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The Parliamentary Oath

This paper looks at the requirement on Members of Parliament to swear an oath of allegiance or make, instead, a solemn affirmation. The history of the oath is described, and the oath in the devolved legislatures is covered. The paper also outlines the main objections to the oath, and looks in more detail at the events following the Speaker's ruling in May 1997 that Members who do not swear the oath are not entitled to use the facilities of the House.

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Summary of main points

Members of both Houses of Parliament are required by law to take an oath of allegiance to the Crown on taking their seat in Parliament. The current wording of the oath was established in the *Promissory Oaths Act 1868*. Any Member or Peer who objects to swearing an oath can, instead, make a solemn affirmation, under the terms of the *Oaths Act 1978*. Until the oath/affirmation is taken, a Member may not sit in the House or vote, and may not receive salary or make use of the facilities of the six departments of the House.

The parliamentary oath has a long history. Members were, at one stage, required to take three separate oaths: the oaths of supremacy, of allegiance and of abjuration. Religious restrictions enshrined in the oath effectively barred individuals of certain faiths (eg Roman Catholics, Jews and Quakers) from entering Parliament for many years. The option of making a solemn affirmation in place of the oath emerged over time, different categories of people gaining the right at different times. The general right to affirm was established in 1888 following the case of Charles Bradlaugh, who was first elected to Parliament in 1880, but, as a professed atheist, was not allowed to take the oath or to affirm.

Various objections are levied against the oath of allegiance: objections to the religious loyalties still implicit in the oath; republican objections to the requirement to pledge allegiance to the Crown; objections that the oath contains no pledge of duty towards the people, or towards democracy. There are also objections to Members of Parliament having to take an oath at all.

Two Sinn Féin Members (Gerry Adams and Martin McGuinness) were elected in the 1997 General Election and did not take the oath/affirmation, so did not take their seats. The Speaker ruled in May 1997 that any Member who did not take the oath/affirmation would not be entitled to use the services offered to Members by the House. Martin McGuinness applied to the High Court of Justice of Northern Ireland for leave to apply for judicial review of the Speaker's decision; the application was refused. He took the case to European Court of Human Rights, where the case was ruled inadmissible.

In December 1999, the media reported that the Government intended to seek the agreement of the House to allow the Sinn Féin Members to use Commons facilities without taking the oath. The Government has said that it has no plans to abolish or change the oath.

CONTENTS

I	Introduction	7
II	The Current Parliamentary Oath	9
	A. Form of oath and affirmation	9
	B. Arrangements for taking the oath	10
	C. Consequences of failure to take oath/affirmation	11
	D. The role of Members	13
III	History of the Oath	15
	A. Early oaths	15
	1. Oath of supremacy	16
	2. Oath of allegiance	16
	3. Oath of abjuration	17
	B. Religious restrictions	18
	C. The modern form of oath	20
	D. The right to affirm	21
	E. The case of Charles Bradlaugh	22
	F. Legislative developments since 1888	24
IV	Objections to the Oath/Affirmation	25
V	The Oath in UK Devolved Legislatures	26
	A. Scottish Parliament and National Assembly for Wales	26
	B. Northern Ireland Assembly	29
VI	Sinn Féin and the Oath	29
	A. General	29

B. The Speaker's ruling	30
C. The legal challenge	33
1. High Court of Justice of Northern Ireland	33
2. European Court of Human Rights	33
3. The Judgment as to Admissibility	34
D. Recent Developments	38
Appendix 1: Recent Speaker's statements on the oath	45
Appendix 2: Recent Attempts to Amend the Oath	48
Appendix 3: Other Oaths	49

I Introduction

Oaths of allegiance to the Crown are fairly common in British public life and approximate to those in other countries where a declaration of loyalty is made to the State. Oaths of office and judicial oaths are required from, for example: Ministers of State, judges, justices of the peace and other holders of executive and judicial office.¹ Special oaths are required on taking up other offices or dignities: an oath of homage by archbishops and bishops, a parliamentary oath by Members of Parliament and Peers², as well as the oaths required, for example, of Privy Counsellors, members of the clergy, the armed services, police constables and of aliens upon naturalization. A coronation oath is also sworn by the Monarch.

Members of Parliament are required by law to swear an oath or make an affirmation on taking their seats in Parliament. In summary, the current statutory requirements are enshrined in the following pieces of legislation:

- the wording of the oath is prescribed by the *Promissory Oaths Act 1868*
- the form and manner of administering the oath, and the right of a Member to make a solemn affirmation instead of swearing an oath, are set out in the *Oaths Act 1978*
- the penalties levied against any Member who takes part in parliamentary proceedings without having taken the oath are specified in the *Parliamentary Oaths Act 1866*

Members and Peers who have not taken the oath or made the affirmation cannot take part in any proceedings in the Chamber, nor table questions or motions of any kind. Neither may they sit in the body of the Chamber. It is usual for new Members who have not yet taken the oath to sit below the Bar: Charles Bradlaugh, (see Part III.E below), did this regularly and also addressed the House on several occasions from that position. The situation regarding committee service is, at least historically, less clear cut. In the 18th and 19th centuries it appears that some Members who had not taken the oath did serve on select committees “in exceptional circumstances”³ (eg, John Bright and Sir Joseph Jekyll). *Erskine May* further states:

Although a Member may not sit and vote until the oath is taken, he may vacate his seat by the acceptance of the Chiltern Hundreds. He is not entitled to a salary or to most of the services provided by the Departments of the House.⁴

The position regarding salary entitlement for Members had not been clear until Speaker Lowther (Viscount Ullswater) made a statement on 26 February 1917 to the effect that there was no statutory regulation of the moment of time at which a Member’s salary became

¹ Full list appears in *Halsbury’s Laws of England*, 4th ed reissue, Vol 8(2) para 923

² and members of the Scottish and Welsh devolved legislatures

³ *Erskine May*, 22ed, p 243

⁴ *ibid*, p 242-3

payable. He therefore ruled that it should begin at the point at which ‘an hon Member qualifies himself to perform his duty as a Member by taking and subscribing the oath.’⁵

A subsequent Speaker’s ruling was made, by Speaker Whitley, on 13 March 1924, as follows:

Mr Speaker: I am unable to give my countenance to the suggestion that Members should take the oath elsewhere than here at the Table of the House, but I have arranged that, in the case of a General Election, Members after taking the Oath, shall be entitled to draw their salaries as from the date on which the Clerk of the Crown intimates to the Speaker that all the returns have been received by him, or, when Parliament assembles on a date on which all returns have not been so received, then the date on which Parliament assembles, in respect of all those Members who have been returned, and in respect of Members who have not then been returned the date on which their return reaches the Office of the Clerk of the Crown.

In the case of bye-elections, Members shall draw their salaries as from the date on which the Member’s return is certified by the Clerk of the Crown.

A Member who has not taken the Oath within six months of the return of his writ to the Clerk of the Crown shall not be entitled to claim any salary prior to the date of his taking the Oath.

This Order applies to Members elected to serve in the Present Parliament.⁶

This statement appears to have been prompted by questions from Members.⁷ An Irish Nationalist Member, Cahir Healy, had been interned from June 1922 until February 1924, but had been elected for Fermanagh and Tyrone in the November 1922 election. He did not take the oath.⁸

Thus it was established that Members’ entitlement to a salary starts from the day after polling day, but they may not receive it or any allowances until after they have taken the oath or made the affirmation. Once this has been done, the salary is backdated to the date of first entitlement. If, however, Members do not take the oath/affirmation within six months of the return of the writ, they are not entitled to claim any salary for the period before the date when the oath/affirmation is taken. Pensions are contributory so that a Member who has received no salary can obviously neither contribute nor receive benefits.

⁵ HC Deb 26 February 1917 Vol 90 c 1692

⁶ HC Deb 13 March 1924 Vol 170 c 2556

⁷ HC Deb 28 February 1924 Vol 170 c 667-8

⁸ *Commons Journal*, 23 November 1923, p 345. See also FWS Craig’s *British Parliamentary Elections 1918-49*. Mr Healy was elected again for Fermanagh and South Tyrone in the 1950 and 1951 general elections.

Before 1997, Members who did not take the oath, while unable to receive their salary, were entitled to the other facilities of the House.⁹ After the 1997 general election the present Speaker made a new ruling on entitlement to salary, allowances and services as they relate to Members who have not taken the oath. This removed the right of any such Members to the services of the House. The Speaker's statement on 14 May 1997¹⁰ appears in an appendix to this Paper and is examined in Part VI below.

II The Current Parliamentary Oath

A. Form of oath and affirmation

The current wording of the oath was established under the provisions of the *Promissory Oaths Act 1868*. The current form and manner of administering the oath are prescribed by section 1 of the *Oaths Act 1978*, which prefaced the oath with the phrase “*I swear by Almighty God...*”. The usual wording of the oath is thus:

I swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law. So help me God.

(The text of the *Promissory Oaths Act* specified Queen Victoria, but section 10 allows for the substitution of the name of the reigning Sovereign.)

There are, however, two further options available to Members. If a Member so chooses, the form of wording in the *Promissory Oaths Act* (without the 1978 prefatory phrase) can be used when swearing the oath, in which case it would begin:

I do swear that I will be faithful ...

Members who object to swearing the oath are permitted by section 5 of the *Oaths Act 1978* (and enshrined in Standing Order No 5) to make a “solemn affirmation”, the text of which is set out in section 6. The full wording of the affirmation is -

I do solemnly, sincerely and truly declare and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law.

⁹ see *Erskine May* 21 ed p 231 – “he ... is entitled to all the other privileges of a Member (but not his salary), being regarded both by the House and by the law, as qualified to serve, until some other disqualification has been shown to exist.” The Speaker stated on 14 May 1997 that the 1924 statement applied to allowances as well as salaries: see Appendix 1

¹⁰ HC Deb Vol 294 cc 35-6

The oath/affirmation must be taken in English, as set out in *Erskine May*, although the Speaker has allowed Members to recite Welsh and Gaelic forms in addition.¹¹

B. Arrangements for taking the oath

Members of Parliament and Peers are required to take the parliamentary oath or make the affirmation required by law at the start of each new parliament and after the death of the Monarch. At the start of a new parliament, after the Speaker has been duly elected by the House and taken the oath, the process of swearing-in of other Members begins. The occupants of the Government front bench are traditionally the first to be sworn, followed by the occupants of the Opposition front bench and any other privy counsellors. In 1996 the Procedure Committee recommended¹² that swearing-in should be organised by seniority, that is, by the parliament of first entry (or for those with broken service, most recent entry). This system was adopted by the Speaker in May 1997 when she called Members in the following order: Father of the House, Cabinet Ministers, Shadow Cabinet Ministers, Privy Counsellors, other Ministers, and other Members according to seniority. Members normally continue take the oath on the first day of the meeting of the new parliament and on one or more subsequent days, after which the majority of Members will have been sworn and are therefore qualified to sit and vote in the House. Members are able to take the oath at subsequent sittings, when a time immediately after prayers is set aside for this purpose.

The procedure for taking the oath is as follows: the Members approach the Table of the House where they swear the oath or make the affirmation (see Part III.D below) in the presence of a Clerk who makes available the text of the oath/affirmation on a card. The ordinary form and manner of administering and taking the oath are prescribed by section 1 of the *Oaths Act 1978*. The oath is administered while the Member holds in uplifted hand a copy of the New Testament or if Jewish, the Old Testament. Section 1 (3) of *the Oaths Act 1978* permits persons of neither the Christian nor Jewish faiths to take the Oath "in any lawful manner". For example, Moslems or Sikhs would be sworn in the usual manner except a Koran (in an envelope, to avoid it being touched by one not of the faith), or Granth would be substituted for the Bible. Mohammad Sarwar, a Moslem, took the oath in this way in May 1997.

A Member may also take the oath with uplifted hand "in the form and manner in which the oath is usually administered in Scotland".¹³ Members who so desire may also take the oath prescribed in the *Promissory Oaths Act 1868* (see above) and kiss the book.

When Members have sworn the oath or made the affirmation, they sign the "Test Roll", headed by the oath and affirmation, which remains in the possession of the Clerk of the House. The Test Roll was formerly a roll of parchment folded in the shape of a book, and is now a book of pages of parchment interleaved with blotting paper. After signing the Test Roll, Members are

¹¹ 22 ed, p 309, which also refers to a Speaker's ruling - HC Deb 21 July 1966 Vol 732 c 879-80

¹² Procedure Committee *Proceedings at the Start of a Parliament*, May 1996, HC 386 1996-97

¹³ *Oaths Act 1978* (chap 19) s3

introduced to the Speaker by the Clerk of the House. Once the majority of Members has been sworn in, which usually takes a few days, the House is properly constituted and Parliament is ready to hear the Queen's speech and to proceed with the initial business of the session.

