



**Government Response to the
Joint Committee on Parliamentary Privilege**

Presented to Parliament
by the Leader of the House of Commons
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GOVERNMENT RESPONSE TO THE JOINT COMMITTEE ON PARLIAMENTARY PRIVILEGE

The Government is grateful to the Joint Committee on Parliamentary Privilege for its detailed consideration of this issue and in particular the Government's proposals set out in the Green Paper *Parliamentary Privilege*. We would also like to register our thanks to those who provided expert evidence to the Committee, which has added further depth of analysis in this complex area.

We should reiterate that the Government has always been clear that Parliamentary privilege is a matter for Parliament and it is therefore right for Parliament to have a proper opportunity to reflect on its continuing purpose.

The Government agrees with the Committee that there is no strong case for a comprehensive codification of Parliamentary privilege. However, as rightly recognised in the Report, this does not mean that steps cannot be taken both by Parliament and by Government to clarify the application of privilege where appropriate. In this Response we will address the principal areas for potential reform raised.

Penal Powers of the Houses

The Government recognises the difficulties associated with criminalising contempt or legislating to confirm Parliament's penal powers, and agrees that neither is the right approach.

The Government notes with interest the approach recommended by the Committee to reassert Parliament's penal rights through the establishment of a "fair process" in Resolutions and Standing Orders of the House of Commons, as set out in Annexes 2 and 3 of the Report. We support the Committee's recommendation that the two Houses should build on this to set out clearly how the powers would and should be exercised. The Government agrees that transparency in procedure will be critical to ensuring that any application of penal powers conforms with modern standards of natural justice.

The Appointment of Lay Members to Select Committees

The Government notes the strong case made by the Committee that the legislative option set out in the Green Paper could have unintended consequences: principally that, by explicitly confirming that privilege extends to the Committee on Standards, it could be interpreted to mean that the same extension did not necessarily apply to other committees that include lay members. The Government is grateful to the Committee for bringing this issue to light. Given this, and the concern raised with regard to the intrusion into the exclusive cognisance of Parliament, the Government accepts that the provision proposed in the Green Paper would not be appropriate.

Judicial Questioning of Proceedings in Parliament

The Government continues to be of the view that the current situation whereby the courts can use proceedings in Parliament as long as they are not questioned or impeached is satisfactory. However, should we see any increase in the rare instances where there has been inappropriate judicial questioning of proceedings in Parliament, as evidenced by the Committee, we believe it would be sensible to revisit this issue.

We therefore agree with the Committee that in the absence of serious infringements a better approach in the near term is to build on the current good relations between the judiciary and the Parliamentary Authorities to ensure continued good practice.

Disapplication of Article IX

We note the very clear view of the Committee that the disapplication of Article IX in respect of criminal prosecutions set out in pages 39-41 of the Green Paper would have a damaging effect upon free speech in Parliament. As the Deputy Leader of the House of Commons, the Rt. Hon. Tom Brake MP, said in his evidence to the Committee “given the importance of protecting freedom of speech, we don’t currently believe that the evidence supports a disapplication of the privilege”. The Government therefore accepts the Committee’s recommendation in this regard.

Section 13 of the Defamation Act

The Government recognises the problems identified by the Committee with regard to Section 13 of the Defamation Act 1996, as well as those associated with a general power of waiver.

The Government therefore agrees that repealing Section 13 would be the wisest course of action and intends to do so when Parliamentary time and a suitable legislative opportunity allows.

Reporting of Parliamentary Proceedings

We welcome the Committee’s view, which is in line with the Government’s position, that absolute privilege should apply to publications and broadcasts made under the authority of either House, but that such absolute privilege should not extend to secondary reporting, in order to maintain the current principle that such reporting should be “in good faith and without malice”.

The Government is of the clear view that, with regard to secondary reporting, the current system of qualified privilege is appropriate. However, we note the Committee’s concern that the burden of proof in cases where reporting is claimed to be malicious should be reversed such that it falls on the claimant rather than the defendant, which is in line with the Government’s policy intent that informed Clause 1 (page 75) set out in the Green Paper.

We agree with the Committee’s view that the Parliamentary Papers 1840 Act lacks the clarity that one might expect from modern legislation and fits awkwardly with

modern communication modes. However, we are not convinced by the Committee's suggestion that this "significantly inhibits press reporting of Parliament", which we believe has sufficient qualified protection under the common law.

