# The parliamentary stages of the *Parliamentary Standards Bill*

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This Note summarises the major amendments made to this Bill during its passage through both Houses. Research Paper 09/61 *Parliamentary Standards Bill* describes the policy background to the Bill and its content at first reading on 23 June. The Bill had a second reading in the Commons on 29 June and committee, report and third reading on 30 June and 1 July, following a programme motion. During its passage through the Commons clause 6 (statutory code of conduct) and clause 10 (waiver of Article 9 of the Bill of Rights 1688) were dropped from the Bill. Further major amendments followed in the Lords.

The Lords gave a second reading to the Bill on 8 July 2009. At committee stage on 14 and 16 July, Baroness Royall of Blaisdon proposed and accepted further amendments:

- Removal of clause 7 (enforcement by IPSA)
- New clause indicating that nothing in the Bill would be construed as affecting Article 9 of the Bill of Rights 1689
- Amendments to investigation procedures in clause 6 to remove IPSA role.
- Removal of offences of false registration and paid advocacy from clause 8, leaving false allowance claim as the only new offence
- New clause to apply a review provision to aspects of the Bill two years after implementation.

At Lords report on 20 July there were further amendments:

- Government new clause that Bill does not apply to Lords
- Government new clause for IPSA to provide taxation advice to Members
- Amendment to ensure that Members are subject to fair procedures in clause 7

No further major amendments were made and the Bill received royal assent on 21 July 2009.

## Contents

# 1 Background

Since Research Paper 09/61 was published, there have been four reports from parliamentary select committees on the Bill, and one from an audit committee. These are:

- Justice Select Committee[1]
- Joint Committee on Human Rights[2]
- Lords Constitution Committee, two reports [3]
- Commons Audit Committees

The Clerk of the House submitted written evidence to the Justice Committee on the implications of the Bill for parliamentary privilege, and he gave oral evidence to that Committee, together with the Clerk of the Journals, and Speaker's Counsel on 30 June 2009. The evidence expressed concern about clauses 6, 7, 8, 10 and 11 in the Bill (Commons Bill 121). The Clerk's concerns also received extensive media coverage.[4]

The Committee on Standards in Public Life have continued with oral evidence sessions. On 29 June, the former Parliamentary Standards Commissioner, Sir Philip Mawer, supported the establishment of IPSA, but had concerns about the proposed disciplinary system and statutory Commissioner.[5] The former Commissioner, Elizabeth Filkin, also gave evidence suggesting that the existing Standards and Privileges procedures had not been successful in preventing abuse.[6] Nick Harvey and Sir Stuart Bell also gave evidence about the operation of the allowances system.[7]

## 1.1 Justice Committee

The summary to the report highlighted the potential impact of the Bill on freedom of speech within Parliament:

> 4. We wish to draw special attention to the advice given by our witnesses on the possible implications of the Bill for parliamentary privilege, freedom of speech in parliament and the boundary between the courts and Parliament.
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> 5. The Government's memorandum said "it is…impossible to end self-regulation without affecting privilege in some way". However, the creation of a body to administer allowances and pay need not affect privilege because these matters are not proceedings in Parliament. On the evidence of the Clerk of the House and Speaker's Counsel, the clauses affecting privilege may not be necessary to the primary purpose of the Bill. In the light of this, we welcome the Government's decision not to pursue Clause 6 of the Bill and we believe that Clause 10, in particular, could also be withdrawn at this stage. This would allow more measured consideration of issues of privilege than has been possible with second reading and committee stage taking place on consecutive days. It would still enable an independent body to be set up in good time to implement the recommendations of the Committee on Standards and

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1 HC 791 2008-09 http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/791/791.pdf
2 HL 124/ HC 844 2008-09 http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/124/124.pdf
3 HL Paper 130 2008-09 http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/130/130.pdf
4 " Clerk of the House questions Commons standards bill" 26 June 2009 *Financial Times*
5 "Expenses reform risks "emasculating Commons" 29 June 2009 *Press Association* Transcript available at http://www.public-standards.gov.uk/Library/Committee_on_Standards_in_Public_Life_29_06_09.doc
6 http://www.public-standards.gov.uk/Library/Committee_on_Standards_in_Public_Life_29_06_09.doc Q749
7 http://www.public-standards.gov.uk/Library/Uncorrected_transcript___Mastercopy_2___23_06_091.doc

> Public Life in the autumn. The very tight timescale for consideration of Clause 10 and other clauses involving privilege and judicial review, if they are retained, is likely to lead to extensive debate in the House of Lords. (The Government intend that the provisions of this Bill shall in due course apply to the House of Lords.)
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> 6. We note the evidence given on the merits of having a Parliamentary Privilege Act and consider that this is an appropriate time for this proposal to be further considered

### 1.2 Joint Committee on Human Rights

The Joint Committee recommended safeguards to ensure that procedures were compatible with the European Convention on Human Rights in its summary:

> In our view, the Bill is not compatible with Article 6(1) of the European Convention on Human Rights, in respect of an MP's right to a fair hearing. We recommend that the Bill should be amended to include procedural safeguards – such as the opportunity to call and examine witnesses – where disciplinary action is being considered. Such measures were recommended by the Joint Committee on Parliamentary Privilege in 1999 and endorsed by the Committee on Standards in Public Life in 2002.
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> We also recommend that there should be a right of appeal to the Judicial Committee of the Privy Council against decisions of the Independent Parliamentary Standards Authority and the House of Commons which amount either to the determination of a criminal charge or which determine an MP's civil rights.

### 1.3 The Lords Constitution Committee

This Committee, which scrutinises bills for constitutional implications, issued a first report on 6 July, which expressed strong concerns about the expedited passage of the Bill in its introduction:

> We welcome these changes [deletion of clauses 6 and 10]. They do, however, reinforce our view that the bill is the product of a desire to respond to a demand to see something done, as the Government put it, rather than the outcome of a law-making process suitable for a bill with serious constitutional repercussions. Even with the two clauses removed, the bill raises other as yet unresolved questions about the relationship between Parliament and the courts. Moreover, it will fall to the House of Lords to consider how the bill hangs together in the light of the decisions made in the House of Commons. Baroness Royall of Blaisdon, the Leader of the House of Lords, told us 24 hours before the removal of the proceedings in Parliament clause, that "The package in the bill is a coherent whole, and no part of it would work without the rest". The bill will accordingly have to be substantially recast. To do so under an accelerated passage is in our view wholly unacceptable given the questions of constitutional principle and detail that it raises.

A second report was published on 8 July, in time for the second reading debate in the Lords. It contains a useful appendix listing the changes made to the Bill during its passage through the Commons.[8] It set out a series of scenarios where the exercise of functions by IPSA and the new Commissioner might give rise to judicial review challenges. It drew attention to evidence submitted by the Clerk of the Parliaments expressing concern about the paid advocacy provisions in clause 5:

> 21 "What clause 5 of the Bill does, in effect, is to create a new boundary, between 'paid advocacy' and legitimate declaration of financial interests in debate, a boundary which falls in the heart of an area that hitherto has been regarded without question as

> subject to parliamentary self-regulation and exclusive cognisance. A legal challenge alleging that a code prepared by IPSA did not comply with clause 5(8) by failing to prohibit a category of conduct which the House itself regards as acceptable could potentially lead the court into an examination of the House's own rules regarding such conduct. It follows that the juxtaposition of the statutory provisions on paid advocacy contained in the Bill (which will of course be subject to judicial oversight) with the codes covering declaration adopted by the two Houses, which are omitted from the Bill (and which are privileged), could erode the protection offered by Article IX".

