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Political and Constitutional
Reform Committee

A new Magna Carta?

Second Report of Session 2014–15

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to the report*

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Summary

Parliament's Political and Constitutional Reform Select Committee has used the first ever five-year fixed-term Parliament to review various parts of our democracy. Alongside this, working closely in a unique collaboration with King's College London, we have produced a series of papers on the theme of whether or not to have a codified constitution. We are now publishing these papers for public comment and consideration. The Select Committee is deliberately not supporting a position for or against a codified constitution, believing it is for the British people ultimately to decide that question. Instead, as we approach the 800th anniversary of Magna Carta, and an election year, we are seeking to inform the debate by briefly outlining the arguments for and against codification and presenting several possible options: a Constitutional Code, a Constitutional Consolidation Act, or a Written Constitution. Each of these options is itself open to debate and variation. We feel they are for the elector to consider, reject, accept or amend. We will consult widely and are asking you, and anyone else who is interested in the future of the United Kingdom's constitution, to send us your views by the end of the year, which can include responding to the questions below:

- Does the UK need a codified constitution?
- If so, which of the three options offers the best way forward?
- What needs to be included in/excluded from your favoured option if you have one?

Comments can be emailed to pcrc@parliament.uk or sent by post to the Political and Constitutional Reform Select Committee, House of Commons, London, SW1A 0AA. The consultation closes on 1 January 2015. We will then report on the responses from the public in time for them to be taken into account ahead of the general election.

Introduction

1. The United Kingdom is one of the very few democratic countries in the world without a codified constitution. Professor Robert Blackburn and Dr Andrew Blick of the Centre for Political and Constitutional Studies at King's College London state: "A distinction is drawn between a constitution as the rules determining political conduct, which the UK like any other country has, and a *codified* constitution, that is a single document or collection of documents within which they are contained, which the UK lacks."¹ Among other democracies, only Israel and New Zealand do not have codified constitutions.

2. The *Cabinet Manual*—the guide published in 2011 which sets out the procedures under which the Government operates—describes the United Kingdom's constitutional arrangements as follows: "The UK does not have a codified constitution. 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.'"²

3. The United Kingdom has a rich constitutional heritage. As the 800th anniversary of the agreement of Magna Carta approaches, and people celebrate a significant moment in a long constitutional history, it is also an exciting time to look forward and to discuss the United Kingdom's constitutional future. Magna Carta is widely acknowledged as the foundation of the concept of limited government, subject both to the law and to the people. Eight hundred years later, this concept is still a cornerstone of the United Kingdom's constitution.

4. We are living through a period of considerable democratic and political change. During the last two decades, under Governments of different political complexions, significant developments have taken place, including devolution in Scotland, Wales and Northern Ireland, the removal of most hereditary peers from the House of Lords, freedom of information legislation, the establishment of the Supreme Court, the introduction of fixed-term Parliaments, and the domestic legal entrenchment of human rights. Also, the United Kingdom has experienced its first coalition Government in recent times, and the traditional two-party system has a less certain future.

5. At the same time, some existing democratic arrangements have been written down in publicly available documents such as the *Ministerial Code*, the *Civil Service Code*, and the *Cabinet Manual*, and the Acts creating the devolved arrangements in most countries of the Union.

¹ Professor Robert Blackburn and Dr Andrew Blick, Centre for Political and Constitutional Studies, King's College London, A Literature Review ([CDE 01](#))

² [The Cabinet Manual](#), 2011, p 2

6. These changes, and attempts to write down existing arrangements, have, however, been piecemeal. At the beginning of the 2010 Parliament, we felt that the time was right to engage the public on the back of a comprehensive evaluation of the United Kingdom's democratic arrangements.

Research

7. We launched our inquiry into *Mapping the path to codifying—or not codifying—the UK's constitution* in September 2010. From the outset, we knew that this would be an ambitious and unusual Select Committee inquiry that would be conducted over not weeks or months, but years, and which would involve research and support from an academic partner. The result has been an innovative collaborative project with the Centre for Political and Constitutional Studies at King's College London, led by Professor Robert Blackburn, to whom we are extremely grateful. We are also grateful to the witnesses who have given us their views in oral and written evidence, which can be found on our website.

8. The work of King's College London for the Committee has been a literature review and a consideration of the existing constitution, and now an outline of the arguments for and against codification, a paper setting out the process that could be adopted in the preparation, design and implementation of a codified constitution for the United Kingdom, and three illustrative blueprints, which indicate how a codified constitution for the United Kingdom could take shape.

9. There have been a number of previous attempts to produce an illustrative codified constitution for the United Kingdom, or an outline of what a codified constitution could contain. Recent examples include O. Hood Phillips QC (1970), Lord Hailsham (1976), Frank Vibert (1990), John Macdonald QC for the Liberal Democrats (1990), Tony Benn in the *Commonwealth of Britain Bill* (1991), the Institute for Public Policy Research (1991), and Richard Gordon QC (2010).³ But what we are publishing now represents the most comprehensive attempt so far to provide different detailed models of a codified constitution for comparison and consideration.

³ Professor Robert Blackburn and Dr Andrew Blick, Centre for Political and Constitutional Studies, King' College London, A Literature Review ([CDE 01](#))

Illustrative blueprints

10. The three blueprints that Professor Blackburn has produced can be summarised as follows:

- A Constitutional Code: this would be a document sanctioned by Parliament, but without statutory authority, and which would set out the essential existing elements and principles of the constitution and the workings of government.
- A Constitutional Consolidation Act: this would be a consolidation of existing laws of a constitutional nature in statute, the common law and parliamentary practice, together with a codification of essential constitutional conventions.
- Written Constitution: this would be a document of basic law by which the United Kingdom would be governed, setting out the relationship between the state and its citizens, an amendment procedure and elements of reform.

11. There are advantages and disadvantages to the United Kingdom's currently uncoded constitution, and these arguments are explored in the papers by King's College London. We wish to be absolutely clear that we are not in this report endorsing one view or the other. Our intention is to generate a forward-looking debate, alongside the Magna Carta 800th anniversary celebrations, by placing in the public domain the results of a unique four-year research project. Like Professor Blackburn, we believe that a consideration of detailed alternative models showing how a constitution might be designed and drafted will inform and advance the debate on the desirability, or not, of codifying the constitution in one place.⁴ Our aim has been to ensure that, if and when a decision is taken to make progress on this issue, a thoroughly scrutinised and properly devised plan is already in place to achieve a successful outcome.

12. We wish also to be very clear that although the third blueprint—the Written Constitution—includes some changes to the United Kingdom's current constitutional arrangements, we are not in any way endorsing or recommending these specific changes. They are simply one example of how a written constitution could take shape and we encourage participants to rewrite parts or the whole of their favoured option, or submit a rousing, lyrical introduction or preamble to their preference.

13. The blueprints could be regarded as standalone documents, in the sense that each is an example of a particular approach to codifying the constitution, or, as Professor Blackburn states, they could be studied as “three stages or building blocks to go through in the process of working towards a written constitution of the UK—identifying the basic principles and elements of government and the constitution; establishing the detailed content and boundaries of existing constitutional law as expressed in statute, the common law,

⁴ Professor Robert Blackburn, Centre for Political and Constitutional Studies, King's College London, Introduction to the Three Illustrative Blueprints, Appendix, p 29

parliamentary practice, and convention; then preparing a modern documentary constitution of fundamental law that binds the working of the state and its relationship with its citizens.”⁵

14. Select Committees normally address their recommendations to Government, but we hope that the leaders of all political parties in the United Kingdom, politicians from local and central government, academics, think tanks, and other organisations, read the research and take part in the discussion. Above all, we hope that the public, including school and university students, seize this unique opportunity for the nation to debate the future of our democracy. The constitution, written or not, should belong to the people of the United Kingdom. The research we are publishing will enable a large number of people to access a comprehensive source of information about the form, if any, a codified constitution could take. We will also produce popular guides to the research for the lay reader and others.

15. At a time of declining membership of political parties and public disillusionment with the political establishment, it is a good moment to return to fundamentals. There are few things more fundamental than the arrangements that determine how the state operates and exercises power in a democracy, and how it interacts with the people. We want people to discuss the blueprints and to decide for themselves whether there is a need for a new Magna Carta for the 21st Century and beyond. No constitution is a panacea but it should be the framework that supports our democracy. Our intention is for the work we are publishing to prove a source of inspiration to all who are interested in how the United Kingdom is governed in the future. What should the next 800 years look like?

16. We are holding a consultation on the options we are publishing with this report. We ask anyone who is interested in the future of the United Kingdom’s constitution to send us their views on the questions below:

- Does the UK need a codified constitution?
- If so, which of the three options offers the best way forward?
- What needs to be included in/excluded from your favoured option if you have one?

Comments can be emailed to pcrc@parliament.uk or sent by post to the Political and Constitutional Reform Select Committee, House of Commons, London, SW1A 0AA. The consultation closes on 1 January 2015. We will then report on the responses from the public in time for them to be taken into account ahead of the general election.

⁵ Professor Robert Blackburn, Centre for Political and Constitutional Studies, King’s College London, Introduction to the Three Illustrative Blueprints, Appendix, p 29

Appendix

Mapping the Path towards Codifying - or Not Codifying - the UK Constitution

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PROGRAMME OF RESEARCH

Aims

This programme of research has been prepared at the formal request¹ of the House of Commons Political and Constitutional Reform Committee chaired by Graham Allen MP to assist its inquiry, and the policy debate generally, on the proposal to codify - or not - the UK constitution. The work been prepared in an impartial way, adopting a pragmatic approach to the issues involved, and does not seek to advocate either codification or non-codification. Its purpose is to inform the inquiry of the issues involved and, in the event that a government in the future might wish to implement such a proposal, it seeks to provide a starting point and set of papers to help facilitate the complex and sensitive issues of substance and process that would be involved.

Structure of the Research

The content starts (Part I) by identifying, and giving a succinct account of, the arguments for and against a written constitution, prepared in rhetorical manner.

It then (Part II) sets out a series of three illustrative blueprints, prepared in the belief that a consideration of detailed alternative models on how a codified constitution might be designed and drafted will better inform and advance the debate on the desirability or not of writing down the constitution into one documentary source. These are -

(1) Constitutional Code - a document sanctioned by Parliament but without statutory authority, setting out the essential existing elements and principles of the constitution and workings of government.

(2) Constitutional Consolidation Act - a consolidation of existing laws of a constitutional nature in statute, the common law and parliamentary practice, together with a codification of essential constitutional conventions.

(3) Written Constitution - a document of basic law by which the United Kingdom is governed, including the relationship between the state and its citizens, an amendment procedure, and elements of reform.

Each of these blueprints is self-contained in the sense that each could serve as a particular model for codifying the constitution. Taken together, however, they could be regarded as three stages or building blocks to go through in the process of working towards a written constitution of the UK.

The Written Constitution contains a limited number of substantive reforms to our system of governance, particularly in those areas where a constitutional problem has arisen in recent years. These are not individual reforms advocated by this paper as such, merely offered as potential solutions and an illustration of an alternative possibility. Producing a coherent constitutional document of this nature makes it easier to see how different parts of the political and constitutional structure relate to one another and, it is hoped, to evaluate ideas and suggestions for future progression of its component parts.

In the last section (Part III), the issues and options to be addressed in the preparation, design and implementation of a codified constitution is considered, including the most appropriate body to draft the constitution, the need for cross-party co-operation, and public engagement procedures.

Ancillary Papers

Related to this work, published separately on-line, are three ancillary papers: *A Literature Review*, being an explanation and discussion of the debate so far on codifying the UK constitution or adopting a written constitution for the UK; *The Existing Constitution*, being a study of the special characteristics of the UK constitution requiring special attention in the process of adopting a codified or written constitution; and a series of twenty-three *Case Studies on Constitution Building*, to accompany Part III of the programme of research on *The Preparation, Design and Implementation of a Codified UK Constitution*, focussing in greater depth on specific matters of process and comparative constitution-building exercises.

Author

Robert Blackburn is Professor of Constitutional Law at King's College London. He is the author of authoritative works of legal theory and practice on the constitution, including *Constitutional and Administrative Law* (Volume 20), *The Crown and Crown Proceedings* (Volume 29) and *Parliament* (Volume 78) in *Halsbury's Laws of England*, and has written or edited twelve books on political and constitutional affairs, including *The Electoral System in Britain, King and Country, Parliament: Functions, Practice and Procedure* and *Constitutional Reform*. He lectures at King's on a number of specialist courses designed by him on constitutional affairs, among them Advanced Constitutional Law (LLB), The Theory and Practice of Parliament (LLM), and The Constitutional History of Britain (MA), and since 2010 has been founding Director of the Centre for Political and Constitutional Studies.

Acknowledgements

Special thanks are due to Dr Andrew Blick, Research Fellow to the programme, now Lecturer in Politics and Contemporary History at King's, who wrote the ancillary papers on *A Literature Review* and *The Existing Constitution*, and provided assistance throughout; to Philip Povey and Dr Elin Weston who provided assistance in the preparation of the draft Constitutional Consolidation Act; and for their encouragement and support, the Joseph Rowntree Charitable Trust and the Nuffield Foundation.

Members of an advisory group to the Centre met in a series of four private seminars to consider draft material for this work, to whom I am indebted for their comments and advice. They included Professor Vernon Bogdanor, Professor Anthony Bradley, Professor Ian Cram, Dr Graham Gee, Katie Ghose, Dr Elizabeth Gibson-Morgan, Richard Gordon QC, Stephen Hockman QC, Professor Sir Francis Jacobs QC, Professor George Jones, Professor Sir Jeffrey Jowell QC, Professor Satvinder Juss, Guy Lodge, Lord Kenneth Morgan, Professor Roger Mortimore, Dr Caroline Morris, Dr Michèle Olivier, Richard Percival, Professor Lord Raymond Plant, Craig Prescott, Alexandra Runswick, Roger Smith, Lord Wilf Stevenson, Dr Elin Weston, Professor Sir Robert Worcester, and as observers David Willis and Nick Hodgson.

I have aimed to be inclusive of earlier work on this subject, where appropriate. I am grateful to Professors Vernon Bogdanor and Stefan Vogenauer for permission to reproduce in the draft Constitutional Code material drawn from the draft constitution produced during their Oxford course on *Enacting the British Constitution* in 2006; and to the Institute for Public Policy Research (IPPR) for permission to reproduce in the draft Written Constitution extensive parts of *The Constitution of the United Kingdom*, produced by their commission on the constitution in 1991, of which I was a member.

Robert Blackburn
King's College London
June 2014

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Part I

THE ARGUMENTS FOR AND AGAINST A WRITTEN CONSTITUTION FOR THE UNITED KINGDOM

Preface

This Part sets out the advantages and disadvantages of a written constitution for the UK, expressed in plain language and in rhetorical fashion.¹ Many of the arguments overlap with one another and most are inter-related. Some represent a different way of expressing a similar point of substance to another. So too, some consequences of a written constitution are interpreted differently by proponents on each side of the debate in support of their case. No conclusions are drawn in this paper, leaving it to the reader to decide their own point of view.

I. The case for a written constitution

Stated generally

The case for a written constitution is that it would enable everyone to know what the rules and institutions were that governed and directed ministers, civil servants and parliamentarians in performing their public duties. The sprawling mass of common law, Acts of Parliament, and European treaty obligations, surrounded by a number of important but sometimes uncertain unwritten conventions, is impenetrable to most people, and needs to be replaced by a single document of basic law dictating the working and operation of government in the United Kingdom easily accessible for all. Furthermore, it has become too easy for governments to implement political and constitutional reforms to suit their own political convenience, and entrenched procedures to ensure popular and parliamentary consent are required that necessitate a written constitution. The present 'unwritten constitution' is an anachronism riddled with references to our ancient past, unsuited to the social and political democracy of the 21st century and future aspirations of its people. It fails to give primacy to the sovereignty of the people and discourages popular participation in the political process. A written constitution would circumscribe the boundaries of the British state and its relationship with Europe and the world. It would become a symbol and expression of national identity today and a source of national pride.

¹ For further reading on the debate about a written constitution, see the ancillary papers, Andrew Blick, Literature Review, with bibliography and commentary (hereafter 'Literature Review'); and Andrew Blick, The Existing Constitution, on the elements and special characteristics of the United Kingdom constitution (hereafter 'The Existing Constitution').

The particular arguments

1 The United Kingdom does not have a constitution at all in the sense of a document setting down the rules and institutions for governing the country. The so-called 'unwritten constitution' exists only in the abstract. Matters of such fundamental importance should be codified into a single documentary constitution for all to see.

2 Many basic rules about British government do not at present exist in any legal form at all, but rely instead on unwritten understandings or traditions, most of which only the political elite understands and are inaccessible or unintelligible to ordinary people. Most of the rules governing the office of Prime Minister, for example, together with the powers and method of appointment of the post-holder, is nowhere committed into legal form, but rely instead on unwritten conventions of monarchy and its ancient royal prerogatives.

3 This abstract, mysterious constitution may work after a fashion, and fitted the deferential and class-orientated structure of society in earlier times, but in today's more equal society, and for the health of its democratic involvement, the constitution should be accessible and intelligible to all, not just the politicians who are running the country.

4 Furthermore, constitutional history is no longer taught in any depth in schools today, unlike in the pre-1945 era when it formed an essential part of civics and history classes at school. This means that the population is generally less aware of the landmarks and origins of customary government underpinning the unwritten conventions of the political system, making it all the more important that the constitution is written down in a single document.

5 Even for parliamentarians and experts some constitutional rules operating as unwritten conventions remain unclear or ambiguous, including some of serious national importance. For example, there is a debate over the existence and scope of any constitutional rule that parliamentary approval is necessary before the government enters into armed conflict abroad or starts arming opposition groups in foreign countries. On such matters, there should be clarity which a codified written constitution would provide.

6 The rules about our core institutions of government, especially the executive (ministers and civil servants), the legislature (the two Houses of Parliament) and judiciary, are of a fundamental and different character to other kinds of law. They should be clearly distinguished from ordinary law and codified in a special document, becoming the United Kingdom's 'written' constitution.

7 The process of making political and constitutional reforms in recent years has become seriously flawed, often with inadequate public and parliamentary consultation on important measures affecting the UK's political system. Governing parties can too easily push measures onto the statute book to change the country's constitutional rules simply to benefit themselves. An entrenched written

constitution would redress this problem, setting down a minimum set of procedures that govern major constitutional changes.

8 In a democracy the people, not Parliament, are sovereign. The idea of 'parliamentary sovereignty' emanates to a large extent from the seventeenth century, signifying the supremacy of an Act of Parliament over the Crown's prerogative after the Civil War and Glorious Revolution of 1688. It is an untenable doctrine today that there are no limitations at all on what Parliament can legislate about, however repugnant, totalitarian or unpopular. In practice, parliamentary sovereignty is wielded by the government of the day and not Parliament as such. Parliamentary sovereignty is an anachronism in the democratic era, and needs replacing by a written constitution that expresses the sovereignty of the people and circumscribes the powers and duties of members of Parliament in both Houses.

9 The process of establishing a codified constitution would give the people a role for the first time in determining the central principles of the constitution of the UK on which they have never been fully consulted.

10 Currently local government, particularly in England, is subject to constant interference in its legal responsibilities and funding by central government. Its lack of a constitutionally delineated sphere of fiscal and policy autonomy reduces the influence people have on issues relevant to their everyday personal lives, and serves as a disincentive to popular engagement in their local communities. A written constitution would entrench the functions and powers of local government, enhancing their local independence, and end the continuous process of centralisation that has occurred in recent decades.

11 A written constitution would make the different regions of the country more fully integrated within the United Kingdom. The complex asymmetrical structure of Scottish, Welsh, and Northern Ireland government in the United Kingdom, with each at present having different rules and institutions in various statutes and with no regional tier of government for England, needs rationalisation and the coherence that only a written constitution can provide, setting down the underlying principles and processes governing the different parts of the Union.

12 Public trust in ministers, parliamentarians and civil servants has been in a state of decline, if not crisis, in recent times. To help buttress public confidence in the political system, a clear structure of controls and safeguards needs to be codified into a written constitution that ensures their integrity and standards.

13 A written constitution would not mean losing Britain's sense of history. Any historic institutions and ceremonies of past centuries that remain valuable for today, including the monarchy, can simply be codified into a written constitution but with clarity over their modern roles, duties and functions.

14 Opinion polls show clear popular support for a written constitution, especially when asked about the desirability of setting down clear legal rules within which government ministers and civil servants are forced to act.

15 A written constitution would become the most prominent national document in the country, with great symbolic as well as legal importance. It would have a beneficial educative effect in society, for young persons at school and the country in general, on how the system of government should work and people's rights and responsibilities.

16 The present constitution as it has evolved in recent times has become one of 'elective dictatorship', lacking separation in powers between executive, legislature and judiciary, and a system of checks and balances on ministers in office. Under the unwritten constitution, the policies and actions of the prime minister and Cabinet dominate the whole legal and political system through its party majority in the House of Commons, a weak House of Lords, a neutral Head of State (the Queen), and the absence of a constitutional court.

17 There is a growing dissatisfaction among parliamentarians with important elements of our constitutional law, such as the arbitrary nature of the Crown prerogative powers (for example, in changing or restructuring government departments, or entering into armed conflict abroad), and a lack of clarity around the working of certain areas of government (such as the transfer of power following an inconclusive election result). A written constitution would address these concerns, codifying the prerogative powers and making them subject to parliamentary or other controls, and replacing grey areas of constitutional conduct by clear legal provisions.

18 Piecemeal codification of disparate parts of the political and constitutional system has been taking place in recent years, but in an informal and disconnected way. This includes circulars issued by government (such as the Ministerial Code, Osmotherly Rules, and the Cabinet Manual), 'soft' law measures (such as the Code of Conduct for Members of Parliament, and the Code of Conduct for Members of the House of Lords, issued by each House of Parliament), and in parliamentary statutes such as the Human Rights Act 1998 (citizenship rights), Constitutional Reform and Governance Act 2010 (creating a statutory basis for the civil service and for the parliamentary scrutiny and approval of treaties) and Fixed-term Parliaments Act 2011 (codifying the law on general election timing). This process towards codifying government needs to be joined up and completed in one comprehensive and coherent document forming a written constitution.

19 Though not essential or necessary to the enactment of a written constitution, its preparation would provide the opportunity, if wished, for public deliberation on a number of selected individual reform proposals, such as replacing the Human Rights Act with a new Bill of Rights, strengthening the House of Lords, creating a new office of Prime Minister, calibrating the relationship between local and central government, and making aspects of the electoral system more representative. A written constitution would also be an opportunity to settle the future of the monarchy, both its permanence and place in a modern democracy, and codify the often contradictory and out of date laws and conventions that circumscribe how it works.

20 Achieving cross-party and wide public agreement on many core principles to go into a codified constitution would be easier than is sometimes imagined. Few would dispute, for example, the need for regular meetings of Parliament, for governments to command the confidence of the House of Commons, for judicial independence, and for free and fair elections.

21 A written constitution would be a confident expression of the United Kingdom's national identity, both at home and internationally. Such a document would be a proud assertion of British-ness and the institutions, values and principles the country espouses. It would more effectively delineate the legal and political boundaries of the British state in its international relationships, especially those with the European Union, but also with the United Kingdom's Overseas Territories, the Commonwealth, and the rest of the world. Every other major democratic country in the world, except two, has a written constitution, serving as important symbols of national unity and pride. It is ironic that Britain was in the vanguard of major constitutional documentation in the western world, such as Magna Carta 1215 and the Bill of Rights 1689, but has failed to produce one for the democratic era. There are no good reasons or inherent difficulties about establishing a written constitution for the United Kingdom, codifying the law and workings of its system of government and its relationship with its people.

II. The case against a written constitution

Stated generally

The case against a written constitution is that it is unnecessary, undesirable and un-British. The fact that the UK system of government has never been reduced to a single document is an indication of the success of the Westminster system of parliamentary democracy and the stability it has brought to the country. This is in contrast to most other countries whose written constitutions were the product of revolution or independence. The unwritten nature of the constitution is something distinctively British, it reminds us of a great history, and is a source of national pride. Contrary to claims that it is out of date, it is evolutionary and flexible in nature, more easily enabling practical problems to be resolved as they arise and individual reforms made, than would be the case under an entrenched constitutional document. While some are concerned about the supposed existence of an "elective dictatorship" and inadequate checks and balances in the political system, there is in fact a wide range of considerable pressures exerted upon ministers seeking to make controversial changes. A written constitution would create more litigation in the courts, and politicise the judiciary, requiring them to pass judgement on the constitutionality of government legislation, when the final word on legal matters should lie with elected politicians in Parliament, not unelected judges. There are so many practical problems inherent in preparing and enacting a written constitution, there is little point in considering the matter. As a public policy proposal it lacks of any depth of genuine popular support and, especially given the massive amount of time such a reform would entail, it is a very low priority even for those who support the idea. An attempt to introduce one would be a distraction and might well have a destabilising effect on the country.

The particular arguments

1 The British system of government and its unwritten constitution works well in its present form and 'if it ain't broke, don't fix it'. It is impossible to codify the constitution without changing it, and change is not wanted.

2 Written constitutions around the world have almost always been initiated as a result of either a revolution or other domestic catastrophe, or a cessation or grant independence from a colonial power or larger political union, and none of these circumstances exist in the United Kingdom today.

3 The United Kingdom has an evolutionary system of government that adapts smoothly to changing social and political conditions, whereas a written constitution entrenching its institutions and rules would be more rigid and difficult to change with a danger that it might fossilise and become out of date.

4 The unwritten constitution allows a democratic Parliament to be the supreme determinant of law, rather than an unelected judiciary. If the written constitution carried a higher status and priority in law, as written constitutions

normally do, then the United Kingdom's Supreme Court would be able to review the constitutionality of particular sections in Acts of Parliament, giving judges rather than elected politicians the final say on what is and what is not the law. If a Bill of Rights were to be included in a constitution of this nature, it would enable the Supreme Court to creatively interpret and apply its human rights articles in cases brought before them in a manner that effectively changes or creates new law, rather than leaving this to Parliament.

5 A written constitution would increase politically motivated litigation in the courts. It would expand the scope of judicial review actions against government ministers and departments; it would allow political opponents of the government to challenge its legislation using the courts; and it would cause uncertainty about the legality of controversial provisions in Acts of Parliament.

6 A written constitution would politicise the judiciary, requiring the courts (and ultimately the Supreme Court) to form judgments on questions of a political nature that should more properly be dealt with by politicians through the normal parliamentary process.

7 A written constitution would detract from the Crown serving as the United Kingdom's symbol of state ('Her Majesty's' government and loyal opposition, the 'Royal' Courts of Justice, the national anthem as 'God Save the Queen', etc.) and thereby diminish the significance of the monarchy that is the most popular of Britain's political institutions both at home and abroad.

8 Where greater clarity over the United Kingdom's political rules is required, an ad hoc process of codification has already been taking place, and can continue to do so. Thus there is a Ministerial Code dealing with responsibilities and procedures for ministers supervised by the Prime Minister and Cabinet Secretary; there is a Civil Service Code regulating ethics for officials supervised by the Civil Service Commission; and there is a judicially enforced code of civil rights and freedoms in the Human Rights Act. This approach is preferable to a comprehensive scheme of codification in a written constitution, because it is an approach that fits with the United Kingdom's evolutionary nature, it allows for each individual issue to be addressed and considered fully on its own merits, and it allows for the creation of particular enforcement mechanisms best suited to the particular constitutional rule or rules being addressed.

9 If advocates of a written constitution seek to argue that stronger judicial controls over government are needed, it is a fallacy that that insufficient judicial controls do not already exist. Judicial review and the power of the courts to invalidate administrative actions and provisions in parliamentary enactments has substantially increased in recent years, especially where European Union Law is concerned, where individual rights recognised by the Human Rights Act 1998 are concerned, or where there are limitations on central government legislation arising out of the Scottish, Welsh, and Northern Ireland devolution settlements.

10 A written constitution would curb the ability of elected representatives and their officials to act quickly and flexibly to meet citizens' needs. When dealing with

such matters elected representatives and their officials would find their discretion curbed even more tightly than before because of the new raft of principles and procedures needed to be complied with if judicial review applications to the courts seeking to quash their decisions were to be avoided ('the judge over your shoulder', as this has been termed).

11 If advocates of a written constitution maintain that there are insufficient institutional checks and balances on the actions, decisions and policies of the executive (an 'elective dictatorship'), this is a simplistic analysis and the reality is very different, there being very considerable pressures on ministers making the implementation of controversial new measures or policies very difficult. These pressures come from the Opposition in the House of Commons, intra-party dissent from the government's own backbench Members in the House of Commons, the scrutiny procedures and cross-examination of the departmental select committees, the ability of the House of Lords to postpone and hold up legislation of which is disapproves, and the need for co-operation on certain matters from European Union bodies and Scottish, Welsh or Northern Ireland regional governments, as well as the glare of a critical mass media and the need to court public opinion to avoid the threat of being voted out of office at the next general election.

12 If advocates of a written constitution propose to codify the status quo, this will need to include some elementary guiding principles of the existing constitution, such as the Rule of Law, Sovereignty, and Judicial Independence, which are by their very nature broad and imprecise, open to varying interpretations in different contexts over a period of time. To include such declarations would be meaningless, except in a purely symbolic sense, as they are essentially non-legal and non-judicial in character, but to omit them would make the constitution incoherent and incomplete. In other words, a written constitution would add no benefit, and if anything, detract from the widely recognised underlying principles of the unwritten constitution.

13 A written constitution would most likely enshrine the doctrine of separation of powers, which in its strict form is alien to the essence of the UK constitution. The essence of the British constitution has been not separation of powers but a mixing and sharing of powers that has served the country well in terms of ministerial and administrative responsibility and accountability to Parliament and the electorate. Trying to impose separation of powers onto the British system of government would be an affront to the British constitutional tradition.

14 If a watered-down form of written constitution were to be proposed, codifying the status quo and making it either non-legal in effect or not enforceable by the judiciary, this would be less objectionable or contrary to the principle of parliamentary sovereignty and other fundamentals of the existing constitution, but would be a futile exercise for the very reason that it lacked proper legal sanction and remedies to deal with violations.

15 Any persons or lobby groups who support a written constitution because they regard it as a device for implementing a wide-ranging or 'joined-up' package

of reforms (such as a United Kingdom Bill of Rights, an elected House of Lords, and the need for parliamentary approval to all prerogative executive powers), are misguided because each particular reform is better formulated, debated and scrutinised on its own merits, and would be dealt with less thoroughly than if just one item contained within a package of changes.

16 There is in reality no popular demand for a written constitution. Though opinion polls might appear to show majority backing for it when asked in public attitude surveys, there is minimal depth of feeling or support behind it, as well as little understanding of what it would entail. For the overwhelming majority of people, even among those who like the idea of a written constitution, it is a very low priority for government action in comparison to other matters.

17 The preparation of a written constitution would involve a huge and disproportionate amount of time and effort - in preparing the proposal and its various options, in carrying out consultation exercises, in holding debates in Parliament, and in arranging (most likely) a referendum. To attempt to foist a written constitution on the UK would be a diversion of scarce time and resources away from the most relevant social and economic problems facing this country. There are far more pressing public policy issues for the government and Parliament to address, such as economic recovery and improving the quality of public services.

18 If enacted, a written constitution containing any substantive reforms (as is almost certain) would cause disruption to the normal workings of government, and a series of direct and consequential changes in the revised procedures across all branches of state. If given any special status in law, the roles of elected representatives and their officials would be diminished in favour of lawyers with their mechanical rules and requirements that are inappropriate for political and administrative decision-making which requires more organic processes.

19 To initiate the process towards a written constitution would be to invite division and controversy at a time when the government should be seeking national unity. It would stir up conflicting emotions and prejudices about the future of the monarchy, the European Union, the House of Lords, the voting system, and human rights. The public, who do not give high priority to this venture, would be alienated from a government who prioritised such a policy over their main concerns.

20 Any study of written constitutions around the world shows that they only come into existence after a successful invasion, after a revolution, or some appalling failure in the polity and breakdown in the way government and politics were operating. The current malaise in the UK is nowhere near any of these catastrophic moments, and does not require a fresh start and a radical new way of conducting government and politics.

21 In the absence of any national crisis or catalyst making a written constitution necessary, it is idle to pretend that the main political parties could ever agree on the precise contents of a written constitution, even if all were to

support the principle and desirability of codifying the constitution. Not only are the parties by their nature adversarial in outlook, constantly wanting to court popularity in media, scoring points over the other or embarrassing them, but there are sharp differences in ideological outlook (Europe, social rights, etc.) that would prove stumbling blocks to completion of the work, particularly if any substantive changes (a Bill of Rights, House of Lords reform, etc.) were proposed at the same time. There is therefore little point in considering the matter.

Part II

Three Illustrative Blueprints

Introduction

1 The series of three illustrative blueprints, of which this is the first (Constitutional Code), has been prepared in the belief that a consideration of detailed alternative models on how a codified constitution might be designed and drafted will better inform and advance the debate on the desirability - or not - of writing down the constitution into one documentary source.

2 The characteristics of the three blueprints or models of codified constitution, stated briefly, are -

(a) Constitutional Code - a document sanctioned by Parliament but without statutory authority, setting out the essential existing elements and principles of the constitution and workings of government.

(b) Constitutional Consolidation Act - a consolidation of existing laws of a constitutional nature in statute, the common law and parliamentary practice, together with a codification of essential constitutional conventions.

(c) Written Constitution - a document of basic law by which the United Kingdom is governed, including the relationship between the state and its citizens, an amendment procedure, and elements of reform.

3 Each of the blueprints is self-contained in the sense that each could serve as a particular model for codifying the constitution. Taken together, however, they could be regarded as three stages or building blocks to go through in the process of working towards a written constitution of the UK - identifying the basic principles and elements of government and the constitution; establishing the detailed contents and boundaries of existing constitutional law as expressed in statute, the common law, parliamentary practice, and convention; then preparing a modern documentary constitution of fundamental law that binds the working of the state and its relationship with its citizens.

1 CONSTITUTIONAL CODE

An illustrative blueprint (first of three)

A document sanctioned by Parliament but without statutory authority, setting out the essential existing elements and principles of the constitution and workings of government.

The United Kingdom, Nationality, and Citizenship

1 The United Kingdom consists of the regions of England, Scotland, Wales and Northern Ireland. In no circumstances shall any of the four regions cease to be a part of the United Kingdom without the consent of a majority of registered voters in that region voting in a poll.

2 Nationality is possessed by (a) United Kingdom citizens, except for those from the Channel Islands and the Isle of Man; (b) United Kingdom citizens with the right of abode in the country; and (c) citizens of the United Kingdom's Overseas Territories.

3 Citizenship of the United Kingdom is acquired by birth, adoption, descent, registration or naturalisation, or is conferred by statute.

4 A Minister may by order deprive a person of their citizenship acquired by registration or naturalisation on the grounds that it was obtained by fraud, false representation or concealment of any material fact; but no such person may be deprived of their citizenship unless the Minister is satisfied that it is not conducive to the public good that that person should continue to be a citizen of the United Kingdom.

The Crown and Head of State

5 The United Kingdom is a parliamentary democracy, with an hereditary constitutional Monarchy serving as its Head of State, who is Queen Elizabeth II.

6 The Monarch is that person who is the descendant of Sophia Electress of Hanover next in line to the throne as provided and regulated by the Act of Settlement 1700, extended to Scotland in 1707 and Northern Ireland in 1801 by Acts of Union, amended by the Succession to the Crown Act 2013. Any alteration in succession to the throne requires the consent of the Parliaments of the Commonwealth realms as well as the Parliament of the United Kingdom.

7 The Monarch as Head of State is the ceremonial head of the executive government, the fount of justice, the commander-in-chief of the armed forces, and the Supreme Governor of the Church of England.

8 The Monarch as Head of State presides at meetings of the Privy Council whose members, being citizens of the United Kingdom, other Commonwealth

country, or the Republic of Ireland, are appointed by the monarch on ministerial advice. Ministers are responsible to Parliament for decisions and orders made by the Privy Council.

9 The public acts of the Queen are performed upon the advice of ministers or according to established convention. The Queen assents to legislation unless advised to the contrary by ministers.

10 The acts of the Head of State are not reviewable by the courts. As Monarch, the Queen is immune from suit and legal process in any civil cause in respect of acts and omissions in his or her private capacity; and is immune from criminal proceedings in respect of acts and omissions in his or her private or official capacity.

11 The Queen, the Royal Household and other members of the Royal Family, are funded through a Sovereign Grant paid by the Treasury.

12 All persons in the service of the Crown are required to swear or affirm an Oath of Allegiance to the Queen and her heirs and successors according to law.

13 Statutory provision is made for the appointment of a Regent in case of the minority, incapacity or non-availability of the Head of State.

Parliamentary Supremacy

14 The supreme legislative power in the state is vested in the Parliament of the United Kingdom, comprising the Queen, the House of Lords, and the House of Commons.

The House of Commons

15 Members of the House of Commons are directly elected in free, equal and secret elections by universal suffrage. The constituencies within which Members are elected are regularly reviewed by boundary commissions chaired by the Speaker of the House of Commons. The revision of constituency boundaries requires parliamentary approval before it can be given statutory effect.

16 The universal franchise extends to all adult citizens of the United Kingdom, the Commonwealth, and the Republic of Ireland, not being persons detained in a penal institution, or under sentence of disqualification for a corrupt or illegal practice, and being persons registered in a parliamentary constituency on the day of the poll. Peers entitled to sit in the House of Lords shall not be entitled to vote.

17 Details of the electoral process and its administration are set out in Acts of Parliament.

18 Any person is eligible to become a Member of the House of Commons, unless they are legally disqualified. Persons disqualified include (a) aliens; (b) those under the qualifying age; (c) bankrupts; (d) persons convicted of treason; (e)

persons currently detained in a penal institution for more than one year; (f) persons convicted of illegal election practices; (g) holders of certain judicial offices; (h) civil servants; (i) members of the regular armed forces; (j) members of any police force maintained by a police authority; (k) ambassadors and High Commissioners; (l) boundary commissioners, electoral commissioners and electoral registration officers; (m) members of a foreign legislature outside the Commonwealth or the Republic of Ireland; (n) holders of other public offices defined by statute, and (o) members of the House of Lords.

19 An Electoral Commission of the UK is appointed by the Head of State on the advice of the Prime Minister, with the agreement of the Speaker, and following consultations with the leaders of all parties represented in the House of Commons. The Commission is responsible for the supervision of elections and referendums, the registration of political parties, and the determination of those who are permitted to participate in a referendum or make donations to political parties.

20 Political parties wishing to nominate candidates for elections are required to register with the Electoral Commission and to maintain accounts in accordance with regulations laid down by the commission.

21 The chief officer of the House of Commons is the Speaker, who is elected by the House of Commons at the beginning of each new Parliament or on the death or retirement of the previous office-holder. The Speaker does not belong to any political party and votes only in the case of a tie when the Speaker votes for further discussion where that is possible. The Speaker represents and presides over the House, enforces the rules which govern its conduct, and protects the rights and privileges of the house. The Speaker has full authority to enforce the rules of the house, and powers to regulate the conduct of debate. In cases of grave and continuous disorder, the Speaker may adjourn or suspend the sitting. The Speaker may order a Member of Parliament who breaks the rules of the House to leave the Chamber, initiate a short suspension or put the matter to a vote.

22 Members of the House of Commons are remunerated from public funds. The level of their salary and scheme of allowances are independently determined by the Independent Parliamentary Standards Authority.

23 Members of the House of Commons are required to observe a Code of Conduct prepared by the House and to register pecuniary interests and other benefits in a Register of Interests that is supervised by the Parliamentary Commissioner for Standards. The costs, expenses, pay and pensions of Members and their staff is overseen by the Independent Parliamentary Standards Authority.

24 Political parties represented in the House of Commons but which do not support the Government constitute the opposition. The formal position of Leader of the Opposition is that person who is the leader of the largest of these parties, whom together with holders of certain other parliamentary posts receives a salary from public funds.

General Elections

25 The Queen as Head of State summons Parliament to meet after each general election by Royal Proclamation.

26 A general election is held the first Thursday in May in the fifth calendar year following that in which the polling day for the previous parliamentary election fell under the terms of the Fixed-term Parliaments Act 2011.

27 An early general election may be held if either (a) a resolution “that there shall be an early Parliamentary general election” is passed in the House of Commons by two-thirds of the membership of the House (including vacant seats), or (b) the Government is defeated in the House of Commons on a motion stating that “this House has no confidence in Her Majesty’s Government” and after a period of fourteen days no new Government has been formed and confirmed by a confidence motion in the Commons stating that “this House has confidence in Her Majesty’s Government”.

House of Lords Membership

28 The House of Lords comprises the following categories:

(a) Life peers under the Life Peerages Act, 1958. Life peers in this category are appointed by the Head of State on the advice of the Prime Minister. An independent appointments committee recommends non-party life peerages to the Prime Minister. The Prime Minister may also recommend the appointment of non-party peers. Party peerages are recommended to the Prime Minister by party leaders, and vetted by the appointments commission to ensure propriety.

(b) Ninety-two hereditary peers, as provided by the House of Lords Act 1999.

(c) Lords Spiritual, who comprise the archbishops of Canterbury and York and the Bishops of London, Durham and Winchester, together with 21 other Diocesan Bishops by seniority of appointment. Lords Spiritual remain members solely during the tenure of their sees.

29 The chief officer of the House of Lords is the Lord Speaker, who is elected by the members of the House of Lords every five years or on the death, retirement or resignation of the previous Lord Speaker. The Lord Speaker does not belong to any political party, and votes only in the case of a tie when the Lord Speaker votes for further discussion where that is possible. No Lord Speaker serves for more than two five-year terms. The Lord Speaker presides over the House, offers advice on procedure outside the Chamber, acts as an ambassador for the work of the Lords at home and abroad, and participates in certain ceremonial duties, including the State Opening of Parliament. The Lord Speaker has no power to act in the House nor to discipline members without the consent of the House.

30 Members of the House of Lords are required to observe the principles in the Code of Conduct. They are required to register various pecuniary interests and other benefits in a Register of Interests.

Powers of the Two Houses

31 The House of Commons alone may propose alterations in financial charges on public funds, taxes or other charges.

32 A public bill, certified by the Speaker of the House of Commons as a Money Bill, that has been passed by the House of Commons, but has not been passed by the House of Lords without amendment within one month of the House of Lords having received it, is, nevertheless, unless the House of Commons directs otherwise, presented to the Monarch for Royal Assent.

33 Any other public bill which originates and has been passed by the House of Commons in two successive sessions and which, having been sent to the House of Lords at least one month before the end of the session, has been rejected by the House of Lords in each of these sessions, is, on its rejection for the second time by the House of Lords, unless the House of Commons directs otherwise, nevertheless presented to the Monarch for Royal Assent; provided that at least one year has elapsed between the second reading of the bill in the House of Commons in the first session and its passing the Commons in the second session.

34 The provisions of paragraph 33 do not apply to a bill to extend the maximum duration of parliament beyond five years, nor to any statutory instrument, for which the consent of both Houses is needed.

Privileges of Parliament

35 The freedom of speech, and debates or proceedings in parliament are not impeached or questioned outside Parliament.

36 The House of Commons has the power to expel a Member whom it deems to be unfit to continue in that capacity, and also to adjudicate upon cases of disqualification of members not covered by an act of parliament.

37 Each House has the right to control its own proceedings and to regulate its internal affairs and whatever takes place within its walls.

38 Each House has the inherent power to punish for breach of parliamentary privilege.

European Union Law

39 Legislative measures of the European Union that are directly effective under the European Communities Act 1972 have legal effect in the United Kingdom.

40 Obligations of the United Kingdom arising under European Union law may be implemented by Order in Council or by statutory instrument (subject to schedule 2 of the European Communities Act 1972).

41 United Kingdom agreement to changes to the Treaty on European Union and the Treaty on the Functioning of the European Union, as well as other defined transfers of power or competence from United Kingdom to European Union level, is subject to the consent of the United Kingdom population through a majority of those voting in a referendum (in accordance with the European Union Act 2011).

Executive Power

42 The executive power of the United Kingdom is vested in the Crown, but all executive acts are performed by Ministers in the Queen's name.