The Government will consider whether wholesale repeal of the 1840 Act, as recommended by the Committee, or amendment, would be the best approach to modernise the law in this area (including who should bear the burden of proof in cases where reporting is claimed to be malicious) and will further consider what legislative vehicle could be used to give such changes effect. We also welcome the Committee's suggestion that a delegated power be provided that would allow the Secretary of State to update the definition of "broadcast" in the event of unforeseen changes in communication modes.

Applicability of Legislation to Parliament

As set out in the Green Paper the Government believes that the current state of the law, in light of the *Chaytor* judgement, is satisfactory and does not intend to bring forward legislation to further clarify the application of legislation to Parliament.

However, the Government welcomes the Committee's recommendation that both Houses adopt resolutions stating that they should in future be expressly bound by legislation creating individual rights which could impinge on parliamentary activities, and that in the absence of such express provision such legislation is not binding upon Parliament. This is, of course, a matter for the two Houses.

The Government commits to working with the House Authorities to ensure the correct application of the guidance issued by the Treasury Solicitor on this matter in 2002.

Registers of Members' Interests

The Government notes the Committee's concern over the ruling in *Rost vs Edwards* (1990) that the Register of Members' Interests should not be considered a parliamentary proceeding.

It is the Government's view that the Registers in both Houses should be considered proceedings of Parliament. Despite this, we are not persuaded that legislative clarification is necessary at this stage, given the infrequency with which cases come before the courts and the opportunities that normally arise for the two Houses to intervene if they see fit.

This is another case where closer contacts between Parliament and the Courts can mitigate the risks of misunderstandings and improve the consistency of decision making.

Jury Service and Witness Summons

The Government notes the Committee's recommendation that the Government legislate to provide a right of excusal from jury service in England and Wales for Members of either House.

The Government disagrees with the Committee that such legislation is necessary. As the Committee rightly points out, Her Majesty's Courts and Tribunals Service will readily grant requests to defer jury service where necessary and we believe this provides sufficient safeguards for Members to be able to avoid potential conflicts of duty.

The Government notes that the Committee makes the case that there should be no change to the current right of Members not to respond to court summons. The Committee argues that there is no evidence that this privilege has caused any harm. The Government does not accept that this, nor the case that Members may be subject to more cases of vexatious subpoenas than most, is sufficient reason to justify this continuing privilege, which is not enjoyed by other public figures. The Government therefore continues to see no strong rationale for Members to be treated differently from non-Members in this area. The Government will legislate to remove this privilege when Parliamentary time and a suitable legislative opportunity allows.

Members' Access to the Precincts of Parliament

It is the Government's view that the legal status of Sessional Orders is not clear. Whilst the Government notes the Committee's regret that the House of Commons has discontinued the practice of passing Orders about stoppages in the streets, it is not convinced that their revival would serve any legal or practical purpose. Whilst there may be an issue of inconsistency between the approaches of the two Houses on this matter, this would be for Parliament to resolve.

In 2003 the House of Commons Procedure Committee concluded that passing the Sessional Order 'did not confer any extra legal powers on the police' and that the only way to ensure that the police had the adequate powers to carry out the Sessional Order was through legislation. As a result the Government introduced statutory restrictions on protest around Parliament under the Serious Organised Crime and Police Act 2005, which were later repealed by the Police Reform and Social Responsibility Act 2011.

The Police Reform and Social Responsibility Act 2011 set in place new, less onerous restrictions, for example in relation to the prohibition of the use of amplified noise equipment as well as a ban on erecting tents or using sleeping equipment in Parliament Square. There is no longer any other restriction on demonstrating without authorisation and if special powers were necessary it would seem appropriate for the Government to provide for these through legislation; the Government, however, sees no pressing need to do so at present.

Other Miscellaneous Issues

On a range of other issues the Committee either confirmed the view of the Government as set out in the Green Paper or raised novel issues with which the Government agrees. We agree with the Committee's assertion that briefings by officials to ministers that enable them to answer Parliamentary Questions should continue to enjoy absolute privilege, whilst recognising that this would of course be a matter for the courts. We also agree, as set out in the Green Paper, that the privilege

of freedom from arrest should be abolished, although note that it is of little current relevance and there is therefore no pressing need to do so.

We would like to once again thank the Committee for their expert consideration of these issues and look forward to working closely with members and the Parliamentary Authorities to ensure that Parliamentary privilege continues to operate to protect the effective functioning of our democracy.

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