



The Scottish Parliament  
Pàrlamaid na h-Alba

# Guidance on Hybrid Bills

Stiùireadh air  
Bilean  
Measgaichte



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## Contents

### Foreword

### Part 1: Hybrid Bills

- Definition of a Hybrid Bill
- The Scottish Parliament's legislative competence
- "Works" Bills

### Part 2: Preparations for introduction

- Initial steps
- Pre-introduction consultation etc.
- Preparation of the Bill
- Preparation of accompanying documents
- Explanatory Notes
- Minister's statement on legislative competence
- Policy Memorandum
- Financial Memorandum
- Scottish Ministers' Statement
- Delegated Powers Memorandum
- Auditor General's Report
- Accompanying documents required only for "works" Bills
- Financial Memorandum
- Maps, plans, sections and books of references
- Environmental Statement
- Introduction of the Bill

### Part 3: Objections

- Who may lodge objections to a Hybrid Bill
- When objections may be lodged
- Admissibility of objections to a Hybrid Bill
- Layout and content of objections
- How objections are lodged
- What happens after objections are lodged
- Data protection

## Guidance on Hybrid Bills

### Contents

Withdrawal of objections

Changes in objectors' circumstances

### **Part 4: Hybrid Bill Committees**

Establishment and membership

Attendance at meetings

First meeting

Role of Convener and Deputy Convener

Sub-committees and reporters

Assessors

Clerks, advisers and other staff

Committee meetings

### **Part 5: Stages of Hybrid Bills**

The three-Stage process

Stage 1

Stage 2

Stage 3

Reconsideration Stage

Financial resolution

Carry-over of Hybrid Bills

Withdrawal of Hybrid Bills

Royal Assent and after

### **Part 6: Amendments**

Basic principles

Admissibility of amendments

Lodging amendments

Rules on marshalling amendments

Daily lists of amendments

Marshalled Lists

Grouping of amendments

Selection of amendments

Proceedings on amendments – all Stages

Proceedings at Stage 2

Proceedings at Stage 3

**Guidance on Hybrid Bills**  
Contents

**Annex A: Stages in the passage of a Hybrid Bill**

**Annex B: Classes of works**

**Annex C: Environmental impact**

**Annex D: Form and content of Hybrid Bills**

**Annex E: Form of accompanying documents**

**Annex F: Notification**

**Annex G: Advertisement of intention to introduce Hybrid Bill**

**Annex H: Distribution of documents**

**Annex J: Fees and costs**

**Annex K: Maps, plans, sections and books of references**

**Annex L: Environmental Statement**

**Annex M: Form of objections**

**Annex N: Financial resolutions**

**Annex O: Form of amendments**

## Foreword

This Guidance has been prepared by the Parliament's Non-Government Bills Unit, mainly to assist:

- the Scottish Government, where it is proposing to introduce a Hybrid Bill in the Scottish Parliament
- anyone seeking to object to such a Bill
- MSPs involved in the scrutiny of such a Bill.

The Guidance describes the procedures and requirements for the progress of a Hybrid Bill through the Parliament, and aims to do so in as clear and understandable a way as possible. So far as possible, the Guidance follows the chronological order of events in the preparation and Parliamentary scrutiny of a Hybrid Bill.

- Part 1 explains what a Hybrid Bill is, and how it differs from other Public Bills.
- Part 2 sets out the steps the Scottish Government must take in preparing for the introduction of a Hybrid Bill. In particular, this explains the information that must be included in all the accompanying documents required on introduction.
- Part 3 explains the rights of affected persons to lodge objections to a Hybrid Bill.
- Part 4 is about Hybrid Bill Committees – their establishment, membership and role.
- Part 5 describes the 3-stage process of scrutiny, in committee and in the Chamber, to which each Hybrid Bill is subject. This explains, in particular, the role that the Scottish Government and any objectors have in presenting their arguments directly to the Hybrid Bill Committee.
- Part 6 provides additional detail on the amendment stages – including about how amendments are lodged, how they are marshalled and grouped

for debate, and how they are moved and disposed of.

A series of annexes provides supplementary information, including the full text of the various “determinations” that have been made (by the Parliament’s Presiding Officer and corporate body) under powers conferred on them by the Rules.

The Rules that provide the procedural framework for the passage of Hybrid Bills in the Parliament are set out in [Chapter 9C](#) of the Parliament’s Standing Orders.<sup>1</sup>

Chapter 9C was added to the Standing Orders in June 2009, based on recommendations by the Standards, Procedures and Public Appointments (SPPA) Committee in its [7th Report, 2009 \(Session 3\)](#). The procedures were used for the first time just a few months later in consideration of the Forth Crossing Bill. The Hybrid Bill Committee established to consider that Bill commented on various aspects of the procedures in its [1st Report, 2011 \(Session 3\)](#) and these were implemented in 2014 and 2016 by the SPPA Committee.

The Guidance was also updated in Session 4 to reflect new determinations made by the Presiding Officer and the SPCB, and the introduction of a new “super-majority requirement” (under the Scotland Act 2016) for Bills that alter certain aspects of the Scottish Parliament’s electoral arrangements.

This Session 6 edition takes account of minor Rule-changes made at the end of Session 5.<sup>2</sup> It also reflects post-Brexit changes to the Scotland Act 1998 and the move to a new Scottish Parliament website. Version 2 incorporates a new Annex L, comprising an updated determination made by the Presiding Officer in November 2022.

If you have any comments on Hybrid Bill procedure generally, or this Guidance, these should be sent to:

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<sup>1</sup> The Standing Orders can be accessed via the Parliament’s website ([www.parliament.scot](http://www.parliament.scot)), under About / How the Parliament Works / Rules and Guidance.

<sup>2</sup> Standards, Procedures and Public Appointments Committee, [6th Report, 2021 \(Session 5\)](#), *Standing Order Rule Changes – Private and Hybrid Bill procedures*

## Guidance on Hybrid Bills

### Foreword

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Alternatively, you can email [info@parliament.scot](mailto:info@parliament.scot) or text 07786 209888. Written correspondence in any language is welcomed.

## Part 1: Hybrid Bills

### Definition of a Hybrid Bill

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1.1 A Bill is a draft Act. A Bill introduced in the Scottish Parliament contains the text that will, if the Bill is passed and enacted, become part of the statute law as an Act of the Scottish Parliament.

1.2 A Hybrid Bill “is a Public Bill introduced by a member of the Scottish Government which adversely affects a particular private interest of an individual or body in a manner different to the private interests of other individuals or bodies of the same category or class” (Rule 9C.1.1). As the name suggests, a Hybrid Bill combines the characteristics of other Public Bills – being introduced by Ministers, and often dealing with matters of general public policy – with some of the characteristics of a Private Bill (a Bill introduced by a non-MSP promoter to obtain particular powers or benefits in excess of or in conflict with the general law). Because a Hybrid Bill (like a Private Bill) directly affects specific people or bodies in ways that set them apart from the public more generally, it requires procedures that allow those people or bodies to object, and to make direct representations to the Parliament, in much the same way as the procedures used in consideration of Private Bills.

1.3 Hybrid Bills are subject to a three-stage process that is explained in detail in Part 5. A graphic overview is provided in Annex A.

### The Scottish Parliament’s legislative competence

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1.4 Section 29 of the Scotland Act 1998 imposes limits on the Scottish Parliament’s powers to legislate (whether in the context of a Public, Hybrid or Private Bill). The five criteria of “legislative competence” (set out in section 29(2)) mean that:

- the Parliament can only apply for or in relation to Scotland
- it cannot legislate in relation to the “reserved matters” set out in Schedule 5 to the 1998 Act (only the UK Parliament can legislate on those reserved



## Guidance on Hybrid Bills

### Part 1: Hybrid Bills

matters)

- it cannot modify certain enactments set out in Schedule 4 to the 1998 Act (which include the Human Rights Act 1998; certain provisions of the Acts of Union and the European Union (Withdrawal) Act 2018; and the United Kingdom Internal Market Act 2020)
- its legislation must be compatible with the European Convention on Human Rights (ECHR) and
- it cannot remove the Lord Advocate from his or her position as head of the system for criminal prosecutions and the investigation of deaths.

1.5 The 1998 Act requires separate statements on the legislative competence of any Bill to be made by the Presiding Officer and by the person in charge of the Bill before it is introduced in the Parliament. The 1998 Act also provides an opportunity for the legislative competence of a Bill to be challenged after it is passed but before it can become law.

1.6 While many of the limits on legislative competence are clear-cut, others may be subject to differences of interpretation. Whether the provisions of a Bill are within the legislative competence of the Parliament may be a matter of debate throughout the process of considering the Bill – both in regard to general debate on the Bill as a whole (or specific provisions in it) and in the context of particular amendments. The precise boundaries of the Parliament’s powers to legislate can ultimately be decided only by the courts.

### **“Works” Bills**

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1.7 As well as defining Hybrid Bills in general, the standing orders also identify a special category of such Bills – namely Bills that either seek to authorise the construction or alteration of certain classes of works (as listed in Annex B), or seek to authorise the compulsory acquisition or use of any land or buildings. Such Bills – Bills to which Rule 9C.1.2 applies – are sometimes known as “works” Bills.

1.8 Works Bills are subject to a number of specific additional requirements, as follows.

## Guidance on Hybrid Bills

### Part 1: Hybrid Bills

1.9 Firstly, they may only be introduced if the Scottish Government has first consulted the following bodies – referred to as “mandatory consultees”:

- NatureScot<sup>3</sup>
- the Scottish Environment Protection Agency
- the local planning authority or authorities (which may include a National Park Authority).

1.10 The type of consultation required, and the relevant timescales, are set out in Annex C.

1.11 As well as being consulted by the Scottish Government before introduction, the mandatory consultees also have a right to make statements to the Parliament, after introduction, for example if they have concerns about the adequacy of the consultation that was undertaken. Such statements may be made during the same 60-day period, beginning on the day after the Bill is introduced, during which objections may be lodged – although a statement by a mandatory consultee is not itself treated as an objection (Rule 9C.8).

1.12 Secondly, various additional accompanying documents are required at the time a works Bill is introduced – namely, an Estimate of Expense and Funding Statement, maps, plans, sections and books of references, and an Environmental Statement. (These are explained in more detail in Part 2.)

1.13 Thirdly, there are additional restrictions on which MSPs may be members of the Hybrid Bill Committee established to consider a works Bill (as explained further in Part 4).

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<sup>3</sup> NatureScot is the operating name of Scottish Natural Heritage.

## Part 2: Preparations for introduction

2.1 This part of the Guidance covers the procedures prior to a Hybrid Bill being lodged for introduction, and is aimed primarily at the Scottish Government.

2.2 It sets out what needs to be done to comply with the standing orders, and also offers suggestions on how this might best be carried out. In doing so, it generally follows a chronological order of events in preparing for the introduction of a typical Hybrid Bill.

2.3 References in this Guidance to “the Minister” or “the member in charge” of the Hybrid Bill are either to the member of the Scottish Government who introduces the Bill (or who is subsequently appointed by the First Minister to take general responsibility for the subject matter of the Bill), or to a junior Scottish Minister designated by him or her (Rule 9C.2.1).

### Initial steps

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2.4 Scottish Government officials are advised to contact the Non-Government Bills Unit (NGBU) at the Parliament at an early stage. NGBU is responsible for aspects of the handling of Hybrid Bills and offers advice to all those involved throughout the process. This includes advice on the procedural requirements, the likely costs and the timescales involved.

### Pre-introduction consultation etc.

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2.5 The standing orders require the Scottish Government to demonstrate (in accompanying documents published on introduction) that it has advertised its intention to introduce the Bill, and that it has consulted on the Bill’s objectives, the ways of meeting those objectives and on the detail of the Bill. In certain cases, the Scottish Government must also demonstrate that it has notified certain people directly affected and, in some instances, obtained their prior consent.

2.6 It is for the Scottish Government to ensure that there is sufficient time to complete these steps in advance of introduction. This may take some planning, depending on the circumstances. For example, where it is necessary to notify

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

people with an interest in heritable property that may be affected, the Scottish Government will need to decide what those properties are, establish who owns or lives in each one, and then prepare the letters to be sent or delivered to them. However, it is unwise to complete these steps too far ahead of introduction, as this may lead the Hybrid Bill Committee to question whether the reported outcomes can still be relied upon, given the time that has since elapsed.

## Preparation of the Bill

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### “Proper form” and layout of Bills

2.7 Hybrid Bills must conform to the Presiding Officer’s determination on “proper form” under Rule 9C.1.6 (see Annex D(1)). The Presiding Officer has also made a number of recommendations about the content of Hybrid Bills and the form in which they should be printed (see Annex D(2)). The aim is to ensure that all Scottish Parliament Bills (and the Acts that they become) conform to standard conventions of style and layout.<sup>4</sup>

## Preparation of accompanying documents

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2.8 All accompanying documents must comply with the Presiding Officer’s determination on the proper form of accompanying documents (see Annex E). Other determinations made under Rule 9C.3.2 are also relevant to the information that must be included in accompanying documents, and these are explained by reference to specific documents below.

2.9 Under Rule 9C.3.2, every Hybrid Bill must be accompanied on introduction by:

- a statement on legislative competence by the Presiding Officer (Rule

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<sup>4</sup> Further guidance on the structure and drafting of Public Bills can be found in Annexes B and C to the *Guidance on Public Bills*. This can be found on the Parliament’s website, under About / How the Parliament Works / [Rules and Guidance](#).

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

#### 9C.3.2(a))

- Explanatory Notes (Rule 9C.3.2(c))
- a statement on legislative competence by the member introducing the Bill (Rule 9C.3.2(d))
- a Policy Memorandum (Rule 9C.3.2.(e))
- a Financial Memorandum (which must contain additional information if the Bill is a “works Bill” – i.e. one to which Rule 9C.1.2 applies) (Rule 9C.3.2(f) or (g)(i))
- a Scottish Ministers’ Statement (which must contain additional information if the Bill affects heritable property) (Rule 9C.2.3(h)).

2.10 If the Bill confers power to make subordinate legislation, or authorises Ministers to issue directions, guidance or a code of practice, a Delegated Powers Memorandum is required (Rule 9C.3.2(ga)).

2.11 In certain circumstances, an Auditor General’s Report may also be required (Rule 9C.3.2(b)).

2.12 The Scottish Government is responsible for preparing all of these other than the first.

2.13 Additional accompanying documents are required for Hybrid Bills to which Rule 9C.1.2 applies, sometimes referred to as “works” Hybrid Bills. These are Bills that seek to authorise the construction or alteration of certain classes of works, or the compulsory acquisition or use of any lands or buildings. As well as requiring additional information in the Financial Memorandum (as noted above), such Bills must be accompanied on introduction by:

- certain maps, plans, sections and books of references (or a statement as to why they are not provided) (Rule 9C.3.2(g)(ii)), and
- an Environmental Statement (Rule 9C.3.2(g)(iii)).

2.14 The specific requirements of the Rules and determinations applying to each accompanying document are set out below. It is the role of the clerks, prior to

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

introduction, to check compliance with these Rules and determinations, including by satisfying themselves that all the required information has been provided. But it is not their role to endorse the accuracy of that information or to validate whatever methods are described. For example, while the clerks' role is to ensure that the Policy Memorandum includes a reasonable amount of information about the consultation undertaken on the Bill, it is not for them to judge whether that consultation was carried out effectively. This is, however, something that the Minister can expect to be questioned closely about at Stage 1, by the Hybrid Bill Committee.

## **Explanatory Notes**

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2.15 The Explanatory Notes normally provide a brief overview of what the Bill does, followed by a more detailed commentary on the individual provisions. Their purpose is to summarise objectively and clearly what each provision of the Bill does and to give other information necessary or expedient to explain the effect of the Bill. They must be neutral in tone and should explain what the Bill does without seeking to justify the policy or advocate its merits. They should be as clear and readable as possible so as to be comprehensible to people with no legal or specialist knowledge. Explanatory Notes can be useful to the reader in describing the legal context in which the Bill operates, including reference to relevant statute and common law, and explaining specialised terminology used in the Bill. Straightforward or self-explanatory provisions do not require explanation in the Notes.

## **Minister's statement on legislative competence**

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2.16 Every person introducing a Bill in the Parliament is required (under section 31(1) of the Scotland Act 1998) to make a statement on the Bill's legislative competence. The established form of words for such a statement is: "In my view, the provisions of the [short title] Bill would be within the legislative competence of the Scottish Parliament." The statement must be in writing, and must be signed by the Minister who introduces the Bill.

## Policy Memorandum

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2.17 The Policy Memorandum sets out the Bill’s policy objectives, what alternative approaches were considered, the consultation undertaken (including, in the case of a “works” Bill, consultation with the mandatory consultees), and an assessment of the effects of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and other matters considered relevant. It provides an opportunity to argue the case for the Bill, and so can provide a useful complement to the Explanatory Notes.

2.18 The Memorandum should specify in reasonable detail what consultation was undertaken on the proposals in the Bill. Such details might include the means by which consultees were selected, the manner in which they were approached, when the consultation was carried out, what was consulted on and with whom, the number of responses received and what (if any) changes to the proposal were made as a result.

2.19 Where Rule 9C.1.2 applies to the Bill (i.e. because it seeks to authorise the construction or alteration of certain classes of works or the compulsory acquisition or use of any lands or buildings), the Memorandum should also describe what consultation was carried out (under Rule 9C.1.8) with the mandatory consultees (listed in Annex C). That Annex sets out what aspects of the project the Scottish Government must consult the mandatory consultees on, and the timescales for the consultation. It also requires the Scottish Government to inform the mandatory consultees of their right to lodge statements in relation to that consultation with the Parliament, during the objection period (under Rule 9C.8).

2.20 It is in the Scottish Government’s interests to ensure that the consultation undertaken is meaningful and effective, as this is liable to be a focus of scrutiny by the Hybrid Bill Committee. While it is up to the Scottish Government to decide what is appropriate in the circumstances, the Committee is likely to look for evidence that the consultation was widely advertised to all those with an interest, whether they were likely to be supportive or hostile; that it explained what the Bill would do in a clear, open and balanced way; and that consultees were given adequate time, and a range of means, to feed in their views.

2.21 Effective consultation can provide helpful feedback, enabling the Bill to be

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

improved; it can also help to allay fears and suspicions and so reduce the likelihood of objections being lodged once a Bill is formally introduced.

## Financial Memorandum

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2.22 The content of the Financial Memorandum varies according to whether the Bill is one to which Rule 9C.1.2 applies.

2.23 If the Rule does not apply, the requirements for the Financial Memorandum are the same as for other Public Bills (Rule 9C.3.2(f)).

2.24 Such a Memorandum must set out best estimates of the expected costs, savings and changes to revenues to which the Bill would give rise, distinguishing between those affecting the Scottish Administration (i.e. the Scottish Government, in the broad sense of Ministers, departments and agencies), local authorities and other bodies, individuals and businesses. In each case, the Memorandum should indicate the timescales over which such costs are expected to arise and the margins of uncertainty in estimates given.

2.25 The additional information required in the Financial Memorandum accompanying a “works Bill” (i.e. a Bill to which Rule 9C.1.2 applies) is explained further below.

## Scottish Ministers’ Statement

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2.26 The main purpose of the Scottish Ministers’ Statement is to set out how the Scottish Government has notified and made information available to those likely to be affected. The Presiding Officer has made determinations on various aspects of what the Statement must include and these determinations are set out in Annexes F and G. The determination at Annex E specifies the proper form of certain elements of the document.

## Notification of people with an interest in heritable property affected by the Bill

2.27 The first requirement of the Scottish Ministers’ Statement applies only to Hybrid Bills that affect heritable property. This is likely to include any Bill to which Rule 9C.1.2 applies. However, some non-works Bills may also trigger the



## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

requirement – for example, if the effect of the Bill would be to reduce amenity for people living in a particular area. If it is unclear whether this requirement applies, the Scottish Government should seek advice from NGBU.

2.28 Where the requirement applies, the Statement must give details of the notification given by the Scottish Government to certain persons having an interest in that property (Rule 9C.3.2(h)(i)).

2.29 In practice, this requires the Scottish Government firstly to identify which properties are affected by the Bill, then to establish who has a relevant interest in each such property, and finally to notify (if possible) each such person. The Scottish Ministers' Statement should give an explanation of how each step was carried out.

2.30 Which properties are affected may sometimes be clear from the Bill (for example, where there is provision for specified land to be compulsorily purchased). But in other cases, the impact of the Bill may be indirect and the Scottish Government will need to adopt criteria for deciding which properties the Bill can be said to affect (for example, in relation to noise impact, by reference to distance from a specific location). Any such criteria should be explained in the Statement.

2.31 The Statement should then explain (in general terms) the methods used to identify those persons considered to have an interest in each property. Annex F(1) lists certain broad categories of persons, and the Statement should confirm that the relevant sources (e.g. the Land Register) have been checked. The Statement should also record whether or not there are people whose identities could not be established, and when the relevant inquiries were made.

2.32 Finally, the Statement should outline the means by which notification was given to the persons identified as having an interest in affected properties. This will normally involve hand-delivering, or posting by recorded delivery, a letter to each affected person (in the case of a business, to a secretary, chair or other responsible officer), or to the occupier of each affected address.

2.33 The function of the notification letter is to inform a person or body who may be affected by the proposed Hybrid Bill of the Scottish Government's intention to introduce it on, or around, a specific date. In particular, it should inform the

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

person/body of how the Bill may affect any land or building in which the person/body has an interest. The letter should also explain how to obtain further information about the Bill and the Parliamentary process to which it will be subject, how to lodge an objection to the Bill and refer to the 60-day objection period. It may be helpful to use as a starting point the model letter set out in Annex F(2).

### **Advertisement of Ministers' intention to introduce Bill**

2.34 In relation to every Hybrid Bill, the Scottish Ministers' Statement must include details of the advertisement of their intention to introduce the Bill (Rule 9A.2.3(d)(iv)). Advertising must be done in two ways – by taking out advertisements in newspapers, and by arranging to have notices put up in public libraries (see Annex G).

2.35 The precise requirements, in each case, vary according to whether the Bill is one to which Rule 9C.1.2 applies.

2.36 In relation to newspaper advertising, the following points are worth noting:

- Where advertisements require to be placed in two newspapers, it is not necessary for each to circulate throughout the relevant area, but together they must do so. Thus, for example, the Scottish Government may choose to advertise in one local or regional paper that has a high circulation in most of the area affected by the Bill, together with one other paper that circulates in the remainder of that area.
- The *Edinburgh Gazette* may be counted as a newspaper circulating throughout Scotland. The *Gazette* is a formal paper of record, but is not widely read by the general public, so it cannot be used as the only newspaper in which advertisements are placed, and the other must be a newspaper that circulates throughout the relevant area.
- A copy of the newspaper advertisement must be provided to NGBU clerks, who will arrange for it to be posted on the Parliament's website.<sup>5</sup> This

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<sup>5</sup> See the [Proposals for Bills](#) page, under Bills and Laws.

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

provides a further means by which the public can be made aware of the forthcoming Bill, at no additional cost to the Scottish Government.

2.37 In relation to notices in libraries, the following points are worth noting:

- Depending on the circumstances, notices must be placed in a minimum of three public libraries, or in one library in each of the 32 local authority areas.
- The text of the notice must contain at least as much information as the newspaper advertisement. The Scottish Government will, understandably, wish to keep the text of newspaper advertisements concise, to minimise costs, but is encouraged to provide additional detail in the context of a library notice.
- The obligation on the Scottish Government is to request that the notices be prominently displayed for at least a two-week period, but it is recognised that this may depend on factors outwith its control. Some libraries do not have noticeboards, and library staff cannot always guarantee that notices posted on them are not later removed or obscured.

### List of premises where Bill and accompanying documents may be inspected

2.38 In relation to every Hybrid Bill, the Statement must include a list of premises at which it is possible to inspect the Bill and accompanying documents (Rule 9C.3.2(h)(iii)).

2.39 For any works Bill (i.e. a Bill to which Rule 9C.1.2 applies), the premises in this list must include all public libraries within the area in which works are proposed or in which land that is to be compulsorily acquired or used is situated – but if there are fewer than three libraries within that area, further libraries must be identified that are nearby, so as to make the number of libraries up to at least three.

2.40 For a non-works Bill (i.e. a Bill to which Rule 9C.1.2 does not apply), the premises in this list must include at least one library or other appropriate premises (e.g. an office operated by the Scottish Administration) within each of the eight Scottish Parliament regions. However, where the Bill would have a particularly

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

significant impact within one or more of those regions, a greater number of libraries or appropriate premises within the region or regions in question must be included – e.g. at least three within the region of North-East Scotland (see Annex H). This should ensure that the members of the public most likely to wish to inspect documents can gain access to them within a reasonable distance from where they live.

2.41 In either case, which premises are included in the list will need to be agreed between the Scottish Government and NGBU, since NGBU is responsible for sending the Bill and the accompanying documents to these agreed premises following introduction (Rule 9C.4.2). Various factors may be relevant to the choice of premises – including their geographical distribution and accessibility. Scottish Government officials may need to contact the staff of public libraries to check whether they are prepared to take copies of the documents and make them available on request to the public.

#### **List of additional premises where documents may be inspected, and related undertaking**

2.42 It is also open to the Scottish Government to include (in the Scottish Ministers' Statement) a list of additional premises to which it (rather than NGBU) intends to make copies of the Bill and accompanying documents available for inspection (Rule 9C.3.2(iv)) – in which the case, the Statement must include an undertaking to send those documents to those additional premises (under Rule 9C.3.2(v)).