43 The executive power includes the inherent common law authority to -

(i) appoint and remove officers of the armed forces, command the armed forces, recognise foreign jurisdictions, exchange envoys, make appointments not otherwise provided for, grant charters, and grant honours and grant mercy;

(ii) declare war or commit the armed forces to enter into armed conflict abroad, provided that Government must, before such action (or as soon as practicable thereafter), put forward a motion for debate and vote in the House of Commons, and comply with its decision, subject to exceptional circumstances of necessity requiring public secrecy or extreme urgency; and

(iii) to sign and ratify treaties, subject to parliamentary approval procedures in accordance with the Constitutional Reform and Governance Act 2010.

44 All executive powers are exercised subject to the legislation, if any, and principles of the common law governing the circumstance and mode of exercise of such powers.

Prime Minister, Cabinet and Ministers

45 The Government consists of the Prime Minister, the Cabinet and other Ministers. The maximum number of holders of ministerial office entitled to sit and vote in the House of Commons at any one time is set at ninety-five by the House of Commons Disqualification Act 1975.

46 The Queen appoints as Prime Minister the leader of the party with an overall majority in the House of Commons. Where following a General Election there is no overall majority for one party, the incumbent Prime Minister has the first opportunity to remain in office and form an administration, but if he is unable to do so (or is defeated on the Address at the meeting of Parliament) then the leader of the largest opposition party is appointed Prime Minister.

47 All Ministers besides the Prime Minister are appointed and removed, and have their individual responsibilities determined, by the Queen acting upon the Prime Minister's advice.

48 All Ministers must be, or within three months of their appointment become, members of the House of Lords or House of Commons.

49 The Prime Minister and all ministers of the Treasury must be or become members of the House of Commons.

50 The Prime Minister, the heads of the executive departments and such other ministers as the Prime Minister determines, comprise a Cabinet, which is summoned and chaired by the Prime Minister.

51 The Cabinet is collectively responsible for its decisions. It provides a forum in which all those Cabinet members who wish to do so can have a say on important government policy decisions.

52 All members of the Cabinet, and all government ministers, are subsequently bound by decisions that are made, and required to maintain a united public front. If unable publicly to defend or refrain from criticising Cabinet decisions, ministers are required to resign.

53 The decisions of Cabinet committees are binding in the same way as if they had were made by full Cabinet. Disputes within Cabinet Committees may be referred to the full Cabinet for resolution.

54 In special circumstances, there may be an agreement confirmed by the Prime Minister to opt out of the discipline of collective responsibility over particular issues.

Ministerial Conduct

55 The ethical standards required of ministers are laid out in a Ministerial Code formulated and published by the Prime Minister and Cabinet Office.

56 The Prime Minister, with the advice of the Cabinet Secretary, is responsible for enforcing the Ministerial Code, and is also bound by it. The Prime Minister may refer particular allegations of violations of the Code to the Independent Adviser on Ministers' Interests.

Relations between Government and Parliament

57 Ministers are always entitled to be heard in the House of Parliament of which they are members. A Minister who has resigned or been removed is entitled to make an address to the House of which he or she is a member.

58 The Government must present receipts of revenue and estimates of expenditure to the House of Commons at least once in every year.

59 Every Minister who is a member of the House of Commons is personally accountable to the House for all matters within his or her portfolio. Ministers may not deceive or knowingly mislead Parliament or the public.

The Civil Service

60 A civil servant is a servant of the Crown employed in a civil capacity who is paid wholly and directly from monies voted by Parliament.

61 Civil servants are recruited on the basis of merit and promoted on the basis of ability. They are politically impartial at all times.

62 There is a Civil Service Commission, appointed in accordance with the Constitutional Reform and Governance Act 2010, and independent of ministers, to ensure that selection to the civil service is based on the principle of fair and open competition, and to hear appeals under the civil service code.

63 The Civil Service supports Ministers individually and collectively in formulating policy and in administering public services for which the Government is responsible. Civil servants give honest and impartial advice to Ministers and make all information relevant to a decision available to Ministers. They may not deceive or knowingly mislead Ministers, Parliament or the public. They must conduct themselves in such a way as to deserve and retain the confidence of Ministers and to be able to establish the same relationship with those whom they may be required to serve in some future administration.

64 The ethical standards required of civil servants are provided for in a Civil Service Code as required by the Constitutional Reform and Governance Act 2010.

65 Ministers uphold the political impartiality of the Civil Service. They may not ask civil servants to act in any way that would conflict with the Civil Service Code.

66 The Prime Minister holds the portfolio of Minister of the Civil Service and has responsibility for the management of the Civil Service.

The Police

67 There is a directly elected Police and Crime Commissioner for designated regional areas in England and Wales, except Greater London where there is a Major's Office for Policing and Crime; there is a Scottish Police Authority in Scotland; and there is a Northern Ireland Policing Board in Northern Ireland. It is the duty of the Police and Crime Commissioners and police authorities to secure the maintenance of an efficient and effective police force for its area.

The Armed Forces

68 The armed forces of the UK comprise the Royal Navy, the Army, and the Royal Air Force. Officers in the armed forces are commissioned in the name of the

Crown, and may be dismissed at the pleasure of the Crown, but they may not resign their commission without leave. Under the Bill of Rights 1689, there shall be no standing army in time of peace without the consent of Parliament.

The Intelligence and Security Agencies

69 The intelligence and security agencies are required to protect national security from, in particular, espionage, sabotage and terrorism. Their powers are laid down by statute and they are accountable to responsible Ministers. A statutory Intelligence and Security Committee of Parliament is responsible for the oversight of the policies, expenditure, administration and operations of the agencies.

Public Inquiries

70 An Act of Parliament provides for the establishment and conduct of public inquiries into matters of public concern.

Emergency Powers

71 In circumstances of an emergency threatening serious damage to human welfare, the environment or security, the Head of State acting on the advice of the Prime Minister may proclaim that a state of emergency exists and issue secondary legislation to address the emergency with parliamentary approval under the Civil Contingencies Act 2004. Emergency regulations must be proportionate to the circumstances they address.

Devolution

72 There is a Scottish Parliament and devolved structure of government in Scotland provided for by the Scotland Act 1998, and Northern Ireland Assembly and devolved structure of government in Northern Ireland provided for by the Northern Ireland Act 1998, and a National Assembly for Wales and devolved structure of government in Wales provided for by the Government of Wales Act 2006.

73 The establishment of a directly elected, territorially based body enjoying legislative or executive powers devolved from Parliament requires a referendum of electors in the area concerned.

Local Government

74 Acts of Parliament provide for directly elected local authorities covering every area of the United Kingdom. Local authorities have powers to promote the economic, social and environmental well-being of the areas that they represent, and may raise taxes under the authority of national or regional legislation.

75 In England and Wales, local authorities have a general power of competence to do anything that individuals generally may do (under the Localism Act 2011).

76 The boundaries of a local government area are subject to review by the regional Local Government Boundary Commissions.

77 The executive of a local authority is either a cabinet or a directly elected Mayor. Before the office of directly elected Mayor is instituted in a local government, a referendum is held in that local government area to ascertain the view of its electorate, and five per cent of the registered electorate in that area can require by petition that such a referendum be held (under the Local Government Act 2000).

The Judiciary and its Independence

78 The judiciary is independent of the other branches of government. By statute the Lord Chancellor and other Ministers are required to uphold the principle of judicial independence, which includes a duty to ensure the support necessary to enable them to exercise their functions.

79 The judicial power is exercised through the separate court systems in England and Wales, Scotland, and Northern Ireland, all of which are subject to final appeal in the Supreme Court of the United Kingdom (except for criminal appeals in Scotland).

80 The establishment of extraordinary courts requires an Act of Parliament.

81 The Lord Chief Justice is the Head of the Judiciary in England and Wales, the Lord President of the Court of Session is Head of the Judiciary in Scotland, and the Lord Chief Justice of Northern Ireland is Head of the Judiciary in Northern Ireland.

82 Judges are appointed by the Queen on ministerial advice, as follows: (a) Justices of the Supreme Court are selected by a Selection Committee convened by the Lord Chancellor giving a nomination, and the Lord Chancellor if he approves giving the name to the Prime Minister for his advice to the Queen; (b) in Scotland the Lord President of the Court of Session and the Lord Justice Clerk are nominated by the First Minister of Scotland, and the Prime Minister then advises the Queen to appoint this person; (c) other judges are selected by the Judicial Appointments Commission for England and Wales, Judicial Appointments Board for Scotland, and Northern Ireland Judicial Appointments Commission, with the Lord Chancellor, or in the case of Scotland the First Minister of Scotland, giving the recommendation to the Queen.

83 Judges in the Supreme Court, Court of Appeal, and High Court, hold office during good behaviour, but may be removed on the Address of both Houses of Parliament. Circuit and district judges may be removed by the Lord Chancellor on grounds of incapacity or misbehaviour. Lay magistrates may be removed at the discretion of the Lord Chancellor at any time.

84 Judicial salaries may not be reduced by the Crown and increases are determined by an independent pay review body.

85 The sittings of all courts are public, except in circumstances provided for by Act of Parliament, and judgments are pronounced at a public sitting.

Principles of Judicial Review

86 So far as it is possible to do so, legislation and all other rules of law are read and given effect in a way that is compatible with the principle of the rule of law.

87 If a court is satisfied that a provision of a statute is incompatible with a Convention right incorporated into United Kingdom law by the Human Rights Act 1998, it may make a Declaration of Incompatibility under the terms of the Act and a Minister may present a Remedial Order for the approval of the two Houses of Parliament.

88 So far as it is possible to do so, legislation and all other rules of law are read and given effect in a way that is compatible with the law of the European Union and a Convention right incorporated into United Kingdom law by the Human Rights Act 1998. The courts do not give effect to any rule of law that is incompatible with directly effective European Union law.

89 Subordinate legislation and administrative action are subject to judicial review on grounds of legality, procedural fairness, proportionality, rationality, and conformity with the Convention rights incorporated into United Kingdom law by the Human Rights Act 1998.

Civil and Political Rights

90 The United Kingdom government guarantees to everyone within its jurisdiction the protection of the following rights and freedoms as defined and delineated by the European Convention on Human Rights, and incorporated into national law by the Human Rights Act 1998, entitled -

Right to Life

Prohibition of Torture

Prohibition of Slavery and Forced Labour

Right to Liberty and Security

Right to a Fair Trial

No Punishment without Law

Right to Respect for Private and Family Life

Freedom of Thought, Conscience and Religion

Freedom of Expression

Freedom of Assembly and Association

Right to Marry

Right to an Effective Remedy

Prohibition of Discrimination

Protection of Property

Right to Education

Right to Free Elections

Social and Economic Welfare

91 The government provides social and economic welfare for all citizens of the United Kingdom including social security (unemployment benefit and old age pension), free health care, a pollution-free environment, and access to clean water and essential public utilities.

Status, Amendment and Publication

92 This Code has no status in law, and may not be cited or relied upon in any legal proceedings before the courts.

93 The laws, conventions, and rules of the constitution change from time to time in the customary manner; that is, by way of (a) Act of Parliament, (b) judicial decision-making in the development of the principles of the common law or the interpretation of statutes, (c) resolutions of each of the Houses of Parliament as affects their internal proceedings, and (d) the evolution, emergence or desuetude of a convention.

94 A revised draft edition of this Code is prepared by the Cabinet Office within thirty days of every General Election, and submitted to each House of Parliament for scrutiny and report by their Select Committee with responsibility for constitutional affairs. Within thirty days of receipt of the Select Committee reports, a Minister will lay the draft Code, with such revisions as it thought necessary, before each House of Parliament for approval.

95 Within fourteen days of a new edition of the Code being approved by both Houses of Parliament, the Code will be printed and published by the Stationary Office as a Command Paper.

2 CONSTITUTIONAL CONSOLIDATION ACT

An illustrative blueprint (second of three)

A consolidation of existing laws of a constitutional nature in statute, the common law and parliamentary practice, together with a codification of essential constitutional conventions.²

A

BILL

TO

Consolidate in one Act of Parliament the existing statutory provisions of a constitutional nature, together with a codification of common law principles, parliamentary practice and constitutional conventions, essential to the working of the government of the United Kingdom and its relationship with its citizens.

Be it enacted by the Queen'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:-

PART I

THE CROWN AND POLITICAL EXECUTIVE

Chapter 1: THE HEAD OF STATE

1 The Sovereign

(1) The UK is a Constitutional Monarchy.³

(2) The Sovereign is the Head of State, the Head of the Armed Forces, the Supreme Governor of the Church of England, and the fount of honours.

² The approach taken by the author to codifying in writing the existing conventions of the constitution for the purpose of this Constitutional Consolidation Act has been to adopt the opinion of the Cabinet office as to what the conventions are, as set in its official publication endorsed by the Cabinet, *The Cabinet Manual: A Guide to Laws, Conventions and Rules on the Operation of Government* (2011) Ed.1 (hereafter 'Cabinet Manual'). This should not be taken as meaning that the Cabinet Manual is a source of the constitution itself, but simply that it is a peculiarly authoritative secondary source, not only because it sets out the restrictions which the government fully accept upon itself, but also because it is the public document most frequently relied upon by the media to inform the public in its reporting of political events. A more precise and realistic interpretation of some of the conventions, such on prime ministerial appointment and war powers, is given by the author in the Constitutional Code (Part II, 1).

³ Common law; Act of Supremacy 1558; see *Cabinet Manual* Ch.1

2 Title to the Crown

(1) The Princess Sophia, Electress and Duchess Dowager of Hanover, Daughter of the late Queen of Bohemia, Daughter of King James the First, to inherit after the King and the Princess Anne, in Default of Issue of the said Princess and His Majesty, respectively and the Heirs of her Body, being Protestants. ⁴

(2) Whereas in the First Year of the Reign of Your Majesty and of our late most gracious Sovereign Lady Queen Mary (of blessed Memory) An Act of Parliament was made intituled [An Act for declaring the Rights and Liberties of the Subject and for settling the Succession of the Crown] wherein it was (amongst other things) enacted established and declared That the Crown and Regall Government of the Kingdoms of England France and Ireland and the Dominions thereunto belonging should be and continue to Your Majestie and the said late Queen during the joynt Lives of Your Majesty and the said Queen and to the Survivor And that after the Decease of Your Majesty and of the said Queen the said Crown and Regall Government should be and remain to the Heirs of the Body of the said late Queen And for Default of such Issue to Her Royall Highness the Princess Ann of Denmark and the Heirs of Her Body And for Default of such Issue to the Heirs of the Body of Your Majesty. ⁵

(3) And it was thereby further enacted That all and every Person and Persons that then were or afterwards should be reconciled to or shall hold Communion with the See or Church of Rome or should professe the Popish Religion or marry a Papist should be excluded and are by that Act made for ever incapable to inherit possess or enjoy the Crown and Government of this Realm and Ireland and the Dominions thereunto belonging or any part of the same or to have use or exercise any regall Power Authority or Jurisdiction within the same And in all and every such Case and Cases the People of these Realms shall be and are thereby absolved of their Allegiance And that the said Crown and Government shall from time to time descend to and be enjoyed by such Person or Persons being Protestants as should have inherited and enjoyed the same in case the said Person or Persons so reconciled holding Communion professing or marrying as aforesaid were naturally dead. ⁶

(4) To grant to Your Majesty or to Her Royall Highness such Issue as may be inheritable to the Crown and Regall Government aforesaid by the respective Limitations in the said recited Act contained doe constantly implore the Divine Mercy for those Blessings And Your Majesties said Subjects having Daily Experience of Your Royall Care and Concern for the present and future Welfare of these Kingdoms and particularly recommending from Your Throne a further Provision to be made for the Succession of the Crown in the Protestant Line for the Happiness of the Nation and the Security of our Religion And it being absolutely

⁴ Act of Settlement 1700 Part 1

⁵ Act of Settlement 1700 Part 1

⁶ Act of Settlement 1700 Part 1

necessary for the Safety Peace and Quiet of this Realm to obviate all Doubts and Contentions in the same by reason of any pretended Titles to the Crown and to maintain a Certainty in the Succession thereof to which Your Subjects may safely have Recourse for their Protection in case the Limitations in the said recited Act should determine.⁷

(5) Therefore for a further Provision of the Succession of the Crown in the Protestant Line We Your Majesties most dutifull and Loyall Subjects the Lords Spirituall and Temporall and Commons in this present Parliament assembled do beseech Your Majesty that it may be enacted and declared and be it enacted and declared by the Kings most Excellent Majesty by and with the Advice and Consent of the Lords Spirituall and Temporall and Comons in this present Parliament assembled and by the Authority of the same That the most Excellent Princess Sophia Electress and Dutchess Dowager of Hannover Daughter of the most Excellent Princess Elizabeth late Queen of Bohemia Daughter of our late Sovereign Lord King James the First of happy Memory be and is hereby declared to be the next in Succession in the Protestant Line to the Imperiall Crown and Dignity of the said Realms of England France and Ireland with the Dominions and Territories thereunto belonging after His Majesty and the Princess Ann of Denmark and in Default of Issue of the said Princess Ann and of His Majesty respectively and that from and after the Deceases of His said Majesty our now Sovereign Lord and of Her Royall Highness the Princess Ann of Denmark and for Default of Issue of the said Princess Ann and of His Majesty respectively the Crown and Regall Government of the said Kingdoms of England France and Ireland and of the Dominions thereunto belonging with the Royall State and Dignity of the said Realms and all Honours Stiles Titles Regalities Prerogatives Powers Jurisdictions and Authorities to the same belonging and appertaining shall be remain and continue to the said most Excellent Princess Sophia and the Heirs of Her Body being Protestants And thereunto the said Lords Spirituall and Temporall and Commons shall and will in the Name of all the People of this Realm most humbly and faithfully submit themselves their Heirs and Posterities and do faithfully promise.⁸

(6) That after the Deceases of His Majesty and Her Royall Highness and the failure of the Heirs of their respective Bodies to stand to maintain and defend the said Princess Sophia and the Heirs of Her Body being Protestants according to the Limitation and Succession of the Crown in this Act specified and contained to the utmost of their Powers with their Lives and Estates against all Persons whatsoever that shall attempt anything to the contrary.⁹

⁷ Act of Settlement 1700 Part 1

⁸ Act of Settlement 1700 Part 1

⁹ Act of Settlement 1700 Part 1

3 Duties and functions of the Sovereign

(1) The Sovereign appoints the Prime Minister as Head of Government and, on his or her advice, other ministers of the Crown.¹⁰

(2) The Sovereign appoints the First Minister of Scotland and the First Minister for Wales, and has a role in relation to the Devolved Administrations, as set out in legislation.¹¹

(3) The Sovereign opens each new session of Parliament, and brings the session to an end, proroguing Parliament if necessary by Order in Council.¹²

(4) A Bill which has completed all of its prior Parliamentary stages becomes law when Royal Assent is given.¹³

4 Regency of the Sovereign

(1) If the Sovereign is, at His Accession, under the age of eighteen years, then, until He attains that age, the royal functions shall be performed in the name and on behalf of the Sovereign by a Regent.¹⁴

(2) For the purpose of any enactment requiring any oath or declaration to be taken, made, or subscribed, by the Sovereign on or after His Accession, the date on which the Sovereign attains the age of eighteen years shall be deemed to be the date of His Accession.¹⁵

(3) If the following persons or any three or more of them, that is to say, the wife or husband of the Sovereign, the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice of England, and the Master of the Rolls, declare in writing that they are satisfied by evidence which shall include the evidence of physicians that the Sovereign is by reason of infirmity of mind or body incapable for the time being of performing the royal functions or that they are satisfied by evidence that the Sovereign is for some definite cause not available for the performance of those functions, then, until it is declared in like manner that His Majesty has so far recovered His health as to warrant His resumption of the royal functions or has become available for the performance thereof, as the case may be, those functions shall be performed in the name and on behalf of the Sovereign by a Regent.¹⁶

¹⁰ Common law; convention; *Cabinet Manual* Ch.1 para 1.1

¹¹ Common law; Scotland Act 1998 c.46, s.45; Government of Wales Act 2006 c.32, s.46; *Cabinet Manual* Ch.1 para 1.1

¹² Common law; *Cabinet Manual* Ch.1 para 1.1

¹³ Common law; Prorogation Act 1867; *Cabinet Manual* Ch.1 para 1.1

¹⁴ Regency Act 1937 c.16 s1(1) (as amended)

¹⁵ Regency Act 1937 c.16 s1(2) (as amended)

¹⁶ Regency Act 1937 c.16 s2(1) (as amended)

(4) A declaration under this section shall be made to the Privy Council and communicated to the Governments of His Majesty's Dominions.¹⁷

(5) If a Regency becomes necessary under this Act, the Regent shall be that person who, excluding any persons disqualified under this section, is next in the line of succession to the Crown.¹⁸

(6) A person shall be disqualified from becoming or being Regent, if he is not a British subject of full age and domiciled in some part of the United Kingdom, or is a person who would, under section 2 of the Act of Settlement 1700, be incapable of inheriting, possessing, and enjoying the Crown; and section 3 of the Act of Settlement 1700 shall apply in the case of a Regent as it applies in the case of a Sovereign.¹⁹

(7) If any person who would at the commencement of a Regency have become Regent but for the fact that he was not then of full age becomes of full age during the Regency, he shall, if he is not otherwise disqualified under this section, thereupon become Regent instead of the person who has theretofore been Regent.²⁰

(8) If the Regent dies or becomes disqualified under this section, that person shall become Regent in his stead who would have become Regent if the events necessitating the Regency had occurred immediately after the death or disqualification.²¹

(9) Subsections (3) and (4), above, shall apply in relation to a Regent with the substitution for references to the Sovereign of references to the Regent, and for the words "those functions shall be performed in the name and on behalf of the Sovereign by a Regent" of the words "that person shall be Regent who would have become Regent if the Regent had died."²²

(10) The Regent shall, before he acts in or enters upon his office, take and subscribe before the Privy Council the oaths set out in the Schedule to the Regency Act 1937 (c.16), and the Privy Council are empowered and required to administer those oaths and to enter them in the Council Books.²³

(11) The Regent shall not have power to assent to any Bill for changing the order of succession to the Crown or for repealing or altering an Act of the fifth year of the reign of Queen Anne made in Scotland entitled "An Act for Securing the Protestant Religion and Presbyterian Church Government."²⁴

¹⁷ Regency Act 1937 c.16 s2(2) (as amended)

¹⁸ Regency Act 1937 c.16 s3(1)

¹⁹ Regency Act 1937 c.16 s3(2)

²⁰ Regency Act 1937 c.16 s3(3)

²¹ Regency Act 1937 c.16 s3(4)

²² Regency Act 1937 c.16 s3(5)

²³ Regency Act 1937 c.16 s4(1)

²⁴ Regency Act 1937 c.16 s4(2)

5 Guardianship of the Sovereign during Regency

(1) During a Regency, unless Parliament otherwise determines,

(a) if the Sovereign is under the age of eighteen years, and unmarried, His mother, if she is living, shall have the guardianship of His person;²⁵

(b) if the Sovereign, being married, is under the age of eighteen years or has been declared under this Constitution to be incapable for the time being of performing the royal functions, the wife or husband of the Sovereign, if of full age, shall have the guardianship of the person of the Sovereign;²⁶

(c) the Regent shall, save in the cases aforesaid, have the guardianship of the person of the Sovereign; and the property of the Sovereign, except any private property which in accordance with the terms of any trust affecting it to be administered by some other person, shall be administered by the Regent.²⁷

Chapter 2: THE PRIME MINISTER

6 The Prime Minister

(1) The Prime Minister is head of the Government.²⁸

(2) The Prime Minister is appointed by the Monarch, on the basis of his or her ability to command the confidence of the House of Commons.²⁹

(3) The Prime Minister is a member of the House of Commons.³⁰

(4) The Prime Minister advises the Monarch on the exercise of the Royal Prerogative powers in relation to government, and the exercise of statutory powers including the calling of elections where there is an early election or a deferred election under the Fixed-term Parliaments Act 2011.³¹

²⁵ Regency Act 1937 c.16 s5(1)(a)

²⁶ Regency Act 1937 c.16 s5(1)(b)

²⁷ Regency Act 1937 c.16 s5(1)(c)

²⁸ Convention; existence cited in various statutes eg Chequers Estate Act 1917, Ministerial and other Pensions and Salaries Act 1991, and Constitutional Reform Act 2005; *Cabinet Manual* Ch.3 para 3.1

²⁹ Convention; *Cabinet Manual* Ch.3, paras 3.1, 3.2. This section is a distillation of the principle described in the Cabinet Manual. A more accurate or precise statement of the convention, drafted by the author, is given as article 46 of the Constitutional Code (Part II, 1). See also Robert Blackburn, "Monarchy and the Personal Prerogatives", *Public Law* (2004) 546; and Robert Blackburn, "The 2010 General Election Outcome and Formation of the Conservative-Liberal Democrat Coalition Government", *Public Law* (2011) 30.

³⁰ Convention; *Cabinet Manual* Ch.3 para 3.1

³¹ *Cabinet Manual* Ch.3 para 3.4

(5) The Prime Minister advises the Monarch on the appointment, dismissal and acceptance of resignation of other ministers.³²

(6) The Prime Minister recommends other public appointments formally made by the Monarch, including archbishops and bishops of the Church of England, senior judges and certain civil appointments. He or she also recommends appointments to several public boards and institutions, as well as to various Royal and statutory commissions.³³

(7) The Prime Minister informs the Monarch of the general business of the government at regular meetings.³⁴

(8) The Prime Minister is First Lord of the Treasury³⁵ and in that capacity takes the oath of office.³⁶

(9) The Prime Minister is the minister for the Civil Service and is also the minister responsible for National Security and matters affecting the Secret Intelligence Service, Security Service and GCHQ collectively.³⁷

(10) The Prime Minister is responsible for the overall organisation of the executive and the allocation of functions between Ministers in charge of departments.³⁸

(11) 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.³⁹

Chapter 3: MINISTERS AND MINISTERIAL CONDUCT

7 Ministers

(1) In general, the ministers in the government comprise the categories of senior ministers, junior ministers, the Law Officers, and whips. The Prime Minister may agree that a minister in any of the categories can be known by a 'courtesy title' reflecting the job the minister has been asked to do, for example 'Minister for Europe'. A courtesy title has no legal or constitutional significance.⁴⁰

³² *Cabinet Manual* Ch.3 para 3.4

³³ *Cabinet Manual* Ch.3 para 3.5

³⁴ *Cabinet Manual* Ch.3 para 3.5

³⁵ Convention; *Cabinet Manual* Ch.3 para 3.2

³⁶ Promissory Oaths Act 1868 c.72

³⁷ Convention; *Cabinet Manual* Ch.3 para 3.6

³⁸ Ministerial Code (2010) para 4.1

³⁹ Ministerial Code (2010) para 1.5

⁴⁰ *Cabinet Manual* Ch.3 para 3.7

(2) The most senior ministers in the Government are the members of Cabinet. The Prime Minister determines who forms Cabinet, but this will always include the Chancellor of the Exchequer, the Lord Chancellor and the secretaries of state. There are no formal limits on the size of Cabinet, but there are limits on the number of ministerial salaries that can be paid, and particularly who can be paid first-tier Cabinet-level salaries.⁴¹

(3) Other ministers who are often invited by the Prime Minister to be a member of, or attend, Cabinet include the Lord President of the Council, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Paymaster General, the Chief Secretary to the Treasury and the Parliamentary Secretary to the Treasury (the Commons Chief Whip). A minister of state may also sometimes be invited to be a member of, or attend, Cabinet.⁴²

(4) A minister may be appointed Deputy Prime Minister. The responsibilities of a Deputy Prime Minister vary according to the circumstances. The fact that a person has the title of Deputy Prime Minister does not constrain the Sovereign's power to appoint a successor to a Prime Minister.⁴³

(5) A minister may be appointed First Secretary of State to indicate seniority. The appointment may be held with another office. The responsibilities of the First Secretary of State will vary according to the circumstances.⁴⁴

(6) Junior ministers are generally ministers of state, Parliamentary under secretaries of state and Parliamentary secretaries. Typically they are ministers within a government department and their function is to support and assist the senior minister in charge of the department.⁴⁵

8 Ministerial propriety and behaviour⁴⁶

(1) The principle of collective responsibility, save where it is explicitly set aside, applies to all Government Ministers;

(2) Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies;

(3) 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;

⁴¹ *Cabinet Manual* Ch.3 para 3.9; Ministerial Salaries Act 1975 c.27

⁴² *Cabinet Manual* Ch.3 para 3.10

⁴³ *Cabinet Manual* Ch.3 para 3.11

⁴⁴ *Cabinet Manual* Ch.3 para 3.12

⁴⁵ *Cabinet Manual* Ch.3 para 3.13

⁴⁶ Ministerial Code (Cabinet Office, May 2010) (hereafter 'Ministerial Code') s1.2

(4) Ministers 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;

(5) Ministers should similarly require civil servants who give evidence before Parliamentary Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;

(6) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

(7) Ministers should not accept any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;

(8) Ministers in the House of Commons must keep separate their roles as Minister and constituency Member;

(9) Ministers must not use government resources for Party political purposes;

(10) 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 as set out in the Constitutional Reform and Governance Act 2010.

(11) Ministers must also comply at all times with the requirements which Parliament itself has laid down in relation to the accountability and responsibility of Ministers.⁴⁷

9 Ministers and Parliament

(1) When Parliament is in session, the most important announcements of Government policy should be made in the first instance, in Parliament.⁴⁸

(2) Even when Government announcements are not of major importance their timing may require careful consideration in order to avoid clashes with other Government publications, statements or announcements or with planned Parliamentary business. The Offices of the Leader of the Commons, the Chief Whip, the Deputy Prime Minister and the Prime Minister should be given as long an opportunity as possible to comment on all important announcements.⁴⁹

⁴⁷ Ministerial Code para 1.6

⁴⁸ Ministerial Code para 9.1

⁴⁹ Ministerial Code para 9.2

(3) Every effort should be made to avoid leaving significant announcements to the last day before a recess.⁵⁰

(4) Ministers should not give undertakings, either in or outside the House of Commons, that an oral statement will be made to the House until the agreement has been given by the private secretaries to the Prime Minister, the Deputy Prime Minister, the Leader of the House of Commons and the Chief Whip. The Leader of the House of Lords and Lords Chief Whip should be consulted where a statement is to be made in the House of Lords in the first instance.⁵¹

(5) A copy of the text of an oral statement should usually be shown to the Opposition shortly before it is made. For this purpose, 15 copies of the statement and associated documents should be sent to the Chief Whip's Office at least 45 minutes before the statement is to be made. At the same time, a copy of the final text of an oral statement should in all cases be sent in advance to the Speaker.⁵²

(6) Every effort must be made to ensure that where a former Minister or a Ministerial colleague and/or a fellow MP/Peer is mentioned in a statement or report which prompts a Ministerial statement, he or she is given as much notice as is reasonably possible.⁵³

(7) Any Minister or Parliamentary Private Secretary who receives a copy of a Select Committee report in advance of publication excluding copies sent to departments at the Confidential Final Revise stage should make no use of them and should return them without delay to the Clerk of the relevant Committee. Civil servants, including special advisers, are also covered by this ruling.⁵⁴

10 Ministerial powers

(1) Ministers' powers derive from: Parliament, which grants powers through legislation; ministers' common law powers to act; and prerogative powers of the Crown that are exercised by, or on the advice of, ministers. Each form of power is subject to limits and constraints, and its use may be challenged in the courts. Ministers can also only spend public money for the purposes authorised by Parliament. Powers may be exercised by civil servants on behalf of ministers.⁵⁵

(2) Acts of Parliament grant powers to ministers or place statutory duties on ministers. Normal practice is that the powers and duties involved in exercising continuing functions of ministers (particularly those involving financial liabilities extending beyond a given year) should be identified in legislation. Statute also provides ministers with emergency powers, in particular that emergency

⁵⁰ Ministerial Code para 9.3

⁵¹ Ministerial Code para 9.4

⁵² Ministerial Code para 9.5

⁵³ Ministerial Code para 9.6

⁵⁴ Ministerial Code para 9.7

⁵⁵ *Cabinet Manual* Ch.3 para 3.24

regulations could be made by Order in Council or by ministers as a last resort where existing legislation is insufficient to respond in the most effective way.⁵⁶

(3) Most statutory powers and duties are conferred on the Secretary of State; these may be exercised or complied with by any one of the secretaries of state, unless a statute confers powers on a specific minister.⁵⁷ This reflects the doctrine that there is only one office of Secretary of State, even though it is the well-established practice to appoint more than one person to carry out the functions of the office.⁵⁸

(4) It is also the well-established practice for each secretary of state to be allocated responsibility by the Prime Minister for a particular department (for example health, foreign affairs, defence, transport, education etc.) and, accordingly, for each Secretary of State, in practice, to exercise only those functions that are within that department. It is for the Prime Minister to determine the various departments.⁵⁹

(5) Most secretaries of state are incorporated as 'corporations sole'. This gives the minister a separate legal personality. This is administratively convenient, for example as regards the ownership of property, because it facilitates continuity when the officeholder changes.⁶⁰

(6) Statutory powers conferred on the Treasury are exercisable by the Commissioners of the Treasury, and may not be exercised by other ministers. The First Lord of the Treasury, along with the Chancellor of the Exchequer and the Junior Lords of the Treasury, make up the Commissioners of Her Majesty's Treasury. However, the Treasury Commissioners do not meet in that capacity. In practice, the Treasury is headed by the Chancellor of the Exchequer supported by the Chief Secretary to the Treasury and other junior Treasury ministers.⁶¹

(7) Ministers' functions are not limited to those authorised by statute. 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 and subject to the fact that a minister will only be able to pay for what he or she does if Parliament votes him or her the money. This is a summary of what is known as the Ram doctrine.⁶²

(8) The powers that a minister may exercise include any of the legal powers of an individual, for example to enter into contracts, convey property or make extra-statutory payments. As more of ministers' powers have been codified in legislation, the extent of inherent powers has been correspondingly reduced.⁶³

⁵⁶ *Cabinet Manual* Ch.3 para 3.25; Civil Contingencies Act 2004 c.36 ss19-31

⁵⁷ *Cabinet Manual* Ch.3 para 3.30

⁵⁸ *Cabinet Manual* Ch.3 para 3.26

⁵⁹ *Cabinet Manual* Ch.3 para 3.27

⁶⁰ *Cabinet Manual* Ch.3 para 3.28ddf

⁶¹ *Cabinet Manual* Ch.3 para 3.29

⁶² *Cabinet Manual* Ch.3 para 3.31

⁶³ *Cabinet Manual* Ch.3 para 3.32

(9) Prerogative powers are generally exercised by ministers or by the Sovereign on the advice of ministers, particularly the Prime Minister. However, the Sovereign continues to exercise personally some prerogative powers of the Crown (the award of certain honours, such as the Order of Merit) and reserves the right to exercise others in unusual circumstances.⁶⁴

(10) Prerogative powers may be divided into the following broad categories:⁶⁵

(a) Constitutional or personal prerogatives: these are the powers that the Sovereign continues to exercise either personally or on the advice of the Government. They include the powers to: appoint and dismiss the Prime Minister and other ministers; grant assent to legislation; and prorogue Parliament.

(b) Prerogative executive powers: these are the powers that are exercised on the Sovereign's behalf by ministers. Most prerogative powers fall into this category. They include powers in relation to foreign affairs, to deploy the armed forces, and to grant mercy. The limited prerogative powers that are relevant to devolved functions are exercised by ministers in the Devolved Administrations.

(11) Before the armed forces are committed to significant military action under the royal prerogative, the House of Commons should have an opportunity to debate the matter except when there was an emergency and such action would not be appropriate.⁶⁶

(12) The scope of the prerogative is affected both by the common law (as developed by the courts) and by statutes (as enacted by Parliament) and accordingly has changed over time.⁶⁷

(13) The role of the courts in determining the existence and extent of the prerogative from time to time can be a significant control on the prerogative. In particular, the control is strengthened by the common law doctrine that courts cannot create new prerogatives. Equally, however, the courts can recognise prerogatives that were previously of doubtful provenance, or adapt old prerogatives to modern circumstances.⁶⁸

(14) Over time, legislation has also clarified and limited the extent of the prerogative, including in some cases abolishing it. Acts of Parliament which are not

⁶⁴ *Cabinet Manual* Ch.3 para 3.33

⁶⁵ *Cabinet Manual* Ch.3 para 3.34

⁶⁶ *Cabinet Manual* Ch.5 paras 5.36 to 5.38, which sets out the Cabinet Office's interpretation of the existing convention. However see also the Constitutional Code (Part 2, I) para 43(ii) for the author's interpretation based on recent precedents, especially the parliamentary action against military action in Syria on 29 August 2013 (*Commons Hansard*, 29 August 2013, cols.1425f), the acceptance of the government of Parliament's negation of its proposed action, and the greater political emphasis in recent times generally upon parliamentary control over the prerogative powers

⁶⁷ *Cabinet Manual* Ch.3 para 3.35

⁶⁸ *Cabinet Manual* Ch.3 para 3.36

primarily aimed at reforming the prerogative may nevertheless bring about significant reform to it. Departmental civil servants provide advice to ministers on the extent of their powers. In the most complex cases, reference can be made to the Law Officers.⁶⁹

(15) The Minister in charge of a department is solely accountable to Parliament for the exercise of the powers on which the administration of that department depends. The Minister's authority may, however, be delegated to a Minister of State, a Parliamentary Secretary, or to an official. It is desirable that Ministers in charge should devolve to their junior Ministers responsibility for a defined range of departmental work, particularly in connection with Parliament. A Minister's proposal for the assignment of duties to junior Ministers, together with any proposed "courtesy titles" descriptive of their duties should be agreed in writing with the Prime Minister, copied to the Cabinet Secretary.⁷⁰

(16) Ministers of State and Parliamentary Secretaries will be authorised to supervise the day-to-day administration of a defined range of subjects. This arrangement does not relieve the Permanent Secretary of general responsibility for the organisation and discipline of the department or of the duty to advise on matters of policy. The Permanent Secretary is not subject to the directions of junior Ministers. Equally, junior Ministers are not subject to the directions of the Permanent Secretary. Any conflict of view between the two can be resolved only by reference to the Minister in charge of the department.⁷¹

(17) Departments should ensure appropriate arrangements are made for Ministerial cover when Ministers are absent from London.⁷²

(18) The Prime Minister's prior approval should be sought for the arrangements for superintending the work of a department when the Minister in charge will be absent. Special care must be taken over the exercise of statutory powers. Ministers should seek legal advice in cases of doubt.⁷³

(19) The Prime Minister must be consulted in good time about any proposal to set up:

(a) Royal Commissions: these can only be set up with the sanction of the Cabinet and after The Queen's approval has been sought by the Prime Minister;

(b) Major public inquiries under the Inquiries Act 2005 (c.12).⁷⁴

⁶⁹ *Cabinet Manual* Ch.3 para 3.37

⁷⁰ Ministerial Code para 4.6

⁷¹ Ministerial Code para 4.7

⁷² Ministerial Code para 4.8

⁷³ Ministerial Code para 4.9

⁷⁴ Ministerial Code para 4.10

(20) The Lord Chancellor and Secretary of State for Justice should also be consulted where there is a proposal to appoint a judge or legal officer to the above.⁷⁵

11 Party and constituency interests of Ministers

(1) Facilities provided to Ministers at Government expense to enable them to carry out their official duties should not be used for Party or constituency work.⁷⁶

(2) Government property should not generally be used for constituency work or party activities. A particular exception is recognised in the case of official residences. Where Ministers host Party or personal events in these residences it should be at their own or Party expense with no cost falling to the public purse.⁷⁷

(3) 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 Network are set out in the Government Communication Network's Propriety Guidance – Guidance on Government Communications.⁷⁸

(4) Where Ministers have to take decisions within their departments which might have an impact on their own constituencies, they must take particular care to avoid any possible conflict of interest. Within departments, the Minister should advise their Permanent Secretary and, in the case of junior Ministers, their Secretary of State of the interest and responsibilities should be arranged to avoid any conflict of interest.⁷⁹

(5) Ministers are free to make their views about constituency matters known to the responsible Minister by correspondence, leading deputations or by personal interview provided they make clear that they are acting as their constituents' representative and not as a Minister.⁸⁰

(6) Ministers are advised to take particular care in cases relating to planning applications in their constituencies or other similar issues. In all such cases, it is important that they make clear that they are representing the views of their constituents, avoid criticism of Government policies and confine themselves to comments which could reasonably be made by those who are not Ministers. Once a decision has been announced, it should be accepted without question or criticism.⁸¹

⁷⁵ Ministerial Code para 4.11

⁷⁶ Ministerial Code para 6.1

⁷⁷ Ministerial Code para 6.2

⁷⁸ Ministerial Code para 6.3

⁷⁹ Ministerial Code para 6.4

⁸⁰ Ministerial Code para 6.5

⁸¹ Ministerial Code para 6.6

(7) Particular care also needs to be taken over cases in which a Minister may have a personal interest or connection, for example because they concern family, friends or employees. If, exceptionally, a Minister wishes to raise questions about the handling of such a case they should advise their Permanent Secretary and write to the Minister responsible, as with constituency cases, but they should make clear their personal connection or interest. The responsible Minister should ensure that any enquiry is handled without special treatment.⁸²

12 Private interests of Ministers

(1) Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.⁸³

(2) It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the independent adviser on Ministers' interests.⁸⁴

(3) On appointment to each new office, Ministers must provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict. The list should also cover interests of the Minister's spouse or partner and close family which might be thought to give rise to a conflict.⁸⁵

(4) Where appropriate, the Minister will meet the Permanent Secretary and the independent adviser on Ministers' interests to agree action on the handling of interests. Ministers must record in writing what action has been taken, and provide the Permanent Secretary and the independent adviser on Ministers' interests with a copy of that record.⁸⁶

(5) The personal information which Ministers disclose to those who advise them is treated in confidence. However, a statement covering relevant Ministers' interests will be published twice yearly.⁸⁷

(6) Where it is proper for a Minister to retain a private interest, he or she should declare that interest to Ministerial colleagues if they have to discuss public business which in any way affects it and the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary in relation to a Minister's previous interests.⁸⁸

⁸² Ministerial Code para 6.7

⁸³ Ministerial Code para 7.1

⁸⁴ Ministerial Code para 7.2

⁸⁵ Ministerial Code para 7.3

⁸⁶ Ministerial Code para 7.4

⁸⁷ Ministerial Code para 7.5

⁸⁸ Ministerial Code para 7.6

(7) Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision they should be guided by the advice given to them by their Permanent Secretary and the independent adviser on Ministers' interests. Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation.⁸⁹

(8) Where exceptionally it is decided that a Minister can retain an interest, the Minister and the department must put processes in place to prohibit access to certain papers and ensure that the Minister is not involved in certain decisions and discussions relating to that interest.⁹⁰

(9) In some cases, it may not be possible to devise a mechanism to avoid a conflict of interest. In any such case, the Prime Minister must be consulted and it may be necessary for the Minister to cease to hold the office in question.⁹¹

(10) Where a Minister is allocated an official residence, they must ensure that all personal tax liabilities, including council tax, are properly discharged, and that they personally pay such liabilities. Ministers who occupy an official residence will not be able to claim Accommodation Expenses from the Independent Parliamentary Standards Authority.⁹²

(11) When they take up office, Ministers should give up any other public appointment they may hold. Where exceptionally it is proposed that such an appointment should be retained, the Minister should seek the advice of their Permanent Secretary and the independent adviser on Ministers' interests.⁹³

(12) Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest.⁹⁴

(13) Ministers should not therefore normally accept invitations to act as patrons of, or otherwise offer support to, pressure groups, or organisations dependent in whole or in part on Government funding. There is normally less objection to a Minister associating him or herself with a charity, subject to the points above, but Ministers should take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed and for this reason they should not approach individuals or companies personally for this purpose. In all such

⁸⁹ Ministerial Code para 7.7

⁹⁰ Ministerial Code para 7.8

⁹¹ Ministerial Code para 7.9

⁹² Ministerial Code para 7.10

⁹³ Ministerial Code para 7.11

⁹⁴ Ministerial Code para 7.12

cases, the Minister should consult their Permanent Secretary and where appropriate the independent adviser on Ministers' interests.⁹⁵

(14) In order to avoid any conflict of interest, Ministers on taking up office should give up membership or chairmanship of a Select Committee or All Party Parliamentary Group. This is to avoid any risk of criticism that a Minister is seeking to influence the Parliamentary process. Ministers must also avoid being drawn into a situation whereby their membership of a Committee could result in the belief that ministerial support is being given to a particular policy or funding proposal.⁹⁶

(15) Where Ministers become involved in legal proceedings in a personal capacity, there may be implications for them in their official position. Defamation is an example of an area where proceedings will invariably raise issues for the Minister's official as well as his or her private position. In all such cases, Ministers should consult the Law Officers in good time and before legal proceedings are initiated so that they may offer guidance on the potential implications and handling of the proceedings.⁹⁷

