

## **PRIVATE AND HYBRID BILLS – REVISED DETERMINATIONS ON COSTS**

### **Executive summary**

1. This paper invites the SPCB to agree changes to the determinations on fees and costs for Private and Hybrid Bills in recognition of recent standing order Rule-changes (on amendments adversely affecting private interests).

### **Issues and Options**

#### **Power to make determinations**

2. All three Chapters of the Standing Orders dealing with Bills (Chapters 9, 9A and 9C) make provision for matters of detail to be dealt with by means of “determinations”. Most such determinations are made by the Presiding Officer, but the SPCB is responsible for determining:

- the fee payable by a promoter for introducing a Private Bill;
- the fee payable for lodging an objection to a Private or Hybrid Bill (currently set at zero); and
- the costs incurred by the SPCB during the passage of a Private or Hybrid Bill that the promoter (of a Private Bill) or the Scottish Government (in relation to a Hybrid Bill) must undertake to repay.

#### **The new Rules**

3. The Parliament agreed on 15 March 2016 to a set of Rule-changes relating to Private Bills (Chapter 9A) and Hybrid Bills (Chapter 9C). The aim of the new Rules is to ensure that, where amendments to such a Bill would have an adverse effect on private interests, they are not agreed to without the holders of those interests first being notified and given an opportunity to make representations.

4. The procedure involves a two-stage “screening process” at Consideration Stage of a Private Bill (or Stage 2 of a Hybrid Bill). The Committee reviews all the amendments lodged to identify whether there are any that adversely affect private interests, and – if so – whether they have sufficient merit to justify putting the scrutiny process on hold to enable the holders of those interests to be consulted. In many cases, there won’t be any amendments of the relevant sort, and hence no need to put the process on hold. But if there are, then there may be a lot of extra work involved. All the relevant persons (i.e. the persons who would be adversely affected) need to be identified and notified about the amendments and about how to make representations, and any representations they make need to be processed. Some of these additional tasks may already have been carried out by the

promoter (or Scottish Government); otherwise, they may be carried out either by an assessor (where one has been appointed) or by the Committee.

5. At Final Stage of a Private Bill (or Stage 3 of a Hybrid Bill), it is for the Presiding Officer to identify whether any of the amendments lodged would adversely affect private interests and take this into account in selecting amendments. In many cases, the fact that an amendment would have such an adverse effect (and so would necessitate putting the scrutiny process on hold while the holders of those interests are consulted) may be a sufficient reason not to select the amendment. But there may also be cases where the PO wishes to select the amendment and invites Bureau members to consider a change to the business programme (deferring the day on which Final Stage or Stage 3 takes place) to enable the requisite consultation to take place. In this situation, too, there will be additional work required in identifying the relevant persons and notifying them, and in handling any representations made. Again, some of these tasks may have already been carried out by the promoter (or Scottish Government); otherwise they may be carried out by an assessor (where one has been appointed) or by the Parliament. In practice, this may mean using the existing resource of the Committee and its staff, or it may mean using other Parliamentary resources.

#### **Consultation with Session 4 SPCB**

6. During the SPPA Committee's inquiry, it wrote to the SPCB to seek its view on its preliminary findings. The then Presiding Officer replied in some detail on the SPCB's behalf.<sup>1</sup>

7. In its report (4th Report, 2016 (Session 4)), the Committee summarised the SPCB's response as follows (paragraph 70):

"The SPCB suggested that the full costs of the consultation should be recovered from the promoter in the case of a private bill. In relation to hybrid bills, the SPCB suggested that, in the case of works bills (where an assessor is appointed), the consultation could be carried out by the assessor, on behalf of the hybrid bill committee. ... If this were the case, there would be an option for the SPCB to recover the costs of that consultation from the Scottish Government by amending existing determinations. For non-works bills (i.e. where there is no assessor), the SPCB envisaged the consultation being carried out by the Committee and funded by the SPCB."

#### **Recommended changes to SPCB determination: Private Bills**

8. The current SPCB determination in relation to Private Bills is set out in Annex A. The proposed changes are highlighted. If the changes are agreed to, this determination will enable the Parliament to recover from the promoter any additional costs associated with notifying people whose private interests would be adversely affected by amendments.

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<sup>1</sup> The PO's letter is reproduced in Annex B to the SPPA Committee's report – accessible at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/97145.aspx>

9. Although the new paragraph at the end refers only to notification, the determination would also allow recovery of the cost of any public evidence-taking from objectors to the amendment, whether at a Committee meeting or an assessor hearing, and the additional costs of having an assessor consider and make recommendations on those objections.

### **Recommended changes to SPCB determination: Hybrid Bills**

10. The current SPCB determination in relation to Hybrid Bills is set out in Annex B. The proposed changes are highlighted. If the changes are agreed to, the determination will enable the Parliament to recover from the Scottish Government any additional costs involved in notifying people whose private interests would be adversely affected by amendments – but only if it is a works Bill and there is an assessor who can be tasked with notifying them.

