



House of Commons
Procedure Committee

Notification of the arrest of Members

Second Report of Session 2015–16



House of Commons
Procedure Committee

Notification of the arrest of Members

Second Report of Session 2015–16

*Report, with Annexes and Appendices,
together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 9 December 2015*

HC 649

Published on 15 December 2015
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Procedure Committee

The Procedure Committee is appointed by the House of Commons to consider the practice and procedure of the House in the conduct of public business, and to make recommendations.

Current membership

[Mr Charles Walker MP](#) (Chairman) (*Conservative, Broxbourne*)

[Edward Argar MP](#) (*Conservative, Charnwood*)

[Bob Blackman MP](#) (*Conservative, Harrow East*)

[Jenny Chapman MP](#) (*Labour, Darlington*)

[Nic Dakin MP](#) (*Labour, Scunthorpe*)

[Yvonne Fovargue MP](#) (*Labour, Makerfield*)

[Patricia Gibson MP](#) (*Scottish National Party, North Ayrshire and Arran*)

[Patrick Grady MP](#) (*Scottish National Party, Glasgow North*)

[Simon Hoare MP](#) (*Conservative, North Dorset*)

[Sir Edward Leigh MP](#) (*Conservative, Gainsborough*)

[Ian C. Lucas MP](#) (*Labour, Wrexham*)

[Mr Alan Mak MP](#) (*Conservative, Havant*)

[Mr David Nuttall MP](#) (*Conservative, Bury North*)

Powers

The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No 147. These are available on the Internet via www.parliament.uk.

Publications

Committee reports are published on the Committee's website at www.parliament.uk/proccom and by The Stationery Office by Order of the House.

Committee staff

The current staff of the Committee are Martyn Atkins (Clerk), Katya Cassidy (Second Clerk), Jim Lawford (Committee Assistant) and Liz Parratt (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Procedure Committee, Journal Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3351; the Committee's email address is proccom@parliament.uk.

Contents

Summary	3
1 Our inquiry	5
2 The House's practice	6
Notifying the House of arrests of Members	6
The requirement and the privilege of freedom from arrest	6
Other instances of notification, and cases where notification is not required	7
3 Current practice, and issues arising	8
Current practice	8
Issues of privacy	9
4 Future requirements	11
The requirement to notify	11
Procedure on notification	12
Conclusions and recommendations	13
Annex 1: Draft Resolution on notification of arrest of members	14
Annex 2: Protocol on the handling of notification of arrests	15
Appendix 1: Letter from the Speaker to the Chair of the Procedure Committee, Charles Walker MP	17
Appendix 2: Memorandum to the Procedure Committee from the Clerk of the House	18
Formal Minutes	26
List of Reports from the Committee during the current Parliament	27

Summary

The Procedure Committee has, at the Speaker's request, considered the House's present practice in requiring police forces to notify the Speaker of the arrest of any Member.

The House requires the Speaker, on receipt of a notification of arrest, to notify the House accordingly by laying the notification on the Table and causing it to be published in the Votes and Proceedings.

The practice is connected to the House's claim—now purely symbolic—to the privilege of freedom from arrest, which itself derives from the principle that the House must have first claim on the attendance of its Members. This claim has never been allowed to interfere with the administration of criminal justice.

The Committee considers that the practice of notification should be retained, since it is linked to the House's assertion of its right to the attendance and participation of its members, and the House must be in a position to be able to ensure the attendance of its members should it be required. To remove any doubt as to the basis for the requirement, the Committee invites the House to pass a resolution restating its claim.

There is, however, a need to balance the claims of the House against the right of its members to privacy. The Committee recognises that some arrests may occur in relation to activities which are essentially private and where the member has not chosen to make the fact of the arrest public or has not behaved in such a way as to make public knowledge inevitable. It is important to make clear that in no other circumstance would a police force or a public authority be able to put the details of an arrest in the public domain in such circumstances without the consent of the arrested individual.

The Committee therefore recommends that a protocol be established to govern the operation of such notifications. Under the proposed protocol, police forces would, via the Chief Superintendent at Parliament, send a notification of arrest to the Clerk of the House, who would then consult the arrested Member or his or her legal representative. The Member would be entitled to indicate that he or she did not wish the notification to be made to the House. In such circumstances the Clerk of the House and the Speaker would consider whether issues of parliamentary privilege or constitutional significance applied: should they decide that such issues did apply, the notification would be made to the House.

1 Our inquiry

1. The Procedure Committee in the last Parliament was asked by the Speaker in January 2015 to consider the practice of the House in requiring the Speaker to report the arrest of a member when notified by the arresting authority.¹ The Committee was unable to complete its inquiry before Dissolution, and passed the matter to us in its legacy report.² We report below on the practice of the House and the issues that it raises.

2. We received a memorandum from the Clerk of the House, which we publish as an Appendix to this report. Our predecessors discussed the matter with the Clerk and with a number of Members who had been arrested in the last Parliament and whose arrest had been notified. We have in addition sought the views of the Metropolitan Police Service on the practice.

1 The text of the Speaker's letter is set out at Appendix 1. See also a point of order raised on 6 January 2015 in relation to the notification of an arrest: HC Deb, 6 January 2015, col. 159.

2 Procedure Committee, *Matters for the Procedure Committee in the 2015 Parliament*, Seventh Report of Session 2014–15, HC (2014–15) 1121, para 34

2 The House's practice

Notifying the House of arrests of Members

3. The House requires police forces in the UK to notify the Speaker of each instance of the arrest of a Member on a criminal charge, and requires the Speaker to report that notification to the House.

