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The United Kingdom constitution - a mapping exercise

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Introduction

It is often said that the constitution of the United Kingdom of Great Britain and Northern Ireland is "unwritten", or even that it does not exist. In fact, and as the Law Wales website notes, "most of the laws, conventions and understandings relating to the constitution are written down", it is just that "they cannot be found conveniently written down all in one place". This lack of a codified constitution makes the UK unusual but not unique: Israel and New Zealand also lack fully codified constitutions.

The academic J. A. G. Griffith once argued that the UK "constitution is what happens [...] if it works, it's constitutional". It was, he concluded, essentially a "political constitution" rather than legal in nature. Christine Carpenter and Andrew Spencer have been more specific, defining a constitution as "the set of political, governmental and legal structures and shared values within which the business of everyday politics and governance operates".

As the Supreme Court stated in its judgment on *Miller II*:

> Although the United Kingdom does not have a single document entitled "The Constitution", it nevertheless possesses a Constitution, established over the course of our history by common law, statutes, conventions and practice. Since it has not been codified, it has developed pragmatically, and remains sufficiently flexible to be capable of further development.

As this suggests, there are several "sources" of the UK constitution, which are introduced in the first section of this research briefing. These include legislation, the royal prerogative, case law and constitutional conventions. The last of these are captured in the pages of Hansard, government Command Papers, Freedom of Information requests and even The Times' correspondence columns. In recent decades, conventions have been set out in official (but not legally binding) documents such as the Cabinet Manual and Ministerial Code. Some are frequently updated, for a flexible constitution is also an ever changing one.

This briefing then attempts to "map" the UK's constitution, summarising the main statutes, prerogatives, conventions and case law in several recognised constitutional categories. The focus is on the constitution as it is rather than as it has been in the past; on describing aspects which are commonly referenced, most relevant and perhaps often misunderstood. There is also an attempt to capture various elements of what Walter Bagehot termed the "dignified constitution", the UK's often colourful ceremonial traditions.

Naturally, this is selective. As Sir Ivor Jennings observed in The Law and the Constitution, a writer on the UK constitution "selects what seems to him to be important". And as Professors Andrew Blick and Robert Blackburn have

observed, it is probably "not possible to establish with certainty and wide agreement what precisely are all the contents of the constitution".

What this briefing is not is an attempt to codify the UK constitution. However, as Nick Barber has pointed out:

> we should take care not to overestimate the differences between written and unwritten constitutions: large parts of the UK constitution are written, whilst large parts of the constitutions of states with a capital c Constitution lie outside of that document.

Above all, what follows is intended as a navigational aid to what can often appear an endless and impenetrable mass of constitutional information. It will regularly be updated and will endeavour to state the law as at the date on the cover.

1 Sources of the UK's constitution

The United Kingdom does not have a codified constitution. As the Cabinet Manual states:

> There is no single document that describes, establishes or regulates the structures of the state and the way in which these relate to the people. Instead, the constitutional order has evolved over time and continues to do so. It consists of various institutions, statutes, judicial decisions, principles and practices that are commonly understood as 'constitutional'.[1]

This also means that describing something as "constitutional" or "unconstitutional" in the UK is an inexact science. As Lord Reid observed in 1969:

> It is often said that it would be unconstitutional for the United Kingdom Parliament to do certain things, meaning that the moral, political and other reasons against doing them are so strong that most people would regard it as highly improper if Parliament did these things. But that does not mean that it is beyond the power of Parliament to do such things.[2]

1.1 Statute

Primary legislation

"Primary legislation" is that which does not owe its authority to any higher form of legislation.[3] Primary legislation issued as an Act of Parliament of the UK Parliament is the "highest form of law and takes precedence over all other forms".[4] Together with other sorts of legislation, primary legislation is sometimes known as "the statute book", in other words the whole body of statute law currently in force.[5] It is one of the most significant sources of the UK constitution.

1 The Cabinet Manual: A guide to laws, conventions and rules on the operation of government (1st edition), Cabinet Office, October 2011, para 4.
2 *Madzimbamuto v Lardner-Burke* [1969] 1 AC 645 (PC).
3 For statutory definitions of primary legislation see the Interpretation Act 1978, section 21 and the Human Rights Act 1998, section 21.
4 Brice Dickson, Law in Northern Ireland (4th edition), London: Hart, 2022, p56. During the UK's membership of the European Union (1973-2020), the case of *Factortame* established the supremacy of EU law over UK Acts of Parliament (*R (Factortame Ltd) v Secretary of State for Transport* [1990] UKHL 7).
5 Understanding Legislation, legislation.gov.uk website. Writing in 1964, the Scottish academic J. D. B Mitchell observed that by the "use of scissors and paste it would be possible to produce out of the Statute Book a 'constitution' which would be very nearly complete" (Constitutional Law, Edinburgh:

Although acts of the devolved Scottish Parliament, Senedd and Northern Ireland Assembly by and large have the same appearance as primary legislation passed by the UK Parliament (and are often referred to as such), they are a type of secondary legislation.[6] Devolved primary legislation can, however, modify existing UK Parliament legislation, provided it is within devolved or transferred competence. Devolved acts usually include the territorial designation in parenthesis in the short title.

All legislation made by the UK Parliament, General Synod of the Church of England (Measures) and devolved legislatures is formally published by the Keeper of Public Records in their capacity as the King's Printer of Acts of Parliament, the Government Printer for Northern Ireland and the King's Printer for Scotland.[7]

The statute book also includes laws enacted by parliaments of the separate countries which co-existed in the British Isles before the UK was formed:

- the Parliament of England (which included Wales) from 1267 to 1706 (Acts of the English Parliament)
- the Parliament of Scotland from 1424 to 1707 (Acts of the Old Scottish Parliament)[8]
- the Parliament of Great Britain (England, Wales and Scotland) from 1707 to 1800
- the Parliament of Ireland from 1495 to 1800 (Acts of the Old Irish Parliament)

Between 1921 and 1999, there were also three sources of Northern Ireland legislation which continue to form part of the UK statute book:[9]

- Acts of the Parliament of Northern Ireland from 1921 to 1972[10]

W. Green, 1964, p8). Westlaw UK, a subscription service, provides a fully updated online text of all UK legislation, linked to relevant quasi-legislation.

6 Brice Dickson, Law in Northern Ireland (4th edition), p65. The Law Wales website states that Acts of the Senedd "have the same status as UK Parliament Acts, which are primary legislation". In *Whaley v Watson* [2000] SC 340, the Inner House of the Court of Session rejected the suggestion that the Scottish Parliament enjoyed immunity from judicial review.

7 About Us, legislation.gov.uk website. The Public Record Office of Northern Ireland is governed by the Public Records Act (Northern Ireland) 1923. Clause of 371 of the Legislation (Procedure, Publication and Repeals) (Wales) Bill (a bill being considered by the Senedd) would create the additional position of The King's Printer for Wales. Sections 41 and 46 of the Interpretation and Legislative Reform (Scotland) Act 2010 make further provision for the King's Printer for Scotland.

8 As of October 2017, it is believed there are 83 Acts of the Old Scottish Parliament still in force, either wholly, partly or as revised and amended by subsequent legislation (Pre-1707 statutes still in force, Records of the Parliaments of Scotland website). Section 11 of the Interpretation and Legislative Reform (Scotland) Act 2010 makes provision for references to Acts of the Parliaments of Scotland (an "old Scots Act").

9 Section 24(5) of the Interpretation Act 1978 defines "Northern Ireland legislation".

10 In these (as in present Assembly Acts), "Northern Ireland" in parentheses appears after "Act", to differentiate these from Acts of the UK Parliament. For statutory definitions relating to the

- Measures of the Northern Ireland Assembly (1974 only)
- Orders in Council made under Northern Ireland Acts between 1972 and 1999[11]

Certain legislative instruments made by the Privy Council under the royal prerogative are also classed as primary legislation:[12]

- Prerogative Orders in Council (made by the King on the advice of the Privy Council)[13]
- Prerogative Orders of Council (made by the Lords of the Privy Council – Privy Counsellors – without the King's approval)[14]
- Prerogative Royal Proclamations[15]

A prerogative instrument is effective from the moment it passes under the Great Seals of the Realm or Northern Ireland, or the Scottish and Welsh Seals.

Prerogative Orders in Council usually concern certain public appointments while Orders of Council approve amendments to the by-laws or statutes of Chartered Bodies, that is organisations established under Royal Charters.

The reason why some powers are vested in an Order in Council rather than a regular Statutory Instrument "is that the more prestigious formality of an Order in Council may seem appropriate to some classes of legislation".[16]

Separately, Royal Warrants, Royal Instructions, Regulations and Letters Patent are also classed as primary legislation.[17] This is because the legislative power of the Crown is original and not subordinate.[18]

Parliament, Commons and Senate of Northern Ireland, see the Interpretation Act (Northern Ireland) 1954, section 41. And for a full account of this "Constitution of Northern Ireland", see the three volumes by Sir Arthur S. Quekett (Belfast: HMSO, 1928-33).

11 Although these Orders in Council took the form of UK Statutory Instruments (which are secondary legislation), they continued the series of statutes known as "Acts of the Northern Ireland Parliament" during a long period of "Direct Rule" by the UK Parliament and government. The relevant enabling acts were the Northern Ireland (Temporary Provisions) Act 1972, section 1 and the Northern Ireland Act 1974, Schedule 1.

12 This means they cannot be invalidated by reason of being incompatible with the European Convention on Human Rights (Human Rights Act 1998, section 21).

13 Orders in Council whether prerogative or statutory are divided into "articles" rather than "sections", as in the case of primary legislation.

14 Orders of Council made since January 2017 are listed on the Privy Council Office website.

15 Under article 3 of The Crown Office (Forms and Proclamations Rules) Order 1992, royal proclamations are published in the London, Edinburgh and Belfast Gazettes, but if the Lord President of the Council thinks it "expedient", he or she "may direct that copies of such proclamations shall in addition be sent to such High Sheriffs, Sheriffs, Lord Mayors and Mayors in England and Wales and to such Sheriffs Principal in Scotland as he thinks fit and the contents of such proclamations shall thereupon be made known in the manner accustomed".

16 A. W. Bradley. K. D. Ewing and C. J. S. Knight, Constitutional and Administrative Law (18th edition), London: Pearson, 2022, p688.

17 Statutory Instrument Practice, The National Archives, November 2017, p4.

18 This was accepted by Lord Hoffman in *R (Bancoult) v Foreign Secretary (No. 2)* [2008] UKHL 61.

Secondary legislation

"Secondary legislation" – also called subordinate or delegated legislation – is that made by a person or body under authority contained in primary legislation (known as the "parent" or enabling act).[19] Typically, powers to make secondary legislation may be conferred on Ministers, on the Crown or on public bodies. In the UK, the main types of secondary legislation are:

- Statutory Instruments (or SIs, generally post-1948)[20]
- Statutory Rules and Orders (generally pre-1948)
- Church Instruments (secondary legislation made under Church of England Measures)

Under section 2 of the Statutory Instruments Act 1946, immediately after the making of any Statutory Instrument above, it shall be sent to the King's Printer of Acts of Parliament and numbered accordingly.[21]

In Northern Ireland, secondary legislation is called Statutory Rules, which are defined in section 4 of the Statutory Rules (Northern Ireland) Order 1979 as all "orders, rules, regulations or byelaws" which have effect in Northern Ireland made after 31 December 1958 by a "rule-making authority" (as defined in Schedule 1) in exercise of any power of a legislative character conferred by:

- Any Act of the Parliament of Northern Ireland
- Any Act of the Northern Ireland Assembly
- Any Act of the Parliament of the UK passed before 1 January 1974, if the power relates to transferred matters, and
- Any Act of the Parliament of the UK passed after 1 January 1974, if the power was exercisable by Statutory Rule for the purposes of the Statutory Rules Regulations (Northern Ireland) 1958 or the 1979 Order

Secondary legislation which has effect in Wales is defined in Schedule 1 to the Legislation (Wales) Act 2019 as:

> regulations, orders, rules, Orders in Council, schemes, warrants byelaws and other instruments made under a Senedd Act, an Assembly Measure, an Act of Parliament or Retained EU Law.

19 For statutory definitions of secondary , subordinate or delegated legislation see the Interpretation Act 1978, section 21 and the Human Rights Act 1998, section 21. For the purposes of the latter, subordinate legislation includes devolved primary legislation.

20 Under section 1 of the Statutory Instruments Act 1946, every power to make an Order in Council conferred by an Act of Parliament passed after 1 January 1948 must be a Statutory Instrument.

21 The Statutory Instruments Regulations, 1947 includes several exemptions from publication.

Statutory Orders in Council are those in which the King has been empowered via statute to make subordinate legislation via the Privy Council, [22] while Statutory Orders of Council generally concern the approval of regulations or rules for (or lay appointments to) statutory regulatory bodies. [23]

Statutory Instruments Practice is a practice guide for those involved in preparing and making SIs. [24]

For delegated legislation which comes before the House of Commons, the practice is for the instrument to be debated – usually briefly – in a specially convened Delegated Legislation Committee.[25] In the House of Lords, the Delegated Powers and Regulatory Reform Committee scrutinises proposals in bills to delegate legislative power from Parliament to another body and also examines Legislative Reform Orders.[26] There also exists a statutory Statutory Instruments (Joint Committee) which considers Statutory Instruments made in exercise of powers granted by an Act of Parliament.[27]

In the Northern Ireland Assembly the Committee for the Executive Office scrutinises delegated legislation,[28] as does the Delegated Powers and Law Reform Committee of the Scottish Parliament and the Legislation, Justice and Constitution Committee of the Senedd.

The introductory text to Statutory Instruments of a constitutional nature includes the heading "Constitutional Law".

Assimilated (EU) law and relevant separation agreement law

The European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) repealed the European Communities Act 1972, thus removing the provision that European Union (EU) legislation automatically took effect as domestic law in the UK.[29] It transferred all EU law onto the UK statute book and gave Ministers of the Crown powers to make changes to "retained EU law".[30] Under section 5 of the Retained EU Law (Revocation and Reform) Act 2023, this is now known as

22 In certain cases, draft Orders may be laid before the UK Parliament, the Scottish Parliament and the Senedd. The introductory text will state that His Majesty, "in exercise of the powers conferred by section [insert statutory reference], is pleased, by and with the advice of His Privy Council, to order as follows".

23 Professional bodies, Privy Council Office website.

24 It is produced by the Legislation Services team at The National Archives, which is a non-ministerial department.

25 See the Delegated Powers and Regulatory Reform Committee, Guidance for Departments: on the role and requirements of the Committee, November 2021.

26 See also Legislative reform orders: guidance for policy officials, Department for Business and Trade, 27 September 2023.

27 The Statutory Instruments Regulations, 1947, Regulation 11.

28 Assembly Standing Order 43 provides the terms of reference for an Examiner of Statutory Rules.

29 The UK left the EU by virtue of Article 50 of the Treaty on European Union.

30 Schedule 5 to the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, requires publication of EU Regulations, EU Decisions, and EU tertiary legislation up to 23:00 on 31 December 2020.

"assimilated law" and is no longer supreme over UK law.[31] A "dashboard" of Retained EU law and assimilated law is available online.

Article 4 of the November 2018 UK-EU Withdrawal Agreement requires that that agreement, and the EU laws to which it gives effect (such as those in the Protocol on Ireland/Northern Ireland, see Section 2.2), to be enforceable in UK courts. Section 7A of the 2018 thus provides for all rights and powers arising under the Withdrawal Agreement (including those of EU citizens) to be given direct effect in UK law. This is a new category of law called "relevant separation agreement law" (as defined in section 7C(3)). It includes all UK primary and secondary legislation made to fulfil the terms of the Withdrawal Agreement and related agreements with the European Economic Area/European Free Trade Association and with Switzerland.[32] Under section 7C(1), any question as to the "validity, meaning or effect" of relevant separation agreement law is to be decided (so far as applicable) in accordance with the three separation agreements.

UK courts are no longer bound by decisions of the Court of Justice of the European Union (CJEU) and may not make references to it. However, courts can have regard to decisions of the CJEU enacted after 2020 so far as they are relevant to a matter before the court.[33]

Quasi-legislation

The UK's governments regularly issue what has been called "quasi-legislation" in the form of codes of guidance, practice, codes of conduct etc. Regulators and other public bodies do the same. Guidance and other quasi-legislation are "statutory" if issued under powers conferred by primary (and occasionally subordinate) legislation; otherwise, it is "voluntary". In most cases, the statutory duty is not to "comply" with but "have regard to" the guidance or code. Most quasi-legislation can be judicially challenged on the same basis of subordinate legislation.[34]

Constitutional statutes

In the 2002 case of *Thoburn*, Sir John Laws introduced the idea of "constitutional statutes". He defined such a statute as:

> one which (a) conditions the legal relationship between citizen and state in some general, overarching manner, or (b) enlarges or diminishes the scope of what we would now regard as fundamental constitutional rights.

Sir John argued that while ordinary statutes could be impliedly repealed, constitutional statutes could not (see Section 1.4). He added that the repeal

31 Commons Library research briefing CBP10140, A shift in approach? Assimilated law reform and the change of government. The Interpretation Act (Northern Ireland) 1954, section 44A, defines "assimilated law" in relation to Northern Ireland enactments.

32 See the EEA EFTA Separation Agreement and Swiss Citizens' Rights Agreement, Department for Exiting the European Union, 20 December 2018.

33 European Union (Withdrawal) Act 2018, section 6.

34 Daniel Greenberg, How to Read Legislation, Amazon, November 2024, pp 4, 25 & 29.

or amendment of a constitutional statute could be achieved only through express language in a subsequent Act of Parliament or where the intention of Parliament to alter or repeal earlier legislation was indisputable.[35] Sir John's remarks did not relate directly to the judgment and are contested, although the existence of constitutional statutes and their immunity from implied repeal has been accepted by the Supreme Court.[36]

There is no official definition or list of constitutional statutes.[37] A constitutional statute can be repealed or amended by Parliament, like any other statute.[38] In Northern Ireland, meanwhile, the "constitutional laws of Northern Ireland" are defined in section 46 of the Interpretation Act (Northern Ireland) 1954 as the "statutory provisions relating to or affecting the legislative powers of the [Northern Ireland] Assembly".

There exists, however, a Commons convention under which the committee stage of bills considered to be of "first class constitutional importance" are considered by a Committee of the Whole House.[39] The House of Lords Constitution Committee also examines the constitutional implications of all public bills which come before the Lords. The latter committee's terms of reference require it "to keep under review the operation of the constitution".[40]

1.2 Royal prerogative

The royal prerogative is the "residual power inherent in the Sovereign, and now exercised mostly on the advice of the Prime Minister and Ministers of the Crown".[41] These powers do not require parliamentary authority, although they can be complemented by statute. Prerogative powers can be exercised by:

- the King acting alone (for example, the appointment of a Prime Minister and conferral of certain honours)

35 *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin).

36 In *BH v Lord Advocate* [2012] UKSC 24, Lord Hope agreed that the Scotland Act 1998 was of such a fundamental constitutional nature that it could only be altered by express provision. For a list of "constitutional instruments", see *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3.

37 In 2003 the Joint Committee on Draft Civil Contingencies Bill listed statutes it considered to form the "fundamental parts of constitutional law" in the UK.

38 The UK constitution, Constitution Society website. Subordinate legislation is "revoked" rather than repealed.

39 Commons Library research briefing RP97-53, The Commons committee stage of 'constitutional' bills. This convention dates from 1945.

40 Companion to the Standing Orders and Guide to the Proceedings of the House of Lords (26th edition), House of Lords, 2022, para 8.40.

41 Cabinet Manual, para 5. In 1994 the then government defined it as "those residual powers, rights, immunities and privileges of the Sovereign and of the Crown which continue to have their legal source in the common law and which the common law recognises as differing significantly from those of private persons" (HL Deb 01 December 1994 Vol 559 c49WA [Royal Prerogative: Powers]).

- the King on the advice of Ministers (prorogation of Parliament, certain public appointments)
- Ministers of the Crown (treaties and foreign affairs), or
- the King in Council (a meeting of the Privy Council at which the King is present)

The precise scope of prerogative powers can be difficult to determine. The most recent survey was published by the Ministry of Justice in 2009.[42]

The exercise of most prerogative powers results in some sort of legal "instrument", a formal document containing an expression of "the King's will".[43] The main types are:

- Prerogative Orders in Council[44]
- Commissions[45] or Warrants made under the Royal Sign Manual (the Monarch's personal signature)[46]
- Royal Proclamations (the public announcement of an executive prerogative act, such as the dissolution of Parliament)[47]
- Writs (these can act as summons to Parliament or direct an election)[48]
- Letters Patent issued under the Great Seal (generally used for public appointments)[49]
- Royal Charters[50]

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42 The Governance of Britain: Review of the Executive Royal Prerogative Powers: Final Report, Ministry of Justice, 2009, pp30-34. See also Commons Library research briefing CBP9877, The royal prerogative and ministerial advice.

43 "Prerogative instrument" is defined in section 126 of the Scotland Act 1998 as "an Order in Council, warrant, charter or other instrument made under the prerogative".

44 Most Orders in Council are available online at www.legislation.gov.uk. See also Commons Library Insight, What are Orders in Council?

45 See, for example, Commissioning certificate for an officer, Great War Forum website. Modern Commissions are stamped with a facsimile of the King's signature. These are not published online.

46 There are two versions of a Warrant: "By Warrant under The King's Sign Manual" and "By The King Himself" (used for senior judicial appointments and for King's Counsel) (Crown Office General Guidance for Warrants and Patents, p1).

47 Crown Office General Guidance for Warrants and Patents, Crown Office, p2. Most Proclamations are published in the Gazette. There also exist Statutory Proclamations, for example those made under the Coinage Act 1971, section 3.

48 Writs are not normally published online, but for images of election writs see a post on Twitter/X by Medway Council.

49 Many Letters Patent are announced in the Gazette; older documents will form part of the Patent Roll are held at the National Archives.

50 The BBC's Royal Charter is unusual in being granted by Prerogative Order in Council and discussed in Parliament (see Copy of Royal Charter for the continuance of the British Broadcasting Corporation, Cmnd 9365, December 2016). There is also a Royal Charter on Self-Regulation of the Press, changes to which can only be made with two-thirds of those voting in both Houses of Parliament and, if relevant, the Scottish Parliament.

Some prerogative acts, such as the Monarch's appointment of a Prime Minister, lack any documentary basis.

The courts have recognised that the Crown possesses some general administrative powers (known as "Third Source" powers) to carry on the ordinary business of government which are not exercises of the royal prerogative and do not require statutory authority.[51]

Crown Office

The Crown Office carries out the functions of the Clerk of the Crown in Chancery and the Lord Chancellor relating to the issue of Letters Patent under the Great Seal, Writs for parliamentary elections and to members of the House of Lords, and all senior judicial and ecclesiastical appointments.[52] The Office also organises certain ceremonial events on behalf of the Lord Chancellor.[53] By convention, the Clerk of the Crown is also permanent secretary at the Ministry of Justice.[54] The Crown Office is physically located within the House of Lords.

Statutory Instruments from 1992, 1996, 2000 and 2002 lay down the wording for certain instruments. In all other cases, the wording follows precedent. Another SI from 1988 specifies which documents are to be prepared on vellum or on paper and lists those to be Wafer Great Sealed.[55] The Crown Office Fees Order 2013 sets out the fees payable for Letters Patent. Crown Office General Guidance for Warrants and Patents (from the reign of Queen Elizabeth II) is also available online.

The Gazette

Many prerogative (and statutory) instruments are "gazetted" – that is their existence is notified in The Gazette. This is formally the combination of three publications: The London Gazette, The Belfast Gazette and The Edinburgh Gazette. These are official journals of record,[56] and include "State notices": State and Parliament notices placed by various Crown and government organisations such as the Central Chancery of the Orders of Knighthood and

51 *R (New London College) v Secretary of State for the Home Department* [2013] UKSC 51. See also B.M. Harris, The "Third Source" of Authority for Government Action Revisited, Legal Quarterly Review, 2007, although the Third Source has been challenged by Robert Craig in Royal Law: Prerogative Foundations, London: Hart, 2025.

52 The Clerk of the Crown is thus and officer of both the House of Commons and the House of Lords.

53 The Crown Office Guide, Ministry of Justice, 2021.

54 The Clerk of the Crown is appointed by the King (on the advice of the Prime Minister) via a Royal Warrant issued under the royal sign manual (Great Seal (Offices) Act 1874, section 8).

55 This means the application of a simpler paper embossed impression of the Great Seal rather than a full wax or plastic impression from the Great Seal matrix.

56 About The Gazette, The Gazette website.

the Prime Minister's Office. Examples include Proclamations regarding the dissolution of Parliament and Letters Patent conferring life peerages.[57]

Ministerial advice

For prerogative powers which require ministerial advice, this usually takes written form, when for example the Monarch is advised to appoint Privy Counsellors, Ministers of the Crown and other public appointments. This is called a "submission" and is not published.[58] In many cases, the Monarch signifies their acceptance of a submission by writing "approved" (sometimes abbreviated) along with their initials at the top of the document.

There is no legal requirement that Parliament is informed about the exercise of prerogative powers. In 1993, Sir John Major told the Commons it was "for individual Ministers to decide on a particular occasion whether and how to report to Parliament on the exercise of prerogative powers".[59]

By long-standing convention, the Monarch always accepts ministerial advice. Several scholars, however, have drawn a distinction between "formal" and "informal advice", the latter being non-binding.[60]

Principles of the royal prerogative

There are three stages of judicial consideration for a prerogative power:

- Does the power exist?
- Is the extent of the power limited by the common law and statute?
- Was the exercise of the power lawful?

Only the last of these does not apply to Lord Roskill's "excluded categories", prerogatives which are not "susceptible to judicial review", for example the making of treaties, the defence of the realm, the grant of honours, the dissolution of Parliament and the appointment of Ministers.[61] Otherwise, the scope of judicial review is broadly the same as that for the exercise of statutory powers: that a decision may be reviewed on grounds of illegality,

57 Notice codes for all Gazette notices, The Gazette website. Notices printed in The Gazette are afforded legal standing, and The Gazette itself is afforded special protection under the Documentary Evidence Act 1882. See also section 44 of the Interpretation and Legislative Reform (Scotland) Act 2010.

58 Examples of ministerial submissions, however, can be found online. See The Language Of Ministerial Submissions and Liz Truss's submissions to the King released, A Venerable Puzzle blog, 31 August 2023 and 6 December 2024.

59 HC Deb 1 March 1993 Vol 220 c19W [Prerogative Powers]

60 See Informal Advice to the Monarch, A Venerable Puzzle blog, 4 April 2024.

61 *Council of Civil Service Unions v Minister for the Civil Service* [1984] UKHL 9. In the Court of Appeal's consideration of this case, Lord Diplock stated that "national security" was "par excellence a non-justiciable question" ([1985] AC 374). In *R (Abbasi) v Foreign Secretary* [2002] EWCA Civ 1598, the Court of Appeal reaffirmed foreign policy as a "forbidden area" for judicial oversight.

irrationality or procedural impropriety (including a failure to honour legitimate expectations).[62]

New prerogatives powers cannot be created by the Crown, the executive or the courts.[63] Where there is a conflict between the prerogative and statute, statute prevails.[64] Once abrogated by statute, it appears a prerogative power can be revived via express legislative provision (see Section 4.2).[65]

1.3 Constitutional conventions

Many prerogative acts are guided by what are known as constitutional conventions. The Cabinet Manual calls these "rules of constitutional practice that are regarded as binding in operation but not in law".[66] These can also apply beyond application of the prerogative. A. V. Dicey first emphasised the importance of "customs, practices, maxims, or precepts which are not enforced or recognised by the Courts, [which] make up a body not of laws, but [are] constitutional or political ethics".[67] To Sir Ivor Jennings, conventions provided "the flesh which clothes the dry bones of the law; they make the legal constitution work; they keep in touch with the growth of ideas".[68]

Examples of constitutional conventions include that:

- the King appoints as Prime Minister the person who is most likely to command the confidence of Parliament
- the UK Parliament will not normally legislate on devolved matters without the consent of the relevant devolved legislature (the Sewel Convention)
- the House of Lords will normally give a second reading to any government bill (the Salisbury Convention)
- ministers are bound by collective responsibility to support government policy, even if they privately disagree
- judges will not criticise government policy, and ministers will not criticise judges for their decisions

62 Stair Memorial Encyclopaedia of the Laws of Scotland Volume 7.
63 *Case of Proclamations* [1610] EWHC KB J22: "the King hath no prerogative, but that which the law of the land allows him." See also *BBC v Johns* [1965] Ch 32, in which Lord Diplock remarked that it was "350 years and a civil war too late for the Queen's courts to broaden the prerogative".
64 *Attorney-General v De Keyser's Royal Hotel Ltd* [1920] AC 508
65 For a discussion, see Joint Committee on the Fixed-Term Parliaments Act, Report, HC 1046/HL 253, 24 March 2021, pp30-40.
66 Cabinet Manual, para 5.
67 A. V. Dicey, Introduction to the Study of the Law of the Constitution (8th edition), Liberty Fund, 1982, p277.
68 Sir Ivor Jennings, The Law and the Constitution (5th edition), London: University of London Press, 1959, pp81-82.

Descriptions of these conventions have been included in non-statutory texts published by the UK government. These include the Cabinet Manual and the Ministerial Code.[69] Parliamentary conventions are also described in Erskine May ("the most authoritative and influential work on parliamentary procedure and constitutional conventions affecting Parliament")[70] and the Companion to the Standing Orders and Guide to the Proceedings of the House of Lords.[71] The Common Core Document (comprising periodic reports from the UK to the United Nations) provides a "snapshot of the constitutional structure" of UK, the British Overseas Territories and the Crown Dependencies.[72]

These quasi-legal documents, which possess no legal force but are nevertheless implemented and accepted by constitutional actors, have been called "soft law" instruments.

Sir Ivor Jennings devised a "test" to establish whether a constitutional convention existed:

> First[ly], what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule?[73]

Long-standing conventions can eventually take statutory form. For example, the Lord Chancellor's historic responsibility to uphold judicial independence was codified in section 3 of the Constitutional Reform Act 2005.

Law and custom of Parliament

The law and custom of Parliament (in Latin, lex et consuetedo Parliamenti) is derived from a number of sources such as parliamentary practice, statute, precedent, judicial decisions or House resolutions. According to Erskine May, this is:

> now understood to be part of the common law, but its former existence as a separate entity not susceptible to examination by the courts has lent to it an air of mystery and exclusivity which continues to this day.[74]

By its resolutions, either House of Parliament declares its own opinions and purposes. But unless they derive force from some other authority (for example statute, as with motions to approve Statutory Instruments), resolutions do not

69 The Cabinet Manual (published in 2011) describes "from the point of view of the Executive – the Government's place in the UK's parliamentary democracy". In 2021 the House of Lords Constitution Committee recommended that a draft update of the Cabinet Manual be produced as soon as possible.

70 Separately, the Commons publishes MPs' Guide to Procedure, which is calls "Practical, clearly written information on the Chamber and committees".

71 See also Joint Committee on Conventions, Conventions of the UK Parliament Volume I, HL Paper 265-I/HC 1212-I, 3 November 2006, and Jacqy Sharpe, Parliamentary Conventions, The Constitution Society, June 2020.

72 Human rights: common core document, Ministry of Justice, 19 May 2022.

73 Ivor Jennings, The Law and the Constitution (5th edition), p136.

74 Erskine May's treatise on the law, privileges, proceedings and usage of Parliament (25th edition), House of Commons, 2019, para 11.14.

have direct legal impact, "though they may have varying degrees of political force depending on circumstances". [75]

1.4 Case law

Although most laws are enacted by the UK's legislatures, in a common law system the courts can also develop the law. By deciding a disputed point of law, a "senior court" (also known as a "court of record") can thereby set a precedent which inferior courts are bound to follow or apply in later cases. [76] Under this "doctrine of precedent", a judge must normally follow earlier judgments on the same legal matter, and is required to follow an earlier judgment made by a higher court than the court in which he or she sits. [77] A judge may make other remarks known as "obiter dicta" (Latin for "things said by the way") which do not constitute binding law. A declaratory judgment (or declarator in Scotland) can state a court's binding opinion on a question of law without any other action.

The "senior courts" are the Supreme Court of the United Kingdom, the Court of Appeal and the High Court (in England and Wales and separately in Northern Ireland) and the Court of Session in Scotland. Courts in Scotland and Northern Ireland are not bound to apply the law laid down by courts in England and Wales but frequently treat those judgments as persuasive if the law is the same or similar. [78]

There are many situations where the domestic law is substantially the same on either a Great Britain-wide or UK-wide basis. In those contexts, it is highly likely that a judgment handed down by the Supreme Court with respect to one jurisdiction will be followed in another, even if it is taken only to be "persuasive" rather than "binding". A decision of the Supreme Court on a "devolution matter", however, "is binding in all legal proceedings". [79]

Case law in all three of the UK's jurisdictions has given rise to important (and constitutional) "principles of law". These include:

- Institutional checks and balances (also known as the "separation of powers" between executive, legislature and judiciary) [80]

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75 Erskine May, para 20.96; Lords Companion, para 6.58.

76 What is case law?, ICLR website.

77 How power is exercised within the UK, Law Wales website.

78 For a notable instance of English and Scottish courts in conflict see the prorogation case: the High Court of England and Wales dismissed the claim on the ground that the issue was not justiciable [2019] EWHC 2381 (QB), while the Inner House of the Court of Session in Scotland (on appeal from the Outer House) ruled that it was justiciable [2019] CSIH 49. The case then progressed to the Supreme Court, which agreed with the Court of Session.

79 Constitutional Reform Act 2005, section 41(3).

80 As Peter Leyland has observed, the UK has "a limited separation of functions and a considerable number of overlapping powers" (The Constitution of the United Kingdom: A Contextual Analysis, 4th

- Representative government (free and fair elections)
- The rule of law (meeting certain standards of fairness, legal certainty, equal treatment before the law, and judicial independence)[81]
- respect for fundamental rights (for example, freedom of speech, assembly and expression)[82]

In *Miller I*, Lord Hope observed that "numerous principles of law" were:

> enforceable by the courts in the same way as other legal principles. In giving them effect, the courts have the responsibility of upholding the values and principles of our constitution and making them effective.[83]

Section 1 of the Constitutional Reform Act 2005 states that the provisions of that Act do not "adversely affect" the "existing constitutional principle of the rule of law", although it (nor any other UK statute) does not define what is meant by "the rule of law".

Judges "do and must make law in the gaps left by Parliament".[84] According to Bradley, Ewing and Knight, judge-made law takes two principal forms:

- Common law: this consists of the rules and customs which have long been declared to be law by the judges in deciding cases before them. These can be set aside or amended by Parliament, even retrospectively.[85]
- Interpretation of statute law: as a general rule, the courts have no authority to rule on the validity of an Act of Parliament, but they can interpret primary legislation where the meaning of an Act is disputed. Lord Nicholls observed that the "task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration".[86]

Only an Act of the UK Parliament is supreme. The courts will, if necessary, rule on the legal effect of other instruments including prerogative Proclamations,

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edition, London: Hart, 2021, p19). For example, the Monarch forms part of the executive, judiciary and the legislature, while the executive is drawn from the legislature. Parliament has also overruled the courts. Section 1 of the Post Office (Horizon System) Offences Act 2024 quashed convictions in England and Wales and in Northern Ireland in relation to the Post Office Horizon scandal, as did section 1 of the Post Office (Horizon System) Offences (Scotland) Act 2024 for convictions in Scotland. See also the Miners' Strike (Pardons) (Scotland) Act 2022. For further discussion see Commons Library research briefing SN06053, The Separation of Powers (16 August 2011).

81 Lord Bingham suggested the rule of law ought to mean that law is clear and predictable, not subject to broad or unreasonable discretion, applies equally to all people, with speedy and fair procedures for enforcement, protects fundamental human rights, and abides by international law (see Tom Bingham, The Rule of Law, London: Penguin, 2011).

82 What are constitutional principles?, The Constitution Unit.

83 *R (Miller) v Prime Minister* [2019] UKSC 41.

84 *R v Brown* [1994] 1 WLR 1599.

85 See, for example, the War Damages Act 1965, section 1, which provides that compensation is not payable to the owners of property damaged by UK forces in wartime.

86 *Regina v Secretary of State for the Environment, Transport and the Regions and Another, Ex Parte Spath Holme Limited* [2000]. For a thorough understanding on the judicial approach to statutory interpretation, see *O (A Child) v Secretary of State for the Home Department* [2022] UKSC 3.

certain treaties, secondary legislation, devolved legislation, bye-laws made by a local authority or another public body, and prerogative Orders in Council made for the Overseas Territories.[87] Where a court considers a provision unlawful, wherever possible it will "sever" it from the surrounding enactment and leave the rest intact.[88]

In interpreting legislation, the courts also apply certain rules and doctrines:

- The enrolled Act rule holds that primary legislation is binding whether or not the standing orders of each House of Parliament have been complied with[89]
- A statute will not be read as having a retrospective effect that impairs an existing right or obligation unless this is unavoidable[90]
- Parliament has intended to legislate in a manner which does not place the UK in breach of its international law obligations, and the courts will attempt to construe legislation to achieve this outcome[91]
- Unless primary legislation includes a sunset clause, then it cannot lapse, although Acts of the Old Scottish Parliament passed before 1707 may by the doctrine of desuetude cease to be law through non-use and change of circumstances[92]
- The doctrine of implied repeal: if two Acts of Parliament are in conflict, then the courts apply the later Act and the earlier Act is taken to have been repealed by implication to the extent of the inconsistency[93]

In discovering legislative intent, the courts begin with the literal rule, which gives words in statute their "ordinary and natural" meaning. If application of this rule would lead to "an absurdity", then they can apply the golden rule – a secondary meaning – which may avoid the absurdity.[94] If there remains ambiguity, then the rule in *Heydon's Case* [1584] is to find the "mischief at which the statute is aimed".[95]

The Law Reports – ICLR covers England and Wales, in Scotland there is The Scottish Council of Law Reporting, while in Northern Ireland there are two main series of printed law reports: Northern Ireland Law Reports and the Northern Ireland Judgments Bulletin. A useful (and free) online resource for case law is BAILII – Case Law Search.

87 Bradley et al, Constitutional and Administrative Law, pp60-61.
88 Daniel Greenberg, How to Read Legislation, p25.
89 *Pickin v British Railways Board* [1974] AC 765. For Acts of the Scottish Parliament, this rule is statutory (Scotland Act 1998, section 28(5)).
90 *Wilson and others v Secretary of State for Trade and Industry (Appellant)* [2003] UKHL 40
91 *Assange v Swedish Prosecution Authority* [2012] UKSC 22.
92 *Mara v Magistrates of Edinburgh* [1913] SC 1059. This was the practice in pre-Union Scotland.
93 *Dean of Ely v Bliss* [1842] 5 Beav 574, 582.
94 The Golden Rule of Statutory Interpretation, Law Teacher website.
95 For a comprehensive guide to the presumptions of statutory construction, see Daniel Greenberg, How to Read Legislation, pp14-16, and for the canons and principles of construction, pp18-21.

1.5 Authoritative works

As the UK constitution is uncodified, the interpretations of experts have often been influential when ambiguity arises. For example, during the 2019 prorogation case, precedents from Canada were cited.[96]

Many experts have produced what are known as "authoritative works". Commonly cited examples include:

- Walter Bagehot, The English Constitution (first published in 1867)
- A. V. Dicey, Introduction to the Law of the British Constitution (8th edition, 1982 [1885])
- Sir William Anson, The Law and Custom of the Constitution (two volumes, 5th/4th editions, 1922 and 1935)
- Sir Ivor Jennings, The Law and the Constitution (5th edition, 1959)
- A. W. Bradley, K. D. Ewing and C. J. S. Knight, Constitutional and Administrative Law (18th edition, 2022)
- Daniel Greenberg, Craies on Legislation (13th edition, 2024)
- Chris Himsworth and Christine O'Neill, Scotland's Constitution: Law and Practice (4th edition, 2021)
- Brice Dickson, Law in Northern Ireland (4th edition, 2022)
- Mark Hill KC, Ecclesiastical Law (4th edition, 2018)
- Ian Hendry and Susan Dickson, British Overseas Territories Law (2nd edition, 2018)

Peter Leyland has described these as "subordinate sources" which are "only resorted to by the courts and other constitutional players when there is no other established authority".[97]

Government documents known as Command Papers (which are laid before the UK Parliament) can also include authoritative statements regarding the UK constitution and its workings. White papers, green papers, treaties, reports from Royal Commissions and some Select Committee responses, can all be released as Command Papers, so called because they are presented to

[96] Prorogation: A View from Canada, Oxford Human Rights Hub website, 3 September 2019. There is no specifically Welsh text on the constitution, though the Welsh Government's Law Wales website "provides information and explanation about Welsh law and the constitution of Wales". See also Senedd Research's Constitutional Quick Guides.

[97] Peter Leyland, The Constitution of the United Kingdom: A Contextual Analysis (4th edition), p33.

Parliament formally "By His Majesty's Command".[98] Recently published Command Papers are available on gov.uk.[99]

1.6 Attempts to codify the UK constitution

There have been several independent attempts to codify the UK constitution:

- the Liberal Democrats in 1990 [100]
- Tony Benn's Commonwealth of Britain Bill in 1991 [101]
- the IPPR's The Constitution of the United Kingdom in 1991 [102]
- Professors Vernon Bogdanor and Stefan Vogenauer (and their students) in 2007 [103]
- Professor Robert Blackburn in 2014 [104]

98 Guide to Parliamentary Work, Office of the Leader of the House of Commons/Cabinet Office, 19 November 2024, para 319.

99 For more on Command Papers see House of Commons Information Office Factsheet P13, Command Papers, October 2009. For other Commons Papers, see Factsheet P12, House of Commons Papers, August 2010.

100 "We, The People…" – Towards a Written Constitution (Federal Green Paper No. 13), London: Liberal Democrats, 1990.

101 Published as Tony Benn and Andrew Hood, Common Sense: A New Constitution for Britain, London: Hutchinson, 1993.

102 Later republished as A Written Constitution for the UK (London: Mansell, 1993). See also James Cornford, On Writing a Constitution, Parliamentary Affairs 44:4, October 1991, pp558-71.

103 Stefan Vogenauer and Vernon Bogdanor, The Constitution of the UK as of 1 January 2007 in Chris Bryant (ed), Towards a New Constitutional Settlement, London: Smith Institute Monographs, 2007, pp152-76.

104 House of Commons Political and Constitutional Reform Committee, A new Magna Carta?, 3 July 2014.

2 The territorial constitution

There is no founding document which established the "United Kingdom of Great Britain and Northern Ireland". Rather, what political scientists describe as a multi-national state (or a State of Unions) has developed gradually over several centuries. [105]

2.1 Legal basis of the United Kingdom

England and Wales

Wales was annexed by the English Crown in 1284, a prerogative act known as the Statute of Rhuddlan (or Statutes of Wales). [106]

Under the Laws in Wales Act 1535, Wales was "incorporated with England" and granted representation in the Parliament of England. The Laws in Wales Act 1542 completed this incorporation. [107]

Cardiff was recognised as the capital of Wales on 20 December 1955. [108]

Schedule 1 to the Interpretation Act 1978 defines "England" as the area consisting of the counties established under section 1 of the Local Government Act 1972, Greater London and the Isles of Scilly. "Wales" is defined as the combined area of the counties created under section 20 of the 1972 Act, while section 158 of the Government of Wales Act 2006 defines "Wales" as including the "sea adjacent to Wales out as far as the seaward boundary of the territorial sea". "English border area", meanwhile, means "a part of England adjoining Wales (but not the whole of England)".

Paragraph 5 of Schedule 2 to the Interpretation Act 1978 provides that in any Act passed before 1 April 1974, a reference to England includes Berwick upon Tweed and Monmouthshire and, in the case of an Act passed before the Welsh Language Act 1967, Wales.

105 Stein Rokkan and Derek Urwin drew a distinction between "union states" and "unitary states". They believed the former captured the UK's "accumulation of disparate historical variations" (Economy, Territory, Identity: Politics of West European Peripheries, London: Sage, 1983, p187).

106 Repealed by the Statute Law Revision Act 1887, Schedule.

107 Most of the 1535 and 1542 Acts were repealed by Schedule 2 to the Welsh Language Act 1993.

108 HC Deb 20 December 1955 Vol 547 c311 [Capital Of Principality (Cardiff)]. Recognition was provided in response to a Parliamentary Question as the government believed that no "formal measures" were "necessary to give effect to this decision".

England and Scotland

Following the 1603 Union of the Crowns, England (which was taken to include Wales) and Scotland remained separate kingdoms but shared a monarch. This was a "personal union" of crowns, with different laws of succession in Scotland and in England.[109] A fuller "incorporating" (rather than federal) union followed in 1707.

Article I of the 1706 Treaty of Union (signed at Westminster on 22 July) stated that the kingdoms of Scotland and England would on 1 May 1707 "and for ever after, be united into one Kingdom by the name of Great-Britain";[110] Article III that it "be represented by one and the same Parliament, to be st[y]led the Parliament of Great-Britain". The Treaty required ratification and legislation in both parliaments. The Union with England Act 1707 was passed by the Parliament of Scotland and the Union with Scotland Act 1706 by the Parliament of England. These are often referred to collectively as the "Acts of Union 1707". A separate Act of the Old Scottish Parliament, the Protestant Religion and Presbyterian Church Act 1707, guaranteed the status of the Presbyterian Church of Scotland.[111]

In October 1707 the Scottish and English parliaments were replaced by a single "Parliament of Great Britain" (which included 45 Scottish MPs and 16 "representative" peers).[112] The Parliament of Great Britain subsequently passed the Union with Scotland (Amendment) Act 1707, which replaced the Privy Councils of England and Scotland with a new Privy Council of Great Britain. There remained a separate Privy Council for Ireland.

Some Scottish lawyers have argued that (in Scots, if not English, law) this union legislation enjoyed a special status which made it unalterable by the GB/UK Parliament.[113] Nevertheless, 14 Articles of the Union were repealed wholly or in part by the Statute Law Revision Acts of 1867, 1871, 1906 and 1948.[114] Scotland's representation in the Commons was also increased via legislation, while the Peerage Act 1963 scrapped the system of representative peers introduced in 1707.

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109 This personal union was interrupted by the Instrument of Government adopted in December 1653 and which governed the republican Commonwealth of England, Scotland and Ireland.

110 For a discussion of whether this created a new state or simply expanded England to include Scotland, see James Crawford and Alan Boyle, Annex A Opinion: Referendum on the Independence of Scotland – International Law Aspects, London: HM Government, 10 December 2012, paras 33-39.

111 This was repeated in and stated as "fundamental" by both ratifying Acts. Separately, the Parliament of England provided for the "Security of the Church of England" in the The Act of 6 Anne 1706, section 2.

112 The Election Act 1707, another Act of the Old Scottish Parliament, stipulated a minimum age of 21 for Scotland's MPs. It was only repealed in 2007.

113 T. B. Smith, The Union of 1707 as Fundamental Law, Public Law 99, 1957. In Dicey's famous observation, "neither the Act of Union with Scotland nor the Dentists Act 1878 has more claim than the other to be considered a supreme law" (A. V. Dicey, Introduction to the Study of the Law of the Constitution (8th edition), p78). The contrary argument has been heard in the Scottish courts and not been summarily dismissed (most famously in *MacCormick v The Lord Advocate* [1953] SC 396).

114 Colin Munro, The Union of 1707 and the British Constitution in P. S. Hodge (ed), Scotland and the Union, Edinburgh: Edinburgh University Press, 1994, p98.

The territory of Scotland (and therefore of the UK) was expanded to include Rockall in 1956, initially under the royal prerogative, [115] and subsequently via statute. [116] Section 126 of the Scotland Act 1998 defines "Scotland" as including "so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland". See also The Scottish Adjacent Waters Boundaries Order 1999, which was made under that Act.

Great Britain and Ireland

The Crown of Ireland Act 1542 (enacted by the Parliament of Ireland) created the title of "King of Ireland" for King Henry VIII of England and his successors. [117] The (British) Union with Ireland Act 1800 and (Irish) Act of Union (Ireland) 1800 abolished the Parliament of Ireland and declared that "for ever after" the Kingdoms of Great Britain and Ireland would "be united into one Kingdom, by the name of the United Kingdom of Great Britain and Ireland". [118] Its single Parliament included 100 Irish MPs and 28 representative peers.

Following a long campaign for "Home Rule" (or devolution) for Ireland, the Government of Ireland Act 1920 partitioned Ireland and created devolved parliaments in Southern and Northern Ireland. For the purposes of that Act, Northern Ireland was defined as the:

> parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry, and Southern Ireland shall consist of so much of Ireland as is not comprised within the said parliamentary counties and boroughs. [119]

The 1921 Anglo-Irish Treaty acknowledged southern Ireland's wish to secede from the UK. This was ratified by the Irish Free State (Agreement) Act 1922 and Irish Free State (Consequential Provisions) Act 1922. Under the Irish Free State Constitution Act 1922 the "Irish Free State" was proclaimed by King George V on 6 December 1922. The Ireland Act 1949 recognised what later became the Republic of Ireland's departure from the British Commonwealth of Nations. Section 46 of the Interpretation Act (Northern Ireland) 1954 defines "Republic of Ireland" as the territory which, in accordance with the provisions of the two 1922 Acts "was required to be styled and known as the Irish Free State".

Section 6 of the Irish Free State (Consequential Provisions) Act 1922 provided for the King in Council to adapt enactments "as a consequence of the establishment of the Irish Free State". The Irish Free State (Consequential Adaptation of Enactments) Order, 1923 provided that:

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115 Royal Warrant, 14 September 1955.
116 Island of Rockall Act 1972.
117 This Act of the Old Irish Parliament remains part of the UK statute book.
118 The Union with Ireland Act 1800 (as amended) remains on the UK statute book, although almost every article has been repealed or amended. In Ireland, the Statute Law Revision (Pre-Union Irish Statutes) Act, 1962 repealed the Act of Union (Ireland) 1800, while the Statute Law Revision Act, 1983 repealed the Union with Ireland Act 1800. For consideration of the 1800 Act vis-à-vis the European Union (Withdrawal) Acts 2018 and 2020 see *James Allister's Application for Judicial Review* [2021] NIQB 64.
119 Government of Ireland Act 1920, section 1(2) (repealed).

> references in any enactment passed before the establishment of the Irish Free State to "the United Kingdom" or "the United Kingdom of Great Britain and Ireland," [...] shall, in the application of the enactment to any part of Great Britain and Ireland other than the Irish Free State, be construed as exclusive of the Irish Free State. [120]

Great Britain and Northern Ireland

The Anglo-Irish Treaty and ratifying legislation enabled the devolved Parliament of Northern Ireland to determine its own constitutional future.

On 7 December 1922, the House of Commons and Senate of Northern Ireland resolved to remain a devolved part of the UK rather than form an autonomous part of the Irish Free State. [121] This established a precedent for what later became known as the "principle of consent".

The boundary between Northern Ireland and the Free State was settled via amendment of the Anglo-Irish Treaty in December 1925. [122] The UK Parliament passed the Ireland (Confirmation of Agreement) Act 1925 while the Free State passed the corresponding Treaty (Confirmation of Amending Agreement) Act, 1925.

At the instigation of the Irish Free State, the UK Parliament also passed the Royal and Parliamentary Titles Act 1927. This changed the name of the "Parliament of the United Kingdom of Great Britain and Ireland" to the "Parliament of the United Kingdom of Great Britain and Northern Ireland". [123] Schedule 1 to the Interpretation Act 1978 thus defines "United Kingdom" as meaning "Great Britain and Northern Ireland". [124] Section 2(2) of the 1927 Act also provided that in every public document issued after the passing of that Act the expression "United Kingdom" meant "unless the context otherwise requires [...] Great Britain and Northern Ireland".

The bicameral Parliament of Northern Ireland was prorogued under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972 and abolished under section 31(1) of the Northern Ireland Constitution Act 1973. [125] Section 42 of the 1973 Act included a saving provision that abolition did not "affect the validity or otherwise of any Act of that Parliament". [126]

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120 London Gazette, 30 March 1923. See also section 11(2) of the Interpretation Act (Northern Ireland) 1954.

121 This took the form of an Address to the King. For a detailed account of Northern Ireland's constitutional development, see Commons Library research briefing CBP8884, Parliament and Northern Ireland, 1921-2021.

122 HC Deb 3 December 1925 [Prime Minister's Announcement]

123 Royal and Parliamentary Titles Act 1927, section 2(1).

124 As does section 43 of the Interpretation Act (Northern Ireland) 1954.

125 Abolition took effect in early 1974 by virtue of The Northern Ireland Constitution (Devolution) Order 1973.

126 Section 95 of the Northern Ireland Act 1998 provides a similar saving for Orders in Council made after 1920. A saving provision is that which keeps an enactment repealed by a bill alive for certain limited purposes (Guide to making legislation, para 9.54).

Territorial seas

Under section 1 of the Territorial Sea Act 1987, the "breadth of the territorial sea adjacent to the United Kingdom shall for all purposes be 12 nautical miles". This Act was extended to Guernsey (a Crown Dependency) by The Territorial Sea Act 1987 (Guernsey) Order 2014. It also extends to Northern Ireland although sovereignty over Lough Foyle and Carlingford Lough remain disputed.[127]

Section 1 of the Continental Shelf Act 1964 provides that:

> Any rights exercisable by the United Kingdom outside territorial waters with respect to the sea bed and subsoil and their natural resources, except so far as they are exercisable in relation to coal, are hereby vested in [His] Majesty.

Under section 3B of the Crown Estate Act 1961 (as amended by section 5 of the Crown Estate Act 2025), the Crown Estate Commissioners may not without the consent of the Treasury permanently dispose of any part of the territorial seabed, which means the "seabed and subsoil within the seaward limits of the United Kingdom territorial waters".

2.2 Statutory basis of devolution

There are three "devolution statutes" covering Northern Ireland, Wales and Scotland. As primary legislation enacted by the King in Parliament, these constitutional statutes do not enjoy entrenched or higher status.[128] In certain respects, these statutes codify aspects of the UK constitution which in the context of Westminster are governed by convention. The Scottish Parliament, Senedd and Northern Ireland Assembly are all products of statute and therefore can only operate within the terms provided by their parent acts.

In the 2002 case of *Robinson v Secretary of State for Northern Ireland*, however, the House of Lords interpreted the relevant provisions of the Northern Ireland Act 1998 "generously and purposively" on the basis that it was "in effect a constitution".[129] Another case in 2004 described the Scotland Act 1998 (read in combination with the European Convention on Human Rights and European Union law) as a "mini constitution".[130] But in the case of *Imperial Tobacco*, the Supreme Court (in deciding whether an Act of the Scottish Parliament had exceeded the limits set out in the Scotland Act 1998)

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127 "Without prejudice to the negotiation of territorial sea boundaries...", Slugger O'Toole blog, 15 December 2011. See also the Foyle Fisheries Act (Northern Ireland) 1952. Section 98 of the Northern Ireland Act 1998 defines "Northern Ireland" as including "so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland".

128 Although as Alan Page has observed, while as "a matter of strict law" the UK Parliament could abolish the Scottish Parliament (or other devolved legislatures), "for all practical purposes that power is irrelevant" (Constitutional Law of Scotland, Edinburgh: W. Green, 2015, para 2-21).

129 *Robinson v Secretary of State for Northern Ireland* [2002] UKHL 32. The preceding Government of Ireland Act 1920 had been viewed in similar terms.

130 *Whaley v Lord Advocate* [2004] SC 78. The Scottish Government's Scottish Public Finance Manual describes the Act as "essentially the Scottish Constitution".

ruled that only a "plain reading" of statute and relevant case law was required. "The Scotland Act," said Lord Reed, "is not a constitution, but an Act of Parliament."[131]

Abolition (as opposed to suspension) of the devolved Northern Ireland Assembly and Executive would require a treaty amendment (as it is a product of the Belfast/Good Friday Agreement, for which see below), while under section 63A of the Scotland Act 1998, the devolved Scottish Parliament and Government "are not to be abolished except on the basis of a decision of the people of Scotland voting in a referendum". The same is true of the Senedd and Welsh Government under section A1 of the Government of Wales Act 2006. Together, these provisions state that the devolved Scottish and Welsh legislatures and executives "are a permanent part of the United Kingdom's constitutional arrangements". [132]

Certain "aspects of the constitution" are reserved matters under Schedule 5 to the Scotland Act 1998 and Schedule 7A to the Government of Wales Act 2006. For a full account of reserved matters see Commons Library research briefing CBP8544, Reserved matters in the United Kingdom.

Under various provisions of the United Kingdom Internal Market Act 2020, the Secretary of State has broad powers to constrain devolved competencies in Scotland, Wales and Northern Ireland in order to maintain the integrity of the UK single market.[133] The Office for the Internal Market (a high profile group) supports the effective operation of the UK Internal Market.

Northern Ireland Act 1998

Strand One of the 1998 Belfast/Good Friday Agreement (part of which comprised an international treaty between the UK and Ireland) included the creation of devolved institutions in Northern Ireland.[134] The Agreement has been called an "interpretive aid" to the Northern Ireland Act 1998.[135]

Northern Ireland Assembly

Under section 3 of the Northern Ireland Act 1998, certain powers were transferred from the UK Parliament and government to a devolved Northern Ireland Assembly.[136] This is often called "Stormont" after its location on the

131 *Imperial Tobacco v The Lord Advocate* [2012] UKSC 61

132 Both provisions could, of course, be repealed or amended by subsequent enactments.

133 In December 2024 the UK government announced it was expediting a statutory review of the Act into the "practical operation" of parts of the Act which would involve engagement with the devolved administrations (UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4, Department for Business and Trade, 23 January 2025).

134 The Belfast Agreement, Cmnd 3883, Northern Ireland Office, 10 April 1998.

135 Dame Siobhan Keegan, Sir Thomas More Lecture 2024, 20 November 2024.

136 See The Northern Ireland Act 1998 (Appointed Day) Order 1999 and Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999.

Stormont Estate in Belfast.[137] Assembly terms are numbered and known as "Mandates".

The Assembly Members (Reduction of Numbers) Act (Northern Ireland) 2016 reduced the number of Members of the Legislative Assembly (MLAs) to the present level of 90.[138] Members designate themselves "Nationalist", "Unionist" or "Other" at the first meeting of an Assembly following an election and can only change this "community" designation between elections if they have changed their party-political affiliation (sections 4(5) and 4(5A)). MLAs are not required to swear or affirm an oath of allegiance to the King, although under section 40A they cannot participate in proceedings until they have given a statutory undertaking, the text of which includes a commitment to "support the rule of law unequivocally in word and deed and to support all efforts to uphold it".[139] Under section 43, Assembly Standing Orders must include provision for a register of interests. Complaints under an MLA Code of Conduct are investigated by the Commissioner for Standards at the Northern Ireland Assembly.[140]

The Assembly is governed by Standing Orders. Section 39 of the 1998 Act provides for the election of a Speaker, without which the Assembly cannot proceed to any other business.[141] A successful candidate requires cross-community consent. Section 40 provides for a Northern Ireland Assembly Commission and section 29 for statutory committees to advise Ministers on the formulation of policy. These committees can take the committee stage of relevant primary legislation, call for persons and papers (section 44), initiate inquiries and issue reports. Standing Order 47 provides for the committees to be filled on the basis of party strength in the Assembly.

Under section 4 of the 1998 Act, the Assembly has legislative responsibility for transferred (or devolved) matters. Section 13 and Standing Orders 30-39 provide for six stages of legislative consideration. Some Assembly votes require what is known as cross-community support as set out in section 4(5), either parallel consent or a weighted majority. If, in accordance with section 42(1), 30 MLAs:

> petition the Assembly expressing their concern about a matter which is to be voted on by the Assembly, the vote on that matter shall require cross-community support.

This Petition of Concern mechanism was constrained by section 6 of the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022.

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137 The Stormont Regulation and Government Property Act (Northern Ireland) 1933 makes provision for the Stormont Estate, as does section 93 of the Northern Ireland Act 1998 for Parliament Buildings. A Northern Ireland Youth Assembly was established in June 2021 with 90 appointed members.

138 The number of MLAs is a reserved rather than an excepted matter (an amendment to the 1998 Act made by section 6 of the Northern Ireland (Miscellaneous Provisions) Act 2014).

139 As inserted by the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016, section 8(1).

140 The Commissioner for Standards also acts as Pan-Island Commissioner for Standards, which covers the Crown Dependencies of Guernsey and Jersey.

141 The Northern Ireland Act 1998 uses the term "Presiding Officer", but Speaker is used in practice.

Those MLAs petitioning need to be from at least two different political parties and a vote can only take place following a 14-day period of consideration.

Although social security and pensions are transferred matters, the Assembly is constrained by a statutory "parity principle", which requires Northern Ireland's provision to mirror that in Great Britain (section 87). [142] Under section 8, the Assembly can also legislate on excepted and reserved matters with the consent of the Secretary of State. [143] Excepted matters in Northern Ireland are broadly equivalent to those classed as "reserved" in Scotland and Wales, while reserved matters (in Northern Ireland) are those which could, in future, be transferred to the Assembly and Executive. The transfer of reserved matters to the Assembly may be given effect by Order in Council provided that it has cross-community consent, and a draft has been approved by both Houses of Parliament (section 85). Schedule 2 of the 1998 Act specifies excepted matters and Schedule 3 reserved matters which remain the legislative responsibility of the UK Parliament.

Section 6(2) provides that the provision of an Assembly Act is "not law" if:

- it would form part of the law of a country or territory other than Northern Ireland, or confer or remove functions exercisable otherwise than in or as regards Northern Ireland
- it deals with an excepted matter and is not ancillary to other provisions [...] dealing with reserved or transferred matters
- it is incompatible with European Convention rights
- it is incompatible with Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement (rights of individuals)
- it discriminates against any person or class of person on the ground of religious belief or political opinion
- it modifies an entrenched enactment listed in section 7

Under Section 5 of the Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016, Assembly Standing Orders made provision for "offices in the leadership of the Opposition". Standing Order 45A echoes statutory provisions for the First Minister and deputy First Minister in providing for parties (who choose not to take up ministerial posts) to nominate a Leader and Deputy Leader of the Opposition.

It is the "well-established parliamentary practice" that a minimum of 21 calendar days should ordinarily elapse between the date on which a Statutory Rule is laid before the Assembly, and the coming into force of that Statutory

[142] See also the Social Services (Parity) Act (Northern Ireland) 1971. Under section 88 of the 1998 Act there is a Joint Authority with responsibility in this respect.

[143] Under section 15 of the Northern Ireland Act 1998, this initiates a special procedure in both Houses of the UK Parliament.

Rule.[144] There is also a statutory period during which the Assembly can annul a Statutory Rule which is subject to the negative resolution procedure.[145]

The November 2018 UK-EU Withdrawal Agreement included a Protocol on Ireland/Northern Ireland. The Protocol was amended in March 2023 and is now known as "the Windsor Framework". Under this, Northern Ireland continues to form part of the European Union's single market for goods and is bound to align with relevant EU laws as they are updated. New EU laws which fall within the scope of the Windsor Framework may also be added to it.

Article 18 of the Windsor Framework set out the process by which the Northern Ireland Assembly could provide "consent" to continue to abide by Articles 5 to 10 of the Windsor Framework. These Articles provide the basis for the application of EU law in Northern Ireland. The procedures for applying the consent provisions in Northern Ireland were set out in The Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020.[146] The first vote took place on 10 December 2024 and as it was not carried with cross-community consent the next vote will take place at the end of 2028.[147] This also triggered an independent review of post-Brexit trading arrangements.[148]

The Windsor Framework also introduced a new "Stormont Brake".[149] Under this mechanism Members of the Northern Ireland Assembly may seek to prevent the application in Northern Ireland of updated EU laws which would otherwise apply automatically under the Windsor Framework. The decision lies with the Secretary of State for Northern Ireland.[150] The procedures are set out in the Windsor Framework (Democratic Scrutiny) Regulations 2023 which added a new Schedule 6B to the Northern Ireland Act 1998.[151] See also The Windsor Framework (Constitutional Status of Northern Ireland) Regulations 2024 which reaffirm that the Windsor Framework is without prejudice to Northern Ireland's constitutional status as part of the UK.

The Assembly and Executive were not fully functioning in the periods 2017-2020 and 2022-2024 but Direct Rule, as existed between 1972 and 1999 and which would require primary legislation at Westminster,[152] was not introduced. The judgment in the *Buick* case significantly limited the ability of Northern Ireland civil servants to take decisions in the absence of Executive

144 Statutory Rules FAQ, Northern Ireland Assembly website.
145 Interpretation Act (Northern Ireland) 1954, section 41(2).
146 The Regulations added a new Schedule 6A to the Northern Ireland Act 1998.
147 Official Report: Tuesday 10 December 2024.
148 Windsor Framework: Former NI Secretary to lead government post-Brexit review, BBC News online, 9 January 2025.
149 Political Declaration by the European Commission and the Government of the United Kingdom, HM Government, 27 February 2023, p3.
150 See, for example, Stormont Brake: Response to the notification made under Schedule 6B Northern Ireland Act 1998, UIN HCWS374, 21 January 2025. See also Letter from the Secretary of State for Northern Ireland regarding Stormont Brake decision, Northern Ireland Office, 20 January 2025.
151 The Regulations added a new Schedule 6B to the Northern Ireland Act 1998.
152 As the Northern Ireland Act 2000 has been repealed.

Ministers.[153] The Northern Ireland (Executive Formation etc) Act 2019 and Northern Ireland (Executive Formation etc) Act 2022 allowed senior officials to take decisions in the public interest in accordance with guidelines issued by the Secretary of State for Northern Ireland. The UK Parliament also, exceptionally, legislated in transferred areas, for example same-sex marriage and abortion.

Under section 56 of the 1998 Act, the First Minister and deputy First Minister acting jointly are obliged to obtain from the consultative Civic Forum (established under Strand One of the Belfast/Good Friday Agreement) its "views on social, economic and cultural matters". The Civic Forum last met in 2002.

Elections

Northern Ireland has a distinct party system from the rest of the UK. Under section 31 of the Northern Ireland Act 1998, Assembly elections (which are conducted by Single Transferable Vote) take place every five years. Voters elect 90 MLAs, five in 18 multi-member constituencies which are coterminous with Northern Ireland's UK Parliament boundaries.[154] Electoral law in Northern Ireland is an excepted matter, unlike in Scotland and Wales.[155] Under section 5 of the Elected Authorities (Northern Ireland) Act 1989, a person is not validly nominated as a candidate at an election to the Northern Ireland Assembly unless their consent to nomination includes a declaration against terrorism (the form of which is provided in Schedule 2). Section 6 provides for a breach of this declaration.

The Northern Ireland Assembly Disqualification Act 1975 specifies which individuals are disqualified from membership of the Assembly. Under the Northern Ireland (Miscellaneous Provisions) Act 2014, MPs or members of the Dáil cannot also serve as MLAs, although members of the House of Lords can.[156] An MLA may at any time resign their seat by notice in writing to the Speaker.[157]

Section 3 of the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 provides that the Secretary of State for Northern Ireland is required to propose a date for an extraordinary Assembly election if the offices of First Minister and deputy First Minister are unfilled after a certain period.

There are no by-elections to the Northern Ireland Assembly. Section 6 of the Northern Ireland Assembly (Elections) Order 2001 provides for a system of "substitution" (often called "co-option"). Under section 6B of The Northern

153 See *Buick's (Colin) Application* [2018] NIQB 43, *Buick's (Colin) Application as Chair Person of NOARC 21* [2018] NICA 26 and *Reference by the Attorney General for Northern Ireland* [2019] UKSC 1.
154 There is, therefore, no separate revision of Assembly constituency boundaries.
155 Northern Ireland Act 1998, Schedule 2 para 12.
156 Northern Ireland Assembly Disqualification Act 1975, sections 1A and 1B (as amended by the Northern Ireland (Miscellaneous Provisions) Act 2014).
157 Northern Ireland Act 1998, section 51.

Ireland Assembly (Elections) (Amendment) Order 2009, political parties in Northern Ireland can nominate substitute MLAs.

The Monarch does not open a new session of the Northern Ireland Assembly following an election, as in Scotland and Wales, although has, on occasion, addressed MLAs in the Assembly chamber.[158]

The Official Report (Hansard) is the formal record of proceedings in the Northern Ireland Assembly.[159]

Ministers

Under section 16A of the 1998 Act,[160] the First Minister and deputy First Minister of Northern Ireland are jointly nominated, respectively, by the largest party within the largest political designation and the largest party within the second-largest political designation. Section 16C provides for the single largest party in the Assembly to nominate the First Minister even if it does not form part of the largest political designation. If the First Minister or deputy First Minister resigns, then the other office is also vacated. The First Minister and deputy First Minister are "chairmen" of the Executive Committee (see below).[161] The First Minister and deputy First Minister do not have an official residence.

Under section 18, other Northern Ireland Ministers are nominated (in reflection of party strength) under the d'Hondt formula. Only the Justice Minister is elected.[162] This means there is "a mandatory coalition government in Northern Ireland – compulsory power-sharing", or what political scientists call "consociationalism".[163]

Section 16A (as amended by the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022, section 2) allows Executive Ministers to remain in office following an Assembly election for up to 24 weeks, and for up to 48 weeks if the First Minister or deputy First Minister cease to hold office. It is anticipated that these "caretaker" Ministers will not, however, take any major new decisions.

Executive Minsters are required to take a statutory Pledge of Office.[164] If the Assembly resolves that a political party does not enjoy its confidence because it is not committed to non-violence and exclusively peaceful and democratic means or its Ministers are not "observing the other terms of the pledge of

158 Visit by Her Majesty Queen Elizabeth II to Parliament Buildings on Tuesday 14 May 2002, Northern Ireland Assembly website.
159 The Hansard debates of both the Commons and Senate of Northern Ireland (1921-72) were available to search online via The Stormont Papers, but this service is currently suspended.
160 As inserted by the Northern Ireland (St Andrews Agreement) Act 2006, section 8.
161 Northern Ireland Act 1998, section 20.
162 Northern Ireland Act 1998, section 21A.
163 Brice Dickson, Law in Northern Ireland (4th edition), p41.
164 Northern Ireland Act 1998, Schedule 4.

office" then they shall be excluded from holding office for a particular period.[165]

Section 28A of the 1998 Act also provides for a Ministerial Code.[166] This "sets out the rules and procedures for the exercise of the duties and responsibilities of Ministers and junior Ministers of the Northern Ireland Assembly" as specified in the Belfast/Good Friday Agreement, the 1998 Act, the St Andrews Agreement and the Northern Ireland (St Andrews Agreement) Act 2006.[167] Complaints made under the Code are investigated by the Commissioner for Standards at the Northern Ireland Assembly.

The King is not involved in any ministerial appointments.[168] Under section 23, however, the Monarch's prerogative and executive powers as regards transferred matters are "exercisable on [His] Majesty's behalf by any Minister or Northern Ireland department" or, in relation to the Northern Ireland Civil Service and Commissioner for Public Appointments for Northern Ireland, by the First Minister and deputy First Minister acting jointly. Under Northern Ireland Assembly Standing Order 20, Ministers (including the First Minister and deputy First Minister) answer oral questions between 2pm and 3.30pm on "those Mondays and Tuesdays on which the Assembly is sitting".

The Attorney General for Northern Ireland is the chief legal adviser to the Northern Ireland Executive and Northern Ireland Departments.[169] Under section 22 of the Justice (Northern Ireland) Act 2002, the Attorney General is a non-political appointment made by the First Minister and deputy First Minister acting jointly.[170] Upon appointment, the Attorney General takes a non-statutory oath to "well and faithfully serve the people of Northern Ireland and uphold and defend the rule of law" before the Lord Chief Justice of Northern Ireland at the Royal Courts of Justice in Belfast.[171]

The Attorney General cannot be an MLA or MP,[172] and under section 25 they may participate in Assembly proceedings but not vote. All the functions of the Attorney General are also to be exercised "independently of any other person".[173] Under sections 11 and 71 of the Northern Ireland Act 1998, the Attorney General has the power to challenge in court Assembly legislation if he or she believes it to be ultra vires or incompatible with Convention rights.

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165 Northern Ireland Act 1998, section 30. These powers to exclude Ministers have never been exercised.

166 The UK, Scottish and Welsh Ministerial Codes are not statutory. For a comparison of the four codes, see Senedd Research, The Welsh Ministerial Code, October 2012.

167 Ministerial Code, Northern Ireland Executive website.

168 The King may, however, have an audience with the First Minister and deputy First Minister during visits to Northern Ireland (Royals visit Belfast as part of NI trip, BBC News online, 19 March 2025).

169 About Us, Attorney General for Northern Ireland website.

170 The Attorney General continues to hold office even if there is not a functioning Northern Ireland Executive.

171 Attorney General for Northern Ireland Tenth Annual Report 2019/20, Attorney General for Northern Ireland, 5 February 2021, p2. See also Northern Ireland's new Attorney General sworn in, Irish Times, 18 August 2020.

172 Northern Ireland Assembly Disqualification Act 1975, Schedule 1 (as amended).

173 Justice (Northern Ireland) Act 2002, section 22(5). This gives statutory form (as with the Scottish and Welsh law officers) to the UK convention that the Attorney General for England and Wales acts independently in his or her prosecutorial capacity.

Separately, a Crown Solicitor for Northern Ireland is appointed by the Advocate General for Northern Ireland (following consultation with the Attorney General for Northern Ireland) under section 35 of the Northern Ireland Constitution Act 1973. The Crown Solicitor's Office is one of two bodies within the Government Legal Service for Northern Ireland.

Northern Ireland Executive

The Northern Ireland Executive Committee (or "the Executive") consists of the First Minister, deputy First Minister and the Northern Ireland Minister.[174] Section 17 of the 1998 Act provides that the First Minister and deputy First Minister acting jointly may determine the number of Ministerial offices to be held by Northern Ireland Ministers and the functions to be exercisable by the holder of each such office. This number must not exceed ten unless the Secretary of State for Northern Ireland by order permits a greater number.

Under section 20 of the 1998 Act, the Executive has the functions set out in paragraphs 19 and 20 of Strand One of the Belfast/Good Friday Agreement, which includes agreement each year on a Programme for Government.[175] Under the Northern Ireland Ministerial Code (and section 28A of the 1998 Act), there is also a duty to bring certain matters to the attention of the Executive.[176] If a Minister appears to breach this duty, then under section 28B, and if the Speaker certifies that it relates to a matter of public importance, the matter can be referred by 30 MLAs to the Executive for reconsideration.

Attendance at meetings of the Executive shall normally comprise the First Minister, the deputy First Minister, the Northern Ireland Ministers and the Secretary to the Executive Committee.[177] Under section 28C of the 1998 Act the Executive may call for a senior officer of a Northern Ireland Department to attend its proceedings. Executive meetings are normally held fortnightly.[178] Under section 28A, it is duty of the chairmen (or women) of the Executive to ensure that its decisions are reached by consensus wherever possible. If this cannot be reached, then any three members of the Executive can require a vote on a particular matter to require cross-community support as defined in section 4(5) of the 1998 Act.[179] By convention, three Executive Ministers can make a joint request that an agenda item not be delayed for more than three meetings.[180]

Northern Ireland Departments

Schedule 1 to the Departments Act (Northern Ireland) 2016 provides for nine Northern Ireland Departments (including the Executive Office[181]). Under sections 5 and 6 of The Departments (Northern Ireland) Order 1999, each Department is a "body corporate" with its own seal and legal personality.

174 Northern Ireland Act 1998, section 20.
175 Northern Ireland Ministerial Code, para 2.3.
176 Northern Ireland Ministerial Code, para 2.4.
177 Northern Ireland Ministerial Code, para 2.6.
178 Northern Ireland Ministerial Code, para 2.9.
179 A quorum of seven Executive members is required for any vote.
180 Sharing Power to Build A Shared Future, Alliance Party of Northern Ireland, 23 June 2022.
181 The Executive Office comprises the First Minister and deputy First Minister and two junior ministers.

This means departments can bring legal proceedings against one another, a situation unique in the UK.[182]

Section 4 of the Ministries Act (Northern Ireland) 1944 provides for assignment and transfer of functions between Northern Ireland Departments.

Cross-border institutions

Strand Two of the Belfast/Good Friday Agreement established the North-South Ministerial Council ("to develop consultation, co-operation and action within the island of Ireland"), while Strand Three established the British-Irish Intergovernmental Conference ("to promote bilateral cooperation at all levels on all matters of mutual interest within the competence of the UK and Irish Governments") and the British-Irish Council ("to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands").[183]

None of these bodies has an explicitly statutory basis, although under the Northern Ireland Ministerial Code, Executive Ministers participating in the North-South Ministerial Council and British-Irish Council "must engage" in the work of those Councils as specified in paragraph five of Strands Two and Three of the Belfast/Good Friday Agreement.[184]

The Safeguarding the Union Command Paper included a commitment to establish an East-West Council, the purpose of which is to "strengthen cooperation between Northern Ireland and other parts of the UK by advising on shared challenges and opportunities with an East-West dimension". It comprises UK and Northern Ireland ministers and met for the first time in March 2024.[185]

In July 2024, the Prime Minister and Taoiseach committed to Annual Summits at which they would "take stock of joint work to deepen and reinvigorate cooperation" between the UK and Ireland.[186]

Secretary of State for Northern Ireland

A Secretary of State for Northern Ireland was first created in 1972,[187] and assumed certain prerogative functions of the former Governor of Northern Ireland under Letters Patent dated 20 December 1973.

The Secretary of State is a member of the UK Cabinet and leads the Northern Ireland Office, which has an office in Belfast and at HM Treasury in Whitehall. This includes the Northern Ireland Office Legal Advisers. The Devolution Guidance Notes describe the role of Secretary of State as that of "an honest

182 See, for example, *The Minister of Enterprise Trade and Investment's Application* [2016] NIQB 26.
183 Northern Ireland Act 1998, sections 52A-54 make certain statutory provision for these bodies.
184 Northern Ireland Ministerial Code, paras 3.21-3.22.
185 Inaugural meeting of East-West Council, Department for Levelling Up, Housing and Communities/Northern Ireland Office, 26 March 2024.
186 PM meeting with Taoiseach Harris of Ireland, Prime Minister's Office, 10 Downing Street, 17 July 2024.
187 Northern Ireland (Temporary Provisions) Act 1972, section 1 (repealed).

broker" in relations between the Northern Ireland Executive and the UK government.[188]

The Secretary of State continues to have a statutory role in relation to devolution in Northern Ireland, for example in consenting to the transfer of certain powers (section 8), proposing election dates, submitting Assembly legislation for Royal Assent (section 14), reducing, if necessary, MLA pay (section 47B), appointing members of the Northern Ireland Human Rights Commission (section 68),[189] and remedying ultra vires acts of the Assembly (section 80).

The Secretary of State shall not submit a bill for Royal Assent if the Advocate General for Northern Ireland or the Attorney General for Northern Ireland has referred a bill to the Supreme Court under section 11 during the period of four weeks beginning with the passing of the bill.

The Secretary of State is Keeper of the Great Seal of Northern Ireland, although this role does not have an explicit statutory basis.[190] The Great Seal is used for Assembly Acts and Letters Patent relating to public appointments in Northern Ireland.[191] Further provision for the Great Seal and its wafer version is made in section 3 of the Northern Ireland (Miscellaneous Provisions) Act 1945 and section 49 of the Northern Ireland Act 1998.

The Northern Ireland Affairs Committee is a Select Committee of the House of Commons which examines the expenditure, administration and policy of the Northern Ireland Office and its associated public bodies. There is also a Northern Ireland Grand Committee, which comprises the 18 Northern Irish MPs together with up to 25 other Members. It debates matters relating to Northern Ireland, but last met in 2013.

Scotland Act 1998

The Scottish Parliament

Section 1 of the Scotland Act 1998 (as amended) provides that there "shall be a Scottish Parliament".[192] It is often referred to as "Holyrood", after its location opposite the Palace of Holyroodhouse in Edinburgh.[193] Section 37 provides that the Union with Scotland Act 1706 and Union with England Act

188 Devolution Guidance Note 5: The Role of the Secretary of State for Northern Ireland, Cabinet Office, 2007.

189 And members of the statutory Parades Commission of Northern Ireland (Public Processions (Northern Ireland) Act 1998, Schedule 1).

190 HC Deb 18 July 1985 Vol 83 c265W [Great Seal].

191 The form of Letters Patent signifying Royal Assent to Assembly Acts is set out in a Schedule to The Northern Ireland (Royal Assent to Bills) Order 1999. The Interpretation Act (Northern Ireland) 1954, section 15, makes further provision for Royal Assent to Assembly bills.

192 Although the Scottish Parliament website claims the 1998 Act "re-established" (or "reconvened") the Old Scottish Parliament abolished in 1707, in fact it created a completely new (and non-sovereign) body.

193 An elected Scottish Youth Parliament was launched on 30 June 1999, a day before the official opening of the Scottish Parliament. The Scottish Government also experimented with a Citizens' Assembly of Scotland in 2019.

1707 "have effect subject to" that Act, which means the Scotland Act "should take precedence over the Acts of Union".[194] Unlike at Westminster, a "session" means the parliament's full five year term rather than an annual subdivision.

Section 19 of the 1998 Act provides for the election of an impartial Presiding Officer,[195] without which the Scottish Parliament cannot function, section 20 for a Clerk of the Parliament and section 21 (and Schedule 2) for a Scottish Parliamentary Corporate Body, which is responsible for the administration of the Scottish Parliament.[196] Section 22 provides for proceedings of the Scottish Parliament to be regulated by Standing Orders, some of which are governed by Schedule 3.

Under Section 29, the Scottish Parliament can make laws in any area not reserved to the UK Parliament under Schedule 5 or protected from modification under Schedule 4.[197] Competent laws must also be compatible with European Convention rights,[198] not form part of the law of a country or territory other than Scotland, confer or remove functions exercisable otherwise than in or as regards Scotland,[199] or remove the Lord Advocate from their position as head of the systems of criminal prosecution and investigation of deaths in Scotland. Under section 31A, a two-thirds majority is required for bills relating to a protected subject-matter, which are defined in section 31(5).[200] Before becoming acts, bills go through a three-stage process of consideration by the Scottish Parliament (as stipulated in section 36).

Section 31(2) of the 1998 Act provides for the Presiding Officer to "decide whether or not in his [or her] view the provisions of the Bill would be within the legislative competence of the Parliament and state his decision". Standing Order 9.3 on "Accompanying documents" also deals with this procedure. The

194 Alan Page, Constitutional Law of Scotland, para 1-20.

195 By convention, this position has been held by a member of a different political party following each Scottish Parliament election and although not required to do so, each Presiding Officer has resigned their party membership while in office. George Reid, the Scottish Parliament's second Presiding Officer, described the role as "political facilitation, corporate direction and representation" (quoted in Alan Page, Constitutional Law of Scotland, para 4-44).

196 The statutory duties of the Clerk – who is also chief executive of the Scottish Parliament – include writing the date of Royal Assent on acts of the Scottish Parliament (section 28(4)).

197 There is a modest exception under paragraph 3 of Schedule 4 for modifications which (a) are incidental to, or consequential on, provision made […] which does not relate to reserved matters, and (b) do not have a greater effect on reserved matters than is necessary to give effect to the purpose of the provision. For a partially successful challenge on reserved matters grounds, see [2018] UKSC 64.

198 This provision means an act of the Scottish Parliament will be struck down as outwith legislative competence rather than made subject to a declaration of incompatibility under section 4 of the Human Rights Act 1998. Examples are *Cameron v Cottam (No 2)* [2012] HCJAC 31, *Salvesen v Riddell* [2013] UKSC 22, *The Christian Institute v The Lord Advocate* [2016] UKSC 51, and *AB v HMA* [2017] UKSC 25. See also the Convention Rights (Compliance) (Scotland) Act 2001, which is used by Scottish Ministers to remedy administrative as well as legislative incompatibilities.

199 Orders in Council have specified these functions, for example The Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2004.

200 These are the persons entitled to vote as electors, the electoral system, the numbers of constituencies or regions (or equivalent areas) and the number of MSPs per constituency or region. The timing or frequency of devolved elections is not a protected matter. The Scottish Elections (Franchise and Representation) Act 2020 was the first piece of legislation which required this "super majority". The Presiding Officer is required to state whether the provisions of a bill relate to a protected subject matter.

