



The sub judice rule

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On 15 November 2001 the House of Commons agreed a motion relating to the House's sub judice rules. This rule provides that, generally speaking, Members should not bring up matters in debates, questions and motions which are awaiting adjudication in a court of law.

This note reviews the formalisation of the sub judice rule, which was confirmed by previous resolutions in 1963 and 1972; and considers reviews of the rule since its confirmation in 2001.

In April 2005, the Procedure Committee reported on the sub judice rule. It considered whether a rule change was necessary: it believed that the House should continue to rely on the Speaker's discretion.

In August 2006, the Procedure Committee reported on the application of the sub judice rules to proceedings in coroners' courts. It concluded that coroners' courts should remain within the scope of the House's sub judice rules but believed that the Speaker could use his discretion to allow debates on policy matters relating to ongoing inquests more frequently. The Committee recommended the introduction of a new Standing Order that explicitly gave power to the Speaker to direct a Member resume his or her seat if he or she oversteps the agreed mark in relation to sub judice matters. The House both approved the Procedure Committee's report and agreed to the new Standing Order on 1 November 2006.

The text of the sub judice rule agreed on 15 November 2001 is reproduced in Appendix 1 and the new Standing Order agreed on 1 November 2006 is reproduced in Appendix 4.

This note also considers the sub judice rules in the UK's devolved legislatures

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A. The sub judice rule

On 15 November 2001 the House of Commons agreed a motion relating to the House's sub judice rules. The text of the motion is reproduced in Appendix 1.

The motion was identical to that proposed by the Joint Committee on Parliamentary Privilege in its March 1999 report, which examined these issues along with other aspects of parliamentary privilege.¹ The House of Lords agreed to the new sub judice resolution proposed by the Committee, in May 2000.² The House of Lords sub judice rule is set out in the *Companion to the Standing Orders*, reproduced in Appendix 3.

The sub judice rule has existed for a long time, but was confirmed by two resolutions of the House, of 23 July 1963 and 28 June 1972, given in appendix 2.³

The 1963 Resolution set out the main rule for the Commons. It came about because of a decision in December 1961 to rule out questions on the grounds of *sub judice* where a writ for libel had been issued, which meant that the House was unable to discuss the subject for some considerable time. The sub judice rule was therefore referred to the Procedure Committee.⁴

The 1963 Resolution stated that matters awaiting adjudication in a court of law should not be brought forward in motions, debates, questions or supplementary questions. There were two important qualifications. One was that the rule was subject to the discretion of the Chair (the Speaker in the Commons, the Lord Speaker in the House in the Lords). The other was that it was subject to the right of the House to legislate on any matter. The 1972 Resolution was a relaxation of the original Resolution. It allowed that in civil proceedings and subject to the discretion of the Chair, reference might be made to matters relating to ministerial decisions "which cannot be challenged in court except on grounds of misdirection or bad faith".

The Joint Committee on Parliamentary Privilege outlined the principles behind the rules as follows:

191. The present rule rightly tries to strike a balance between two sets of principles. On the one hand, the rights of parties in legal proceedings should not be prejudiced by discussion of their case in Parliament, and Parliament should not prevent the courts from exercising their functions. On the other hand, Parliament has a constitutional right to discuss any matters it pleases.⁵

The Joint Committee highlighted a number of problems with the rules.

¹ Joint Committee on Parliamentary Privilege, Report, HC 214-I 1998-99 and HL 43-I 1998-99, 30 March 1999 paragraphs 189-203

² HL Deb 11 May 2000 c1725-1735

³ HC Deb 23 July 1963 c 1417 and HC 28 June 1972 c 1589

⁴ Procedure Committee, *Rule relating to Reference in the House of Commons to Matters considered as Sub Judice*, HC 15 1962-63

⁵ Joint Committee on Parliamentary Privilege, Report, HC 214-I 1998-99 and HL 43-I 1998-99, 30 March 1999

