

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2022-2023

HOLOCAUST MEMORIAL BILL

STANDING ORDERS COMMITTEE

STATEMENT OF FACT

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

IN SUPPORT OF

AN APPLICATION FOR DISPENSATION WITH CERTAIN PRIVATE BUSINESS STANDING ORDERS

1. In the case of the Holocaust Memorial Bill (**the Bill**), which was introduced into the House of Commons and given its first reading on 23 February 2023, the Examiners of Petitions for Private Bills (**the Examiners**) have found the Bill to be hybrid and reported that certain Standing Orders applying to it have not been complied with.
2. The applicable House of Lords Private Business Standing Orders (**PrBSOs**) in relation to the Bill are those relating to:
 - (a) the publication of notices (PrBSOs 4, 10 and 11);
 - (b) making copies of the Bill available for inspection and for sale (PrBSO 4A); and
 - (c) the depositing of copies of the Bill in the office of the Clerk of the Parliaments and at government departments and public bodies (PrBSOs 38 and 39).

A summary of the PrBSO requirements is set out in **Appendix 1**.

3. As regards all of the PrBSOs referred to in paragraphs 2(a), (b) and (c), non-compliance has been found in relation to the publication of notices, making copies of the Bill available for inspection and sale and the deposit of copies of the Bill.
4. The Bill was introduced into the House of Commons as a public bill, at which point the Speaker referred it to the Examiners on the ground of it being *prima facie* hybrid. Following on from this, the Secretary of State made written submissions and appeared before the Examiners to make the case for why the Bill should not be considered to be hybrid and therefore should proceed to its Second Reading as a public bill.

5. The Secretary of State had confidence in the arguments he put forward (hence why the Bill had proceeded as a public bill up to that point) and for that reason, prior to the finding of the Examiners that the Bill is hybrid, steps had not been taken to comply with the PrBSOs as they were not regarded as applying, as the Bill was not considered to be hybrid.
6. The circumstances relating to the Bill and its hybridity are unprecedented. In their Report and Statement of Reasons¹, the Examiners stated:

“Rarely are the Examiners called upon to make a decision as to the hybridity of a public bill, and so there are few precedents for us to refer to. Those that do exist relate to very different bills; we have not identified a bill with similar provisions to the one before us, which is why this report does not make many references to previous bills or decisions of Examiners. Given the lack of clear precedent and the highly unusual nature of this Bill, we are therefore grateful to the parties and those representing them for their assistance during the examination.”

7. However, with regard to the non-compliance with the PrBSOs to date, it should first be noted that the PrBSOs are drafted in such a way so as to reflect the ‘fixed’ timetable that applies to private (rather than hybrid) bills, including the specific deadline for the deposit of petitions for such bills (27 November of each year). As such, the PrBSOs contain specific dates by which certain actions need to have been taken (e.g. PrBSO 10 requires newspaper notices to have been published in two consecutive weeks by 11 December) which flow from the ‘fixed’ 27 November starting point and which have in mind the subsequent dates fixed by the PrBSOs for petitions against private bills to be deposited (30 January in the House of Commons and 6 February in the House of Lords). Clearly such specific dates cannot apply to a hybrid bill such as the Bill automatically, given it is not subject to the same ‘fixed’ timetable as a private bill. In this context, it would never have been possible for the relevant PrBSOs to have strictly been complied with in the case of the Bill, given that it was introduced on 23 February 2023. As such, a dispensation from the Standing Orders Committees was always going to be required in relation to time.
8. *Erskine May*² refers to the following three questions that the Committee will usually wish to take into account when deciding whether to resolve to dispense with compliance with any applicable PrBSOs. These are:
 - (a) whether it is in the public interest, apart from that of the promoters, that the PrBSOs should be dispensed with;
 - (b) whether the promoters have been negligent in not complying with the PrBSOs; and
 - (c) to what extent parties other than the promoters will be adversely affected by non-compliance with the PrBSOs.
9. It is submitted that, in the case of this Bill, it is in the public interest, apart from that of the promoters, that the PrBSOs should be dispensed with. This is with a view to the Bill receiving Royal Assent as quickly as possible to facilitate the coming forward of the memorial and learning centre whilst Holocaust survivors are still alive, and also so that visitors can benefit from the object of the memorial and learning centre as soon as possible (this being continued learning and understanding so that future generations will not forget the horrors of the Holocaust). The bringing forward of a memorial and learning

¹ HC 1403, 22 May 2023, available here: [Holocaust Memorial Bill: Report from the Examiners and Statement of Reasons \(parliament.uk\)](https://www.parliament.uk)

² *Erskine May*, 25th Edition (2019), para 43.10 [accessed online on 14 June 2023].

centre was a manifesto commitment by this government. Given these overarching aims, there is a need for expediency through the Parliamentary process. It is acknowledged that either House may wish to interrogate these aims fully, including the timetable of the Bill, and both will have an opportunity to do this at Second Reading.

