

Research and Library Services



Northern Ireland Assembly

Research Paper 103/08

15 February 2008

PROCEDURES GOVERNING PRIVATE LEGISLATION IN OTHER LEGISLATURES

Research and Library Services

This paper is intended to facilitate Members in their understanding and consideration of procedures governing Private Legislation. It outlines procedures on Private Legislation in other legislatures and highlights any potential issues for consideration.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

Contents

1. INTRODUCTION.....	1
2. UK PARLIAMENT	1
2.1 Petitions for Private Bill.....	1
2.2 Compliance with Standing Orders	2
2.3 Presentation of a Bill.....	2
2.4 Passage of Private Bill.....	2
3. ROI.....	5
3.1 Promotion of Bill	5
3.2 Examination of Bill	6
3.3 Passage of Bill.....	6
4. SCOTLAND.....	7
4.1 Preparations for Introduction of a Private Bill	7
4.2 Lodging of Objections.....	8
4.3 Private Bill Committee	8
4.4 Stages of a Bill.....	8
5. PROCEDURES GOVERNING PRIVATE LEGISLATION IN THE PARLIAMENT OF CANADA	9
6. ISSUES FOR CONSIDERATION	10
ANNEX A Procedures in UK Parliament governing Private Bills	13
ANNEX B Procedures in ROI governing Private Bills	14
ANNEX C Procedures in Scottish Parliament governing Private Bills	15

1. INTRODUCTION

Private legislation is widely recognised as a complex area however it should not be confused with private members' bills which are public bills. According to Erskine May private legislation is,¹

A special kind of legislation for conferring particular powers or benefits on any persons or body of persons-including individuals, local authorities, companies, or corporation-in excess of or in conflict with the general law. As such, it is to be distinguished from public general legislation, which is applicable to the general community and is treated differently in Parliament.

This paper outlines the procedures governing private legislation in the UK Parliament, the Dail Éireann and the Seanad Éireann, the Scottish Parliament and the Parliament in Canada. Each section outlines the exact processes a private bill would pass through in the respective Legislature. Finally, from these procedures potential issues for consideration will be detailed to facilitate Members with their consideration on this matter.

2. UK PARLIAMENT

All private bills in the UK Parliament are founded on a petition in the House of Commons with half the bills being allotted to the House of Commons and half to the House of Lords. The subsequent proceedings and standing orders upon private bills in the two Houses are therefore similar in nature.²

The procedure involved when passing a private bill in the UK Parliament is summarised in the diagram provided at Annex A. It follows a chronological order of events in preparing for a typical private bill. These are outlined below.

- 2.1 Petitions for Private Bill
- 2.2 Compliance with Standing Orders
- 2.3 Presentation of a Bill
- 2.4 Passage of Private Bill

2.1 Petitions for Private Bill

Standing Orders 38 and 39 of the House of Commons outline the procedures for deposits of bills. For every private bill, in whichever House it is eventually presented, a petition signed by the parties who are promoters of the bill, must be deposited in the Private Bill Office of the House of Commons before 27 November in each year, with a copy of the proposed bill annexed. A printed copy of every such bill must also be deposited on or before the same date in the Office of the Clerk of the Parliaments in the House of Lords.³

¹McKay, W.R. 23rd Ed. *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. Butterworths. London: 2004 Pg 965

²McKay, W.R. 23rd Ed. *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. Butterworths. London: 2004 Pg 1053

³House of Commons Fact sheet on Private Bills, February 2005 Pg 2

The drafting of private bills and their conduct through the two Houses is a complex process, and the promoters entrust it to a firm of parliamentary agents, who are the legal representatives of the promoters for the purpose of dealing with Parliament. There are several firms who have satisfied the Speaker with their knowledge of private bill procedure and who alone may accept fees for taking a bill through Parliament.⁴

Copies of the bill must to be deposited with various interested authorities and made available to Members and Officers of the House. Members of the public may purchase copies of bills from parliamentary agents. In cases where public works are to be constructed for example, railways, roads or bridges Government Departments must also be notified.⁵

2.2 Compliance with Standing Orders

There are a number of requirements which must be complied with before a private bill can be presented and these are laid out in the Standing Orders for each House. The Officials who ensure the requirements are adhered to are the Examiners, the Clerks of Bills for each House. The requirements to be complied with before the presentation of the bill are arranged in the following order:⁶

- Notices by advertisement;
- Notices to owners, lessees, and occupiers;
- Documents required to be deposited and the times and places of deposit; and
- Plans, books of reference, sections and cross-sections.