(16) Similarly, when a Minister is a defendant or a witness in an action, he or she should notify the Law Officers as soon as possible. Preferably, this should be before he or she has instructed his or her own solicitors in the matter.⁹⁸

(17) From time to time, the personal support of Ministers is requested for nominations being made for international prizes and awards, for example, the annual Nobel prizes. Ministers should not sponsor individual nominations for any awards, since it would be inevitable that some people would assume that the Government was itself thereby giving its sponsorship.⁹⁹

(18) Ministers should not normally, while holding office, accept decorations from foreign countries.¹⁰⁰

13 Private Secretaries

(1) Cabinet ministers and ministers of state may appoint Parliamentary private secretaries. All appointments require the prior written approval of the Prime Minister. The Chief Whip should also be consulted and no commitments to make such appointments should be entered into until such approval is received.¹⁰¹

⁹⁵ Ministerial Code para 7.13

⁹⁶ Ministerial Code para 7.14

⁹⁷ Ministerial Code para 7.16

⁹⁸ Ministerial Code para 7.17

⁹⁹ Ministerial Code para 7.18

¹⁰⁰ Ministerial Code para 7.19

¹⁰¹ *Cabinet Manual* Ch.3 para 3.21; Ministerial Code para 3.6

(2) Parliamentary private secretaries are not members of the Government, although by convention they are bound by collective agreement. Their role is to support ministers in conducting Parliamentary business.¹⁰²

14 Law Officers of the Crown

(1) The term ‘the Law Officers’ refers to the UK Law Officers, who are the Attorney General, the Solicitor General and the Advocate General for Scotland. The Attorney General for England and Wales is also the ex-officio Advocate General for Northern Ireland.¹⁰³

(2) The Attorney General is the Chief Law Officer for England and Wales and is the Chief Legal Adviser to the Crown. The Solicitor General is in practice the Attorney General’s deputy and may exercise any function of the Attorney General.¹⁰⁴

(3) 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 and EU law.¹⁰⁵

(4) The core function of the Law Officers is to advise on legal matters, helping ministers to act lawfully and in accordance with the rule of law. The Attorney General is also the minister with responsibility for superintending the Crown Prosecution Service and the Serious Fraud Office.¹⁰⁶

(5) In addition to these roles, the Law Officers have a number of public interest functions. Acting in the public interest, independently of government, and in accordance with the relevant statutes, they may:

- refer unduly lenient sentences to the Court of Appeal;
- bring contempt of court proceedings;
- grant consent for some specific prosecutions;
- intervene in certain charity and family law cases;
- bring proceedings to restrain vexatious litigants;
- appoint advocates to the Court; and
- refer points of law to the Court of Appeal after acquittals in criminal cases.¹⁰⁷

¹⁰² *Cabinet Manual* Ch.3 para 3.22; Ministerial Code para 3.9

¹⁰³ *Cabinet Manual* Ch.6 para 6.1

¹⁰⁴ *Cabinet Manual* Ch.6 para 6.2

¹⁰⁵ *Cabinet Manual* Ch.6 para 6.3

¹⁰⁶ *Cabinet Manual* Ch.6 para 6.4

¹⁰⁷ *Cabinet Manual* Ch.6 para 6.5

(6) 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. It has normally been considered appropriate to consult the Law Officers in cases where:

- the legal consequences of action by the Government might have important repercussions in the foreign, EU or domestic fields;
- a departmental legal adviser is in doubt concerning;
- the legality or constitutional propriety of proposed primary or subordinate legislation which the Government proposes to introduce;
- the powers necessary to make proposed subordinate legislation; or
- the legality of proposed administrative action, particularly where that action might be subject to challenge in the courts;
- ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations that are likely to come before Cabinet or a Cabinet committee;
- there is a particular legal difficulty (including one that arises in the context of litigation) that may raise sensitive policy issues; or
- two or more government departments disagree on legal questions and wish to seek the view of the Law Officers.¹⁰⁸

(7) 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.¹⁰⁹

(8) Where advice from the Law Officers is included in correspondence between ministers, or in papers for Cabinet or ministerial committees, the conclusions of the advice may be summarised, if necessary. But if this is done, the complete text of the advice should be attached.¹¹⁰

(9) 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. The Law Officers' advice to government is subject to legal professional privilege (LPP) and is confidential.¹¹¹

15 Government Whips

(1) Government whips are appointed for both the House of Commons and the House of Lords. The government chief whips in the House of Commons and the House of Lords arrange the scheduling of government business, often in consultation with their opposition counterparts. Collectively, the government and

¹⁰⁸ *Cabinet Manual* Ch.6 para 6.6; Ministerial Code para 2.10

¹⁰⁹ *Cabinet Manual* Ch.6 para 6.7

¹¹⁰ *Cabinet Manual* Ch.6 para 6.8; Ministerial Code para 2.12

¹¹¹ *Cabinet Manual* Ch.6 para 6.9; Ministerial Code para 2.13

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.¹¹²

(2) The chief whips and their assistants manage their Parliamentary parties. Their duties include keeping members informed of forthcoming Parliamentary business, maintaining the party’s voting strength by ensuring that members attend important votes, and passing on to the party leadership the opinions of backbench members. Whips in the House of Commons do not generally speak during Parliamentary debates. However, Lords whips may speak in Parliament on behalf of departments.¹¹³

Chapter 4: THE CABINET

16 The Cabinet

(1) Cabinet is chaired by the Prime Minister, who also determines its membership. It will usually comprise senior ministers. The Prime Minister may arrange for other ministers to attend Cabinet, either on a regular basis or for particular business (for example, the Attorney General to give legal advice). All members of Cabinet as Privy Counsellors are bound by the Privy Council Oath.¹¹⁴

17 Cabinet business

(1) The business of the Cabinet and Ministerial Committees consists in the main of:

(a) questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public;

(b) questions on which there is an unresolved argument between departments.¹¹⁵

(2) Collective agreement can be sought at a Cabinet or Cabinet committee meeting or through ministerial correspondence.¹¹⁶

(3) 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. Cabinet and Cabinet committees can all take collective decisions and the level of committee at which a decision is taken should not be disclosed.¹¹⁷

¹¹² *Cabinet Manual* Ch.3 para 3.16

¹¹³ *Cabinet Manual* Ch.3 para 3.17

¹¹⁴ *Cabinet Manual* Ch.4 para 4.5

¹¹⁵ Ministerial Code para 2.2

¹¹⁶ *Cabinet Manual* Ch.4 para 4.16

¹¹⁷ *Cabinet Manual* Ch.4 para 4.18

(4) With the agreement of the Prime Minister, consideration of significant domestic or international policy issues may be taken by Cabinet at an early stage by way of a general discussion to inform the development of detailed policy by the relevant Secretary of State, or as a final step prior to announcement. Where an issue is brought to Cabinet at the end of the process, it would normally have been discussed and agreed by the relevant Cabinet committee.¹¹⁸

(5) 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. Legislative proposals include public commitments to legislate within certain timescales, clearance of bills before introduction, amendments to bills during their passage through Parliament and the Government's position on Private Members' Bills.¹¹⁹

(6) 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 the meeting. The expectation is that the proposals will be accepted by Cabinet without amendment, although the Chancellor may, if necessary, make amendments.¹²⁰

(7) An agenda is set for each Cabinet and Cabinet committee meeting. In the case of Cabinet, items for the agenda are agreed by the Prime Minister. For other Cabinet committees, the agenda is agreed by the relevant chair.¹²¹

(8) Any proposals where other departments have an interest should be discussed with them before collective agreement is sought. Where proposals have public expenditure implications, the Treasury should be consulted before they are submitted for collective agreement. Where the department proposing the policy and the Treasury cannot agree in advance, any proposal for collective ministerial consideration should record the Treasury's position in terms which are acceptable to them. Policy proposals with public expenditure implications will not be agreed unless Treasury ministers are content. If necessary, issues can be referred to the Prime Minister or, if he or she so decides, to Cabinet for a decision.¹²²

(9) Minutes are taken for each Cabinet and Cabinet committee meeting, forming part of the historic record of government. They record the main points made in discussion and the Cabinet or Cabinet committee conclusions as summed up by the chair. To help preserve the principle of collective responsibility, most

¹¹⁸ *Cabinet Manual* Ch.4 para 4.19

¹¹⁹ *Cabinet Manual* Ch.4 para 4.20

¹²⁰ *Cabinet Manual* Ch.4 para 4.23

¹²¹ *Cabinet Manual* Ch.4 para 4.26

¹²² *Cabinet Manual* Ch.4 para 4.32

contributions by ministers are unattributed. However, points made by the minister introducing the item and the chair's summing-up are generally attributed.¹²³

(10) It is the responsibility of the Cabinet Secretariat to write and circulate the minutes to members of Cabinet or the relevant Cabinet committee. This should be done within 24 hours of the meeting. Minutes are not cleared with the chair of Cabinet or the Cabinet committee in advance of circulation. If a minister has a factual correction to make, the Cabinet Secretariat should be informed within 24 hours of circulation of the minutes.¹²⁴

18 Cabinet Committees

(1) Cabinet committees help to ensure that government business is processed more effectively by relieving pressure on Cabinet. The committee structure also supports the principle of collective responsibility, ensuring that policy proposals receive thorough consideration without an issue having to be referred to the whole Cabinet. Cabinet committee decisions have the same authority as Cabinet decisions.¹²⁵

(2) 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.¹²⁶

(3) Committees are usually established to consider a particular area of government business, such as home or domestic affairs, or national security. Where appropriate, sub-committees may be established to consider detailed issues and report as necessary to the full committee. Ad hoc or miscellaneous committees may also be established by the Prime Minister to carry out a particular task, usually over a limited timescale.¹²⁷

(4) The committee structure varies depending on the requirements of the incumbent government. A list of the current committees, their terms of reference and the ministers who sit on them will normally be available from the Cabinet Office website.¹²⁸

(5) 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. Meetings at COBR are in effect Cabinet committee meetings, although there is no fixed membership, and they can meet at ministerial or official level depending on the issue under consideration. In general

¹²³ *Cabinet Manual* Ch.4 para 4.34

¹²⁴ *Cabinet Manual* Ch.4 para 4.35

¹²⁵ *Cabinet Manual* Ch.4 para 4.9

¹²⁶ *Cabinet Manual* Ch.4 para 4.10

¹²⁷ *Cabinet Manual* Ch.4 para 4.11

¹²⁸ *Cabinet Manual* Ch.4 para 4.12

the chair will be taken by the secretary of state of the government department with lead responsibility for the particular issue being considered.¹²⁹

(6) Official committees can be established to support Cabinet committees. Official committees are chaired by the Cabinet Secretariat. There is no fixed membership, but senior officials will be invited from each department with a minister who is a member of the relevant Cabinet committee.¹³⁰

(7) Official committees may be convened for a variety of purposes, but would normally meet in advance of a Cabinet committee. This would enable them to consider the issues that would need to be covered in Cabinet committee papers and to help the Cabinet Secretariat identify points that are likely to be raised so that it can brief the chair of the Cabinet committee effectively.¹³¹

(8) The role of the Cabinet committee responsible for primary legislation differs from that of a policy Cabinet committee: it is concerned with the preparation and management of the legislative programme, rather than with agreeing government policy. The committee aims to ensure that the content of the legislative programme as a whole implements the Government's priorities, and that the passage of bills through Parliament can be successfully managed.¹³²

19 Collective Responsibility

(1) The principle of collective responsibility, save where it is explicitly set aside, 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.¹³³

(2) Matters wholly within the responsibility of a single Minister and which do not significantly engage collective responsibility need not be brought to the Cabinet or to a Ministerial Committee unless the Minister wishes to inform his colleagues or to have their advice. No definitive criteria can be given for issues which engage collective responsibility. The Cabinet Secretariats can advise where departments are unsure. When there is a difference between departments, it should not be referred to the Cabinet until other means of resolving it have been exhausted. It is the responsibility of the initiating department to ensure that proposals have been discussed with other interested departments and the outcome of these discussions should be reflected in the memorandum or letter submitted to Cabinet or a Cabinet Committee.¹³⁴

¹²⁹ *Cabinet Manual* Ch.4 para 4.13

¹³⁰ *Cabinet Manual* Ch.4 para 4.14

¹³¹ *Cabinet Manual* Ch.4 para 4.15

¹³² *Cabinet Manual* Ch.4 para 4.21

¹³³ Ministerial Code para 2.1

¹³⁴ Ministerial Code para 2.4

20 The Cabinet Secretary and Cabinet Secretariat

(1) The Cabinet Secretary is the head of the Cabinet Secretariat. The Cabinet Secretary is appointed by the Prime Minister on the advice of the retiring Cabinet Secretary and the First Civil Service Commissioner.¹³⁵

(2) The Cabinet Secretary, unless unavoidably absent, attends all meetings of Cabinet and is responsible for the smooth running of Cabinet meetings and for preparing records of its discussions and decisions. This includes responsibility for advising the Prime Minister on all questions connected with the appointment and organisation of Cabinet committees, including membership and terms of reference.¹³⁶

(3) The Cabinet Secretariat exists to support the Prime Minister, and the Deputy Prime Minister where a minister has been appointed to that office, and the chairs of Cabinet committees in ensuring that government business is conducted in an effective and timely way and that proper collective consideration takes place. The Cabinet Secretariat is therefore non-departmental in function and consists of officials who are based in the Cabinet Office but drawn from across government.¹³⁷

(4) The Cabinet Secretariat reports to the Prime Minister, the Deputy Prime Minister and other ministers who chair Cabinet committees. The Cabinet Secretariat prepares the agenda of Cabinet committee meetings, with the agreement of the chair; it also provides them with advice and support in their functions as chair; and it issues the minutes of the committees.¹³⁸

¹³⁵ *Cabinet Manual* Ch.4 para 4.53

¹³⁶ *Cabinet Manual* Ch.4 para 4.54

¹³⁷ *Cabinet Manual* Ch. 4 para 4.51

¹³⁸ *Cabinet Manual* Ch.4 para 4.52

PART II

PUBLIC ADMINISTRATION

Chapter 5: THE CIVIL SERVICE

21 The Civil Service

(1) Subject to subsections (2) and (3), this Chapter applies to the civil service of the State.¹³⁹

(2) This Chapter does not apply to the following parts of the civil service of the State—

- (a) the Secret Intelligence Service;
- (b) the Security Service;
- (c) the Government Communications Headquarters;
- (d) the Northern Ireland Civil Service.¹⁴⁰

(3) Further, this Chapter—

- (a) does not apply in relation to the making, outside the United Kingdom, of selections of persons who are not members of the civil service of the State for appointment to that service for the purpose only of duties to be carried out wholly outside the United Kingdom;
- (b) does not apply in relation to the appointment of a person to the civil service of the State who was selected for the appointment as mentioned in paragraph (a);
- (c) does not apply to the civil service of the State so far as it consists of persons—
 - (i) who were appointed to the civil service of the State as mentioned in paragraph (b), and
 - (ii) all of whose duties are carried out wholly outside the United Kingdom.¹⁴¹

¹³⁹ Constitutional Reform and Governance Act 2010 c.25 Ch.1 s1(1)

¹⁴⁰ Constitutional Reform and Governance Act 2010 c.25 Ch.1 s1(2)

¹⁴¹ Constitutional Reform and Governance Act 2010 c.25 Ch.1 s1(3)

(4) In this Chapter references to the civil service—

(a) are to the civil service of the State excluding the parts mentioned in subsections (2) and (3)(c);

(b) are to be read subject to subsection (3)(a) and (b);

and references to civil servants are to be read accordingly.¹⁴²

22 General principles of the Civil Service

(1) Civil servants are servants of the Crown and owe a duty of loyal service to the Crown as their employer.¹⁴³

(2) Civil servants must be, and must be seen to be, honest and impartial in the exercise of their duties. They must not allow their judgement or integrity to be compromised in fact or by reasonable implication. In particular:

(a) civil servants must not misuse information which they acquire in the course of their official duties, nor without authority disclose official information which has been communicated in confidence within Government, or received in confidence from others. They must not seek to frustrate the policies, decisions or actions of Government either by declining to take, or abstaining from, action which flows from ministerial decisions or by unauthorised, improper or premature disclosure outside the Government of any information to which they have had access as civil servants;

(b) civil servants must not take part in any political or public activity which compromises, or might be seen to compromise, their impartial service to the Government of the day or any future Government;

(c) civil servants must not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. Conflicts of interest may arise from financial interests and more broadly from official dealings with, or decisions in respect of, individuals who share a civil servant's private interests (for example freemasonry, membership of societies, clubs and other organisations, and family). Where a conflict of interest arises, civil servants must declare their interest to senior management so that senior management can determine how best to proceed; and

(d) civil servants must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity.¹⁴⁴

¹⁴² Constitutional Reform and Governance Act 2010 c.25 Ch.1 s1(4)

¹⁴³ *Civil Service Management Code* (2011) 4.1.1

¹⁴⁴ *Civil Service Management Code* (2011) 4.1.3

23 Ministers and Civil Servants

(1) 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.¹⁴⁵

(2) Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions, and should have regard to the Principles of Scientific Advice to Government.¹⁴⁶

(3) Heads of departments and the chief executives of executive agencies are appointed as Accounting Officers. This is a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally to the Committee of Public Accounts on these matters, within the framework of Ministerial accountability to Parliament for the policies, actions and conduct of their departments.¹⁴⁷

(4) Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. If a Minister in charge of a department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objections to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled.¹⁴⁸

(5) If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question. The Accounting Officer is obliged to comply with the instructions and send relevant papers to the Comptroller and Auditor General. A similar procedure applies where the Accounting Officer has concerns about whether a proposed course of action offers value for money. This notification process enables the Committee of Public Accounts to see that the Accounting Officer does not bear personal responsibility for the actions concerned.¹⁴⁹

¹⁴⁵ Ministerial Code para 5.1. Deleted ‘and the requirements of the Constitutional Reform Act 2010’

¹⁴⁶ Ministerial Code para 5.2

¹⁴⁷ Ministerial Code para 5.3

¹⁴⁸ Ministerial Code para 5.4

¹⁴⁹ Ministerial Code para 5.5

24 Management of the Civil Service

(1) The Minister for the Civil Service has the power to manage the civil service (excluding the diplomatic service). ¹⁵⁰

(2) The Secretary of State has the power to manage the diplomatic service. ¹⁵¹

(3) The powers in subsections (1) and (2) include (among other things) power to make appointments. ¹⁵²

(4) But they do not cover national security vetting (and, accordingly, subsections (1) and (2) do not affect any power relating to national security vetting). ¹⁵³

(5) The agreement of the Minister for the Civil Service is required for any exercise of the power in subsection (2) in relation to—

(a) remuneration of civil servants (including compensation payable on leaving the civil service), or

(b) the conditions on which a civil servant may retire. ¹⁵⁴

(6) In exercising his power to manage the civil service, the Minister for the Civil Service shall have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and of the conventions governing the relationship between Parliament and Her Majesty's Government. ¹⁵⁵

25 The Civil Service Commission: composition and functions

(1) There is to be a body corporate called the Civil Service Commission (“the Commission”). ¹⁵⁶

(2) The Commission is to consist of at least seven members. ¹⁵⁷

(3) One of those is to be the First Civil Service Commissioner appointed in accordance with the rules set out in subsections (4) to (10), below. ¹⁵⁸

¹⁵⁰ Constitutional Reform and Governance Act 2010 (hereafter ‘CRGA 2010’) c.25 Ch.1 s3(1)

¹⁵¹ CRGA 2010 c.25 Ch.1 s3(2)

¹⁵² CRGA 2010 c.25 Ch.1 s3(3)

¹⁵³ CRGA 2010 c.25 Ch.1 s3(4)

¹⁵⁴ CRGA 2010 c.25 Ch.1 s3(5)

¹⁵⁵ CRGA 2010 c.25 Ch.1 s3(6)

¹⁵⁶ CRGA 2010 c.25 Ch.1 s2(1)

¹⁵⁷ CRGA 2010 c.25 Sch.1 (Part 1) s1(1)

¹⁵⁸ CRGA 2010 c.25 Sch.1 (Part 1) s1(2)

(4) The First Commissioner is appointed by Her Majesty on the recommendation of the Minister for the Civil Service.¹⁵⁹

(5) A person's selection for recommendation as First Commissioner must be on merit on the basis of fair and open competition.¹⁶⁰

(6) Before selecting a person as First Commissioner, the Minister must consult—

(a) the First Ministers for Scotland and Wales, and

(b) the relevant opposition leaders (see subsection 10).¹⁶¹

(7) The terms on which the First Commissioner holds office are determined by the Minister for the Civil Service.¹⁶²

(8) The period of the appointment of the First Commissioner is to be no more than five years.¹⁶³

(9) A person cannot be appointed as First Commissioner more than once.¹⁶⁴

(10) The relevant opposition leaders are the registered leaders of the registered parties in opposition to Her Majesty's Government in the United Kingdom which had the highest and second highest national vote at the previous parliamentary general election.¹⁶⁵

(11) The other members of the Commission are to be Civil Service Commissioners appointed under subsections (12) to (19), below.¹⁶⁶

(12) A Commissioner is appointed by Her Majesty on the recommendation of the Minister for the Civil Service.¹⁶⁷

(13) A person's selection for recommendation as a Commissioner must be on merit on the basis of fair and open competition.¹⁶⁸

(14) A person must not be selected as a Commissioner without the agreement of the First Commissioner.¹⁶⁹

¹⁵⁹ CRGA 2010 c.25 Sch.1 (Part 1) s2(2)

¹⁶⁰ CRGA 2010 c.25 Sch.1 (Part 1) s2(3)

¹⁶¹ CRGA 2010 c.25 Sch.1 (Part 1) s2(4)

¹⁶² CRGA 2010 c.25 Sch.1 (Part 1) s2(5)

¹⁶³ CRGA 2010 c.25 Sch.1 (Part 1) s2(6)

¹⁶⁴ CRGA 2010 c.25 Sch.1 (Part 1) s2(7)

¹⁶⁵ CRGA 2010 c.25 Sch.1 (Part 1) s2(8)

¹⁶⁶ CRGA 2010 c.25 Sch.1 (Part 1) s1(3)

¹⁶⁷ CRGA 2010 c.25 Sch.1 (Part 1) s3(2)

¹⁶⁸ CRGA 2010 c.25 Sch.1 (Part 1) s3(3)

¹⁶⁹ CRGA 2010 c.25 Sch.1 (Part 1) s3(4)

(15) The terms on which a Commissioner holds office are determined by the Minister. ¹⁷⁰

(16) The period of the appointment as a Commissioner is to be no more than five years. ¹⁷¹

(17) A person cannot be appointed as a Commissioner more than once. ¹⁷²

(18) A person cannot be a Commissioner and the First Commissioner at the same time. ¹⁷³

(19) But, if the office of First Commissioner is vacant, the Minister may authorise a Commissioner to carry out the functions of First Commissioner until the vacancy is filled. ¹⁷⁴

(20) The Commission (including its members and employees) is not to be regarded—

(a) as the servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown. ¹⁷⁵

(21) The Commission's property is not to be regarded as property of, or held on behalf of, the Crown. ¹⁷⁶

(22) The Commission may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions. ¹⁷⁷

(23) But the Commission may not borrow money except with the agreement of the Minister for the Civil Service. ¹⁷⁸

(24) Nothing in this section which specifies powers of the Commission limits the generality of subsection (22). ¹⁷⁹

(25) The Commission may establish committees. ¹⁸⁰

¹⁷⁰ CRGA 2010 c.25 Sch.1 (Part 1) s3(5)

¹⁷¹ CRGA 2010 c.25 Sch.1 (Part 1) s3(6)

¹⁷² CRGA 2010 c.25 Sch.1 (Part 1) s3(8)

¹⁷³ CRGA 2010 c.25 Sch.1 (Part 1) s3(9)

¹⁷⁴ CRGA 2010 c.25 Sch.1 (Part 1) s3(10)

¹⁷⁵ CRGA 2010 c.25 Sch.1 (Part 2) s7(1)

¹⁷⁶ CRGA 2010 c.25 Sch.1 (Part 2) s7(2)

¹⁷⁷ CRGA 2010 c.25 Sch.1 (Part 2) s8(1)

¹⁷⁸ CRGA 2010 c.25 Sch.1 (Part 2) s8(2)

¹⁷⁹ CRGA 2010 c.25 Sch.1 (Part 2) s8(3)

¹⁸⁰ CRGA 2010 c.25 Sch.1 (Part 2) s9(1)

(26) A committee of the Commission may establish sub-committees.¹⁸¹

(27) Members of a committee or sub-committee may include persons who are not members of the Commission.¹⁸²

(28) The Commission may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum.¹⁸³

(29) The validity of proceedings of the Commission or a committee or sub-committee is not affected by—

(a) a vacancy among the members, or

(b) a defect in the appointment of a member.¹⁸⁴

Chapter 6: DEPARTMENTS OF STATE

26 Prime Ministerial authority

The Prime Minister is responsible for the overall organisation of the executive and the allocation of functions between Ministers in charge of departments.¹⁸⁵

27 Limitation on Ministerial Powers

(1) The Prime Minister's approval must be sought by a minister where changes are proposed that affect this allocation and the responsibilities for the discharge of ministerial functions. This applies whether the functions in question are derived from statute or from the exercise of the Royal Prerogative, or are general administrative responsibilities.¹⁸⁶

(2) The Prime Minister's written approval must be sought where it is proposed to transfer functions:

(a) between Ministers in charge of departments unless the changes are de minimis, can be made administratively and do not justify public announcement.

(b) within the field of responsibility of one Minister when the change is likely to be politically sensitive or to raise wider issues of policy or organisation.

¹⁸¹ CRGA Act 2010 c.25 Sch.1 (Part 2) s9(2)

¹⁸² CRGA 2010 c.25 Sch.1 (Part 2) s9(3)

¹⁸³ CRGA 2010 c.25 Sch.1 (Part 2) s10(1)

¹⁸⁴ CRGA 2010 c.25 Sch.1 (Part 2) s10(2)

¹⁸⁵ Common law; Ministerial Code s4.1

¹⁸⁶ Ministerial Code para 4.2

(c) between junior Ministers within a department when a change in ministerial titles is involved.¹⁸⁷

(3) In addition, the Prime Minister's written approval should be sought for proposals to allocate new functions to a particular Minister where the function does not fall wholly within the field of responsibilities of one Minister, or where there is disagreement about who should be responsible.¹⁸⁸

(4) Unresolved disputes concerning the allocation of functions should be referred to the Cabinet Secretary before a submission is made to the Prime Minister.¹⁸⁹

Chapter 7: NATIONAL FINANCE

28 The Treasury

HM Treasury is the United Kingdom's finance and economics ministry, and is responsible for formulating and implementing the UK Government's financial and economic policy.¹⁹⁰

29 Her Majesty's Revenue and Customs

(1) Her Majesty may by Letters Patent appoint Commissioners for Her Majesty's Revenue and Customs.¹⁹¹

(2) The Welsh title of the Commissioners shall be Comisynwyr Cyllid a Thollau Ei Mawrhydi.¹⁹²

(3) A Commissioner—

(a) may resign by notice in writing to the Treasury, and

(b) otherwise, shall hold office in accordance with the terms and conditions of his appointment (which may include provision for dismissal).¹⁹³

(4) In exercising their functions, the Commissioners act on behalf of the Crown.¹⁹⁴

(5) Service as a Commissioner is service in the civil service of the State.¹⁹⁵

¹⁸⁷ Ministerial Code para 4.3

¹⁸⁸ Ministerial Code para 4.4

¹⁸⁹ Ministerial Code para 4.5

¹⁹⁰ *HM Treasury Group Departmental Strategic Objectives 2008-2011* (2009) para 1.1

¹⁹¹ Commissioners for Revenue and Customs Act 2005 c.11 s1(1)

¹⁹² Commissioners for Revenue and Customs Act 2005 c.11 s1(2)

¹⁹³ Commissioners for Revenue and Customs Act 2005 c.11 s1(3)

¹⁹⁴ Commissioners for Revenue and Customs Act 2005 c.11 s1(4)

¹⁹⁵ Commissioners for Revenue and Customs Act 2005 c.11 s1(5)

(6) The Commissioners may appoint staff, to be known as officers of Revenue and Customs.¹⁹⁶

(7) A person shall hold and vacate office as an officer of Revenue and Customs in accordance with the terms of his appointment (which may include provision for dismissal).¹⁹⁷

(8) An officer of Revenue and Customs shall comply with directions of the Commissioners (whether he is exercising a function conferred on officers of Revenue and Customs or exercising a function on behalf of the Commissioners).¹⁹⁸

(9) Anything (including anything in relation to legal proceedings) begun by or in relation to one officer of Revenue and Customs may be continued by or in relation to another.¹⁹⁹

(10) Appointments under subsection (6) may be made only with the approval of the Minister for the Civil Service as to terms and conditions of service.²⁰⁰

(11) Service in the employment of the Commissioners is service in the civil service of the State.²⁰¹

(12) The Commissioners shall be responsible for—

(a) the collection and management of revenue for which the Commissioners of Inland Revenue were responsible before the commencement of this section,

(b) the collection and management of revenue for which the Commissioners of Customs and Excise were responsible before the commencement of this section, and

(c) the payment and management of tax credits for which the Commissioners of Inland Revenue were responsible before the commencement of this section.²⁰²

(13) The Commissioners shall also have all the other functions which before the commencement of this section vested in—

(a) the Commissioners of Inland Revenue (or in a Commissioner), or

¹⁹⁶ Commissioners for Revenue and Customs Act 2005 c.11 s2(1)

¹⁹⁷ Commissioners for Revenue and Customs Act 2005 c.11 s2(2)

¹⁹⁸ Commissioners for Revenue and Customs Act 2005 c.11 s2(3)

¹⁹⁹ Commissioners for Revenue and Customs Act 2005 c.11 s2(4)

²⁰⁰ Commissioners for Revenue and Customs Act 2005 c.11 s2(5)

²⁰¹ Commissioners for Revenue and Customs Act 2005 c.11 s2(6)

²⁰² Commissioners for Revenue and Customs Act 2005 c.11 s5(1)

(b) the Commissioners of Customs and Excise (or in a Commissioner).²⁰³

(14) This section is subject to section 35 of the Commissioners for Revenue and Customs Act 2005 (c.11).²⁰⁴

(15) In this Constitution “*revenue*” includes taxes, duties and national insurance contributions.²⁰⁵

(16) A function conferred by an enactment (in whatever terms) on any of the persons listed in subsection (17) shall by virtue of this subsection vest in an officer of Revenue and Customs.²⁰⁶

(17) Those persons are—

(a) an officer as defined by section 1(1) of the Customs and Excise Management Act 1979 (c. 2),

(b) a person acting under the authority of the Commissioners of Customs and Excise,

(c) an officer of the Commissioners of Customs and Excise,

(d) a customs officer,

(e) an officer of customs,

(f) a customs and excise officer,

(g) an officer of customs and excise, and

(h) a collector of customs and excise.²⁰⁷

(18) In the exercise of their functions the Commissioners shall comply with any directions of a general nature given to them by the Treasury.²⁰⁸

²⁰³ Commissioners for Revenue and Customs Act 2005 c.11 s5(2)

²⁰⁴ Commissioners for Revenue and Customs Act 2005 c.11 s5(3)

²⁰⁵ Commissioners for Revenue and Customs Act 2005 c.11 s5(4)

²⁰⁶ Commissioners for Revenue and Customs Act 2005 c.11 s6(1)

²⁰⁷ Commissioners for Revenue and Customs Act 2005 c.11 s6(2)

²⁰⁸ Commissioners for Revenue and Customs Act 2005 c.11 s11

30 Bank of England: Governor, Deputy Governor and Court of Directors

- (1) There shall continue to be a court of directors of the Bank of England. ²⁰⁹
- (2) The court shall consist of a Governor, 2 Deputy Governors and 16 directors of the Bank, all of whom shall be appointed by Her Majesty. ²¹⁰
- (3) Appointment as Governor or Deputy Governor of the Bank shall be for a period of 5 years. ²¹¹
- (4) A person appointed as Governor or Deputy Governor of the Bank shall work exclusively for the Bank. ²¹²
- (5) Appointment as director of the Bank shall be for a period of 3 years, except that initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times. ²¹³
- (6) A person appointed as director of the Bank in place of a person who ceased to hold office before the end of the term for which he was appointed shall be appointed for the remainder of that person's term of office. ²¹⁴
- (7) A person appointed as Governor, Deputy Governor or director of the Bank may resign his office by written notice to the Bank. ²¹⁵
- (8) The court may act notwithstanding the existence of one or more vacancies among its members. ²¹⁶
- (9) The court may appoint such sub-committees as it thinks fit. ²¹⁷
- (10) The court may delegate such duties and powers as it thinks fit to—
 - (a) a member of the court,
 - (b) any officer, servant or agent of the Bank,
 - (c) a sub-committee consisting of—
 - (i) members of the court, or
 - (ii) one or more members of the court and one or more of the officers, servants and agents of the Bank. ²¹⁸

²⁰⁹ Bank of England Act 1998 c.11 s1(1)

²¹⁰ Bank of England Act 1998 c.11 s1(2)

²¹¹ Bank of England Act 1998 c.11 Sch.1 s1(1)

²¹² Bank of England Act 1998 c.11 Sch.1 s1(2)

²¹³ Bank of England Act 1998 c.11 Sch.1 s2

²¹⁴ Bank of England Act 1998 c.11 Sch.1 s3

²¹⁵ Bank of England Act 1998 c.11 Sch.1 s4

²¹⁶ Bank of England Act 1998 c.11 Sch.1 s9

²¹⁷ Bank of England Act 1998 c.11 Sch.1 s10

²¹⁸ Bank of England Act 1998 c.11 Sch.1 s11

31 Functions of the Court of Directors of the Bank of England

(1) The court of directors of the Bank shall manage the Bank's affairs, other than the formulation of monetary policy.²¹⁹

(2) In particular, the court's functions under subsection (1) shall include determining the Bank's objectives (including objectives for its financial management) and strategy.²²⁰

(3) In determining the Bank's objectives and strategy, the court's aim shall be to ensure the effective discharge of the Bank's functions.²²¹

(4) Subject to that, in determining objectives for the financial management of the Bank, the court's aim shall be to ensure the most efficient use of the Bank's resources.²²²

32 Relationship between the Treasury and the Bank of England and Other Banks

(1) The Treasury may from time to time give such directions to the Bank as, after consultation with the Governor of the Bank, they think necessary in the public interest except in relation to monetary policy.²²³

(2) The Bank, if they think it necessary in the public interest, may request information from and make recommendations to bankers, and may, if so authorised by the Treasury, issue directions to any banker for the purpose of securing that effect is given to any such request or recommendation:

Provided that:—

(a) no such request or recommendations shall be made with respect to the affairs of any particular customer of a banker; and

(b) before authorising the issue of any such directions the Treasury shall give the banker concerned, or such person as appears to them to represent him, an opportunity of making representations with respect thereto.²²⁴

(3) In relation to monetary policy, the objectives of the Bank of England shall be—

(a) to maintain price stability, and

(b) subject to that, to support the economic policy of Her Majesty's Government, including its objectives for growth and employment.²²⁵

²¹⁹ Bank of England Act 1998 c.11 s2(1)

²²⁰ Bank of England Act 1998 c.11 s2(2)

²²¹ Bank of England Act 1998 c.11 s2(3)

²²² Bank of England Act 1998 c.11 s2(4)

²²³ Bank of England Act 1946 c.27 s4(1) (as amended)

²²⁴ Bank of England Act 1946 c.27 s 4(3)

(4) The Treasury may by notice in writing to the Bank specify for the purposes of section 3, above—

(a) what price stability is to be taken to consist of, or

(b) what the economic policy of Her Majesty's Government is to be taken to be. ²²⁶

33 Office of Comptroller and Auditor General

(1) The office of Comptroller and Auditor General (or, in Welsh, Rheolwr ac Archwilydd Cyffredinol) is to continue. ²²⁷

(2) It is for Her Majesty by Letters Patent to appoint a person to be Comptroller and Auditor General. ²²⁸

(3) Her Majesty's power is exercisable on an address of the House of Commons. ²²⁹

(4) It is for the Prime Minister to move the motion for the address. ²³⁰

(5) To do so the Prime Minister must have the agreement of the person who chairs the Committee of Public Accounts. ²³¹

(6) The person appointed holds office for 10 years. ²³²

(7) The person may not be appointed again. ²³³

(8) The Comptroller and Auditor General continues by that name to be a corporation sole. ²³⁴

(9) The Comptroller and Auditor General continues to be an officer of the House of Commons.

But section 4(4) of the House of Commons (Administration) Act 1978 (which provides for the application of provisions of that Act to staff employed in or for the

²²⁵ Bank of England Act 1998 c.11 s11

²²⁶ Bank of England Act 1998 c.11 s12(1)

²²⁷ Budget Responsibility and National Audit Act 2011 c.4 s11(1)

²²⁸ Budget Responsibility and National Audit Act 2011 c.4 s11(2)

²²⁹ Budget Responsibility and National Audit Act 2011 c.4 s11(3)

²³⁰ Budget Responsibility and National Audit Act 2011 c.4 s11(4)

²³¹ Budget Responsibility and National Audit Act 2011 c.4 s11(5)

²³² Budget Responsibility and National Audit Act 2011 c.4 s11(6)

²³³ Budget Responsibility and National Audit Act 2011 c.4 s11(7)

²³⁴ Budget Responsibility and National Audit Act 2011 c.4 s12(1)

purposes of the House of Commons) does not apply in relation to the office of Comptroller and Auditor General.²³⁵

(10) The person who is Comptroller and Auditor General may not be a member of the House of Lords.²³⁶

(11) The Comptroller and Auditor General is not to be regarded—

(a) as the servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.²³⁷

(12) The person who is Comptroller and Auditor General may not hold any other office or position to which a person may be appointed, or recommended for appointment, by or on behalf of the Crown.²³⁸

(13) The Comptroller and Auditor General may resign from office by giving written notice to the Prime Minister.²³⁹

(14) Her Majesty may remove the Comptroller and Auditor General from office on an address of both Houses of Parliament.²⁴⁰

(15) The Comptroller and Auditor General may carry out examinations into the economy, efficiency and effectiveness with which any department, authority or other body to which this section applies has used its resources in discharging its functions.²⁴¹

34 The National Audit Office

(1) There is to be a body corporate called the National Audit Office (or, in Welsh, Y Swyddfa Archwilio Genedlaethol).²⁴²

(2) The membership, status and functioning of the National Audit Office shall be in accordance with Schedule 2 to the Budget Responsibility and National Audit Act 2011 (c.4).²⁴³

²³⁵ Budget Responsibility and National Audit Act 2011 c.4 s12(2)

²³⁶ Budget Responsibility and National Audit Act 2011 c.4 s12(3)

²³⁷ Budget Responsibility and National Audit Act 2011 c.4 s12(4)

²³⁸ Budget Responsibility and National Audit Act 2011 c.4 s12(5)

²³⁹ Budget Responsibility and National Audit Act 2011 c.4 s14(1)

²⁴⁰ Budget Responsibility and National Audit Act 2011 c.4 s14(2)

²⁴¹ National Audit Act 1983 c.44 s6

²⁴² Budget Responsibility and National Audit Act 2011 c.4 s20(1)

²⁴³ Budget Responsibility and National Audit Act 2011 c.4 s20(3)

35 The Public Accounts Commission

(1) There shall be a body of Commissioners named the Public Accounts Commission (referred to in this section as “the Commission”) which shall perform the functions conferred on it by this Constitution. ²⁴⁴

(2) The Commission shall consist of—

- (a) the Member of the House of Commons who is for the time being the Chairman of the Committee of Public Accounts;
- (b) the Leader of the House of Commons; and
- (c) seven other Members of the House of Commons appointed by the House, none of whom shall be a Minister of the Crown. ²⁴⁵

(3) The Commission shall from time to time present to the House of Commons a report on the exercise of its functions. ²⁴⁶

36 National Loans Fund

(1) The Treasury shall have an account at the Bank of England, to be called the National Loans Fund. ²⁴⁷

(2) Money paid into the National Loans Fund shall form one general fund to meet all outgoings from the Fund, and daily statements of all money paid into and out of the Fund, in such form as the Treasury may direct, shall be sent by the Bank of England to the Comptroller and Auditor General. ²⁴⁸

(3) The Comptroller and Auditor General shall from time to time at the request of the Treasury grant credits on the National Loans Fund for sums payable out of the Fund under this or any other Act and, subject to section 18 of the National Loans Act 1968, all payments out of the National Loans Fund shall be made by the Treasury in accordance with credits so granted. ²⁴⁹

(5) In section 1(2) of the Parliament Act 1911 (which defines the Money Bill as one dealing exclusively with subjects which include the imposition of charges on the Consolidated Fund) after “Consolidated Fund” there shall be inserted “the National Loans Fund”. ²⁵⁰

²⁴⁴ National Audit Act 1983 c.44 s2(1)

²⁴⁵ National Audit Act 1983 c.44 s2(2)

²⁴⁶ National Audit Act 1983 c.44 s2(3)

²⁴⁷ National Loans Act 1968 c.13 s1(1)

²⁴⁸ National Loans Act 1968 c.13 s1(2)

²⁴⁹ National Loans Act 1968 c.13 s1(3)

²⁵⁰ National Loans Act 1968 c.13 s1(5)

(7) No provision in any Act requiring money to be paid into the Exchequer shall be construed as requiring or authorising money to be paid into the National Loans Fund. ²⁵¹

(8) Where the intention is that money be paid into the Consolidated Fund it shall be sufficient to enact that it be paid into the Consolidated Fund (instead of enacting that it be paid into the Exchequer). ²⁵²

37 The Consolidated Fund of Great Britain and Ireland

(1) All rates, duties, taxes, receipts, sums of money, and revenues of what nature or kind soever, which under or by virtue of any Act or Acts in force in Great Britain or Ireland respectively at the time of the passing of National Loans Act 1968, and immediately before the said fifth day of January one thousand eight hundred and seventeen, shall or may constitute or form part of or be directed to be carried to the several funds called the consolidated fund of Great Britain and the consolidated fund of Ireland respectively, shall be carried to and shall be and become and shall form and constitute one general fund, to be called the consolidated fund of the United Kingdom of Great Britain and Ireland. ²⁵³

(2) And that the said consolidated fund of the United Kingdom of Great Britain and Ireland, whether the same or any part thereof shall be in the Exchequer of Great Britain or in the Exchequer of Ireland, shall in the first place, be charged and chargeable with and shall from time to time be applied indiscriminately to the payment of the whole of the interest of the national debts of Great Britain and Ireland, and the sinking funds applicable to the reduction thereof, as one joint consolidated national debt, interest, and sinking fund; and in the next place the said consolidated fund of the said United Kingdom shall in like manner be charged and chargeable with and shall be applied to the payment of the salaries and other charges of his Majesty's civil list establishments in Great Britain and Ireland; and in the next place the said consolidated fund of the said United Kingdom shall be in like manner charged and chargeable with and shall be applied in payment of all other charges whatsoever made payable out of the consolidate funds of Great Britain and Ireland respectively, under or by virtue of any Act or Acts in force immediately before the said fifth day of January one thousand eight hundred and seventeen; and after payment and satisfaction of all the aforesaid charges the said consolidated fund of the United Kingdom shall be in like manner indiscriminately applied to the service of the United Kingdom of Great Britain and Ireland, or any part thereof, as shall be directed by Parliament, and shall be issued and applied accordingly, in manner and under the authority herein-after mentioned and directed. ²⁵⁴

²⁵¹ National Loans Act 1968 c.13 s1(6)

²⁵² National Loans Act 1968 c.13 s1(8)

²⁵³ Consolidated Fund Act 1816 c.98 s1

²⁵⁴ Consolidated Fund Act 1816 c.98 s1

PART III

THE PARLIAMENTARY LEGISLATURE

Chapter 8: THE PARLIAMENTARY SPEAKERS

38 Election of the Speaker in the House of Commons

(1) Whenever it is necessary to proceed forthwith to the choice of a new Speaker in consequence of the Speaker having ceased for any reason to be a Member of the House of Commons, the chair shall be taken by that Member, present in the House and not being a Minister of the Crown, who has served for the longest period continuously as a Member of this House.²⁵⁵