10. For completeness, it is further submitted that withdrawing the Bill at this stage to ensure full compliance with the PrBSOs would not achieve anything, aside from unnecessary delay. The Secretary of State would not propose to materially amend the Bill in these circumstances and, as set out above, the PrBSOs would not be able to be complied with in respect of time, in any event.
11. Secondly, it is submitted that the Secretary of State has not been negligent (or careless) in not complying with the PrBSOs to date. He took advice, both internally and from his Parliamentary Agents, on the question of hybridity and carefully considered that advice. The rationale for the Bill proceeding as a public bill was set out in the submissions made before the Examiners and the Secretary of State and his advisers (as stated at paragraph 5) had confidence in those arguments meaning that prior to the finding of the Examiners, steps had not been taken to comply with the PrBSOs as it was considered they did not apply. It is submitted that, as a result, the rationale for the Bill proceeding as a public bill was sound, particularly given the Examiners' conclusions as set out in paragraph 6. Now that the Bill has been found to be hybrid, the Secretary of State has proceeded with all possible haste to mitigate the non-compliance with the PrBSOs to date by publishing the requisite notices in accordance with the PrBSOs, as set out in **Appendix 1**. In addition, the Secretary of State has now taken steps to deposit copies of the Bill (and Explanatory Notes) electronically in line with the requirements of PrBSOs 4A and 39 with those bodies set out in **Appendix 2**. It is considered that these actions demonstrate that the Secretary of State has been proactive in the steps taken to mitigate non-compliance with the applicable PrBSOs.
12. Finally, it is submitted that no parties have been, or will be, adversely affected or prejudiced by non-compliance with the PrBSOs to date. This is because the first time that persons will have an opportunity to submit their views on the Bill will be during the petitioning period. As this period for a hybrid bill does not start running until the day after Second Reading of the Bill (and, indeed, the date of Second Reading has not yet been set, nor has the length of the petitioning period should it be proposed to extend beyond the minimum 25 day period set by the PrBSOs), this opportunity has not yet arisen and therefore has not been lost.
13. Ultimately, the majority of the PrBSOs that have been found by the Examiners to apply to the Bill relate to publishing notices to alert persons who might have a private interest specially and directly affected by the Bill that they can deposit a petition against it. The Secretary of State considers that no potential petitioner is prejudiced as the PrBSOs have now been substantially complied with (see paragraph 11 above) in good time before the Bill's Second Reading, therefore affording sufficient time for potential petitioners to be made aware of the Bill (to the extent that they are not already in light of the Examiners' hearings).
14. For completeness, it may assist the Committee to note that on 13 June 2023, the Secretary of State (represented by his Parliamentary Agent) appeared before the House of Commons Standing Orders Committee and presented the case that compliance with the House of Commons PrBSOs (**HC PrBSOs**) found to apply to the Bill should be dispensed with. The House of Commons Standing Orders Committee resolved that HC PrBSOs 4, 4A, 11, 38 and 39 should be dispensed with without conditions and that HC PrBSO 10 should be dispensed with on the condition that a second newspaper notice be placed in the *Evening Standard* and *Westminster Extra* 6 clear days after the first was placed. This notice will have been published by the time the Committee's hearing occurs.

15. Additionally, the House of Commons Standing Orders Committee requested that steps be taken by the Secretary of State to investigate whether the notices published in online versions of the newspapers and the *London Gazette* could be made more prominent. It should be noted that the Secretary of State has arranged for publication of the notices in full compliance with the methods set out in both the HL and HC PrBSOs (which do not provide for online notices) and unfortunately he cannot dictate nor control how those publications choose to make notices available online. However, the Secretary of State has contacted the publications in question (through his statutory notices agents) to investigate any solutions to this issue. It should be noted, finally, that the notice in *The London Gazette* is readily accessible if the “Holocaust Memorial Bill” is inputted into the relevant search box on that publication’s website³.
16. In these circumstances it is respectfully requested that the PrBSOs, insofar as they have not been complied with, are dispensed with by the Standing Orders Committee so that the Bill can proceed to its Second Reading in the House of Commons.

