

# QUEEN'S OR PRINCE'S CONSENT

This pamphlet is intended for members of the Office of the Parliamentary Counsel.

Unless otherwise stated:

- references to Erskine May are to the 24th edition (2011),
- references to the Companion to the Standing Orders are to the Companion to the Standing Orders and Guide to Proceedings of the House of Lords (25th edition, 2017),
- references to the Cabinet Office *Guide to Making Legislation* are to the version of July 2017.

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## CHAPTER 1 INTRODUCTION

1.1 This pamphlet sets out some of the issues that arise when considering whether Queen's or Prince's consent should be signified to a bill and contains information about the signification of consent.

1.2 OPC's role is:

- to consider whether Queen's or Prince's consent might be needed for a bill,
- to raise the issue of whether consent is needed with the House authorities before the bill is introduced,
- to keep the department and the whips informed on this issue, and
- to consider, as the bill goes through Parliament, whether any amendments to it will alter what has been decided.

1.3 It is OPC's responsibility to bring anything in a bill that might require consent to the attention of the House authorities and to advise them (so far as we are able) whether consent is required. The decision on whether consent is required is for the House authorities.

## CHAPTER 2 QUEEN'S CONSENT

### Introduction

2.1 Queen's consent needs to be considered in the case of—

- provisions affecting the prerogative, and
- provisions affecting the hereditary revenues, the Duchy of Lancaster or the Duchy of Cornwall, and personal property or personal interests of the Crown.

2.2 The form of the consent will vary depending on whether the prerogative or the interests of the Crown, or both, are affected (see paragraphs 5.22 to 5.29). Consent which relates just to the prerogative is sometimes called “prerogative only consent”, with consent which relates just to the interests of the Crown sometimes being called “interest only consent”.

2.3 Consent is not needed for provisions affecting Crown servants (such as Ministers or the armed forces), except possibly employees of the Royal Household. Nor is it needed for property belonging to Crown servants as such (for example, a government department's property).

### The prerogative

2.4 The royal prerogative is defined in Halsbury's Laws as the special pre-eminence which the monarch has over and above all other persons by virtue of the common law, but out of its ordinary course, in right of Her regal dignity, and includes all the special dignities, liberties, privileges, powers and royalties allowed by the common law to the Crown of England.<sup>1</sup>

2.5 The prerogative (as commonly defined) extends beyond those powers that are personal to the monarch (i.e. things that only the monarch can do, such as appointing a Prime Minister). The prerogative powers are now often exercised by Crown servants on behalf of the monarch rather than by the monarch in person.

2.6 The prerogative can also be seen, at least in part, as the residue of the monarch's legal authority<sup>2</sup> which has survived into modern times without being superseded by statute law or otherwise eroded. Prerogative powers often relate to the government of the country and are exercisable for the public good.

2.7 It is not possible to give a comprehensive catalogue of prerogative powers.<sup>3</sup> However, prerogative powers of government (whether, in practice, exercised personally by the monarch (with or without the advice of Ministers) or exercised on her behalf by Ministers, officials or

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1. Volume 20 (2014), para 166, based on Blackstone's *Commentaries on the Laws of England I*, p. 239 (hence the reference to the Crown of England).

2. *Attorney-General v De Keyser's Royal Hotel* [1920] AC 508.

3. Bradley, Ewing and Knight, *Constitutional and Administrative Law*, Pearson, 17th Ed. (2018) p. 258.

other bodies) include the following powers –

- to appoint a Prime Minister;
- to summon or prorogue Parliament;<sup>4</sup>
- to give or refuse Royal Assent to bills;
- to legislate by prerogative Orders in Council (for example, in relation to certain parts of the civil service<sup>5</sup>) or by letters patent;
- to exercise the prerogative of mercy (for example, to pardon convicted offenders);
- to make treaties;
- to wage war by any means and to make peace (including power over the control, organisation and disposition of the armed forces);<sup>6</sup>
- to recognise states;
- to issue passports<sup>7</sup> and to provide consular services;
- to confer honours, decorations and peerages;
- to make certain appointments (including royal commissions).<sup>8</sup>

2.8 The prerogative also includes powers relating to –

- the coinage;
- the jurisdiction of the Crown as a visitor of universities and Oxbridge colleges;
- appeals to the Privy Council.

2.9 There are also other prerogative rights of the Crown which are more closely associated with the production of revenues. These include –

- the grant of royal charters;
- the mining of precious metals;
- the grant of franchises for markets;
- the right to bona vacantia;<sup>9</sup>
- the right to waifs<sup>10</sup> and estrays;<sup>11</sup>
- the right to wrecks;
- the ownership of swans and whales.

2.10 The revenues from these tend to be included among the hereditary revenues of the Crown and there is therefore some uncertainty as to whether they fall within the prerogative for the purposes of Queen's or Prince's consent. It may be that an interest-only consent is sufficient to cover these vestigial prerogatives but this is for the House authorities to decide.

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4. The prerogative power to dissolve Parliament was abolished by section 3 of the Fixed-term Parliaments Act 2011.

5. Part 1 of the Constitutional Reform and Governance Act 2010 put most of the civil service on a statutory footing.

6. See paras. A.2 to A.4.

7. See paras. A.39 to A.43.

8. See para. A.1.

9. See paras. A.5 to A.10.

10. Things stolen and thrown away by a thief in flight.

11. Valuable animals of a tame or reclaimable nature found wandering and whose owner is unknown.

## Hereditary revenues, the Duchies and personal property and interests

### *Hereditary revenues*

2.11 The hereditary revenues of the Crown come principally from land or other property which is, or becomes, vested in the monarch in right of the Crown (i.e. as monarch). It does not include revenue from the land and property of government departments.

2.12 In particular, the hereditary revenues come from –

- the Crown Estate,<sup>12</sup>
- the Osborne estate,<sup>13</sup> and
- treasure vesting in the Crown under section 6(1) of the Treasure Act 1996.<sup>14</sup>

2.13 It is not entirely clear whether revenues from the Duchy of Lancaster also form part of the hereditary revenues of the Crown.<sup>15</sup> Nothing turns on this point as far as Queen's consent is concerned for the reason given in paragraph 2.18.

2.14 The Crown Estate is worth £13 billion.<sup>16</sup> In relation to England, Wales and Northern Ireland it consists of the land and other property, rights and interests of the Crown which are under the management of the Crown Estate Commissioners (as established under the Crown Estate Act 1956 and managed in accordance with the Crown Estate Act 1961). In relation to Scotland the Crown Estate consists of the land and other property, rights and interests of the Crown which are under the management of Crown Estate Scotland (following the transfer in 2017 of the Commissioners' functions in relation to Scotland to the Scottish Ministers under section 90B of the Scotland Act 1998).

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12.The Crown Estate as a whole essentially dates from 1066 although the ownership of some property can be traced back to Edward the Confessor. After the Norman Conquest, all the land in England belonged to William "in right of the Crown" because he was King. In 1603 James VI, King of Scotland, became James I, King of England and, although governed by separate legislation until the nineteenth century, the Crown Estate is now constituted so as to include regal property in Scotland. Over time, large areas were granted to nobles to raise revenue and the estate has fluctuated in size and value. An agreement was finally reached with George III that the Crown lands would be managed on behalf of the government and the surplus revenue would go to the Treasury. In return, the King would receive a fixed annual payment ("the Civil List"). This agreement has been repeated, at the beginning of his or her reign, by each succeeding monarch. The Civil List has been replaced by the Sovereign Grant, an annual payment based on a percentage of the profits of the Crown Estate (see sections 1 and 6 of the Sovereign Grant Act 2011).

