduction. Bill teams are strongly advised to read the more detailed Devolution Guidance Notes (DGNs) for taking forward primary legislation which seeks to legislate within devolved or transferred areas of competence in Scotland, Wales and Northern Ireland. These can be found on the [GOV.UK](https://www.gov.uk) website.

### **General principles**

14.3 Officials in the UDD and the territorial offices should be the first port of call for bill teams on any devolution issues. It is advisable to contact them early on in the development of the bill, even if the bill does not appear to have any obvious devolution implications. In addition to devolution issues, there may be drafting issues to take into account (for instance, with regard to the appropriate drafting under the separate Scottish and Northern Irish legal systems).

14.4 With the support of the UDD, the territorial offices and their respective legal advisers (OAG, WOLA and NIOLA), bill teams should identify at an early stage the territorial extent of the bill, whether or not the bill’s provisions relate to reserved, devolved or transferred matters in each part of the UK, along with whether or not the provisions engage the LCM processes in the devolved legislatures. This should involve the bill teams and their departmental lawyers producing an initial analysis of the devolution implications of the bill. It is likely to involve sharing policy intent and drafting instructions for bills with UDD, the territorial offices and relevant legal advisers to ensure that they have the clearest possible understanding of the proposed legislation before they can help bill teams fully assess the devolution implications. UKG departments should consult the relevant territorial offices before making initial contact with counterparts in the devolved governments to discuss the bill.

- 14.5 If provisions in the bill relate to devolved or transferred matters, UKG departments should consider whether UKG's preferred position would be to legislate for England only (or England and other parts of the UK where the topic is reserved and not devolved/transferred) or to seek to extend the provisions to other parts of the UK, bearing in mind that this is likely to engage the LCM process in the relevant devolved legislatures.
- 14.6 Bill teams (with assistance from the territorial offices, where necessary) should then hold policy discussions with devolved government counterparts to understand if DA Ministers will be content for the bill to extend and apply to devolved and/or transferred areas in Scotland, Wales and/or Northern Ireland. Equally, DA Ministers may request that provisions that relate to England only are extended to apply to their own respective nations. Bill teams should also be clear with the devolved governments over matters for which UKG remains responsible and matters for which the devolved governments are responsible. If differences in interpretations or boundaries arise, bill teams should work with the relevant territorial offices and with UDD to reach an agreed solution.
- 14.7 Even if the bill does not appear to have any obvious devolution implications, it is crucial that bill teams discuss the provisions with colleagues in both the UDD and the territorial offices to confirm that this is the case. In particular, while a bill might not deal substantially with devolved matters, it may touch on devolved or transferred matters which could result in the LCM process being engaged within a devolved legislature. The UDD and the territorial offices can advise on whether or not the LCM is likely to be engaged before provisions in the bill are shared with the devolved governments.
- 14.8 Bill teams should seek agreement and clearance from the relevant territorial offices before sharing a bill's provisions and clauses (relating to devolved or transferred matters) with the devolved governments ahead of introduction. However, copies of the relevant provisions/clauses that are likely to engage the LCM process in the devolved legislatures should only be shared with the agreement of UKG Ministers.
- 14.9 If the provisions relate to reserved matters, UKG departments should be aware that a failure to apply a bill's reserved provisions/clauses in the devolved nations will mean that the devolved legislatures will have no way of passing equivalent legislation.

14.10 It is not only important that engagement with the devolved governments takes place at an early stage (following discussion with the territorial offices), but equally important that bill teams and sponsoring departments decide on a contingency position if they are unable to secure LCM support from one or all of the devolved governments. This might mean having a view on what a bill could look like with such provisions excised from it. In some exceptional circumstances, it is possible to proceed without LCMs from the devolved legislatures. Bill teams should first discuss the appropriate next steps with the UDD, EDS, the relevant territorial offices and with Business Managers' offices.

14.11 If a bill applies and extends to Scotland, Wales and/or Northern Ireland, UKG departments should keep in mind the need to consult relevant interest groups in those parts of the UK including, in particular, the judiciary in Scotland and Northern Ireland, on the same basis as their equivalents in England and Wales. Further information on engaging with relevant interest groups can be found in the DGNs.

### **The Legislative Consent process**

14.12 A devolved government cannot seek to table or take forward an LCM until the bill has been formally introduced to the UK Parliament. As a result, the relevant UKG bill minister should first secure agreement in principle from DA Ministers that the relevant devolved governments will table and support an LCM in their devolved legislatures in respect of the bill.

14.13 Following the introduction of a bill at Westminster, the devolved governments are expected to table a legislative consent memorandum (which is a precursor to an LCM) in their devolved legislatures. Bill teams should continue to take on board views, and work with devolved government counterparts on the bill according to the established practices.

14.14 Although the timing and passage of LCMs is firmly a matter for the devolved legislatures, bill teams should work closely with devolved government counterparts with the aim of securing passage as soon as possible. The final vote on the LCM must take place in the devolved legislatures before the final amending stage in the second House in Parliament<sup>14</sup>. This is to ensure that UKG has the contingency option of tabling amendments to the bill to remove or amend the relevant provisions/clauses, in the event that a devolved legislature chooses to

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<sup>14</sup> In the case of the House of Lords, the final amending stage should be considered as Report Stage (and not Third Reading).

withhold legislative consent. However, UKG's aim and first preference remains for the LCMs to be passed by the devolved legislatures while the bill is in the first House in Parliament.

14.15 Bill teams will need to remain in contact with the UDD and the territorial offices throughout the passage of the bill to ensure that any amendments tabled to the bill during passage are fully considered from a devolution perspective.

14.16 UKG departments should also note that any legislative amendments made to a bill while it progresses through Parliament may have implications on a bill's devolution analysis and status. Bill teams should do their utmost to ensure that the devolved governments are consulted on all devolution-related amendments tabled by UKG and that, where necessary, supplementary LCMs are obtained.

### **Devolution and PBL Committee**

14.17 The PBL Committee, prior to considering a bill ready for introduction, will expect the devolved governments to have been consulted on a bill's devolved provisions and clauses. The PBL Committee will also expect all devolution-related issues to have been substantively resolved, unless there are exceptional circumstances. This will form part of the PBL clearance process.

14.18 By the time the bill goes to PBL Committee for approval for introduction, the sponsoring UKG department must be in a position to state whether the provisions of the bill will apply and extend to England only, to England and Wales, to England and Wales and/or Scotland and/or Northern Ireland, or to the whole of the UK. Different provisions within the same bill may have different territorial extent and application.

14.19 If the bill extends to Scotland, Wales and/or Northern Ireland, the PBL Committee will also wish to know whether it deals with matters which are reserved wholly to the UK Government or whether it has implications for the devolved legislatures and/or governments. For example, it may extend their powers or duties or the provisions may have a consequential impact on devolved responsibilities i.e. such as local government in Scotland, Wales or Northern Ireland.

14.20 If provisions extending to one or more of the devolved governments relate directly to matters that are devolved or transferred, the PBL Committee will wish to know whether the



relevant devolved governments have expressed support or agreement in respect of the relevant provisions/clauses which will engage the LCM process. If the provisions relate to the executive powers of DA Ministers, the Committee will also wish to know whether this has been agreed by the relevant devolved governments. Once the Westminster bill has been introduced, a legislative consent memorandum should normally be laid by the devolved governments in their devolved legislatures no later than two weeks after introduction. The legislative consent memorandum (which is the precursor to the LCM) will indicate if the devolved government agrees with the UKG's devolution analysis of the bill, along with an indication if they intend to recommend that consent be given to the bill's devolved provisions/clauses.

14.21 If the bill (or part of the bill) deals with devolved or transferred matters, PBL Committee will expect the devolved governments concerned to have been fully consulted; in practice, this means extensive engagement at official-level and appropriate engagement at ministerial-level. The PBL Committee will also expect the responsible UKG bill minister to write to their DA ministerial counterparts seeking 'agreement in principle' to take forward the LCM process in the devolved legislatures. The relevant DA Minister will then consult with their ministerial colleagues and officials to reach agreement on the proposal. This is then usually confirmed in writing in response to the relevant UKG bill minister.

14.22 The expectation of the PBL Committee is that devolution issues will have been substantively resolved by the time the Committee considers whether a bill is ready for parliamentary introduction. If any devolution issues remain outstanding, the PBL Committee may decide to delay the introduction of the bill. This is to ensure that the progress of other legislative vehicles at Westminster is not delayed.

14.23 UKG departments should also note that any legislative amendments made to a bill while it progresses through Parliament may have implications on a bill's devolution analysis and status. Bill teams should do their utmost to ensure that the devolved governments are consulted on all devolution-related amendments tabled by UKG and that, where necessary, supplementary LCMs are obtained.

14.24 The territorial offices are part of the Westminster decision-making process and will be involved in PBL write-rounds and clearance processes. However, the devolved governments are not part of the Westminster decision-making process. As a result, Cabinet committee correspondence or papers should not be copied to them, although UKG Ministers may write to

DA ministerial counterparts in the devolved governments in similar terms when writing to Cabinet committees. Likewise, internal government legal advice should **not** be shared directly with the devolved governments without agreement from both the UDD and the relevant territorial office. Details on handling correspondence can be found in the DGNs and UDD can advise on other protocols in corresponding and managing relations with the devolved governments.

14.25 The PBL Secretariat in the Cabinet Office should also be kept informed of any devolution issues in bills.

### **Devolution implications of bills to be published in draft**

14.26 The same principles apply where a bill is being prepared for publication in draft. The bill team should discuss the proposed provisions with the UDD and the territorial offices as early as possible, so that discussions with the devolved governments can start in good time with the aim of reaching an agreed position before publishing the bill in draft.

14.27 It is preferable to reach an agreed position before publishing the bill in draft. However, if the devolution issues prove complex and risk significantly delaying publication of the draft bill, it may be possible to publish the bill in draft form, stating that the devolution issues remain to be resolved through discussion with the devolved governments. This can be explained in the bill's accompanying explanatory notes. Publication in draft may, in itself, help to resolve any outstanding issues.

### **Engaging with the Scottish Government and Parliament**

14.28 Under the DGNs, the UK Parliament does 'not normally' legislate without the consent of the Scottish Parliament on provisions which:

- are for a devolved purpose;
- modify/alter the executive competence of Scottish Ministers; or
- modify/alter the legislative powers of the Scottish Parliament.

14.29 To secure legislative consent in Scotland, an LCM must be tabled and voted on (in favour) by the Scottish Parliament; the LCM is normally tabled and promoted by the Scottish Government. In theory, it is possible for any member of the Scottish Parliament (who is not a

member of the Scottish Government) to table an LCM before the Scottish Parliament, though UKG departments will normally only deal with the Scottish Government in order to agree the tabling of an LCM. Appendix D provides more detail on the process in the Scottish Parliament for considering LCMs.

14.30 Where it is proposed to include provisions/clauses which fall within the competence of the Scottish Parliament within a Westminster bill, the Office of the Secretary of State for Scotland (OSSS) should be consulted in the first instance. The Office of the Advocate General (OAG), who advises UKG on Scots law, should also be consulted on drafting matters and on establishing whether such provisions will engage the LCM process in the Scottish Parliament. It is critically important that bill teams discuss the potential need for LCMs, along with DA engagement, with OSSS and OAG at an early stage. Equally, OAG will be able to support departmental lawyers in conducting a devolution analysis on each bill. Any LCM support must then be agreed by the relevant Scottish Minister. If the Scottish Government agrees to supporting an LCM, they will then lay an LCM before the Scottish Parliament, together with a detailed memorandum, which will recommend that the Scottish Parliament agrees to providing legislative consent for the bill.

14.31 LCMs must be passed by the Scottish Parliament before the final amending stage in the second House in Parliament. This is to ensure that UKG has the contingency option of tabling amendments to the bill to remove or amend the relevant provisions/clauses in relation to Scotland, in the event that the Scottish Parliament chooses to withhold legislative consent.

14.32 Legislative amendments made (both by UKG or by backbench/opposition MPs) during parliamentary proceedings can alter a bill's devolution status and engage the LCM process. The same procedure, as described above for securing the agreement of the Scottish Government would then apply, but would need to be accelerated. As such, legislative amendments that are likely to impact upon the handling and passage of a bill should be discussed with PBL Secretariat, OSSS and the UCG in the first instance.

### **Engaging with the Welsh Government and Senedd Cymru/Welsh Parliament**

14.33 Under the DGNs, the UK Parliament does 'not normally' legislate without the consent of the Senedd Cymru/Welsh Parliament on provisions which:

- are for a devolved purpose;
- modify/alter the executive competence of Welsh Ministers; or
- modify/alter the legislative powers of the Senedd Cymru/Welsh Parliament.

14.34 To secure legislative consent in Wales, an LCM must be tabled and voted on (in favour) by the Senedd Cymru/Welsh Parliament; the LCM is normally tabled and promoted by the Welsh Government. Appendix F provides more detail on the process in the Senedd Cymru/Welsh Parliament for considering LCMs.

14.35 Where it is proposed to include such provisions/clauses which fall within the competence of the Senedd Cymru/Welsh Parliament within a Westminster bill, the Office of the Secretary of State for Wales (OSSW) should be consulted in the first instance. Wales Office Legal Advisers (WOLA) should also be consulted on drafting matters and on establishing whether or not the LCM process is engaged in the Senedd Cymru/Welsh Parliament. It is critically important that bill teams discuss the potential need for LCMs, along with DA engagement, with OSSW and WOLA at an early stage. Equally, WOLA will be able to support departmental lawyers in conducting a devolution analysis on each bill. Any LCM support must then be agreed by the relevant Welsh Minister. If the Welsh Government agrees to supporting an LCM, they will then lay an LCM before the Senedd Cymru/Welsh Parliament, together with a detailed memorandum, which will recommend that the Senedd Cymru/Welsh Parliament agrees to providing legislative consent for the bill.

14.36 LCMs must be passed by the Senedd Cymru/Welsh Parliament before the final amending stage in the second House in Parliament. This is to ensure that UKG has the contingency option of tabling amendments to the bill to remove or amend the relevant provisions/clauses in relation to Wales, in the event that the Senedd Cymru/Welsh Parliament chooses to withhold legislative consent. Bill teams should consult with the Office of the Secretary of State for Wales (OSSW) on timings with regard to tabling an LCM before the Senedd Cymru/Welsh Parliament as there are different recess times in Wales and limited slots for the Senedd Cymru/Welsh Parliament to consider and debate LCMs. Appendix D provides more detail on the process in the Senedd Cymru/Welsh Parliament for considering LCMs.

14.37 Legislative amendments made (both by UKG or by backbench/opposition MPs) during parliamentary proceedings can alter a bill's devolution status and engage the LCM process. The same procedure, as described above for securing the agreement of the Welsh

Government would then apply, but would need to be accelerated. As such, legislative amendments that are likely to impact upon the handling and passage of a bill should be discussed with PBL Secretariat, OSSW and UDD in the first instance.

## **Engaging with the Northern Ireland Executive and Assembly**

14.38 Under the DGNs, the UK Parliament does 'not normally' legislate without the consent of the Northern Ireland Assembly on provisions which:

- are for a transferred (ie: devolved) purpose;
- modify/alter the executive functions of Northern Ireland Ministers or the executive functions of the departments; or
- modify/alter the legislative powers of the Northern Ireland Assembly.

This convention does not apply when legislation deals with transferred matters only incidentally or consequentially upon provision made in relation to a reserved or excepted matter.

14.39 To secure legislative consent in Northern Ireland, an LCM must be tabled and voted on (in favour) by the Northern Ireland Assembly; the LCM is normally tabled and promoted by the Northern Ireland Executive. Appendix E provides more detail on the process in the Northern Ireland Assembly for considering LCMs.

14.40 Where it is proposed to include such provisions/clauses which fall within the transferred competence of the Northern Ireland Assembly within a Westminster bill, Northern Ireland Office (NIO) officials should be consulted in the first instance. Northern Ireland Office Legal Advisers (NIOLA) should also be consulted on drafting matters and on establishing whether or not the LCM process is engaged in the Northern Ireland Assembly. It is critically important that bill teams discuss the potential need for LCMs, along with DA engagement, with NIO and NIOLA at an early stage. Equally, NIOLA will be able to support departmental lawyers in conducting a devolution analysis on each bill. Any LCM support must then be agreed collectively by Northern Ireland Executive Ministers. If the Northern Ireland Executive agrees to supporting an LCM, the relevant Minister will then lay an LCM before the Northern Ireland Assembly, together with a detailed memorandum, which will recommend that the Northern Ireland Assembly agrees to providing legislative consent for the bill.

14.41 LCMs must be passed by the Northern Ireland Assembly before the final amending stage in the second House in Parliament. This is to ensure that UKG has the contingency option of tabling amendments to the bill to remove or amend the relevant provisions/clauses in relation to Northern Ireland, in the event that the Northern Ireland Assembly chooses to withhold legislative consent. Appendix D provides more detail on the process in the Northern Ireland Assembly for considering LCMs.

14.42 Legislative amendments made (both by UKG or by backbench/opposition MPs) during parliamentary proceedings can alter a bill's devolution status and engage the LCM process. The same procedure, as described above for securing the agreement of the Northern Ireland Executive would then apply, but would need to be accelerated. As such, legislative amendments that are likely to impact upon the handling and passage of a bill should be discussed with PBL Secretariat, NIO and UDD in the first instance.

# 15. DELEGATED POWERS

## Key points

- Delegated legislation is legislation made by a person (usually a government minister) exercising a power conferred on them by an Act of Parliament. Such legislation usually takes the form of a set of regulations or, less commonly these days, an order. The Act generally requires the power to be exercised by “statutory instrument” (an “SI”). SIs are regulated by the Statutory Instruments Act 1946 which, amongst other things, requires SIs to be numbered and published.
- It may be appropriate for a bill to delegate legislative powers to a minister or other person so that they can make further legislative provision by regulations, order or some other form of subordinate legislation after the bill becomes an Act.
- The scope of powers, the rationale for their use, and whether any safeguards are appropriate should be properly tested and justified in every case.
- Appendix E (‘Delegated Powers Toolkit’) provides guidance to help departments decide whether to include a delegated power in a bill.
- Any provisions in a bill that delegate legislative powers will be scrutinised closely by Parliament and, in particular, by the Delegated Powers and Regulatory Reform Committee (DPRRC) in the House of Lords.
- When preparing instructions to Parliamentary Counsel, care needs to be taken to ensure that any proposed powers to make delegated legislation are fully justified. The bill team should also make sure that the minister is content with what is proposed and alerted to any proposed powers which may prove controversial.
- The instructions will also need to detail the form of parliamentary scrutiny procedure to which the exercise of any power to make delegated legislation is to be subject.
- Before a bill is approved for introduction, the PBL Committee requires a delegated powers memorandum for the bill. This must set out all the proposed delegated powers in the bill, the

rationale for their inclusion, the choice of parliamentary scrutiny procedure and the justification for that choice. The draft memorandum should be shared with the PBL Secretariat, the Government Whips' Offices and Parliamentary Counsel for comment, before it is submitted to the PBL Committee.

- When the bill is introduced in the Lords or transfers from the Commons to the Lords, the memorandum should be submitted to the DPRRC. For Bills starting in the Commons it should be sent to the Commons Public Bill Office who will arrange for it to be published on the Parliament website.
- A supplementary memorandum should be submitted to the DPRRC (and copied to the Public Bill Office for publication) if the bill is subsequently amended to alter the existing delegated powers or to add further delegated powers.
- A delegated powers memorandum is not required if the bill does not contain any delegated powers, but will need to be provided if any delegated powers are added to the bill by amendment.
- Where a bill is published in draft before introduction, the Government should also publish a delegated powers memorandum and send a copy of that memorandum to the DPRRC.
- The DPRRC will aim to report on a bill by no later than the time the bill reaches Committee Stage in the Lords, and sometimes before Second Reading. Very occasionally, for example, where a bill is being fast-tracked, the DPRRC will report on a bill when it is still in the House of Commons.
- The minister must write to the DPRRC with the Government's response, but should not commit to making any amendments in response unless these have already been agreed by the PBL Committee and the relevant policy committee in the normal way. The letter to the DPRRC should provide a full justification where recommendations have not been accepted.

### **When is it appropriate for a bill to delegate legislative powers?**

15.1 An Act of Parliament can give Ministers or others the power (sometimes called a 'delegated power') to make secondary legislation.

15.2 It is appropriate for delegated powers to be used, for example, to deal with secondary policy detail required to give effect to the Act, including technical or administrative matters. These are various circumstances in which it might be appropriate for a bill to contain



delegated powers. For example, where a matter, though detailed, goes to the heart of the bill such that Parliament ought to consider it as part of the policy story set out in the bill.

### Delegated Powers Toolkit

The Delegated Powers Toolkit at Appendix E sets out guidance to help departments decide whether or not to include a delegated power in a bill. It deals with the following questions

- What is the right balance between primary and secondary legislation?
- What is the proper role for delegated powers?
- Where will delegated powers not generally be justifiable?
- In what circumstances may it be appropriate to take 'Henry VII' powers?
- What safeguards or alternatives should be considered when taking a power?

15.3 As noted above, the inclusion of any delegated powers in a bill needs to be justified by the Government. The Delegated Powers and Regulatory Reform Committee's twelfth report of the 2021-22 session entitled '[Democracy Denied? The urgent need to rebalance power between Parliament and the Executive](#)' (HL 106) sets out the following statement of principles of parliamentary democracy which the Government can use when considering whether to include delegated powers in a bill:

- “1. Parliamentary democracy is founded on principles of parliamentary sovereignty, the rule of law and the accountability of the executive to Parliament.
2. Sometimes it is appropriate for Parliament to delegate legislative powers to a minister or other body so that further legislative provision by delegated legislation can be made after Royal Assent.
3. Where any provision in a bill delegates legislative powers, departments must satisfy themselves that the delegation is framed in a way that takes into account to the fullest extent possible the principles of parliamentary democracy.
4. Departments may be asked to explain to Parliament how the principles of parliamentary democracy have been taken into account when seeking a delegation

of legislative power. In the case of exceptional or controversial powers, this explanation should be set out in the delegated powers memorandum accompanying a bill.

5. Any explanation should be complete and not formulaic."

## **Guidance**

15.4 It is Government policy that guidance should not be used to circumvent the usual way of regulating a matter. If the policy is to create rules that must be followed, this is not appropriate content for guidance. Examples of appropriate uses of guidance include aiding policy implementation by supplementing legal rules or explaining the legal framework clearly and simply.

## **Forms of parliamentary scrutiny**

15.5 There are two main forms of parliamentary scrutiny for delegated legislation: affirmative and negative.

15.6 The most common form is annulment in pursuance of a resolution of either House of Parliament i.e. the 'negative' procedure. SIs under this procedure are laid (presented to Parliament) already made (signed by a minister) and thus law. This is commonly referred to as 'made when they are laid'. However, unless there is an extreme case of urgency, the expectation is that a minimum of 21 days should be left between laying and the law coming into force. This is in line with Parliamentary convention and facilitates appropriate time for scrutiny. Any breach of this requires clear explanation in the accompanying explanatory memorandum. In total, Members of Parliament and Peers have 40 sitting days from the SIs being laid to pray against it. If a 'prayer' motion is moved, a debate and vote to annul the SI may occur. A 'prayer' is tabled in the form of an Early Day motion. There is no automatic debate if a 'prayer' is tabled and departments should discuss any 'prayers' with the Whips Offices.

15.7 There is also the rarely used draft negative resolution procedure where an instrument is laid in draft and can only be made if no negative resolution is passed within 40 sitting days. In this case the negative resolution is in terms that the draft instrument is not to be made, in which case the Statutory Instruments Act 1946 provides that no further proceedings shall be taken on the instrument.

15.8 The other principal form of scrutiny is the ‘affirmative’ procedure (draft-affirmative procedure). The instrument is laid in draft and cannot be made until both Houses have debated and approved it.

15.9 There is another variant (made-affirmative procedure), where the order is made before being laid and comes into force immediately (usually because the minister regards it as necessary to act as a matter of urgency). However, this requires each House to pass a resolution affirming the instrument before a period specified in the Act (for example, 28 days) expires. Should the period specified in the Act expire before the SI has been debated and approved in each House, then it will cease to have effect.

15.10 In the case of some financial instruments, these procedures apply to the Commons only.

15.11 Some instruments are not subject to Parliamentary procedure. This is commonly the case with commencement orders or regulations.

15.12 The Joint Committee on Statutory Instruments (JCSI) scrutinises the legal and technical aspects of all SIs laid before Parliament. The Lords Secondary Legislation Scrutiny Committee (SLSC) considers the policy content of all SIs subject to parliamentary procedure laid before Parliament. Both issue weekly reports.

15.13 In some other exceptional cases there may be provision for additional parliamentary control (‘enhanced procedures’). Departments should avoid routinely including such provision in bills (or conceding amendments to that effect), since this adds to the complexity of parliamentary handling and has a considerable impact on future business management.

### **Content of the delegated powers memorandum to the DPRRC**

15.14 The role of the DPRRC is “to report whether the provisions of any bill inappropriately delegate legislative power or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny”. Departments should carefully consider DPRRC’s [guidance](#) (revised in December 2023) when preparing a delegated powers memorandum. Further guidance can be obtained from the Government Whips’ Office in the Lords or the Clerk to the DPRRC.

15.15 The delegated powers memorandum should give a concise account of the bill, and:

- identify every provision for delegated legislation within the bill;
- give a brief description or statement of their purpose;

- describe briefly the justification for taking the power, why it is appropriate for the matter to be dealt with to in delegated legislation, and how the power has been narrowed; and
- identify the choice of parliamentary scrutiny procedure selected for the exercise of each power (affirmative, negative or none at all) and explain why that procedure is considered appropriate.

15.16 Powers to give directions or issue codes of practice may be considered to be delegated legislative powers and must be covered in the memorandum. If a department is unsure whether a power is legislative it is better to include an explanation than to leave it out.

15.17 While the memorandum should cover all proposals for delegated powers in the bill, the DPRRC takes a particular interest in so-called ‘Henry VIII’ powers to amend primary legislation through statutory instruments. The DPRRC has recommended that in respect of Henry VIII powers to make incidental, consequential and similar provision, there should be a presumption in favour of the affirmative procedure for SIs made under the power; and if the Government propose such powers be subject to anything other than the affirmative procedure, the reasons should be set out in the explanatory notes to the bill as well as in the delegated powers memorandum (for more on scrutiny of Henry VIII powers see section D of Appendix E). It has also recommended that in each case the explanatory notes and delegated powers memorandum should offer an explanation of the reasons why a particular form of wording has been adopted.

15.18 A bill or provision that consists primarily of powers and leaves the substance of the policy, or significant aspects of it, to delegated legislation is sometimes called a framework (or ‘skeleton’) bill or provision. Legislation in this form will need to be fully justified to the DPRRC. In these cases it is helpful to explain the steps taken to include policy detail, limitations on the power and appropriate safeguards on the face of the bill. It may be helpful to draw the DPRRC’s attention to relevant precedents in existing legislation.

15.19 The DPRRC may, on occasion, invite further evidence, written or oral, from the department, or possibly from others, but neither is common.

15.20 The draft DPRRC memorandum should be shared with the PBL Secretariat, the Government Whips’ Offices in the Lords and Parliamentary Counsel for comment before it is submitted to the PBL Committee.

## Practicalities on introduction

- 15.21 For bills starting in the House of Lords, on the day of introduction the delegated powers memorandum should be submitted to the DPRRC via email ([hldelegatedpowers@parliament.uk](mailto:hldelegatedpowers@parliament.uk)) to the clerk to the committee with 50 copies placed in the Commons Vote Office, and further copies in the libraries of both Houses. Then, on passage to the Commons, the memorandum should be updated (if necessary) and sent to the DPRRC with 50 copies placed in the Commons Vote Office and further copies in the libraries of both Houses.
- 15.22 On introduction for bills starting in the House of Commons, the memorandum should be sent to the Commons Public Bill Office for publication on the Parliament website. It does not need to be submitted to the DPRRC at that stage with 50 copies placed in the Commons Vote Office and further copies in the libraries of both Houses. Then, on passage to the Lords, the memorandum should be updated and sent to the DPRRC with 50 copies placed in the Commons Vote Office, and further copies in the libraries of both Houses.
- 15.23 When the memorandum is submitted to the DPRRC it should also be copied to the Commons Public Bill Office. They will arrange to publish it on the Parliament website. The relevant contact details can be found in Appendix B.
- 15.24 Whichever the House of introduction, when the bill passes to the second House the memorandum needs to be updated to reflect any amendments made in the first House.
- 15.25 As a general rule, bill teams should keep the DPRRC informed of any issues around the bill which they are likely to be interested in. Any correspondence to the chair of the DPRRC should be copied to the committee Clerk who is also willing to advise departments on delegated powers matters.

## Responding to the DPRRC's report

- 15.26 The DPRRC will aim to complete its scrutiny of the bill and provide a report to the House of Lords before the bill goes into Committee stage or earlier if this is feasible.
- 15.27 The DPRRC works by informing and making recommendations to the House. Its report may simply draw the attention of the House to the provisions concerned, or it may propose that a different form of subordinate, or indeed primary, legislation would be appropriate or that a delegated power should be subject to a different level of parliamentary scrutiny.

15.28 The Government can expect to be challenged on its response to any of the DPRRC's recommendations which falls short of full implementation.

15.29 The bill team must consider the report carefully and advise ministers which of the recommendations can be accepted. The minister should write to the chair of the DPRRC before Committee stage to inform them of the Government's response to the recommendations (which is usually published) but should not commit to making any amendments unless these have already been cleared by the PBL Committee and relevant policy committee in the normal way. Departments therefore need to make sure that they consider their response to the DPRRC promptly, to allow time to seek clearance if necessary. If the time between publication of the report and Committee stage is short and it is not possible to provide a formal response, departments should write to the DPRRC with an indication of when a response will be sent.

15.30 DPRRC's recommendations must be considered seriously to see whether it is possible to accept them. However, any changes to the bill as a result must nonetheless be cleared through the PBL Committee in the normal way, and may also require clearance through the relevant policy committee. There is, therefore, benefit in departments anticipating the views of the DPRRC when drafting the bill to avoid the need for amendments. The DPRRC's advisers are willing to be consulted informally before introduction.

15.31 Careful handling will be required if the Government chooses not to accept the recommendations of the DPRRC. The bill minister must provide a full justification for not accepting recommendations in their written response to the DPRRC. The bill team should engage the DPRRC and their advisors, the PBL Secretariat and the Lords Whips Office, prior to responding to the report.

### **Delegated powers in private members' bills**

15.32 The DPRRC may report on any bill containing delegated powers. If a government-supported private member's bill looks likely to complete its Commons stages and reach the Lords (even if the Government has only agreed to support the bill part-way through its passage), the department responsible should submit a memorandum to the DPRRC as set out above, by the time the bill reaches the Lords at the very latest. For a government-supported Lords private member's bill, a memorandum should be submitted as soon as possible after introduction and the Government should provide a response to any DPRRC report as they would with a government Bill.

15.33 More detail on delegated powers and issues to be considered when drafting the bill are in Chapters 8 and 9 (Drafting the Bill).

### **Providing Parliament with draft regulations etc.**

15.34 MPs and peers who are considering a bill will find it helpful to be given sight of drafts of the regulations, guidance etc that the department intends to make under the powers conferred by the bill. This is usually done by the drafts being placed in the Vote Office (Commons) or the Printed Paper Office (Lords) and the libraries of both Houses and made available during Committee with an announcement made at the relevant point in Committee, or letters written to interested members or peers.

15.35 In cases where the detailed draft regulations themselves are not available or they may not aid debate (e.g. if they are particularly detailed and technical), departments should consider setting out clear policy statements or case studies about the content of the proposed regulations. A policy statement can set out the Government's basic approach to the exercise of a power, even where it is impossible to draft regulations (e.g. powers in respect of future technologies, where it is impossible to predict the detail, but the Government has a policy as to its approach).

### **Practical considerations for delivering delegated powers**

15.36 There is now a central coordination, clearance and monitoring function for delivering secondary legislation across Government (the triage process), which should be considered when formulating plans for secondary legislation. In practice this means that departments must plan their SIs as well as any other project and be able to provide comprehensive detail, adequate justification and carefully thought-through parliamentary handling considerations for any secondary legislation they wish to make before it will be cleared to be laid before Parliament. This work should not be disregarded when deciding how broad delegated powers in a bill will be.

### **Triage**

15.37 The PBL Secretariat operate a triage process for all secondary legislation, producing a monthly submission of secondary legislation planned over the next three months for a sub-group of PBL Committee to consider. Based on the information provided to them and the overall flow of instruments to Parliament, the PBL triage ministers will clear SIs to be laid, ask for more information or reject SIs for laying.

15.38 The PBL triage ministers are:

- Leader of the House of Commons
- Leader of the House of Lords
- Chief Whip of the House of Commons
- Chief Whip of the House of Lords
- Chief Secretary to the Treasury
- a Cabinet Office minister

15.39 SIs submitted to triage need to contain information on a number of fields such as purpose/justification, possible level of controversy and technical details such as its enabling powers. Fields must be completed succinctly and to ministerial-submission quality.

### **Parliamentary Handling Plans**

15.40 Many SIs submitted to triage will also require an accompanying parliamentary handling plan, providing detail on how it is expected to progress through both Houses. PBL Secretariat can provide more guidance on the precise templates.

### **Debating delegated legislation**

15.41 In the House of Commons, affirmative or negative SIs can be debated for up to 90 minutes each. This is set out in Standing Order No. 16. Most SIs are scheduled for debate in Committee, with only high-profile or time-critical SIs normally scheduled for debate on the Floor of the House.

15.42 In the House of Lords debates on SIs are not time-limited. Most are debated in Grand Committee but they can be taken on the floor of the House. Votes only tend to take place if a motion has been tabled against an SI.

15.43 SIs that relate to each other can be grouped for debate, providing the Whips' Offices can obtain agreement in usual channels. If all members are content, then there is one debate encompassing all SIs with votes at the end. However, in the Commons if any member objects to the grouping, the SIs must be taken in turn with each debate lasting up to 90 minutes. In this instance, votes would happen at the end of each debate, not at the conclusion of all the debates.



15.44 Departments should discuss timings and possible groupings with the Government Whip's Offices.

# 16. CROWN DEPENDENCIES AND OVERSEAS TERRITORIES

## Crown Dependencies

- 16.1 Departments must consider whether the bill has any implications for the Crown Dependencies: the Bailiwick of Jersey, the Bailiwick of Guernsey (which includes the separate jurisdictions of Alderney and Sark) and the Isle of Man. This will include any proposals for all or part of the bill to extend, or be capable of extension at a future date, to the Crown Dependencies and proposals to include in the bill amendments of existing UK Acts of Parliament that extend, or are capable of extension, to the Crown Dependencies.
- 16.2 The Crown Dependencies are not part of the UK and have no representation in Parliament. They are parliamentary democracies with their own legislative assemblies, administrative, fiscal and legal systems and their own courts of law. Constitutionally, the UK Government is responsible for their defence, their international relations and, on behalf of the Crown, their good government. Detailed information is contained in the [“Fact sheet on the UK’s Relationship with the Crown Dependencies”](#) on GOV.UK.
- 16.3 The Crown Dependencies have autonomy in their domestic affairs and the UK Government, by long-standing constitutional convention, does not ordinarily legislate for them in such matters. Only in rare cases, with the agreement of the Crown Dependencies, will an Act of Parliament be expressed to apply directly. It may apply by necessary implication, although this too will now be rare.
- 16.4 Almost invariably nowadays, UK legislation intended to take effect in the Crown Dependencies will do so by Order in Council made with the agreement of each of the Crown Dependencies concerned under an enabling provision, known as a permissive extent clause, contained in the Act of Parliament.
- 16.5 If a department wishes its bill to extend to the Crown Dependencies it will need to seek their consent. Furthermore, a permissive extent clause should not be included in a bill without their prior agreement save in exceptional circumstances (such as where a bill engages the UK’s constitutional responsibilities for the defence and international relations of the Crown

Dependencies) and then only after consultation with the Crown Dependencies and the Ministry of Justice Crown Dependencies Team. This applies equally to any bill which proposes to amend or replace an Act of Parliament that extends to the Crown Dependencies on its face or includes a permissive extent clause. UK Government departments should not assume that pre-existing direct extent or a pre-existing permissive extent clause can be replicated. Similarly, any Orders in Council that the Crown Dependencies subsequently agree should include only those provisions drafted in consultation with them.

16.6 It is therefore important that a department consults the Crown Dependencies at an early stage if the content of a proposed bill appears relevant to them, and before any mention of them is made in a published bill. Contact details for each of the Crown Dependencies and the Ministry of Justice Crown Dependencies Team can be found in Appendix B.

16.7 Departments must satisfy the PBL Committee that any necessary consultation with the Crown Dependencies has been carried out before it gives approval to introduce the bill to Parliament.

16.8 All UK Government departments are responsible for their respective policy areas towards the Crown Dependencies and should engage directly with them. The Crown Dependencies Team in the Ministry of Justice ([crown.dependencies@justice.gov.uk](mailto:crown.dependencies@justice.gov.uk)) should be notified of any contact departments make with the Crown Dependencies and can provide advice on how to communicate with them. Further information can be found in the Ministry of Justice “[How To Note: Extension of UK Legislation to the Crown Dependencies](#)” guide on GOV.UK.

## **Overseas Territories**

16.9 Departments should consider at an early stage whether a bill has any implications for the UK’s 14 Overseas Territories: Anguilla; Bermuda; the British Indian Ocean Territory; the British Antarctic Territory; the Cayman Islands; Gibraltar; the Falkland Islands; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and the South Sandwich Islands; the Sovereign Base Areas of Akrotiri and Dhekelia (on the island of Cyprus); St Helena, Ascension Island and Tristan da Cunha; the Turks and Caicos Islands; and the Virgin Islands (commonly known as the British Virgin Islands).

16.10 The Overseas Territories are constitutionally separate from the UK, but the UK remains responsible for their overall good governance, and their defence and external affairs. Unlike for the Crown Dependencies, each Overseas Territory has a written constitution contained in

an Order in Council. This sets out the powers of the local legislature and executive, and also prescribes a particular role for a Governor or equivalent, who is subject to instruction by the Secretary of State. Overseas Territories' laws are a mixture of legislation passed by the local legislature, Orders in Council and UK Acts of Parliament.

16.11 There is no limit to the power of Parliament to enact primary legislation for any of the Overseas Territories. However, Acts of Parliament do not normally extend to the Overseas Territories. If they do, they may do so either by virtue of the Act itself (this may be either expressed on the face of the Act or by necessary implication), or, more commonly, by Order in Council under an enabling provision contained in the Act (known as a "permissive extent clause"). While there is no rule of law that requires the consent of an Overseas Territory, or even prior consultation with it, before Parliament legislates for it, the UK Government does not normally legislate for the Overseas Territories except with the agreement of the locally-elected governments. In addition, there is now a legal requirement set out in the Cayman Islands' Constitution on the Secretary of State to normally bring such an Act or Order in Council to the attention of the Premier of the Cayman Islands so that the Cayman Islands Cabinet can signify its view on it. Departments will need to satisfy PBL Committee that any necessary consultation with Overseas Territories Governments has been carried out before it gives approval to introduce the bill to Parliament.

16.12 All UK Government departments have recognised their responsibility to support the Overseas Territories in their area of competence and expertise. Departments should therefore take Overseas Territory interests into account when considering new policies or parliamentary bills.

16.13 If intended legislation has potential implications for the Overseas Territories, or a department wishes its bill to extend automatically to the Overseas Territories or to contain a permissive extent clause, it should consult Overseas Territories Directorate and Europe Directorate (for Gibraltar and the Sovereign Base Areas) in the Foreign, Commonwealth and Development Office (FCDO). Departments should consult Overseas Territories Directorate ([DLOTDSstrategyTeamSensitive@fcdo.gov.uk](mailto:DLOTDSstrategyTeamSensitive@fcdo.gov.uk)) at the FCDO for the relevant contact details for territory. In the first instance, Governors should be made aware by email or letter via email. The Governor/s will then normally consult the territory governments. A separate email should subsequently be sent to the relevant Overseas Territory Representative/s to London for awareness. This should take place as early as possible and in any case, before any mention of the Overseas Territories is made in a published bill.

# 17. KING'S AND PRINCE'S CONSENT

## Background

17.1 It is a longstanding Parliamentary requirement that the King's and the Prince's consent should be given for certain bills.

**King's consent** is required if the Bill affects the prerogative of the Crown or the interests (hereditary revenues, personal property or other personal interests) of the Crown, the Duchy of Lancaster or the Duchy of Cornwall.

**Prince's consent** is required if the bill expressly refers to the Duchy of Cornwall or otherwise has a special application to it. Very occasionally, it may be required in other cases.

17.2 A bill may require both King's and Prince's consent.

## When King's and Prince's consent is required

17.3 It is not always easy for bill teams to spot where King's and/or Prince's consent may be needed. The bill team should consult Parliamentary Counsel at an early stage on whether it is likely that it will be needed for their bill. Parliamentary Counsel may, in turn, consult the House authorities and advise accordingly. It is important to allow at least a week for the House authorities to take a view (this may take longer when the House is in recess).

17.4 There is no requirement to seek King's or Prince's consent prior to publication of a draft bill, though out of courtesy the department might wish to alert the Royal Household to any draft bill which significantly affects the Crown's interests.

17.5 If a private member's bill requires King's and/or Prince's consent, the Member writes to the relevant minister to ask the Government to arrange for consent to be obtained. The Government will usually seek such consent even if it opposes the bill although it will generally not seek consent where it is clear from the parliamentary timetable that there is no real prospect of the bill making progress or the bill has been submitted without enough time to seek consent. Nevertheless, the Department may wish to indicate in the covering letter to the

Private Secretary requesting King's or Prince's consent that the Government intends to oppose the bill during its later stages.

17.6 The request to the Government is normally made once the bill has been printed but might need to be made immediately after First Reading if time is short, provided the intended content of the bill is known.

### **How to seek King's and Prince of Wales's consent**

17.7 Where King's consent is required a letter should be sent from the bill minister's Private Secretary to the King's Private Secretary explaining the purpose of the bill and how it will affect the prerogative or interests of the Crown, and asking for consent. Letters affecting the Crown Estate should be copied to the Secretary to the Crown Estate Commissioners (contact details are available in Appendix B).

17.8 Where Prince's consent is required a similar letter should be sent from the bill minister's Private Secretary to the Prince of Wales's Principal Private Secretary setting out how the bill would affect the interests of the Duchy. All letters sent to the Prince of Wales's Principal Private Secretary should be copied to the Secretary to the Duchy of Cornwall.

17.9 In cases where both King's and Prince's consent is required, separate letters rather than copies should be sent to each Private Secretary.

17.10 Two copies of the draft bill should be enclosed. If the draft is not yet final, the latest version should be sent in the interim and the final draft as soon as available. The Royal Household will need to have received a final copy of the bill for consent to be granted with any changes between the draft copies identified.

17.11 The language of the letters should be formal in nature. All letters should be copied to:

*Mr. Julian Smith*

*Messrs Farrer and Co*

*66 Lincoln's Inn Fields*

*London*

*WC2A 3LH*

17.12 Farrer and Co will, as appropriate, advise the Royal Household, the Clerk to the Council of the Duchy of Lancaster and the Secretary to the Duchy of Cornwall on the nature of the legislation and its potential impact.

17.13 The relevant contact details for the Royal Household can be found in Appendix B.

17.14 Templates for the letters to seek consent can be obtained from the PBL Secretariat.

## **Timing**

17.15 Consent should normally be sought before the bill is introduced. When considering whether to approve a bill for introduction, the PBL Committee will expect to hear that consent has been sought and obtained, or that the process has begun and no significant issues are expected in obtaining consent.

17.16 The Royal Household must be given as much time as possible, and never fewer than 14 days, in which to process requests for consent. It is the responsibility of bill teams to ensure that consent is sought and obtained on time. Ministers must ensure that a response has been received in writing before they signify consent in Parliament.

17.17 If, very exceptionally, consent to a government bill can only be sought after a bill has been introduced, it should be sought as soon as possible; however a minimum of 14 days must be left for it to be considered. Amendments to a bill after introduction might require consent to be sought if they are not covered by the original consent or if the bill did not require consent when introduced. In that case consent must be obtained before the amendments are tabled. If an amendment which requires consent is made by the second House, consent must be signified in the House in which the bill was introduced before the amendment can be considered by that House on 'ping-pong'. This does not apply if consent was signified in the first House and it can be assumed that the matters covered by the consent include the matter covered by the amendment in the second House

## **Signifying consent**

17.18 In the Commons, consent is signified by a minister who is a Privy Counsellor in the Chamber on Third Reading. The Privy Counsellor merely nods to signify consent.

17.19 In the House of Lords consent is signified orally by a minister who is a Privy Counsellor in the Chamber on Third Reading.

17.20 In the Commons, it is up to the department (through their Parliamentary Branch) to ensure that a minister who is a Privy Counsellor is available to signify King's or Prince's consent. In the Lords, the Whips Office will arrange for the Privy Counsellor to signify consent.

# 18. TAX AND PUBLIC EXPENDITURE

## Key points

- The agreement of the relevant HM Treasury minister must be obtained to any tax proposals or to the tax implications of new activities or bodies proposed.
- Contact with HM Treasury officials should begin at an early stage in policy development and agreement of HM Treasury ministers obtained before the bill is sent to the PBL Committee for final approval before introduction into Parliament.
- HM Treasury agreement must also be obtained to the bill's public expenditure or public sector manpower implications. Any proposals which create a charge upon public funds must be authorised by a money resolution in Parliament, for which the approval of the Financial Secretary to the Treasury is required.
- Departments must have proper regard to the parliamentary timetable for approving legislation. Departments cannot normally incur expenditure in advance of both Royal Assent of the enabling legislation and any necessary parliamentary authority through the supply estimates.
- See [Managing Public Money](#) for more information, or contact HM Treasury for further guidance.

## Tax implications

18.1 Treasury ministers should be consulted on all tax and excise duty proposals at the earliest possible stage, including anything that may be considered an environmental tax. This will help to ensure that all tax matters are resolved before a bill is ready for introduction and will minimise delays.

18.2 Careful thought should be given to potential tax implications of the creation of new activities or bodies which may require either exemption or bringing into the tax net, and of changes to legislation which is itself referred to in tax law. The control of betting and gaming duties, road fuel duties and environmental taxes, among other things, are the responsibility of HM Revenue and Customs (HMRC). Departments should consider whether social, transport or environmental legislation could affect any of these areas.



18.3 Where departments consider that the bill may impact on any of these areas it is essential to obtain the agreement of the relevant HM Treasury minister to the tax or duty proposals. This process is quite separate from approval of the bill by legislation and policy committees and consent should be obtained before the bill is submitted for collective agreement.

18.4 Departments should notify HMRC at the start of the bill process. Officials will then assist the bill team to determine the tax or duty provisions which may be required and provide advice to the relevant HM Treasury minister in line with the Government's tax and environmental policies. Arrangements for consulting with the devolved governments on tax provisions in bills should also be agreed with HMRC.

### **Public expenditure**

18.5 HM Treasury agreement must also be obtained to any proposals in the bill which have implications for public expenditure or public sector manpower.

18.6 Any proposals in a bill which create a charge upon public funds must be authorised by a money resolution, and those which impose charges of certain kinds upon the people or make certain provisions about borrowing or the use of receipts must be authorised by a ways and means resolution. The motion for the resolution must be initialled by an HM Treasury minister. It is important that official level discussions with HM Treasury begin at an early stage so that ministerial agreement to the proposal can be obtained in time for the bill's introduction to Parliament. The Chief Secretary to the Treasury is a member of the PBL Committee and must also give his or her approval before the bill can be introduced into Parliament.

