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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, much of the UK constitution is written down in some form, but it has never been codified or, as in most other countries, brought together in a single document. This 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*](#), the UK constitution has been:

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 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.

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

1.1 Statute

Primary legislation

“Primary legislation” is the term used to describe the main laws passed by the legislative bodies of the UK.² Together with other sorts of legislation, this is sometimes known as “the statute book”, in other words the whole body of statute law currently in force.³ It is one of the most significant sources of the UK constitution. The main sources of primary legislation are:

- Acts of the UK Parliament
- Acts of the Scottish Parliament
- Acts of the Senedd (the Welsh Parliament)
- Acts of the Northern Ireland Assembly
- Measures of the General Synod of the Church of England

All legislation made by the UK Parliament, General Synod 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.⁴

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 For statutory definitions of primary legislation see the Interpretation Act 1978, [section 21](#) and the Human Rights Act 1998, [section 21](#).

³ [Understanding Legislation](#), legislation.gov.uk website.

⁴ [About Us](#), legislation.gov.uk website. The Public Record Office of Northern Ireland is governed by the [Public Records Act \(Northern Ireland\) 1923](#).

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](#))⁵
- 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:⁶

- [Acts of the Parliament of Northern Ireland](#) from 1921 to 1972⁷
- Measures of the Northern Ireland Assembly (1974 only)
- Orders in Council made under Northern Ireland Acts between 1972 and 1999⁸

Certain legislative instruments made by the King in Council (otherwise known as the Privy Council) under the royal prerogative are also classed as primary legislation:

- Prerogative Orders in Council (made by the King on the advice of the Privy Council)
- Prerogative Orders of Council (made by the Lords of the Privy Council – Privy Counsellors – without the King’s approval)⁹
- Proclamations, Royal Warrants, [Royal Instructions](#), Regulations and Letters Patent¹⁰

⁵ 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).

⁶ [Section 24\(5\)](#) of the Interpretation Act 1978 defines “Northern Ireland legislation”.

⁷ In these, “Northern Ireland” in parentheses appears after “Act”, to differentiate these from Acts of the UK Parliament. For statutory definitions relating to the Parliament, Commons and Senate of Northern Ireland, see the Interpretation Act (Northern Ireland) 1954, [section 41](#).

⁸ Although this last category of legislation takes the form of UK Statutory Instruments (which are secondary legislation), it constitutes, in effect, the primary legislation for Northern Ireland during periods of “Direct Rule” by the UK Parliament and government.

⁹ [Orders of Council made since January 2017](#) are listed on the Privy Council Office website.

¹⁰ [Statutory Instrument Practice](#), The National Archives, November 2017, p4.

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”.¹¹

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 act”).¹² 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)¹³
- Statutory Rules and Orders (generally pre-1948)
- Church Instruments (secondary legislation made under Church of England Measures)

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:

¹¹ A. W. Bradley, K. D. Ewing and C. J. S. Knight, *Constitutional and Administrative Law* (18th edition), London: Pearson, 2022, p688.

¹² 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.

¹³ 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.

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.

Statutory Orders in Council are those in which the King has been empowered via statute to make subordinate legislation via the Privy Council,¹⁴ while Statutory Orders of Council generally concern the approval of regulations or rules for (or lay appointments to) statutory regulatory bodies.¹⁵

[Statutory Instruments Practice](#) is a practice guide for those involved in preparing and making SIs.¹⁶

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](#). 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. There also exists a [Statutory Instruments \(Joint Committee\)](#) which considers Statutory Instruments made in exercise of powers granted by an Act of Parliament.

Assimilated law

The [European Union \(Withdrawal\) Act 2018](#) repealed the European Communities Act 1972, thus removing the provision that European Union (EU) legislation automatically took effect as domestic law in the UK. It transferred all EU law onto the UK statute book and gave Ministers of the Crown powers to make changes to “retained EU law”.¹⁷ Under [section 5](#) of the Retained EU Law (Revocation and Reform) Act 2023, this is now known as “assimilated law”.¹⁸

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

¹⁴ In certain cases, draft Orders may be laid before the UK Parliament, the Scottish Parliament and the Senedd.

¹⁵ [Professional bodies](#), Privy Council Office website.

¹⁶ It is produced by the Legislation Services team at the National Archives.

¹⁷ [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.

¹⁸ 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.

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.¹⁹ Sir John's remarks did not relate directly to the judgment and are contested.²⁰

There is no official definition or list of constitutional statutes.²¹ A constitutional statute can be repealed or amended by Parliament, like any other statute.²² 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.²³ 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”.²⁴

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”.²⁵ 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)
- the King on the advice of Ministers (dissolution of Parliament, certain public appointments)
- Ministers of the Crown (treaties and foreign affairs), or

¹⁹ [Thoburn v Sunderland City Council \[2002\] EWHC 195 \(Admin\)](#).

²⁰ For a list of “constitutional instruments”, see [R \(HS2 Action Alliance Ltd\) v Secretary of State for Transport \[2014\] UKSC 3](#).

²¹ 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.

²² [The UK constitution](#), Constitution Society website.

²³ Commons Library research briefing RP97-53, [The Commons committee stage of ‘constitutional’ bills](#). This convention dates from 1945.

²⁴ Companion to the Standing Orders and Guide to the Proceedings of the House of Lords (26th edition), House of Lords, 2022, [para 8.40](#).

²⁵ [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 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 2009.²⁶

The exercise of most prerogative powers results in some sort of legal “instrument”, a formal document containing an expression of “the King’s will”. The main types are:

- Prerogative Orders in Council²⁷
- Commissions²⁸ or Warrants made under the Royal Sign Manual (the Monarch’s personal signature)²⁹
- Royal Proclamations (the public announcement of an executive prerogative act, such as the dissolution of Parliament)³⁰
- Writs (these can act as summons to Parliament or direct an election)³¹
- Letters Patent issued under the Great Seal (generally used for public appointments)³²
- Royal Charters³³

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

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. [The Crown Office Fees](#)

²⁶ [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](#).

²⁷ Most Orders in Council are available online at www.legislation.gov.uk. See also Commons Library Insight, [What are Orders in Council?](#)

²⁸ 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.

²⁹ 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).

³⁰ [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](#).

³¹ Writs are not normally published online, but for images of election writs see a [post on Twitter/X by Medway Council](#).

³² Many Letters Patent are published in the Gazette; older documents will form part of the [Patent Roll](#) are held at the National Archives.

³³ 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.

[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 published 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,³⁴ 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 the Prime Minister’s Office. Examples include Proclamations regarding the dissolution of Parliament and Letters Patent conferring life peerages.³⁵

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.³⁶ 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”.³⁷

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.³⁸

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?

³⁴ [About The Gazette](#), The Gazette website.

³⁵ [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](#).

³⁶ Examples of ministerial submissions, however, can be found online.

³⁷ [HC Deb 1 March 1993 Vol 220 c19W \[Prerogative Powers\]](#)

³⁸ See Jason Loch, [Informal Advice to the Monarch](#), A Venerable Puzzle blog, 4 April 2024.

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.³⁹ 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, irrationality or procedural impropriety (including a failure to honour legitimate expectations).⁴⁰

New prerogative powers cannot be created by the government.⁴¹ Where there is a conflict between the prerogative and statute, statute prevails.⁴² Once abrogated by statute, it appears a prerogative power can be revived via express legislative provision (see Section 4.2).⁴³

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".⁴⁴ 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".⁴⁵ 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".⁴⁶

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)

³⁹ [Council of Civil Service Unions v Minister for the Civil Service \[1984\] UKHL 9.](#)

⁴⁰ Stair Memorial Encyclopaedia of the Laws of Scotland Volume 7.

⁴¹ [Case of Proclamations \[1610\] EWHC KB J22.](#)

⁴² [Attorney-General v De Keyser's Royal Hotel Ltd \[1920\] AC 508](#)

⁴³ For a discussion, see Joint Committee on the Fixed-Term Parliaments Act, [Report](#), HC 1046/HL 253, 24 March 2021, pp30-40.

⁴⁴ [Cabinet Manual](#), para 5.

⁴⁵ A. V. Dicey, Introduction to the Study of the Law of the Constitution (8th edition), Liberty Fund, 1982, p277.

⁴⁶ Sir Ivor Jennings, The Law and the Constitution (5th edition), London: University of London Press, 1959, pp81-82.

- 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

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](#). Parliamentary conventions are also described in [Erskine May](#) (“the most authoritative and influential work on parliamentary procedure and constitutional conventions affecting Parliament”)⁴⁷ and the [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#).⁴⁸

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?⁴⁹

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 consuetudo 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.⁵⁰

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 have direct legal impact, “though they may have varying degrees of political force depending on circumstances”.⁵¹

⁴⁷ Separately, the Commons publishes [MPs’ Guide to Procedure](#), which is called “Practical, clearly written information on the Chamber and committees”.

⁴⁸ See also Joint Committee on Conventions, [Conventions of the UK Parliament Volume 1](#), HL Paper 265-I/HC 1212-I, 3 November 2006, and Jacqy Sharpe, [Parliamentary Conventions](#), The Constitution Society, June 2020.

⁴⁹ Ivor Jennings, *The Law and the Constitution* (5th edition), p136.

⁵⁰ Erskine May’s treatise on the law, privileges, proceedings and usage of Parliament (25th edition), House of Commons, 2019, [para 11.14](#).

⁵¹ Erskine May, [para 20.96](#); Lords Companion, [para 6.58](#).

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.⁵² 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.⁵³

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. Case law has also 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)⁵⁴
- 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)⁵⁵
- respect for fundamental rights (for example, freedom of speech, assembly and expression)
- Standards in public life (for example, the Nolan [Principles of Public Life](#))⁵⁶

[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”.

According to Bradley, Ewing and Knight, judge-made law takes two principal forms:

⁵² [What is case law?](#), ICLR website.

⁵³ [How power is exercised within the UK](#), Law Wales website.

⁵⁴ This separation is not absolute. For example, [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.

⁵⁵ 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).

⁵⁶ [What are constitutional principles?](#), The Constitution Unit.

- 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.⁵⁷
- 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”.⁵⁸

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, 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.⁵⁹

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 with⁶⁰
- A statute will not be read as having a retrospective effect that impairs an existing right or obligation unless this is unavoidable⁶¹
- 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 outcome⁶²
- 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 circumstances⁶³
- 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 inconsistency⁶⁴

⁵⁷ See, for example, the War Damages Act 1965, [section 1](#).

⁵⁸ [Regina v Secretary of State for the Environment, Transport and the Regions and Another, Ex Parte Spath Holme Limited \[2000\]](#)

⁵⁹ Bradley et al, Constitutional and Administrative Law, pp60-61.

⁶⁰ [Pickin v British Railways Board \[1974\] AC 765](#). For Acts of the Scottish Parliament, this rule is statutory (Scotland Act 1998, [section 28\(5\)](#)).

⁶¹ [Wilson and others v Secretary of State for Trade and Industry \(Appellant\) \[2003\] UKHL 40](#)

⁶² [Assange v Swedish Prosecution Authority \[2012\] UKSC 22](#).

⁶³ [Mara v Magistrates of Edinburgh \[1913\] SC 1059](#).

⁶⁴ [Dean of Ely v Bliss \[1842\] 5 Beav 574, 582](#).

1.5 Authoritative works

As the UK constitution is uncodified, the interpretations of experts have often been influential when ambiguity arises. These are known as “authoritative works”. Commonly cited examples include:

- Walter Bagehot, *The English Constitution* (1867)
- A. V. Dicey, *Introduction to the Law of the British Constitution* (1885)
- Sir William Anson, *The Law and Custom of the Constitution* (two volumes, 1922 and 1935)
- Sir Ivor Jennings, *The Law and the Constitution* (1959)
- A. W. Bradley, K. D. Ewing and C. J. S. Knight, *Constitutional and Administrative Law* (18th edition, 2022)
- Daniel Greenberg, *Craies on Legislation* (12th edition, 2020)
- Chris Himsworth and Christine O’Neill, *Scotland’s Constitution: Law and Practice* (4th edition, 2021)
- Brice Dickson, *Law in Northern Ireland* (4nd edition, 2022)

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 Parliament formally “By His Majesty’s Command”.⁶⁵ Recently published Command Papers are available on [gov.uk](https://www.gov.uk).⁶⁶

1.6 Attempts to codify the UK constitution

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

- the Liberal Democrats in 1990⁶⁷

⁶⁵ Guide to Parliamentary Work, Office of the Leader of the House of Commons/Cabinet Office, 19 November 2024, [para 319](#).

⁶⁶ 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.

⁶⁷ “We, The People...” – Towards a Written Constitution (Federal Green Paper No. 13), London: Liberal Democrats, 1990.

- Tony Benn's Commonwealth of Britain Bill in 1991⁶⁸
- the IPPR's The Constitution of the United Kingdom in 1991⁶⁹
- Professors Vernon Bogdanor and Stefan Vogenauer (and their students) in 2007⁷⁰
- Professor Robert Blackburn in 2014⁷¹

⁶⁸ Published as Tony Benn and Andrew Hood, *Common Sense: A New Constitution for Britain*, London: Hutchinson, 1993.

⁶⁹ 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.

⁷⁰ 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.

⁷¹ 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.

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).⁷²

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.⁷³ Until its repeal in 1993, section 2 of the Wales and Berwick Act 1746 provided that references in Acts of Parliament to “England” included Wales and Berwick-upon-Tweed.⁷⁴

Cardiff was recognised as the capital of Wales on 20 December 1955.⁷⁵

[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. Monmouthshire was only confirmed as a geographical part of Wales in the same Act.⁷⁶

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

⁷² Repealed by the Statute Law Revision Act 1887, [Schedule](#).

⁷³ Most of the 1535 and 1542 Acts were repealed by [Schedule 2](#) to the Welsh Language Act 1993.

⁷⁴ Also repealed by the [Welsh Language Act 1993](#).

⁷⁵ [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”.

⁷⁶ Local Government Act 1972, [section 1\(12\)](#).

Scotland and in England.⁷⁷ A fuller “incorporating” (rather than federal) union followed in 1707.

Article I of the 1706 [Treaty of Union](#) stated that the two kingdoms (and parliaments) of Scotland and England would in 1707 “and forever after be United into One Kingdom by the Name of Great Britain”.⁷⁸ The Treaty required ratification and legislation in both parliaments. The [Union with Scotland Act 1706](#) was passed by the Parliament of England, and the [Union with England Act 1707](#) by the Parliament of Scotland. 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.⁷⁹

On 1 May 1707, the Scottish and English parliaments were [replaced by a single “Parliament of Great Britain”](#) (which included 45 Scottish MPs and 16 “representative” peers). The Parliament of Great Britain subsequently passed the [Union with Scotland \(Amendment\) Act 1707](#), which united the Privy Councils of England and Scotland. 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.⁸⁰ Nevertheless, 14 Articles of the Union were repealed wholly or in part by the Statute Law Revision Acts of 1867, 1871, 1906 and 1948.⁸¹ 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.

The territory of Scotland (and therefore of the UK) was expanded to include Rockall in 1956, initially under the royal prerogative,⁸² and subsequently via statute.⁸³

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.⁸⁴ 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

⁷⁷ 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.

⁷⁸ 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.

⁷⁹ Separately, the Parliament of England provided for the “Security of the Church of England” in the [The Act of 6 Anne 1706](#), [section 2](#).

⁸⁰ T. B. Smith, *The Union of 1707 as Fundamental Law*, Public Law 99, 1957.

⁸¹ 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.

⁸² [Royal Warrant, 14 September 1955](#).

⁸³ [Island of Rockall Act 1972](#).

⁸⁴ This Act of the Old Irish Parliament remains part of the UK statute book.

Kingdom, by the name of the United Kingdom of Great Britain and Ireland”.⁸⁵ 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.⁸⁶

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:

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.⁸⁷

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

⁸⁵ The Union with Ireland Act 1800 (as amended) remains on the UK statute book. 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.

⁸⁶ Government of Ireland Act 1920, [section 1\(2\)](#) (repealed).

⁸⁷ [London Gazette, 30 March 1923](#). See also [section 11\(2\)](#) of the Interpretation Act (Northern Ireland) 1954.

part of the Irish Free State.⁸⁸ 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 1925.⁸⁹ 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”.⁹⁰ [Schedule 1](#) to the Interpretation Act 1978 thus defines “United Kingdom” as meaning “Great Britain and Northern Ireland”.⁹¹ [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. [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”.

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 Belfast Lough remain disputed.⁹²

[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.

⁸⁸ 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](#).

⁸⁹ [HC Deb 3 December 1925 \[Prime Minister’s Announcement\]](#).

⁹⁰ Royal and Parliamentary Titles Act 1927, [section 2\(1\)](#).

⁹¹ As does [section 43](#) of the Interpretation Act (Northern Ireland) 1954.

⁹² [“Without prejudice to the negotiation of territorial sea boundaries...”](#), Sluggor O’Toole blog, 15 December 2011. See also the [Foyle Fisheries Act \(Northern Ireland\) 1952](#).

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.

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”.⁹³ But in the later 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) ruled that only a “plain reading” of statute and relevant case law was required.⁹⁴

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”.

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](#).

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.⁹⁵

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.⁹⁶ This is often called “Stormont” after its location on the

⁹³ [Robinson v Secretary of State for Northern Ireland \[2002\] UKHL 32](#). The preceding Government of Ireland Act 1920 had been viewed in similar terms.

⁹⁴ [Imperial Tobacco v The Lord Advocate \[2012\] UKSC 61](#)

⁹⁵ [The Belfast Agreement](#), Cmnd 3883, Northern Ireland Office, 10 April 1998.

⁹⁶ 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.⁹⁷ 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. 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.

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.⁹⁸ [Section 40](#) provides for a Northern Ireland Assembly Commission, while [Standing Order 47](#) provides for the Assembly’s statutory 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. Some 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.

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](#)).⁹⁹ Under [section 8](#), the Assembly can also legislate on excepted and reserved matters with the consent of the Secretary of State.¹⁰⁰ [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\(2\)\(e\)](#) provides that the Assembly cannot enact legislation which “discriminates against any person or class of person on the ground of religious belief or political opinion”, while under [section 75](#) all public authorities must promote equality of opportunity. There exist a statutory [Northern Ireland Human Rights Commission](#) and [Equality Commission for Northern Ireland](#).

⁹⁷ The [Stormont Regulation and Government Property Act \(Northern Ireland\) 1933](#) makes provision for the Stormont Estate.

⁹⁸ The Northern Ireland Act 1998 uses the term “Presiding Officer”, but Speaker is used in practice.

⁹⁹ See also the [Social Services \(Parity\) Act \(Northern Ireland\) 1971](#).

¹⁰⁰ Under [section 15](#) of the Northern Ireland Act 1998, this initiates a special procedure in both Houses of the UK Parliament.

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.

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 which added a new Schedule 6A to the Northern Ireland Act 1998](#). The first vote must take place by the end of 2024.¹⁰¹

The [Windsor Framework](#) also introduced a new “Stormont Brake”.¹⁰² 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 procedures are set out in the [Windsor Framework \(Democratic Scrutiny\) Regulations 2023 which added a new Schedule 6B to the Northern Ireland Act 1998](#).¹⁰³ 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,¹⁰⁴ 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 Ministers.¹⁰⁵ 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.

¹⁰¹ The Regulations added a new [Schedule 6A](#) to the Northern Ireland Act 1998.

¹⁰² [Political Declaration by the European Commission and the Government of the United Kingdom](#), HM Government, 27 February 2023, p3.

¹⁰³ The Regulations added a new [Schedule 6B](#) to the Northern Ireland Act 1998.

¹⁰⁴ As the [Northern Ireland Act 2000](#) has been repealed.

¹⁰⁵ [Reference by the Attorney General for Northern Ireland \[2019\] UKSC 1](#).

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. Electoral law in Northern Ireland is an excepted matter, unlike in Scotland and Wales.¹⁰⁶ 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. An MLA may at any time resign their seat by notice in writing to the Speaker.¹⁰⁷

[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 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.¹⁰⁸

The [Official Report \(Hansard\)](#) is the formal record of proceedings in the Northern Ireland Assembly.¹⁰⁹

Ministers

Under [section 16A](#) of the 1998 Act,¹¹⁰ the First Minister and deputy First Minister of Northern Ireland are 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

¹⁰⁶ Northern Ireland Act 1998, [Schedule 2 para 12](#).

¹⁰⁷ Northern Ireland Act 1998, [section 51](#).

¹⁰⁸ [Visit by Her Majesty Queen Elizabeth II to Parliament Buildings on Tuesday 14 May 2002](#), Northern Ireland Assembly website.

¹⁰⁹ 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.

¹¹⁰ As inserted by the Northern Ireland (St Andrews Agreement) Act 2006, [section 8](#).

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).¹¹¹

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.¹¹²

[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 Ministers are required to take a statutory [Pledge of Office](#).¹¹³ [Section 28A](#) of the 1998 Act also provides for a [Ministerial Code](#).¹¹⁴ 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](#).¹¹⁵

The King is not involved in any ministerial appointments. 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”. 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.¹¹⁶ 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.¹¹⁷ They cannot be an MLA or MP,¹¹⁸ 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”.¹¹⁹

Separately, a Crown Solicitor for Northern Ireland is appointed by the Advocate General for Northern Ireland (following consultation with the

¹¹¹ Northern Ireland Act 1998, [section 20](#).

¹¹² Northern Ireland Act 1998, [section 21A](#).

¹¹³ Northern Ireland Act 1998, [Schedule 4](#).

¹¹⁴ The UK, Scottish and Welsh Ministerial Codes are not statutory.

¹¹⁵ [Ministerial Code](#), Northern Ireland Executive website.

¹¹⁶ [About Us](#), Attorney General for Northern Ireland website.

¹¹⁷ The Attorney General continues to hold office even if there is not a functioning Northern Ireland Executive.

¹¹⁸ Northern Ireland Assembly Disqualification Act 1975, [Schedule 1](#) (as amended).

¹¹⁹ Justice (Northern Ireland) Act 2002, [section 22\(5\)](#).

Attorney General for Northern Ireland) under [section 35](#) of the Northern Ireland Constitution Act 1973.

Northern Ireland Executive

The Northern Ireland Executive Committee (or “the Executive”) consists of the First Minister, deputy First Minister and the Northern Ireland Ministers.¹²⁰

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.¹²¹ Under the Northern Ireland Ministerial Code, there is also a duty to bring certain matters to the attention of the Executive,¹²²

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.¹²³ 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.¹²⁴ 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.¹²⁵

Northern Ireland Departments

[Schedule 1](#) to the Departments Act (Northern Ireland) 2016 provides for nine Northern Ireland Departments (including the Executive Office). 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. [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”).¹²⁶

¹²⁰ Northern Ireland Act 1998, [section 20](#).

¹²¹ Northern Ireland Ministerial Code, [para 2.3](#).

¹²² Northern Ireland Ministerial Code, [para 2.4](#).

¹²³ Northern Ireland Ministerial Code, [para 2.6](#).

¹²⁴ Northern Ireland Ministerial Code, [para 2.9](#).

¹²⁵ A quorum of seven Executive members is required for any vote.

¹²⁶ Northern Ireland Act 1998, [sections 52A-54](#) make certain statutory provision for these bodies.

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.¹²⁷

Secretary of State for Northern Ireland

A Secretary of State for Northern Ireland was first created in 1972,¹²⁸ 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. The Devolution Guidance Notes describe the role as that of “an honest broker” in relations between the Northern Ireland Executive and the UK government.¹²⁹

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](#)) and reducing, if necessary, MLA pay ([section 47B](#)). 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.¹³⁰ The Great Seal is used for Assembly Acts and Letters Patent relating to public appointments in Northern Ireland.¹³¹ 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](#).

¹²⁷ Northern Ireland Ministerial Code, [paras 3.21-3.22](#).

¹²⁸ Northern Ireland (Temporary Provisions) Act 1972, [section 1](#) (repealed).

¹²⁹ [Devolution Guidance Note 5: The Role of the Secretary of State for Northern Ireland](#), Cabinet Office, 2007.

¹³⁰ [HC Deb 18 July 1985 Vol 83 c265W \[Great Seal\]](#)

¹³¹ 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.

Scotland Act 1998

The Scottish Parliament

[Section 1](#) of the Scotland Act 1998 (as amended) provides that there “shall be a [Scottish Parliament](#)”.¹³² It is often referred to as “Holyrood”, after its location opposite the Palace of Holyroodhouse in Edinburgh.

[Section 19](#) provides for the election of a Presiding Officer,¹³³ without which the Scottish Parliament cannot function, [section 20](#) for a Clerk of the Parliament and [section 21](#) (and [Schedule 2](#)) for a Scottish Parliament Corporate Body. [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](#). [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](#).¹³⁴ 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, the Lord Advocate or the Attorney General for England and Wales during the period of four weeks beginning with the passing of the bill.¹³⁵

Modifications to reserved or protected legislative competence can be made under [section 30](#) and (for executive devolved competence) [section 63](#).¹³⁶ 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. [Section 107](#) enables the UK Parliament to repeal via subordinate legislation Acts of the Scottish Parliament considered ultra vires.¹³⁷ The legislative competence of the Scottish Parliament was extended by the [Scotland Act 2012](#) and [Scotland Act 2016](#).

[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

¹³² 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.

¹³³ By convention, this position has been held by a member of a different political party following each Scottish Parliament election.

¹³⁴ 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](#).

¹³⁵ Scotland Act 1998, [sections 32A](#) and [33](#).

¹³⁶ 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](#).

¹³⁷ 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](#).

Scottish Government is not obliged to withdraw or change legislation that the Presiding Officer declares incompetent.

[Schedule 6](#) to the Scotland Act 1998 makes provision for “devolution issues” to be considered by the courts, including the Supreme Court. [Section 29\(3\)](#) provides that an Act of the Scottish Parliament is “not law” if it “relates to a reserved matter”. 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.¹³⁸ [Paragraph 34](#) of Schedule 6 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.¹³⁹

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.¹⁴⁰

The [Official Report](#), like Hansard at Westminster, is the published record of proceedings in the Scottish Parliament.

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. There are currently no legal restrictions on MSPs also serving as Members of the House of Commons or of the House of Lords.

[Section 2](#) of the 1998 Act (as amended by the [Scottish Elections \(Dates\) Act 2016](#)) provides for general elections every five years,¹⁴¹ 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. [Section 9](#) provides for constituency by-elections and [section 10](#) for regional list vacancies. By virtue of [section 1](#) of the Scottish Elections (Reduction of Voting Age) Act 2015, the voting age is 16 years or over.

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 and standards for MSPs and sets out the ethical standards expected of them in carrying out their

¹³⁸ [Imperial Tobacco v Lord Advocate \[2012\] UKSC 61](#).

¹³⁹ [Reference by the Lord Advocate \[2022\] UKSC 31](#).

¹⁴⁰ These are Standards, Procedures and Public Appointments, Finance, Public Audit, Europe and External Relations, Equalities, Public Petitions and Delegated Powers and Law Reform.

¹⁴¹ As amended by Scottish Elections (Reform) Act 2020, [section 1](#).

Parliamentary duties. A Member of the Scottish Parliament may at any time resign their seat by giving notice in writing to the Presiding Officer.¹⁴²

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 Scottish Regalia is usually present.¹⁴³ 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.¹⁴⁴ A Kirking of the Parliament service is held at St Giles' Cathedral to mark the beginning of each Holyrood session.¹⁴⁵

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.¹⁴⁶ 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 presented to the Lord President). By custom, the First Minister of Scotland becomes a member of the Privy Council. A First Minister can resign via a written communication to the King,¹⁴⁷ and, under [section 45\(2\)](#), must do so if the Parliament resolves that the Scottish Government no longer enjoys the confidence of the Parliament.¹⁴⁸ 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".

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".¹⁴⁹ This is used to seal Acts of the Scottish Parliament and Letters Patent relating to Scottish appointments.¹⁵⁰ 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.¹⁵¹

¹⁴² Scotland Act 1998, [section 14](#).

¹⁴³ [The King's speech marking the 25th anniversary of the Scottish Parliament](#), Royal Family website, 28 September 2024.

¹⁴⁴ [Scottish Parliament Official Report, 12 September 2022](#)

¹⁴⁵ [The Duke of Rothesay attends the Kirking of the Scottish Parliament in Edinburgh](#), Royal Family website, 11 May 2016.

¹⁴⁶ See also Scottish Parliament Standing Orders [Chapter 4](#) and [11](#).

