

Background papers 1



Overview and Scrutiny Committee

Mon 13 Dec
2021
6.30 pm

Council Chamber
Town Hall
Redditch

REDDITCH BOROUGH COUNCIL

*making
a
difference*

www.redditchbc.gov.uk

**If you have any queries on this Agenda please contact
Jo Gresham**

**Town Hall, Walter Stranz Square, Redditch, B98 8AH
Tel: (01527) 64252 (Ext. 3031)
e.mail: joanne.gresham@bromsgroveandredditch.gov.uk**



Overview and Scrutiny

Monday, 13th December, 2021

6.30 pm

Council Chamber Town Hall

Agenda

Membership:

Cllrs:

Debbie Chance
(Chair)
Jennifer Wheeler
(Vice-Chair)
Salman Akbar
Karen Ashley
Michael Chalk

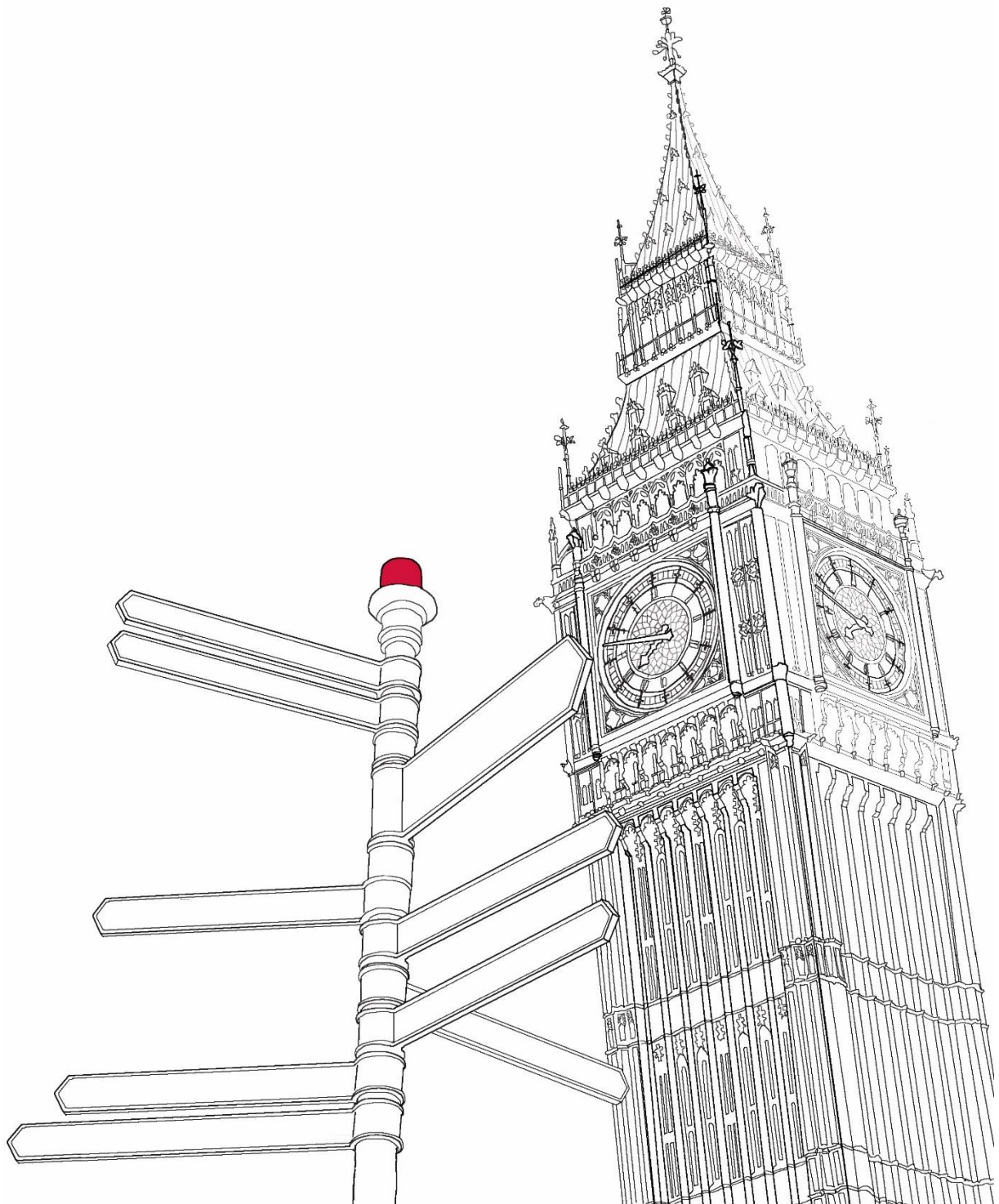
Brandon Clayton
Alex Fogg
Julian Grubb
Lucy Harrison