13.The Osborne Estate Act 1902 provided that the Osborne Estate, Queen Victoria's retreat on the Isle of Wight, was to cease to be part of the private estates of the monarch and was to become, by virtue of the Act, vested in His Majesty in right of the Crown. The Osborne estate thus became part of the hereditary revenues of the Crown (the side-note to the operative section of that Act was "Osborne estate to be part of the hereditary revenues of the Crown").

14.This is treated as part of the hereditary revenues of the Crown for the purposes of section 1 of the Civil List Act 1952.

15.For example, it was not mentioned in the civil list arrangements first entered into by George III. This may be because, at the time, it was worth very little or it may be because it was not thought to form part of the hereditary revenues of the Crown.

16.The Crown Estate Annual Report and Accounts 2016-17.



2.15 The Crown Estate includes –

- the rural estate, consisting of about 140,000 hectares of agricultural land and forest;
- the urban estate, including property on historic estates in London and elsewhere such as estates at Regent's Street and St James's (but excluding the Royal palaces);
- the Windsor estate (including the Great Park and Ascot racecourse but excluding Windsor Castle);
- the marine estate consisting of just under half of the UK's foreshore, tidal river-beds and almost all of the sea-bed within the 12 nautical miles limit (including rights to all minerals excluding hydrocarbons);<sup>17</sup>
- rights to all naturally occurring gold or silver (the Mines Royal); and
- rights to all minerals (excluding hydrocarbons) from the UK's continental shelf.

*The Duchy of Lancaster*

2.16 The Duchy of Lancaster has a special status. Originating in a grant of land made in 1265 to a Plantagenet Prince, the Lancaster inheritance became a Duchy in 1351. It merged with the Crown in 1399<sup>18</sup> and a charter of 1485 confirmed the Duchy as a distinct entity to be enjoyed by subsequent monarchs, separate from other Crown lands and under its own management. There has been no fresh settlement since then.

2.17 The Duchy currently manages over 18,000 hectares of land in England and Wales including the Savoy Estate off the Strand, 10 castles including Lancaster and Pickering castles and numerous rural holdings in Lancashire, Yorkshire, Staffordshire and elsewhere. The Queen holds the title of "the Duke of Lancaster",<sup>19</sup> and the Chancellor of the Duchy of Lancaster is a Minister who, among other things, is responsible to the Queen for the administration of the Duchy. However, certain functions, particularly asset management, have been delegated to the Duchy Council. The revenues of the Duchy finance the Privy Purse which meets both official and private expenditure of the Queen (including the maintenance of her private estates, charitable donations and expenses incurred by other members of the Royal Family).

2.18 The Duchy of Lancaster is Crown land and Queen's consent is required if a bill affects its interests (there is no need for separate Prince's consent).

*Duchy of Cornwall*

2.19 For the Duchy of Cornwall, see Chapter 3 below about Prince's consent.

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17. Non-Crown owned foreshore, for this purpose, includes that part of the foreshore which is owned by the Duchies. In September 2010, the main board of the Crown Estate indicated that "The Crown Estate has long had a general predisposition against the sale of seabed in the interests of integrated and effective seabed management and that remains the case. The policy does however allow for consideration of individual proposals for sales depending on circumstances." The statement was made in the context of the potential development of Lerwick Harbour.

18. In 1399, Henry Bolingbroke, Duke of Lancaster, became King. Originally, he provided for the inheritance to pass to his male heirs and for it to be administered separately from the other royal possessions. However, when Edward IV of York became King, he treated the Duchy as forfeit and legally his own despite the fact that he had no Lancastrian blood. By Act of Parliament, he incorporated the Duchy possessions under the title "the Duchy of Lancaster" to be held "for ever to us and our heirs, Kings of England, separate from all other Royal possessions". The accession of Henry VII united the houses of Lancaster and York.

19. "Duke" is still used even for a female monarch.

*Personal property*

2.20 The private estates<sup>20</sup> of the Queen are an example of the personal property of the Crown. Section 1 of the Crown Private Estates Act 1862 defines them for the purposes of that Act as—

- land or other real or heritable property or estate purchased at any time by Queen Victoria or her heirs or successors out of money issued and applied for the use of the Privy Purse or out of any other money not appropriated to a public service,
- land or other real or heritable property or estate which came to Queen Victoria or her heirs or successors (whether by gift, inheritance or otherwise) from any other person (unless not intended to be transferred as private estate<sup>21</sup>),
- land or other real or heritable property or estate which belonged to, or was in trust for, Queen Victoria or her heirs or successors at the time of their accession and which was, before their accession, capable of alienation.

2.21 Balmoral and Sandringham are private estates of the Queen.

2.22 The private estates differ from the Crown Estate in that they can be freely disposed of and are not subject to the Sovereign Grant Act 2011.

2.23 Section 8 of the Crown Private Estates Act 1862 ensures that the private estates are subject to taxes, rates, duties etc. as though they were the property of any subject of the realm but section 9 of that Act ensures that such impositions are paid out of the Privy Purse. The Queen is liable for council tax and non-domestic rates on her private estates.<sup>22</sup>

*Personal interests*

2.24 An example of the personal interests of the Crown is anything that affects the Queen personally (whether as an individual or as landlord or employer) and is not covered by any of the other categories for which consent is required. For example, the abolition of the coroner of the Queen's household by the Coroners and Justice Act 2009 required consent on the basis that it affected the Queen's personal interests.

2.25 Anything affecting the Royal Palaces where the Queen and her family reside may be an example of something affecting the personal interests of the Crown. These palaces (for example, Buckingham Palace, St James' Palace and Windsor Castle) are retained as royal residences at the disposal of the monarch and are held by the Queen on trust as monarch for future monarchs. Note also that Queen's consent was required for the bill for the Parliamentary Corporate Bodies Act 1992 because the Palace of Westminster is a royal palace even though it is not a royal residence.

**Exceptions and examples**

2.26 Chapter 4 sets out some general exceptions to the need for Queen's consent.

2.27 Appendix A contains examples of cases where Queen's consent has, or has not, been required.

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20. See the Crown Private Estate Act 1800, the Crown Private Estates Act 1862 and the Crown Private Estates Act 1873.

21. Section 1 of the Crown Private Estates Act 1873.

22. Section 8 of the Crown Private Estates Act 1862 and section 65A of the Local Government Finance Act 1988. See also paragraphs [A.17](#) and [A.18](#).

## CHAPTER 3 PRINCE'S CONSENT

### Introduction

3.1 Prince's consent is needed in certain circumstances for provisions affecting the Duchy of Cornwall. It may, very occasionally, be needed in certain other cases.

### The Duchy of Cornwall

#### *The Duchy*

3.2 The Duchy of Cornwall was created in 1337 by Edward III for his son, Prince Edward. A charter ensured that each future Duke of Cornwall would be the eldest surviving son of the monarch and the heir to the throne. So the current Prince of Wales is also Duke of Cornwall.

3.3 Where there is no Duke of Cornwall, the Duchy reverts to the Crown.<sup>23</sup> That would include a case where the heir to the throne is female.<sup>24</sup> Given this reversionary interest that the Crown has in the Duchy of Cornwall, a bill affecting the hereditary revenues, personal property or interests<sup>25</sup> of the Duchy requires Queen's consent.

