CONFIDENTIAL COPY NO: 6

PRIME MINISTER

RATES BILL

As you know, Robin Maxwell-Hyslop has raised with me the question of whether this Bill is hybrid and should therefore follow the hybrid bill procedure. The effect would be to delay the passage of the Bill and mean that we could not begin the procedure for capping selected authorities in 1984 in time to become effective for 1985/86.

I am always conscious of the possibility of hybridity in the field of local government legislation, and Parliamentary Counsel raised this point at an early drafting stage with the House authorities. He obtained an assurance from them that by listing the local authorities to whom the Bill is to apply and not including in that list certain rating authorities (the Sub-Treasurers of the Inner and Middle Temples) and certain precepting authorities (the Receiver of the Metropolitan Police, parish councils, water authorities and joint boards) the Bill was not rendered hybrid. There is the precedent of the Local Government, Planning and Land Act 1980 which lists authorities in the same way and on which hybridity was not raised.

After my conversation with Maxwell-Hyslop I had an urgent meeting with my officials and Parliamentary Counsel yesterday to discuss the points which he had raised with me. I am firmly persuaded that the Bill is not hybrid. A summary of the legal position as we see it is annexed to this minute.

I understand that Robin Maxwell-Hyslop has mentioned this point informally to Mr Speaker. The House authorities - who have been approached again this morning - have reaffirmed that the Bill is not hybrid. The Speaker is not of course obliged to accept their advice, but the general view is that he would.

In these circumstances there is clearly no case for the Government taking any action before Second Reading and we are confident that if this point is raised tomorrow it will not succeed.

It is of course always possible that some point that we have not uncovered might be raised at Second Reading. It is prudent therefore to consider what action we might then need to take. Much would depend on the exact nature of the point raised but supposing it was one of substance there would appear to be three options:

(i) if the point is purely technical, eg that the list should be redrafted in the form of a general definition, an undertaking could be given to put the matter right in Committee. (This would require a resolution as described in sub-paragraph (iii) below to proceed with the Bill without a reference to the Examiners).

(ii) if the issue is more than purely technical and the Speaker refers the Bill to the Examiners we could argue the point there but with no guarantee of success. This would very probably delay the enactment of the Bill so that its provisions could not take effect for next year.

(iii) if the point goes to the root of the Bill, eg if it attacks the whole principle of selection of authorities, and is upheld we would have to consider adopting the tactic chosenby the then Leader of the House (Michael Foot) in the case of the Aircraft and Shipbuilding Industries Bill: to put down and carry a procedure resolution which in effect would set aside the Speaker's ruling. This would be most controversial and you may think would require collective consideration.

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I have asked the Whips to speak to Robin Maxwell-Hyslop (who supports the Bill). In the light of our further researches I am meeting him again and will seek to persuade him that his concerns on the issue of hybridity have been fully examined and are unlikely to be accepted by Mr Speaker.

I am sending a copy of this minute to John Biffen and John Wakeham.

P.J.

P J

16 January 1984

ANNEX

HYBRIDITY: THE RATES BILL

1. Hybridity is an elastic concept and difficult to define. The definition relied on most frequently is the statement by Mr Speaker Hylton-Foster on the London Government Bill (Hansard, 10 Dec 1982 col 45 et seq).

> "I think that a hybrid Bill can be defined as a Public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class."

The Rates Bill

2. The authorities eligible for selection under the selective scheme of control and those subject to the general scheme of control are:

(a) the council of a county or district;

(b) the GLC, the council of a London Borough and the Common Council of the City of London;

(c) the ILEA; and

(d) the Council of the Isles of Scilly.

3. An objection on the grounds of hybridity could be based on the existence of precepting or rating authorities not included in this list, namely:-

(a) as respects precepts, the Receiver of the Metropolitan Police, parish councils, water authorities and joint boards

(b) as respects rates, the Sub-treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

Thus, it could be argued, these bodies are being treated in a manner differently from the list of authorities of the same class.

4. In whichever way the counter argument is put, it amounts to saying that these bodies are not of the same class either because:-

(i) parish councils are not in the same "tier" of local government as the authorities included in the Bill, and/or

(ii) apart from parish councils, none are local authorities and/or

(iii) they are not democratically elected authorities eligible for Block Grant under the Local Government Planning and Land Act 1980, as amended. (The Receiver although not a local authority for the purposes of 1980 was effectively made one by an amendment made by the Local Government Finance Act 1982, which enabled block grant to be paid direct to the Receiver. This was done at the request of local authorities.)

The common sense view is that this list includes all authorities within what is commonly taken to be the two tier-structure of local government. (See, generally, the exchange of correspondence between Parliamentary Counsel and the Public Bill Office - copies attached).

5. It could be argued that because certain authorities, ie those whose GRE does not exceed £10m are exempt, an element of hybridity is introduced. However this exemption applies to all authorities listed and the further selection process takes place under the provisions of the Bill.

6. A factor which persuaded the Public Bill Office when they gave the assurance that the Bill was not hybrid was the precedent of section 53 of the Local Government, Planning and Land Act 1980 which lists the same authorities. That was not regarded as hybrid and the Scots rating measure, now in Committee, which theoretically is open to the same criticism, has not been alleged to be hybrid.

7. It could be suggested that the use which can be made of precedent is limited because the point may never have been raised. This however ignores the fact that it is the duty of the Public Bill Office to consider every Public Bill and to notify the promoter if they consider that any Bill is potentially hybrid (see S.O.40)

Mr Maxwell-Hyslop's arguments

8. The first argument is that Mr Speaker Hylton-Foster's ruling is not comprehensively stated in Erskine May and he ruled,* in effect, that if it be possible to take the view that the Bill is hybrid then it should be referred to the Examiners. This of course does not stand alone. In the next paragraph, the Speaker interpreted his words as meaning that the Bill must be prima facie hybrid. That is not the case here. (In other words a remote or ~~fanciful~~ fanciful possibility would not justify a reference.)

* Hansard, 10 Dec 1962, Col. 45

9. The second argument is that the class to which the Bill applies must be explicit; if it is not and the class is implicit, presumably because it refers to individual authorities rather than setting out a general definition, then there is a possibility that the Bill is hybrid.

This argument is difficult to follow, however. Mr Maxwell-Hyslop may be drawing upon his knowledge of the Aircraft and Shipbuilding Industries Bill (certificate from the Examiners that certain Private Bill Standing Orders should apply to the Bill and Statements of Reasons therefore (71) - copy attached).

The examiners reported,

> "It is still open to us to find that this Bill is hybrid according as we answer the arid questions whether all the companies named in Part 1 of the 2nd Schedule to the Bill are within the category or class set out in Part II of that Schedule and whether any company within that category or class is not named in Part 1. If Part 1 and Part II of the Second Schedule are not congruent, the Bill is hybrid".

10. The short answer is that the structure and the provisions of the Rates Bill bear no comparison to the Aircraft and Shipbuilding Industry Bill and the argument does not hold. In the case of the latter it was possible to demonstrate as a matter of fact that there was a member of the class to which the provisions of the Bill did not apply. Furthermore the mere fact that the authorities are named does not make the Bill hybrid. The Stock Exchange Bill which named one member of the class was not regarded as hybrid. Even if it were remotely possible to argue that, in effect, Clause 10(1) creates a "class" of designated authorities it is not possible to find an authority which is "named" /

in Clause 1(3) and which does not fall within the "class" in Clause 10(1).

11. There may be other arguments which could be made and which have not been considered. Given the nature of this elastic concept it is conceivable that there is a mine hidden somewhere. Nevertheless nothing has been suggested so far which raises a prima facie case for the Bill being hybrid.