Compliance with the standing orders must be proven with respect to every private bill.⁷

2.3 Presentation of a Bill

Standing Order 163⁸ of the House of Commons outlines the procedures involved in the presentation of a bill. Where, in respect of a petition for a private bill, the Examiner has reported that the standing orders have been complied with, the bill itself must be presented to the House on 21 January. A private bill is presented to the House by being deposited in the Private Bill Office. It must be laid upon the Table of the House by the clerk in that office on the next sitting day.⁹

2.4 Passage of Private Bill

The passage of private bills in the UK Parliament is subjected to a number of stages which are outlined below.

<http://www.parliament.uk/documents/upload/L04.pdf>

⁴ Ibid, Pg 2

⁵ Ibid, Pg 2

⁶ McKay, W.R. 23rd Ed. *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. Butterworths. London: 2004 Pg 982

⁷ Ibid, Pg 982

⁸ Standing Order 163. House of Commons Standing Orders – Private Business 2005
<http://www.publications.parliament.uk/pa/cm200506/cmstords/441/pvtbs25.htm>

⁹ McKay, W.R. 23rd Ed. *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. Butterworths. London: 2004, Pg 1014

- (i) First and Second Reading
- (ii) Committee Stage
- (iii) Consideration and Third Reading
- (iv) Passing to the House of Lords

- (i) First and Second Reading

The Chairman of the Ways and Means in the Commons and the Lord Chairman of Committees in the Lords decide which bills start in the Commons and which in the Lords.¹⁰

Standing Order 166 of the House of Commons describes how a private bill is deemed to have been read the first time by being 'laid on the Table of the House'. It is then recorded as having been read the first time and ordered to be read a second time. Standing Order 170 states there must not be fewer than four days between the first and second reading of a private bill.¹¹

The second reading of a private bill takes the form of a debate. Since a private bill is founded upon allegations of fact which have not yet been proved, in agreeing to its second reading the House affirms the principle of the bill conditionally. If the second reading is agreed to without division and the Examiners are content all Standing Orders have been adhered to up until this point, a private bill stands referred under Standing Order 109 to the Committee of Selection.¹²

A bill may be referred to the Examiners and may not be allowed to proceed until compliance with standing orders has occurred or the Standing Orders Committee has resolved that such requirements are no longer needed.¹³

The next process in which a private bill may pass through is determined by whether or not a petition¹⁴ has been lodged against the bill. Any individual or group of individuals or organisation directly affected by the provisions of a private bill may petition against it.

As a private bill starts in one House and then passes through the other House, a petitioner may lodge a petition in either House or both. However each House has a separate format for petitioning therefore petitions should be addressed to the appropriate House. A petition cannot be deposited until the bill has been formally presented to the House. Petitions against bills starting in the Commons should be lodged on or before the 30 January, 10 days after the first reading of the bill on the 21 January. A £20 fee is charged to the petitioners on the presentation of a petition against a bill.¹⁵

- (ii) Committee Stage

At this point the bill is either committed to the Unopposed Bill Committee or the Opposed Bill Committee. If there are no petitions against a bill it is referred to an

¹⁰ House of Commons Fact sheet on Private Bills, February 2005 Pg 4

<http://www.parliament.uk/documents/upload/L04.pdf>

¹¹ Standing Order 170. House of Commons Standing Orders – Private Business 2005

<http://www.publications.parliament.uk/pa/cm200506/cmstords/441/pvtbs25.htm#a192>

¹² McKay, W.R. 23rd Ed. *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. Butterworths. London: 2004, 1023

¹³ Ibid, Pg 1020

¹⁴ A petition is a summary of objections to a private bill. It is a request to the House of Commons for petitioners to be allowed to argue their case.

¹⁵ Guidance on how to Petition against a Private Bill in the House of Commons, Pg 4

<http://www.parliament.uk/documents/upload/CommonsPetitioningKit.pdf>

unopposed bill committee consisting of 5 members. These members are the Chairman or one of the Deputy Chairmen of Ways and Means and 4 members from a panel nominated by the Committee of Selection at the beginning of every session. Standing Order 132 governs the constitution of the committee on unopposed bills.¹⁶

Proceedings in the committee on unopposed bills are briefer and less formal than those of a committee on opposed bills. However because there are no opponents to the bill this committee has capacity to ensure, in its consideration of the provisions of the bill, that the interests of the public are properly safeguarded and that the bill conforms with the standing orders of the House.¹⁷

