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Chairman of Ways and Means, House of Commons  
Senior Deputy Speaker, House of Lords

# Hybrid Bill Review Report



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22/09/2022

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## Introduction

1. In April 2021, the Private Bill Offices of both Houses launched a public consultation into hybrid bill procedure. The consultation took place from 29 April to 23 July 2021 and formed the second stage of a review of hybrid bill procedure, the first stage of which took place in 2016–17.
2. The scope of the review, as set out in the 2016 consultation, was to “consider and make recommendations about possible changes to the procedure and practice of both Houses in relation to hybrid bills so as to make the hybrid bill process simpler and less time-consuming for all those involved, without unfairly curtailing the right of those who are directly and specially affected by such bills to make their case effectively, or the right of the Government to ensure the passage of [its] legislation through Parliament.”
3. The first stage began in 2016 and was completed in 2017, and resulted in amendments to the Private Business Standing Orders (PrBSOs), including changes to:
  - abolish the requirement for petitions against a bill to include a signature;
  - allow the electronic submission of petitions;
  - enable a minimum petitioning period to be set for hybrid bills;
  - clarify the procedure for dealing with late petitions;
  - allow a select committee appointed to consider petitions against a private or hybrid bill to group petitions, and also, in appropriate cases, to consider petitions by way of written submission only; and
  - give Members of Parliament “whose constituencies are directly affected by the works proposed by a bill” the express right to have their petitions considered.

These changes were agreed by the two Houses (in the House of Commons on 7 November 2017 and in the House of Lords on 18 December 2017).

4. The April 2021 consultation included general questions related to whether Parliament could do more to ensure that potential petitioners are able to use the petitioning process effectively and fairly; whether procedures and practices used in other systems (such as planning inquiries) could usefully be applied to the hybrid bill procedure; and whether there could be changes that might promote negotiation between the promoters and petitioners at an earlier stage. Specific procedural questions included:

- whether parties to hybrid bill proceedings should be able to participate in meetings remotely;
- whether the £20 petitioner’s fee should be retained;
- what guidance might assist potential petitioners in understanding the concept of “right to be heard”; and
- whether promoters should be able to propose Additional Provisions in either House;
- and how Parliament can effectively ensure that promoters making undertakings or giving assurances to a hybrid bill select committee fulfil those obligations.

A full list of the consultation questions can be found at Appendix 1.

5. 45 responses were received. Respondents included the Department for Transport on behalf of the Government, High Speed Two Ltd and Transport for London; Members of both Houses; local authorities; Parliamentary Agents and other legal professional bodies; charities and organisations; and former petitioners.
6. This report sets out some of the key points raised in the consultation and what is being done to address them. In some cases, we have decided not to make a change. Some changes that we have decided to make are more straightforward than others: some require changes to Standing Orders but others can be made merely by altering the practice of the Private Bill Offices or of hybrid bill select committees.

## **Petitioners appearing remotely**

7. In both Houses, witnesses to select committees have always been allowed to appear remotely, and that practice is now very common. In the House of Commons, select committees themselves may only meet in hybrid form (i.e. with some members of the Committee appearing remotely) if the House allows it, as it did at the start of the COVID-19 pandemic in 2020. In the House of Lords, the current practice is that select committees may decide for themselves whether to meet in hybrid form. The House of Lords High Speed Rail (West Midlands - Crewe) Bill select committee met fully virtually in summer 2020 and in autumn 2020 decided at short notice to be fully hybrid (i.e. with parties and Members able to take part remotely). In March 2021, the Lords held a fully virtual Opposed Bill Committee on the Highgate Cemetery Bill.