#### **Information about other documents and where they may be inspected or viewed**

2.43 With any Hybrid Bill (whether or not it is a works Bill), there may be documents that are relevant to the Bill but are not accompanying documents. This may include, for example, illustrations of how a proposed development might appear once completed. It is good practice for the Scottish Government to send copies of such documents to all the premises listed in the Scottish Ministers' Statement, so that they can be made available to interested members of the public along with the Bill and accompanying documents. Where that is done, the Scottish Ministers' Statement should mention these documents as being among those available at the listed premises.

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

2.44 With a non-works Hybrid Bill (that is, one to which Rule 9C.1.2 does not apply), the Parliament is required (under Rule 9C.4.1) to print and publish the Bill and all the accompanying documents. In particular, this means that all these documents will be available, from the day after introduction, on the Parliament's website. With a works Hybrid Bill, the documents that the Parliament is required to print and publish exclude the additional accompanying documents required only for such a Bill – namely, maps, plans, sections, books of references and the Environmental Statement – and these documents may therefore not be available on the Parliament's website. If there are documents that are relevant to the Bill but are not accompanying documents, these may also not be available on the Parliament's website.

2.45 Some members of the public may not be able to travel to a public library or other premises to inspect them (and the libraries or premises where they are available for inspection may not have the facilities for making or selling copies). Accordingly, it is helpful if the Scottish Ministers' Statement also includes information about how these documents may be viewed online (e.g. from the Scottish Government's own website) and/or how printed copies may be purchased, e.g. in person at specified premises, by post or online.

### Undertaking to pay costs

2.46 The Scottish Ministers' Statement must also include (under Rule 9C.2.3(h)(vi)) an undertaking to reimburse the Scottish Parliamentary Corporate Body for certain costs it incurs, during the passage of the Hybrid Bill, in connection with the appointment and use of an assessor.

2.47 The SPCB has determined (see Annex J) that these costs comprise:

- the assessor's professional fees
- any travel, subsistence and accommodation costs reasonably incurred by the assessor
- certain costs associated with public assessor hearings (including the costs of preparing a transcript, broadcasting the proceedings, and providing security staff)

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

- the costs involved in the assessor notifying people whose interests may be adversely affected by amendments lodged to the Bill.

2.48 The form of words to be used for this undertaking is set out in Annex E.

## **Delegated Powers Memorandum**

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2.49 This document is required only if the Bill contains provision conferring power to make subordinate legislation, or authorising the Scottish Ministers to issue directions, guidance or codes of practice. For each such provision, the Memorandum must set out:

- the person or body upon whom the power is conferred on and the form in which the power is to be exercised
- why is it considered appropriate to delegate the power, and
- the Parliamentary procedure (if any) to which the exercise of the power is subject and why it was considered appropriate to make it subject to that procedure (or not to make it subject to any procedure).

## **Auditor General's Report**

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2.50 This document is required only in relation to a Bill containing provisions “charging expenditure on” the Scottish Consolidated Fund (SCF) (Rule 9C.3.2(b)). A charge on the Fund is a charge which the Scottish Government is required to pay without obtaining further authority from the Parliament by means of a Budget Bill. By agreeing to the provision, the Parliament voluntarily gives up its right to scrutinise the budget for the item concerned. Where a Bill contains such provisions, the Auditor General is required to set out his or her views on whether such a charge is appropriate.

## **Accompanying documents required only for “works” Bills**

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2.51 Rule 9C.3.2 includes certain additional requirements in relation to accompanying documents if the Hybrid Bill is a “works Bill” (i.e. one to which Rule 9C.1.2 applies). The specific requirements of each of these documents are

outlined below.

## **Financial Memorandum**

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2.52 The Financial Memorandum for a works Hybrid Bill must include additional information compared with that required for a non-works Bill – as outlined in paragraph 2.24 above.

2.53 Such a Financial Memorandum must set out (under Rule 9C.3.2(g)):

- the estimated total cost of the project, together with a detailed cost breakdown for each element of the project
- the administrative, compliance and other costs involved
- a detailed breakdown of all anticipated and committed sources of funding, covering both capital and revenue costs
- best estimates of the timescales over which such costs would be expected to arise, and
- the margins of uncertainty in all these estimates.

2.54 In doing so, the Memorandum must distinguish separately the costs expected to be borne by the Scottish Administration (i.e. the Scottish Government in the broad sense of Ministers, departments and agencies), by local authorities and by other bodies, individuals and businesses.

## **Maps, plans, sections and books of references**

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2.55 Hybrid Bills to which 9C.1.2 applies must be accompanied by certain maps, plans, sections and books of references. Further requirements about maps, plans and sections are set out in Annex K.

2.56 A book of references is a document that provides further information about areas of land (or water) directly affected by the Bill. Annex E includes pro forma wording for the opening paragraph of this document. Annex K gives further detail about what the document should cover.

## Guidance on Hybrid Bills

### Part 2: Preparations for introduction

2.57 It is helpful for the main part of the document to be set out in the form of a table, with the columns labelled along the following lines:

- Number (or other identifier) – to identify the plot of land concerned by reference to the Bill or an accompanying map or plan
- Description – giving extent (e.g. in square metres or hectares) and brief indication of type of land and its location (e.g. by postal address)
- Nature of impact – e.g. compulsory acquisition, right to use, extinguishment of rights
- Owners – name(s) and address(es) of owners of the land
- Lessees – name(s) and address(es) of any lessees of the land (if applicable)
- Occupiers – name(s) and address(es) of any occupiers of the land (if different from the owners or lessees).

2.58 In the columns for owners, lessees and occupiers, the source of information for the names and addresses given should also be included.

## **Environmental Statement**

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2.59 The final accompanying document required only for a Hybrid Bill to which Rule 9C.1.2 applies is an Environmental Statement. This must contain the same information about the Bill's anticipated environmental impact as would be required by relevant environmental legislation (Rule 9C.3.2(g)(iii)).

2.60 Annex L provides full details of the information that is required, including by reference to the relevant environmental legislation. The final two elements of what the Environment Statement must include (i.e. paragraphs (d) and (e) of the Annex) should be labelled as a Code of Construction Practice, and a Noise and Vibration Policy.



## Introduction of the Bill

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### Timing of introduction

2.61 Under Rule 9C.1.4, a Hybrid Bill can be introduced on any “sitting day”. A sitting day is, under Rule 2.1.3, any day when the office of the Clerk is open but not when the Parliament is in recess or dissolved. The office of the Clerk is open on most weekdays throughout the year, other than the main public holidays.<sup>6</sup>

### Pre-introduction consideration

2.62 Once the Scottish Government has finalised the text of the draft Bill, it is submitted to the Parliament for pre-introduction consideration, together with drafts of all the accompanying documents. This is normally done three weeks before the proposed date of introduction. Periods of Parliamentary recess and public holidays cannot usually be counted towards the three weeks.

2.63 During this pre-introduction period, clerks in the Legislation Team (separate from NGBU) prepare the Bill and the relevant accompanying documents for publication, and check that the Bill itself is in “proper form” (see Annex D). They also consider, and advise the Bill’s drafters on, certain procedural issues that may arise later in the Bill’s passage – including what amendments to the Bill are likely to be considered admissible (under Rule 9C.14.6), whether there is any need for Crown consent to be signified (under Rule 9C.15) and whether a financial resolution is likely to be required (under Rule 9C.16). The Legislation Team clerks may also raise any suggestions they may have about the drafting of the Bill or accompanying documents.

2.64 During the same period, the Parliament’s solicitors prepare advice on legislative competence in order to assist the Presiding Officer in making the statement required by section 31(2) of the 1998 Act (and by Rule 9C.3.2(a)).

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<sup>6</sup> Recess dates are published on the Parliament’s website (About / [Recess dates](#)). Office of the Clerk dates are accessible by a link from that page.

#### Formal introduction

2.65 A Hybrid Bill that has been submitted for pre-introduction consideration together with drafts of all the relevant accompanying documents can only be formally introduced at the end of that period once various pre-conditions have been met.

2.66 One is that the Presiding Officer's statement on legislative competence has been signed. The Scottish Government will be notified as soon as this has happened. The other pre-conditions are that a signed copy of the Bill itself (Rule 9C.1.9) and a signed copy of the Minister's statement on legislative competence (Rule 9C.3.2(d) have been lodged with the Legislation Team. This should be done only towards the end of the 3-week period, once it has been confirmed that there are to be no final adjustments to the Bill's drafting.

2.67 Introduction of the Bill is recorded in the Parliament's Business Bulletin.<sup>7</sup> Information on the progress of a Bill through the Parliament also appears in the Bulletin and on the Parliament's website.

#### Publication and distribution

2.68 Following introduction, the Legislation Team arranges for the Bill and the accompanying documents (other than, in the case of a "works" Bill, any maps, plans, sections and books of references and the Environmental Statement) to be printed and published. These documents are available, from 8.30 am on the day following introduction, in hard copy and on the Parliament's website.

2.69 Bills appear in "pdf" format on the website, so that page and line breaks remain identical to the printed version. This enables the internet user to make sense of amendments, which are worded by reference to the page and line numbers.

2.70 The clerks then distribute copies of the Bill and accompanying documents

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<sup>7</sup> The Business Bulletin is the Parliament's official publication that lists current and forthcoming business. It is accessible from the Parliament's website, under Chamber and committees / [What's On](#).

## **Guidance on Hybrid Bills**

### Part 2: Preparations for introduction

to the agreed premises (as listed in the Scottish Ministers' Statement). In the case of a Bill to which Rule 9C.1.2 applies, the clerks also send copies to the mandatory consultees. It is for the Scottish Government to send copies of any other documents that are relevant to the Bill but are not accompanying documents to those agreed premises (and to the mandatory consultees), and to send copies of the Bill and other documents to any additional premises (other than those agreed) at which it wishes them to be available for inspection.

## Part 3: Objections

3.1 This part of the Guidance refers to objections to a Hybrid Bill. In certain circumstances, it may also be possible to object to an amendment to the Bill (see Parts 5 and 6).

### Who may lodge objections to a Hybrid Bill

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3.2 Any person, body corporate or unincorporated association may lodge an objection to a Hybrid Bill that they consider would adversely affect their private interests (Rule 9C.7.1).

3.3 Objections may be lodged jointly by a number of persons (for example, two or more members of the same household, or a group of people living in the same street). Indeed, this approach is encouraged in situations where all those supporting the objection consider that the Bill adversely affects them in the same ways (or in very similar ways), and who have the same (or very similar) grounds for objecting to it, as it avoids the additional administrative complexity of handling a larger number of separate objections. Any such objection will be published in a manner that makes clear that it has been lodged on behalf of a number of people, but for practical purposes, only the principal signatory will be treated as “the objector”. This means, for example, that NGBU will communicate directly only with that principal signatory, and a request by that principal signatory to withdraw the objection will be treated as authority to do so (without evidence being required that every other signatory has consented to withdrawal).

3.4 Prospective objectors are advised to contact NGBU clerks (see Foreword for details) to seek guidance and information on the parliamentary procedures involved and, in particular, the arrangements for lodging an objection. The clerks can only offer advice on procedural issues and not on the content of an objection.

### When objections may be lodged

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#### The objection period

3.5 Objections should be lodged with the Clerk during a 60-day period, referred to as the “objection period”, which begins on the day after introduction of the Bill

## Guidance on Hybrid Bills

### Part 3: Objections

and normally ends (at 5 pm) on the sixtieth day after introduction. However, the objection period excludes periods when “the office of the Clerk” is closed for more than four days (including periods when the Parliament is dissolved prior to an election); and if the sixtieth day is a day when the office of the Clerk is closed, then the last day of the objection period is instead the first day thereafter on which the office of the Clerk is open (Rule 9C.7.2). The “office of the Clerk” is the term used in standing orders to refer to Parliament staff (including NGBU). The dates on which it is open are set by Parliamentary resolution, and normally include weekdays throughout the year, including during most recess periods, but excluding public holidays. As soon as a Hybrid Bill is introduced, the actual dates during which objections may be lodged are posted on the Parliament’s website.

3.6 Whether a written objection is lodged within the objection period depends on when it is handed in at the Parliament or when a posted copy arrives in the Parliament’s mailroom. Proof that a letter was posted within the objection period may not be accepted as proof that the objection was lodged on time. An objection sent by e-mail will be accepted as being lodged on time if it is clear from the e-mail that it was sent before the end of the objection period, even if it didn’t arrive in the relevant Parliament mailbox until after that period has ended. Anyone who sends an objection by e-mail near the end of the objection period is advised to check with NGBU shortly after that period has ended if in doubt as to whether it has been received.

### Late objections

3.7 Objections may also be lodged after the expiry of the objection period, so long as they are lodged before the first meeting of the Hybrid Bill Committee at Stage 2 and are accompanied by a statement explaining the delay in lodging them. Any late objection is referred to the Committee, which must decide whether it is satisfied that:

- there was a good reason for not lodging the objection during the objection period
- it was lodged as soon as reasonably practical after that period
- allowing the objection to proceed would not be unreasonable having regard to the rights and interests of (other) objectors and the promoter.

## Guidance on Hybrid Bills

### Part 3: Objections

3.8 Unless the Committee is satisfied on all three points, the late objection is rejected. If the Committee is satisfied, however, the objection goes forward for preliminary consideration on the same basis as objections lodged during the objection period. If, by the time a decision is taken to allow a late objection to proceed in this way, it is impractical to give it preliminary consideration during Stage 1, then it may be given preliminary consideration at the beginning of Stage 2 instead (Rule 9C.11.2).

### **Admissibility of objections to a Hybrid Bill**

3.9 When an objection is lodged, the clerks in NGBU consider whether it is admissible. The criteria of admissibility (set out in Rule 9C.7.5) are that the objection:

- (a) is in “proper form” (see below)
- (b) sets out the nature of the objection
- (c) explains whether the objection is to the whole Bill or to specified provisions
- (d) specifies how the objector’s interests would be adversely affected by the Bill
- (e) is accompanied by the lodging fee (although this criterion no longer applies in practice, as the fee has been set at zero).

#### **(a) Proper form**

3.10 In order to be in “proper form” (see Annex M(1)), an objection must:

- be in English or Gaelic
- be printed, typed or clearly hand-written
- set out clearly the objector’s name, address and, where available, other contact details (such as telephone or e-mail)
- be signed and dated.

3.11 Objections in the name of a private individual should normally be signed by

## Guidance on Hybrid Bills

### Part 3: Objections

the objector, but may be signed by another person in certain circumstances (e.g. by a solicitor acting on the objector's behalf, or where the objector is unable to sign because of a disability). Objections in the name of an organisation should be signed by a person authorised to act on its behalf. In either case, the name and designation of the person signing the objection should be given (in addition to the name and address of the objector).

3.12 If the objection is lodged on behalf of two or more people, only one need provide contact details, and only one signature is required (though others may also sign in support of the objection if they wish). It is the principal signatory who will be treated as “the objector” for the purposes of applying the Rules, and references elsewhere in this Guidance to “the objector” should be read as references to the principal signatory.

#### **(b) Nature of objection**

3.13 The objection should explain the ground or grounds on which the objector objects to the Bill. Where there are two or more grounds of objection, it is helpful if these are listed separately as far as possible. With a Bill that authorises works, for example, the grounds may include noise or loss of amenity; with a Bill authorising the compulsory acquisition of land, the grounds may include the objector's unwillingness to move or a concern that any compensation offered does not reflect the value of the land.

3.14 Given the wide scope for variation in the subject-matter and impact of Hybrid Bills, it is not possible to say in advance what grounds may legitimately be used as a basis on which to object to them. However, objectors should bear in mind that the purpose of the objection process is to enable people or organisations whose interests would be adversely affected to contribute directly to the Parliamentary process – so a ground of objection is only likely to carry weight if there is a connection between it and the adverse impact the Bill is expected to have on the objector in question.

#### **(c) Whether the objection is to the whole Bill or specified provisions**

3.15 The objection must explain whether the objection is to the whole Bill or to specified provisions. An objection to the whole Bill is normally treated as an objection that invites the Parliament to reject the Bill in its entirety. An objection to

## Guidance on Hybrid Bills

### Part 3: Objections

specified provisions is normally treated as an objection inviting the Parliament to amend the Bill so that it secures its purpose in a different manner. The same objection may do both these things – for example, by arguing firstly that the changes made by the Bill are unnecessary and then by arguing why, if those changes are nevertheless to be made, it would be preferable (in the objector’s opinion) for them to be made in a different way, or with additional safeguards included.

#### **(d) How the objector’s interests would be adversely affected**

3.16 The objection must specify how the objector’s interests would be adversely affected by the Hybrid Bill. As noted above, this requires some connection to be made between the ground of the objection and the objector’s particular circumstances. Thus, for example, if an objector’s ground of objection is that the Bill would create additional noise for people living in a particular area, the objection should make clear that the objector is one of the people in question.

3.17 A person who opposes a Bill (in whole or part) but does not qualify as an objector – because their interests would not be adversely affected – may instead, if they choose, make a written submission to the Hybrid Bill Committee.

#### **(e) Fee for objections**

3.18 Objections must be accompanied by any fee determined by the Scottish Parliamentary Corporate Body. Since February 2015, this fee has been set at zero.

### **Layout and content of objections**

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3.19 A model layout for an objection is set out in Annex M(2).

3.20 Although there is no limit on the length of objections, objectors should aim to express themselves in as clear and concise a manner as is consistent with satisfying the above criteria. In particular, objections should normally refer to, rather than quote from, specified parts of the Bill or the accompanying documents, and only quote from other published sources (e.g. newspapers, court judgements) to the extent necessary (i.e. it is not necessary for copies of the full source to be attached so long as a full citation is provided). However, objectors may submit



accompanying material to support their objection if they consider it necessary to do so.

## **How objections are lodged**

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3.21 Objections should be lodged with NGBU, whose contact details are provided in the Foreword. Objections may be lodged either in writing or by e-mail (Rule 9C.7.3). Objections lodged in writing may be delivered in person or by courier, or may be posted (recorded delivery or registered post being recommended).

3.22 Objections lodged by e-mail must be sent from the objector's e-mail address and must be received within the objection period. The e-mail must include evidence that the objection has been signed (for example, by attaching a scanned copy of the signed original).

3.23 Whether lodging is done by e-mail or in hard copy, it is greatly appreciated if the text of the objection can be provided electronically. If lodging is done by e-mail, the text of the objection should be included in the body of the e-mail, or as an attachment in MS Word (in addition to the scanned document attached to show the signature). If lodging is done in hard copy, the text of the objection can be e-mailed separately, or an electronic copy may be included with the hard-copy original (e.g. on a memory-stick, which the clerks will post back after copying the relevant file).

## **What happens after objections are lodged**

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3.24 Each objector will be notified by the clerks whether their objection is admissible i.e. whether it complies with the admissibility criteria outlined above.

3.25 Following the conclusion of the objection period, a list of the names of objectors who have lodged admissible objections is published in the Parliament's Business Bulletin (Rule 9C.7.7).<sup>8</sup> If the Hybrid Bill Committee subsequently

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<sup>8</sup> The Business Bulletin is available on the Parliament's website under Chamber and committees / [What's On](#).

considers any late objections and is satisfied with the explanation given (see paragraph 3.6), the names of these additional objectors will also be published in the Bulletin (Rule 9C.7.9).

3.26 All admissible objections must then be given “preliminary consideration” by the Hybrid Bill Committee, usually at Stage 1. Those not rejected following preliminary consideration go on to receive full consideration by the Committee, at Stage 2 – following which they may be accepted (in whole or in part) or rejected. What is involved in preliminary and full consideration is explained in Part 5. The key point to note, however, is that confirmation that an objection is admissible does not guarantee that the objection will go on to full consideration by the Committee, nor is it an indication of whether it will eventually be upheld.

## Data protection

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3.27 The lodging of objections is a public process and the Scottish Parliament is subject to the requirements of the Data Protection Act 2018.

3.28 As noted above, objectors are required to provide a certain amount of personal data with their objections – their name, address and contact details; the name and designation of any person signing the objection on the objector’s behalf – and each objection must be signed. With the exception of the objector’s name, however, none of this personal data is published by the Parliament, nor is it normally provided to the Hybrid Bill Committee except where it is relevant to their consideration – for example, where objectors’ addresses are relevant to a decision on how objections are grouped.

3.29 At the same time as they are assessing objections on admissibility grounds, NGBU clerks check objections to make sure they do not contain any “special category” personal data<sup>9</sup> (e.g. references to the objector’s racial or ethnic

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<sup>9</sup> Special category personal data (under Article 9(1) of GDPR) is data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership; genetic data; biometric data for the purpose of uniquely identifying a natural person; data concerning health, or data concerning a natural person’s sex life or sexual orientation.

## Guidance on Hybrid Bills

### Part 3: Objections

origin) or statements about a third party which either constitute special-category personal data about that person or may identify a third party (unless the objection is accompanied by evidence that the third party consents to the statement being included). They also check for any material that could reasonably be regarded as defamatory or abusive. Where any such data or material is included, NGBU will contact the objector and invite them to amend the objection, failing which the objection may have that data or material redacted before the objection is published.

3.30 After the objection period (as noted above), NGBU is required to publish in the Parliament's Business Bulletin a list of the names of all objectors whose objections are admissible (Rule 9C.7.7). Where an objection is lodged on behalf of two or more people, only the principal signatory's name will normally be included in the list; but the entry for the objection will also indicate the number of other people supporting the objection (e.g. "Objection 1 by Mr J Smith (and 3 others)").

3.31 At around the same time as the list is published in the Bulletin, the admissible objections themselves are published on the Parliament's website, and copies (of the same published version) are sent to the public libraries or other premises to which copies of the Private Bill and accompanying documents were distributed immediately after introduction (as listed in the Scottish Ministers' Statement).

3.32 As noted above, the version of an objection that is published (and distributed to libraries etc.) will not include the other personal data – such as address and contact details – provided by the objector. However, objectors should bear in mind that the text of their objection, together with their name, may enable people reading the objection to establish (via other resources, such as a telephone directory) where the objector lives and how to contact them.

3.33 The unpublished contact details provided with objections will be used by NGBU clerks for the purpose of contacting objectors – for example, to update them on progress with the Bill. In addition, the clerks may invite objectors to consent to their contact details being shared with the Scottish Government and/or with other objectors. Sharing contact details in this way can make it easier for the Government officials to negotiate directly with objectors, and for objectors to liaise among themselves (particularly once their objections have been grouped for the

purpose of Stage 2 evidence-taking). NGBU will never pass on an objector's contact details to a third party without the objector's express consent.

## **Withdrawal of objections**

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3.34 An objector may, at any time following the lodging of their objection, withdraw it by notifying the clerks (Rule 9C.7.10). As with lodging an objection, notice of withdrawal should be given in writing. Withdrawal by e-mail may not be accepted unless the e-mail attaches a copy of a signed letter of withdrawal. There is no requirement for an objector to give reasons for withdrawing an objection.

3.35 The Scottish Government may wish to engage with objectors in order to discuss their concerns and how they could be addressed, and such negotiations may sometimes lead to objections being withdrawn. However, the initiative for withdrawing an objection always rests with the objector, and the clerks will not accept notice from the Scottish Government as evidence that an objection has been withdrawn.

## **Changes in objectors' circumstances**

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3.36 Objectors' circumstances may change after their objection is lodged and before it is finally disposed of. If a change of circumstances is directly relevant to the content of the objection, the objector should inform the clerks who will, if appropriate, update the Committee.

3.37 In some cases, a change in an objector's circumstances may remove entirely the basis on which the objection was deemed admissible – for example, if the objector moves away (for reasons unrelated to the Bill) from the area affected by the Bill. This does not formally invalidate the objection, and it remains a decision for the objector whether to withdraw the objection, but it is expected that objectors will explain the change in circumstances to the Hybrid Bill Committee so that the Committee is able to make an informed decision on the objection.

3.38 Sometimes a change in an objector's circumstances may result in a new individual or organisation acquiring (for the first time) an interest that is (or may be) adversely affected by the Bill – for example, where one person (A) who lives within the area affected by the Bill and has objected on that basis then sells that

## Guidance on Hybrid Bills

### Part 3: Objections

property to someone else (B) who was not previously qualified to object. If this happens before Stage 2 has begun, B may be able to lodge a late objection, citing the circumstances in their explanation of why the objection was lodged after the objection period (see paragraph 3.7). If Stage 2 has already begun, B does not have the option of lodging their own objection, but may be able to arrange with A for A's objection to be pursued on B's behalf. These circumstances should be explained to the Committee when evidence on the objection is given.

3.39 Similarly, if an organisation that has lodged an objection changes status (for example, if it goes into administration, is taken over by a new owner, or is re-named or re-structured), this should be brought to the attention of the clerks if the change may be relevant to the grounds of objection.

## Part 4: Hybrid Bill Committees

### Establishment and membership

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#### Establishment of Committee

4.1 Following the introduction of a Hybrid Bill, the Parliament must establish a Hybrid Bill Committee to consider it. It is for the Parliamentary Bureau to propose the relevant motion (Rule 6.1.3). The motion normally specifies the name, remit and duration of the Committee, and the party from which the Convener and Deputy Convener are to be chosen. The names of the Committee members may be included in the same or a separate Bureau motion.

#### Remit and duration

4.2 The remit of a Hybrid Bill Committee is to consider and report to the Parliament on the Bill in question. What this involves, and the role of other committees in scrutiny of the Bill, is explained in detail in Part 5.

4.3 Hybrid Bill Committees are normally established for the duration of the Bill – that is, until the Bill is passed or rejected, falls or is withdrawn. In practice, the Committee's role will normally be at an end once Stage 2 is completed.

