



Factsheet L9 Legislation Series

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House of Commons Information Office

Order Confirmation Bills and Special Procedure Orders

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Certain types of legislation, usually local in character, are not subject to the provisions described in **Factsheets** L1, L2, L4, L5 or L7. These consist of three separate procedures: Scottish provisional orders and order confirmation bills; provisional order bills; and special procedure orders and bills to confirm special procedure orders.

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Introduction

This Factsheet looks at three types of legislation not covered in other Factsheets: Order confirmation bills, special procedure orders and provisional order bills. These relate to legislation that might otherwise be dealt with by a private bill (see **Factsheet L4**) under private bill procedures.

Order Confirmation Bills

Private Legislation Procedure (Scotland) Act 1936

During the nineteenth century there was an increase in the number of private bills considered by Parliament that related solely or mainly to Scotland. This increase was not restricted to Scotland but was a general trend due to the growth in railway buildings and public utilities. However, where Scotland and Ireland were concerned, it meant that promoters, witnesses and local people had to travel long distances to take part in proceedings at Westminster. There were various attempts to change this situation, culminating in a Government bill, the *Private Bill Procedure (Scotland) Bill*, in 1898. The object of this Bill, as stated by the then Lord Advocate (Mr Graham Murray), was to transfer to Scotland "the initial steps for promoting local legislation". It was also intended to allow greater rights to persons and organisations who might not otherwise have the means to object to the proposals. The Bill proposed a system of non-parliamentary local enquiries for the first stages. Although this Bill did not become law, a similar bill the following session did. The resulting Act, which was amended in 1933 and consolidated under its present title in 1936, still allows a procedure whereby Scottish private legislation can receive scrutiny today although devolution has removed the scrutiny of most private legislation from Westminster to the Scottish Parliament. Draft provisional orders and order confirmation bills will still be necessary for any reserved matters, such as defence, and for any railways etc. that may fall in England as well as Scotland. Although it was originally intended to extend the 1899 Act to Ireland and Wales, this was never done.

The system laid down by the Act is that the Secretary of State issues a provisional order, which has to be confirmed by Parliament. This order has no validity until it has been confirmed in this way. The situation in Scotland therefore differed to that in England and Wales, where organisations would have had to promote a Private bill at this stage. The Act of 1899 also restricted the right to petition Parliament for a bill since proceeding by order became in most cases obligatory for Scottish matters. *The Transport and Works Act 1992* (which provided a system of proceeding by order for railway, canal, and other works bills instead of by private bill) did not extend to Scotland, so the procedure laid out in this section is generally unaffected by the new Act.

Applications

Petitions for the issue of a provisional order have to be deposited at the Scotland Office in London either before 27 November or 27 March every year. Copies have to be sent to the Clerk of the Parliaments, the Private Bill Offices of the Commons, the Treasury and certain other bodies.

Compliance with General Orders

Draft orders must meet the requirements stipulated in the "General Orders". These are detailed rules similar to Private Business Standing Orders. The private bill

examiners go through every draft order to ensure such compliance and report to the Chairman of Committees (in the Lords) and the Chairman of Ways and Means (in the Commons) and the Secretary of State. The Chairmen have discretion to allow an order to proceed even if it does not fully comply.

Objections

Petitions against proposals for the issue of orders must be received not later than six weeks after the deadline for deposit of the original petition at the Scotland Office. When the weight of opposition (if any) to the proposals has been determined, the Chairman of Committees in the House of Lords and the Chairman of Ways and Means in the House of Commons report to their respective Houses and to the Secretary of State. If they report that the provisions (or some of them) relate to non-Scottish matters, or that they raise "questions of public policy, novelty and importance", then the Secretary of State does not proceed to issue the desired order. This means that if the promoters wish to proceed they must do so by means of a private bill.

Inquiry Procedure

The Secretary of State will order an inquiry if the order is opposed, or if he considers an inquiry is necessary.

The Commissioners for these inquiries are drawn from three panels. Two of these Panels are composed in total of a maximum forty parliamentarians: fifteen are Lords chosen by the Lord Chairman and twenty-five are Members of Parliament chosen by the House of Commons Committee of Selection. The third panel of twenty is nominated by the Chairman of Committees, the Chairman of Ways and Means, and Secretary of State, every five years.

When an inquiry is held, the Chairmen nominate four members (two from each House or, if that is impossible, members are taken from the third panel chosen by the Secretary of State).