The Committee agreed with the assessment of the Clerk and expressed concern about the implications of clause 5. However, it noted that it should not be assumed that the courts would necessarily become involved in IPSA functions:

> 26. It should not be assumed that those decisions or actions of the IPSA and new Commissioner which are not "proceedings in Parliament"—such as those in scenarios (c), (d) and (e), above—will automatically fall within the court's jurisdiction. The Court of Appeal's judgment in *Al Fayed* was based on broad constitutional understandings about the appropriate division of responsibility between the courts and Parliament, a borderline that is based on sound constitutional principles. **The fact that investigations and other regulatory decisions are now to be placed on a statutory footing (rather than based on a Resolution of the House of Commons) does not, in and of itself, have the consequence that they will in future be judicially reviewable. The courts will determine the extent of their jurisdiction having regard to the constitutional principles governing a parliamentary democracy.**

The Committee also concurred with the Clerk of the Parliaments that clause 7 (clause 8 in original Commons Bill) required amendment to avoid defining in statute the circumstances in which the House of Commons may exercise its disciplinary powers as part of its 'exclusive cognisance' to run its own internal affairs. The Committee cited a series of previous parliamentary reports in support of its recommendation that the decision making powers of IPSA should be subject to the possibility of an appeal to a different body. It threw serious doubt on the desirability of offences specifically designed for Member rather than the public at large, and recommended the removal of the paid advocacy offence, as well as clarity about the prosecution of such offences in Scotland.

### 1.4 Memorandum from the House of Commons Audit Committees

The Memorandum was published on 29 June by the Administration Estimate Audit Committee and the Members Estimate Audit Committee, with the consent of the House of Commons Commission and the MEC.

The Memorandum said in relation to external audit:

> 4. Paragraph 24 of Schedule 1 (Audit) requires the Authority to submit its accounts annually to the Comptroller and Auditor General, who is to examine and certify them and lay a copy before each House of Parliament. We welcome the requirement for external audit by the National Audit Office (NAO) but would wish to see further clarification of the intended scope of the NAO's audit; whether this will be solely an opinion on the accounts, or a full scope audit within the remit of the National Audit Office Act 1983, including regularity, propriety and value for money. The latter would require the NAO to take a view on the correctness of individual payments made by the Authority to Members.

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[8] HL Paper 134 2008-09 http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/134/13402.htm

The Memorandum also noted the implications for the Members Estimate:

> 11. The creation of the Authority will have implications for the House's two Estimates. We anticipate that the Members Estimate will disappear and that any expenditure which used to be covered by that Estimate, which is not transferred to the Authority, will be absorbed into the Administration Estimate. There is uncertainty about the funding of particular expenditure, including Financial Support for Opposition Parties.

It also discussed possible financial implications including the costs of established robust ICT system, the acquisition of new premises and the likelihood of staff transfer to the new body.

# 2 Commons stages

This section of the Note makes references to the clauses as in the original Commons bill.[9]

## 2.1 Second reading

Second reading took place on 29 June 2009. The Justice Secretary and Lord Chancellor, Jack Straw, referred to the intensive three week period of cross party talks preceding the introduction of the Bill.[10] He also said that the proposals from the Committee on Standards in Public Life on allowances would be accepted, and this had been agreed by all party leaders. He explained the envisaged timetable:

> **Mr. Straw:** I will explain why not to the hon. Gentleman. He asked me a question and I would now like to answer it, if I may. Sir Christopher Kelly and his committee will come forward with proposals for the scheme of allowances, which will come before this House. As far as I know, all the party leaders have indicated that unless those proposals are in the realm of complete irrationality, which I do not anticipate, they will be accepted in full, and so they should be. However, that is about the content of the scheme. The Bill is about the operation of the scheme, which includes, for example, who runs the Fees Office, who adjudicates in respect of the scheme and so on. Our plan—we can go into this in more detail in Committee tomorrow and on Wednesday—is that in the early autumn Sir Christopher Kelly will make his recommendations, which will be subject to approval by this House. Those recommendations will be the platform for the scheme that the new authority will operate. With luck, they could all come into force by 1 January next year if we have the authority in place, so the two will work in parallel and then merge together.[11]

There were a number of comments on the implications for parliamentary privilege, given the Clerk's evidence to the Justice Committee and whether the new criminal offences were necessary. At this stage, Jack Straw said that he was willing to delete Clause 6 (code of conduct) from the Bill[12] He also indicated that it remained the Government's intention to extend the IPSA to the Lords, but in subsequent legislation.[13]

Frank Field expressed concern about the new rules on the registration of interests which came into force on 1 July, as inhibiting the work of MPs.[14] Sir George Young, the chairman of the Standards and Privileges Committee, also raised concerns about clause 8 in respect of paid advocacy and of the future role for the Commissioner for Parliamentary Standards.[15]

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9 Bill 121 of 2008-09
10 HC Deb 29 June 2009 c45
11 HC Deb 29 June 2009 c50-51
12 HC Deb 29 June 2009 c52
13 HC Deb 29 June 2009 c47
14 HC Deb 29 June 2009 c77
15 HC Deb 29 June 2009 c80-82

Andrew Dismore, Chairman of the Joint Committee on Human Rights then highlighted concerns about the possible infringement of Article 6 of ECHR.[16] The majority of MPs expressed support for an independent agency to process allowances, but some were concerned about the expedited passage of the bill and the impact on the existing system of investigating allegations against MPs. There were many citations of the Clerk's evidence in respect of clause 10 having a 'chilling effect' on Members' freedom of speech. The Bill received a second reading by 291 to 1, the one being self declared earlier as Frank Field.

The programme motion for the Bill was passed by 254 votes to 73.[17]

### 2.2 Committee stage

There were continued protests at the programme motion, which were rejected by Jack Straw.[18] He also stated that the bill was not pre-empting the CSPL enquiry, which was focused on the content of the allowances systems. **Clause 1** was accepted without a division.[19] There was discussion about the possibility of appointing a serving judge to the IPSA, which Mr Straw promised to consider. He accepted amendments enabling the Speaker to lay papers before the House on behalf of IPSA. He explained that an address of both Houses was felt necessary to ensure the independence of the new body.[20]

Sir George Young used the opportunity of the debate on **Schedule 2** (Commissioner for Parliamentary Investigations) to press for further details as to how the two Commissioners, one statutory, one non-statutory would work together. In response Jack Straw stressed the Government argument that an independent Fees Office on its own would not be enough to restore public confidence, but that independent investigatory machinery was also required.[21] He indicated that one option would be to appoint one person to both posts:

> The hon. and learned Member for Harborough (Mr. Garnier) asked whether it might be sensible to have one person who was able to do both jobs. Yes, it might be; the double-hatting of functions is perfectly normal in many situations. That is why clause 11, which we will come to in due course, provides for two sets of things. First, subsection (1) states:
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> "The Speaker, after consulting the Commissioner and the House of Commons Committee on Standards and Privileges, may agree with the" authority that it
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> "is to carry out any registration function specified in the agreement"
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> that it is not already carrying out. The registration functions in the Bill will be functions relating to Members, not necessarily to Members' spouses or staff, nor, for example, to the press lobby, which is currently separate. If that is agreed, then subject to the provisions in subsection (8), those functions would go to the authority.
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> Secondly, subsection (4) states:
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> "The Speaker, after consulting the IPSA and the House of Commons Committee on Standards and Privileges, may agree with the Commissioner that the Commissioner is to carry out any relevant function specified in the agreement (whether relating to a matter arising before or after the agreement is made or the date this Act is passed)."