#### Membership

4.4 Under Rule 9C.6.2, a Hybrid Bill Committee must consist of three, four or five members.

4.5 There are various constraints on who can serve as a member of a Hybrid Bill Committee. As with other committees of the Parliament, the Parliamentary Bureau is required (Rule 6.3.4) to have regard to the balance of political parties within the Parliament and to take into account the qualifications and experience of any member who has expressed an interest in serving on the committee. Although seats on committees are normally allocated in proportion to the strength of the parties (as measured by their number of MSPs), the small size of Hybrid Bill Committees usually makes proportionality across all the parties impossible.

4.6 In addition to these general constraints on membership, the quasi-judicial role that Hybrid Bill Committees are expected to perform makes it important that

their members are, and are seen to be, neutral and impartial. Accordingly, under Rule 9C.6.3, the following may not be appointed to a Hybrid Bill Committee:

- an MSP whose principal place of residence is within the area of any works that the Bill would authorise
- an MSP who owns (or has any other right or interest in) any land or buildings that would be subject to compulsory acquisition or use under the Bill
- an MSP whose constituency or region includes any part of the area of any works that the Bill would authorise
- an MSP whose constituency or region would, in the opinion of the Parliamentary Bureau, be particularly affected by any such works
- an MSP who has a financial interest that, in the opinion of the Parliamentary Bureau, directly relates to the subject matter of the Bill
- an MSP who has any other interest registered in the Register of Interests of Members of the Scottish Parliament<sup>10</sup> that the Parliamentary Bureau considers would, or would be likely to, prejudice the MSP's ability to participate in the Committee's proceedings in an impartial manner.

4.7 The function of the Register of Interests is to provide information about certain financial interests of members, namely those which “might be thought to influence a member's actions, speeches or votes in the Parliament”.<sup>11</sup> In most contexts, the existence of a financial interest requires to be registered and declared in relevant contexts, but does not prevent the member from participating

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<sup>10</sup> The Register entry for each current MSP is available from the Parliament's website (under [Current and previous MSPs](#)), by selecting the MSP's name, then selecting “Register of Interests”.

<sup>11</sup> [Code of Conduct for MSPs](#), Section 1, paragraph 3, accessible on the Parliament's website, under MSPs.

in the proceedings of the Parliament.

4.8 In relation to a Hybrid Bill Committee, however, the test is simply whether the member has a financial interest that, in the Bureau's opinion, directly relates to the subject matter of the Hybrid Bill, even if the amounts involved are below the normal threshold for registration.

Accordingly, to ensure that the Bureau is in a position to judge eligibility for membership of a Hybrid Bill Committee, any MSP who has been nominated must bring to the attention of the Bureau any unregistered financial interest they have in relation to the subject-matter of the Bill (Rule 9C.6.4).

4.9 In addition, the rules exclude from membership of the Hybrid Bill Committee any member with a registered interest that (in the Bureau's opinion) is likely to prejudice his or her ability to consider the Bill impartially.

4.10 To further demonstrate the importance attached to the impartiality of members, a declaration of impartiality must be made at the first meeting they attend (see below).

### **Changes of membership**

4.11 The circumstances in which a member of a Hybrid Bill Committee may cease to be a member of it are the same as for other committees – namely, resignation, removal from office by the Parliament on a motion of the Committee, and ceasing to be an MSP (Rule 6.3.5). In such an event, the Bureau may appoint a replacement member.

### **Attendance at meetings**

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4.12 Like other committees, a Hybrid Bill Committee cannot commence consideration of any business or vote with fewer than three members present (Rule 12.2.1).

4.13 Partly because of the small size of Hybrid Bill Committees and partly because of the special nature of their proceedings, members are expected to attend all meetings of the Committee, and may be absent from a meeting only in exceptional circumstances (Rule 9C.6.8).



4.14 Unlike the position for most other committees, substitute members cannot be appointed to a Hybrid Bill Committee (Rule 6.3A.3). The Rules on “Bill substitutes” (Rule 6.3B) also do not apply in the context of a Hybrid Bill Committee.

4.15 At Stage 2, a member of the Committee may not participate in any consideration of the merits of an objection, or in any further proceedings relevant to that objection, unless either:

- he or she was present on each occasion when the Committee took oral evidence directly relevant to that objection, or
- he or she instead views a recording of the relevant proceedings or reads the *Official Report*.<sup>12</sup>

4.16 Normally, the second option (viewing a recording or reading the Official Report) is available only if each person who gave oral evidence in the absence of the member, and the promoter, agrees (Rule 9C.6.9). So if one of the parties (objector or the Scottish Government) withholds agreement, the member who was absent is barred from participating in consideration of the objection.

4.17 However, if the net effect is that fewer than half of the committee members would remain eligible to participate in consideration of an objection, the committee must invite all those who were previously invited to give evidence to give their evidence again (Rule 9C.6.9A). If the party who withheld agreement accepts this invitation, the members who would otherwise have been ineligible to participate in consideration of objections become eligible (by having now heard the evidence in person). And if the party does not take up the invitation, their agreement is no longer required – thus allowing the otherwise-ineligible members to become eligible (by viewing a recording or reading the Official Report of that party’s original evidence).

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<sup>12</sup> This does not apply in a situation where the committee is considering an objection on the basis of a report by an assessor, where the evidence was given to the assessor and not to the committee.

4.18 In view of these constraints, it is particularly important that members of Hybrid Bill Committees notify the clerks as far ahead as possible of any circumstances that might prevent them attending all or part of a scheduled meeting, so that consideration can be given to changing the times of the meeting or re-scheduling it altogether. If such circumstances arise during a meeting, it may be necessary for the meeting to be adjourned for a time, or closed early. Because of the inconvenience this may cause to non-MSPs involved in the proceedings, members should make every effort to ensure that such circumstances do not arise.

## **First meeting**

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### **Declarations of interest and impartiality**

4.19 All members of committees are expected to declare any interests they have that are relevant to the remit of the committee, at the first meeting they attend.<sup>13</sup>

4.20 In addition, each member of a Hybrid Bill Committee must, at the first meeting he or she attends, make the following declaration (under Rule 9C.6.5):

“I declare that I will act impartially, in my capacity as a member of the [*name*] Committee, and will base my decisions solely on the evidence and information provided to the Committee.”

### **Choice of convener**

4.21 Like other committees, a Hybrid Bill Committee must choose a Convener at its first meeting. In practice, this is normally a formality, as the Parliament will already have decided that only members of a particular political party are eligible to be the Convener (in the motion establishing the Committee), and there is likely to be only one member of the Committee from that party.

4.22 Until the Convener is chosen, the meeting is chaired by the oldest

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<sup>13</sup> Code of Conduct Guidance, Section 3, paragraph 6 – available on the Parliament’s website under MSPs / [Code of Conduct](#).

Committee member present (Rule 12.1.6 and 12.1.19).

## **Role of Convener and Deputy Convener**

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4.23 The Convener holds office for the duration of the Committee unless he or she resigns, is removed from office by a decision taken by an absolute majority of the Committee, or ceases to be a member of the Committee or an MSP. If the convener ceases to hold office, the Committee must choose a successor (Rules 12.1.8 and 12.1.9). In these circumstances, the Bureau may propose a fresh motion specifying the party from which the convener is to be taken.

4.24 The convener's role is to convene and chair all meetings of the Committee and (with the assistance of the clerks) to ensure that it follows the applicable procedures. The convener can vote in any division, and must exercise a casting vote in the event of a tie.

4.25 If the Parliament decides, when it establishes the Committee or subsequently, that the Committee should have a deputy convener, the Committee must choose one of its members to occupy that position. As with the convener, the Parliament chooses the political party, and the Committee's choice is therefore usually a formality. The main role of the deputy convener is to chair meetings of the Committee in the absence of the convener. He or she is also likely to share with the Convener responsibility for speaking on behalf of the Committee in Chamber debates on the Bill.

## **Sub-committees and reporters**

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4.26 Like other committees of the Parliament, Hybrid Bill Committees can establish sub-committees (with the agreement of the Parliament on a motion of the Parliamentary Bureau), or appoint members as reporters (Rules 12.5 and 12.6). However, given the presumption in favour of all evidence being heard by all Committee members, Hybrid Bill Committees generally do not use these powers.

## **Assessors**

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4.27 In the case of a Hybrid Bill to which objections have been lodged, the Hybrid Bill Committee can decide (at Stage 1) to direct the Parliamentary

corporation (the SPCB) to appoint an assessor to undertake some of the detailed work on the Bill at Stage 2 (assuming the Bill proceeds that far).

4.28 The main role of an assessor is to consider the evidence given by the Scottish Government and objectors at Stage 2, and to report to the Committee with recommendations. The assessor may also be asked to carry out an initial assessment of the objections and recommend to the Committee how they should be grouped, which objectors should be chosen as lead objectors, and whether the evidence invited should be oral, written or both (Rule 9C.10.3).

4.29 Where an assessor is appointed and the Committee agrees (whether or not on the assessor's recommendation) that the evidence invited should include oral evidence, it is for the assessor to conduct the oral evidence hearings as he or she sees fit. While these are not proceedings of the Committee, they are in practice conducted in a similar way, including with the parties leading their own evidence and cross-examining each other's evidence. The Committee clerks may assist the assessor in preparing for these meetings, much as they would do with Committee meetings. A transcript of any oral proceedings held in public (similar in style to the *Official Report* of a Committee meeting) is prepared and published.

4.30 Following the completion of assessor hearings, the assessor prepares a report, with recommendations, and provides it to the Committee. It is then for the Committee to reach decisions, based on the assessor's report, just as it would do if it had taken that evidence itself. (See also Part 5.)

## **Clerks, advisers and other staff**

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### **Clerks to the Committee**

4.31 Each committee has one or more clerks. The clerks are members of the staff of the Parliament whose general role is to provide administrative and procedural support to the Parliament as a whole and to its members. The specific role of the clerk to a committee is to arrange meetings; prepare the agenda, papers and minutes; provide procedural advice to the convener and other members; liaise with the Scottish Government, objectors and witnesses; and draft the committee's reports.

4.32 The clerks do not normally speak during public committee meetings but

may do so, on the invitation of the convener, in relation to a factual or procedural query. A committee may not meet without a clerk present.

### **Parliament legal advisers**

4.33 A committee may have in attendance one or more of the Parliament's legal advisers, whose general role is to provide the members and clerks with legal advice.

### **Official reporters and broadcasters**

4.34 For every Committee meeting held in public a substantially verbatim report of the proceedings is published (Rules 16.2 and 16.5). Members of the staff of the Official Report attend meetings and sit at the table for the purpose of preparing this report. A broadcast (audio-visual or audio only) is also made of all public committee proceedings.

Members of broadcasting staff are present at meetings to control cameras and to operate microphones.

### **Security staff**

4.35 Members of the Parliament's security staff are present during all public committee meetings. Their role is to assist with public access, maintain order and pass messages to and from members and others.

### **Advisers**

4.36 Like other committees, Hybrid Bill Committees may seek to appoint advisers to assist them in their work. Advisers are only likely to be appointed if the Bill raises complex or specialised issues and where relevant expertise is not available from within the Parliament. Advisers provide informed, impartial advice to the Convener and other members, and to the clerks. They usually attend meetings, and may contribute to the proceedings, although they do not participate directly in evidence-taking.

## Committee meetings

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### Time and place of meetings

4.37 Like all committees, Hybrid Bill Committees normally meet in the morning, on Tuesdays, Wednesdays or Thursdays, although they can occasionally meet at other times or on other days. Hybrid Bill Committees have more latitude than most other committees to meet, or continue to meet, while a meeting of the Parliament is in progress (Rules 9C.6.6 and 7). In practice, it is for the Committee as a whole to decide how often it needs to meet to carry out the work required of it, and it is for the Convener to make final decisions about the dates and times of meetings. These will be advertised in advance on the Committee's web page and in the Parliament's Business Bulletin.

4.38 Committees may, subject to the approval of the Parliamentary Bureau and Conveners Group, meet anywhere in Scotland (Rule 12.3.2). Depending on the subject-matter, a Hybrid Bill Committee may sometimes meet in or near the area affected by the Bill. Assessor hearings may also sometimes be held in the local area.

4.39 In addition, Committee members (or an assessor) may wish to undertake visits to relevant sites, in order to inform themselves about the context for the Bill and its likely impact. Where such a visit is hosted by the Scottish Government, objectors may be given the opportunity to observe.

### Public and private meetings

4.40 Like other committees, Hybrid Bill Committees normally meet in public (Rule 12.3.4). Any committee may meet in private if it so decides, but it may not do so when considering legislation except where, for the purpose of taking evidence, it decides that it is appropriate that a meeting, or part of a meeting, should be held in private (Rule 12.3.5). This might arise in relation to evidence of a commercially sensitive nature, for example. In addition, like other committees, Hybrid Bill Committees may decide to take certain agenda items in private where these do not relate directly to the consideration of the Bill. This may include, for example, agreeing their approach to a particular Stage of the process, preliminary consideration of objections, a decision on whether to appoint an adviser or an assessor, or consideration of a draft report.

4.41 Decisions to hold a meeting, or part of a meeting, in private should if possible be taken at a previous meeting of the Committee. This helps to make clear in advance to members of the public who might wish to attend that they will not be able to do so.

4.42 Committee proceedings held in private are not reported in the Official Report (unless the Parliament has decided otherwise), and are not broadcast (Rule 16.5.2). However, the outcome of any decisions taken in private are recorded in the minutes of the Committee meeting, which are published on the Committee's web pages.

4.43 Assessor hearings are normally conducted in public, but an assessor may occasionally agree to take certain evidence in private for the same sorts of reasons that a Committee might have for meeting in private (e.g. if the evidence is commercially sensitive).

### **Committee papers**

4.44 In advance of each committee meeting, an agenda is circulated to members and published in the Business Bulletin and on the committee's web page.<sup>14</sup> For some items, committee papers may also be circulated (e.g. notes by the clerk or written evidence received). Where an agenda item is to be taken in private, the papers (e.g. a draft report) may also be private. Public papers are published with the agenda on the committee's web page. After each meeting, minutes are published on the same web- page, alongside the *Official Report*.

### **Attendance by non-Committee members**

4.45 Any MSP who is not a member of a committee may attend any public meeting it holds (Rule 12.2.2). However, this is more restricted in the context of Hybrid Bill Committees, where non-Committee members are not entitled to participate in the committee proceedings at Stage 1 (Rule 9C.10.8) or in the proceedings on objections at Stage 2 (Rule 9C.11.12). In this context,

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<sup>14</sup> Each committee has a dedicated web-page which can be found on the Parliament's website, under Chamber and committees / [Current and previous committees](#).



“participation in the proceedings” includes questioning of witnesses and discussion of the Bill. All MSPs are entitled to participate in the committee proceedings on amendments at Stage 2.

### **Conduct during meetings**

4.46 As in other committees, the convener chairs meetings of the Hybrid Bill Committee, and other members speak only at the invitation of the convener. Members speak from their seats and should speak through the convener at all times, unless addressing questions directly to witnesses. Members should not interrupt each other, though they may accept interventions (Rules 7.2.1 and 7.2.4 and 7.8). Witnesses should address their remarks through the chair, except during direct cross-examination of other witnesses.

4.47 The convener may limit the time available for a particular item on the agenda. He or she may also determine the order of speakers and limit the time available to any member or other person present to speak. The convener has similar general powers to maintain order in the Committee as the Presiding Officer has in the Chamber. In particular, he or she may order a member or any other person present to stop speaking if they have exceeded the time allotted to them, or if they are departing from the subject or repeating themselves (Rules 7.2.2 and 7.2.3 and 7.8).

4.48 In committee meetings, members address each other in the same manner as in the Parliament – that is, by name (and title if they wish). The convener and deputy convener may be referred to as such.

4.49 All participants in the proceedings must conduct themselves in a courteous, orderly and respectful manner, and must respect the authority of the convener at all times. In particular, they must not behave in a manner that would constitute a criminal offence or contempt of court (Rules 7.3.1 and 2 and 7.8).

### **Matters *sub judice***

4.50 Under Rule 7.5, members may not make reference to any matter in relation to which legal proceedings are active (for the purposes of section 2 of the Contempt of Court Act 1981), except to the extent permitted by the Presiding Officer. While this Rule does not “prevent the Parliament from considering



## Guidance on Hybrid Bills

### Part 4: Hybrid Bill Committees

legislation”, members should avoid making reference to matters that are sub judice during proceedings on a Hybrid Bill unless they consider it necessary and appropriate to do so. If in doubt, they should, where possible, raise the matter with the clerks in advance.

### Language

4.51 All committees normally conduct their business in English (Rule 7.1). However, if a member wishes to address a Hybrid Bill Committee in Scots Gaelic, or in any other language, he or she may do so with the agreement of the convener. A promoter, objector, witness, or any other person invited to speak by the Committee may also address it in a language other than English with the permission of the Convener. Permission should be sought, through the clerks, at least two weeks in advance to allow translation or interpretation facilities to be made available.

## Part 5: Stages of Hybrid Bills

### The three-Stage process

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- 5.1 All Hybrid Bills are subject to a three-Stage process. These are:
- **Stage 1** – in which the Committee considers and reports on the general principles of the Bill and whether it should proceed as a Hybrid Bill, and gives preliminary consideration to any objections; the Parliament then decides whether the Bill should proceed to the next stage
  - **Stage 2** – in which the Committee gives full consideration to any objections, then considers any amendments lodged
  - **Stage 3** – in which the Parliament considers any further amendments lodged, and then decides whether to pass the Bill.
- 5.2 A separate Reconsideration Stage is also possible in certain circumstances.

### Stage 1

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5.3 This Stage begins once the Bill has been published and a Hybrid Bill Committee established.

#### Committees involved at Stage 1

5.4 If the Hybrid Bill falls within the remit of any of the Parliament's existing committees, the Parliamentary Bureau must designate the Hybrid Bill Committee as "lead committee" on the Bill, and those other committees (the "secondary committees") may consider and report on the general principles of the Bill to the Hybrid Bill Committee (Rule 9C.6.1). This ensures that the established expertise of the relevant subject committees is fed into the scrutiny process, while still protecting the central role of the Hybrid Bill Committee in the process.

5.5 If the Bill includes provisions that confer powers to make subordinate legislation, the Delegated Powers and Law Reform Committee must consider and

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

report to the Hybrid Bill Committee on those provisions (Rule 9C.10.9). Similarly, the Finance Committee may consider the Bill's Financial Memorandum and report its views to the Hybrid Bill Committee, which must take those views into account in finalising its own report (Rule 9C.10.10).

5.6 The Parliament may, on a recommendation by the Parliamentary Bureau, set a deadline for the completion of Stage 1.

### Role of Hybrid Bill Committee

5.7 The Hybrid Bill Committee's role is to produce a report (the Stage 1 Report) on:

- the general principles of the Bill, and
- whether the Bill should proceed as a Hybrid Bill.

In addition, the Committee is required to give preliminary consideration to any objections.

5.8 At its first Stage 1 meeting, Hybrid Bill Committee members first make declarations of interest and of impartiality, and then choose a Convener (and Deputy Convener). Either at the same meeting or a subsequent one, the Committee then normally decides what approach to take to its Stage 1 consideration. This involves, for example, considering which witnesses to invite, whether to appoint an adviser, how often to meet, and how long completion of the Stage is likely to take. While this discussion may be taken in private, the outcome is published so that the parties are aware of the likely timescales, and of any deadlines for submitting evidence.

### Consideration of general principles

5.9 In considering the general principles of the Bill, the Hybrid Bill Committee should consider the Bill "in the round" without focusing unduly on points of detail that are more properly a matter for Stage 2. This normally includes taking oral evidence from the Scottish Government, and perhaps from other witnesses (e.g. experts in the subject-matter). Any written evidence that has been submitted (whether in response to an invitation by the Committee or otherwise) will also be taken into account. If there are objections to the whole Bill, the Committee may

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

wish to take evidence from some or all of the relevant objectors, to ensure that it has a balanced view of the arguments before reaching a view on the Bill's general principles.

### **Consideration of whether the Bill should proceed as a Hybrid Bill**

5.10 In considering whether the Bill should proceed as a Hybrid Bill, the Hybrid Bill Committee must consider, in particular:

- whether the Bill conforms to the definition of a Hybrid Bill set out in Rule 9C.1.1, and
- whether the Bill's accompanying documents conform to Rule 9C.3.2 and are adequate to allow proper scrutiny of the Bill (Rule 9C.10.4).

5.11 On the first of these points, the Committee should satisfy itself that the Bill adversely affects the private interests of some persons within a category or class in a manner that differentiates them from others in the same category or class – and hence that the Bill cannot simply be treated under the normal procedures for Public Bills.

5.12 On the second point, the Committee should establish whether each accompanying document meets the requirements set out in Rule 9C.3.2, and does so in a way that is suitable for the intended purpose. For example, the Committee should consider whether the Explanatory Notes give sufficient information to explain the effect of the provisions of the Bill, and whether the Scottish Ministers' Statement is sufficient to demonstrate that all those persons likely to be affected were properly notified.

5.13 In relation to any "works Bill", the Committee's consideration of the adequacy of accompanying documents should include consulting on the Environmental Statement. This is to ensure that the Parliament complies with case-law on the application of EU legislation on public participation in relation to environmental impact assessments. The Stage 1 report should include a summary of the responses received, together with the Committee's conclusions, and a link to the responses themselves.

5.14 If the Committee takes the view that the accompanying documents do not

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

meet the requirements of Rule 9C.3.2 and are not adequate to allow for proper scrutiny of the Bill, it may offer the Scottish Government an opportunity to provide supplementary accompanying documents (Rule 9C.10.5). It is for the Committee to specify what further documents it requires and to set a reasonable timescale within which they must be provided. Under Rule 9C.10.6, supplementary accompanying documents must satisfy the same requirements of form as apply to the original accompanying documents. Supplementary accompanying documents are published and distributed on the same basis as the original accompanying documents (Rule 9C.10.7).

### **Preliminary consideration of objections**

5.15 The third main role of the Hybrid Bill Committee at Stage 1 is to give preliminary consideration to any admissible objections lodged.

5.16 Preliminary consideration is limited to the Committee considering whether each objection demonstrates that the objector's interests are clearly adversely affected by the Bill. If the Committee considers that the objector's interests are not clearly adversely affected, it must reject the objection (Rule 9C.10.2). These decisions are normally made solely on the basis of the information contained in the objections, although the Committee may invite oral or written evidence from an objector before reaching a decision. If the Committee decides to undertake the preliminary consideration of objections in private, the results of its decision will be published shortly after the meeting, and any objectors whose objections have been rejected will be informed directly by the clerks. The Committee's decisions on objections (on the basis of its preliminary consideration) do not require to be endorsed by the Parliament, and only those objections not rejected proceed to Stage 2 for full consideration.

### **Stage 1 Report**

5.17 Once the Hybrid Bill Committee has completed its detailed consideration of the three issues outlined above, it prepares a Stage 1 Report to the Parliament. The report normally includes a recommendation to the Parliament on whether the general principles of the Bill should be agreed to (taking account of the views of any secondary committees) and whether the Bill should proceed as a Hybrid Bill. It also sets out the result of the Committee's preliminary consideration of any objections. The report must include the Committee's views on the Financial

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

Memorandum (taking account of any views reported to it by the Finance Committee) and the Policy Memorandum (Rule 9C.10.10). Where other committees have reported their views on the Bill to the Hybrid Bill Committee, links to these are normally included in an annexe to the report.

5.18 The Stage 1 Report is published on the Committee's web page. The clerks inform the objectors when the report is published, and copies are sent to the same premises to which copies of the Bill and accompanying documents were sent on introduction.

#### Stage 1 debate

5.19 After the Stage 1 Report has been published, it is for the Parliament to debate and decide on the general principles of the bill and whether it should proceed as a Hybrid Bill. The date and time for this Stage 1 debate are advertised in the Business Bulletin at least a week in advance.

5.20 The Stage 1 debate cannot take place earlier than the fifth sitting day after publication of the Stage 1 Report (unless a motion, by any member, proposing that the debate takes place earlier is agreed to) (Rule 9C.10.11). This is intended to ensure that there is, in the normal course of events, at least a week between publication of the Stage 1 Report and the Stage 1 debate.

5.21 The Stage 1 debate takes place on a motion, lodged in the name of the Minister ("That the Parliament agrees to the general principles of the [short title] Bill and that the Bill should proceed as a Hybrid Bill"). If the motion is agreed to by the Parliament (whether on a division or otherwise), the Bill proceeds to Stage 2. If the motion is not agreed to, the Bill falls (Rule 9C.10.15).

5.22 Any member may, before the debate, lodge an amendment to the Stage 1 motion. Like all amendments to motions, such amendments are subject to selection by the Presiding Officer (Rule 8.5.6). Such an amendment may be selectable if, while expressing reservations about the Bill (for example), the amended motion would continue to make clear that the Bill should proceed to Stage 2. However, an amendment to reverse the motion (for example, making clear that the Bill should not proceed to Stage 2 for a reason specified in the amendment) would not normally be selected by the Presiding Officer, as rejection of the amended motion could cast doubt on whether the Bill was still in progress.

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

5.23 All MSPs may participate in the Stage 1 debate. The debate is opened (and closed) by one of the Ministers in charge of the Bill, with the Convener of the Hybrid Bill Committee usually also called near the beginning of the debate. Other members who speak may do so as party spokespersons, on the basis of a constituency or regional interest (which should be declared), or in their capacity as members of the Hybrid Bill Committee (or another committee involved in Stage 1 scrutiny).