8. In this context, the consultation asked the question, "Should parties to hybrid bill proceedings (whether promoters, petitioners, witnesses, or Members of the hybrid bill select committee) be able to appear at and participate in meetings remotely?" Some respondents were concerned that remote meetings might "make it harder than it already is to convey a petitioner's message to the select committee".<sup>1</sup> Others were concerned about petitioners who may not be "tech-savvy" or who may have an unreliable internet connection, or about the audio quality of the proceedings.<sup>2</sup>
9. Many respondents argued for flexibility for petitioners, especially where there may be exceptional circumstances, including disability.<sup>3</sup> Manchester City Council noted that "a hybrid bill may affect land and constituents many miles away from Westminster (such as HS2 Phase 2b) so it is not appropriate, in terms of time or financial resources, to require face to face hearings at Westminster. [...] We would suggest that people are given a choice of appearing either in person or remotely".<sup>4</sup> HS2 Ltd argued that

petitioners, particularly on Bills that affect an area some distance from Parliament, should be able to present their petitions to a hybrid Select Committee hearing remotely, by means of video-conference. This should be allowed, on the basis of exceptional circumstances, either due to ill health or other constraints on their ability to travel to Parliament in person, such as unreasonable cost, mobility issues or caring responsibilities.

10. The instruction motion for the House of Commons High Speed Rail (Crewe - Manchester) Bill Select Committee makes specific mention of hearing petitioners remotely:

That the Select Committee shall require any hearing in relation to a petition mentioned in paragraph (5) above to take place in person, unless exceptional circumstances apply<sup>5</sup>.

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<sup>1</sup> Compulsory Purchase Association

<sup>2</sup> Country Land and Business Association; Madeley Independent Residents STOP HS2 Action Group.

<sup>3</sup> National Farmers Union, Parliamentary Bar Mess

<sup>4</sup> Manchester City Council

<sup>5</sup> [Votes and Proceedings 20 June 2022](#), item 85

The motion does not specify what constitutes “exceptional circumstances” and therefore it will be for the Committee to determine.

11. There may be occasions where either House does not decide whether or not a select committee may hear petitioners remotely (i.e. it is not mentioned in the instruction motion approved by the House). We have considered the matter of whether hybrid bill select committees already have the power to hear from petitioners remotely and have consulted the House authorities for advice. Select committees have the power to hear from their witnesses remotely, and as hybrid bill select committees fall into the ‘select committee’ category, there is nothing in the Standing Orders to prevent them from similarly doing so. Petitioners are not in precisely the same formal position as witnesses to a select or general committee, but **we see no reason why hybrid bill select committees do not already have the power to choose to hear from petitioners remotely, where the House has not decided otherwise.**

## Guidance

12. Many respondents commented on the guidance available to petitioners, including on guidance related to petitioners’ right to be heard which the consultation asked about specifically. Some responses commented positively on the guidance that is currently available on the Parliament website, as well as guidance made available when a hybrid bill is going through Parliament.
13. Responses to the consultation included some comments that it is difficult to locate guidance<sup>6</sup> and that there is “little, if any, guidance for those affected to use the petitioning process effectively”.<sup>7</sup> Other comments related to the fact that information and guidance about petitioning is only available shortly before the start of the petitioning period, and that petitioners would be better served by earlier provision of information.<sup>8</sup>
14. **We agree that it is essential that Parliament provides clear, accessible guidance well in advance of the start of the petitioning period.** We note that the House of Commons Private Bill Office published guidance on the petitioning process and the right to be heard in early spring 2022, several months before the second reading of the High Speed Rail (Crewe – Manchester) Bill was expected to take place in the House of Commons. The guidance is available

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<sup>6</sup> Compulsory Purchase Association

<sup>7</sup> National Trust

<sup>8</sup> DfT, TfL

on the bill page on the Parliament website and will also be available on the select committee page once it is set up.