3.4 The Duchy currently owns land across 23 counties (including commercial property in London). It is also the harbour authority for the Isles of Scilly.

#### *When is Prince's consent required because of a bill's effect on the Duchy?*

3.5 Prince's consent is required, as well as Queen's consent, for provisions that expressly mention the Duchy or otherwise have a special application to it.<sup>26</sup>

3.6 Provisions that merely affect the Duchy in the same way as other Crown land do not generally need Prince's consent as well as Queen's consent,<sup>27</sup> on the basis that, in such cases, Queen's consent is taken to include consent on behalf of the Prince of Wales.

3.7 Examples of bills affecting Duchy land for which Queen's consent has been given, but Prince's consent has not been given, include the bill for the Rating (Valuation) Act 1999, the High Hedges Bills 2000/01 and 2002/03 and the bills for the Growth and Infrastructure Act 2013 and the Infrastructure Act 2015.

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23. For example, George VI had no son and so, on his accession, there was no Duke of Cornwall and the Duchy remained with the Crown. The Duchy also reverts to the Crown if the heir apparent dies leaving issue (because the heir to the throne is not a surviving son of the monarch). Section 9 of the Sovereign Grant Act 2011 deals with the effect on the grant paid to the sovereign under that Act where there is no Duke of Cornwall, as well as where the Duke is under the age of 18.

24. See HL Deb 14.02.13 col. 830.

25. See HC Deb. 30.04.96 W.A.417.

26. Queen's consent alone is required if there is no Duke of Cornwall or if the Duke of Cornwall is not yet of age. *Erskine May* at p.165, and para. 8.185 of the *Companion to the Standing Orders*, refer to the Duke of Cornwall being "of age". It is not entirely clear what this means. Once the Duke of Cornwall is 18, he acquires powers to act in relation to the Duchy although there is also a suggestion that he does not receive the full income of the Duchy until he is 21.

27. Paragraph 8.185 of the *Companion to the Standing Orders* states that no separate Duchy consent is required if Queen's consent has been obtained and the effect on the Duchy is not distinct from that on the Crown. See also pp. 663-664 of *Erskine May*.

3.8 But Queen's consent alone may not be sufficient where Prince's consent has been signified (or would have been if he were of age) on an earlier bill because of an express reference to the Duchy, and a later bill in the same field applies equally to the Duchy but without express reference to it. The House authorities might consider signification of Prince's consent prudent.

3.9 For example, Prince's consent (as well as Queen's consent) was required on the bill for the Local Democracy, Economic Development and Construction Act 2009; although it did not mention the Duchy expressly, it amended provisions in the Housing Grants, Construction and Regeneration Act 1996 which did expressly apply to the Duchy and for which Prince's consent had been required.

3.10 Very occasionally, the Queen's interest may be too remote to justify Queen's consent but the Prince's interest may be pressing enough to require Prince's consent.<sup>28</sup>

### **The Prince and Steward of Scotland**

3.11 Consent as Prince and Steward of Scotland has always been rare and may now have been superseded altogether. It has been required in exceptional cases for bills concerning Scottish land law and feudal reform in Scotland. See Appendix B for further detail.

### **Prince's consent in other circumstances**

3.12 Prince's consent is generally only required because of the Prince of Wales's role as Duke of Cornwall. The consent (either in that capacity or as Prince and Steward of Scotland) derives from the Crown's own interest in land and is therefore an extension of Queen's consent.

3.13 It is not generally needed for a provision of a bill that affects the Prince of Wales in his capacity as an ordinary citizen. So any bill that creates an offence will bind the Prince of Wales and will not require Prince's consent to do so.

3.14 But Prince's consent may very occasionally be required for a bill that expressly refers to the Prince of Wales or the Duchy of Cornwall.

3.15 For example, the bill for the House of Lords Act 1999 (which removed the bulk of hereditary peers from the House of Lords) expressly provided that "hereditary peerage" included the principality of Wales. This was to make it absolutely clear that the Prince of Wales was excluded from the House of Lords as Prince of Wales.

3.16 Prince's consent was also required for the bill for the Data Protection Act 1998 and the bill for the Data Protection Act 2018 because, in each case, of the bill's express application to data processed by the Duchy of Cornwall.

### **Exceptions and examples**

3.17 Chapter 4 sets out some general exceptions to the need for Prince's consent.

3.18 Appendix A contains examples of cases where consent has, or has not, been required.

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<sup>28</sup>Prince's consent alone was signified for the Pilotage Bill 1987 because the Duke of Cornwall is the harbour authority for the Scilly Isles.



## CHAPTER 4 GENERAL EXCEPTIONS

### The remoteness/de minimis tests

4.1 Queen's or Prince's consent is not needed where the impact on the Crown is too indirect or too remote, or where there is unlikely to be an impact or the impact is likely to be too insignificant. This test and a de minimis test can become blurred in practice and so are best considered together.

4.2 Queen's consent was not needed for the bill for the Local Government Act 1999; the effect on the Queen's liability to council tax of the capping provisions (which changed the regime restricting local authorities' power to increase council tax) was too remote or indirect.<sup>29</sup>

4.3 Similarly, Queen's consent was not needed for the bill for the Greater London Authority Act 1999. Although the bill made the GLA a major precepting authority, and so the Queen's council tax bill might have increased, the effect was too insignificant because many of the functions of the GLA and the four functional bodies for which it also issued precepts were to be taken over from existing bodies already funded by the council tax.

4.4 The provisions on the Pubs Code in the bill for the Small Business, Enterprise and Employment Act 2015 provide another example. Although the Crown Estate, the Duchy of Lancaster and the Duchy of Cornwall lease pubs to pub-owning businesses, they were not landlords who were directly affected by the provisions. The possibility that fewer landlords might want to lease pubs from the Crown Estate etc as a result of the Code was too unlikely or insignificant an effect to require consent.

4.5 Note however that Erskine May states<sup>30</sup> in the context of this exception and the exception discussed below that, in cases where the effect of a bill is doubtful, it is the practice to require Queen's consent.

### Original consent sufficient for later provisions

4.6 Queen's or Prince's consent may not be needed if an earlier consent is sufficient.

4.7 For example, Queen's or Prince's consent for a particular change in the law may be sufficient for a bill amending that law if the amendments come within the scope of the original consent. So where consent has been given for a particular scheme, further consent may not be required for a bill that makes only a minor change to that scheme if it appears that the original consent would have covered consent for changes of the same nature.

4.8 Queen's consent was required for the introduction of the VAT regime.<sup>31</sup> A substantial restructuring of VAT might require further Queen's consent; lesser changes do not. For example, Queen's consent is not needed for a clause imposing a higher rate of VAT on goods and services or for other "run of the mill" amendments, on the basis that the Crown has, with the Queen's consent, been placed once and for all in the same position as other suppliers by section 19 of the Finance Act 1972.

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29. See Annex A paragraphs [A.17](#) and [A.18](#).

30. At p.663.

31. VAT was first introduced by Part 1 of the Finance Act 1972. It applies to taxable supplies by the Crown: see now section 41 of the Value Added Tax Act 1994.

4.9 On the bill for the Mobile Homes Act 2013, neither Queen's nor Prince's consent was required for amendments to the licensing regime under the Caravan Sites and Control of Development Act 1960. Although both consents (interest only) had been given for that Act (which applied to Crown land not occupied by the Crown), nothing in the bill encroached further on the Queen's or Prince's interests and there was no need for fresh consent.

