



BRIEFING PAPER

Number 7554, 11 April 2016

Private Members' Bills

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Summary

A debate on the procedure for debating and voting on private Members' bills has been scheduled to take place in Westminster Hall on Wednesday 13 April 2016. The Member who initiated the debate is Jeff Smith.

A private Member's bill (PMB) has to complete its passage through both Houses, like any other bill, before it can receive Royal Assent. However, unlike most Government bills, PMBs are not timetabled or programmed.

The Procedure Committee is "looking at the procedures and practices of the House relating to private Member's bills, in the light of the work undertaken by the predecessor Committee in the 2013-14 Session". The Committee announced its inquiry on 7 January 2016. The Committee has taken oral evidence from the Leader and Shadow Leader of the House of Commons, a number of backbench Members, parliamentary officials, journalists and the Hansard Society.

An e-petition, "Reform the rules on filibustering or 'talking a bill to death'" was tabled after long speeches were made in the course of the debate on the second reading of the *Hospital Parking Charges (Exemption for Carers) Bill 2015-16*.

1. Current issues

1.1 Procedure Committee inquiry

The Procedure Committee is “looking at the procedures and practices of the House relating to private Member’s bills, in the light of the work undertaken by the predecessor Committee in the 2013-14 Session”. The Committee announced its inquiry on 7 January 2016.¹ The Committee has taken oral evidence from the Leader and Shadow Leader of the House of Commons, a number of backbench Members, parliamentary officials, journalists and the Hansard Society.²

Before the formal launch of the inquiry there had been a number of press reports indicating the likely approach of the Committee to the issue, in the light of the reports of the Procedure Committee in the last Parliament.

1.2 Inquiries in the last Parliament

In the last Parliament, the Procedure Committee examined procedures and practices relating to private Members’ bills. In the report of that inquiry, the Procedure Committee suggested two options for timetabling private Members’ bills.

- Under its first proposal, the first seven private Members’ bill (PMB) Fridays would be restructured to allow the House to debate a bill for two and three quarter hours and then vote upon it. This would allow two PMBs to be debated on each of these Fridays. A programme motion providing an end time for debate at report stage could be moved in connection with any bill returning to the floor of the House on any of the six “later stage” Fridays.
- Under its second proposal, only a limited number of PMBs would be programmed in each Session. It suggested two approaches for determining which – either on a “first come, first served” basis, or allowing the House to consider whether a PMB should be programmed.

The Procedure Committee recommended that “the House be invited to decide whether it should be possible to programme private Members’ bills. If it decides in favour of the principle of programming private Members’ bills, we recommend that it be offered the choice between the two means of programming bills” which it outlined.³

The Committee argued that programming “enables appropriate debate and discussion of a bill whilst preventing the delay of a bill’s passage by procedural tactics or filibustering”, and it continued that “It is this outcome which we wish to achieve in the private Member’s bill process”.⁴

¹ Procedure Committee news, [Procedure Committee inquires into private Members’ bills](#), 7 January 2016

² Procedure Committee, [Private Members’ Bills inquiry – publications](#)

³ Procedure Committee, [Private Members’ bills](#), 2 September 2013, HC 188-I 2013-14, paras 32-50

⁴ Procedure Committee, [Private Members’ bills](#), 2 September 2013, HC 188-I 2013-14, paras 32-33

In March 2014 the Committee published a follow-up report, covering the Government's response to its initial report and commenting on it. In that report the Committee noted that:

Following further discussions with the Leader of the House, we have decided not to proceed with our proposals for programming of private Members' bills by putting them to the House. This is an idea whose time has not yet come.⁵

And, in place of programming, it recommended that "the House should agree that there should be a convention that the question on second reading of a private Member's bill should be put to the House at the end of a full day's debate, in the same way that the House expects the question to be put on second reading of a Government bill".⁶

The Committee also recommended a number of measures designed to streamline the private Members' bill process and reduce the number of notices of Second Reading of Bills printed on the Order Paper.

