Memorandum from Paul Evans, former Clerk of the Journals, House of Commons (SCC0023)

Summary

This paper has been prepared in response to the invitation from the House of Commons Committee of Privileges for the submission of evidence relating to its inquiry into select committees and contempts.

It proposes that the choice for the House is between a statutory solution or abandoning its claim to penal powers to punish contempts.

It argues that while an overarching parliamentary privilege bill might in theory be desirable, the lesson of history is that such an outcome is very hard to achieve. It would be better to legislate on the narrow matter of committee powers and contempts now, rather than delay yet further a solution to this more pressing problem in order to settle the issue of all contempts and their punishment.

Drawing on international comparisons, the paper sets out some options for how select committee powers might be placed on a statutory basis which would make it possible to sanction those who defy them.

Introduction

1. I was Clerk of Committees in the House of Commons, where I was responsible for the management of the resources and staff almost all its select committees, from 2016 to 2019. Between 2014 and 2016 I was Clerk of the Journals, the principal adviser to the Clerk of the House on matters of privilege. Over my career I spent 23 years working for select committees directly.

2. During that time, advising chairs and members of select committees on the scope and enforceability of their power to send for persons, papers and records (PPR) was always something of a problem, and occasionally a source of embarrassment. It involved contriving to explain that committees' PPR powers were almost unlimited in scope and reach and at the same time largely unenforceable. Our approach, collectively, as clerks was strongly to discourage committees from invoking the powers because of the risk that they would be exposed as ineffective, and destroy for all committees the carefully cultivated illusion of omnipotence.

3. As Clerk of the Journals, I found that the questions of privilege on which my advice was sought often circled around the interpretation of Article IX of the Bill of Rights 1688/89. Increasingly, I felt that a confirmation of a much older claim by the House of the privilege of freedom of speech – an uncontestable prerequisite for a functioning democratic legislature – had been elevated in recent decades to a totemic status which it did not entirely deserve. Attempts to preserve its status as immaculate seem often to have been the principal reason that efforts to codify privilege in a way which was fit for a modern Parliament in a modern world have ended up running into the sand.

4. An awful lot of ink has been spilled over Article IX over the last 330 years. But it should be regarded as at root a specific historical response to a specific set of historical circumstances.[1] The proceedings of Parliament are daily questioned in places out of Parliament, and no-one knows what "impeaching" them would involve. The narrow focus on the words "any court" has been a peculiar obsession of lawyers. The 1999 Joint Committee on Privilege took a healthily relaxed view of the issue, and I would urge this Committee to follow suit, and not to be distracted by quasi-theological arguments from the task of coming up with a plausible solution to a current problem.

5. In this paper I try to answer each of the questions in the Committee's call for evidence in turn. At the end I offer some concluding observations which go slightly beyond the call for evidence. I apologise for its length.

How can select committees effectively exercise their powers to summon witnesses and call for papers, while at the same time treating potential witnesses with fairness and due respect?

6. The use of their formal powers by committees to compel attendance is rare. I am aware of a number of cases where they have been used at the request of a witness who wishes, as an insurance against legal liability, to have some evidence that they were compelled to produce particular evidence. But it is reasonable to suppose that generally when they are deployed the witness who is the subject of them is regarded as hostile. In these circumstances, where a witness's reputation or livelihood is potentially in jeopardy, a higher standard of due process should properly be applied. The principles of a fair trial are well-rehearsed in many different texts and have been set out in different forms by a number of Parliaments. The

[1] See, for example, Lois G Schwoerer, *The Declaration of Rights 1689*, The John Hopkins University Press, Baltimore and London, 1981; and also Paul Seaward, 'Yonge, Haxey, and the Privilege of Freedom of Speech in Parliament', at https://historyofparliamentblog.wordpress.com/2020/04/07/yonge-haxey-and-the-privilege-of-freedom-of-speech-in-parliament/.

paragraphs of Article 6 of the European Convention of Human Rights relating to a fair hearing are as good a summary as any. Using those as a starting point, we might say that a witness is entitled in such circumstances:

a. to be informed promptly and in detail, of the nature of any case in which a committee may accuse them of culpability for incompetence, malpractice, neglect, recklessness, extravagance or corruption, and be given notice of areas of questioning and matters of detail that may be asked about which touch on their possible culpability under such headings;
b. to have adequate notice and facilities for preparation for the hearing and to have access in advance to any evidence which will be called in aid to arraign them for any such matters;
c. to be given a proper opportunity to defend themselves in person; and
d. to have the chance to rebut any subsequent evidence which tends to damage their reputation and to be given notice of any findings a committee proposes to make which would have the potential to do so.