4.10 On the bill for the Sustainable and Secure Buildings Act 2004, neither Queen's nor Prince's consent was required for amendments to the building regulations regime, on the basis that consent to the principle that building regulations should generally apply to the Crown had already been given for previous legislation and the amendments did not fundamentally alter the nature of building regulations.

4.11 But Queen's consent was needed for the bill for the Housing Act 1996, as it made significant amendments to landlord and tenant law which affected the Crown.<sup>32</sup>

4.12 Similarly, Queen's consent was needed on second reading of the European Union Bill 2004-05; although Queen's consent was needed on second reading of the bill for the European Communities Act 1972, the reworking of that Act by the bill was substantial enough to require such consent again.

4.13 Note again the point mentioned above in paragraph 4.5 that consent may be required where the effect of the bill is doubtful.

4.14 There is no need for Queen's or Prince's consent for a simple restatement of the law. So on a consolidation or a rewrite, the question of Queen's or Prince's consent arises only on any changes in the law to be made (or in relation to subsequent amendments). Such changes will, in most cases, be so minor that they will come within the scope of the original consent.

4.15 Where Queen's consent was required for a bill to remove the prerogative altogether from a particular area, further consent is not likely to be required for a bill to make a different legislative scheme in the area formerly covered by the prerogative. The original bill has removed the prerogative and the consent for it can be taken to permit further legislation in that area. There will though sometimes be a question whether the prerogative has fully been removed in a particular area.<sup>33</sup>

4.16 Where consent has been signified on a bill during its passage through the first House, it may be that no further consent needs to be signified by that House when considering amendments made to the bill (whether by that or the other House) because the original consent is sufficient (see Chapter 5).

#### **No adverse effect on the Crown**

4.17 The question sometimes arises as to the need for Queen's or Prince's consent if there is no adverse effect on the Crown or the Duchy of Cornwall. After all, it seems strange to require consent for something that is wholly beneficial. But generally speaking consent is required whether or not the effect is adverse.

4.18 This issue could become blurred with the remoteness or *de minimis* test. For example, if the Crown would happen to benefit from a provision, then (unless the benefit were really

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32. But note, for example, that the amendments of housing legislation made by the bill for the Civil Partnership Act 2004 were not thought to be significant enough to warrant Queen's consent.

33. For example, there may be an issue as to how far the statutory regulation of powers turns powers that are non-statutory in origin into statutory powers.

substantial) it could be argued that the effect would be too remote to be significant.

4.19 In addition, there may be a question as to whether or not something is in fact beneficial, or wholly beneficial, to the Crown. The House authorities may think it prudent to err on the side of caution and require consent.



## CHAPTER 5 THE SIGNIFICATION OF CONSENT

5.1 Queen's or Prince's consent must be signified in each House of Parliament, though it is normally only sought once in relation to a bill unless amendments to the bill require it to be sought again.

5.2 In the past, Queen's or Prince's consent was in some cases required to be signified at second reading in the Commons and the Lords. Since 24 February 2015,<sup>34</sup> consent (in either House) falls to be signified at third reading, whatever the nature and extent of the prerogative or interests engaged.

5.3 If a bill requires Queen's or Prince's consent, this is now indicated in relation to the bill on the Commons and Lords Order papers as soon as the requirement is known.<sup>35</sup>

5.4 Consent is signified in the House of Commons on the order for third reading being read.

5.5 Consent is signified in the House of Lords immediately before the motion for third reading.

### Signification following amendments to a bill

5.6 Consent may sometimes need to be signified as a result of amendments to a bill.

5.7 For example, a bill may not have needed consent in the form in which it was introduced in, or transferred to, a House but may need it as a result of amendments made to it during its passage through the House. If so, in the case of government amendments, the Palace should be approached for consent before the amendments are tabled. The relevant consent will be signified on third reading.

5.8 Alternatively, a bill may have needed consent in the form in which it was introduced in, or transferred to, a House but amendments made to it during its passage through that House may be of a kind that also requires consent. In these circumstances, the department must consider whether the terms of the consent obtained from the Palace are sufficient to cover the subsequent amendments.

5.9 If they are sufficient to cover the subsequent amendments, the necessary consent can simply be signified for everything on third reading in the House.

5.10 But, if the terms of the original consent are not sufficient to cover subsequent amendments, the department must in the case of government amendments obtain the Palace's further consent before the amendments are tabled in the House. Consent can then be signified at third reading.

5.11 Further issues can arise where the first House has to consider amendments made by the

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34.The change resulted from the approval by the Commons on 24 February 2015 of its Procedure Committee's 4th Report of Session 2014-15, and the approval by the Lords on 30 October 2014 of its Procedure Committee's 3rd Report of Session 2014-15. The change for the Lords was dependent on the Commons making the same change, and so did not take effect until the later of these dates.

35.This change also resulted from the approval by each House of the respective Procedure Committee report mentioned in the previous footnote.

second House. There are two main cases<sup>36</sup> –

- no consent was signified in the first House but amendments made to the bill by the second House mean that consent needs to be signified when those amendments are considered by the first House;
- consent was signified in the first House but amendments made to the bill by the second House mean that further consent needs to be signified in the first House.

5.12 Where consent was signified in the first House no further consent will generally need to be signified unless the amendments made by the second House have an effect on the Queen's interests or prerogative which, having regard to the bill's subject-matter, was unforeseen. An example would be the introduction in the second House of a topic sufficiently different from what was in the bill when it left the first House as to imply that the consent given in the first House could not have extended to the new topic.

5.13 On either scenario in paragraph 5.11, consent will have been signified in the second House to cover the amendments in question and so the department will already have obtained consent from the Palace for the amendments.

### **Re-signification for identical bill**

5.14 Even if Queen's or Prince's consent has been signified for a bill that was introduced but not passed in one session, it still needs to be signified again for the same bill re-introduced in the next session and the Palace needs to be approached again to confirm its original consent. The formula for consent operates only on the bill for which consent is being given.

5.15 In relation to a bill carried over from one session to the next, each House has recently endorsed the practice of not requiring consent to be re-signified.<sup>37</sup> This is no longer an issue in practice following the change to signification on third reading in all cases, as a bill will be carried over before its third reading in the first House.

### **The manner of signification**

5.16 In the House of Commons, consent will be signified by a Privy Counsellor who is almost invariably a serving Minister.<sup>38</sup> It is done formally (by nodding in response to a request from the Chair).<sup>39</sup>

5.17 In the House of Lords consent will be signified by a Privy Counsellor who must be a serving Minister.<sup>40</sup> It is done orally.

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36.It is also possible for consent to be needed at later stages in the "to and fro" process, for example, on a suggested compromise by one House to a proposal by another that did not itself require consent.

37.This results from the approval by the Commons on 24 February 2015 of its Procedure Committee's 4th Report of Session 2014-15 and the approval by the Lords on 30 October 2014 of its Procedure Committee's 3rd Report of Session 2014-15. For further information on carry-over see the Office Pamphlet on Carrying Over Bills.

38.Consent to public bills in the House of Commons has, on rare occasions, been signified by a Privy Counsellor who is not a serving Minister of the Crown but this is acceptable only if the Privy Counsellor is in a position to give assurance that the consent has indeed been obtained - *Erskine May* at p.166. The Chairman of Ways and Means has signified consent to private bills.

39.Note that when (under the procedure applying before 2015) consent had to be signified at second reading in the Commons, it was done orally.

40.*Companion to the Standing Orders*, paragraph 8.184.