The inquiry, which sits in Scotland, meets daily if possible and acts in the same way as a private bill committee on an opposed bill (see **Factsheet L4**). After considering the provisional order, the Commissioners make one of three recommendations:

- 1) The order should be issued with amendments
- 2) The order should be issued without amendments
- 3) The order should be refused

If the Commission reports that the order should not be made, the Secretary of State cannot make it. Otherwise, he or she has discretion to make the order, with or without the amendments recommended by the Commissioners, the Chairmen, and any government Departments whose views, under the 1936 Act, have to be sought.

If no inquiry has been held, the draft order is scrutinised by Counsel to the Secretary of State for Scotland (in the same way as the unopposed bills committee examines a private bill). The Secretary of State has discretion to modify or reject the order or to make it without amendment.

Order Confirmation Bill

As soon as possible after the order has been issued, the Government presents a

confirming bill to one of the two Houses, usually to the House of Commons first. These are public bills, in the HC bill numbered series, and can be obtained from The Stationery Office. The text of the order is included as the schedule to the bill.

If the bill confirms an order on which no inquiry was held, it is able to miss out some of the normal parliamentary stages. It is put down for report stage and subsequently third reading and is treated as though the second reading and committee stage have already taken place. It then receives the same stages in the other House.

Joint Committee

If the bill confirms an order on which an inquiry has been held, an additional opportunity for objection is allowed. If within seven days of the confirmation bill's introduction a petition is presented against the bill or some part of it, it is open to a Member to give notice that he will move to commit the bill to a joint committee of both Houses. Joint committees, however, are only rarely required. The committee is composed of six members. The Lord Chairman nominates three members from the House of Lords and the Committee of Selection nominates three members from the House of Commons. The joint committee sits at Westminster and hears arguments from the promoters and the counter arguments of the petitioners. It then makes a report to both Houses, recommending either that the order should be confirmed, with or without amendment, or that it should not be confirmed.

If confirmation is recommended, the bill proceeds to third reading if unamended, or to report stage if amended. If the joint committee recommends rejection, the Government will withdraw the bill.

Debate

Though order confirmation bills are set down by the Government, they follow the pattern of private bills. Their stages are set down at 2.30 pm on Monday and Tuesday, 11.30am Wednesday and 10.30am on Thursday, as private bills, for formal approval. If "blocked" (see **Factsheet L4**) time has to be found for their consideration. If, as is general, no joint committee is moved for, debate may nevertheless take place if report or third reading is "blocked".

The bill then goes to the other House. There cannot be a committee stage in the second House.

When it has passed all necessary stages in both Houses, and any differences between the two Houses have been reconciled, the bill goes for Royal Assent. It is then printed in the Local and Personal Acts series, with Roman chapter numbers.

The most recent Bill subject to this procedure was the Railtrack (Waverley Station) Order Confirmation Bill 1999-2000, which received Royal Assent on 14 June 2000.

Provisional Order Bills

These are now virtually obsolete and have now been all but superseded by the *Statutory Orders (Special Procedure) Act 1945*. They were, however, a very common procedure from about 1860 to 1945. The system had its origin in the system of "general acts", whereby local authorities in particular might "adopt" powers laid down

in an all-embracing public act and have their action confirmed by a Minister or by Parliament. The main pieces of legislation giving rise to provisional order procedure are now the *Commons Act 1876*, the *Public Health Act 1937* (s 317) and the *Public Health (Drainage of Premises) Act 1937*. Two bills under the *General Pier and Harbour Acts 1861* and 1862 (repealed by the *Transport & Works Act 1992*) were presented in the 1979-80 Session and one under the *Public Health Act* in the 1976-77 Session: These are the most recent occasions on which the procedure has been utilised. It is technically possible for more than one order to be confirmed by the same bill, but this is nowadays unknown.

Local Inquiries

In most cases, a local inquiry has to be held before the provisional order is made, but the pre-parliamentary stages vary according to the act under which the order is to be made. As with the Scottish procedure (see above), the idea is that the order is made by the relevant Secretary of State, and has no force until confirmed by Parliament.

Confirming Bill

The confirming bill must generally be presented to Parliament by 15 May in any year. The bill is referred to the Examiners of Private Bills. These bills are published as public bills, numbered in the HC bill sequence, and sold by TSO. Bills may begin in either House.

When the Examiners have reported that the Standing Orders have been complied with (or that none is applicable) the bill may proceed to second reading. (If they report the Standing Orders have not been complied with, the Standing Orders Committee (see **Factsheet L4**) will adjudicate.) Members may "block" the progress of these bills as with private bills (see **Factsheet L4**). Should this happen, they will be debated three hours before the moment of interruption, as opposed private business.