4. New Cemetery Provision - Pre-Scrutiny (Pages 1 - 16)

This page is intentionally left blank

REDDITCH BOROUGH COUNCIL

Proposals for a Private Bill | September 2020



CONTENTS

INTRODUCTION	3
BDB PITMANS AND OUR PRIVATE BILL EXPERIENCE	3
PROPOSED TEAM AND BACK UP	4
FEES Our fees Disbursements and third party costs	6
APPENDIX 1 Promotion of Private Bills – summary and key considerations	8
PRINCIPAL STAGES IN A PRIVATE BILL PROMOTION	9
AN OPTIMISED PROGRAMME	10
KEY CHALLENGES Justification and expediency Political objection Stakeholder objection and petitions Procedural delay Procedural non-compliance Additional provisions	11
FURTHER PARTICULARS OF OUR WORKSTREAMS	13

INTRODUCTION

We at BDB Pitmans are delighted to have the opportunity to act for Redditch Borough Council in relation to the potential promotion of a Private Bill.

We understand that the primary purpose of the Bill would be to obtain powers to optimise burial space within the cemeteries in Redditch, so that they can offer burial in a sustainable manner for the foreseeable future. These powers would be similar to those already available to London local authorities, which we recently obtained for New Southgate, a private cemetery, and are currently in the process of obtaining for Highgate Cemetery

We believe that our capacity to deal with these issues is unique among Parliamentary Agents as we have unmatched experience promoting Bills for cemeteries. We are confident that we can offer you the most attentive, commercial and politically aware service and the best value for money. We very much look forward to doing so.

BDB PITMANS AND OUR PRIVATE BILL EXPERIENCE

BDB Pitmans LLP incorporates the former parliamentary agency practices of Dyson Bell & Co, Martin & Co, and Bircham & Co. We have practised as parliamentary agents as well as solicitors for around 250 years. Our experience in relation to local legislation for burial grounds is unrivalled amongst Parliamentary Agents. We were, of course, instructed on the last Private Bill relating to cemeteries to go through Parliament – ie the New Southgate Cemetery Bill, now the New Southgate Cemetery Act 2017, and are instructed on the only cemetery Private Bill currently going through Parliament (the Highgate Cemetery Bill)

There have been relatively few Private Bills in recent years and fewer still concerned with cemeteries. Those enacted in the last 30 years include the following (the Acts highlighted in bold being Acts that we promoted):

- **New Southgate Cemetery Act 2017;**
- **Allhallows Staining Church Act 2010;**
- London Local Authority Act 2007, section 74 (power to disturb human remains); and
- **Woodgrange Park Cemetery Act 1993.**

We also acted for, amongst others, the Representative Body for the Church in Wales in the 1990s in seeking new burial ground legislation and for the promoters of the Ginns & Gutteridge (Leicester Crematorium) Private Bill.

Various pieces of local railway and other works legislation have also made specific provision for burial grounds and disused burial grounds. Recent examples which we promoted include the Greater Manchester (LRTS) (Second City Crossing) Order 2013 which involved disturbance of a former church vault and burials within it, and the Merseytram (Liverpool City Centre to Kirkby) Order 2005, and the Nottingham Express Transit System Order 2009 which similarly authorised the disturbance of human remains. We have also advised Transport for London, HS2 Limited and Highways England on schemes of theirs that are likely to have an impact on burial grounds.

We have also acted for a number of local authorities on the promotion of Private Bills including the following:

- **Kent County Council (Filming on Highways) Act 2010;**
- **Nottingham City Council Act 2003;**
- **Hereford Markets Act 2003;** and
- **City of Newcastle Upon Tyne Act 2000.**

In total, we have been involved in the promotion of 37 bills since 1991, including the following:

- **Middle Level Act 2018;**
- **Humber Bridge Act 2013;**
- **Allhallows Staining Church Act 2010;**
- **St Austell Market Act 2008;**
- **HBOS Group Reorganisation Act 2006;** and
- **Ipswich Market Act 2004.**

We currently have four Parliamentary Agents, that is to say lawyers who are registered with the Houses of Parliament as entitled to promote Private Bills. Our Parliamentary Agents have all been actively involved in the promotion of and opposition to local legislation for the last 10 years and, in the case of three of them, each for more than 25 years.

