

CHAPTER 2:08

PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT ACT

Acts 14/1971, 15/1981 (s. 66), 18/1989 (s. 3), 11/1991(s. 4), 22/2001 (s. 4), 5/2014 (s. 33), 3/2016 (Part V).

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AN ACT to make provision in connection with the privileges, immunities and powers of Parliament, the members and office bearers of Parliament and persons employed in the service of Parliament or in the publication of parliamentary papers; to penalize persons who sit or vote in Parliament knowing or having reasonable grounds for knowing that they are not entitled to do so; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 7th May, 1971.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Privileges, Immunities and Powers of Parliament Act [*Chapter 2:08*].

2 Interpretation

(1) In this Act—

“Committee” means a standing, sessional, special or select committee of Parliament;

“journal” means votes and proceedings of Parliament;

“member” means a member of Parliament;

“officer of Parliament” means the Clerk or any other person appointed to the staff of Parliament in terms of section 154(4) the Constitution;

[Definition substituted by Act 3 of 2016]

“Clerk” means the Clerk of Parliament or any person acting for the Clerk of Parliament;

[Definition substituted by Act 3 of 2016]

“Speaker”—

(a) means the person elected in terms of section 126 and section 127 of the Constitution to be the Speaker of Parliament; and

(b) includes—

(i) the Deputy Speaker; or

(ii) any other member of Parliament when acting for the Speaker;

[Definition amended by Act 3 of 2016]

“Standing Orders”—

(a) means the Standing Orders made in terms of section 139 of the Constitution; and

(b) includes any rules relating to the conduct of business of any committee made in terms of the Standing Orders.

[Definition amended by Act 3 of 2016]

(2) Any reference in this Act to a member of Parliament shall, unless the context otherwise requires, be construed as including the Speaker.

PART II

PRIVILEGES, IMMUNITIES AND POWERS GENERALLY

3 Privileges, immunities and powers generally

Parliament and members and officers of Parliament shall hold, exercise and enjoy—

(a) the privileges, immunities and powers conferred upon Parliament, respectively, by this Act or any other law; and

(b) all such other privileges, immunities and powers, not inconsistent with the privileges, immunities and powers referred to in paragraph (a), as were applicable in the case of the House of Commons of the Parliament of the United Kingdom, its members and officers, respectively, on the 18th April 1980.

4 Privileges, immunities and powers to be judicially noticed

The privileges, immunities and powers of Parliament and members and officers of Parliament shall be part of the general and public law and it shall not be necessary to plead them but they shall be judicially noticed in all courts.

PART III

FREEDOM OF SPEECH AND DEBATE OR PROCEEDINGS AND OTHER PRIVILEGES AND IMMUNITIES

5 Freedom of speech and debate

(1) There shall be freedom of speech and debate or proceedings in or before Parliament and any committee and such freedom shall not be liable to be impeached or questioned in any court or place outside Parliament.

(2) Subsection (1) shall, subject to section *thirteen*, not apply to a person, other than a member, who gives evidence in or before Parliament or a committee.

(3) It is declared for the avoidance of doubt that a member shall not be liable to any civil or criminal proceedings, arrest or imprisonment or damages for anything said in, produced before or submitted to Parliament or any of its committees.

[Subsection substituted by Act 3 of 2016]

6 Stay of proceedings in cases of privilege

(1) Upon the production, at any stage of proceedings instituted for or on account of or in respect of any matter of privilege, to the presiding officer by the person against whom the proceedings are instituted of a certificate by the Speaker or, in his absence or incapacity, by the Secretary, stating that the matter in question is one concerning the privilege of Parliament the presiding officer shall immediately stay the proceedings which shall thereupon be deemed to be finally determined.

(2) It is declared for the avoidance of doubt that any matter or thing referred to in subsection (3) of section *five* is a matter of privilege for the purposes of subsection (1).

7 Exemption from attendance at court

(1) No member or officer of Parliament, whilst in attendance on Parliament or a committee, shall be required to attend as a witness in any proceedings, other than criminal proceedings, which are held or brought to trial elsewhere than at the seat of Parliament.