Committee Stage

Procedure in committee generally follows that in use for private bills (see **Factsheet L4**). The Question put, however, at the end of the case is "That the Order be confirmed" (or confirmed subject to modifications). Petitions must be received within seven days after notice is given of the referral of the bill to the Examiners; and *locus standi* is adjudicated upon by the Court of Referees. The content of the bill itself is not considered until the order itself (which is printed as the schedule to the bill) has been gone through. Amendments can be made provided they are within the scope of the powers set down in the original act.

Remaining stages follow as for private bills. The bill then goes to the Lords, where a similar procedure is followed. When the bill receives Royal Assent it becomes a Local and Personal Act, with a Roman chapter number.

Special Procedure Orders

Statutory Orders (Special Procedure Act) 1945

This Act removed a number of subjects from the remit of the provisional order bill system, by substituting a procedure which means that fewer of the subjects need detailed consideration by or argument before the House: the local proceedings are much more important. The Act applies to a number of fields of legislation under the

Town and Country Planning and Water Acts. Use of the procedure laid down by the 1945 Act is quite common. If the order is sufficiently contested a bill will be introduced that will, on completion of parliamentary stages, confirm the order. However, this is not often the case. There have in fact only been two since 1945, the *Mid-Northamptonshire Water Order Confirmation (Special Procedure) Bill* of 1948-49, and the *Okehampton By-pass (Confirmation of Orders) Bill* 1985-86.

Local Proceedings

These may include the publication of notices, exhibition of plans, consideration of objections and, almost always, a local inquiry.

Parliamentary Process

After the local procedure has been completed, the Minister lays the order before Parliament. It must be accompanied by the Minister's certification of due compliance with the local inquiry procedure or, if no such inquiry has been held, a certificate to that effect. If compulsory purchase or works are involved, copies of relevant maps or plans must be deposited in both Houses.

Petitioning against Orders

Petitions against an order must be directed to either or both Houses within 21 days of the order being laid before Parliament. Petitions may call for changes to the order or object more generally. There is no reason why an objector should not submit two petitions, one for amendment and the other of general objection. The petition must be drawn up in accordance with the rules for petitioning against private bills (see **Factsheet L4**). Copies must be sent to the Minister, to the other House, and to the applicants for the order. These petitions may be objected to by Minister or applicant. The two Chairmen then take the petitions into consideration and, if all is in order, certify the petitions as proper to be received. If petitions are deemed to be improper or are objected to, the Chairmen hold a meeting with the parties involved to discuss the arguments. Counter-petitions may be received when petitions for amendment have been declared proper. The Chairmen also determine *locus standi* (see **Factsheet L4**.)

Petitions

If petitions have been submitted, the Chairmen make a report to both Houses which details whether or not they are proper to be received. Within 21 days of this report, any Member of either House may move to annul the order. If such a motion is carried, the order becomes void. If no such motion has been considered, and valid petitions have been deposited, a committee stage will be required. However, if the petition objected generally to the order, either House may decide that it should not be referred to a committee after all.

The committee that considers all outstanding petitions is formed of three Peers and three Members of Parliament. This joint committee functions largely as a private bill committee. The petitioners and their counsel attempt to prove their case and the applicants for the order (or the Minister) put forward counter-arguments. The evidence taken by joint committees is not published, but typescripts are kept in the Private Bill Offices of both Houses.

The committee then deliberates and reports the order with or without amendment. It

may also report that the order be not approved. The report is made to both Houses and recorded in the Votes and Proceedings and Journal. If reported without amendment, the order comes into force, either straightaway or at a later date specified in it. If amended, the order will come into force as amended unless the Minister decides it should be withdrawn, or that it is inexpedient that the amendments should be made.

The Confirming Bill

However, if the Minister still wishes to go ahead in its original form with an order which has been rejected or amended, he has to present a confirming bill to Parliament. These bills generally proceed straight to report and third reading – there is no second reading or committee stage. If, however, there are outstanding petitions for amendment, the bill goes additionally to the former joint committee. The bills are printed as public bills, in the HC bills series.

As stated above, only two confirming bills have ever been presented, and these became Local and Personal Acts.

Bills of all categories discussed in this **Factsheet** are listed (in the case of order confirmation bills, intended orders also) with dates of debate, in the section of the *Weekly Information Bulletin* called 'Order Confirmation Bills in Progress' .

The three procedures described above are overseen by the Private Bill Office in the House of Commons (020 7219 3250) to whom application for advice may be made. To check the progress of these bills, or to trace acts which originated thus, apply to the House of Commons Information Office (020 7219 4272).

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Factsheet L9

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