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16 HC Deb 29 June 2009 c83
17 HC Deb 29 June 2009 c 132
18 HC Deb 30 June 2009 c191
19 HC Deb 30 June 2009 c194
20 HC Deb 30 June 2009 c201-2
21 HC Deb 30 June 2009 c206

> Therefore, the existing functions could be passed over. The other safeguard for the House is that that could happen only if the agreement were approved by a resolution of the House.[22]

The provisions on addresses by both Houses to remove IPSA members were modified. An amendment sponsored by David Heathcoat Amery removed the requirement for the Leaders of both Houses to move such a motion without a vote.[23]

Some anxiety was expressed about the proposed membership of the Speaker's Committee for IPSA, that the possible whip involvement might mean that the backbench Members might be influenced by the Government. In response Mr Straw pointed out that the Leader would be the only Minister of the Crown to be a member of the Committee and that the similar Committee on the Electoral Commission was demonstrably independent and collaborative.[24]

Andrew Tyrie moved amendments to remove from the House power to pass resolutions on Members' pay, which was defeated by 295 votes to 189.[25] Amendments to delay the establishment of the new allowances system to a new Parliament were negatived.[26]

The CSPL and HM Revenue and Customs, as well as individual Members, were added to the list of bodies to be consulted by IPSA in preparing and reviewing the allowances scheme under **Clause 3.**[27]

The Government accepted that **Clause 4** required amendment to allow payments by IPSO to be made to a third party on behalf of an MP rather than the MP himself.[28] On report, an additional sub clause was added to clause 4 to that effect.[29]

Jack Straw indicated that he was prepared to look at the drafting of **Clause 5** in respect of the requirements for the declaration of Members' interests. Initially, he indicated that this drafting would take place in amendments in the Lords, [30] but in fact, subsection 8 was deleted at committee stage[31] and subsection 9 at report stage without further debate.[32] Mr Straw noted that Dominic Grieve raised the question of the legal interpretation on the provisions banning paid advocacy in clause 5, arguing that the distinction between the receipt of gifts and payments in kind was unclear at present.[33]

A number of Members expressed concern on the separate question of the new requirements on registering outside interests due to come into effect on 1 July 2009, including Frank Field, who said that he was not prepared to accede to the new rules.[34] There followed some discussion as to whether these new requirements would lead to the further professionalisation of politicians.[35] A number of MPs argued that Ministers should also have to register their employment as ministers under the current rules, but this was not accepted

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22 HC Deb 30 June 2009 c207
23 HC Deb 30 June 2009 c216
24 HC Deb 30 June 2009 c217
25 HC Deb 30 June 2009 c222-226
26 HC Deb 30 June 2009 c239
27 HC Deb 30 June 2009 c 235
28 HC Deb 30 June 2009 c240
29 HC Deb 1 July 2009 c391
30 HC Deb 30 June 2009 c247
31 HC Deb 30 June 2009 c 267
32 HC Deb 1 July 2009 c394
33 HC Deb 30 June 2009 c251
34 HC Deb 30 June 2009 c244
35 See for example Paul Goodman at HC Deb 30 June 2009 c262

by the Government.[36] This amendment 73 was put to a division, which was lost by 340 votes to 159. Other amendments made at this point to clause 5 included a duty on IPSA to consult MPs when devising the financial interests requirements.

On the following day the House considered the Bill from clause 6 onwards. Following a short debate, an amendment was passed to exclude **Clause 6** from the Bill, without a vote.[37] Jack Straw said that the Government had recognised the serious anxieties expressed by the Clerk of the House and others about the potential damage that might be caused to parliamentary privilege by litigious constituents.

Mr Straw introduced a series of amendments to **Clause 5** on rules for financial interests. The amendments were designed to replace the wording of rules in the Bill with the word 'code'. Sir George Young was concerned that this substitution might cause confusion:

> **Mr. Straw:** I was not suggesting that the two codes would run together—far from it; I was suggesting that they would be split. The code that relates to the non-financial matters of the House would be pretty thin, and I therefore think it important that the public and Members be able to find that part of the code which is the vast bulk. It would comprise not only the guide to the rules relating to the conduct of Members, but the rules of conduct in the Members' current code of conduct, wrapped up in a single word: "code". That is all I am saying.
>
> **Sir George Young:** Is it not the case that we will continue to have the Members' current code of conduct, albeit without paragraphs 14 and 16 and the financial bits, and then another code that, if the amendment is agreed to, will be called a "code"? There is a real risk of confusion, because there will be one code produced by the House, our current code of conduct, and another code produced by another body, covering matters that are tangential but not identical. Would it not be better to have just one code and to stick with what we had until this morning, which was the rest of it being just rules?[38]

Sir George also suggested that the objective of the amendments was to preserve the commitment to introduce a statutory code of conduct:

> I just wish to say a word about the Government amendments, which rebrand the rules relating to financial interests as a code of conduct. It is not at all clear to me why what yesterday was a rule about a financial interest must today be a code of conduct. That is certainly not a consequential amendment flowing from the removal of clause 6; it does not follow at all that because that code of conduct has been removed another part of the Bill has to be rebranded as a code of conduct. I think that this has happened merely so that the Prime Minister can fulfil his pledge to introduce a statutory code. If the Government amendments are accepted, there will be two codes. One will be a statutory code covering financial matters and the other will be maintained by the House and will cover everything else. That is a recipe for confusion, and it is totally unnecessary.[39]

Sir George Young asked for careful consultation before implementation.[40]

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36 HC Deb 30 June 2009 c256
37 HC Deb 1 July 2009 c312
38 HC Deb 30 June 2009 c242
39 HC Deb 30 June 2009 c254
40 HC Deb 30 June 2009 c214

Jack Straw made a commitment to consider an amendment to introduce a provision into the Bill to allow for periodic review of the new rules on financial interests. He said:

> Under the structure of the Bill at the moment, only IPSA could do so, but I will take the matter away. I had not thought of this before, but there might need to be provision in the Bill for the rules periodically to be reviewed and voted on by the House. I will take that matter away; it is an important point.[41]

There were a series of amendments proposed to **Clause 7,** and Mr Straw accepted the following:

- Rectification procedure, so that no report need be made by the Commissisoner (amendment 10);
- Ability of Member to refer himself to Commissioner (amendment 9);
- IPSA to consult Leader of the House and Standards and Privileges Committee over investigations procedures (amendment 11).[42]

Mr Straw promised to consider **New Clause 11**, tabled by Andrew Dismore, which set out minimum standards of fairness in procedures, stating that he needed to think more carefully about the criminal standard of proof, which was contained in the new clause.[43] He rejected an amendment to provide independent legal advice to Members.[44]

During the debate on **Clause 8**, many Members made the point that the current system of investigation of complaint- the Commissioner and the Standards and Privileges Committee- worked satisfactorily, but that legislation would subject the Committee to judicial review and create tension with the courts.