16 January 1984

PUBLIC BILL OFFICE
HOUSE OF COMMONS. SW1
Telephone 01-219 [illegible]
01 2[illegible] 3255 [illegible]

3 November 1983

In Confidence

Dear Henry

Limitation of Rights and Precepts

Thank you for your letter of 31 October. As I understand it, we are talking about local authorities in London (including ILEA and the Common Council) and local authorities in the rest of England and Wales, including the Isles of Scilly but excluding parish councils.

I had thought from your letter of 26 October that you had intended to find formulae which would ascribe the authorities in the bill to two or more classes. Obviously, general definitions of these classes would throw a cloak of respectability (ie. of non-hybridity) over them, and the fact that a definition is not feasible makes one wonder whether a class which cannot be defined is truly a class!

However, I agree with you that it is the reality which matters. Commonsense tells me that a bill treating all these bodies alike is not hybrid. If in addition you are able to cite the precedent of Section 53 of the Local Government, Planning and Land Act 1980 (c. 65), which lists the same authorities and which was not regarded as hybrid, I am content.

John Grey agrees.

Yours ever

Jim

J H WILLCOX
Clerk of Public Bills

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CONFIDENTIAL

J H Willcox Esq
Public Bill Office
House of Commons

31 October 1983

LIMITATION OF ~~RIGHTS~~ RATES AND PRECEPTS

Thank you for your letter of 28 October.

What matters for hybridity purposes is substance rather than form and I take it that neither you nor John Grey would take a differen view if the Bill specified the authorities to which it applies viz.-

(a) county councils, the GLC and the ILEA; and

(b) district councils, London boroughs, the Common Council of the City of London and the Council of the Isles of Scilly.

This would obviously be more convenient for a reader of the Bill and a user of the Act; and I doubt whether a definition of these authorities would in fact be feasible. Upper tier and lower tier are colloquial rather than legal expressions and while they aptly descri the relevant authorities in common parlance they could not be used as the basis of a statutory definition.

A copy of this letter goes to John Grey.

C H de WAAL

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The Bill giving effect to the Government's proposals is likely to be bitterly contested and its opponents can be expected to avail themsel of any weapons they can lay their hands on. I should be grateful, therefore, if you would confirm that objections on the ground of hybrid would be unfounded. Any such objection would presumably be based on t existence of precepting or rating authorities not covered by the Bill. These are -

(a) as respects precepts, the Receiver of the Metropolitan Police District (s.12ϕ of the Local Government Act 1948 (c.26)), parish councils (s.150 of the Local Government Act 1972 (c.70 water authorities (s.46 of the Land Drainage Act 1976 (c.70)) and joint boards (i.e. certain port health authorities) under s.309(2) of the Public Health Act 1976 (c.49);

(b) as respects rates, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple (s.1(1) of the General Rate Act 1967).

Apart from parish councils, however, none of these are local authoritie and parish councils are not in the same "tier" of local government as the authorities to be included in the Bill.

A copy of this letter goes to Vallance White whose views would also be welcome.

C H de WAAL

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PUBLIC BILL OFFICE
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In Confidence

28th October, 1983

Dear Henry

John Grey and I have considered the points in your letter of 26th October:

Provided satisfactory definitions can be drafted to cover local authorities in the upper tier which have power to precept, and local authorities in the lower tier which have power to levy a rate, we can see no possible difficulty.

Yrs

J. H. WILLCOX
Clerk of Public Bills

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25 October 198

LIMITATION OF RATES AND PRECEPTS

You will be aware that the Government intend to introduce legis which will enable the Secretary of State to impose limits on th rates or precepts of local authorities. The proposals are desc in Chapters 3 and 4 of the White Paper "Rates" published last August (Cmnd 9008). Chapter 3 describes a scheme under which t Secretary of State would be able to select particular authoriti for limitation and Chapter 4 describes a scheme that would appl to all authorities. The authorities capable of selection under Chapter 3 and those to which a scheme under Chapter 4 would app are described in paragraph 3.2 on page 15, ie -

(a) "upper tier" precepting authorities (county councils, the GLC and the ILEA); and

(b) "lower tier" rating authorities (district councils and the London boroughs).

The reference to a London borough is to be read as including th City of London and although not I think mentioned in the White both schemes would also cover the Council of the Isles of Scil This has power to levy a rate: see s.118 of the General Rate Ac 1967 (c.9).

CONFIDENTIAL

[MR. EDEN.]
right hon. Friend agree that this particular action demonstrates not only the importance, as the right hon. Member for Easington (Mr. Shinwell) has stated, of the continued strength of the Gurkha Brigade but also of the significant rôle in the maintenance of peace in the area which can be played by the Singapore base?

Mr. Sandys: I do not think I need say more than I have about the value we attach to the contribution of the Gurkhas and I am also already on record about the importance of our base at Singapore. There are indications, but they are not yet firm, that the rebel forces have received, or have undergone, a certain amount of military training outside the country.

Mr. Wigg: The right hon. Gentleman has told us that intelligence available made him aware that such a rebellion was a possibility. The composite force sent in should, therefore, be balanced and equipped and organised to fight, with reinforcements, if required, available in sufficient numbers and without extensive notice. Will the right hon. Gentleman say how it comes about, however, on the basis of what he has said, that the force is anything but balanced? Will he tell us the kind of aircraft used and confirm whether or not the force has been limited, not by the needs of the situation, but by the capacity of the sea and air lift?

Mr. Sandys: If the hon. Gentleman studies my statement he will see that a very adequate force was sent in, and sent in very quickly. More troops are available should they be needed. Some are already on the way, while others are being held in readiness. As for equipment and balance, I have no knowledge —and, certainly, I am sure that the hon. Gentleman has no information—which suggests that the force has not been properly equipped and is not in every way ready and fit to carry out these duties.

Mr. Wigg: The right hon. Gentleman has given the details of the forces. They are the Queen's Own Highlanders, the 1st Battalion the 2nd Gurkhas, 42nd Commando and a squadron of the Queen's Irish Hussars. He has said nothing about the services. Has the force been sent in without a signal company, without any R.Es., without hospitalisation? Has the force been sent in without those formations because the right hon. Gentleman lacks the lift to move the rest in?

Mr. Sandys: I was not going into every detail about kitchen stoves and the Dental Service, or things of that sort.

Mr. Gordon Walker: Has the right hon. Gentleman any information about where the arms, which he told us were coming from outside, have come from? In view of what he has said about the great value of the Gurkhas, does he realise that there is strong feeling in the House that the Government should reconsider what is broadly thought to be their intention to disband quite a large number of these valuable troops?

Mr. Sandys: It is not for me to make a statement, arising out of a report on Brunei, on the future of the Gurkhas, but I understand that my right hon. Friend the Secretary of State for War will be making a statement on this subject early in the new year.

Several Hon. Members *rose*——

Mr. Speaker: We cannot go on with this now, without a Question. I am not giving the hon. Member for Dudley (Mr. Wigg) any encouragement. I was about to ask the Clerk to read the Orders of the Day. Does he wish to make an application?

Mr. Wigg: I should be the last to take advantage of any encouragement that you gave me, Mr. Speaker, but as I gave notice to the Minister of Defence and was answered by an easy political gibe by the right hon. Gentleman, who suggested that I was referring to the Dental Corps and who did not answer my question about the kind of aircraft which were used in this operation—and I suppose that even hon. Members opposite would think that it was relevant to know whether the troops had ammunition; or do they not? —and as we do not know whether these troops are effectively supplied, I do not know whether to seek permission to move the Adjournment of the House under Standing Order No. 9 so that we can discuss the matter.

Mr. Speaker: Either the hon. Member moves his Motion, giving it to me in writing, or he does not. There is no half-way house about it.

ORDERS OF THE DAY

LONDON GOVERNMENT BILL

Order for Second Reading read.

3.53 p.m.

Mr. G. R. Mitchison (Kettering): On a point of order. Mr. Speaker, I desire to submit that this is a Bill to which the Standing Orders relative to Private Business may apply—the words of Standing Order No. 36 are "may apply". If that is so, the Bill ought to be sent to the Examiners.