### **Resource Implications**

11. It is already the role of NGBU to liaise with other offices about work done in relation to Private Bills so as to be able to invoice promoters for the relevant costs (i.e. costs covered by the determination). In cases where consultation is required on amendments affecting private interests, there would be some extra work for NGBU and other offices in calculating the costs involved and including those in invoices. However, these administrative costs should be outweighed very substantially by the amounts recovered from promoters (or the Scottish Government) as a consequence.

### **Governance issues**

12. By ensuring that the additional costs the SPCB could incur as a result of amendments affecting private interests being lodged are recoverable, the revised determination protects the Parliament from a particular financial risk (albeit one unlikely to arise).

13. There are no equalities, health and safety or environmental implications. An EQIA has not been carried out.

14. The Parliament's legal advisers were directly involved in developing the new procedures, a key aim of which is to protect the Parliament from a risk of legal challenge to its legislative procedures. The legal advisers have been consulted on the revised determinations.

15. The Scottish Government was consulted by the SPPA Committee at the same time as the SPCB, and confirmed then and later in the inquiry that it supported the Committee's recommendations. Scottish Government officials have also been consulted on the revised determinations, and are content.

### **Publication Scheme**

16. This paper will be published in line with the SPCB's Publication Scheme.

### **Next steps**

17. If the SPCB agrees to the changes highlighted in Annex A, a revision will be made to the published *Guidance on Private Bills* (which includes the SPCB determination as an annex). This will be announced in the Business Bulletin. A new edition of the *Guidance on Hybrid Bills* is in preparation, and the revised determination in Annex B (if agreed to) will be incorporated into that before it is published.

### **Decision**

18. The SPCB is invited to amend its determinations on fees and costs for Private and Hybrid Bills as indicated by the highlighted new text in Annexes A and B.

Non-Government Bills Unit (Chamber Office)  
June 2016

### **Proposed changes to SPCB determination (Private Bills)**

Proposed new text is shown in **yellow highlighting**. The earlier parts of the current determination (fees for introducing the Bill and lodging an objection) are not shown here.

### **Matters for which promoters must undertake to reimburse the Parliamentary corporation**

The cost of printing and publishing the Bill and accompanying documents.

The cost of printing and publishing Private Bill Committee reports.

Professional fees charged by an assessor for:

- the consideration of objections **to the Bill (or objections to amendments)**, including considering written evidence and conducting oral hearings, and
- the preparation of reports,

together with any travel, accommodation and subsistence costs reasonably incurred in connection with that work.

For public meetings of Private Bill Committees, or public hearings conducted by an assessor, whether or not held at the Scottish Parliament—

- the cost of preparing, printing and publishing the *Official Report* or any transcript prepared by the Official Report
- the costs incurred by broadcasting staff in connection with a sound recording, video broadcast and/or webcast of proceedings
- the costs involved in having security staff present throughout the meeting or hearing
- the cost of any claims paid by the SPCB to objectors under the witness expenses scheme.

For public meetings of a Private Bill Committee, or public hearings conducted by an assessor, held at a location other than the Scottish Parliament (in addition to the above matters)—

- the cost of hiring a suitable venue
- any costs incurred in connection with a sound recording, video broadcast and/or webcast of proceedings, either by Parliament staff or

by persons contracted for the purpose (if this is more cost-effective than using Parliament staff)

- the cost of preparing a transcript of the proceedings, either by the Official Report or by persons contracted for the purpose (if it is not practicable for the transcript to be prepared by the Official Report)
- any travel, accommodation and subsistence costs reasonably incurred by Committee members, or by Parliament staff or contractors (clerks, legal advisers, Official Report, broadcasting and security), in connection with attending the meeting or hearing.

For fact-finding visits by Private Bill Committee members, agreed to by the Committee, any travel, accommodation and subsistence costs reasonably incurred by those Committee members, and by any accompanying Parliament staff.

In relation to an amendment that adversely affects private interests and is lodged at Consideration Stage or selected for Final Stage, any costs incurred by the Parliament (including by the Private Bill Committee or an assessor) in notifying the holders of those interests of the terms and implications of the amendments and of how they may make representations.

### **Proposed changes to SPCB determination (Hybrid Bills)**

Proposed new text is shown in **yellow highlighting**. The earlier part of the current determination (fee for lodging an objection) is not shown here.

#### **Matters for which the Scottish Ministers will require to give an undertaking to pay costs incurred by the Scottish Parliamentary Corporate Body**

Professional fees charged by any assessor for

- the consideration of objections **to the Bill (or objections to amendments)**, including considering written evidence and conducting oral hearings, and
- the preparation of reports,

together with any travel, accommodation and subsistence costs reasonably incurred in connection with that work.

For public hearings conducted by an assessor, whether or not held at the Scottish Parliament—

- the cost of preparing, printing and publishing any transcript prepared by the Official Report
- the costs incurred by broadcasting staff in connection with a sound recording, video broadcast and/or webcast of proceedings
- the costs involved in having security staff present throughout the hearing.

**In relation to an amendment that adversely affects private interests and is lodged at Stage 2 or selected for Stage 3, any costs incurred by an assessor in notifying the holders of those interests of the terms and implications of the amendments and of how they may make representations.**