The requirement and the privilege of freedom from arrest

4. *Erskine May* states that “in all cases in which Members of either House are arrested on criminal charges, the House must be informed of the cause for which they are detained from their service in Parliament.”³ The present requirement derives from the House’s ancient claim to privilege for freedom from arrest of its members.

5. The Clerk of the House told us that Thomas Erskine May’s predecessor in describing the House’s procedure and practice, John Hatsell,⁴ had demonstrated that the origin of the practice of notification lay in the claim of privilege of freedom from arrest.⁵ Hatsell indicated that the practice, and the privilege, lay in sound constitutional principle:

As there is no privilege, of which the House of Commons have always been, and indeed, ought to be, more jealous, than the security of the persons of the Members, “that they shall be under no undue restraint from being able to attend their duty in Parliament”, it is highly expedient, that, whenever the public necessity appears to the Ministers of the Crown to justify any breach of this privilege, they should as soon as possible acquaint the House with the steps they have taken, and the grounds and reasons which induced them to it.⁶

6. The claim of privilege of freedom of arrest has long been of symbolic value only. When Erskine May—at that point Assistant Librarian of the House—first came to describe the House’s privileges in 1844, he found that this ancient claim was no longer enforced. By then a member could be arrested in the Chamber itself and taken to King’s Bench Prison without the Committee of Privileges finding any breach of privilege, provided that the House was notified of the arrest:

Thus the house will not allow even the sanctuary of its walls to protect a member from the process of criminal law. But in all cases in which members are arrested on criminal charges, the house must be informed of the cause for which they are detained from their service in Parliament.⁷

The House therefore continued to insist on notification even while it made no attempt to claim immunity for its members from the due process of the criminal law. For instance, the Protection of Person and Property Bill of 1881—a controversial legislative proposal which provided for a form of detention without trial for the purpose of maintaining public order in Ireland—was amended on its passage through the House to make express

3 Erskine May, 24th edition (2011), p. 243

4 Clerk of the House 1768–1797; author of *Precedents of Proceedings in the House of Commons with Observations*, 1818.

5 Appendix 2, paras 2–3

6 Hatsell, *op. cit.*, volume II, p. 364

7 Erskine May, 1st edition (1844), p. 105

provision for notification of the House in the event of the arrest of any Member under its provisions “in like manner as if he were arrested on a criminal charge.”⁸

7. The privilege of freedom from arrest continues to be symbolically claimed at the opening of every Parliament, as one of the ancient privileges of the House claimed by the Speaker-elect from the Lords Commissioners, on behalf of the Crown: it was claimed by the present Speaker following his election and prior to his confirmation in office by the Lords Commissioners on 19 May 2015.⁹ *Erskine May* describes its practical application thus:

The principle upon which the privilege of freedom from arrest is based is the absolute priority of attendance by Members of both Houses. However, it has never been allowed to interfere with the administration of criminal justice or emergency legislation. The privilege is now of extremely limited application and the 1999 Joint Committee on Parliamentary Privilege recommended its abolition.¹⁰

As the Clerk of the House pointed out, the 2013 Joint Committee on Parliamentary Privilege took the same view on abolition as the 1967 and 1999 committees, but saw little need for urgency in dealing with the matter, given the limited application of the privilege and since legislation would be required to make abolition effective.¹¹

Other instances of notification, and cases where notification is not required

8. The Clerk noted other instances where there was a requirement for the House to be notified formally of proceedings against a Member:

- Imprisonment or remanding in custody of a Member
- On passage of any sentence of imprisonment against a Member
- Conviction of illegal or corrupt practice at a parliamentary election
- Conviction of an offence under s. 10 of the Parliamentary Standards Act 2009

9. The Clerk also noted the instances where the House is *not* routinely informed of circumstances preventing a Member from attending. These include jury service, appearance as a witness in a trial, service away from Westminster on parliamentary duties, military service, illness, and paternity or maternity leave and other caring responsibilities.¹²

8 For the amendment, see CJ (1881) 82 and HC Deb, 18 February 1881, cols. 1285–1311. The Bill was enacted as the Protection of Person and Property Act (Ireland) Act 1881 on 2 March 1881. Its provisions expired on 30 September 1882. See also *Erskine May*, 13th edition (1924), p 122. Charles Stewart Parnell and several other Members for constituencies in Ireland were arrested under the provisions of the Act and the House was notified accordingly.

9 On that occasion the Speaker made the following statement in the Lords: “It is now my duty, in the name of and on behalf of the Commons of the United Kingdom, to lay claim, by humble petition to Her Majesty, to all their ancient and undoubted rights and privileges, especially to freedom of speech in debate, to *freedom from arrest*, and to free access to Her Majesty whenever occasion shall arise, and that the most favourable construction shall be put upon all their proceedings.” HL Deb, 19 May 2015, col. 3.

10 *Erskine May*, 24th edition, p 243

11 Appendix 2, para 3

12 Appendix 2, para 6

10. Members may fall foul of the law without being arrested or detained and therefore without such brushes with authority being notified to the House. The fining of a Member or the award of a caution will not trigger a formal notification; nor would the charge of a Member with an offence unless arrest and detention had preceded charge.¹³ As the Clerk points out, these events might become widely known, and some would be a matter of public record.