> The system was set up some 14 or 15 years ago—it is tried and tested and has been improved. The House has been well served by Philip Mawer and now by John Lyon. The Committee on which I serve has tried to operate the rules of the House dispassionately and fairly. In his evidence to the Committee on Standards in Public Life, which is now sitting, Anthony King said that that part of the system works quite well. Clause 8 would dismantle it at breakneck speed and try to replace it. By doing that at speed, one may not get it right.
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> The Government are trying to fetter the discretion of the Standards and Privileges Committee because they believe that the tariffs that we have operated are not tough enough. In the speech that the Leader of the House made a few days ago, she referred to the long time that had elapsed since someone was expelled. My hon. and learned Friend the Member for Beaconsfield (Mr. Grieve) did not make it clear that the Standards and Privileges Committee simply makes recommendations on the tariff to the House. It is open to any Member and to the Government to amend the tariffs recommended by the Standards and Privileges Committee if they think that they are too lenient or too tough.
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> .. Clause 8 tries to make the Standards and Privileges Committee the agent of an outside body. The moment we do that, we run into all sorts of difficulties, which the Clerk of the House identified in his memorandum. One cannot make us the agent of an

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41 HC Deb 30 June 2009 c215
42 HC Deb 1 July 2009 c327
43 HC Deb 1 July 2009 c330
44 HC Deb 1 July 2009 c329

> outside body, as subsection (2) would do, without running into all the constitutional difficulties that we outlined.[45]

A number of concerns were aired that the inclusion of references to the Standards and Privileges Committee would mean that the proceedings of that Committee would become justiciable. In response, the junior minister, Barbara Keeley, emphasised:

> We have deliberately devised a scheme in the Bill so that the House retains the power to discipline its Members. Apart from the criminal offences in clause 9, the ultimate decision about what action to take against an MP remains with the House. It will be for the House to decide whether to punish a Member for not supplying information or for failing to comply with a direction, and it will be for the House to decide what to do with a recommendation from IPSA for other sanctions.
>
> We believe that concerns that the provisions are breaches of privilege are misplaced, because they have been carefully drafted precisely to preserve those privileges of the House. The alternatives would have been to make every breach of the rules on allowances or the registration of interests into a criminal offence, or to give IPSA itself a power to enforce its decisions.
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> Both options would lead to giving a body outside Parliament far more of an incursion into the proceedings of the House, and would certainly be a breach of the principle of exclusive cognisance. Therefore, I urge the Committee to reject the amendment.[46]

Ms Keeley said that the Government would consider amendments on the protocol in clause 8(6). An amendment sponsored by Alan Duncan to modify 8(2), so that IPSA simply drew the attention of the Committee on Standards and Privileges to its findings, rather than made specific recommendations, was rejected by 274 votes to 234, Various amendments were made:

- Substitution of Standards and Privileges for the Speaker's Committee on IPSA when the IPSA prepares a protocol in clause 8(6) (amendment 20)
- The Committee of Standards and Privileges would be able to accept, reject or amend a decision of the IPSA as it saw fit (amendment 17).

A number of comments were made during the debate on **Clause 9** (offences) to the effect that the *Fraud Act 2006* and section 17 of the *Theft Act 1968* were already available for prosecutions against Members. In response Jack Straw pointed out that the failure to register and a breach of the paid advocacy rules had been approved by the House when debating the *Scotland Act 1998.* Angus Robertson, for the SNP, proposed an amendment to make intentional failure to declare an interest also a criminal offence, as in Scotland, but this was rejected by 286 votes to 63.[47] An amendment to remove 8(3) - breach of paid advocacy rule a criminal offence - was lost by 344 votes to 160. In speaking to the amendments, Dominic Grieve had argued that the provisions in the draft Bribery Bill were already sufficient to prosecute Members under this category.[48]

Under the terms of the programme motion, which required the Committee stage to finish by 5pm, there was no time remaining to debate **Clause 10**. However, the clause was negatived

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45 HC Deb 1 July 2009 c343
46 HC Deb 1 July 2009 c359
47 HC Deb 1 July 375
48 HC Deb 1 July 2009 c365

by 250 by 247.[49] In response, Mr Straw said that he would respect the will of the House and that the Government would take full account of the decision in consequential amendments to be moved in the Lords.[50]

### 2.3 Report stage

Dominic Grieve spoke to New Clause 1 which would make IPSA a data controller 2 months after royal assent for the Bill. In response Mr Straw pointed out that the IPSA would not take up its responsibilities before 1 January 2010, and that when it held data which might be subject to FoI and data protection, it would be subject to those acts. The amendments were withdrawn.[51]

Some minor Government amendments were made to:

- Require the Speaker to lay the relevant IPSA papers before the House;
- Allow the payment of an allowance to a person other than a Member, to offer some more flexibility;
- Allow a serving member of the senior judiciary to be a member of IPSA.[52]

Jack Straw accepted an amendment from Sir Stuart Bell to remove subsections 5 and 6 of clause 13, to ensure that conduct before royal assent was not caught by the legislation.[53]

There was some debate as to the consequences of the removal of clause 10. Mr Straw said in response to amendment 6, proposed by Bernard Jenkin, that an earlier version of the Bill had applied parliamentary privilege to IPSA, but that proposal had been withdrawn as making the body insufficiently independent of Parliament.[54] Mr Grieve and Mr Straw debated the possibility of using clause 15 of the draft Bribery Bill as a way of prosecuting MPs accused of breaching the paid advocacy rule, since the drafting of that clause would allow Article 9 to be waived in limited circumstances.[55]

**Clause 13** on transitional provisions was amended so that Sis made under these powers would be subject to the affirmative, rather than the negative resolution procedure.

Alan Duncan moved a sunset amendment to **Clause 14** to ensure that the legislation applied only for one year. This was opposed by Mark Durkan of the SDLP, who said that the fundamental question of the credibility of Parliament would not be solved in the next 12 months.[56]

Alan Duncan argued that the uncertainties for privilege meant a sunset clause was required:

> **Alan Duncan:** Very nice try, but it does not wash. As someone who has run organisations and set them up, I appreciate that the Secretary of State is quite right to say that the staff need some sort of continuity, but we are considering not just the staff but the significance of the legislation that we are passing. It is not the independent fees

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49 See "Who were the standards bills rebels?" 3 July *Guardian*
50 HC Deb 1 July 2009 c387
51 HC Deb 1 July c391
52 HC Deb 1 July 2009 c394
53 HC Deb 1 July 2009 c398
54 HC Deb 1 July 2009 c399
55 HC Deb 1 July 2009 c400
56 HC Deb 1 July 2009 c403

> office that is in any way controversial—the Secretary of State is right; we all support that; it is all the surrounding implications for privilege and so on that matter, and they may well need revisiting. Doing so in no way threatens the stability of the independent fees office that the Bill sets up, and which should be the only thing it sets up.[57]

In response, Mr Straw said that IPSA needed more than a year to establish itself as a viable authority. Other points made were that Government guidance recommended review of regulation responding to a particular crisis, and that public trust might be damaged if it were seen that Parliament was ending external regulation after just one year.

The amendment was lost by 284 votes to 225.

Third Reading was purely formal, as remaining time had been used up in terms of the Programme Motion.

# 3 Lords stages

## 3.1 Second reading

This took place on 8 July, where the Bill received an unopposed second reading. However, an amendment to the committal motion from Lord Norton of Louth to postpone committee stage for at least 14 days after second reading was defeated by 110 votes to 88.