¹⁴⁷ Nichola Kane @NicholaKane_, [X \(Twitter\)](#), 28 March 2023 [Accessed 14 September 2023].

¹⁴⁸ 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.

¹⁴⁹ Scotland Act 1998, [section 2\(6\)](#).

¹⁵⁰ The form of the Letters Patent is set out in [The Scottish Parliament \(Letters Patent and Proclamations\) Order 1999](#).

¹⁵¹ [Humza Yousaf meets King Charles as republican First Minister spends weekend at Balmoral](#), Daily Record, 11 September 2023.

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. With the agreement of the Scottish Parliament, the First Minister makes a submission to the Monarch which recites that section of the 1998 Act.¹⁵² They are known collectively as “the Scottish Ministers” but are not Ministers of the Crown. Junior ministers are appointed with the approval of the King under [section 49](#).

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.¹⁵³ Ministers who knowingly mislead the Scottish Parliament are expected to offer their resignation to the First Minister.¹⁵⁴ All Scottish Ministers are bound by the [Interests of Members of the Scottish Parliament Act 2006](#), taken together with [section 39](#) of the Scotland Act 1998.

[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 ministers. The First Minister is responsible for the overall organisation of the Scottish Government, the allocation of functions between Ministers, the appointment of all Cabinet Secretaries and junior ministers and all special adviser appointments.¹⁵⁵ 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.¹⁵⁶ Most functions are conferred upon Scottish Ministers 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.

The Scottish Government’s [Programme for Government](#) is published each September.

The Cabinet is the main decision-making body of the Scottish Government. It comprises the First Minister and all Cabinet Secretaries:

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.¹⁵⁷

¹⁵² Courtesy of Jason Loch.

¹⁵³ Scottish Ministerial Code, [para 3.1](#).

¹⁵⁴ Scottish Ministerial Code, [para 1.3\(c\)](#).

¹⁵⁵ Scottish Ministerial Code, [paras 4.16-4.20](#); Constitutional Reform and Governance Act 2010, [section 15](#).

¹⁵⁶ Scottish Ministerial Code, [paras 2.1 and 2.8](#).

¹⁵⁷ [Cabinet and Ministers](#), Scottish Government website.

Membership of the Scottish Cabinet and decisions on attendance at Cabinet meetings are matters for the First Minister.¹⁵⁸ 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.¹⁵⁹

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.

[Section 47\(3\)](#) of the 1998 Act provides that any Minister may be removed from office by the First Minister, 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 Government or a junior Scottish minister is supported by at least 25 MSPs then it shall be included in a proposed business programme.¹⁶⁰

Under [section 53](#), prerogative and other executive functions of the King exercisable within devolved competence are exercisable by the Scottish Ministers.¹⁶¹ 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. 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.

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 by the King on the recommendation of the First Minister (via Royal Warrant) and with the agreement of the Scottish Parliament.¹⁶² The Lord Advocate also serves as the ministerial head of the [Crown Office and Procurator Fiscal Service in Scotland](#),

¹⁵⁸ Scottish Ministerial Code, [para 4.5](#).

¹⁵⁹ Scottish Ministerial Code, [para 2.10](#).

¹⁶⁰ If such a motion is lost, Scottish Ministers are not obliged to resign but may feel politically compelled to do so.

¹⁶¹ For First Ministerial advice on devolved prerogative powers, see [HC Deb 30 June 1999 Vol 334 cc215-6W \[Devolution \(Scotland\)\]](#).

¹⁶² 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.

making them the chief public prosecutor for Scotland.¹⁶³ Both law officers can speak (but not vote) in the Scottish Parliament and are not usually MSPs.¹⁶⁴

The Scottish Ministerial Code states that the Scottish law officers have a responsibility for ensuring “that the [Scottish] Government acts lawfully at all times”.¹⁶⁵ 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 particular matter, the Law Officers must be consulted and their prior consent obtained”.¹⁶⁶

The Lord Advocate and Solicitor General for Scotland are operationally responsible for the Scottish Government Legal Directorate.¹⁶⁷ 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.

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,¹⁶⁸ this still forms part of the Scottish Ministerial Code.¹⁶⁹

Secretary of State for Scotland

A Secretary for Scotland was created in 1885¹⁷⁰ and has held the rank of a Secretary of State since 1926.¹⁷¹ 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.¹⁷²

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 2013.¹⁷³

¹⁶³ [Lord Advocate](#), Scottish Government. Any decisions taken in this capacity must be taken “independently of any other person” (Scotland Act 1998, [section 48\(5\)](#)).

¹⁶⁴ Scotland Act 1998, [section 27](#).

¹⁶⁵ [Scottish Ministerial Code](#), Scottish Government, 8 February 2018, para 2.30.

¹⁶⁶ Scottish Ministerial Code, [paras 2.39\(b\)-2.4](#).

¹⁶⁷ Scottish Ministerial Code, [para 2.31](#).

¹⁶⁸ Benjamin Lewis @tc1415, [X \(Twitter\)](#), 29 August 2023 [Accessed 14 September 2023].

¹⁶⁹ Scottish Ministerial Code, [para 9.10](#).

¹⁷⁰ [Secretary for Scotland Act 1885](#).

¹⁷¹ Secretaries of State Act 1926, [section 1](#).

¹⁷² 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.

¹⁷³ [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](#).¹⁷⁴ It is generally known as “the Senedd”, which is Welsh for parliament.

[Section 25](#) provides for the election of a Presiding Officer (Llywydd), without which the Senedd cannot function, [section 26](#) for a Clerk of the Senedd and [section 27](#) (and [Schedule 2](#)) for a Senedd Commission. [Section 31](#) provides for proceedings of the Senedd to be regulated by [Standing Orders](#), with some statutory stipulations.

[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 115](#), it is for the Presiding Officer to submit Senedd bills for Royal Assent, unless prevented from doing so under [section 114](#).¹⁷⁵ 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](#). 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,¹⁷⁶ while [Schedule 9](#) makes provision for “devolution issues” to be considered by the courts, including the Supreme Court.

[Section 111A](#) of the 2006 Act (as amended by the Wales Act 2017, [section 9](#)) provides for “protected subject matters”. 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.

By convention, Statutory Instruments (secondary legislation) should be laid before the Senedd at least 21 days before coming into force. This is colloquially known as “the 21-day rule”. If breached, the Welsh Ministers must notify the Presiding Officer of this fact when the SI is laid and explain the delay.¹⁷⁷

¹⁷⁴ Senedd and Elections (Wales) Act 2020, [section 2](#), renamed what had been the National Assembly for Wales.

¹⁷⁵ 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](#).

¹⁷⁶ Section 109 Orders require approval from both the UK Parliament and the Senedd.

¹⁷⁷ [Subordinate Legislation](#), Senedd website.

[The Record](#) is the published account of Senedd proceedings.

Elections

[Section 3](#) of the 2006 Act provides for general elections every five years,¹⁷⁸ although this will change to every four years as of 2026,¹⁷⁹ while [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. [Section 10](#) provides for constituency by-elections and [section 11](#) for electoral region vacancies.¹⁸⁰ Under [section 12](#), the franchise for a Senedd election is the same as that for local government elections in Wales.

The Senedd consists of 40 constituency members and 20 regional members who are known as Members of the Senedd (MS). At the next Senedd election in 2026, the number of MSs will increase to 96 as elected under a closed list proportional representation system.¹⁸¹

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. There is a [Code of Conduct and Associated Rules and Guidance for Members of the Senedd](#). Members of the Senedd may at any time resign by giving notice in writing to the Llywydd.¹⁸²

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.¹⁸³ [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.¹⁸⁴

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.¹⁸⁵ Under [Senedd Standing Order 12.56\(i\)](#),

¹⁷⁸ As amended by the Wales Act 2014, [section 1](#).

¹⁷⁹ Senedd Cymru (Members and Elections) Act 2024, [section 3](#).

¹⁸⁰ As amended by the Senedd Cymru (Members and Elections) Act 2024, [section 9](#).

¹⁸¹ Senedd Cymru (Members and Elections) Act 2024, [section 1](#).

¹⁸² Government of Wales Act 2006, [section 15](#).

¹⁸³ [A speech by The King for the twenty-fifth anniversary of the Senedd](#), Royal Family website, 11 July 2024.

¹⁸⁴ [His Majesty The King's reply to the message of condolence at the Senedd](#), Royal Family website, 16 September 2022.

¹⁸⁵ The form of Letters Patent is set out in [The National Assembly for Wales \(Letters Patent\) Order 2011](#).

time must be made available in plenary each sitting week, for a maximum of 60 minutes, for the First Minister to answer oral questions.

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).¹⁸⁶ As per [section 55](#), all Welsh Ministers must take the official oath set out in [section 3](#) of the Promissory Oaths Act 1868.¹⁸⁷ They are known collectively as “the Welsh Ministers” but are not Ministers of the Crown. 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 ministers and the Counsel General.¹⁸⁸ Ministers have a duty to be held to account in the Senedd, to which they must give accurate and truthful information. Ministers who knowingly misled the Senedd are expected to offer their resignation to the First Minister.¹⁸⁹

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.¹⁹⁰ 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.¹⁹¹

The Welsh Government publishes an annual [Programme for Government](#).

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 Secretary of State for Wales continues to advise in respect of the King’s other functions in relation to Wales.¹⁹²

The Counsel General for Wales is the Welsh Government’s chief legal adviser and representative in the courts.¹⁹³ 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.¹⁹⁴ If not an MS, then under [section 34](#) the Counsel

¹⁸⁶ 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](#)).

¹⁸⁷ Welsh Ministers do not receive a salary until they have done so (section 55(5)).

¹⁸⁸ Welsh Ministerial Code, [paras 6.1-6.2](#).

¹⁸⁹ Welsh Ministerial Code, [para 1.3](#).

¹⁹⁰ Welsh Ministerial Code, [paras 2.1-2.2, 2.10](#); Constitutional Reform and Governance Act 2010, [section 15](#).

¹⁹¹ Welsh Ministerial Code, [para 6.3](#).

¹⁹² [HC Deb 15 October 2012 Vol 551 c1WS \[First Minister of Wales \(Functions as Privy Counsellor\)\]](#)

¹⁹³ [Wales’ Counsel General sworn into office](#), Welsh Government, 28 May 2021.

¹⁹⁴ See the Government of Wales Act 2006, [sections 46-49](#).

General can participate in Senedd proceedings to the extent permitted by Standing Orders but not vote.¹⁹⁵ 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. The content of his or her advice must not be disclosed without the authority of the Counsel General.¹⁹⁶

Secretary of State for Wales

A Secretary of State for Wales was first created in 1964 and leads the [Wales Office](#),¹⁹⁷ which is based as Gwydyr House in London. He or she 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
- oversee the progress through [the UK] Parliament of primary legislation making separate provision for Wales

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.¹⁹⁸ This is known as the Sewel Convention¹⁹⁹ and is “recognised” in statute without being legally binding.²⁰⁰ 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.²⁰¹

¹⁹⁵ The Counsel General can also introduce legislation even if not an MS.

¹⁹⁶ Welsh Ministerial Code, [paras 6.17-6.23](#).

¹⁹⁷ Previously the Welsh Office, created in 1965, and, between 1999 and 2024, the Office of the Secretary of State for Wales.

¹⁹⁸ [Memorandum of Understanding](#), para 14.

¹⁹⁹ So called after Lord Sewel, who first articulated the convention ([HL Deb 21 Jul 1998 Vol 592 c791](#)).

²⁰⁰ 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.

²⁰¹ [R \(Miller\) v Secretary of State for Exiting the European Union](#) [2017] UKSC 5, para 148.

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.²⁰² The UK Parliament is not bound if an LCM recommends that consent be withheld. As the Memorandum of Understanding states:

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.²⁰³

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.²⁰⁴ 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.²⁰⁵

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.²⁰⁶

Under another long-standing convention, Northern Ireland is treated as a non-partisan issue by the main parties of Great Britain at Westminster. The party of government consults members of the opposition prior to legislative initiatives and opposition Members do not generally criticise government policy.²⁰⁷

²⁰² Erskine May, [para 27.6](#). See Scottish Parliament [Standing Order 9B](#), Senedd [Standing Order 29](#) and Northern Ireland Assembly [Standing Order 42A](#).

²⁰³ [Memorandum of Understanding](#), para 14.

²⁰⁴ Erskine May, [para 11.13](#). There are certain exceptions.

²⁰⁵ Guide to Parliamentary Work, [para 229](#).

²⁰⁶ 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).

²⁰⁷ See, for example, [HC Deb 31 January 2024 Vol 744 cc878-79 \[Northern Ireland Executive Formation\]](#).

Funding

The Consolidated Funds for Scotland,²⁰⁸ Wales²⁰⁹ and Northern Ireland²¹⁰ are statutory. 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.²¹¹

The devolved administrations receive their funding largely from a Treasury "block grant".²¹² Changes to the level of funding for the devolved administrations are determined by the non-statutory Barnett formula. The UK government places no conditions on expenditure of the devolved administrations, although it follows that this can only apply within devolved policy areas.²¹³ 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".²¹⁴ Failing bilateral resolution, financial disputes can be referred to the UK Cabinet.²¹⁵

There is a UK-Scotland Joint Exchequer Committee (JEC) and Joint Exchequer Committee (Wales). The January 2020 [New Decade, New Approach](#) agreement included a [UK Government – Northern Ireland Executive Joint Board](#).

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.

²⁰⁸ Scotland Act 1998, [section 64](#).

²⁰⁹ Government of Wales Act 2006, [section 117](#).

²¹⁰ 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](#).

²¹¹ [Statement of funding policy: Funding the Scottish Government, Welsh Government and Northern Ireland Executive](#), HM Treasury, November 2023.

²¹² [Cabinet Manual](#), para 8.26.

²¹³ [Cabinet Manual](#), para 8.26.

²¹⁴ [Statement of funding policy: funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly](#), HM Treasury, November 2015, p39.

²¹⁵ [Protocol for Avoidance and Resolution of Disputes](#), HM Government, 2010.

2.3

Secession from 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”.²¹⁶

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.

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.²¹⁷ If a majority (in Northern Ireland) were to endorse Irish unification in such a poll (which must be held at intervals of seven years), then the Secretary of State must:

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.²¹⁸

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.²¹⁹

In February 2024 the House of Commons passed an Address to the King which reaffirmed the constitutional status of Northern Ireland.²²⁰

²¹⁶ [Reforming our Union 2021: summary](#), Welsh Government, 8 July 2021.

²¹⁷ [Raymond McCord’s Application: Border Poll \[2020\] NICA 23](#).

²¹⁸ Northern Ireland Act 1998, [section 1\(2\)](#).

²¹⁹ [Application by Allister et al \[2021\] NIQB 64](#)

²²⁰ [HC Deb 26 February 2024 Vol 746 cc54-98 \[Northern Ireland\]](#)

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 2014.²²¹ The Scottish Government then introduced legislation in the Scottish Parliament to that end.²²² No further action was necessary when the people of Scotland voted by 55-45 to remain part of the United Kingdom.²²³

In 2022, the Supreme Court ruled that the Scottish Parliament did not have the unilateral “power to legislate for a referendum on Scottish independence”.²²⁴

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.²²⁵

Referendums

Referendums have become a conventional part of constitutional change in the UK. These have taken place in Northern Ireland in 1973²²⁶ and 1998, Scotland in 1979, 1997 and 2014, and in Wales in 1979, 1997 and 2011. Only three UK-wide referendums have taken place, all on constitutional matters: continuing membership of the [European Economic Community in 1975](#), on the [Alternative Vote \(AV\) in 2011](#), and on the [UK’s membership of the European Union in 2016](#).

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”.²²⁷

²²¹ [Scotland Act 1998 \(Modification of Schedule 5\) Order 2013](#).

²²² 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.

²²³ Commons Library research briefing 14/50, [Scottish Independence Referendum 2014: Analysis of results](#).

²²⁴ [Reference by the Lord Advocate \[2022\] UKSC 31](#)

²²⁵ [Reforming our Union: Shared governance in the UK](#), Welsh Government, 25 June 2021,

²²⁶ See David Torrance, [‘Taking the border out of politics’ – the Northern Ireland referendum of March 1973](#), Constitution Unit blog, 21 November 2019.

²²⁷ 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.

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.

2.4 Intergovernmental relations

Intergovernmental relations (IGR) in the UK “work on the basis of agreement by consensus” between the UK and the devolved governments 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”)
- 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 areas²²⁸

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.²²⁹ Annex D sets out full details of the “Dispute Avoidance and Resolution Process”. 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.²³⁰

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”.²³¹ This met for the first time in October 2024.²³²

Relations between the UK government and the devolved administrations are also underpinned by a Memorandum of Understanding.²³³ This is supported by Devolution Guidance Notes which set out advice on working-level arrangements.²³⁴ Like the Memorandum, these are not legally binding. Many

²²⁸ [Review of intergovernmental relations](#), Cabinet Office and Department for Levelling Up, Housing and Communities, 13 January 2022.

²²⁹ Cabinet Office, [Review of Intergovernmental Relations](#).

²³⁰ Cabinet Office, [Review of Intergovernmental Relations](#).

²³¹ [The King’s Speech 2024](#), Prime Minister’s Office, 10 Downing Street, 17 July 2024. This Council includes the Mayor of London.

²³² [Council of the Nations and Regions: Inaugural meeting on 11 October 2024](#), Ministry of Housing, Communities and Local Government/Cabinet Office, 17 October 2024.

²³³ [Devolution: memorandum of understanding and supplementary agreement](#), Cabinet Office, October 2013. This has been revised six times since it was first introduced.

²³⁴ [Devolution guidance notes](#), Cabinet Office, 14 March 2019.

UK government departments also have bilateral concordats with the devolved administrations, covering areas of shared interest and setting out a framework for co-operation.²³⁵

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, while the Deputy Prime Minister and Ministry of Housing, Communities and Local Government has responsibility for devolution policy in England and engagement with metro-mayors and local government.²³⁶ 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”.²³⁷

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).²³⁸

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). The [Interparliamentary Forum](#) was also established in October 2017.

2.5

British citizenship

[Section 1](#) of the British Nationality Act 1981 provides that a person born in the United Kingdom (which includes, for the purposes of that Act, the Channel Islands and the Isle of Man²³⁹) or in a “qualifying territory” on or after commencement of the Act (1 January 1983²⁴⁰) 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. “Qualifying territory” means a British Overseas

²³⁵ [Cabinet Manual](#), para 8.17.

²³⁶ [Machinery of Government](#), 5 September 2024, UIN HCWS71.

²³⁷ Lords Constitution Committee, [Uncorrected oral evidence: Executive oversight and responsibility for the UK constitution](#), 20 November 2024, Q36.

²³⁸ [Joint Ministerial Committee \(EU Negotiations\) Communiqué](#), 16 October 2017.

²³⁹ British Nationality Act 1981, [section 53](#), provides that most provisions of that Act extend to “the Islands”.

²⁴⁰ The British Nationality Act 1981 (Commencement) Order 1982, [section 2](#).

Territory (listed in [Schedule 6](#)) other than the Sovereign Base Areas of Akrotiri and Dhekelia.²⁴¹ 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 citizenship²⁴²
- 2) British overseas citizenship: this carries British nationality and Commonwealth citizenship²⁴³
- 3) British National (Overseas): a class of British nationality associated with the former colony of Hong Kong²⁴⁴
- 4) British subject: a class of British nationality largely granted under limited circumstances to those connected with Ireland or British India and born before 1949²⁴⁵
- 5) British protected person: a class of British nationality associated with former protectorates, protected states, and territorial mandates and trusts under British control²⁴⁶

[Schedule 1](#) to the 1981 Act provides certain requirements for naturalisation as a British citizen. 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](#).²⁴⁷ British citizenship can be renounced under [section 12](#).

[Section 40](#) provides for deprivation of British citizenship if the Secretary of State is satisfied that this is “conducive to the public good”,²⁴⁸ 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 [Special Immigration Appeals Commission](#) under [section 2B](#) of the Special Immigration Appeals Commission Act 1997. In national security cases, the generic right of appeal is to the [Immigration and Asylum](#) chamber of the First-tier Tribunal under [section 40A](#) of the 1981 Act.

Right of abode

Under [section 2](#) of the Immigration Act 1971, 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

²⁴¹ British Overseas Territories Act 2002, [Schedule 1](#).

²⁴² British Nationality Act 1981, [section 4](#).

²⁴³ British Nationality Act 1981, [section 26](#).

²⁴⁴ Hong Kong Act 1985, [section 2](#).

²⁴⁵ British Nationality Act 1981, [sections 30](#) and [31](#).

²⁴⁶ British Nationality Act 1981, [section 38](#).

²⁴⁷ Individuals also need to take the [Life in the United Kingdom](#) citizenship test.

²⁴⁸ As inserted by the Nationality, Immigration and Asylum Act 2002, [section 4](#).

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”.²⁴⁹

Immigration law in the UK is supplemented with detailed [Immigration Rules](#).

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.

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.²⁵⁰ 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.²⁵¹ 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.²⁵²

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.²⁵³

²⁴⁹ Any such Order is subject to annulment in pursuance of a resolution of either House of Parliament.

²⁵⁰ [Royal Prerogative](#), Home Office, 21 May 2021. See also Immigration Act 1971, [section 33\(5\)](#).

²⁵¹ [HC Deb 25 April 2013 Vol 561 cc69WS-70WS \[Passports\]](#)

²⁵² [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.

²⁵³ [Passports](#), Royal Family website.

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 Immigration Act 1971. Under [section 3ZA](#), there are no immigration restrictions for Irish citizens.

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.²⁵⁴ The folk song “Flower of Scotland” is commonly used as an unofficial Scottish national anthem,²⁵⁵ as is “Hen Wlad Fy Nhadau” (Land of My Fathers) in Wales.²⁵⁶ 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](#).²⁵⁷ The College of Arms advises as to proportions and suggested colours.²⁵⁸

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.²⁵⁹

²⁵⁴ [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.

²⁵⁵ [Consideration of Petition PE1541](#), Scottish Government, 13 February 2015.

²⁵⁶ [National Anthem - The background to Hen Wlad Fy Nhadau](#), BBC Wales website,

²⁵⁷ [Union Flag: approved designs](#), College of Arms website. Additional information courtesy of the College of Arms.

²⁵⁸ [Union Flag](#), College of Arms website.

²⁵⁹ [Union Flag flying guidance for UK government buildings](#), Department for Digital, Culture, Media & Sport, 5 February 2024.

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.

Northern Ireland does not possess its own flag,²⁶⁰ although England (the St George's Cross),²⁶¹ Scotland (St Andrew's Cross or the Saltire),²⁶² and Wales (a red dragon adopted in 1959) do.²⁶³

[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".²⁶⁴

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.²⁶⁵ Under a Royal Warrant dated 3 September 1934, use of the Lion Rampant flag in Scotland is unrestricted.²⁶⁶

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.²⁶⁷ 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.²⁶⁸ This simpler version is used for Letters Patent granting Royal Assent to legislation and several other documents.²⁶⁹ The process of sealing takes place at the Clerk's office in the

²⁶⁰ A [flag used by the devolved Government of Northern Ireland](#) after 1953 fell into disuse following Direct Rule in 1972.

²⁶¹ The English flag has relatively little official recognition.

²⁶² 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](#).

²⁶³ [HC Deb 23 February 1959 Vol 600 c122 \[Welsh Flag\]](#).

²⁶⁴ It is not clear what the Act means by the flag of Northern Ireland.

²⁶⁵ [Royal Standard](#), Royal Family website.

²⁶⁶ "Scottish flags/Lion flag", Scottish Home Department file 18736/85, Edinburgh: National Records of Scotland. This Warrant was not published.

²⁶⁷ [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](#).

²⁶⁸ Crown Office Act 1877, [section 4](#). The same Act provides for a statutory committee of the Privy Council, although this last met in 1988.

²⁶⁹ [The Crown Office \(Preparation and Authentication of Documents Rules\) Order 1988](#), Part II.

House of Lords.²⁷⁰ A system of “colour coding” is used for seals. Scarlet red is used for most Letters Patent.²⁷¹

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.²⁷² 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 Ireland.²⁷³ 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.²⁷⁴

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”.²⁷⁵

Official languages

English is the UK’s de facto official language, although this does not have an explicit statutory basis.²⁷⁶

[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”.

[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”.²⁷⁷

²⁷⁰ Great Seal Act 1884, [section 2](#).

²⁷¹ 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.

²⁷² It is no longer an act of high treason to counterfeit the Great Seal of the Realm.

²⁷³ Irish Free State (Consequential Provisions) Act 1922, [Schedule 1 para 2\(4\)](#).

²⁷⁴ [The Coronation Ceremony](#), The Royal Mint website.

²⁷⁵ 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).

²⁷⁶ [Toponymic guidelines for map and other editors. United Kingdom of Great Britain and Northern Ireland](#), Ministry of Defence, May 2024.

²⁷⁷ [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”.

Census

Provision for a periodic census is made in the [Census Act 1920](#) (for Great Britain) and the [Census Act \(Northern Ireland\) 1969](#). Under [section 1](#) of the 1920 Act, the date of a census in Great Britain is fixed by Order in Council,²⁷⁸ while under [section 1](#) of the 1969 Act it is fixed by order of the First Minister and deputy First Minister acting jointly.²⁷⁹

²⁷⁸ [The Census \(England and Wales\) Order 2020](#) and [The Census \(Scotland\) Order 2020](#).

²⁷⁹ [The Census Order \(Northern Ireland\) 2020](#).

3 The Crown

The UK is an hereditary [constitutional monarchy](#).²⁸⁰ 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”.²⁸¹

“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.²⁸²

3.1 Official duties

According to the Royal Household, the King’s role comprises “two distinct elements”, that:

- 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”²⁸³

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,

²⁸⁰ As opposed to an [absolute monarchy](#), as exists in some parts of the world.

²⁸¹ Walter Bagehot, *The English Constitution*, 1867, [No. II The Cabinet](#).

²⁸² 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”.

²⁸³ [Sovereign Grant Annual Report and Accounts 2022-23](#), HC 142, 23 July 2024, p3.

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.

In all 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”.²⁸⁴

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 and High Commissioners to represent the UK abroad.

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, 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.

The immunities granted to diplomatic staff, and their families, are set out in the 1961 Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations 1963. 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 1968.²⁸⁵

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).²⁸⁶ Such High Commissioners may still meet with the King

²⁸⁴ [Sovereign Grant Annual Report and Accounts 2022-23](#), p3.

²⁸⁵ See also [Diplomatic Immunity and Diplomatic Premises](#), Crown Prosecution Service website.

²⁸⁶ See, for example, [Canada’s High Commissioner to Solomon Islands Presents Letter of Introduction to Government](#), Solomon Times, 9 October 2023.

upon their appointment, but they do not present any documents.²⁸⁷ High Commissioners from Commonwealth republics possess Letters of Commission, which are presented to the King upon the High Commissioner's arrival.²⁸⁸ All foreign diplomats are accredited "to the Court of St James's" rather than to the United Kingdom. Audiences for the presentation of credentials are organised by the [Marshal of the Diplomatic Corps](#),²⁸⁹ at which the permanent secretary of the Foreign, Commonwealth and Development Office is present.

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.²⁹⁰

Treason

Planning the death of the King, Queen and the King's eldest child is an offence under the Treason Act 1351.²⁹¹ This declaratory Act of the Parliament of England was extended to Ireland (now Northern Ireland) in 1495,²⁹² and to Scotland in 1708.²⁹³

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](#).²⁹⁴

[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.²⁹⁵

²⁸⁷ Court Circular, 1 July 2023.

²⁸⁸ Court Circular, 9 February 2023.

²⁸⁹ Royal Family website, [Audiences](#).

²⁹⁰ [The King and Diplomacy](#), Royal Family website.

²⁹¹ Treason Act 1351, [section II](#).

²⁹² Poynings' Law 1495, [section I](#). See also the [Treason Act \(Ireland\) 1703 \[1\]](#).

²⁹³ Treason Act 1708, [section I](#).

²⁹⁴ [Regina v Attorney General \[2003\] UKHL 38](#)

²⁹⁵ [The Accession Proclamation](#), Privy Council Office, 10 September 2022.