There are currently only seven other practising Agents in four other firms who hold themselves out as available to promote Private Bills. We are thus easily the largest parliamentary agency practice. Furthermore, promotion of private legislation is very much part of our core business and something we take particular pride in delivering upon.

We have a very experienced senior Parliamentary Clerk (currently Chair and Treasurer of the Parliamentary Clerks' Society). We also have a substantial number of assistant solicitors and other lawyers trained and experienced in undertaking this line of work. Our parliamentary agency practice forms an integral part of our (50 lawyer) planning, infrastructure and public law department, providing expert and experienced legal assistance at all levels.

PROPOSED TEAM AND BACK UP

We propose a core team led by Parliamentary Agent Nick Evans, supported by Pam Thompson and Mustafa Latif-Aramesh.



NICHOLAS EVANS, PARTNER AND PARLIAMENTARY AGENT

T +44 (0)20 7783 3416

E nicholasevans@bdbpitmans.com

Nick Evans is an Agent and has been assisting in the promotion of private legislation with us since joining the firm in 1997. He promoted the New Southgate Cemetery Act 2017, is promoting the Highgate Cemetery Bill and has also advised on matters related to burial grounds in connection with Nottingham Express Transit, Merseytram and HS2, as well as acting on the bills for the Middle Level Act 2018, the Kent County Council (Filming on Highways) Act 2010, the HBOS Group Reorganisation Act 2006, the Ipswich Market Act 2004, the Mersey Tunnels Act 2004, and the Hereford Markets Act 2003.



PAM THOMPSON, PARLIAMENTARY CLERK

T +44 (0)20 7783 3437

E pamthompson@bdbpitmans.com

Pam Thompson, our principal parliamentary clerk, has worked on the promotion of 22 Private Bills including working on the promotion of the Bills which became the Woodgrange Park Cemetery Act 1993, Dawat-e-Hadiyah Act 1993, United Reform Church Act 2000, Allhallows Staining Church Act 2010, New Southgate Cemetery Act 2017 and the Middle Level Act 2018. She undertaken Parliamentary and statutory authorisation work for over 38 years. She has vast experience in the preparation of, and the procedures relating to, Private and Hybrid Bills, Harbour Orders, TWAOs, DCOs and other forms of statutory consent.



MUSTAFA LATIF-ARAMESH, SENIOR ASSOCIATE

T +44 (0)20 7783 3678

E mustafalatif-aramesh@bdbpitmans.com

Mustafa Latif-Aramesh is an associate who works closely with our parliamentary agents. He has assisted on the promotion of the New Southgate Cemetery Act 2017 and the Highgate Cemetery Bill, and drafted a number of statutory instruments, elements of private members bills, and amendments to public bills. He has advised in the area of burial rights, cemetery acquisition and has conducted several local legislation searches.

In addition, the core team would be supported by:



NICHOLAS BROWN, CONSULTANT AND PARLIAMENTARY AGENT

T +44 (0)20 7783 3410

E nicholasbrown@bdbpitmans.com

Nicholas Brown has 30 years' experience as a Parliamentary Agent and promoted the New Southgate Cemetery 1990 Act. His other Private Bill promotions include the Bill for the Woodgrange Park Cemetery Act 1993, and the Dawat-e-Hadiyah Act 1993 (to incorporate the Dai al-Mutlaq, the supreme head of the Dawoodi Bohra Islamic Community, as a corporation sole). He has since been involved in much further local legislative work including acting as Government Agent for the West Northamptonshire Development Corporation (Area and Constitution) Order, and promoting the Bills for HSBC Investment Bank, Hailsham Cattle Market and Northern Bank.

FEES

OUR FEES

Private Bill promotions are likely to involve a cost of at least £x to £x excluding VAT or more in Parliamentary Agents' fees. These estimates could well be exceeded if, for example, the Bill is opposed from any quarter in which case the promotion becomes somewhat akin to litigation (we set out some key risks in the appendix). If there is extensive opposition our fees could be £x plus exclusive of VAT.

