

# Demystifying

ISBN: 978-1-903903-67-4  
Published by The Constitution Unit  
School of Public Policy

## **Contents**

Acknowledgements .....	3
Executive summary .....	4
Introduction.....	6

## List of tables

## Acknowledgements

## **Executive summary**





# Introduction



## **Financial privilege: the process**







## How the Commons claims financial privilege

Agree the amendment.

*Commons*

Propose an alternative.

*Journals of the House of*

Disagree to the amendment.

**How the Lords may respond**





## **Key statistics on financial privilege**

## **Financial privilege and Lords defeats**

## **Financial privilege and all Lords defeats 1974-2013**



## **Complaints about financial privilege**



*[The Clerk of Legislation] assesses whether each amendment has a financial effect. This is normally very straightforward – it's fairly obvious that an amendment, if made, would affect expenditure under the Bill, or would involve the levying of a charge.*

*With regard to the charges in respect of which they claim privilege, the Commons treat as a breach of privilege by the Lords not merely the imposition or increase of such a charge but also any alteration, whether by increase or reduction, of its amount or of its duration, mode of assessment, levy, collection, appropriation or management; and in addition, any alteration in respect of the persons who pay, receive, manage, or control it, or in respect of the limits within which it is leviable.*









## Assessment

*if they weren't parliament – if they were some other public authority – the courts, by way of judicial review, would tell them that it is elementary that public law requires those basic criteria to be satisfied: you must tell people what standards you are applying, and you must give a reason for your decision.*

**Complaint 6: Decisions on financial privilege exclude MPs as well as peers**

*Complaint*



*Assessment*

*designation invocation*





**Complaint 8: Financial privilege weakens the Lords' capacity to scrutinise legislation**

*Complaint*

**Complaint 9: Financial privilege is being invoked more often than it was in the past**

*Complaint*



## **International comparisons**

Ordinary legislation

Financial legislation

**Ireland**

**Canada**

*... this House considers that some of the aforementioned amendments, by altering the nature of the financial scheme proposed for the Unemployment Insurance system, do infringe the financial initiative of the Crown in a manner at variance with parliamentary practice respecting the Royal Recommendation ...*

*And considers, moreover, amendments 7 and 9, which would cause an increase to the budgetary deficit in the order of \$1.75 billion annually and thus confound the Ways and Means as approved by this House, to be for that reason in violation of the principle embodied in Sections 53 and 54 of the Constitution Act, 1867, and constitutional practice,*

*And, therefore, conscious in this of fellowship with its predecessors, reaffirms its sole and undoubted democratic right, which will not in this matter be waived, not only to grant aids and supplies to the Sovereign but to direct, limit, and appoint for all such grants their ends, purposes, considerations, conditions, limitations and qualifications, none of which are alterable by the Senate<sup>37</sup>*





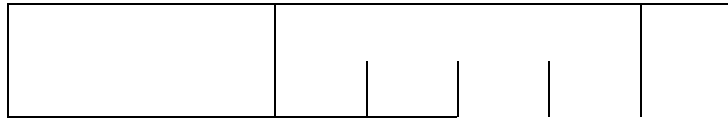
- a) laws which cause money to be expended out of a standing appropriation are a charge or burden on the people (within the meaning of the third paragraph of section 53); and
- b) it is likely that the amendment will have the effect of increasing the amount that may be paid out of a standing appropriation and therefore of increasing such a proposed charge or burden, which is prevented by the third paragraph of section 53.

*The effect of this amendment is to allow the making of regulations that may increase the amount of expenditure payable out of the Consolidated Revenue Fund under the standing appropriation in section 16 of the Taxation Administration Act 1953. It is covered by section 53 because it may increase a "proposed charge or burden on the people".*

*Amendment no. 8 would not be regarded as a request under the precedents of the Senate. The effect of amendment no. 8 is to provide the making of regulations which have the effect of changing the timing of the delivery of the research and development incentive to certain entities, through the introduction of quarterly tax credits. The Senate has long held the view that only a very direct effect on appropriation is regarded as an increase in charge or burden... [this proposal] does not meet the test of directness.*

## **The politics of financial privilege**

*bills*





**Financial privilege: what if anything needs to change?**















## **Appendix 1: Baroness Royall's 2009 memorandum**





*The Contemporary House of Lords: Westminster Bicameralism Revived*

*British Politics*

*Companion to the Rules of the Senate of Canada*

---

---



*Public Finance*

*Huffington Post UK*



---