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”.²⁹⁶ [Section 1](#) of the Royal Titles Act 1953 provided 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.²⁹⁷ Queen Elizabeth II made such a Proclamation on 28 May 1953,²⁹⁸ 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.²⁹⁹

[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.³⁰⁰ 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”.³⁰¹

The Royal Family’s surname is “Windsor” by virtue of a [Royal Proclamation dated 17 July 1917](#).³⁰² 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.³⁰³

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

²⁹⁶ [The Overseas Territories](#), Foreign and Commonwealth Office, Command 8374, June 2012, p14.

²⁹⁷ 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 \[Royal Titles Bill\]](#)).

²⁹⁸ [London Gazette, 29 May 1953](#).

²⁹⁹ 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.

³⁰⁰ *MacCormick v The Lord Advocate* [1953] SC 396.

³⁰¹ [HC Deb 15 April 1953 \[Royal Style and Title\]](#). Until 1707, English and Scottish monarchs were numbered separately.

³⁰² Until this point there had been doubt as to whether the Royal Family had a surname at all.

³⁰³ [The Gazette, 10 May 2023](#).

- 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.³⁰⁴

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.³⁰⁵ 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.³⁰⁶

[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 of State. These sensitive words include Royal, Queen, King, Prince or Princess.³⁰⁷

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.³⁰⁸ A male heir to the Throne immediately becomes [Duke of Cornwall](#) upon a demise.

The Prince of Wales possesses few constitutional powers, although he receives Cabinet papers and can grant audiences to ministers.³⁰⁹ 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.³¹⁰

³⁰⁴ [London Gazette, 8 January 2013](#).

³⁰⁵ [Guidance applications for protected royal titles](#), Lord Chamberlain’s Office.

³⁰⁶ [Royal Arms Blue Booklet](#), Lord Chamberlain’s Office.

³⁰⁷ Which are specified in the [Company, Limited Liability Partnership and Business Names \(Sensitive Words and Expressions\) Regulations 2014](#).

³⁰⁸ [Crown Office](#), The Gazette, 24 February 2023.

³⁰⁹ Rodney Brazier, The constitutional position of the Prince of Wales, Public Law, 1995, pp401-16.

³¹⁰ [Titles and Heraldry](#), Prince of Wales website. See also an [Act of the Old Scottish Parliament dated 17 November 1469](#).

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.

Lords-Lieutenant

Lords-Lieutenant are the Crown's representatives in each county of the United Kingdom.³¹¹ 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 Forces³¹²

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 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.³¹³

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.³¹⁴

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”.³¹⁵

It comprises five main Departments:

³¹¹ 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.

³¹² Lords-Lieutenant also lead local magistracies in some counties of England and Wales.

³¹³ Cabinet Office, [Process for the appointment of Lord-Lieutenants](#).

³¹⁴ See, for example, [London Gazette, 12 January 2018](#).

³¹⁵ [Sovereign Grant Annual Report and Accounts 2022-23](#), Royal Household, July 2024, pp3 & 5.

- 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
- 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 Wales³¹⁶

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)³¹⁷
- 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 Master of the Household, others are purely honorific.³¹⁸

³¹⁶ [Inside the Royal Household](#), Royal Family website.

³¹⁷ 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.

³¹⁸ David Torrance, *Elites in Scotland* in M. Stewart Leith & Duncan Sim (eds), *Scotland: The New State of an Old Nation*, Manchester: Manchester University Press, 2020, pp143-44.

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”.³¹⁹

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”. 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 position of parliament within the Scottish constitution at the expense of the royal prerogative”.

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 provision is made to the contrary.³²⁰ [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.

[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 preserves the Monarch’s personal immunity from legal proceedings in his private capacity. As Adam Tomkins has observed, the:

³¹⁹ Erskine May, [para 1.6](#).

³²⁰ [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.

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.³²¹

[Section 1](#), however, provides for civil actions against the Crown to be brought in the same way as against any other party.³²² [Section 2](#) renders the Crown 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. [Section 28](#) 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.

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.³²³

3.5

Succession to the Crown

Under common law, succession to the Crown upon the death or abdication of a monarch is immediate.³²⁴ 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.³²⁵ 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](#)).³²⁶

³²¹ Adam Tomkins, *Crown Privileges* in M. Sunstein and S. Payne, *The Nature of the Crown*, Oxford: Oxford University Press, 1999 pp171-72.

³²² 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).

³²³ *Franklin v AG* [1974] QB 185.

³²⁴ 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 VII/II was deemed to have abdicated. William III and Mary II did not accept the Crown (of England) until 13 February 1689.

³²⁵ Also restated in [Princess Sophia's Precedence Act 1711](#).

³²⁶ This did not necessarily require a monarch to be an Anglican. Kings George I and II, for example, were German Lutherans.

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.³²⁷

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.³²⁸

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.³²⁹

The Crown, including succession to the Crown and a regency (see below), are reserved or excepted matters under the devolution statutes.³³⁰

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.³³¹

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.³³²

Following a demise, the new monarch decides the dates for the lying-in-state and state funeral of their predecessor. The ceremonials observed are later published in The Gazette.³³³

³²⁷ [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.

³²⁸ 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.

³²⁹ 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.

³³⁰ 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.

³³¹ [Prayers for the Sovereign and for the Royal Family, and Prayers and Forms of Service for Accession Day](#).

³³² Judicial Committee of the Privy Council Report [1910] UKPC 39.

³³³ [London Gazette, 17 July 2024](#).

Abdication

There is no 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.³³⁴

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",³³⁵ 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".³³⁶

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

- makes a non-statutory personal Declaration³³⁷
- 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)³³⁸

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.³³⁹ The same Proclamation is then read out, as directed by Orders of Council, at various locations around the UK and in the Crown

³³⁴ Philip Murphy, *Monarchy and the End of Empire*, Oxford: Oxford University Press, 2013, p169. An example is Fiji in 1987.

³³⁵ Privy Council, [UIN HL293](#), 17 May 2022.

³³⁶ [King Charles III: Ceremonies](#), UIN HL3308, 9 November 2022.

³³⁷ [His Majesty's Declaration](#), Privy Council Office, 10 September 2022.

³³⁸ [His Majesty's Oath Relating to the Security of the Church of Scotland](#), Privy Council Office, 10 September 2022.

³³⁹ [The Accession Proclamation](#), Privy Council Office, 10 September 2022.

Dependencies.³⁴⁰ 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.³⁴¹ 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.³⁴²

A new monarch chooses a Royal Cypher or monogram, which consists of their initials, title and a representation of the Crown.³⁴³ 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”.³⁴⁴ A new effigy of the Sovereign is also commissioned for use on the UK’s [stamps](#), [banknotes](#) and [coins](#).

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. 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.³⁴⁵ The final form of words was included in the Coronation Roll for King Charles III.³⁴⁶

³⁴⁰ 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.

³⁴¹ [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.

³⁴² 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.

³⁴³ [His Majesty The King’s cypher](#), Royal Family website, 27 September 2022.

³⁴⁴ [GOV.UK launches new official crown logo for His Majesty The King](#), Cabinet Office/Government Digital Service, 19 February 2024.

³⁴⁵ [The Coronation Oath](#), UIN HCWS727, 19 April 2023.

³⁴⁶ [Coronation Oath](#), Coronation Roll website.

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.³⁴⁷ 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 liturgy for each coronation.³⁴⁸ 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.³⁴⁹ 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.³⁵⁰ There is a relatively recent custom of a specifically Scottish ceremony which takes place shortly after the coronation.³⁵¹

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.³⁵²

Either at their coronation, or at the first State Opening of their reign (whichever occurs first),³⁵³ the Sovereign is required to declare that they are a faithful Protestant and will secure the Protestant succession.³⁵⁴

By custom, a newly crowned monarch will visit each part of the UK.³⁵⁵

Royal regalia

The Royal regalia, or [Crown Jewels](#), are kept at the Tower of London and are only removed for a coronation. 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.³⁵⁶ The Welsh regalia

³⁴⁷ King Edward VIII, for example, reigned during 1936 without having been crowned.

³⁴⁸ [Lambeth Palace Publishes Liturgy for the Coronation of King Charles III](#), Archbishop of Canterbury website.

³⁴⁹ [The Coronation Order of Service](#), Royal Family website, 6 May 2023.

³⁵⁰ [20 facts revealed about the Stone of Destiny](#), Historic Environment Scotland website.

³⁵¹ [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.

³⁵² This replaced the [Court of Claims](#).

³⁵³ Bill of Rights [1688], [Introductory Text](#).

³⁵⁴ Accession Declaration Act 1910, [Schedule](#).

³⁵⁵ 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.

³⁵⁶ 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](#).³⁵⁷

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.³⁵⁸ “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.

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 succession. It further stipulates that any delegated functions be “exercised

³⁵⁷ There was no investiture for the current Prince of Wales.

³⁵⁸ A declaration shall be made to the Privy Council and communicated to Commonwealth Realm governments.

jointly”.³⁵⁹ [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 to 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.³⁶⁰ 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,³⁶¹ 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.³⁶²

3.7

The Crown and the police

Police officers in England and Wales are servants of the Crown.³⁶³ 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”.³⁶⁴ It is from the Office of Constable that each officer derives their powers.³⁶⁵

The oaths taken by members of [Police Scotland](#) and the [Police Service of Northern Ireland](#) (PSNI) (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, 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

³⁵⁹ This has been taken to mean that Counsellors of State act in pairs when executing any royal functions.

³⁶⁰ Regency Act 1937, [section 6\(1\)](#).

³⁶¹ [Counsellors of State](#), Royal Family website.

³⁶² Regency Act 1943, [section 1](#). The Duke of Sussex is excepted from acting as a Counsellor of State under this provision.

³⁶³ Constables have no right to join a trade union and cannot complain of unfair dismissal (Employment Relations Act 1996, [section 200](#)).

³⁶⁴ Police Act 1996, [Schedule 4](#).

³⁶⁵ [The Office of Constable: The bedrock of modern day British policing](#), Police Federation, p2.

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.

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.³⁶⁶

The relationship between the police and the citizen is subject to detailed statutory regulation in the [Political and Criminal Evidence Act 1984](#) (as amended by the [Criminal Justice and Police Act 2001](#)) alongside the [Codes of Practice](#) that accompany it.

3.8 The Crown and the Armed Forces

The [Armed Forces Act 1996](#) defines the Armed Forces as “any of the naval, military or air forces of the Crown”. The monarch is Head of the UK’s Armed Forces.³⁶⁷ Parliamentary approval is required for the maintenance of the Army, the Royal Air Force and other forces serving on land, although the Royal Navy is maintained under the royal prerogative.³⁶⁸

the [Armed Forces Act 2021](#) may be renewed annually by Statutory Order in Council but is not to have effect beyond the end of 2026.³⁶⁹

Prerogative powers provide authority for the Crown to:

- commission members of the Armed Forces³⁷⁰
- appoint commanders and grant commissions to officers, and
- make agreements with foreign states about stationing troops on their soil

Other matters, such as the enforcement of military discipline and the trial of offences under military law, are regulated by statute.³⁷¹ The [Visiting Forces Act 1952](#) makes provision for the apprehension and disposal of deserters or

³⁶⁶ [Who we are](#), HMICFRS website.

³⁶⁷ Not Commander in Chief, as is sometimes claimed.

³⁶⁸ Bradley et al, Constitutional and Administrative Law, p294.

³⁶⁹ This reflects the expectation in the Bill of Rights [1688] that regular parliamentary consent is given to the maintenance of a standing army.

³⁷⁰ As such they may be dismissed at the pleasure of the Crown and may not resign their commission without leave.

³⁷¹ See the [Armed Forces Act 2006](#).

absentees without leave from the naval, military and air forces 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 Monarch receives regular reports from the Chiefs of Staff,³⁷² and has regular audiences with senior military officials.

[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.

Under [section 3](#) of the Aliens Restriction (Amendment) Act 1919, “aliens” (citizens of foreign countries) are prohibited from causing sedition or disaffection among the civil population as well as among the Armed Forces. Under [section 1](#) of the Incitement to Disaffection Act 1934, it is also 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”.

Guidelines on [Military Aid to the Civil Authorities \(MACA\)](#) outline circumstances in which members of the Armed Forces can assist civil authorities.³⁷³

Oath of allegiance

Upon enlistment, members of the [Army](#), [Royal Air Force](#) and [Royal Marines](#) are required to take or affirm an oath of allegiance to the Monarch. Members of the Royal Navy are not required to take an oath as it was originally created under the royal prerogative. Instead, they do sign an attestation or engagement form upon entry.

The standard text of the oath for members of the Army, Royal Air Force and Royal Marines 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.³⁷⁴

³⁷² Peter Rowe, *The Crown and Accountability for the Armed Forces* in M. Sunkin and S. Payne, *The Nature of the Crown*, p281.

³⁷³ See also Emergency Powers Act 1964, [section 2](#).

³⁷⁴ [Freedom of Information release FOI2021/06951](#), Ministry of Defence, 28 July 2021.

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:

- [The Queen's regulations for the Royal Navy](#) (April 2014)
- [The Queen's Regulations for the Royal Air Force](#) (June 2012)
- [The Queen's regulations for the Armed Forces 1975](#) (January 2019)

Part 14 of the Armed Forces 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".

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 ministers³⁷⁵
- The education convention: that the heir to the throne should be "instructed in the business of government in preparation for when he is King", and
- The cardinal convention: this holds that the Monarch "is normally expected to act in accordance with ministerial advice"³⁷⁶

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.³⁷⁷

³⁷⁵ [Cabinet Manual](#), para 6. This is adapted from Walter Bagehot's concept of constitutional monarchy.

³⁷⁶ *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).

³⁷⁷ *The Times*, 28 July 1986.

For this reason, there is a convention of confidentiality surrounding the Sovereign's communications with Ministers of the Crown and the devolved executives.³⁷⁸

Under [section 37\(1\)\(a\)](#) of the Freedom of Information Act 2000, information which "relates to" communications with the Monarch is exempt from disclosure. [Section 41](#) of the Freedom of Information (Scotland) Act 2002 makes similar provision.³⁷⁹

According to the Ministry of Justice, every "subject of the King has constitutional right to petition His Majesty".³⁸⁰ Signed written representations or appeals "in respect of any concern or grievance for which there is no other constitutional remedy readily available" can be posted to the King by UK citizens free of charge.³⁸¹

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)³⁸² to determine the value of the Sovereign Grant in each financial year by following a five-step process. 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.³⁸³ 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

³⁷⁸ In [Evans v Information Commissioner \[2012\] UKUT 313 \(AAC\)](#), the Upper Tribunal extended this to the then Prince of Wales in upholding the Information Commissioner's decision not to disclose correspondence between the heir to the throne and seven government departments.

³⁷⁹ This exemption expires after 20 years or five years after the relevant monarch's death, whichever is longer.

³⁸⁰ [Prisoner Complaints Policy Framework](#), Ministry of Justice, 12 December 2023.

³⁸¹ [United Kingdom Post Scheme \(6 April 2022\)](#), Royal Mail website, pp43-44.

³⁸² A body corporate created under the Civil List Act 1952, [section 10](#).

³⁸³ 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.

Statutory Order in Council which provided that existing Sovereign Grant provisions would instead expire six months after the end of his reign.³⁸⁴

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.³⁸⁵ It provides the Monarch “with a source of income that is independent of Government and the public purse”.³⁸⁶ 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”.³⁸⁷

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.³⁸⁸

3.11

Royal residences

The “Occupied Royal Palaces” (ORP) include Buckingham Palace, St James’s Palace,³⁸⁹ 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.³⁹⁰ One of six “Historic Royal Palace” is [Hillsborough Castle](#), which is a

³⁸⁴ [The Sovereign Grant Act 2011 \(Duration of Sovereign Grant Provisions\) Order 2022](#).

³⁸⁵ 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](#).

³⁸⁶ [Duchy of Lancaster Annual Report and Accounts for Year Ended 31st March 2023](#), Duchy of Lancaster website.

³⁸⁷ [About the Duchy](#), Duchy of Cornwall website.

³⁸⁸ These are also placed in the Libraries of each House.

³⁸⁹ 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.

³⁹⁰ [Maintaining the Occupied Royal Palaces](#), National Audit Office, 10 December 2008, p7.

royal and government residence situated in what is now Royal Hillsborough in Northern Ireland.³⁹¹

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.

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 1837.³⁹² During the 20th century a [Scottish version of the Arms](#) entered use throughout Scotland.³⁹³ Subsequent artistic changes appear to be a purely personal prerogative of the reigning monarch.³⁹⁴ 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.³⁹⁵

[Section 66](#) of the Justice (Northern Ireland) Act 2002 provides that the Royal Arms “must not be displayed in any courtroom” in Northern Ireland.³⁹⁶

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

³⁹¹ 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.

³⁹² [Royal Proclamation, 26 July 1837](#).

³⁹³ Stair Memorial Encyclopaedia of the Laws of Scotland Volume 7.

³⁹⁴ [New Coat of Arms artwork unveiled](#), Cabinet Office, 10 October 2024.

³⁹⁵ [New Coat of Arms artwork unveiled](#).

³⁹⁶ Arms “displayed immediately before” the coming into force of section 66 are exempt.

[Royal Badge of Wales](#) appears on the cover of the paper copy of larger Welsh SIs.³⁹⁷

[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.³⁹⁸

³⁹⁷ [WQ85557 \(e\)](#), The Record, 21 June 2022.

³⁹⁸ 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.”³⁹⁹ The King or Crown “in Parliament” is composed of the Sovereign, the House of Lords and the House of Commons.⁴⁰⁰

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 the House of Commons following motions tabled by the government.⁴⁰¹

Parliaments have been numbered since 1801.⁴⁰² 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.⁴⁰³ 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.⁴⁰⁴ 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 Westminster.

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.⁴⁰⁵

³⁹⁹ Erskine May, [para 1.5](#).

⁴⁰⁰ Erskine May, [para 1.1](#).

⁴⁰¹ 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](#).

⁴⁰² 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.

⁴⁰³ Lords Companion, [Appendix B](#).

⁴⁰⁴ Erskine May, [para 6.49](#).

⁴⁰⁵ Erskine May, [para 15.11](#).

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”.⁴⁰⁶ This has been recognised in statute.⁴⁰⁷ Some prefer the term “[parliamentary supremacy](#)”.

Dicey also suggested that while Parliament was legally sovereign, ultimately the electorate were “politically sovereign”.⁴⁰⁸ The orthodox position is that parliamentary sovereignty is “unlimited”.⁴⁰⁹ 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”.⁴¹⁰ The devolution statutes preserve the supremacy of the UK Parliament.⁴¹¹

Many of Parliament’s powers stem from what is known as parliamentary privilege.⁴¹² 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.⁴¹³

Prior to royal approbation, a Speaker claims for the Commons “their ancient and undoubted rights and privileges”.⁴¹⁴ 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.⁴¹⁵

The power of each House to control its own precincts, proceedings and aspects of membership is known as “exclusive cognizance”.⁴¹⁶ Exclusive cognizance does not displace the criminal law.⁴¹⁷

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.⁴¹⁸ This provides that freedom of speech and debates or

⁴⁰⁶ A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edition), London: Macmillan, 1959, pp39-40.

⁴⁰⁷ European Union (Withdrawal Agreement) Act 2020, [section 38](#).

⁴⁰⁸ A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, p70.

⁴⁰⁹ [Reference by the AG and the AG for Scotland – UNCRC \(Incorporation\) \(Scotland\) Bill \[2021\] UKSC 42](#).

⁴¹⁰ [R \(Jackson\) v Attorney General \[2005\] UKHL 56](#). This observation was obiter dicta.

⁴¹¹ See, for example, the Scotland Act 1998, [section 28\(7\)](#).

⁴¹² Erskine May, [para 11.1](#).

⁴¹³ Erskine May, [para 11.14](#).

⁴¹⁴ [HL Deb 9 July 2024 Vol 839 c4 \[Speaker of the House of Commons\]](#).

⁴¹⁵ [Pepper \(Inspector of Taxes\) v Hart \[1993\] AC 593](#).

⁴¹⁶ [Bradlaugh v Gosset \[1884\] 12 QBD 271](#). See also Erskine May, [para 11.16](#).

⁴¹⁷ Erskine May, [para 11.18](#).

⁴¹⁸ Erskine May, paras [13.1-13.2](#), [13.10-13.14](#). Article IX does not extend to devolved legislatures, although the [2024 Labour Party manifesto](#) pledged to ensure Members had “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”.

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”.⁴¹⁹ Both Houses have nevertheless applied many statutory provisions (for example that banning smoking in public places) voluntarily. In 2014 the Commons resolved that “legislation creating individual rights which could impinge on the activities of the House should in future contain express provision to this effect”.⁴²⁰

The power of impeachment is still in theory available to Parliament but is considered obsolete.⁴²¹

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 rather than elected, they retain their positions. Ministers of the Crown continue to hold office throughout the election period.⁴²²

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.⁴²³

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:

- 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

⁴¹⁹ [R v Chaytor \[2010\] UKSC 52](#).

⁴²⁰ Lords Companion, [para 12.13](#).

⁴²¹ The last occurred in 1806 (see [Impeachment](#), UK Parliament website).

⁴²² Guide to Parliamentary Work, [paras 18 and 19](#).

⁴²³ Dissolution and Calling of Parliament Act 2022, [sections 2 and 4](#).

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 Parliament⁴²⁴

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.⁴²⁵

Any extension of a Parliament beyond five years would require legislation.⁴²⁶ 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.

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.

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;
- (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.⁴²⁷

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".⁴²⁸

⁴²⁴ [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](#)).

⁴²⁵ For the most recent example, see Harold Wilson, *The Labour Government 1964-1970: A Personal Record*, London: Weidenfeld and Nicolson, 1971, p215.

⁴²⁶ 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.

⁴²⁷ *The Times*, 2 May 1950.

⁴²⁸ Vernon Bogdanor, *Monarchy and the Constitution*, Oxford: Clarendon Press, 1995, pp159-62.

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”.⁴²⁹ 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.⁴³⁰ Such a request is usually made in private audience but can take written form if the Monarch is abroad.

It is not necessary for Parliament to have been prorogued for it to be dissolved.⁴³¹

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 (ie 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 Council.⁴³² As per *Miller II*, Prime Ministerial advice in this respect is subject to certain limitations, and prorogation does not constitute a proceeding in Parliament.⁴³³ 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

⁴²⁹ [HC Deb 6 July 2021 Vol 698 c849 \[Dissolution and Calling of Parliament Bill\]](#)

⁴³⁰ [Dissolution Principles](#), HM Government, 2022.

⁴³¹ House of Lords Library, [Lengths of prorogation since 1900](#).

⁴³² [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.

⁴³³ [R \(on the application of Miller\) \(Appellant\) v The Prime Minister \(Respondent\) \[2019\] UKSC 41](#)

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.⁴³⁴

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.⁴³⁵ [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, and 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”).

If the Speaker is satisfied that the public interest requires such a meeting, they may give notice accordingly.⁴³⁶ Similarly, Lords Standing Order No 16(1) provides for a recall of that House during a period of adjournment.⁴³⁷

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 together in the same place.⁴³⁸ 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

⁴³⁴ Lords Companion, [Appendix G: The ceremony of prorogation by Commission](#).

⁴³⁵ See the [Meeting of Parliament Act 1797](#), as amended by the [Meeting of Parliament Act 1870](#) and the [Parliament \(Elections and Meeting\) Act 1943](#).

⁴³⁶ Erskine May, [para 8.13](#).

⁴³⁷ Lords Companion, [para 2.21](#).

⁴³⁸ Judges also receive writs to attend the State Opening, while members of the Diplomatic Corps are invited by the Lord Great Chamberlain.

Speech (also known as the Gracious Speech). This is a statement of government policy for which the Sovereign accepts no personal responsibility.⁴³⁹ A King's Speech can be an important test of a Prime Minister's ability to command the confidence of Parliament.⁴⁴⁰ The Cabinet Secretariat, working with Number 10, drafts the King's Speech and provides coordination for supporting documents.⁴⁴¹

1 Black Rod

The Gentleman or Lady Usher of the Black Rod ("Black Rod") is appointed by the Crown by Letters Patent under the Garter Seal. Black Rod is responsible for administrative arrangements whenever the Sovereign is in Parliament. 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.⁴⁴²

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.⁴⁴³ 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.⁴⁴⁴ This Address is presented by each House to the King,⁴⁴⁵ who makes a formal reply.⁴⁴⁶

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.⁴⁴⁷ [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.⁴⁴⁸ It also provides for a category of "protected" island constituencies: two in the Isle of

⁴³⁹ Ivor Jennings, *Cabinet Government*, Cambridge: Cambridge University Press, 1959, p402. See also *Lords Companion*, [Appendix F: The King's Speech](#).

⁴⁴⁰ In January 1924, for example, the Conservative Prime Minister Stanley Baldwin resigned when his minority government was defeated in a vote on its legislative programme as set out in the King's Speech. A general election had taken place in December 1923.

⁴⁴¹ [Guide to Making Legislation](#), Cabinet Office, 2022, para 20.1.

⁴⁴² Erskine May, [para 6.34](#).

⁴⁴³ [Companion to the Standing Orders, Appendix E](#)

⁴⁴⁴ Erskine May, [para 8.37](#).

⁴⁴⁵ Erskine May, [para 8.38](#).

⁴⁴⁶ Erskine May, [para 8.39](#).

⁴⁴⁷ As amended by the Parliamentary Constituencies Act 2020, [section 5](#).

⁴⁴⁸ As amended by the Parliamentary Constituencies Act 2020, [section 1](#).

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.⁴⁴⁹ 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 recommendations.⁴⁵⁰ 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

⁴⁴⁹ The four Boundary Commissions were first established as permanent bodies by the House of Commons (Redistribution of Seats) Act 1944.

⁴⁵⁰ If submission is delayed by “exceptional circumstances” then these must be explained by a Minister to Parliament.

been previously registered or previously resident in a constituency before leaving.⁴⁵¹

Legal incapacities to voting include:

- peers with seats in the House of Lords⁴⁵²
- convicted persons during the period of their detention in a penal institution (or mental hospital) in pursuance of their sentence,⁴⁵³ and
- persons found guilty of corrupt or illegal practices at elections⁴⁵⁴

There is no bar to the Lords Spiritual voting in elections, but by long-standing convention they do not do so.⁴⁵⁵ By custom, members of the Royal Family (including the King) do not vote.⁴⁵⁶

[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).⁴⁵⁷ Each constituency has a returning officer who is personally responsible for running the election in line with these rules.

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). The Clerk of the Crown in Chancery is also Permanent Secretary at the Ministry of Justice.⁴⁵⁸ [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

⁴⁵¹ As amended by the Elections Act 2022, [section 14](#).

⁴⁵² *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.

⁴⁵³ Representation of the People Act 1983, [sections 3](#) and [3A](#).

⁴⁵⁴ Representation of the People Act 1983, [sections 160](#) and [173](#).

⁴⁵⁵ 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 \[Parliamentary Voting: Lords Spiritual\]](#).

⁴⁵⁶ [Do the royals vote and what are the rules for them as political parties start campaigning?](#), Sky News website, 2 June 2024.

⁴⁵⁷ 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](#).

⁴⁵⁸ Under the Great Seal (Offices) Act 1874, [section 8](#), the Clerk of the Crown is appointed by the King via a Royal Warrant issued under the Royal Sign Manual.

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 is banned on ITV and on commercial radio stations. The BBC 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.⁴⁵⁹ OFCOM also has the duty to ensure broadcasting 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.⁴⁶⁰ 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.⁴⁶¹ Under [section 145](#), the Commission has a general duty to monitor compliance with the provisions of the 2000 Act.

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 [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.⁴⁶² 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.⁴⁶³ [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.

⁴⁵⁹ Ofcom, [Ofcom rules on Party Political and Referendum Broadcasts](#), 31 December 2020.

⁴⁶⁰ There are separate registers for Great Britain and Northern Ireland. Registration is not compulsory.

⁴⁶¹ Political Parties, Elections and Referendums Act 2000, [section 3](#), as amended by the Political Parties and Elections Act 2009, [section 5](#).

⁴⁶² The Clerk of the Crown in Chancery (who is also the Permanent Secretary to the Ministry of Justice) is appointed under royal sign manual (Great Seal (Offices) Act 1874, [section 8](#)).

⁴⁶³ Decisions of the Election Court are not subject to appeal.

At the beginning of a Parliament, the Clerk of the Crown delivers to the Clerk of the House of Commons a “Return Book” containing the names of Members returned to serve in that Parliament.⁴⁶⁴

By-elections

A by-election will occur if a sitting Member dies, resigns or becomes disqualified.⁴⁶⁵ 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.⁴⁶⁶ 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
- 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.⁴⁶⁷

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.⁴⁶⁸ Similarly, any disqualifications for the Parliaments of Great Britain or of

⁴⁶⁴ Erskine May, [para 8.15](#).