5.24 Any member may, before the Stage 1 decision is taken, move that the Bill be referred back to the Hybrid Bill Committee for a further report on the general principles of the Bill (or specified sections of the Bill), or on whether the Bill should proceed as a Hybrid Bill. Such a motion should normally be lodged in advance and (if selected by the Presiding Officer) taken before the Stage 1 debate. If the motion is agreed to, the Bill returns to the Hybrid Bill Committee for a further report, and the Stage 1 debate is adjourned until that has happened (Rules 9C.10.13 and 14).

### Crown consent

5.25 If a fundamental purpose of the Bill requires Crown consent (see paragraph 2.62 above), this is signified by the relevant Minister at the beginning of the Stage 1 debate. (If Crown consent is required only in respect of minor or subsidiary provisions of the Bill, it may be signified at Stage 3.)

## Stage 2

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5.26 Unless the Bill is rejected at Stage 1, it proceeds to Stage 2, which is taken by the Hybrid Bill Committee (Rule 9C.11.1). There must be at least 12 sitting days between the day Stage 1 is completed and the day Stage 2 begins (9C.9.4).

5.27 The overall purpose of Stage 2 is to consider the detail of the Bill. If there are no objections – either because no admissible objections were lodged, or because any admissible objections were rejected at Stage 1 – then Stage 2 normally consists only of an opportunity to consider amendments (like Stage 2 of any other Public Bill). However, if there are objections, these must be considered first, before any consideration of amendments begins. In these circumstances, the Stage falls into two distinct phases, distinguished by the style of proceedings – the



Committee first meets in a quasi-judicial capacity to hear evidence from the Minister and objectors, and then meets in a legislative capacity to consider and dispose of any amendments.

### **Consideration of objections – principles**

5.28 Stage 2 is the main opportunity for objectors to explain their grounds for objection, and for the Scottish Government to respond. The role of the Hybrid Bill Committee is to facilitate agreement or compromise where possible, and otherwise to act as arbiter between the parties. Therefore, before it reaches a decision on the merits of objections, the Committee must ensure that each party has had a fair opportunity to present its own case and question the opposing case. This may involve the leading of evidence and the cross-examination of witnesses and their evidence. It is open to the Scottish Government, at any point in the process, to resolve specific issues by direct negotiation with relevant objectors, thus reducing the number of issues that need to be considered and decided upon by the Committee.

### **Invitations to give evidence**

5.29 Where there are objections to consider at Stage 2, the Committee must first decide from whom to invite evidence, and whether to invite oral evidence, written evidence or both.

5.30 The Committee has only limited discretion about whom to invite. Under Rule 9C.11.5(a), it must invite the member in charge (i.e. the Minister). With objectors, the Committee should first group objections that it considers to be the same or similar and then select one or more objectors to give evidence on behalf of each group (Rules 9C.11.5(b) and 6). It must also invite each objector whose objection has not been grouped – unless the Committee takes the view that the objector's interests are no longer adversely affected by the Hybrid Bill, for example because of a relevant change in the objector's circumstances since Stage 1 (Rule 9C.11.5(c)).

5.31 For the purpose of grouping, objections will normally be treated as similar only if they give similar reasons in opposition to similar aspects of the Bill, or are objecting on the basis of having similar interests (e.g. by reference to where they live). This ensures that all legitimate arguments are considered, while avoiding



unnecessary repetition.

5.32 While the grouping of objections and the selection of objectors to represent those groups is a matter for the Committee, it is normal practice to allow objectors to comment on what is proposed before decisions are finalised. The Committee may, for example, make provisional decisions (on the basis of advice from the clerks) and then allow a period of (say) a couple of weeks for feedback from objectors. This allows objectors to say whether they are content with the group they are in and with the person nominated as lead objector for that group.

5.33 Invitations are normally to give both oral and written evidence. A Hybrid Bill Committee is only likely to limit the evidence invited to written evidence where the issues at stake are relatively minor and uncontroversial. Where oral evidence is to be taken, the parties invited to attend a particular meeting are normally given the opportunity to submit written evidence in advance of that meeting.

### **Role of lead objectors**

5.34 For practical reasons, it is likely that a single “lead objector” will be nominated for each group. The main role of the lead objector is to coordinate the evidence given on behalf of the group, and to act as a contact-point for the group in relation to practical arrangements. If the lead objector does not wish to give all the oral evidence him/herself, he or she may nominate other objectors from within the group to speak on particular topics (e.g. because of relevant expertise). The lead objector is also responsible for submitting any written evidence on behalf of the group. It is for the lead objector to satisfy him/herself that any evidence (whether oral or written) given on behalf of the group represents the views of the group as a whole.

5.35 In carrying out their role, lead objectors should ensure that the evidence that is given, whether orally or in writing, on behalf of the group relates to the grounds of objection set out in the group’s original objections. New material can be included that is relevant to these grounds of objection (e.g. to expand on or update the original points made), but new grounds of objection cannot normally be added at this stage.

5.36 As well as nominating other objectors within the group to give evidence on specific topics, lead objectors may also request that third parties (i.e. people who

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

are not objectors themselves) be invited to give evidence on behalf of the group. A third party may be suggested, for example, because he or she has relevant experience or expertise not available within the group. Another option is that the group may wish to have their case presented by a solicitor or advocate.

5.37 Committees will normally agree to invite as witnesses any additional objectors or third parties nominated by the lead objector (although it may sometimes be necessary to set an upper limit on the number of witnesses invited on behalf of a group). Where third parties are invited, they are eligible for travel expenses on the same basis as other witnesses, but it would be for the objectors in the group to meet any professional fees they may charge for their attendance.

5.38 If an assessor has been appointed, his or her role will normally include making recommendations to the Committee about the grouping of objections, the choice of objectors to give evidence on behalf of each group, and whether evidence should be given orally or in writing. The final decision on these matters rests with the Committee, but would be informed by the assessor's recommendations.

### Timetabling of meetings

5.39 Once the groupings and lead objectors have been finalised, a timetable for the consideration of objections is drawn up. The aim of this is to give the Scottish Government and the objectors reasonable notice of when oral evidence from each group (or individual objection, if not grouped) will be taken. The clerks consult the parties about their availability in the preparation of the timetable so that their preferences can be accommodated as far as practicable.

5.40 The deadline for the submission of any written evidence on behalf of a group (or individual objection, if the objection has not been grouped) is usually a week before the meeting at which oral evidence is to be taken, so that submissions can be circulated to Committee members and to the Scottish Government in advance. The same deadline normally applies to any written evidence by the Scottish Government.

5.41 A similar deadline is likely to be set for the parties to finalise who is to appear on their behalf. For each group, this will normally include the lead objector and may include other objectors from within the group and any third-party

witnesses the Committee has agreed to invite. For the Scottish Government, this will normally include the Minister, relevant officials, and any third-party witnesses the Committee has agreed to invite. The clerks will need the full names and designations (e.g. job titles) of all those who wish to give oral evidence, together with an indication of the topics they are likely to cover and the time they consider is likely to be required for their evidence. (It is, however, for the Convener rather than the parties to make final decisions on the time available for oral evidence.)

### Written evidence

5.42 Written evidence should, so far as possible, be concise and non-technical. It is greatly appreciated if it is submitted electronically so it can easily be re-formatted for circulation and publication on the Committee's web-pages. If there is any reason why evidence should not be published in full (e.g. for reasons of commercial sensitivity), this should be discussed in advance with the clerks. The clerks may also query evidence that appears to contain personal data (particularly special category personal data<sup>15</sup>) or to include defamatory statements, and may require that material to be amended, or redact it, before the evidence is published.

### Structure of oral evidence-taking

5.43 It is for the convener of the Committee to call witnesses to speak and to determine the overall order of proceedings. In relation to each group of objections (or individual objection, if not grouped), normal practice is to give each "side" (i.e. the objectors, or the Scottish Government) an opportunity to set out their arguments – including by calling any third-party witnesses – and then to give the other side an opportunity to test these arguments through cross-examination. Both sides may also be questioned by Committee members. At the end, each side has an opportunity to sum up and make any final points.

5.44 Where a number of groups have similar grounds of objection, the parties to later groups are encouraged to rely on evidence already given to the Committee, rather than repeating it. The Committee also has the option of amalgamating the

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<sup>15</sup> See footnote to paragraph 3.29

proceedings on two or more groups, for example to allow relevant third-party witnesses to be cross-examined by objectors from more than one group.

### **Committee decisions on objections**

5.45 Once evidence-taking is completed, it is for the Committee to reach a decision on the merits of each objection in the light of the evidence that relates to it (Rule 9C.11.7A). Each objection may be accepted (in whole or in part) or rejected. Acceptance in part may involve, for example, the Committee recommending additional measures that the Scottish Government could take to offset the adverse impact on objectors. Where the Committee accepts (in full) an objection to the whole Bill, this may (depending on the circumstances) lead it to recommend rejection of the Bill by the Parliament at Stage 3.

5.46 It is for the Committee to decide how to make its decisions on objections known. Should it wish to explain and give context to the decisions, it may agree a “Stage 2 report” – in which case, the decisions would be made as part of the process of agreeing the report, and made known by its publication. If a report is not considered necessary, then the minutes of the meeting at which the final decisions on objections are made provide the means for making the decisions known.

5.47 Where a Stage 2 report is published, copies are distributed to the premises at which the Bill and accompanying documents were distributed on introduction. The report is also published on the Committee’s web pages.

### **Assessor hearings and report**

5.48 Where evidence is given to an assessor, rather than directly to the Committee, it is for the assessor to determine the order in which the parties give evidence and generally to manage the proceedings. However, the approach taken is likely to be similar to that outlined above in relation to evidence-taking by the Committee.

5.49 Once assessor hearings have concluded, the assessor prepares a report to the Committee with recommendations as to which objections should be upheld (in whole or in part) and which rejected. This report is then circulated to the Committee for consideration, usually in private. The Committee may accept the

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

report (in whole or in part) or reject it. The Committee may also take such other steps as it thinks fit – including referring further matters to the assessor to consider, or taking further evidence itself (Rule 9C.11.7A).

5.50 As in the normal case (where there is no assessor) the final decisions on objections rest with the Committee (rather than with the assessor, or with the Parliament), and it is for the Committee to decide whether to publish a Stage 2 report to explain its decisions. The Committee might, for example, decide to prepare such a report in order to explain any decision it had taken to depart substantially from a recommendation of the assessor. In that event, the assessor's report is published as an annexe to the Committee's report. If there is no Committee report, the assessor's report is published on the Committee's web pages to allow objectors and others to understand the detailed consideration that informed the Committee's decisions.

### Stage 2 amendments

5.51 Once the first phase of Stage 2 – including consideration of the merits of objections – has been completed, Stage 2 amendments to the Bill may be lodged.

5.52 If there were no objections which required to be given full consideration, but there were late objections which needed to be given preliminary consideration at the beginning of Stage 2, amendments may be lodged from when that preliminary consideration was completed. Where no admissible objections were lodged, or any such objections were rejected at Stage 1, amendments may be lodged as soon as Stage 1 is completed (Rule 9C.11.10).

5.53 There must be an interval of at least five sitting days between the day on which amendments can first be lodged and the day on which the Hybrid Bill Committee begins formal proceedings on amendments (Rule 9C.11.10A).<sup>16</sup> The deadline for lodging Stage 2 amendments is 2 sitting days before the amendment

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<sup>16</sup> Sitting days are days when the [office of the Clerk is open](#), but not when the Parliament is in [recess](#) or dissolved (Rule 2.1.3). In practice, most weekdays (other than in recess) count as sitting days.

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

proceedings take place (Rule 9C.14.2).

5.54 Any MSP may lodge amendments to the Bill at Stage 2.

5.55 Amendments are lodged with the clerks in the Parliament's Legislation Team (not with the Committee clerks) and, if admissible, printed in the Business Bulletin (Section G). Before the first meeting of the Committee at which amendments are considered, a Marshalled List, showing all the admissible amendments lodged, in the order in which they will be considered, is prepared. The Convener may group amendments for debate, and a groupings list is also published in advance of the proceedings. (See Part 6 for more details.)

### Order of consideration

5.56 Under Rule 9C.11.9, the Hybrid Bill Committee may decide the order in which the sections and schedules of the Bill are to be taken. If it does not, the default order prescribed by the Rule is to take the sections in the order they appear in the Bill and each schedule immediately after the section that introduces it. The Scottish Government will be consulted on any proposal to depart from the default order, and if the Scottish Government wishes to propose a different order, it should contact the clerks well in advance. The last opportunity for deciding any non-default order of consideration is the Committee's last meeting before that on which consideration of amendments begins.

### Amendments adversely affecting private interests

5.57 The Hybrid Bill Committee's consideration of amendments begins with it deciding whether any of the amendments would adversely affect private interests – that is, whether the amendment would result in the Bill having an adverse effect on a private interest that is distinct from (or goes beyond) any adverse effect of the Bill as introduced (Rule 9C.11.10B).

5.58 Where the Committee considers that there are amendments that adversely affect private interests, it must then consider whether they pass the "merits test" – i.e. whether the amendments have (in the Committee's opinion) "sufficient merit that there is a possibility of their being agreed to after further scrutiny" (Rule 9C.11.10C). If any amendment (which the Committee considers affects private interests) fails this test, then it may not be moved (Rule 9C.11.10D) – and such an

amendment does not appear in the Marshalled List (Rule 9C.14.10(a)). But if any amendment passes this test, none of the amendments (whether or not affecting private interests) may be moved until the tasks outlined below (paragraph 5.60) have been completed (Rule 9C.11.10E).

5.59 The purpose of this two-step screening process is to ensure that amendments are not decided upon until those whose private interests would be adversely affected have been given an opportunity to comment – and to do so in a way that minimises the impact on the timescale for the Bill’s passage. By screening all the amendments together, the process ensures that where Stage 2 proceedings need to be put on hold to allow the holders of private interests to be consulted, this need be done only once. And the merit test aims to ensure the proceedings are not put on hold at all if the only amendments that adversely affect private interests are unlikely to be agreed to anyway (for reasons unrelated to any adverse impact on private interests they may have).<sup>17</sup>

5.60 Where the Committee has decided that there is at least one amendment that adversely affects private interests and that passes the merits test, the tasks that must be performed (in relation to each such amendment) are:

- notifying the holders of the affected private interests of the terms of the amendment and its implications, and of how they may lodge an objection
- where admissible objections are lodged, taking evidence on those objections
- where such evidence is taken, considering that evidence and reaching conclusions (Rule 9C.11.10H).

5.61 Where the relevant amendments have been, or are to be, lodged by the Minister, it is for the Scottish Government to carry out the first task (notification) (Rule 9C.11.10F). This may be done in advance of Stage 2 if the need for the

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<sup>17</sup> The reasoning behind the procedure is more fully explained in the Standards, Procedures and Public Appointments Committee’s [4th Report, 2016 \(Session 4\)](#), *Standing Order Rule-changes – Legislation*.



## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

amendment is identified early – in which case, the Scottish Government should consult the clerks about the process of notification to be followed. Otherwise, it is for the Committee either to carry out these tasks itself or to instruct an assessor (where one has been appointed) to do so. If the Scottish Government or an assessor is to carry out a task, the Committee may direct how this is to be done – for example, by deciding on an appropriate period for the lodging of objections (which need not be the same 60-day period allowed for lodging objections to the Bill after introduction) (Rule 9C.11.10G).

5.62 Where objections to amendments are lodged, they are subject to most of the same Rules as objections to the Bill (as described in Part 3), but with a number of variations (set out in Rule 9C.11.10J to 10N). Accordingly:

- Objections may be lodged by an individual, body corporate or unincorporated association during whatever period for lodging objections has been specified (by the Committee or assessor).
- Objections may be lodged in writing or by e-mail.
- To be admissible, the objection must be in proper form; set out the nature of the objection; specify how the objector's interests would be adversely affected by the amendment; and be accompanied by any fee determined by the SPCB (currently set at zero).<sup>18</sup>
- A list of objectors' names need not be published in the Business Bulletin (but is provided instead in committee papers).
- Objections that are lodged after the deadline but before the Committee's first meeting to consider amendments may be given consideration if they are accompanied by a statement to explain the delay and the Committee is satisfied that (a) the objector had good reasons for lodging after the deadline, (b) the objection was lodged as soon as reasonably practicable

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<sup>18</sup> With objections to amendments, there is no equivalent of the requirement (in Rule 9C.7.5(c)) to explain whether the objection lies against the whole Bill or specified provisions.



## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

after the deadline, and (c) consideration of the objection would not be unreasonable having regard to the rights and interests of objectors and the promoter.

- Objections may be withdrawn by the objector.

5.63 Objections to amendments (unlike objections to Bills) are not subject to any process of preliminary consideration by the Committee. Instead, the Committee (or an assessor) proceeds immediately to invite evidence on the objections – which may be written evidence, oral evidence or both – from objectors and the promoter. The Committee (whether or not on the basis of a recommendation by an assessor) may group objections that it considers to be the same or similar and appoint lead objectors to give evidence on behalf of each group. Timetabling, the handling of written evidence and the structure of oral evidence-taking may be conducted on a similar basis as would be the case for objections to the Bill, or a simplified approach may be adopted.

5.64 The Committee is then required to consider the merits of objections in the light of the evidence (or assessor's report) and has the power to accept or reject, in whole or in part, any objection (or assessor's report). In practice, it is likely that the decisions made on amendments will constitute the Committee's final decision on some of the objections lodged to those amendments.

### Proceedings on amendments

5.65 The procedures governing the formal consideration of amendments, by which they are moved, debated and disposed of, are explained in more detail in Part 6. Committees may take evidence on amendments before these formal proceedings begin, although this is unusual in practice. As well as considering any amendments, the Committee must consider and agree each section and schedule of the Bill, and the long title (Rule 9C.11.8).

### Recording decisions on amendments

5.66 Decisions on amendments are recorded in the Committee's minutes, and in the Official Report of the proceedings. A Committee report is not normally prepared, but this would be an option if, for example, the Committee wished to draw the Parliament's attention to provisions of the Bill where, although it could

not agree on any particular amendments, it agrees that some amendment is required.

### **The Bill as amended**

5.67 If any amendment (however small) is agreed to, a revised version of the Bill must be published (Rule 9C.11.13). If substantial amendments are made (particularly the insertion of new sections or schedules) the Scottish Government is required to provide revised or supplementary Explanatory Notes. If the amendments substantially alter the Bill's cost implications, it must provide a revised or supplementary Financial Memorandum by the end of the second week before that in which Stage 3 is due to begin (Rules 9C.11.14 and 15). And if the amendments have inserted new powers to make subordinate legislation, or substantially altered any existing powers, a revised or supplementary Delegated Powers Memorandum must be provided no later than the tenth sitting day after Stage 2 ended or by the end of the second week before that in which Stage 3 is due to begin (Rule 9C.11.17). The publication of the amended Bill and any revised or supplementary accompanying documents is recorded in the Business Bulletin, and copies are sent to the premises to which the original Bill and accompanying documents were sent on introduction.

### **Stage 3**

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5.68 Stage 3 takes place at a meeting of the Parliament (Rule 9C.12.1). There must be at least ten sitting days between the last day at Stage 2 and the day on which Stage 3 takes place (or begins) (Rule 9C.9.5). The business programme containing the date (or dates) for Stage 3 is agreed by the Parliament (on a motion of the Parliamentary Bureau) and advertised in the Business Bulletin.

### **Amendments at Stage 3**

5.69 Amendments for Stage 3 may be lodged as soon as Stage 2 is completed (Rule 9C.12.3). The final day for lodging Stage 3 amendments is the fourth sitting day before Stage 3 is due to begin (Rule 9.C14.3). Where the Bill was amended at Stage 2, Stage 3 amendments must relate to the "as amended" version of the Bill.

5.70 Any MSP may lodge amendments at Stage 3. Amendments are lodged with the Legislation Team clerks and, if admissible, are published in the Business

Bulletin.

### **Order of consideration**

5.71 Rule 9C.12.6 requires amendments at Stage 3 to be taken by reference to the order in which the sections and schedules arise in the Bill, unless the Parliament agrees (on a motion by the Parliamentary Bureau) a different order. If the Scottish Government takes the view that Stage 3 consideration should follow any order other than that laid down by the Rule, it may suggest that order to the clerks. It is unlikely to be possible for the Parliament to agree any such order less than a week before Stage 3 begins.

### **Selection, grouping and timetabling of amendments**

5.72 At Stage 3, the Presiding Officer selects which of the admissible amendments are to be taken (Rule 9C.12.4). Only the selected amendments appear in the Marshalled List.

5.73 Any amendment that would adversely affect private interests (as described in paragraph 5.57 above) is unlikely to be selected, since this would make it necessary to delay the Stage 3 proceedings on amendments to allow time for the holders of those interests to be notified and given an opportunity to make representations. Accordingly, where the Presiding Officer is inclined to select such an amendment (for example, because it has been lodged by the Minister), members of the Parliamentary Bureau would first have to be consulted on the timetabling implications. It would then be for the Parliament to decide (on the Bureau's recommendation) whether to defer the Stage 3 proceedings on amendments in order to facilitate the Presiding Officer's selection of the amendment. It is likely that the Stage 3 proceedings would need to be deferred by at least a few weeks in order to allow the holders of the adversely-affected private interests to be notified and given a reasonable opportunity to make representations. In some circumstances, it may be considered appropriate to give the Hybrid Bill Committee a role in considering any representations made and reporting on them to the Parliament in advance of the deferred Stage 3 proceedings.

5.74 As at Stage 2, amendments may be grouped for debate, and a separate groupings list is published in advance of the proceedings.

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

5.75 The Parliament may, on a motion of the Parliamentary Bureau, agree a timetable for consideration of amendments. This generally requires debate on particular groups to be concluded within specified periods of time, but the Presiding Officer retains some discretion to vary the time limits, including to ensure that all those with a right to speak can do so (Rule 9C.12.5).

### Proceedings on amendments

5.76 Stage 3 proceedings on amendments are similar to those at Stage 2, except that all MSPs may move and vote on amendments, and there is no requirement to agree to each section and schedule. (For further details, see Part 6.)

### Statement on protected subject-matter

5.77 After any amendments have been disposed of, the Presiding Officer is required to make a statement (orally or in writing) on whether or not any provision of the Bill relates to a “protected subject-matter” within the meaning of section 31(4) of the Scotland Act 1998 (super-majority requirement for certain legislation) (Rule 9C.12.8A).

5.78 The protected subject-matters all concern elections to the Scottish Parliament, and consist of the franchise; the electoral system; the numbers of constituencies, regions or other electoral areas; and the numbers of MSPs returned for those electoral areas. Where a Bill contains provisions relating to any of these matters, it can only be passed by a two-thirds majority (that is, the number of members voting for the Bill must be at least two-thirds of the total number of seats for members of the Parliament – currently, 86 of 129) (Rule 11.11.4).

### Adjournment to a later day

5.79 Immediately after the Presiding Officer’s statement on protected subject-matter has been made, the convener of the Committee or the Minister in charge may move, “That remaining Stage 3 proceedings on the [short title] Bill be adjourned to [date]/a later day” (the motion may, but need not, name a day). This motion may be moved without notice and cannot be amended or debated, and (under Rule 11.3.1), the question is put on it straight away.

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

5.80 If the motion is agreed to, no further proceedings take place on the Bill until the day named in the motion (or until the Parliament has appointed a “later day”). In the interim, the convener of the Committee or the Minister may lodge further amendments, but only for the purpose of “clarifying uncertainties” or “giving effect to commitments given at the earlier proceedings at Stage 3” (Rule 9C.12.9 and 10). After any such amendments have been disposed of, the Presiding Officer is required to make a further statement on protected subject-matter (see paragraph 5.77 above).

5.81 The same opportunity to lodge such further amendments applies in a case where the debate on whether to pass the Bill was scheduled for a later day from the outset.

### **Referral back for further Stage 2 consideration**

5.82 Adjourning Stage 3 consideration is one mechanism available to allow further changes to be made to a Bill before a decision is made whether to pass it – but it is suitable only where the changes required fit within the relatively narrow confines referred to above. Where more substantial changes are required, the Convener of the Hybrid Bill Committee or the Minister in charge may (at the beginning of the debate on the motion to pass the Bill) move “That [specified provisions] of the [short title] Bill be re-committed for further Stage 2 consideration”, under Rule 9C.12.11. The provisions specified may amount to no more than half of the sections of the Bill (and for this purpose schedules are counted with the sections that introduce them).

5.83 If such a motion is agreed to, the Bureau refers the provisions mentioned in the motion back to the Hybrid Bill Committee. At least four sitting days must elapse between the decision to re-commit the Bill and the beginning of the further Stage 2 proceedings (Rule 9C.9.6(a)). Those proceedings consist, in particular, of a further opportunity for amendments to be lodged and debated – subject to the same rules (e.g. on lodging deadlines) as applied to the original Stage 2 proceedings. As in those original proceedings, the Committee must carry out a two-stage screening process on the admissible amendments lodged so that, if any of them adversely affects private interests and passes the “merits test”, the holders of those interests are given an opportunity to comment before decisions on the amendments are made (see paragraphs 5.57 to 5.64 above). Even where

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

this does not apply, the Committee has the option, if it chooses, of inviting further evidence (e.g. from the Minister and objectors) on any amendments lodged, before they are disposed of.