15. Responses addressing the guidance on the right to be heard included requests for “examples of situations which do give rise to a right to be heard”<sup>9</sup> and a “checklist’ to facilitate consideration by a petitioner of whether or not they meet the test of being directly and specially affected”.<sup>10</sup> This is not straightforward. It is House officials who produce the existing guidance on petitioners’ right to be heard, and in order for it to be published in advance of the start of the petitioning period it is published before the select committee for a hybrid bill has been appointed. It would therefore not be appropriate for the guidance to include lists of specific situations where petitioners would have the right to be heard because it is the role of the select committee to determine these cases if a petitioner’s right to be heard is challenged by the promoter.
  
16. However, we note that the guidance on the right to be heard produced by the House of Commons Private Bill Office ahead of the petitioning period for the High Speed Rail (Crewe – Manchester) Bill gave a broad overview of what being “directly and specially affected” means, and the process which follows a petitioner’s right to be heard being challenged. The document also sets out further information and resources, including Court of Referees *locus standi* reports (decisions taken by the Court of Referees on right to be heard, previously called “locus standi”, for private bills are binding on any select committee for a hybrid bill).<sup>11</sup> The Private Bill Offices in both Houses are also able to offer general advice to individual petitioners on the right to be heard, although petitioners are urged to remember that it is a matter for the promoter to decide whether to challenge a petitioner’s right to be heard and for the select committees to make a determination.
  
17. We also take this opportunity to comment on the provision of guidance by Parliament and by the promoter to assist petitioners in understanding the petitioning process and the right to be heard. One response to the consultation suggested that Parliament could adopt or utilise HS2’s paper on right to be heard,<sup>12</sup> and the Department for Transport on behalf of the Government offered HS2

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<sup>9</sup> Compulsory Purchase Association

<sup>10</sup> Parliamentary Bar Mess

<sup>11</sup> In the House of Commons, right to be heard challenges for private bills are decided by the Court of Referees; right to be heard challenges for hybrid bills are decided by the select committee on the bill. In the House of Lords, they are decided by the committee on the bill.

<sup>12</sup> Greater Manchester Combined Authority

Ltd's assistance in producing guidance for the next High Speed Rail bill. **We consider it inadvisable, however, to conflate guidance produced by Parliament with that prepared by the promoter of a bill. It is essential that petitioners do not confuse the roles of Parliament and the promoter, and that guidance and advice offered by Parliament are independent of the promoter.**

## Petitioning fee

18. Views on the £20 fee paid by petitioners on the depositing of a petition varied. Many respondents were of the view that the fee should be abolished; some compared the process to other similar processes (for example, planning applications) which required no fee.<sup>13</sup> Some respondents were of the view that the fee deterred vexatious petitions;<sup>14</sup> others held the view that it was too low to deter anyone from a vexatious or frivolous petition.<sup>15</sup> Some respondents were content for the fee to be retained but commented that it should be kept at a low level.<sup>16</sup> The Government considered that "the fee should be adjusted to reflect that it has remained unaltered for over 20 years", and HS2 Ltd's view was that the fee should be reviewed "to better reflect the cost to Parliament of holding hearings and/or to keep pace with inflation".
19. Hybrid bills are often controversial and can generate strong public opposition. It is possible that removing the fee entirely could provide an easy way for opponents of a hybrid bill to disrupt the process by depositing spurious petitions. We acknowledge the argument that the fee deters those who are not genuinely affected but are seeking to petition vexatiously, but that the size of the fee is unlikely to deter someone who is genuinely affected and seeking redress.
20. We recognise the breadth of opinion on this issue. **We do consider that the fee is likely to play a role in deterring vexatious or frivolous petitions but we do not see a reason to increase the fee. We therefore recommend that the fee remains at £20.**

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<sup>13</sup> Greater Manchester Combined Authority; London Borough of Camden; Manchester City Council