### **Powers to incur expenditure (the 'Second Reading convention')**

18.7 Departments should not normally consume resources or incur expenditure on new services until the relevant legislation has Royal Assent and the department has obtained parliamentary authority through the supply estimates process. However, where expenditure has to be incurred urgently, it may be possible once the legislation has passed Second Reading in the Commons. Departments wishing to make appointments to new public sector bodies being set up under specific legislation should wait until the legislation has received Royal Assent, although 'shadow' bodies may be established to prepare the ground. In exceptional circumstances, and with the approval of HM Treasury, appointments may be made after Second Reading in the Commons.

18.8 If the passage of the bill is delayed, or the bill is introduced in the Lords and does not reach the Commons until later than it would otherwise have done, departments must ensure that

they continue to observe the guidance in Managing Public Money on powers to incur expenditure on new or substantially amended services. Delay in implementation may sometimes mean that the expenditure profile has to be revised in order for that expenditure to remain consistent with the general regularity and propriety principles of public expenditure.

# 19. HANDLING STRATEGIES

## Key points

- Bill teams should prepare a parliamentary handling strategy and a wider stakeholder / media handling strategy in consultation with the Government Whips' Offices in the Commons and Lords and with the departmental press office respectively.
- The parliamentary handling strategy in particular should be a living document, helping the bill team to crystallise its approach and prioritise resources. Further guidance is available from the Government Whips' Office in the Commons and in the Lords.
- A handling strategy for a Statutory Instrument, if it is required, should be provided to the Whips before the SI is laid and made. A handling plan will be commissioned by the PBL Secretariat as part of the triage process and if you are in doubt about whether one is required, you should liaise with them directly.

## Handling strategies – the basics

19.1 A parliamentary handling strategy (covering both Houses) must be submitted alongside the bill when the PBL Committee considers it before introduction. The bill team will also need to prepare a wider stakeholder / media handling strategy. The nature of the strategies will depend on the length of the bill and the level of controversy but as a general guide the parliamentary handling strategy should:

- Set out which areas are likely to be contentious, based on an awareness of the mood of the House, the particular interests of individual MPs / peers and wider public narrative;
- Identify those MPs / peers likely to take a particular interest and what engagement with them is planned;
- Include details of any briefings for all members by ministers, discussions with MPs held by officials, media work by ministers etc; and
- Include a plan for responding to amendments that could come up on the bill (and are considered likely to be in scope).

19.2 Parliamentary handling strategies should be drafted in consultation with the Whips' Offices and cleared by departmental whips and ministers. Examples of these are available from the PBL Secretariat on request.

19.3 The wider stakeholder / media handling strategy should be prepared in conjunction with press offices and communications experts in departments and should:

- identify the concerns of stakeholders, and recognise that key stakeholders will expect to be engaged early and throughout the bill's progress;
- list the key stakeholders, their position, and how the relationship will be managed;
- list the main issues which have or are likely to arise, the groups likely to raise them and why, setting out the Government's position on the issue and what action has or can be taken to resolve the issue;
- set out planned actions, including details of any press launches and other media work;
- consider setting up an advisory panel representing key stakeholders; and
- include a core media script and press notices.

19.4 The bill team should work closely with press office, especially on the media handling strategy, if possible via a dedicated point of contact.

19.5 Preparing handling strategies will help the bill team to crystallise the approach and prioritise resources towards those areas where poor handling would be most likely to have the greatest impact on the bill. It will also provide an assurance to the PBL Secretariat and the PBL Committee that the bill team has thought through the issues carefully and an indication of where the greatest pressures are likely to arise.

19.6 The parliamentary handling strategy in particular should be a living document, updated throughout the passage of the bill and crucially always looking and planning ahead to the next parliamentary stage and beyond. The strategy will be particularly crucial should the Government suffer defeats or should the bill go into ping-pong. Possible concessions and fall-back positions, and the handling these will require, should be set out in the strategy.

# 20. PBL APPROVAL FOR INCLUSION IN THE PROGRAMME AND INTRODUCTION TO PARLIAMENT

## Key points

- The PBL Committee's approval must be obtained before the bill can be introduced into Parliament or published in draft.
- The bill minister must attend a meeting of the PBL Committee before the bill is introduced. In advance, they must circulate the latest draft of the bill, explanatory notes, a bill memorandum, impact assessment (if needed), a legal issues memorandum, a parliamentary handling strategy, and a delegated powers memorandum (if needed).
- At the meeting the bill minister will be asked to summarise the main provisions of the bill, confirm that it is ready for introduction and set out any particular handling issues. If there are no outstanding issues, it is likely that the committee will then approve the bill for introduction on the agreed date “subject to any minor or drafting amendments”.

## King's Speech

20.1 The Cabinet Secretariat, working with Number 10, will draft the King's Speech and provide coordination for the supporting documents. As the speech is short, it is not normally possible to include references to all of the bills that the Government plans to introduce. Instead, reference to other bills may be made in the supporting documents (including the lobby pack published alongside the programme, the Prime Minister's statement following the Gracious Speech and the written ministerial statement issued by the Leader of the House of Commons the day after the speech).

20.2 Bill teams will also be asked to provide background briefing on the bill for the subsequent parliamentary debates on the King's Speech.

20.3 Bill teams should ensure that departmental press offices are ready to handle any inquiries as a result of the bill being announced in the King's Speech, particularly where the bill is high profile. To assist with planning, the PBL Secretariat will aim to inform bill teams of their target week for introduction well in advance of the King's Speech. Business managers will want to ensure that a good number of high-profile bills are introduced in the first week of the new session.

### **PBL Committee papers for clearance for introduction to Parliament**

20.4 The PBL Committee's agreement is needed before a bill can be introduced into Parliament or published in draft. The PBL Secretariat will arrange a meeting of the committee to consider the bill's readiness and handling. This will normally be in the week leading up to or of the scheduled introduction date.

20.5 The minister in charge will be invited to prepare a memorandum on the bill and to attend the meeting. The memorandum should be prepared using the template provided by the PBL Secretariat. It must be circulated a week before the meeting and be accompanied by the other papers listed below. Parliamentary Counsel will normally supply the text of the bill itself directly to the PBL Secretariat.

20.6 The full set of papers required by the PBL Committee before it will approve a bill for introduction is listed below. The PBL Secretariat can provide templates and recent examples of these to bill teams on request:

- latest draft of the bill;
- final explanatory notes;
- PBL Committee memorandum;
- legal issues memorandum (cleared with the Law Officers) and if required (for example, due to lengthy analysis) a separate ECHR memorandum for the JCHR Committee;
- impact assessment (if needed) and Regulatory Policy Committee opinion (if applicable);
- parliamentary handling strategy covering both Houses; and
- delegated powers memorandum (if needed).

20.7 The PBL Secretariat will circulate the agenda and papers for the meeting a week before the meeting.

## The PBL Committee meeting

20.8 At the meeting, the Leader (as chair of the committee) will generally ask the minister to briefly summarise the main provisions of the bill, confirm that it is ready for introduction and indicate the overall parliamentary handling strategy. They will be asked to comment on the delegated powers or devolution position where relevant.

20.9 The Committee will be primarily concerned with questions of timing, handling and the resolution of any outstanding issues. The minister's presentation should therefore cover any last-minute developments not included in the memorandum. This could include any arrangements for publicity, and any departmental or parliamentary points which other ministers at the meeting can be expected to raise. This is also a good opportunity for the bill minister to make any requests for Royal Assent by a particular date (though Business Managers will not be able to offer any guarantees).

20.10 Bill teams should discuss with the PBL Secretariat what issues are likely to arise at the meeting. Policy issues will not be reopened at this stage unless they give rise to a significant handling issue. Policy must be cleared by Cabinet or the relevant policy committee before the bill is presented to the PBL Committee.

20.11 The PBL Committee will always wish to know that:

- the bill will be ready for introduction on the date specified and there are no planned (non-concessionary) government amendments;
- the explanatory notes are ready;
- the impact assessment is satisfactory, as confirmed by a Regulatory Policy Committee opinion;
- the work on the bill's compatibility with the ECHR is satisfactory and the section 19 statement on compatibility with Convention rights has been signed;
- there are no other outstanding legal issues and any retrospective provisions or early commencement provisions have been agreed by the Law Officers;
- the territorial extent and any implications for the devolved governments have been agreed;
- handling strategies are in place;
- HM Treasury is content with any financial implications of the bill; and

- the minister can justify the proposed level of scrutiny for any delegated powers in the bill.

20.12 Multiple bills may be covered in a single meeting. The bill minister should only attend the portion of the meeting relevant to their bill (unless they are also a member of the PBL Committee).

20.13 If all the above points have been satisfied, it is likely that the committee will then approve the bill for introduction “subject to any minor or drafting amendments”.

20.14 If there are unresolved issues (which should arise only exceptionally at this stage) the committee may decide that they should reconsider the bill after they have been dealt with.

20.15 The Committee may also take decisions about how the bill is to be handled at later stages of its progress through Parliament (for example, whether any special procedures such as Second Reading Committee should be recommended) and the target date for achieving Royal Assent.

20.16 If a bill is likely to need Committee of the whole House in the Commons, or if MPs may argue for this, the PBL Secretariat and the Government Whips' Office in the Commons should be alerted at the earliest opportunity. There are various reasons for committing a bill to a Committee of the whole House: it may need to be passed with speed, it may be of major constitutional significance or be controversial in ways which transcend normal party divisions, or it may be so uncontroversial that no amendments are expected.

20.17 The senior Parliamentary Counsel working on the bill will attend the meeting of the PBL Committee, but it is exceptional for officials to attend and does not usually extend to departmental officials. Any exceptional attendance must be agreed with the Secretariat and chair (but is rare).

### **Decision on House of introduction**

20.18 The Business Managers will decide whether the bill should start in the Lords or the Commons, and may confirm this in the meeting. Their aim is to ensure a balanced programme in both Houses.

20.19 A bill will normally start in the Commons if one of its main features is to provide for new public expenditure or impose a charge on public funds but bills in which the creation of a charge is a subsidiary matter can start in the Lords. Bills that have major constitutional implications have tended to start in the House of Commons. The PBL Committee memorandum will need to make clear whether or not introduction could be in either House



(though any pressing requests should also have been put to the PBL Secretariat at an earlier stage).

20.20 It is important for the balance of the programme that there should be major bills suitable for the Lords ready at the beginning of the session.

### **Preparing for introduction**

20.21 Bill teams should check with their minister's Private Office well in advance of introduction the minister's preferences for documents, box notes and speaking notes. It is also good to book tentative briefing slots with the minister and find out their preferred style and level of detail for briefing well in advance. The bill team should also ensure that everybody in the department who is involved in the bill is clear on the division of roles in supporting the minister and completing other bill tasks, to avoid wasteful duplication. For example, they should agree with their parliamentary branch the procedure for receiving amendments, marshalled lists and copies of Hansard.

20.22 The bill team should remind the minister's office that parliamentary business must take precedence over all other business. While bill teams may wish to alert the Government Whips' Offices of any other major commitments the bill minister may have during the parliamentary stages of the bill, for example, a planned overseas visit, it is very unlikely that the whips will be able to reschedule any of the bill's stages to take account of the minister's other commitments. The bill team should alert the minister's Private Office to dates as soon as they are agreed.

# 21. PUBLICATION IN DRAFT AND PRE-LEGISLATIVE SCRUTINY

## Key points

- The Government is committed to, wherever possible, publishing bills in draft for pre-legislative scrutiny; the minister should write to the PBL Committee seeking initial agreement to the principle of publishing the bill in draft for pre-legislative scrutiny before a bill is drafted.
- Pre-legislative scrutiny is normally carried out by the relevant Commons departmental select committee, or an ad hoc joint committee of both Houses. This will be subject to negotiation with the usual channels but agreement in principle should be obtained before seeking final PBL Committee approval to publish the bill in draft (working with the Whips offices).
- When the bill is ready to be published in draft the minister must seek clearance to do so, circulating a PBL Committee memorandum including the draft bill, explanatory notes, impact assessment and legal issues memorandum.
- Draft bills should be published in time to give the committee carrying out scrutiny at least three to four months (excluding parliamentary recess) to carry out its work and still report in time for the department to make any necessary changes before the bill is introduced.
- Publication in draft does not guarantee introduction in the next session, so the department must bid for a slot for a programme bill even as it is preparing a draft bill.
- Further guidance is available from the PBL Secretariat and the Cabinet Office Parliamentary Adviser. You should contact your departmental parliamentary clerk in good time for information on laying documents before Parliament.

## Suitability of bills for publication in draft

21.1 The Government is committed to publishing more of its bills in draft before they are formally introduced to Parliament, and to submitting them to a parliamentary committee for parliamentary pre-legislative scrutiny where possible.

21.2 The PBL Committee will give consideration to proposals to publish parts of a bill in draft where it is not feasible to publish the whole bill in draft.

21.3 The chair of the PBL Committee will ask ministers to consider whether bills for which they are bidding for legislative time are suitable for publication in draft, as well as inviting bids for bills specifically intended for publication in draft in the first instance.

21.4 There are a number of reasons why publication in draft for pre-legislative scrutiny is desirable. It allows thorough consultation while the bill is in a more easily amendable form, and makes it easier to ensure that both potential parliamentary objections and stakeholder views are elicited. This can assist the passage of the bill when it is introduced to parliament at a later stage and increases scrutiny of government legislation.

21.5 The decision on which bills will be published in draft is for the PBL Committee, taking into account the overall requirements of the legislative programme. Some bills may not be suitable for publication in draft, for example bills that are needed to meet international commitments where there is little flexibility around implementation, bills to implement budget commitments, or bills which must reach the statute book quickly.

### **PBL Committee approval for publication in draft**

21.6 PBL Committee agreement is needed to draft any bill, whether for publication in draft or to introduce a final bill into Parliament.

21.7 After the King's Speech, the Leader of the House of Commons writes to the House of Commons Liaison Committee listing the bills which the Government expects to publish in draft that session, and their provisional date of publication. The Leader of the House of Lords will also write to the Liaison Committee in that House in similar terms. This allows the usual channels to negotiate scrutiny arrangements for a package of draft bills.

21.8 In advance of the King's Speech, the PBL Secretariat will assess the progress of all bills being prepared for publication in draft and confirm with departments which bills will be included in the list sent to the Liaison Committee. In the light of consultations, the business managers will bring forward proposals for the establishment of ad hoc joint committees to undertake pre-legislative scrutiny in the course of the session. Other draft bills are likely to be subject to pre-legislative scrutiny by an existing select committee.

21.9 The Government may publish further draft bills or draft clauses during the session which were not included in the letter to the Liaison Committee. The Leaders in each House will write to the Commons and Lords Liaison Committee to update them on this.

21.10 Draft bills are normally cleared by the PBL Committee by correspondence rather than in a meeting. The bill minister will need to write to the PBL Committee, allowing at least six sitting days for colleagues to comment (nine working days over a recess period) and four days for clearance to be arranged in time for the draft bill to be published on the date agreed. Clearance is not granted until the chair of the committee has signed a letter confirming agreement to publication. The bill minister should attach the following papers to the letter seeking clearance:

- the latest draft of the bill;
- explanatory notes;
- bill memorandum;
- delegated powers memorandum;
- legal issues memorandum; and
- impact assessment (if needed).

21.11 In place of a parliamentary handling strategy, details of the proposed arrangements for pre-legislative scrutiny (which should be agreed with the business managers and subject to agreement with the usual channels) should be included in the PBL Committee memorandum. This should include the preferred timetable for completion of pre-legislative scrutiny and the Government's response to the recommendations, and any public consultation.

21.12 Draft bills should be published and laid before Parliament as command papers. This need not require costly white paper-style publication. The explanatory notes and impact assessment should be published alongside the draft bill. Where a draft bill includes delegated powers, a delegated powers memorandum should be published alongside the draft bill and a copy sent to the DPRRC. Departments should discuss laying command papers with their departmental parliamentary clerk.

21.13 There is no requirement to seek King's consent before a draft bill is published, though out of courtesy the department might wish to alert the Palace to any draft bill which significantly affects the Crown's interests.

## Parliamentary pre-legislative scrutiny

21.14 Parliamentary pre-legislative scrutiny may be carried out by a variety of types of committee.

The options are:

- Commons departmental (or cross-cutting) select committee;
- Joint committee of both Houses (usually ad hoc);
- Ad hoc Commons or Lords committee;
- Separate but parallel committees in each House; or
- Two or more existing committees meeting concurrently.

21.15 The bill minister should indicate the preferred option even at the early stage of seeking agreement to the principle of publication in draft, as business managers will take this into account whilst considering the overall needs of the legislative programme. Once the PBL Committee has agreed a preferred option, the choice of route will still be subject to negotiation with the usual channels and discussions with the relevant committee who may, for example, press for Lords involvement. The factors to consider include:

- whether the draft bill is likely to be of particular interest to one House rather than the other;
- whether the Government declining to initiate the appointment of a joint committee will lead to later handling difficulties;
- whether the bill engages the responsibilities of more than one department; and
- whether an existing select committee has already built up expertise in the area through a previous inquiry such as an inquiry into a related green paper.

21.16 In general there is an expectation that the Commons departmental select committee will be the chosen route unless there is reason to the contrary, though there is also something of an expectation that if possible there will be two/ three joint committees in any one session. Departments should bear in mind, however, that, in the case of an existing select committee, it is for the committee to decide whether it wishes to undertake this work. In contrast, an ad-hoc committee is tasked specifically to carry out the work. An existing select committee is more likely to be willing to do so if it has sufficient warning that it can build scrutiny of the draft bill into its programme of work for the session.

21.17 An ad hoc joint committee requires a series of motions in each House and complex negotiation with the usual channels (over membership etc.), although departments can express their preferences on who might be suitable to chair the committee and the date by which it could report. The necessary negotiations and motions take time.

21.18 The bill team should discuss the options with the PBL Committee, the Cabinet Office Parliamentary Adviser and the Government Whips' Offices in the early stage of planning pre-legislative scrutiny. In cases where the usual channels propose a joint committee, existing committees cannot, if they so wish, be prevented from carrying out their own inquiry in parallel, but effective early informal discussions can help to prevent this.

21.19 Depending on other priorities in the session, a draft bill may not be picked up for formal parliamentary pre-legislative scrutiny by any committee but will still benefit from having been published in draft, given the opportunity for informal scrutiny by parliamentarians and for public consultation.

### **Timetable for parliamentary pre-legislative scrutiny**

21.20 Parliamentary pre-legislative scrutiny should be completed in time for any resulting amendments to the bill to be made in time for introduction to Parliament to the timetable agreed with the PBL Committee (assuming the bill is to be introduced to Parliament the following session).

21.21 If the bill is to be taken by an existing committee, departments should liaise with the committee clerk to identify a mutually convenient timetable. If an ad hoc committee is to be appointed to examine the bill, additional time needs to be allowed for parliamentary agreement of the motions to establish the committee.

21.22 A date for the ad hoc committee to report will probably be set in the motions appointing it. The bill team may wish to discuss timings with the Government Whips Office on what is a realistic deadline. Motions are required in both Houses and tabled by the Whips' Offices.

21.23 It may also be helpful to discuss practicalities with the Scrutiny Unit in the House of Commons and, where a joint committee is a possibility, with the relevant clerk in the House of Lords.

21.24 A joint committee made up of Members of the House of Commons and House of Lords is expected to be appointed to make recommendations on the draft Bill. After it is appointed, the joint committee may invite written contributions and is likely to hold hearings to inform those

recommendations. You can find more information on joint committees on the Parliament website and also about how select committee inquiries work. You can contact [draftbills@parliament.uk](mailto:draftbills@parliament.uk) to ask to be informed when the joint committee's inquiry begins.

21.25 Generally a committee will need at least three to four months to take evidence and report (not including long recesses). Where draft bills have not given committees sufficient time to scrutinise, this has led to serious criticism.

21.26 Earlier publication means the committee will report earlier, giving the department more time to make any changes to the bill as a result of pre-legislative scrutiny before introducing the bill to Parliament at the beginning of the next session.

### The committee inquiry

21.27 A committee inquiry will usually involve the following stages:

- **Initial information:** The department may be asked for background information in advance of publication of the draft bill. Early and co-operative engagement with the committee staff is recommended.
- **Evidence to the committee:** the Minister is likely to be asked to give oral evidence to the committee at some stage during the inquiry;
- In addition to the draft bill and explanatory notes, the department may be asked to submit additional written evidence;
- If the draft bill amends existing legislation, the committee is likely to request a consolidated version of the existing legislation, which highlights the amendments proposed by the draft bill;
- Evidence is usually taken in public; and
- Bill teams may be asked to attend the public evidence sessions and even to respond to questions during them. This also helps keep the department informed of issues likely to be raised in the committee's report.
- **Committee report:** Committees decide for themselves how to work, and actual practice will vary, but it is generally expected that the committee will not challenge the overall aim of the bill or become too involved in detailed drafting points. However, the committee may recommend that amendments be made to the bill before introduction, or propose that additional matters should be included in the bill.
- **Government's response:** It is for the Government to decide whether or not to accept

the committee's recommendations

- In some cases, for example where all the committee's recommendations were accepted or where there is very little time, the bill itself may be sufficient as a response. It is usual, however, for the Government to make a formal response to the committee's report;
- In the case of an ad hoc or joint committees, it will not be possible to respond with a memorandum, as the committee will no longer exist, and the response should be published as a command paper (the clerk of the former committee should be kept fully informed). Copies should also be sent to the members of the former committee;
- While the usual two-month deadline for responses to committee reports applies, the committee may be willing to allow longer, perhaps to fit the timetable for introduction; and
- The committee and wider stakeholders will want to know how the bill has changed as a result of pre-legislative scrutiny, so departments should have a list of changes available on introduction, perhaps in a narrative document accompanying publication of the final bill.

### **Wider pre-legislative scrutiny – public consultation**

21.28 Parliamentary pre-legislative scrutiny is only one part of pre-legislative scrutiny. Even if the bill is not formally scrutinised by a committee there is still value to publishing it in draft for stakeholders and those who will be affected by the bill.

21.29 Departments may therefore wish to publish a consultation document or white paper at the same time as, or before, the draft bill. This should include a copy of the impact assessment. The normal arrangements for public consultation, as set out in the [consultation principles](#) apply.

21.30 Departments will need to consider how this public consultation fits in with the timetable for parliamentary pre-legislative scrutiny, bearing in mind that the committee may wish to see the results of the public consultation before reporting.



## SECTION C

# ESSENTIAL GUIDANCE FOR BILL TEAMS

# 22. AMENDMENTS

## Key points

- Every amendment the Government makes to a bill delays its progress. Government amendments to bills after introduction must therefore be kept to a minimum and will only be agreed by the PBL Committee if they are considered essential to ensure that the bill works properly. To avoid a government defeat or otherwise significantly ease handling in Parliament.
- All government amendments must be agreed by the PBL Committee, as well as by the relevant policy Cabinet committee if the proposal involves a change to agreed policy. Clearance must also be sought to accept a government defeat, to offer a compromise amendment or to accept other non-government amendments.
- An exception may be made for minor and technical amendments, but these must first be discussed with the PBL Secretariat. Bill teams should alert the PBL Secretariat to any proposed amendments at the earliest possible stage and before the minister writes to the PBL Committee seeking clearance.
- The Government should always aim to table amendments at least one sitting week before they are due to be debated, especially in the Lords. This convention is in place to ensure that members and peers have sufficient time to consider the amendments before they are debated. All government amendments require an explanatory statement, in plain English, setting what an amendment will do.
- Parliamentary Counsel will draft government amendments and will need to be instructed in good time.
- If the Government tables amendments involving delegated powers, a further (supplementary) memorandum must be prepared for the DPRRC, who may report again if they have already considered the bill.

- Where an amendment raises significant legal issues or early commencement or retrospection, bill teams should be liaising with the Attorney General's Office and the Legal Secretariat to the Advocate General preferably two weeks before the PBL write round letter seeking consent to the tabling of the amendment.
- You should read the relevant sections on amendments in the chapters relating to the Commons and Lords for further information on managing amendments in both Houses: see paragraphs 29.39, 30.3, 35.5, 36.5 and 36.11, and Chapter 37 on ping-pong.

## Types of amendments

22.1 Amendments can be classified into four main types:

- **Minor and technical** - typographical corrections, drafting improvements, clarifications, renumbering or reordering, to ensure consistency with existing legislation or to update references, for example, to bodies that have changed name since the bill was introduced. Minor and technical amendments do not impact at all on the substance of the bill and should therefore not take up any time at all in debate<sup>15</sup>. Departments should note that "minor and technical" is a category recognised by Government for the purpose of seeking collective agreement, but not by Parliament;
- **Concessionary** - amendments which ease bill handling. They are brought forward directly to address a point raised by a member of either House in an earlier debate on the bill or offer an alternative to non-government amendments where the Government is likely to be defeated. Amendments in response to recommendations of the Lords' Delegated Powers and Regulatory Reform Committee, the Joint Committee on Human Rights or any other select committee of either House will always be considered concessionary. An amendment may be considered concessionary if brought forward in response to a point raised about the bill from outside Parliament but only if there is likelihood that this point would be raised in Parliament at a later stage in the bill's passage. In some cases, concessionary amendments may only be acceptable if they are necessary to avoid a defeat. This also includes amendments in response to a government defeat - accepting, overturning or offering a compromise amendment;

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<sup>15</sup> Renumbering as a consequence of amendments made to the bill, and certain types of typographical corrections, will be made as part of the reprinting process on request to the relevant Public Bill Office and do not require explicit amendments to the bill. Parliamentary Counsel can advise on this point.

- **Essential** – where there are unforeseen circumstances which have arisen since the introduction of the bill which have led to the pressing need for the amendment, e.g. correcting some major error in the bill or dealing with a situation which could cause major problems if the bill went on to the statute book. This also includes drafting and technical changes essential to deliver the policy in the bill;
- **Desirable** – all new areas of policy, even if they do not widen the bill's scope. Also any issues which are proposed to be added to a bill which are not essential but merely a new policy idea where the bill is being used as a vehicle and there is no pressing time consideration.

## Preparation of bills

22.2 The PBL Committee grants drafting authority for specified policy areas. Clearance will need to be sought from the committee for any new policy areas to be added to a bill whilst it is being drafted; the committee is likely to refuse any requests for additional drafting authority unless operational necessity can be demonstrated. New areas should not be added by amendment if they were not given initial drafting authority.

22.3 When a bill is put forward to the PBL Committee for clearance to be introduced, one of the key questions members will ask the minister and Parliamentary Counsel is whether the bill is fully ready to be introduced. This is not a formality. If the committee is not satisfied on this point and feels that there is still policy development or drafting needed which may result in government amendments after the bill's introduction, the committee can, and does, refuse clearance. This can not only delay a bill but may result in its losing its slot altogether in that year's legislative programme. It is therefore essential that departments ensure all the policy for the bill is settled several months before introduction so that they can instruct Parliamentary Counsel, in tranches if necessary, before a bill is to be introduced.

## After introduction – clearance of amendments

22.4 Once a bill has been introduced, government amendments and acceptance of non-government amendments must first receive clearance from the PBL Committee and (where they are not within agreed policy clearance) the relevant policy committee. Agreement is normally sought through correspondence, though a meeting may sometimes be called, particularly to consider handling of bills during ping-pong.

22.5 Clearance of amendments follows the same rules as all other types of Cabinet / Cabinet committee clearance; ministers must be given six clear working days to respond (nine where any part of the period falls during recess). In addition, departments should allow at least four days from the time that they submit a completed ring-round sheet to PBL Secretariat and when they wish to table the amendment(s). These timelines may only be shortened with the express permission of the Cabinet Secretariat (in discussion with the Cabinet Secretary's office). In the event that insufficient time is allowed for ministers to consider amendments, the Secretariat will recommend that clearance is not granted. The letter should quite clearly set out the deadline by which ministers should respond and the date by which clearance is sought in order to table the amendments.

22.6 Where an amendment raises significant legal issues or early commencement or retrospection, bill teams should be liaising with the Attorney General's Office and the Legal Secretariat to the Advocate General preferably two weeks before the PBL write round letter seeking consent to the tabling of the amendment.

22.7 Letters seeking clearance for amendments should set out whether amendments are essential, desirable or concessionary and should provide a justification as to why the amendments fall into one of these categories. The description in the template should also set out what the amendment would do, without recourse to legal jargon or references to clauses, aimed at a reader who is unfamiliar with the bill or the policy area. It should include an assessment of the likely handling implications, including what level of support or opposition it is likely to receive, both inside and outside Parliament. Further detail should be provided in the amendment table annex, provided by the PBL Secretariat.

22.8 The PBL Committee then assesses the impact on the bill in question (for example, will it delay the bill's passage or make this harder to achieve) and on the rest of the programme. Letters and amendments templates should set out any implications in terms of the analysis presented in the impact assessment prepared at an earlier stage (including, for example, the costs and benefits for businesses, civil society organisations and the public sector), of the devolved governments and any delegated powers.

22.9 The letter does not need to rehearse the benefits of the bill or provide any other background information beyond that directly relevant to the proposed amendment. The letter should not assume that members of the PBL Committee have a copy of the bill in front of

them. Rather than saying, for example, that the amendment would insert “words” in clause 22(a), it should describe the practical effect of the proposed amendment.

22.10 It is not essential to attach the text of the proposed amendments to the letter seeking clearance (unless they are already drafted); the letter should instead seek to describe the effect of the amendments in full. It is worth getting an indication from the secretariat whether clearance is likely to be a problem before instructing Parliamentary Counsel, however departments should not wait until the PBL Committee has given clearance for the amendments before instructing Parliamentary Counsel to draft them as, assuming they are agreed, they are otherwise unlikely to be ready to table in time.

22.11 If the amendment affects the agreed policy for the bill, the agreement of the relevant policy committee must also be obtained. This can be done through a single letter addressed to the chairs of both committees, stating that clearance is being sought from both committees. The letter should set out the effect of the change in policy, including any costs and how these will be met, and the consequences of doing nothing.

22.12 Minor and technical amendments do not need formal PBL Committee clearance. However, departments should never assume that an amendment is minor and technical; bill teams should share details of all possible amendments with the PBL Secretariat who will make the final judgment. Where amendments are minor and technical (usually with advice of Parliamentary Counsel), the secretariat will confirm that these amendments do not require formal clearance. Under no circumstances should amendments be tabled where they do not have formal clearance or written confirmation from the secretariat.

22.13 All amendments which are given clearance for a particular stage, but which for any reason are not tabled at that stage, must be brought back to the PBL Committee before they can be tabled at a later stage.

22.14 At Committee Stage, any non-concessionary amendments should be shown by the bill minister to be essential. Amendments that are purely desirable are not likely to be permitted. The below table summarises the likelihood that will be considered acceptable:

Stage	Amendments permitted		
	Desirable	Essential	Concessionary

Committee Stage (first House)	Very unlikely	Yes	Yes
Report Stage (first House)	Very unlikely	Very unlikely	Yes
Third Reading (only in the Lords, when the Lords is the first House)	No	Very unlikely	Very unlikely
All stages (second House)	Very unlikely	Very unlikely	Yes

22.15 In considering whether to seek clearance for government amendments, departments and bill ministers should consider the above guidance carefully and should not waste the PBL Committee’s time by putting forward amendments which are purely desirable or even, after Committee Stage in the first House, amendments which are essential, unless there is a particularly compelling case.

**The role of PBL Secretariat in agreeing government amendments**

22.16 If the secretariat considers that the PBL Committee is unlikely to agree to the proposed amendment, it may advise against seeking clearance. If a large number of amendments are proposed, the secretariat may advise the department to reconsider and seek clearance only for a smaller number of amendments.

22.17 Even if no other member of the PBL Committee objects to a particular amendment, the secretariat will scrutinise all requests for clearance and will advise the committee chair to refuse clearance for all or some amendments if they either do not comply with this guidance or if they do not sufficiently justify an amendment to enable a judgement to be made.

22.18 As programmes are intended to provide reasonable time for discussion of legislation, the usual channels, including the bill whip and, through them, opposition parties, will need to be kept abreast of the likely scale of government amendments. It is important therefore that there is good communication about amendments between the bill team, parliamentary branch and the Government Whips' Office, throughout the bill's passage.

22.19 If the Government brings forward significantly more amendments than were expected, the opposition will have cause for complaint. The Government should avoid having to repeatedly

revise programmes because significant government amendments were not signalled at the relevant stages.

## **Other things to consider**

22.20 Just as departments should stay in close touch with the Scotland, Wales and Northern Ireland offices and the devolved governments during the development of policy and drafting of a bill, so any potential amendments that would affect the devolved governments should be discussed with the territorial offices early on, to ensure timely agreement can be reached with the devolved governments if necessary.

22.21 An updated impact assessment should be provided for amendments that would significantly alter the costs or benefits of the bill or create new regulatory burden. Amendments that might raise human rights or other legal issues should be discussed with the Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland. A letter should be written to the Joint Committee on Human Rights to seek its view.

22.22 If amendments involving new delegated powers or changing existing delegated powers are tabled during the passage of the bill, a supplemental delegated powers memorandum must be prepared and submitted to the Lords Delegated Powers and Regulatory Reform Committee. This should be submitted on the day the amendments are tabled at the latest. The Committee may report again in respect of amendments. The Government has also agreed that, where possible and where relevant, it will submit a memorandum to the Delegated Powers and Regulatory Reform Committee on any non-government amendment where the Government has indicated in advance that it would support both the policy and the drafting of that amendment.

22.23 Bill teams should also seek advice from Parliamentary Counsel if it is thought that a further money resolution or ways and means resolution is required for a government amendment, though this is likely to be rare and will require time to debate on the Floor of the House of Commons.



22.24 The deadlines for tabling amendments are:

House of Commons			
Stage	Amendments	Government deadline	Tabling deadline
Second Reading	Reasoned amendment (decline to give bill 2R)	n/a	Day before
Committee	Essential and concessionary	One week	Three sitting days
Report	Concessionary	One week	Three sitting days
Third Reading	None (except 'merely verbal')	n/a	n/a

House of Lords			
Stage	Amendments	Government deadline	Tabling deadline for marshalled list
Second Reading	Reasoned amendment (decline to give bill 2R)	n/a	Day before
Committee	Essential and concessionary	One week	Two working days
Report	Concessionary	One week	Two working days
Third Reading	Tidying or to meet undertakings	One week or ASAP after Report if interval is less	One working day

### Non-government amendments

22.25 Bill teams should keep up to date with what is being said by stakeholders (through direct contact with key stakeholders and by keeping an eye on key stakeholder websites to see stakeholder briefings) and the media (by ensuring that the bill team and policy leads are on the circulation list for departmental press cuttings), as this will influence the amendments tabled by non-government MPs and peers.

22.26 In some cases it will be clear that non-government amendments should be resisted (without the need to refer to PBL Committee or a policy committee of Cabinet) as being contrary to government policy.

22.27 In other cases, however, the minister responsible for the bill may wish to accept a non-government amendment, either because it represents an improvement on the policy set out in the bill, or because they have concluded, after discussion with the whips, that accepting it is necessary to ensure the passage of the bill. In such cases the minister must seek clearance from the relevant committees. Advice must be sought from Parliamentary Counsel on whether the wording is in an appropriate form. If it is not, the minister can accept the amendment in principle (which they can only do if clearance has been given) and offer to table improved wording to meet the intended aim at a later stage; or the minister can accept the amendment as it stands if Parliamentary Counsel has been consulted to ensure the amendment uses the right form of words.

## **Government defeats**

22.28 Where an amendment is passed against the Government's position, the minister will need to consider, in consultation with the whips in both Houses, whether to:

- accept that the new provision remain in the bill;
- seek to reverse it (and at which stage); or
- bring forward an amendment that would meet at least some of the concerns which have been expressed.

22.29 Where the intention is to reverse a defeat, further policy committee clearance is not needed, as the effect of reversing is to restore the original policy intention of the bill.

22.30 Before deciding to accept a defeat, the minister should consider whether other departments have a policy interest, and therefore whether the agreement of the relevant policy committee as well as that of the PBL Committee would be needed to accept the defeat. Bill teams should also consider whether the amendment affects the devolved legislatures and consult territorial offices where appropriate.

22.31 The bill team needs to work with Parliamentary Counsel and departmental lawyers to consider whether the amendment as drafted is technically workable and achieves what is intended legally. Non-government amendments are not always technically workable (members do not have the resources of Parliamentary Counsel at their disposal), in practice accepting a non-government amendment will mean the bill minister asks the sponsoring member to withdraw his or her amendment so that the Government can bring forward a similar but better drafted amendment at a subsequent stage. The minister will need to be in receipt of PBL Committee clearance before making this commitment to the sponsoring member.

22.32 If the intention is to offer a compromise or concession, PBL Committee and policy committee clearance must also be sought. In all cases, bill teams should discuss the proposed course of action with the PBL Secretariat before advising their ministers to write seeking collective agreement.

### **Making commitments on the floor of the House**

22.33 Parliament will hold ministers to any commitments they make on the floor of the House, which are recorded in Hansard. Ministers must therefore take care during debates not to make any commitments for which they do not have collective agreement.

22.34 Ministers may state that they will consider or give further consideration to a matter but they may not state that they will bring forward an amendment unless they have clearance to do so.

22.35 Where the Government wishes to bring forward a concessionary amendment and has clearance to do so but has not been able to draft the amendment in time for that stage, the minister may wish to address concerns raised by the House by indicating their intention to bring the amendment forward at the next stage.

22.36 Where a non-government amendment is put down which is acceptable in substance but defective in form, and it refers to a clause which will not be reached for some time, the minister could, if they have clearance to do so, write to the member suggesting an alternative form of words as drafted by Parliamentary Counsel.

## Explanatory statements

22.37 Explanatory statements should be provided for all government amendments with the exception of cases where several amendments are tabled which are introductory to, consequential upon or closely related to another amendment. In this case, the explanatory 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.

22.38 The statements will be drafted by Parliamentary Counsel and then run past the department for checking before the amendments are tabled. They should be submitted by the minister alongside the amendment, and are typically no more than around 50 words per statement with each amendment.

22.39 The explanatory statement must describe the intended effect of the amendment but may not be phrased as an argument for its adoption or against the existing text of, or any other proposed amendment to, the bill.

22.40 Explanatory statements are not required for bills committed to a select committee, for example, a hybrid bill. The Procedure Committee's report was not intended to apply in such a case but only to bills in Committee of the whole House, in public bill committee and in Report Stage.

22.41 Questions as to the application of these rules will ultimately be decided by the chair of the public bill committee concerned, the Chairman of Ways and Means in respect of Committee of the whole House and the Speaker in respect of Report Stage.

22.42 Cross-references in the statements to other amendments are possible, these should use a system which will continue to be capable of identifying the amendment concerned even if its bold amendment number changes. Whatever system is adopted, cross-references should be put in square brackets so as to enable cross-references to be found easily by searching for square brackets. In the Lords it will not be possible to cross-refer to other amendments by number because amendments are only numbered at the point the marshalled list is produced.

22.43 Finance bills are excluded from this process. HM Treasury publish the text of all Finance bill government amendments together with an Explanatory Note on the Treasury website. These notes are likely to be far more comprehensive than what is possible in the

word-restricted explanatory statements. Treasury ministers also write to the chair of the public bill committee when government amendments are tabled explaining their effect.

# 23. BRIEFING MINISTERS FOR BILL WORK AND THE USE OF MINISTERIAL STATEMENTS IN CONSTRUING STATUTE

## Key points

- In certain circumstances parliamentary material including ministerial speeches (from any stage of debate on the bill in either House, including debate in Committee) may be used by the courts in interpreting the statute.
- Particular care should therefore be taken in drafting any statements to be used by the minister about the effect or interpretation of clauses of the bill. Bill teams should check with the legal advisers for accuracy, who will consult Parliamentary Counsel where appropriate.
- The legal adviser should always attend relevant parliamentary proceedings of the bill as part of ministers' official support. Where there is doubt about interpretation, rather than offering impromptu advice it may be better for ministers to offer to reflect on a point and reply on a future occasion.
- The bill team and legal adviser should always review the Hansard record of ministers' contributions to a debate and consider whether there is any inaccuracy or other hostage to fortune. Where it is decided that the record needs to be corrected during the passage of the bill, this should be done at a time and in such a way that it would be clear to the courts in the future that Parliament was aware of the matter before passing the bill, and should be discussed with Parliamentary Counsel and the Government Whips' Offices.
- The courts may also use explanatory notes in a similar way.

## Detailed considerations

23.1 Following the decision of the House of Lords (in *Pepper v Hart* [1993] All ER 42) the courts may, in certain circumstances, look to parliamentary material as well as to the text of the statute itself when construing legislation. The implication of *Pepper v Hart* is that courts may do this if three conditions are satisfied:

- the legislation is ambiguous or leads to an absurdity;
- the material relied upon consists of a statement by a minister or other promoter of the bill, together with such other parliamentary material as was necessary to understand that statement; and
- the statements relied upon are themselves clear.

23.2 Since clarity and the avoidance of ambiguity are key objects in the drafting of legislation, the procedure adopted in *Pepper v Hart* should remain very much the exception rather than the rule. Nonetheless departments should bear this possibility in mind and exercise great care in drafting material for use by ministers which may find its way into the record of debates in either House (including their committees) and, if necessary, find a satisfactory method for correcting any significant mistakes or ambiguities which appear in such records. Bill teams should follow the steps below.

23.3 As far as possible, speeches and speaking notes should be reviewed by the bill team's legal adviser for possible influence on interpretation (different arrangements for legal advice apply to finance bills). Parliamentary Counsel do not normally review speaking notes as a matter of course but are happy to be consulted on specific points if the bill team would find their input helpful.

23.4 Officials should take care in providing impromptu advice on interpretation in order to assist a minister to answer a point raised during proceedings on a bill. Where possible, ministers might be invited to offer to reflect on a point and reply on a future occasion.

23.5 Ambiguities or inaccuracies in the wording of legislation should always be put right by amendment where this is possible.

23.6 References to the *Pepper v Hart* judgment in ministerial statements are best avoided as this could be taken to imply that the provision of the bill being debated is indeed ambiguous.

23.7 If it is considered that the official record cannot be allowed to stand, ministers should be advised accordingly and asked urgently to consider what action should be taken. Ministers will need to make a judgement, in the light of the official and legal advice, on whether and how to clarify the record. Factors influencing this might include the possible effect on interpretation and implementation of the legislation, the desirability of precision in the particular circumstances of the case and the political and handling implications of re-opening issues which may be controversial. The Government Whips' Offices and Parliamentary Counsel should always be consulted about a proposal to correct the official record during proceedings on the bill.

23.8 If it is decided that the record needs to be corrected during the passage of the bill, this should be done at a time and in such a way that it would be clear to the courts in the future that Parliament was aware of the matter before passing the bill. The timing and manner of any ministerial correction required during proceedings on the bill should be discussed with the Whips Office. The approach adopted may vary depending on the importance of the matter, the stage which the bill has reached and the nature of the proceedings during which it is proposed that the correction should be made. Options for correcting the record include clarifying the matter in the minister's speech, raising a point of order or laying issuing written ministerial statement. Although letters to individual members of Parliament will not be an effective way of correcting statements in Parliament about the meaning of bill provisions, they may still be appropriate as a way of giving or correcting factual information or of answering points raised in debate.

23.9 Where a ministerial correction is made in this way it would be helpful if a cross-reference could be inserted at the Hansard record of the original statement. This may be possible if the correction is issued in time to be reflected in the bound volume of Hansard. This point should be discussed with the Hansard authorities.

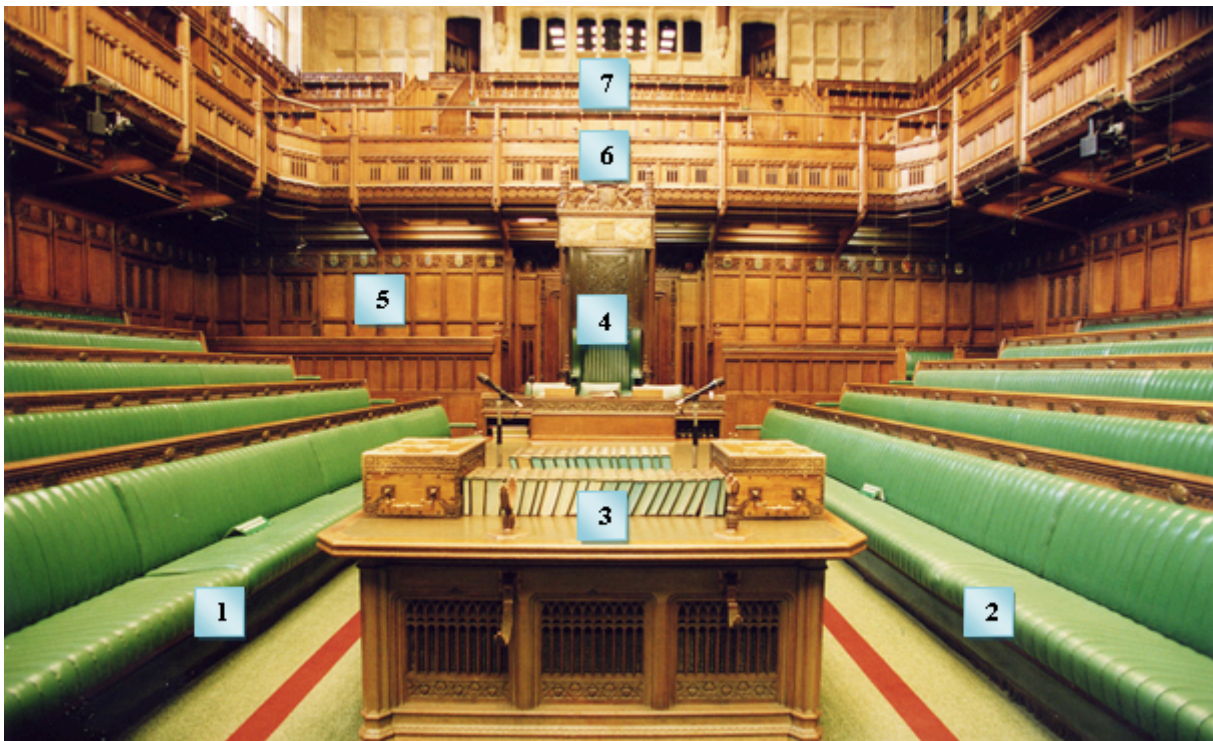
23.10 Where a ministerial correction is made after the bill has been passed by the House it is unlikely that the courts will take it into account. This makes accuracy particularly important during the later stages of bills.



# SECTION D

## COMMONS STAGES

## 24. THE COMMONS: OVERVIEW OF STAGES



### House of Commons

1. Government benches
2. Opposition benches
3. Mace
4. Speaker
5. Civil servants ("the box")
6. Hansard reporters
7. Press Gallery

24.1 Most flagship government measures, in particular those which have major spending implications, are introduced in the House of Commons, although some will be introduced in the House of Lords in order to spread the workload of each House over the session.

24.2 During parliamentary stages bill teams should inform their minister's office as soon as they are advised of the timing of forthcoming stages to ensure the minister is on standby to attend Parliament when needed.

## Overview of stages and minimum intervals between them

**24.3 Introduction and First Reading:** most bills are introduced by notice of presentation. The short title of the bill is then read out in the Chamber before the day's main business, after questions and statements, on the appointed day and a minister nods. The bill is thereby read the first time. The bill will be published on the day of introduction (not notice of presentation). The minister (usually a whip) will then name the next sitting day (the whip will say "tomorrow") as the day for Second Reading but this is usually entirely theoretical. The actual date will be announced by the Leader of the House in the weekly business statement. There are no proceedings in the Chamber for bills moving from the Lords to the Commons; First Reading is a formal entry into Votes and Proceedings only.