As was mentioned earlier, the bill may be committed to the Opposed Bill Committee however this will only occur if there has been a petition presented against the bill in accordance with Standing Order 171A. Committees on opposed bills consist of 4 impartial Members. One of the first proceedings of this committee would be to call upon all parties involved with the bill to give evidence. For example, agents in support of a petition against a bill may appear before the committee to present their arguments.¹⁸

The traditional procedure adopted by a private bill committee, when the principle of the bill was opposed by petitioners, was to consider first the preamble of the bill and subsequently go through the individual clauses. Recently however many committees have followed a more flexible procedure allowing them to deal first with the points contested by the petitioners, which may relate partly to the preamble and partly to individual clauses and to take decisions on such matters before passing onto the unopposed clauses.¹⁹

In either case, whether the bill has been committed to an unopposed bill committee or an opposed bill committee, the committee will sit in a semi-judicial capacity. The function of the committee will be to decide whether and in what form the bill should proceed and to consider whether the case for having a bill has been made. The case will either be proved or not proved.

If the case has not been proved this is tantamount to rejection of the whole bill. If the case has been proved, the committee states that the declared purpose of the bill has been established as proper. It will then consider whether any amendment is necessary, for example if it appears that the promoters have asked for excessive powers the committee may look to limit the scope of the bill.²⁰

(iii) Consideration and Third Reading

After the committee stage the bill is reprinted if it has been amended, and is put down again "after prayers" at the beginning of the sitting. If a bill has not been amended, it is ordered to be read the third time. The third reading will normally follow a few days later.²¹

¹⁶ House of Commons Fact sheet on Private Bills, February 2005 Pg 4

<http://www.parliament.uk/documents/upload/L04.pdf>

¹⁷ McKay, W.R. 23rd Ed. *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. Butterworths. London: 2004 Pg 1032

¹⁸ *Ibid*, 1034

¹⁹ *Id*

²⁰ *Id*

²¹ House of Commons Fact sheet on Private Bills, February 2005 Pg 5

<http://www.parliament.uk/documents/upload/L04.pdf>

Any amendments made by the House on the consideration of a bill, or verbal amendments on the third reading, are entered by the clerk in the Private Bill Office upon the House copy of the bill. When this stage has been completed a private bill is sent to the House of Lords after being endorsed by the Clerk of the House.²²

With private bills, it is normal for any that have not been completed before the end of the session to be “suspended”. If the promoters apply, the House may decide to permit a bill to proceed in the next session.²³

(iv) Passing to the House of Lords

The bill then goes to the Lords, where it goes through much the same process. If the Lords amend the bill the Commons must consider their amendments. The bill is then ready to receive the Royal Assent. Proceedings on Royal Assent to private Acts are identical with those for public and general Acts.²⁴

3. ROI

The Standing Orders of the Dail and Seanad governing Private Business (1939) state,²⁵

Every bill promoted for the particular interest or benefit of any person or locality as distinguished from a measure of public policy shall be treated as a private bill.

The procedures involved when passing a private bill in the Dail or Seanad follow a chronological order of events which are broadly categorised below (Also see Annex B).

- Promotion of Bill
- Examination of Bill
- Passage of Bill

3.1 Promotion of Bill

In the Oireachtas Éireann, proceedings begin with the promotion of a private bill. A notice is published in a number of local newspapers and any documents relating to the bill, for example plans, references or maps are deposited in such places outlined in Standing Order 17. Copies of the bill should then be deposited in the Private Bill Office.²⁶

²² McKay, W.R. 23rd Ed. *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. Butterworths. London: 2004 Pg 1047

²³ House of Commons Fact sheet on Private Bills, February 2005 Pg 6
<http://www.parliament.uk/documents/upload/L04.pdf>

²⁴ McKay, W.R. 23rd Ed. *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. Butterworths. London: 2004, Pg 1067

²⁵ Standing Orders of the Dail and Seanad governing Private Business 1939

²⁶ Information on Private Bill Procedure in the Oireachtas Éireann gained by correspondence with

3.2 Examination of Bill

Examiners will then scrutinise the proposed private bill along with the relevant documents to ensure they comply with standing orders. If the Examiner has reported non-compliance with the standing orders, the report will be referred to the Joint Committee on Standing Orders. If the Examiner has reported compliance to both Houses, the bill can be laid upon the Table of the Seanad.²⁷

3.3 Passage of Bill

The passage of private bills in the Oireachtas Éireann is subjected to a number of stages which are outlined below.