(2) No proceedings against a member or officer of Parliament, other than criminal proceedings, shall, whilst the member or officer is in attendance on Parliament or a committee, be held or brought to trial elsewhere than at the seat of Parliament.

(3) A certificate by the Speaker or, in his absence or incapacity, by the Clerk, stating that a member or officer of Parliament is in attendance on Parliament or a committee shall be sufficient proof of his attendance for the purposes of subsection (1) or (2).

8 Exemption from liability for acts authorized by Parliament

No person who acts reasonably and in good faith and without culpable ignorance or negligence shall be liable in damages or otherwise for anything done under the authority of Parliament and within its legal powers or under any warrant issued by virtue of those powers.

PART IV

ATTENDANCE BEFORE PARLIAMENT AND EVIDENCE BEFORE PARLIAMENT AND ELSEWHERE

9 Attendance before Parliament and evidence

Parliament or a committee—

(a) may by way of a summons issued in terms of section *ten*—

(i) order any person to attend before it;

(ii) require the production of any document or thing which is in the possession of or under the control of any person;

(b) may require any person attending before it, whether or not he is summoned in terms of section *ten*—

(i) to give evidence;

(ii) to be examined upon oath which the Speaker, the chairman of the committee or any other person appointed by the Speaker, may administer for the purpose.

10 Summonses

A summons to attend before Parliament or a committee shall—

(a) be issued under the hand of the Clerk; and

(b) state—

(i) the name of the person required to attend; and

(ii) the time and place at which he is required to attend; and

(iii) the description of the document or thing, if any, which he is required to produce; and

- (c) be served on the person required to attend by a police officer or other person authorized by the Clerk—
 - (i) delivering a copy to him in person; or
 - (ii) leaving a copy with some adult person at his usual or last known place of residence.

11 Witness expenses

A witness in or before Parliament or a committee, whether or not he is summoned in terms of section *ten*, shall, subject to the Standing Orders, be paid or tendered such sums in respect of the expenses of his attendance as are fixed by the Speaker.

12 Examination of witnesses

(1) A witness in or before Parliament or a committee, whether or not he is summoned in terms of section *ten*, shall, subject to this section, be bound—

- (a) to answer any question which may be put to him;
- (b) to produce any document or thing which he may actually have in his possession.

(2) No witness in or before Parliament or a committee shall be required or permitted to—

- (a) give evidence as to any fact, matter or thing; or
- (b) produce any document or thing;

which he would not be required or permitted to produce in any case depending before the High Court by reason that the fact, matter, thing or document on a principle of public policy and from regard to public interest ought not to be disclosed and is privileged from disclosure.

(3) No witness in or before Parliament or a committee shall be required to answer any question which is irrelevant to the subject of inquiry and of a private nature.

13 Stay of proceedings in cases against witnesses

(1) If a witness in or before Parliament or a committee, in the opinion of the Speaker or the chairman of the committee, as the case may be, answers fully and faithfully all questions put to him and his replies are relevant to the questions, the witness shall be entitled to apply for and be issued with a certificate by the Speaker or the chairman of the committee, as the case may be, stating that the witness was upon his examination so required to answer and did so answer all such questions.

(2) Upon the production by any person of a certificate issued to him in terms of subsection (1) at any stage of proceedings instituted against him for or on account of or in respect of—

- (a) anything said by him in the course of giving evidence in or before Parliament or a committee; or
- (b) any act or thing done before that time and revealed by his evidence;

the presiding officer shall immediately stay the proceedings which shall thereupon be deemed to be finally determined.

(3) A certificate issued in terms of subsection (1) shall not be produced as provided in subsection (2) unless the production has been authorized by Parliament.

(4) The production of a certificate issued in terms of subsection (1) shall not be authorized as is provided in subsection (3) if the person against whom the proceedings are instituted is charged with the crime of perjury or an offence relating to the giving of false testimony.

