



Cabinet Office

# Guide to Making Legislation

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# CONTENTS

## Contents

INTRODUCTION TO THE LEGISLATIVE PROCESS AND BIDDING FOR LEGISLATION .....	5
1. HOW TO USE THIS GUIDE AND THE ROLE OF PBL SECRETARIAT .....	6
2. THE GOVERNMENT'S LEGISLATIVE PROGRAMME AND THE WORK OF THE PARLIAMENTARY BUSINESS AND LEGISLATION (PBL) COMMITTEE .....	9
3. SUMMARY OF STAGES IN THE LEGISLATIVE PROCESS .....	12
4. KEY PLAYERS IN MAKING LEGISLATION .....	21
5. SECURING A SLOT IN THE LEGISLATIVE PROGRAMME .....	24
6. THE BILL AND BILL TEAM MANAGEMENT .....	30
7. COLLECTIVE AGREEMENT .....	41
PREPARING THE BILL FOR INTRODUCTION .....	45
8. preparing the bill for introduction: checklist of tasks to be completed by department .....	46
9. DRAFTING THE BILL: GENERAL .....	48
10. DRAFTING THE BILL: Structure and Content of Instructions to OPC .....	58
11. EXPLANATORY NOTES .....	71
12. THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR) .....	95
13. OTHER LEGAL ISSUES .....	104
14. IMPACT ASSESSMENTS .....	107
15. DEVOLVED LEGISLATURES AND ADMINISTRATIONS .....	112
16. DELEGATED POWERS .....	120
17. Crown dependencies and overseas territories .....	120
18. Queen's AND PRINCE'S Consent .....	130
19. Tax and public Expenditure .....	133
20. Handling strategies .....	136
21. Queen's Speech and PBL Committee approval for introduction .....	138
22. Publication in draft and pre-legislative scrutiny .....	143
ESSENTIAL GUIDANCE FOR BILL TEAMS .....	151
23. Amendments .....	152
24. EXPLANATORY STATEMENTS .....	166
25. Briefing ministers for bill work and the use of ministerial statements in construing statute .....	168
COMMONS STAGES .....	171
26. The Commons: Overview of stages, minimum intervals between stages and sitting times .....	172

27.	Money resolution and ways and means resolution .....	177
28.	Programming .....	181
29.	Commons introduction and First Reading.....	186
30.	Commons Second Reading .....	193
31.	Commons COMMITTEE STAGE .....	198
32.	Commons remaining stages (Report and Third Reading).....	216
33.	Carrying over legislation .....	221
LORD STAGES.....		224
34.	The LORDS: Overview of stages AND DIFFERENCES FROM COMMONS STAGES .....	225
35.	Lords introduction and First Reading .....	232
36.	Lords Second Reading.....	236
37.	Lords Committee Stages .....	239
38.	Lords remaining stages (Report and Third Reading.....	244
Further action after completing Commons and Lords stages and after Royal Assent.....		247
39.	Consideration of amendments and ‘ping-pong’ .....	248
40.	Royal Assent and commencement .....	255
41.	Further action after Royal Assent.....	258
42.	Post-legislative scrutiny .....	263
Other types of government bill.....		272
43.	Hybrid bills .....	273
44.	Consolidation bills.....	277
Private members’ bills .....		281
45.	Private members’ bills: Introduction .....	282
46.	Private members’ bills: Parliamentary procedure.....	283
47.	Private members’ bills: Responding to non-government bills .....	289
48.	Government ‘handout’ bills.....	299
Appendix A: Glossary .....		303
Appendix B: Contact details.....		307
Appendix C: Other guides .....		309
Appendix D: Codes of practice and legislation .....		311



# SECTION A

## INTRODUCTION TO THE LEGISLATIVE PROCESS AND BIDDING FOR LEGISLATION

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

1.1 This guide has been prepared by the Parliamentary Business and Legislation (PBL) Secretariat, part of the Economic and Domestic Affairs Secretariat (EDS) of the Cabinet Office, together 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 and the Public Bill Offices of both Houses. PBL Secretariat acts as the secretariat to the Parliamentary Business and Legislation (PBL) Committee.

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, from bidding for a slot in the legislative programme to gaining Royal Assent. We hope it is comprehensive and answers the most commonly-asked questions, but it should not be regarded as an authoritative statement of parliamentary practice. Parliamentary Counsel (who may in turn consult the House authorities) or the Public Bill Offices should always be consulted on matters of bill procedure.

1.3 The Guide is written with the needs of departmental bill teams (including legal advisers) and policy officials 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 in preparing legislation and taking it through Parliament 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 and list of sources of advice or people to keep informed is provided at the start of each chapter. Within each chapter, hyperlinks direct the reader towards other chapters offering more detail on related topics.

1.5 The main part of the Guide (Sections A-F) deals with conventional government bills and will be the sections used by most bill teams. Bill teams should ensure that they familiarise themselves with procedures for both the Commons (Section D) and the Lords (Section E) before the bill is introduced to Parliament.

1.6 Section G deals with certain ‘special cases’: hybrid 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 members’ bill.

1.7 This Guide does not cover:

- Finance bills.
- Consolidated fund bills
- Appropriation bills
- Bills relating exclusively to Scotland, Wales or Northern Ireland, although these 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 Office clerks as far as parliamentary processes are concerned.

- Secondary legislation. Departmental parliamentary branches or legal advisers should hold copies of the Statutory Instrument Practice guidance.
- Legislative reform orders (LROs). See the Legislative Reform Order-making Powers guidance.

1.8 This Guide is reviewed at least annually and, where necessary, updated or corrected to reflect changes in parliamentary procedure as they occur. 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. Feedback from users of the Guide is welcome so that layout and content can be improved in future editions, and should be sent to the PBL Secretariat (contact details in Appendix B).

### Role of PBL Secretariat

1.9 The PBL Secretariat is part of the Economic and Domestic Affairs Secretariat (EDS) in the Cabinet Office. Information about the role of the Cabinet secretariats can be found in the Guide to Cabinet and Cabinet Committees. The

PBL Secretariat provides the secretariat to the PBL Cabinet Committee and provides advice to the Leader of the House of Commons on clearance of legislative proposals (including amendments to bills) and advice to other ministers on the legislative programme.

1.10 Bill teams or other officials working on a bill can contact the Secretariat (contact details at Appendix B) with any queries relating to their bill or the legislative programme. The Secretariat should be notified as early as possible of all requests for clearance, 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 bills is extremely limited and bill teams should remember that delays to their bill may also 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, PBL Committee aims to ensure that time is used as efficiently as possible.

2.1 Governments normally introduce a programme of legislation in each session of Parliament consisting of up to 30 bills, although the exact number will depend on the time individual bills will take during their passage. Each of those bills is part of the wider legislative programme and cannot be considered in isolation. PBL Committee manages the Government's current legislative programme on behalf of Cabinet and advises Cabinet on strategic management of the forthcoming

programme. It aims to ensure that the Government's legislative programme reflects its overall priorities and that the passage of each of those bills through Parliament is as smooth as possible. The list of Cabinet committees and their members is available in the [Cabinet Committee System](#) guidance.

2.2 PBL Committee usually receives around twice as many bids for legislative slots as there are slots available. Many potential bills are not awarded a place in the programme. Bills that are awarded a slot but are not ready on time waste slots that could otherwise have been awarded to other bills. It is crucial, therefore, that bills are ready for introduction at the start of the session.

2.3 Bills that require a large number of amendments after introduction place additional pressure on parliamentary time and drafting resources. They also open the Government up to criticism for not having prepared sufficiently. No more

than one third of time in the 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 for some reason it is important that the Secretariat and the Whips are alerted at the earliest opportunity.

2.4 Timetabling of bill stages across the two Houses is a complex exercise, so time lost on one bill can have 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.

2.5 PBL Committee's systems for scrutinising bids for legislation and managing the legislative 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 dropping bills or postponing them to a future session.

2.6 Producing papers for collective agreement, preparing briefing material and speaking notes, adhering to procedure and, above all, sharing information with parliamentary business managers in good time, are the keys to a successful bill. 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.

2.7 On behalf of the PBL Committee, the Secretariat will seek contributions from bill teams for The Queen's Speech. After introduction, PBL Secretariat will seek weekly updates from bill teams and should be kept informed of any emerging issues. The PBL Committee will be briefed on this basis.

2.8 Bill teams should not hesitate to contact the Secretariat about any issues that may arise relating to their bill. The earlier the Secretariat is alerted to a potential issue, the more likely it is to be able to help, or

to recommend handling strategies if the issue cannot be resolved. Parliamentary Counsel can also help with queries about parliamentary procedure.

# 3. SUMMARY OF STAGES IN THE LEGISLATIVE PROCESS

3.1 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.

3.2 These will usually have been preceded by the usual stages in policy development: a green paper discussion or consultation document (proposals rather than a commitment to action), a white paper (major policy proposals set out in more detail) and one or more rounds of public consultation.

3.3 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 for guidance on parliamentary procedure). Definitive guidance is given by the House authorities. It also only deals with Government programme bills.

## Before introduction

3.4 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 the annual bidding round when the Leader of the House of Commons, as Chair of PBL Committee, invites Cabinet colleagues to submit bids for bills for the following session of Parliament. Bids must be by letter to the Chair of PBL Committee and accompanied by a bid template (which will be available from the PBL Secretariat). PBL Committee will assess bids on their priority and state of readiness and then advise Cabinet on the contents of the programme. The programme will be reviewed in preparation for The Queen'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 dropped to accommodate them.

3.5 Public commitment to legislate: Ministers should not make a public commitment to legislate in the forthcoming session of Parliament unless or until the inclusion of a bill in the forthcoming session has been agreed by PBL Committee. The Government's announcement of its intention to legislate on a particular issue

will normally be made as part of The Queen'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).

3.6 Setting up the bill team: A well-resourced bill team is critical to any bill. A dedicated bill manager and bill 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 PBL Secretariat. A senior project board should be established to monitor progress on the bill.

3.7 Collective agreement: The relevant policy committee of Cabinet 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 PBL Committee is required at the following stages:

3.8 When bidding for a slot in the programme

3.9 When publishing a bill in draft

3.10 Just before introduction, to approve the final text of the bill

3.11 For any amendments to the bill after introduction

3.12 Drafting instructions to Parliamentary Counsel: Parliamentary Counsel drafts 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 received collective agreement, although in some cases, time constraints may make it imperative to start drafting on a contingent basis, pending 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.

3.13 Explanatory notes: Explanatory notes must be published alongside every government bill and are drafted by the bill team in consultation with departmental lawyers and Parliamentary Counsel. They must be ready by the time the bill comes to 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 a final

draft needs to be ready at least two days before the text of a bill is handed in by Counsel. Explanatory notes must be amended when the bill enters the second House to reflect changes made in the first House and, if there have been any second House amendments, new explanatory notes will be needed for those amendments when the bill returns to the first House for consideration.

### 3.14 European Convention on Human Rights

Rights: Departmental legal advisers will need to prepare a memorandum for PBL Committee before the bill is introduced, setting out 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.

3.15 Other legal issues: The department must also consider other legal issues, such as the bill's compatibility with EU law, and obtain Law Officers' consent to any retrospective provisions or early commencement of provisions.

3.16 Impact assessment: Impact assessments are generally required for all UK government interventions of a regulatory nature that affect the private sector, civil society organisations and public services (full details available in the impact assessment guidance). The final impact assessment must be circulated to

PBL Committee alongside the bill and other papers when it is considered for approval for introduction, and published alongside the bill.

### 3.17 Impact on devolved administrations:

Departments must identify the implications of their legislation for the devolved administrations, ensure that the devolved administrations share their understanding of this and, where appropriate, seek their agreement. PBL Committee will need to be satisfied that agreement has been reached on the implications for the devolved administrations before it gives its approval for a bill to be introduced into Parliament. Scotland, Wales and Northern Ireland each has its own devolution settlement, so departments will need to give careful thought at an early stage to the implications of their proposed legislation under each settlement. Officials in the Scotland, Wales and Northern Ireland Offices should be the first point of contact for departments seeking to clarify whether proposed legislation is an excepted or reserved matter or impinges on devolved matters.

3.18 Delegated powers: Departments must consider what degree of parliamentary scrutiny will be appropriate for any delegated powers in the bill, and produce a delegated powers memorandum for PBL Committee, justifying the inclusion of any delegated powers and addressing any concerns that might be raised. Particular attention should be given to

any 'Henry VIII' powers (powers to amend primary legislation through secondary legislation) that the bill seeks to create. The memorandum must be published on introduction in the first House and formally submitted to the Lords Delegated Powers and Regulatory Reform Committee.

### 3.19 Impact on crown dependencies:

Departments must identify the implications, if any, of their legislation for the crown dependencies (the Bailiwicks of Jersey, the Bailiwick of Guernsey, which includes Alderney and Sark, and the Isle of Man) and where appropriate seek the consent of the insular authorities. PBL Committee will need to be satisfied that agreement has been reached with the insular authorities before it gives approval for a bill to be introduced to Parliament.

### 3.20 Queen's and Prince of Wales' consent:

Departments should identify at an early stage whether Queen's or Prince or 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 or when they should be signified, Parliamentary Counsel will consult the two Public Bill Offices.

### 3.21 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 the policy comes for collective agreement. 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 Appropriation Act.

3.22 Publication in draft: The Government is committed to publishing more bills in draft for pre-legislative scrutiny. Initial 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 PBL Committee for clearance, along with a covering memorandum, explanatory notes, impact assessment and ECHR statement. Draft

bills should be presented to Parliament and published as command papers.

3.23 Queen's Speech: Bill teams will be asked to provide a very brief contribution to The Queen's Speech and accompanying prime ministerial statement at the start of the parliamentary session, as well as more detailed material to be included in the briefing pack. As of 2012 The Queen's Speech will take place annually in the spring.

3.24 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).

3.25 PBL Committee approval for introduction: When a bill is ready for introduction it must be circulated to PBL Committee, accompanied by a covering memorandum, explanatory notes, impact assessment, memorandum on compatibility with the ECHR, parliamentary handling strategy and delegated powers memorandum. The Committee will usually meet to agree to the bill's introduction. Further PBL Committee approval is needed to make any amendments to the bill after introduction, although such amendments should be kept to a minimum.

## Summary of parliamentary stages

3.26 The bill may start in either the Commons or the Lords. The House and date of introduction will be agreed by PBL Committee on advice from the business managers. The following notes assume that the bill starts in the Commons and then goes to the Lords. Bills starting in the Lords must complete the same stages. There are five stages of legislation in each House: First Reading, Second Reading, Committee Stage, Report Stage and Third Reading:

**First Reading** – formal presentation of the bill

**Second Reading** – debate on general principles of the bill

**Committee Stage** – detailed line-by-line examination of the bill, consideration of amendments, oral evidence heard and written evidence published (if necessary)

**Report Stage** – Further opportunity to consider amendments made in Committee and to amend the bill

**Third Reading** – Final consideration of the bill

3.27 Introduction into the Commons and First Reading: First Reading is the formal presentation of the bill in Parliament. The Clerk at the Table reads out the short title of the bill, a minister nods and the bill is deemed to have been read the first time. The final text of the bill and explanatory notes are supplied by Parliamentary



Counsel to the Public Bill Office. The department should ensure that the minister who will be in charge of the bill has signed the ECHR statement and that this has been sent to Parliamentary Counsel. The department is directly responsible for the publication of an impact assessment and for ensuring the appropriate availability of relevant older papers and revised editions of Acts. 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. Papers may be deposited in the Library, but these are record copies and are not part of supplying papers to the House at large. The department must also publish a delegated powers memorandum.

**3.28 Commons Second Reading:** This is the first debate on the general principles of the bill. There is a convention that such a 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 and the 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, sometimes, carry-over motions. Their preparation is a matter for Parliamentary Counsel.

**3.29 Commons Committee Stage:** This is the principal stage for detailed scrutiny and

amendment of the bill and can begin the week after Second Reading. Scrutiny normally takes place in a public bill committee (formerly known as a 'standing 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 according to the programme resolution. Committees may have 16-50 members. For bills that have been subject to pre-legislative scrutiny, or those that started in the House of Lords, the committee may decide that oral evidence sessions will not be held. 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.

Amendments can be tabled by the Government, the opposition or backbenchers. Clearance to table government amendments must be obtained from PBL Committee and from the relevant policy committee of Cabinet if the amendments represent a change in policy. For both a public bill committee or committee of the whole house, briefing and speaking notes must be produced for ministers on each clause (clause stand part) and on any amendments tabled.

**3.30 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. This is the final amending stage in the Commons.

3.31 Commons Third Reading: Normally takes place immediately after Report Stage and 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.

3.32 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 a 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 must be signed by the minister who is in charge of the bill in the second House. 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.

3.33 Lords Second Reading: As with the Commons, a debate on the principles of the bill. This can take place once two weekends have elapsed since introduction. Procedure is similar to Second Reading in the Commons, with some minor differences. There is no programme motion in the Lords.

3.34 Lords Committee Stage: 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. This is a clause-by-clause examination of the bill. 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.

3.35 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.

3.36 Lords Third Reading: At least three clear sitting days after Report Stage. The scope for amendments is limited at this stage.

3.37 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>1</sup> and the bill falls.

3.38 The Government has announced proposals for 'English Votes for English Laws'. Under the proposals the Speaker of the House of Commons would be required to certify bills, and the clauses and schedules within them. Where provisions have an effect in England or England and Wales and are on policy matters which have been devolved to the Scottish Parliament or the Welsh or Northern Ireland Assemblies, MPs representing English, or English and Welsh constituencies would be asked for their consent at certain stages of the legislative process. There will be no changes to the ways in which the House of Lords considers legislation.

3.39 The proposals will be decided upon by the House of Commons, and this guidance will be updated accordingly. In the meantime, PBL secretariat can answer any questions bill teams might have. The proposals can be found on Gov.uk at:  
<https://www.gov.uk/government/publications/english-votes-for-english-laws-proposed-changes>

### On completion of parliamentary stages

3.40 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.

3.41 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 PBL Committee. Retrospective provisions also

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<sup>1</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, and neither House has offered alternatives, the bill is lost.

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).

3.42 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.

3.43 Guidance and publicity: Where new legislation affects business or the third sector, 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 Bill teams will need to work with a number of officials beyond their own department and those with an immediate policy interest, including 'business management' officials (i.e. those involved in managing the Government's business in Parliament). Contact details for all of the key players can be found at Appendix B. In case of any queries, please contact the PBL Secretariat.
- 4.2 PBL Secretariat supports PBL Committee in the overall management of the Government's programme of legislation and provides advice to ministers on legislative issues.
- 4.3 The Secretariat to the relevant policy committee of Cabinet, (e.g. the Home Affairs Committee) will coordinate the collective agreement process for the policy in the bill. Contact details are available from PBL Secretariat.
- 4.4 The Office of the Parliamentary Counsel is responsible for drafting the bill.
- 4.5 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 Public Bills in the Lords clear bills for introduction as conforming with the rules of each House.
- 4.6 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.
- 4.7 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.
- 4.8 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 (where the latter cannot be dealt with by the Ministry of Justice).

4.9 Your departmental Better Regulation Unit can advise on impact assessments, guidance for business and the third sector, applicability of legislation to small firms and any other regulatory issues. 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 the third sector, and that any new burdens are offset under the ‘one-in, one-out’ rule. They should also be able to advise on the process for submitting impact assessments to the Regulatory Policy Committee.

## Competition Policy

4.10 Any proposal that might affect competition in markets (for example by raising barriers to entry or privileging one business model over another) should be discussed with the Competition and Markets Authority ([advocacy@cma.gsi.gov.uk](mailto:advocacy@cma.gsi.gov.uk)) which has powers both to advise informally and to make formal recommendations on the impact of legislative proposals on competition. The Competition Policy team at BIS can answer any queries ([competition@bis.gsi.gov.uk](mailto:competition@bis.gsi.gov.uk)).

4.11 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 [guidance](#) is available from the Equality and Human Rights Commission. The Government Equalities Office can also assist, in the case of more complex enquiries.

4.12 The Scotland Office is the first port of call for discussing any provisions that may affect Scotland, including identifying where a legislative consent motion (formerly known as a ‘Sewel 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.

4.13 The Office of the Advocate General for Scotland is part of the UK Government and provides legal advice on Scots law and associated devolution.

4.14 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.

4.15 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.

4.16 The parliamentary private secretary to the bill minister or secretary of state sits on the public bill committee and advises the minister on handling. Contact can be made through the bill minister's private office.

# 5. SECURING A SLOT IN THE LEGISLATIVE PROGRAMME

## Key points

5.1 At least annually, the Chair of PBL Committee will request bids for legislation for the following 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.

5.2 PBL Committee will assess these bids on their political importance, urgency and state of preparation. It will then make recommendations to Cabinet on the content of the legislative programme and give drafting authority where appropriate.

5.3 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.

5.4 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.

5.5 Announcements about an intention to legislate in a particular session can only be made with the agreement of PBL Committee, or following an

announcement in The Queen's Speech. Bill teams will need to work with a number of officials beyond their own department and those with an immediate policy interest, including 'business management' officials (i.e. those involved in managing the Government's business in Parliament). Contact details for all of the key players can be found at Appendix B. In case of any queries, please contact the PBL Secretariat.

## The good law approach

5.6 Mistaken perceptions of what the law requires can encourage risk-aversion and inaction. Excessively complex or inaccessible legislation hinders economic activity. It places burdens on people, communities and businesses. It damages people's trust in the law. Good law is: necessary, clear, accessible, effective and coherent.

5.7 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 new, user-centered approach across government. Further reading on the 'good law approach' and the good law principles is available on the [Office of Parliamentary Counsel website](#).

### **Is a legislative slot necessary?**

5.8 Before seeking a slot in the Government's legislative programme, departments should consider whether primary 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 before embarking on primary legislation. Guidance on secondary legislation can be found in the Statutory Instrument Practice guidance which should be held by departmental parliamentary branches or legal advisers, and [guidance on legislative reform orders](#) is also available.

5.9 When considering legislation, departments should be ready to challenge the content of their bills and ensure that bills introduced to Parliament are as effective, clear and accessible as possible. To promote good law, everyone involved in preparing and scrutinising proposals for legislation should be invited to make (and accept) the challenges set

out in the good law pages of the [Office of Parliamentary Counsel website](#).

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

5.10 The content of the Government's legislative programme in future sessions is decided by Cabinet, on the basis of proposals from PBL Committee. Where legislation extends to Scotland, separate legal advice in respect of Scots law is given by the [Office of the Advocate General](#) (UK Government's Scottish legal team) and not your in-house departmental lawyer. In turn, the Office of the Advocate General may instruct Scottish Parliamentary Counsel (UK) where separate Scottish provision is required.

5.11 Each year, the chair of PBL Committee asks departments to put forward bids for legislation for the following session. Bids will usually be sought over a year before the start of the session in question (an example of this timetable is shown below).

5.12 In order to ensure that PBL Committee has all the information it needs to assess the relative priority of bids, bids should be submitted using the bidding template provided by 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.

5.13 Bids should be submitted by the deadline requested, so that 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 require another bill to be dropped.

5.14 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.

5.15 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.

### **Example timetable for preparing and finalising the legislative programme**

#### **Around 12 months before the start of the session (April / May)**

- Request for bids for legislation
- PBL Secretariat produces recommendation for 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 PBL Committee's recommendations and reaches a provisional view on the contents of the following session's legislative programme.

#### **Five to six months before the start of the session (November / December)**

- 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 month before the start of the session (March / April)**

- Cabinet finalises the programme and agrees the content of The Queen's Speech

5.16 In order to assist departments with forward planning, as part of the annual bidding round the Leader of the House of Commons will also ask departments to indicate which bills might need to be brought forward in the next session but one, and will normally recommend that a handful of slots be provisionally allocated in this way.

### **Criteria for assessing bids**

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

5.18 Whether legislation is necessary. 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. Alternative vehicles should be considered before making a bill bid. If in doubt, departments should seek advice from their departmental Better Regulation Unit or from PBL Secretariat.

5.19 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).

5.20 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.

5.21 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 PBL Committee will look on favourably.

5.22 Some bids for legislation originate from recommendations of the Law Commission. Following a Law Commission report, it is the responsibility of the relevant government department to decide whether to accept all or some of

them, and to bid for any necessary legislation. When bidding for legislation, departments should make clear whether the bill implements Law Commission recommendations and whether it is suitable for the special parliamentary procedure for Law Commission bills.

5.23 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. 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. 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.

5.24 Major changes in the content and the scope of such a bill may not be possible after an initial place in the programme has been allocated. The PBL Secretariat will monitor closely the development of these proposals.

5.25 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. 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 private member who has been successful in the ballot for private members' bills, held at the start of each session.

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

5.26 While 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 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.

5.27 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 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.

### **Emergency / fast-track legislation**

5.28 PBL Committee will only accept new bids for legislation after the session has started in emergencies. Where emergency legislation is required, a bid may not need to be submitted, but departments should contact PBL Secretariat for advice in the first instance. Departments should write to PBL Committee at the earliest opportunity if emergency legislation is a possibility and provide detail of timescales.

### **Announcing an intention to legislate**

5.29 Subject to policy clearance, a department may announce a general intention to legislate in a particular area, but may not announce an intention to legislate in a particular session or to a specified timescale, unless:

5.30 The bill has been announced in The Queen's Speech or the written ministerial statement made by the Leader of the House of Commons shortly after The Queen's Speech (which includes those bills planned but not mentioned in The Queen's Speech).

5.31 They have obtained the agreement of PBL Committee in the normal manner.

### **Time of Royal Assent**

5.32 Departments should ensure that any absolute deadlines for Royal Assent are flagged in their bids for legislation. 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, the Government has already made a public commitment to implement the proposals by a given date, or any delay beyond this date would result in significant costs. The more bills that require early Royal Assent, the less flexibility 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.

5.33 While business managers will make 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 in place to oversee progress from an early stage. Bill management is not an overhead but an integral part of the process.
- The bill manager should be responsible to a departmental project board for the delivery of the bill and its supporting documentation. All but the very smallest bills should be overseen by a project board made up of the senior officials with an interest in or responsibility for a bill's delivery.
- The bill team will need good project management skills. All bills need a delivery plan and a risk register. Parliamentary Counsel will not start drafting a bill until a realistic delivery plan has been agreed with the department.
- 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 may need extra resources for the lifetime of the bill.
- 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.
- Bill teams are encouraged to attend training events available through Civil Service Learning and to draw on expertise within their own departments on running a bill.

## Importance of providing sufficient resource

6.1 Only very short and straightforward bills can be managed without setting up a separate, dedicated bill team. A properly resourced team is vital to the successful preparation of legislation and is one of the factors which will be considered by PBL Secretariat in advising PBL Committee on

the content of the programme and in monitoring bill preparation. 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 in work on the bill. 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 Departments should not wait until all policy is finalised before appointing a bill manager. 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.

6.4 Even if the 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 on the bill. Particularly where the bill includes more than one policy area and a number of policy officials and legal advisers are working on different sections of the bill, it is important to have a dedicated bill manager who is not directly responsible for any of the policies in the bill.

6.5 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. The bill manager must drive forward work on the bill which may be spread across several different areas of the department (and possibly several departments). He or she must take responsibility for resolving any issues that may delay the bill's progress and ensure that all workstreams deliver on time. Given the large number of people involved in a bill it is also important to have a single point of contact through which to channel all communications.

6.6 The bill manager will be responsible for day-to-day management of all bill workstreams. 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 and with senior officials in the department 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.

6.7 The bill manager should be responsible to 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. He or she 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 The bill manager must keep track of every aspect of the bill's development.

Depending on the number of people involved in the bill, the bill manager should chair regular meetings of all those in the department(s) involved in the bill or circulate progress updates to ensure that everybody is kept up to date. Regular bilateral meetings with policy leads and legal advisers, and through them with Parliamentary Counsel, are also likely to be useful.

### **The bill team**

6.9 In most cases the bill manager will be supported by a small administrative team, usually consisting of an AO, one or two EOs and an HEO. Even for a very large bill it is not recommended to go beyond this, as the key to an effective bill team is good communication within the team, and the larger the team, the harder this becomes.

6.10 A bill team should be small enough to function as a 'hub' for the bill 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 four people should be sufficient for the vast majority of bills; the very largest bills might necessitate a bill team of four or five people but anything larger than this will begin to be less effective.

6.11 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. On smaller bills, the bill team is also likely to have to get involved in policy negotiations and preparing speaking material for amendments.

6.12 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 (PBL Secretariat and officials in the Government Whips' Offices in the Commons and Lords). A bill manager will want to consider whether one member of the team will act as first point of contact on devolution issues. 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.



6.13 For 'joint' bills where more than one department has a core interest in the bill it is recommended that one department assumes the lead on the bill, with the bill team based in that department but working very closely with colleagues in the other key departments.

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

6.14 While previous experience of working on a bill is desirable – and it is recommended that any bill team include at least one person who has worked on a bill before – good project management skills 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. Bill teams should use project management tools to manage their bill as they would any other project.

6.15 All bills need a delivery plan and a risk register and these should be approved by the project board and by ministers. Parliamentary Counsel will not start drafting a bill until a realistic delivery plan has been agreed with the department and PBL Committee will seek assurances from bill ministers that appropriate tools are in place to manage work on the bill.

6.16 For each part of the bill, the delivery plan should set out who is responsible for doing what and the timetable for:

- ministerial clearance within the department
- collective agreement by the relevant Cabinet committee
- 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
- first draft clauses available
- draft clauses finalised
- resolving other issues, e.g. with other government departments or external stakeholders
- production of explanatory notes, an impact assessment, legal issues memorandum, parliamentary handling strategy, 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, e.g. preparation of guidance or statutory instruments (regulations)

6.17 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.

