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Select Committee on the Constitution

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Money Bills and Commons Financial Privilege

Report

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To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

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Committee Staff

The current staff of the Committee are Emily Baldock (Clerk), Stuart Stoner (Policy Analyst) and Nicola Barker (Committee Assistant).

Contact Details

All correspondence should be addressed to the Clerk of the Select Committee on the Constitution, Committee Office, House of Lords, London, SW1A 0PW.

The telephone number for general enquiries is 020 7219 1228/5960

The Committee's email address is: constitution@parliament.uk

Money Bills and Commons Financial Privilege

Introduction

1. The Constitution Committee is appointed “to examine the constitutional implications of all public Bills coming before the House; and to keep under review the operation of the constitution.” We consider that the latter function includes examining issues relating to the powers of the House of Lords and the relationship of this House with the House of Commons.
2. On 23 November 2010 the Savings Accounts and Health in Pregnancy Grant Bill was introduced into this House, having completed its Commons stages. The Bill had been certified as a money bill. This gave rise to debate on the floor of the House concerning the definition of money bills and the process of certification.¹ In the light of these debates, we decided to produce this short report for the information of Members of the House.
3. We publish as Appendix 2 a paper on Commons financial privilege deposited in the Library of the House by the Clerk of the Parliaments in February 2009. This paper was produced in response to concerns raised during the debates on the Planning Bill in the 2008–2009 session. We believe that this paper should be drawn to the wider attention of Members. Appendix 3 provides some useful statistics relating to the certification of bills as money bills over the last ten years.

Financial privilege

4. The House of Commons has a special role in financial matters, based on a resolution of 1671 which states “That in all aids given to the King by the Commons, the rate of tax ought not to be altered by the Lords” and on a further resolution of 1678 which restates the “undoubted and sole right of the Commons” to deal with all bills of aids and supplies. *Erskine May’s Treaties on the Law, Privileges, Proceedings and Usage of Parliament* states:
“The Commons’ claim to sole rights in respect of financial legislation applies indivisibly to public expenditure and to the raising of revenue to meet that expenditure. ... The Commons treat as a breach of privilege by the Lords not merely the imposition or increase of such a charge but also any alteration, whether by increase or reduction, of its amount or of its duration, mode of assessment, levy, collection, appropriation or management ...”²
5. The Commons may choose to waive their financial privileges, except in relation to bills of aids and supplies. ‘Aids’ refers to taxation and comprises the annual Finance Bill; ‘supplies’ refers to government spending and comprises the Consolidated Fund Bills.³ Such bills must originate in the Commons and are readily identifiable by a special enactment formula. They may not be amended by the Lords and committee stage in the House of

¹ HL Deb 23 November 2010 col 1008; HL Deb 29 November 2010 cols 1271–1280; HL Deb 7 December 2010 cols 128–173.

² 23rd ed. pp 919–920.

³ From time to time, other bills are presented which have the characteristics of bills of aids and supplies: for further details see *Erskine May* pp 923–924.

Lords is invariably negated.⁴ *Erskine May* states that “though rejection of [a supply bill which is not a certified money bill] is permissible, it has virtually ceased to be practical”.⁵

6. Bills originating in the Lords, and amendments made by the Lords to bills originating in the Commons, may include provisions which might be deemed to infringe Commons’ financial privileges. It is for the Commons to determine whether to waive its privileges in such cases.⁶
7. When amendments from the Lords are received, a judgement is made as to which, if any, engage financial privilege. The Speaker lists those amendments at the outset of consideration of Lords amendments. Where the House agrees to such amendments, the Commons Journal records that the House of Commons has waived its privilege in relation to those amendments. Where it disagrees to an amendment which engages financial privilege, it is the practice to give that as the reason, rather than the merits.
8. The most recent example of such a reason being given was in relation to the Identity Documents Bill.⁷ An amendment to the Bill was agreed in the House of Lords which would have led to expenditure on reimbursing those who had purchased identity cards. No Money Resolution had been passed in the Commons in relation to the Bill, since the provisions of the Bill as presented did not lead to any additional expenditure. Ministers did not wish to table a Resolution to cover the expenditure which would have arisen under the amendment. In these circumstances, which are infrequent, House of Commons Standing Order No 78(3) obliges the Speaker to declare that the amendment is deemed to have been disagreed to. Otherwise the House of Commons would be debating an amendment which, if agreed to, would lead to expenditure which it had not sanctioned. The Reason given, referring to “a charge on the public revenue”, reflected the wording of SO No 78.⁸

Money bills

9. In addition to the conventions which govern much of financial privilege and which are set out in detail in Appendix 2, specific statutory rules apply to money bills which are certified as such by the Speaker of the House of Commons. The definition of a money bill provided by section 1(2) of the Parliament Act 1911 is:

“A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, the National Loans Fund or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions “taxation”, “public money”, and “loan” respectively do

⁴ *Erskine May* p 923; Companion para 8.198.