(5) The provisions of this section shall apply, *mutatis mutandis*, in the case of a witness who is required in terms of this Part to produce any document or thing to Parliament or a committee.

14 Evidence of parliamentary proceedings, etc., not to be given elsewhere without leave

No member, officer of Parliament or person employed in connection with the recording of evidence given in or before Parliament or a committee shall give evidence elsewhere of—

- (a) the content of anything said or any evidence given in or before, or document or thing produced to, Parliament or a committee; or
- (b) any proceedings or examination at the bar of Parliament or in or before a committee;

unless the giving of that evidence has been authorized by the Speaker.

15 Admissibility of journals as evidence

A copy of the journals printed or purporting to be printed by order of Parliament shall be admitted as evidence of such journals in all courts and other places without proof being given that the copy was so printed.

PART V

CONTEMPTS WHICH ARE ALSO OFFENCES AT LAW

16 Jurisdiction of Parliament

(1) It is declared for the avoidance of doubt that Parliament has all such powers and jurisdiction as may be necessary for inquiring into, judging and pronouncing upon the commission of any act, matter or thing in this Part declared to be an offence without derogation from the powers and jurisdiction exercisable by Parliament by virtue of paragraph (b) of section *three* with respect to the commission of any act, matter or thing, whether or not in this Part declared to be an offence, which is or may be adjudged by Parliament to be a contempt.

(2) Parliament shall have power to award and execute the punishments provided by this Part for the commission of any act, matter or thing which in this Part is declared to be an offence.

(3) Subsection (2) shall not be construed as precluding Parliament from awarding and executing any punishment for the commission of any act, matter or thing referred to in that subsection which Parliament has power and jurisdiction to award and execute by virtue of paragraph (b) of section *three* in addition to or instead of any punishment provided by this Part for the commission of that act, matter or thing.

(4) Parliament sitting as a court shall have all such rights and privileges of a court of record as may be necessary for the purpose of summarily inquiring into and punishing the commission of any act, matter or thing which in this Part is declared to be an offence.

(5) In determining whether to exercise its powers and jurisdiction for the purpose of judging and pronouncing upon the commission of any act, matter or thing in this Part declared to be an offence, and awarding and executing the punishments provided by this Part for the commission of that offence, Parliament shall be guided, but not bound, by the principle that if, in the given circumstances of the offence, a criminal court might reasonably be expected to impose a sentence of imprisonment without the option of a fine, or a sentence of imprisonment in conjunction with a fine, then the Prosecutor-General ought to be requested to institute a prosecution of the offence in terms of section 22.

[Subsection inserted by Act 3 of 2016]

17 Member not to vote on matters in which he has a direct pecuniary interest

(1) Subject to subsection (2), a member who, in or before Parliament or a committee, votes upon or takes part in the discussion of any matter in which he or she has a direct pecuniary interest shall be guilty of an offence and liable—

- (a) where the Prosecutor-General has, in terms of section 22, instituted the prosecution, to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment; or
- (b) where Parliament sits as the court by virtue of section 3(b), to a fine not exceeding twice the amount of the maximum fine in level fourteen or, in default of payment of the fine, to imprisonment for a period not exceeding one year.

[Subsection substituted by Act 3 of 2016]

(2) Subsection (1) shall not apply to—

- (a) any vote or discussion concerning the remuneration or allowances or other benefits to be received by members in their capacity as members; or
- (b) any interest which a member may have in any matter in common with the public generally or any class or section of the public.

18 Prohibition against fees, etc., for promoting or opposing proceedings in Parliament

(1) No member or person who is the employer, a partner or in the service of a member, whether in the practice of the profession of legal practitioner, parliamentary agent or otherwise, shall accept or receive, directly or indirectly, any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill, petition, resolution, motion or other matter or thing submitted or proposed to be submitted for the consideration of Parliament or a committee.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable—

- (a) where the Prosecutor-General has, in terms of section 22, instituted the prosecution, to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment; or
- (b) where Parliament sits as the court by virtue of section 3(b), to a fine not exceeding twice the amount of the maximum fine in level fourteen or, in default of payment of the fine, to imprisonment for a period not exceeding one year;

and, in addition, he or she shall be liable to repay the amount or value of the fee, compensation, gift or reward accepted or received by him or her.