A side note to the Rules talks about *prima facie* Hybrid Bills, but I prefer the language of the rule itself and the answer which was given by the then Clerk of Public Bills to the Select Committee on Hybrid Bills, 1948, when, on page 52 of the evidence, he was asked:

"Is the principle then, that when there is any doubt at all the bill must go to the Examiners?"

His answer was:

"I should say so, yes."

I propose to submit that in this case there is, at any rate, some doubt and that the Bill should, therefore, go to the Examiners.

Standing Orders will be applicable if the Bill affects private rights which are not the private rights of a whole class of people. The second paragraph of the Report of that same Select Committee on Hybrid Bills contains as part of its definition of a Hybrid Bill

"... a public bill, since it accords with the two fundamental criteria of public bills described by Erskine May"—

those two fundamental criteria are that it should relate to public policy and be introduced directly by a Member of the House—

"it has also, in large or small degree, the character of a private bill, since it affects the interests of specific individuals or corporations as distinct from all individuals or corporations of a similar category."

An instance of a Private Bill, and a very common instance, is a Bill local in its application. There appears to be no doubt that if the present Bill related to Birmingham, for instance, it would be a Private Bill and would, therefore, have in it that element of Private Bill character which would require it to be sent to the Examiners. That is the conclusion in Erskine May which, on page 869, says:

"A bill relating to a city is usually held to be a private bill."

The question is whether that also applies to the Metropolis. I must say at once that the practice of the decisions about this has not by any means been consistent, but all that I have to show is that there is some doubt. For that purpose I can take a very simple case referred to on page 1 of the Minutes of Evidence given before that same Committee. The footnote says:

"A bill purely public has been converted by amendment into a hybrid bill. Thus the Waterworks Clauses Act (1847) Amendment Bill, 1884-85, as introduced into the House of Commons, applied to every water company in the kingdom. By an Amendment made in Committee it was limited to the metropolis. The House of Lords referred the bill to the Examiners who held that it had become a hybrid bill."

There follow references to the Lords Journals.

The practice in these matters is the same whichever House is concerned. The change from a general application to a Metropolis application was held to turn the Bill into a Hybrid Bill. During the course of years, Bills about the Metropolis were originally introduced as Public Bills; then, matters affecting the Metropolis, gradually but to an increasing extent, have been dealt with by Private Bills now introduced regularly year by year. On page 870 of Erskine May there are a number of references to a variety of cases and the general statement:

"Since 1874 bills for giving further powers to the Metropolitan Board of Works and to its successor, the London County Council, have been introduced and passed as private bills."

There therefore appears to be nothing in the metropolitan character of London which necessarily prevents this Bill from being treated as what it really is—a Bill of local application.

There is a reference to the point of the Metropolis in Erskine May, but it is no doubt the result of the growth of other large conurbations that the tendency has been more and more to assimilate metropolitan practice to that which would apply to Birmingham, or some other large town. Therefore, if any distinction is to be drawn, it must be a distinction relating to the character of the Metropolis as such. I can see the

[MR. MITCHISON.]

point in relation to the police, for instance, but I fail to see it in relation to a number of matters with which this Bill deals. I submit that there is, therefore, sufficient doubt as to whether the matters should be dealt with in this form without reference to the Examiners to entitle us to have the Bill sent to them.

From that aspect of the matter I wish to turn to one or two particular cases. It is common knowledge, and has been stated by the Government and reported in the Press, that there were provisions relating to the water supply of the Metropolis which appeared in some draft Bill —which, of course, I have not seen— and which were taken out and do not appear in the present Bill; and which are to be the subject of other legislation, because it was understood that if they were put into this Bill, they would turn it into a Hybrid Bill.

If one looks at the published statement, called "Future of the Metropolitan Water Board," printed by the Board and containing the report of its General Purposes Committee which was adopted on 19th October, one sees the sort of thing which might have been the reason for the hybrid character which these water provisions would have imported in the Bill. Page 2 of the printed statement states:

> "The proposed area to be administered by the Council"—

that is, the Greater London Council which is contemplated in this Bill—

> "is some 750 square miles. Of this only some 420 square miles are supplied by the Board, that is, a little more than half. Moreover, the Board supply an area of about 120 square miles outside the Greater London Council area".

Later in the statement, when arguing the case, the Board says:

> ". . . it is inconceivable that at the very time when the Government is endeavouring to improve and regularise the local government pattern in London, a step is proposed which would immediately create an anomaly by giving the Greater London Council jurisdiction for a service in parts only of its area, and permitting ten other authorities to have jurisdiction for the same service in other parts of its area."

The point of this, of course, is that if we have provisions of this kind we are bound to have with them treatment relating not to a whole class, such as the water undertakings throughout the kingdom, but to a whole class, less some particular instance. The particular instance, would, therefore, get the special treatment which imports a private character into the Bill and calls for its examination by the Examiners.

The Metropolitan Water Board is a statutory body. It is financed by a water fund with the deficiencies out of the fund supplemented from the rates of the constituent bodies. A similar body appears in the sewerage section of the Bill. Sewers are not always treated with sufficient seriousness, but their maintenance is, no doubt, an essential part of local government. They are just as essential as the water supply, and Part V of the Bill deals with nothing else but sewage and trade effluents. Here we get an instance, on which I propose to rely, of what I submit is, quite clearly, exceptional treatment of one particular person; using the term "person" in the sense in which it is used in the definition to which I refer, a Parliamentary person, either an individual, or some public authority or corporation.

It may be said that this is a small point. But the words of the definition which I read refer expressly to a small degree and I think that I can show the House, or I can show you, Mr. Speaker, that even two sewers may be enough to turn the Bill into a Hybrid Bill, and these are more than two.

Turning to Clause 35, the first Clause in this part of the Bill, certain sewerage authorities and sewers and sewage disposal works are dealt with. The authorities are to be dissolved in the near future, and the sewers and sewage disposal works are to vest in the Greater London Council. Those authorities cover a considerable part of the Greater London Council area, but not the whole of it. The part which they do cover is referred to in the same Clause as "the sewerage area of the Greater London Council"; and the broad structure of the Clause is to hand over the provision of main sewers and sewage disposal works to the Greater London Council and the provision of what I might perhaps call ancillary sewers to London boroughs.

There is even a provision for the

> ". . . power of the Common Council, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple to provide sewers . . ."

I do not know what they do about it, but there it is.

Then follows, in subsection (5), a provision which enables the Greater London Council, in effect, to annex adjacent sewers which go with the main sewers which pass to them by virtue of the first subsection of the Clause. The Council can make a declaration and take over such sewers as it thinks are required. Indeed, it is laid down as the duty of the Council that it should examine the whole matter and take action.

The point on which I rely is that subsection (5), as the operative subsection, is subject to one exception which recurs through the whole Clause. It is that nothing is to affect the property or the functions of the West Kent Main Sewerage Board. That Board, which receives this exceptional treatment—for, in the language of the subsection, it is exceptional treatment—is the sewerage authority which provides for the whole of one, and most of another, of the new London boroughs to be constituted under the Bill.

On page 89 of the Bill we find that Borough No. 19, which includes Beckenham, Bromley and other places, and most of the preceding borough No. 18, are served by the West Kent Main Sewerage Board. The result of these provisions is, therefore, that if the West Kent Main Sewerage Board had not been excepted its public sewers and sewage disposal works would have been vested in the Greater London Council and the boroughs respectively so far as the Greater London Council thought proper, having regard to its statutory duties.

It is now not allowed to deal with the West Kent Main Sewerage Board in this way and, therefore, its position, as indeed appears from the language of the Clause, is an exceptional one. This, of course, is not a mere matter of the technical property in this, that or the other sewer. It directly affects the rating powers and the exercise of those powers in the whole area. The effect may not be large, but it is there.