**24.4 Second Reading:** the minimal interval is normally two weekends following publication (in some circumstances it may be possible to adjust this) or after First Reading if coming from the Lords. The general principle of the bill is debated. If a bill fails to get a Second Reading, it can progress no further. The opposition may choose not to vote against Second Reading but retain major reservations about specific parts of the bill. The opposition may also table a reasoned amendment which seeks to decline to give the bill a Second Reading for reasons set out in the amendment. Immediately following Second Reading, the question on certain motions relating to proceedings on the bill can be put forthwith:

- **Programme motion:** usually includes provision for committal of a bill (normally to a public bill committee), determines the date by which the public bill committee must report and specifies the number of days set aside in the House for remaining stages.
- **Money resolution:** required if the bill creates a charge on public funds (i.e. if it will involve government expenditure).
- **Ways and means resolution:** required if the bill imposes charges of certain kinds upon the people or makes certain provisions about borrowing or the use of receipts (for example, if it will involve taxes or other charges on members of the public).
- **Carry over motion** (if applicable): required if the bill is expected to be carried over to the next parliamentary session.

**24.5 Public Bill Committee Stage:** the detailed scrutiny of the bill. The minimum interval is usually one week if Second Reading is on a Monday or a Tuesday and ten days if Second Reading is on Wednesday, Thursday or Friday. It consists of:

- a series of public evidence sessions. The committee will call in individuals or organisations (such as ministers, key stakeholders or professional experts) to give evidence; and
- a clause-by-clause examination of the bill. The Committee may also receive written evidence received from interested parties setting out their views of the bill as a whole or on specific elements.

24.6 Some exceptions to this are:

- bills of major constitutional significance, and certain other bills, will have all (or some) of their Committee Stage on the floor of the House; and
- for bills that start in the Lords, the convention is that the bill will proceed directly to the public bill committee for a clause-by-clause examination of the bill without holding a public evidence sessions (though written evidence may be received).

24.7 **Remaining stages:** as early as a week after committee ends, but depends on urgency and parliamentary time. Precise timing will be determined by the Business Managers. This includes:

- **Report Stage:** further consideration of amendments, though there is no debate on each clause and the criteria for selection of amendments are more stringent; and
- **Third Reading:** usually takes place immediately after Report Stage on the same day. It is a further chance for the House to debate the principle of the bill in the light of any amendments passed at Committee Stage and/or Report Stage. Amendments cannot be made to a bill at the Third Reading. At the end of the debate the House votes on whether to approve the Third Reading of the bill.

24.8 The minimum interval between stages does not include recess weeks. For example, if a bill is introduced during the last sitting week before Christmas recess the entire recess period will only count as one weekend and there must be at least one more full sitting week and weekend in the New Year before Second Reading debate.

24.9 The minimum intervals are exactly that and bill teams should not expect the bill to progress to that timetable. Often the intervals between stages will be longer. The timetable for a bill to complete all of its stages in the Commons will be dependent on a number of factors, including the exact nature of the bill, its size and complexity and on the other bills in the programme. Other bills may be accorded a higher priority if they are politically very important, or have a fixed deadline for Royal Assent. Minimum intervals in the Lords are slightly different.

24.10 Bill teams should alert departmental press offices to the dates of parliamentary stages and provide them with background briefing as necessary.

### Commons sitting times

#### The parliamentary day: House of Commons

**Monday:** 2:30pm - 10pm\*

(public bill committee, rarely meets on this day, or Second Reading Committee: 4:30pm - approx. 6pm, and 7pm onwards.

NB: The House always sits according to Monday hours on the first day after recess; Committees will therefore use the times above)

**Tuesday:** 11:30am - 7pm\*

(public bill committee: 9:25am - 11:25am and 2pm onwards)

**Wednesday:** 11:30am - 7pm\*

(public bill committee, rarely meets on this day: 9:25am - 11:25am and 2pm onwards)

**Thursday:** 9:30am - 5pm\*

(public bill committee: 11:30am - approx. 1pm and 2pm onwards)

**Friday:** 9:30am - 5pm

(public bill committee: does not meet)

\* Main business adjourns commonly known as 'the moment of interruption' takes place. The daily adjournment debate will follow main business and any further proceedings scheduled by Government. The usual finishing time - the time the Houses rises - is half an hour later.

24.11 Unless special provision is made for extended debate, the main business of the day is brought to a conclusion at the 'moment of interruption': 10pm on Monday, 7pm on Tuesday and Wednesday, 5pm on Thursday and 2:30pm on Friday. At this time, questions on proceedings are put by the Speaker which may result in votes. On any day the House may rise later if there are votes at 10pm on Monday, 7pm on Tuesday or Wednesday and at 5pm on Thursday, or if there is later business. The House may also rise early unexpectedly if business collapses. An important point to bear in mind as the deadline for tabling amendments

in the Commons is the rise of the House, or 4:30pm on a non-sitting Friday or on printing days during recess.

24.12 Debate on bills will not normally start until after 3:30pm on Monday, 12:30pm on Tuesday or Wednesday, or 11:30am on Thursday. The start of debate can be delayed by urgent questions and/or ministerial statements. The start of debate may also be delayed on a Tuesday or Wednesday by a 'ten-minute-rule motion', which can last between 10 and 20 minutes and can be voted on. Bill teams should check for any likely delays with their parliamentary branch on the morning of the debate. It is prudent for ministers to be in the Chamber early as exact timings for the start of debate are unknown.

24.13 The first day after recess takes Monday hours.

24.14 Sitting Fridays (thirteen during a session of normal length) are reserved for private members' business.

24.15 Timings for public bill committees for government bills will depend on the programme resolution agreed for the bill in question. Sitting times for public bill committees may vary, but it is usual for them to meet on Tuesdays from 9:25am to 11:25am and 2pm onwards, and Thursdays from 11:30am to approximately 1:00pm and 2pm onwards. The afternoon sessions on any day can run until any hour and continue until the committee decides to adjourn (normally on a motion moved by the government whip on the committee).

# 25. MONEY RESOLUTION AND WAYS AND MEANS RESOLUTION

## Key points

- All provisions in a bill which create a charge upon certain public funds must be authorised by a money resolution. The need for such a resolution is decided by the House authorities in consultation with Parliamentary Counsel.
- The money resolution must be moved by a minister and must be taken before Committee Stage (usually immediately after Second Reading and any ensuing programme motion). The text of the resolution must be approved by HM Treasury before it can be submitted by Parliamentary Counsel to the Public Bill Office.
- A ways and means resolution will be required if one of the purposes of the bill is to raise money or if the only 'money' in the bill comes from a provision requiring payment into the Consolidated Fund.
- The ways and means resolution is normally taken after the money resolution, if there is one. However, where the primary purpose of the bill is to raise money the ways and means resolution is taken before First Reading and the bill is ordered in on the resolution as is the case for a finance bill.
- Both types of resolution are normally moved immediately after Second Reading and any ensuing programme motion. They are all taken forthwith (without debate). It is worth noting that, if a further ways and means and/or money resolution is required during the passage of the bill, there can be a debate on the resolution on the floor of the House for up to 45 minutes each.
- For further information consult Parliamentary Counsel or the Government Whips' Office in the Commons.

## Money resolution

25.1 If a bill creates a charge upon certain public funds, either by way of new or increased expenditure or by remission of debt, all the provisions in the bill involving the charge must be authorised by a resolution of the House of Commons known as a money resolution. The House authorities decide in consultation with Parliamentary Counsel if a money resolution is

required. Parliamentary Counsel will draft the resolution, seeking instructions from the department as necessary.

25.2 The resolution can only be moved by a minister (reflecting the Crown's exclusive right to initiate proposals for expenditure) and must be taken before the beginning of the Committee Stage. It is normally taken immediately after Second Reading and any programme motion. The reason for this is that, though the charging provisions can be debated on Second Reading, the chair of the committee on the bill cannot put the question on them unless they have been covered by a money resolution. To mark this fact the charging provisions are printed in italics in the bill as first printed in the Commons.

25.3 If a bill proposes new expenditure the Commons will require proof that the proposal is recommended by the Crown. This is achieved by including the words 'King's recommendation signified' in the heading to the money resolution (this is different from King's Consent, which is required where His Majesty's own prerogative or interests are directly affected by the bill). Before accepting the text of a proposed money resolution for tabling, the Public Bill Office requires confirmation from Parliamentary Counsel that a Treasury minister - generally the Financial Secretary if they are a member of the House of Commons - has approved the text. Counsel will therefore wait until they have received confirmation that the Treasury minister has signed the draft money resolution before confirming this to the Public Bill Office. A Treasury minister other than the Financial Secretary can signify approval if necessary.

25.4 Private members' bills which create a charge on public funds will also require a money resolution. Although it is not obliged to do so, the Government will usually table a motion for such a resolution for bills which have received a Second Reading and provide time for it to be debated, regardless of whether it supports the bill. Each resolution is debatable for up to 45 minutes.

### **Money resolution debate**

25.5 Though appearing in the name of a Treasury minister, the resolution is moved by the minister in charge of the bill if it is to be debated or by a whip if it is taken forthwith. If the money resolution is taken immediately after Second Reading there is no debate (because Second Reading will itself have provided the opportunity for debate) and the question is put forthwith. A money resolution moved on a later day (such as for a private member's bill) may be debated for up to 45 minutes and the bill team will need to prepare a briefing for the minister.



25.6 The three kinds of point most likely to be raised in such a debate, and which the minister's brief should anticipate, are:

- asking for explanation of anything obscure in the money resolution;
- objecting to the narrowness with which it is drafted; and
- asking how much money might be spent.

25.7 Amendments to the money resolution itself are very occasionally put down. If the money resolution is debatable the bill team will need to prepare notes on amendments for the bill minister. A private member's amendment to a money resolution is out of order if it would have the effect of increasing the charge on public funds authorised by the resolution.

25.8 Amendments which lack the necessary sanction of a money resolution will be ruled out of order in the House of Commons. It can be helpful to draw the attention of the Public Bill Office to such amendments. If the department later wishes to put down amendments which entail expenditure not covered by the original money resolution or a bill is returned from the Lords with such amendments, a new resolution (and debate) will be required before the House or committee can consider such amendments.

### **Ways and means resolution**

25.9 A ways and means resolution of the House of Commons is needed if a bill contains a provision imposing 'charges upon the people' – a term which may not include levies, charges or fees which are not akin to taxation – granting borrowing powers to the Crown or providing for the payment of receipts not arising from taxation into the Consolidated Fund or the National Loans Fund. This is distinct from a money resolution which is primarily concerned with expenditure. The need for a ways and means resolution is decided by the House authorities in consultation with Parliamentary Counsel. Parliamentary Counsel will draft the resolution, seeking instructions from the department as necessary.

25.10 A ways and means resolution will be required if one of the purposes of the bill is to raise money or if the only 'money' in the bill comes from a provision requiring payment into the Consolidated Fund. However, where the sums to be paid into the Consolidated Fund are incidental to a specific project involving expenditure (e.g. fees or incidental receipts of the administering department) a paragraph dealing with the payments into the Consolidated Fund is usually included in the money resolution covering the expenditure under the bill.

25.11 Where the primary purpose of the bill is to raise money, the necessary ways and means resolution is taken before First Reading and the bill is ordered in on the resolution like a finance bill.

25.12 In other cases the procedure for a ways and means resolution is similar to that for a money resolution. It is tabled in the name of a Treasury Minister. If there is also a money resolution, the ways and means resolution is normally taken immediately after the money resolution, which, as noted above, will normally be immediately after Second Reading and any programme motion relating to the bill. If there is a need for a ways and means resolution at a later stage, a separate debate must take place on the motion for that resolution, lasting for up to 45 minutes and taken on the floor of the House.

25.13 Amendments which lack the necessary sanction of a ways and means resolution will be ruled out of order in the House of Commons. As in the case of money cover, it can be helpful to draw the attention of the Public Bill Office to such amendments.

#### **Lords amendments requiring a new money resolution or ways and means resolution**

25.14 Generally the Commons are able, if they wish, to agree to Lords amendments that infringe their financial privilege, provided that the Government moves any necessary financial resolution.

25.15 Where amendments involve financial matters that are not covered by a previous money resolution for the bill, the amendments will, by Standing Order No. 78(3), automatically be treated as disagreed to on grounds of privilege unless a further resolution covering the amendments is agreed before the amendments are considered.

25.16 Similarly, where amendments involve financial matters that are not covered by a previous ways and means resolution for the bill, the minister will be called upon by the Speaker to move a motion to disagree to the amendments unless a further resolution covering the amendments is agreed before the amendments are considered.

25.17 Even if the Government intends to oppose the amendments in question, it may well be appropriate to table a further resolution to enable the amendments to be considered, rather than to rely on a technicality. It will be essential to table a further resolution if the Government wants not only to oppose the amendments but also to offer an amendment in lieu (even one not requiring a further resolution).

# 26. PROGRAMMING

## Key points

- Most government bills are subject to programming in the House of Commons. Programming allows the House, following consultation through the usual channels, to determine a timetable for proceedings in Committee and the duration of remaining stages on the floor of the House.
- The Whips will consider the bill's complexity and degree of controversy, experience with similar bills and their own business management needs and negotiate through the usual channels. Parliamentary Counsel will draft the initial programme motion on instruction from the Whips' Office setting out the completion date for public bill committee (the 'out-date') or, if committed to a Committee of the whole House, how many days of Committee the bill will have. The initial programme motion is taken immediately after Second Reading.
- For bills being considered by a public bill committee, the programming sub-committee will recommend the times and dates for oral evidence and clause-by-clause consideration within the overall time for Committee Stage, the schedule of witnesses, and the order the bill is to be considered.
- The bill team must keep the Whips' Office informed about the need for government amendments. If significantly more amendments are brought forward than were expected, the opposition will have cause for complaint and this may jeopardise the bill's progress.
- The Government should avoid having to repeatedly revise programme orders because government amendments were not signalled at the relevant stages. It is particularly important to predict how many amendments are likely to be made on Report.
- Programming does not operate in the House of Lords.

## Overview of programming

26.1 Most government bills are subject to programme orders in the Commons. Alternatively, there are arrangements in the Commons for the Government to impose a timetable through an allocation of time order, commonly known as a 'guillotine', or a Business of the House motion.

26.2 Programme motions are taken immediately after Second Reading. They are expected to be agreed in advance, at least in broad outline, and informally and privately between the parties. Programming is intended to be flexible: the precise nature of the process will depend on the bill and how the minister, the Business Managers and the opposition wish to handle it.

26.3 Once a programme motion is agreed to by the House extra time can only be made available by bringing forward amendments to the programme order. Therefore programming increases the importance of forward planning, of good communications between bill teams, parliamentary branches and the Whips' Office and of keeping amendments to a minimum.

26.4 As soon as the bill is introduced there will need to be informal discussion with the whips, who will liaise with other parties to identify what would be a reasonable timescale for the bill's Committee Stage. To do this properly it is essential that the whips have as much information as possible about:

- the areas of the bill which are likely to be controversial;
- suggestions for witnesses for oral evidence sessions (where oral evidence is to be taken);
- the number of government amendments expected; and
- the complexity of the provisions.

### **At Second Reading**

26.5 The programme motion will be drafted by Parliamentary Counsel on instruction from the Whips' Office. It must be tabled before Second Reading and is taken immediately after Second Reading. There is no debate on a programme motion taken at this stage but it may be referred to during the debate on Second Reading. The programme motion will usually include:

- provision for what kind of Committee Stage the bill will have. Most bills are committed to a public bill committee, though bills of major constitutional significance are normally committed to a Committee of the whole House;
- in the case of a bill committed in whole or in part to a committee of the whole House, provision for the number of days, and for a time to conclude proceedings on those days;
- in the case of a bill committed to a public bill committee, provision for the committee to sit twice on its first day; provision for proceedings in public bill committee to be concluded by a certain date (the 'out-date');

- provision about the number of days to be allotted for remaining stages, and about when proceedings on that day or those days are to conclude; and
- provision to disapply the requirement for a programming committee for Report Stage and other proceedings on the floor of the House (e.g. Committee of the whole House).

26.6 Before Second Reading the bill team will be advised by the Chief Whip's private secretary how long has been agreed for Committee Stage. For public bill committee this will be based on two sittings each on Tuesdays and Thursdays when the House is sitting

### **Public bill committee: the role of the programming sub-committee**

26.7 When a bill is committed to public bill committee, a sub-committee is appointed to make recommendations about how proceedings in public bill committee should be timetabled.

26.8 The programming sub-committee is chaired by the one of the nominated chairs of the public bill committee that is to consider the bill (the chairs are members of the Panel of Chairs). The programming sub-committee is composed of seven members of the public bill committee nominated by the Speaker. They will include the lead minister, the opposition spokesperson, the minister's parliamentary private secretary (PPS), a government backbencher, a government whip, an opposition whip and a representative from the third-largest or a minority party. The programming sub-committee usually meets no later than the day before the public bill committee first sits.

26.9 Parliamentary Counsel will draft the appropriate resolution for consideration by the programming sub-committee based on instructions from the Whips' Office, which will in turn arise from discussions through the usual channels. The level of detail in programme resolutions varies from bill to bill. Programme resolutions will detail the dates and times the committee will meet, the order in which the bill will be considered and the time proceedings will conclude at the last session, but will also provide for oral evidence sessions for most bills that start in the Commons.

26.10 In rare circumstances, there can be 'knives' to ensure that all parts of the bill are dealt with in the time allotted. 'Knives' are the cut-off points at which debate on particular sections of the bill must be completed. Importantly, these affect votes as well as debates.

26.11 All programmed government bills which start in the Commons are likely to have up to four oral evidence sessions before the committee begins clause-by-clause consideration. In these

instances the times and details of the witnesses (names of individuals and/or organisations) are specified in the resolution.

26.12 Programming sub-committees meet in private and their proceedings are not recorded. Departmental officials, including Private Office, are not permitted to attend the meetings, although Parliamentary Counsel may attend. The programming sub-committee will discuss the resolution drafted by Parliamentary Counsel and may suggest changes including requesting additional witnesses. The whip and the minister will take the lead. As long as the overall time allotted or 'out-date' from Committee Stage remains unchanged, there is considerable flexibility. If bill ministers and whips on the committee think changes are needed which would affect the 'out date', they should discuss this with the Government Whips' Office.

### **Public bill committee**

26.13 A motion to give effect to the resolution of the programming sub-committee is considered by the public bill committee when it first meets. This is debatable for up to half an hour and can be voted on. Amendments may also be tabled. The committee will then agree a motion to allow written evidence to be received and published (see from paragraph 29.13). If the committee is to take oral evidence, it will agree a motion allowing it to sit in private, on days on which oral evidence is to be heard, until witnesses are admitted. This is to enable the committee to informally discuss how questioning will proceed. The committee will then proceed to take oral evidence, if applicable (see from paragraph 29.18), and consider the bill in the order agreed.

26.14 When a knife (the deadline for the conclusion of debate) falls in accordance with the programme motion, the chair will put the question before the committee, followed by other questions necessary to dispose of proceedings (clauses and schedules stand part and government amendments). Questions of the same type which occur consecutively are 'bundled together' so that the questions put to the committee are as few as possible.

26.15 Opposition amendments may be divided on, if they have already been debated and the chair has indicated that they will allow separate division.

26.16 Public bill committees have the power to send for persons, papers and records relating to the bill, if the bill has been programmed or if the House has otherwise granted this power. This allows the committee to receive written evidence and to take oral evidence if desired. It does not mean that the committee would actually order people to attend or to bring papers or records with them.

## **Public bill committee: revising the timetable**

- 26.17 It is possible to revise the programme order originally agreed by the public bill committee - to recommend a change to the arrangements for oral evidence, the order of consideration or to internal knives (if applicable). Ideally this is achieved through consensus in usual channels with the amendment moved at the next appropriate time. If there is an objection to the amendment, the programming sub-committee will have to meet to discuss the amendment; if an objection is anticipated a meeting of the programming sub-committee can be convened without the amendment being moved in the committee itself first
- 26.18 Once the programming sub-committee has concluded its discussion the committee will resume and the amendment will be moved. The amendment can be debated for up to 30 minutes and voted on. If it is felt that the time allotted to proceedings in Committee is too short then the Government may, after discussions in the usual channels, table a supplementary programme motion extending the 'out-date', for consideration by the House. This supplementary programme motion is taken on the floor of the House. It cannot be debated but can be voted on. If the supplementary programme motion is agreed to, an amendment to the programme order agreed to by the public bill committee would be required to agree the new times and dates for the committee to meet. Departments should discuss extending the 'out date' with the Whips' Office.

## **Supplementary programme motions for remaining stages in the Commons**

- 26.19 The programme motion agreed immediately after Second Reading will make provision about the number of days for remaining stages and about when proceedings on that day or those days are to conclude. It is possible for this provision to be changed by way of a supplementary programme motion, which would be drafted by Parliamentary Counsel, on instructions from the Whips' Office. Any supplementary programme motion must be agreed by the House and can be debated for up to 45 minutes and can be voted on.
- 26.20 It is not uncommon for a supplementary programme motion to be brought forward in respect of Commons Report Stage and Third Reading and for a further supplementary programme motion to be brought forward for Consideration of Lords Amendments. A supplementary programme motion can alter the order of consideration for the remaining stages (see the relevant chapters on Report Stage and Consideration of Amendments/'ping-pong') or provide for 'knives' to ensure that all parts of the bill are dealt with in the time allotted. As in Committee, 'knives' affect votes as well as debates and the Whips' Office will advise on the appropriateness of including these

## Allocation of time order (the 'guillotine')

26.21 An allocation of time motion (commonly known as a guillotine) is exceptionally moved by the Government to impose a mandatory timetable for proceedings on a Bill in the House of Commons. The main advantage that allocation of time motions have over programme orders is that they can be used to timetable Second Reading, as well as other stages of the Bill. They are therefore most commonly used for fast-track legislation.

26.22 An allocation of time motion is drafted by Parliamentary Counsel on instructions from the whips and moved by a minister, usually at the beginning of proceedings on the day of Second Reading. An allocation of time motion is debatable for up to three hours under Commons Standing Order No. 83 and is also amendable.

26.23 In some cases a Business of the House motion is used instead of an allocation of time motion. This allows a single motion to be used both to:

- set a timetable for proceedings (in the same way as an allocation of time motion); and
- make provision that would otherwise require a separate procedure motion.

26.24 There is then no limit on the time for which the motion may be debated (i.e. Standing Order No. 83 does not apply). Parliamentary Counsel or the Whips Office can advise on these matters.

26.25 Where an allocation of time or Business of the House motion is used, any clauses not discussed when the allocated time is up, together with all amendments to those clauses moved by a minister, have to be put to the vote without discussion.

26.26 The motions discussed here are used only in exceptional circumstances and the Government Whips' Office should be consulted in the first instance.



# 27. COMMONS INTRODUCTION AND FIRST READING

## Key points

- The date of introduction will be agreed by the Business Managers and No.10.
- Before introduction the bill team should:
  - Ensure that the Public Bill Office has received the final text of the bill and the explanatory notes for printing at the same time as the notice of presentation. Parliamentary Counsel sends the bill to the Public Bill Office and the department sends the explanatory notes;
  - Ensure that all other supporting documents (including: delegated powers memorandum, impact assessment, ECHR memorandum, where needed, are cleared and ready for publication);
  - Ensure that the minister has signed the ECHR, Environment Act and Northern Ireland-Great Britain Trade statements. If a separate ECHR memorandum has been prepared this should also be copied to the Public Bill Office so it can be published on the bill's webpage on the Parliament website; and
  - Ensure the names of bill backers are with Parliamentary Counsel before introduction. The list of bill backers should be agreed through departmental parliamentary branches, who will contact the relevant private secretaries to seek their consent to the ministers' names being added to the bill.
  - Ensure that Parliamentary Counsel has formal authority from the minister in charge of the bill to submit the notice of presentation and the final text of the bill to the Public Bill Office on their behalf.

At First Reading the clerk at the table reads out the short title of the bill at the commencement of public business. The minister, or by arrangement the whip on the bench, 'nods' in the affirmative and the bill is thereby read the first time. Under no circumstances should copies of the bill be made available before First Reading. Copies of the bill must not be made available to the press

before they are available to Parliament, which may be the day after introduction if the bill is not printed until then. Business Managers and No.10 will agree both the date of introduction and the date of publication. This can either be the same day, or publication can take place the following day.

### **Introducing a bill into the Commons**

27.1 Most government bills are introduced under Standing Order No. 57 which requires only written notice. The notice is prepared by Parliamentary Counsel and is handed in to the Public Bill Office on the sitting day prior to that on which the bill is to be introduced.

27.2 The date of introduction will be agreed by the Business Managers and Number 10. Notice of presentation can be given on the day of the King's speech, with the bill concerned being introduced the following day, but bills cannot be introduced on the day of the King's Speech.

27.3 Bills can either be published on the day of introduction, or on the day following introduction. Either way, notice must be given the sitting day prior to introduction. Parliamentary Counsel will ask for authority to submit the notice in the name of the minister in charge of the bill.

### **Bills brought from the Lords**

27.4 If a government bill is brought from the Lords, it must be 'taken up' by a minister in the House of Commons: the Government Whips' Office arranges for the clerks at the table to be notified that a minister will take charge of the bill. The bill is deemed to have been read a first time and is then printed.

27.5 First Reading is recorded in Votes and Proceedings; bill ministers are not required to do anything in the Chamber. Under Standing Order No. 57A, even if the Commons is not sitting when the bill comes from the Lords (which will happen immediately after the bill completes its Lords stages), it can still be sent for printing and is deemed to have been read a first time on the next sitting day as long as notice is given in writing that a minister will take charge of the bill. This will be arranged by the Government Whips' Office.

27.6 If an amendment has been made in the first House which the Government has said it will seek to overturn in the second House, the revised explanatory notes should give a neutral description of the amendment and its effect and say the Government seeks to overturn the amendment but should not argue its pros and cons.

27.7 If a minister has said in the House that the Government intends to seek to overturn the amendment, the explanatory notes may give the Hansard reference for that statement but if no announcement has been made to that effect, the notes are not the place for it.

### **Before introduction: ECHR compatibility, Northern Ireland-Great Britain Trade, and Environment Act statements**

27.8 The minister taking the bill through the Commons must make a statement on the face of the bill setting out its compatibility with the European Convention on Human Rights and, if required, an Environment Act statement and a Northern Ireland-Great Britain Trade statement. The statutory requirement is for the statement to be made before Second Reading and to be published in such manner as the minister considers appropriate.

27.9 The bill team should ensure that the minister signs the relevant ECHR and, if required, Environment Act statement and a Northern Ireland-Great Britain Trade statements before introduction and confirmation that it has been signed should be sent to Parliamentary Counsel. Parliamentary Counsel will ensure that the version of the bill first printed in each House has the statement on the face of it.

27.10 If for any reason the statement will not be signed before the bill is first printed (on entry to either House), Parliamentary Counsel should be consulted immediately. The minister concerned should make a written ministerial statement and will produce a statement before Second Reading. This is true whether the bill is introduced in the Commons or has been brought from the Lords; the relevant Secretary of State in the Commons and the relevant Lords minister in the Lords will need to sign a 'section 19' ECHR and, if required, an Environment Act statement and a Northern Ireland-Great Britain Trade statement.

### **Bill backers**

27.11 For government bills introduced in the House of Commons, there must also be a list of bill 'backers' at the back of the bill. Parliamentary Counsel will need to know the names of these 'backers', to arrange to have them put on the back of the bill. These should include a junior minister and any ministers particularly interested in the bill. Not more than 11 ministers, in addition to that of the presenting minister, may appear and the number is often much smaller.

27.12 The departmental parliamentary clerk, after consultation with the bill team, will seek the agreement of other ministers concerned to be backers. A written list of the backers is then sent to Parliamentary Counsel, who will hand it in with the notice of presentation.

## First Reading

27.13 The bill, unless brought from the Lords, is presented in ‘dummy form’, containing only the short and long title and the names of the backers. The clerk at the table reads out the short title of the bill at the commencement of public business. The minister (or, by arrangement, the whip on the bench) stands and ‘nods’ assent and the bill is thereby read the first time.

27.14 On First Reading the government whip names the next sitting day for Second Reading (the whip will normally say “Tomorrow”). This demonstrates the importance of government legislation but this merely puts the business on the ‘the remaining orders and notices’ section of the order paper (also known as the ‘Future business B’ section). The bill will be scheduled by the Government Whips’ Office who will inform departments in the usual way.

## Printing

27.15 At First Reading an order is made automatically for the bill to be printed and given a number in the public bill series. An order to print is also made for the explanatory notes. Bills and explanatory notes are printed and published on the parliamentary website.

27.16 The bill may be published on presentation (immediately after First Reading) or on the following day. Parliamentary Counsel will ask the department to confirm its wishes a few days in advance, and convey them to the Public Bill Office. The usual approach is to ask for publication on presentation.

27.17 Where a bill is to be published on presentation, the final text of the bill is normally supplied by Parliamentary Counsel to the Public Bill Office for printing at the same time as notice of presentation (in other words, the day before First Reading). Parliamentary Counsel will ask for authority to do this in the minister’s name. The bill team must provide the final text of the explanatory notes on the same day. When a bill is to be published the day after First Reading, the text and the notes are usually provided on the day of First Reading.

27.18 The publication date is the key date in terms of publicity. Bills may be published on non-sitting Fridays but under no circumstances should copies of the bill be released before First Reading (although a draft bill may of course have been published as part of pre-legislative scrutiny). In the case of emergency legislation a draft bill has sometimes been published for the convenience of Parliament in advance of First Reading.

27.19 In the case of a very long bill, the Public Bill Office cannot guarantee publication on the day after the final text is provided by Parliamentary Counsel. It is important that the intended date

of publication is notified to the parliamentary clerk who, after consulting the bill team, will arrange to receive enough copies of the printed bill and the explanatory notes for the department and for any Lobby briefing or press conference. Copies for this purpose should be obtained through Parliamentary Counsel, who can arrange for them to be made available to the minister in the Vote Office as soon as the bill is published together with the text of the explanatory notes. As a general rule, publication of a bill cannot be delayed to fit in with a minister's press conference. The time of publication needs to be borne in mind when arranging a statement in the House or a Lobby briefing.

### **Supporting documents**

27.20 The delegated powers memorandum should be sent to the Commons Public Bill Office so they can arrange to publish it on the Parliament website. The Memo only requires formally sending to the Delegated Powers and Regulatory Reform Committee when the Bill moves to, or has been introduced in, the House of Lords.

27.21 The department must also ensure that the delegated powers memorandum is deposited in both Houses on introduction. For a bill starting in the Commons or arriving in the Commons from the Lords, 50 copies of the memorandum should be sent to the House of Commons Vote Office, with ten copies sent to the Lords Printed Paper Office. Further copies should be sent to the libraries of both Houses.

27.22 A full impact assessment should be published by the department to accompany the bill introduced to Parliament. Fifty copies should be placed in the Vote Office. Copies should also be sent directly to the Commons Public Bill Office for placing in the public bill committee room.

27.23 If a separate memorandum on ECHR implications has been prepared (as the analysis is too detailed for the explanatory notes) this should be published on GOV.UK but also copied to the Commons Public Bill Office to be put on the bill's webpage on the Parliament website. The ECHR memorandum should also be sent to the Joint Committee on Human Rights ([jchr@parliament.uk](mailto:jchr@parliament.uk)).

### **Revised editions of Acts**

27.24 If provisions in the bill make reference to heavily amended Acts of which no up-to-date editions are readily available, the department should consider providing a clear, readable and

up to date version of the legislation concerned. Where only some provisions of an act are relevant, the revised edition can be limited to those provisions.

27.25 Copies should be available before or not long after Second Reading in the House in which the bill is introduced. A copy should be sent to the Librarian in each House, the Clerk of Legislation in the Commons, and the Clerk of Public Bills in the Lords. For bills starting in the Commons it is also good practice to send a copy directly to each member appointed to the public bill committee, the clerk of the committee and to the clerk in the Scrutiny Unit dealing with public bill committees.

27.26 If the department wishes to show how existing legislation will be changed by the bill, this should be done as an annex to the explanatory notes.

### **List of relevant older papers for the House of Commons Library**

27.27 The department must supply the House of Commons Library with a list of all the older papers which have relevance to the forthcoming debates on the bill. This should be sent by the parliamentary clerk to the Library as soon as possible after the bill is introduced, in preparation for Second Reading. The list should mention the bill status, the title of the bill and the date of First Reading (and of Second Reading, if known).

### **Publicity**

27.28 The bill team should keep in touch with the department's press office over arrangements for publicity. Unless the bill is of only minor importance, a short press notice will usually be drafted by the bill team and the press office. This may be supported by a more detailed press notice to explain the purpose of each part of the bill. This notice should be purely explanatory and must not anticipate the Second Reading debate.

27.29 A Lobby briefing (i.e. to those correspondents who have privileged access to the Lobby of the House) and / or a briefing to specialist correspondents may be desirable if the bill is important. The bill minister should always be consulted on this and any Lobby briefing should be arranged through the Prime Minister's press secretary.

27.30 Copies of the bill must not be made available to the press before they are available to Parliament, which may be the day after introduction if the bill is not printed until then.

27.31 Any briefings must take place after publication of the bill and published copies should be made available at the briefings. Where a bill is sent to be printed overnight, copies will normally be available the following morning in time for a press conference around lunchtime.

The bill team will need to brief the bill minister for any Lobby or specialist correspondent's briefing (e.g. with question-and-answer material). The legal adviser should help ensure that any publicity material is accurate, particularly when the bill or part of a bill is especially complex. The press office may also need support from the bill team in answering press queries after publication.

27.32 Bill teams should ensure that after introduction they continue to keep in touch with external stakeholders who have been involved in developing the bill, as these groups may influence the shape of debate on the bill.

27.33 Immediately after introduction the House of Commons Library may contact the bill team for background information as they prepare a research paper on the bill. The paper is usually published before Second Reading and can be used by members during debate.

# 28. COMMONS SECOND READING

## Key points

- Second Reading is a debate on the general principles of the bill. The senior minister in charge of the bill (usually the Secretary of State) opens the debate moving that “the bill be now read a second time” then going through the main features of the bill clause by clause.
- A junior minister, (usually the bill minister or a minister from another department with an interest) will wind up, though the orders can sometimes be reversed. Alternatively the senior minister can both open and wind up the debate, with the leave of the House.
- The minister winding up should answer as many as possible of the points raised during the debate, and especially those asking for a direct answer. Officials in the box will need to write notes on these points as they are raised and clear them with their legal adviser.
- The opposition can oppose the bill either by a ‘reasoned’ amendment or by voting against the motion that the bill be read a second time. If a vote is lost at Second Reading the bill will fall.
- In certain circumstances, parliamentary material including ministerial speeches at Second Reading or any other stage of the bill may subsequently be used by the courts in interpreting the statute. Particular care should therefore be taken in drafting any statements to be used by the minister about the effect or interpretation of clauses of the bill which is why final clearance with their legal adviser is essential.

## Date of Second Reading

28.1 The date for Second Reading is settled by the offices of the Chief Whip and the Leader of the House. The convention is for at least two weekends to be allowed between publication of the bill and Second Reading except in emergency situations. The parliamentary clerk will inform all concerned as soon as they receive notice of the date for Second Reading. This date is made public by the Leader of the House in the Thursday Business Statement a fortnight in advance and should remain confidential until then.



## Procedure at Second Reading

- 28.2 On the day fixed the short title of the bill is printed as one of the effective orders of the day. The Government Whips' Office arranges this with the Table Office. When it is called, the minister begins the debate by moving that the bill "be now read a second time".
- 28.3 The usual order of speaking is for the senior minister in charge of the bill to open and for a junior departmental minister, or a minister from another department with an interest, to wind up. However, this could be reversed.
- 28.4 An opposition front bench member will speak second in the debate and another leading opposition member second last. In between, members selected by the Speaker, usually from the two sides of the House alternately, will make their contribution. Members (including ministers) cannot speak twice in a Second Reading debate without leave of the House. The member (including the opposition frontbench) whose 'reasoned' amendment (see below) has been selected for debate by the Speaker will move the amendment when they are called to speak.
- 28.5 Second Reading of a major government bill will usually last for a whole day and will start after any urgent questions, statements and/or ten-minute rule motions.

## Opposition to Second Reading

- 28.6 The opposition can oppose a Second Reading of a bill by either a 'reasoned' amendment which sets out the grounds on which the bill should be refused a Second Reading or simply by voting against the government motion that the bill be read a second time. Backbenchers can also table reasoned amendments. In both cases it is up to the Speaker to decide which are selected for debate. Votes can be held on any question before the House. The minister will need a speaking note for each reasoned amendment tabled that can be added to their speech in the event one is selected.
- 28.7 If a reasoned amendment is carried, or if the government motion to give the bill a Second Reading fails, the bill cannot progress any further. The opposition may choose not to vote against the Second Reading of a bill, accepting the principle of the bill, yet still oppose parts or details of the bill in Committee. Second Reading can provide a useful indicator of the opposition's attitudes – and those of other members – to a piece of legislation and the arguments that are likely to be deployed.

## **Assistance to ministers**

28.8 The opening speech usually goes through the main features of the bill clause by clause. Briefing and background material will be needed: form and style will depend on the minister's preferences, the character of the bill and how closely the minister has been involved in the detail of the bill beforehand. A full Second Reading speech may well be required or at least speaking notes on the more technical or complex parts of the bill. If a reasoned amendment is selected the minister's speaking notes should address it.

28.9 The more important representations received by the department from outside bodies between First and Second Reading should be outlined in the background material since they may well lead to interventions during the minister's speech.

28.10 The closing speech must answer as many as possible of the points raised during the debate, and especially those asking for a direct answer. Officials attending the debate write notes on these points as they are raised and the Parliamentary Private Secretary hands them to the minister who will wind up. It is very important that these notes:

- are legible;
- identify the speaker by constituency as well as name (the annunciator screens in the Chamber and Vacher's Quarterly will help here); and
- clearly and briefly indicate the point raised and the factual answer or the suggested line of argument in reply.

28.11 The closing speaker may or may not want a set brief for their final remarks. If they do, officials should bear in mind that a closing speech on a motion not opposed will be quite different from one on an opposed motion: it will be more conciliatory and will be directed to preparing the ground for good progress in Committee. Sometimes the closing speaker asks for an oral briefing towards the end of the debate, and there must be sufficient officials present to provide this while still covering the debate in the Chamber.

## **Attendance of officials**

28.12 The departmental parliamentary clerk will need to know beforehand which officials and legal advisers will attend in the officials' gallery ('the box'); this should be settled on the day before the debate to allow time for security passes to be arranged. Numbers should be kept to a minimum as officials from other departments may need places and the box only holds seven

with sufficient space for everybody to deploy papers and for Parliamentary Counsel to join them if they wish.

28.13 If more officials are needed to cover different parts of the bill, they will need to wait outside and take turns in the box as needed. Names will be checked on arrival by the House officials at the back of the Chair, who may also be willing to send in a message, e.g. summoning someone from the box to answer the telephone (incoming callers should ask for “the back of the Chair”). The official in the box may need to have an opposite number available in the department for telephone messages while the debate lasts. Whilst in the box (in the Chamber or in the committee Room) officials should keep a note of any points to which the minister agrees to write or respond, so these can be actioned.

### **Box etiquette**

28.14 Handheld electronic devices such as mobile phones and tablets may be taken into the box but must be turned on silent mode and used in a way that does not impair decorum. This means that such electronic devices should only be used for purposes connected with the business of the House on which officials are assisting ministers or for other urgent official business and should not be used excessively. Bill teams may want to acquire a dedicated bill team mobile phone to ensure that a member of the bill team can be reached during days in Parliament. Bill teams may also use the phones on the committee corridor for official business however it should be remembered that Members take precedence.

28.15 No bags or cases are allowed in the box therefore papers should be collated in large ring binders that can be carried in and out of the box easily. Pages in these binders should be ordered coherently and separated by dividers so that notes on a topic can be found quickly when it comes up in debate. Take a few copies so, if needed, pages can be annotated and passed to the minister. An easily transportable case such as a briefcase on wheels is likely to be useful for carrying papers to and from Parliament. Departmental parliamentary branches may have one. Bill teams should ensure that they take with them all the paperwork they need as there are no dedicated printing or copying facilities for bill teams in Parliament. In case of need officials should ask the doorkeeper in attendance, who may be able to refer officials to appropriate House staff.

28.16 Conversations while in the box should be kept to a minimum and there should be no eating or drinking in the box. Officials (pink passholders) may use the Terrace Cafeteria. All users of the Palace of Westminster may use the Jubilee Cafeteria off Westminster Hall which offers limited facilities and is also used by the public.

28.17 Decide in advance whether private secretaries or the bill team will read Hansard in the Editors' Office on behalf of ministers in order to suggest corrections.

### **Second Reading Committee**

28.18 Under Standing Order No. 90, a bill may be referred to a Second Reading Committee for its Second Reading debate. This is reserved for a few, very uncontroversial bills. Tax law rewrite bills are automatically referred to a Second Reading Committee. Under Standing Order No. 59 Law Commission bills (other than consolidation bills) are also automatically referred to a Second Reading Committee. When the Second Reading Committee has reported its resolution, *That the bill ought to be read a second time*, the motion for Second Reading is taken forthwith (without debate) on the floor of the House. The Whips Office will arrange the Second Reading motion.

# 29. COMMONS COMMITTEE STAGE

## Key points

- Committee stage usually involves an intensive period of work for both ministers and officials; preparation should begin early. Committee Stage is a clause-by-clause examination of a bill and any schedules, usually allowing the House to suggest amendments to clauses or schedules and remove or insert new clauses or schedules.
- After Second Reading, most bills are committed to a public bill committee with members of the committee nominated by the Committee of Selection so as to reflect the party composition of the House; some bills will have Committee on the floor of the House.
- All programmed public bill committees have the power to hear written and oral evidence, generally including with ministers. However, oral evidence will not normally be heard if the bill started in the Lords or has already been subject to pre-legislative scrutiny.
- Amendments normally arise either from the members seeking to challenge or probe the Government on a particular provision, or from the Government deciding to amend existing clauses or insert new provisions to address drafting issues or respond to points raised during earlier debate (although these should be kept to a minimum).
- Any government amendments must be collectively agreed within the Government and tabled at least one sitting week in advance (see Chapter 22).
- The bill team will need to prepare notes for the minister on all amendments, both government and non-government.
- The bill team should ensure that any correspondence from the bill minister to the public bill committee should be copied to the clerk of the bill Committee and to the House's Scrutiny Unit ([SCRUTINY@parliament.uk](mailto:SCRUTINY@parliament.uk)) for publication as part of the bill committee's proceedings.
- The minister **must not** make any commitments, legislative or non-legislative, without having first collectively agreed these. Where a minister promises to consider a matter, this will be noted by the clerk and amendments on the subject are likely to be selected at Report.

## Work of the bill team in Committee

29.1 Public bill committee stage is one of the most intensive periods of work in the bill's progress through Parliament. The bulk of the work involves supporting any oral evidence to be given by the minister, and providing notes on amendments (both government and non-government) for the minister. The number of amendments (and the amount of work) will vary according to the size and subject matter of the bill and how well prepared the bill is when it is introduced. The team can help to manage this workload by preparing notes for the clause stand part debates before the bill is introduced.

29.2 The work at Committee Stage can be divided into:

- work in connection with the evidence-taking process;
- work on drafting clause / schedule stand part speaking notes;
- work on government amendments or new clauses; and
- work on opposition or backbench amendments and new clause

## Committal

29.3 Most government bills are committed after Second Reading to a public bill committee, with the power to hear oral evidence (if applicable). A bill can also have its Committee Stage 'on the floor of the House' if speed is essential, if the bill is of major constitutional importance or, occasionally, because the bill is so uncontroversial that no amendments are expected. Committal provisions (that is, provisions stating to what form of committee a bill is to be sent) are contained in a programme motion.

29.4 If a bill is not programmed and no separate committal motion is made, the bill automatically goes to a public bill committee without the power to take evidence. However, although uncommon, a separate committal motion could be moved immediately after Second Reading, without debate, committing the bill to a Committee of the whole House or to a select committee. Alternatively a separate motion could be moved to allow a public bill committee to take evidence (by giving it power 'to send for persons, papers and records').

29.5 Finance bills and, very occasionally, other bills are split between a Committee of the whole House and a public bill committee. This requires a motion which can be briefly debated, or will be wrapped up, like other committal motions, in the programme motion. Which clauses are

taken on the floor is a matter for discussion between the usual channels: the bill team is unlikely to be involved in these decisions.

29.6 Bill teams normally find it useful to talk to the clerk of the committee about the handling of the bill and this is encouraged. Remember, however, that to avoid confusion, the formal channel of communication between the department and the Public Bill Office is through Parliamentary Counsel. Bill teams should make contact with the clerk of the committee early on and ensure that they are included on the clerk's email list circulating the chair's final selection list of amendments to committee members.

### **Membership of the public bill committee**

29.7 Members of public bill committees are nominated by the Committee of Selection so as to reflect the party composition of the House. The Committee normally makes its selection on the Wednesday afternoon following Second Reading. The minister may wish to suggest the selection of members from among those interested in the bill. These suggestions should be routed through the Government Whips' Office via the bill team.

29.8 Law Officers who are members of the House of Commons may attend committees *ex officio*; they may then take part in the debates but may not move any motion or amendment, or vote. They may on the other hand be chosen as full members of the committee if this is desirable in view of the nature of the bill. A whip serves on all committees dealing with government bills.

29.9 Throughout Committee Stage the chair of the committee will be advised by the committee clerk, who will have consulted Parliamentary Counsel on the selection and grouping of amendments and other procedural points. Generally, the same clerk will subsequently be responsible for preparation of an initial draft selection for consideration by the Speaker when the bill returns to the floor of the House for Report Stage and 'ping pong'.

### **Attendance of officials**

29.10 One or more officials from the bill team and the legal advisers attend Committee sittings, occupying the seats to the right of or behind the chair. Officials going to and from these seats should always enter by the members' entrance to the committee room and move quietly along the dais behind the chair, but should not walk across the dais behind the chair while the chair is putting questions or addressing the committee. Any additional officials can usually be accommodated in the public gallery. If oral evidence is being taken, officials may be placed in

seats behind the members. In no circumstances should officials enter or cross the part of the room in which the members sit while the committee is sitting. Permission to attend is not necessary as it is for the officials' box in the Chamber, though security passes for the Palace of Westminster are required.

29.11 On arrival it is usual to give the Hansard writer a copy of all speaking notes. Parliamentary Counsel may attend and will, amongst the officials, sit closest to the chair, as part of Counsel's function is to assist the clerk in advising the chair on, for example, questions of scope or the effect of a proposed amendment. Notes from the bill team should be cleared by the legal adviser and passed to the minister via the parliamentary private secretary.

29.12 Arrangements for public bill committee are dealt with by the Public Bill Office and the House of Commons Scrutiny Unit. Bill teams should make contact with the Scrutiny Unit before or as soon as possible after introduction to the Commons, to help planning for public bill committee.

### **Revised editions of Acts**

29.13 Sufficient copies of up-to-date editions of legislation that is being amended by the bill, and is not readily available elsewhere, should be provided to the clerk of the public bill committee for each member of the committee to be given their own personal copy.

29.14 The bill minister should consider sending an introductory letter to members of the committee, copied to the clerk, providing any information that might be helpful to the members and outlining any amendments that the Government may be tabling during the committee if collective agreement has been obtained.