No time was found by the Government for a debate on the proposals set out in the Committee's subsequent report before the end of the 2014-15 Session, and the House did not therefore have a chance to debate or endorse any of the Committee's recommendations.

1.3 E-petition calling for reform of procedures relating to private Members' bills

An e-petition, "Reform the rules on filibustering or 'talking a bill to death'"⁷ was tabled after long speeches were made in the course of the debate on the second reading of the *Hospital Parking Charges (Exemption for Carers) Bill 2015-16*,⁸ which was subsequently withdrawn.

Members expressed concern that too much time was allowed for the debate on the *NHS (Charitable Trusts Etc) Bill 2015-16* and thus prevented adequate time for debate on the *Off-patent Drugs Bill 2015-16*, on 6 November 2015.⁹ There was also frustration, after Alistair Burt, the Minister for Community and Social Care, told the House that he would use all the time available to him in order to prevent the *Off-patent Drugs Bill* making progress.¹⁰

The term filibustering is not widely used in the British parliamentary context. Erskine May discussed the Speaker's powers to deal with "irrelevance or tedious repetition" under Standing Order No 42:

⁵ Procedure Committee, [Private Members' bills: Government response and revised proposals](#), 31 March 2014, HC 1171 2013-14, para 5

⁶ Procedure Committee, [Private Members' bills: Government response and revised proposals](#), 31 March 2014, HC 1171 2013-14, para 6

⁷ UK Government and Parliament, [Reform the rules on filibustering or 'talking a bill to death'](#)

⁸ [HC Deb 30 October 2015 cc618ff](#)

⁹ Procedure Committee, [Oral Evidence: Private Members' bills, 20 January 2016](#), Q29

¹⁰ Alistair Burt said, "In the time available before half-past 2—and I make it very clear that I will talk until then, because that is the procedure here" [[HC Deb 6 November 2015 c1304](#)]

If any Member strays from the question under discussion, the Speaker will intervene to remind that Member to speak to the question. If a Member persists in irrelevance or tedious repetition either of his own arguments, or of the arguments used by other Members in debate, Standing Order No 42 empowers the Speaker, after calling the attention of the House to the Member's conduct, to direct him to discontinue his speech. If he refuses to obey the direction of the Chair, the Speaker, acting under Standing Order No 43, may either direct him to withdraw from the House for the remainder of the sitting, or name him for disregarding the authority of the Chair.¹¹

Another authority on parliamentary procedure – Griffith and Ryle – actually used the term filibustering in describing the powers given by Standing Order No 42:

Standing order 42 gives the Chair power to deal with irrelevance in debate or undue prolongation of a speech (a form of filibustering in which the Irish nationalist Members specialised in the nineteenth century and which led to the adoption of this standing order in 1882.)¹²

Griffith and Ryle then noted that the Standing Order is seldom used: there were just 21 occasions in the Chamber between 1945 and the end of the 1998-99 Session. They added that “it has normally been applied to deal with irrelevance rather than repetition; and there are no cases in recent years where a Member has been disciplined, or even restrained, for repeating the arguments already used by other Members”.¹³

On 28 November 2014, Standing Order No 42 was used by the Deputy Speaker. First Philip Davies was warned and rebuked before the Deputy Speaker brought him to order by ruling that his speech was finished: “Order! Sit down, Mr Davies. ... Your speech is now finished”.¹⁴

However, in the first oral evidence session in its current inquiry into private Members’ bills, the Procedure Committee heard evidence in support of individual MPs who spoke at length in order to do what they thought was right. For example, in support of earlier comments from Isabel Hardman, Mark D’Arcy said:

I wouldn’t for a moment criticise the people who filibuster out some of these Bills. They are doing what they think is right for their own reasons—sometimes at the behest of the Whips, sometimes on their own, but fair enough. That’s the game as it’s played at the moment. They are simply using the rules.¹⁵

¹¹ Erskine May, *Parliamentary Practice*, 24th edition, 2011, p452

¹² Robert Blackburn and Andrew Kennon, *Griffith and Ryle on Parliament – Functions, Practice and Procedures*, 2nd edition, 2003, p299

¹³ *Ibid*

¹⁴ [HC Deb 28 November 2014 c1251](#), c1252, cc1253-1254

¹⁵ Procedure Committee, [Oral Evidence: Private Members’ bills, 6 January 2016](#), Q2

2. Passage of a private Member's bill

A private Member's bill (PMB) has to complete its passage through both Houses, like any other bill, before it can receive Royal Assent. However, unlike most Government bills, PMBs are not timetabled.