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Pinsent Masons LLP

**Parliamentary Agents for the Secretary of State for Levelling Up, Housing and
Communities**

15 June 2023

³ [The Gazette | Official Public Record](#) [accessed 14 June 2023]

APPENDIX 1

| House of Lords PrBSO | Brief description of requirement (and information on specific paragraphs, where applicable) | Steps now taken, and proposed to be taken, in substantial compliance |
|---|---|---|
| 4. Contents of notice | <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, when objections can be made by petition and from whom further details regarding petitioning may be obtained.</p> <p>4(3): Notice to be headed with short title of the bill.</p> | <p>4(1): The notice published on 09 June 2023 (and to be published again on 16 June 2023, which as required by the PrBSOs is 6 clear days after publication of the first notice on 9 June) contains a concise summary of the purposes of the Bill without detailed particulars, in accordance with PrBSO 4(1). It does not, however, name any persons with, to or from whom it is proposed that any amalgamation, sale, purchase, lease, agreement or arrangement is to be made, as this is not relevant to the subject matter of the Bill.</p> <p>4(2)(a): The notice states that copies of the Bill can be inspected, and at a reasonable price obtained, at two offices in London (as per PrBSO 4A). It is noted that it was not possible to comply with the date prescribed in PrBSO 4(2)(a) (4 December) given that this is a hybrid bill, rather than a private bill and so is working to a different timetable.</p> <p>4(2)(b): The notice states the time within which objection may be made by the submission of a petition to the office of the Clerk of the Parliaments or the Private Bill Office of the House of Commons.</p> <p>4(2)(c): The notice states that information regarding the submission of such petitions may be obtained from either the office of the Clerk of the Parliaments or the Private Bill Office of the House of Commons or from the agents for the promoters (Pinsent Masons LLP), and gives the appropriate website and contact details.</p> <p>4(3): The notice is headed by the short title of the Bill, and is subscribed with the name of the person responsible for the publication of the notice.</p> |
| 4A. Copies of Bill to be made available | 4A(1): Promoter to make copies of the bill available for inspection, and sale at a reasonable price, at an office in London (and in Cardiff, Edinburgh or Belfast additionally, if the Bill affects | 4A(1): Copies of the Bill (and Explanatory Notes) have now been made available for inspection at two offices in London and copies of the Bill will be supplied by post or electronically, on request. It is noted that it has not been possible to comply with the date prescribed in PrBSO 4A(1) (4 |

| House of Lords PrBSO | Brief description of requirement (and information on specific paragraphs, where applicable) | Steps now taken, and proposed to be taken, in substantial compliance |
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| | <p>the devolved administrations), at the following places:</p> <p>4A(1)(a): If the bill is promoted by, or alters functions of, a local authority, other than a parish or community council or meeting, at an office in the area of the authority.</p> <p>4A(1)(b): If the bill alters the functions of a parish or community council or meeting, at an office in the district or county in which the parish or community is situated.</p> <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>4A(1)(d): If the bill authorises the construction of works to which PrBSO 27 applies, the compulsory acquisition of land or land rights, or extends the time limited by a former Act for any of those purposes, at an office in each of the local authority areas in which the works are to be or the lands are situated.</p> <p>4A(2): It is sufficient compliance with paragraph 4(1) to make only part of the bill that would alter</p> | <p>December) given that this is a hybrid bill, rather than a private bill and so is working to a different timetable.</p> <p>4A(1)(a): This is not relevant to the Bill, because the Bill is not promoted by, and does not alter the functions of, a local authority, and so deposit is not required in an office in the area of that authority.</p> <p>4A(1)(b): This is not relevant to the Bill, because the Bill does not alter the functions of a parish or community council or meeting,</p> <p>4A(1)(c): This is relevant to the Bill given it is being promoted by the Secretary of State, not a local authority. Copies of the Bill have now been made available for inspection at 83 Victoria Street, London SW1H 0HW, which is within the local government area in which the Secretary of State's principal office is situated. This office was chosen (as opposed to a Government office) due to fewer security issues related to public access. The other inspection location is the office of the Secretary of State's Parliamentary Agents, Pinsent Masons LLP.</p> <p>4A(1)(d): This is not relevant to the Bill given that it does not authorise the construction of works to which PrBSO 27 applies, the compulsory acquisition of land or land rights, or extend the time limited by a former Act for any of those purposes.</p> <p>4A(2): This is not relevant to the Bill, as it does not alter the functions of a local authority.</p> |

