

IN PARLIAMENT

HOUSE OF COMMONS

SESSION 2022-2023

HOLOCAUST MEMORIAL BILL

EXAMINATION OF BILL

REPRESENTATIONS ON BEHALF OF THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

PRIVATE BUSINESS STANDING ORDERS POTENTIALLY APPLICABLE TO THE BILL

1. INTRODUCTION

- 1.1 On 23 February 2023, the Holocaust Memorial Bill (**the Bill**) was introduced into the House of Commons and given its first reading. Subsequently, pursuant to Standing Order No. 61¹ of the standing orders relating to public business (**the PuBSOs**), the Examiners of Petitions for Private Bills (**the Examiners**) were ordered to examine the Bill and to report on whether the standing orders relating to private business (**the PrBSOs**) are applicable to the Bill – in other words, whether the Bill should be considered as being ‘hybrid’. Pursuant to Standing Order No. 224 of the PrBSOs, the Examiners must, in determining whether the Bill is hybrid, consider whether or not Standing Orders No. 4 to 68 of the PrBSOs should apply to it.
- 1.2 On 17 April 2023, the Examiners met and heard representations from the Secretary of State and those parties that submitted memorials (**the Memorialists**) on the nature and effect of the Bill, the rules regarding hybridity and their application to the Bill.² The memorials submitted by the Memorialists set out which of the PrBSOs they each considered the apply to the Bill.
- 1.3 The Examiners have since invited the Secretary of State and Memorialists to a further meeting on 18 May 2023, at which they will announce their determination as to the hybridity of the Bill. In the event that the Examiners find that the Bill is hybrid and that therefore the PrBSOs apply to it in principle, the Examiners will consider which PrBSOs are applicable to the Bill and whether they have been complied with. To this end, the Examiners have invited the Secretary of State and the Memorialists to make standalone written submissions setting out their views on those PrBSOs that would be applicable to the Bill should it be found to be hybrid and whether those PrBSOs have been complied with.
- 1.4 Without prejudice to the Secretary of State’s position that the Bill is not hybrid, in the event that the Examiners find that the Bill is hybrid, this note sets out which of Standing Orders No. 4 to 68 of the PrBSOs are considered by the Secretary of State to apply to it. For completeness it also sets out why the remainder of Standing Orders No. 4 to 68 of the PrBSOs are considered not to apply to the Bill.

¹ Any reference to a standing order in these representations relates to the standing orders of the House of Commons unless otherwise stated. Where the standing orders of the House of Lords are referred to, the prefix “HL SO” is used.

² The Memorialists are each of the parties that submitted Memorials against the Bill. These are: Sir Peter Bottomley MP (albeit it is noted he was not entitled to appear at the Examination hearing due to his Memorial being submitted after the deadline of 14 April 2023 at noon), Westminster City Council, Thorney Island Society and Residents of Westminster, London Historic Parks and Gardens Trust, Baroness Ruth Deech and Holocaust Survivors and the Buxton Family and the Thomas Fowell Buxton Society.

1.5 It is noted that the Secretary of State does not dispute that in all cases, where a PrBSO is found to apply to the Bill, that PrBSO will not have been complied with to date, owing to the fact that the Bill has, to date, proceeded as a public bill. It is for the Standing Orders Committee of each House to consider whether compliance with the particular Standing Orders concerned should be dispensed with.

1.6 It is, however, the Secretary of State's contention that non-compliance with any PrBSOs found to apply to the Bill would not (and has not) caused any prejudice to any person. This is because the Bill has not yet received its Second Reading, which in the case of a hybrid bill triggers the petitioning period. Should the Examiners find the Bill to be hybrid and following their decision on which of the PrBSOs apply to it and whether they have been complied with (but subject to the decisions of the Standing Orders Committees), the Secretary of State will seek to comply with the Standing Orders concerned. In particular, this will be through the wording of Motions to be tabled prior to Second Reading which will set down the petitioning timetable, including by way of ensuring that the required notices have been placed, served and given (as necessary). This will provide the necessary publicity for the Bill, to ensure that those who consider that they are specially and directly affected by it and therefore wish to petition against the Bill are given an opportunity to do so.

2. APPLICATION OF THE PRIVATE BUSINESS STANDING ORDERS

2.1 As referred to in paragraph 1.3 above, should the Examiners find that the Bill is hybrid and that the PrBSOs therefore apply to it, a commentary has been provided in the **Appendix** to this note as to which of the PrBSOs it is considered by the Secretary of State *may* apply to the Bill, together with a rationale. Where a PrBSO is not cited in the Appendix, the conclusion is that the PrBSO would not apply to the Bill. It should be noted that the Appendix is materially the same as that contained in the Secretary of State's representations dated 31 March 2023, the exception being one minor change indicated by a footnote.

2.2 It is noted that a number of the PrBSOs quoted in the Appendix refer to specific dates, which are relevant for the timetabling of a private bill, but not for a hybrid bill. As such, where the table in the Appendix states that the Secretary of State considers a Standing Order may apply to the Bill, any specific dates are being disregarded for this purpose.