When a PMB is presented, the Member in charge nominates the day on which second reading is to take place. Thirteen Fridays in each session are allocated for the consideration of PMBs. The order of bills on the first seven Fridays is simply the order in which the bills were set down for that date, and those Fridays are therefore usually taken up with second reading debates, but on and after the eighth Friday, PMBs are arranged in the following order:

consideration of Lords amendments, third readings, consideration of reports not already entered upon, adjourned proceedings on consideration, bills in progress in committee, bills appointed for committee, and second readings.¹⁶

Those Members drawn high in the ballot are able to secure the first slot for debate on the first seven Fridays allocated for PMBs. However, if their bill is not given a second reading, the resumption of its adjourned debate has no precedence over other bills already awaiting second reading on subsequent PMB Fridays, whether they were introduced under the ballot procedure, the ten-minute rule procedure or simply presented.

2.1 Second reading debate

If debate concludes before the moment of interruption, the question that the Bill be read a second time is put (see below).

A Member may try to bring the debate to a close by moving the closure:

Closure of debate.

36.—(1) After a question has been proposed a Member rising in his place may claim to move, 'That the question be now put,' and, unless it shall appear to the chair that such motion is an abuse of the rules of the House, or an infringement of the rights of the minority, the question 'That the question be now put,' shall be put forthwith.

(2) When a question 'That the question be now put' has been decided in the affirmative, and the question consequent thereon has been decided, a Member may claim that any further question be put which may be requisite to bring to a decision any question already proposed from the chair, and if the assent of the chair, as aforesaid, be not withheld, any question so claimed shall be put forthwith.

(3) This order shall apply in committee only when the Chairman of Ways and Means or either Deputy Chairman is in the chair.

¹⁶ House of Commons, *Standing Orders of the House of Commons – Public Business 2012*, September 2012, HC 614 2012-13, Standing Order No 14(10)

Majority for closure or for proposal of question.

37.—If a division be held upon a question for the closure of debate under [Standing Order No. 36 \(Closure of debate\)](#) or for the proposal of the question under [Standing Order No. 29 \(Powers of chair to propose question\)](#), that question shall not be decided in the affirmative unless it appears by the numbers declared from the chair that not fewer than one hundred Members voted in the majority in support of the motion.¹⁷

If the Speaker allows the question ‘That the question be now put,’ it is put forthwith and, if it is agreed with the required majority, the question that the Bill be read a second time is then put.¹⁸

The question that the Bill be read a second time is then determined on a simple majority (although, in any division, if fewer than 35 Members vote (not counting the tellers), the business stands over until the next sitting.¹⁹)

If the question that the Bill be read a second time is agreed to, the Bill stands referred to a public bill committee.

If debate is continuing at the moment of interruption, the Speaker will adjourn the debate and the Member in charge will need to nominate another Friday for the debate to continue. However, his bill will be added to the bottom of the list of bills awaiting debate on that day.