### **Timing and timetabling of proceedings in Committee**

29.15 Committee stages of bills will generally be programmed. The initial programme motion taken after the Second Reading debate will set an 'out date' by which the committee must report. The 'out date' is agreed between the usual channels and bill teams should liaise with the Whips' Office to discuss proposed timescales. The programming sub-committee, chaired by a member of the Panel of Chairs, will set a more detailed timetable to control proceedings in public bill committee. The level of detail will vary according to circumstances. The resolution, agreed by the programming sub-committee and ratified by the committee itself, will generally include the proposed times and dates the committee will meet, the timetable and



proposed witnesses (preferably by name of organisation, rather than individual) for the oral evidence sessions, and the order the bill will be considered by the committee.

29.16 The committee will meet at set times, usually on Tuesdays at 9:25am to 11:25am and 2pm onwards, and Thursdays at 11:30am to 1pm and 2pm onwards. The afternoon sessions on any day can run until any hour and continue until the committee decides to adjourn (normally on a motion moved by the government whip on the committee).

29.17 The resolution agreed by the programming sub-committee is moved by the minister in the public bill committee at the beginning of the first day, and can be debated for up to half an hour (although it rarely is). The minister may wish to make a short opening statement but this should relate to the programme resolution rather than the merits of the bill.

### **Oral evidence in a public bill committee**

29.18 It is normal practice for bills which start in the House of Commons and are committed to a public bill committee to take oral evidence. Oral evidence sessions most often take place at the start of committee proceedings to inform line-by-line scrutiny of the bill. Where a bill has received parliamentary pre-legislative scrutiny, just one evidence session, or in some cases none, may be appropriate. There may be other exceptional cases where usual channels agree to dispense with oral evidence-taking for a programmed bill.

29.19 The decision whether to hear oral evidence is taken by the usual channels, agreed by the programming sub-committee on the bill and ratified by the committee itself.

29.20 The public oral evidence sessions operate under the programming structure for Committee, so departments can still plan on the basis of an 'out date', set by the programme motion, by which the bill must be reported from Committee. The process allows the available time to be divided up between evidence-taking and clause-by-clause scrutiny.

29.21 The schedule for oral evidence will form part of the resolution which the programming sub-committee will agree and put to the full committee for approval. Like the other parts of the motion, it will be drafted by Parliamentary Counsel on the basis of instructions from the Whips' Office, arising from discussion through the usual channels. Bill teams should discuss oral evidence sessions with the Whips' Office early on and include a potential list of witnesses in their parliamentary handling strategy.

29.22 The decision as to whom to invite to give evidence is for the committee, but departments will want to consider advising the minister on which other witnesses or groups of witnesses

would be appropriate, balancing available time, the different interests involved and any consultation process. It is also possible, and indeed sometimes appropriate, for ministers and/or officials to give evidence. Departments should liaise with the Government Whips' Office about plans for the committee in this respect as the whip in charge of the bill will discuss proposed witnesses in usual channels. Bill teams should contact the Whips Office who can advise on how oral evidence sessions operate.

### **Written evidence in a public bill committee**

29.23 All programmed bills in public bill committee, whether subject to oral evidence hearings or not, have the power to publish written evidence. A motion to report any such evidence to the House (i.e. to publish it) is normally agreed by the committee without debate or division. Parliamentary Counsel table the motion in the minister's name on authority from the department. It is taken after the programme resolution has been debated and agreed on the first day of the committee's proceedings. Any written evidence (whether from those giving oral evidence, or from others) will be received and processed by the House of Commons Scrutiny Unit working in support of the Public Bill Office, but will not be published until the committee has agreed the motion.

29.24 Any written material received directly by the department will not count formally as written evidence to the public bill committee, although if it appears that the material has been sent to the department by mistake or under the impression that this was the correct route for submission, the department can redirect it to the Scrutiny Unit.

29.25 The public bill committee is responsible for deciding whether it formally accepts any material received as 'evidence', how and when it will be made available to the members of the committee, and how it will be reported to the House and published. The bill minister and whip will receive copies as members of the committee. Note that letters to the committee from the bill minister may well have the status of 'evidence to the committee' and, if published, may become liable to the rule in *Pepper v Hart*. Written evidence accepted by the committee is published on the internet regularly while the committee is sitting; all of it is published in hard copy as part of the Hansard transcripts of committee proceedings.

29.26 Departments may wish to encourage stakeholders to submit written evidence. Written evidence can only be received while the Committee is sitting; if a Committee concludes early, evidence will not be accepted by the House. Any submissions should therefore be sent to the Scrutiny Unit as soon as the Committee starts to ensure it can be received and published.

## **Supporting the public bill committee evidence-taking process: liaison with the House of Commons Scrutiny Unit**

29.27 During the oral evidence stage, bill teams will need to brief the bill minister for any oral evidence they are to give (and attend in support of the minister if invited) and follow the other oral evidence sessions in order to inform their work on the bill. They will also need to follow any written evidence which is received. Written evidence is published on the parliament website (find each bill here: <https://bills.parliament.uk/> and go to 'Publications').

29.28 The House of Commons Scrutiny Unit coordinates briefing to members for the evidence-taking stages of public bill committee and processes written evidence. Subject to the agreement of the whip in charge of the bill, early discussions between departments and the Scrutiny Unit will be advisable (if necessary on a confidential basis) as, whatever the outcome of the discussions in the usual channels and the final proposal of the programming sub-committee, it will be the Scrutiny Unit which has to make the formal arrangements for the attendance of witnesses.

29.29 Departments may also wish to liaise with the Scrutiny Unit over publicity arrangements for inviting written evidence. The Parliament website has basic instructions for the public on how to submit evidence but the Scrutiny Unit may be able to propose a form of words for incorporation into departments' own publicity about the bill to ensure a coordinated and helpful approach.

29.30 The Scrutiny Unit may also wish to engage with departments, whilst working with other House services including the Library, as to the content and timing of bills (including ahead of the bill's publication, where possible) in order to facilitate timely and accurate briefing. Contact details are available in Appendix B.

## **Completion of oral evidence and transition to clause-by-clause consideration**

29.31 Usually all the oral evidence sessions will take place at the beginning of the public bill committee proceedings. It is possible for line-by-line scrutiny to start on the same day that oral evidence finishes but it will usually start at the next session. However, it is possible for an oral evidence hearing to be scheduled at a later point after clause-by-clause consideration has started.

## Order of consideration during clause-by-clause consideration

29.32 If no provision is made to the contrary, the committee goes through the bill clause by clause in the following order:

- amendments proposed to each clause, followed by the question that each clause stand part of the bill;
- new clauses proposed;
- amendments to schedules and questions that each schedule stand part of the bill;
- new schedules; and
- amendments to the long title.

29.33 The programme resolution can vary the order a bill is considered. It is common practice to change the order of consideration to take schedules immediately after the clauses to which they relate. More substantial changes to the order of consideration need to be discussed through the usual channels. Departments should contact the Government Whips' Office to discuss.

29.34 The committee may disagree to any (or indeed all) of the clauses and schedules.

29.35 Amendments that are not relevant to the subject matter of the bill are beyond its scope and cannot be entertained unless a special instruction has been given by the House to the committee. There are limits on the matters that can be made the subject of an instruction.

29.36 Amendments which lack the necessary sanction of a money or ways and means resolution are not in order and will not be selected for debate.

29.37 The chair of the committee has the same power as the Speaker has on the floor of the House to check irrelevance or repetition in debate, refuse or allow dilatory motions, select and group amendments or decide that they are out of order and decide whether to accept a closure or put the question on clause stand part without debate. A dilatory motion is a motion to adjourn a debate. Note that once a bill is programmed, dilatory motions may be moved in Committee of the whole House only by a Minister of the Crown.

29.38 There is no rule against a member of the committee speaking more than once on any question in public bill committee or in Committee of the whole House.

## Tabling government amendments in Committee

29.39 This section covers procedural points specific to tabling amendments in the Commons. Bill teams should also read the main section on amendments, which describes types of government amendments and how to obtain collective agreement for amendments to bills (see Chapter 22).

29.40 Amendments may be put down by any member of the House but must be moved by a member of the committee. An amendment put down by one member of the committee may be moved by another member. Amendments which no member of the committee has signed are therefore unlikely to be selected.

29.41 Where possible government amendments should be tabled at Committee Stage rather than Report, since more time for debate is available.

29.42 Government amendments must be put down in the name of the lead minister. The only exception to this rule is where a bill is clearly the joint responsibility of two departments or for territorial amendments, where the name of more than one minister may be used. These exceptional cases should always be discussed with Parliamentary Counsel, the PBL Secretariat and the Whips' Offices. Whichever style is decided upon should be used throughout Committee. If a list of names is to be used, officials and Parliamentary Counsel should have the list before Committee Stage begins.

29.43 All government amendments (and proposals to accept non-government amendments) must be cleared by the PBL Committee and by the relevant policy committee of Cabinet where appropriate. Once a government amendment has been drafted (for which the department will need to instruct Parliamentary Counsel), Parliamentary Counsel will need authority from the minister to table it on their behalf.

29.44 Amendments should ideally be tabled at least one sitting week in advance to give the committee sufficient notice but must be tabled no later than three sitting days before the earliest day on which they may be reached in proceedings of the public bill committee, or two sitting days in Committee of the whole House. As a general rule therefore, for public bill committee on a Tuesday, amendments must be tabled before the House rises on a Thursday and for public bill committee on a Thursday, amendments must be tabled before the House rises on a Monday.

29.45 Note that non-sitting Fridays are regarded as sitting days for this purpose, as are certain specified days towards the end of a periodic adjournment (a recess). So, for example, if

amendments are tabled on a Thursday in recess, the House returns the next Monday and the committee sits on the Tuesday, the amendments will not usually be starred on the order paper on Tuesday (and therefore may be considered by the committee). In practice, the only days that do not count as sitting days for tabling purposes are weekends, bank holidays and most of recess.

29.46 The bill team should ensure that ministerial approval is obtained and drafting is completed in time to meet these deadlines (bill teams should ensure that they check what time the House rises as this is the deadline for tabling). The minister may wish to send a short note to committee members giving the reasons for the amendment(s).

29.47 To table on a given day, amendments must be handed in to the Public Bill Office before it closes. The closing time may vary depending on what time the House rises that day and Parliamentary Counsel, who will table the amendments, will advise. It is important not to leave tabling until too late in the day; business in the House can finish earlier than expected and with little notice so departments should monitor the parliamentary annunciator and ensure sufficient time to table the amendments. Amendments tabled the day before the sitting of a committee will appear with a black star on the order paper for that sitting and those tabled two days before will appear with an outline (or 'empty') star. As a rule, chairs do not usually call 'starred' amendments, except in very exceptional circumstances.

29.48 Manuscript amendments may be handed in on the day the committee will reach them but chairs will not usually accept manuscript amendments save in exceptional circumstances, for example, where the amendment is generally desired and arises out of current discussion or where the Government has tabled its amendments so late the chair considers it only fair to accept manuscript amendments to them.

### **Tabling of non-government amendments**

29.49 Amendments and new clauses appear numbered in the vote bundle on the day after notice of them is handed in. They are usually available electronically on the Bill pages on the evening of the day of tabling. The numbering of amendments reflects the order in which the amendments were tabled. A marshalled list in the correct order is issued (on a white sheet) on the morning of the day the committee is sitting. In the run-up to a committee session, departmental parliamentary branches should check with the Public Bill Office each day for advance notice of any amendments that have been tabled and can collect copies of the amendments at any time up to the rising of the House. It should be remembered that on some sitting Fridays the House may rise before 3pm, and it is likely to have risen before 5:30pm on

a Thursday evening. Amendments may be tabled on non-sitting Fridays up until 4:30pm. Bill teams should agree with their parliamentary branches what time they will send the list of amendments for each sitting, and should scan and allocate immediately to policy leads for the preparation of notes on amendments.

29.50 Amendments identify the clause, page and line number to which they relate, and will propose to do one of the following:

- leave out words;
- leave out some words and insert others; or
- simply to insert or add new words.

29.51 The amendment “to leave out from word X in line p to word Y in line q” would have the effect of deleting the words between X and Y but neither of those words themselves. An amendment can propose to leave out a specified element within a clause or schedule, such as a subsection, paragraph or sub-paragraph. No amendment is needed to leave out a clause or schedule since the question on each is proposed automatically. Nonetheless, if the Government intends to vote against a clause it should signal the fact in advance by tabling a (strictly unnecessary) amendment to leave out the clause.

### **Selection and grouping of amendments**

29.52 Apart from amendments of which inadequate notice has been given, the chair may rule an amendment out of order for one of several reasons (e.g. irrelevance, point already decided or being out of scope). They may also decline to select an amendment if, for example, it is frivolous or the point is better covered by another amendment.

29.53 The chair will also group amendments for discussion where they all bear on one subject of debate. The committee clerk usually consults Parliamentary Counsel before advising the chair on the grouping and selection of amendments. If the department has particular preferences as to the grouping of the amendments these should be communicated to the Clerk beforehand (either via, or following discussion with, Parliamentary Counsel). The Clerk will usually email the chair's provisional selection and grouping of amendments (at least on a provisional basis) to interested parties, including a list of recipients in the department, on the day before the sitting. Final versions of groupings lists are available in the public bill committee room.

29.54 Where one amendment paves the way for a more substantial later one (a ‘paving amendment’), the substantive amendment may be debated with it. In the same way, a

consequential amendment may be debated with the substantive amendment going before it. The 'consequential' will not be moved if the substantive amendment has been lost and will be moved formally, when the appropriate point in the bill is reached, if the substantive amendment has been made.

29.55 An amendment can be proposed to an amendment. If this happens, the amendment to the amendment is moved and disposed of before a decision is taken on the original amendment.

## Grouping

29.56 Each day a list of amendments will be issued under the authority of the chair of the committee. It may look like this:

### Clause 1

1 + 7

3 + Gov 4 + Gov 10 to Gov 12 + Gov 5

6 + NC17 ...

29.57 The clause heading refers only to the position of the first amendment in the group. Subsequent amendments in the group may be scattered throughout the bill.

29.58 Debate on all the amendments will take place on the first amendment in each group. However if government amendments are debated as part of a group, the minister will need to move them formally when they are reached, which may not be until days or weeks later (the chair of the committee will usually prompt the minister to do so).

29.59 The amendments are listed in each group in the order in which they fall to be considered, not numerical order. The order of consideration is usually determined by the programme order.

29.60 Government amendments are numbered in the same sequence as all other amendments; it is merely convention that they are marked as 'Gov' on the selection list. Bill teams will need to check that no government amendments have been left un-noted and that no backbench amendments have been mis-identified as government.

## Keeping track of amendments



29.61 A very large number of non-government amendments may be tabled for Committee (and Report) Stage and the bill minister must respond to them all. A good system for keeping track of each amendment is therefore critical, particularly for Lords stages, where the numbering system can make it harder to keep track of amendments, evolving groupings and the drafting of speaking notes. Note that the numbering systems for amendments in the Lords and Commons differ.

29.62 At the very least, a spreadsheet should be used to record amendments as they come in and provide a means of checking that speaking notes have been drafted. A spreadsheet allows amendments to be sorted into groups, and these groups to be assigned to an official for drafting. It also allows bill managers to assign a 'dummy' number to amendments which have yet to appear on the marshalled list, so they can be assigned to provisional groups and sent out for speaking notes to be drafted. The spreadsheet generates what will become the final numbers when the list is marshalled. When the marshalled list arrives the bill team should carefully cross-check, amend any dummy numbers used in speaking notes and go through the groupings again. This should be quicker than going through the marshalled list and converting each number in turn.

#### **'Clause stand part' (and equivalent for schedules)**

29.63 Once all amendments relating to an individual clause have been disposed of or, if there are no such amendments, as soon as the clause is reached, the question is then proposed from the chair "That the clause [as amended] stand part of the bill". Bill teams should note that the minister does not move this motion, nor that schedule 'n' be the 'nth schedule' to the bill: the question is proposed by the chair without any motion. If the Government intends to leave out a clause, it should table an amendment to this effect. This amendment will not be selected for debate but it signifies the Government's intention to vote against the proposition that the clause stand part of the bill. It will be especially important to make sure that members are aware of the Government's intention to leave out any clauses, since their natural assumption (on the Government side) is that they will be voting 'aye' on any stand-part decisions.

29.64 Depending on the significance of the clause and the extent to which it has already been discussed, there may be a debate on the principle of the clause as a whole or any point in it. The chair has power to direct that the principle of the clause has been adequately dealt with in debate on the amendments offered to it but this is only rarely exercised so as not to allow a clause stand part debate. Occasionally the debate on clause stand part will appear on the grouping list explicitly linked to an earlier group of amendments, to indicate that there will be

no separate debate. It is advisable to draft notes on clause stand part as early as possible in proceedings, perhaps even before a bill is introduced into Parliament but definitely before Second Reading. Any format that suits the minister's preferences could be used.

### **New clauses or schedules**

29.65 A new clause is first debated on the question that the clause be read a second time (First Reading takes place without debate at the conclusion of the mover's speech and is signified by the clerk reading the title of the new clause.) If the question is agreed to, amendments may be proposed to the clause. After they have been disposed of the question is put, that the clause (as amended) be added to the bill. The same procedure applies to a new schedule. The location of a new clause in the bill is not specified by the mover (as it is in the Lords), but is notified to the clerk of the public bill committee by Parliamentary Counsel. Occasionally a new clause may be grouped with a related amendment or with a clause stand part debate (particularly if the new clause is a substitute for the existing clause).

### **Producing speaking notes on amendments**

29.66 Speaking notes and background briefing will be needed on all amendments, new clauses, schedules and new schedules, even those which have not been selected by the chair (although clearly priority will be given to those which have) because there could be late changes in the selection and grouping or the member may try to make the point raised by a non-selected amendment during the 'clause stand part' debate.

29.67 Almost daily sessions with the minister and frequent contact with Parliamentary Counsel may be required to settle the line to be taken on each. Time is often so short at this stage that a good understanding with the minister about what need or need not be cleared by the minister is invaluable. The fact that amendments look out of order or unlikely to be selected should not be relied on too much although Parliamentary Counsel will be able to advise that an amendment is likely or unlikely to be selected.

29.68 As there is often little time available to produce notes on amendments, the bill team should arrange with the parliamentary clerk to get the earliest possible notice of new amendments. It may be possible to leave aside for the present amendments referring to clauses far ahead in the bill but a good margin should be allowed because committee proceedings can always begin to run faster without warning.

29.69 The bill team must also understand which amendments go together, what their intention is and what their effect would be (which may be very different). Consultation with the legal adviser or Parliamentary Counsel may be needed to inform the position the Government decides to take on each amendment.

29.70 Depending on the minister's personal preference, the note drafted on each amendment should either be headed '**Government Amendment**' (if it is one), or should begin by indicating in a short heading the line recommended e.g. '**Resist**', '**Accept in principle**', '**Accept**' or '**Agree to consider**'. If the recommendation is to be anything but '**Resist**', Parliamentary Counsel must be consulted before the recommendation is made to the minister.

29.71 Managing the drafting of speaking notes for amendments is one of the most challenging responsibilities for a bill team. It is essential that the bill team develop a standard template for drafting notes on amendments using a format clearly understood by ministers and officials alike. Any template that meets the minister's preferences could be used.

29.72 The substance of the notes on amendments needs to be carefully thought out. For government amendments this should be straightforward but for non-government amendments it is not always easy to work out just what the member is trying to achieve or why.

29.73 For an ordinary amendment, the structure would be:

- This amendment...[and then summarise what it says];
- The practical effect of the amendment would be to...[and then spell out the consequences];
- The intention is thought to be...[and then have an informed guess and explain what it is based on, for example, it was raised at Second Reading or during a Westminster Hall debate.

29.74 Having analysed the amendment in this way, the note should then set out the line or lines of argument recommended.

29.75 The bill team should clarify in advance what the minister wants: either a series of points set out crisply and clearly, in tolerably short sentences, for the minister to build into a speech in their own way or (as is more usual with any minister unfamiliar with the subject) a speaking note which they can simply deliver verbatim, adding only the conventional courtesies (which officials need not draft). There is, of course, a degree of risk with a speaking note drafted in advance: if when the amendment is proposed officials realise that they have missed the point, they will have to warn the minister somehow.

- 29.76 It may be helpful for the bill team to contact other members, particularly members of the public bill committee, including those in opposition parties, directly to discuss the purpose of their amendments but the bill minister's approval should be sought before doing this.
- 29.77 Notes on amendments should never devote more than a passing reference to the adequacy or otherwise of the drafting. Opposition and backbench amendments are very often defective in some degree but it is for the opposition and backbenchers to propose changes to the bill and for the Government, which alone has drafting resources, to clean up the drafting.
- 29.78 Where several amendments are consequential on an earlier substantive amendment and the whole group is likely to be considered together, they may all be covered by the same note. If this is done it must be made clear that the note does in fact cover a number of amendments.
- 29.79 Parliamentary Counsel do not normally review notes on amendments, although are happy to advise on specific queries if time is available.
- 29.80 On the question that the clause stand part of the bill, points may be raised of which notice has not been given. The explanatory notes are of value here but officials must be ready to give ministers notes on any points if required. What was said about notes in Second Reading debates applies here. While ministers are more accessible in the committee room than in the Chamber, speeches tend to be shorter so the temptation to deluge the minister with notes should be resisted.
- 29.81 Ministers may wish to have speaking notes for use on 'clause stand part', or the explanatory notes or any notes on clauses themselves may include passages suitable for such use.
- 29.82 Generally, the tone of proceedings in public bill committee is very different from that in the Chamber. Practical points are more in evidence than debating points and all members are usually anxious to see that the bill is improved by the committee's scrutiny. The minister will usually wish to respond accordingly. Particularly in the early stages of committee proceedings, the minister's attitude may make a great difference to the progress that can be made. The bill team's advice and the way in which their notes are expressed should aim to help the minister to strike the right note.

**Do** provide full factual analysis and give reasons why an amendment is to be resisted as fully as possible.

**Don't** begin briefing with political point scoring, concentrate on the opposition's record, or suggest the minister commit to look again at an issue unless the policy really will be reconsidered.

### **Providing text of existing legislation as amended**

29.83 If the bill team has prepared a text showing how the bill would look if particular sets of amendments were agreed to as part of the minister's briefing, they should publish this part of the briefing (only the text of the bill as it would look if amended, not any of the surrounding commentary or briefing) and supply copies to members of the public bill committee. However, there is no obligation on departments to prepare such briefing for members of the public bill committee if they had not planned to produce it for the minister anyway.

### **Commitments**

29.84 Ministers must not make commitments to bring forward amendments or to accept non-government amendments without clearance from the PBL Committee and from the relevant policy committee if the amendment would effect a change in policy.

29.85 Non-legislative commitments do not require PBL Committee clearance unless they relate to future use of parliamentary time, for example. a commitment to hold an annual debate on a certain topic, but will require policy clearance if they would effect a change in policy.

29.86 The bill team should keep a list, day by day, of commitments made by ministers in Committee. Action should be set in train immediately on these points. Parliamentary Counsel must be asked to draft the necessary amendments; or officials to prepare letters for the minister to send to the member etc., which will generally be copied to the chair, other members of the committee, the committee clerk and the Library of the House.

29.87 If a minister promises to consider a matter, the promise will be noted by the clerk and amendments on the subject are likely to be selected on Report. Ministers should accordingly be selective in such promises or Report Stage will become a repetition of Committee. When such promises are made, the necessary work should begin at once and not be left until the end of Committee Stage.

29.88 If the minister agrees to write to a member of the committee, the letter should be addressed to that member of the committee and sent within 24 hours, if possible. This letter should

generally also be copied to the chair, other members of the committee and the committee clerk and a copy placed in the Library of the House.

29.89 At the end of Committee it is usual for the bill minister to thank everybody who has been involved for their hard work.

29.90 Decide in advance whether private secretaries or the bill team will read public bill committee Hansard on behalf of ministers.

### **Select committees on bills**

29.91 Occasionally a bill is committed after Second Reading to a select committee. This is usual for hybrid bills or the quinquennial Armed Forces Bill. The committee takes evidence and deliberates, like any select committee, and may produce a report. It then goes through the bill in private and amends it as it thinks fit. Once the select committee has reported it to the House, the bill is normally recommitted to a public bill committee or to committee of the whole House. The programme motion moved after Second Reading will usually contain provision for recommitment after proceedings have concluded in the select committee. In recent times this procedure has been used only for hybrid bills and for the quinquennial armed forces bills, where the stage at which the committee is considering amendments is now held in public (this is provided for in the programme motion) and proceeds in a similar way to a public bill committee.

# 30. COMMONS REMAINING STAGES (REPORT AND THIRD READING)

## Key points

- The Chief Whip and Leader of the House decide when Report Stage is taken, though the bill team should give advice based on the time likely to be needed for preparing amendments.
- Report Stage is taken on the floor of the House. Debate is confined to amendments to insert new clauses or schedules, to amend the existing text, or to leave out clauses or schedules.
- Amendments fulfilling government commitments made in Committee may need to be made at Report, but should be kept to a minimum. If a large number of government amendments are tabled, there may be calls for additional time to be given to consideration or for the bill to be recommitted to public bill committee, which will significantly delay the progress of the bill.
- It is for the Speaker to select amendments for debate. Not all amendments tabled are selected. Departmental parliamentary branches should collect the Speaker's selection and grouping of amendments once it is available, usually on the afternoon of the day before Report, although it is likely the clerks will circulate an electronic copy.
- Notes on amendments are required in the same way as for Committee. A significant number of amendments at short notice may make Report Stage the busiest stage of all for officials.
- The purpose of Third Reading is to allow the Commons to look at the bill as it has been amended and reaffirm its decision at Second Reading to allow the bill to proceed. It is almost invariably taken immediately after Report. No amendments may be made to a bill on Third Reading in the Commons. If issues of substance still need to be considered the bill may be recommitted.
- The deadline for tabling amendments for Report Stage is three days beforehand, although Government should aim to table one week in advance.

## Report Stage

30.1 When Committee Stage is concluded, the bill is reported to the House, and formally set down for consideration on the next sitting day, so it appears on the remaining orders ('Future business B' in the order paper). A later day is appointed for its consideration by the House, and announced in the weekly business statement. Consideration on Report takes place on the floor of the House and the arrangements for attendance of officials are as for Second Reading. A bill reported without amendment from Committee of the whole House proceeds directly to Third Reading; there is no Report Stage.

30.2 When a bill has completed its Committee Stage (whether in a public bill committee, a Committee of the whole House or both), it will ordinarily be reprinted if it has been amended. There is an exception in relation to fast-track bills, where the Report Stage follows on immediately after completion of proceedings in a Committee of the whole House. The parliamentary clerk should obtain a sufficient number of copies of any reprints of the bill.

## Amendments at Report

30.3 On Report, the House considers the whole bill in its current form, not the amendments already made. No questions are put for each clause to stand part of the bill. Therefore, a proposal to leave out a clause or consecutive clauses takes the form of an amendment, of which due notice must be given.

30.4 At this stage, amendments fulfilling commitments made by the minister in Committee may need to be put down by the minister or possibly a government drafted amendment will have been offered to a backbench member whose amendment in Committee was accepted in principle, and will be put down by that member. However, amendments at Report should be kept to a minimum. If a large number of government amendments are tabled for Report, there may be calls for additional time or for the bill to be recommitted to public bill committee, which can significantly delay the progress of the bill.

30.5 The order in which the bill is discussed on Report differs from that in Committee and is normally as follows (though it can be changed, usually through a programme motion):

1. New clauses together with any amendments proposed to these;
2. Amendments to existing clauses;
3. New schedules together with any amendments proposed to these;



4. Amendments to existing schedules;
5. Amendments to the long title.

30.6 Except in the case of private members' bills (where that member's amendments take precedence), new government clauses are taken before other new clauses and new government schedules are taken before other new schedules.

30.7 Non-government amendments for Report may be tabled up to three days before the debate. It is advisable for somebody from the bill team or departmental parliamentary branch to go to the Public Bill Office (on the third floor in the lift behind the officials' box) about 30 minutes after the House has risen to collect any further amendments tabled that day, as policy leads will, of course, need to prepare speaking notes on the amendments in time for the minister's box the following day.

### **Selection of amendments**

30.8 On the afternoon before the day when Report Stage is to be taken, the Speaker considers the amendments tabled (unless this is a Monday, in which case it would be that morning). The power of selection is more freely used on Report than in Committee. In 1967 the Speaker, Horace King, set out the criteria that he used for selection and these remain a good guide:

- All government amendments or, equally, all amendments by the member in charge of a private member's bill;
- All involving some undertaking by the government;
- New 'compromises' or 'halfway' proposals;
- Important issues carefully debated in committee but still containing vital matters worthy of a 'last look';
- New matters brought in by members of the committee or non-members;
- New developments that have occurred since the committee examined the bill.

30.9 The clerk will circulate a copy of the Speaker's provisional grouping and selection of amendments. It is usually available the day before Report. The final grouping and selection may not be confirmed by the Speaker until the day of debate so bill teams will need to react to any changes. Grouping and selection may affect the way in which the minister will handle the

debate and bill teams should discuss this with the minister. A flood of amendments at short notice may make Report stage on a contentious bill the busiest stage of all for officials.

30.10 Notes on government and other amendments or new schedules will be needed on Report in the same way as in Committee. If all or part of the bill was considered in a public bill committee, only the member in charge of the bill (any minister, in the case of a government bill) and the member who has moved a new clause or an amendment are entitled to speak more than once (without leave). No other member may speak more than once per debate without the leave of the House. There are no clause stand part debates.

### Third Reading

30.11 Third Reading is usually taken immediately after Report. Its purpose is to allow the Commons to look at the bill as it has been amended and to reaffirm the decision taken at Second Reading that the bill should proceed. It would, for example, be open to the House to decide that the amendments made to the bill, or the fact that no amendments had been made, meant that in spite of the broad decision taken at Second Reading that such a bill was desirable, this particular bill should not be passed.

30.12 No amendments may be made to a bill on Third Reading in the Commons unless they are 'merely verbal' (Standing Order No. 77). In practice, the possibility of such amendments would not normally arise, because they could have been tabled for Report Stage instead. If material amendments were necessary, the order for Third Reading would have to be discharged and the bill recommitted to a public bill committee or committee of the whole House.

30.13 For certain important bills, more than an hour may be allocated for debate on Third Reading. In such cases it may be that more than one minister will participate in the debate.

30.14 The bill team should check that, if the bill requires King's consent, the Order Paper mentions this. If this has been omitted, it should be pointed out to Parliamentary Counsel who will alert the House authorities. The parliamentary branch should arrange for a minister who is a privy counsellor to signify Consent just before Third Reading. To signify, the minister needs to nod in the affirmative when prompted by the Speaker.

30.15 The bill team should ensure the minister has a short speech setting out how the bill has changed since introduction. It is customary to thank Members for their interest in the bill. The minister will need to "beg to move the bill be read a third time" at the beginning of the speech. While the minister has right of reply, there is often little time to do so bill teams should ensure

the minister's opening speech speaking notes include everything that the minister needs and wishes to say.

## Preparing for the second House

30.16 On completion of Third Reading the bill will be sent to the Lords, normally on the following day. It can take longer if the bill is heavily amended at Commons Report; this can delay Lords Second Reading, particularly if Commons Third Reading is on a Wednesday. Further details on arrangements for sending a bill to the Lords are in the Lords section of this guide but at this stage bill teams should ensure that:

- the bill as amended in Commons is proof-read and approved for publication when sent to the Lords;
- explanatory notes are revised as necessary to publish alongside bill and are cleared with the Public Bill Office in the Lords at least two to three working days before the bill is sent to the Lords;
- impact assessment and delegated powers memorandum revised and republished as necessary, with the delegated powers memorandum now formally submitted to the Lords Delegated Powers and Regulatory Reform Committee;
- a fresh ECHR statement is signed for second House; and
- 'take up' arrangements are clear (i.e. which minister is to take charge of the bill in the second House).

30.17 Completing passage through the first House is also a good time for bill teams to take stock. For example to ensure that all first House papers are correctly filed and to check that plans are in place for any work that may need to be done post-Royal Assent, as the second House will be a very busy period for bill teams. In particular, bill teams should ensure that arrangements have been made to draft any guidance needed once the bill becomes an act (for example, implementation guidance for business or civil society). This is unlikely to be a task for the bill team itself, but the bill team should ensure that arrangements are in place for any such guidance to be prepared (and if appropriate published in draft before Royal Assent).

# 31. CARRYING OVER LEGISLATION

## Key points

- Each session Business Managers identify a small number of bills for Commons introduction towards the end of the session for carry over to the next session.
- Carry over should not be seen as a means of extending the time available for a bill towards the end of its passage, as the bill must normally complete its parliamentary passage within 12 months of the date of First Reading. Rather it helps Parliament and government spread the workload over each session.
- The intention to carry over should be indicated at Second Reading with a carry over motion moved by the bill minister. To be carried over a bill must have received a Second Reading but not yet received a Third Reading in its first House. The bill is presented in the new session in the terms in which it was suspended and goes straight to the stage where it left off (stages already covered in the previous session are taken again as a formality). Carry over of bills in the Lords is possible but rare.
- Bills have never been carried over from one Parliament to the next unless they are hybrid bills or private bills, when different procedures apply.

## Background

31.1 Carry over bills help to spread the workload of Parliament over the course of the session. Bills introduced in the Commons for carry over in the spring give the Commons new bills to scrutinise at a time when most Commons starters have gone to the Lords (and because generally fewer bills start in the Lords there are not as many bills arriving from the Lords to the Commons).

31.2 Carry over should not be seen as a means of extending the time available for a bill towards the end of its passage. A carry over bill must complete its parliamentary passage within 12 months of the date of First Reading, unless the House agrees to a separate motion extending the timetable. Carry over does however give the Government some flexibility to delay the introduction of a small number of bills (normally no more than two or three per year).

31.3 In the next session, the bill is presented and printed in the same terms as it stood when suspended in the previous session (i.e. including any amendments that were made to the bill). It will then be considered to have been read the first and second time and will be set down for whatever stage it had reached (or committed to a Committee in respect of the remaining parts of the bill, if proceedings in the previous session were suspended partway through Committee). Any notices of amendments, new clauses and schedules not disposed of in the previous session will be reprinted. In the Commons, this happens automatically under Standing Order No. 80A(11). In the Lords, either the carry over procedure motion will make provision for reprinting or the amendments will need to be retabled.

31.4 On re-introduction in the second session the explanatory notes, impact assessment and delegated powers memorandum must be reissued, and revised as necessary to reflect the bill as it stood at the end of the first session (i.e. incorporating any amendments that were made to the bill in the first session). The relevant Secretary of State in the Commons or the relevant Lords minister, depending on which House the bill is in, must also sign a fresh section 19 ECHR and a fresh section 20 environmental law statement.

31.5 Decisions on which bills to carry over are made by the Business Managers. Departments who consider that their bill might be suitable for carry over should mention it when bidding for a legislative slot and should discuss the possibility of carry over with the PBL Secretariat. More often it will be the PBL Committee that suggests carrying a bill over to assist the management of the legislative programme.

### **Carry over of Commons bills whilst still in the Commons**

31.6 Under Standing Order No. 80A, public bills which started in the Commons and have not yet left the Commons may be carried over from one session to the next. The intention to carry over should normally be indicated at Second Reading (although the carry over motion may be moved at any stage before Third Reading).

31.7 To carry a bill over, the minister must put down a motion that proceedings on a public bill not completed before the end of the session shall be resumed in the next session. Each motion must be in respect of only one bill. If a carry over motion is put down for the same day as Second Reading, it can be decided without debate. If put down at any other time, it is debatable for up to 90 minutes.

31.8 Under Standing Order No. 80A, a bill must complete its parliamentary passage within 12 months of its First Reading or it will fall unless the House agrees to an extension motion.

Royal Assent itself need not be notified within 12 months though it would normally be notified shortly after the bill completes its parliamentary passage. A debate on a motion to extend the carry over period is debatable for up to 90 minutes.

31.9 There is no requirement for the bill to reach the end of Committee Stage or the end of Report Stage by the end of the session. Proceedings may be suspended at any stage between Second and Third Reading.

31.10 When the bill is re-introduced in the second session, the explanatory notes, impact assessment and delegated powers memorandum must be revised to incorporate any amendments that were made to the bill in the first session, and reissued. A fresh section 19 ECHR statement and a fresh section 20 environmental law statement also need to be signed by the relevant Secretary of State in the Commons. Once they are signed, confirmation must be sent to Parliamentary Counsel. The bill backers also need to be reconfirmed. It is worth noting that the persons on the list need not be the same as those on the list when the Bill was first introduced if, for example, there has been a reshuffle in the intervening period.

### **Carry over of Lords bills whilst still in the Lords**

31.11 Carry over of bills in the Lords is possible but rare. Whether or not a bill is eligible for carry over needs to be agreed through the usual channels.

31.12 The procedure for carry over in the Lords is not regulated by standing orders, and involves the Lords agreeing to an ad hoc carry over motion, which is debatable. The precedents have required two motions - a paving motion in the first session, contingent on the bill not completing all its stages before the end of the session, and a main motion in the second session, allowing the debate on the bill to pick up where it left off.

31.13 As with re-introduction in the Commons, when a bill is re-introduced in second session the explanatory notes, impact assessment and delegated powers memorandum must be revised and reissued and a fresh section 19 ECHR statement and a fresh section 20 environmental law statement must be signed by the Lords minister.

### **Carry over of bills once in their second House**

31.14 There are no precedents for second House carry over of public bills, although the House of Lords has agreed in principle that this could happen, subject to the bill in question having undergone pre-legislative scrutiny in draft<sup>16</sup>. The process would require the agreement of both

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<sup>16</sup> See Fifth Report from the Select Committee on Procedure of the House, HL 148 (2001–02).

Houses by means of specially tailored motions. These motions would be debatable. In the second of the two sessions, the bill would be presented in the originating House, be considered to have gone through all its stages in that House and passed. It would then be sent to the second House, where it would be considered to have completed all the stages completed the previous session and be set down for the next stage.

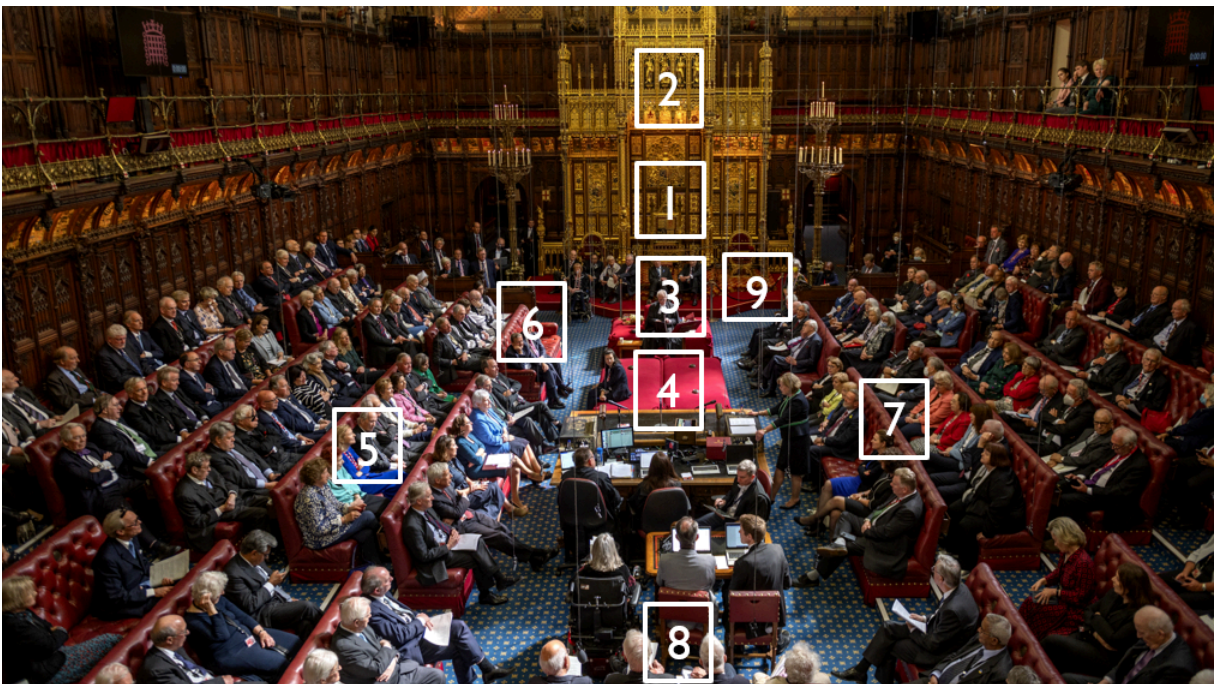
31.15 Second House carry over would only ever be practicable in cases where there was a high level of cross-party agreement.

# SECTION E

## LORDS STAGES



## 32. THE LORDS OVERVIEW AND DIFFERENCES FROM COMMONS' STAGES



Parliamentary copyright<sup>17</sup>

### House of Lords

- |                       |                                                 |
|-----------------------|-------------------------------------------------|
| 1. Sovereign's throne | 6. Bishops                                      |
| 2. Cloth of estate    | 7. Opposition                                   |
| 3. Speaker            | 8. Cross benchers                               |
| 4. Judge's woolsack   | 9. MPs (who can sit on the steps of the throne) |
| 5. Government         |                                                 |

### Key points

- There are important differences to how the House of Lords approach scrutinising legislation compared to the Commons. This includes more detailed consideration of delegated powers and particular emphasis on the supporting documents setting out the technical detail. Bill teams should be in touch with the Whips' Office before introduction to Parliament, even if the

<sup>17</sup> Image available at: <https://lordslibrary.parliament.uk/who-sits-where-in-the-house-of-lords/>

bill is introduced in the Commons, as there are things the team can do in the Commons to ease passage through the Lords.

- A good parliamentary handling strategy, agreed with the Government Whips' Office, is particularly important for the House of Lords where the Government has no majority.
- Proceedings must be agreed through the usual channels (the whips of all parties).
- The Lords minister and Whip taking the bill through the House will not necessarily be the policy minister for the Bill and may therefore require additional briefing. There is a substantial body of professional expertise among peers across a range of subjects.
- The Lords Delegated Powers and Regulatory Reform Committee will scrutinise every bill that contains delegated powers to consider the appropriateness and suitability of the delegated powers.
- The Lords Constitution Committee may also wish to scrutinise the bill. Bill teams should consult the Government Whips' Office in the Lords if they think the Constitution Committee is likely to have an interest in the bill and ensure there is a plan for a timely response to any reports.

## **Differences in practice and procedure in the Lords**

32.1 There are differences in the conduct of debates and procedure during the bill's passage. It is not the Lord Speaker but the House as a whole which decides questions of order. Peers address their remarks to the whole House ("My Lords") whereas in the Commons they address the Speaker or the chair of the committee. There are no financial resolutions or programme motions. What the Lords can do is restricted by Commons financial privilege, other constitutional and parliamentary conventions, and the Parliament Acts.

32.2 Every amendment tabled in the Lords is called in turn in the order of the 'marshalled list' and can be spoken to. There is no selection of amendments; scope rules are applied by the Clerks. An amendment that has been tabled need not be moved, although if none of the peers named as supporters of the amendment moves it, another member may do so. Amendments are not grouped for discussion by the chair as in the Commons, but informal groupings are negotiated through the Government Whips' Office in the Lords.

32.3 It is the bill team's responsibility to propose groupings of amendments for each day. As in the Commons the bill team's proposals for grouping may be discussed in advance with Parliamentary Counsel. Groupings are informal and not binding. It is open to any peer to speak to an amendment in its place in the marshalled list but the Government Whips' Office

tries to get agreement from all members concerned about proposed groupings. Any member can ask the Government Whips' Office to de-group their amendment from those the bill team has suggested it be grouped with. In this case the Government Whips' Office will tell the bill team. However, it is open to any peer to de-group their amendment in Committee or at other stages (although this is now formally discouraged).

32.4 A member may speak to a whole group of amendments when the first amendment in the group is called. Only the first amendment in the group is called (in the technical sense that there is a question specifically on it before the House) and the rest are at this stage merely spoken to. Proceedings on later amendments in the group are often formal but further debate may take place and an amendment previously debated may be moved at its place in the bill.

32.5 Unlike in the Commons where, for example, Report and Third Reading are often taken together, in the Lords not more than one stage of a bill can be taken during one sitting. This is a standing order of the House and is dispensed with for bills that are money and/or supply bills. The standing order may also be dispensed with for a particular bill that is urgently required, but the agreement of the usual channels and then the House is required to do so. Notice must be given on the order paper of a motion to dispense with this standing order, and it is possible for the motion to be opposed. Lords Committee stage is open to all members and does not involve evidence-taking. Lords Third Reading is an amending stage, though restrictions apply.

### **Minimum intervals between Lords stages**

32.6 The different stages and minimum intervals which are usually observed are set out below. This is the conventional minimum timetable that could be expected for a bill of reasonable length and complexity. Shortening these intervals can only be agreed through the usual channels.

**Between First and Second Reading:** normally two weekends

**Between Second Reading and Committee Stage:** 14 calendar days

**Between Committee Stage and Report Stage:** 14 calendar days

**Between Report Stage and Third Reading:** three clear sitting days.

'Sitting days' excludes weekends and non-sitting Fridays.

32.7 Bill teams are advised to prepare on the basis of minimum intervals. However, bill teams should not expect a bill to progress to that timetable as often the intervals between stages will be longer. The timetable for a bill to complete all of its stages in the Lords will be dependent on a number of factors, including the exact nature of the bill, its size and complexity, availability of opposition spokespersons and, perhaps most importantly, the other bills in the programme. Other bills may be accorded a higher priority if they are politically very important or have a fixed deadline for Royal Assent. The whips or the PBL Secretariat will be able to advise on the relative position of your bill and they need to be made aware at the earliest possible moment if there are any pressing political, financial, operational or other reasons for bills to receive Royal Assent by a particular time, although there are never any guarantees.

### **Lords sitting times**

32.8 Sitting times in the Lords are:

#### **The parliamentary day: House of Lords**

**Monday and Tuesday:** 2:30pm - 10pm or later

(grand committee: 3:45pm - 7:45pm or up to one hour later by agreement)

**Wednesday:** 3pm - 10pm or later

(grand committee: 4:15pm - 8:15pm or up to one hour later by agreement)

**Thursday:** 11am - 7pm or later

(grand committee: 1pm - 5pm or up to one hour later by agreement)

**Friday:** 10am - 3pm (on sitting Fridays)

32.9 Oral Questions are held for 40 minutes at the start of business on Monday to Thursday. Debates will start after Oral Questions. Statements can also be taken at any time after Questions, with usual channels agreement.

### **Constitution Committee**

32.10 The Constitution Committee is appointed by the House of Lords “to examine the constitutional implications of public bills coming before the House and keep under review the

operation of the constitution and constitutional aspects of devolution.” In exercising the first of these functions, the committee scrutinises government bills before the House and any private members’ bills which are likely to reach the statute book. While there is no requirement for departments to produce a memorandum for the Constitution Committee in the same way as for the Delegated Powers and Regulatory Reform Committee, officials should be aware of the Constitution Committee’s role and consult the Government Whips’ Office in the Lords if they think the committee will take an interest in the bill.

32.11 If a bill appears to raise issues of principle affecting a principal part of the constitution, the committee may request information from the minister responsible, or seek advice more widely. This correspondence is usually published on the committee’s website. More infrequently, the committee will publish a substantive report on a single bill. For example, bills will attract the attention of the committee if they deal with the relationship between the Executive, Judiciary and Parliament, the electoral system and referendums, the relationship between central and local government or with devolution. In other cases, for example where a bill gives new powers to public authorities or amends existing powers, or grants new powers to collect or share personal data, the committee will form a view on whether the bill makes a significant change to the system of government or the relations between the state and the individual.