⁴⁶⁵ 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](#).

⁴⁶⁶ Erskine May, [para 2.12](#).

⁴⁶⁷ Recall of MPs Act 2015, [sections 14](#) and [15](#).

⁴⁶⁸ Succession of the Crown Act 1707, [section 29](#).

Ireland were by statute extended to the Parliament of the United Kingdom.⁴⁶⁹ Those disqualified are persons “born out of the” UK realm,⁴⁷⁰ people aged under 18,⁴⁷¹ peers who are Members of the House of Lords,⁴⁷² bankrupts,⁴⁷³ persons convicted of treason,⁴⁷⁴ persons sentenced or ordered to be imprisoned or detained indefinitely or for more than one year,⁴⁷⁵ and Lords Spiritual.⁴⁷⁶

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.⁴⁷⁷ [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 disqualification. 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.

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,⁴⁷⁸ 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.⁴⁷⁹

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).

⁴⁶⁹ House of Commons (Disqualifications) Act 1801, [section 1](#).

⁴⁷⁰ Act of Settlement (1700), [section 3](#).

⁴⁷¹ Electoral Administration Act 2006, [section 17](#).

⁴⁷² 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.

⁴⁷³ Insolvency Act 1986, [sections 426A](#) and [427](#) (as amended).

⁴⁷⁴ Forfeiture Act 1870, [section 2](#).

⁴⁷⁵ Representation of the People Act 1981, [section 1](#).

⁴⁷⁶ 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.

⁴⁷⁷ Erskine May, [paras 3.11-3.22](#).

⁴⁷⁸ Erskine May, [para 5.25](#).

⁴⁷⁹ 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).

Speaker

The Speaker of the House of Commons is the “representative of the House itself in its powers, proceedings and dignity”.⁴⁸⁰ 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.⁴⁸¹ These are seen as authoritative and are recorded in Erskine May.⁴⁸²

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.⁴⁸³

Commons Standing Orders make provision for the election of a Speaker, who is then subject to royal approbation.⁴⁸⁴ This is the first business of a new Parliament.⁴⁸⁵ 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.⁴⁸⁶ By an Order in Council of 30 May 1919, the Speaker ranks immediately after the Lord President of the Council.⁴⁸⁷

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

⁴⁸⁰ Erskine May, [para 4.19](#).

⁴⁸¹ Erskine May, [para 4.25](#).

⁴⁸² [Speaker’s rulings](#), UK Parliament website.

⁴⁸³ Erskine May, [para 4.23](#).

⁴⁸⁴ [Commons Standing Orders Nos 1-1B](#). For a description of royal approbation, see Lords Companion, [Appendix D](#).

⁴⁸⁵ For a full account see Lords Companion, [Appendix D: Opening of a new Parliament and election of Commons Speaker](#).

⁴⁸⁶ When Speaker Seymour was created a Privy Counsellor shortly after his appointment to the Chair strong objections were raised by some Members (Philip Laundry, *The Office of Speaker*, pp235-36).

⁴⁸⁷ [London Gazette, 3 June 1919](#).

- Representative – the Speaker is the spokesperson of the House in its communications with the Crown, the House of Lords, and external authorities outside Parliament⁴⁸⁸

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.⁴⁸⁹

During a general election, the Speaker campaigns as “The Speaker seeking re-election” and issue a non-political statement to their electors.⁴⁹⁰ If a Speaker does not win re-election then they cease to hold office.⁴⁹¹ By convention, ex-Speakers do not remain in the Commons after vacating the Chair and usually join the Upper House as a life peer.

If the numbers in a division are equal, then by convention the Speaker exercises the casting vote.⁴⁹² This is subject to certain principles.⁴⁹³

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.⁴⁹⁴

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.⁴⁹⁵

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 appointed by the Crown via Letters Patent.⁴⁹⁶ 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

⁴⁸⁸ Erskine May, [para 4.19](#).

⁴⁸⁹ [Commons Standing Orders Nos. 44-46](#).

⁴⁹⁰ This description is statutory. See Representation of the People Act 1983, [Schedule 1 Part II para 6](#).

⁴⁹¹ This has never occurred.

⁴⁹² Erskine May, [para 20.89](#).

⁴⁹³ Erskine May, [para 20.90](#).

⁴⁹⁴ Erskine May, [para 6.18](#).

⁴⁹⁵ Erskine May, [para 4.30](#). The most recent

⁴⁹⁶ [London Gazette, 4 October 2023](#).

the House of Commons”.⁴⁹⁷ Officers of the House of Commons are not civil servants.⁴⁹⁸

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.⁴⁹⁹

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 Commissioner for Administration](#) (or the 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 misbehaviour following Addresses from both Houses of Parliament.⁵⁰⁰ The post has invariably been held by the same person as holds the post of Health Service Commissioner for England.⁵⁰¹

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).⁵⁰² 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.⁵⁰³

If the Ombudsman finds that there has been maladministration he or she sends the MP concerned a report ([section 10](#)).⁵⁰⁴ 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

⁴⁹⁷ The Clerk’s oath was converted into a declaration by the Promissory Oaths Act 1868, [section 12](#).

⁴⁹⁸ By convention, their terms and conditions and pay mirror those of civil servants. Officers of both Houses of Parliament can also join the Civil Service Pension Scheme.

⁴⁹⁹ Erskine May, [para 4.25](#).

⁵⁰⁰ The King can also declare the office of Commissioner to have been vacated on medical grounds.

⁵⁰¹ 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.

⁵⁰² 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).

⁵⁰³ 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.

⁵⁰⁴ 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.

should have cogent reasons for doing so and is potentially open to challenge if it acts unreasonably.⁵⁰⁵

Proceedings

The quorum for a meeting of the House of Commons is 40.⁵⁰⁶

The [House of Commons Journal](#) forms the permanent official record of the proceedings of the House, as does the [House of Lords Journal](#) for the Upper House.⁵⁰⁷ 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 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.⁵⁰⁸ 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.⁵⁰⁹

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”.

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.⁵¹⁰

[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

⁵⁰⁵ [Cabinet Manual](#), para 5.41. *R (Bradley and others) v Secretary of State for Work and Pensions* [2008] [EWCA Civ 36](#).

⁵⁰⁶ [Commons Standing Order No. 41](#).

⁵⁰⁷ Erskine May, [para 7.17](#) and Lords Companion, [para 3.61](#).

⁵⁰⁸ Lords Companion, [para 3.57](#).

⁵⁰⁹ *Pepper (Inspector of Taxes) v Hart* [1993] [AC 593](#).

⁵¹⁰ *R v Home Secretary, ex parte Simms* [1999] UKHL 33.

papers produced by Parliament and its committees and papers presented to Parliament by outside bodies.⁵¹¹

[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”.⁵¹² 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.⁵¹³

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.⁵¹⁴ 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”.⁵¹⁵

The Backbench Business Committee has the power to call a debate on “a matter of regional, national or international importance”.⁵¹⁶

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.⁵¹⁷ 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

⁵¹¹ Guide to Parliamentary Work, [para 286](#).

⁵¹² Erskine May, [para 38.1](#). See [Commons Standing Order No 133](#).

⁵¹³ Erskine May, [para 38.4](#).

⁵¹⁴ Erskine May, [para 38.73](#).

⁵¹⁵ Erskine May, [para 38.66](#).

⁵¹⁶ [Commons Standing Order No 24A](#).

⁵¹⁷ Erskine May, [para 38.34](#).

accept” such invitations,⁵¹⁸ whereas under the Welsh Ministerial Code, it is for Welsh Ministers to “decide whether to accept”.⁵¹⁹

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.⁵²⁰

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 published as a Command Paper or submitted by the department most directly concerned as a memorandum to the committee.⁵²¹

Petitions

Members of the public can ask a Member of Parliament to present a public (paper) petition to the House⁵²² 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.⁵²³ 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.⁵²⁴

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.⁵²⁵

4.6

House of Lords

The Lords Spiritual (bishops) and Temporal (life and hereditary peers) sit together and jointly constitute the House of Lords.⁵²⁶

⁵¹⁸ Scottish Ministerial Code, [para 3.11](#).

⁵¹⁹ Welsh Ministerial Code, [para 7.16](#).

⁵²⁰ [Giving Evidence to Select Committees – Guidance for Civil Servants](#), Cabinet Office, October 2014.

⁵²¹ Erskine May, [para 38.54](#).

⁵²² Either by placing them in a green bag on the back of the Speaker’s Chair or on the floor of the House.

⁵²³ Erskine May, [para 24.1](#).

⁵²⁴ Erskine May, [para 24.22](#).

⁵²⁵ Guide to Parliamentary Work, [para 275](#).

⁵²⁶ Erskine May, [para 1.12](#). Lords Spiritual are not peers.

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 England⁵²⁷

Bishops to whom a writ of summons has been issued are not peers but “Lords of Parliament”.⁵²⁸

[Section 5](#) of the Bishops 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, until 2025 any vacancy is filled by a female English diocesan bishop, ahead of any male. The [Lords Spiritual \(Women\) Act 2015 \(Extension\) Bill 2024-25](#) will extend this period to 2030.

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, although the removal will only have effect once the King in Council has confirmed this penalty.

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 convention, some are granted life peerages, which allows them to remain under a different category of membership. The Archbishop of Canterbury is traditionally made a life peer upon retirement.

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. 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.

⁵²⁷ With the exception of the Bishop of Sodor and Man, who may not take a seat. He or she is instead a member of Tynwald (Isle of Man).

⁵²⁸ [House of Lords Standing Order No. 6](#).

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.⁵²⁹ When nominating members of other parties, [by convention the Prime Minister takes advice from the leaders of those parties](#)
- 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”](#)
- Crossbench: the [House of Lords Appointments Commission](#) (HoLAC) considers self-nominations from individuals to become non-aligned peers⁵³⁰

In each case, the numbers nominated are at the discretion of the Prime Minister. Since 2000, the appointment of life peers has been monitored by the House of Lords Appointments Commission, an advisory, non-departmental public body created under the prerogative. 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.⁵³¹

In 2020, a Prime Minister (Boris Johnson) over-ruled advice from HoLAC for the first time.⁵³² Life peers are created via Letters Patent.⁵³³

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.⁵³⁴ Lords [Standing](#)

⁵²⁹ It has also become increasingly common for Prime Ministers to nominate non-affiliated peers.

⁵³⁰ House of Lords Library In Focus, [House of Lords Appointments Commission: Role and powers](#), 12 November 2024.

⁵³¹ [Vetting: the Role of the Appointments Commission](#), House of Lords Appointments Commission website.

⁵³² [Boris Johnson Overrides House Of Lords Watchdog To Hand Peerage To Former Tory Treasurer Who Gave The Party £3.5m](#), Politics Home website, 22 December 2020.

⁵³³ For a full explanation of the process see Commons Library Insight, [How are life peers created?](#), 4 July 2024.

⁵³⁴ No Member of the House of Lords has yet been expelled under this provision.

[Order No 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,⁵³⁵ aged under 21,⁵³⁶ bankrupts,⁵³⁷ convicted of treason,⁵³⁸ or they occupy a disqualifying judicial office.⁵³⁹

[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 No 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 suspended by resolution of the House on 25 July 2024.⁵⁴⁰

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 State occasions,⁵⁴¹ while the Lord Great Chamberlain is responsible for the State Opening of Parliament.⁵⁴²

The Lord Chancellor, on behalf of the Crown, maintains a [Roll of the Peerage](#),⁵⁴³ which records both life peers and hereditary peers without a seat in the Lords. [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.⁵⁴⁴ The form of the instrument of disclaimer is given in [Schedule 1](#).

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

⁵³⁵ Act of Settlement (1700), [section 3](#).

⁵³⁶ [Lords Standing Order No 2](#).

⁵³⁷ Insolvency Act 1986, [sections 426A](#) and [427](#) (as amended).

⁵³⁸ Forfeiture Act 1870, [section 2](#).

⁵³⁹ 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](#)).

⁵⁴⁰ [HL Deb 25 July 2024 Vol 839 cc624-27 \[Business of the House\]](#)

⁵⁴¹ The Earl Marshal is a “pure” hereditary office in that it passes from father to son.

⁵⁴² 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](#).

⁵⁴³ [Royal Warrant, 1 June 2004](#).

⁵⁴⁴ This does not apply to the Earl Marshal or the Lord Great Chamberlain.

Chancellor from the office of the Clerk of the Crown in Chancery.⁵⁴⁵ Lords Temporal are ceremonially introduced,⁵⁴⁶ as are Lords Spiritual.⁵⁴⁷ Excepted hereditary peers require no introduction and, on receiving a writ, can take their seat and the oath of allegiance without any ceremony.⁵⁴⁸ There is no compulsory retirement age for Lords Temporal.⁵⁴⁹ Members can take leave of absence.⁵⁵⁰

Arrangements for the seating of Members of the House of Lords are, “in theory”, governed by the [House of Lords Precedence Act 1539](#).⁵⁵¹ 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.⁵⁵²

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.⁵⁵³

Lord Speaker

The House of Lords resolved on 12 July 2005 to “elect its own presiding officer”.⁵⁵⁴ [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.⁵⁵⁵

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

⁵⁴⁵ Lords Companion, [para 1.7](#).

⁵⁴⁶ Erskine May, [para 25.25](#). For a full description, see Lords Companion, [Appendix J: Introductions](#).

⁵⁴⁷ Erskine May, [para 25.26](#).

⁵⁴⁸ Lords Companion, [para 1.14](#).

⁵⁴⁹ 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”.

⁵⁵⁰ Lords Companion, [paras 1.37-1.42](#).

⁵⁵¹ 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](#)).

⁵⁵² This law has not been strictly observed.

⁵⁵³ Lords Companion, [paras 5.1-5.8](#).

⁵⁵⁴ [HL Deb 12 July 2005 Vol 673 cc1000-1032 \[Speakership of the House\]](#)

⁵⁵⁵ [Lords Standing Order 17](#).

the ceremonies accompanying oath-taking, the State Opening of Parliament and Royal Commissions.⁵⁵⁶

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.⁵⁵⁷

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.⁵⁵⁸

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, 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.⁵⁵⁹

Administration

The Lord Speaker chairs the non-statutory House of Lords Commission.⁵⁶⁰

The Clerk of the Parliaments is the head of the House of Lords Administration and is appointed by the Crown via Letters Patent under the Great Seal.⁵⁶¹ The Clerk is “removable” by the King upon an address of the House of Lords.⁵⁶² 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”.⁵⁶³

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

⁵⁵⁶ Erskine May, [para 4.49](#).

⁵⁵⁷ Lords Companion, [para 4.1](#).

⁵⁵⁸ Lords Companion, [para 4.3](#).

⁵⁵⁹ Lords Companion, [paras 4.50-4.51](#).

⁵⁶⁰ Erskine May, [para 4.49](#).

⁵⁶¹ [London Gazette, 7 April 2021](#).

⁵⁶² Clerk of the Parliaments Act 1824, [section 2](#).

⁵⁶³ Erskine May, [para 6.32](#).

administrative departments of the House.⁵⁶⁴ 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.⁵⁶⁵

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.⁵⁶⁶ This includes a [Constitution Committee](#), which considers the constitutional significance of most public bills.⁵⁶⁷ The Chair of a Lords committee may be appointed by the House on the proposal of the Committee of Selection.⁵⁶⁸ 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 privilege. It also keeps the Lords Companion to Standing Orders under review.⁵⁶⁹

Joint committees are formally composed of separate Select Committees appointed by each House to work together.⁵⁷⁰ 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.⁵⁷¹

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”.

⁵⁶⁴ Clerk of the Parliaments Act 1824, [section 5](#).

⁵⁶⁵ Erskine May, [para 6.33](#).

⁵⁶⁶ Erskine May, [para 40.1](#).

⁵⁶⁷ 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).

⁵⁶⁸ [Lords Standing Order 62](#).

⁵⁶⁹ Erskine May, [para 40.60](#).

⁵⁷⁰ Erskine May, [para 41.1](#).

⁵⁷¹ Lords Companion, [paras 3.70-3.77](#).

[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 statutory obligation for Members to do so,⁵⁷² it has become the custom. Erskine May states, however, that it “continues to be obligatory in the House of Lords”,⁵⁷³ 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”.⁵⁷⁴

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.

⁵⁷² 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](#)).

⁵⁷³ Erskine May, [para 8.25](#).

⁵⁷⁴ Lords Companion, [para 1.16](#).

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.⁵⁷⁵

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)⁵⁷⁶
- 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)⁵⁷⁷
- consideration of government business in the Lords in “reasonable” time⁵⁷⁸
- the Lords does not usually object to secondary legislation, but has the right to do so⁵⁷⁹

For statutory rules regarding the relationship between the two Houses see below on the Parliament Acts 1911 and 1949.

⁵⁷⁵ [McGuinness v United Kingdom, no 39511/98](#).

⁵⁷⁶ 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](#)).

⁵⁷⁷ 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).

⁵⁷⁸ Erskine May, [para 11.7](#).

⁵⁷⁹ [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.

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.⁵⁸⁰

The preamble to a bill (which appears immediately after the long title) sometimes states the reasons for and the intended effects of the proposed legislation.⁵⁸¹ A legislative preamble does not form part of an act and therefore is not binding law.⁵⁸² Schedules, by contrast, have the same full statutory effect as clauses.⁵⁸³

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.⁵⁸⁴

Bills will often 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.⁵⁸⁵ Article 19 of the [Bill of Rights \[1688\]](#) could be viewed as an ouster clause.⁵⁸⁶

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,⁵⁸⁷ except 60 days in each

⁵⁸⁰ The [Office of the Parliamentary Counsel](#) is a group of government lawyers who specialise in drafting legislation.

⁵⁸¹ Erskine May, [para 26.8](#).

⁵⁸² 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](#).

⁵⁸³ Erskine May, [para 26.11](#).

⁵⁸⁴ Erskine May, [para 26.12](#).

⁵⁸⁵ [Anisminic Ltd v Foreign Compensation Commission \[1969\] 2 AC 147](#).

⁵⁸⁶ “That the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.”

⁵⁸⁷ Erskine May, [para 18.11](#).

session which are allocated for opposition business, backbench business and Private Members' Bills.⁵⁸⁸

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.⁵⁸⁹ The Parliamentary Business and Legislation (PBL) Cabinet committee is responsible for preparing and managing the government's legislative programme.⁵⁹⁰

By convention, "free votes" have been permitted on ethical issues that are seen as a matter of conscience.⁵⁹¹

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 authority⁵⁹²

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 1987.⁵⁹³

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. A private member may not, however, propose a bill the main object of which is the creation of a charge on the public revenue.⁵⁹⁴

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.⁵⁹⁵ This is not a statutory requirement. When a pressing emergency arises, a bill may pass through all its stages on the same day.⁵⁹⁶

⁵⁸⁸ [Cabinet Manual](#), para 5.7.

⁵⁸⁹ Erskine May, [para 18.17](#).

⁵⁹⁰ [Guide to making legislation](#), Cabinet Office, 15 August 2022.

⁵⁹¹ [Free votes](#), UK Parliament website. See also Commons Library research briefing SN04793, [Free votes in the House of Commons since 1979](#).

⁵⁹² Erskine May, [para 26.2](#). See also Erskine May, [Part 7](#).

⁵⁹³ Erskine May, [para 46.41](#). See also Lords Companion, [Chapter 9](#).

⁵⁹⁴ [Commons Standing Order No 48](#).

⁵⁹⁵ Erskine May, [para 26.1](#) and Lords Companion, [Chapter 8](#).

⁵⁹⁶ 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.

After second reading in the Commons, 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.⁵⁹⁷

Procedure for consolidation bills is governed by the [Consolidation of Enactments \(Procedure\) Act 1949](#).⁵⁹⁸ These usually follow recommendations from the [Law Commission](#) and/or [Scottish Law Commission](#), which are statutory bodies.⁵⁹⁹

The repeal of legislation is provided for in [sections 15 to 17](#) of the Interpretation Act 1978.

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 exercised on ministerial advice (a submission from the Lord Chancellor), 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”.⁶⁰⁰

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.

This differs for finance bills and bills presented for Royal Assent under the Parliament Acts 1911 and 1949 (see below).⁶⁰¹

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 in the Letters Patent by which the Sovereign is to signify the Royal Assent.⁶⁰² 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.

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 Schedule of the Letters Patent.⁶⁰³ In the House of

⁵⁹⁷ [Commons Standing Order No 84A](#).

⁵⁹⁸ See also Erskine May, [para 29.72](#).

⁵⁹⁹ As established under the Law Commissions Act 1965, [sections 1](#) and [2](#).

⁶⁰⁰ [Erskine May, para 30.36](#)

⁶⁰¹ Erskine May, [para 26.9](#).

⁶⁰² Erskine May, [para 30.36](#).

⁶⁰³ Crown Office Act 1884, [section 4](#).

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 Crown Office Rules Order 1967](#).

[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”.⁶⁰⁴

At the ceremony of the Royal Assent to bills by commission (under section 1(a)),⁶⁰⁵ the Clerk of the Parliaments pronounces to each Act the words by which the Royal Assent is signified and must (by statute) endorse on every Act the date on which it received the Royal Assent.⁶⁰⁶ 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.⁶⁰⁷

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.

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. 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”.⁶⁰⁸

⁶⁰⁴ This last occurred in 1854.

⁶⁰⁵ Lords Companion, [Royal Commissions](#), Appendix C.

⁶⁰⁶ [Acts of Parliament \(Commencement\) Act 1793](#). This prevents acts of Parliament from “taking effect from a Time prior to the passing thereof”.

⁶⁰⁷ Interpretation Act 1978, [section 4](#).

⁶⁰⁸ See also Interpretation Act (Northern Ireland) 1954, [section 14](#).

Parliament Acts 1911 and 1949

Under the Parliament Acts 1911 and 1949 certain public bills may be presented for Royal Assent without the consent of the Lords.⁶⁰⁹

[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.

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,⁶¹⁰ 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.

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.⁶¹¹

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”.⁶¹² [Section 5](#) deals with SIs which are subject to “annulment by resolution of either House of Parliament” (known as the negative resolution procedure⁶¹³), and [section 6](#) SIs of which drafts are to be laid before Parliament. [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.⁶¹⁴

Two other common procedures ([draft affirmative](#) and [made affirmative](#)) have developed through custom and practice. Under the affirmative resolution procedure,⁶¹⁵ the government must secure the approval of the House before the instrument comes into effect. Much secondary legislation is made without

⁶⁰⁹ 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.

⁶¹⁰ The reduction from three to two sessions is by virtue of the Parliament Act 1949, [section 1](#).

⁶¹¹ [Jackson v Her Majesty’s Attorney General \[2005\] UKHL 56](#).

⁶¹² The heading of an Instrument (once in force) 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](#)).

⁶¹³ Erskine May, [para 18.26](#).

⁶¹⁴ 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).

⁶¹⁵ Erskine May, [para 18.25](#).

being subject to any parliamentary proceedings; it is simply approved and signed by the relevant Minister of the Crown.⁶¹⁶

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 and has upheld (by resolution) “its unfettered freedom to vote on any subordinate legislation submitted for its consideration”.⁶¹⁷

“Henry VIII clauses” are sometimes included in statutes to enable the government to make delegated legislation which amends the statutes themselves.⁶¹⁸ [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](#)).

While the courts cannot strike down primary legislation, they may declare delegated legislation invalid.⁶¹⁹

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. 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.⁶²⁰

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

⁶¹⁶ [Cabinet Manual](#), para 5.28. [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”).

⁶¹⁷ Lords Companion, [para 10.2](#).

⁶¹⁸ [Cabinet Manual](#), para 5.30.

⁶¹⁹ Erskine May, [para 31.4](#).

⁶²⁰ Commons Library research briefing CBP9247, [How Parliament treats treaties](#). 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 – UNCRIC \(Incorporation\) \(Scotland\) Bill \[2021\] UKSC 42](#)).

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.

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.⁶²¹ The rule that legislation is necessary to give legal authority to taxation and expenditure is based on “ancient constitutional usage”.⁶²²

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.⁶²³

[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.

Under [section 14](#) of the Exchequer and Audit Departments Act 1866, the Monarch and two Lords Commissioners are required to sign a Royal Order once the relevant Supply and Appropriation Bill (Finance Act) has received

⁶²¹ [Cabinet Manual](#), para 7.

⁶²² 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](#).

⁶²³ Erskine May, [para 33.2](#).

Royal Assent.⁶²⁴ This occurs at least twice a year.⁶²⁵ 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.

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.⁶²⁶ Under [section 2](#) of the Consolidated Fund Act 1816 they execute the office of Lord High Treasurer of the United Kingdom. Commissioners are appointed by the King via Letters Patent under the Great Seal.

Despite its name, the Bank of England is the central bank of the United Kingdom.⁶²⁷ 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.⁶²⁸ The King may by Letters Patent also appoint Commissioners for His Majesty's Revenue and Customs under [section 1](#) of the Commissioners for Revenue and Customs Act 2005.

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

⁶²⁴ Jason Loch (@JasonLoch), [X \(Twitter\)](#), 14 July 2023 [Accessed 30 October 2023].

⁶²⁵ For a description of the procedure, see [HL Deb 22 April 1834 Vol 22 cc1084-85 \[Exchequer Receipt Bill\]](#).

⁶²⁶ [London Gazette, 19 July 2024](#).

⁶²⁷ [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](#).

⁶²⁸ Bank of England Act 1998, [section 1](#) and [Schedule 1](#).

of the House.⁶²⁹ Under [section 2](#) of the Sovereign Grant Act 2011, this includes the Royal Household.

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](#).⁶³⁰ The appointment is made by Royal Warrant following nomination by the Northern Ireland Assembly.⁶³¹ Under [section 69](#) of the Scotland Act 1998, an Auditor General for Scotland is appointed by the King on the nomination of the Scottish Parliament and heads [Audit Scotland](#). 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](#). Under [section 2](#) of the Public Audit (Wales) Act 2013, the Auditor General is appointed by the King on the nomination of the Senedd.

The [Public Accounts Committee](#) reports to the House on the financial and accounting practices of government departments, which are also subject to the [Government Resources and Accounts Act 2000](#).

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).⁶³² Such messages are generally acknowledged by Addresses in both Houses and are presented by representatives of each.⁶³³

Other types of communication are made from the Crown to either House of Parliament for a variety of purposes. There are three types:

⁶²⁹ Erskine May, [para 6.44](#).

⁶³⁰ There is also some remaining provision in the [Exchequer and Audit Act \(Northern Ireland\) 1921](#), including a retirement age of 65.

⁶³¹ [Northern Ireland Assembly Commission identifies new Comptroller and Auditor General](#), Northern Ireland Assembly website, 18 March 2022.

⁶³² Erskine May, [para 9.2](#).

⁶³³ Erskine May, [para 9.8](#).

- “King’s pleasure” (for example, instructing the Commons to elect a Speaker)⁶³⁴
- “King’s recommendation” (for public expenditure not in annual estimates),⁶³⁵ and
- “King’s consent” (for bills affecting the prerogative)⁶³⁶

All communications from the Monarch are delivered to each House by Ministers of the Crown, Privy Counsellors or members of the Royal Household.

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.⁶³⁷ 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).⁶³⁸

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.⁶³⁹ This has been the practice on significant royal jubilees and, in September 2022, upon the demise of the Crown.⁶⁴⁰ Addresses can be presented to, and the replies made by, Counsellors of State acting on the King’s behalf.⁶⁴¹

By long-established custom a message from the Crown for pecuniary (financial) aid is sent to both Houses.⁶⁴²

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.⁶⁴³ Petitions which relate to the prerogative powers of the Crown are not permitted.⁶⁴⁴

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

⁶³⁴ Erskine May, [para 9.4](#).

⁶³⁵ Erskine May, [para 9.5](#).

⁶³⁶ Erskine May, [paras 9.6](#) and [9.7](#).

⁶³⁷ Erskine May, [para 9.10](#).

⁶³⁸ Erskine May, [para 9.11](#).

⁶³⁹ Erskine May, [para 9.12](#).

⁶⁴⁰ Royal Family website, [His Majesty The King's reply to addresses of condolence at Westminster Hall](#), 12 September 2022.

⁶⁴¹ Erskine May, [para 9.13](#).

⁶⁴² 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.

⁶⁴³ Erskine May, [para 21.20](#).