In her speech, Baroness Royall of Blaisdon referred to further cross party discussions since the Commons stages of the Bill and announced commitments to make amendments in the following areas:

- Removal of the offence of paid advocacy in clause 8[58]
- Removal of the ability of the IPSA to make recommendations on specific findings to the Standards and Privileges Committee, in favour of IPSA referring to the Committee those findings in clause 7(2)[59]

There were indications that further amendments to meet the points made by the Joint Committee on Human Rights on fair procedures might be made.[60] Baroness Royall said that she would consider the case for an independent tribunal.[61]

Baroness Royall also promised to consider a post legislative review provision for aspects of the Bill:

> I believe that there should be a post-legislative review of the Parliamentary Standards Bill within two years. This would provide Parliament with an opportunity to review the impact and effectiveness of the legislation in the near future.[62]

She emphasised that the Bill would not now be applied to the House of Lords in this Parliament:

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57 HC Deb 1 July 2009 c407
58 HL Deb 8 July c681
59 HL Deb 8 July 2009 c743
60 HL Deb 8 July 2009 c681
61 HL Deb 8 July 2009 c749
62 HL Deb 8 July 2009 c747

> Nothing in this Bill will affect this House. Nothing in this Bill will impact upon this House. Nothing in this Bill will change what we in this House do and how we in this House do it.[63]

Some concern was expressed during the debate that the Front Benches had agreed to expedite the Bill, without fully understanding the constitutional implications.[64] There were also concerns that the Government had not undertaken to legislate for a Parliamentary Privileges Act.[65] Lord Lester of Herne Hill raised continuing concerns about compatibility with ECHR.[66] Lord Norton of Louth said that the Bill was not addressing directly the concern felt by constituents about the payment of allowances to MPs; it was simply creating an independent body to do this. He argued that fast tracking the Bill would not solve the stated problem[67]

For the Liberal Democrats, Lord Tyler asked for three days in committee the following week to resolve the outstanding issues:

> **Lord Tyler:** My Lords, I shall come to that point immediately as it is raised. We believe that the amendments that are already on the Order Paper, and those which are likely to flow from today's debate, will require at least three days in Committee next week. That is our preference. If that preference is not met by the Government's business managers we will review the situation because we do not believe that it will be possible to achieve the radical surgery that this Bill requires in the time currently available.[68]

Lord Kingsland, for the Opposition, said that they would attempt to remove the whole of Clause 8 on offences. He was concerned that the public perception might be that the offences applicable to MPs were lighter than for the general public:

> It is also crucial to change the offences provisions under Clause 8. We on the committee will seek to expunge the whole of Clause 8. There are three offences. We need not trouble ourselves any further about Clause 8(3), because now that Clause 10 has been removed from the Bill, it would be impossible to use parliamentary proceedings as evidence in court, and therefore impossible to establish a prosecution case against any Member of Parliament.
>
> The other two provisions remain. The first one has been spoken to by a number of noble Lords, in particular by the noble and learned Lord, Lord Woolf, and the noble Lord, Lord Goodhart. I respectfully agree with their conclusions. It is clear that the matter is covered by Section 2 of the Fraud Act 2006. Therefore it is unnecessary to have a provision that mirrors it in Clause 8(1), particularly since the provision only carries with it a sentence of imprisonment for one year, whereas Section 2 of the Fraud Act carries a sentence of 10 years. It will be suggested by the public that, by inserting Clause 8(1), the Government are trying to set a much lighter penalty for Members than for the public. That would be highly dangerous—I am delighted to see that the noble Baroness is nodding.[69]

In response, Baroness Royall of Blaisdon said:

> A prosecution for fraud requires additional proof beyond reasonable doubt of dishonest intent and proof that the purpose was to make a financial gain. Fraud is a more serious

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63 HL Deb 8 July 2009 c675
64 See speech by Lord Peston HL Deb 8 July 2009 c693-696
65 See speech by Lord Tyler HL Deb 8 July 2009 c739
66 HL Deb 8 July 2009 c704
67 HL Deb 8 July 2009 c725
68 HL Deb 8 July 2009 c736
69 HL Deb 8 July 2009 c744

> offence which carries a greater maximum penalty than that envisaged in the Bill, which, as many noble Lords have said, requires only knowingly providing false information. I hear what the noble Lord, Lord Kingsland, says and I note the amendments that he has tabled. Before Committee, I shall certainly reflect on his suggestion to get rid of the whole of Clause 8. However, of course I cannot make any concessions here at the Dispatch Box and it would not be right for me to do so.[70]

### 3.2 Lords Committee stage

The first day in Committee was on 15 July 2009. Further major amendments to the Bill were made:

- Removal of clause 7 (enforcement by IPSA)
- New clause indicating that nothing in the Bill would be construed as affecting Article 9 of the Bill of Rights 1689
- Amendments to investigation procedures in clause 6 to remove IPSA role, including power to refer matters to the Commissioner
- Removal of offences of false registration and paid advocacy from clause 8, leaving false allowance claim as the only new offence
- New clause to apply a review provision to aspects of the Bill two years after implementation

References in this section of the Note are to the Bill as introduced into the Lords.[71]

On 14 July Baroness Royall indicated that she would consider tabling an amendment to remove the criminal offence relating to the registration of financial interests in clause 8(2) and reminded the Lords that clause 8(3) paid advocacy would be removed. She also proposed amendments designed to offer fairer procedures for Members in terms of investigations and said that she would further consider the sunset clause she had already tabled:

Further details are set out below:

> Further to my letter of 13 July, which has been laid in the Vote Office, I hope that the amendments will go a long way towards reassuring your Lordships. We have tabled amendments, first, to remove the offence on paid advocacy from the Bill; secondly, to provide that the commissioner will refer his or her findings directly to the House of Commons Committee on Standards and Privileges; and, thirdly, to provide that the commissioner will not be required to refer findings to the Committee on Standards and Privileges if the transgression is minor and the Member in question has already agreed to take appropriate remedial action. We have introduced greater safeguards into the procedures that the commissioner will be required to have. They include an opportunity for the Member to be heard in person and an opportunity, where appropriate, to call witnesses.
>
> I could go on, but I come instead to the sunset clause. We have tabled an amendment to require that the parts of the Bill that relate to offences be continued by order every two years. We believe that that approach is about balance. However, I hear what the noble Lord says and I am minded to return to the sunset clause, which I would call a review clause, later in the debates. Also, as noble Lords will recall, I gave a

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70 HL Deb 8 July 2009 c747
71 HL Bill 60 2008-09

> commitment that the Bill should be subject to formal post-legislative scrutiny within the next two years.
>
> In order to respect the strength of feeling in this House on the issues of principle that have been raised, I am happy to accept Amendment 1 on the Marshalled List in the name of the noble Lords opposite. I am also happy to accept the principle of Amendment 2, with some exceptions. I undertake to return to this at the Report stage. Your Lordships will recall that I gave an undertaking that this legislation would not apply to the House of Lords and, of course, the commitment still stands.[72]

The amendment she referred was Amendment 1, moved by Lord Strathclyde, which inserted a **New Clause** at the beginning of the Bill as follows:

> "Bill of Rights
>
> Nothing in this Act shall be construed by any court in the United Kingdom as affecting Article IX of the Bill of Rights 1689."

Lord Lester of Herne Hill expressed some doubts as to the legal effect of this new clause.