<sup>14</sup> HS2 Ltd; Department for Transport on behalf of the Government

<sup>15</sup> Parliamentary Bar Mess

<sup>16</sup> National Farmers Union

## Practice in Committee

21. A number of responses commented on various aspects of practice in select committee. One former petitioner thought that there appeared to be a “cosy relationship” between the Committee and the promoter,<sup>17</sup> and the Country Land and Business Association commented that there is a “perception that the committee have a closer relationship with the promoter” (although it acknowledged that the issue was “difficult to address”).<sup>18</sup> Other responses from former petitioners stressed the importance not only of committees being independent but of being “seen to be obviously so”,<sup>19</sup> with one noting from experience that

It does nothing for the feeling of fairness if, as was my experience, petitioners lined up in the corridor to await access to the [committee room] can hear members of the committee and the promoters team being very convivial.<sup>20</sup>

22. It is important that hybrid bill select committees act, and are seen to act, fairly and impartially to all, and take into consideration the circumstances of petitioners, who are unlikely to have the same level of resource as the promoter. **Hybrid bill select committees should be given guidance from their clerks and from Counsel (Parliamentary lawyers who advise select committees) on good practice in conducting proceedings to ensure impartiality and the appearance of impartiality.**

23. Lord Berkeley made an observation in his response about the need for hybrid bill select committees to be patient with petitioners who are unfamiliar with the process and may be nervous about the formality of speaking to a committee:

The Committee must never give the impression that they are in a hurry; many petitioners do not have legal or presentational training and may irritate the committee by taking too long to make their points. The Committees must allow them the necessary latitude there.<sup>21</sup>

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<sup>17</sup> Ian Campbell

<sup>18</sup> Country Land and Business Association

<sup>19</sup> David Auger

<sup>20</sup> Tom Walsh

<sup>21</sup> Lord Berkeley

24. Others agreed. One former petitioner thought that there was “an impatience shown towards some petitioners whose hesitant and nervous presentations were mistaken for time wasting.”<sup>22</sup> Another person who had previously petitioned felt that they were “not heard fully” and were left “disillusioned with the fairness of the process”.<sup>23</sup> One former petitioner who was asked to cut down her presentation to the Committee felt that it was a “David and Goliath situation” and that her presentation suffered for it.<sup>24</sup>
25. **The Private Bill Offices should ensure that guidance provided to petitioners about the select committee hearings is as clear as possible. Petitioners should be advised that the Committee is dealing with a huge volume of evidence and there is not unlimited time for them to make their case. However, hybrid bill select committees should be given guidance from their clerks about how to make the experience for petitioners easier and less stressful and about how to ensure petitioners are heard as fully as possible.**
26. We note that the Department for Transport on behalf of the Government suggested in its response that hybrid bill select committees could “sit for more days of the week or for more weeks of the year, including when Parliament is not sitting”. It is for any individual Committee to decide its own timetable, including whether it sits in recess. In the House of Commons, this would require the motion creating the select committee to allow it to sit notwithstanding any adjournment of the House. The motion passed by the House of Commons on 20 June 2022 in respect of the High Speed Rail (Crewe - Manchester) Bill included this provision.

## **Incompatibility with the Standing Orders**

27. Many of the Private Business Standing Orders specify dates by which certain actions have to be taken by the promoter. Usually, these concern requirements in relation to the posting and publication of notices and the deposit and delivery of documents. After a petition for a private bill has been deposited in Parliament, the promoter has to prove compliance with these requirements before the Examiners of Petitions for Private Bills. The requirements are set out in PrBSOs 4 to 68 and 83A. The dates specified in the Standing Orders flow from the fact that the PrBSOs require private bills to be deposited in Parliament on or before 27 November. For this reason, plans and

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<sup>22</sup> Ian Campbell

<sup>23</sup> FP and AM Simmons

<sup>24</sup> Sian Froggat

maps, for example, have to be deposited with departments by 20 November and certain notices have to be given during early December.