All these procedural caveats would have the beneficial side-effect of meaning that committees could only use these powers after careful deliberation and with planning. They would make it hard, if not impossible, for a committee to act on impulse when using its powers of compulsion.

7. The 2013 Joint Committee on Parliamentary privilege proposed a series of standing orders on this matter (in Annex 3 to its report). In my view these were too complex to be usefully turned into standing orders, especially given the rarity with which they would be deployed. A resolution of the House would seem to be sufficient to embed these principles.[2] They could be expressed more briefly by sticking to principles and avoiding the details of procedure. The relevant standing order of the Dáil Éireann (97(5)), for example, states:

> "A Committee which is giving or has given a compellability direction, and following the compliance by a person with a direction, will act with due regard to:
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> (a) fair procedures;
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> (b) the rights of the person given the direction; and
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> (c) the rights of any other person affected by the direction."

One could add to these conditions an expectation that witnesses would be treated in accordance with the House's Code of Conduct – but that should apply to all witnesses, not just those summoned and therefore regarded as hostile.

What are the benefits and drawbacks of the three options identified in 2017 by the then Clerk of the House, that is, to do nothing, to reassert the House's existing powers by amending Standing Orders or by Resolution, or to legislate to provide a statutory regime?

8. The main drawback to *doing nothing* is that, at the point at which we have now arrived, it does not retain the House's theoretical penal powers – it is a concession (or, if you prefer,

[2] This is the solution adopted by the Australian Federal House of Representatives – the resolutions are appended to its standing orders, although the 1999 Joint Committee preferred the option to list them in statute.

confession) that they no longer exist. Its only benefit is therefore to put the question of the House's penal powers to bed for several more decades – it would effectively signal that there are none. Along with that might go PPR powers in general – if they are not enforceable they are not really "powers" in the natural meaning of the word.

9. The main drawback of *reassertion of its penal powers* is that it is long-established that the House cannot extend its privileges by mere assertion, and that in most cases a resolution of the House cannot bind others unless it is expressed as statute. Although there could be some benefit in the form of an incremental accretion of the awe with which the House's powers were regarded, I believe any such reassertion would carry a heavy risk of being seen as an empty gesture.

10. I see the choice before the House as effectively a binary one – it can either abandon its claim to possess penal powers or *legislate* to make them a reality. There is no real middle ground which could provide a solid foundation on which to build. The main benefit of placing the penal powers on a statutory basis is that it would make a reality of what has been shown to be an illusion. Its effect on the behaviour of future witnesses can only be a matter for speculation. But it would be a hard argument to substantiate that it would be likely to render witnesses less likely to show compliance than the present range of penalties (there is in effect only one at present – admonition).

11. The main drawback canvassed by opponents of such a move has always been that it would risk drawing the courts into conflict with the House. My own view is that this risk is regularly overstated. On the whole the courts are careful to ensure that they do not trespass on the exclusive cognisance of the two Houses of Parliament, recognising the different constitutional roles played by Parliament and the courts. The incidence of such cases will, in any event, be very small (the evidence from elsewhere where similar powers have been placed on a statutory basis seems to confirm this). And in the end, Parliament has the whip hand and can re-legislate if the courts are appearing to frustrate its intentions.

12. While I tend to discount the risks of the courts overreaching themselves, one cannot predict the future with complete confidence. There is a trade-off between present benefit and future risk. In my judgement the benefits of having credible powers of enforcement outweigh the theoretical jeopardy to the exercise of the House's exclusive cognisance. Even in the event of a stand-off with the courts, I do not think the losses are likely to exceed the damage which arises from the House's present appearance of impotence.

What are appropriate sanctions for non-compliance or other contempts on the part of witnesses? How should these be applied?