32.12 The Constitution Committee will consider whether procedures provided for in relation to appeals, review and redress of grievances is satisfactory and whether the bill makes a clear division between matters for which ministers have authority and matters for which authority is devolved to autonomous office-holders. If a bill proposes a new tribunal, the committee will expect the tribunal to be placed under the supervision of the Council on Tribunals.

32.13 Where a bill stems from the UK’s international obligations, the committee will look at the manner in which Parliament is being asked to implement them. When the committee reports on a bill it will aim to do so before Lords Committee Stage.

# 33. LORDS INTRODUCTION AND FIRST READING

## Key points

- For bills starting in the House of Lords, the date of introduction will be agreed by the Business Managers and No.10. For bills transferring from the House of Commons, First Reading will take place once the Commons has formally passed the Bill to the Lords. This is usually the next sitting day, but the Lord's Business Managers can advise on the timings that will vary from bill to bill.
- The publication of the Bill is agreed between the Lords Whips Office and the Lords Public Bill Office. Publication may be on the day a bill is introduced in the Lords or on the day after. The bill team should liaise with the Lords Whips Office on the timing of any letters, press conferences, and briefings being issued on introduction.
- The same accompanying documentation as for the Commons must be published alongside the bill: explanatory notes, impact assessment and delegated powers memorandum if required. If a bill comes from the Commons, the explanatory notes, impact assessment and delegated powers memorandum should be revised to take into account any changes made in the Commons. Whichever House the bill starts in, on arrival in the Lords the delegated powers memorandum should be formally submitted to the Lords Delegated Powers and Regulatory Reform Committee.
- Whichever House the bill starts in, the Lords minister will need to sign a section 19 statement on compatibility with the European Convention on Human Rights (ECHR), and (if applicable) statements under section 13C of the European Union (Withdrawal) Act 2018 (Northern Ireland-Great Britain trade statement) and section 20 of the Environment Act 2021 (environmental protection statement).



## Introducing a bill in the Lords

- 33.1 The date of introduction will be agreed by the Business Managers and No.10 and communicated to the department. It must be a day when the Lords will sit.
- 33.2 A bill starting in the Lords carries only the name of the minister or whip who has signed the section 19 ECHR, section 13C European Union (Withdrawal) Act 2018 Northern Ireland-Great Britain trade, and section 20 Environment Act statements. Unlike the Commons, there is no provision for other "bill backers" to be listed.
- 33.3 No formal notice of presentation of a bill is required but Parliamentary Counsel will email the Lords Public Bill office with the name of the minister in charge of the bill, the date of introduction (also known as First Reading) and the long and short titles of the bill. This is usually by 5pm the day before introduction. The bill print will then need to be sent to the Lords Public Bill Office, usually by 2pm on the day the bill is introduced, who will arrange for it to be published. Parliamentary Counsel will need formal authority to submit the text of the Bill on the minister's behalf.
- 33.4 On the day of First Reading, the minister or whip introduces the bill by reading the long title and moving "that the bill be now read a first time". This is organised by the Government Whips' Office. The Lords Whips' Office can advise on any requirements from the minister for First Reading.
- 33.5 The bill is then ordered to be printed and a day is arranged for Second Reading. First Readings are not opposed. No bills may be introduced before the text has been handed to the Lords Public Bill Office. At First Reading an order is made automatically for the bill to be printed and given a number in the HL Bill series. An order to print is also made for the explanatory notes. Bills and explanatory notes are printed and published on the parliamentary website. This usually occurs during the afternoon or evening on the day of First Reading, but this cannot be guaranteed.
- 33.6 The same supporting documentation is required for Lords starters as for Commons starters. The bill team should ensure that all other supporting documents are cleared and ready for publication: delegated powers memorandum, impact assessment, ECHR memorandum, Environment Act statement, and statement on bills affecting trade between Northern Ireland and other parts of the UK where needed. The delegated powers

memorandum, the ECHR memorandum (if prepared separately to the Explanatory Notes) and the impact assessment should also be copied to the Lords Publishing Team for uploading to the bill webpage on the Parliament website. The delegated powers memorandum should be formally submitted to the Lords Delegated Powers and Regulatory Reform Committee. No documents need to be sent to the Public Bill Office in the House of Commons for bills starting in the House of Lords.

33.7 If for any reason the ECHR statement will not be signed before the bill is first printed (on entry to either House), Parliamentary Counsel and the Lords Whips Office should be consulted immediately. Where a statement is not made on Bill introduction, a written ministerial statement must be made before Second Reading.

33.8 The explanatory notes will have to be cleared by the Lords Public Bill Office, and should be shared with them at least two to three working days before the bill is introduced.

33.9 A list of relevant papers should be provided where appropriate to the Lords Printed Paper Office ([printedpaperoffice@parliament.uk](mailto:printedpaperoffice@parliament.uk)) when the bill arrives or starts in the Lords. These are papers which have relevance to the forthcoming debates on the bill, such as recent consultations, international agreements or Office for National Statistics publications, and should be sent by the parliamentary clerk to the Library as soon as possible after the bill is introduced, in preparation for Second Reading. The list should mention the bill status, the title of the bill and the date of First Reading.

### **Bills brought from the Commons**

33.10 After Third Reading in the House of Commons, a copy of the latest print of the bill, incorporating all amendments made in the Commons and signed by the Clerk of the House, is delivered to the House of Lords (without interrupting proceedings) with a message stating that the Commons has passed it and desire the agreement of the House of Lords.

33.11 First Reading will take place once the Commons has formally passed the Bill to the Lords. This is usually the next sitting day, but the Lord's Business Managers can advise on the timings that will vary from bill to bill. The bill cannot be delivered until the text is settled; for a large bill heavily amended at Commons Report this may take several days. The message is read at a convenient moment during the sitting and a government whip moves the First Reading immediately afterwards. This is taken without debate. The bill is then printed and arrangements must be made for a Second Reading date.



- 33.12 The Whips Office will inform the bill team of the timetable. Bills can be received by the Lords Public Bill Office when the House is not sitting and, if it is helpful for the House and practical, printed immediately, with First Reading afterwards when the House next sits.
- 33.13 The explanatory notes will need to be revised and republished to reflect any substantive amendments to the bill in the Commons. Even if there were no substantive changes, the format of the explanatory notes will require some minor changes in all cases. Any substantial revisions to the explanatory notes should be approved by the bill minister. The department is responsible for updating the notes and sending them to the Lords Public Bill Office.
- 33.14 If an amendment has been made in the first House which the Government has said it will seek to overturn in the second House, the revised explanatory notes should give a neutral description of the amendment and its effect and say the Government seeks to overturn the amendment but should not argue its pros and cons.
- 33.15 If a minister has said in the House that the Government intends to seek to overturn the amendment, the explanatory notes may give the Hansard reference for that statement but if no announcement has been made to that effect, the notes are not the place for it.
- 33.16 As with introduction to the Commons, the explanatory notes will have to be cleared by the Lords Public Bill Office. The revised notes should be shared at least two to three working days before the bill transfers to the Lords.
- 33.17 The impact assessment and delegated powers memorandum, if required, must also be revised to take account of any changes in the first House. The bill team must also ensure that the Lords minister signs the relevant ECHR, Northern Ireland-Great Britain trade, and Environment Act statements and, once they have been signed, inform Parliamentary Counsel.
- 33.18 The delegated powers memorandum should be formally submitted to the Lords Delegated Powers and Regulatory Reform Committee: [hdelegatedpowers@parliament.uk](mailto:hdelegatedpowers@parliament.uk). The delegated powers memorandum, the relevant statements should also be copied to the Lords Public Bill Office and the updated impact assessment copied to the Commons Public Bill Office so they can publish the updated versions on the parliament website. The ECHR memorandum should also be sent to the Joint Committee on Human Rights ([jchr@parliament.uk](mailto:jchr@parliament.uk)).

33.19 In addition, a list of relevant older papers should be provided where appropriate to the Lords Printed Paper Office when the bill arrives in the Lords.

### **Supporting documents**

33.20 The delegated powers memorandum should be formally submitted to the Lords Delegated Powers and Regulatory Reform Committee on the day the bill is published.

33.21 The department must also ensure that the delegated powers memorandum is deposited in both Houses on introduction. Further copies should be sent to the libraries of both Houses.

33.22 A full impact assessment should be published by the department to accompany the bill introduced to Parliament.

33.23 If a separate memorandum on ECHR implications has been prepared (as the analysis is too detailed for the explanatory notes) this should be published on GOV.UK but also copied to the Lords Publishing Team to be put on the bill's webpage on the Parliament website.

### **Revised editions of Acts**

33.24 If provisions in the bill make reference to heavily amended Acts of which no up-to-date editions are readily available, the department should consider providing a clear, readable and up to date version of the legislation concerned (see also section on 'Keeling Schedules'). Where only some provisions of an act are relevant, the revised edition can be limited to those provisions. These should be sent to the Librarian in each House, to the Clerk of Legislation in the Commons and to the Clerk of Legislation in the Lords before, or soon after, the bill receives a Second Reading.

33.25 If the department wishes to show how existing legislation will be changed by the bill, this should be done as an annex to the explanatory notes.

### **Press and publicity in the Lords**

33.26 The publication date is the key date in terms of publicity in the House of Lords. Press briefing should not take place before the day of introduction, which is the earliest the bill may be published in the Lords (whereas Commons bills can be introduced and published on the same day and therefore earlier press briefings are possible).

33.27 Bills may be published on non-sitting Fridays. Under no circumstances should copies of the bill be released or made available to the press by the Government before publication by Parliament (although a draft bill may of course have been published as part of pre-legislative scrutiny). In the case of emergency legislation where a bill starts in the Lords, a draft bill may be published for the convenience of Parliament in advance of First Reading.

33.28 It is important that the intended date of publication is discussed with the Whips who will liaise with the bill team to arrange to receive enough copies of the printed bill and the explanatory notes for the department and for any Lobby briefing or press conference. Copies for this purpose should be obtained through Parliamentary Counsel, who can arrange for them to be made available to the minister in the Printed Paper Office as soon as the bill is published together with the text of the explanatory notes. Publication of a bill cannot be delayed to fit in with a minister's press conference. The time of publication needs to be borne in mind when arranging any briefings.

33.29 The bill team should keep in touch with the department's press office over arrangements for publicity. Unless the bill is of only minor importance, a short press notice will usually be drafted by the bill team and the press office. This may be supported by a more detailed press notice to explain the purpose of each part of the bill. This notice should be purely explanatory and must not anticipate the Second Reading debate.

33.30 Any briefings must take place after publication of the bill and published copies should be made available at the briefings. Where a bill is sent to be printed overnight, copies will normally be available the following morning in time for a press conference around lunchtime. The bill team will need to brief the bill minister for any Lobby or specialist correspondent's briefing (e.g. with question-and-answer material). The legal adviser should help ensure that any publicity material is accurate, particularly when the bill or part of a bill is especially complex. The press office may also need support from the bill team in answering press queries after publication.

33.31 Bill teams should ensure that after introduction they continue to keep in touch with external stakeholders who have been involved in developing the bill, as these groups may influence the shape of debate on the bill.

# 34. LORDS SECOND READING

## Key points

- Second Reading in the Lords takes a similar format as Second Reading in the Commons and, unless otherwise stated in this chapter, procedures and requirements are the same as for the Commons.

## Differences from the Commons

34.1 The minister in charge of the bill in the Lords is often the bill minister. They may be a government whip or law officer who does not work within the lead department. Briefing will often not need to be more thorough than in the Commons.

34.2 Second Reading is rarely opposed in the Lords. If Second Reading is opposed it is the usual practice to give warning in the form of an amendment on the order paper to the effect that "this House declines to give the bill a second reading". The amendment may add a reason (a 'reasoned amendment'). Agreeing to such an amendment, in whatever form, kills the bill.

34.3 Lords wishing to demonstrate opposition to the Government, without going to the extreme of seeking to stop the bill (which would be regarded as a breach of convention), may instead table an amendment allowing Second Reading but objecting to aspects of the Government's stance (a 'non-fatal reasoned amendment'). An example of a non-fatal reasoned amendment would be "but regrets ... and calls on the Government to ..."; the House agreeing to such an amendment may have political impact would not kill the bill.

34.4 The minister in charge has a right of reply and usually both opens and winds up the debate, though different ministers may do so. If an amendment is tabled, the mover also has a right of reply.

- 34.5 The opening speech should set out the purpose and rationale for the bill. Some content might be broadly similar to the Commons, but should not be a repetition of the Commons version and should be tailored to likely concerns in the Lords.
- 34.6 For the closing speech, the bill team should have notes ready on points raised in the debate. Notes are usually passed to the frontbench via the Doorkeeper or Whip. The bill team should liaise with the Private Office on arrangements for notes and the Minister's preferences - for example, if they prefer physical or electronic notes. Ensure that the full title of the minister in charge is on the note (e.g. 'Lord Smith of [Place], not simply 'Lord Smith' as there may be more than one).
- 34.7 Peers find it particularly courteous if a proper response is given in the winding up speech. Failing that, an indication to write on the detailed points should be given and a letter should be sent to the peer(s) within 24 hours. Speakers are expected to be present for the Minister's response; the Minister need not respond to a member who is not.
- 34.8 Bill teams can watch the list of speakers grow on [the Government Whips' Office website](#) before the debate. This will help in preparation of material for ministers. The final list of ordered speakers is published on 'Today's List', normally an hour before the House sits. Every peer on the speakers' list will have a chance to speak in the order shown. The minister's opening speech should not exceed 15 minutes and the winding speech should not exceed 20 minutes.
- 34.9 There is no procedure for money resolutions in the Lords, although a bill starting in the Lords may need a money resolution when it comes to the Commons. A bill for which the sole purpose is to raise taxation or authorise expenditure may be a 'money bill', a 'supply bill' (or 'bill of aids and supplies') or both. Such bills always start in the Commons. The Lords cannot amend a supply bill. Under the Parliament Act 1911, the Lords cannot prevent a money bill passing into law. While it could, in theory, propose amendments, in practice the House of Lords does not consider such bills in Committee.
- 34.10 A motion is required to commit a bill to Committee: either to a Committee of the whole House or to a grand committee. This is tabled by the Government Whips' Office in advance of Second Reading to be moved straight after the Second Reading has been agreed.

## Box etiquette

34.11 Your departmental parliamentary branch is responsible for sending names for the officials' box to Black Rod's Office. Similar rules apply as for box etiquette in the Commons. In the House of Lords, officials are not allowed on the blue carpet (in the Prince's Chamber behind the Lords Chamber) when the House is sitting. In practice they have to walk across the carpet to reach the officials' box but they should only do so when invited by the doorkeepers and should not wait around there. When waiting to go into the Chamber they should wait in the Contents Lobby for the doorkeepers to show them in. In the box there is room for up to four officials (usually including the minister's private secretary). There are a few more chairs outside the box but they are not very close. In particular watch the folding down desks in the box as, unless folded down very carefully, they can fall themselves with a loud bang. Bill teams can also make use of the Bill Team Room, which is booked through the Government Whips' Office.

# 35. LORDS COMMITTEE STAGE

## Key points

- In the Lords bills are considered either on the floor of the House ('Committee of the whole House'), or in the Moses Room ('grand committee').
- Any non-concessionary government amendments in the Lords should be tabled for Committee. The bill team must ensure that any amendments have been collectively agreed (by the PBL Committee and the relevant policy committee if necessary) and are drafted in time to be tabled at least one sitting week in advance of the debate.
- Lords Committee follows different procedures to Commons Committee, though the requirement for bill teams to provide notes on amendments for ministers is the same.

## Types of committee

35.1 A motion is moved after Second Reading to commit a bill to either a Committee of the whole House or to a grand committee. This is decided through the usual channels, although the motion can be voted upon and the final decision is for the House. A motion may also be moved to instruct the Committee to consider the bill in a particular order, usually to take each schedule after the clause on which it depends; see 35.16 and 20-21 below.

35.2 In both Committee of the whole House and grand committee, all members can attend, table amendments and speak. The proceedings in grand committee are identical to those in a Committee of the whole House except that no votes take place: decisions to alter the bill may only be made with unanimity. Thus when a question is put, a single voice against an amendment causes the amendment to be negatived. If there is opposition to an amendment, it should be withdrawn in grand committee, to enable the House to decide the matter on Report. A single voice against "clause stand part" is ineffective; leaving a clause out requires unanimity.

35.3 In addition, bills can, in principle, be sent to a select committee or a special public bill committee, although these are extremely rare. The Government Whips' Office will be able to advise on procedures in each case.

35.4 A day in the Chamber typically lasts until around 10pm (7pm on Thursdays), a day in Grand Committee for 4 hours or 5 by prior agreement. The Committee Stage in the Lords is not subject to a programme motion and its length cannot easily be controlled by the Government. The length of Committee will be decided through the usual channels and can be extended after further discussion.

### **Tabling amendments**

35.5 Bill teams should read the main section of this guidance on amendments which describes what sort of government amendments are likely to be agreed to and how to obtain collective agreement for amendments to bills. The bill team must ensure that any government amendments have been collectively agreed and are drafted in time to be tabled at least one sitting week in advance of the debate.

35.6 Any government amendments needed in the Lords should be brought forward for Committee or, if absolutely necessary, for Report as 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. Government amendments at Third Reading are limited to 'tidying up' amendments (not necessarily the same as 'minor and technical') or to fulfil undertakings made by the minister at an earlier stage of the bill's passage in the Lords.

35.7 The procedure for tabling amendments is the same for both Committee of the whole House and grand committee. Amendments may appear in the names of up to four members (or five if the peer in charge of the bill adds his or her name). Government amendments should be tabled in the name of the Lords minister in charge but another minister may nevertheless move them. The name of only one minister should appear against a government amendment. New clauses must be positioned (usually "After clause X"), unlike in the Commons. As in the Commons, an amendment to leave a clause out cannot be tabled at Committee stage; instead a notice is tabled to "oppose the question that the clause stand part". Tabled by another member, such a notice usually means an intention to debate, not literally to oppose; see 35.15 below.



35.8 Amendments put down by peers are not included in the vote bundle as in the Commons, but are printed in the House of Lords bill series, bearing the number of the last print of the bill with suffixes, e.g. HL Bill X (a), (b), etc - these lists are published daily. The deadline for amendments to be published on the first marshalled list is 4pm two days before the date fixed for Committee. The first marshalled list is published later that evening. All amendment papers are available on the Parliament website on the day of their publication.

35.9 Any amendments which have not previously been circulated are 'starred' in the marshalled lists but this does not mean, as in the Commons, that they may not be called. Amendments must be relevant to the subject matter of the bill and to the clause or schedule to which they relate. Amendments tabled after the deadline for marshalling but before the day of debate are published on a supplementary sheet or a revised marshalled list. Manuscript amendments, i.e. amendments tabled on the day of debate, may be moved at any stage except on Third Reading but their use is discouraged.

35.10 The system for numbering amendments in the Lords differs from that in the Commons, and needs to be carefully managed to avoid confusion. In the Commons amendments are numbered consecutively as they are tabled. While the numbers do not bear any relation to the position of the amendment in the bill, amendments do retain their number on subsequent reprints. In the Lords amendments are only numbered in the marshalled list. Amendments published before the publication of the first marshalled list and then in between each debate and publication of the next marshalled list are not numbered. It is therefore useful if the bill team assign them temporary 'dummy' numbers in order to track them until they are published with their numbers in the marshalled list. When the marshalled list is printed the bill team will then need to convert the dummy numbers, and amend any notes on amendments accordingly.

35.11 In the first marshalled list amendments are simply numbered based on the order in which the bill will be considered. However, subsequent marshalled lists will slot new amendments into their place and number them accordingly. For example, amendments between 20 and 21 will be numbered 20A, 20B, etc. Any amendment between 20A and 20B will be numbered 20AA. An amendment between amendments 20 and 20A it will be numbered 20ZA, the Z signifying that it comes before the amendment with the next letter in sequence.

35.12 Amendments can be tabled between 10am and 4pm on any working day. In sitting periods they are printed overnight and are available from the Printed Paper Office and online the next

morning. Bill teams should discuss with the Lords Whips Office the arrangements for tabling amendments during recesses.

35.13 The same procedure for preparing explanatory statements and notes on clauses and amendments applies as in the Commons.

### **Procedure in committee of the whole House**

35.14 The Lord in charge moves “that the House do now resolve itself into a committee upon the bill”. This motion is usually taken formally, though it may be used occasionally for discussion of the procedure to be adopted in Committee or to express disapproval. When the House has agreed to go into Committee the Lord Speaker (or a deputy) leaves the Woolsack and goes to the table opposite the clerks to preside over the committee. The Legislation Office will produce a ‘peer in charge’ brief on procedural points for the minister and whip.

35.15 The question “that clause X stand part of the bill” is put in respect of each clause after any amendments to that clause have been dealt with. No motion is moved. This gives the opportunity to debate the clause generally, or to raise any points on it which are not the subject of amendments. Any peer is free to speak on the question that a clause stand part, whether or not they have given notice, but Lords will generally indicate their intention to speak by means of an italic note stating: “The Lord X gives notice of his intention to oppose the question that clause / schedule Y stand part of the bill” which appears in the appropriate place in the marshalled list, but does not get an amendment number.

35.16 The order in which the bill is considered in committee of the whole House is usually as follows (the order of consideration can be changed in the form of a motion being put to the House to be agreed before Committee Stage starts):

- amendments to clauses are taken in order, followed after each clause by the question “that clause X (as amended) stand part”;
- amendments to schedules, followed after each schedule by the question “that this schedule (as amended) be the nth schedule to the bill”; and
- long title and any preamble.

35.17 The rule that members of the Lords (including the minister but not including the mover of a motion or amendment, who has a right of reply) may only speak once to any question does not apply in Committee (though it does on other stages of the bill). New clauses and schedules are treated like other amendments, e.g. the Lord puts down an amendment “after clause X insert the following new clause ...” and the motion is simply that the amendment be agreed to. The place of the new clause or schedule proposed is therefore determined by the Lord proposing it.

35.18 Where there are a number of clauses with no amendments the chair may put a single question that the clauses stand part en bloc but any Lord who wishes to speak on a particular clause may object.

### **Procedure in grand committee**

35.19 Procedure in grand committee is very similar to that in committee of the whole House. The main differences are:

- no motion to resolve into a committee is moved at the start of proceedings: the chair simply calls the first amendment;
- grand committees meet for four-hour sessions in a committee room (the Moses Room) rather than in the Chamber, though any peer may participate;
- divisions are not permitted, and the bill may only be amended if there is unanimous agreement; and,
- if there is a division in the Chamber, the grand committee usually adjourns for a short time to allow members to vote .

### **Variation in order of amendments**

35.20 To take clauses and schedules to a bill in a different order than in the order of the printed bill (e.g. each Schedule straight after its governing clause; any other variation from taking the bill in order is unusual), a motion for an instruction should be tabled as soon as possible after Second Reading in the name of the peer in charge of the bill. This motion will set out the proposed order. Since new clauses and new schedules are taken at the place where it is desired to insert them in the bill (for example, “after clause X”) and not at the end (as in the Commons), they need not be mentioned in the motion for an instruction.

35.21 The motion is drafted by Parliamentary Counsel on the department's instructions and tabled by the Whips. Parliamentary Counsel will normally send any draft order of consideration motion for Lords Committee to the Whips before Second Reading, so that the motion may be taken on the day of Second Reading as part of, or immediately after the motion to commit, if desired. You should consult the Whips' Office as any variation from the printed order of the bill will need to be agreed by the Usual Channels.

### **Committee on a money or supply bill**

35.22 For money and/or supply bills the Committee Stage is usually negated after Second Reading. Such bills are normally taken through all of their stages after First Reading on a single day, with no Committee or Report Stage and no amendments at Third Reading.

### **Discharging a committee**

35.23 Committee Stage may be discharged altogether if there are no notices of amendments and no member of the Lords has indicated a wish to speak on the bill in Committee. Notice of a motion to discharge the Committee Stage must appear on the order paper; the Government Whips' Office will see to this. This is a great incentive for departments to ensure that no government amendments are made to non-contentious bills in the Lords. If the committee is discharged there is also no Report Stage.

# 36. LORDS REPORT AND THIRD READING

## Key points

- Unlike in the Commons Report and Third Reading usually take place on separate days.
- Amendments at Third Reading are limited to 'tidying up' points or to fulfil undertakings made at an earlier stage of the bill's passage

## Report Stage

36.1 Immediately after Committee Stage, the chair reports that the committee has passed the bill with or without amendment. If the bill has not been amended in Committee, the peer in charge may then move that the report of the committee "be now received", and a day is arranged for Third Reading without a Report Stage. This rarely happens on government bills, and only by agreement.

36.2 If the bill has been amended in Committee, an order is made for it to be reprinted as amended and the Report Stage is fixed for a subsequent date. Further amendments may be put down.

36.3 Unlike in the Commons, the Lords Report and Third Reading stages are normally taken on separate days. The rule of thumb is that Report Stage will usually take half the number of days the bill was considered in Committee but, again, this is agreed through the usual channels.

36.4 Proceedings on Report are opened by the peer in charge of the bill moving "that this report be now received". Although on rare occasions this question may be debated, it is usually taken formally. Once the motion is agreed the tabled amendments are called in the order in which they are marshalled with the question put on each (if moved) "that this amendment be agreed to". Again, the Legislation Office will produce a 'peer in charge' brief on procedural points for the minister and whip.

36.5 The order in which the amendments are taken can be altered by an order of the House agreed to on a motion which, like the instruction at Committee Stage, is drafted by Parliamentary Counsel on the department's instructions and given to the Government Whips' Office as soon as possible to be tabled.

36.6 The rule that no member of the Lords may speak twice on any question (including the Minister but excluding the mover of an amendment, who has a right to reply) applies on Report Stage as it does on Second and Third Reading.

36.7 Whereas in Committee the whole bill is open to discussion, regardless of whether or not amendments are tabled (because each clause or schedule must be stood part), on Report debate is limited to amendments before the House. Amendments to leave out clauses or schedules are therefore, at this stage, treated as ordinary amendments.

### **Recommittal**

36.8 Very occasionally, the bill may be recommitted (as a whole or in part) to Committee Stage to allow for amendments to be fully discussed under Committee rules, followed by a Report Stage. The late tabling of important or extensive government amendments after Committee stage can lead to recommittal. This can be done at any time between Committee and Third Reading.

### **King's and Prince of Wales' consent**

36.9 King's Prince of Wales' consent is (if required) signified by a Privy Counsellor who is also a Minister (usually the Leader of the House or Government Chief Whip) as soon as the Lord Speaker has read the notice and before Third Reading is moved.

### **Third Reading**

36.10 When the Third Reading is called, the Lord in charge moves "that this bill be now read a third time". When this has been agreed to, further amendments may be moved but only if notice of them has been given not later than the day before that on which they are to be moved. Manuscript amendments are inadmissible on Third Reading.

36.11 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. The overall purpose of the stage is to tidy up the bill. An issue which has been fully debated and voted on or negatived at a previous stage of a bill may not be reopened by an amendment on Third Reading.

### **Legislative consent statement**

36.12 When legislative consent arises and has been refused, or not yet granted by the time of third reading, the Minister is expected to make an oral statement before Third Reading, setting out the efforts that were made to secure consent and the reasons for the disagreement. Such statements are not debatable but issues can be raised on 'Bill Do Now Pass'. See Chapter 14.

### **Privilege amendment**

36.13 It is the privilege of the Commons to control charges on the people and on public funds. Where a bill that starts in the Lords may involve such charges, to avoid infringing this privilege, the House of Lords formally declare that nothing the bill involves such a charge. They do so by means of a 'privilege amendment' on Third Reading, adding a subsection to the end of the bill. The privilege amendment is made via an entry in the minutes of proceedings - the Minister does not have to move or debate an amendment. When the bill transfers to the Commons, the privilege amendment appears in the bill in bold type. An amendment should be tabled to remove it in Committee.

### **Passing**

36.14 The motion "that this bill do now pass" is moved immediately after any amendments on Third Reading have been disposed of. It is usually taken with little or no debate, although it can be used by the minister and others to say a few words of thanks..

36.15 When a bill which starts in the Lords has passed through all its stages there, it is sent to the Commons with a message asking for their agreement and the bill will be introduced in the Commons, normally on the following sitting day. When a bill starting in the Commons has been amended in the Lords, the amendments go back to the Commons for their agreement.

# SECTION F

## FURTHER ACTION AFTER COMPLETING COMMONS AND LORDS STAGES AND AFTER ROYAL ASSENT



# 37. CONSIDERATION OF AMENDMENTS AND 'PING PONG'

## Key points

- Before a bill can become an act both Houses must reach agreement on a single text. Any amendments made by the second House need to be agreed by the House where the bill started. If there is no agreement, the bill enters what is known as 'ping-pong' with further exchanges between the Houses until agreement is reached.
- If no agreement is reached before the end of the session or there is a 'double insistence' (where each House in turn sticks to its previous stance and no alternatives are offered) the bill will fall. Double insistence can be avoided by offering further concessions. Bill teams must take great care that double insistence does not happen by accident because a suitable concession is not offered.
- Government amendments during ping-pong must be collectively agreed, as with amendments at earlier stages of the bill. Given the speed of ping-pong, bill teams and the minister should draw up and agree a ping-pong strategy well in advance.
- On return to the first House, departments must submit explanatory notes on any amendments made in the second House. The explanatory notes should also include detail of the financial effects (if any) of the amendments made in the second House. Explanatory notes are not required for any further exchanges of ping-pong after the bill has been returned to the first House.

## Overview

37.1 Ping-pong only occurs where a bill has been amended in the second House. Ping-pong is more formally known as: Commons Consideration of Lords Amendments (CCLA) or Lords Consideration of Commons Amendments (LCCA), according to the House in which the amendments are being considered. Technically, CCLA is the first stage of ping-pong in the

Commons, with subsequent stages formally called Commons Consideration of Lords Message. However, it is common practice for all Commons stages to be referred to as CCLA.

37.2 During ping-pong only amendments that have been made in the second House are able to be debated. Clauses of the bill that have been agreed by both Houses are no longer under consideration. As ping-pong progresses, and as disagreements between the two Houses are resolved, the number of amendments being debated therefore reduces.

37.3 If the first House agrees to all of the amendments made in the second House, the bill is ready for Royal Assent. If it does not, it returns the bill to the second House with reasons for disagreeing to the amendments and / or with further amendments. This can be followed by further exchanges of ping-pong between the Houses until:

- agreement is reached;
- the session is brought to an end without agreement having been reached; or
- 'double insistence' is reached and the bill is normally lost.

37.4 Ping-pong can involve repeated consideration by both Houses and can become very complicated, given the complex procedural requirements, the time pressure at the end of the session and the political context. Only the most politically contentious of bills are likely to go into protracted ping-pong.

37.5 If there is no agreement by the end of the session, the bill falls. If there is a 'double insistence', where one House insists on an amendment to which the other House has already disagreed and the other House refuses to alter its position ('insists on its disagreement') the bill falls.

### **Ping-pong strategy**

37.6 If there have been any amendments in the Lords which need to be overturned in the Commons or any Commons amendments which are likely to be contentious in the Lords, then the bill team should consider the options and advise ministers on the best way forward well in advance of consideration and ping-pong stages. This should be done in consultation with the Government Whips' Office in both Houses and with Parliamentary Counsel.

37.7 Bill teams must ensure that everybody involved in the bill is absolutely clear about the procedure during ping-pong and understands that concessions may be necessary to avoid double insistence and losing the bill.

- 37.8 Departments must not assume that, if Lords defeats are overturned in the Commons, the Lords will be prepared to accept this with no further attempt to amend the bill. Departments must therefore consider where they would be willing to make concessions in the event of deadlock at this late stage if absolutely pressed and to avoid double insistence.
- 37.9 Just as at earlier stages, ministers must seek collective agreement through the PBL Committee and, where appropriate, a policy committee of Cabinet, for any proposals to table government amendments or accept non-government amendments during consideration and ping-pong.
- 37.10 Given the rate at which the bill may ping-pong between the two Houses, it will not normally be possible to allow the full six working days for the PBL Committee (and the policy committee where necessary) to comment on the proposals but as much time as possible should be allowed, particularly if the bill has already reached this stage before the summer recess. Shortened write rounds must be agreed with the Secretariat before being launched.
- 37.11 Bill teams should also discuss timing of clearance for ping-pong with the PBL Secretariat and the Whips' Office. There are no fixed tabling deadlines for ping-pong, given the speed at which it can progress, but bill teams should table as close as possible to government deadlines wherever possible.
- 37.12 Generally, it is advisable to write in advance seeking collective agreement to make those concessions which they are almost certain they will need to make, and contingent clearance to make further concessions only if absolutely pressed during consideration or ping-pong. This way ministers can consider and agree with their colleagues what they are prepared to concede and under what circumstances, at a slightly more leisurely pace than is possible during ping-pong when decisions will need to be taken extremely quickly.
- 37.13 On return to the first House, departments must ordinarily submit revised explanatory notes on any amendments made in the second House; it is not necessary to prepare a complete set of explanatory notes for the whole bill. An exception may be made if time is particularly tight, for instance during wash-up or the passage of a fast-track bill. Explanatory notes do not need to be revised on return to the second House or at any further stage of ping-pong. The next time they will need to be revised is on Royal Assent.
- 37.14 The details of the ping-pong procedure are set out below; the key message for bill teams to note is that ministers will need to be prepared to offer concessions to avoid losing the bill

through double insistence. This may include policies that they have defended very strongly throughout previous parliamentary stages.

### **Commons Consideration of Lords Amendments**

37.15 Second House amendments are published in a distinct list by reference to the print of the bill as it left the first House. On this list, the amendments will be marshalled and numbered according to the order that they appear in the Bill; the numbering they had on amendment papers at earlier stages in the second House is not continued with. At each stage of ping-pong, the list will be updated to reflect the response of the House that has just considered the bill; any amendments that are agreed to or otherwise resolved will be removed.

37.16 Lords amendments may be considered by the Commons immediately if there is an urgent need for Royal Assent or if the amendments are so minor and technical that they can be considered very quickly. The bill could then pass almost immediately. Usually, however, a later day is fixed for consideration. Bill teams must prepare notes on the Lords amendments for their minister and a more detailed brief for any amendments which may give rise to debate in the Commons.

37.17 Lords amendments altering financial arrangements proposed by the Commons, or otherwise affecting the public finances, may be regarded as engaging the financial privileges of the Commons. This is determined by the Commons Speaker when the Bill returns to the Commons. If an amendment made in the Lords seems likely to engage privilege, the department should seek early advice from Parliamentary Counsel, who may in turn consult the Commons Public Bill Office.

37.18 The Government can invite the Commons to agree to a Lords amendment engaging privilege (referred to as the Commons 'waiving' privilege), provided that it has any necessary cover of a financial resolution. But if the Commons disagree to such an amendment, they have to do so on privilege grounds (embodied in the 'reason' sent to the Lords). By convention, this stops the Lords from insisting on the amendment (although it cannot be relied on to stop them proposing an alternative that also engages privilege). Privilege can be a sensitive issue in the Lords, particularly where financial matters do not actually lie at the heart of the disagreement—it can seem that the Government is using procedural devices to shut down debate. But in truth the Government has no choice about whether privilege is invoked if it wishes to disagree to the Lords amendment.

37.19 Where Lords amendments involve financial matters that are not covered by a previous money or ways and means resolution for the bill, the amendments will automatically be treated as disagreed to on grounds of privilege unless a further resolution covering the amendments is agreed before the amendments are considered (see 25.14-17).

37.20 The Commons have the following options in considering Lords amendments:

- agree;
- disagree (with a reason given for each disagreement);
- agree a Lords amendment but propose an amendment to it;
- disagree to a Lords amendment and propose an amendment or amendments in lieu, or amendments to the words so restored to the bill (if the Lords amendment left words out); or
- agree and propose a new amendment or amendments consequential on a Lords amendment.

37.21 It is for the Commons member in charge (i.e. the bill minister, or in the case of private members' bills, the member) to propose a grouping for Lords amendments. This needs to be agreed with the Whips' Office as grouping of amendments will relate to the programme motion required to manage Commons consideration of Lords amendments.

37.22 Parliamentary Counsel will forward the grouping to the Public Bill Office. Debate is usually initiated by a minister moving a motion to agree or disagree with the lead Lords amendment in a particular group. Exceptionally, if the first Lords amendment in a group has an amendment tabled to it, the first thing to be moved is that amendment. Parliamentary Counsel will draft the motion.

37.23 Amendments can also be 'packaged'. This is where a number of related amendments are grouped together for the purposes of both debate and decision. ('Grouping' in the ordinary sense means that amendments are debated together, but their fate is decided separately.) Parliamentary Counsel will ensure that the motion for debate makes clear to the other House when amendments are 'packaged' and what the links are between different elements of a 'package'. This normally happens only in the later stages of ping-pong. The main significance of packaging is that movement on any part of a package avoids double insistence on any other part—so, if Lords Amendments 1, 2 and 3 all represent a single area of disagreement and are accordingly packaged together, a concession is only needed on one of those amendments to keep the bill alive.

37.24 No notice is required of a motion to agree with the Lords but notice is required for amendments to the Lords amendments, amendments in lieu of those Lords amendments and consequential amendments to the bill and notice is expected of a motion to disagree with the Lords. This is analogous with clause stand part debates in Committee, when the Government gives notice if it intends to leave out particular clauses but not if it intends to leave them in the bill.

37.25 If the Commons disagree with a Lords amendment and do not offer an alternative, a committee (with a government majority and including the bill minister) is appointed to draw up 'reasons for disagreement', immediately after all the Lords amendments have been considered. The Whips arrange that the names of the committee be notified in advance to the Public Bill Office, which arranges for the appropriate motion to be available to be moved by a whip. Parliamentary Counsel will draft the reasons and agree them with the department.

37.26 The appointed committee, together with Parliamentary Counsel and the clerk, withdraw immediately to the 'Reasons Room' off the lobby at the back of the Speaker's chair.

37.27 When the bill returns to the second House this is called 'Lords Consideration of Commons Reasons (or Amendments or both)'.

37.28 The Lords have the following options in considering the Commons disagreement with Lords amendments:

- not insist on their amendment;
- not insist on their amendment but propose a different amendment in lieu;
- insist on their amendment (unless it was disagreed for reason of financial privilege);  
or
- make further amendments in regard to any of the amendments disagreed by the Commons.

37.29 The bill formally moves between the two Houses via a 'message' that indicates the response of the House that has just considered the bill. Motions on Lords/Commons amendments cannot be tabled until the message arrives in the receiving House. If the content of the message is unexpected, bill teams must very quickly advise their minister on the options open to them, bearing in mind the need to avoid double insistence. Once a course of action is agreed, bill teams must prepare any notes or briefing the minister or peer in charge will need for the next stage. In the Commons, if it is known in advance that a 'reason for disagreement' will be required, Parliamentary Counsel will prepare a draft for the minister to approve. These

'reasons' are as brief as possible and do not seek to argue the case in detail; in recent years they have tended to indicate the grounds for disagreement in a succinct way.

37.30 The process continues until such time as agreement is reached or it becomes clear no agreement is possible, or there is 'double insistence'. 'Insist' in this context is a technical term with a precise meaning. If one House insists on an amendment to which the other has already disagreed, and the other House then insists on its previous disagreement (i.e. disagrees a second time), without offering anything new on that amendment (or in that package – see above), the bill is lost.

37.31 To avoid this, where the Lords insist on an amendment to which the Commons have disagreed, the Government has to offer some sort of concession to keep the bill alive. A concession has to be substantive (so not merely verbal)—Parliamentary Counsel may have to consult the Public Bill Office on what will be enough in the particular context. As noted above, the 'packaging' of different but related amendments is another possible means of avoiding double insistence (although a concession will still be needed for each package).

### **Lords Consideration of Commons Amendments**

37.32 Lords Consideration of Commons Amendments works in much the same way. All of the above could be read substituting "Commons" for "Lords" and vice versa, with the following differences:

37.33 Groupings are arranged by the Lords Whips' Office.

37.34 It is open to the Lords to 'unpackage' amendments for the purposes of debate.

37.35 In the Lords, where there are large numbers of Commons amendments it is often sensible to move them en bloc but this can only be done if the amendments are consecutive, no counter-propositions have been tabled and with the leave of the House (i.e. in the absence of objection when leave is asked for).

37.36 The Lords no longer appoint reasons committees. When the Lords disagree with a Commons proposition without proposing an alternative, a standard reason ('because the Lords wish the Commons to consider the matter again') is given.

### **Parliament Acts 1911 and 1949**

37.37 Where no agreement is reached between the two Houses, it is possible for a bill that started in the Commons to be enacted later under the Parliament Acts of 1911 and 1949,

which make provision for presenting a bill for Royal Assent without the concurrence of the House of Lords. The Parliament Act can only be used for bills first introduced in the Commons.

37.38 In the case of money bills within the terms of section 1 of the 1911 Act, the bill may be presented for Royal Assent a month after it has been sent to the Lords, disregarding either the failure of the Lords to pass such a bill or any amendments they propose. For this reason, such bills are not usually amended or subject to extended proceedings in the Lords. The definition of a 'money bill' for these purposes is narrow and is set out in section 1(2) of the 1911 Act. Parliamentary Counsel will be able to advise on its application in specific cases; the decision is made by the Speaker as the bill leaves the Commons. No bill has ever been passed under section 1 of the 1911 Act.

37.39 In the case of bills other than money bills, this involves reintroducing the bill in the Commons in the next session and allowing a year to pass between Commons Second Reading in the first of the two sessions and Commons Third Reading in the second of the two sessions. The bill must be sent to the Lords in the second of the two sessions in the same form as sent up in the first of the two sessions, except that it may contain alterations necessary owing to the elapse of time and may include any amendments made in the Lords in the first session. The Commons may 'suggest' further amendments for the Lords' consideration. If the bill is again rejected by the Lords (or passed with amendments unacceptable to the Commons) it is automatically presented for Royal Assent notwithstanding the Lords' disagreement, unless the Commons directs to the contrary. The provision only applies if, in each session, the bill was sent to the Lords at least a month before the end of the session.

37.40 The procedure is a rarity and a last resort. The procedures which apply, particularly in the case of suggested amendments, are somewhat uncertain, and advice should be sought from Parliamentary Counsel. Departments should also consider the wider handling implications. The Parliament Act procedures can be used only in the session immediately following that in which the bill fell; a bill reintroduced in a subsequent session must follow the normal process.



# 38. ROYAL ASSENT AND COMMENCEMENT

## Key points

- Royal Assent is announced throughout the session by notification from the Speaker of each House or at prorogation by commissioners.
- The proof prints of the Act will need to be checked carefully by Parliamentary Counsel and the bill team.
- Where the text of an Act needs to be made available urgently, the bill team should notify Parliamentary Counsel and Legislation Services, who will ensure that the Lords Public Bill Office gives priority to provision of the final approved text of the act and that this is made available on [www.legislation.gov.uk](http://www.legislation.gov.uk) as soon as it is ready.
- The bill team should send the final explanatory notes (updated to reflect any substantive changes to the bill through amendment at Consideration or ping-pong) to Legislation Services for formatting and publishing alongside the text of the act or as soon as possible thereafter.
- Unless the Act states otherwise it commences (comes into operation) on the date of Royal Assent.

## Royal Assent

38.1 When a bill has been passed by both Houses and any amendments have been agreed to, it is ready to receive Royal Assent. For bills which complete their parliamentary passage right at the end of the session, Royal Assent will be communicated at prorogation (the end of the session) by the commissioners who are commissioned to prorogue Parliament and declare Royal Assent for those bills on behalf of The King.

38.2 For bills which complete their parliamentary passage earlier on in the session, Royal Assent is notified to each House by its Speaker. The two Houses are normally notified on the same day but not necessarily at the same time. Royal Assent is effective when the second of the two Houses is notified.

38.3 Royal Assent by notification is given at intervals throughout the session but The King should not be asked to give Royal Assent too frequently so a bill that has completed its passage may have to wait until a suitable date (for example, when other bills have also completed passage) before receiving Royal Assent.

38.4 It is possible to make a request through the Government Whips' Office in the Lords for Royal Assent to be notified on a particular date if the occasion is important enough and the timing is reasonable but no guarantees can be given that this will be possible. This is different from requests for Royal Assent before a particular deadline. These latter requests must be made when bidding for a slot in the legislative programme, and must be agreed to by the PBL Committee. Such requests should only be made where absolutely necessary, and should be made as early as possible to allow Business Managers to plan business accordingly if the request is sufficiently pressing.

38.5 When a bill receives Royal Assent, it becomes an Act.

### **Proof prints of Acts**

38.6 The Lords Public Bill Office is responsible for the correctness of prints of Acts and will send the proof prints of the Act to Parliamentary Counsel. Proofs should be carefully checked by Parliamentary Counsel and the bill team. The Public Bill Office should be informed through Parliamentary Counsel at an early stage if a large number of proofs are required. Corrections to these proofs should be channelled through Parliamentary Counsel.

38.7 Once any corrections have been made, the Act is printed and published, with the date of Royal Assent included after the long title. The act will be published on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website in PDF format immediately after the approved text has been received from the Lords Public Bill Office and in HTML format at the same time as the printed copy is made available.

38.8 If any provisions of the bill are to take practical effect immediately or soon after Royal Assent or if there are other reasons why it should be given priority over other bills for early printing / publication on enactment, the department should let Parliamentary Counsel and Legislation Services know as early as possible. Where appropriate the Public Bill Office will prioritise the proof prints and Legislation Services will arrange to expedite printing on receipt of the approved text.

38.9 Where an act cannot be published before it takes practical effect, the department should seek to disseminate the final text of the relevant sections to those most interested, or their representatives.

### **Finalising the explanatory notes**

38.10 On completion of parliamentary passage, the explanatory notes (including any transposition notes) must be updated to reflect any substantive changes to the bill at Consideration or ping-pong. Irrespective of any amendments, certain other changes must be made as well see Chapter 10 for more information. It is the bill team's responsibility to finalise the explanatory notes and then send them to The National Archives (contact details at Appendix B) for formatting and publishing alongside the text of the act, or as soon as possible thereafter.

38.11 Rather than publishing the final act and explanatory notes on their own website, departments should provide a link to the documents on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website as these are the official documents that will be updated with any necessary changes in future.

### **Commencement of Acts**

38.12 Unless the Act states otherwise, it commences (comes into operation) on the date of Royal Assent. Details on commencement provisions and consent for early commencement can be found earlier in this guide.

38.13 Where the provisions have an impact on business and civil society organisations, they should be commenced on one of the two annual 'common commencement dates' (6 April and 1 October). For more information speak to your departmental Better Regulation Unit. .

38.14 Officials responsible for the implementation of different parts of an Act will need to work together to ensure that, where provisions are to be brought into operation by commencement order, the number of orders made and commencement dates specified should be kept to a minimum. For example, if specific sections of an Act are to be commenced by Welsh Government ministers, then the responsible department should work closely with Welsh Government counterparts to coordinate commencement in Wales with commencement in England.

# 39. FURTHER ACTION AFTER ROYAL ASSENT

## Key points

- Royal Assent is not the end of a bill team's work. There is much to do post-Royal Assent, so it is important to retain sufficient resource on the bill team, and to make preparations for post-Royal Assent tasks at an earlier stage.
- Secondary legislation may need to be prepared and laid before Parliament. The bill team should work with their parliamentary teams to input into the central secondary legislation triage process.
- Where new legislation has a significant impact on business or civil society, the Government has committed to publishing guidance 12 weeks before regulations come into effect, and, where appropriate and reasonable, publishing this guidance in draft during the bill's passage.
- The bill team will need to review and update the impact assessment, reflecting any amendments that were made during the passage of the bill.
- Other forms of guidance and publicity may also be needed.
- The bill team will need to make provisions for the filing of bill papers after Royal Assent by keeping papers in order during the bill's passage.