(2) Whenever it is necessary to proceed to the choice of a new Speaker in consequence of an intimation to Her Majesty by the Speaker of his wish to relinquish that office then the Speaker shall continue to take the chair and shall perform the duties and exercise the authority of Speaker until a new Speaker has been chosen, whereupon the Speaker shall leave the chair and shall cease to perform those duties and to exercise that authority and the Speaker Elect shall take the chair accordingly: Provided that, if when this House proceeds to choose a new Speaker the unavoidable absence of the Speaker has been announced, the Deputy Speaker shall forthwith leave the chair and the chair shall be taken in accordance with the provisions of subsection (1).²⁵⁶

(3) A Member taking the chair under the provisions of subsection (1) shall enjoy all those powers which may be exercised by the Speaker during proceedings under subsection (2).²⁵⁷

(4) If at the commencement of a Parliament the Member who was Speaker at the dissolution of the previous Parliament is returned to the House, the Member presiding in accordance with Standing Order No. 1 (Election of the Speaker: Member presiding) shall, when the House meets to proceed with the choice of a Speaker, ascertain whether the former Speaker is willing to be chosen as Speaker, and, the former Speaker having submitted himself to the House, shall call upon a Member to move that he do take the Chair of this House as Speaker; and the question thereon shall be put forthwith.²⁵⁸

(5) If the question is agreed to, the former Speaker shall thereupon take the chair as Speaker-elect.²⁵⁹

²⁵⁵ *Standing Orders of the House of Commons Relating to Public Business* 2012 (HC 614/2012) Standing Order (hereafter 'Commons SO') No.1(1)

²⁵⁶ Commons SO 1(2)

²⁵⁷ Commons SO 1(3)

²⁵⁸ Commons SO 1A(1)

²⁵⁹ Commons SO 1A(2)

(6) If the question is negatived, the Member presiding shall forthwith adjourn the House to the following day at half-past two o'clock, and the House shall proceed in accordance with Standing Order No. 1B (Election of Speaker by secret ballot). ²⁶⁰

39 Election of the Lord Speaker in the House of Lords

(1) It is the duty of the Lord Speaker ordinarily to attend the Lords House of Parliament as Speaker of the House; and in case the Lord Speaker be absent, his place on the Woolsack or in the Chair may be taken either by a Deputy Speaker, authorised under the Great Seal from the Queen to supply that place, or by a Deputy Chairman, appointed by the House; and if neither a Deputy Speaker nor a Deputy Chairman be present, the Lords may then choose their own Speaker during that vacancy. ²⁶¹

(2) An election of a Lord Speaker shall be held on 13th July 2011. Subsequently, elections shall, subject to paragraphs (3) and (4), be held in the fifth calendar year following that in which the previous election was held, on a day no later than 15th July in that year. If the result of the election is approved under paragraph (8), a Lord Speaker elected under this paragraph shall take office on 1st September in the year of election. ²⁶²

(3) Where a Lord Speaker (including a person elected as Lord Speaker who has not yet taken office) dies, resigns or is deemed to have resigned pursuant to paragraph (11), an election of a Lord Speaker shall, subject to paragraph (4), be held within three months of the death, the giving notice of resignation or the deemed resignation. For the purposes of paragraph (2), this election is then “the previous election”. ²⁶³

(4) Where a Dissolution of Parliament is announced after a date has been set for an election, the election shall take place either on the date originally set, or on a day no later than one month after the opening of the next Parliament, whichever is later. ²⁶⁴

(5) All members of the House shall be entitled to stand for election and to vote, save that

(a) Lords who have not taken the Oath in the current Parliament, who are subject to statutory disqualification, who are suspended from the service of the House, or who are on Leave of Absence, may not stand or vote and

²⁶⁰ Commons SO 1A(3)

²⁶¹ Commons SO.18

²⁶² Commons SO 19(1)

²⁶³ Commons SO 19(2)

²⁶⁴ Commons SO 19(3)

(b) a Lord who has been successful in two previous elections may not stand. Before they can stand, candidates shall require a proposer and a seconder, who must themselves be eligible to stand. ²⁶⁵

(6) The election shall be conducted in accordance with arrangements made by the Clerk of the Parliaments. The Clerk of the Parliaments may refer any question concerning the propriety of the electoral process to the Committee for Privileges and Conduct. ²⁶⁶

(7) In the event of a tie between two or more candidates, the matter (if not resolved by the electoral arrangements adopted by the House) shall be decided by the drawing of lots. ²⁶⁷

(8) The result of the election shall be subject to the approval of Her Majesty The Queen. ²⁶⁸

(9) The Chairman of Committees may act during any vacancy in the office of Speaker. ²⁶⁹

(10) The Lord Speaker may resign at any time by giving written notice to the Leader of the House. ²⁷⁰

(11) If the House passes a motion for an Address to Her Majesty seeking the Lord Speaker's removal from office, the Lord Speaker shall be deemed to have resigned with effect from the date on which the motion was passed. ²⁷¹

Chapter 9: MEETING AND DISSOLUTION OF PARLIAMENTS

40 Dissolution of a Parliament

(1) The polling day for the next parliamentary general election after the passing of this Constitution is to be 7 May 2015. ²⁷²

(2) The polling day for each subsequent parliamentary general election is to be the first Thursday in May in the fifth calendar year following that in which the polling day for the previous parliamentary general election fell. ²⁷³

²⁶⁵ Commons SO.19(4)

²⁶⁶ Commons SO 19(5)

²⁶⁷ Commons SO 19(6)

²⁶⁸ Commons SO 19(7)

²⁶⁹ Commons SO 19(8)

²⁷⁰ Commons SO 19(9)

²⁷¹ Commons SO 19(10)

²⁷² Fixed-term Parliaments Act 2011 c.14 s1(2)

²⁷³ Fixed-term Parliaments Act 2011 c.14 s1(3)

(3) But, if the polling day for the previous parliamentary general election—

(a) was appointed under subsection (13), and

(b) in the calendar year in which it fell, fell before the first Thursday in May, subsection (2) has effect as if for “fifth” there were substituted “fourth”.²⁷⁴

(4) The Prime Minister may by order made by statutory instrument provide that the polling day for a parliamentary general election in a specified calendar year is to be later than the day determined under subsection (1) or (2), but not more than two months later.²⁷⁵

(5) A statutory instrument containing an order under subsection (4) may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.²⁷⁶

(6) The draft laid before Parliament must be accompanied by a statement setting out the Prime Minister's reasons for proposing the change in the polling day.²⁷⁷

(7) An early parliamentary general election is to take place if—

(a) the House of Commons passes a motion in the form set out in subsection (8), and

(b) if the motion is passed on a division, the number of members who vote in favour of the motion is a number equal to or greater than two thirds of the number of seats in the House (including vacant seats).²⁷⁸

(8) The form of motion for the purposes of subsection (7)(a) is—

“That there shall be an early parliamentary general election.”²⁷⁹

(9) An early parliamentary general election is also to take place if—

(a) the House of Commons passes a motion in the form set out in subsection (10), and

(b) the period of 14 days after the day on which that motion is passed ends without the House passing a motion in the form set out in subsection (11).²⁸⁰

²⁷⁴ Fixed-term Parliaments Act 2011 c.14 s1(4)

²⁷⁵ Fixed-term Parliaments Act 2011 c.14 s1(5)

²⁷⁶ Fixed-term Parliaments Act 2011 c.14 s1(6)

²⁷⁷ Fixed-term Parliaments Act 2011 c.14 s1(7)

²⁷⁸ Fixed-term Parliaments Act 2011 c.14 s2(1)

²⁷⁹ Fixed-term Parliaments Act 2011 c.14 s2(2)

²⁸⁰ Fixed-term Parliaments Act 2011 c.14 s2(3)

(10) The form of motion for the purposes of subsection (9)(a) is—

“That this House has no confidence in Her Majesty's Government.”²⁸¹

(11) The form of motion for the purposes of subsection (9)(b) is—

“That this House has confidence in Her Majesty's Government.”²⁸²

(12) Subsection (13) applies for the purposes of the Timetable in rule 1 in Schedule 1 to the Representation of the People Act 1983.²⁸³

(13) If a parliamentary general election is to take place as provided for by subsection (7) or (9), the polling day for the election is to be the day appointed by Her Majesty by proclamation on the recommendation of the Prime Minister (and, accordingly, the appointed day replaces the day which would otherwise have been the polling day for the next election determined under subsections (1) to (6), above).²⁸⁴

(14) The Parliament then in existence dissolves at the beginning of the 25th working day before the polling day for the next parliamentary general election as determined under subsections (1) to (6), above, or appointed under subsection (13).²⁸⁵

(15) Parliament cannot otherwise be dissolved.²⁸⁶

(16) Once Parliament dissolves, the Lord Chancellor and, in relation to Northern Ireland, the Secretary of State have the authority to have the writs for the election sealed and issued (see rule 3 in Schedule 1 to the Representation of the People Act 1983).²⁸⁷

(17) Once Parliament dissolves, Her Majesty may issue the proclamation summoning the new Parliament which may—

(a) appoint the day for the first meeting of the new Parliament;

(b) deal with any other matter which was normally dealt with before the passing of this Act by proclamations summoning new Parliaments (except a matter dealt with by subsection (14) or (16)).²⁸⁸

²⁸¹ Fixed-term Parliaments Act 2011 c.14 s2(4)

²⁸² Fixed-term Parliaments Act 2011 c.14 s2(5)

²⁸³ Fixed-term Parliaments Act 2011 c.14 s2(6)

²⁸⁴ Fixed-term Parliaments Act 2011 c.14 s2(7)

²⁸⁵ Fixed-term Parliaments Act 2011 c.14 s3(1)

²⁸⁶ Fixed-term Parliaments Act 2011 c.14 s3(2)

²⁸⁷ Fixed-term Parliaments Act 2011 c.14 s3(3)

²⁸⁸ Fixed-term Parliaments Act 2011 c.14 s3(4)

(18) In this section “working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) a Christmas Eve, Christmas Day or Good Friday;
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;
- (d) a day appointed for public thanksgiving or mourning.²⁸⁹

(19) But, if—

- (a) on a day (“the relevant day”) one or more working days are fixed or appointed as bank holidays or days for public thanksgiving or mourning, and
- (b) as a result, the day for the dissolution of a Parliament would (apart from this subsection) be brought forward from what it was immediately before the relevant day to a day that is earlier than 30 days after the relevant day, the day or days in question are to continue to be treated as working days (even if the polling day is subsequently changed).²⁹⁰

41 Summoning of a Parliament

(1) The Sovereign in all cases fixes by Proclamation the date for the next meeting of Parliament.²⁹¹

(2) Proclamations are issued by Her Majesty in Council.²⁹²

42 Opening of a Parliament

The date of the first meeting of a new Parliament is determined by a proclamation issued by the Sovereign, on the advice of the Prime Minister.²⁹³

Chapter 10: MEMBERSHIP OF THE HOUSE OF COMMONS

43 Minimum age of Members

A person is disqualified for membership of the House of Commons if, on the day on which he is nominated as a candidate, he has not attained the age of 18.²⁹⁴

²⁸⁹ Fixed-term Parliaments Act 2011 c.14 s3(5)

²⁹⁰ Fixed-term Parliaments Act 2011 c.14 s3(6)

²⁹¹ *Cabinet Manual* Ch.1 para 1.1 & Ch.2 para 2.22

²⁹² *Cabinet Manual* Ch.2 para 2.23

²⁹³ *Cabinet Manual* Ch.2 para 2.4

44 Exclusion of Aliens

(1) That after the said Limitation shall take Effect as aforesaid no Person born out of the Kingdoms of England Scotland or Ireland or the Dominions thereunto belonging (although he be made a Denizen (except such as are born of English Parents) shall be capable to be of the Privy Councill or a Member of either House of Parliament or to enjoy any Office or Place of Trust either Civill or Military or to have any Grant of Lands Tenements or Hereditaments from the Crown to himself or to any other or others in Trust for him. ²⁹⁵

(2) The provisions of subsection 1, above, do not apply (so far as they relate to membership of the House of Commons) to a person who is–

(a) a qualifying Commonwealth citizen, or

(b) a citizen of the Republic of Ireland. ²⁹⁶

(3) For the purposes of subsection (2), a person is a qualifying Commonwealth citizen if he is a Commonwealth citizen who either–

(a) is not a person who requires leave under the Immigration Act 1971 (c. 77) to enter or remain in the United Kingdom, or

(b) is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of that Act. ²⁹⁷

(4) But a person is not a qualifying Commonwealth citizen by virtue of subsection (3)(a) if he does not require leave to enter or remain in the United Kingdom by virtue only of section 8 of the Immigration Act 1971 (exceptions to requirement for leave in special cases). ²⁹⁸

(5) Subject to an order made by the House of Commons under section 6(2) of the House of Commons Disqualification Act 1975 (c. 24) as applied by subsection (6)–

(a) if a person disqualified for membership of that House by virtue of section 3 of the Act of Settlement (1700 c. 2) as modified by this section is elected as a member of that House his election is void;

²⁹⁴ Electoral Administration Act 2006 c.22 s17

²⁹⁵ Act of Settlement 1700 Part III (as amended)

²⁹⁶ Electoral Administration Act 2006 c.22 s18(1)

²⁹⁷ Electoral Administration Act 2006 c.22 s18(2)

²⁹⁸ Electoral Administration Act 2006 c.22 s18(3)

(b) if a person being a member of that House becomes so disqualified for membership his seat is vacated.²⁹⁹

(6) Sections 6(2) to (4) and 7 of the House of Commons Disqualification Act 1975 apply in the case of a person disqualified as mentioned in subsection (5) as they apply in the case of a person disqualified by that Act, and references in those sections to a person disqualified by that Act must be construed as including references to a person disqualified as mentioned in subsection (5).³⁰⁰

45 Persons reported personally guilty of corrupt or illegal practices

(1) If a candidate who had been elected is reported by an election court personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void.³⁰¹

46 Disqualification of certain offenders for membership of the House of Commons

(1) A person found guilty of one or more offences (whether before or after the passing of the Representation of the People Act 1981 (c.34) and whether in the United Kingdom or elsewhere), and sentenced or ordered to be imprisoned or detained indefinitely or for more than one year, shall be disqualified for membership of the House of Commons while detained anywhere in the British Islands or the Republic of Ireland in pursuance of the sentence or order or while unlawfully at large at a time when he would otherwise be so detained.³⁰²

47 Disqualification of holders of certain offices and places

(1) Subject to the provisions of this Constitution, a person is disqualified for membership of the House of Commons who for the time being—is a Lord Spiritual;

(a) holds any of the judicial offices specified in Part I of Schedule 1 to the House of Commons Disqualification Act 1975 (c.24);

(b) is employed in the civil service of the Crown, whether in an established capacity or not, and whether for the whole or part of his time;

(c) is a member of any of the regular armed forces of the Crown;

(d) is a member of any police force maintained by a local policing body or a police authority;

²⁹⁹ Electoral Administration Act 2006 c.22 s18(4)

³⁰⁰ Electoral Administration Act 2006 c.22 s18(5)

³⁰¹ Representation of the People Act 1983 c.2 s159(1)

³⁰² Representation of the People Act 1981 c.34 s1

(e) is a member of the legislature of any country or territory outside the Commonwealth (other than Ireland); or

(f) holds any office described in Part II or Part III of Schedule 1 of the House of Commons Disqualification Act 1975 (c.24).³⁰³

(2) Except as provided by this Constitution, a person shall not be disqualified for membership of the House of Commons by reason of his holding an office or place of profit under the Crown or any other office or place; and a person shall not be disqualified for appointment to or for holding any office or place by reason of his being a member of that House.³⁰⁴

Chapter 11: ELECTIONS TO THE HOUSE OF COMMONS

48 Parliamentary Electors

(1) A person is entitled to vote as an elector at a parliamentary election in any constituency if on the date of the poll he—

(a) is registered in the register of parliamentary electors for that constituency;

(b) is not subject to any legal incapacity to vote (age apart);

(c) is either a Commonwealth citizen or a citizen of the Republic of Ireland; and

(d) is of voting age (that is, 18 years or over).³⁰⁵

(2) A person is not entitled to vote as an elector—

(a) more than once in the same constituency at any parliamentary election; or

(b) in more than one constituency at a general election.³⁰⁶

³⁰³ House of Commons Disqualification Act 1975 c.24 s1

³⁰⁴ House of Commons Disqualification Act 1975 c.24 s1(4)

³⁰⁵ Representation of the People Act 1983 c.2 s1(1) (as amended)

³⁰⁶ Representation of the People Act 1983 c2 s1(2).

49 Entitlement to be registered as parliamentary or local government elector

(1) A person is entitled to be registered in the register of parliamentary electors for any constituency or part of a constituency if on the relevant date he—

- (a) is resident in the constituency or that part of it;
- (b) is not subject to any legal incapacity to vote (age apart);
- (c) is either a qualifying Commonwealth citizen or a citizen of the Republic of Ireland; and
- (d) is of voting age.³⁰⁷

(2) A person is not entitled to be registered in the register of parliamentary electors for any constituency in Northern Ireland unless, in addition to complying with subsection (1) above, he has been resident in Northern Ireland during the whole of the period of three months ending on the relevant date.³⁰⁸

(3) A person is entitled to be registered in the register of local government electors for any electoral area if on the relevant date he—

- (a) is resident in that area;
- (b) is not subject to any legal incapacity to vote (age apart);
- (c) is a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and
- (d) is of voting age.³⁰⁹

(4) The preceding provisions have effect—

- (a) subject to—
 - (i) any enactment imposing a disqualification for registration as a parliamentary, or (as the case may be) local government, elector; and
 - (ii) compliance with any prescribed requirements; and
- (b) (as respects registration as a parliamentary elector) without prejudice to section 2(1) of the Representation of the People Act 1985 (registration of British citizens overseas).³¹⁰

(5) A person otherwise qualified is (despite subsection (1)(d) or (3)(d), as the case may be) entitled to be registered in a register of parliamentary electors or local

³⁰⁷ Representation of the People Act 1983 c.2 s4(1)

³⁰⁸ Representation of the People Act 1983 c.2 s4(2)

³⁰⁹ Representation of the People Act 1983 c.2 s4(3)

³¹⁰ Representation of the People Act 1983 c.2 s4(4)

government electors if he will attain voting age before the end of the period of 12 months beginning with the 1st December next following the relevant date, but—

(a) his entry in the register shall give the date on which he will attain that age; and

(b) until the date given in the entry he shall not by virtue of the entry be treated as an elector for any purposes other than those of an election the date of the poll for which is the date so given or any later date.³¹¹

(6) In this section—“qualifying Commonwealth citizen” means a Commonwealth citizen who either—

(a) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or

(b) is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) any description of such leave;

“the relevant date”, in relation to a person, means—

(a) the date on which an application for registration is made (or, by virtue of section 10A(2) of the Representation of the People Act 1983 (c.2), is treated as having been made) by him;

(b) in the case of a person applying for registration in pursuance of a declaration of local connection or a service declaration, the date on which the declaration was made.³¹²

(7) If a person entitled to be registered by virtue of subsection (5) above has an anonymous entry in the register, the references in paragraphs (a) and (b) of that subsection to his entry in the register are to be read as references to his entry in the record of anonymous entries prepared in pursuance of paragraph 8A of Schedule 2 to the Representation of the People Act 1983 (c.2).³¹³

50 Registers of electors

(1) Each registration officer shall maintain—

(a) a register of parliamentary electors for each constituency or part of a constituency in the area for which he acts; and

(b) a register of local government electors for the local government areas or parts of local government areas included in the area for which he acts.³¹⁴

³¹¹ Representation of the People Act 1983 c.2 s4(5)

³¹² Representation of the People Act 1983 c.2 s4(6)

³¹³ Representation of the People Act 1983 c.2 s4(5A)

³¹⁴ Representation of the People Act 1983 c.2 s9(1)

(2) Subject to section 9B(3) of the Representation of the People Act 1983 (c.2), each register shall contain—

(a) the names of the persons appearing to the registration officer to be entitled to be registered in it (subject to their complying with any prescribed requirements);

(b) (subject to any prescribed exceptions) the qualifying addresses of the persons registered in it; and

(c) in relation to each such person, that person's electoral number.³¹⁵

(3) A person's electoral number is such number (with or without any letters) as is for the time being allocated by the registration officer to that person as his electoral number for the purposes of the register in question.³¹⁶

(4) Electoral numbers shall be allocated by a registration officer in such a way as to ensure, so far as is reasonably practicable, that in each separate part of a register the numbers run consecutively.³¹⁷

(5) The registers of parliamentary electors and of local government electors shall so far as practicable be combined, the entries of persons registered only as parliamentary electors or local government electors being marked to indicate that fact.³¹⁸

(6) Where under this section two or more registration officers maintain registers of parliamentary electors in respect of different parts of the same constituency, then in relation to that constituency any reference in this Act (whether express or implied) to the register of parliamentary electors for a constituency shall be read—

(a) as a reference to one of those registers, or

(b) in relation to one of those registration officers, as the register maintained by him,

as the context may require.³¹⁹

³¹⁵ Representation of the People Act 1983 c.2 s9(2)

³¹⁶ Representation of the People Act 1983 c.2 s9(3)

³¹⁷ Representation of the People Act 1983 c.2 s9(4)

³¹⁸ Representation of the People Act 1983 c.2 s9(5)

³¹⁹ Representation of the People Act 1983 c.2 s9(7)

51 Disfranchisement of offenders

(1) A convicted person during the time that he is detained in a penal institution in pursuance of his sentence or unlawfully at large when he would otherwise be so detained is legally incapable of voting at any parliamentary or local government election.³²⁰

52 Disenfranchisement of offenders detained in mental hospitals

(1) A person to whom section 3A of the Representation of the People Act 1983 (c.2) applies is, during the time that he is—

(a) detained at any place in pursuance of the order or direction by virtue of which this section applies to him, or

(b) unlawfully at large when he would otherwise be so detained,

legally incapable of voting at any parliamentary or local government election.³²¹

Chapter 12: CONSTITUENCIES³²² FOR THE HOUSE OF COMMONS

53 Parliamentary constituencies

(1) There shall for the purpose of parliamentary elections by the county and borough constituencies (or in Scotland the county and burgh constituencies), each returning a single member, which are described in Orders in Council made under the Parliamentary Constituencies Act 1986 (c.56).

(2) The number of constituencies in the United Kingdom shall be 600.

(3) Each constituency shall be wholly in one of the four parts of the United Kingdom (England, Wales, Scotland and Northern Ireland).

(4) There shall be protected constituencies as follows -

(a) There shall be two constituencies in the Isle of Wight.

(b) There shall continue to be -

(i) a constituency named Orkney and Shetland, comprising the areas of the Orkney Islands Council and the Shetland Islands Council;

³²⁰ Representation of the People Act 1983 c.2 s3(1)

³²¹ Representation of the People Act 1983 c.2 s3A

³²² This chapter consolidates provisions in the Parliamentary Constituencies Act 1986 (as amended) and the Parliamentary Voting System and Constituencies Act 2011 (as amended).

(ii) a constituency named Na h-Eileanan an Iar, comprising the area of Comhairle nan Eilean Siar.

(5) In any Act passed after the Representation of the People Act 1948, except where the context otherwise requires, “constituency” means an area having separate representation in the House of Commons.

54 Electorate per constituency

(1) The electorate of any constituency shall be -

- (a) no less than 95% of the United Kingdom electoral quota, and
- (b) no more than 105% of that quota.

(2) The "United Kingdom electoral quota" for this purpose means U divided by 596 where U is the electorate of the United Kingdom minus the electorate of the protected constituencies mention in section 57 below.

(3) In relation to Northern Ireland section 57(1)(e) shall apply as an exception to sub-section (1); and sub-section (1) shall not apply to the constituencies referred to in section 53(4) above.

(5) This section applies to any review conducted under sections 54 to 59 below or the preparation of any draft Order in Council under section 56.

55 Boundary Commissions

(1) For the purpose of the continuous review of the distribution of seats at parliamentary elections, there shall continue to be four permanent Boundary Commissions, namely a Boundary Commission for England, a Boundary Commission for Scotland, a Boundary Commission for Wales and a Boundary Commission for Northern Ireland.

(2) The Commissions are independent, non-political and impartial.³²³

(3) The Speaker of the House of Commons shall be the chairman of each of the four Commissions.

(4) Each of the four Commissions shall consist of the chairman, a deputy chairman and two other members appointed by the Secretary of State.

³²³ Boundary Commission for England *Annual Report 2012-13* (2013) p.8; Boundary Commission for Scotland *Annual Report 2012/13* (2013) p.1; Boundary Commission for Wales *Annual Report 2011-12* (2012) p.3; Boundary Commission for Northern Ireland *Annual Report 2011-12* (2012) s1.1

(5) The deputy chairman—

(a) in the case of the Commission for England shall be a judge of the High Court appointed by the Lord Chancellor,

(b) in the case of the Commission for Scotland shall be a judge of the Court of Session appointed by the Lord President of the Court of Session,

(c) in the case of the Commission for Wales shall be a judge of the High Court appointed by the Lord Chancellor,

(d) in the case of the Commission for Northern Ireland shall be a judge of the High Court in Northern Ireland appointed by the Lord Chief Justice of Northern Ireland.

(6) A Member of any Commission (other than the chairman) shall hold his appointment for such term and on such conditions as may be determined before his appointment by the person appointing him.

(7) In the case of a member of a Commission other than the chairman or deputy chairman, the conditions referred to in subsection 4 above may include such provisions with respect to remuneration as the Secretary of State may determine with the approval of the Treasury.

56 Reports of the Boundary Commissions

(1) Each Boundary Commission shall keep under review the representation in the House of Commons of the part of the United Kingdom with which they are concerned and shall, in accordance with subsection (2) below, submit to the Secretary of State reports with respect to the whole of that part of the United Kingdom, either—

(a) showing the constituencies into which they recommend that it should be divided in order to give effect to the rules in this Act and other statutory requirements;

(b) stating that, in the opinion of the Commission, no alteration is required to be made in respect of that part of the United Kingdom in order to give effect to the said rules;

(2) A Boundary Commission shall submit reports under sub-section (1) above periodically -

(a) before 1st October 2018 but not before 1st September 2018, and

(b) before 1st October of every fifth year after that.³²⁴

³²⁴ Electoral Registration and Administration Act 2013, s.6, amending the Parliamentary Voting System and Constituencies Act 2011, s.10(3).

(3) A failure by a Boundary Commission to submit a report within the time limit which is appropriate to that report shall not be regarded as invalidating the report for the purposes of any enactment.

(4) A report of a Boundary Commission under this Act showing the constituencies into which they recommend that any area should be divided shall state, as respects each constituency, the name by which they recommend that it should be known, and whether they recommend that it should be a county constituency or a borough constituency (or in Scotland a county constituency or a burgh constituency).

(5) As soon as may be after the submission of all four reports under subsection (1) above that are required by subsection (2) above to be submitted before a particular date, the Secretary of State shall lay before Parliament the draft of an Order in Council for giving effect to the recommendations contained in them.

(6) Where—

(a) a Boundary Commission have submitted a report under subsection (1) above (but no draft under subsection (5) above has yet been laid in relation to the report),

(b) the Commission notify the Secretary of State that the recommendations contained in the report are to have effect with specified modifications, and

(c) the Commission submit to the Secretary of State a statement of the reasons for those modifications,

the draft under subsection (5) above shall give effect to the recommendations with those modifications.

(7) Subsections (5) and (6) above do not apply where each of the reports mentioned in subsection (5) above states that no alteration is required to be made in respect of the part of the United Kingdom with which the Commission in question are concerned.”

57 Other rules for distribution of seats

(1) Any review of constituency boundaries conducted under sections 56 shall be conducted in accordance with the following rules -

(a) A constituency shall not have an area of more than 13,000 square kilometres.

(b) A constituency does not have to comply with sub-section (1) if—

(i) it has an area of more than 12,000 square kilometres, and

(ii) the Boundary Commission concerned are satisfied that it is not

reasonably possible for the constituency to comply with that rule.

(c) A Boundary Commission may take into account, if and to such extent as they think fit—

(i) special geographical considerations, including in particular the size, shape and accessibility of a constituency;

(b)

(ii) local government boundaries as they exist on the most recent ordinary council-election day before the review date;

(iii) boundaries of existing constituencies;

(iv) any local ties that would be broken by changes in constituencies;

(v) the inconveniences attendant on such changes.

(d) The Boundary Commission for England may take into account, if and to such extent as they think fit, boundaries of the electoral regions from force from time to time for the purposes of European Parliamentary elections.

(e) In relation to Northern Ireland, sub-section (f) below applies in place of section 54 where -

(i) the difference between the electorate of Northern Ireland, and the United Kingdom electoral quota multiplied by the number of seats in Northern Ireland (determined under the allocation method in sub-section xx below) exceeds one third of the United Kingdom electoral quota, and

(ii) the Boundary Commission for Northern Ireland consider that having to apply section 54 would unreasonably impair their ability to take into account the factors set out in sub-section (1)(c) above, or their ability to comply with section 3(2) of this Act.

(f) The electorate of any constituency shall be no less than whichever is the lesser of $N - A$ and 95% of the United Kingdom electoral quota, and no more than whichever is the greater of $N + A$ and 105% of the United Kingdom electoral quota, where N is the electorate of Northern Ireland divided by the number of seats in Northern Ireland (determined under sub-section (f) below), and A is 5% of the United Kingdom electoral quota.

(g) The method for allocation of constituencies is as follows -

(i) The first constituency shall be allocated to the part of the United Kingdom with the greatest electorate.

(ii) The second and subsequent constituencies shall be allocated in the same way, except that the electorate of a part of the United Kingdom to which one or more constituencies have already been allocated is to be divided by $2C + 1$ where C is the number of

constituencies already allocated to that part.

(iii) Where the figure given by sub-section (ii) above is the same for two or more parts of the United Kingdom, the part to which a constituency is to be allocated shall be the one with the smaller or smallest actual electorate.

(vi) This section does not apply to the constituencies mentioned in section 53(4), and accordingly—

(i) the electorate of England shall be treated for the purposes of this rule as reduced by the electorate of the constituencies mentioned in section 53(4)(a);

(ii) the electorate of Scotland shall be treated for the purposes of this rule as reduced by the electorate of the constituencies mentioned in section 53(4)(b).

(2) The following terms are to be interpreted as follows -

(a) The “electorate” of the United Kingdom, or of a part of the United Kingdom or a constituency, is the total number of persons whose names appear on the relevant version of a register of parliamentary electors required by law in respect of addresses in the United Kingdom, or in that part or that constituency.

(b) “Local government boundaries” are—

in England, the boundaries of counties and their electoral divisions, districts and their wards, London boroughs and their wards and the City of London,

in Wales, the boundaries of counties, county boroughs, electoral divisions, communities and community wards,

in Scotland, the boundaries of local government areas and the electoral wards into which they are divided under section 1 of the Local Governance (Scotland) Act 2004, and

in Northern Ireland, the boundaries of wards.

(c) “Ordinary council-election day” is—

in relation to England and Wales, the ordinary day of election of councillors for local government areas;

in relation to Scotland, the day on which the poll is held at ordinary elections of councillors for local government areas;

in relation to Northern Ireland, the day of an election for any district council (other than an election to fill a casual vacancy).

58 Publicity and consultation

(1) Once a Boundary Commission have decided what constituencies they propose to recommend in a report under section 3(1)(a) above—

(a) the Commission shall take such steps as they think fit to inform people in each of the proposed constituencies - (i) what the proposals are, (ii) that a copy of the proposals is open to inspection at a specified place within the proposed constituency, (iii) that written representations with respect to the proposals may be made to the Commission during a specified period of 12 weeks (“the initial consultation period”), and

(b) the Commission shall cause public hearings to be held during the period beginning with the fifth week of the initial consultation period and ending with the tenth week of it.

(2) Subsection (1)(a)(ii) above does not apply to a constituency with respect to which no alteration is proposed.

(3) After the end of the initial consultation period the Commission—

(a) shall publish, in such manner as they think fit, representations made as mentioned in subsection (1)(a) above and records of public hearings held under subsection (1)(b) above;

(b) shall take such steps as they think fit to inform people in the proposed constituencies that further written representations with respect to the things published under paragraph (a) above may be made to the Commission during a specified period of four weeks (“the secondary consultation period”).

(4) If after the end of the secondary consultation period the Commission are minded to revise their original proposals so as to recommend different constituencies, they shall take such steps as they see fit to inform people in each of those revised proposed constituencies -

(a) what the revised proposals are,

(b) that a copy of the revised proposals is open to inspection at a specified place within the revised proposed constituency, and

(c) that written representations with respect to the revised proposals may be made to the Commission during a specified period of eight weeks.

59 Orders in Council.

(1) The draft of any Order in Council laid before Parliament by the Secretary of State under this Act for giving effect, whether with or without modifications, to the recommendations contained in the report of a Boundary Commission may make provision for any matters which appear to him to be incidental to, or consequential on, the recommendations.

(2) Where any such draft gives effect to any such recommendations with modifications, the Secretary of State shall lay before Parliament together with the draft a statement of the reasons for the modifications.

(3) If any such draft is approved by resolution of each House of Parliament, the Secretary of State shall submit it to Her Majesty in Council.

(4) If a motion for the approval of any such draft is rejected by either House of Parliament or withdrawn by leave of the House, the Secretary of State may amend the draft and lay the amended draft before Parliament, and if the draft as so amended is approved by resolution of each House of Parliament, the Secretary of State shall submit it to Her Majesty in Council.

(5) Where the draft of an Order in Council is submitted to Her Majesty in Council under this Act, Her Majesty in Council may make an Order in terms of the draft which (subject to subsection (6) below) shall come into force on such date as may be specified in the Order and shall have effect notwithstanding anything in any enactment.

(6) The validity of any Order in Council purporting to be made under this Act and reciting that a draft of the Order has been approved by resolution of each House of Parliament shall not be called in question in any legal proceedings whatsoever.

60 Method of election

(1) The votes at the poll shall be given by ballot, the result shall be ascertained by counting the votes given to each candidate and the candidate to whom the majority of votes have been given shall be declared to have been elected.³²⁵

Chapter 13: MEMBERSHIP OF THE HOUSE OF LORDS

61 Minimum age for Lords

(1) No Lord under the age of one and twenty years shall be permitted to sit in the House.³²⁶

³²⁵ Representation of the People Act 1983 c.2 Sch. 1, paragraph 18.

³²⁶ *The Standing Orders of the House of Lords Relating to Public Business* 2013 (HL 105/2013) Standing Order No.2

62 Exclusion of Hereditary Peers

(1) No-one shall be a member of the House of Lords by virtue of a hereditary peerage.³²⁷

(2) Subsection 1 shall not apply in relation to anyone excepted from it by or in accordance with Standing Orders of the House.³²⁸

(3) At any one time 90 people shall be excepted from section 1; but anyone excepted as holder of the office of Earl Marshal, or as performing the office of Lord Great Chamberlain, shall not count towards that limit.³²⁹

(4) Once excepted from subsection 1, a person shall continue to be so throughout his life (until an Act of Parliament provides to the contrary).³³⁰

(5) Standing Orders shall make provision for filling vacancies among the people excepted from subsection 1; and in any case where—

(a) the vacancy arises on a death occurring after the end of the first Session of the next Parliament after that in which this Act is passed, and

(b) the deceased person was excepted in consequence of an election,

that provision shall require the holding of a by-election.³³¹

(6) A person may be excepted from subsection 1 by or in accordance with Standing Orders made in anticipation of the enactment or commencement of this section.³³²

(7) Any question whether a person is excepted from subsection 1 shall be decided by the Clerk of the Parliaments, whose certificate shall be conclusive.³³³

63 Life Peerages

(1) Her Majesty shall have power by letters patent to confer on any person a peerage for life having the incidents specified in subsection (2) of this section.³³⁴

(2) A peerage conferred under this section shall, during the life of the person on whom it is conferred, entitle him—

³²⁷ House of Lords Act 1999 c.34 s1

³²⁸ House of Lords Act 1999 c.34 s2(1)

³²⁹ House of Lords Act 1999 c.34 s2(2)

³³⁰ House of Lords Act 1999 c.34 s2(3)

³³¹ House of Lords Act 1999 c.34 s2(4)

³³² House of Lords Act 1999 c.34 s2(5)

³³³ House of Lords Act 1999 c.34 s2(6)

³³⁴ Life Peerages Act 1958 c.21 s1(1)

(a) to rank as a baron under such style as may be appointed by the letters patent; and

(b) subject to subsection (4) of this section, to receive writs of summons to attend the House of Lords and sit and vote therein accordingly,

and shall expire on his death.³³⁵

(3) A life peerage may be conferred under this section on a woman.³³⁶

(4) Nothing in this section shall enable any person to receive a writ of summons to attend the House of Lords, or to sit and vote in that House, at any time when disqualified therefore by law.³³⁷

64 Restriction on ecclesiastical membership

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; and whenever there is a vacancy among such Lords Spiritual by the avoidance of any of the sees of Canterbury, York, London, Durham, or Winchester, such vacancy shall be supplied by the issue of a writ of summons to the bishop acceding to the see so avoided; and if such vacancy is caused by the avoidance of any see other than one of the five sees aforesaid, such vacancy shall be supplied by the issue of a writ of summons to that bishop of a see in England who having been longest bishop of a see in England has not previously become entitled to such writ: Provided, that where a bishop is translated from one see to another, and was at the date of his translation actually sitting as a Lord of Parliament, he shall not thereupon lose his right to receive a writ of summons to Parliament.³³⁸

65 Disqualification from Parliament: Bankruptcy and Debt Relief Restrictions Orders

(1) A person in respect of whom a bankruptcy restrictions order or a debt relief restrictions order has effect shall be disqualified—

(a) from membership of the House of Commons,

(b) from sitting or voting in the House of Lords, and

(c) from sitting or voting in a committee of the House of Lords or a joint committee of both Houses.³³⁹

³³⁵ Life Peerages Act 1958 c.21 s1(2)

³³⁶ Life Peerages Act 1958 c.21 s1(3)

³³⁷ Life Peerages Act 1958 c.21 s1(4)

³³⁸ Bishoprics Act 1878 c.68 s5

³³⁹ Insolvency Act 1986 c.45 s426A(1)

(2) If a member of the House of Commons becomes disqualified under this section, his seat shall be vacated.³⁴⁰

(3) If a person who is disqualified under this section is returned as a member of the House of Commons, his return shall be void.³⁴¹

(4) No writ of summons shall be issued to a member of the House of Lords who is disqualified under this section.³⁴²

(5) If a court makes a bankruptcy restrictions order or interim order, or a debt relief restrictions order or an interim debt relief restrictions order, in respect of a member of the House of Commons or the House of Lords the court shall notify the Speaker of that House.³⁴³

(6) If the Secretary of State accepts a bankruptcy restrictions undertaking or a debt relief restrictions undertaking made by a member of the House of Commons or the House of Lords, the Secretary of State shall notify the Speaker of that House.³⁴⁴

Chapter 14: PROCEDURE OF THE HOUSE OF COMMONS

66 Arrangement and timing of public and private business³⁴⁵

(1) Save as provided in section, government business shall have precedence at every sitting.

(2) Twenty days shall be allotted in each session for proceedings on opposition business, seventeen of which shall be at the disposal of the Leader of the Opposition and three of which shall be at the disposal of the leader of the second largest opposition party; and matters selected on those days shall have precedence over government business provided that—

(a) two Friday sittings shall be deemed equivalent to a single sitting on any other day;

(b) on any day other than a Friday, not more than two of the days at the disposal of the Leader of the Opposition may be taken in the form of four half days, and one of the days at the disposal of the leader of the second largest opposition party may be taken in the form of two half days; and

(c) on any such half day, proceedings under this paragraph shall either—

³⁴⁰ Insolvency Act 1986 c.45 s426A(2)

³⁴¹ Insolvency Act 1986 c.45 s426A(3)

³⁴² Insolvency Act 1986 c.45 s426A(4)

³⁴³ Insolvency Act 1986 c.45 s426A(5)

³⁴⁴ Insolvency Act 1986 c.45 s426A(6)

³⁴⁵ *The Standing Orders of the House of Commons Relating to Public Business* 2012 (HC 614/2012) Standing Order ('Commons SO') No.14

(i) lapse at seven o'clock on Monday or Tuesday, four o'clock on Wednesday or two o'clock on Thursday if not previously concluded, or

(ii) be set down for consideration at the hour specified in sub-paragraph (i) above and, except on days on which private business has been set down for consideration under the provisions of paragraph (5) of Standing Order No. 20 (Time for taking private business), shall be entered upon at that time: Provided that on days on which business stands over until seven o'clock, four o'clock or two o'clock under the provisions of Standing Order No. 24 (Emergency debates) proceedings under this sub-paragraph shall not be entered upon until such business has been disposed of, and may then be proceeded with for three hours, notwithstanding the provisions of Standing Order No. 9 (Sittings of the House).

(3) For the purposes of this section 'the second largest opposition party' shall be that party, of those not represented in Her Majesty's Government, which has the second largest number of Members elected to the House as members of that party.

(4) Thirty-five days or its equivalent shall be allotted in each session for proceedings in the House and in Westminster Hall on backbench business of which at least twenty-seven shall be allotted for proceedings in the House; the business determined by the Backbench Business Committee shall have precedence over government business (other than any order of the day or notice of motion on which the question is to be put forthwith) on those days; and the provisions of paragraph (2)(c) of this section shall apply to any of those days taken in the House in the form of half-days.

(5) In addition to those days allotted under paragraph (4) of this section, the Backbench Business Committee may determine that a sitting in Westminster Hall may be held on a Monday in accordance with paragraph (1)(a) of Standing Order No. 10 to consider e-petitions.

(6) For the purposes of paragraph (4) above, a Thursday sitting in Westminster Hall at which the business is appointed by the Backbench Business Committee shall count as one half-day and a topical debate shall count as one quarter-day.

(7) Backbench business comprises all proceedings in the Chamber relating to any motion or order of the day except:

(a) government business, that is proceedings relating to government bills, financial business, proceedings under any Act of Parliament, or relating to European Union Documents, or any other motion in the name of a Minister of the Crown;

(b) opposition business under paragraph (2) above;

(c) motions for the adjournment of the House under paragraph (7) of Standing Order No. 9 (Sittings of the House), private Members' motions for

leave to bring in bills under Standing Order No. 23 (Motions for leave to bring in bills and nomination of select committees at commencement of public business) and private Members' bills under paragraphs (9) to (14) below;

(d) proceedings relating to private business;

(e) any motion to amend this section or Standing Order No. 152J (Backbench Business Committee);

(f) business set down at the direction of, or given precedence by, the Speaker.

(8) The proceedings to be taken as backbench business shall be determined by the Backbench Business Committee, as set out in Standing Order No. 152J (Backbench Business Committee).

(9) Private Members' bills shall have precedence over government business on thirteen Fridays in each session to be appointed by the House.

(10) On and after the eighth Friday on which private Members' bills have precedence, such bills shall be arranged on the order paper in the following order— consideration of Lords amendments, third readings, consideration of reports not already entered upon, adjourned proceedings on consideration, bills in progress in committee, bills appointed for committee, and second readings.

(11) The ballot for private Members' bills shall be held on the second Thursday on which the House shall sit during the session under arrangements to be made by the Speaker, and each bill shall be presented by the Member who has given notice of presentation or by another Member named by him in writing to the Clerks at the Table, at the commencement of public business on the fifth Wednesday on which the House shall sit during the session.

(12) Until after the fifth Wednesday on which the House shall sit during the session, no private Member shall—

(a) give notice of a motion for leave to bring in a bill under Standing Order No. 23 (Motions for leave to bring in bills and nomination of select committees at commencement of public business);

(b) give notice for presenting a bill under Standing Order No. 57 (Presentation and first reading); or

(c) inform the Clerks at the Table of his intention to take charge of a bill which has been brought from the Lords.

(13) A private Member's bill to which the provisions of paragraphs (2) to (6) of Standing Order No. 97 (Scottish Grand Committee (bills in relation to their principle)) have applied, and which has been considered by a Scottish public bill

committee, shall not be set down for consideration on report so as to have precedence over any private Member's bill so set down which was read a second time on a day preceding that on which the bill was reported from the Scottish Grand Committee under paragraph (3) of that Standing Order.

(14) An order appointing a day for the second reading of a private Member's bill shall lapse at the rising of the House on the preceding sitting day if at that time the bill has not been printed and delivered to the Vote Office, and the House shall make no further order appointing a day for the second reading of the bill until it has been printed.