2.2 Money resolution – required before a bill can be considered in committee

The main objective of a PMB cannot be to create a charge by way of taxation or expenditure.²⁰ However, if it requires any spending, a money resolution (or it raises any charges, a ways and means resolution), must be agreed by the House before it can be considered by a committee. Erskine May states that:

... If ... a bill is of the kind which does not require to be brought in on financial resolutions, any financial provisions which it may contain must be authorized by a resolution of the House before they can be considered by the committee on the bill.²¹

Such a resolution would need to be initiated by the Government.²² By convention, if the House agrees a bill’s second reading the Government tables a money resolution to allow the committee stage to proceed, even if it opposes the bill. In the debate on the money resolution for

¹⁷ House of Commons, *Standing Orders of the House of Commons – Public Business, 2012*, September 2012, HC 614 2012-13

¹⁸ For example, on 3 December 2010, Rebecca Harris claimed to move the closure during the second reading debate on the *Daylight Saving Bill 2010-12*. The Deputy Speaker allowed the closure [[HC Deb 3 December 2010 c1154](#)]. During the debate on the *Lawful Industrial Action (Minor Errors) Bill 2010-12* on 22 October 2010, the Deputy Speaker initially declined to put the question [[HC Deb 22 October 2010 c1255](#)] but after the minister had spoken, he allowed the closure motion to be put [[HC Deb 22 October 2010 c1260](#)]

¹⁹ House of Commons, *Standing Orders of the House of Commons – Public Business, 2012*, September 2012, HC 614 2012-13, Standing Order No 41

²⁰ Erskine May, *Parliamentary Practice*, 24th edition, 2011, pp542-543

²¹ Erskine May, *Parliamentary Practice*, 24th edition, 2011, p542

²² House of Commons, *Standing Orders of the House of Commons – Public Business, 2012*, September 2012, HC 614 2012-13, Standing Order No 48

the *Daylight Saving Bill 2010-12*, Mark Prisk, Minister of State, Department for Business, Innovation and Skills, after moving the motion, said that:

The House last debated the Bill on 3 December 2010 when, despite the Government's Opposition, it received its Second Reading.²³

More recently, the position was restated by George Freeman, Parliamentary Under Secretary of State for Life Sciences, on behalf of the Government:

I just want to confirm that once the House has given a private Member's Bill a Second Reading, the convention is that the Government, even when they robustly oppose it, always table a money resolution so that the Committee need not concern itself with that matter. Doing so is not a signal of Government support; it is absolutely in line with the convention of the House with all private Members' Bills, whether we oppose or support them.²⁴

2.3 Public bill committee

The Member in charge of a PMB is responsible for finding members willing to serve on its public bill committee (PBC) and passing their names to the Committee of Selection for nomination.²⁵

Because PMBs are not timetabled, there cannot be a fixed 'out date' for the PBC. However, the Member in charge could table a sittings motion, setting out when the committee would meet. By convention PBCs considering PMBs meet on Wednesdays but they can meet at other times.²⁶

The Committee of Selection may not nominate members to a PBC on a PMB while a PBC on another PMB is still sitting, unless a Minister tables a motion in support of the nomination.²⁷

²³ [HC Deb 22 November 2011 c256](#)

²⁴ HC Deb, 3 November 2015 c922

²⁵ A typical PBC of 16 members would include: 8 Conservative, 6 Labour, 1 Liberal Democrat members and 1 member of a minority party. The membership should reflect the balance of opinion on the bill and not just party proportions.

²⁶ The first business of the PBC on the *Scrap Metal Dealers Bill 2012-13* was the consideration of a sittings motion [[Scrap Metal Dealers Bill Deb 11 September 2012 c3](#)]. And see proceedings of the *Driving Instructors (Registration) Bill Committee*, [Tuesday 1 March 2016](#).

²⁷ Standing Order No. 84A(5)

Box 1: Order of proceedings

The order of proceedings in a public bill committee is as follows:

- motion to agree programme or sittings motion (if any);
- motion (if any) to vary the order in which the clauses and schedules are considered;
- debate on the first amendment (or group of amendments) to the first clause to be considered. The mover makes a speech; the Chair proposes the question 'That the amendment be made'; there is a debate. Members may speak as many times as they wish. At the end of the debate, either the mover seeks leave to withdraw the amendment (which can be prevented by a single objection) or the Chair puts the question;
- once the amendments to each clause or schedule have been disposed of (or as soon as the clause or schedule is reached, if there are no amendments), the Chair proposes the question 'That the clause stand part of the bill' or 'That the schedule be the [first] schedule to the bill'. The question can be debated, unless the Chair considers there has already been adequate debate while going through the amendments;
- new clauses are dealt with after existing clauses and new schedules after existing schedules;
- finally, the Chair puts the question 'That I do report the bill [as amended] to the House'. This cannot be debated, but may be divided on.