## Overview

39.1 Resource pressures within departments often lead to bill teams being disbanded rapidly after Royal Assent. This is unfortunate, as much work remains to be done and is often better done by bill team members who are familiar with the bill than by policy colleagues who have not been so closely involved with the bill (and for whom this work may be of lesser priority).

## Secondary legislation

39.2 Any statutory instruments will be drafted by the legal adviser on instructions given by the policy team and will be subject to such parliamentary procedures as have been provided for in the Act. Frequently, draft statutory instruments will have been published during the bill's passage through Parliament.

39.3 Guidance on preparing secondary legislation can be found in the Statutory Instrument Practice [guidance](#), copies of which should be held by departmental parliamentary branches or legal advisers. It is one of the tasks of the Office of the Parliamentary Counsel to vet any subordinate legislation which amends primary legislation. It may also be possible to make arrangements with the Office of the Parliamentary Counsel concerning other subordinate legislation to be made under an act, for instance where there are particularly complicated transitional provisions. Initial contact on such issues should be made with the team leader within the Office of the Parliamentary Counsel responsible for the department.

## Guidance

39.4 Where new legislation has a significant impact on business or civil society, the Government has committed to publishing guidance 12 weeks before regulations come into effect. Departments should strive to meet this commitment wherever possible, as absence of timely and good quality guidance may result in extra costs for business and civil society, for example, seeking professional advice about what to do in order to comply with the new law. Production of guidance should be factored into the bill team's delivery plan.

39.5 Guidance should not simply repeat the material already available in the explanatory notes although some material from the explanatory notes may be relevant. The aim of guidance is to give external organisations a clear idea of how the new law will affect them and what they need to do in order to comply with it. Unlike the explanatory notes, it does not need to cover the entire Act, but only those parts which are likely to have an impact on external organisations. For further advice on preparing guidance, contact your departmental Better Regulation Unit.

39.6 Where the new legislation is likely to have a particularly significant impact on external organisations, it is good practice, where appropriate and reasonable, to publish guidance in draft during the bill's passage. Draft guidance will help business, the voluntary, community and

social enterprise sector and MPs and peers to better understand the impact on business and civil society, thus assisting proper parliamentary scrutiny. It will also give business and civil society more time to make any adjustments necessary for when the Act comes into force. However, before publishing any draft guidance, departments should carefully consider the degree to which the draft guidance is subject to change as a result of parliamentary scrutiny or any other means. To avoid issuing conflicting or confusing messages about what is required to comply with the new legislation, draft guidance should not be published until there is a reasonable degree of certainty about the final form of the bill.

39.7 Publication of draft or final implementation guidance will not normally require clearance by the PBL Committee, but may require clearance through the relevant policy Cabinet committee. The PBL Secretariat can advise whether collective agreement is needed. Even if formal clearance is not required, bill teams should ensure that they consult with other government departments as appropriate.

39.8 Where guidance has been published in draft it should normally be reissued after Royal Assent with any revisions necessary to reflect amendments made to the bill during its passage. However, where the bill has not been significantly amended it may be sufficient to remind interested parties of the existence of the material provided earlier.

39.9 Guidance may include notes for practicing solicitors, accountants and others who advise the public.

39.10 All guidance should be available in a range of formats that are accessible, as appropriate and reasonable, e.g. departmental websites (as well as local authority websites if appropriate), leaflets etc. To ensure high levels of market penetration, guidance should also be published on or linked to the HMRC website and any wider publicity (see below) should draw attention to the guidance.

39.11 Guidance or instructions may also need to be issued within government itself, for example to ensure that other interested departments receive up-to-date copies of any transposition notes.

## Publicity

39.12 Press or information officers will normally look after publicity about the passing of the bill but they will need the advice of the bill team about press notices. Some Acts may result in a flood of enquiries to the press office in which case they will need to have good working arrangements with the bill team. If the minister is holding a press conference on the new Act, a brief will be needed or perhaps notes on the main questions likely to be asked, and someone from the bill team should attend. Press advertisements as well as a press notice may be required.

## Leaflets

39.13 It may be appropriate to publish a leaflet to explain the Act to members of the public whose rights or duties may be extended or diminished. All leaflets should be checked by the legal adviser for accuracy, but the design and language of the leaflet is often best undertaken by specialist editorial / design staff.

## Circulars

39.14 Statutory and other bodies may be directly affected by the Act and circulars may be needed explaining it and drawing their attention to any action they should take or prepare to take as a result. The aim should be to send out such circulars by the time the Act becomes effective and particularly by an appointed day.

## Forms

39.15 Forms may have to be designed for completion either on behalf of statutory or other bodies or by members of the public. The difficulty of designing them so that they cover all necessary points without becoming unintelligible or impossibly cumbersome is notorious and it will be advisable to involve design specialists at an early stage. Guidance should be sought from experts within departments or from Government Communications in the Cabinet Office. All government forms should be pre-tested with a representative sample of users before being issued and all forms to be sent to businesses should be cleared with the 'departmental forms gatekeeper'.

## Registration and custody of bill papers

39.16 Every department will have its own system for filing bill papers. Their importance will be obvious in preparing later legislation on the same subject, in the administration of the Act and during post-legislative scrutiny: for all Acts gaining Royal Assent since 2005, the department responsible for implementing the legislation must, three to five years after Royal Assent, submit a memorandum to the relevant select committee setting out how the Act has worked out in practice and whether its objectives have been achieved. This will allow the select committee to decide whether to carry out fuller post-legislative scrutiny. The objectives will be as set out in the explanatory notes, impact assessment and any ministerial statements made to Parliament during passage of the bill. Further information on post-legislative scrutiny is set out in Chapter 40.

39.17 The difficulty of keeping papers in order during the critical phases of the legislative process is obvious, and sometimes impossible, but busy periods are usually followed by relatively easier ones when a member of the bill team should be responsible for gathering together and filing the last batch of important papers. A useful working rule is that all incoming original documents should be directed to one focal point in the bill team. They should, in particular, not remain with the legal adviser.

39.18 Bill papers start at the moment when legislative proposals are endorsed by the minister and finish with the record of Royal Assent.

## Conducting a lessons learnt exercise

39.19 Because bills are finite projects, the officials and lawyers working on a bill often move onto new projects but it is important that the department capitalises on the experience of officials, lawyers and ministers so future bill teams can learn lessons and avoid previous mistakes.

39.20 After taking forward a bill, departments should conduct a lessons learnt exercise to evaluate how the department handled the legislation, in particular: to identify what worked well, where processes could have worked better, and examples of best practice. This evaluation should be produced for dissemination within the department so that future bill teams can build upon the experiences of legislation previously taken forward by the department. Ideally the evaluation should be carried out as soon as possible after Royal Assent, before members of the bill team move onto new posts.



39.21 The PBL Secretariat and the Office of Parliamentary Counsel conduct a regular lessons learnt exercise looking at themes across the legislative programme. Departments may wish to follow the model used for this exercise, where feedback is sought from the bill ministers, the bill team, officials from the Business Managers' offices, departmental lawyers and Parliamentary Counsel. This is then compiled into a short report identifying key lessons for each stage of the process; from instructions to Royal Assent. The PBL Secretariat can provide advice on how to conduct a lessons learnt exercise.

# 40. POST-LEGISLATIVE SCRUTINY

## Key points

- Three to five years (normally) after Royal Assent, the responsible department must submit a memorandum to the relevant Commons departmental select committee (unless it has been agreed with the committee that a memorandum is not required), published as a command paper.
- Responsible departments should draw up a timetable for producing a memorandum to meet the three to five-year deadline, taking into account other review processes (including any statutory reviews required under sunseting regulations policy and post-implementation reviews).
- The memorandum will include a preliminary assessment of how the Act has worked in practice, relative to objectives and benchmarks identified during the passage of the bill and in the supporting documentation.
- The select committee (or potentially another committee) will then decide whether it wishes to conduct a fuller post-legislative inquiry into the Act.
- When preparing new legislation, departments should take into account the commitment that, taken together, the impact assessment, explanatory notes and other statements made during the passage of a bill should give sufficient indication of the bill's objectives to allow any post-legislative reviewing body to make an effective assessment as to how an Act is working in practice.

## Post-legislative scrutiny: Background

40.1 Post-legislative scrutiny of Acts complements, but does not replace any of the existing processes for post-legislative scrutiny and review. Departments will therefore need to adhere to any obligations to consider Acts post-implementation, in addition to conducting post-legislative scrutiny. Existing processes for post-legislative scrutiny and review include:

- at the instigation of the department through the post-implementation review impact assessment process;

- a review carried out in order to satisfy a statutory review obligation, for example as may be required under the [Government's Sunsetting Regulations: Guidance](#).
- examination by a parliamentary committee choosing to conduct an inquiry into the operation of an Act; and,
- examination by a parliamentary committee where the operation of an Act is integral to some other inquiry the committee is conducting.

40.2 Post-legislative scrutiny was introduced to respond to calls that once an Act has received Royal Assent insufficient attention was paid to whether it had been well implemented (or implemented at all), its actual effect and impact. Together with other initiatives it promotes a more systematic approach with government working with Parliament in an area that has been recognised as a relative weakness in the legislative process. It should benefit government by:

- improving the preparation of bills, by focusing attention on likely implementation difficulties;
- helping to identify problems with the implementation of Acts earlier or more systematically; and,
- allowing lessons (both about what has worked well and what has not worked well) to be learnt and disseminated to the benefit of other legislation, and significant achievements to be identified and highlighted.
- At the same time, the intention is to ensure that such scrutiny is proportionate to need. While some degree of scrutiny will be required for each Act - this may just be an initial assessment of the legislation that informs a discussion with a parliamentary committee - it is not envisaged that there should be a full in-depth review of every Act.

### **Other processes for the review of Acts within government**

40.3 Post-enactment review work within government will remain important and departments should continue to carry out whichever of the following may be appropriate:

- internal reviews (or reviews commissioned from an outside body) of all or part of an Act and its operation, as part of a department's general policy responsibilities. Where appropriate the Government would expect such internal reviews to be published;
- post-implementation reviews as required by the process set out in the impact assessment; or

- any review required by the provisions of the Act as passed, including a statutory review clause introduced under the sunseting regulations policy.

### **The system for supporting parliamentary review of Acts**

40.4 The central commitment under post-legislative scrutiny is that the responsible department will, within the period three to five years after an Act has received Royal Assent, submit to the relevant Commons departmental select committee a memorandum reporting on certain key elements of the Act's implementation and operation. At the same time, copies will need to be sent to key stakeholders. Further information on who should the memorandum should be submitted to is under the heading 'Clearance processes' below.

40.5 Exceptions and variations to this rule are listed below, but the objective is to ensure that in all appropriate cases the relevant select committee, facilitated by information provided by the department on the basis of an initial assessment of the Act, can give systematic consideration as to whether it would be appropriate for a fuller review to be carried out.

40.6 The relevant government department in each case is the department responsible for the Act at the time a memorandum is to be submitted or discussed with the relevant committee, irrespective of whether it was the responsible department at the time the Act was passed.

40.7 The relevant committee will be the department's normal departmental select committee (for the Cabinet Office, this is the Public Administration and Constitutional Affairs Select Committee). If there is any doubt as to which is the appropriate select committee, departments should seek advice from the Cabinet Office Parliamentary Adviser and PBL Secretariat.

40.8 In each session since 2012 there has been a Lords Special Inquiry Committee (previously called an ad hoc committee) appointed to carry out post-legislative scrutiny on specific Acts. The Lords Liaison Committee selects the Act (or Acts) to be scrutinised on an ad hoc basis, and in due course a select committee is established.

40.9 The process applies to most government bills that reach Royal Assent (see the list of exceptions below). It also applies to private members' bills that receive Royal Assent since such Acts form part of the body of primary legislation for which departments are responsible.

40.10 If a department plans to submit a memorandum within three to five years after Royal Assent as required, there is no particular need to discuss it with the select committee beforehand, although if the memorandum is to be submitted towards the end of the five-year limit, the committee might contact the department earlier to ascertain its plans. Where the

department plans to submit a memorandum on a different timescale or not to submit a memorandum at all, it must contact the committee as described below.

40.11 Memoranda need not be submitted (nor will it be necessary for the department to contact the committee to explain why no memorandum is being submitted) for the following categories of Acts:

- Consolidated fund and appropriation Acts;
- Finance Acts;
- Tax law rewrite Acts;
- Consolidation Acts;
- Statute law repeal Acts;
- Private Acts; and,
- Armed forces Acts.

40.12 There will be other occasions where the department and committee can agree that no memorandum is required. Departments will need to agree this with the relevant parliamentary committee. Examples where departments may wish to consider proposing this might include where:

- an Act has already been repealed (without having been consolidated);
- an Act has only a very limited policy or practical significance;
- a review has already been committed to or carried out (e.g. following a pilot); or
- a department has already submitted relevant evidence in connection with another inquiry by the parliamentary committee.

40.13 This is not an exhaustive list of cases where a memorandum might be considered unnecessary and there may be other situations in which a department wishes to propose this. Equally there may be cases within this list where a memorandum is still appropriate. Non-submission of a memorandum would be the exception and the department will need to make its case to the committee, and inform the PBL Secretariat of its intention to do so.

40.14 Where the relevant Commons departmental select committee agrees that a memorandum is not required, this does not preclude any other parliamentary committee (in the Commons or

Lords) with a legitimate interest requesting a memorandum from the department under their existing powers. If another committee has requested a memorandum, departments should inform the PBL Secretariat.

40.15 There will also be cases where a department considers that it would be more appropriate to submit a memorandum outside the three to five-year post-Royal Assent timeframe, for example where:

- the principal provisions of the Act were not brought into force until sometime after Royal Assent (but it may of course be that a delay in bringing the Act into force is itself a matter of key interest for post-legislative scrutiny); or
- some outside event (whether envisaged in the Act itself or unforeseen) or ongoing scrutiny means that a different timescale is appropriate.

40.16 In these or any other circumstances it considers appropriate, a department is free to propose to the relevant committee that the memorandum be submitted later than five (or earlier than three) years after Royal Assent. It will be for the department to make the case to the committee (remembering that the select committee would anyway be free to ask the department for a memorandum at any time, even without these new arrangements).

40.17 The timing of ‘three to five years’ runs from the actual date of Royal Assent rather than the calendar year (though in practice committees may be unlikely to be unduly concerned about precise dates).

### **Contents of memorandum for committee**

40.18 The memorandum itself will not constitute full post-legislative scrutiny of the Act but it should be sufficient to allow the relevant select committee, or other parliamentary bodies, to decide whether fuller post-legislative scrutiny would be appropriate. These are minimum requirements rather than limitations on what a department may wish to include in a memorandum.

Points from memorandum	Comment / guidance
a) Summary of the objectives of the Act	Drawn from documentation and commitments made at the time of the passage of the bill, but memorandum will provide an opportunity for reference to any changed context which might in practice have altered these objectives
(b) <b>Implementation:</b> information on when and how different provisions of the Act had been brought into operation. Information highlighting any provisions which had not been brought into force, or enabling powers not used, and explaining why not	Largely factual information, save for the explanation of why any provisions have not (yet) been brought into force or enabling powers not used
(c) <b>Secondary legislation etc.:</b> a brief description or list of the associated delegated legislation, guidance documents or other relevant material prepared or issued in connection with the Act	A comprehensive summary of secondary legislation and other documents issued in connection with the Act. If necessary or appropriate it need only be in list form, but should at least include dates of issue and a headline indication of the purpose or scope of each document (it may overlap with information given under the previous heading)
(d) <b>Legal issues:</b> an indication of any specific legal or drafting difficulties which had been matters of public concern (e.g. issues which had been the subject of actual litigation or of comment from parliamentary committees) and had been addressed	Opportunity to summarise any legal issues which have arisen publicly, either in the courts or elsewhere, and the response
(e) <b>Other reviews:</b> A summary of any other known post-legislative reviews or	Information should be included on any other assessments or reviews of the Act of which the department is aware. These might be governmental, parliamentary (including National

Points from memorandum	Comment / guidance
assessments of the Act conducted in government, by Parliament or elsewhere	Audit Office reports) or from other sources such as academic studies (in some cases the existing studies may have led the committee to agree that no new memorandum was required)
(f) <b>Preliminary assessment of the Act:</b> A short preliminary assessment of how the Act has worked in practice, relative to objectives and benchmarks referred to in point (a) above, and drawing on data and evidence to show implementation in practice, and identifying stakeholders impacted by the Act's provisions	Not in itself a full post-legislative scrutiny of the Act, though it should be sufficient for a parliamentary committee to assess whether such scrutiny is needed

40.19 For examples of previous memoranda, contact the PBL Secretariat.

### Summary of the objectives of the Act

40.20 The objectives of the Act will have been set out in the explanatory notes to the Act and any impact assessment published alongside the bill, but also in any accompanying ministerial statements (for example in Parliament). Taken together, these documents should provide sufficient information to allow any post-legislative reviewing body to make an effective assessment as to how an Act is working out in practice. Preparation of these documents at the time of the bill should take the Government's commitment on post-legislative scrutiny into account.

### Preliminary assessment of the Act

40.21 This is the core of the memorandum. As well as setting out its preliminary assessment, the department may wish to include such information as lessons learned, whether in relation to policy or administration (e.g. IT systems), any cost-benefit information or any ongoing parliamentary scrutiny such as oral statements, Westminster Hall debates or parliamentary questions. It is not envisaged that preparation of this part of the memorandum should, unless the department so wishes, include new, in-depth investigation, however, departments may want to talk to internal and external stakeholders to understand if the legislation is working for



them. Departments should always consult with Parliamentary Counsel before preparing the memorandum.

40.22 As stated above, the memorandum is not in itself a full review of the Act and the work involved is intended to be proportionate to need. Where applicable, to avoid duplication, the memorandum could refer to or make direct use of any other reviews or assessment of the Act of which the department is aware, annexing those documents to the memorandum.

### **Delegated legislation**

40.23 Post-legislative scrutiny applies only to primary legislation. However individual statutory instruments may be subject to their own statutory review obligation, or a separate post-implementation review under the impact assessment process. The memorandum submitted in respect of an Act should list the associated delegated legislation, summarising the implementation history of the Act, and the preliminary assessment of the Act would cover how the principal delegated legislation under the Act has worked in practice.

40.24 Any Northern Ireland policing and criminal justice legislation made by Order in Council should be treated in the same way as Acts but since such legislation generally follows directly from equivalent England and Wales legislation it should be considered in the context of that legislation rather than on its own. There would need to be appropriate consultation between the Northern Ireland Office and the relevant UK government department, and between the Northern Ireland Affairs Committee and other relevant departmental select committees.

### **Format and publication of the memorandum**

40.25 The memorandum must be published as a command paper. This is intended to make clear the significance of the post-legislative scrutiny process. It will also help to make the contents of the memorandum readily available to all interested parties, not just the Commons select committee to which it is submitted.

40.26 The command paper should make clear, in any introduction or preface, that it is being published as part of the post-legislative scrutiny process set out in Cm 7320, and be clearly entitled in such a way as to indicate this (for example 'XX Act 2005: post-legislative assessment'). It should also indicate clearly the Commons departmental select committee to which it is being submitted in the first instance.

40.27 Subject to this, there is no specific template which departments should follow, since the circumstances and nature of each Act will be different, and for some Acts the memorandum

will be quite short. Departments might find it helpful to use the headings indicated in the summary above, but are free to use a layout which is appropriate for their particular Act and may wish to include other information not specifically included under these headings.

## Clearance processes

40.28 A memorandum will not usually include new policy announcements and will not routinely require any collective clearance through the Cabinet committee process. In particular, there is no need for the memorandum to be approved by the PBL Committee. If it does contain significant new policy announcements or other relevant information then these should be collectively agreed in the normal way.

40.29 For all memoranda, departments should submit a copy of the memorandum to individuals listed below. This should happen 6 days before formal publication, 9 days if in recess. Once the memorandum has been published, departments should confirm with the same list of individuals that the memorandum had been published. The memorandum should be submitted to:

- The relevant Commons select committee, and the Managing Director of the Select Committee Team;
- The Private Offices of the Leader of the House of Commons, Leader of the House of Lords, Chief Whip (Commons) and Chief Whip (Lords);
- PBL Secretariat;
- Cabinet Office Parliamentary Adviser;
- Office of the Parliamentary Counsel;
- Private secretary in the Prime Minister's Office responsible for the legislation;
- Cabinet Secretariat desk officer responsible for the legislation; and
- Lords Liaison Committee, copied to their central mailbox, their clerk, and the Clerk of Committees.

40.30 These should be sent six working days before publication (nine during recess). It is not necessary to wait for responses before publication. Contact details for all on the copy list can be obtained from the PBL Secretariat.

40.31 Departments are free to discuss the drafting of any memorandum with the Cabinet Office Parliamentary Adviser and the PBL Secretariat beforehand.

### **Further review by Parliament**

40.32 Following consideration of a memorandum, the Commons departmental select committee may decide that a fuller post-legislative scrutiny of the Act is appropriate. Such an inquiry would be carried out by the select committee in the same way as other select committee inquiries. The committee may well ask the department for a fuller paper to inform its inquiry, in which case the department would be expected to respond according to the normal principles for requests for evidence from select committees. Where the Commons select committee does not instigate a fuller inquiry, the memorandum might be taken up by another interested parliamentary committee, of either House.

40.33 It can reasonably be expected that if a departmental select committee takes up a particular Act (and associated memorandum) for further examination then other committees would not normally seek to duplicate this work. This is subject to the normal principles for resolving overlap between select committees (i.e. that different committees may agree amongst themselves that there is a legitimate role for more than one committee to look at a subject) and to the powers and role of the House of Lords and its committees. For example, it would be open to committees or other interests in either House to propose the establishment of a joint committee to conduct a fuller post-legislative scrutiny of an Act, and any such proposal would be considered. The Lords Liaison Committee will also select Acts on an ad hoc basis for post-legislative scrutiny.

## SECTION G

# OTHER TYPES OF GOVERNMENT BILL

# 41. HYBRID BILLS

## Key points

- A hybrid bill is a public bill which affects a particular private interest in a manner different from the private interests of other persons or bodies in the same category or class.
- The changes to the law proposed by a hybrid bill affect the general public but also have a significant impact on the private interests of specific individuals or bodies.
- Hybrid bills therefore have to go through some of the stages of a private bill, including select committee hearing of petitions against the bill after Second Reading. Generally the procedure is longer and more expensive (parliamentary agents have to be engaged by the department), so hybrid bills are best avoided wherever possible.
- Departments should indicate the possible hybridity of a bill when making a bid for a slot in the programme.

## What is a hybrid bill?

41.1 A public bill which affects a particular private interest in a manner different from the private interests of other persons or bodies in the same category or class is called a hybrid bill and is subject to a special procedure which includes some of the steps applicable to private bills. This means that it generally takes far longer to complete its parliamentary process than an ordinary public bill, and the procedure is more complex. Such bills are best avoided, if at all possible.

41.2 Recent examples of Acts resulting from hybrid bills are the Channel Tunnel Rail Link Act 1996 (first introduced in November 1994 and received Royal Assent in December 1996), the Crossrail Act 2008 (first introduced in February 2005 and received Royal Assent in January 2008), the High Speed Rail (London - West Midlands) Act 2017 (first introduced in November 2013 and received Royal Assent in February 2017) and the High Speed Rail (West Midlands - Crewe) Act 2021 (first introduced in July 2017 and received Royal Assent in February 2021).

41.3 “Private interest” is wide enough to cover not only the interests of a purely private person or body (such as an individual or company) but also, for example, the interest a local authority has in the administration of its area. A bill may also be regarded as hybrid if it affects a named

geographical area outside London (London is often viewed as a special case) and also affects private interests. A bill that singles out a particular person or body for favourable treatment is not normally regarded as hybrid so long as others in the same category or class are not thereby prejudiced. These are, however, only rough guides to hybridity. If there is a possibility of a bill being regarded as hybrid, it is essential for the matter to be checked with Parliamentary Counsel, who will consult the authorities of both Houses. The ultimate decision on whether a bill is hybrid lies with the House authorities.

41.4 The fact that a provision of a bill makes, or may make, the bill hybrid should be indicated when the bill is put forward for a place in the legislative programme. The degree and nature of the opposition which such a bill might be expected to arouse from the interests affected would be an important consideration in most cases. On both points it will be for the bill team to advise the minister on this as accurately as possible. Consultation should assist in this and, in some cases, help avoid or reduce opposition.

41.5 It is obviously desirable to determine whether a bill will be hybrid as early as possible, though the House authorities may not be able to form a clear view until the provisions in question have been drafted. If it becomes clear during drafting that a particular provision that is not critical to the bill would make it hybrid, and cannot be redrafted so as to avoid hybridity, the presumption should be to remove the provision from the bill.

41.6 Given the procedural complications and the extra time a hybrid bill will require, it is absolutely essential that any hybrid bill is introduced right at the start of the session. However a hybrid bill may be carried over from one session to the next, like a private bill, and even from one Parliament to the next (as with the Crossrail Bill and the High Speed Rail (West Midlands - Crewe) Bill).

### **Decision on hybridity**

41.7 Parliament's formal decisions on hybrid bills are taken in several stages. These are set out below.

41.8 The Public Bill Office of the House in which the bill is introduced may consider that, *prima facie*, some of the standing orders relating to private business may be applicable; if so the House will refer the bill to the Examiners of Petitions for Private Bills (officers of the two Houses). It is the Examiners who decide whether these standing orders do apply (in other words, to decide whether the bill is *in fact* hybrid).

41.9 The Examiners may decide that:

- the standing orders relating to private business do not apply to the bill, in which case the bill proceeds as an ordinary public bill; or
- the standing orders do apply to the bill, in which case the bill proceeds as a hybrid bill.

41.10 The next step depends on whether the Examiners decide that the standing orders relating to private business have been complied with. The Examiners may decide that:

- the standing orders have not been complied with, in which case the bill is referred to the Standing Orders Committee for a decision whether the standing orders not complied with should be dispensed with; or
- the standing orders have been complied with, in which case the bill proceeds to Second Reading and, after that, the bill is committed to a select committee as a hybrid bill.

41.11 Where a bill is referred to a Standing Orders Committee the Committee may decide that:

- the standing orders should be dispensed with, in which case the bill proceeds to Second Reading and, after that, the bill is committed to a select committee as a hybrid bill; or
- the standing orders should not be dispensed with, in which case no further proceedings on the bill can take place.

41.12 The steps to be taken in order to comply with the standing orders will vary from bill to bill but usually there will be a need for advertisements in the press, serving of notices on affected persons and depositing of plans and of copies of the bill. All this can take weeks to complete.

41.13 These steps, and proceedings before the Examiners and in select committee, are dealt with on behalf of the department by a parliamentary agent (a member of a firm of specialist private solicitors). The legal adviser will consult the parliamentary agent at an early stage about the steps to be taken and they will draw up a timetable for taking them. The department is usually represented before the select committee by an independent counsel, who is instructed by the parliamentary agent. This will inevitably increase the costs associated with the bill.

### **After Second Reading**

41.14 Where the standing orders relating to private business apply and have been complied with (or dispensed with) a hybrid bill is referred after Second Reading to a select committee (or,

rarely, a joint committee) appointed for this purpose. In the House of Commons, Parliamentary Counsel will draft a committal motion, to be taken after Second Reading, which will among other things set the period within which petitions must be presented. In the House of Lords the petitioning period (usually ten days) is set by a formal entry in the minutes made by the authorities of the House.

41.15 The select committee hears petitioners against the bill if they are directly or personally involved and if the petitions have been duly lodged. The department promoting the bill has a right to be heard against the petitioners. It is not necessary to prove the expediency of the bill as a whole in select committee, since this has been decided on Second Reading. If no petitions are presented against the bill (or if all submitted are withdrawn) the select committee will be discharged and the bill recommitted.

41.16 After hearing the petitioners in a judicial manner, the select committee will go through the bill clause by clause and may make amendments. Copies of the minutes of evidence may be obtained. Parliamentary Counsel may not be directly involved throughout this stage unless amendments need to be drafted but they should be made aware of anything likely to affect the bill at a later stage.

### **Remaining stages and second House**

41.17 On report by the select committee, the bill is formally recommitted to a committee of the whole House, although in the Commons it is usual for the whips then to table a motion for the bill to be considered by a public bill committee instead. Thereafter the bill proceeds as an ordinary public bill.

41.18 The procedure on hybrid bills is basically the same in both Houses, so that, unless a joint committee has been appointed to hear the petitioners, there may be a select Committee Stage in both Houses. It is not, however, generally necessary to do anything further to comply with the standing orders in the second House. The government parliamentary agent will simply indicate to the examiners after the bill arrives in the second House that nothing further needs to be done.

### **Amendments to hybrid bills**

41.19 If a hybrid bill is amended in either House the amendments may have the effect of requiring further compliance with the standing orders or a bill may become *prima facie* hybrid as a result



of the amendment. Amendments which have this effect are said to hybridise or re-hybridise the bill and the Public Bill Office may refer the bill to the Examiners..

41.20 Parliamentary Counsel should be consulted well in advance if it is proposed to amend a hybrid bill. They will, if necessary, discuss with the authorities of both Houses whether making them would re-hybridise the bill and, if it would, what implications this has for the further progress of the bill. The need for further compliance with (or dispensation from) the standing orders inevitably costs time. It is therefore extremely important that all the matters to be contained in a hybrid bill are, so far as possible, included before introduction.

### **Carry over of hybrid bills**

41.21 The Commons standing order providing for carry over of bills does not apply to a hybrid bill. To carry over a hybrid bill would require the agreement of both Houses.

### **Hybrid statutory instruments**

41.22 In the House of Lords (but not in the House of Commons) there is a standing order applying special rules to any subordinate instrument which is subject to affirmative procedure and contains provision that would, if contained in a bill, have made the bill hybrid. Bills giving power to make affirmative instruments have sometimes exempted them from the standing order but any provision of that nature could be contentious.

# 42. CONSOLIDATION BILLS, LAW COMMISSION BILLS, STATUTE LAW REPEAL AND REVISION BILLS

## Key points

- In areas of law where there have been a significant number of acts over a period of time, the Law Commission may recommend a consolidation bill, to bring all of the relevant provisions into a single act.
- These bills may either be purely to consolidate existing legislation or they may also make some minor amendments such as tidying up past errors and ambiguities, though without making any changes of substance.
- Similarly, the Law Commission may propose statute law revision bills and statute law repeal bills.
- These bills must be approved by the PBL Committee before introduction but are then subject to special procedures in Parliament, involving scrutiny by a joint committee of both Houses and other stages being taken formally.
- The Law Commission may also draft bills which go further than clarification or consolidation which, if agreed to by the Government, are introduced following either a successful bid for a legislative slot by the relevant department and approval by the PBL Committee or alternatively through a special accelerated procedure.

## What is a consolidation bill?

42.1 In many fields of legislation a series of acts will build up over time, each amending, adding to, or subtracting from the previous ones. The point is reached when it is very much in the public interest that this series should be consolidated into a single act (of course this in no way prevents the consolidated act from itself being amended by further acts). Recommendations for consolidation are the responsibility of the Law Commission and the Scottish Law

Commission. The minister in charge is the Secretary of State for Justice. Consolidation bills are always introduced in the House of Lords; the Parliamentary Under-Secretary of State in the Ministry of Justice usually takes them through the Commons.

42.2 Included in the category of 'consolidation bills' are:

- pure consolidation (this kind of bill does not amend the law);
- consolidation with Law Commission amendments (i.e. to consolidate and make amendments giving effect to recommendations of the Law Commission or the Scottish Law Commission or joint recommendations from them both);
- consolidation with corrections and improvements under the Consolidation of Enactments (Procedure) Act 1949 (largely superseded by the Law Commission amendment procedure but does still have its uses, especially if necessary to make amendments that extend to Northern Ireland);
- Statute law revision bills; and
- Statute law repeal bills.

42.3 Bills that include some consolidation or simplification as part of a larger amending bill (i.e. where the amendments stem from government and represent a significant change in policy, rather than amendments recommended by the Law Commission which are likely to be smaller in nature and probably fairly technical) are not considered to be consolidation bills and must follow the normal procedures.

42.4 The purpose of Law Commission recommendations is to produce a satisfactory consolidation of the law in question. This may include tidying up errors of the past, removing ambiguities and generally introducing common sense on points where the form of drafting in the past appeared to lead to a result which departed from common sense. It is not to introduce a substantial change in the law or one that might be controversial, indeed nothing that Parliament as a whole would wish to reserve for its own consideration.

42.5 The Law Commission will work in co-operation with the relevant department. The minister and policy divisions are not likely to have to devote much time to this work; legal advisers may have to devote a good deal more. It may however be necessary for a policy division to express a view on matters connected with a consolidation. If, for example, an amending bill dealing with the same subject matter is planned, a decision will be needed on whether the consolidation should await the passage of the amending bill or proceed before the bill is

introduced. The attraction of consolidating first is that there will then only be one act on which the amending bill needs to operate, so that the amending bill can be a good deal simpler.

### **Procedural differences applying to consolidation bills**

42.6 The responsible department (usually the Ministry of Justice) does not need to bid for a legislative slot for a consolidation bill as with other government bills, but must make the bill available to all departments before introduction. In other words, it must ensure that other departments are given an opportunity to suggest amendments to the bill.

42.7 A consolidation bill must be approved by the PBL Committee before introduction, normally through correspondence.

42.8 The Ministry of Justice will play an oversight role in relation to the programme of consolidation bills introduced each session, and together with the Government Whips' Office in the Lords, will advise departments on the appropriate timetable.

42.9 Explanatory notes are not normally provided for consolidation bills. The documents to be presented to the joint committee are the drafter's notes explaining issues arising from the consolidation process, the table of origins (the source of each of the provisions in the consolidation) and the table of destinations (setting out where the existing statutory material appears in the consolidation). Together the two tables show that the contents of the consolidation bill represent only the contents of the acts being consolidated. On Royal Assent the tables of origins and destinations should be sent to Legislation Services for publishing alongside the act, as would otherwise be the case with finalising the explanatory notes.

42.10 The following special procedures apply to consolidation bills:

- they are referred to and examined by a joint committee of both Houses, the members being nominated for the life of each Parliament. Timetabling will need to take into account the committee's workload and timetable of meetings;
- in the Lords, Second Reading is debated and amendments can be tabled on recommitment, report and Third Reading. If a Government amendment is needed in order for the Bill to account for other legislation passed whilst the Bill is making process, the Government should consult the Chairman of the Joint Committee on Consolidation Bills (JCCB). There is no formal minimum interval between the JCCB and Committee Stage on recommitment, but the committee needs time to publish its report. Other intervals should be respected.

- in the Commons, Second Reading is taken forthwith, the Committee Stage may be dispensed with altogether on a government motion and Third Reading is taken forthwith.
- When a consolidation bill is passed, bodies especially concerned in that field of law, and the public so far as they may be affected, need to be informed that the law is now contained in a new statute and that it has not (as they might assume) been substantially changed. See further action after Royal Assent for more detail about the type of explanatory material which may be needed, though this will probably be on a reduced scale from what is described there for amending Acts.

### **Law Commission bills that would represent a more significant change in policy**

42.11 The Law Commission may also, as part of its rolling programme of work, recommend changes to the law which go beyond clarification or consolidation, and prepare a draft bill. If the Government wishes to accept these recommendations and take forward legislation, the responsible department must bid for a legislative slot, collectively agree the policy proposals and clear the bill through the PBL Committee before introduction in the normal way. However, if the proposals are non-controversial, once introduced to Parliament such a bill may be able to follow a special, accelerated procedure.

42.12 The accelerated procedure for substantial Law Commission bills of this kind is available only for bills that are concerned solely with implementing Law Commission recommendations, not for bills which include Law Commission recommendations among other things. The Government would need to agree with the usual channels that the bill was a suitable candidate for the accelerated procedure. If the proposals are at all controversial, normal parliamentary procedures must be followed.

42.13 Bills using the accelerated procedure must be introduced in the Lords. The stages envisaged for the Lords are as follows: First Reading; Second Reading Committee (functioning like a grand committee, with no provision for divisions) followed by motion for Second Reading being taken formally; special public bill committee; remaining stages in the usual way. Commons Standing Order No. 59 provides that any public bill, the main purpose of which is to give effect to a Law Commission report is automatically referred to a Second Reading Committee unless the House orders otherwise. For further advice, contact the PBL Secretariat, the Cabinet Office Parliamentary Adviser or the Senior Parliamentary Counsel at the Law Commission.

## SECTION H

### PRIVATE MEMBERS' BILLS

# 43. PRIVATE MEMBERS' BILLS: INTRODUCTION

## Key points

- A private member's bill is a bill promoted by a member of either House of any party who is not a minister. It is not a private bill which is a bill promoted by a body outside Parliament. The member may have chosen to introduce a bill on a subject that interests them or may have been given ideas from a non-governmental organisation or pressure group. The bill may also be a handout bill taking forward a proposal for the Government.
- Whatever its source, if not a handout bill, the lead minister will need to write proposing the Government's position in good time for Second Reading. The ministers most directly concerned with the subject will also usually need to take part in the debates on the bill's various stages (including Committee Stage) to explain the Government's position. When a department is deciding whether to support a private member's bill, the full policy and legislative implications must be considered, including the impact on the devolved governments, compatibility with the European Convention of Human Rights, regulatory and other impacts and spending implications.

## Government response

43.1 There are three positions that can be taken:

- **Support:** this will need collective agreement from PBL Committee and the appropriate policy sub-committee of Cabinet. Although supporting a bill will not usually justify the creation of a full bill team, the lead policy division will need to provide ministers with the same type of support as for a government bill.
- **Remain neutral:** this will also need collective agreement from the PBL Committee and the appropriate policy committee. The Government remains neutral only in very exceptional circumstances, for example if the bill concerns an issue of conscience such as abortion or euthanasia, or matters more properly for Parliament, rather than the Government, to decide.

- **Oppose:** there is no collective agreement needed to take this position, although the PBL Committee should be informed by way of a 'for information' letter before Second Reading.



# 44. PRIVATE MEMBERS' BILLS: PARLIAMENTARY PROCEDURE

## Key points

- In a typical session lasting a year, there are 13 Fridays reserved for debates on private members' bills in the Commons. Second Readings take precedence on the first seven and remaining stages on the final six.
- In the Commons, the right to introduce the first twenty bills is decided by a ballot of members at the start of the session. Once these bills have been presented, other members can introduce bills after giving notice or following a ten-minute-rule motion.
- Normally only the first two to three bills on any private members' bill day have a realistic chance of being debated. However, any bill on the order paper can proceed 'on the nod' without a debate at the end of business, provided no member objects.
- Once past Second Reading private members' bills usually go to a public bill committee but must wait in a queue behind other private members' bills still in Committee unless the Government tables a motion permitting more than one at once.
- The private members' bill procedure in the Lords differs in that there are no fixed private members' bill days although time is normally found for debates on one Friday per calendar month when the House is sitting. Where the Government cannot support a private member's bill in the Lords, it explains its reservations during the bill's passage through the Lords but will not attempt to block the bill until it reaches the Commons. A ballot is held shortly after State Opening to pick the first 25 private members' bills to be introduced at the start of each session in the Lords.
- Irrespective of whether the bill is first on the list for debate or last in a long line of private members' bills, the Government will want to reach an agreed position on every bill on the order paper that day. If a minister is designated to respond to a private member's bill, they will need to be within easy reach of the House to speak if called.

- The standing orders of each of the devolved legislatures make special provision about the timing of legislative consent motions relating to private members' bills<sup>18</sup>. In each case the result is that the legislative consent motion cannot be tabled in the devolved legislature until the private members' bill in question has completed its committee stage in the first House at Westminster. This does not effect the need for early discussions with the devolved government(s).

## Methods of introduction: Commons

44.1 In the House of Commons members may introduce a bill once they have given notice of presentation. The right to introduce the first 20 bills each session is given to 20 members successful in a ballot held on the second Thursday (on which the House is sitting) of each session. Once the 20 'ballot' bills have been introduced on the fifth Wednesday (on which the House is sitting) of the session, any other member may introduce further bills after giving due notice of presentation under Standing Order No. 57 (ordinary 'presentation' or 'back-of-the-chair' bills) or following a successful 'ten-minute-rule' motion.

44.2 Introduction of ordinary presentation or 'back-of-the-chair' bills does not require the agreement of the House and there is no opportunity to speak on the issue. The member sponsoring the bill has to give the long and short title of the bill to the Public Bill Office before close of business on the sitting day before it is to be introduced.

44.3 Under Standing Order No.23, 'ten-minute-rule' motions seeking leave to introduce bills may be put down in the Commons, but not until after the ballot bills are introduced on the fifth Wednesday in the session. Normally 15 sitting days' notice is given of the subject of a motion, though it may be as little as five sitting days (it is open to members to change the short title of their bills before they seek leave to bring them in, and initially to use a 'holding' motion such as 'That leave be given to bring in a Bill under SO No.23 [details to be provided]'). Only one ten-minute-rule motion may be considered at the beginning of public business on each subsequent Tuesday and Wednesday (unless that day turns out to be a Budget Day in which case it is taken on the following Monday).

44.4 On the day of the ten-minute-rule motion, the proposer speaks for up to ten minutes and another member, not a minister, may speak against it for a similar time. If the motion has been

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<sup>18</sup> See rule 9B.3 of the Standing Orders of the Scottish Parliament (5th Edition, 8th revision, 8 March 2021); S.O. 29.2 of the Standing Orders of the Welsh Parliament (March 2021); and S.O. 42A of the Standing Orders of the Northern Ireland Assembly (8 March 2021).

opposed the House usually divides and, if the proposer secures a majority, the bill can then be formally introduced and listed for Second Reading on one of the private members' Fridays.

44.5 Often, ten-minute-rule bills are introduced more with the aim of airing the subject than with any expectation of carrying them through, but if the bill is formally introduced and listed for Second Reading then the Government will need to agree its position before the Second Reading debate. A member could choose a Second Reading date very soon after introduction (but the bill will not appear on the order paper if it has not been published).

### **Methods of introduction: Lords**

44.6 In the House of Lords, a ballot is held shortly after State Opening to determine the order in which the first 25 private members' bills are introduced at the start of each session. To enter the ballot, peers must submit the long and short titles of their bill to the Legislation Office.

44.7 Subsequently, a peer may introduce a bill on any sitting day without prior notice of presentation. The peer usually agrees the date with the Public Bill Office, who will notify the Government Whips' Office on the morning of the day the bill is introduced. There is no equivalent of the Commons' ten-minute-rule procedure. There is a standard minimum interval of two weekends between introduction and Second Reading by which point an agreed government handling position is required.

### **Order of precedence for private members' bills debate in the Commons**

44.8 In a year-long session, 13 Fridays (9:30am-2:30pm) are reserved for debates on private members' bills. The dates are agreed by motion at the beginning of each session. On the first seven Fridays bills take precedence in the order in which they were set down, regardless of the stage they have reached which usually means that they are devoted to Second Readings. On and after the eighth Friday bills are arranged according to the stage they have reached, with bills returning from the Lords with Lords amendments taken first and Second Readings last (except that Report Stages which have not already been entered upon take precedence over Report Stages which have been adjourned at a previous sitting).

44.9 The 20 members who are successful in the ballot present their bills on the fifth Wednesday of the session in the order in which they drew places in the ballot. For this purpose they hand

in the long and short title of their bill, but not normally the full text, to the Public Bill Office by the previous day at the latest.

44.10 On presentation a bill is given a formal First Reading and the member lists it for Second Reading on one of the reserved Fridays. Normally the first seven members successful in the ballot will choose the first seven Fridays in turn and the remainder, together with members who introduce bills subsequently after giving notice or following a successful ten-minute-rule motion, will select whichever day they think gives them the best chance of securing a Second Reading debate.

44.11 Only those bills which are high in the order for Second Reading on the first seven Fridays stand a good chance of going on to complete all their parliamentary stages, if they are at all controversial. Exceptionally, a bill which is straightforward, uncontroversial and has cross-party support can complete all stages without a debate, 'on the nod'.

44.12 A private member's bill originating in the House of Lords which has completed its progress through the Lords can only proceed through the Commons if it is taken up by a member of the Commons. The bill will then take its turn for debate on the Friday selected by that member. Procedurally, such Bills are given no special status in the Commons, and are typically far down the list on a sitting Friday.

### **Commons Second Reading**

44.13 Normally only the first two or three bills listed for a particular Friday have much prospect of debate. However, parliamentary branches with an interest in listed bills should always check in advance with the Government Whips' Office what is expected to happen on a particular Friday as the speed with which bills further down the list are reached cannot always be accurately predicted. Irrespective of whether the bill is first on the list for debate or last in a long line of private members' bills, the Government needs to reach an agreed position on every private members' bill on the order paper that day. If a minister is designated to respond to a private member's bill, they will need to be within easy reach of the House to speak, should they be called upon, until dismissed by the private members' bill whip.

44.14 If a bill which has been tabled for a particular Friday has not, in fact, been printed and published (a process which the member concerned must arrange with the Commons Public

Bill Office), then it will be removed from the list of bills for that Friday, although it may be put down again for a subsequent Friday.

44.15 If debate starts on a bill but is not finished by 14:30 it is said to be 'talked out'. A member may seek to prevent this by moving the closure of the debate, but the Speaker will not necessarily accept such a motion if the debate has begun late in the day and insufficient debate has taken place. A contested closure motion is only carried if it is agreed by division and at least a hundred members vote in support of it. If the closure motion is carried, the question for Second Reading is then put forthwith. Members may also seek to delay proceedings by moving that the House should sit in private at the beginning of a discussion on a bill. If fewer than 40 members (including the occupant of the chair and the tellers) take part in the ensuing division, the business under consideration stands over until the next sitting of the House and the next business is taken. To avoid this happening, a motion to sit in private is often moved, and negatived, at the beginning of a Friday sitting before the first bill has been reached. Such a motion may only be moved once per sitting and this prevents debate on any of the day's bills being interrupted in this way.

44.16 When the time for opposed business ends at 2:30pm, the titles of all remaining bills are read. As long as a bill is not opposed, it can pass at this stage. Indeed, the member in charge may move that it be considered in Committee of the whole House, take Committee immediately, take Report and Third Reading immediately after Committee, and have the bill passed, in two or three minutes – as long as no one objects. A single objection, however, prevents a bill from proceeding further that day after 2:30pm. In recent sessions, it has been usual for bills on which there has been no debate to be objected to.

### **Commons Committee and remaining stages**

44.17 Private members' bills that secure a Second Reading are committed, as with government bills, to a public bill committee. Only one public bill committee of a private member's bill may be active at any one time, unless, under Standing Order No. 84A(5), the Government tables a motion allowing an additional public bill committee on such a bill to operate in parallel, or unless the member in charge allows a later bill to leapfrog his or her bill.

44.18 Names for public bill committee members can be put forward by the sponsoring MP for a meeting of the Committee of Selection on a Wednesday after the bill obtained Second Reading. The committee usually convenes the following Wednesday after members have

been selected. Assuming there is no wait for another private member's bill to complete its committee stage, a bill can therefore start its committee stage less than two weeks after its Second Reading.

44.19 The committee traditionally meets on Wednesday morning, although meetings in the afternoon or on other days are not unknown. If a private member's bill is straightforward, committee may last only one sitting. No public bill committees for private members' bills have taken written or oral evidence so far and it would be exceptional for them to do so as either the bill would have to be programmed or the House would have to authorise the committee to take evidence.