[Subsection substituted by Act 3 of 2016]

19 False evidence before Parliament

(1) Any person who wilfully and corruptly gives before Parliament or a committee a false answer to any question material to the subject of inquiry which is put to him in the course of any examination shall be guilty of an offence and liable to the punishments and penalties prescribed by law for perjury.

(2) Any person who wilfully and corruptly gives before Parliament or a committee a false answer to any question material to the subject of inquiry which is put to him or her in the course of any examination shall be guilty of an offence and liable—

- (a) where the Prosecutor-General has, in terms of section 22, instituted the prosecution, to the punishments and penalties prescribed by law for perjury; or

- (b) where Parliament sits as the court by virtue of section 3(b), to a fine not exceeding twice the amount of the maximum fine in level fourteen or, in default of payment of the fine, to imprisonment for a period not exceeding two years.

[Subsection substituted by Act 3 of 2016]

20 Penalty for printing or tendering in evidence reports, etc., falsely purporting to be printed under parliamentary authority

Any person who—

- (a) prints or causes to be printed a copy of any enactment or of any report, paper, minutes or minutes of proceedings of Parliament or a committee as purporting to have been printed by the Government Printer or the Parliamentary Printer or by the order or by or under the authority of Parliament, a committee or the Speaker which was not so printed; or
- (b) tenders in evidence as purporting to have been so printed a copy of any enactment, report, paper or minutes referred to in paragraph (a) knowing that it was not so printed;

shall be guilty of an offence and liable—

- (c) where the Prosecutor-General has, in terms of section 22, instituted the prosecution, to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
- (d) where Parliament sits as the court by virtue of section 3(b), to a fine not exceeding twice the amount of the maximum fine in level fourteen or, in default of payment of the fine, to imprisonment for a period not exceeding two years.

[Section substituted by Act 3 of 2016]

21 Certain other contempts to be offences

Any person who commits any act, matter or thing specified in the Schedule shall be guilty of an offence and liable—

- (a) where the Prosecutor-General has, in terms of section 22, instituted the prosecution, to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
- (b) where Parliament sits as the court by virtue of section 3(b), to a fine not exceeding twice the amount of the maximum fine in level fourteen or, in default of payment of the fine, to imprisonment for a period not exceeding two years.

[Section substituted by Act 3 of 2016]

22 Prosecutions by Prosecutor-General

(1) The Prosecutor-General may, if requested to do so by resolution of Parliament but not otherwise, take such steps as are necessary to bring to trial before a court of competent jurisdiction any person who is alleged to have committed—

- (a) any act, matter or thing which in this Part is declared to be an offence; or
- (b) within the precincts of Parliament any other act, matter or thing which is a crime or an offence otherwise than by reason of this Part and into and upon the commission of which Parliament has powers and jurisdiction to inquire, judge and pronounce by virtue of paragraph (b) of section *three*.

(2) It is declared for the avoidance of doubt that a court before which proceedings are instituted in pursuance of subsection (1) has all such powers and jurisdiction as are exercisable by it in or in connection with a criminal trial.

[Subsection amended by Act 3 of 2016]

(3) Nothing in subsection (1) shall be construed as precluding the Prosecutor-General from taking such steps as are necessary to bring to trial before a court of competent jurisdiction a person who is alleged to have committed within the precincts of Parliament a crime or an offence which is not an act, matter or thing referred to in subsection (1).

[Section amended by Act 5 of 2014]

PART VI

WARRANTS AND ARRESTS

23 Warrants for arrest and imprisonment

Subject to section 23A, the Speaker may issue a warrant for the arrest and imprisonment of any person who—

- (a) has been adjudged by Parliament to be guilty of contempt; and
- (b) has been sentenced to imprisonment or has failed to pay a fine or undergo some other punishment to which he has been sentenced.