Members who have been returned at a by-election are normally introduced immediately after oral questions in order that they may be in a position to take part in public business as soon as possible.¹⁴ Such Members take the oath or make their affirmation in the same manner as those returned at a general election. Standing Order No 6 provides that:

Members may take and subscribe the oath required by law at any time during the sitting of the House, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of; but no debate or business shall be interrupted for that purpose.

The names of Members taking the oath or making the affirmation are recorded in the *Votes and Proceedings* and subsequently in the *Journal*. Because the *Journal* entries for Members sworn after a general election are recorded together, it is not possible to ascertain definitively whether an individual Member swore the oath or made the affirmation, though this is generally recorded at the introduction of a new Member after a by-election.

C. Consequences of failure to take oath/affirmation

Should a Member take part in parliamentary proceedings without having sworn the oath or made the affirmation, the penalty is £500 for every offence, together with vacation of his or her seat. The position is set out in *Erskine May*:

By the Parliamentary Oaths Act 1866, any peer voting by himself or his proxy, or sitting in the House of Lords without having taken the oath, is subject, for every such offence, to penalty of £500; and any Member of the House of Commons who votes such, or sits during any debate after the Speaker has been chosen, without having taken the oath, is subject to the same penalty, and his seat also vacated in the same manner as if he were dead. The fine may be recovered upon the suit of the Crown alone. When peers or Members have neglected to take the oaths from haste, accident, or inadvertence, Acts of indemnity have been passed to relieve them from the consequences of their neglect. In the Commons, however, it is necessary to move a new writ immediately the omission is discovered, as the Member's seat is vacated.¹⁵

There have been cases where Members or Peers have inadvertently neglected to take the oath and they have sometimes been relieved of the consequences of their omission by an Act of Indemnity. Such an Act cannot, however, prevent a Member's seat from being immediately vacated; a new writ must be moved for at once.¹⁶

¹⁴ *Erskine May*, 22 ed, p 308

¹⁵ *ibid*, p 242-3

¹⁶ *ibid*, p 242-3

The requirement to take the oath/affirmation is also enshrined in the Code of Conduct for Members of Parliament:¹⁷

II Public duty

By virtue of the oath, or affirmation, of allegiance, taken by all Members when they are elected to the House, members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.¹⁸

Action could, at least in theory, be taken against any Member not complying with this particular duty in the code of conduct. Any complaint alleging that the conduct of a Member was incompatible with the code of conduct would be dealt with by the Parliamentary Commissioner of Standards and the Committee on Standards and Privileges. In this sense, the oath is akin to issues of privilege or exclusive cognisance, where Parliament holds the power to regulate its own composition and internal procedures, including the discipline of Members.

The *Political Parties, Elections and Referendums Bill*¹⁹ would introduce new consequences for Members who do not take the oath. Part I of the Bill contains provisions which would exclude parliamentary parties comprised solely of Members of Parliament who had not taken the oath. In the current Parliament this would apply only to Sinn Féin.

Clause 1 of the Bill would establish an Electoral Commission. The general functions of the Commission would include: reporting on particular elections and referendums; the review of electoral law; the provision of guidance in relation to party political broadcasts; and promoting understanding of electoral and political matters.²⁰ Electoral Commissioners would be appointed by Her Majesty on the presentation of an Address from the House of Commons. The procedure for their appointment would require consultation with the leaders of each registered political party with two or more sitting Members of the House of Commons.²¹ However, Clause 3(5)(a) of the Bill would exclude from the consultation process any party which did not have two or more Members who had taken the oath.

Clause 10 would provide for a system of policy development grants to be devised and administered by the Electoral Commission.²² Such grants would be available to each registered political party with two or more sitting Members of the House of Commons but, again, any party which did not have two or more Members who had taken the oath would not be eligible.²³

¹⁷ see also Part V.A for discussion on the oath in the Scottish Parliament's proposed code of conduct

¹⁸ *The Code of Conduct together with the guide to the rules relating to the conduct of Members*, 24 July 1996, HC 688 1995-96

¹⁹ Bill 34 of 1999-2000

²⁰ See Research Paper 00/1 for further details of the role of the commission

²¹ Clause 3(2)(b)

²² See Research Paper 00/2 for background on policy development grants

²³ Clause 10(1)(b)

D. The role of Members

The legislation which prevents elected Members from taking their seats unless they swear the oath of allegiance is part of the law governing the conduct of the House of Commons. This should be distinguished from electoral law, which provides for the return of the deposit paid by a candidate once he or she has been elected. There is no requirement to take the oath to be recognised as the elected Member for a particular constituency.²⁴ Government departments, for example, would appear to treat correspondence from Members who have not taken the oath in a similar manner to letters from other Members. A Member may of course subsequently be disqualified under the *House of Commons Disqualification Act 1975* or other statutory provisions on disqualification.²⁵

Members of Parliament have a number of possible roles besides participation in the proceedings of the House of Commons. These additional roles, which are not dependent on taking the oath, have grown in prominence in recent years. A survey of MPs first elected in 1997, carried out soon after the General Election, found that 86 per cent of those who responded thought that “being a good constituency member” was their most important activity. Only 13 per cent ranked “checking the executive” higher in their list of priorities.²⁶ There is no official “job description” for MPs, although a recent SSRB report contained a description of the various roles which Members adopt in practice:

Job Purpose

Represent, defend and promote national interests and further the needs and interests of constituents wherever possible.

Principal Accountabilities

1. Help furnish and maintain Government and Opposition so that the business of parliamentary democracy may proceed.
2. Monitor, stimulate and challenge the Executive in order to influence and where possible change government action in ways which are considered desirable.

²⁴ Rule 53(2) of the *Parliamentary Elections Rules in the Representation of the People Act 1983* provides for the deposit to be returned the day following the poll, unless forfeit due to insufficient votes for a candidate. Election deposits of £150 were introduced in the *Representation of the People Act 1918* and applied to the Stormont Parliament. According to official files in the Public Record Office, the deposits given by Sinn Fein Members Michael Collins and Arthur Griffith for their election to Stormont in 1921 were retained, since they had not taken the oath. There was considerable discussion between the British and (effectively Northern) Irish Law Officers as to the legality of this retention. The Treasury concluded that the deposits would be returned if applied for. The money was eventually returned to Arthur Griffiths. Following the assassination of Michael Collins in 1922, his executors applied in 1925 for the return of the money which had been held by the Under Sheriff of Armagh, who had also died. The files are silent as to the solution of the dispute (HO 45 20070)

²⁵ For further details see Research Paper 00/6 *Disqualifications Bill*

²⁶ Philip Norton and Austin Mitchell, “Meet the new breed”, *House Magazine*, 13 October 1997

3. Initiate, seek to amend and review legislation so as to help maintain a continually relevant and appropriate body of law.
4. Establish and maintain a range of contacts throughout the constituency, and proper knowledge of its characteristics, so as to identify and understand issues affecting it and, wherever possible, further the interests of the constituency generally.
5. Provide appropriate assistance to individual constituents, through using knowledge of local and national government agencies and institutions, to progress and where possible help resolve their problems.
6. Contribute to the formulation of party policy to ensure that it reflects views and national needs which are seen to be relevant and important.
7. Promote public understanding of party policies in the constituency, media and elsewhere to facilitate the achievement of party, objectives.

Nature and Scope

An MP's work may be seen under three broad headings. The first is his or her participation in activities designed to assist in the passage of legislation and hold the Executive to account. This is traditionally seen as the "core" role of the parliamentarian. The second area is work in and for the constituency. This is in part representational; in part promoting or defending the interests of the constituency, as a whole; and in part it is designed to help individual constituents in difficulty. The third part of the job is work in support of the party to which the Member belongs, and for which he/she was elected.²⁷

The second and third broad headings described above, constituency and party political work, do not necessarily require participation in parliamentary proceedings, although this could obviously further these objectives on occasion. The second specific task listed by the SSRB, "monitor, stimulate and challenge the Executive in order to influence and where possible change government action", is presumably meant to fall under the "core" parliamentary heading, but might well be pursued effectively from outside the precincts of the Palace, for example in the media and by meetings and correspondence with Ministers. Indeed, the paper produced for the SSRB quoted above suggests that

perhaps only a relatively small minority [of Members] seek to influence events by participating to the fullest extent in the Chamber itself.²⁸

There has been much recent comment to the effect that

The main arena of British political debate is now the broadcasting studio rather than the chamber of the House of Commons.²⁹

²⁷ Review Body on Senior Salaries, Report No 38, *Review of Parliamentary Pay and Allowances*, Vol 2, Cm 3330-II, July 1996. Section 1 (paper by Hay Management Consultants), p22

²⁸ Review Body on Senior Salaries, Report No 38, op cit, p23

III History of the Oath

Different oaths have been used at different times in parliamentary history, particularly as changes were made to address perceived political threats (eg the influence of the Pope or the Stuart Pretender) and, later, in more tolerant times, to accommodate wider religious views.

A. Early oaths

In an article written by two House of Lords clerks some years ago tracing the origins of the oath of allegiance in the English and, later, UK Parliament, the writers investigated whether the current parliamentary oath of allegiance grew directly out of the feudal oath required of magnates of the realm in medieval times. The feudal oath was an oath of fealty, offered as a sign of loyalty and a form of homage. They concluded, however:

... that not only are the two oaths historically unconnected but that the present oath was not originally one of allegiance at all, and that its predecessor disappeared at some point between the fifteenth and seventeenth centuries. A new “Oath of Allegiance” grew up from origins that were not “feudal” in any respect.³⁰

The article followed the development of the oath of allegiance and drew evidence from the Rolls of Parliament revealing that on a number of occasions special oaths of allegiance were exacted by the King from the Lords, for example, by Henry IV at the beginning of his reign and by Henry VI in 1455 and 1459.

A series of oaths subsequently developed, not as signs of homage, but oaths of a different, religious nature. At one stage, Members of Parliament had to take three separate oaths: the oaths of supremacy, of allegiance and of abjuration. The purposes of the different oaths are summarised by Wilding and Laundy:

The oath of supremacy was a repudiation of the spiritual or ecclesiastical authority of any foreign prince, person or prelate, and of the doctrine that princes deposed or excommunicated by the Pope might be murdered by their subjects. The oath of allegiance was a declaration of fidelity to the Sovereign, and the oath of abjuration introduced in 1702 was a repudiation of the right and title of descendants of James II to the throne. To these was added a declaration against transubstantiation, which with the oath of supremacy effectively barred Roman Catholics from Parliament, while the oath of abjuration, which concluded with the words ‘on the true faith of a Christian’ could not be taken by a Jew.³¹

²⁹ Peter Riddell, *Parliament Under Pressure*, 1998, p162

³⁰ R.W. Perceval and P.D.G. Hayter, “The oath of allegiance”, *The Table*, Vol XXXIII, 1964, p 85

³¹ N Wilding and P Laundy, *An Encyclopaedia of Parliament*, 4th ed, 1972, p 503

1. Oath of supremacy

An oath of supremacy had been introduced under Henry VIII in 1534,³² essentially as a political weapon against Roman Catholics. In the first year of her reign, Queen Elizabeth I introduced an Act of Supremacy³³ requiring an oath to be taken by clergy, justices, mayors and other lay officers. No specific oath for Members of House of Commons was required until 1563, when Queen Elizabeth I instituted a revised oath of supremacy. The revised oath was extended to include not only ecclesiastical and secular officials but all persons in Holy Orders, university graduates, school masters, lawyers and court officials,³⁴ and all future Members of the House of Commons.³⁵ At this time, the temporal members of the House of Lords were not required to swear the oath because, according to the statute:

... the Queen's Majesty is otherwise sufficiently assured of the Faith and Loyalty of the Temporal Lords of her High Court of Parliament ...³⁶

2. Oath of allegiance

Under the reign of James I a new oath appeared – the oath of allegiance – under the terms of the *Popish Recusants Act 1605*³⁷ and the *Oath of Allegiance Act 1609*.³⁸ This oath too was religious and political in nature (rather than one of fealty), and was prompted by the discovery of the Catholic conspiracy to blow up the Houses of Parliament, the "Gunpowder Plot". This was a long oath, which required recognition of James I as lawful King and renunciation of the Pope and his claims. It ended with a concluding clause sworn "upon the true faith of a Christian", which, as discussed below, had an effect on the ability of Jews to enter Parliament. The 1609 Act required Members of the House of Commons to take the oath of allegiance along with the oath of supremacy. At this point, however, the oath of allegiance was not strictly a "parliamentary" oath³⁹ in that it was not taken in Parliament - Members swore the oaths before the Lord Steward before entering Parliament, the bishops swore the oath before the Lord Chancellor and the peers before the commissioners in the area where they lived - and there were no parliamentary consequences if Members of Parliament did not swear the oath.