5.84 If the Bill is amended during the further Stage 2 proceedings, it is re-published as amended and a further four sitting days must elapse between the day those proceedings end and the day on which Stage 3 resumes (Rule 9C.9.6(b)). (If the Bill is not amended, no such minimum interval applies.) In either case, Stage 3 amendments may again be lodged, but only to those sections and schedules specified in the motion to re-commit, or to other parts of the Bill (including the long title) if they are necessary in consequence of amendments made on re-commitment (Rule 9C.12.11).

### **Debate and decision on whether the Bill be passed**

5.85 After proceedings on amendments at Stage 3 are concluded (including any adjourned proceedings under Rule 9C.12.10, and any further Stage 3 proceedings after re-commitment), the Parliament must debate and decide, by division, whether to pass the Bill. The debate takes place on a motion by the Minister in charge, “That the Parliament agrees that the [*short title*] Bill be passed”. Other MSPs may lodge amendments to the motion, and any such amendments are subject to selection by the Presiding Officer. As at Stage 1 (see paragraph 5.22 above) amendments will not normally be selected if rejection of the amended motion would leave it unclear whether or not the Bill had been passed.

5.86 The debate is opened, and closed, by the Minister. Other members who speak may do so as party spokespersons, on the basis of a constituency or regional interest (which should be declared), or in their capacity as members of the Hybrid Bill Committee.

5.87 Agreement to the motion passes the Bill (with the proviso that at least 33 MSPs must take part in the voting – otherwise the Bill is treated as rejected) (Rule 9C.12.14).

5.88 Normally, a Bill is passed if more members vote for it than against it (a simple majority). However, if the most recent statement made by the Presiding Officer is that any provision of the Bill relates to a protected subject-matter, then a super-majority (at least 86 members voting for the Bill) is required to pass it –

failing which, the Bill is treated as rejected (Rule 9C.12.16).

### **Crown consent**

5.89 If the Bill requires Crown consent (see paragraph 2.62) and this was not signified at Stage 1 (or if relevant provision has since been inserted by amendment), it is signified during the Stage 3 debate by a member of the Scottish Government (Rule 9C.15).

### **“As Passed” version**

5.90 If a Bill that is passed was amended at Stage 3, a new version is published to show the Stage 3 amendments. If it was not amended at Stage 3, the previous version of the Bill serves the purpose of showing the Bill in the form in which it was passed. Copies of any “as passed” Bill are sent to the premises to which the original Bill and accompanying documents were sent on introduction.

## **Reconsideration Stage**

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### **Powers of Law Officers and Secretary of State**

5.91 Section 32 of the Scotland Act 1998 provides that a Bill, once passed, may normally be submitted for Royal Assent by the Presiding Officer only after the expiry of a four-week period. During that period, the Bill is subject to legal challenge by the Advocate General for Scotland, the Lord Advocate or the Attorney General under section 32A (on protected subject-matter grounds) or 33 (on legislative competence grounds) and may also be blocked by an order of the Secretary of State under section 35 (on various grounds, including defence and national security). The Bill may, however, be submitted for Royal Assent after less than four weeks if all three Law Officers and the Secretary of State notify the Presiding Officer that they do not intend to exercise those powers.

5.92 A challenge from one of the Law Officers takes the form of a reference to the UK Supreme Court. Once such a reference has been made, the Presiding Officer cannot submit the Bill for Royal Assent until the Supreme Court has decided (or otherwise disposed of) the reference.



## Motion to reconsider the Bill

5.93 If the Supreme Court decides that any provision of the Bill would be outwith legislative competence, if a section 35 order is made, or if the Court reverses the decision of the Presiding Officer on whether any provision of the Bill relates to a protected subject-matter (see paragraph 5.78), the Minister may move “That the Parliament resolves to reconsider the [*short title*] Bill” (Rule 9C.13.2, 9C.13A.1). If such a motion is agreed to, the Bureau allocates a time for Reconsideration Stage on the Bill at a meeting of the Parliament.

## Amendments at Reconsideration Stage

5.94 Where Reconsideration Stage is held following a reference under section 33 (on legislative competence grounds) or an order under section 35, the main purpose of the Stage is likely to be to amend the Bill so as to resolve the problem which led to the reference or order being made (Rule 9C.13.4). So only amendments aimed at resolving that problem are admissible. As at Stage 3, amendments are disposed of in the order in which they relate to the Bill, unless the Parliament decides, on a Bureau motion, to follow a different order (Rule 9C.13.4). There is no selection of amendments at Reconsideration Stage, so all admissible amendments lodged must be taken. Only the Minister in charge may move amendments at Reconsideration Stage.

5.95 Where Reconsideration Stage is held following a reference under section 32A (on protected subject-matter grounds), the purpose of Reconsideration Stage is to take a fresh decision whether to pass or reject it, subject to the correct majority threshold. In these circumstances, the Bill may not be amended at Reconsideration Stage (Rules 9C.13.4, 9C.13A.2).

## Proceedings at Reconsideration Stage

5.96 The above differences aside, proceedings at Reconsideration Stage are similar to those at Stage 3. After any amendments have been disposed of and before the Parliament debates whether to approve the Bill, the Presiding Officer must make a further statement on protected subject-matter (see paragraph 5.77 above). The decision whether to approve the Bill must then be taken by division. If the Presiding Officer’s statement was that any provision of the Bill relates to a protected subject-matter, a super-majority (of at least 86 MSPs) is required to



## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

pass the Bill. Otherwise, a simple majority is sufficient (subject, as at Stage 3, to the requirement that at least 33 MSPs take part in the voting). If the required majority is not achieved (or fewer than 33 MSPs vote), the Bill is rejected.

5.97 A Bill approved at Reconsideration Stage is again subject to legal challenge by the Law Officers or the Secretary of State in exactly the same way as it was after it was first passed. There is no limit to the number of times the Parliament may approve a Bill, or those persons may exercise their rights under the Scotland Act 1998 in relation to it.

### Crown consent

5.98 If the Bill has been amended at Reconsideration Stage to include provisions requiring Crown consent, that consent is signified during the debate on whether to approve the Bill.

### Financial resolution

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5.99 Where a Hybrid Bill contains particular provisions affecting payments into or out of the Scottish Consolidated Fund, it cannot proceed beyond Stage 1 unless the Parliament has, by resolution, agreed to the relevant provisions. That resolution is known as a “financial resolution” and the rules governing such resolutions are set out in Rule 9C.16. In particular, only a Scottish Government minister may lodge and move a motion for a financial resolution. (For further details, see Annex N.)

### Carry-over of Hybrid Bills

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5.100 As with other Public Bills, a Hybrid Bill introduced in any session of the Parliament falls if a decision whether or not to pass it has not been taken by the Parliament before the end of that session (Rule 9C.9.8).<sup>19</sup> However, unlike other Public Bills, Hybrid Bills that fall in these circumstances may be “carried over” to

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<sup>19</sup> Note that, in the Scottish Parliament, the term “session” refers to the period between the first meeting of the Parliament after a general election and the dissolution of the Parliament before the next election. The equivalent term in Westminster is a “Parliament”.

the following session.

5.101 Under Rule 9C.9.9, where a Bill falls at the end of one session (“the first session”), a Minister may introduce a Bill in the same terms in the next session of the Parliament (“the second session”). If the original Bill had already completed Stage 2 and had been re-published as amended, introducing a Bill “in the same terms” in the second session means the Bill must be in the same terms as that amended Bill. The Scottish Government is not required to provide an Auditor General’s Report, Explanatory Notes, a Policy Memorandum, Financial Memorandum, Scottish Ministers’ Statement or Delegated Powers Memorandum, or any “works” Bill-specific documents when the new Bill is introduced. Instead, the versions of these accompanying documents, together with any supplementary accompanying documents, published in the first session are used for the Bill in the second session.

5.102 Any objections to the original Bill lodged during the first session are treated as objections in the second session to the new Bill, and any decision by the earlier Hybrid Bill Committee to reject certain objections at the Stage 1 applies in relation to the new Bill (Rule 9C.9.11). A further 60-day objection period is therefore not required.

5.103 If, on the day the Parliament is dissolved, the original Bill had not completed a particular Stage, then proceedings on the new Bill must normally commence at the beginning of that Stage. However, the new Bill may commence at a later point in that Stage (up to the point that the original Bill had reached) subject to two conditions (Rule 9C.9.14). First, if the Hybrid Bill Committee had taken oral evidence on the original Bill at the Stage in question, then everyone who gave that evidence must either give it again orally to the new Hybrid Bill Committee, or agree that the new Committee members can instead view a recording or read the *Official Report* of the earlier proceedings. Second, the Minister, any lead objectors that had been chosen by the original Committee to represent groups of objections, and any objectors whose objections had not been grouped must agree (to the new Bill picking up part-way through the Stage). Securing agreement in this way may be useful to avoid the repetition of evidence taken during the earlier session. However, the Committee established in the new session may prefer to begin evidence-taking again if its membership is substantially different from that of the original Committee or if the amount of

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

evidence to be re-heard is not substantial. (If an assessor was appointed in the earlier session, but had not reported on the objections by the end of the session, then it is for the Committee established in the new session to consider the assessor's report (Rule 9C.9.15).)

5.104 It should be noted, however, that this Rule does not permit the new Bill to commence its progress part-way through proceedings on amendments (at either Stage 2 or Stage 3). This is because amendments that had been lodged to the original Bill are not carried over to the new session. What is more, decisions taken by the Committee (or the Parliament) to agree to amendments during a Stage not completed during the first session have no effect after the dissolution. As a result, it is necessary for the new Bill to begin the relevant proceedings on amendments afresh in the second session to allow the same or similar amendments to be made to the new Bill.

5.105 The option of introducing a new Bill in the second session to take advantage of the above procedures (which minimise the extent to which the dissolution of the Parliament requires repetition and delay in scrutiny of the Bill) is only available until the 30th day after the second session begins (Rule 9C.9.12). Any new Bill introduced later than that is treated as an entirely new (rather than a carried-over) Bill, to which all the normal Rules (including for accompanying documents, an objection period, and 3-stage scrutiny) apply.

## **Withdrawal of Hybrid Bills**

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5.106 A Hybrid Bill may be withdrawn at any time before the end of Stage 1 by the Scottish Government writing to the clerks, who notify the Committee and include notice of the withdrawal in the Business Bulletin. If Stage 1 has already been completed, withdrawal of the Bill requires the Minister to lodge a motion seeking the Parliament's agreement (Rule 9C.17).

## **Royal Assent and after**

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### **From Bill to Act**

5.107 If a Hybrid Bill that has been passed (or approved at Reconsideration Stage) is not subject to legal challenge (or further legal challenge) during the

## Guidance on Hybrid Bills

### Part 5: Stages of Hybrid Bills

statutory 4-week period, or if all three Law Officers and the Secretary of State confirm (during that period) that they will not challenge the Bill, then as soon as that period has ended, the Presiding Officer presents the Bill for Royal Assent.

5.108 The Bill becomes an Act on the day that Royal Assent is formally recorded (by the Keeper of the Registers of Scotland). This date is included on the first page of the Act when it is published. Acts of the Scottish Parliament are published online as part of the wider UK “statute book”.<sup>20</sup>

5.109 The Act is textually identical to the final version of the Bill, but with all numbering corrected and any necessary “printing points” taken in. Printing points are non-substantial corrections (i.e. corrections that do not affect the legal effect of the Bill). For example, changes may be made to section and schedule titles to ensure they continue accurately to describe the relevant sections and schedules. Numbering (including in cross-references) and punctuation are also corrected in consequence of amendments made. The Scottish Government may ask for printing points to be made before the Bill is submitted for Royal Assent, but these will be refused by the clerks if they involve substantive changes that should have been made by amendment at an earlier stage.

### Commencement

5.110 Although the date of Royal Assent marks the point at which a Bill becomes an Act, it is not necessarily the date on which its provisions come into force (become law). This depends on the provision made in the Bill/Act for commencement. Some Acts (or provisions) come into force immediately after Royal Assent, while others may come into force only after a specified period or be brought into force by regulations made by Ministers. Some Acts provide for certain provisions to come into force before others, or for the same provision to come into force at different times for different purposes.

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<sup>20</sup> UK Acts, including all Acts of the Scottish Parliament, are available at [www.legislation.gov.uk](http://www.legislation.gov.uk).

## Part 6: Amendments

6.1 This Part of the Guidance explains the rules and procedures relating to amendments in more detail. It explains the principles behind amendments, how they are lodged and published and the creation of Marshalled Lists. It also explains how amendments are grouped and (at Stage 3) selected, and how the proceedings on amendments are conducted.

6.2 An amendment is a proposal to change the wording of the text of a Bill. It is the only mechanism that may be used to make such a change. An amendment is also the key mechanism for allowing debate on the Bill's provisions at Stages 2 and 3. (Some amendments – sometimes referred to as “probing amendments” – are lodged primarily to allow an issue to be debated, without any intention of changing the Bill's text.) All amendments must conform to the rules governing the admissibility, style and content of amendments.

### Basic principles

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6.3 The Standing Orders relating to amendments are based on two guiding principles: the rule of separate textual amendments and the rule of progress.

#### Separate textual amendments

6.4 This is the principle that every substantive change to the text of a Bill requires an individual amendment to be lodged, moved and agreed to. As a legislature, the Parliament must agree to the precise form of words that has legal effect, and not just to the underlying policy behind those words. This means that it cannot simply agree, for example, to change every occurrence of word X to word Y, since the legal effect of changing X to Y will depend on the context in which the word occurs and may be different in each case.

6.5 When the Parliament (or a Committee) agrees to an amendment, it is precisely that amendment – and only that amendment – that may be made to the Bill (the only other changes that are permitted being strictly non-substantive “printing points”). The Parliament (or the Committee) cannot decide only on the principle underlying a change to the text of a Bill; it must also decide on the

precise manner in which that change is to be made. Note that some major changes to the legal effect of a Bill can be achieved by a single amendment, whereas other, less major changes may require dozens of separate amendments.

### **The rule of progress**

6.6 The second basic principle is that amendments must be taken and disposed of strictly in order. This order is not always the order in which the sections and schedules appear in the printed Bill but, whatever the order is, it must be followed. It is never permitted to return to a point in the order earlier than the last amendment moved at that Stage of the Bill. This obviously makes it important that amendments are marshalled (i.e. sorted into order) accurately and that a degree of formality is applied in the manner in which amendments are called and disposed of, since mistakes often cannot be rectified at the same Stage. The rule of progress also explains the importance of wording amendments consistently – since this will determine their relative places in the Marshalled List and hence their precedence in debate.

### **Admissibility of amendments**

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6.7 Rule 9C.14.6 establishes five criteria for the admissibility of amendments. These are explained below by reference to the paragraphs of that Rule.

6.8 It should be noted that legislative competence is not a criterion for the admissibility of amendments. Whether a Bill, or specific provisions within it, are within the Parliament's legislative competence may be a matter of debate throughout the passage of a Bill.

#### **(a) Proper form**

6.9 The Presiding Officer has made a determination on the form of amendments (see Annex O). The clerks will aim to ensure, as a matter of course, that an amendment that is otherwise admissible is put into proper form. Amendments should, therefore, rarely be ruled inadmissible on this ground alone.

6.10 It is implicit in this first criterion that an amendment is inadmissible if an identical amendment has already been lodged. This includes not just amendments which can be worded in only one way (e.g. "Leave out section 1") but also

amendments that differ from an amendment already lodged only in trivial respects that would have no legal effect. A member seeking to submit such an amendment has the choice of either changing the amendment to make it substantively different from the one already lodged, or indicating support for that amendment.

#### **(b) Relevance**

6.11 An amendment is inadmissible if it is not relevant to the Bill. This is sometimes referred to as an amendment being outwith the “scope” of the Bill – though this is not always easy to determine.

6.12 It is sometimes wrongly imagined that the long title alone can be used to determine the scope of the Bill. The long title is intended to provide a concise description of the main purposes of the Bill and so is a useful guide to scope; but it is not definitive. The reason why amendments to the long title are permitted (and are taken last) is to allow it to be adjusted to take account of amendments made elsewhere in the Bill – amendments that had to be within the scope of the Bill to be admissible, but were not consistent with the long title as it stands.

6.13 The normal rule of thumb is that where a Bill has only one or two purposes when it is introduced, any additional purpose is unlikely to be relevant; but if the Bill has three or more purposes when it is introduced, it may be relevant to add a further purpose by amendment, so long as the new purpose is no more remote in terms of subject-matter to the existing purposes than those purposes are to each other. However, it is unlikely to be appropriate to add a whole new purpose to a Hybrid Bill by amendment unless the new purpose is unrelated to the provisions that make the Bill hybrid, as this could call into question the validity of the Parliament’s scrutiny process (which aims to involve directly, from an early stage, all those people whose interests could be adversely affected by the Bill).<sup>21</sup>

6.14 As well as being relevant to the Bill as a whole, each amendment must be relevant to the provision to which it is made. An amendment to a section, for

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<sup>21</sup> The existence of a procedure (outlined in paragraphs 5.57 to 5.64) for notifying, and allowing objections from, people adversely affected by amendments, does not detract from the generality of this point.

## Guidance on Hybrid Bills

### Part 6: Amendments

example, is admissible only if it is relevant to the subject matter of the section. Similarly, an amendment to leave out a section and insert a new section in its place is appropriate only where the new section has essentially the same purpose as the old (but uses a different form of words to achieve that purpose). If the new section is doing something quite distinct, two amendments should be lodged, one to leave out the existing section, the other to insert the new one. The Parliament (or Hybrid Bill Committee) should, in that case, have the option of agreeing to one amendment without the other. Similar considerations apply to amendments to leave out smaller provisions such as subsections and insert new such provisions in their place.

6.15 Where an amendment is relevant to the Bill but not to any existing section (or schedule), it should be put in the form of a new section (or schedule). In that case, care must be taken to place it appropriately in the Bill. In particular, if the Bill is divided into Parts and Chapters or under italic headings, a new section must be placed under a Part, Chapter, or italic heading to which it is relevant (which is easier if one of those headings is “General” or “Miscellaneous”). If the new section is not relevant to any existing heading, it may be necessary to prefix it with its own heading.

6.16 Under Rule 9C.14.11, an amendment to insert a new section or schedule should “normally” specify where it is to be inserted. “Normally” here means “wherever possible”. For any new section/schedule amendment that is admissible, it must be possible to find a place in the Bill where it can be relevantly inserted – and it should be lodged as an amendment to that place in the Bill if submitted before the Stage begins. But if proceedings at the Stage in question have already progressed beyond the last place where the new section or schedule could relevantly be inserted, then it may be lodged as an amendment to an unspecified place in the Bill. (Before accepting such an amendment, care should be taken to ensure that it conforms to the fourth criterion below.) Such an amendment would be printed under the heading “At an appropriate place in the Bill”.

#### **(c) Consistency with general principles**

6.17 An amendment is not admissible if it is inconsistent with the general principles of the Bill as agreed by the Parliament. This criterion is intended to rule out so-called “wrecking amendments” – amendments that would reverse,



## Guidance on Hybrid Bills

### Part 6: Amendments

substantially alter or render ineffective a principal purpose of the Bill. The rationale for this rule is that, by the time the Bill comes to be amendable, the Parliament has already voted at Stage 1 in favour of its general principles. Amendments may be used to improve the means by which the Bill gives effect to those general principles, but not to frustrate those principles. The proper course, therefore, for members who oppose the basic thrust of the Bill is to vote against the motion to approve its general principles at Stage 1 – or, if any amendments made at Stage 2 and Stage 3 are insufficient to make it acceptable in their view, to vote against the Bill at the end of Stage 3.

6.18 In determining whether an amendment would be inconsistent with the general principles of the Bill, a similar approach to that described under Relevance above is employed. Where a Bill is introduced with only one or two principal purposes, an amendment to leave out (or substantially alter) that purpose or one of those purposes would not normally be admissible. But where the Bill was introduced with three or more purposes, it may be possible to leave out by amendment any one of them without “wrecking” the Bill. In any particular case, account would be taken of how substantial the purpose is, the extent to which the remaining purposes would be affected by its removal (or substantial alteration) and how close it is in terms of subject-matter to the other purposes of the Bill. It would normally be possible to remove by amendment from a multi-purpose Bill a minor purpose that stands apart from the remainder of the Bill and on which the rest of the Bill does not depend, but not to remove a substantial purpose that is central to the Bill as a whole.

#### **(d) Consistency with decisions already taken on amendments**

6.19 An amendment is not admissible if it is inconsistent with a decision already taken on an amendment at the Stage at which it is proposed. This criterion is intended to prevent decisions taken on one amendment being effectively overturned by a decision on a subsequent amendment at the same stage. Rule 9C.14.13 prevents a later amendment already on the Marshalled List (i.e. that was admissible when it was lodged) being called; but this criterion of admissibility prevents such an amendment being published if the amendment with which it is inconsistent has already been agreed to. It also prevents an amendment being published if another amendment that would have essentially the same effect has already been disagreed to. The rationale for this criterion is to prevent a member

## Guidance on Hybrid Bills

### Part 6: Amendments

who has been defeated once on an issue simply coming back again with a similar amendment later during the same Stage.

#### **Determining admissibility**

6.20 The clerks in the Legislation Team will ensure that all amendments are in proper form and also aim, where possible, to ensure that amendments submitted conform to the other criteria above. Where there is doubt about the admissibility of an amendment, the clerks will seek to raise this with the member as soon as possible. In any case of dispute about the admissibility of an amendment, the final decision rests with the convener of the Hybrid Bill Committee at Stage 2 or the Presiding Officer at Stage 3 (under Rule 9C.14.5).

6.21 The clerks may, if need be, hold back amendments of doubtful admissibility from publication while the issue is resolved, to avoid the situation where an amendment is published in the Business Bulletin and is subsequently deemed inadmissible. Where an amendment is so held back for this reason, the member who submitted it will be informed. However, where an amendment of doubtful admissibility is lodged on the last day before the deadline, it may sometimes be necessary to publish it before its admissibility is decided, to ensure that notice is given. This may lead to a delay in publication of the Marshalled List until the amendment's admissibility is decided.

#### **Lodging amendments**

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##### **When amendments may be lodged**

6.22 A Hybrid Bill can be amended at Stage 2 and at Stage 3 (Rules 9C.11.10 and 9C.12.3). A Bill that is referred back to the Hybrid Bill Committee for further Stage 2 consideration under Rule 9C.12.11 may be further amended at that Stage and again when it returns to Stage 3 (to the limited extent specified in that Rule). A Bill that is reconsidered after it has been passed may be amended to the extent allowed under Rule 9C.13.4.

6.23 At Stage 2, amendments may be lodged as soon as consideration of objections has been completed or, if there were no objections to consider at that Stage, after the completion of Stage 1 (Rule 9C.11.10). Stage 3 amendments may be lodged as soon as Stage 2 has been completed (Rule 9C.12.3).

## Guidance on Hybrid Bills

### Part 6: Amendments

6.24 The final day for lodging amendments at Stage 2 (or Reconsideration Stage) is the third sitting day before the day on which consideration of amendments at that Stage begins (Rule 9C.14.2). So where Stage 2 amendments proceedings are to be taken on a Thursday, amendments should be lodged no later than the Monday. The purpose of the notice period is to ensure members have an opportunity to read and think about amendments in advance of the debate, and to allow the clerks adequate time to prepare the Marshalled List and advise on groupings. There is a single lodging deadline even where the amendment proceedings are being taken over more than one day.

6.25 At Stage 3, the final day for lodging amendments is the fourth sitting day before the day the Stage is due to start (Rule 9C.14.3).

6.26 At all amending Stages, amendments may be lodged on any day when the office of the Clerk is open. This excludes weekends and holidays, but includes most days of recess. Amendments may normally be lodged until 4.30 pm. However, at Stage 2 and Reconsideration Stage, the deadline on the final day when amendments for the Stage may be lodged is 12.00 noon (Rule 9C.14.2).

6.27 Amendments lodged after the deadline may be accepted as “manuscript amendments” under Rule 9C.14.7, but only at the discretion of the convener of the Hybrid Bill Committee (at Stage 2) or Presiding Officer (at Stage 3 or Reconsideration Stage). Procedures for dealing with such amendments are set out below.

6.28 At all Stages, members are advised to lodge amendments as early as possible before the deadline. Members are also encouraged to contact the clerks as early as possible to discuss amendments they propose to lodge.

6.29 Amendment lodging deadlines for all Bills in progress, where these deadlines are known, are published in the Business Bulletin.

### **Where amendments are lodged**

6.30 Amendments to a Hybrid Bill should be lodged with the clerks in the Legislation Team (rather than with the clerks to the Hybrid Bill Committee). The Legislation Team is based in Room T1.01 and can be contacted on (0131 34) 85277 or at [LegislationTeam@parliament.scot](mailto:LegislationTeam@parliament.scot).

### Which parts of the Bill may be amended

6.31 Any part of the “legislative text” of the Bill (i.e. the words that have legal effect) may be amended. This includes every section and schedule of the Bill and the long title (although the long title is normally amended only in consequence of amendments made elsewhere in the Bill). The short title may be amended where it is cited in the Bill itself (in the final section).

6.32 The parts of the Bill that may not normally be amended are Part and Chapter titles, italic cross headings, section or schedule titles, or any of the numbers assigned to any of the component parts of the Bill. The principle behind this distinction between legislative text and other elements of a Bill is that the Parliament must decide what the legislative effect of the Bill is to be, and these other elements can then be adjusted administratively to reflect what the Parliament has decided. (These administrative changes are known as “printing points”.)

6.33 Similar considerations apply with punctuation and numbering. For example, an amendment to break up a subsection into two paragraphs, (a) and (b), might only insert the number (b), leaving the (a) to be inserted later as a printing point. A separate amendment to do nothing more than insert the number (a) would normally not be permitted, but may be accepted if it was necessary to make the effect of the principal amendment clear.