- The rules were different in the Commons and the Lords. Both rules allowed for discussion on matters concerning issues of national importance. However, they diverged on the discussion of ministerial decisions. The Lords rule allowed for discussion of matters relating to *any* ministerial decision, at the discretion of the Leader of the House. The Commons rule allowed discussion of cases relating to ministerial decisions “which cannot be challenged in court except on grounds of misdirection or bad faith”. The Joint Committee considered that the exception should be drawn more widely so as to include any ministerial decision, subject to the discretion of the Chair.
- There was no explicit statement that the rules applied to committees.⁶
- The Joint Committee highlighted the importance of having clear starting and finishing points for the rule in each case. For criminal cases it considered that the existing rule should continue. This was that the sub judice rule becomes active only when the case against the individual is formulated in a charge or summons to appear. However, it considered that a relaxation of the rule in relation to pre-trial applications in civil cases (for example, for injunctions) would be desirable.⁷

The Joint Committee recommended that the two Houses should have an identical sub judice rule, and recommended a form of words which forms the basis of the motion before the House. The explanatory notes set out the principal points of comparison with the current rules as follows:

- It is made explicit that the rule applies in Committee
- New provisions clarify what is meant by a case being active , and exactly which proceedings are covered
- The provisions for criminal cases follow current practice, although the wording is clarified and the possibility of cases being discontinued is included
- The provisions for civil proceedings are relaxed so that pre-trial applications (e.g. for injunctions) are treated as distinct proceedings. A case is currently sub judice from the time it is brought before the court “as for example by notice of motion for an injunction”; under the new rule once such a pre-trial issue had been settled the sub judice rule would be lifted until the case became active once more
- The relaxation of the rule now applies to any judicial review of a ministerial decision rather than being limited to reviews on grounds of misdirection or bad faith.⁸

B. The debate on 15 November 2001

The debate was opened by Stephen Twigg, Parliamentary Secretary, Privy Council Office. He said:

The motion stems from the report in the previous Parliament of the Joint Committee on Parliamentary Privilege, one of whose members, the hon. Member for North Cornwall (Mr. Tyler), is in his place. The Joint Committee was chaired by Lord

⁶ *Ibid*, paragraph 189

⁷ *Ibid*, paragraph 197

⁸ *Explanatory Memorandum on the motion relating to matters sub judice standing on the order paper in the name of the Leader of the House*, November 2001

Nicholls and was set up to review parliamentary privilege and to make recommendations. Parliamentary privilege is important, and should be used well. I am grateful to all those, both in this House and the other place, who served on the Joint Committee, and the many distinguished witnesses who assisted in its work.

The Joint Committee addressed free speech in Parliament as part of its inquiry. It noted that freedom of speech

"is the single most important parliamentary privilege".

I am sure that we all agree with that. Members may wish to note that the Joint Committee recommended that there should be no action to limit parliamentary freedom of speech in respect of court injunctions, or in respect of the Official Secrets Acts. Those rights remain absolute, and the good sense of Members of Parliament will continue as the best guard against their misuse.

The Joint Committee also looked at the sub judice rule and recommended that the sub judice resolutions of both Houses of Parliament should be brought up to date, and into line with one another. The House of Lords has already implemented the Joint Committee's recommendation and I now invite this House to do the same. I stress that the new motion does not significantly alter the rules on sub judice. Before I turn to the motion itself, it might be helpful if I remind the House of the reason for the sub judice rule.

A fundamental feature of our constitution is that Parliament and the courts each keep to their appropriate functions. It is for Parliament to make the law; it is for the courts to interpret it. Article 9 of the Bill of Rights provides

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

Rightly, we have absolute privilege for anything that we say in Parliament. The courts cannot interfere with what we say or do in the course of proceedings in Parliament.

That absolute privilege must not be abused, and the sub judice rule is a means to prevent abuse. As the Joint Committee said,

"the rule provides that matters awaiting adjudication in a court of law should not be brought forward on motions, debates, questions or supplementary questions."

The rule is not absolute. As the Joint Committee said, it tries

"to strike a balance between two sets of principles. On the one hand, the rights of parties in legal proceedings should not be prejudiced by discussion of their case in Parliament, and Parliament should not prevent the courts from exercising their functions. On the other hand, Parliament has a constitutional right to discuss any matters it pleases."

The sub judice rule is necessary not only to preserve proper relations between courts and Parliament, but to ensure that trials are not prejudiced by parliamentary comment. I acknowledge that it can be frustrating for Members when the sub judice rule restricts comment in this House more stringently than comment in the media, but that is unavoidable. Media comment is constrained by the Contempt of Court Act 1981 and if such comment oversteps the mark, legal action can be taken.