However, after the Restoration the oaths of supremacy and of allegiance were imposed upon Members and Peers in Parliament. Some unrest had been caused by the story of Titus Oates, which afterwards proved to be an invention, about a powerful and widespread Catholic conspiracy to assassinate Charles II. And so, under the terms of the *Parliament Act 1678* – "An Act for the more effectual preserving the King's Person and Government, by disabling

³² *Supremacy of the Crown Act 1534*, 26 Hen 8, c 1

³³ *Act of Supremacy 1558*, 1 Eliz 1, c 1

³⁴ *Act of Supremacy 1562*, 5 Eliz 1, c 1, s 5

³⁵ *ibid*, s 16

³⁶ *ibid*, s 17

³⁷ 3 Jac 1, c 4

³⁸ 7 Jac 1, c 6

³⁹ see Perceval and Hayter, "The oath of allegiance", *The Table*, Vol XXXIII, 1964, p 87

Papists from sitting in either House of Parliament”⁴⁰ the oaths of supremacy and of allegiance were required to be taken by both the Lords and the Commons (for a second time) at the Tables of their respective Houses and a requirement to make a declaration against transubstantiation was added.

In 1689, following the "Glorious Revolution", in an Act passed by King William and Queen Mary in the first year of their reign, the old oaths of supremacy and allegiance were replaced with shorter, simpler ones. The religious content of the oath of allegiance was removed but was retained in the oath of supremacy, (although they both had to be taken together). This brought the form of the oath of allegiance almost to its modern form:

I A.B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to Their Majesties King William and Queen Mary, so help me God.⁴¹

3. Oath of abjuration

In 1701 another threat emerged: the exiled king, James II, died and the adherents of the Stuart claim and the French king, Louis XIV, proclaimed his son rightful king. The *Act of Succession 1701*⁴² was quickly passed to address the new situation. It extended substantially the old oaths, and added an oath of abjuration of the Pretender's title. This oath pledged support for the Hanoverian succession and for the exclusion of the Stuarts. It was the longest oath of all, and a religious element was reintroduced: the oath included a faithful promise to support, maintain and defend the Protestant succession to the throne, and detailed the succession to named persons “being Protestants”.

The three oaths underwent only two minor verbal changes during the course of the 18th century.⁴³ Michael MacDonagh described the requirements on Members regarding the swearing of oaths at this stage in history in the following terms:

The amount of swearing - the solemn appeals to the Deity and professions of faith - which a representative returned to the Commons was compelled to undergo before he could take his seat was now certainly prodigious. He was first obliged to swear to the oath of Allegiance and the oath of Supremacy before the Lord Steward, even before he was allowed to cross the bar of the Legislative Chamber; and next, to take at the Table of the House the oath of Allegiance, the oath of Supremacy, the oath of Abjuration, and, in addition, to make the declaration against transubstantiation, the invocation of the saints and the sacrifices of the Mass.⁴⁴

⁴⁰ 30 Cha 2 St 2, c 1

⁴¹ *Parliament Act 1689*, 1 Will & Mar, c 1

⁴² *Security of the Succession etc Act 1701*, 13 & 14 Will 3, c 6

⁴³ Michael MacDonagh, *Parliament: Its Romance, Its Comedy, Its Pathos*, 1902, Chapter 8 "The Evolution of the Parliamentary Oath" p 190

⁴⁴ *ibid*, p 190

The requirement on Members to swear the oaths before the Lord Steward before entering “the Parliament House” was removed in 1831⁴⁵, which meant that they had to swear the oaths at the Table of the House only.

B. Religious restrictions

As a result of this accumulation of oaths, each directed against a specific perceived political threat, Roman Catholics, Jews, Quakers and others found themselves effectively barred from membership of the House.

It was not until 1829 that the restrictions on **Roman Catholics** entering Parliament were removed. The *Roman Catholic Relief Act 1829* provided a special oath deemed acceptable to Roman Catholics and also abolished the declaration against transubstantiation:

II. And be it enacted, That from and after the Commencement of this Act it shall be lawful for any Person professing the Roman Catholic Religion, being a Peer, or who shall after the Commencement of this Act be returned as a Member of the House of Commons, to sit and vote in either House of Parliament respectively, being in all other respects duly qualified to sit and vote therein, upon taking and subscribing the following Oath, instead of the Oaths of Allegiance, Supremacy, and Abjuration:

‘I *A.B.* do sincerely promise and swear, That I will be faithful and bear true Allegiance to His Majesty King *George* the Fourth, and will defend him to the utmost of my Power against all Conspiracies and Attempts whatever, which shall be made against his Person, Crown or Dignity; and I will do my utmost Endeavour to disclose and make known to His Majesty, His Heirs and Successors, all Treasons and traitorous Conspiracies which may be formed against Him or Them: And I do faithfully promise to maintain, support, and defend, to the utmost of my Power, the Succession of the Crown which Succession, by an Act, intituled *An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject*, is and stands limited to the Princess *Sophia*, Electress of *Hanover*, and the Heirs of her Body, being Protestants; hereby utterly renouncing and abjuring any Obedience or Allegiance unto any other Person claiming or pretending a Right to the Crown of this Realm: And I do further declare, That it is not an Article of my Faith, and that I do renounce, reject, and abjure the Opinion, that Princes excommunicated or deprived by the Pope, or any other Authority of the See of *Rome*, may be deposed or murdered by their Subjects, or by any Person whatsoever: And I do declare, That I do not believe that the Pope of *Rome*, or any other Foreign Prince, Prelate, Person, State, or Potentate, hath or ought to have any Temporal or Civil Jurisdiction, Power, Superiority, or Pre-eminence, directly or indirectly, within this Realm. I do swear, That I will defend to the utmost of my Power the Settlement of Property within this Realm, as established by the Laws: And I do hereby disclaim, disavow, and solemnly abjure any Intention to subvert the present Church Establishment, as settled by Law within this Realm: And I do solemnly swear, That I never will exercise any Privilege to which I am or may

⁴⁵ *House of Commons Oaths Act 1831* (1 & 2 Will 4, c 9)

become entitled, to disturb or weaken the Protestant Religion or Protestant Government in the United Kingdom: And I do solemnly, in the presence of God, profess, testify, and declare That I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words of this Oath, without any Evasion, Equivocation, or mental Reservation whatsoever. So help me God.⁴⁶

The Bill had been introduced following the election to Parliament in 1828 of Daniel O'Connell, who had played a large part in the struggle in Ireland during the early part of the century for the removal of civil disabilities against Roman Catholics. However, the provisions of the Act were not applied retrospectively, and so O'Connell was not able to take his seat representing the county of Clare until a new writ was issued and he was re-elected in 1830. Meanwhile, another Roman Catholic had had the distinction of being sworn in as the first Roman Catholic Member of Parliament swearing the new oath - the Earl of Surrey (elected MP for Horsham).⁴⁷

The religious tenets of **Quakers** forbade them from swearing oaths (because it was regarded as sacrilegious) and an Act of 1696 had given them the right to make affirmations in place of most required oaths (but not the parliamentary oath). This right was periodically renewed and finally made permanent in the mid 18th century, when the same privilege was extended to Moravians. Because the provisions did not apply to the parliamentary oath, however, a Quaker elected to Parliament in 1699, one John Archdale, was consequently unable to take his seat. He refused to take the oath and the option of affirmation was denied him. It was not until 1833 that the first Quaker entered the House: Joseph Pease. When he claimed the right to affirm, a select committee was appointed to examine the issue and the committee concluded that the relevant acts did, in fact, apply to the parliamentary oath.⁴⁸ The *Quakers and Moravians Act 1833*⁴⁹ enabled both Quakers and Moravians to make a solemn affirmation, omitting the phrase "So help me God".

Jews were enabled to sit in the House after the passing of the *Jews Relief Act 1858*⁵⁰ which permitted the omission of the words 'on the true faith of a Christian' from the oath in individual cases. This phrase first made its appearance in the oath of allegiance introduced in 1609 when its intention would not have been expressly to exclude Jews, as they were, at the time, prohibited from entering England anyway. It was to be used with that effect subsequently however, as, together with the requirement that the oath of allegiance be sworn on the New Testament, this effectively barred Jews from entering Parliament.

⁴⁶ *Roman Catholic Relief Act 1829*, 10 Geo 4, c 7, s 2

⁴⁷ sat for Horsham from the passing of the *Roman Catholic Relief Act 1829* (see Michael Stenton, *Who's Who of British Members of Parliament*, Vol I)

⁴⁸ *Report from the Select Committee appointed to search the Journals of the House, and to report to The House such Precedents, and such Acts or parts of Acts of Parliament as relate to the right of the people called Quakers to take their Seats in Parliament, and to the privilege conferred upon them to make their Solemn Affirmation in Courts of Justice, and other places where by law an Oath is allowed, authorised, or required to be taken*, 1833 (6) Vol XII, p 137

⁴⁹ 3 & 4 Will 4, c 49

⁵⁰ 21 & 22 Vict, c 49, s 1

In 1847 Baron Lionel Nathan de Rothschild was returned for the City of London. A Bill was subsequently introduced in the House of Commons to enable him to take his seat, but the Bill was thrown out by the Lords. For three years he bided his time, but then presented himself at the Table of the House of Commons in 1850 and asked permission to be sworn on the Old Testament, and with his head covered. This was allowed, but because he would not use the words in the oath of abjuration "on the true faith of a Christian", the House resolved that he could not sit or vote. The following year another Jew, Mr Alderman Salomons, was elected for Greenwich and took the three oaths, omitting the offending phrase, and then, considering himself legally sworn he sat within the House and voted. His actions were challenged in the Court of Exchequer for the recovery of the penalties these actions incurred, and the judgement went against him.⁵¹ It was not until 1858 that the Lords agreed a Bill that permitted either House to pass a resolution allowing a Jew to take a modified version of the oath. Initially the resolution was a sessional order, becoming in 1860 a standing order, and finally it was made part of the law in 1866 (see below).

C. The modern form of oath

It was the *Oaths of Allegiance etc and Relief of the Jews Act 1858*⁵² that prescribed a single form of the oath in place of the former three. The single form of the oath retained a declaration of allegiance and a promise to defend the Hanovarian succession. A declaration relating to the supremacy of the Sovereign was also included and the oath continued to be made 'on the true faith of a Christian' (although this phrase could be omitted for Jews, as outlined above). However, both of these latter elements disappeared from the revised version of the single oath that was subsequently prescribed in the *Parliamentary Oaths Act 1866*.⁵³ That Act repealed much of the earlier pieces of legislation in so far as they related to oaths taken by Members of Parliament. The text of the new oath then read:

I A.B. do swear that I will be faithful and bear true Allegiance to Her Majesty Queen Victoria; and I do faithfully promise to maintain and support the succession to the Crown, as the same stands limited and settled by virtue of the Act passed in the reign of King William the Third, intituled "*An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject*", and of the subsequent Acts of Union with Scotland and Ireland. So help me God.⁵⁴

Finally, in the *Promissory Oaths Act 1868* a further curtailment to the oath was made, thereby establishing the form of the oath still used today. The direct religious content has disappeared along with the declarations relating to the supremacy of the Sovereign. In its current form, the oath conforms fairly closely to the medieval (feudal) oath of allegiance. As remarked by R.W. Perceval and P.D.G. Hayter:

⁵¹ see McDonagh, *Parliament: Its Romance, Its Comedy, Its Pathos*, 1902, p 199

⁵² 21 & 22 Vict, c 48

⁵³ 29 Vict, c 19

⁵⁴ *Parliamentary Oaths Act 1866*, 29 Vict, c 19, s 1

The circle is therefore complete: the old Oath of Allegiance which had disappeared was replaced by a series of religious Oaths; but the religious content of those Oaths has been steadily purged away until nothing remains but an Oath of Allegiance very nearly in the ancient form.⁵⁵

D. The right to affirm

The religious restrictions on swearing official and judicial oaths, which had gradually been removed as the right was granted to substitute affirmations for those oaths, were not officially applied to Parliament until the passing of the *Parliamentary Oaths Act 1866*. This Act provided for an affirmation to be made, in certain circumstances, in lieu of the parliamentary oath:

Every Person of the Persuasion of the People called Quakers, and every other Person for the Time being by Law permitted to make a solemn Affirmation or Declaration instead of taking an Oath, may, instead of taking and subscribing the Oath hereby appointed, make and subscribe a solemn Affirmation in the Form of the Oath hereby appointed, substituting the Words “solemnly, sincerely and truly declare” and “affirm” for the Word “swear”, and omitting the Words “So help me God;” and the making and subscribing such Affirmation with such Substitution as aforesaid by a Person hereby authorized to make and subscribe the same shall have the same Effect as the making and subscribing by other Persons of the Oath hereby appointed....⁵⁶

This still left a problem for atheists and agnostics, who were neither Quakers nor (explicitly) persons “for the time being by law permitted to permitted to make a solemn affirmation or declaration”. (This phrase was later to become subject to legal challenge, as described in the next section). Only persons included in one of the specific categories, covered by previous statutes relating to official and judicial oaths, were able to affirm: in addition to Roman Catholics and Quakers, this included Moravians and Separatists. (Dissenters were never excluded on the basis of the wording of the oath.) The *Report of the Oaths Commission*⁵⁷ set out the various oaths required of public officers in 1867 (and there were very many) together with proposed declarations that could be taken in place of the oaths.