Scottish Government is not obliged to withdraw or change legislation that the Presiding Officer declares incompetent. Under section 31(1), any person in charge of a bill – be it a Member's Bill, Committee, Private or Emergency – shall also make a similar statement of legislative competence. A Scottish Government bill cannot be introduced without such a ministerial statement, and a Scottish Minister cannot make a statement on legislative competence without clearance from the Scottish Law Officers.

Section 32 provides that the Presiding Officer submits bills to the King for Royal Assent, unless prevented from doing so by an Order laid in the UK Parliament under section 35.[201] Submission for Royal Assent is also prohibited if a Scottish Parliament bill has been referred to the Supreme Court by the Advocate General for Scotland,[202] the Lord Advocate or the Attorney General for England and Wales during the period of four weeks beginning with the passing of the bill.[203] Under section 38, the Keeper of the Registers of Scotland record all Letters Patent "signed with [His] Majesty's own hand signifying" assent to a bill passed by the Scottish Parliament.[204] The Interpretation and Legislative Reform (Scotland) Act 2010 makes provision about the publication, interpretation and operation of Acts of the Scottish Parliament and instruments made under them.

Modifications to reserved or protected legislative competence can be made under section 30 and (for executive devolved competence) section 63.[205] An Order under section 108 can enable functions of Scottish Ministers to be transferred to – or be exercised concurrently/by agreement with – a UK Minister of the Crown.[206] Section 104 (in conjunction with section 112) provides for Orders in Council or a Minister of the Crown by order to make consequential modifications to the law in reserved areas in consequence of Acts of the Scottish Parliament.[207] Section 107 enables the UK Parliament to repeal via subordinate legislation Acts of the Scottish Parliament considered

201 Of this there is only one example, The Gender Recognition Reform (Scotland) Bill (Prohibition on Submission for Royal Assent) Order 2023. The Secretary of State's intervention was upheld in the Court of Session, *Petition of the Scottish Ministers* [2023] CSOH 89. As at Westminster, the strong convention is that the King grants Royal Assent to any bill passed by the Scottish Parliament.

202 The Advocate General examines bills "at various stages during their progress through the Scottish Parliament" (HC Deb 25 January 2002 Vol 378 c1127W [Legislation]).

203 Scotland Act 1998, sections 32A and 33.

204 While under section 40 of the Interpretation and Legislative Reform (Scotland) Act 2010 the Clerk of the Scottish Parliament must ensure that the Keeper of the Records of Scotland receives the official print of each Act of the Scottish Parliament.

205 The type of legislative scrutiny for different Orders in Council is set out in Schedule 7 to the 1998 Act. Section 30 Orders require the agreement of both the UK and Scottish Parliaments. See Devolution Guidance Note 14. Section 63 Orders were used extensively after 1999 to adjust the executive functions of Scottish Ministers.

206 This power, which requires the approval of both parliaments, has never been used. Under section 93, UK Ministers of the Crown may make "agency" arrangements for Scottish Ministers to exercise specified functions on their behalf and vice versa. See, for example, The Scotland Act 1998 (Agency Arrangements) (Specification) Order 2011.

207 See, for example, Scotland Act Order to Enable Scottish Miners' Pardons, Scotland Office, 10 December 2024. The term "Scotland Act Order" is not statutory.

ultra vires.[208] The legislative competence of the Scottish Parliament was extended by the Scotland Act 2012 and Scotland Act 2016.[209]

Schedule 6 to the Scotland Act 1998 makes provision for "devolution issues" to be considered by the courts, including the Supreme Court. Section 29 provides that an Act of the Scottish Parliament is "not law" if it "relates to a reserved matter" and subsection (3) that the question of whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined "by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances". Under section 101, such a provision is to be read "as narrowly as is required for it to be within competence, if such a reading is possible".[210]

In the case of *Imperial Tobacco v Lord Advocate*, Lord Hope stated that "more than a loose or consequential connection" to a reserved matter must be established.[211] Paragraph 34 of Schedule 6 to the 1998 Act provides that the Lord Advocate "may refer to the Supreme Court any devolution issue which is not the subject of proceedings". This can include the competence of draft legislation.[212]

The Scottish Parliament has a committee system, although this does not distinguish between standing and select committees, as in the UK Parliament. Seven mandatory committees are set out in the Scottish Parliament's Standing Orders.[213] Subject committees can also be established on a motion from any MSP or from the Parliamentary Bureau, and these usually cover the main portfolio responsibilities of Scottish Ministers. Under paragraph 6 of Schedule 6 to the 1998 Act, "regard" must be had "to the balance of political parties in the Parliament" when populating committees. Unlike at Westminster, committee convenors are not elected. Scottish Parliament committees may also initiate bills "on any competent matter".[214] Under section 23 of the 1998 Act, committees have statutory power to call for witnesses and documents. Committees can conduct both pre-legislative scrutiny of draft bills and post-legislative scrutiny of acts.[215] The Scottish Parliament publishes Guidance on Committees.

The Official Report, like Hansard at Westminster, is the published record of proceedings in the Scottish Parliament.

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208 This has only been used once, to repeal part of the Regulation of Care (Scotland) Act 2001, which purported to amend provisions for two tax incentives in the UK Finance Act 2000.

209 These Acts implemented some of the recommendations of, respectively, the cross-party Calman Commission (2009) and Smith Commission (2014).

210 Alan Page has called this the "presumption of competence" (Constitutional Law of Scotland, para 16-21).

211 *Imperial Tobacco v Lord Advocate* [2012] UKSC 61.

212 *Reference by the Lord Advocate* [2022] UKSC 31.

213 These are Standards, Procedures and Public Appointments, Finance, Public Audit, Europe and External Relations, Equalities, Public Petitions and Delegated Powers and Law Reform. The Public Petitions Committee is now the Citizen Participation and Public Petitions Committee.

214 Scottish Parliament Standing Orders Rule 6.2.

215 Post-legislative scrutiny, Scottish Parliament website.

Elections

The Scottish Parliament is elected under the simple majority system (first past the post) in 73 constituencies and the Additional Member System of proportional representation in eight multi-member regions. Schedule 1 to the 1998 Act, as amended by the Scottish Parliament (Constituencies) Act 2004, fixed the number of MSPs at 129. Detailed rules for the conduct of elections are prescribed in The Scottish Parliament (Elections etc.) Order 2015. The Electoral Management Board for Scotland is responsible for co-ordinating the administration of Scottish Parliamentary (and local) elections.[216] Paragraph 6 of Schedule 1 to the Scotland Act 1998 (as amended by section 30 of the Scottish Elections (Reform) Act 2020) provides for the procedure governing changes to the boundaries of Scottish parliamentary constituencies. Once Boundaries Scotland has submitted its report, Scottish Ministers must give effect to the recommended boundaries by laying a draft Order before the Scottish Parliament. If approved by resolution, the Scottish Ministers must submit the draft Order to the King in Council; if rejected or withdrawn, Scottish Ministers may amend the draft and re-lay it or ask Boundaries Scotland to conduct a further review.

There is no constitutional difference between constituency or regional Members. Candidates may stand as both a constituency and regional candidate in the same election, but in only one constituency and one region. [217] Qualification to stand for election to, and to be a member of, the Scottish Parliament is provided for under section 15 of the 1998 Act and in The Scottish Parliament (Disqualification) Order 2020. Under section 18, the Court of Session has jurisdiction over disqualification proceedings. In 2025 the Scottish Government intends to introduce regulations (under sections 3 and 4 of the Scottish Elections (Representation and Reform) Act 2025) which would bar MSPs from also serving as an MP or member of the House of Lords.[218]

Section 2 of the 1998 Act (as amended by the Scottish Elections (Dates) Act 2016) provides for general elections every five years on the first Thursday in May, [219] and section 3 for extraordinary elections if the Scottish Parliament votes (by two thirds) to dissolve itself or the office of First Minister is vacant after 28 days. [220] An ordinary general election cannot take place on the same day as a UK parliamentary election, while the Presiding Officer can propose an alternative date either within one month earlier or one month later than the first Thursday in May. In that eventuality, then the King by Proclamation under the Scottish Seal would dissolve the Scottish Parliament, require an election to be held on the alternative date and require Parliament to meet within seven days.[221]

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216 Local Electoral Administration (Scotland) Act 2011, section 1.
217 Scotland Act 1998, section 5.
218 Modernising Scottish elections, Scottish Government, 17 December 2024.
219 As amended by Scottish Elections (Reform) Act 2020, section 1.
220 An extraordinary general election has no bearing on the timing of the next ordinary election unless it is held within six months of that date, in which case the ordinary election is not held.
221 Scotland Act 1998, sections 2(2A) and 2(5).

Section 9 provides for constituency by-elections (which must be held within three months of a vacancy unless an ordinary election is due within that period) and section 10 for regional list vacancies. [222] By virtue of section 1 of the Scottish Elections (Reduction of Voting Age) Act 2015, the voting age is 16 years or over. [223] Prisoners sentenced to a term of imprisonment not exceeding 12 months can vote in Scottish Parliament elections. [224]

Under section 84 of the 1998 Act, MSPs are required to make an oath or affirmation of allegiance to the King as set out in section 2 of the Promissory Oaths Act 1868. There is a Code of Conduct for Members of the Scottish Parliament which provides a set of principles (including the Nolan Principles) and standards for MSPs and sets out the ethical standards expected of them in carrying out their Parliamentary duties. [225] This is overseen by The Standards Commission for Scotland and an Ethical Standards Commissioner, an independent regulator appointed by the Scottish Parliamentary Corporate Body, approved by MSPs and underpinned by legislation. [226] A Member of the Scottish Parliament may at any time resign their seat by giving notice in writing to the Presiding Officer. [227]

It is customary for the Sovereign to open each session of the Scottish Parliament with a speech, although this is not analogous to the King's Speech delivered in the House of Lords. The Monarch also attends meetings to mark significant anniversaries. The Lord Lyon, Scottish Heralds and Scottish Regalia are usually present. [228] There is no statutory obligation for the Scottish Parliament to meet upon a demise of the Crown, although in 2022 it chose to do so. [229] A Kirking of the Parliament service is held at St Giles' Cathedral to mark the beginning of each Holyrood session. [230]

Scottish Government

Sections 45-46 for MSPs to choose one of their number to be nominated by the Presiding Officer for appointment by the King as First Minister. [231] A First Minister is appointed via Royal Warrant, after which he or she is sworn in at the Court of Session, Scotland's senior civil court (during which the Warrant is

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222 If a party's regional list is exhausted, or where a regional seat held by an individual candidate falls vacant, then that seat remains vacant until the next general election.

223 See also The Scottish Parliament (Elections etc.) Order 2015.

224 Representation of the People Act 1983, section 3(1A) (as amended by the Scottish Elections (Franchise and Representation) Act 2020, section 5).

225 Section 8 of the Code of Conduct states that MSPs must "take on a constituent's case when approached, unless they have a legitimate reason for declining it".

226 The Ethical Standards in Public Life etc. (Scotland) Act 2000, the Scottish Parliamentary Standards Commissioner Act 2002, the Public Appointments and Public Bodies etc. (Scotland) Act 2003, and the Lobbying (Scotland) Act 2016.

227 Scotland Act 1998, section 14. See, for example, Bill Walker resigns as MSP after pressure over domestic abuse convictions, BBC News online, 7 September 2013.

228 The King's speech marking the 25th anniversary of the Scottish Parliament, Royal Family website, 28 September 2024.

229 Scottish Parliament Official Report, 12 September 2022

230 The Duke of Rothesay attends the Kirking of the Scottish Parliament in Edinburgh, Royal Family website, 11 May 2016.

231 See also Scottish Parliament Standing Orders Chapter 4 and 11.

presented to the Lord President).[232] No provision exists in the 1998 Act for a Deputy First Minister, but by custom all devolved administrations have granted one senior Scottish Minister this title, as combined with specific policy responsibilities.

A First Minster can resign via a written communication to the King,[233] and, under section 45(2), must do so if the Parliament resolves that the Scottish Government no longer enjoys the confidence of the Parliament.[234] Under section 45(4), if the office of First Minister is vacant or the incumbent is unable to act, then their functions can be "exercisable by a person designated by the Presiding Officer". Death also causes a vacancy under section 46(2)(c).[235] The office of First Minister is held "at His Majesty's pleasure", which suggests he or she could be dismissed by the King in certain circumstances.[236]

The First Minister is Keeper of the Scottish Seal, that is the Seal appointed by the Treaty of Union to be "kept and used in Scotland in place of the Great Seal of Scotland".[237] This is used to seal Acts of the Scottish Parliament and Letters Patent relating to Scottish appointments.[238] By custom, the First Minister of Scotland becomes a member of the Privy Council. Scottish Parliament Standing Order 13.6 makes provision for a weekly session known as First Minister's Questions.

The Monarch holds an audience with the First Minister of Scotland around twice a year. As with the Prime Minister, it has become a tradition that the First Minister spends a weekend with the King at Balmoral during the summer.[239] The First Minister's official residence is Bute House in Edinburgh.

Under section 47 of the 1998 Act the First Minister may, with the approval of the King, appoint Ministers from among Members of the Scottish Parliament.[240] With the agreement of the Scottish Parliament, the First Minister makes a submission to the Monarch which recites that section of the 1998 Act.[241] They are known collectively as "the Scottish Ministers" but are not Ministers of the Crown. Junior Scottish Ministers are appointed with the approval of the King under section 49. They are "to assist the Scottish

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232 During this ceremony, the First Minister takes the oath of allegiance and official oath as required by the Scotland Act 1998, as well as the official oath as Keeper of the Scottish Seal under the First Part of the Schedule to the Promissory Oaths Act 1868.

233 Nichola Kane @NicholaKane_, X (Twitter), 28 March 2023 [Accessed 14 September 2023].

234 If a motion expresses no confidence in the First Minister personally then they are not legally bound to submit their resignation if that motion is lost.

235 As occurred with the death of Donald Dewar in October 2000.

236 As with the potential dismissal of the Prime Minister by the Monarch, this is most likely more theoretical than real (see Alan Page, Constitutional Law of Scotland, para 5-05).

237 Scotland Act 1998, section 2(6).

238 The form of the Letters Patent is set out in The Scottish Parliament (Letters Patent and Proclamations) Order 1999.

239 Humza Yousaf meets King Charles as republican First Minister spends weekend at Balmoral, Daily Record, 11 September 2023.

240 Unlike the Welsh Government, there is no statutory restriction on their number.

241 The executive being drawn from the legislature therefore follows the Westminster model, as is also the case in Wales and, with important caveats, in Northern Ireland. As at Westminster, the King's obligation to approve the names tendered to him remains based on convention.

Ministers in the exercise of their functions", language intended to reflect the *Carltona* doctrine (see Section 5.3).

In all their dealings with the Scottish Parliament, Ministers should seek to uphold and promote the key principles which guided the work of the Consultative Steering Group on the Scottish Parliament.[242] Ministers who knowingly mislead the Scottish Parliament are expected to offer their resignation to the First Minister.[243] All Scottish Ministers are bound by the Interests of Members of the Scottish Parliament Act 2006,[244] taken together with section 39 of the Scotland Act 1998. Standing Orders make provision for questions (both oral and written) to the Scottish Government.[245]

Section 44(1) of the 1998 Act provides that the Scottish Government consists of the First Minister, other Scottish Ministers (Cabinet Secretaries), the Lord Advocate and the Solicitor General for Scotland and junior Scottish Ministers.[246] The First Minister is responsible for the overall organisation of the Scottish Government, including the allocation of functions between Ministers and all special adviser appointments.[247] The Scottish Government operates on the basis of collective responsibility with the exceptions of statutory or other responsibilities on the First Minister or Lord Advocate alone.[248]

Functions of the Scottish Ministers are "exercisable on behalf of [His] Majesty". Most of these functions are conferred collectively, but section 52(3) of the 1998 Act provides that any member of the Scottish Government can exercise any of these functions, and section 52(4) that any act or omission of any member of the Scottish Government is legally the act or omission of each of them.[249] This echoes the legal status of the UK office of Secretary of State as one and indivisible. Section 56 lists powers which are "shared" by the Scottish Ministers and UK Ministers of the Crown, for example the provision of financial assistance to industry.

Section 47(3) of the 1998 Act provides that any Minister may be removed from office by the First Minister (without the consent of the Scottish Parliament), may at any time resign and must do so if the Scottish Parliament resolves that the Scottish Government no longer enjoys its confidence. Standing Order 8.12 provides that if a motion of confidence in a member of the Scottish

242 Scottish Ministerial Code, para 10.1.
243 Scottish Ministerial Code, para 1.7(c).
244 This Act started life as a Committee Bill promoted by the Standards Committee.
245 The Scottish Parliament also publishes Guidance on Parliamentary Questions.
246 Under subsection (3) members of the Scottish Government cannot hold office in the UK government. The change of name from "Scottish Executive" to Scottish Government was given effect by section 12 of the Scotland Act 2012.
247 Scottish Ministerial Code, para 8.1 and 7.14-7.18; Constitutional Reform and Governance Act 2010, section 15. If there is a coalition government, then this will be a matter of discussion and agreement between the First Minister and Deputy First Minister.
248 Scottish Ministerial Code, paras 6.1 and 6.8. Collective responsibility also applies to junior ministers even though they do not formally come within the definition of "the Scottish Ministers".
249 Under section 50 of the 1998 Act, the validity of any ministerial act is not affected by any defect in the parliamentary proceedings relating to their appointment.

Government or a junior Scottish Minister is supported by at least 25 MSPs then it shall be included in a proposed business programme. [250]

Under section 53, prerogative and other executive functions of the King exercisable within devolved competence are exercisable by the Scottish Ministers. [251] Under section 84(4), all Scottish Ministers (including the First Minister) must take the official oath (or Oath of Office) set out in section 3 of the Promissory Oaths Act 1868. [252] Under section 5A of the same Act, this is tendered by the Lord President of the Court of Session at a sitting of that court. Section 7 provides that if any member of the Scottish Government "declines or neglects" to take the necessary oath then he or she shall vacate or be disqualified from entering any office held.

Although there is no longer a requirement in the UK Ministerial Code for Ministers of the Crown (including the Prime Minister) to seek the King's permission to travel abroad, [253] this still forms part of the Scottish Ministerial Code. [254] By convention, the Scottish Ministerial Code is revised at the commencement of each new parliamentary term (and after a change of First Minister). If deemed appropriate, the First Minister may refer action required in respect of ministerial conduct to independent advisers for advice. [255]

Section 126 of the Scotland Act 1998 defines the "Scottish Administration" as members of the Scottish Government, junior Scottish Ministers, non-ministerial office holders and their respective members of staff. [256] The Public Finance and Accountability (Scotland) Act 2000 makes provision for the appointment of the Scottish Government's Permanent Secretary as Principal Accountable Officer for the Scottish Administration and specifies their functions in this capacity. Staff of the Scottish Administration are members of the "civil service of the State". [257] The Scottish Civil Service Code states that they are "accountable to Scottish Ministers, who in turn are accountable to the Scottish Parliament". [258] Under the overall direction of the Permanent Secretary, the management of more than 40 Directorates is allocated to eight Directors-General. [259]

The Scottish Government's Programme for Government is published each September. This includes the legislative programme for the forthcoming parliamentary year. The Parliamentary Counsel Office (which is headed by the First Scottish Parliamentary Counsel) drafts all bills for the legislative

250 If such a motion is lost, Scottish Ministers are not obliged to resign but may feel politically compelled to do so.
251 For First Ministerial advice on devolved prerogative powers, see HC Deb 30 June 1999 Vol 334 cc215-6W [Devolution (Scotland)].
252 Under section 83(2) no member of the Scottish Government can receive a salary until the oath has been taken. Each junior Scottish Minister is required to take the oath of allegiance.
253 Benjamin Lewis @tc1415, X (Twitter), 29 August 2023 [Accessed 14 September 2023].
254 Scottish Ministerial Code, Scottish Government, 17 December 2024, para 11.10.
255 The Scottish Ministerial Code: independent advisers, Scottish Government website.
256 The Scottish Government's guide to Public bodies in Scotland lists nine categories.
257 Scotland Act 1998, section 51(2).
258 Civil Service Code, Scottish Government website, 11 November 2010.
259 Government structure, Scottish Government website.

programme.[260] Unlike at Westminster, Scottish parliamentary business is the responsibility of the cross-party Parliamentary Bureau.

Scottish Law Officers

The Lord Advocate, supported by the Solicitor General for Scotland, is the principal legal adviser to the Scottish Government and the Crown on devolved matters. The Scottish Law Officers are non-political members of the Scottish Government (and therefore also Scottish Ministers) appointed (or removed) by the King on the recommendation of the First Minister (via Royal Warrant) and with the agreement of the Scottish Parliament.[261] Elish Angiolini was the first Lord Advocate to remain in office following a change in government.[262]

The Lord Advocate also serves as the ministerial head of the Crown Office and Procurator Fiscal Service in Scotland,[263] making them the chief public prosecutor for Scotland. Under section 48(5) of the 1998 Act, any decision of the Lord Advocate taken in this capacity shall be taken "independently of any other person".

Both law officers can speak (but not vote) in the Scottish Parliament and are not usually MSPs.[264] The Lord Advocate is not a member of the Scottish Cabinet but can attend in certain circumstances and address it if they consider it appropriate to do so.[265] The Lord Advocate is a member of the Scottish Cabinet Sub-Committee on Legislation and oversees the drafting of Scottish Government bills by the Parliamentary Counsel Office.[266]

The Scottish Ministerial Code states that the Scottish law officers have a responsibility for ensuring "that the [Scottish] Government acts lawfully at all times".[267] Under the Law Officer Convention, the Scottish Government does not, other than in exceptional circumstances, disclose the fact that legal advice has or has not been given to the Scottish Government by or sought from the Law Officers, but if Scottish Ministers feel that the "balance of public interest lies in disclosing either the source or the contents of legal advice on a

260 See With these few words..., Law Society of Scotland website, 21 August 2006.

261 Scotland Act 1998, section 48(1). Where the Lord Advocate resigns in consequence of a no-confidence resolution in the Scottish Government, he or she "shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted, but only for the purpose of exercising his retained functions". Under section 287 of the Criminal Procedure (Scotland) Act 1995, outstanding indictments raised by the Lord Advocate are unaffected by the demission from office of the Lord Advocate or Solicitor General for Scotland.

262 Angiolini had been appointed by a Labour Scottish Government in October 2006 but was retained by the SNP government which took office in May 2007. Hitherto the Lord Advocate had been viewed as a quasi-political appointment (see Alan Page, Constitutional Law of Scotland, para 5-28).

263 Not to be confused with the Crown Office within the Ministry of Justice.

264 Scotland Act 1998, section 27. Under the Scottish Parliament's Standing Orders, written questions about the operation of the systems of criminal prosecution and investigation of deaths are answerable only by the Law Officers, as are oral questions on those matters in all but exceptional circumstances (Rules 13.5.1, 13.7.1 and 13.8.3).

265 Scottish Government, Guide to Collective Decision Making, para 4.2.

266 Lord Advocate: role and functions, Scottish Government website, 23 October 2024.

267 Scottish Ministerial Code, para 6.28.

particular matter, the Law Officers must be consulted and their prior consent obtained".[268]

The Lord Advocate and Solicitor General for Scotland are operationally responsible for the Scottish Government Legal Directorate.[269] Under section 2 of the Law Officers Act 1944, the Solicitor General for Scotland may exercise any function of the Lord Advocate in certain circumstances.

Under the Precedence Act 1661 (an Act of the Old Scottish Parliament), the Lord Advocate ranks third in the order of precedence in Scotland.[270]

Scottish Cabinet

Although there is no provision for one in the 1998 Act, the Cabinet is the main decision-making body of the Scottish Government. It comprises the First Minister and all Cabinet Secretaries (senior Scottish Ministers):

> The Permanent Secretary attends Cabinet meetings as Secretary to the Cabinet. The Minister for Parliamentary Business is not a member, but attends weekly to discuss forthcoming business in the Parliament. The Lord Advocate is not a member, but attends when required to provide legal advice and to represent her ministerial interests. Cabinet meetings are held weekly in Bute House, Edinburgh while parliament is sitting, and may also be held at other times in locations throughout Scotland.[271]

Membership of the Scottish Cabinet and decisions on attendance at Cabinet meetings are matters for the First Minister.[272] While the Scottish Parliament is in session, the Cabinet meets weekly, usually on a Tuesday afternoon. The Cabinet's business consists, in the main:

> of questions which significantly engage the collective responsibility of the Government, either because they raise major issues of policy or because they are of critical importance to the public.[273]

Copies of the full minutes of Scottish Cabinet meetings, but not individual Cabinet papers, are sent to the private secretaries of the King and the Duke of Rothesay (the Prince of Wales) to "ensure they are properly briefed on Scottish affairs".[274] Regular Travelling Cabinets are held all over Scotland.

The provisions of the Freedom of Information (Scotland) Act 2002 apply to all information held by the Scottish Government and therefore also apply to

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268 Scottish Ministerial Code, paras 6.37(b)-6.38. For an example of publication with consent see Scottish Parliament Official Report, 23 October 2012. Section 29(1)(c) of the Freedom of Information (Scotland) Act 2002 exempts from disclosure information relating to advice, or a request for advice, by the Law Officers. This exemption is however subject to the public interest test in section 2 of that Act.

269 Scottish Ministerial Code, para 6.29.

270 The Lord President of the Court of Session ranks first and the Lord Clerk Register second.

271 Cabinet and Ministers, Scottish Government website.

272 Scottish Ministerial Code, para 8.5.

273 Scottish Ministerial Code, para 6.10.

274 Written question and answer: S4W-28995, Scottish Parliament website. See also the Scottish Government's Guide to Collective Decision Making, which was published in November 2008 and is now archived.

Cabinet and Cabinet sub-committee information.[275] The "working assumption" is that the proceedings of the Cabinet (or any sub-committee or other ministerial group) are exempt from disclosure under the 2002 Act, subject to consideration of the public interest. Where information is covered by a content-based exemption, this may be withheld only if disclosure would "prejudice substantially" certain aspects of Scottish Government business.[276] As under the equivalent UK Act, the First Minister has the power to set aside the Scottish Information Commissioner's decision in certain limited circumstances.[277]

There is a list of Scottish Cabinet sub-committees on the Scottish Government website, including one on legislation.

Secretary of State for Scotland

A Secretary for Scotland was created in 1885[278] and has held the rank of a Secretary of State since 1926.[279] The Secretary of State for Scotland is a member of the UK Cabinet. He or she leads the Scotland Office, which is based at Dover House on Whitehall.[280] The Secretary of State has limited power to make provision about the combination of polls in Scottish Parliament elections under section 12A of the Scotland Act 1998, while section 58 allows him or her to prevent or require action of the Scottish Government (and to revoke subordinate legislation) if required under the UK's international obligations. Together with the section 35 "veto", the Memorandum of Understanding views these powers of intervention "very much as a matter of last resort".[281]

The Scottish Affairs Committee is a Select Committee of the House of Commons which examines the expenditure, administration and policy of the Scotland Office, including its relations with the Scottish Parliament. It comprises 11 Members of Parliament who conduct inquiries and produce reports. There is also a Scottish Grand Committee, although this last met in November 2013.[282]

275 All Scottish public authorities covered by the 2002 Act are listed in Schedule 1.

276 Scottish Government, Guide to Collective Decision Making, para 4.31. Under section 42 of the 2002 Act, a Scottish Information Commissioner is appointed by the King on the nomination of the Scottish Parliament for a term not exceeding eight years. The Commissioner can be removed from office by the King provided at least 86 MSPs have supported a resolution to that effect.

277 Freedom of Information (Scotland) Act 2002, section 52. An appeal on a point of law lies against a decision of the Commissioner to the Inner House of the Court of Session (section 56).

278 Secretary for Scotland Act 1885.

279 Secretaries of State Act 1926, section 1. The Reorganisation of Offices (Scotland) Act 1939 consolidated most Scottish administration in Edinburgh rather than London.

280 Previously the Scottish Office and, between 1999 and 2024, the Office of the Secretary of State for Scotland. There is also a small office in Edinburgh.

281 Memorandum of Understanding and Supplementary Agreements, October 2013, para 27.

282 Constitutional Arrangements, Scottish Grand Committee Debates, 12 November 2003.

Government of Wales Act 2006

The Senedd

Section 1 of the Government of Wales Act 2006 (as amended) provides for a legislative body called Senedd Cymru or the Welsh Parliament.[283] It is generally known as "the Senedd", which is Welsh for parliament.[284]

Section 25 provides for the election of a Presiding Officer (Llywydd, who operates impartially), without which the Senedd cannot function, section 26 for a Clerk of the Senedd (now the Chief Executive and Clerk of the Senedd) and section 27 (and Schedule 2) for a Senedd Commission (which is chaired by the Presiding Officer and whose Principal Accounting Officer is the Clerk). Section 31 provides for proceedings of the Senedd to be regulated by Standing Orders, with some statutory stipulations, including (under section 36) that they must include provision for a register of interests.

Section 107 provides for the Senedd to pass Acts of the Senedd (primary legislation) while preserving the power of the UK Parliament "to make laws for Wales", even in devolved areas. Under section 108A, an act of the Senedd is "not law" if any provision of the act is outside legislative competence. A provision is outside competence if it extends beyond England and Wales, applies beyond Wales, relates to reserved matters, makes modifications of the law on reserved matters or is incompatible with European Convention rights.

Under section 115, it is for the Presiding Officer to submit Senedd bills for Royal Assent, unless prevented from doing so under section 114.[285] Submission for Royal Assent is prohibited if under sections 111B and 112 a Senedd bill has been referred to the Supreme Court by the Counsel General or the Attorney General for England and Wales during the period of four weeks beginning with the passing of the bill.

The legislative competence of the Senedd was extended by the Wales Act 2014 and Wales Act 2017.[286] The latter inserted a new Schedule 7A to the 1998 Act, which lists matters reserved to the UK Parliament. Schedule 7B sets out general restrictions on the Senedd's legislative competence. Sections 58A and 109 of the 2006 Act provide for transfers of executive and legislative functions between the UK and Welsh parliaments,[287] while Schedule 9 makes provision for "devolution issues" to be considered by the courts, including the Supreme Court.

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283 Senedd and Elections (Wales) Act 2020, section 2, renamed what had been the National Assembly for Wales.

284 The first Welsh Youth Parliament was elected in December 2018, following a Senedd vote in October 2016.

285 This power has never been exercised. Also under section 115, Letters Patent regarding Royal Assent must be sent to and preserved in the National Library of Wales.

286 These Acts implemented many of the proposals made in the first and second reports published by the Commission on Devolution in Wales (the Silk Commission).

287 Section 109 Orders require approval from both the UK Parliament and the Senedd.

Section 111A of the 2006 Act (as amended by the Wales Act 2017, section 9) provides for "protected subject matters", which include the composition of and franchise for the Senedd. If the Presiding Officer decides that a provision of a Senedd bill relates to a protected subject matter, then it cannot be passed unless two-thirds of the total number of MSs vote in favour of it at the final stage. This is known colloquially as the "supermajority" vote.

Senedd procedures relevant to public bills are set out in Standing Order 26 and generally involve a four-stage process.[288] Section 111 of the 2006 Act makes certain stipulations for Senedd Standing Orders in respect of proceedings on Senedd bills.

Section 28 states that Standing Orders may make provision for committees and sub-committees of the Senedd, which have the power to call witnesses (section 37). Under section 30, one of these must be an Audit Committee, the membership of which cannot include any Ministers and whose chair must not be a "member of a political group with an executive role". Under section 143, the Audit Committee may consider any accounts or reports laid before the Senedd by the Auditor General. Senedd Committees may conduct both pre-legislative scrutiny of draft bills and post-legislative scrutiny of Senedd acts.[289]

The Record is the published account of Senedd proceedings.

Elections

Section 3 of the 2006 Act provides for general elections every five years on the first Thursday in May,[290] although this will change to every four years as of 2026.[291] Section 5 makes provision for an extraordinary election if the Senedd votes (by two thirds) to dissolve itself or if the office of First Minister is vacant after 28 days. An ordinary general election cannot take place on the same day as a UK parliamentary election, while the Presiding Officer can propose an alternative date either within one month earlier or one month later than the first Thursday in May. In that eventuality, then the King by Proclamation under the Welsh Seal would dissolve the Senedd, require an election to be held on the alternative date and require Parliament to meet within 14 days.[292]

Section 11 makes provision for vacant seats.[293] Under section 12, the franchise for a Senedd election is the same as that for local government elections in Wales. The National Assembly for Wales (Representation of the People) Order 2007 prescribes the timelines for Senedd elections, while Senedd constituencies are specified in regulations under section 49J of the Democracy and Boundary Commission Cymru etc. Act 2013.

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288 See also Guide to the Legislative Process, Senedd website.
289 Examining legislation, Senedd website.
290 As amended by the Wales Act 2014, section 1.
291 Senedd Cymru (Members and Elections) Act 2024, section 3.
292 Government of Wales Act 2006, section 4.
293 As amended by the Senedd Cymru (Members and Elections) Act 2024, section 9.

The Senedd consists of 40 constituency members and 20 regional members who are known as Members of the Senedd (MS, or as Aelodau o'r Senedd). The allocation of regional members is calculated under section 8. At the next Senedd election in 2026, the number of MSs will increase to 96 as elected under a closed list proportional representation system in 16 multi-member constituencies.[294] Under Schedule 2 to the Senedd Cymru (Members and Elections) Act 2024, the Democracy and Boundary Commission Cymru must, by 1 April 2025, submit a report to Welsh Ministers setting out which contiguous UK parliamentary constituencies in Wales are to be combined to create the areas of the 16 new Senedd constituencies. Welsh Ministers must make regulations giving effect to the determinations and lay them before the Senedd.[295]

Under section 23 of the 2006 Act, Members of the Senedd are required to make an oath or affirmation of allegiance to the King as set out in section 2 of the Promissory Oaths Act 1868.[296] There is a Code of Conduct and Associated Rules and Guidance for Members of the Senedd. Section 16 and Schedule 1A provide for those disqualified from membership, which includes members of the House of Lords under section 17C. Members of the Senedd may at any time resign by giving notice in writing to the Llywydd.[297]

By custom, the Monarch opens each new session of the Senedd shortly after an election, and also attends on other occasions such as anniversary celebrations.[298] Wales Herald Extraordinary is usually present. There is no statutory obligation for the Senedd to meet upon a demise of the Crown but in 2022 it chose to do so.[299]

Welsh Government

Section 45 of the 2006 Act provides for a Welsh Government, while sections 46 and 47 make provision for the Senedd to choose one of its Members to be nominated by the Presiding Officer as First Minister and thereafter appointed by the King. A First Minister of Wales is appointed via Royal Warrant. Once the Llywydd has informed the Welsh Government of the King's approval, the new First Minister takes the statutory Official Oath before a presiding judge of the Wales circuit. By custom, a new First Minister is also sworn a member of the Privy Council. Section 116 of the 2006 Act makes provision for a Welsh Seal of which the First Minister is Keeper. This is used to seal Letters Patent signifying the King's assent to Senedd bills.[300] Under Senedd Standing Order 12.56(i), time must be made available in plenary each sitting week, for a maximum of

294 Senedd Cymru (Members and Elections) Act 2024, section 1.
295 Unlike in the Scottish Parliament, the Senedd does not have a vote on these boundaries.
296 The Welsh Forms of Oaths and Affirmations (Government of Wales Act 2006) Order 2007, article 5, prescribes the form of words in Welsh.
297 Government of Wales Act 2006, section 15.
298 A speech by The King for the twenty-fifth anniversary of the Senedd, Royal Family website, 11 July 2024.
299 His Majesty The King's reply to the message of condolence at the Senedd, Royal Family website, 16 September 2022.
300 The form of Letters Patent is set out in The National Assembly for Wales (Letters Patent) Order 2011.

60 minutes, for the First Minister to answer oral questions. The First Minister of Wales does not have an official residence.

Under section 48 of the 2006 Act, the First Minister may, with the approval of the King, appoint Welsh Ministers from among Members of the Senedd. Section 51 limits the number of Welsh Ministers to 12 (excluding the First Minister and Counsel General).[301] As per section 55, all Welsh Ministers (including the First Minister and Counsel General) must take the oath of allegiance set out in section 2 and the official oath set out in section 3 of the Promissory Oaths Act 1868.[302] They are known collectively as "the Welsh Ministers" but are not Ministers of the Crown.[303] Deputy Welsh Ministers are appointed by the First Minister with the approval of the King under section 50.

The principle of collective responsibility applies to all Welsh Ministers, Deputy Welsh Ministers and the Counsel General.[304] Ministers have a duty to be held to account in the Senedd, to which they must give accurate and truthful information. Ministers who knowingly mislead the Senedd are expected to offer their resignation to the First Minister.[305]

The First Minister is responsible for the overall structure and organisation of the Welsh Government, the allocation of portfolios between ministers and deciding on the distribution of special adviser posts.[306] The Permanent Secretary is the Principal Accounting Officer for the Welsh Ministers. The business of the Welsh Cabinet consists, in the main:

> of matters which significantly engage the collective responsibility of the Welsh Government, because they raise major issues of policy, taxation, the constitution or because they are of critical importance to the public.[307]

The Welsh Government publishes an annual Programme for Government.

Section 58A provides that executive ministerial functions, so far as exercisable within devolved competence, are exercisable by the Welsh Ministers.[308] Executive prerogative powers are not, as in Scotland and Northern Ireland, devolved, although since 2012 it has been the custom for the First Minister of Wales to advise the King as to the use of his devolved statutory functions. The

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301 After the 2026 Senedd general election, the maximum number of Welsh Ministers will increase to 17, excluding the First Minister and Counsel General. This maximum number can be further increased to 18 or 19 by regulations subject to the approval of two-thirds of Members of the Senedd (Senedd Cymru (Members and Elections) Act 2024, section 5).

302 The Welsh Forms of Oaths and Affirmations (Government of Wales Act 2006) Order 2007, articles 2 and 4, prescribes the forms of words in Welsh. Welsh Ministers do not receive a salary until they have done so (section 55(5)). Deputy Welsh Ministers must take the oath of allegiance but not the official oath.

303 Under section 92, the First Minister, Welsh Ministers, Counsel General and Deputy Welsh Ministers are all Crown servants for the purposes of the Official Secrets Act 1989.

304 Welsh Ministerial Code, paras 6.1-6.2.

305 Welsh Ministerial Code, para 1.3.

306 Welsh Ministerial Code, paras 2.1-2.2, 2.10; Constitutional Reform and Governance Act 2010, section 15.

307 Welsh Ministerial Code, para 6.3.

308 Although under section 81 Welsh Ministers cannot act incompatibly with European Convention rights.

Secretary of State for Wales continues to advise in respect of the King's other functions in relation to Wales. [309] Under section 57 of the 2006 Act, functions of the Welsh Ministers, the First Minister and the Counsel General are "exercisable on behalf of Her Majesty" and are exercisable by the First Minister or any of the Welsh Ministers appointed under section 48. An Order in Council issued under section 58 can enable functions of Welsh Ministers to be transferred to – or be exercised concurrently/by agreement with – a UK Minister of the Crown. [310]

The Counsel General for Wales is the Welsh Government's chief legal adviser and representative in the courts. [311] He or she is appointed by the King (on the recommendation of the First Minister and with the agreement of the Senedd) and is usually also an MS. [312] If not an MS, then under section 34 the Counsel General can participate in Senedd proceedings to the extent permitted by Standing Orders but not vote. [313] In certain respects, the Counsel General acts independently of the Welsh Government. The Counsel General is not a Welsh Minister but is a member of the Welsh Government and may attend and participate in a Cabinet meeting by invitation of the First Minister. [314] The content of his or her advice must not be disclosed without the authority of the Counsel General. [315]

Staff of the Welsh Administration are members of the "civil service of the State", which means the Home Civil Service. [316]

Secretary of State for Wales

A Secretary of State for Wales was first created in 1964 and leads the Wales Office, [317] which is based as Gwydyr House in London. This includes the Wales Office and Information Law team. The Secretary of State is a member of the UK Cabinet. According to Devolution Guidance Note 4, the Secretary for State shall:

- act as guardian of the devolution settlement in Wales
- ensure that the interests of Wales are fully taken into account by the UK Government in making decisions which will have effect in Wales
- represent the UK Government in Wales, and

309 HC Deb 15 October 2012 Vol 551 c1WS [First Minister of Wales (Functions as Privy Counsellor)]
310 See also Schedule 3A to the Act. "Agency" arrangements are possible by virtue of section 83.
311 Wales' Counsel General sworn into office, Welsh Government, 28 May 2021.
312 See the Government of Wales Act 2006, sections 46-49.
313 The Counsel General can also introduce legislation even if not an MS.
314 Section 49(9) of the 2006 prohibits the Counsel General being appointed to the offices of First Minister, Welsh Minister or Deputy Welsh Minister. Nevertheless, Jeremy Miles was Minister for European Transition as well as Counsel General between 2018 and 2021, while Mick Antoniw was also Minister for the Constitution between 2021 and 2024.
315 Welsh Ministerial Code, paras 6.17-6.23.
316 Government of Wales Act 2006, section 52.
317 Previously the Welsh Office, created in 1965, and, between 1999 and 2024, the Office of the Secretary of State for Wales.

- oversee the progress through [the UK] Parliament of primary legislation making separate provision for Wales

Under section 13A of the Government of Wales Act 2006 the Secretary of State may make provision to combine the polls at general and extraordinary Senedd elections with the polls at certain UK Parliamentary elections, although this requires the agreement of the Welsh Ministers. Under section 82 the Secretary of State may also take certain act vis-à-vis the Welsh Ministers in the context of the UK's international obligations, and under section 150 make "such provision as the Secretary of State considers appropriate" in consequence of any provision made by a Senedd act or subordinate legislation. Section 151 provides for the King in Council to remedy ultra vires acts of the Senedd.

The Welsh Affairs Committee is a Select Committee of the House of Commons which examines the expenditure, administration and policy of the Wales Office, including its relations with the Senedd. It comprises 11 MPs who conduct inquiries and produce reports. There is also a Welsh Grand Committee, which last met in January 2022.

Devolution conventions

The Sewel Convention

Legislative "consent" is a self-denying ordinance under which the UK Parliament does "not normally" legislate on devolved matters without the consent of the relevant devolved legislature.[318] This is known as the Sewel Convention[319] and is "recognised" in statute without being legally binding.[320] The UK Supreme Court confirmed in *R (Miller) v Secretary of State for Exiting the European Union* that Parliament's decision to put Lord Sewel's words in statute did not convert the Convention into a judicially-enforceable rule.[321]

Where it is more convenient for legislation on devolved matters to pass through the UK Parliament, the relevant devolved legislatures are invited to consider a Legislative Consent Motion (LCM) by the relevant devolved administration, provision for which is made in standing orders for the Scottish Parliament, Senedd and Northern Ireland Assembly.[322] The UK Parliament is not bound if an LCM recommends that consent be withheld. As the Memorandum of Understanding states:

318 Memorandum of Understanding, para 14.
319 So called after Lord Sewel, who first articulated the convention (HL Deb 21 Jul 1998 Vol 592 c791).
320 See (as amended) Scotland Act 1998, section 28(8), and Government of Wales Act 2006, section 107(6). There is no equivalent provision in the Northern Ireland Act 1998.
321 *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, para 148. The Welsh Government has published its Principles on UK Legislation in devolved areas, 13 December 2024.
322 Erskine May, para 27.6. See Scottish Parliament Standing Order 9B, Senedd Standing Order 29 and Northern Ireland Assembly Standing Order 42A.

> The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power.[323]

The approval or refusal of an LCM is notified by the clerk of the relevant devolved legislature to the clerks of the two Houses of Parliament at Westminster. The letters and associated memoranda are published on the bill pages on parliament.uk. When legislative consent is refused by a devolved legislature, an italic note appears on the list of public bills in each House's daily business paper.[324]

Questions

Under another self-denying ordinance, questions may not be tabled in the UK Parliament on matters for which responsibility has been devolved to Scotland, Wales and Northern Ireland.[325] Exceptions include those which seek information the UK government is empowered to require of a devolved executive; relate to matters covered (or to be covered) by legislation introduced in the UK Parliament; concern the operation of a concordat between the UK government and a devolved executive; concern matters in which UK Ministers have taken an official interest, or press for action in areas where UK Ministers retain administrative powers.[326]

Amendments to Strand One of the Belfast/Good Friday Agreement

There appears to be a convention under which the Strand One institutions of the Belfast/Good Friday Agreement are only reformed following agreement between all the political parties represented in the Assembly, and with the Irish government. Legislation, if necessary, is then introduced to the UK Parliament. The outcome of such negotiations is usually published as a Command Paper.[327]

Bipartisanship

Since the early 1970s, the main Great Britain parties at Westminster have taken a "bipartisan approach" to Northern Ireland matters, which means that the main opposition party (or parties) usually support government policy. This convention could encompass the "possibility of some criticism" and does not imply "total agreement or accord". The Conservative Party briefly withdrew its support for the convention (or principle) in 2001-02 when certain House of Commons services were extended to Sinn Féin MPs despite them not having taken their Parliamentary Oath or made affirmation.[328]

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323 Memorandum of Understanding, para 14.

324 Lords Constitution Committee, Respect and Co-operation: Building a Stronger Union for the 21st century, HL Paper 142, 20 January 2022, para 110.

325 Erskine May, para 11.13. There are certain exceptions.

326 Guide to Parliamentary Work, para 229.

327 See, for example, New Decade, New Approach (2020) and Safeguarding the Union (2024). Earlier concordats were the Hillsborough Castle Agreement (2010), The Stormont House Agreement (2014) and A fresh start for Northern Ireland (2015).

328 For a discussion see HC Deb 18 December 2001 Vol 377 cc151-244 [Facilities of the House].

Funding and expenditure

The Consolidated Funds for Scotland,[329] Wales[330] and Northern Ireland[331] are statutory. As in the UK Parliament, expenditure from those Consolidated Funds requires authorisation from the relevant devolved legislature.[332]

UK government funding for the devolved administrations is normally determined within spending reviews in accordance with policies set out in the Treasury's Statement of Funding Policy.[333]

The devolved administrations receive their funding largely from a Treasury "block grant".[334] Changes to the level of funding for the devolved administrations are determined by the non-statutory Barnett formula.[335] The UK government places no conditions on expenditure of the devolved administrations, although it follows that this can only apply within devolved policy areas.[336] Under section 50 of the United Kingdom Internal Market Act 2020, a UK Minister of the Crown may authorise expenditure in certain devolved areas.

The Statement of Funding Policy also sets out the procedure if there is a disagreement between UK Treasury ministers and the devolved administrations about "any aspect of its application for determining funding".[337] Failing bilateral resolution, financial disputes can be referred to the UK Cabinet.[338]

There is a UK-Scotland Joint Exchequer Committee (JEC) and Joint Exchequer Committee (Wales).[339] The January 2020 New Decade, New Approach agreement included a UK Government – Northern Ireland Executive Joint Board. Revenue Scotland (which is statutorily independent) is responsible for collecting and managing Scotland's devolved taxes.[340]

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329 Scotland Act 1998, section 64.

330 Government of Wales Act 2006, section 117. The Welsh Consolidated Fund is "held with the Paymaster General", a UK Minister of the Crown.

331 Northern Ireland Act 1998, section 57. This provided for the continued existence of the Consolidated Fund created under section 20 of the repealed Government of Ireland Act 1920. See also the Exchequer and Financial Provisions Act (Northern Ireland) 1950.

332 See, for example, section 1 of the Public Finance and Accountability (Scotland) Act 2000. Under section 5, the Auditor General for Scotland grants credits for payments out of the Fund "from time to time at the request of the Scottish Ministers". Section 124 of the Government of Wales Act 2006 makes similar provision in respect of the Welsh Consolidated Fund.

333 Statement of funding policy: Funding the Scottish Government, Welsh Government and Northern Ireland Executive, HM Treasury, November 2023.

334 Cabinet Manual, para 8.26.

335 Wales and Northern Ireland have "needs-based" factors which supplement the basic Barnett formula (see Commons Library research briefing CBP7386, The Barnett formula and fiscal devolution).

336 Cabinet Manual, para 8.26.

337 Statement of funding policy: funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, HM Treasury, November 2015, p39.

338 Protocol for Avoidance and Resolution of Disputes, HM Government, 2010.

339 There is also a UK-Scotland Joint Ministerial Working Group on Welfare.

340 As established under section 2 of the Revenue Scotland and Tax Powers Act 2014.

The Scottish and UK governments periodically agree a Fiscal Framework, most recently in August 2023. A Fiscal Framework was also agreed by the Welsh and UK governments in December 2016, and an Interim Fiscal Framework between the Northern Ireland Executive and UK government on 21 May 2024. These all include dispute resolution mechanisms.

2.3 Leaving the Union(s)

The United Kingdom has been described as a "voluntary union of 4 nations" – England, Scotland, Northern Ireland and Wales – "which come together to share resources and risks". [341]

The "Union of the Kingdoms of Scotland and England" is a reserved matter under Schedule 5 to the Scotland Act 1998, as is "the union of the nations of Wales and England" under Schedule 7A to the Government of Wales Act 2006. The union of Great Britain and Northern Ireland is not an excepted or reserved matter under the Northern Ireland Act 1998.

Northern Ireland

Section 1(1) of the Northern Ireland 1998 Act provides that Northern Ireland:

> in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1.[342]

Under Schedule 1 to the 1998 Act, the Secretary of State for Northern Ireland may "direct the holding of a poll for the purposes of section 1" on a date specified in an Order, while he or she "shall" (or must) exercise the same power:

> if at any time it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland.

Attempts in the courts to clarify the "mechanism" for directing what is often called a "border poll" have failed. [343] If a majority (in Northern Ireland) were to endorse Irish unification in such a poll, then the Secretary of State must:

341 Reforming our Union 2021: summary, Welsh Government, 8 July 2021.

342 A similar declaration appeared in section 1 (now repealed) of the Northern Ireland Constitution Act 1973. This included the curious formulation that "Northern Ireland remains part of Her Majesty's dominions and of the United Kingdom".

343 *Raymond McCord's Application: Border Poll* [2020] NICA 23. For a thorough academic examination of how any potential border poll would be designed and conducted, see Working Group on Unification Referendums on the Island of Ireland, Constitution Unit, May 2021.

> lay before Parliament such proposals to give effect to that wish as may be agreed between [His] Majesty's Government in the United Kingdom and the Government of Ireland. [344]

If a referendum is held and does not endorse unification, then another border poll cannot be held for seven years. [345]

Case law has consistently established that this "principle of consent" relates only to Northern Ireland's status as part (or not) of the United Kingdom, not to other changes regarding its governing arrangements. [346]

In February 2024 the House of Commons passed an Address to the King which reaffirmed the constitutional status of Northern Ireland. [347] Since the 1993 Downing Street Declaration, the UK government has maintained that it has "no selfish strategic or economic interest in Northern Ireland". [348]

Scotland and Wales

No equivalent provision exists for Scotland or Wales to determine their constitutional status.

Under the non-statutory Edinburgh Agreement of 2012, the Scottish and UK governments agreed to facilitate an Order in Council under section 30 of the Scotland Act 1998 to allow a single-question referendum on Scottish independence to be held before the end of 2014. [349] The Scottish Government then introduced legislation in the Scottish Parliament to that end. [350] No further action was necessary when the people of Scotland voted by 55-45 to remain part of the United Kingdom. [351]

In 2022, the Supreme Court ruled that the Scottish Parliament did not have the unilateral "power to legislate for a referendum on Scottish independence", [352] although the earlier Smith Commission report observed that nothing in that report (proposals for further devolution) prevented Scotland "becoming an

344 Northern Ireland Act 1998, section 1(2).
345 Northern Ireland Act 1998, paragraph 1 of Schedule 1.
346 *Application by Allister et al* [2021] NIQB 64
347 HC Deb 26 February 2024 Vol 746 cc54-98 [Northern Ireland]
348 Joint Declaration 1993 (Downing St. Declaration), Department of Foreign Affairs website.
349 Scotland Act 1998 (Modification of Schedule 5) Order 2013.
350 The Scottish Independence Referendum (Franchise) Act 2013 extended the franchise for the referendum to 16 and 17 year-olds, while the Scottish Independence Referendum Act 2013 established the referendum question and rules. Both are now spent.
351 Commons Library research briefing 14/50, Scottish Independence Referendum 2014: Analysis of results. In the event of a "yes" vote, the Scottish Government intended that a Scottish Independence Act 2015 (an Act of the Scottish Parliament) would have provided for an "interim constitution" pending a permanent codified constitution agreed "by or on behalf of the people of Scotland" (The Scottish Independence Bill: A Consultation on an Interim Constitution for Scotland, Scottish Government, 2014).
352 *Reference by the Lord Advocate* [2022] UKSC 31

independent country in the future should the people of Scotland so choose". [353]

In 2021, the Labour-led Welsh Government expressed the view that provided a devolved government in either Scotland or Wales had:

> secured an explicit electoral mandate for the holding of a referendum [on independence], and enjoys continuing support from its parliament to do so, it is entitled to expect the UK Parliament to take whatever action is necessary to ensure that the appropriate arrangements can be made. [354]

Referendums

Referendums have become a conventional part of proposals for constitutional change in the UK. These have taken place in:

- Northern Ireland in 1973 (on Northern Ireland's constitutional status) [355]
- Scotland and Wales in 1979 (on devolution) [356]
- Scotland and Wales in 1997 (also on devolution) [357]
- Greater London in 1998 (on a mayor and assembly) [358]
- Northern Ireland in 1998 (on the Belfast/Good Friday Agreement) [359]
- North East England in 2004 (on a regional assembly) [360]
- Wales in 2011 (on further devolution) [361]

Only three UK-wide referendums have taken place, all on constitutional matters:

- continuing membership of the European Economic Community in 1975 [362]

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353 Report of the Smith Commission for further devolution of powers to the Scottish Parliament, 27 November 2014, para 18.

354 Reforming our Union: Shared governance in the UK, Welsh Government, 25 June 2021.

355 The Northern Ireland (Border Poll) Order 1973. See also David Torrance, 'Taking the border out of politics' – the Northern Ireland referendum of March 1973, Constitution Unit blog, 21 November 2019.

356 Scotland Act 1978, section 85 and Wales Act 1978, section 80. As neither referendum achieved the necessary electoral threshold, the Acts were repealed via The Scotland Act 1978 (Repeal) Order 1979 and The Wales Act 1978 (Repeal) Order 1979. Both Orders were made by Counsellors of State in Council.

357 Referendums (Scotland and Wales) Act 1997, sections 1 and 2.

358 Greater London Authority (Referendum) Act 1998, section 1.

359 Northern Ireland (Entry to Negotiations, etc) Act 1996, section 4 and the Northern Ireland Negotiations (Referendum) Order 1998.

360 Regional Assemblies (Preparations) Act 2003, section 1 and The Regional Assembly and Local Government Referendums (Date of Referendums, Referendum Question and Explanatory Material) (North East Region) Order 2004.

361 Government of Wales Act 2006, section 103 (repealed) and The National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010.

362 Referendum Act 1975 (repealed).

- on the Alternative Vote (AV) in 2011, [363] and
- on the UK's membership of the European Union in 2016 [364]

In a 2010 report, the House of Lords Constitution Committee concluded that referendums were "most appropriately used in relation to fundamental constitutional issues". It also observed that even when such a referendum possessed no direct legal effect (as in most cases), "it would be difficult for Parliament to ignore a decisive expression of public opinion". [365] There appears to be a convention under which a Prime Minister or First Minister will resign having "lost" a referendum, although there is no legal obligation to do so. [366]

The Political Parties, Elections and Referendums Act 2000 includes provision for referendums in the UK, as does the Referendums (Scotland) Act 2020 for any referendum within devolved Scottish competence. Under section 64 of the Government of Wales Act 2006, the Welsh Ministers may hold a poll for the purpose of "ascertaining the views of those polled about whether or how any of the functions of the Welsh Ministers [...] should be exercised".

For referendums conducted under the 2000 Act, the chief counting officer (the equivalent of a returning officer) is either the chair of the Electoral Commission or appointed by the chair. The Commission must appoint a lead campaigner for the "yes" and "no" sides and design the ballot paper. It is also required to look at – and conduct research into – the proposed wording of the referendum question to ensure it is easily understood. [367]

2.4 Intergovernmental relations

Intergovernmental relations (IGR) in the UK "work on the basis of agreement by consensus" between the UK and the devolved administrations and do not have a statutory basis. The current "principles" and "machinery" of IGR are set out in the 2022 Review of Intergovernmental Relations. This comprises three tiers:

- Top tier: The Prime Minister and Heads of Devolved Governments Council ("The Council")

363 Parliamentary Voting System and Constituencies Act 2011, section 1. Had there been a majority in favour of AV, then this referendum would have had direct legal effect under section 8.
364 European Union Referendum Act 2015, section 1. Sections 5 and 12 allowed citizens of Gibraltar (an Overseas Territory) to vote in the 2016 referendum.
365 House of Lords Constitution Committee, Referendums in the United Kingdom, HL Paper 99, October 2009, para 197. The Scottish and Welsh devolution referendums of 1979 and AV referendum held in 2011 possessed direct legal effect.
366 David Cameron resigned as Prime Minister following the 2016 EU referendum, as had Alex Salmond as First Minister of Scotland following the 2014 Scottish independence referendum.
367 Political Parties, Elections and Referendums Act 2000, Part VII.

- Middle tier: The Interministerial Standing Committee (IMSC), the Finance Interministerial Standing Committee (F:ISC) and additional time-limited interministerial committees formed as necessary

- Lowest tier: interministerial groups (IMG) formed to discuss specific policy areas[368]

Overall accountability for IGR continues to rest with the Prime Minister, the First Ministers of Scotland and Wales and the First Minister and deputy First Minister of Northern Ireland.[369] Annex D sets out full details of the "Dispute Avoidance and Resolution Process".[370] The Council, IMSC and ICs are supported by a standing IGR Secretariat, which is hosted and funded by the Cabinet Office and staffed by officials from all four governments.[371]

The 2024 King's Speech included plans to establish a new "Council of the Nations and Regions" to "renew opportunities for the Prime Minister, heads of devolved governments and mayors of combined authorities to collaborate with each other".[372] This met for the first time in October 2024.[373] New mayors established through future devolution deals would be eligible to sit on the Council of the Nations and Regions.[374]

Relations between the UK government and the devolved administrations are also underpinned by a Memorandum of Understanding.[375] This is supported by Devolution Guidance Notes which set out advice on working-level arrangements.[376] Like the Memorandum, these are not legally binding. Many UK government departments also have bilateral concordats with the devolved administrations, covering areas of shared interest and setting out a framework for co-operation.[377]

As of July 2024, the Chancellor of the Duchy of Lancaster (a Cabinet Office minister) is, as Minister for Intergovernmental Relations, responsible for devolution outside of England,[378] while the Deputy Prime Minister and Ministry of Housing, Communities and Local Government has responsibility for

368 Review of intergovernmental relations, Cabinet Office and Department for Levelling Up, Housing and Communities, 13 January 2022.
369 Cabinet Office, Review of Intergovernmental Relations.
370 Section 99 of the Scotland Act 1998 enables the Scottish and UK governments to pursue legal proceedings against one another, or rather "the Crown in right of [His] Majesty's Government in the United Kingdom and the Crown in right of the Scottish Administration".
371 Cabinet Office, Review of Intergovernmental Relations.
372 The King's Speech 2024, Prime Minister's Office, 10 Downing Street, 17 July 2024. This Council includes the Mayor of London.
373 Council of the Nations and Regions: Inaugural meeting on 11 October 2024, Ministry of Housing, Communities and Local Government/Cabinet Office, 17 October 2024. The Council's Terms of Reference are available online.
374 Council of the Nations and Regions, UIN HL3085, 2 December 2024.
375 Devolution: memorandum of understanding and supplementary agreement, Cabinet Office, October 2013. This has been revised six times since it was first introduced. The 2024 Labour manifesto promised "a new memorandum of understanding outlining how the nations will work together for the common good".
376 Devolution guidance notes, Cabinet Office, 14 March 2019.
377 Cabinet Manual, para 8.17.
378 Since February 2025, the Chancellor of the Duchy of Lancaster has been supported in this role by the Minister of State at the Cabinet Office.

devolution policy in England and engagement with metro-mayors and local government.[379] There is a Union and Devolution Directorate and Propriety and Constitution Group within the Cabinet Office. The latter provides "expertise" on the constitution, devolution, on standards and propriety, and on the "relationship with the Palace".[380]

Collectively the Scottish Government, Welsh Government and Northern Ireland Executive are referred to as the "devolved governments".[381] Collectively the Scotland Office, Wales Office and Northern Ireland Office are known as the "territorial offices".[382]

Between 2021 and 2024 the Cabinet Office and Department for Levelling Up, Housing and Communities published three Annual Transparency Reports on intergovernmental relations which were laid as Command Papers in both Houses of Parliament.[383]

Common Frameworks

Since 2017, the UK government, Scottish Government, Welsh Government and the Northern Ireland Executive have worked together to develop agreements covering a range of policy areas where powers have returned from the EU and intersect with devolved competence. The development of these Common Frameworks is guided by principles agreed a meeting of the former Joint Ministerial Committee (EU Negotiations).[384]

Under Schedule 3 to the European Union (Withdrawal) Act 2018, the UK government is required to report to the UK Parliament every three months on progress made on developing these Common Frameworks.

Interparliamentary relations

The main forum for relations between legislatures in the British Isles is the British-Irish Parliamentary Assembly (BIPA), which mirrors membership of the British-Irish Council. The Interparliamentary Forum was also established in October 2017.

2.5 British citizenship

Section 1 of the British Nationality Act 1981 (as amended) provides that a person born in the United Kingdom (which includes, for the purposes of that

379 Machinery of Government, 5 September 2024, UIN HCWS71.
380 Lords Constitution Committee, Uncorrected oral evidence: Executive oversight and responsibility for the UK constitution, 20 November 2024, Q36.
381 Guide to making legislation, Cabinet Office, 27 February 2025, p131.
382 Guide to making legislation, p132.
383 For the most recent see Intergovernmental Relations Annual Report 2023, Department for Levelling Up, Housing and Communities, 23 April 2024.
384 Joint Ministerial Committee (EU Negotiations) Communique, 16 October 2017.

Act, the Channel Islands and the Isle of Man[385]) or in a "qualifying territory" on or after commencement of the Act (1 January 1983[386]) shall be a British citizen if at the time of the birth their father or mother is (a) a British citizen or (b) settled in the UK or a qualifying territory.[387] "Qualifying territory" means a British Overseas Territory (listed in Schedule 6) other than the Sovereign Base Areas of Akrotiri and Dhekelia.[388] Under section 37, those who qualify are also Commonwealth citizens.

There are five other forms of British nationality (which do not confer British citizenship):

1) British Overseas Territories citizenship[389]

2) British overseas citizenship[390]

3) British National (Overseas): a class of British nationality associated with the former colony of Hong Kong [391]

4) British subject: a class of British nationality largely granted under limited circumstances to those connected with Ireland or British India and born before 1949 [392]

5) British protected person: a class of British nationality associated with former protectorates, protected states, and territorial mandates and trusts under British control [393]

Schedule 1 to the 1981 Act provides certain requirements for naturalisation as a British citizen.[394] Under section 42, an eligible person is not registered or naturalised as a British citizen unless they have made the relevant citizenship oath and pledge specified in Schedule 5 at a citizenship ceremony.[395] British citizenship can be renounced under section 12.

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385 British Nationality Act 1981, section 53, provides that most provisions of that Act extend to "the Islands".

386 The British Nationality Act 1981 (Commencement) Order 1982, section 2.

387 Statute is consistent in providing for "British" rather than "United Kingdom" nationality and citizenship. The British Nationality (No. 2) Act 1964 (repealed) made provision for the acquisition of "citizenship of the United Kingdom and Colonies" by certain classes of persons who would otherwise be stateless.

388 British Overseas Territories Act 2002, Schedule 1.

389 British Nationality Act 1981, section 4. Most of those with Overseas Territories citizenship also have British citizenship by virtue of section 3 of the British Overseas Territories Act 2002.

390 British Nationality Act 1981, section 26. The concept of "Commonwealth citizenship" emerged from the 1947 British Commonwealth Conference on Nationality and Citizenship and first took statutory form in the British Nationality Act 1948.

391 Hong Kong Act 1985, section 2.

392 British Nationality Act 1981, sections 30 and 31.

393 British Nationality Act 1981, section 38.

394 One element of naturalisation is that individuals are required to take and pass the Life in the United Kingdom citizenship test. UK Visas and Immigration publishes caseworker guidance on Naturalisation as a British citizen and on assessing the Good character requirement.

395 See Citizenship ceremonies: guidance notes (English and Welsh), Home Office. Ceremonies are also held in Scotland and Northern Ireland. Article 3 of The Citizenship Oath and Pledge (Welsh Language) Order 2007 provides the Welsh language form of the oath and pledge.

Section 40 provides for deprivation of British citizenship if the Secretary of State is satisfied that this is "conducive to the public good", [396] or if registration or naturalisation was obtained by means of fraud, false representation or "concealment of a material fact". There is a right of appeal to the Immigration and Asylum chamber of the First-tier Tribunal under section 40A of the 1981 Act. In national security cases, the right of appeal is to the Special Immigration Appeals Commission under section 2B of the Special Immigration Appeals Commission Act 1997. Section 7 provides for appeals from the Commission to the Courts of Appeal in England and Wales and in Northern Ireland and to the Court of Session in Edinburgh.

Legal rights and responsibilities of citizenship

The UK does not possess a comprehensive statement of the rights and responsibilities of its citizens.[397] In his 2008 report Citizenship: Our Common Bond, however, Lord Goldsmith (a former Attorney General for England and Wales) summarised these as:[398]

Right of abode and free movement

- Right of abode and freedom of movement in the UK (see below)
- Freedom of movement within the Common Travel Area (see below)
- Expectation of issue of a UK passport (see below)

Right of protection – and duty of allegiance

- Entitled to request that the State exercises diplomatic protection where they have suffered a wrong at the hands of another State
- Entitled to request consular assistance when abroad[399]
- Entitled to domestic protection[400]

396 As inserted by the Nationality, Immigration and Asylum Act 2002, section 4.

397 The government considered the "suggestion" that the British Nationality Act 1981 should "also cover civic rights and obligations was self-evidently an unrealistic aim" (HC Deb 28 January 1981 Vol 997 c939 [British Nationality Bill]).

398 Lord Goldsmith QC, Citizenship: Our Common Bond, Ministry of Justice, March 2008, pp5-6. Goldsmith's definitions were political and social as well as legal. The list has been updated to reflect the UK's departure from the EU and the devolution of the franchise, benefits and taxes (in some respects) since 2008.

399 This is not a legal right (see Consular assistance: how the Foreign, Commonwealth & Development Office provides support, Foreign, Commonwealth & Development Office, 31 August 2022). See also the UK government's Consular Charter, Foreign, Commonwealth and Development Office, 31 August 2022. The courts have held that there is scope for judicial review of a refusal to render diplomatic assistance to a British subject who is suffering violation of a fundamental human right abroad (*R (Abbasi) v Foreign Secretary* [2002] EWCA Civ 1598). The 2024 Labour manifesto promised to introduce "a new right" for British nationals to consular assistance "in cases of human rights violations".

400 The right to protection at home is historically derived from the Sovereign's obligation to maintain and defend the Realm and their subjects, as enshrined in the Coronation Oath (see Section 7.1).

- Duty of allegiance to the Crown[401]
- Duty to obey the law when in the UK – liable for certain offences in the UK even if committed abroad

Civic rights

- Right to vote and stand for election where registered (and from overseas if eligible) in UK, devolved and local elections, and to vote in referendums (see Sections 2.2, 4.5 and 6)
- Right and duty to undertake jury service, subject to residence requirement (see Section 8.3)
- Permitted to hold public offices governed by the Act of Settlement (1700)

Social and economic rights

- Full extent of access to benefits and services such as healthcare and education,[402] and
- Duty to pay taxes and make national insurance contributions

Right of abode

Section 1 of the Immigration Act 1971 provides that:

> All those who are expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.

Under section 2, a person has the right of abode in the UK if (a) they are a British citizen or (b) a Commonwealth citizen who had the right of abode immediately before commencement of the British Nationality Act 1981. Under section 2A of the 1971 Act, the Secretary of State may by Order remove from a specified person a right of abode in the UK if they think "it would be conducive to the public good for the person to be excluded or removed from the United Kingdom". Under section 3(7), the King may by Statutory Order in Council make provision for prohibiting persons who "are not British citizens from embarking in the United Kingdom".[403]

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401 Those born British citizens are not required to take the oath of allegiance although this was optional for anyone watching broadcasts of the King's coronation in 2003. Lord Goldsmith viewed the oaths taken by holders of public office as "merely evidence of the duty of allegiance owed by all British nationals" (Citizenship: Our Common Bond, para 50). Allegiance "follows the person of the subject" and "he may violate his allegiance in a foreign country" (*R v Casement* [1917] 1 QB 98).

402 Unlike those "subject to immigration control" who are not entitled to a range of non-contributory benefits (see Immigration and Asylum Act 1999, section 115).

403 Any such Order is subject to annulment in pursuance of a resolution of either House of Parliament.

Those without the right of abode are subject to immigration control.[404]

Immigration law in the UK is supplemented with detailed Immigration Rules,[405] which are laid before Parliament under section 3(2) of the 1971 Act. Border Force, a law enforcement command within the Home Office. carries out immigration and customs controls for people and goods entering the UK.

Those who have indefinite leave to enter (ILE) or remain (ILR) are said to be "settled". "Settled" status is defined as being ordinarily resident in the UK without restriction under immigration laws as to the length of that stay.[406] The rules governing the rights of those with indefinite leave who stay outside the UK are set out in The Immigration (Leave to Enter and Remain) Order 2000 (as amended).

Passports

There is no statutory right to a UK passport. Rather, the decision to issue, withdraw, or refuse a UK passport is at the discretion of the Home Secretary acting under the royal prerogative.[407] In this field, the prerogative operates alongside legislative powers introduced under Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011.

Although non-statutory, government policy has often been published, most recently in a written ministerial statement by the then Home Secretary, Theresa May, on 25 April 2013. This redefined the "public interest" justification for refusing or withdrawing a passport.[408] Home Office guidance states that such decisions will usually involve national security, for example in relation to someone seeking to travel abroad to engage in terrorism-related activity and who would return to the UK with enhanced capabilities to do the public harm.[409]

As a British passport is issued in the name of His Majesty, it is unnecessary for the King to possess one. All other members of the Royal Family hold passports.[410] HM Passport Office (a high profile group within the Home Office) issues passports to citizens of the United Kingdom on behalf of the Crown. UK Visas and Immigration (also part of the Home Office) makes decisions regarding who has the right to visit or stay in the country.

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404 Immigration Act 1971, section 1(2).

405 See Commons Library research briefing CBP10043, The immigration rules.

406 Immigration Act 1971, section 33(2A).

407 Royal Prerogative, Home Office, 21 May 2021. See also Immigration Act 1971, section 33(5).

408 HC Deb 25 April 2013 Vol 561 cc69WS-70WS [Passports]

409 Royal Prerogative: caseworker guidance, HM Passport Office, 24 November 2022, p7. Certain terrorist organisations are proscribed under the Terrorism Act 2000. Under section 5 of that Act, there is a Proscribed Organisations Appeal Commission and a right of appeal (section 6) from that Commission to the relevant appellate court in the UK's three jurisdictions. Terrorism is also covered by the Prevention of Terrorism Act 2005, the Counter-Terrorism and Security Act 2015, the Counter-Terrorism and Border Security Act 2019 and the Terrorist Offenders (Restriction of Early Release) Act 2020.

410 Passports, Royal Family website.

The Belfast/Good Friday Agreement accepted the:

> birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly [have a right] to hold both British and Irish citizenship.

Although this "largely reaffirmed what was already the state of nationality law in Northern Ireland",[411] Ireland amended its citizenship legislation in 2000. In Ireland, dual British-Irish citizens have long been able to run for elected office (or be appointed to its Seanad), including for the presidency.[412]

Common Travel Area

Section 1(3) of the Immigration Act 1971 provides that:

> Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act [...] and in this Act the United Kingdom and those places, or such of them as are not so excluded, are collectively referred to as "the common travel area".

The Common Travel Area (CTA) is a long-standing arrangement between the UK, the Crown Dependencies (Jersey, Guernsey and the Isle of Man) and Ireland. Under the CTA, British and Irish citizens can move freely and reside in either jurisdiction and enjoy associated rights and privileges, including the right to work, study and to access social welfare benefits and health services. The UK and Irish governments signed a Memorandum of Understanding in May 2019 which reaffirmed their commitment to maintaining the CTA.

The legal basis for the passport-free travel component of the CTA is contained in sections 1 and 9 of the 1971 Act. Under section 3ZA, there are no immigration restrictions for Irish citizens although, in principle, they are subject to immigration control. Irish citizens do not have the right of abode and they are not required to have leave to enter or remain.

Under section 2 of the Ireland Act 1949, the Republic of Ireland is:

> not a foreign country for the purposes of any law in force in any part of the United Kingdom or in any colony, protectorate or United Kingdom trust territory, whether by virtue of a rule of law or of an Act of Parliament or any other enactment or instrument whatsoever [...]

The rights of Irish citizens to vote and stand for election in the UK are provided for in, respectively, section 1 of the Representation of the People Act 1983 and section 18 of the Electoral Administration Act 2006.

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411 Brice Dickson and Tom Hickey, Nationality and Citizenship in Ireland, North and South, Irish Studies in International Affairs 35:2, 2024, pp164-97. The Irish Nationality and Citizenship Act 1956 had allowed those born in Northern Ireland to become Irish citizens by self-declaration. British citizens in Great Britain can apply for Irish passports provided they meet the legal requirements.

412 For example, Mary McAleese (who was born in Belfast) won the 1997 Irish presidential election.

Under Article 1(vi) of the British-Irish Agreement (which forms part of the Belfast/Good Friday Agreement), the UK and Irish governments accepted the right of the people of Northern Ireland to "hold both British and Irish citizenship".[413]

2.6 National Anthem, flags and seals

National Anthem

The National Anthem of the United Kingdom is "God Save the King". This derives from custom and use rather than any statutory or prerogative basis in law.[414] The folk song "Flower of Scotland" is commonly used as an unofficial Scottish national anthem,[415] as is "Hen Wlad Fy Nhadau" (Land of My Fathers) in Wales.[416] There is no agreed unofficial anthem in England and in Northern Ireland.

Flags

The Union Flag, commonly known as the Union Jack, is the national flag of the UK. The present flag, which incorporates the crosses of St George, St Andrew and St Patrick, was approved by King George III in an Order in Council dated 5 November 1800 and brought into effect by proclamation on 1 January 1801.[417] The College of Arms advises as to proportions and suggested colours.[418]

The flying of flags, including the Union flag, is not the subject of legislation in England, Wales or Scotland. Rather advice is issued by the Department for Digital, Culture, Media and Sport (DDCMS) for the flying of national flags on government buildings, apart from those which are the responsibility of a devolved administration.[419]

Only in Northern Ireland is there specific legislation setting out the arrangements for the flying of flags from government buildings: The Flags Regulations (NI) 2000, as amended by The Flags Regulations (NI) (Amendment) 2002 and The Flags (Northern Ireland) (Amendment) Regulations 2022. Section 67(2) of the Justice (Northern Ireland) Act 2002 also provides for the Flags Regulations to apply to court buildings in Northern Ireland.

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413 See also article 2 of the Irish Constitution.

414 The History of 'God Save the King', History Today, May 1953. An Army Order of 1933 laid down regulations for tempo, dynamics and orchestration, while in 1919 a "Peace Version" of the Anthem was approved by the Privy Council.

415 Consideration of Petition PE1541, Scottish Government, 13 February 2015.

416 National Anthem – The background to Hen Wlad Fy Nhadau, BBC Wales website,

417 Union Flag: approved designs, College of Arms website. Additional information courtesy of the College of Arms.

418 Union Flag, College of Arms website.

419 Union Flag flying guidance for UK government buildings, Department for Digital, Culture, Media & Sport, 5 February 2024.

Northern Ireland does not possess its own flag, [420] although England (the St George's Cross), [421] Scotland (St Andrew's Cross or the Saltire), [422] and Wales (a red dragon adopted in 1959) do. [423]

Section 4(2) of the Trade Marks Act 1994 provides that a trade mark which consists of or contains a representation of the national flag of the UK or "the flag of England, Wales, Scotland, Northern Ireland or the Isle of Man" shall not be registered if it appears to the registrar that the use of the trade mark would be "misleading or grossly offensive". [424]

The Royal Standard represents the Sovereign and the UK and is flown when the King is present in particular buildings. In Scotland a different version of the Royal Standard is used. [425] Under a Royal Warrant dated 3 September 1934, use of the Lion Rampant flag in Scotland is unrestricted. [426]

Seals

The Great Seal of the Realm is the principal seal of the Crown and is used to show the Monarch's approval of important state documents. Use of the Great Seal is governed by statute. [427] In some cases, the Great Seal is replaced by a wafer version, a smaller representation of the obverse embossed on coloured paper. This does not affect its validity. [428] This simpler version is used for Letters Patent granting Royal Assent to legislation and several other documents. [429] The process of sealing takes place at the Clerk's office in the House of Lords. [430] A system of "colour coding" is used for seals. Scarlet red is used for most Letters Patent. [431]

Article 24 of the Treaty of Union provided for a Scottish Seal to be used in place of the pre-1707 Great Seal of Scotland. Under section 12 of the Treason Act 1708, it remains an act of high treason to counterfeit the Scottish Seal. [432] The Irish Free State (Consequential Provisions) Act 1922 provided for a new Great Seal of Northern Ireland to be used by the Governor of Northern

420 A flag used by the devolved Government of Northern Ireland after 1953 fell into disuse following Direct Rule in 1972.
421 The English flag has relatively little official recognition.
422 The Scottish flag was recorded on the statutory Lyon register during the reign of Charles II. In February 2003 a committee of the Scottish Parliament recommended Pantone 300 for use on the Saltire.
423 HC Deb 23 February 1959 Vol 600 c122 [Welsh Flag].
424 It is not clear what the Act means by the flag of Northern Ireland.
425 Royal Standard, Royal Family website.
426 "Scottish flags/Lion flag", Scottish Home Department file 18736/85, Edinburgh: National Records of Scotland. This Warrant was not published. See also The Royal Banner of the Royal Arms of Scotland, Royal Family website.
427 Great Seal (Offices) Act 1874, Crown Office Act 1877, Great Seal Act 1884 and The Crown Office (Preparation and Authentication of Documents Rules) Order 1988.
428 Crown Office Act 1877, section 4. The same Act provides for a statutory committee of the Privy Council, although this last met in 1988.
429 The Crown Office (Preparation and Authentication of Documents Rules) Order 1988, Part II.
430 Great Seal Act 1884, section 2.
431 Dark green seals are affixed to Letters Patent which elevate individuals to the peerage. Blue seals are used for documents relating to the close members of the Royal Family.
432 It is no longer an act of high treason to counterfeit the Great Seal of the Realm.

Ireland. [433] It is now kept by the Secretary of State for Northern Ireland. Provision for a Welsh Seal was made under section 116 of the Government of Wales Act 2006. By tradition, once replaced, former seals are ceremonially "defaced" by the Monarch and gifted to their keeper. [434]

Under section IX of the Succession to the Crown Act 1707, all public seals in use at a demise of the Crown "shall continue and be made use of as the respective Seals of the Successor until such Successor shall give Order to the contrary". [435]

Official languages

English is the UK's de facto official language, although this does not have an explicit statutory basis. [436]

Section 1 of the Gaelic Language (Scotland) Act 2005 provides that functions conferred on Bòrd na Gàidhlig are to be exercised "with a view to securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language".

Section 5 of the Welsh Language Act 1993 provides for the principle that in "the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality". Section 1 of the Welsh Language (Wales) Measure 2011 also provides that the Welsh language "has official status in Wales". Under section 78 of the Government of Wales Act 2006, the Welsh Ministers must adopt a Welsh language strategy which sets out "how they propose to promote and facilitate the use of the Welsh language".

Part 7B of the Northern Ireland Act 1998 (as amended by section 2 of the Identity and Language (Northern Ireland) Act 2022) provides for the "official recognition of the status of the Irish language in Northern Ireland". [437]

Statistics and census

Section 1 of the Statistics and Registration Service Act 2007 provided for the UK Statistics Authority, which exercises its functions on behalf of the Crown and, under section 7, has the objective of "promoting and safeguarding the production and publication of official statistics that serve the public good". [438]

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433 Irish Free State (Consequential Provisions) Act 1922, Schedule 1 para 2(4).

434 The Coronation Ceremony, The Royal Mint website.

435 At his Accession Council on 10 September 2022, King Charles III also provided authorisation for the continued use of seals bearing the effigy of the late Queen Elizabeth II, although this appears to have been unnecessary (see Twelve Orders in Council, Privy Council Office website).

436 Toponymic guidelines for map and other editors, United Kingdom of Great Britain and Northern Ireland, Ministry of Defence, May 2024.

437 Part 7C of the 1998 Act (as amended) provides for "facilitating the use of Ulster Scots in the provision of services to the public or a section of the public in Northern Ireland".

438 The work of the Authority is further defined under secondary legislation made under the Act by the UK Parliament or the devolved legislatures.

Section 6 defines "official statistics" as those produced by the Authority (in practice the Office for National Statistics), a UK government department, the Scottish Administration, a Welsh ministerial authority, a Northern Ireland Department, "any other person acting on behalf of the Crown" and bodies added by order.[439] Under section 10, the Authority publishes a Code of Practice for Statistics. Section 27 provides that the Authority must lay an annual report before the UK Parliament, Scottish Parliament, Senedd and the Northern Ireland Assembly.

The regulatory arm of the Authority is the Office for Statistics Regulation, which provides independent regulation of all official statistics produced in the UK. The Office for National Statistics (ONS) is the UK's largest independent producer of official statistics and its recognised national statistical institute. It collects and publishes statistics related to the economy, population and society at national, regional and local levels. Under section 1 of the Statistics of Trade Act 1947, businesses are required to provide information requested by the ONS.

Provision for a periodic census is made in the Census Act 1920 (for Great Britain) and the Census Act (Northern Ireland) 1969.[440] Under section 1 of the 1920 Act, the date of a census in Great Britain is fixed by Order in Council,[441] while under section 1 of the 1969 Act it is fixed by order of the First Minister and deputy First Minister acting jointly.[442] The ONS is responsible for the census in England and Wales, the National Records of Scotland in Scotland and the Northern Ireland Statistics and Research Agency in Northern Ireland.

439 See The Official Statistics Order 2023 and The Official Statistics (Wales) (Amendment) Order 2024. Bodies which produce official statistics can be added by the UK government and the devolved executives.

440 See Commons Library research briefing CBP8531, Preparing for the 2021 census (England and Wales).

441 The Census (England and Wales) Order 2020 and The Census (Scotland) Order 2020.

442 The Census Order (Northern Ireland) 2020.

3 The Crown

The UK is an hereditary constitutional monarchy.[443] This means that a king or queen is head of state but possesses only limited powers (conferred by statute or existing under the royal prerogative) which are usually exercised upon ministerial advice. Walter Bagehot differentiated between what he called the "dignified" and "efficient" parts of the UK constitution, with the former (the monarchy) serving to "excite and preserve the reverence of the population" via dignified ceremonial and "the efficient parts – those by which it, in fact, works and rules".[444]

"The Crown" nevertheless remains a significant part of the UK constitution, described by Professor Robert Blackburn as "fundamental to the law and working of government in the UK". It has, however, no single accepted definition. The term has been used to describe a physical object or as an alternative way of referring to the Monarch in their personal or official capacity. At its most expansive, the Crown has been taken as a proxy for "the government" or what in other countries would be known as "the State", something which is not a legal concept under UK constitutional law.[445] The courts have generally followed Lord Simon's characterisation of the Crown as a "corporate aggregate" – a corporation composed of many persons – or Lord Diplock's designation of it as a corporation sole.[446]

In general terms, there is a tendency to refer to "the King" in regard to acts which the King does personally – for example appointing a Prime Minister and granting Royal Assent to legislation – and the phrase "the Crown" in relation to acts which are carried out by some public authority but ascribed to the King because the power so to act is legally vested in him, for example the courts and the Armed Forces.[447]

3.1 Official duties

According to the Royal Household, the King's role comprises "two distinct elements", that:

443 As opposed to an absolute monarchy, as exists in some parts of the world.
444 Walter Bagehot, The English Constitution, 1867, No. II The Cabinet.
445 Philippe Lagassé, The State, The Crown, and Parliament, lecture given at Carleton University, Ottawa, 2 November 2021. Statutory references to "the State" are rare, although section 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 refers to "the civil service of the State".
446 *Town Investments Ltd v Department of the Environment* [1978] AC 359.
447 Ivor Jennings, The Law and the Constitution, p221.