Article 9 of the Bill of Rights gives us absolute protection in this House, and that should make us cautious about what we say in this place. Moreover, as the Joint Committee said,

"it is important constitutionally, and essential for public confidence, that the judiciary should be seen to be independent of political pressures".

However, we should not limit parliamentary debate more than necessary, and there are three important provisions in the motion that stop the sub judice rule doing so.

The first is that the application of the rule is

"subject to the discretion of the Chair".

As the Joint Committee said,

"the key to the successful operation of the sub judice rule over the years in the House of Commons has been the sensitive use by the Speaker of discretionary powers."

Successive occupants of the Chair have had to grapple with the application of the rules in often difficult and delicate circumstances, and have demonstrated the importance of having a rule that does not seek to anticipate every situation that may arise but leaves considerable discretion to the Chair. This new rule would, of course, preserve that discretion.

Secondly, the House remains free to legislate on any matter. When it appears that the law needs changing, the sub judice rule does not prevent us from making changes even as cases go through the courts.

Thirdly, the rule does not apply to cases in which a ministerial decision is in question in the courts—that is, where a decision is being judicially reviewed. In fact, the new sub judice rule will relax the practice of the Commons on this matter and bring us into line with the more permissive rule that has applied in the Lords.

The existing rules refer to decisions that

"cannot be challenged in court except on grounds of misdirection or bad faith, or concern issues of national importance such as the national economy, public order or the essentials of life".

The new proposal has no such restrictions, and that must be right. The purpose of the sub judice rule is to protect the courts from parliamentary interference; it is not to provide Ministers with a convenient protection against questioning in the House. I commend this substantive alteration to the House.

The other alterations to the sub judice rules recommended by the Joint Committee are technical rather than substantive. First, it cannot be right to have the rules contained in two resolutions, rather than one, or to have different rules in one House of Parliament from those that apply in the other. That is rectified by the proposal before the House.

Secondly, although it is accepted that the sub judice rule applies to Select Committees, in the past that has not been clearly stated. It will now be explicit that the application is also to the Committees of the House.

Thirdly, changes to court practice mean that many of the references to specific courts in the existing rules are out of date, and need to be changed. The redrafted rules do that.

I hope that the House will agree to follow the Lords and adopt this updated and comprehensive sub judice rule.⁹

Responding to the Minister, Eric Forth said on behalf of the Conservatives that he welcomed the motion, and was pleased to see that the discretion available to the Chair was being retained. Paul Tyler, on behalf of the Liberal Democrats, also supported the motion, on the grounds that it would make it more difficult for ministers to use the sub judice rule to avoid difficult questions.

C. Procedure Committee reviews

1. April 2005

In April 2005, the Procedure Committee reported on the sub judice rule of the House of Commons after a case in the Foreign Affairs Committee and because of a question about the application of the rule to coroners' courts. Despite these specific issues, the Committee considered the operation of the rule more generally.¹⁰

After reviewing the history of and justification of the rule, the Committee reported on problems with the rule. The Committee said the disputes about the application of the rule "seldom reach the floor of the House". There were concerns about raising related cases. The Clerk considered that it was normally possible to raise a general issue without going into the details of particular. The Committee thought that "there may be justification in asking the Speaker to exercise his discretion" in cases which remain active for several years.

The Committee also examined the specific phrase: "cases ... shall not be referred to". It received evidence on whether it would be appropriate to raise question about the length of time a case was taking. The Attorney General was "sympathetic" to such questions. However, the Faculty of Advocates and the Hon. Secretary of the Coroners' Society for England and Wales expressed caution that such a question could be seen as interference in the course of justice or affect the decision of a judicial officer.¹¹

On the subject of inquests, the Committee was concerned about how long some cases were active. But rather than change the rules, it believed that "it would be preferable to rely on the Speaker's discretion". The Committee also noted concerns about the way in which the Resolution treated cases before the coroners' courts and recommended that the two Houses should consider definitions:

⁹ HC Deb 15 November 2001 Vol 374 c1012-14

¹⁰ Procedure Committee, *The Sub Judice Rule of the House of Commons*, 4 April 2005, HC 125 2004-05, paras 1-3