It may assist to say too that we should be able to give a fuller estimate once we have had an opportunity to examine the case for the Bill in a little detail and (*information redacted*). Whilst no Promoter would wish to throw expenses away unnecessarily, you may like also to note that there is no obligation to continue with a promotion which has been started and, so the option of abandoning the exercise is open to a Promoter if it finds at some stage that the likely expense is more than it wishes to countenance.

On that basis and subject to any discussion which the council may wish to initiate concerning possible alternative fee proposals, our fee proposal is as follows:

- preparation of a complete draft Bill, Explanatory Memorandum and initial draft Human Rights Statement (but excluding any later revisions required): £x net;
- preparation and service of all notices and advertisements for the promotion of the Bill: £x net; and
- ongoing work at the following hourly rates.

Position	Rate (excluding VAT)
Partner / Parliamentary Agent	£x
Senior Associate	£x
Associate	£x
Solicitor	£x
Trainee	£x
Senior Parliamentary Clerk	£x
Paralegals	£x

The rates above represent a (*redacted*) reduction in hourly rates and we provide estimates for the primary stages of the Bill below (please note what each of these stages entails is described in the 'Principal Stages' section of the Appendix):

Parliamentary stage	Estimate
First reading	£x to £x
Second reading	£x - £x plus*
Unopposed committee (where petitions have not been made against the proposals)	£x - £x
Opposed committee (only where petitions have been made by objectors to the proposals)	£x to £x plus¥
Third reading	£x to £x plus*

* We anticipate being able to keep within the above estimates, but if there is a concerted effort by MPs to frustrate or block the progress of the Bill, additional work is likely to be involved in overcoming this.

¥ Where there are petitions against the Bill, the scenario will be akin to litigation. The time and costs associated with this are difficult to predict and will depend on the number of petitions received. If there are a large number of petitions, it may be beneficial to instruct Counsel at that stage.

We are also able to offer an additional x% discount if our fees exceed £x net of VAT and disbursements (which, as mentioned above, is only likely to occur if there is sustained opposition to the Bill).

DISBURSEMENTS AND THIRD PARTY COSTS

There will be a £x payable to the House Authorities in stages as the Bill progresses. In addition, there will be advertising and printing costs of around £x.

References to net costs are to costs net of disbursements and VAT.

APPENDIX 1

PROMOTION OF PRIVATE BILLS – SUMMARY AND KEY CONSIDERATIONS

PRINCIPAL STAGES IN A PRIVATE BILL PROMOTION

Every Private Bill has to pass through the same basic stages as a Public Bill but there are a number of material differences.

The main stages in each House are:

- **First Reading** – this is taken formally, without debate;
- **Second Reading** – an opportunity for debate in plenary session on the Floor of the House;
- **Committee Stage** – proposal of amendments and detailed examination by a committee of Members;
- **Consideration and Report** – an opportunity for debate on amendments made in committee and for further amendments in plenary session on the Floor of the House; and
- **Third Reading** – a final opportunity for debate in plenary session on the Floor of the House.

The main differences with a Private Bill are as follows:

- **Petitions** – interested parties with concerns about the Bill can deposit a petition against it which, subject to the rules governing who has a right to be heard, entitle them to appear with counsel, agents and witnesses at the committee stage in that House which then takes the form of an adversarial hearing;
- **Second Reading** – the principle of the Bill (ie whether it should be enacted) is not determined in principle, rather this is left for consideration at the committee stage and Second Reading can be taken formally without debate and will be unless a Member opposes this, in which case the Bill is at risk since it may be defeated on a vote or, in the Commons, talked out if there is a division on a motion to end the debate and less than 100 vote in favour;
- **Other Debates generally** – as with Second Reading, these can be taken without debate and will be unless a Member opposes this in which case the bill is at risk;
- **Unopposed Committee** – If no petitions have been deposited or any petitions which were deposited have been withdrawn, the committee stage is taken by the Parliamentary Agent presenting the Bill to the Committee with witnesses giving evidence if appropriate and departmental witnesses appearing to speak to any departmental report which has been lodged. In the Commons, the Committee comprises MPs from a pre-selected panel with no constituency interest in the Bill and, in the Lords, the Committee comprises the Senior Deputy Speaker and his Counsel; and
- **Opposed Committee** – where petitions have been lodged and not withdrawn, the promoters and any petitioners appear, by counsel or their agent, and call witnesses as appropriate before a specially selected committee.