- of Head of State, "which is a formal constitutional concept, common to all nations and involves the official duties which The Sovereign, by constitutional convention, must fulfil", and
- of Head of Nation, "a much more symbolic role in the life of the Nation, involving duties which are not directed by the constitution but which The Sovereign carries out where appropriate or necessary" [448]

As head of state, the King's constitutional role encompasses:

> a range of parliamentary and diplomatic duties [...] formal approval of all parliamentary legislation and secondary legislation through the Privy Council, as well as certain official public appointments. The Sovereign has a formal role in dissolving Parliament and opening each new parliamentary session and holds regular confidential Audiences with the Prime Minister. Diplomatically, The Sovereign receives the credentials of foreign Ambassadors and receives visits from other Heads of State. As Head of State, The Sovereign is the Fount of Honour and all honours are awarded in Their name (though, with certain exceptions, most are awarded on the advice of Government). The Sovereign is also Head of the Armed Forces, Head of the Judiciary and the Civil Service, and Supreme Governor of the Church of England.

As head of nation, the Monarch can broadcast a special address at times of significant national or royal events. Recent examples include the Covid-19 pandemic and the death of Queen Elizabeth II.[449]

In both these roles, adds the Royal Household, the King "provides a sense of continuity, a focus for loyalty and an assurance of political independence and neutrality for these institutions".[450]

The Court Circular is the official record of past royal engagements.

The King's functions in relation to Parliament, government, honours, the judiciary and the Church of England are covered in the relevant sections of this research briefing.

Ambassadors and High Commissioners

Under the royal prerogative, the King appoints (on ministerial advice) Ambassadors to represent the UK abroad. The Monarch also signs Letters of Commission or Introduction for High Commissioners, who represent the UK in other Commonwealth states.[451]

Most Ambassadors or High Commissioners are "career diplomats" – long-serving members of the UK's Diplomatic Service – but there is nothing

448 Sovereign Grant Annual Report and Accounts 2022-23, HC 142, 23 July 2024, p3.
449 The text of a speech by Queen Elizabeth II to be delivered in the event of World War III was released in 2013.
450 Sovereign Grant Annual Report and Accounts 2022-23, p3.
451 UK high commissioners to Commonwealth countries are formally titled "The High Commissioner for His Majesty's Government in the United Kingdom", while UK ambassadors to non-Commonwealth countries are styled "His Britannic Majesty's Ambassador".

preventing individuals with political backgrounds also being appointed.[452] Under section 10 of the Constitutional Reform and Governance Act 2010, senior roles in the UK Diplomatic Service are excepted from the requirement that appointments must be made "on merit on the basis of fair and open competition".

Once an individual has been selected, the Foreign Secretary (with the Prime Minister's approval for senior postings) makes a formal submission to the King recommending their appointment. Once approved by the Monarch (and "Agrément" from another state to receive the individual) Ambassadors and High Commissioners to non-Realm Commonwealth countries are issued with a Diplomatic Commission granted by the Monarch under the Royal Sign Manual (the King's signature) and signet, formally appointing them to the role. Following this, appointees have an audience with the King at Buckingham Palace which is recorded in the Court Circular. Ambassadors are said to "kiss hands" but do not literally do so. Newly appointed diplomats also present Letters of Credence to their host nation.

Section 6 of the Commissioners For Oaths Act 1889 and section 2 of the Oaths And Evidence (Overseas Authorities And Countries) Act 1963 enable the UK's diplomatic representatives to administer oaths and undertake any notarial act while abroad.[453]

The immunities granted to diplomatic staff, and their families, are set out in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. The relevant provisions of these Conventions are applied in the UK by section 2 of the Diplomatic Privileges Act 1964 and section 1 of the Consular Relations Act 1968.[454] UK Ambassadors and High Commissioners are subject to the statutory Diplomatic Service Code, which sets out the standards of behaviour expected of members of the UK diplomatic service.

Ambassadors from other countries present the King with Letters of Credence from their heads of state which assure the Sovereign that these diplomats can speak on behalf of their respective countries. High Commissioners from Commonwealth Realms use Letters of Introduction which are exchanged between heads of government and do not involve the Sovereign (or their representative).[455] Such High Commissioners may still meet with the King upon their appointment, but they do not present any documents.[456] High Commissioners from Commonwealth republics possess Letters of Commission, which are presented to the King upon the High Commissioner's arrival.[457]

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452 See Commons Library Insight, How are diplomats appointed?, 20 December 2024.

453 The 1963 Act applies in two Crown Dependencies by virtue of The Oaths and Evidence (Isle of Man) Order 1965 and The Oaths and Evidence (Guernsey) Order 1966.

454 See also Diplomatic Immunity and Diplomatic Premises, Crown Prosecution Service website.

455 See, for example, Canada's High Commissioner to Solomon Islands Presents Letter of Introduction to Government, Solomon Times, 9 October 2023.

456 Court Circular, 1 July 2023.

457 Court Circular, 9 February 2023.

All foreign diplomats are accredited "to the Court of St James's" rather than to the United Kingdom. Details of foreign embassies, high commissions and consulates in the UK, including heads of mission, are available online. Audiences for the presentation of credentials are organised by the Marshal of the Diplomatic Corps, [458] at which the permanent secretary of the Foreign, Commonwealth and Development Office is present. The Diplomatic and Consular Premises Act 1987 allows the UK government to determine what land is considered to be diplomatic or consular premises. The State Immunity Act 1978 provides that a foreign head of state shall enjoy the same immunity as the head of a diplomatic mission.[459] Under the common law "foreign act of state doctrine", UK domestic courts do not consider the acts of foreign countries.[460]

By custom, the King and Queen and other members of the Royal Family welcome members of the Diplomatic Corps to the State Rooms at Buckingham Palace for an annual Diplomatic Reception.[461] Members of the Diplomatic Corps also attend the annual State Opening of Parliament. Foreign monarchs, presidents or Prime Ministers are invited to visit the King on the advice of the Foreign, Commonwealth and Development Office (FCDO). Likewise, invitations are issued to His Majesty to travel overseas ("outbound" state visits) via the FCDO. "Inbound" state visits usually involve ceremonial elements.[462]

Treason

Planning the death of the King, Queen and the King's eldest child, as well as "violating" the Queen, are offences under the Treason Act 1351, as are "being adherent to the Sovereign's enemies" and "levying war against the sovereign in his realm".[463] This declaratory Act of the Parliament of England was extended to Ireland (now Northern Ireland) in 1495,[464] and to Scotland in 1708.[465] Section 2 of the Treason Act 1842 added the offence of discharging or aiming fire-arms "with intent to injure or alarm her Majesty".[466]

Republican activity also remains a felony under section 3 of the Treason Felony Act 1848, although the House of Lords ruled in 2003 that there was no likelihood of prosecution given that freedom of speech was protected under the Human Rights Act 1998.[467]

458 Royal Family website, Audiences.
459 The 1978 Act gave effect to the European Convention on State Immunity.
460 The Act of State Doctrine of the United Kingdom: An Analysis, With Comparisons to United States Practice, American Journal of International Law 75:2, April 1981, pp283-323. The Supreme Court has ruled there to be an exception to the doctrine if what was done by the foreign state amounts to a grave violation of human rights.
461 The King and Diplomacy, Royal Family website.
462 What is a State Visit?, Royal Family website.
463 Treason Act 1351, section II.
464 Poynings' Law 1495, section I. See also the Treason Act (Ireland) 1703 [I].
465 Treason Act 1708, section I.
466 For the most recent charge see Man admits treason charge over Queen crossbow threat, BBC News online, 3 February 2023.
467 *Regina v Attorney General* [2003] UKHL 38

Section 36 of the Crime and Disorder Act 1998 amended all legislative provision for treason to abolish the death penalty. The highest penalty is now imprisonment for life.

3.2 Style and titles

In general terms, "title" refers to the position someone holds, for example "King of the United Kingdom", while "style" concerns how they are described, for example "His Majesty". The King's full style and titles as proclaimed following his accession to the throne is:

> Charles the Third, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of his other Realms and Territories, King, Head of the Commonwealth, Defender of the Faith. [468]

This form only applies in the UK, its 14 Overseas Territories and in the three Crown Dependencies. Together, the UK considers these to form "one undivided Realm". [469] Section 1 of the Royal Titles Act 1953 provides for the Monarch via Proclamation to adopt "such style and titles" as His Majesty "may think fit", while "having regard" to a Commonwealth agreement of that year. [470] Queen Elizabeth II made such a Proclamation on 28 May 1953, [471] which subject to section 10 of the Interpretation Act 1978 remains the statutory basis for the King's style and titles. This provides that:

> In any Act a reference to the Sovereign reigning at the time of the passing of the Act is to be construed, unless the contrary intention appears, as a reference to the Sovereign for the time being. [472]

Section 8 of the Interpretation Act (Northern Ireland) 1954 makes similar provision for Northern Ireland enactments.

The King's regnal name (ie Charles) is a personal decision under the royal prerogative, as is his regnal number. [473] In response to a parliamentary question in April 1953, however, the then Prime Minister Winston Churchill set out the "principle" that, in future, a monarch should adopt "whichever numeral in the English or Scottish lines of Kings and Queens happens to be the higher". [474]

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468 The Accession Proclamation, Privy Council Office, 10 September 2022.
469 The Overseas Territories, Foreign and Commonwealth Office, Command 8374, June 2012, p14.
470 Which was that each member of the Commonwealth "should use for its own purposes a form of the Royal Style and Titles which suits its own particular circumstances but retains a substantial element which is common to all" (HC Deb 3 March 1953 Vol 512 c194 [Royal Titles Bill]).
471 London Gazette, 29 May 1953.
472 Under sections 21 and 23 of the 1978 Act, this provision extends to subordinate legislation made under primary legislation and other "instruments", which presumably includes Proclamations.
473 *MacCormick v The Lord Advocate* [1953] SC 396.
474 HC Deb 15 April 1953 [Royal Style and Title]. Until 1707, English and Scottish monarchs were numbered separately.

The Royal Family's surname is "Windsor" by virtue of a Royal Proclamation dated 17 July 1917. [475] In 1960, Queen Elizabeth II declared that descendants other than Royal Highnesses and Princes or Princesses should bear the name "Mountbatten-Windsor".

Under common law, the wife of a king is automatically queen. Under a Royal Warrant dated 3 May 2023, the King directed that as of 6 May (the date of his coronation) Church of England prayers for, or referring to, members of the Royal Family should be altered so that instead of the words "Camilla the Queen Consort", "Queen Camilla" should be inserted. [476] The husband of a reigning queen has no powers. [477]

Other royal titles are conferred under the prerogative. Letters Patent issued by King George V in 1917 restricted the style "His or Her Royal Highness" and title of Prince and Princess to:

- The sons and daughters of a Sovereign
- The male-line grandchildren of a Sovereign
- The eldest living son of the eldest son of the Prince of Wales

Further Letters Patent authorised by Queen Elizabeth II on 31 December 2012 extended this to all children of the then Prince of Wales. [478]

The style of "Royal Highness" can be removed via Letters Patent.

Permission to use the title "Royal", names and titles of members of the Royal Family, and other protected Royal titles is "a mark of Royal favour" granted by the Sovereign under the royal prerogative upon ministerial advice. [479] Under section 4(1) of the Trade Marks Act 1994, a trade mark which consists of or contains "words, letters or devices likely to lead persons to think that the applicant either has or recently has had Royal patronage or authorisation" shall not be registered without consent from or on behalf of the King or the relevant member of the Royal Family. The Lord Chamberlain's Office is empowered to grant this consent. [480]

Sections 55 and 1047 of the Companies Act 2006 and the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 prohibit companies and limited liability partnerships from being registered under a name which includes "sensitive words" without the approval of the Secretary

475 Until this point there had been doubt as to whether the Royal Family had a surname at all.
476 The Gazette, 10 May 2023.
477 Unless, that is, an act of parliament makes him so. Philip of Spain, who married Queen Mary I of England, held the title "King of England" under a 1554 statute.
478 London Gazette, 8 January 2013.
479 Guidance applications for protected royal titles, Lord Chamberlain's Office.
480 Royal Arms Blue Booklet, Lord Chamberlain's Office.

of State. These sensitive words include Royal, Queen, King, Prince or Princess. [481]

The Prince of Wales and Princess Royal

Upon the accession of a new monarch, the title of Prince of Wales "merges" with the Crown and is usually recreated for a new male heir. The title is created separately via Letters Patent, usually some weeks (or even years) after the accession of a new monarch. [482] A male heir to the Throne immediately becomes Duke of Cornwall upon a demise. A Prince of Wales pays Homage to the Sovereign at their coronation. [483]

The Prince of Wales possesses few constitutional powers, although he receives Cabinet papers and can grant audiences to ministers. [484] The heir to the Crown is also Duke of Rothesay, Earl of Carrick and Baron of Renfrew, Lord of the Isles and Prince and Great Steward of Scotland. [485]

The eldest daughter of a monarch is sometimes known as the Princess Royal. The first was Princess Mary in 1641 and the title is currently held by Princess Anne, as created by Letters Patent. [486] The position is for life, so is maintained even when its holder is no longer the eldest daughter, as Princess Anne ceased to be in September 2022.

Lords-Lieutenant

Lords-Lieutenant are the Crown's representatives in each county of the United Kingdom. [487] Their duties include:

- arranging visits by members of the Royal Family
- representing the King, including presenting certain honours
- encouraging and assessing honours nominations
- liaising with local units of the Armed Forces [488]

As representatives of the Crown, Lords-Lieutenant are "strictly apolitical". They are selected following a consultation process involving the Prime Minister's Appointments Secretary, representatives from the devolved governments (in Scotland and Wales) and the Northern Ireland Office. The

481 Which are specified in the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014.
482 Crown Office, The Gazette, 24 February 2023.
483 The Coronation Order of Service, Royal Family website, p37.
484 Rodney Brazier, The constitutional position of the Prince of Wales, Public Law, 1995, pp401-16.
485 Titles and Heraldry, Prince of Wales website. See also an Act of the Old Scottish Parliament dated 17 November 1469.
486 London Gazette, 12 June 1987. The Letters Patent were dated 9 June 1987.
487 They are appointed under section 1 of the Lieutenancies Act 1997 in Great Britain and The Northern Ireland (Lieutenancy) Order 1975 in Northern Ireland. See also section 36 of the Northern Ireland Constitution Act 1973.
488 Lords-Lieutenant also head local magistracies in some counties of England and Wales.

Prime Minister asks the Monarch for approval of the appointment. Lords-Lieutenant can also be removed by the King on the recommendation of the Prime Minister. [489]

The lieutenancy for the City of London is held "in commission" (ie by a committee rather than an individual) of which the Lord Mayor is head. The Monarch issues a new Commission of Lieutenancy each December, notice of which is placed in The Gazette. [490]

The Lord Provosts of Glasgow, Edinburgh, Aberdeen and Dundee are ex-officio Lord Lieutenants of those cities.

3.3 The Royal Household

The Royal Household provides "support and service to The Sovereign and members of the Royal Family, in their service to the Nation" and "works very closely with a number of Government Departments on a wide range of matters, such as constitutional and legislative affairs, security, travel and ceremonial occasions". [491]

It comprises five main Departments:

- The Private Secretary's Office, which supports the King in his "crucial constitutional, governmental and political duties as Head of State" and liaises with Number 10 Downing Street [492]
- The Privy Purse and Treasurer's Office, which enables the Household to "operate as a business" (including "vital support functions" such as Finance, HR, IT and Telecoms, Internal Audit and Property Services)
- The Master of the Household's Department, which handles everything involved in the official and private entertaining across all the Royal residences
- The Lord Chamberlain's Office, which is responsible for organising those elements of The King's programme that involve ceremonial activity or public facing events (including the State Opening of Parliament)
- The Royal Collection Trust, which is responsible for the care and presentation of the Royal Collection, and manages the public opening of the official residences of the King and Prince of Wales [493]

489 Cabinet Office, Process for the appointment of Lord-Lieutenants.
490 See, for example, London Gazette, 12 January 2018.
491 Sovereign Grant Annual Report and Accounts 2022-23, Royal Household, July 2024, pp3 & 5.
492 By custom, the Monarch's Private Secretary (who is a member of the Privy Council) is granted a life peerage upon retirement.
493 Inside the Royal Household, Royal Family website.

Some Ministers of the Crown are concurrently members of the Royal Household:

- The Treasurer, Comptroller and Vice-Chamberlain of the Household (government whips in the House of Commons) [494]
- The Captain of the Gentlemen-At-Arms, the Captain of the Yeoman of the Guard and three of the five non-permanent Lords-in-Waiting (government whips in the House of Lords)

The Royal Household in Scotland is the "residue" of the ancient Scottish Court. It has four parts, heraldic or ceremonial (Court of the Lord Lyon), ecclesiastical (comprising ministers from the Church of Scotland), medical and defensive (the Royal Company of Archers). Some positions within the Scottish Household are hereditary, such as the Lord High Constable and the Hereditary Master of the Household, others are purely honorific. [495]

3.4 Statutory limitations on the Crown

Erskine May states that the "power of Parliament over the Crown is distinctly affirmed by the statute law and recognised as an important principle of the constitution". [496]

The Bill of Rights [1688] is an English statute which emerged from the Glorious Revolution of 1688-89. Its provisions limited the powers of the Crown by declaring that "the pretended power of suspending or dispensing with laws, or the execution of laws, without consent of Parliament, is illegal".[497] The Crown and Parliament Recognition Act 1689 subsequently confirmed the succession to the throne of King William III and Queen Mary II and confirmed the validity of laws passed by the Convention Parliament convened following the Glorious Revolution. The Crown Recognition Act (Ireland) 1692 (an Act of the Old Irish Parliament) made similar provision in respect of Ireland.

The provisions of the Claim of Right Act 1689 (an Act of the Old Scottish Parliament) echoed those of the English Bill of Rights in bolstering the

494 The Vice-Chamberlain is responsible for sending the King a private daily email with an account of proceedings in Parliament. By tradition, they are also held "hostage" at Buckingham Palace for the duration of the State Opening of Parliament.

495 Jean Goodman, Debrett's Royal Scotland, Exeter: Webb & Bower, 1983, p168-73. The High Constables of Edinburgh possess mainly ceremonial duties. It has long been the custom in Scotland to add the prefix "Lord" to the title of any high officer appointed by the Sovereign under the Scottish Seal, for example the Lord Advocate and Lord High Commissioner. This neither indicates a permanent title nor membership of the House of Lords.

496 Erskine May, para 1.6.

497 See also The Petition of Right [1627], which restricted the imposition of martial law to periods in which England was not at peace. This remains in force but is of little practical effect.

position of parliament within the Scottish constitution at the expense of the royal prerogative.[498]

Crown application

By the common law rule of statutory construction there exists the "presumption" that an Act of the UK Parliament "does not bind the Crown" unless by express provision or by necessary implication.[499] Section 7 of the Interpretation Act (Northern Ireland) 1954, for example, provides that:

> No enactment passed or made after the commencement of this Act shall bind or affect in any manner whatsoever [His] Majesty or [His] Majesty's rights or prerogatives, unless it is stated therein that [His] Majesty is bound thereby to the full extent authorised or permitted by the constitutional laws of Northern Ireland or to such less extent as is specified in the enactment.

Under section 31(1) of the Crown Proceedings Act 1947, the Crown can take advantage of an act of parliament without prejudicing this doctrine. Section 40(f) provides that nothing in that Act affects "any rules of evidence or any presumption relating to the extent to which the Crown is bound by any Act of Parliament". The Crown can, however, waive its immunity.[500]

Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 reversed this presumption for Acts of the Scottish Parliament (so that they bind the Crown except in so far as they provide otherwise), as did section 28(1) of the Legislation (Wales) Act 2019 for Acts of the Senedd.

Crown proceedings

Section 40 of the Crown Proceedings Act 1947 also preserves the Monarch's personal immunity from legal proceedings in his private capacity. As Adam Tomkins has observed, the:

> Sovereign cannot be arrested; no arrest can be made within the Sovereign's presence or within the royal palaces; the Sovereign's goods may not be seized; and the Sovereign may not give evidence in her own cause.[501]

Section 1, however, provides for civil actions against the Crown to be brought in the same way as against any other party.[502] Section 2 renders the Crown

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498 While the Bill of Rights referred to James II of England having "abdicated" the throne, the Claim of Right used the term "forefaulted" regarding James VII, which suggested the King of Scots had possessed a contractual relationship with his Scottish kingdom.

499 Crown Application, Office of the Parliamentary Counsel, January 2021, para 1.3. This was reaffirmed by the House of Lords in *Lord Advocate v Dumbarton District Council* [1990] 2 AC 580, and by the Supreme Court in *R (on the application of Black) v Secretary of State for Justice* [2017] UKSC 81. The courts have not been quick to find any such necessary implication or to support any other general exceptions to this doctrine.

500 Crown Application, Office of the Parliamentary Counsel, para 1.1.

501 Adam Tomkins, Crown Privileges in M. Sunkin and S. Payne, The Nature of the Crown, Oxford: Oxford University Press, 1999 pp171-72.

502 This does not apply to Scotland, where it has always been possible to sue the Crown in the Court of Session on contractual claims or for the recovery of property (see Bradley et al, Constitutional and Administrative Law, p830).

liable as though it were a natural person for torts committed by its servants and agents, common law duties of an employer to its servants and agents and common law duties as an owner or occupier of property. But the action of an official does not render the Crown liable unless that official has been directly or indirectly appointed by the Crown (so not, for example, a local authority or independent statutory authority).

Section 28 of the 1947 Act also provides for the courts to order disclosure of documents by the Crown. Under section 28(2) the Crown can resist disclosure where this could be "injurious to the public interest". This provision reasserted the doctrine of Crown privilege (now known as public interest immunity) while also making it justiciable.[503]

The 1947 Act applies only to proceedings against the Crown in "right of the government of the United Kingdom", not to claims arising in respect of the British Overseas Territories.[504]

Crown immunity

The legal doctrine of Crown immunity holds that unless Parliament intends otherwise, onerous legislation does not apply to the Crown:

> The Crown for this purpose is not limited to the monarch personally, but extends to all bodies and persons acting as servants or agents of the Crown, whether in its private or public capacity, including all elements of the Government, from Ministers of the Crown downwards. Government departments, civil servants, members of the armed forces and other public bodies or persons are, therefore, included within the scope of the immunity.[505]

This means that bodies like HM Prison and Probation Service and the Scottish Prison Service are immune from criminal proceedings. Crown bodies are also immune from statutory enforcement of health and safety legislation by virtue of section 48(a) of the Health and Safety at Work etc. Act 1974. However, administrative procedures known as Crown censures have been developed for use in circumstances where it is the Health and Safety Executive's opinion that, "but for Crown immunity, there would have been sufficient evidence to provide a realistic prospect of conviction in the courts".[506]

For the purposes of Crown Immunity, the Crown includes the government of any Commonwealth Realm (of which the King is head of State), the British Overseas Territories, the Channel Islands and the Isle of Man.[507]

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503 The Public Interest Disclosure Act 1998 protects workers from detrimental treatment or victimisation from their employer if, in the public interest, they "blow the whistle" on wrongdoing. The Act does not apply to police officers or the intelligence services.

504 *Franklin v AG* [1974] QB 185.

505 Home Affairs Committee, Home Affairs and Work and Pensions – First Report, 12 December 2005, para 200.

506 Enforcement procedures for crown bodies, Health and Safety Executive website. Details of Crown Censures taken by HSE since 1 April 1999 are available online.

507 Crown Immunity – HMRC internal manual, HM Revenue & Customs, 17 January 2025.

3.5 Succession to the Crown

The immediacy of succession to the Crown is governed at common law by the feudal rules of hereditary descent formerly applicable to land.[508] Statute provides for whom may succeed.

Section 4 of the Act of Settlement (1700) (an Act of the Parliament of England) provides that:

> the Laws of England are the Birthright of the People thereof and all the Kings and Queens who shall ascend the Throne of this Realm ought to administer the Government of the same according to the said Laws.

The Act further provided that succession to the Crown of England (and Ireland) was to pass to Princess Sophia, Electress of Hanover (King James VI/I's granddaughter), and her Protestant heirs.[509] It also restated the Bill of Rights' stipulation that no Catholic could hold the Crown (section 2) and, in addition, required whoever was in "Possession of this Crown" to "[join] in Communion with the Church of England as by Law established" (section 3).[510]

These provisions were extended to Scotland as part of Great Britain by Article II of the Treaty of Union (and subsequent legislation), and to Ireland (now Northern Ireland) as part of the United Kingdom under Article 2 of the Union with Ireland Act 1800.

Section 1 of the Succession to the Crown Act 2013 provides that in determining succession to the Crown, the gender of a person born after 28 October 2011 "does not give that person, or that person's descendants, precedence over any other person (whenever born)". This altered the previous legal situation in which a younger male heir would succeed before an older female sibling.[511]

The preamble to the Statute of Westminster 1931 states that:

> any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.[512]

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508 This followed the principle of real property under the law of inheritance as it was before 1926. On the same basis a monarch immediately becomes Duke of Lancaster upon succession to the throne. The last interregnum occurred on 11 December 1688, when James II was deemed to have abdicated in England. William III and Mary II did not accept the Crown (of England) until 13 February 1689. The Scottish interregnum lasted from March to May 1689.

509 Also restated in Princess Sophia's Precedence Act 1711. Under A Statute for those who are born in Parts beyond Sea (1350), it does not matter if an heir has been born outside the realm.

510 This did not necessarily require a monarch to be an Anglican. Kings George I and II, for example, were German Lutherans.

511 Section 3 of the 2013 Act provided that only the next six in the line of succession required the Monarch's consent before marrying. Permission is granted at a meeting of the Privy Council.

512 The "Dominions" were defined as Canada, Australia, New Zealand, South Africa, the Irish Free State and Newfoundland. Newfoundland later became a Province of Canada, while South Africa and the Free State became republics.

Although not legally binding, this is treated as a binding political convention which applies to every Commonwealth Realm. This convention was followed in 2013 when several Realms legislated separately to end male primogeniture. [513]

The Crown, including succession to the Crown and a regency (see below), are reserved or excepted matters under the devolution statutes. [514]

In a Royal Warrant dated 17 September 2022, the King directed that the Church of England should observe Accession Day on 8 September each year. [515]

Demise of the Crown

Section 1 of the Demise of the Crown Act 1901 provides that the "holding of any office under the Crown, whether within or without His Majesty's dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown". In 1910 the Judicial Committee of the Privy Council ruled that this included judges, Justices of the Peace and Privy Counsellors. [516]

Following a demise, the new monarch decides the dates for the lying-in-state (in Westminster Hall) and state funeral (at Westminster Abbey) of their predecessor. The ceremonials observed are later published in The Gazette. [517] For more on the ceremonial associated with a demise see Commons Library research briefing CBP9372, The death of a monarch.

Abdication

There is no permanent statutory provision for the abdication of a monarch.

In December 1936 King Edward VIII at first signed an Instrument of Abdication, which was then given legal effect by His Majesty's Declaration of Abdication Act 1936. Section 1(2) removed the former King's descendants from having "any right, title or interest in or to the succession to the Throne".

It is possible for the Sovereign to give effect to a "voluntary termination" of their status as head of state in another Commonwealth Realm. [518]

513 This followed a Commonwealth agreement in Perth. See House of Commons Political and Constitutional Reform Committee, Rules of Royal Succession, HC 1615, 7 December 2011, Annex 1.

514 See Schedule 5 of the Scotland Act 1998, Schedule 2 of the Northern Ireland Act 1998 and Schedule 7A of the Government of Wales Act 2006.

515 Prayers for the Sovereign and for the Royal Family, and Prayers and Forms of Service for Accession Day.

516 Judicial Committee of the Privy Council Report [1910] UKPC 39.

517 London Gazette, 17 July 2024. In September 2022 Queen Elizabeth II also lay-at-rest at St Giles' Cathedral in Edinburgh (Her Majesty The Queen's Lying at Rest in St Giles' Cathedral, Scottish Government, 12 September 2022).

518 Philip Murphy, Monarchy and the End of Empire, Oxford: Oxford University Press, 2013, p169. An example is Fiji in 1987.

Accession Council

An Accession Council is usually convened within 24 hours of the death or abdication of a sovereign and is held at St James's Palace. It does not have a statutory basis but takes place in two parts and before Parliament meets at any length. As Lord True stated in a written answer on 25 May 2022, there is "no constitutional understanding that all Privy Counsellors must be summonsed to an Accession Council", [519] although this had been the custom until September 2022 (when the Accession Council was also televised for the first time). The criteria for ex-officio eligibility to attend the Accession Council is based "primarily on whether Privy Counsellors were serving in a senior parliamentary, judicial or Church post at the time of Demise". [520]

At the first part of the Accession Council, a new monarch:

- makes a non-statutory personal Declaration [521]
- takes an oath to maintain and preserve the presbyterian Church of Scotland (this is as provided by Article XXV of the Union with Scotland Act 1706, although the wording of the oath is not specified) [522]

By custom, only Privy Counsellors attend part two, which is a new monarch's first Privy Council meeting. At this, the King (or Queen) in Council will authorise several Orders relating to his or her succession. Following this, an Accession Proclamation (which provides the monarch's full style and titles) is read by Garter King of Arms from the balcony above Friary Court at St James's Palace. [523] The same Proclamation is then read out, as directed by Orders of Council, at various locations around the UK and in the Crown Dependencies. [524] The Proclamation itself does not "make" a new monarch or affect their accession – it merely publicizes the accession.

By custom, a new monarch will visit each part of the UK shortly after succeeding to the throne, which includes delivering addresses to the devolved legislatures. [525] It is also customary for "Privileged Bodies" – organisations permitted to access the King directly – to present Loyal Addresses following the accession of a new monarch or on other significant occasions. [526]

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519 Privy Council, UIN HL293, 17 May 2022. See also F. W. Maitland, The Constitutional History of England, Cambridge: Cambridge University Press, 1963, p83.

520 King Charles III: Ceremonies, UIN HL3308, 9 November 2022.

521 His Majesty's Declaration, Privy Council Office, 10 September 2022.

522 His Majesty's Oath Relating to the Security of the Church of Scotland, Privy Council Office, 10 September 2022. This has become known as the "Scottish Oath".

523 The Accession Proclamation, Privy Council Office, 10 September 2022.

524 In Edinburgh by Lord Lyon King of Arms (at Mercat Cross and at the drawbridge to Edinburgh Castle), in Cardiff by Wales Herald Extraordinary (at Cardiff Castle) and in Belfast by Norroy and Ulster King of Arms.

525 Scottish Parliament Official Report, 12 September 2022, Senedd The Record, 16 September 2022 and His Majesty The King's reply to the message of condolence at Hillsborough Castle, Royal Family website, 13 September 2022. The last of these was not a meeting of the Northern Ireland Assembly but a gathering of MLAs at Hillsborough Castle.

526 See, for example, A Speech by His Majesty The King at the Presentation of Loyal Addresses by Privileged Bodies, Royal Family website, 9 March 2023.

A new monarch chooses a Royal Cypher or monogram, which consists of their initials, title and a representation of the Crown. [527] This is used on government buildings, state documents and on some pillar boxes. Uses of the Crown "across the Government estate" are subsequently "changed to reflect the new reign". [528] A new effigy of the Sovereign is also commissioned for use on the UK's stamps, banknotes and coins. [529]

Coronation

The Coronation Oath Act 1688 (passed by the Parliament of England) provides for a single uniform oath to be taken by all future monarchs. [530] This statutory oath binds the Monarch to:

- rule according to laws agreed "in Parliament"
- cause law, justice and mercy to be executed in their judgments, and
- maintain "the Protestant Reformed Religion Established by Law" (ie, the Church of England)

Section 3 provides the words to be used in the oath, while section 4 states that the oath is to be read to the monarch by the Archbishop of Canterbury or York, or another bishop appointed for that purpose.

The wording of the Coronation Oath has been altered several times, not always via statute. Details of the most recent changes were announced via a written ministerial statement. [531] The final form of words was included in the Coronation Roll for King Charles III. [532] It is sometimes claimed that monarchs have breached their coronation oath by virtue of assenting to certain pieces of legislation. [533]

There is nothing explicitly in law which states that a coronation ceremony must take place. and one is not necessary for a monarch to exercise royal functions. [534] However, it is clear from the Bill of Rights [1688] and Coronation Oath Act 1688 that a coronation ceremony is expected to take place. By "longstanding tradition", the Archbishop of Canterbury authorises a new

527 His Majesty The King's cypher, Royal Family website, 27 September 2022.
528 GOV.UK launches new official crown logo for His Majesty The King, Cabinet Office/Government Digital Service, 19 February 2024.
529 The Crown Office assesses stamp and coin designs from the Crown Dependencies and either refer these to the Palace for approval or request amendments to the designs from the issuing jurisdiction (The Crown Office Guide, Ministry of Justice, 2021).
530 The Coronation Oath Act 1567, an Act of the Old Scottish Parliament, appears still to be in force but is of no effect.
531 The Coronation Oath, UIN HCWS727, 19 April 2023.
532 Coronation Oath, Coronation Roll website.
533 In *Williamson v Archbishops of Canterbury and York* [1996] EWCA Civ J0905-2, made this argument of Queen Elizabeth II's Royal Assent for the Royal Assent to the Priests (Ordination of Women) Measure 1993. This was rejected.
534 See *Calvin's Case* [1608], 77 ER 377, (1608) Co Rep 1a. King Edward VIII, for example, reigned during 1936 without having been crowned.

liturgy for each coronation.[535] This is based on the Liber Regalis (or Royal Book), created in around 1382. An Order of Service is prepared by Lambeth Palace in close collaboration with the Royal Household and Westminster Abbey and, for its constitutional aspects, the UK government.[536] The coronation service tends "to illustrate current constitutional facts".[537]

A Royal Warrant provides that Commissioners for the Safeguarding of the (Scottish) Regalia are responsible for the transfer of the Stone of Scone (also known as the Stone of Destiny) to the Abbey on the occasion of a coronation.[538] There is a relatively recent custom of a specifically Scottish ceremony which takes place shortly after the coronation.[539]

Since the 14th century, the official State Record of a coronation has been the Coronation Roll. In 2023, a Coronation Claims Office was formed within the Cabinet Office "to consider claims to perform an historic or ceremonial role" at the ceremony.[540]

Either at their coronation, or at the first State Opening of their reign (whichever occurs first),[541] the Sovereign is required to declare that they are a faithful Protestant and will secure the Protestant succession.[542]

By custom, a newly crowned monarch will visit each part of the UK.[543]

Royal regalia

The Royal regalia, or Crown Jewels, are kept at the Tower of London and are only removed for a coronation.[544] The centrepiece of a coronation ceremony is the St Edward's Crown, while the Imperial State Crown is often used at the State Opening of Parliament and at Royal funerals. The Scottish regalia or Honours of Scotland are kept at Edinburgh Castle, some of which is used at the opening of the Scottish Parliament after an election.[545] The Welsh regalia

535 Lambeth Palace Publishes Liturgy for the Coronation of King Charles III, Archbishop of Canterbury website.

536 The Coronation Order of Service, Royal Family website, 6 May 2023.

537 J. D. B. Mitchell, Constitutional Law, p139. See David Torrance: Constitutional mirrors: Coronations and the territorial constitution, UK Constitutional Law Association blog, 27 October 2022.

538 20 facts revealed about the Stone of Destiny, Historic Environment Scotland website. Commissioners include the Lord Advocate and First Minister of Scotland (in their capacity as Keeper of the Scottish Seal).

539 Order of Service for a National Service of Thanksgiving and Dedication for Their Majesties The King and Queen on the occasion of the Presentation of the Royal Honours of Scotland, Church of Scotland, 5 July 2023.

540 This replaced the Court of Claims.

541 Bill of Rights [1688], Introductory Text.

542 Accession Declaration Act 1910, Schedule.

543 See The King and Queen visit Northern Ireland, Holyrood Week 2023 and The King and Queen visit Wales, Royal Family website, 24 May, 3 July and 20 July 2023.

544 In his 1956 book Laws and Flaws: Lapses of Legislators (London: Odhams Press), the amateur constitutional expert Edward F. Iwi argued that it was illegal for the Crown Jewels to be taken out of the Realm.

545 The Honours of Scotland were also presented to the King during a Service of Thanksgiving and Dedication at St Giles' in July 2023. The Stone of Scone, once housed in the Coronation Chair at Westminster Abbey, is now on display at the Perth Museum.

includes a sword, ring and rod made of Welsh gold for the 1911 investiture of the Prince of Wales. The coronet was made for the 1969 investiture. [546]

3.6 Regency and Counsellors of State

Regency

The Regency Act 1937 provides for four eventualities. Under section 1, if a Sovereign is aged under 18 at their accession to the throne, then "the royal functions" are performed "in the name and on behalf of the Sovereign by a Regent". Similarly, under section 2, if at least three out of five persons – the wife or husband of the Sovereign, the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice of England and Wales and the Master of the Rolls – declare in writing that the Sovereign is "by reason of infirmity of mind or body incapable for the time being of performing the royal functions", or that the Sovereign is for "some definite cause not available for the performance of those functions", then those functions will be carried out by a Regent. [547] "Royal functions" are defined in section 8(2) as including all powers and authorities belonging to the Crown, whether prerogative or statutory.

Section 3 provides that the Regent is next in the line of succession to the Crown, excluding persons who are not of full age (21), domiciled in some part of the UK or a Catholic. Under section 4, a Regent must take oaths set out in the Schedule to the Act, while they are prohibited from providing Royal Assent to any bill altering the order of succession or for repealing or altering an Act of the Old Scottish Parliament for securing the Church of Scotland. [548]

A Regency only applies in the UK, not any other Commonwealth Realm although section 4(1) of the Constitution Act 1986 (New Zealand) provides that:

> Where, under the law of the United Kingdom, the royal functions are being performed in the name and on behalf of the Sovereign by a Regent, the royal functions of the Sovereign in right of New Zealand shall be performed in the name and on behalf of the Sovereign by that Regent.

Counsellors of State

Section 6 of the 1937 Act provides that the Sovereign may "delegate" to Counsellors of State "such of the royal functions as may be specified in the Letters Patent" if they are ill or absent from the UK. Section 6 also provides that the Counsellors shall be the wife or husband of the Sovereign (if the Sovereign is married), and the four persons who are next in the line of

[546] There was no investiture for the current Prince of Wales.
[547] A declaration shall be made to the Privy Council and communicated to Commonwealth Realm governments.
[548] It is notable that the Church of England is not similarly protected.

succession. It further stipulates that any delegated functions be "exercised jointly". [549] Section 1 of the Counsellors of State Act 2022 extended these provisions to the Earl of Wessex (later the Duke of Edinburgh) and the Princess Royal to serve as Counsellors during their lifetimes. All Counsellors (except an heir) are be aged at least 21 and not Catholics. Under section 1 of the Regency Act 1943, the heir apparent or heir presumptive to the throne can serve as a Counsellor of State if they are aged 18 or above.

Counsellors can only dissolve Parliament on the "express instructions" of the Sovereign and are prohibited from granting peerages. [550] According to the Royal Family website, other "core constitutional functions" that "may not be delegated" to Counsellors are "Commonwealth matters" and the appointment of a Prime Minister, [551] although these limitations are not specified in statute.

The Regency Act 1943 added the discretionary provision that if it "appears to the Sovereign" that any eligible Counsellor will be "absent from the United Kingdom or intends to be so absent during the whole or any part of the period of such delegation", then Letters Patent "may make provision" for excepting that person from among those acting as Counsellors of State. [552]

3.7 The Crown and the police

Police officers in England and Wales are servants of the Crown. [553] Under the Police Act 1996, at their attestation ceremony all police officers (regardless of rank) "do solemnly and sincerely declare and affirm" that they "will well and truly serve the King in the office of constable". [554] It is from the Office of Constable that each officer derives their powers. [555]

The oaths taken by members of Police Scotland [556] and the Police Service of Northern Ireland (PSNI) [557] (who are also constables) are similar but do not include reference to the King. The motifs used by the PSNI, Police Scotland and forces in England and Wales incorporate the Crown. They are governed by, respectively, the Scottish Police Authority and Northern Ireland Policing Board.

Under section 42 of the Police Reform and Social Responsibility Act 2011,

549 This has been taken to mean that Counsellors of State act in pairs when executing any royal functions.
550 Regency Act 1937, section 6(1).
551 Counsellors of State, Royal Family website.
552 Regency Act 1943, section 1. The Duke of Sussex is excepted from acting as a Counsellor of State under this provision.
553 Constables have no right to join a trade union and cannot complain of unfair dismissal (Employment Relations Act 1996, section 200).
554 Police Act 1996, Schedule 4.
555 The Office of Constable: The bedrock of modern day British policing, Police Federation, p2.
556 As established under section 6 of the Police and Fire Reform (Scotland) Act 2012.
557 As renamed by section 1 of the Police (Northern Ireland) Act 2000.

the Metropolitan Police Commissioner is appointed by the King (via Royal Warrant) on the advice of the Home Secretary and holds office as "the Commissioner of Police of the Metropolis" at His Majesty's pleasure. The recommended candidate must be or have been a constable in any part of the UK, while the Home Secretary "must have regard" to any recommendations made by the Mayor's Office for Policing and Crime. Section 48 provides for the suspension and removal of the Commissioner and Deputy Commissioner.[558]

His Majesty's Inspectors of Constabulary and Fire and Rescue Services, including His Majesty's Chief Inspector, are also appointed by the King on the advice of the Home Secretary and the Prime Minister. As independent holders of public office under the Crown, appointed under Royal Warrant, they are neither civil servants nor police officers.[559]

3.8 The Crown and the Armed Forces

The Monarch is Head of the UK's Armed Forces.[560] The King is also titular head of the Royal Navy as Lord High Admiral, one of the Great Officers of State.[561]

Parliamentary approval is required for all three services – the Army, Royal Air Force and Royal Navy – by way of the Armed Forces Act 2006, as extended and updated by the Armed Forces Act 2021. The 2021 Act may be renewed annually by Statutory Order in Council but is not to have effect beyond the end of 2026, at which point another Armed Forces Act will become necessary.[562]

This annual consideration of legislation governing the Armed Forces reflects the constitutional requirement under the Bill of Rights [1688] that "raising or keeping a standing Army within the Kingdome in time of Peace" without the consent of Parliament is against the law.[563] The Armed Forces are matters reserved to the UK Parliament.

The Armed Forces Act 2006 sets out the service justice system which underpins the maintenance of discipline throughout the chain of command. Without that Act, commanding officers would have no powers of punishment

558 By custom, the Metropolitan Commissioner is granted a life peerage upon retirement.

559 Who we are, HMICFRS website.

560 Not Commander in Chief, as is sometimes claimed. Two Governors of Overseas Territories – Bermuda and Gibraltar – have the honorific title of "Commander in Chief". This reflects the presence of local defence forces, which also exist in the Falkland Islands and Montserrat. There are also garrisons of UK Armed Forces stationed in the Falklands, the Sovereign Base Areas, Gibraltar, the British Indian Ocean Territory and Ascension.

561 The title was re-vested in the Sovereign following a review of the Navy's organisational structure in 1964 (Queen Elizabeth II conferred the office and title on her husband Prince Philip in 2011 (see The Duke of Edinburgh appointed Lord High Admiral, Royal Family website, 10 June 2011). There is no equivalent Great Office for the other Services.

562 The Armed Forces Act 2006 (Continuation) Order 2023 is the most recent Order in Council. See also the Commons Library research briefing CBP10065, What is the Armed Forces Act?

563 For F. W. Maitland, the words "in time of peace" seemed to "imply that in time of war the king may keep a standing army even without the consent of parliament" (F. W. Maitland, The Constitutional History of England, p328).

for either disciplinary or criminal misconduct, meaning there would be no means to ensure that personnel obey orders.[564] In 2023, the then Defence Minister Baroness Goldie explained that if the Act "were not renewed, while servicepersons will continue to owe a duty to His Majesty, Parliament will have removed the power of enforcement".[565]

Section 11 of the Crown Proceedings Act 1947 provides that nothing in Part I of that Act:

> shall extinguish or abridge any powers or authorities exercisable by the Crown, whether in time of peace or of war, for the purpose of the defence of the realm or of training, or maintaining the efficiency of, any of the armed forces of the Crown.

Beyond statute, prerogative powers provide authority for the Crown to:

- commission members of the Armed Forces[566]
- appoint commanders and grant commissions to officers, and
- make agreements with foreign states about stationing troops on their soil
- deploy the Armed Forces in military action overseas (see Section 5.3)

The Visiting Forces Act 1952 provides for the legal jurisdiction over military personnel of certain other countries visiting the UK.

The Defence (Transfer of Functions) Act 1964 made provision for the central organisation of defence by the Secretary of State (for Defence) and the Defence Council, which was constituted by Letters Patent in 1964. The Defence Board is chaired by the Defence Secretary and is responsible for top level strategic leadership at the Ministry of Defence. The Defence Board is responsible for the Defence Vision, which is:

> To defend the United Kingdom and its interests, strengthen international peace and stability, and act as a force for good in the world.[567]

Under the royal prerogative and on the advice of the Defence Secretary, the King appoints the:

- Chief of the Defence Staff[568]

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564 A guide to the legislation and reference material on the Armed Forces Act 2006 is available on the Ministry of Defence website.

565 HL Deb 15 June 2023 Vol 830 c387GC [Armed Forces Act 2006 (Continuation) Order 2023].

566 As such they may be dismissed at the pleasure of the Crown and may not resign their commission without leave.

567 Our governance, Ministry of Defence.

568 Admiral Sir Tony Radakin KCB ADC appointed new Chief of the Defence Staff, Ministry of Defence, 7 October 2021.

- Vice Chief of the Defence Staff[569]
- First Sea Lord and Chief of the Naval Staff[570]
- Chief of the General Staff[571]
- Chief of the Air Staff[572]
- Commander Strategic Command[573]

The Monarch receives regular reports from the Chiefs of Staff,[574] all of whom are also Aides-de-Camp to His Majesty, and has regular audiences with senior military officials.

Guidelines on Military Aid to the Civil Authorities (MACA) outline circumstances in which members of the Armed Forces can assist civil authorities.[575]

Oath of allegiance

Upon enlistment, members of the Army, Royal Air Force, Royal Navy and Royal Marines are required to take or affirm an oath of allegiance to the Monarch.[576] There is no requirement, however, for naval officers to take the oath.

The standard text of the oath is:

> I [insert name] swear by Almighty God that I will be faithful and bear true allegiance to his Majesty King Charles III his heirs and successors and that I will as in duty bound honestly and faithfully defend his Majesty, in person, Crown and dignity against all enemies and will observe and obey all laws of his Majesty, his heirs and successors and of the generals and officers set over me.

An alternative version of the oath is also available for those of all other faiths.[577]

569 General Sharon Nesmith appointed new Vice Chief of the Defence Staff, Ministry of Defence, 17 May 2024.
570 Vice Admiral Sir Ben Key KCB CBE has been appointed to First Sea Lord and Chief of the Naval Staff, Ministry of Defence, 15 October 2021.
571 General Sir Roly Walker appointed new Chief of the General Staff, Ministry of Defence, 12 December 2023.
572 Air Marshal Sir Richard Knighton appointed new Chief of the Air Staff, Royal Air Force website, 31 March 2023.
573 Lieutenant General Sir James Hockenhull appointed new Commander United Kingdom Strategic Command, Ministry of Defence, 29 April 2022.
574 Peter Rowe, The Crown and Accountability for the Armed Forces in M. Sunkin and S. Payne, The Nature of the Crown, p281.
575 See also Emergency Powers Act 1964, section 2.
576 There is no explicit provision for an oath in the Armed Forces Act 2006, but the Armed Forces (Enlistment) Regulations 2009, which flowed from the 2006 Act, harmonised enlistment practices and included the oath of allegiance.
577 Freedom of Information release FOI2021/06951, Ministry of Defence, 28 July 2021.

A Ministry of Defence freedom of information release from 2021 stated that the wording of the oath reflected "selfless commitment":

> In it, soldiers agree to subordinate their own interests to those of the unit, Army and Nation, as represented by the Crown [...] It expresses the loyalty of every soldier to the Sovereign as Head of State. These relationships find expression in the Colours, Standards and other emblems of Regimental and Corps spirit, which derive from the Sovereign.[578]

Under section 1 of the Incitement to Disaffection Act 1934, it is an offence for any person to "maliciously and advisedly" endeavour "to seduce any member of His Majesty's forces from his duty or allegiance to His Majesty".[579]

The King's Regulations

The King's Regulations are a collection of orders and regulations governing the Royal Navy, British Army and Royal Air Force. Issued by the Ministry of Defence, they apply "at home and abroad" and provide guidance to officers of the three services. Updates require approval from the Monarch. The most current editions are available online:

- The Queen's regulations for the Royal Navy (April 2017)
- The Queen's Regulations for the Royal Air Force (June 2012)[580]
- The Queen's regulations for the Army 1975 (January 2019)

Part 14 of the Army regulations (J5.581) state that regular service personnel "are not to take any active part in the affairs of any political organization, party or movement". Only the Queen's Regulations for the Army sets out a procedure for conscientious objection.[581]

3.9 Crown conventions

In the case of *R (Evans) v Attorney General*, the UK Information Commissioner identified several Crown conventions:

- The tripartite convention: that the Sovereign is entitled to be informed and consulted, and to advise, encourage and warn ministers[582]

578 Freedom of Information release FOI2021/06951, Ministry of Defence, 28 July 2021.
579 Under section 3 of the Aliens Restriction (Amendment) Act 1919, "aliens" (citizens of foreign countries) are also prohibited from causing sedition or disaffection among the civil population as well as among the Armed Forces.
580 A list of amendments was published by the Ministry of Defence in 2014.
581 Conscientious Objection in the UK Armed Forces, ForcesWatch briefing, February 2011.
582 Cabinet Manual, para 6. This is adapted from Walter Bagehot's concept of constitutional monarchy.

- The education convention: that the heir to the throne should be "instructed in the business of government in preparation for when he is King",[583] and
- The cardinal convention: this holds that the Monarch "is normally expected to act in accordance with ministerial advice"[584]

In a 1986 letter to The Times, Sir William Heseltine, the then Private Secretary to Queen Elizabeth II, took "three points to be axiomatic":

1. The Sovereign has the right — indeed a duty — to counsel, encourage and warn her Government. She is thus entitled to have opinions on Government policy and to express them to her chief Minister.
2. Whatever personal opinions the Sovereign may hold or may have expressed to her Government, she is bound to accept and act on the advice of her Ministers.
3. The Sovereign is obliged to treat her communications with the Prime Minister as entirely confidential between the two of them. [585]

For this reason, there is a convention of confidentiality surrounding the Sovereign's communications with Ministers of the Crown and the devolved executives.[586]

Under section 37(1)(a) of the Freedom of Information Act 2000, information which "relates to" communications with the Monarch is subject to an absolute exemption from disclosure.[587] Section 41 of the Freedom of Information (Scotland) Act 2002 makes similar provision, although disclosure of information in Scotland is subject to a public interest test.[588] By convention, ministerial advisers to the Monarch are not supposed to divulge the content of private conversations.[589]

According to the Ministry of Justice, every "subject of the King has constitutional right to petition His Majesty".[590] Signed written representations or appeals "in respect of any concern or grievance for which there is no other

583 Rodney Brazier has also referred to this as the "apprenticeship convention" (*Evans v Information Commissioner* [2012] UKUT 313 (AAC)).

584 *R (Evans) v Attorney General* [2015] UKSC 21. Rodney Brazier concurred that this was "the most important convention of the British constitution" (Stanley de Smith and Rodney Brazier, Constitutional and Administrative Law (8th edition), London: Penguin, 1998, p27).

585 The Times, 28 July 1986.

586 In *Evans v Information Commissioner* [2012] UKUT 313 (AAC), the Upper Tribunal concluded that the education convention did not extend to letters between the then Prince of Wales and Ministers where he was advocating for particular causes.

587 As amended by the Constitutional Reform and Governance Act 2010, something the Information Commissioner's Office said was necessary to "ensure that the constitutional position and impartiality of the Monarchy was not undermined" (Communications with His Majesty and the awarding of honours (section 37), ICO website).

588 This exemption expires after 20 years or five years after the relevant monarch's death, whichever is longer.

589 In practice, this convention is frequently broken, for example in the memoirs of former Prime Ministers.

590 Prisoner Complaints Policy Framework, Ministry of Justice, 12 December 2023.

constitutional remedy readily available" can be posted to the King by UK citizens free of charge.[591]

3.10 Finances of the monarchy

Section 1 of the Sovereign Grant Act 2011 provides that a "Sovereign Grant" is to be paid by HM Treasury to the King for each financial year to provide "resources for use for that year by the Royal Household in support of [His] Majesty's official duties". Section 6 provides for the Royal Trustees (the Prime Minister, Chancellor and Keeper of the Privy Purse)[592] to determine the value of the Sovereign Grant in each financial year by following a five-step process.[593] Under section 7, the Royal Trustees must review the percentage of the net surplus of the Crown Estate which forms the basis of the Sovereign Grant every five years.[594] The present percentage was set by The Sovereign Grant Act 2011 (Change of Percentage) Order 2024.

The Treasury's oversight of the Royal Household's activities relating to the Grant is defined in a Framework Agreement between the Treasury and the Royal Household.

Section 16 of the 2011 Act provides that the Sovereign Grant provisions cease to have effect six months after the death of a monarch unless alternative provision is made by Order in Council within six months of an accession. At his Accession Council on 10 September 2022, King Charles III approved a Statutory Order in Council which provided that existing Sovereign Grant provisions would instead expire six months after the end of his reign. [595]

The present voluntary arrangement under which the King and the Prince of Wales pay tax on certain earnings is set out in a non-statutory Memorandum of Understanding on Royal Taxation, the most recent of which was published in July 2023.

Duchies of Lancaster and Cornwall

The Duchy of Lancaster is an historic portfolio of land and assets held in trust for the reigning Sovereign in their capacity as Duke of Lancaster. [596] It provides the Monarch "with a source of income that is independent of

591 United Kingdom Post Scheme (6 April 2022), Royal Mail website, pp43-44.
592 A body corporate crated under the Civil List Act 1952, section 10.
593 For the most recent determination, see Report of the Royal Trustees on the Sovereign Grant Review 2025-26, HM Treasury, 20 March 2025.
594 The Crown Estate is an "independent, commercial business", the statutory basis of which is the Crown Estate Act 1961. Section 36 of the Scotland Act 2016 transferred management of Crown Estate assets in Scotland to the Scottish Ministers.
595 The Sovereign Grant Act 2011 (Duration of Sovereign Grant Provisions) Order 2022.
596 The last Duke of Lancaster (as a title or dignity) was the eldest son of Henry IV, but the title merged with the Crown in 1413.

Government and the public purse". [597] The net revenue from the Duchy of Lancaster forms part of the King's Privy Purse. The Chancellor of the Duchy of Lancaster, a member of the Cabinet, "administers the estates and rents of the Duchy of Lancaster".

The Duchy of Cornwall is a private estate belonging to the Duke of Cornwall, a title held by the heir to the throne. The revenue from the Duchy is "used to fund the public, private and charitable activities of The Duke and his immediate family". [598]

Under section 9 of the Sovereign Grant Act 2011, if the Duke of Cornwall is aged under 18 then Duchy revenue flows to the Monarch and the Sovereign Grant is reduced by 90% of the net surplus revenue.

Under section 2 of the Duchies of Lancaster and Cornwall (Accounts) Act 1838, the officers of the Duchies of Cornwall and Lancaster are responsible for the preparation of accounts which are submitted to the Treasury. [599]

3.11 Royal residences

The Occupied Royal Palaces include Buckingham Palace, St James's Palace, [600] Windsor Castle and parts of Kensington Palace. They "are held in Trust for the Nation by The Sovereign" and, since 1991, responsibility for maintenance has rested with the Royal Household and the Keeper of the Privy Purse. [601] One of six Historic Royal Palaces (a public corporation) is Hillsborough Castle, which is a royal residence situated in what is now Royal Hillsborough in Northern Ireland. [602] It is also available for Ministers in the Northern Ireland Office while on duty in Northern Ireland. [603]

The Palace of Holyroodhouse in Edinburgh is "the official residence of the Monarchy in Scotland" and is managed by the Royal Household. By custom, the Monarch spends part of July in residence at Holyroodhouse, something known as Holyrood or Royal Week.

Under the Crown Private Estate Act 1800, the Sovereign can also own property as a private individual. The King's private estates include Balmoral and Sandringham, both of which can also host "official" activity, such as audiences and meetings of the Privy Council.

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597 Duchy of Lancaster Annual Report and Accounts for Year Ended 31st March 2023, Duchy of Lancaster website.

598 About the Duchy, Duchy of Cornwall website.

599 These are also placed in the Libraries of each House.

600 St James's Palace ceased to be the monarch's official residence in 1837, but remains the official residence of the Court, to which Ambassadors and High Commissioners are accredited.

601 Maintaining the Occupied Royal Palaces, National Audit Office, 10 December 2008, p7.

602 Its dual status dates from its use until 1973 as the official residence of the vice-regal Governor of Northern Ireland. There is no royal residence in Wales, although the Duchy of Cornwall maintains the Llwynywermod estate.

603 Ministers: Official Residences, UIN HL2901, 26 November 2024.

Under section 128 of the Serious Organised Crime and Police Act 2005, it is a criminal offence to enter or be on any designated site as a trespasser. A site designated by the Secretary of State may include any Crown land and land owned privately by the King or the Prince of Wales.

3.12 Royal Arms

The 1707 and 1800 Acts of Union left the Royal (coat of) Arms in the disposition of the Monarch under the royal prerogative. The authority for the present Royal Arms is a Proclamation made by Queen Victoria on 26 July 1837. [604] During the 20th century a Scottish version of the Arms entered use throughout Scotland. [605] Subsequent artistic changes appear to be a purely personal prerogative of the reigning monarch. [606] The Lord Chamberlain's Office produces definitive guidelines on the use of the Royal Arms.

The government uses a simplified version of the Royal Arms known as the "Lesser Arms", for example in the branding of government departments, on official government documents and UK passports. [607]

Section 66 of the Justice (Northern Ireland) Act 2002 provides that the Royal Arms "must not be displayed in any courtroom" in Northern Ireland. [608]

The Scottish version of the Royal Arms appears on the front page of acts passed by the Scottish Parliament, but the crest of the Royal Arms of Scotland appears on Scottish Statutory Instruments made by Scottish Ministers. The Royal Badge of Wales appears on the cover of the paper copy of more substantial Welsh SIs. [609]

Section 4(1) of the Trade Marks Act 1994 provides that a trade mark which consists of or contains the Royal Arms (and other emblems) shall not be registered without consent from or on behalf of the King or the relevant member of the Royal Family. The Lord Chamberlain's Office is empowered to grant this consent. Section 99 provides for unauthorised use of the Royal Arms. [610]

604 Royal Proclamation, 26 July 1837.
605 Stair Memorial Encyclopaedia of the Laws of Scotland Volume 7.
606 January 2025 Newsletter (no 77), College of Arms website.
607 New Coat of Arms artwork unveiled.
608 Arms "displayed immediately before" the coming into force of section 66 are exempt.
609 WQ85557 (e), The Record, 21 June 2022.
610 There also exists international protection under Article 6ter(1)(a) of the 1883 Paris Convention for the Protection of Industrial Property, to which the UK was a signatory.

4 Parliament

As Erskine May states: "The legal existence of Parliament results from the exercise of royal prerogative." [611] The King or Crown "in Parliament" is composed of the Sovereign, the House of Lords and the House of Commons. [612] It is the legislature for every part of the UK on reserved policy matters, although it also legislates in areas devolved to Scotland, Wales and Northern Ireland, normally with the relevant legislature's consent. The UK Parliament itself is a reserved matter.

The time between one general election and the next is known as "a Parliament". A new Parliament starts after each general election. A Parliament is normally divided into sessions that last roughly a year, often beginning in May or June and continuing until the following April or May. The sitting calendar of a Parliament is set by the government, although individual recess periods are agreed by both Houses following motions tabled by the government. [613] Proceedings of Parliament can take hybrid (virtual) form, as they did during the Covid-19 pandemic.

Parliaments have been numbered since 1801. [614] Under section 2 of the Royal And Parliamentary Titles Act 1927, the "style" of the UK Parliament became the "Parliament of the United Kingdom of Great Britain and Northern Ireland".

Since 1965, control of the "precincts" of each House in the Palace of Westminster have been vested in their respective Speakers. Black Rod is solely responsible for access to the King's Residual Estate, which comprises the Robing Room, the Royal Gallery and the Chapel of St Mary Undercroft. [615] Control of Westminster Hall is vested jointly in the Lord Great Chamberlain as representing the Monarch and in the two Speakers on behalf of their respective Houses. [616] The Parliamentary Estate extends beyond the Palace of Westminster and covers a number of buildings north of Bridge Street. This is known as the Northern Estate. [617]

Sections 142 and 142A of the Police Reform and Social Responsibility Act 2011 provide for controls on public activities in the vicinity of the Palace of

611 Erskine May, para 1.5.
612 Erskine May, para 1.1.
613 Guide to Parliamentary Work, paras 1 and 6. The rules relating to sittings of the House of Commons are set out in Standing Orders Nos 9-13.
614 That elected in July 2024 is the 59th Parliament of the United Kingdom. This numbering was undisturbed by the secession of the Irish Free State in December 1922. Under section 4 of the Irish Free State (Agreement) Act 1922, writs ceased to be issued to Members representing Irish constituencies outside Northern Ireland.
615 Lords Companion, Appendix B.
616 Erskine May, para 6.49.
617 The Northern Estate is not covered by Crown immunity from statute.

Westminster. Section 384 of the Greater London Authority Act 1999 transferred the central garden of Parliament Square to the King as part of the "hereditary possessions and revenues of [His] Majesty".

A mace is a symbol of Royal authority and without one in place neither House of Parliament can meet or pass laws. The mace is absent from the Lords during the State Opening of Parliament as the Monarch is present in person.

The crowned portcullis has for many years been used as the emblem of the UK Parliament. In 1997, its use was formally authorised by licence granted by Queen Elizabeth II.[618]

An elected UK Youth Parliament was established in 1999 to provide opportunities for young people, including those from marginalised communities, to influence the parliamentary process.[619]

4.1 Powers of Parliament

An important principle of the UK constitution is "parliamentary sovereignty". A. V. Dicey defined this as "the right to make or unmake any law whatever" and that "no person or body" had "a right to override or set aside the legislation of Parliament".[620] This has been recognised in statute.[621] Some prefer the term "parliamentary supremacy".

Dicey also suggested that while Parliament was legally sovereign, ultimately the electorate were "politically sovereign".[622] The orthodox position is that parliamentary sovereignty is "unlimited",[623] while the competing "manner and form" view holds that Parliament's legislative supremacy can be qualified via procedural changes.[624] According to Lord Hope, while the UK constitution might be "dominated by the sovereignty of Parliament", this was "no longer, if it ever was, absolute".[625] The devolution statutes preserve the supremacy of the UK Parliament.[626]

618 Erskine May, para 15.11.
619 UK Youth Parliament, National Youth Agency website.
620 A. V. Dicey, Introduction to the Study of the Law of the Constitution (8th edition), pp3-4.
621 European Union (Withdrawal Agreement) Act 2020, section 38.
622 A. V. Dicey, Introduction to the Study of the Law of the Constitution (8th edition), p29.
623 See *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5 and *Reference by the AG and the AG for Scotland – UNCRC (Incorporation) (Scotland) Bill* [2021] UKSC 42. Lord Cooper considered this a "distinctively English principle" with "no counterpart in Scottish constitutional law" (*MacCormick v The Lord Advocate* [1953] SC 396). J. D. B. Mitchell thought the "doctrine" a "post-Union development closely linked with the ideas underlying the reforms of 1832" (Constitutional Law, p55).
624 Sir Ivor Jennings, The Law and the Constitution (5th edition), pp152-59. For the origins of "manner and form" see *Attorney-General for New South Wales v Trethowan* [1932] AC 526.
625 *R (Jackson) v Attorney General* [2005] UKHL 56. This observation was obiter dicta.
626 See, for example, the Scotland Act 1998, section 28(7).

There is also a principle of statutory interpretation known as the "principle of legality". Lord Hoffmann said this meant:

> that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words [...] In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual.

In this way, the UK courts acknowledge the sovereignty of Parliament but apply "principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document".[627]

Many of Parliament's powers stem from what is known as parliamentary privilege.[628] According to Erskine May, this term may:

> nowadays be applied both to the immunities and exemptions afforded to either House and their Members individually or collectively and to the rights and powers exercised by either House in its institutional or corporate capacity.[629]

Prior to royal approbation, a Speaker claims for the Commons "their ancient and undoubted rights and privileges".[630] Neither House can by its own resolution create new privileges, and when a matter of privilege is disputed it is for the courts to decide whether a particular privilege exists and for the relevant House to decide whether it has been infringed.[631] The Speaker can admonish Members and non-Members at the Bar of the House.[632]

The power of each House to control its own precincts, proceedings and aspects of membership is known as "exclusive cognizance".[633] Exclusive cognizance does not displace the criminal law.[634]

The courts generally rely on Article IX of the Bill of Rights [1688] as the statutory basis for the protections provided to formal proceedings of Parliament.[635] This provides that freedom of speech and debates or

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627 *R v Home Secretary, ex parte Simms* [1999] UKHL 33.

628 Erskine May, para 11.1.

629 Erskine May, para 11.14. Lord Judge has observed that properly "understood, the privileges of Parliament are the privileges of the nation, and the bedrock of our constitutional democracy" (*R v Chaytor* [2010] EWCA Crim 1910).

630 HL Deb 9 July 2024 Vol 839 c4 [Speaker of the House of Commons].

631 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593.

632 The most recent non-Member to be admonished was in 1957 (see HC Deb 24 January 1957 Vol 563 cc403-05 [Privilege (Attendance of Mr. John Junor)]). More recently, admonishment has been via a resolution of the House.

633 *Bradlaugh v Gosset* [1884] 12 QBD 271. See also Erskine May, para 11.16.

634 Erskine May, para 11.18.

635 Erskine May, paras 13.1-13.2, 13.10-13.14. Article IX does not extend to the devolved legislatures, where a degree of privilege takes statutory form (see the Scotland Act 1998, section 41; Government of Wales, section 42; and Northern Ireland Act, section 50; provisions of which also disapply the "strict liability rule" established under section 1 of the Contempt of Court Act 1981). The 2024 Labour Party manifesto pledged to introduce "the same free speech protections in the Scottish Parliament as those enjoyed by MPs".

proceedings in Parliament "ought not to be impeached or questioned in any court or place out of Parliament".[636]

The courts have held that unless the contrary intention appears, then statute does not apply to either House, its proceedings or precincts, although the Supreme Court considers this "open to question".[637] Nevertheless, the policy of the Commons and Lords Commission has been to apply many statutory provisions (for example that banning smoking in public places) voluntarily.[638] In 2014 both Houses resolved that "legislation creating individual rights which could impinge on the activities of the House should in future contain express provision to this effect".[639]

The power of impeachment is still in theory available to Parliament but is considered obsolete.[640]

4.2 Dissolution and summons

When Parliament is dissolved, all business in the House comes to an end. MPs stop representing their constituencies and there are no MPs until after the general election. As peers are appointed for life rather than elected, they retain their positions. Ministers of the Crown continue to hold office throughout the election period.[641]

Dissolution

The dissolution of Parliament was (briefly) governed entirely by statute (under the Fixed-term Parliaments Act 2011). This is no longer the case, as the Dissolution and Calling of Parliament Act 2022 explicitly revived the historical dissolution prerogative. A Parliament is dissolved on the expiry of its maximum term (currently 5-years from the date it first met) or, if sooner, by proclamation issued by the King.[642]

Parliaments are far more often dissolved by proclamation than by the formal expiry of their maximum term. A proclamation is signed by the King at a meeting of the Privy Council and comes into force from the moment it is sealed by the Crown Office (a separate Order in Council directs its sealing by the Lord Chancellor). The text of a dissolution proclamation:

636 The Scottish Claim of Right 1689 similarly provided that "Parliaments ought to be frequently called and allowed to sit and the freedom of speech and debate secured to the members".
637 *R v Chaytor* [2010] UKSC 52. In *Chaytor*, the Supreme Court ruled that Article IX did not include false accounting by MPs in relation to parliamentary expenses.
638 HC Deb 30 June 1997 Vol 297 c45W [Crown Immunity].
639 HC Deb 8 May 2014 Vol 580 c357 [House of Commons Business] and HL Deb 20 March Vol 753 cc320-48 [Parliamentary Privilege].
640 The last occurred in 1806 (see Impeachment, UK Parliament website).
641 Guide to Parliamentary Work, paras 18 and 19.
642 Dissolution and Calling of Parliament Act 2022, sections 2 and 4.

- dissolves Parliament and "discharges" MPs and peers
- orders the Lord Chancellor of Great Britain and the Secretary of State for Northern Ireland to issue writs (a formal written order) summoning peers to the House of Lords and for the election of MPs to the House of Commons
- sets the date for the first meeting of the new Parliament[643]

Since 1835, the monarch's power to dissolve Parliament has only ever been exercised following a request made by the Prime Minister. This request is usually made in person though can, if necessary, be made by telephone or letter.[644]

Any extension of a Parliament beyond five years would require legislation.[645] The most recent example was the Prolongation of Parliament Act 1944, which applied to both the UK Parliament and the devolved Parliament of Northern Ireland.[646]

The Meeting of Parliament Act 1694 (an Act of the Parliament of England) sets the historic expectation that governments should not operate without Parliament for any prolonged period. No more than three years can elapse between the dissolution of one parliament and the first meeting of its successor.

It is possible for the UK Parliament to legislate for a general election.[647]

Dissolution conventions

There are no statutory restrictions on when the Prime Minister can request a dissolution. In a letter to The Times (under the pseudonym "Senex"), Sir Alan Lascelles, then Private Secretary to King George VI, wrote that "no wise sovereign" would deny a dissolution request unless he or she was satisfied that:

> (1) the existing Parliament was still vital, viable, and capable of doing its job;
>
> (2) a General Election would be detrimental to the national economy;

643 London Gazette, 31 May 2024. Although an interval between dissolution and the summoning of a new Parliament remains possible, writs have to be issued within three years of dissolution (Erskine May, para 8.3).

644 For the most recent example, see Harold Wilson, The Labour Government 1964-1970: A Personal Record, London: Weidenfeld and Nicolson, 1971, p215.

645 Any bill proposing such an extension is exempted from the restrictions imposed on the powers of the House of Lords by the Parliament Acts 1911 and 1949.

646 This was due to the Second World War. The 1935 UK Parliament lasted ten years, while the Parliament of Northern Ireland elected in 1938 lasted more than seven.

647 Early Parliamentary General Election Act 2019.

> (3) he could rely on finding another Prime Minister who could carry on his Government, for a reasonable period, with a working majority in the House of Commons.[648]

The "Lascelles Principles" are now contested. By the 1990s, the constitutional expert Sir Vernon Bogdanor believed the Crown's right to refuse a dissolution only existed if such a request "would be an affront to, rather than an expression of, democratic rights".[649]

During passage of the Dissolution and Calling of Parliament Act 2022, the government argued that there remained "a role for the sovereign in exceptional circumstances to refuse a Dissolution request".[650] Separately, the government said the prerogative allowed a Prime Minister, "by virtue of commanding the confidence of the House of Commons", to advise the Sovereign to dissolve Parliament "at a time of their choosing" or after "having lost a designated or explicit vote of confidence" in the Commons.[651]

It is not necessary for Parliament to have been prorogued for it to be dissolved.[652]

Demise of the Crown

Under section 51 of the Representation of the People Act 1867, Parliament is not dissolved by a demise of the Crown.

The case of a demise of the Crown after a Proclamation summoning a new Parliament (i.e. during a general election campaign) is governed by section 20 of the Representation of the People Act 1985 (as amended by paragraph 9 of the Schedule to the Dissolution and Calling of Parliament Act 2022). This provides for a default whereby polling day (and the day that Parliament first meets) is postponed by a fortnight, and that each may, by Proclamation on the advice of the Privy Council, be moved by up to seven days either side of the default 14-day postponement.

4.3 Prorogation

Prorogation

The prorogation of Parliament (the formal end of each session at which all business ceases) is a prerogative act of the Crown on the advice of the Prime Minister. It is given effect, on the advice of ministers, by a Prerogative Order in

[648] The Times, 2 May 1950.
[649] Vernon Bogdanor, Monarchy and the Constitution, Oxford: Clarendon Press, 1995, pp159-62.
[650] HC Deb 6 July 2021 Vol 698 c849 [Dissolution and Calling of Parliament Bill]
[651] Dissolution Principles, HM Government, 2022.
[652] House of Lords Library, Lengths of prorogation since 1900.

Council.[653] As per *Miller II*, prorogation does not constitute a proceeding in Parliament, while the relevant limit on the power to prorogue is that:

> a decision to prorogue Parliament (or to advise the monarch to prorogue Parliament) will be unlawful if the prorogation has the effect of frustrating or preventing, without reasonable justification, the ability of Parliament to carry out its constitutional functions as a legislature and as the body responsible for the supervision of the executive.[654]

Adjournment (a temporary suspension) is not a matter for the Crown but for each House.

The command to prorogue Parliament is now exercised by certain Lords (or Royal) Commissioners acting by virtue of a Commission under the Great Seal. According to the usual practice, the Commissioners communicate the prorogation to both Houses in the House of Lords. If there are any bills awaiting Royal Assent, then the same Commission authorises that Assent be signified.[655] All other bills before Parliament fall unless explicitly "carried over" to the next session.[656]

When Parliament stands prorogued to a certain day, the King may authorise a Proclamation (on ministerial advice) directing Parliament to meet on any day after the date of that Proclamation.[657] Section 68 of the Reserve Forces Act 1996 and section 28 of the Civil Contingencies Act 2004 requires the King to do so in certain circumstances, if Parliament stands prorogued or adjourned for more than five days. Under section 1 of the Prorogation Act 1867, the Monarch may by Proclamation change the period of prorogation.

Adjournment and recall

Adjournment (a temporary suspension of the proceedings of either House of Parliament) is not the same as prorogation. It is governed by the rules of the two respective Houses and is not a matter with which the Crown is directly concerned.

Under Commons Standing Order No 13, the government may make representations to the Speaker that the House of Commons should meet at an earlier time during an adjournment (that the House should be "recalled").

653 Privy Council meeting, 23 May 2024. The date is chosen by the Leaders of and Chief Whips in each House shortly before the session ends.

654 *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent)* [2019] UKSC 41. In the court's view, the Prime Minister in this context has "a constitutional responsibility" to "have regard to all relevant interests, including those of Parliament".

655 Lords Companion, Appendix G: The ceremony of prorogation by Commission.

656 Carrying over bills in Parliament, Office of the Parliamentary Counsel, 3 September 2024.

657 See the Meeting of Parliament Act 1797, as amended by the Meeting of Parliament Act 1870 and the Parliament (Elections and Meeting) Act 1943.

If the Speaker is satisfied that the public interest requires such a meeting, they may give notice accordingly.[658] Similarly, Lords Standing Order 16(1) provides for a recall of that House during a period of adjournment.[659]

Demise of the Crown

Under section 5 of the Succession to the Crown Act 1707 Parliament, if sitting, is immediately to proceed to act, and if adjourned or prorogued is immediately to meet and sit.

4.4 State Opening of Parliament

A new session of Parliament is opened by the King in state. This is not a statutory requirement but forms part of the law and custom of Parliament. It is the only routine occasion on which the three constituent parts of Parliament – Commons, Lords and the Crown – gather in the same place.[660] It typically takes place annually, and sometimes with reduced ceremonial. At its core is the delivery – not necessarily by the monarch personally – of a King's Speech (also known as the Gracious Speech). This is a statement of government policy for which the Sovereign accepts no personal responsibility. A King's Speech can be an important test of a Prime Minister's ability to command the confidence of Parliament.[661] The Cabinet Secretariat, working with Number 10, drafts the King's Speech and provides co-ordination for supporting documents.[662]

1 Black Rod

The Gentleman or Lady Usher of the Black Rod ("Black Rod") is responsible for administrative arrangements whenever the Sovereign is in Parliament. Their parliamentary role derives from their appointment to the office of Serjeant at Arms attending the Lord Chancellor, which is made by Letters Patent under the Great Seal.[663] Black Rod also acts as Secretary to the Lord Great Chamberlain and, as such, is responsible for certain ceremonial duties and arrangements, including daily management of the Sovereign's residual estate in the Palace.[664] Their deputy is the Yeoman Usher of the Black Rod.

658 Erskine May, para 8.13.
659 Lords Companion, para 2.21.
660 Writs of Assistance (also known as Writs of Attendance) are also sent to the Attorney General and Solicitor General for England and Wales, Supreme Court justices, the Lord Chief Justice of England and Wales, the Master of the Rolls, the President of the Family Division, the Vice-Chancellor, the Lords Justices of Appeal and the Justices of the High Court, while members of the Diplomatic Corps are invited by the Lord Great Chamberlain.
661 As in January 1924 (see HC Deb 21 January 1924 Vol 169 cc587-681 [Debate On The Address]).
662 Guide to making legislation, para 20.1.
663 London Gazette, 16 February 2024.
664 Erskine May, para 6.34.

According to the Lords Companion: "If the King is not present, there is no State Opening." In such cases, the King's Speech is instead delivered by one of the Lords Commissioners, by virtue of a Royal Commission for opening Parliament.[665] In 2022, authority for two Counsellors of State to open Parliament was provided under section 6 of the Regency Act 1937.

The King's Speech is then debated in each House and an Address moved in response.[666] This Address is presented by each House to the King,[667] who makes a formal reply.[668]

4.5 House of Commons

The Parliamentary Constituencies Act 1986 (as amended) provides that there shall be 650 constituencies represented in the House of Commons.[669] Schedule 2 to that Act includes rules for the allocation of seats to each part of the UK and a requirement for boundary reviews every eight years.[670] It also provides for a category of "protected" island constituencies: two in the Isle of Wight, Orkney and Shetland, Na h-Eileanan an Iar (Western Isles) and Ynys Môn (Anglesey).

Section 1 of the 1986 Act provides that each constituency will return a single Member of Parliament (MP). Constituencies are described in Orders in Council made under section 4 of that Act.

Section 2 provides for the continued existence of four permanent Boundary Commissions, one each for England, Scotland, Wales and Northern Ireland.[671] The Speaker is the chairman of each Commission but in practice does not sit; instead a judge from the appropriate High Court (Court of Session in Scotland) is appointed deputy chairman (Schedule 1). Under section 3, each Boundary Commission is to keep under review the boundaries of constituencies in the House of Commons of the part of the UK with which it is concerned.

Also under section 2, the Boundary Commissions submit their reports to the Speaker of the House of Commons and send a copy to the Secretary of State. The Speaker must then lay them before Parliament. Once all four reports have been laid, the Secretary of State must submit to the King in Council (a meeting of the Privy Council) a draft Order in Council giving effect to the

665 Companion to the Standing Orders, Appendix E.
666 Erskine May, para 8.37.
667 Erskine May, para 8.38.
668 Erskine May, para 8.39.
669 As amended by the Parliamentary Constituencies Act 2020, section 5.
670 As amended by the Parliamentary Constituencies Act 2020, section 1.
671 The four Boundary Commissions were first established as permanent bodies by the House of Commons (Redistribution of Seats) Act 1944. These are the Boundary Commission for England, The Boundary Commission for Scotland, the Boundary Commission for Wales and The Boundary Commission for Northern Ireland.

recommendations. [672] Parliamentary approval of the Order is not required. The Parliamentary Constituencies Order 2023 came into effect upon the dissolution of the 2019-24 Parliament. Section 4(7) of the 1986 Act provides that the validity of any Order in Council made under the Act shall not be called in question in any legal proceedings.

Franchise

Section 1 of the Representation of the People Act 1983 provides that a person is entitled to vote in an election for a UK parliamentary constituency if on the date of the poll they are:

- registered to vote in the constituency
- not subject to any "legal incapacity" to vote (apart from age)
- a British citizen, a qualifying Commonwealth citizen or a citizen of Ireland, and
- of voting age (18 years old on polling day)

Under section 1A of the Representation of the People Act 1985, British citizens who are resident outside the UK can register as overseas electors at parliamentary elections. They must meet the eligibility requirements to have been previously registered or previously resident in a constituency before leaving. [673]

Legal incapacities to voting include:

- peers with seats in the House of Lords [674]
- convicted persons during the period of their detention in a penal institution (or mental hospital) in pursuance of their sentence, [675] and
- persons found guilty of corrupt or illegal practices at elections [676]

672 If submission is delayed by "exceptional circumstances" then these must be explained by a Minister to Parliament.

673 As amended by the Elections Act 2022, section 14.

674 *Earl Beauchamp v Overseers of Madresfield and Marquess of Salisbury v Overseers of South Mimms* [1872] LR 8 CP 245 and *Re Bristol S E etc Election* [1961] 3 All ER 354. Peers without seats in the Lords are not disqualified. Peers with seats may vote in devolved and local government elections.

675 Representation of the People Act 1983, sections 3 and 3A. This remains the case despite a European Court of Human Rights judgment (*Hirst v the United Kingdom*) that a blanket ban on prisoner voting was incompatible with Article 3 of Protocol 1 of the European Convention.

676 Representation of the People Act 1983, sections 160 and 173.

There is no bar to the Lords Spiritual voting in elections, but by long-standing convention they do not do so. [677] By custom, members of the Royal Family (including the King) do not vote. [678]

Section 13BD of the 1983 Act, as amended by section 1 of and Schedule 1 to the Elections Act 2022, makes provision for voter identification requirements in certain reserved elections. Section 13C of the 1983 Act makes provision for voter ID in Northern Ireland.

Elections

The timetable and rules for administering elections to the House of Commons are contained in Schedule 1 to the Representation of the People Act 1983 (as amended). [679] Each constituency has a returning officer who is personally responsible for running the election in line with these rules. [680]

The timetable is 25 working days. Bank holidays, weekends and Christmas Eve are not counted. The day on which a dissolution Proclamation is signed and sealed is day zero. Election writs are deemed to have been delivered to returning officers on day one, while polling day is then day 25.

Election writs are the responsibility of the Clerk of the Crown in Chancery (in Great Britain) and the Clerk of the Crown for Northern Ireland (in Northern Ireland). Schedule 1 to the 1983 Act provides the form of an election writ, while the manner in which writs are to be conveyed in Great Britain and Northern Ireland is set out, respectively, in The Parliamentary Writs Order 1983 and The Parliamentary Writs (Northern Ireland) Order 1983.

Under sections 319-21 of the Communications Act 2003, political advertising in banned on ITV and on commercial radio stations. [681] The British Broadcasting Corporation or BBC (a public corporation) is not subject to statutory restrictions but operates under a prerogative Royal Charter and does not permit political advertising. Instead, rules developed by OFCOM allocate time for election broadcasts. [682] OFCOM also has the duty to ensure broadcasting

677 House of Lords Library In Focus, Why peers cannot vote at general elections, 29 May 2024. See also HL Deb 29 June 1983 Vol 443 cc243-45 [Parliamentary Voting: Lords Spiritual].

678 Do the royals vote and what are the rules for them as political parties start campaigning?, Sky News website, 2 June 2024.

679 See also The Representation of the People (England and Wales) Regulations 2001, Representation of the People (Scotland) Regulations 2001 and Representation of the People (Northern Ireland) Regulations 2001.

680 In England and Wales, returning officers are honorary positions held by high sheriffs, mayors and other local officials; in Scotland they are the same as those for local authority elections and not honorary; while in Northern Ireland the Chief Electoral Officer acts as returning officer.