6.18 The delivery plan should also cover resourcing – budget, administrative and most importantly staffing. A poorly-resourced bill team that cannot adequately support its bill minister through Parliament will not only result in poor legislation, it will reflect badly on the department in a very public way.

6.19 Once a bill is awarded a place in the provisional programme, 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, as work on the bill progresses. If deadlines are missed, the bill's place in the programme may be at risk, so project boards should be careful to ensure that they are not signing up to targets that are unrealistic or undeliverable.

6.20 Some departments have developed standard tools for their bill teams (bill teams should check with their departmental parliamentary clerks), but there is no set format – bill teams should use whatever tools are most helpful to them in managing the work. Tools for managing amendments can be downloaded from the chapter on amendments later in this guidance.

6.21 The risk register should cover risks to the bill before and after introduction, actions taken to minimise risk and contingency plans should a risk be realised. Major risks at the drafting stage will include: change in policy direction from (new) ministers, lack of resources, slippage in sending instructions to Parliamentary Counsel or significant redrafting required as a result of public consultation.

6.22 Risks post-introduction will later form the basis of the parliamentary handling strategy that must be produced for PBL Committee when it considers the bill prior to introduction. This will need to include any issue where there is likely to be significant dissent from the Government's position, what steps are being taken to win the argument with stakeholders, 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**

6.23 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 right from the start.

6.24 All but the very smallest bills should be overseen by a project board made up of the senior officials with an interest in or responsibility for a bill's delivery. The board should usually be chaired by the senior official most directly responsible to ministers for delivery of the bill. Ultimate responsibility for directing the work and making appropriate official-level decisions and judgements will fall to the chair.

6.25 Any bill will fall within the area of responsibility of at least two members of the Senior Civil Service – the senior official responsible for the bill's policy content and the senior legal adviser. Often, however, a bill will cover policy areas that fall under the responsibility of a number of senior officials, or will be worked on by legal advisers reporting to more than one senior legal adviser. In such circumstances, all those senior officials whose teams are contributing

significantly to the delivery of the bill should be represented on the board.

6.26 Where a bill covers issues that are the responsibility of more than one department, the project board should reflect interdepartmental interests. Where a bill relates to the work of an executive agency or NDPB, those bodies should also be represented.

6.27 It may be useful to include one board member without direct responsibility for delivery of the bill, for example somebody from the department's central strategy unit, to provide an external perspective on progress or 'project assurance'. 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.

6.28 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 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 will:

- need to ensure that all bill team roles are filled and that the individuals concerned 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;

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

6.29 The board may need to meet more frequently at certain stages of a bill:

- During the early stage of development of a bill, the board will need to agree the bill bid, sign off the bill delivery plan and consider resourcing issues.
- During the bill's preparation, the board will need to meet periodically to assess progress and address any risks to delivery.
- And as a bill approaches introduction, or if problems are encountered, the board may need to meet weekly or more often to monitor and assess progress and resolve any problems.

6.30 Members of the board, particularly the chair, may also need to be involved in

between formal meetings to address urgent issues.

### Policy leads

6.31 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 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 to the bill.

6.32 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 debates and Committee sessions.

6.33 Because of the burdens of bill work, which can be considerable, on top of normal responsibilities, for the life of a bill some policy teams may require additional resources.

6.34 Bill teams should also identify at the outset a key contact in their departmental

communications team. They can advise on engagement and external-facing communications throughout the legislative process.

## **Bill legal advisers**

6.35 Departmental legal advisers take the policy proposals for the bill and express them as legal material. As such, legal advisers are responsible both for providing legal instructions to Parliamentary Counsel (based on policy instructions provided by policy leads) and for responding to material produced by the Parliamentary Counsel working on the bill. Legal advisers must also be sufficiently resourced to meet bill deadlines, as any slippage in delivery of instructions to Parliamentary Counsel can jeopardise the bill. This may mean deferring work on other matters. It is important that resourcing is addressed in the bill delivery plan and that the senior legal representative on the project board is kept aware of any problems and particularly any resourcing issues.

6.36 Departmental legal advisers should work with the relevant policy leads to ensure that the bill delivery plan contains realistic targets for delivery of instructions to Parliamentary Counsel against which progress can be monitored. As noted at 5.10 where legislation extends to Scotland, separate legal advice in respect of Scots law is given by the Office of the Advocate General and so bill teams will need to establish the appropriate OAG

contact as early as possible, treating them as an extension of the bill team.

6.37 On a bill involving more than one legal adviser, it is usually helpful for one lead legal adviser to be identified as a contact point both for Parliamentary Counsel and for the bill manager and to be responsible for co-ordinating legal advisers' input, 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.

6.38 The role of the legal team 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.

## **Ensuring the bill team is properly equipped**

6.39 Bill teams will be working under great pressure for much of the time, in particular during parliamentary stages when they will need to respond to non-government amendments and provide briefing for the bill minister at short notice.

This section offers some practical tips to help make bill work easier.

6.40 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.

6.41 Bill teams should arrange with their department's IT Support Team for the bill 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.

6.42 There will be occasions when neither the bill team, nor policy leads will be located in the same building as the minister(s).

On occasions, especially during the Committee stages, the bill team will need to be close to the minister and Parliament and therefore space, such as a meeting room, should be reserved.

6.43 The Commons Public Bill Office will send each day's selection list (showing both amendments selected, and the grouping) by email normally to Parliamentary Counsel rather than directly to the department, as soon as it is finalised. In the Lords (where there is no selection), groupings are handled by the Government Chief Whip's Office.

6.44 Most bill documents and papers will be supplied on the 'all follows' list which should be arranged with the Stationery Office (TSO) by departmental parliamentary branches, but the bill team may on occasion need to ask TSO to print additional copies of the introductory print of the bill, the explanatory notes, or later the Act, and should ensure they have a budget for this (note there is also a small charge for each item received on the 'all follows' list).

6.45 Whiteboards or the use of Excel spreadsheets will be useful for tracking progress of draft clauses and later on speaking notes for amendments.

6.46 There will be times when the bill 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.

## Training

6.47 A great deal can be learnt from departmental colleagues who have worked on bills in the past. Parliamentary clerks should have their contact details, and may also have formal 'lessons learnt' documents from previous bill teams.

6.48 Bill teams and prospective bill teams will also benefit from some of the formal training courses on offer, which may be available through Civil Service Learning.

6.49 Civil Service Learning may also be able to arrange tailored training sessions on bill work in departments. Bill managers are encouraged to run one of these sessions, to give the departmental officials involved in the bill a broad introduction to bill work. It will be helpful for policy leads, who may only be involved in a small part of the bill, to understand the wider context and appreciate some of the pressures which the bill manager may be facing.

## Parliamentary passes

6.50 Key players on the bill (key policy leads and legal advisers as well as members of the bill team) should apply for a parliamentary pass in good time. Departmental parliamentary

branches should handle pass applications for the bill team. Even before introduction, bill teams will be meeting regularly with the bill minister and these meetings may well be held in Parliament. There are two types of pass: plastic (pink) passes for officials who need to attend Parliament on a regular basis for business purposes (several times a week - this is monitored), and day passes for everybody else (key members of the bill team will require a pink pass). Applicants will need to complete a form and, when the application has been authorised, will need to go the Pass Office on Derby Gate to have their photo taken and a pass made up.

6.51 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 mins 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 particular busy with tourists, explain your business, show your departmental pass and ask to be fast-tracked. 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 tell the parliamentary branch that they need a pass for the following day (or in

extremis even for the same day). Photo Day passes must be collected in person from the Derby Gate Pass Office. 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.

6.52 When Parliament is sitting the Derby Gate Pass Office opens at 8am and closes at 6pm, 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 Derby Gate to the House of Commons or House of Lords.

6.53 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 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.



# 7. COLLECTIVE AGREEMENT

## Key points

- Collective agreement to legislation must be obtained from PBL Committee, the relevant policy committee of the Cabinet and, where applicable, Reducing Regulation Committee, at various stages of a bill's preparation and parliamentary passage.
- The policy committee will consider the content of the proposals, including any changes before or after introduction which amend the policy or introduce significant new provisions, while PBL Committee will consider the state of preparation and handling. Where the proposals are regulatory or deregulatory, Reducing Regulation Committee will consider their adherence to the Government's principle of regulation, and associated requirements.
- If policy clearance has not been obtained when a slot in the programme is allocated, this should be a priority – though 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.

- Six sitting days should be allowed for ministers to comment on requests for formal policy agreement; nine working days when any of the time is during parliamentary recess.
- Further information on the Cabinet Committee system can be found in the [Guide to Cabinet and Cabinet Committees](#).

## When collective agreement is required

- 7.1 The Ministerial Code states that “Questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public” need to be agreed collectively by Cabinet or by its committees ([Ministerial Code](#), paragraph 2.2)
- 7.2 During preparation of a bill, collective agreement normally has to be sought from two Cabinet committees: from the relevant policy committee on the content of the bill, and from PBL Committee on preparation and handling of the bill. One of the factors PBL Committee will consider in awarding legislative slots is the extent to which policy has been settled. Ideally, the department should have obtained collective agreement to

the policy before bidding. If not, it should be in a position to do so shortly after a slot in the programme is allocated. PBL Committee's agreement is needed to:

- obtain a slot in the legislative programme;
- 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 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: changes which would significantly widen the scope of the bill require clearance from PBL Committee; smaller additions / omissions arising from further policy development do not need to be cleared by PBL Committee at this stage, only by the relevant policy committee (see below), as PBL Committee will consider each bill in its entirety before introduction;
- approve a bill's introduction into Parliament; and
- table any government amendments or accept any opposition or backbench amendments to a bill, except where PBL Secretariat and Parliamentary Counsel have both agreed that the amendments

(whether government or non-government) can be considered minor and technical – though clearance may still be required if a large number of minor and technical amendments are proposed given the time these may take to debate.

7.3 Further details of PBL Committee clearance processes are given at the appropriate point in this guide.

7.4 The agreement of the relevant policy committee of the Cabinet is needed to:

- approve the policy contained within a bill;
- agree any changes to a bill, either before or after introduction, which amend the policy or introduce significant new provisions.

7.5 For bills containing provisions that have a regulatory or deregulatory effect, the agreement of Reducing Regulation Committee is needed to confirm that the proposals adhere to the Government's principles of regulation and associated requirements (including impact assessment, scrutiny by the Regulatory Policy Committee and the 'one-in, one-out' rule).

7.6 Where collective agreement has not already been obtained when the bill is given a slot in the programme, it should be an immediate priority as Parliamentary Counsel are normally unable to begin drafting until the policy in the bill has been collectively agreed.

This is to avoid time being wasted drafting provisions which subsequently have to be re-drafted to reflect changes in policy.

7.7 At the same time, it is important that the implications of the policy proposals are fully thought through. A proposal that is not well thought through will result in delays at a later stage in the bill's preparation.

### **Obtaining collective agreement for the policy in the bill**

7.8 The lead department should normally seek the views of the other main departments with an interest as early as possible. It will normally be evident which departments should be consulted, but officials should consider carefully the impact of their policy on other departments.

7.9 If a bill is to make different provision for Wales, the lead department should inform the Wales Office at the earliest opportunity and the agreement of the Secretary of State for Wales should be obtained at this stage. The lead department can then seek formal collective policy agreement for the Welsh provisions alongside the other provisions of the bill or, if they prefer, the Wales Office can arrange for the Secretary of State for Wales to seek collective agreement to the Welsh provisions separately, normally through correspondence. If any issues are left

which can only be resolved between ministers, these remaining points should be highlighted when formal policy agreement is sought.

7.10 To obtain collective agreement, the bill minister should write to the chair of the appropriate policy committee, copied to the members of that committee, outlining the proposal.

7.11 The list of Cabinet committees and their members is available in the Cabinet Committee System guidance. PBL Secretariat can advise on the most appropriate policy Committee where this is unclear.

7.12 The letter should give sufficient detail for ministers to consider the impact on their own departments. It should include a copy of the impact assessment and, where relevant, a copy of the opinion issued by the Regulatory Policy Committee.

7.13 Six sitting days should be given for comment, or longer where approval is being sought for policy which is substantial or likely to be controversial. Nine working days should be allowed during recess. The chair of the committee will also need two to three days to confirm clearance. If insufficient time is given to consider the policy, it may not be possible to obtain collective agreement to the deadline required. The letter should state clearly the deadline for ministers to comment; if clearance is

being sought with a view to making a public announcement on a certain date, then the deadline for comments should be at least a couple of days before the scheduled announcement, to allow time for clearance to be arranged. Similarly, for amendments, a date should be set for responses (usually six days after the date of the letter) and the date on which amendments are to be tabled should also be included. This should be a couple of days after the deadline for responses.

7.14 Any request for clearance that does not give the required six (or nine) days for ministers to respond can only be sought with the express agreement of the Cabinet Secretariat.

7.15 To finalise clearance, the bill minister's private office should carry out a 'ring round' of the private offices of all members of the committee to confirm whether or not they intend to respond. All committee members must either respond or give a nil return before clearance can be arranged (the committee secretariat in Cabinet Office will advise the chair of the committee whether to give clearance, based on any responses made and any other relevant factors). Committee members should only respond if they have a significant

point to make; responses indicating ministers are content with the proposal are unnecessary (in this case a nil return should be given). A ring-round sheet listing all responses and nil returns, and copies of all responses, should be sent to the relevant committee secretary in the Cabinet Office.

7.16 Where there is significant difficulty in reaching an agreement, the department should consult the committee secretariat, who will be able to help broker agreement and arrange a Cabinet committee or other ministerial meeting if necessary. In this case, the department is likely to be required to prepare and circulate a paper in advance of the committee meeting, in agreement with the committee secretary. Detailed guidance on the layout, content and length of Cabinet and Cabinet committee memoranda and their reproduction and circulation is contained in the Handbook for the Cabinet Documents Officer. This document is available on CabCom and hard copies are held by all ministerial private offices.

7.17 Contact details for other committee secretaries are available from PBL Secretariat.

## SECTION B

### PREPARING THE BILL FOR INTRODUCTION

## 8. PREPARING THE BILL FOR INTRODUCTION: CHECKLIST OF TASKS TO BE COMPLETED BY DEPARTMENT

7.18 As well as producing the bill itself, there are a number of other tasks to be completed before the bill can be approved for introduction. Bill teams should factor these tasks into their delivery plan and start work on them as early as possible. When PBL Committee meets to consider the bill before introduction, it will expect the department to have:

- Obtained collective agreement for all of the policy in the bill;
- Prepared a PBL Committee memorandum (based on the standard memo template, available from the PBL Secretariat) which summarises the content of the bill and any other important issues which have been covered in the annex documents described below;
- Produced a full set of explanatory notes to accompany the bill (Parliamentary Counsel will advise, but the notes are the responsibility of the department and work

should start as soon as instructions have been sent to Counsel, if not before);

- Prepared a full impact assessment as necessary, cleared by the (ministerial) Reducing Regulation Committee, having obtained a 'fit for purpose' opinion from the Regulatory Policy Committee. This should include documentation showing how you considered the impact of the bill on different groups, such as in regard to race, gender, disability etc. This should be published alongside the bill;
- Prepared a delegated powers memorandum for publication, explaining the purpose and justification of any such powers in the bill;
- Considered the bill's compatibility with the European Convention on Human Rights and set out the justification for any provisions that may potentially be considered to touch on Convention rights in a legal issues memorandum;

- Considered any other legal issues, including the bill's compatibility with EU law (and made arrangements to notify the European Commission if necessary), and obtained Law Officers' consent to any retrospective provisions or early commencement of provisions, all of which should be covered in the legal issues memorandum;
- Reached an agreed position with the devolved administrations on any devolved provisions, including obtaining agreement in principle from the devolved administration in question to promote a legislative consent motion (LCM) after introduction, if one is necessary. Devolution issues should also be set out in the legal issues memorandum;
- Ensure that the bill is compatible with Scots and Northern Ireland law
- Obtained Queen's Consent, Prince of Wales' Consent or the consent of the Crown dependencies, if required;
- Addressed any finance, public expenditure or tax implications of the bill and obtained the agreement of HM Treasury where necessary;
- Produced a parliamentary handling strategy for the bill and agreed it with the Government Whips' Offices in the Commons and Lords.

8.2 In short, all outstanding issues within government should have been settled before introduction and the department must have a clear idea of how it intends to handle any other issues that are expected to arise during the bill's passage.

# 9. DRAFTING THE BILL: GENERAL

## Introduction

9.1 Government bills are drafted by the Office of the Parliamentary Counsel (OPC) on the basis of instructions provided by the department.

9.2 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 have produced this chapter and the following chapter to help departmental officials with this task and with other aspects of the bill drafting process.

9.3 This Chapter includes:

- a brief summary of the good law initiative;
- 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 should be set aside in the project plan for preparing the instructions and drafting the bill;
- advice about involving the minister in the drafting process.

9.4 The next chapter contains detailed advice about the form, structure and content of instructions to OPC. That chapter is principally for departmental lawyers, but policy officials will also find it of use.

## The good law initiative

9.5 The good law initiative is an appeal to everyone interested in the making and publishing of law to work together with a shared objective of making legislation work well for those who use it.



9.6 Departmental officials who are involved in writing instructions and subsequently work with OPC to produce a bill should keep in mind the essential components of good law. Good law is law which is necessary, clear, coherent, effective and accessible.

9.7 For further information about the good law initiative, visit <https://www.gov.uk/good-law-the-challenge>

### **Background information about OPC**

9.8 OPC is part of the Cabinet Office. It has around 45 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.

9.9 In addition to drafting the Government's bills, drafters in OPC are 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.

9.10 Drafters tend not to specialise in particular areas of law. So the department's 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 the

department's lawyers will provide this advice will be in the instructions.

9.11 Drafters in OPC are 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**

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

9.13 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 mind and will be best placed to judge how alternative policy options will be viewed by MPs, Peers, other government departments, the devolved administrations, interest groups and the public generally.

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

9.15 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 he or she will sometimes be able to spot potential difficulties that may not have been obvious to the department.

9.16 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.

9.17 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?**

9.18 As will be seen in paragraph 9.21, the basic rule is that the department should not normally send instructions to OPC until PBL Committee and the relevant policy committee of cabinet have taken certain decisions. But the department should not wait for these decisions to be taken before getting in touch with OPC. Indeed, as soon as the department decides to pursue a bill it should start to engage with OPC.

9.19 At this early stage the department will not know which particular drafters will be

assigned to its bill and so it should get in touch with the appropriate Team Leader (that is to say, the Leader of the OPC team that is responsible for drafting the department's bills). Advice as to who the appropriate Team Leader is in any particular case can be obtained by contacting John Healy at OPC ([John.Healy@cabinet-office.x.gsi.gov.uk](mailto:John.Healy@cabinet-office.x.gsi.gov.uk) / 020 7276 6572).

9.20 An early discussion with the Team Leader can serve the following purposes:

- the Team Leader can gauge the size and complexity of the proposed bill and the resources needed to draft it;
- the Team Leader can provide initial advice about how long it may take to draft the bill – this will help the department to prepare a project plan;
- the department can discuss with the Team Leader any concerns it has about its proposals – the Team Leader will be able to say if he or she foresees any difficulties with the proposals and may be able to suggest alternatives.

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

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

- 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.

9.22 Of course, 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. (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.)

9.23 Once PBL Committee has allocated the bill a slot in the legislative programme (or has given drafting authority), PBL 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 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.

9.24 PBL Secretariat will arrange further meetings to monitor progress.

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

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

9.26 But the first step will usually be for policy officials to explain the policy to their departmental legal adviser. On some occasions little explanation will be needed because the lawyer will have been involved in developing the policy from the outset (perhaps even before the need for a bill was identified). But on other occasions a full explanation will be required. 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 on the time that is available. 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.

9.27 Once the policy has been explained, the departmental lawyer will work with the policy officials to deal with any gaps, inconsistencies, flaws or ambiguities in the policy.

9.28 The lawyer 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.

9.29 The next chapter contains detailed advice about the form, structure and content of the instructions. Departmental lawyers should familiarise themselves with this before starting work on a bill. 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.

9.30 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 PBL Secretariat.

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

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

9.32 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.

9.33 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 administrations**

9.34 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 administration(s) concerned are content with the department's proposals.

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

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

9.36 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**

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

9.38 But 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.

9.39 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;
- whether the drafter's other priorities would enable work to start on the instalment if it was sent in advance of the other instructions.

9.40 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**

9.41 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.

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

9.43 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.

9.44 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.

9.45 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**

9.46 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.

9.47 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**

9.48 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:

- 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 use of meetings etc);
- which particular officials in the department will deal with the drafter in relation to particular matters. Except in certain rare cases, it will be necessary for lawyers in the department to prepare the instructions to the drafter. But on other matters it will be appropriate for policy officials or other members of the bill team to deal with the drafter - the drafter and the department should agree whatever will work best for them.

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

9.49 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.

9.50 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 a departmental lawyer and a policy official are on hand to answer these questions.

9.51 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.

9.52 Except in the most straightforward of cases, the first draft will be accompanied by a letter which will do two things. First, 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**

9.53 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.

9.54 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.

9.55 In responding to the drafter the department need not confine itself to commenting on whether the draft provisions achieve its policy. 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.

9.56 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?"

9.57 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**

9.58 Where a draft provision will extend to Scotland the drafter will wish to share the provision with Scottish Parliamentary Counsel (UK) (often referred to as 'SPC(UK)' 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.

9.59 It is relevant here to note that SPC(UK) works to OAG and the UK Government (rather than to the Scottish Government). By contrast, the Office of the Legislative Counsel works exclusively to the Northern Ireland Executive.

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



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

9.61 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;
- 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.

9.62 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.

9.63 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. And 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 this will take time.

9.64 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.

9.65 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.

9.66 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.

9.67 As mentioned in paragraph 9.20 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**

9.68 The bill team will need to monitor progress with the drafting of the bill. 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;).

9.69 The drafter will find it helpful to be given a copy of the progress chart so that he or she can see where things stand.

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

9.70 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.

9.71 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.

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

9.73 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.

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

## Introduction

10.1 This chapter has been produced by the Office of the Parliamentary Counsel (OPC) to help departmental lawyers 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.

10.2 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. Departmental lawyers are therefore encouraged to familiarise themselves with this chapter on each occasion they are asked to work on a bill.

10.3 Policy officials may also find this chapter of use - it will help them anticipate the sorts of information their lawyers will need to be able to complete their instructions to OPC.

## General observations & guidance

10.4 Some general observations and guidance can be offered at the outset.

10.5 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.

10.6 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.

10.7 Thirdly, the departmental lawyer should try to ensure that the policy is fully thought through and analysed before the instructions to OPC are finalised. But having said this, 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.

10.8 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. And 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.

10.9 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**

10.10 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 – numbered and lettered paragraphs 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.

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

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

10.12 But 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;
- Parliamentary and other handling matters.

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

## Part 1 - Introduction

10.14 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.”*

10.15 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.

10.16 If the instructions are likely to give rise to particularly difficult devolution, EU law 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).

10.17 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.

10.18 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. Or it might be a good idea to provide a web link to any consultation documents or other relevant publications.

## **Part 2: Existing law**

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

10.20 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 in order to grips with the legal landscape in which he or she is 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.

10.21 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.

10.22 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.

10.23 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;
- highlights features of the existing law which are of particular importance in the context of the department's proposals.

10.24 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.

10.25 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).

10.26 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.

10.27 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.

10.28 While it is important that the drafter is given a good grounding in the area he or

she is 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. It is a waste of the author's time to produce a lengthy description of legislation or case law if it will ultimately have no effect on the drafting.

10.29 If the author of the instructions is unsure about how much detail to go into in this part of the instructions it may be helpful to discuss the matter with the drafter or (if a drafter has not yet been assigned to the bill) the appropriate Team Leader in OPC.

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

#### Introduction

10.30 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.

#### Policy objective

10.31 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

10.32 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).

10.33 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 he or she happens 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 free-standing 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 he or she 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 he or she 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.

10.34 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 are actually trying to achieve.

10.35 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 his or her best guess as to what the department will want – but there will then be a risk that his or her guess will be incorrect and the draft will need to be revised.

10.36 When describing the proposed changes in law the author of the instructions will, of course, need to exercise his or her judgment to determine how much detail is enough. But a good starting point is for the author to think about what he or she would want to know if asked to draft provisions to give effect to the change. Paragraphs 1.37 to 1.40 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

10.37 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

10.38 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.

#### New duties

10.39 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 want 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

10.40 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. And it will 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

10.41 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 - so 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

10.42 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**

10.43 The author of the instructions should consider whether anything needs to be said about any of the supplemental and incidental matters listed in paragraph 1.46 below.

10.44 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.

10.45 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.

10.46 The supplemental and incidental matters are as follows:

- EU law issues;
- 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;
- consequential amendments and repeals;
- transitional, transitory and saving provisions;
- commencement;
- retrospection (see chapter 12 of this Guide).

10.47 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.

10.48 EU law issues: On some occasions EU law issues will go to the very heart of the department's proposals. For example, it may be that the very purpose of the department's proposals is to implement a Directive. On these occasions it will be more appropriate for the relevant EU law to be dealt with earlier in the instructions. On other occasions it will be more appropriate for the EU law issues to be dealt with in this part of the instructions.

10.49 An example of an EU law issue which may arise from time to time is compatibility with the E Commerce Directive (2000/12/EC). This Directive contains provisions restricting the power of member

states to impose obligations, broadly speaking, on internet activity. Where the department's proposals may affect internet activity the instructions should explain whether the Directive affects the proposals and whether any provisions are needed to make the bill consistent with it.

10.50 Another Directive that instructing departments may need to consider from time to time is the Technical Standards Directive (Directive 98/34/EC, as amended by Directive 98/48/EC). This Directive requires departments to notify the Commission of any "technical standards" that they are proposing to create. (Examples of technical standards include laying down characteristics required of a product before it can be marketed; requiring approval of a product before it can be marketed; prohibiting the marketing of a product; and imposing requirements as to the composition of a product.) The Technical Standards Directive also requires the Commission to be notified of certain requirements that are to be imposed on the use of information society services (broadly, internet-based services). Responsibility for identifying and notifying technical standards rests with the department, but the instructions should say if the department considers that its proposals will constitute a technical standard.

10.51 For further guidance about EU law generally and about its domestic implementation, see the European Law area on LION.

10.52 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. But a short explanation of the department's analysis is needed so as to let the drafter know that the necessary issues have been considered.

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

10.54 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).

10.55 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. But 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.

10.56 The instructions should tell the drafter which option the department wishes to pursue.

10.57 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.

10.58 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.

10.59 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.

10.60 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.

10.61 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.

10.62 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).

10.63 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. But 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. The other thing to bear in mind is 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.

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

10.65 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;
- at the end of a specified period beginning with Royal Assent.

10.66 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.

10.67 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.

10.68 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 2 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 have reached in seeking the Law Officers' consent to early commencement.

10.69 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, Innovation & Skills 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**

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

10.71 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 Queen's or Prince's consent (see chapter 17 for further information about this);
- whether there is a risk that the bill will be treated as a hybrid bill (see chapter 41 for further information about hybrid bills);
- whether the bill will require a money resolution or a ways and means resolution (see chapter 25 for further information about these sorts of resolution).

10.72 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.

# 11. EXPLANATORY NOTES

published in draft for consultation or pre-legislative scrutiny.

## A: PURPOSE AND PROCESS

### Are explanatory notes needed for the bill?

11.1 Explanatory notes 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 are also required for all government bills published in draft.

11.2 Explanatory notes should also normally be provided for handout bills, that is, private members' bills supported and drafted by the Government (see paragraphs 11.95 to 11.100).

### What are the notes for?

11.3 Explanatory notes are not intended to be an exhaustive description of the bill or to be a substitute for it. Their purpose is to make the bill accessible to readers who may not be legally qualified or have specialised knowledge of the subject area.

11.4 Explanatory notes are a vital part of the overall bill package, whether a bill is being introduced into Parliament or

11.5 Good explanatory notes can:

- assist in communicating the department's messages about the bill;
- result in more valuable feedback from the consultation or pre-legislative scrutiny process;
- assist in the passage of a bill through Parliament;
- (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.

11.6 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.

11.7 Explanatory notes that merely repeat, in slightly different words, what is said in the bill are not helpful.



## Legal status of the notes

### 11.8 Explanatory notes 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.

### 11.9 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*). So it is important that the notes do not mislead; 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?

### 11.10 The department sponsoring the bill is responsible for preparing the explanatory notes to accompany it. Explanatory notes 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.

### 11.11 The appropriate person to write the explanatory notes might be the bill team manager or the lead policy official. The

bill team should identify that person at an early stage.

### 11.12 If a bill covers a range of different policy areas, the explanatory 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 explanatory notes, making sure that the style of the notes is consistent throughout and that the notes are clear, fluent and readable.

## Parliamentary Counsel's role in clearing the notes

### 11.13 Explanatory notes must be cleared by the Parliamentary Counsel drafting the bill.

### 11.14 Before notes are sent to Parliamentary Counsel they must be:

- cleared internally, including by the departmental instructing lawyers;
- proof-read within the department (to pick up spelling mistakes, grammatical mistakes and consistency points).

### 11.15 Counsel will, in particular, consider:



- Whether the notes attempt to ‘sell’ the bill (see paragraph 11.37);
- Whether the notes reveal any misunderstanding between the drafter and the department;
- Whether they misrepresent the effect or purpose of any provisions in the bill or offer unhelpful explanations;
- Whether what the notes say about the financial implications of the bill is consistent with what Counsel has been told for the purposes of any financial resolutions.

11.16 The role of Counsel does not involve:

- Checking the grammar and spelling of the notes;
- Rewriting the notes or making drafting comments;
- Offering suggested changes to the text of the notes merely because, in Counsel’s view, the material could be fuller or better expressed;
- Checking the conformity of the notes with all aspects of this Guide;
- Checking the accuracy of the notes in every other detail (e.g. cross-references to provisions of the bill, consistent use in the notes of the right abbreviations).