> Far from clarifying the law, it leaves it in a state of uncertainty, as we will see when we come to judicial review, a tribunal, fairness and other matters. It does not grapple with the central problem identified by the Joint Committee on Parliamentary Privilege, which is that Parliament is subject to Article 6 of the European convention and when it uses its disciplinary powers in an extreme way there are problems about fairness.[73]

The amendment was accepted without a division. The Government did not accept a series of amendments proposed by Lord Jenkin of Roding which would have extended parliamentary privilege to the functions carried out under the Bill, but Baroness Royall indicated that she would examine the principles behind them in relation to justiciability.[74]

Baroness Hamwee initiated a debate on the name of the new body, suggesting that it be called the Independent House of Commons Standards Authority, but her amendment was withdrawn. [75] Amendments to restrict power of address to remove IPSA members to the Commons only were also not moved. Amendments to increase the number of members of IPSA from four to seven were debated but these were not accepted by the Government. Lord Bach thought that more than four might be disproportionate. He also said that the implementation date for the new body would be as soon as possible after royal assent.[76]

Lord Woolf proposed that there should be only one commissioner and not two in the Commons, especially as the Al-Fayed case had established that the exercise of functions by the non statutory Commissioner was not subject to judicial review.[77]

Lord Bach spoke to a series of Government amendments which removed from IPSA any role in enforcement of the new allowances and Members' interests codes:

> The package of measures in the government amendments in this group—although there are also opposition amendments in the group, to which I shall reply after they have been spoken to—responds to those concerns by removing any role for IPSA in

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72 HL Deb 15 July 2009 c1049
73 HL Deb 14 July 2009 c1050
74 HL Deb 14 July 2009 c1059
75 HL Deb 14 July 2009 c1061
76 HL Deb 14 July 2009 c1072
77 HL Deb 14 July 2009 c1076

> the enforcement of the new allowances regime or the code of conduct on financial interests in individual cases. IPSA will remain responsible for setting the allowances regime and for the payment of MPs' salaries and allowances. It will be responsible for setting the code of conduct on financial interests and for administering the register of financial interests. IPSA will retain responsibility for the procedures under which alleged breaches of the financial rules can be investigated. Those, we think, are the core principles of independent oversight and regulation of MPs' financial affairs which the public ask for and which we have promised.

He went to explain how the Commissioner would no longer report to IPSA but to the Committee on Standards and Privileges:

> An independent statutory commissioner will also be responsible for investigating complaints that MPs have breached the rules of the allowances regime or the rules on registration of interests. Those arrangements remain unchanged. The amendments make changes in what happens to the outcome of the commissioner's investigations. Amendment 43A provides that the commissioner must refer his or her findings to the Committee on Standards and Privileges, rather than to IPSA. The amendment redrafts what was inserted in the other place as subsection (5), but maintains its effect in allowing minor cases to be settled by the commissioner without reference to the committee, provided that any general conditions fixed by IPSA are met and the Member acknowledges the error and agrees to repay the overpayment or correct the entry in the register, as appropriate.
>
> New subsection (5C) is a revised approach to the duty of the MP to provide information to the commissioner, which was included in subsection (3) of Clause 6 and for which the sanctions were previously covered in subsections (5) and (6) of Clause 7. Rather than setting out the duty on the MP to provide information, the commissioner will be able to report a finding to the Committee on Standards and Privileges if the Member of Parliament chooses not to co-operate.[78]

In response to concerns from Members and peers about fair procedures, Lord Bach also said:

> Following concerns expressed by the noble Lord, Lord Lester of Herne Hill, and other noble Lords, we propose including a specific right for Members of Parliament who are subject to an investigation to be heard in person by the commissioner, as well to make representations, and a right, in appropriate circumstances, to call and examine witnesses.[79]

Lord Goodhart expressed support for the Government amendments, but also spoke to a large group of amendments which probed the investigation and appeal procedures. Lord Strathclyde noted that the complicated and substantial group of Government amendments which had been in the public domain for only 24 hours needed further scrutiny, probably on report.[80] In response Lord Bach promised to consider several points of detail. He noted that IPSA would be a public body and therefore subject to the normal public law principles of rationality.[81]

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78 HL Deb 14 July 2009 c1078
79 HL Deb 14 July 2009 c1079
80 HL Deb 14 July 2009 c1085
81 HL Deb 14 July 2009 c1089

There followed some debate on the mechanisms for setting the level of MPs' salaries, and the terminology to be used in respect of allowances, but no amendments were made.[82] A Government amendment to clarify that the resettlement grant could continue to be paid by IPSA, even though a person had ceased to be a Member.[83]

Lord Strathclyde spoke to an amendment to ensure that the Commons could amend any financial interests code put before it for approval. In response, Lord Hunt of Kings Heath, for the Government, said that the bill ensured that there was appropriate consultation before the code was formally laid.[84]

There followed a debate on whether Ministers should declare their work in the register of Members' Interests, but no amendments were made. In her response, Baroness Royall pointed out that it would be IPSA which would draw up the financial interests code, and therefore, this new code might not replicate the existing one.[85]

There was a stand part debate on **Clause 5** (statutory code on financial interests) tabled by Lord Strathclyde. Baroness Royal said that she was considering omitting clause 8(2) which makes failure to register a criminal offence:

> **Baroness Royall of Blaisdon:** Noble Lords have asked many interesting questions. First, I will clarify the point raised by the noble Lord, Lord Higgins. The noble Lord, Lord Strathclyde, asked a question in relation to Clause 8(2), which refers to offences. It states:
>
> "A member of the House of Commons commits an offence if, without reasonable excuse, the member fails to comply with a requirement included by virtue of section 5(7) (registration of interests) in the MPs' code of conduct relating to financial interests".
>
> This is an issue on which I have been reflecting throughout the day. I am minded to reflect further on this specific offence and come back to it on Report. The Government are absolutely clear that they regard the offence mentioned in Clause 8(1) as a prerequisite of the Bill. We want that offence to stand; we consider it to be extremely important for the core function of the Bill. As I said, I am reflecting on whether the offence referred to in Clause 8(2) might be removed, but I shall come back on that in due course.[86]

She later said that she would table any amendment for report stage on 20 July.[87]

However she noted that the Government had no intention of making further amendments to Clause 5 and clarified that neither IPSA nor the statutory Commissioner would have a role in relation to enforcing the paid advocacy rule, although IPSA would make that rule. She referred to the possible publication of a Keeling schedule to aid the House in discovering where amendments had already been made.[88] The schedule was made available in hard copy form in the Printed Paper Office which gave amendments after first day in committee.

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82 HL Deb 14 July 2009 c1105
83 HL Deb 14 July 2009 c1107
84 HL Deb 14 July 2008 c1129
85 HL Deb 14 July 2009 c1136
86 HL Deb 14 July 2009 c1139
87 HL Deb 14 July 2009 c1142
88 HL Deb 14 July 2009 c1143

Lord Lester spoke to amendments to **Clause 6** which were intended to meet the requirements of Article 6 of ECHR:

> Let us assume, as did the Joint Committee on Parliamentary Privilege in 1998, that if a Member of Parliament is subjected to really severe disciplinary penalties, that in terms of the convention the MPs' civil rights and obligations are being determined, or that he or she is being subjected to what is in substance a criminal charge, the requirement of the right to an independent and impartial tribunal is triggered by the convention. I believe that to be the case. More importantly, that view was taken by the Joint Committee on Parliamentary Privilege as a likely outcome where severe sanctions were involved.[89]

Lord Lester recommended the introduction of an internal tribunal within the House of Commons, separate from the Standards and Privileges Committee, which would meet the requirements of Article 6. There was some reference in the subsequent debate to recommendations from the CSPL to introduce such a tribunal. Lord Lester received support for this proposal from Lord Pannick and Lord Mackay of Clashfern.