681 Section 320 requires the providers of television and radio services (other than the BBC) to preserve "due impartiality" in matters of political or industrial controversy or relating to current public policy. A 2006 agreement between the Culture Secretary and the BBC imposes an obligation on the BBC to "do all it can to ensure that controversial subjects are treated with due accuracy and impartiality" (see BROADCASTING An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation July 2006, Cmnd 6872, July 2006, as amended by an updated framework agreement, CP 682, May 2022).

682 Ofcom, Ofcom rules on Party Political and Referendum Broadcasts, 31 December 2020.

licence holders comply with the Broadcasting Code issued under section 319 of the Communications Act 2003.

The law on election campaigns for candidates, including spending limits, is set out in Part II of the 1983 Act. Schedules 9 and 10 to the Political Parties, Elections and Referendums Act 2000 impose limits on national expenditure by registered political parties and others to promote the election of candidates.[683] The 2000 Act also established the Electoral Commission. This is a statutory body with up to ten Commissioners appointed by the King on a Commons Address moved with the agreement of the Speaker and after consultation with the leaders of each registered party with two or more Members.[684] Under section 145, the Commission has a general duty to monitor compliance with the provisions of the 2000 Act.[685] The statutory Speaker's Committee on the Electoral Commission reviews the work of the Commission and oversees the recruitment process for Commissioners. There four representative Party panels covering the UK, Scottish and Welsh parliaments and the Northern Ireland Assembly.

Under section 5 of the 2000 Act, the Electoral Commission is required to publish a report following each general election on the administration of the election. It can make recommendations and issue guidance, but the Commission cannot direct returning officers on how to administer an election. Under section 13ZA the Commission is required to "have regard" to a strategy and policy statement made by the government under section 4A.[686]

Under Part III of the Representation of the People Act 1983, a parliamentary election result can only be challenged by an election petition. Section 122 provides that an election petition must be presented within 21 days after the writ has been returned to the Clerk of the Crown in Chancery or the Clerk of Crown for Northern Ireland. This could question, for example, an election on the basis of corrupt practice. The trial of controverted elections is entrusted to judges selected by rota from the judiciary in the appropriate part of the UK. These are known as Election courts, which report to the Speaker of the House of Commons. Under section 144, it is then for the Commons to issue a writ for a new election if necessary.[687] Section 173 provides that anyone elected to the Commons who is subsequently found to have committed a corrupt or illegal practice must vacate their seat.

Under paragraph 52 of Schedule 1 to the 1983 Act, from the certificate on each writ returned to him or her, the Clerk of the Crown enters the name of the

683 There are separate registers for Great Britain and Northern Ireland. Registration is not compulsory.

684 Political Parties, Elections and Referendums Act 2000, section 3, as amended by the Political Parties and Elections Act 2009, section 5. Three of the Commissioners are appointed to represent Northern Ireland, Scotland and Wales.

685 Since 2021 the Commission has also been directly accountable to the Senedd and the Scottish Parliament by virtue of the Senedd and Elections (Wales) Act 2020, section 28 and Schedule 2, and the Scottish Election (Reform) Act 2020, Part 2.

686 As inserted by the Elections Act 2022, section 16. See also Electoral Commission strategy and policy statement, 29 February 2024.

687 Decisions of the Election Court are not subject to appeal. The most recent example of an election petition being upheld was in 2010 (*Watkins v Woolas* [2010] EWHC 2702). For a more recent refusal of a petition, see *Morrison v Carmichael* [2015] ECIH 90.

Member returned in a book to be kept at the Crown Office (writs returned to the Clerk of the Crown for Northern Ireland are "transmitted" by them to the Clerk of the Crown in England).[688] At the beginning of a Parliament, the Clerk of the Crown delivers to the Clerk of the House of Commons this "Return Book", which contains the names of Members returned to serve in that Parliament.[689]

MPs split their time between working in Westminster and in their constituency. An MP balances the demands of representing their constituencies, supporting the goals of their political party and following issues that are important to them as an individual. There is no formal (or statutory) "job description" and each MP finds their own balance of these roles.[690] A 2009 judgment found that MPs had no legal "duty" to represent their constituents.[691]

Section 16 of and Schedule 1 to the National Security Act 2023 provides that foreign interference in any UK election, including those to the House of Commons, is a criminal offence.

By-elections

A by-election will occur if a sitting Member dies, resigns or becomes disqualified.[692] Upon a motion by any Member, the Speaker may be ordered by the House to issue a warrant to the Clerk of the Crown for a new writ for the vacant constituency. By convention, the motion is moved by the whip of the party which last held the seat.[693] The Recess Elections Act 1975 also makes provision for the issue of writs during a parliamentary recess.

A by-election will also be triggered if a successful recall petition unseats a sitting MP. Under section 1 of the Recall of MPs Act 2015 a "recall petition" is triggered if:

- A Member has been convicted in the UK of an offence and sentenced or ordered to be imprisoned or detained
- Following a report from the Committee on Standards in relation to a Member, the House of Commons orders the suspension of the Member from the service of the House for a specified period of at least 10 sitting days, or of at least 14 days

688 A copy of each writ returned to the Clerk of the Crown for Northern Ireland and of the certificate endorsed on it are attested by the Secretary of State for Northern Ireland and kept in the office of the Clerk of the Crown for Northern Ireland (in Belfast) (paragraph 51 to Schedule 1).
689 Erskine May, para 8.15. The Return Book is also known as the White Book.
690 You and Your MP, House of Commons Information Office, March 2013.
691 MP 'has no duty to constituent', BBC News online, 29 April 2009.
692 Resignation arises from acceptance of the Chiltern Hundreds or Manor of Northstead, offices under the Crown which disqualify a Member. See Erskine May, para 3.22; House of Commons Disqualification Act 1975, section 4; and Commons Library research briefing SN06395, Resignation from the House of Commons.
693 Erskine May, para 2.12.

- A Member has been convicted of an offence under section 10 of the Parliamentary Standards Act 2009 (offence of providing false or misleading information for allowances claims)

If the petition achieves the necessary number of signatures – at least 10% of the number of eligible registered electors in that constituency – the petition officer notifies the Speaker, and the seat is made vacant from the date of that notification. [694]

The Recall Petition (Welsh Forms) Order 2022 provides the Welsh language versions of prescribed forms and forms of words to be used in respect of a recall petition conducted under the 2015 Act in Wales.

Disqualification

Any disqualifications from the Parliament of England were, at the time of the union with Scotland, made applicable to the Parliament of Great Britain. [695] Similarly, any disqualifications for the Parliaments of Great Britain or of Ireland were by statute extended to the Parliament of the United Kingdom. [696] Those disqualified are persons "born out of the" UK realm, [697] people aged under 18, [698] peers who are Members of the House of Lords, [699] bankrupts, [700] persons convicted of treason, [701] persons sentenced or ordered to be imprisoned or detained indefinitely or for more than one year, [702] and Lords Spiritual. [703]

Under section 1 of the House of Commons Disqualification Act 1975, those disqualified include civil servants, members of the Armed Forces, police, members of legislatures outside the Commonwealth, holders of judicial office, returning officers, Police and Crime Commissioners and elected mayors. [704] Schedule 1 to the Act lists judicial and other offices disqualifying for membership.

Section 7 of the 1975 Act provides for applications to the King in Council for a declaration that an individual is disqualified. These would then be referred to the Judicial Committee of the Privy Council in accordance with section 3 of the Judicial Committee Act 1833. No such application has ever been made.

694 Recall of MPs Act 2015, sections 14 and 15.
695 Succession of the Crown Act 1707, section 29.
696 House of Commons (Disqualifications) Act 1801, section 1.
697 Act of Settlement (1700), section 3, although these words have been repealed so far as they relate to UK and Irish citizens.
698 Electoral Administration Act 2006, section 17.
699 The seat of a Member who is created a life peer is not vacated until the Letters Patent conferring the dignity have passed the Great Seal (Erskine May, para 2.14). Under the law and custom of Parliament individuals cannot be Members of both Houses.
700 Insolvency Act 1986, sections 426A and 427 (as amended).
701 Forfeiture Act 1870, section 2.
702 Representation of the People Act 1981, section 1.
703 House of Commons (Removal of Clergy Disqualification) Act 2001, section 1. The same Act removed the bar on ordained ministers of any religious denomination standing for election to the House of Commons.
704 Erskine May, paras 3.11-3.22.

Code of Conduct, salaries and expenses

A non-statutory House of Commons Code of Conduct (together with the Guide to the Rules relating to the Conduct of Members) sets out in detail the rules which Members are obliged to follow. The operation of the Code is overseen by the Commons Committee on Standards,[705] while a Parliamentary Commissioner for Standards is appointed (by a resolution of the House) to oversee and, if necessary, act on the operation of the Code.[706]

Allegations of bullying and harassment made against MPs are dealt with by the Independent Complaints and Grievance Scheme (ICGS). Decisions of the Committee on Standards and arising from the ICGS can be appealed to the Independent Expert Panel, which is comprised entirely of lay members.

The Independent Parliamentary Standards Authority (IPSA) was established under section 3 of the Parliamentary Standards Act 2009, as amended by section 36 of the Constitutional Reform and Governance Act 2010. It is responsible for administering Members' expenses and salaries. The chair and ordinary members of IPSA are appointed by the King on an Address of the House of Commons (Schedule 1 to the 2009 Act).

Speaker

The Speaker of the House of Commons is the "representative of the House itself in its powers, proceedings and dignity".[707] The office is not a product of statute, but the holder has several statutory duties, as well as those which exist through usage and by virtue of Commons Standing Orders. The Speaker issues Rules of behaviour and courtesies in the House of Commons. Speaker's rulings constitute precedents by which subsequent Speakers, Members, and officers are guided.[708] These are seen as authoritative and are recorded in Erskine May.[709]

Erskine May states that:

> Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that that impartiality is generally recognised.[710]

Commons Standing Orders make provision for the election of a Speaker, who is then subject to royal approbation.[711] This is the first business of a new

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705 Erskine May, para 5.25.

706 Erskine May, para 5.5. Commons Standing Order No 150. The House, not the courts, are responsible for the Commissioner's activities (*R v Parliamentary Commissioner for Standards, ex p Al Fayed* [1998] 1 All ER 93).

707 Erskine May, para 4.19.

708 Erskine May, para 4.25.

709 Speaker's rulings, UK Parliament website.

710 Erskine May, para 4.23.

711 Commons Standing Orders Nos 1-1B. For a description of royal approbation, see Lords Companion, Appendix D.

Parliament. [712] Deputy Speakers, who are elected under Commons Standing Order No 2A, possess statutory authority under the Deputy Speaker Act 1855.

By custom, the Speaker of the House of Commons becomes, if they are not already, a Privy Counsellor. [713] By an Order in Council of 30 May 1919, the Speaker ranks immediately after the Lord President of the Council in the order of precedence. [714]

Each Commons sitting is preceded by the ceremonial Speaker's procession to the Chamber, followed by prayers (in private).

Erskine May identifies three key roles and responsibilities associated with the Speaker:

- Presiding Officer – the Speaker presides over Commons debates and enforces its rules
- Administrative – the Speaker has a range of administrative responsibilities, which includes chairing the House of Commons Commission
- Representative – the Speaker is the spokesperson of the House in its communications with the Crown, the House of Lords, and external authorities outside Parliament [715]

As presiding officer, the Speaker may adjourn or suspend a sitting if there is grave and continuous disorder, order a Member who breaks the rules of the House to leave the Chamber, initiate a short suspension or put the matter to a vote. [716]

During a general election, the Speaker campaigns as "The Speaker seeking re-election" and issues a non-political statement to their electors. [717] If a Speaker does not win re-election then they cease to hold office. [718] By convention, ex-Speakers do not remain in the Commons after vacating the Chair and usually join the House of Lords as a life peer.

If the numbers in a division are equal, then by convention the Speaker exercises the casting vote. [719] This is subject to certain principles. [720]

712 For a full account see Lords Companion, Appendix D: Opening of a new Parliament and election of Commons Speaker.
713 When Speaker Seymour was created a Privy Counsellor shortly after his appointment to the Chair strong objections were raised by some Members (Philip Laundy, The Office of Speaker, pp235-36).
714 London Gazette, 3 June 1919. The Lord Speaker ranks just below the Commons Speaker.
715 Erskine May, para 4.19.
716 Commons Standing Orders Nos. 44-46.
717 This description is statutory. See Representation of the People Act 1983, Schedule 1 Part II para 6.
718 This has never occurred.
719 Erskine May, para 20.89.
720 Erskine May, para 20.90.

The Counsel to the Speaker is the head of the Office of Speaker's Counsel and has the general duty of advising the Speaker and Officers and Departments of the House on legal questions. [721]

Since 1916, Speaker's Conferences have been used as a type of forum to find cross-party agreement on a subject, most commonly electoral reform. They are established at the request of the Prime Minister and operate on the basis that the Speaker will chair the Conference in an impartial manner. [722]

Administration

Under Schedule 1 to the House of Commons (Administration) Act 1978 (as amended by the House of Commons Commission Act 2015), the Speaker chairs the statutory House of Commons Commission. The Commission delegates the management of day-to-day operations to the Commons Executive Board by an Instrument of Delegation. The 1978 Act provides for the Commission to continue during a dissolution of Parliament.

The Clerk of the House of Commons is the chief permanent Officer of the House of Commons and head of the House of Commons Service. The Clerk is a prerogative appointment by the Crown via Letters Patent. [723] The Clerk makes a declaration before the Lord Chancellor on entering office: this includes a duty "to make true entries, remembrances, and journals of the things done and passed in the House of Commons". [724] Officers of the House of Commons are not civil servants. [725]

Where the Clerk of the House considers a Speaker's decision "to comprise a substantial breach of the Standing Orders, or a departure from long-established conventions, without appropriate authorisation by the House itself", a statement indicating the Clerk's view may be placed in the Library of the House and the Speaker will make a statement. [726]

Under section 2 of the Parliamentary Corporate Bodies Act 1992, the Clerk of the House is a corporation sole known as the Corporate Officer of the House of Commons. The Parliament (Joint Departments) Act 2007 permits the Corporate Officers of both Houses to establish joint departments.

The Parliamentary and Health Service Ombudsman is appointed by the King via Letters Patent under section 1 of the Parliamentary Commissioner Act 1967. Under subsection (3), the Commissioner may be relieved of office by the King at their own request or removed from office by the King on the ground of

721 Erskine May, para 6.18.

722 Erskine May, para 4.30. The most recent Speaker's Conference was established in October 2024 to "consider the factors influencing the threat level against candidates and MPs and the effectiveness of the response to such threats".

723 London Gazette, 4 October 2023.

724 The Clerk's oath was converted into a declaration by the Promissory Oaths Act 1868, section 12.

725 Under section 2(2) of the 1978 Act, the "complementing, grading and pay of staff in the House Departments are kept broadly in line with those in the statutory home civil service". Officers of both Houses of Parliament can also join the Civil Service Pension Scheme.

726 Erskine May, para 4.25. See, for example, Deposited paper DEP2024-0193, UK Parliament website.

misbehaviour following Addresses from both Houses of Parliament.[727] The post has invariably been held by the same person as holds the post of Health Service Commissioner for England.[728]

The Commissioner's function is to investigate complaints referred by Members of the House of Commons from members of the public who claim to have sustained injustice in consequence of maladministration in connection with actions taken by or on behalf of those government departments or specific non-departmental public bodies under Schedule 2 (as amended).[729] Many matters are excluded from investigation under section 5(3) and Schedule 2. These include those for which Ministers of the Crown are or may be responsible to Parliament,[730]

If the Ombudsman finds that there has been maladministration he or she sends the MP concerned a report (section 10). [731] If it relates to a department or agency for which the government is responsible then the government is not bound by findings or recommendations, although if it rejects a finding it should have cogent reasons for doing so and is potentially open to challenge if it acts unreasonably. [732]

Proceedings

The quorum for a division in the House of Commons is 40.[733] In the House of Lords, the quorum for a division is 30.[734]

The House of Commons Journal forms the permanent official record of the proceedings of the House, [735] as does the House of Lords Journal for the House of Lords. [736] Under section 3 of the Evidence Act 1845 (which does not extend to Scotland) all copies of the Journals of either House (as well as private, local

727 The King can also declare the office of Commissioner to have been vacated on medical grounds.

728 See Health Service Commissioners Act 1993 and the Health Service Commissioners (Amendment) Act 1996. Complaints about health authorities, NHS trusts and other bodies may be referred directly to the Ombudsman by a member of the public, although they must first have been raised with the appropriate NHS body.

729 This list may be amended by Order in Council under section 4, as it is whenever bodies are abolished or created. The referral decision is for the MP and is not amenable to judicial review (*R (Murray) v Parliamentary Commissioner for Administration* [2002] EWCA Civ 1472). The Commissioner publishes the Principles of Good Administration. There is no "MP filter" for complaints under the Victims' Code (see Victims and Prisoners Act 2024, section 27).

730 Also excluded are constitutional matters including the administration of Overseas Territories, an exercise of the prerogative of mercy and the grant of honours, awards or privileges within the gift of the Crown.

731 The Commissioner's reports to Parliament under sections 10(3) and 10(4) are examined by the Commons' Public Administration and Constitutional Affairs Committee, which also takes evidence from government departments which have been criticized.

732 Cabinet Manual, para 5.41. *R (Bradley and others) v Secretary of State for Work and Pensions* [2008] EWCA Civ 36.

733 Commons Standing Order No. 41.

734 Lords Standing Order 56.

735 The Journal is the corrected, archive edition of Votes and Proceedings, the formal record of House of Commons business for a given day.

736 Erskine May, para 7.17 and Lords Companion, para 3.61.

and personal Acts of Parliament and Proclamations) are to be admitted as evidence by all courts.

In the Lords and Commons, the regular reporting of parliamentary debates is known as Hansard. [737] The text of the Official Reports of both Lords and Commons from 1803 onwards is available at the parliamentary website. As a result of the decision in *Pepper v Hart*, the courts now refer to parliamentary material (for example Hansard or the explanatory notes accompanying a bill) where legislation is considered ambiguous or obscure or could otherwise be interpreted so to lead to an absurdity. [738]

Under section 15 of and Schedule 1 to the Defamation Act 1996, there exists statutory qualified privilege for "a fair and accurate report of proceedings in public of a legislature anywhere in the world".

Section 165 of the Copyright, Designs and Patents Act 1988 established the category of parliamentary copyright. Parliamentary copyright subsists in works made by or under the direction or control of the House of Commons or the House of Lords.

Section 1 of the Parliamentary Papers Act 1840 provides that proceedings, criminal or civil, against persons for the publication of papers by order of either House of Parliament, shall be immediately stayed. The term parliamentary papers can include the working papers of Parliament (such as bills, Hansard and the daily business papers for each House), other papers produced by Parliament and its committees and papers presented to Parliament by outside bodies. [739]

Commons Standing Order No 10 governs "parallel" proceedings in the Grand Committee Room off Westminster Hall. Established in 2000, its purpose is to "provide an additional forum for debate, such as debates on select committee reports and debates chosen by backbenchers". It is not a committee of the House of Commons but a resolution in Westminster Hall has the same status as a resolution of that House.

Select Committees

House of Commons Select Committees are established to undertake a wide range of tasks which require "a different, and often more flexible, mode of operation than is found in Chamber proceedings". [740] Select Committees usually possess no formal authority except that which they derive by delegation from the House. The chairs of committees listed in Commons Standing Order No 122B are elected by the House by secret ballot. [741]

737 Lords Companion, para 3.57.
738 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593.
739 Guide to Parliamentary Work, para 286.
740 Erskine May, para 38.1. See Commons Standing Order No 133.
741 Erskine May, para 38.4.

In 2002 the Commons Liaison Committee agreed a set of ten core tasks for Select Committees to guide their work.

Standing Orders provide for a Procedure Committee "to consider the practice and procedure of the House in the conduct of public business". This can undertake inquiries on its own initiative or respond to requests from the House, the Speaker, the Leader of the House, committees or individual Members to examine specific matters which require resolution. [742] Commons Standing Order No 146 also provides for a Public Administration and Constitutional Affairs Committee which examines the work of the Cabinet Office and "constitutional issues". [743]

The Backbench Business Committee has the power to call a debate on "a matter of regional, national or international importance". [744]

Members of the Commons or Lords, including Ministers, cannot be formally summoned to attend as witnesses before Select Committees, although there has been no instance of an MP persisting in a refusal to give evidence when ordered by the House to do so. [745] A Select Committee may invite a (devolved) Scottish or Welsh Minister to attend and give evidence at one of its meetings, and under the Scottish Ministerial Code, Scottish Ministers "should normally accept" such invitations, [746] whereas under the Welsh Ministerial Code, it is for Welsh Ministers to "decide whether to accept". [747]

Civil servants frequently give evidence to Select Committees, although successive governments have taken the view that they do so on behalf of their ministers and under their direction. The government issues guidance to civil servants appearing as witnesses before Select Committees (known as the "Osmotherly rules"), which is published. [748]

Section 1 of the Parliamentary Witnesses Oaths Act 1871 provides that any committee of the House of Commons may administer an oath to the "witnesses examined before such committee", although this is no longer necessary. [749]

Where a Select Committee has made a report relating to government administration or policy, it is expected that the government will reply to the committee's recommendations and observations. Such a reply may be

742 Erskine May, para 38.73.
743 Erskine May, para 38.66.
744 Commons Standing Order No 24A.
745 Erskine May, para 38.34.
746 Scottish Ministerial Code, para 10.12.
747 Welsh Ministerial Code, para 7.16.
748 Giving Evidence to Select Committees – Guidance for Civil Servants, Cabinet Office, October 2014. The Scottish Parliament and Government has also agreed a Protocol on the handling of committee business, which covers similar grounds.
749 The same Act allows the Speaker to administer an oath to witnesses examined at the Bar of the Commons.

published as a Command Paper or submitted by the department most directly concerned as a memorandum to the committee. [750]

Petitions

Members of the public can ask a Member of Parliament to present a public (paper) petition to the House [751] or they can start or sign an e-petition at the petition.parliament.uk website. The arrangements for both sorts of petitions are overseen by the Commons Petitions Committee. [752] The government gives a written response to petitions which obtain more than 10,000 signatures. If the petition reaches 100,000 signatures, it is considered by the Petitions Committee for a debate. [753]

Under Commons Standing Order No 156, a copy of the petition, once printed, is sent to the appropriate government department. All substantive petitions receive a response from the relevant Minister in the form of an observation (or a notification that the government does not have responsibility) within two months. [754]

4.6 House of Lords

The Lords Spiritual (bishops/archbishops) and Temporal (life and hereditary peers) sit together and jointly constitute the House of Lords. [755]

Lords Spiritual

The Lords Spiritual are the archbishops and bishops of the Church of England who have seats in Parliament through ancient usage and by statute. They are:

- the Archbishops of Canterbury and York
- the Bishops of London, Durham and Winchester
- and 21 other diocesan bishops of the Church of England [756]

750 Erskine May, para 38.54.
751 Either by placing them in a green bag on the back of the Speaker's Chair or on the floor of the House.
752 Erskine May, para 24.1.
753 Erskine May, para 24.22.
754 Guide to Parliamentary Work, para 275.
755 Erskine May, para 1.12. Lords Spiritual are not peers.
756 Except for the Bishop of Sodor and Man, who may not take a seat. He or she is instead a member of Tynwald (Isle of Man).

Bishops to whom a writ of summons has been issued are not peers but "Lords of Parliament".[757] Section III of the House of Lords Precedence Act 1539 provides for the places of the archbishops and bishops in the Lords Chamber.

Section 5 of the Bishoprics Act 1878 provides that:

> The number of Lords Spiritual sitting and voting as Lords of Parliament shall not be increased by the foundation of a new bishopric after the year 1846.

The 1878 Act does not stipulate the number of Lords Spiritual, although the number is 26. Previously, when a vacancy arose in one of the 21 spaces not reserved, the next most senior bishop replaced them. Under section 1 of the Lords Spiritual (Women) Act 2015 (Extension) Act 2025, until May 2030 any vacancy is filled by a female English diocesan bishop, ahead of any male.

Under section 1 of the Bishops (Retirement) Measure 1986, a bishop may resign their see and therewith their seat in the Lords. Under section 24 of the Clergy Discipline Measure 2003, an archbishop or bishop serving as a Lord Spiritual can be removed from office for misconduct (see Section 8.3).

Under section 1 of the Ecclesiastical Office (Age Limit) Measure 1975, bishops are obliged to retire at 70, at which point any incumbent Lords Spiritual leave the House of Lords. By custom, the Archbishops of Canterbury and York are granted life peerages upon their retirement.[758]

For the appointment of bishops and archbishops see Section 7.1.

Lords Temporal

Most Lords Temporal are known as "life peers". They are created for life by the King (on ministerial advice) under section 1 of the Life Peerages Act 1958.[759] Although section 6 of the Appellate Jurisdiction Act 1876 has been repealed, some life peers created to serve as Lords of Appeal in Ordinary remain Members of the House of Lords.

There are several different categories of nomination for life peerages:

- Direct ministerial: the government nominates someone to allow them to become a government minister (for example, Lord Cameron of Chipping Norton as Foreign Secretary)
- Party political: the Prime Minister nominates members of the governing party to sit on their benches in the Upper House.[760] When nominating

[757] House of Lords Standing Order 6. The form of writ is in the Schedule to The Crown Office (Forms and Proclamations Rules) Order 1992.
[758] Department for Constitutional Affairs, Constitutional reform: next steps for the House of Lords, CP 14/03, September 2003, para 68.
[759] For a list of United Kingdom peerage creations (life and hereditary) since 1801, see UK peerage creations from 1801: home page.
[760] It has also become increasingly common for Prime Ministers to nominate non-affiliated peers.

members of other parties, by convention the Prime Minister takes advice from the leaders of those parties[761]

- Dissolution honours: parties nominate MPs who are leaving the House of Commons as members of the Lords
- Resignation honours: an outgoing Prime Minister nominates colleagues (including aides) for appointment as life peers
- Public service: the Prime Minister nominates up to 10 candidates in any Parliament for crossbench peerages "based on their public service"[762]
- Crossbench: the House of Lords Appointments Commission (HoLAC) considers self-nominations from individuals to become non-affiliated peers[763]

In each case, the numbers nominated are at the discretion of the Prime Minister and there is no legal limit.[764] The House of Lords currently has more than 800 members, including bishops and excepted hereditary peers (see below).[765] Since 2000, the House of Lords Appointments Commission, an advisory, non-departmental public body created under the prerogative, has had oversight of the appointment of life peers. HoLAC makes clear that:

> The Commission does not have a right of veto; it is down to the Prime Minister to decide whether to recommend an individual to His Majesty The King.[766]

In 2020, a Prime Minister (Boris Johnson) overruled advice from HoLAC for the first time.[767] Life peers are created via Letters Patent following consultation

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761 Political parties are required to provide 150-word citations when making nominations for appointment to the House of Lords, summarising why an individual has been put forward (House of Lords (Appointments), 5 December 2024, UIN HCWS284). See also HoLAC's Amended citation guidance.

762 These have included, upon their retirement, the Archbishops of Canterbury and York, the Cabinet Secretary, the Monarch's Private Secretary, the Chief of the Defence Staff, the Governor of the Bank of England, the Master of the Rolls, the permanent secretary at the Foreign Office, the Speaker of the House of Commons, the Commissioner of the Police of the Metropolis and the Director General of MI5, and, upon their appointment, the President of the Supreme Court and the Lord Chief Justice of England and Wales (Alyssa Nathanson-Tanner: The Irresistible Temptations of Patronage: Prime Ministerial Appointment of Crossbenchers, UK Constitutional Law Association blog, 21 January 2025).

763 House of Lords Library In Focus, House of Lords Appointments Commission: Role and powers, 10 January 2025.

764 The last occasion on which a Prime Minister threatened to "flood" the House of Lords with additional peers to enact government policy concerned the 1909/10 Budget.

765 For a recent proposal to reduce the size of the Lords, see Report of the Lord Speaker's committee on the size of the House, House of Lords, 31 October 2017.

766 Vetting: the Role of the Appointments Commission, House of Lords Appointments Commission website.

767 See the exchange of correspondence dated 22 December 2020, as published by the Commons' Public Administration and Constitutional Affairs Committee.

with Garter King of Arms regarding the title and, if applicable, territorial designation.[768]

Under sections 1, 2 and 3 of the House of Lords Reform Act 2014, a Member (Lord Temporal) is disqualified from attending proceedings of the House if they have resigned from the House or ceased to be a Member by virtue of not attending during a session lasting six months or more, or they have been sentenced to imprisonment indefinitely or for more than one year. Under section 1 of the House of Lords (Expulsion and Suspension) Act 2015 the House may pass a resolution to expel a Member for misconduct.[769] Lords Standing Order 11 provides that this must follow a recommendation from the Conduct Committee after the Member has been found in breach of the Code of Conduct. Otherwise, an appointment under the 1958 Act is irrevocable: life peerages cannot be disclaimed. Removal would therefore require legislation.

Members of the Lords are also disqualified if they are born outside the UK realm,[770] aged under 21,[771] bankrupts,[772] convicted of treason,[773] or they occupy a disqualifying judicial office.[774]

Section 2 of the House of Lords Act 1999 "excepted" 90 hereditary peers as well as the Earl Marshal and Lord Great Chamberlain from the general expulsion of hereditaries from membership of the Lords. Under Lords Standing Order 9, any vacancy arising from the death, expulsion or resignation of one of the 90 hereditary peers elected under the House of Lords Act 1999 must be filled by means of a by-election. By-elections were conducted in accordance with arrangements made by the Clerk of the Parliaments, but these were effectively suspended by resolution of the House on 25 July 2024.[775]

If enacted, the House of Lords (Hereditary Peers) Bill 2024-25 would exclude the remaining hereditaries from the House of Lords, including the Earl Marshal and Lord Great Chamberlain. These "Great Officers of State" retain duties in connection with Royal ceremonial. The Earl Marshal is head of the College of Arms (the official heraldic authority for England, Wales and Northern Ireland; part of the Royal Household) and responsible for organising

768 The form of Letters Patent for life barons and baronesses are in the Schedule to The Crown Office (Forms and Proclamations Rules) Order 1992. For a full explanation of the process see Commons Library Insight, How are life peers created?, 4 July 2024.
769 No Member of the House of Lords has yet been expelled under this provision.
770 Act of Settlement (1700), section 3.
771 Lords Standing Order 2.
772 Insolvency Act 1986, sections 426A and 427 (as amended).
773 Forfeiture Act 1870, section 2.
774 Constitutional Reform Act 2005, section 137. Such Members are not, however, disqualified for receiving a writ (in this case a writ of attendance), which allows certain judges to attend the State Opening of Parliament (Lords Companion, para 1.10).
775 HL Deb 25 July 2024 Vol 839 cc624-27 [Business of the House]

State occasions,[776] while the Lord Great Chamberlain is responsible for the State Opening of Parliament.[777]

The Lord Chancellor, on behalf of the Crown, maintains a Roll of the Peerage,[778] which records both life peers and hereditary peers without a seat in the Lords.[779] Section 1 of the Peerage Act 1963 allowed any person succeeding to an hereditary peerage in the peerage of England, Scotland, Great Britain or the United Kingdom to disclaim that peerage for their life by an instrument of disclaimer delivered to the Lord Chancellor within 12 months of that succession.[780] The form of the instrument of disclaimer is given in Schedule 1. Hereditary peers possess "privilege of peerage", a surviving element of which is freedom from arrest.[781]

Members of the House of the Lords may not take their seat until they have obtained a writ of summons. Writs are issued on the direction of the Lord Chancellor from the office of the Clerk of the Crown in Chancery.[782] Lords Temporal are ceremonially introduced,[783] as are Lords Spiritual.[784] Excepted hereditary peers require no introduction and, on receiving a writ, can take their seat and the oath of allegiance without any ceremony.[785] There is no compulsory retirement age for Lords Temporal.[786] Members can take leave of absence.[787]

Arrangements for the seating of Members of the House of Lords are, "in theory", governed by the House of Lords Precedence Act 1539.[788] Section I provides that only "the King's Children" shall "attempte or presume to sytt or have place at any side of the Clothe of estate in the parliament Chamber". The Cloth of Estate is a hanging behind the Throne in the House of Lords.[789]

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776 The Earl Marshal is a "pure" hereditary office in that it passes from father to son.

777 The Lord Great Chamberlain of England rotates between members of three families who "perform and execute" the office at the beginning of each reign. Although automatic, the Lord Great Chamberlain is appointed via Royal Warrants Under the Royal Sign Manual.

778 Royal Warrant, 1 June 2004.

779 The prerogative power to create hereditary peers continues to exist but has most recently been exercised in relation to members of the Royal Family, albeit without a seat in the House of Lords.

780 This does not apply to the Earl Marshal or the Lord Great Chamberlain. The Union with Scotland Act 1706, article XXIII and Union with Ireland Act 1800, article fourth provide for the precedence of Scottish and Irish peers vis-à-vis their English and Great British counterparts.

781 See Joint Committee on Parliamentary Privilege, HC 214, Report, 30 March 1999, *Stourton v Stourton* [1963] 1 All ER 366, and *Peden International Transport, Moss Bros, The Rowe Veterinary Group and Barclays Bank plc v Lord Mancroft* (1989).

782 Lords Companion, para 1.7.

783 Erskine May, para 25.25. For a full description, see Lords Companion, Appendix J: Introductions.

784 Erskine May, para 25.26.

785 Lords Companion, para 1.14.

786 The 2024 Labour Party manifesto pledged to "introduce a mandatory retirement age" so that at the end of the Parliament in which a member reaches 80 years of age, "they will be required to retire from the House of Lords".

787 Lords Companion, paras 1.37-1.42.

788 As Erskine May states, in practice "these arrangements have been modified for the sake of convenience in debate on modern party lines" (para 6.52).

789 This law has not been strictly observed.

Code of Conduct

There is a non-statutory Code of Conduct for Members of the House of Lords. Peers sign an undertaking to uphold the Code, which is overseen by a Conduct Committee. The House of Lords Commissioners for Standards are independent officers, appointed by the House as a whole. Their task is to investigate alleged breaches of the Code. [790]

Lord Speaker

The House of Lords resolved on 12 July 2005 to "elect its own presiding officer". [791] Lords Standing Order 18 provides for the election by that House of a Lord Speaker. This is not linked to the meeting of a new Parliament. A new election (using the Alternative Vote) is held every five years or within three months of the Lord Speaker dying, giving written notice of their resignation to the Leader of the House, or being deemed to have resigned. The result of an election is subject to the approval of the King. Certain members of the House are appointed by the Crown by Commission under the Great Seal to act as Deputy Speakers of the House of Lords in the absence of the Lord Speaker. [792]

The primary role of the Lord Speaker is to preside over proceedings in the Chamber, including committees of the whole House. They also take part in the ceremonies accompanying oath-taking, the State Opening of Parliament and Royal Commissions. [793]

Each sitting of the House of Lords is preceded by the ceremonial Lord Speaker's procession to the Chamber, followed by prayers (in private).

Proceedings

The House of Lords is self-regulating: the Lord Speaker has no power to rule on matters of order. In practice, this means that the preservation of order and the maintenance of the rules of debate are the responsibility of the House itself. [794]

The Leader of the House of Lords is appointed by the Prime Minister, is a member of the Cabinet, and is responsible for the conduct of government business in the Lords. The Leader (or other members of the government front bench) also advises the House on procedure and order and is responsible for drawing attention to violations or abuse. [795]

During Lords proceedings, no Member of the Commons should be mentioned by name, or otherwise identified, for the purpose of criticism of a personal, rather than a political, nature. Criticism of members of the Royal Family,

790 Lords Companion, paras 5.1-5.8.
791 HL Deb 12 July 2005 Vol 673 cc1000-1032 [Speakership of the House]
792 Lords Standing Order 17.
793 Erskine May, para 4.49.
794 Lords Companion, para 4.1.
795 Lords Companion, para 4.3.

proceedings in the Commons or of Commons Speaker's rulings are also out of order, although criticism may be made of the institutional structure of Parliament or the role and function of the Commons.[796]

Administration

The Lord Speaker chairs the non-statutory House of Lords Commission.[797]

The Clerk of the Parliaments is the head of the House of Lords Administration and is a statutory appointment by the Crown via Letters Patent.[798] The Clerk is "removable" by the King upon an address of the House of Lords.[799] The Clerk makes a declaration at the Table of the House upon entering office "to make true entries and records of the things done and passed" in the Parliaments and to "keep secret all such matters as shall be treated therein and not to disclose the same before they shall be published but to such as it ought to be disclosed unto".[800]

Under section 1 of the Parliamentary Corporate Bodies Act 1992, the Clerk of the Parliaments is a corporation sole known as the Corporate Officer of the House of Lords. The Clerk of the Parliaments employs all the staff in the administrative departments of the House.[801] As in the Commons, officers of the House of Lords are not civil servants. The Clerk Assistant and Reading Clerk are appointed by the Lord Speaker.[802]

Committees

The House of Lords may appoint committees to investigate and report back to it on any matter which it considers appropriate. Apart from committees of the whole House and Grand Committees, almost all committees in the House of Lords are Select Committees.[803] This includes a Constitution Committee, which considers the constitutional significance of most public bills.[804] The Chair of a Lords committee is not elected (as in the Commons) but may be appointed by the House on the proposal of the Committee of Selection.[805] The Procedure and Privileges Committee considers proposals for changes in the procedure of the House of Lords and whether its Standing Orders require to be altered to give effect to such changes; and questions of parliamentary

796 Lords Companion, paras 4.50-4.51.
797 Erskine May, para 4.49.
798 London Gazette, 7 April 2021.
799 Clerk of the Parliaments Act 1824, section 2.
800 Erskine May, para 6.32.
801 Clerk of the Parliaments Act 1824, section 5.
802 Erskine May, para 6.33.
803 Erskine May, para 40.1.
804 In 2001 the Constitution Committee identified the five "basic tenets" of the UK constitution to be sovereignty of the Crown in Parliament, the rule of law, encompassing the rights of the individual, the Union State, representative government and membership of the Commonwealth, the European Union, and other international organisations (Lords Constitution Committee, Constitution – First Report, 11 July 2001, para 51).
805 Lords Standing Order 62.

privilege. It also keeps the Lords Companion to Standing Orders under review.[806]

Joint committees are formally composed of separate Select Committees appointed by each House to work together.[807] These include Joint Committees on Consolidation, &c, Bills, Statutory Instruments, Human Rights and on the UK's National Security Strategy.

Petitions

Members of the public may petition the House of Lords, but only a Member of the House may present a petition in the Lords Chamber.[808]

4.7 Parliamentary Oath

Section 1 of the Parliamentary Oaths Act 1866 provides that an oath (known as the Parliamentary Oath) is to be "made and subscribed by members of both Houses of Parliament on taking their seats in every Parliament". Section 3 provides that when Members take their oaths the Speaker of each House must be "in his chair".

Section 1 of the Oaths Act 1978 provides that the person taking the oath:

> shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words "I swear by Almighty God that . . . . . ", followed by the words of the oath prescribed by law.

The oath of allegiance "prescribed by law" is in section 2 of the Promissory Oaths Act 1868:

> I [name of Member] do swear that I will be faithful and bear true allegiance to [His] Majesty King Charles the Third, his heirs and successors, according to law. So help me God.

Section 1(3) of the 1978 Act provides that in the case of a person who is neither a Christian nor a Jew, "the oath shall be administered in any lawful manner" which means that Members of either House may swear on any holy text they request. Section 3 provides that a person can also swear the oath with "uplifted hand" (and no text), which is the "form and manner in which an oath is usually administered in Scotland", which section 5 allows for a "solemn affirmation" in place of swearing, while section 6 provides the form of such an affirmation.

In the event of a demise of the Crown, all Members of both Houses of Parliament may again take the oath of allegiance. Although there is no

806 Erskine May, para 40.60.
807 Erskine May, para 41.1.
808 Lords Companion, paras 3.70-3.77.

statutory obligation for Members to do so, [809] it has become the custom. Erskine May states, however, that it "continues to be obligatory in the House of Lords", [810] as Lords Standing Orders state that the Oath of Allegiance "must be taken or solemn affirmation made by all members before they can sit and vote in the House [...] after a demise of the Crown". [811]

An MP who has not taken the oath or made the affirmation cannot participate in any formal proceedings of the House of Commons and cannot sit in the chamber or vote in divisions. Under a 1924 Speaker's ruling, they will also not receive a salary.

Section 5 of the Parliamentary Oaths Act 1866 provides that:

> if any member of the House of Commons votes as such in the said House, or sits during any debate after the Speaker has been chosen, without having made and subscribed the oath hereby appointed, he shall be subject to a like penalty for every such offence, and in addition to such penalty his seat shall be vacated in the same manner as if he were dead.

In that scenario, a writ would be moved to declare the seat vacant, and a by-election would be held. The penalty is £500, which can be recovered in the High Court.

Members representing Sinn Féin refuse to swear the oath or make the affirmation as they do not recognise the King as head of state and desire a united Ireland. As a result, Sinn Féin MPs do not take their seats in the House of Commons. This long-standing policy is known as "abstention".

This means Sinn Féin MPs do not receive a salary. However, since a Commons resolution of 18 December 2001 (which took effect on 8 January 2002), those MPs:

> may use the facilities within the precincts of the House and the services of departments of the House, and may claim support for their costs [...] relating to Members' Allowances, Insurance &c., and the allowances relating to travel within the United Kingdom for Members, their families and staff.

In 1999 the late Martin McGuinness, then a Sinn Féin MP, challenged the obligation to take the Parliamentary Oath in the European Court of Human Rights. The court held unanimously that this did not contravene the terms of the European Convention on Human Rights. [812]

809 Erskine May, para 8.25. In the view of the Attorney General in 1937, the re-taking of the oath "ceased to be statutory in the eighteenth century" (HC Deb 26 Jan 1937 Vol 319 c762).
810 Erskine May, para 8.25.
811 Lords Companion, para 1.16.
812 *McGuinness v United Kingdom*, no 39511/98.

4.8 Relationship between two Houses

The relationship between the Commons and the Lords is formally expressed through a combination of practice, conventions and rules. The principal conventions are:

- the primacy of the House of Commons (including financial privilege)[813]
- the Salisbury-Addison Convention (the Lords does not try to vote down at second or third reading a government bill which implements a manifesto commitment)[814]
- consideration of government business in the Lords in "reasonable" time[815]
- the Lords does not usually object to secondary legislation, but has the right to do so[816]

For statutory rules regarding the relationship between the two Houses see below on the Parliament Acts 1911 and 1949.

4.9 Primary legislation

Primary legislation is made by the assent of all the constituent parts of Parliament: the Crown, Lords and Commons.

The Cabinet Office Guide to making legislation covers the procedures to follow when preparing primary legislation and taking it through Parliament, while the Office of the Parliamentary Counsel (OPC) drafting guidance provides guidance for members of the OPC who are drafting bills to be considered in Parliament.[817] The First Parliamentary Counsel (who has the rank of permanent secretary) is appointed by the Prime Minister. The Office of the Legislative Counsel (OLC) in Belfast also works with Parliamentary Counsel in Whitehall to ensure the correct application to Northern Ireland of Westminster bills, while drafting Northern Ireland Executive bills for introduction to the Northern Ireland Assembly.[818] The Parliamentary Counsel

813 This is based upon the Commons resolution of 1671 "That in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords", and on a much more broadly drawn resolution of 3 July 1678 (Erskine May, para 37.6).

814 It has been questioned whether this convention applies to a minority or coalition government (see Salisbury Convention: A Decade of Developments, House of Lords Library Briefing, 13 December 2019.

815 Erskine May, para 11.7. See also Joint Committee on Conventions, Conventions of the UK Parliament, HL Paper 265-I/HC 1212-I, 3 November 2006, pp36-47.

816 Strathclyde Review: secondary legislation and the primacy of the House of Commons. Orders or regulations have been rejected by the Lords in 1968, 2000 and 2015.

817 The Office of the Parliamentary Counsel is a group of government lawyers who specialize in drafting legislation. It is a high profile group. See also Common Legislative Solutions: a guide to tackling recurring policy issues in legislation, Parliamentary Counsel, May 2022.

818 Supporting the Executive, The Executive Office website.

to the Office of the Advocate General for Scotland deals with provisions of UK legislation which extends to Scotland.[819]

A preamble to a bill (which can appear immediately after the long title) sometimes states the reasons for and the intended effects of the proposed legislation.[820] A legislative preamble does not form part of an act and therefore is not binding law.[821] Schedules, by contrast, have the same full statutory effect as clauses.[822]

The "extent" provisions of a bill are a statement that it forms part of the law of one of the UK's three separate legal jurisdictions (England and Wales, Scotland and Northern Ireland). Extent is distinct from application. A bill may extend to a part of the UK even if it does not have effect. A bill, therefore, may extend to England and Wales even if it applies only in England.[823] If a UK act applies only to Scotland, Wales or Northern Ireland its short title will include this in parenthesis.[824]

Bills can on occasion include an ouster clause which means the subject matter of that clause cannot be challenged in the courts. However, the courts will assume that Parliament does not intend to exclude all judicial review unless the statutory language introducing an ouster clause makes express provision to that effect.[825] Article 19 of the Bill of Rights [1688] could be viewed as an ouster clause.[826]

Section 6 of the Interpretation Act 1978 provides that in any act, unless the contrary intention appears, "words importing the masculine gender include the feminine" (and vice versa) and "words in the singular include the plural" (and vice versa).[827]

By law, all UK bills require a statement of compatibility with the European Convention on Human Rights,[828] whether it contains environmental law[829] and whether it affects trade between Northern Ireland and other parts of the UK.[830]

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819 Guide to making legislation, para 8.52.

820 Erskine May, para 26.8.

821 The preamble to the Parliament Act 1911, for example, stated that it was "intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis". See also Interpretation Act (Northern Ireland) 1954, section 10.

822 Erskine May, para 26.11. Schedules are not self-enacting; an act will make provision stating that they are to have the full force of law.

823 Erskine May, para 26.12.

824 The UK Parliament continues to legislate for Scotland, Wales and Northern Ireland on reserved or excepted matters.

825 *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147.

826 "That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament."

827 The Interpretation Act (Northern Ireland) 1954, section 37, makes similar provision in respect of Northern Ireland enactments, as does section 22 of the Interpretation and Legislative Reform (Scotland) Act 2010 as regards numbers.

828 Human Rights Act 1998, section 19.

829 Environment Act 2021, section 20.

830 European Union (Withdrawal) Act 2018, section 13C.

Precedence of government business

The modern basis of the government's control over the business of the House of Commons lies in Commons Standing Order No 14. This gives the government's business precedence at every sitting,[831] except 60 days in each session which are allocated for opposition business, backbench business and Private Members' Bills.[832] Most bills are introduced in the House of Commons. Financial bills cannot begin their passage in the House of Lords.

A government's programme as outlined in the King's Speech is mainly implemented by the passing of government bills and the necessary ancillary motions, and by the passing of motions for approving instruments made by ministers under powers delegated by statute.[833] The Parliamentary Business and Legislation (PBL) Cabinet committee is responsible for preparing and managing the government's legislative programme.[834]

During 2019, backbench MPs succeeded in taking control of the Commons order paper and passing legislation without government support: The European Union (Withdrawal) Act 2019 and European Union (Withdrawal) (No. 2) Act 2019.[835]

The Guide to making legislation states that everyone working on a bill should keep in mind the essential components of "good law", being law which is "necessary, clear, coherent, effective and accessible".[836]

Types of bills

Bills are divided into two main classes, public and private:

- Public bills relate to matters of public policy and are introduced directly by Members of either House
- Private bills are bills for (or affecting) the particular interest or benefit of any person or persons, public company or corporation, or local authority[837]

Personal bills are private bills that relate to the "estate, property, status or style, or otherwise to the personal affairs of an individual". Such bills are now rare: none has been enacted since 1987.[838] The last local (or private) bill to become law was the University of London Act 2018.[839] Infrastructure bills introduced by the government (for example for Crossrail or HS2) are called

831 Erskine May, para 18.11.
832 Cabinet Manual, para 5.7.
833 Erskine May, para 18.17.
834 Guide to making legislation, Cabinet Office, 15 August 2022.
835 See Commons Library Insights, Taking control of the order paper, 26 June 2019, and The Benn-Burt Bill: Another Article 50 extension?, 4 September 2019.
836 Guide to making legislation, para 8.1.
837 Erskine May, para 26.2. See also Erskine May, Part 7. See also the Private Legislation Procedure (Scotland) Act 1936, which is a protected enactment under Schedule 4 to the Scotland Act 1998.
838 Erskine May, para 46.41. See also Lords Companion, Chapter 9.
839 See also Chronological Tables – Local Acts, legislation.gov.uk website.

"hybrid" bills but result in a public general act.[840] The Examiners of Petitions for Private Bills (officers of the two Houses) decide whether a bill is in fact hybrid.[841]

Private Members' Bills are those introduced by members of either House who are not Ministers of the Crown. They have often been used for matters of social reform and may receive government support. Unless recommended by the Crown, a private member may not propose a bill the main object of which is the creation of a charge on the public revenue.[842] By convention, "free votes" have been permitted on ethical issues that are seen as a matter of conscience.[843] Very exceptionally, the government may wish to take a neutral position on such a bill.[844]

The Public and Private Bill Offices of both Houses support the legislative process in Parliament and advise government and opposition members. The Clerk of Legislation in the Commons and the Clerk of Legislation in the Lords clear bills for introduction as conforming with the rules of each House.[845]

Consideration of bills

In both Houses, the principal stages of bills are normally: first reading, second reading, committee, consideration on report from committee, and finally third reading.[846] This is not a statutory requirement. When a pressing emergency arises, a bill may pass through all its stages on the same day.[847] In this case, the Explanatory Notes for a bill will justify the "fast-tracking" of any primary legislation.[848] After second reading in the Commons (which is a debate on the bill's general principles), a bill is normally referred for detailed consideration to a Public Bill Committee, which consists of between 16 and 50 Members nominated by the Committee of Selection.[849]

Procedure for consolidation bills is governed by the Consolidation of Enactments (Procedure) Act 1949.[850] These usually follow recommendations from the Law Commission and/or Scottish Law Commission, which are

840 Commons Library background paper SN06736, Hybrid Bills.
841 Guide to making legislation, para 41.8.
842 Commons Standing Order No 48.
843 Free votes, UK Parliament website. See also Commons Library research briefing SN04793, Free votes in the House of Commons since 1979.
844 Guide to making legislation, para 45.23.
845 Guide to making legislation, para 4.4.
846 Erskine May, para 26.1 and Lords Companion, Chapter 8. See Guide to making legislation, paras 3.26-3.40 for a detailed summary of parliamentary stages in both Houses and conventions as regards timing.
847 Erskine May, para 30.42. This has often been used for Northern Ireland legislation during periods in which the Northern Ireland Assembly is not fully functioning.
848 See Lords Constitution Committee, Fast-track Legislation: Constitutional Implications and Safeguards Volume I: Report, HL Paper 116–I, 7 July 2009.
849 Commons Standing Order No 84A.
850 See also Erskine May, para 29.72.

statutory bodies.[851] The Law Commission may also recommend changes to the law which go beyond clarification or consolidation, and prepare a draft bill.[852]

The repeal of legislation is provided for in sections 15 to 17 of the Interpretation Act 1978.

Pre-legislative scrutiny of draft bills has been an established feature of parliamentary life since 1997.[853] The Committee Office Scrutiny Unit supports departmental Select Committees in scrutinising draft bills. Since 2008, there has also existed post-legislative scrutiny.[854] For most acts gaining Royal Assent since 2005, the UK government is required to submit a memorandum to the relevant Commons departmental select committee with a preliminary assessment of how an act has worked in practice. In each session since 2012 a Lords Special Inquiry Committee has been appointed to carry out similar scrutiny on specific acts selected on an ad hoc basis.[855]

Royal Assent

When bills (either public or private) or Church of England Measures have been agreed by both Houses, they await Royal Assent to become law. Royal Assent is a prerogative power of the Monarch, although aspects of Assent procedure are statutory (see below). Nevertheless, it has long been a strong convention that a monarch does not refuse it for a bill which has the consent of both Houses. If it has, then Erskine May states that "assent must be forthcoming".[856] This convention holds even when legislation is passed by both Houses which lacks government support.[857]

An "enacting formula" was developed in the 15th century:

> Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows.

The wording differs for finance bills and bills presented for Royal Assent under the Parliament Acts 1911 and 1949 (see below).[858]

When Royal Assent is desired, the Lord Chancellor submits to the Sovereign a list of those bills which are ready for Royal Assent, or which are likely to have passed by the time Royal Assent is to be declared. The list is prepared by the Clerk of the Parliaments. An advance copy is sent to the Clerk of the Crown in Chancery, who includes those bills listed in a Schedule to the Letters Patent

851 As established under the Law Commissions Act 1965, sections 1 and 2.
852 Guide to making legislation, para 42.11.
853 See Commons Library research briefing SN0585,9 Pre-legislative scrutiny under the Coalition Government: 2010-2015.
854 Post-legislative scrutiny – the Government's approach, Office of the Leader of the House of Commons, 20 March 2008.
855 Guide to making legislation, paras 10.41, 39.16 and 40.8.
856 Erskine May, para 30.36. Parliament has, on occasion, circumvented Royal Assent via resolution during, for example, the Illness of King George III in 1811.
857 HC Deb 3 September 2019 Vol 664 c97 [European Union (Withdrawal)].
858 Erskine May, para 26.9.

by which the Sovereign is to signify the Royal Assent.[859] The King signs the Letters Patent rather than individual bills. Letters Patent for Royal Assent may be signed by Counsellors of State appointed under the Regency Acts 1937 to 1953. The King should not be asked to give Royal Assent "too frequently".[860]

When the signed Commission has been returned to the Crown Office, the Clerk of the Crown in Chancery affixes (on behalf of the Lord Chancellor) the wafer version of Great Seal to the Letters Patent.[861] In the House of Lords, the Commission is taken to the Table of the House; in the House of Commons, a Notification signed by the Deputy Clerk of the Crown is given to the Speaker.

For the forms of Royal Assent by Commission, Royal Assent by Commission with Prorogation and Royal Assent by Notification, see the Schedule to The Crown Office (Forms and Proclamations Rules) Order 1992.

Section 1 of the Royal Assent Act 1967 provides that an Act of Parliament is duly enacted if:

> [His] Majesty's Assent thereto, being signified by Letters Patent under the Great Seal signed with [His] Majesty's own hand,—
>
> (a) is pronounced in the presence of both Houses in the House of Lords in the form and manner customary before the passing of this Act [at prorogation]; or
>
> (b) is notified to each House of Parliament, sitting separately, by the Speaker of that House or in the case of his absence by the person acting as such Speaker.

Section 1(2) preserves the power of the King to declare Royal Assent "in person in Parliament".[862]

At the ceremony of the Royal Assent to bills by commission (under section 1(a)),[863] the Clerk of the Parliaments pronounces to each Act the appropriate words (in Norman French) by which the Royal Assent is signified and must (by statute) endorse on every Act the date on which it received the Royal Assent.[864] The date of Royal Assent is the date of commencement when no other date is enacted. Every act is in force for the whole of the day of its commencement, unless otherwise provided.[865] Announcing that a power will never be commenced is an unlawful fettering of discretion.[866]

Under the Acts of Parliament Numbering and Citation Act 1962, acts are numbered serially throughout each calendar year in the order in which they receive the Royal Assent.

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859 Erskine May, para 30.36.
860 Guide to making legislation, para 38.3.
861 Crown Office Act 1884, section 4.
862 This last occurred in 1854.
863 Lords Companion, Royal Commissions, Appendix C.
864 Acts of Parliament (Commencement) Act 1793. This prevents acts of Parliament from "taking effect from a Time prior to the passing thereof".
865 Interpretation Act 1978, section 4.
866 Government Legal Service, Statutory Instrument Drafting Guidance, August 2018, para 1.5.1(b).

Royal Assent may bring an act into force immediately, or provisions in an act may specify a later date on which it (or certain provisions) is to come into force or may equip the government with the power to introduce commencement orders (Statutory Instruments) for the same purpose.[867] In the absence of any commencement provisions then under section 4 of the Interpretation Act 1978, an act comes into force "at the beginning of the day on which the Act receives the Royal Assent".[868]

For more on Royal Assent, see Commons Library research briefing CBP9466, Royal Assent.

Parliament Acts 1911 and 1949

The House of Lords does not have the power to veto primary legislation emanating from the Commons but can delay it for up to a year. Under the Parliament Acts 1911 and 1949 certain public bills may be presented for Royal Assent without the consent of the Lords.[869] The Guide to making legislation states that this procedure "remains a rarity and a last resort".[870]

Section 1 of the 1911 Act provides that a money bill which "in the opinion of the Speaker of the House of Commons" contains only provisions dealing with financial matters which are the sole privilege of the Commons will be so certified by the Speaker before being sent to the Lords. Such a bill can be presented to the King for Royal Assent, after one month, even if the Lords have not agreed to it.[871]

Under section 2, any public bill other than a money bill or one to extend the maximum duration of Parliament beyond five years is passed by the House of Commons in two successive sessions and is rejected by the House of Lords in each of those sessions,[872] the Speaker certifies that the provisions of the 1911 Act have been complied with which allows the bill to be presented for Royal Assent. Under section 3 a Speaker's certification under sections 1-2 cannot be questioned in a court of law (an ouster clause).

In the case of the Parliament Acts, the courts are prepared to consider the validity of an Act of Parliament passed according to their statutory process.[873]

867 See Guide to making legislation, para 9.58. The Easter Act 1928 is yet to be commenced by Order in Council.

868 See also Interpretation Act (Northern Ireland) 1954, section 14.

869 These Acts do not apply to bills originating in the Lords, bills to extend the life of a Parliament beyond five years, provisional order confirmation bills, private bills or delegated legislation.

870 Guide to making legislation, para 37.37. The procedure was used for the Government of Ireland Act 1914, the Welsh Church Act 1914, the War Crimes Act 1991, the European Parliamentary Elections Act 1999, the Sexual Offences (Amendment) Act 2000 and the Hunting Act 2004.

871 See also Money bills, Office of the Parliamentary Counsel, 15 February 2024.

872 The reduction from three to two sessions is by virtue of the Parliament Act 1949, section 1. For more, see the Office of the Parliamentary Counsel publication, Parliament Act 1911 section 2: guidance, 29 August 2019.

873 *Jackson v Her Majesty's Attorney General* [2005] UKHL 56.

Delegated legislation

Section 1 of the Statutory Instruments Act 1946 defines "Statutory Instrument" (SI) while section 4 makes provisions for SIs "which are required to be laid before Parliament".[874] Section 5 deals with SIs which are subject to "annulment by resolution of either House of Parliament" (known as the negative resolution procedure[875]) within a period of 40 days, and section 6 SIs of which drafts are to be laid before Parliament (the made affirmative procedure).[876] Section 7 provides that for the purposes of sections 4-6, the period of 40 days does not include periods in which Parliament has been dissolved or prorogued and adjourned for more than four days.[877] The Commons has not annulled a Statutory Instrument since 1979.[878]

The government gave an undertaking to Parliament on 8 November 1971 that there would normally be an interval of 21 days between the laying of an instrument and its coming into operation.[879] This 21-day "rule" or convention is also followed in the Welsh Parliament/Senedd[880] and in the Northern Ireland Assembly.[881] In the Scottish Parliament the period is 28 days.[882]

Much secondary legislation is made without being subject to any parliamentary proceedings; it is simply approved and signed by the relevant Minister of the Crown.[883]

Statutory procedures for SIs also exist for delegated legislation in the Scottish Parliament,[884] Senedd[885] and Northern Ireland Assembly.[886]

There is a general rule for delegated legislation that sub-delegation of powers is not permitted, nor is amendment or repeal of primary legislation.[887] Section 14 of the Interpretation Act 1978 provides that where an Act confers

874 The heading of an Instrument (once in forced) must state (i) when it was made, (ii) when it was laid before Parliament and (iii) when it came into operation. What constitutes laying before Parliament is governed by the practice of each House (see the Laying of Documents before Parliament (Interpretation) Act 1948).

875 Erskine May, para 18.26.

876 Erskine May, para 18.25. Debates on affirmative instruments are generally subject to a time limit of 90 minutes.

877 Although there is no binding judicial authority on the matter, "it is submitted that failure to lay an instrument prevents it from coming into operation" (Bradley et al, Constitutional and Administrative Law, p691).

878 It was later accepted as The Paraffin (Maximum Retail Prices) (Revocation) Order 1979.

879 HC Deb 8 November 1971 Vol 825 cc648-59 [Procedure (Select Committee's Report)].

880 Subordinate Legislation, Senedd website.

881 What is the 21-Day Rule?, FAQ, Northern Ireland Assembly website.

882 Negative SSIs, Scottish Parliament website.

883 Cabinet Manual, para 5.28.

884 Interpretation and Legislative Reform (Scotland) Act 2010, sections 28 and 29.

885 Part 1 of the Bill Legislation (Procedure, Publication and Repeals) (Wales) Bill would provide for three new Senedd procedures governing the scrutiny of Statutory Instruments in Wales: Senedd Approval Procedure (replacing the "draft affirmative" procedure), the Senedd Confirmation Procedure (replacing "made affirmative" procedure) and the Senedd Annulment Procedure (replacing the "negative procedure").

886 Statutory Rules FAQ, Northern Ireland Assembly website.

887 There have been exceptions, for example Orders in Council dealing with transferred matters in Northern Ireland between 1972 and 1999. These Orders both sub-delegated authority and amended or repealed primary legislation.

powers to make Orders in Council, orders or other subordinate legislation made by Statutory Instrument, then it "implies" a power to revoke, amend or re-enact any instrument made under that power.

The Parliament Acts 1911 and 1949 do not apply to delegated legislation, so delegated legislation rejected by the Lords cannot have effect even if the Commons has approved it. Neither House of Parliament has the power to amend (proposals for) delegated legislation. The Lords has only rarely rejected delegated legislation (most recently in 2015[888]) and has upheld (by resolution) "its unfettered freedom to vote on any subordinate legislation submitted for its consideration".[889]

"Henry VIII clauses" are sometimes included in statutes to enable the government to make delegated legislation which amends the statutes themselves.[890] Part 1 of the Legislative and Regulatory Reform Act 2006 also gives ministers wide-ranging powers to amend primary legislation by order, so as to remove or reduce burdens (section 1) or to promote regulatory principles (section 2).[891] Similarly, section 10 of and Schedule 2 to the Human Rights Act 1998 provide for remedial orders by Ministers of the Crown or the King in Council to amend UK legislation following a declaration of incompatibility under that Act.[892]

"Framework bills" (or "skeleton bills") set out the principles of legislation for scrutiny but do not provide substantial information as to how those principles will apply in practical policy terms, it being intended that this will be later enacted via delegated legislation.[893]

While the courts cannot strike down primary legislation, they may declare delegated legislation "ultra vires" (Latin for "beyond the powers") if it exceeds legislative or executive authority or Convention rights.[894]

In rare cases where certain protected categories of land are subject to compulsory acquisition,[895] the Statutory Orders (Special Procedure) Act 1945 (as amended by the Statutory Orders (Special Procedure) Act 1965) apply.

888 As a result, the then government dropped The Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015. This incident led to the Strathclyde Review: secondary legislation and the primacy of the House of Commons, Cabinet Office, 1 December 2016.
889 Lords Companion, para 10.2.
890 Cabinet Manual, para 5.30.
891 Sections 9, 10 and 11 of the 2006 Act provide for restrictions when it comes to matters devolved or transferred to Scotland, Northern Ireland and Wales.
892 Although remedial orders have occasionally been used (see, for example, The Fatal Accidents Act 1976 (Remedial) Order 2020), most declarations have been remedied via primary legislation.
893 See Commons Library Insight, Delegated powers and framework legislation, 17 July 2024.
894 Erskine May, para 31.4.
895 Erskine May, para 42.18.

4.10 Treaties

The UK operates a dualist system, which means that international treaties (agreed by Ministers under the royal prerogative) create rights and obligations which are binding in international law but do not form an integral part of UK domestic law.[896] The UK nonetheless is bound by the obligations it has accepted and must interpret and apply a treaty in good faith. This may mean that a treaty, or certain provisions within it, will need to be written ("incorporated") into domestic law through primary or secondary legislation to ensure that the UK is able to give it domestic legal effect. [897]

Under section 20 of the Constitutional Reform and Governance Act 2010, all treaties (defined by the Act as written agreements between States or between States and international organisations which are binding under international law) must be laid in each House by a Minister of the Crown, together with an explanatory memorandum.

A treaty may not be ratified if within 21 sitting days the Commons has resolved that it should not be unless the Minister lays a statement explaining why the treaty should nonetheless be ratified and the House of Commons does not pass a second resolution against ratification within a further 21 sitting days. In exceptional cases, section 22 allows the Government to disapply these provisions, although a Minister will still be required to lay a treaty before Parliament "either before or as soon as practicable after the treaty is ratified" together with a statement explaining the Minister's determination.

The House of Lords' International Agreements Committee scrutinises all treaties laid before Parliament under the terms of the 2010 Act and considers the government's conduct of negotiations with states and other international partners.

International instruments binding at international law include treaties, agreements, conventions, charters, protocols, declarations, memoranda of understanding, modus vivendi and exchange of notes.[898] A UK Treaties Database is available online. Article 18 of the Vienna Convention on the Law of Treaties laid down a rule that, pending ratification, a signatory state is under an obligation to refrain from acts which would defeat the object and purpose of a treaty.

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[896] As opposed to "monist" systems, in which any international agreements automatically form part of a country's domestic law.

[897] See Commons Library research briefings CBP9247, How Parliament treats treaties, and CBP10116, Treaty-making and parliamentary scrutiny: recent developments. The devolved administrations are responsible for implementing any aspects which are not reserved to the UK Parliament. Separately, the Supreme Court has ruled that while incorporation is permitted under the Scotland Act 1998, the Scottish Parliament does not have the power to require UK Acts of Parliament to comply with international obligations (*Reference by the AG and the AG for Scotland – UNCRC (Incorporation) (Scotland) Bill* [2021] UKSC 42).

[898] Definitions, United Nations Treaty Collection website.

4.11 Finance

Erskine May refers to a "basic constitutional principle", that the Crown requests money, the Commons grant it, and the Lords assents to that grant. The government may not levy taxes, raise loans or spend public money unless and until it has authorisation from Parliament. [899] The rule that legislation is necessary to give legal authority to taxation and expenditure is based on "ancient constitutional usage". [900]

Today, the government presents to the House of Commons its detailed requirements for the financing of the public services. It is for the Commons, acting on the sole initiative of Ministers, first to authorise the relevant expenditure (or "Supply") and, second, to provide through taxes and other sources of public revenue the "Ways and Means" deemed necessary to meet the Supply granted. The role of the House of Lords is confined to assenting to such financial provisions of the House of Commons as require statutory authorisation. [901]

Section 1 of the Provisional Collection of Taxes Act 1968 (as amended) and section 50 of the Finance Act 1973 (as amended) provide temporary statutory force to Commons resolutions that renew, vary or abolish certain taxes and duties before the necessary Finance Act has received Royal Assent. [902]

Supply and Appropriation Bills give authority for the UK government to use the expenditure requested in the estimates and to be issued with money from the Consolidated Fund (the government's bank account). In addition, they also place limits on the purpose for which the money may be spent by setting out the services particular budgets are to be used for. There are two of these bills each year: one for the supplementary estimates and votes on account and another for the main estimates. A Schedule contains the substantive content of the estimates approved by the House.[903] No estimate has been rejected since 1919.[904]

Under section 14 of the Exchequer and Audit Departments Act 1866, the Monarch and two Lords Commissioners are required to sign a Royal Order

899 Cabinet Manual, para 7.

900 Bill of Rights [1688], article IV (in relation to taxation); *Auckland Harbour Board v The King* [1924] AC 318 (in relation to expenditure). See also Erskine May, para 33.8. Income tax disputes are handled by the Upper Tribunal (Tax and Chancery Chamber).

901 Erskine May, para 33.2.

902 Although a Finance Bill can in theory be amended during its consideration, "in practice the Government's reputation is at stake and so major substantive amendments are rare" (Commons Treasury and Civil Service Committee, Budgetary Reform, HC 137, 1982, para 2.1).

903 Supply and Appropriation Bills – MPs' Guide to Procedure, UK Parliament website.

904 This related to the provision of a second bathroom for the Lord Chancellor (see HC Deb 24 June 1919 Vol 117 cc113-16).

once the relevant Supply and Appropriation Bill has received Royal Assent.[905] This occurs at least twice a year.[906]

Under section 1 of the 1816 Act all revenue is paid into the Consolidated Fund of the United Kingdom, while the hereditary revenues of the Crown are paid into the Exchequer and made part of the UK or Scottish Consolidated Fund under section 1 of the Civil List Act 1952.[907] There exists a Contingencies Fund under the Contingencies Fund Act 1974. The government's main borrowing and lending account is the National Loans Fund established by the National Loans Act 1968.

Section 161 of the Social Security Administration Act 1992 provides that the National Insurance Fund shall be "maintained under the control and management" of the Commissioners for His Majesty's Revenue and Customs (HMRC). HM Revenue & Customs is a statutory non ministerial department and its Commissioners are appointed by the King (via Letters Patent) under section 1 of the Commissioners for Revenue and Customs Act 2005.

Statutory powers conferred on the Treasury are exercisable only by the Lords and Lady Commissioners of the Treasury, who are the First Lord of the Treasury (the Prime Minister), the Second Lord (the Chancellor of the Exchequer) and at least four junior Lords of the Treasury.[908] Under section 2 of the Consolidated Fund Act 1816 they execute the offices of "treasurer of the Exchequer of Great Britain and lord high treasurer of Ireland". Commissioners are appointed by the King via Letters Patent under the Great Seal.[909] Schedule 1 to the Interpretation Act 1978 defines "The Treasury" as "the Commissioners of [His] Majesty's Treasury".

Despite its name, the Bank of England is the central bank of the United Kingdom.[910] It is a public body accountable to the Treasury Committee of the House of Commons. The Bank is governed by a Court of Directors which consists of the Governor and four deputy governors appointed by the King.[911] The Bank is responsible for monetary policy (via its Monetary Policy

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905 Jason Loch (@JasonLoch), X (Twitter), 14 July 2023 [Accessed 30 October 2023].

906 For a description of the procedure, see HL Deb 22 April 1834 Vol 22 cc1084-85 [Exchequer Receipt Bill].

907 Under the Treasury Solicitor Act 1876, the Treasury Solicitor acts for the Crown to administer the estates of people who die intestate (without a will) and without known kin (entitled blood relatives) and collect the assets of dissolved companies and other various ownerless goods in England and Wales. The proceeds are transferred to the UK Consolidated Fund. Assets in the Duchies of Lancaster and Cornwall pass to the respective duchies. In Northern Ireland this "bona vacantia" is dealt with by the Crown Solicitor as the Treasury Solicitor's agent. The King owns the superior interest in all land in England, Wales and Northern Ireland.

908 London Gazette, 19 July 2024.

909 See also The Lord High Treasurer of the United Kingdom, benl.co.uk :: Blog, 17 October 2021.

910 What does the Bank of England do?, Bank of England website. The Bank is governed by its charters and legislation: the Bank of England Act 1694, the Charter of the Bank of England 1694, the Bank Charter Act 1844, the Bank of England Act 1946, the Charter of the Bank of England 1998, the Bank of England Act 1998, the Financial Services and Markets Act 2000, the Banking Act 2009, the Financial Services Act 2012 and the Bank of England and Financial Services Act 2016. See also the Memorandum of Understanding on resolution planning and financial crisis management issued under the 2012 Act.

911 Bank of England Act 1998, section 1 and Schedule 1. By custom, the Governor is granted a life peerage upon retirement.

Committee) although section 19 of the Bank of England Act 1998 provides that the Treasury, after consultation with the Governor of the Bank, may by order give directions with respect to monetary policy if they are "satisfied that the directions are required in the public interest and by extreme economic circumstances".[912]

Comptroller and Auditor General

The Comptroller General of the Receipt and Issue of His Majesty's Exchequer and Auditor General of Public Accounts (or, more simply, the Comptroller and Auditor General) is appointed by Letters Patent under section 3 of the Exchequer and Audit Departments Act 1866. By section 1 of the National Audit Act 1983 (as amended by section 11 of the Budget Responsibility and National Audit Act 2011) the King's power of appointment is exercisable on an Address presented by the House of Commons. No motion shall be made for such an Address except by the Prime Minister acting with the agreement of the Chairman of the Commons Public Accounts Committee.

The Comptroller heads the National Audit Office (NAO) and assists the House of Commons by controlling the issue of money granted by Parliament from the Exchequer on demand of the Treasury and by auditing the accounts of government departments and a wide range of public sector bodies on behalf of the House.[913] Under section 2 of the Sovereign Grant Act 2011, this includes the Royal Household. Scrutiny of appropriation accounts by the Public Accounts Committee (which then reports to the House of Commons) is initiated by the presentation of the Comptroller and Auditor-General's reports on each account.

The Public Accounts Commission was established under section 2 of the National Audit Act 1983. It consists of the Chair of the Public Accounts Committee, the Leader of the House of Commons, and seven other MPs, none of whom shall be a Minister of the Crown. This lays before the House the estimate of the expenses of the NAO prepared by the Comptroller and Auditor General.

There is also a Comptroller and Auditor General for Northern Ireland, who heads the Northern Ireland Audit Office, as established by the Audit (Northern Ireland) Order 1987.[914] The appointment is made by the King under section 65 of the Northern Ireland Act 1998, following nomination by the Northern Ireland Assembly.[915] Under section 69 of the Scotland Act 1998, an Auditor General for Scotland is appointed by the King on the nomination of the

912 This "reserve power" has never been used.

913 Erskine May, para 6.44. The statutory authority for this rests on the Exchequer and Audit Departments Act 1866 and Exchequer and Audit Departments Act 1921.

914 There is also some remaining provision in the Exchequer and Audit Act (Northern Ireland) 1921, including a retirement age of 65.

915 Northern Ireland Assembly Commission identifies new Comptroller and Auditor General, Northern Ireland Assembly website, 18 March 2022.

Scottish Parliament and heads Audit Scotland. [916] Under section 145 of and Schedule 8 to the Government of Wales Act 2006, there is an Auditor General for Wales who heads up Audit Wales. [917] Under section 2 of the Public Audit (Wales) Act 2013, the Auditor General is appointed by the King on the nomination of the Senedd.

HM Treasury sets out the main principles for dealing with resources in public sector organisations in the UK. [918] The devolved administrations have their own detailed rulebooks. [919]

A statutory Office for Budget Responsibility prepares five-year economic forecasts and assesses whether the UK government is on course to meet its financial targets. [920]

4.12 Crown and Parliament

The Sovereign constitutes one of the three parts of the "Crown in Parliament".

Communications

The King can communicate with Parliament by messages under the royal sign manual (the monarch's personal signature). [921] Such messages are generally acknowledged by Addresses in both Houses and are presented by representatives of each. [922]

Other types of communication are made from the Crown to either House of Parliament for a variety of purposes. There are three types:

- "King's pleasure" (for example, instructing the Commons to elect a Speaker) [923]
- "King's recommendation" (for public expenditure not in annual estimates), [924] and

916 The Scottish Parliament's Public Audit Committee, of which no member of the Scottish Government or junior Scottish Minister can be a member and no MSP representing a governing party or parties can be convenor (Standing Order Rule 6.7), examines reports published by the Auditor General for Scotland to ensure that public money is spent efficiently and effectively by the Scottish Government and other public bodies in Scotland.

917 Under section 131 of the 2006 Act, Welsh Ministers must submit accounts to the Auditor General for Wales.

918 Managing public money, HM Treasury, 4 May 2023.

919 See Scottish Public Finance Manual, Scottish Government, 29 August 2024; Managing Welsh public money, Welsh Government, 18 October 2018; and Managing Public Money NI, Northern Ireland Department of Finance, 12 August 2024.

920 Budget Responsibility and National Audit Act 2011, section 3 and Schedule 1.

921 Erskine May, para 9.2.

922 Erskine May, para 9.8.

923 Erskine May, para 9.4.

924 Erskine May, para 9.5.

- "King's consent" (for bills affecting the prerogative)[925]

All communications from the Monarch (under the royal sign manual) are delivered to each House by Ministers of the Crown, Privy Counsellors or members of the Royal Household.[926]

An Address to His Majesty is the form ordinarily employed by both Houses of Parliament for making their desires and opinions known to the Crown as well as for the purpose of acknowledging communications proceeding from the Crown.[927] Addresses have comprised matters of foreign or domestic policy, the administration of justice, the expression of congratulation or condolence and public appointments (some of which may be statutory requirements).[928]

It is now common procedure for the Sovereign to appoint the Palace of Westminster as the place in which the House should attend to present certain Addresses.[929] This has been the practice on significant royal jubilees and, in September 2022, upon the demise of the Crown.[930] Addresses can be presented to, and the replies made by, Counsellors of State acting on the King's behalf.[931]

By long-established custom a message from the Crown for pecuniary (financial) aid is sent to both Houses.[932]

Proceedings

The irregular use of the King's name to influence a decision of the House of Commons is "unconstitutional in principle and inconsistent with the independence of Parliament". This rule extends also to other members of the Royal Family, although there are exceptions.[933] Petitions which relate to the prerogative powers of the Crown are not permitted.[934]

No question can be put which brings the name of the Sovereign or the influence of the Crown directly before Parliament, or which casts reflections upon the Sovereign or the Royal Family. Questions are, however, allowed on such matters as the costs to public funds of royal events and the Occupied Royal Palaces.[935]

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925 Erskine May, paras 9.6 and 9.7. For more on King's and Prince's Consent, see King's and Prince's Consent, Office of the Parliamentary Counsel, 2 November 2022.

926 In both Houses, King's consent is signified by a Privy Counsellor in the Chamber at a bill's third reading, in the Commons by nodding and orally in the Lords.

927 Erskine May, para 9.10.

928 Erskine May, para 9.11.

929 Erskine May, para 9.12.

930 Royal Family website, His Majesty The King's reply to addresses of condolence at Westminster Hall, 12 September 2022.

931 Erskine May, para 9.13.

932 Erskine May, para 37.4. The bill for the Sovereign Grant Act 2011 was preceded by messages from Queen Elizabeth II to both Houses on 29 June 2011.

933 Erskine May, para 21.20.

934 See, for example, Remove the titles Duke and Duchess of Sussex from Prince Harry and Meghan Markle, Petitions website.

935 Erskine May, para 22.15.

Questions may be asked of Ministers who are among the confidential advisers of the Crown regarding matters relating to those public duties for which the Sovereign is responsible. It has been ruled that the Prime Minister cannot be interrogated as to the advice that they may have given to the Sovereign regarding honours, ecclesiastical patronage, the appointment and dismissal of Privy Counsellors, or, in certain circumstances, the exercise of the prerogative of mercy. [936]

The Vice-Chamberlain of the Royal Household (a government whip) emails a daily report to the monarch of proceedings in Parliament. [937] By custom, the Vice-Chamberlain is also held "captive" at Buckingham Palace during the State Opening of Parliament to guarantee the monarch's safe return.

[936] Erskine May, para 22.16.

[937] Queen Elizabeth is hooked on political gossip, Politico, 5 February 2022. No minister in the Lords has equivalent responsibility, although the Lord Chamberlain (the senior officer of the Royal Household) acts "as the channel of communication between the Sovereign and the House of Lords". By custom the Lord Chamberlain sits on the crossbenches.

5 Central government

His Majesty's Government is "an Executive drawn from and accountable to Parliament".[938] Its authority is derived both from the Crown and from voters. As the Cabinet Manual states:

> Constitutional convention is that executive power is exercised by the Sovereign's Government, which has a democratic mandate to govern. Members of the Government are normally Members of the House of Commons or the House of Lords and the Government is directly accountable to Parliament. The government of the day holds office by virtue of its ability to command the confidence of the House of Commons. Elections are held at least every five years to ensure broad and continued accountability to the people.[939]

5.1 Government formation (and collapse)

The ability of a government to command the confidence of the elected House of Commons is central to its authority to govern. This is tested by votes on motions of confidence, or of no confidence,[940] and on other major features of a government's programme, such as a debate on its King's Speech.[941] If there is a minority or coalition government, then the Prime Minister may define confidence matters in a speech to the Commons.[942]

By established convention, the government always accedes to the demand from the Leader of the Opposition to allot a day for the discussion of a motion which, in the government's view, would have the effect of testing the confidence of the House.[943] If an incumbent government loses the confidence of the Commons, then a general election takes place.

If an incumbent government retains an overall majority at an election, then it will normally continue in office and resume normal business. There is no need for the Sovereign to ask the Prime Minister to continue. If the election, however, results in an overall majority for a different party, then the incumbent Prime Minister and government will immediately resign, and the

938 Cabinet Manual, para 1.
939 Cabinet Manual, para 2.
940 Cabinet Manual, para 2.7. The last successful motion of no confidence was in April 1979 (see HC Deb 28 March 1979 Vol 965 cc461-590 [Her Majesty's Government (Opposition Motion)]).
941 The Conservative government of 1922-24 fell after losing a vote on its King's Speech (see HC Deb 21 January 1924 Vol 169 cc587-681 [Debate On The Address]).
942 See, for example, Ramsay MacDonald in February 1924 (HC Deb 12 February 1924 Vol 169 cc746-51 [Prime Minister's Statement]).
943 Erskine May, para 18.44.

Sovereign will invite the leader of the party that has won the election to form a government.[944]

Where an election does not result in an overall majority for a single party, the incumbent government remains in office unless and until the Prime Minister tenders his or her and the government's resignation to the Sovereign. An incumbent government is entitled to wait until the new Parliament has met to see if it can command the confidence of the House of Commons.[945]

Where a range of different administrations could potentially be formed, political parties may wish to hold discussions to establish who is best able to command the confidence of the House of Commons. The Sovereign would not expect to become involved in any negotiations, although there are responsibilities on those involved in the process to keep the Palace informed.[946] The Prime Minister may authorise the Civil Service to provide such support to negotiations between political parties.[947]

At an appropriate time towards the end of any Parliament, the Prime Minister writes to the leaders of the main opposition parties to authorise pre-election contacts with the Civil Service.[948] By convention, during this period governments are expected to observe discretion in initiating any new action of a continuing or long-term character, although essential business is allowed to continue.[949] By another convention, the governing party is entitled to check with departments that statements made on its behalf are factually correct and consistent with government policy.[950]

When Parliament has been dissolved, then in "accordance with normal procedure" the King and other members of the Royal Family "postpone engagements that may appear to divert attention or distract from the election campaign".[951]

944 Cabinet Manual, para 2.11.
945 Cabinet Manual, para 2.12.
946 Cabinet Manual, para 2.13.
947 Cabinet Manual, para 2.14-2.15. This can include advice on the constitutional processes of government formation.
948 Cabinet Manual, para 2.21. The Cabinet Office also publishes guidance on activities in the run up to polling day, while the Prime Minister writes to ministers in similar terms (Cabinet Manual, para 2.28). These are known as the Douglas-Home Rules after the Prime Minister (Sir Alec) who initiated the practise in 1964.
949 Cabinet Manual, para 2.27. See also Election guidance for civil servants, Cabinet Office, 23 May 2024. Some more limited restrictions on government activity also apply during elections to the devolved legislatures and in local government (Cabinet Manual, para 2.34).
950 Election guidance for civil servants, Cabinet Office, 23 May 2024.
951 General election: Royal Family postpones engagements that 'divert attention' from campaign, Sky News website, 22 May 2024.

5.2 The Prime Minister

As the Sovereign's principal adviser and the most senior member of the government, the Prime Minister is "ultimately responsible for overseeing the UK's constitutional arrangements".[952]

Appointment

Legally, the Monarch can appoint whomever they want as Prime Minister. Indeed, there exists the legal power to appoint no one at all, as there is no legal requirement that there should always be a Prime Minister.[953] However, by strong convention the King appoints the person best placed to command the confidence of the House of Commons.