5.18 The department (through their Parliamentary branch) are responsible for ensuring that a Privy Counsellor is available to signify consent in either House.

5.19 When Queen's Consent is to be signified in the Commons, the Order paper, when setting out the Main Business for the day of third reading, will mention the need for Queen's Consent.<sup>41</sup>

5.20 When Queen's Consent is to be signified in the Lords, Lords Business will also mention the need for Queen's Consent. The fact that Consent will be, or has been, signified will also be noted against the title of the bill in the list of Bills in Progress in the House of Lords business document.

5.21 There is nothing that needs to be done by OPC, the Department or the Whips to ensure that these entries appear. The clerks in the relevant Public Bill Office make a note at the time when the bill is introduced and make the entry as a matter of course.

### **The form of signification**

5.22 The form of the consent will vary depending upon whether the prerogative or interests (or both) of the monarch are affected.

5.23 OPC is not usually concerned with the precise form of words that is used. The necessary arrangements seem to be made between the department's parliamentary branch, the Whips and the House authorities. OPC's role is usually confined to telling the department what sort of consent is required (prerogative, interest or both).

5.24 However, any particular form of words used needs to be consistent with the terms of the consent given by the Palace even if the precise words used by the Palace were different (for example, if the Palace only gives a prerogative consent, the form of words must not refer to a prerogative and interest consent).

5.25 In the Commons, consent (now signified at third reading) will normally be recorded in the Journal in the following form –

“[Name of Privy Counsellor] signified Queen's consent, as far as Her Majesty's [prerogative/ interest/prerogative and interest] [is/are] concerned.”

“[Name of Privy Counsellor] signified Prince of Wales's consent, as far as his interest is concerned.”

5.26 In the Lords, consent (now signified at third reading) will normally be recorded in the Journal by a bare statement that consent has been signified.

5.27 In Hansard, wording along the following lines is used at third reading in the Lords –

“[Name of Privy Counsellor]: I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the [...] Bill, has consented to place her [prerogative/interest/ prerogative and interest], so far as [it is/they are] affected by the Bill, at the disposal of Parliament for the purposes of the Bill.”

At third reading in the Commons, there will normally be a bare statement in Hansard that consent has been signified.

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41. See para. 5.3 above.

5.28 It is not clear whether a standard formula would be used to record what has happened if different words were actually spoken on the signification of consent. However, it may be possible to use the standard formula so long as it reflects the substance of what was actually said. But it is clearly preferable for the Privy Counsellor to use the right form of words in the first place. A different form of words may be appropriate in a case where the interests of the Duchy of Lancaster are specifically in the picture.

5.29 Occasionally the signification of consent has led to a query in the House about the interests it covers. In one case the Lords Chief Whip's response was that it was not usual to discuss in detail what those interests were, but he nevertheless gave an indication of which provisions had triggered the need for consent.<sup>42</sup> In another case the Lords Chief Whip promised to write to the member concerned and this was followed by a written question and answer.<sup>43</sup>

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<sup>42</sup>See HL Deb 15.12.15 col.1982.

<sup>43</sup>See HL Deb 17.1.18 col.649 and HL5999.

## CHAPTER 6 PRACTICAL STEPS

### Obtaining consent

6.1 The department sponsoring a bill is responsible for writing to the Palace at an early stage before the introduction of the bill to obtain Queen's or Prince's consent if it is required. The Palace must be given as much time as possible and never fewer than 14 days. The PBL Secretariat has template letters for Bill teams who need to seek either consent.

6.2 OPC should give the department early warning of the need for Queen's or Prince's consent (in so far as it is feasible to do so before all the provisions of the bill are drafted and before the House authorities have been approached on the question).

6.3 Sometimes it will be clear at an early stage that consent is required and what the form of consent should be. Other times, it will be clear that no consent is required. But sometimes it will not be clear either way.

6.4 In that case, the department must do what it can with what information it has. It is preferable not to bother the Palace unnecessarily and, if an approach is made too early, it increases the risk that other issues will arise that will require the department to go back to the Palace again. On the other hand, it is important to give the Palace as much early warning as possible and to meet the requirement that an approach is made giving at least the minimum 14 days' notice required.

6.5 On obtaining consent generally, see also Chapter 18 of the *Guide to Making Legislation*.

### Informing the Whips

6.6 OPC should inform the Whip's Office if Queen's or Prince's consent is being sought.

### Writing to the House authorities

6.7 OPC must write to the Public Bill Office in the House in which the bill is to be introduced about Queen's and Prince's consent. The letter should be copied to the Public Bill Office in the other House because the House authorities need to reach agreement.

### Private Members' Bills

6.8 In responding to a report of the House of Commons Political and Constitutional Reform Committee,<sup>44</sup> the government –

- confirmed that it would generally seek Queen's or Prince's consent for Private Members' bills on request, even where it opposed the bill. (The government would however not generally seek consent where it was clear from the parliamentary timetable that there was no real prospect of the bill making

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44. The government response is published as the Political and Constitutional Reform Committee's First Special Report of Session 2014-15. This response related to the relevant procedure as it was before the changes that took effect in February 2015 as a result of recommendations by the Procedure Committee of each House (see paras. 5.2 and 5.3 above).

progress, or the bill had been submitted without enough time to seek consent); and

- undertook that, in the case of a Private Member's bill, the government would on request write to the Member to advise him or her when consent had been received.

### **Informing the Palace of further developments**

6.9 The Palace should be kept informed by the department of any developments subsequent to their original approach which fall outside the terms of the original consent. Thus, for example, new consent issues might arise after the Palace has given its original consent and before the bill is introduced and the Palace should be kept informed of these. Similarly, once the bill has been introduced, the Palace should be kept informed of any subsequent amendments that raise further issues of consent.

### **Other**

6.10 Where consent is required, the department should be reminded that they are responsible for its signification in each House. It may also be helpful to remind the Public Bill Office of the need for signification.

## CHAPTER 7 MISCELLANEOUS

### Draft bills

7.1 Queen's or Prince's consent does not need to be obtained (and cannot be signified) in relation to a draft bill which is to be published for consultation. It is also unnecessary for the department to approach the Palace for an indication that the consent will be forthcoming in due course although, out of courtesy, the department might wish to alert the Palace to any draft bill that significantly affects the Crown's interests.<sup>45</sup>

### Consent not obtained

7.2 If Queen's or Prince's consent is not signified (in a case where it is required), the question on third reading of the bill (or, where appropriate, on consideration of Lords or Commons Amendments) cannot be put.

7.3 Consent has on occasion not been sought for some private members' bills on the basis that there was no time available to debate the bills and no reasonable prospect of them making progress.<sup>46</sup>

7.4 But consent is usually sought even for bills that the government opposes.<sup>47</sup> The grant of consent does not imply approval by the Crown or its advisers but only that the Crown does not intend that, because of lack of consent, Parliament should be prevented from debating the bill in question.<sup>48</sup>

### Inadvertent failure to signify consent

7.5 Proceedings on a bill have been declared void because of a failure, through inadvertence, to signify Queen's consent at the appropriate time.<sup>49</sup>

7.6 However, this did not happen on the bill for the Pollution Prevention and Control Act 1999. Queen's consent was not signified on third reading in the Lords (20 May 1999). The bill went to the Commons where Queen's consent was signified on third reading (14 July 1999). The bill was amended in the House of Commons, and arrangements were made for Queen's consent to be signified on Lords consideration of Commons amendments (which took place on 26 July 1999).<sup>50</sup>

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45.Paragraphs 18.4 and 22.15 of the Guide to Making Legislation.