⁵ p 930.

⁶ See further Appendix 1, *Erskine May* pp 920–928 and *Companion* paras 8.151–8.152 and 8.180–8.183.

⁷ HL Deb 21 December 2010 cols 998–1020.

⁸ See Companion 8.180–8.181 and Joint Committee on Conventions, Report (2005–06): *Conventions of the UK Parliament* (HL Paper 265-1), paras 250–252.

not include any taxation, money, or loan raised by local authorities or bodies for local purposes.”⁹

The Speaker must certify any bill which in his opinion falls within this definition. Any bill containing provisions outside this definition would not be certified as a money bill.

10. It is necessary to distinguish between money bills and supply bills. The two categories of bills are separate, but there is some overlap. Supply bills are not subject to the Parliament Act 1911 unless they are also money bills. Finance Bills, which may contain administrative provisions in addition to the matters specified in section 1(2) of the 1911 Act, are quite frequently not certified as money bills.
11. Under section 3 of the Parliament Act 1911 the Speaker’s certificate is “conclusive for all purposes”. Under section 1(3) of the Act, the Speaker has a duty to “consult, if practicable, two members to be appointed from the Chairmen’s Panel”: i.e. two senior backbenchers, usually one from either side of the House, appointed by the Committee of Selection from amongst those senior MPs who chair general committees. The Speaker is under no statutory duty to consult further, but the Speaker takes the advice of the clerks of the House of Commons when deciding whether to certify a bill.
12. The Speaker does not certify a bill until it has reached the form in which it will leave the House of Commons, i.e. at the end of its Commons stages. The Speaker can only decide whether or not to certify a bill once it has passed the House. It is possible that amendments made in committee or on report could have a bearing on his decision, either way.
13. The Companion to the Standing Orders and Guide to the Proceedings of the House of Lords states that certification of a bill as a money bill “does not debar the Lords from amending such bills provided they are passed within the month, but the Commons are not obliged to consider the amendments. On a few occasions minor amendments have been made by the Lords to such bills and have been accepted by the Commons.”¹⁰ The normal practice of the Lords is that money bills are not committed.¹¹
14. Over the last 20 years, there have been between two and seven bills certified as money bills each session (most commonly four or five). The majority of these bills are Consolidated Fund Bills. Appendix 3 lists the other bills to have been certified as money bills over the last ten years.
15. The only money bill to have been committed in the House of Lords in the last 20 years was the European Union (Finance) Bill (1994–1995). The Bill gave legal effect to the main elements of the complex financial settlement reached at the Edinburgh European Council. Concluding the second reading debate for the Government, Lord Henley said:

“It may be worth reminding your Lordships that the Bill we are debating this evening ... has been certified by Madam Speaker as a Money Bill. This means after Thursday of this week the Bill may be presented for Royal Assent under the terms of the Parliament Acts with or without the agreement of your Lordships and there is no need for the Bill to be considered further in another place whether or not this House should happen to amend it.

⁹ The full text of section 1 is set out in Appendix 1.

¹⁰ para 8.196.

¹¹ Companion para 8.48.

“That being so, and in view of what the noble Lord, Lord Richard, said about the element of unreality about the debate, it just may be asked why we are debating the Bill at all. The answer is that the ‘usual channels’ recognised the very strong interest in the Bill which has been expressed in various quarters of your Lordships’ House and the importance of the matters at issue. I think we are all agreed they are matters of fundamental importance. The number of speakers and the quality of the speakers who have taken part in the debate this afternoon indicates the wish of this House to consider these matters.

“Most unusually for a Money Bill it has further been agreed that there should be a separate Committee stage which will take place tomorrow and for which amendments have been tabled. That might give me the opportunity to deal with some of the more detailed points that I am unable to deal with in the time available this evening. That debate, as I said, will take place tomorrow; but I would strongly urge your Lordships that there is no practical purpose to be served by further prolonging the proceedings or by, for that matter, any amendment of the Bill. I trust therefore that the House will not in fact seek to obstruct the passage of the Bill.”¹²

The Bill was not amended in Committee.

Conclusion

16. We have made this short report to bring to the attention of Members of the House issues relating to financial privilege and, in particular, the certification of money bills.
17. We note that during the debates on the Savings Accounts and Health in Pregnancy Grant Bill the specific question was raised whether it was worthwhile committing the Bill given that it was a money bill.¹³ In the light of the fact that money bills may be committed, this issue is one for the House itself to resolve in relation to each bill.
18. We draw the House’s attention to one particular difficulty with money bills. The fact that money bills are certified only upon completion of all their Commons’ stages means that there is likely to be a minimal length of time between such certification and introduction of a bill into this House. There is therefore a risk that a certification which was not anticipated by Members of the Commons or Lords may give rise to concerns that a bill may not, as a result, receive appropriate parliamentary scrutiny. For example, MPs scrutinising a bill in the Commons might select some aspects on which to concentrate in the expectation that Members of the Lords would focus on others.
19. It is expected that a draft bill containing proposals for reform of the membership of the House of Lords will be published in the next few months. Issues of the relative powers of the two Houses will likely arise in the context of discussions of these proposals and we may choose to return to this matter in the context of that debate.