3 Current practice, and issues arising

Current practice

11. The Clerk set out current practice relating to the requirement for notification, as has obtained following the review of House procedures consequent on the arrest of Damien Green MP in November 2008.¹⁴

12. Police forces are presently instructed to report each and every arrest of a Member of Parliament to the Speaker by letter. When the Speaker receives the letter he is obliged to report the matter to the House. This may be done by means of an oral statement, but modern practice has been to lay the letter before the House—in effect, making it available to all Members.¹⁵ The Speaker will arrange for a copy of the letter to be sent to the Journal Office, where it is recorded in the Votes and Proceedings as a paper laid before the House. The name of the Member arrested is recorded, but no other details are given.¹⁶

13. A copy of the letter is retained in the Journal Office and a copy is sent to the Library, where it can be inspected by Members and by such of their staff and staff of the House who have access to the Library. The letter may also be inspected by any member of the public on application to the Parliamentary Archives.¹⁷ In practice such documents are also immediately available to the press. The Clerk notes that it would be impossible, given modern technology, to prevent the circulation of copies of such letters, and the practice of the House Service is therefore to provide copies on request.¹⁸

14. The Clerk of the House provided a table setting out the notifications given since 1945, and noted “some variation in recent practice”: for example, there is no record of any notification between August 1978 and November 2008, when it seems unlikely that no arrests occurred.

15. We note that current police practice on arrests, with or without a warrant, is markedly different from the practice as it may have obtained in 1844, when May first described the requirement. Police powers of investigation, which include arrest and detention, are now largely governed by the provisions of the Police and Criminal Evidence Act 1984 and its associated codes of practice.¹⁹ The term ‘arrest’, though generally understood, is nowhere defined in statute, and authorities note that the case law on arrest is in places

¹³ Appendix 2, para 7

¹⁴ Appendix 2, paras 10–15

¹⁵ Erskine May, 24th edition, p. 60

¹⁶ Appendix 2, para 11

¹⁷ Appendix 2, para 14

¹⁸ Appendix 2, para 14

¹⁹ *Blackstone’s Criminal Practice 2016*, s. D1.15

inconsistent.²⁰ While there is no necessary assumption that a charge will follow an arrest, an arrest is unlawful should the arresting officer know at the time of the arrest that there is no possibility of a charge being made.²¹ An arresting officer is normally obliged to take a person under arrest to a designated police station as soon as possible following the arrest.²² Alternatively an arrestee may be released on bail to attend a police station at a future date: if that is the case then the arrestee must be given a notice informing him of the offence for which he is arrested, the grounds of arrest, the requirement to attend a police station, the conditions imposed on the bail and the opportunity to seek a variation of such conditions.²³

Issues of privacy

16. Article 8 of the European Convention on Human Rights sets out a fundamental, but qualified, right to privacy. It states:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.²⁴

17. This right is given more detailed statutory protection in domestic legislation. Identifying data about the investigation of an offence prior to the public action of charging is considered ‘sensitive personal data’ under the terms of the Data Protection Act 1998, and therefore may not be disclosed by a public authority. Police forces, when issuing statements confirming the arrest of individuals on suspicion of criminal offences, do not therefore give out the name of any arrested individual as a matter of course: statements made by police forces will customarily use a formulation such as ‘a 48 year old male’ to confirm that an arrest has been made. This safeguards the right to privacy of an individual up to the point when any charges may be brought.

18. While the charging of an individual with a criminal offence is a public act and the name of the individual, and the offence with which he or she is charged, will be in the public domain, recent cases of media treatment of individuals said to be under investigation for notorious offences have highlighted the risks both to the effective conduct of justice and of violation of the right to privacy from the publication of names of arrested individuals before charge.²⁵ The Law Commission has been consulting on issues relating to contempt of court in reporting of criminal cases.²⁶ The Home Secretary, in recent guidance to the

20 For instance, the law has been interpreted to the effect that a person is arrested either (a) if as a result of what is said or done, he is under compulsion and not free to go as he pleases or (b) where the context of the restriction and the purpose of the confinement or restriction are such as to amount to an arrest. (*Blackstone’s Criminal Practice 2016, loc. cit.*)

21 *Ibid.* s. D1.17

22 Police and Criminal Evidence Act 1984, s. 30(1), (1A), (1B) and (2)

23 Police and Criminal Evidence Act 1984, s. 30A(1) to (3)

24 Human Rights Act 1998, Schedule 1, Part 1, Article 8

25 For example, the arrest of Christopher Jefferies in December 2010.

26 Law Commission, *Contempt of Court: A Consultation Paper*, Law Commission Consultation Paper No 209, November 2012

College of Policing, has set out her view that the arrest of an individual should only be made public in exceptional circumstances.²⁷

19. As the Clerk pointed out to us, police forces “inevitably” arrest people who turn out to be innocent of any wrongdoing.²⁸ Arrests may also take place under a voluntary arrangement between the individual and the police. As we point out at paragraph 15 above, arrest is not now invariably followed by detention until charge, and arrested individuals may be released on bail to attend a police station at a later date.

20. The practice of the House in extending the requirement of notification of arrest to include the publication in the Votes and Proceedings of the name of an arrested Member, and therefore providing for the publication of details of the arrest, can have an unnecessary and avoidable impact on the privacy and the reputation of a Member where no charge follows. There are instances where the arrest of a Member has taken place in public, following participation in a demonstration or following instances of affray. Those are events which have taken place in the public eye and have inevitably attracted press attention. Members arrested on other criminal charges have chosen themselves to make the fact of their arrest public: and any Member may choose to disclose the fact of their arrest, as might any other member of the public.

21. The circumstance which most concerns us is where a Member is arrested on suspicion of an offence related to activities which are essentially private and where he or she has not chosen to disclose the fact of the arrest or has not behaved in such a way as to make public knowledge inevitable. As matters stand, the fact of the arrest must be communicated to the Speaker. The Speaker himself has no discretion in this matter, because the notification is addressed to the House: he must put in train the procedures for notifying the House, irrespective of the facts of the case.