The Bar Council point out that paragraph (3)(a) of the sub judge resolution treats cases before coroners' courts as falling within the provisions of paragraph (1)(a), concerning criminal cases (which are active when a charge has been made or a summons to appear has been issued), and describes this as "hardly apposite". **We recommend that the two Houses should consider jointly how the points at which cases before coroners' courts are to be treated as active can be more suitably defined.**¹²

The Committee did not think that the scope of the rule should be extended to tribunals which had not been set up under the provisions of the *Tribunals of Inquiry (Evidence) Act 1921* (now the *Inquiries Act 2005*).¹³

It considered the subject of the Speaker's discretion and reported the Clerk of the Table Office's explanation that "this discretion is exercised by the Speaker personally". The Committee recommended:

We agree that the exercise of discretion should continue to be a matter for the Speaker personally; therefore, we encourage Members who consider that the rule is unreasonably impeding the work of Parliament to refer the matter to the Speaker, stating their case, and ask him to exercise his discretion.¹⁴

The Committee noted that in select committee meetings, chairmen can be required to exercise discretion to allow an active case to be referred to, and that this could subsequently cause difficulty to the Speaker and his deputies. The Committee recommended that select committee chairmen should consult the Speaker if time allowed or otherwise take evidence in private.¹⁵

2. July 2006

In July 2006, the Procedure Committee reported on the application of the sub judge rule to proceedings in coroners' courts. Its inquiry was prompted by further calls from Members to re-examine the sub judge rules specifically in regard to coroners' courts. The Committee said that "a number of apparent breaches of the rule in the House of Lords" was another factor that led to the inquiry.¹⁶

Like its predecessor Committee, this Committee reviewed the rule in general and in relation to the specific cases drawn to its attention. It reported three reasons for the House's sub judge rule, as identified by the Attorney General: "the risk of prejudicing individual cases, the principle of comity between the Courts and Parliament, and the need to demonstrate that the judiciary operates independently of the political process".¹⁷

¹¹ *Ibid*, paras 15-23

¹² *Ibid*, para 28

¹³ *Ibid*, paras 29-31

¹⁴ *Ibid*, para 35

¹⁵ *Ibid*, paras 36-38

¹⁶ Procedure Committee, *Application of the sub judge rule to proceedings in coroners' courts*, 22 August 2006, HC 714 2005-06, paras 1 and 21

¹⁷ *Ibid*, para 7

The Committee commented briefly on the House of Lords' experience. It agreed with the previous Committee that any proposals for change should be considered jointly. While it had been concerned at the different implementation of the rule in the two Houses, it welcomed the "efforts made by the House of Lords authorities to ensure that the rule is implemented in the same way in both Houses".¹⁸

The Committee concluded that coroners' courts should remain within the scope of the rule:

We conclude that the argument that coroners' courts should remain within the scope of the rule due to the possibility of prejudice is persuasive. Taken alongside the long standing precedent for inquests to have been included with the House's implementation of its sub judice rule, and the principle of comity, it forms a convincing case. We therefore concur with the view expressed in our predecessors' report that there is no justification for removing the protection of the rule from coroners' courts.¹⁹

After considering the scope of the rule, the Committee, like its predecessor, stressed that the Speaker's discretion could be exercised more frequently. However, it cautioned that:

If that is to happen, a clear distinction must be maintained between policy matters and the details of a case and the Chair must be in a position to take effective action to enforce the terms of the debate. We therefore recommend that an explicit power to order a Member to resume their seat on the grounds of a breach of sub judice should be provided to the Speaker, or, in Westminster Hall, the Chairman.²⁰

It also expected the question of "national importance", one of the exemptions of the rule that allows debate, to be the subject of the Speaker's discretion, which was to be exercised more readily.²¹

In its consideration of the issue of cases before coroners' courts, the Committee concluded that there were no practical alternatives to defining an active case.²² At present, once a coroner has opened an inquest it is considered active, even if the case stands adjourned (However, during the debate on the Committee's report, Greg Knight indicated that there had been some movement on this issue – see below).