The final significant statute in the development of the parliamentary oath was the *Oaths Act 1888*, which permitted affirmation to **anyone** who had conscientious objections to swearing an oath. It was the election to Parliament of Charles Bradlaugh which finally prompted this change and led to a general right to affirm.

⁵⁵ R.W. Perceval and P.D.G. Hayter, “The oath of allegiance”, *The Table*, Vol XXXIII, 1964, p 85-90

⁵⁶ *ibid*, s 4

⁵⁷ *Report of the Oaths Commission 1867*, Parliamentary Papers: Reports Commissioners etc, Vol XXXI

E. The case of Charles Bradlaugh

Charles Bradlaugh had a highly significant impact on the development of the parliamentary oath. First elected in 1880, Bradlaugh claimed what he believed to be his right to affirm as he had no religious belief. He was excluded from the House and unseated four times, but was each time re-elected. On more than one occasion Bradlaugh tried to take the oath in the ordinary form, but the strength of feeling against his unorthodox views was such that the House would not permit him to do so. In 1886, however, on the occasion of his fifth election, Speaker Peel would not allow any objection to be made and Bradlaugh did take the oath in the ordinary form. In 1888 Bradlaugh succeeded in getting his Oaths Bill passed, which gave a general right to affirm, orally and in writing, both to atheists and to persons whose religious beliefs made the taking of oaths objectionable.⁵⁸

As a founder of the National Secular Society and founder/editor of the *The National Reformer* (subtitled 'Radical Advocate and Freethought Journal'), Charles Bradlaugh was already a renowned radical, republican and atheist, when he was elected as a Liberal Member of Parliament for Northampton in the 1880 general election, along with Henry Labouchere, a moderate Liberal, in the two-member seat of Northampton. In a study of the events surrounding Charles Bradlaugh's claim of the right to affirm, in place of swearing the oath, Walter L Arnstein set out the difficulties facing Gladstone's new Government in 1880:

It was this government which, almost before its organization was complete, was faced with the baffling problem of whether Charles Bradlaugh, the newly elected Radical from Northampton, might be admitted as a fully fledged member of Parliament. For three weeks the problem posed itself - whether Bradlaugh might substitute an affirmation for the customary Parliamentary oath; but from then on, for more than five long years, the central question was whether an avowed atheist ought to be allowed to take the oath at all, even if he was willing to do so.⁵⁹

Charles Bradlaugh arrived to be sworn in on 3 May 1880, and asked the Clerk to be permitted to make an affirmation instead. As described in the previous section, the *Parliamentary Oaths Act 1866* had granted the right of affirmation only to Quakers, Moravians, Separatists "and every other person for the time being permitted by law to make a solemn affirmation or declaration". The Clerk, Sir Thomas Erskine May, asked therefore on what basis he wished to affirm. As a result of his previous political activities, Bradlaugh had been subject of several law suits against different publications and ventures in which he had been involved. He had availed himself of provisions in the *Evidence Amendment Acts* of 1869 and 1870 that allowed the making of an affirmation in place of swearing an oath in courts of law. He cited these Acts as the basis for his claim to affirm, believing that by giving him the right to affirm in the law courts, these Acts brought him within the scope of the definition. The Speaker at the time, Sir Henry Brand, was undecided about the reasoning and decided to seek advice from a veteran clerk, S.K. Richards. Richards concluded that the Evidence Amendment Acts,

⁵⁸ This section is based on the detailed study by Walter L Arnstein in *The Bradlaugh Case*, 1965

⁵⁹ *ibid*, p 3

because they related to judicial oaths, had not had the effect of amending the *Parliamentary Oaths Act*, which related to promissory oaths. He also expressed the opinion that it might be desirable to amend the law.⁶⁰

A Select Committee of the House was appointed to report on the question as to whether "persons entitled, under Evidence Amendment Acts, to make a solemn Declaration instead of an Oath in Courts of Justice, may be admitted to make an Affirmation or Declaration in this House". The Committee's vote on the validity of Bradlaugh's claim to affirm was tied, and the chairman's casting vote went against his claim.⁶¹

Bradlaugh then notified the Speaker that he would take the usual oath as soon as the Committee's report was published. This action may have compromised his position with some of his supporters, but he explained his decision in a letter to *The Times* in which he referred to his duty to his constituents to fulfil the mandate they had given him and stated:

I shall, taking the oath, regard myself as bound not by the letter of its words, but by the spirit which the affirmation would have conveyed had I been permitted to use it.⁶²

But when Bradlaugh subsequently approached the Table on 21 May 1880 to swear the oath, Sir Henry Drummond Wolff, the Conservative Member for Portsmouth, rose from his seat in objection and the House agreed a resolution to the effect that Bradlaugh ought not to be allowed to take the oath because the oath would not be binding. Arnstein explains the basis of the argument:

Because [Bradlaugh] had previously claimed to make the affirmation under an act which provided that the potential affirmer had first to satisfy the presiding judge that an oath 'had no binding effect' on his conscience. ... Bradlaugh, it now seemed clear for the first time, had fallen into a constitutional trap. In the very act of choosing to affirm rather than to swear he had technically cut himself off from the alternative possibility.⁶³

Following heated debate in the House, a second Select Committee was set up to look into the "facts and circumstances under which Mr Bradlaugh claims to have Oath administered to him in this House, and also as to law applicable to such claim under such circumstances, and as to right and jurisdiction of this House to refuse to allow the Oath to be administered to him". (Gladstone had, in the meantime, privately come to the conclusion that the House had no jurisdiction in the matter; indeed it was Bradlaugh's statutory duty to take the oath.)⁶⁴ The Select Committee reported its conclusion that Bradlaugh should not be allowed to take the

⁶⁰ *ibid*, p 36

⁶¹ *Report from the Select Committee on the Parliamentary Oath*, 20 May 1880, HC 159 1880

⁶² *The Times*, 21 May 1880, p 4

⁶³ Walter L. Arnstein, *The Bradlaugh Case*, 1965, p 42

⁶⁴ *ibid*, p 45

oath, but he should not be prevented from making the affirmation (although he would affirm at his own risk at law).⁶⁵ The House, however, rejected a motion to that effect and when Charles Bradlaugh came to the House to argue his case from the Bar of the House, and refused to withdraw, he was detained overnight by the Serjeant at Arms.

For several years the battle continued in Parliament and in the law courts. Twice Bradlaugh administered the oath to himself and was expelled. Three more times he was returned as Member for Northampton: twice at a by-election when the seat was declared vacant, and again at the general election of 1885. When the new Parliament assembled in 1886, the new Speaker (Viscount Peel) firmly refused any objection or protest and Charles Bradlaugh swore the oath and took his seat. The general right to affirm became law, with the support of the Government, in 1888.⁶⁶

F. Legislative developments since 1888

After the general right to affirm was guaranteed in 1888, no major changes to swearing the oath or affirming in Parliament have occurred. A brief summary of the subsequent legislation follows.

The *Oaths Act 1909* introduced a change to the ordinary method of taking oaths, which provided for oaths to be sworn on the Bible: in case of a Christian, on the New Testament, and in the case of a Jew on the Old Testament. This Act also established the usual form of taking the oath, prefixing the words with the phrase “I swear by Almighty God that ...”. It also provided for a person who was neither a Christian nor a Jew was to have the oath administered “in any manner which is now lawful”.

Section 1 of the *1888 Oaths Act* (on the right to affirm) was replaced in the *Administration of Justice Act 1977*. The *Oaths Act 1961* extended the 1888 Act, but did not apply to Parliamentary Oaths.

All of the provisions in the Oaths Acts of 1838, 1888, 1909, 1961 and 1977 were repealed and consolidated in the *Oaths Act 1978*, although the form of wording of the oath set out in the 1868 Act was preserved. The *1978 Oaths Act* contains provisions relating to: the manner of administering the oath, the option of swearing with uplifted hand, the validity of oaths, the making of solemn affirmations and the form of affirmation.

⁶⁵ *Report from the Select Committee on Parliamentary Oath (Mr Bradlaugh)*, 16 June 1880, HC 226 1880

⁶⁶ *Oaths Act 1888*, 51 & 52 Vict, c 46

IV Objections to the Oath/Affirmation

The objections to earlier versions of the oath were mainly concerned with the religious declarations enshrined in the oath and the restrictions they placed on non-Protestant individuals. The affirmation is now worded in such a way that is intended to make it acceptable to individuals of differing faiths or to atheists. However, despite the fact that there is no explicit religious content in the affirmation, there have been criticisms based on claims of implicit religious loyalties. For example, there are some who object to having to swear faithfulness and allegiance to a Monarch who is Head of the established Church of England, and who, by law, cannot belong to the Roman Catholic faith or be married to a Roman Catholic. Martin McGuinness included this point in his case to the European Court of Human Rights (see Part VI below).

Religious arguments aside, the other main objections against the oath/affirmation centre on the fact that it is to the Crown that Members are required to pledge their allegiance. Republicans find this objectionable in itself. Tony Benn has on several occasions voiced his protest against having to swear allegiance to the Crown. For example, in a speech during the early part of the 1992 Parliament he stated:

When I took the oath at the beginning of this Parliament, I said, “As a dedicated republican, I solemnly swear ...”. My hon Friend the Member for Bolsover (Mr. Skinner) said, “I solemnly swear that I will bear true and faithful allegiance to the Queen when she pays her income tax”. There are some concessions that we all have to make, and everybody should know that.⁶⁷

At the swearing in of Members after the 1997 election, the press reported Mr Benn’s prefatory remarks as follows:

As a committed republican, under protest, I take the oath required of me by law, under the Parliamentary Oaths Act of 1866, to allow me to represent my constituency ...⁶⁸

The press also reported that Tony Banks was seen with his fingers crossed when he took the oath at the start of the 1997 Parliament.⁶⁹

In his speech during the debate on the tercentenary of the “Glorious Revolution” Tony Benn expanded on his objections to the current form of the oath:

Then we come to the oath. I have been looking at the oaths and my next Bill will seek to amend the Promissory Oaths Act 1868. When one looks at the oaths of a privy councillor, a Member of Parliament and the Sovereign at the coronation, they

⁶⁷ HC Deb 23 July 1993 Vol 229 c 656

⁶⁸ “Benn launches alternative oath” *Guardian* 14 Jan 1998

⁶⁹ eg, “Fingers crossed as Banks swears the oath” *The Times* 14 May 1997

throw an interesting light on the obligations by which we are bound. The reality is that nobody takes an oath to uphold democracy in Britain. The Queen takes an oath to govern the country and uphold the rights of the bishops. We take an oath to the Queen. Nobody in the House takes an oath to uphold democracy in Britain, and one does not need to have watched “A very British coup” to realise that that might have some relevance at some future date.⁷⁰

There is also a more fundamental objection: one which opposes the requirement on Members of Parliament to take an oath of any sort. Because the oath is compulsory, it could be regarded, in effect, as a qualification for office. (As mentioned above, in Part II.C, reference to the oath/affirmation appears in the Members Code of Conduct). Some have argued that in a democracy the electorate should have sole responsibility (subject to electoral law) for determining who sits in the House of Commons to represent them; and that Parliament should have no right to overturn the decision of the people. For example, Kevin McNamara in attempting to introduce a ten minute rule bill on the parliamentary oath stated:

The era in which it was thought to be appropriate for legislators to set a political or religious test for those deemed acceptable to enter the parliamentary club has long since passed. ... The only test for inclusion and membership of this House should be the will of the electorate, freely expressed.⁷¹

Various Members over the years have introduced private Member’s bills that included provisions to amend the parliamentary oath. A list of recent bills appears as Appendix 2.