11.17 Explanatory notes must be written using the latest version of the Word template. This is available from PBL Secretariat and Parliamentary Counsel.

### Publication and copyright

11.18 Although prepared by departments, explanatory notes are a parliamentary document and copyright is assigned to Parliament while the bill is before Parliament. 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 [parliamentary website](#). Even if the bill is not amended, the explanatory 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 all previous versions).

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

### Timing, checks and updating

11.20 Writing explanatory notes should not be left until the last minute, even though they often cannot be finalised until then.

### Word template

11.21 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. Work can also start at an early stage on the part of the notes that provides commentary on particular provisions of the bill. You don't need to wait until the drafting of a provision has been finalised before starting work on the explanatory notes relating to that provision. Work 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.

11.22 Parliamentary Counsel and PBL Secretariat will assist in trying to ensure that explanatory notes are prepared in a timely manner:

- Parliamentary Counsel will ask to be provided with a draft of the explanatory notes relating to a particular provision (or group of provisions) at the time when Counsel feels that the policy behind the provision(s) is sufficiently settled. (Work can of course begin on the draft in advance of this request.)
- When PBL Secretariat asks the department to report on progress on the drafting of the bill, it will also ask for a report on progress on the preparation of the explanatory notes.

11.23 The explanatory notes must be provided alongside the bill before PBL Committee will clear the bill for introduction.

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

11.25 The notes must be cleared with departmental lawyers before they are sent to PBL Committee.

11.26 The territorial extent and application section of the notes (including the annexed table – see paragraphs 11.59 to 11.63) should be agreed by officials in the Scotland, Wales and Northern Ireland Offices before the notes are sent to PBL Committee.

11.27 The notes must be cleared with Parliamentary Counsel, ideally before they are sent to PBL Committee although on occasion they have to be cleared by Counsel after PBL Committee has considered the bill (see paragraphs 11.13 to 11.16).

11.28 Parliamentary Counsel will arrange for the relevant Public Bill Office to comment on the draft notes (either before or after PBL Committee consideration of the bill, as time allows).

11.29 When the bill is ready to be introduced, the final version of the notes should be sent to Parliamentary Counsel who will arrange for the notes to be handed in to the Public Bill Office. The Public Bill Office deals with publication.

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

- The notes are in the correct format;
- The notes 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) (see paragraph 11.37);
- The notes do not misrepresent the effect or purpose of any provisions of the bill.

11.31 Late publication of explanatory notes 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 PBL Secretariat as soon as possible who will ensure that PBL Committee and the business managers are informed.

11.32 The explanatory notes must be revised at least twice:

- to accompany the first print of the bill in the second House (see paragraphs 11.83 to 11.87);

- at the time of Royal Assent (see paragraphs 11.93 and 11.94).

11.33 The need to update the explanatory 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.

11.34 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 explanatory notes as the bill is amended, rather than waiting until the end of the first House.

11.35 There is a separate document (explanatory notes on amendments) that must be produced if a bill is amended in the second House. See paragraphs 11.88 to 11.92.

11.36 A checklist of tasks for preparing and finalising explanatory notes is provided below.

## Checklist for preparing and finalising explanatory notes

Up to introduction	
Instructions being prepared for Parliamentary Counsel	<ul style="list-style-type: none"> <li>• Department identifies the personnel who will be responsible for preparing the explanatory notes.</li> <li>• If wanted, department requests training session from Parliamentary Counsel on preparing explanatory notes.</li> <li>• Department begins work on explanatory notes (using the template), starting with the sections on policy background and legal background.</li> </ul>
Drafting of bill underway	<ul style="list-style-type: none"> <li>• Parliamentary Counsel asks department to supply a draft of the explanatory notes relating to a particular provision (or group of provisions) when the policy behind the provision(s) is sufficiently settled.</li> <li>• PBL Secretariat asks department for updates on the preparation of the explanatory notes, at the same time as asking for updates on the drafting of the bill.</li> </ul>
Drafting of bill well-advanced	<ul style="list-style-type: none"> <li>• Department consults Parliamentary Counsel about when to send the full set of explanatory notes for clearance in time for PBL Committee meeting to approve the bill for introduction.</li> </ul>
Before PBL Committee meets to approve the bill for introduction	<ul style="list-style-type: none"> <li>• Department finishes clearing notes internally (including department's instructing lawyers) and clears the "Territorial extent and application section" with the territorial offices.</li> <li>• Department clears notes with Parliamentary Counsel.</li> <li>• Department emails notes to PBL Secretariat with the other bill papers (Parliamentary Counsel sends the bill).</li> </ul>
Before introduction	<ul style="list-style-type: none"> <li>• Department amends notes to reflect any changes to the bill after the PBL Committee meeting, clears the changes internally (including department's instructing lawyers) and agrees them with Parliamentary Counsel.</li> </ul>

	<ul style="list-style-type: none"> <li>• Department sends Parliamentary Counsel the notes. Counsel seeks approval of Public Bill Office in House of introduction.</li> <li>• Department makes any changes needed to the notes in light of comments from Public Bill Office.</li> <li>• Parliamentary Counsel sends final version of the notes to Public Bill Office, alongside bill.</li> <li>• Public Bill Office adds bill number and arranges printing of bill and notes.</li> </ul>
<b>Bill in House of introduction</b>	
Before Report Stage	<ul style="list-style-type: none"> <li>• Department consults Parliamentary Counsel about when notes have to be finalised for the second House.</li> </ul>
By time of Third Reading (the earlier the better)	<ul style="list-style-type: none"> <li>• Department updates notes, clears notes internally (including department's instructing lawyers) and agrees changes with Counsel.</li> <li>• Department sends Counsel the revised notes.</li> <li>• Counsel seeks approval of Public Bill Office in the second House.</li> </ul>
Immediately after Third Reading or earlier, where possible	<ul style="list-style-type: none"> <li>• Counsel sends final version of the revised notes to Public Bill Office in the second House.</li> <li>• Public Bill Office adds bill number and arranges printing of bill and notes.</li> </ul>
<b>Bill brought to second House</b>	
Before Report Stage	<ul style="list-style-type: none"> <li>• Department consults Parliamentary Counsel about when the following have to be finalised: Notes on amendments made in the second House (if any); Notes for the Act.</li> </ul>
By time of Third Reading (the earlier the better)	<ul style="list-style-type: none"> <li>• If needed, department prepares notes on amendments made in the second House, clears notes internally (including department's instructing lawyers) and then clears them with Parliamentary Counsel who will in turn seek the approval of the Public Bill Office in the first House.</li> <li>• Department should also be working on updating notes on bill into Act version, clearing notes internally (including</li> </ul>

	department's instructing lawyers) and agreeing changes with Counsel. This work is likely to continue up until (and sometimes after) Royal Assent.
After Third Reading	<ul style="list-style-type: none"> <li>Notes on second House amendments published as bill returns to first House for consideration. Usual deadline for handing in (by Counsel): two hours after the second House finishes Third Reading or the rising of the House, whichever is later.</li> </ul>
<b>Royal Assent</b>	
After Royal Assent	<ul style="list-style-type: none"> <li>Department sends final Act notes to Legislation Services by email</li> <li>Legislation Services publishes notes alongside the Act and places both on the website <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a></li> </ul>

## B: CONTENT OF NOTES

### Key points in drafting the notes

11.37 It is essential that the notes are neutral in tone. Explanatory notes 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.

11.38 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 without legal training and unfamiliar with the subject matter of the bill.

11.39 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 explanatory notes for the Enterprise and Regulatory Reform Act 2013 use flow charts to help explain the impact 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 explanatory notes

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).

11.40 The use of hyperlinks is encouraged.

11.41 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 explanatory notes 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.

11.42 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 explanatory notes. However, the explanatory 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 [www.gov.uk](http://www.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.

11.43 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. The explanatory notes (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

11.44 The template is structured such that explanatory notes 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
- Commentary on provisions of the Bill
- Commencement
- Financial implications of the Bill
- Compatibility with the European Convention on Human Rights
- Related documents.

11.45 When the bill is in the House of Commons, the notes must also include a section, inserted after “Financial implications of the Bill”, entitled “Parliamentary approval for financial costs or for charges imposed”.

11.46 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.

11.47 If the bill implements an EU Directive, the explanatory notes must also include transposition notes in an annex (see paragraph 11.82).

11.48 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.

#### 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. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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

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



11.50 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])”

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

### Overview of the Bill section

11.52 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 Armed Forces (Service Complaints and Financial Assistance) Bill (2014/15 Session)

“The Bill deals with two matters:

- Reform of the service complaints system
- Payments to charities and other organisations which support the armed forces community.”

Example 2 – from the explanatory notes for the Lords Spiritual (Women) Bill (2014/15 Session)

“The Bill has a single purpose, which is to enable vacancies among Church of

England bishops in the House of Lords to be filled, for a limited period, by female bishops instead of male bishops who would otherwise have become members of the House under the current law.”

### Policy background section

11.53 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.

11.54 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.).

11.55 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

11.56 In this section of the notes it may be helpful to refer to the pieces of primary and secondary legislation 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).

11.57 In other cases, it may be that there is nothing to add to what has been said in the policy background section of the notes. If so, say something along the lines of “The relevant legal background is explained in the policy background section of these Notes.”

11.58 See paragraph 11.82 where the bill is implementing an EU directive.

### **Territorial extent and application section**

11.59 In general this section of the notes should briefly explain what the territorial extent and application of the bill is. But where the territorial extent and application of the bill is different from one clause to the next, there is no need to try to summarise the bill’s territorial extent and application in this section of the notes. This is because in the case of all bills (see paragraph 11.71 below), there will be a paragraph in the commentary on individual provisions of the bill setting out their extent and application. Some suggested wording for the “Territorial extent and application” section 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 of the Bill includes a paragraph explaining their extent and application.”

11.60 It is important to remember that there may be a mismatch between the extent and application of a bill’s provisions. This might be because, for example:

- 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 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.

11.61 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, and indicate whether a legislative consent motion in any of the devolved legislatures is being sought.

11.62 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 Bill does not contain any provision which gives rise to the need for a legislative consent motion in the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of any of these legislatures without the consent of the legislature concerned. If there are amendments relating to such matters that fall within the convention, the consent of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly (as appropriate) will be sought for them.”

(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

11.63 The template includes as one of the annexes a table which must be completed by way of summary of the information about territorial extent and application and the need (if any) for legislative consent motions. The table is concerned only with extent within the UK. 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 (see paragraph 11.71 below).

### Fast-track legislation section

11.64 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

11.65 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 the issues in question?
- Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

## **Commentary on provisions of Bill section**

11.66 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](http://legislation.gov.uk) (the intention is that notes will be linked with their related provisions), a note should be included for each clause and Schedule, or for groups of clauses / Schedules if it is felt more appropriate to provide commentary on a group of provisions.

11.67 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. (See also paragraph 11.71 about the inclusion of a paragraph on the extent and application of the provision(s).)

11.68 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.

11.69 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);
- An explanation of how the department plans to use a regulation making power.

11.70 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. Explanatory notes have to be neutral in tone but this does not prevent the use of existing material that meets this test.

11.71 In the case of the bill's substantive provisions, the commentary on an individual provision / group of provisions must 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 provision / group of provisions forms part of the law of ...".

11.72 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.

11.73 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**

11.74 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**

11.75 If the bill has no financial implications, this section of the notes should say so.

11.76 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.

11.77 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.

11.78 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 charges imposed section**

11.79 This section must be included in notes that are to be published with a bill that is in the House of Commons. It should state whether a money resolution or Ways and Means resolution (or both) in the House of Commons will be required to authorise any provisions of the bill. The notes should indicate in general terms which those provisions are. Parliamentary Counsel will provide draft wording for this part of the notes.

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

11.80 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. Previous Governments gave a commitment to give an assessment of the most significant human rights issues thought to arise from each bill. These will have been set out in the legal issues memorandum prepared for PBL Committee (though departments should remember that any advice from the Law Officers contained in the legal issues memorandum should

not be disclosed in the explanatory notes). This assessment of the impact of the bill's provisions on the Convention rights should be as detailed as necessary, setting out any relevant case law and presenting the Government's reasons for concluding that the provisions in the bill are either compatible with the Convention or why if unable to make a statement of compatibility, the Government nevertheless wishes the House to proceed with the Bill.

11.81 In order to discharge the Government's commitment to provide a human rights assessment, the department should do one of the following (as appropriate):

- state that the department does not consider that the provisions of the bill engage Convention rights;
- in a case where any ECHR issues are not significant, deal with the issues in a short paragraph or paragraphs in the explanatory notes;
- where significant ECHR issues arise, state 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.

### **Related documents section**



11.82 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 will be:

- Impact assessment
- Delegated powers memorandum
- Any draft regulations that have been published.

See also paragraph 11.80 concerning the legal issues memorandum (if any).

### Transposition notes

11.83 If the bill implements an EU Directive, the explanatory notes should include in the form of an annex a set of ‘transposition notes’ illustrating how the Government intends to transpose the main elements of the directive(s) into UK law. The legal background section of the notes should introduce the transposition notes and explain, in broad terms, the approach taken to transposition, highlighting any difficult areas and including a brief scrutiny history of when the directive was considered by the EU scrutiny committees. Transposition notes should be copied to the devolved administrations for information purposes only, at the same time as they are submitted to Parliament.

## C: AFTER INTRODUCTION

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

11.84 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].”

11.85 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;
- if relevant, where legislative consent motions from the devolved administrations have been obtained.

11.86 Sometimes an amendment will be made in the first House, which the Government has said it will seek to overturn in the second House. The notes should give a neutral description of the

amendment and its effect, say the Government intends to seek to overturn the amendment and should not argue the pros and cons of the amendment. 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.

11.87 The revised notes should be cleared with the departmental instructing lawyers and then with Parliamentary Counsel for the bill who will, in turn, clear them with the Public Bill Office in the second House. As at introduction, the final version of the notes should be sent to Parliamentary Counsel for handing-in to the Public Bill Office. The Public Bill Office will deal with publication.

11.88 The revised notes should be published as soon as the bill passes to the second House. However, if, for example, a bill starting in the Lords was amended at Third Reading 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**

11.89 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.

11.90 Explanatory notes 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 through Parliamentary Counsel and with the Leader of the House of Commons through PBL Secretariat.

11.91 Explanatory notes on second House amendments must be cleared by Parliamentary Counsel (once they have been cleared internally, including by the department's instructing lawyers). Parliamentary Counsel will clear the notes with the Public Bill Office in the first House. As with bill notes, the final version of the explanatory notes on second House amendments should be sent to Parliamentary Counsel for handing-in to the Public Bill Office. The



Public Bill Office will deal with publication.

11.92 An example is set out below, but it is taken from a version of the template that is to be superceded.

*These notes relate to the Lords Amendments to the Fixed-term Parliaments Bill,  
as brought from the House of Lords on 24 May 2011*

## **FIXED-TERM PARLIAMENTS BILL**

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### **EXPLANATORY NOTES ON LORDS AMENDMENTS**

#### **INTRODUCTION**

1. These Explanatory Notes relate to the Lords amendments to the Fixed-term Parliaments Bill, as brought from the House of Lords on 24 May 2011. The Notes have been prepared by the Cabinet Office in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These Notes, like the Lords amendments themselves, refer to HL Bill 40, the Bill as first printed for the Lords.
3. These Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords amendments.
4. Lords Amendments 5, 7 and 8 were tabled in the name of the Minister. Lords Amendments 3, 4 and 6 were supported by the Government. Lords Amendments 1, 2 and 9 were opposed by the Government.
5. In the following Commentary, an asterisk appears in the heading of each of the paragraphs dealing with non-Government amendments.

#### **COMMENTARY ON LORDS AMENDMENTS**

##### ***\*Lords Amendments 1, 2 and 9***

6. Lords Amendments 1 and 2 would provide that the polling day for a subsequent parliamentary general election (that is, elections after the next parliamentary general election under the Bill) is only to be fixed under the Bill if each House of Parliament resolves that that polling day should be so fixed.

## Key Points

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

- Use the latest version of the Word template. This is available from PBL Secretariat and Parliamentary Counsel. It is a different template from the one used for bill explanatory notes.
- 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 only if that section of the original explanatory notes has become incomplete or inaccurate as a result of the amendments. Where a section on

financial implications is needed, the implications should be identified as accurately as is reasonably possible, because of their relevance to questions of financial privilege. Parliamentary Counsel will agree with the House Authorities which amendments engage financial privilege.

- When dealing with more than one amendment, the format should be as follows:

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

Lords Amendments 23, 35 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

11.94 As 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). After clearing them internally (including with the departmental instructing lawyers) and with Parliamentary Counsel, the department should email the final explanatory notes to [legislation@nationalarchives.gsi.gov.uk](mailto:legislation@nationalarchives.gsi.gov.uk). The Legislation Services Team in the National Archives will make the notes

(together with the Act and impact assessments) 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). Departments should therefore provide links to these texts from their own websites rather than publishing them separately on their own website.

11.95 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. So where a provision of the Act does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

- 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).
- References in the notes to the ‘bill’ should be changed to references to the ‘Act’; and references to ‘clauses’ should be changed to ‘sections’.
- Delete the material about legislative consent motions in the territorial extent and application section (but not in the annexed extent and application table) and delete the sections on the financial implications of the Bill, Parliamentary approval for financial costs or for charges imposed and Compatibility with the European Convention on Human Rights. If the parliamentary progress of the bill was expedited, the section in the notes justifying fast-tracking of the bill should also be deleted.

- 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 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.
- Include as an annex to the notes a table showing the origin of each section as a numbered clause in each version of the bill. The template includes an outline table.

## D: NOTES FOR HANDOUT BILLS

### Explanatory notes for private members' 'handout' bills

- 11.96 Departments should not provide explanatory notes for private members' bills that the Government does not support. If a department wishes to provide explanatory notes for a private members' bill that is being supported by the Government but is not a 'handout' bill, Parliamentary Counsel should be consulted in advance.
- 11.97 However, the Government should prepare explanatory notes for all handout bills – 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, explanatory notes for handout bills should be prepared in the same way as for government bills.

- 11.98 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/name of peer], the [member/peer] in charge of the Bill, in order to assist the reader of the Bill."

- 11.99 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 explanatory notes are published the sentence above should be amended accordingly.
- 11.100 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.
- 11.101 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.

# 12. 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 PBL Committee before it will approve a bill for introduction or publication in draft.
- Section 19 of the Human Rights Act requires that, for every government bill, the minister in charge in **each** House make a statement that, in his or her view, the bill's provisions are compatible with the Convention rights. Alternatively, if he or she is not able to provide that personal assurance, he or she must state that, nevertheless, the Government 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, PBL Secretariat should be informed immediately.
- The explanatory notes should contain a section on compatibility with the Convention.
- The Joint Committee on Human Rights will report on the ECHR issues raised by a bill and is likely to examine closely the arguments put forward by the department justifying interference with a Convention right. It may ask for additional memoranda on particular points such as the

compatibility of a bill with the UN Convention on the Rights of the Child.

- A section 19 statement is not required for private members' bills but if a department wishes to support a private members' bill it must produce a legal issues memorandum for PBL Committee. A legal issues memorandum may also be required where the Government wishes to take a neutral position on a private members' 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 (contact details are at Appendix B).

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

12.1 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.

12.2 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, 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'.

12.3 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; and
- 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.



12.4 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.

12.5 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.

12.6 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.

12.7 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 co-ordinate 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 crosscutting human rights issues are raised, or where a department is proposing to make a legislative reference to the Human Rights Act but MoJ does not need sight of all legal issues memoranda.

### **Legal issues memorandum for PBL Committee**

12.8 A memorandum setting out the legal issues raised by the bill is one of the papers required by PBL Committee before the bill can be approved for introduction or publication in draft.

12.9 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 two weeks before the meeting of PBL Committee 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 for PBL. It should be emphasised that two weeks is the minimum period to allow for any difficulties to be addressed before the bill comes to 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 if this is helpful.

12.10 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 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 would be advisable here. Private members' Bills which the Government

proposes to support (including handout bills) have the same requirements.

12.11 Memoranda should cover the legal issues raised, with a frank assessment by the department of the vulnerability to challenge in legal and policy terms. 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.

12.12 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).

12.13 Departments should be aware that the role of 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)**

12.14 Section 19 of the Human Rights Act 1998 requires that, for every government bill, the minister in charge in each House make a statement that in her or his view the bill's provisions are compatible with the Convention rights.

12.15 Alternatively, if he or she is not able to provide that personal assurance, he or she 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.

12.16 Departmental legal advisers will take the lead in providing the formal advice required to justify such statements, seeking assistance from legal advisers in the Ministry of Justice Human Rights

Division and, ultimately, the Law Officers as necessary.

12.17 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.

12.18 The statement should be made by whichever minister is in overall charge of the bill in each House. In the Commons, this will be the minister whose name goes on the take-up slip; in the Lords, this may be a departmental minister or it may be a government whip. If in doubt, consult Parliamentary Counsel.

12.19 The minister in charge of the bill in each House 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 the House to proceed with the .... Bill.

[signed] .....

Secretary of State / Minister for .....

Reading, and the minister can indicate whether or not the House is to be invited to remove the amendment in question.

12.22 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 PBL Committee. Parliamentary Counsel should be informed that the statement has been made.

12.23 If for any reason the statement will not be signed before the bill is first printed in either House, Parliamentary Counsel should be consulted immediately. The minister concerned should answer an arranged question saying he or she is giving consideration to the matter (or, in the Commons, make a written ministerial statement) and will produce a statement before Second Reading.

12.24 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

12.20 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”.

12.21 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

without either amending the provisions or informing Parliament of the issue.

12.25 The section 19 statement should be printed on good-quality paper and signed by the minister in black ink before the bill is introduced to Parliament.

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

12.27 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 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 (e.g. 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 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

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

12.29 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

12.30 The JCHR will report on the ECHR issues raised by a bill and is likely to examine closely the arguments put forward by the department justifying interference with a Convention right. 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.

12.31 If the JCHR considers that the memorandum provided to the Committee, or the explanatory notes, 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 reports favourably 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.

12.32 It may be helpful for departments to volunteer a memorandum at the time of introduction informing the JCHR of any human rights issues which the bill may raise, or write to them setting out any issues which were too detailed or substantial to be included in the explanatory notes.

12.33 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.

12.34 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).

12.35 It is not usually necessary for the department to respond to the Committee's report in writing as members of the Committee will often move amendments to give effect to the Committee's recommendations and objections; the minister will be expected to give a full response at that time. However, if the response to a recommendation or objection is particularly legal or technical, it may be easier for the department to respond in writing; advice on this point can be sought from the Human Rights Division of the Ministry of Justice. Memoranda can be emailed to the JCHR and bill teams should alert the Committee Clerk that a response is coming (contact details at Appendix B). If a memorandum 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 of the memorandum in the library of the appropriate House.

## Acts

12.36 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.



# 13. OTHER LEGAL ISSUES

## Key points

- Departments should adhere to the Government's guiding principles for EU legislation and revised transposition guidance. Departments should consider any implications for EU law and may need to notify the European Commission of the proposed legislation.
- Departments should consider any risk of legal challenge and ensure that the way the bill is drafted reduces this risk as far as possible.
- Any proposal for a provision to have retrospective effect must be agreed by the Law Officers.

## The Government's guiding principles for EU legislation and transposition guidance

13.1 The Government has committed to end the so called 'gold plating' of EU legislation and in December 2010 published the *Guiding principles for EU legislation* (completed in July 2011). The Guiding Principles establishes how the Government will tackle the flow of EU legislation and are aimed at maximising the UK's influence in Brussels and ending the 'gold plating' of EU legislation in the UK.

13.2 Alongside the Guiding Principles, the Government revised and updated *Transposition Guidance: how to the implement European Directives effectively* to take account of the Government's approach to EU legislation. Alongside the Guiding Principles, the Guidance assists policy makers in ensuring that UK interests are not disadvantaged and that the Principles are used to achieve the best outcome for the UK.

13.3 Contact your departmental Better Regulation Unit or Team for further advice on transposition and implementation of EU law in the first instance, or contact the Better Regulation Executive in BIS as appropriate.

## Compatibility with EU law

13.4 At the earliest possible stage in preparation of any bill, consideration should be given to the EU implications of what is proposed and legal advice should be obtained on whether there is any potential conflict with EU law.

13.5 Consideration should also be given to whether the bill should be notified to the European Commission as a draft technical regulation under Directive



83/19/EEC, as amended by Directive 94/10/EEC.

13.6 In both cases, bill legal advisers should consult Cabinet Office European Legal Advisers (COELA), who can provide detailed guidance, ideally before and certainly no later than the time at which instructions go to Parliamentary Counsel.

### **Legal challenge to actions carried out under legislation**

13.7 The Government Legal Department offers guidance to departmental legal advisers on steps which can help reduce the risk of legal challenge to actions carried out under a piece of legislation. See their guidance *The Judge Over Your Shoulder* for advice.

13.8 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 the 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;
- memoranda submitted to a Cabinet committee seeking policy decisions should draw attention to any perceived risks of legal challenge. Memoranda accompanying bills submitted to PBL Committee should draw attention to any steps taken to reduce such risks.

### **Retrospectivity**

13.9 Where a department proposes to include a provision that would be retrospective, they must first seek the consent of the Law Officers, and 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 PBL Committee for clearance.

13.10 There are a few small exceptions to this requirement so, in the first instance, departments should discuss their proposals with officials in the Attorney General's Office and the Legal Secretariat to the Advocate General for Scotland. 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.

- 13.11 Any amendments to the bill after introduction that would have retrospective effect would need to be agreed with the Law Officers in the same way, although such amendments are unlikely to be agreed to by PBL Committee.

### **Codes of practice and legislation**

- 13.12 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.

- 13.13 Detailed guidance on codes of practice and legislation can be found at Appendix D.

- 13.14 Where it is proposed to introduce a code of practice in a way or for a purpose that departs from standard practice, ministers should be aware that this is likely to be controversial, particularly in the House of Lords.

# 14.IMPACT ASSESSMENTS

## Key points

- Impact assessments are generally required for all UK Government interventions of a regulatory nature that affect the private sector, civil society organisation or public services. When publishing the results of an impact assessment, the template should be used. See the Government's [Impact Assessment Guidance](#) for full details.
- The impact assessment includes a full assessment of economic, social and environmental impacts. Departments should ensure that they have covered all relevant points by consulting the [Impact Assessment Toolkit](#), particularly 'Step 4: Identify the impacts'.
- In particular, 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 must accompany requests for collective agreement to the policy in a bill and must be submitted to 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 10 to the Lords Printed Paper Office on introduction, and will need to be updated during parliamentary passage to reflect any changes made to the bill. Impact Assessments should be emailed to [impactassessment@parliament.uk](mailto:impactassessment@parliament.uk).
- Departments should refer to the template and detailed [Impact Assessment Guidance](#) provided by the Better Regulation Executive.

## What is an impact assessment?

### 14.1 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.

14.2 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 (e.g. 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

14.3 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 details are available in

Chapter 2 of the Impact Assessment Toolkit.

## When is an impact assessment required?

14.4 Impact assessments are generally required for all government interventions of a regulatory<sup>2</sup> nature that affect the private sector, civil society organisations or public services. If you answer 'yes' to any of the following questions then an impact assessment **is required**.

### Will the regulatory proposal?

- Impose additional costs or reduce existing costs on businesses or civil society organisations (this includes national policy statements)?
- Impose a new information obligation on, or remove an existing information obligation from, the public sector or bodies that deliver public services?
- In the absence of imposing any information obligation, introduce any other administrative burdens or unfunded policy costs of £5 million or more (annual equivalent costs) on the public sector or bodies that deliver public services, or which are

<sup>2</sup> Definition of 'regulation': A rule with which failure to comply would result in coming into conflict with the law or being ineligible for funding and other applied for schemes. This includes: EU regulations, Acts of Parliament, statutory instruments, rules, orders, schemes and regulations etc. made under statutory powers by ministers or agencies, licences and permits issued under government authority, codes of practice with statutory force, guidance with statutory force, codes of practice, guidance, self-regulation, partnership agreements with government backing, approved codes of practice or bye-laws made by government.

likely to attract high levels of political or media interest<sup>3</sup>?

- 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.
- Involve a regulatory change through repeal or recasting, use of alternative approaches and so forth, which you wish to score as an 'out' under the 'one-in, one-out' rule<sup>4</sup>?

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, and the bill minister should be able to confirm at this point that he or she has seen the impact assessment and, on the basis of the available evidence, is satisfied that the benefits of the proposal outweigh the costs.

- The final impact assessment must be made available alongside bills published in draft for pre-legislative scrutiny or introduced to Parliament.

#### 14.5 For bills, this means:

- A development, options or consultation-stage impact assessment must be submitted alongside any bids for legislation.
- A final proposal-stage impact assessment must be produced to accompany Cabinet or Cabinet committee correspondence when seeking collective agreement to the policy in the bill, and published alongside any consultations.
- A final impact assessment must be submitted to PBL Committee before it

- Where a bill contains several different policies, an impact assessment must be completed for each policy in the bill.

14.6 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.

- Privacy Impact Assessments are also required for proposals involving the processing of personal data. Further

<sup>3</sup> For the public sector, if a regulatory proposal is likely to add upward pressure to council tax, a 'new burdens assessment' (NBA) must be completed in addition to an impact assessment. For more information on the NBA please contact the NBA team at the Department for Communities and Local Government.

<sup>4</sup> Note that, in this case, an impact assessment may be required to evidence the value of the 'out' even if the deregulatory proposal does not require legislation.

details are available at [Undertaking Privacy Assessments](#).

## Developing an impact assessment

14.7 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. The impact assessment does not need to be published at this stage and will usually be a 'live' working document.