| House of Lords PrBSO | Brief description of requirement (and information on specific paragraphs, where applicable) | Steps now taken, and proposed to be taken, in substantial compliance |
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| | <p>the functions of a local authority available in that affected locality.</p> <p>4A(3): It is sufficient compliance with paragraph 4(1) to make only part of the bill that would authorise the construction of works or the compulsory acquisition of land or land rights in a particular local authority area available within that affected locality.</p> <p>4A(4): The offices of a local authority, if situated outside the area of that authority, are deemed to be in that area for the purpose of compliance with this PrBSO.</p> <p>4A(5) A bill that alters the functions of a member or officer of a local authority, shall for the purposes of this PrBSO be deemed to alter functions of that authority.</p> | <p>4A(3): This is not relevant to the Bill, as it does not authorise the construction of works or the compulsory acquisition of land or land rights in any locality.</p> <p>4A(4): This is not relevant to the Bill, as copies of the Bill do not need to be deposited in the offices of a local authority.</p> <p>4A(5): This is not relevant to the Bill, as it does not alter the functions of a member or officer of a local authority.</p> |
| 10. Publication of notice in newspapers | <p>10(1): Prescribes the times at which the notices must be published.</p> <p>10(2): Prescribes the newspapers that the notices must be published in:</p> | <p>10(1): Notices have been and will be published once in each of two consecutive weeks with an interval of at least six clear days between publications (on 09 and 16 June 2023) in the <i>Evening Standard</i> and <i>Westminster Extra</i>, both of which are newspapers circulating in the area of Westminster. It is noted that it has not been possible to comply with the date prescribed in PrBSO 10(1) (11 December) given that this is a hybrid bill, rather than a private bill and so is working to a different timetable.</p> |

| House of Lords PrBSO | Brief description of requirement (and information on specific paragraphs, where applicable) | Steps now taken, and proposed to be taken, in substantial compliance |
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| | <p>(a): If the bill is promoted by, or alters the functions of, a local authority, newspaper(s) circulating in that authority.</p> <p>(b): Where a bill is not promoted by a local authority, newspaper(s) must circulate in the area in which the promoters' principal office is situated.</p> <p>(c) If the bill authorises the construction of works to which PrBSO 27 applies, the compulsory acquisition of land or land rights, or extends the time limited by a former Act for any of those purposes, newspaper(s) circulating in the areas in which the works are to be or the lands are situated.</p> <p>10(3): Where part only of a bill alters the functions of a local authority, it is sufficient compliance with 10(1) to only publish in a local newspaper(s) so much only of the notice that relates to that part.</p> <p>10(4): Where part only of a bill authorises the construction of works or the compulsory acquisition of land or land rights, or extends the time limited by a former Act for any of those purposes, it is sufficient compliance with 10(1) to only publish in a local newspaper(s) so much only of the notice that relates to that part.</p> <p>10(5): A bill that alters the functions of a member or officer of a local authority, shall for the purposes</p> | <p>10(2)(a): This is not relevant to the Bill, as it does not alter the functions of a local authority.</p> <p>10(2)(b): This is relevant to the Bill given it is being promoted by the Secretary of State, not a local authority. The newspapers in which the notices have been and will be published circulate in the area in which the promoters' principal office is situated.</p> <p>10(2)(c): This is not relevant to the Bill given that it does not authorise the construction of works to which PrBSO 27 applies, the compulsory acquisition of land or land rights, or extend the time limited by a former Act for any of those purposes.</p> <p>10(3): This is not relevant to the Bill, as it does not alter the functions of a local authority, in part or otherwise.</p> <p>10(4): This is not relevant to the Bill, as it does not authorise the construction of works or the compulsory acquisition of land or land rights, in part or otherwise.</p> <p>10(5): This is not relevant to the Bill, as it does not alter the functions of a member or officer of a local authority.</p> |