In response, Lord Hunt of King's Heath said:

> In addition, although the Government are not convinced by the JCHR's arguments concerning ECHR, we have none the less decided to accept the key safeguards from Amendment 49. Government Amendment 53B sets out that the procedure for commissioner investigations must include an opportunity for the MP to be heard in person, and an opportunity, where the commissioner considers it appropriate, to call and examine witnesses. My understanding is that that reflects the procedural safeguards which exist in Standing Order 150 of the other place, where the parliamentary commissioner for standards makes use of an investigatory panel to assist him. That ought to go some way to reassuring the noble Lord.
>
> My noble friend Lord Campbell-Savours and the noble Lord, Lord Pannick, have raised concerns about how the Committee on Standards and Privileges conducts its affairs; it is only right and proper for noble Lords to do so. At the end of the day, however, that is very much a matter for the other place to regulate. I agree with the noble Lord, Lord Pannick, that it is part of that House's internal disciplinary proceedings. While I am happy to ensure that this debate is referred to appropriate Members in the other place, I am hesitant to go down the route of our determining what ought to happen.[90]

He promised to consider without commitment whether a reference to fair procedures was necessary.

Baroness Royall then went on to explain why **Clause 7** was no longer necessary:

> **Baroness Royall of Blaisdon:** We have discussed in detail the amendments that the Government have proposed to the Bill, and which your Lordships have agreed, in relation to the enforcement regime. As a result of those changes, particularly the removal of any powers of IPSA to direct an MP to repay allowances or to make an amendment to the Register of Interests, or to make any recommendation to the Standards and Privileges Committee about action that it might take against an MP, the need for the provisions of Clause 7 has fallen away, as it has for the safeguards that were specifically related to those powers. Since IPSA will not be recommending sanctions of any sort, we judge that there is no need to have a protocol about how it will work with bodies such as the DPP. Since there is to be no reference to the sorts of

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89 HL Deb 14 July 2009 c1146

90 HL Deb 14 July 2009 c1154

> disciplinary powers that might be appropriate, the provisions that spelt out those powers and the provisions that made it clear that these were not any sort of restriction on the inherent powers of the House were also redundant.[91]

Mr Straw appeared before the Justice Select Committee on 15 July and indicated that the Government had taken notice of concerns expressed by peers at second reading in the amendments to the Bill.

The second day in committee was on 16 July. Baroness Royall tabled a motion to take report and third reading together on 20 July. She stressed that IPSA needed to be up and running by the time of the next general election and that the principles be agreed before Sir Christopher Kelly reported.[92]

Lord Strathclyde spoke to probing amendments on **Clause 8 (offences).** A number of peers questioned the need for a separate offence applicable only to MPs of falsely claiming allowances in 8(1). These included Lord Mackay of Clashfern[93] and Baroness Butler-Sloss. There were also concerns that the fact that the offence carried a maximum sentence of one year might lead the public to believe that MPs would not serve as long sentences as members of the public for fraud.

In response Baroness Royall cited a similar offence on pecuniary interests for local councillors in the *Local Government and Housing Act 1989* and said that prosecutions under the *Fraud Act* would require a higher evidential bar than the proposed offence. [94] Baroness Royall then moved amendments to remove the offences of false registration and paid advocacy from the Bill.

She commented:

> We tabled the amendment to remove the offence in relation to paid advocacy on Monday, so noble Lords were already aware of it during our debates on Tuesday. We have accepted that it is an offence which would be difficult to prove without incursion into matters covered by privilege, and with the removal of the clause which would have waived privilege for the courts and prosecutors in investigating and prosecuting the offence, would have probably been unworkable. This does not mean that breach of the rules of paid advocacy is not to be taken very seriously. We have agreed not to pursue it in this Bill on the basis that the draft Bribery Bill currently receiving pre-legislative scrutiny will cover the same mischief.
>
> I also signalled on Tuesday that I was looking further at the offence in Clause 8(2) in relation to the registration of interests. I have concluded that we should also remove this from the Bill. There would not have been the same difficulty in prosecuting the offence as there would have been with paid advocacy. I remind your Lordships that this Parliament created offences of failing to declare interests and of paid advocacy for members of the devolved Administrations and for local councillors. Although it would not have been an infringement of privilege to have continued to have an offence, I recognise the strength of the feeling expressed in the House earlier in the week. I beg to move.[95]

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91 HL Deb 14 July 2009 c1158
92 HL Deb 16 July 2009 c1271
93 HL Deb 16 July 2008 c1288
94 HL Deb 16 July 2009 c1276
95 HL Deb 16 July 2009 c1281

Lord Strathclyde pointed out that the remaining offence would only be brought in by a statutory instrument, and no fixed date was set out in the Bill.[96] In response, Baroness Royall said that the new offence would be commenced only when the IPSA allowances scheme was laid before Parliament.[97]

Lord Jenkin of Roding spoke to an amendment which was designed to ensure that EC law or the ECHR would not affect the supremacy of Article 9 in relation to the Bill.[98] During this debate Lord Mackay of Clashfern asked whether a report from the statutory Commissioner which became public before being presented to the Committee on Standards and Privileges would attract parliamentary privilege.[99] He doubted whether the amendment proposed was necessary and this position was confirmed by Baroness Royall:

> The wider question of whether the Bill of Rights prevents any international court looking at proceedings in Parliament is a separate issue. MPs have human rights too and could conceivably ask Strasbourg to enforce them if the parliamentary disciplinary mechanisms were deeply unfair. However, they are not; they are fair. Therefore, we deem the amendment necessary. I broadly agree with the eloquent and learned explanation of the noble and learned Lord, Lord Mackay, concerning the relationship between our courts, the ECJ and Strasbourg. I agree with his conclusion that the amendments are not necessary[100]

She promised to examine the question posed by Lord Mackay at report stage.

Lord Jenkin then spoke to an amendment to prevent the Standards and Privileges Committee from investigating a case which was the subject of a criminal investigation.[101] Lord Campbell Savours cited previous delays to Standards and Privileges investigations in the case of Neil Hamilton and George Galloway. Baroness Royall said that the amendment would impose unnecessary inflexibility.[102]

Lord Tyler spoke to an amendment to introduce a sunset clause for sections 5 to 9 and Schedule 1 of the legislation, so leaving the provisions establishing IPSA as permanent. As an alternative, Baroness Royall proposed a renewal clause for the same parts of the Bill, by means of a statutory instrument.[103] Lord Tyler said that he considered that more time was necessary to examine the implications of the Government amendments which had been tabled only that day.[104] Lord Strathclyde noted that the amendments would begin the two year period as from implementation of the new allowance scheme rather than from royal assent.[105]

Baroness Royall commented:

> Nevertheless, the Government understand the concern that to some extent we are moving into uncharted waters with this Bill. We have therefore tabled these amendments to provide an opportunity for Parliament to reconsider whether the legislation is working as intended, but without requiring its complete re-enactment to

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96 HL Deb 16 July 2009 c1282
97 HL Deb 16 July 2009 c1286
98 HL Deb 16 July 2009 c1294
99 HL Deb 16 July 2009 c1301
100 HL Deb 16 July 2009 c1304
101 HL Deb 16 July 2009 c1306
102 HL Deb 16 July 2009 c1310
103 HL Deb 16 July 2009 c1314
104 HL Deb 16 July 2009 c1315
105 HL Deb 16 July 2009 c1317

> continue its existence. We are clear that IPSA must continue to exist, and that we must be able to offer certainty to those whom we want to work in it. It is essential that we have an independent body outside the House setting a transparent allowances regime. That much is common ground.
>
> Noble Lords will know that we had great doubts about the wisdom of applying the sunset provision to Clause 5, but we have decided to do so, given the strength of feeling in this House that we should. However, in contrast to the noble Lords' amendment, we do not see any point in continuing the existence of the commissioner if he or she is to be shorn of all functions. That is why our amendment also refers to Clause 1(3) and Schedule 2.[106]

The review clause, **Clause 13,** was added to the Bill without a division.[107] There were minor amendments to **Clause 10** to refer to the Committee on Standards in Public Life. There was a short debate on the transitional arrangements in **Clause 11**, but no amendments were made.[108]

### 3.3 Report and third reading

This took place on 20 July 2009. The Bill has been reprinted as HL Bill 67.[109] Some further amendments were made at report:

- A Government new clause that the Bill does not apply to Lords;
- A Government new clause for IPSA to provide taxation advice to Members;
- An amendment to ensure that Members are subject to fair procedures in clause 7 (investigations).

