



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HONOURABLE THE LORD BURNETT OF MALDON

Chris Bryant MP
Chair of the Committee of Privileges
House of Commons
London
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By email only

6th October 2021

Dear Mr Bryant

Thank you for inviting me to provide you with a note concerning the proposals contained in your Report 'Select committees and contempts: clarifying and strengthening powers to send for persons, papers and records'. The Report of the Committee, having considered a number of options, recommends new legislation to enable Committees of the House of Commons to summon witnesses and order the provision of papers. In particular, the Report proposes that a new criminal offence be created by legislation to criminalise disobedience to a summons from a Select Committee.

In May 2017 my predecessor, Lord Thomas of Cymgiedd, provided a short memorandum on the implications of such an offence for the separation of powers. I respectfully agree with the observations made by Lord Thomas and would echo here the implications for article IX of the Bill of Rights, the importance of judicial independence in determining cases according to law and the overarching need for anyone prosecuted to have a fair trial.

The proposal is to create a criminal offence similar in some respects to contempt of court. The proposed maximum sentence aligns with that available to the courts for contempt, namely two years custody. It is, perhaps, unusual to create an offence which is indictable only, that is to say that it must be dealt with in the Crown Court, with a two year maximum sentence. That reflects, no doubt, the view of the Committee about the seriousness of an offence which amounts to the defiance of Parliament, having considered the alternative of an offence triable either way, that is in either the Crown Court or the Magistrates' Court.

The proposal in the draft legislation that a certificate of the Speaker would be conclusive proof that a person failed to attend or provide documents etc would, at first blush, deny a

potential defendant the opportunity of challenging one of the ingredients of the offence. It would determine a fact which would ordinarily be within the province of the court to decide upon as one of the ingredients of the offence. That is, at least, unusual. Moreover, to determine whether it was reasonable for a person not to attend etc. might well take a court into territory protected by Article IX. The implications of these provisions would have to be worked through in the usual way should there be any prosecutions.

I understand that it is a relatively rare phenomenon for someone within the jurisdiction of the courts of the various parts of the United Kingdom to defy a Parliamentary summons. It is to be hoped that the creation of a criminal offence will act as a deterrent to the few who might do so.

Yours sincerely,

Burnett of Maldon

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