If one looks at Clause 36 which is entitled, "Expenditure on sewerage", and without going into detail, it is perfectly clear that the exclusion, the peculiar treatment given to this sewerage board in this way, must have some effect —though it is rather hard to see beforehand exactly what it is—on the finances of the sewerage authorities concerned, and ultimately on the rating authorities concerned.

I suggested a little time ago that two sewers might make all the difference. I am sure that the Minister will remember that they did make a considerable difference in 1955 when what is now the Rating and Valuation (Miscellaneous Provisions) Act, 1955, contained a number of various and wide provisions about rating generally all over the country and was unquestionably, in the form in which it came before the House, a public Bill; and, I should have thought, with no character of the hybrid Bill in it at all.

During the course of the passage of that Bill through this House, an undertaking was given on behalf of the Government to give exceptional treatment to two sewers. The position was that sewers were to be derated, and the effect of derating the two sewers, which were the London outfall sewers, would be considerable on the finances of the Metropolitan boroughs, on the one side, and the London County Council, on the other.

The London County Council was taken to be in occupation of the sewers, and, for this purpose, paid rates, which constituted a substantial source of finance, for instance, to the East End authorities. A great deal of pressure was put upon the Government in the House not to upset the finances of these authorities and to make things difficult for the East End boroughs, which, I think, were the ones principally dealt with here.

The Government gave an unqualified undertaking, but, when the matter came to another place, they broke it. They recognised it, but said it must be carried out some other way. Indeed, I believe that steps have been taken to that end. But the Government broke the undertaking to amend that Bill, and the reason they gave was that to have carried it out would have been to make that Bill a hybrid Bill. This was a case of two sewers, not all the sewers of the West Kent Sewerage Board, which may have been many more than two; and maybe they were two very large sewers, but still only two. This was in a Bill which not only dealt with sewers, because the sewers were dealt with only

[MR. MITCHISON.]

in two subsections of a miscellaneous Clause.

In regard to the other, I quote from HANSARD of 26th July, 1955:

"MR. HASTINGS asked the Minister of Housing and Local Government what steps he is taking to implement his undertaking"—

that is, the undertaking to which I have just referred, and the present Secretary of State for Commonwealth Relations, who was then Minister of Housing and Local Government, replied:

"It was unfortunately found that the inclusion in the Bill of the proposed Amendments to implement the undertaking would turn it into a hybrid Bill, and this would involve a lengthy procedure for which time is not available. It is, however, still the Government's view that the overground parts of these sewers should continue to be rated, and I am consdering how best that result might be served."

Then, later, the Minister said, at the top of column 980:

"We have taken the best possible advice, but we are not satisfied that, without stretching the constitution, it would be possible to deal with the matter other than by means of a hybrid Bill."—[OFFICIAL REPORT, 26th July, 1955; Vol. 544, c. 979-80.]

Therefore, I find it hard, and to my limited capacity it is impossible, to distinguish that case from that which we have to consider in relation to the West Kent Sewerage Board. Of course, the right hon. Gentleman had taken the best possible advice, and all I would say is that though that led to no ruling, it led to a distinct change of front by the Government and to a step which had a very marked effect, and it must surely be sufficient to raise doubt, which is all that I require to have this Bill sent to the Special Examiners.

I wish to mention two other points, and I apologise for taking the time of the House, but this is a matter of importance, and the Bill itself is important. First, there is the question of land occupied by local authorities for housing purposes. Under Clause 23, there is provision for a transfer of land held for housing purposes, and, where land is so held, it is to vest in the councils of the newly constituted London boroughs. These difficulties inevitably occur, as in the case of the West Kent Sewerage Board, on the boundaries of the area concerned.

In this case, the difficulty occurs in connection with land held by the Councils of the Borough of Epsom and Ewell and the Chigwell Urban District. These two local authorities are partly within the new Greater London Council area and partly outside it, and the result is that they get special treatment. Some land held for housing purposes is to pass to the newly constituted London boroughs, being land within the area of the Greater London Council, and some will not. The result will be to have an effect on those councils, on their rates and on their ratepayers, which is quite exceptional and derives from the fact that they are cut in two by the Bill. If being cut in two does not affect one's private interest, I do not know what does, and that is what is happening in this case.

Again, we cannot say what the effect will be. The authorities may be better off or worse off. One cannot say, in this case, as in the sewerage case, exactly how it would work out, so there is room for doubt whether this comes within a hybrid Bill, so far as it relates to private interests.

There is one other instance which I shall mention shortly. This is a very complicated and long Bill. Nobody will deny that. I have said nothing, in speaking to this point of order, about its merits, but it is very odd indeed that when one looks at the City of London and the Middle Temple, one finds that throughout the Bill they are having treatment which appears at first sight to be very special. Some of it may depend on their existing statutory position, and I would not deny that, though I am not sure that all of it does. Perhaps the simplest way of looking at it is to look at Clause 69 (1), where there is a provision about the equalisation of rates, under which the Minister may make a scheme for the purpose of reducing the disparity in the rates levy in certain areas other than the Temple.

It means something. It could mean much, it may mean little; but this question of the position of the Temples, and, for that matter, the City of London, raises doubt whether private interests are affected. When I refer to private interests, I am not talking about the interests of private individuals, but the interests of the public or local authorities. In the case of the two sewers and the Minister, if I may so refer to it, the parties concerned were, on the one hand, the London County Council, and on the other, a number of London boroughs. In one sense of the word, there is no life in any of them; in another, they have a full and vigorous Parliamentary life, until somebody abolishes them one day.

This is the kind of thing which it is intended to protect by this provision relating to Hybrid Bills, and I respectfully submit that this is a case where there is, at least, some doubt, and that the matter should be referred to the examiners.

Mr. Speaker: I should like to begin by thanking the hon. and learned Member for Kettering (Mr. Mitchison), not only for the careful and pleasant way in which he has made his objection now but for coming quite a long time ago, with the hon. Member for Fulham (Mr. M. Stewart), to warn me of the substance of this argument, and my advisers, so that we might have time to consider it as best as we could.

I do not think that I need quarrel at all about definitions with the hon. and learned Member. I accept the true position to be this, that if it be possible for the view to be taken that this Bill is a Hybrid Bill it ought to go to the examiners. There must not be a doubt about it.

I will try to follow his order as much as I can. I do not think, frankly, that the relevant Standing Order applies to this Bill as *prima facie* hybrid. On the wide ground that the hon. and learned Member was urging, in the light of precedent by which I am guided, I think that a Hybrid Bill can be defined as a public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class. But I am afraid that the precedents relating to Bills affecting local government of the whole of London and those which relate to Bills on the metropolitan sewers would prevent me from ruling that this Bill is *prima facie* hybrid by reason of the presence of Part V in it.

Indeed, it is plain that our practice has admitted sewerage as having the very metropolitan character that the Police have so as to make it properly the subject of a Public Bill. An instance of it being so regarded is the Metropolitan Local Management Act, 1855, part of which dealt with that very topic. Further, sewerage necessarily falls within the scope of public policy dealt with by this Bill. Indeed, by the Bill the authorities at present charged with the functions relating to sewerage would largely disappear. It is, in the words of the hon. and learned Member, essentially part of local government.

What this Bill is doing is dealing with the whole structure of local government and the exercise of all local authority functions in Greater London. Sewerage is by statute a local authority function imposed here, either by the Public Health Act, 1936, or by Part II of the Public Health (London) Act, 1936, on the local authorities. The fact is that on this principle London sewerage has previously been treated as a matter which can be dealt with by a purely Public Bill without any sort or kind of complaint or hint of hybridity.

I think that the first stab into that principle which the hon. and learned Member attempted was the footnote on page 1 of the evidence given before the Select Committee. Were this a matter of water it may well be that we should regard it the same way as another place regarded the matter then, namely, that when the Bill, by amendment, was confined to London that Bill, relating to water supply, became a Hybrid Bill. It might be so, but whatever the reason may be, it is quite clear that our practice in this field distinguishes between public utilities, like water, gas, transport, electricity, and local government and local government functions.