The Committee also considered how the House authorities' role in sub judice questions could be better understood. It recommended that: "In order to increase transparency and to improve Members' understanding of the sub judice rule and the Speaker's power of discretion, we recommend that the Table Office consider issuing a short guidance note for Members on sub judice issues". The Committee produced a draft, with its report, and recommended that the leaflet should summarise "the general principles of the resolution and the procedures involved".²³

¹⁸ *Ibid*, paras 21-25

¹⁹ *Ibid*, para 38

²⁰ *Ibid*, para 48

²¹ *Ibid*, paras 49-53

²² *Ibid*, para 63

²³ *ibid*, paras 76 and 83

The Committee echoed the previous Committee's call for select committee chairmen to consult with the Speaker before waiving the sub judice resolution. It also noted the fact that select committees could take evidence in private.²⁴

The House approved the Committee's report, which it debated along with proposals to reform the way bill are considered in committee, the introduction of the Communications Allowance and the ending of September sittings, on 1 November 2006.²⁵ The House also agreed to the change in the Standing Orders, recommended by the Committee:

Ordered,

That, with effect from the beginning of the next Session of Parliament,

(1) the following Standing Order (Sub judice) be made:

'42A. The Speaker, or the chairman, may direct any Member who breaches the terms of the sub judice resolution of the House to resume his seat.'; and

(2) the following amendment to Standing Order No. 89(3)(c) (Procedure in standing/general committees) be made:

Line 40, after 'repetition),' insert 'No. 42A (Sub judice),'.— [Mr. Straw.]²⁶

During the debate, Greg Knight, the Chairman of the Procedure Committee explained the reasons for the change to Standing Orders. He said the Committee did not feel that the authorities of the House were "repeatedly over-cautious in the advice that they gave" but that that impression had been created for a number of reasons. First, the rule is subject to the discretion of the Chair; and secondly,

... the House authorities have, perhaps, been over-cautious in their advice on the implementation of the rule. That is because – to be fair to them, and to borrow the words of the former Clerk of the House, Sir Roger Sands –

'we have quite often been let down by Members in this matter'.²⁷

Despite recommending that the rule should remain unchanged, Greg Knight pointed to other changes that might make it easier for matters before the coroners' courts to be discussed in the House. He reported that he had received a letter from Harriet Harman, the Minister of State in the Department for Constitutional Affairs, in which she explained the proposals in the draft Coroners Bill would draw a distinction between the coroner's duty to investigate and to hold an inquest. This she argued could allow coroners to open an investigation at the beginning of their process and then open an inquest at a later date. The letter continued:

We will need to assess how this change will impact on the exemption that coroner's cases receive from debate in Parliament under the sub judice rule, but certainly one interpretation could be that a coroner's investigation and inquest would equate to the

²⁴ *Ibid*, paras 85-88

²⁵ HC Deb 1 November 2006 cc304-422

²⁶ HC Deb 1 November 2006 c418

²⁷ HC Deb 1 November 2006 c343

distinction in the criminal justice system between a police investigation and the commencement of court proceedings.²⁸

The *sub judice* rule leaflet produced by the Table Office is available on the Parliamentary Intranet.²⁹

D. The sub judice rule in the devolved legislatures

1. Scotland

The Scotland Act 1998 (Schedule 3) required the Parliament to include a sub judice rule in its standing orders. The requirement is expressed in Rule 7.5, which states:

Rule 7.5 Sub judice

1. A member may not in the proceedings of the Parliament refer to any matter in relation to which legal proceedings are active except to the extent permitted by the Presiding Officer.
2. For the purposes of paragraph 1, legal proceedings are active in relation to a matter if they are active for the purposes of section 2 of the Contempt of Court Act 1981 (1981 c.49).
3. Where any member refers to a matter in relation to which legal proceedings are active the Presiding Officer may order that member not to do so.
4. Nothing in this Rule shall prevent the Parliament from legislating about any matter.