⁶⁴⁴ See, for example, [Remove the titles Duke and Duchess of Sussex from Prince Harry and Meghan Markle](#), Petitions website.

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.⁶⁴⁵

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.⁶⁴⁶

The Vice-Chamberlain of the Royal Household (a government whip) emails a daily report to the monarch of proceedings in Parliament.⁶⁴⁷ 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.

⁶⁴⁵ Erskine May, [para 22.15](#).

⁶⁴⁶ Erskine May, [para 22.16](#).

⁶⁴⁷ [Queen Elizabeth is hooked on political gossip](#), Politico, 5 February 2022. No minister in the Lords has equivalent responsibility, although the Lord Chamberlain is the Monarch’s formal link with the Upper House.

5 Central government

His Majesty's Government is "an Executive drawn from and accountable to Parliament".⁶⁴⁸ 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.⁶⁴⁹

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,⁶⁵⁰ and on other major features of a government's programme, such as a debate on its King's Speech.⁶⁵¹

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.⁶⁵² 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 Sovereign will invite the leader of the party that has won the election to form a government.⁶⁵³

⁶⁴⁸ [Cabinet Manual](#), para 1.

⁶⁴⁹ [Cabinet Manual](#), para 2.

⁶⁵⁰ [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 \(Opposition Motion\)\]](#)).

⁶⁵¹ 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 \[Debate On The Address\]](#)).

⁶⁵² Erskine May, [para 18.44](#).

⁶⁵³ [Cabinet Manual](#), para 2.11.

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.⁶⁵⁴

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.⁶⁵⁵ The Prime Minister may authorise the Civil Service to provide such support to negotiations between political parties.⁶⁵⁶

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.⁶⁵⁷ 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.⁶⁵⁸ 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.⁶⁵⁹

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".⁶⁶⁰

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".⁶⁶¹

⁶⁵⁴ [Cabinet Manual](#), para 2.12.

⁶⁵⁵ [Cabinet Manual](#), para 2.13.

⁶⁵⁶ [Cabinet Manual](#), para 2.14-2.15. This can include advice on the constitutional processes of government formation.

⁶⁵⁷ [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).

⁶⁵⁸ [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).

⁶⁵⁹ [Election guidance for civil servants](#), Cabinet Office, 23 May 2024.

⁶⁶⁰ [General election: Royal Family postpones engagements that 'divert attention' from campaign](#), Sky News website, 22 May 2024.

⁶⁶¹ [HM Government – Written Evidence \(E0S0002\)](#), Lords Constitution Committee Inquiry: Executive oversight and responsibility for the UK Constitution, para 12.

Appointment

The Prime Minister accepts office at a private audience with the Sovereign, at which time the appointment takes effect.⁶⁶² This is recorded, along with the previous premier's resignation, in the Court Circular.⁶⁶³

In his or her capacity as First Lord of the Treasury, the Prime Minister takes an oath of office under the Promissory Oaths Act 1868.⁶⁶⁴ By long-standing custom, this role 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.

A convention emerged in the early 20th century that the Prime Minister always sits in the House of Commons.⁶⁶⁵ A peer has not served as premier since 1902.⁶⁶⁶ 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).⁶⁶⁷

Number 10 Downing Street is the official residence of the First Lord of the Treasury, and not of the Prime Minister.⁶⁶⁸ The [Chequers Estate Act 1917](#) specifies Chequers as the Prime Minister's residence.

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.⁶⁶⁹ The Ministerial Code states that the Prime Minister is responsible for the "overall organisation of the Executive".⁶⁷⁰ The "Office of the Prime Minister" is a business unit within the Cabinet Office.⁶⁷¹

Prime Minister's Questions (PMQs) is the most visible aspect of the House of Commons' power to hold an incumbent Prime Minister to account.⁶⁷² Since 2002, the Commons Liaison Committee has also regularly scrutinised the Prime Minister.⁶⁷³

⁶⁶² 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.

⁶⁶³ See, for example, the Court Circular dated 5 July 2024.

⁶⁶⁴ [Cabinet Manual](#), para 3.2.

⁶⁶⁵ [Cabinet Manual](#), para 3.1.

⁶⁶⁶ [History of Robert Gascoyne-Cecil, 3rd Marquess of Salisbury](#), History of the UK government.

⁶⁶⁷ 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.

⁶⁶⁸ [First Lord of the Treasury](#), Cabinet Office.

⁶⁶⁹ [Cabinet Manual](#), para 3.3.

⁶⁷⁰ Ministerial Code, [para 7.1](#).

⁶⁷¹ 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.

⁶⁷² [Prime Minister's Questions and the role of the Speaker](#), UK Parliament website.

⁶⁷³ Commons Library research briefing CBP8182, [The Liaison Committee: taking evidence from the Prime Minister](#).

By custom, the Prime Minister makes an annual speech at the Lord Mayor's Banquet at the Guildhall each November.⁶⁷⁴ 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.⁶⁷⁵

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).⁶⁷⁶ This is "entirely private".⁶⁷⁷ Audiences can take place by telephone rather than in person.⁶⁷⁸ At these regular meetings, the Prime Minister informs the Monarch of the general business of the government.⁶⁷⁹

While premier, Sir Tony Blair described his role as both "the head of Her Majesty's Government" and "her principal adviser".⁶⁸⁰ 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.⁶⁸¹

Honours

Most honours are awarded on the advice of the Prime Minister, who sets "strategic priorities" for the honours system.

⁶⁷⁴ [PM speech at Lord Mayor's Banquet: 13 November 2023](#), Prime Minister's Office, 10 Downing Street, 13 November 2023.

⁶⁷⁵ [Cameron's bald cheek lights up revival of correspondents' dinner](#), Financial Times, 17 January 2014.

⁶⁷⁶ [The Mysteries of the Golden Triangle](#), Heywood Quarterly, 10 June 2024.

⁶⁷⁷ [Audiences](#), Royal Family website.

⁶⁷⁸ [Queen holds weekly telephone audience with PM despite having COVID](#), Sky News website, 24 February 2022.

⁶⁷⁹ [Cabinet Manual](#), para 3.5.

⁶⁸⁰ [HC Deb 15 October 2001 Vol 372 c818W \[Prime Minister's Powers\]](#)

⁶⁸¹ Quoted in Colin Turpin, *British Government and the Constitution: Text, Cases and Materials* (2nd edition), Evanston, IL: Northwestern University Press, 1990, p99.

Honours lists are published twice a year at New Year (usually 30 or 31 December)⁶⁸² and on the Sovereign's Official Birthday (currently the middle of June).⁶⁸³ 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
- 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.⁶⁸⁴ The Head of the Civil Service (the Cabinet Secretary) is the appointing authority for all independent honours committee appointments.⁶⁸⁵ There can also be ad hoc honours lists to mark occasions such as the dissolution of Parliament⁶⁸⁶ or a Prime Minister's resignation.⁶⁸⁷

The Committee on the Grant of Honours, Decorations and Medals (known as the HD Committee) provides advice to the Sovereign on general honours issues.⁶⁸⁸ 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.⁶⁸⁹

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.⁶⁹⁰

Under [section 1](#) of the Honours (Prevention of Abuses) Act 1925, abuses in connection with the grant of honours is a criminal offence.⁶⁹¹ The [Titles](#)

⁶⁸² [New Year Honours List 2024](#), Cabinet Office, 29 December 2023.

⁶⁸³ [The King's Birthday Honours List 2024](#), Cabinet Office, 14 June 2024.

⁶⁸⁴ [Appointment details – Parliamentary and Political Service Independent Honours Committee Member](#), Cabinet Office.

⁶⁸⁵ [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.

⁶⁸⁶ [Dissolution Honours 2024](#), Prime Minister's Office, 10 Downing Street, 4 July 2024.

⁶⁸⁷ [Resignation Honours: June 2023](#), Cabinet Office, 9 June 2023.

⁶⁸⁸ For a summary of its terms of reference see [Committee on the Grant of Honours, Decorations and Medals](#), UIN 7430, 7 October 2024.

⁶⁸⁹ [In the matter of the Baronetcy of Pringle of Stichill \[2016\] UKPC 16](#). The Committee last met in 2015.

⁶⁹⁰ [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).

⁶⁹¹ 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.

[Deprivation Act 1917](#) is often cited as the basis for the removal of peerages, but that Act was specific to the First World War.

Certain honours known as the King's personal honours do not require ministerial advice.⁶⁹² These are the [Orders of the Garter](#) and [the Thistle](#), the [Order of Merit](#) and the [Royal Victorian Order](#).⁶⁹³ The Ministry of Justice has called these the “truly personal, executive prerogative” of the monarch.⁶⁹⁴

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.⁶⁹⁵ The SIS and GCHQ operate within the statutory constraints of the [Intelligence Services Act 1994](#),⁶⁹⁶ 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](#)), while the Security Service is governed to some extent by the [Security Service Act 1989](#).⁶⁹⁷ Also under sections 2 and 4 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, while the Chief of the Intelligence Service and Director of GCHQ must do the same to the Prime Minister and Foreign Secretary. Employees of the security and intelligence services have employment rights unless they have been exempted “for the purpose of safeguarding national security”.⁶⁹⁸ The security and intelligence services also operate within boundaries defined by the European Convention on Human Rights.⁶⁹⁹

Members of the [Joint Intelligence Committee](#) also bring to the attention of Ministers and 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

⁶⁹² [The King and Honours](#), Royal Family website.

⁶⁹³ These Orders are governed by their own statutes. The Order of St Patrick is dormant ([Honours: Northern Ireland](#), UIN 11561, 29 October 2024).

⁶⁹⁴ [The Governance of Britain – Review Final Report](#), Ministry of Justice, p6.

⁶⁹⁵ [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).

⁶⁹⁶ [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”.

⁶⁹⁷ 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).

⁶⁹⁸ Trade Union and Labour Relations (Consolidation) Act 1992, [section 275](#); Employment Rights Act 1996, [section 193](#).

⁶⁹⁹ Bradley et al, *Constitutional and Administrative Law*, p599.

by Parliament, to which the ISC reports.⁷⁰⁰ 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.⁷⁰¹

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.⁷⁰² The Commissioner must make an annual report to the Prime Minister.⁷⁰³ An Investigatory Powers Tribunal also exists to hear complaints about any of the intelligence services.⁷⁰⁴ Appeals from the Tribunal can be made to the Court of Appeal (in England and Wales) or Court of Session (in Scotland).⁷⁰⁵

The National Security Committee comprises senior ministers, including the Prime Minister, who chairs it, and is served by a [National Security Secretariat](#). The Secretariat is headed by the National Security Adviser and is based in the Cabinet Office.⁷⁰⁶ 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.⁷⁰⁷

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.⁷⁰⁸

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](#).⁷⁰⁹ [Section 21](#) lays down conditions for making emergency regulations while [section 19](#) defines an "emergency".

⁷⁰⁰ 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](#)).

⁷⁰¹ Justice and Security Act 2013, [section 6](#).

⁷⁰² 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.

⁷⁰³ Investigatory Powers Act 2016, [section 234](#).

⁷⁰⁴ Regulation of Investigatory Powers Act 2000, [section 65](#). Members of the Tribunal are appointed by the King via Letters Patent.

⁷⁰⁵ 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.

⁷⁰⁶ 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).

⁷⁰⁷ Commons Library research briefing CBP7456, [The UK National Security Council](#).

⁷⁰⁸ [The nuclear promise: letters of last resort](#). Forces Net, June 2019.

⁷⁰⁹ 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.

[Section 27](#) makes provision for parliamentary approval and [section 29](#) for consultation with the devolved authorities.

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](#)).⁷¹⁰

Resignation

The Cabinet Manual states that Prime Ministers “hold office unless and until they resign”.⁷¹¹ 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”.⁷¹² 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.⁷¹³

A Prime Minister (and therefore his or her government) can be dismissed by the Monarch, although this last occurred in 1834.⁷¹⁴ 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”.⁷¹⁵ There is no such position as “Acting Prime Minister”⁷¹⁶

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 the incumbent Prime Minister.⁷¹⁷ Ministers have the right to consult otherwise confidential material from their time in office but have to do so in person.⁷¹⁸ These are known as the Radcliffe rules, which requires⁷¹⁹ A Public Duty Costs Allowance exists to “assist former Prime Ministers still active in public life”.⁷²⁰

⁷¹⁰ [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](#).

⁷¹¹ [The Cabinet Manual](#), paras 2.12-13.

⁷¹² [The Cabinet Manual](#), para 2.10.

⁷¹³ [Cabinet Manual](#), para 2.18.

⁷¹⁴ This was King William IV’s dismissal of Lord Melbourne and the appointment of Sir Robert Peel as his successor.

⁷¹⁵ Lords Constitution Committee, [The Cabinet Manual](#), p23.

⁷¹⁶ 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.

⁷¹⁷ [The Cabinet Manual](#), para 11.31.

⁷¹⁸ [The Cabinet Manual](#), para 11.27.

⁷¹⁹ 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 10.14](#)) and Welsh Ministers (Welsh Ministerial Code, [para 8.10](#)).

⁷²⁰ [Public Duty Costs Allowance guidance](#), Cabinet Office, 31 March 2023.

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.⁷²¹

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”.⁷²²

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.⁷²³

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.⁷²⁴

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”.⁷²⁵ Most Secretaries of State are incorporated as “corporations sole”, which means they have a separate legal personality.⁷²⁶ The Prime Minister may agree that a Minister can be known by a “courtesy title”, although has no legal or constitutional significance.⁷²⁷

When they take up office, Ministers should give up any other public appointment they may hold.⁷²⁸ Ministers are provided with facilities at government expense to enable them to carry out their official duties. These

⁷²¹ [Cabinet Manual](#), para 3.11.

⁷²² [Board of Trade](#), gov.uk.

⁷²³ [The Cabinet Manual](#), p21.

⁷²⁴ Lord Young of Old Windsor, [The Mysteries of the Golden Triangle](#), Heywood Quarterly, 10 June 2024.

⁷²⁵ Unless there is contrary provision. See also [section 43](#) of the Interpretation Act (Northern Ireland) 1954.

⁷²⁶ [Cabinet Manual](#), para 3.28.

⁷²⁷ [Cabinet Manual](#), para 3.7.

⁷²⁸ Ministerial Code, [paras 3.12](#).

facilities should not generally be used for party or constituency activities.⁷²⁹ Official facilities and resources may not be used for the dissemination of material which is essentially party political. The conventions governing the work of the Government Communication Service are set out in the Government Communication Service's [Propriety and Ethics Guidance for Government Communicators](#).⁷³⁰

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.⁷³¹ 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.⁷³² 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.⁷³³

Ministers' powers derive from statute, the royal prerogative and case law. They are subject to an overarching duty to act in accordance with the law. The courts rule on whether ministerial action is carried out lawfully.⁷³⁴ Ministers can also only spend public money for the purposes authorised by Parliament.⁷³⁵ Under the *Carltona* principle, junior ministers and officials may exercise statutory functions possessed by the minister in charge of their department.⁷³⁶ 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.⁷³⁷ 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.

Departure from office

Ministers of the Crown only remain in office for so long as they retain the confidence of the Prime Minister.⁷³⁸

⁷²⁹ Ministerial Code, [paras 4.1](#).

⁷³⁰ Ministerial Code, [para 4.3](#). This also forms part of the Scottish Ministerial Code ([para 10.3](#)) and Welsh Ministerial Code ([para 8.1](#)).

⁷³¹ [Cabinet Manual](#), para 3.8.

⁷³² 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).

⁷³³ 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.

⁷³⁴ [Cabinet Manual](#), para 12.

⁷³⁵ [Cabinet Manual](#), para 3.24.

⁷³⁶ [Cabinet Manual](#), para 3.13. *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 (CA).

⁷³⁷ [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)".

⁷³⁸ Ministerial Code, [para 2.4](#).

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. Where a minister resigns their post by writing to the Prime Minister, it is often the case that the exchange of letters is published.⁷³⁹ Ministerial resignations are also [submitted to the Monarch for approval](#).

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.⁷⁴⁰

Limitation on numbers and salaries

[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](#))⁷⁴¹ “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).

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”. Ministers may also seek the permission of the Prime Minister for an extended absence in other circumstances, such as ill health, adoption or paternity.⁷⁴²

⁷³⁹ [Cabinet Manual](#), para 3.20.

⁷⁴⁰ 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 11.25](#)).

⁷⁴¹ This Schedule may be amended by Orders in Council made under the Ministers of the Crown Act 1975, [section 1](#).

⁷⁴² Ministerial Code, [paras 7.10-7.12](#).

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.

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.⁷⁴³ 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.⁷⁴⁴ Senior ministers who have not yet received their seals cannot exercise all the functions associated with their office.⁷⁴⁵

Table 1 Ministerial appointments

Office	Procedure	Documents (if any)
Prime Minister	Received in private Audience and kisses hands	
First Lord of the Treasury	Takes Oath of Office in Council as First Lord of the Treasury	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	

⁷⁴³ [Harrison v Bush \[1855\] 5 E & B 344](#).

⁷⁴⁴ [Cabinet Manual](#), para 3.19. In other words, when the King initials and approves the Prime Minister's written submission.

⁷⁴⁵ [HC Deb 10 January 2005 Vol 429 c95W](#).

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	Letters Patent Treasury Commission – as member of Treasury Board – by Letters Patent (distinct from above)
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 ⁷⁴⁶	
Paymaster General	Sworn before the Lord President of the Council	Warrant under the Sign Manual
Attorney General & 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 accordance with procedure stipulated	

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 Ireland⁷⁴⁷), 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

⁷⁴⁶ According to the Duchy of Lancaster, its Chancellor is appointed by Letters Patent under the seals of the Duchy and County Palatine.

⁷⁴⁷ 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.

Parliament. All three are appointed by the King via Letters Patent under the royal prerogative.⁷⁴⁸

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.⁷⁴⁹ 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.⁷⁵⁰

The Attorney General is the chief law officer for England and Wales and is the chief legal adviser to the Crown. 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.⁷⁵¹

The Advocate General for Scotland is the principal legal adviser to the government on Scots law. Jointly with the Attorney General, the Advocate General for Scotland also advises the government on legal issues, including human rights.⁷⁵²

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.⁷⁵³

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.⁷⁵⁴ 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".⁷⁵⁵ On occasion, the government has decided to publish certain advice.⁷⁵⁶

The Attorney General "superintends" the [Government Legal Department](#) (previously the Treasury Solicitor's Department), the [Crown Prosecution Service](#),⁷⁵⁷ and the [Serious Fraud Office](#). The Treasury Solicitor is Head of the

⁷⁴⁸ There are various statutory references to the Advocate General for Scotland in the Scotland Act 1998, for example [section 87](#).

⁷⁴⁹ 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).

⁷⁵⁰ [Cabinet Manual](#), paras 6.4 and 6.6. Ministerial Code, [para 5.11](#).

⁷⁵¹ 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.

⁷⁵² [Cabinet Manual](#), paras 6.1-6.3.

⁷⁵³ [Cabinet Manual](#), para 6.7.

⁷⁵⁴ Ministerial Code, [para 5.14](#).

⁷⁵⁵ Erskine May, [para 21.27](#).

⁷⁵⁶ This can follow a motion in the House of Commons. See, for example, [Exiting the EU: Publication of Legal Advice](#), Department for Exiting the European Union, 5 December 2018.

⁷⁵⁷ Introduced by the Prosecution of Offences Act 1985, [section 1](#). The CPS is under the central direction of a [Director of Public Prosecutions](#) appointed by the Attorney General.

Government Legal Service, which joins together around 2,000 government lawyers working across dozens of government organisations.⁷⁵⁸

Some prosecution decisions require the consent of the Attorney General.⁷⁵⁹ 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.⁷⁶⁰ 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 possesses a prerogative power to stop a prosecution on indictment under certain circumstances.⁷⁶¹ 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.⁷⁶²

Machinery of Government

The Prime Minister’s written approval must be sought where it is proposed by Ministers to transfer functions.⁷⁶³ [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”.⁷⁶⁴

A list of UK government departments is maintained under the Crown Proceedings Act 1947 and for the purposes of investigation by the Parliamentary Ombudsman.⁷⁶⁵ 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.⁷⁶⁶

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

⁷⁵⁸ [Cabinet Manual](#), paras 6.32-6.33. See Jonathan Jones, [The Role of the Treasury Solicitor](#), Judicial Review, 29 July 2024.

⁷⁵⁹ See, for example, the Theatres Act 1968, [section 8](#) and the Public Order Act 1986, [sections 27](#) and [29L](#).

⁷⁶⁰ [Framework agreement between the Law Officers and the Director of Public Prosecutions \(CPS\)](#), Attorney General’s Office/Crown Prosecution Service, 14 October 2022.

⁷⁶¹ [Termination of Proceedings \(Including Discontinuance\)](#), CPS website, 15 October 2024.

⁷⁶² [HC Deb 29 January 1951 Vol 483 cc679-90 \[Prosecutions \(Attorney-General’s Responsibility\)\]](#)

⁷⁶³ [Cabinet Manual](#), para 3.55. See also [Machinery of Government explanatory notes](#), Cabinet Office, 21 December 2011.

⁷⁶⁴ [Cabinet Manual](#), para 3.57.

⁷⁶⁵ Bradley et al, Constitutional and Administrative Law, p322.

⁷⁶⁶ *Mersey Docks and Harbour Trustees v Gibbs* [1866] LR 1 HL 93.

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 in its own right, but does not have its own Minister. However, it is accountable to Parliament through its sponsoring ministers⁷⁶⁷

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.⁷⁶⁸

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 2024.⁷⁶⁹

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.⁷⁷⁰ 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.⁷⁷¹

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”.⁷⁷² 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.⁷⁷³

⁷⁶⁷ Guide to Parliamentary Work, [para 225](#).

⁷⁶⁸ Ministerial Code, [paras 1.1–1.4](#). The Nolan Principles also form part of the Scottish, Welsh and Northern Ireland Ministerial Codes.

⁷⁶⁹ [Ministerial Code](#), Cabinet Office, 6 November 2024.

⁷⁷⁰ Ministerial Code, [paras 2.6–2.7 and Annex A](#).

⁷⁷¹ Ministerial Code, [para 2.7](#).

⁷⁷² Ministerial Code, [para 2.5](#).

⁷⁷³ 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.⁷⁷⁴

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”.⁷⁷⁵

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”.⁷⁷⁶

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).⁷⁷⁷

Those in possession of General Full Powers (which take the form of Letters Patent) 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. [Specific Full Powers](#) are normally signed by the Foreign, Commonwealth and Development Secretary.⁷⁷⁸

In practice, the Prime Minister will authorise the UK’s accession to any major treaty and, on occasion, sign it personally.⁷⁷⁹ The recognition of states is another prerogative power. This is given effect through inter-governmental

⁷⁷⁴ Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, [section 3](#) and [Schedule 2](#).

⁷⁷⁵ [Change Labour Party Manifesto 2024](#), London: Labour Party, June 2024, p107.

⁷⁷⁶ [The Governance of Britain – Review of the Executive Royal Prerogative Powers: Final Report](#), Ministry of Justice, October 2009, para 23.

⁷⁷⁷ [Treaties and MOUs: Guidance on Practice and Procedures](#), Foreign, Commonwealth & Development Office, 22 March 2022.

⁷⁷⁸ 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 Specific Full Powers documents, see Sir Ivor Roberts, *Satow’s Diplomatic Practice* (7th edition), Oxford: Oxford University Press, 2018, paras 7.58-7.60.

⁷⁷⁹ 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.⁷⁸⁰

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”.⁷⁸¹

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.⁷⁸² Prime Minister Theresa May’s decision to bypass the House of Commons and order military action in Syria in 2018 defied this convention.⁷⁸³

Judicial review

Ministers’ decisions, and the process by which they exercise (or fail to exercise) their powers, can be reviewed by the courts, 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. In judicial review the court will consider a Minister’s exercise of public powers by reference to:

- legality (acting within the scope of any powers and for a proper purpose)⁷⁸⁴
- 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)⁷⁸⁵
- compatibility (with the European Convention on Human Rights)

If the court finds that a ministerial decision was unreasonable, it will usually simply cancel (or “quash”) the decision, thus requiring the Minister to make a

⁷⁸⁰ [HC Deb 13 June 2006 Vol 447 cc52-3WS \[Republic of Montenegro\]](#)

⁷⁸¹ [HL Deb 19 February 2003 Vol 644 c1139 \[Declaration of War: Parliamentary Approval\]](#)

⁷⁸² [HC Deb 10 March 2011 Vol 524 c1066 \[Business of the House\]](#)

⁷⁸³ [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.

⁷⁸⁴ 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.

⁷⁸⁵ 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.

fresh decision that takes into account the guidance given by the court.⁷⁸⁶ 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.⁷⁸⁷ These have never been part of Scots law.⁷⁸⁸ Under the [Crown Suits \(Scotland\) Act 1857](#) (as amended), actions in respect of UK departments may be brought against the Advocate General for Scotland, while in respect of Scottish Government departments actions are brought against the Lord Advocate.

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](#).

Judicial review is not an optional substitute for an appeal to a tribunal with relevant jurisdiction.⁷⁸⁹

Public appointments and inquiries

Most public appointments are made by or on the recommendation of Ministers of the Crown.

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 guidance on the making, of public appointments and to consult before amending that Code.⁷⁹⁰ 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.⁷⁹¹ 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](#).⁷⁹²

For a full list of prerogative and statutory appointments made by the King, mostly on advice, see the supporting document for Commons Library research briefing, [The royal prerogative and ministerial advice](#).⁷⁹³

⁷⁸⁶ [Cabinet Manual](#), paras 6.10-6.12.

⁷⁸⁷ 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.

⁷⁸⁸ Court of Session Act 1988, [sections 27A-27D](#) make provision for judicial review procedure in the Court of Session.

⁷⁸⁹ [R \(G\) v Immigration Appeal Tribunal \[2004\] EWCA Civ 1731](#).

⁷⁹⁰ [Governance Code on Public Appointments](#), Cabinet Office, 8 February 2024.

⁷⁹¹ Scottish Ministerial Code, [para 5.3](#).

⁷⁹² Welsh Ministerial Code, [para 2.16](#).

⁷⁹³ See also [HC Deb 31 October 1994 Vol 248 cc919-20 \[Public Appointments\]](#).

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.⁷⁹⁴ 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".⁷⁹⁵ 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 should also be consulted.⁷⁹⁶ Under the Scottish Ministerial Code, the Lord Advocate should be consulted in Scotland as well as the First Minister "in good time" regarding any Royal Commission or public inquiry in relation to devolved matters.⁷⁹⁷

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.⁷⁹⁸ The Ministerial Code states that Ministers should, where possible, "provide full and timely responses to written parliamentary questions, ministerial correspondence and select committee reports".⁷⁹⁹

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.⁸⁰⁰ The Leaders are responsible for the arrangement of government business in each House, as well as representing their House

⁷⁹⁴ 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.

⁷⁹⁵ [Cabinet Manual](#), paras 6.34-6.35.

⁷⁹⁶ Ministerial Code, [para 7.14](#). See also [section 23](#) of and [Schedule A1](#) to the Interpretation Act (Northern Ireland) 1954.

⁷⁹⁷ Scottish Ministerial Code, [paras 5.11](#) and [4.21](#).

⁷⁹⁸ [Cabinet Manual](#), para 10.

⁷⁹⁹ Ministerial Code, [para 9.8](#).

⁸⁰⁰ Erskine May, [para 4.7](#).

within government and the Cabinet. The Leader of the House of Commons is also a member of the statutory House of Commons Commission.⁸⁰¹ 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.⁸⁰² A copy of the text of an oral statement should usually be shown to the Opposition shortly before it is made.⁸⁰³ A statement by a Minister on a matter of public importance may be made by leave of the House without notice.⁸⁰⁴ Questions to Ministers must relate to matters for which those Ministers are officially responsible.⁸⁰⁵

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 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.⁸⁰⁶

Accountability to Parliament has been stated to be a constitutional principle as central as parliamentary sovereignty.⁸⁰⁷ 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”.⁸⁰⁸ 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.⁸⁰⁹

There is no duty on Ministers to resign because of misconduct by officials within that Minister’s department.⁸¹⁰

⁸⁰¹ House of Commons (Administration) Act 1978, [section 1](#).

⁸⁰² Ministerial Code, [para 9.1](#).

⁸⁰³ Ministerial Code, [para 9.5](#).

⁸⁰⁴ Erskine May, [para 25.34](#).