A Prime Minister accepts office at a private audience with the Sovereign, at which time the appointment takes effect.[954] This is recorded, along with the previous premier's resignation, in the Court Circular.[955]

In his or her capacity as First Lord of the Treasury, the Prime Minister takes an oath of office under the Promissory Oaths Act 1868.[956] By long-standing custom, this role (First Lord) has always been held by the Prime Minister. There are no seals of office as Prime Minister. There is also no kissing of hands, although that phrase is used to describe the process of appointment.[957]

A convention emerged in the early 20th century that the Prime Minister always sits in the House of Commons.[958] A peer has not served as premier since 1902.[959] Prime Ministers must also be a Privy Counsellor, although incoming premiers usually already are (the last who was not was the Labour leader Ramsay MacDonald in January 1924).[960]

Number 10 Downing Street is the official residence of the First Lord of the Treasury, and not of the Prime Minister.[961] The Chequers Estate Act 1917 specifies Chequers as the Prime Minister's residence. The Prime Minister was

952 HM Government – Written Evidence (EOS0002), Lords Constitution Committee Inquiry: Executive oversight and responsibility for the UK Constitution, para 12.
953 Alison L. Young, Turpin and Tomkins' British Government and the Constitution: Text and Materials (8th edition), Cambridge: Cambridge University Press, 2021, p458 (kindle edition).
954 On occasion, an individual might ask for leave to find out if it is possible for them to form a government, which would necessitate a second audience.
955 See, for example, the Court Circular dated 5 July 2024.
956 Cabinet Manual, para 3.2.
957 A new Prime Minister does, however, usually literally kiss hands on being subsequently sworn as First Lord of the Treasury.
958 Cabinet Manual, para 3.1.
959 History of Robert Gascoyne-Cecil, 3rd Marquess of Salisbury, History of the UK government. Section VI of the House of Lords Precedence Act 1539 provides for the place of the King's "Chief Secretary" (if a peer) in the Lords Chamber.
960 Commons Library research briefing CBP7460, The Privy Council: history, functions and membership, p43. As a result, MacDonald was sworn of the Privy Council before kissing hands as Prime Minister.
961 First Lord of the Treasury, Cabinet Office.

granted precedence next after the Archbishop of Canterbury by a Royal Warrant dated 4 December 1905.[962]

By custom, a newly appointed Prime Minister may choose to visit devolved parts of the UK and meet with their respective First Ministers (and in Northern Ireland the deputy First Minister).[963]

Functions

The Prime Minister has few statutory functions but will usually take the lead on significant matters of state. The Prime Minister has certain prerogatives, for example recommending the appointment of ministers and determining the membership of Cabinet and Cabinet committees.[964] The Ministerial Code states that the Prime Minister is responsible for the "overall organisation of the Executive".[965] The "Office of the Prime Minister" is a business unit within the Cabinet Office.[966]

Prime Minister's Questions (PMQs) is the most visible aspect of the House of Commons' power to hold an incumbent Prime Minister to account.[967] Since 2002, the Commons Liaison Committee has also regularly scrutinised the Prime Minister.[968]

By custom, the Prime Minister makes an annual speech at the Lord Mayor's Banquet at the Guildhall each November.[969] Since the 1930s, the Prime Minister has often broadcast direct to the nation. This generally occurs on significant occasions, such as the outbreak of war, during an economic crisis, or following the death of a monarch.

In 2014, an annual correspondents' dinner with the Prime Minister was revived (having ended in 1974). Modelled on the annual White House press corps dinner, its centrepiece is a humorous speech from the guest of honour.[970]

As Minister for the Union, the Prime Minister "works to ensure that all of government is acting on behalf of the entire United Kingdom: England, Northern Ireland, Scotland, and Wales".[971]

962 London Gazette, 5 December 1905.
963 Keir Starmer to visit all four nations of UK, Sky News website, 7 July 2024.
964 Cabinet Manual, para 3.3.
965 Ministerial Code, para 7.1.
966 House of Commons Public Administration and Constitutional Affairs Committee, The role and status of the Prime Minister's Office, HC 67, 9 June 2021, p5. A Cabinet Office board provides the "collective strategic and operational leadership of the Department".
967 Prime Minister's Questions and the role of the Speaker, UK Parliament website.
968 Commons Library research briefing CBP8182, The Liaison Committee: taking evidence from the Prime Minister.
969 PM speech at Lord Mayor's Banquet: 13 November 2023, Prime Minister's Office, 10 Downing Street, 13 November 2023.
970 Cameron's bald cheek lights up revival of correspondents' dinner, Financial Times, 17 January 2014.
971 United Kingdom, UIN 37564, 12 March 2025.

Relations with the Sovereign

The Prime Minister has a weekly audience with the King, usually at Buckingham Palace on a Wednesday evening (though not, customarily, during an election campaign).[972] This is "entirely private".[973] Audiences can take place by telephone rather than in person. [974] At these regular meetings, the Prime Minister informs the Monarch of the general business of the government. [975]

While premier, Sir Tony Blair described his role as both "the head of Her Majesty's Government" and "her principal adviser". [976] When ministers offer formal "advice" to the Crown, the monarch is bound by convention to follow. Informal advice is not similarly binding. The then Liberal Prime Minister H. H. Asquith observed in 1910 that:

> The part to be played by the Crown [...] is to act upon the advice of the Ministers who for the time being possess the confidence of the House of Commons, whether that advice does or does not conform to the private and personal judgement of the Sovereign. Ministers will always pay the utmost deference, and give the most serious consideration, to any criticism or objection that the Monarch may offer to their policy; but the ultimate decision rests with them; for they, and not the Crown, are responsible to Parliament. [977]

Honours

Most honours are awarded on the advice of the Prime Minister, who sets "strategic direction" for each honours list. [978]

Honours lists are published twice a year at New Year (usually 30 or 31 December) [979] and on the Sovereign's Official Birthday (currently the middle of June). [980] Three separate lists comprise the half-yearly list:

- the Prime Minister's List – managed by the Cabinet Office, for those contributing to the UK
- the Overseas and International List – managed by the Foreign, Commonwealth and Development Office (FCDO), for members of the Diplomatic Service and for those UK citizens working in the UK's interests abroad, and

[972] The Mysteries of the Golden Triangle, Heywood Quarterly, 10 June 2024.
[973] Audiences, Royal Family website.
[974] Queen holds weekly telephone audience with PM despite having COVID, Sky News website, 24 February 2022.
[975] Cabinet Manual, para 3.5.
[976] HC Deb 15 October 2001 Vol 372 c818W [Prime Minister's Powers]
[977] Quoted in Colin Turpin, British Government and the Constitution: Text, Cases and Materials (2nd edition), Evanston, IL: Northwestern University Press, 1990, p99.
[978] Governance – UK Honours System, Cabinet Office.
[979] New Year Honours List 2024, Cabinet Office, 29 December 2023.
[980] The King's Birthday Honours List 2024, Cabinet Office, 14 June 2024.

- the Defence Services or Military List – managed by the Ministry of Defence (MOD), for members of the Armed Forces

There are ten independent committees which assess nominations for the Prime Minister's List.[981] The Head of the Civil Service (the Cabinet Secretary) is the appointing authority for all independent honours committee appointments.[982] There can also be ad hoc honours lists to mark occasions such as the dissolution of Parliament[983] or a Prime Minister's resignation.[984]

The Committee on the Grant of Honours, Decorations and Medals (known as the HD Committee) provides direct advice to the Sovereign on general honours issues.[985] The Prime Minister's Principal Private Secretary is a member, which is the mechanism "by which the Prime Minister is able to feed into decisions taken by the committee".[986] The Baronetage Committee of the Privy Council was established by Order in Council in 1910 to examine doubtful claims to be placed on the Official Roll of baronets (an hereditary knighthood). The Roll is now maintained by the Ministry of Justice.[987]

Most honours can also be taken away under the prerogative, something known as "forfeiture". This is the responsibility of the Cabinet Office Forfeiture Committee. The Committee's recommendations for forfeiture are submitted through the Prime Minister to the King. If the King approves, a notice of forfeiture is usually placed in the London Gazette.[988]

Under section 1 of the Honours (Prevention of Abuses) Act 1925, abuses in connection with the grant of honours is a criminal offence.[989] The Titles Deprivation Act 1917 is often cited as the basis for the removal of peerages, but that Act was specific to the First World War, and a contemporary removal would require fresh legislation.

Certain honours known as the King's personal honours do not require ministerial advice.[990] These are the Orders of the Garter and the Thistle, the

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981 Appointment details – Parliamentary and Political Service Independent Honours Committee Member, Cabinet Office.

982 Honours: Public Appointments, UIN HL1929, 23 October 2024. Appointments to the ten independent honours committees are not ministerial or regulated public appointments and are not on the Public Appointments Order in Council.

983 Dissolution Honours 2024, Prime Minister's Office, 10 Downing Street, 4 July 2024.

984 Resignation Honours: June 2023, Cabinet Office, 9 June 2023.

985 For a summary of its terms of reference see Committee on the Grant of Honours, Decorations and Medals, UIN 7430, 7 October 2024.

986 Committee on the Grant of Honours, Decorations and Medals, UIN HL3881, 8 January 2025.

987 *In the matter of the Baronetcy of Pringle of Stichill* [2016] UKPC 16. The Committee last met in 2015. The form of Letters Patent creating baronets are in the Schedule to The Crown Office (Forms and Proclamations Rules) Order 1992.

988 Forfeiture – UK Honours System, Cabinet Office website. Reasons for annulment are also published (see List of individuals who have forfeited their honour, Cabinet Office, 22 August 2023).

989 Only one person has ever been convicted under the Act, Maundy Gregory, who had attempted to broker the selling of Vatican knighthoods in the UK. A 2006-07 Metropolitan Police investigation did not lead to any prosecutions.

990 The King and Honours, Royal Family website. Appointment to the Orders of the Garter, Thistle and St Patrick had once required ministerial advice but in 1946 the then Prime Minister (Clement Attlee) tendered advice that they be in the King's personal gift (John W. Wheeler-Bennett, King George VI: His Life and Reign, London: Macmillan, 1958, pp757-58).

Order of Merit and the Royal Victorian Order. [991] The Ministry of Justice has called these the "truly personal, executive prerogative" of the monarch.[992]

Civil Service and National Security

The Prime Minister has held the office of Minister for the Civil Service since that office was created in 1968, in which capacity he or she has overall responsibility for the management of most of the Civil Service (see below).

The Prime Minister is also the minister responsible for National Security and matters affecting the Secret Intelligence Service (SIS or MI6), the Security Service (or MI5) and Government Communications Headquarters (GCHQ) collectively,[993] all three of which are headed by individuals with the rank of permanent secretary. The SIS and GCHQ operate within the statutory constraints of the Intelligence Services Act 1994,[994] with the former under the control of the Chief of the Intelligence Service (section 2) and the latter under the control of its Director (section 4). Both must make an annual report to the Prime Minister and Foreign Secretary.

Under section 1 of the Security Service Act 1989, the function of the Security Service:

> shall be the protection of national security and, in particular, its protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.

Section 2 provides that the Service "does not take any action to further the interests of any political party" and that the Director General of MI5 (who is appointed by the Home Secretary) must make an annual report to the Prime Minister and the Home Secretary.[995]

Employees of the security and intelligence services have employment rights unless they have been exempted "for the purpose of safeguarding national security".[996] The security and intelligence services also operate within boundaries defined by the European Convention on Human Rights.[997]

Members of the Joint Intelligence Committee (which is headed by a permanent secretary) also bring to the attention of Ministers and

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991 These Orders are governed by their own statutes. The Order of St Patrick is now dormant (Honours: Northern Ireland, UIN 11561, 29 October 2024).

992 The Governance of Britain – Review Final Report, Ministry of Justice, p6.

993 Cabinet Manual, para 3.6. The Prime Minister is advised on security matters by the Cabinet Secretary (Lord Denning's Report, Cmnd 2152, London: HMSO, September 1963, para 238).

994 Section 7 of the 1994 Act enables the Secretary of State to authorize a person to commit an act "outside the British Islands" which would be unlawful "under the criminal or civil law of any part of the United Kingdom".

995 The Director General of the Security Service is responsible to the Home Secretary rather than Parliament, it being a convention that matters relating to security and intelligence are not placed before Parliament (Bradley et al, Constitutional and Administrative Law, p620).

996 Trade Union and Labour Relations (Consolidation) Act 1992, section 275; Employment Rights Act 1996, section 193.

997 Bradley et al, Constitutional and Administrative Law, p599.

departments "assessments that appear to require operational, planning or policy action".

Members (from both Houses) of the statutory Commons Intelligence and Security Committee (ISC) are nominated by the Prime Minister and appointed by Parliament, to which the ISC reports.[998] Under section 2(3) of the Justice and Security Act 2013, the Prime Minister can veto the Committee's examination of ongoing operational matters, while under Schedule 4 to the same Act, the Home Secretary can halt the Committee's call for "sensitive" papers.[999]

The Prime Minister also appoints (on the recommendation of the Lord Chancellor and senior UK judges) the Investigatory Powers Commissioner and the Judicial Commissioners who oversee the use of covert investigatory powers by more than 600 public authorities, including the UK's intelligence agencies, law enforcement agencies, police, councils and prisons.[1000] The Commissioner must make an annual report to the Prime Minister.[1001] An Investigatory Powers Tribunal also exists to hear complaints about any of the intelligence services.[1002] Appeals from the Tribunal can be made to the Court of Appeal (in England and Wales) or Court of Session (in Scotland).[1003]

The National Security Committee comprises senior ministers, including the Prime Minister, who chairs it, and is served by a National Security Secretariat (a high profile group). The Secretariat is headed by the National Security Adviser and is based in the Cabinet Office.[1004] At the Prime Minister's discretion, opposition party leaders can – and have been – invited to meetings of the NSC for briefings on Privy Council terms.[1005]

On assuming office, the Prime Minister is responsible for writing four "letters of last resort". These are four identical handwritten letters given to the commanders of each of the UK's nuclear deterrent submarines setting out the last nuclear directive of the Prime Minister in the event UK government is destroyed in a nuclear strike.[1006]

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998 Justice and Security Act 2013, section 1. The relationship between the Prime Minister and the Committee is set out in a Memorandum of Understanding (Intelligence and Security Committee of Parliament, Annual Report 2013-2014, HC 794, 25 November 2015, Annex A).

999 Justice and Security Act 2013, section 6.

1000 Investigatory Powers Act 2016, section 227. Under subsections (5) and (6), in making any appointment the Prime Minister must consult the Scottish Ministers and have regard to a memorandum of understanding agreed between them both. The Regulation of Investigatory Powers (Scotland) Act 2000 regulates the use of covert surveillance powers by certain, but not all, public authorities in Scotland.

1001 Investigatory Powers Act 2016, section 234.

1002 Regulation of Investigatory Powers Act 2000, section 65. Members of the Tribunal are appointed by the King via Letters Patent.

1003 Regulation of Investigatory Powers Act 2000, section 67A. The Secretary of State may by regulations, and with the consent of the Northern Ireland Assembly, add the Court of Appeal in Northern Ireland to the list of courts in this section.

1004 In June 2020, Theresa May criticised her successor, Boris Johnson, for selecting a political appointee (Lord Frost) as his National Security Adviser (Theresa May attacks appointment of UK national security adviser, Financial Times, 30 June 2020).

1005 Commons Library research briefing CBP7456, The UK National Security Council.

1006 The nuclear promise: letters of last resort, Forces Net, June 2019.

The First Lord of the Treasury (the Prime Minister) is one of the senior Ministers of the Crown who may make emergency regulations under section 20 of the Civil Contingencies Act 2004.[1007] Section 21 lays down conditions for making emergency regulations while section 19 defines an "emergency". Section 27 makes provision for parliamentary approval and section 29 for consultation with the devolved authorities.[1008]

A state of emergency was last proclaimed in the UK in February 1974 under the now repealed Emergency Powers Act 1920 (as amended by the Emergency Powers Act 1964). [1009]

Resignation

The Cabinet Manual states that Prime Ministers "hold office unless and until they resign". [1010] This can follow an election defeat, a loss of confidence in Parliament or a personal decision. It is for the Prime Minister to judge the "appropriate time at which to resign, either from their individual position as Prime Minister or on behalf of the government". [1011] A Prime Minister can resign in writing. Where a Prime Minister chooses to resign when his or her administration has an overall majority in the House of Commons, it is for the party or parties in government to identify who can be chosen as the successor. [1012]

A Prime Minister (and therefore his or her government) can be dismissed by the Monarch, although this last occurred in 1834.[1013] Lord Armstrong, a former Cabinet Secretary, has observed that the "very existence" of this power "should serve to ensure that it never needs to be exercised".[1014] According to Alison Young, "it must now be unconstitutional for the sovereign to dismiss the prime minister [...] in all but the most exceptional circumstances".[1015] There is no such position as "Acting Prime Minister".[1016]

By convention, former Prime Ministers can be offered an honour, including a life peerage. Also by convention, all former Prime Ministers (and indeed other former ministers) intending to publish memoirs are required to submit the manuscript to the Cabinet Secretary, who acts at the request and on behalf of

1007 Such regulations may "make provision of any kind that could be made by Act of Parliament or by the exercise of the Royal Prerogative" (section 22(3)). This power has never been invoked.

1008 The Emergency Powers (Overseas Territories) Order 2017 makes provision for the exercise of emergency powers in most of the British Overseas Territories.

1009 HC Deb 7 February 1974 Vol 868 cc1368-72 [Proclamation of State of Emergency]. The proclamation was made by Counsellors of State acting on behalf of Queen Elizabeth II. Section 2 of the 1964 Act remains in force. This made permanent the Defence (Armed Forces) Regulations 1939.

1010 The Cabinet Manual, paras 2.12-13.

1011 The Cabinet Manual, para 2.10.

1012 Cabinet Manual, para 2.18.

1013 This was King William IV's dismissal of Lord Melbourne and the appointment of Sir Robert Peel as his successor. There are more recent examples in other Commonwealth Realms, for example Gough Whitlam's dismissal by the Governor-General of Australia in 1975.

1014 Lords Constitution Committee, The Cabinet Manual, p23.

1015 Alison L. Young, Turpin and Tomkins' British Government and the Constitution, pp460-61 (kindle edition).

1016 Philip Norton, A temporary occupant of No.10? Prime Ministerial succession in the event of the death of the incumbent, Public Law 34, 2016, pp18-34.

the incumbent Prime Minister.[1017] Ministers have the right to consult otherwise confidential material from their time in office but have to do so in person.[1018] These are known as the Radcliffe rules.[1019] A Public Duty Costs Allowance exists to "assist former Prime Ministers still active in public life".[1020]

Deputy Prime Minister

The title of Deputy Prime Minister is sometimes given to a senior minister in the government, for example the deputy leader of the party in government or the leader of the smaller party in a coalition. The role of the Deputy Prime Minister is sometimes combined with other roles. The fact that a person has the title of Deputy Prime Minister does not constrain the Sovereign's power to appoint another individual as Prime Minister.[1021]

5.3 Ministers of the Crown

Section 8 of the Ministers of the Crown Act 1975 defines "Minister of the Crown" as the "holder of an office in [His] Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council".[1022] Section 4 provides for changes to the style and title of a Minister of the Crown by Order in Council, while under section 5(5) that Act is without prejudice to "any power exercisable by virtue of the prerogative power of the Crown in relation to the functions of Ministers of the Crown"

The Cabinet Manual states that:

> It is for the Prime Minister to advise the Sovereign on the exercise of the Royal Prerogative powers in relation to government, such as the appointment, dismissal and acceptance of resignation of other ministers.[1023]

According to Lord Young of Old Windsor, Private Secretary to Queen Elizabeth II, to allow a government:

> to publicly announce the appointments, the practice is that the Sovereign's 'informal' approval will first be sought and obtained, and this will be followed up in slightly slower time with the signed Prime Ministerial submission for HM's initials.[1024]

1017 The Cabinet Manual, para 11.31.
1018 The Cabinet Manual, para 11.27.
1019 Report of the Committee of Privy Counsellors on Ministerial Memoirs, Cmnd 6386, January 1976. These principles also apply to Scottish Ministers (Scottish Ministerial Code, para 12.1) and Welsh Ministers (Welsh Ministerial Code, para 8.10).
1020 Public Duty Costs Allowance guidance, Cabinet Office, 31 March 2023.
1021 Cabinet Manual, para 3.11.
1022 Board of Trade, gov.uk.
1023 The Cabinet Manual, p21.
1024 Lord Young of Old Windsor, The Mysteries of the Golden Triangle, Heywood Quarterly, 10 June 2024.

The Cabinet Secretary may be asked by the Prime Minister to advise on any matter supporting the smooth running of government, including ministerial appointments. There is no written or published guidance on such matters.[1025]

A full list of Ministers (including whips) and their respective responsibilities is published on the government's website. Under Schedule 1 to the Interpretation Act 1978, the term "Secretary of State" means "one of [His] Majesty's principal Secretaries of State",[1026] which flows from the principle that there is only one Secretary of State whose duties have been subdivided. Most Secretaries of State are incorporated as "corporations sole", which means they have a separate legal personality.[1027] The Prime Minister may agree that a Minister can be known by a "courtesy title", although has no legal or constitutional significance.[1028]

When they take up office, Ministers should give up any other public appointment they may hold.[1029] Ministers are provided with facilities at government expense to enable them to carry out their official duties. These facilities should not generally be used for party or constituency activities.[1030] Official facilities and resources may not be used for the dissemination of material which is essentially party political.[1031] The conventions governing the work of the Government Communication Service are set out in that high profile group's Propriety and Ethics Guidance for Government Communicators.[1032]

There is a convention that an individual will be a Minister only if they are a Member of the Commons or the Lords, with most being MPs. However, there are examples of individuals being appointed in anticipation of their becoming a member of either House and also of continuing to hold office for a short period after ceasing to be Members of the Commons.[1033] The Prime Minister is responsible for the distribution of appointments between the Commons and Lords, but there is no statutory provision about which House of Parliament ministers may be drawn from.[1034] In recent years, the practice has been for only two or three Cabinet Ministers to be drawn from the House of Lords, not necessarily including the Lord Chancellor.[1035] Each major government department has a Minister in each House, although by convention the most

1025 HC Deb 6 March 2025 Vol 763 c421 [Ministerial Appointments].
1026 Unless there is contrary provision. See also section 43 of the Interpretation Act (Northern Ireland) 1954.
1027 Cabinet Manual, para 3.28.
1028 Cabinet Manual, para 3.7.
1029 Ministerial Code, paras 3.12.
1030 Ministerial Code, paras 4.1.
1031 These are known as the Widdecombe Conventions, after a local government commission of the same name.
1032 Ministerial Code, para 4.3. This also forms part of the Scottish Ministerial Code (para 9.3) and Welsh Ministerial Code (para 8.1).
1033 Cabinet Manual, para 3.8.
1034 Until 2014, there had always been at least one member of the House of Lords in the Cabinet (until 2005 the Lord Chancellor had to be a peer) (see House of Lords Constitution, Status of the Leader of the House of Lords, HL Paper 41, 25 July 2014).
1035 Bradley et al, Constitutional and Administrative Law, p206. See also House of Lords Library In Focus, Ministers in the House of Lords: Role and accountability to Parliament, 12 November 2024.

senior Officers of State (Chancellor, Foreign Secretary and Home Secretary) are MPs rather than peers.[1036]

Ministers' powers derive from statute, the royal prerogative and case law, but only extend to matters reserved to the UK Parliament and government.[1037] Ministers can also only spend public money for the purposes authorised by Parliament.[1038] Under the *Carltona* principle, junior ministers and officials may exercise statutory functions possessed by the minister in charge of their department.[1039] A minister may, as an agent of the Crown, exercise any powers which the Crown may exercise, except insofar as ministers are precluded from doing so by statute. This is known as the Ram doctrine.[1040] Under Part 2 of the Deregulation and Contracting Out Act 1994, a minister may authorise any person (whether or not a civil servant) to exercise the minister's functions.

Every Minister of the Crown has a private office, which is a "small team of civil servants dedicated to supporting ministerial duties and decisions".[1041]

Departure from office

Ministers of the Crown only remain in office for so long as they retain the confidence of the Prime Minister.[1042]

Ministers may resign when they are not able to continue to accept collective responsibility, or because of issues relating to their conduct in office, or due to a personal or private matter. The last instance of resignation on the grounds of departmental fault was Amber Rudd as Home Secretary in 2018.[1043]

Where a minister resigns their post by writing to the Prime Minister, it is often the case that the exchange of letters is published.[1044] Ministerial resignations are also submitted to the Monarch for approval. The House of Commons is "usually indulgent" regarding resignation statements from outgoing Ministers, and unlike personal statements there is no need to clear the text

1036 Lord Cameron, who was appointed Foreign Secretary in November 2023, is a recent exception.

1037 There is no "executive equivalent of the continuing (supreme) power of the Westminster Parliament to legislate for Scotland on all matters, whether reserved or devolved" (Chris Himsworth quoted in Alan Page, Constitutional Law of Scotland, para 8-05). This also applies to Wales and Northern Ireland.

1038 Cabinet Manual, para 3.24.

1039 Cabinet Manual, para 3.13. *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 (CA). Exceptionally, statute may require that a power entrusted to a Minister of the Crown is to be exercised by that minister personally. See, for example, section 6(1) of the Intelligence Services Act 1994, which provides that a warrant "shall not be issued" except "under the hand of the Secretary of State" or a "Scottish Minister".

1040 Cabinet Manual, para 3.31. The Ram doctrine is set out in a memorandum dated 2 November 1945 and entitled "Ministers of the Crown (Transfer of Functions)".

1041 Ministers' private offices, Institute for Government, 21 October 2020.

1042 Ministerial Code, para 2.4.

1043 Rudd resigned after misleading a Commons Select Committee regarding the Windrush scandal, although an inquiry later concluded that failures within the Home Office were responsible (Ex-home secretary Amber Rudd 'let down by officials', BBC News online, 2 November 2018).

1044 Cabinet Manual, para 3.20.

with or obtain leave from the Speaker.[1045] If the statement includes matters which fall under the doctrine of collective ministerial responsibility, then the consent of the King is required via the Prime Minister.[1046]

On leaving office, Ministers are prohibited from lobbying the government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments (ACoBA) about any appointments or employment they wish to take up within two years of leaving office.[1047]

Limitation on numbers, salaries and pensions

Section 2 of the House of Commons Disqualification Act 1975 provides that not more than 95 holders of ministerial offices (as specified in Schedule 2) [1048] "shall be entitled to sit and vote in the House of Commons at any one time".

Section 1A of the Ministerial and other Salaries Act 1975 provides for salaries for ministerial office holders (listed in Schedule 1). These are divided into four parts: Part I (the Prime Minister and other Cabinet ministers); Part II (other Ministers who are not members of the Cabinet); Part III (Law Officers of the Crown); and Part IV (Parliamentary Secretaries and members of the Royal Household).[1049]

Under the same Schedule, not more than 21 salaries may be paid at the same time in respect of office holders in Part I and not more than 50 in respect of office holders in Parts I and II together. In addition, the total number of office holders in Parts I and II, taken together with the total number of Parliamentary Secretaries, must not exceed 83. Additional Ministers may be appointed, but they may not be paid. Under section 1A, provision is made for salaries to increase annually based on the average increase in Senior Civil Service pay.

Under the provisions of the Ministerial and other Maternity Allowances Act 2021, Ministers may take paid maternity leave (of up to six months) at the Prime Minister's discretion. While doing so, the Minister will be designated as a "Minister on Leave", which means they remain a member of the government but creates a vacancy in that office which is filled in the usual way under the royal prerogative.[1050] Ministers may also seek the permission of the Prime Minister for an extended absence in other circumstances, such as ill health, adoption or paternity.[1051]

1045 Erskine May, para 19.24.

1046 *Attorney-General v Jonathan Cape Ltd* [1976] 1 QB 752.

1047 Ministerial Code, para 11.2. Business appointment rules for ministers, Cabinet Office, 21 December 2016. This also applies to Welsh Ministers (Welsh Ministerial Code, para 5.26) and Scottish Ministers (Scottish Ministerial Code, para 12.2).

1048 This Schedule may be amended by Orders in Council made under the Ministers of the Crown Act 1975, section 1.

1049 See Salaries of members of His Majesty's Government: April 2022, Cabinet Office.

1050 Between March and September 2021, for example, Suella Braverman was designated Minister on Leave and Michael Ellis was appointed Attorney General for England and Wales in her place (Ministerial appointments: 2 March 2021, Prime Minister's Office, 10 Downing Street, 2 March 2021).

1051 Ministerial Code, paras 7.10-7.12.

Under section 5 of the Ministerial and other Pensions and Salaries Act 1991, Ministers in the House of Lords (along with certain opposition and other office-holders) are entitled to receive the Lords Office Holder Allowance.[1052]

Under section 4 of the 1991 Act, a Minister who leaves office is entitled to receive a payment equivalent to a quarter of the salary paid to the post they are leaving. They must be under the age of 65 and not be reappointed to a ministerial office within three weeks of departing. A minister may choose to waive their entitlement in some circumstances.

Oaths and seals of office

Section 5 of the Promissory Oaths Act 1868 requires that the Oath of Office be tendered to and taken by each of the officers (Ministers) named in the first part of the Schedule to the Act as soon as possible after their acceptance of office. This has been amended twice, first by an Order in Council dated 9 August 1872 (which now applies only to the Chancellor of the Duchy of Lancaster) and second by the Promissory Oaths Order 1939, which requires the Oath of Office to be taken by members of the Cabinet before the King in Council. Indirectly, this means that all members of the Cabinet must be members of the Privy Council (Privy Counsellors). Those ministers included in Part I of the Schedule to the 1868 Act but not in the Cabinet must take an oath of office before another senior minister, usually the Lord President of the Council. Section 7 provides that if "any officer" specified in the Schedule "declines or neglects" to take the necessary oath then he or she shall vacate or be disqualified from entering any office held.

Secretaries of State and some other ministers (for example, the Lord Privy Seal) also receive seals of office. Their appointments take effect by the delivery of those seals by the Sovereign.[1053] Others have their appointments made or confirmed by Letters Patent (for example, the Attorney General for England and Wales) or Royal Warrant (for example, the Paymaster General). Appointments of other Ministers generally take effect as soon as the Sovereign accepts the Prime Minister's recommendation of the appointment.[1054] Senior ministers who have not yet received their seals cannot exercise all the functions associated with their office.[1055]

Table 1 Ministerial appointments

Office	Procedure	Documents (if any)
Prime Minister	Received in private Audience and is said to "kiss hands" but does not literally do so	

[1052] As a consequence, they are not entitled to receive the Lords daily allowance. See also The Lords Office-holders Allowance Order 2010.
[1053] *Harrison v Bush* [1855] 5 E & B 344.
[1054] Cabinet Manual, para 3.19. In other words, when the King initials and approves the Prime Minister's written submission.
[1055] HC Deb 10 January 2005 Vol 429 c95W.

First Lord of the Treasury	Takes Oath of Office in Council as First Lord of the Treasury and physically kisses hands	Treasury Commission – a member of the Treasury Board – by Letters Patent
Lord President	Declared in Council, and thereupon takes Oath of Office and kisses hands	
Lord Chancellor	Takes Oath of Office in Council, kisses hands and receives the Great Seal; takes statutory Lord Chancellor's oath at the Royal Courts of Justice "as soon as may be after" accepting office	
Lord Privy Seal	Takes Oath of Office in Council, kisses hands & receives Privy Seal	
Secretaries of State	Take Oath of Office in Council, kiss hands and receive seals	
Chancellor of the Exchequer	Takes Oath of Office in Council, kisses hands and receives seals of office	Treasury Commission – a member of the Treasury Board – by Letters Patent (part of the same commission as that for the First Lord)
Chancellor of the Duchy of Lancaster	Takes of Oath of Office in private Audience (usually after the Council), kisses hands and receives the seal of office [1056]	
Paymaster General	Sworn before the Lord President of the Council	Warrant under the Sign Manual
Attorney General and Solicitor General	Takes non-statutory oath at the Royal Courts of Justice	Letters Patent
Other Treasury Ministers and Lords of the Treasury		Treasury Commission – as members of the Treasury Board – by Letters Patent
President of the Board of Trade (a "phantom" office)	Appointee to substantive office, with which this is held, takes Oath in respect of both offices	Order in Council approved at time Oath of Office is taken
Other phantom offices	Oath of Office is taken by holder of substantive office if required by Promissory Oaths Act and in	

[1056] According to the Duchy of Lancaster, its Chancellor is appointed by Letters Patent under the seals of the Duchy and County Palatine.

	accordance with procedure stipulated	
Ministers of the Crown[1057]	Oath of Office	

Source: "The formal resignation and appointment of ministers: a memorandum by the Clerk of the Privy Council", 1987 (with amendments)

Law Officers of the Crown

The term "the Law Officers of the Crown" refers to the UK Law Officers, who are the Attorney General for England and Wales (who is also the Advocate General for Northern Ireland[1058]), the Solicitor General for England and Wales, and the Advocate General for Scotland. There is no explicit statutory requirement that the UK Law Officers must be Members of either House of Parliament. Their appointment is confirmed by the King via Letters Patent under the royal prerogative.[1059] The Attorney General's Office is a UK ministerial department, as is the Office of the Advocate General for Scotland, which includes the Legal Secretariat to the Advocate General for Scotland.

The core function of the Law Officers is to advise the UK government on legal matters, helping ministers to act lawfully and in accordance with the rule of law in the UK's three jurisdictions.[1060] The Law Officers must be consulted by Ministers or their officials in good time before the government is committed to critical decisions involving legal considerations.[1061] The courts have viewed the Attorney General as having a constitutional role as "guardian of the public interest".[1062]

The Attorney General is the chief law officer for England and Wales and is the chief legal adviser to the Crown. Although a political appointee, the Attorney General is not a full member of the Cabinet. Under section 1 of the Law Officers Act 1997, the Solicitor General is in practice the Attorney General's deputy and may exercise any function of the Attorney General. Both take a non-statutory Law Officers' oath on assuming office, usually at the Royal Courts of Justice.[1063] The Attorney General's Office has an "established and

[1057] Paragraph 1 of Schedule 1 to the Ministers of the Crown Act 1975 provides that the Promissory Oaths Act 1868 "shall have effect as if the name of the Minister were included in Part I of the Schedule to that Act".

[1058] Justice (Northern Ireland) Act 2002, section 27. Section 2 of the Law Officers Act 1997 provides that the Solicitor General for England and Wales can also exercise any function of the Advocate General for Northern Ireland.

[1059] There are various statutory references to the Advocate General for Scotland in the Scotland Act 1998, for example section 87.

[1060] To that end, the Attorney General publishes Guidance on Legal Risk "for lawyers advising on lawfulness and legal risk in Government" (Attorney General's Office, 6 November 2024).

[1061] Cabinet Manual, paras 6.4 and 6.6. Ministerial Code, para 5.11. Working with the Law Officers on Legislation, internal UK government guidance, requires submission to them, early in the drafting process, of a memorandum identifying key legislative policy issues.

[1062] *Attorney General v Blake* [1998] Ch. 439.

[1063] The text of the Law Officers' oath can be found in House of Lords Constitution Committee, The roles of the Lord Chancellor and the Law Officers, HL Paper 118, 18 January 2023, para 264. As of 2024, the oath includes a commitment to uphold the rule of law.

rigorous process for identifying and dealing with conflicts, and potential conflicts, that arise from the law officers' past practice."[1064]

The Advocate General for Scotland is the principal legal adviser to the government on Scots law.[1065] Jointly with the Attorney General, the Advocate General for Scotland also advises the government on legal issues, including human rights.[1066] The Attorney General for England and Wales enjoys precedence over the Lord Advocate "in all matters in which they may appear as counsel".[1067]

The Law Officers have a role in ensuring the lawfulness and constitutional propriety of legislation. In particular, the Law Officers' consent is required for legislative provisions that have a retrospective effect or where it is proposed that legislation is commenced within two months of Royal Assent.[1068]

Under the Law Officers Convention, the fact that the Law Officers have advised, or have not advised, and the content of their advice may not be disclosed outside government without their authority.[1069] According to Erskine May, the purpose of this Law Officers' Convention "is to enable the Government to obtain frank and full legal advice in confidence".[1070] On occasion, the government has decided to publish certain advice.[1071] By convention, written opinions of the Law Officers, unlike other Cabinet papers, are generally made available to succeeding administrations.[1072]

The Attorney General "superintends" the Government Legal Department (previously the Treasury Solicitor's Department and a non-ministerial department with its own permanent secretary),[1073] the Crown Prosecution Service[1074] and the Serious Fraud Office (both also non-ministerial departments).[1075] The Treasury Solicitor is Head of the Government Legal Service, which joins together around 2,000 government lawyers working across dozens of government organisations.[1076] Under section 1 of the Treasury Solicitor Act 1876, it is a corporation sole. Treasury Counsel are a

[1064] HL Deb 27 January 2025 Vol 843 cc [Attorney General's Office: Conflicts of Interest].
[1065] Under the First Part of the Schedule to the Promissory Oaths Act 1868, the Advocate General for Scotland is required to take the official oath before the Lord President of the Court of Session.
[1066] Cabinet Manual, paras 6.1-6.3.
[1067] *Attorney General v Lord Advocate* [1834] 2 Cl. & Fin. 481. This referred to the House of Lords in its historic appellate capacity so could now be extended to the Supreme Court.
[1068] Cabinet Manual, para 6.7.
[1069] Ministerial Code, para 5.14.
[1070] Erskine May, para 21.27.
[1071] This can follow an humble Address from the House of Commons. See, for example, Exiting the EU: Publication of Legal Advice, Department for Exiting the European Union, 5 December 2018.
[1072] Ministerial Code, para 5.12. For the convention regarding access to a previous administration's papers, see HC Deb 24 January 1980 Vol 977 cc305-07W [Cabinet Papers].
[1073] See also the Government Legal Profession, which is a high profile group.
[1074] Introduced by the Prosecution of Offences Act 1985, section 1. The CPS is under the central direction of a Director of Public Prosecutions (DPP) appointed by the Attorney General. The DPP has the rank of permanent secretary.
[1075] Criminal Justice Act 1987, section 1(2).
[1076] Cabinet Manual, paras 6.32-6.33. See Jonathan Jones, The Role of the Treasury Solicitor, Judicial Review, 29 July 2024.

team of specialist advocates who advise and appear on behalf of the Law Officers as well as other government departments.

Some prosecution decisions require the consent of the Attorney General.[1077] While they usually attend Cabinet but "acts independently of government" when taking decisions about prosecutions. And unless expressly required to do so by law, the Attorney General should "never" be consulted about decisions which are politically sensitive.[1078]

Under section 36 of the Criminal Justice Act 1972, the Attorney General can refer the acquittal of a person tried on indictment to the Court of Appeal in England and Wales. The Attorney General also possesses a prerogative power to stop a prosecution on indictment under certain circumstances.[1079] Under the Shawcross Principle, the Law Officers may consult with other Ministers as to the "public interest" when making prosecution decisions but must make the decision entirely on their own judgement and without party political pressure, interest or favour.[1080]

Under section 27 of the Justice (Northern Ireland) Act 2002, the Advocate General for Northern Ireland and the Solicitor General for England and Wales have, in Northern Ireland, the same rights of audience as members of the Bar of Northern Ireland, but since the creation of the office (2010) have been ceremonially called to that Bar. In March 2023, the Advocate General for Scotland was also called to the Northern Ireland Bar.[1081]

Machinery of Government

The Prime Minister's written approval must be sought where it is proposed by Ministers to transfer functions.[1082] Section 1 of the Ministers of the Crown Act 1975 requires the transfer of statutory functions and the abolition of government departments to be given effect via Order in Council. Otherwise, the royal prerogative suffices for distribution of unspecified administrative functions, including allocation to those assigned statutorily to simply "the Secretary of State".[1083] Some UK government departments owe their existence to the royal prerogative (for example the Treasury and Home Office), others to statute.

1077 See, for example, the Theatres Act 1968, section 8 and the Public Order Act 1986, sections 27 and 29L.

1078 Framework agreement between the Law Officers and the Director of Public Prosecutions (CPS), Attorney General's Office/Crown Prosecution Service, 14 October 2022.

1079 Termination of Proceedings (Including Discontinuance), CPS website, 15 October 2024.

1080 HC Deb 29 January 1951 Vol 483 cc679-90 [Prosecutions (Attorney-General's Responsibility)]

1081 The then Advocate General for Northern Ireland, Victoria Prentis, said this demonstrated the "commitment of all three UK law officers to every part of the UK" (Law Officers are called to Northern Ireland Bar, Attorney General's Office, 4 April 2023).

1082 Cabinet Manual, para 3.55. See also Machinery of Government explanatory notes, Cabinet Office, 21 December 2011.

1083 Cabinet Manual, para 3.57. See, for example, The Transfer of Functions (Health and Social Security) Order 1988. Such Orders include incorporation of the Secretary of State as a corporation sole so that a department can hold property, enter contracts, etc.

A list of UK government departments is maintained under the Crown Proceedings Act 1947 and for the purposes of investigation by the Parliamentary Ombudsman.[1084] Unless otherwise provided, government departments share in the legal status of the Crown and may benefit from certain privileges and immunities peculiar to the Crown.[1085]

A statute constituting a new public body will often say expressly whether or not it is to be regarded as acting on behalf of the Crown.[1086] If legislation is not explicit on this point, then the question is resolved on a consideration of the functions of the public body and the degree of its independence.[1087] This is important when it comes to Crown immunity (see Section 3.4).

There are also three types of arm's-length body (ALB):

- a non-departmental public body (NDPB) is a "body which has a role in the processes of national government but is not a government department or part of one". NDPBs work within a strategic framework set by Ministers
- executive agencies (EA) are clearly designated units of a central government department, administratively distinct, but remaining legally part of the department
- a non-ministerial department is a government department but does not have its own Minister. However, it is accountable to Parliament through its sponsoring ministers[1088]

There is a complete list of Departments, agencies and public bodies on gov.uk. The Prime Minister's Office 10 Downing Street is top, followed by:

- 24 ministerial departments (including the Attorney General's Office)
- 20 non-ministerial departments (including the Crown Prosecution Service, HM Revenue & Customs and the Supreme Court)
- 423 agencies and other public bodies (including the Bank of England, the four UK boundary commissions and the Civil Service Commission)
- 117 high profile groups (including Border Force and HM Passport Office), and
- 19 public corporations (including the BBC and Historic Royal Palace)

1084 Bradley et al, Constitutional and Administrative Law, p322.
1085 *Mersey Docks and Harbour Trustees v Gibbs* [1866] LR 1 HL 93.
1086 See, for example, section 55(2) of the Local Democracy, Economic Development and Construction Act 2009.
1087 See, for example, *Tamlin v Hannaford* [1950] 1 KB 18.
1088 Guide to Parliamentary Work, para 225. See also The approvals process for the creation of new arm's-length bodies, Cabinet Office/Efficiency and Reform Group, 15 March 2018.

For official lists of non–departmental public bodies, see Public bodies publications.

The Ministerial Code

The non-statutory Ministerial Code, which is issued by the Prime Minister of the day, sets out the principles underpinning the standards of conduct expected of Ministers. Ministers of the Crown are expected to behave in a way that upholds the highest standards of propriety, including ensuring that no conflict arises or appears to arise, between their public duties and their private interests. Ministers are under an overarching duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice. They are also expected to observe the (non-statutory) Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These are also known as the Nolan Principles.[1089] An independent Committee on Standards in Public Life "promotes" these principles and advises the Prime Minister on arrangements for "upholding ethical standards of conduct across public life in England".[1090]

It has become customary for a new version of the Ministerial Code to be published when there has been a change of Prime Minister. New versions have also been published when there is a significant change of content. The latest edition of the Ministerial Code was issued on 6 November 2024.[1091]

The Independent Adviser on Ministerial Standards has a role, set out in Terms of Reference published by the Prime Minister, in advising the Prime Minister and Ministers about adherence to the Code.[1092] The Prime Minister may also ask the Independent Adviser for confidential advice on the appropriate sanction should he or she determine that a breach has occurred.[1093]

However, the Prime Minister is the "ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards".[1094] Where the Prime Minister retains his or her confidence in a Minister, available sanctions include requiring some form of public apology, remedial action, or removal of ministerial salary for a period.[1095]

1089 Ministerial Code, paras 1.1–1.4. The Nolan Principles also form part of the Scottish, Welsh and Northern Ireland Ministerial Codes.
1090 The Committee was created by the then Prime Minister John Major in 1994 and does not have a statutory basis. Its Terms of reference (with updates) are available online.
1091 Ministerial Code, Cabinet Office, 6 November 2024.
1092 Ministerial Code, paras 2.6-2.7 and Annex A.
1093 Ministerial Code, para 2.7.
1094 Ministerial Code, para 2.5.
1095 Ministerial Code, para 2.7.

Separately, the statutory Office of the Registrar of Consultant Lobbyists ensures transparency in the work of consultant lobbyists and their engagement with Ministers and Permanent Secretaries on behalf of clients.[1096]

The 2024 Labour Party manifesto pledged to establish a new independent Ethics and Integrity Commission, with its own independent chair, to "ensure probity in government" and that "ministers are held to the highest standards".[1097]

Ministerial prerogatives – foreign affairs

Prerogative powers relating to territory and diplomacy form the basis for the conduct of UK foreign policy. They operate in conjunction with legislation such as the Consular Relations Act 1968, the Territorial Sea Act 1987 and the International Organisations Act 1968 "to provide the necessary flexibility over a very wide field".[1098]

The signing of treaties is a prerogative power which does not have a statutory basis. Although the King is head of state, he does not "sign" treaties. Instead, it is:

> established practice for [Foreign, Commonwealth and Development Office] ministers and certain UK Representatives to hold General Full Powers signed by the Monarch [...] giving them authority to sign any treaty (in practice subject to being instructed by the FCDO in each case).[1099]

Those in possession of General Full Powers[1100] (which take the form of Letters Patent prepared by the Crown Office) may in turn authorise someone else to represent the UK in performing certain actions in relation to the conclusion of a treaty, including signing a specified treaty. Special Full Powers can be signed by the Foreign, Commonwealth and Development Secretary.[1101]

In practice, the Prime Minister will authorise the UK's accession to any major treaty and, on occasion, sign it personally.[1102] The recognition of states is another prerogative power. This is given effect through inter-governmental

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1096 Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, section 3 and Schedule 2.

1097 Change Labour Party Manifesto 2024, London: Labour Party, June 2024, p107.

1098 The Governance of Britain – Review of the Executive Royal Prerogative Powers: Final Report, Ministry of Justice, October 2009, para 23.

1099 Treaties and MOUs: Guidance on Practice and Procedures, Foreign, Commonwealth & Development Office, 22 March 2022.

1100 Generally, the Foreign Secretary, Ministers of State, parliamentary under-secretaries and the UK's permanent representatives at the United Nations.

1101 Foreign, Commonwealth & Development Office, Treaties and MOUs: Guidance on Practice and Procedures, 22 March 2022. The Great Seal is affixed to a General Full Powers instrument on the authority of a Royal Warrant countersigned by the Foreign Secretary. For the precise wording of General and Special Full Powers documents, see Sir Ivor Roberts, Satow's Diplomatic Practice (8th edition), Oxford: Oxford University Press, 2023, paras 8.57-8.60.

1102 See, for example, the Treaty concerning the Accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom to the EEC and the EAEC (Brussels, 22 January 1972), CVCE website.

contact, for example in a letter from the Prime Minister and Foreign Secretary to their counterparts in the state to be granted recognition. [1103]

Ministerial prerogatives – deployment of the Armed Forces

The decision to use military force is made under the royal prerogative by the Prime Minister in consultation with the Foreign and Defence Secretaries. As such, it does not, "as a matter of law or constitutionality, require the prior approval of Parliament". [1104]

In 2011 the then coalition government said a "war powers convention" had emerged whereby Parliament would be consulted before the deployment of the Armed Forces in military action overseas, except in an emergency. [1105] Prime Minister Theresa May's decision to bypass the House of Commons and order military action in Syria in 2018 challenged this convention. [1106]

In exceptional circumstances, such as a decision to go to war, the BBC may be required to provide time for a broadcast by a UK government minister. [1107] In such circumstances, it may also be necessary for the BBC to consider whether responses from other political parties are appropriate. [1108]

UK military support for other countries in times of conflict, for example Ukraine, appears to fall under the royal prerogative. [1109]

Public appointments and inquiries

More than a thousand public appointments are made under delegated powers by Ministers of the Crown. For a full list of prerogative and statutory appointments made by the King, mostly on ministerial advice, see the supporting document for Commons Library research briefing, The royal prerogative and ministerial advice. [1110]

The prerogative Public Appointments (No. 2) Order in Council 2023 sets out the functions of the Commissioner for Public Appointments (who is appointed under the royal prerogative) and include a list of all the bodies regulated by the Commissioner. Under Article 3, the Minister for the Cabinet Office is required to maintain a Governance Code setting out the principles, and

1103 HC Deb 13 June 2006 Vol 447 cc52-3WS [Republic of Montenegro]
1104 HL Deb 19 February 2003 Vol 644 c1139 [Declaration of War: Parliamentary Approval]. See also Commons Library research briefing CBP10001, Military action: Parliament's role.
1105 HC Deb 10 March 2011 Vol 524 c1066 [Business of the House]. The Cabinet Manual incorrectly describes the precedents for how Parliament is consulted on decisions to go to war.
1106 Did Theresa May Kill the War Powers Convention? Comparing Parliamentary Debates on UK Intervention in Syria in 2013 and 2018, Parliamentary Affairs 75:2 (£), April 2022, pp400-419.
1107 Broadcasting: An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, Cmnd 9366, December 2016, para 67.
1108 Section 10: Politics, Public Policy and Polls – Guidelines, BBC Editorial Guidelines, para 10.3.11.
1109 UK support to Ukraine: factsheet, 28 February 2025.
1110 See also HC Deb 31 October 1994 Vol 248 cc919-20 [Public Appointments].

guidance on the making, of public appointments and to consult before amending that Code.[1111]

Since June 2008, House of Commons Select Committees have routinely held pre-appointment hearings for a number of public appointments. A negative assessment by a committee is not binding on the government. A list of posts subject to pre-appointment scrutiny has been published by the Cabinet Office.[1112]

In Scotland, public appointments should be made in accordance with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland issued by the Commissioner for Ethical Standards in Public Life in Scotland.[1113] In Wales, public appointments should follow Welsh Government Public Bodies Unit procedures and "reflect and champion" the principles of the Welsh Government's Diversity and Inclusion Strategy for Public Appointments.[1114] Since 2019 the Senedd has carried out pre-appointment hearings to scrutinise some Welsh Government candidates for public appointments.[1115] Northern Ireland Departments must follow the Commissioner for Public Appointments for Northern Ireland's Code of Practice for Ministerial Public Appointments in Northern Ireland.[1116]

A Royal Commission can be established under the royal prerogative with the sanction of the Cabinet and after the King's approval has been sought by the Prime Minister.[1117] Ministers can also establish other non-statutory inquiries where, for example, "all relevant parties have agreed to co-operate, and it may be convened and concluded more quickly – and perhaps more cheaply".[1118] These can consist of Privy Counsellors.

Under section 1 of the Inquiries Act 2005, a Minister of the Crown, Scottish Ministers, Welsh Ministers or a Northern Ireland Minister "may cause an inquiry to be held" where it appears that:

- particular events have caused, or are capable of causing, public concern, or
- there is public concern that particular events may have occurred

Under section 10, if a Minister proposes to appoint a judge as a member of an inquiry panel, he or she must first consult, if applicable, the President of the Supreme Court or the head of the judiciary in England and Wales, Scotland or Northern Ireland. According to the UK Ministerial Code, the Lord Chancellor

1111 Governance Code on Public Appointments, Cabinet Office, 8 February 2024.
1112 Pre-appointment scrutiny by House of Commons select committees, Cabinet Office, 17 January 2019.
1113 Scottish Ministerial Code, para 7.5.
1114 Welsh Ministerial Code, para 2.16.
1115 Pre-appointment hearings for public appointments, Senedd website, 22 March 2022.
1116 As required by the Commissioner for Public Appointments (Northern Ireland) Order 1995 (as amended).
1117 Ministerial Code, para 7.13. The last Royal Commission was that on the Reform of the House of Lords in 1999. A Royal Commission on the Constitution (Cmnd 5460) reported in October 1973.
1118 Cabinet Manual, paras 6.34-6.35.

should also be consulted.[1119] Under the Scottish Ministerial Code, the First Minister should be consulted "in good time" regarding any Royal Commission or public inquiry in relation to devolved matters.[1120]

5.4 Parliament and the government

The government is primarily responsible to Parliament for its day-to-day actions. This scrutiny function is exercised through a variety of mechanisms, such as Commons Select Committees, Parliamentary Questions, oral and written statements, debates in both Houses and via the Parliamentary Commissioner for Administration.[1121] The Ministerial Code states that Ministers should, where possible, "provide full and timely responses to written parliamentary questions, ministerial correspondence and select committee reports".[1122]

Leaders of the House of Commons and House of Lords are appointed by the King on the advice of the Prime Minister. Those roles are often combined with another office.[1123] The Leaders are responsible for the arrangement of government business in each House, as well as representing their House within government and the Cabinet. The Leader of the House of Commons is also a member of the statutory House of Commons Commission.[1124] The Leaders (together with the Cabinet Office) publish a Guide to Parliamentary Work for civil servants who work with Parliament.

When Parliament is in session, the most important announcements of government policy should be made in the first instance, in Parliament.[1125] A copy of the text of an oral statement should usually be shown to the Opposition shortly before it is made.[1126] A statement by a Minister on a matter of public importance may be made by leave of the House without notice.[1127] Questions to Ministers must relate to matters for which those Ministers are officially responsible.[1128]

Government whips are appointed for both the House of Commons and the House of Lords. They arrange the scheduling of government business, often in consultation with their opposition counterparts. Collectively, the government

1119 Ministerial Code, para 7.14. See also section 23 of and Schedule A1 to the Interpretation Act (Northern Ireland) 1954.
1120 Scottish Ministerial Code, para 8.11.
1121 Cabinet Manual, para 10.
1122 Ministerial Code, para 9.8. In 2011 the Cabinet Office published guidance for civil servants on Drafting answers to parliamentary questions.
1123 Erskine May, para 4.7.
1124 House of Commons (Administration) Act 1978, section 1.
1125 Ministerial Code, para 9.1.
1126 Ministerial Code, para 9.5.
1127 Erskine May, para 25.34.
1128 Erskine May, para 22.17.

and opposition whips are often referred to as "the usual channels" when the question of finding time for a particular item of business is being discussed.[1129]

Accountability to Parliament has been stated to be a constitutional principle as central as parliamentary sovereignty.[1130] Under the Ministerial Code, Ministers have "a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies", while it is of "paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity". Ministers who knowingly mislead Parliament will be "expected to offer their resignation to the Prime Minister".[1131] Ministerial office requires "candour and openness":

> Ministers should demand and welcome candid advice. They should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest which should be decided in accordance with the relevant statutes and the Freedom of Information Act 2000. Ministers should be open and candid with public inquiries.[1132]

Ministers must also comply with the requirements which Parliament itself has laid down in relation to the accountability and responsibility of Ministers.[1133]

Under section 45 of the Freedom of Information Act 2000, the Cabinet Office publishes a Freedom of Information Code of Practice. Under Schedule 12 to the Data Protection Act 2018, an Information Commissioner is appointed by the King via Letters Patent for a term not exceeding seven years and having been "selected on merit on the basis of fair and open competition". The Commissioner may be relieved of office by the King at the Commissioner's own request, or by the King on an Address from both Houses of Parliament if a Minister of the Crown has presented a report stating that he or she is satisfied that the Commissioner is guilty of serious misconduct or no longer fulfils the conditions required for the performance of their functions.

It is possible for the Commons to resolve that the government is in contempt of Parliament.[1134]

To avoid any risk of criticism that a Minister is seeking to influence the parliamentary process, on taking up office Ministers should give up membership or chairmanship of a Select Committee or All-Party Parliamentary Group.[1135]

1129 Cabinet Manual, para 3.16.

1130 *R (Miller) v Exit Secretary* [2017] UKSC 5.

1131 Ministerial Code, para 1.6. The disclosure (inadvertent or otherwise) of Budget secrets has in the past been considered a resignation matter for a Chancellor of the Exchequer.

1132 Ministerial Code, para 1.6d.

1133 Ministerial Code, para 1.7. For Ministers in the Commons, these are set by the resolution recorded in HC Deb 19 March 1997 Vol 292 cc1046-47 [Ministerial Accountability to Parliament]; for Ministers in the Lords, the equivalent resolution can be found in HL Deb 20 March 1997 Vol 579 c1057 [Ministerial Accountability].

1134 Contempt of parliament, Institute for Government, 4 December 2018.

1135 Ministerial Code, para 3.15.

5.5 The Cabinet

Cabinet is the ultimate decision-making body of government. The Haldane report of 1918 described it as "the mainspring of all the mechanisms of Government",[1136] and Walter Bagehot as "a buckle which fastens the legislative part of the State to the executive part". The purpose of Cabinet and its committees is to provide a framework for Ministers to consider and make collective decisions on policy issues. Cabinet and its committees are established by convention.[1137] Cabinet does not have specific terms of reference or powers laid down in legislation.[1138] Cabinet can meet outside London,[1139] while Queen Elizabeth House in Edinburgh includes "a dedicated Cabinet room, the first of its kind outside of London".[1140]

Cabinet Ministers and Ministers of State may appoint Parliamentary Private Secretaries (PPSs) following consultation with the Chief Whip and the prior written approval of the Prime Minister. PPSs are not members of the government, although by convention they are bound by collective agreement.[1141]

Collective responsibility

The Cabinet system of government is based on the "general principle" of collective responsibility. This:

> requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and Ministerial Committees, including in correspondence, should be maintained. [1142]

By convention, collective responsibility can be "set aside" by the Prime Minister for issues of conscience or on major constitutional issues, for example referendums on the UK's membership of the European Union in 1975 and 2016. As of 2024, the Cabinet Secretary writes to Ministers stating the terms for such instances. [1143]

1136 Report of the Machinery of Government Committee, Cmnd 9250, Ministry of Reconstruction, 1918, para 5.
1137 Cabinet Manual, para 4.1.
1138 Cabinet Manual, para 4.6.
1139 The first occasion was at Inverness Town Hall in 1921.
1140 Flagship UK Government Hub in Edinburgh named 'Queen Elizabeth House', Office of the Secretary of State for Scotland, 15 July 2019.
1141 Cabinet Manual, paras 3.21-3.22.
1142 Ministerial Code, para 5.1. Collective responsibility has been recognised in judicial analysis of parliamentary procedure. See *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] 2 All ER 109.
1143 Cabinet Secretary Letter to UK Government Ministers, Cabinet Office, 3 October 2024. This letter was also published online.

Cabinet meetings

Cabinet is chaired by the Prime Minister, who also determines its membership. There are no formal limits on the size of Cabinet, but there are limits on the number of Cabinet-level salaries which can be paid (see above). The Prime Minister may arrange for other Ministers to attend Cabinet, either on a regular basis or for particular items of business (for example, the Attorney General to give legal advice). [1144]

The Ministerial Code states that Cabinet and Cabinet committee meetings take precedence over all other ministerial business apart from the Privy Council, although it is understood that ministers may sometimes have to be absent for reasons of Parliamentary business. [1145]

Cabinet business

There are no set rules about the issues that should be considered by Cabinet itself and it is ultimately for the Prime Minister to decide the agenda, on the advice of the Cabinet Secretary. [1146]

The Chancellor of the Exchequer's Budget and any other Budget statement are disclosed to Cabinet at a meeting on the morning of the day on which they are presented to the House of Commons, although the content of the proposal will often have been discussed with relevant Ministers in advance of that meeting. The expectation is that the proposals will be accepted by Cabinet without amendment. [1147]

The proceedings of Cabinet (and Cabinet committees) are recorded by the Cabinet Secretariat. [1148] The minutes produced are the official record of discussion and the decisions made. [1149] The Cabinet Secretary is the head of the Cabinet Secretariat and is appointed by the Prime Minister on the advice of the retiring Cabinet Secretary and the First Civil Service Commissioner, [1150] although in practice this follows a recommended shortlist prepared by an appointments panel chaired by the Commissioner. [1151] The Cabinet Secretary attends meetings of Cabinet. [1152]

Under section 35 of the Freedom of Information Act 2000, information held by a government department is "exempt information" if it relates to (a) the

1144 Cabinet Manual, para 4.5.
1145 Cabinet Manual, para 4.36. Cabinet Office, Ministerial Code, paragraph 5.5.
1146 Cabinet Manual, para 4.18.
1147 Cabinet Manual, para 4.23.
1148 Cabinet Manual, paras 4.51-4.52. The King sees important Cabinet papers, including minutes.
1149 Cabinet Manual, para 4.7.
1150 Prime Minister appoints Sir Chris Wormald as new Cabinet Secretary and Head of the Civil Service, Cabinet Office/Prime Minister's Office, 10 Downing Street, 2 December 2024.
1151 Public Administration and Constitutional Affairs Committee (PACAC), Oral evidence: The Work of the Civil Service Commission, HC 625, 28 January 2025, Q6.
1152 Cabinet Manual, para 4.53. By custom, the Cabinet Secretary is granted a life peerage upon retirement.

formulation or development of government policy, (b) Ministerial communications, (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or (d) the operation of any Ministerial private office. This includes proceedings of the Cabinet or of any committee of the Cabinet.[1153] The test in the 2000 Act is that disclosure would "prejudice" certain aspects of government business.[1154]

Section 53 provides for a Minister of the Crown in some circumstances to override a decision or enforcement notice of the Commissioner which has been served on a government department.[1155] This has been consistently used in relation to Cabinet minutes, "suggesting the existence of a policy".[1156] The Parliamentary Commissioner for Administration may not see documents certified by the Cabinet Secretary (with the Prime Minister's approval) as relating to proceedings of the Cabinet or a Cabinet committee.[1157]

Under Schedule 1 to the Public Records Act 1958, "records of, or held in, any department of [His] Majesty's Government in the United Kingdom" are defined as "public records".

For more on Cabinet procedure, see Cabinet Manual, Chapter 4.

Cabinet committees

The Prime Minister decides – with the advice of the Cabinet Secretary – the overall structure of the Cabinet committee system, including the chair, deputy chair (if any), membership and the terms of reference of each Cabinet committee. Details are usually announced biannually in a written ministerial statement in Parliament.[1158] There is a Union and Constitution Cabinet Committee which considers "matters related to the Union and constitutional reform".

All legislative proposals relating to primary legislation require clearance from the Cabinet committee that is responsible for Parliamentary business and legislation, in addition to clearance through the relevant policy committee.[1159]

1153 These provisions also apply to the Welsh Government and Northern Ireland Executive.
1154 In freedom of information cases either the complainant or the public authority may appeal to the First-Tier Tribunal (Information Rights) against a decision notice, and either party may further appeal to the Upper Tribunal and from there to the Court of Appeal.
1155 The Supreme Court has ruled that the "reasonable grounds" for doing so do not include disagreement with the Information Commissioner's decision (*Evans v Attorney General* [2015] UKSC 21).
1156 Bradley et al, Constitutional and Administrative Law, p347.
1157 Parliamentary Commissioner Act 1967, section 8(4).
1158 Cabinet Manual, para 4.10. And online: Cabinet Committee List, Cabinet Office, 14 October 2024.
1159 Cabinet Manual, para 4.20.

Political Cabinet

At the discretion of the Prime Minister, members of Cabinet may meet to discuss party political matters in what is known as a "political Cabinet". Such meetings may take place in the Cabinet Room as usual, but they are not attended by officials and the conclusions of the discussion are not formally minuted. [1160]

Cabinet Office Briefing Room (COBR)

The Cabinet Office Briefing Room (COBR) is the mechanism for agreeing the central government response to major emergencies which have international, national or multi-regional impact.[1161] Exceptionally, with the consent of the relevant chair, ministers from the devolved administrations may be invited to attend COBR meetings.[1162]

5.6 The Privy Council

Schedule 1 to the Interpretation Act 1978 defines the Privy Council as to "the Lords and others of [His] Majesty's Most Honourable Privy Council". [1163] "The King in Council" is not defined but is generally taken to mean a meeting of the Privy Council at which the King is in attendance.

The Privy Council (established under the royal prerogative) advises the Sovereign on the exercise of his prerogative powers and certain functions assigned to the Sovereign and the Council by statute. [1164] The Privy Council has no published standing orders, although it is given some functions by statute. Privy Council Procedures (for the preparation of business for the Council) were released under Freedom of Information in 2012. The present Privy Council of the United Kingdom dates from 1 January 1801. [1165] No further appointments have been made to the Privy Council of Northern Ireland (PCNI) since 1973. [1166]

The recital that Orders in Council are made by the King "by and with the advice of his Privy Council" is purely formal: in reality a Privy Counsellor (usually a Minister of the Crown) recites the title of an instrument in the presence of the Monarch, "who is called upon by constitutional convention to

1160 Cabinet Manual, para 4.8.
1161 Cabinet Manual, para 4.13.
1162 Cabinet Manual, para 4.49.
1163 As does the Interpretation Act (Northern Ireland) 1954, section 43.
1164 Cabinet Manual, para 1.10.
1165 The Edinburgh Gazette, Issue 785
1166 Northern Ireland Constitution Act 1973, section 32(3). The statutory basis of the PCNI is the Irish Free State (Consequential Provisions) Act 1922, Schedule 1.

approve it". [1167] Responsibility for an Order in Council is borne by the Minister of the Crown whose department decided the Order should be made. [1168]

Orders approved and business transacted at Privy Council meetings have been published on the Privy Council Office website since 2010. Beyond this, proceedings are considered to be confidential.

Privy Counsellors

Halsbury's Laws identifies 14 offices and positions as being "generally understood to have a claim to appointment" to the Privy Council. These include near relatives of the monarch, the Archbishops of Canterbury and York, Great Officers of State, members of the Royal Household and senior members of the judiciary. [1169]

The appointment of Privy Counsellors (by Order in Council) is made under the royal prerogative by the King on the recommendation of the Prime Minister. Upon appointment, Privy Counsellors are required to swear or affirm the statutory Oath of Allegiance and the non-statutory Privy Council Oath, [1170] and kiss hands. [1171] This Oath is often considered the basis for the confidentiality of Cabinet discussions, but this has been disputed. [1172]

An individual's request to resign from the Privy Council is nowadays construed as a request seeking the monarch's agreement to the removal of that individual's name from the list of Privy Counsellors. In such cases, the List of Business for a Privy Council meeting will record an "Order directing that the name [...] be removed from the List of Privy Counsellors". [1173] "Enforced removal" is a matter for the Sovereign, "acting on the advice of Ministers". [1174]

A full list of Privy Council members is available on the Privy Council Office website. Appointment to the Privy Council is for life and therefore most Counsellors play no part in the Privy Council's day-to-day business, which is largely conducted by a few serving Ministers of the Crown. [1175] The King attends, but is not a member of, the Privy Council. [1176] Rather he is its Head.

Since 1999, the First Ministers of Scotland, Wales and (with one exception) Northern Ireland have been appointed members of the Privy Council. [1177] It has become a convention that most members of the statutory Intelligence and

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1167 *Secretary of State for the FCO v The Queen (ex parte Bancoult)* [2007] EWCA Civ 498.
1168 *R (Bancoult) v Foreign Secretary (No. 2)* [2008] UKHL 61.
1169 Halsbury's Laws of England, Vol 8(2), para 522.
1170 The Privy Council Oath has been viewed as the basis of Cabinet confidentiality, but it was not relied upon in the case of *Attorney-General v Jonathan Cape Ltd* [1976] 1 QB 752.
1171 The Oath of a Privy Counsellor and The Affirmation of a Privy Councillor, Privy Council Office website.
1172 The Privy Council Oath was not relied upon by the Attorney General in the Crossman diaries case (see *Attorney-General v Jonathan Cape Ltd* [1976] QB 752).
1173 See, for example, Privy Council meeting, 9 October 2013.
1174 HL Deb 26 Oct 2009 Vol 713 cWA106
1175 Cabinet Manual, para 1.11. The quorum is three.
1176 If a member before succeeding to the throne, then a monarch ceases to be so at their accession.
1177 No member of Sinn Féin or the SDLP has been sworn of the Privy Council.

Security Committee of Parliament be appointed to, if not already members of, the Privy Council, although this practice is neither consistent nor obligatory. [1178]

Exceptionally, non-Cabinet ministers attending Cabinet and senior members of opposition parties can be given briefings on confidential terms (known as "Privy Council terms"). Having accepted a briefing on Privy Counsellor terms, he or she is understood to have agreed to treat it as confidential. [1179]

Privy Council meetings

The Privy Council meets on average about nine or ten times a year. It usually meets every month except in January, August and September. [1180] Meetings are held wherever the King is in residence, most commonly at Buckingham Palace, Windsor or Balmoral. [1181] Meetings can also be held in the presence of a Regent (if a monarch is incapacitated) or Counsellors of State (if the monarch is ill or absent from the Realm).

An Order in Council from February 1637 requires the presence of three "Lords of the Council". The presence of the Clerk of the Privy Council (see below) is also necessary, as it is his attestation "which affords legal proof" of certain documents. [1182]

By convention, the King and his Privy Counsellors remain standing during a meeting. During and after the Covid-19 pandemic, Privy Council meetings took place via video link. It has in the past also met in other Commonwealth Realms, most recently in Wellington, New Zealand, in 1995.

The Lord President of the Council (one of the Great Officers of State) is responsible for presiding over meetings of the Privy Council. The post is generally a Cabinet post and is often held by the Leader of either the House of Commons or the House of Lords. [1183] It has become the practice of the Privy Council to involve Scottish Privy Counsellors, in particular the First Minister of Scotland, in business including the making of devolved Orders in Council. [1184]

Privy Council Office

The Privy Council Office (PCO) is the Secretariat to the Privy Council and is responsible for delivering all aspects of its business, including arrangements for scheduled Privy Council meetings as well as any ad hoc Emergency

1178 The Intelligence and Security Committee and the Privy Council, Watching the Watchers blog, 25 June 2018.
1179 Cabinet Manual, para 1.12.
1180 HC Deb 28 June 1999 Vol 334 c17W
1181 Meetings can take place elsewhere. On 15 September 2023, the King held a Privy Council at Dumfries House.
1182 F. W. Maitland, The Constitutional History of England, p406.
1183 Cabinet Manual, para 1.13.
1184 HC Deb 30 June 1999 Vol 334 cc215-6W [Devolution (Scotland)]

Councils. It is "an autonomous Government Department whose ministerial head is the Lord President of the Council and whose Permanent Head is the Clerk of the Privy Council". [1185]

The "Clerk in Ordinary of His Majesty's Most Honourable Privy Council" is chosen on a representation from the Lord President of the Council and appointed by Prerogative Order in Council. [1186] The Clerk subscribes to an oath "very similar to that of the Privy Counsellors". [1187]

5.7 The Civil Service

The Civil Service or the Home Civil Service (or "the civil service of the State"[1188]) serves the government of the day and supports it to develop and implement its policies as effectively as possible. [1189]

2 Crown servants

Section 12 of the Official Secrets Act 1989 defines "Crown servant" as including:

- a Minister of the Crown
- a member of the Scottish Government or a junior Scottish Minister
- the First Minister of Wales, a Welsh Minister, the Counsel General or a Deputy Welsh Minister
- any person employed in the civil service of the Crown, including His Majesty's Diplomatic Service, the Northern Ireland Civil Service and the Northern Ireland Courts and Tribunal Service
- any member of the naval, military or air forces of the Crown, including any person employed by a Reserve Association[1190]
- any constable and any other person employed or appointed in or for the purposes of any police force (including the Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve) or a National Crime Agency special[1191]

1185 Privy Council Office Resource Accounts 2006-07, HC 656, London: HMSO, 31 August 2007, p4.
1186 See, for example, London Gazette, 12 August 1898.
1187 John F. Naylor, A man and an institution: Sir Maurice Hankey, the Cabinet Secretariat and the custody of Cabinet secrecy, Cambridge: Cambridge University Press, 1984, p105.
1188 See, for example, Constitutional Reform and Governance Act 2010, section 1.
1189 About us, Civil Service website. It does not include the Foreign, Commonwealth and Development Office, government ministers, members of the Armed Forces, the police, officers of local government or NDPBs or the Houses of Parliament, employees of the National Health Service (NHS), or staff of the Royal Household.
1190 As established for the purposes of Part XI of the Reserve Forces Act 1996.
1191 Within the meaning of Part 1 of the Crime and Courts Act 2013.

Under the *Carltona* principle, the Civil Service has "no legal or constitutional personality separate from the Government or ministers".[1192] Civil servants are accountable to ministers, who in turn are accountable to Parliament.[1193] The Civil Service management code states that:

Civil servants are servants of the Crown and owe a duty of loyal service to the Crown as their employer. Since constitutionally the Crown acts on the advice of Ministers who are answerable for their departments and agencies in Parliament, that duty is, subject to the provisions of the Civil Service Code, owed to the duly constituted Government.[1194]

Civil servants have employment rights by virtue of section 273 of the Trade Union and Labour Relations (Consolidation) Act 1992.[1195] But as civil servants hold office at the pleasure of the Crown, at common law they can be dismissed at any time.[1196]

The Home Civil Service (HCS) covers Great Britain and includes the Scottish and Welsh Governments.[1197] All HCS civil servants work for and report ultimately to the Head of the Civil Service, who is the Cabinet Secretary.[1198] The Diplomatic Service and Northern Ireland Civil Service are separate (see below).

Sections 2 and 3(1) of the Constitutional Reform and Governance Act 2010 placed the Civil Service Commission (CSC) on a statutory basis and provided the Minister for the Civil Service (by convention the Prime Minister) with a statutory power (similar to the old prerogative power) "to manage the civil service".[1199] Under Schedule 1, 12 Civil Service Commissioners for Great Britain (including the First Civil Service Commissioner) are appointed by the King on the recommendation of the Minister for the Civil Service.[1200] There are "specified link commissioners", one for Scotland and one for Wales.[1201] A

1192 *Carltona v Commissioner of Works* [1943] 2 All ER 560
1193 The Civil Service code, Civil Service website, para 1.
1194 Civil Service management code, para 4.1.1.
1195 "Crown employment" means employment "under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by an enactment".
1196 *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374.
1197 The permanent secretaries of the Scottish and Welsh Governments are accountable to, respectively, Scottish and Welsh Ministers (Our governance, Civil Service website).
1198 The Civil Service Board (CSB) is a high profile group accountable to the Cabinet Secretary and is responsible for considering the strategic challenges faced by the Civil Service. It is chaired by a Chief Operating Officer and comprises a cross-section of permanent secretaries from Civil Service departments. The House of Commons Public Administration and Constitutional Affairs Committee has questioned several Cabinet Secretaries, who can also give evidence to public inquiries.
1199 The Prime Minister may delegate these powers to other ministers and the devolved administrations under the Civil Service (Management Functions) Act 1992. A consolidated framework document is agreed between the Cabinet Office and Civil Service Commission, the Advisory Committee on Business Appointments and the Commissioner for Public Appointments.
1200 Before selecting a person as First Commissioner, the Minister must consult the First Ministers for Scotland and Wales and "relevant opposition leaders" in the UK Parliament. The Commissioners exist to promote competitive entry into the Civil Service.
1201 The First Civil Service Commissioner is involved in giving the First Ministers of Scotland and Wales a list of appointable candidates to be the permanent secretaries of the Scottish and Welsh Governments. See, for example, New Permanent Secretary to the Scottish Government appointed, Cabinet Office/Scottish Government, 7 March 2025.

memorandum of understanding between the CSC and the Cabinet Office is supposed to be renewed on a triennial basis.[1202]

Section 3(6) of the 2010 Act provides that:

> In exercising his power to manage the civil service, the Minister for the Civil Service shall have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and of the conventions governing the relationship between Parliament and [His] Majesty's Government.

Furthermore, the Minister for the Civil Service must publish a Code of Conduct for the Civil Service (section 5). This code includes the "core values" of:

- "integrity" (putting the obligations of public service above your own personal interests)
- "honesty" (being truthful and open)
- "objectivity" (basing your advice and decisions on rigorous analysis of the evidence)
- "impartiality" (acting solely according to the merits of the case and serving equally well governments of different political persuasions)[1203]

Section 7 of the 2010 Act stipulates "minimum requirements" for both the Civil Service and Diplomatic Service codes.

Civil servants working for the Scottish and Welsh Governments, and their agencies, have their own versions of the Civil Service code.[1204] These are published by the Minister for the Civil Service following consultation with the First Ministers of Scotland and Wales.[1205]

"Junior administrators" (civil servants) are provided with guidance for improving policy development and decision-making in the public service.[1206]

In his September 2024 Labour Party conference speech, Prime Minister Sir Keir Starmer promised to legislate for the "Hillsborough law", a legal "duty of candour" which would apply to public authorities and public servants, with criminal sanctions.[1207]

1202 PACAC, Oral evidence: The Work of the Civil Service Commission, Q1. The most recent memorandum, however, dates from 2010.

1203 The Civil Service code, Civil Service website, 16 March 2015. The 1854 Northcote-Trevelyan Report is generally regarded as the founding basis of the contemporary Civil Service.

1204 Civil Service Code, Scottish Government, 11 November 2010 and Civil Service code, Welsh Government, 19 October 2017. Under sections 5(6) and 5(7) the First Minsters of Scotland and Wales must lay codes covering civil servants who serve in the Scottish and Welsh Governments before the Scottish and Welsh Parliaments.

1205 Constitutional Reform and Governance Act 2010, sections 5(2) and 5(3).

1206 The Judge Over Your Shoulder, Government Legal Service, January 2006.

1207 Keir Starmer speech at Labour Party Conference 2024, Labour Party website, 24 September 2024.

The most senior civil servant in a department is the permanent secretary. Around 40 permanent secretaries are responsible to the Cabinet Secretary/Head of the Civil Service for the effective day-to-day management of the relevant department.[1208] The government does not publish a single list of permanent secretaries.[1209] The Ministerial Code states that:

> Ministers and permanent secretaries should have a trusting, positive relationship, with regular opportunities for the exchange of feedback. Any concerns about this relationship should be resolved as swiftly as possible with the Cabinet Secretary and Prime Minister.[1210]

According to the Institute for Government, the government of Boris Johnson was willing to "force permanent secretaries out of the job prematurely, without being formally fired". Permanent secretaries appear in front of the Commons Public Accounts Commission and Select Committees to answer questions regarding their responsibilities.[1211]

Under section 11 of the 2010 Act, the Civil Service Commission is required to publish Recruitment Principles, which govern how external appointments are made, including Ministerial involvement.[1212] The Recruitment Principles can be revised by the CSC but only with the Prime Minister's agreement.[1213] The CSC also investigates complaints made under the code.[1214]

Section 10 provides that a person's selection for appointment to the Civil Service must be "on merit on the basis of fair and open competition", although there are exceptions for special advisers and "a selection excepted by the recruitment principles" under section 12(1)(b).[1215] The final appointment of permanent secretaries and directors-general is made by the Prime Minister, who is asked to approve the candidate who has come top in the merit order.[1216]

The Review Body on Senior Salaries provides independent advice to the Prime Minister, the Lord Chancellor, the Home Secretary, the Secretary of State for Defence, the Secretary of State for Health and Social Care and the Minister of Justice for Northern Ireland on the remuneration of salaried judicial office-

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1208 Cabinet Manual, para 7.9. This includes the permanent secretaries to the devolved Scottish and Welsh Governments. The Scotland and Wales Offices are headed by Directors. The Northern Ireland Office has a permanent secretary. Pay is set by the Permanent Secretary Remuneration Committee.

1209 But see Senior Civil Servants: Conditions of Employment, UIN 463, 15 October 2019.

1210 Ministerial Code, para 1.12.

1211 Permanent secretaries, Institute for Government, 12 March 2020.

1212 These appointment principles also apply to Scottish Ministers (Scottish Ministerial Code, para 7.2) and Welsh Ministers (Welsh Ministerial Code, para 2.15).

1213 Independent Review of Governance and Accountability in the Civil Service: The Rt Hon Lord Maude of Horsham, para 6.2

1214 See also the Civil Service management code, which outlines civil servants' terms and conditions of service for government departments and agencies (Civil Service, 9 November 2016). This code divides civil servants into three groups: the politically free (industrial and non-office grades) who may take part in all political activities; a politically restricted group (primarily senior civil servants) who may be given permission to take part in local politics; and an intermediate group comprising all other staff.

1215 This means, among other things, that certain positions do not need to be advertised externally.

1216 Independent Review of Governance and Accountability in the Civil Service: The Rt Hon Lord Maude of Horsham, paras 6.15 & 6.26.

holders, senior civil servants, senior officers of the Armed Forces, senior managers in the NHS, Police and Crime Commissioners, chief police officers, and "other such public appointments as may from time to time be specified".[1217]

There is a general statutory prohibition on the employment of "aliens" in the Civil Service except in certain circumstances.[1218] Under section 1 of the Aliens' Employment Act 1955 "an alien may be employed in any civil capacity under the Crown" under a certificate issued by a Minister on the basis that no suitably qualified British citizen was available to do the job or the "alien" possesses exceptional qualifications or experience. A list of such certificates must be laid before Parliament annually.[1219]

Under the non-statutory Ministerial Code, Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service code and the statutory requirements of the 2010 Act.[1220]

The Accounting Officer for a government department is appointed by the Treasury under section 5(6) of the Government Resources and Accounts Act 2000. Where an Accounting Officer (usually a permanent secretary) objects to a proposed course of action by a Minister of the Crown on grounds of propriety, regularity or value for money relating to proposed expenditure, they are required to seek a written ministerial direction. This is copied to the Comptroller and Auditor General who will normally draw the matter to the attention of the Committee of Public Accounts.[1221] Ministerial Directions are published online by HM Treasury.

The Cabinet Office has published government Consultation principles, which "give clear guidance to government departments on conducting consultations". There is also a Code of Practice on Consultation.

The Government Social Research profession supports the development, implementation, review and evaluation of government policy.

1217 If requested, the SSRB may also advise on peers' allowances and Ministers covered by the Ministerial and Other Salaries Act 1975. If asked to do so by the Presiding Officer of the Scottish Parliament and First Minister of Scotland jointly, the Speaker of the Northern Ireland Assembly, the Presiding Officer of the Senedd or by the Mayor of London and the chair of the Greater London Assembly jointly, the Review Body also from time to time advises those bodies on the pay, pensions and allowances of their members and office holders (Senior Salaries Review Body Report: 2024, 29 July 2024). See also the Performance management framework for the Senior Civil Service, Civil Service, 6 February 2025.

1218 Aliens Restriction (Amendment) Act 1919, section 6. Aliens are defined in the Act of Settlement (1700), section III.

1219 See also The Civil Service Nationality Rules, Cabinet Office.

1220 Ministerial Code, para 1.6. The Scottish Ministerial Code includes similar provisions at para 1.7(j) and the Welsh Ministerial Code at para 1.3(ix).

1221 Cabinet Manual, paras 10.22-10.23.

Diplomatic Service

Under section 3 of the Constitutional Reform and Governance Act 2010, the Secretary of State has the power to manage the Diplomatic Service. [1222] Under section 6 they must publish Diplomatic Service code and lay it before Parliament. [1223] Under section 10, exempt from the requirement to be appointed on merit are heads of mission or Governors of Overseas Territories (see Section 3.1).

The 2010 Act does not extend to MI5, MI6, GCHQ or the Northern Ireland Civil Service. [1224]

Northern Ireland Civil Service

The basis of the Northern Ireland Civil Service (NICS) is prerogative rather than statutory. [1225]

Under section 4 of the prerogative Civil Service (Northern Ireland) Order 1999, the Northern Ireland Department of Finance is responsible for the "general management and control" of the NICS. [1226] A Northern Ireland Civil Service Handbook is published under the same Order, as is a Code of Ethics, [1227]

Under the prerogative Civil Service Commissioners (Northern Ireland) Order 1999, Civil Service Commissioners for Northern Ireland (who are appointed by the King on UK ministerial advice) are to "maintain the principle of selection on merit" and publish a Recruitment Code. Paragraph 2(b) allows for a certain number of appointments outside this Merit Principle. [1228] The Commissioners investigate complaints made under the Code of Ethics.

Both Orders were issued by the Secretary of State for Northern Ireland before certain powers were transferred to the Northern Ireland Assembly. But under section 23 of the Northern Ireland Act 1998, as respects the NICS the "prerogative and other executive powers" of the Sovereign are exercisable by the First Minister and the deputy First Minister acting jointly. The Head of the Northern Ireland Civil Service is appointed on this basis, [1229] as are special advisers. [1230] Under the Civil Service (Special Advisers) Act (Northern Ireland)

1222 The Act does not stipulate but in practice it is the Foreign Secretary.

1223 Diplomatic and Home Service Regulations, Foreign and Commonwealth Office, 11 February 2015.

1224 Constitutional Reform and Governance Act 2010, section 3(4).

1225 The NICS was first established in 1921 to support the devolved Government of Northern Ireland, as established under the Government of Ireland Act 1920. UK parliamentary procedure in the event Westminster makes provision for the NICS is provided for in section 3 of the Civil Service (Management Functions) Act 1992.