46.See further *Brazier: Legislating about the Monarchy*, Cambridge Law Journal, March 2007, pp 96-7 and the 11th Report of the House of Commons Political and Constitutional Reform Committee of Session 2013-14 at paras. 22-29.

47.See para. 6.8 above.

48.HC Deb (1966-67) 743, c 891.

49.CJ (1852) 157; CJ (1911) 388; CJ (1948-49) 323.

50.See also the bill for the Pensions Act 2004 where Queen's consent was not signified on third reading in the Commons but at Commons Consideration of Lords Amendments instead. This also happened on the bill for the Health Act 2006 and the bill for the Nuclear Safeguards Act 2018. See also the East Sussex County Council (Newhaven Bridge) Bill 1971, the Felixstowe Dock and Railway Bill 1987 and the Bill for the Local Government Act 2003.

### **Consent in the absence of the Queen**

7.7 If the Queen is absent from the United Kingdom, the communication of the consent refers instead to Counsellors of State acting on Her behalf.<sup>51</sup>

### **Consent before introduction of a bill**

7.8 There was a time when certain constitutional bills such as bills reforming the composition of the House of Lords required the monarch's consent before introduction.<sup>52</sup> This has for many years ceased to be necessary, for government bills at least.<sup>53</sup>

7.9 That said, note the case of the bill for the Sovereign Grant Act 2011 which was brought in on 30 June 2011 following a Message from the Queen on 29 June, Prince's consent being signified before the bill received a first reading. By contrast, in the case of the bill for the Succession to the Crown Act 2013, Queen's consent was signified at second reading (in what was then the normal way).

7.10 The recent decision of the two Houses<sup>54</sup> that consent, if required, is not signified until third reading, must it seems have had the effect of abolishing whatever requirement as to pre-introduction consent might previously have survived for private members' bills.

### **Queen's speech**

7.11 The fact that a bill affecting the Crown has been mentioned in the Queen's speech does not exempt it from the need for Queen's consent.<sup>55</sup>

### **Royal Assent**

7.12 The granting of Queen's or Prince's consent for a bill is merely a consent for Parliament to debate the bill and does not affect the theoretical right of the monarch to withhold Royal Assent to the bill. That said, Royal Assent is of course never refused for a bill that has successfully made its way through Parliament.

7.13 The issue of consent is entirely a matter of House procedure and becomes irrelevant once a bill has received Royal Assent.

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51.CJ (1973-74) 146.

52.See Lord Lansdowne 1911 Parl. Deb. Lords 5th Series Vol VII c. 763. Thus, Lord Simon needed an Address to the Crown and a message from Her Majesty on 4th December 1952 before he could introduce his Life Peers Bill (see Parl. Deb. Lords 5th Series Vol 179 c.749).

53.Consent was not required to be notified before introduction in the case of the bills for the Life Peerages Act 1958, the Peerages Act 1963, the House of Lords Act 1999, the House of Lords Reform Act 2014, the House of Lords (Expulsion and Suspension) Act 2015 or the Lords Spiritual (Women) Act 2015, or in the case of the Parliament Bill of 1969.

54.See para. 5.2 above.

55.*Erskine May* at p.167.



## APPENDIX A EXAMPLES

### Appointment of office-holder

A.1 The Forensic Science Regulator Bill 2017/19 provides for the existing non-statutory Regulator, appointed by the Secretary of State, to be replaced with a new statutory office. Queen's consent was not required in the absence of provision for appointment by the Queen by warrant under the sign manual or by letters patent, on the advice of the Secretary of State.

### Armed Forces etc

A.2 On the bill for the Armed Forces Act 2006, Queen's consent was not needed because the armed forces fall within the exception for Crown servants. Similarly consent was not signified to the bills for the Armed Forces Acts of 2011 and 2016.

A.3 Queen's consent is also not required where statutory provisions replace arrangements made under the prerogative (for example, putting on a statutory footing Boards of Inquiry which had been convened for the Navy under the prerogative). This seems to be on the basis that Parliament can alter service law freely without the need for Queen's consent.

A.4 Consent was required for the bills for the Chemical Weapons Act 1996, the Landmines Act 1998 and the Cluster Munitions (Prohibitions) Act 2010 because they limited the methods of waging war. No consent was required for the bill for the Cultural Property (Armed Conflicts) Act 2017, on the basis that it was not concerned with warlike activities. The conduct prohibited by the bill (making cultural property the object of attack and so on) was already outside the limits of what UK armed forces could legally do.

### Bona vacantia

A.5 Bona vacantia is ownerless property that passes to the Crown.<sup>56</sup> for example, undistributed property on an intestacy or property disclaimed under a will where there is no residuary beneficiary. Certain trust property might also end up as bona vacantia.<sup>57</sup>

A.6 On the bill for the Civil Partnership Act 2004, Queen's consent was not required for changes in the intestacy rules which could affect bona vacantia.

A.7 When a company is dissolved, its property becomes bona vacantia under section 1012 of the Companies Act 2006 and vests in the Crown, Duchy of Lancaster or Duchy of Cornwall (depending on the location of its registered office). Under section 1029 of that Act a company which has been struck off the register (and therefore dissolved) can be restored to the register. The value of property which has vested under section 1012 is then returned to the company.

A.8 Section 51 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 enables the Regulator of Community Interest Companies to apply to the court for an order under section 1029 of the Companies Act 2006. Queen's and Prince's consent was required because of the increased possibility of an order being made under that section and the Crown or Duchies having to return property to the resurrected company.<sup>58</sup>

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56.For property in England and Wales "the Crown" will be the relevant division of the Government Legal Department or the Duchy of Cornwall or the Duchy of Lancaster. Separate administrative arrangements are in place for property in Scotland and Northern Ireland.

57.The right to bona vacantia for estates is now based on statute: the Administration of Estates Act 1925.

A.9 On the bill for the Charities Act 2006, Queen's and Prince's consent was required at third reading because changes to the cy-pres jurisdiction might have reduced the amount of bona vacantia to which the Crown or Duchy was entitled.

A.10 On the bill for the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011, Queen's consent was not needed as the impact on bona vacantia was insignificant. The bill amended the law of succession where a person disclaims an inheritance or is disqualified from receiving one by the forfeiture rule. It amended provisions of the Administration of Estates Act 1925 which had been amended by the Law Reform (Succession) Act 1995, which had required Queen's and Prince's consent because it affected section 46(1)(vi) of the 1925 Act (devolution of property to the Crown in the absence of anybody else). The 2011 bill did not affect section 46(1)(vi) but, by providing for a beneficiary where there would otherwise be none, it could have reduced the amount of property going to the Crown.

### **Civil partnerships and same sex marriage**

A.11 Queen's consent was required for the bill for the Civil Partnership Act 2004 because a declaration about the validity of a civil partnership (see section 58) would bind the Queen.

A.12 Queen's consent was required for the bill for the Marriage (Same Sex Couples) Act 2013. The bill affected the Royal Marriages Act 1772 (now replaced by section 3 of the Succession to the Crown Act 2013) and extended the provisions about declarations in Part 3 of the Family Law Act 1986 to cover marriages of same sex couples. By section 58(2) of that Act such a declaration binds the Queen.