There were also some minor amendments. After a short break the Bill received its third reading.

Baroness Royall began the debate by moving a new clause to ensure that the legislation would not affect the Lords, apart from some minor exceptions.[110]

Lord Jenkin spoke again to an amendment on application of EC law and ECHR to the procedures in the Bill. This enabled the Attorney General, Baroness Scotland of Asthal, to reply in detail. She deposited in the Printed Paper office a letter to peers, but repeated the main arguments in debate. She emphasised that IPSA and the Commissioner would have no jurisdiction to investigate allegations of paid advocacy or failures to declare interests in debate, which would remain matters for the Commons. She went on:

> Like the authority, the new commissioner is likely to be regarded by the courts as a statutory body, subject to the normal principles of administrative law and judicial review. I suggest that there is nothing for Parliament to fear from that either. The Independent Parliamentary Standards Authority and the commissioner are deliberately being set up as bodies independent of Parliament. Although their functions are of great concern to parliamentarians, payments of allowances and registration of financial interests are not matters of privilege and do not entail questioning of proceedings in Parliament. Any decisions on sanctions to be imposed on individual Members of

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[106] HL Deb 16 July 2009 c1317
[107] HL Deb 16 July 2009 c1324
[108] HL Deb 16 July 2009 c1323
[109] http://www.publications.parliament.uk/pa/ld200809/ldbills/067/09067.1-5.html
[110] HL Deb 20 July 2009 c 1415

> Parliament will, as now, be for the Committee on Standards and Privileges. That committee is a committee of the House of Commons set up under the rules of the House and answerable to the House. [111]

She considered that in the Government's opinion, the subject matter of the Bill would be very unlikely to give rise to an interpretation by the European Court of Justice. The possibility of an ECHR challenge could not however be ruled out, but she referred to *A v the United Kingdom* where the court had accepted that parliamentary privilege pursued the legitimate aim of ensuring freedom of speech in Parliament.[112] In response Lord Pannick pointed out that the functions of IPSA and the Commissioner were advisory, reporting to the House. The courts would therefore be likely to decline an application for judicial review.[113] Lord Jenkin withdrew his amendment.

The Attorney General also took the opportunity to emphasise the fact that clause 8(1) (offence of falsely claiming allowances) was necessary. She cited other offences, such as falsely claiming social security benefits, which were similar.[114]

There was a Government amendment to deal with a point raised by Mark Durkan in the Commons. The amendment would enable IPSA to provide to MPs any general information or guidance on tax issues published by HMRC.[115]

There was a short debate on the conditions which IPSA might set in relation to investigations where no referral to Standards and Privileges Committee is thought necessary.[116] There also followed a debate on whether reports should be published when a MP has been found to have committed no fault, but no amendments were made in either case.[117]

Following the debate in Lords committee, an amendment moved by Lord Pannick to insert a requirement for fair procedures into clause 7 was accepted by the Government. It received the support of Lord Woolf, Baroness Butler Sloss and Lord Mackay of Clashfern.[118]

There was some clarification of procedures to be followed under clause 9 (further functions of IPSA). Baroness Royall set out the interaction between the current Parliamentary Commissioner for Standards and the statutory Commissioner:

> The initiative for any transfer of functions must come from the Speaker. It has to be discussed with the Committee on Standards and Privileges as well as with IPSA. The Speaker has to lay any agreement to transfer functions before the House, and it cannot come into effect until the House has resolved to approve it. Therefore, I think that it is clear that there is little opportunity for a transfer of the sort of functions that noble Lords may be concerned about, because those who would be responsible for this transfer of functions would not make a recommendation unless they had decided that it was in the best interests of the House. Moreover, it is important to be clear that Clause 9(4) can only be used to transfer existing functions of the parliamentary commissioner for standards. The new statutory commissioner would then in essence be wearing those non-statutory functions as a separate hat. There would be no question of the statutory commissioner exercising his statutory functions in relation to those matters, and, in

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[111] HL Deb 20 July 2009 c1422
[112] HL Deb 20 July 2009 c1423-4
[113] HL Deb 20 July 2009 c1429
[114] HL Deb 20 July 2009 c1425-26
[115] HL Deb 20 July 2009 c1435
[116] HL Deb 20 July 2009 c1437
[117] HL Deb 20 July 2009 c1437-9
[118] HL Deb 20 July 2009 c1441

> particular, the statutory commissioner would be acting in accordance with the standing orders of the House rather than the procedures of IPSA.
>
> So, in future, if the House of Commons and the Speaker of the House wish to have just one commissioner, not two, that would be possible. But that commissioner would wear two hats: he would wear one hat with his statutory functions and one with his non-statutory functions. [119]

Finally, Lord Tyler proposed an amendment to remove the review provisions in clause 13, and replace them with a sunset provision after two years. This amendment was defeated by 139 votes to 60. Lord Tyler considered that a statutory instrument mechanism was insufficient for a full review of the legislation. In response, Baroness Royall set out two justifications for a review; firstly that the bill had been subject to an expedited passage and secondly that the legislation represented 'uncharted waters'.[120] But she argued that IPSA had to be given an opportunity to operate effectively. Lord Strathclyde signalled that the Opposition would not support the amendment, but prophesied that further legislation would be likely in any case following the CSPL report in the autumn.[121]

Third reading took place later on at 10.30pm. Baroness Royall moved an amendment to clause 9, which answered the points made earlier by Lord Jenkin on procedures for minor infringements. The amendment requires IPSA to consult appropriate bodies on the procedures to be adopted.[122]

### 3.4 Lords amendments

Lords amendments were debated in the Commons on 21 July 2009. There was a division on the programme motion which allowed an hour for debate.[123] A number of Members commented on the short time available to debate major changes. No further amendments were made. Bill Cash spoke to an amendment on the potential impact of EC law and the ECHR, but this amendment was negatived. Sir George Young protested at Lords amendment 12, which removed the ability of IPSA to refer a matter to the Commissioner to undertake an investigation. He said that this would make it impossible for IPSA to pass information to the Commissioner to investigate wrong-doing.[124] Nevertheless the Bill passed unamended and received royal assent that day.

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[119] HL Deb 20 July 2009 c1442
[120] HL Deb 20 July 2009 c 1447
[121] HL Deb 20 July 2009 c1446
[122] HL Deb 20 July 2009 c1501
[123] HC Deb 21 July 2009 c769
[124] HC Deb 21 July 2009 c785