22. We reiterate: in no other walk of life would a citizen have the fact of an arrest automatically placed in the public domain in this way by a police force and a public authority. The right to privacy in this respect is provided for in domestic legislation passed by the House and underpinned by the right to privacy in the European Convention on Human Rights.

23. We have therefore asked ourselves, as invited by the Speaker, to consider whether the requirement of notification should simply be renounced. We have concluded that it should not. It seems to us that the ancient claim to freedom from arrest was founded on the House’s determination to protect its Members from harassment by the agents of the Crown or of other authorities claiming jurisdiction, or by other individuals. Although this threat is no longer present, the House’s assertion of its right to the attendance and participation of its Members in its proceedings should not be lightly abandoned, as it could not readily be reclaimed. The House must be in a position where it can ensure the attendance of its Members should this be required. The formal notification of an arrest is one means by which the House asserts the right to be kept informed by agents of the Crown of actions taken against members which may impair their ability to attend the House. The formal notification of imprisonment or other detention of a Member is another. And, although the House is not an employer of its members, it has some claim to private knowledge of

27 “Suspects should have right to anonymity at arrest - Theresa May”, BBC News website, 15 May 2013, last accessed 10 December 2015. For the views of the Commissioner of the Metropolitan Police on the issue, see also Home Affairs Committee, *Police bail*, Seventeenth Report of Session 2014–15, HC (2014–15) 962, para 7.

28 Appendix 2, para 16

those occasions in which its Members become entangled with the law, in case these raise any issues either of privilege or of safeguarding.

24. We recognise that a balance needs to be struck between the exercise of this claim and the legitimate expectations of Members to the same protections of their privacy as are enjoyed by others within the jurisdiction.

25. **We conclude that the House should continue to instruct police forces to provide notification of the arrest of any Member. We also conclude that the present practice of the House in requiring the Speaker to publish the fact of a Member’s arrest regardless of circumstance is, in its generalised and non-discretionary application, incompatible with the right to privacy.**

4 Future requirements

The requirement to notify

26. In continuing this requirement, the House needs to recognise the dilemma which police forces face in complying with it. They are required both to respect the privileges of the House and to obey the law. There is a potential conflict between the duty to notify and the obligation to respect the privacy of individuals.

27. However, as we have noted above, the right set out in Article 8 of the European Convention on Human Rights is a qualified one, and there are exceptions. For example, under the Notifiable Occupations Scheme, which operated between 1956 and August 2015, police forces were entitled to disclose information about the convictions of “people in professions or occupations which carry additional trust or responsibility” where the public interest in the disclosure of conviction and other information by the police generally outweighed the normal duty of confidentiality owed to the individual.²⁹

28. This scheme was replaced in August 2015 by a broader system of Common Law Police Disclosure, under which police forces are entitled to pass information on the arrest or charge of individuals to employers or regulatory bodies for the purposes of public protection.³⁰ Should it be the case that any individual—including a Member of Parliament—is arrested or charged with offences which give rise to a public protection risk, the arresting police force is entitled to disclose information about the risk to relevant employers or regulators to enable them to make an assessment of the risk. Notification generally takes place upon charge, but may be made upon arrest where a chief constable considers that there may be a public protection risk.

29. Because the requirement of notification that we are inviting the House to consider is wider, **we conclude that if the House is to maintain its requirement, it should do so by means of a new resolution. We publish a possible draft resolution at Annex 1. This would clarify the authority under which the police provide notifications. We recommend that the House restate its requirement for notification by passing a resolution to that effect.**

29 Home Office Circular HO 45/1986

30 Home Office, *Common Law Police Disclosure: guidance for employers and regulatory bodies*, August 2015

Procedure on notification

30. The Clerk of the House, in his memorandum, invited us to take two issues into account should we determine that the requirement for notification should continue:

- how to balance each Member's right to privacy against the requirement for the House to be informed of an arrest; and
- whether to make allowance for circumstances where an arrested Member positively seeks to engage the notification procedure, for instance in a case where an arrest was seen as unjust or oppressive or connected with a political cause.³¹

31. We consider that the competing requirements may be best addressed by establishing a protocol for notification based on the following principles:

- Each Member has the right to privacy which every citizen enjoys.
- A Member arrested on suspicion of a criminal offence should have the option to determine whether the arrest should be notified to the House.

32. The exception to the right to privacy stated above arises where that claim may be outweighed by the interest of the House in receiving notification, because it is judged that the arrest potentially infringes the privileges of the House. We consider that such competing claims should be resolved by the Speaker, advised if necessary by the Clerk of the House and the Committee of Privileges. In circumstances where a Member does not wish notification to be made, the Clerk of the House should advise the Speaker whether the circumstances of the arrest raise questions touching on the House's privilege which demand notification of the whole House. The Clerk of the Committee of Privileges should receive an anonymised account of the case. The Speaker may request that the Committee of Privileges urgently consider the matter and give its opinion.