- (i) First & Second Stage - First and Second Reading
- (ii) Third Stage - Committee
- (iii) Fourth Stage - Report
- (iv) Fifth Stage

- (i) First and Second Reading

Once the bill is laid upon the Table of the Seanad it is deemed to be read the First Time. The Second Stage of the bill takes the form of a debate which will determine if the bill proceeds any further. The Dail's concurrence on the motion is then requested.²⁸

Petitions against a private bill can be deposited in the Private Bill Office no later than two weeks after the bill has passed the Second Stage in the Seanad.²⁹

- (ii) Third Stage

Once the Dail has concurred with the motion, the Seanad will refer the bill to the Joint Committee specifically established to consider the bill. The purpose of this Committee is to consider the bill, calling on promoters or objectors of the bill to give evidence before them. After the Committee has considered all the evidence, it then prepares a report on the proposed bill.³⁰

- (iii) Fourth Stage

Once the Committee has completed their report it is laid upon the Table of both Houses. This is to enable a Member if they so wish, to put down any amendments to the bill. At this stage the Speaker in the Seanad may rule that such amendments be considered by the former Joint Committee on the bill. If this occurs the Committee will consider any amendments and then report back to both Houses.³¹

- (iv) Fifth Stage

No amendment shall be made in the Fifth Stage so once the bill has passed this stage in the Seanad, it is sent to the Dail. At this point the Fourth and Fifth Stage will be taken as the earlier Stages will have been deemed to have been passed. If the Dail amends the bill in any way, it will be passed back to the Seanad.³²

When the bill has finally been passed by both Houses it will be printed ready for the President's Signature, then translated into Irish or English as the case may be.

²⁷ Ibid, Pg 5

²⁸ Ibid, Pg 6

²⁹ Ibid

³⁰ Ibid, Pg 8

³¹ Ibid, Pg 11

³² Ibid, Pg 12

4. SCOTLAND

The Rules that provide the procedural framework for the passage of private bills in the Scottish Parliament are set out in chapter 9A of the Standing Orders. A private bill according to Rule 9A.1.1 of the Standing Orders is,³³

A Bill introduced for the purpose of obtaining for an individual person, body corporate or unincorporated association of persons (“the promoter”) particular powers or benefits in excess of or in conflict with the general law, and includes a bill relating to the estate, property, status or style, or otherwise relating to the personal affairs, of the promoter.

A Private Bill to which this paragraph applies is a Private Bill which seeks to authorise the construction or alteration of such classes of works as may be determined by the Presiding Officer or a Private Bill which seeks to authorise the compulsory acquisition or use of any land or buildings.

Private bills are different to public bills in that they involve measures sought in the private interests of the promoter and to which others may object also in a private capacity. The role of the Parliament remains to legislate but, because of the nature of the issues in question it is also to decide between competing private interests. Therefore the procedures that have been put in place regarding private bills are both parliamentary and quasi-judicial in character.³⁴

The procedures involved when passing a private bill in the Scottish Parliament can be seen in the diagram provided at Annex C. It follows a chronological order of events in preparing for a typical bill being introduced to the passing of the bill itself. The chronological order is:

- Preparations for Introduction of a Private Bill
- Lodging of Objections
- Private Bill Committee
- Stages of a Bill

4.1 Preparations for Introduction of a Private Bill

The procedures prior to a private bill being lodged for introduction include the arrangements for notification and advertisement, as well as the requirements in relation to accompanying documents to the bill. The purpose of this is to indicate the expectations of a Private Bill Committee and also to minimise the delay of a Bill passage.³⁵

The procedures involved in the preparation for the introduction of a private bill all lead up to the actual introduction of the bill itself. The bill is introduced by being lodged with the Clerk and must be signed by, or on behalf of the promoter. The signed bill should therefore be lodged in hard copy either in person by the promoter or by post. At the time the bill is introduced, the promoter must also pay whatever fee for

³³ Rule 9A.1.1. Standing Orders of the Scottish Parliament, 2007
<http://www.scottish.parliament.uk/business/so/sto-4.htm#9a>

³⁴ The Scottish Parliaments Guidance on Private Bills, Para 1.2
http://www.scottish.parliament.uk/business/bills/billguidance/gprb-1.htm#1_6

³⁵ Ibid, Para 2.1

introduction of the bill has been determined by the Scottish Parliament Corporate Body (SPCB).³⁶

If the private bill relates to charitable, religious, educational, literary or scientific purposes whereby no profit or advantage is derived, or is promoted by a person other than a local authority, who appear unlikely to derive substantial personal or corporate gain a fee of £1250 will be charged. Any other bill which doesn't fall within the areas mentioned will be charged a fee of £5000.³⁷

4.2 Lodging of Objections

Under the Standing Orders of the Scottish Parliament, any individual or group of individuals have the right to object. Rule 9A.6.1 states:³⁸

An individual person who, or a body corporate or unincorporated association of persons which, considers that his, her or its interests would be adversely affected by a Private Bill introduced in the Parliament (an "objector") may lodge an objection to the Private Bill during the objection period.