1226 Northern Ireland Civil Service Handbook, Northern Ireland Department of Finance. There are a number of areas where the Department of Finance under the Civil Service (Management Functions) (Northern Ireland) Order 1994, has delegated its management and control function to certain departments.

1227 Civil Service Code of Ethics, Northern Ireland Department of Finance, February 2023. Made under Article 4(2)(b) of the Civil Service (Northern Ireland) Order 1999.

1228 These are special advisers appointed by the Assembly Speaker, the First Minister and deputy First Minister, and other Executive Ministers.

1229 New Head of the Civil Service announced, Executive Office website, 10 June 2021.

1230 See, for example, the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016.

2013, those with serious criminal convictions are disqualified from appointment. [1231] A Code of Conduct for Special Advisers was issued under section 7 of that Act.

Special advisers

Under section 15 of the Constitutional Reform and Governance Act 2010, the Prime Minister must approve the appointment of a "special adviser" to a Minister of the Crown. Section 8 provides that the Minister for the Civil Service must publish and lay before Parliament a special adviser's code. This sets out the relationship of an adviser with the Home Civil Service.

Special advisers are employed as temporary civil servants to help ministers on matters where the work of government and the work of the party, or parties, of government overlap and where it would be inappropriate for permanent civil servants to become involved. [1232] There is no limit on the number of special advisers. [1233]

Official Secrets

Under the Official Secrets Act 1989, it is an offence to disclose official information relating to certain categories, including security and intelligence, defence and international relations. The Act applies to public servants, including government ministers, civil servants, members of the Armed Forces and the police. It also applies to government contractors. [1234]

5.8 His Majesty's Opposition

As with the Prime Minister, the Leader of His Majesty's Opposition (or Leader of the Opposition) has a limited basis in statute. [1235]

The Leader of the Opposition and some of the Leader's principal colleagues in both Houses form a group, known as "the Shadow Cabinet". Each member of the Shadow Cabinet is given a particular range of activities on which it is their task to direct criticism of the government's policy and administration and to outline alternative policies. Since 1975, the Official Opposition has been entitled to financial assistance (known as Short Money) to help meet, among other expenses, the running costs of the office of the Leader of the Opposition.

1231 The 2013 Act was later amended by the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021.

1232 Cabinet Manual, paras 7.11-7.13. Special advisers: code of conduct, Cabinet Office, 6 November 2024.

1233 Ministerial Code, para 6.2.

1234 Cabinet Manual, para 11.21.

1235 It was recognised for the first time in 1937 (see The Ministers of the Crown Act, 1937, Modern Law Review 1:2, September 1937, pp145-48).

The Leader of the Opposition is also provided with a suite of offices at Westminster.[1236]

Under section 1 of the Ministerial and other Salaries Act 1975, the Leader of the Opposition and opposition whips receive a salary. Section 2 defines "Leader of the Opposition" (in relation to either House of Parliament) as:

> that Member of that House who is for the time being the Leader in that House of the party in opposition to [His] Majesty's Government having the greatest numerical strength in the House of Commons.

Under sections 2(2) and 2(3), the Speaker and Lord Speaker's decision ("certified in writing under his hand") as to who is Leader of the Opposition in each House "shall be final and conclusive".[1237]

Section 4 of the Ministerial and other Maternity Allowances Act 2021 provides for an allowance to be paid to temporary opposition leaders and whips in each House.

Public money – known as Short and Cranborne Money (for the Commons and Lords respectively) – is made available to opposition parties in Parliament to assist with their parliamentary activities. Under section 12 of the Political Parties, Elections and Referendums Act 2000, policy development grants are available for a "represented registered party to assist the party with the development of policies for inclusion in any manifesto".

Since 1961 every new leader of each of the main political parties in the House of Commons has been made a member of the Privy Council, if not one already, upon the Prime Minister's advice.[1238] By custom, a new Leader of the Opposition is also granted an audience with the Monarch.[1239]

It is customary for opposition Members to chair a proportion of Commons Select Committees.

There is no formal equivalent in the Scottish and Welsh Parliaments, although "Leader of the Opposition" is sometimes used informally to describe the leader of the largest non-government party in both legislatures. For the opposition in the Northern Ireland Assembly, see Section 2.2.

1236 Erskine May, para 4.6.
1237 For a Speaker's ruling on this point, see HC Deb 29 June 2016 Vol 612 c340 [Point of Order].
1238 Rodney Brazier, Choosing a Prime Minister: The Transfer of Power in Britain, Oxford: Oxford University Press, 2020, p10.
1239 Kemi Badenoch to meet King Charles in revived royal practice, The Times (£), 2 February 2025. This custom appears to have lapsed between 2006 and 2025.

6 Local government

Local authorities are statutory bodies created by primary legislation. [1240] That legislation sets out their functions and associated legal duties. Local authorities (sometimes called "councils") are "public authorities" for the purposes of section 6 of the Human Rights Act 1998.

Local authorities can make local laws known as byelaws for the "good rule and government" of the whole or any part of their district, borough or area and "for the prevention and suppression of nuisances" therein. [1241] Local administrators (or officials) are not civil servants.

Local authorities are not accountable to Parliament or the devolved legislatures, as they are directly elected by their local communities. However, UK or devolved ministers can direct local government to adhere to national policy frameworks where legislation permits. [1242] Local government is a devolved or transferred matter in Scotland, Wales and Northern Ireland.

Local authorities are responsible for their own finances within centrally set parameters and budgets. However, the UK government and devolved administrations set the overall level of central government funding for local government in each part of the UK.[1243]

Elected councils across the UK use ceremonial maces, which denote royal authority. [1244] The Accession Proclamation of a new monarch is read by the High Sheriffs of each county in England and Wales,[1245] or by mayors and lord mayors. In Scotland it is read by sheriffs (in counties), lord provosts and

[1240] As such, local authorities can also be abolished via primary legislation. The Local Government Act 1985, for example, removed the Greater London Council and several metropolitan county councils in England.

[1241] Local Government Act 1972, section 235; Local Government (Scotland) Act 1973, section 201; Local Government Act (Northern Ireland) 1972, section 90. See Local government legislation: byelaws, Department for Levelling Up, Housing and Communities, 23 October 2016.

[1242] Cabinet Manual, para 8.27.

[1243] Cabinet Manual, para 8.31.

[1244] For a description of local government royal ceremonial, see Dermot Morrah, The Work of the Queen, London: William Kimber, 1958, p93.

[1245] Paul Millward, Civic Ceremonial: A Handbook, History and Guide for Mayors, Councillors and Officers, Crayford: Shaw & Sons, 2007, p159. Nominations for three prospective High Sheriffs for each county in England and Wales are made during a meeting of "the Lords of the Council" (Privy Counsellors) in the King's Bench Division of the High Court of Justice on 12 November each year. Subsequently, the selection of new High Sheriffs (whose functions are largely ceremonial) is made annually in March, when the Sovereign selects one of the three nominated Sheriffs to serve for the next 12 months literally by "pricking" a hole through his or her name on the Sheriffs' Roll with the spike of a brass bodkin. Following the "pricking" ceremony, a Warrant of Appointment is sent to each nominee by the Clerk of the Privy Council (Sheriffs Act 1887, Schedule 1). High Sheriffs for the counties of the Duchy of Lancaster are pricked separately by the King during an audience with the Chancellor of the Duchy of Lancaster. The Duke of Cornwall (the Prince of Wales) appoints the High Sheriff of Cornwall.

provosts (in cities and towns), and in Northern Ireland by mayors and lord mayors.[1246]

The UK is a signatory to The European Charter of Local Self-Government (a Council of Europe initiative) which lays down standards for protecting the rights of local authorities.

6.1 England

Local government in England comprises 317 authorities. The structure varies from area to area. In many parts of England, there are two tiers – county and district – with responsibility for council services split between them. Other parts of England operate under a single-tier structure with councils responsible for all services in their area. Broken down, the 317 authorities comprise:

- county councils (21)
- district councils (164)
- unitary authorities (62)
- metropolitan districts (36)
- London boroughs (32)

The other two authorities are the City of London and the Isles of Scilly (see below).

There are also more than 10,000 parish or town councils in mainly rural parts of England. [1247] They typically focus on activities such as managing parks, car parks, footpaths, community centres, cemeteries, and other local amenities.[1248] Members of the public and representatives of the press have a right of access to parish and community council meetings under section 1 of the Public Bodies (Admission to Meetings) Act 1960.

A full list of councils in England is available online.

[1246] OP London Bridge Protocol, Hellesdon Parish Council, para 9.
[1247] Local Government Act 1972, section 9.
[1248] Unitary authorities: The role of parish and town councils, Commons Library Insight, 16 December 2020. For a list powers which have been vested in Parish, Town and Community Councils by Acts of Parliament, see Powers and Duties, County Durham Association of Local Councils website.

Governance

Local authorities in England have statutory duties to provide a range of services to their communities, including education, social care, waste collection, planning and housing, and road maintenance.[1249]

The statutory framework for local government in England is the Local Government Act 1972 (as amended). Section 1 divided England (outside Greater London and the Isles of Scilly) into counties and districts, while section 2 provided for the "constitution of principal councils in England". London's 32 borough councils were established under the London Government Act 1963. The Local Government and Public Involvement in Health Act 2007 provides for two-tier authorities to become unitary councils. Before implementing a unitarisation proposal, section 7 requires the Secretary of State to consult every local authority affected (except that which was "invited" to make it).[1250] Under section 240, if the Secretary of State decides to make an order for local government restructuring, it must be approved by both Houses of Parliament before it can take effect.[1251] Local authorities cannot at present be compelled to unitarise, but nor can they veto a government decision to establish a unitary authority.[1252]

In December 2024, the UK government said it would:

> Work with individual areas on local government reorganisation, inviting proposals [for unitarisation] from all remaining two-tier areas and those unitary councils where there is evidence of failure or their size or boundaries may be hindering their ability to deliver sustainable and high quality services to their residents.[1253]

The English Devolution White Paper also promised a "rewiring of local government's constitutional status, under the presumption that councils have the knowledge and expertise to govern their places".[1254]

Under section 245 of the 1972 Act, the King in Council (the King at a meeting of the Privy Council) may by Royal Charter confer upon a district the status of a borough. A petition can only be presented in this regard if the necessary

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1249 Office for Local Government: Understanding and supporting local government performance, Office for Local Government.

1250 Under section 4, the Secretary of State may refer a proposal to the Local Government Boundary Commission for England but is not required to do so.

1251 Restructuring proposals have been subject to judicial review of the process initiated by councils facing abolition (see, for example, *Shrewsbury and Atcham Borough Council v Secretary of State for Housing and Local Government* [2007] EWHC 2279 (Admin) and *Christchurch District Council v Secretary of State for Housing, Communities and Local Government* [2018] EWHC 2126 (Admin)).

1252 General regulations governing unitarisation exercises provide that honorary freemen and aldermen of predecessor local authorities retain their status for the relevant successor unitary authorities (Civic Dignitaries, UIN 24613, 16 January 2025).

1253 English Devolution White Paper: Power and Partnership: Foundations for Growth, CP 1218, Ministry of Housing, Communities and Local Government, 16 December 2024, p115. See also Local government reorganisation: letter to two-tier areas.

1254 English Devolution White Paper: Power and Partnership: Foundations for Growth, CP 1218, p100.

resolution has been passed by "not less than two-thirds of the members voting".

City status can be conferred upon part or all of a local authority area via Letters Patent under the royal prerogative. This does not confer any specific rights or privileges but is a "mark of prestige".[1255] The dignity of having a "lord mayor" as civic head has been granted to 24 districts enjoying city status in England, including the City of London.[1256] Two (City of London and York) have the right to use the style "the Right Honourable" but are not members of the Privy Council.[1257]

The Local Government Act 2000 provides for the choice of governance models which must be operated by local authorities in England. These are:

- a mayor and cabinet executive (section 9H)
- a leader and cabinet executive (section 9I)
- the committee system (Chapter 3)
- or other arrangements approved by the Secretary of State (section 9BA)

Under section 9M, certain changes in governance arrangements are subject to approval in a referendum.

Statutory arrangements for meetings of full councils, their committees and sub-committees and joint committees are set out in Part 5A of and Schedule 12 to the 1972 Act.

Under section 1 of the Localism Act 2011, local authorities in England now possess a "general power of competence", which means councils do not have to look to enabling legislation. Instead, they can act in any area if there is no legislation restricting that action. The courts have construed the ultra vires principle – under which a local authority can act only within the limits of statutory powers conferred upon them – in strict terms.[1258]

Section 101 of the 1972 Act provides for a local authority to arrange for the discharge of any of their functions (a) by a committee, a sub-committee or an officer of the authority, or (b) by any other local authority.[1259]

1255 Letters Patent from Her Majesty Queen Elizabeth II granting city status to Stirling 22nd April 2002, Stirling Archives, 1 October 2022. This applies in each part of the UK.
1256 Mainly created under the royal prerogative via Letters Patent. For a full list, see List of lord mayoralties and lord provostships in the United Kingdom, Wikipedia.
1257 For a full guide to civil ceremonial see Paul Millward, Civic Ceremonial: A Handbook, History and Guide for Mayors, Councillors and Officers (5th edition), Crayford: Shaw & Sons, 2007.
1258 See, for example, *Bromley London Borough Council v Greater London Council* [1983] 1 AC 768.
1259 The *Carltona* principle does not apply in local government.

The Secretary of State (for Housing, Communities and Local Government) has several statutory powers to "amend, repeal, revoke or disapply" local authority enactments under certain circumstances.[1260]

Under section 15 of the Local Government Act 1999, the Secretary of State (or appointees) can take over any specified functions of a local authority if he or she is satisfied that it is failing to comply with "best value" requirements. Alternative intervention approaches include the government commissioning an external assurance review or a sector-led intervention.[1261]

Section 151 of the 1972 Act provides that every local authority "shall make arrangements for the proper administration of their financial affairs", while section 7 of the Local Audit and Accountability Act 2014 provides for the appointment of a local auditor to audit local authority accounts. In some cases, the courts have held that local authorities are constrained by a "fiduciary duty" owed to local taxpayers.[1262]

Section 100 of the 1972 Act secures the admission, "so far as practicable", of the public (including the press) to all meetings of committees of local authorities as well as to meetings of local authorities themselves (in England and Wales).

There is a Recommended code of practice for local authority publicity which was published by the then Ministry of Housing, Communities and Local Government in 2011.

For a comprehensive list of legal duties placed on local authorities in England, see Review of local government statutory duties: summary of responses.

Elections and franchise

Under section 2 of the Representation of the People Act 1983, the franchise for local government elections in England is the same as that for the UK Parliament with the addition of "a qualifying EU citizen or an EU citizen with retained rights". Certain officers and staff in "politically restricted" posts are disqualified from becoming or remaining a member of a local authority under section 1 of the Local Government and Housing Act 1989.[1263]

The Local Elections (Principal Areas) (England and Wales) Rules 2006 contain the principal conduct rules for council elections in England and Wales. Ward

[1260] See Local Government Act 2000, sections 5 and 6; Local Government Act 2003, section 97; Localism Act 2011, sections 5 and 15.

[1261] Best value standards and intervention: a statutory guide for best value authorities, Department for Levelling Up, Housing and Communities, 8 May 2024. This is statutory guidance issued under section 26 of the Local Government Act 1999.

[1262] See, for example, *Prescott v Birmingham Corporation* [1955] Ch. 210.

[1263] Politically restricted posts are listed in section 2. This restriction also applies to local authorities in Scotland and Wales.

boundaries and the number of councillors for each ward are also provided via secondary legislation.

Members of English councils (councillors) are elected for four-year terms under the first past the post system. [1264] Elections are held on the first Thursday in May. [1265] There are a variety of electoral cycles (times when elections are held) so not all councillors are elected at the same time. The three methods of holding elections to English councils are:

- by whole council (all councillors elected every four years)
- by halves (half the councillors elected every two years), and
- by thirds (a third of councillors elected every year for three years, with no elections in the fourth year) [1266]

This election timetable shows when councils in England hold elections. The Local Elections (Principal Areas) (England and Wales) Rules 2006 prescribes the timelines for county and county borough elections.

The Local Elections (Declaration of Acceptance of Office) Order 2012 provides the prescribed form of words for the purposes of section 83 of the Local Government Act 1972 for the declaration of acceptance of office by councillors and council office holders.

Postponement of local government elections requires legislation. Section 60 of the Coronavirus Act 2020, for example, delayed English local government elections by one year, but the same is true of elections in Scotland, Wales and Northern Ireland.

The Local Government (Disqualification) Act 2022 disqualifies individuals subject to certain sexual offence legal orders from standing for election or holding office in local authorities in England.

Council tax and non-domestic rates

In England, local authorities have three main sources of funding: UK government grants, council tax and non-domestic (business) rates.

The statutory basis for non-domestic rates in England is the Local Government Finance Act 1988. The Local Government Finance Act 2012 provides for local retention of 50% of revenue from non-domestic rates.

The Local Government Finance Act 1992 established the current system of council tax in England. The Local Government Act 1999 made provision for the regulation of council tax and precepts, including, under section 16, a power for the Secretary of State to modify or exclude the application of any

[1264] Local Government Act 1972, section 7.
[1265] Local Government Act 1972, section 37.
[1266] Local Government Act 1972, section 7. See also Local government structure and elections, Department for Levelling Up, Housing and Communities, 1 April 2023.

enactment they believe does not offer "best value".[1267] The level at which a local authority can increase council tax each year without holding a local referendum is regulated by section 72 of the Localism Act 2011.

The last council tax band revaluation in England took effect in 1993.

The Valuation Tribunal for England handles appeals regarding council tax valuation and liability, and the rateable value on business premises. Appeals from the Valuation Tribunal come to the Upper Tribunal (Lands Chamber).

City of London

The City of London Corporation is the governing body of the "Square Mile".[1268] Its "old Liberties and Customs" are protected in one of three clauses of Magna Carta 1297 which remain in force,[1269] while by custom the Lord Mayor of London and the Court of Aldermen attend the first part of the Accession Council held following a demise of the Crown.[1270] By custom, the King also approves the election of a new Lord Mayor of London.[1271] The Lord Mayor later takes the oath of allegiance at the Royal Courts of Justice during the annual Lord Mayor's Show.[1272] In the Ceremony of the Pearl Sword, the Lord Mayor presents the hilt of the City's Pearl Sword to the Monarch who touches it and symbolically returns the sword to the Lord Mayor.

Unusually for a local authority, the Corporation is empowered (under its Royal Charters) to alter or amend its own constitution by an Act of Common Council when it benefits the Corporation and the City to do so.[1273] The franchise of the Corporation is also unusual in that it is dominated by business votes which do not exist in any other UK local authority.[1274] The Corporation is also governed by various local acts of the UK Parliament.[1275] A City Remembrancer acts as a channel of communications between the Lord Mayor, the Royal Household and Parliament.[1276] The Remembrancer is also the City's ceremonial officer and chief of protocol.

1267 In the House of Lords, such orders are scrutinised by the Delegated Powers and Regulatory Reform Committee (Lords Companion, para 10.33).

1268 About the City of London Corporation, City of London Corporation website.

1269 Magna Carta (1297), section IX.

1270 The Accession Council, Privy Council website.

1271 Approbation of the new Lord Mayor of London, Ministry of Justice website, 17 October 2022. This ceremony is organised by the Crown Office.

1272 The City's relationship with the Monarch and the Royal Family, CityandLivery blog, 15 January 2018. See also City of London (Various Powers) Act 1959.

1273 London Metropolitan Archives Information Leaflet Number 13, The Court of Common Council, p3.

1274 See the City of London (Various Powers) Act 1957 and City of London (Ward Elections) Act 2002.

1275 Generally known as City of London (Various Powers) Acts.

1276 The City Remembrancer can examine UK parliamentary legislation and liaison with Select Committees of both Houses and government departments regarding bills which affect the City. As a Parliamentary Agent, the City Remembrancer is entitled to observe proceedings from the Under Gallery in the Chamber, which faces the Speaker (HC Deb 3 March 2014 c593W [City of London Remembrancer]).

Isles of Scilly

Section 265 of the 1972 Act allowed for the continued existence of the Council of the Isles of Scilly. This is a unitary authority, but some of its services are provided in conjunction with Cornwall Council. It also has its own water authority, airport authority and other powers, including running its own Sea Fisheries Committee. [1277]

Local Government Boundary Commission for England

The number of councillors for each local authority is decided by the independent Local Government Boundary Commission, as established under section 55 of the Local Democracy, Economic Development and Construction Act 2009. This is responsible for reviewing the number and boundaries of electoral areas and the number of councillors in local authorities in England. The Commission's Chair is appointed by the King on the recommendation of the Speaker's Committee on the Electoral Commission. [1278]

Section 10 of the Local Government and Public Involvement in Health Act 2007 provides for the Secretary of State to implement recommendations of the Local Government Boundary Commission by Order.

Local Government and Social Care Ombudsman

The Local Government and Social Care Ombudsman investigates individual complaints about councils in England. It is run by the Commission for Local Administration as established under section 23 of the Local Government Act 1974.

Local Government Association

The non-statutory Local Government Association is the "national voice" of local government in England, "working with councils to support, promote and improve local government".

Leaders' Council

Since October 2024, there has existed a Leaders' Council, which brings together local government leaders in England and Ministers. [1279]

[1277] Local government structure and elections, Department for Levelling Up, Housing and Communities, 1 April 2023. See also The Isles of Scilly Order 1978.

[1278] The Deputy Chair and other Local Government Boundary Commissioners are appointed by the King on the recommendation of the Secretary of State for Levelling Up, Housing and Communities.

[1279] Local Government Association Conference, Ministry of Housing, Communities and Local Government, 24 October 2024.

6.2 Wales

Local government in Wales comprises 22 principal authorities (county or county borough councils) and more than 730 community and town councils (the equivalent of parish councils in England). The latter are not required to provide any specific services by law, and some areas of Wales do not have a community or town council. [1280]

The Welsh Ministers (the devolved Welsh Government) have a general supervisory role in relation to local government in Wales and determine and fund most annual revenue and capital settlements for local government. [1281] Under section 73 of the Government of Wales Act 2006, the Welsh Ministers must set out how they will "sustain and promote local government in Wales".

Governance

The statutory framework for local government in Wales is the Local Government Act 1972. [1282] That Act was significantly amended by the Local Government (Wales) Act 1994, which established the current system of 22 unitary authorities. All principal councils are required by law to prepare and agree a constitution. [1283]

The dignity of having a "lord mayor" as civic head has been granted to two districts enjoying city status in Wales, Cardiff and Swansea. [1284] The Lord Mayor of Cardiff can style themselves "the Right Honourable" but is not a member of the Privy Council.

Under section 245A of the 1972 Act, the King in Council may by Royal Charter confer upon a county the status of a county borough. A petition can only be presented in this regard if the necessary resolution has been passed by "not less than two-thirds of the members voting".

All principal councils in Wales have an executive leader and cabinet, although the directly elected mayor model can be adopted by a council if there is public support in a referendum. [1285] Statutory arrangements for meetings of a council's executive are set out in the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 (as amended).

[1280] Local democracy in Wales: introduction to local government, Welsh Government. The community councils of three communities with city status – Bangor, St Asaph, and St Davids – are known as "city councils".

[1281] Local democracy in Wales: introduction to local government, Welsh Government.

[1282] Local Government Act 1972, section 20.

[1283] Local Government Act 2000, section 37.

[1284] By Letters Patent under the royal prerogative. For Swansea, see the London Gazette, 25 March 1982.

[1285] Local Government (Wales) Measure 2011, section 40. There is further provision in the Local Government (Wales) Measure 2009.

The current configuration of communities was established by the Local Government (Wales) Act 1994, [1286] while the framework was established by the 1972 Act. [1287]

Chapter 3 of Part 5 of the Local Government and Elections (Wales) Act 2021 allowed for the formation of corporate joint committees (CJCs) made up of two or more principal areas and with powers relating to economic well-being, strategic planning and the development of regional transport policies. There are currently four CJCs (which were established by Statutory Instrument), covering the whole of Wales.

For a fuller list of primary and secondary legislation which relates to local government in Wales, see Local democracy in Wales: legislation.

Franchise and elections

The franchise for local government (and Senedd) elections in Wales (which is a devolved matter) has been extended. As well as those eligible to vote in UK Parliament elections, qualifying foreign nationals may also register to vote in local and Senedd elections. [1288] A qualifying foreign national (including EU nationals) is someone who has permission to enter or stay in the UK, or who does not need such permission. Voting age for these elections has been reduced to all registered electors aged 16 or over on polling day. [1289]

Council elections in Wales are held every five years. [1290] The day of election for ordinary elections is fixed by law and is usually the first Thursday in May. [1291] Under section 37ZA of the 1972 Act (as amended), council elections cannot take place on the same day as those for the Senedd (the Welsh Parliament).

Council elections are held under first past the post, but under section 8 of the Local Government and Elections (Wales) Act 2021, local authorities in Wales have the ability to adopt the Single Transferable Vote as their electoral system. To date, no local authority has made the decision to change to this system.

The Local Elections (Principal Areas) (England and Wales) Rules 2006 prescribes the timelines for elections in Wales.

1286 Local Government (Wales) Act 1994, section 8. See also the Local Government (Wales) Measure 2011.
1287 Local Government Act 1972, section 27.
1288 Representation of the People Act 1983, section 2 (as amended by Local Government and Elections (Wales) Act 2021, section 2.
1289 As amended by the Local Government and Elections (Wales) Act 2021, section 2.
1290 Local Government Act 1972, section 26 (as amended by Local Government and Elections (Wales) Act 2021, section 14).
1291 Local Government Act 1972, section 37ZA (as amended by the Wales Act 2017, section 6).

Council tax and non-domestic rates

The statutory basis for council tax and non-domestic (business) rates in Wales is largely the same as that in England.[1292] The Local Government Finance (Wales) Act 2024 includes changes to the frequency of revaluations for business rates and for reliefs and discounts for business rates and council tax.

Council tax bands in Wales were last revalued in 2003.[1293] The next revaluation is due to take place in 2028.[1294]

The Valuation Tribunal for Wales hears local taxation appeals regarding council tax and business rates. On council tax, there is a right of appeal to the High Court on a point of law, and for business rates, to the Upper Tribunal (Lands Chamber).

Democracy and Boundary Commission Cymru

Section 2 of the Democracy and Boundary Commission Cymru etc. Act 2013 provided for the continued existence of Local Government Boundary Commission for Wales, which was renamed the Democracy and Boundary Commission Cymru by the Senedd Cymru (Members and Elections) Act 2024. This keeps under review the electoral arrangements for the 22 principal councils in Wales and for Senedd constituency boundaries.

The Commission will also host the Electoral Management Board for Wales, which is provided for in section 1 of the Elections and Elected Bodies (Wales) Act 2024.

The Public Services Ombudsman for Wales

The office of the Public Services Ombudsman for Wales (PSOW) was established under section 1 of the Public Services Ombudsman (Wales) Act 2005 (as amended by the Public Services Ombudsman (Wales) Act 2019). Under Schedule 1 to the 2005 Act, the Ombudsman is appointed by the King upon the nomination of the Senedd. The PSOW:

- examines complaints that Welsh councillors have breached their statutory Code of Conduct,[1295] and
- works with public bodies to improve public services and standards of conduct within local government across Wales
- investigates complaints about devolved public services

[1292] Slightly different rules apply to reliefs, thresholds for reliefs and appeal mechanisms.
[1293] The Council Tax (Valuation Bands) (Wales) Order 2003.
[1294] Council tax in Wales: Revaluation delayed to 2028, BBC News online, 15 May 2024.
[1295] The Local Authorities (Model Code of Conduct) (Wales) Order 2008.

Welsh Local Government Association

The (non-statutory) Welsh Local Government Association represents the interests of local government and "promotes local democracy in Wales".

Partnership Council for Wales

The statutory Partnership Council for Wales encourages joint working between the Welsh Government and local government in Wales. [1296]

6.3 Scotland

Scotland has 32 unitary local authorities and more than 1,000 community councils.

The devolved Scottish Government sets the framework for the accountability and standards of unitary authorities, councillors' roles, conduct and pay, local government revenue/capital/investments/accounting, council tax and non-domestic (business) rates. [1297] General grant funding is provided via an annual Local Government Finance (Scotland) Order under the authority of Schedule 9 to the Local Government Finance Act 1992. [1298]

Governance

The statutory basis of local government in Scotland is the Local Government (Scotland) Act 1973, which established many local authority powers and responsibilities, and the Local Government etc. (Scotland) Act 1994, which provided for the current system of 32 unitary authorities. Specific powers are in the Civic Government (Scotland) Act 1982 and Local Government and Planning (Scotland) Act 1982, while the Local Government in Scotland Act 2003 introduced a range of new duties for local authorities, including requirements to secure "best value". Compliance with this duty falls to the Controller of Audit and the Accounts Commission for Scotland under section 3 of the 2003 Act. [1299]

Local authorities in Orkney and Shetland have additional responsibilities under two pieces of legislation from the 1970s. The Zetland County Council Act 1974 provided for what is now Shetland Council to exercise jurisdiction as a port and harbour authority, control maritime works within a three-mile limit around Shetland's shores, [1300] establish a reserve fund for use "solely in the interests of Shetland or its inhabitants" and to enter into commercial

[1296] Government of Wales Act 2006, section 72.
[1297] Local government, Scottish Government website.
[1298] See, for example, The Local Government Finance (Scotland) Order 2023.
[1299] This is linked to section 102 of the Local Government (Scotland) Act 1973.
[1300] This was later extended to 12 miles under the Territorial Sea Act 1987.

enterprises connected with oil-related developments. The Orkney County Council Act 1974 made similar provision for what is now Orkney Council. [1301]

Section 21 of the Islands (Scotland) Act 2018 and The Additional Powers Request (Scotland) Regulations 2019 provide for "additional functions, duties or responsibilities" to be transferred to an authority following a request. A relevant local authority must "demonstrate reasonable cause" for making such a request, which the Scottish Ministers can "not unreasonably refuse to grant".

The statutory purpose of community councils was set out in section 51(2) of the Local Government (Scotland) Act 1973, while section 22 of the Local Government etc. (Scotland) Act 1994 made provision for their continuation. [1302] For more, see Model scheme for the establishment of community councils in Scotland.

Every unitary authority in Scotland is headed by a leader, who is normally elected by the party or coalition which forms the administration of that council. Each council also elects a civic head, who chairs council meetings and represents the council on civic and ceremonial occasions. Under section 4(7) of the Local Government etc. (Scotland) Act 1994, in the cities of Glasgow, Edinburgh, Aberdeen and Dundee, the civic head is known as the Lord Provost. The Lord Provosts of Edinburgh and Glasgow enjoy the right to style themselves "the Right Honourable" but are not members of the Privy Council. Other councils may choose their own title, excluding Lord Provost, and most are titled Provost. [1303] There is currently no power in Scotland to introduce directly elected mayors (or provosts).

By custom, the King is welcomed into the City of Edinburgh (in "your ancient and hereditary kingdom of Scotland") by the Lord Provost of that city, who offers the Monarch the keys of the city. [1304]

Under section 50A of the 1973 Act, a meeting of a local authority in Scotland "shall be open to the public except to the extent that they are excluded".

Franchise and elections

The franchise for local government elections in Scotland (which is a devolved matter) has been extended. As well as those eligible to vote in UK Parliament elections, qualifying foreign nationals may also register to vote. A "qualifying foreign national" is someone who has permission to enter or stay in the UK, or who does not need such permission. [1305] Voting age has been reduced to all

[1301] Both bills began as private legislation, although the Zetland bill was taken over by Liberal MP Jo Grimond as a private member's bill.
[1302] Find a Community Council, Community Councils Scotland website.
[1303] Local authorities: factsheet, Scottish Government website, 8 May 2017.
[1304] Holyrood Week, Royal Family website. The King replies: "I return these Keys, being perfectly convinced that they cannot be placed in better hands than those of the Lord Provost and Councillors of my good City of Edinburgh."
[1305] Representation of the People Act 1983, section 2(1) (as amended by the Scottish Elections (Franchise and Representation) Act 2020, section 1).

registered electors aged 16 or over on polling day.[1306] Prisoners sentenced to a term of imprisonment not exceeding 12 months can vote in Scottish local government elections.[1307] Under section 31A of the Local Government (Scotland) Act 1973, a person elected to a local authority who is the holder of "any paid office or employment or other place of profit in the gift or disposal of the authority" is disqualified from remaining a member unless they resign that office, employment or place of profit under subsection (2).[1308]

There are 1,226 elected councillors in Scotland, who are normally elected every five years.[1309] Under section 43(1) of the Representation of the People Act 1983, the day of the election is usually the first Thursday in May. The Local Governance (Scotland) Act 2004 changed the electoral system for Scottish local government elections from first past the post to the Single Transferable Vote. This was used for the first time at the 2007 local elections. Each council area is divided into a number of wards, and between two and five councillors are elected for each ward.[1310]

Council tax and non-domestic rates

As in England and Wales, the statutory basis for council tax in Scotland is the Local Government Finance Act 1992 (in this case Part II). There has not been a council tax band revaluation in Scotland since 1993. Since 2007, the Scottish Government has often "frozen" council tax across Scotland by compensating local authorities which agree to implement the freeze.[1311]

For a full list of legislation relating to council tax in Scotland, see Council Tax: legislation, and for non-domestic (business) rates, Non-domestic rates: legislation.

The Lands Tribunal for Scotland has statutory power to deal with disputes regarding valuations for rating on non-domestic premises.[1312] Appeals are heard by the Local Taxation Chamber of the Scottish Tribunals, which also handles council tax disputes.

Under the Concordat agreement of 2007 (as updated), the Scottish Government provides a block grant to local authorities which makes up

[1306] Representation of the People Act 1983, section 2(1A) (as amended by the Scottish Elections (Reduction of Voting Age) Act 2015, section 1).
[1307] Representation of the People Act 1983, section 3(1A) (as amended by the Scottish Elections (Franchise and Representation) Act 2020, section 5).
[1308] For perhaps the first breach under this provision, see Law over employment ends Labour councillor's time in office, Herald, 1 December 2024.
[1309] Local Government etc. (Scotland) Act 1994, section 5 (as amended by the Scottish Elections (Reform) Act 2020, section 2). This meant council elections would take place the year after those to the Scottish Parliament, which also moved to five-year terms under the same Act.
[1310] See also The Scottish Local Government Elections Order 2011.
[1311] Council tax frozen across Scotland, Scottish Government, 15 April 2024.
[1312] For the statutory basis of this and other functions see Specific statutory jurisdictions, The Land Tribunal for Scotland website.

around 85% of their net revenue expenditure, with the remainder coming mostly from local taxation, i.e. council tax.[1313]

Boundaries Scotland

Boundaries Scotland is an independent body in Scotland which was originally created as the Local Government Boundary Commission for Scotland under section 12 of the Local Government (Scotland) Act 1973.[1314] This carries out reviews of boundaries and electoral arrangements for Scottish local authorities as well as for the Scottish Parliament.

Scottish Public Services Ombudsman

The Scottish Public Services Ombudsman is the final stage for complaints about councils in Scotland, as well as devolved public services in general. The office was established under section 1 of the Scottish Public Services Ombudsman Act 2002. The Ombudsman is appointed by the King upon the nomination of the Scottish Parliament and access is direct rather than through an elected representative, as in the UK Parliament.

Councillor standards in Scotland are handled by the Ethical Standards Commissioner. There is a Councillors' Code of Conduct issued under section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000. This is overseen by The Standards Commission for Scotland, which is supported by the Scottish Parliament Corporate Body and whose members are appointed by the Scottish Ministers under section 8 of the 2000 Act. Under section 22, there is a right of appeal from the Commission to the sheriff principal and from the sheriff principal to the Court of Session.

Convention of Scottish Local Authorities

The non-statutory Convention of Scottish Local Authorities (COSLA) was established in 1975 and represents the views of Scotland's 32 councils to central government. It views itself as the successor body to the Convention of Royal Burghs, "once the oldest representative body in Europe".[1315]

1313 Local government revenue, Scottish Government website.
1314 It was renamed Boundaries Scotland by the Scottish Elections (Reform) Act 2020, section 28.
1315 About COSLA, COSLA website. Article 21 of the 1707 Treaty of Union had provided for the protection of the rights and privileges of Scotland's pre-Union royal burghs. The powers of the royal burghs were removed by the Local Government (Scotland) Act 1973.

6.4 Northern Ireland

Local government in Northern Ireland comprises 11 city, borough or district councils. [1316] All are unitary authorities. There is no system of parish or community councils.

Notably, local authorities in Northern Ireland do not carry out the same range of functions as those in the rest of the UK. The Northern Ireland Local Government Association has calculated that they have approximately one-sixth of the powers and spending that councils in Scotland, Wales and the Republic of Ireland possess. [1317]

This situation has its origins in a major reform of local government in the early 1970s (in response, inter alia, to allegations of discriminatory practices against the minority Catholic population). Major services previously provided by councils were transferred either to central government or to separate authorities. For example, the Education Authority, Housing Executive and Libraries NI deliver services commonly handled by councils in Great Britain.

Governance

The statutory basis of local government in Northern Ireland is the Local Government Act (Northern Ireland) 2014. This provided for 11 single-tier authorities known as "Local Government Districts". The boundaries were provided by the Local Government (Boundaries) Order (Northern Ireland) 2012. [1318] Some provisions of the Local Government Act (Northern Ireland) 1972 also remain in force, including a declaration on acceptance of office required under Schedule 1. [1319]

City and borough councils appoint a mayor and deputy mayor while district councils appoint a chair and vice-chair. [1320] The dignity of having a "lord mayor" as civic head has been granted to two districts enjoying city status in Northern Ireland, Belfast and Armagh. [1321] The Lord Mayor of Belfast can style themselves "the Right Honourable" but is not a member of the Privy Council.

Under section 79 of the 2014 Act, councils in Northern Ireland have a "general power of competence" (similar to that provided for in England and Wales under the Localism Act 2011), which means they can do anything not

[1316] The Interpretation Act (Northern Ireland) 1954, section 44, provides definitions for local government purposes.
[1317] Nilga Councillor Guide 2023, NILGA.
[1318] See also the Local Government (Boundaries) Act (Northern Ireland) 2008 and The District Electoral Areas (Northern Ireland) Order 2014.
[1319] This affirms that a councillor has "read and will observe" the Northern Ireland Local Government Code of Conduct for Councillors (as revised from time to time) "in the performance of" their functions as a councillor.
[1320] Local government facts and figures: Northern Ireland, LGiU website.
[1321] By Letters Patent under the royal prerogative. For Belfast, see "The Lord Mayor of Belfast", The Irish Times, 11 June 1892.

specifically prohibited by statute. Section 19 provides for three forms of governance:

- executive: either a cabinet-style executive or a streamlined committee executive
- committee: this can range from Belfast's over-arching strategic policy and resources committee to functional, joint and quasi-judicial committees
- prescribed arrangements: an alternative form which requires approval from the Northern Ireland Department for Communities

Most of Northern Ireland's councils have a committee structure. The d'Hondt system is the default method for appointing councillors to "positions of responsibility", although Schedule 1 to the 2014 Act permits two alternative methods (the Sainte-Laguë Method and the Single Transferable Vote).

Section 42 of the 2014 Act provides that a meeting of a council in Northern Ireland "must be open to the public except to the extent that they are excluded".

Franchise and elections

Under section 1 of the Elected Authorities (Northern Ireland) Act 1989, a person is entitled to vote in local government elections in Northern Ireland if on the date of the poll they are registered, not subject to any legal incapacity to vote (age apart), is a Commonwealth citizen, a citizen of the Republic of Ireland, a qualifying EU citizen or an EU citizen with retained rights, and aged 18 or over. [1322]

Unlike in Scotland and Wales, the local government franchise in Northern Ireland, as well as elections, is an excepted (reserved) matter. [1323]

Under section 11 of the Electoral Law Act (Northern Ireland) 1962 (as amended), [1324] 462 councillors are normally elected every four years on the first Thursday in May. Elections are conducted under the Single Transferrable Vote method set out in Schedule 5 to the 1962 Act (as amended by The Local Elections (Northern Ireland) Order 1985). As in the Northern Ireland Assembly, vacant council seats are filled by co-option rather than a by-election. [1325] Under section 3 of the 1989 Act, a person is not validly nominated as a candidate at a local election unless their consent to nomination includes a declaration against terrorism (the form of which is provided in Schedule 2). Section 6 provides for a breach of this declaration.

[1322] Section 2 of the Electoral Law Act (Northern Ireland) 1969 also makes provision for voting age.
[1323] Northern Ireland Act 1998, Schedule 2 para 12.
[1324] This was an Act of the former Parliament of Northern Ireland.
[1325] Electoral Law Act (Northern Ireland) 1962, section 11A. (as amended by section 3 of The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010). Those elected as independent councillors can provide a "list of substitutes".

Under section 13C of and Schedule 1 to the Representation of the People Act 1983 (as amended by section 4 of the Electoral Fraud (Northern Ireland) Act 2002), voters in Northern Ireland are required to produce one of nine forms of photographic identification (including the Electoral Identity Card) when voting at a polling station.

Under section 2 of the Electoral Law Act (Northern Ireland) 1971, annual registers of parliamentary and local electors in Northern Ireland are published.

Regional and district rates

The statutory basis for the regional and district rates in Northern Ireland is article 6 of the Rates (Northern Ireland) Order 1977.

Revenue from the regional rate (which is set annually by the Northern Ireland Executive) goes to the Northern Ireland Assembly, [1326] while that from the district rate (set annually by individual councils) goes to local authorities. [1327] The collection of rates is handled centrally by the Land and Property Services agency of the Northern Ireland Department of Finance. [1328]

The Northern Ireland Valuation Tribunal (NIVT) hears and determine appeals against new capital values for property in Northern Ireland in respect of domestic rates. In certain circumstances it is possible to appeal the decision of the NIVT to either the Northern Ireland Court of Appeal or The Lands Tribunal.

Local Government Boundaries Commissioner for Northern Ireland

The Local Government Boundaries Commissioner for Northern Ireland is appointed by the Department for Communities under section 50 of the Local Government Act (Northern Ireland) 1972 (as amended by section 2 of the Local Government (Boundaries) Act (Northern Ireland) 2008). The Commissioner independently reviews (every 10-15 years) the boundaries and names of the 11 local government districts in Northern Ireland.

Northern Ireland Public Services Ombudsman

Under section 3 of the Public Services Ombudsman Act (Northern Ireland) 2016, and on the nomination of the Northern Ireland Assembly, the King appoints a Northern Ireland Public Services Ombudsman. He or she also acts as the Northern Ireland Local Government Commissioner for Standards, in which capacity they investigate complaints against councils in Northern

[1326] The regional rate funds public services across Northern Ireland, including education, emergency hospitals, law and order, roads, social services and community development.
[1327] The district rate pays for local services including arts, events and recreation, building control, leisure/community centres, environmental health, tourism and waste management.
[1328] Local councils, indirect website.

Ireland and alleged breaches of the Northern Ireland Local Government Code of Conduct For Councillors. [1329]

Northern Ireland Local Government Association

The non-statutory Northern Ireland Local Government Association (NILGA) is the council led representative body for local authorities in Northern Ireland. [1330]

6.5 Greater London Authority/London Assembly

Section 1 of the Greater London Authority Act 1999 provided that there "shall be an authority for Greater London, to be known as the Greater London Authority" (GLA). Under section 2, the GLA consists of a directly elected Mayor of London and 25 Members of the elected London Assembly. Section 3 provides for Mayoral and Assembly elections every four years. The franchise is the same as that for local government elections in England. The Greater London Authority Rules 2007 contains the principal conduct rules for elections.

Section 30 sets out the functions of the GLA "exercisable by the Mayor acting on behalf of the Authority". The Mayor of London holds all executive power in the GLA, but certain key actions can be prevented by the London Assembly. It may amend the Mayor's annual budget or a Mayoral strategy on a two-thirds majority. [1331] Under section 48, the Mayor must hold two public People's Question Time events per year. The powers of the Mayor and GLA were extended by the Greater London Authority Act 2007. [1332]

6.6 Combined Authorities

Section 103 of the Local Democracy, Economic Development and Construction Act 2009 provided for the Secretary of State to establish Combined Authorities comprising two or more local government areas in England. Under Section 107A the Secretary of State may by order provide for there to be an elected mayor for each Combined Authority. As of December 2024, there are eleven such Authorities with elected mayors (each links to the relevant devolution deal):

1329 Northern Ireland Local Government Commissioner for Standards, NIPSO website. The Code of Conduct was approved by the Northern Ireland Assembly in 2014.

1330 About, NILGA website.

1331 No such rejection has ever taken place. The power to reject strategies was introduced by the Localism Act 2011, section 229.

1332 Provisions in the Police Reform and Social Responsibility Act 2011 and Public Bodies Act 2011 further extended the Mayor of London's authority.

- Cambridgeshire and Peterborough
- Greater Manchester
- Liverpool City Region
- North East
- South Yorkshire
- Tees Valley
- West of England
- West Midlands
- West Yorkshire
- East Midlands
- York and North Yorkshire

Devolution deals for each Combined Authority were implemented via Orders made under section 16 of the Cities and Local Government Devolution Act 2016. [1333] Under section 1 of that Act the Secretary of State must lay before each UK House of Parliament an annual report concerning devolution for all relevant areas in England.[1334]

Section 13 of the Elections Act 2022 provided for the Mayors of London and the Combined Authorities to be elected under the simple majority system (first past the post) rather than the Supplementary Vote. The franchise is the same as that for local government elections in England.

The Combined Authorities (Mayoral Elections) Order 2017 contains the detailed conduct rules for elections, while the Combined Authorities (Mayors) (Filling of Vacancies) Order 2017 makes provision for the holding of a by-election if a vacancy occurs.

The Levelling-up and Regeneration Act 2023 allowed Combined Authorities to be introduced with only upper-tier authorities as members. It also provided for the modification of titles of Mayors of new and existing Combined Authorities.[1335]

The UK government's December 2024 English Devolution White Paper said its goal for strategic authorities was:

1333 Some elements of the devolution deals do not concern statutory functions, and therefore do not require Orders. The deal documents themselves are not statutory.
1334 The most recent is Annual report on devolution 2022 to 2023, Department for Levelling Up, Housing & Communities, 26 March 2024.
1335 Levelling-up and Regeneration Act 2023, section 76. Alternative titles include "governor".

> institutions empowered with clear access to defined powers, enshrined permanently in law; and full devolution coverage across England, at the right geographies, and focused on growth being felt in every corner of the country.[1336]

The government intends to legislate so that Mayors can appoint and pay "Commissioners" who will support the delivery of key functions in each Combined Authority.[1337] A statutory "ministerial directive" will also compel areas to establish strategic authorities if they are unable to agree and prevent small devolution "islands" being left out of the process.[1338]

Since 2024, the Deputy Prime Minister has chaired meetings of the Mayoral Council, which exists to strengthen the relationships between central government, the Combined Authority Mayors and the Mayor of London.[1339]

"Local identity" is one of the criteria considered for future devolution deals in England.[1340] On 6 February 2025, the UK government announced that Norfolk and Suffolk, Greater Essex, Sussex and Brighton, Hampshire and Solent, Cheshire and Warrington, and Cumbria had been selected for the devolution priority programme. Those areas are expected to elect a mayor in May 2026.[1341]

6.7 Police and Crime Commissioners

Police and Crime Commissioners (PCCs) are directly elected politicians in England and Wales who are responsible for securing an "effective and efficient" police force in their area. They were created under section 1 of the Police Reform and Social Responsibility Act 2011. The first PCC elections took place in 2012. [1342] Under section 28 of the 2011 Act, PCCs are held to account by Police and Crime Panels, whose membership includes local councillors.

In Greater London, Greater Manchester, West Yorkshire, South Yorkshire and York and North Yorkshire, the directly elected mayors of each holds the responsibilities of a PCC. [1343]

The Police and Crime Commissioner Elections Order 2012 contains the principal conduct rules for running a Police and Crime Commissioner election in England and Wales, while the Police and Crime Commissioner Elections

1336 English Devolution White Paper: Power and Partnership: Foundations for Growth, CP 1218, p91.
1337 Mayors, UIN 20571, 17 December 2024.
1338 English Devolution White Paper: Power and Partnership: Foundations for Growth, CP 1218, paras 2.2.1. and 2.2.3.
1339 Deputy Prime Minister launches first-ever Mayoral Council, Ministry of Housing, Communities and Local Government, 10 October 2024.
1340 Council of the Nations and Regions, UIN 34623, 28 February 2025.
1341 English Devolution and Local Government, UIN HCWS418, 5 February 2025. Lancashire may be included later in 2025.
1342 The administration of PCC elections is not devolved so the franchise is the same as that for local government elections in England.
1343 Police and crime commissioners, gov.uk website.

(Welsh Forms) Order 2012 makes provision for Welsh language versions of election forms. The Police and Crime Commissioner Elections (Declaration of Acceptance of Office) Order 2012 prescribes the form of words that newly elected Commissioners are required to declare before assuming office.

7 Church and State

The United Kingdom has two established churches, in England and in Scotland. The term "establishment" means different things in each. For the 1970 Chadwick Commission, it meant "laws which apply to the Church of England and not to other churches",[1344] while in Scotland some dispute whether "the Kirk" is established at all, preferring to call it "the national church".[1345]

The Irish Church Act 1869 disestablished the Anglican church in Ireland on 1 January 1871, while the Welsh Church Act 1914 disestablished it in Wales on 31 March 1920.[1346] There remain 18 parishes of the established Church of England which are wholly or partly in Wales following local referenda under section 9(1) of the 1914 Act (as applied by section 8 of the Welsh Church (Temporalities) Act 1919).[1347]

The state has no oversight of other organised religions in the UK, although many are subject to charity law. Under section 3(1) of the Charities Act 2011, "the advancement of religion" is defined as a charitable purpose.

7.1 England

Maurice Gwyer, a judge and administrator, observed that:

> The Church [of England] has never been 'established' by Act of Parliament. Establishment has been a growth and not a creation, and dates from an age when Church and nation were indistinguishable one from another.[1348]

Similarly, in the 2004 case of *Aston Cantlow v Wallbank*, Lord Hope concluded that "the Church of England as a whole has no legal status or personality".[1349] Canon A 1 states that:

> The Church of England, established according to the laws of this realm under the [King's] Majesty, belongs to the true and apostolic Church of Christ; and,

[1344] Owen Chadwick, Church and State – Report of the Archbishops' Commission, London: Church Information Office, 1970, p2.
[1345] See Commons Library Insight, Is the Church of Scotland established?, 16 May 2024.
[1346] The Welsh Church (Temporalities) Act 1919 had postponed the original date of disestablishment.
[1347] Some ecclesiastical laws, however, continued to apply to the Church in Wales, so-called "vestiges of establishment". Examples include the right to marry in the parish church and the right to burial in the churchyard (see National Assembly for Wales Constitutional and Legislative Affairs Committee, Report on the Inquiry into Law-making and the Church in Wales, June 2013).
[1348] Viscount Cecil of Chelwood, Church and State – Report of the Archbishops' Commission on the Relations between Church and State Volume 2, London: Church Assembly, 1935, p171.
[1349] *Aston Cantlow v Wallbank* [2004] 1 AC 546.

> as our duty to the said Church of England requires, we do constitute and ordain that no member thereof shall be at liberty to maintain or hold the contrary.

Section 1 of Magna Carta (1297) confirmed that the English church "shall be free, and shall have all her whole Rights and Liberties inviolable".

The laws applicable to the Church of England are to be found in Acts of the UK Parliament, in Measures and Canons, in a variety of rules and regulations (often styled "soft law"), in the common law of England as revealed in the judgments of ecclesiastical and temporal courts, in custom, and in divine and natural law.[1350]

The Crown

The Acts of Supremacy 1534 and 1558 declared, respectively, the King to be "supreme head" and "Supreme Governor" of the Church of England. There is no existing statutory basis for the latter title, although section 2 of the House of Lords Precedence Act 1539 provides that the "Kings Majestie is justly and laufullie supreme he[a]d in Erthe, under God, of the Churche of Englande". The Monarch is also "Defender of the Faith", a title originally bestowed by the Pope on King Henry VIII but subsequently appropriated permanently.[1351]

Section 8 of the Act of Supremacy 1558 (which remains in force) provides for jurisdiction over the State "Ecclesiasticall and Spirituall" to be "united and annexed to the Imperiall Crowne of this Realme".[1352] Together with Canon A 7 (which acknowledges the King as the "highest power under God in this kingdom") this makes clear that the Sovereign has supreme authority "over all persons in all causes, ecclesiastical as well as civil".

The Coronation Oath Act 1688 provided for an oath to be administered at the coronation of William and Mary and all future monarchs. Section 3 provides the text of the oath, a section of which deals with the Church of England.[1353] Despite being statutory, the wording of this oath has changed several times since 1688, not always via legislation. The wording of the above section administered to King Charles III at his coronation in May 2023 read:

> Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England?

1350 Mark Hill, Ecclesiastical Law (4th edition), Oxford: Oxford University Press, 2018, p110.
1351 It formed part of The Accession Proclamation issued on 10 September 2022, and an earlier Proclamation of 28 May 1953 (London Gazette, 29 May 1953).
1352 See also the Act of Supremacy (Ireland) 1560, which remains in force.
1353 The oath was reiterated in the Act of Settlement (1700), section 2.

> And will you preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges as by law do or shall appertain to them or any of them? [1354]

In a preamble, the Archbishop of Canterbury spoke of seeking "to foster an environment in which people of all faiths and beliefs may live freely". [1355]

The Bill of Rights [1688] barred Roman Catholics from the throne of England. This was confirmed by section 3 of the Act of Settlement (1700), which also required all future monarchs to "join in communion with the Church of England as by law established". This requirement was extended to Scotland via the Union with Scotland Act 1706 (article 2). This does not necessarily mean membership of the Church of England. [1356] Canon B 15A provides the necessary pre-condition for being admitted to Holy Communion (those who "subscribe to the doctrine of the Holy Trinity, and who are in good standing in their own Church") but is not sufficient of itself to meet the statutory requirement "to join in communion with", which involves actually receiving communion in the Church of England.

Finally, the Schedule to the Accession Declaration Act 1910 provides the text of an oath to be taken by a monarch either at their first State Opening of Parliament or at their coronation, whichever occurs first (as stipulated by the Bill of Rights [1688]):

> I [here insert the name of the Sovereign] do solemnly and sincerely in the presence of God profess, testify, and declare that I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the Throne of my Realm, uphold and maintain the said enactments to the best of my powers according to law.

The King may direct by Royal Warrant that the Church of England's prayers for the Royal Family be altered. [1357]

Church appointments

Church Nominations Commission

The Crown Nominations Commission (CNC) is a church-based body, with the Archbishop of Canterbury as chair and the Archbishop of York as vice-chair. [1358] The Prime Minister's Appointments Secretary is an ex-officio and non-voting member. [1359] Membership of the CNC varies depending on the vacancy being considered.

1354 The Coronation Service – Order of Service, Royal Family website, p24.
1355 The Coronation Service – Order of Service, p23.
1356 William III was a Dutch Calvinist while George I was a Lutheran.
1357 Prayers for the Royal Family, Diocese of Ely website, 4 May 2023.
1358 By virtue of their respective offices, the Archbishop of Canterbury is styled Primate of All England and Metropolitan and the Archbishop of York Primate of England and Metropolitan. The former is entitled to sign his surname as "Cantuar" (the Latin for Canterbury) and the latter as "Ebor" (York).
1359 The Governance of Britain – Constitutional Renewal, Cmnd 7170, Ministry of Justice, March 2008, para 59.

While the Prime Minister remains constitutionally responsible for advising the King on appointments, he or she has no active role in the CNC's decision-making process, which produces a single name.[1360] The Prime Minister then asks the CNC's nominee if s/he is willing to become the new bishop. S/he may of course decline and then the Prime Minister has to ask the CNC for another name.

Legal constraints on advice

Section 18 of the Roman Catholic Relief Act 1829 provides that it is not lawful for "any person professing the Roman Catholic religion directly or indirectly to advise his Majesty" (or a Regent) "concerning the appointment to or disposal of any office or preferment in the Church of England". Anyone breaking this law shall be "deemed guilty of a high misdemeanor, and disabled for ever from holding any office, civil or military, under the Crown". This also applies to the Prime Minister's Secretary for Appointments.

Similarly, section 4 of the Jews' Relief Act 1858 provides that it is not lawful "for any Person professing the Jewish Religion, directly or indirectly, to advise [His] Majesty, [His] Heirs or Successors" (or a Regent) on Church of England appointments. As with the 1829 Act, it is a high misdemeanour to do so and would bar an offender from holding any office under the Crown.

In either case, the Prime Minister's advisory role could be delegated to another Minister of the Crown not similarly barred. The UK government is currently considering "how to address historic restrictions on Roman Catholics and Jews advising the Crown on appointments in the Anglican Church".[1361]

Diocesan bishops

The office of bishop and archbishop comprises:

- Temporalities: the proprietary rights that attach to the office, and
- Spiritualities: the duties attached to the office

Some of the process for the appointment of archbishops and bishops is determined under the Appointment of Bishops Act 1533 (nomination to and election by the relevant college of canons). Other components are covered by the Crown Nominations Commission Standing Orders and the Vacancy in See Committees Regulation 2024.

There are three main stages, each of which consists of several elements:

[1360] Archbishop of Canterbury appointment process, Cabinet Office, 15 November 2024.
[1361] HL Deb 19 March 2025 Vol 844 c1250 [Church of Scotland (Lord High Commissioner) Bill].

1. Nomination

- Vacancy in See Committee meets and consults on the needs of the diocese
- Crown Nominations Commission recommends one name
- The archbishop reports the name to the Prime Minister
- The Prime Minister conveys the name to the Monarch
- Nomination by the Crown

2. The person nominated becomes bishop of the diocese

- Crown grants a licence (congé d'elire) and a letter missive naming the person to be elected by the college of canons of the cathedral[1362]
- The college of canons signifies the election to the Crown and the Metropolitan. The King then assents to the election and orders the Metropolitan to confirm it
- Confirmation of Election by or on behalf of the metropolitan of the province; the bishop or archbishop receives the spiritual jurisdiction and become the bishop of the diocese

3. The bishop takes up office

- Consecration by archbishop of the relevant province (if not already in episcopal orders)[1363]
- Homage to the Crown (see below); the temporalities of the see are restored[1364]

If the bishop is eligible as one of 26 Lords Spiritual, then their homage has to take place before a writ of summons to the House of Lords is issued (see Section 4.6).

Archbishop of Canterbury

For an Archbishop of Canterbury, the process is slightly different. As the Archbishop cannot chair the CNC, the Prime Minister appoints a communicant lay member of the Church of England as chair.[1365] The Vacancy in See Committee in the Diocese of Canterbury also meets to produce a Statement of

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1362 One of four bodies established for each cathedral under the Cathedrals Measure 1999, the others being the Council, the Chapter and the corporate body.

1363 Upon translation (the transfer of a bishop from one see to another) there is no consecration.

1364 Working with the Spirit: choosing diocesan bishops: A review of the operation of the Crown Appointments Commission and related matters, GS 1405, London: Church House Publishing, 2001, p10.

1365 General Synod Standing Order 138(6). See, for example, Appointment of Chairman of the Crown Nominations Commission for Canterbury, Prime Minister's Office, 10 Downing Street, 16 December 2024.

Needs (the diocese's assessment of the qualities and skills required of the next occupant) and elect three members of the CNC.[1366]

Voting members of the CNC will include five representatives from the Churches of the Anglican Communion in five global regions (Asia, The Americas, Africa, Europe, and Oceania) and, in a non-voting capacity, its Secretary General. At least two of the five voting members must be female, and a majority of voting members' ethnicity must be global majority heritage.[1367]

Names are suggested to the CNC from a wide variety of sources, including the general public. Through prayer, discussion and voting, a single name is agreed by at least two-thirds of the total number of the voting members of the CNC in a secret ballot. They may also agree the name of a second candidate, but with that candidate's name kept in reserve in case it "becomes impossible to appoint" the first preference.[1368] If the nominee declines, then the Prime Minister asks the CNC for the name of another candidate (which will be the second candidate if one has been agreed). The Prime Minister could hypothetically exercise their discretion by rejecting the first nominee, in which case they would also ask the CNC for its second, or another, name. Once the King approves the chosen candidate, the Prime Minister's Office announces the name of the Archbishop-designate.[1369]

The election of an archbishop is signified by the Crown to the other archbishop and at least two other bishops who are commissioned to carry out the confirmation of election.[1370]

By custom, a new Archbishop of Canterbury is appointed a member of the Privy Council following their Confirmation of Election.[1371] The Archbishop pays Homage to the Sovereign at their coronation.[1372]

Resignation of bishops and archbishops

Under section 1 of the Bishops (Retirement) Measure 1986, if a diocesan or suffragan bishop wishes to resign they tender their resignation to the archbishop in a written instrument in the prescribed form. If the archbishop decides to accept, they shall within 28 days of receiving the instrument, by endorsement declare the bishopric vacant as from a specified date. Under section 2, not less than six months before the date on which a person holding the office of diocesan or suffragan bishop is required to vacate his office in accordance with section 1 of the Ecclesiastical Offices (Age Limit) Measure 1975, the archbishop shall by written instrument in the prescribed form

1366 General Synod Standing Order 137(1).
1367 General Synod Standing Order 139(2A).
1368 General Synod Standing Order 136(3A).
1369 Archbishop of Canterbury appointment process, Cabinet Office, 15 November 2024. See also Appointing a new Archbishop of Canterbury, Church of England website.
1370 Appointment of Bishops Act 1533, section IV. In practice, eight other bishops are named in the Crown's commission in addition to the archbishop of the other province. The two archbishops are appointed via Letters Patent.
1371 See the Orders in Council dated 12 February 2013 and 14 March 2013.
1372 The Coronation Order of Service, Royal Family website, p37.

declare the bishopric vacant. Section 3 of the 1986 Measure provides for the retirement of a bishop in the case of disability.

Under section 4, where an archbishop wishes to resign he or she tenders their resignation to the King in a written instrument in the prescribed form and the King in Council may by Order in Council declare the archbishopric vacant as from a date specified in the Order (which shall not be earlier than the date of the Order).[1373] Under section 5, not less than six months before the date on which an archbishop is required to vacate his office in accordance with the 1975 Measure, the archbishop must tender his resignation to the King in a written instrument, after which the process is the same as in section 4, although the Monarch can declare the vacancy at a later date. Under section 2 of the 1975 Measure, if the King considers there are "special circumstances" then he may authorise the continuance in office of the retiring archbishop for a period not exceeding one year.[1374] Symbolically, an outgoing Archbishop of Canterbury lays down his bishop's crozier on the altar in the chapel at Lambeth Palace to mark the end of their tenure.[1375]

Section 14A of the Dioceses, Pastoral and Mission Measure 2007 provides that either archbishop may by an instrument "made under hand" delegate to the other archbishop, or a diocesan, suffragan or assistant bishop, certain functions "when the archbishop is unable to exercise them".

Bishops and archbishops can also be removed from office via an Order in Council issued under section 24 of the Clergy Discipline Measure 2003.

By custom, a former Archbishop of Canterbury is created a life peer upon their retirement.

Suffragan bishops

Under section 1 of the Suffragan Bishops Act 1534, as amended by the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010, a diocesan bishop is required to submit one name to the Crown for appointment directly by Letters Patent. Suffragan bishops assist the bishop of each diocese.

Bishops in foreign countries

Section 1 of the Bishops in Foreign Countries Act 1841 provides that the Archbishops of Canterbury and York may consecrate British subjects or foreigners to be bishops in foreign countries, without the royal licence for election.

1373 See, for example, the Order in Council dated 18 December 2024. An Archbishop of Canterbury may initially indicate to the King their intention to resign without immediately tendering the necessary written instrument. Rowan Williams had announced his resignation in March 2012. This Order declared the archbishopric vacant as of 1 January 2013.

1374 This last occurred in 2002 when Queen Elizabeth II allowed George Carey to remain in office as Archbishop of Canterbury until her Golden Jubilee.

1375 Justin Welby's final day as Archbishop of Canterbury, Archbishop of Canterbury website, 6 January 2025.

Benefices and canonries

The Crown appoints 210 benefices on the advice of the Prime Minister, and 442 where the Lord Chancellor is the appointing authority, either as the sole patron or in conjunction with other patrons (including the Crown). Certain provisions of the Patronage (Benefices) Measure 1986 now apply to Crown appointments as a result of amendments made by the Crown Benefices (Parish Representatives) Measure 2010.

There are 38 canonries across nine cathedrals, Westminster Abbey and Windsor. Eight were in 2024 currently suspended. All but two are appointed by the Crown, either on the advice of the Prime Minister or the Lord Chancellor acting alone. [1376]

If a Lord Chancellor is a Catholic, an Order in Council passed under section 2 of the Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974 can transfer his or her ecclesiastical functions to the Prime Minister. If the Prime Minister is also a Catholic, constitutional advice on the exercise of patronage can be given by another Minister of the Crown.

If the Chancellor of the Duchy of Lancaster is a Catholic or a Jew, the Clerk of the Council of the Duchy takes his or her place in advising the King on certain benefices in the Church of England of which he is patron. [1377]

Deans

The Crown appoints 28 of 44 cathedral deans. Section 5(9) of the Cathedrals Measure 2021 provides that:

> [w]here the constitution provided, immediately before the commencement of this section, for the appointment of the dean to be made by [His] Majesty, the constitution must continue so to provide.

Chaplains

Military chaplains are commissioned officers under King's Regulations subject to the approval of the appropriate denominational authority. For the Church of England, chaplains receive authority to exercise ministry from the relevant diocesan bishop. [1378] The Archbishop of Canterbury commissions and licenses the Bishop to the Forces.

Under section 7 of the Prisons Act 1952 every prison establishment in England and Wales must have a chaplain who has to be a clergyman of the Church of England. Under section 53 this applies to the Church in Wales for prisons in Wales.

Sede vacante patronage

[1376] In two cases the Crown takes turns with the (arch)bishop.
[1377] HC Deb 24 May 1976 Vol 912 c28 [Ecclesiastical Patronage].
[1378] See also the Army Chaplains Act 1868.

Where a right of patronage belongs to a diocesan bishop or archbishop, but the bishopric is vacant when the right of patronage falls to be exercised, the Crown has the right to exercise it. This is known as sede vacante patronage. The position was modified by section 2 of the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010. Unless the Crown gives notice under section 2(3), the patronage is exercised on its behalf by the "relevant bishop", usually the bishop who is exercising functions in the diocese during the vacancy (sometimes called an "acting bishop"). In the case of each vacancy in a diocesan see since section 2 of the 2010 Measure came into force, the Crown has indicated that it does not intend to give notice.

Oath of allegiance and homage

Bishops, priests and deacons of the Church of England are required to swear an oath of allegiance under section 4 of the Clerical Subscription Act 1865 (as amended). Canon 13 states that every person "to be instituted, installed, licensed or admitted to any office in the Church of England" shall take the "Oath of Allegiance in the form following":

> I, A B, do swear that I will be faithful and bear true allegiance to His Majesty King Charles III, his heirs and successors, according to law: So help me God.

Priests are not employees but "office holders", and the money they receive is a stipend rather than a salary.[1379]

A new bishop or archbishop also makes Homage to the Crown following his or her appointment by kneeling before the King, who sits in a chair. By the King's side is the Lord Chancellor, who administers the oaths with the Clerk of the Closet in attendance. S/he places the palms of their hands together as if in prayer. The King takes them between his own. The bishop then repeats, after the Lord Chancellor, the words of the Homage:

> I [NAME] having been elected, confirmed and consecrated Bishop of [...] do hereby declare that Your Majesty is the only supreme governor of this your realm in spiritual and ecclesiastical things as well as in temporal and that no foreign prelate or potentate has any jurisdiction within this realm and I acknowledge that I hold the said bishopric as well the spiritualities as the temporalities thereof only of Your Majesty and for the same temporalities I do my homage presently to Your Majesty so help me God.
> God save [King Charles].[1380]

The King then issues Letters Patent and Writs restoring the temporalities of the vacant see to the new bishop or archbishop.[1381] The Crown Office prepares the briefing for the homage ceremony as well as organising the timetable and overseeing the process of election and appointments of diocesan bishops.[1382]

1379 *Sharpe and the Bishop of Worcester (in his corporate capacity)* [2015] EWCA Civ 399.
1380 Bishops And Homage, A Venerable Puzzle blog, 21 July 2020.
1381 Because the right to a writ of summons to Parliament is a franchise attached to the temporalities of the see, the bishop must do homage before a writ is issued. Those paying homage include the Bishop of Sodor and Man.
1382 The Crown Office Guide, Ministry of Justice, 2021.

In section 8(2) of the Regency Act 1937 includes "the receiving of any homage required to be done" as among the royal functions to be carried out by a Regent. Homage has on occasion been paid virtually.[1383]

Church governance

Canon A 6 provides that:

> The government of the Church of England under the [King's] Majesty, by archbishops, bishops, deans, provosts, archdeacons, and the rest of the clergy and of the laity that bear office in the same, is not repugnant to the Word of God.

Under the Church of England Assembly (Powers) Act 1919, also known as the "Enabling Act", the General Synod (as established in 1970 under the Synodical Government Measure 1969) is empowered to pass legislation which forms part of the public law of England (and Wales).[1384] The responsibility for initiating Church legislation rests with the General Synod. For example, the Bishops and Priests (Consecration and Ordination of Women) Measure 2014 permitted female priests and bishops.[1385]

General Synod

The General Synod consists of three Houses: Bishops, Clergy and Laity.[1386] Its Legislative Committee is drawn from all three Houses. Synods last a maximum of five years.[1387] The General Synod – of which the Archbishops of Canterbury and York are joint presidents – is required to meet on at least two occasions each year, at Church House in February and at the University of York in July.

Orders in Council order that the Convocations of the Provinces of Canterbury and York be dissolved and that the Lord Chancellor cause writs to issue. The writs, in the name of the Sovereign, command the archbishops to dissolve their respective convocations thus triggering dissolution of the General Synod.[1388] Another Prerogative Order directs the Lord Chancellor to issue writs calling together new Convocations.[1389] Dissolution can be postponed by an Order in Council, as it was in 2020 due to the Covid pandemic.[1390]

1383 The Archbishop of York pays homage to The Queen, Royal Family website, 21 July 2020.

1384 See also the Interpretation Measure 1925 (No. 1).

1385 For concerns and disputes regarding such appointments, an Independent Reviewer acts in an ombudsman-style role under The Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations 2014.

1386 A diocesan synod also comprises a house of bishops, a house of clergy and a house of laity.

1387 This is the maximum under the Church of England Convocations Act 1966 and the Synodical Government Measure 1969, Schedule 2, para 3(2). In fact, a Synod usually lasts less than five years.

1388 Church of England Convocations Act 1966. Dissolution can be postponed via Order in Council, as it was in 2020 due to the Covid pandemic (see the Coronavirus Act 2020, section 84). The form of writs dissolving or summoning the convocations are in the Schedule to The Crown Office (Forms and Proclamations Rules) Order 1992.

1389 See, for example, Orders in Council dated 9 June 2010.

1390 See Section 84 of the Coronavirus Act 2020.

Since 1970, the Sovereign has inaugurated and addressed the opening session of the General Synod every five years, following diocesan elections.[1391]

The Archbishops' Council was established under section 1 of the National Institutions Measure 1998. It acts as a national executive of the Church of England and is accountable to the General Synod but not subordinate. The Council's chief executive is known as Secretary General.

Church Measures

Once approved by the Synod, a Measure is first submitted to Parliament's statutory Ecclesiastical Committee (see below). This Committee decides whether a Measure ought to proceed and then communicates its report in draft to the Legislative Committee of the General Synod. If the Legislative Committee decides to proceed, the text of the Measure and the report of the Ecclesiastical Committee are laid before Parliament. A resolution for presenting the Measure to the King for Royal Assent may then be moved. A Measure which has received Royal Assent has the force and effect of an Act of Parliament. A Measure may repeal or amend an Act of Parliament.[1392]

The Legislative Reform Measure 2018 makes provision for removing or reducing burdens resulting from ecclesiastical legislation and for facilitating consolidations of ecclesiastical legislation. Provision is made under the Channel Islands (Church Legislation) Measure 1931 and The Synodical Government (Channel Islands) Order 1970 for Measures to be brought into effect in the Channel Islands (the Crown Dependencies of Guernsey and Jersey) with any necessary modifications.

Where a Measure affects the interests or prerogatives of the Crown, King's Consent is required as it is for a bill. Neither the Ecclesiastical Committee nor either House of Parliament has power to amend a Measure, but either House can reject it by disagreeing to the motion for a resolution.[1393]

By convention, the government does not legislate for the Church of England without its consent.[1394] Also by convention, the Church of England can "request" that the government introduce primary legislation in relation to Church matters.[1395]

Canon

The General Synod has a general power (transferred from the Convocations by Canon under Schedule 1 to the Synodical Government Measure 1969) to

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1391 See, for example, A speech by The Queen at the Inauguration of the General Synod, 2015, Royal Family website, 24 November 2015.

1392 Erskine May, para 31.48. It is common for a Measure to provide for the making of secondary legislation which takes the form of a Statutory Instrument. They have the Subject heading "Ecclesiastical Law, England" but are part of the general series of SIs.

1393 For a comprehensive guide to Measure procedure, see Lords Companion, paras 8.231-8.236.

1394 House of Commons, First Standing Committee on Delegated Legislation, 20 October 2005, c4.

1395 The Lords Spiritual (Women) Act 2015 (Extension) Bill was introduced in July 2014 following such a request from the Church of England (New legislation will increase representation of female bishops in the House of Lords, Cabinet Office, 30 July 2024).

make Canons which are legally binding on the clergy of the Church of England.[1396] No canon may be made which is contrary or repugnant to the royal prerogative, or to the "customes lawes or statutes of this Realme".[1397] However, this prohibition does not apply in the case of canons made under section 1 of the Church of England (Worship and Doctrine) Measure 1974. These are "with respect to worship in the Church of England" and other matters prescribed by the Book of Common Prayer, a key source of the Church's doctrine.[1398] As this example indicates, a parent Measure may render lawful the making of particular provision by canon.

Canons are mainly to do with the work of the clergy and are not subject to parliamentary approval.[1399] Instead, they are submitted to the King for Royal Assent and Licence via the Lord Chancellor/Secretary of State for Justice.

Royal peculiars

The royal peculiars are Church of England parishes or churches which are exempt from the jurisdiction of the diocese and the province in which they lie, and are instead subject to the Crown. Peculiars include Westminster Abbey and St George's Chapel, Windsor.[1400] They answer to the Sovereign, or to the Sovereign through the Lord Chancellor,[1401] and are governed by reference to their own ancient statutes or rules and not the Cathedrals Measure 1999 or Ecclesiastical Jurisdiction Measure 1963.

Parochial Church Councils

Church Representation Rules provide for church electoral rolls, annual meetings, Parochial Church Councils (PCCs), deanery synods and diocesan synods, as well as the House of Laity of the General Synod.[1402]

Section 2 of the Parochial Church Councils (Powers) Measure 1956 provides that it is the duty of a minister and PCC to "consult together on matters of general concern and importance to the parish".[1403] Under section 3, every PCC is a body corporate.[1404] The constitution of a PCC is prescribed by the Church Representation Rules, Part 9 (Section B).

1396 Canons are not, of their own force, binding on the laity.

1397 Submission of the Clergy Act 1533, section III.

1398 The Prayer Book (Alternative and Other Services) Measure 1965 had already permitted deviation from the Book of Common Prayer, although permanent form of worship remained as prescribed by the 1662 Prayer Book under the Act of Uniformity 1662 and Clerical Subscription Act 1865.

1399 *Middleton and his Wife v Croft* [1766] 94 ER 1059. Canon are directly binding on the clergy alone.

1400 One royal peculiar is located at the Palace of Holyroodhouse in Edinburgh.

1401 For the most recent review, see The Royal Peculiars: Report of the Review Group set up by Her Majesty The Queen, 2001.

1402 These Rules form Schedule 3 to the Synodical Government Measure 1969.

1403 Many PCCs are registered charities, as the "advancement of religion" is a charitable purpose as defined in section 3 of the Charities Act 2011.

1404 The legal status of a PCC was considered by the House of Lords in *Parochial Church Council v Wallbank* [2003] UKHL 37. Lord Nicholls concluded that "their constitution and functions lend no support to the view that they should be characterised as governmental organisations", i.e. a public authority under the Human Rights Act 1998. The *Wallbank* case concerned Chancel Repair Liability, under which some landowners and homeowners in England and Wales are liable for funding repairs Anglican churches.

Some responsibilities of PCCs are handled by elected churchwardens, of which there must be two in every parish under section 1 of the Churchwardens Measure 2001. They are ex-officio members of the PCC and its standing committee.

Parliament and the Church of England

Sittings in both Houses of Parliament begin with prayers.[1405] The Speaker's Chaplain (an Anglican) usually reads the prayers in the Commons,[1406] while in the Lords a bishop (Lord Spiritual) usually does so. The official proceedings of the Lords cannot begin until prayers have been read.[1407]

At the beginning of a new Parliament, the Archbishop of Canterbury leads a service of blessing and gives an address to new members of both Houses.[1408] By custom, the archbishop normally meets with the Prime Minister about twice a year.[1409]

A Church of England Parliamentary Unit was established in 2008. This supports the work of the church in Parliament, including the Lords Spiritual and the Second Church Estates Commissioner in the House of Commons.

Lords Spiritual

The Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester and 21 further bishops are entitled ex officio to sit in the House of Lords (see Section 4.6).

Ecclesiastical Committee

Under section 2 of the Church of England Assembly (Powers) Act 1919 the Speaker nominates 15 Members of the House of Commons to serve on the Ecclesiastical Committee. Fifteen Members of the House of Lords are nominated by the Lord Speaker. By practice, the committee chair is a former holder of high judicial office.

Church Commissioners

The Church Commissioners Measure 1947 merged two bodies – Queen Anne's Bounty (established in 1703) and the Ecclesiastical Commissioners (created in 1836) – to form the Church Commissioners,[1410] a body which administers the assets of the Church of England, today invested in stock market shares and property, to produce revenue to support the church's ministry. The National Institutions Measure 1998 reduced the number of Commissioners from 95 to 33. Under Schedule 1 to the 1947 Measure, the Church Commissioners include

[1405] Prayers, UK Parliament website.
[1406] The Speaker's Chaplain also presides at the weekly services of Holy Communion which are celebrated in Parliament's chapel, St Mary Undercroft.
[1407] The text of the prayers read in the House of Lords are printed in the Lords Companion, Appendix I.
[1408] This service usually takes place at St Margaret's Church, Westminster.
[1409] Frank Cranmer, John Lucas and Bob Morris, Church and State: A mapping exercise, Constitution Unit, April 2006, p21.
[1410] See the Queen Anne's Bounty Act 1714 and the Ecclesiastical Commissioners Act 1836.

the First Lords of the Treasury (the Prime Minister), the Lord President, the Lord Chancellor, the Speaker, the Lord Speaker, the Secretary of State for Culture, Media and Sport, the Archbishops of Canterbury and York and the Church Estates Commissioners.

Under Section 12 of the 1947 Measure, the Commissioners must lay their annual report and accounts before Parliament. The Church Commissioners transact their business through an executive body known as the Board of Governors.

Under section 12 of and Schedule 2 to the Mission and Pastoral Measure 2011, the Judicial Committee of the Privy Council hears appeals against pastoral schemes made by the Church Commissioners.

Church Estates Commissioners

Under section 1 of the Ecclesiastical Commissioners Act 1850, the King (by Warrant under the royal sign manual) appoints two lay members of the Church of England called the First and Second Church Estates Commissioners. The Third Church Estates Commissioner is appointed by the Archbishop of Canterbury. Together they represent the Church Commissioners in the General Synod. By convention, the Second Church Estates Commissioner is a senior backbench MP from the governing party. Since 1926, the Second Church Estates Commissioner has been regarded as the parliamentary spokesman for the Church Commissioners. [1411]

The Privy Council and the Church of England

As already stated, under section 4 of the Bishops (Retirement) Measure 1986, an Order in Council is required to declare an archbishopric vacant.

Under section 11 of the Dioceses, Pastoral and Mission Measure 2007, the King in Council has, on receipt of a petition from the bishop of the diocese concerned, the power to change the name of any diocesan or suffragan see.

The Burial Acts 1852 to 1885 provide for the regulation of some Church of England burial grounds. Under section 1 of the Burial Act 1854, the King in Council may (following ministerial advice) “restrain” the opening or new burial grounds and order discontinuance of burials in specified places via Order.

The Judicial Committee of the Privy Council can hear appeals from certain ecclesiastical courts (see Section 8.3).

[1411] G. F. A. Best, Temporal Pillars, Cambridge: Cambridge University Press, 1964, pp418-9. It is now established that s/he can be asked and answer questions on more general matters relating to the Church of England.

Legatine powers

The Archbishop of Canterbury also exercises legatine powers under legislation originating in the Ecclesiastical Licences Act 1533. The system is administered on behalf of the archbishop by a Faculty Office operating under the supervision of the Master of the Faculties (who has in the past been a High Court judge).[1412] The commonly active elements of this jurisdiction include three areas:

- Special marriage licences: these may be issued in England and Wales to authorize the solemnisation of marriage in circumstances not permitted under normal Church of England and Church in Wales requirements, for example where parties wish to marry outside their parishes of residence.

- Notaries Public: these are legal officers of ancient standing. Their functions include the preparation and execution of legal documents for use abroad, attesting the authenticity of deeds and writings, and "protesting" bills of exchange. Under the Courts and Legal services Act 1990, the Master of Faculties (who is Dean of Arches) may make Rules for the regulation of the Notarial profession in England and Wales and in some overseas jurisdictions[1413]

- Lambeth Degrees: the ability of the Archbishop to award degrees is also founded on the 1533 Act. The degrees are recognized in law as full degrees. In practice, they are awarded (sometimes after examination) to those – not necessarily Anglicans – who have distinguished themselves in the service of the Christian Church.

Under section X of the 1533 Act, during a vacancy in the See of Canterbury, its dean and chapter (as guardian of the spiritualities) are empowered to grant all licences and dispensations throughout both provinces as may be granted by the Archbishop.

The Crown Office prepares Letters Patent for Lambeth degrees, registration of overseas notarial faculties granted by the Archbishop of Canterbury and collection of fees.[1414]

7.2 Scotland

The Papal Jurisdiction Act 1560 declared that the Pope had no jurisdiction in Scotland,[1415] while the Church Jurisdiction Act 1567 (another Act of the Old

[1412] See also The Faculty Jurisdiction Rules 2015.
[1413] Overseas Jurisdictions, The Faculty Office website.
[1414] The Crown Office Guide, Ministry of Justice, 2021.
[1415] The current Church of Scotland "is in historical continuity with the Church of Scotland which was reformed in 1560" (Article III).

Scottish Parliament) confirmed the status of the Church of Scotland, whose liberties were ratified in 1592.[1416]

The 1647 General Assembly approved the Westminster Confession of Faith, which contained "the sum and substance of the Faith of the Reformed Church". Under the Confession of Faith Ratification Act 1690, the Church of Scotland's government "is Presbyterian, and is exercised through Kirk Sessions; Presbyteries, and General Assemblies".[1417]

The Union with Scotland Act 1706 and Union with England Act 1707 – the Acts of Union – preserved the Church of Scotland, while a separate Act of the Old Scottish Parliament, the Protestant Religion and Presbyterian Church Act 1707, which was passed before the Union with England Act 1707 and reiterated within it and the equivalent English Act, also guaranteed its status and provided for what became known as the "Scottish Oath" (see Section 3.5).

Church of Scotland Act 1921

Negotiations between the Church of Scotland and Free Church of Scotland (formed following the Disruption of 1843) eventually produced Articles Declaratory of the Constitution of the Church of Scotland. This "constitution" asserted the Church's independence from the state in spiritual matters and formed a Schedule to the Church of Scotland Act 1921,[1418] which recognised them "as lawful". Under the Articles, the Church of Scotland has:

> the right and power subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government, and discipline in the Church, including the right to determine all questions concerning membership and office in the Church, the constitution and membership of its Courts, and the mode of election of its office-bearers, and to define the boundaries of the spheres of labour of its ministers and other office-bearers.[1419]

Article III of the Declaratory Articles describes the Kirk as the "national Church representative of the Christian Faith of the Scottish people".