Sinn Féin’s objections to the oath, and the response of the European Court of Human Rights to the legal challenge mounted by Sinn Féin, are considered in Part VI below.

V The Oath in UK Devolved Legislatures

A. Scottish Parliament and National Assembly for Wales

The provisions of the *Promissory Oaths Act 1868* are not restricted to Members’ oaths but cover official oaths in general. The same form of oath was therefore used for swearing in Members to the Scottish Parliament⁷² and the National Assembly for Wales.⁷³

Under the terms of the *Scotland Act 1998*, sections 84(1) and 84(2) a person returned as a member of the Scottish Parliament cannot take part in any proceedings until he or she has taken the oath of allegiance or made a solemn declaration.

⁷⁰ HC Deb 7 July 1988 Vol 136 c 1240

⁷¹ HC Deb 29 July 1998 Vol 317 c377

⁷² *Scotland Act 1998* (chap 46) s 84

⁷³ *Government of Wales Act 1998* (chap 38) s 20

The equivalent provision was made for the National Assembly for Wales in section 20 of the *Government of Wales Act 1998*. A subsequent statutory instrument provided that the oath or allegiance could be made in Welsh by an Assembly Member and prescribed the form of Welsh words.⁷⁴

Arrangements for taking the oath/affirmation in the Scottish Parliament were set out in a news release.⁷⁵ The words of the oath and the affirmation, according to their choice, was handed to the Member. After making the oath or affirmation in English, the Member could then repeat the oath in another language. The text was made available in the following languages: Scottish Gaelic, Cantonese, Punjabi, Urdu, Gujarati and Hindi. A Member could repeat the oath or affirmation in any other language, but no text was provided. The news release states the consequences for any Member not taking the oath or affirmation:

Any member who refuses to take the oath or the affirmation will be disbarred from taking part in any other proceedings of the Parliament and from being paid any salary and allowances until he or she has done so. If any member has not taken the oath or affirmation within two months of the day of their election they shall cease to be a Member of the Parliament (unless the Parliament agrees to extend this period).

The requirement regarding the taking of oaths/affirmations did not go by without comment, both within and outwith the Scottish Parliament. For example, during the passage of the *Scotland Bill 1997-98* at Westminster, in advance of devolution, Dennis Canavan objected to the requirement that Members of the Scottish Parliament would be required to take an oath, moving an amendment (which was not agreed) to the effect that:

The standing orders shall include a requirement for every member elected to the Scottish Parliament to be requested to make the following affirmation:
"I do hereby acknowledge the sovereign right of the Scottish people to determine the form of Government best suited to their needs, and, do hereby declare and pledge that in all our actions and deliberations their interests shall be paramount."
And no other affirmation or oath shall be required of members of the Scottish Parliament.⁷⁶

As the MSPs were being sworn in at the start of the Scottish Parliament, Alex Salmond, the SNP leader, and Tommy Sheridan, of the Scottish Socialist Party, both prefaced their oath with a declaration that their parties' true allegiance was to the Scottish people. According to press reports, Tommy Sheridan also swore the oath with his arm raised in a clenched fist salute.

⁷⁴ *National Assembly for Wales (Oath of Allegiance in Welsh) Order SI 1999/1101*

⁷⁵ *A guide to the taking of the oath of allegiance or solemn affirmation*, Scottish Parliament Media Briefing Note, News Release 0991/99, 6 May 1999

⁷⁶ HC Deb 12 May 1998 Vol 312 c 231

The draft code of conduct for MSPs, drawn by the Scottish Parliament's Standards Committee, included reference to swearing the oath of allegiance. Some MSPs made representations to the Committee calling for the reference to the oath to be dropped from the code of conduct, but the calls were rejected.⁷⁷ The Committee published the proposed code of conduct in a report on 8 February 2000.⁷⁸ The mention of the oath appears in Section 2 – “Key Principles of the Code of Conduct” – and reads as follows:

2.3 By virtue of the oath of allegiance taken or affirmation made by all members when they are elected to the Parliament, members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law

The Standards Committee report is due to be debated on Thursday 17 February 2000. Press reports suggest that the SNP is preparing an amendment to remove the section on the oath from the code of conduct, on the grounds that it could lay Members open to disciplinary procedures for breaking the code if they made statements in opposition to the monarchy. An SNP spokesman is reported as saying:

A code of conduct should be about ensuring high standards of public service, integrity and honesty from MSPs and we think this devalues it because apart from anything else it's unenforceable.⁷⁹

In the early days of the new Scottish Parliament, a press article on the oath pointed out that, historically, the Scottish parliamentary oath was not always one of allegiance:

In 1641, when a newly-self confident Scots parliament sat in session in its first-ever purpose built home, the new parliament house in Edinburgh, it devised for itself the imposing and stately oath of parliament. It was an assertion of the dignity and parliament, made in the presence of the king, Charles I, who had come on a special visit to Scotland to try to settle the tricky constitutional problems raised by his struggle with the Covenantors. It expressed the highest aspirations of a body which was trying to shake itself free from its traditional limitations to become the heart of government and debate in Scotland. ...

... As part of this brave new experiment it claimed for itself the right to “frieliel speike answer and ourselves upon everything which we shall be proponit so far as we thinke in our conscience may conduce to the glory of God, the good and peace of this church and kingdome” and which promised in its oath to “imploy our best endeavours to promote the same and shall in no ways advyse voice or consent to anything which we think not most expedient and conduceable thereto”. ... they swore to uphold the “power and privileges of parliament and the lawful lives and liberties of the subjects”

⁷⁷ eg Scottish Parliament, Standards Committee Official Report, 12 Jan 2000, c 339

⁷⁸ Scottish Parliament Standards Committee, 1st Report 2000, 8 Feb 2000, SP Paper 64

⁷⁹ “Nationalist rebels will snub oath to Queen”, *Scotland on Sunday* 6 February 2000 p 2

... So this was an oath which struck a balance, recognising the rights of both King and parliament. It was also a demanding oath which called for MPs to speak freely and to consult their consciences, while always thinking of the common good.⁸⁰

B. Northern Ireland Assembly

Members of the Northern Ireland Assembly are not required to take an oath. As laid out in the initial standing orders, Members take their seats by signing the Assembly's roll of membership and registering a designation of identity – Nationalist, Unionist or Other⁸¹. Only Ministers are required, under section 10 of the *Northern Ireland Act 1998*, to take a “pledge of office” as set out in the Annex A to Strand One of the Belfast Agreement.⁸² Ministers can be removed from office following a decision of the Assembly taken on a cross community basis if the responsibilities of the pledge are not met.

That Members of the Assembly are not required to swear an oath is not a new departure. In 1921 Members elected to the Northern Ireland Parliament were required to swear the statutory oath of allegiance, but it is notable that no oath was required of Members elected to the 1973 or the 1982 Northern Ireland Assemblies.⁸³ The *Northern Ireland Constitution Act 1973* rendered religious and political discriminatory laws void and discriminatory executive action unlawful. Section 21 of the Act made it unlawful for a public body to require an oath, undertaking or declaration from any person “as a condition of his being appointed to or acting as a member of that authority or body, or serving with or being employed under that body”.⁸⁴ Section 21(4) stated that the provisions applied to Assembly itself. Members of the Northern Ireland Executive were however required to take an oath or make an affirmation to uphold the laws of Northern Ireland and conscientiously fulfil their duties in the interests of Northern Ireland and its people.⁸⁵

VI Sinn Féin and the Oath

A. General

As a party, Sinn Féin has traditionally maintained an abstentionist policy towards the Westminster Parliament, on the basis that it does not recognise Westminster sovereignty over Northern Ireland. In common with other Sinn Féin members, Countess Constance Markievicz, the first woman to be elected to the House of Commons in 1918 (when the majority of seats in Ireland were won by Sinn Féin), did not take her seat. Intermittently, over the years since 1818, Sinn Féin members have been elected to the House of Commons

⁸⁰ “Sworn statement” *The Scotsman*, 12 Dec 1998, p 13

⁸¹ *Northern Ireland Assembly Interim Standing Orders*, Northern Ireland Office, 28 June 1998

⁸² set out in schedule 4 of the Act, see also HC Library Research Paper 00/6 *Disqualifications Bill* p 20

⁸³ for background, see Brigid Hadfield, *The Constitution of Northern Ireland*, 1989, p 52, 110

⁸⁴ *Northern Ireland Constitution Act 1973*, c 36, s 21(1)

⁸⁵ under section 8(10), the form of the oath being set out in Schedule 4

and have consistently not taken their seats.⁸⁶ Until 1986 Sinn Féin also had an abstentionist policy with regard to Dail elections. The Dail does not require an oath of its members.

B. The Speaker's ruling

The Sinn Féin candidates Gerry Adams and Martin McGuinness were elected for the Belfast West and Mid Ulster constituencies on 1 May 1997. Both indicated that they would not swear the oath and did not take their seats in Parliament. Mr Adams previously won the Belfast West seat in 1983 and 1987 and did not take his seat on those occasions either. Press reports suggest that the two Members would not have taken their seats even if there had been no requirement to take the oath in its current form:

Mr Adams said the question of the oath was “a bit of a distraction”. While a change might be good for British democracy, it would not alter Sinn Fein’s position. Asked if he could see himself sitting in the Commons following a change to the oath, Mr Adams said: “No, because the issue for us is the claim of that parliament to jurisdiction in Ireland.”⁸⁷

Mr Adams and Mr McGuinness had both announced before the election that although they would not take the oath if elected they would adopt a new policy of “active abstentionism”. Thus they would attend the Palace of Westminster in order to avail themselves of “the normal facilities afforded to MPs, namely office accommodation, staff allowances, research facilities, travel allowances, broadcasting services and access to restricted areas for the purpose of making informal contact with other MPs”.⁸⁸ It was their understanding that elected members who did not take the oath were nonetheless entitled to benefit from these services.⁸⁹

On 14 May 1997 the Speaker made a statement to the House in which she said:

those who choose not to take their seats should not have access to the many benefits and facilities that are now available in the House without also taking up their responsibilities as Members.⁹⁰

⁸⁶ for further details on Sinn Fein candidates elected to Westminster see HC Library Research Paper 00/6 – *Disqualifications Bill* p 11

⁸⁷ *Irish Times*, 5 December 1997, “Sinn Fein would not take seats in Commons if oath was changed”

⁸⁸ *Decision as to the admissibility of application no. 39511/98 by Martin McGuinness against the United Kingdom, European Court of Human Rights (Third Section)*, 8.6.99, available at www.echr.coe.int/eng/Judgments.htm. See also *Times* 5.12.97 “Sinn Fein MPs to challenge Speaker’s ruling”

⁸⁹ On the “extra-Parliamentary” role of MPs, see Part II.D of this paper. In response to a series of written Parliamentary questions, the Government declined to reveal the extent of correspondence received by Ministers from the Sinn Fein Members since the 1997 election on the grounds that such correspondence “is treated in confidence unless the originating MP chooses to make such issues public”. See, for example, HC Deb 4 Feb 2000 Vol 343 c 740W

⁹⁰ HC Deb 14 May 1997 Vol 294 cc 35-6

Thus the 1924 ruling⁹¹, that any Member who fails to take the oath cannot receive a salary, was extended to the other services that are available to Members from the six Departments of the House.⁹² A list of services covered by the ruling was appended to the statement in Hansard. The statement is reproduced in full in Appendix 1.

