

The privileges of the Assembly

Quick Guide

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Introduction

The term “privilege” is used in parliamentary contexts to describe the special rights, powers and immunities held by a legislature and its elected members in order to ensure its constitutional independence and to allow for elected members to debate matters of importance freely in proceedings without fear of being sued or prosecuted.

The UK Parliament derives these powers and immunities not from statute but from numerous historical privileges which date back to a 17th century struggle between King and Parliament and which were confirmed by the *Bill of Rights 1689*. The National Assembly’s privileges by contrast are derived solely from the *Government of Wales Act 2006*¹ (“the 2006 Act”) and as such, the scope of its privilege is much narrower than those applied in relation to the House of Commons and the House of Lords and their Members.

This guide provides an overview of the statutory privileges that apply in relation to the Assembly and compares these powers and rights with the much wider historical privileges of MPs and Lords at Westminster.

Please note that only general information about privilege in the Assembly is provided by this document; it is not intended to constitute formal legal guidance. Anyone looking for information or guidance about specific cases relating to issues of privilege in the Assembly should therefore seek legal advice.

Privilege at Westminster

At both the House of Commons and House of Lords, parliamentary privilege has two broad components:

Freedom of speech

The *Bill of Rights 1689* guarantees the freedom of speech of MPs. This essentially protects members of both Houses of Parliament from being subjected to any penalty, civil or criminal, in any court or tribunal for what they have said in the course of proceedings in the UK Parliament.² This does not mean however that individual MPs have immunity from criminal or civil prosecution, as is the case in some countries, but only that evidence of what was said in parliamentary proceedings cannot be used against MPs in the criminal or civil courts.

Powers of parliament to protect its own processes (also known as “exclusive cognisance”)

“Exclusive cognisance” is a term used to describe the exercise by the UK Parliament of control over its own affairs. It gives the UK Parliament sole control to determine its procedures and to discipline its own members for misconduct without interference from any external body. This provides the UK Parliament with “an unquestioned authority over the

¹ *Government of Wales Act 2006* (Chapter 32)

² UK Parliament, Joint Committee on Parliamentary Privilege, *Report*, 9 April 1999, HC 214 1998-99, paragraph 37

procedure it employs as legislator” and, taken together with the concept of freedom of speech, provide rights which “are essential elements in parliamentary independence”.³

Privilege in the Assembly

The Assembly’s privileges are much narrower than the historical privileges of the UK Parliament. Assembly Members have limited rights in relation to freedom of speech and the Assembly’s internal processes may also be subject to external interference (via the courts and the laws of the UK Parliament).

Privilege in the Assembly derives entirely from Sections 41 to 44 of the 2006 Act. These broadly mirror the privileges of the Scottish Parliament under the *Scotland Act 1998*⁴ and the Northern Ireland Assembly under the *Northern Ireland Act 1998*.⁵ They relate to only the following areas:

Defamation⁶

The 2006 Act ensures that any defamatory statement made in Assembly proceedings⁷ is “absolutely privileged”⁹ and therefore immune from civil or criminal proceedings. This is intended to ensure that Assembly Members are free to debate and that the Assembly is free to report on matters of public interest without fear of an action for defamation being raised. In addition to protecting Assembly Members, the 2006 Act also similarly protects any witnesses providing oral evidence during Assembly proceedings, or any written evidence published by the Assembly.

The 2006 Act, however, does **not** provide Assembly Members or witnesses with immunity from legal challenge on grounds **other than defamation**. No immunity would therefore be provided under the 2006 Act in relation to, for example, civil actions for breaches of confidence, charges of incitement to racial hatred, or offences against the *Official Secrets Act 1989* which relate to anything said by Assembly Members or witnesses during Assembly proceedings. No protection is conferred by the 2006 Act upon Members or witnesses either if their comments are made outside Assembly proceedings or if their written documents are published without the express authority of the Assembly.

Contempt of court

Assembly proceedings (unlike those of the UK Parliament whose processes are protected by privilege) are generally not immune from the orders of a court of law or of legal rules designed to protect court proceedings (such as protecting the anonymity of witnesses).

The 2006 Act does however protect Assembly Members and others from being guilty of “contempt of court” under the “strict liability” rule, in other words when they have inadvertently or ill-advisedly referred to active court cases in the course of Assembly proceedings. It does **not** protect them in instances where statements are made to deliberately influence court cases, or if specific court orders are disobeyed.

This immunity is balanced by provisions in the 2006 Act that require equivalent internal constraints to be placed on Assembly Members and witnesses. Section 31(2) of the 2006 Act requires the Assembly’s Standing Orders to include provisions preventing conduct in Assembly proceedings which would (were it not for the immunity of Assembly Members) constitute “contempt of court” – i.e. a *sub judice*¹⁰ rule for Assembly Members. As a result, Standing Orders

³ Ibid, HC 214 1998-99, paragraph 113

⁴ See Section 41 and 42 of the *Scotland Act 1998* (Chapter 46)

⁵ See Section 50 of the *Northern Ireland Act 1998* (Chapter 47)

⁶ “Defamation” is defined as the injuring of a person’s good name or reputation.

⁷ The 2006 Act defines “Assembly proceedings” as including any plenary, committee or sub-committee proceedings in the Assembly

⁸ “Statement” is defined by the 2006 Act to mean “words, pictures, visual images, gestures or any other method of signifying meaning”.

⁹ *Government of Wales Act 2006* (Chapter 32), Section 42

¹⁰ A “*sub judice* rule” is a rule which prevents any reference in questions and debates to matters pending decision in court proceedings..

13.15 and 17.28 state that an Assembly Member must not raise or pursue in plenary or committee meetings any matter where court proceedings have been initiated, unless the Presiding Officer or the Committee Chair in question is satisfied that:

- The matter is clearly related to a matter of general public importance or a ministerial decision is in question;
- 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 to a case which is to be heard, or is being heard, in family proceedings; and
- The Member does not, in his or her comments, create a real and substantial risk of prejudice to the proceedings of a court either generally or in respect of a particular case.¹¹

Further information

For further information about **THE PRIVILEGES OF THE ASSEMBLY**, please contact **OWAIN ROBERTS** (owain.roberts@Wales.gov.uk), Research Service.

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The Research Service has produced this Quick Guide for the benefit of Assembly Members and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

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Author name: Owain Roberts

¹¹ National Assembly for Wales, *Standing Orders of the National Assembly for Wales*, June 2012, Standing Orders 13.15 and 17.28