A second statute, the Church of Scotland (Properties and Endowments) Act 1925, transferred the secular endowment of the church to a new body called the General Trustees. Together, these measures satisfied the majority of the United Free Church that the causes of the 1843 Disruption had finally been resolved and it was reunified with the Church of Scotland in 1929.

Despite the 1921 Act, the Church of Scotland's special status continued to be recognised in several Acts of Parliament. Under section 8 of the Marriage (Scotland) Act 1977, only Church of Scotland ministers are automatically entitled to solemnise a religious marriage in Scotland; under section 3 of the Prisons (Scotland) Act 1989, Church of Scotland ministers are appointed chaplains to each Scottish prison; and under section 31 of the Local

1416 General Assembly Act 1592.
1417 See also Church Constitution, Church of Scotland website, Article II.
1418 The 1921 Act commenced in 1926 via an Order in Council made under section 4.
1419 Church Constitution, Article IV.

Government etc. (Scotland) Act 1994 representatives of the Church of Scotland sit on education authority committees.

In the *Percy* case, the House of Lords held that the provisions of the 1921 Act privileged the jurisdiction of the Church of Scotland only in so far as exclusively spiritual, rather than civil, matters were concerned (section 3 of the Act provides as much). The Church's internal disciplinary processes are, therefore, susceptible to legal challenge in civil proceedings.[1420]

The General Assembly

The General Assembly of the Church of Scotland has mixed functions: it is a legislature, a court (at least vestigially[1421]) and an executive.[1422] In 1639 it was enacted that General Assemblies take place annually.[1423]

The ordinances of the Church are known as Acts of Assembly. Under the Barrier Act 1697, "overtures" (that is, proposals for Acts) "which are to be binding Rules and Constitutions to the Church" are referred for a process of approval and ratification to presbyteries. They may be subsequently adopted as Acts of Assembly only when they have received majority approval. Acts of the General Assembly do not require any UK Parliament oversight. The Solicitor General for Scotland has certain ceremonial duties in relation to the General Assembly.[1424]

The holder of the office Moderator of the General Assembly of the Church of Scotland – which changes every year – represents the Church on state occasions and makes an annual visit to the UK Parliament (known as "London Week"), in which the Church of Scotland has no automatic representation. During their visit they preach at the Chapel of St Mary Undercroft and meet with the Prime Minister, Secretary of State for Scotland and other party leaders, Scottish MPs and parliamentarians. In 1953 and 2023, the Moderator was the only non-Anglican figure to have a significant speaking role at the coronations of Queen Elizabeth II and King Charles III.

The first item of business each week in the Scottish Parliament is Time for Reflection, which, unlike prayers in the House of Commons, is ecumenical. The Moderator has often delivered Time for Reflection.

1420 *Percy (AP) (Appellant) v. Church of Scotland Board of National Mission (Respondent) (Scotland)* [2005] UKHL 73.

1421 It acted until 1988 as the final court of appeal in discipline cases, but since then most appeals have been heard by a Judicial Commission. For a recent exception, see Frank Cranmer, Human Sexuality and the Church of Scotland: Aitken et al v Presbytery of Aberdeen, Ecclesiastical Law Journal 11:3, September 2009, pp334-39. Article VIII of the Declaratory Articles provides that the Church of Scotland "has the right to interpret these Articles".

1422 See Regulations of the General Assembly, Church of Scotland website.

1423 Acts of the General Assembly 37.

1424 Lord Advocate: role and functions, Scottish Government website, 23 October 2024.

The Crown

The King is "an ordinary member" of the Church of Scotland rather than its Supreme Governor, as in England.[1425] While at Balmoral, the King and other members of the Royal Family take "divine service" at Crathie Kirk.[1426]

By convention, the Sovereign is not normally present at the General Assembly although the right to be so is preserved in the General Assembly Act 1592 (an Act of the Old Scottish Parliament). Queen Elizabeth II attended in 1960, 1977 and 2002, the latter two of which were jubilee years.

Normally, the King is represented at the General Assembly of the Church of Scotland by a Lord High Commissioner.[1427] He or she attends as an observer and is appointed by His Majesty on the advice of the Prime Minister, following consultation with the First Minister of Scotland.[1428] As they are representatives to the General Assembly rather than part of it, the appointee does not need to be a Presbyterian or a member of the Church of Scotland.[1429] At present, the office holder cannot be Catholic,[1430] although the Church of Scotland (Lord High Commissioner) Bill 2024-25 seeks to remove that restriction.[1431] The King's Commission and a Gracious Letter from the Sovereign is read at the General Assembly,[1432] followed by an address from the Lord High Commissioner.[1433]

During the General Assembly, the Lord High Commissioner ranks between the King and the Duke of Rothesay (the Prince of Wales) in the order of precedence and is addressed as "Your Grace". The office holder resides at the Palace of Holyroodhouse. Some weeks after serving in that office, the Lord High Commissioner has an audience with the King, and there is the possibility of an invitation to serve again the following year.[1434]

1425 About, Coronation Roll website.
1426 See, for example, Court Circular, 13 October 2024.
1427 For the history of the office see HC Deb 05 November 1959 Vol 612 cc1271-309 [Lord High Commissioner (Church of Scotland) Bill].
1428 Appointment of the Lord High Commissioner of the General Assembly of the Church of Scotland: 10 December 2024, Prime Minister's Office, 10 Downing Street, 10 December 2024. This is an appointment under the royal prerogative. The King signs a Royal Warrant authorising preparation of the Commission shortly before the General Assembly (see, for example, London Gazette, 17 June 2022). The Lord High Commissioner also receives Private Instructions from the Monarch.
1429 Several Lords High Commissioner have been Episcopalians (Scottish Anglicans) and Lady Elish Angiolini (appointed in December 2024 to serve in May 2025) a Catholic.
1430 Roman Catholic Relief Act 1829, section 12.
1431 See Commons Library research briefing CBP10192, Church of Scotland (Lord High Commissioner) Bill 2024-25.
1432 King expresses admiration for Church's "deep concern" for vulnerable people, Church of Scotland website, 18 May 2024.
1433 Address by the Lord High Commissioner, Church of Scotland website. The Lord High Commissioner also makes a closing address. When the Lord High Commissioner is present, the Assembly mace is affixed to the side of his or her chair in the Assembly gallery. The Lord High Commissioner cannot be present on the floor of the Assembly chamber. For more see Stewart Mechie, The Office of the Lord High Commissioner, Edinburgh: Saint Andrew Press, 1957.
1434 HL Deb 19 March 2025 Vol 844 c1253 [Church of Scotland (Lord High Commissioner) Bill].

The Lord High Commissioner (Church of Scotland) Act 1974 empowered the Secretary of State for Scotland (now the devolved Scottish Ministers) to pay an allowance to the Lord High Commissioner.

Appointments

The King makes certain appointments of Church of Scotland ministers to positions in the Monarch's Ecclesiastical Household,[1435] including the Dean of the Chapel Royal in Scotland.[1436] Lay patronage in the Church of Scotland (including the Crown's patronage) was abolished by the Church Patronage (Scotland) Act 1874.

[1435] This forms part of the Royal Household in Scotland (see Section 3.3).
[1436] The holder of this office is also Dean of the Order of the Thistle (By royal appointment: theologian takes up new roles, Church of Scotland website, 3 July 2019).

8 Courts and Human Rights

The United Kingdom has three separate jurisdictions:

- England and Wales [1437]
- Scotland, and
- Northern Ireland

This reflects the UK's historical origins and the fact that Scotland retained its own legal system following the 1707 union with England. Northern Ireland retains a distinct system – albeit similar to that in England and Wales – which once applied to all of Ireland. England and Wales and Northern Ireland possess common law systems, systems based on the doctrine of judicial precedent, while Scotland has a mixed common and civil law system.[1438]

The Crown remains "fountain of justice". As Martin Loughlin observed in 1999:

> All jurisdiction is [...] exercised in the name of the Queen, and all judges derive their authority from her commission. Every breach of the peace is a transgression against the Queen. She alone has the authority to prosecute criminals; when sentence is passed, she alone can remit the punishment.[1439]

In criminal proceedings in England and Wales and in Northern Ireland, the Crown is the prosecuting party and is usually designated on the title or name of a case as "R v [name]", with R standing for Rex (king). In Scotland, criminal prosecutions are undertaken by the Lord Advocate (or the relevant procurator fiscal) in the name of the Crown, with the abbreviation "HMA" (His Majesty's Advocate) in place of Rex.[1440] It has been clear for several centuries that cases must be tried in courts of law and not by the Sovereign personally.[1441]

King's Counsel (KC) are barristers, advocates or solicitor advocates appointed by the King under the royal prerogative.[1442] In England and Wales,

[1437] The Welsh Government has long argued for the creation of separate Welsh jurisdiction (see A distinct Welsh jurisdiction, Senedd Research, 26 May 2016). Section A2 of the Government of Wales Act 2006 recognises the "ability of the Senedd and the Welsh Ministers to make law forming part of the law of England and Wales".

[1438] Human rights: common core document, para 16.

[1439] Martin Loughlin, The State, the Crown and the Law in M. Sunkin and S. Payne, The Nature of the Crown, p58. The centrality of the Crown to justice became established (in England) by the early 13th century (F. W. Maitland, The Constitutional History of England, pp209-10).

[1440] R, Oxford Reference website.

[1441] *Prohibitions Del Roy* [1607] 12 Coke Reports 63 77 ER 1342.

[1442] The Bar of England and Wales upholds the principles of "government accountability under law and vindication of legal rights through the courts" and is governed by the Bar Council. The Bar of Northern Ireland is governed by its own Bar Council. The equivalent body in Scotland is the Faculty of Advocates which is led by its elected Office-bearers.

the King's Counsel Selection Panel is responsible for recommendations to the Lord Chancellor, who sends a final list to the King for formal approval. The issue of Letters Patent completes the appointment process. [1443] In Scotland, the First Minister seeks nominations from the Lord Justice General. [1444] In Northern Ireland, applicants are recommended to the Minister of Justice, or the person(s) exercising their functions. [1445] KC Honoris Causa, or an Honorary KC, can also be appointed by the King on the advice of the Lord Chancellor. [1446] By convention, the Law Officers of the Crown are appointed practising King's Counsel (rather than honorary) if, upon appointment, they have not already taken silk. [1447]

All three jurisdictions mark the beginning of what is known as the "legal year" with ceremonies in London, Edinburgh and Belfast during September or October. In London, judges attend a service at Westminster Abbey before processing to Westminster Hall for the Lord Chancellor's breakfast. [1448] In Edinburgh, there is a ceremony at the Court of Session before a procession to St Giles' Cathedral for a short service. [1449] In Northern Ireland the Lord Chief Justice addresses members of the profession. [1450]

The appeals process in the UK's three courts systems is governed by a combination of:

- Statutes (acts of the UK Parliament and devolved legislatures)
- Procedure Rules (usually made by a Procedure Rule Committee or the judicial leadership and contained in statutory instruments), and
- Practice Directions (issued by the senior judiciary and which supplement the Procedure Rules)

Common law courts can be established under the royal prerogative but a new court with a new jurisdiction requires an act of parliament. [1451]

8.1 Independence of the judiciary

According to the Cabinet Manual, it is a long-established constitutional principle that the judiciary is independent of both the government of the day

1443 Summary of Revised Process for QC Award for England and Wales, June 2023. There follows a King's Counsel appointments ceremony in Westminster Hall.
1444 Appointment of King's Counsel in Scotland 2023, Scottish Government, 13 September 2023. New Scottish KCs participate in a ceremony for the Opening of the Legal Year.
1445 Appointment of Queen's Counsel in Northern Ireland 2019 Silk Call: Guide for Applicants (password protected), Law Society of Northern Ireland, pp8-9.
1446 Honorary King's Counsel nominations, Ministry of Justice, 14 June 2023.
1447 Solicitor-General Harman goes on to become a silk, Law Gazette, 26 June 2001.
1448 Opening of the Legal Year 2024, Government Legal Department, 2 October 2024.
1449 Opening of the Legal Year, Judiciary of Scotland website.
1450 Opening of the new legal year, Lady Chief Justice's address, Judicial Communications Office, 5 September 2024.
1451 *In re Lord Bishop of Natal* [1865] 3 Moore (NS) 114.

and Parliament "so as to ensure the even-handed administration of justice".[1452]

Lord Nolan observed in 1992 that:

> The proper constitutional relationship of the executive with the courts is that the courts will respect all acts of the executive within its lawful province, and that the executive will respect all decisions of the courts as to what its lawful province is.[1453]

The Constitutional Reform Act 2005 provides for this separation of powers (in England and Wales) by clarifying the constitutional roles of the Lord Chancellor and the Lord Chief Justice of England and Wales. Under section 3, the Lord Chancellor, other Ministers of the Crown and all those involved in the administration of justice are under a duty to uphold the continued independence of the judiciary, and must not seek to influence particular judicial decisions.[1454]

Similarly, section 1 of the Judiciary and Courts (Scotland) Act 2008 places a duty on the First Minister, the Lord Advocate, the Scottish Ministers, MSPs and other persons responsible for matters relating to the judiciary or the administration of justice in Scotland to "uphold the continued independence of the judiciary".[1455] Subsection (2) provides that the First Minister, the Lord Advocate and the Scottish Ministers must not seek to influence particular judicial decisions through any special access to the judiciary.

Finally, section 1 of the Justice (Northern Ireland) Act 2002 (as amended) provides that the First Minister and deputy First Minister, Northern Ireland Ministers and "all with responsibility for matters relating to the judiciary or otherwise to the administration of justice" are to "uphold the continued independence of the judiciary". Under section 1(2) and (3), the First Minister, the deputy First Minister and Northern Ireland Ministers "must not seek to influence particular judicial decisions through any special access to the judiciary". The statutory Northern Ireland Pledge of Office for ministers also includes a commitment "to support the rule of law unequivocally in word and deed and to support all efforts to uphold it", including support for the courts.[1456]

Where a judge has a direct pecuniary or proprietary interest in the outcome of a case before them, they are automatically disqualified from sitting.[1457] If that

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1452 Cabinet Manual, para 16. This principle dates from the Bill of Rights [1688] (in England and Wales) and the Claim of Right 1689 (in Scotland).

1453 *M v Home Office* [1992] QB 270.

1454 A further agreement between government and the judiciary in January 2008 recognised that the judiciary has a distinct responsibility to deliver justice independently (HC Deb 23 January 2008 Vol 470 cc54-56WS [Her Majesty's Courts Service].

1455 When, during 2011, the First Minister of Scotland and Scottish Justice Secretary were seen to have "overstepped the boundaries of acceptable criticism" of the UK Supreme Court, the Dean of the Faculty of Advocates and President of the Law Society of Scotland reminded them of their statutory obligations in a joint statement (see Alan Page, Constitutional Law of Scotland, para 6-41).

1456 Northern Ireland Ministerial Code, para 1.4(ce).

1457 *R v Rand* [1866] LR 1 QB 230.

judge nevertheless proceeds, then their decision cannot stand. [1458] The test for bias has two limbs. First, a court has to ascertain all the circumstances that have a bearing on the suggestion that a judge has an appearance of bias. The question is then whether a fair minded and informed observer, having considered the facts, would conclude there was a real possibility that the judge was biased. [1459]

Under section 14 of the Defamation Act 1996, a "fair and accurate report of proceedings in public" before any court in the UK and the European Court of Human Rights, "if published contemporaneously with the proceedings, is absolutely privileged".

Sections 1 and 2 of the Contempt of Court Act 1981 contain the "strict liability rule" that a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced may be treated as a contempt of court, regardless of intent to do so. Under section 5, a publication forming part of "a discussion in good faith of public affairs or other matters of general public interest" is not treated as contempt if this risk is "merely incidental to the discussion".

The Lord Chancellor

The office of Lord Chancellor is "pivotal to the constitutional relationship between the executive and judicial branches of the state". [1460]

Formally, the Lord Chancellor is Lord High Chancellor of Great Britain as the equivalent post of Lord Chancellor of Ireland was abolished in 1922. [1461] Despite the geographical designation, in practice the Lord Chancellor has UK-wide responsibilities. Section 1 of the Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974 declares that the office of Lord Chancellor "is and shall be tenable by an adherent of the Roman Catholic faith", [1462] while section 2 provides that if a Catholic were to be appointed then the Sovereign may temporarily transfer that office holder's ecclesiastical functions to the Prime Minister or to another Minister of the Crown. Under section II of the Treason Act 1351, killing the Lord Chancellor is a treasonous offence.

Section 1 of the Constitutional Reform Act 2005 provides that the Act "does not adversely affect" the "existing constitutional principle of the rule of law" or the Lord Chancellor's "existing constitutional role in relation to that

1458 *R v Bow Street Magistrate ex parte Pinochet (No. 2)* [2000] 1 AC 119.

1459 *Porter v Magill* [2001] UKHL 67. In 2000, and just weeks after passing judgment in an appeal, the Scottish judge Lord McCluskey quoted himself suggesting that ECHR had provided "a field day for crackpots, a pain in the neck for judges and legislators, and a goldmine for lawyers". The appeal court bench disqualified itself and different judges were appointed (Human rights, the judges and the new Scotland, Scots Law News website, 18 October 1998).

1460 HM Government – Written Evidence (EOS0002), para 17.

1461 Interpretation Act 1978, Schedule 1; Interpretation Act (Northern Ireland) 1954, section 43; and the Irish Free State (Consequential Provisions) Act 1922, Schedule 2 (repealed).

1462 Section 12 of the Roman Catholic Relief Act 1829 appears to suggest that Catholics are prohibited from appointment as Lord Chancellor.

principle". Section 2 provides that a person recommended for appointment as Lord Chancellor must appear to the Prime Minister "to be qualified by experience", which includes as a Minister of the Crown, a member of either House of Parliament, a qualifying practitioner in any of the UK's three jurisdictions, as an academic lawyer or "other experience that the Prime Minister considers relevant".

Under section 17 of the 2005 Act, the Lord Chancellor must take the Lord Chancellor's oath as soon as possible after accepting office. This is separate to the Oath of Office taken as Lord Chancellor and Secretary of State for Justice at a meeting of the Privy Council. The Lord Chancellor's oath is usually taken at the Royal Courts of Justice in London. The oath is:

> I, [insert name of Lord Chancellor], do swear that in the office of Lord High Chancellor of Great Britain I will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible. So help me God. [1463]

The Lord Chancellor is keeper of the Great Seal of the Realm. When the Great Seal is in commission, Lords Commissioners represent the Lord Chancellor under section 1 of the Great Seal Act 1688.[1464] Section 129 of the Senior Courts Act 1981 provides that Lords Commissioners shall represent the Lord Chancellor for the purposes of the 1981 Act.

8.2 United Kingdom Supreme Court

Section 23 of the Constitutional Reform Act 2005 provides that there "is to be a Supreme Court of the United Kingdom" (UKSC), which is a non-ministerial department.

The Supreme Court of the United Kingdom is the final court of appeal for all civil cases in the UK and for all criminal cases in England, Wales and Northern Ireland.[1465] The exclusion of criminal appeals from Scotland is a result of the Union with England Act 1707, article XIX – which took statutory form as section 72 of the Criminal Procedure (Scotland) Act 1887 – although the Supreme Court may determine (on appeal) a "compatibility issue" arising in Scottish criminal cases.[1466]

A decision of the Supreme Court on appeal from a court of any part of the UK (other than a decision on a devolution matter) is regarded as the decision of a court of that part of the UK. The 2005 Act also makes clear that none of its

[1463] As inserted in the Promissory Oaths Act 1868, section 6A.
[1464] As per section 12 of the Roman Catholic Relief Act 1829, Lords Commissioner cannot be Catholic.
[1465] Its predecessor was the Appellate Committee of the House of Lords.
[1466] Criminal Procedure (Scotland) Act 1995, section 288AA. "Compatibility issue" is defined in section 288ZA. See also The Jurisdiction of the Supreme Court of the United Kingdom in Scottish Appeals, Supreme Court website. Article XIX declared that "no causes in Scotland" were to be "cognoscible" by any "court in Westminster Hall", although civil appeals began shortly after.

provisions for the Supreme Court "affect the distinctions between the separate legal systems of the parts of the United Kingdom". [1467]

The right of appeal to the Supreme Court is regulated by statute and subject to statutory restrictions. A list of principal statutes for criminal appeals (as amended in most cases by section 40 of and Schedule 9 to the 2005 Act) is available on the Supreme Court website. [1468]

The Supreme Court will not hear an appeal unless it raises an "arguable point of law on a matter of general public importance". [1469] The Supreme Court Rules provide that application for permission to appeal must be made first to the court below. If the lower court agrees, then the appeal proceeds, and if the lower court does not, then an application may be made to the Supreme Court. "Leapfrog" appeals are also possible in certain circumstances from the High Court in England and Wales and in Northern Ireland. [1470]

In certain situations, permission to appeal cannot be sought from the UK Supreme Court at all if the court below refuses permission to appeal. [1471]

Under Schedule 9 to the Constitutional Reform Act 2005, the UKSC also hears cases on "devolution issues" under the Scotland Act 1998, the Government of Wales Act 2006 and the Northern Ireland Act 1998. [1472] Under those Acts, the Attorney General for England and Wales and other law officers (UK and devolved) may refer devolved legislation to the UKSC prior to Royal Assent to ascertain whether a bill is within devolved competence and/or relates to a protected subject matter. [1473] Two other routes are through a statutory reference or appeal of a "devolution issue" from certain courts to the Supreme Court, and through the normal judicial process, with cases arriving at the Supreme Court on appeal from lower courts.

The number of Supreme Court justices that sit on a case varies. Sometimes there will be a larger panel of up to eleven justices, for example if a case is of high constitutional importance.

The Supreme Court must also give effect to the rights contained in the European Convention on Human Rights and take account of any decision of the European Court of Human Rights in Strasbourg. Section 6 of the Retained EU Law (Revocation and Reform) Act 2023 provides for direct references to the Supreme Court both from lower courts and by government law officers on the interpretation and application of legacy EU law. [1474]

1467 Constitutional Reform Act 2005, section 41(1) and 41(2).
1468 See also A guide to bringing a case to The Supreme Court, Supreme Court website.
1469 Supreme Court, Practice direction 3.3.3.
1470 Administration of Justice Act 1969, Part II.
1471 Criminal Appeal Act 1968, section 33(3); Court of Session Act 1988, section 40(3); Access to Justice Act 1999, section 54(4).
1472 "Devolution issues" are defined in Schedule 6 to the Scotland Act 1998, Schedule 9 to the Government of Wales Act 2006 and Schedule 10 to the Northern Ireland Act 1998.
1473 Scotland Act 1998, sections 32A and 33; Government of Wales Act 2006, sections 111B and 112; Northern Ireland Act 1998, section 11.
1474 These provisions are not yet in force.

The test in deciding whether to depart from its own case law is set out in a Practice Statement issued by the House of Lords in 1966. [1475] This has equal effect in the Supreme Court. [1476]

Under sections 38-39 of the Constitutional Reform Act 2005 a judge can "act as a judge of the [Supreme] Court" if they are a sitting "senior territorial judge" or a retired judge who sits on the Court's "supplementary panel". [1477]

The number of Supreme Court judges that sit on a case varies. Usually there will be five justices. Sometimes cases will be presided over by a panel of seven, nine or eleven justices. This typically only happens if the Court is asked to depart from one of its previous decisions, the case is of high constitutional importance, the case is otherwise of great public importance, the case requires the UKSC to resolve a conflict between decisions of its own, the Appellate Committee, or the JCPC, or the case raises an important point in relation to Convention rights. [1478]

Under section 45 of the Constitutional Reform Act 2005, the President of the Supreme Court makes The Supreme Court Rules 2024. Practice Directions issued by the President are also available on the Supreme Court website.

Under section 5 of the Constitutional Reform Act 2005, the President of the Supreme Court may lay before Parliament written representations on matters that appear to the President to be matters of importance relating to the Supreme Court or to the jurisdiction it exercises. [1479]

By custom, the President and Deputy President of the Supreme Court meet annually with the House of Lords Constitution Committee. [1480] The President of the Supreme Court is also granted a life peerage upon appointment.

Although the Supreme Court usually sits at its building on Parliament Square, London, it has also heard some appeals in Edinburgh, Belfast and Cardiff.

Supreme Court justices

Section 23 of the Constitutional Reform Act 2005 provides that the Supreme Court consists of the persons appointed as its judges by the King via Letters Patent. The number of full-time equivalent judges cannot be more than 12, although the King may by Order in Council to increase this number. [1481] They

1475 HL Deb 26 July 1966 Vol 276 c677 [Judicial Precedent].
1476 Supreme Court, Practice direction 3. *Austin v Mayor and Burgesses of the London Borough of Southwark* [2010] UKSC 28.
1477 See Guide to Conduct for members of the Supplementary Panel, Supreme Court, August 2021.
1478 Panel numbers criteria, Supreme Court website.
1479 For example, an annual report: The Lady Chief Justice's Report 2024, Judiciary of England and Wales, November 2024.
1480 House of Lords Constitution Committee, Corrected oral evidence: Annual evidence session with the President and Deputy President of the Supreme Court, 4 July 2023.
1481 A draft of any such Order must be laid before and approved by resolution of each House of Parliament.

are appointed on a permanent basis, subject to the UK-wide mandatory retirement age for judicial appointments, which is now 75 years. [1482]

Under subsection (5) the King may by Letters Patent appoint one of the judges to be President and one to be Deputy President of the Court, while under subsection (6) judges other than the President and Deputy President are styled "Justices of the Supreme Court".

In 2010, Queen Elizabeth II authorised a Royal Warrant declaring that every Justice of the Supreme Court would in future be styled as "Lord" or "Lady". This was to ensure that all justices of the Court (including those without life peerages) were "described and addressed in a similar manner". [1483]

Section 25 of the 2005 Act provides for qualifications for appointment as a Supreme Court justice, [1484] while section 26 provides that recommendations for appointment as a justice, President or Deputy President "may be made only by the Prime Minister". Under subsection (5), if there is a vacancy in the office of President or Deputy President ("or it appears to him that there will soon be such a vacancy"), the Lord Chancellor must convene a bespoke selection commission for the selection of a person to be recommended. [1485]

Section 27 provides for the selection process, including that it be "on merit" and that the commission "ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom". [1486] By convention, although numbers are not stipulated in statute, this means two Scottish and one Northern Irish justice are appointed. Once a recommendation has been made, the Lord Chancellor is under a statutory duty to consult various parties. [1487] Section 27A of the 2005 Act provides a reserve power for the Lord Chancellor to require the commission to reconsider its recommendation or reject it altogether.

Rules of appointment are supplemented by The Supreme Court (Judicial Appointments) Regulations 2013. Regulations can only be made by the Lord Chancellor with the agreement of the senior judge of the Supreme Court (usually that means the President). They are also subject to prior approval by both Houses of Parliament (under the draft affirmative procedure). The Lord Chancellor must also consult the First Ministers of Scotland and Wales, the

1482 Public Service Pensions and Judicial Offices Act 2022, Schedule 1.

1483 Courtesy titles for Justices of the Supreme Court, Supreme Court Press Notice 13/2010, 13 December 2010.

1484 Including the "judicial-appointment eligibility condition" introduced under section 50 of the Tribunals, Courts and Enforcement Act 2007. This only applies in England and Wales. In Scotland and Northern Ireland, they must have been a "qualifying practitioner" for 15 years.

1485 This commission must include members of the Judicial Appointments Commission and its Scottish and Northern Irish equivalents. If the Court is short, or soon expected to be short, of its full complement of 12 full-time equivalent judges, the Lord Chancellor has discretion about whether to convene a selection commission, having consulted with the most senior justice on the Court (Constitutional Reform Act 2005, section 26(5A)).

1486 By custom, there are two judges from Scotland's legal system and one from that of Northern Ireland.

1487 The Supreme Court (Judicial Appointments) Regulations 2013, regulation 19.

Northern Ireland Judicial Appointments Commission, and the senior territorial judiciary about any proposed regulations before they are made. [1488]

Under section 33, a judge of the Supreme Court holds that office "during good behaviour" but may be removed from it on an Address from both Houses of Parliament. Section 35 provides that the President, Deputy President or a Supreme Court judge may at any time resign their office by giving the Lord Chancellor notice in writing to that effect. Under section 36, the Lord Chancellor may by instrument declare one of these offices to have been vacated on specified medical grounds.

A Supreme Court justice can, under section 27 of the Judicial Pensions and Retirement Act 1993, continue to serve for the purposes of disposing of a case to which they were assigned prior to their vacating office.

There is no custom by which past or present Supreme Court justices are created life peers.

Judicial Committee of the Privy Council

The Judicial Committee Act 1833 (as amended) established a statutory committee of the Privy Council known as the Judicial Committee of the Privy Council (JCPC) to deal with appeals to the King in Council. [1489] The JCPC hears appeals from the:

- Crown Dependencies (see Section 9.3)
- British Overseas Territories
- several (generally smaller) Commonwealth Realms (to the King in Council)
- some Commonwealth republics (to the Judicial Committee), and
- by proxy on behalf of the Sultan of Brunei from the Court of Appeal of Brunei[1490]

A jurisdiction map is available on the JCPC website.

[1488] Constitutional Reform Act 2005, sections 27A and 144.

[1489] See the Judicial Committee Act 1843, Judicial Committee Act 1844, Privy Council Registrar Act 1853, Appellate Jurisdiction Act 1876, sections 6 and 25, Judicial Committee Act 1881, Appellate Jurisdiction Act 1887, sections 3 and 5, Appellate Jurisdiction Act 1908, Judicial Committee Act 1915 and the References of appeals to Judicial Committee Order in Council 1909. Appeals from outside the UK are in many cases also governed by laws made in the countries and territories concerned (for a full list see Legislation governing particular proceedings, Judicial Committee of the Privy Council website).

[1490] See The Brunei (Appeals) Order 1989. In civil cases parties can appeal to the JCPC provided that both agree.

The JCPC's work is covered by the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and Judicial Committee (Appellate Jurisdiction) Rules (Amendment) Order 2013.

Under section 1 of the Judicial Committee Act 1833, any individual who is under 75 years old, a Privy Counsellor and who holds, or has held, high judicial office (as defined in section 60 of the Constitutional Reform Act 2005) is able to serve on the JCPC. Section 1 of the Judicial Committee Amendment Act 1895 allows current and former judges from certain overseas jurisdictions to become a JCPC judge, provided they are a Privy Counsellor and are, or have been, either a chief justice or a justice of a designated Supreme or superior court for the purposes of the 1895 Act.[1491]

Formally, the JCPC does not decide a case but merely reports to the King in Council (a meeting of the Privy Council), which makes an Order in Council giving effect to the Judicial Committee's decision. Technically, therefore, "the Committee is not a court, but an advisory committee".[1492] In the case of *British Coal Corporation v the King*, however, the JCPC concluded that it was:

> clear that the Committee is regarded in the [1833] Act [...] as a judicial body or court, though all it can do is to report or recommend to His Majesty in Council [...] But according to constitutional convention it is unknown and unthinkable that His Majesty in Council should not give effect to the report of the Judicial Committee, who are thus in truth an appellate court of law.[1493]

The Judicial Committee still transacts, albeit very rarely, domestic judicial business. Several Acts of Parliament create a right of appeal from professional bodies directly to the Judicial Committee.[1494] It is also responsible at first instance for resolving disputes under section 7 of the House of Commons Disqualification Act 1975. Other more obscure domestic judicial business of the JCPC can potentially include appeals from:

- the Court of Chivalry (on heraldic disputes)[1495]
- the Prize Courts (relating typically to the seizure of ships)
- the Court of Admiralty of the Cinque Ports (dealing with piracy and collisions at sea) and
- certain ecclesiastical courts (see Section 8.3)

Section 4 of the Judicial Committee Act 1833 also allows the King to refer (by Order in Council) any other matter to the Judicial Committee of the Privy

1491 See, for example, Privy Council appointments: 28 August 2024, Prime Minister's Office, 10 Downing Street, 28 August 2024.
1492 Ivor Jennings, The Law and the Constitution, p125. A digital catalogue of Appeals to the Judicial Committee of the Privy Council between 1792-1998 is available online.
1493 *British Coal Corporation v the King* [1935] UKPC 33.
1494 Professional bodies, Privy Council Office website.
1495 The Court of Chivalry has not met since 1954.

Council for its opinion.[1496] This provides "a convenient method of ascertaining the law when no other jurisdiction is available".[1497] A reference has in the past been made following an humble Address from the House of Commons (the Strauss case).[1498]

Tribunals

Tribunals are independent judicial bodies set up by the UK's legislatures to rule on disputes between individuals or private organisations and state agencies. These tribunals either sit across the United Kingdom, in Great Britain (GB), or in one part of the UK. Generally, reserved matters (to borrow the language of the devolution statutes) are the responsibility of UK or GB tribunals while devolved matters are the responsibility of devolved tribunals in Scotland, Wales and Northern Ireland.

UK tribunals are split between a First-tier Tribunal (for first-instance decisions) and an Upper Tribunal (to hear appeals from the First-tier), a system created by the Tribunals, Courts and Enforcement Act 2007.[1499] Further appeals can be made, with leave, to the Court of Appeal (in England and Wales) or to the Inner House of the Court of Session (in Scotland).[1500] The Senior President of Tribunals, based at the Royal Courts of Justice, is responsible for the leadership, guidance and training of the Tribunals' judiciary across the UK.

Employment Tribunals are not part of this system.[1501] Appeals from those Tribunals go to a specialist appeal forum known as the Employment Appeal Tribunal, with any appeal from there then going on to the Court of Appeal.[1502]

Section 60 of the Wales Act 2017 created the role of the President of Welsh Tribunals, who is appointed by the Lord Chief Justice of England and Wales. He or she has a supervisory role over the Welsh Tribunals provided for in section 59.

The statutory basis for Scottish Tribunals is the Tribunals (Scotland) Act 2014, which provides for the First-tier and Upper Tribunals for Scotland. The Lord President is the head of the Scottish Tribunals but has delegated various functions to the President of Scottish Tribunals.

1496 Judicial Committee of the Privy Council, Role of the JCPC. A reference under this section is rare. In 1924, for example, the JCPC was asked to interpret the expression "the Government of the Free State, the Government of Northern Ireland, and the British Government" in relation to the Ireland/Northern Ireland border (see Report of the Judicial Committee of the Privy Council in the Irish Boundary Question, Cmnd 2214, 1924).

1497 HL Deb 21 April 1971 Vol 317 c769.

1498 Erskine May, para 16.5. See also HC Deb 4 December 1957 Vol 579 cc391-488 [Parliamentary Privilege Act, 1770].

1499 Each Tribunal is organized in a series of chambers.

1500 Tribunals, Courts and Enforcement Act 2007, sections 13 and 14. Under sections 14A-14C, an appeal to the Supreme Court is possible by grant of certificate from the Upper Tribunal.

1501 Nor are the Investigatory Powers Tribunal, the Proscribed Organisations Appeal Commission or the Competition Appeal Tribunal.

1502 There is a long-standing plan to devolve employment law tribunal functions to Scotland.

More than a dozen tribunals also operate under the auspices of the Northern Ireland Courts and Tribunals Service (NICTS). A full list is available on the Department of Justice (NI) website. The President of each tribunal is a member of the Tribunal Presidents' Group, which is chaired by a Lord or Lady Justice of Appeal. Not part of NICTS are Industrial Tribunals, which are the Northern Ireland equivalents of Employment Tribunals in Great Britain. The Fair Employment Tribunal, which deals with allegations of discrimination on the basis of political opinion or religious belief, has no equivalent in any other part of the UK.

8.3 England and Wales

The Lady or Lord Chief Justice of England and Wales is the head of the judiciary in England and Wales, Head of Criminal Justice and President of the Courts of England and Wales.[1503] The Lady Chief Justice carries out these responsibilities through the Judicial Executive Board and the Judges' Council. The Judicial Office, which is headed by its chief executive, provides staffing to support judges with administrative and leadership responsibilities.[1504]

The Judges' Council is a body "broadly representative of the judiciary as a whole" which informs and advises the Lord/Lady Chief Justice "on matters as requested from time to time". Under Schedule 12 to the Constitutional Reform Act 2005, it appoints three members of the Judicial Appointments Commission (see below).

Under the Constitutional Reform Act 2005, the Lord Chief Justice has some 400 statutory duties, including:

- representing the views of the judiciary of England and Wales to Parliament and government
- overseeing the judiciary's welfare, training and guidance
- discussing with government the provision of resources for the judiciary, (which are allotted by the Lord Chancellor), and
- deploying judges to and allocating work to the courts of England and Wales

The Master of the Rolls is second in judicial seniority to the Lord Chief Justice and is Head of Civil Justice and President of the Civil Division of the Court of Appeal. He or she is also a Judge of the Court of Appeal.

Under section 5 of the Constitutional Reform Act 2005, the Lord Chief Justice may lay before the UK Parliament written representations on matters that

[1503] Lady Chief Justice, Courts and Tribunals Judiciary website.
[1504] Organisation of the Judiciary – Introduction, Courts and Tribunals Judiciary website.

appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in England and Wales.[1505]

It is a longstanding principle that judges in England and Wales are immune from proceedings of any sort for any action which they may take or words which they may speak when acting in their judicial capacity.[1506]

The statutory basis of the Senior Courts of England and Wales (as renamed by section 59 of the Constitutional Reform Act 2005[1507]) is the Senior Courts Act 1981. This provides for the structure and jurisdiction of the:

- Court of Appeal
- High Court of Justice
- Crown Court

Court of Appeal

Under section 2 of the 1981 Act, the Court of Appeal consist ex-officio judges and a maximum of 39 ordinary judges.[1508]

Section 3 provides for two divisions of the Court of Appeal: Criminal (of which the president is the Lord Chief Justice) and Civil (of which the president is the Master of the Rolls). Section 15 provides for the general jurisdiction of the Court of Appeal, section 16 for appeals from the High Court, and sections 53-60 provide for practice and procedure.

Part II of the Criminal Appeal Act 1968 (as amended) provides for appeal to the Supreme Court from Criminal Division of the Court of Appeal.

High Court

Section 4 provides for membership of the High Court, which under section 5 this has three divisions:

- the Chancery Division (of which the president is known as the Chancellor of the High Court)[1509]
- the King's Bench Division (of which the president is the Lord Chief Justice)
- the Family Division (which has its own President)[1510]

1505 This power has never been exercised.

1506 *Scott v Stansfield* [1868] LR 3 Ex 220; *Anderson v Gorrie* [1895] I QB 668.

1507 To avoid confusion with the newly created Supreme Court of the United Kingdom.

1508 This number can be varied by the King in Council. See, for example, The Maximum Number of Judges Order 2015.

1509 This deals with company law, partnership claims, conveyancing, land law, probate, patent and taxation cases. The Chancery Division includes three specialist courts: the Companies Court, the Patents Court and the Bankruptcy Court.

1510 The Family Division includes the Court of Protection.

Distribution of work between the three divisions is governed partly by statute, party by rules of court and partly by custom.

Section 6 of the 1981 Act provides that the Chancery Division shall include a Patents Court, and the King's Bench Division an Admiralty Court [1511] and a Commercial Court [1512] Sections 19-44 provide for the jurisdiction and powers of the High Court, its divisions and component courts, while sections 61-72 provide for practice and procedure.

"Circuits" are the six distinct geographical regions which England and Wales are split into for the practice of law. They are the areas around which the High Court judges travel ("go out on circuit") as they try the most important cases. [1513]

The Administration of Justice Act 1960 makes some provision for appeals to the Supreme Court from the High Court in criminal cases.

Crown Court

The Crown Court sits in centres throughout England and Wales, dealing with indictable criminal cases that are transferred from the magistrates' courts, including serious criminal cases (such as murder, rape and robbery). Section 8 of the 1981 Act provides for the jurisdiction of the Crown Court to be exercisable by any judge of the High Court, any Circuit judge, Recorder, qualifying judge advocate or District Judge (Magistrates' Courts) and, in certain circumstances, Justices of the Peace.

Under section 8(3), when the Crown Court sits in the City of London it is known as the Central Criminal Court and the Lord Mayor and any Alderman of the City is entitled to sit as a judge with those listed above.

Sections 45-48 make provision for the general jurisdiction and other aspects of the Crown Court, and sections 72-83 for practice and procedure.

Part I of the Criminal Appeal Act 1968 provides for appeals from the Crown Court to the Court of Appeal in criminal cases.

Non-jury trials

The Criminal Justice Act 2003 provides that the prosecution can apply for certain fraud cases to be conducted without a jury in a Crown Court (section 43), and where there is a danger of jury tampering (section 44). [1514]

1511 This deals principally with the legal consequences of collisions at sea, salvage, and damage to cargoes. It also handles prize jurisdiction (see the Prize Courts Act 1894).

1512 This has a wide jurisdiction over banking and international credit and trade matters. Not listed in statute are the Mercantile, Technology & Construction and Administrative Courts, which also form part of the King's Bench Division. The Planning Court forms part of the Administrative Court.

1513 The Judicial System of England and Wales: A visitor's guide, Judicial Office, p11.

1514 Under section 50 of the 2003 Act, these provisions apply to Northern Ireland.

County Court

The County Court deals with civil (non-criminal and non-family) cases where an individual or a business believes their rights have been infringed.

Section A1 of the County Courts Act 1984 provided for a court in England and Wales "called the county court" with jurisdiction and powers conferred on it by that Act and primary legislation passed by the Senedd (Welsh Parliament).

Under section 3, sittings of the county court may be held anywhere in England and Wales as directed by the Lord Chancellor (after consulting the Lord Chief Justice) or a nominated judicial office holder. Section 5 provides that a person is a judge of the county court if they are a Circuit judge, a district judge (including deputy district judges) or a judicial office holder listed in subsection (2).

Section 41 provides for proceedings commenced in or transferred to the county court to be heard in the High Court by order of that court, or by order of the county court under section 42. Section 77 provides for appeals to the Court of Appeal.

The Mayor's and City of London Court is a sitting of the County Court for England and Wales in the City of London. Section 15 of the City of London (Courts) Act 1964 (as amended by paragraph 60 of Schedule 4 to the Constitutional Reform Act 2005) provides that the Common Serjeant and the assistant judge of the court shall take in the presence of the Lord Chief Justice of England and Wales the oath of allegiance and judicial oath.

Family Court

Section 31A of the Matrimonial and Family Proceedings Act 1984 (as amended by section 17 and Schedules 10 and 11 to the Courts and Crime Act 2013) provides for the Family Court, which was established in April 2014. This brought all levels of family judiciary together in the same court for the first time: magistrates, District Judges, District Judges (Magistrates Court), Circuit Judges and High Court Judges.

Magistrates' court

All criminal cases in England and Wales start in a magistrates' court. Serious cases are transferred to the Crown Court after a preliminary hearing in the magistrates' courts. Cases are heard by either two or three magistrates or a district judge. There is no jury. Magistrates, or Justices of the Peace, are members of the local community without legal background or knowledge who act as judges in the magistrates' court.

The statutory basis of magistrates' courts in England and Wales is the Justices of the Peace Act 1361 (an Act of the Old Parliament of England). Section I provides that:

> in every County of England [there] shall be assigned for the keeping of the Peace, one Lord, and with him three or four of the most worthy in the County, with some learned in the Law, and they shall have Power to restrain the Offenders, Rioters, and all other Barators, and to pursue, arrest, take, and chastise them according their Trespass or Offence; and to cause them to be imprisoned and duly punished according to the Law and Customs of the Realm.

Refusal to be "bound over" to keep the peace – though not a breach of the peace in itself – is an offence in English law, punishable by up to six months' imprisonment.[1515]

The Magistrates' Courts Act 1980 provides for the jurisdiction of, and the practice and procedure before, magistrates' courts.

Under section 7 of the Courts Act 2003, there is a commission of the peace for England and Wales issued under the Great Seal and "addressed generally, and not by name, to all such persons as may from time to time hold office as justices of the peace for England and Wales".[1516]

The Obscene Publications Act 1959 allows Justices of the Peace to issue warrants for the police seizure of such materials.

Specialist courts

The judiciary also sit on specialist courts, including Coroners' Courts. A coroner investigates sudden, violent or unnatural deaths. They do this by holding an inquest. The post of Chief Coroner is appointed by the Lord Chief Justice and was established under section 35 of and Schedule 8 to the Coroners and Justice Act 2009.[1517] The Lord Chancellor appoints area and assistant coroners by order under Schedule 3.

Another specialist court is the Office of the Judge Advocate General. The Court Martial (which has global jurisdiction) deals with the criminal trials of servicemen and women in the Royal Navy, the Army and the Royal Air Force.[1518] Judge Advocates also preside over the Summary Appeal Court and the Service Civilian Court.[1519] Appeals go to the Courts-Martial Appeal Court which consists of judges from England, Scotland and Northern Ireland.[1520]

1515 Unlike in Scots law (see *Smith v Donnelly* 2001 SLT 1007).

1516 The form of commission of the peace for counties in England and Wales, areas of Greater London and the City of London are in the Schedule to The Crown Office (Forms and Proclamations Rules) Order 1992.

1517 See also Legislation and Statutory Instruments (used by coroners), Courts and Tribunals Judiciary website.

1518 Armed Forces Act 2006, section 50.

1519 Armed Forces Act 2006, section 51.

1520 Courts-Martial (Appeals) Act 1951, section 1.

Magna Carta and Habeas corpus

Magna Carta is often cited as the basis of trial by jury. Clause 29 of the 1297 statute (which is still in force) provides that:

> NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.

The Juries Act 1974 makes provision for juries in England and Wales.[1521]

Clause 61 of Magna Carta is also invoked as a right of lawful rebellion, but it was removed from the original document in 1215 and never provided for that right. [1522]

Habeas corpus is an equitable remedy by which a report can be made to a court alleging the unlawful detention or imprisonment of an individual and requesting that the prisoner be brought to a court to determine whether their detention is lawful. Originally a prerogative writ, the modern law of habeas corpus is governed partly by statute, partly by case law and partly by court rules. In England and Wales, the main statutes are the Habeas Corpus Act 1679 (an Act of the Parliament of England) and the Habeas Corpus Act 1816, which extended some provisions to civil cases. Under section 14 of the Administration of Justice Act 1960, another application on the same grounds requires fresh evidence. See also Civil Procedure Rules Part 87.

In Northern Ireland it is the Habeas Corpus Act (Ireland) 1781 (I) and Rules of the Court of Judicature No. 54. In Scotland the closest equivalent to habeas corpus was the Criminal Procedure Act 1701, an Act of the Old Scottish Parliament.

Rules

Section 84 of the Senior Courts Act 1981 provides for rules of court (delegated legislation) to be made by the Lord Chief Justice. The current civil procedure code for the civil courts is The Civil Procedure Rules 1998. The Criminal Procedure Rules 2020 govern the way criminal cases are managed. The Family Procedure Rules 2010 came into effect in 2011.

HM Courts and Tribunals Service

HM Courts and Tribunals Service is an agency of the Ministry of Justice created on 1 April 2011. It manages the day-to-day running of the courts of England and Wales. The Lord Chancellor is the minister responsible to Parliament for courts, tribunals and the justice system. He or she has a

[1521] For Northern Ireland see The Juries (Northern Ireland) Order 1996 and for Scotland the Criminal Procedure (Scotland) Act 1995.

[1522] The TRUTH about Article 61 of Magna Carta, The Law and Policy Blog.

statutory duty to ensure there is an efficient and effective system to support the business of the courts and tribunals.[1523] The administrative work of HM Courts and Tribunals Service is subject to the jurisdiction of the Parliamentary and Health Service Ombudsman.

Criminal Cases Review Commission

Section 8 of the Criminal Appeal Act 1995 provides for a Criminal Cases Review Commission. This investigates alleged miscarriages of justice in England, Wales and Northern Ireland.[1524] Under subsection (4), not fewer than 11 members of the Commission are appointed by the King on the recommendation of the Prime Minister. Subsection (6) provides that:

> At least two thirds of the members of the Commission shall be persons who appear to the Prime Minister to have knowledge or experience of any aspect of the criminal justice system and of them at least one shall be a person who appears to him to have knowledge or experience of any aspect of the criminal justice system in Northern Ireland.

Under section 17, the Commission can obtain information from public bodies such as the police, the Crown Prosecution Service, social services and local authorities. Under section 18A, it can seek a Crown Court order to obtain material from a private individual or organisation.

Other offices and agencies

The Sentencing Council for England and Wales was set up in April 2010 to promote greater "transparency and consistency" in sentencing.[1525]

Section 1 of the Crime and Courts Act 2013 made provision for the National Crime Agency (NCA). This non-ministerial department leads the UK's "fight to cut serious and organised crime" and is headed by someone with the rank of permanent secretary.[1526] Under section 10, the Director General of the NCA can designate officers as having the powers and privileges of a constable, Revenues and Customs or immigration officer.

The King's Remembrancer (a post combined with the Senior Master of the King's Bench Division)[1527] has various functions connected with the appointment of High Sheriffs, the swearing in of the Lord Mayor of London,

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1523 Courts Act 2003, section 1, and the Tribunals Courts and Enforcement Act 2007, section 39. A Framework Document published in 2014 includes aims and objectives for HM Courts & Tribunals Service.

1524 Our powers and practices, Criminal Cases Review Commission website. The Commission also reviews cases from the Court Martial and Service Civilian Court.

1525 Coroners and Justice Act 2009, section 118 and Schedule 15.

1526 What we do, National Crime Agency website. Other specialist nationwide police services include the British Transport Police, the Civil Nuclear Constabulary and the Ministry of Defence Police.

1527 Under section 89(4) of the Senior Courts Act 1981, the person appointed Senior Master of the King's Bench Division also holds and perform the duties of the offices of the King's Remembrancer and registrar of judgments. The King also appoints the Chief Chancery Master, Chief Taxing Master, Chief Insolvency and Companies Court Judge and Senior District Judge of the Family Division on the recommendation of the Lord Chancellor.

the Trial of the Pyx (the annual examination of coins issued by the Royal Mint), and the appointment of Commissioners to supervise the planting and management of the timber in the Royal Forest of Dean. [1528]

Judicial Appointments Commission

Section 61 of and Schedule 12 to the Constitutional Reform Act 2005 provided for a body called the Judicial Appointments Commission (JAC). The JAC selects candidates for judicial office in England and Wales up to and including the High Court, as well as for some non-devolved tribunals. [1529] The Commission consists of a chair (a lay member) and 14 Commissioners appointed by the King on the recommendation of the Lord Chancellor. [1530]

Section 63 provides that selection must be "solely on merit" and for the selecting body to be "satisfied" that a person "is of good character". Section 64 provides that the JAC "must have regard to the need to encourage diversity in the range of persons available for selection for appointments".

The Judicial Appointments Regulations 2013 were made by the Lord Chancellor under the 2005 Act.

Although the JAC makes recommendations to the Lord Chancellor, it identifies a single name for each vacancy. The Lord Chancellor can accept or reject this recommendation or request its reconsideration. [1531] The Lord Chancellor remains responsible for submitting advice to the Monarch on appointments. [1532] A submission takes, for example, the following form:

> The Lord Chancellor, with their humble duty to Your Majesty, submits for Your Majesty's approval, if you shall so please, the attached list of names of persons for appointment as Justices of Your Majesty's High Court.
>
> Also in the event of Your Majesty being graciously pleased to approve the appointment, the Lord Chancellor submits for Your Majesty's signature, if you shall so please, Warrants for their appointment to be Justices of Your Majesty's High Court. [1533]

Senior judges

Under section 10(1) of the Senior Courts Act 1981, the King "may, on the recommendation of the Lord Chancellor, by letters patent appoint a qualified person" to specified senior offices: [1534]

1528 See, for example, the Queen's Remembrancer Act 1859, the Coinage Age 1971, section 8.

1529 The JAC has no role in selecting magistrates or Supreme Court Justices.

1530 See also the The Judicial Appointments Commission Regulations 2013.

1531 In practice, the Lord Chancellor nearly always accepts these recommendations. There were only five occasions (from among nearly 3,500 recommendations) between 2006-13 when this was not so.

1532 The Governance of Britain: Judicial Appointments, para 4.21.

1533 Crown Office Disclosures (@crownofffoids), X (Twitter), 21 January 2021 [Accessed 1 October 2023].

1534 Although the 1981 Act specifies the Lord Chancellor, in practice a recommendation has been made by the Prime Minister and the Lord Chancellor (see, for example, Appointment of Lord Chief Justice, Prime Minister's Office, 15 June 2023).

- the Lord Chief Justice
- Master of the Rolls
- President of the King's Bench Division
- President of the Family Division
- Chancellor of the High Court

No one can be appointed to the above offices unless qualified for appointment as a Lord Justice of Appeal or is a judge of the Court of Appeal. Under subsection (2) the King may also appoint (in the same way) qualified persons as Lords Justices of Appeal or as puisne judges of the High Court.

For recommendations for an appointment as Lord Chief Justice, Master of the Rolls, President of the King's Bench Division, President of the Family Division or Chancellor of the High Court the Lord Chancellor "must make a recommendation" to fill any vacancy (section 68 of the Constitutional Reform Act 2005) and make a request to the Judicial Appointments Commission for selection (section 69).

Under section 70 of the 2005 Act, on receiving such a request the JAC "must appoint a selection panel" which under subsection (2A) include consultation with the Lord Chancellor and, for the office of Lord Chief Justice only, the First Minister for Wales. Sections 77, 78 and 79 make similar provision for vacancies among Lord Justices of Appeal, with the added proviso that the Lord Chancellor "must consult" the Lord Chief Justice before making a request (section 78(2)).

By custom, Heads of Division and the judges of the Court of Appeal are appointed to the Privy Council and are thus addressed as "The Right Honourable", followed by their judicial titles. In court they are called "My Lord" or "My Lady". The official designation of a High Court judge is "The Honourable Mr/Mrs Justice Name"; they are referred to as "My Lord" or "My Lady" in court.[1535] Section 13 of the 1981 Act provides for the order of precedence of judges of the senior courts. Also, by custom, the Lord Chief Justice is granted a life peerage upon appointment, as is the Master of the Rolls upon retirement.[1536]

Section 11 of the 1981 Act provides that any Senior Courts judge shall vacate their office on reaching the age of 75. Subsection (3) also provides that judges holding office "during good behaviour" can be removed by the King on an Address presented to him by both Houses of Parliament.[1537]

[1535] What do I call a judge?, Courts and Tribunals Judiciary website.
[1536] Lord Dyson (a courtesy title), who was Master of the Rolls between 2012 and 2016, is a recent exception to this custom in that he was not granted a life peerage upon retirement.
[1537] Under subsection (3A), it is for the Lord Chancellor to recommend the exercise of the power of removal under subsection (3). See also Claim of Right Act 1689, article 13.

Section 108 of the Constitutional Reform Act 2005 Act provides that the Lord Chief Justice may, with the agreement of the Lord Chancellor, suspend a person from a judicial office (listed in Schedule 14) for any period in certain circumstances, including senior judges if they are subject to proceedings for a parliamentary Address.

County court judges

Under section 6 of the County Courts Act 1984, the King may, on the recommendation of the Lord Chancellor, appoint district judges. Section 8 provides for the Lord Chief Justice to appoint, if expedient, deputy district judges. Under section 11, a district judge holds office "during good behaviour" but must vacate their office on attaining the age of 75. The Lord Chancellor, with the concurrence of the Lord Chief Justice, can remove a district judge on account of misbehaviour or inability to perform the duties of their office.

District judges

Under section 22 of the Courts Act 2003, the King may on the recommendation of the Lord Chancellor appoint District Judges to the Magistrates' Courts. Section 23 provides that the King may designate one of the District Judges (Magistrates' Courts) to be Senior District Judge (Chief Magistrate). The Lord Chancellor may with the agreement of the Lord Chief Justice remove a District Judge from office on grounds of "incapacity or misbehaviour".

Justices of the peace

Under section 10 of the Courts Act 2003, lay justices are appointed by the Lord Chief Justice "by instrument on behalf and in the name of [His] Majesty", although this can be delegated to a senior judge under subsection (6A). Under section 11, they can be removed for incapacity, misbehaviour, incompetence or neglect of duty.

Justices of the peace are recruited by Local Advisory Committees according to The Lord Chancellor and Secretary of State's Directions for Advisory Committees on Justices of the Peace. The Advisory Committees also deal with complaints.

Circuit judges and Recorders

Under section 16 of the Courts Act 1971, the King may "from time to time" appoint Circuit judges to serve in the Crown Court and county courts. Under section 21, Recorders (who act as part-time judges of the Crown Court) are appointed by the King on the recommendation of the Lord Chancellor following an open competition administered by the Judicial Appointments Commission.

Tribunals

The Judicial Appointments Commission selects candidates for some tribunals with UK-wide powers. The Senior President of Tribunals is appointed by the

King on the advice of the Lord Chancellor. [1538] Sections 6 and 7 of the Tribunals and Inquiries Act 1992 also make provision for the appointment (and removal) of chairmen and women of certain tribunals.

Judicial Appointments and Conduct Ombudsman

There is an independent Judicial Appointments and Conduct Ombudsman, who is responsible for investigating and making recommendations concerning complaints about the judicial appointments process. [1539]

The Lord Chancellor and the Lord Chief Justice are jointly responsible for judicial discipline. They are supported by the Judicial Conduct Investigations Office, which is an independent part of the Judicial Office.

Judicial oaths

Under section 32 of the Constitutional Reform Act 2005, a person appointed President, Deputy President or a justice of the Supreme Court must swear or affirm the oath of allegiance and judicial oath (collectively referred to as the "judicial oath") "as soon as may be after accepting office". This must occur in the presence of another Supreme Court justice. The judicial oath is as provided for in sections 2 and 4 of the Promissory Oaths Act 1868.

Under section 10(4) of the Senior Courts Act 1981, senior judges are also required to swear or affirm the judicial oath. The Lord Chief Justice is required to take his or her oath in the presence of the other four office holders listed in section 10(1) of the 1981 Act, while those other office holders are required to take their oaths in the presence of the Lord Chief Justice or someone nominated by them for that purpose.

Section 2 of the Promissory Oaths Act 1871 provides that certain judicial office holders are required to take the judicial oath either before the Lord Chief Justice or "in open court before one or more judges of the High Court or before one or more Circuit judges".

The Coroners and Justice Act 2009 does not provide for coroners to take the judicial oath or make affirmation, but guidance issued by the Chief Coroner states that as independent judicial office holders they "must" do so. [1540]

Ecclesiastical courts

The jurisdiction of England's ecclesiastical courts is regulated largely by the Ecclesiastical Jurisdiction Measure 1963 and the Ecclesiastical Jurisdiction and Care of Churches Measure 2018. This jurisdiction is now essentially confined to the control of the fabric and contents of churches, churchyards and other consecrated land ("the faculty jurisdiction") as well as clergy

[1538] Tribunals, Courts and Enforcement Act 2007, section 2 and Schedule 1.
[1539] Constitutional Reform Act 2005, section 62 and Schedule 13.
[1540] Guidance No. 3 Oaths and Robes, Chief Coroner, 18 April 2023.

discipline.[1541] Ecclesiastical law forms part of the law of England and Wales, though applies mainly within England.

Consistory courts

Under section 1 of the 2018 Measure, for each diocese there is a court of the bishop of the diocese, known as the consistory court.[1542] Under section 2, the consistory court of a diocese is presided over by a single judge known as the chancellor of the diocese,[1543] appointed by the bishop of the diocese by Letters Patent, on the recommendation of the Dean of the Arches and Auditor (who must consult the Lord Chancellor as well as the bishop). A person may only be appointed as chancellor of a diocese if they hold or has held high judicial office or holds or has held the office of circuit judge or has the qualifications required for holding that office. A lay person may be appointed only if the bishop is satisfied that that person is a communicant. The decision of a consistory court of one diocese does not bind that of another.

Arches Court of Canterbury and Chancery Court of York

Under section 9 of the 2018 Measure, each province has a court of the archbishop. The court for the province of Canterbury is known as the Arches Court of Canterbury, while that for York is known as the Chancery Court of York. Section 10 provides that judges of the two courts are the chancellor of each diocese in each province (other than the chancellor of the diocese in Europe) and the Dean of the Arches and Auditor, who is appointed by the Archbishops of Canterbury and York acting jointly with the approval of the King, as signified by Warrant under the royal sign manual.

That judge (the Church of England's most senior) is styled as Dean of the Arches (in relation to the jurisdiction in the province of Canterbury) and Auditor (in relation to York). A person appointed to this office must hold or have held high judicial office or be qualified for appointment as a Lord Justice of Appeal. A lay person may be appointed if the archbishops are satisfied that they are a communicant. Section 11 provides for this judge's term of and departure from office, while under section 13 the Dean and Auditor must take the prescribed oath. Section 14 provides for the jurisdiction of each court.

Under section 21, the King in Council can hear and determine an appeal from a judgment of the Arches Court of Canterbury or the Chancery Court of York in proceedings under section 14(1)(a) (appeals in faculty cases). An appeal may be brought by any party to the proceedings with the permission of the King in Council.

In relation to proceedings on an appeal under section 20 of the Clergy Discipline Measure 2003, the judges of each court is as provided in section 3 of the Ecclesiastical Jurisdiction Measure 1963.

1541 A Benefices Act Court exists under the Benefices Act 1898 but last met in 1917.

1542 See also The Faculty Jurisdiction Rules 2015.

1543 In the case of the diocese of Canterbury, the judge is known as the commissary general.

Court of Ecclesiastical Causes Reserved

Under section 16 of the 2018 Measure, there is a court called the Court of Ecclesiastical Causes Reserved for both provinces. This deals with offences of doctrine, ritual and ceremonial, as well as hearing appeals from a consistory court in faculty cases involving such matters (section 18). Section 17 provides that the court consists of five judges appointed by the King, two of whom must hold or have held high judicial office and have made a declaration that he or she is a communicant. Three of the five must be or have been a diocesan bishop. This court last sat to consider the Henry Moore altar introduced into a London church.[1544]

Commissions of Review

Section 19 of the 2018 Measure provides that the King may appoint commissioners with jurisdiction to review a finding of the Court of Ecclesiastical Causes Reserved in proceedings under section 18. A party to such proceedings may lodge with the Clerk of the Crown in Chancery a petition to the King for a review. On a petition being lodged, a commission of review must be directed under the Great Seal of the Realm to five persons nominated by the King. Three of the five must be either a Supreme Court justice or a member of that court's supplementary panel and have made a declaration that they are a communicant. Two of the nominees must be Lords Spiritual in the House of Lords.

Clergy discipline

The Clergy Discipline Measure 2003 and The Clergy Discipline Appeal Rules 2005 provide for the law relating to ecclesiastical discipline. Section 3 of the 2003 Measure provides for a Clergy Discipline Commission, which publishes a Code of Practice and other guidance. Under Section 8, disciplinary proceedings can be triggered against any archbishop, bishop, priest or deacon on the grounds of:

- breaching any ecclesiastic laws
- failing to comply with the code imposed by section 5A of the Safeguarding and Clergy Discipline Measure 2016
- failing to do anything required by ecclesiastical law
- neglect or inefficiency in the performance of the duties of office
- conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders

Under section 6, a disciplinary tribunal hears and determines disciplinary proceedings against a priest or deacon, and the Vicar-General's court of the province of Canterbury or York proceedings against bishops and the archbishop of the other province. Section 23 makes provision for a Vicar-

[1544] *Re St Stephen, Walbrook* [1987] Fam 146, Ct of Ecc Causes Res.

General's court when exercising its jurisdiction in disciplinary proceedings against a bishop or archbishop.

Under section 24(1), if misconduct is found in a disciplinary proceeding, one or more of the following penalties may be imposed:

- prohibition (for life or for a limited time) from on carrying on certain functions
- removal from office
- revocation of licence
- injunction
- rebuke

Section 24(2) provides that in the case of misconduct by senior members of the clergy appointed by the King – including archbishops and bishops – then any penalty will only have effect once it is confirmed by an Order in Council. Section 37 provides for the suspension of a bishop or archbishop.

Guidelines for the Professional Conduct of the Clergy were approved on 10 July 2015 and declared as an Act of Convocation by the Convocations of Canterbury and York.

The draft Clergy Conduct Measure will repeal the Clergy Discipline Measure 2003 and replace it with a new system for the investigation and determination of complaints, establishing three different procedures depending on whether the complaint is a grievance, an allegation of misconduct, or an allegation of serious misconduct.[1545]

Judicial review

As with inferior secular courts, the ecclesiastical courts are subject to control by the senior courts of England and Wales through the process of judicial review, but only as regards excess of, or failure to exercise, jurisdiction.[1546]

Guernsey (a Crown Dependency) has its own Ecclesiastical Court.

8.4 Scotland

Article XIX of the Union with Scotland Act 1706 provided that the Court of Session and the High Court of Justiciary:

> do after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted by the Laws of that Kingdom and with

[1545] Explanatory Notes Clergy Conduct Measure 23-01-2025, Church of England website. This draft Measure will be considered by the General Synod in February 2025.
[1546] The position in relation to errors within an ecclesiastical court's jurisdiction is less clear.

> the same authority and privileges as before the Union Subject nevertheless to such regulations for the better Administration of Justice as shall be made by the Parliament of Great Britain.

This preserved a distinct system of Scots Law following the union of the kingdoms and parliaments of Scotland and England in May 1707. [1547]

Part 1 of Schedule 5 to the Scotland Act 1998 – which devolved responsibility for the courts and the administration of justice to the Scottish Parliament and Government – therefore reserved to the UK Parliament judicial remuneration (salaries) and:

> (d) the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal, [and]
>
> (e) the continued existence of the Court of Session as a civil court of first instance and of appeal

Together, these are known as Scotland's Supreme Courts, which are based in Parliament House in Edinburgh. [1548] The Principal Clerk of Session and Justiciary is responsible for the administration of these courts.

It is a longstanding principle of Scots Law that a judge enjoys absolute immunity from civil liability for anything done by him or her in the exercise of their judicial office. [1549]

Court of Session

The College of Justice Act 1532, an Act of the Old Scottish Parliament, made provision for a "college of cunning and wise men [...] for the doing and administracioune of Justice In all ciuile [civil] actiouns". [1550] The College of Justice includes the Court of Session, Scotland's highest civil court and the only one with the ability to deal with applications for judicial review (see Section 5.3).

The Court of Session Act 1988 (as amended) consolidated enactments relating to the constitution, administration and procedure of the Court of Session.

Under section 1, the maximum number of judges of the Court of Session is 36, although this can be increased by the King in Council. [1551] Under section 2, the Court is composed of an Inner House (which is primarily for appeals) and an Outer House. The Inner House is composed of two Divisions, the First Division (comprising the Lord President and five senior judges of the Court) and the

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1547 Under Article XVIII, Scots Law affecting private right was not to be altered "Except for evident Utility of the Subjects within Scotland".

1548 Parliament House had been built to house the Parliament of Scotland in the late 17th century.

1549 See *Haggart's Trs v Lord President Hope* [1824] 2 Sh App 125. One statutory exception to this general rule is section 170(1) of the Criminal Procedure (Scotland) Act 1995, which provides for damages to be payable to any person who wrongfully imprisoned by a justice of the peace.

1550 In 2015 the Court of Session ruled that the 1532 Act prevented English barristers appearing before that court (1532 law keeps English barrister out of Scotland's highest court, Legal Futures website, 7 May 2015).

1551 See, for example, The Maximum Number of Judges (Scotland) Order 2022.

Second Division (comprising the Lord Justice Clerk and five other senior judges of the Court).

Section 39 provides that a judgment pronounced by the Inner House "shall in all causes be final in the Court". Under section 40, an appeal to the Supreme Court requires permission of the Inner House or, if permission is refused, the Supreme Court itself.

Section 2 of the Judiciary and Courts (Scotland) Act 2008 provided that the Lord President of the Court of Session is the is the Head of the Scottish Judiciary. Under subsection (2) the Lord President is responsible:

- for making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts
- for representing the views of the Scottish judiciary to the Scottish Parliament and the Scottish Ministers
- for laying before the Scottish Parliament written representations on matters that appear to the Head of the Scottish Judiciary to be matters of importance relating to the Scottish judiciary or the administration of justice, and
- for making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders

The Lord President is also responsible for regulating the legal professions in Scotland. [1552]

Section 28 of the 2008 Act provides that the Lord President may by rules make provision for the investigation and determination of any matter concerning the conduct of judicial office holders in Scotland. [1553] Under section 29, the Lord President may, for disciplinary purposes, give a judicial office holder formal advice, a formal warning or a reprimand. Section 30 provides for the Scottish Ministers, with the consent of the Lord President, to appoint a Judicial Complaints Reviewer.

Under section 34, the Lord President may suspend a judicial office holder if they consider it is necessary for the purpose of maintaining public confidence in the judiciary. Section 35 provides that the First Minister must (when requested to do so by the Lord President) and may (in such other circumstances as the First Minister thinks fit) constitute a tribunal to investigate and report on whether a person holding a specified judicial office is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.

[1552] Regulating legal professions, Judiciary of Scotland website.
[1553] Complaints about the Judiciary (Scotland) Rules 2024.

The Administration of Justice (Scotland) Act 1933 also includes provision for the Court of Session.

Under section 5 of the Constitutional Reform Act 2005, the Lord President may also lay before the UK Parliament written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in Scotland. [1554]

Members of the Scottish judiciary "rarely attend" the Scottish Parliament to comment on proposed legislation, although in November 2023 Lady Dorrian (the Lord Justice Clerk) gave evidence to the Equalities, Human Rights and Civil Justice Committee to underlines the "extent" of "concerns" about the Scottish Government's Regulation of Legal Services (Scotland) Bill. [1555]

An Act of Sederunt is the legal name given to the procedural rules regulating civil legal procedure in Scotland. See the Act of Sederunt (Rules of the Court of Session 1994) 1994 (as amended). The Scottish Civil Justice Council has a role in making court rules.

High Court of Justiciary

Another Act of the Old Scottish Parliament, the Courts Act 1672, established the High Court of Justiciary, which is Scotland's highest criminal court and sits both as a trial court and a court of appeal. The same Act placed the office of Lord Justice Clerk on a statutory basis.

Under section 1 of the Criminal Procedure (Scotland) Act 1995 (as amended) the Lord President of the Court of Session is also Lord Justice General and performs their duties as the presiding judge of the High Court. The same section provided that the High Court's membership is the same as that of the Court of Session, with the remaining High Court judges known as Lords Commissioners of Justiciary.

Under section 2, the time and place of High Court sittings is determined by the Lord Justice General (or, failing that individual, the Lord Justice Clerk) after consultation with the Lord Advocate. The High Court can also hold additional sittings as required by the Lord Advocate.

Part VIII of the 1995 Act makes provision for appeals. An appeal lies from the High Court sitting as a trial court to the High Court sitting as a court of criminal appeal.

Section 304 provided for a Criminal Courts Rules Council. An Act of Adjournal is the legal name given to the rules regulating criminal procedure in Scotland. See the Act of Adjournal (Criminal Procedure Rules) 1996.

[1554] Such matters do not include those within the legislative competence of the Scottish Parliament, unless they are matters to which a bill for an act of Parliament relates. This power has never been exercised.

[1555] Scottish Parliament Official Report, Equalities, Human Rights and Civil Justice Committee, 28 November 2023, column 2.

Sheriff courts

Section 1 of the Courts Reform (Scotland) Act 2014 made continuing provision for sheriff courts, which have existed in some form in Scotland since the 12th century. They are regulated by the Sheriff Courts (Scotland) Act 1907 and the Sheriff Courts (Scotland) Act 1971. Sheriff courts are Scotland's principal local courts with extensive jurisdiction in both civil and criminal matters. They have concurrent jurisdiction with the Court of Session.

Scotland is divided into six sheriffdoms, each presided over by a sheriff principal. The six sheriffdoms are in turn divided into 49 sheriff court districts, each with a court presided over by one or more sheriffs.

Under section 27, the sheriff principal of a sheriffdom is responsible for ensuring the efficient disposal of business in the sheriff courts of the sheriffdom. Section 28 provides for the sheriff principal to fix sittings of sheriff courts, although under section 29 this power can be exercised by the Lord President if he or she considers the status quo prejudicial to the efficient disposal, organisation or administration of business in those courts or otherwise against the interest of the public.

Chapter 4 of the 2014 Act makes provision for the jurisdiction and competence of sheriffs.

Section 110 provides for appeal to the Sheriff Appeal Court, without the need for permission, against a decision of a sheriff constituting final judgment in civil proceedings, or any decision of a sheriff in civil proceedings.

Under section 38 of the Sheriff Courts (Scotland) Act 1971 (as amended), in any summary cause an appeal shall lie to the sheriff principal on any point of law from the final judgment of the sheriff, and to the Court of Session on any point of law from the final judgment of the sheriff principal (if the sheriff principal certifies the cause as suitable for such an appeal).

There is also an All-Scotland Sheriff Personal Injury Court.

Sheriff Appeal Court

Section 46 of the Courts Reform (Scotland) Act 2014 established the Sheriff Appeal Court. This comprises sheriff principals (section 49) and other Appeal Sheriffs appointed by the Lord President (section 50) to deal with civil appeals from sheriff courts and summary criminal appeals from sheriff and justice of the peace courts. Under section 54, the Lord President appoints a President and Vice President of the Sheriff Appeal Court.

Section 113 provides that an appeal may be taken to the Court of Session against a decision of the Sheriff Appeal Court constituting final judgment in civil proceedings, but only with the permission of the Sheriff Appeal Court, or if that Court has refused permission, with the permission of the Court of Session. Under section 114, an appeal may be taken to the Court of Session

against a decision of a sheriff principal constituting a final judgment in relevant civil proceedings.

Section 194ZB of the Criminal Procedure (Scotland) Act 1995 (as amended) provides for appeals on a point of law to the High Court against any decision of the Sheriff Appeal Court in criminal proceedings, but only with the permission of the High Court.

The relevant rules are the Act of Sederunt (Sheriff Appeal Court Rules) 2021.

Justice of the Peace courts

Section 59 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (as amended) provided for courts of summary criminal jurisdiction to be known as justice of the peace courts (JP courts).[1556] Under section 61, the sheriff principal of each sheriffdom is responsible for securing the efficient disposal of business in JP courts in that sheriffdom. Part 4 of that Act makes further provision for JP courts and justices of the peace (JPs).

Under section 6 of the Criminal Procedure (Scotland) Act 1995, the jurisdiction and powers of JP courts are exercisable by a summary sheriff or by one or more justices. Section 7 makes provision for the jurisdiction and powers of JP courts.

The form of commissions of the peace in Scotland is in the Schedule to The Crown Office (Forms and Proclamations Rules) Order 1992.

Scottish Land Court

Section 1 of and Schedule 1 to the Scottish Land Court Act 1993 provided that the Scottish Land Court established under the Small Landholders (Scotland) Act 1911 should continue in being. This has authority to resolve a range of disputes, including disputes between landlords and tenants, in agriculture and crofting.[1557]

There is a close relationship between the Land Court and the Lands Tribunal for Scotland: the Chairman of the Land Court is also President of the Lands Tribunal, although they have separate administrations.

Court of the Lord Lyon

The Court of the Lord Lyon, Scotland's heraldic authority and part of the devolved Scottish Government, is governed by statute: the Lyon King of Arms Act 1592, Lyon King of Arms Act 1669, Lyon King of Arms Act 1672 and Lyon King of Arms Act 1867. Appeals in civil cases go to the Inner House of the Court of Session and criminal to the High Court of Justiciary.

[1556] These replaced district courts.
[1557] The Scottish Land Court, Scottish Land Court website.

Under Schedule 5 to the Scotland Act 1998, Lyon's functions "as relating to the granting of arms" are reserved matters, but those in his judicial capacity are devolved.

The Court of the Lord Lyon website includes Guidance Notes on the Succession of Chiefs of Clans and Families, Succession to a Scottish Peerage or Nova Scotian Baronetcy, and On Petitioning for Arms.

Scottish Courts and Tribunals Service

Section 60 of and Schedule 3 to the Judiciary and Courts (Scotland) Act 2008 provided for the Scottish Courts and Tribunals Service (SCTS).[1558] Under section 61, the SCTS provides property, services, officers and other staff required for the purposes of the Scottish courts and the judiciary of those courts. Section 66 provides for the SCTS to prepare and submit to the Scottish Ministers for their approval a corporate plan describing how it proposes to carry out its functions, which must be laid before the Scottish Parliament and published once it has been approved. Under section 67, the SCTS must also prepare and publish a report on the carrying out of its functions, send a copy of that report to the Scottish Ministers and lay it before the Scottish Parliament.

Crown Office and Procurator Fiscal Service

The Lord Advocate is the ministerial head of the Crown Office and Procurator Fiscal Service (COPFS), leading the system of criminal prosecutions and the investigation of deaths. [1559]

Section 78 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 provided for an officer known as His Majesty's Chief Inspector of Prosecution in Scotland, who is appointed by the Lord Advocate. Under section 79, the Inspector is to secure the inspection of the operation of the Crown Office and Procurator Fiscal Service (COPFS).

Scottish Criminal Cases Review Commission

Section 194A of and Schedule 9A to the 1995 Act provided for a body corporate to be known as the Scottish Criminal Cases Review Commission. The Commission can review cases in which an individual has been convicted of a crime in a Scottish Court and believes that a miscarriage of justice may have occurred in respect of either the conviction, sentence imposed or both. [1560] Members of the Commission are appointed by the King on the recommendation of the Secretary of State for Scotland. Under section 194B, the Commission may refer a case to the High Court.

[1558] As renamed by the Courts Reform (Scotland) Act 2014, section 130.
[1559] Our leadership and structure, COPFS website.
[1560] The SCCRC is a public body addressing miscarriages of justice, SCCRC website.

Judicial appointments

Judicial Appointments Board for Scotland

Section 9 of and Schedule 1 to the Judiciary and Courts (Scotland) Act 2008 provided for a Judicial Appointments Board for Scotland.

The Board comprises ten members: three judicial members appointed by the Lord President, two legal members appointed by the Scottish Ministers, and five lay members also appointed by the Scottish Ministers, one of whom they must appoint as the chairing member.

The Board recommends to members of the Scottish Government individuals for appointment to judicial offices within the Board's remit (listed in section 10) and provides advice to the Scottish Ministers in connection with such appointments. Under section 11, a Minister may only appoint, nominate or recommend an individual to an office within the Board's remit only if the Board has recommended the individual for appointment to that office. A Scottish Minister may decline to accept a recommendation but must give reasons for doing so.

Section 12 provides that selection must be solely on merit and that the Board must be satisfied that the individual is of good character. Under section 14, the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office. Section 18 provides that the Board must prepare and publish an annual report, a copy of which must be sent to the Scottish Ministers, who in turn must lay it before the Scottish Parliament.

Senior judicial appointments

Most senior judges in Scotland are appointed by the King under the royal prerogative:[1561] the Lord President of the Court of Session,[1562] the Lord Clerk Register,[1563] the Lord Justice Clerk,[1564] and Senators of the College of Justice.[1565] Statute does, however, provide for the process to be followed before a recommendation for appointment is made to the King.

Under section 19 of the Judiciary and Courts (Scotland) Act 2008, where a vacancy in the office of Lord President and Lord Justice Clerk arises or is expected to arise, the First Minister must establish a panel in accordance with Schedule 2. Under subsection (5), in deciding whom to nominate the First Minister must have regard to the panel's recommendation. Under section 20, individuals must be of good character and selected solely on merit.

[1561] The College of Justice Act 1532 established what became the Court of Session but was not explicit as to who was to appoint its "cunning and wise men". See also Alan Page, Constitutional Law of Scotland, paras 6-19-6-28.

[1562] Lord President appointed, Scottish Government, 9 January 2025.

[1563] New Lord Clerk Register of Scotland, Scottish Courts website, 5 June 2023.

[1564] Appointment of Lord Justice Clerk, Scottish Courts website, 13 April 2016.

[1565] Senators appointed to College of Justice, Scottish Government, 17 March 2017.

Section 95 of the Scotland Act 1998 (as amended) provides, however, that it is for the Prime Minister to recommend to the King the appointment of a person as Lord President or Lord Justice Clerk. They shall not do so unless that person has been nominated by the First Minister for such appointment. Before nominating persons for appointment, the First Minister shall consult the Lord President and the Lord Justice Clerk (unless, in either case, the office is vacant).

Under section 4 of the Judiciary and Courts (Scotland) Act 2008, if the office of Lord President is vacant or the Lord President is incapacitated or suspended, then any function of the Lord President can be exercised by the Lord Justice Clerk. Under subsection (3) the First Minister must have received a declaration in writing signed by a majority of the total number of judges of the Inner House (including the Lord Justice Clerk) declaring that they are satisfied that the Lord President is incapacitated. Under subsection (6) the First Minister must send a copy of a declaration to the Presiding Officer of the Scottish Parliament. Section 5 makes similar provision for the Lord Justice Clerk.

By custom, the Lord Justice Clerk and Lord President are appointed Privy Counsellors if they are not already members of the Privy Council by virtue of having served as a Senator.

Court of Session judges

Under section 95 of the Scotland Act 1998, it is also for the First Minister, after consulting the Lord President, to recommend to the King the appointment of a person as a judge of the Court of Session.

Article XIX of the Union with England Act 1707 provides that such persons must have at least five years' standing as a member of the Faculty of Advocates. Under the Claim of Right Act 1689 they hold office ad vitam aut culpam (for life or until serious fault) although this has been substantially qualified by statute.

Under section 20A of the Judiciary and Courts (Scotland) Act 2008, an individual is qualified for appointment as a judge of the Court of Session if the individual immediately before the appointment held the office of sheriff principal or sheriff, and had held office as either sheriff principal or sheriff throughout the period of five years immediately preceding the appointment, or at the time of appointment is a solicitor having a right of audience in the Court of Session or the High Court of Justiciary under section 25A of the Solicitors (Scotland) Act 1980 and has been such a solicitor throughout the period of five years immediately preceding the appointment.

Under section 95(6) of the 1998 Act, a Court of Session judge may be removed from office only by the King on the recommendation of the First Minister. The First Minister can only make such a recommendation if the Scottish Parliament has approved a motion made by them, and following a written report from a tribunal concluding that the person in question is unfit for office by reason of inability, neglect of duty or misbehaviour. The chair of such a

tribunal shall be a member of the Judicial Committee of the Privy Council who holds or has held high judicial office. Where the person in question is the Lord President or the Lord Justice Clerk, the First Minister must also consult the Prime Minister.

Section 20B of the 2008 Act provides for the Scottish Ministers to appoint a temporary judge of the Court of Session. Section 20D provides for their resignation by giving notice to the Scottish Ministers.

By custom, only judges of the Inner House are appointed Privy Counsellors.

Sheriffs

Under section 3 of the Courts Reform (Scotland) Act 2014, the King appoints an individual to the office of sheriff principal. Under section 95(4) of the Scotland Act 1998, it is for the First Minister, after consulting the Lord President, to make this recommendation to the King. Section 4 makes similar provision for sheriffs, section 5 for summary sheriffs, sections 6 and 7 for a temporary sheriff principal, section 8 for part-time sheriffs, and section 10 for part-time summary sheriffs. Under section 14, an individual is qualified for appointment to these judicial offices if that individual:

- immediately before the appointment, held any other judicial office specified in that subsection, or
- at the time of appointment is legally qualified, and has been so qualified throughout the period of 10 years immediately preceding the appointment

Section 20 provides that any of these judicial office holders may resign at any time by giving notice to that effect to the Scottish Ministers. Under section 21, the First Minister must, if requested to do so by the Lord President, constitute a tribunal to investigate and report on whether an individual holding one these judicial offices is unfit to hold the office by reason of inability, neglect of duty or misbehaviour. Under section 25, the First Minister may remove an individual from these offices if a tribunal constituted under section 21 reports to them that the individual is unfit to hold that office by reason of inability, neglect of duty or misbehaviour, but only after the First Minister has laid the report before the Scottish Parliament under section 24(2). [1566]

Justices of the Peace

Under section 67 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, justices of the peace (JPs) are appointed "on behalf of and in the name of" the King by instrument under the hand of the Scottish Ministers. Appointment is for a term of five years, although a JP may resign by giving notice to the Scottish Ministers or retire. Under section 71, a tribunal appointed by the Lord President may order the removal of a JP from office.