13. "Other contempts" presumably include the deliberate misleading of or lying to a committee – the offence which originally gave rise to this inquiry. In my view it would be sensible to define this as a (criminal) offence in any legislation, rather than relying on an assumption of contempt as a matter of parliamentary "common law" and in order to avoid an exhaustive attempt to define contempts. Section 75(2) of Irish Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 is an example, though by piggy-backing on perjury as the test it sets a very high bar.[3]

[3] "If a person gives false evidence before a committee in such circumstances that, if the person had given the

14. Section 14 of the Contempt of Court Act 1981 currently provides for penalties of a period of imprisonment not exceeding two years or a fine not exceeding £2,500. Section 75(3) of the Irish Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 (and other sections) provides on summary conviction for a fine of €5,000 or imprisonment for a term not exceeding six months, or both; or on conviction on indictment, for a fine not exceeding €500,000 or imprisonment for a term not exceeding five years, or both. Section 22 of the New Zealand Parliamentary Privilege Act 2014 provides for a fine not exceeding NZ$1000 (around £500). Section 7 of the Australian Parliamentary Privileges Act 1987 provides for a fine not exceeding A$5000 (around £2,750) for an individual or A$25,000 (around £15,000) for a corporation, or a period of imprisonment not exceeding six months.

15. Under section 25 of the Scotland Act 1998, section 53 of the Government of Wales Act 2006 and section 45 of the Northern Ireland Act 1998 a person guilty of an offence of refusing to provide evidence to a committee is liable to a fine of up to level 5 (currently £5,000) or a period of imprisonment not exceeding 51 weeks in the case of the Scottish Parliament or Welsh Senedd or three months in relation to the Northern Ireland Assembly.

16. The range of fines provided by these international examples is clearly broad. As a minimum, it seems appropriate that contempt of Parliament should be treated at least as on all fours with contempt of court. However, it is easy to conceive of circumstances in which a fine at the maximum level set by the 1981 Act was a mere pinprick for a contemnor. The Australian practice of differentiating between an individual and a corporation has some appeal in that context. The effect of making contempt a criminal offence would, however, carry many other disabilities with it which should provide a strong disincentive to witnesses tempted to take the risk of defiance.

17. In all these examples, the alternative or addition of imprisonment is included in the range of penalties. The 1999 Joint Committee rejected this option, though it proposed no limit on fines. While imprisonment seems likely to be only appropriate in the most extreme cases, it would look to be a good idea to include it as a longstop, not least on the principle I urged of equality with contempt of court.

18. Such penalties can only plausibly be applied through using the courts in some way, even if an attempt is made to restrict their role to enforcement rather than trial. The House cannot simply reassert any such powers in the modern world. In purely practical terms, it has no plausible enforcement mechanisms. It is possible that the statute could give Parliament sweeping powers, and then link into the court system for enforcing payment of fines – although those powers could not be exercised without the risk of interference by the courts on the grounds that enforcement had interfered with one or more human rights.

19. The option of admonition by the House should perhaps be retained, though this would be a parallel track process which might require some thought about how it could be designed to fit into any statutory system. Other Acts referred to elsewhere have had savings which retain the "old" privileges,[4] and the 1999 Joint Committee recommended something similar.

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evidence before a court, the person would be guilty of perjury, the person is guilty of an offence".

[4] As does S.O. No. 44(5) of the House of Commons.

20. Several models for operationalising a system of sanctions are available.

21. In New Zealand the certificate of the Speaker that a fine has been imposed requires the courts to treat the matter as if it were a fine imposed for contempt of court. This has the appeal of simplicity, and retains the judgement as to whether an offence has been committed to the House. However, that itself has some downsides.

22. In Australia the collection of any fine is delegated to a court chosen by the Parliament, but the process for enforcing a sentence of imprisonment seems vague (although provision is made for the presiding officers to discharge a prisoner).

23. In both Australia and New Zealand the nature and range of the offences are not specified but contempts are defined by reference to the situation at Westminster at the moment of the foundation of the legislature. This strikes me as a bit odd and not really meeting the expectation of due process that a person should be easily able to establish what the law is before they choose whether or not to break it. However, in New Zealand at least, the standing orders spell out examples of contempts which include "deliberately attempting to mislead the House or a committee" and "failing to obey an order of the House or a summons issued by order of the House or by the Speaker".[5]

24. In Ireland, section 3 of Committee of Public Accounts of Dáil Éireann (Privilege and Procedure) Act 1970 provided that: "the committee may certify the offence of that person under the hand of the chairman of the committee to the High Court and the High Court may, after such inquiry as it thinks proper to make, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court". Under section 75 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 the offence is tried by the court and the sentence would be, presumably, imposed in the same way as for any other criminal offence.