14.8 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 (e.g. self regulation or voluntary codes) need to be properly considered from the outset.

14.9 This **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 the impact assessment must be published.

14.10 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.

14.11 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.

14.12 The **review stage** requires a post-implementation review impact assessment to capture the real impact of the implemented policy, and assess any modifications to the policy objectives or its implementation recommended as a result of the review. The post-implementation review impact assessment must be published. New



policy development or a proposed policy change prompted by the post-implementation review should trigger a new impact assessment.

### **Practicalities on introduction**

14.13 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. 80 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) and ten copies to the Lords Printed Paper Office on introduction to the Commons. Impact Assessments should be emailed to [impactassessment@parliament.uk](mailto:impactassessment@parliament.uk).

14.14 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.

14.15 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 and ten copies to the Lords Printed Paper Office. Again, it should be sent to [impactassessment@parliament.uk](mailto:impactassessment@parliament.uk).

14.16 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, 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.

14.17 For further guidance contact the Better Regulation Executive at BIS or the Reducing Regulation Secretariat at Cabinet Office. Contact details are at Appendix B.

# 15. DEVOLVED LEGISLATURES AND ADMINISTRATIONS

## Key points

- Parliament remains sovereign, but will not normally pass primary legislation relating to areas in which a devolved legislature has legislative competence except with the agreement of that devolved legislature in the form of a legislative consent motion (LCM). This is known as ‘the Sewel Convention’.
- The devolution settlements in Scotland, Wales and Northern Ireland are not the same. The three devolved legislatures hold different powers.
- Departments will need to ascertain at an early stage whether each provision in the bill relates to devolved, reserved or transferred matters under each settlement. The Scotland, Wales and Northern Ireland Offices (the territorial offices) will be able to provide assistance in this process. Following discussion with the territorial offices, departments should also discuss with the devolved administrations whether they share the department’s understanding of the territorial extent of the bill’s provisions.
- An LCM will normally need to be secured in the devolved legislature if any provisions in the bill relate to devolved matters in Wales and Scotland or if the bill makes provision specifically for transferred purposes in Northern Ireland.
- A devolved administration cannot seek to promote an LCM until the bill has been introduced at Westminster. As a result, the bill minister should, where possible, secure the devolved administration’s agreement in principle to promote an LCM before the bill is introduced.
- Departments should seek to share information on bills and clauses of draft bills with devolved administrations, where this is possible and within the bounds of confidentiality as set out in the Memorandum of Understanding between the UK Government and the devolved administrations. The purpose of doing so is to allow the devolved administration to make an informed judgement on whether it wishes to promote an LCM (as set out below under ‘general principles’).
- Following the introduction of a bill at Westminster, the devolved administration is expected to table a legislative consent memorandum (which is a precursor to an LCM) in the relevant legislature and seek



to secure completion of the passage of the LCM before the bill completes its final amending stage in the first House at Westminster (Third Reading in the Lords, Report Stage in the Commons). This is so that the Government can then consider whether to table amendments to the bill to remove the relevant clauses, if the devolved legislature does not pass the LCM.

- Before the bill is approved for introduction to Parliament, PBL Committee will expect the devolved administrations to have been consulted on the bill's intent. It 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.
- Officials in 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 legal system).
- Bill teams will also need to remain in contact with territorial offices and Cabinet Office throughout the passage of the bill to ensure that amendments are considered from a devolution perspective.

- Bill teams are strongly advised to study carefully the more detailed devolution guidance notes on handling legislation applying to Scotland, Wales and Northern Ireland. These can be found on the Cabinet Office website.
- Bill teams need to be aware that recess dates are often different in the UK Parliament and the devolved legislatures. This means that bill teams will need to think carefully about coordinating the LCM process with the early stages of the bill's passage through Parliament.

## General principles

15.1 The Memorandum of Understanding between the UK Government and the devolved administrations says:

“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 administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.”

15.2 Each devolution settlement has different characteristics and gives different powers to the legislatures in question.

One consequence is that an LCM may be required 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 carefully study the more detailed [devolution guidance notes](#) on handling legislation affecting Northern Ireland, Wales and Scotland. These can be found on the Cabinet Office website.

15.3 With the help of the Scotland, Wales and Northern Ireland Offices (the territorial offices) and their respective legal advisers, bill teams should identify at an early stage whether the provisions of the bill relate to reserved, devolved or transferred matters in each part of the UK. This is likely to involve sharing policy intent and drafting instructions for bills with territorial offices to ensure that they have the clearest possible understanding of the proposed legislation before they can help bill teams fully assess the devolution impacts. In general, departments should consult the relevant territorial office before making initial contact with the devolved administration about a bill.

15.4 The bill team (with assistance from territorial offices where necessary) should then work closely with the devolved administrations to agree the boundaries between matters for which the Government remains responsible and matters for which the devolved administrations are responsible. If

differences of interpretation arise, bill teams should work with the relevant territorial office(s) and Cabinet Office to reach an agreed solution.

15.5 Even if the bill does not appear to have any obvious devolution implications, it is very important that bill teams discuss the provisions with the territorial offices at an early stage to confirm that this is the case. In particular, while a bill might not deal substantially with devolved matters, it may touch on devolved matters. This may still result in the need for an LCM. The territorial offices can advise on the need for an LCM before provisions in the bill are disclosed to the devolved administrations.

15.6 If provisions in the bill relate to devolved matters, departments should consider whether the Government's preferred position would be to legislate for England only or to seek to extend the provisions to other parts of the UK, bearing in mind that this may require an LCM to be passed in the relevant devolved legislature. Bill teams should consider sharing the provisions of the bill relating to devolved matters in confidence with the devolved administrations as early as practicable. This will enable them to give full and informed consideration to the need for, and their agreement to, an LCM.

15.7 It is not only important that engagement with the devolved administrations takes place at an early stage (following

discussion with the territorial offices about government lines to take). It is also important that the bill team / department decides on a 'default position' if they are unable to reach agreement with a devolved administration over provisions relating to devolved matters. This might mean having a view on what a bill could look like with such provisions excised from it. In some circumstances, it is possible to proceed without an LCM. However, bill teams should discuss appropriate next steps with Cabinet Office and the relevant territorial office if this is being considered.

15.8 If a bill extends to Scotland, Wales or Northern Ireland, 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. The detailed [devolution guidance notes](#) cover such points.

## **Devolution and PBL Committee**

15.9 By the time the bill goes to PBL Committee for approval for introduction, the department must be in a position to state whether the provisions of the bill will 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.

15.10 If the bill extends to Scotland, Wales or Northern Ireland, the Committee will also wish to know whether it deals with matters which are wholly the UK Government's responsibility or whether it has implications for the devolved legislatures and / or administrations. For example, it may extend their powers or duties or the provisions may have a direct consequential impact on devolved responsibilities (such as local government in Scotland, Wales or Northern Ireland). If provisions extending to one or more of the devolved administrations relate directly to matters that are devolved, the Committee will also wish to know whether the devolved administration has agreed in principle to bring forward an LCM once the bill is introduced. This is partly because the devolved administration cannot table an LCM until the bill in question has been introduced at Westminster. If the provision relates to the executive powers of the Welsh Ministers, the Committee will wish to know whether this has been agreed by the Welsh Government. Once the bill has been introduced, a legislative consent memorandum should normally be laid in the appropriate parliament no later than two weeks after introduction.

15.11 If the bill or part of the bill deals with devolved matters, PBL Committee will expect the devolved administrations concerned to have been consulted and any necessary agreements obtained. "Agreement in principle to bring forward a legislative consent motion" means that

the UK bill minister has written to his / her counterpart in the Scottish Government, Welsh Government or Northern Ireland Executive seeking agreement. The Minister in the devolved administration will have consulted with their colleagues and reached collective agreement to the proposal. This will have been confirmed in writing to the UK bill minister.

15.12 The expectation of PBL Committee is that devolution issues will have been substantively resolved by the time the Committee considers whether a bill is ready for introduction. This is so that the progress of legislation at Westminster is not delayed. Delays in the introduction of bills impacts across the whole programme, and provisions to expand the territorial extent of the bill should ideally be included at introduction. Where such amendments are required, this may cause a delay to bills at introduction.

15.13 Departments should also note that amendments made while a bill progresses through Parliament may have implications for the devolved legislatures. They should do their utmost to ensure that the devolved administrations are consulted and agreement to table a (supplemental) LCM obtained when appropriate.

15.14 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 administrations are not part of the Westminster decision-making process. As a result, Cabinet committee correspondence or papers should **not** be copied to them, although ministers may write to colleagues in the devolved administrations in similar terms when writing to Cabinet committees. Likewise, internal government legal advice should **not** be shared directly with the devolved administrations without the express agreement of Cabinet Office and the relevant territorial office, although it may be necessary to summarise the relevant arguments during discussions. The Devolution Secretariat in the Cabinet Office can advise on protocols in corresponding with the devolved administrations as well as on wider issues relating to managing relations with the devolved administrations.

15.15 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**

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

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

### **Engaging with the Scottish Parliament**

15.18 By convention, Parliament does not normally legislate without the consent of the Scottish Parliament on provisions which:

- are for a devolved purpose;
- vary the competence of the Scottish ministers;
- vary the powers of the Scottish Parliament.

15.19 Consent is achieved through the agreement of the Scottish Parliament to an LCM which is normally promoted by the Scottish Government. In theory it is possible for a member of the Scottish Parliament who is not in the Government to table an LCM, though UK government departments will normally deal with the Scottish Government.

15.20 Where it is proposed to include such provisions falling in a UK bill, the Constitutional Policy Branch of the Scotland Office should be consulted in the first instance. The Office of the Advocate General (the UK Government's Scottish legal team) should also be consulted on drafting matters and on establishing whether an LCM is required. It is critically important that bill teams discuss possible LCMs with the Scotland Office and the Office of the Advocate General at an early stage. Any proposed LCM must then be collectively agreed by the Scottish ministers. If they agree to the tabling of a motion, they will lay an LCM before the Scottish Parliament, together with a detailed memorandum on the contents of such provisions, once the bill is introduced at Westminster.

15.21 The agreement of the Scottish Parliament should be sought in advance of the final amending stage of a bill in the first House at Westminster. This is so that the Government has the option of tabling amendments excising the provisions if the Scottish Parliament does not wish the UK bill to include provisions relating to devolved matters.

15.22 Amendments made during parliamentary proceedings may trigger the need for an LCM for a bill that previously covered only reserved matters. 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 amendments are likely to impact upon the handling and passage of a bill, departments should discuss any such proposals at an early stage with PBL Secretariat and the Scotland Office in the first instance.

### **Engaging with the National Assembly for Wales**

15.23 As is the case in relation to Scotland, Parliament will, by convention, not legislate without consent on matters within the areas where the National Assembly for Wales has legislative competence or the Welsh ministers have executive functions.

15.24 Provisions varying the functions of the Welsh ministers or that add to the legislative competence of the Welsh Assembly require the collective agreement of the Welsh ministers to be included in a UK bill. Provisions that reduce the legislative competence of the Assembly or which are within the legislative competence of the Assembly require the agreement of the Welsh ministers and subsequently of the National Assembly for Wales via an LCM.

15.25 PBL Committee will wish to know whether Welsh ministers have agreed to the inclusion of the provisions by the time a bill comes before the Committee prior to introduction. Where the agreement of Welsh ministers to promote the relevant LCM in the Assembly is also desirable,

PBL Committee will also wish to know prior to introduction whether such agreement has been obtained.

15.26 PBL Committee would expect the Assembly to have debated the motion before the bill reaches its final amending stage in the first House at Westminster so that there is still an opportunity for a provision to be removed from the bill by amendment if the Assembly does not agree to its inclusion. Departments should consult the Wales Office and Welsh Government at an early stage on timing issues with regard to the opportunity to debate the LCM, as there are different recess times in the National Assembly and Westminster and limited slots for the Assembly to debate the LCM.

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

15.27 A similar convention applies when legislation makes provision specifically for a transferred (i.e. devolved) purpose in Northern Ireland, alters the legislative competence of the Northern Ireland Assembly or alters the executive functions of Northern Ireland ministers or departments. It does not apply when legislation deals with transferred matters only incidentally or consequentially upon provision made in relation to a reserved or excepted matter.

15.28 As with the devolution settlements in Scotland and Wales, PBL Committee will

wish to know whether Northern Ireland ministers have agreed to promote an LCM in the Assembly by the time the bill comes before the Committee, prior to introduction, if it is proposed that the bill deals with matters that are transferred to the Assembly. The Assembly will then be expected to give its view on whether provisions should be included in the UK

bill before the final amending stage in the first House at Westminster.

15.29 Departments should work closely with the Northern Ireland Office and Northern Ireland Executive departments to ensure the smooth delivery of any agreements necessary.



# 16 DELEGATED POWERS

## Key points

- It may sometimes be appropriate for a Bill to delegate legislative powers to a Minister or other person so that he or she can make further legislative provision by order, regulations or other form of subordinate legislation after Royal Assent.
- Where the department's instructions to OPC ask for the bill to delegate legislative powers the instructions will need to spell out the form of Parliamentary scrutiny that power is to be subject to.
- Any provisions in the bill that delegate legislative powers will be scrutinised closely by Parliament and, in particular, by the House of Lords Delegated Powers and Regulatory Reform Committee. So when preparing instructions to the OPC care needs to be taken to ensure that it will be possible to justify the proposed powers to make subordinate legislation and the form of Parliamentary scrutiny chosen. The Bill team should also make sure that the minister is content with what is proposed and alerted to any proposed delegated powers which may prove controversial.
- The role of the House of Lords Delegated Powers and Regulatory Reform Committee (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..."
- A memorandum to the DPRRC in respect of any powers in the bill to make delegated legislation, by statutory instrument or otherwise, is required by PBL Committee before it will approve a bill for introduction. This is usually drafted by the departmental legal adviser.
- Departments should carefully consider the guidance given by the Delegated Powers and Regulatory Reform Committee when preparing a Delegated Powers Memorandum. This can be found at [delegated-powers-and-regulatory-reform-committee---guidance-for-departments-/-](#).
- Although designed primarily for use by the DPRRC on introduction of a bill in the Lords, the delegated powers memorandum must be made available in both the Commons and the Lords on introduction of the bill to either House.
- 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 were added to the bill by amendment.

- Where a delegated powers memorandum has already been published and the bill is amended to alter the existing delegated powers or add further delegated powers, a revised memorandum should be published as the bill transfers to its second House.
- The DPRRC will aim to report by the time the bill reaches Committee Stage in the Lords. The minister should then write to the DPRRC with the Government's response, but should not commit to making any government amendments in response to the DPRRC unless these have already been agreed by PBL Committee in the normal way.
- Bill teams should read the more detailed Guidance for Departments on the role and requirements of the DPRRC. Further guidance can be obtained from the Government Whips' Office in the Lords or the Clerk of the Lords Delegated Powers and Regulatory Reform Committee (contact details at Appendix B).

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

16.1 These are some of the factors to consider when deciding whether the Bill should confer a power to make provision by secondary legislation:

- the matter in question may need adjusting more often than Parliament can be expected to legislate for by primary legislation;
- there may be rules which will be better made after some experience of administering the new Act and which it is not essential to have as soon as it begins to operate;
- the use of delegated powers in a particular area may have strong precedent and be uncontroversial;
- there may be transitional and technical matters which it would be appropriate to deal with by delegated powers.

On the other hand:

- the matters, though detailed, may be so much of the essence of the bill that Parliament ought to consider them along with the rest of the bill;
- the matters may raise controversial issues running through the bill which it would be better for Parliament to decide once in principle rather arguing several times over (and taking up scarce parliamentary time in so doing).

### **Forms of Parliamentary scrutiny**

16.2 The most common form of Parliamentary scrutiny is annulment in pursuance of a resolution of either House of Parliament (the 'negative resolution')

procedure). This does not delay the coming into operation of an instrument but, if within 40 days of its being laid before Parliament (excluding any time during which Parliament is dissolved or prorogued, or during which either House is adjourned for more than four days), a 'prayer' moved against the instrument by a member of either House is carried, the instrument ceases to have effect. There is also the relatively rarely-used draft negative resolution procedure where an instrument is laid in draft and can only be made if, during the period of 40 days from the laying in draft, no negative resolution is passed. 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.

16.3 The other principal form of control is the 'affirmative resolution' procedure, whereby the instrument cannot be made unless it has been laid before Parliament in draft and approved by resolutions of both Houses. Here also there is another variant, where the order is made (usually because the minister regards it as necessary to act as a matter of urgency) but is then required to get each House to pass a resolution affirming the instrument before a period specified in the Act (e.g. 28 days) expires.

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

16.5 Some instruments are not even laid before Parliament. This is commonly the case with commencement orders.

16.6 In some other exceptional cases there may be provision for additional parliamentary control (so-called 'super-affirmative' procedure). Departments should avoid 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**

16.7 The terms of reference of the Lords Delegated Powers and Regulatory Reform Committee (DPRRC) are "...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..." Where a bill provides powers to make delegated legislation, by statutory instrument or otherwise, the department will need to provide a delegated powers memorandum to the DPRRC. The delegated powers memorandum must be approved by the minister and published on introduction and is one of the papers required by PBL

Committee before it will approve the bill for introduction.

16.8 Although the delegated powers memorandum is made available in both Houses, and in the case of a bill starting in the Commons is not actually examined by the DPRRC until the bill reaches the Lords, the memorandum should always follow the requirements set by the Committee as set out below.

16.9 The 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 why the matter has been left to delegated legislation;
- explain the choice of parliamentary scrutiny procedure selected for the exercise of each power (affirmative, negative or none at all) and why.

16.10 Powers to give directions or issue codes of practice can 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.

16.11 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 S.I.s 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. 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.

16.12 An enabling bill will need to be fully justified to the DPRRC, as will any enabling provision in a bill. In these cases it is helpful to set out any relevant precedents.

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

## **Responding to the DPRRC's report**

16.14 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.

16.15 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.

16.16 The Government can expect to be challenged on its response to any of the DPRRC's recommendations. The bill team must therefore 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 PBL 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.

16.17 It is usual for the Government to accept most, if not all, of the DPRRC's recommendations, but any changes to the bill as a result must nonetheless be cleared through PBL Committee in the normal way, and may also require clearance through the relevant policy committee of Cabinet. 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.

16.18 Careful handling will be required if the Government chooses not to accept the recommendations of the DPRRC.

### **Practicalities on introduction**

16.19 For bills starting in the House of Lords, on introduction to the Lords the delegated powers memorandum should be submitted to the DPRRC with 50 copies placed in the Commons Vote Office, ten in the Lords Printed Paper Office and further copies in the libraries of both Houses. Then, on passage to the Commons, the revised memorandum should be sent to the DPRRC with 50 copies placed in the Commons Vote Office and further copies in the libraries of both Houses. There is no specific commitment to provide extra copies to the Lords Printed Paper Office at this point but departments may find it helpful to do so.

16.20 For bills starting in the House of Commons, on introduction to the Commons the memorandum should be submitted to the DPRRC with 50 copies placed in the Commons Vote Office and further copies in the libraries of both Houses. There is no specific commitment to provide extra copies to the Lords Printed Paper Office at this point but

departments may find it helpful to do so. Then, on passage to the Lords, the revised memorandum should be sent to the DPRRC with 50 copies placed in the Commons Vote Office, ten in the Lords Printed Paper Office and further copies in the libraries of both Houses.

16.21 Sending or copying to the DPRRC means emailing the memorandum to the Clerk of the Committee (contact details at Appendix B).

16.22 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.

16.23 If the Government tables amendments involving further delegated powers, a further memorandum must be prepared and the DPRRC may report again. The Government has also agreed that, where possible and where relevant, it will submit a memorandum to the DPRRC on any non-government amendment where it has indicated in advance that it would support both the policy and the drafting of that amendment. In cases of doubt, departments should seek advice from the Government Whips' Office in the Lords.

16.24 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.

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

16.25 The DPRRC may report on any public bill containing delegated powers. If a government-supported private members' 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 members' bill, a memorandum should be submitted as soon as possible after introduction.

16.26 More detail on delegated powers and issues to be considered when drafting the bill are in the earlier chapter on drafting the bill.

### **Providing Parliament with draft orders, regulations etc**

16.27 MPs and Peers who are considering a Bill may occasionally find it helpful to be given sight of drafts of the orders/regulations that the department intends to make under the powers conferred by the Bill – this will be the case where the orders/regulations concerned are central to the bill's effect. 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.

# 17 CROWN DEPENDENCIES AND OVERSEAS TERRITORIES

## Crown dependencies

- Departments should consider whether the bill has any implications for the crown dependencies: Jersey, Guernsey, Alderney, Sark and the Isle of Man.
- The UK Government does not normally legislate for the crown dependencies, except with the consent of the insular authorities. If a department wishes its bill to extend to the crown dependencies it will need to seek the consent of the insular authorities through the Crown Dependencies Branch in the Ministry of Justice in the first instance.
- Departments will need to satisfy PBL Committee that any necessary consultation with the insular authorities has been carried out before it gives approval to introduce the bill to Parliament.
- Further information can be found in the Ministry of Justice's *Background Briefing on the Crown Dependencies*. The Crown Dependencies Branch should be contacted with any queries (contact details in Appendix B).

17.2 Acts of Parliament do not normally extend to the crown dependencies (Jersey, Guernsey, Alderney, Sark and the Isle of Man). 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 by Order in Council made with the agreement of the insular authorities under an enabling provision contained in the Act. For an Act to extend otherwise than by an Order in Council is now very unusual and the insular authorities must be fully consulted if that approach is being considered.

17.3 If an enabling provision for an Order in Council, known as a 'permissive extent clause', is to be used, this clause should be included in published bills only after the Ministry of Justice has consulted the insular authorities. Similarly, any orders that the insular authorities subsequently agree should include only those provisions drafted in consultation with them. It is therefore important that the Ministry of Justice is consulted at an early stage if the content of a proposed bill appears relevant to the crown dependencies, and before any mention



of the crown dependencies is made in a published bill.

17.4 The International Directorate in the Ministry of Justice should be notified of any contact you wish to make with the insular authorities and can provide advice on how to communicate with them.

## Overseas territories

- 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.
- The UK has responsibilities towards the overseas territories under international law (principally Article 73 of the UN Charter which requires the UK as the administering power to ensure their political, economic, social and educational advancement) and under the constitutions of each territory.
- The overseas territories have a different constitutional relationship with the UK from the crown dependencies.
- Overseas territories' laws are a mixture of legislation passed by the local legislature, orders in council and UK Acts of Parliament. Local legislation of all overseas territories assented to by the Governor (except Gibraltar and, only to a very limited extent, Bermuda) is subject to disallowance by the sovereign through a

Secretary of State, in practice usually the Foreign Secretary, although this is a power which it is rarely, if ever, necessary to use.

17.5 Acts of Parliament may extend directly to the overseas territories, either as expressed on the face of the Act, or, occasionally, by necessary implication. It is unusual for an Act to extend directly nowadays and the practice is usually for the locally-elected territory government to be fully consulted if that approach is being considered. More commonly an Act will contain a provision enabling it to be extended by Order in Council.

- There is no limit to the power of Parliament to enact primary legislation for any of the overseas territories.
- Departments should consider whether a bill has any implications for the UK's 14 overseas territories: Anguilla, Bermuda, the Virgin Islands, the Cayman Islands, Montserrat, the Turks and Caicos Islands, Gibraltar, the Falkland Islands, South Georgia and the South Sandwich Islands, St Helena, Ascension Island and Tristan da Cunha, Pitcairn, the British Indian Ocean Territory, the British Antarctic Territory and the Sovereign Base Areas in Cyprus, at the earliest opportunity.
- 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. If a department wishes its bill to extend automatically to the overseas territories it should consult Overseas Territories Directorate in the Foreign and Commonwealth Office (FCO) in the first instance, which will normally consult the territory governments.

mention of the overseas territories is made in a published bill.

- If an enabling provision for an Order in Council, a 'permissive extent clause', is to be used in a bill, this clause should be included in the bill only after the FCO has been consulted. The agreement of the territory governments does not need to be sought before such a clause is included in the bill (although their agreement would normally be sought before such a provision was used).

17.6 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. It is essential that the Overseas Territories Directorate in the FCO, which retains co-ordinating oversight of the Government's relationship with the territories, is consulted at an early stage if intended legislation has potential implications for the overseas territories, and before any

# 18 QUEEN'S AND PRINCE'S CONSENT

## Background

18.2 It is a longstanding Parliamentary requirement that Queen's and Prince of Wales's consent should be given for certain bills.

**Queen'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 and the Duchy of Cornwall.

**Prince of Wales's consent** is required if the bill affects the Duchy of Cornwall or otherwise has a special application to it. Very occasionally, it may be required in other cases.

18.3 A bill may require both Queen's and Prince of Wales's consent.

## When Queen's and Prince of Wales's consent is required

18.4 It is not always easy for bill teams to spot where Queen's and/or Prince's consent may be needed. The bill team should consult legal advisers at an early stage on whether it is likely that it will be needed for their bill. Legal advisers should consult Parliamentary Counsel

who, in turn, will 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).

18.5 There is no requirement to seek Queen'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.

18.6 If a private members' bill requires Queen's and/or Prince's consent, the Member writes to the relevant Minister to ask the Government to arrange for consent to be obtained. Government will usually seek such consent even if it opposes the bill. The request to the Government would normally be made once the bill had 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 Queen's and Prince of Wales's consent

18.7 Where Queen's consent is required a letter should be sent from the bill

Minister's Private Secretary to The Queen'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 at annex B).

*66 Lincoln's Inn Fields  
London  
WC2A 3LH*

18.12 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.

18.8 Where The Prince of Wales'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.

18.13 The relevant contact details for the Royal Household can be found at annex B.

18.14 Templates for the letters to seek consent can be obtained from PBL Secretariat

### **Timing**

18.9 In cases where both The Queen and The Prince of Wales's consent is required, separate letters rather than copies should be sent to each Private Secretary.

18.15 Consent should normally be sought before the bill is introduced. PBL Committee will expect to hear that consent has been sought and obtained, when considering whether to approve a bill for introduction.

18.10 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.

18.16 The parliamentary authorities determine whether Queen's and/or Prince of Wales's consent is required. It should be signified at Third Reading.

18.11 The language of the letters should be formal in nature. All letters should be copied to:

*Mr. Julian Smith  
Messrs Farrer and Co*

18.17 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.

18.18 If, very exceptionally, consent to a Government bill must be sought after a bill has been introduced, it should be as soon as possible however a minimum of 14 days must be left for it to be considered. If an amendment which requires Queen's consent is made by the second House, consent would have to be signified in the House in which the bill was introduced before the amendment could be considered by that House.

### **Signifying consent**

18.19 In the Commons, Consent is signified by a Privy Counsellor in the Chamber on Third Reading. The Privy Counsellor merely nods to signify consent.

18.20 On some occasions consent may also need to be signified at Commons Consideration of Lords Amendments if an amendment made in the Lords makes this necessary. If this is the case consent should be sought without delay.

18.21 In the House of Lords consent is signified orally by a Privy Counsellor. Consent to bills affecting the prerogatives of the Crown is signified at Third Reading. Where a bill requires Consent, Consent is signified on Third Reading.

18.22 In both the Commons and the Lords, it is up to the department (through their Parliamentary Branch) to ensure that a Privy Counsellor is available to signify Queen's or Prince's consent.

# 19. 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 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 paragraph 2.4.3 of *Managing Public Money* for more information, or contact HM Treasury for further guidance.

## Tax implications

19.1 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.

19.2 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.

19.3 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.

19.4 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 administrations on tax provisions in bills should also be agreed with HMRC.

### **Public expenditure**

19.5 HM Treasury agreement must also be obtained to any proposals in the bill which have implications for public expenditure or public sector manpower.

19.6 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 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')**

19.7 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.

19.8 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.

# 20. 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 towards those areas where poor handling would be most likely to have the greatest impact. It should be submitted to PBL Committee prior to introduction.
- Further guidance is available from the Government Whips' Office in the Commons and the Government Whips' Office in the Lords

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 and the particular interests of individual MPs / peers
- 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
- Be drafted following advice from the Government Whips' Offices and special advisers
- Be agreed by ministers

20.1 A parliamentary handling strategy (covering both Houses) must be submitted alongside the bill when PBL Committee considers it before introduction. The bill team will also need to prepare a wider stakeholder / media handling strategy, although this does not need to be submitted to PBL Committee. The nature of the strategies will depend on the length of the bill and the level of

20.2 Examples of parliamentary handling strategies are available from PBL Secretariat on request.

20.3 The wider stakeholder / media handling strategy should be prepared in conjunction with press offices and communications experts in departments and should:



- be based on the identification and understanding of the concerns of stakeholders, and recognising that key stakeholders will expect to be engaged early and throughout the bill's progress
- list the key stakeholders and their contact details, 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
- set out key messages, target audiences and means through which these can be reached
- include a core media script and press notices
- be agreed by ministers

20.4 The bill team should work closely with press office, especially on the media handling strategy, if possible via a dedicated point of contact.

20.5 Preparing a handling strategy will help the bill team to crystallise its approach and prioritise resources towards those areas where poor handling would be most likely to have the greatest impact on the bill; it will provide an assurance to PBL Secretariat and PBL Committee that the bill team has thought through the issues carefully and an indication of where the greatest pressures are likely to arise.

20.6 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, when concessions may be needed to avoid defeat. Possible concessions and fallback positions, and the handling these will require, should be set out in the strategy.

# 21. QUEEN'S SPEECH AND PBL COMMITTEE APPROVAL FOR INTRODUCTION

## Key points

- In advance of The Queen's Speech, PBL Committee will review the state of readiness of all bills and draw up the final programme. If bills are not likely to be ready on time, they may be dropped.
- 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 PBL Committee before the bill is introduced. In advance he or she must circulate a bill memorandum, the latest draft of the bill, explanatory notes, impact assessment, a note on compatibility with the European Convention of Human Rights, parliamentary handling strategy and delegated powers memorandum.
- 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".