After an instance in the Scottish Parliament when the sub judice rule applied, the then Presiding Officer Sir David Steel said:

The broadcast and written media must take their own view on the application of the rules of contempt of court and make their own decisions accordingly. Freedom of speech has a central place in the Parliament and the ability of members to represent their constituents is an essential and cherished duty of us all. Alongside that, however, we all must have regard to the interests of justice, including the interests of all parties to a court action. There is no question of gagging parliamentary debate on the McKie case. It would have been perfectly in order for it to be debated here at any time after the Minister for Justice's statement in June 2000 and before the civil action became active in March this year. It will become possible again to debate the matter once the court case has been concluded. In the meantime, it is vital to recognise the proper place of the courts and of the Parliament. That is my ruling.³⁰

2. Wales

The sub judice rule is rule 7.13 in the National Assembly for Wales's standing orders:

²⁸ HC Deb 1 November 2006 c345

²⁹ Table Office, *The sub judice rule*,

http://pdvnsco.parliament.uk/clerks/intra2.clerks.parliament.uk/content/table_office/The%20sub%20judice%20rule.pdf

³⁰ SPOR 15 May 2002 c11855-6,

http://www.scottish.parliament.uk/S1/official_report/session-02/sor0515-02.htm

7.13 Subject to the right of the Assembly to legislate on any matter within its competence, a Member shall not raise or pursue in any proceedings of the Assembly any matter where court proceedings have been initiated, or where notice of appeal has been given, until the time when judgement has been given, unless the Presiding Officer is satisfied that:

- (i) the matter is clearly related to a matter of general public importance;
- (ii) the matter does not relate to a case which is to be heard, or is being heard, before a criminal court or before a jury or to a case which is to be heard, or is being heard, in family proceedings;
- (iii) the matter is raised by means of a motion or question, due notice having been given; and
- (iv) the Member does not, in his or her comments, create a real and substantial risk of prejudice to the proceedings of a court or tribunal either generally or in respect of a particular case.³¹

3. Northern Ireland

The Northern Ireland Assembly reconvened, following suspension, on 8 May 2007. Its Standing Orders were made by the Secretary of State for Northern Ireland on 26 March 2007. The Northern Ireland Assembly's sub judice rule is in Standing Order 68:

68. Sub Judice

(1) Subject always to the discretion of the Chair and to the right of the Assembly to legislate on any matter within its legislative competence, matters awaiting or under adjudication in all courts exercising a criminal jurisdiction and in courts martial should not be referred to -

- (a) in any Motion (including a Motion for leave to bring in a Bill),
- (b) in debate, or
- (c) in any question to a Minister including a supplementary question.

(2) Subject as mentioned above, matters awaiting or under adjudication in a civil court should not be referred to -

- (a) in any Motion (including a Motion for leave to bring in a Bill),
- (b) in debate, or
- (c) in any question to a Minister including a supplementary question

from the time that the case has been set down for trial or otherwise brought before the court, as for example by notice of motion for an injunction; such matters may be referred to before such date unless it appears to the Chair that there is a real and substantial danger of prejudice to the trial of the case.

(3) Paragraphs (1) and (2) of this Order should have effect -

- (a) in the case of a criminal case in courts of law, including courts martial, from the moment the law is set in motion by a charge being made;
- (b) in the case of a civil case in courts of law, from the time that the case has been set down for trial or otherwise brought before the court, as for example by notice of motion for an injunction;

³¹ <http://www.wales.gov.uk/keypubstandingorders/index.htm>

(c) in the case of any judicial body to which the Assembly has expressly referred a specific matter for decision and report, from the time when the Resolution is passed.

- (4) Paragraphs (1) and (2) of this Order should cease to have effect -
- (a) in the case of courts of law, when the verdict and sentence have been announced or judgement given, but resumed when notice of appeal is given until the appeal has been decided;
 - (b) in the case of courts martial, when the sentence of the court has been confirmed and promulgated, but resumed when the convicted person petitions the Army Council, the Air Council or the Board of Admiralty;
 - (c) in the case of any judicial body to which the Assembly has expressly referred a specific matter for decision and report, as soon as the report is laid before the Assembly.

(5) Notwithstanding the above and subject to the discretion of the Chair reference may be made in Questions, Motions or debate to matters awaiting or under adjudication in all civil courts, in so far as such matters relate to a Ministerial decision which cannot be challenged in court except on grounds of misdirection or bad faith, or concern issues of importance such as the economy, public order or the essentials of life.