⁸⁰⁵ Erskine May, [para 22.17](#).

⁸⁰⁶ [Cabinet Manual](#), para 3.16.

⁸⁰⁷ [R \(Miller\) v Exit Secretary \[2017\] UKSC 5](#).

⁸⁰⁸ 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.

⁸⁰⁹ Ministerial Code, [para 1.6d](#).

⁸¹⁰ Bradley et al, Constitutional and Administrative Law, p123.

Ministers must also comply with the requirements which Parliament itself has laid down in relation to the accountability and responsibility of Ministers.⁸¹¹

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.⁸¹²

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.⁸¹³

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”.⁸¹⁴ 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.⁸¹⁵ Cabinet does not have specific terms of reference or powers laid down in legislation.⁸¹⁶ Cabinet can meet outside London,⁸¹⁷ while Queen Elizabeth House in Edinburgh includes “a dedicated Cabinet room, the first of its kind outside of London”.⁸¹⁸

Cabinet Ministers and Ministers of State may appoint Parliamentary Private Secretaries (PPSs) following consultation with the Chief Whip and the prior

⁸¹¹ 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 ci1057 \[Ministerial Accountability\]](#).

⁸¹² [Contempt of parliament](#), Institute for Government, 4 December 2018.

⁸¹³ Ministerial Code, [para 3.15](#).

⁸¹⁴ Report of the Machinery of Government Committee, Cmnd 9250, Ministry of Reconstruction, 1918, para 5.

⁸¹⁵ [Cabinet Manual](#), para 4.1.

⁸¹⁶ [Cabinet Manual](#), para 4.6.

⁸¹⁷ The first occasion was at Inverness Town Hall in 1921.

⁸¹⁸ [Flagship UK Government Hub in Edinburgh named ‘Queen Elizabeth House’](#), Office of the Secretary of State for Scotland, 15 July 2019.

written approval of the Prime Minister. PPSs are not members of the government, although by convention they are bound by collective agreement.⁸¹⁹

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.⁸²⁰

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.⁸²¹

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).⁸²²

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.⁸²³

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.⁸²⁴

⁸¹⁹ [Cabinet Manual](#), paras 3.21-3.22.

⁸²⁰ Ministerial Code, [para 5.1](#).

⁸²¹ [Cabinet Secretary Letter to UK Government Ministers](#), Cabinet Office, 3 October 2024. This letter was also published online.

⁸²² [Cabinet Manual](#), para 4.5.

⁸²³ [Cabinet Manual](#), para 4.36. Cabinet Office, Ministerial Code, [paragraph 5.5](#).

⁸²⁴ [Cabinet Manual](#), para 4.18.

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.⁸²⁵

The proceedings of Cabinet (and Cabinet committees) are recorded by the Cabinet Secretariat.⁸²⁶ The minutes produced are the official record of discussion and the decisions made.⁸²⁷ 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. They attend meetings of Cabinet.⁸²⁸

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 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.⁸²⁹ [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. This has been consistently used in relation to Cabinet minutes, "suggesting the existence of a policy".⁸³⁰ 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.⁸³¹

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

⁸²⁵ [Cabinet Manual](#), para 4.23.

⁸²⁶ [Cabinet Manual](#), paras 4.51-4.52.

⁸²⁷ [Cabinet Manual](#), para 4.7.

⁸²⁸ [Cabinet Manual](#), para 4.53.

⁸²⁹ These provisions also apply to the Welsh Government and Northern Ireland Executive.

⁸³⁰ Bradley et al, *Constitutional and Administrative Law*, p347.

⁸³¹ Parliamentary Commissioner Act 1967, [section 8\(4\)](#).

statement in Parliament.⁸³² There is a Union and Constitution Cabinet Committee.

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.⁸³³

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.⁸³⁴

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.⁸³⁵ Exceptionally, with the consent of the relevant chair, ministers from the devolved administrations may be invited to attend COBR meetings.⁸³⁶

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”.⁸³⁷ “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.⁸³⁸ The Privy Council has no published standing orders, although it is given some functions by statute. [Privy Council Procedures](#) were released under Freedom of Information in 2012. The present Privy Council of the United Kingdom dates from 1 January 1801.⁸³⁹

⁸³² [Cabinet Manual](#), para 4.10. And online: [Cabinet Committee List](#), Cabinet Office, 14 October 2024.

⁸³³ [Cabinet Manual](#), para 4.20.

⁸³⁴ [Cabinet Manual](#), para 4.8.

⁸³⁵ [Cabinet Manual](#), para 4.13.

⁸³⁶ [Cabinet Manual](#), para 4.49.

⁸³⁷ As does the Interpretation Act (Northern Ireland) 1954, [section 43](#).

⁸³⁸ [Cabinet Manual](#), para 1.10.

⁸³⁹ [The Edinburgh Gazette, Issue 785](#)

No further appointments have been made to the Privy Council of Northern Ireland (PCNI) since 1973.⁸⁴⁰

The recital that Orders in Council are made by the King “by and with the advice of her Privy Council” is purely formal: in reality a Privy Counsellor (usually a Minister of the Crown) places the instrument before the Monarch, “who is called upon by constitutional convention to approve it”.⁸⁴¹ Responsibility for an Order in Council is borne by the Minister of the Crown whose department decided the Order should be made.⁸⁴²

[Orders approved and business transacted](#) at Privy Council meetings have been published on the Privy Council Office website since 2010.

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.⁸⁴³

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,⁸⁴⁴ and kiss hands.⁸⁴⁵ This Oath is often considered the basis for the confidentiality of Cabinet discussions, but this has been disputed.⁸⁴⁶

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 minutes of a Privy Council meeting will record an “Order directing that the name [...] be removed from the List of Privy Counsellors”.⁸⁴⁷ “Enforced removal” is a matter for the Sovereign, “acting on the advice of Ministers”.⁸⁴⁸

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

⁸⁴⁰ 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](#).

⁸⁴¹ *Secretary of State for the FCO v The Queen (ex parte Bancoult)* [2007] EWCA Civ 498.

⁸⁴² *R (Bancoult) v Foreign Secretary (No. 2)* [2008] UKHL 61.

⁸⁴³ Halsbury’s Laws of England, Vol 8(2), para 522.

⁸⁴⁴ 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.

⁸⁴⁵ [The Oath of a Privy Counsellor](#) and [The Affirmation of a Privy Councillor](#), Privy Council Office website.

⁸⁴⁶ 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).

⁸⁴⁷ See, for example, [Privy Council meeting, 9 October 2013](#).

⁸⁴⁸ [HL Deb 26 Oct 2009 Vol 713 cWA106](#)

largely conducted by a few serving Ministers of the Crown.⁸⁴⁹ The King attends, but is not a member of, the Privy Council.⁸⁵⁰ 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.⁸⁵¹ It has become a convention that most members of the statutory [Intelligence and Security Committee of Parliament](#) be appointed to, if not already members of, the Privy Council, although this practice is neither consistent nor obligatory.⁸⁵²

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.⁸⁵³

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.⁸⁵⁴ Meetings are held wherever the King is in residence, most commonly at Buckingham Palace, Windsor or Balmoral.⁸⁵⁵ 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). By convention, the King and his Privy Counsellors remain standing during a meeting. Since 2020, Privy Council meetings have taken place via video link. It can also meet 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.⁸⁵⁶ 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.⁸⁵⁷

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 the nine or ten scheduled Privy Council meetings each year as well as any

⁸⁴⁹ [Cabinet Manual](#), para 1.11. The quorum is three.

⁸⁵⁰ If a member before succeeding to the throne, then a monarch ceases to be so at their accession.

⁸⁵¹ No member of Sinn Féin or the SDLP has been sworn of the Privy Council.

⁸⁵² [The Intelligence and Security Committee and the Privy Council](#), Watching the Watchers blog, 25 June 2018.

⁸⁵³ [Cabinet Manual](#), para 1.12.

⁸⁵⁴ [HC Deb 28 June 1999 Vol 334 c17W](#)

⁸⁵⁵ Meetings can take place elsewhere. On 15 September 2023, the King [held a Privy Council at Dumfries House](#).

⁸⁵⁶ [Cabinet Manual](#), para 1.13.

⁸⁵⁷ [HC Deb 30 June 1999 Vol 334 cc215-6W \[Devolution \(Scotland\)\]](#)

ad hoc Emergency 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”.⁸⁵⁸

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.⁸⁵⁹ The Clerk subscribes to an oath “very similar to that of the Privy Counsellors”.⁸⁶⁰

5.7

The Civil Service

The Civil Service (or the Home Civil Service) serves the government of the day and supports it to develop and implement its policies as effectively as possible.⁸⁶¹ Under the *Carltona* principle, the Civil Service has “no legal or constitutional personality separate from the Government or ministers”.⁸⁶² Civil servants are accountable to ministers, who in turn are accountable to Parliament.⁸⁶³ Civil servants are servants of the Crown.⁸⁶⁴ Statute occasionally refers to “the civil service of the State”.⁸⁶⁵

The Home Civil Service (HCS) covers Great Britain and includes the Scottish and Welsh Governments.⁸⁶⁶ All HCS civil servants work for and report ultimately to the Head of the Civil Service, who is the Cabinet Secretary. The Diplomatic Service and Northern Ireland Civil Service are separate (see below).

[Section 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 an old prerogative power) “to manage the civil service”.⁸⁶⁷ Under [Schedule 1](#), Civil Service Commissioners for Great Britain (including the First

⁸⁵⁸ [Privy Council Office Resource Accounts 2006-07](#), HC 656, London: HMSO, 31 August 2007, p4.

⁸⁵⁹ See, for example, [London Gazette, 12 August 1898](#).

⁸⁶⁰ 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.

⁸⁶¹ [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.

⁸⁶² [Carltona v Commissioner of Works \[1943\] 2 All ER 560](#)

⁸⁶³ [The Civil Service code](#), Civil Service website, para 1.

⁸⁶⁴ [Cabinet Manual](#), para 7.1.

⁸⁶⁵ See, for example, Constitutional Reform and Governance Act 2010, [section 1](#).

⁸⁶⁶ The Permanent Secretary of the Scottish and Welsh Governments are accountable to, respectively, Scottish and Welsh Ministers ([Our governance](#), Civil Service website).

⁸⁶⁷ The Prime Minister may delegate these powers to other ministers and the devolved administrations under the [Civil Service \(Management Functions\) Act 1992](#).

Civil Service Commissioner) are appointed by the King on the recommendation of the Minister for the Civil Service.⁸⁶⁸

The 2010 Act also stipulates that 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)⁸⁶⁹

[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.⁸⁷⁰ These are published by the Minister for the Civil Service following consultation with the First Ministers of Scotland and Wales.⁸⁷¹

“Junior administrators” (civil servants) are provided with guidance for improving policy development and decision-making in the public service.⁸⁷²

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.⁸⁷³

The most senior civil servant in a department is the permanent secretary. Permanent secretaries are responsible to the Cabinet Secretary/Head of the Civil Service for the effective day-to-day management of the relevant department.⁸⁷⁴ The Ministerial Code states that:

Ministers and permanent secretaries should have a trusting, positive relationship, with regular opportunities for the exchange of feedback. Any

⁸⁶⁸ 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.

⁸⁶⁹ [The Civil Service code](#), Civil Service website, 16 March 2015.

⁸⁷⁰ [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 Ministers of Scotland and Wales must lay codes covering civil servants who serve in the Scottish and Welsh Governments before the Scottish and Welsh Parliaments.

⁸⁷¹ Constitutional Reform and Governance Act 2010, [sections 5\(2\)](#) and 5(3).

⁸⁷² [The Judge Over Your Shoulder](#), Government Legal Service, January 2006.

⁸⁷³ [Keir Starmer speech at Labour Party Conference 2024](#), Labour Party website, 24 September 2024.

⁸⁷⁴ [Cabinet Manual](#), para 7.9.

concerns about this relationship should be resolved as swiftly as possible with the Cabinet Secretary and Prime Minister.⁸⁷⁵

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.⁸⁷⁶ The Recruitment Principles can be revised by the CSC but only with the Prime Minister's agreement.⁸⁷⁷ The CSC also investigates complaints made under the code. 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.⁸⁷⁸

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.⁸⁷⁹

Where an accounting officer (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.⁸⁸⁰ [Ministerial Directions](#) are published online by HM Treasury.

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.⁸⁸¹ Under [section 6](#) they must publish Diplomatic Service code and lay it before Parliament.⁸⁸² 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.⁸⁸³

⁸⁷⁵ Ministerial Code, [para 1.12](#).

⁸⁷⁶ These appointment principles also apply to Scottish Ministers (Scottish Ministerial Code, [para 5.2](#)) and Welsh Ministers (Welsh Ministerial Code, [para 2.15](#)).

⁸⁷⁷ [Independent Review of Governance and Accountability in the Civil Service: The Rt Hon Lord Maude of Horsham](#), para 6.2

⁸⁷⁸ [Independent Review of Governance and Accountability in the Civil Service: The Rt Hon Lord Maude of Horsham](#), paras 6.15 & 6.26.

⁸⁷⁹ Ministerial Code, [para 1.6](#). The Scottish Ministerial Code includes similar provisions at [para 1.3\(j\)](#) and the Welsh Ministerial Code at [para 1.3\(ix\)](#).

⁸⁸⁰ [Cabinet Manual](#), paras 10.22-10.23.

⁸⁸¹ The Act does not stipulate but in practice it is the Foreign Secretary.

⁸⁸² [Diplomatic and Home Service Regulations](#), Foreign and Commonwealth Office, 11 February 2015.

⁸⁸³ Constitutional Reform and Governance Act 2010, [section 3\(4\)](#).

Northern Ireland Civil Service

The basis of the Northern Ireland Civil Service (NICS) is prerogative rather than statutory.⁸⁸⁴

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.⁸⁸⁵ A [Northern Ireland Civil Service Handbook](#) is published under the same Order, as is a Code of Ethics,⁸⁸⁶

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.⁸⁸⁷ 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 – which includes appointments – 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.⁸⁸⁸

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.⁸⁸⁹ [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

⁸⁸⁴ The NICS was first established in 1921 to support the devolved Government of Northern Ireland, as established under the Government of Ireland Act 1920.

⁸⁸⁵ [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.

⁸⁸⁶ [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.

⁸⁸⁷ These are special advisers appointed by the Assembly Speaker, the First Minister and deputy First Minister, and other Executive Ministers.

⁸⁸⁸ [New Head of the Civil Service announced](#), Executive Office website, 10 June 2021.

⁸⁸⁹ For the history of prime ministerial special advisers, see Andrew Blick and George Jones, *At Power’s Elbow: Aides to the Prime Minister from Robert Walpole to David Cameron*, London: Biteback, 2013.

permanent civil servants to become involved.⁸⁹⁰ There is no limit on the number of special advisers.⁸⁹¹

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.⁸⁹²

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.⁸⁹³

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. The Leader of the Opposition is also provided with a suite of offices at Westminster.⁸⁹⁴

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".⁸⁹⁵

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

⁸⁹⁰ [Cabinet Manual](#), paras 7.11-7.13. [Special advisers: code of conduct](#), Cabinet Office, 6 November 2024.

⁸⁹¹ Ministerial Code, [para 6.2](#).

⁸⁹² [Cabinet Manual](#), para 11.21.

⁸⁹³ 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).

⁸⁹⁴ Erskine May, [para 4.6](#).

⁸⁹⁵ For a Speaker's ruling on this point, see [HC Deb 29 June 2016 Vol 612 c340 \[Point of Order\]](#).

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.⁸⁹⁶

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.

⁸⁹⁶ Rodney Brazier, *Choosing a Prime Minister: The Transfer of Power in Britain*, Oxford: Oxford University Press, 2020, p10.

6 Local government

Local authorities are statutory bodies created by primary legislation.⁸⁹⁷ 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.⁸⁹⁸ 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.⁸⁹⁹ 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.⁹⁰⁰

Elected councils across the UK use ceremonial maces, which denote royal authority.⁹⁰¹ The Accession Proclamation of a new monarch is read by the [High Sheriffs](#) of each county in England and Wales,⁹⁰² or by mayors and lord mayors. In Scotland it is read by sheriffs (in counties), lord provosts and provosts (in cities and towns), and in Northern Ireland by mayors and lord mayors.⁹⁰³

The UK is a signatory to [The European Charter of Local Self-Government](#), which lays down standards for protecting the rights of local authorities.

⁸⁹⁷ 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.

⁸⁹⁸ 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.

⁸⁹⁹ [Cabinet Manual](#), para 8.27.

⁹⁰⁰ [Cabinet Manual](#), para 8.31.

⁹⁰¹ For a description of local government royal ceremonial, see Dermot Morrah, *The Work of the Queen*, London: William Kimber, 1958, p93.

⁹⁰² Paul Millward, [Civic Ceremonial: A Handbook. History and Guide for Mayors, Councillors and Officers](#), Crayford: Shaw & Sons, 2007, p159.

⁹⁰³ [QP London Bridge Protocol](#), Hellesdon Parish Council, para 9.

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.⁹⁰⁴ They typically focus on activities such as managing parks, car parks, footpaths, community centres, cemeteries, and other local amenities.⁹⁰⁵

A full [list of councils in England](#) is available online.

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.⁹⁰⁶

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.

⁹⁰⁴ Local Government Act 1972, [section 9](#).

⁹⁰⁵ [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.

⁹⁰⁶ [Office for Local Government: Understanding and supporting local government performance](#), Office for Local Government.

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 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”.⁹⁰⁷ 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.⁹⁰⁸ Two (City of London and York) have the right to use the style “the Right Honourable” but are not members of the Privy Council.⁹⁰⁹

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.

[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.⁹¹⁰

⁹⁰⁷ [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.

⁹⁰⁸ 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.

⁹⁰⁹ 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.

⁹¹⁰ 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.⁹¹¹

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.⁹¹²

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”. The [Local Elections \(Principal Areas\) \(England and Wales\) Rules 2006](#) contain the principal conduct rules for council elections in England and Wales. Ward 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.⁹¹³ Elections are held on the first Thursday in May.⁹¹⁴ 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)⁹¹⁵

This [election timetable](#) shows when councils in England hold 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

⁹¹¹ See Local Government Act 2000, [sections 5](#) and [6](#); Local Government Act 2003, [section 97](#); Localism Act 2011, [sections 5](#) and [15](#).

⁹¹² [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.

⁹¹³ Local Government Act 1972, [section 7](#).

⁹¹⁴ Local Government Act 1972, [section 37](#).

⁹¹⁵ Local Government Act 1972, [section 7](#). See also [Local government structure and elections](#), Department for Levelling Up, Housing and Communities, 1 April 2023.

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.

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 enactment they believe does not offer “best value”.⁹¹⁶ 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.

City of London

The [City of London Corporation](#) is the governing body of the “Square Mile”.⁹¹⁷ Its “old Liberties and Customs” are protected in one of three clauses of [Magna Carta 1297](#) which remain in force,⁹¹⁸ 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.⁹¹⁹ By custom, the King also

⁹¹⁶ In the House of Lords, such orders are scrutinised by the Delegated Powers and Regulatory Reform Committee (Lords Companion, [para 10.33](#)).

⁹¹⁷ [About the City of London Corporation](#), City of London Corporation website.

⁹¹⁸ Magna Carta (1297), [section IX](#).

⁹¹⁹ [The Accession Council](#), Privy Council website. 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.

approves the election of a new Lord Mayor of London.⁹²⁰ The Lord Mayor later takes the Oath of Allegiance at the Royal Courts of Justice during the annual Lord Mayor's Show.⁹²¹ 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.⁹²² 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.⁹²³ The Corporation is also governed by various local acts of the UK Parliament.⁹²⁴

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.⁹²⁵

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](#).⁹²⁶

[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

⁹²⁰ [Approbation of the new Lord Mayor of London](#), Ministry of Justice website, 17 October 2022.

⁹²¹ [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](#).

⁹²² London Metropolitan Archives Information Leaflet Number 13, [The Court of Common Council](#), p3.

⁹²³ See the [City of London \(Various Powers\) Act 1957](#) and [City of London \(Ward Elections\) Act 2002](#).

⁹²⁴ Generally known as City of London (Various Powers) Acts.

⁹²⁵ [Local government structure and elections](#), Department for Levelling Up, Housing and Communities, 1 April 2023. See also [The Isles of Scilly Order 1978](#).

⁹²⁶ The Deputy Chair and other commissioners are appointed by the King on the recommendation of the Secretary of State for Levelling Up, Housing and Communities.

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.⁹²⁷

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.⁹²⁸

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.⁹²⁹ 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 1972.⁹³⁰ 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.⁹³¹

The dignity of having a “lord mayor” as civic head has been granted to two districts enjoying city status in Wales, Cardiff and Swansea.⁹³² The Lord Mayor

⁹²⁷ [Local Government Association Conference](#), Ministry of Housing, Communities and Local Government, 24 October 2024.

⁹²⁸ [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”.

⁹²⁹ [Local democracy in Wales: introduction to local government](#), Welsh Government.

⁹³⁰ Local Government Act 1972, [section 20](#).

⁹³¹ Local Government Act 2000, [section 37](#).

⁹³² By Letters Patent under the royal prerogative. For Swansea, see the [London Gazette, 25 March 1982](#).

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 (the King at a meeting of the Privy 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.⁹³³ 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 \(as amended\)](#).

The current configuration of communities was established by the Local Government (Wales) Act 1994,⁹³⁴ while the framework was established by the 1972 Act.⁹³⁵

[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.⁹³⁶ 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.⁹³⁷

⁹³³ Local Government (Wales) Measure 2011, [section 40](#).

⁹³⁴ Local Government (Wales) Act 1994, [section 8](#). See also the [Local Government \(Wales\) Measure 2011](#).

⁹³⁵ Local Government Act 1972, [section 27](#).

⁹³⁶ Representation of the People Act 1983, [section 2](#) (as amended by Local Government and Elections (Wales) Act 2021, [section 2](#)).

⁹³⁷ As amended by the Local Government and Elections (Wales) Act 2021, [section 2](#).

Council elections in Wales are held every five years.⁹³⁸ The day of election for ordinary elections is fixed by law and is usually the first Thursday in May.⁹³⁹ 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.

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.⁹⁴⁰ 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 2003.⁹⁴¹ The next revaluation is due to take place in 2028.⁹⁴²

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:

⁹³⁸ Local Government Act 1972, [section 26](#) (as amended by Local Government and Elections (Wales) Act 2021, [section 14](#)).

⁹³⁹ Local Government Act 1972, [section 37ZA](#) (as amended by the Wales Act 2017, [section 6](#)).

⁹⁴⁰ Slightly different rules apply to reliefs, thresholds for reliefs and appeal mechanisms.

⁹⁴¹ [The Council Tax \(Valuation Bands\) \(Wales\) Order 2003](#).

⁹⁴² [Council tax in Wales: Revaluation delayed to 2028](#), BBC News online, 15 May 2024.

- examines complaints that Welsh councillors have breached their statutory Code of Conduct,⁹⁴³ and
- works with public bodies to improve public services and standards of conduct within local government across Wales
- investigates complaints about devolved public services

Welsh Local Government Association

The (non-statutory) [Welsh Local Government Association](#) represents the interests of local government and “promotes local democracy in Wales”.

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.⁹⁴⁴

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. The [Local Government in Scotland Act 2003](#) introduced a range of new duties for local authorities, including requirements to secure “best value”.

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,⁹⁴⁵ establish a reserve fund for use “solely in the interests of Shetland or its inhabitants” and to enter into commercial enterprises connected with oil-related developments. The [Orkney County Council Act 1974](#) made similar provision for what is now Orkney Council.⁹⁴⁶

[Section 21](#) of the [Islands \(Scotland\) Act 2018](#) and [The Additional Powers Request \(Scotland\) Regulations 2019](#) provide for “additional functions, duties

⁹⁴³ [The Local Authorities \(Model Code of Conduct\) \(Wales\) Order 2008](#).

⁹⁴⁴ [Local government](#), Scottish Government website.

⁹⁴⁵ This was later extended to 12 miles under the [Territorial Sea Act 1987](#).

⁹⁴⁶ Both bills began as private legislation, although the Zetland bill was taken over by Liberal MP Jo Grimond as a private member’s bill.

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.⁹⁴⁷ 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.⁹⁴⁸ 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.⁹⁴⁹

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.⁹⁵⁰ Voting age has been reduced to all registered electors aged 16 or over on polling day.⁹⁵¹

There are 1,226 elected councillors in Scotland, who are normally elected every five years.⁹⁵² 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 Government \(Scotland\) Act 2004](#) changed the electoral system for Scottish local government elections from first past the post to the Single Transferable

⁹⁴⁷ [Find a Community Council](#), Community Councils Scotland website.

⁹⁴⁸ [Local authorities: factsheet](#), Scottish Government website, 8 May 2017.

⁹⁴⁹ [Holyrood Week](#), Royal Family website.

⁹⁵⁰ Representation of the People Act 1983, [section 2\(1\)](#) (as amended by the Scottish Elections (Franchise and Representation) Act 2020, [section 1](#)).

⁹⁵¹ Representation of the People Act 1983, [section 2\(1A\)](#) (as amended by the Scottish Elections (Reduction of Voting Age) Act 2015, [section 1](#)).

⁹⁵² 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.

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.

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.⁹⁵³

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](#).

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 1973.⁹⁵⁴ This carries out reviews of boundaries and electoral arrangements for Scottish local authorities.

Scottish Public Services Ombudsman

The [Scottish Public Services Ombudsman](#) is the final stage for complaints about councils in Scotland. It 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. Unlike in Wales, councillor standards in Scotland are handled by the [Ethical Standards Commissioner](#), an independent regulator appointed by the Scottish Parliamentary Corporate Body, approved by MSPs and underpinned by legislation.⁹⁵⁵

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”.⁹⁵⁶

⁹⁵³ [Council tax frozen across Scotland](#), Scottish Government, 15 April 2024.

⁹⁵⁴ It was renamed Boundaries Scotland by the Scottish Elections (Reform) Act 2020, [section 28](#).

⁹⁵⁵ 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](#).

⁹⁵⁶ [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.

6.4

Northern Ireland

Local government in Northern Ireland comprises 11 city, borough or district councils.⁹⁵⁷ 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.⁹⁵⁸

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](#).⁹⁵⁹ Some provisions of the [Local Government Act \(Northern Ireland\) 1972](#) also remain in force.

City and borough councils appoint a mayor and deputy mayor while district councils appoint a chair and vice-chair.⁹⁶⁰ 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.⁹⁶¹ 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 specifically prohibited by statute. [Section 19](#) provides for three forms of governance:

⁹⁵⁷ The Interpretation Act (Northern Ireland) 1954, [section 44](#), provides definitions for local government purposes.

⁹⁵⁸ [Nilga Councillor Guide 2023](#), NILGA.

⁹⁵⁹ See also the [Local Government \(Boundaries\) Act \(Northern Ireland\) 2008](#).

⁹⁶⁰ [Local government facts and figures: Northern Ireland](#), LGiU website.

⁹⁶¹ By Letters Patent under the royal prerogative. For Belfast, see “The Lord Mayor of Belfast”, The Irish Times, 11 June 1892.

- 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).

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.⁹⁶²

Unlike in Scotland and Wales, the local government franchise in Northern Ireland, as well as elections, is an excepted (reserved) matter.⁹⁶³

Under [section 11](#) of the Electoral Law Act (Northern Ireland) 1962 (as amended),⁹⁶⁴ 462 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.⁹⁶⁵

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.

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.

⁹⁶² [Section 2](#) of the Electoral Law Act (Northern Ireland) 1969 also makes provision for voting age.

⁹⁶³ Northern Ireland Act 1998, [Schedule 2 para 12](#).

⁹⁶⁴ This was an Act of the former Parliament of Northern Ireland.

⁹⁶⁵ 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 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,⁹⁶⁶ while that from the district rate (set annually by individual councils) goes to local authorities.⁹⁶⁷ The collection of rates is handled centrally by the [Land and Property Services](#) agency of the Northern Ireland Department of Finance.⁹⁶⁸

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 Ireland and alleged breaches of the [Northern Ireland Local Government Code of Conduct For Councillors](#).⁹⁶⁹

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.⁹⁷⁰

⁹⁶⁶ The regional rate funds public services across Northern Ireland, including education, emergency hospitals, law and order, roads, social services and community development.

⁹⁶⁷ The district rate pays for local services including arts, events and recreation, building control, leisure/community centres, environmental health, tourism and waste management.