- The Committee will also decide whether the bill should be introduced in the House of Commons or House of Lords.

## Queen's Speech and finalising the programme

21.1 PBL Secretariat prepares The Queen's Speech on behalf of PBL Committee. The Speech will be considered by PBL Committee then by full Cabinet; it will also be considered by Her Majesty.

21.2 In early springtime bill teams will be asked to provide a single sentence summarising the bill for inclusion in The Queen's Speech. As the speech is very 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 Prime Minister's statement following the Gracious Speech, and the Leader of the House of Commons will publish a full list of bills, including bills that the Government intends to publish in draft during the forthcoming session. Bill

teams will also be asked to provide background briefing on the bill for the subsequent parliamentary debates on The Queen's Speech.

21.3 In advance of The Queen's Speech, PBL Committee will review the state of readiness of all bills and draw up the final programme. If bills are not likely to be ready on time, they may be dropped. It will also consider any late emerging priorities for legislation.

21.4 Bill teams should ensure that departmental press offices are ready to handle any inquiries as a result of the bill being announced in The Queen's Speech, particularly where the bill is high profile.

21.5 To assist with planning, PBL Secretariat will aim to inform bill teams of their target week for introduction well in advance of The Queen'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, with others introduced in the second or third week of the session. However, as a meeting of PBL Committee to approve the bill will be held around a week before scheduled introduction, and papers for the meeting must be circulated three days and a weekend beforehand, effectively the bill and accompanying documentation will need to be ready almost two weeks before introduction.

## **PBL Committee papers for clearance for introduction to Parliament**

21.6 PBL Committee agreement is needed before a bill can be introduced into Parliament or published in draft. Specific points relating to approval for publication in draft are dealt with in the next chapter.

21.7 PBL Secretariat will arrange a meeting of PBL Committee to consider the bill's introduction and subsequent handling. This will normally be about a week before the scheduled introduction date. 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 PBL Secretariat. It must be circulated at least three days and a weekend before the meeting (in line with guidance on papers for Cabinet and Cabinet committees). It must be accompanied by the other papers listed below. Parliamentary Counsel will normally supply the text of the bill itself directly to PBL Secretariat. Bill teams are encouraged to send an earlier draft of the PBL Committee memorandum to the Secretariat for comment.

21.8 The full set of papers required by PBL Committee before it will approve a bill for introduction is listed below. PBL Secretariat can provide recent examples of these to bill teams on request:

- PBL Committee memorandum

- The latest draft of the bill
- Explanatory notes
- Legal issues memorandum (cleared with the Law Officers)
- Impact assessment (cleared by the Reducing Regulation Committee)
- Parliamentary handling strategy covering both Houses
- Delegated powers memorandum

21.9 The PBL Secretariat will publish the agenda and papers for the meeting on CabCom two days and a weekend before the meeting so the department must provide the papers in sufficient time. Each department has a designated Cabinet Documents Officer (usually in the Secretary of State's Private Office) whose role is to monitor CabCom and ensure that the Committee papers are passed to the minister in good time before the meeting.

### The PBL Committee meeting

21.10 At the meeting, the Chair of the Committee will generally ask the minister if he or she wishes to add anything to the memorandum, and he or she will normally be expected to briefly summarise the main provisions and benefits of the bill, referring (where appropriate) to the themes of the legislative programme, confirm that it is

ready for introduction and indicate that he or she has given some thought to the parliamentary handling strategy.

21.11 The Committee will be primarily concerned with questions of timing, handling and the resolution of outstanding issues. The minister's introduction 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 on this point). Bill teams may wish to discuss with 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 PBL Committee.

21.12 PBL Committee will always wish to know that:

- The bill will be ready for introduction on the date specified;
- The explanatory notes are ready;
- The impact assessment is satisfactory (i.e. has a 'fit for purpose' opinion from the

Regulatory Policy Committee and has been agreed by the Reducing Regulation Committee).

- 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, the bill is compatible with EU law and any retrospective provisions or early commencement provisions have been agreed by the Law Officers;
- The territorial extent and any implications for the devolved administrations have been agreed;
- Handling strategies are in place;
- HM Treasury is content with any financial implications of the bill;
- The minister can justify the proposed level of scrutiny for any delegated powers in the bill;
- The bill will not require significant amendment during its passage.

21.13 Several bills may be covered in a single meeting. If all issues have been resolved, consideration of a bill need not last long.

21.14 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”.

21.15 If there are unresolved problems (which should arise only exceptionally at this stage) the Committee may decide that they should reconsider the bill after those problems have been dealt with.

21.16 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.

21.17 If a bill is likely to need Committee on the floor of the Commons, or if MPs may argue for this, PBL Secretariat and the Government Whips' Office in the Commons should be alerted at the earliest opportunity. The reasons for committing a bill to a Committee of the whole House are various: 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.

21.18 The senior Parliamentary Counsel working on the bill will attend the meeting of PBL Committee, but it is exceptional for officials of the department to attend; any such attendance is limited to one legal adviser, for which the approval of

the Chair must be sought through PBL Secretariat.

### **Decision on House of introduction**

21.19 The Committee will decide whether the bill should start in the Lords or the Commons. Their aim is to ensure a balanced programme in both Houses.

21.20 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 should 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 PBL Secretariat at an earlier stage).

21.21 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. However, introduction in the Lords is not suitable if there is a significant chance that the House might reject the bill, since the Parliament Acts only apply to bills introduced in the Commons.

### **Preparing for introduction**

21.22 Bill teams should check with their minister's private office well in advance of introduction the bill minister's preferences for documents, box notes and speaking notes. It will also be a good idea to book tentative briefing slots with the minister and find out the minister's 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 – bill team, parliamentary branch and private office – is clear on the division of roles in supporting the minister and completing other bill tasks, to avoid wasteful duplication. For example, agree with parliamentary branch the procedure for receiving amendments, marshalled lists and copies of Hansard.

21.23 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, e.g. 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 bill minister's other commitments. As well as alerting the minister's private office to dates as soon as they are agreed, the bill team may also wish to remind the minister's office that parliamentary business must take precedence over all other business

# 22. PUBLICATION IN DRAFT AND PRE-LEGISLATIVE SCRUTINY

## Key points

- The Government is committed to increasing the number of bills that are published in draft for pre-legislative scrutiny; the minister should write to PBL Committee seeking initial agreement to the principle of publishing the bill in draft for pre-legislative scrutiny.
- 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.
- When the bill is ready to be published in draft the bill minister must seek clearance to do so, circulating a PBL Committee memorandum on the draft bill, explanatory notes, impact assessment and legal issues memorandum alongside the bill.
- 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 to the bill before its planned date of introduction (likely to be at the start of the following session).
- 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 Cabinet Office Parliamentary Adviser.
- Please contact the Information Services Team at the National Archives or the Journal Office in the House of Commons for laying documents before Parliament (contact details at Appendix B).

## Suitability of bills for publication in draft

22.1 The default position should be that bills will be published in draft prior to formal introduction. There should be a good reason not to publish the bill in draft. 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.

22.2 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.

22.3 The Chair of 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.

22.4 There are a number of reasons why publication in draft for pre-legislative scrutiny is desirable. It allows thorough consultation on the bill while it is still 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.

22.5 The decision on which bills will be published in draft is for 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 due to 'real world' pressures.

### **PBL Committee approval for publication in draft**

22.6 PBL Committee agreement is needed for drafting of any bill, whether for publication in draft or to introduce a final bill.

22.7 Immediately after The Queen's Speech, the Leader of the House of Commons writes to the House of Commons Liaison Committee listing the bills which the Government intends to publish in draft that session, and their provisional date of publication. The Leader of the House of Lords may 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. In advance of The Queen's Speech, 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 committee



22.8 The Government may however publish further draft bills or draft clauses during the session which were not included in the letter to the Liaison Committee. The Leader of the House of Commons will write to the Liaison Committee to update the Committee on this.

22.9 Once a bill is ready for publication, it will need to come to PBL Committee to be considered in the same way as the Committee would consider a bill for introduction, although draft bills are normally cleared by correspondence rather than in a meeting.

22.10 If clearance is being sought by correspondence, the bill minister will need to write to PBL Committee allowing at least six sitting days for colleagues to comment (nine working days over a recess period) and 48 hours 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:

- PBL Committee memorandum
- The latest draft of the bill
- Explanatory notes
- Note of compatibility with European Convention of Human Rights (though a

section 19 Ministerial statement of compatibility is not required for draft bills)

- Impact assessment (requirements for clearance of impact assessments should be discussed with the Reducing Regulation Committee Secretariat in the Cabinet Office).

22.11 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 timetable for completion of pre-legislative scrutiny and the Government's response to the recommendations arising from it, and any public consultation.

22.12 A delegated powers memorandum is not required at this stage for bills to be published in draft (although PBL Committee may request one if the bill contains a large number of, or particularly sensitive, delegated powers) but the main issues should be summarised in the memorandum.

22.13 Where it has been agreed to publish a bill in draft, but not all parts of the bill are ready on time, PBL Committee may agree to the publication of those parts of the bill that are ready, if they form a coherent package of measures.

## Publication in draft

22.14 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.

22.15 There is no requirement to seek Queen'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

22.16 Parliamentary pre-legislative scrutiny may be carried out by a variety of types of committee. The options are:

- A Commons departmental (or cross-cutting) select committee
- A joint committee of both Houses (usually ad hoc)
- An ad-hoc Commons or Lords committee
- Separate but parallel committees in each House
- Two or more existing committees meeting concurrently

22.17 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 PBL Committee has agreed the preferred option, the choice of route will still be subject to negotiation with the usual channels 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 in the Lords;
- Whether the bill engages the responsibilities of more than one department;
- 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;
- Whether the bill makes significantly different provision in Wales, in which case the Welsh Affairs Select Committee may want to scrutinise those clauses.

22.18 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 at least three joint committees in any one session. An existing Commons committee is the simplest approach and requires no formal proceeding in the House. However, business managers may take the view that failing to appoint a joint committee will lead to later handling difficulties in the Lords.

22.19 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.

22.20 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 chairmanship and out date. The necessary negotiations and motions take time.

22.21 The bill team should discuss the options with 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.

22.22 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**

22.23 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 PBL Committee (assuming the bill is to be introduced to Parliament the following session).

22.24 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.

22.25 A date for the committee to report will probably be set in the motions appointing the committee. The bill team may wish to

discuss with the Cabinet Office Parliamentary Adviser on what is a realistic deadline.

22.26 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.

22.27 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.

22.28 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

22.29 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. The committee is likely to wish to see a note on compatibility with the ECHR and an impact assessment;
- 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 (see also information on 'Keeling Schedules');
- evidence will usually be taken in public;
- in recent cases, bill teams have been 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.

### 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 response

- It is for the Government to decide whether or not to accept the committee's recommendations for amendment;
- 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 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.
- 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

22.30 Parliamentary pre-legislative scrutiny is only one part of pre-legislative scrutiny; members of the public may also wish to comment on the draft bill. Even if the bill is not formally scrutinised by a committee there is still enormous value to publishing it in draft for stakeholders and those who will be affected by the bill, as it provides an extra opportunity for them to comment having seen how the legislation would work in practice.

22.31 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 Code of Practice on Consultation, apply.

22.32 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.

22.33 Finally it should be noted that publication in draft does not guarantee introduction in the next session, as PBL Committee will consider the relative merits of all bids for legislative time in the round, but it will be a factor taken into consideration by PBL Committee when drawing up the provisional programme

and will count in the bill's favour. As bids for legislative time are made up to a year before the start of the session, the

department must bid for a slot for a programme bill even as it is preparing its draft bill.

## SECTION C

# ESSENTIAL GUIDANCE FOR BILL TEAMS

## 23. 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 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 PBL Committee, as well as by the relevant policy committee of Cabinet if the proposal involves a change to agreed policy.
- An exception may be made for minor and technical amendments, but these must first be discussed with the PBL Secretariat.
- Bill teams should alert PBL Secretariat to any proposed amendments at the earliest possible stage and at any rate before the bill minister writes to PBL Committee seeking clearance.
- PBL Committee clearance must also be sought to accept or overturn government defeats, to offer a compromise amendment or to accept other non-government amendments.
- Letters requesting PBL Committee clearance for government amendments must always be accompanied by the PBL Secretariat amendments template (available from the Secretariat).
- 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.
- Parliamentary Counsel will draft government amendments and will need to be instructed in good time.
- All Government amendments in the House of Commons require an explanatory statement, in plain English, setting what an amendment will do (see para 24.5)
- 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 2 weeks before the PBL write



round letter seeking consent to the tabling of the amendment.

## Introduction

23.1 Some government amendments to bills are necessary. However, amendments can also create the impression that a bill has not been properly prepared, they may hinder the progress of a bill, unnecessarily take up parliamentary time and cause ill-feeling in Parliament.

23.2 Even if amendments by themselves are small and uncontroversial and unlikely to take up much time, their cumulative impact can be serious. Government amendments to bills after introduction must therefore be kept to a minimum and will usually only be cleared by PBL Committee if they are considered essential to ensure that the bill works, to avoid a government defeat or otherwise significantly ease handling in Parliament. Amendments that are purely desirable are very unlikely to be cleared but may sometimes be made.

## Types of amendments

23.3 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 e.g. 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 will therefore not take up any time at all in debate<sup>5</sup>;

- **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 (particularly Committee Stage) 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>5</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. This also includes correcting minor or insignificant errors in the bill (which are not minor and technical and so may still take up debating time).

## Preparation of bills

23.4 PBL Committee grants drafting authority for specified policy areas. Clearance will need to be sought from PBL 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. Bill teams should not think that they can add, by amendment, any new areas that were not given initial drafting authority.

23.5 When a bill is put forward to PBL

Committee for clearance to be introduced to Parliament, one of the key questions Committee members will ask the bill 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 for a bill to be introduced. 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

23.6 Once a bill has been introduced to Parliament, government amendments and acceptance of opposition amendments must first receive clearance from PBL Committee and (where they are not within agreed policy clearance) the relevant policy committee through the normal clearance process (see Chapter 7). Agreement is normally sought through correspondence, though a meeting may sometimes be called,

particularly to consider handling of bills during ping pong.

23.7 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 48 hours from the time that they submit a completed ring-round sheet to PBL Secretariat and when they wish to lay the amendment(s). These timelines may only be shortened where there is an urgent need to table amendments to meet parliamentary deadlines and the amendments could not be foreseen by bill teams. Departments should seek the express agreement of PBL Secretariat to a shortened timeline; 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.

23.8 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 2 weeks before the PBL write round letter seeking consent to the tabling of the amendment.

23.9 Letters seeking clearance for amendments should include a completed amendments template (blank and example copies available from PBL Secretariat). This 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 describe 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 also 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. PBL Committee can then assess the impact on the bill in question (e.g. 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 administrations and any delegated powers.

23.10 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 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.

23.11 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 usually 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 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.

23.12 If the amendment affects the agreed policy for the bill, the agreement of the relevant policy committee (e.g. Home Affairs) 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.

23.13 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 PBL Secretariat. Where amendments are considered minor and technical (usually with advice of Parliamentary Counsel), PBL 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 PBL Secretariat that the amendments are minor and technical.

23.14 When departments write for PBL Committee clearance for amendments, the completed template should also state the total number of amendments that have been tabled; this number should still include minor and technical amendments to give the overall picture. PBL Committee will not permit any amendments after Committee Stage in either House unless the bill minister can satisfy the Committee that they fall within the above definition of concessionary or are absolutely essential.

23.15 In considering whether to give clearance to amendments, the Committee will consider each amendment in the light of the overriding concern: whether amendments would help or hinder both the passage of the bill and the legislative programme as a

whole. The Committee will seek to strike an appropriate balance between getting the bill perfect and getting it to Royal Assent.

23.16 All amendments which are given clearance for Committee Stage, but which for any reason are not tabled at that stage, must be brought back to PBL Committee before they can be tabled at a later stage, where the test will be more stringent.

23.17 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 table below summarises this guidance:

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

23.18 In considering whether to seek clearance for government amendments, departments and bill ministers should consider the above guidance carefully and should not waste PBL Committee 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**

23.19 Bill teams should alert PBL Secretariat to any proposed amendments at the earliest possible stage and, in any case,

before the bill minister writes to PBL Committee seeking clearance. PBL Secretariat will be happy to advise departments on which category amendments fall into, to comment on letters in draft before they are submitted and advise on timing.

23.20 If the Secretariat considers that 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.

23.21 Even if no other member of PBL Committee objects to a particular amendment, PBL 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.

23.22 Departments 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.

23.23 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.

23.24 If the Government brings forward significantly more amendments than were expected, the opposition will have cause for complaint. The Government should avoid having repeatedly to revise programmes because significant government amendments were not signalled at the relevant stages. It will be particularly important to predict the number of amendments likely on Report.

### Other handling issues

23.25 Just as departments should stay in close touch with the Scotland, Wales and Northern Ireland Offices and the devolved administrations during the development of policy and drafting of a bill, so any potential amendments that would affect the devolved administrations should be discussed with the territorial offices early on, to ensure timely agreement can be reached with the devolved administrations if necessary.

23.26 Similarly, amendments that would significantly alter the costs or benefits of the bill or create new regulatory burdens

should be cleared with Reducing Regulation Committee and an updated version of the impact assessment prepared as soon as practical. 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, and a letter should be written to the Joint Committee on Human Rights to seek their view.

23.27 If amendments involving further 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, and the Committee may report again. 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.

23.28 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.

23.29 Government amendments should usually be published at least a week in advance. Amendments tabled after the tabling deadline appear “starred” on the order paper and are not usually taken. 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 (Two days for Committee of the Whole House)
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
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	Two sitting days
Third Reading	Tidying or to meet undertakings	One week, or ASAP after Report if interval is less	One/two sitting days



## Non-government amendments

23.30 Non-government amendments to the bill will, of course, also be tabled during its passage through Parliament. 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.

23.31 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.

23.32 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 he or she has concluded, after discussion with the whips, that accepting it is necessary to ensure the passage of the bill. In such cases:

23.33 the minister must seek PBL Committee (and, if relevant, policy committee) agreement, normally through correspondence;

23.34 advice must also be sought from Parliamentary Counsel on whether the wording is in an appropriate form; if not, the minister must accept the amendment in principle (which he or she can only do if clearance has been given) and offer to table improved wording to meet the intended aim at a later stage.

23.35 An amendment might be accepted as it stands if the member and minister have been in touch and Parliamentary Counsel has been consulted to ensure the amendment uses the right form of words.

## Government defeats

23.36 Where an amendment is passed against the Government's wishes, the minister will need to consider, in consultation with the whips, whether to accept that the new provision remain in the bill, or to seek to reverse it (and if the latter at which stage), or to bring forward an amendment that would meet at least some of the concerns which have been expressed. The minister will need to write seeking agreement to the necessary amendments in the normal way.

23.37 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 PBL Committee would be needed to accept the defeat (i.e. no further

amendment needs to be made). Bill teams should also consider whether the amendment affects the devolved legislatures and consult territorial offices where appropriate.

23.38 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. PBL Committee clearance will still be needed as reversing defeats will involve tabling further amendments and may also involve significant handling issues.

23.39 If the intention is to offer a compromise or concession, PBL Committee clearance must be sought, as should agreement from the relevant policy committee if the compromise would entail a change of policy from what was originally in the bill. In all cases, bill teams should discuss the proposed course of action with PBL Secretariat before advising their ministers to write seeking collective agreement.

23.40 If the Government expects to be defeated on a non-government amendment, it may wish to pre-empt a defeat by tabling a concessionary amendment, which would need to be cleared by PBL Committee, as well as by the relevant policy committee of Cabinet if the amendment would have the effect of a change in policy.

23.41 Alternatively, if the non-government amendment is technically workable and does not represent a fundamental change in policy, the government may wish simply to accept the amendment rather than let it go to a vote and lose. Again, this would need to be agreed by PBL Committee. However, as 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.

### **Making commitments on the floor of the House**

23.42 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.

23.43 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.

23.44 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.

23.45 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 he or she had clearance to do so, write to the member suggesting an alternative form of words as drafted by Parliamentary Counsel.

### **Before the bill is reported**

23.46 Officials should be assessing what government amendments (if any) are needed on Report, how controversial the bill has been, and what amendments the Opposition are likely to propose. They should ensure their parliamentary branch and whip are involved in any discussion.

23.47 The department should be able to give an assessment of whether the time initially allowed for remaining stages is adequate. A key determinant will be the number of government amendments; the more there are, and the more they deal with matters not debated in Committee, the more time is likely to be required.

23.48 An extension to the time allowed for remaining stages can be altered by tabling a supplemental programme motion. This may be triggered by a recommendation of the public bill committee, following a resolution of the programming sub-committee. Alternatively, the Government can simply table a supplemental programme motion following discussion in the usual channels.

### **Amendments during remaining stages when a bill is taken in Committee of the whole House**

23.49 If the bill is considered by committee of the whole House (instead of or as well as a public bill committee) and the bill is not amended, there will be no Report Stage. If no amendments are expected, the initial programme motion should allocate enough time to remaining stages for a Third Reading, taken alone. In that case, there would be no need for a supplementary programme motion.

23.50 It is usual for the provisions for a programme committee for remaining stages to be dis-applied, with the equivalent provision being made directly by a freestanding programme motion.

23.51 If, however, there is a Report Stage, a supplementary programme motion may be tabled to detail the order the amendments will be considered, particularly if the Report Stage is scheduled for more than one day. The

programming committee may meet (although the procedure in the previous paragraph is more normal). It would be helpful to have all, or at least the majority, of government amendments tabled before such a meeting. As with the Second Reading programme motion, Parliamentary Counsel will provide a draft motion. Whatever is agreed will be reported to the House and the programme motion may be debated for up to 45 minutes and can be voted on. The Report Stage debate will follow.

### **Consideration of Lords amendments**

23.52 As both Houses of Parliament need to agree to all amendments, if amendments have been made in the House of Lords, the Commons needs to consider them. A programme motion may be tabled to detail the amount of time scheduled for debate or the order the amendments will be considered. Programme motions at this stage are not debated. The level of detail in the programme motion will depend on discussion between the usual channels. Again, opposition priorities for debate should be identified and, if possible, respected.

### **Allocation of time order (the 'guillotine')**

23.53 In exceptional circumstances, where a bill has not been programmed and agreement between the parties on the timetable of a bill cannot be reached or breaks down, and to ensure that proceedings on a bill are completed by a

certain date, or when it is intended to timetable all proceedings (including Second Reading) in advance, the Government may move an 'allocation of time' order, commonly known as a 'guillotine'. The motion would be drafted by Parliamentary Counsel and proposed by a minister. Standing Order No. 83 provides that the debate on a guillotine motion is limited to three hours.

23.54 The main purpose of such an order is to prescribe, or arrange through the agency of a business committee or business sub-committee of the public bill committee, the time within which various stages of the bill (or, in Committee, clauses of the bill) must be dealt with. Those clauses not discussed when the allocated time is up, together with all amendments to those clauses moved by a minister, then have to be put to the vote without discussion.

23.55 A business committee consists of the Chairman of Ways and Means and not more than eight members (normally ministers, government whips and leading members of the Opposition concerned with the bill). The function of the committee is to divide up the bill as it thinks best and apply a timetable in detail. The business committee performs its function for the Committee Stage of bills committed to a committee of the whole House, and for the Report Stage of all bills to which a guillotine applies. An allocation of time order can dispense with the need for a business committee

and instead make specific provision about how to divide the available time.

23.56 A business sub-committee of the public bill committee consists of the chair of the public bill committee and seven of its members, and performs the same function in respect of the public bill committee proceedings. The business committees and sub-committees meet in private, joined by Parliamentary Counsel and a clerk. Parliamentary Counsel supplies a draft resolution to be proposed by the minister, suggesting a division of the bill with appropriate times.

23.57 When a business committee or sub-committee comes to a resolution, the resolution is reported to the House or the committee, as the case may be, and is

put to the House or the committee for endorsement without amendment or debate.

23.58 If consideration of Lords amendments is guillotined, the necessary order is normally made under powers contained in the original order to supplement its provisions. The original order usually limits debate on such a supplemental order to one hour. Any division of the bill into parts for the purposes of the guillotine would be contained in the supplemental order.

23.59 Guillotine motions are used only in exceptional circumstances, and the Leader of the House of Commons' Office and the Government Whips' Office should be consulted in the first instance.

# 24. EXPLANATORY STATEMENTS

## Introduction

24.1 Departments should table explanatory statements on all Government amendments tabled in the House of Commons.

24.2 The guidance does not require explanatory statements to be tabled 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.

24.3 Ministers tabling an amendment to a bill, including Private members' Bills, must submit an explanatory statement of no more than around 50 words per statement with each amendment.

24.4 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.

24.5 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.

24.6 Parliamentary Counsel should check that the statements actually reflect what the amendments do and do not argue for its adoption, in the same way they currently check Explanatory Notes.

24.7 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. Where clarification or advice is needed, departments should consult, in the first instance, Parliamentary Counsel.

24.8 Departments, rather than Parliamentary Counsel, are responsible for producing explanatory statements for amendments, just as they are responsible for Explanatory Notes.

24.9 Explanatory statements will be printed in italics immediately following the amendment to which they relate.

24.10 Where departments wish to cross-refer to an amendment in an explanatory statement, they 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. This allows Parliamentary Counsel to find cross-references by searching for square brackets.

24.11 The statements will appear on the Amendment Paper, so must be tabled with the amendments themselves.

24.12 Time should be allowed for Parliamentary Counsel to incorporate the

statements into the amendment document on the customised drafting software used for Bills and amendments. Departments will need to discuss how much extra time is likely to be needed. Ideally, the explanatory statement for an amendment should be prepared as soon as the amendment is in a reasonably settled form.

24.13 Finance Bills will be 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.

# 25. 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 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. 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.

25.1 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.

25.2 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.

25.3 As far as possible, speeches and speaking notes should be reviewed by the bill team's legal adviser and Parliamentary Counsel for possible influence on interpretation (Different arrangements for legal advice apply to finance bills). The legal adviser should always attend relevant parliamentary

proceedings of the bill as part of ministers' official support and clear all speaking notes before they are passed to ministers.

25.4 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.

25.5 The bill team and their 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.

25.6 Ambiguities or inaccuracies in the wording of legislation should always be put right by amendment where this is possible.

25.7 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.

25.8 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 judgement 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.

25.9 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. The timing and manner of any ministerial correction required during proceedings on the bill should be discussed with the departmental whip. 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. The correction should contain a

column reference to the Hansard record of the original statement.

25.10 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.

25.11 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.

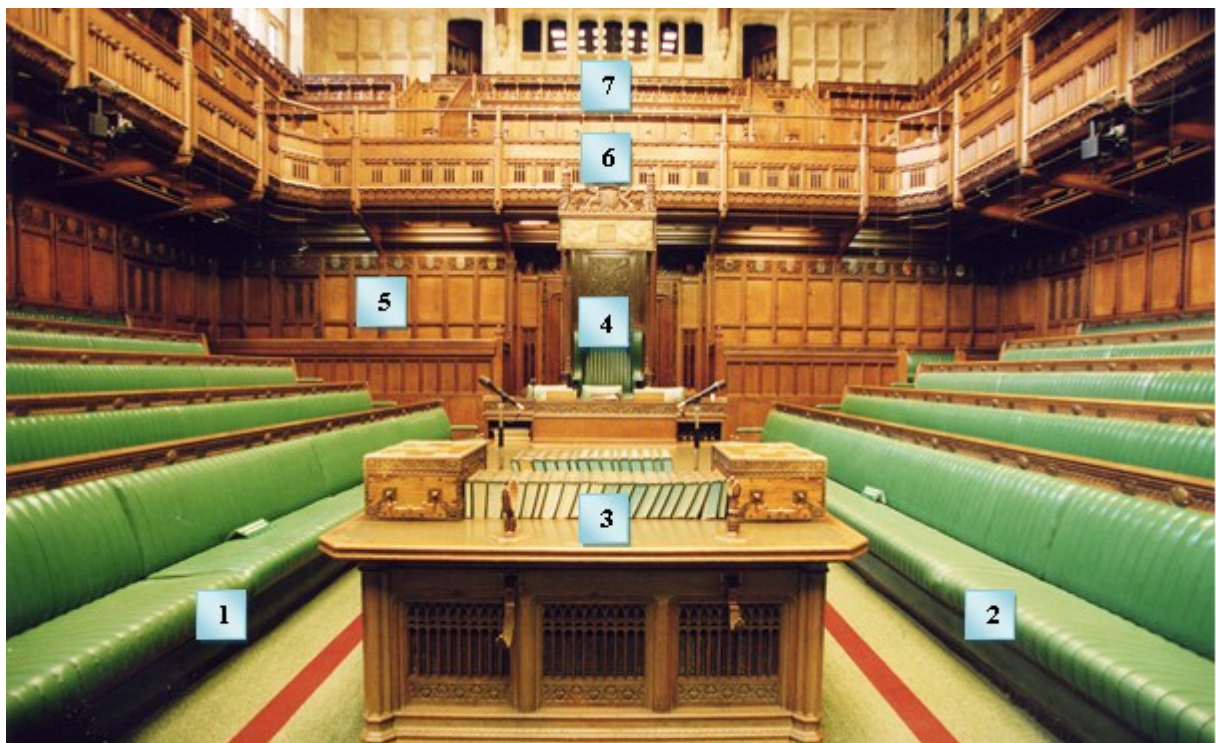
25.12 Although letters to individual members of Parliament will not be an effective way of correcting statements in Parliament about the meaning of bill provisions, they may still be appropriate as a way of giving or correcting factual information or of answering points raised in debate.