67 Public Bill procedure

(1) A Member may, after notice, present a bill without previously obtaining leave from the House to bring in the same.³⁴⁶

(2) When a bill is presented either in pursuance of an order of the House or under the provisions of paragraph (1) of this section, the bill shall be read the first time without any question being put, shall be ordered to be read a second time on such day as the Member presenting it shall appoint, and shall be ordered to be printed.³⁴⁷

(3) If a Member informs the Clerks at the Table of his intention to take charge of a bill which has been brought from the Lords, the bill shall be deemed to have been read the first time on the day on which the Member so informs the Clerks, and to have been ordered to be read a second time on such day as he shall appoint, and shall be recorded in the Journal of the House as having been read the first time and ordered to be read a second time on the day so appointed, and shall be ordered to be printed.³⁴⁸

(4) If a public bill is passed by the Lords and carried to the office of the Clerk of the House at a time when this House is not sitting, then, provided that a Member shall have notified the Clerks at the Table, in writing, of his intention to take charge of the bill—

(a) the Clerk of the House shall arrange for the printing and circulation of copies of the bill, and

(b) the bill shall be recorded in the Journal of the House as having been read the first time on the next sitting day and as having been ordered to be printed pursuant to this standing order and to be read a second time on such day as the Member shall have appointed.³⁴⁹

³⁴⁶ Commons SO 57(1)

³⁴⁷ Commons SO 57(2)

³⁴⁸ Commons SO 57A(1)

³⁴⁹ Commons SO 57A(2)

(5) Where a public bill (not being a bill to confirm a provisional order or certificate) is ordered to be read a second time on a future day, and it appears that the standing orders relating to private business may be applicable to the bill, the Examiners of Petitions for Private Bills shall be ordered to examine the bill and they shall proceed and report with all convenient speed whether the said standing orders are applicable thereto. If they find that the standing orders are applicable, they shall further report whether they have been complied with.³⁵⁰

(6) If the Examiners report that any standing order applicable to the bill has not been complied with, and the Standing Orders Committee report that such standing order ought not to be dispensed with, the order of the day relating to the bill shall be discharged.³⁵¹

(7) If on an amendment to the question ‘That a bill be now read a second time (or the third time)’ it is decided that the word ‘now’ stand part of the question, the Speaker shall forthwith declare the bill to be read a second or the third time as the case may be.³⁵²

(8) When the question has been proposed ‘That a bill be now read a second time (or the third time)’ and the question on any amendment to leave out all the words after ‘That’ and insert other words has passed in the negative, the main question shall be put forthwith.³⁵³

(9) When a public bill (other than a Consolidated Fund or an Appropriation Bill, or a tax law rewrite bill, or a bill for confirming a provisional order) has been read a second time, it shall stand committed to a public bill committee unless the House otherwise orders.³⁵⁴

(10) A motion—

(a) to commit a bill to a committee of the whole House or to a select committee, or a motion that it is expedient that a bill be committed to a joint committee of Lords and Commons; or

(b) to give a public bill committee to which a bill has been committed under this order power to send for persons, papers and records,

may be made by any Member and if made immediately after the bill has been read a second time shall not require notice, and, though opposed, may be decided after the expiration of the time for opposed business, and the question thereon shall be put forthwith.³⁵⁵

³⁵⁰ Commons SO 61(1)

³⁵¹ Commons SO 61(2)

³⁵² Commons SO.62(1)

³⁵³ Commons SO 62(2)

³⁵⁴ Commons SO 63(1)

³⁵⁵ Commons SO.63(2)

(11) A motion to commit a bill to a public bill committee in respect of some of its provisions and to a committee of the whole House in respect of other provisions may be made by the Member in charge of the bill and, if made immediately after the bill has been read a second time, shall not require notice, and may, though opposed, be decided after the expiration of the time for opposed business. If such a motion is opposed, the Speaker after permitting, if he thinks fit, a brief explanatory statement from the Member who makes and from a Member who opposes the motion shall, without permitting any further debate, put the question thereon.³⁵⁶

(12) If the question on a motion made under paragraph (10) or paragraph (11) of this section is negatived, the Speaker shall forthwith declare that the bill stands committed to a public bill committee.³⁵⁷

(13) All committees to which bills may be committed or referred for consideration on report shall have power to make such amendments therein as they shall think fit, provided they be relevant to the subject matter of the bill: but if any such amendments shall not be within the long title of the bill, they shall amend the long title accordingly, and report the same specially to the House.³⁵⁸

(14) Whenever an order of the day is read for the House to resolve itself into a committee on a bill, the Speaker shall leave the chair without putting any question, and the House shall thereupon resolve itself into such committee, unless notice of an instruction to such committee has been given, when such instruction shall be first disposed of, or unless the committee is discharged in pursuance of paragraph (8) of Standing Order No. 60 (Tax law rewrite bills).³⁵⁹

(15) If, during the consideration of a bill in a committee of the whole House, the chair is of opinion that the principle of a clause or schedule and any matters arising thereon have been adequately discussed in the course of debate on the amendments proposed thereto, he may, after the last amendment to be selected has been disposed of, state that he is of this opinion and shall then forthwith put the question ‘That the clause (or, the clause, as amended) stand part of the bill’ or ‘That this schedule (or this schedule, as amended) be the schedule to the bill’, as the case may be.³⁶⁰

(16) When a Member has brought up a clause or schedule in committee on a bill or on consideration of a bill on report, it shall be read the first time without any question being put.³⁶¹

(17) At the close of the proceedings of a committee of the whole House on a bill, the chair shall report the bill forthwith to the House, and when amendments shall

³⁵⁶ Commons SO 63(3)

³⁵⁷ Commons SO.63(4)

³⁵⁸ Commons SO.65

³⁵⁹ Commons SO 66

³⁶⁰ Commons SO.68

³⁶¹ Commons SO 69

have been made thereto, a day shall be appointed for taking the bill, as amended, into consideration, unless the House shall order it to be taken into consideration forthwith.³⁶²

(18) When the order of the day for the consideration of a bill, as amended in a committee of the whole House, has been read, the House shall proceed to consider the same without question put, unless the Member in charge thereof nominates a future day for its consideration or a motion shall be made to re-commit the bill in whole or in part.³⁶³

(19) When a bill has been committed to a public bill committee, or has been so committed in respect of some of its provisions, then, on consideration on report of the bill or such of its provisions as were so committed, the rule against speaking more than once shall not apply to the Member in charge of the bill or to the mover of any amendment or new clause or schedule in respect of that amendment or clause or schedule.³⁶⁴

(20) No amendments, not being merely verbal, shall be made to any bill on the third reading.³⁶⁵

(21) Lords amendments to public bills and Lords reasons shall be appointed to be considered on a future day, unless the House shall order them to be considered forthwith, and the provisions of Standing Order No. 57A (Bills brought from the Lords) shall apply to the appointment of consideration and the printing of Lords amendments and reasons as they apply to the appointment of second reading and the printing of bills brought from the House of Lords.³⁶⁶

(22) When the order of the day for the consideration of Lords amendments to a public bill or Lords reasons has been read, the House shall proceed to consider the same without question put, unless the Member in charge thereof nominates a future day for their consideration.³⁶⁷

(23) If the Speaker is satisfied that a Lords amendment imposes a charge upon the public revenue such as is required to be authorised by resolution of the House under Standing Order No. 49 (Certain proceedings relating to public money) and that such charge has not been so authorised, on reaching that amendment, the Speaker shall declare that he is so satisfied and the amendment shall be deemed to have been disagreed to and shall be so recorded in the Journal.³⁶⁸

³⁶² Commons SO 71

³⁶³ Commons SO 72

³⁶⁴ Commons SO 76

³⁶⁵ Commons SO.77(1)

³⁶⁶ Commons SO 78(1)

³⁶⁷ Commons SO 78(2)

³⁶⁸ Commons SO 78(3)

(24) If a motion be made by a Minister of the Crown providing for an allocation of time to any proceedings on a bill the Speaker shall, not more than three hours after the commencement of the proceedings on such a motion, put any question necessary to dispose of those proceedings.³⁶⁹

67 Procedure for the programming of Public Bills³⁷⁰

(1) If, before second reading of a bill, notice of a motion providing—

(a) for committal of the bill, and

(b) for any proceedings on the bill to be programmed,

is given by a Minister of the Crown, the motion may be made immediately after second reading, and Standing Order No. 63 (Committal of bills not subject to a programme order) shall not apply to the bill.

(2) Such a motion is to be called a programme motion.

(3) A programme motion may not disapply paragraph (2) of Standing Order No. 84A (Public bill committees).

(4) An order made by the House as a result of a programme motion is to be called a programme order.

(5) A motion to vary or supplement a programme order is also to be called a programme motion.

(6) A programme motion may provide for the allocation of time for any proceedings on a bill.

(7) Except in the following four cases, the question on a programme motion is to be put forthwith.

(8) The first exception is where—

(a) a public bill committee has reported a resolution under paragraph (12) of Standing Order No. 83C (Programming sub-committees) proposing an alteration of the date by which the bill is to be reported to the House, and

(b) the motion made under paragraph (13) of Standing Order No. 83C does not give effect to the public bill committee's proposal.

³⁶⁹ Commons SO 83

³⁷⁰ Commons SO 83A-83C

(9) The second exception is where the motion makes further provision for proceedings on consideration and third reading of the bill otherwise than in accordance with a resolution of a public bill committee under paragraph (14) of Standing Order No. 83C.

(10) The third exception is where the motion reduces the amount of time allocated under a programme order for any proceedings on the bill (whether or not it also increases the amount of time allocated for other proceedings on the bill).

(11) The fourth exception is where the motion relates to a resolution of a programming committee.

(12) If any of the exceptions applies, any question necessary to dispose of proceedings on a programme motion is to be put not later than three-quarters of an hour after the commencement of proceedings on the motion.

(13) If proceedings in committee of the whole House or on consideration and third reading are subject to a programme order, there is to be a committee for the bill consisting of—

(a) the Chairman of Ways and Means (who is to be chair of the committee);
and

(b) not more than eight other Members, nominated by the Speaker.

(14) The committee is to be called the programming committee.

(15) The quorum of the programming committee is four.

(16) The programming committee shall consider the allocation of time to proceedings in committee of the whole House or on consideration and third reading and report any resolution which it makes to the House.

(17) Proceedings in the programming committee shall be brought to a conclusion not later than two hours after their commencement.

(18) For the purposes of bringing any proceedings to a conclusion in accordance with paragraph (17), the chair shall—

(a) first put forthwith any question which has been proposed from the chair and not yet decided; and

(b) then put successively questions on any motions made by a Minister of the Crown.

(19) Resolutions of the programming committee—

(a) may be reported from time to time; and

(b) subject to the powers of the Speaker or chair to select the amendments, new clauses and new schedules to be proposed,

may include alterations in the order in which specified proceedings on the bill are to be taken.

(20) If a bill is subject to a programme order which commits it to a public bill committee, the order stands referred to the committee and, subject to paragraph (29) of this order, shall be considered by a sub-committee of the committee.

(21) The sub-committee is to be called the programming subcommittee.

(22) The programming sub-committee shall consist of—

(a) the chair or one of the chairs of the committee (who is to be chair of the sub-committee); and

(b) seven members of the committee, nominated by the Speaker.

(23) The quorum of the programming sub-committee is four.

(24) The programming sub-committee shall report to the committee any resolution which it makes about—

(a) the number of sittings to be allotted to the consideration of the bill in the committee;

(b) the allocation of the proceedings to each sitting;

(c) the time at which any proceedings, if not previously concluded, are to be brought to a conclusion;

(d) the date by which the bill is to be reported to the House;

(e) the programming of consideration and third reading.

(25) Proceedings in the programming sub-committee shall be brought to a conclusion not later than two hours after their commencement.

(26) For the purposes of bringing any proceedings to a conclusion in accordance with paragraph (25), the chair shall—

(a) first put forthwith any question which has been proposed from the chair and not yet been decided; and

(b) then put forthwith successively questions on any motions made by a Minister of the Crown.

(27) Resolutions of the programming sub-committee—

(a) may be reported from time to time; and

(b) subject to the powers of the chair to select the amendments, new clauses and new schedules to be proposed,

may include alterations in the order in which specified proceedings are to be taken.

(28) On a motion in the terms of a resolution of the programming sub-committee being made in the committee, any question necessary to dispose of proceedings on the motion is to be put not later than half an hour after the commencement of those proceedings.

(29) A Minister of the Crown may make any motion in a public bill committee which could have been the subject of a resolution of the programming sub-committee; and for the purposes of this order the motion shall be treated as if it were in the terms of a resolution of the programming sub-committee: provided that proceedings on such a motion shall lapse if any member of the committee signifies objection to it.

(30) Any resolution of the committee—

(a) proposing an alteration to the date by which the bill is to be reported to the House; or

(b) making a recommendation about the programming of the bill on consideration and third reading;

shall be reported to the House.

(31) If a resolution is reported proposing an alteration to the date by which the bill is to be reported to the House, a supplemental programme motion shall be set down for a day not later than the fifth sitting day after the day when the report was made which may—

- (a) give effect to the committee's proposal;
- (b) otherwise alter or supplement the provisions of the original programme of the bill; or
- (c) confirm the date set in the original programme order for the bill.

(32) If a resolution is reported making a recommendation about the programming of the bill on consideration and third reading, a supplemental programme motion shall be set down before the consideration of the bill on report which may—

- (a) give effect to the committee's recommendations;
- (b) otherwise alter or supplement the provisions of the original programme of the bill; or
- (c) confirm the original programme order for the bill.

68 Concluding proceedings following Public Bill Committee (Programme Orders) ³⁷¹

(1) This section applies for the purpose of bringing proceedings in public bill committee or in committee of the whole House to a conclusion in accordance with a programme order.

(2) The chair shall put forthwith the following questions (but no others) in the same order as they would fall to be put if this order did not apply—

- (a) any question already proposed from the chair;
- (b) any question necessary to bring to a decision a question so proposed;
- (c) the question on any amendment, new clause or new schedule selected by the chair for separate decision;
- (d) the question on any amendment moved or motion made by a Minister of the Crown;
- (e) any other question necessary for the disposal of the business to be concluded.

³⁷¹ Commons SO 83D

(3) On a motion made for a new clause or a new schedule, the chair shall put only the question that the clause or schedule be added to the bill.

(4) If two or more questions would fall to be put under paragraph (2)(d) on successive amendments moved or motions made by a Minister of the Crown, the chair shall instead put a single question in relation to those amendments or motions.

(5) If two or more questions would fall to be put under paragraph (2)(e) in relation to successive provisions of the bill, the chair shall instead put a single question in relation to those provisions, except that the question shall be put separately on any clause of or schedule to the bill which a Minister of the Crown has signified an intention to leave out.

(6) On conclusion of the proceedings in a committee, the chair shall report the bill (or such of the bill's provisions as were committed to it) to the House without putting any question.

69 Concluding proceedings on Third Reading (Programme Orders) ³⁷²

(1) This section applies for the purpose of bringing proceedings on consideration and third reading to a conclusion in accordance with a programme order.

(2) The Speaker shall put forthwith the following questions (but no others) in the same order as they would fall to be put if this order did not apply—

(a) any question already proposed from the chair;

(b) any question necessary to bring to a decision a question so proposed;

(c) the question on any amendment, new clause or new schedule selected by the Speaker for separate decision;

(d) the question on any amendment moved or motion made by a Minister of the Crown;

(e) any other question necessary for the disposal of the business to be concluded.

(3) On a motion made for a new clause or a new schedule, the Speaker shall put only the question that the clause or schedule be added to the bill.

(4) If two or more questions would fall to be put under paragraph (2)(d) on successive amendments moved or motions made by a Minister of the Crown, the Speaker shall instead put a single question in relation to those amendments or motions.

³⁷² Commons SO 83E

70 Concluding proceedings following Lords amendments (Programme Orders)³⁷³

(1) This section applies for the purpose of bringing proceedings on consideration of Lords amendments to a conclusion in accordance with a programme order.

(2) The Speaker shall first put forthwith any question which has been proposed from the chair and not yet decided.

(3) If that question is for the amendment of a Lords amendment, the Speaker shall then put forthwith—

(a) a single question on any further amendments of the Lords amendment moved by a Minister of the Crown; and

(b) the question on any motion made by a Minister of the Crown that this House agrees or disagrees with the Lords in their amendment or (as the case may be) in their amendment as amended.

(4) The Speaker shall then put forthwith—

(a) a single question on any amendments moved by a Minister of the Crown to a Lords amendment; and

(b) the question on any motion made by a Minister of the Crown that this House agrees or disagrees with the Lords in their amendment or (as the case may be) in their amendment as amended.

(5) The Speaker shall then put forthwith the question on any motion made by a Minister of the Crown that this House disagrees with the Lords in a Lords amendment.

(6) The Speaker shall then put forthwith the question that this House agrees with the Lords in all the remaining Lords amendments.

(7) As soon as the House has—

(a) agreed or disagreed with the Lords in any of their amendments; or

(b) disposed of an amendment relevant to a Lords amendment which has been disagreed to,

the Speaker shall put forthwith a single question on any amendments moved by a Minister of the Crown relevant to the Lords amendment.

³⁷³ Commons SO 83F-83H

(8) The following paragraphs apply for the purpose of bringing proceedings on any further message from the Lords to a conclusion in accordance with a programme order.

(9) The Speaker shall first put forthwith any question which has been proposed from the chair and not yet decided.

(10) The Speaker shall then put forthwith the question on any motion made by a Minister of the Crown which is related to the question already proposed from the chair.

(11) The Speaker shall then put forthwith the question on any motion made by a Minister on or relevant to any of the remaining items in the Lords message.

(12) The Speaker shall then put forthwith the question that this House agrees with the Lords in all of the remaining Lords proposals.

(13) The following paragraphs apply in relation to any committee to be appointed to draw up reasons after proceedings have been brought to a conclusion in accordance with a programme order.

(14) The Speaker shall put forthwith the question on any motion made by a Minister of the Crown for the appointment, nomination and quorum of a committee to draw up reasons and the appointment of its chair.

(15) The committee shall report before the conclusion of the sitting at which it is appointed.

(16) Proceedings in the committee shall be brought to a conclusion not later than half an hour after their commencement.

(17) For the purpose of bringing any proceedings to a conclusion in accordance with paragraph (16), the chair shall—

(a) first put forthwith any question which has been proposed from the chair and not yet decided; and

(b) then put forthwith successively questions on motions which may be made by a Minister of the Crown for assigning a reason for disagreeing with the Lords in any of their amendments.

(18) The proceedings of the committee shall be reported without any further question being put.

71 Proceedings in the House of Commons on a Bill subject to a Programme Order³⁷⁴

(1) The provisions of this section apply to proceedings in the House or in committee of the whole House on a bill which is subject to a programme order.

(2) Standing Order No. 15(1) (Exempted business) applies to the proceedings for any period after the moment of interruption allocated to them in accordance with the programme order.

(3) The proceedings may not be interrupted under any Standing Order relating to the sittings of the House.

(4) If, on a day on which the bill has been set down to be taken as an order of the day, a motion for the adjournment of the House under Standing Order No. 24 (Emergency debates) would, apart from this order, stand over to seven o'clock, four o'clock or three o'clock—

(a) that motion stands over until the conclusion of any proceedings on the bill which, in accordance with the programme order, are to be brought to conclusion at or before that time; and

(b) the bringing to a conclusion of any proceedings on the bill which, in accordance with the programme order, are to be brought to a conclusion after that time is postponed for a period of time equal to the duration of the proceedings on that motion.

(5) If a day on which the bill has been set down to be taken as an order of the day is one to which a motion for the adjournment of the House under Standing Order No. 24 stands over from an earlier day, the bringing to a conclusion of any proceedings on the bill which, in accordance with the programme order, are to be brought to a conclusion on that day is postponed for a period equal to the duration of the proceedings on that motion.

(6) No dilatory motion may be made in relation to the proceedings except by a Minister of the Crown; and the question on any such motion is to be put forthwith.

(7) If at any sitting the House is adjourned, or the sitting is suspended, before the expiry of the period at the end of which proceedings are to be brought to a conclusion under a programme order, no notice is required of a motion made at the next sitting by a Minister of the Crown for varying or supplementing the provisions of the programme order.

³⁷⁴ Commons SO 831

72 Public Bill Committees

(1) A public bill committee shall be appointed for the consideration of each bill committed to such a committee, subject to paragraph (4).³⁷⁵

(2) A public bill committee to which a bill is, or certain provisions of a bill are, committed by means of a programme order under Standing Order No. 83A (Programme motions) shall have the power to send for persons, papers and records.³⁷⁶

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(3) A public bill committee given the power (under paragraph (2) of this section or paragraph (2)(b) of Standing Order No. 63 (Committal of bills not subject to a programme order)) to send for persons, papers and records may hear oral evidence at such meetings as the committee may appoint, and, unless the committee otherwise orders, all such evidence shall be given in public. The oral evidence shall be printed in the official report of the committee's debates and the committee shall have power to report written evidence to the House as if it were a select committee.³⁷⁷

(4) A Scottish public bill committee shall be appointed for the consideration of—

(a) each bill certified by the Speaker as relating exclusively to Scotland and committed to a public bill committee, and

(b) each bill committed to a Scottish public bill committee.³⁷⁸

73 Second Reading Committees

(1) A motion, of which at least ten days' notice has been given, may be made by a Minister of the Crown at the commencement of public business, that a public bill be referred to a second reading committee, and the question thereupon shall be put forthwith; and if, on the question being put, not fewer than twenty Members rise in their places and signify their objection thereto, the Speaker shall declare that the noes have it: Provided that no such notice shall be given until the bill has been printed and delivered to the Vote Office.³⁷⁹

(2) A motion, of which at least ten days' notice has been given, may with the leave of the House be made by the Member in charge of a private Member's bill at the commencement of public business on any day when private Members' bills have precedence under the provisions of Standing Order No. 14 (Arrangement of public business), that the said bill be referred to a second reading committee, and the question thereupon shall be put forthwith. If such a motion be agreed to, any order

³⁷⁵ Commons SO 84A(1)

³⁷⁶ Commons SO 84A(2)

³⁷⁷ Commons SO 84A(3)

³⁷⁸ Commons SO 84A(4)

³⁷⁹ Commons SO.90(1)

that the said bill be read a second time which stands on the paper for that or any subsequent day shall be discharged. No such motion shall be made before the eighth Friday on which private Members' bills have precedence and no such notice shall be given until the bill has been printed and delivered to the Vote Office.³⁸⁰

(3) A second reading committee shall report to the House either that it recommends that the bill ought to be read a second time or that it recommends that the bill ought not to be read a second time, and in the latter case it shall have power to state its reasons for so recommending.³⁸¹

(4) When a second reading committee shall have made a report to the House in respect of a bill referred to it under paragraph (2) above, the bill shall be ordered to be read a second time upon a future day.³⁸²

(5) Upon a motion being made for the second reading of a bill reported from a second reading committee, the question thereon shall be put forthwith.³⁸³

(6) A bill which has been considered by a second reading committee or by the Scottish Grand Committee in relation to the principle of the bill may be referred for consideration on report to a committee to consider bills on report or to the Scottish Grand Committee, as the case may be, upon a motion made after notice by a Minister of the Crown at the commencement of public business, and the question on such motion shall be put forthwith; and if, on the question being put, not fewer than twenty Members rise in their places and signify their objection thereto, the Speaker shall declare that the noes have it.³⁸⁴

(7) A committee to consider bills on report shall consist of not fewer than twenty nor more than eighty Members, to be nominated by the Committee of Selection to serve on the committee for the consideration of each bill referred to it; and in the nomination of such Members, the Committee of Selection shall have regard to their qualifications and to the composition of the House: Provided that, for the consideration of all public bills relating exclusively to Wales, the committee shall be so constituted as to include all Members sitting for constituencies in Wales.³⁸⁵

(8) Any committee to which a bill is referred under this order shall report to the House that it has considered the bill and has made amendments or has made no amendment thereunto, as the case may be; and the bill so reported shall be ordered to be read the third time upon a future day.³⁸⁶

³⁸⁰ Commons SO.90(2)

³⁸¹ Commons SO 90(3)

³⁸² Commons SO 90(4)

³⁸³ Commons SO 90(5)

³⁸⁴ Commons SO 92(1)

³⁸⁵ Commons SO 92(2)

³⁸⁶ Commons SO 92(3)

74 Private Members Bills

(1) On Tuesdays and Wednesdays, and, if given by a Minister of the Crown, on Mondays and Thursdays, notices of motions for leave to bring in bills, and for the nomination of select committees, may be set down for consideration at the commencement of public business. The Speaker, after permitting, if he thinks fit, a brief explanatory statement from the Member who makes and from a Member who opposes any such motion respectively, shall put either the question thereon, or the question, 'That the debate be now adjourned'.³⁸⁷

(2) With respect to a private Member's motion for leave to bring in a bill under this order—

(a) notice shall be given in the Public Bill Office by the Member in person or by another Member on his behalf, but on any one day not more than one notice shall be accepted from any one Member;

(b) no notice shall be given for a day on which a notice of motion under this order already stands on the paper;

(c) no notice shall be given for a day earlier than the fifth or later than the fifteenth sitting day after the day on which it is given;

(d) not more than one such notice shall stand on the paper in the name of any one Member for a day within any period of fifteen sitting days.³⁸⁸

Chapter 15: PROCEDURE OF THE HOUSE OF LORDS

75 Presence of the Monarch and arrangements³⁸⁹

(1) When Her Majesty comes publicly to the House, the Lords shall be attired in their robes or in such other dress as may be approved by Her Majesty, and shall sit in their due places.

(2) At all such solemn times, before Her Majesty comes, no person other than a Lord shall be allowed on the floor of the House except:

(a) such members of the Royal Family as Her Majesty may direct;

(b) Judges summoned by writ and the officers and attendants of this House;

(c) such Peeresses and members of the Diplomatic Corps as are in possession of an invitation issued by the Lord Great Chamberlain.

³⁸⁷ Commons SO 23(1)

³⁸⁸ Commons SO 23(2)

³⁸⁹ *The Standing Orders of the House of Lords Relating to Public Business* 2013 (HL 105/2013) Standing Order (hereafter 'Lords SO') No.1

(3) No person whatsoever shall presume to stand upon the steps of the Throne but such as carry Her Majesty's train and those that bear the Regalia.

(4) The approaches to the House shall be kept clear from all unauthorised persons, and the Lord Great Chamberlain shall be desired to take care to see this Order duly observed.

76 No Bill to be read twice on the same day ³⁹⁰

(1) No Bill shall be read twice the same day; no Committee of the Whole House shall proceed on any Bill the same day as the Bill has been read the Second time; no report shall be received from any Committee of the Whole House the same day such Committee goes through the Bill, when any amendments are made to such Bill; and no Bill shall be read the Third time the same day that the Bill is reported from the Committee, or the order of commitment is discharged.

77 Commitment of Bills ³⁹¹

(1) After second reading, Bills are committed to a Committee on a Motion in the name of the Lord in charge of the Bill (except that in case of a Bill of Supply or a Bill certified by the Speaker as a Money Bill the House may order that the Bill be not committed).

(2) If, at the time appointed for the House to go into Committee on a Bill, no amendment has been set down and it appears that no Lord wishes to speak to the Bill or to table a manuscript amendment, the Lord in charge of the Bill may, having given notice, move, "That the order of commitment (or re-commitment) be discharged": provided that the Question shall not be put on any such Motion if a single Lord objects.

78 Amendments on Third Reading ³⁹²

(1) No amendment, other than a privilege amendment, shall be moved upon the Third Reading of a Public Bill unless notice of the amendment has been given to the Clerk not later than the day preceding that on which the amendment is to be moved, in sufficient time to enable the amendment to be printed and circulated in the form in which it is to be moved.

79 Commons Bills to be dropped and not further proceeded ³⁹³

(1) When a Bill brought from the House of Commons shall have remained on the Table of this House for twelve sitting days without any Lord giving notice of the Second Reading thereof, such Bill shall not be further proceeded with in the same

³⁹⁰ Lords SO 46

³⁹¹ Lords SO 47

³⁹² Lords SO 48

³⁹³ Lords SO 49

session, except after eight days' notice given by a Lord of the Second Reading thereof.

80 Printing of Bills brought from the Commons³⁹⁴

(1) If a Public Bill is passed by the Commons and is carried up to the Office of the Clerk of the Parliaments at a time when this House is not sitting, and if it is for the convenience of this House that copies of the Bill should be circulated before the Bill is read a First time, the Bill shall be deemed to have been brought from the Commons and the Clerk of the Parliaments shall arrange for the printing and circulation of copies of the Bill and any Explanatory Notes thereto.

(2) Likewise, if a Public Bill is returned from the Commons with amendments or Reasons at a time when this House is not sitting, the Clerk of the Parliaments may, pursuant to this Standing Order, arrange for the printing and circulation of any such amendments and Reasons and any Explanatory Notes on the amendments.

81 Joint Committee on Consolidation Bills³⁹⁵

(1) There shall be a Select Committee consisting of twelve Lords, who shall be appointed at the commencement of every session, to join with a Committee of the House of Commons as the Joint Committee on Consolidation etc. Bills, to which shall be referred:

- (a) Consolidation Bills whether public or private;
- (b) Statute Law Revision Bills;
- (c) Bills prepared pursuant to the Consolidation of Enactments (Procedure) Act 1949, together with any memoranda laid pursuant to that Act and any representations made with respect thereto;
- (d) Bills to consolidate any enactments with amendments to give effect to recommendations made by one or both of the Law Commissions together with any report containing such recommendations;
- (e) Bills prepared by one or both of the Law Commissions to promote the reform of the Statute Law by the repeal, in accordance with Law Commission recommendations, of certain enactments which (except in so far as their effect is preserved) are no longer of practical utility, whether or not they make other provision in connection with the repeal of those enactments, together with any Law Commission report on any such Bill.

³⁹⁴ Lords SO 50

³⁹⁵ Lords SO 51

82 No clause to be annexed to a Bill of Aid or foreign to the matter ³⁹⁶

(1) The annexing of any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to and different from the matter of the said Bill of Aid or Supply, is unparliamentary and tends to the destruction of constitutional Government.

83 Chairman of Committees ³⁹⁷

(1) The Lord nominated Chairman of Committees at the commencement of every session or, in his absence, a Deputy Chairman shall take the Chair in all Committees of the Whole House, and in all other Committees of the House, unless the House otherwise directs.

84 Committees of the Whole House ³⁹⁸

(1) To have more freedom of debate, and that arguments may be used (pro and contra), Committees of the Whole House are appointed, sometimes for Bills, sometimes to discuss matters of great moment. Whenever the House resolves itself into a Committee, the Lord Speaker leaves the Woolsack and he or the Lord Chairman of Committees presides over the Committee from the Chair; Standing Order No. 30 (No Lord to speak more than once to a Motion) shall not apply when the House is in Committee.

85 Committee of Selection ³⁹⁹

(1) At the commencement of each session the House shall appoint a Committee of Selection consisting of the Chairman of Committees and such other Lords as the House shall name.

(2) The Committee of Selection shall select and propose to the House the names of the Lords to form each Select Committee of the House except the Committee of Selection itself, any Committee otherwise provided for by statute or by Order of the House and, unless the Chairman of Committees is of the opinion that the members of any such Committee should be appointed by the Committee of Selection or unless two or more members of that Committee request a meeting for that purpose, the following Committees:

- (a) Select Committees on Private Bills;
- (b) Select Committees on opposed Personal Bills;
- (c) Select Committees on opposed Provisional Order Confirmation Bills;

³⁹⁶ Lords SO.52

³⁹⁷ Lords SO 61

³⁹⁸ Lords SO 62

³⁹⁹ Lords SO 63

(d) Joint Committees under the Private Legislation Procedure (Scotland) Act 1936 (Lords members);

(e) Joint Committees under the Statutory Orders (Special Procedure) Act 1945 (Lords members).

(3) The Committee of Selection may propose to the House the name of the Lord to be Chairman of a Select Committee.

(4) In the absence of any Chairman appointed in pursuance of paragraph (3) of this section a Committee may appoint its own Chairman.

(5) The Committee of Selection shall select and propose to the House the names of the panel of Lords to act as Deputy Chairmen of Committees for each session.

(6) The Committee of Selection shall also have power to select and propose to the House the names of the Lords to form any other body, not being a Select Committee, referred to it by the Chairman of Committees.

(7) The Chairman of Committees shall have discretion to propose to the House, without reference to the Committee of Selection, the names of Lords to fill casual vacancies occurring in the membership of Select Committees.

86 All Lords may attend and speak but not vote ⁴⁰⁰

(1) At a Select Committee of the House any Lord, though not of the Committee, is not excluded from coming in and speaking, but he must not attend any meeting while the Committee deliberate, unless invited by the Committee to do so, and he must not vote.

87 Power to hear Counsel ⁴⁰¹

(1) A Select Committee shall call such evidence as it may require, but shall not hear parties by Counsel unless so authorised by Order of the House.

88 Concurrent meetings ⁴⁰²

(1) Any Select Committee of the House shall have leave to confer and meet concurrently with any Committee or Sub-Committee of the Commons appointed to consider a similar matter, for the purpose of deliberating or taking evidence, and may communicate to any such Committee or Sub-Committee its evidence or any other documents relating to matters of common interest. Any Select Committee of the House shall also have leave to give this power to confer and meet concurrently to any Sub-Committee appointed by it.

⁴⁰⁰ Lords SO 65

⁴⁰¹ Lords SO 66

⁴⁰² Lords SO 67

89 Reports of Select Committees ⁴⁰³

(1) Reports from Select Committees shall be laid on the Table and ordered to be printed. Notice shall be given on the Order Paper of the day on which the report is to be considered.

89A Joint Committee on Statutory Instruments ⁴⁰⁴

(1) There shall be a Select Committee consisting of seven Lords, which shall join with a Committee of the House of Commons as the Joint Committee on Statutory Instruments, to consider:

(a) every instrument which is laid before each House of Parliament and upon which proceedings may be or might have been taken in either House of Parliament, in pursuance of an Act of Parliament; being

(i) a statutory instrument, or a draft of a statutory instrument;

(ii) a scheme, or an amendment of a scheme, or a draft thereof, requiring approval by statutory instrument;

(iii) any other instrument (whether or not in draft), where the proceedings in pursuance of an Act of Parliament are proceedings by way of an affirmative resolution; or

(iv) an Order subject to special parliamentary procedure;

but excluding any remedial order or draft remedial order under Schedule 2 to the Human Rights Act 1998, and any draft order proposed to be made under Part 1 of the Legislative and Regulatory Reform Act 2006 and any subordinate provisions order made or proposed to be made under the Regulatory Reform Act 2001; any draft order laid under or by virtue of section 7 or section 19 of the Localism Act 2011, and any draft order laid under or by virtue of section 5E of the Fire and Rescue Services Act 2004; and

(b) every general statutory instrument not within the foregoing classes, and not required to be laid before or to be subject to proceedings in the Commons only; but not including any Scottish statutory instrument or any statutory instrument made by the Welsh Ministers unless it is required to be laid before Parliament or either House of Parliament and not including Measures under the Church of England Assembly (Powers) Act 1919 and instruments made under such Measures;

⁴⁰³ Lords SO 68

⁴⁰⁴ Lords SO 73

with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds—

(i) that it imposes a charge on the public revenues or contains provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payments;

(ii) that it is made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts, either at all times or after the expiration of a specific period;

(iii) that it purports to have retrospective effect where the parent statute confers no express authority so to provide;

(iv) that there appears to have been unjustifiable delay in the publication or in the laying of it before Parliament;

(v) that there appears to have been unjustifiable delay in sending a notification under the proviso to subsection (1) of section 4 of the Statutory Instruments Act 1946, where an Instrument has come into operation before it has been laid before Parliament;

(vi) that there appears to be a doubt whether it is *intra vires* or that it appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;

(vii) that for any special reasons its form or purport call for elucidation;

(viii) that its drafting appears to be defective;

or on any other ground which does not impinge on its merits or on the policy behind it, and to report their decision with the reasons thereof in any particular case.

90 Committee for Privileges and Conduct

(1) A Committee for Privileges and Conduct shall be appointed at the beginning of every session; sixteen Lords shall be named of the Committee, of whom two shall be former holders of high judicial office. In any claim of peerage, the Committee for Privileges and Conduct shall sit with three holders of high judicial office, who shall have the same speaking and voting rights as the members of the Committee.⁴⁰⁵

⁴⁰⁵ Lords SO.77

91 Claims of Peerage ⁴⁰⁶

(1) In claims of Peerage the following directions shall apply in regard to claims by Petition which have been referred to the Committee for Privileges and Conduct:

(2) The Petitioner shall lodge his case, pedigree and proofs with the Clerk of the Parliaments within six weeks from the date of the presentation of his Petition to the House.

(3) Records and documents in public custody may be proved before the Committee by copies officially certified as in ordinary legal proceedings. The production of originals of such documents shall not be required except on an order of the Lord Speaker or Chairman of Committees. Originals of records and documents in private custody, together with copies thereof, must be produced and proved before the Committee.

(4) In unopposed claims the record of the documentary evidence given before the Committee shall be examined by an examiner appointed by the Crown Agent. The Crown Agent may, if he think fit, similarly appoint an examiner in opposed claims. The cost of the examination shall be borne by the claimant.

(5) The fees to be charged shall be such as shall be authorised from time to time by the House.

92 Claims of Irish Peerage ⁴⁰⁷

(1) A claim to any Peerage of Ireland shall be made by Petition to the House, which Petition shall be referred to the Lord Chancellor to consider and report upon to the House.

93 Claims of Irish Peerages in abeyance ⁴⁰⁸

(1) In case any Peerage of Ireland now is or hereafter shall be in abeyance, the persons claiming to be co-heirs thereto, or any of them, may, by Petition to the House, state such claim, and pray that the same may be examined by the House.

(2) No claim of any Peerage of Ireland alleged to be in abeyance shall be proceeded upon until the same shall have been recommended by Her Majesty to the consideration of the House, or until Her Majesty shall have been informed of such claim by the House.

(3) Every such claim shall be referred to the Committee for Privileges and Conduct to examine the matter and report the same, as it shall appear to them, to the House.

⁴⁰⁶ Lords SO 78

⁴⁰⁷ Lords SO 79

⁴⁰⁸ Lords SO 80

(4) In case it shall appear to the House that any such Peerage is in abeyance, the House shall inform Her Majesty that in the opinion of the House such Peerage, though in abeyance, is to be deemed and taken to be an existing Peerage, according to the Fourth Article of Union.

94 Privileges

(1) The privilege of the House is that, when Parliament is sitting, or within the usual times of privilege of Parliament, no Lord of Parliament is to be imprisoned or restrained without sentence or order of the House, unless upon a criminal charge or for refusing to give security for the peace. Notification of any order whatsoever for the imprisonment or restraint of a Lord of Parliament should be given to the House by the Court or authority ordering such restraint or imprisonment.⁴⁰⁹

(2) Privilege of Parliament shall not be allowed to minor Peers, Noblewomen, or widows of Peers; and if the widow of any Peer shall be married to a commoner, she shall not be allowed privilege of Peerage.⁴¹⁰

(3) In all cases wherein it is necessary to examine witnesses in perpetuam rei memoriam, it shall not be taken to be a breach of privilege of Parliament to file a Bill against a Peer in time of Parliament, and take out usual process for that purpose only.⁴¹¹

(4) No oath shall be imposed by any Bill or otherwise upon Peers with a penalty in case of refusal to lose their places and votes in Parliament or liberty of debate therein.⁴¹²

Chapter 16: RELATIONSHIP BETWEEN THE TWO HOUSES⁴¹³

95 Money Bills

(1) If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent

⁴⁰⁹ Lords SO 82

⁴¹⁰ Lords SO 83

⁴¹¹ Lords SO 84

⁴¹² Lords SO 85

⁴¹³ By Convention, the House of Lords will accord a Second Reading to a Bill whose main policy purpose was included in the governing party's manifesto in the previous general election. It not subject such a Bill to wrecking amendments which would change the Government's manifesto intention, and will return such a Bill to the House of Commons in reasonable time so as to ensure that the House of Commons has the opportunity to consider the Bill or any amendments proposed by the House of Lords: *Report of the Joint Committee on Conventions* (2005-06, HL 265-I, HC 1212-I) para. 99

being signified, notwithstanding that the House of Lords have not consented to the Bill.⁴¹⁴

(2) A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, the National Loans Fund or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them.

In this subsection the expressions “taxation,” “public money,” and “loan” respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.⁴¹⁵

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate the Speaker shall consult, if practicable, two members to be appointed from the Chairmen’s Panel at the beginning of each Session by the Committee of Selection.⁴¹⁶

96 Public Bills

(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in two successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the second time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless one year has elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the second of these sessions.⁴¹⁷

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.⁴¹⁸

⁴¹⁴ Parliament Act 1911 c.13 s1(1)

⁴¹⁵ Parliament Act 1911 c.13 s1(2)

⁴¹⁶ Parliament Act 1911 c.13 s1(3)

⁴¹⁷ Parliament Act 1911 c.13 s2(1)

⁴¹⁸ Parliament Act 1911 c.13 s2(2)

(3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.⁴¹⁹

(4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the second session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section: Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.⁴²⁰

Chapter 17: PARLIAMENTARY PRIVILEGES AND STANDARDS

97 Freedom from arrest

(1) For the guarantee of his or her attendance in Parliament, a member of the House of Commons enjoys freedom from civil arrest, except for contempt of court, for a period of 40 days after every prorogation or dissolution and 40 days before the next appointed meeting.⁴²¹

(2) The privilege of a peerage confers immunity from arrest in civil causes at all times.⁴²²

(3) In all cases in which members of either House of Parliament are arrested on criminal charges, the Speaker of the House concerned must be informed of the cause for which they are detained from their service in Parliament.⁴²³

⁴¹⁹ Parliament Act 1911 c.13 s2(3)

⁴²⁰ Parliament Act 1911 c.13 s2(4)

⁴²¹ Law and custom of Parliament; Sir William Blackstone, *Commentaries* (17th ed., 1830), 1, p.165. *Goudy v Duncombe* (1847) 154 ER 183 at 184; *Barnard v Mordaunt* (1754) 96 ER 939; *Anglo-French Co-operative Society* [1880] 14 ChD 534.

⁴²² Common law; *Erskine May's Parliamentary Practice* (24th ed., 2011), p.249.

⁴²³ Law and custom of Parliament; *Erskine May's Parliamentary Practice* (24th ed., 2011), p.243.

98 Evidence concerning proceedings in Parliament⁴²⁴

(1) Where the conduct of a person in or in relation to proceedings in Parliament is in issue in defamation proceedings, he may waive for the purposes of those proceedings, so far as concerns him, the protection of any enactment or rule of law which prevents proceedings in Parliament being impeached or questioned in any court or place out of Parliament.

(2) Where a person waives that protection—

(a) any such enactment or rule of law shall not apply to prevent evidence being given, questions being asked or statements, submissions, comments or findings being made about his conduct, and

(b) none of those things shall be regarded as infringing the privilege of either House of Parliament.

(3) The waiver by one person of that protection does not affect its operation in relation to another person who has not waived it.

(4) Nothing in this section affects any enactment or rule of law so far as it protects a person (including a person who has waived the protection referred to above) from legal liability for words spoken or things done in the course of, or for the purposes of or incidental to, any proceedings in Parliament.

(5) Without prejudice to the generality of subsection (4), that subsection applies to—

(a) the giving of evidence before either House or a committee;

(b) the presentation or submission of a document to either House or a committee;

(c) the preparation of a document for the purposes of or incidental to the transacting of any such business;

(d) the formulation, making or publication of a document, including a report, by or pursuant to an order of either House or a committee; and

(e) any communication with the Parliamentary Commissioner for Standards or any person having functions in connection with the registration of members' interests.

In this subsection “a committee” means a committee of either House or a joint committee of both Houses of Parliament.

⁴²⁴ Defamation Act 1996 c.31 s13

99 The Parliamentary Commissioner for Standards ⁴²⁵

(1) There shall be an Officer of the House of Commons, called the Parliamentary Commissioner for Standards, who shall be appointed by the House.

(2) The principal duties of the Commissioner shall be—

(a) to maintain the Register of Members' Financial Interests and any other registers of interest established by the House, and to make such arrangements for the compilation, maintenance and accessibility of those registers as are approved by the Committee on Standards or an appropriate sub-committee thereof;

(b) to provide advice confidentially to Members and other persons or bodies subject to registration on matters relating to the registration of individual interests;

(c) to advise the Committee on Standards, its sub-committees and individual Members on the interpretation of any code of conduct to which the House has agreed and on questions of propriety;

(d) to monitor the operation of such code and registers, and to make recommendations thereon to the Committee on Standards or an appropriate sub-committee thereof; and

(e) to investigate, if he thinks fit, specific matters which have come to his attention relating to the conduct of Members and to report to the Committee on Standards or to an appropriate sub-committee thereof, unless the provisions of paragraph (4) apply.