⁹⁶⁸ [Local councils](#), indirect website.

⁹⁶⁹ [Northern Ireland Local Government Commissioner for Standards](#), NIPSO website. The Code of Conduct was approved by the Northern Ireland Assembly in 2014.

⁹⁷⁰ [About](#), NILGA website.

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.⁹⁷¹ 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](#).⁹⁷²

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):

- [Cambridgeshire and Peterborough](#)
- [Greater Manchester](#)
- [Liverpool City Region](#)
- [North East](#)
- [South Yorkshire](#)
- [Tees Valley](#)
- [West of England](#)

⁹⁷¹ No such rejection has ever taken place. The power to reject strategies was introduced by the Localism Act 2011, [section 229](#).

⁹⁷² Provisions in the [Police Reform and Social Responsibility Act 2011](#) and [Public Bodies Act 2011](#) further extended the Mayor of London’s authority.

- [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 2016.⁹⁷³ 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.⁹⁷⁴

[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.⁹⁷⁵

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.⁹⁷⁶

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

⁹⁷³ Some elements of the devolution deals do not concern statutory functions, and therefore do not require Orders. The deal documents themselves are not statutory.

⁹⁷⁴ The most recent is [Annual report on devolution 2022 to 2023](#), Department for Levelling Up, Housing & Communities, 26 March 2024.

⁹⁷⁵ Levelling-up and Regeneration Act 2023, [section 76](#). Alternative titles include “governor”.

⁹⁷⁶ [Deputy Prime Minister launches first-ever Mayoral Council](#), Ministry of Housing, Communities and Local Government, 10 October 2024.

place in 2012.⁹⁷⁷ 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.⁹⁷⁸

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 \(Welsh Forms\) 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.

6.8 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. 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 it⁹⁷⁹

The term “Wednesbury unreasonableness” is used to describe the third limb.⁹⁸⁰ 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”.⁹⁸¹

Any judicial review of a decision under planning legislation is subject to a six-week time limit.⁹⁸²

⁹⁷⁷ The administration of PCC elections is not devolved so the franchise is the same as that for local government elections in England.

⁹⁷⁸ [Police and crime commissioners](#), gov.uk website.

⁹⁷⁹ [The Wednesbury principle](#), Law Society Gazette, 9 March 2015. Wednesbury is a market town in Sandwell in the West Midlands.

⁹⁸⁰ *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223.

⁹⁸¹ [Education Secretary v Tameside Council](#) [1977] AC 1014.

⁹⁸² Civil Procedure Rules, [Rule 54.5](#).

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”,⁹⁸³ while in Scotland some dispute whether “the Kirk” is established at all, preferring to call it “the national church”.

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 1920.⁹⁸⁴ 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 1919.⁹⁸⁵

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.⁹⁸⁶

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”.⁹⁸⁷

[Section 1](#) of Magna Carta (1297) confirmed that the Church of England “shall be free, and shall have all her whole Rights and Liberties inviolable”.

⁹⁸³ Owen Chadwick, *Church and State – Report of the Archbishops’ Commission*, London: Church Information Office, 1970, p2.

⁹⁸⁴ The [Welsh Church \(Temporalities\) Act 1919](#) had postponed the original date of disestablishment.

⁹⁸⁵ 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).

⁹⁸⁶ 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.

⁹⁸⁷ *Aston Cantlow v Wallbank* [2004] 1 AC 546.

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 lafullie 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.⁹⁸⁸

[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”.⁹⁸⁹ Together with [Canon A 7](#), 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.⁹⁹⁰ 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?

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?⁹⁹¹

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”.⁹⁹²

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.⁹⁹³ [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

⁹⁸⁸ 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](#)).

⁹⁸⁹ See also the [Act of Supremacy \(Ireland\) 1560](#).

⁹⁹⁰ The oath was reiterated in the Act of Settlement (1700), [section 2](#).

⁹⁹¹ [The Coronation Service – Order of Service](#), Royal Family website, p24.

⁹⁹² [The Coronation Service – Order of Service](#), p23.

⁹⁹³ William III was a Dutch Calvinist while George I was a Lutheran.

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.⁹⁹⁴

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. The Prime Minister’s Appointments Secretary is an ex-officio and non-voting member.⁹⁹⁵

While the Prime Minister continues formally to advise the Sovereign as to appointments, he or she is provided with a single name by the CNC. 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

⁹⁹⁴ [Prayers for the Royal Family](#), Diocese of Ely website, 4 May 2023.

⁹⁹⁵ [The Governance of Britain – Constitutional Renewal](#), Cmnd 7170, Ministry of Justice, March 2008, para 59.

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.

Diocesan bishops

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:

1. Nomination

- Vacancy in See Committee is formed and consultation in the diocese
- Crown Appointments 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
- Election signified by the Crown to the metropolitan
- [Confirmation of Election](#) by or on behalf of the metropolitan of the province; bishop elect receives the spiritual jurisdiction and become the bishop of the diocese.

3. The bishop takes up office

- Consecration (if not already in episcopal orders)
- Homage to the Crown (see below); the temporalities of the see are restored⁹⁹⁶

If the bishop is eligible as one of 26 Lords Spiritual, then homage is necessary before a writ of summons to the House of Lords is issued (see Section 4.6).

⁹⁹⁶ [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.

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.⁹⁹⁷ The Vacancy in See Committee in the Diocese of Canterbury also meets to produce a Statement of Needs (the diocese's assessment of the qualities and skills required of the next occupant) and elect three members of the CNC.⁹⁹⁸

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](#).⁹⁹⁹

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.¹⁰⁰⁰ 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.

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.¹⁰⁰¹

By custom, a new Archbishop of Canterbury is appointed a member of the Privy Council following their Confirmation of Election.¹⁰⁰²

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

⁹⁹⁷ [General Synod Standing Order 138\(6\)](#).

⁹⁹⁸ [General Synod Standing Order 137\(1\)](#).

⁹⁹⁹ [General Synod Standing Order 139\(2A\)](#).

¹⁰⁰⁰ [General Synod Standing Order 136\(3A\)](#).

¹⁰⁰¹ 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.

¹⁰⁰² See [Orders in Council dated 12 February 2013](#) and [14 March 2013](#).

accordance with [section 1](#) of the Ecclesiastical Offices (Age Limit) Measure 1975, the archbishop shall by written instrument in the prescribed form 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).¹⁰⁰³ 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.

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. Suffragan bishops assist the bishop of each diocese.

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. 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.¹⁰⁰⁴

¹⁰⁰³ See [Order in Council dated 11 April 2012](#). 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.

¹⁰⁰⁴ In two cases the Crown takes turns with the (arch)bishop.

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.¹⁰⁰⁵

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

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.

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.

Crown reversion

Where a right of patronage belongs to a diocesan bishop, 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 Crown reversion. 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

Clergy 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

¹⁰⁰⁵ [HC Deb 24 May 1976 Vol 912 c28 \[Ecclesiastical Patronage\]](#).

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.

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].¹⁰⁰⁶

The King then issues Letters Patent and writs restoring the temporalities of the vacant see to the new bishop or archbishop.¹⁰⁰⁷

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 can be paid virtually.¹⁰⁰⁸

Church legislation

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). 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.

¹⁰⁰⁶ [Bishops And Homage](#), A Venerable Puzzle blog, 21 July 2020.

¹⁰⁰⁷ 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.

¹⁰⁰⁸ [The Archbishop of York pays homage to The Queen](#), Royal Family website, 21 July 2020.

General Synod

The General Synod consists of three Houses: Bishops, Clergy and Laity. Its Legislative Committee is drawn from all three Houses. Synods last a maximum of five years.¹⁰⁰⁹

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](#).¹⁰¹⁰ Another Prerogative Order directs the Lord Chancellor to issue writs calling together new Convocations.¹⁰¹¹ Dissolution can be postponed by an Order in Council, as it was in 2020 due to the Covid pandemic.¹⁰¹²

Since 1970, the Sovereign has inaugurated and addressed the opening session of the General Synod every five years, following diocesan elections.¹⁰¹³

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.¹⁰¹⁴

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.¹⁰¹⁵

By convention, the government does not legislate for the Church of England without its consent.¹⁰¹⁶ Also by convention, the Church of England can

¹⁰⁰⁹ 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.

¹⁰¹⁰ [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](#)).

¹⁰¹¹ See, for example, [Orders in Council dated 9 June 2010](#).

¹⁰¹² See [Section 84](#) of the Coronavirus Act 2020.

¹⁰¹³ See, for example, [A speech by The Queen at the Inauguration of the General Synod, 2015](#), Royal Family website, 24 November 2015.

¹⁰¹⁴ 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.

¹⁰¹⁵ For a comprehensive guide to Measure procedure, see Lords Companion, [paras 8.231-8.236](#).

¹⁰¹⁶ House of Commons, [First Standing Committee on Delegated Legislation](#), 20 October 2005, c4.

“request” that the government introduce primary legislation in relation to Church matters.¹⁰¹⁷

Canons

The General Synod has a general power (transferred from the Convocations by Canon under [Schedule 1](#) to the Synodical Government Measure 1969) to make Canons which are legally binding on the clergy of the Church of England.¹⁰¹⁸ Some Canons provide for the making of secondary legislation in the form of rules or regulations.

For example, under [section 1](#) of the Church of England (Worship and Doctrine) Measure 1974, the General Synod may make Canon “with respect to worship in the Church of England” and other matters prescribed by the Book of Common Prayer.¹⁰¹⁹

Canons are mainly to do with the work of the clergy and are not subject to parliamentary approval.¹⁰²⁰ Instead, they are submitted to the King for Royal Assent and Licence via the Lord Chancellor/Secretary of State for Justice.¹⁰²¹

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. Peculiars include Westminster Abbey and St George’s Chapel, Windsor.¹⁰²² They answer to the Sovereign, or to the Sovereign through the Lord Chancellor,¹⁰²³ and are governed by reference to their own ancient statutes or rules and not the [Cathedrals Measure 1999](#) or [Ecclesiastical Jurisdiction Measure 1963](#).

Parliament and the Church of England

Sittings in both Houses of Parliament begin with prayers.¹⁰²⁴ The [Speaker’s Chaplain](#) (an Anglican) usually reads the prayers in the Commons,¹⁰²⁵ while in the Lords a bishop (Lord Spiritual) usually does so. The official proceedings of the Lords cannot begin until prayers have been read.¹⁰²⁶

¹⁰¹⁷ 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).

¹⁰¹⁸ Canons are not, of their own force, binding on the laity.

¹⁰¹⁹ 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](#).

¹⁰²⁰ [Middleton and his Wife v Croft \[1766\] 94 ER 1059](#). Canon are directly binding on the clergy alone.

¹⁰²¹ Canons cannot generally contain anything “contrary or repugnant to the King’s prerogative Royal or the customs, laws, or statutes” of the realm.

¹⁰²² One royal peculiar is located at the Palace of Holyroodhouse in Edinburgh.

¹⁰²³ For the most recent review, see [The Royal Peculiars: Report of the Review Group set up by Her Majesty The Queen](#), 2001.

¹⁰²⁴ [Prayers](#), UK Parliament website.

¹⁰²⁵ The Speaker’s Chaplain also presides at the weekly services of Holy Communion which are celebrated in Parliament’s chapel, [St Mary Undercroft](#).

¹⁰²⁶ The text of the prayers read in the House of Lords are printed in the Lords Companion, [Appendix I](#).

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.¹⁰²⁷ By custom, the Archbishop normally meets with the Prime Minister about twice a year.¹⁰²⁸

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,¹⁰²⁹ 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 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.

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

¹⁰²⁷ This service usually takes place at [St Margaret’s Church, Westminster](#).

¹⁰²⁸ Frank Cranmer, John Lucas and Bob Morris, Church and State: A mapping exercise, Constitution Unit, April 2006, p21.

¹⁰²⁹ See the [Queen Anne’s Bounty Act 1714](#) and the [Ecclesiastical Commissioners Act 1836](#).

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.¹⁰³⁰

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).

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 (usually a High Court judge). 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.¹⁰³¹
- **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

¹⁰³⁰ 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.

¹⁰³¹ [Overseas Jurisdictions](#), The Faculty Office website.

those – not necessarily Anglicans – who have distinguished themselves in the service of the Christian Church.

7.2

Scotland

The [Papal Jurisdiction Act 1560](#) declared that the Pope had no jurisdiction in Scotland,¹⁰³² while the [Church Jurisdiction Act 1567](#) (another Act of the Old Scottish Parliament) confirmed the status of the Church of Scotland, whose liberties were ratified in 1592.¹⁰³³

The 1647 General Assembly approved the Westminster Confession of Faith, under which the Church of Scotland’s government “is Presbyterian, and is exercised through Kirk Sessions; Presbyteries, and General Assemblies”.¹⁰³⁴

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](#), 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 1921,¹⁰³⁵ 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.¹⁰³⁶

[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

¹⁰³² The current Church of Scotland “is in historical continuity with the Church of Scotland which was reformed in 1560” (Article III).

¹⁰³³ [General Assembly Act 1592](#).

¹⁰³⁴ [Church Constitution](#), Church of Scotland website, Article II.

¹⁰³⁵ The 1921 Act commenced in 1926 via Order in Council.

¹⁰³⁶ [Church Constitution](#), Article IV.

United Free Church that the causes of the 1843 Disruption had finally been resolved and the churches were reunified in 1929.

Despite this declaration of independence, 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 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. The Church's internal disciplinary processes are, therefore, susceptible to legal challenge in civil proceedings.¹⁰³⁷

The General Assembly

The [General Assembly](#) of the Church of Scotland has mixed functions: it is a legislature, a court (at least vestigially¹⁰³⁸) and an executive.¹⁰³⁹ 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 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.

¹⁰³⁷ *Percy (AP) (Appellant) v. Church of Scotland Board of National Mission (Respondent) (Scotland) [2005] UKHL 73*.

¹⁰³⁸ 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.

¹⁰³⁹ See [Regulations of the General Assembly](#), Church of Scotland website.

The Crown

The King is “an ordinary member” of the Church of Scotland rather than its Supreme Governor, as in England.¹⁰⁴⁰ While at Balmoral, the King and other members of the Royal Family take “divine service” at Crathie Kirk.¹⁰⁴¹

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.

Normally, the King is represented at the General Assembly of the Church of Scotland by a [Lord High Commissioner](#). 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.¹⁰⁴² The King’s Commission and a Gracious Letter from the Sovereign is read at the General Assembly,¹⁰⁴³ followed by an opening address from the Lord High Commissioner.¹⁰⁴⁴

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

As with appointments in the Church of England, anyone advising the King vis-à-vis Church of Scotland appointments cannot be Catholic or Jewish.

Under section 18 of the Roman Catholic Relief Act 1829, it is not lawful for a Catholic “directly or indirectly to advise” the King or a Regent on any “office or preferment” in the Church of Scotland. Such a “high misdemeanor” would lead to a bar on holding any office under the Crown. [Section IV](#) of the Jewish Relief Act 1858 similarly bars those of the Jewish faith from offering advice.

The King makes certain appointments in the Church of Scotland which do not appear to require ministerial advice, including the Dean of the Chapel Royal in Scotland.¹⁰⁴⁵

¹⁰⁴⁰ [About](#), Coronation Roll website.

¹⁰⁴¹ See, for example, Court Circular, 13 October 2024.

¹⁰⁴² [Appointment of the Lord High Commissioner to the General Assembly of the Church of Scotland 2024](#), Prime Minister’s Office, 10 Downing Street, 10 March 2024. This is an appointment under the royal prerogative.

¹⁰⁴³ [King expresses admiration for Church’s “deep concern” for vulnerable people](#), Church of Scotland website, 18 May 2024.

¹⁰⁴⁴ [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.

¹⁰⁴⁵ 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).

Lay patronage in the Church of Scotland (including the Crown's patronage) was abolished by the [Church Patronage \(Scotland\) Act 1874](#).

8 Courts and Human Rights

The United Kingdom has three separate jurisdictions:

- England and Wales
- 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.

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.¹⁰⁴⁶

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.¹⁰⁴⁷

King’s Counsel (KC) are barristers, advocates or solicitor advocates appointed by the King under the royal prerogative. In England and Wales, 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.¹⁰⁴⁸ In Scotland, the First Minister seeks nominations from the Lord Justice General.¹⁰⁴⁹ In Northern Ireland, applicants are recommended to the Minister of Justice, or the

¹⁰⁴⁶ Martin Loughlin, *The State, the Crown and the Law* in M. Sunstein and S. Payne, *The Nature of the Crown*, p58.

¹⁰⁴⁷ B, Oxford Reference website.

¹⁰⁴⁸ [Summary of Revised Process for QC Award for England and Wales](#), June 2023. There follows a [King’s Counsel appointments ceremony](#) in Westminster Hall.

¹⁰⁴⁹ [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](#).

person(s) exercising their functions.¹⁰⁵⁰ KC Honoris Causa, or an Honorary KC, can also be appointed by the King on the advice of the Lord Chancellor.¹⁰⁵¹

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.¹⁰⁵² In Edinburgh, there is a ceremony at the Court of Session before a procession to St Giles’ Cathedral for a short service.¹⁰⁵³ In Northern Ireland the Lord Chief Justice addresses members of the profession.¹⁰⁵⁴

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)

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 and Parliament “so as to ensure the even-handed administration of justice”.¹⁰⁵⁵

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.¹⁰⁵⁶

¹⁰⁵⁰ [Appointment of Queen’s Counsel in Northern Ireland 2019](#), *Silk Call: Guide for Applicants* (password protected), Law Society of Northern Ireland, pp8-9.

¹⁰⁵¹ [Honorary King’s Counsel nominations](#), Ministry of Justice, 14 June 2023.

¹⁰⁵² [Opening of the Legal Year 2024](#), Government Legal Department, 2 October 2024.

¹⁰⁵³ [Opening of the Legal Year](#), Judiciary of Scotland website.

¹⁰⁵⁴ [Opening of the new legal year, Lady Chief Justice’s address](#), Judicial Communications Office, 5 September 2024.

¹⁰⁵⁵ [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).

¹⁰⁵⁶ 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 \[Her Majesty’s Courts Service\]](#)).

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”. 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.¹⁰⁵⁷

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”.

The Lord Chancellor

The office of Lord Chancellor is “pivotal to the constitutional relationship between the executive and judicial branches of the state”.¹⁰⁵⁸

Formally, the Lord Chancellor is Lord High Chancellor of Great Britain as the equivalent post of Lord Chancellor of Ireland was abolished in 1922.¹⁰⁵⁹ 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”,¹⁰⁶⁰ 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.

[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 principle”. [Section 2](#) provides that a person recommended for appointment as

¹⁰⁵⁷ Northern Ireland Ministerial Code, [para 1.4\(ce\)](#).

¹⁰⁵⁸ [HM Government – Written Evidence \(EOS0002\)](#), para 17.

¹⁰⁵⁹ Interpretation Act 1978, [Schedule 1](#); Interpretation Act (Northern Ireland) 1954, [section 43](#); and the Irish Free State (Consequential Provisions) Act 1922, Schedule 2 (repealed).

¹⁰⁶⁰ [Section 12](#) of the Roman Catholic Relief Act 1829 appears to suggest that Catholics are prohibited from appointment as Lord Chancellor.

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.¹⁰⁶¹

The Lord Chancellor is keeper of the Great Seal of the Realm. [Section 129](#) of the Senior Courts Act 1981 provides that when the Great Seal is in commission then 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).

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.¹⁰⁶² 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.¹⁰⁶³

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) are available on the Supreme Court website.¹⁰⁶⁴

The Supreme Court will not hear an appeal unless it raises an “arguable point of law on a matter of general public importance”.¹⁰⁶⁵ The Supreme Court Rules

¹⁰⁶¹ As inserted in the Promissory Oaths Act 1868, [section 6A](#).

¹⁰⁶² Its predecessor was the Appellate Committee of the House of Lords. The exclusion of criminal appeals from Scotland is a result of the Union with England Act 1707, [article 19](#), although if the High Court of Justiciary determines a “devolution issue” or a “compatibility issue” in the course of Scottish criminal proceedings, that decision can then be challenged before the Supreme Court. See also [The Jurisdiction of the Supreme Court of the United Kingdom in Scottish Appeals](#).

¹⁰⁶³ Constitutional Reform Act 2005, [section 41\(2\)](#).

¹⁰⁶⁴ See also [A guide to bringing a case to The Supreme Court](#), Supreme Court website.

¹⁰⁶⁵ Supreme Court, [Practice direction 3.3.3](#).

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.¹⁰⁶⁶

In certain situations, permission to appeal cannot be sought from the UK Supreme Court at all if the court below refuses permission to appeal.¹⁰⁶⁷

Under [Schedule 9](#) to the Constitutional Reform Act 2005, the UKSC also hears cases on “devolution matters” under the Scotland Act 1998, the Government of Wales Act 2006 and the Northern Ireland Act 1998. 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.¹⁰⁶⁸

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.¹⁰⁶⁹

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 1966.¹⁰⁷⁰ This has equal effect in the Supreme Court.¹⁰⁷¹

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”.¹⁰⁷²

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.¹⁰⁷³

¹⁰⁶⁶ Administration of Justice Act 1969, [Part II](#).

¹⁰⁶⁷ Criminal Appeal Act 1968, [section 33\(3\)](#); Court of Session Act 1988, [section 40\(3\)](#); Access to Justice Act 1999, [section 54\(4\)](#).

¹⁰⁶⁸ Scotland Act 1998, [sections 32A](#) and [33](#); Government of Wales Act 2006, [sections 111B](#) and [112](#); Northern Ireland Act 1998, [section 11](#).

¹⁰⁶⁹ These provisions are not yet in force.

¹⁰⁷⁰ [HL Deb 26 July 1966 Vol 276 c677 \[Judicial Precedent\]](#).

¹⁰⁷¹ Supreme Court, [Practice direction 3. *Austin v Mayor and Burgesses of the London Borough of Southwark* \[2010\] UKSC 28](#).

¹⁰⁷² See [Guide to Conduct for members of the Supplementary Panel](#), Supreme Court, August 2021.

¹⁰⁷³ [Panel numbers criteria](#), Supreme Court website.

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.¹⁰⁷⁴

By custom, the President and Deputy President of the Supreme Court meet annually with the House of Lords Constitution Committee.¹⁰⁷⁵

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.¹⁰⁷⁶ They are appointed on a permanent basis, subject to the UK-wide mandatory retirement age for judicial appointments, which is now 75 years.¹⁰⁷⁷

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”.¹⁰⁷⁸

[Section 25](#) of the 2005 Act provides for qualifications for appointment as a Supreme Court justice,¹⁰⁷⁹ 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

¹⁰⁷⁴ For example, an annual report: [The Lady Chief Justice’s Report 2024](#), Judiciary of England and Wales, November 2024.

¹⁰⁷⁵ House of Lords Constitution Committee, [Corrected oral evidence: Annual evidence session with the President and Deputy President of the Supreme Court](#), 4 July 2023.

¹⁰⁷⁶ A draft of any such Order must be laid before and approved by resolution of each House of Parliament.

¹⁰⁷⁷ Public Service Pensions and Judicial Offices Act 2022, [Schedule 1](#).

¹⁰⁷⁸ [Courtesy titles for Justices of the Supreme Court](#), Supreme Court Press Notice 13/2010, 13 December 2010.

¹⁰⁷⁹ 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.

such a vacancy”), the Lord Chancellor must convene a bespoke selection commission for the selection of a person to be recommended.¹⁰⁸⁰

[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”.¹⁰⁸¹ Once a recommendation has been made, the Lord Chancellor is under a statutory duty to consult various parties.¹⁰⁸² [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 Northern Ireland Judicial Appointments Commission, and the senior territorial judiciary about any proposed regulations before they are made.¹⁰⁸³

On taking office, the President, Deputy President and Supreme Court justices must swear or affirm the oath of allegiance and judicial oath.¹⁰⁸⁴ The oaths or affirmations must be taken in the presence of another Supreme Court justice.

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.

¹⁰⁸⁰ 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\(5A\)](#)).

¹⁰⁸¹ By custom, there are two judges from Scotland’s legal system and one from that of Northern Ireland.

¹⁰⁸² The Supreme Court (Judicial Appointments) Regulations 2013, [regulation 19](#).

¹⁰⁸³ Constitutional Reform Act 2005, [sections 27A](#) and [144](#).

¹⁰⁸⁴ Constitutional Reform Act 2005, [section 32](#). The oaths are provided for in the [Promissory Oaths Act 1868](#).

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.¹⁰⁸⁵ 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
- Brunei (a Commonwealth monarchy)¹⁰⁸⁶

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 Councillor 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.¹⁰⁸⁷

Most judgments of the JCPC take the form of advice to the King, as the Court's decisions are given effect via Judicial Orders in Council. This is why judgments often end with the words "The Board will humbly advise His Majesty".¹⁰⁸⁸

The JCPC 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.¹⁰⁸⁹ It is also responsible at first instance for

¹⁰⁸⁵ 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).

¹⁰⁸⁶ [The Brunei \(Appeals\) Order 1989](#). In civil cases parties can appeal to the JCPC [provided that both agree](#).

¹⁰⁸⁷ See, for example, [Privy Council appointments: 28 August 2024](#), Prime Minister's Office, 10 Downing Street, 28 August 2024.

¹⁰⁸⁸ A digital catalogue of Appeals to the Judicial Committee of the Privy Council between 1792-1998 is [available online](#).

¹⁰⁸⁹ [Professional bodies](#), Privy Council Office website.

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)¹⁰⁹⁰
- 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 any other matter to the Judicial Committee of the Privy Council for its opinion.¹⁰⁹¹ This provides “a convenient method of ascertaining the law when no other jurisdiction is available”.¹⁰⁹²

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, or in one part of the UK. They are split into a [First-tier](#) (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](#).¹⁰⁹³ 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).¹⁰⁹⁴ 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. [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](#).

Employment Tribunals are not part of this system.¹⁰⁹⁵ 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.¹⁰⁹⁶

The statutory basis for Scottish Tribunals is the [Tribunals \(Scotland\) Act 2014](#), which provides for the First-tier Tribunal for Scotland and the Upper Tribunal

¹⁰⁹⁰ The Court of Chivalry has not met since 1954.

¹⁰⁹¹ Judicial Committee of the Privy Council, [Role of the JCPC](#). A reference under this section is rare.

¹⁰⁹² [HL Deb 21 April 1971 Vol 317 c769](#).

¹⁰⁹³ Each Tribunal is organized in a series of chambers.

¹⁰⁹⁴ 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.

¹⁰⁹⁵ Nor are the Investigatory Powers Tribunal, the Proscribed Organisations Appeal Commission or the [Competition Appeal Tribunal](#).

¹⁰⁹⁶ There is a longstanding plan to devolve employment law tribunal functions to Scotland.

for Scotland. The Lord President is the head of the Scottish Tribunals but has delegated various functions to the President of Scottish Tribunals.

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.¹⁰⁹⁷ 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 appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in England and Wales.¹⁰⁹⁸

The statutory basis of the Senior Courts of England and Wales (as renamed by [section 59](#) of the Constitutional Reform Act 2005¹⁰⁹⁹) is the Senior Courts Act 1981. This provides for the structure and jurisdiction of the:

¹⁰⁹⁷ [Lady Chief Justice](#), Courts and Tribunals Judiciary website.

¹⁰⁹⁸ This power has never been exercised.

¹⁰⁹⁹ To avoid confusion with the newly created Supreme Court of the United Kingdom.

- [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.¹¹⁰⁰

[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](#))¹¹⁰¹
- the King's Bench Division (of which the president is the Lord Chief Justice)
- the Family Division (which has its own [President](#))¹¹⁰²

Distribution of work between the three divisions is governed partly by statute, partly 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 Court¹¹⁰³ and a Commercial Court.¹¹⁰⁴ [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.

¹¹⁰⁰ This number can be varied by the King in Council. See, for example, [The Maximum Number of Judges Order 2015](#).

¹¹⁰¹ 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.

¹¹⁰² The Family Division includes the Court of Protection.

¹¹⁰³ This deals principally with the legal consequences of collisions at sea, salvage, and damage to cargoes.

¹¹⁰⁴ 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.

“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.¹¹⁰⁵

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.

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.

¹¹⁰⁵ [The Judicial System of England and Wales: A visitor’s guide](#), Judicial Office, p11.

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 1](#) 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.

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".