(6) In exercising its discretion the Chair should not allow reference to such matters if it appears that there is a real and substantial danger of prejudice to the proceedings.³²

³² Northern Ireland Assembly, *standing orders of the Northern Ireland Assembly*, March 2007, http://www.niassembly.gov.uk/sopdf/standing_orders.htm

Appendix 1 – The sub judice rule

The Motion agreed by the House of Commons on 15 November 2001 was:

That the Resolutions of 23rd July 1963 and 28th June 1972 be rescinded and the following Resolution be made:

That, subject to the discretion of the Chair, and to the right of the House to legislate on any matter or to discuss any delegated legislation, the House in all its proceedings (including proceedings of committees of the House) shall apply the following rules on matters *sub judice*:

1. Cases in which proceedings are active in United Kingdom courts shall not be referred to in any motion, debate or question.

(a)(i) Criminal proceedings are active when a charge has been made or a summons to appear has been issued, or, in Scotland, a warrant to cite has been granted.

(ii) Criminal proceedings cease to be active when they are concluded by verdict and sentence or discontinuance, or, in cases dealt with by courts martial, after the conclusion of the mandatory post-trial review.

(b)(i) Civil proceedings are active when arrangements for the hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance.

(ii) Any application made in or for the purposes of any civil proceedings shall be treated as a distinct proceeding.

(c) appellate proceedings, whether criminal or civil, are active from the time when they are commenced by application for leave to appeal or by notice of appeal until ended by judgment or discontinuance.

But where a ministerial decision is in question, or in the opinion of the Chair a case concerns issues of national importance such as the economy, public order or the essential services, reference to the issues or the case may be made in motions, debates or questions.

2. Specific matters which the House has expressly referred to any judicial body for decision and report shall not be referred to in any motion, debate or question from the time when the Resolution of the House is passed until the report is laid before the House.

3. For the purposes of this Resolution—

(a) Matters before Coroners Courts or Fatal Accident Inquiries shall be treated as matters within paragraph 1(a);

(b) 'Motion' includes a motion for leave to bring in a bill; and

(c) 'Question' includes a supplementary question.

Appendix 2 – Previous sub judice resolutions

Resolution of 23rd July 1963

Resolved, That, subject always to the discretion of the Chair and to the right of the House to legislate on any matter,

(1) matters awaiting or under adjudication in all courts exercising a criminal jurisdiction and in courts martial should not be referred to—

- (a) in any Motion (including a Motion for leave to bring in a Bill), or
- (b) in debate, or
- (c) in any question to a Minister including a supplementary question;

(2) matters awaiting or under adjudication in a civil court should not be referred to—

- (a) in any Motion (including a Motion for leave to bring in a Bill), or
- (b) in debate, or
- (c) in any question to a Minister including a supplementary question

from the time that the case has been set down for trial or otherwise brought before the court, as for example by notice of motion for an injunction; such matters may be referred to before such date unless it appears to the Chair that there is a real and substantial danger of prejudice to the trial of the case.

(3) Paragraphs (1) and (2) of this Resolution should have effect—

- (a) in the case of a criminal case in courts of law, including courts martial, from the moment the law is set in motion by a charge being made;
- (b) in the case of a civil case in courts of law, from the time that the case has been set down for trial or otherwise brought before the court, as for example by notice of motion for an injunction;
- (c) in the case of any judicial body to which the House has expressly referred a specific matter for decision and report, from the time when the Resolution of the House is passed.

(4) Paragraphs (1) and (2) of this Resolution should cease to have effect—

- (a) in the case of courts of law, when the verdict and sentence have been announced or judgment given, but resumed when notice of appeal is given until the appeal has been decided;
- (b) in the case of courts martial, when the sentence of the court has been confirmed and promulgated, but resumed when the convicted man petitions the Army Council, the Air Council or the Board of Admiralty;
- (c) in the case of any judicial body to which the House has expressly referred a specific matter for decision and report, as soon as the report is laid before the House.

Resolution of 28th June 1972

Resolved, That—

- (1) notwithstanding the Resolution of 23rd July 1963 and subject to the discretion of the Chair reference may be made in Questions, Motions or debate to matters awaiting or under adjudication in all civil courts, including the National Industrial Relations Court, in so far as such matters relate to a Ministerial decision which cannot be challenged in court except on grounds of misdirection or bad faith, or concern issues of national importance such as the national economy, public order or the essentials of life;
- (2) in exercising its discretion the Chair should not allow reference to such matters if it appears that there is a real and substantial danger of prejudice to the proceedings; and should have regard to the considerations set out in paragraphs 25 to 28 of the Fourth Report from the Select Committee on Procedure.