25. The choice seems to be between retaining the trial and right to make a finding to the House and using the courts purely as an enforcement mechanism, or making contempts of committees criminal offences and handing the process of trial, verdict and sentence over to the courts lock, stock and barrel. The 1999 Joint Committee appeared to favour the latter course. On balance (and it is a nice judgement) I would be inclined agree.

26. This does, however, leave the courts with a wider margin of appreciation in which to insert their own assessment of the gravity of the offence or, presumably, to find that no offence has been committed within the meaning of the relevant Act. On the other hand it has the great benefit, in my view, of relieving Parliament of the task of trying a case, making a finding and deciding on an appropriate punishment. I think the experience of the Standards & Privileges/Privileges committees' inquiry into the News International case demonstrates that this is both an enormous procedural burden and one which Parliament is not well designed to carry – though the inquiry was very thorough and better-conducted than some court proceedings I have had the misfortune to be obliged to read.

[5] Standing Order 410 of the New Zealand House of Representatives.

27. If the criminal offence approach were adopted, I think it would be important to retain the right of initiating a prosecution in some way to the House, to forestall oppressive or vexatious complaints of a criminal offence and the waste of police and prosecutorial time pursuing them. However, if this were to be applied in cases where an allegation of deliberately misleading a committee was the issue, it would be a good deal more complicated than establishing the plain fact of a failure to respond to a summons for persons or papers.

What relevant developments have there been since the inquiry was originally launched?

28. It is probably worth remembering that the original cause of the referral of this matter to the Privileges Committee was the outcome of the News International case in which two witnesses were found to have lied to a committee of the House. Their punishment was admonition – to which the Committee had restricted itself from the very outset, no doubt in part to lower the litigious heat of its subsequent inquiry. The punishment was widely felt not to meet the crime – it certainly seems unlikely that the guilty parties would have got off so lightly if the misleading statements had been made to a court.

29. There is no solid evidence that any witness has subsequently lied to a committee of the House. But there have been plentiful enough examples of witnesses being evasive, uncooperative and downright insolent to committees. I do not think, when they are doing so, that they fear the possible consequence of an admonition, not least since they might well be aware that it would be likely to take several years to arrive.

30. The more salient recent event, clearly, was the finding of contempt against a recalcitrant witness for his refusal to answer a summons to appear before the Digital, Culture, Media and Sport Committee. I think members of the Privileges Committee are able to draw their own conclusions about whether the reputational damage suffered by the contemnor (often argued by those who oppose putting penal powers on a statutory basis as the main punishment carried by an admonition) can be said to have diminished his career or financial prospects or general place in the world. On that assessment, again, the judgement as to whether the punishment fitted the crime may hang.

31. More generally, the widely remarked development in which select committees are increasingly seeking evidence from non-state actors has probably become more marked since your inquiry was first announced. There are those who disapprove of this. However, committees are given by the House a wide degree of discretion in setting their own agenda, and I do not think neutering their powers is a plain and honest way of clipping their wings, if that is what people think should happen. It is a phenomenon that can reasonably, at least in part, be ascribed to the growing extent of interpenetration between the state and the private sector in the delivery of essential services and the support of economic life, education, housing, health and wider factors affecting the quality of citizens' lives.

32. Penal powers are really only relevant to non-government witnesses, and in particular to those who exercise great sway over the lives of citizens in one way or another. It is a political question appropriate for Parliament to answer as to what extent such individuals, organisations or corporations should be allowed to feel that they enjoy any impunity from parliamentary scrutiny. Contrariwise, Parliament should be very wary of setting itself up as a court or tribunal in matters relating to individuals such as professional standards, potentially

criminal behaviour or other matters for which there are more effective and appropriate places to weigh evidence, make judgments and impose sanctions.

What lessons can be learnt from other parliaments and assemblies in the UK and overseas?

33. Most of the useful detailed international and UK comparisons of which I am aware are referred to above throughout my answers to the Committee's questions. I would make two further observations from these comparisons.