A.13 Section 202 of the Equality Act 2010 repealed the prohibition on the registration of civil partnerships in religious premises. Queen's consent was not needed, because any impact on the Queen's interest was likely to be de minimis or too remote. For a civil partnership to be held on religious premises owned by the Queen (for example, one of her private chapels), consent could be dealt with administratively on the application for approval of the premises.

### **Clergy**

A.14 On the bill for the House of Commons (Removal of Clergy Disqualification) Act 2001, Queen's consent was not needed. It removed any disqualification from membership of the House of Commons that arose from a person having been ordained or being a Minister of a religious denomination, but ensured that Lords Spiritual continued to be disqualified.

A.15 Queen's consent had not been required for the bill for the House of Commons (Clergy Disqualification) Act 1801, which disqualified from membership of the Commons persons ordained to the office of priest or deacon and ministers of the Church of Scotland. But for the precedent set by that Act, it seems that Queen's consent would have been required for the bill mentioned in the last paragraph on the basis that the Queen's interest as Supreme Governor touched on the position of Archbishops and Bishops in Parliament.

A.16 Queen's consent in respect of the prerogative was required in respect of the bill for the Lords Spiritual (Women) Act 2015, on the basis that the appointment of bishops was an exercise of the prerogative and the bill altered the effect of appointments.

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58. The relevant provisions at the time of the 2004 Act were sections 651 to 655 of the Companies Act 1985, which were repealed by the Companies Act 2006.

### **Council tax and business rates**

A.17 The Queen is liable to council tax on her private estates because of section 8 of the Crown Private Estates Act 1862. No other Crown property appears to be liable to council tax because the Local Government Finance Act 1992 (which created the tax) does not apply to the Crown. The Queen is liable for non-domestic rates on her private estates because of section 8 of the 1862 Act and section 65A of the Local Government Finance Act 1988. The Duchy of Cornwall and other Crown property are also liable to non-domestic rates under that section.

A.18 On that basis, Queen's consent (but not Prince's consent) was required for the bills for the Local Government Finance Act 1992, the Rating (Empty Properties) Act 2007, the Business Rate Supplements Act 2009 and the Local Government Finance Act 2012. However Queen's consent was not needed to the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill 2017/19 on the basis that the consents given to the Local Government Finance Act 1988 and the Local Government Finance Act 2012 were sufficient.

### **Courts**

A.19 No Queen's consent was needed for the following (which largely relate to appointments by the Queen) –

- changing the “style” of female judges of the Court of Appeal (appointed by the Queen by Letters Patent) and giving power to change the style of other judges;
- changing the commission of the peace so that there would be a single one for the whole of England and Wales;
- changing provisions about the appointment of justices of the peace in Lancashire;
- making provision about the effect of the Act of Settlement on the appointment of justices of the peace;
- replacing sheriffs in their role of enforcing writs of execution (sheriffs are appointed by the Queen “pricking” them) by enforcement officers.

A.20 But consent was required at third reading for the bill for the Tribunals, Courts and Enforcement Act 2007 which could have changed the exercise of jurisdiction over the Crown as a party to tribunal proceedings or how it can recover a debt.

### **Crown Estate Commissioners**

A.21 On the bill for the Corporate Manslaughter and Corporate Homicide Act 2007, Queen's consent was required for provisions enabling the prosecution of the Crown Estate Commissioners (a body corporate under section 1 of the Crown Estates Act 1961) for corporate manslaughter or corporate homicide. On the basis that any resulting fine would be paid from Crown Estate revenues, the bill could affect the hereditary revenues of the Crown.

### **Education**

A.22 On the bill for the Higher Education Act 2004, Queen's consent (prerogative) was required because the bill affected the Crown's jurisdiction as a visitor of universities and Oxbridge colleges (see sections 20 and 46 of the Act).

## **Employment**

### *Deduction from earnings orders (child maintenance and social security)*

A.23 On the bill for the Child Maintenance and Other Payments Act 2008, Queen's consent was required for provisions about deduction from earnings orders. The interest of the Crown was affected because of a possible increase in the number of cases in which the Queen had to make payments under such orders in respect of staff of the Royal Household.

A.24 The consent given for the bill for the Child Support Act 1991 (which originally applied deduction from earnings orders to the Royal Household) was not sufficient to cover the extension of that application by the bill. Nor was the extension so minor as to be *de minimis*.

A.25 But on the bill for the Welfare Reform Act 2012, which made provision about recovering overpayments of benefits by deduction from earnings orders, Queen's consent was not needed. Indeed, it was hard to see why consent would be required for provisions which merely affect the Queen in the same way as all other employers and which do not affect the personal property or interests of the Crown. The House authorities indicated that –

- they do not require Queen's consent where general labour or social security law is concerned merely because of its applicability to the Royal Household,<sup>59</sup>
- consent would conceivably be required where there was a disproportionate or unexpected effect on the Royal Household,
- each case did of course have to be considered on its merits, and
- the decision on the bill for the Child Maintenance and Other Payments Act 2008 was not a binding precedent.

### *National insurance contributions*

A.26 Different approaches have been taken on national insurance contributions.

A.27 Section 115 of the Social Security (Contributions and Benefits) Act 1992 provides that Parts 1 to 6 of that Act “apply to persons employed by or under the Crown in like manner as if they were employed by a private person”.

A.28 Given that the Queen must, as an employer, pay national insurance contributions, it is clear that issues of Queen's consent can arise on bills dealing with such contributions.

A.29 On the bill for the National Insurance Contributions and Statutory Payments Act 2004, the House authorities drew a distinction between provisions making changes of a general administrative nature and those making substantive changes to the national insurance contribution regime (for example, shifting liability between classes of national insurance contributions). Only the latter gave rise to a need for Queen's consent.

A.30 On the bill for the National Insurance Contributions Act 2006, it was decided, on the basis of this type of reasoning, that Queen's consent (but not Prince's consent) was required because the bill made substantive changes to liability for national insurance contributions.

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<sup>59</sup>This is not, though, to be taken to mean that “general labour law” is applicable to the Queen in her personal capacity. The Trade Union and Labour Reform (Consolidation) Act 1992, the Employment Rights Act 1992 and the Employment Tribunals Act 1996 do not bind the Queen personally and there is no necessary implication to that effect. On that basis, Queen's consent was not required for Part 2 of the Bill for the Enterprise and Regulatory Reform Act 2013.

A.31 On the bill for the National Insurance Contributions Act 2011, Queen's consent was not required for increases in contributions (on the basis of the precedents of the National Insurance Contributions Act 1992 and the National Insurance Contributions Act 2002). It was also not needed for the national insurance "holiday" provisions for new businesses as they were unlikely to affect anything the Queen might do and, if they did, they would affect her positively rather than adversely.<sup>60</sup>

#### *Pensions*

A.32 The bill for the Pensions Act 2011 required Queen's consent, in respect of interest, on third reading. The Act amended the Pensions Acts 2004, 2007 and 2008, the bills for which had all required Queen's consent.

A.33 The bill for the 2004 Act applied to occupational pension schemes managed by or on behalf of the Crown – in particular, pensions for the Queen's employees under the Royal Household Pension Scheme which are payable under section 7 of the Civil List Act 1952. It did not apply to private Crown schemes (the Private Estate scheme and the Royal Household Group (or "Privy Purse") scheme): see section 313(5) of the 2004 Act. Similar reasoning was relied on for the bills for the 2007 and 2008 Acts.