AN OPTIMISED PROGRAMME

The programme for a Private Bill promotion depends very much on whether any petitions are deposited against it, whether it is opposed by any Members and whether its progress is interrupted by General Elections.

The following represents an optimised programme demonstrating the quickest and smoothest possible passage to enactment, assuming the Bill commences in the Commons and with the main events which can interrupt its passage highlighted on the right:

Date	Stage	Exception
January 2021	Consultation on proposals	
April 2021	Liaison with Ministry of Justice, initial draft of Bill	
Autumn 2021	Council approval to promotion of Private Bill in order to comply with Local Government Act 1972	
November 2021	Deposit of Bill in Parliament	
December 2021	Compliance with Standing Orders Allocation of Bill (assume Bill allotted to Commons not Lords)	Non-compliance; referral to Court of Referees
January 2022	First Reading [HC] Petitions due (30 January), none deposited	Any petitions deposited, if not settled, will trigger an Opposed Committee Hearing
February 2022	Unopposed Second Reading [HC]	If Second Reading is blocked by an MP, significant delay will ensue and a debate will be required
April 2022	Carry Over Motion Prorogation of Parliament	Motion can be blocked necessitating a debate and causing further delay
May 2022	Bill revived	If a revival motion is required (because a carry over motion was not passed in the last Parliament, this can be blocked necessitating a debate and causing further delay)
May / June 2022	Unopposed Bill Committee [HC]	Adverse departmental report or other criticisms could affect Committee's willingness to agree Bill If a debate was required on the revival motion this may be delayed to June/July
July 2022	Consideration and Third Reading [HC], taken formally First Reading [HL]	Stages are capable of being opposed by MPs, requiring a debate and possibly including the tabling of hostile amendments
October 2022	Compliance with Standing Orders Petitions [HL] due 10 days after First Reading but this	Any petitions deposited, if not settled, will trigger an Opposed Committee Hearing

	period extended until after Summer recess, none deposited	
November 2022	Unopposed Second Reading [HL]	If Second Reading is blocked by a Peer, significant delay will ensue and a debate will be required
November 2022	Unopposed Committee [HL], no amendments made Third Reading [HL]	Amendments will mean a Report Stage on the Floor of the House (which may be taken with Third Reading) and referral of the Bill back to the Commons for Approval of Lords amendments (also open to debate)
December 2022	Royal Assent	

KEY CHALLENGES

JUSTIFICATION AND EXPEDIENCY

it will be important to be able to satisfy both Government and Parliament that the Bill is appropriate.

This is likely to entail demonstrating that:

- legislative change is needed;
- an alternative legislative mechanism (eg a Legislative Reform Order) is not available;
- the proposal conforms with, or at least is not at odds with Government policy; and
- appropriate safeguards have been included, having regard in particular to Convention Rights.

The principal audiences that need to be satisfied are relevant Government Departments (in this case, the Ministry of Justice and MHCLG) and the law officers in each House (ie Counsel to the Speaker and Counsel to the Senior Deputy Speaker). As the Bill's Parliamentary Agents, we will provide appropriate briefings for this purpose.

POLITICAL OBJECTION

Opposition from Members of Parliament will delay the Bill's passage and may result in its defeat.

It is important therefore not to attract significant opposition and, in the Commons, it is highly desirable to attract the active support of the constituency MP, ideally supported by other neighbouring MPs from the other main parties. If a debate is required, a sponsoring MP or in the Lords, a Peer, is required and other Members will usually take note, one way or the other, if the constituency MP is not supportive.

MPs can block Second Reading and later stages on the Floor of the House being taken formally by shouting 'Object' when the motion is called and thereafter tabling what is called a 'six month motion'. In advance of any Second Reading debate, they can also table an instruction to the Committee (to disadvantage the promoter) and, at later stages, can table hostile amendments.

STAKEHOLDER OBJECTION AND PETITIONS

As indicated in relation to the optimised programme set out above, interested parties can petition against the Bill in one or both Houses and, if they do and their petitions cannot be negotiated away, an adversarial hearing will ensue before an Opposed Committee.

Petitioners are also likely to lobby Members to oppose the Bill at Second Reading or at later stages.