28. Hybrid bills, such as the High Speed Rail Bills, are Government bills and are introduced into Parliament as public bills. They are therefore not deposited under PrBSOs and are not subject to private bill procedure until they have been declared hybrid by the Examiners. As a result, it is next to impossible for the promoter, whether in respect of a bill or an additional provision to a bill, to comply with the various dates in the PrBSOs. Despite this impossibility, the Examiners are obliged to make a finding of non-compliance (solely as to time) and the bill has to be referred to the Standing Orders Committees of the two Houses to seek dispensation to progress despite this non-compliance.

29. **We recommend that the Standing Orders be amended to disapply the date requirements in respect of hybrid bills.**

## Newspaper notices

30. The PrBSOs place requirements on the promoter of a bill to publish notices in newspapers when an application is intended to be made to bring in a private bill. Compliance with these PrBSOs is inquired into by the Examiners.

31. It is the practice, during an Examination, for a promoter's Parliamentary Agent to prove compliance with the requirements of the PrBSOs relating to the content and publication of notices in newspapers by handing in a hard copy of each newspaper in which the notice has been placed.

32. The Examiners have agreed that compliance with PrBSOs relating to the content and publication of newspaper notices may now be satisfied either:

- by submission of a hard copy of the newspaper in which the notice has been placed, or
- by provision of an electronic voucher ("e-voucher") showing both the content of the notice and its date of publication, accompanied by evidence to demonstrate the authenticity of the e-voucher.

This decision was announced on 14 July 2022 by issuing a Practice Direction to all Parliamentary Agents.<sup>25</sup>

33. Allowing the use of e-vouchers as an alternative form of proof does not change the requirements under the PrBSOs as to the content of newspaper notices or that they must be placed in hard copy newspapers.
34. We recognise that technology has progressed since these PrBSOs were originally agreed and a newspaper may not be as useful a tool as it once was in assisting those affected by a bill scheme to understand exactly how they are affected. We are open minded about modernising and improving the notice given to those potentially affected by hybrid bills, although any change must not have an adverse effect on members of the public being made aware of bills that may affect them. We are therefore considering whether there are more effective alternatives to the current rules on newspaper notices. Any substantive change to the rules will require amendments to the PrBSOs.

### **Longer term changes**

35. There are other changes that could be made to improve hybrid bill procedure, which would need to be considered as part of a separate longer-term project. We therefore propose to consider the extent to which the PrBSOs might be revised and re-drafted using simpler, more modern language. We will also consider whether it might be appropriate to produce a separate set of Standing Orders for hybrid business.

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<sup>25</sup> Sian Froggat

## Appendix 1: Consultation questions

### General questions

1. What should Parliament do to ensure that those who are directly and specially affected by a hybrid bill (that is, potential petitioners) know how to use the petitioning process effectively?
2. Is there an imbalance in the roles and resources of the promoters and the petitioners that creates problems of unfairness and, if so, is there anything that Parliament should do to remedy it?
3. Are there procedures and practices used in other systems for determining planning applications, such as planning inquiries for major construction projects, which could usefully be applied to the hybrid bill procedure when dealing with works bills?
4. Are there procedural, or any other, changes that could be made to promote negotiation between the promoters and petitioners (or potential petitioners) so that agreement might be reached at an earlier stage and in advance of committee hearings?

### Specific procedural questions

5. Should parties to hybrid bill proceedings (whether promoters, petitioners, witnesses, or Members of the hybrid bill select committee) be able to appear at and participate in meetings remotely?
6. Should the £20 petitioner's fee be retained? What are the arguments for and against its retention? If it is retained, what should govern the level of the fee?
7. What further guidance might assist potential petitioners in understanding the concept of "right to be heard"?
8. Should promoters be able to propose Additional Provision in either House? What would be the consequences of allowing Additional Provision in the second House?
9. Where promoters make undertakings to a hybrid bill select committee, or give assurances, how can Parliament most effectively ensure that they fulfil those obligations?

### Other

10. Are there any other changes to hybrid bill procedure and practice that are needed, or would be desirable, in order to promote the overall purpose of the review?