¹² HL Deb 9 January 1995 cols 77–78.

¹³ HL Deb 29 November 2010 cols 1270 and 1279.

APPENDIX 1: PARLIAMENT ACT 1911, SECTION 1

1 Powers of House of Lords as to Money Bills

(1) If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be present to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill.

(2) A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, [the National Loans Fund] or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions “taxation”, “public money”, and “loan” respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult, if practicable, two members to be appointed from the Chairmen’s Panel at the beginning of each Session by the Committee of Selection.

APPENDIX 2: COMMONS FINANCIAL PRIVILEGE

Paper deposited by the Clerk of the Parliaments in the Library of the House,
February 2009

Background

1. Modern practice in respect of Commons financial privilege is based upon resolutions of the Commons passed in the late 17th Century. In 1671, the Commons resolved “that in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords”. A more broadly drawn resolution of 1678 effectively asserts the Commons’ sole right in respect of all legislation with financial implications.

Bills of aids and supplies

2. The most significant consequence of the Commons’ assertion of financial privilege is that bills of aids and supplies (“supply bills”), including the Finance Bill and the Consolidated Fund Bills, which deal with taxation and Government spending respectively, originate in the Commons, and are not amended by the Lords. These bills are identified by a special enactment formula.

Money bills

3. Under the Parliament Act 1911, if the Speaker of the Commons has certified a bill as a “money bill”—that is a bill whose only purpose is to authorise expenditure or taxation or the granting or raising of loans and matters incidental to those subjects—it may be presented for Royal Assent a month after being sent to the Lords, whether the Lords has passed it or not. In practice, the Lords does not amend money bills, and no money bill has ever been presented for Royal Assent under the Parliament Act.

4. Although there is a large degree of overlap between supply and money bills, a supply bill need not be a money bill, and vice versa.

“Tacking”

5. The practice of “tacking” onto supply bills provisions unconnected with the grant of supply, in order that the Lords should not be able to amend those provisions, was condemned by this House in a resolution of 1702, which is now enshrined in Standing Order 53:

The annexing of any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to and different from the matter of the said Bill of Aid or Supply, is unparliamentary and tends to the destruction of constitutional Government.

6. It has recently been suggested that if privilege is cited where none really exists, the House may need to renew the 1702 resolution. The complaints about the Commons use of privilege reasons at the end of the last session was not related to “tacking”, which could arise only on a supply bill. The last occasion on which “tacking” was invoked by the Lords to reject a Commons bill was in 1807. No complaint of “tacking” in more recent times has been upheld.

7. The conventions surrounding Commons financial privilege in respect of supply bills and money bills, including the avoidance of “tacking”, are well understood and unchallenged.

Other bills

8. This note is mainly concerned with financial privilege as it applies to public bills in general. In practice, privilege issues normally arise only on Government bills.

9. Such bills often make significant changes to public expenditure, and may affect national or local taxation or national insurance. They can start in either House, and Commons financial privilege can be invoked in respect of Lords starters or Commons starters. A Lords private member's bill raising privilege issues would normally be blocked before it reached the point at which the Commons would formally invoke financial privilege.

The scope of Commons financial privilege

10. Privilege applies both to public expenditure and to the raising of revenue to meet that expenditure. The word "charge" is used in this note to refer to both taxation and expenditure.

11. The Commons take a wide view of matters which they consider infringe their privilege. These may include the imposition or increase of a charge, any alteration of the amount or duration of a charge, and any change in the administration of the charge. "Administration" may include modes of assessment, levy, collection or management of the charge, and any alteration in procedural matters connected with the charge. The recent discussions on the Planning Bill suggested that a change in the parliamentary procedure for making Statutory Instruments with financial implications constituted a change in the administration of a charge, and was therefore a matter over which the Commons could claim privilege.

"Unwaivable" and "waivable" privilege

12. If a Lords amendment is not "covered" by the money or ways and means resolutions passed at the beginning of a bill's passage through the Commons, it will be summarily rejected by the Commons, on the instruction of the Speaker, and will not be considered. This is sometimes referred to as an assertion of "unwaivable financial privilege". The *Companion* states that it is "unprofitable" for the Lords to make amendments of this kind, unless the Lords has reason to believe that the Commons will pass any necessary resolutions.