(3) In determining whether to investigate a specific matter relating to the conduct of a Member the Commissioner shall have regard to whether in his view there is sufficient evidence that the Code of Conduct or the rules relating to registration or declaration of interests may have been breached to justify taking the matter further.

(4) No report shall be made by the Commissioner—

(a) in any case where the Member concerned has agreed that he has failed to register or declare an interest, if it is the Commissioner's opinion that the interest involved is minor, or the failure was inadvertent, and the Member concerned has taken such action by way of rectification as the Commissioner may have required within any procedure approved by the Committee for this purpose; and

⁴²⁵ *The Standing Orders of the House of Commons Relating to Public Business* 2012 (HC 614/2012) Standing Order No.150

(b) in any case involving parliamentary allowances, or the use of facilities or services, if the Commissioner has with the agreement of the Member concerned referred the matter to the relevant Officer of the House for the purpose of securing appropriate financial reimbursement, and the Member has made such reimbursement within such period of time as the Commissioner considers reasonable.

(5) The Commissioner may at any time in the course of investigating a complaint, and if so requested by the Committee on Standards and Privileges shall, appoint an Investigatory Panel to assist him in establishing the facts relevant to the investigation.

100 The Committee on Standards ⁴²⁶

(1) There shall be a select committee, called the Committee on Standards—

(a) to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Financial Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; and to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; and

(b) to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in any code of conduct to which the House has agreed and which have been drawn to the committee's attention by the Commissioner; and to recommend any modifications to such code of conduct as may from time to time appear to be necessary.

(2) The committee shall consist of ten Members, and at least two and no more than three lay members.

(3) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

(4) The committee shall have power to appoint sub-committees consisting of no more than seven Members, and at least two lay members, and to refer to such sub-committees any of the matters referred to the committee.

(5) Lay members may take part in proceedings of the committee and of any sub-committee to which they are appointed and may ask questions of witnesses, but lay members may not move any motion or any amendment to any motion or draft report, and may not vote.

⁴²⁶ *The Standing Orders of the House of Commons Relating to Public Business* 2012 (HC 614/2012) Standing Order No.149 & 149A

(6) The quorum of the committee shall be five members who are Members of this House, and the quorum of any subcommittee shall be three members who are Members of this House.

(7) The committee and any sub-committee may not proceed to business unless at least one lay member is present.

(8) The committee and any sub-committee shall have power—

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House and to adjourn from place to place;

(b) subject to the provisions of paragraph (9) of this section, to report from time to time;

(c) to appoint legal advisers, and to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

(9) Any lay member present at a meeting at which a report has been agreed shall have the right to submit a paper setting out that lay member's opinion on the report. The Committee shall not consider a motion that the Chair make a report to the

House until it has ascertained whether any lay member present wishes to submit such a paper; and any such paper shall be appended to the report in question before it is made to the House.

(10) The committee shall have power to order the attendance of any Member before the committee or any sub-committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of a sub-committee or of the Commissioner, be laid before the committee or any sub-committee.

(11) The committee, or any sub-committee, shall have power to refer to unreported evidence of the former Committees on Standards and Privileges and to any documents circulated to any such committee.

(12) The committee shall have power to refuse to allow proceedings to which the public are admitted to be broadcast.

(13) The Attorney General, the Advocate General and the Solicitor General, being Members of the House, may attend the committee or any sub-committee, may take part in deliberations, may receive committee or sub-committee papers and may give such other assistance to the committee or subcommittee as may be appropriate, but shall not vote or make any motion or move any amendment or be counted in the quorum.

(14) Lay members shall be appointed to the Committee on Standards by a resolution of the House on a motion made under the provisions of this section and shall remain as lay members in accordance with the provisions of this section.

(15) No person may be first appointed as a lay member if that person is or has been a Member of this House or a Member of the House of Lords; and any person so appointed shall cease to be a lay member upon becoming a Member of this House or of the House of Lords.

(16) No person may be appointed as a lay member unless that person has been selected on the basis of a fair and open competition.

(17) A person appointed as a lay member may resign as a lay member by giving notice to the House of Commons Commission.

(18) A person appointed as a lay member shall be dismissed from that position only following a resolution of the House, after the House of Commons Commission has reported that it is satisfied that the person should cease to be a lay member; and any such report shall include a statement of the Commission's reasons for its conclusion.

(19) Subject to the provisions of paragraphs (15), (17) and (18) of this section, a person appointed as a lay member shall continue as a lay member for the remainder of the Parliament in which that person was first appointed.

(20) A person first appointed as a lay member who has been a lay member for the remainder of one Parliament may be reappointed by a resolution of the House in the subsequent Parliament, and the provisions of paragraph (16) of this section shall not apply to any such re-appointment. The period of re-appointment shall be specified in the resolution of the House for re-appointment and shall not exceed two years from the dissolution of the Parliament in which the person was first appointed as a lay member, and a resolution under this paragraph shall cease to have effect on the dissolution of the Parliament in which the resolution of the House for reappointment was made.

(21) No person may be re-appointed as a lay member other than in accordance with the provisions of paragraph (20) of this order.

(22) No motion may be made under the provisions of this order unless—

(a) notice of the motion has been given at least two sitting days previously, and

(b) the motion is made on behalf of the House of Commons Commission by a Member of the Commission.

(23) The Speaker shall put the questions necessary to dispose of proceedings on motions made under the provisions of this order not later than one hour after the commencement of those proceedings.

(24) Business to which this order applies may be proceeded with at any hour, though opposed.

101 The Committee on Privileges ⁴²⁷

(1) There shall be a select committee, called the Committee of Privileges, to consider specific matters relating to privileges referred to it by the House.

(2) The committee shall consist of ten Members, of whom five shall be a quorum.

(3) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

(4) The committee shall have power to appoint subcommittees consisting of no more than seven Members, of whom three shall be a quorum, and to refer to such subcommittees any of the matters referred to the committee.

(5) The committee and any sub-committee shall have power—

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place and to report from time to time;

(b) to appoint legal advisers, and to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

(6) The committee shall have power to order the attendance of any Member before the committee and to require that specific documents or records in the possession of a Member relating to its inquiries be laid before the committee or any sub-committee.

(7) The committee shall have power to refer to unreported evidence of the former Committees on Standards and Privileges and to any documents circulated to any such committee.

(8) The committee shall have power to refuse to allow proceedings to which the public are admitted to be broadcast.

(9) The Attorney General, the Advocate General and the Solicitor General, being Members of the House, may attend the committee, may take part in deliberations, may receive committee papers and may give such other assistance to the committee as may be appropriate, but shall not vote or make any motion or move any amendment or be counted in the quorum.

⁴²⁷ *The Standing Orders of the House of Commons Relating to Public Business* 2012 (HC 614/2012) Standing Order No. 148A

102 Independent Parliamentary Standards Authority

(1) There is to be a body corporate known as the Independent Parliamentary Standards Authority (“IPSA”).⁴²⁸

(2) The IPSA, its members and its staff are not to be regarded—

(a) as the servants or agents of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.⁴²⁹

(3) The IPSA's property is not to be regarded as property of, or property held on behalf of, the Crown.⁴³⁰

(4) The IPSA may do anything (except borrow money) which is calculated to facilitate the carrying out of its functions or is incidental or conducive to the carrying out of those functions.⁴³¹

(5) The IPSA determines the amounts of the salaries and allowances to be paid to Members of the House of Commons.⁴³²

(6) Membership of the IPSA is governed by Part 1 of Schedule 1 to the Parliamentary Standards Act 2009 (c.13).

⁴²⁸ Parliamentary Standards Act 2009 c.13 s3(1)

⁴²⁹ Parliamentary Standards Act 2009 c.13 Sch. 1 s9(1)

⁴³⁰ Parliamentary Standards Act 2009 c.13 Sch. 1 s9(2)

⁴³¹ Parliamentary Standards Act 2009 c.13 Sch. 1 s11

⁴³² Parliamentary Standards Act 2009 c.13 s4(4), ss4-7

PART IV

THE EUROPEAN UNION

Chapter 18: RELATIONSHIP BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

103 European Union ⁴³³

(1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression “enforceable EU right” and similar expressions shall be read as referring to one to which this subsection applies.

(2) Subject to Schedule 2 to the European Communities Act 1972 (c.68), at any time after its passing Her Majesty may by Order in Council, and any designated Minister or department may by order, rules, regulations or scheme, make provision—

(a) for the purpose of implementing any EU obligation of the United Kingdom, or enabling any such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties to be exercised; or

(b) for the purpose of dealing with matters arising out of or related to any such obligation or rights or the coming into force, or the operation from time to time, of subsection (1) above;

and in the exercise of any statutory power or duty, including any power to give directions or to legislate by means of orders, rules, regulations or other subordinate instrument, the person entrusted with the power or duty may have regard to the objects of the EU and to any such obligation or rights as aforesaid.

In this subsection “designated Minister or department” means such Minister of the Crown or government department as may from time to time be designated by Order in Council in relation to any matter or for any purpose, but subject to such restrictions or conditions (if any) as may be specified by the Order in Council.

(3) There shall be charged on and issued out of the Consolidated Fund or, if so determined by the Treasury, the National Loans Fund the amounts required to

⁴³³ European Communities Act 1972 c.68 s2

meet any EU obligation to make payments to the EU or a member State, or any EU obligation in respect of contributions to the capital or reserves of the European Investment Bank or in respect of loans to the Bank, or to redeem any notes or obligations issued or created in respect of any such EU obligation and, except as otherwise provided by or under any enactment,—

(a) any other expenses incurred under or by virtue of the Treaties or the European Communities Act 1972 (c.68) by any Minister of the Crown or government department may be paid out of moneys provided by Parliament; and

(b) any sums received under or by virtue of the Treaties or the European Communities Act 1972 (c.68) by any Minister of the Crown or government department, save for such sums as may be required for disbursements permitted by any other enactment, shall be paid into the Consolidated Fund or, if so determined by the Treasury, the National Loans Fund.

(4) The provision that may be made under subsection (2) above includes, subject to Schedule 2 to the European Communities Act 1972 (c.68), any such provision (of any such extent) as might be made by Act of Parliament, and any enactment passed or to be passed, other than one contained in this part of this Constitution, shall be construed and have effect subject to the foregoing provisions of this section; but, except as may be provided by any Act passed after the European Communities Act 1972 (c.68), the said Schedule 2 shall have effect in connection with the powers conferred by this section and the European Communities Act 1972 (c.68) to make Orders in Council or orders, rules, regulations or schemes.

(5) And the references in that subsection to a Minister of the Crown or government department and to a statutory power or duty shall include a Minister or department of the Government of Northern Ireland and a power or duty arising under or by virtue of an Act of the Parliament of Northern Ireland.

(6) A law passed by the legislature of any of the Channel Islands or of the Isle of Man, or a colonial Law (within the meaning of the Colonial Laws Validity Act 1865) passed or made for Gibraltar, if expressed to be passed or made in the implementation of the Treaties and of the obligations of the United Kingdom thereunder, shall not be void or inoperative by reason of any inconsistency with or repugnancy to an Act of Parliament, passed or to be passed, that extends to the Island or Gibraltar or any provision having the force and effect of an Act there (but not including this section), nor by reason of its having some operation outside the Island or Gibraltar; and any such Act or provision that extends to the Island or Gibraltar shall be construed and have effect subject to the provisions of any such law.

104 Status of EU Law

(1) Directly applicable or directly effective EU law (that is, the rights, powers, liabilities, obligations, restrictions, remedies and procedures referred to in section 103(1), above) falls to be recognised and available in law in the United Kingdom

only by virtue of that section or where it is required to be recognised and available in law by virtue of any other Act.⁴³⁴

105 Amendment to European Treaties

(1) For the purposes of the interpretation of this section: ⁴³⁵

(a) “TEU” means the Treaty on European Union.⁴³⁶

(b) “TFEU” means the Treaty on the Functioning of the European Union.⁴³⁷

(c) A reference to a treaty which amends TEU or TFEU includes a reference to—

(i) a treaty resulting from the application of Article 48(2) to (5) of TEU (ordinary revision procedure);

(ii) an agreement under Article 49 of TEU (admission of new members).⁴³⁸

(d) An “Article 48(6) decision” means a decision under Article 48(6) of TEU (simplified revision procedure).⁴³⁹

(e) Except in a reference to “the European Council”, “the Council” means the Council of the European Union.⁴⁴⁰

(f) A reference to a Minister of the Crown voting in favour of or otherwise supporting a decision is a reference to a Minister of the Crown—

(i) voting in favour of the decision in the European Council or the Council,
or

(ii) allowing the decision to be adopted by consensus or unanimity by the European Council or the Council.⁴⁴¹

⁴³⁴ European Union Act 2011 c.12 s18

⁴³⁵ European Union Act 2011 c.12 s1(1)

⁴³⁶ European Union Act 2011 c.12 s1(2)

⁴³⁷ European Union Act 2011 c.12 s1(3)

⁴³⁸ European Union Act 2011 c.12 s1(4)

⁴³⁹ European Union Act 2011 c.12 s1(5)

⁴⁴⁰ European Union Act 2011 c.12 s1(6)

⁴⁴¹ European Union Act 2011 c.12 s1(7)

(2) A treaty which amends or replaces TEU or TFEU is not to be ratified unless—

(a) a statement relating to the treaty was laid before Parliament in accordance with the procedure set out in section 5 of the European Union Act 2011 (c.12),

(b) the treaty is approved by Act of Parliament, and

(c) the referendum condition or the exemption condition is met.⁴⁴²

(3) The referendum condition is that—

(a) the Act providing for the approval of the treaty provides that the provision approving the treaty is not to come into force until a referendum about whether the treaty should be ratified has been held throughout the United Kingdom or, where the treaty also affects Gibraltar, throughout the United Kingdom and Gibraltar,

(b) the referendum has been held, and

(c) the majority of those voting in the referendum are in favour of the ratification of the treaty.⁴⁴³

(3) The exemption condition is that the Act providing for the approval of the treaty states that the treaty does not fall within section 4 of the European Union Act 2011 (c.12).⁴⁴⁴

Chapter 19: EUROPEAN PARLIAMENTARY ELECTIONS

106 Electoral Regions and number of MEPs

(1) There shall be 73 members of the European Parliament (“MEPs”) elected for the United Kingdom.⁴⁴⁵

(2) For the purposes of electing those MEPs—

(a) the area of England and Gibraltar is divided into the nine electoral regions specified in Schedule 1 to the European Parliamentary Elections Act 2002 (c.24); and

(b) Scotland, Wales and Northern Ireland are each single electoral regions.⁴⁴⁶

⁴⁴² European Union Act 2011 c.12 s2(1)

⁴⁴³ European Union Act 2011 c.12 s2(2)

⁴⁴⁴ European Union Act 2011 c.12 s2(3)

⁴⁴⁵ European Parliamentary Elections Act 2002 (hereafter ‘EPEA 2002’) c.24 s1(1)

(3) The number of MEPs to be elected for each electoral region is as follows—

East Midlands 5
 Eastern 7
 London 8
 North East 3
 North West 8
 South East 10
 South West 6
 West Midlands 7
 Yorkshire and the Humber 6
 Scotland 6
 Wales 4
 Northern Ireland 3 ⁴⁴⁷

107 Voting system in Great Britain and Gibraltar

(1) The system of election of MEPs in an electoral region other than Northern Ireland is to be a regional list system. ⁴⁴⁸

(2) The Secretary of State must by regulations—

(a) make provision for the nomination of registered parties in relation to an election in such a region, and

(b) require a nomination under paragraph (a) to be accompanied by a list of candidates numbering no more than the MEPs to be elected for the region. ⁴⁴⁹

(3) The system of election must comply with the following conditions. ⁴⁵⁰

(4) A vote may be cast for a registered party or an individual candidate named on the ballot paper. ⁴⁵¹

(5) The first seat is to be allocated to the party or individual candidate with the greatest number of votes. ⁴⁵²

(6) The second and subsequent seats are to be allocated in the same way, except that the number of votes given to a party to which one or more seats have already been allocated are to be divided by the number of seats allocated plus one. ⁴⁵³

⁴⁴⁶ EPEA 2002 c.24 s1(2)

⁴⁴⁷ EPEA 2002 c.24 s1(3)

⁴⁴⁸ EPEA 2002 c.24 s2(1)

⁴⁴⁹ EPEA 2002 c.24 s2(2)

⁴⁵⁰ EPEA 2002 c.24 s2(3)

⁴⁵¹ EPEA 2002 c.24 s2(4)

⁴⁵² EPEA 2002 c.24 s2(5)

(7) In allocating the second or any subsequent seat there are to be disregarded any votes given to—

(a) a party to which there has already been allocated a number of seats equal to the number of names on the party's list of candidates, and

(b) an individual candidate to whom a seat has already been allocated.⁴⁵⁴

(8) Seats allocated to a party are to be filled by the persons named on the party's list of candidates in the order in which they appear on that list.⁴⁵⁵

(9) For the purposes of subsection (6) fractions are to be taken into account.⁴⁵⁶

(10) In this section "registered party" means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41).⁴⁵⁷

108 Voting system in Northern Ireland

(1) The system of election of MEPs in Northern Ireland is to be a single transferable vote system under which—

(a) a vote is capable of being given so as to indicate the voter's order of preference for the candidates, and

(b) a vote is capable of being transferred to the next choice—

(i) when the vote is not required to give a prior choice the necessary quota of votes, or

(ii) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.⁴⁵⁸

109 Date of elections

(1) The poll at each general election of MEPs is to be held on a day appointed by order of the Secretary of State.⁴⁵⁹

110 Persons entitled to vote

(1) A person is entitled to vote as an elector at an election to the European Parliament in an electoral region if he is within any of subsections (2) to (5).⁴⁶⁰

⁴⁵³ EPEA 2002 c.24 s2(6)

⁴⁵⁴ EPEA 2002 c.24 s2(7)

⁴⁵⁵ EPEA 2002 c.24 s2(8)

⁴⁵⁶ EPEA 2002 c.24 s2(9)

⁴⁵⁷ EPEA 2002 c.24 s2(10)

⁴⁵⁸ EPEA 2002 c.24 s3

⁴⁵⁹ EPEA 2002 c.24 s4

(2) A person is within this subsection if on the day of the poll he would be entitled to vote as an elector at a parliamentary election in a parliamentary constituency wholly or partly comprised in the electoral region, and—

(a) the address in respect of which he is registered in the relevant register of parliamentary electors is within the electoral region, or

(b) his registration in the relevant register of parliamentary electors results from an overseas elector's declaration which specifies an address within the electoral region.⁴⁶¹

(3) A person is within this subsection if—

(a) he is a peer who on the day of the poll would be entitled to vote at a local government election in an electoral area wholly or partly comprised in the electoral region, and

(b) the address in respect of which he is registered in the relevant register of local government electors is within the electoral region.⁴⁶²

(4) A person is within this subsection if he is entitled to vote in the electoral region by virtue of section 3 of the Representation of the People Act 1985 (c. 50) (peers resident outside the United Kingdom).⁴⁶³

(5) A person is within this subsection if he is entitled to vote in the electoral region by virtue of the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (S.I. 2001/1184) (citizens of the European Union other than Commonwealth and Republic of Ireland citizens).⁴⁶⁴

(6) Subsection (1) has effect subject to any provision of regulations made under the European Parliamentary Elections Act 2002 (c.24) which provides for alterations made after a specified date in a register of electors to be disregarded.⁴⁶⁵

(7) In subsection (3) "local government election" includes a municipal election in the City of London (that is, an election to the office of mayor, alderman, common councilman or sheriff and also the election of any officer elected by the mayor, aldermen and liverymen in common hall).⁴⁶⁶

(8) The entitlement to vote under this section does not apply to voting in Gibraltar.⁴⁶⁷

⁴⁶⁰ EPEA 2002 c.24 s8(1)

⁴⁶¹ EPEA 2002 c.24 s8(2)

⁴⁶² EPEA 2002 c.24 s8(3)

⁴⁶³ EPEA 2002 c.24 s8(4)

⁴⁶⁴ EPEA 2002 c.24 s8(5)

⁴⁶⁵ EPEA 2002 c.24 s8(6)

⁴⁶⁶ EPEA 2002 c.24 s8(7)

⁴⁶⁷ EPEA 2002 c.24 s8(8)

PART V

INTERNATIONAL RELATIONS

Chapter 20: Treaties and International Law

111 Treaties and their ratification

(1) The prerogative power in relation to foreign affairs includes a power for ministers to enter into and to ratify treaties.⁴⁶⁸

(2) This power is exercised subject to subsections (3) to (8) below.⁴⁶⁹

(3) Treaties to be laid before Parliament before ratification

(a) Subject to what follows, a treaty is not to be ratified unless—

(i) a Minister of the Crown has laid before Parliament a copy of the treaty,

(ii) the treaty has been published in a way that a Minister of the Crown thinks appropriate, and

(iii) period A has expired without either House having resolved, within period A, that the treaty should not be ratified.

(b) Period A is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (a)(i) is met.

(c) Subsections (d) to (f) apply if the House of Commons resolved as mentioned in subsection (a)(iii) (whether or not the House of Lords also did so).

(d) The treaty may be ratified if—

(i) a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why, and

(ii) period B has expired without the House of Commons having resolved, within period B, that the treaty should not be ratified.

(e) Period B is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (d)(i) is met.

⁴⁶⁸ Common law; *Cabinet Manual* Ch.3 para 3.34

⁴⁶⁹ Part 2 of the Constitutional Reform and Governance Act 2010 (c.25)

(f) A statement may be laid under subsection (d)(i) in relation to the treaty on more than one occasion.

(g) Subsection (h) applies if (i) the House of Lords resolved as mentioned in subsection (a)(iii), but (ii) the House of Commons did not.

(h) The treaty may be ratified if a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.

(i) “Sitting day” means a day on which both Houses of Parliament sit.

(4) Extension of 21 sitting day period

(a) A Minister of the Crown may, in relation to a treaty, extend the period mentioned in subsection 111(3)(a)(iii) by 21 sitting days or less.

(b) The Minister does that by laying before Parliament a statement (i) indicating that the period is to be extended, and (ii) setting out the length of the extension.

(c) The statement must be laid before the period would have expired without the extension.

(d) The Minister must publish the statement in a way the Minister thinks appropriate.

(e) The period may be extended more than once.

(5) Subsection 111(3) not to apply in exceptional cases

(a) Subsection 111(3) does not apply to a treaty if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that subsection having been met.

(b) But a treaty may not be ratified by virtue of subsection (a) after either House has resolved, as mentioned in section 111(1)(c), that the treaty should not be ratified.

(c) If a Minister determines that a treaty is to be ratified by virtue of subsection (a), the Minister must, either before or as soon as practicable after the treaty is ratified—

(i) lay before Parliament a copy of the treaty,

(ii) arrange for the treaty to be published in a way that the Minister thinks appropriate, and

(iii) lay before Parliament a statement indicating that the Minister is of the opinion mentioned in subsection (a) and explaining why.

(6) Subsection 111(3) not to apply to certain descriptions of treaties

(a) Subsection 111(3) does not apply to—

(i) a treaty covered by section 12 of the European Parliamentary Elections Act 2002 (treaty providing for increase in European Parliament's powers not to be ratified unless approved by Act of Parliament);

(ii) a treaty covered by section 5 of the European Union (Amendment) Act 2008 (treaty amending founding Treaties not to be ratified unless approved by Act of Parliament).

(b) Subsection 111(3) does not apply to a treaty in relation to which an Order in Council may be made under one or more of the following—

(i) section 158 of the Inheritance Tax Act 1984 (double taxation conventions);

(ii) section 2 of the Taxation (International and Other Provisions) Act 2010 (double taxation arrangements);

(iii) section 173 of the Finance Act 2006 (international tax enforcement arrangements).

(c) Subsection 111(c) does not apply to a treaty concluded (under authority given by the government of the United Kingdom) by the government of a British overseas territory, of any of the Channel Islands or of the Isle of Man.

(d) Section 111(c) does not apply to a treaty a copy of which is presented to Parliament by command of Her Majesty before that section comes into force.

(7) Explanatory memoranda - In laying a treaty before Parliament, a Minister shall accompany the treaty with an explanatory memorandum explaining the provisions of the treaty, the reasons for Her Majesty's Government seeking ratification of the treaty, and such other matters as the Minister considers appropriate.

(8) Meaning of “treaty” and “ratification”

(a) In this section “treaty” means a written agreement—

(i) between States or between States and international organisations,
and

(ii) binding under international law.

(b) But “treaty” does not include a regulation, rule, measure, decision or similar instrument made under a treaty (other than one that amends or replaces the treaty (in whole or in part)).

(c) In this section a reference to ratification of a treaty is a reference to an act of a kind specified in subsection (d) which establishes as a matter of international law the United Kingdom's consent to be bound by the treaty.

(d) The acts are (i) deposit or delivery of an instrument of ratification, accession, approval or acceptance; (ii) deposit or delivery of a notification of completion of domestic procedures.

(9) A ministerial decision to enter into or to ratify a treaty is not subject to challenge before the courts of the United Kingdom. ⁴⁷⁰

(10) A treaty to which the United Kingdom is a party does not alter the domestic law of the United Kingdom unless it has been incorporated into national law by legislation. ⁴⁷¹

112 Customary International Law

(1) A court in the United Kingdom may apply rules of customary international law, without the need for incorporating legislation, if this would not be contrary to a statute of the United Kingdom Parliament or a prior decision binding on the court. ⁴⁷²

(2) To be so applicable, the rule of customary international law must have attained the position of general acceptance by civilised nations as a rule of international conduct, evidenced by international treaties and conventions, authoritative textbooks, practice and judicial decision. ⁴⁷³

⁴⁷⁰ Common law

⁴⁷¹ Common law; *Cabinet Manual* Ch.9 para 9.14

⁴⁷² Common law

⁴⁷³ Common law

PART VI

DEVOLUTION AND LOCAL GOVERNMENT

Chapter 21: SCOTLAND

113 The Scottish Parliament ⁴⁷⁴

- (1) There shall be a Scottish Parliament.
- (2) One member of the Parliament shall be returned for each constituency (under the simple majority system) at an election held in the constituency.
- (3) Members of the Parliament for each region shall be returned at a general election under the additional member system of proportional representation provided for in this Part and vacancies among such members shall be filled in accordance with Part 1 of the Scotland Act 1998 (c.46).
- (4) The validity of any proceedings of the Parliament is not affected by any vacancy in its membership.

114 Elections for membership of the Scottish Parliament

- (1) The day on which the poll at the first ordinary general election for membership of the Parliament shall be held, and the day, time and place for the meeting of the Parliament following that poll, shall be appointed by order made by the Secretary of State. ⁴⁷⁵
- (2) The poll at subsequent ordinary general elections shall be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general election was held, unless the day of the poll is determined by a proclamation under subsection (5). ⁴⁷⁶
- (3) If the poll is to be held on the first Thursday in May, the Parliament—
 - (a) is dissolved by virtue of this section at the beginning of the minimum period which ends with that day, and
 - (b) shall meet within the period of seven days beginning immediately after the day of the poll. ⁴⁷⁷

⁴⁷⁴ Scotland Act 1998 c.46 s1

⁴⁷⁵ Scotland Act 1998 c.46 s2(1)

⁴⁷⁶ Scotland Act 1998 c.46 s2(2)

⁴⁷⁷ Scotland Act 1998 c.46 s2(3)

(4) In subsection (3), “the minimum period” means the period determined in accordance with an order under section 12(1) of the Scotland Act 1998 (c.46).⁴⁷⁸

(5) If the Presiding Officer proposes a day for the holding of the poll which is not more than one month earlier, nor more than one month later, than the first Thursday in May, Her Majesty may by proclamation under the Scottish Seal—

(a) dissolve the Parliament,

(b) require the poll at the election to be held on the day proposed, and

(c) require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.⁴⁷⁹

(6) In this Constitution “the Scottish Seal” means Her Majesty's Seal appointed by the Treaty of Union to be kept and used in Scotland in place of the Great Seal of Scotland.⁴⁸⁰

(7) The Presiding Officer shall propose a day for the holding of a poll if—

(a) the Parliament resolves that it should be dissolved and, if the resolution is passed on a division, the number of members voting in favour of it is not less than two-thirds of the total number of seats for members of the Parliament, or

(b) any period during which the Parliament is required under section 46 of the Scotland Act 1998 (c.46) to nominate one of its members for appointment as First Minister ends without such a nomination being made.⁴⁸¹

(8) If the Presiding Officer makes such a proposal, Her Majesty may by proclamation under the Scottish Seal—

(a) dissolve the Parliament and require an extraordinary general election to be held,

(b) require the poll at the election to be held on the day proposed, and

(c) require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.⁴⁸²

⁴⁷⁸ Scotland Act 1998 c.46 s2(4)

⁴⁷⁹ Scotland Act 1998 c.46 s2(5)

⁴⁸⁰ Scotland Act 1998 c.46 s2(6)

⁴⁸¹ Scotland Act 1998 c.46 s3(1)

⁴⁸² Scotland Act 1998 c.46 s3(2)

(9) If a poll is held under this section within the period of six months ending with the day on which the poll at the next ordinary general election would be held (disregarding subsection 5, above), that ordinary general election shall not be held.⁴⁸³

(10) Subsection (9) does not affect the year in which the subsequent ordinary general election is to be held.⁴⁸⁴

(11) At a general election, the candidates may stand for return as constituency members or regional members.⁴⁸⁵

(12) A person may not be a candidate to be a constituency member for more than one constituency.⁴⁸⁶

(13) The candidates to be regional members shall be those included in a list submitted under subsection (14) or individual candidates.⁴⁸⁷

(14) Any registered political party may submit to the regional returning officer a list of candidates to be regional members for a particular region (referred to in this Constitution, in relation to the region, as the party's "regional list").⁴⁸⁸

(15) A registered political party's regional list has effect in relation to the general election and any vacancy occurring among the regional members after that election and before the next general election.⁴⁸⁹

(16) Not more than twelve persons may be included in the list (but the list may include only one person).⁴⁹⁰

(17) A registered political party's regional list must not include a person—

(a) who is included in any other list submitted under subsection (14) for the region or any list submitted under that subsection for another region,

(b) who is an individual candidate to be a regional member for the region or another region,

(c) who is a candidate to be a constituency member for a constituency not included in the region, or

⁴⁸³ Scotland Act 1998 c.46 s3(3)

⁴⁸⁴ Scotland Act 1998 c.46 s3(4)

⁴⁸⁵ Scotland Act 1998 c.46 s5(1)

⁴⁸⁶ Scotland Act 1998 c.46 s5(2)

⁴⁸⁷ Scotland Act 1998 c.46 s5(3)

⁴⁸⁸ Scotland Act 1998 c.46 s5(4)

⁴⁸⁹ Scotland Act 1998 c.46 s5(5)

⁴⁹⁰ Scotland Act 1998 c.46 s5(6)

(d) who is a candidate to be a constituency member for a constituency included in the region but is not a candidate of that party.⁴⁹¹

(18) A person may not be an individual candidate to be a regional member for a particular region if he is—

(a) included in a list submitted under subsection (14) for the region or another region,

(b) an individual candidate to be a regional member for another region,

(c) a candidate to be a constituency member for a constituency not included in the region, or

(d) a candidate of any registered political party to be a constituency member for a constituency included in the region.⁴⁹²

(19) In this Constitution, “registered political party” means a party registered under Part II of the Political Parties, Elections and Referendums Act 2000.⁴⁹³

Polls for regional members

(20) In each of the constituencies for the Parliament, a poll shall be held at which each person entitled to vote as elector may give a vote (referred to in this Constitution as a “regional vote”) for—

(a) a registered political party which has submitted a regional list, or

(b) an individual candidate to be a regional member for the region.⁴⁹⁴

(21) The right conferred on a person by subsection (20) is in addition to any right the person may have to vote in any poll for the return of a constituency member.⁴⁹⁵

(22) The persons who are to be returned as constituency members for constituencies included in the region must be determined before the persons who are to be returned as the regional members for the region.⁴⁹⁶

⁴⁹¹ Scotland Act 1998 c.46 s5(7)

⁴⁹² Scotland Act 1998 c.46 s5(8)

⁴⁹³ Scotland Act 1998 c.46 s5(9)

⁴⁹⁴ Scotland Act 1998 c.46 s6(2)

⁴⁹⁵ Scotland Act 1998 c.46 s6(3)

⁴⁹⁶ Scotland Act 1998 c.46 s7(1)

(23) For each registered political party which has submitted a regional list, the regional figure for the purposes of subsections (26) to (34) is—

(a) the total number of regional votes given for the party in all the constituencies included in the region, divided by

(b) the aggregate of one plus the number of candidates of the party returned as constituency members for any of those constituencies.⁴⁹⁷

(24) Each time a seat is allocated to the party under subsections (26) to (34) below, that figure shall be recalculated by increasing (or further increasing) the aggregate in subsection (23)(b) by one.⁴⁹⁸

(25) For each individual candidate to be a regional member for the region, the regional figure for the purposes of subsections (26) to (34) below is the total number of regional votes given for him in all the constituencies included in the region.⁴⁹⁹

(26) The first regional member seat shall be allocated to the registered political party or individual candidate with the highest regional figure.⁵⁰⁰

(27) The second and subsequent regional member seats shall be allocated to the registered political party or individual candidate with the highest regional figure, after any recalculation required by subsection (24) has been carried out.⁵⁰¹

(28) An individual candidate already returned as a constituency or regional member shall be disregarded.⁵⁰²

(29) Seats for the region which are allocated to a registered political party shall be filled by the persons in the party's regional list in the order in which they appear in the list.⁵⁰³

(30) For the purposes of this section, a person in a registered political party's regional list who is returned as a member of the Parliament shall be treated as ceasing to be in the list (even if his return is void).⁵⁰⁴

(31) Once a party's regional list has been exhausted (by the return of persons included in it as constituency members or by the previous application of subsection (26) or (27)) the party shall be disregarded.⁵⁰⁵

⁴⁹⁷ Scotland Act 1998 c.46 s7(2)

⁴⁹⁸ Scotland Act 1998 c.46 s7(3)

⁴⁹⁹ Scotland Act 1998 c.46 s7(4)

⁵⁰⁰ Scotland Act 1998 c.46 s8(1)

⁵⁰¹ Scotland Act 1998 c.46 s8(2)

⁵⁰² Scotland Act 1998 c.46 s8(3)

⁵⁰³ Scotland Act 1998 c.46 s8(4)

⁵⁰⁴ Scotland Act 1998 c.46 s8(5)

⁵⁰⁵ Scotland Act 1998 c.46 s8(6)

(32) If (on the application of subsection (26) or any application of subsection (27)) the highest regional figure is the regional figure of two or more parties or individual candidates—

(a) the subsection in question shall apply to each of them; or

(b) if paragraph (a) would result in more than the correct number of seats for the region being allocated, the subsection in question shall apply as if the regional figure for each of those parties or candidates had been adjusted in accordance with subsection (33).⁵⁰⁶

(33) The regional figure for a party or candidate is adjusted in accordance with this subsection by—

(a) adding one vote to the total number of regional votes given for the party or candidate in all the constituencies included in the region; and

(b) (in the case of a party) recalculating the regional figure accordingly.⁵⁰⁷

(34) If, on the application of the subsection in question in accordance with subsection (32)(b), seats would be allocated to two or more parties or individual candidates and that would result in more than the correct number of seats for the region being allocated, the regional returning officer shall decide between them by lot.⁵⁰⁸

*Constituency vacancies*⁵⁰⁹

(35) Where the seat of a constituency member is vacant, an election shall be held to fill the vacancy (subject to subsection (38)).

(36) The date of the poll shall be fixed by the Presiding Officer.

(37) The date shall fall within the period of three months—

(a) beginning with the occurrence of the vacancy, or

(b) if the vacancy does not come to the notice of the Presiding Officer within the period of one month beginning with its occurrence, beginning when it does come to his notice.

⁵⁰⁶ Scotland Act 1998 c.46 s8(7)

⁵⁰⁷ Scotland Act 1998 c.46 s8(8)

⁵⁰⁸ Scotland Act 1998 c.46 s8(9)

⁵⁰⁹ Scotland Act 1998 c.46 s9

(38) The election shall not be held if the latest date for holding the poll would fall within the period of three months ending with the day on which the poll at the next ordinary general election would be held (disregarding subsection (5), above).

(39) For the purposes of this section, the date on which a vacancy is to be treated as occurring shall be determined under standing orders.

(40) A person may not be a candidate at such an election if he is a member of the Parliament or a candidate in another election to fill a vacancy.

*Regional vacancies*⁵¹⁰

(41) This section applies where the seat of a regional member is vacant.

(42) If the regional member was returned as an individual candidate, or the vacancy is not filled in accordance with the following provisions, the seat shall remain vacant until the next general election.

(43) If the regional member was returned (under this section) from a registered political party's regional list, the regional returning officer shall notify the Presiding Officer of the name of the person who is to fill the vacancy.

(44) The regional returning officer shall ascertain from that party's regional list the name and address of the person whose name appears highest on that list ("the first choice") and shall take such steps as appear to him to be reasonable to contact the first choice to ask whether he will—

(a) state in writing that he is willing and able to serve as a regional member for that region; and

(b) deliver a certificate signed by or on behalf of the nominating officer of the registered party which submitted that regional list stating that the first choice may be returned as a regional member from that list.

(45) Where—

(a) within such period as the regional returning officer considers reasonable—

(i) he decides that the steps he has taken to contact the first choice have been unsuccessful; or

(ii) he has not received from that person the statement and certificate referred to in subsection (44); or

(b) the first choice has—

⁵¹⁰ Scotland Act 1998 c.46 s10

(i) stated in writing that he is not willing to serve as a regional member for that region; or

(ii) failed to deliver the certificate referred to in subsection (44)(b),

the regional returning officer shall repeat the procedure required by subsection (44) in respect of the person (if any) whose name appears next in that list (“the second choice”) or, where paragraph (a) or (b) of this subsection applies in respect of that person, in respect of the person (if any) whose name appears next highest after the second choice in that list; and the regional returning officer shall continue to repeat the procedure until the regional returning officer has notified the Presiding Officer of the name of the person who is to fill the vacancy or the names in the list are exhausted.

(46) Where a person whose name appears on that list provides the statement and certificate referred to in subsection (44), the regional returning officer shall notify to the Presiding Officer the name of that person.

(47) Where—

(a) under subsection (45), the regional returning officer has asked the second choice or a subsequent choice the questions referred to in subsection (44); and

(b) the person who was asked those questions on an earlier occasion then provides the statement and certificate referred to in that subsection,

that statement and certificate shall have no effect unless and until the circumstances described in paragraph (a) or (b) of subsection (45) apply in respect of the second choice or, as the case may be, of the subsequent choice.

(48) Where a person's name has been notified under subsection (43), this Constitution shall apply as if he had been declared to be returned as a regional member for the region on the day on which notification of his name was received by the Presiding Officer.

(49) For the purposes of this section, the date on which a vacancy is to be treated as occurring shall be determined under standing orders.

Term of office of members ⁵¹¹

(50) The term of office of a member of the Parliament begins on the day on which the member is declared to be returned and ends with the dissolution of the Parliament.

⁵¹¹ Scotland Act 1998 c.46 s13

Resignation of members ⁵¹²

(51) A member of the Parliament may at any time resign his seat by giving notice in writing to the Presiding Officer.

Disqualification from membership of the Parliament and exceptions ⁵¹³

(52) A person is disqualified from being a member of the Parliament (subject to the following subsections) if—

(a) he is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),

(b) he is disqualified otherwise than under that Act (either generally or in relation to a particular parliamentary constituency) from being a member of the House of Commons or from sitting and voting in it, or

(d) he is an office-holder of a description specified in an Order in Council made by Her Majesty under this subsection.

(53) An office-holder of a description specified in an Order in Council made by Her Majesty under this section is disqualified from being a member of the Parliament for any constituency or region of a description specified in the Order in relation to the office-holder.

(54) In this section “office-holder” includes employee or other post-holder.

(55) A person is not disqualified from being a member of the Parliament merely because—

(a) he is a peer (whether of the United Kingdom, Great Britain, England or Scotland), or

(b) he is a Lord Spiritual.

(56) A citizen of the European Union who is resident in the United Kingdom is not disqualified from being a member of the Parliament merely because of section 3 of the Act of Settlement (disqualification of persons born outside the United Kingdom other than certain Commonwealth citizens and citizens of the Republic of Ireland).

(57) Subsection (58) applies where a person was, or is alleged to have been, disqualified from being a member of the Parliament (either generally or in relation to a particular constituency or region) on any ground other than one falling within subsection (52)(b).

⁵¹² Scotland Act 1998 c.46 s14

⁵¹³ Scotland Act 1998 c.46 s15, 16

(58) The Parliament may resolve to disregard any disqualification incurred by that person on the ground in question if it considers that—

- (a) the ground has been removed, and
- (b) it is proper to disregard any disqualification so incurred.

(59) A resolution under this section shall not—

- (a) affect any proceedings under Part III of the Representation of the People Act 1983 as applied by an order under section 12 of the Scotland Act 1998 (c.46), or
- (b) enable the Parliament to disregard any disqualification which has been established in such proceedings or in proceedings under section 18 of the Scotland Act 1998 (c.46).

*Electors*⁵¹⁴

(60) The persons entitled to vote as electors at an election for membership of the Parliament held in any constituency are those who on the day of the poll—

- (a) would be entitled to vote as electors at a local government election in an electoral area falling wholly or partly within the constituency, and
- (b) are registered in the register of local government electors at an address within the constituency.

(61) A person is not entitled to vote as elector in any constituency—

- (a) more than once at a poll for the return of a constituency member, or
- (b) more than once at a poll for the return of regional members, or to vote as elector in more than one constituency at a general election.

115 Presiding Office and administration of the Scottish Parliament

*Presiding Officer*⁵¹⁵

(1) The Parliament shall, following a general election, elect from among its members a Presiding Officer and two deputies.

(2) The Parliament must do so—

⁵¹⁴ Scotland Act 1998 c.46 s11

⁵¹⁵ Scotland Act 1998 c.46 s19

(a) before it conducts any other proceedings, except the taking by its members of the oath of allegiance (see section 84 of the Scotland Act 1998 (c.46)), and

(b) in any event, within the period of 14 days beginning immediately after the day of the poll at the election.

(3) The Parliament may, at any time, elect from among its members one or more additional deputies.

(4) A person elected Presiding Officer or deputy shall hold office until the conclusion of the next election for Presiding Officer under subsection (1) unless he previously resigns, ceases to be a member of the Parliament otherwise than by virtue of a dissolution or is removed from office by resolution of the Parliament.

(5) But standing orders may make provision for additional deputies to hold office for a shorter time than provided by subsection (2).

(6) If the Presiding Officer or a deputy elected under subsection (1) ceases to hold office before the Parliament is dissolved, the Parliament shall elect another from among its members to fill his place.

(7) The Presiding Officer's functions may be exercised by a deputy if the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act.

(8) The Presiding Officer may (subject to standing orders) authorise any deputy to exercise functions on his behalf.

(9) Standing orders may include provision as to the participation (including voting) of the Presiding Officer and deputies in the proceedings of the Parliament.

(10) The validity of any act of the Presiding Officer or a deputy is not affected by any defect in his election.

Clerk of the Parliament ⁵¹⁶

(11) There shall be a Clerk of the Parliament.

(12) The Clerk shall be appointed by the Scottish Parliamentary Corporate Body (established under section 21 of the Scotland Act 1998 (c.46)).

(13) The Clerk's functions may be exercised by any Assistant Clerk if the office of Clerk is vacant or the Clerk is for any reason unable to act.

(14) The Clerk may authorise any Assistant Clerk or other member of the staff of the Parliament to exercise functions on his behalf.

⁵¹⁶ Scotland Act 1998 c.46 s20

116 Powers of the Scottish Parliament

Acts of the Scottish Parliament ⁵¹⁷

(1) Subject to subsections (8) to (12) below, the Parliament may make laws, to be known as Acts of the Scottish Parliament.

(2) Proposed Acts of the Scottish Parliament shall be known as Bills; and a Bill shall become an Act of the Scottish Parliament when it has been passed by the Parliament and has received Royal Assent.