25.13 In addition, the courts are likely to show interest in the explanatory notes.

## SECTION D

### COMMONS STAGES

## 26. THE COMMONS: OVERVIEW OF STAGES, MINIMUM INTERVALS BETWEEN STAGES AND SITTING TIMES



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### HOUSE OF COMMONS

- |               |                             |
|---------------|-----------------------------|
| 1. Government | 5. Civil servants (the box) |
| 2. Opposition | 6. Hansard reporters        |
| 3. Mace       | 7. Press Gallery            |
| 4. Speaker    |                             |

26.1 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. This part of the guide covers procedure for the Commons stages of bills introduced in the Commons, explaining where procedure varies for the Commons stages of bills introduced in the Lords.

26.2 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. The timetable below shows the conventional minimum timetable in the Commons that can be expected for a bill of reasonable length and complexity.

### Overview of stages and minimum intervals between them

26.3 **Introduction and First Reading:** most bills are introduced by notice of presentation. The short title of the bill is then read out before the day's main business, after questions and statements, in the Chamber on the appointed day, and a minister nods. The bill is thereby read the first time. The minister (usually a whip) will then name the next sitting day as the day for second reading, but this is usually entirely theoretical, and the actual date for

second reading will be announced by the Leader of the House in a business statement.

26.4 **Second Reading:** 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. 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 (e.g. if it will involve taxes or other charges on members of the public).

**26.5 Public Bill Committee Stage:** the detailed scrutiny of the bill. Minimum interval before Committee: one week if Second Reading is on a Monday or a Tuesday, ten days if Second Reading is on Wednesday, Thursday or Friday. Consists of:

- a series of public evidence sessions. The committee will call in individuals (such as ministers, key stakeholders or professional experts) to give evidence;
- a clause-by-clause examination of the bill; and
- the Committee may also receive written evidence received from interested parties setting out their views of the bill as a whole or specific elements.

**26.6** Some exceptions to this are:

- Bills of major constitutional significance will have all (or some) of their Committee Stage on the floor of the House.
- For bills that start in the Lords, the convention is that, in the Commons, 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).

**26.7 Remaining stages:** usually about a week after committee ends, but depends on urgency and parliamentary time, and

will be determined by the parliamentary business managers.

- **Report Stage:** further consideration of amendments, though there is no debate on each clause and the criteria for selection of amendments are more stringent;
- **Third Reading:** usually takes place immediately after Report Stage on the same day; a further chance for the House to consider debate the principle of the bill in the light of amendments passed at Committee Stage and 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.

**26.8** The bill will then pass to the Lords for its First Reading there.

**26.9** The minimum interval between stages does not include recess weeks so, 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.

**26.10** 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 much 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, perhaps even more 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.

Minimum intervals in the Lords are slightly different.

- 26.11 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:** 14.30 – 22.00\*

**Tuesday:** 11.30 – 19.00\*  
(public bill committee: 09.30 – 11.25, 14.00 onwards)

**Wednesday:** 11.30 – 19.00\*  
(public bill committee (rarely meets on this day): 09.30 – 11.25, 14.00 onwards)

**Thursday:** 09.30 – 17.00\*  
(public bill committee: 11.30 – 13.00, 14.00 onwards)

**Friday:** 09.30 – 14.30 (on sitting Fridays)

\*Main business adjournment commonly known as the 'Moment of Interruption'. The daily adjournment debate will follow main business and any further proceedings scheduled by Government.

- 26.12 Unless special provision is made for extended debate, the main business of the days 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 is the rise of the House.

- 26.13 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 or ministerial statements. The start of debate may also be delayed on a Tuesday or Wednesday by a '10-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 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.

- 26.14 If the minister wishes to have an extended Second Reading (which is extremely unusual), the business

managers will need to be consulted and, if they agree, there will need to be a 'Business of the House' motion to enable this.

26.15 The first day after recess takes Monday hours. Sitting Fridays (thirteen during a session of normal length) are reserved for private members' business.

26.16 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, 9:30am to 11:25am and 2pm onwards, and Thursdays, 11:30am to 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).



# 27. 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 like a finance bill.

- For further detail, consult your Parliamentary Counsel or the Government Whips' Office in the Commons.

27.1 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 further ways and means and money resolutions as well as programme motions are required during the passage of the bill, there can be a debate on the floor of the House for up to 45 minutes each.

## Money resolution

27.2 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.

27.3 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.

27.4 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 'Queen's recommendation signified' in the heading to the money resolution (this is different from Queen's Consent, which is required where Her 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 express confirmation from Parliamentary Counsel that the Financial Secretary to the Treasury has approved the text. Counsel will therefore wait until he or she has received confirmation that the

Financial Secretary has signed the draft money resolution before confirming this to the Public Bill office. An HM Treasury minister other than the Financial Secretary can signify approval if necessary.

27.5 Private members' bills which create a charge on public funds will also require a money resolution which will be debatable for up to 45 minutes on the Floor of the House. Although it is not obliged to, 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 Government supports the bill.

### Money resolution debate

27.6 Though appearing in the name of the Financial Secretary, 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 members' bill) may be debated for up to 45 minutes and the bill team will need to prepare briefing for the minister.

27.7 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;
- asking how much money might be spent.

27.8 Amendments to the money resolution itself are very occasionally put down, and, if the money resolution is debatable, the bill team will need to prepare notes on amendments for the bill minister. A private members' 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.

27.9 Amendments which lack the necessary sanction of a money resolution will be ruled out of order. 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**

27.10 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.

27.11 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.

27.12 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.

27.13 In other cases the procedure for a ways and means resolution is similar to that for a money resolution. 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.

27.14 Amendments which lack the necessary sanction of a ways and means resolution will be ruled out of order.

### **Lords amendments requiring a new money resolution or ways and means resolution**

27.15 In most cases the Commons are able, if they wish, to agree to Lords amendments that infringe their financial privilege; but there have been cases where an infringement has been so significant that the Speaker has regarded it as 'unwaivable'.

27.16 Where amendments involve financial matters that are not covered by a

previous money 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.

27.17 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.

27.18 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. And 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).

# 28. PROGRAMMING

## Key points

- Most government bills are subject to programming in the Commons. Programming allows the House, following consultation through the usual channels, to determine a timetable for proceedings in public bill committee and the duration of remaining stages on the floor of the House.
- The bill team needs to provide a reasonable assessment of the time required in Committee, based on their knowledge of the bill, its complexity and degree of controversy, and experience with similar bills. The Whips will consider this in the light of their own business management needs and negotiate through the usual channels.
- Parliamentary Counsel drafts the required programme motion on instruction from the Whips' Office setting out the completion date for public bill committee and outline provision for later stages, which is taken immediately after Second Reading.
- For bills being considered by a public bill committee, the programming sub-committee can recommend detailed proposals for particular witnesses and for the internal division of time between oral evidence sessions and clause-by-clause consideration and between different parts of the bill within the overall time for Committee Stage. They may also recommend to the House that the 'out-date' is changed, if this is felt necessary.
- The bill team must keep the Whips' Office informed about the need for government amendments in Committee. If significantly more amendments are brought forward than were expected, the Opposition will have cause for complaint and this may jeopardise the progress of the bill.
- The Government should avoid having repeatedly to revise programmes 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.

## Programming: Introduction

28.1 Programming of bills allows for some aspects of the timetable of a bill's passage through the Commons to be set out in advance. Most government bills

are now 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' although these are now fairly uncommon (except in the case of fast-track legislation).

28.2 Programme motions are taken immediately after Second Reading. They are expected to be agreed in advance, at least in broad outline, and only 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.

28.3 Once a programme motion is accepted, extra time can only be made available through amendments to the programme motion. 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.

28.4 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 participants 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;
- The complexity of the provisions.

### At Second Reading

28.5 The programme motion will be drafted by Parliamentary Counsel and is taken immediately after Second Reading. It will usually comprise:

- 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;

- Provision to determine the number of days to be allotted for remaining stages, and to set a time for concluding proceedings on that day or those days; and
- Provision to disapply the requirement for a programming committee for Report Stage.

28.6 Before Second Reading, the bill team should discuss with the Chief Whip's Private Secretary how long they think the bill will need at Committee Stage, based on their knowledge of the bill and taking into account the amount of time taken on previous bills of a similar size and controversy. In the first instance, the timetable should be based on a maximum of two sittings each on Tuesdays and Thursdays during sitting weeks. The whips will need to take into account the demands of other bills in the programme. The proposed timetable is likely to be modified as a result of discussions through the usual channels.

### **The role of the programming sub-committee at Committee Stage**

28.7 Once the programme motion has been taken at Second Reading, the details of the programme in committee are settled through amendments to the programme motion (for committees of the whole House) or the programme resolution which is agreed by the programming sub-committee (for public bill committees). The following describes the

procedure for public bill committees; procedure for committees of the whole House is similar. It is possible for a programming committee to be appointed to allocate time for committee of the whole House, and its procedure would be similar to that of a programming sub-committee; however, the more usual course is to table any desired arrangements as amendments to the existing programme order.

28.8 The programming sub-committee will be chaired by the one of the nominated chairs of the committee (the chairs are members of the Chairman's Panel) that is to consider the bill, and is composed of seven members of the committee nominated by the Speaker. They will include the lead minister, the Opposition spokesperson, a member of the second opposition party, the minister's parliamentary private secretary (PPS), a government backbencher, an opposition backbencher, a government whip and an opposition whip. The programming sub-committee usually meets a few days before the committee first sits.

28.9 Parliamentary Counsel will draft the appropriate motion for consideration by the programming sub-committee based on instructions from the department, which will in turn arise from discussions through the usual channels. The level of detail in these programme resolutions varies has varied considerably from bill to bill. Programme resolutions for bills that start in either the Commons or Lords



will detail the dates and times the committee will meet, the order the bill will be considered and the time proceedings will conclude at the last session, but has to provide for oral evidence sessions for most bills. In rare circumstances, there are sometimes regular '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. All programmed government bills which start in the Commons are likely to have one or more 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. The draft resolution is subject to change, depending on the views of the Opposition. It is agreed as first business in the first committee session. These may be provided for in some detail in the programming motion, including times and names of witnesses (or at least of the organisations from which they come).

28.10 Programming committees and programming sub-committees meet in private and their proceedings are not recorded. Departmental officials do not attend these meetings of programming committees or sub-committees, which meet in private and whose proceedings are not recorded verbatim, although Parliamentary Counsel may attend. The programming sub-committee will discuss

the resolution and may suggest changes including requesting additional witnesses. The whip and the minister will take the lead. The draft resolution is subject to change, depending on the views of the Opposition. As long as the overall 'envelope' 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 total time allotted or the 'out-date', they should discuss this with the Government Whips' Office.

### **The operation of the programme resolution in Committee**

28.11 A motion to give effect to the resolution of the programming sub-committee is usually considered by the public bill committee when it first meets. This is debatable for up to half an hour and can be voted on. The committee will then agree the motion to allow written evidence to be received and published. The committee will then proceed to take oral evidence (if applicable) and consider the bill in the order agreed.

28.12 When a knife falls, the most common being the final day of Committee, the chair will put the question then 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.

28.13 Opposition amendments may be divided on, if they have already been debated and the chair has indicated that he or she will allow separate division.

28.14 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.

### **Revising the timetable agreed for Committee**

28.15 It is possible to revise the programme resolution originally agreed by the public bill committee. The programming sub-committee may meet – perhaps during a brief suspension of the committee – to agree a change to the arrangements for oral evidence or the internal knives, and a motion is then moved in Committee to give effect to the resolution. Amendments to witnesses or times may be moved at an appropriate time in

Committee and, if no member of the committee objects, such a variation motion may be agreed without the need for a programming sub-committee meeting. However, it may be appropriate for the programming sub-committee to meet to agree a change to the arrangements. If you think this is possible, you should talk to the Whips' Office.

28.16 If it is felt on all sides that the time allotted to proceedings in Committee is too short, a meeting of the programming sub-committee may be arranged to consider a resolution proposing a change in the out-date. If the public bill committee agrees, the resolution will be reported to the House and a supplementary programme motion must be put to the House within five sitting days. If the supplementary programme motion gives effect to the committee's recommendations, it is taken without debate (unless it reduces the amount of time already allocated to the proceedings); otherwise it is debatable for not more than 45 minutes.

28.17 Alternatively, the Government may simply table a supplementary programme motion extending the 'out-date' without any need for a resolution from the public bill committee.

# 29. COMMONS INTRODUCTION AND FIRST READING

## Key points

- The date of introduction will be agreed by PBL Committee and the Strategic Communications Unit in No. 10.
  - The bill team should ensure that the minister has signed the ECHR statement and the names of bill backers are with Parliamentary Counsel before introduction. This 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.
  - The final text of the bill and explanatory notes is normally supplied by Parliamentary Counsel to the Public Bill Office for printing at the same time as notice of presentation.
  - 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' assent and the bill is thereby read the first time.
  - Under no circumstances should copies of the bill be made available before First Reading.
- 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 (PBL Committee 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).
- Any press briefings must take place after publication of the bill and published copies should be made available at the briefings.
  - The delegated powers memorandum and impact assessment must be deposited in both Houses on introduction, with copies to the Commons Vote Office and the Lords Printed Paper Office.
  - If provisions in the bill make reference to heavily amended Acts of which no up to date editions are available, the department should consider providing a clear, readable and up to date version of the legislation concerned (see also section on 'Keeling Schedules'); the department must also supply the House of Commons Library with a list of all the

older papers which have relevance to the forthcoming debates on the bill.

- If the bill implements European directives, the department should provide transposition notes showing how this has been done, annexed to the explanatory notes.

### **Introducing a bill into the Commons**

29.1 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.

29.2 The date of introduction will be agreed by PBL Committee and the Strategic Communications Unit in No. 10. Bills cannot be introduced on the day of The Queen's Speech, which is the first day of the session. Notice of presentation can be given on the day of The Queen's Speech, with the bill concerned being introduced the following day.

29.3 Bills can either be published on the day of introduction, or on the day following introduction. Either way, notice must be given the day prior to introduction.

### **Bills brought from the Lords**

29.4 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. 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.

### **Before introduction: ECHR compatibility statement**

29.5 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. 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.

29.6 The bill team should ensure that the minister signs the relevant ECHR

statement before introduction and that it is then 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. 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 answer an arranged question saying he or she is giving consideration to the matter (or, in the Commons, 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 lead minister in each House will need to sign a 'section 19' ECHR statement.

## **Bill backers**

29.7 At the back of the bill, there must also be a list of bill 'backers'. 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 names, in addition to that of the presenting minister, may appear and the number is often much smaller.

29.8 This will normally be arranged by the departmental parliamentary clerk, who, after consultation with the bill team, seeks the agreement of the bill minister

and the other ministers concerned, and sends a written list of the backers via the legal adviser to Parliamentary Counsel, who will hand it in with the notice of presentation.

## **First Reading**

29.9 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.

29.10 On First Reading the government whip names the next sitting day for Second Reading; 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) from day to day and enables it to be taken when convenient.

## **Printing**

29.11 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 by TSO and are published on the parliamentary website.

29.12 The bill may be published on presentation (immediately after First Reading) or on the following day. Where a bill is to be published on presentation, the final text of the bill and explanatory notes 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). Where a bill is to be published the day after First Reading, the text is usually provided on the day of First Reading.

In other words, the procedure will be either:

**Day 1** – hand in notice of presentation

**Day 2** – hand in bill text, First Reading, send bill to be printed overnight

**Day 3** – publication

Or, if accelerated:

**Day 1** – hand in notice of presentation and bill text, send bill to be printed overnight

**Day 2** – First Reading and publication

29.13 Under both these scenarios, particularly long bills will require two days for printing.

29.14 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.

29.15 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.

### **Delegated powers memorandum**

29.16 The department must ensure that a 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 and one to the Lords Delegated Powers and Regulatory Reform Committee. Further copies should be sent to the libraries of both Houses.

### **Revised editions of Acts**

29.17 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.

29.18 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 Commons starters, it will also be a good idea to send a copy directly to each member appointed to the public bill committee, to the clerk of the committee, and to the clerk in the Scrutiny Unit dealing with public bill committees.

29.19 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.

### **Transposition notes on the implementation of European directives**

29.20 If the bill implements a European directive, the explanatory notes should include in the form of an annex a set of 'transposition notes', illustrating how the Government intends to transpose the main elements of the directive into UK law. The transposition notes should be included in the explanatory notes placed in the libraries of both Houses on publication of the bill.

### **List of relevant older papers for the House of Commons Library**

29.21 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).

### **Impact assessment**

29.22 A full impact assessment should be published by the department to accompany the bill introduced to Parliament. 50 copies should be placed

in the Vote Office and 10 sent to the Lords Printed Paper Office. Copies should also be sent directly to the Commons Public Bill Office for placing in the public bill committee room.

## Publicity

29.23 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.

29.24 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.

29.25 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. For Lords starters, there can be no briefing until the day after introduction which is the earliest Lords starter bills can be published (whereas Commons bills can be

introduced and published on the same day).

29.26 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.

29.27 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.

29.28 Immediately after introduction, the House of Commons Library will 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.



## Checklist for Commons introduction

- Bill prepared
- Explanatory notes prepared, including transposition notes on implementation of European directives as an annex, if applicable
- ECHR statement signed and Parliamentary Counsel informed
- List of backers sent to Parliamentary Counsel
- List of relevant older papers ready for House of Commons Library
- Revised editions of Acts available if necessary
- 50 copies of the impact assessment placed in the Commons Vote Office, 30 of which are marked for the attention of the Commons Public Bill Office, and ten in the Lords Printed Paper Office.
- 50 copies of the delegated powers memorandum placed in the Commons Vote Office, ten in the Lords Printed Paper Office, with further copies to the libraries of both Houses and a copy sent to the Lords Delegated Powers and Regulatory Reform Committee

### If desired after introduction:

- Press notice
- Lobby briefing



# 30. COMMONS SECOND READING

## Key points

- Second Reading is a debate on the general principles of the bill. Failure to receive a Second Reading will mean that the bill can progress no further.
- The senior minister in charge of the bill normally 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, or 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.
- 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 (Pepper v Hart – see ch.31). 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.

30.1 This chapter deals with procedures at Second Reading in the Commons, though the procedure is broadly similar for Second Reading in the Lords.

30.2 The Second Reading is the point at which the House considers the general principle of the bill. The debate can therefore be expected to focus on the underlying intentions and broad policies behind the bill, rather than a detailed scrutiny of each clause. Failure to obtain a Second Reading will prevent the bill from progressing any further.

## Date of Second Reading

30.3 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 (see section paragraph 5.16 on fast track legislation). The parliamentary clerk will inform all concerned as soon as he or she receives 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**

30.4 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".

30.5 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. Alternatively, the minister might both open and wind up, with the leave of the House (that is, if nobody objects).

30.6 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 his or her amendment when he or she is called to speak.

30.7 Second Reading of a major government bill will usually last for a whole day and will start after any urgent questions, statements or ten minute rule motions.

### **Opposition to Second Reading**

30.8 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.

30.9 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**

30.10 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.

30.11 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.

30.12 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.

30.13 The closing speaker may or may not want a set brief for his or her final remarks. If he or she does, 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**

30.14 The 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 he or she wishes.

30.15 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**

30.16 Handheld electronic devices such as Blackberries and iPads may be taken into the box but must be turned on silent mode and used in 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 Blackberry 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, although it should be remembered that members take precedence.

30.17 No bags or cases are allowed in the box either, so papers should be collated in large ringbinders that can be carried in and out of the box easily, with lots of dividers so that notes on a topic can be found quickly when it comes up in debate. Take a few copies so, if need be, pages can be annotated, torn out 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 / 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.

30.18 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.

30.19 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**

30.20 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 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.

# 31. COMMONS COMMITTEE STAGE

## Key points

- Committee stage usually involves an intensive period of work for both ministers and officials; preparation should begin early.
- 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 (usually those that are constitutional) 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, who will need to be briefed. However, oral evidence will not normally be heard if the bill started in the Lords or has already been subject to pre-legislative scrutiny. The committee will usually agree to the motion to receive and publish written evidence
- Committee Stage allows the House to carry out a clause-by-clause examination of a bill and any schedules, to suggest amendments to clauses or schedules and remove or insert new clauses or schedules subject to the programme resolution.
- Amendments normally arise either from the members of the committee seeking to challenge or probe the Government on particular provisions in the bill, 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.
- Any government amendments must be collectively agreed within the Government and tabled at least one sitting week in advance (see Chapter 30).
- Amendments relating to the same subject are grouped by the chair. Parliamentary Counsel will assist the clerk of the committee in advising the chair on questions of scope, selection of amendments and grouping. Once amendments on each clause have been considered, the question is put that the clause stands part of the bill.
- 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. This chapter deals with procedures at Second Reading in the Commons, though the procedure is broadly similar for Second Reading in the Lords.

### Work of the bill team in Committee

31.1 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 opposition) 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 bill team can help to manage this workload by preparing notes for the clause stand part debates before the bill is introduced.

31.2 The work at Committee Stage can be divided into:

- a. work in connection with the evidence-taking process;
- b. work on government amendments or new clauses;
- c. work on opposition or backbench amendments and new clauses (or points on 'clause / schedule stand part speaking notes')

### Committal

31.3 Most government bills are committed after Second Reading to a public bill committee, with the power to hear oral evidence. 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 usually contained in a programme motion.

31.4 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'.

31.5 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.

31.6 Bill teams normally find it very 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. Contact details for the Commons Public Bill Office are at Appendix B.

### **Membership of the public bill committee**

31.7 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. For example, if a bill makes a significantly different provision in Wales, the minister may wish to include the Parliamentary Under-Secretary of State for Wales on the bill committee to speak to those clauses. These suggestions should be routed through the Government Whips' Office via the parliamentary clerk.

31.8 Law Officers who are members of the House 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.

31.9 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.



## Attendance of officials

31.10 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 on his or her feet 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 of course required (see chapter 22).

31.11 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 his or her 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 as discreetly as possible.

31.12 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

31.13 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 (see also note on Keeling schedules providing text of existing legislation as amended.)

31.14 The bill minister may consider sending an introductory letter to members of the committee providing any information that is considered might be helpful to the members outlining any amendments that the Government may be tabling during the committee.

## Timing and timetabling of proceedings in Committee

31.15 Committee stages of bills will generally be programmed. In the initial programme motion taken after the Second Reading debate the House 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 the Chair of the Chairman's Panel, 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 (by name of organisation, rather than individual) for the oral evidence sessions, and the order the bill will be considered by the committee.

31.16 The committee will meet at set times, usually on Tuesdays at 8.55am to 11.25am and 2pm to 5pm or later, and Thursdays, 11.30am to 1pm and 2pm to 5pm or later. 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).

31.17 The resolution agreed by the programming sub-committee is moved by the minister in the public bill committee, usually at the beginning of the first day, and can be debated for up to half an hour. The minister may also 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**

31.18 It is normal practice for bills which start in the House of Commons and are committed to 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, would normally be appropriate. There may be other exceptional cases where the Government does not propose oral evidence-taking for a programmed bill. In 2006 the Government indicated that it would expect committees to adhere to the recommendation of the Modernisation Committee to hold 'at least one' evidence session.

31.19 The decision whether to hear oral evidence is taken by the usual channels and agreed by the programming sub-committee on the bill and ratified by the committee itself.

31.20 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.

31.21 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 ratification. 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.

31.22 The ministers and officials will normally be either the first or last witnesses to give oral evidence. 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. 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 through usual channels.

### **Written evidence in a public bill committee**

31.23 All programmed bills in public bill committee, whether subject to oral

evidence hearings or not, have the power to receive written evidence once the motion to receive and publish written evidence has been agreed by the committee. This motion 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 also 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. It will not be published until the committee has agreed the motion.

31.24 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.

31.25 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.

### **Supporting the public bill committee evidence-taking process: liaison with the House of Commons Scrutiny Unit**

31.26 During the oral evidence stage, bill teams will need (a) to brief the bill minister for any oral evidence they are to give (and attend in support of the minister if invited) and (b) to 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 in the transcripts of the committee's proceedings.

31.27 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.

31.28 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.

31.29 Working with other House services including the Library, the Scrutiny Unit may also wish to engage with departments 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 at Appendix B.

### **Completion of oral evidence and transition to clause-by-clause consideration**

31.30 Usually all the oral evidence sessions will be grouped together at the beginning of the public bill committee proceedings. The programme resolution may have provided for the committee to begin clause-by-clause consideration (in the order set out in the 'order of consideration' element of the motion described below) at the same meeting as oral evidence finishes or, more usually, at the beginning of the next meeting. 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**

31.31 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;
- amendments to the long title.

31.32 It is quite normal for the order of consideration to be varied by the motion to give effect to the programme resolution of the programming sub-committee. This may mean, for instance, that schedules are taken immediately after the clauses to which they relate, and matters of importance are discussed early in proceedings, to assist the committee in their consideration. Such orders of consideration are discussed through the usual channels.

31.33 The committee may disagree to any (or indeed all) of the clauses and schedules.

31.34 Amendments that are not 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; and there are limits on the matters that can be made the subject of an instruction.

31.35 Amendments which lack the necessary sanction of a money or ways and means resolution are not in order.

31.36 The chair of the committee has the same power in Committee 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. 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**

31.37 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).

31.38 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.

31.39 Where possible, government amendments should be tabled at Committee Stage rather than Report, since more time for debate is available.

31.40 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 and PBL Secretariat. 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.

31.41 All government amendments (and proposals to accept non-government amendments) must be cleared by PBL Committee, and by the relevant policy committee of Cabinet where appropriate. See the chapters on collective

agreement and amendments for further information. Once a government amendment has been drafted (for which the department will need to instruct Parliamentary Counsel) the bill team should get ministerial authority for the wording so that the legal adviser can instruct Parliamentary Counsel to put the amendment down.

31.42 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; for public bill committee on a Thursday, amendments must be tabled before the House rises on a Monday.

31.43 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.

31.44 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).

31.45 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 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.

31.46 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, e.g. 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**

31.47 Amendments and new clauses appear numbered (on a blue sheet if the committee does not meet that day) in the vote bundle on the day after notice of them is handed in. 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 Fridays the House may rise at 3pm, and it is likely to have risen before 6.30pm on a Thursday evening. Amendments may be tabled on non-sitting Fridays. 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.

31.48 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;
- simply to insert or add new words.

31.49 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**

31.50 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, out of scope); or he or she may decline to select an amendment if, for example, it is frivolous or the point is better covered by another amendment.

31.51 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 selection and grouping of amendments, so if the department has particular preferences as to the grouping of the amendments these should be communicated to Parliamentary Counsel beforehand. Parliamentary Counsel will usually email the chair's provisional selection and grouping of amendments (at least on a provisional basis) to 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.

31.52 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.

31.53 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

31.54 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+ Govt 4 + Govt 10 to Govt 12 + Govt 5

6 + NC 17...

31.55 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.

31.56 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).

31.57 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.

31.58 Government amendments are numbered in the same sequence as all other amendments; it is merely convention that they are marked as

‘Govt.’ 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

31.59 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. 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)**

31.60 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.

31.61 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 will not 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**

31.62 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

31.63 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 his or her point during the 'clause stand part' debate.

31.64 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 him or her 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 confirm that an amendment is likely or unlikely to be selected.

31.65 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.

31.66 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.

31.67 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.

31.68 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.

31.69 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. 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 say what it is based on, e.g. notice at Second Reading].

31.70 Having analysed the amendment in this way, the note should then set out the line or lines of argument recommended.

31.71 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 he or she 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.

31.72 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.

31.73 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.

31.74 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.

31.75 Notes on amendments should be emailed to the Parliamentary Counsel in charge of the bill, if possible in time for comments to be made before they are finalised. The final versions of notes on amendments and the minister's speaking notes should be emailed to Parliamentary Counsel. Even if they are sent after the relevant sitting of the committee, it would be helpful if those

notes relating to amendments where the recommendation is to reject the amendment could be separated out from the other notes.

31.76 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.

31.77 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.

31.78 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 policy really will be reconsidered.

### **Providing text of existing legislation as amended**

31.79 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**

31.80 Ministers must not make commitments to bring forward amendments or to accept non-government amendments without clearance from PBL Committee, and from the relevant policy committee of Cabinet if the amendment would effect a change in policy.

31.81 Non-legislative commitments do not require PBL Committee clearance unless they relate to future use of parliamentary time, e.g. a commitment to hold an annual debate on a certain topic, but will require policy clearance if they would effect a change in policy.

31.82 The bill team should keep a list, day by day, of commitments made by ministers in Committee: e.g. to move an amendment on Report to meet a member's point. 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 and other members of the Committee and the Library of the House.

31.83 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.

31.84 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 and other

members of the committee and a copy placed in the Library of the House.

31.85 At the end of Committee it is usual for the bill minister to thank everybody who has been involved for their hard work. Decide in advance whether private secretaries or the bill team will read public bill committee Hansard on behalf of ministers.

### Select committees on bills

31.86 Occasionally a bill is committed after Second Reading to a select committee. 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 it has reported the bill to the House, the bill is normally recommitted to a public bill committee or to committee of the whole House. 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.

### Explanatory statements on amendments

31.87 In the last Parliament, pilots were conducted with selected bills for the inclusion on the list of amendments tabled of an 'explanatory statement' of no more than 50 words on each

amendment. Such statements – as with the explanatory notes to a bill – were required to be factual and non-argumentative in nature. In the current Parliament, the general authority for

explanatory statements remains for public bill committees but is rarely used. The House has agreed to a further pilot on selected bills to start in 2012, which will include Report Stage.



## 32. 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 on Report is confined to amendments to insert new clauses or schedules, to amend the existing text, or to leave out clauses or schedules. There are no clause stand part debates.
- 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 for Report, 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.
- Notes on amendments for Report Stage are required in the same way as for Committee. A flood of amendments at short notice may make Report Stage on a contentious bill 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. Third Reading in the Commons 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.
- Contact the Commons Whips' Office, Parliamentary Counsel or the departmental parliamentary clerk for further guidance.

