



Demystifying Financial Privilege: Does the Commons' Claim of Financial Primacy on Lords Amendments Need Reform?

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Structure

- The perceived problem
- Our research
- Basic information & facts about financial privilege
- Specific complaints about financial privilege
- Overseas comparators
- Our recommendations

The problem

- Complaints about financial privilege date back many years
- Coalition's Welfare Reform Bill in 2012 a particular flashpoint:
 - 7 Lords defeats, all responded to with financial privilege
 - Lord Lawson: “invoked promiscuously” and “completely contrary to the conventions of the constitution”
 - Baroness Boothroyd: “very heavy-handed”
 - Lord Mackay of Clashfern: made debating amendments “a waste of time”
 - Public Finance magazine: “an abuse of privilege”
- Led to some clarificatory publications
- Controversy recurred over Legal Aid, Sentencing and Punishment of Offenders Bill in 2012

What we did

Research

- Identified every amendment on which financial privilege invoked 1974-2013
- Interviews with insiders
- Some overseas comparisons

Questions

- How does the system work?
- What – if anything – is wrong with it?
- What – if anything – should be done?
- Can overseas parliaments help to teach us anything?

Financial Privilege: the basics

- Part of Commons “financial primacy”, which is traceable to c17 resolutions & earlier convention
- Financial privilege based on convention, key source Erskine May
- When Commons receives Lords amendments:
 - Those with financial implications identified by Commons clerks (privilege “engaged”)
 - If Commons accepts amendment, privilege “waived”
 - If Commons makes amendment in lieu, financial privilege does not arise
 - If Commons rejects amendments, privilege “invoked”, as stated in the “Reason” sent to the Lords
- Where invoked, by convention “the Lords do not insist on their amendment” (Companion, 8.183)
- Some disagreement about appropriateness of Lords responding with similar amendments in lieu

Some facts

- Dec 2000 - Feb 2012: financial privilege waived on 610 amendments, invoked on 56
- But overall figures mask effects on Lords defeats
- Looked at all Lords amendments to four social security bills: where financial privilege invoked, only on defeats
- 1974-2013, financial privilege invoked on 9% of Lords defeats
- In 2010-13 the figure was 24%

Complaints about financial privilege

As discussed in the report:

1. The procedure for financial privilege is opaque
2. There are no clear rules for which amendments engage financial privilege
3. Financial privilege is being interpreted increasingly broadly
4. No explanation is given for why financial privilege applies
5. The privilege Reason doesn't reflect why the amendment was rejected
6. Decisions on financial privilege exclude MPs as well as peers
7. Financial privilege is controlled by government for political ends
8. Financial privilege weakens the Lords' capacity to scrutinise legislation
9. Financial privilege is being invoked more often than it was in the past

Transparency

- This, in our view, is the biggest problem
- There is great lack of understanding of the process itself (e.g. who does what)
- Definitions of what financial privilege extends to are unclear, and not openly available
- No explanation is given as to why financial privilege applies to a particular amendment
- There is some lack of clarity about how the Lords can respond

Government control of the process

- Complaints and confusion on this are commonplace:
 - “the Government chose to claim privilege”
 - “the Government have now made it the subject of the privilege amendment”
- Even ministers aggravate the problem:
 - “I ask the House to disagree to those amendments, and I will ask the Reasons Committee to ascribe financial privilege as the reason...”
- Decisions are in fact taken by neutral Commons clerks
- Though clerks take advice from parliamentary counsel, who may push for broad interpretation
- Odd (even inappropriate) that the clearest definition available is a PCO publication
- Some ministers appear to think that they are part of the decision process
- At the very least, an area of confusion and misunderstanding

Change over time

- Figures quoted above make it seem that financial privilege is being invoked more often: why?
- It is possible that definitions are moving, but any such change is probably small
- Clearly the number of Lords defeats, and insistences, has risen
- Key difference post-2010 is in proportion of defeats on which financial privilege *engaged*
- Hence reflects the changing policy agenda: coalition government and financial cuts
- The key change is political, not procedural

International experience

- It is not unusual for the second chamber in a bicameral system to have restricted powers over financial matters
- Looked at three countries in detail: Ireland, Canada & Australia
- In some cases limits are stricter: in all three, non-government MPs cannot table amendments with financial implications
- But in some cases there is also greater transparency:
 - In Australia statements published on how and why any amendment judged financial
 - In Canada statements have specified the costs involved
- In all three countries limits apply only to increases not decreases in spending

Recommendations

- Central requirement is for more transparency
- Procedures for financial privilege should be clearly set out on parliament website
- Clear definition of what Commons counts as financial privilege should be published
- Statements should be given explaining why any amendment is judged to have engaged it, and of likely costs
- Both of these should be more clearly under authority of the Speaker, to provide accountability
- The Lords may choose to define boundaries within which it will be restricted more narrowly than the Commons
- Some streamlining of the process (e.g. Reasons) may be desirable
- In the end this process is fragile, convention-based, and subject to change - particularly following future Lords reform.