34. The first is a very general one. Neither in the UK nor abroad have I come across any evidence that placing compellability powers or penal powers relating to contempts on a statutory footing has created any serious conflict between the legislatures and the courts. In saying that, I have to admit that I have discovered no actual example of the penal powers being used. I do not conclude from this that they are pointless. Penal powers are undoubtedly a weapon of last resort. The point of having a weapon of last resort is that you never use it – the principle on which the UK has held onto its nuclear deterrent capability for over sixty years. The fact that the weapon has not been used can be construed just as readily as evidence of its effectiveness as of its redundancy. Nobody knows what might have happened.

35. The second is a much more specific point about process. In New Zealand, Standing Order 196 of the Parliament requires a witness summons to be signed and served by the Speaker. The Speaker may only do so once they have satisfied themselves that the evidence, papers, or records sought by the committee are necessary to its proceedings, and that the committee has taken all reasonable steps to obtain them. In Ireland, Section 76 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 provides that a committee wishing to issue a compellability direction must first obtain the consent of the "appropriate committee", which is defined as the Procedure Committee of the Dáil (see also Standing Orders 97 and 119 of the Dáil).

36. While neither a presiding officer nor a procedure/privileges committee is necessarily endowed with the wisdom of Solomon, the gatekeeper role provided for in these two systems seems to me a desirable check on the potential for the impetuous or oppressive use of compellability powers by a select committee. The powers are delegated to a committee from the House – the House as a whole has a direct interest in ensuring that they are used proportionately and appropriately. This double lock also has the benefit of giving better assurance to the world at large, and to the courts if necessary,[6] that the powers have been used only carefully and with forethought.

Concluding Observations

Don't get tangled up in seeking the answer to everything

37. We have been discussing the desirability of codifying legislation on privilege for at least 180 years. As long ago as 1844, in the first edition of his *Treatise upon the Law, Privilege, Proceedings and Usage of Parliament*, Thomas Erskine May expostulated:

[6] There is an interesting issue around this point concerning the recent *Kerins* case in Ireland, where the PAC of the Dáil was found to have acted oppressively towards a witness. I could expand on this point if the Committee wished me to.

> The present position of privilege is, in the highest degree, unsatisfactory … It is not expected that Parliament should surrender any privilege that is essential to its dignity, and of the proper exercise of its authority; but the privileges of both houses should be secured by a legislative definition; and a mode of enforcing them should be adopted which would be binding on the courts.

Progress towards the outcome desired by Erskine May has been patchy at best.[7] A series of committees since the 1999 Joint Committee on Parliamentary Privilege have concluded that there is a need for legislation on various matters of privilege but warned against doing it "piecemeal". (Even the 2013 Joint Committee, which generally set itself against a legislative solution, asked for clarification of the Parliamentary Papers Act 1840 with respect to "effective repetition".) The consequence has in practice been that there has been no such legislation. I would counsel the present committee, if it decides to recommend a legislative solution, to steel itself to propose piecemeal legislation to address the particular matter which has been referred to it by the House rather than allowing the best to be the enemy of the good-enough by again deferring any solution until we can pass comprehensive legislation on privilege and contempts. (That said, the Australian 1987 Act and the New Zealand 2014 Act are both reasonably terse pieces of legislation. The same could not be said of the Irish 2013 Act, though that had to deal with some very particular problems arising from the fact that Ireland has a constitution. The Irish Act was a consolidation and recapitulation as well as expansion of several earlier Acts. Those Acts concentrated, as does the 2013 Act really, on the issue of the conduct of committee inquiries rather than the wider questions of contempts.)

Be specific

38. If the Committee does recommend a legislative solution, I would also counsel it to commission the Office of the Speaker's Counsel to prepare a draft bill to be appended to its report. A series of free-floating recommendations for action, without an attempt to pin these down to particularities, will all too easily end up on the backburner, with no-one to champion action and no flag for supporters to rally around. But it would be prudent not to underestimate the challenge of preparing such a draft.