6.34 Amendments to amendments are permitted (Rule 9C.14.8), and are subject to the same rules as other amendments, save for minor differences of style.

### Who may lodge amendments

6.35 Any MSP may lodge amendments to a Hybrid Bill at Stage 2 or Stage 3, and there is no limit to the number of amendments that each MSP may lodge.

6.36 As with other items of business, amendments (under Rule 17.4) may be lodged either in writing by the member, or on his or her behalf by a third party whom the member has authorised in writing, or by e-mail if the member has authorised the acceptance of business from his or her e-mail account.

Amendments cannot be lodged by fax, nor can they be lodged by e-mail from the e-mail address of anyone other than the member.

## Guidance on Hybrid Bills

### Part 6: Amendments

6.37 Each amendment must be in the name of just one member, but may also have up to four supporters – or five if one is the member in charge of the Bill (Rule 9C.14.4). Supporters' names need not be attached to the amendment when it is lodged – they may be added at any time during the period when amendments for the Stage may be lodged (Rule 9C.14.4). Where supporters' names are added to an amendment that has already been published in the Business Bulletin, the amendment is not re-published just because new names have been added. The additional names will, however, appear when the Marshalled List is published.

6.38 Part of the rationale for allowing members to support amendments is that a member cannot lodge a particular amendment if another member has already done so – but the second members' name may be added in support of the amendment. An amendment may be withdrawn by the member who lodged it, but only with the consent of all supporters and only during the period when amendments for that Stage may be lodged (Rule 9C.14.9). So by adding his or her name to an amendment, a member can prevent the amendment being withdrawn in advance and so be assured of the opportunity (under Rule 9C.14.16) to move it if the member who lodged it does not.

6.39 Where the member who lodged an amendment seeks to alter it (or lodge a new version in substitution), the consent of any supporters to the original amendment is only required if the alteration is substantial (or the new version substantially different). If any such supporters' consent has not been obtained, their names must be left attached to that version of the amendment (which cannot therefore be withdrawn in advance of the Stage).

6.40 Supporters' names cannot be added to a manuscript amendment, nor can such an amendment, once lodged, be withdrawn in advance of the Stage (Rules 9C.14.4 and 9). As with any other amendment, it is of course open to the member who lodged a manuscript amendment not to move it when it is called.

6.41 It is quite normal for many of the amendments to a Hybrid Bill to be lodged by the Minister in charge of the Bill. Other members may add their names as supporters just as with non-Government amendments.

### **Correcting amendments after lodging**

6.42 All members – and others – with an interest in a Bill are advised to check

## Guidance on Hybrid Bills

### Part 6: Amendments

the Business Bulletin every day during the period when amendments may be lodged, to ensure they have seen and considered all amendments lodged to the Bill. It is particularly important that members who lodge amendments check them carefully in the next day's Bulletin. The clerks may make minor changes of wording and structure to ensure that amendments are, so far as possible, consistent with the structure and drafting style used in the Bill. The clerks make every effort to clear changes of substance with members before publication, but this is not always possible and occasionally the purpose of an amendment may be misunderstood. It is the responsibility of members to ensure that amendments published in their name achieve the intended purpose.

6.43 Members who wish to correct amendments that have been published should contact the Legislation Team as early as possible. If the corrections are substantive (i.e. non-trivial) but do not change the overall purpose of the amendment, the corrected amendment will appear on the Marshalled List marked with an asterisk (\*). This alerts other members to the fact that the amendment is not the same as the version previously published with that amendment number. (New amendments – i.e. those not previously published – are also asterisked on the Marshalled List.) Where a more fundamental correction is sought, a new amendment must be lodged and is published in the Bulletin as “in substitution for” the earlier amendment. This procedure ensures that maximum notice is given of the new amendment, while simultaneously alerting other members to the fact that the earlier amendment has been superseded.

6.44 Major corrections (i.e. those that would require an “in substitution” amendment) can only be made up to the deadline for lodging amendments at that Stage. Minor corrections may be made at any time until the Marshalled List is finalised. However, members should notify the clerks of all corrections as early as possible, since in practice the deadline for finalisation of the Marshalled List may not be much later (particularly at Stage 2) than the deadline for lodging amendments. The published Marshalled List is treated as a definitive document. The only amendments that may be moved and agreed to (aside from any manuscript amendments that may be lodged) are those published in the List.

## Rules on marshalling amendments

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6.45 The preparation of both daily lists of amendments and Marshalled Lists is based on rules determined by the Clerk of the Parliament (under Rule 9C.14.10). They are subject to the “order of consideration” – the order in which the sections and schedules of the Bill are to be considered. At Stage 2, the order of consideration is the order set out in Rule 9C.11.9 or such other order as is decided by the Hybrid Bill Committee under that Rule. At Stage 3, it is the order in which the sections and schedules appear in the Bill or such other order as the Parliament has decided under Rule 9C.12.6. The long title is always considered last.

6.46 The rules on marshalling amendments are as follows:

An amendment to insert a new section or schedule before or after an existing section or schedule is taken before or after (as the case may be) amendments to the existing section or schedule.

An amendment to leave out a section or schedule and insert a new section or schedule in its place is taken after all amendments to the section or schedule, but before any amendment to leave out the section or schedule. An amendment to leave out a section or schedule is, in turn, taken before any amendments to divide or move the section or schedule.

Within each section or schedule, amendments are considered in the order determined by the first point in the section or schedule to which they relate, subject to the following rules:

- Amendments to leave out a block of text within a section or schedule (such as a subsection or paragraph) are taken before any amendments to that block of text.
- Amendments to leave out words are taken before any amendments to leave out words beginning at the same place in the Bill and insert other words in their place.
- Amendments to insert new words at the end of the last line of a block of text are taken before amendments to insert new blocks of text at the end of

## Guidance on Hybrid Bills

### Part 6: Amendments

that line; and amendments to insert new blocks of text at the same place in the Bill are taken in the order in which those blocks of text would appear in the Bill if all such amendments were agreed to.

Where the order of amendments to the same place in the Bill is not determined by the above rules, they are normally taken in the order in which they are lodged, but with precedence given to those lodged by the member in charge of the Bill.

6.47 For example, amendments would be marshalled as follows:

#### Section 12

In section 12, page 10, line 8, leave out subsection (1)

In section 12, page 10, line 8, leave out subsection (1) and insert:

<(1) Text of new subsection.>

In section 12, page 10, line 8, leave out <word>

In section 12, page 10, line 8, leave out <word> and insert <words>

In section 12, page 10, line 8, after <word> insert <words>

In section 12, page 10, line 8, at end insert <words>

In section 12, page 10, line 8, at end insert:

<() text of new paragraph;>

In section 12, page 10, line 8, at end insert:

<() Text of new subsection.>

Leave out section 12 and insert:

<**Title of new section**

Text of new section.>

Leave out section 12

Divide section 12 into two sections, the first (*Title of first new section*) to consist of subsections (1) and (2) and the second (*Title of second new section*) to consist of subsections (3) to (5)

Move section 12 to after section 14



## Guidance on Hybrid Bills

### Part 6: Amendments

After section 12.

After section 12, insert:

<Title of new section

Text of new section.>

## Daily lists of amendments

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6.48 Where possible, all amendments lodged before the deadline on a particular day are published in the following day's Business Bulletin under the short title of the relevant Bill. The amendments in each such "daily list" will normally appear in marshalled order, numbered consecutively from top to bottom of the list.

Amendment numbers on a second daily list begin where the numbers on the first such list left off. The exception to this numbering is for amendments to amendments, which are numbered by reference to the amendment to which they relate, so amendments to amendment 3 are 3A, 3B etc.

## Marshalled Lists

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6.49 Normally, by the time a Marshalled List is published, all the amendments to be included will already have been published in a daily list. The Marshalled List is therefore simply an amalgamation of the various daily lists (minus any amendments that have been withdrawn), together with any manuscript amendments (if the convener or Presiding Officer has agreed they may be moved). At Stage 2, the Marshalled List excludes any amendments that (in the opinion of the Private Bill Committee) adversely affect private interests, but which do not have the merit described in Rule 9C.11.10C, and so (under Rule 9C.11.10D) may not be moved. At Stage 3, the Marshalled List excludes those amendments not selected by the Presiding Officer (Rule 9C.14.10).

6.50 Because each daily list may contain amendments scattered throughout the Bill, and because amendment numbers do not change once assigned, Marshalled Lists are not numbered consecutively but in an apparently random order. Although this may at first appear odd, it has significant advantages. The fact that each amendment is numbered as soon as it first appears in print makes it easier for members and others with an interest to follow the progress of the amendment –

which is only possible because amendment numbers do not change once assigned.

6.51 Marshalled Lists are numbered by reference to the relevant print of the Bill. So the first Marshalled List at Stage 2 of SP Bill 3 will be SP Bill 3–ML1, the second ML2, and so on. If the Bill is amended at Stage 2 and reprinted as SP Bill 3A, the Stage 3 Marshalled List will be SP Bill 3A–ML; if the Bill is not amended, the Stage 3 Marshalled List will be numbered in the same sequence as those at Stage 2.

## **Grouping of amendments**

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6.52 The purpose of grouping amendments is to minimise repetition by debating together amendments on particular topics and to allow the committee (or the Parliament) the maximum choice. Some groups may consist of a single amendment. There are four principal grounds on which amendments are grouped together:

Amendments that stand or fall together, or are to a lesser extent dependent on each other, are grouped.

- For example, there might be a series of amendments throughout a Bill to change a particular date or title, where there would be no point in agreeing to any one such amendment without also agreeing to all the others, and where a single debate on the issue is all that is required.
- Another clear case would be an amendment to insert a new schedule and the amendment to insert a provision introducing the schedule, where the Bill would be defective if it included one and not the other.
- A less clear case might involve an amendment to insert a new section, and a number of other amendments to insert cross-references to that new section in various existing provisions of the Bill. It might be that the new section would be ineffective without at least some of the other amendments, but members who support the new section might differ on which of the existing provisions of the Bill should be made subject to its procedures, and hence which of the associated amendments should be agreed to.

## Guidance on Hybrid Bills

### Part 6: Amendments

Amendments that represent alternative ways of addressing the same issue, or are otherwise closely related in terms of the issue they raise, are grouped.

- Here the clear case involves directly competing alternatives, where it would not make sense to agree to all of the amendments and where the issues raised are identical: for example, where the Bill makes provision for a specified period of notice (e.g. one month) and there are amendments to substitute different periods (e.g. two months, three months, six months).
- A less clear case would be where there are various amendments to a particular provision that are related only by the fact that their subject matter is determined by the provision. Some might make major changes to the provision, others only small changes. Some might be mostly technical in nature (e.g. to improve the drafting), whereas others might involve major changes of policy. In this situation, there are likely to be various acceptable ways in which the amendments could be grouped.

Amendments to amendments are always grouped with the amendments to which they relate.

Similarly, amendments that would be pre-empted by other amendments (see paragraph 6.60) are never grouped in such a way that they could be pre-empted without ever having been debated. In practice this usually means that amendments are grouped with the amendments that would pre-empt them.

6.53 The groupings are decided by the convener of the Hybrid Bill Committee or Presiding Officer (Rule 9C.14.14). The clerks, in preparing a draft, may seek the views of members and the Scottish Government, but the convener's or Presiding Officer's decision is final. Groupings lists are prepared no later than the day before the relevant meeting of the Hybrid Bill Committee or the Parliament and are available in advance from SPICe and on the website. Like Marshalled Lists, groupings are numbered by reference to the Bill number (e.g. SP Bill 3- G1 for the first).

6.54 The Groupings document also includes the text of the amendments

arranged in group order. This is for guidance only, and the Marshalled List should still be treated as the definitive document on which the proceedings are based.

## **Selection of amendments**

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6.55 There is no selection of amendments at Stage 2 (or Reconsideration Stage) and all admissible amendments may be debated. But at Stage 3 the Presiding Officer has the power to select which amendments of those that have been lodged (and are admissible) are to be taken (under Rule 9C.12.4). The decision of the Presiding Officer is final.

6.56 The purpose of selection is to ensure that proceedings on the Bill can be completed in a reasonable time and to avoid repeating unnecessarily discussion of issues fully debated at Stage 2. In making the selection, the Presiding Officer aims to apply the following criteria (striking a balance between them, if need be):

An amendment that would adversely affect private interests will not normally be selected unless:

- the holders of those interests have been notified and given a reasonable opportunity to make representations to the Parliament about the proposed amendment, or
- the Parliament has agreed to defer proceedings on amendments in order to allow the holders of those interests to be notified and given such a reasonable opportunity.

Trivial amendments or amendments that are technically defective (e.g. “probing” amendments which, if agreed to, would leave the Bill in need of further amendment) should not be selected, to allow the debate to concentrate on the more important issues and on amendments that could improve the resulting legislation. Selection should not, however, reduce the range of important issues considered.

Amendments that raise issues fully considered at Stage 2, particularly where it is obvious from the Stage 2 proceedings that there is little real merit in the amendment or little support for it, should not be selected.

An amendment that was fully discussed at Stage 2 may, however, be selected if:

- its wording has been revised to take account of criticisms made at Stage 2, where those criticisms were (or may have been) decisive in its not being agreed to at that Stage
- the Minister gave an undertaking to reconsider the issue, particularly if no Government amendment has been lodged
- the response by the Minister to the earlier debate left genuine doubt as to the attitude of the Scottish Government to the issue, or
- there has been (or appears to have been) a change of Scottish Government policy on the issue, or a relevant material development, such that, had it applied when the Stage 2 debate took place, a different result might have obtained.

The selected list should continue to reflect the major concerns of all political parties and of individual MSPs who have lodged amendments.

Selection may also be used to reduce the number of alternative or overlapping amendments. But there need be no selection among a number of valid alternative amendments (which would in any case be grouped and debated together).

All Government amendments are normally selected.

Committee amendments (i.e. amendments lodged by the convener of a committee on behalf of that committee) are normally selected.

## **Proceedings on amendments – all Stages**

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6.57 The way in which proceedings on amendments are conducted is similar at all Stages, in the Hybrid Bill Committee and in the Parliament. In the description that follows, references to the convener (of that Committee) should be read as references to the Presiding Officer, and references to the committee as references to the Parliament, in the context of proceedings at Stage 3 or Reconsideration Stage. Guidance that applies only at Stage 2 is set out at the end.

#### Calling amendments

6.58 The convener calls amendments in turn from the Marshalled List. Each amendment is called – and, if moved, disposed of – individually in its place in the list.

6.59 The only situation in which an amendment on the Marshalled List may not be called is where it would be inconsistent with a decision already taken on an amendment at the same Stage (Rule 9C.14.13). Instances of this are described as “pre-emptions”. This will arise in a case where one amendment would, if agreed to, remove the text on which the later amendment relies. An amendment to leave out subsection (1), for example, would pre-empt any amendment to the text of that subsection. Pre-emptions may also arise with amendments aiming at the same result but at different points in the Bill, where agreeing to the later amendment would be inconsistent with disagreement to the earlier. This would not, however, be treated as a pre-emption in any case where the later amendment may be regarded as the better means of achieving the shared intention.

6.60 In any instance of pre-emption, the convener will, before calling the earlier amendment, draw the committee’s attention to the implications for the later amendment of agreeing to the earlier amendment. The published groupings also provide notification of any pre-emptions, as well as of direct alternatives (see below).

6.61 Rule 9C.14.13 does not preclude all of a number of alternative amendments to the same place in the Bill being taken. Amendments to a provision setting a time limit (of, say, one month) might variously propose changing that limit to two, three and six months. Agreement to the first of those amendments would not prevent the others also being taken, so the later amendments are not regarded as pre-empted. Agreement to the first may be taken to involve only a decision that two months is better than one, which does not preclude a decision that three or six months is better still. Amendments of this sort (i.e. two or more amendments replacing the same text with different text) are referred to as “direct alternatives”.

#### Moving and debating amendments

6.62 In any debate on a group of amendments, certain members have a right to

## Guidance on Hybrid Bills

### Part 6: Amendments

speak. A member in whose name any of the amendments in the group appears has a right to speak. The Minister in charge of the Bill (and any other Minister present) has a right to speak. Other members who wish to speak may be called at the discretion of the convener (Rule 9C.14.15).

6.63 Debate on a group of amendments proceeds as follows:

- The convener calls the member who lodged the “lead” amendment in the group (i.e. the one in the group that appears first on the Marshalled List) to speak to and move that amendment, and speak to all other amendments in the group. The suggested form of words for moving an amendment, which is usually at the end of the speech in support of it, is “Accordingly, I move amendment X”.
- The convener then calls all other members who have amendments in the group to speak in the debate. (This may include the Minister in charge, if he or she did not move the lead amendment.) They are called in the order in which the first of their amendments in the group appears in the Marshalled List. Each such member speaks in support of (but does not move) his or her own amendments in the group, and may also comment on the lead and other amendments.
- The convener then has discretion to call other members (i.e. members who does not have amendments in the group) who may wish to speak in the debate.
- If the Minister in charge has not already spoken, he or she is called at this point to set out the Scottish Government’s position on the amendments in the group.
- At the end of the debate, the convener gives the member who moved the lead amendment an opportunity to reply to points made by other speakers, and to indicate whether he or she wishes to press for a decision on the lead amendment. (Where the lead amendment is in the name of the Minister, it is normally assumed that it will be pressed.)

#### **Not moving an amendment when it is called**

6.64 If the member in whose name an amendment appears does not wish to move it, the member should simply say “Not moved” when the amendment is called. In that event, any other member entitled to participate in the proceedings may move the amendment (Rule 9C.14.16). If an amendment is not moved, the convener immediately calls the next amendment on the Marshalled List.

#### **Withdrawing amendments that have been moved**

6.65 At any time after an amendment is moved, but before the question is put, the member who moved it may seek to withdraw it (Rule 9C.14.17). In that event, the convener must ask whether any member present objects to the amendment being withdrawn. If any member objects, the amendment cannot be withdrawn and the question on it must be put. If no member objects, the amendment is withdrawn, and the next amendment is immediately called.

#### **Putting the question and voting on amendments**

6.66 After the debate on an amendment or a group of amendments is concluded, the Convener “puts the question”, normally by saying “The question is that amendment X be agreed to. Are we all agreed?” Members of the Committee who agree say “Yes”, those who disagree say “No”. If no member disagrees, the amendment is agreed to. If any member of the Committee disagrees to the question on an amendment, the Convener calls a division.

6.67 At Stage 2, divisions normally take place by a show of hands (Rule 11.8.3). The Convener says “Those in favour?”, “Those against?”, “Those abstaining?”, ensuring that hands are raised for long enough in each case to allow the clerks to note the names of those voting. (If a Committee member requests a roll-call vote, and the Convener agrees, the Committee votes by the Convener calling members’ names in alphabetical order, each responding “Yes”, “No” or “Abstain”.) At Stage 3, the electronic voting system is normally used. The normal practice is to have a five minute suspension following the first instance of a pressed amendment being objected to (thus precipitating a division), followed by a 30-second division. After the first division, a one-minute voting period is allowed for the first division after a debate on a group. All other divisions are for 30 seconds.

6.68 If the result of the division is a tie, the Convener must exercise a casting



vote.

### **Amendments in groups**

6.69 As explained above, amendments are grouped in order to avoid repetition and to allow a single debate on the issue raised by a number of amendments. But grouping does not affect the requirement that each amendment is called, moved and disposed of in its place in the Marshalled List. The result is that a lengthy debate on a group of consecutive amendments may be followed by the disposal of those amendments in quick succession.

6.70 Where amendments are debated in a group because they are so closely related that they must stand or fall together then, if the first is agreed to, it can be expected that the others will also be agreed to when they are called. But each must be called and moved before it can be so agreed to.

6.71 Where an amendment is called having already been debated earlier, it cannot be debated again (Rule 9C.14.14). If the member wishes to move it he or she need only say “Moved” or “Moved formally” – but the Convener may allow him or her to make a brief remark before the question is put. Where a number of such amendments in the name of the same member (and, at Stage 2, to the same section or schedule) are consecutive in the Marshalled List, they may be moved en bloc. If no member of the Committee objects, a single question on those amendments may also be put, but if any member does object, the amendments must be disposed of individually to the extent desired. If it is clear that the member who lodged a sequence of previously-debated amendments does not wish to move them, they need not be called individually. However, if any other member present indicates a wish to move such an amendment not moved by the member who lodged it, they may exercise their right to do so.

### **Amendments to amendments**

6.72 Where there are amendments to an amendment, these will usually be grouped together. The procedure is similar to that described above, except that the amendments to the original amendment must be disposed of before that amendment is disposed of (Rule 9C.14.12).

Taking as an example a Government amendment (35, say) to which two non-

## Guidance on Hybrid Bills

### Part 6: Amendments

Government amendments (35A and 35B) have been lodged, the procedure would be as follows:

- The Convener invites the Minister to speak in support of and move amendment 35.
- Immediately the Convener invites Member A to speak in support of and move amendment 35A.
- The debate then takes place on amendment 35A. The Convener calls other speakers, including Member B (who lodged amendment 35B). The final speakers are the Minister (to wind up on amendment 35) and Member A (to wind up on amendment 35A and the debate in general). At this point, Member A has the opportunity either to press amendment 35A to a decision or seek to withdraw it.
- If the amendment is pressed, the Convener puts the question “That amendment 35A be agreed to”.
- The Convener then calls Member B to move (or not move) amendment 35B.
- If the amendment is moved, the Convener puts the question “That amendment 35B be agreed to”.
- Finally, the Minister has the opportunity either to press amendment 35 to a decision (or seek to withdraw it). If it is pressed, the Convener puts the question “That amendment 35 (or amendment 35 as amended) be agreed to”.

### Manuscript amendments

6.73 Amendments lodged after the normal deadline established by Rule 9C.14.2 or 3 are referred to as “manuscript amendments”. All late amendments fall into this category, whether they are lodged only minutes after the deadline or immediately before the point in proceedings on the Bill when they would have to be moved. Like any other amendment, a manuscript amendment must be lodged in writing with the clerk, and is subject to the criteria of admissibility set out in Rule 9C.14.6. A manuscript amendment at Stage 3 is also subject to selection by the

## Guidance on Hybrid Bills

### Part 6: Amendments

#### Presiding Officer under Rule 9C.12.4.

6.74 A manuscript amendment may be moved only with the Convener's agreement. The Convener gives that agreement only if he or she "considers it is justified, in the circumstances, taking account of the disadvantages of lack of proper notice" (Rule 9C.14.7). In applying that test, the Convener should keep in mind that, although there may be a justification for manuscript amendments in particular circumstances, their frequent use erodes the effectiveness of the normal deadline, the purpose of which is to ensure that adequate notice is given of all amendments, both to members and to outside parties with an interest in the Bill.

6.75 The disadvantages of reduced notice depend on the scope and complexity of the amendment, and are generally greater the less notice that is given – particularly at Stage 3 (or Reconsideration Stage), normally the final opportunity to amend the Bill. There is a particular disadvantage in taking a last-minute manuscript amendment at a meeting of the Parliament, given the greater disruption that a suspension causes to Chamber proceedings. A last-minute Stage 3 (or Reconsideration Stage) manuscript amendment may still be justified, however, if it would, for example, correct a defect in the Bill (such as a missed consequential) that had only just come to light. Agreement should not normally be given to move a manuscript amendment that could equally well have been lodged before the deadline. But where a non-manuscript amendment was lodged immediately before the normal deadline, and so is only available in print after that deadline has passed, agreement should normally be given to move any manuscript amendments that are lodged directly in response to that amendment, and on the first available day thereafter.

6.76 If a manuscript amendment is lodged in time for it to be included in the Marshalled List, then (assuming the Convener agrees to it being moved) it will be published with an asterisk beside its number to indicate that it is a manuscript amendment. If it is lodged after the Marshalled List has been finalised, the amendment will normally be made available separately before it is moved. If the amendment is lodged during the proceedings, it may be necessary for the meeting to be suspended to allow copies of the amendment to be made available. A manuscript amendment to leave out a section or schedule, however, may be moved without copies being available.

## Proceedings at Stage 2

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### Agreement to sections and schedules

6.77 Rule 9C.11.8 requires every section and schedule to be agreed to at Stage 2. The question that is put is “that section/schedule X be agreed to” (and no motion is required for this). Before the question is put, the convener may give members the opportunity to raise any issues relevant to the section or schedule that have not been adequately discussed during consideration of amendments to it.

6.78 The question on a section or schedule is only put if there is no amendment to leave out the section or schedule. In other words, any substantive decision on whether the section or schedule should remain in the Bill is taken on an amendment. If an amendment to leave out the section or schedule is disagreed to, the question that the section or schedule be agreed to is not put (under the final sentence of Rule 9C.11.11). And if such an amendment is agreed to, it is no longer possible to agree to the section or schedule, since it no longer exists.

6.79 If no amendment to leave out the section or schedule has been lodged in advance, any member who does not wish to agree to the section or schedule must do so by moving a manuscript amendment to leave it out. So long as such an amendment is admissible, the Convener should always consent to it being taken. In the case of a section containing provisions central to one of the principal purposes of the Bill, a manuscript amendment to leave it out may be inadmissible under Rule 9C.14.6(c) – which precludes “wrecking” amendments.

6.80 Because the only mechanism available to leave a section or schedule out of a Bill is by means of an amendment, putting the question on each section and schedule is, in practice, a formality. There is no obligation on members to agree when the question is put on the section or schedule, but disagreement does not lead to a division and cannot result in the omission of the section or schedule from the Bill.