[Section amended by Act 3 of 2016]

23A Judicial authority for issuance of warrants by Speaker

Where Parliament sitting as a court has imposed any fine for the commission of an offence under Part V, and the offender has not paid the fine in full within the period stipulated by Parliament or, if the period is not so stipulated, within twenty-one days of the imposition of the fine, the Clerk or any officer of Parliament authorised by the Clerk may forthwith transmit to the clerk or registrar of any court having competent jurisdiction to impose the fine a document signed by the Speaker setting out the particulars of the offender, the offence, the fine and the custodial sentence imposed by Parliament in the event of the fine not being paid, whereupon—

- (a) the document shall be entered by the clerk or registrar in the records of that court; and
- (b) as soon as the document has been recorded in terms of paragraph (a) it shall be laid before the court and the court shall thereupon—
 - (i) sentence the offender to the term of imprisonment imposed by Parliament in default of payment of the fine; and
 - (ii) by endorsement on a copy of the document authorise the Speaker to issue the appropriate warrant of arrest and imprisonment in accordance with this Part.

[Section inserted by Act 3 of 2016.]

24 Form of warrants

(1) A warrant referred to in section *twenty-three* shall—

- (a) state that the person named in the warrant has been adjudged guilty of a contempt; and
- (b) specify the nature of the contempt.

(2) Subject to subsection (1), it shall not be necessary to observe any particular form in a warrant referred to in section *twenty-three*.

25 Arrests without warrant

Any person who creates or joins in any disturbance in or within the vicinity of Parliament whilst Parliament is actually sitting may be arrested without warrant on the verbal order of the Speaker and kept in the custody of an officer of Parliament or a police officer until a warrant is issued for his detention in prison.

26 Execution of warrants, etc

(1) All police officers and officers of Parliament shall aid and assist in—

- (a) the execution of any warrant issued in terms of section *twenty-three* or *thirty-two*;
- (b) the arrest and detention of any person in pursuance of a verbal order such as is referred to in section *twenty-five*.

(2) The person in charge of any prison or other place shall, on the production of a warrant referred to in paragraph (a) of subsection (1) directing that the person named in the warrant be imprisoned in that prison or other place—

- (a) receive the person into his custody in that prison or other place; and
- (b) imprison him according to the tenor of the warrant.

27 Powers in relation to execution of warrants and orders

Subsection (2) of section 34, sections 35, 36, 37, 39 and 40, subsections (1), (2) and (4) of section 41 and sections 43, 44, 45 and 46 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to the execution of any warrant or order referred to in subsection (1) of section *twenty-six* as if any reference to a peace officer in those sections included a reference to an officer of Parliament charged with aiding and assisting in the execution of the warrant or order.

PART VII

GENERAL

28 Protection in regard to parliamentary publications

(1) Upon the production to the presiding officer by any person against whom proceedings are instituted for or on account of or in respect of the publication by him or on his behalf by the order or authority of Parliament or a committee of any report, paper, minutes or minutes of proceedings of a certificate by the Speaker stating that the report, paper, minutes or minutes of proceedings were so published, the presiding officer shall immediately stay the proceedings which shall thereupon be deemed to be finally determined.

(2) A person against whom proceedings referred to in subsection (1) are instituted shall give to the person by whom those proceedings are instituted not less than twenty-four hours notice of his intention to produce any certificate referred to in that subsection.

29 Protection in regard to publication of extracts from parliamentary publications

If, in any proceedings instituted for or on account of or in respect of the publication of an extract from or abstract of any report, paper, minutes or minutes of proceedings such as are referred to in section *twenty-eight*, the court is satisfied that the extract or abstract was published *bona fide* and without malice, judgment shall be entered for the person against whom the proceedings are instituted.

30 Unqualified person sitting or voting

Any person who sits or votes in Parliament knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty, recoverable by civil action in a competent court by the Minister responsible for finance, of forty dollars for each day on which he sits or votes.