Specialist courts

The judiciary also sit on a number of 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 was established under [section 35](#) of and [Schedule 8](#) to the Coroners and Justice Act 2009.¹¹⁰⁶

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

¹¹⁰⁶ See also [Legislation and Statutory Instruments](#) (used by coroners), Courts and Tribunals Judiciary website.

Force.¹¹⁰⁷ Judge Advocates also preside over the Summary Appeal Court and the Service Civilian Court.¹¹⁰⁸ Appeals go to the Courts-Martial Appeal Court which is staffed by Court of Appeal judges in the same way as civilian criminal appeals.¹¹⁰⁹

Magna Carta

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.

Clause 61 of Magna Carta is also invoked as a right of lawful rebellion, but it was removed from the original document in 1216 and never provided for that right.¹¹¹⁰

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 is 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 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.

¹¹⁰⁷ Armed Forces Act 2006, [section 50](#).

¹¹⁰⁸ Armed Forces Act 2006, [section 51](#).

¹¹⁰⁹ [Courts-Martial \(Appeals\) Act 1951](#)

¹¹¹⁰ [The TRUTH about Article 61 of Magna Carta](#), The Law and Policy Blog.

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 statutory duty to ensure there is an efficient and effective system to support the business of the courts and tribunals.¹¹¹¹ 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.¹¹¹² 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 [Judicial Office](#) supports the judiciary across the courts of England and Wales, and the non-devolved tribunals across the UK, by providing training, legal and policy advice, human resources, communications and administrative support. It reports to the Lord Chief Justice.

[Section 1](#) of the Crime and Courts Act 2013 made provision for the [National Crime Agency](#) (NCA) This leads the UK's "fight to cut serious and organised crime".¹¹¹³ 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 has various functions connected with the appointment of High Sheriffs, the swearing in of the Lord Mayor of London,

¹¹¹¹ 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.

¹¹¹² [Our powers and practices](#), Criminal Cases Review Commission website. The Commission also reviews cases from the Court Martial and Service Civilian Court.

¹¹¹³ [What we do](#), National Crime Agency website.

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](#).¹¹¹⁴

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.¹¹¹⁵

[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.¹¹¹⁶ The Lord Chancellor remains responsible for submitting advice to the Monarch on appointments.¹¹¹⁷ 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.¹¹¹⁸

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:¹¹¹⁹

- the Lord Chief Justice
- Master of the Rolls

¹¹¹⁴ See, for example, the [Queen’s Remembrancer Act 1859](#), the Coinage Act 1971, [section 8](#).

¹¹¹⁵ The JAC has no role in selecting magistrates or Supreme Court Justices.

¹¹¹⁶ 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.

¹¹¹⁷ [The Governance of Britain: Judicial Appointments](#), para 4.21.

¹¹¹⁸ Crown Office Disclosures (@crownoffoids), [X \(Twitter\)](#), 21 January 2021 [Accessed 1 October 2023].

¹¹¹⁹ 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).

- 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.¹¹²⁰

[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.¹¹²¹

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.

¹¹²⁰ [What do I call a judge?](#), Courts and Tribunals Judiciary website.

¹¹²¹ 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](#).

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. 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 5\(1\)](#) of the Justices of the Peace Act 1997, justices of the peace for any commission area are appointed by the Lord Chancellor "by instrument on behalf and in the name of [His] Majesty and a justice so appointed may be removed from office in like manner". Under [section 10](#) of the Courts Act 2003, lay justices are appointed by the Lord Chief Justice in the same manner, 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](#).

Recorders

Recorders (who may sit in both Crown and County Courts) 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.¹¹²² [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.¹¹²³

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.

¹¹²² Tribunals, Courts and Enforcement Act 2007, [section 2](#) and [Schedule 1](#).

¹¹²³ Constitutional Reform Act 2005, [section 62](#) and [Schedule 13](#).

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, as soon as may be after accepting office, take the required judicial oath in the presence of specified office holders.

Under [section 1\(4\)](#) of the Senior Courts Act 1981, senior judges are required to 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”.¹¹²⁴ The judicial oath is as provided for in [sections 2](#) and [4](#) of the Promissory Oaths Act 1868.

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 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”.

Ecclesiastical courts

The jurisdiction of England’s ecclesiastical courts is regulated largely by the [Ecclesiastical Jurisdiction Measure 1963](#). This 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 discipline. Ecclesiastical law forms part of the law of England and Wales, though applies mainly within England.

At diocesan level there is the consistory court, which is presided over by the chancellor of the diocese. He or she must be a communicant member of the Church of England and legally qualified according to the requirements of [section 71](#) of the Courts and Legal Services Act 1990. The chancellor is appointed by the bishop of the diocese in consultation with the Lord Chancellor and the [Dean of Arches](#) (in the Province of Canterbury) and Auditor (in the Province of York)

The Dean of Arches is the Church of England’s senior Judge and is appointed by the archbishops jointly, but with the approval of the King on the advice of Ministers. At the provincial level (the Arches Court of Canterbury and the Chancery Court of York) there are five judges presided over by the Dean of Arches. Each of these judges must either have a ten-year qualification under the 1990 Act or have held defined high judicial office. They are appointed by the archbishops jointly with the approval of the King.

¹¹²⁴ The oaths are as provided for in the Promissory Oaths Act 1868, [sections 2](#) and [4](#).

The Court of Ecclesiastical Causes Reserved (which deals with offences of doctrine, ritual and ceremonial, as well as hearing appeals in faculty cases involving such matters) has five members all of whom are appointed by the King, two of them being persons who hold or have held high judicial office, and three who are, or have been, diocesan bishops. Furthermore, in relation to faculty cases not involving matters of doctrine, ritual or ceremonial, the final right of appeal lies to a secular court, the Judicial Committee of the Privy Council. That body also hears appeals against pastoral schemes made by the Church Commissioners.

Similarly, appeals from a commission of Convocation or the Court of Ecclesiastical Causes Reserved relating to offences of doctrine, ritual and ceremonial are heard by a Commission of Review, which comprises five persons nominated by the King, of whom three must be Lords of Appeal.

Like other inferior courts, the ecclesiastical courts are subject to control by the superior courts through the process of judicial review (at least as regards excess of, or failure to exercise, jurisdiction; the position in relation to errors within a court's jurisdiction is less clear). And, through the doctrine of precedent, the ecclesiastical courts are bound by any applicable decisions of the Judicial Committee (other than in relation to matters of doctrine, ritual or ceremonial).

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 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.

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:

(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

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”. 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.¹¹²⁵ Under [section 2](#), the Court is composed of an Inner House (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 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.¹¹²⁶

[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.¹¹²⁷ Under [section 29](#), the Lord

¹¹²⁵ See, for example, [The Maximum Number of Judges \(Scotland\) Order 2022](#).

¹¹²⁶ [Regulating legal professions](#), Judiciary of Scotland website.

¹¹²⁷ [Complaints about the Judiciary \(Scotland\) Rules 2024](#).

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.

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.¹¹²⁸

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.

¹¹²⁸ 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.

[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](#).

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. These are Scotland's principal local courts with extensive jurisdiction in both civil and criminal matters. Sheriff courts 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).¹¹²⁹ 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.

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.¹¹³⁰

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](#)

¹¹²⁹ These replaced district courts.

¹¹³⁰ [The Scottish Land Court](#), Scottish Land Court website.

[Act 1592](#), [Lyon King of Arms Act 1669](#), [Lyon King of Arms Act 1672](#) and [Lyon King of Arms Act 1867](#).

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).¹¹³¹ 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.¹¹³²

[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.¹¹³³ 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.

¹¹³¹ As renamed by the Courts Reform (Scotland) Act 2014, [section 130](#).

¹¹³² [Our leadership and structure](#), COPFS website.

¹¹³³ [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. [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

It appears most senior judges in Scotland are appointed by the King under the royal prerogative:¹¹³⁴ the Lord President of the Court of Session,¹¹³⁵ the Lord Clerk Register,¹¹³⁶ the Lord Justice Clerk,¹¹³⁷ and [Senators of the College of Justice](#).¹¹³⁸ 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.

[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

¹¹³⁴ 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*, Edinburgh: W. Green, 2015, paras 6-19-6-28.

¹¹³⁵ [Lord Carloway appointed as Lord President](#), Scottish Legal News website, 18 December 2015.

¹¹³⁶ [New Lord Clerk Register of Scotland](#), Scottish Courts website, 5 June 2023.

¹¹³⁷ [Appointment of Lord Justice Clerk](#), Scottish Courts website, 13 April 2016.

¹¹³⁸ [Senators appointed to College of Justice](#), Scottish Government, 17 March 2017.

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 [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 of 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\(2\)](#).¹¹³⁹

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.

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

¹¹³⁹ The First Minister may remove a sheriff principal, sheriff or summary sheriff only by an Order subject to the negative procedure.

President), one of whom may be appointed Chairman.¹¹⁴⁰ 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. As the Crown's representative in Scotland, the office holder deals with ownerless property known as "bona vacantia".¹¹⁴¹

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
- the Lord Justice Clerk
- the judges and temporary judges of the Court of Session and High Court of Justiciary
- 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

¹¹⁴⁰ 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.

¹¹⁴¹ The [KLTR's policies](#) set out the Office's approach to dealing with particular types of property and assets. The Lord (High) Treasurer was a senior office in the pre-1707 government of Scotland.

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.¹¹⁴² 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.¹¹⁴³

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:

- High Court of Justice
- Court of Appeal
- Crown Court

[Section 42](#) of the Interpretation Act (Northern Ireland) 1954 also provides for judicial definitions.

¹¹⁴² 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.

¹¹⁴³ 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

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”.¹¹⁴⁴ [Part II](#) of the 1978 Act makes provision for the general jurisdiction of the High Court and its judges.

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,¹¹⁴⁵ as can the Criminal Cases Review Commission when in it suspects there has been a miscarriage of justice.¹¹⁴⁶

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.

¹¹⁴⁴ 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](#).

¹¹⁴⁵ Criminal Appeal (Northern Ireland) Act 1980, [section 15](#).

¹¹⁴⁶ Criminal Appeal Act 1995, [section 10](#).

[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.

[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](#).

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. 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.

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.¹¹⁴⁷

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

¹¹⁴⁷ [Court Rules Publications](#), Department of Justice (NI) website. See also Interpretation Act (Northern Ireland) 1954, [section 21](#).

- 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.

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](#). Under [section 51](#) the Commission must keep under review the law of Northern Ireland “with a view to its systematic development and reform”. The Commission has reporting duties under [section 52](#).

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](#).

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.

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.¹¹⁴⁸

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.

¹¹⁴⁸ 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 [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.

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 district judges (magistrates’ courts), 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.

Tribunals

The Northern Ireland Judicial Appointments Commission appoints individuals to tribunals in Northern Ireland.

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.¹¹⁴⁹

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 Court, in open court before one or more of the judges of such court, or at the county court.

¹¹⁴⁹ [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](#).

8.6 Prerogative of mercy

The prerogative of mercy is exercised by the King on ministerial advice.

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.¹¹⁵⁰

It is given effect via a Warrant under the Royal Sign Manual.¹¹⁵¹ 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.¹¹⁵²

8.7 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](#).¹¹⁵³

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
- 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

¹¹⁵⁰ [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 \[Guardsmen Fisher and Wright\]](#)).

¹¹⁵¹ PQ 199271, [Letters Patent](#), 5 June 2014. Until the 1990s this prerogative was given effect via Letters Patent.

¹¹⁵² [UIN 221302, 20 January 2015, Prerogative of Mercy](#).

¹¹⁵³ 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.

- 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”,¹¹⁵⁴ 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 be in 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.¹¹⁵⁵

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
- Protocol No. 13 – abolition of the death penalty in all circumstances¹¹⁵⁶

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](#)).

The Human Rights Act 1998 gives further effect to the ECHR. The Act includes provisions that:

¹¹⁵⁴ The UK has, in the past, derogated in respect of Northern Ireland and in response to the events of 11 September 2001.

¹¹⁵⁵ [European Convention on Human Rights \(simplified version\)](#), Council of Europe website.

¹¹⁵⁶ [Protocols to the Convention](#), ECHR website.

- make it unlawful for a public authority (which includes Ministers of the Crown in their official capacity, courts and tribunals),¹¹⁵⁷ subject to certain limited exceptions, to act in a way that is incompatible with a Convention right ([section 6](#))¹¹⁵⁸
- 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](#))¹¹⁵⁹
- 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](#))¹¹⁶⁰

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.¹¹⁶¹

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.¹¹⁶²

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.¹¹⁶³

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, which is based in Strasbourg. The Court comprises a number of judges equal to the number of states which are party to the Convention (article 20), with a judge from each country (article 22).

¹¹⁵⁷ But not the Church of England or “either House of Parliament or a person exercising functions in connection with proceedings in Parliament”.

¹¹⁵⁸ Unless primary legislation permits no other course of action.

¹¹⁵⁹ 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).

¹¹⁶⁰ 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).

¹¹⁶¹ 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\(2\)\(e\)](#).

¹¹⁶² [UK Delegation to the Council of Europe](#), Foreign, Commonwealth and Development Office website.

¹¹⁶³ Erskine May, [para 10.3](#).

The implementation of a judgment usually involves the responsible Minister (or Ministers) taking both individual and general measures.¹¹⁶⁴ The Committee of Ministers of the Council of Europe can take steps against the UK if, in its view, a judgment is not being properly implemented.¹¹⁶⁵

International Criminal Court

The International Criminal Court is a treaty-based international criminal court. It 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](#).

8.8 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.

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”.¹¹⁶⁶

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 cases¹¹⁶⁷

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”.¹¹⁶⁸

¹¹⁶⁴ 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 \(Application no. 7525/76\)](#).

¹¹⁶⁵ [Cabinet Manual](#), para 9.18.

¹¹⁶⁶ [Guide to Judicial Conduct](#), Courts and Tribunals Judiciary, July 2023, p16.

¹¹⁶⁷ [Guide to Judicial Conduct](#), p16.

¹¹⁶⁸ [Cabinet Manual](#), para 6.40.

There is also [Guidance for the judiciary – Appearances before Select Committees](#).

Scotland

[Guidance to Judicial Office Holders on Judicial Ethics in Scotland](#) is produced by the Judicial Council 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.¹¹⁶⁹

The Guidance also echoes that for England and Wales in stating that a judge “should avoid involvement in political controversy, unless the controversy itself directly affects the operation of the courts, the independence of the judiciary, or the administration of justice”.¹¹⁷⁰

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”.¹¹⁷¹

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.¹¹⁷²

All four guidance documents embody the [Bangalore Principles of Judicial Conduct](#) endorsed by the United Nations Human Rights Commission in 2003.

¹¹⁶⁹ [Guidance to Judicial Office Holders on Judicial Ethics in Scotland](#), Judiciary of Scotland, February 2024, para 4.15.

¹¹⁷⁰ [Guidance to Judicial Office Holders on Judicial Ethics in Scotland](#), para 4.16.

¹¹⁷¹ [Guidance to Judicial Office Holders on Judicial Ethics in Scotland](#), para 2.4.

¹¹⁷² [A Statement of Ethics For the Judiciary in Northern Ireland](#), Lord Chief Justice’s Office, 5 August 2011, para 4.3.

Criticism of judges by elected office holders

By a similar convention, members of the UK's governments do not make personal criticism of judges, although, in reality, this has become more common since the 1990s.¹¹⁷³

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 be brought before it. This is known as the sub judice rule.¹¹⁷⁴

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.¹¹⁷⁵

The House of Lords observes the same rule.¹¹⁷⁶ 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.¹¹⁷⁷

The devolved legislatures have similar provisions.¹¹⁷⁸

¹¹⁷³ Patrick O'Brien, "[Enemies of the People](#)": Judges, the media, and the mythic Lord Chancellor, Oxford Brookes University.

¹¹⁷⁴ Erskine May, [paras 20.11 and 22.21](#).

¹¹⁷⁵ [Guide to Parliamentary Work](#), para 65.

¹¹⁷⁶ Lords Companion, [paras 4.68-4.73](#).

¹¹⁷⁷ Lords Companion, [para 4.73](#).

¹¹⁷⁸ See [Northern Ireland Assembly Standing Order No 73](#), [Scottish Parliament Standing Order No 7.5](#) and [Senedd Standing Order No 13.5](#).

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.¹¹⁷⁹

Some instruments or decisions agreed by international organisations are binding on member states.¹¹⁸⁰ 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 1946.¹¹⁸¹ 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.¹¹⁸² 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.¹¹⁸³

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.¹¹⁸⁴

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

¹¹⁷⁹ [Cabinet Manual](#), para 18.

¹¹⁸⁰ [Cabinet Manual](#), para 9.13.

¹¹⁸¹ These are usually Orders for international sanctions.

¹¹⁸² 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.

¹¹⁸³ This can be delegated to another minister.

¹¹⁸⁴ [Cabinet Manual](#), para 9.22.

goals of democracy and development”. The [Commonwealth Charter](#) expresses the “values and aspirations which unite the Commonwealth”.

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.¹¹⁸⁵ [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”,¹¹⁸⁶ 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.¹¹⁸⁷ Examples include the annual Commonwealth Day message and the King’s traditional Christmas speech, which is broadcast across the Commonwealth.¹¹⁸⁸ In practice, however, UK governments have often requested changes to the Christmas speech.¹¹⁸⁹ 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.¹¹⁹⁰

Commonwealth Realms

Within the broader Commonwealth there are 14 Commonwealth Realms (not including the UK) where the King is also Head of State.

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 subordinate, “though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations”.¹¹⁹¹

¹¹⁸⁵ [Cabinet Manual](#), para 9.21.

¹¹⁸⁶ [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).

¹¹⁸⁷ Philip Murphy, *The Empire’s New Clothes: The Myth of the Commonwealth*, London: C. Hurst, 2021, p97.

¹¹⁸⁸ [HC Deb 24 January 1984 Vol 52 c763 \[Engagements\]](#)

¹¹⁸⁹ The Times, 21 January 1984.

¹¹⁹⁰ [A speech by The Queen to the UN General Assembly, 1957](#), Royal Family website, 21 October 1957.

¹¹⁹¹ [Imperial Conference, 1926: Summary of Proceedings](#), Dublin: The Stationary Office, 1926.

In each Commonwealth Realm, the King is represented by a Governor-General. 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.¹¹⁹²

Since 1930, vice-regal representatives have been appointed following advice from the relevant Realm government.¹¹⁹³

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.¹¹⁹⁴

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
New Zealand	Constitution Act 1986, section 2
Papua New Guinea	Constitution of the Independent State of Papua New Guinea, section 88 ¹¹⁹⁵
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 ¹¹⁹⁶
Tuvalu	The Constitution of Tuvalu Act 2023, section 56 ¹¹⁹⁷

¹¹⁹² [Imperial Conference, 1926: Summary of Proceedings](#), p15.

¹¹⁹³ [Imperial Conference, 1930: Summary of Proceedings](#), Government of New Zealand, 1930, p15.

¹¹⁹⁴ Australia Act 1986, [section 7](#).

¹¹⁹⁵ 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”.

¹¹⁹⁶ The King must act “in accordance with an address from Parliament”.

¹¹⁹⁷ 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”.

The Statute of Westminster, 1931 removed nearly all the UK Parliament's authority to legislate for the Commonwealth Realms. [Section 4](#) of the Statute 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.

The UK Parliament's remaining ability to legislate on behalf of certain Commonwealth Realms was terminated by the [Canada Act 1982](#), the [Australia Act 1986](#) and the [Constitution Act 1986 \(New Zealand\)](#). 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.¹¹⁹⁸

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]".¹¹⁹⁹ 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.¹²⁰⁰ 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".¹²⁰¹

¹¹⁹⁸ Statute of Westminster, 1931, [preamble](#).

¹¹⁹⁹ This applies to the King by virtue of [section 16](#) of the Acts Interpretation Act 1901 (Australia).

¹²⁰⁰ Provision for this is made in the relevant Realm legislation.

¹²⁰¹ For a full list see Commons Library Insight, [The King's style and titles in the UK and the Commonwealth](#), 31 January 2024.

Commonwealth Realms are free to sever their remaining links with the Crown. Barbados was the most recent to do so in November 2021.¹²⁰² The means by which this severance occurs depends upon each Realm’s constitutional arrangements. The King possesses no veto.

9.2 Overseas Territories

Fourteen Overseas Territories form part of a single “UK Realm”.

[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).

Governors (or their equivalent) of the Overseas Territories are appointed by the King on the advice of the Foreign Secretary, usually under statute. Each Overseas Territory also has its own constitution (see Table 3),¹²⁰³ although the UK Parliament retains unlimited power to legislate on their behalf.¹²⁰⁴

The UK generally makes laws for the Overseas Territories in “reserved” areas via Orders in Council, which receive the King’s approval at a meeting of the Privy Council. All constitutional Orders in Council are made under statutory powers, except those made under the Anguilla and Cyprus Acts (1980 and 1960 respectively) and must also be laid before both Houses of Parliament.¹²⁰⁵

Governors of Overseas Territories (or their equivalents) grant or refuse Royal Assent for territorial legislation. Some continue to possess “[reserve powers in relation to defence and financial services](#)”. 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.¹²⁰⁶ By convention, the UK does not recommend denial of assent if there is no clash.¹²⁰⁷

To comply with a House of Lords ruling from in 2005, Overseas Territory Governors now act on the advice of each Territory’s executive (rather than UK Ministers of the Crown) in certain respects.¹²⁰⁸

¹²⁰² Commons Library Insight, [Barbados becomes a republic](#), 29 November 2021.

¹²⁰³ 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.

¹²⁰⁴ [The Overseas Territories: Security, Success and Sustainability](#), Cmnd 8374, Foreign and Commonwealth Office, 28 June 2012.

¹²⁰⁵ Commons Foreign Affairs Committee, [Overseas Territories](#), HC 147-1, 6 July 2008, paras 27-28.

¹²⁰⁶ Commons Library research briefing CBP9583, [The UK Overseas Territories and their Governors](#).

¹²⁰⁷ [Bermuda same-sex marriage: Government will not block bill](#), BBC News online, 8 February 2018.

¹²⁰⁸ *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).

While each Overseas Territory has its own legal system and courts of law, the Judicial Committee of the Privy Council remains their highest court of appeal (see Section 8.2).

Table 3 Overseas Territories constitutions		
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 ¹²⁰⁹
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)
South Georgia and the South Sandwich Islands	The South Georgia and South Sandwich Islands Order 1985	Statutory (British Settlements Acts 1887 and 1945)
Sovereign Base Areas of Akrotiri and Dhekelia	The Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960	Statutory (Cyprus Act 1960)

¹²⁰⁹ [BIOT Government, Royal Prerogative & Orders in Council](#), BIOT Administration website.

Turks and Caicos Islands	The Turks and Caicos Islands Constitution Order 2011	Statutory (West Indies Act 1962)
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Source: legislation.gov.uk

Otherwise, the UK is generally responsible for the defence, security, international relations and overall “good government” of the Overseas Territories.¹²¹⁰ If the UK is considering ratification of a convention or treaty, the Overseas Territories are consulted regarding its extension to them.¹²¹¹

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.¹²¹² 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.¹²¹³ Since 2022 the Speaker of the House of Commons has held regular conferences of Overseas Territory speakers and presiding officers.¹²¹⁴

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 Mauritius.¹²¹⁵ By convention, legislation as well as a treaty is necessary to give effect to the cessation of UK territory.¹²¹⁶

Since 1967, several Overseas Territories have voted in referendums to maintain UK sovereignty: [Gibraltar](#) (1967), [Bermuda](#) (1995) and the [Falkland Islands](#) (2013).

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

¹²¹⁰ [Cabinet Manual](#), para 9.25. See [The Emergency Powers \(Overseas Territories\) Order 2017](#).

¹²¹¹ [Cabinet Manual](#), para 9.26. See also [Guidance on extension of treaties to Overseas Territories](#).

¹²¹² [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](#).

¹²¹³ [Conference of overseas territories Attorneys General](#), UK government press release, 26 September 2016.

¹²¹⁴ [Commons and Overseas Territories Speakers’ Conference 2023 Communiqué](#).

¹²¹⁵ [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.

¹²¹⁶ William Anson, *The Law and Custom of the Constitution* II, ii, pp137-42.

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.¹²¹⁷

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. This has also been called “the British family”.¹²¹⁸ [Schedule 1](#) to the Interpretation Act 1978 defines the “British Islands” as “the United Kingdom, the Channel Islands and the Isle of Man”.¹²¹⁹

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](#).¹²²⁰ In the Channel Islands the King is styled Duke of Normandy,¹²²¹ and in the Isle of Man, Lord of Mann.¹²²² Several public appointments in the Crown Dependencies are made by the King under statute and the prerogative, usually via Letters Patent.¹²²³

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”.¹²²⁴ Wikipedia has a list of [Royal charters applying to the Channel Islands](#).

¹²¹⁷ [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.

¹²¹⁸ 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”.

¹²¹⁹ As does [section 43](#) of the Interpretation Act (Northern Ireland) 1954.

¹²²⁰ 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).

¹²²¹ 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).

¹²²² 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).

¹²²³ 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](#).

¹²²⁴ Jeffrey Jowell et al, [The Barclay Cases: Beyond Kilbrandon](#), Jersey Legal Information Board, March 2018.

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](#)).¹²²⁵

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.

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.¹²²⁶ Tynwald sits as a single body to deal with financial and policy matters.

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 enactment, or it ceases to have effect. Any person may also approach Tynwald Hill on Tynwald Day to present a Petition for Redress.¹²²⁷

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:¹²²⁸

¹²²⁵ The States of Guernsey may legislate for Sark on criminal matters without the consent of the Chief Pleas.

¹²²⁶ 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).

¹²²⁷ [Tynwald Day](#), Tynwald website. There are no equivalent ceremonies in the Channel Islands.

¹²²⁸ [Information Notes on the Jersey and Guernsey Courts of Appeal](#), Courts and Tribunals Judiciary website.

- [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](#)

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.¹²²⁹

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 King ought to make an Assenting Order.¹²³⁰ 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.¹²³¹

For all Jersey legislation, Royal Assent is granted by the King in Council.¹²³² For Isle of Man legislation, this is delegated to the Lieutenant Governor for all “non-reserved” purposes.¹²³³ [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.¹²³⁴

¹²²⁹ [HC Deb 19 May 1992 Vol 208 cc93-4W \[Jersey Bailiff \(Dismissal\)\]](#). The advisory role was previously the responsibility of the Home Secretary.

¹²³⁰ [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.

¹²³¹ There is no longer an active Privy Council committee for the Isle of Man.

¹²³² [Royal Assent to Legislation and Petitions \(Bailiwick of Jersey\) Order 2022](#).

¹²³³ 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.

¹²³⁴ [Royal Assent to Legislation \(Delegation to Lieutenant-Governor\) \(Bailiwick of Guernsey\) Order 2024](#).

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.¹²³⁵

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.¹²³⁶

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”.¹²³⁷

If consent is forthcoming, then the provisions of UK primary legislation can be extended to the Crown Dependencies via a Permissive Extent Clause. This can happen either by “direct application” (expressly or by necessary implication) or via an Order in Council, which is now the usual course.¹²³⁸

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”.¹²³⁹

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.¹²⁴⁰

¹²³⁵ Certain other relations between the UK and Isle of Man are governed by the [Isle of Man Act 1979](#).

¹²³⁶ House of Commons Justice Committee, [Crown Dependencies](#), HC 56-I, 30 March 2010, p20.

¹²³⁷ Royal Commission on the Constitution 1969-1973 Volume I: Report, Cmnd 5460, October 1973, para 1362.

¹²³⁸ [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.

¹²³⁹ Commons Justice Committee, [Crown Dependencies](#), p16.

¹²⁴⁰ Commons Justice Committee, [Crown Dependencies](#), p18.

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”.¹²⁴¹

Letters of Entrustment

The Crown Dependencies are recognised internationally as “territories for which the United Kingdom is responsible”.¹²⁴² As such they cannot sign up to international agreements without something known as a Letter of Entrustment.¹²⁴³ Otherwise, when the UK is planning to ratify international conventions, treaties, protocols or agreements, then by convention it consults the Crown Dependencies.¹²⁴⁴

¹²⁴¹ For the most recent report, see Commons Justice Committee, [The constitutional relationship with the Crown Dependencies](#), HC 30, 28 March 2024.

¹²⁴² [Fact sheet on the UK’s relationship with the Crown Dependencies](#), Ministry of Justice.

¹²⁴³ [Cabinet Manual](#), para 9.24.

¹²⁴⁴ [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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