6.81 Where there is a section or schedule to which no amendments have been lodged, the Convener puts the question on that section or schedule at the appropriate point (i.e. immediately after the last amendment to the previous section or schedule has been disposed of) (Rule 9C.11.11). Where there are two

## Guidance on Hybrid Bills

### Part 6: Amendments

or more consecutive sections or schedules to which no amendments have been lodged, a single question that they be agreed to may be put (Rule 9C.11.8). (But a manuscript amendment to leave out more than one section or schedule is not permitted – separate such amendments would be required.)

6.82 Although all amendments to a section or schedule are taken before the question is put on the section or schedule, amendments to divide or move the section or schedule are taken after the section or schedule has been agreed to. This is in order to allow the substance of the section or schedule to be finalised before deciding any issue of where in the Bill the section or schedule should go.

### Consideration of the long title

6.83 At the end of Stage 2, any amendments to the long title are disposed of and the question is then put “that the long title be agreed to”.

## Proceedings at Stage 3

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6.84 At Stage 3, it is usual for the Parliamentary Bureau to propose a motion (under Rule 9C.12.5) setting out time limits by which the debate on one or more groups must be concluded. Such a motion is moved before Stage 3 begins. The purpose of the timetabling motion is to seek to ensure a reasonable distribution of debating time, by anticipating which groups are likely to be most and least debated.

### Presiding Officer’s discretion to depart from the timetabling motion

6.85 In managing debate on amendments, the Presiding Officer will always seek to adhere to the time limits set out in the timetabling motion. However, the Presiding Officer has a power to depart from any time limits in the motion, to such extent as is considered necessary (Rule 9C.12.5). This can be for any one of three reasons:

- to enable those members given a right to speak on a group by Rule 9C.14.15 to do so – i.e. the member moving the amendment leading the group; any other member intending to move an amendment in the same group; the member in charge of the Bill and (if different) any Minister present at the proceedings

## Guidance on Hybrid Bills

### Part 6: Amendments

- to prevent any debate on a group of amendments that has already begun from being unreasonably curtailed, or
- as a consequence of the non-moving of an amendment leading to a change in the order in which groups are debated.

6.86 The first two reasons above are intended to address circumstances where there is a danger of the timetabling motion forcing the debate to come to a premature end (or not even to take place at all). The first reason is intended to ensure that those having a right to speak to the amendments are able to do so, and that the “bare bones” of a debate on a group is therefore always possible. The second reason, unlike the first, can only be relied upon if the debate had already begun before the deadline was reached. It is likely to apply in respect of a particularly important group, where only a truncated debate has been possible within the deadlines set in the timetabling motion. The Presiding Officer may consider that it is important to allow the debate to continue, whether to enable the member leading the debate (and who has therefore already exercised his or her right to speak) to sum up or to allow the debate to be opened up to members other than those who have a right to speak.

6.87 The third reason above addresses the specific, uncommon circumstance of the member called to speak to the lead amendment in a group not moving it, and no other member present doing so either. This has the potential (depending on which amendments immediately follow in the Marshalled List) to muddle the deadlines set out in the timetabling motion so that they apply to the “wrong” groups of amendments. The third reason allows the Presiding Officer to depart from the time limits to correct this.

6.88 If the Presiding Officer invokes the power to depart from any time limit under Rule 9C.12.5, this has no effect on subsequent time limits in the timetabling motion. They must continue to be adhered to, unless the Presiding Officer uses his or her discretion under the rule again. So spending additional time on early groups needs to be compensated for by using less time later in the proceedings. In theory, however, the Presiding Officer can use the discretion as often as is considered necessary to depart from subsequent time limits.

### **Extending time limits in a timetabling motion**

6.89 Rule 9C.12.5 allows departure from deadlines set out in the timetabling motion under certain circumstances. However, using that Rule does not in itself lead to more parliamentary time being spent on Stage 3 overall. Its purpose is to allow the reallocation of the total time allotted at Stage 3 so as to give the Presiding Officer greater flexibility to manage the debate than the timetable would otherwise allow. So, any extra time used for debate on any grouping must be compensated for either in debates on subsequent groupings or in the debate on whether to pass the Bill, or in both.

6.90 However, where it is considered that more debating time on amendments is needed overall at Stage 3, Rule 9C.12.7 may be invoked. This Rule applies at any time during Stage 3 proceedings subject to a timetabling motion (i.e. during the debate on amendments, but not during the debate on whether to pass the Bill). It permits any member present to seek to move a motion without notice proposing that the next time limit to arise be extended by such amount of time (which cannot exceed 30 minutes) as the member specifies. Such a motion, which cannot be debated or amended, may only be taken with the agreement of the Presiding Officer. Any number of such motions may be sought and moved, but the total amount of time by which a Stage 3 may be extended may not exceed 30 minutes. Additionally, where a motion to extend a particular time limit has been disagreed to, no further motion to extend that time limit may be moved.

6.91 While it is open to any member to seek to invoke Rule 9C.12.7 at any time during timetabled stage 3 proceedings, the Presiding Officer may be minded to refuse a motion moved early in those proceedings, on the ground that it might yet be possible to overcome apparent timetabling problems by use of Rule 9C.12.5. If the Presiding Officer refuses a motion this would not stop a member from seeking to move another one later.

### **Effect of agreeing to a motion to extend the time limits in a timetabling motion**

6.92 The effect of a motion under Rule 9C.12.7 being agreed to is that the next deadline is moved forward by whatever amount of time the motion specified, as are any subsequent deadlines in the timetabling motion. Any previous statement from the Presiding Officer under Rule 9C.12.5 that a particular deadline is being

departed from for a particular amount of time is superseded by the agreement to the motion.

### **Effect of agreeing to a motion to extend the time limits in a timetabling motion**

6.93 Agreement to a motion under Rule 9C.12.7 has no automatic effect on any subsequent deadlines in the daily business list. This means (assuming that the debate on the motion to pass the Bill immediately follows the debate on amendments), that any time gained in debating amendments is lost in the debate on passing the Bill. Rule 9C.12.8, however, empowers the Presiding Officer to make such alterations to the daily business list, including altering the time of Decision Time, as are considered necessary or appropriate as a consequence of a motion under Rule 9C.12.7 being agreed to. In practice, the Presiding Officer is likely to move all remaining deadlines in the daily business list forward by the same amount of time as was specified in the successful motion under Rule 9C.12.7.

6.94 The wording of Rule 9C.12.8 allows the Presiding Officer effectively to lengthen the debate on whether to pass the Bill. But the Presiding Officer is only likely to use this discretion sparingly, where it is clear not only that there was insufficient time to debate the amendments, but that the time proposed for the debate on the whole Bill is clearly inadequate too. The Presiding Officer may decide not to use this power if, for instance, moving the deadlines back would cause significant disruption to members.

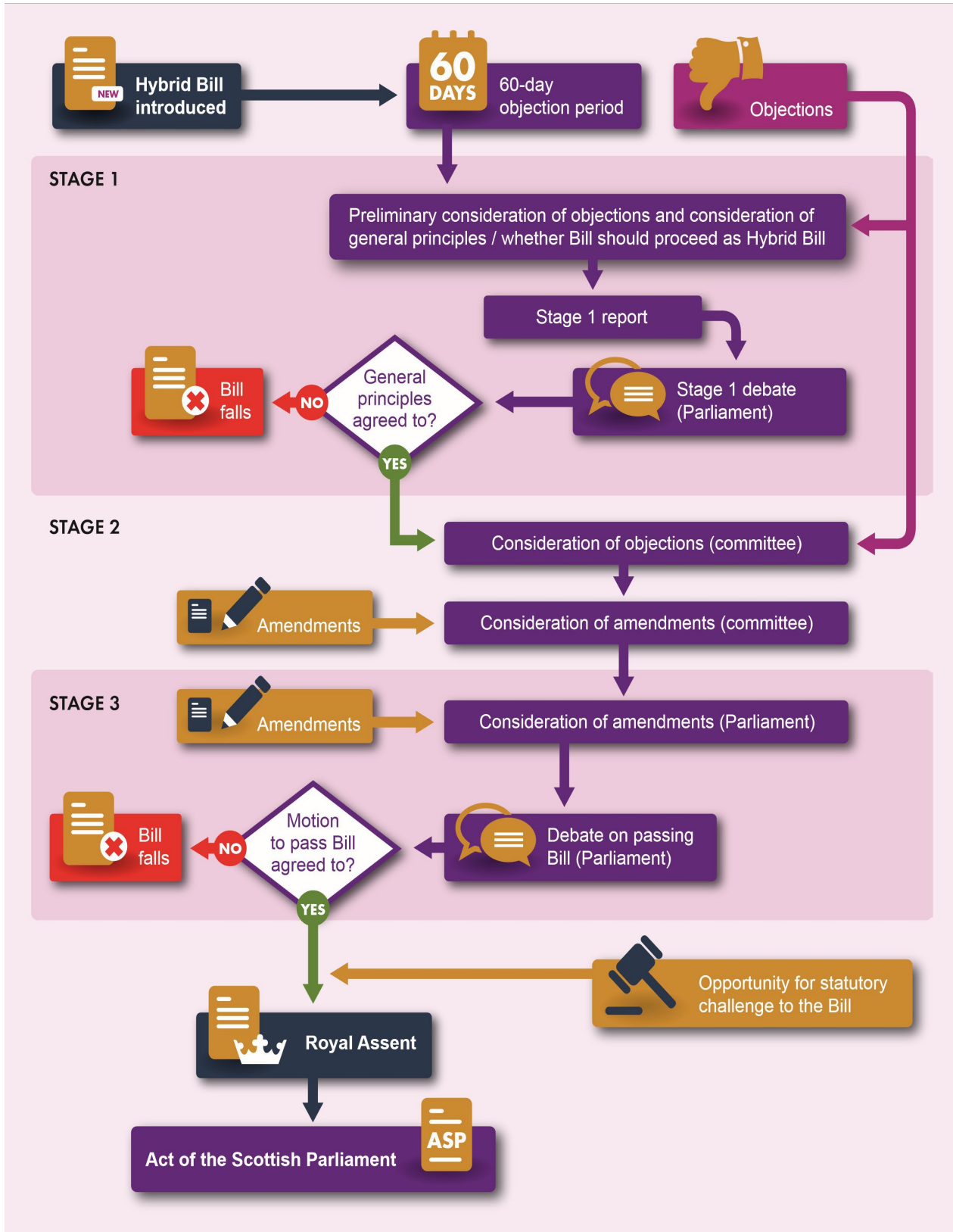
6.95 The Presiding Officer is required to notify the Parliament of any changes to the daily business list made by way of Rule 9C.12.8. A clear spoken announcement would constitute sufficient notification under the rule. Before advising the Presiding Officer about use of this Rule, the clerks would normally consult parties' representatives on the Parliamentary Bureau.



Guidance on Hybrid Bills

Annex A: Stages in the passage of a Hybrid Bill

**Annex A: Stages in the passage of a Hybrid Bill**



## Annex B: Classes of works

### Presiding Officer determination (Hybrid Bills): Classes of works

The Presiding Officer has determined that the classes of works referred to in Rule 9C.1.2 of Standing Orders shall be as follows:

- Aqueduct
- Archway
- Bridge
- Canal
- Cut
- Dock
- Drainage (where it is not provided in the Bill that the cut shall not be more than 3.4 metres wide at the bottom)
- Embankment for reclaiming land from the sea or any tidal river
- Ferry
- Harbour
- Light railway
- Navigation Pier
- Port
- Reservoir
- Road
- Sewer

## Guidance on Hybrid Bills

### Annex B: Classes of works

- Subway
- Tramroad
- Tramway
- Trolley vehicle system
- Tunnel
- Waterwork

and any construction or engineering works which would otherwise require an application for planning permission, if that requirement would be removed (on enactment of the Bill) solely by virtue of article 3 of, and Part 11 (Class 29) of Schedule 1 to, the [Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992](#) (S.I. 1992/223).

## Annex C: Environmental impact

### Presiding Officer determination (Hybrid Bills): Mandatory consultees and consultation on environmental impact

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The Presiding Officer has determined under Rule 9C.1.8 that:

(a) the mandatory consultees are as follows:

- Scottish Natural Heritage<sup>22</sup>
- the Scottish Environment Protection Agency
- Historic Environment Scotland; and
- every planning authority in whose area the proposed development or part of it is to be situated

(b) as soon as reasonably practicable and in any event at least two months in advance of the date of the Bill's introduction, the Scottish Government must consult the mandatory consultees on the following matters, providing sufficient information for that purpose (referred to as the "consultation material"):

- the nature and purpose of the proposed development
- the affected land
- the likely effects of the development on the environment (during both construction and operation)
- the need for appropriate assessment under the [Conservation \(Natural Habitats &c.\) Regulations 1994](#) (S.I. 1994/2716)

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<sup>22</sup> The operating name of Scottish Natural Heritage is NatureScot.

## Guidance on Hybrid Bills

### Annex C: Environmental impact

- mitigation
- the scoping of the Environmental Statement prior to its production

(c) the Scottish Government must invite mandatory consultees to express their written view on the consultation material within a period of no less than 28 days from the date of receipt of the consultation material by the mandatory consultees; and

(d) when consulting the mandatory consultees, the Scottish Government must also advise the mandatory consultees of their opportunity to lodge with the Scottish Parliament a statement in relation to the Scottish Government's consultation under Rule 9C.8 of the Standing Orders.

## Annex D: Form and content of Hybrid Bills

### **(1) Presiding Officer determination (Public, Private and Hybrid Bills): Proper form of Hybrid Bills**

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The Presiding Officer has determined, under Rule 9C.1.6 of the Standing Orders, that the “proper form” of Hybrid Bills is as follows.

#### **Structure**

The text of a Bill should be set out in numbered sections, supplemented where appropriate, by schedules, which should be numbered unless there is only one. Bills may be divided into numbered Parts and Chapters (as may schedules). Each section, schedule, Part and Chapter should have a brief descriptive title. The sections of a Bill (or the paragraphs of a schedule) may also be grouped under italic cross-headings as a guide to the structure of the Bill (or the schedule).

Sections may be divided into numbered subsections, which in turn may be divided into paragraphs, sub-paragraphs etc. Schedules may be similarly divided into numbered paragraphs, sub-paragraphs etc.

Each Bill should be prefaced by a long title beginning “An Act of the Scottish Parliament to ...”.

Preambles to Bills are not permitted.

#### **Style and presentation**

Section numbers and titles should appear in bold, with each section title appearing above the text of the section. Units of text smaller than sections and schedule paragraphs should appear as indented blocks of text with straight left margins.

## **(2) Presiding Officer's recommendations on the content of bills**

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The Presiding Officer has made the following recommendations about the content of Bills. (Note: these recommendations do not form part of the determination of “proper form”.)<sup>23</sup>

### **Style and content**

A Bill should be drafted so that, when read with any relevant existing statutory provision, its intended legal effect is clear.

A Bill should include provision for the short title by which the Act is to be known. The long title should set out the principal purposes of the Bill.

The text of a Bill – including both the short and long titles – should be in neutral terms and should not contain material intended to promote or justify the policy behind the Bill, or to explain its effect. The text of the Bill itself should be identical to the text of the Act to which it is intended to give rise and, in particular, should refer to the Bill as “this Act”.

Any Bill that has such severe deficiencies in drafting that it could not readily be understood or, if enacted, would be manifestly incapable of consistent legal application, should not be introduced.

A Bill whose principal purpose (or one of whose principal purposes) is to make provision manifestly outside the legislative competence of the Parliament should not be introduced.

Any Bill intended to extend other than to the whole of Scotland should set out that intended extent.

Any Bill intended to come into force other than on the day after Royal Assent should either (a) give a date or dates for commencement, or (b) make provision for the appointment of the relevant date or dates. Under the Interpretation and Legislative Reform (Scotland) Act 2010 the default provision for commencement

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<sup>23</sup> Recommendations irrelevant to Hybrid Bills are not reproduced here.

## Guidance on Hybrid Bills

### Annex D: Form and content of Hybrid Bills

where a Bill is silent on the point is for the Bill to come into force on the day after Royal Assent. This does not, however, prevent the Bill from expressly providing for commencement on that day.

Any Bill containing provisions that would confer power to make subordinate legislation should specify what powers, if any, the Parliament is to have to approve or reject the subordinate legislation (or draft subordinate legislation) laid before it under those provisions.

### Preparation for introduction

The text of a Bill should be submitted to the Clerk in writing or by email in sufficient time before the proposed date of introduction to allow it to be prepared for printing. No Bill may be published under the authority of the Parliament except by the Clerk. The Clerk will ensure that the published version of the Bill conforms to the following presentational conventions:

- The text of Bills (sections, schedules and the long title) should be printed in Times New Roman font, fully justified. The text size should be 11.5 point when the Bill is printed at A4 size.
- There should be a running header throughout the body of the Bill containing the Bill's short title and page number together with, where appropriate, any Part and Chapter titles or schedule and schedule Part titles.
- Bills of more than around six sections should be published with a Contents page or pages.
- The text of the Bill, including the long title, should be published with line numbers every fifth line.
- The Bill should be published with a back sheet setting out the short and long titles, the name of the member who introduced it, the names of any supporters, the date of introduction and the type of Bill.



## Annex E: Form of accompanying documents

### Presiding Officer determination (Hybrid Bills): Proper form of accompanying documents

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The Presiding Officer has determined under Rule 9C.3.1 of the Standing Orders that the proper form of accompanying documents for a Hybrid Bill is as follows.

#### All accompanying documents (other than maps, plans and sections)

The text of each document should be set out either in un-numbered paragraphs or in consecutively-numbered paragraphs (1, 2, 3, etc.). Paragraphs may be divided into sub-paragraphs or bullet-points, but multi-level numbering (e.g. 1.1.1) should be avoided.

Headings should be un-numbered.

The text of each document should generally follow the order of such requirements as are specified in the relevant Rule.

#### Books of References

The first paragraph (under the heading “Introduction”) should read as follows [variable or optional text]:

This document relates to the [short title] Bill introduced in the Scottish Parliament on [date]. It has been prepared by the Scottish Government to satisfy Rule 9C.3.2(g)(ii) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament.

#### Environmental Statement

The first paragraph (under the heading “Introduction”) should read as follows [variable or optional text]:

This document relates to the [short title] Bill introduced in the Scottish Parliament on [date]. It has been prepared by the Scottish Government to

## Guidance on Hybrid Bills

### Annex E: Form of accompanying documents

satisfy Rule 9C.3.2(g)(iii) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament.

### Scottish Ministers' Statement

The Statement should clearly state whether Rule 9C.3.2(h)(i) applies.

Any undertaking under Rule 9C.3.2(h)(iii) – if required – should be in the following form [*variable* or optional text] and should be signed by one of the Scottish Ministers (or junior Scottish Minister), or an official authorised to sign on their behalf:

I, [*name*], on behalf of the Scottish Ministers, hereby undertake to send copies of the [*short title*] Bill and its accompanying documents to those premises listed in the Scottish Ministers' Statement as premises (other than premises to which copies are to be sent by the Clerk under Rule 9C.4.2) where the Bill and accompanying documents may be inspected.

(Note: if the only premises listed in the Scottish Ministers' Statement are those premises to which copies are to be sent by the Clerk under Rule 9C.4.2, an undertaking in the form given above need not be included.)

The undertaking under Rule 9C.3.3(h)(iv) should be in the following form [*variable* or optional text] and should be signed by one of the Scottish Ministers (or junior Scottish Minister) or an official authorised to sign on their behalf:

I, [*name*], on behalf of the Scottish Ministers, hereby undertake to pay any costs that may be incurred by the Scottish Parliamentary Corporate Body during the passage of the [*short title*] Bill in connection with such matters associated with the appointment and use of an assessor as are determined by that Body under Rule 9C.3.2(h)(iv) of the Parliament's Standing Orders.

## Annex F: Notification

### **(1) Presiding Officer determination (Hybrid Bills): Notification of persons with an interest in heritable property**

The Presiding Officer has determined, under Rule 9C.3.2(h)(i) of the Standing Orders, that the persons or classes of persons with an interest in heritable property who require to be notified by the Scottish Ministers are as follows:

Persons whose interests are:

- (a) recorded in the Register of Sasines held by Registers of Scotland
- (b) registered on the Land Register of Scotland
- (c) on the latest version of the valuation roll, or
- (d) as the owner, the lessee or, as the case may be, the occupier of any land or buildings (other than land or buildings the owner, lessee or occupier of which cannot be ascertained after reasonable inquiry).

### **(2) Model notification letter**

Dear

The purpose of this letter is to inform you that the Scottish Government intends to introduce a Hybrid Bill, the [*title of Bill*], into the Scottish Parliament on or around [*proposed date of introduction*].

The purpose of the Bill is to [*give outline of what the Bill does*].

[*Optional text here (X) – see end of Annex.*]

#### **The Bill and accompanying documents**

The day after the Bill is introduced in the Parliament, it will be published on the Parliament's website ([www.parliament.scot](http://www.parliament.scot), go to Bills and laws / Current and previous Bills), together with the following accompanying documents:

## Guidance on Hybrid Bills

### Annex F: Notification

- Explanatory Notes
- a Policy Memorandum
- a Financial Memorandum
- a Scottish Ministers' Statement
- statements by the Minister introducing it and by the Presiding Officer of the Parliament on the legislative competence of the Bill.

In addition, printed copies of the Bill and the above documents will be available for inspection, as soon as possible after introduction, at the following premises:

*[list relevant public libraries or other premises].*

*[In the case of a Bill to which Rule 9C.1.2 applies, insert the following additional paragraph: At the above locations, you will also find printed copies of the following additional accompanying documents (which may not be available on the Parliament's website):*

- maps, plans and sections
- a book of references
- an Environmental Statement.]

### **Parliamentary process (including objections)**

Once the Bill has been introduced, it will be subject to a three-Stage process where it will be considered in detail both by a specially established Hybrid Bill Committee (and other committees) and by the full Parliament.

**You may be entitled to object to the Bill.** Objections must normally be lodged within a 60-day period that begins on the day after introduction of the Bill. The actual dates on which the objection period for this Bill will begin and end will be published on the Parliament's website immediately after the Bill is introduced.

Objections must (amongst other things):

- set out clearly the nature of the objection

## Guidance on Hybrid Bills

### Annex F: Notification

- explain whether the objection is to the whole Bill and/or specified provisions; and
- specify how the objector's interests would be adversely affected by the Bill.

At the end of the 60-day period, all admissible objections will be posted on the Parliament's website (but with all personal details, other than the names of objectors, removed). As part of the Parliament's scrutiny process, objectors will have an opportunity to give oral or written evidence to the Hybrid Bill Committee (or to an independent assessor), either individually or in groups. It will be for the Committee to decide, on the basis of the evidence taken from objectors and the promoter, whether to accept the objections, in whole or in part, or to reject them.

### Further information

Further details on the Hybrid Bill process are available on the Scottish Parliament website ([www.parliament.scot](http://www.parliament.scot)). In particular, you may find it helpful to read:

- Chapter 9C of the Parliament's standing orders (go to About / How the Parliament Works / Rules and guidance / Standing Orders)
- the Guidance on Hybrid Bills (go to About / How the Parliament Works / Rules and guidance)
- "Information for objectors to Hybrid Bills" (go to Bills and Laws / About Bills and Laws / How a Bill becomes an Act / Hybrid Bill / Stage 2)

Alternatively, please contact the Non-Government Bills Unit (0131 348 5246, [ngbu@parliament.scot](mailto:ngbu@parliament.scot)).

For further information about the proposed Bill, please contact [*insert name and contact details for relevant Scottish Government officials*].

Yours sincerely/faithfully,

[*Name etc.*]

**Additional material to be included in the above letter (at point X) in relation to Bills that seek to authorise the compulsory acquisition or use of any land or buildings**

I / We understand that you are the owner / lessee / occupier of [*insert name/address of property / the land described in the annex to this letter*]. The Bill provides for this property / land to be subject to compulsory purchase / use [*give details if required – e.g. if the Bill provides power to carry out protective works, or extinguishes certain rights over the land*].

This means that, if the Bill is passed by the Parliament, you may be forced to sell / move out of the property / the land may be used for [*specify purpose*] without your consent being required. [*Or give alternative outline, in plain English, of the likely consequences of the relevant provisions of the Bill.*] You may be entitled to compensation for any financial loss that results.

[*Optional:*] Further information about the land affected / the nature of the Bill's impact on the above property / land is set out in an annex to this letter. [*Include maps, plans etc. in the annex if appropriate.*]

**IF YOU ARE IN DOUBT ABOUT THE POSSIBLE EFFECT OF THIS LETTER YOU SHOULD SEEK LEGAL ADVICE AS SOON AS POSSIBLE.**

## Annex G: Advertisement of intention to introduce Hybrid Bill

### Presiding Officer determination (Hybrid Bills): Advertisement of intention to introduce Bill

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The Presiding Officer has determined under Rule 9C.3.2(h)(ii) of Standing Orders that the minimum requirements for advertising the Scottish Ministers' intention to introduce a Hybrid Bill are as follows.

#### Advertisements in newspapers etc.

In the case of a Bill to which Rule 9C.1.2 applies, it must be advertised in two newspapers which together circulate throughout the area in which works are proposed, or in which the land or buildings which could be compulsorily acquired or used are situated. In each newspaper, the advertisement must appear in two separate issues at least a week apart.

In the case of a Bill to which Rule 9C.1.2 does not apply, it must be advertised in two newspapers together circulating throughout Scotland, in two separate issues at least a week apart.