I can only guess at what the reason is. It may be that by and large you need not have gas if you do not want it, or electricity if you do not want it, but you must use the sewerage. To make good my point at a glance, if hon. Members look at Erskine May they will find the two notes on page 870. One is under (*d*) and another under (*e*). The (*d*) Bills are the ones which managed their life happily as Public Bills without hint of hybridity, and the (*e*) Bills are the ones dealing with water and gas.

I am not unduly frightened off my line of thinking by the footnote on page 1 of the evidence before the Select Committee. It is true that I did privately

[MR. SPEAKER.]
rule this Bill in its previous form as hybrid. I did it in relation to the provisions relating to the Metropolitan Water Board on grounds which in no way deal with the matter I am now ruling about, or my views about that.

The next narrower objection of the hon. and learned Member's is based on Clause 35, the argument being that that Clause treats the West Kent Main Sewerage Board differently from the three sewerage boards which are dissolved by subsection (1), but in my view there is no question here of singling out a sewerage board for special treatment within a category of sewerage board to which it belongs. This is the problem—I forget the exact words the hon. and learned Member used just now—it is the in and out problem. What happens on the boundaries of an area one is legislating about? All the boards serving areas wholly or mainly within and having their disposal works or outfalls within Greater London are dealt with in exactly the same way by this Bill.

The East Kent Board is quite different. Half of its area will remain in Kent if the Bill becomes law and the sewerage of the area is purified at works which will lie outside Greater London under the Bill and fall into the Thames at a point which will be outside Greater London under the Bill. For this reason I cannot regard the exclusion of the West Kent Main Sewerage Board by subsection (8) of that Clause as making the Bill *prima facie* hybrid.

I turn to the hon. and learned Member's two sewers case, in which I suspect he participated. I should have shared the fears of the Government of the day that, had they imported into the Bill the amendments they were contemplating, the Bill would have been ruled by my predecessor, if necessary, hybrid, because what the Bill would have done —not, indeed, with the two great outfall sewers but with parts of those sewers— would have been to except as against the category of all the sewers in England parts of two sewers from the exemption from rating. I cannot help feeling that that would be a way of singling them out in a wholly different way from the treatment of the West Kent Main Sewerage Board, which has its works and outfalls outside Greater London. In that case, I cannot regard the 1935 Act as a precedent helping me in what I have to decide here.

The remaining matters that the hon. and learned Member mentioned were the provisions of Clause 23, but those are a different problem. In connection with this Clause, he used the expression that it looks as though the Council of the Borough of Epsom and Ewell, on the one hand, or Chigwell Urban District Council, on the other, were being singled out of the whole category of local authorities for some kind of benevolent and special treatment, but this is not so, I think that if hon. Members look at the facts they will see that those two local authorities are the only two of which a part will lie within Greater London under the Bill. So they are not treated specially within a category, but in the same way inside their own special category.

I think that the only other matter the hon. and learned Member mentioned was the Inner and Middle Temples, but I do not think that this vitiates my Ruling. They are, inside the Bill, treated as though they were local authorities, as, indeed, for some purposes they are. I do not think their treatment makes the Bill *prima facie* hybrid.

Mr. Marcus Lipton (Brixton): Further to the point of order raised by my hon. and learned Friend the Member for Kettering (Mr. Mitchison). There is no doubt, Mr. Speaker, that you have given the most careful consideration to the possible hybridity of the Bill in all its aspects. May I very respectfully submit for your consideration Clause 81 of the Bill, which provides that any local Act for the time being in force in any part of London may be modified.

I am wondering whether, in the course of your consideration of the points raised by my hon. and learned Friend, you have also satisfied yourself that no action taken by the Minister under this Clause could possibly affect or deal with any private interest in such a manner as to make the Bill a Hybrid Bill.

It is unfortunate that no hon. Member has available to him all the local Acts for the time being in force in any part of Greater London. They are not even available to hon. Members in the Library of the House. No doubt it will be possible for this information to be made

available to hon. Members, but in the meantime, Mr. Speaker, I ask you to indicate whether your investigations have included this point and whether you are satisfied that Clause 81 does not, in fact, make it a Hybrid Bill in that connection.

Mr. Speaker: The hon. Member will understand that I cannot for this purpose examine things which the Minister might do at some future time. I have to take the Bill as it is, and on that basis Clause 81 does not involve any evident hybridity. May I suggest to the House, in no sense of vanity, that I have of necessity had to give rather a long Ruling and that it might be profitable if we read it before we argued about it. We have a lot to do.

4.31 p.m.

The Minister of Housing and Local Government, and Minister for Welsh Affairs (Sir Keith Joseph): I beg to move, That the Bill be now read a Second time.

This is the first Bill to deal with the structure of London local government in any major way since 1899. The Bill has two main features—the creation of an overall authority to meet needs which by their nature are needs of Greater London as a whole, and the setting up of a substantially uniform system of borough administration for all other purposes.

The Bill gives effect to the general policy for London local government set out in the 1961 White Paper, as amplified by later statements by my predecessor on the borough groupings and on the educational arrangements for the central area. It is, of course, part of the general scheme of local government review which is now in hand over the whole of England and Wales, the only difference being that instead of a review by a Local Government Commission under the 1958 Act, followed where necessary by a ministerial Order, there has been the even fuller treatment of a Royal Commission, followed by a White Paper, followed by parliamentary debates on the White Paper, and now a Bill.

All organisations, public and private, need reviewing from time to time so that they may be adapted to changing conditions. That, I think, is agreed on all sides. In England and Wales generally, the structure of local government has been practically unchanged since the last century. Meanwhile, the population has grown from 31 million to over 50 million. Villages have become towns, small towns have become big towns, and in the great centres of industry and commerce, whole communities which used to be distinct have merged together. Meanwhile, more and more has come to be expected of local government with the emergence of social services and with the widening of ideas and practice in the scope and purpose of local government. Local government today, in fact, traces paths undreamed of when the present structure was established.

It is also agreed that London has not escaped these trends. The population of Greater London in 1881 was nearly 5 million, of which just under 4 million lived in what was, in 1888, to become the administrative county of London, the L.C.C. area. By 1961, the Greater London population had grown to over 8 million, while the population of the L.C.C. area had declined to just over 3 million. In other words, authorities established at the end of the nineteenth century have had to assume much wider responsibilities over an area which has greatly developed and which has become steadily more congested.

As a result of this and other factors, London government at present has structural complexities which, to put it at the very least, do not help effective administration. It has a number of distinct systems of local government. In the centre, the L.C.C., with many of the powers of a county borough, shares the duty of providing local services with 28 metropolitan borough councils and the Common Council of the City. The metropolitan borough councils, despite their size, have responsibilities and powers which are considerably less than those of most non-county borough and urban district councils over the rest of the country. In Middlesex, great boroughs have grown up, some of them struggling for county borough status but continually denied it in the interests of some comprehensive reorganisation of the whole metropolitan area.

Outside London and Middlesex, the metropolitan fringes, also containing

STATEMENT OF REASONS FOR THE CERTIFICATE FROM THE EXAMINERS

We have based our inquiry on the well-known statement by Mr. Speaker Hylton-Foster on the Bill for the London Government Act 1963:

> "I think that a hybrid Bill can be defined as a Public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class."

This definition, taken at its face value, indicates what might have been thought to be obvious, that the doctrine of hybridity is an expression of the will of each House of Parliament that an individual singled out by a Public Bill for adverse treatment should be allowed to plead his cause to a Select Committee on a petition against the Bill or against those provisions of the Bill that will affect him. The doctrine was designed to give the minority some defence against the legislature; and that in modern times means defence against the Crown. Unless it is that, it is nothing.