13. When, however, the Lords make an amendment which has financial implications but which is within the money or ways and means resolution, the Commons may agree to it. In such cases, the Commons' Votes and Proceedings make it clear that the Commons' claim to financial privilege was waived. This is referred to as "waivable" privilege. The Speaker advises the House, before it considers the Lords amendments, which amendments involve financial privilege.

Privilege reasons

14. When the Commons rejects a Lords amendment without offering an alternative, it gives a reason for doing so. Where privilege is involved, the reason always concludes with the words "and the Commons do not offer any further reason, trusting that this will be deemed sufficient". In the Commons' view, therefore, the matter should not be further debated between the two Houses, but should be regarded as settled. The first part of the reason varies from case to case but examples include:

"because it alters the rate or incidence of taxation",

"because it would impose a charge on the public funds",

“because it would alter the financial arrangements made by the Commons”.

The reasons are proposed by the “reasons committee” and are agreed to by the Commons.

Options open to the Lords following receipt of a privilege reason

15. If the Commons have rejected a Lords amendment with a privilege reason, the options open to the Lords are limited. They cannot insist on their original amendment. It is possible to send back an amendment in lieu, although the recent Joint Committee on Conventions has stated that it is “contrary to convention to send back an amendment which clearly invites the same response¹⁴”.

Recent criticism of claims of financial privilege

16. Recent debates, in particular on the Planning Bill, have included negative comment on the Commons practice of using privilege reasons, and there have been suggestions that privilege is being claimed as a way of avoiding debate on substantive issues. This claim is not new, and it is difficult to say whether the use of privilege reasons is increasing or whether they are being applied to amendments which would not previously have attracted a claim of privilege. It may also be the case that there has been an increase in the number of provisions relating to charges. The scope of financial privilege is a matter for the Commons, and it is clear from *Erskine May* that matters which are potentially regarded as privileged range very widely indeed¹⁵. Points which have emerged from discussions on the Planning Bill are that—

- (i) where several Clauses, taken together, provide for some new financial arrangement, the Commons may regard an amendment to any part of that structure as something which can lead to an assertion of privilege; and
- (ii) any change of parliamentary procedure for secondary legislation making financial arrangements (changing negative to affirmative, or making Commons-only instruments bicameral) will probably be regarded as a privilege issue.

Packaging

17. The issue of packaging of Lords amendments in the House of Commons was also raised at the end of last session. For the avoidance of doubt, this is an entirely separate issue of “ping-pong” procedure. The amendments rejected by the Commons with privilege reasons were single amendments dealing with well-defined issues, so “packaging” was irrelevant to the fate of these amendments. There was certainly no suggestion that the Commons was conflating amendments raising privilege with other amendments, in order to “shelter” non-privilege amendments under a privilege reason.

18. In conclusion, it may be worth making two points:

¹⁴ Report of the Joint Committee on *Conventions of the UK Parliament*, Session 2005–06, HL Paper 265–I, para 252.

¹⁵ Extract from *Erskine May*, 23rd edition, p.920:

“With regard to the charges in respect of which they claim privilege, the Commons treat as a breach of privilege by the Lords not merely the imposition or increase of such a charge but also any alteration, whether by increase or reduction, of its amount or of its duration, mode of assessment, levy, collection, appropriation or management; and in addition, any alteration in respect of the persons who pay, receive, manage, or control it, or in respect of the limits within which it is leviable.”

- First, until the Commons asserts its privilege, the Lords is fully entitled to debate and agree to amendments with privilege implications.
- Second, the critics of the Commons' claim of privilege may have misunderstood the extremely broad scope of the matters which the Commons has over a long period regarded as privileged.

19. In the last analysis, the scope and application of financial privilege is for the Commons alone to determine.

Michael Pownall, Clerk of the Parliaments, February 2009

APPENDIX 3: MONEY BILLS IN THE LAST TEN YEARS

Depending on the length of the parliamentary session, there will normally be three or four consolidated fund and/or appropriation bills per session. Such bills are always money bills and are not listed here. Only those finance bills listed here were certified as money bills during this period.

2000–01

Capital Allowances Bill

2001–02

Civil Defence (Grant) Bill

European Communities (Finance) Bill

National Insurance Contributions Bill

2002–03

Income Tax (Earnings and Pensions) Bill

Industrial Development (Financial Assistance) Bill

2003–04

Age-Related Payments Bill

2004–05

Income Tax (Trading and Other Income) Bill

2005–06

None

2006–07

Finance Bill

Income Tax Bill

Planning-Gain Supplement (Preparations) Bill

Rating (Empty Properties) Bill

2007–08

European Communities (Finance) Bill

2008–09

Corporation Tax Bill

Finance Bill

Industry and Exports (Financial Support) Bill

2009–10

Corporation Tax Bill

Fiscal Responsibility Bill