Under the Speaker's ruling of 14 May 1997, the services which are not available to Members who do not take the Oath include:

- Legal services
- Procedural services, including the tabling of questions, motions and amendments, and public petitions
- Broadcasting services
- Vote Office services
- Services available from the Parliamentary Office of Science and Technology
- The provision of passes, special permits and car parking facilities
- Access to those areas within the parliamentary precincts which are open only to pass holders
- The booking of Committee Rooms, conference rooms and interview rooms
- Office accommodation services for Members and their staff
- Computer services, except those available to the public
- The allocation of Gallery tickets
- The sponsoring of exhibitions in the Upper Waiting Hall
- Members' medical services
- Library and research services, except for those services of the Public Information Office generally available to the public
- Services provided by the Official Report
- Payroll and other financial services provided to Members and their staff
- Insurance services
- Catering services provided for Members and their staff, including the sponsoring of banqueting services
- Police and security advice available within the precincts
- Services in the Members' post offices
- Travel services

The statement attracted considerable comment in the press. Matthew Parris, in *The Times*, criticised the ruling as symptomatic of “English mindlessness toward Irish affairs” but a leading article in the *Daily Telegraph* published the day before the statement urged the Speaker to deny passes to Adams and McGuinness.⁹³ The *Irish News* later commented that the requirement that Members swear an oath

⁹¹ HC Deb 13 March 1924 Vol 170 c 2556

⁹² The Speaker stated that the 1924 ruling also prevented Members who had not taken the oath from claiming allowances, although allowances were not referred to in the 1924 statement. The list of services unavailable to Members who do not take the Oath appended to the May 1997 statement included “Payroll and other financial services provided to Members and their staff”. This would appear to include allowances.

⁹³ “Free the Westminster Two”, 16.5.97; “Sinn Fein’s gunpowder plot”, 13.5. 97

is not just an anachronism, it fatally undermines the democratic principle. If a candidate wins the approval of the votes, he or she should have an automatic right to represent that electorate.⁹⁴

On 19 May 1997, Tony Benn, on a point of order, suggested that the law on 1 May was “quite clear”: although Members who had not taken the oath were not entitled to participate in proceedings in Parliament, they were nevertheless entitled to “all the other privileges of a Member” except drawing a salary [and allowances]. He observed that those electors who voted for the two hon. Members concerned

voted on the basis that although they may have been abstentionist in their policy towards the Chamber, they would be entitled to all the rights of Members in safeguarding the interests of constituents [...] Is it right that the law of Parliament should be changed retrospectively in a way that denies electors the rights that they legitimately believed they had when they voted, but which they now find have been taken away?⁹⁵

Mr Adams wrote to the Speaker on 4 July 1997 requesting her to review her decision. She replied on 8 July that her decision stood for the reasons set out in her statement of 14 May. The Speaker made a further statement on 4 December 1997 following a meeting with Mr Adams and Mr McGuinness.⁹⁶ She reaffirmed her decision of 14 May and stated that the decision did not discriminate against Sinn Féin:

it applies equally to any Members not taking their seats for any reason. Those who do not take up their democratic responsibilities cannot have access to the facilities at Westminster that are made available to assist Members who do. I declined to allow those Members passes to the Palace of Westminster, because that would provide automatic access to many of the facilities not open to them. I told them that they were in effect asking for associate membership of this House. Such a status does not exist. There is no halfway house: they are part of the all. I reminded them that they are allowed, of course, the use of free stationery and postage, which enables them to take up issues on behalf of their constituents, and they also have access to Ministers, as we all have.

Mr Benn made an intervention in which he called, amongst other things, for the House to debate this issue of “major constitutional importance” and to reach a decision, rather than rely on a statement made from the Chair.

⁹⁴ “Party right to challenge oath”, 13,8.99

⁹⁵ HC Deb 19 May 1997 Vol 294 c 377

⁹⁶ HC Deb 4 Dec 1997 Vol 302 cc 487-8, reproduced in full in Appendix 1

C. The legal challenge

1. High Court of Justice of Northern Ireland

On 12 August 1997, Martin McGuinness applied to the High Court of Justice of Northern Ireland for leave to apply for judicial review of the Speaker's decision and for a declaration that the *Parliamentary Oaths Act 1866*, in so far as it required him to swear or affirm allegiance to the British monarchy, was incompatible with his constitutional rights as an MP. Mr Justice Kerr heard the application on 1 October 1997.

Mr Justice Kerr refused the application on 3 October 1997. The reasons have been summarised as follows:

As to the applicant's challenge to the Speaker's authority to extend the restriction on facilities and services, the judge ruled that the Speaker was acting as a delegate of the House and on behalf of the House. Furthermore, he pointed out that the government of the day decided in March 1965 that the control of the accommodation and services in the House of Commons and its precincts should be vested in the Speaker on behalf of the House. The judge further ruled that he was:

quite satisfied that ... the Speaker's action lies squarely within the realm of internal arrangements of the House of Commons and is not amenable to judicial review. Control of its own internal arrangements has long been recognised as falling uniquely within Parliament's domain and superintendence from the Court's intervention is excluded [...]

As to the applicant's challenge to the validity of the 1866 Act Mr Justice Kerr ruled that, being primary legislation, the court did not have jurisdiction to review it. As to the applicant's claim that the Speaker's action was not a "proceeding" under Article 9 of the Bill of Rights 1689, the judge did not rule on the matter, but he said that if it had been necessary for him to do so, he would have held that the Speaker's decision to introduce the restrictions was a proceeding in Parliament and so could not be challenged by way of judicial review under Article 9 of the Bill of Rights of 1689.⁹⁷

2. European Court of Human Rights⁹⁸

Mr McGuinness did not appeal to the Court of Appeal, following advice from counsel that an appeal would be to no avail. Instead he applied to the European Court of Human Rights on the following grounds:

- a) The requirement to take an oath of allegiance to the British monarch is an unjustified interference with the right to freedom of expression guaranteed under Article 10 of the

⁹⁷ *Decision as to the admissibility of application no. 39511/98 by Martin McGuinness against the United Kingdom*, op cit

⁹⁸ This section of the paper is based on *Decision as to the admissibility of application no. 39511/98 by Martin McGuinness against the United Kingdom*, op cit

European Convention on Human Rights. His refusal to comply with the requirement meant that he was denied access to facilities available to elected representatives with the result that he had been seriously impeded in exercising his right to express the views of his constituents and party.

- b) The oath is repugnant to his religious beliefs in that it obliges him, a Roman Catholic, to swear allegiance to a monarch who is by law prohibited from being Roman Catholic or from marrying a Roman Catholic. He invoked Article 9 of the Convention in this respect [freedom of thought, conscience and religion].
- c) The lack of an effective remedy to seek redress in respect of his complaints under Articles 9 and 10 constitutes a violation of Article 13 of the Convention [right to an effective remedy in respect of other Convention rights].
- d) The Speaker's statement, introducing new restrictions on the rights of elected representatives who do not comply with the oath requirement, violated Article 3 of Protocol No. 1 [right to free elections] since it prevented him from properly representing the opinions of his constituents, thereby denying them the free expression of their opinion.
- e) The Speaker's statement, announced two weeks after his election and in the knowledge that the applicant did not intend to take the oath, was a discriminatory measure in breach of Article 14 of the Convention in conjunction with Articles 9, 10 and Article 3 of Protocol No. 1 to the Convention.

3. The Judgment as to Admissibility

The European Court of Human Rights declared unanimously that the application was inadmissible.

Key Human Rights Concepts⁹⁹

In its judgement on the McGuinness case, the Court referred to two of the key concepts in human rights law:

Proportionality: any interference with a Convention right must be proportionate to the intended objective

Margin of appreciation: the Court allows national authorities a "margin of appreciation" in relation to certain Convention rights, where the Court is reluctant to substitute its own views of the merits of the case for those of the national authority. This applies particularly where Convention rights require a balance to be maintained between competing considerations.

⁹⁹ See *A New Era of Rights and Responsibilities: Human Rights Task Force Core Guidance for Public Authorities*, Home Office, 1999, pp 14-15

The reasons the Court gave for declaring the application to be inadmissible are summarised below.

a. Article 10: freedom of expression

The relevant parts of Article 10 read as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. [...]
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The Court noted that any interference with the right to freedom of expression cannot be justified unless it is “prescribed by law”, pursues one or more legitimate aim or aims as defined in Article 10(2) of the Convention and is “necessary in a democratic society” to attain those aims. The Court held that the requirement to take the oath had a clear legal basis in the domestic law and parliamentary practice and procedure of the United Kingdom.

Turning to the legitimacy of the aim or aims pursued by the requirement to take the oath, the Court noted that the expression “the protection of the rights of others” contained in Article 10(2) of the Convention could embrace the protection of effective democracy. In its view, this term “must equally extend to the protection of the constitutional principles which underpin a democracy”. The requirement that elected representatives take an oath of allegiance to the monarch

forms part of the constitutional system of the respondent State, which, it is to be observed, is based on a monarchical model of government. For the Court, the requirement that elected representatives to the House of Commons take an oath of allegiance to the reigning monarch can be reasonably viewed as an affirmation of loyalty to the constitutional principles which support, *inter alia*, the workings of representative democracy in the respondent State [...] In the Court’s view it must be open to the respondent State to attach such a condition, which is an integral part of its constitutional order, to membership of Parliament and to make access to the institution’s facilities dependent on compliance with the condition.

The Court found that Mr McGuinness could not claim with justification that the requirement to take the oath had a *disproportionate* effect on his right to freedom of expression:

[The Court] recalls that the oath requirement can be considered a reasonable condition attaching to elected office having regard to the constitutional system of the respondent State. Moreover, it observes that the applicant voluntarily renounced his

right to take his seat in the House of Commons in line with his own political beliefs. Although denied access to services and facilities in the precincts of the House of Commons, there is nothing to prevent the applicant from expressing the views of his constituents and party in other contexts including meetings outside the House of Commons with the participation of government ministers and MPs.

The Court therefore found that the complaint under Article 10 of the Convention was not admissible.

b. Article 9: freedom of thought, conscience and religion

The relevant part of Article 9 reads as follows:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

The Court stated

The applicant submits, *inter alia*, that to take the prescribed oath of allegiance to the British monarchy would offend his religious beliefs. He asserts that he is a Roman Catholic and that under the law of the respondent State Roman Catholics are debarred from acceding to the throne.

The Court reiterates that it would be contradictory to make the exercise of a mandate intended to represent different views of society within Parliament subject to a declaration of commitment to a particular set of beliefs (see the *Buscarini and Others v. San Marino* judgment of 18 February 1999, to be published in *Reports 1999*, § 39). In the instant case, however, the applicant was not required under the 1866 Act to swear or affirm allegiance to a particular religion on pain of forfeiting his parliamentary seat or as a condition of taking up his seat; neither was he obliged to abandon his republican convictions or prohibited from pursuing them in the House of Commons.

The Court therefore found that the complaint under Article 9 of the Convention was not admissible.

c. Article 3 of Protocol No. 1: free elections

Article 3 of Protocol No. 1 reads as follows:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

The Court noted that signatories to the convention have a wide *margin of appreciation* to make the rights to vote and stand for election subject to prescribed conditions. However, any

such conditions should not thwart “the free expression of the opinion of the people in the choice of legislature” and should be imposed only in pursuit of a legitimate aim. In addition, the means employed should not be *disproportionate*. The Court stated:

Sinn Féin voters in the Mid-Ulster constituency enjoyed the same rights to vote and the right to stand for election on the same legal footing as voters of other political persuasions. They are in no way deprived of those rights on account of the fact that the applicant, the Sinn Féin candidate, had to take the oath as a condition of taking his seat if elected. They voted for him in full knowledge of this requirement, which the Court has earlier found to be a reasonable one attaching to parliamentary office.

As to the applicant’s argument that by being denied access to the services and facilities of the House of Commons he is prevented from raising issues of concern to his constituents with relevant ministers and departments as well as with other MPs, the Court observes once again that he is not prevented from carrying out any of these activities. The applicant can make his opinions or those of his party and constituents known without access to the services and facilities listed in the May 1997 addendum to the 1866 Act. For this reason the Court does not accept the applicant’s argument that his election rights, or those of his constituents, have been further compromised by being prevented access to services and facilities which are accessory to his core function in the House of Commons and which he has voluntarily renounced.

The Court therefore found that the complaint under Article 3 of Protocol No. 1 was not admissible.

d. Article 14: prohibition of discrimination

The relevant part of Article 14 reads as follows:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... religion, political or other opinion, national [...] origin [...] or other status.

Mr McGuinness alleged that the Speaker’s Statement pursued a discriminatory purpose since it was issued just two weeks after his election as a direct response to his pledge not to take up his seat in the House of Commons if elected. He also argued that the 1886 Act had a *disproportionate* effect on the elected representatives of Sinn Féin in view of the party’s opposition to the oath.