33. We therefore propose, at Annex 2, a protocol which the House should be invited to endorse alongside the resolution which we recommend at paragraph 26 above. The purpose of the protocol is to guide the Speaker and the House in balancing a Member's right to privacy against the interest of the House in receiving notification. ***We recommend that the House endorse the proposed protocol published at Annex 2 of this report and direct the Speaker and the Clerk of the House to follow its provisions.***

³¹ Appendix 2, para 17

Conclusions and recommendations

Current practice, and issues arising

1. We conclude that the House should continue to instruct police forces to provide notification of the arrest of any Member. We also conclude that the present practice of the House in requiring the Speaker to publish the fact of a Member's arrest regardless of circumstance is, in its generalised and non-discretionary application, incompatible with the right to privacy. (Paragraph 25)

Future requirements

2. We conclude that if the House is to maintain its requirement, it should do so by means of a new resolution. We publish a possible draft resolution at Annex 1. This would clarify the authority under which the police provide notifications. *We recommend that the House restate its requirement for notification by passing a resolution to that effect.* (Paragraph 29)
3. *We recommend that the House endorse the proposed protocol published at Annex 2 of this report and direct the Speaker and the Clerk of the House to follow its provisions.* (Paragraph 33)

Annex 1: Draft Resolution on notification of arrest of members

That Members of the House shall be under no undue restraint from being able to attend the House, and that this principle has been, and continues to be, encompassed in the privileges of the House claimed at the beginning of each Parliament;

That this House accordingly:

(1) endorses the Second Report of the Procedure Committee, Session 2015–16, *Notification of the arrest of Members*, HC 649;

(2) directs the Clerk of the House and the Speaker to follow the protocol on notification of arrest of Members set out in Annex 2 to that Report; and

(3) directs each chief officer of police in the United Kingdom, immediately upon the arrest of any Member by the police force under that officer's command, to notify the Clerk of the House in accordance with the provisions of that protocol.

Annex 2: Protocol on the handling of notification of arrests

- 1) Police forces in the UK should as soon as possible and in any event within 24 hours of an arrest notify the Chief Superintendent at Parliament of any case in which a Member has been arrested or similarly detained, showing when and where the arrest took place, where and for how long the Member was detained, when and on what basis released, and the offence cited.
- 2) Once in receipt of such a notification, the Chief Superintendent should immediately notify the Clerk of the House. This notification should be marked In Strict Confidence. It will not be published in any way save (a) at the request of the Member concerned or his or her legal representative or (b) as directed by the Speaker following advice to that effect given under paragraph 10 below.
- 3) Police forces may, alongside the notification, make representations concerning the dissemination of the information provided, which shall be conveyed to the Clerk of the House by the Chief Superintendent. The Clerk of the House shall have regard to any such representations in handling the notification.
- 4) The Clerk of the House will make every effort to contact the Member or his or her legal representative to discover if the Member wishes the fact of the arrest and all or any of the other details to be made public. No impediment will be permitted to the right of a Member to inform the House of their arrest or detention.
- 5) If the Member indicates that he or she does wish for publication, the Clerk of the House will so advise the Speaker and Speaker's Counsel. The Speaker will inform the House verbally or by laying so much of the letter as the Member wishes before the House.
- 6) If the Member indicates that he or she does not wish for publication, the Clerk of the House, advised as necessary by Speaker's Counsel, will assess whether the arrest may raise issues of parliamentary privilege or of constitutional significance.
- 7) If the Clerk of the House considers that issues of parliamentary privilege or of constitutional significance do arise, he or she will so advise the Speaker.
- 8) Having considered such advice, the Speaker will inform the House either verbally or by laying the letter or relevant parts thereof before the House. The Member will be informed of this in advance, as will the Chief Superintendent.
- 9) Where the Speaker considers that the matter may raise issues relating to privilege which should in addition be urgently considered by the Committee of Privileges he or she may invite that Committee to consider it.
- 10) If the Clerk of the House considers that no issues of parliamentary privilege or of constitutional significance arise, there will be no further action.
- 11) There will be no notification under any of these provisions without previous contact with the Member concerned or his or her legal representative.

12) The Clerk of the House shall also send an anonymised account of each notification of arrest to the Clerk of the Committee of Privileges, solely for the purposes of collating information on the frequency and circumstances of such arrests.

13) Nothing in this Protocol affects the statutory duties of a court or tribunal to inform the Speaker in various circumstances of actions they have taken.

14) Nothing in this protocol shall be taken to affect the operation of police notification schemes to mitigate public protection risks.

Appendix 1: Letter from the Speaker to the Chair of the Procedure Committee, Charles Walker MP

I write to you to invite to Procedure Committee to inquire into the current practice of the House being informed where a Member has been arrested, and to consider if the practice should be altered. I do not feel that I can change the current practice without the authority of the House, but I am increasingly uneasy at the way it is operating in the 21st century and in a legal framework of individual rights.

Since I was elected Speaker in 2009, I have received a number of written notifications from police forces of instances where Members have been arrested, including in a number of cases where no charges followed. I have been advised that I must pass on this information to the House, either orally or by formally laying the letter before the House, recorded in the Votes and Proceedings. There has been variation in the content of these notifications; some included reference to the grounds for the arrest and details of the period of detention and subsequent bail regime, which others have not. Some have been received within hours of the arrest, while others have been received several months later.

The regime relies on a short passage in Erskine May, page 243, which states that “In all cases in which Members of either House are arrested on criminal charges, the House must be informed of the cause for which they are detained from their service in Parliament”. The references to “criminal charges”, which may well not follow an arrest, “the cause for which they are detained”, which is not always given, and to “their service in Parliament”, a phrase evidently open to wide interpretation, all suggest to me and to others that the time is ripe for inquiry.

It has, for example, been suggested that only where a Member’s arrest coincides with time during which the House is sitting should notification be required. More radically, I am advised there may be no case for formal notification to the House; no other citizen suffers from the publication of the facts of an arrest unless and until charges follow. I personally rather doubt that a regime designed some centuries ago for the protection of Members from arbitrary arrest by the executive is necessary now, although some form of informal notification might be retained, which preserved the privacy of the Member concerned.

I would therefore be grateful if your committee could inquire into this, drawing on expert resources of our procedural and legal advisers, with a view to sorting it out before this Parliament ends.