Appendix 3 - House of Lords³³

SUB JUDICE

4.68 The privilege of freedom of speech in Parliament places a corresponding duty on members to use the freedom responsibly. This is the basis of the sub judice rule. Under the rule both Houses abstain from discussing the merits of disputes about to be tried and decided in the courts of law.

4.69 The Joint Committee on Parliamentary Privilege recommended that the two Houses should adopt a resolution on sub judice set out in the committee's report. The House of Lords did this on 11 May 2000. The resolution is as follows:

"That, subject to the discretion of the Lord Speaker, and to the right of the House to legislate on any matter or to discuss any delegated legislation, the House in all its proceedings (including proceedings of committees of the House) shall apply the following rules on matters sub judice:

(1) Cases in which proceedings are active in United Kingdom courts shall not be referred to in any motion, debate or question.

(a) (i) Criminal proceedings are active when a charge has been made or a summons to appear has been issued, or, in Scotland, a warrant to cite has been granted.

(ii) Criminal proceedings cease to be active when they are concluded by a verdict and sentence or discontinuance, or, in cases dealt with by courts martial, after the conclusion of the mandatory post-trial review.

(b) (i) Civil proceedings are active when arrangements for the hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance.

(ii) Any application made in or for the purposes of any civil proceedings shall be treated as a distinct proceeding.

(c) Appellate proceedings, whether criminal or civil, are active from the time when they are commenced by application for leave to appeal or by notice of appeal until ended by judgment or discontinuance.

But where a ministerial decision is in question, or in the opinion of the Lord Speaker a case concerns issues of national importance such as the economy, public order or the essential services, reference to the issues or the case may be made in motions, debates or questions.

(2) Specific matters which the House has expressly referred to any judicial body for decision and report shall not be referred to in any motion, debate or question, from the time when the Resolution of the House is passed, until the report is laid before the House.

(3) For the purposes of this Resolution—

(a) Matters before Coroners Courts or Fatal Accident Inquiries shall be treated as matters within paragraph (1) (a); and

(b) "Question" includes a supplementary question.

³³ This description of the rules is taken from House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 21st edition, 2007, at <http://www.parliament.the-stationery-office.co.uk/pa/ld/ldcomp/ctso08.htm>. It reflects the fact that the Lords have already adopted the recommendations of the Joint Committee on Parliamentary Privilege (HL Deb 11 May 2000 cc 1725-35). The previous rule is reproduced in the Joint Committee's report (see Footnote 1 for reference) page 111

4.70 The House has agreed that the practice governing motions and questions relating to matters sub judice should be similar in both Houses of Parliament.^[157] It is desirable that each House should be in the same position to debate a sub judice matter when the circumstances warrant it.

4.71 The rules governing sub judice do not apply to bills, Measures or delegated legislation or to proceedings on them. Nor do they apply to matters being considered by departmental inquiries and the like; but it is recognised that Parliament should not generally intervene in matters where the decision has been delegated to others by Parliament itself.

4.72 A case is deemed to be sub judice from the moment a petition for leave to appeal is presented to the House of Lords.

4.73 The Lord Speaker must be given at least 24 hours' notice of any proposal to refer to a matter which is sub judice. The exercise of the Speaker's discretion may not be challenged in the House.

Appendix 4 – Sub judice: Speaker’s powers

On 1 November 2006, the House agreed to the following standing order changes:

Ordered,

That, with effect from the beginning of the next Session of Parliament,

(1) the following Standing Order (Sub judice) be made:

‘42A. The Speaker, or the chairman, may direct any Member who breaches the terms of the sub judice resolution of the House to resume his seat.’; and

(2) the following amendment to Standing Order No. 89(3)(c) (Procedure in standing/general committees) be made:

Line 40, after ‘repetition,’ insert ‘No. 42A (Sub judice),’.³⁴

³⁴ HC Deb 1 November 2006 c418