#### *Statutory maternity pay, adoption pay, paternity pay and sick pay*

A.34 Section 169 of the Social Security (Contributions and Benefits) Act 1992 provides that the provisions of Part 12 of that Act (which relate to statutory maternity pay) "apply in relation to women employed by or under the Crown as they apply in relation to women employed otherwise than by or under the Crown". Section 171ZQ makes corresponding provision in relation to Part 12ZB (statutory adoption pay).

A.35 The wording in sections 169 and 171ZQ is similar to the wording in section 115(1) of the Act (see above in relation to national insurance contributions). Accordingly, issues of Queen's consent can arise on statutory maternity pay and statutory adoption pay.

A.36 Issues of Queen's consent may also arise on statutory paternity pay and sick pay. For example, because of the definition of "employer" in section 171ZJ(1) of the 1992 Act, the bill for the Work and Families Act 2006 required the Queen to pay additional statutory paternity pay for members of the Royal Household who took advantage of the new rights following the birth or adoption of a child. This was a substantial restructuring of the existing arrangements. Queen's consent was, on the basis of the same reasoning, required for the provisions in the bill for the Children and Families Act 2014 on statutory shared parental pay.

#### **Land**

A.37 Queen's consent was required for the bill for the Agriculture (Miscellaneous Provisions) Act 1963 because it amended the Agricultural Holdings Act 1948 which applied to land owned by the Crown or Duchies. No Prince's consent was required, as the Prince of Wales was not of age.

A.38 Queen's consent was given for the bill for the Animal Welfare Act 2006, largely because of the powers of inspectors to enter onto land owned by the Crown Estate and the Duchies; there is an exemption for land forming part of the Queen's private estate.

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60. But on positive as opposed to adverse effect see paragraphs 4.17 to 4.19.

## **Passports**

A.39 Passports are issued under the prerogative, so issues of Queen's consent can arise. For example, Queen's consent was needed for the bill for the Identity Cards Act 2006.

A.40 Also, on the bill for the Child Maintenance and Other Payments Act 2008, Queen's consent was required for giving the Child Maintenance and Enforcement Commission power to disqualify a person who had failed to pay child support maintenance from holding a UK passport.

A.41 Queen's consent was required for the bill for the Counter-Terrorism and Security Act 2015, as a result of provisions –

- invalidating a passport held by a person subject to a temporary exclusion order;
- preventing the subsequent issue of a passport to the person while the temporary exclusion order is in force.

A.42 Merely requiring the surrender of a passport does not engage the prerogative – see, for example, the travel restriction order provisions in the bill for the Criminal Justice and Police Act 2001 for which Queen's consent was not required.

A.43 Provisions about fees for passports do not require Queen's consent on the basis that any prerogative power to charge has now been put on a statutory footing. This was confirmed in connection with the bill for the Immigration Act 2016.

## **Ports**

A.44 Queen's or Prince's consent needs to be considered carefully in the context of ports, not least because the Duchy of Cornwall is the harbour authority for the Isles of Scilly.

A.45 Prince's consent was required on third reading for the bill for the Pilotage Act 1987.<sup>61</sup> Prince's consent was required on third reading for the bill for the Merchant Shipping and Maritime Security Act 1997 because it imposed new duties on harbour authorities (including that for the Isles of Scilly). Neither of these bills dealt expressly with the Duchy of Cornwall, so it was not immediately obvious that the issue of Prince's consent arose.

A.46 Prince's consent was also required on second reading for the Marine Navigation Aids Bill 2009-2010, where the Prince as statutory harbour authority was also the local lighthouse authority. As the bill made provision about lighthouse authorities it affected the Duchy.

## **Restricting or ousting the courts' jurisdiction**

A.47 No consent was required for the Consular Relations Bill 1967 in relation to a provision which sought to restrict the jurisdiction of the courts where the jurisdiction was exercised by the courts under statute rather than the prerogative (the Queen as the fount of all justice).

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61. Already mentioned in the footnote to para. 3.10 above.

## APPENDIX B THE PRINCE AND STEWARD OF SCOTLAND

B.1 The styles “Prince and Great (or High) Steward of Scotland” appear to be inseparably connected. The Great (or High) Steward of Scotland is a hereditary office dating from the twelfth century. An Act of 1469 confirmed that the title should go to “the first-born prince of the King of Scots for ever”. The designation “Principality of Scotland” implies not Scotland as a whole but the lands in Renfrew and the Stewartry appropriated as the patrimony of the monarch’s eldest son for his maintenance.<sup>62</sup>

B.2 Prince’s consent was given for the bill for the Conveyancing and Feudal Reform (Scotland) Act 1970 “as far as the Prince of Wales’s interest, in respect of the Principality and Stewartry of Scotland, is concerned”.<sup>63</sup> Section 51 of that Act applied the Act to “land held of the Prince and Steward of Scotland”.

B.3 Consent was also given for the bill for the Prescription and Limitation (Scotland) Act 1973. And it was given for the bill for the Land Registration (Scotland) Act 1979 “so far as the interest of the Prince of Wales in respect of the Principality and Stewartry of Scotland is concerned”.<sup>64</sup> The Act applied to “land held of the Crown and of the Prince and Steward of Scotland”.

B.4 These were exceptional cases relating to Scottish land law and feudal reform in Scotland. The need for the consent of the Prince and Steward of Scotland appears to have been an extension of the need for Queen’s consent in relation to Crown land (similar to the extension required for the Duchy of Cornwall). Thus, the Prince and Steward of Scotland held residual Crown lands in Scotland in lieu of the monarch and, in particular, held feudal superiority of certain land, mostly in the south-west of Scotland.

B.5 But the need for consent was rare even when the Prince and Steward of Scotland held feudal superiority in Scotland. The Abolition of Feudal Tenure etc. (Scotland) Act 2000 has now abolished any feudal estate (for example, a superiority) held by the Prince and Steward of Scotland that was not a dominion agile (the equivalent of ordinary ownership of land). It is no longer clear whether there is any remaining land or interest held by the Prince of Wales as Prince and Steward of Scotland.

B.6 If there is no such land, there is no residual scope for Prince’s consent as the Prince and Steward of Scotland. And even if there is any such land, the fact that land and feudal reform has been devolved makes it even more unlikely that Prince’s consent as the Prince and Steward of Scotland will ever be relevant to future Westminster bills.<sup>65</sup>

B.7 In addition, on the same principles as for Duchy of Cornwall land, consent as Prince and Steward of Scotland is only ever likely to be an issue if a bill specifically mentions the Prince and Steward of Scotland or has some special application to him. Queen’s consent is likely to be sufficient for any bill that affects Crown land (including any land held by the Prince and Steward of Scotland) but does not mention, or have any special application to, the land held by the Prince and Steward of Scotland.

B.8 The question of the consent of the Prince and Steward of Scotland presumably also

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62. See Stair, “The Laws of Scotland”, Vol 7, para. 786.

63. See CJ 1969-70 p.321.

64. See CJ 1978-79 p.259.

65. Rule 9.11 of the Standing Orders of the Scottish Parliament recognises the possibility that the consent of the Prince and Steward of Scotland may be needed to a bill before that Parliament (as well as Queen’s consent and Prince’s consent in relation to the Duchy of Cornwall). The test is whether the bill would need such consent if it were a Bill for an Act of the United Kingdom Parliament.

cannot arise at all if he is not of age or there is no separate Prince and Steward of Scotland (for example, there was no Great (or High) Steward of Scotland from the accession of Edward VIII to the birth of Prince Charles because there was no first-born prince of the King). In these circumstances, Queen's consent is, again, presumably taken to be sufficient.