Yet this defence has been eroded by two Speakers' rulings, the first given before, and the second given after, Mr. Speaker Hylton-Foster's ruling. Before discussing these rulings, it is right to call attention to the difficulty of applying the Hylton-Foster definition to any particular Bill. Every person or body is a member of a category or class of persons or bodies and every category or class of persons or bodies is a member of a wider category or class of persons or bodies. Therefore, the answer to the question whether a Bill is hybrid on the Hylton-Foster definition depends on where you draw your category or class. The two rulings we have referred to are that of Mr. Speaker Clifton-Brown on the Bill for the Iron and Steel Act 1949 and that of Mr. Speaker King on the Bill for the Iron and Steel Act 1967. The effect of both of them is that the category or class that is relevant is the one selected by the promoters of the Bill. In other words, the defences of the subject against selective ill-treatment can be turned by drawing a category or class that comprises him and his fellow victims and nobody else.

We therefore conceive ourselves effectively prohibited by the rulings of Mr. Speaker Clifton-Brown and Mr. Speaker King from finding that the Aircraft and Shipbuilding Industries Bill is inherently hybrid, that is to say that we cannot in the light of those rulings find that the class of companies whose securities are to be taken into public ownership is described with such particularity that it is itself a selection from a wider class of companies. We are prohibited, not because we as officers of the House of Lords are formally bound by decisions of the Speakers of the House of Commons, but because it would be, to say the least, inconvenient if the two Houses developed different doctrines of hybridity.

It is still open to us to find that this Bill is hybrid according as we answer the arid questions whether all the companies named in Part I of the Second Schedule to the Bill are within the category or class set out in Part II of that Schedule and whether any company within that category or class is not named in Part I. If Part I and Part II of the Second Schedule are not congruent, the Bill is hybrid. This is because—

(*a*) if a company is named in Part I but is outside the category or class defined in Part II, it is singled out from its own category or class; and

(*b*) if a company within the category or class defined in Part II is nevertheless not named in Part I, the companies named in Part I are within a category or class not all of whose members are subjected to nationalisation.

We deal later with the Government's suggestion that a category or class other than that described in Part II is appropriate to the list in Part I.

It is widely supposed that the Bill is to nationalise the aircraft manufacturing industry and the shipbuilding industry. This is far from the truth. The long title of the Bill refers to "certain companies" engaged in those industries, and, so far as the shiprepairing industry is concerned, and that is the industry that our examination has been almost exclusively concerned with, the Bill is notably selective. Out of the ninety or so shiprepairing companies, the Bill would bring into public ownership twelve companies named in the Second Schedule as shiprepairing companies, and about six more shiprepairing companies which are on the list in that Schedule of shipbuilding companies and presumably fulfil the criteria appropriate to such companies. If, therefore, we were free to apply Mr. Speaker Hylton-Foster's ruling to the shiprepairing nationalisation proposed by the Bill, but without taking Mr. Speaker King's ruling into account, we should be forced to find it hybrid, whether we were to treat the "category or class" as comprising the "companies engaged in shipbuilding and allied industries" mentioned in the long title or as comprising those engaged in the shiprepairing industry. It was only by devising a class as tight as that described in paragraphs 1 and 3 of Part II of the Second Schedule to the Bill that the Government could hope to avoid hybridity. How tight that class is can be seen by a study of those paragraphs and of the definitions of "group of companies" and "subsidiary" in clause 56(1).

One of the main arguments advanced by those who appeared before us in support of the proposition that the Bill is hybrid (whom we shall refer to as "the memorialists") was that many shipowning companies fitted the description in paragraph 1(*b*) of Part II of the Schedule as companies that "fulfilled the criteria" in paragraph 3 of that Part as shiprepairing companies, in that they fulfilled, among other criteria, that of being engaged on the 31st July 1974 in the business of repairing, refitting or maintaining ships in spite of the fact that the ships were their own. The Government has all along resisted this contention. In his answer of 14th October 1976 to a question asked by Lord Colville of Culross, Lord Peart said:

> "The Government are satisfied that a person who does repair or other work only for himself, such as a shipowner carrying out his own repairs or maintaining his own ships, is not 'engaged in the business of repairing, refitting or maintaining ships.' A good analogy would be a hotel company which launders its own linen; no-one would say this would make the company into a company engaged in the laundry business."

It was pointed out to us that the hotel analogy would have been better had it said "would make the company into a company engaged in the business of laundering linen".

We are thus invited to find that the Bill is hybrid because, although the shipowning companies are for the most part not within the list of shiprepairing companies contained in Part I of the Second Schedule, they fulfil the conditions in Part II of that Schedule. This issue, above all, shows the unreality and artificiality of what we have been inquiring into. We are aware that Mr. Speaker King, in ruling that the Bill for the Iron and Steel Act 1967 was not

hybrid, declined to speculate on the reason why the class devised for that Bill was selected; but in the case before us there was no occasion to speculate because both Mr. Gamon, the Government Agent, and Mr. McDonald, whom he called as a witness from the Department of Industry, made it abundantly clear that from the beginning the Government was aiming, not at the ship-repairing industry, but at a carefully selected list of companies engaged in that industry. The risk of hybridity was therefore immediately apparent, and we are entitled to assume that Parliamentary Counsel endeavoured to draft Part II of the Second Schedule so as to enable the Government to avoid hybridity by availing itself of Mr. Speaker King's ruling, that is to say, by devising a category or class into which the twelve companies could be fitted, but no others except those included in the list of shipbuilding companies. The Government was fully entitled to do this, as other Governments have in the past; but the effect of such tactics is remarkable, because the right of any of the twelve companies to plead its cause before a Select Committee depends, not on any consideration of the rights of the subject, but on the success of Parliamentary Counsel in so drafting the Schedule that Parts I and II cover exactly the same twelve companies; and indeed we had evidence that Part II was altered in the draft Bill stage of the original Bill, both on the dry-dock qualification and on the turnover qualification, to admit or exclude individual companies.

Moreover, when we turn to the question whether shipowning companies are also shiprepairing companies for the purposes of the Bill, the answer is "No" because those companies are not named in Part I of the Schedule. But that is not the question we have to answer. What we have to answer is the artificial question whether shipowning companies which repair their own ships fulfil the criteria in paragraph 3(1)(*a*) of Part II of the Schedule as shiprepairing companies. Mr. Gamon strongly urged us to have regard to the intention of those who framed the Bill; but this leads us nowhere. The intention of those who framed the Bill was to exclude the shipowning companies or most of them; and this, of course, the Bill will achieve, not by reference to the long title or to the language of paragraph 1(*b*) of Part II, but by the list of companies in Part I. We find that many of the shipowning companies did repair their own ships.

Whether it follows from this that the shipowning companies which repaired their own ships were "engaged in the business" of repairing ships is an evenly balanced question. To find that they were not so engaged involves some absurdity having regard to the case of Clyde Wharf Ltd., a subsidiary of Sugar Line Ltd., which until the end of March 1973 was repairing ships belonging to Sugar Line. On 31st March 1973, Clyde Wharf ceased to trade and transferred its shiprepairing section to Sugar Line together with the workforce, plant and machinery used in that section. Before the transfer Clyde Wharf was certainly engaged in the business of repairing ships. Can it therefore reasonably be held that immediately after transfer Sugar Line was not engaged in that business because its main business was the owning of ships? We nevertheless find that, in ordinary parlance, to be engaged in business connotes making, or attempting to make, a trading profit.

