



Parliamentary Privilege in the Northern Ireland Assembly.

Section One: Overview

Parliamentary privilege at Westminster has evolved through custom, practice and law, and Westminster privilege comprises rights and immunities enjoyed by the Houses of Parliament.

While the privilege is Parliament's rather than the individual member's, it does attach to certain activities of an MP in the performance of some but not all of their Parliamentary functions.

Parliamentary privilege has two main components:

1. Freedom of speech, guaranteed by an absolute privilege enshrined in Article 9 of the Bill of Rights 1689 which states:

"That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

The privilege of freedom of speech protects what is said in debate and allows members to speak without fear of penalty, civil or criminal, in any court or tribunal. It also protects officers of Parliament and those non-members who participate in the proceedings of Parliament, for example witnesses giving evidence to a committee of Parliament.

2. The exercise by Parliament of control over its own affairs, known technically as 'exclusive cognisance' (or exclusive jurisdiction):

Exclusive cognisance enables Parliament to have control over all aspects of its own affairs, to determine its procedures and to discipline its own members for misconduct.

Individual Members of Parliament do not have immunity from criminal or civil prosecution, but it is not possible for parliamentary proceedings to be used in evidence against Members when prosecutions are undertaken by virtue of Article 9.

Section Two: Northern Ireland context

Parliamentary privilege, as operated at Westminster, does not extend to any of the devolved legislatures as these are "creatures of statute". The privileges enjoyed by the Northern Ireland Assembly are therefore reviewable by a Court of law. Whilst the devolution legislation gives the Northern Ireland legislature some statutory protection, regarding defamation and liability for contempt of court, these do not equal the breadth of parliamentary privilege enjoyed at Westminster.

The only parliamentary privileges (i.e. legal protections and immunities) applicable to the Northern Ireland Assembly are those conferred by the Northern Ireland Act 1998, which relate to freedom of speech only and not exclusive cognisance.

Section 50 of the Northern Ireland Act 1998 states:

"For the purposes of the law of defamation, absolute privilege shall attach to –

- (a) The making of a statement in proceedings of the Assembly; and
- (b) The publication of a statement under the Assembly's authority.

Thus freedom of speech for Members applies only to the law of defamation so that a Member of the Assembly could make reference to an individual, group of individuals or organisations and would not be committing an act of defamation under this privilege.

Section 13 of the Defamation Act 1996 allows a Member of Parliament to waive parliamentary privilege for the purpose of defamation hearings. Neil Hamilton sued the Guardian Newspaper in libel over allegations that he had accepted cash to ask questions in Parliament. In its defence the Guardian attempted to admit evidence about Mr. Hamilton's conduct and motives in tabling parliamentary questions and early day motions. The judge found that the Guardian would in doing so be acting contrary to Article 9 of the Bill of Rights. As such the Court stopped the proceedings on the grounds that it would not be fair to allow the plaintiff to sue for libel if the defendant newspaper was not permitted to justify what it had written.

Section Three: Proceedings in Parliament

There is no comprehensive definition of proceedings in parliament nor is there one of proceedings in the Assembly.

It appears to include debates and actions taken by the House collectively such as decisions. An individual member takes part in proceedings usually by speech by voting, or by reporting from a committee. Non-members may take part in proceedings by giving evidence before one of its committees or by securing presentation of a petition.

Absolute privilege against defamation attaches to:

- a. The making of a statement in proceedings of the Assembly; and
- b. The publication of a statement under the Assembly's authority.

It would certainly appear to be the case that if an action were to be raised against any Member in respect of any potentially defamatory statement he has made in proceedings in the Northern Ireland Chamber or Committee, the Member could defend the action by relying on the privilege provided for under section 50 of the 1998 Act.

Section Four: Contempt

Closely related to the concept of privilege is contempt, and indeed sometimes the terms privilege and contempt are used interchangeably when discussing the breach of privilege. It is important to remember that whilst a breach of the privileges of the House of Commons can be contempt, contempt is not necessarily a breach of privilege.

Parliament claims a jurisdiction in contempt to enable the proper performance of its functions and to ensure there is no or little interference with Parliament or its Members or officers in discharging their public duties. Thus Parliament must have the power to take appropriate action in response. The function is essentially that of unimpeded debate and legislation and any interference is known as contempt.

Actions of contempt by Members might include for instance, a failure to fulfil any requirement of the House, as declared in a code of conduct or participation in debate or other proceedings or acting in breach of any orders of the House.

The devolved legislatures may not claim a jurisdiction in relation to contempt in the way that it is done by Westminster.

Section Five: Northern Ireland Assembly's Justice Committee

Pursuant to section 29 of the Northern Ireland Act 1998 standing orders shall, inter alia, make provision for establishing committees of members of the Assembly to advise and assist each NI Minister in the formulation of policy with respect to matters within his responsibilities as a Minister.

Statutory committees are set up to advise, assist and scrutinise Ministers and their Departments. For example, the Justice Committee is one of Northern Ireland's 12 statutory committees and it is set up to scrutinize the Department of Justice and its Minister. The current Chair is Paul Givan MLA whilst the Deputy Chair is Raymond McCartney MLA.

Section Six: Northern Ireland Assembly's Committee on Standards and Privileges

This Committee has a remit under the Standing Orders to investigate breaches of privilege.

Standing Order 57 provides that there shall be a committee of the Assembly called the Committee on Standards and Privilege to inter alia, consider specific matters relating to privilege referred to it by the Assembly and consider any matter relating to the conduct of members, including specific complaints in relation to alleged breaches of any code of conduct to which the Assembly has agreed and which have been drawn to the committees attention.

Standing Order 70 sets out how matters of privilege can be raised by Members and dealt with by the Speaker. It reflects the House of Commons procedure for handling breaches of privilege, and provides, inter alia, that:

“a specific matter affecting the privilege of the Assembly shall be referred to the Committee on Standards and Privileges”.

Interestingly, this standing order was taken from the Standing Orders of the 1973 Northern Ireland Assembly, which had privilege equivalent to the of the House of Commons. Section 26 of the Northern Ireland Constitution Act 1973 conferred the House of Commons in Westminster's privileges on the Northern Ireland Assembly as it was then, but this was not repeated in the Northern Ireland Act 1998 under devolved Government.

Previously, section 26 of the 1973 Act provided:

“The powers, privileges and immunities of the Assembly and of the members and committees thereof shall be the same as those for the time being held and enjoyed by the House of Commons and its members and committees”

This sits in stark contrast to the present position as set out above and provided for in section 50 of the Northern Ireland Act 1998.

Section Seven: Members of the Public Adversely Named During Proceedings in the Chamber of Committee

The options for a non member in these circumstances are as follows:

1. By writing to:
 - a. The Member concerned;
 - b. To all NI Assembly Members (108 copies of letter in one envelope addressed to “For the Attention of all Members”);
 - c. To the Members of their constituency; and
 - d. To the political parties;
2. By writing to the Speaker
3. By speaking to the press or public
4. By lobbying another Member of the Assembly to take action.



Olivia O'Kane
Associate | Defamation & Media Law Department
+44 (0)28 9034 8827
olivia.okane@carson-mcdowell.com