(3) A Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Scottish Seal signed with Her Majesty's own hand signifying Her Assent are recorded in the Register of the Great Seal.

(4) The date of Royal Assent shall be written on the Act of the Scottish Parliament by the Clerk, and shall form part of the Act.

(5) The validity of an Act of the Scottish Parliament is not affected by any invalidity in the proceedings of the Parliament leading to its enactment.

(6) Every Act of the Scottish Parliament shall be judicially noticed.

(7) This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland. ⁵¹⁸

Legislative competence ⁵¹⁹

(8) An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.

(9) A provision is outside that competence so far as any of the following paragraphs apply—

(a) it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,

(b) it relates to reserved matters,

(c) it is in breach of the restrictions in Schedule 4 to the Scotland Act 1998 (c.46),

(d) it is incompatible with any of the Convention rights or with EU law,

⁵¹⁷ Scotland Act 1998 c.46 s28

⁵¹⁸ However the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament: *Memorandum of Understanding* (Cm 4444, 1999) p.12

⁵¹⁹ Scotland Act 1998 c.46 s29

(e) it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.

(10) For the purposes of this section, the question whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined, subject to subsection (11), by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

(11) A provision which—

(a) would otherwise not relate to reserved matters, but

(b) makes modifications of Scots private law, or Scots criminal law, as it applies to reserved matters,

is to be treated as relating to reserved matters unless the purpose of the provision is to make the law in question apply consistently to reserved matters and otherwise.

(12) Subsection (8) is subject to subsection (18).

Legislative competence: supplementary ⁵²⁰

(13) Schedule 5 to the Scotland Act 1998 (c.46) (which defines reserved matters) shall have effect.

(14) Her Majesty may by Order in Council make any modifications of Schedule 4 or 5 of the Scotland Act 1998 (c.46) which She considers necessary or expedient.

(15) Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of this Constitution as may be specified, as being, or as not being, functions which are exercisable in or as regards Scotland.

(16) An Order in Council under this section may also make such modifications of—

(a) any enactment or prerogative instrument (including any enactment comprised in or made under the Scotland Act 1998 (c.46)), or

(b) any other instrument or document,

as Her Majesty considers necessary or expedient in connection with other provision made by the Order.

⁵²⁰ Scotland Act 1998 c.46 s30

(17) Subsection (18) applies where any alteration is made—

- (a) to the matters which are reserved matters, or
- (b) to Schedule 4, (whether by virtue of the making, revocation or expiry of an Order in Council under this section or otherwise).

(18) Where the effect of the alteration is that a provision of an Act of the Scottish Parliament ceases to be within the legislative competence of the Parliament, the provision does not for that reason cease to have effect (unless an enactment provides otherwise).

Scrutiny of Bills before introduction ⁵²¹

(19) A person in charge of a Bill shall, on or before introduction of the Bill in the Parliament, state that in his view the provisions of the Bill would be within the legislative competence of the Parliament.

(20) The Presiding Officer shall, on or before the introduction of a Bill in the Parliament, decide whether or not in his view the provisions of the Bill would be within the legislative competence of the Parliament and state his decision.

(21) The form of any statement, and the manner in which it is to be made, shall be determined under standing orders, and standing orders may provide for any statement to be published.

Submission of Bills for Royal Assent ⁵²²

(22) It is for the Presiding Officer to submit Bills for Royal Assent.

(23) The Presiding Officer shall not submit a Bill for Royal Assent at any time when—

- (a) the Advocate General, the Lord Advocate or the Attorney General is entitled to make a reference in relation to the Bill under subsections (26) to (28),
- (b) any such reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or
- (c) an order may be made in relation to the Bill under section 35 of the Scotland Act 1998 (c.46).

⁵²¹ Scotland Act 1998 c.46 s31

⁵²² Scotland Act 1998 c.46 s32

(24) The Presiding Officer shall not submit a Bill in its unamended form for Royal Assent if—

- (a) the Supreme Court has decided that the Bill or any provision of it would not be within the legislative competence of the Parliament, or
- (b) a reference made in relation to the Bill under subsections (26) to (28) has been withdrawn following a request for withdrawal of the reference under section 34(2)(b) of the Scotland Act 1998 (c.46).

(25) In this section—

“Advocate General” means the Advocate General for Scotland.

Scrutiny of Bills by the Supreme Court ⁵²³

(26) The Advocate General, the Lord Advocate or the Attorney General may refer the question of whether a Bill or any provision of a Bill would be within the legislative competence of the Parliament to the Supreme Court for decision.

(27) Subject to subsection (28), he may make a reference in relation to a Bill at any time during—

- (a) the period of four weeks beginning with the passing of the Bill, and
- (b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5) of the Scotland Act 1998 (c.46).

(28) He shall not make a reference in relation to a Bill if he has notified the Presiding Officer that he does not intend to make a reference in relation to the Bill, unless the Bill has been approved as mentioned in subsection (27)(b) since the notification.

117 The Scottish Executive ⁵²⁴

(1) There shall be a Scottish Executive, whose members shall be—

- (a) the First Minister,
- (b) such Ministers as the First Minister may lawfully appoint, and
- (c) the Lord Advocate and the Solicitor General for Scotland.

⁵²³ Scotland Act 1998 c.46 s33

⁵²⁴ Scotland Act 1998 c.46 s44

(2) The members of the Scottish Government are referred to collectively as the Scottish Ministers.

(3) A person who holds a Ministerial office may not be appointed a member of the Scottish Government; and if a member of the Scottish Government is appointed to a Ministerial office he shall cease to hold office as a member of the Scottish Government.

(4) In subsection (3), references to a member of the Scottish Government include a junior Scottish Minister and “Ministerial office” has the same meaning as in section 2 of the House of Commons Disqualification Act 1975.

118 The First Minister ⁵²⁵

(1) The First Minister shall be appointed by Her Majesty from among the members of the Parliament and shall hold office at Her Majesty's pleasure.

(2) The First Minister may at any time tender his resignation to Her Majesty and shall do so if the Parliament resolves that the Scottish Government no longer enjoys the confidence of the Parliament.

(3) The First Minister shall cease to hold office if a person is appointed in his place.

(4) If the office of First Minister is vacant or he is for any reason unable to act, the functions exercisable by him shall be exercisable by a person designated by the Presiding Officer.

(5) A person shall be so designated only if—

(a) he is a member of the Parliament, or

(b) if the Parliament has been dissolved, he is a person who ceased to be a member by virtue of the dissolution.

(6) Functions exercisable by a person by virtue of subsection (5)(a) shall continue to be exercisable by him even if the Parliament is dissolved.

(7) The First Minister shall be the Keeper of the Scottish Seal.

119 Choice of the First Minister ⁵²⁶

(1) If one of the following events occurs, the Parliament shall within the period allowed nominate one of its members for appointment as First Minister.

⁵²⁵ Scotland Act 1998 c.46 s45

⁵²⁶ Scotland Act 1998 c.46 s46

(2) The events are—

- (a) the holding of a poll at a general election,
- (b) the First Minister tendering his resignation to Her Majesty,
- (c) the office of First Minister becoming vacant (otherwise than in consequence of his so tendering his resignation),
- (d) the First Minister ceasing to be a member of the Parliament otherwise than by virtue of a dissolution.

(3) The period allowed is the period of 28 days which begins with the day on which the event in question occurs; but—

- (a) if another of those events occurs within the period allowed, that period shall be extended (subject to paragraph (b)) so that it ends with the period of 28 days beginning with the day on which that other event occurred, and
- (b) the period shall end if the Parliament passes a resolution under section 3(1)(a) of the Scotland Act 1998 (c.46) or when Her Majesty appoints a person as First Minister.

(4) The Presiding Officer shall recommend to Her Majesty the appointment of any member of the Parliament who is nominated by the Parliament under this section.

120 Ministers ⁵²⁷

(1) The First Minister may, with the approval of Her Majesty, appoint Ministers from among the members of the Parliament.

(2) The First Minister shall not seek Her Majesty's approval for any appointment under this section without the agreement of the Parliament.

(3) A Minister appointed under this section—

- (a) shall hold office at Her Majesty's pleasure,
- (b) may be removed from office by the First Minister,
- (c) may at any time resign and shall do so if the Parliament resolves that the Scottish Government no longer enjoys the confidence of the Parliament,
- (d) if he resigns, shall cease to hold office immediately, and

⁵²⁷ Scotland Act 1998 c.46 s47

(e) shall cease to hold office if he ceases to be a member of the Parliament otherwise than by virtue of a dissolution.

121 The Scottish Law Officers ⁵²⁸

(1) It is for the First Minister to recommend to Her Majesty the appointment or removal of a person as Lord Advocate or Solicitor General for Scotland; but he shall not do so without the agreement of the Parliament.

(2) The Lord Advocate and the Solicitor General for Scotland may at any time resign and shall do so if the Parliament resolves that the Scottish Government no longer enjoys the confidence of the Parliament.

(3) Where the Lord Advocate resigns in consequence of such a resolution, he 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.

(4) Subsection (3) is without prejudice to section 287 of the Criminal Procedure (Scotland) Act 1995 (demission of office by Lord Advocate).

(5) Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person.

(6) In Schedule 2 to the House of Commons Disqualification Act 1975 (Ministerial offices) and Part III of Schedule 1 to the Ministerial and other Salaries Act 1975 (salaries of the Law Officers), the entries for the Lord Advocate and the Solicitor General for Scotland are omitted.

122 Functions of Scottish Ministers

Exercise of functions ⁵²⁹

(1) Statutory functions may be conferred on the Scottish Ministers by that name.

(2) Statutory functions of the Scottish Ministers, the First Minister or the Lord Advocate shall be exercisable on behalf of Her Majesty.

(3) Statutory functions of the Scottish Ministers shall be exercisable by any member of the Scottish Government.

(4) Any act or omission of, or in relation to, any member of the Scottish Government shall be treated as an act or omission of, or in relation to, each of

⁵²⁸ Scotland Act 1998 c.46 s48

⁵²⁹ Scotland Act 1998 c.46 s52

them; and any property acquired, or liability incurred, by any member of the Scottish Government shall be treated accordingly.

(5) Subsection (4) does not apply in relation to the exercise of—

- (a) functions conferred on the First Minister alone, or
- (b) retained functions of the Lord Advocate.

(6) In this section, “retained functions” in relation to the Lord Advocate means—

- (a) any functions exercisable by him immediately before he ceases to be a Minister of the Crown, and
- (b) other statutory functions conferred on him alone after he ceases to be a Minister of the Crown.

(7) In this section, “statutory functions” means functions conferred by virtue of any enactment.

General transfer of functions ⁵³⁰

(8) The functions mentioned in subsection (9) shall, so far as they are exercisable within devolved competence, be exercisable by the Scottish Ministers instead of by a Minister of the Crown.

(9) Those functions are—

- (a) those of Her Majesty's prerogative and other executive functions which are exercisable on behalf of Her Majesty by a Minister of the Crown,
- (b) other functions conferred on a Minister of the Crown by a prerogative instrument, and
- (c) functions conferred on a Minister of the Crown by any pre-commencement enactment,

but do not include any retained functions of the Lord Advocate.

(10) In this section, “pre-commencement enactment” means—

- (a) an Act passed before or in the same session as the Scotland Act 1998 (c.46) and any other enactment made before the passing of that Act,
- (b) an enactment made, before the commencement of this section, under such an Act or such other enactment,

⁵³⁰ Scotland Act 1998 c.46 s53

(c) subordinate legislation under section 106 of the Scotland Act 1998 (c.46), to the extent that the legislation states that it is to be treated as a pre-commencement enactment.

Devolved competence ⁵³¹

(11) References in this section to the exercise of a function being within or outside devolved competence are to be read in accordance with this section.

(12) It is outside devolved competence—

(a) to make any provision by subordinate legislation which would be outside the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament, or

(b) to confirm or approve any subordinate legislation containing such provision.

(13) In the case of any function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or exercise it in any way) so far as a provision of an Act of the Scottish Parliament conferring the function (or, as the case may be, conferring it so as to be exercisable in that way) would be outside the legislative competence of the Parliament.

Functions exercisable with agreement ⁵³²

(14) A statutory provision, or any provision not contained in an enactment, which provides for a Minister of the Crown to exercise a function with the agreement of, or after consultation with, any other Minister of the Crown shall cease to have effect in relation to the exercise of the function by a member of the Scottish Government by virtue of subsections (8) to (10) above.

(15) In subsection (14) “statutory provision” means any provision in a pre-commencement enactment other than paragraph 5 or 15 of Schedule 32 to the Local Government, Planning and Land Act 1980 (designation of enterprise zones).

Shared powers ⁵³³

(16) Despite the transfer by virtue of subsections (8) to (10) above of any function under—

(a) section 17(1) of the Ministry of Transport Act 1919 (power to make advances for certain purposes),

⁵³¹ Scotland Act 1998 c.46 s54

⁵³² Scotland Act 1998 c.46 s55

⁵³³ Scotland Act 1998 c.46 s56

(b) any Order in Council under section 1 of the United Nations Act 1946 (measures to give effect to Security Council decisions),

(c) section 9 of the Industrial Organisation and Development Act 1947 (levies for scientific research, promotion of exports, etc.),

(d) section 5 of the Science and Technology Act 1965 (funding of scientific research),

(e) section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in respect of mineral exploration),

(f) sections 10 to 12 of the Industry Act 1972 (credits and grants for construction of ships and offshore installations),

(g) sections 2, 11(3) and 12(4) of the Employment and Training Act 1973 (power to make arrangements for employment and training etc. and to make certain payments),

(h) sections 7 to 9 and 11 to 13 of the Industrial Development Act 1982 (financial and other assistance for industry), and

(i) sections 39 and 40 of the Road Traffic Act 1988 (road safety information and training),

the function shall be exercisable by a Minister of the Crown as well as by the Scottish Ministers.

(17) Despite the transfer of any other function by virtue of subsections (8) to (10) above, the function shall, if subordinate legislation so provides, be exercisable (or be exercisable so far as the legislation provides) by a Minister of the Crown as well as by the Scottish Ministers.

(18) Subordinate legislation under subsection (17) may not be made so as to come into force at any time after the function in question has become exercisable by the Scottish Ministers.

(19) Any power referred to in subsection (9)(a) to establish, maintain or abolish a body, office or office-holder having functions which include both—

(a) functions which are exercisable in or as regards Scotland and do not relate to reserved matters, and

(b) other functions,

shall, despite that section, be exercisable jointly by the Minister of the Crown and the Scottish Ministers.

(20) In subsection (19), “office-holder” includes employee or other post-holder.

EU law and Convention rights ⁵³⁴

(21) Despite the transfer to the Scottish Ministers by virtue of subsections (8) to (10) above of functions in relation to observing and implementing obligations under EU law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(22) A member of the Scottish Government has no power to make any subordinate legislation, or to do any other act, so far as the legislation or act is incompatible with any of the Convention rights or with EU law.

(23) Subsection (22) does not apply to an act of the Lord Advocate—

(a) in prosecuting any offence, or

(b) in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland.

123 The Scottish Consolidated Fund and Other Financial Provisions

(1) There shall be a Scottish Consolidated Fund. ⁵³⁵

(2) The Secretary of State shall from time to time make payments into the Fund out of money provided by Parliament of such amounts as he may determine. ⁵³⁶

(3) Sums received by an office-holder in the Scottish Administration shall be paid into the Fund. ⁵³⁷

(4) Subsection (3) is subject to any provision made by or under an Act of the Scottish Parliament for the disposal of or accounting for such sums. ⁵³⁸

(5) The Treasury may, after consulting with the Scottish Ministers, by order designate receipts of any description specified in the order which are payable into the Fund (or would be but for any provision made by or under an Act of the Scottish Parliament). ⁵³⁹

⁵³⁴ Scotland Act 1998 c.46 s57

⁵³⁵ Scotland Act 1998 c.46 s64(1)

⁵³⁶ Scotland Act 1998 c.46 s64(2)

⁵³⁷ Scotland Act 1998 c.46 s64(3)

⁵³⁸ Scotland Act 1998 c.46 s64(4)

⁵³⁹ Scotland Act 1998 c.46 s64(5)

(6) The Scottish Ministers shall make payments to the Secretary of State, at such times and by such methods as the Treasury may from time to time determine, of sums equal to the total amount outstanding in respect of designated receipts.⁵⁴⁰

(7) Amounts required for the payment of sums under subsection (6) shall be charged on the Fund.⁵⁴¹

(8) The Fund shall be held with the Paymaster General.⁵⁴²

(9) The Scottish Ministers may borrow from the Secretary of State any sums required by them for the purpose of—

(a) meeting a temporary excess of sums paid out of the Scottish Consolidated Fund over sums paid into that Fund, or

(b) providing a working balance in the Fund.⁵⁴³

(10) Amounts required for the repayment of, or the payment of interest on, sums borrowed under this section shall be charged on the Fund.⁵⁴⁴

(11) Sums borrowed under this section shall be repaid to the Secretary of State at such times and by such methods, and interest on them shall be paid to him at such rates and at such times, as the Treasury may from time to time determine.⁵⁴⁵

(12) A member of the Scottish Government may borrow money only under this section or under any power conferred by any other Act of Parliament.⁵⁴⁶

(13) The Treasury may issue to the Secretary of State out of the National Loans Fund such sums as are required by him for making loans under subsections (9) to (12).⁵⁴⁷

(14) The aggregate at any time outstanding in respect of the principal of sums borrowed under that section shall not exceed £500 million.⁵⁴⁸

(15) The Secretary of State may by order made with the consent of the Treasury substitute for the amount (or substituted amount) specified in subsection (14) such increased amount as may be specified in the order.⁵⁴⁹

⁵⁴⁰ Scotland Act 1998 c.46 s64(6)

⁵⁴¹ Scotland Act 1998 c.46 s64(7)

⁵⁴² Scotland Act 1998 c.46 s64(8)

⁵⁴³ Scotland Act 1998 c.46 s66(1)

⁵⁴⁴ Scotland Act 1998 c.46 s66(2)

⁵⁴⁵ Scotland Act 1998 c.46 s66(3)

⁵⁴⁶ Scotland Act 1998 c.46 s66(4)

⁵⁴⁷ Scotland Act 1998 c.46 s67(1)

⁵⁴⁸ Scotland Act 1998 c.46 s67(2)

⁵⁴⁹ Scotland Act 1998 c.46 s67(3)

(16) Sums received by the Secretary of State under subsection (11) shall be paid into the National Loans Fund.⁵⁵⁰

(17) If a member of the Scottish Government lends money to a body established under any enactment, the rate of interest on the loan shall not be less than the lowest rate determined by the Treasury under section 5 of the National Loans Act 1968 in respect of similar loans made out of the National Loans Fund on the day the loan is made.⁵⁵¹

(18) A body established under any enactment shall not, in pursuance of a power conferred by virtue of an Act of the Scottish Parliament, borrow money in a currency other than sterling except with the consent of the Scottish Ministers given with the approval of the Treasury.⁵⁵²

(19) There shall be an Auditor General for Scotland who shall be an individual appointed by Her Majesty on the nomination of the Parliament.⁵⁵³

(20) A recommendation shall not be made to Her Majesty for the removal from office of the Auditor General for Scotland unless the Parliament so resolves and, if the resolution is passed on a division, the number of members voting in favour is not less than two-thirds of the total number of seats for members of the Parliament.⁵⁵⁴

(21) The validity of any act of the Auditor General for Scotland is not affected by any defect in his nomination by the Parliament.⁵⁵⁵

(22) The Auditor General for Scotland shall not, in the exercise of any of his functions, be subject to the direction or control of any member of the Scottish Government or of the Parliament.⁵⁵⁶

(23) Subsection (22) does not apply in relation to any function conferred on him of preparing accounts.⁵⁵⁷

(24) Scottish legislation shall provide—

(a) for proper accounts to be prepared by the Scottish Ministers, by the Lord Advocate and by other persons to whom sums are paid out of the Scottish Consolidated Fund, of their expenditure and receipts,

⁵⁵⁰ Scotland Act 1998 c.46 s67(4)

⁵⁵¹ Scotland Act 1998 c.46 s68(1)

⁵⁵² Scotland Act 1998 c.46 s68(2)

⁵⁵³ Scotland Act 1998 c.46 s69(1)

⁵⁵⁴ Scotland Act 1998 c.46 s69(2)

⁵⁵⁵ Scotland Act 1998 c.46 s69(3)

⁵⁵⁶ Scotland Act 1998 c.46 s69(4)

⁵⁵⁷ Scotland Act 1998 c.46 s69(5)

(b) for the Scottish Ministers to prepare an account of payments into and out of the Fund,

(c) for the Auditor General for Scotland to exercise, or ensure the exercise by other persons of, the functions mentioned in subsection (25),

(d) for access by persons exercising those functions to such documents as they may reasonably require,

(e) for members of the staff of the Scottish Administration designated for the purpose to be answerable to the Parliament in respect of the expenditure and receipts of each part of the Scottish Administration, and

(f) for the publication of parliamentary accounts and of reports on such accounts and for the laying of such accounts and reports before the Parliament.⁵⁵⁸

(25) The functions referred to in subsection (24)(c) are—

(a) issuing credits for the payment of sums out of the Fund,

(b) examining parliamentary accounts (which includes determining whether sums paid out of the Fund have been paid out and applied in accordance with section 65 of the Scotland Act 1998 (c.46)), and certifying and reporting on them,

(c) carrying out examinations into the economy, efficiency and effectiveness with which the Scottish Ministers and the Lord Advocate have used their resources in discharging their functions, and

(d) carrying out examinations into the economy, efficiency and effectiveness with which other persons determined under Scottish legislation to whom sums are paid out of the Fund have used those sums in discharging their functions.⁵⁵⁹

(26) Standing orders shall provide for the consideration by the Parliament of accounts and reports laid before it in pursuance of subsection (24)(f).⁵⁶⁰

(27) Scottish legislation may make further provision for the purpose of ensuring that persons who receive sums derived from the Fund are accountable including, in particular, provision for any person to whom subsection (24)(a) does not apply to be accountable for his expenditure and receipts in respect of functions for which he receives sums derived from the Fund.⁵⁶¹

⁵⁵⁸ Scotland Act 1998 c.46 s70(1)

⁵⁵⁹ Scotland Act 1998 c.46 s70(2)

⁵⁶⁰ Scotland Act 1998 c.46 s70(3)

⁵⁶¹ Scotland Act 1998 c.46 s70(4)

(28) Persons (other than the Auditor General for Scotland) charged with the exercise of any function mentioned in subsection (25) or other like function conferred by Scottish legislation shall not, in the exercise of that or any ancillary function, be subject to the direction or control of any member of the Scottish Government or of the Parliament.⁵⁶²

(29) Scottish legislation may not require any cross-border public authority to prepare accounts if any other legislation requires—

(a) the authority to prepare accounts of its expenditure and receipts, and

(b) the accounts to be examined, certified and reported on by the Auditor General for Scotland, the Comptroller and Auditor General or a person appointed by either of them.⁵⁶³

(30) Subsection (25)(b) does not apply to accounts prepared by the Auditor General for Scotland.⁵⁶⁴

(31) This section does not require Scottish legislation to impose any requirement which is imposed by any other legislation.⁵⁶⁵

(32) In this section—

“parliamentary accounts” means—

(a) any accounts prepared in pursuance of subsection (24)(a) or (b), and

(b) any accounts referred to in subsection (29) which are required to be examined, certified and reported on by the Auditor General for Scotland or any person appointed by him, “Scottish legislation” means provision made by or under an Act of the Scottish Parliament and “other legislation” means provision made by any other enactment.

⁵⁶² Scotland Act 1998 c.46 s70(5)

⁵⁶³ Scotland Act 1998 c.46 s70(6)

⁵⁶⁴ Scotland Act 1998 c.46 s70(7)

⁵⁶⁵ Scotland Act 1998 c.46 s70(8)

Chapter 22: WALES

124 The Assembly ⁵⁶⁶

(1) There is to be an Assembly for Wales to be known as the National Assembly for Wales or Cynulliad Cenedlaethol Cymru (referred to in this Act as “the Assembly”).

(2) The Assembly is to consist of—

(a) one member for each Assembly constituency (referred to in this Constitution as “Assembly constituency members”), and

(b) members for each Assembly electoral region (referred to in this Constitution as “Assembly regional members”).

(3) Members of the Assembly (referred to in this Constitution as “Assembly members”) are to be returned in accordance with the provision made by and under the Government of Wales Act 2006 (c.32) for—

(a) the holding of general elections of Assembly members (for the return of the entire Assembly), and

(b) the filling of vacancies in Assembly seats.

(4) The validity of any Assembly proceedings is not affected by any vacancy in its membership.

(5) In this Constitution “Assembly proceedings” means any proceedings of—

(a) the Assembly,

(b) committees of the Assembly, or

(c) sub-committees of such committees.

125 Elections for membership of the Welsh Assembly

Assembly constituencies and electoral regions ⁵⁶⁷

(1) The Assembly constituencies are the constituencies specified in the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006 (S.I. 2006/1041) as amended by—

(a) the Parliamentary Constituencies and Assembly Electoral Regions (Wales) (Amendment) Order 2008 (S.I. 2008/1791), and

⁵⁶⁶ Government of Wales Act 2006 c.32 s1

⁵⁶⁷ Government of Wales Act 2006 c.32 s2

(b) any Order in Council under the Parliamentary Constituencies Act 1986 giving effect (with or without modifications) to a report falling within section 13(3) or (4) of the Parliamentary Voting System and Constituencies Act 2011.

(2) There are five Assembly electoral regions.

(3) The Assembly electoral regions are as specified in the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006.

(4) There are four seats for each Assembly electoral region.

General elections

(5) The poll at an ordinary general election is to be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general election was held, unless provision is made for the day of the poll by an order under sub-section (9) below.⁵⁶⁸

(6) If the poll is to be held on the first Thursday in May, the Assembly–

(a) is dissolved by virtue of this section at the beginning of the minimum period which ends with that day, and

(b) must meet within the period of seven days beginning immediately after the day of the poll.⁵⁶⁹

(7) In subsection (6) “the minimum period” means the period determined in accordance with an order under section 13 of the Government of Wales Act 2006 (c.32).⁵⁷⁰

(8) In calculating any period of days for the purposes of subsection (6)(b), the following days are to be disregarded–

(a) Saturday and Sunday,

(b) any day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971 (c. 80), and

(c) any day appointed for public thanksgiving or mourning.⁵⁷¹

⁵⁶⁸ Government of Wales Act 2006 c.32 s3(1)

⁵⁶⁹ Government of Wales Act 2006 c.32 s3(2)

⁵⁷⁰ Government of Wales Act 2006 c.32 s3(3)

⁵⁷¹ Government of Wales Act 2006 c.32 s3(4)

(9) The Secretary of State must propose a day for the holding of a poll at an extraordinary general election if subsection (10) or (11) applies.⁵⁷²

(10) This subsection applies if–

- (a) the Assembly resolves that it should be dissolved, and
- (b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.⁵⁷³

(11) This subsection applies if any period during which the Assembly is required under section 47 of the Government of Wales Act 2006 (c.32) to nominate an Assembly member for appointment as the First Minister ends without such a nomination being made.⁵⁷⁴

(12) If the Secretary of State proposes a day under subsection (9), Her Majesty may by Order in Council–

- (a) dissolve the Assembly and require an extraordinary general election to be held,
- (b) require the poll at the election to be held on the day proposed, and
- (c) require the Assembly to meet within the period of seven days beginning immediately after the day of the poll.⁵⁷⁵

(13) If a poll is held under this section within the period of six months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 12), that ordinary general election is not to be held.⁵⁷⁶

(14) But subsection (13) does not affect the year in which the subsequent ordinary general election is to be held.⁵⁷⁷

(15) In calculating any period of days for the purposes of subsection (12)(c), the following days are to be disregarded–

- (a) Saturday and Sunday,
- (b) Christmas Eve, Christmas Day and Good Friday,

⁵⁷² Government of Wales Act 2006 c.32 s5(1)

⁵⁷³ Government of Wales Act 2006 c.32 s5(2)

⁵⁷⁴ Government of Wales Act 2006 c.32 s5(3)

⁵⁷⁵ Government of Wales Act 2006 c.32 s5(4)

⁵⁷⁶ Government of Wales Act 2006 c.32 s5(5)

⁵⁷⁷ Government of Wales Act 2006 c.32 s5(6)

(c) any day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971 (c. 80), and

(d) any day appointed for public thanksgiving or mourning.⁵⁷⁸

(16) Each person entitled to vote at a general election in an Assembly constituency has two votes.⁵⁷⁹

(17) One (referred to in this section as a “constituency vote”) is a vote which may be given for a candidate to be the Assembly constituency member for the Assembly constituency.⁵⁸⁰

(18) The other (referred to in this section as an “electoral region vote”) is a vote which may be given for—

(a) a registered political party which has submitted a list of candidates to be Assembly regional members for the Assembly electoral region in which the Assembly constituency is included, or

(b) an individual who is a candidate to be an Assembly regional member for that Assembly electoral region.⁵⁸¹

(19) The Assembly constituency member for the Assembly constituency is to be returned under the simple majority system.⁵⁸²

(20) The Assembly regional members for the Assembly electoral region are to be returned under the additional member system of proportional representation provided for in this section.⁵⁸³

(21) In this section “registered political party” means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41).⁵⁸⁴

(22) At a general election a person may not be a candidate to be the Assembly constituency member for more than one Assembly constituency.⁵⁸⁵

(23) Any registered political party may submit a list of candidates for return as Assembly regional members for a particular Assembly electoral region at a general election.⁵⁸⁶

⁵⁷⁸ Government of Wales Act 2006 c.32 s5(7)

⁵⁷⁹ Government of Wales Act 2006 c.32 s6(1)

⁵⁸⁰ Government of Wales Act 2006 c.32 s6(2)

⁵⁸¹ Government of Wales Act 2006 c.32 s6(3)

⁵⁸² Government of Wales Act 2006 c.32 s6(4)

⁵⁸³ Government of Wales Act 2006 c.32 s6(5)

⁵⁸⁴ Government of Wales Act 2006 c.32 s6(6)

⁵⁸⁵ Government of Wales Act 2006 c.32 s7(1)

⁵⁸⁶ Government of Wales Act 2006 c.32 s7(2)

(24) The list must be submitted to the regional returning officer.⁵⁸⁷

(25) The list must not include more than twelve persons (but may include only one).⁵⁸⁸

(26) The list must not include a person–

(a) who is included on any other list submitted for the Assembly electoral region or any list submitted for another Assembly electoral region,

(b) who is an individual candidate to be an Assembly regional member for the Assembly electoral region or another Assembly electoral region, or

(c) who is a candidate to be the Assembly constituency member for an Assembly constituency.⁵⁸⁹

(27) A person may not be an individual candidate to be an Assembly regional member for the Assembly electoral region if that person is–

(a) included on a list submitted by a registered political party for the Assembly electoral region or another Assembly electoral region,

(b) an individual candidate to be an Assembly regional member for another Assembly electoral region, or

(c) a candidate to be the Assembly constituency member for an Assembly constituency.⁵⁹⁰

(28) In this section “regional returning officer”, in relation to an Assembly electoral region, means the person designated as the regional returning officer for the Assembly electoral region in accordance with an order under section 13 of the Government of Wales Act 2006 (c.32).⁵⁹¹

*Calculation of electoral region figures*⁵⁹²

(29) The person who is to be returned as the Assembly constituency member for each Assembly constituency in the Assembly electoral region is to be determined before it is determined who are to be returned as the Assembly regional members for the Assembly electoral region.

⁵⁸⁷ Government of Wales Act 2006 c.32 s7(3)

⁵⁸⁸ Government of Wales Act 2006 c.32 s7(4)

⁵⁸⁹ Government of Wales Act 2006 c.32 s7(5)

⁵⁹⁰ Government of Wales Act 2006 c.32 s7(6)

⁵⁹¹ Government of Wales Act 2006 c.32 s7(7)

⁵⁹² Government of Wales Act 2006 c.32 s8

(30) For each registered political party by which a list of candidates has been submitted for the Assembly electoral region–

(a) there is to be added together the number of electoral region votes given for the party in the Assembly constituencies included in the Assembly electoral region, and

(b) the number arrived at under paragraph (a) is then to be divided by the aggregate of on and the number of candidates of the party returned as Assembly constituency members for any of those Assembly constituencies.

(31) For each individual candidate to be an Assembly regional member for the Assembly electoral region there is to be added together the number of electoral region votes given for the candidate in the Assembly constituencies included in the Assembly electoral region.

(32) The number arrived at–

(a) in the case of a registered political party, under subsection (30)(b), or

(b) in the case of an individual candidate, under subsection (31),

is referred to in this section as the electoral region figure for that party or individual candidate.

*Allocation of seats to electoral region members*⁵⁹³

(33) The first seat for the Assembly electoral region is to be allocated to the party or individual candidate with the highest electoral region figure.

(34) The second and subsequent seats for the Assembly electoral region are to be allocated to the party or individual candidate with the highest electoral region figure after any recalculation required by subsection (35) has been carried out.

(35) This subsection requires a recalculation under paragraph (b) of subsection (30) in relation to a party–

(a) for the first application of subsection (34), if the application of subsection (33) resulted in the allocation of an Assembly seat to the party, or

(b) for any subsequent application of subsection (34), if the previous application of that subsection did so,

and a recalculation is to be carried out after adding one to the aggregate mentioned in that paragraph.

⁵⁹³ Government of Wales Act 2006 c.32 s9

(36) An individual candidate already returned as an Assembly regional member is to be disregarded.

(37) Seats for the Assembly electoral region which are allocated to a party are to be filled by the persons on the party's list in the order in which they appear on the list.

(38) Once a party's list has been exhausted by the return of persons included on it as Assembly regional members by the previous application of subsection (33) or (34), the party is to be disregarded.

(39) If (on the application of subsection (33) or any application of subsection (34)) the highest electoral region figure is the electoral region figure of two or more parties or individual candidates, the subsection applies to each of them.

(40) However, if subsection (39) would mean that more than the full number of seats for the Assembly electoral region were allocated, subsection (33) or (34) does not apply until–

(a) a recalculation has been carried out under section (30)(b) after adding one to the number of votes given for each party with that electoral region figure, and

(b) one has been added to the number of votes given for each individual candidate with that electoral region figure.

(41) If, after that, the highest electoral region figure is still the electoral region figure of two or more parties or individual candidates, the regional returning officer must decide between them by lots.

Vacancies

(42) The procedures to be followed in the event of a vacancy in a constituency or in an electoral region are those set out in sections 10 and 11 of the Government of Wales Act 2006 (c.32).

Term of office of Assembly members ⁵⁹⁴

(43) The term of office of an Assembly member–

(a) begins when the Assembly member is declared to be returned, and

(b) ends with the dissolution of the Assembly.

⁵⁹⁴ Government of Wales Act 2006 c.32 s14

Resignation of members ⁵⁹⁵

(44) An Assembly member may at any time resign by giving notice in writing to the Presiding Officer.

Disqualification from being Assembly member and exceptions

(45) A person is disqualified from being an Assembly member if that person–

(a) is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975 (c. 24) (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),

(b) holds any of the offices for the time being designated by Order in Council as office disqualifying persons from being Assembly members,

(c) holds the office of Auditor General,

(d) holds the office of Public Services Ombudsman for Wales, or

(e) is employed as a member of the staff of the Assembly. ⁵⁹⁶

(46) Subject to subsections (51) and (52) below, a person is also disqualified from being an Assembly member if that person is disqualified otherwise than under the House of Commons Disqualification Act 1975 (c. 24) (either generally or in relation to a particular constituency) from being a member of the House of Commons or from sitting and voting in it. ⁵⁹⁷

(47) For the purposes of subsection (46) the references to the Republic of Ireland in section 1 of the Representation of the People Act 1981 (c. 34) (disqualification of offenders detained in, or unlawfully at large from detention in, the British Islands or the Republic of Ireland) are to be treated as references to any member State (other than the United Kingdom). ⁵⁹⁸

(48) A person who holds office as lord-lieutenant, lieutenant or high sheriff of any area in Wales is disqualified from being an Assembly member for any Assembly constituency or Assembly electoral region wholly or partly included in that area. ⁵⁹⁹

(49) An Order in Council under paragraph (b) of subsection (45)–

⁵⁹⁵ Government of Wales Act 2006 c.32 s15

⁵⁹⁶ Government of Wales Act 2006 c.32 s16(1)

⁵⁹⁷ Government of Wales Act 2006 c.32 s16(1)

⁵⁹⁸ Government of Wales Act 2006 c.32 s16(3)

⁵⁹⁹ Government of Wales Act 2006 c.32 s16(4)

(a) may designate particular offices or offices of any description, and

(b) may designate an office by reference to any characteristic of a person holding it,

and in that paragraph and this subsection “office” includes any post or employment.⁶⁰⁰

(50) No recommendation is to be made to Her Majesty in Council to make an Order in Council under subsection (45)(b) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, the Assembly.⁶⁰¹

(51) A person is not disqualified from being an Assembly member merely because that person is–

(a) a peer (whether of the United Kingdom, Great Britain, England or Scotland), or

(b) a Lord Spiritual.⁶⁰²

(52) A citizen of the European Union who is resident in the United Kingdom is not disqualified from being an Assembly member merely because of section 3 of the Act of Settlement (1700 c.2) (disqualification of certain persons born outside United Kingdom).⁶⁰³

(53) The Assembly may resolve that the disqualification of any person who was, or is alleged to have been, disqualified from being an Assembly member on a ground within subsections (45) or (48) is to be disregarded if it appears to the Assembly–

(a) that the ground has been removed, and

(b) that it is proper so to resolve.⁶⁰⁴

(54) A resolution under subsection (53) does not–

(a) affect any proceedings under Part 3 of the Representation of the People Act 1983 (c. 2) as applied by or incorporated in an order under section 13 of the Government of Wales Act 2006 (c.32), or

⁶⁰⁰ Government of Wales Act 2006 c.32 s16(5)

⁶⁰¹ Government of Wales Act 2006 c.32 s16(6)

⁶⁰² Government of Wales Act 2006 c.32 s17(1)

⁶⁰³ Government of Wales Act 2006 c.32 s17(2)

⁶⁰⁴ Government of Wales Act 2006 c.32 s17(3)

(b) enable the Assembly to disregard any disqualification which has been established in such proceedings or in proceedings under section 19 of the Government of Wales Act 2006 (c.32).⁶⁰⁵

126 Presiding Officer and administration

*Presiding Officer*⁶⁰⁶

(1) The Assembly must, at its first meeting following a general election, elect from among the Assembly members–

(a) a presiding officer (referred to in this section as “the Presiding Officer”), and

(b) a deputy presiding officer (referred to in this section as “the Deputy Presiding Officer”).

(2) The person elected under paragraph (a) of subsection (1) is to be known as the Presiding Officer or by such other title as the standing orders may provide; and the person elected under paragraph (b) of that subsection is to be known as the Deputy Presiding Officer or by such other title as the standing orders may provide.

(3) The Presiding Officer holds office until the conclusion of the next election of a Presiding Officer under subsection (1).

(4) The Deputy Presiding Officer holds office until the Assembly is dissolved.

(5) But the Presiding Officer or Deputy Presiding Officer–

(a) may at any time resign,

(b) ceases to hold office on ceasing to be an Assembly member otherwise than by reason of a dissolution, and

(c) may be removed from office by the Assembly.

(6) If the Presiding Officer or the Deputy Presiding Officer ceases to hold office under subsection (5) (or dies), the Assembly must elect a replacement from among the Assembly members.

⁶⁰⁵ Government of Wales Act 2006 c.32 s17(4)

⁶⁰⁶ Government of Wales Act 2006 c.32 s25

(7) Subject to subsection (9), the Presiding Officer and the Deputy Presiding Officer must not belong to–

- (a) the same political group, or
- (b) different political groups both of which are political groups with an executive role.

(8) For the purposes of this section a political group is a political group with an executive role if the First Minister or one or more of the Welsh Ministers appointed under section 48 belong to it.

(9) The Assembly may resolve that subsection (7) is not to apply for so long as the resolution so provides; but if the motion for the resolution is passed on a vote it is of no effect unless at least two-thirds of the Assembly members voting support it.

(10) The Presiding Officer's functions may be exercised by the Deputy Presiding Officer if–

- (a) the office of Presiding Officer is vacant, or
- (b) the Presiding Officer is for any reason unable to act.

(11) The Presiding Officer may (subject to the standing orders) authorise the Deputy Presiding Officer to exercise functions of the Presiding Officer.

(12) The standing orders may include provision for the Presiding Officer's functions to be exercisable by any person specified in, or determined in accordance with, the standing orders if–

- (a) the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act, and
- (b) the office of Deputy Presiding Officer is vacant or the Deputy Presiding Officer is for any reason unable to act.

(13) The standing orders may include provision as to the participation (including voting) in Assembly proceedings of the Presiding Officer and Deputy Presiding Officer and any person acting by virtue of subsection (12).

(14) The validity of any act of a person as Presiding Officer or Deputy Presiding Officer, or of any person acting by virtue of subsection (12), is not affected by any defect in the person's appointment by the Assembly.

(15) Subsections (10) to (12) are subject to paragraph 11 of Schedule 2 to the Government of Wales Act 2006 (c.32).

Clerk of Assembly ⁶⁰⁷

(16) The Assembly Commission must appoint a person to be the Clerk of the Assembly (referred to in this section as “the Clerk”).

(17) The person appointed under subsection (16) is to be known as the Clerk of the Assembly or by such other title as the standing orders may provide.

(18) The Clerk's functions may be exercised by any other member of the staff of the Assembly (or person seconded to work at the Assembly) authorised by the Assembly Commission if–

- (a) the office of Clerk is vacant, or
- (b) the Clerk is for any reason unable to act.

(19) The Clerk may authorise any other member of the staff of the Assembly (or person seconded to work at the Assembly) to exercise functions on the Clerk's behalf.

127 Assembly Measures

Assembly Measures ⁶⁰⁸

(1) The Assembly may make laws, to be known as Measures of the National Assembly for Wales or Mesurau Cynulliad Cenedlaethol Cymru (referred to in this section as “Assembly Measures”).

(2) A proposed Assembly Measure is enacted by being passed by the Assembly and approved by Her Majesty in Council.

(3) The validity of an Assembly Measure is not affected by any invalidity in the Assembly proceedings leading to its enactment.

(4) Every Assembly Measure is to be judicially noticed.

(5) This does not affect the power of the Parliament of the United Kingdom to make laws for Wales.

Legislative competence ⁶⁰⁹

(6) Subject to the provisions of this section, an Assembly Measure may make any provision that could be made by an Act of Parliament.

⁶⁰⁷ Government of Wales Act 2006 c.32 s26

⁶⁰⁸ Government of Wales Act 2006 c.32 s93

⁶⁰⁹ Government of Wales Act 2006 c.32 s94

(7) An Assembly Measure is not law so far as any provision of the Assembly Measure is outside the Assembly's legislative competence.

(8) A provision of an Assembly Measure is within the Assembly's legislative competence only if it falls within subsection (9) or (10).

(9) A provision of an Assembly Measure falls within this subsection if–

(a) it relates to one or more of the matters specified in Part 1 of Schedule 5 to the Government of Wales Act 2006 (c.32) and does not fall within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule (whether or not the exception is under a heading corresponding to the field which includes the matter), and

(b) it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.

(10) A provision of an Assembly Measure falls within this subsection if–

(a) it provides for the enforcement of a provision (of that or any other Assembly Measure) which falls within subsection (9) or it is otherwise appropriate for making such a provision effective, or

(b) it is otherwise incidental to, or consequential on, such a provision.

(11) But a provision which falls within subsection (9) or (10) is outside the Assembly's legislative competence if–

(a) it breaches any of the restrictions in paragraphs 1 to 6 of Part 2 of Schedule 5 to the Government of Wales Act 2006 (c.32), having regard to any exception in Part 3 of that Schedule from those restrictions,

(b) it extends otherwise than only to England and Wales, or

(c) it is incompatible with the Convention rights or with EU law.

(12) For the purposes of this section the question whether a provision of an Assembly Measure relates to one or more of the matters specified in Part 1 of Schedule 5 to the Government of Wales Act 2006 (c.32) (or falls within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule) is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

Legislative competence: supplementary ⁶¹⁰

(13) Her Majesty may by Order in Council—

- (a) amend Part 1 of Schedule 5 to the Government of Wales Act 2006 (c.32) to add a matter which relates to one or more of the fields listed in that Part, or to vary or remove any matter,
- (b) amend that Part to add a new field or to vary or remove any field, or
- (c) amend Part 2 or 3 of that Schedule.

