



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

THE PROBLEM

The Hillsborough Law is an excellent and vital proposal. We wholeheartedly support it, and it must become law. However, the Bill excludes legislators, and the offence of misleading the public, as currently worded, will not work in court.

ExecProsec is uniquely placed to understand these problems. We are the only organisation to have prosecuted a politician for lying under the similar common law offence of misconduct in public office, having prosecuted Boris Johnson in 2019 in his capacities as a Member of Parliament and Mayor of London. That experience showed us how the requirements concerning official capacity and the exercise of functions can prevent an offence from working in court when they are not defined in statute. The same confusion and complexity marred the reception of our prosecution against Johnson.

There is extensive case law on these issues, but requiring judges to work through so much of it is itself part of the problem. The statute must resolve these questions expressly. Legislators must also be included, with protection for parliamentary proceedings stated clearly on the face of the Bill, so that they know they cannot be prosecuted for what they say in those proceedings.

THE SOLUTION

We must amend the Public Office (Accountability) Bill to include all legislators for their acts in public outside of parliamentary proceedings and ensure that the offence of misleading the public works in court. Our proposed amendments apply the lessons of our 2019 Boris Johnson prosecution: they expressly include legislators, define the requirements concerning “capacity as such” and “functions”, and protect proceedings in all four of the UK’s Parliaments.

AMENDMENT ONE OF TWO

Schedule 2, paragraph 3, after sub-paragraph (13), 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 this sub-paragraph causes section 12 (misleading the public) to apply 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, after subsection (7), 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 because of paragraph 3(14) of Schedule 2 only in the circumstances set out in subsection (7C).

(7B) Neither paragraph 3(14) of Schedule 2 nor subsection (7C) causes this section to 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 to Schedule 2 which expressly includes legislators as public officials. It limits liability arising from that status to five specified purposes, protects proceedings, and provides a fine-only sentence while the person remains a legislator. Existing liability as a Minister is preserved. (47 words)