3. RESPONSE TO MEMORIALISTS ON APPLICATION OF THE PRIVATE BUSINESS STANDING ORDERS

3.1 In their memorials, the Memorialists contended that a number of additional PrBSOs (over and above those contained in the Appendix to this note) would apply to the Bill should it be found to be hybrid. The Secretary of State has addressed each of these, in chronological order, below.

PrBSO 5

3.2 The Memorial of Westminster City Council asserts that PrBSO 5 applies, which requires that where "use of" open space is authorised by a Bill, any notice prepared relating to the Bill shall contain a description of "open space or protected square... in which it is situate, and an estimate of the area of so much of such surface as is proposed to be compulsorily acquired or used". The Memorial asserts that this indicates that if similar provisions to those found in the Bill had been contained in a private bill, preliminary notices would, under Standing Order 5, have had to be given to parties whose rights are affected.

3.3 It is the Secretary of State's submission that PrBSO only applies "in the case of bills in respect of which plans are required to be deposited under PrBSO 27 (Deposit of plan, book of reference, and section etc.)"³, which is not applicable to this Bill. PrBSO 27 applies where a bill authorises, in short, the construction of works (or alteration of works authorised by a former Act) or the compulsory acquisition of land or rights over land, or where it proposes to render any land or buildings liable to the imposition of an improvement charge. The Secretary of State submits that the Bill does not seek

³ PrBSO 5(1).

to deal with any of these matters. The Bill simply ensures that the 1900 Act does not prevent the Holocaust Memorial from coming forward at Victoria Tower Gardens.

PrBSO 13

- 3.4 The Thorney Island Society and Residents of Westminster; the Buxton Family and the Thomas Fowell Buxton Society; the London Historic Parks and Gardens Trust; and Baroness Deech and Holocaust survivors consider PrBSO 13 to be relevant to the Bill, as they all assert that it proposes to authorise the compulsory acquisition of land or of rights to use land, thus requiring notice to be served on each owner, lessee, and occupier of each parcel of land or house affected. The Secretary of State respectfully submits that this is a fundamental misreading of the effect of Clause 2 of the Bill, which merely provides that sections 8(1) and (8) of the 1900 Act do not prevent or restrict the Holocaust Memorial from being constructed. It does not authorise any of the matters contemplated by PrBSO 13.

PrBSO 95 and 96

- 3.5 The Thomas Fowell Buxton Society, the London Historic Parks and Gardens Trust, the Thorney Island Society's Memorials all assert that each is a society, association or other body which is capable of representing amenity or recreational (among other) interests mentioned in PrBSO 95(2) (HL SO 117(2)), meaning they would each have standing to petition against the Bill, as an amenity society representing interests that stand to be adversely affected by the Bill.
- 3.6 All of the Memorialists (save for Westminster City Council and Sir Peter Bottomley MP) submit that Westminster City Council and the Greater London Authority are both capable of being local authorities where the whole or any part of their area stands to be injuriously affected by a bill or any provisions thereof mentioned in PrBSO 96 (HL SO 118), meaning they would also have standing to petition against the Bill.
- 3.7 It is considered by the Secretary of State that both of these PrBSOs are only relevant to the question of whether or not each party has standing to petition, which is a matter for later in the Parliamentary process – this is distinct from the strict question that is for the Examiners to consider (whether PrBSOs 4 to 68 apply to the Bill).

4. PRIVATE BUSINESS STANDING ORDERS CONSIDERED NOT TO APPLY TO THE BILL

- 4.1 Finally, it is the Secretary of State's submission that the following PrBSOs (which have not been raised by any of the Memorialists) cannot be said to apply to the Bill. These are addressed in chronological order, save for PrBSO 27 which is addressed first, as the applicability of a number of other PrBSOs relies on that Standing Order applying.
- 4.2 As stated at paragraph 3.3, PrBSO 27 applies where a bill authorises the construction of works (or alteration of works authorised by a former Act) or the compulsory acquisition of land or rights over land, or where it proposes to render any land or buildings liable to the imposition of an improvement charge. For the reasons stated in that paragraph, it is the Secretary of State's submission that the Bill does not deal with any of the matters set out in this PrBSO. As such, PrBSO 27 does not apply. and therefore neither do PrBSOs 4A(1)(d), 4(3), 5, 10(4), 10A, 36, 45, 48 and 61, which all make express reference to being relevant to bills to which PrBSO 27 applies or which authorise the construction of works or the compulsory acquisition of land or rights over land and require plans to be prepared.