Rt Hon John Bercow MP

The Speaker

5 January 2015

Appendix 2: Memorandum to the Procedure Committee from the Clerk of the House

Notification of arrests of Members of Parliament

1) The practice of reporting the arrest of a Member to the House rests principally on the statement in Erskine May that “In all cases in which Members of either House are arrested on criminal charges, the House must be informed of the cause for which they are detained from their service in Parliament.”¹ The phrase “arrested on criminal charges” does not conform to current practice, since a person is arrested on suspicion of having committed an offence and is now rarely if ever charged at the moment of his arrest and indeed may not be charged at all. Nor does the reference later in the same passage to communicating “the cause of committal of a Member after his arrest” make any sense in the light of modern practice, given that cases are now ‘sent’ to the Crown Court for trial and committal proceedings have been abolished since 2013.

2) The statement quoted in para 1 above has survived unaltered from the first edition of Erskine May published in 1844.² Hatsell, May’s predecessor in describing the procedure and practice of the House, set out a number of cases of the arrest, imprisonment and conviction of Members of the House and concluded—

“We may collect from these instances, that whenever the King, or any of his Ministers, or persons employed by him, find it necessary, for the public service, to put a Member of the House of Commons under arrest, or that, in any public enquiry, matter comes out, which may lead to affect the person of a Member; or, as in the case of Mr Montagu, to seize his papers; it has been the uniform practice, immediately to acquaint the House of Commons, that they may know the reasons for such a proceeding, and take such steps as they think proper.—As there is no privilege, of which the House of Commons have always been, and indeed, ought to be, more jealous, than the security of the persons of the Members, “that they shall be under no undue restraint from being able to attend their duty in Parliament”, it is highly expedient, that, whenever the public necessity appears to the Ministers of the Crown to justify any breach of this privilege, they should as soon as possible acquaint the House with the steps they have taken, and the grounds and reasons which induced them to it”.³

3) This confirms that the origins of the practice of notification to the House of the detention or arrest of its Members lie in the now almost wholly discarded claim of the House to the privilege of freedom from arrest, claimed from the Sovereign and implicitly directed to the Sovereign.⁴ It is one of the privileges specified by the Speaker as amongst the “ancient and undoubted” privileges for which he seeks confirmation from the Lords Commissioners, after he has received the royal approbation from them, on the day following his election. May, however, describes it as being of “symbolic importance rather than of

1 May, 24th edition, p. 243.

2 May, 1st edition, p. 105.

3 *Precedents of Proceedings in the House of Commons with Observations*, John Hatsell, 1818, volume II, p 364.

4 For the authoritative account of this privilege, see May, 24th edition, pp 209–215.

practical effect”⁵ The 1967 Select Committee on Parliamentary Privilege recommended its abandonment.⁶ The Joint Committee on Parliamentary Privilege in 1999 agreed.⁷ The 2013 Joint Committee concurred with its two predecessors, but noting that legislation was unlikely and perhaps undesirable, but would be required, saw little need for any urgency in dealing with the anomaly.⁸ All these committees concurred in the conclusion that Members are subject to the normal course of criminal justice.⁹ Each also noted that with the abolition of imprisonment for civil debt in 1870, the last vestige of a requirement for this privilege had evaporated. May considers whether the privilege might apply in the case of a contempt of court of a “civil” rather than “criminal” nature, but the House has in the past generally declined to intervene in favour of a Member imprisoned for contempt of court.¹⁰

4) There is a parallel regime of notification to the House of imprisonment of a Member following conviction or remanded in custody. The automatic disqualification of, and consequent vacation of the seat held by, a Member imprisoned for more than one year necessarily means that the House be informed.¹¹ Section 4 of the Recall of MPs Act 2015 obliges a court to notify the Speaker of any sentence of imprisonment passed on an MP, in effect putting on a statutory footing what has long been the practice of notification of short sentences (such as those passed on Ulster Unionist Members in 1987/88).

5) A non-custodial sentence may also be formally announced to the House where it directly affects the House and its membership. The principal examples are of a conviction for an illegal or corrupt practice at a parliamentary election, which disqualifies the Member and vacates the seat¹², and the making of a bankruptcy restrictions order in respect of a Member.¹³ The Recall of MPs Act 2015 provides for the Speaker to transmit to the petition officer notice of a conviction for an offence under s.10 of the Parliamentary Standards Act 2009: although such a conviction would not normally fall to be announced to the House, it seems likely that the Speaker would want the House to be aware of the notification he had received and the action taken.

6) The House is not informed in all cases where a Member is unable to attend due to legal processes, such as jury service or appearance as a witness. The House is not now informed of the detention of a Member under the Mental Health Act. Nor of course is it formally notified in the myriad other circumstances of more or less involuntary absence, such as service away from Westminster on parliamentary duties, military service as a reservist, illness, maternity or paternity or other caring responsibilities.

7) There will of course be cases where a Member may fall foul of the law in various ways, leading to non-custodial sentences such as fines, or to a caution, without at any stage in the process being arrested or detained: and cases where a Member may be charged with

5 May, 24th edition, p. 206.

6 *Report from the Select Committee on Parliamentary Privilege, Session 1967–68*, HC 34, para 98.

7 *Report of the Joint Committee on Parliamentary Privilege, Session 1998–99*, HC 214-I, para 327.

8 *Report from the Joint Committee on Parliamentary Privilege, Session 2013–14*, HC 100, para 257.