Under these Standing Orders "the objection period" is a period of 60 days following the bill being introduced. The Standing Orders relating to the lodging of an objection also explain in detail the admissibility of objections, the means by which an objector can lodge an objection and also the lodging fee.³⁹

4.3 Private Bill Committee

Within the 60 day objection period, formal steps are taken to establish a Private Bill Committee. Like other committees of the Scottish Parliament, a Private Bill Committee is established by a resolution of the Parliament. If there are two or more private bills in progress at the same time, it is expected that separate committees will be established for each. However there may be occasions when it is appropriate to establish a single committee to deal with two or more closely related private bills introduced at around the same time.⁴⁰

The Standing Orders of the Scottish Parliament relating to a Private Bill Committee discuss in detail the establishment, remit, duration and membership of such a committee. There are various constraints discussed regarding membership, for example a Member of the Scottish Parliament (MSP) may not be appointed to a committee if they live within an area in which works are proposed to be authorised by, or under the bill. Quorum and attendance at meetings and clerks to the committee are also discussed in detail.⁴¹

4.4 Stages of a Bill

Private bills in the Scottish Parliament are subjected to a three stage process which are:

³⁶ Ibid, Para 2.56

³⁷ Ibid

³⁸ Rule 9A.6.1. Standing Orders of the Scottish Parliament, 2007

<http://www.scottish.parliament.uk/business/so/sto-4.htm#9a>

³⁹ Ibid, Rule 9A.6.2

⁴⁰ The Scottish Parliament's Guidance on Private Bills, Para 4.1

http://www.scottish.parliament.uk/business/bills/billguidance/gprb-1.htm#P499_43157

⁴¹ Ibid, Para 4.7

- (i) Preliminary Stage
- (ii) Consideration Stage
- (iii) Final Stage.

(i) Preliminary Stage

This stage begins once the bill has been printed and a Private Bill Committee established. The committee's role is to produce a report on whether to recommend to the Parliament that the general principles of the bill should be agreed to and the bill should proceed as a private bill. After the Preliminary Stage Report has been published, the Parliamentary Bureau will recommend a time in the Parliament's Business Programme for a Preliminary Stage debate.

The Preliminary Stage debate takes place on a motion, reflecting the recommendations of the report. If a motion is agreed to by the Parliament the bill proceeds to Consideration Stage, if such a motion is not agreed to, the bill falls.⁴²

(ii) Consideration Stage

If the bill is approved by Parliament at the Preliminary Stage debate it will then proceed on to Consideration Stage. The overall purpose of Consideration Stage is to consider the detail of the bill. This stage has two distinct phases, the first involves the committee meeting in a quasi-judicial capacity to hear evidence on the bill and on objections to it.⁴³

The second phase involves the committee meeting in a legislative capacity to consider and dispose of any amendments. If any amendment is agreed to, the bill must be re-printed in the amended form. There must be an interval of at least 5 sitting days between each phase of the Consideration Stage.⁴⁴

(iii) Final Stage

Final Stage takes place at a meeting of the Parliament. If the bill has been amended at Consideration Stage, there must be 9 whole sitting days between the last day at that Stage and the day on which Final Stage takes place. Amendments for Final Stage may be lodged as soon as the Consideration Stage is completed. After proceedings on the amendments at the Final Stage are concluded, the Parliament must decide whether to pass the bill.⁴⁵

The Convenor of the Private Bill Committee moves the motion and a general debate on the bill may take place. If there is a division on the motion to pass the bill, the result is only valid if at least a quarter of MSPs vote. If the majority votes against the bill, or the result is invalid, the bill falls. A bill once passed, may be submitted for Royal Assent after the expiry of a 4 week period in which the bill is subject to legal challenge. The Presiding Officer may then submit the bill for Royal Assent.⁴⁶

5. PROCEDURES GOVERNING PRIVATE LEGISLATION IN THE PARLIAMENT OF CANADA

Procedures governing private legislation in the Parliament of Canada are based on the Westminster model whereby they must have three separate readings and be

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid, Para 5.71

given a detailed study by a committee. In the Canadian Parliament, private bills can originate in either the House of Commons or the Senate. Private bills are subject to special rules in both Houses of Parliament and they must meet certain parliamentary requirements that distinguish them procedurally from all other types of bills.⁴⁷