The Court observed that, according to its own established case-law, a difference in treatment is to be regarded as discriminatory under the Convention if “it has no objective and reasonable justification”, that is if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised”. Moreover, the Contracting States enjoy a certain *margin of appreciation* in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The oath requirement and the terms of the Speaker’s statement applied to all elected representatives without distinction:

While the effects of these measures may have weighed more heavily on Sinn Féin members this is to be explained in terms of that party's own official policy on the oath requirement. The Court also recalls that in the context of the applicant's complaint under Article 10 of the Convention it found that the measures at issue could be considered a proportionate response taken in furtherance of a legitimate aim.

The Court therefore found that the complaint under Article 14 of the Convention was not admissible.

e. Article 13: effective remedy

Article 13 reads as follows:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity

Mr McGuinness complained that he had no effective remedy before a national authority and that his rights under Article 13 had therefore been infringed. The Court, however, considered that since his complaints under Articles 9, 10 and Article 3 of Protocol No. 1 were inadmissible, he did not have an arguable grievance under Article 13.

D. Recent Developments

During Business Questions on 2 December 1999, David Winnick asked whether the Government would consider a change to the wording of the oath that would allow Sinn Féin MPs to take their seats.¹⁰⁰ In reply, the Leader of the House, Margaret Beckett, said that she would draw it to the attention of the relevant Ministers:

Mr. David Winnick (Walsall, North): My right hon. Friend will know that, despite strenuous opposition from some Members in the past century, ways were found for Catholics, Jews and non-believers to take their seats without in any way undermining their religious, or non-religious, principles. Will she consider the possibility of a change of wording that would allow Sinn Féin MPs to take their seats? After all, they were elected in the same way as we were. If the peace process is to continue and, as we hope, to be consolidated, will that not be an encouraging sign of our own flexibility as a parliamentary democracy? Of course, we would need to work on the basis that there is a genuine wish on the part of the people to whom I have referred to take their seats.

Mrs. Beckett: My hon. Friend raises an interesting and important point. He is right to say that the House has, historically, found ways to enable people to be at ease with their conscience and to operate properly as Members of Parliament. I am not entirely

¹⁰⁰ HC Deb, Vol 340 c434

sure who the issue that he has raised would be a matter for, but I will draw it to the attention of my relevant right hon. and hon. Friends. However, I share his view that, before the matter could even be considered, there would have to be a genuine wish to operate properly as Members of Parliament and in the context of the development of peace.

Later that month, there were reports in the media that Gerry Adams and Martin McGuinness would be allowed to use Commons facilities without having to swear the oath of allegiance. The *Sunday Times* claimed that

The Commons authorities have been pressured into making the gesture by Downing Street. ‘These are elected MPs voted in by their constituents,’ one senior source said.¹⁰¹

The Times stated that the Government would invite MPs to vote on this issue in the new year.¹⁰² The article implied that access to facilities would be granted to the Sinn Féin Members without breaching the general restriction on Members who do not take the oath:

The move to allow Sinn Fein to have offices at Westminster has caused misgivings among Tory MPs, Unionists and within the Commons authorities.

It is understood that Betty Boothroyd, the Speaker, has dug in her heels to prevent a breach of the general rule that MPs who do not swear allegiance to the Queen cannot have access to Westminster facilities. But Miss Boothroyd is reported to accept the Government’s view that allowing the two MPs to have offices at Westminster could be seen as part of the ‘confidence-building’ measures.

This approach would, in effect, make an exception to the Speaker’s ruling of 14 May 1997 without overturning it.

On 21 December 1999 the Speaker responded to a point of order on this issue, saying that should Ministers now wish the two Sinn Féin Members to have access to Commons facilities, it would be for the Government to bring a motion to that effect for debate and decision by the House:

Mr. Crispin Blunt (Reigate): [...] What is going on? Have you, Madam Speaker, been put under any pressure by Downing street; and could you confirm that if you have been - or are in the future - put under any pressure by the Executive to change your ruling of 14 May 1997 unilaterally, the request would be met with the dusty response that Members of this House would expect from you?

Madam Speaker: I am sure that the hon. Gentleman does not believe everything that he reads in the press, but he is correct in recalling May 1997, when I informed the

¹⁰¹ 19 December 1999, “Adams wins row over oath to Queen”

¹⁰² 21 December 1999, “New law to boost Adams’s ambitions”

House of my decision that Members who do not take their seats should not have access to the facilities of the House. This summer, the European Court of Human Rights rejected on all counts a challenge to that decision. It is true to say that one or two Ministers have been to see me recently. The House would not expect me to divulge any conversations. Others may divulge conversations of that nature; I do not. Should Ministers now wish the two Sinn Fein Members to have access to some of our facilities, it would be for the Government to bring a motion to that effect for debate and decision by the House. I am the servant of the House and if it approved such a motion, I would of course ensure that it was put into effect.¹⁰³

A Press Association report described the discussions which the Government had been engaged in, and the aims which were said to lay behind these moves:

The Prime Minister's spokesman today insisted that there were no plans to allow MPs to take their seat or draw a salary without swearing the oath, but said that discussions on the possibility of an arrangement to allow Sinn Fein MPs to use Parliamentary facilities were ongoing.

Any change would require a resolution of the House, which would be preceded by discussions with the leaders of opposition parties, he said.

It is understood that the Government feels that allowing Sinn Fein MPs to set up offices within Westminster would tie them ever more closely into the democratic process, making a return to violence less likely.¹⁰⁴

More recently *The Times* reported the Northern Ireland Secretary, Peter Mandelson, as saying that the plan to allow access to Commons facilities to Sinn Féin Members was

an important part of normalising the political process between London and Belfast. Allowing the Republicans to associate with a "broad spectrum" of political views represented in Westminster would assist their development as "a party committed to democratic and peaceful means", he said.¹⁰⁵

A Sinn Féin spokesman has been quoted as saying "It's no less than what we were entitled to from the day and hour our MPs were elected".¹⁰⁶ John Major, however, has criticised the reported plans. The Press Association reported his views in the following terms:

The former Conservative Prime Minister said the Government should not use its temporary majority on such an issue against the opposition of other parties.

This was the first item of the Government's Northern Ireland policy that he had opposed, said Mr Major.

¹⁰³ Vol 341, 21 December 1999, c680

¹⁰⁴ 21 December 1999, "Dual MPs proposal attacked by Unionists"

¹⁰⁵ 14 January 2000, "Adams to get desk at Commons"

¹⁰⁶ *The Birmingham Post*, 14 January 2000, "Adams and McGuinness will be allowed into Commons"

He went on: 'The Government is to publish a Bill today to enable MPs at Westminster to stand in the Dail also. I don't much like this, but I think it is primarily a matter for the individual electorates and I will not oppose it.

'I am much more concerned about the Government's apparent proposal to enable elected Members to use the facilities of the House of Commons without taking the oath of allegiance to the Queen.

'I have supported the Government strongly throughout many difficult decisions on the Northern Ireland process, but I cannot and will not support them if they bring forward such a change to the oath of allegiance.' Mr Major added: 'It seems to be entirely improper that this matter is being floated in public without proper consultation with the principal opposition parties.

'I understand no such consultation has taken place, nor do I understand what this proposal may mean.' Mr Major asked: 'Is it intended to enable Members to sit in the House without taking the oath, to be paid without taking the oath, to claim expenses without taking the oath, to use the research facilities without taking the oath? None of this is acceptable.

'Any Member elected to the UK Parliament must accept that they have to take the oath of allegiance before being entitled to utilise the facilities of the Commons.

'If the Government are proposing to change this long-standing convention, then it is a step too far and it does not deserve the support of the House.' Mr Major added: 'I recognise that they can use their majority to force this through after a short debate.

'But it would be improper of them to do so without all-party agreement.

'This is a matter that will affect future Parliaments as well as the current Parliament and the Government should not use their temporary majority on such an issue against the opposition of other parties.

'I still support the Government's Irish policies. But I am not going to support this.'¹⁰⁷

A leading article in the *Daily Telegraph* suggested that

by its proposal to waive the requirement and to give the two Sinn Fein MPs office facilities and secretarial allowances at the Commons, the Government seems to be suggesting that the oath does not really matter all that much - or, at least, that the Government's own convenience matters more. Yet again, New Labour is showing its contempt for the House of Commons.

The oath and the admittance policy at the Commons are not proper matters, for the Government at all, to be used as bargaining chips in the Northern Ireland 'peace process' They are matters for the Speaker, as the guardian of the rules and traditions of the House. Betty Boothroyd has already given her ruling on the matter, withholding the facilities at Westminster from anybody who refuses to take the oath. Peter Mandelson, the Northern Ireland Secretary, said yesterday: 'The circumstances in Northern Ireland at the time that the Speaker made her ruling were very different to the situation now.' But that is to miss the point entirely. The arrangements at the House of Commons have absolutely nothing to do with the circumstances in Northern Ireland. Relaxing the rules on admission will undermine the importance of the solemn

¹⁰⁷ 21 December 1999 "Major pledges to oppose change over MPs' oath"

oaths sworn by every sitting member of the House. MPs of every party who value the dignity of the Commons should vote against this piece of impertinence.¹⁰⁸

The Irish Times reported the shadow Northern Ireland Secretary, Andrew Mackay, as describing the plan to allow Sinn Féin Members access to House of Commons facilities as “at the very least decidedly premature and mistaken” given the lack of progress on decommissioning:

Mr Mackay said the decision presumably would mean that Mr Adams and Mr McGuinness would not only be eligible for all allowances available to MPs, but would also receive additional funding to assist opposition parties with secretarial and research costs. ‘That would mean the taxpayer funding Sinn Fein as a party at Westminster at a time when the IRA have failed to decommission their illegally held arms and explosives as they are obliged to do.’

A number of reports have suggested that the facilities to which the Sinn Féin Members would have access would include the Office Costs Allowance, currently £50,264, and other allowances available to Members, such as the Additional Costs Allowance.¹⁰⁹ As the comments by Andrew Mackay reproduced above indicate, there is also speculation that Sinn Féin would be entitled to “Short money”, public funding made available to opposition parties in the Commons to assist them in carrying out their “Parliamentary business”.¹¹⁰

The Short money scheme is administered under the Resolution of the House of 26 May 1999.¹¹¹ It has three components, set out in the first three paragraphs of the Resolution:

- 1) Funding to assist an opposition party in carrying out its Parliamentary business
- 2) Funding for the opposition parties’ travel and associated expenses
- 3) Funding for the running costs of the Leader of the Official Opposition’s office.

An opposition party qualifies for Short money under paragraphs 1 or 2 of the Resolution if:

- a) it has two Members who were elected as candidates for that party at the last general election;
or
- b) it has one such Member and the party received at least 150,000 votes at the last election.

The amount payable to qualifying parties under the basic scheme (paragraph 1) in the year from 1 April 1999 is £10,732.69 for every seat won at the last election plus £21.44 for every 200 votes gained by the party. If Sinn Féin had been entitled to Short money from the beginning of the current financial year, this would have given them just over £35,000. A total of £117,896 is

¹⁰⁸ *Daily Telegraph*, 14 January 2000, “Keeping allegiance”

¹⁰⁹ See, for example, the *Daily Mail*, 14 January 2000, “Adams to claim £60,000 a year and a Commons Office”. Further details of Members’ allowances are given in House of Commons Information Office Factsheet No 17

¹¹⁰ For a brief account of the current Short money scheme, see Research Paper 00/2

¹¹¹ *Votes and Proceedings* 26 May 1999. Resolution debated and agreed to at HC Deb Vol 332, cc 427-9.

available in the current year for the opposition parties' travel expenses under paragraph 2 of the resolution; this is apportioned between each of the opposition parties in the same proportion as the amount given to each of them under the basic Short money scheme.

The Government has denied that it intends to abolish or amend the oath. On 21 December last, the Prime Minister responded to a Written Question asking whether he would seek to introduce alternative versions of the oath taken by hon. Members to reflect republican views. He said: "There are no plans to introduce alternative versions of the oath".¹¹² During the closing speech in the second reading debate on the *Disqualifications Bill 1999-2000*, which aims to remove the disqualification of Irish parliamentarians from membership of the House of Commons and the Northern Ireland Assembly,¹¹³ the junior Northern Ireland Minister, George Howarth, said:

The hon. Member for Fermanagh and South Tyrone also asked about the Oath. That is an important matter, and one that has been raised repeatedly. The Bill does not change the Oath of Allegiance. The Government do not intend to change it; we are not talking to anyone or consulting with anyone about the possibility of changing it.