9 Hatsell observed, in his review of precedents up to 1628, that “there is not a single instance of a Member’s claiming the Privilege of Parliament, to withdraw himself from the criminal law of the land: they were contented with being substantially secured from any violence of the Crown, or its Ministers; but readily submitted themselves to the judicature of the King’s Bench ...” (Hatsell, *op cit*, volume I, p. 206).

10 May, 24th edition, pp 246–7.

11 S.1 of the Representation of the People Act 1981.

12 May, 24th edition, pp 33–4.

13 May, 24th edition, p. 34.

offences without being first arrested or detained. None of these would give rise to formal notification to the House, although as some would be matters of public record they might become widely known. But a Member would have the same rights to privacy or protection of his sensitive personal data as any other citizen.

8) It is therefore neither (a) the mere inability of a Member to attend nor (b) the belief that any alleged or potential “criminality” of a Member in itself needs to be reported to the House as a whole that has led to the current regime on notification of arrests, but the insistence in past years by the House that it should be in a position to enforce its claim to freedom from arrest for its Members.

9) The attached historical table indicates some variation in recent practice. We cannot know on what occasions an arrest went unreported. For almost exactly thirty years, between the arrests of Jeremy Thorpe for conspiracy to murder and that of Damian Green for conspiracy to commit misconduct in public office, no reports were made to the House. It is hard to believe that there were no arrests of Members in that period.

10) The concerns surrounding the conduct of the police in relation to the Damian Green case led to a stricter application of the rules. The police were instructed (though they cannot be compelled) to report each and every arrest in a letter to the Speaker, and the practice has been to report each such letter to the House (“lay it on the Table”) and for the fact of that laying to be recorded in the Appendix to the Votes and Proceedings amongst other papers laid on that day. The entry names the Member concerned but does not give the other details included in the letter.

11) The level of detail given by the police in the letters of notification has varied. In some cases the details of the cause of arrest has been given, in other cases not. In the most recent example (Mr Mark Pritchard) no such details were disclosed, but the coincidence of the laying of the letter and the Metropolitan Police’s anonymised press release in which reference was made to the reasons for the arrest meant that the nature of the allegations against the Member were easily deduced by the media.

12) Mr David Ruffley’s arrest and caution in March 2014 came to public attention through the press several months after it occurred. The police were invited to report it retrospectively, and the letter was treated in the same way as others have been since the start of this Parliament. It contained brief details of the allegations and the caution delivered. These were by then already public knowledge.

13) On receiving notification of arrest, under the current practice Mr Speaker is in effect obliged to inform the House, either in an oral statement to the House or by laying the letter before the House.

14) “Laying” a document on the Table is an action which makes that document available to every Member of the House. Every such document is placed in the Library, and any such document can be inspected by any member of the public on application to the Records Office in Parliamentary Archives. In practice, modern technology means it would be impossible (and indeed pointless) to prevent the circulation of copies of such documents by other means. They are thus immediately available to the press, and if a member of the public requested a copy we would provide it. In other words, they are treated exactly as any other laid paper would be.

15) If the Speaker were in some or all cases to keep the letter of notification to himself, without prior authorisation from the House, he could be open to charges of improper protection of the reputation of the Member concerned by withholding damaging information from the House. That applies no matter what protective privacy marking the police may put on the letter, since it is plainly addressed to him under current conventions not in a personal capacity but as representing the House.

16) Publication of the fact of a Member's arrest and of the grounds for the arrest has inevitable reputational impact. All other citizens benefit from privacy in this respect. The police inevitably do arrest people who turn out to be innocent of any wrongdoing. Some arrests may even be voluntary arrangements between the individual and the police. Since information about the commission or alleged commission of an offence is 'sensitive personal data' for the purposes of the Data Protection Act 1998, the police do not officially announce the name of an arrested person, but use some such formula as 'a 54 year old male'. Thus most citizens can be assured that the fact of their arrest and the grounds for that arrest will not be published.

17) The Committee may therefore wish to consider—

- a) to what extent there is any remaining rationale for the House being informed whenever one of its Members has been detained on suspicion of having committed an offence;
- b) if so, how each Member's right to privacy should be balanced against any need for the House to be informed of the arrest of one of its Members; and
- c) whether allowance should be made for circumstances where an arrested or detained Member positively seeks the formal process of notification to the House, such as where the arrest or similar action was seen as unjust or oppressive, or closely connected with a political cause.

18) Whatever conclusion the Committee may draw on the right balance to be struck, it may consider that some means should be found of informal notification to the House authorities of arrests of Members, without necessarily triggering publication to the House or the wider world. As noted above, the Speaker cannot keep these matters from the House by his own decision, once they have been formally reported to him in writing. But an informal and clearly confidential communication to the House authorities (e.g. to the Clerk of the House, the Serjeant at Arms or Speaker's Counsel) of the arrest of any Member by the police could be established in a protocol, as a protection against abuse.

19) The Committee should be aware that broadly similar procedures apply in the Lords. While there is no absolute requirement to stay in step, it would be useful to test any suggested changes with the authorities there. It is clear from a very limited paper search that the practice in sister legislatures varies.