A petition must be filed with the Clerk of Petitions who agrees that it conforms to the Standing Orders of the House of Commons and the practices of the House. One such requirement is that notice of the bill must be published in the Canada Gazette.⁴⁸

Once the petition for a private bill has been received an Official of the House acting as the Examiner of Petitions for Private Bills, examines it to ensure that the requirements have been met regarding notice and the number of times it has been published in the Canada Gazette. If the petition has not met certain requirements, it is sent to the Standing Committee on Procedure and House Affairs for further examination before being put before the House.⁴⁹

Following first reading, it is ordered for second reading and is considered during Private Members' Business followed by passage by the Senate. If the Senate has requested any amendments these must pass through the House of Commons before being passed for Royal Assent.⁵⁰

Four fundamental principles underlie and define private bill procedure in the Canadian Parliament which are set out in the Standing Orders.⁵¹ These are:

- A private bill should only be passed at the request of the individual/s who are to benefit from the legislation.
- Relevant information regarding a private bill should be made available to all interested parties.
- All persons or bodies affected by a private bill should be heard (during committee hearings) and the need for the bill demonstrated.
- The financial burden of considering a bill for the benefit of private interests should not be borne solely by the public treasury.

6. ISSUES FOR CONSIDERATION

There are a number of issues which could potentially be considered when reviewing the procedures governing private bills in other legislatures, some of which are outlined below.

- The total cost of processing a private bill may need to be considered and to whom this responsibility will fall to. Within the area of cost the issue of fees may also need to be addressed. For example, should fees be payable by promoters, objectors or both and if so at what level should fees be set? Also

⁴⁷ Marleau, R. & Montpetit, C. *House of Commons Procedure and Practice*. Cheneliere McGraw-Hill, Canada 2000

<http://www.parl.gc.ca/MarleauMontpetit/DocumentViewer.aspx?DocId=1001&Sec=Ch23&Seq=1&Lang=E>

⁴⁸ The Canada Gazette is a periodical publication of the Government.

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Chapter XV Standing Orders of the House of Commons of the Canadian Parliament 2005
http://www.parl.gc.ca/Sites/ASOII/19_ASOII_Chap15-e.html#TOC_048

should Parliament bear the costs for production of a private bill and the accompanying documents or should the promoter be billed for these costs?

Since promoters of a private bill are making an attempt to change the law privately for their own interests, it could be argued they should be required to pay a fee relating to the cost of processing a private bill. The Scottish Consumer Council highlighted in their evidence on private legislation submitted to the Scottish Procedures Committee, such a system may provide an incentive for promoters to try to meet objections by negotiation thereby avoiding a lengthy hearing.⁵²

If a fee for lodging an objection to a private bill was established this may deter certain individuals from objecting to a bill. However, establishing such a fee may also be viewed as discriminatory. The requirement to pay a fee for an objection may be viewed as infringement of the human rights of potential objectors, who have a right to a fair hearing in the determination of their civil rights under the Human Rights Act 1998.⁵³ It may also be argued charging no fee for objecting to a bill may encourage more objectors to voice their concerns which may have an adverse affect on the length and cost of processing a bill.

- Another issue which may be considered in more detail is the length of time available for persons to lodge objections. According to the submission to the Procedures Committee from the Clerk of Bills in the House of Commons it should be possible for individuals or organisations to register objections with the Assembly as soon as the promoters have fulfilled their obligation to publicise the provisions of the bill. According to the Clerk of Bills setting a cut-off date provides a balance between the rights of both the objectors and promoters of a bill.⁵⁴
- Consideration may be given to how a proposed bill should be examined to establish if it continues through the Assembly as a private bill. For example, a single Examiner may be appointed to carry out this role as is the situation in the Dail or a committee may be established as is the case in the Scottish Parliament, so the responsibility does not rest with one individual but rather a group of individuals.
- The idea of a pre-introduction consultation by a promoter of a private bill may warrant further consideration. A pre-introduction consultation would involve the promoter of a private bill carrying out an initial consultation with a number of mandatory consultees before the introduction of the bill. As is the case in Scotland, a private bill that seeks to authorise the construction or alteration of works specified by the Presiding Officer may not be introduced unless the promoter has consulted the mandatory consultees on the matters specified. This required the consultation to be taken as early as possible and at least two months prior to the proposed date of the bill's introduction.⁵⁵

⁵²Procedures Committee Report on Private Legislation in the Scottish Parliament, 2000
<http://www.scottish.parliament.uk/business/committees/historic/procedures/reports-00/prr00-02-01.htm>

⁵³ Article 6, Human Rights Act 1998
http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_3#sch1