But the element of trading profit is more evident in the analogous case of companies such as Athel Line Ltd., Royal Mail Lines Ltd., Houlder Brothers Ltd., Manchester Liners Ltd. and Shaw Savill & Albion Ltd., which were managing ships belonging to other companies. We were told that a management contract invariably requires the manager to maintain the ship and generally

requires him to repair the ship. As a rule small repairs are done by the manager's employees at sea or in port; larger repairs are carried out by ship-repairers. The five companies mentioned above are relevant, not because it was suggested that they should be in the Bill, but because, in the case of Athel, its turnover would, it was submitted to us, have required Richards (Shipbuilders) Ltd., and, in the other cases, their turnover would have required Manchester Dry Docks Ltd., to be included in the Bill as shiprepairing companies. All five companies sometimes repaired their managed ships with their own work-force and equipment. There is thus a strong argument for the proposition that a company that contracts with a shipowner to manage his ships and, as an element of management, to maintain them and repair them as occasion demands with the manager's workforce and equipment is "engaged in the business of repairing, refitting or maintaining ships". Is the managing company then nevertheless engaged in the business of managing ships or can it be said to be engaged in the business of managing and the business of repairing or maintaining? With some difficulty, we have come to the conclusion that the management of ships does not involve the manager in the business of maintaining or repairing ships.

It was submitted to us that the Westminster Dredging Company, though not listed in Part I of the Second Schedule, was engaged in the business of repairing, refitting or maintaining ships within the meaning of paragraph 3(1)(*a*) of Part II of the Schedule because it was engaged in repairing not only its own ships and ships chartered by it but also ships of other companies. On 7th June 1972, the company wrote to the general manager and engineer of the Port of Preston Authority in these terms:

> "We have now leased from the Mersey Docks and Harbour Company both No. 1 and No. 3 Birkenhead Drydocks. You will probably know that we maintain our own vessels utilising our workshops both at Bromborough and adjacent to the drydocks.
>
> For many years we have virtually monopolised No. 1 drydock for our own vessels and this utilisation, together with third party vessels using No. 3 dock, leaves us with about 70 per cent. spare capacity.
>
> Since 1st May 1972 we have been hiring the dock to shiprepairers who also carry out their own repairs, but we would also like to make maximum use of our workshop facilities. It is for this reason we are writing to ask if you would allow us to quote for drydocking and repairs on your vessels which drydock regularly in the Port of Liverpool.
>
> We would like to think that, apart from our large stocks of materials and parts (peculiar to dredgers), we have also accumulated a great deal of specialised knowledge, and hope therefore we may be of some assistance."

The Company was from June 1972 until about May 1975, and certainly at the end of July 1974, repairing ships that were not owned or chartered or managed by the company, including ships belonging to the Preston Port Authority. There is some dispute between the memorialists and the Government about the number of ships repaired for outsiders during this period. We find that there were seven or eight. This repair work was a small portion of the company's total business, which consists of dredging and land reclamation. The turnover of the company in the financial year ended 31st December 1974 was £21 million, whereas the turnover of the company so far as it related to repair work undertaken for outside companies was from May 1972 to December 1975 inclusive not more than £47,305.

It was submitted to us that the London Graving Dock Company Ltd., though included in Part I of the Second Schedule to the Bill, did not fulfil the criteria of paragraph 3 of Part II of that Schedule. That company in the year in which 31st July 1974 fell was acting purely as a holding company, one of whose subsidiaries was London Graving Dock Ship Repairs Ltd. Though the parent company has for most of the time been the one selected by the Government for nationalisation, there was a time in the spring of 1975 when both the Government and the directors of the companies were in serious doubt whether to select the parent or its subsidiary. It was the view of the directors that neither the parent nor its subsidiary in isolation appeared to fulfil the criteria specified in paragraph 3 of Part II of the Second Schedule ; but the Government had no doubt that taken together the two companies and the companies in the same group engaged in shiprepairing fulfilled those criteria. After prolonged negotiations between the Government and the directors, it was decided by the Government with the approval of the directors to list the parent company in Part I ; but the involvement of the parent company in the business of repairing, refitting or maintaining ships was tenuous and depended on a contract with Trinity House which was entirely subcontracted to London Graving Dock Ship Repairs Ltd. A note by Mr. Walker of the Department of Industry of a meeting on 10th April 1975 between the Department and the directors suggests that there may have been other long-term contracts ; but we have no evidence about their content. The parent company's turnover for the relevant financial year, which is that ended 31st March 1973, was over £5 million, being the consolidated turnover of the company and its subsidiaries. At the end of March 1973 the company ceased to carry out shiprepairing, but retained its fixed assets. Though it employed some 200 persons some of whom were engaged in shiprepairing, its turnover for the year ended 31st March 1975, the year in which 31st July 1974 fell, was nil. All the practical work including administration work on the parent company's contracts was performed by London Graving Dock Repairs.

We deal next with J. B. Howie Ltd. and Western Shiprepairers Ltd. Both these companies were on 31st July 1974 engaged in the business of repairing, refitting or maintaining ships. Both companies were entitled to an interest in possession in, or a licence to occupy, a dry-dock or a graving dock within the meaning of the Second Schedule, Part II, paragraph 3(1)(*b*). The Department of Industry was informed by letter dated 30th September 1976 from Messrs. Ashurst, Morris, Crisp & Co., solicitors to the Laird Group, that in the " relevant financial year", i.e. that ended 31st December 1972, Howie did not trade and Western had a turnover of £1,735,243, so that neither qualified for the £3·4 million turnover which by paragraph 3(1)(*c*) is made a condition for takeover. Cammell Laird (Shiprepairers) Company Ltd. was, however, a member of the same group ; and that company in the same relevant financial year had a turnover of more than £5 million. That company was on 31st July 1974 a member of the Laird Group to which Howie and Western belonged and accordingly its turnover could be reckoned with the turnovers of Howie and Western if, but only if, on 31st December 1972 it was " engaged in the business of repairing, refitting or maintaining ships " as required by subparagraphs (1)(*a*) and (2)(*b*) of paragraph 3. Messrs. Ashurst, Morris, Crisp & Co. have informed the Department of Industry that on 31st July 1974 Cammell Laird (Shiprepairers) Ltd. had a contract with the Venezuelan navy for the refitting of two destroyers and a contract with the Peruvian Government for the refitting of two other destroyers. These two contracts were entered into before 1972. Cammell Laird (Shiprepairers) Ltd. had sold their assets to the Laird Group in 1972 and

the work on the Venezuelan and Peruvian contracts had been sub-contracted to Cammell Laird (Shipbuilders) Ltd. and Western Shiprepairers Ltd. Cammell Laird (Shiprepairers) had no employees, it had no interest in possession in a dry-dock or graving dock and had no other fixed assets. There is some evidence that the directors of Cammell Laird (Shiprepairers) Ltd. continued to supervise the Venezuelan and Peruvian contracts. We find that on 31st July 1974 Cammell Laird (Shiprepairers) Ltd. was a member of the same group of companies as J. B. Howie Ltd. and Western Shiprepairers Ltd. and that on 31st December 1972, the end of the relevant financial year, it was still marginally engaged in repairing, refitting or maintaining ships, and that therefore its turnover may be aggregated with those of J. B. Howie Ltd. and Western Shiprepairers Ltd.

We now turn to the case of Humber St. Andrews Engineering Company Ltd. That company was on 31st July 1972 repairing the Esquimaux and the Emerald in a dry-dock at Hull owned and operated by the British Transport Docks Board. The Esquimaux was owned by British United Trawlers (Hull) Ltd. and managed by Hellyer Brothers Ltd., and the Emerald was owned by Hellyer. The three companies, British United Trawlers (Hull) Ltd., Hellyer and Humber St. Andrews were members of the same group. Humber St. Andrews had a turnover in the relevant financial year exceeding £3·4 million and was agreed to be engaged on 31st July 1974 in the business of repairing ships. In an answer given in the House of Lords on 14th October 1976, Lord Peart said that neither Hellyer Brothers, who booked the dry-dock, nor Humber St. Andrews, who was doing the repairs, was entitled to a licence to occupy the dry-dock. What does the phrase " entitled to a licence to occupy a dry-dock " mean? It must be something less than " an interest in possession in a dry-dock " which is the other dry-dock qualification imposed by paragraph 3(1)(*b*) of Part II of the Second Schedule to the Bill. We would expect it, on the other hand, to be something more than the occupation of a dry-dock in pursuance of a booking by the owner, charterer or manager of a ship occupying the dry-dock. No evidence has been given to us of any intermediate " licence " between an interest in possession and occupation under a booking from the dock-owner. We find that Hellyer Brothers Ltd. occupied the dry-dock on 31st July 1974.