The right hon. Member for Maidstone and The Weald asked for an absolute commitment on the issue. She served with some distinction in the previous Government, and she knows that no Government can give cast-iron guarantees of that kind. However, it would be wrong for anyone to think that a change in the Oath is in prospect. It is not around the corner, nor around any corner that I can foresee.¹¹⁴

Subsequent press reports suggested that the Government would delay introducing a motion on access to the services of the House for Sinn Féin Members "until there is proof that the IRA will decommission its weapons":

The Secretary of State for Northern Ireland delayed a move to allow the two Sinn Féin leaders to have offices and secretarial back-up at Westminster to avoid further undermining David Trimble, the Ulster Unionist leader. Mr Mandelson's decision last week to implement the Patten report on the reform of the RUC, in spite of a failure by the IRA to begin handing in its weapons, put Mr Trimble's position on the line.

Mr Trimble's security spokesman, Ken Maginnis MP, said the Ulster Unionists had been assured privately by Mr Mandelson that there would be no move to provide the offices until decommissioning begun.

Mr Adams and Mr McGuinness have both declined to take up their Westminster seats, and have been denied offices for refusing to take the oath of allegiance. The Sinn Féin chairman Mitchell McLaughlin told BBC Radio 4's *The World This Weekend* yesterday that any withdrawal of the offer of facilities at Westminster would

¹¹² Vol 341, 21 December 1999, c502W

¹¹³ See Research Paper 00/6

¹¹⁴ HC Deb Vol 343, 24 January 2000, c74

be ‘a breach of an agreement that was reached only a matter of weeks ago with the British Government. For anyone to unilaterally change that sends a very negative signal indeed’.¹¹⁵

More recently, due to continuing disagreements on decommissioning, Parliament has passed the *Northern Ireland Bill 1999-2000* providing for the suspension of the Northern Ireland Assembly.¹¹⁶

¹¹⁵ “Mandelson delays plan for Adams to be given an office”, *Independent*, 24 January 2000

¹¹⁶ *Northern Ireland Act 2000* (chap 1), and see HC Research Paper 00/13

Appendix 1: Recent Speaker's statements on the oath

The Speaker's Statement of 14 May 1997¹¹⁷

I wish to make a statement about the availability of services in the House for those who do not take their seats after being returned here as Members.

This House has traditionally accommodated great extremes of opinion. I am sure therefore that the House would not wish to put any unnecessary obstacle in the way of Members wishing to fulfil their democratic mandate by attending, speaking and voting in this House. Equally, I feel certain that those who choose not to take their seats should not have access to the many benefits and facilities that are now available in the House without also taking up their responsibilities as Members.

The present position is that, under the terms of the Parliamentary Oaths Act 1866, any Member who fails to take the oath or to make the affirmation that is required by law and who then votes or sits during any debate after the election of the Speaker is subject to a penalty of £500 on each occasion and his or her seat is automatically vacated. In 1924, one of my predecessors ruled that any such Member could not receive a salary, and this regulation also applies to allowances.

In the interests of the House, and making use of the power vested in the office of the Speaker to control the accommodation and services in the Commons parts of the Palace of Westminster and the precincts, I have decided to extend these restrictions. As from the date of the end of the debate on the Queen's Speech, the services that are available to all other Members from the six Departments of the House and beyond will not be open for use by Members who have not taken their seats by swearing or by affirmation.

For the avoidance of doubt, a schedule listing these various services will be appended to this statement in the *Official Report*. One of the purposes of this will, of course, be to enable officers and servants of the House and others to administer these new regulations with clarity and precision.

Of course, I accept that there may be occasional cases where an elected Member, for reasons of health or for other good reasons, cannot attend to take his or her seat immediately after election, but, nevertheless, desires to do so at the earliest possible moment. Provided such a Member sends me a letter informing me of his or her inability to attend and signifying his or her intention to attend to swear or affirm at the earliest possible time, I will give instructions that these new regulations should not be applied. This should be done not later than the date of the end of the debate on the Queen's Speech or, in the case of a by-election, after 10 sitting days.

The House will have noted that the date which I have set for the introduction of these regulations is the end of the debate on the Queen's Speech. That is not an ideal date,

¹¹⁷ HC Deb 14 May 1997 Vol 294 cc 35-6

but the House needs notice of these changes. In a future Parliament, the effective date both for the cessation of services and for the deadline for the sending of the letter requesting excusal will be the date of the Queen's Speech itself.

The services to which the new regulations apply include:

- Legal services
- Procedural services, including the tabling of questions, motions and amendments, and public petitions
- Broadcasting services
- Vote Office services
- Services available from the Parliamentary Office of Science and Technology
- The provision of passes, special permits and car parking facilities
- Access to those areas within the parliamentary precincts which are open only to pass holders
- The booking of Committee Rooms, conference rooms and interview rooms
- Office accommodation services for Members and their staff
- Computer services, except those available to the public
- The allocation of Gallery tickets
- The sponsoring of exhibitions in the Upper Waiting Hall
- Members' medical services
- Library and research services, except for those services of the Public Information Office generally available to the public
- Services provided by the Official Report
- Payroll and other financial services provided to Members and their staff
- Insurance services
- Catering services provided for Members and their staff, including the sponsoring of banqueting services
- Police and security advice available within the precincts
- Services in the Members' post offices
- Travel services

The Speaker's Statement of 4 December 1997¹¹⁸

I wish to inform the House that I held a meeting this morning with the Members for Belfast, West (Mr. Adams) and for Mid-Ulster (Mr. McGuinness), at their request. I do not normally comment in public on meetings that I have with Members, but I think it appropriate to do so on this occasion, as the matter is of general interest to the House. The Members concerned made representations to me about the restrictions on the use of House of Commons services and facilities at Westminster that apply to Members who do not take their seats.

Having listened carefully to their representations, I reaffirmed my decision of 14 May that those who choose not to take their seats should not have access to the benefits and facilities available in the House without also taking up their responsibilities as Members and participating in the democratic process. I reminded them that, as

¹¹⁸ HC Deb 14 Dec 1997 Vol 302 cc 487-8

Speaker, I am bound by the law. Swearing the Oath, or affirming it, is a legal requirement that cannot be set aside by whim or any administrative action. Primary legislation would be needed to change the Parliamentary Oaths Act 1866 or the form of the Oath. I told them that it was their refusal to swear or affirm that prevented them from taking their seats, not any action by the Speaker.

I pointed out that my decision does not discriminate against Sinn Féin: it applies equally to any Members not taking their seats for any reason. Those who do not take up their democratic responsibilities cannot have access to the facilities at Westminster that are made available to assist Members who do. I declined to allow those Members passes to the Palace of Westminster, because that would provide automatic access to many of the facilities not open to them. I told them that they were in effect asking for associate membership of this House. Such a status does not exist. There is no halfway house: they are part of the all. I reminded them that they are allowed, of course, the use of free stationery and postage, which enables them to take up issues on behalf of their constituents, and they also have access to Ministers, as we all have.

Mr. Tony Benn (Chesterfield): May I ask you a question arising from your statement, Madam Speaker? I appreciate the authority of the Chair, but I put it to you that, in May, the proceedings of the House were completely altered by your statement then, because the Member for Belfast, West (Mr. Adams) was previously a Member of Parliament under the rules which would have allowed him to take advantage of the facilities of the House.

The effect of the law to which you referred - the Parliamentary Oaths Act 1866 - is to deny people who have elected a Member of Parliament a Member who is able to use the House, and to deny us access to the views of Members who have been elected. The whole question of the Oath needs to be considered. At one time, Jews, Catholics and humanists were kept out of Parliament. There is no oath for the European Parliament. Privy Councillors take an Oath of obedience to the Queen, and then take contrary oaths when they go to the Commission and say that they take no notice of any other Government. The time has come for the matter to be looked at.

Finally, Madam Speaker, will you recognise that even your statement today is of such major constitutional importance that you would be helped if the House had a chance to debate it and to reach a decision, rather than rely solely on a statement made from the Chair?

Madam Speaker: I am not taking questions on my statement--I am simply reaffirming what I said in May. I met the two Members at their request, and it is right that I should tell the House factually about the exchanges that took place. If there are to be any changes to the Oath, that is not a matter for me. I am sure that the House has listened carefully to the right hon. Member for Chesterfield (Mr. Benn) - I certainly have.

Appendix 2: Recent Attempts to Amend the Oath

There have been several private Member's bills in recent years concerning the parliamentary oath. None have been successful. The following have occurred since the passing of the *Oaths Act 1978*:

Democratic Oaths Bill 1987-88¹¹⁹ (Tony Benn)

21 July 1988 Presentation and first reading

Long title: A Bill to provide a new Oath to be taken by the Crown on the occasion of the Coronation, and by Privy Councillors, Members of Parliament, holders of all judicial offices, all civil and military officers, Lord Mayors, Mayors, Lords Lieutenant, and others holding positions of authority within the United Kingdom.

Proposed form of oath:

I, A B,

Do swear by Almighty God

Or

Solemnly declare and affirm

That I will be faithful and bear true allegiance to the peoples of the United Kingdom, according to their respective laws and customs; preserving inviolably their civil liberties and democratic rights of self government, through their elected representatives in the House of Commons, and will faithfully and truly declare my mind and opinion on all matters that come before me without fear or favour.

Parliamentary Declaration Bill 1997-98¹²⁰ (Tony Benn)

13 Jan 1998 Presentation and First Reading

Long title: A Bill to Provide for a new Declaration to be made by Members of Parliament upon their election to the House of Commons

Proposed form of Declaration:

I do solemnly Declare and Affirm that I will, to the best of my ability, discharge the responsibilities required of me by virtue of my membership of the House of Commons and faithfully serve those whom I represent here.

Parliamentary Oaths (Amendment) proposed Bill 1997-98¹²¹ (Kevin McNamara)

29 July 1998 Motion for leave to introduce a Bill. Negatived on division (137 to 151)

Motion: That leave be given to bring in a Bill to enable a person lawfully elected to the House of Commons to take his seat without swearing the present oath or affirming; and for connected purposes.

¹¹⁹ Bill 204 1987-88

¹²⁰ Bill 106 1997-98

¹²¹ HC Deb 29 July 1998 Vol 317 c 377-83

Appendix 3: Other Oaths

Official oath

I,, do swear that I will well and truly serve Her Majesty Queen Elizabeth in the office of
So help me God.¹²²

Judicial oath

I,, do swear that I will and truly serve our Sovereign Lady Queen Elizabeth in the Office of, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or illwill. So help me God.¹²³

Privy Counsellors

The answer to a written question set out the Privy Counsellors' oath:

Mr. Baker: To ask the President of the Council, pursuant to her Oral answer to the hon. Member for Pendle (Mr. Prentice), of 20 July 1998, *Official Report*, column 779, on the Privy Council, if she will publish the text of the oath sworn by privy counsellors. [52790]

Mrs. Beckett: The text of the Privy Counsellors Oath is as follows:

"You do swear by Almighty God to be a true and faithful Servant unto the Queen's Majesty, as one of Her Majesty's Privy Council. You will not know or understand of any manner of thing to be attempted, done, or spoken against Her Majesty's Person, Honour, Crown, or Dignity Royal, but you will lett and withstand the same to the uttermost of your Power, and either cause it to be revealed to Her Majesty Herself, or to such of Her Privy Council as shall advertise Her Majesty of the same. You will, in all things to be moved, treated, and debated in Council, faithfully and truly declare your Mind and Opinion, according to your Heart and Conscience; and will keep secret all Matters committed and revealed unto you, or that shall be treated of secretly in Council. And if any of the said Treaties or Counsels shall touch any of the Counsellors, you will not reveal it unto him, but will keep the same until such time as, by the Consent of Her Majesty, or of the Council, Publication shall be made thereof. You will to your uttermost bear Faith and Allegiance unto the Queen's Majesty; and will assist and defend all Jurisdictions, Pre-eminences, and Authorities, granted to Her Majesty, and annexed to the Crown by Acts of Parliament, or otherwise, against all Foreign Princes, Persons, Prelates, States, or Potentates. And generally in all things you will do as a faithful and true Servant ought to do to Her Majesty. So help you God".¹²⁴

¹²² *Promissory Oaths Act 1868*, c 72, s 3

¹²³ *ibid*, s 4

¹²⁴ HC Deb 28 July 1998 Vol 387 c 182W