- 4.3 The Secretary of State considers that PrBSOs 6 to 9 do not apply as the subject matter of the Bill is not relevant to any of the particulars that these PrBSOs relate to.
- 4.4 PrBSOs 12 to 18 or 19A to 21 are not considered to apply, as none of the specific notification requirements in these orders is relevant to the subject matter of this Bill and what it is authorising.
- 4.5 PrBSOs 25 and 25A are not considered to be applicable, in light of the content of the Bill.
- 4.6 PrBSO 27A is not applicable, as the Bill does not authorise works. Similarly, PrBSOs 29 to 37 are considered not to apply, as they only apply in circumstances that are not relevant to this Bill.
- 4.7 PrBSOs 41 to 47 require copies of bills affecting certain interests or authorising certain works to be deposited with certain persons. None is considered by the Secretary of State to be applicable to the Bill, in light of its subject matter.
- 4.8 PrBSOs 48 to 59 are applicable to bills authorising particular works, none of which is considered relevant to this Bill. PrBSO 60 is not applicable as the Bill has not yet been read for a third time in the House of Lords and PrBSO 61 is also not relevant for similar reasons.
- 4.9 PrBSOs 62 to 68 are not considered to apply to the Bill, because the promoter is the Secretary of State and the Bill does not relate in any way to the status or constitution of a private company.

17 May 2023

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APPENDIX

PRIVATE BUSINESS STANDING ORDERS (PrBSOs) 4 TO 68 POTENTIALLY APPLICABLE TO THE BILL

House of Commons PrBSOs relating to private business potentially relevant to the Bill (and associated HL PrBSO reference)	Brief description of requirement (and information on specific subsections, where applicable)	Applicability if the Bill is found to be hybrid	Differences between the HC and HL PrBSOs
4. Contents of a notice (HL4)	<p>4(1): Publication of notice with concise summary of the Bill, as provided in PrBSO 10.</p> <p>4(2): Published notice to contain information as to where Bill may be inspected and purchased and when objections can be made by petition.</p> <p>4(3): Notice to be headed with short title of the Bill.</p>	<p>The purpose of this PrBSO is to notify persons interested/affected by a Bill of its existence and of the ability to petition against it – as such, the applicability of this is inherently connected with whether the Bill is considered to specially affect any private interests – if it is, this PrBSO would apply in principle.</p>	<p>None relevant.</p>
4A. Copies of Bill to be made available (HL4A)	<p>4A(1)(c): A Bill not promoted by a local authority must be made available for inspection or purchase at an office in the local government area in which the promoters' principal office is situated.</p>	<p>The purpose of this PrBSO is to allow persons interested/affected by a Bill to inspect its content - again, the applicability of this is inherently connected with whether the Bill is considered to specially affect any private interests – if it is, this PrBSO would apply in principle.</p>	<p>None relevant.</p>
10. Publication of notice in newspapers (HL10)	<p>10(1): prescribes the times at which the notices must be published.</p> <p>10(2)(b): where a Bill is not promoted by a local authority, newspaper(s)</p>	<p>As with PrBSO 4.</p>	<p>None relevant.</p>

House of Commons PrBSOs relating to private business potentially relevant to the Bill (and associated HL PrBSO reference)	Brief description of requirement (and information on specific subsections, where applicable)	Applicability if the Bill is found to be hybrid	Differences between the HC and HL PrBSOs
	must circulate in the area in which the promoters' principal office is situated.		
11. Publication of notice in the Gazette (HL11)	Publication of notice in The London Gazette giving time by which petitions must be submitted.	As with PrBSO 4.	None relevant.
19. Notice to owners, etc., in case of alteration or repeal of protective provisions (HL19)	Notice to be given to any person who has the benefit of a protective provision that a bill is proposing to alter or repeal.	<p>It could be said that section 8 of the 1900 Act is a protective provision in favour of the "Commissioner of Works" (now DCMS), meaning this PrBSO could apply if the Bill is found to be hybrid.</p> <p>Although the Bill does not propose any alteration or repeal, in the event that PrBSO 19 is nevertheless considered to apply, PrBSOs 22 to 24 would consequently apply, as they detail the method of giving notice pursuant to PrBSOs 13 to 21 and the evidence required to prove that notice has been given⁴.</p>	None relevant.
38. Deposit of copies of bill in Vote Office and Private Bill Office (HL38)	<p>38(1): Copies of Bill to be delivered to the Vote Office and/or to the Private Bill Office for the use of every Agent.</p> <p>38(2) and (4): Provision of a printed memorandum to be attached to the</p>	Similar considerations to those set out for PrBSO 4A apply.	38(1): Copies to be deposited in the office of the Clerk of the Parliaments (applicable whether or not any petitions have been deposited.)

⁴ To note, this paragraph is an addition to the version of this Appendix that was appended to the Representations of the Secretary of State dated 31 March 2023.

House of Commons PrBSOs relating to private business potentially relevant to the Bill (and associated HL PrBSO reference)	Brief description of requirement (and information on specific sub-sections, where applicable)	Applicability if the Bill is found to be hybrid	Differences between the HC and HL PrBSOs
	Bill, in which related clauses can be dealt with together. 38(3): statement of compatibility of the Bill with HRA 1998.		
39. Deposit of copies of bills (HL39)	Deposit of Bill at government departments and public bodies.	Similar considerations to those set out for PrBSO 4A apply.	None relevant.