An Opposed Committee hearing will delay the Bill significantly and also involves considerable additional expense and risk.

Whilst sometimes petitions cannot be avoided, the desirability of avoiding them or, where this is not practicable, of negotiating a settlement allowing them to be withdrawn, means that good prior consultation and proactive engagement with interested third parties is particularly important.

If there must be an Opposed Committee hearing, it is of course important too to prepare a robust case to be presented by good witnesses and engagement of Counsel may also be appropriate although we are entitled, as agents, to take the role of advocate and sometimes do.

PROCEDURAL NON-COMPLIANCE

Compliance with the advertising, notification and other requirements of Standing Orders needs to be absolute and the Bill's Parliamentary Agent is required to appear before officials in each house, known as Examiners, to prove compliance.

Non-compliance will usually mean appearing before a committee of MPs in the Commons called the Standing Orders Committee, and its equivalent in the Lords, to seek a waiver which will not necessarily be granted.

ADDITIONAL PROVISIONS

A Private Bill cannot be amended so as to extend its scope beyond that of the Bill as originally deposited and advertised.

If an amendment beyond its scope is required, this can only be introduced by promoting what is called an Additional Provision during the passage of the Bill through the first House to which it is allocated. This involves, in effect, going through all the preliminary Private Bill advertising and notification requirements again for the Additional Provision and seeking the leave of the House to introduce the Additional Provision. This is an arduous, expensive and uncertain process which will also considerably delay the Bill's progress.

Wherever practicable, Additional Provisions are therefore best avoided.

FURTHER PARTICULARS OF OUR WORKSTREAMS

The various activities involved in Private Bill promotions are not easily divided into distinct categories or time periods but, in the table below, we highlight the main elements of the various work streams involved.

During the course of the promotion, should we be instructed, we will be happy to provide time and cost estimates for our likely involvement in each of these activities but, at this stage, we do not think it is possible to do so with sufficient precision.

1	Pre-application preparations
	Review of case for Bill
	Site visit and team meeting(s) – pandemic permitting
	Settlement and commencement of stakeholder consultation strategy
	Briefing and liaison with Ministry of Justice
	Review and revision of draft Bill and preparation of Explanatory Memorandum
	Briefing and liaison with Counsel in each House who advise the House Authorities
	Preparation of Human Rights Statement, including briefing Counsel if appropriate
	Identification and briefing of sponsoring MP(s) and Peer(s)
	Bill revived
2	Deposit and compliance
	Preparing scheme for compliance
	Advising on and preparation of notices and resolutions for Council meetings, under section 239 of the Local Government Act 1972
	Preparing and placing requisite advertisements
	Preparing all necessary notices
	Arranging for printing of Bill and Explanatory Memorandum with the official printers and proofing same
	Arranging for service and deposit of all necessary documents
	Preparation of petition and bill for deposit
3	In Parliament – administrative
	Deposit of petition for Bill

	Preparing memorial and affidavits of compliance
	Attending before the Examiners to prove compliance
	Payment of House fees (four stages)
	Preparation of all House copies of Bill, including requisite 'Precedent Bill'
	Advising on and responding to departmental reports and any queries from Human Rights and Delegated Powers Committees
	Continuing to liaise with Counsel in each House
	Preparation of necessary Amendments and 'Filled-Up' Bill
	Preparation for and appearance before Unopposed Committee
	Liaising with the House Clerks and tabling all requisitions to move stages
	Attending at all stages
4	In Parliament – political
	Liaising with sponsoring Members and any Members who block the Bill
	Preparing briefings including formal statements required for any debate
5	In Parliament – stakeholder and objection management
	Continuing to advise on stakeholder and objection management
	Providing copies of and reporting on any petitions deposited
	Conducting or assisting in negotiations with petitioners and other third parties
	Preparation for any Opposed Committee proceedings including, if required, briefing Counsel, case preparation and development of witness proofs
	Attendance at Opposed Committee proceedings, either as advocate or in support of Counsel
	Settlement of any parliamentary undertakings or agreements

FREEDOM OF INFORMATION

We consider our credentials, how we have structured our bid and our proposed charging rates

© BDB Pitmans LLP 2019

T +44 (0)345 222 9222 W www.bdbpitmans.com

Cambridge | London | Reading | Southampton



Crown
Commercial
Service
Supplier

This page is intentionally left blank