Source: derived from House of Commons, *Business of the House and its Committees – a short guide*, November 2011, p74

Selection and grouping of amendments

As in other proceedings, the Chair seeks to group amendments to assist debate at both committee and report stage (see below). Even for amendments which are technically in order, the Speaker or committee chair has the power of selection.²⁸ The Chair's *selection list* (which includes grouping) is published in hard copy and on the internet on the day that a bill is to be taken, or if possible the previous day.

Amendments to bills to leave out clauses or schedules are not selected in committee, since a question is automatically put on whether each clause and schedule should remain part of the bill. This does not apply at report stage, where there is no automatic question on each clause and schedule.²⁹

2.4 Report stage

When the public bill committee has completed its consideration of a bill, it returns to the floor of the House for Report stage. As described above, the report stage of a PMB takes precedence over second readings after the first seven Fridays (and a *new* report stage takes precedence over an *adjourned* report stage).

The House as a whole has the opportunity to amend the bill. Only those parts of the bill which Members are seeking to amend are debated, so there is not automatically a question put on each clause. New clauses are taken before other amendments.

²⁸ House of Commons, *Standing Orders of the House of Commons – Public Business, 2012*, September 2012, HC 614 2012-13, Standing Order No 32, Standing Order No 89(3)(a)

²⁹ House of Commons, *Business of the House and its Committees – a short guide*, November 2011, p21

The criteria for selecting amendments are more stringent than at committee stage, and amendments re-opening issues already thoroughly dealt with in committee are not usually selected for debate. There is no report stage if the bill was considered in full in Committee of the whole House and not amended or if no amendments have been tabled and selected for debate.³⁰

2.5 Third reading

Third reading is usually taken immediately after the conclusion of Report stage. Debate is limited to the contents of the bill under consideration.

2.6 Lords Amendments

Like any other bill, a PMB must be agreed by the Lords in identical form for it to become law (and vice versa³¹). PMBs from one House are therefore 'taken up' by a private Peer or Member in the other House. By convention, the Lords tend to restrain themselves from amending a private Member's bill which has successfully negotiated its Commons stages because of the challenge of finding yet more time in the Commons for this additional stage. If the Lords do amend a PMB that started in the Commons, the bill is returned to that House for consideration of the Lords Amendments. This would take place on a Private Member's Friday chosen by the Member in charge of the bill and, again as indicated above, such business would take precedence over all other stages.

³⁰ House of Commons, *Business of the House and its Committees – a short guide*, November 2011, pp76-77, and see [HC Deb 4 March 2016 c1222 \(House of Commons Members Fund \(No. 2\) Bill\)](#)

³¹ It is extremely rare for a private Peer's bill to make progress in the Commons because of the reduced precedence for second reading debates as the session progresses

3. Press coverage on filibustering

Isabel Hardman, "[This filibuster farce only damages Parliament](#)", *The Times*, 4 January 2016 [subscription required]

Mark Leftly, "[Filibusters: MPs push for end to 'cruel' blocking of Private Members' Bills](#)", *The Independent*, 28 November 2015

Frances Perraudin, "[Tory MP's filibuster blocks bill to give carers free hospital parking](#)", *Guardian*, 30 October 2015

Chris Young, "[Shipley MP Philip Davies defends latest filibustering criticism after 52 minute speech by saying 'it takes as long as it takes'](#)", *Telegraph and Argus*, 22 November 2015

Andrew Sparrow, "[MPs debate EU referendum bill: Politics live blog](#)", *Guardian*, 8 November 2013

Mark D'Arcy, "[Calling time on Friday filibusters?](#)", *BBC News*, 13 September 2013

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