Comity with the Lords

39. An obvious problem for legislation relating to parliamentary privilege as a whole would be securing the agreement of the House of Lords. The issues for the Lords are quite different to the ones which gave rise to this inquiry. The 1999 Joint Committee noted that the Lords had not had a contempt case for over a century. I see no particular impediment (though I may be missing something) to the Commons legislating on its own privileges and powers to punish contempts relating to committees if the Lords are reluctant to join in. It would be a sub-optimal solution but I do not think this would imply any disrespect or lack of comity – it would just reflect difference of circumstances and maybe a diversity of views. On the other hand, the Lords might take the view that although they had no expectation of using the

[7] See for example the chapter by Paul Evans on 'Privilege, Exclusive Cognisance and the Law' in *Parliament and the Law*, 2nd ed, eds Alexander Horne and Gavin Drewry, Hart/Bloomsbury, Oxford and London, 2018, 7-42; and the chapter by Eve Samson on 'Privilege: the unfolding debate with the Courts' in *Essays on the History of Parliamentary Procedure in Honour of Thomas Erskine May*, ed Paul Evans, Hart/Bloomsbury, Oxford and London, 2017, 287-310.

powers they were happy to have them on the statute book. And the rapid growth in that House of committees of inquiry might eventually change the weather there.

Article IX is not sacred

40. Legislation attenuating Article IX would not be a new departure.[8] In the later nineteenth century Parliament made a couple of little noticed moves to put the punishment of contempts on a statutory footing. The Parliamentary Witnesses Oaths Act 1871 extended the power to put witnesses on oath to committees of the Commons. Section 3 made a nod to the doctrine of not extending privileges.[9] The punishment for false witness was to be the same as that for perjury: the Perjury Act 1911 consolidated those provisions. The purpose was to make lying to a committee on oath a criminal matter. The implication of this example, and that of the Witnesses Protection Act 1892, discussed in the next paragraph, can only be that Article IX of the Bill of Rights was impliedly repealed insofar as it would be necessary to use the proceedings before any committee as evidence in any prosecution.

Witness protection

41. There is a missing element, I believe, in the Committee's inquiry. I described in my introduction the slight air of embarrassment that can surround a clerk trying to explain to a committee the extent of its PPR powers in theory and then in practice. A similar difficulty arises when trying to advise witnesses on the extent to which they are protected from disadvantage on account of evidence they may give. Witnesses before committees do not only need to be occasionally compelled and even more occasionally sanctioned. They also need to be protected. The Witnesses (Public Inquiries) Protection Act 1892 provides, in section 2, that anyone who: "… threatens, or in any way punishes, damnifies, or injures, or attempts to punish, damnify, or injure, any person for having given evidence upon any inquiry, or on account of the evidence which he has given upon any such inquiry, shall, unless such evidence was given in bad faith, be guilty of a misdemeanour …". Section 1 of the Act includes inquiries by committees of either House of Parliament in its scope.[10]

42. In any legislation updating contempts relating to select committee evidence I think it would be desirable to consolidate witness protection provisions. Section 133 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 provides one example of how this might be done.[11] It reads:

> (1) A person who threatens to inflict, or inflicts, injury, damage or loss on a witness, or who offers a reward, or rewards, a witness …
>
> > (a) with intent to influence, or in a manner calculated to influence, whether any such witness will give evidence or the nature, extent, duration or content of the evidence any such witness may give, or

[8] See, for example, the Report of the 1999 Joint Committee, paras 319-323, on the curious case of the Parliamentary Privilege Act 1770.

[9] Its states, stating: 'Nothing in this Act contained shall be held to confer any additional or further power or privilege on the Commons House of Parliament with reference to impeachment or other criminal jurisdiction or otherwise howsoever than is herein expressly enacted'.

[10] Section 7 of the 1892 Act reads: "Nothing in this Act contained shall in any way lessen or affect any power or privilege possessed by either House of Parliament, or any power given by statute in the premises".

[11] In section 128 it also deletes the references in the 1892 Act (which was carried over into the Irish statute book) to parliamentary inquiries and privilege.

(b) without lawful excuse, in retaliation for, or in consequence of, the giving of evidence by any such witness,

is guilty of an offence.

Perjury

43. On evidence under oath, my inclination would be to recommend the repeal the 1871 Act (along with S.O. No. 132). Questions put to witnesses by a select committee are rarely of the kind which are amenable to a factual yes or no answer, and the bar for perjury is set so high as to make the provision a pretty pointless one. It also tends, misleadingly, to suggest that a higher standard of truth applies to evidence given to a committee on oath than it does otherwise. However, other jurisdictions mentioned in this paper have retained and re-legislated the power of committees to take evidence under oath.

12 July 2020