44.20 It is possible immediately after Second Reading to move that the bill's Committee Stage be taken on the floor of the House. If this motion is carried, the Committee Stage is named for the same or one of the later private members' bill days. A completely uncontroversial bill might have its Committee Stage taken 'on the nod' on the floor of the House, possibly on the same day as it secures Second Reading; but an opposed bill might be deferred at that stage through lack of time.

44.21 The Government does not provide government time on the floor of the House for debate (i.e. on Monday to Thursday) for private members' bills except in the most exceptional circumstances.

44.22 A minister of the lead department is expected to take part in all debates on the floor of the House, but will not open or close the debate (unless a government amendment leads a group at Report Stage). Normally they will also be a member of the committee and departmental officials will need to provide briefing on amendments, as for a government bill.

44.23 Report and Third Reading may be taken on the same day in the Commons. As noted above, remaining stages take precedence over Second Readings on the final six private members' bills Fridays of the session.

### **Procedure in the Lords**

44.24 The main differences in Lords procedures for private members' bills are:

- Second Reading debates take place on sitting Fridays and are normally taken in the same order in which bills were introduced.
- All stages are taken on the floor and minimum intervals between stages apply. If, as often happens, no amendments are tabled for Committee, then Committee is discharged and there is no Report stage and Third Reading is normally unopposed. Substantive amending stages take place on a sitting Friday. Where no amendments are tabled for Committee, Report or Third Reading, these stages can take place, by agreement, on a sitting day other than a Friday; and
- Where a private member's bill is unacceptable to the Government, the government minister or whip responding in debate expresses reservations during its passage in the Lords, rather than attempting to stop its passage. The Government can then attempt to block the bill in the Commons, if it progresses that far.

44.25 If a private member's bill enters the Lords from the Commons, the sponsor will need to find a peer to take the bill forward. If the Government has supported the bill the minister may, in consultation with the Government Whips' Office, wish to suggest a suitable peer and instruct the department to assist, much as with the Government's own legislation (the Commons member will need to be kept in touch throughout). The Lords will almost always give a Second Reading to any bill which has passed the Commons but subsequently may alter it substantially, sometimes on the Government's initiative if they support it, or reject it. A Commons bill may not formally be withdrawn in the House of Lords by the peer who has taken it up, although it is open to them not to proceed further with it. Beyond the last Commons sitting Friday of the session, any Lords amendment is fatal to a Commons private member's bill because the Commons will have no opportunity to consider it.

44.26 In addition, due to the limited Parliamentary time for the consideration of private members' bills, departments will need to have a good understanding of whether they are likely to secure a legislative consent motion before Report Stage in the first House. This is so that any amendments that are needed to secure a legislative consent motion, or to deal with the absence of such a motion, can be made at Report Stage in the first House. Waiting until the second House to make the necessary amendments may mean that there is insufficient time for the amendments to also be considered by the first House with the result that the bill does not reach Royal Assent. Further information on legislative consent motions and working with the Union and Devolution Directorate and the devolved governments can be found in Chapter 14.

## Post-legislative scrutiny

44.27 The requirements on post-legislative scrutiny (that the responsible department will, within the period three to five years after an act has received Royal Assent, submit to the relevant Commons departmental select committee a memorandum reporting on certain key elements of the act's implementation and operation) applies to acts which began life as a private member's bill just as for any other act. This is because they form part of the body of primary legislation for which departments are responsible. The 'responsible department' is the one responsible for the act at the time a memorandum is to be submitted, irrespective of whether it was the responsible department at the time the Act was passed. See Chapter 40 for further information on post-legislative scrutiny.



# 45. PRIVATE MEMBERS' BILLS: RESPONDING TO NON- GOVERNMENT BILLS

## Key points

- The Government needs to agree its handling position on non-government proposals in time for Second Reading.
- The responsible minister will need to write to the PBL Committee and the relevant Cabinet policy committee (if necessary) recommending what position the Government should take: support, oppose or (in very rare and exceptional cases) remain neutral.
- To satisfy the committees that the consequences of supporting a private member's bill have been carefully considered, the minister will need to attach to the letter seeking clearance, a PBL Committee memorandum setting out any handling issues and explaining the implications of the bill (for example for the devolved governments), the bill print, explanatory notes (where possible), delegated powers memorandum, handling strategy, a legal issues memorandum, and an impact assessment (if necessary).
- Where a private member's bill proceeds beyond Second Reading, further action may be required from departments even if the Government is not supporting the bill. Policy leads should keep in touch with the PBL Secretariat and their parliamentary branches who will alert them to any action that needs to be taken.

## Allocating private members' bills to departments, preparing handling letters and agreeing a government position

45.1 The PBL Secretariat regularly circulates a list of all forthcoming private members' bills to parliamentary clerks, allocating each one to the relevant lead department. If this allocation is incorrect, the parliamentary branch should inform the secretariat immediately, so the bill can be allocated to the correct department. Private members' bills down for debate on a given day

in the Commons can also be found in the 'future business' sections of the Parliament website. Progress of a particular private member's bill can be found in the 'bills before Parliament' section of the website.

45.2 As soon as a private member's bill has been allocated to the department, the parliamentary clerk should alert the relevant policy official, who will then need to find out what the bill would do. Even if the bill has not yet been published, the long title, which is a summary of its purpose, will be available on the Parliament website.

45.3 The policy official will need to consider the factors for and against supporting the bill, in discussion with legal advisers from their own department and possibly with other departments with an interest (in particular with HM Treasury if the bill would impose a financial cost on the Government). The policy official should then advise the relevant minister on whether the proposal should be supported or opposed.

45.4 Key questions which need to be considered are:

- Are the measures in accordance with existing departmental policy?
- Would ministers want them to become law?
- Are there any outstanding devolution, ECHR or regulatory issues that need to be considered?

45.5 Officials should give careful consideration to whether the Government could sensibly support the bill, subject to any necessary amendments.

45.6 If the summary on the Parliament website does not provide sufficient detail for the Government to be able to take a view, officials should speak to their parliamentary clerk or Private Office, as the minister, his or her parliamentary private secretary or a special adviser will need to speak to the MP or peer to find out what is likely to be in the bill. Most MPs, peers or their assistants will be happy to give a good indication of the bill's aims. Ministers should then write to the PBL Committee on the basis of their expectation of what the bill will do. It is important that handling recommendations are based on as clear an understanding as possible, so early engagement with the sponsoring MP or peer is helpful.

45.7 The minister will then need to write to the PBL Committee recommending what position the Government should take: support, oppose (or, for a bill in the Lords, express reservations) or (in very rare cases) remain neutral. If a department is minded to support or remain neutral on a bill, policy officials should discuss the arguments for such an approach with the PBL Secretariat before the minister sends the letter.

45.8 The PBL Secretariat is able to provide a handling letter template on request and will happily look at draft letters before they are sent out. Whatever the proposed stance, the handling letter should:

- be no more than two sides long;
- set out the bill's title and the name of the sponsor MP or peer, when the bill was introduced and the date for Second Reading debate;
- set a deadline for responses if clearance is required, which should be at least two weeks before the Second Reading date, and give members of the committee at least six working days for consideration (nine during recess);
- explain what the bill aims to achieve. Summarise the content of the bill, and not just its title, unless this is all that is known. Avoid jargon and technical terms unless these are explained;
- state clearly whether the letter is informing the PBL Committee of the intention to oppose the bill (the handling letter should be addressed to the chair of the committee and copied to members of the PBL Committee for information), or whether the PBL Committee and the relevant policy committee clearance is being sought to support the bill or remain neutral (in this instance, the handling letter should be addressed to the chairs of both committees);
- explain the reasoning behind the recommended position: support, oppose (express reservations in the Lords) or remain neutral. State clearly whether the Government's support would be conditional on amendments being made to the bill in Committee and if so what these amendments would be; and

- state whether the proposed handling position is based on the published bill, on discussions with the sponsor MP or peer, or on assumptions about what an unpublished bill would do.

45.9 Even if the bill has not yet been published, a handling letter will still need to be provided to the deadlines given above. In the Lords, private members' bills must be introduced and published at least two weekends in advance of Second Reading. In the Commons a private member's bill only falls off the order paper if it has still not been printed the day before Second Reading is due.

45.10 Where a private member's bill is down for a Second Reading debate shortly after introduction and it is not possible to adhere to the deadlines above, the minister should write to the PBL Committee as soon as possible, allowing a reasonable period for comment and a position to be agreed before Second Reading.

### **Opposing a private member's bill**

45.11 If the recommended position is to oppose the private member's bill, a letter needs to be circulated to members of the PBL Committee, explaining why the Government should oppose the bill. It will be important for the handling letter to set out a strong case for opposing the bill. If a strong case is not provided, the PBL Committee is likely to press the minister again as to why the bill cannot be supported. It is not acceptable to recommend that a bill be opposed simply because its drafting is defective: If there are no other reasons why the bill should not be supported, the Government would normally agree to support the bill subject to drafting amendments being made in Committee to ensure the bill is technically workable.

45.12 There may be a number of reasons why the responsible minister will wish to recommend that the Government oppose a private member's bill, for example if it is contrary to the Government's policy, duplicates work already in progress, is incompatible with international law or would have significant cost implications. However, even where there appears to be a good reason why the Government should not support the bill, it will be important for the department to consider whether this could be addressed to allow the Government to support an amended version of the bill and, where appropriate, for the minister to discuss this with the sponsoring member.

45.13 If the private member's bill has not yet been published, the sponsoring member may be persuaded to drop those elements of the bill which the Government is unable to support, to enable the Government to give support to the bill from the outset.

45.14 The Government will normally seek to defeat a bill that it opposes at Second Reading in the Commons. Where the bill being opposed is introduced in the Lords, the Government will express its reservations at Second Reading but will not seek to block the bill until it reaches the Commons. On no account shall a minister initiate a vote on a Second Reading motion in the House of Lords.

45.15 Where the Government opposes a private member's bill, Parliamentary Counsel will not normally be involved, as the fate of such bills is often decided at Second Reading. Occasionally, however, amendments need to be prepared to provide clarification (and possibly compromise) from the sponsor. Where the minister asks for such amendments to be prepared they will usually be tabled in his or her name; where they are tabled by backbenchers the House will expect it to be made clear whether such government drafting assistance has been given.

### **Supporting, or supporting subject to amendment**

45.16 Where it is proposed that the Government supports a private member's bill or supports it subject to amendment, this must be cleared through the relevant policy committee of Cabinet as well as the PBL Committee. Prior to seeking clearance, officials will want to consider the policy implications for other departments, implications for the devolved governments, legal issues, the regulatory and other impacts and compatibility with the ECHR. The department must also consider the extent to which the published version of the bill will need to be amended to ensure it is technically workable, as well as compatible with government policy.

45.17 Where departments are sympathetic to the overall aims of the bill but could not accept a particular part of the bill, they are encouraged to discuss with the member the possibility of amending the bill to enable government to offer its full support. Recent Leaders of the House of Commons have indicated that they would like to be able to offer government support to more private members' bills and have encouraged departmental ministers to actively consider ways in which they could work with members to ensure a bill that would be acceptable to the member and to government.

45.18 It is important that departmental ministers engage the member early enough so that if a compromise is agreed, there is still enough time for the department to prepare the necessary documentation (a PBL Committee memorandum, bill print and explanatory notes (where possible), legal issues memorandum, delegated powers memorandum, and impact assessment (if needed)) to satisfy the relevant policy committee of Cabinet and the PBL Committee that supporting the bill is the right thing to do, and for this position to be formally agreed.

45.19 Members will frequently contact ministers with a view to reaching agreement on the contents of their proposed bill and obtaining government support. The minister will often consent to officials in their department discussing the proposal with the member or their staff. Such co-operation can be helpful to both sides and can improve the chances of reaching an agreement to support the bill. Where government support is likely, the member should be encouraged to publish their bill in sufficient time before Second Reading, to allow the Government to reach an agreed position. The Government Whips' Office in the House of introduction and the PBL Secretariat should also be informed.

45.20 A joint letter to the chairs of the PBL Committee and the relevant policy committee of Cabinet seeking clearance to support the bill should be sent at least one month before the date scheduled for Second Reading. Officials are advised to contact the PBL Secretariat for advice before drafting this letter. The PBL Secretariat can also advise which policy committee of Cabinet it would be appropriate to write to in each case. The handling letter should be circulated with a PBL Committee memorandum (a template can be provided by the secretariat) covering issues such as compatibility with the ECHR and any devolution implications, regulatory and other impacts or delegated powers. An impact assessment and legal issues memorandum must also be circulated. The department may also wish to prepare explanatory notes, but this is not a requirement.

45.21 Policy officials in departments should therefore engage early with officials in:

- the Regulation Directorate in the Department for Business and Trade;
- the Scotland, Wales and Northern Ireland Offices, on any devolution issues; and
- the Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland on any ECHR matters. The legal issues memorandum should be sent to the

Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland for comments before it is circulated to the PBL Committee and the relevant policy committee of Cabinet.

45.22 The letter should also state whether any amendments would be needed to enable the Government to support the bill, and legal advisers should discuss with Parliamentary Counsel whether any drafting work is required.

### **Remaining neutral**

45.23 Very exceptionally, the Government may wish to take a neutral position on a private member's bill, if for example it concerns an issue of conscience such as abortion or euthanasia or matters more properly for Parliament, rather than the Government, to decide. If the bill does not fall into one of the two narrow categories above, the Government will be expected to take a view and must agree collectively whether to support or oppose the bill.

45.24 As private members' bills can and do reach the statute book, a neutral position should only be recommended if the Government is genuinely prepared to accept the legislation, should that be the will of Parliament. By not opposing a bill the Government is indicating that it is prepared to accept it reaching the statute book with all of the consequences.

45.25 It may be, therefore, that a write round to collectively agree the stance will be required. If so, this would generally be in the same way as supporting a private member's bill, with a handling letter and accompanying documentation: a PBL Committee memorandum, bill print and explanatory notes (where possible), impact assessment, legal issues memorandum and delegated powers memorandum. These must be sent to the PBL Committee and the relevant policy committee of Cabinet at least one month before Second Reading.

45.26 If a private member's bill on which the Government has remained neutral receives a Second Reading, the Government will often have to make drafting changes to ensure the bill is technically correct. This is because the Government has a duty of care to the statute book.

### **Clearance**

45.27 If there are no outstanding issues, the chair of the PBL Committee (and the chair of the relevant policy committee of Cabinet, as necessary) will write to give clearance for the agreed position shortly before Second Reading.

45.28 If the bill is published after the handling letter has been sent, departments should contact the PBL Secretariat to confirm whether the proposed position still holds. If, for any other reason, the department wishes to change its position after sending a handling letter to the PBL Committee, or should a change in circumstances mean it may be appropriate for the Government to change the position it has already agreed, the PBL Secretariat should be informed immediately.

### **Further action required by departments where the Government is supporting a private member's bill**

45.29 Clearance to support a private member's bill will often include PBL and policy committee clearance to work with the member to draft mutually-satisfactory first House amendments to ensure that:

- the bill does what it is intended to do (members do not have the resources of Parliamentary Counsel at their disposal, so some technical amendments may be needed to tighten up the bill and make it technically correct); and,
- the Government can fully support the bill, for example where it has agreed to support the bill on the condition that certain provisions are removed, amended or added.

45.30 As far as possible, amendments should be made at Committee Stage in the first House.

45.31 If amendments are made in the second House, the bill will have to return to the first House for consideration. Given the limited amount of parliamentary time available for private members' bills, this is likely to kill the bill. Time for private members' bills is even more limited in the Lords, so departments should contact the Government Whips' Office in the Lords to discuss Lords handling in good time before the bill reaches the Lords, and discuss any proposed amendments with the Government Whips' Office in both Houses. Government time is given to private members' bills in the Commons only in the most exceptional circumstances.



45.32 If clearance was given to support the bill subject to certain amendments being made in Committee, no further clearance is required before tabling those amendments. Any other amendments which the Government wishes to table to a private member's bill or hand to the sponsoring member to table must be agreed by the PBL Committee, and by the relevant policy committee of Cabinet if the amendments would have the effect of a change in policy. The responsible minister will need to write to the chairs of the committee(s) seeking clearance and allowing colleagues six working days to respond (nine during recess) plus four days for clearance to issue. Amendments should be discussed with the sponsoring MP or peer whose support is crucial.

45.33 In view of the pressure on Parliamentary Counsel, drafting assistance should be offered as sparingly as possible and, if the bill is not expected to progress as far as Committee, it will clearly not be worthwhile. When a department anticipates that it could need drafting assistance it should prepare instructions in advance on a contingency basis.

45.34 Amendments drafted by Parliamentary Counsel will sometimes be government amendments and will sometimes be put down in the name of a private member. If the amendments are to be put down in the name of a private member, the department will usually invite the member to put the amendment down him or herself. It is often more convenient if they are handed in by Parliamentary Counsel on behalf of the member; in which case the member in charge must either sign the amendments or give written authority to the Public Bill Office to accept the amendments from Parliamentary Counsel.

45.35 Where amendments are tabled by the minister, the department should ensure that both the private member sponsoring the bill and, where the amendment is being tabled in the second House, the private member sponsoring the bill in the first House are kept informed.

45.36 **Delegated powers:** The Lords Delegated Powers and Regulatory Reform Committee and the Business and Trade Select Committee (formerly considered by the Regulatory Reform Committee) may report on **any** public bill containing delegated powers. If a government-supported private member's bill looks likely to complete its Commons stages and reach the Lords (even if the Government has only agreed to support the bill part-way through its passage), the department responsible should submit a delegated powers memorandum to the Lords Delegated Powers Committee and the Business and Trade Select Committee, by the time the bill reaches the Lords at the very latest. For a government-supported Lords

private member's bill, a memorandum should be submitted as soon as possible after introduction.

45.37 **ECHR:** it is not necessary for ministers to sign a statement under section 19 Human Rights Act 1998 in respect of compatibility with the ECHR if the bill is a private member's bill. However, if the Government is supporting a private member's bill then it must still provide analysis of human rights issues to the JCHR. If the Government is preparing the Explanatory Notes for the bill then this should include the analysis of human rights issues as for Government bills (see Chapter 10 for information on Explanatory Notes and Chapter 11 for information on ECHR). If the Government is not preparing the Explanatory Notes then bill teams should discuss the situation with the PBL Secretariat. In these cases the departments will likely need to contact the JCHR directly to provide information.

**Further action required by departments for any private member's bill that looks likely to pass, irrespective of whether government is supporting or opposing the bill**

45.38 **King's consent:** The possible need for King's consent should always be considered. King's consent can only be signified by a privy counsellor, normally a minister, so, if it is needed, steps should be taken to ensure a privy counsellor is available in the relevant Chamber. King's consent would not normally be withheld from a bill, even if the Government intended to block or oppose it during its later stages. The Palace should be given at least two weeks to consider requests for King's consent. Nevertheless, the Department may wish to indicate in the covering letter to the Private Secretary requesting King's or Prince's consent that the Government intends to oppose the bill during its later stages.

45.39 **Money resolutions:** In theory, a private member's bill entailing public expenditure could be halted by the Government declining to table a money resolution. Motions for money resolutions are not usually taken until after Second Reading and then in government time. Only the Government can move a motion for a money resolution, and neither italicised words nor clauses governed by them can be considered by the committee unless a money resolution authorising them has been agreed by the House. If the exclusion of these clauses would make the bill unworkable, the Speaker would probably not allow the remaining stages to be taken.

45.40 The Government usually moves a motion for a money resolution in respect of a private member's bill which has been given a Second Reading, regardless of whether it supports the

bill, although it is not under any obligation to do so. Moving such a motion does not necessarily indicate government support for a bill.

45.41 **Drafting assistance:** The Government does, of course, accept a responsibility to put private members' bills which are likely to pass into good order. A 'neutral' or 'opposing' position must always be read as subject to this.

45.42 Where a private member's bill proceeds beyond Second Reading, further action may be required from departments even if the Government is not supporting the bill. Policy leads should keep in touch with the PBL Secretariat and their parliamentary branches who will alert them to any action that needs to be taken and advise if or when any further clearance is required.

# 46. PRIVATE MEMBERS' BILLS: GOVERNMENT 'HANDOUT' BILLS

## Key points

- In advance of each parliamentary session the PBL Committee asks departments to submit proposals for short and uncontroversial measures for an approved list of bills which can be offered to members successful in the private members' ballot.
- Departments must obtain policy clearance and provide drafting instructions to Parliamentary Counsel as they would for a government bill.
- If a member picks up a 'handout' bill, the department must obtain the PBL Committee's approval before giving the final text of the bill to the member for publication. The minister must write to the PBL Committee attaching a PBL Committee memorandum, the bill print and explanatory notes, impact assessment, delegated powers memorandum, and legal issues memorandum at least one month before Second Reading to allow the member in charge to publish the text of the bill at least one week before Second Reading. If deadlines are tight, departments should contact the PBL Secretariat to discuss the timings for seeking collective agreement.
- The department will have to be ready to offer some support (for example, briefing) to the member in charge of the bill, as well as the responsible minister, at the Second Reading debate and during the remainder of the bill's parliamentary passage.

## Preparing measures for the 'handout' list

46.1 In the House of Commons, on the second Thursday of each session, a private members' ballot is held to select 20 MPs who will be given the opportunity to introduce a private member's bill that session. While many MPs who are successful in the private members'

ballot already have a good idea of what bill they want to bring forward, some do not and may be receptive to suggestions of small, sensible measures put forward by Government.

46.2 Well in advance of the start of each session, the chair of the PBL Committee invites departments to suggest possible measures of this sort for discussion with members. Given the limited amount of parliamentary time available for private members' bills, measures for 'handout' should be:

- short (no more than 10 clauses) and simple (non-technical);
- relatively uncontroversial but interesting enough for members to want to pick up and take forward;
- without major financial implications;
- not concerning major constitutional reform; and
- on areas where policy has already been collectively agreed, or where policy clearance is sought in parallel to the handout bid.

46.3 A good example would be a small measure the department would have liked to include in a recent government bill but was unable to do so because of the effect it would have had on the scope of the bill or the subject of a recent private member's bill which the Government would have liked to have supported but was unable to do so because of technical issues (if a solution to these can be found).

46.4 In putting forward suggestions, departments are asked to consider the same issues that they would consider for any government bill, e.g. impact on the devolved governments, compatibility with the ECHR, financial implications etc., and to set these out in a letter to the PBL Committee.

46.5 The PBL Committee will assess the suitability of suggestions from departments and draw up an approved list of measures. Once a department's suggestion is included on this list it will need to start preparing drafting instructions and submit these to Parliamentary Counsel.

46.6 Suggestions for additional measures for the next session may be made after the initial approved list has been drawn up or at any time of year. Details should be sent to the PBL Secretariat.

46.7 The government whips (not departmental ministers or officials) will discuss with those members successful in the ballot whether any of the Government's proposals might be suitable for them to take forward.

46.8 If a 'handout' bill is not picked up by one of the members successful in the ballot, it is still possible for another MP to introduce the bill as an ordinary 'presentation' or 'back-of-the-Chair' bill and for the bill to reach Royal Assent. Ministers will wish to consider whether there are any MPs to whom the bill would particularly appeal and who may wish to take it forward.

46.9 A peer may also be interested in taking forward a 'handout' proposal. A private member's bill introduced in the Lords is less likely to reach Royal Assent than a private member's bill introduced in the Commons, because when it arrives in the Commons it will have to take its place on the order paper below bills already listed for debate that day and may not be reached.

46.10 For private members' bills starting in the Commons, time is normally found for them to be debated in the Lords as long as there is a theoretical prospect of the bill becoming law, and all stages are usually taken on the floor, making for quicker progress through the House, assuming there are no objections. However, the department may wish to consider the option of a Lords 'handout' bill if no MP has shown interest in picking up the proposals (although an MP would still have to be found to pick up the bill when it arrived in the Commons after completing its Lords stages).

### **Working with the member to finalise the text of the bill**

46.11 If a bill is taken up by an MP, Parliamentary Counsel will draft long and short titles for the member to present on the fifth sitting Wednesday of the session. Current practice is for Parliamentary Counsel to send the notice of presentation to the Government Whips' Office, which will then arrange for the member to hand it in to the Public Bill Office. The notice of presentation should be with the Government Whips' Office no later than the rise of House the day before the fifth sitting Wednesday of the session, as this is the last day for handing in

notice of presentation for ballot bills. However, it is advisable to hand in notice of presentation sooner if possible.

46.12 As priority is given to Second Readings on the first seven private members' bill Fridays, the first seven members in the ballot will usually name those seven days for Second Reading, with those lower down in the top twenty in the ballot taking second or third place on the order paper for those days. A private member's bill introduced on the fifth sitting Friday could have its Second Reading debate just a few weeks later or several months later.

46.13 During this time, the responsible department will need to be working with the member, external stakeholders where appropriate and with Parliamentary Counsel to finalise the text of the bill and resolve any issues, for example, agreeing the nature of any impact on the devolved governments. Before the draft text of a bill is given to the member who wishes to introduce it, the responsible departmental minister must ensure that the policy has been fully agreed with colleagues, and that the bill has been approved by the PBL Committee. Departments will also need to ensure that the member in charge has seen and agreed to the text of the bill. Any changes to the bill may require additional collective agreement.

46.14 The minister must write to the PBL Committee, covering the issues outlined in the PBL Committee memorandum and attaching the draft text of the bill, explanatory notes, an impact assessment and a legal issues memorandum. Confirmation must be given that the devolution implications have been addressed and that policy clearance has been obtained.

46.15 The Public Bill Office will expect the text of the bill to be published at least one week before the date scheduled for the Second Reading debate. The minister must also allow six days for colleagues to comment (nine during recess), an additional 4 days for clearance to be arranged, and sufficient time for the member to approve the draft of the bill before publication. This means that the letter to the PBL Committee must be sent at least one month in advance of Second Reading. If deadlines are tight, departments should contact the PBL Secretariat to discuss timings of collective agreement and if, for example, a final copy of the bill print can be circulated in slower time to allow drafting to continue. It should be emphasised that publishing the bill one week before the Second Reading debate is the minimum acceptable period and, wherever possible, the minister should aim to hand the text of the bill to the member to allow them to publish it well in advance of this.

46.16 In order to ensure the Public Bill Office receives the bill using compatible software, and to reduce the risk of error, it is advisable for the text of the bill to be handed in by Parliamentary Counsel. Departments will need to ensure the member in charge gives Parliamentary Counsel authority to hand in the text on the member's behalf. This is confirmed by the member in charge informing the Public Bill Office that Parliamentary Counsel can hand in the text of the bill. The department will need to ensure supporting documents are sent to the Public Bill Office. Members can also be explicit that Parliamentary Counsel have the authority to table any amendments on the member's behalf. As with the bill text, the member in charge must agree to any amendments before they are tabled. If the member in charge prefers to hand in the bill and supporting documents themselves, the department will need to provide them with final copies for submission.

#### **Further action required of departments during parliamentary passage of a 'handout' bill**

46.17 During the Second Reading debate the responsible minister will be expected to indicate the Government's support for the bill. The department will also have to be ready to offer some support (e.g. briefing) to the member in charge of the bill, at Second Reading debate and during the remainder of its parliamentary passage.

46.18 Given that a 'handout' bill has been agreed by the member in charge and the Government and drafted by Parliamentary Counsel, no amendments should be required after introduction unless responding to significant unforeseen points raised in debate. If the bill looks likely to complete its Commons stages and reach the Lords the Government may need to prepare a delegated powers memorandum. See further action required by departments where the Government is supporting a private members' bill for more detail. See also further action required by departments for any private member's bill that looks likely to pass, irrespective of whether the Government is supporting or opposing the bill for detail of action required by departments in relation to King's consent and money resolutions.

46.19 The member in charge will need to find a peer to agree to sponsor the bill through the House of Lords. If no peer is willing to pick up the bill and take it through the Lords, the bill will be unable to proceed. The department and minister in charge, with the assistance of the Government Chief Whip's Office in the Lords, will therefore wish to assist the member in identifying a peer to pick up the bill.



46.20 If the bill reaches Royal Assent the department must finalise the explanatory notes and send them to Legislation Services at The National Archives for publishing alongside the bill, as if the bill had been a government bill.

# APPENDIX A: GLOSSARY

**Affirmative instrument** – delegated legislation that the parent act requires Parliament to explicitly approve before it is able to come into effect (through ‘the affirmative procedure’).

**Amendment** – a proposal to alter the text of a bill, motion or draft select committee report.

**Bill** – draft primary legislation.

**CCLA** – Commons consideration of Lords’ amendments.

**Clause** – the basic unit of a bill, divided into subsections, then paragraphs, then sub-paragraphs. When the bill becomes an act, ‘clauses’ become ‘sections’ but the names of the other subdivisions stay the same.

**Command paper** – a document presented to Parliament by Command of His Majesty but in practice by a Government Minister. Command papers are produced to a particular standard and are part of numbered series managed by The National Archives.

**Commencement** – the coming into effect of legislation. In the absence of a commencement provision, the act comes into force from the beginning of the day on which Royal Assent was given (at midnight).

**Committee of the whole House** – A Committee Stage that takes place in the House itself, rather than in a public bill committee. Any MP may take part in proceedings.

**Delegated legislation** – legislation made by a minister, or occasionally by a public body, under powers conferred by an act of Parliament. Different types of delegated legislation may be called orders, rules, regulations, schemes or codes, depending on what the ‘parent act’ calls them. Also known as ‘secondary legislation’.

**Dissolution** – the formal conclusion of a Parliament ahead of a general election.

**Draft bill** – a bill that is published for pre-legislative scrutiny by a select or joint committee. A draft bill has not been formally introduced into either House.

**Explanatory notes** – a document accompanying a government bill that sets out the bill’s intention and background. It explains the clauses in language that a lay person could understand.

**Explanatory statements** – a simple statement to explain what an amendment does. They are mandatory for government bills with the exception of Finance Bills.

**First Reading** – the formal first stage of a bill's passage through Parliament.

**Grand committee** – A Committee Stage in the House of Lords that takes place off the floor of the House.

**Grouping** – a set of related amendments for debate.

**Guillotine** – an order that imposes time limits on the remainder of its progress. Can be made at any stage in a bill's passage through the House of Commons. Also known as an 'allocation of time motion' or a 'Business of the House motion'.

**Handout bill** – a bill that is drafted by Parliamentary Counsel and offered to a back bencher to take forward as a private member's bill, usually with the continuing support and briefing of the government department concerned.

**Introduction** – the formal start of a bill's passage through Parliament. Also known as First Reading.

**King's Consent:** agreement by The King that Parliament may proceed to debate a bill that would affect the prerogative of the Crown or the interests of the Crown, the Duchy of Lancaster or the Duchy of Cornwall.

**King's speech** – the Speech written by the Government and delivered by The King at the State Opening of Parliament. It outlines the Government's plans for the new session, especially its legislative programme, and sets out the events for the coming year (including state visits).

**Knives** – the deadlines within a programme motion. When a knife falls, only specified decisions may be taken. It may not be possible to debate or decide on certain clauses or amendments.

**Law Officers** – the collective term for the Attorney General, the Solicitor General and the Advocate General for Scotland. The Attorney General for England and Wales is also the ex-officio Advocate General for Northern Ireland. The core function of the Law Officers is to advise on legal matters, helping ministers to act lawfully and in accordance with the rule of law.

**LCCA** – Lords consideration of Commons' amendments.

**Long title** – the passage at the start of a bill that begins 'a Bill to...' and then lists its purposes. The content of the bill must be covered by the long title.

**Money bill** – a bill whose only purpose is to authorise expenditure or taxation.

**Money resolution** – a motion to authorise government expenditure in relation to a bill. When the motion is approved it becomes a resolution.

**Negative instrument** – delegated legislation that, under the parent act, may be made and come into effect unless one or other House decides otherwise ('the negative procedure').

**Parliamentary Business Managers** – the Leaders and Chief Whips of both Houses. Also known as the BMs or 4BMs.

**Parliamentary Counsel** - a group of government lawyers who are expert in drafting legislation. They draft all government bills.

**PBL Committee** – the Cabinet committee on parliamentary business and legislation chaired by the Leader of the House of Commons. Other members include the Leader of the House of Lords, the Chief Whips of both House, the Law Officers and the Secretaries of State of the territorial offices.

**Ping-pong** – the to and fro of bills and amendments between the two Houses towards the end of a bill's passage.

**Prince's consent** – agreement by the Prince of Wales that Parliament may proceed to consider legislation that would affect his interests.

**Private bill** – a bill that would only have a local or personal effect, rather than a general effect.

**Private member's bill** – a public bill introduced by a 'private member' of Parliament (not a minister) i.e. a backbencher in the Lords or Commons.

**Prorogation** – the formal end of a parliamentary session, bringing almost all parliamentary business to an end.

**Public bill** – a bill that, if passed, will have general effect in some or all of the constituent parts of the UK.

**Report Stage** – the consideration of a bill in the form in which it left Committee, and an opportunity for any member to propose amendments (not just those who were on the committee).

**Royal Assent** – the sovereign's agreement to a bill.

**Second Reading** – approval of a bill in principle. The second stage of the passage of a bill through each House of Parliament.

**Session** – the main subdivision of time during a parliament. The period from State Opening to prorogation.

**Short title** – the title by which a bill is known during its passage through Parliament for example 'Civil Aviation Bill'.

**Standing committee** – In the Commons, a committee to which most bills are referred for their Committee Stage.

**Sunset clause** – a provision in legislation that makes it time-limited.

**Table** – to deposit formally before the House or committee, as 'to table an amendment'.

**Third Reading** – the final stage of the passage of a bill through each House of Parliament.

**Usual channels** – the informal and private contacts between the whips and Business Managers on both sides of each House.

# APPENDIX B: CONTACT DETAILS

## **Attorney General's Office**

0207 271 2492

[correspondence@attorneygeneral.gov.uk](mailto:correspondence@attorneygeneral.gov.uk)  
<https://www.gov.uk/government/organisations/attorney-generals-office>

## **Advocate General for Scotland**

[enquiries@advocategeneral.gov.uk](mailto:enquiries@advocategeneral.gov.uk)  
<https://www.gov.uk/government/organisations/office-of-the-advocate-general-for-scotland>

## **Clerk to the Joint Committee on Human Rights**

0207 219 2797

[jchr@parliament.uk](mailto:jchr@parliament.uk)

## **Clerk to the Lords Constitution Committee**

0207 219 3871

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## **Clerk to the Lords Delegated Powers and Regulatory Reform Committee**

0207 219 3103

[hldelegatedpowers@parliament.uk](mailto:hldelegatedpowers@parliament.uk)

## **Competitions Policy Team, Department for Business and Trade**

[CompetitionPolicy@businessandtrade.gov.uk](mailto:CompetitionPolicy@businessandtrade.gov.uk)

## **Crown Dependencies Team, Ministry of Justice**

[crown.dependencies@justice.gov.uk](mailto:crown.dependencies@justice.gov.uk)

## **Crown Dependencies: Bailiwick of Guernsey**

Jo Reeve, Director of International Relations & Constitutional Affairs  
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## **Crown Dependencies: Bailiwick of Jersey**

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## **Crown Dependencies: Isle of Man**

Anne Shimmin, External Relations Manager  
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## **Crown Estate**

1 St James's Market, London, SW1Y 4AH  
0207 851 5000  
[enquiries@thecrownestate.co.uk](mailto:enquiries@thecrownestate.co.uk)

## **Digital Regulation Team, Department for Science, Innovation & Technology**

[digital-regulation@dsit.gov.uk](mailto:digital-regulation@dsit.gov.uk)

## **Data Protection Policy Team, Department for Science, Innovation & Technology**

[datapcorrespondence@dsit.gov.uk](mailto:datapcorrespondence@dsit.gov.uk)

## **Environmental Principles Team (section 19), Department for Environment, Food & Rural Affairs**

[environmental.principles@defra.gov.uk](mailto:environmental.principles@defra.gov.uk)

## **Government Whips' Office (Commons)**

0207 276 2020

[cwocommittee@cabinetoffice.gov.uk](mailto:cwocommittee@cabinetoffice.gov.uk)

## **Government Whips' Office (Lords)**

0207 219 3131

[holgovernmentwhips@parliament.uk](mailto:holgovernmentwhips@parliament.uk)

**Joint Committee on Human Rights**

[jchr@parliament.uk](mailto:jchr@parliament.uk)

**Journal Office, House of Commons**

0207 219 3317

[journaloffice@parliament.uk](mailto:journaloffice@parliament.uk)

**Legal Secretariat to the Advocate General for Scotland**

0207 270 6722

<https://www.gov.uk/government/organisations/office-of-the-advocate-general-for-scotland>

**Parliamentary Business and Legislation (PBL) Secretariat, Cabinet Office**

[pbl-secretariat@cabinetoffice.gov.uk](mailto:pbl-secretariat@cabinetoffice.gov.uk)

**Lords Printed Paper Office**

0207 219 3037/3038

[printedpaperoffice@parliament.uk](mailto:printedpaperoffice@parliament.uk)

**The National Archives, Legislation Services Team** (enquiries about the accuracy or content of official legislation published on [www.legislation.gov.uk](http://www.legislation.gov.uk))

[legislation@nationalarchives.gov.uk](mailto:legislation@nationalarchives.gov.uk)

**The National Archives, Official Publishing Enquiries Team**

(obtaining Command paper numbers and enquiries about producing and publishing draft bills, and pre and post-legislative scrutiny documents)

0208 392 5218

[official.publishing@nationalarchives.gov.uk](mailto:official.publishing@nationalarchives.gov.uk)

**The National Archives, Policy Team**

(notification of intention to amend Public Records Act 1958)

[pra@nationalarchives.gov.uk](mailto:pra@nationalarchives.gov.uk)

**Northern Ireland Office**

[communications@nio.gov.uk](mailto:communications@nio.gov.uk)

**Northern Ireland Office, Rights Team**

(Article 2 of the Windsor Framework)

[crsg@nio.gov.uk](mailto:crsg@nio.gov.uk)

**Office of the Parliamentary Counsel**

0207 276 6541

<https://www.gov.uk/government/organisations/office-of-the-parliamentary-counsel>

**Overseas Territories Directorate, Foreign, Commonwealth & Development Office**

[DLOTDStrategyTeamSensitive@fcdo.gov.uk](mailto:DLOTDStrategyTeamSensitive@fcdo.gov.uk)

**Palace of Westminster Pass Office**

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[securityvetting@parliament.uk](mailto:securityvetting@parliament.uk)

**Parliamentary Adviser (Cabinet Secretariat), Cabinet Office**

0207 276 9941

**Public Bill Office (Commons)**

0207 219 3251

[pbohoc@parliament.uk](mailto:pbohoc@parliament.uk)

**Public Bill Office (Lords)**

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**Public Bodies Team, Cabinet Office**

[publicbodiesreform@cabinetoffice.gov.uk](mailto:publicbodiesreform@cabinetoffice.gov.uk)

**The Private Secretary to The King**

Buckingham Palace, London SW1A 1AA

**The Private Secretary to The Prince of Wales**

Kensington Palace, London, W8 4PX

**Scotland Office**

[enquiries@ukgovscotland.gov.uk](mailto:enquiries@ukgovscotland.gov.uk)

**Regulation Directorate (formerly the  
Better Regulation Executive), Department  
for Business and Trade**

0207 215 5000 (switchboard)

[BRF@businessandtrade.gov.uk](mailto:BRF@businessandtrade.gov.uk)

**Windsor Framework Taskforce, Cabinet  
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**Vote Office (Commons)**

0207 219 3631

[vote\\_office@parliament.co.uk](mailto:vote_office@parliament.co.uk)

**Wales Office**

0207 270 0534

[correspondence@ukgovwales.gov.uk](mailto:correspondence@ukgovwales.gov.uk)



# APPENDIX C: CODES OF PRACTICE AND LEGISLATION

- Bill teams should read this section if there is a proposal to adopt, use, or otherwise refer to a code of practice or similar document in implementing the legislation. Where it is proposed to introduce a code of practice in a way or for a purpose which departs from the guidance below, Ministers should be aware that this is likely to be controversial, particularly in the House of Lords.
- Where use of a code of practice is contemplated as part of, or as an adjunct to, the scheme of an Act, the drafting of the code ought to begin early enough to enable a decision as to whether statutory provision is required, and if so what kind of provision is appropriate, to be made with a clear idea of the proposed contents of the code. Equally, if Parliament is to be asked to enact statutory provisions relating to a code, a draft of the proposed code should if at all possible be made available so that the appropriateness of the statutory provisions can be properly considered.
- Failure to do this can hinder the passage of the enabling legislation. While this chapter offers a general guide only and the paramount consideration in every case must be the framing of a legislative scheme which is appropriate for the particular purpose in hand, departure from the general rules in this guidance should rarely be necessary and will require justification. In particular, departments should bear in mind that any unusual or novel provision will be closely scrutinised in Parliament.

## Meaning of ‘code of practice’

- A ‘code of practice’ is an authoritative statement of practice to be followed in some field. It typically differs from legislation in that it offers guidance rather than imposing requirements: its prescriptions are not hard and fast rules but guidelines which may allow considerable latitude in their practical application and may be departed from in appropriate circumstances. The provisions of a code are not directly enforceable by legal proceedings,

which is not to say that they may not have significant legal effects. A code of practice, unlike a legislative text, may also contain explanatory material and argument.

- A number of different kinds of document may be described by statute as a 'code of practice'. They may contain general principles or minute technical details, they may describe existing practice or practice which is recommended for the future and they may contain explanation and information of various kinds. Conversely, other terms may be used to describe essentially the same kind of document. This guidance refers to 'codes of practice' but its comments apply equally to similar documents under other names.
- It will usually be undesirable for an Act to refer to some other kind of document as a 'code of practice'. This is apt to mislead as to the status or intention of the document. Some more accurate descriptive title should be used.
- Different kinds of provisions may be found within a single document. Accordingly, where this guidance refers to a type of code the comment should be read as applicable to particular provisions of that description in a code of practice.

### **Is statutory provision necessary?**

- This guidance is concerned with legislation and is therefore not concerned with non-statutory codes. However, a preliminary question which must always be considered is whether statutory provision is necessary.
- There are many things departments can properly do without express statutory authority. It has been the practice for many years for departments to issue information, advice or exhortation of various kinds, for the guidance of the public or of the authorities or officers charged with administering some branch of Government. These documents may be described as 'codes' and may be of considerable practical importance. It does not follow that statutory provision is necessary.
- A provision which merely confers on a Minister power to issue a code of practice consisting of information, advice or exhortation which is not intended to have any particular legal effect is unnecessary.

- Statutory provision is justifiable if the code is intended to have a particular legal effect (the various types of which are described below). It is also justifiable if it is intended to impose a legal duty to issue a code of practice or to impose legal requirements as to the procedure to be followed in connection with its issue. Either of those courses indicates that importance is attached to the code of practice and careful consideration should be given to the question of its legal effect.
- Statutory provision may also be justifiable when setting up a statutory body to make clear that the body has power to issue codes of practice. Express provision is not necessary where, as will usually be the case, the issuing of codes is merely incidental to the body's general functions.
- If statutory provision is necessary but the code is not intended to have any particular legal effect of the descriptions below, there should be appropriate words indicating that the code is issued only for purposes of advice or information.
- Codes of practice are not to be used to define specific legal obligations. Where specific legal obligations are to be imposed, breach of which leads directly to civil or criminal liability, their content should be spelled out in primary or secondary legislation. A code of practice is not appropriate for this purpose, either to delineate the main obligation or to provide for exceptions or defences.
- A code of practice may be appropriate to explain or supplement the provisions of primary or secondary legislation. It should not be regarded as a substitute for legislation. It is the function of legislation to set minimum standards of conduct and it is usual to provide for penalties for those who fall below the minimum standard and for legal remedies for the protection or compensation of those who suffer injury or loss as a result. It is usual to set legal minimum standards notwithstanding that the overall policy objective is to raise standards generally above the minimum - an objective towards which a code of practice may contribute.
- Codes addressed to the public or a section of it: failure to comply with code as evidence of breach of legal duty The most common type of provision giving legal effect to a code of practice is that making failure to comply with the code evidence of breach of some more general legal duty. The codes in relation to which such provision is made are normally addressed to the public at large or a section of it (for instance, road users or employers).

- The liability is not for breach of the code but for breach of a duty arising elsewhere.
- There is no essential difference between the two styles of provision to this effect. The first type of provision focuses on the effect of breach or compliance in establishing liability; the second focuses on the effect of the code's provisions in elaborating standards of conduct. Both types of provision produce substantially the same result: that in certain kinds of proceedings the code is an element in deciding the issue of liability or some other question, but is not itself decisive.
- In neither case does the provision directly shift the legal or evidential burden of proof. The significance of a failure to comply with a provision of a code cannot be assessed except in relation to the circumstances of a particular case. The evidential weight depends on the relevance and importance of the failure in relation to the matters to be proved in order to establish liability.
- When considering what evidential effect should be attributed to any particular code careful consideration should be given to identifying so far as possible what proceedings, and what issues, a breach of the code may be relevant to. The resulting statutory provision should be as specific as is possible.
- In general the first type of provision is preferable because it is more specific, but it cannot be regarded as universally applicable. It may be that some adaptation of it, or something more akin to the "questions arising" form, is in particular circumstances more appropriate. For instance, it may not be "liability" which is in issue but some other question; and the proceedings may not be ordinary legal proceedings.
- A form appropriate to the determination of issues in legal proceedings should not be stretched to cover the exercise of administrative functions which is more aptly dealt with by a duty to have regard. It may in some cases be necessary to provide for both types of effect in relation to the same code.
- There is a variant form of the evidential code provision in s.17 (1) and (2) of the Health & Safety at Work Act 1974 (c.37) which expressly shifts the burden of proof. It is not usual to attempt in legislation to modify the operation of general legal principles such as those relating to the evidential burden of proof whose impact in the nature of things varies from case to case. And to shift the legal (or "persuasive") burden of proof would normally be regarded as giving a code too much legal force. For these reasons, although this provision

may be justified in its particular context, it should not in general be regarded as a precedent for future legislation.

### **Codes addressed to authorities and officers: duty to have regard to code**

- Another type of code of practice is that relevant to the exercise of statutory functions by public authorities or officers.
- General principles of administrative law require public authorities or officers in exercising their functions to direct themselves properly and to take into account all relevant factors and not to take into account irrelevant factors. Failure to do so may result in a decision or other Act being challenged in proceedings for judicial review or simply being regarded as being legally ineffective.
- If the provisions of a code are intended to be included among the relevant factors in the exercise of a class of functions it will normally be desirable to make this clear by requiring the relevant authorities to have regard to the code, or, which amounts to the same thing, to take it into account. As indicated above, the consequences of their failing to do so are governed by general administrative law; ad hoc statutory provision as to the effect of failure is neither necessary nor desirable.
- The requirement that an authority or officer must have regard to the code means that the authority or officer must consider the provisions of the code and give them due weight in coming to their decision. They are not bound to follow the code if they properly conclude that the recommendations of the code are, in a particular case, either not relevant or are outweighed by other considerations.
- Careful consideration should be given to identifying the persons or authorities who are required to have regard to the code and the decisions or functions in relation to which the provisions of the code are to be taken into account. Again, the statutory provision should be as specific as the circumstances admit.

### **Codes administered by authorities having regulatory or disciplinary powers: failure to comply with code leading to action by authority**

- Another form of provision found is that failure to comply with the provisions of a code of practice is a ground for the exercise of regulatory or disciplinary powers by some supervisory authority or, which amounts to the same thing, that an authority shall exercise

its general supervisory powers so as to secure compliance with the code. The code itself may be one issued by the authority in question, by Ministers or by some third party.