- the deadline for tabling amendments across the board is now a consistent 3 days for all stages.

## Report Stage

32.1 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.

32.2 The Chief Whip and Leader of the House will decide when Report Stage is to be taken. In giving advice on this the bill team should bear in mind the time needed for preparing government amendments, especially those requiring collective agreement.

32.3 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 emergency (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

32.4 On Report the House considers the whole bill in its current form, not the amendments already made, but no question is 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.

32.5 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 backbencher whose amendment in Committee was accepted in principle, and will be put down by him or her. 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 will significantly delay the progress of the bill.

32.6 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.

32.7 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.

32.8 Non-government amendments for Report may be tabled up to three days before the debate (this also applies to government amendments). It is advisable for somebody from the bill team or departmental parliamentary branch to go to the Public Bill Office (on the 3rd 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**

32.9 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, Speaker 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 members' 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.

32.10 Departmental parliamentary branches should collect the Speaker's selection and grouping of amendments once it is available on the afternoon of the day before Report, as it may affect the way in which the minister will handle the debate. As in Committee, Parliamentary Counsel, who assist the House authorities on selection and grouping, will normally be able to give advance notice. A flood of amendments at short notice may make Report stage on a contentious bill the busiest stage of all for officials.

32.11 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). For bills which had their Committee Stage wholly in committee of the whole House, no member may speak more than once per debate without the leave of the House. There are no clause stand part debates.

## Recommittal

32.12 A bill may be recommitted to a public bill committee or to a committee of the whole House (in whole or in part) either before Report Stage or before Third Reading has been moved, if a motion to that effect is agreed to. Standing Order No. 74 provides that if a motion to recommit a bill as a whole is made, debate is normally limited to a brief explanatory statement by the member moving it (normally the minister in charge of the bill) and a brief statement from an opponent.

## Third Reading

32.13 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.

32.14 No amendments may be made to a bill on Third Reading in the Commons unless they are 'merely verbal' (S.O. 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.

32.15 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.

32.16 The bill team should check that if the bill requires Queen'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. Parliamentary branch should arrange for a minister who is a privy counsellor to signify Consent just before Third Reading.

32.17 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 his or her speech.

### **Preparing for the second House**

32.18 On completion of Third Reading the bill will be sent to the Lords, normally on the following day. 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
- 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

- Fresh ECHR statement signed for second House
- ‘Take up’ arrangements are clear (i.e. which minister is to take charge of the bill in the second House)

32.19 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 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 (e.g. implementation guidance for business or the third sector). 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).

# 33. 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 carryover to the next session.
- Carryover 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 carryover should be indicated at Second Reading with a carryover 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, if the bill has been subject to pre-legislative scrutiny, but requires general consent.

## Carryover of Commons bills whilst still in the Commons

33.1 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 carryover motion may be moved at any stage before Third Reading).

33.2 Carryover should not be seen as a means of extending the time available for a bill towards the end of its passage (and does not, in fact, result in any extra time being made available, as a carryover bill must in any case complete its parliamentary passage within 12 months of the date of First Reading). It does however give the Government some flexibility to delay the introduction of a small number of bills which may have been particularly complex to draft (normally no more than two or three per year).

33.3 Carryover bills also help to spread the workload of Parliament over the course of the session. Bills introduced in the Commons for carryover in the late autumn or winter 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).

33.4 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.

33.5 Carryover can be for one session only, and will lapse 12 months from the date of First Reading. Standing orders require that proceedings on any bill which has been the subject of a carryover motion be brought to a conclusion by a particular time, and that time can (provided it has not already expired) be extended by the House. In other words, the bill must complete its parliamentary passage within 12 months of its First Reading or it will fall, unless the House has previously agreed to an extension motion (debatable for up to 90 minutes). Royal Assent itself need not be notified within 12 months, though it would normally be notified shortly after completing parliamentary passage.

33.6 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 and the bill carried over.

33.7 In the session following the bill's introduction, the bill is presented and printed in the same terms as it stood when suspended in the first 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.

33.8 On introduction in the second session, the explanatory notes, impact assessment and delegated powers memorandum must be reissued, 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 minister in charge must also sign a fresh section 19 ECHR statement.

33.9 Decisions on which bills to carryover are made by the business managers. Departments who consider that their bill might be suitable for carryover should mention it when bidding for a legislative slot and should discuss the possibility of



carryover with PBL Secretariat. More often it will be PBL Committee that suggests carryover to assist the management of the legislative programme.

33.10 Bills have never been carried over from one Parliament to the next unless they are hybrid bills or private bills, when different procedures apply.

### **Carryover of Lords bills whilst still in the Lords**

33.11 The House of Lords has also agreed to permit carryover of bills, but normally only where they have been subject to pre-legislative scrutiny. Whether or not a bill is eligible for carryover needs to be agreed through the usual channels.

33.12 The procedure for carryover in the Lords is not regulated by standing order, and requires agreement of an ad-hoc carryover motion, which is debatable.

33.13 Carry over of bills from the Lords to the Commons is very rare.

### **Carryover of bills once in their second House**

33.14 There are no precedents for second House carryover 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>6</sup> The process would require the agreement of ad-hoc motions in both Houses. 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.

33.15 Second House carryover would only ever be practicable in cases where there was a high level of cross-party agreement.

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<sup>6</sup> See Fifth Report from the Select Committee on Procedure of the House, HL 148 (2001–02).

## SECTION E

### LORD STAGES

## 34. THE LORDS: OVERVIEW OF STAGES AND DIFFERENCES FROM COMMONS STAGES



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### HOUSE OF LORDS

- |               |             |
|---------------|-------------|
| 1. Government | 5. Bishops  |
| 2. Opposition | 6. Woolsack |
| 3. Clerks     |             |

## Key points

- The House of Lords is usually the more difficult House to take legislation through and is different from the Commons in many ways. The main differences are set out here, but bill teams should speak with the Government Whips' Office.
- Bill teams should be in touch with the Whips' Office read the booklet before introduction to Parliament, even if the bill is introduced in the Commons, as there are things which a bill team can do in the Commons to ease passage through the Lords later on.
- A good parliamentary handling strategy, agreed with the Government Whips' Office in the Lords, 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 of Lords is less likely to be familiar with the subject matter of the bill and will require additional briefing, as there is a substantial body of professional expertise among peers across a wide range of subjects.
- The Lords Constitution Committee and Delegated Powers 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.

## Differences in practice and procedure in the Lords

34.1 The formal stages of procedure in the Lords are similar to those in the Commons, however the key differences are:

- **There is no government majority in the Lords.** Careful consideration will therefore need to be given to the handling of bills and in responding to points raised in debate;
- **There are likely to be experts in the field of each bill sitting in the Lords,** who will take a very active part in debate and will ensure the Government's position is rigorously tested, perhaps with more detailed scrutiny than in the Commons. Ministers will need to be prepared for what is likely to be a more detailed debate than in the Commons;
- **There are fewer rules of procedure** and business is conducted on a much more consensual basis, with no formal government control over the timetable and few provisions to stop the repetition of argument from one stage to the next. There is no guillotine or programming of business in the House of Lords and most business is not time limited. However, the House has agreed informal target rising times (10pm Monday to Wednesday, 7pm on Thursday). The usual channels

negotiate how much time to allocate to each item of business but their deals are not set in stone and can be altered if the House deals with business more or less quickly than expected;

- **The number of divisions (votes) has increased in recent years.** However, the margin of government defeats is often fairly slim. Engaging fully with key players and keeping them up to date may make all the difference here;
- **Party-political lines are often less sharply drawn than in the Commons,** though peers may also take up strongly some point which aroused little comment in the Commons. Because the element of party political controversy in the Lords is less strong, there is a larger role for bill teams to meet with non-government peers and their researchers to discuss the bill and proposed amendments;
- **How far peers are wedded to their amendments will vary.** Some will just want to make a point and will be content to withdraw the amendment once the issue has been debated. Others will insist on a division but be likely to accept the will of the elected House if the Commons subsequently reverses any government defeat. Others may continue to insist on the amendment into the ping-pong stage (after the bill has passed through both Houses but in a different form). Departments will benefit from gauging the mood of the Lords so that they can respond accordingly;
- **The Lords minister in charge of the bill is less likely to be familiar with its subject matter.** The briefing and speaking notes will therefore need to be more comprehensive. The bill minister retains overall responsibility for the bill whichever House it is in, and will also need to be kept in touch with developments in the Lords;
- **It is particularly important to write regularly to those that have spoken at all stages of the bill and other peers with an interest in the bill,** to follow up points not fully addressed during debate (though a letter is still useful, and appreciated, even when all points have been fully addressed). In particular, the Lords minister should always write to all those peers that have participated on the bill so far to alert them to any government amendments on the day they are tabled (once clearance to table the amendments has been granted by PBL Committee).
- The physical layout of the Lords chamber means that it **is more difficult for officials to give information quickly to the minister during a debate** as they are seated much further away from the minister. Once you have attracted the attention of the doorkeepers or the assisting whip on the front bench, it would therefore help if you can give them answers to several points at once. But this also underlines the importance of comprehensive and well flagged briefing.

## Procedure in the Lords

34.2 There are differences too in the conduct of debates and procedure during the bill's passage. It is not the 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.

34.3 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. 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.

34.4 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 his or her amendment in Committee or at other stages.

34.5 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.

34.6 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 finance and for consolidated fund bills and may sometimes be dispensed with for a particular bill that is urgently required, with the agreement arrived at through the usual channels. 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.



## Minimum intervals between Lords stages

34.7 The different stages and minimum intervals which are usually observed are set out below – this would be the conventional minimum timetable that could be expected for a bill of reasonable length and complexity. Departure from these intervals can only be agreed through the usual channels.

**Between First Reading and Second Reading:** normally two weekends.

**Between Second Reading and Committee Stage:** 14 calendar days.

**Between Committee and Report:** 14 calendar days

**Between Report and Third Reading:** three clear sitting days.

‘Sitting days’ excludes weekends and non-sitting Fridays.

34.8 The minimum intervals are just minimums and bill teams should not expect the bill to progress to that timetable – often the intervals between stages will be much longer. Minimum intervals in the Commons are also slightly different. 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 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.

34.9 Bill teams should alert departmental press offices to the dates of parliamentary stages, particularly those where any votes are expected, and provide them with background briefing as necessary.

## Lords sitting times

34.10 Sitting times in the Lords are:

### Parliamentary Day: House of Lords

Monday and Tuesday: 14.30 – 22.00 or later

(grand committee: 15.30 – 19.30)

Wednesday: 15.00 – 22.00 or later

(grand committee: 15.45 – 19.45)

Thursday: 11.00 – 19.00 or later

(grand committee: 14.00 – 18.00)

Friday: 10.00 – 15.00 (on sitting Fridays)

34.11 Oral Questions are held for 30 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

34.12 The Constitution Committee is appointed by the House of Lords “to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.” 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 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.

34.13 If a bill appears to raise issues of principle affecting a principal part of the constitution<sup>7</sup>, 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.

34.14 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.

34.15 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. Where the Committee reports on a bill, it will aim to do so before Lords Second Reading.

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<sup>7</sup> The Committee defines this as “the set of laws, rules and practices that create the basic institutions of the state, and its component and related parts, and stipulate the powers of those institutions and the relationship between the different institutions and between those institutions and the individual” (HL Paper 11 (2001-02), chapter 2).



# 35. LORDS INTRODUCTION AND FIRST READING

## Key points

- Unlike the Commons, a bill introduced in the Lords will not be published on the day of introduction, but on the day after introduction. Press conferences on the bill should not be held until publication.
- For bills which start in the Lords, the same accompanying documentation as for the Commons (explanatory notes, impact assessment and delegated powers memorandum) must be published.
- 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.
- Whether the bill starts in the Commons or Lords, the Lords minister will need to sign a new statement on compatibility with the European Convention on Human Rights on arrival in the Lords.

## Procedure for bills starting in the Commons

- 35.1 After Third Reading in the Commons, the House 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 have passed it and desire the agreement of the House of Lords.
- 35.2 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 as soon as possible.
- 35.3 The parliamentary clerk 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, printed immediately. However bills must not be published until the day after introduction.
- 35.4 The bill team must ensure that the Lords minister signs the relevant European

Convention on Human Rights (ECHR) statement and inform Parliamentary Counsel.

### **Procedure for bills starting in the Lords**

35.5 A bill starting in the Lords carries only the name of the peer who has signed the ECHR statement; there is no provision for other backers to be listed. No formal notice of presentation is required, but Parliamentary Counsel should alert the Lords Public Bill Office as far in advance as possible. On the day fixed for First Reading, the government peer introduces the bill (for which leave is not required) by reading the long title (which Parliamentary Counsel will have supplied to the Lords Public Bill Office) and moving “that the bill be now read a first time”.

35.6 The bill is then ordered to be printed and a day is arranged for Second Reading. First Readings are not opposed. It is usual practice for a bill introduced in the Lords to be published on the following morning. No bills may be introduced before the text has been handed to the Lords Public Bill Office.

35.7 Press conferences should not be held until the day after introduction, which is the earliest the bill can be published.

### **Accompanying documentation**

35.8 The same accompanying documentation is required for Lords starters as for

Commons starters: the explanatory notes should be published alongside the bill, and the impact assessment also needs to be published, as does the delegated powers memorandum if the bill contains such powers (which should be formally submitted to the Lords Delegated Powers and Regulatory Reform Committee).

35.9 If the bill has come from the Commons, 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. All changes to the explanatory notes should be agreed with Parliamentary Counsel, and any substantial revisions should be approved by the bill minister.

35.10 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. 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. The explanatory notes will have to be

cleared by the Office of the Parliamentary Counsel, and time should be allowed for this to happen.

35.11 The impact assessment and delegated powers memorandum must also be revised to take account of any changes in the first House, and the delegated powers memorandum should be formally submitted to the Lords Delegated Powers and Regulatory Reform Committee.

35.12 A list of relevant older papers similar to that required in the Commons should be provided where appropriate to the Lords Printed Paper Office when the bill arrives or starts in the Lords.

35.13 Revised editions of Acts: For Lords starters, clear, readable and up to date copies of any heavily amended legislation which is affected by the bill and is not readily available elsewhere should be sent to the Librarian in each House and to the Clerk of Legislation in the Commons and the Clerk of Public Bills in the Lords before, or soon after, the bill receives a Second Reading. For Commons starters, these papers should already have been circulated to all of the above.

#### **Press briefing**

35.14 Not before the day after introduction, which is the earliest the bill may be published.

## Checklist for Lords Introduction

- Text to Public Bill Office (automatic if brought from Commons), otherwise handed in by Parliamentary Counsel
- Explanatory notes (revised if bill brought from Commons) published alongside bill
- List of Relevant older papers for Library (Commons and Lords starters)
- Revised editions of Acts (if starting in the Lords)
- ECHR statement signed by Lords minister responsible
- For Lords starters, 50 copies of the impact assessment placed in the Commons Vote Office and ten in the Lords Printed Paper Office; for bills from the Commons, impact assessment revised and revised copies sent to recipients again as above
- For Lords starters, 50 copies of the delegated powers memorandum placed in the Commons Vote Office, ten in the Lords Printed Paper Office, with further copies to the libraries of both Houses and formally submitted to the Lords Delegated Powers and Regulatory Reform Committee; for bills from the Commons, delegated powers memorandum revised and circulated as necessary, and formally submitted to Lords
- Delegated Powers and Regulatory Reform Committee even if there have been no revisions from the Commons.

# 36. 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.
- However, as the Lords minister may not be as familiar with the detail of the bill, briefing may need to be more thorough than in the Commons.

36.1 For bills which have come from the Commons, revised explanatory notes to reflect any amendments made in the Commons should be available by Second Reading in the Lords at the latest. For a substantial bill there will generally be limited time to carry out this task, so work should get underway as soon as the bulk of Commons amendments are dealt with.

36.2 The bill team should ensure that Parliamentary Counsel has warned the Lords Public Bill Office to arrange for Queen's Consent to be signified at this stage, if it is required. The department (through their parliamentary branch) are responsible for ensuring that a privy counsellor is available to signify Queen's Consent. This could be the Leader of the

House of Lords or the Lords Chief Whip if available. Officials should check with the Lords' Whip's Office and should not approach any peers to signify Queen's Consent other than their minister.

## Differences from the Commons

36.3 The peer in charge of the bill in the Lords is often not the bill minister, and sometimes may be a government whip or law officer who does not work within the lead department. Briefing may need to be more thorough than in the Commons.

36.4 Second readings are 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.

36.5 The Lord in charge has a right of reply and usually both opens and winds up the debate, though different ministers may do so.

36.6 The brief for the opening speech at Second Reading will normally include some passages from the Commons



debates (if the bill comes from the Commons) flagged in Hansard, as well as notes for the present speech and background material. However, the opening speech should not be a repetition of the Commons version and should be tailored to likely concerns in the Lords.

36.7 For the closing speech, the bill team should have notes ready on points raised in the debate. Notes are usually passed to the Front Bench via the Doorkeeper. Ensure that the full title of the peer in charge is on the note (e.g. 'Lord Smith of Wherever', not just 'Lord Smith' as there may be more than one).

36.8 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.

36.9 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 can be obtained from the Government Whips' Office around lunchtime on the day of Second Reading (10am on Thursday). Every peer on the Speakers List will have a chance to speak in the order shown. The minister's opening and closing speeches should not exceed 15-20 minutes each.

36.10 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 (a consolidated fund bill, for example) is defined as a 'money 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. The annual Finance Bill is not committed, whether or not it is a money bill.

36.11 A motion is required to commit the bill to Committee: either to committee of the whole House or to grand committee. This is tabled by the Government Whips' Office in advance of Second Reading, to be moved as soon as possible after the Second Reading has been agreed.

### **Box etiquette**

36.12 Passes for the officials' box are obtained by your departmental parliamentary branch from 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 door keepers 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.

36.13 Once in the official's box there is limited room for only about four or five

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!

# 37. LORDS COMMITTEE STAGES

## 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 (also referred to as 'grand committee').
- It is preferable for any government amendments in the Lords to be tabled for Committee. The bill team must ensure that any government amendments have been collectively agreed (by 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

37.1 A motion is moved after Second Reading to commit a bill to either Committee of the Whole House or Grand Committee. This is decided through the usual channels, although the motion can be voted upon and the final decision is for the House.

37.2 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 negative. Amendments can only be made by general agreement. If there is opposition to an amendment, it should be withdrawn in grand committee, to enable the House to decide the matter on Report.

37.3 In addition, bills can, in principle, be sent to a public (and private) bill 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. Bills which have been considered under these special procedures are not then recommitted to a committee of the whole House, but proceed directly to Report Stage on the floor of the House.

37.4 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 but, after further discussion, can be extended.

is therefore unnecessary for the name of more than one minister to appear against a government amendment.

## Tabling amendments

37.5 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.

37.6 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 minor and technical amendments.

37.7 The procedure for tabling amendments is broadly 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 government peer in charge, but another minister may nevertheless move them. It

37.8 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 by the Stationery Office (TSO) and marshalled lists are available the morning before the date fixed for Committee. All daily sheets and marshalled lists are available on the website of the [Government Whips' Office in the Lords](#) and on the [Parliament website](#) on the day of their publication.

37.9 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. Manuscript amendments may be moved at any stage except on Third Reading, but their use is discouraged.

37.10 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 publication of subsequent marshalled lists, 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.

37.11 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 but will not continue numbering from where the first list finished. For example, amendments between 20 and 21 will be numbered 20A, 20B, etc. Any amendment between 20A and 20B will be numbered 20AA. If there is 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.

37.12 Amendments can be tabled between 10am and 5pm Monday to Thursday when the House is sitting, and on Fridays or in recess between 10am and 4pm. They are printed overnight and are

available from the Printed Paper Office the next morning.

37.13 The same procedure for preparing notes on amendments applies as in the Commons and the parliamentary clerk will distribute them.

### **Procedure in committee of the whole House**

37.14 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.

37.15 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. This gives the opportunity to debate the clause generally, or to raise any points on it which are not the subject of amendments. Any member of the Lords is free to speak on the question that a clause stand part, whether or not he or she has 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.

37.16 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 out to the House to be agreed, before Committee Stage starts):

- at the commencement of proceedings the long title and preamble (if any) are postponed and considered after the schedules;
- 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”;
- long title.

37.17 The rule that members of the Lords may only speak once to any question does not apply in committee of the whole House (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.

37.18 Where there are a number of clauses with no amendments the chair may put the question that the whole groups of clauses stand part en bloc, but any Lord who wishes to speak on a particular clause may object.

### **Procedure in grand committee**

37.19 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 Lord may participate;
- Divisions are not permitted, and the bill may only be amended if there is unanimous agreement;
- If there is a division in the Chamber, the grand committee usually adjourns for ten minutes.

### **Variation in order of amendments**

37.20 To take clauses and schedules to a bill in a different order than in the order of the printed bill (e.g. Schedule 1 straight

after clause 1), 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 (e.g. “after clause X”) and not at the end (as in the Commons), they need not be mentioned in the motion for an instruction.

37.21 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 immediately after the motion to commit, if desired. Any variation from taking the Bill in order is unusual and you should consult the Whips' Office as any variation from the printed order of the bill will to be agreed by the Usual Channels.

### **Committee on a money or supply bill**

37.22 Where the bill is a Finance Bill or is certified by the Speaker of the House of Commons as a money bill<sup>8</sup>, the Committee Stage is usually negatived after Second Reading. The bill then awaits Third Reading, there being no requirement for a Report Stage.

### **Discharging a committee**

37.23 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.

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<sup>8</sup> See Section 1(2) and (3) of the Parliament Act 1911



# 38. LORDS REMAINING STAGES (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 technical 'tidying up' points.
- For bills starting in the Lords, a 'privilege amendment' is moved by the peer in charge after all other Third Reading amendments have been disposed of, to recognise the Commons' right / privilege to control any charges on the people and on public funds. However, this does not prohibit the Lords from debating any financial provisions in the bill.

## Report Stage

38.1 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.

38.2 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 when further amendments may be put down.

38.3 Unlike in the Commons, the Lords Report and Third Reading stages are not usually combined but are taken on separate days. The rule of thumb is that Report Stage will usually take half the number of days the bill was considered at Committee but, again, this is agreed through the usual channels.

38.4 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 "that this amendment be agreed to".

38.5 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.

38.6 The rule that no member of the Lords may speak twice on any question (except the mover of an amendment, who has a right to reply) applies on Report Stage as it does on Second and Third Reading.

38.7 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**

38.8 Very occasionally, the bill may be recommitted (as a whole or in part) to Committee Stage to allow for the amendments to be fully discussed in committee of the whole House. The late tabling of government amendments can lead to recommittal. This can be done at any time between Committee and Third Reading.

### **Queen's Consent**

38.9 Queen's Consent is (if required) signified as soon as the clerk has read the notice and before Third Reading is moved.

### **Third Reading**

38.10 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 (except in the case of privilege amendments: see below). Manuscript amendments are inadmissible on Third Reading.

38.11 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. Amendments are restricted to technical points 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. Notice is required if any member of the House wishes to move an amendment to leave out a clause or schedule on Third Reading, just as it is on Report.

### **Privilege amendment**

38.12 It is the privilege of the Commons to control charges on the people and on public funds. Where a bill may involve such charges, to avoid infringing this privilege, the House of Lords formally declare that nothing in a bill starting in their House involves such a charge.

They do so by means of a 'privilege amendment' on Third Reading. The privilege amendment is moved by the peer in charge formally, after any other amendments have been disposed of. It is agreed to without debate.

38.13 The privilege amendment takes the form of a subsection, inserted at the end of the final clause of the bill, to the effect that nothing in the bill shall impose any charge upon the people or on public funds. The text of the privilege amendment is given to the peer in charge in the procedural brief supplied by the Lords Public Bill Office. It is not printed in advance of Third Reading.

38.14 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.

38.15 In spite of the above, the House of Lords is not inhibited from discussing financial provisions, and briefing may be

needed for such discussion. Where a bill has started in the Commons, the Commons can agree with Lords amendments which infringe privilege or relate to local rates, thus waiving privilege. The Commons have relaxed their claim to privilege in matters affecting pecuniary penalties and fees by Standing Order Nos. 79 and 80.

## Passing

38.16 The motion "that this bill do now pass" is moved immediately after any amendments on Third Reading have been disposed of. It is usually formal, with no debate.

38.17 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 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

# 39. 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 one House disagrees twice 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 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.
- 39.1 Before a bill can become an Act, both Houses must agree its complete text. If a bill has been amended in the second House, it must return to the first House for Commons Consideration of Lords Amendments (CCLA) or Lords Consideration of Commons Amendments (LCCA), depending on the House of introduction.
- 39.2 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;

- 'double insistence' is reached and the bill is normally lost.

39.3 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.

39.4 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 the exact wording of 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.

### **Consideration and ping-pong strategy**

39.5 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 well in advance of consideration and ping-pong stages the bill team should consider the options and advise ministers on the best way forward. This should be done in consultation with the Government Whips' Office in both Houses.

39.6 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.

39.7 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. Generally speaking, where the Government has been defeated in the Lords (which is where the vast majority of defeats occur), perhaps one third of defeats are overturned by the Commons and not pursued further by the Lords; one third of defeats result in some form of compromise; and one third of defeats are conceded by Government.

39.8 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.

39.9 Just as at earlier stages, ministers must seek collective agreement through 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.

39.10 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 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. Bill teams should discuss timing of clearance for ping-pong with the PBL Secretariat and the Whips' Office. There are no tabling deadlines for ping pong, given the speed at which it can progress, but Bill teams should table as close to Government deadlines wherever possible.

39.11 For bills going into ping-pong towards the end of the session, time will be much tighter and the bill minister would be advised 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.

39.12 On return to the first House, departments must 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. Explanatory notes do not need to be revised on return to the second House or at any further stage of ping-pong

however. The next time they will need to be revised is on Royal Assent.

39.13 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**

39.14 Second House amendments are published in a distinct printed list by reference to the print of the bill as it left the first House.

39.15 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.

39.16 Where 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. Financial privilege is determined by the Commons Speaker and the Government does not have any input into this process. The Government may accept an amendment that invokes financial privilege, however no other alternative 'reason' can be given when sent back to the House of Lords.

39.17 The Commons have the following options in considering Lords amendments:

- agree;
- disagree;
- amend a Lords amendment;
- disagree to a Lords amendments and propose amendments in lieu, or amendments to the words so restored to the bill (if the Lords amendment left words out);
- agree and propose a new amendment or amendments consequential on a Lords amendment.

39.18 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.

39.19 Parliamentary Counsel will forward the grouping to the Public Bill Office, which advises the Speaker on: the selection of propositions; amendments to the Lords amendments; amendments in lieu of those Lords amendments; and consequential amendments to the bill. 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.

39.20 In the Commons, amendments can also be 'packaged'. This is where a number of related amendments are grouped together for the purposes of both debate and decision. Grouped 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.

39.21 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. The analogy is with clause stand part debates in Committee, where the Government gives notice if it intends to leave out particular clauses, but not if it intends to leave them in the bill.

39.22 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 statements of 'reasons for disagreement'.

39.23 The appointed committee, together with Parliamentary Counsel and the clerk, withdraw to the 'Reasons Room' off the lobby at the back of the Speaker's Chair.

39.24 When the bill returns to the second House this is called 'Lords Consideration of Commons Reasons (or Message)' or vice versa.

39.25 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;
- make further amendments in regard to any of the amendments agreed by the Commons.

39.26 Each time the bill moves from one House to the other it is accompanied by a 'message' indicating the response of the House that has just considered the bill. If 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. 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.

39.27 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

insists on its previous disagreement (i.e. disagrees a second time), the first House has no further alternatives to consider and can proceed no further, so the bill is lost.

39.28 To avoid this, where the Lords insist on disagreement the Government will usually offer an alternative, in other words an amendment to the text in dispute. Even the smallest amendment in this situation will prevent double insistence as it will give the Lords something further to debate and to send back to the Commons one more time if it is still not acceptable. A last resort at a later stage of ping-pong is for the minister to table a motion seeking to bring together different matters of contention for consideration as a 'package', for example, a motion along the lines of "that this House insists on its disagreement to amendments 1, 2 and 3 but proposes the following amendment in lieu of amendment 1". This may be a means to prevent a double insistence, but only if the House accepts the motion.

### **Lords Consideration of Commons Amendments**

39.29 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:

39.30 It is open to the Lords to 'unpackage' amendments for the purposes of debate.

39.31 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 and with the leave of the House (i.e. in the absence of objection when leave is asked for).

### **Parliament Acts**

39.32 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.

39.33 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. No bill has ever been passed under section 1 of the 1911 Act.

39.34 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.

39.35 The procedure has been used more frequently in the last decade than in the past, but it remains 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 of using the Parliament Act procedures.

39.36 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 procedures.

# 40. ROYAL ASSENT AND COMMENCEMENT

## Key points

- Royal Assents take place 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

- 40.1 When a bill has been passed by both Houses and any amendments have been agreed to, it is ready to receive Royal Assent.
- 40.2 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 Queen.
- 40.3 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.
- 40.4 Royal Assent by notification is given at intervals throughout the session, but The Queen 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 (e.g. when other bills have also completed passage) before receiving Royal Assent.

40.5 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, for example in order to comply with an EC directive. These latter requests must be made when bidding for a slot in the legislative programme, and must be agreed to by 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.

40.6 When a bill receives Royal Assent, it becomes an Act.

### **Proof prints of Acts**

40.7 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.

40.8 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.

40.9 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.

40.10 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

40.11 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 11 for more information. It is the bill team's responsibility to finalise the explanatory notes and clear them with Parliamentary Counsel before sending 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.