31 Penalties and fines to be paid into Consolidated Revenue Fund

Any penalty referred to in section *thirty* or any fine imposed by Parliament for contempt shall be paid into the Consolidated Revenue Fund.

32 Administrative penalty of imprisonment for contempt, etc

(1) It is declared for the avoidance of doubt that any person adjudged by Parliament to be guilty of a contempt which is not an act, matter or thing declared in Part V to be an offence may, in addition to any other penalty to which he or she is liable by virtue of this Act or any other law, be committed to prison for such period during the current session of Parliament as Parliament may determine, which period, however, shall terminate—

(a) on the adjournment of the next sitting of the House which adjourned first after the sitting during which person is committed to prison; or

(b) on the prorogation or dissolution of Parliament;

whichever is the earlier date.

(2) Parliament shall not have power to impose—

(a) any fee for any contempt; or

(b) any fine for any contempt which is not an act, matter or thing declared in Part V to be an offence.

(3) Sections 23 and 24 shall, apply with such changes as may be necessary, to a warrant of committal to prison issued in pursuance of subsection (1).

[Section substituted by Act 3 of 2016]

33 Control of accounts and appropriations of Parliament

The control of the accounts and expenses of Parliament and of the appropriations of moneys for the service of Parliament shall be vested in the Speaker, and the receipts of the Speaker relating to all matters affecting the services of Parliament shall, notwithstanding anything to the contrary in any other law, be valid in all respect.

SCHEDULE (Section 21)

OTHER CONTEMPTS WHICH ARE OFFENCES

1. Wilfully failing or refusing to obey any rule, order or resolution of Parliament.
2. Disobeying any summons issued in terms of section *ten*.
3. Refusing to be examined before or to answer any lawful and relevant question put by Parliament or a committee.
4. Prevarication or other misconduct as a witness before Parliament or a committee.
5. Presenting to Parliament or a committee any false, untrue, fabricated or falsified document or thing with intent to deceive Parliament or the committee.
6. Destroying, putting away or divesting himself of a document or thing which he or some other person has been ordered to produce before Parliament or a committee.
7. Tampering with, deterring, threatening, beguiling or in any way unduly influencing any person in regard to evidence to be given by him before Parliament or a committee.
8. Molesting, assaulting or threatening a witness on account of evidence given by him before Parliament or a committee.
9. Publishing the proceedings of a committee or evidence given before a committee before the proceedings of the committee are reported to Parliament.
10. Wilfully publishing a false or perverted report of any debate or proceedings in Parliament or wilfully misrepresenting any speech made by a member.
11. Publishing a defamatory statement reflecting on the proceedings or character of Parliament or a committee.
12. Publishing a defamatory statement concerning a member in respect of his conduct as a member.
13. Making any oral or written threat to a member or challenging him to fight on account of his conduct in Parliament or a committee.
14. Offering to or accepting by a member or officer of Parliament of a bribe to influence him in his conduct as a member or officer.
15. Offering to a member a fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill, petition, resolution, motion or other matter or thing submitted for the consideration of Parliament or a committee.
16. Assaulting, insulting, interfering with or wilfully obstructing a member coming to or going from Parliament or whilst within the precincts of Parliament or on account of his conduct in Parliament or a committee or en-

deavouring to compel a member by force, insult or menace to declare himself in favour of or against any proposition or matter pending or expected to be brought before Parliament or a committee.

17. Assaulting, insulting, interfering with, molesting, resisting or wilfully obstructing an officer of Parliament in the execution of his duty or whilst coming to or going from Parliament or whilst within the precincts of Parliament in the course of or in connection with his duties or on account of his conduct as an officer.
18. Creating or joining in any disturbance in Parliament or the vicinity of Parliament whilst Parliament is sitting whereby the proceedings of Parliament are or are likely to be interrupted.
19. Committing any act, matter or thing specified in and declared to be a contempt in any Standing Order.