⁵⁴ Information gained from the written submission of the Clerk of Bills in the House of Commons

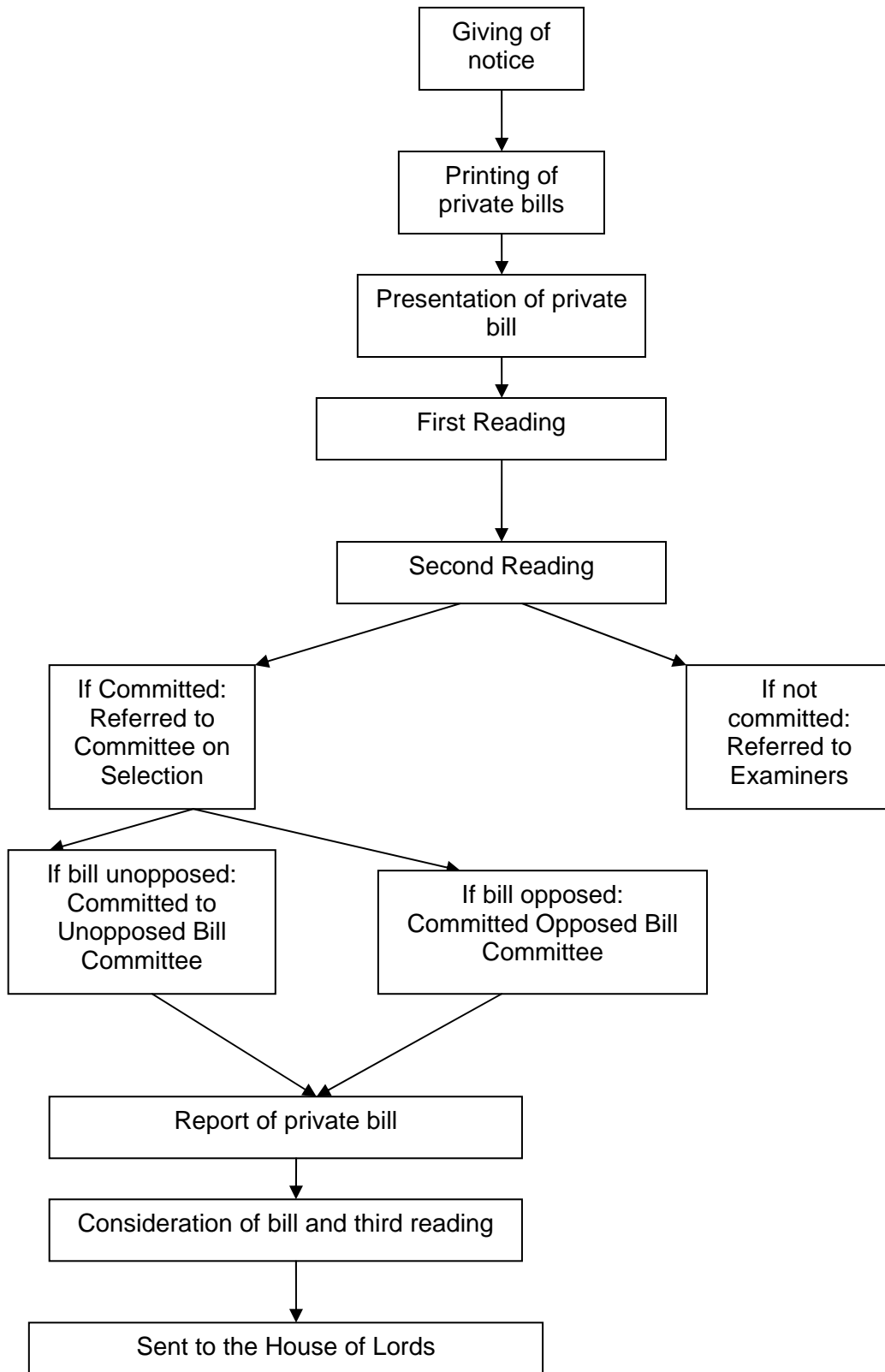
⁵⁵ The Scottish Parliament's Guidance on Private Bills, Para 2.3
http://www.scottish.parliament.uk/business/bills/billguidance/gprb-1.htm#P499_43157

- Further consideration on the issue of ‘equality of arms’ may be given when considering the procedures of private bills. In other legislatures it is practice for the promoter and the objector, if they so wish to employ legal Counsel to represent them. However this could prove difficult for an objector on a lower income. Would it be possible to allow an objector in such circumstances the chance to be represented by legal Counsel and having this funded by the promoter of the bill?

