

## **FINANCIAL PRIVILEGE**

*A note by the Clerk of the House and the Clerk of Legislation*

### **KEY POINTS**

- *The Commons has ancient financial primacy (long before the Parliament Act 1911)*
- *If a Bill will involve expenditure, that must be authorised by a Money Resolution, routinely agreed to by the Commons after Second Reading. Taxation must similarly be authorised by a Ways and Means Resolution. Only the Commons can authorise spending and taxation*
- *The “designation” of Lords Amendments (LAs) as having financial implications is an impartial process. The Speaker is not directly involved, and the Government has no say*
- *The main issue is policy difference, which may include, but is by no means limited to, the merits of a financial change. If an LA with financial implications is voted down in the Commons, the reason given to the Lords will be that it infringes financial privilege, whatever the policy difference between the two Houses*
- *Most LAs with financial implications are agreed to (223 out of 266 in the last three years). The Bills and numbers of LAs are on the attached sheet. (There were a total of 1,569 LAs to the 16 Bills listed there.)*
- *Whether the Lords try again is a matter for their interpretation of the convention that they should not send back an amendment that “invites the same response”. It is not a matter for the Commons. If the Lords send back amendments, the Commons will consider them*
- *If the Lords send back an LA for which there is no authorisation by way of a Money Resolution, they are disagreed to automatically because there is no money cover (sometimes known as “unwaivable privilege”. This is unusual (two occasions in the last four years)*
- *“Money Bills” are a different issue entirely. They are defined in the Parliament Acts; there are four or five each Session (mostly the Consolidated Fund Bills which authorise Government spending); they are certified by the Speaker after they have been passed by the Commons; and the Government has no say in what is or is not a Money Bill.*

### **MORE DETAIL**

“Financial privilege” is shorthand for the primacy of the House of Commons in spending and taxation. It long predates the Parliament Act 1911; a Resolution of 1671 says that the Lords should not alter the rate of a tax, and a Resolution of 1678 restates the “undoubted and sole right of the Commons” to deal with all bills of “aids and supplies” (that is, taxation (aids) and government spending (supplies), these days meaning such things as the Consolidated Fund Bill, which authorises government spending).

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### ***Financial authorisation***

If a Bill will involve expenditure, it needs a *Money Resolution* to authorise that expenditure under the Bill. If a Bill involves taxation (which can include a variety of charges) then it needs a *Ways and Means Resolution* to authorise “charges on the people”. Only the House of Commons can authorise spending and taxation.

### ***Lords Amendments (LAs): designation***

When LAs to a Commons Bill are received, they are examined by the Clerk of Legislation, a senior (and entirely impartial) officer of the House. She assesses whether each amendment has a financial effect. This is normally very straightforward – it’s fairly obvious that an amendment, if made, would affect expenditure under the Bill, or would involve the levying of a charge. This assessment is done under the authority of the Speaker – cases of doubt would be referred to him – but he is not directly involved.

The Government of the day has no role in deciding whether an LA engages financial privilege.

### ***After designation: the next steps***

When the House is about to consider LAs, the Speaker (or a Deputy) says “I must inform the House that financial privilege is involved in amendments numbers x, y and z. If the House agrees to those amendments, I will ensure that the necessary entry is made in the Journal”. That means simply that if those LAs are agreed to, the legal record of proceedings will say “the Commons being willing to waive their privileges”.

### ***Disagreeing to a Lords Amendment***

It’s important to remember that designation simply identifies which LAs have a financial effect. Whether the Government wishes the House to agree to them or not is a matter of policy, and no different from the “ping-pong” process on any Bill. But if the Government of the day uses its majority to get the House to disagree to an LA, then the Reason (see below) given to the Lords will be the financial privilege Reason.

### ***Waiving of privilege***

Even if an LA involves spending or charging, and so engages financial privilege, the Commons can accept the amendment (and so waive its privileges). 35 Lords amendments to the Welfare Reform Bill which were designated as engaging financial privilege were accepted by the Commons.

The Commons waives its privilege far more often than not. For example, 115 LAs to the Localism Bill, which were considered by the Commons on 27 November 2011, were designated as involving financial privilege. The House waived its privilege on all of them.<sup>1</sup>

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<sup>1</sup> The Commons also waived its privilege in relation to Lords amendments to the Education Bill, 14 November 2011, Parliamentary Voting System and Constituencies Bill, 15 February 2011, Superannuation Bill, 14 December 2010, in the

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In the last three years, sixteen Bills have come back from the Lords with amendments which involved privilege. On eight, privilege was waived on all LAs. On one, the Commons did not (and could not, as explained below). On the remaining seven, the Commons accepted most LAs with financial implications but disagreed to 43. The details are on the attached sheet.

### ***“Unwaivable privilege”***

If the Speaker is satisfied that an LA imposes a charge upon the public revenue and the charge has not been authorised by a Commons Money Resolution he must under SO No 78 (3) declare that the amendment is deemed to have been disagreed to. That is unusual. There were two examples in the last three years: 30 March 2010 (Personal Care at Home Bill) and 14 December 2010 (Identity Documents Bill). If the Government wishes to allow the House an opportunity to consider and agree to such an LA, it can ask the House to agree to a Money Resolution to provide the necessary authorisation.

### ***The Reasons Committee***

If any LAs are disagreed to *and the Commons does not make an alternative proposition*, a Reasons Committee (usually the subject front-benchers and a whip on each side) is immediately appointed to agree on the reasons to be given to the Lords for disagreeing to each of those amendments. If an amendment infringes privilege, that is the only reason that will be given. This is because giving another reason suggests either that the Commons haven't noticed the financial implications, or that they are somehow not attaching importance to their financial primacy.

### ***Further information***

- Erskine May, 24<sup>th</sup> edition, deals with LAs and financial privilege on pages 792 to 794
- The October 2006 Report of the Joint Committee on Conventions (HL Paper 265-I and HC 1212-I of 2005-06) deals with financial privilege in paragraphs 235 to 252
- The Lords Committee on the Constitution reported on *Money Bills and Commons Financial Privilege* in February 2011 (10<sup>th</sup> Report of 2010-11, HL Paper 97)
- The Clerk of Legislation and her colleagues in the Public Bill Office can give further guidance.