David Natzler

Clerk of the House

July 2015

Annex: notifications of arrests and imprisonments of Members since 1945

House notified of Members arrested:

Date of arrest	Sitting day?	Member	House informed	Offence	Outcome
Tuesday 02.12.2014	Yes	Mark Pritchard	Wednesday 03.12.2014	Not specified	Investigation dropped
Friday 17.10.2014	Yes	Eric Joyce	Thursday 23.10.2014	Assault	Charged and committed for trial
Saturday 15.03.2014	No	David Ruffley	Thursday 26.06.2014	Assault	Cautioned
Monday 19.08.2013	No	Caroline Lucas	Thursday 29.08.2013	Obstruction, &c.	Acquitted
Sunday 19.05.2013	No	Eric Joyce	Monday 03.06.2013	Threatening or abusive behaviour, &c.	Fined
Saturday 04.05.2013	House prorogued	Nigel Evans	Tuesday 14.05.2013	Sexual offences	Acquitted
Wednesday 19.06.2013	Yes		Wednesday 19.06.2013		
Tuesday 10.09.2013	Yes		Thursday 17.10.2013		
Friday 15.03.2013	No	Eric Joyce	Monday 18.05.2013	Assault	Not charged
Tuesday 21.02.2012	Yes	Eric Joyce	Wednesday 22.02.2012 (Speaker's Statement); Monday 27.02.2012 (letter laid on the Table)	Assault	Fined, &c.
Thursday 09.06.2011	Yes	Andrew Bridgen	Thursday 09.06.2011	Sexual assault	Not charged

Date of arrest	Sitting day?	Member	House informed	Offence	Outcome
Thursday 27.11.2008 (during pro-rogation)	House prorogued	Damian Green	Monday 01.12.2008	Conspiracy to commit misconduct in a public office	Not charged
Friday 04.08.1978	No	Jeremy Thorpe	Tuesday 24.10.1978	Conspiracy to murder	Acquitted
Wednesday 21.06.1977	Yes	Audrey Wise	Wednesday 21.06.1977	Obstruction	Fined
Saturday 19.07.1975	No	John Stonehouse	Monday 21.07.1975	Fraud, theft, forgery, conspiracy to defraud, wasting police time, &c.	Remanded in custody; took the Chiltern Hundreds
Thursday 15.01.1970	No	Will Owen	Monday 19.01.1970	Breach of the Official Secrets Act	Remanded in custody; acquitted
Friday 16.01.1970	No		Monday 19.01.1970		
Monday 19.01.1970	Yes		Thursday 22.01.1970		

House notified of Members imprisoned:

Date of imprisonment	Sitting day?	Member	House informed	Offence	Sentence
Thursday 11.07.1991	Yes	Terry Fields	Monday 15.07.1991	Non-payment of community charge	60 days
Wednesday 24.08.1988	No	Peter Robinson	Wednesday 19.10.1988	Unlawful procession	7 days for non-payment of fine
Wednesday 24.02.1988	Yes	Harold McCusker	Thursday 25.02.1988	Unlawful procession	7 days for non-payment of fine
Wednesday 24.02.1988	Yes	Martin Smyth	Thursday 25.02.1988	Unlawful procession	7 days for non-payment of fine

Date of imprisonment	Sitting day?	Member	House informed	Offence	Sentence
Wednesday 24.02.1988	Yes	Clifford Forsythe	Thursday 25.02.1988	Unlawful procession	7 days for non-payment of fine
Wednesday 17.02.1988	Yes	Peter Robinson	Monday 22.02.1988	Untaxed vehicle	30 (actually 7) days for non-payment of fine
Wednesday 10.02.1988	Yes	Roy Beggs	Monday 15.02.1988	Unlawful procession	7 days for non-payment of fine
Wednesday 27.01.1988	Yes	William McCrea	Monday 01.02.1988	Unlawful procession	7 days non-payment of fine
Wednesday 20.01.1988	Yes	Peter Robinson	Monday 25.01.1988	Unlawful procession (two offences)	7 days for non-payment of fines
Wednesday 06.01.1988	No	A. Cecil Walker	Monday 11.01.1988	Unlawful procession	7 days for non-payment of fine
Tuesday 22.09.1987	No	Peter Robinson	Wednesday 21.10.1987	Untaxed vehicle	7 days for non-payment of fine
Monday 15.06.1987	Parliament dissolved	Ken Maginnis	Thursday 25.06.1987	Untaxed vehicle	7 days for non-payment of fine
Monday 26.01.1987	No	Harold McCusker	Wednesday 28.01.1987	Untaxed vehicle	7 days for non-payment of fine
Monday 17.04.1972	Yes	Frank McManus	Thursday 20.04.1972	Unlawful procession (three offences)	6 months
Monday 17.04.1972	Yes	Bernadette Devlin	Thursday 20.04.1972	Unlawful procession	6 months
Monday 18.01.1971	Yes	Frank McManus	Friday 22.01.1971	Unlawful procession (three offences)	6 months

Date of imprisonment	Sitting day?	Member	House informed	Offence	Sentence
Friday 26.06.1970	Parliament dissolved	Bernadette Devlin	Thursday 02.07.1970	Incitement to riot	6 months
Tuesday 30.11.1954	Yes	Peter Blaker	Wednesday 01.12.1954	Uttering forged documents	7 years (expelled from House)
Wednesday 29.10.1947	Yes	David Weitzmann	Thursday 30.10.1947	Unlawful supply of toilet preparations	12 months (quashed 16.03.1948; House informed 17.03.1948)

Formal Minutes

Wednesday 9 December 2015

Mr Charles Walker, in the Chair

Jenny Chapman	Sir Edward Leigh
Nic Dakin	Mr Alan Mak
Patricia Gibson	Mr David Nuttall
Patrick Grady	

Draft Report (*Notification of the arrest of Members*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 33 read and agreed to.

Annexes 1 and 2 and Summary agreed to.

Two papers were appended to the Report as Appendices 1 and 2.

Resolved, That the Report be the Second Report of the Committee to the House.

Resolved, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Wednesday 16 December at 2.30 pm.]

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/proccom.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

First Report	Government proposals for English votes for English laws Standing Orders: Interim Report	HC 410 (HCWS (2015–16) 251)
--------------	---	--------------------------------