We are thus presented with the question whether the Bill is hybrid—

first, because of the omission of Westminster Dredging Company notwithstanding that on 31st July 1974 it was engaged in the business of repairing ships, albeit in a small way ;

second, because of the inclusion of the London Graving Dock Company notwithstanding that its shiprepairing business on 31st July 1974 was minimal ;

third, because of the inclusion of J. B. Howie and Western Shiprepairers notwithstanding that on 31st July 1974 the shiprepairing business of Cammell Laird Shiprepairers, by virtue of whose turnover those two companies are included, was minimal ;

fourth, because of the exclusion of Humber St. Andrews Engineering Company on the ground that their work in a dry-dock on 31st July 1974 did not amount to an entitlement to a licence to occupy it.

It has been urged on us on behalf of the Government that we should not concern ourselves with such trivialities ; and we agree with the Government that they are indeed trivialities. We go further and say that they have little bearing on the underlying question whether any of the companies selected by the Bill

for nationalisation, and especially the twelve shiprepairing companies, should be allowed to present their case to a Select Committee of the House.

It is at this point that the fundamental issue of this examination presents itself. We share the view expressed on behalf of the Government that it is grotesque that the constitutional right of a subject to plead his cause before a Select Committee of the House of Lords or the House of Commons should depend on the answers to the kind of questions we have just mentioned. Mr. Gamon, perhaps anticipating that the shiprepairing activities of Westminster Dredging Company might compel us to find that that company was engaged in the business of repairing ships within the meaning of Part II of the Schedule, though not listed in Part I of the Schedule, suggested that we should look beyond the class described in paragraphs 1 and 3 of Part II of the Schedule to an unexpressed class, described by him as the "genuine class", of companies which are to be nationalised as shiprepairing companies. He contended that the Government sought to bring into public ownership a genuine class of eighteen or so major shiprepairing companies and that Westminster Dredging Company, for instance, could not in ordinary parlance be described as a shiprepairing company at all. It was almost exclusively engaged in dredging and land-reclamation. But one must assume that those who framed the Bill shrank from a bare naming of the shiprepairing companies that the Government wanted to take, with or without some such description of them as "the major ship-repairing companies", because to do so would be to make a naked selection and so hybridise the Bill. So they employed the device adopted in the two Iron and Steel nationalisation Bills and blessed by the rulings of Mr. Speaker Clifton-Brown and Mr. Speaker King. That device, as we have said, was for the promoters to draw a class that would comprise the selected companies and no others. That is the way the Government has chosen to play it. The fact that the class has been so drawn as to include a company that the Government did not intend to include does not justify us in ignoring the stated class and relying on the unexpressed "genuine" class. To do so would amount to finding not only that clause 19(2) and the Second Schedule were ineffective but to substituting something for them that would itself hybridise the Bill.

We find that the Bill is hybrid in respect of the omission of the Westminster Dredging Company. We find that the Bill is not hybrid with respect to the inclusion of the London Graving Dock Company, J. B. Howie and Western Shiprepairers and the exclusion of Humber St. Andrews.

It will be seen that the minor shiprepairing business of Westminster Dredging Company, a company outside Schedule II, is balanced by the minor shiprepairing businesses of London Graving Dock Company and Cammell Laird (Shiprepairers) which have brought London Graving Dock and J. B. Howie and Western Shiprepairers within Schedule II.

There is another matter which raises the question of hybridity. In the Bill for the Iron and Steel Act 1967 the ruling of Mr. Speaker King, to which we have already referred, was to the effect that the description contained in that Bill of the companies selected for public ownership formed an adequate class if the description was germane to the subject matter of the Bill. It is not clear whether by this he meant germane to the Iron and Steel Industry or germane to the companies selected out of that industry for nationalisation. We think he meant the first. It was submitted to us that the condition in paragraph 3(1)(*c*) of Part II of the Second Schedule to the Bill is not germane to the shiprepairing industry. Paragraph 3(1)(*c*) deals with turnover and requires that

the aggregate turnover of the company concerned and of its associated ship-repairing companies must have exceeded £3·4 million in order to qualify for nationalisation ; but the turnover is not confined to turnover in the shiprepairing business and, in one company at least, the Humber Graving Dock and Engineering Company, some 40 per cent. of the turnover required by the Bill was turnover in respect of business that was not the business of shiprepairing. In other words the Government has decided, in the case of this company, to bring it into public ownership by reason of its size, but not solely by reason of its size as ship-repairers. We find that the Bill is hybrid in that the condition of turnover is not germane to the subject matter of the Bill so far as it relates to the shiprepairing companies.

It is also our duty to decide whether the Bill is or is not hybrid in respect of the aircraft manufacturing industry and in respect of the shipbuilding, marine diesel engine and training industries. We have received virtually no evidence about these ; but we accept Mr. Gamon's assurance that, as far as he knows, there is no incongruity between Parts I and II of the First Schedule and Parts I and II of the Second Schedule so far as they relate to the shipbuilding, marine engine and training industries. We accordingly find that the Bill is not hybrid on account of any such discrepancy.

Having pronounced our finding, we would add this. We are conscious of the fact that important sections of industry are waiting for Parliament to decide whether, and to what extent, nationalisation of certain companies is to proceed. We are also conscious of the fact that, since this Bill is introduced with the certificate from the Speaker pursuant to section 2(4) of the Parliament Act 1911, the House of Lords will be unable in all probability to give effect to any Petitions against the Bill. Nevertheless, we have to do our best to decide whether the memorialists and other parties affected by the Bill should be given an opportunity to plead their case before a Select Committee of the House.

We have not investigated to any great extent the origins of the rules of both Houses regarding hybridity. We are however convinced that they were designed by both Houses to ensure that the subject should have a right to plead his cause before them if he could show that their legislation would put him to greater disadvantage than it would put his fellows. Parliament has, in other words, been careful to protect the individual from the majority, from the power of the state, or, if you prefer it, from the power of the Government.

As we have indicated above the rulings of Mr. Speaker King and his predecessor, Mr. Speaker Clifton-Brown, have, we think, almost completely lost sight of the fundamental purposes of the hybridity rule. Governments are naturally very reluctant to submit major decisions of policy to the judgment of Select Committees, whether they be Committees of the House of Commons or Committees of the House of Lords. They therefore take great pains to have their Bills drafted so as to avoid hybridity. We have already expressed our opinion that whether a Bill is or is not hybrid has degenerated into a question whether the Parliamentary Counsel who draft Bills for the Government have been successful in drawing a class into which the undertakings intended for nationalisation can be fitted and which excludes the undertakings that the Government does not wish to nationalise ; and it is curious that the answer to the question whether a constitutional right of such importance as the right of a subject to plead his cause before Committees of either House might depend on the opinion of officers of the House about the meaning of such phrases as " engaged in the business of repairing, refitting or maintaining ships " and " entitled to a licence to occupy a dry-dock or graving dock ".

The draftsman of this Bill was assigned an impossible task. It was difficult enough for him to make Part II of his Second Schedule cover all the companies in Part I; but when it came to ensuring that no other company fulfilled the conditions in Part II, he had to rely on such information as the Government could glean from sources that were not always sympathetic. Had he had the knowledge available to us, he would in all probability have succeeded. As it was, that knowledge was denied him, and the attempt failed.

Printed in England by Her Majesty's Stationery Office at St. Stephen's Parliamentary Press
397903 Dd 293722 K16 2/77