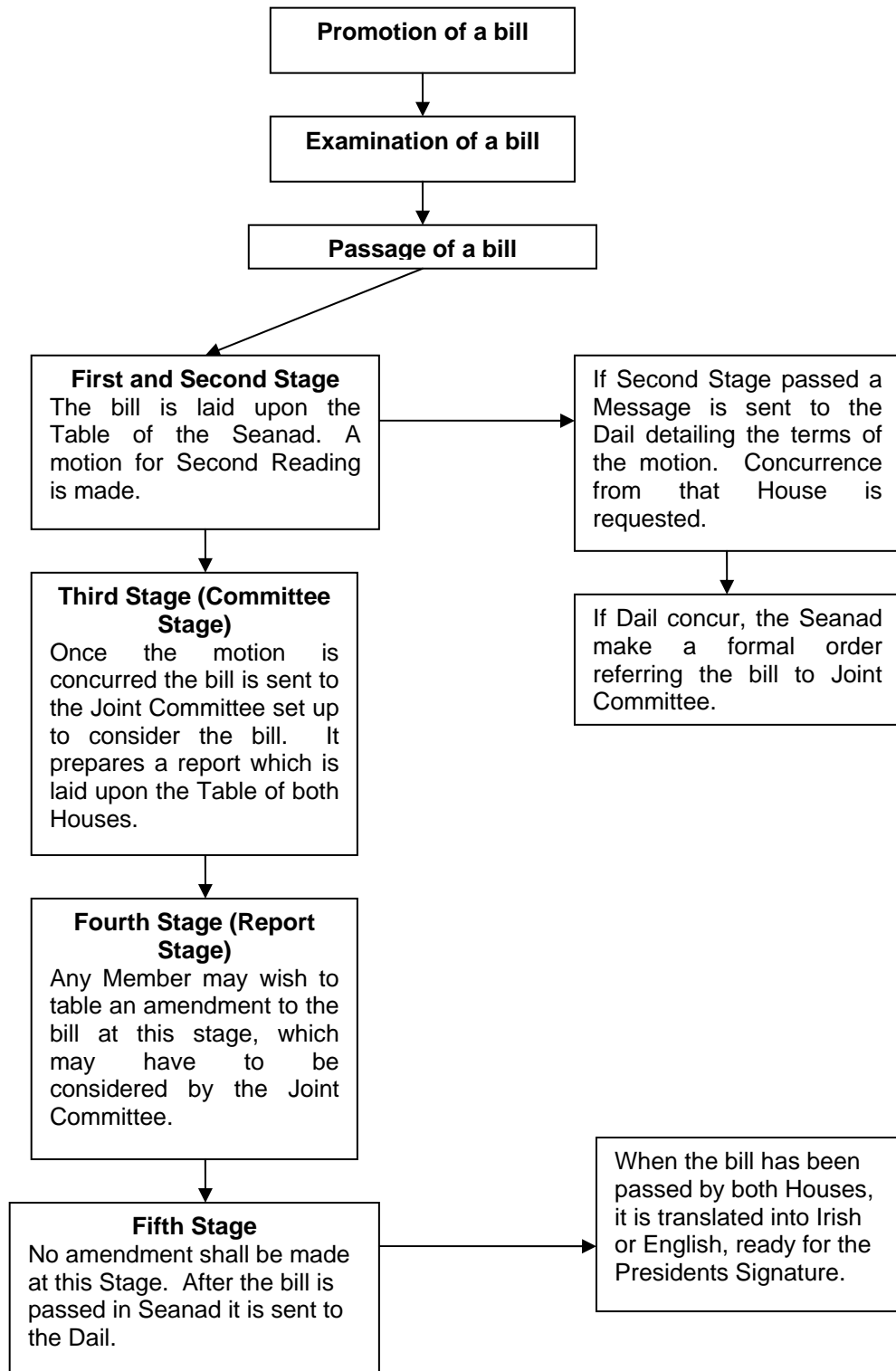
In the Scottish Parliament during the cross examination of a bill at committee stage, the objector and/or the promoter are invited to give evidence. However it is a matter for the promoter and the objector to decide whether or not to employ legal representation to appear for them but there is no obligation to do so. It is expected however that each party that does choose this form of representation will bear the cost of doing so.

- Another issue which may be considered in more detail is the issue of the translation of the private bill into another language. If the Assembly decides to translate the bill who would bear the cost of work?

ANNEX A Procedures in UK Parliament governing Private Bills



ANNEX B Procedures in ROI governing Private Bills



ANNEX C Procedures in Scottish Parliament governing Private Bills

