

# **PARLIAMENTARY PRIVILEGE (DEFAMATION) BILL [HL]**

---

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Parliamentary Privilege (Defamation) Bill [HL]. They have been prepared in order to assist the reader of the Bill and to help inform debate. They do not form part of the Bill and have not been endorsed by Parliament.

### **COMMENTARY ON CLAUSE 1 & BACKGROUND**

2. Clause 1 provides for the repeal of Section 13 of the Defamation Act 1996. Section 13(1) provides that where the conduct of a person in or in relation to proceedings in Parliament is an issue in defamation proceedings, he or she may waive the protection of Parliamentary privilege for the purpose of those proceedings.
3. Accordingly, if an MP is accused of accepting money to ask Parliamentary Questions, the MP may waive the privilege given by Article 9 of the Bill of Rights, and, in that event, evidence may be given and questions asked about the MP's conduct without infringing Parliamentary privilege.
4. It is not possible to counterclaim for damages for a slander spoken in Parliament even against a claimant MP who has himself waived privilege for the purpose of the proceedings.
3. Section 13 was passed as an amendment to the 1996 Act after Neil Hamilton MP was unable to pursue a defamation claim against *The Guardian* for allegations of corruption as a result of Article 9 of the Bill of Rights of 1689.
4. The 1999 Report of the Joint Committee on Parliamentary Privilege, chaired by Lord Nicholls of Birkenhead<sup>1</sup> criticised Section 13 as undermining the basis of privilege and creating anomalies –

“A fundamental flaw is that it undermines the basis of privilege: freedom of speech is the privilege of the House as a whole and not of the individual member in his own right, although an individual member can assert and rely on it. Application of the new

---

<sup>1</sup> HL Paper 43/HC 214-1, 1998-99, Chapter 2

provision could also be impracticable in complicated cases; for example where two members ... are closely involved in the same action and one waives privilege and the other does not. Section 13 is also anomalous: it is available only in defamation proceedings. ... The Committee considers these criticisms are unanswerable.”<sup>2</sup>

5. The Joint Committee recommended that section 13 should be repealed and replaced by a new provision under which either House on the advice of a committee, would make a general waiver of Article 9 in an appropriate case –

“We recommend that the mischief sought to be remedied by section 13 ... should be cured by a different means. Section 13 should be replaced by a short statutory provision empowering each House to waive Article 9 for the purpose of any court proceedings, whether relating to defamation or any other matter, where the words spoken or the acts done in proceedings in Parliament would not expose the speaker of the words or the doer of the acts to any legal liability. Each House will need to consider appropriate machinery once the section has been repealed.”<sup>3</sup>

6. The 2013 Joint Committee on Parliamentary Privilege received evidence on this issue from the Newspaper Society to the effect that a discretionary power to waive privilege would be unpredictable and retrospective and could therefore create a chilling effect which would be detrimental to openness of debate and press reporting of proceedings in Parliament.<sup>4</sup>
7. The Government also acknowledged “concerns with introducing a general power of waiver for Parliament given the potential chilling effect on debate.”<sup>5</sup>
8. The Committee concluded that section 13 should be repealed without replacement on the basis that the anomalies it creates are more damaging than the mischief it was intended to cure, and that there is no persuasive argument for granting either House a power of waiver, which would have the potential to undermine the fundamental constitutional principle of freedom of speech in Parliament.<sup>6</sup>

## **COMPATIBILITY WITH CONVENTION RIGHTS AND FREEDOMS**

9. Lord Lester of Herne Hill considers that the provisions of the Bill are compatible with the Convention rights.

---

<sup>2</sup> Paragraph 69

<sup>3</sup> Paragraph 89

<sup>4</sup> Written evidence from the Newspaper Society, cited in Joint Committee on Parliamentary Privilege: Report of Session 2013-14 HL Paper 30 HC 100, para 168

<sup>5</sup> Written evidence from the Deputy Leader of the House of Commons, para 10, *ibid* para 169.

<sup>6</sup> *Ibid.*, para 170

*These notes refer to the Parliamentary Privilege (Defamation) Bill [HL]  
as introduced in the House of Lords on 9th June 2014 [HL Bill 9]*

10. The Bill engages Articles 8 and 10 of the Convention. Article 10(1) protects the right to freedom of expression. The reporting of what is said and done in Parliament plays an important function in the realisation of the right to receive and impart information on matters of significant public interest.
11. The right to freedom of expression is qualified by exceptions and limitations contained in Article 10(2). Accordingly its exercise may be subject to restrictions where necessary in a democratic society for the protection of the reputation or rights of others.
12. Article 8 protects the right to personal privacy, which includes the right to reputation.<sup>7</sup>
13. In *Von Hannover v Germany*<sup>8</sup> the European Court of Human Rights held that where both Articles 8 and 10 are engaged there is a need to ensure that a fair balance is struck between the competing rights.
14. Clause 1 removes an anomaly from the law, whereby individual parliamentarians may waive parliamentary privilege in certain circumstances for the purposes of adducing evidence in defamation proceedings. It ensures that those involved in defamation proceedings will have greater certainty as to the application of parliamentary privilege.
15. The Bill thereby achieves a balance between Articles 8 and 10, providing positive guarantees of Article 10 rights and safeguards against abuse.

---

<sup>7</sup> *Karako v Hungary* Application no 39311/05

<sup>8</sup> (2005) 40 EHRR 1.

**PARLIAMENTARY PRIVILEGE  
(DEFAMATION) BILL [HL]**

**EXPLANATORY NOTES**

*These notes refer to the Parliamentary Privilege (Defamation) Bill [HL]  
as introduced in the House of Lords on 9th June 2014  
[HL Bill 9]*

---

*Ordered to be Printed,  
9th June 2014*

---

© Parliamentary copyright 2014  
This publication may be reproduced under the terms of the Open Parliament Licence, which is published at  
[www.parliament.uk/site-information/copyright](http://www.parliament.uk/site-information/copyright).

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS  
LONDON – THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by The Stationery Office Limited

£x.00