- This type of provision will not normally offend against the principle mentioned above (that a code of practice should not to be used to define specific legal obligations) because any legal liability arises as a result of the exercise of the authority's general powers and not simply from the failure to comply with the code. The authority will normally take action on some wider ground than breach of the code alone and will have a discretion as to how it exercises its regulatory powers.
- The effect of a breach of the code is in such cases broadly similar to that mentioned above in that it is a ground on which a sanction may, but need not, be imposed. However, similar considerations to those mentioned above (that a code of practice should not to be used to define specific legal obligations) apply if what is envisaged is a set of binding rules breach of which will, without anything else having to be shown or otherwise required, lead directly to the imposition of a sanction.

### **Statutory mention of codes having extra statutory effect**

- The framing of codes of practice by trade associations, professional bodies and other self-regulatory organisations is commonplace and whatever legal effect they have is basically a matter of private law. There are a number of statutory provisions which confer duties on regulatory authorities to encourage the preparation and dissemination of codes by non-governmental bodies.
- These provisions do not confer any additional legal effect on the codes in question.

### **Drafting codes of practice**

- Codes of practice are drawn up for a wide range of audiences and purposes and contain a variety of provisions. No general guidance is possible, or indeed necessary, as to the manner in which a code is expressed. The main purpose of a code of practice is to inform and guide and it will fail in that object if its provisions are not clear.
- Every code which is drawn up under statutory authority should refer to its authorising provision and recite or summarise the purposes for which it is issued.

- Where a code is to have legal effect of any of the kinds mentioned above, it should also recite or summarise the provisions giving it that legal effect. Such a code must also be sufficiently precisely drafted for its intended purpose. In particular, where a code contains provisions of different kinds it should be arranged, so far as practicable, in such a way as to make it clear which passages are prescriptive and which contain only exhortation, explanation or information.
- Where use of a code of practice is contemplated as part of, or as an adjunct to, the scheme of an Act, the drafting of the code ought to begin early enough to enable a decision as to whether statutory provision is required, and if so what kind of provision is appropriate, to be made with a clear idea of the proposed contents of the code. Equally, if Parliament is to be asked to enact statutory provisions relating to a code, a draft of the proposed code should if at all possible be made available so that the appropriateness of the statutory provisions can be properly considered.
- Failure to do this can hinder the passage of the enabling legislation.

### **Parliamentary procedure for codes of practice**

- Departments should ensure that there is appropriate provision for Parliamentary procedure where the nature and importance of the subject matter of a code warrants it. In the case of evidential codes (where the failure to comply with a code can be taken as evidence of breach of legal duty) and codes to which authorities are to have regard, there is a presumption in favour of parliamentary procedure of some kind; but this may not be appropriate for detailed technical documents. If it is envisaged that a code will be frequently amended, it may be sufficient to provide for parliamentary procedure only in relation to its original issue or revocation.
- The considerations involved in deciding between affirmative and negative procedure, or no procedure, are broadly similar to those applicable in the case of subordinate legislation. Parliament will wish to consider the substance of the code, so that provision for Parliamentary procedure should relate to the code itself and not, where there is one, to the order bringing the code into operation, even though that may be a statutory instrument. In the case of the approval by Ministers of a code drawn up by a third party it may be appropriate to provide for Parliamentary procedure in relation to the approval order, the code itself having been laid before Parliament.

## Publication and commencement

- Departments should ensure that there are satisfactory arrangements for publication or other means of bringing the contents of a code of practice to the notice of those to whom it is directed.
- No special statutory provision is required, although it is sometimes found, for the publication and sale of codes. In the case of codes addressed to authorities or officers it should be borne in mind that others will have a legitimate interest in the contents of the code, for instance, in order to challenge a decision taken in breach of the code. In such cases other means of disseminating the necessary information may be appropriate, for instance, publishing the code on a website, as a circular in a series sold through TSO, or the department's designated publisher including the code in a relevant annual report which is published. Every code issued under statutory authority ought to be made available to Parliament; if it is not otherwise available, by placing a copy in the Library of each House.
- It will often be important to know when a code, or an amendment of it, came into operation. There is no reason why this should not be stated in the code itself but it may be convenient to make provision in a separate order, particularly where it is necessary to include transitional provisions or savings. Where such orders are made by Ministers they should be made by statutory instrument.

## Evidence: Admissibility and proof of document

- Provision is sometimes found that a code of practice is to be "admissible" in certain kinds of legal proceedings. A code (whether expressed as a command or a statement of fact) is a statement of the opinion of the maker of the code as to what ought to be done. Such a statement would not normally be relevant to a court's consideration of what is legally required to be done. That may be simply a matter of law on which the court makes up its own mind after hearing argument; or it may involve questions of fact (such as, what is "best practicable means" or "reasonable care") on which expert witnesses may be called. The contents of a code of practice are a form of "opinion evidence" of someone who is not a witness and may not be an expert in the sense under discussion (i.e. the code of practice is compiled by persons who are unidentified and who if identified might not count as experts). To provide that the code is admissible, therefore, means that the document can be put before the court despite these general rules of the law of evidence.



- Provision to this effect is unnecessary if the court is directed by the Act to take the code into account for some specified purpose. It must follow from such a duty that the court can look at the code whatever its status may be so far as the general rules of evidence are concerned.
- This question must be distinguished from the question of how the text of the code is proved. Assuming a code of practice is "admissible" or may be relied on in particular proceedings, there may in some cases be technical difficulties in proving that the document is in fact the code referred to in the Act or in establishing what the text of the code is. In criminal proceedings, in particular, the prosecution may find itself put to proof of a code not in common use or there may be a real dispute as to the correct text of a code at any material time. As well as the text, the party relying on a code may be required to prove when the code, or an amendment, was issued or came into operation.
- Codes and related documents issued by Government departments may have the benefit of the Documentary Evidence Act 1868 (c.37), as amended and extended, which enables the document to be proved by a copy purporting to be printed by, or under the superintendence or authority of, His Majesty's Stationery Office. In other cases it will be necessary to consider whether provision should be made for facilitating the proof of the document, and of any order or other instrument approving it for the purposes of the statute, by creating a presumption that such a document is what it purports to be.

# APPENDIX D: SECURING LEGISLATIVE CONSENT MOTIONS IN THE DEVOLVED LEGISLATURES

## General principles

- In each of the devolved legislatures the process of securing a Legislative Consent Motion (LCM) begins with a legislative consent memorandum being tabled by the corresponding devolved government. This memorandum cannot be tabled until the Westminster bill has been introduced by the UK Government (UKG) before Parliament. The subsequent processes and timings vary slightly between the devolved legislatures as set out below. In theory, the LCM process can be expedited in all three of the devolved legislatures, however the timing and process of LCMs is very much a matter for the devolved legislatures to consider.
- LCMs must be passed by the devolved legislatures before the bill reaches its final amending stages in the second House in Parliament<sup>19</sup>. This is to ensure that UKG has the contingency option of tabling amendments to the bill to remove or amend the relevant provisions/clauses in the event that any of the devolved legislatures choose to withhold legislative consent.
- Further information on the LCM processes in each of the devolved legislatures can be found in Devolution Guidance Notes (DGNs) 8, 10 and 18.

## Scottish Parliament

- The Scottish Parliament's Standing Orders set out how the devolved legislature deals with LCMs. The Standing Orders state that, once legislation is introduced in the UK Parliament, and if the legislation relates to a matter within the legislative competence of the Scottish Parliament (or alters/modifies executive or legislative competence), the Scottish Government is required to lodge a legislative consent memorandum within two weeks (although that can be extended if the Scottish Government can secure agreement from the

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<sup>19</sup> In the case of the House of Lords, the final amending stage should be considered as Report Stage (and not Third Reading).

Scottish Parliament to suspend the relevant Standing Order). This memorandum should set out the provisions which are considered to engage the LCM process alongside the Scottish Government's recommendation on whether or not the Scottish Parliament should agree to give legislative consent.

- Prior to the introduction of the memorandum, the Scottish Parliament's Presiding Officer must determine whether the legislative consent memorandum falls within the scope of the Scottish Parliament's Standing Orders in relation to LCMs.
- When a memorandum has been tabled in the Scottish Parliament, the process can take around eight weeks and cannot be expedited without the agreement of the Scottish Parliament. As part of this process, the memorandum will be considered by a lead scrutiny committee of the Scottish Parliament, who will produce a report prior to a final vote on the LCM itself. In some cases, UKG Ministers may be asked to attend a committee session in order to provide formal evidence in relation to the bill.
- Under the Scottish Parliament's Standing Orders, it is possible for any Member of the Scottish Parliament (MSP) to table an LCM before the Scottish Parliament, however LCMs are almost always tabled and promoted by the Scottish Government.

### **Senedd Cymru/Welsh Parliament**

- Under the Senedd Cymru/Welsh Parliament's Standing Orders for Westminster bills that engage the LCM process, the Welsh Government must lay a legislative consent memorandum in the Senedd setting out the provisions which fall within the legislative competence of the Senedd. The memorandum must identify "relevant provision" (ie: provisions which fall within the legislative competence of the Senedd or provisions which modify or alter the legislative or executive competence of the Senedd or Welsh Ministers), and explain whether or not the Welsh Government considers it appropriate for a Westminster bill to legislate in areas of devolved competence. The Senedd's Standing Orders also state that such a memorandum must normally be laid no later than two weeks after the bill's introduction in the Westminster Parliament.
- The Senedd's Business Committee normally refers the Welsh Government's legislative consent memorandum to a Senedd committee for scrutiny and sets a date by when that committee must report back to the Senedd on it. In some cases, UKG Ministers may be asked to attend a committee session in order to provide formal evidence in relation to the bill. Once the committee has reported on the memorandum, or the deadline by which the

committee is required to report has passed, any Member of the Senedd (in practice, usually a Welsh Minister) may table an LCM for the Senedd to consider and vote on.

- Whilst there is no specific role for the Senedd's Presiding Officer in relation to Westminster bills, their general competence to determine questions on the interpretation or application of the Standing Orders would enable them to rule out an LCM debate if the Welsh Government's legislative consent memorandum fails to identify "relevant provision", or if the process of scrutiny was defective.
- The process from laying the memorandum to the date of the Senedd's LCM debate and vote usually takes around six to eight weeks, although this can depend on the complexity and content of the bill being considered for legislative consent.

### **Northern Ireland Assembly**

- The LCM process in the Northern Ireland Assembly begins with the relevant Northern Ireland Executive Minister laying a legislative consent memorandum before the Northern Ireland Assembly, either explaining that consent is being sought or explaining why the Minister is declining to recommend that consent be given. This cannot happen until after the bill has been introduced at Westminster and should normally happen within ten working days of the bill's introduction at Westminster.
- It is possible for any other Member of the Legislative Assembly (MLA) to lay a legislative consent memorandum. This may only happen after either the Northern Ireland Executive Minister has laid a legislative consent memorandum; or the Northern Ireland Executive Minister has laid a memorandum explaining why consent is not being recommended; or the ten working day period has elapsed.
- Once a legislative consent memorandum has been laid before the Northern Ireland Assembly, those provisions of the bill dealing with a transferred matter are referred to the relevant Northern Ireland Assembly scrutiny committee for consideration, unless the Assembly orders otherwise. The committee may report its opinion to the Northern Ireland Assembly within 15 working days of referral.
- At least five working days after publication of the committee's report (or 20 working days after referral to the committee), the relevant Northern Ireland Executive Minister may then table an LCM and move the motion. The Northern Ireland Assembly will then vote on whether to agree to the LCM i.e. give consent. If the motion is not supported then consent will not have been provided.

- Unique to Northern Ireland, a Petition of Concern can apply to any Northern Ireland Assembly vote, including a vote on an LCM. If 30 or more MLAs support a petition, then the vote requires either the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting. Except in exceptional circumstances a petition must be delivered to the Speaker at least one hour before the vote is due to take place; if one is presented, the vote cannot take place for a further 24 hours.
- The LCM process in Northern Ireland (involving the agreement of the Northern Ireland Executive, the relevant committee scrutiny and vote of the Northern Ireland Assembly itself) can generally take around eight weeks. There is no urgent procedure in the Assembly's Standing Orders, although Standing Orders can be suspended with the agreement of the Northern Ireland Assembly itself.

# APPENDIX E: DELEGATED LEGISLATION TOOLKIT

- An Act of Parliament can give ministers or others the power (sometimes called a ‘delegated power’) to make secondary legislation. This toolkit will help you decide whether to include delegated powers in a bill. It sets out some guiding principles and practical examples (which are not intended to be exhaustive).
- The toolkit covers the following issues:
  - What is the right balance between primary and secondary legislation?
  - What is the proper role for delegated powers?
  - Where will delegated powers not generally be justifiable?
  - In what circumstances may it be appropriate to take powers that enable primary legislation to be amended (so called “Henry VIII powers”)?
  - What alternatives should be considered when deciding whether to take a delegated power?
  - What safeguards should be considered when it has been decided to take a delegated power?
- Questions about the application of this guidance should be discussed in the first instance with departmental policy officials and lawyers, who can liaise with the Office of the Parliamentary Counsel and, as appropriate, with the Attorney General’s Office/Legal Secretariat to the Advocate General for Scotland for clarification or further assistance.
- These issues will ultimately need to be resolved as part of the usual processes for agreeing the form and content of legislation before introduction, and with ministerial discussion where required.

- This guidance is exclusively concerned with decisions about whether to take new powers in primary legislation. It is not intended to deal with the exercise of existing powers to make secondary legislation.

#### **A. What is the right balance between primary and secondary legislation?**

- An Act of Parliament is the way that the most important aspects of policy are translated into law. An Act should contain the main aspects of a policy at an appropriate level of detail to be meaningfully scrutinised by Parliament, and to be understood and applied by those at whom it is aimed.
- Delegated powers are generally used to give effect to the policy framework in the Act.

#### **Example**

- The Marriage (Same Sex Couples) Act 2013 introduced marriage for same-sex couples in England and Wales. The Act allowed existing civil partnerships to be converted into a marriage. A delegated power was taken to allow ministers to set out how that procedure should work in practice (e.g. the information that should be provided to support an application).

- As a rule of thumb, the more significant a legal change, the stronger the presumption that it should be set out in primary legislation so that it can be debated by Parliament via the bill process, rather than included within the scope of a delegated power.

#### **B. What is the proper role for delegated powers?**

- Secondary legislation is an indispensable part of modern lawmaking, but it is vital that it is used appropriately, and not abused. The scope of powers, the rationale for their use, and whether any safeguards are appropriate (as below) should be properly tested and justified in every case.
- Delegated powers are more likely to be appropriate for matters such as:
  - dealing with secondary policy detail required to give effect to the Act, including technical or administrative matters (e.g. application processes, detailed procedural rules);

- making consequential changes to other legislation;
- including detail which may need amending more often than Parliament can be expected to legislate for by primary legislation, in circumstances where the purpose of the Act will be defeated if changes could only be achieved by further bills (e.g. in an area of rapidly evolving technology where references to technical concepts could quickly become defunct);
- dealing with things which can reasonably be anticipated to change regularly in the future (e.g. uprating sums in line with inflation);
- accommodating the fact that a detailed policy has to work differently for different groups of people, different areas, etc. (e.g. to set up a pilot scheme for a new policy in one part of the country) or has to deal with niche cases;
- dealing with emergency situations, where primary legislation is not feasible as a means of responding to fast-moving events (e.g. public health emergencies).

### **C. Where will delegated powers not generally be justifiable?**

- Delegated powers should not generally be taken so as to make provision in future which is central to the effect of the Bill. That detail should normally be included on the face of a bill for scrutiny and debate as part of its passage.
- For example, delegated powers should only exceptionally be taken to deal with:
  - the creation or extension of generally applicable criminal offences or penalties (and regulatory offences, unless they are to be created by powers containing appropriate safeguards – see section F below);
  - measures effecting significant constitutional change.
- It is of particular importance that a delegated power which is capable of interfering with human rights is appropriately justified and contains proper safeguards (which may vary according to the nature of the right and the significance of the potential interference).



- Delegated powers are unlikely to be appropriate, for example:
  - to legislate for essential aspects of a policy framework which have not been set out in the Act (including ‘skeleton clauses’ which leave the real substance of the Act to regulations made under it);
  - because there has been insufficient time for proper policy development; or where powers are being included speculatively on a ‘just in case’ basis.

#### **D. In what circumstances may it be appropriate to take Henry VIII powers?**

- As a general rule, an Act of Parliament should be amended or repealed by another Act. Powers to amend or modify primary legislation by secondary legislation (sometimes called ‘Henry VIII’ powers) should only be taken where their necessity has been rigorously tested, and appropriate safeguards – or alternatives – fully considered.
- Henry VIII powers are sometimes misunderstood as being unacceptable in all circumstances. What really matters, though, is the scope of the power, and the substance of the change that is capable of being made to primary legislation.
- Some examples of where Henry VIII powers may be acceptable include:
  - to amend detail which could well have been left to secondary legislation (see section B) but has been included in primary legislation to make the law easier for the reader to understand;
  - to make consequential amendments to legislation in light of changes made by an Act;
  - to add new cases to a legal framework set out in an Act, where not being able to do so would undermine the policy of that Act (e.g. in a policy environment involving rapid technological or other change, or where there is likelihood of abuse or avoidance).

## Example 1

Section 339ZH(10) of the [Proceeds of Crime Act 2002](#) allows the Secretary of State to update in line with inflation the maximum penalty set out in the Act for failing to comply with a court order

## Example 2

Section 10 of the [Genetic Technology \(Precision Breeding\) Act 2023](#) allows the definition of 'relevant animal' in the Act to be updated in order to ensure consistency with related regulatory regimes.

- By contrast, Henry VIII powers should not generally (and not without appropriate safeguards) be taken to amend the matters that are identified above as only exceptionally being the proper subject of a delegated power (see section C above).
- The starting assumption is that Henry VIII powers should be subject to the affirmative procedure unless, having regard to the substance of the power, there is a good justification for a different level of scrutiny (e.g. because the power is only capable of making amendments of a minor character).

### **E. What alternatives should be considered when deciding whether to take a delegated power?**

- Some examples of alternative approaches to taking a delegated power may be:
  - delaying introduction of the Bill until policy formulation is more advanced;
  - including, on the face of the Bill, more aspects of the policy that a power seeks to implement;
  - where policy formulation is still ongoing, to consider whether it may be possible and appropriate to proceed by way of Government amendment at a later stage.

### **F. What safeguards should be considered when it has been decided to take a delegated power?**

- Powers should be no wider than necessary to meet their intended objective. This is particularly important where the power is capable of amending primary legislation.

- The wider a power, the more likely it is that specific safeguards should be included to uphold the proper constitutional balance between Parliament and the executive, and to guard against future abuse.
- Some examples of appropriate safeguards, or alternative approaches, may include:
  - express restrictions on the scope of a power (e.g. limiting to the expansion, rather than removal of rights granted by an Act; limiting its application to a particular group of people/type of case; setting statutory maximum limits on matters such as fines and sentences);
  - a test or threshold that must be met, or process undertaken (e.g. consultation), before a power can be exercised;
  - clear description of, or parameters around, what the power can positively do (e.g. describing as tightly as possible the kind of conduct that may amount to a regulatory offence);
  - appropriate parliamentary scrutiny procedures: as a rule of thumb, powers capable of making more significant provision should be subject to the affirmative resolution procedure;
  - sunset provisions (which mean that the power will expire, or must be renewed by Parliament, after a given period of time).
- The implications of these different approaches will need to be carefully worked through, including by reference to legal and delivery risks.

# APPENDIX F: OTHER GUIDES

## **Cabinet Office**

- a. [Ministerial Code](#)
- b. [Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee](#)
- c. [Devolution guidance notes](#)
- d. [Common Legislative Solutions: a guide to tackling recurring policy issues in legislation](#)
- e. [Consultation Principles: Guidance](#)
- f. [Guide to Parliamentary Work](#) - for information on security, access and accessibility
- g. [Cabinet Manual](#)

## **Competition and Markets Authority**

- h. [Competition impact assessment: guidelines for policymakers](#)

## **Department for Business and Trade**

- i. [Legislative Reform Order-making Powers](#)
- j. [Better regulation framework](#)

## **Department for Science, Innovation & Technology**

- k. [Data Protection Impact Assessments](#)
- l. [Guidance on the application of Article 36\(4\) of the General Data Protection Regulation \(GDPR\)](#)
- m. [ICO Data Sharing Code of Practice](#)

## **Department for Food, Environment and Rural Affairs**

- n. [Environmental Principles Policy Statement](#)

## **Equality and Human Rights Commission**

- o. [The Essential Guide to the Public Sector Equality Duty](#)

- p. [Meeting the equality duty in policy and decision-making](#)

### **Government Legal Department**

- q. [GLD Digital - Legal guidance for civil servants](#) (Government email address required)
- r. [The Judge Over Your Shoulder](#)

### **HM Treasury**

- s. [Managing Public Money](#)
- t. [The Green Book: appraisal and evaluation in central government](#)

### **Ministry of Justice**

- u. [Guidance: Crown Dependencies](#)
- v. [Justice impact test guidance](#)

### **Parliament**

- w. [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#)
- x. House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC), [Guidance for Departments on the role and requirements of the Committee](#)
- y. Joint Committee on Human Rights, [The Committee's Future Working Practices](#)
- z. [Standing Orders of the House of Commons - Public Business](#)

### **Other**

- aa. [Making Laws that Work, by David Goddard](#) - reflections on creating effective legislation. The legislative checklists are available online.

# APPENDIX G: CHECKLISTS FOR EACH STAGE

*These checklists are **not comprehensive and are not to be read in isolation** but referred to alongside the relevant sections of the Guide. You should read all of the chapters on parliamentary stages in the Guide first to allow for timely preparation in advance of deadlines.*

## PREPARING A BILL FOR INTRODUCTION

### Before drafting legislation

- Bid for the bill, completing a bid template provided by the PBL Secretariat.
- Contact the PBL Secretariat to discuss the bid.
- Obtain drafting authority from the Leader of the House of Commons for OPC to draft the bill.
- Put in place resources: a bill team, legal team, and governance mechanisms.
- If there is a joint bill team with two or more departments, agree a protocol for managing the bill.
- Produce a clear delivery plan for developing the bill and supporting documents from now until after Royal Assent.
- Arrange for training (contact the Parliamentary Capability team or the PBL Secretariat).
- Engage the Union and Devolution Directorate, Territorial Offices and then the devolved governments on any devolved implications of the bill.

### During drafting

- Obtain collective agreement for the policy in the bill.
- Work with departments across-government on any implications for their areas.
- Contact the AGO and LSAG to discuss the key legal issues in the bill and whether any Law Officer consents will be required.

- Consider the duty on Ministers of the Crown in section 19 of the Environment Act 2021 to have due regard to the environmental principles policy statement when making policy, including proposals that lead to legislation.
- Contact the United Kingdom Intelligence Community to discuss whether the proposals impact on work of the Agencies.
- Consider the impact, if any, on the Crown Dependencies and British overseas territories, as necessary, in consultation with MoJ and FCDO.
- Contact the Data Protection Policy Team in DSIT to discuss whether the proposals which relate to the processing of personal data are compatible with data protection legislation.
- Consult the Information Commissioner's Office on any new data sharing proposals or gateways
- Address any finance, public expenditure or tax implications of the bill and obtain the agreement of HM Treasury where necessary.
- Seek Cabinet Office and HM Treasury ministerial approval before taking steps to establish, disestablish, re-classify, or merge an Arm's-Length Body (ALB), if applicable.
- Give the House Authorities an opportunity to comment on proposals intended to apply in relation to Parliament or the parliamentary estate.
- Begin work on your economic and equalities impact assessments, if applicable.
- Begin work on explanatory notes, delegated powers memorandum, ECHR memorandum, factsheets, "keeling schedules" and other supporting documents.
- Keep in regular contact with the PBL Secretariat.

#### **Before PBL Committee consideration of the bill for introduction**

- Ensure you have a plan to draft and deliver the documents required, and assigned members of the team. You will need to provide (see below for detailed checklists on each product):
  - Bill print (OPC will provide)
  - Explanatory Notes
  - PBL Memorandum
  - Parliamentary handling strategy
  - Legal Issues Memorandum
  - Delegated Powers Memorandum, if needed

- Impact Assessment and RPC opinion, if needed
- Ask the PBL Secretariat for the templates.
- Documents need to be circulated to PBL Secretariat one week before the Committee meeting, with drafts shared the week before that, or in the case of the Legal Issues Memo, at least three weeks before.
- Ensure the AGO and LSAG are sent the draft legal issues memorandum three weeks before documents are sent to the PBL Committee. AGO and LSAG officials will need to comment on any draft requests for retrospection or early commencement in good time for the final requests to be sent to AGO and LSAG.

### **Explanatory Notes:**

- Identify the personnel who will be responsible for preparing the explanatory notes (ENs), including the person who will act as the point of contact with the Public Bill Offices (PBO).
- Begin drafting the ENs (using the template), starting with the sections on policy background and legal background.
- Seek comments from departmental lawyers throughout drafting of the Bill, including the final version of the ENs before they are sent to PBL Committee.
- Consider whether you should consult OPC on parts of the ENs relating to territorial extent and application.
- If the bill is to be introduced in the House of Commons, ask OPC to provide, or to clear, the wording for the part of the ENs that relate to parliamentary approval for financial costs or charges imposed.
- Consult the Territorial Offices and Office of the Advocate General (as appropriate) to provide final clearance for the relevant sections of the notes.
- Ensure the final draft of the ENs are consistent with the final text of the bill.
- Arrange for the Public Bill Office to comment on the explanatory notes (at least two days before introduction).
- Action any comments from the PBO.

### **Prepare a PBL Committee memorandum**

- Draft the Memo, summarising the content of the bill and any other important issues which have been covered in the other PBL Committee documents referenced above.



- Proof read the final version of the Memo, ensuring all sections are complete.

### **Prepare a final parliamentary handling strategy**

- Draft the handling strategy.
- Share the draft handling strategy with the Whips at least one week before they are submitted to the PBL Committee for circulation.
- Action any comments to from the Government Whips' Offices in the Commons and Lords.

### **Produce a delegated powers memorandum (DPM), if applicable, for publication**

- Draft the DPM, explaining the purpose of and justification for any delegation of power in the bill
- Share the DPM with Lords Whips' Office at least one week before they are submitted to the PBL Committee for circulation.
- Action any comments from the Government Whips' Office in the Lords.

### **Produce full impact assessment, if applicable**

- Engage with your departmental Better Regulation team.
- Produce the impact assessment.
- Engage with the RPC, where appropriate.
- Action any comments from the RPC in relation to an initial opinion.

### **Draft the Legal Issues Memorandum (LIM)**

- Draft the LIM, setting out the justification for any provisions that may potentially be considered to touch on Convention rights in a legal issues memorandum. Consider the bill's compatibility with the European Convention on Human Rights and arrange for the bill minister to sign the ECHR statement to support the bill.
- Consider whether the bill contains environmental law (NB: the minister may need to sign a statement, or include a sentence in the ENs).
- Consider whether the bill relates to Northern Ireland-Great Britain trade (NB: the minister may need to sign a statement, or include a sentence in the ENs)
- Consider whether the bill is compatible with Scottish and Northern Ireland law. Consult with the Territorial Offices and Office of the Advocate General as appropriate in relation to any devolution matters.

## Before PBL Committee

- Clear the PBL Committee documents with your minister/s.
- Submit the papers to PBL Secretariat one week before the PBL Committee meeting.
- Brief your minister ahead of the PBL Committee meeting.

## THE HOUSE OF COMMONS

### Ahead of presentation/First Reading in the Commons

- Arrange bill backers
- If applicable, arrange for the minister to sign an ECHR statement.
- Arrange for the minister to sign an environment law statement, or include a sentence in the ENs
- Arrange for the minister to sign a Northern Ireland-Great Britain trade statement, or include a sentence in the ENs.
- Agree that OPC can give notice of presentation of the bill.
- Send the final bill print and ENs to the PBO (OPC will send the bill print; the bill team should send other documents including the ENs). The PBO will add the bill number and arrange printing of both documents.
- Confirm with the Whips Office which minister will sit on the front bench to 'nod' in the bill.
- If necessary, write to the devolved governments requesting their agreement to initiate the legislative consent process. You should repeat this whenever the bill is amended in a way which engages the legislative consent process.

### On the day of introduction

- Send the delegated powers memorandum to Commons PBO for publication  
*(requires sending to the DPRRC when the Bill reaches the Lords - see Lords intro requirements).*
- Share soft copies with the PBO of: the impact assessment and Regulatory Policy Committee opinion (if applicable), ECHR memo (if separate analysis has been undertaken).
- Send the ECHR memo to the JCHR.
- Provide printed copies of relevant documents to the PBO, including:

- 50 copies of the delegated powers memo in the Commons Vote Office, and
- 50 copies of the impact assessment and Regulatory Policy Committee opinion (if applicable).
- Arrange for publication on GOV.UK (on dedicated Bill page) of:
  - Impact assessment(s) and Regulatory Policy Committee opinion (if applicable),
  - Delegated powers memo and ECHR memo (if relevant), and
  - Other supporting statements (e.g. fact sheets) where relevant.
- Arrange for deposit of supporting documents in the House libraries.

### **After the bill has been introduced**

- Arrange for a written ministerial statement (WMS) to be issued (if relevant) and agreed with the Whips offices and No.10.
- Send a 'Dear Colleagues' letter to MPs (as agreed with the Commons Whips office and No.10).
- Send stakeholder and select committee correspondence (where relevant).
- Issue a press notice and media briefings (where relevant).

### **Ahead of Commons Second Reading**

- Keep in touch with the Whips about the timing for Second Reading.
- Meet the minister to understand their briefing requirements.
- Arrange for ministers to open and close - agree the approach with the Whips Office.
- Draft an opening speech, including details of the bill.
- Draft a skeleton closing speech, with placeholders to respond to the expected areas of questioning, and rebuttals to any reasoned amendments tabled.
- Provide a Q&A pack with top lines to respond to anticipated issues that will come up during the debate.
- Take stock of stakeholder briefings and wider public narratives ahead of debate - and reflect positions in the briefing pack.
- Ensure you have copies of speech for Hansard, and copies of the final briefing pack that can be annotated and passed to the minister (via the PPS) as necessary.
- Agree officials to attend the box with the departmental parliamentary branch (establish a virtual box for policy leads/lawyers).

## After Commons Second Reading

- Provide a readout of the debate across the department, PBL Secretariat and business managers.
- Follow up on any commitments e.g. 'I will write' letters.

## Commons Committee Stage

- Provide the Whips with a list of witnesses for oral evidence sessions (agreed by the bill minister).
- With Whips and OPC, prepare programming resolution and standard motions for sitting in private and publication of written evidence.
- Brief minister for programming sub-committee.
- Prepare suggested questions for the minister to ask witnesses.
- Develop a tracker for amendments.
- Agree a process for responding to amendments and briefing ministers with policy, legal, press and private offices (including drafting / clearance processes). Communicate deadlines and expected pressure points to the department.
- Arrange an early discussion with the Committee Clerk and agree process for the bill team to comment on draft groupings.
- Consider providing a procedural brief on how Committee works to the bill minister (in discussion with the Whips office).
- Draft clause/schedule stand part notes for each clause/schedule in the bill.
- Agree suggested Government amendments needed with the PBL Secretariat and Whips offices before seeking collective agreement.
- Seek collective agreement (PBL Committee and policy committee if needed)
- Factor in time for instructing OPC to prepare any Government amendments.
- Commission notes on amendments (explanations of amendments, speaking note and Q&A) to be cleared by legal and (if necessary) communications colleagues.
- Stay in touch with the Whips offices about timing for Committee and what will be debated when.
- Table Government amendments at least a week before consideration (having agreed that they can be tabled with the Whips); provide details in a letter to co-chairs of the Public Bill Committee (enclosing, as appropriate, supplementary delegated powers and ECHR memos).

- If needed, discuss final grouping with the Clerk directly, or via OPC.
- Provide final ministerial briefing pack.
- Brief minister/s
- Agree officials to attend the box and alert the departmental parliamentary branch.  
Establish a virtual box as required for those not attending in person.
- During Committee:** keep a list of Ministerial commitments and provide a readout of the debate across the department, PBL Secretariat and business managers.
- Prepare script for minister at end of committee thanking co-chairs etc.
- Ensure your explanatory notes are updated and ready to be re-published on Lords introduction
- If applicable, ensure your Delegated Powers Memo is updated and ready to be published as soon as Committee Stage has concluded.
- Keep in regular contact with the PBL Secretariat.

### **Commons Remaining stages (Report and Third Reading)**

- Keep in touch with the Whips office about the timing of remaining stages, including tabling deadlines and how the debate will run.
- Obtain clearance for any Government amendments, factoring in time to instruct OPC to prepare any Government amendments that are wanted. Send a letter detailing amendments to the Official Opposition spokesperson (enclosing supplementary ECHR and delegated powers memos where appropriate).
- Table amendments at least one week before the debate (having agreed that they can be tabled with the Whips).
- Send a letter detailing amendments to the Official Opposition spokesperson (enclosing supplementary ECHR and delegated powers memos, where appropriate).
- If necessary, issue further Dear Colleague letter covering key Government amendment and high-profile non-government amendments.
- If you are at the final amending stage in the second House, ensure that any LCMs have been passed by the devolved legislatures.
- Commission notes on amendments (explanations of amendments, speaking note and Q&A) to be cleared by legal and (if necessary) communications colleagues.
- Agree with Whips terms of any supplementary programme motion.
- If needed, discuss final grouping with the Clerk directly, or via OPC.

- Provide a Q&A pack with top lines to respond to anticipated issues that could come up during the debate.
- Brief minister.
- Arrange any briefing sessions with MPs that may be required.
- If the bill requires King's and/or Prince's consent, check that the Order Paper mentions this; if this has been omitted, it should be pointed out to OPC who will alert the House Authorities.
- Arrange for a Minister, who is a privy counsellor, to signify Consent just before Third Reading, if applicable.
- Ensure the Minister has a short Third Reading speech setting out how the bill has changed since introduction and thank Members for their interest in the bill.
- Provide a readout of the debate across the department, PBL Secretariat and business managers.

### **Preparing to transfer to the second House**

- Ensure the 'take up' arrangements are clear (i.e. which Minister is to take charge of the bill in the second House).
- Agree an approach to parliamentary engagement with the Whips Offices.
- Ensure the bill, as amended in the Commons, is proof read and approved for publication.
- Ensure explanatory notes are revised as necessary to publish alongside the bill. These needs to be cleared with the Public Bill Office in the Lords at least two to three working days before the bill is sent to the Lords.
- Arrange a fresh ECHR statement to be signed.
- If the Bill contains environmental law, arrange for the Lords Minister in charge of the Bill to sign an environmental law statement.
- If the bill relates to Northern Ireland-Great Britain trade, arrange for the Lords Minister in charge of the Bill to sign a statement, or include a sentence in the ENs.
- Revise and arrange for re-publication of the impact assessment(s) and delegated powers memorandum as necessary,

## THE HOUSE OF LORDS

### Lords Introduction and First Reading

*Note that after Third Reading in the Commons, the House copy of the print incorporating amendments (signed by the Clerk of the House) is delivered to the House of Lords with a message. There is no formal process for the Lords Minister to move First Reading (this will be done by the Whips).*

If the bill starts in the Lords:

- Agree that OPC can alert the PBO to the intention to introduce a bill (different to notice of presentation).
- Ensure the government Peer is lined up to read the long title. If the bill started in the Commons, the Whip will read out the short title and formally move First Reading.
- Send draft explanatory notes to the PBO for comment (at least two to three working days before introduction).
- Arrange for the Lords Minister in charge of the Bill to sign an ECHR statement.
- If the bill contains environmental law, arrange for the Lords Minister in charge of the Bill to sign an environmental law statement.
- If the bill relates to Northern Ireland-Great Britain trade, arrange for the Lords Minister in charge of the bill to sign a statement, or include a sentence in the ENs.
- Send the delegated powers memorandum to the DPRRC Committee.

Whether the bill starts in the Lords or Commons, departments also will need to:

- Send final explanatory notes to the PBO the day before publication.
- Share soft copies of the impact assessment(s), and ECHR memo (if separate analysis has been undertaken) with the Lords Publishing Team for publication on the Bill's Parliament webpage.
- Arrange for publication on GOV.UK (on dedicated Bill page) of:
  - Impact assessment(s) and Regulatory Policy Committee opinion (if applicable),
  - Delegated powers memo and ECHR memo (if relevant), and
  - Other supporting statements (e.g. fact sheets) where relevant.
- Make provision for revised editions of Acts ("keeling schedules") (where necessary).

- Arrange press briefings and memos to be published after publication of the bill and supporting documents.
- Set up necessary engagement with peers, either through an all-peers meeting or attending party group meetings.
- Send any All Peers letters (as agreed with the Lords Whips office and No.10).

### **Lords Second Reading**

- Ahead of Second Reading, agree and arrange briefings for the lead Minister - usually the same Minister opens and closes.
- Draft an opening speech.
- Draft a skeleton closing speech and a briefing pack providing lines on issues that might come up.
- Keep track of the Bill speakers list on [the Government Whips' Official website](#) before the debate. The final list can be obtained from the Government Whips' Office around lunchtime on the day of Second Reading (10am on Thursday).
- Agree and arrange for officials to sit in the box including provision of passes.
- During debate, provide any additional responses needed for the closing speech via notes to the Minister.
- After the debate, respond to any outstanding questions or points via correspondence within 24 hours.
- Update your parliamentary handling strategy based on what was raised during debate.

### **Lords Committee Stage**

- Stay in touch with the Whips offices about timing and what will be debated and when.
- Consider providing a procedural brief on how Committee works to the bill Minister (in discussion with the Whips offices).
- Design a system for tracking amendments and applying dummy numbers to ensure consistency.
- Ensure any necessary Government amendments have been drafted, collectively agreed and tabled (having agreed that they can be tabled with the Whips) at least one week before Committee. Factor in time to instruct OPC to prepare these. Agree



handling and communication of amendments being tabled with the Lords Whips office.

- Send any supplementary delegated powers memo to DPRRC.
- Agree a process for responding to amendments and briefing ministers with policy, legal, press and private offices (including drafting / clearance processes).  
Communicate deadlines and expected pressure points to the department.
- Draft clause/Schedule stand part notes for each clause/Schedule in the bill.
- Commission notes on amendments (explanations of amendments, speaking note and Q&A) to be cleared by legal and (if necessary) communications colleagues.
- Provide the Whips office suggested groupings for debate.
- Finalise the ministerial pack based on final groupings.
- Brief the minister.
- If needed, ensure your explanatory notes are updated as soon as Committee Stage has concluded, though republication at this stage is highly unusual (see 10.30).

## Lords Report

- Keep in touch with the Whips office about the timing, including tabling deadlines and how the debate will run.
- Obtain clearance for any Government amendments or concessions in the usual way, factoring in time for OPC to prepare these and table before the deadline (having agreed that they can be tabled with the Whips). Agree handling and communication of amendments being tabled with the Lords Whips office.
- Send any supplementary delegated powers memo to DPRRC.
- Keep PBL Secretariat, No.10 and the Whips Offices regularly updated on risk areas (e.g. where there may be votes / defeats) and ensure there are processes for agreeing the approach to each amendment.
- Draft notes on amendments to agreed drafting / clearance process.
- Agree an approach to ministerial briefing and clearance of the approach.
- If you are at the final amending stage in the second House, ensure that any LCMs have been passed by the devolved legislatures.
- Respond to DPRRC, Constitution Committee and JCHR, if applicable.
- Provide the Whips office a suggested grouping of amendments and update the Minister's pack based on the final groupings (noting that Peers can change groupings on the day of debate).

- Brief the minister.
- If applicable, ensure your explanatory notes are updated and ready to be published as soon as Report Stage has concluded.

### **Lords Third Reading**

- Keep in touch with the Whips office about the timing, including tabling deadlines and how the debate will run.
- Draft notes on any amendments tabled (note that the only amendments that are admissible are tidying up amendments and amendments to enable the Government to fulfil undertakings given at an earlier stage).
- On tabling any Government amendments, send a letter to the Official Opposition spokespersons (attaching, as necessary, supplementary delegated powers and/or ECHR memos).
- Send any supplementary delegated powers memo to DPRRC.
- Ensure the Minister has a short speech for 'Bill Do Now Pass'. It is customary to thank Members for their interest in the bill.
- Prepare a statement for the minister to read before Third Reading commences to inform the House of the bill's present LCM status where consent has not yet been received or has not been granted.
- Brief the minister.
- Ensure your explanatory notes are updated and ready to be published following Royal Assent.

If the bill started in the Lords, see: **Preparing to transfer to the second House** above for the checklist.

### **Ping-pong**

*Note: there are various complexities to ping-pong that cannot be captured in a checklist. This is therefore designed to give a sense of the issues to consider, but further detailed planning and training should be undertaken ahead of this stage.*

- Keep in touch with both Whips offices about the timing, including tabling deadlines and how the debate will run.
- Arrange training for the bill team (the PBL Secretariat in consultation with OPC and the Whips Offices can support this).

- Complete early analysis of issues that could be in play at ping-pong with options for responding.
- Agree the approach to issues outlined above with the PBL Secretariat, No.10 and the Whips offices, and where necessary seeking contingent collective agreement from PBL Committee and the relevant policy committee to a range of options. This will enable speedy deployment if needed.
- If necessary, ahead of Commons Consideration of Lords Amendments, issue further Dear Colleague letter covering key Government Lords amendments and non-government amendments.
- Engage both MPs and peers ahead of ping-pong to ensure strong intelligence on the options and approach the House is likely to take (agree your strategy with the Whips Offices).
- Agree the approach to all amendments and ensure OPC have the necessary instructions to draft the motions for debate, including reasons for seeking to overturn any amendments.
- Prepare briefing for the Minister to respond to amendments during debate.
- Ask the PBL Secretariat for the explanatory notes template used during ping-pong.
- On return to the first House for the first time (only), submit explanatory notes on any amendments (government and non-government) made in the second House to the PBO.
- In the Commons, it is for the bill minister to propose groupings for Lords amendments for debate. This should be done in consultation with the Whips Office.
- If an amendment is overturned / rejected in the Commons, a Reasons Committee will meet to provide a reason for this. This is arranged by the Whips office, but the bill team will be asked to:
  - Input the reasons drafted by OPC; and
  - Confirm the name of the minister serving on the Committee.
- Keep the master explanatory notes updated throughout ping pong as these will be needed once the bill reaches Royal Assent.

## **Royal Assent**

- Ensure the explanatory notes are updated to reflect any changes to the bill throughout the bill's passage through the second House and during ping-pong..

They need to be in line with the Guide to Making Legislation (Note: no new template is needed; it is the original template with elements removed as set out in the Guide).

- Ensure the Act and explanatory notes are proof-read before publication.
- Send the final explanatory notes to Legislation Services at The National Archives for formatting and publication alongside the text of the Act.
- Formally handover any work to the teams working on implementation e.g. any secondary legislation, guidance needed. Departments should highlight any debates that were pertinent to ongoing work to ensure this is factored into future handling
- Conduct a lessons learned exercise (the PBL Secretariat or the Parliamentary Capability can support this).
- Ensure all templates, documents and submissions are saved in shared areas for archive.
- Share best practice and consider training for wider bill teams or within the department.
- Arrange a celebration.

## **PRIVATE MEMBERS' BILLS**

- Ensure the department has a good system for tracking bills introduced by Members and for agreeing a position.
- Ensure you are engaging with your legislative strategy team and/or parliamentary branch.

## **Taking a position on PMBs that have been introduced**

- Determine the policy and legislative implications, including the impact on the devolved governments, legal issues, compatibility with the European Convention of Human Rights, regulatory impact, and spending implications.
- Ensure a clear ministerial decision is taken on whether to:
  - Support the bill;
  - Oppose the bill; or
  - Remain neutral
- If the Minister wishes to support the bill or take a neutral position, collective agreement must be sought. Engage with the PBL Secretariat as soon as possible to ask for bill document templates.

- Attach to the write round:
  - PBL memorandum
  - Bill print
  - Explanatory notes
  - Legal issues memorandum (LIM)
  - Parliamentary handling strategy,
  - Delegated powers memo (if applicable)
  - Impact assessment (if applicable).
- Engage with OPC on drafting the bill print.
- Contact the AGO and LSAG as soon as it is known that the Government may be supporting a PMB to ensure the LIM can be cleared.
- Contact UDD to discuss any devolution implications.
- Seek King's and/or Prince's consent, if applicable.
- Ask the Member if OPC can hand in the bill and supporting documents.
- If the Government wishes to make amendments to the bill, be clear in the write round what those amendments are.
- If the Minister wishes to oppose the bill, write to PBL Committee for information ahead of Second Reading setting out the reasons why.

### **Government supported PMBs - after introduction**

- Support the Member as necessary (in consultation with the Whips offices).
- Provide the minister with a briefing pack for all stages of the bill in the first House.
- Ensure the impact assessment and delegated powers memo have been published and the latter shared with the Commons PBO for publication (*requires sending to the DPRRC when the Bill reaches the Lords - see Lords intro requirements*).
- Ensure collective agreement is gained for any further amendments.
- If any amendments are made to the bill, ensure the explanatory notes are updated to reflect the changes. If necessary, write to the devolved governments asking that they initiate the legislative consent process.
- Ensure you have a good understanding of whether the relevant devolved governments are likely to secure a legislative consent motion before Report Stage in the first House.
- Work with the Member to identify a MP/peer to pick up the bill in the second House.

- Consider and set up systems to support the Member in the second House (in consultation with the Whips offices).
- Send the delegated powers memorandum to the DPRRC Committee (cc'd to the PBO) when the bill passes to the second House.
- Provide the minister with a briefing pack for all stages of the bill in the second House.
- Arrange for a Minister, who is a privy counsellor, to signify Consent just before Third Reading, if applicable.
- If the bill reaches Royal Assent, send the final explanatory notes to Legislation Services at The National Archives for formatting and publication alongside the text of the Act.

### **Government handout bills**

- Bid for the bill, completing a bid template provided by the PBL Secretariat.
- Obtain drafting authority from the Leader of the House of Commons for OPC to draft the bill.
- Obtain policy clearance for the content of the hand out bill ahead of the ballot.
- Draft a 'handout one pager' setting out what the Bill does and share with the PBL Secretariat.
- Agree a timetable to provide OPC with drafting instructions and provide them on time.
- Ahead of the write round, engage with the PBL Secretariat and ask for the bill templates.
- Attach to the write round:
  - PBL memorandum
  - Bill print
  - Explanatory notes
  - Legal issues memorandum (LIM)
  - Parliamentary handling strategy,
  - Delegated powers memo (if applicable)
  - Impact assessment (if applicable).
- Contact the AGO and LSAG as soon as it is known that the Government may be supporting a PMB to ensure the LIM can be cleared.
- Contact UDD to discuss any devolution implications.
- Seek King's and/or Prince's consent, if applicable.

- Ask the Member if OPC can hand in the bill and supporting documents.
- If a Member picks up the bill, consider and set up systems to support the Member (in consultation with the Whips offices).
- Provide the minister with a briefing pack for all stages of the bill in the first House.
- Ensure the impact assessment and delegated powers memo have been published and the latter shared with the DPRRC.
- Ensure collective agreement is gained for any further amendments.
- If any amendments are made to the bill, ensure the explanatory notes are updated to reflect the changes.
- Ensure you have a good understanding of whether the relevant devolved governments are likely to secure a legislative consent motion before Report Stage in the first House.
- Work with the Member to identify a MP/peer to pick up the bill in the second House.
- Consider and set up systems to support the Member in the second House (in consultation with the Whips offices).
- Send the delegated powers memorandum to the DPRRC Committee (cc'd to the PBO) when the bill passes to the second House.
- Provide the minister with a briefing pack for all stages of the bill in the second House.
- If the bill reaches Royal Assent, send the final explanatory notes to Legislation Services at The National Archives for formatting and publication alongside the text of the Act.