[1566] The First Minister may remove a sheriff principal, sheriff or summary sheriff only by an Order subject to the negative procedure.

Chairman of the Scottish Land Court

Under section 1 of the Scottish Land Court Act 1993, the Scottish Land Court consists of not more than seven persons appointed by the King on the recommendation of the First Minister (who must first consult the Lord President), one of whom may be appointed Chairman.[1567] Under subsection (5), one of the members of the Land Court must speak the Gaelic language.

Under section 95(6) of the Scotland Act 1998, the Chairman of the Land Court may be removed from office only by the King on a similar basis as that for Court of Session judges.

Scottish Tribunals

The Tribunals (Scotland) Act 2014 makes provision for the appointment of ordinary, legal and judicial members of the First-tier and Upper Tribunals by the Scottish Ministers and others.

King's and Lord Treasurer's Remembrancer

The King's and Lord Treasurer's Remembrancer (KLTR) is appointed under the royal prerogative. It is held by the Crown Agent, the senior official in the Crown Office and Procurator Fiscal Service. As the Crown's representative in Scotland, the office holder deals with ownerless property known as bona vacantia.[1568] Proceeds are transferred to the Scottish Consolidated Fund. The KLTR delegates authority for treasure trove to the Treasure Trove Unit.[1569]

Judicial oaths

Section 6 of the Promissory Oaths Act 1868 provides that the oath of allegiance (the form of which is in section 2) and judicial oath (the form of which is in section 4) shall be taken by each of the officers named in the second part of the Schedule to that Act "as soon as may be after his acceptance of office". These are:

- the Lord President of the Court of Session[1570]
- the Lord Justice Clerk
- the judges and temporary judges of the Court of Session and High Court of Justiciary

[1567] He or she must be an advocate of the Scottish Bar of not less than ten years' standing, a sheriff principal or sheriff who has held office as such for a continuous period of not less than ten years; or a solicitor who, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980, has for a continuous period of not less than ten years had a right of audience in the Court of Session.

[1568] The KLTR's policies set out the Office's approach to dealing with different property and assets. The Lord (High) Treasurer was a senior office in the pre-1707 government of Scotland.

[1569] Treasure trove in Scotland falls under the royal prerogative, whereas in the rest of the UK it is governed by the Treasure Act 1996.

[1570] Lord President installation to be livestreamed, Judiciary of Scotland website, 30 January 2025.

- sheriffs principal, sheriffs, part-time sheriffs, summary sheriffs, part-time summary sheriffs, and
- justices of the peace

Section 2 of the Promissory Oaths Act 1871 provides that the judicial oath must be taken:

> in the Court of Session in open court before one or more of the judges of that court [...] or in open court before the court of the sheriff principal of the sheriffdom for which the person taking the oaths acts as justice, sheriff or summary sheriff, or, for a part-time sheriff or part-time summary sheriff, in open court before any sheriff principal.

8.5 Northern Ireland

Under section 12 of the Justice (Northern Ireland) Act 2002, the Lord Chief Justice of Northern Ireland holds the office of President of the Courts of Northern Ireland and is Head of the Judiciary of Northern Ireland.[1571] As President, he or she is responsible:

- for representing the views of the judiciary of Northern Ireland to Parliament, the Lord Chancellor and Ministers of the Crown generally
- for representing the views of the judiciary of Northern Ireland to the Northern Ireland Assembly, the First Minister and deputy First Minister and Northern Ireland Ministers
- for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of Northern Ireland within the resources made available by the Lord Chancellor, and
- for the maintenance of appropriate arrangements for the deployment of the judiciary of Northern Ireland and the allocation of work within courts

Under section 5 of the Constitutional Reform Act 2005, the Lord Chief Justice of Northern Ireland may lay before the UK Parliament written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in Northern Ireland.[1572]

The statutory basis of the superior Court Structure in Northern Ireland is the Judicature (Northern Ireland) Act 1978 (as amended). This provides for the constitution, jurisdiction and proceedings of the Court of Judicature of Northern Ireland. Under section 1, the Court of Judicature consists of the:

[1571] Although this is not reflected in statute, the holder of this office at the time of writing was Dame Siobhan Keegan and therefore styled Lady Chief Justice.

[1572] Such matters do not include transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a bill for an act of Parliament relates. This power has never been exercised.

- High Court of Justice
- Court of Appeal
- Crown Court

Section 42 of the Interpretation Act (Northern Ireland) 1954 also provides for judicial definitions.

High Court

Under section 2 of the 1978 Act, the High Court comprises the Lord Chief Justice of Northern Ireland and not more than 15 puisne judges called "Judges of the High Court".[1573] Part II of the 1978 Act makes provision for the general jurisdiction of the High Court and its judges, while section 8 covers applications for judicial review.

Under section 5, there are three divisions of the High Court, the:

- Chancery Division
- King's Bench Division
- Family Division

Court of Appeal

Under section 3, the Court of Appeal consists of the Lord Chief Justice and three other "Lords Justices of Appeal". Part III of the Act makes provision for the general jurisdiction of Court of Appeal.

Part II of the Criminal Appeal (Northern Ireland) Act 1980 provides for appeals from the Court of Appeal to the Supreme Court.

Crown Court

Under section 4, the jurisdiction of the Crown Court is exercisable by the Lord Chief Justice, any judge of the High Court or Court of Appeal, or any county court judge. Part IV of the Act makes further provision for the Crown Court.

Part I of the Criminal Appeal (Northern Ireland) Act 1980 provides for appeals from the Crown Court to the Court of Appeal.

The Director of Public Prosecutions for Northern Ireland can also make references in certain circumstances to the Court of Appeal,[1574] as can the

[1573] To date, a maximum of only 11 High Court judges have ever held office. The number can be varied by the King in Council. See, for example, The Maximum Number of Judges Order (Northern Ireland) 2020.

[1574] Criminal Appeal (Northern Ireland) Act 1980, section 15.

Criminal Cases Review Commission when in it suspects there has been a miscarriage of justice.[1575]

Non-jury trials

Section 1 of the Justice and Security (Northern Ireland) Act 2007 allows the Director of Public Prosecutions for Northern Ireland to issue a certificate that any trial on indictment of a defendant is to be conducted without a jury subject to a choice of conditions including a risk to the administration of justice and the involvement of a proscribed organisation.[1576] Under section 4, a non-jury trial is held only at the Crown Court sitting in Belfast, unless the Lord Chief Justice of Northern Ireland directs otherwise. If a certificate is issued under section 1, a single judge sits alone to hear the case. Any person convicted before a non-jury court has a right of appeal against sentence or conviction without leave. Section 9 provides that these provisions are time limited but may be extended for a period of two years by secondary legislation approved in both Houses of Parliament.[1577] Under section 40, an Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 reviews the legislation annually.

County and magistrates' courts

Section 1 of the Justice Act (Northern Ireland) 2015 provided for a single jurisdiction for county courts and magistrates' courts in Northern Ireland.

Section 3 of the County Courts (Northern Ireland) Order 1980 makes provision for county courts in Northern Ireland. Part III of the Order makes provision for county courts' general jurisdiction. Five county courts also operate as Family Care Centres, which handle family law disputes, as do several magistrates' courts in Family (or Domestic) Proceedings Courts. Appeals direct to the Court of Appeal on a point of law is available from county and magistrates' courts.

Section 10 of the Justice (Northern Ireland) Act 2002 transferred most functions of justices of the peace to lay magistrates, although some are retained under Schedule 4 to the Justice (Northern Ireland) Act 2002.

The Magistrates' Courts (Northern Ireland) Order 1981 makes general provision for magistrates' courts in Northern Ireland, while there is some remaining provision in the Magistrates' Courts Act (Northern Ireland) 1964.

1575 Criminal Appeal Act 1995, section 10.
1576 The 2007 Act replaced the so-called "Diplock Courts" system which had existed since 1972.
1577 The provisions were most recently extended in July 2023 and expire on 31 July 2025 (see The Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023). This was the eighth extension since 2007. There are no legal limits to the number of extensions though the provisions were intended to be a temporary measure.

Justices of the Peace

Section 5 of the Justice Act (Northern Ireland) 2015 provided for a commission of the peace for Northern Ireland issued under the Great Seal of Northern Ireland. Under subsection (2), justices of the peace for Northern Ireland are appointed by the Department of Justice by instrument on behalf and in the name of the King and may be removed from office in the same manner.

Coroners' courts

Under section 1 of the Coroners Act (Northern Ireland) 1959, the Lord Chancellor is responsible for the administration of all matters relating to coroners in Northern Ireland. [1578] Under section 2 the Northern Ireland Judicial Appointments Commission may appoint one, or more than one, coroner and deputy coroner for a district or districts. Under section 12(1D) of the Justice (Northern Ireland) Act 2002 (as amended by section 7 of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014), the Lord Chief Justice for Northern Ireland is President of the coroners' courts. Coroners also have jurisdiction to hold inquests into the finding of "treasure" in Northern Ireland. [1579]

Rules and administration

Sections 54-56 of the Judicature (Northern Ireland) Act 1978 make provision for Rules of Court. The current Rules of the Court of Judicature (NI) 1980 were most recently updated in June 2021. There are separate rules for the inferior courts made under the relevant legislation. [1580]

Under section 68A, the Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the:

- Court of Judicature
- county courts
- magistrates' courts, and
- coroners' courts

The Lord Chancellor must prepare and lay before the Northern Ireland Assembly an annual report as regards this duty.

Under section 69, the Northern Ireland Department of Justice must facilitate the conduct of the business of these courts.

[1578] See also The Coroners (Practice and Procedure) Rules (Northern Ireland) 1963.
[1579] Treasure Act 1996, section 9A.
[1580] Court Rules Publications, Department of Justice (NI) website. See also Interpretation Act (Northern Ireland) 1954, section 21.

Other bodies

Section 29 of the Justice (Northern Ireland) Act 2002 provided for a Public Prosecution Service for Northern Ireland. Under section 43, the Attorney General for Northern Ireland must consult the Advocate General for Northern Ireland before appointing a person to be Director or Deputy Director. Under subsection (2) either may be removed from office by the Attorney General if a tribunal convened under subsection (4) has reported to him recommending that the Director or Deputy Director be removed on the ground of misbehaviour or inability to perform the functions of the office.

Section 50 made provision for a body corporate known as the Northern Ireland Law Commission, although this was closed down in 2015. [1581]

The Criminal Jurisdiction Act 1975 provides for extra-territorial offences under the law of Northern Ireland, which means that criminal liability exists for offences which take place in the Republic of Ireland. Its counterpart in Ireland is the Criminal Law (Jurisdiction) Act 1976.

The statutory Independent Commission for Reconciliation & Information Recovery has the power to investigate deaths and serious injuries related to the Troubles which occurred between 1 January 1966 and 10 April 1998. [1582]

Judicial appointments

Northern Ireland Judicial Appointments Commission

Section 3 of and Schedule 2 to the Justice (Northern Ireland) Act 2002 provided for a Northern Ireland Judicial Appointments Commission to consist of a chairman and 12 other members appointed by the Lord Chancellor. The Commission selects and appoints and recommends for appointment all listed judicial offices up to and including the High Court in Northern Ireland.

Under paragraph 2 of Schedule 3, the King's power to appoint a person to a listed judicial office is exercisable on the Lord Chancellor's recommendation. This recommendation is exercisable only following notification by the Commission that it has selected a person.

Under section 7, a person holding a listed judicial office (Schedule 1) may be removed from office (and suspended from office pending a decision whether to remove him) by the Lord Chief Justice if a tribunal convened under section 8 has recommended removal on ground of misbehaviour or inability to perform the functions of the office.

[1581] Proposals for law reform are now considered internally in the Northern Ireland Department of Justice.

[1582] Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, section 2.

Lord Chief Justice and Lord Justices of Appeal

Under section 9 of the Judicature (Northern Ireland) Act 1978, a person is not qualified for appointment as Lord Chief Justice, a Lord Justice of Appeal or a judge of the High Court unless they are:

- a member of the Bar of Northern Ireland of at least ten years' standing, or
- a solicitor of the Court of Judicature of at least ten years' standing

Under section 12, the King may appoint a qualified person by Letters Patent under the Great Seal of Northern Ireland to serve as:

- Lord Chief Justice
- Lord Justices of Appeal (subject to the limit on numbers in section 3)

Under subsection (3), the King's powers of appointment are exercisable on the Prime Minister's recommendation, and under subsection (4), the Prime Minister must make a recommendation to fill any vacancy in the office of Lord Chief Justice or Lord Justice of Appeal. Under subsection (6), before making a recommendation the Prime Minister must consult:

- the (incumbent) Lord Chief Justice or (under section 11) the senior Lord Justice of Appeal who is available, and
- the Northern Ireland Judicial Appointments Commission

Under section 12B, the Lord Chief Justice holds office during good behaviour (subject to section 26 of the Judicial Pensions and Retirement Act 1993, under which they are to retire on reaching the age of 70). The King may, on an Address of both Houses of Parliament, remove a person from office as Lord Chief Justice. Under subsection (3), a motion for such an Address may be made in the House of Commons only by the Prime Minister and in the House of Lords only by the Lord Chancellor or (if the Lord Chancellor is not a peer) by another Minister of the Crown at the Lord Chancellor's request. Under subsection (4), no motion is to be made unless the Prime Minister has, after consulting the Lord Chancellor, convened a tribunal which has recommended the removal on the ground of misbehaviour and a copy has been laid before the relevant House of Parliament. [1583]

Under section 11, if the Lord Chief Justice is unavailable or the office vacant, their functions can be exercised by the senior Lord Justice of Appeal.

Under section 14, the Lord Chief Justice, a Lord Justice of Appeal or a judge of the High Court may vacate their office by resignation in writing addressed to the King.

[1583] The tribunal is to consist of the persons specified in subsection (9).

By custom, Lord Justices of Appeal and the Lord Chief Justice are appointed Privy Counsellors.

High Court judges

Under section 12A, the King may appoint a qualified person as a High Court judge by Letters Patent under the Great Seal of Northern Ireland (subject to the limit on numbers in section 2). Under Schedule 3 to the Justice (Northern Ireland) Act 2002, the Lord Chancellor must recommend the person selected by the NIJAC.

Under section 12C, Lords Justices of Appeal and judges of the High Court hold office (and are removable) on the same terms as the Lord Chief Justice, although the necessary tribunal is convened by the Lord Chief Justice or the Northern Ireland Judicial Appointments Ombudsman, each after consulting the other.

Under section 12 of the Administration of Justice Act 1973, the Lord Chancellor may by instrument declare the office of a judge of the Court of Judicature in Northern Ireland – who is "disabled by permanent infirmity" but "incapacitated from resigning it" – to have been vacated. Under subsection (4), such a declaration must be made with the concurrence of the Lord Chief Justice or, if made with respect to him or her, with that of the senior Lord Justice of Appeal.

Since 1988, knighthoods and damehoods have been conferred upon High Court judges who agree to accept them. [1584]

County court judges

Under section 102 of the County Courts Act (Northern Ireland) 1959 (as amended), the King may appoint a qualified person to be a judge who, under subsection (2) shall sit in the county court in accordance with directions given by the Lord Chief Justice. Section 103 makes provision for the qualifications and disqualifications of county court judges. Under section 105, a county court judge must vacate their office on reaching the age of 75.

Magistrates

Under section 9 of the Magistrates' Courts Act (Northern Ireland) 1964 (as amended), the King may appoint "fit and proper persons" to be resident magistrates, being members of the Bar of Northern Ireland of at least seven years' standing or solicitors of the Court of Judicature of at least seven years' standing. Under subsection (3), a resident magistrate shall sit in accordance with directions given by the Lord Chief Justice.

Under section 4 of the Justice Act (Northern Ireland) 2015, the Northern Ireland Judicial Appointments Commission appoints lay magistrates.

[1584] Brice Dickson, Law in Northern Ireland (4th edition), p98.

Tribunals

The Northern Ireland Judicial Appointments Commission appoints individuals to tribunals in Northern Ireland, including a President of the Industrial Tribunals and the Fair Employment Tribunal.

Ombudsman and complaints

Section 9A of and Schedule 3A to the Justice (Northern Ireland) Act 2002 provided for a Northern Ireland Judicial Appointments Ombudsman who is, by virtue of subsection (2) the Northern Ireland Public Services Ombudsman. Under section 9C, the Northern Ireland Judicial Appointments Commission must make arrangements for investigating any complaint made to it. Section 9D makes provision for complaints to the Ombudsman.

Under section 16 of the Justice (Northern Ireland) Act 2002, the Lord Chief Justice must prepare a code of practice relating to the handling of complaints against any person who holds a protected judicial office. [1585]

Under section 45 of and Schedule 8 to the 2002 Act, the Department of Justice appoints a Chief Inspector of Criminal Justice in Northern Ireland, although this office has no role in connection with the judiciary in Northern Ireland.

Judicial oaths

Under section 19 of the Justice (Northern Ireland) Act 2002, every person appointed to an office specified in Schedule 6 must, before undertaking any functions of the office, either take the oath specified in subsection (2), or make the affirmation and declaration specified in subsection (3). Neither include reference to the King, as in the judicial oath taken by judicial office holders in Great Britain.

The oath is:

> I..... do swear that I will well and faithfully serve in the office of..... and that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm.

The affirmation and declaration is:

> I..... do solemnly and sincerely and truly affirm and declare that I will well and faithfully serve in the office of..... and that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm.

Under section 2 of the Promissory Oaths Act 1871, the oath or affirmation must be taken before the Lord Chief Justice of Northern Ireland, or in the High

[1585] Lord Chief Justice's Code of Practice on Complaints. There is a separate code of practice for Complaints about the Conduct of the Lord Chief Justice.

Court, in open court before one or more of the judges of such court, or at the county court.

8.6 Prerogative of mercy

The prerogative of mercy is exercised by the King on ministerial advice. It can only be exercised in relation to criminal – rather than civil – proceedings.

The Lord Chancellor/Secretary of State for Justice is responsible for recommending the exercise of this royal prerogative in England, Wales and the Channel Islands, except in relation to members of the Armed Forces convicted and sentenced under the Services justice system, where the responsibility is carried by the Secretary of State for Defence. In the Isle of Man, by convention, this responsibility rests with the Lieutenant Governor. In Scotland, it is held by the First Minister, and in Northern Ireland by the Minister of Justice. [1586]

It is given effect via a Warrant under the Royal Sign Manual. [1587] By convention, the Clerk of the Crown in Chancery has in the past placed a notice of free pardons granted in England and Wales in the London Gazette. [1588]

8.7 Judicial review

Public bodies (which includes Ministers of the Crown, Scottish, Welsh and Northern Ireland Ministers) are subject to an overarching duty to act in accordance with the law. The courts can rule on whether such action is carried out lawfully, [1589] although they will usually hesitate to intervene in cases where they accept that, because of the subject matter (for example, certain prerogative powers), the decision-maker is better qualified than the courts to make a judgment.

Applications for what is known as judicial review must focus on the process by which a Minister or a public body has come to a decision, not on the substance (i.e. the merits) of that decision. There is no difference of substance between the grounds of review in Scots law and that of England

[1586] UIN HL2637, 4 November 2014, Prerogative of Mercy. A request to exercise this prerogative has also taken the form of an Address from the House of Lords (HL Deb 20 July 1998 Vol 592 cc653-72 [Guardsmen Fisher and Wright]).

[1587] PQ 199271, Letters Patent, 5 June 2014. Until the 1990s this prerogative was given effect via Letters Patent.

[1588] UIN 221302, 20 January 2015, Prerogative of Mercy.

[1589] Cabinet Manual, para 12.

and Wales,[1590] although its scope in Scotland has been wider, with less of a public/private distinction.[1591]

In judicial review the court will consider a public body's exercise of public powers by reference to:

- legality (acting within the scope of any powers and for a proper purpose)[1592]
- procedural fairness (for example, giving an individual affected by the decision the opportunity to be heard)
- reasonableness or rationality (following a proper reasoning process to reach a reasonable conclusion, see below)[1593]
- proportionality[1594]
- compatibility (with the European Convention on Human Rights)

If the court finds that a public body's decision was unreasonable, it will usually simply cancel (or "quash") the decision, thus requiring that public body to make a fresh decision that takes into account the guidance given by the court.[1595] In England and Wales, a quashing order is one of what used to be known as prerogative remedies under the jurisdiction of the High Court, the others being a mandatory or prohibitory order.[1596]

These orders have never been part of Scots law,[1597] in which the equivalents are known as reduction, implement and suspension. Under the Crown Suits (Scotland) Act 1857 (as amended), actions in respect of UK government departments may be brought against the Advocate General for Scotland, while in respect of Scottish Government departments actions are brought against the Lord Advocate. With some exceptions this applies in general to any part of the Scottish Administration.[1598]

1590 Alan Page, Constitutional Law of Scotland, para 16-15. The minor exception relates to the distinction between ultra vires and intra vires errors of law, which are of importance in Scots law.

1591 The principles were laid down in *West v Secretary of State for Scotland* [1992] SC 385.

1592 In *Padfield v Minister of Agriculture and Fisheries* [1968] AC 997, the House of Lords held that a Minister's discretion in exercising his statutory powers was subject to the restriction that it could not frustrate the purpose of the Act from which he derived his authority.

1593 These first three grounds of review were referred to as "illegality", "procedural impropriety" and "irrationality" by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374.

1594 *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26.

1595 Cabinet Manual, paras 6.10-6.12. On occasion, the UK Parliament has responded with indemnity legislation. See, for example, the National Health Service (Invalid Direction) Bill (HL Deb 20 March 1980 Vol 407 cc355-60 [National Health Service (Invalid Direction) Bill]).

1596 Senior Courts Act 1981, sections 29 and 31. Under section 31(3) leave for judicial review cannot be granted unless the applicant has a "sufficient interest" in the matter to which the application relates. Section 27B of the Court of Session Act 1988 makes similar provision for judicial review in Scotland.

1597 Court of Session Act 1988, sections 27A-27D make provision for judicial review procedure in the Court of Session.

1598 Scots law, unlike English law, did not historically consider that "the King can do no wrong".

The procedure of application for judicial review in England and Wales is set out in Civil Procedure Rule 54, for Scotland it is in Chapter 58 of Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994, and for Northern Ireland in Judicial Review Practice Direction 2/2018. Most applications must be brought no later than three months after the occurrence of the act being challenged, [1599] although the courts have general discretion to make exceptions.

Judicial review is not an optional substitute for an appeal to a tribunal with relevant jurisdiction. [1600] In March 2021 a government-commissioned Independent Review of Administrative Law presented its report to the UK Parliament.

Wednesbury principle

The Wednesbury principle (or test) is derived from a Court of Appeal judgment concerning the right to intervene in the decision of a local authority, although the principle now applies to public bodies generally. To justify intervention, a court would have to conclude that an authority:

- in making that decision, took into account factors that ought not to have been taken into account, or
- failed to take account factors that ought to have been taken into account, or
- that the decision was so unreasonable that no reasonable authority would ever consider imposing it [1601]

The term "Wednesbury unreasonableness" is used to describe the third limb. [1602] Or, as Lord Diplock put it, "unreasonable" denotes "conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt". [1603]

8.8 Judicial conventions

The UK Supreme Court issues its own Guide to Judicial Conduct. It is a non-statutory guide as to what is expected of UK Supreme Court Justices when they carry on their work.

[1599] Court of Session Act 1988, section 27A.
[1600] *R (G) v Immigration Appeal Tribunal* [2004] EWCA Civ 1731.
[1601] The Wednesbury principle, Law Society Gazette, 9 March 2015. Wednesbury is a market town in Sandwell in the West Midlands.
[1602] *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223. Since the Human Rights Act 1998, the courts have held that in cases concerning Convention rights, standards of proportionality should be used instead of Wednesbury unreasonableness.
[1603] *Education Secretary v Tameside Council* [1977] AC 1014.

England and Wales

The Guide to Judicial Conduct details the conventions which "operate variously to promote the dignity of the judicial office, the finality of judgements [sic] and, crucially, the independence of the judiciary from the other branches of government".[1604]

The Guide states that all judicial office holders should "by long standing convention" not comment publicly on:

- the merits, meaning or likely effect of government policy or proposals, including proposed legislation
- the merits of public appointments, or
- the merits of individual cases[1605]

According to the Cabinet Manual, judges may comment publicly on the practical effect of legislative proposals "insofar as such proposals affect the operation of the courts or the administration of justice".[1606]

There is also Guidance for the judiciary – Appearances before Select Committees.

In December 2024 Alison Levitt KC resigned as a circuit judge shortly before her nomination as a party-political member of the House of Lords was announced by 10 Downing Street.[1607]

Scotland

Guidance to Judicial Office Holders on Judicial Ethics in Scotland is produced by the Judicial Council for Scotland (which is supported by the Judicial Office for Scotland).

This states that it is "a cardinal feature" of judicial independence that:

> a judge should have no party political involvement of any kind, other than the exercise of their right to vote. If, at the time of appointment, a judge is a member of any political party or organisation, such a tie should be severed. An appearance of continuing ties, such as might arise from attendance at political gatherings, political fundraising events, or the making of a pecuniary contribution to a political party, should be avoided.[1608]

The Guidance also echoes that for England and Wales in stating that a judge "should avoid involvement in political controversy, unless the controversy

1604 Guide to Judicial Conduct, Courts and Tribunals Judiciary, July 2023, p16.
1605 Guide to Judicial Conduct, p16.
1606 Cabinet Manual, para 6.40.
1607 Political Peerages December 2024, Prime Minister's Office, 10 Downing Street, 20 December 2024.
1608 Guidance to Judicial Office Holders on Judicial Ethics in Scotland, Judiciary of Scotland, February 2024, para 4.15.

itself directly affects the operation of the courts, the independence of the judiciary, or the administration of justice". [1609]

Justices of the Peace and members of some tribunals, however, "have been regarded as free to have party political involvement" although they should ensure "that any political involvement does not impinge upon the performance of their judicial functions". [1610]

Northern Ireland

A Statement of Ethics for the Judiciary in Northern Ireland is issued by the Lord Chief Justice's Office.

This includes a statement regarding party political activity similar to that in the Scottish Guidance, but adds:

> Given the sensitivity of political matters in Northern Ireland, particular care is required when considering association with any particular political party or cause. [1611]

All four guidance documents embody the Bangalore Principles of Judicial Conduct endorsed by the United Nations Human Rights Commission in 2003.

Criticism of judges by elected office holders

By a similar convention, members of the UK's governments to not make personal criticism of judges, although, in reality, this has become more common since the 1990s.[1612] In February 2025, for example, the Lady Chief Justice of England and Wales said she was "deeply troubled" by comments made by the Prime Minister and Leader of the Opposition concerning a judge's ruling in an immigration case.[1613]

Judges are also shielded from criticism in Parliament by a rule that charges against a judge can be made only on a substantive motion on which a vote will be taken.[1614]

Sub judice rule

The House of Commons has resolved that no matter awaiting adjudication by a court of law (including a coroner's court or a Fatal Accident Inquiry) should

1609 Guidance to Judicial Office Holders on Judicial Ethics in Scotland, para 4.16.
1610 Guidance to Judicial Office Holders on Judicial Ethics in Scotland, para 2.4.
1611 A Statement of Ethics For the Judiciary in Northern Ireland, Lord Chief Justice's Office, 5 August 2011, para 4.3.
1612 Patrick O'Brien, "Enemies of the People": Judges, the media, and the mythic Lord Chancellor, Oxford Brookes University.
1613 Judge 'deeply troubled' by PMQs exchange on Gazans settling in UK, BBC News online, 18 February 2025.
1614 HC Deb 19 July 1977 Vol 935 cc1381-84 [Mr. Speaker's Ruling: Criticism of Judges].

be brought before it (although it can legislate on such matters). This is known as the sub judice rule.[1615]

It is for the House authorities to determine whether a matter falls within the sub judice resolution. In certain cases, if a matter concerns issues of national importance, the Commons Speaker can decide to grant a waiver to the rule allowing the matter to be raised in proceedings.[1616]

The House of Lords observes the same rule.[1617] The Lords Companion also states that Members of that House:

> should also respect United Kingdom court orders which are no longer sub judice and should be careful that in exercising their undoubted right to free speech in Parliament they have due regard to the relationship between Parliament and the courts.[1618]

The devolved legislatures have similar provisions.[1619]

8.9 The police and public order

Police officers are not employees of a police force or the state but hold the office of constable, a common law concept which grants police officers powers they can use to detect and investigate crime.[1620] A long-standing philosophy of policing was set out in the "General Instructions" issued to every new police officer after 1829. These are known as Robert Peel's 9 Principles of Policing.[1621] The use of police powers must be compatible with human rights and equalities legislation (see Section 8.9). Police personnel are individually responsible for ensuring their use of their powers is lawful, proportionate and necessary.[1622] Police constables enjoy common law powers of arrest in addition to their statutory powers.[1623]

Each police force is an independent body, led by a chief officer. Police forces and officers are expected to make operational decisions free from the influence of Parliament or government. This is sometimes referred to as "operational independence" or serving "without fear or favour".[1624] The Home Secretary sets The Strategic Policing Requirement for England and Wales, of which chief officers and Police and Crime Commissioners must have consideration.

1615 Erskine May, paras 20.11 and 22.21.
1616 Guide to Parliamentary Work, para 65.
1617 Lords Companion, paras 4.68-4.73.
1618 Lords Companion, para 4.73.
1619 See Northern Ireland Assembly Standing Order No 73, Scottish Parliament Standing Order No 7.5 and Senedd Standing Order No 13.5.
1620 The Office of Constable: The bedrock of modern day British policing, Police Federation.
1621 Definition of policing by consent, Home Office, 10 December 2012.
1622 See Commons Library research briefing CBP8637, Police powers: an introduction.
1623 See, for example, *Duncan v Jones* [1936] 1 KB 218.
1624 See Commons Library research briefing CBP8582, Policing in the UK.

In England and Wales, the use of investigation powers by the police is regulated by the Political and Criminal Evidence Act 1984 (as amended by the Criminal Justice and Police Act 2001), alongside the Codes of Practice which accompany it.

The law in Northern Ireland is almost identical to that in England and Wales by virtue of The Police and Criminal Evidence (Northern Ireland) Order 1989, as amended by The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007).[1625] In Scotland the relevant legislation is the Criminal Justice (Scotland) Act 2016.

The Public Order Act 1986 provides for offences relating to public order and the control public processions and assemblies in Great Britain.[1626] The equivalent legislation in Northern Ireland is The Public Order (Northern Ireland) Order 1987 and the Public Processions (Northern Ireland) Act 1998. Under section 1 of the 1998 Act, there is a Parades Commission for Northern Ireland.

8.10 Equality and human rights

Great Britain

The Great Britain Equality Act 2010 provides legal protection from discrimination in the workplace and in wider society.[1627] It consolidated previous individual laws on sex, race, and disability discrimination. Section 1 provides for a public sector duty to "reduce the inequalities of outcome which result from socio-economic disadvantage".

Under section 14 of the Equality Act 2006, the Equality and Human Rights Commission (EHRC) publishes Codes of Practice on what the 2010 Act means in practice.

The Great Britain EHRC was established under the 2006 Act. This enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.[1628] These are known as protected characteristics and are listed in section 4 of the Equality Act 2010.

Under Schedule 1 to the 2006 Act, the Secretary of State appoints not fewer than 10 or more than 15 individuals as Commissioners. These must include an individual who is (or has been) a disabled person, one "who knows about conditions in Scotland" (and has the consent of the Scottish Ministers) and

[1625] See also A New Beginning: Policing in Northern Ireland – The Report of the Independent Commission on Policing for Northern Ireland, September 1999.
[1626] The Police, Crime, Sentencing and Courts Act 2022 and Public Order Act 2023 provide for additional powers. See Commons Library research briefing SN05013, Police powers: Protests.
[1627] Including but not exclusively for UK citizens.
[1628] There is also a UK Special Envoy for Freedom of Religion or Belief.

one who knows about conditions in Wales (and has the consent of the Welsh Ministers). Scotland and Wales Committees also advise the Commission about the exercise of its functions in so far as they affect Scotland and Wales.

Section 30 of the 2006 Act provides for the EHRC to institute or intervene in legal proceedings, including judicial review, "if it appears to the Commission" that the proceedings are relevant to a matter in connection with which the Commission has a function.

Under section 7 of the 2006 Act, the EHRC will not take human rights action in relation to a matter within the legislative competence of the Scottish Parliament. Although mainly a Great Britain body, under section 82 the Northern Ireland Executive Office (which comprises the First Minister and deputy First Minister and two junior ministers) may by regulations make provision about discrimination or harassment on grounds of sexual orientation in Northern Ireland.

The Scottish Commission for Human Rights (SCHR) was established under section 1 of the Scottish Commission for Human Rights Act 2006. The SCHR has a "general duty" to promote awareness, understanding and respect for all human rights – economic, social, cultural, civil and political – in Scotland.[1629]

Schedule 1 to that Act provides that the Commission's chair is appointed by the King on the nomination of the Scottish Parliament, and not more than four other members by the Scottish Parliamentary Corporate Body (from which the SCHR is independent). Under section 14, the SCHR may, with leave of or at the invitation of the court, intervene in legal proceedings for the purpose of making a submission to the court on an issue arising in those proceedings.[1630]

Northern Ireland

Separate laws in Northern Ireland regarding discrimination based on gender, race, disability, sexual orientation and age are roughly comparable to those which apply in Great Britain under the 2010 Act.[1631]

Section 68 of the 1998 Act provides for a statutory Northern Ireland Human Rights Commission (NIHRC). Its primary role is to make sure government and public authorities "protect, respect and fulfil the human rights of everyone in Northern Ireland".[1632] The Secretary of State for Northern Ireland appoints Commissioners (including a Chief Commissioner) but in doing so must "as far as practicable" ensure they are "representative of the community in Northern Ireland". Under section 69, the NIHRC may advise the Assembly as to whether a bill is compatible with human rights and "bring proceedings involving law

1629 About, Scottish Human Rights Commission website.
1630 This applies to civil proceedings before a court, except children's hearing proceedings.
1631 See Brice Dickson, Law in Northern Ireland (4th edition), pp169-72.
1632 What we do, Northern Ireland Human Rights Commission website.

or practice relating to the protection of human rights".[1633] Under Schedule 7 to the 1998 Act, the NIHRC presents an annual report to the UK Parliament.

The NIHRC works in partnership with the Irish Human Rights and Equality Commission as mandated through a joint committee created in accordance with the Belfast/Good Friday Agreement.[1634]

Section 73 of the Northern Ireland Act 1998 also provides for an Equality Commission for Northern Ireland (ECNI). This consists of between 14 and 20 Commissioners appointed by the Secretary of State for Northern Ireland and, as with the NIHRC, must be "representative" of the community in Northern Ireland. Under section 75, all public authorities in Northern Ireland must promote equality of opportunity. Under Schedule 8 to the 1998 Act, the ECNI makes an annual report the Northern Ireland Department of the Economy.

Under the 2020 New Decade, New Approach agreement, an Ad Hoc Committee on a Bill of Rights was established by resolution of the Northern Ireland Assembly in February 2020. Its remit was to consider the creation of a Bill of Rights for Northern Ireland. The Ad Hoc Committee's Report was published in February 2022 but has not been acted on by the Assembly or the Northern Ireland Executive.

8.11 The European Convention on Human Rights and the Human Rights Act 1998

The European Convention on Human Rights (ECHR) was signed in Rome in 1950 and incorporated into UK law via the Human Rights Act 1998.[1635] The ECHR has been extended to, and the right of individual petition accepted in respect of, all but three of the British Overseas Territories.[1636] It also applies in the three Crown Dependencies.

The ECHR is divided into 59 Articles, which set out substantive rights and freedoms and established the European Court of Human Rights (Articles 19 to 51). The Articles include:

- Article 1 – obligation to respect human rights
- Article 2 – right to life

1633 See, for example, *Re Northern Ireland Human Rights Commission (Northern Ireland)* [2002] UKHL 25.

1634 In 2011 the joint committee considered the possibility of establishing a charter for the protection of fundamental rights for everyone living in both jurisdictions on the island of Ireland.

1635 Even before 1998 the Convention had effect as the UK had ratified it in 1951 and it had come into force in 1953. The UK was therefore bound to the Convention as a treaty in international law. Its preamble commits members of the Council of Europe to the "profound belief in those fundamental freedoms which are the foundation of justice and peace in the world" and reminds of the "common heritage of political traditions, ideals, freedom and the rule of law".

1636 The exceptions are the British Antarctic Territory, the British Indian Ocean Territory and Pitcairn.

- Article 3 – prohibition of torture
- Article 4 – prohibition of slavery and forced labour
- Article 5 – right to liberty and security
- Article 6 – right to a fair trial
- Article 7 – no punishment without law
- Article 8 – right to respect for private and family life
- Article 9 – freedom of thought, conscience and religion
- Article 10 – freedom of expression
- Article 11 – freedom of assembly and association
- Article 12 – right to marry
- Article 13 – right to an effective remedy

Article 14 provides that these rights exist regardless of skin colour, sex, language, political or religious beliefs, or origins. Article 15 provides for derogation by member states in time of war or other public emergency, "but only when strictly necessary", [1637] and not in relation to Articles 2, 3, 4 and 7.

Under Article 16, governments may restrict the political activity of foreigners, even if this would conflict with Articles 10, 11 or 14. Article 18 provides that most Convention rights can be restricted by a general law which is applied to everyone, but only if this is strictly necessary. Under Article 34, individuals can only appeal directly to the European Court of Human Rights having first exhausted all domestic remedies. [1638] Proceedings must be brought within one year of the date on which the act being complained about took place, although this can be extended. [1639]

Further substantive rights are set out in additional Protocols to the Convention, of which the UK has ratified the First, Sixth and Thirteenth:

- Protocol No. 1 – protection of property
- Protocol No. 6 – abolition of the death penalty

[1637] The UK has, in the past, derogated in respect of Northern Ireland and in response to the events of 11 September 2001.

[1638] European Convention on Human Rights (simplified version), Council of Europe website.

[1639] Human Rights Act 1998, section 7. This one-year time limit was extended to the Scottish Government under section 100 of the Scotland Act 1998 (as amended by section 14 of the Scotland Act 2012). For the purpose of such proceedings, Scottish Ministers can be judicially challenged for a failure to act (including a failure to make legislation).

- Protocol No. 13 – abolition of the death penalty in all circumstances [1640]

Not all Convention rights are absolute: many may be limited or interfered with in certain defined circumstances, so long as it is necessary and proportionate to do so. Each country is given a certain latitude in how it gives effect to the Convention rights to reflect national circumstances (the margin of appreciation).

"Qualified" rights, which include the right to respect for private and family life (Article 8) and peaceful enjoyment of property (Protocol 1, Article 1), may be interfered with only if what is done:

- has a basis in law
- is done to secure a legitimate aim set out in the relevant article, e.g. the prevention of crime, and
- is necessary in a democratic society, which means it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued[1641]

The Human Rights Act 1998 gives further effect to the ECHR. The Act includes provisions that:

- make it unlawful for a public authority (which includes Ministers of the Crown in their official capacity, courts and tribunals),[1642] subject to certain limited exceptions, to act in a way that is incompatible with a Convention right (section 6)[1643]
- when determining a question which has arisen in connection with a Convention right must take into account jurisprudence from the European Court of Human Rights without being bound by it (section 2)
- require all courts and tribunals to interpret all legislation, as far as possible, in a way that is compatible with the Convention rights (section 3)
- allow certain higher courts to make a declaration of incompatibility (section 4) [1644]

[1640] Protocols to the Convention, ECHR website.

[1641] The last of these is known as the "proportionality test".

[1642] But not the Church of England or "either House of Parliament or a person exercising functions in connection with proceedings in Parliament". The question as to whether a body is a public authority is one of fact and degree as to whether they exercise functions "of a public nature" (*Aston Cantlow Parochial Church Council v Wallbank* [2003] UKHL 37).

[1643] Unless primary legislation permits no other course of action.

[1644] This itself does not "strike down" an Act of Parliament. It remains for the government to make proposals to Parliament to change the law (*In re McLaughlin* [2018] UKSC 48). The higher courts are the Supreme Court, the Judicial Committee of the Privy Council, the Court Martial Appeal Court, the High Court of Justiciary (in Scotland) "sitting otherwise than as a trial court", the Court of Session, the High Court or the Court of Appeal (in England and Wales or Northern Ireland) and the Court of Protection when dealing with certain matters.

- compel the Minister in charge of a government bill to make (before its second reading) a statement that in his or her view the bill's provisions are compatible with Convention rights (section 19)[1645]

Under the devolution statutes, any legislative provision made by the Scottish Parliament, Senedd or Northern Ireland Assembly which is incompatible with Convention rights and given domestic effect under the 1998 Act is not law.[1646]

The 1998 Act does not extend to the British Overseas Territories as part of their law, although in most cases each Territory's constitution makes provision for human rights protection (see Table 3), either via Order in Council or local legislation.[1647]

The UK government provides an annual report to Parliament's Joint Committee on Human Rights which sets out its record on the implementation of human rights judgments.[1648]

Even after the passage of the 1998 Act, UK common law presumptions relating to fundamental rights remain of importance. For example, the presumption against retrospective application of legislation goes beyond that in the European Convention in that it also applies to civil liabilities.[1649]

Council of Europe

The UK Delegation to the Council of Europe represents the UK at intergovernmental meetings of and works with the European Court of Human Rights, the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights and the Congress of Local and Regional Authorities, as well as the delegations of other member states.[1650]

The Prime Minister appoints members of the UK Delegation, normally in a written ministerial statement and following consultation with other political parties, although this can be delegated to another Minister of the Crown.[1651]

Judgments of the European Court of Human Rights

Article 46 of the European Convention on Human Rights obliges the UK to implement judgments made against it by the European Court of Human Rights (ECtHR), which is based in Strasbourg.[1652] The Court comprises a number of judges equal to the number of states which are party to the

[1645] On rare occasions, a Minister may also make a statement that he or she cannot say that the bill's provisions are compatible but that the Government nevertheless wishes Parliament to proceed with the bill (Cabinet Manual, paras 6.28-6.30). Ministers are not required to give reasons either way.
[1646] See Northern Ireland Act 1998, sections 6(2)(c) and 6(2)(d), Scotland Act 1998, section 29(2)(d) and Government of Wales Act 2006, sections 81 and 108A(2)(e).
[1647] This usually takes the form of a "fundamental rights" chapter near the beginning of a Territory's constitution.
[1648] Responding to human rights judgments: 2023 to 2024, Ministry of Justice, 28 November 2024.
[1649] Daniel Greenberg, How to Read Legislation, p23.
[1650] UK Delegation to the Council of Europe, Foreign, Commonwealth and Development Office website.
[1651] Erskine May, para 10.3.
[1652] The UK accepted the jurisdiction of the court with effect from January 1966.

Convention (article 20), with a judge from each country (article 22). Chamber judgments can be referred to the Grand Chamber, the judgment of which is final. The ECtHR also publishes its Rules of Court.

The implementation of a judgment usually involves the responsible Minister (or Ministers) taking both individual and general measures.[1653] The Committee of Ministers – the Council of Europe's decision-making body – can take steps against the UK if, in its view, a judgment is not being properly implemented.[1654]

Although the UK courts are under no statutory obligation to follow ECtHR case law, in *R (Ullah) v Special Adjudicator* [2004] UKHL 26, the House of Lords ruled that domestic courts "should, in the absence of some special circumstances, follow any clear and constant jurisprudence of the Strasbourg court", although this was qualified in the case of *Manchester City Council v Pinnock* [2010] UKSC 45.

International Criminal Court

The International Criminal Court (ICC) is a treaty-based international criminal court. It investigates and where warranted tries individuals accused of genocide and other war crimes. The ICC was established under the Rome Statute, which was given effect in law in England and Wales and in Northern Ireland through the International Criminal Court Act 2001, and in Scotland by the International Criminal Court (Scotland) Act 2001. The Court is located at The Hague, Netherlands.

International Court of Justice

The International Court of Justice (ICJ) is an organ of the United Nations which adjudicates general disputes between nations and gives advisory opinions on international legal issues. The ICJ is also located at The Hague in the Netherlands. Under a 2017 declaration, the UK accepts as "compulsory ipso facto and without special convention, on condition of reciprocity" the jurisdiction of ICJ.[1655]

For a description of international instruments related, directly or indirectly, to human rights and accepted by the UK, see the Ministry of Justice's Human rights: common core document, pp34-35.

[1653] For example, The Homosexual Offences (Northern Ireland) Order 1982 (which decriminalised homosexuality between consenting adults in Northern Ireland) was made following judgement in the case of *Dudgeon v The United Kingdom* (Application no. 7525/76).

[1654] Cabinet Manual, para 9.18.

[1655] Declarations recognizing the jurisdiction of the Court as compulsory, ICJ website, 22 February 2017.

9 The Commonwealth, Overseas Territories and Crown Dependencies

Much of the previous chapters have described what might be called the United Kingdom's domestic constitution. As the Cabinet Manual states:

> The UK has also ratified a wide range of other treaties that form part of the constitutional framework – for example the Charter of the United Nations, the North Atlantic Treaty and the various agreements of the World Trade Organization. [1656]

Some instruments or decisions agreed by international organisations are binding on member states. [1657] Where necessary, the King may by Order in Council make provision to apply measures (up to the use of armed force) agreed by the UN Security Council under section 1 of the United Nations Act 1946. [1658] Such Orders can extend to "any part of His Majesty's dominions" other than independent Commonwealth Realms (ie the Crown Dependencies and Overseas Territories). Similarly, the International Organisations Act 1968 and Overseas Development and Co-operation Act 1980 provide for the UK's membership of the International Monetary Fund and World Bank.

The Prime Minister represents the UK at a range of international meetings, even during a general election. [1659] The Prime Minister also appoints members of both Houses to various international delegations, normally in a written ministerial statement and following consultation with other political parties. [1660]

International relations are reserved to the UK Parliament but by convention the UK government ensures the devolved administrations are consulted as necessary, in accordance with the arrangements set out in the Memorandum of Understanding and its associated concordats. [1661]

1656 Cabinet Manual, para 18.
1657 Cabinet Manual, para 9.13.
1658 These are usually Orders for international sanctions. For a challenge to two Orders made under the 1946 Act, see *Ahmed v HM Treasury* [2010] UKSC 2. Under the UN Charter, the UK is one of five permanent members of the UN Security Council.
1659 As Prime Minister, Rishi Sunak was heavily criticised for choosing not to attend the international part of D-Day commemorations during the 2024 UK general election campaign.
1660 This can be delegated to another minister.
1661 Cabinet Manual, para 9.22.

9.1 The Commonwealth

The Commonwealth is a voluntary association of 56 countries which recognise King Charles III as its Head. It is "values based and works towards the shared goals of democracy and development". The Commonwealth Charter expresses the "values and aspirations which unite the Commonwealth", including democracy, human rights and the rule of law.

Decisions are taken by consensus at the biennial Commonwealth Heads of Government Meeting (CHOGM), while the Commonwealth Secretariat's work plan is based on mandates also agreed by heads of government. [1662] Commonwealth Declarations are usually issued following a CHOGM.

Under the non-statutory London Declaration, 1949, members of the Commonwealth accept the King as the "symbol of the free association of its independent member nations and as such the Head of the Commonwealth". The Head of the Commonwealth is not an hereditary position but based on the agreement of all member states. Most recently, Commonwealth leaders agreed in 2018 that the "next head of the Commonwealth shall be His Royal Highness Prince Charles, the Prince of Wales", [1663] which he therefore became upon the death of Queen Elizabeth II in September 2022.

As the Commonwealth is not a constitutional entity, the Head of the Commonwealth must from time to time speak or act in relation to the Commonwealth without UK ministerial advice. [1664] Examples include the annual Commonwealth Day message and the King's traditional Christmas speech, which is broadcast across the Commonwealth. [1665] In practice, however, UK governments have often requested changes to the Christmas speech. [1666] If the Monarch makes a speech as Head of the Commonwealth, as Queen Elizabeth II did at the United Nations in 1957, then the text is agreed in advance by all Commonwealth Realm governments. [1667]

The Commonwealth Parliamentary Association (CPA) promotes "parliamentary democracy and good governance".

1662 Cabinet Manual, para 9.21.

1663 Commonwealth Heads of Government Meeting 2018 – Leaders' Statement, Commonwealth website, 20 April 2018. This statement followed Queen Elizabeth II's "sincere wish" that her son (now King Charles III) continue "carry on the important work" begun by her father (King George VI) in 1949 (A Speech given by Her Majesty The Queen, Head of the Commonwealth, at the Formal Opening of CHOGM, Royal Family website, 18 April 2018).

1664 Philip Murphy, The Empire's New Clothes: The Myth of the Commonwealth, London: C. Hurst, 2021, p97.

1665 HC Deb 24 January 1984 Vol 52 c763 [Engagements]

1666 The Times, 21 January 1984.

1667 A speech by The Queen to the UN General Assembly, 1957, Royal Family website, 21 October 1957.

Commonwealth Realms

Within the broader Commonwealth there are 14 Commonwealth Realms (not including the UK) where the King is also Head of State.

Table 2 Commonwealth Realm constitutions and the Governor-General

Commonwealth Realm	Constitutional reference
Antigua and Barbuda	The Antigua and Barbuda Constitution Order 1981, section 22
Australia	Commonwealth of Australia Constitution Act 1900, section 2
The Bahamas	The Constitution of the Commonwealth of The Bahamas, section 32
Belize	Belize Constitution, section 30
Canada	The Constitution Acts 1867 to 1982, section 10
Grenada	The Grenada Constitution, article 19
Jamaica	The Jamaica (Constitution) Order in Council 1962, section 27[1668]
New Zealand	Constitution Act 1986, section 2[1669]
Papua New Guinea	Constitution of the Independent State of Papua New Guinea, section 88[1670]
Saint Kitts and Nevis	The Constitution of Saint Christopher and Nevis, section 21
Saint Lucia	Constitution of Saint Lucia, section 19
Saint Vincent and the Grenadines	Constitution of Saint Vincent and the Grenadines, section 19
Solomon Islands	Solomon Islands Constitution, section 27[1671]
Tuvalu	The Constitution of Tuvalu Act 2023, section 56[1672]

The 1926 Imperial Conference declared that what were then known as "Dominions" – Canada, Newfoundland, Australia, New Zealand, South Africa and the Irish Free State – were "equal in status" to the UK and in no way

[1668] In December 2024 the Jamaican government introduced The Constitution Amendment Bill 2024 which seeks to amend the Constitution of Jamaica to provide for "a non-monarchical Head of State, thereby establishing Jamaica as a republic".

[1669] The Constitution Act 1986 is the "principal formal statement" of New Zealand's constitutional arrangements but is not a codified constitution. Relevant English and UK statutes were confirmed as part of the law of New Zealand by the Imperial Laws Application Act 1988. See also the New Zealand Cabinet Manual 2023. A King's Representative in the Cook Islands, which are in free association with New Zealand, is also appointed by the King for a renewable three-year term (Constitution of the Cook Islands, article 3)

[1670] In addition to acting on the advice of Papua New Guinea's National Executive Council, the King must also act "in accordance with a decision of the Parliament".

[1671] The King must act "in accordance with an address from Parliament".

[1672] The King must act "in accordance with the advice of the Prime Minister given, after the Prime Minister has, in confidence, consulted the members of Parliament".

subordinate, "though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations". [1673]

In each Commonwealth Realm, the King is represented by a Governor-General.[1674] The 1926 Imperial Conference also agreed that:

> the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government. [1675]

Since 1930, vice-regal representatives have been appointed following advice from the relevant Realm government.[1676] The 1930 Imperial Conference also decided that disputes between Realms should be submitted to a Commonwealth Tribunal especially appointed for the purpose, although this mechanism has never been used.[1677]

Most Realm constitutions (or primary legislation in the case of New Zealand) make provision for a Governor-General to be appointed by the King who is to hold office "during His Majesty's pleasure" and who shall be his "representative" in each Realm (see Table 2). The Monarch also appoints Australian state governors but not Canadian lieutenant-governors.[1678] There is a Canadian Secretary to the King, an official in that realm's Privy Council Office.

The Statute of Westminster, 1931 removed nearly all the UK Parliament's authority to legislate for the Commonwealth Realms. Section 4 of the Statute, however, provides that:

> No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof. [1679]

An express declaration of consent was last used in the preamble to the Australia Act 1986, which terminated the UK Parliament's remain ability to legislate in that Commonwealth Realm.[1680] Technically, the UK Parliament could repeal these provisions and indeed the Statute itself, although as Lord Sankey observed in 1935, "that is theory and has no relation to realities".[1681]

1673 Imperial Conference, 1926: Summary of Proceedings, Dublin: The Stationary Office, 1926.

1674 In Canada and New Zealand, the office of their respective governors-general are constituted by Letters Patent.

1675 Imperial Conference, 1926: Summary of Proceedings, p15.

1676 Imperial Conference, 1930: Summary of Proceedings, Government of New Zealand, 1930, p15.

1677 Ivor Jennings, The Law and the Constitution, p99.

1678 Australia Act 1986, section 7.

1679 Although this provision could be repealed by the UK Parliament, the effect of doing so would have no effect internationally. The Southern Rhodesia Act 1965, for example, asserted the UK Parliament's right to legislate for what was then a self-governing Crown colony, although this was largely ignored by the government of Southern Rhodesia.

1680 See also the preamble to the Canada Act 1982.

1681 *British Coal Corporation v the King* [1935] UKPC 33.

The preamble to the Statute of Westminster also stated that:

> any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom. [1682]

As explained in Section 3.5, this has been treated as a binding convention.

The King retains certain powers in some Commonwealth Realms. Section 2 of the Royal Powers Act 1953 (Australia) provides that when the King is "personally present in Australia" then "any power under an Act exercisable by the Governor-General may be exercised by the [King]". [1683] This enabled Queen Elizabeth II to open the federal Parliament of Australia on several occasions.

Under section 59 of the Australian constitution and section 56 of the Canadian constitution, the King may "disallow" any federal law within a year of it receiving the Governor-General's assent. Section 16 of the New Zealand Constitution Act 1986 is much narrower in scope, providing only that a bill "shall become law" when "the Sovereign or the Governor-General assents to it".

Some Commonwealth Realms retain the right of appeal to "His Majesty in Council" (which would then be referred to the Judicial Committee of the Privy Council): The Bahamas, St Kitts and Nevis, Antigua and Barbuda, Tuvalu, Jamaica, Grenada, and Saint Vincent and the Grenadines. [1684] In some cases, appeals will come via the Eastern Caribbean Supreme Court, which was established by the The West Indies Associated States Supreme Court Order 1967. This is a superior court of record for five Commonwealth Realms and three Overseas Territories. The Chief Justice is appointed by the King on the advice of the Lord Chancellor.

Since the UK Royal Titles Act 1953, the Monarch has possessed a different style and title in each Commonwealth Realm, something known as the "divisibility of the Crown". Common to each, however, is "Head of the Commonwealth". [1685]

Commonwealth Realms are free to sever their remaining links with the Crown. Barbados was the most recent to do so in November 2021. [1686] The means by which this severance occurs depends upon each Realm's constitutional arrangements. The King possesses no veto.

[1682] Statute of Westminster, 1931, preamble.
[1683] This applies to the King by virtue of section 16 of the Acts Interpretation Act 1901 (Australia).
[1684] Provision for this is made in the relevant Realm legislation.
[1685] For a full list see Commons Library Insight, The King's style and titles in the UK and the Commonwealth, 31 January 2024.
[1686] Commons Library Insight, Barbados becomes a republic, 29 November 2021.

9.2 Overseas Territories

Fourteen Overseas Territories form part of a single "UK Realm" but are not part of the United Kingdom or "the British Islands" (see Section 9.3).[1687] These Territories are listed in Schedule 6 to the British Nationality Act 1981. The boundaries of some Overseas Territories have been altered by Order in Council.[1688]

Section 1 of the British Overseas Territories Act 2002 renamed the UK's Dependent Territories "British Overseas Territories" and made provision for British citizenship regarding the inhabited territories (see Section 2.5).[1689] In most of the Overseas Territories there has also been established a local status known as "belonger status" or "belongership".[1690] All 14 Overseas Territories also fall within the definition of "colony" in Schedule 1 to the Interpretation Act 1978, and this is the term generally used in pre-2002 enactments.

Governors

Governors (or their equivalent) of the Overseas Territories are appointed by the King on the advice of the Foreign Secretary, usually under statute.[1691] In some Territories, Royal Instructions issued to the Governor under the royal prerogative remain in force and may be considered as part of the law of those Territories.[1692] Instructions include matters such as the issue of banknotes and laws affecting the discipline and control of the Armed Forces. There are also directions to Governors known as Colonial Regulations, which date from 1977. Part I deals with public officers and Part II with public business.[1693] Regulations 69-71 deals with communications from officers in Overseas Territories to the Secretary of State and petitions addressed to the King from any citizen.[1694]

1687 The Overseas Territories are within the Commonwealth by virtue of the UK's membership but are not separate members as they are not sovereign states. Representatives of the Territories may attend Commonwealth meetings as part of the UK delegation (Ian Hendry and Susan Dickson, British Overseas Territories Law, 2nd edition, London: Hart, 2018, p9).

1688 See also section 1 of the Colonial Boundaries Act 1895.

1689 Some provisions of the British Nationality (Falkland Islands) Act 1983 remain in force.

1690 See Ian Hendry and Susan Dickson, British Overseas Territories Law, pp220-26.

1691 Most Governors are resident in their respective Territories, except the Governor of Pitcairn, who in practice is usually the British High Commissioner to New Zealand (and therefore based in Wellington), and the Governor of Ascension and Tristan da Cunha, who is the same person as the Governor of St Helena. The Commissioners of the British Antarctic Territory and British Indian Ocean Territory are held by senior officials at the Foreign, Commonwealth and Development Office. The office of Commissioner of South Georgia and the South Sandwich Islands has in practice been held by the Governor of the Falkland Islands. Finally, the Administrator of the Sovereign Base Areas is resident in that Territory.

1692 See Ian Hendry and Susan Dickson, British Overseas Territories Law, pp40-41. According to The National Archives' Statutory Instrument Practice, Royal Instructions are classed as primary legislation.

1693 Both parts are available to download at Governance – SGSSI Laws, SGSSI website.

1694 See also Ian Hendry and Susan Dickson, British Overseas Territories Law, pp54-55.

Governance

Each Overseas Territory also has its own codified constitution (see Table 3),[1695] although the UK Parliament retains unlimited power to legislate on their behalf.[1696] In less populated Territories, executive power is exercised on the King's behalf largely by the Governor or equivalent office holder, while in Territories with permanent populations the Governor is advised to varying degrees by an elected executive body, variously called a Cabinet, Executive Council, Council of Ministers or Island Council. In larger Territories, these bodies exercise direct executive power or provide the Governor with binding advice on a wide range of matters.[1697] Where there are ministerial forms of government, the Governor or equivalent appoints the premier or chief minister. While the Overseas Territories are expected to be self-financing as far as possible, financial assistance is granted to several by the UK government.[1698] In most Territories, the office of auditor is constitutional in nature.[1699]

In nine Territories, there is an elected legislature which debates and passes bills before submitting them for assent by the King or a Governor acting on his behalf.[1700] These are known as Acts, Laws or Ordinances. Sections 2 and 3 of the Colonial Laws Validity Act 1865 provides that Territory legislation is not invalid for inconsistency with UK laws except to the extent that it is "repugnant" to any Act or subordinate legislation that extends to the Territory in question.[1701] Governors of Overseas Territories (or their equivalents) grant or on occasion refuse Royal Assent for territorial legislation. Some continue to possess "reserve powers" in relation to defence and financial services. In certain cases, Governors may also "reserve" a territorial bill for a UK Secretary of State to decide if the legislation appears repugnant to the relevant Overseas Territory constitution.[1702] By convention, the UK does not recommend denial of assent if there is no clash.[1703] The power of the King to

1695 All but two are statutory. Gibraltar and the British Indian Ocean Territory are subject to the royal prerogative as they were ceded to the UK rather than settled. Ian Hendry and Susan Dickson have suggested that the prerogative may not have been displaced "entirely" even with respect to Territories whose constitutions have a statutory basis (British Overseas Territories Law, pp14-15).

1696 The Overseas Territories: Security, Success and Sustainability, Cmnd 8374, Foreign and Commonwealth Office, 28 June 2012. See also *Madzimbamuto v Lardner-Burke and George* [1969] 1 AC 645 (PC).

1697 Ian Hendry and Susan Dickson, British Overseas Territories Law, p10. See *R (Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs* [2006] 1 AC 52. Anne Twomey, an Australian constitutional lawyer, has criticised the *Quark* judgment on the basis that it ran contrary to the idea of the Overseas Territories forming part of a single UK realm (Anne Twomey, Responsible Government and the Divisibility of the Crown, Public Law, Winter 2008, pp742-67). For the contrary view, see Hendry and Dickson (p27).

1698 Ian Hendry and Susan Dickson, British Overseas Territories Law, p13. Assistance is mainly governed by the International Development Act 2002, particularly section 2. Under Article 73 of the United Nations Charter the UK is obliged to promote the well-being of the inhabitants of the Overseas Territories and their economic advancement, but this duty has not been incorporated into UK law.

1699 Ian Hendry and Susan Dickson, British Overseas Territories Law, pp236-38.

1700 In sparsely populated Territories, the Governor or equivalent office holder is the legislature.

1701 The effect of sections 4 and 5 of the 1865 Act is that a Territory legislature is subject to the authority by which it was created. Prisoners can be transferred between Territories under the Colonial Prisoners Removal Act 1884.

1702 Commons Library research briefing CBP9583, The UK Overseas Territories and their Governors.

1703 Bermuda same-sex marriage: Government will not block bill, BBC News online, 8 February 2018.

disallow a law enacted by the legislature of an Overseas Territory is retained in the constitutions of all Territories except that of Gibraltar.[1704]

The UK generally makes laws for the Overseas Territories in "reserved" areas (such as defence and security) via primary legislation,[1705] Regulations made by a UK Minister of the Crown[1706] or via Orders in Council, the last of which receive the King's approval at a meeting of the Privy Council.[1707] Neither consent nor consultation from or with Territories is necessary but in practice the latter usually takes place.[1708] Constitutional Orders in Council made under statutory powers, except those made under the St Helena, Anguilla and Cyprus Acts, must be laid before both Houses of Parliament after being made.[1709] By convention, however, since 2002 most constitution Orders have been sent in draft to Commons Foreign Affairs Committee, where possible at least 28 sitting days before they are submitted to the King in Council.[1710] Both statutory and prerogative constitutions Orders are judicially reviewable on the usual principles.[1711] In some cases, Territory legislation makes general or specific provision for the incorporation of UK enactments.[1712]

Legal system

While each Overseas Territory has its own legal system, law officers (usually an Attorney General) and courts of law, the Judicial Committee of the Privy Council remains their highest court of appeal (see Section 8.2).[1713] Below the JCPC, every Territory except the Sovereign Base Areas has its own, or shares a common, Court of Appeal, a court of unlimited civil and criminal jurisdiction (usually called a Supreme Court, which again is sometimes shared) and its own summary or magistrates' courts.[1714] Beyond JCPC rulings (which are binding on the courts of the relevant Territory), judgments of other courts in

1704 Ian Hendry and Susan Dickson, British Overseas Territories Law, p79.

1705 Primary legislation will usually provide for application to the Overseas Territories, either in whole or in part. See, for example, the British Nationality Act 1981, section 53.

1706 See, for example, The British Nationality (British Overseas Territories) Regulations 2007.

1707 For settled Territories see the British Settlements Act 1887, section 2.

1708 Ian Hendry and Susan Dickson, British Overseas Territories Law, p59. A rare example of the UK legislating for a Territory against the wishes of its government was the Caribbean Territories (Criminal Law) Order 2000, which decriminalised homosexual acts in private between consenting adults. The purpose of this Order was to satisfy the UK's obligations under the European Convention. The Cayman Islands Constitution (Amendment) Order 2020 obliges the Foreign Secretary to notify the Cayman Islands Premier of proposed UK acts that would extend directly to the Cayman Islands or Orders in Council extending any provisions of a UK act to the Cayman Islands.

1709 Commons Foreign Affairs Committee, Overseas Territories, HC 147-I, 6 July 2008, paras 27-28. Orders made under the excepted Acts do not need to be laid before Parliament, nor any constitution Orders made exclusively by virtue of the prerogative for Gibraltar or the BIOT.

1710 Commons Foreign Affairs Committee, Overseas Territories, HC 147-I, 6 July 2008, para 29.

1711 *R (Bancoult) v Foreign Secretary (No. 2)* [2008] UKHL 61.

1712 See, for example, the English Law (Application) Act, a Gibraltar Ordinance.

1713 See the Judicial Committee Acts 1833 and 1844.

1714 The Chief Justice and Justices of the Pitcairn Supreme Court are New Zealand judges who reside in New Zealand and attend to Pitcairn matters when required. The Falklands' Chief Justice is usually a High Court judge from England and Wales and its Court of Appeal (usually appellate judges drawn from the Court of Appeal of England and Wales) sits in London as and when required. The non-resident Court of Appeal for Gibraltar holds three sessions a year and its Justices are largely drawn from the England and Wales Court of Appeal or the Judicial Committee of the Privy Council (see the Human rights: common core document).

the UK are in most cases persuasive rather than binding authority.[1715] The Crown has a prerogative power to establish courts in ceded and settled territories. Section 2 of the British Settlements Act 1887 also makes statutory provision for settled Territories. The Colonial Courts of Admiralty Act 1890 provides that a Territory legislature may declare certain courts to be a court of admiralty.

Table 3 Overseas Territories constitutions (as amended)

Overseas Territory	Constitution	Statutory or prerogative?
Anguilla	The Anguilla Constitution Order 1982	Statutory (Anguilla Act 1980 and West Indies Act 1967)
Bermuda	Bermuda Constitution Order 1968	Statutory (Bermuda Constitution Act 1967)
British Antarctic Territory	The British Antarctic Territory Order 1989	Statutory (British Settlements Acts 1887 and 1945)
British Indian Ocean Territory	British Indian Ocean Territory (Constitution) Order 2004	Prerogative[1716]
British Virgin Islands	The Virgin Islands Constitution Order 2007	Statutory (West Indies Act 1962)
Cayman Islands	The Cayman Islands Constitution Order 2009	Statutory (West Indies Act 1962)
Falkland Islands	The Falkland Islands Constitution Order 2008	Statutory (British Settlements Acts 1887 and 1945)
Gibraltar	Gibraltar Constitution Order 2006	Prerogative
Montserrat	The Montserrat Constitution Order 2010	Statutory (West Indies Act 1962)
Pitcairn	The Pitcairn Constitution Order 2010	Statutory (British Settlements Acts 1887 and 1945, Judicial Committee Act 1844)
St Helena, Ascension and Tristan da Cunha	St Helena, Ascension and Tristan da Cunha Constitution Order 2009	Statutory (British Settlements Acts 1887 and 1945, Saint Helena Act 1833)[1717]
South Georgia and the South Sandwich Islands	The South Georgia and South Sandwich Islands Order 1985	Statutory (British Settlements Acts 1887 and 1945)

[1715] Ian Hendry and Susan Dickson, British Overseas Territories Law, p28.
[1716] BIOT Government, Royal Prerogative & Orders in Council, BIOT Administration website.
[1717] The Saint Helena Act 1833 was originally the Government of India Act 1833 until 1948, when its present short title was granted.

Sovereign Base Areas of Akrotiri and Dhekelia	The Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960	Statutory (Cyprus Act 1960)
Turks and Caicos Islands	The Turks and Caicos Islands Constitution Order 2011[1718]	Statutory (West Indies Act 1962)

Source: legislation.gov.uk

Otherwise, the UK is generally responsible for the defence, security, "external affairs" and overall "good government" of the Overseas Territories.[1719] If the UK government believes domestic good government to be compromised, it can introduce direct rule.[1720] If the UK is considering ratification of a convention or treaty, the Overseas Territories are consulted regarding its extension to them.[1721] By virtue of authority granted by the UK (via a general letter or authority or entrustment),[1722] the more populated Territories have conducted various forms of external relations in their own names.[1723]

UK Ministers and the elected leaders of the Overseas Territories meet annually in a Joint Ministerial Council (JMC). The JMC meets annually and is usually hosted by a Minister from the Foreign, Commonwealth and Development Office. The UK government also provides a "small secretariat" to support the work of the Council, while regularly reporting on progress to the UK Parliament.[1724] In addition to the JMC, there is an annual meeting of Attorneys-General from the Overseas Territories, which is usually chaired by the Attorney or Solicitor General for England and Wales.[1725] Since 2022 the Speaker of the House of Commons has held regular conferences of Overseas Territory speakers and presiding officers.[1726]

In practice, sovereignty over Overseas Territories has terminated either upon their achieving independence or by their transfer to another state. It is the UK government's intention to submit a treaty and a bill to Parliament during 2025 which would cede sovereignty over the British Indian Ocean Territory to

[1718] This restored ministerial government and an elected House of Assembly to the Territory.
[1719] Cabinet Manual, para 9.25. See, for example, The Extradition Act 2003 (Overseas Territories) Order 2016, which provides for extradition from or to most of the Overseas Territories.
[1720] The Virgin Islands Constitution (Interim Amendment) Order 2022 allows action to be taken to address concerns about "poor governance" in the Virgin Islands by providing for certain provisions of its constitution to be suspended in whole or in part on an interim basis.
[1721] Cabinet Manual, para 9.26. See also Guidance on extension of treaties to Overseas Territories.
[1722] These are generally issued by the UK Minister responsible for the Overseas Territories on behalf of the Foreign Secretary.
[1723] Ian Hendry and Susan Dickson, British Overseas Territories Law, pp248-65.
[1724] The Overseas Territories: Security, Success and Sustainability, Foreign and Commonwealth Office, June 2012, p16. For a more recent declaration, see Joint declaration of governments of the United Kingdom and British Overseas Territories: a modern partnership for a stronger British family.
[1725] Conference of overseas territories Attorneys General, UK government press release, 26 September 2016.
[1726] Commons and Overseas Territories Speakers' Conference 2023 Communiqué.

Mauritius.[1727] By convention, legislation as well as a treaty is necessary to give effect to the cessation of UK territory.[1728]

Since 1967, several Overseas Territories have voted in referendums to maintain UK sovereignty: Gibraltar (1967), Bermuda (1995) and the Falkland Islands (2013). Referendums also approved draft constitutions in Gibraltar (2006) and the Cayman Islands (2009).

Ten of the UK's Overseas Territories are on the United Nations' list of Non-Self-Governing Territories. In 2012 a UK delegate told the UN that its Special Committee on Decolonization was no longer relevant to the Overseas Territories as they all possessed a large measure of self-government.[1729]

Court of Final Appeal in Hong Kong

Section 1 of the Hong Kong Act 1985 provided that Hong Kong ceased to be UK territory as of 1 July 1997.

Under the Hong Kong Court of Final Appeal Ordinance (Cap.484), Hong Kong's government established the Court of Final Appeal for the Hong Kong Special Administrative Region. This replaced the Judicial Committee of the Privy Council as of 30 June 1997. The Court of Final Appeal may as required invite judges from other common law jurisdictions to sit on the court. A number of judges from the UK, Australia and New Zealand have done so.[1730]

9.3 Crown Dependencies

The Crown Dependencies are the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. Within the Bailiwick of Guernsey there are three separate jurisdictions: Guernsey (which includes the islands of Herm and Jethou), Alderney and Sark (which includes the island of Brecqhou).

Together with the Overseas Territories, the Crown Dependencies comprise "one undivided" UK Realm but are not part of the UK. This has also been

1727 HC Deb 7 October 2024 Vol 754 cc45-47 [British Indian Ocean Territory: Negotiations]. See also UK and Mauritius joint statement, Foreign, Commonwealth & Development Office, Prime Minister's Office, 10 Downing Street, 3 October 2024. There are also territorial disputes regarding the British Antarctic Territory (with Argentina and Chile, although these are held in abeyance by the Antarctic Treaty 1959), the Falkland Islands and South Georgia and the South Sandwich Islands (with Argentina) and Gibraltar (with Spain). The UK accepts the condition in the Treaty of Utrecht 1713 that should it wish to cede Gibraltar then it must first be offered to Spain.

1728 William Anson, The Law and Custom of the Constitution II, ii, pp137-42.

1729 Special Committee on Decolonization 'No Longer Relevant' to Overseas Territories of United Kingdom, Fourth Committee Told, United Nations website, 11 October 2012.

1730 Hong Kong Court of Final Appeal – A Brief Overview of the Court of Final Appeal. In a UK context this has been controversial; see Remaining British judges urged to resign from Hong Kong's top court, Guardian, 24 June 2024.

called "the British family".[1731] Schedule 1 to the Interpretation Act 1978 defines the "British Islands" as "the United Kingdom, the Channel Islands and the Isle of Man".[1732]

Unlike the Overseas Territories, the Crown Dependencies are predominantly self-governing entities, of which the King is Head of State, as represented by a Lieutenant-Governor.[1733] In the Channel Islands the King is styled Duke of Normandy,[1734] and in the Isle of Man, Lord of Mann.[1735] Several public appointments in the Crown Dependencies are made by the King under statute and the prerogative, usually via Letters Patent.[1736]

Constitutionally, Jersey and Guernsey are unusual in that their office of Bailiff "fuse together the roles of chief justice and presiding officer of their respective courts and parliaments".[1737]

There is no legislation or document which clearly sets out the relationship between the UK government and the Crown Dependencies. Rather it rests "largely on the common law, ancient Royal Charters and constitutional convention about which there is not always agreement".[1738] Wikipedia has a list of Royal charters applying to the Channel Islands. Like the UK, the Crown Dependencies do not possess codified constitutions.

The UK Ministry of Justice acts as an "interlocutor and facilitator" for the Crown Dependencies in their engagement with the UK government. The Lord Chancellor is the Privy Counsellor with responsibility for advising the Crown on matters relating to the Crown Dependencies.[1739]

1731 House of Commons Justice Committee, The constitutional relationship with the Crown Dependencies, 28 March 2024. The Succession to the Crown (Jersey) Law 2013, however, referred to Queen Elizabeth II as "Sovereign of the Bailiwick of Jersey, such Realm being anciently part of the Duchy of Normandy".

1732 As does section 43 of the Interpretation Act (Northern Ireland) 1954.

1733 The Lieutenant-Governors are appointed by the King on the advice of a local panel (Jersey), the Bailiff, Seigneur of Sark and President of States of Alderney (Guernsey) and the Chief Minister, President of Tynwald and First Deemster (the Isle of Man).

1734 Although the Royal Family website notes that the islands "owe allegiance to The King in his role as Duke of Normandy", that title was renounced by Henry III in 1259 and removed from his seal and official styles in 1260 (Royal Styles and Titles in England and Great Britain, Heraldica website).

1735 The Isle of Man's Accession Proclamation for King Charles III in September 2022 included this title for the first time (Proclamation of the Lord of Mann at St. John's, 16 September 2022).

1736 See, for example, Letters Patent for various roles (FOI), Government of Jersey, 25 March 2020. For a full list, see the supporting document for Commons Library research briefing, The royal prerogative and ministerial advice.

1737 Andrew Le Sueur: Finally, separation of powers in Jersey?, UK Constitutional Law Association, 28 November 2024.

1738 Jeffrey Jowell et al, The Barclay Cases: Beyond Kilbrandon, Jersey Legal Information Board, March 2018.

1739 Commons Justice Committee, The constitutional relationship with the Crown Dependencies: Government Response, HC 582, 16 December 2024, paras 2 and 20.

Governance

The Channel Islands

The unicameral States of Guernsey (États de Guernesey) is the parliament of Guernsey. It comprises 38 People's Deputies and 2 Alderney Deputies. All its enactments apply to the island of Herm, while some also apply to Alderney and Sark as "Bailiwick-wide legislation" (with the consent of the States of Alderney or the Sark Chief Pleas).[1740] The main constitutional statutes for each part of the Bailiwick are, as amended:

- The Reform (Guernsey) Law, 1948
- The Government of Alderney Law, 2004
- The Reform (Sark) Law, 2008

For more on Guernsey governance see Constitution – Royal Court and the Guernsey Legal Resources website.

Jersey's States Assembly (Assemblée des États) is also unicameral, consisting of 37 Deputies elected across 9 districts and 12 Constables representing 12 parishes. The States Assembly elects the Chief Minister who, with Assembly approval, appoints the Council of Ministers. The main constitutional statute is the States of Jersey Law 2005. See also the Jersey Legal Information Board website.

Isle of Man

The Isle of Man Parliament, known as the (High Court of) Tynwald, consists of the Legislative Council and the House of Keys. All Members of the Legislative Council (MLCs) are indirectly elected by the 24 Members of the House of Keys (MHKs), except the President of Tynwald, the Lord Bishop of Sodor and Man (a voting member) and the Attorney General. These are all ex-officio office holders.[1741] Tynwald sits as a single body to deal with financial and policy matters. The Estates of the Constitution of the Isle of Man explains its separation of powers.

On 5 July each year, the Tynwald Court assembles in the open air on Tynwald Hill at St John's for Tynwald Day. The Lieutenant Governor of the Isle of Man, the Monarch, or another member of the Royal Family presides. By statute, each Act of Tynwald must be promulgated on Tynwald Hill within 18 months of

[1740] The States of Guernsey may legislate for Sark on criminal matters without the consent of the Chief Pleas. See the Alderney (Application of Legislation) Ordinance, 1948. An hereditary Seigneur has the right to speak in debate but not vote in the Chief Pleas.

[1741] Under the Constitution Bill 2023, the Bishop of Sodor and Man would retain their seat in the Legislative Council but lose the right to vote (see Removal of bishop's vote moves forward in Legislative Council, BBC News online, 12 June 2024).

enactment, or it ceases to have effect. Any person may also approach Tynwald Hill on Tynwald Day to present a Petition for Redress.[1742]

British-Irish Council

All three Crown Dependencies are members of the British-Irish Council (BIC) and host BIC summit meetings on rotation together with other member governments.

Judicial systems

Each Crown Dependency has its own legal system and courts of law, many of which have a legislative basis: [1743]

- Isle of Man Courts of Justice – Staff of Government (Appeals), High Court (Civil Division and Court of General Gaol Delivery) and the Lower Courts
- Jersey Courts Service – Royal Court (including the Family Division) the Court of Appeal, Magistrate's Court, Petty Debts Court, Youth Court, Youth Appeal Court and Tribunals
- Guernsey Court System – Royal Court, Magistrate's Court, Contracts Court, Guernsey Court of Appeal, Court of Chief Pleas and the Ecclesiastical Court (and, separately, the Court of Alderney and the Court of the Seneschal of Sark)

The judiciary and law officers of the Crown Dependencies are appointed under the royal prerogative by the King on the advice of the Lord Chancellor. The Lord Chancellor can also advise the King, if necessary, to remove a member of a Crown Dependency judiciary. [1744]

The Judicial Committee of the Privy Council is the court of last resort in appeals from the Guernsey and Jersey Courts of Appeal (see Section 8.2). Judges from England and Wales and Scotland often sit on Crown Dependency Courts of Appeal.

The Privy Council

Principal legislation made by Crown Dependency legislatures also requires Royal Assent, sometimes via the Privy Council of the United Kingdom.

The UK Ministry of Justice examines each piece of legislation to ensure there is no conflict with the UK's international obligations (including the European Convention on Human Rights) or with any "fundamental constitutional principles". Having done so, it advises the Privy Council as to whether the

[1742] Tynwald Day, Tynwald website. There are no equivalent ceremonies in the Channel Islands.
[1743] Information Notes on the Jersey and Guernsey Courts of Appeal, Courts and Tribunals Judiciary website.
[1744] HC Deb 19 May 1992 Vol 208 cc93-4W [Jersey Bailiff (Dismissal)]. The advisory role was previously the responsibility of the Home Secretary.

King ought to make an Assenting Order. [1745] The Privy Council Committee for the Affairs of Jersey and Guernsey comprises the Secretary of State for Justice and the Lord President of the Council. [1746]

For all Jersey legislation, Royal Assent is granted by the King in Council. [1747] For Isle of Man legislation, this is delegated to the Lieutenant Governor for all "non-reserved" purposes. [1748] Projets de Loi (legislation) approved by the States of Guernsey, the States of Alderney or the Sark Chief Pleas are subject to a procedure similar to that in the Isle of Man. [1749]

Financial relations

Under a long-standing agreement, the Isle of Man makes an annual contribution to the UK for defence and common services, including overseas representation. The amount is determined in accordance with the 1994 Contribution Agreement between the UK and Isle of Man governments. [1750]

In accordance with the Jersey and Guernsey (Financial Provisions) Act 1947, the Bailiwicks of Jersey and Guernsey occasionally surrender hereditary revenues of the Crown to the UK Consolidated Fund. Each payment is returned to Jersey and Guernsey within ten working days.

Extension of UK legislation to the Crown Dependencies

UK primary legislation does not ordinarily apply to the Crown Dependencies, although the UK Parliament can legislate for the Crown Dependencies in the areas of defence, nationality, citizenship, Succession to the Throne, extradition and broadcasting.[1751]

The 1973 Royal Commission on the Constitution observed that, by convention, the UK Parliament did "not legislate for the Islands without their consent in matters of taxation or other matters of purely domestic concern".[1752]

If consent is forthcoming, then the provisions of UK primary legislation can be extended to the Crown Dependencies via a Permissive Extent Clause (PEC). This can happen either by "direct application" (expressly or by necessary implication) or via an Order in Council, which is now the usual course.[1753] The

1745 Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man, Ministry of Justice. The Justice Secretary can recommend that Royal Assent be withheld, although this is rare.
1746 There is no longer an active Privy Council committee for the Isle of Man.
1747 Royal Assent to Legislation and Petitions (Bailiwick of Jersey) Order 2022.
1748 See the Isle of Man Constitution Act 1990 and the Royal Assent to Legislation and Sodor and Man Diocesan Synod Measures (Isle of Man) Order 2022. The Ministry of Justice still reviews Manx legislation prior to indicating to the Lieutenant Governor that s/he may grant assent.
1749 Royal Assent to Legislation (Delegation to Lieutenant-Governor) (Bailiwick of Guernsey) Order 2024.
1750 Certain other relations between the UK and Isle of Man are governed by the Isle of Man Act 1979.
1751 House of Commons Justice Committee, Crown Dependencies, HC 56–I, 30 March 2010, p20.
1752 Royal Commission on the Constitution 1969-1973 Volume I: Report, Cmnd 5460, October 1973, para 1362.
1753 How To Note: Extension of UK primary legislation to the Crown Dependencies, Ministry of Justice. Unusually, the UK government included a Permissive Extent Clause in the Fisheries Act 2020 despite explicit opposition from Jersey and Guernsey.

UK has not activated a PEC without a Crown Dependency's consent since 1967, when it did so in relation to the Isle of Man.[1754]

The Royal Commission on the Constitution also believed the UK could legislate on behalf of the Crown Dependencies to uphold what it called "good government". In 2010, the Commons Justice Committee found that this would only be called into question in the "most serious of circumstances", for example a "fundamental breakdown in public order or endemic corruption in the government, legislature or judiciary".[1755]

In 2008, consideration of "good government" appears to have formed the basis for the then Justice Secretary's initial rejection of Royal Assent regarding proposals for a new democratic legislature for Sark.[1756]

The House of Commons Justice Committee regularly examines the relationship between the Crown Dependencies and the UK government, "taking an in depth look at issues as they arise".[1757]

Letters of Entrustment

The Crown Dependencies are recognised internationally as "territories for which the United Kingdom is responsible".[1758] As such they cannot sign up to international agreements without something known as a Letter of Entrustment.[1759] Otherwise, when the UK is planning to ratify international conventions, treaties, protocols or agreements, then by convention it consults the Crown Dependencies.[1760]

1754 Commons Justice Committee, The constitutional relationship with the Crown Dependencies: Government Response, para 59.
1755 Commons Justice Committee, Crown Dependencies, p16.
1756 Commons Justice Committee, Crown Dependencies, p18.
1757 For the most recent report, see Commons Justice Committee, The constitutional relationship with the Crown Dependencies, HC 30, 28 March 2024.
1758 Fact sheet on the UK's relationship with the Crown Dependencies, Ministry of Justice.
1759 Cabinet Manual, para 9.24.
1760 How to note on the extension of international instruments to the Crown Dependencies and How to note on dealing with requests from the Crown dependencies to extend the UK's ratification of international instruments, Ministry of Justice.

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