

Our proposed House of Lords amendments to the Public Office (Accountability) Bill

Amendment draft 4. Draft 1 was tabled in the House of Commons by Luke Myer MP as amendments 13 to 18. Draft 2 was tabled in the House of Lords as amendment 66A and debated in Committee. Draft 3 was a single amendment to Schedule 2. On the advice of a former Deputy President of the Supreme Court, it is now two linked amendments: one making legislators public officials, and one confining the offence.

AMENDMENT ONE OF TWO · SCHEDULE 2

Schedule 2, page 53, line 17, at end insert—

“(14) Subject to sub-paragraph (2), “public official” also includes a member of either House of Parliament, the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly; but section 12 (misleading the public) applies to such a member only as provided by section 12(7A) to (7E).”

MEMBER’S EXPLANATORY STATEMENT

This amendment would include members of the UK’s four legislatures as public officials, so that they owe the duty of candour. A separate amendment to clause 12 sets out the limited circumstances in which the offence of misleading the public applies to them. (43 words)

AMENDMENT TWO OF TWO · CLAUSE 12

Clause 12, page 14, line 7, at end insert—

“(7A) In this section “legislator” means a member of either House of Parliament, the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, and this section applies to a legislator only in the circumstances set out in subsection (7C).

(7B) This section does not apply to a legislator in respect of—

- (a) anything said or done in the proceedings of any Parliament or legislative assembly in the United Kingdom,
- (b) anything said solely to their own political party about its internal business, or solely about their private or family life,
- (c) an opinion, a broken promise, a mistake or anything else in ordinary political debate, unless it is proved that they acted with the intention of misleading the public or were reckless as to whether their act would do so; and an opinion is not dishonest merely because it is mistaken, unpopular or disputed,
- (d) withholding information for the purpose of safeguarding national security, but not making any false or misleading statement, or
- (e) any act they promptly and publicly corrected, as prominently as they made it, before it could affect any vote, decision or other outcome (for example, before a war has begun or a referendum has been held).

(7C) A Minister of the Crown or of a devolved government, an elected mayor or a legislator who acts with the intention of misleading the public, or is reckless as to whether their act will do so, is treated as acting in their capacity as a public authority or public official and in the exercise of their functions as such, and their act is treated as having had the potential to cause harm to one or more other persons, where they act in order to—

- (a) influence whether the United Kingdom goes to war or takes other military action,

- (b) influence the result of a referendum held under an enactment,
- (c) hide or misrepresent the causes of a disaster or other event involving death or serious injury,
- (d) hide a risk to public health or safety, or
- (e) hide serious wrongdoing by a public authority or public official, or the misuse of public money.

(7D) Subsection (4) does not apply to an act in the circumstances set out in subsection (7C), and it is irrelevant whether the legislator, Minister or mayor was writing, broadcasting or working for a news publisher at the time.

(7E) Where a person is convicted of an offence under this section for an act to which this section applies to them only because they are a legislator—

- (a) if, when sentenced, they are still a legislator, the court may impose a fine but not a sentence of imprisonment, and the conviction does not of itself end their membership, which is a matter for the Parliament or assembly concerned and, where its members are elected, for the voters, and
- (b) if, when sentenced, they are no longer a legislator, the court may impose any sentence available under subsection (5)."

MEMBER'S EXPLANATORY STATEMENT

This amendment works with the amendment at Schedule 2, page 53, line 17, which makes legislators public officials. It confines the misleading the public offence, for them, to intentional or reckless deception over war, referendums, disasters, public safety or wrongdoing, excludes parliamentary proceedings, and limits sitting legislators to a fine. (50 words)