40.12 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

40.13 Unless the Act states otherwise, it commences (comes into operation) on the date of Royal Assent. Detail on commencement provisions and consent for early commencement can be found earlier in this guide.

40.14 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 see [Common commencement dates: Guidance for policy makers](#).

Commencement is also the date on which any costs or benefits under 'one-in, one-out' are taken into account and clearance to commence provisions may be required from Reducing Regulation Committee as part of the [Statement of New Regulation process](#).

40.15 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. If sections are to be commenced by Welsh Government ministers, the department should work closely with the Welsh Government to coordinate commencement in Wales with commencement in England.



# 41. 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;
- Where new legislation has a significant impact on business or the third sector, 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.

41.1 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).

41.2 There will be much for bill teams to do immediately after Royal Assent, such as making preparation for regulations or other secondary legislation, explanatory material or guidance, forms and publicity. Work should begin well in advance during the quieter periods of the bill's passage, particularly where there will be a need to consult with others on text or clear it with legal advisers.

## Secondary legislation

41.3 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.

41.4 Where the subordinate legislation is regulatory, collective agreement must be obtained from Reducing Regulation Committee in the normal way before it is introduced, and from the relevant policy committee.

41.5 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. Contact on such issues should be made, on first instance, with First Parliamentary Counsel.

## Guidance

41.6 Where new legislation has a significant impact on business or the third sector, 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 the third sector, e.g. 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.

41.7 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.

41.8 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 the third sector, thus assisting proper parliamentary scrutiny. It will also give business and the third sector more time to make any adjustments necessary for when the Act comes into force. However, before publishing any draft guidance, departments should consider carefully 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.

41.9 Publication of draft or final implementation guidance will not normally require clearance by PBL Committee, but may require clearance through the relevant policy committee of Cabinet and Reducing Regulation Committee. 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.

41.10 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.

41.11 Guidance may include notes for practising solicitors, accountants and others who advise the public.

41.12 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 [www.businesslink.org](http://www.businesslink.org), and any wider publicity (see below) should draw attention to the guidance.

41.13 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

41.14 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 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

41.15 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 thereby. 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

41.16 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

41.17 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 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

41.18 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.

41.19 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 on the bill team; they should, in particular, not remain with the legal adviser.

41.20 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**

41.21 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.

41.22 After taking forward a Bill, departments should conduct a lessons learnt exercise to evaluate how the department handled the legislation, in particular: what worked well; where process could have worked better and to identify 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.

41.23 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. PBL Secretariat can provide advice on how to conduct a lessons learnt exercise.

# 42. 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 out 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 out in practice.

- Useful background is available in *Post-legislative Scrutiny – the Government's approach*.

## Post-legislative scrutiny: Background

### 42.1 Post-legislative scrutiny of Acts

complements, but does not replace any of, the existing processes for post-legislative scrutiny and review, namely:

- 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 Sunseting Regulations: Guidance*.
- examination by a parliamentary committee choosing to conduct an inquiry into the operation of an Act;

- examination by a parliamentary committee where the operation of an Act is integral to some other inquiry the committee is conducting.

42.2 Post-legislative scrutiny was introduced to respond to calls that, once an Act has been passed, insufficient attention is paid to whether it has been well implemented (or implemented at all) and to its actual effects. Together with other initiatives, it promotes a more systematic approach, with government working with Parliament in an area governments have 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;
- 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.

42.3 At the same time, the intention is to ensure that such scrutiny is proportionate to need. In particular, 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**

42.4 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 review as required by the process set out in the impact assessment.
- 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**

42.5 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.



42.6 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.

42.7 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.

42.8 The relevant committee will be the department's normal departmental select committee (for the Cabinet Office, the Public Administration 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.

42.9 The process will apply to Acts which began life as a private members' bill, as well as government bills, since such Acts form part of the body of primary legislation for which departments are responsible.

42.10 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.

42.11 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
- Armed forces Acts

42.12 There will be other occasions where the department and committee can agree that no memorandum is required. Examples where departments may wish to consider proposing this might include:

- where an Act has already been repealed (without having been consolidated);
- where an Act has only a very limited policy or practical significance;
- where a review has already been committed to or carried out (e.g. following a pilot);
- where a department has already submitted relevant evidence in connection with another inquiry by the committee.

42.13 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.

42.14 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.

42.15 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);
- Some outside event (whether envisaged in the Act itself or unforeseen) means that a different timescale is appropriate.

42.16 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).

42.17 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

42.18 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
<b>(a) Summary of the objectives of the Act</b>	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
<b>(c) 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)
<b>(d) 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	Opportunity to summarise any legal issues which have arisen publicly, either in the courts or elsewhere, and the response

committees) and had been addressed	
<b>(e) Other reviews:</b> A summary of any other known post-legislative reviews or assessments of the Act conducted in government, by Parliament or elsewhere	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 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)
<b>(f) Preliminary assessment of the Act:</b> A short preliminary assessment of how the Act has worked out in practice, relative to objectives and benchmarks referred to at point (a) above	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

42.19 For examples of previous memoranda, contact the PBL Secretariat.

### Summary of the objectives of the Act

42.20 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

42.21 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), or any cost benefit information. It is not

envisaged that preparation of this part of the memorandum should, unless the department so wishes, include new, in-depth investigation.

42.22 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.

42.23 Before preparing the memorandum, departments will wish to consult within Government and with stakeholders, as appropriate. Departments should always consult with Parliamentary Counsel before preparing the memorandum.

### **Delegated legislation**

42.24 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.

42.25 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**

42.26 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.

42.27 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.

42.28 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 in the particular case and may wish to include other information not specifically included under these headings.

### Clearance processes

42.29 A memorandum will not usually include new policy announcements and will not routinely require any collective clearance through Cabinet committee. In particular, there is no need for the memorandum to be approved by PBL Committee. If it does contain significant new policy announcements or other relevant information then these should be collectively agreed in the normal way.

42.30 For all memoranda, departments should send a copy of their post-legislative memorandum to:

- Private secretaries to 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

42.31 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.

42.32 Departments are free to discuss the drafting of any memorandum with the Cabinet Office Parliamentary Adviser and / or PBL Secretariat beforehand.

### Further review by Parliament

42.33 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.

42.34 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.



## SECTION G

### OTHER TYPES OF GOVERNMENT BILL

# 43. 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.
- 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?

43.1 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.

43.2 Recent examples of hybrid bills are the Channel Tunnel Rail Link Bill (1996 Act of Parliament) and the Crossrail Bill, which was first introduced in February 2005 but did not complete its select committee stage until October 2007, when it proceeded to the normal parliamentary stages of a government bill.

43.3 The interest of a local authority in the administration of its area is regarded as a private interest, and a bill is generally regarded as hybrid if it relates only to one named area outside London. 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.

43.4 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.

43.5 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.

43.6 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), although this would be extremely unusual.

## Decision on hybridity

43.7 Parliament's formal decisions on hybrid bills are taken in several stages, as follows:

- 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) to see if these standing orders do apply;
- If the examiners decide that they do not apply, the bill will be treated as an ordinary public bill;
- If they do apply and have been complied with, Second Reading may take place and the bill is then committed to a select committee as a hybrid bill;
- If they apply and have not been complied with, the matter is referred to the Standing Orders Committee of the House;
- If the Committee report that the standing orders should be dispensed with, the bill may proceed to Second Reading and the bill is then committed to a select committee as a hybrid bill;
- If they report that the standing orders should not be dispensed with, the order for Second Reading is discharged and normally the bill would be withdrawn;

- The steps to be taken in order 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 some weeks to complete.

43.8 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 him or her at an early stage about the steps to be taken and he or she 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

43.9 Where the standing orders 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.

43.10 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, but it is open to the select committee to report that the bill should not proceed. If no petitions are presented against the bill the select committee will be discharged.

43.11 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 he or she should be made aware of anything likely to affect the bill at a later stage.

## Remaining stages and second House

43.12 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.

43.13 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**

43.14 If a hybrid bill is amended in either House the amendments may have the effect of requiring further compliance with the standing orders. Amendments which have this effect are said to re-hybridise the bill. It is also possible, of course, for an amendment to have the effect of hybridising a bill which had not been hybrid previously.

43.15 Parliamentary Counsel should be consulted well in advance if it is proposed to amend a hybrid bill. He or

she 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.

### **Carryover of hybrid bills**

43.16 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**

43.17 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.

# 44. CONSOLIDATION 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 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.

## What is a consolidation bill?

44.1 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.

44.2 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);
- Statute law revision bills;
- Statute law repeal bills.

44.3 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.

- 44.4 The purpose of Law Commission recommendations is to tidy up errors of the past, remove ambiguities and generally introduce common sense on points where the form of drafting in the past appeared to lead to a result which departed from common sense; though 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.
- 44.5 The Law Commissions 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**

- 44.6 The responsible department (usually the Ministry of Justice) does not need to bid for 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 any additions to the bill.
- 44.7 A consolidation bill and its explanatory material must be approved by PBL Committee before introduction, normally through correspondence.
- 44.8 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.
- 44.9 Explanatory notes are not normally provided for pure consolidation bills, or for that part of a 'consolidation bill with amendments' which consists of pure consolidation; other explanatory material should be provided instead. 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.

44.10 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;
- Stages on the floor of the House of Lords are formal, though minimum intervals must 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.

44.11 When a consolidation bill is passed, bodies specially 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**

44.12 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 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.

44.13 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.

44.14 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. For further advice, contact the Cabinet Office Parliamentary Adviser.

## SECTION H

### PRIVATE MEMBERS' BILLS

# 45. PRIVATE MEMBERS' BILLS: INTRODUCTION

45.1 A 'private members' bill' is a bill promoted by a private 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.

45.2 Whatever its source, the key point for departments is that ministers will need to write to obtain collective agreement to 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.

45.3 If the lead department proposes to support a private members' bill, this will need collective agreement from PBL Committee and the appropriate Cabinet

policy committee. When a department is deciding whether to support a private members' bill, the full policy and legislative implications must be considered, including the impact on the devolved administrations, compatibility with the European Convention of Human Rights, regulatory and other impacts and spending implications. 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.

45.4 If the lead department proposes to oppose a private members' bill, this position must also be collectively agreed by PBL Committee (but not a Cabinet policy committee) before Second Reading.

45.5 The next chapter explains the parliamentary procedure for private members' bills. The following chapter explains what departments need to do to agree the Government's response to these bills.

# 46. PRIVATE MEMBERS' BILLS: PARLIAMENTARY PROCEDURE

## Key points

- In an average session lasting a year, there are around 13 Fridays reserved for private members' bill debates in the Commons in each session. Second Readings take precedence on the first seven and remaining stages on the final six.
- 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 normally must wait in a queue behind other private members' bills still in Committee.
- 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 Fridays. Where the Government cannot support a private members' 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.
- 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 members' bill, they will need to be within easy reach of the House to speak if called.

## Methods of introduction

- 46.1 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 of each session. Once the 20 'ballot' bills have been introduced on the fifth Wednesday 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.

46.2 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 day before it is to be introduced.

46.3 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' title such as 'A bill to amend the Statutory Instruments Act 1946'). 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).

46.4 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 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.

46.5 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).

46.6 In the House of Lords Second Reading debates are normally arranged in the order in which private members' bills have received their First Reading. A ballot is held on the day of State Opening to determine the order in which private members' bills are introduced at the start of each session. To enter the ballot, peers must submit the final text of their bill to the Legislation Office before the rise of the House on the day of State Opening.

46.7 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**

46.8 In a year-long session, around 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).

46.9 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.

46.10 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.

46.11 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'.

46.12 A private members' 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, and will take its turn for debate on the Friday selected by that member.



## Commons Second Reading

46.13 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 members' 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.

46.14 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.

46.15 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 closure motion is only carried if 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.

46.16 When the time for opposed business ends at 14.30, 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**

46.17 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 members' bill may be active at any one time, unless, under Standing Order No 84 A(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.

46.18 Names for public bill committee members can be put forward by the sponsoring MP for the meeting of the Committee of Selection on the Wednesday after the bill obtained Second Reading, and the committee usually convenes the following Wednesday after members have been selected. The committee traditionally meets on Wednesday morning, although meetings in the afternoon or on other days are not unknown. If a private members' 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.

46.19 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.

46.20 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.

46.21 A minister of the lead department will be expected to take part in all debates on the floor of the House, but will not open or close the debate. 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.

46.22 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' bill Fridays of the session.

## Procedure in the Lords

46.23 The main differences in Lords procedures for private members' bills are:

- Proceedings are not restricted by standing orders to specified days, and time is normally found for them to be debated as long as there is a theoretical prospect of the bill becoming law;
- All stages are taken on the Floor and minimum intervals between stages may apply. If, as often happens, no amendments are tabled for Committee, then Committee is discharged, there is no Report stage and Third Reading is normally unopposed;
- Where a private members' 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.

46.24 If a private members' 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 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, or even reject it. A Commons bill may not formally be withdrawn in the House of Lords by the Lord who has taken it up, although it is open to him or her not to proceed further with it. Beyond a certain point in the session, any Lords amendment is fatal to a Commons private members' bill, because the Commons will have no opportunity to consider it.

## Post-legislative scrutiny

46.25 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 members' 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.

# 47. 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 PBL Committee recommending what position the Government should take: support, oppose or (in very rare and exceptional cases) remain neutral. Whatever the recommended position, the responsible minister should write to PBL Committee (and, if supporting or remaining neutral, the relevant policy committee) at least one month before Second Reading, to allow time for other ministers to comment. Responses should be requested within six working days (nine during recess) so as to allow a further two weeks for any issues to be resolved and a position agreed across Government.
- All private members' bills handling letters should be copied to the relevant policy committee of Cabinet, but if the recommended position is to support or remain neutral, clearance must also be sought from the relevant policy committee of Cabinet. To satisfy the committees that the consequences of supporting a private members' bill have been carefully considered, the minister will need to attach to the letter a PBL Committee memorandum setting out any handling issues and explaining the implications of the bill (for example for the devolved administrations), the bill print and explanatory notes (where possible) a legal issues memorandum and an impact assessment.
- The Government remains neutral only in very exceptional circumstances, for example if the private members' bill concerns an issue of conscience such as abortion or euthanasia, or matters more properly for Parliament, rather than the Government, to decide.
- If the recommended position is to oppose, a letter explaining why the Government should oppose the bill will normally suffice, but it will be important for the letter to set out a strong case for not supporting the bill.

- Where a private members' 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 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**

47.1 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 members' bill can be found in the 'bills before Parliament' section of the website.

47.2 As soon as a private members' 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.

47.3 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. 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? Officials should give careful consideration to whether the Government could sensibly support the bill, subject to any necessary amendments.

47.4 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 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.

Second Reading date, and give members of the Committee at least six working days for consideration (nine during recess)

47.5 The minister will then need to write to 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. To allow time for other Ministers to comment, the Minister should write to PBL Committee at least one month before Second Reading, requesting responses within six working days (nine during recess) so as to allow a further two weeks for any issues to be resolved and a position agreed. Policy officials are encouraged to discuss the arguments for supporting or opposing the private members' bill with PBL Secretariat before the minister sends the letter.

- State clearly whether PBL Committee and the relevant policy committee clearance is being sought to support the bill or remain neutral (the handling letter should be addressed to the Chairs of both committees) or whether PBL Committee clearance only is being sought to oppose the bill (the handling letter should be addressed to the Chair of PBL Committee and copied to members of the policy committee for information).
- 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.

47.6 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 which should be at least two weeks before the
- 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.
  - 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.



47.7 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 members' bill only falls off the order paper if it is has still not been printed the day before Second Reading is due.

47.8 Where a private members' 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 PBL Committee as soon as possible, allowing a reasonable period for comment and a position to be agreed before Second Reading.

### **Opposing a private members' bill**

47.9 If the recommended position is to oppose the private members' bill, a letter needs to be circulated to members of PBL Committee, copied to the relevant policy 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, 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.

47.10 There may be a number of reasons why the responsible minister will wish to recommend that the Government oppose a private members' bill, for example if it is contrary to the Government's policy, duplicates work already in progress, is incompatible with European 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.

47.11 If the private members' 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. If the bill has already been published, the sponsoring member may be persuaded to give a commitment to make amendments in Committee to address the Government's concerns and allow it to support the bill.

47.12 If it is still not possible for the Government to support the private



members' bill, the handling letter which should be sent to PBL Committee one month before the Second Reading date (copied to the relevant policy committee of Cabinet for information) should explain clearly why this is, including any options that have been explored to support an amended form of the bill.

oppose a private members' bill, but PBL Secretariat may ask for one to be completed if the handling letter issues late or if the proposal is particularly controversial.

### **Supporting, or supporting subject to amendment**

47.13 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.

47.14 Where the Government opposes a private members' 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.

47.15 A completed 'ring-round' sheet (see collective agreement) is not normally required for letters seeking clearance to

47.16 Where it is proposed that the Government supports a private members' bill, or supports it subject to amendment, this must be cleared through the relevant policy Committee of Cabinet as well as PBL Committee. Prior to seeking clearance, officials will want to consider the policy implications for other departments, implications for the devolved administrations, 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.

47.17 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. It is important that departmental ministers engage with the member in charge early enough so that if a compromise is agreed, there is still enough time for the department to prepare the necessary documentation (PBL Committee memorandum, bill print and explanatory notes (where possible) legal issues memorandum and impact assessment) to satisfy the relevant policy committee of Cabinet and PBL Committee that supporting the bill is the right thing to do, and for this position to be formally agreed.

47.18 In opposing private members' bills, ministers may be missing the chance to sensibly amend the law. Moreover as private members' bills cover matters that are of personal importance to members, those that fall tend to be reintroduced in subsequent sessions, making it worthwhile for the Government to consider whether a compromise position could be agreed.

47.19 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 PBL Secretariat should also be informed.

47.20 Whilst the Government will wish to support as many private members' bills as possible, it is equally important that it does so only after full consideration of the implications of the bill reaching Royal Assent and becoming law. If the Government supports the objective behind a private members' bill but the bill would have unacceptable consequences that cannot be addressed by amendment, then the Government would not normally support the bill. It is important that policy officials in their advice to ministers set out fully the reasons for and against supporting the bill, to enable ministers to make an informed decision.

47.21 A joint letter to the chairs of 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 PBL Secretariat for advice before drafting this letter. 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 PBL 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.

47.22 Policy officials in departments should therefore engage early with officials in:

- the Better Regulation Executive in the Department for Business, Innovation and Skills on the Impact Assessment;
- the Scotland, Wales and Northern Ireland Offices, on any devolution issues;
- 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 PBL Committee and the relevant policy committee of Cabinet.

47.23 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

47.24 Very exceptionally, the Government may wish to take a neutral position on a private members' 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.

47.25 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 the consequences.

47.26 A neutral stance must therefore be collectively agreed by ministers in the same way as supporting a private members' bill, with a handling letter and accompanying documentation: PBL Committee memorandum, bill print and explanatory notes (where possible), impact assessment, legal issues memorandum and legal issues memorandum. These must be sent to PBL Committee and the relevant policy committee of Cabinet at least one month before Second Reading. Policy officials in the department should discuss the

proposed stance with PBL Secretariat as early as possible.

47.27 If a private members' 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.

## Clearance

47.28 If there are no outstanding issues, the Chair of 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.

47.29 If the bill is published after the handling letter has been sent, departments should contact 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 PBL Committee, or should a change in circumstances mean it may be appropriate for the Government to change the position it has already agreed, PBL Secretariat should be informed immediately.

## Further action required by departments where the Government is supporting a private members' bill

47.30 Clearance to support a private members' 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);
- 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.

47.31 As far as possible, amendments should be made at Committee Stage in the first House.

47.32 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.

47.33 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 members' bill or hand to the sponsoring member to table must be agreed by 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 48 hours for clearance to issue. Amendments should be discussed with the sponsoring MP or peer, whose support is crucial.

47.34 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.

47.35 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 may however be 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.

47.36 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.

47.37 **Delegated powers:** The Lords Delegated Powers and Regulatory Reform Committee may report on **any** public bill containing delegated powers. If a government-supported private members' 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 and Regulatory Reform Committee, by the time the bill reaches the Lords at the very latest. For a government-supported Lords private members' bill, a memorandum should be submitted as soon as possible after introduction.

**Further action required by departments for any private members' bill that looks likely to pass, irrespective of whether Government is supporting or opposing the bill**

**47.38 Queen's Consent:** The possible need for Queen's Consent should always be considered. Queen'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. Queen'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 Queen's Consent.

**47.39 Money resolutions:** In theory, a private members' 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.

**47.40** The Government usually moves a motion for a money resolution in respect of a private members' 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.

**47.41 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.

**47.42** Where a private members' 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 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.



# 48. GOVERNMENT 'HANDOUT' BILLS

## Key points

- In advance of each parliamentary session, 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 PBL Committee approval before giving the final text of the bill to the member for publication. The minister must write to PBL Committee attaching a PBL Committee memorandum, the bill print and explanatory notes, impact assessment 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.
- The department will have to be ready to offer some support (e.g. briefing) to the member in charge of the bill, as well as the responsible minister, at Second

Reading debate and during the remainder of the bill's parliamentary passage.

## Preparing measures for the 'handout' list

48.1 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 members' 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.

48.2 Well in advance of the start of each session, the Chair of 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:

48.3 Short (no more than 12 clauses) and simple (non-technical)

48.4 Relatively uncontroversial but interesting enough for members to want to pick up and take forward



- Without major financial implications
- Not concerning major constitutional reform
- On areas where policy has already been collectively agreed, or where policy clearance is sought in parallel to the handout bid

48.5 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 members' 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).

48.6 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 administrations, compatibility with the ECHR, financial implications etc, and to set these out in a letter to PBL Committee.

48.7 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 as soon as possible.

48.8 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 PBL Secretariat.

48.9 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. The government whips will discuss proposals with all members successful in the ballot, and a 'handout' bill may be taken up by a non-government MP.

48.10 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.

48.11 A peer may also be interested in taking forward a 'handout' proposal. A private members' bill introduced in the Lords is less likely to reach Royal Assent than a private members' 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. 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**

48.12 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 at least two days before the fifth sitting Wednesday of the session, as this is the last day for handing in notice of presentation for ballot bills.

48.13 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 members' bill introduced on the fifth sitting Friday could have its Second Reading debate just a few weeks later or several months later.

48.14 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, e.g. agreeing the nature of any impact on the devolved administrations. 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 PBL Committee.

48.15 The minister must write to 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.

48.16 The Public Bill Office will expect the text of the bill to be published at least

one week before the date scheduled for Second Reading debate. The minister must also allow six days for colleagues to comment (nine during recess), an additional 48 hours 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 PBL Committee must be sent at least one month in advance of Second Reading. It should be emphasised that publishing the bill one week before 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.

#### **Further action required of departments during parliamentary passage of a 'handout' bill**

48.17 During 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.

48.18 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 members' bill that looks likely to pass, irrespective of whether Government is supporting or opposing the bill for detail of action required by departments in relation to Queen's Consent and money resolutions.

48.19 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, will therefore wish to assist the member in identifying a peer to pick up the bill.

48.20 If the bill reaches Royal Assent, the department must finalise the explanatory notes and send them to Legislation Services 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.

**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 ‘standing

committee’. Any MP may take part in proceedings.

**Commons amendment** – an amendment made by the Commons to a bill that has been passed by the Lords.

**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’.

**Draft bill** – a bill that is made available 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.

**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** – the grouping 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 order'.

**Handout bill** – a bill that is drafted by Parliamentary Counsel and offered to a back-bencher to take forward as a private members' bill, usually with the continuing support and briefing of the government department concerned.

**Introduction** – the formal start of a bill's passage through Parliament.

**Knives** – the deadlines within a programme order. 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.

**Lords amendment** – amendment made by the Lords to a bill that has been passed by the Commons.

**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.

**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.

**Primary legislation** – Acts of Parliament

**Prince of Wales' 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 members' bill** – a public bill introduced by a 'private member' of Parliament (not a minister).

**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.

**Queen's Consent** – agreement by The Queen that Parliament may proceed to

consider legislation that would affect her interests.

**Queen's Speech** – the Speech written by the Government and delivered by The Queen 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).

**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**

020 7271 2400 (switchboard)

[www.attorneygeneral.gov.uk](http://www.attorneygeneral.gov.uk)

## **Advocate General for Scotland**

0131 244 0359

[enquiries@advocategeneral.gsi.gov.uk](mailto:enquiries@advocategeneral.gsi.gov.uk)

<https://www.gov.uk/government/organisations/office-of-the-advocate-general-for-scotland>

## **Better Regulation Executive, Department for Business, Innovation and Skills**

020 7215 5000

(switchboard)

[betterregulation@bis.gsi.gov.uk](mailto:betterregulation@bis.gsi.gov.uk)

## **Clerk of Bills in the Commons**

020 7219 3257

[pbohoc@parliament.uk](mailto:pbohoc@parliament.uk)

## **Clerk of the Joint Committee on Human Rights**

020 7219 2794

[jchr@parliament.uk](mailto:jchr@parliament.uk)

## **Clerk of Legislation in the Commons**

020 7219 3255

[jchr@parliament.uk](mailto:jchr@parliament.uk)

## **Clerk to the Lords Constitution Committee**

020 7219 1228

[constitution@parliament.uk](mailto:constitution@parliament.uk)

## **Clerk to the Lords Delegated Powers and Regulatory Reform Committee**

020 7219 3103

[dpr@parliament.uk](mailto:dpr@parliament.uk)

## **Clerk of Public Bills in the Lords**

020 7219 3152

[pbohl@parliament.uk](mailto:pbohl@parliament.uk)

## **Commons Public Bill Office**

020 7219 3251

## **Commons Vote Office**

020 7219 3631 / 6607

## **Crown Dependencies Branch, Ministry of Justice**

020 3334 3698

[crown.dependencies@justice.gsi.gov.uk](mailto:crown.dependencies@justice.gsi.gov.uk)

## **Crown Estate**

16 New Burlington Place

London, W1S 2HX

020 7851 5000

[enquiries@thecrownestate.co.uk](mailto:enquiries@thecrownestate.co.uk)

## **Devolution Secretariat (Economic and Domestic Affairs Secretariat), Cabinet Office**

020 7276 2285 / 0838

## **Government Whips' Office (Commons)**

020 7276 2020

**Government Whips' Office (Lords)**

020 7219 6961

[holgovernmentwhips@parliament.uk](mailto:holgovernmentwhips@parliament.uk)**Information Policy Team, National Archives**

020 8392 5218

[official.publishing@nationalarchives.gsi.gov.uk](mailto:official.publishing@nationalarchives.gsi.gov.uk)**Journal Office, House of Commons**

020 7219 3317

[journaloffice@parliament.uk](mailto:journaloffice@parliament.uk)**Legal Secretariat to the Advocate General for Scotland**

020 7270 6720

<https://www.gov.uk/government/organisations/office-of-the-advocate-general-for-scotland>**Parliamentary Business and Legislation (PBL) Secretariat (Economic and Domestic Affairs Secretariat), Cabinet Office**

020 7276 0135

020 7276 0326

020 7276 0242

**Legislation Services Team, National Archives**

020 8392 5202

[legislation@nationalarchives.gsi.gov.uk](mailto:legislation@nationalarchives.gsi.gov.uk)**Lords Printed Paper Office**

020 7219 3038 / 3037

[printedpaperoffice@parliament.uk](mailto:printedpaperoffice@parliament.uk)**Northern Ireland Office**

020 7210 6575

[www.nio.gov.uk](http://www.nio.gov.uk)**Office of the Parliamentary Counsel**

020 7210 6629

[goodlaw@cabinetoffice.gov.uk](mailto:goodlaw@cabinetoffice.gov.uk)[www.gov.uk/government/organisations/office-of-the-parliamentary-counsel](http://www.gov.uk/government/organisations/office-of-the-parliamentary-counsel)**Overseas Territories Directorate, Foreign and Commonwealth Office**

020 7008 2569

[otdenquiries@fco.gov.uk](mailto:otdenquiries@fco.gov.uk)**Palace of Westminster Pass Office**

020 7219 5915

**Parliamentary Adviser (Economic and Domestic Affairs Secretariat)**

020 7276 0351

**The Private Secretary to The Queen**  
Buckingham Palace, London SW1A 1AA**The Principal Private Secretary to The Prince of Wales**

Clarence House, London SW1A 1BA

**Reducing Regulation Secretariat (Economic and Domestic Affairs Secretariat), Cabinet Office**

020 7276 1546 / 1188

**Scotland Office**

020 7270 6756

**The Stationery Office**

01603 694360

# APPENDIX C: OTHER GUIDES

## Cabinet Office

### Guide to Cabinet and Cabinet Committees

- a. Ministerial Code
- b. Working with Parliamentary Counsel
- c. Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee
- d. Devolution guidance notes
- e. Post-Legislative Scrutiny – the Government’s approach.
- f. Consultation Principles: Guidance
- g. Legislative Reform Order-making Powers
- h. Common commencement dates: Guidance for policy makers.
- i. Impact Assessment Guidance
- j. Impact Assessment Toolkit
- k. Sunsetting Regulations: Guidance
- l. Transposition Guidance: how to implement European Directives effectively
- m. Guiding principles for EU legislation
- n. One-in, one-out: Statement of new regulation

## Department for Business, Innovation and Skills

## 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

## HM Treasury

- q. Managing Public Money

## Ministry of Justice

- r. Background Briefing on the Crown Dependencies

## Parliament

- s. Joint Committee on Human Rights, The Committee's Future Working Practices
- t. House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC), Guidance

for Departments on the role and requirements of the Committee

- u. House of Lords Constitution Committee, Fast-track Legislation: Constitutional Implications and Safeguards
- v. Undertaking Privacy Assessments

## Government Legal Department

- w. The Judge Over Your Shoulder

# APPENDIX D: 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, Her 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.