Where, for the purposes of this determination, a Hybrid Bill is advertised in two newspapers, one may be the *Edinburgh Gazette* (which qualifies as a newspaper circulating throughout Scotland) so long as the other is a newspaper that circulates throughout the relevant area.<sup>24</sup>

The advertisement must be headed "Proposed Hybrid Bill" and the text must include:

- the short title of the proposed Bill, and that it will be introduced by the Scottish Ministers

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<sup>24</sup> For information about placing a notice in the *Edinburgh Gazette*, see <https://www.thegazette.co.uk/place-notice>

## Guidance on Hybrid Bills

### Annex G: Advertisement of intention to introduce Hybrid Bill

- a concise summary of the purpose of the Bill
- an indication of when the Bill is likely to be introduced
- a website address and a postal address from which further information about the Bill, and about the Parliamentary process (including about how to lodge an objection), may be obtained.

The Scottish Government must provide a copy of the advertisement to the Non-Government Bills Unit, at the same time as to newspapers, for posting on the Parliament's website.

### Notices in public libraries

The Scottish Government must also prepare notices, which should be at least A4 in size and contain at least the same information as the advertisements, and send them (either directly or via the local authority) to public libraries in accordance with the following paragraphs.

In the case of a Bill to which Rule 9C.1.2 applies, notices must be sent to:

- all public libraries within the area in which works are proposed, or in which the land or buildings which are to be compulsorily acquired or used are situated, plus (if that is fewer than three)
- as many outside that area but reasonably close to it as are necessary to make the total up to three.

In the case of a Bill to which Rule 9C.1.2 does not apply, notices must be sent to one public library in the area of each local authority in Scotland.

The notices should be sent with a request that they be prominently displayed, in a place accessible to visitors to the library, for a period beginning at least two weeks before the proposed introduction date of the Bill and continuing at least until the date of introduction and preferably until the end of the objection period.



## Annex H: Distribution of documents

### **Presiding Officer determination (Hybrid Bills): Distribution of Bill and certain accompanying documents**

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The Presiding Officer has determined under Rule 9C.3.2(h)(iii) of Standing Orders that the premises to which a copy of the Hybrid Bill and the accompanying documents must be sent are as follows.

If the Bill is a Bill to which Rule 9C.1.2 applies:

- all public libraries within the area in which works are proposed, or in which the land or buildings which are to be compulsorily acquired or used are situated, plus (if that is fewer than three)
- as many outside that area but reasonably close to it as are necessary to make the total up to three.

If the Bill is not a Bill to which Rule 9C.1.2 applies:

- where the Bill's impact on private interests appears to be particularly significant within any of the following Scottish Parliament regions, the following number of public libraries or appropriate premises within the region in question:
  - Highlands and Islands – four
  - North-East Scotland, Mid-Scotland and Fife or South of Scotland – three
  - any other region – two
- otherwise, one public library or appropriate premises within each of the Scottish Parliament regions.

In this determination:

“appropriate premises” means premises (such as an office or shop) owned or occupied by or on behalf of the Scottish Administration and open to the

## **Guidance on Hybrid Bills**

### Annex H: Distribution of documents

public without charge at reasonable times

the Scottish Parliament regions are the eight electoral regions defined in Schedule 1 to the Scotland Act 1998.

## Annex J: Fees and costs

### SPCB determination (Hybrid Bills): Fees and reimbursement of costs

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The Scottish Parliamentary Corporate Body (SPCB) has determined under Rule 9C.7.5(e) of the Standing Orders the fee payable by objectors to a Hybrid Bill, and has determined under Rule 9C.3.2(h)(iv) those matters for which the Scottish Ministers must undertake to reimburse its costs, as follows:

#### Fee payable by an objector

To lodge an objection: nil

#### 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 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

## **Guidance on Hybrid Bills**

### Annex J: Fees and costs

the holders of those interests of the terms and implications of the amendments and of how they may make representations.

## Annex K: Maps, plans, sections and books of references

### Presiding Officer determination (Hybrid Bills): Maps, plans, sections and books of references

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The Presiding Officer has determined under Rule 9C.3.2(g)(ii) of Standing Orders the information that requires to be set out in the maps, plans, sections and book of reference that accompany on introduction a Hybrid Bill that seeks to authorise the construction or alteration of works or authorises the compulsory acquisition or use of any land or buildings. In general, sufficient maps, plans and sections must be provided to allow for proper consideration and, where these are required, not less than the following will apply.

#### Maps

These must be based on an Ordnance Survey map at a scale not smaller than 1:50,000, with the general course of direction or boundaries of the proposed work or alteration shown and, where appropriate, show the line of any proposed works. These should be submitted in colour.

#### Plans, sections

Plans must be drawn to a horizontal scale not smaller than 1:2,500. A key plan, showing the general location of works, must be drawn to a scale not smaller than 1:50,000. They must show clearly the line or situation of the whole of the work and where the construction is, or demolition or alterations are, to take place. Where it is the intention of the promoter to apply for powers to make any deviation from the line of the proposed work, then the limits of any such deviation must be defined on a plan and all land included within those limits must also be defined. A plan must be provided of any building yard, courtyard or land within the curtilage of any building or ground cultivated as a garden, either in the line of the proposed work, or included within the limits of deviation.

A plan or plans, showing clearly any land that it is proposed to acquire compulsory, must also be provided.

Sections and cross-sections of works must be drawn to the same horizontal scale as the plans. In respect of the vertical scale, this must be no smaller than 1:500.

## Guidance on Hybrid Bills

### Annex K: Maps, plans, sections and book of references

Where tunnelling as a substitute for open cutting or a viaduct as a substitute for solid embankment is required then this must be marked on the plan (in the case of tunnelling, by a dotted line). Where a length is stated on the plan, it must be stated in kilometres and metres.

In the case of a Bill that seeks to authorise the construction or alteration of any railway or tramroad, the distances in kilometres and metres from the commencement of the work must be marked on the plan. Details of the radius of every curve not exceeding one kilometre in length must also be noted on the plan. Where the Bill seeks to authorise the construction or alteration of a railway or tramroad so as to form a junction with an existing or authorised line of railway or tramroad, the course of the existing or authorised line must be shown on the plan for a distance of 500 metres on each side of the proposed junction, on the same scale as the first-mentioned railway or tramroad.

In the case of a Bill that seeks to authorise the construction or alteration of a tramway, the plan must indicate the proposed position of the tramway, in relation to the road in which it is to be laid and, where not along the centre, the distance from an imaginary line drawn along the centre of the road. If it is proposed that the tramway should be laid so that between any points for a distance of 10 metres or upwards, the space intervening between the outside of the footpath on either side of the road and the nearest rail of the tramway will be less than:

- 3 metres; or
- if it is intended to run, on the tramway, carriages or trucks adapted for use upon railways, 4 metres, the tramway between those points must be indicated on the plan by a thick dotted line on the side or sides where the narrow places occur and the width of the road at those places must also be marked on the plan. Double lines (including passing places) must be indicated on the plan by a double line and the distance between the centre lines of each line of tramway indicated.

The distances in kilometres and metres from one of the termini of the tramway must be marked on the plan. It must also state:

- the total length of the road upon which the tramway is to be laid (i.e. the length of the route of the tramway); and

## Guidance on Hybrid Bills

### Annex K: Maps, plans, sections and book of references

- the length of each double and single portion of the tramway and the total lengths of double and single portions respectively.

If the Bill relates to more than one tramway, the above details apply severally to each tramway.

In the case of a Bill that proposes to authorise the diversion, widening or narrowing of any road, navigable river, canal, railway or tramroad, the course of the diversion, and the extent of the widening or narrowing, must be marked upon the plan and, if it is intended to divert any public footpath, the course of such diversion must be marked upon the plan.

The information provided on all copies of plans and sections must be accurate. The plans and sections can be submitted in black and white. Key features, such as any limits of deviation of the works and the precise boundaries of each plot of land to be compulsorily acquired, must be clearly delineated on the relevant plans. Plans and sections should be drawn to a larger scale than the minimum prescribed if this is necessary to achieve reasonable clarity and accuracy.

### **Book of References**

Where a Bill seeks to authorise the compulsory acquisition of land, or the right to use land or to carry out protective works to buildings, or the compulsory extinguishment of servitudes and other private rights over land (and of navigation over water) the promoter must provide in a Book of References a list of the names and addresses of the owners, lessees and occupiers of all lands and buildings that may be compulsorily acquired or used or who have interests in any land or water in or over which rights would be extinguished or in those rights. The promoter is not required to include information about owners or lessees whose identity cannot after reasonable enquiry be ascertained.

The names and addresses listed must be extracted from the most recent information available. The source or sources of the information must be shown.

## Annex L: Environmental Statement

### Presiding Officer determination (Hybrid Bills): Environmental Statement

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The Presiding Officer has determined under Rule 9C.3.2(g)(iii) of Standing Orders that the information that requires to be set out in any Environmental Statement that accompanies a Hybrid Bill on introduction is:

- (a) all of the information set out in [Schedule 4 of the Town and Country \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) (SSI 2017/102)
- (b) in so far as the provisions in the Bill constitute a qualifying plan or programme, how the Scottish Ministers have complied with, or intend to comply with, the provisions of the [Environmental Assessment \(Scotland\) Act 2005](#) (asp 15)
- (c) where applicable, how the Scottish Ministers have complied with, or intend to comply with, the following in relation to the Hybrid Bill:
  - (i) the [Conservation \(National Habitats &c.\) Regulations 1994](#) (SI 1994/2716) regarding requirements for protecting European sites or European Protected Species – including the need for appropriate assessment in some cases
  - (ii) the [Conservation of Habitats and Species Regulations 2017](#) (SI 2017/1012) as applicable for Scotland, regarding requirements for protecting European sites or European Protected Species – including the need for appropriate assessment in some cases
  - (iii) the [Nature Conservation \(Scotland\) Act 2004](#) (asp 6) regarding provisions which may need to be made to safeguard habitats, species or earth science interests on Sites of Special Scientific Interest
  - (iv) the [Wildlife and Countryside Act 1981](#) (c. 69) regarding provisions which may need to be made for specially protected species
  - (v) the Marine and Coastal Access Act 2009 (c. 23), [part 5](#), and the [Conservation of Offshore Marine Habitats and Species Regulations 2017](#) (SI 2017/1013) insofar as decisions made in relation to Scotland (land and territorial waters) could affect offshore Marine Protected



Areas, Special Protection Areas or Special Areas of Conservation;  
and

- (vi) the [Marine \(Scotland\) Act 2010](#) (asp 5), parts 3, 5 and 6 regarding requirement in relation to marine planning, Marine Protected Areas and the conservation of seals

(d) how the Scottish Ministers will, where applicable:

- (i) require contractors to minimise the adverse environmental and other impacts of the construction works
- (ii) define minimum standards of construction practice; and
- (iii) inform and consult affected communities about how the adverse effects of the works will be mitigated and the timetable of those works.

(This information to be contained in a Code of Construction Practice)

- (e) how the Scottish Ministers will, where applicable, secure the mitigation of noise and vibration from the operation of the works

(This information to be contained in a Noise and Vibration Policy).

## Annex M: Form of objections

### (1) Presiding Officer determination (Hybrid Bills): Proper form of objections

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The Presiding Officer has determined, under Rules 9C.7.4 and 9C.11.10J of the Standing Orders, the proper form in which objections to a Hybrid Bill, and objections to an amendment to such a Bill, must be lodged.

Every objection lodged against a Hybrid Bill or an amendment to such a Bill must:

- be in English or Gaelic
- be printed, typed or clearly hand-written
- set out clearly the name, address and, where available, other contact details of the objector (telephone, fax and e-mail), and
- be signed (where applicable, by a person duly authorised and showing that person's position or designation) and dated.

### (2) Model layout for objections to a Hybrid Bill

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#### Objection to the [*short title*] Bill

1. I/We, [*name of individual or body*], hereby object to the [*short title*] Bill.

2. My/our objection is to the whole Bill.

OR:

2. My/our objection is to [*name particular provision or provisions*].

OR:

2. My/our objection is to those provisions that [*give brief description of the aspect of the Bill to which objection is taken – if individual provisions cannot easily be identified*].

OR:

## Guidance on Hybrid Bills

### Annex M: Form of objections

2. My/our objection is to the whole Bill, and also (in particular) to [name particular provisions] / to those provisions that [*give brief description of the aspect of the Bill to which objection is taken – if individual provisions cannot easily be identified*].
3. My/our interests would be adversely affected by the Bill because [*specify*].
4. My/our grounds of objection are as follows. [*Set out main grounds of objection in further numbered paragraphs, giving evidence and relevant information as appropriate*].

Signature

Name of signatory (if not the objector)\*

Position or designation of signatory (if appropriate)\*

Date

Name of objector

Address (including postcode)

Telephone number(s) (optional)

E-mail address (optional)

\* Note: the name of the signatory should be provided if signing on behalf of an objector. If the signatory is, for example, the objector's agent or solicitor, or is an authorised officer of an organisation objecting to the Bill, the signatory's position or designation should also be given.

### **(3) Model layout for objections to an amendment to a Hybrid Bill**

**[Short title] Bill**

**Objection to amendment(s) [number(s)]**

1. I/We, [*name of individual or body*], hereby object to amendment(s) [*number(s)*] to the [*short title*] Bill.
2. My/our interests would be adversely affected by the amendment(s) because [*specify*].
3. My/our grounds of objection are as follows. [*Set out main grounds of objection in further numbered paragraphs, giving evidence and relevant information as appropriate*].

Signature

Name of signatory (if not the objector)\*

Position or designation of signatory (if appropriate)\*

Date

Name of objector

Address (including postcode)

Telephone number(s) (optional)

E-mail address (optional)

\* Note: the name of the signatory should be provided if signing on behalf of an objector. If the signatory is, for example, the objector's agent or solicitor, or is an authorised officer of an organisation objecting to the Bill, the signatory's position or designation should also be given.

## Annex N: Financial resolutions

Where a Hybrid Bill contains particular provisions affecting payments into or out of the Scottish Consolidated Fund (the “SCF”), no proceedings can be taken on the Bill after Stage 1 unless the Parliament has, by resolution, agreed to the relevant provisions. That resolution is known as a “financial resolution”. Financial resolutions are governed by Rule 9C.16.

### Principles behind the Rule

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The financial resolution procedure is a means of giving extra control to the Scottish Government over Bills with certain financial implications. Only a member of the Scottish Government or a junior Scottish Minister can lodge a motion for a financial resolution (Rule 9C.16.7), and so the Scottish Government has a veto on whether any Bill that requires such a resolution makes progress. Unless a motion is lodged and the Parliament agrees to it, a Bill that requires a financial resolution falls (Rule 9C.16.8).

Rule 9C.16 is intended to give effect to the principles of the Financial Issues Advisory Group (FIAG) which reported to the Consultative Steering Group (CSG) before the establishment of the Parliament. FIAG was attempting to give effect to the established principle that the executive arm of government has a unique responsibility in relation to the management of public funds. If it is to fulfil this function, the Scottish Government must maintain control both over the raising of revenue and over public spending – hence the need for a mechanism to secure Scottish Government consent for payments either into or out of central funds.

### When a resolution is required

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The Presiding Officer decides in relation to every Hybrid Bill whether or not a financial resolution is required (Rule 9C.16.2). This decision is usually made shortly after introduction. It is communicated to the Minister in charge of the Bill, other relevant Ministers and the convener of the Hybrid Bill Committee, and announced on the Bill’s webpage.

The decision is made with reference to the provisions contained in the Bill, the accompanying documents and any other relevant information. The need for a resolution does not just arise in relation to mandatory provisions (e.g. those using “must”) in a Bill, but also in relation to optional provisions (e.g. those using “may”). Budgetary authorisation may be required to ensure that a mechanism provided in the Bill can be used, as well as for what the Bill requires to be done. The question is whether, if the mechanism were resorted to, there would be a legitimate claim against the SCF.

### **Rule 9C.16.3: resolutions required due to new or increased expenditure charged on the SCF**

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A financial resolution is required in every case where a Hybrid Bill contains provisions that “charge expenditure on” the SCF (Rule 9C.16.3(a)). Such charges – which the Scottish Government is required to pay without obtaining further authority from the Parliament by means of a Budget Bill – are provided for only in exceptional cases.

A resolution is also required if the Hybrid Bill is likely to increase significantly existing expenditure “charged on” the SCF (Rule 9C.16.3(b)).

### **Rule 9C.16.3A: resolutions required due to new or increased expenditure payable out of the SCF**

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A financial resolution is required if the Hybrid Bill is likely to increase significantly expenditure payable out of the SCF (as opposed to expenditure charged on that Fund) (Rule 9C.16.3A). This applies to expenditure for any purpose, whether a new purpose or an existing one.

### **Meaning and interpretation of “likely” and “significant”**

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Whether a financial resolution is required for a Bill under either Rule 9C.16.3(b) or 3A depends on two tests – one about whether the expenditure is “likely” and the other about whether it would be “significant”.

## Guidance on Hybrid Bills

### Annex N: Financial resolutions

Expenditure is a “likely effect” of a Bill where new or increased expenditure is the likely outcome of the Bill’s implementation, taking into account the wider context in which the Bill operates, not just where the Bill requires expenditure to be incurred.

In addition, expenditure that is likely to arise in the event of a power conferred by the Bill being exercised will be taken into account, even if the power is not certain to be exercised. It is the mechanisms that the Bill provides, not the way in which those mechanisms are expected to be used in practice, that is important. Where there is substantial uncertainty about the level of expenditure that might be involved in a Bill, but there is potential for the expenditure to exceed the “significant” threshold, an approach of erring on the side of caution and saying that a financial resolution is required is likely to be adopted. If, however, the implications of a Bill for expenditure are very indirect or uncertain a resolution may not be required.

The second test is that the expected expenditure must be “significant”. As a result, a resolution may not be required for a Bill which will require expenditure but where the amounts involved are expected to be trivial or easily capable of being absorbed within existing budgets.

Expenditure of over £400,000 in any single financial year (regardless of whether that level of expenditure is ongoing or one-off) is the threshold for what is currently considered “significant” for the purposes of Rules 9C.16.3(b) and 9C.16.3A. Savings arising from provisions in the Bill may be taken into account in determining whether the overall cost of the Bill exceeds the threshold.

### **Rule 9C.16.3B and 3C: resolutions required due to new, increased or reduced taxes**

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A financial resolution is required in every case where a Hybrid Bill imposes – or confers a power to impose (through subordinate legislation) – any tax (Rule 9C.16.3B(a)). This applies regardless of the anticipated amount of revenue from the new tax. A tax is a liability on a person to make a payment. It is distinct from a fee for a service, which a person who wants to use the service must pay.

A resolution is also required where a Hybrid Bill either increases or reduces – or confers a power to increase or reduce – an existing tax; but in this case, the

resolution is required only if the likely effect is to increase or (as the case may be) reduce revenue from the tax “significantly” (Rule 9A.14.3B(b), Rule 9A.14.3C). Here, too, a total net increase (or, as the case may be, reduction) counts as “significant” only if it is expected to exceed £400,000 in any financial year.

### **Rule 9C.16.4: resolutions required on grounds of charges or other payments into the SCF**

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A financial resolution is required if a Hybrid Bill satisfies the two tests set out in Rule 9C.16.4(a) and (b). The first test is that it would impose or increase a charge (other than a tax), or otherwise require a payment to be made, including by provision that is to be made by subordinate legislation. It is assumed for the purposes of Rule 9C.16.4 that a power to impose or increase a charge will be used.

The second test is that the charge or payment must be made – with one exception – to persons with a statutory duty to pay the amounts involved into the Scottish Consolidated Fund. In practice, this means the Scottish Ministers and other office-holders in the Scottish Administration, together with directly-funded bodies. It excludes most non-departmental public bodies (NDPBs), whose income is not payable into the Fund.

The exception (set out in brackets in Rule 9C.16.4(b)) relates to bodies which are not required to pay income received (e.g. from charges or payments) into the SCF, but who are only not so required because a provision in an Act of the Scottish Parliament (or in subordinate legislation made under such an Act) allows them instead to keep that income. Bodies in that position, in other words, have the power to “recycle” income – offsetting it directly against money they would otherwise require to be given from the SCF for expenditure purposes.

The purpose of the exception is to ensure that a Hybrid Bill which authorises such a body to levy charges or payments is not automatically exempted from the need for a financial resolution just because the body is not required to pay the income into the SCF. Without this exception, an arbitrary distinction would be drawn between public bodies which have this limited type of financial autonomy and those which don’t – even though the impact on the SCF of a Hybrid Bill



## Guidance on Hybrid Bills

### Annex N: Financial resolutions

authorising either type of body to raise new income would be essentially the same.

Rule 9C.16.5 provides two exemptions from the application of Rule 9C.16.4. The first is a similar exemption for insignificant amounts as is provided in relation to expenditure by Rule 9C.16.3. The income produced by a Hybrid Bill is currently considered “significant” for the purposes of Rule 9C.16.4 if it is likely to exceed £400,000 in any single financial year. As with Rules 9C.16.3(b) and 3A, an approach of erring on the side of caution and saying that a financial resolution is required is likely to be taken in cases where there is substantial uncertainty about the level of income that will be produced by a Bill but where there is potential for it to exceed the “significant” threshold.

The second exemption is for charges or payments which are levied to recover the cost of goods or a service provided, or otherwise where there is no significant net gain or loss for the SCF. Charges for goods that are reasonable and charges for services that are limited to approximately cost recovery level do not require financial resolution cover (provided in either case that the restriction is contained in the Hybrid Bill or existing legislation). This would cover, for example, a charge for providing someone required to register information with a copy of their entry in the register. It would allow the charge levied to be at a higher level than would be justified only in terms of marginal cost recovery (i.e. the cost of the paper, photocopier toner and staff time making the copy) – but not substantially higher. The underlying intention is that a financial resolution should only be required in cases where charges or payments can be levied in such a way as to generate substantial profit or to contribute significantly to the income of the body in question.

## **Lodging and moving motions for resolutions**

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Under Rule 9C.16.7, a motion for a resolution may be lodged and moved only by a member of the Scottish Government or a junior Scottish Minister. (The Minister who moves such a motion need not be the one who lodged it, and may move it without having added his or her name as a supporter (Rule 8.3.2).) The motion must be lodged within six months of the completion of Stage 1 (Rule 9C.16.8(a)) and amendments to such a motion are not admissible (Rule 9C.16.7). If no motion

## Guidance on Hybrid Bills

### Annex N: Financial resolutions

is lodged within this time or if such a motion is lodged but not agreed to by the Parliament when it is taken, the Bill falls (Rule 9C.16.8).

## **Cost-bearing amendments to Bills**

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Rule 9C.16.6 prevents there being any proceedings taken on an amendment to a Hybrid Bill (or a number of such amendments lodged together) if the effect of the amendment (or amendments) would be that the Bill, had it been introduced in that form, would need a resolution that it doesn't have. Rule 9C.16.6 does not affect the admissibility of amendments, and an amendment (or amendments) to which it applies may be lodged and published in the Business Bulletin and in a Marshalled List. But unless the necessary resolution is first agreed to, the amendment (or amendments) may not be called, moved or debated, and the question cannot be put.

Motions for financial resolutions are usually broadly worded, which allows many cost-bearing amendments to be debated and decided on at later stages without a further financial resolution being required. Sometimes, however, a motion may be more narrowly worded, making it more likely that any cost-bearing amendments may require a new financial resolution.

## Annex O: Form of amendments

### Presiding Officer determination (Public and Private Bills): Proper form of amendments

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The Presiding Officer has determined, under Rule 9C.14.1 of the Standing Orders, that the proper form of amendments to Bills is as follows.

Each amendment shall propose only one change to the text of the Bill; and each amendment to an amendment shall propose only one change to the text of that amendment.

No amendment shall leave out or insert more than one section of, or schedule to, the Bill.

Amendments to leave out sections of, or schedules to, the Bill shall be in the form “Leave out section/schedule x”; and amendments to substitute new such sections or schedules for existing ones shall be in the form “Leave out section/schedule x and insert— [text of new section/schedule]”.

Amendments to insert new sections or schedules in the Bill shall normally be in the form “Before/After section/schedule x, insert— [text of new section/schedule]”.

Amendments to existing sections of, or schedules to, the Bill shall normally begin “In section/schedule x, page y, line z, ...” and shall be to “leave out”, “leave out and insert” or “insert” blocks of text or words.

In all amendments, words in the Bill referred to and text to be included in the Bill shall be framed with angle brackets (e.g. after <word> insert <words>).

Amendments to leave out whole subsections of, or paragraphs of schedules to, the Bill shall do so by reference to those subsections or paragraphs, but amendments to leave out other defined blocks of text shall do so by reference to lines. Amendments to leave out words shall do so by reference to those words or, where appropriate, by reference to the first and last words to be left out.

## Guidance on Hybrid Bills

### Annex O: Form of amendments

In amendments to leave out words and insert new words, the first or last words to be inserted shall not normally be the same as the first or last words to be left out.

No amendment shall leave out or insert any item of text smaller than a word.

Amendments to insert blocks of text into the Bill shall set out those blocks of text in the form in which they would appear in the Bill, except that blocks of text that would, if part of the Bill, be numbered shall either be un-numbered in the amendment or numbered so as not to require re-numbering of existing provisions of the Bill.

Amendments to the long title shall begin “In the long title, page x, line y, ...”.

Amendments to amendments shall begin “As an amendment to amendment x, ...” and shall, where appropriate, refer to the text to be amended by reference to subsection, schedule paragraph or line.