| House of Lords PrBSO | Brief description of requirement (and information on specific paragraphs, where applicable) | Steps now taken, and proposed to be taken, in substantial compliance |
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| | <p>of this PrBSO be deemed to alter functions of that authority.</p> <p>10(6): This PrBSO applies to Greater London as if it were a county.</p> | <p>10(6): This is relevant to the Bill, as its subject matter relates to land within Greater London. The notice has been and will be published in newspapers (the <i>Evening Standard</i> and <i>Westminster Extra</i>) which circulate in Greater London.</p> |
| <p>11. Publication of notice in the Gazette</p> | <p>Publication of notice in <i>The London Gazette</i> (and <i>The Edinburgh Gazette</i> or <i>The Belfast Gazette</i>, if applicable) stating:</p> <p>(a) the short title of the bill;</p> <p>(b) the time by which petitions must be submitted;</p> <p>(c) the offices at which copies of the bill may be inspected and obtained, as set out in the newspaper notice; and</p> <p>(d) where PrBSO 27 applies, information about the officers with whom plans have been deposited.</p> | <p>Notice has now been published in <i>The London Gazette</i> (on 09 June 2023). The notice states the short title of the Bill, the time period during which petitions must be submitted and the offices at which copies of the bill may be inspected and obtained.</p> <p>PrBSO 11(d) is not relevant to the Bill, because PrBSO 27 does not apply.</p> <p>It is noted that it has not been possible to comply with the date prescribed in PrBSO 11 (11 December) given that this is a hybrid bill, rather than a private bill and so is working to a different timetable.</p> |
| <p>38. Deposit of copies of bill in the office of the Clerk of the Parliaments</p> | <p>38(1): Copies of bill to be deposited in the office of the Clerk of the Parliaments.</p> | <p>Established practice with hybrid bills (e.g. over the last 10 years in the case of the three HS2 Bills) is that this Standing Order (in respect of both the House of Commons and the House of Lords, albeit acknowledging the different formulations of the two) is not considered to apply, it being accepted that the Standing Order only applies to private bills. Hybrid bills, instead, are introduced directly into either House by a minister or other member of the House concerned.</p> <p>All government bills are available as a matter of course in the office of the Clerk of the Parliaments and are also available online to Parliamentary Agents.</p> |

| House of Lords PrBSO | Brief description of requirement (and information on specific paragraphs, where applicable) | Steps now taken, and proposed to be taken, in substantial compliance |
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| | <p>38(2) and (4): Provision of a printed memorandum to be attached to the bill, in which related clauses can be dealt with together.</p> <p>38(3): statement of compatibility of the Bill with HRA 1998.</p> | <p>38(2): When the Bill was originally published, Explanatory Notes to the Bill, prepared by the Department for Levelling Up, Housing and Communities, were published separately as Bill 254-EN.</p> <p>38(3): The Bill includes a statement of compatibility of the Bill with the Human Rights Act 1998.</p> |
| 39. Deposit of copies of bills | Deposit of Bill at government departments and public bodies in accordance with PrBSO 1A. | <p>Steps have been taken to deposit copies of the Bill (and Explanatory Notes) electronically in accordance with Standing Order 1A. A list of those bodies with whom the Bill has been deposited electronically is contained in the list attached to this statement at Appendix 2.</p> <p>It is noted that it has not been possible to comply with the date prescribed in PrBSO 39 (4 December) given that this is a hybrid bill, rather than a private bill and so is working to a different timetable.</p> |

APPENDIX 2

PARTIES WITH WHOM A COPY OF THE BILL HAS BEEN DEPOSITED UNDER PRBSO 39

1. Department for Business and Trade
2. Department for Energy Security and Net Zero
3. Department for Levelling Up, Housing & Communities
4. Office of the Crown Estate Commissioners
5. Department for Culture, Media and Sport
6. Ministry of Defence
7. Ministry of Justice
8. Coroners, Burial, Cremation and Inquiries Team
9. Office of the Duchy of Lancaster
10. Department for Education
11. Department for Environment, Food and Rural Affairs
12. Department of Health and Social Care
13. Home Office
14. Cabinet Office
15. Department for Transport
16. HM Treasury

17. Government Legal Department
18. Department for Work and Pensions
19. The Charity Commission
20. Civil Society and Youth Directorate
21. Wales Office