(14) An Order in Council under this section does not have effect to amend Part 1 of Schedule 5 to the Government of Wales Act 2006 (c.32) by adding a field if, at the time when the amendment comes into force, no functions in the field are exercisable by the Welsh Ministers, the First Minister or the Counsel General.

(15) An Order in Council under this section may make such modifications of—

- (a) any enactment (including any enactment comprised in or made under the Government of Wales Act 2006 (c.32)) or prerogative instrument, or
- (b) any other instrument or document,

as Her Majesty considers appropriate in connection with the provision made by the Order in Council.

(16) An Order in Council under this section may make provision having retrospective effect.

(17) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council—

- (a) has been laid before, and approved by a resolution of, the Assembly, and
- (b) having been so approved, has been laid before, and approved by a resolution of, each House of Parliament.

(18) As soon as is reasonably practicable after the draft of an Order in Council under this section has been approved by a resolution of the Assembly, the First Minister must ensure that—

- (a) notice in writing of the resolution, and
- (b) a copy of the draft, is sent to the Secretary of State.

⁶¹⁰ Government of Wales Act 2006 c.32 s95

(19) The Secretary of State must, before the end of the period of 60 days beginning immediately after the day on which notice of the Assembly's resolution is received, either–

- (a) lay the draft before each House of Parliament, or
- (b) give notice in writing to the First Minister of the Secretary of State's refusal to do so and the reasons for that refusal.

(20) As soon as is reasonably practicable after the First Minister receives notice of the Secretary of State's refusal to lay the draft before each House of Parliament and the reasons for that refusal–

- (a) the First Minister must lay a copy of the notice before the Assembly, and
- (b) the Assembly must ensure that it is published.

(21) In reckoning the period of 60 days mentioned in subsection (19) no account is to be taken of any period during which Parliament is dissolved or prorogued or both Houses are adjourned for more than four days.

(22) The amendment of Schedule 5 to the Government of Wales Act 2006 (c.32) by an Order in Council under this section does not affect–

- (a) the validity of an Assembly Measure passed before the amendment comes into force, or
- (b) the previous or continuing operation of such an Assembly Measure.

Scrutiny of proposed Orders in Council ⁶¹¹

(23) The Counsel General or the Attorney General may refer to the Supreme Court for decision the question whether a matter which a proposed Order in Council under subsections (13) to (22), above, proposes to add to Part 1 of Schedule 5 to the Government of Wales Act 2006 (c.32) relates to a field listed in that Part.

Scrutiny of proposed Assembly Measures by Supreme Court ⁶¹²

(24) The Counsel General or the Attorney General may refer the question whether a proposed Assembly Measure, or any provision of a proposed Assembly Measure, would be within the Assembly's legislative competence to the Supreme Court for decision.

⁶¹¹ Government of Wales Act 2006, c.32 s96

⁶¹² Government of Wales Act 2006 c.32 s99

(25) Subject to subsection (26), the Counsel General or the Attorney General may make a reference in relation to a proposed Assembly Measure at any time during–

(a) the period of four weeks beginning with the passing of the proposed Assembly Measure, and

(b) any period of four weeks beginning with any subsequent approval of the proposed Assembly Measure in accordance with provision included in the standing orders in compliance with section 98(7) of the Government of Wales Act 2006 (c.32).

(26) No reference may be made in relation to a proposed Assembly Measure–

(a) by the Counsel General if the Counsel General has notified the Clerk that no reference is to be made in relation to it by the Counsel General, or

(b) by the Attorney General if the Attorney General has notified the Clerk that no reference is to be made in relation to it by the Attorney General.

(27) But subsection (26) does not apply if the proposed Assembly Measure has been approved as mentioned in subsection (25)(b) since the notification.

Approval of proposed Assembly Measures ⁶¹³

(28) It is for the Clerk to submit proposed Assembly Measures for approval by Her Majesty in Council.

(29) The Clerk may not submit a proposed Assembly Measure for approval by Her Majesty in Council at any time when–

(a) the Attorney General or the Counsel General is entitled to make a reference in relation to the proposed Assembly Measure under subsections (24) to (27),

(b) such a reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or

(c) an order may be made in relation to the proposed Assembly Measure under section 101 of the Government of Wales Act 2006 (c.32).

⁶¹³ Government of Wales Act 2006 c.32 s102

(30) The Clerk may not submit a proposed Assembly Measure in its unamended form for approval by Her Majesty in Council if–

(a) the Supreme Court has decided on a reference made in relation to the proposed Assembly Measure under subsections (24) to (27) that the proposed Assembly Measure or any provision of it would not be within the Assembly's legislative competence, or

(b) a reference made in relation to the proposed Assembly Measure under subsections (24) to (27) has been withdrawn following a request for withdrawal of the reference under section 100(2)(b) of the Government of Wales Act 2006 (c.32).

(31) Once an Assembly Measure has been approved by Her Majesty in Council, the Clerk of the Privy Council must send the Order in Council approving the Assembly Measure to the Clerk.

(32) The date of the approval by Her Majesty in Council of an Assembly Measure is to be written on the Assembly Measure by the Clerk, and forms part of the Assembly Measure.

(33) The Clerk must publish the Order in Council by which an Assembly Measure is approved.

(34) The standing orders must include provision for the notification by the Clerk to the Assembly of the date of the approval of an Assembly Measure by Her Majesty in Council.

(35) The validity of an Assembly Measure is not affected by any failure to comply with provision made by or by virtue of subsection (31), (32) or (34).

128 Acts of the Assembly

Acts of the Assembly ⁶¹⁴

(1) The Assembly may make laws, to be known as Acts of the National Assembly for Wales or *Deddfau Cynulliad Cenedlaethol Cymru* (referred to in this Constitution as “Acts of the Assembly”).

(2) Proposed Acts of the Assembly are to be known as Bills; and a Bill becomes an Act of the Assembly when it has been passed by the Assembly and has received Royal Assent.

(3) The validity of an Act of the Assembly is not affected by any invalidity in the Assembly proceedings leading to its enactment.

⁶¹⁴ Government of Wales Act 2006 c.32 s107

(4) Every Act of the Assembly is to be judicially noticed.

(5) This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.

Legislative competence ⁶¹⁵

(6) Subject to the provisions of this Part, an Act of the Assembly may make any provision that could be made by an Act of Parliament.

(7) An Act of the Assembly is not law so far as any provision of the Act is outside the Assembly's legislative competence.

(8) A provision of an Act of the Assembly is within the Assembly's legislative competence only if it falls within subsection (9) or (10).

(9) A provision of an Act of the Assembly falls within this subsection if–

(a) it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 to the Government of Wales Act 2006 (c.32) and does not fall within any of the exceptions specified in that Part of that Schedule (whether or not under that heading or any of those headings), and

(b) it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.

(10) A provision of an Act of the Assembly falls within this subsection if–

(a) it provides for the enforcement of a provision (of that or any other Act of the Assembly) which falls within subsection (9) or a provision of an Assembly Measure or it is otherwise appropriate for making such a provision effective, or

(b) it is otherwise incidental to, or consequential on, such a provision.

(11) But a provision which falls within subsection (9) or (10) is outside the Assembly's legislative competence if–

(a) it breaches any of the restrictions in Part 2 of Schedule 7 to the Government of Wales Act 2006 (c.32), having regard to any exception in Part 3 of that Schedule from those restrictions,

(b) it extends otherwise than only to England and Wales, or

(c) it is incompatible with the Convention rights or with EU law.

⁶¹⁵ Government of Wales Act 2006 c.32 s108

(12) For the purposes of this section the question whether a provision of an Act of the Assembly relates to one or more of the subjects listed in Part 1 of Schedule 7 to the Government of Wales Act 2006 (c.32) (or falls within any of the exceptions specified in that Part of that Schedule) is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

Legislative competence: supplementary ⁶¹⁶

(13) Her Majesty may by Order in Council amend Schedule 7 to the Government of Wales Act 2006 (c.32).

(14) An Order in Council under this section may make such modifications of–

(a) any enactment (including any enactment comprised in or made under the Government of Wales Act 2006 (c.32)) or prerogative instrument, or

(b) any other instrument or document,

as Her Majesty considers appropriate in connection with the provision made by the Order in Council.

(15) An Order in Council under this section may make provision having retrospective effect.

(16) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council–

(a) has been laid before, and approved by a resolution of, each House of Parliament, and

(b) except where the Order in Council is the first of which a draft has been laid under paragraph (a), has been laid before, and approved by a resolution of, the Assembly.

(17) The amendment of Schedule 7 to the Government of Wales Act 2006 (c.32) by an Order in Council under this section does not affect–

(a) the validity of an Act of the Assembly passed before the amendment comes into force, or

(b) the previous or continuing operation of such an Act of the Assembly.

⁶¹⁶ Government of Wales Act 2006 c.32 s109

Scrutiny of Bills by Supreme Court ⁶¹⁷

(18) The Counsel General or the Attorney General may refer the question whether a Bill, or any provision of a Bill, would be within the Assembly's legislative competence to the Supreme Court for decision.

(19) Subject to subsection (20), the Counsel General or the Attorney General may make a reference in relation to a Bill at any time during–

(a) the period of four weeks beginning with the passing of the Bill, and

(b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with provision included in the standing orders in compliance with section 111(7) of the Government of Wales Act 2006 (c.32).

(20) No reference may be made in relation to a Bill–

(a) by the Counsel General if the Counsel General has notified the Clerk that no reference is to be made in relation to it by the Counsel General, or

(b) by the Attorney General if the Attorney General has notified the Clerk that no reference is to be made in relation to it by the Attorney General.

(21) But subsection (20) does not apply if the Bill has been approved as mentioned in subsection (19)(b) since the notification.

Royal Assent ⁶¹⁸

(22) It is for the Clerk to submit Bills for Royal Assent.

(23) The Clerk may not submit a Bill for Royal Assent at any time when–

(a) the Attorney General or the Counsel General is entitled to make a reference in relation to the Bill under section 112 of the Government of Wales Act 2006 (c.32),

(b) such a reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or

(c) an order may be made in relation to the Bill under section 114 of the Government of Wales Act 2006 (c.32).

⁶¹⁷ Government of Wales Act 2006 c.32 s112

⁶¹⁸ Government of Wales Act 2006 c.32 s115

(24) The Clerk may not submit a Bill in its unamended form for Royal Assent if—

(a) the Supreme Court has decided on a reference made in relation to the Bill under section 112 of the Government of Wales Act 2006 (c.32) that the Bill or any provision of it would not be within the Assembly's legislative competence, or

(b) a reference made in relation to the Bill under section 112 of the Government of Wales Act 2006 (c.32) has been withdrawn following a request for withdrawal of the reference under section 113(2)(b) of that Act.

(25) A Bill receives Royal Assent when Letters Patent under the Welsh Seal signed with Her Majesty's own hand signifying Her Assent are notified to the Clerk.

(26) The Keeper of the Welsh Seal must make arrangements to send the Letters Patent to the National Library of Wales.

(27) The date of Royal Assent is to be written on the Act of the Assembly by the Clerk, and forms part of the Act.

(28) On the copy of the Act of the Assembly on which the Clerk writes the date of Royal Assent the Clerk must write—

(a) the calendar year, and

(b) any prefix and number which has been assigned to that Act of the Assembly.

(29) The information written on the Act of the Assembly in pursuance of subsection (28) forms part of the Act.

(30) The copy of the Act of the Assembly on which the date of Royal Assent and the information in subsection (28) is written is to be known as the official print of the Act.

(31) The Clerk must make a copy of the official print and certify it as a true copy.

(32) The Clerk must send the certified copy to the Queen's Printer and the official print to the National Library of Wales.

(33) The National Library of Wales must ensure that the official prints and Letters Patent it receives are preserved and open to public inspection at all reasonable times.

(34) The standing orders must include provision for notification by the Clerk to the Assembly of the date of Royal Assent to an Act of the Assembly.

(35) The validity of an Act of the Assembly is not affected by any failure to comply with provision made by or by virtue of subsection (25), (27) or (34).

129 Welsh Assembly Government ⁶¹⁹

(1) There is to be a Welsh Assembly Government, or Llywodraeth Cynulliad Cymru, whose members are—

- (a) the First Minister or Prif Weinidog (see sections 130 and 131),
- (b) the Welsh Ministers, or Gweinidogion Cymru, appointed under section 132,
- (c) the Counsel General to the Welsh Assembly Government or Cwnsler Cyffredinol i Lywodraeth Cynulliad Cymru (see section 49 of the Government of Wales Act 2006 (c.32)) (referred to in this Constitution as “the Counsel General”), and
- (d) the Deputy Welsh Ministers or Dirprwy Weinidogion Cymru (see section 50 of the Government of Wales Act 2006 (c.32)).

(2) In this Act and in any other enactment or instrument the First Minister and the Welsh Ministers appointed under section 48 are referred to collectively as the Welsh Ministers.

130 The First Minister ⁶²⁰

(1) The First Minister is to be appointed by Her Majesty after nomination in accordance with section 131, below.

(2) The First Minister holds office at Her Majesty's pleasure.

(3) The First Minister may at any time tender resignation to Her Majesty and ceases to hold office as First Minister when it is accepted.

(4) A person ceases to hold office as the First Minister if another person is appointed to that office.

(5) The functions of the First Minister are exercisable by a person designated by the Presiding Officer if—

- (a) the office of the First Minister is vacant,
- (b) the First Minister is for any reason unable to act, or
- (c) the First Minister has ceased to be an Assembly member.

⁶¹⁹ Government of Wales Act 2006 c.32 s45

⁶²⁰ Government of Wales Act 2006 c.32 s46

(6) A person may not be designated to exercise the functions of the First Minister unless the person is—

- (a) an Assembly member, or
- (b) if the Assembly has been dissolved, a person who ceased to be an Assembly member by reason of the dissolution.

(7) A person may be designated to exercise the functions of the First Minister only on the recommendation of the Welsh Ministers (unless there is no-one holding office as a Welsh Minister appointed under section 132).

(8) If a person is designated to exercise the functions of the First Minister, the designation continues to have effect even if the Assembly is dissolved.

131 Choice of First Minister ⁶²¹

(1) If one of the following events occurs, the Assembly must, before the end of the relevant period, nominate an Assembly member for appointment as First Minister.

(2) The events are—

- (a) the holding of a poll at a general election,
- (b) the Assembly resolving that the Welsh Ministers no longer enjoy the confidence of the Assembly,
- (c) the First Minister tendering resignation to Her Majesty,
- (d) the First Minister dying or becoming permanently unable to act and to tender resignation, and
- (e) the First Minister ceasing to be an Assembly member otherwise than by reason of a dissolution.

(3) The relevant period is the period of 28 days beginning with the day on which the event occurs; but—

- (a) if another of those events occurs within that period, the relevant period is (subject to paragraph (b)) extended to end with the period of 28 days beginning with the day on which that other event occurs, and
- (b) the relevant period ends if the Assembly passes a resolution under section 5(2)(a) of the Government of Wales Act 2006 (c.32) or when Her Majesty appoints a person as the First Minister.

⁶²¹ Government of Wales Act 2006 c.32 s47

(4) The Presiding Officer must recommend to Her Majesty the appointment of the person nominated by the Assembly under subsection (1).

132 Welsh Ministers ⁶²²

(1) The First Minister may, with the approval of Her Majesty, appoint Welsh Ministers from among the Assembly members.

(2) A Welsh Minister appointed under this section holds office at Her Majesty's pleasure.

(3) A Welsh Minister appointed under this section may be removed from office by the First Minister.

(4) A Welsh Minister appointed under this section may at any time resign.

(5) A Welsh Minister appointed under this section must resign if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly.

(6) A Welsh Minister appointed under this section who resigns ceases to hold office immediately.

(7) A Welsh Minister appointed under this section ceases to hold office on ceasing to be an Assembly member otherwise than by reason of a dissolution.

133 Functions of Welsh Ministers

(1) The Welsh Ministers, the First Minister and the Counsel General have the functions conferred or imposed on them by or by virtue of the Government of Wales Act 2006 (c.32) or any other enactment or prerogative instrument. ⁶²³

Exercise of functions ⁶²⁴

(2) Functions may be conferred or imposed on the Welsh Ministers by that name.

(3) Functions of the Welsh Ministers, the First Minister and the Counsel General are exercisable on behalf of Her Majesty.

(4) Functions of the Welsh Ministers are exercisable by the First Minister or any of the Welsh Ministers appointed under section 132.

(5) Any act or omission of, or in relation to, the First Minister or any of the Welsh Ministers appointed under section 132 is to be treated as an act or omission of, or in relation to, each of them.

⁶²² Government of Wales Act 2006 c.32 s48

⁶²³ Government of Wales Act 2006 c.32 s56

⁶²⁴ Government of Wales Act 2006 c.32 s57

(6) But subsection (5) does not apply in relation to the exercise of functions conferred or imposed on the First Minister alone.

(7) Where a function conferred or imposed on the Counsel General is (either generally or in particular circumstances) exercisable concurrently by the Welsh Ministers or the First Minister, subsection (5) applies in relation to the exercise of the function (or to its exercise in those circumstances) as if the Counsel General were included among the Welsh Ministers.

Transfer of Ministerial functions ⁶²⁵

(8) Her Majesty may by Order in Council—

(a) provide for the transfer to the Welsh Ministers, the First Minister or the Counsel General of any function so far as exercisable by a Minister of the Crown in relation to Wales or the Welsh zone,

(b) direct that any function so far as so exercisable is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General concurrently with the Minister of the Crown, or

(c) direct that any function so far as exercisable by a Minister of the Crown in relation to Wales or the Welsh zone is to be exercisable by the Minister of the Crown only with the agreement of, or after consultation with, the Welsh Ministers, the First Minister or the Counsel General.

(9) An Order in Council under this section may not make provision about a function of a Minister of the Crown exercisable in relation to the area of the Welsh zone beyond the seaward limit of the territorial sea unless the function is connected with fishing, fisheries or fish health.

(10) Subsection (9) does not have effect in relation to an Order in Council to the extent that it contains provision made by virtue of paragraph 4 of Schedule 3 of the Government of Wales Act 2006 (c.32) (functions exercisable beyond the territorial sea).

(11) An Order in Council under this section may, in particular, provide for any function exercisable by the Welsh Ministers, the First Minister or the Counsel General by virtue of an Order in Council under subsection (8)(a) or (b) to be exercisable either generally or in such circumstances as may be specified in the Order in Council, concurrently with any other of the Welsh Ministers, the First Minister or the Counsel General.

⁶²⁵ Government of Wales Act 2006 c.32 s58

(12) An Order in Council under this section may make such modifications of–

(a) any enactment (including any enactment comprised in or made under the Government of Wales Act 2006 (c.32)) or prerogative instrument, or

(b) any other instrument or document,

as Her Majesty considers appropriate in connection with the provision made by the Order in Council.

(13) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council–

(a) has been laid before, and approved by a resolution of, each House of Parliament, and

(b) has been approved by the Welsh Ministers.

(14) For further provision in connection with the transfer etc. of functions by Orders in Council under this section see Schedule 3 to the Government of Wales Act 2006 (c.32).

134 Welsh Consolidated Fund ⁶²⁶

(1) There is to be a Welsh Consolidated Fund.

(2) The Welsh Consolidated Fund is to be held with the Paymaster General.

135 Grants ⁶²⁷

(1) The Secretary of State must from time to time make payments into the Welsh Consolidated Fund out of money provided by Parliament of such amounts as the Secretary of State may determine.

(2) Any Minister of the Crown, and any government department, may make payments to the Welsh Ministers, the First Minister or the Counsel General of such amounts as may be determined by the Minister of the Crown or those responsible in the department.

⁶²⁶ Government of Wales Act 2006 c.32 s117

⁶²⁷ Government of Wales Act 2006 c.32 s118

136 Borrowing by Welsh Ministers ⁶²⁸

(1) The Welsh Ministers may borrow from the Secretary of State any amounts it appears to them are required by them for the purpose of—

(a) meeting a temporary excess of sums paid out of the Welsh Consolidated Fund over sums paid into that Fund, or

(b) providing a working balance in that Fund.

(2) Amounts borrowed under this section must be repaid to the Secretary of State at such times and by such methods, and interest on such sums must be paid to the Secretary of State at such rates and at such times, as the Treasury may from time to time determine.

(3) Sums required for the repayment of, or the payment of interest on, amounts borrowed under this section are to be charged on the Welsh Consolidated Fund.

137 Lending by Secretary of State ⁶²⁹

(1) The Treasury may issue to the Secretary of State out of the National Loans Fund such sums as the Secretary of State needs for making loans under section 136.

(2) The aggregate outstanding in respect of the principal of sums borrowed under that section must not exceed £500 million.

(3) The Secretary of State may by order made with the consent of the Treasury substitute for the amount for the time being specified in subsection (2) such greater amount as is specified in the order.

(4) No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.

(5) Sums received by the Secretary of State under section 136 must be paid into the National Loans fund.

⁶²⁸ Government of Wales Act 2006 c.32 s121

⁶²⁹ Government of Wales Act 2006 c.32 s122

Chapter 23: NORTHERN IRELAND

138 Status of Northern Ireland ⁶³⁰

(1) It is hereby declared 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 to the Northern Ireland Act 1998 (c.47).

(2) But if the wish expressed by a majority in such a poll is that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland, the Secretary of State shall lay before Parliament such proposals to give effect to that wish as may be agreed between Her Majesty's Government in the United Kingdom and the Government of Ireland.

139 The Northern Ireland Assembly

Dates of elections and dissolutions ⁶³¹

(1) Subject to subsections (2) to (3), the date of the poll for the election of each Assembly shall be the first Thursday in May in the fourth calendar year following that in which its predecessor was elected; and the predecessor shall be dissolved at the beginning of the minimum period which ends with that date.

(2) The date of the poll for the election of the Assembly next following the Assembly elected at the poll on 26 November 2003 shall be 7 March 2007; and the Assembly elected on 26 November 2003 shall be dissolved on 30 January 2007.

(3) An order under subsection (2) may not specify a date falling on or before the date on which the poll would (apart from that subsection) fall to be held under subsection (1).

(4) An order under subsection (2) may include provision making such modifications of—

(a) any enactment (other than one contained in the Northern Ireland Act 1998 (c.47)), or

(b) any provision of subordinate legislation,

as appear to the Secretary of State to be necessary or expedient for the purposes of, or in consequence of or in connection with, the order.

(5) An order under subsection (2) may, in particular, make provision modifying any duty of the Chief Electoral Officer for Northern Ireland whereby (apart from

⁶³⁰ Northern Ireland Act 1998 c.47 s1

⁶³¹ Northern Ireland Act 1998 c.47 s31

the order) he must perform any function or discharge any duty on or by reference to a particular date.

(6) An order under subsection (2) may also make such supplementary, incidental or consequential provision as the Secretary of State considers necessary or expedient.

(7) The Assembly elected at the poll on 26th November 2003 shall be dissolved on whichever of the following dates is the earlier–

(a) 3rd May 2007; or

(b) such date as may be specified in an order made by the Secretary of State.

(8) The Secretary of State may at any time by order direct that the date of the poll for the election of the next Assembly shall, instead of being that specified in subsection (1), be a date specified in the order being a date falling not more than two months before or after the date specified in that subsection.

(9) An Assembly elected under this section shall meet within the period of eight days beginning with the day of the poll at which it is elected.

(10) For the purposes of subsection (9), a Saturday, a Sunday, Christmas Day, Good Friday and any day which is a bank holiday in Northern Ireland shall be disregarded, as shall any day on which section 1 of the Northern Ireland Act 2000 is in force.

(11) In this section “minimum period” means a period determined in accordance with an order of the Secretary of State.

Extraordinary elections ⁶³²

(12) If the Assembly passes a resolution that it should be dissolved the Secretary of State shall propose a date for the poll for the election of the next Assembly.

(13) A resolution under subsection (12) shall not be passed without the support of a number of members of the Assembly which equals or exceeds two thirds of the total number of seats in the Assembly.

(14) If–

(a) the period mentioned in section 16A(3) of the Northern Ireland Act 1998 (c.47) ends without the offices of First Minister and deputy First Minister and the Ministerial offices to be held by Northern Ireland Ministers having been filled; or

⁶³² Northern Ireland Act 1998 c.47 s32

(b) the period mentioned in section 16B(3) of that Act ends without the offices of First Minister and deputy First Minister having been filled,

the Secretary of State shall propose a date for the poll for the election of the next Assembly.

(15) If the Secretary of State proposes a date under subsection (12) or (14), Her Majesty may by Order in Council—

(a) direct that the date of the poll for the election of the next Assembly shall, instead of being determined in accordance with subsections (1) to (11), be the date proposed; and

(b) provide for the Assembly to be dissolved on a date specified in the Order.

Constituencies and numbers of members ⁶³³

(16) The members of the Assembly shall be returned for the parliamentary constituencies in Northern Ireland.

(17) Each constituency shall return six members.

Elections of members of the Assembly and franchise ⁶³⁴

(18) Each vote in the poll at an election of members of the Assembly shall be a single transferable vote.

(19) A single transferable vote is a vote—

(a) capable of being given so as to indicate the voter's order of preference for the candidate for election as members for the constituency; and

(b) capable of being transferred to the next choice when the vote is not needed to give a prior choice the necessary quota of votes or when a prior choice is eliminated from the list of candidates because of a deficiency in the number of votes given for him.

(20) The Secretary of State may by order make provision about elections or any matter relating to them.

(21) In particular, an order under subsection (20) may make—

(a) provision as to the persons entitled to vote at an election and the registration of such persons;

⁶³³ Northern Ireland Act 1998 c.47 s33

⁶³⁴ Northern Ireland Act 1998 c.47 s34

(b) provision for securing that no person stands as a candidate for more than one constituency at a general election;

(c) provision for determining the date of the poll at a by-election;

(d) provision about deposits.

(22) An order under subsection (20) may apply (with or without modifications) any provision of, or made under, any enactment.

Vacancies ⁶³⁵

(23) The Secretary of State may by order make provision for the filling of vacancies occurring in the Assembly's membership.

(24) Such provision may be made by reference to by-elections or substitutes or such other method of filling vacancies as the Secretary of State thinks fit.

(25) If a seat becomes vacant, the Presiding Officer shall as soon as reasonably practicable inform the Chief Electoral Officer for Northern Ireland.

(26) The validity of any proceedings of the Assembly is not affected by any vacancy in its membership.

(27) An order under subsection (23) may apply (with or without modifications) any provision of, or made under, any enactment.

Disqualification ⁶³⁶

(28) The Northern Ireland Assembly Disqualification Act 1975 shall have effect as if any reference to the Assembly established under section 1 of the Northern Ireland Assembly Act 1973 were a reference to the Assembly.

(29) No recommendation shall be made to Her Majesty to make an Order in Council under section 3(1) of the Northern Ireland Assembly Disqualification Act 1975 (power to amend Schedule 1) without the consent of the Secretary of State.

(30) A person who is Her Majesty's Lord-Lieutenant or Lieutenant for a county or county borough in Northern Ireland is disqualified for membership of the Assembly for a constituency comprising the whole or part of the county or county borough.

⁶³⁵ Northern Ireland Act 1998 c.47 s35

⁶³⁶ Northern Ireland Act 1998 c.47 s36

(31) A person is disqualified for membership of the Assembly if he is disqualified for membership of the House of Commons otherwise than under the House of Commons Disqualification Act 1975.

(32) A person is not disqualified for membership of the Assembly by virtue of subsection (31) by reason only that—

(a) he is a peer; or

(b) he is a Lord Spiritual.

(33) A person is not disqualified for membership of the Assembly by virtue of subsection (31) by reason only that he is disqualified under section 3 of the Act of Settlement (certain persons born out of the Kingdom) if he is a citizen of the European Union.

140 Presiding Officer ⁶³⁷

(1) Each Assembly shall as its first business elect from among its members a Presiding Officer and deputies.

(2) A person elected Presiding Officer or deputy shall hold office until the conclusion of the next election for Presiding Officer under subsection (1) unless—

(a) he previously resigns;

(b) he ceases to be a member of the Assembly otherwise than by virtue of a dissolution; or

(c) the Assembly elects from among its members a person to hold office as Presiding Officer or deputy in his place.

(3) If the Presiding Officer or a deputy ceases to hold office (otherwise than under subsection (2)(c) before the Assembly is dissolved, the Assembly shall elect another from among its members to fill his place.

(4) The Presiding Officer's functions may be exercised by a deputy if the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act.

(5) The Presiding Officer may (subject to standing orders) authorise a deputy to exercise functions on his behalf.

(6) Standing orders may include provision as to the participation (including voting) of the Presiding Officer and deputies in the proceedings of the Assembly.

⁶³⁷ Northern Ireland Act 1998 c.47 s39

(7) A person shall not be elected under subsections (1) to (3) without cross-community support.

141 Acts of the Northern Ireland Assembly ⁶³⁸

(1) Subject to sections 142 to 144, the Assembly may make laws, to be known as Acts.

(2) A Bill shall become an Act when it has been passed by the Assembly and has received Royal Assent.

(3) A Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Great Seal of Northern Ireland signed with Her Majesty's own hand signifying Her Assent are notified to the Presiding Officer.

(4) The date of Royal Assent shall be written on the Act by the Presiding Officer, and shall form part of the Act.

(5) The validity of any proceedings leading to the enactment of an Act of the Assembly shall not be called into question in any legal proceedings.

(6) This section does not affect the power of the Parliament of the United Kingdom to make laws for Northern Ireland, but an Act of the Assembly may modify any provision made by or under an Act of Parliament in so far as it is part of the law of Northern Ireland.

142 Legislative competence ⁶³⁹

(1) A provision of an Act is not law if it is outside the legislative competence of the Assembly.

(2) A provision is outside that competence if any of the following paragraphs apply—

(a) it would form part of the law of a country or territory other than Northern Ireland, or confer or remove functions exercisable otherwise than in or as regards Northern Ireland;

(b) it deals with an excepted matter and is not ancillary to other provisions (whether in the Act or previously enacted) dealing with reserved or transferred matters;

(c) it is incompatible with any of the Convention rights;

(d) it is incompatible with EU law;

⁶³⁸ Northern Ireland Act 1998 c.47 s5

⁶³⁹ Northern Ireland Act 1998 c.47 s6

(e) it discriminates against any person or class of person on the ground of religious belief or political opinion;

(f) it modifies an enactment in breach of section 143.

(3) For the purposes of this Constitution, a provision is ancillary to other provisions if it is a provision—

(a) which provides for the enforcement of those other provisions or is otherwise necessary or expedient for making those other provisions effective; or

(b) which is otherwise incidental to, or consequential on, those provisions;

and references in the Northern Ireland Act 1998 (c.47) to provisions previously enacted are references to provisions contained in, or in any instrument made under, other Northern Ireland legislation or an Act of Parliament.

(4) Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of the Northern Ireland Act 1998 (c.47) as may be specified, as being, or as not being, functions which are exercisable in or as regards Northern Ireland.

(5) No recommendation shall be made to Her Majesty to make an Order in Council under subsection (4) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.

143 Entrenched enactments ⁶⁴⁰

(1) Subject to subsection (2), the following enactments shall not be modified by an Act of the Assembly or subordinate legislation made, confirmed or approved by a Minister or Northern Ireland department—

(a) the European Communities Act 1972;

(b) the Human Rights Act 1998;

(c) section 43(1) to (6) and (8), section 67, sections 84 to 86B, section 95(3) and (4) and section 98; and

(d) section 1 and section 84 of the Justice (Northern Ireland) Act 2002.

(2) Subsection (1) does not prevent an Act of the Assembly or subordinate legislation modifying section 3(3) or (4) or 11(1) of the European Communities Act 1972.

⁶⁴⁰ Northern Ireland Act 1998 c.47 s7

144 Consent of Secretary of State required in certain cases ⁶⁴¹

(1) The consent of the Secretary of State shall be required in relation to a Bill which contains—

(a) a provision which deals with an excepted matter and is ancillary to other provisions (whether in the Bill or previously enacted) dealing with reserved or transferred matters; or

(b) a provision which deals with a reserved matter.

145 Appointment of First Minister, deputy First Minister and Northern Ireland Ministers following Assembly election ⁶⁴²

(1) This section applies where an Assembly is elected under section 31 or 32 of the Northern Ireland Act 1998 (c.47).

(2) All Northern Ireland Ministers shall cease to hold office.

(3) Within a period of seven days beginning with the first meeting of the Assembly—

(a) the offices of First Minister and deputy First Minister shall be filled by applying subsections (4) to (7); and

(b) the Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6) of the Northern Ireland Act 1998 (c.47).

(4) The nominating officer of the largest political party of the largest political designation shall nominate a member of the Assembly to be the First Minister.

(5) The nominating officer of the largest political party of the second largest political designation shall nominate a member of the Assembly to be the deputy First Minister.

(6) If the persons nominated do not take up office within a period specified in standing orders, further nominations shall be made under subsections (4) and (5).

(7) Subsections (4) to (6) shall be applied as many times as may be necessary to secure that the offices of First Minister and deputy First Minister are filled.

⁶⁴¹ Northern Ireland Act 1998 c.47 s8

⁶⁴² Northern Ireland Act 1998 c.47 s16A

(8) But no person may take up office as First Minister, deputy First Minister or Northern Ireland Minister by virtue of this section after the end of the period mentioned in subsection (3).

(9) The persons nominated under subsections (4) and (5) shall not take up office until each of them has affirmed the terms of the pledge of office.

(10) Subject to the provisions of this Part, the First Minister and the deputy First Minister shall hold office until immediately before those offices are next filled by virtue of this section.

(11) The holder of the office of First Minister or deputy First Minister may by notice in writing to the Presiding Officer designate a Northern Ireland Minister to exercise the functions of that office—

(a) during any absence or incapacity of the holder; or

(b) during any vacancy in that office arising otherwise than under section 146(2),

but a person shall not have power to act by virtue of paragraph (a) for a continuous period exceeding six weeks.

146 Vacancies in the office of First Minister or deputy First Minister ⁶⁴³

(1) The First Minister or the deputy First Minister—

(a) may at any time resign by notice in writing to the Presiding Officer; and

(b) shall cease to hold office if he ceases to be a member of the Assembly otherwise than by virtue of a dissolution.

(2) If either the First Minister or the deputy First Minister ceases to hold office at any time, whether by resignation or otherwise, the other—

(a) shall also cease to hold office at that time; but

(b) may continue to exercise the functions of his office until immediately before those offices are filled in accordance with this section.

(3) Where the offices of the First Minister and the deputy First Minister become vacant at any time, they shall be filled by applying subsections (4) to (7) within a period of seven days beginning with that time.

(4) The nominating officer of the largest political party of the largest political designation shall nominate a member of the Assembly to be the First Minister.

⁶⁴³ Northern Ireland Act 1998 c.47 s16B

(5) The nominating officer of the largest political party of the second largest political designation shall nominate a member of the Assembly to be the deputy First Minister.

(6) If the persons nominated do not take up office within a period specified in standing orders, further nominations shall be made under subsections (4) and (5).

(7) Subsections (4) to (6) shall be applied as many times as may be necessary to secure that the offices of First Minister and deputy First Minister are filled.

(8) But no person may take up office as First Minister or deputy First Minister under this section after the end of the period mentioned in subsection (3).

(9) The persons nominated under subsections (4) and (5) shall not take up office until each of them has affirmed the terms of the pledge of office.

147 Ministerial Offices ⁶⁴⁴

(1) The First Minister and the deputy First Minister acting jointly may at any time, and shall where subsection (2) applies, determine—

(a) the number of Ministerial offices to be held by Northern Ireland Ministers; and

(b) the functions to be exercisable by the holder of each such office.

(2) This subsection applies where provision is made by an Act of the Assembly for establishing a new Northern Ireland department or dissolving an existing one.

(3) In making a determination under subsection (1), the First Minister and the deputy First Minister shall ensure that the functions exercisable by those in charge of the different Northern Ireland departments existing at the date of the determination are exercisable by the holders of different Ministerial offices.

(4) The number of Ministerial offices shall not exceed 10 or such greater number as the Secretary of State may by order provide.

(5) A determination under subsection (1) shall not have effect unless it is approved by a resolution of the Assembly passed with cross-community support.

⁶⁴⁴ Northern Ireland Act 1998 c.47 s17

148 Functions of Northern Ireland Ministers

Statutory functions ⁶⁴⁵

(1) An Act of the Assembly or other enactment may confer functions on a Minister (but not a junior Minister) or a Northern Ireland department by name.

(2) Functions conferred on a Northern Ireland department by an enactment passed or made before the appointed day shall, except as provided by an Act of the Assembly or other subsequent enactment, continue to be exercisable by that department.

Prerogative and executive powers ⁶⁴⁶

(3) The executive power in Northern Ireland shall continue to be vested in Her Majesty.

(4) As respects transferred matters, the prerogative and other executive powers of Her Majesty in relation to Northern Ireland shall, subject to subsections (5) and (6), be exercisable on Her Majesty's behalf by any Minister or Northern Ireland department.

(5) So far as the Royal prerogative of mercy is exercisable on Her Majesty's behalf under subsection (4), it is exercisable only by the Minister in charge of the Department of Justice.

(6) As respects the Northern Ireland Civil Service and the Commissioner for Public Appointments for Northern Ireland, the prerogative and other executive powers of Her Majesty in relation to Northern Ireland shall be exercisable on Her Majesty's behalf by the First Minister and the deputy First Minister acting jointly.

(7) The First Minister and deputy First Minister acting jointly may by prerogative order under subsection (6) direct that such of the powers mentioned in that subsection as are specified in the order shall be exercisable on Her Majesty's behalf by a Northern Ireland Minister or Northern Ireland department so specified.

149 Consolidated Fund of Northern Ireland ⁶⁴⁷

(1) The Consolidated Fund of Northern Ireland shall continue to exist.

(2) Sums forming part of the Fund—

(a) shall be appropriated to the public service of Northern Ireland by Act of the Assembly; and

⁶⁴⁵ Northern Ireland Act 1998 c.47 s22

⁶⁴⁶ Northern Ireland Act 1998 c.47 s23

⁶⁴⁷ Northern Ireland Act 1998 c.47 s57

(b) shall not be applied for any purpose for which they are not appropriated.

(3) Subsection (2) is subject to section 59 of the Northern Ireland Act 1998 (c.47) and to any provision which charges sums on the Fund and is made—

(a) by or under an Act of Parliament; or

(b) by an Act of the Assembly or other Northern Ireland legislation.

150 Payments into the Fund ⁶⁴⁸

(1) The Secretary of State shall from time to time make payments into the Consolidated Fund of Northern Ireland out of money provided by Parliament of such amounts as he may determine.

Chapter 24: LONDON

151 The Authority ⁶⁴⁹

(1) There shall be an authority for Greater London, to be known as the Greater London Authority.

(2) The Authority shall be a body corporate.

(3) The Authority shall have the functions which are transferred to, or conferred or imposed on, the Authority by or under the Greater London Authority Act 1999 (c.29) or any other Act.

152 Membership of the Authority and the Assembly ⁶⁵⁰

(1) The Authority shall consist of—

(a) the Mayor of London; and

(b) an Assembly for London, to be known as the London Assembly.

(2) The Assembly shall consist of twenty five members, of whom—

(a) fourteen shall be members for Assembly constituencies (“constituency members”); and

(b) eleven shall be members for the whole of Greater London (“London members”).

⁶⁴⁸ Northern Ireland Act 1998 c.47 s58

⁶⁴⁹ Greater London Authority Act 1999 c.29 s1

⁶⁵⁰ Greater London Authority Act 1999 c.29 s2

(3) There shall be one constituency member for each Assembly constituency.

(4) The Assembly constituencies shall be the areas, and shall be known by the names, specified in an order made by statutory instrument by the Local Government Boundary Commission for England.

(5) Schedule 1 to the Greater London Authority Act 1999 (c.29) (which makes further provision about Assembly constituencies and orders under subsection (4) above) shall have effect.

(6) The Mayor and the Assembly members shall be returned in accordance with the provision made in or by virtue of the Greater London Authority Act 1999 (c.29) for—

(a) the holding of ordinary elections of the Mayor, the constituency members and the London members; and

(b) the filling of vacancies in the office of Mayor or among the constituency members or the London members.

(7) An ordinary election involves the holding of—

(a) an election for the return of the Mayor;

(b) an election for the return of the London members; and

(c) elections for the return of the constituency members.

(8) The term of office of the Mayor and Assembly members returned at an ordinary election shall—

(a) begin on the second day after the day on which the last of the successful candidates at the ordinary election is declared to be returned; and

(b) end on the second day after the day on which the last of the successful candidates at the next ordinary election is declared to be returned;

but this subsection is subject to the other provisions of the Greater London Authority Act 1999 (c.29) and, in particular, to any provision made by order by virtue of subsection (4) of section 3 of the the Greater London Authority Act 1999 (c.29).

(9) If at any ordinary election the poll at the election of an Assembly member for an Assembly constituency is countermanded or abandoned for any reason, the day on which the last of the successful candidates at the ordinary election is declared to be returned shall be determined for the purposes of subsection (8) above without regard to the return of the Assembly member for that Assembly constituency.

(10) The validity of proceedings of the Assembly is not affected by any vacancy in its membership.

(11) The validity of anything done by the Authority is not affected by any vacancy in the office of Mayor or any vacancy in the membership of the Assembly.

153 The General Power of the Authority ⁶⁵¹

(1) The Authority shall have power to do anything which it considers will further any one or more of its principal purposes.

(2) Any reference in this Constitution to the principal purposes of the Authority is a reference to the purposes of—

(a) promoting economic development and wealth creation in Greater London;

(b) promoting social development in Greater London; and

(c) promoting the improvement of the environment in Greater London.

(3) In determining whether or how to exercise the power conferred by subsection (1) above to further any one or more of its principal purposes, the Authority shall have regard to the desirability of so exercising that power as to—

(a) further the remaining principal purpose or purposes, so far as reasonably practicable to do so; and

(b) secure, over a period of time, a reasonable balance between furthering each of its principal purposes.

(4) In determining whether or how to exercise the power conferred by subsection (1) above, the Authority shall have regard to the effect which the proposed exercise of the power would have on each of the following—

(a) the health of persons in Greater London;

(b) health inequalities between persons living in Greater London;

(c) the achievement of sustainable development in the United Kingdom; and

(d) climate change, and the consequences of climate change.

⁶⁵¹ Greater London Authority Act 1999 c.29 s30

(5) Where the Authority exercises the power conferred by subsection (1) above, it shall do so in the way which it considers best calculated—

- (a) to promote improvements in the health of persons in Greater London;
- (b) to promote the reduction of health inequalities between persons living in Greater London;
- (c) to contribute towards the achievement of sustainable development in the United Kingdom; and
- (d) to contribute towards the mitigation of, or adaptation to, climate change, in the United Kingdom,

except to the extent that the Authority considers that any action that would need to be taken by virtue of paragraph (a), (b), (c) or (d) above is not reasonably practicable in all the circumstances of the case.

(6) In subsection (5)(a) above, the reference to promoting improvements in health includes a reference to mitigating any detriment to health which would otherwise be occasioned by the exercise of the power.

(7) In subsection (5)(b) above, the reference to promoting the reduction of health inequalities includes a reference to mitigating any increase in health inequalities which would otherwise be occasioned by the exercise of the power.

(8) The Secretary of State may issue guidance to the Authority concerning the exercise by the Authority of the power conferred by subsection (1) above.

(9) In deciding whether or how to exercise that power, the Authority shall have regard to any guidance issued under subsection (8) above.

(10) Any guidance issued under subsection (8) above shall be published by the Secretary of State in such manner as he considers appropriate.

(11) The functions conferred or imposed on the Authority under or by virtue of this section shall be functions of the Authority which are exercisable by the Mayor acting on behalf of the Authority.

154 Limits of the general power ⁶⁵²

(1) The Authority shall not by virtue of section 153(1) above incur expenditure in doing anything which may be done by—

- (a) Transport for London;
- (b) the Mayor's Office for Policing and Crime; or
- (c) the London Fire and Emergency Planning Authority.

(2) In determining whether to exercise the power conferred by section 153(1) above, the Authority must seek to secure that it does not incur expenditure in doing anything which is being done by a Mayoral development corporation.

(3) The Authority shall not by virtue of section 153(1) above incur expenditure in providing—

- (a) any education services,
- (b) any social services, or
- (c) any health services,

in any case where the provision in question may be made by a London borough council, the Common Council or any other public body.

(4) The reference in subsection (3) above to providing any education services does not include sponsoring Academies or facilitating their sponsorship.

(5) Any reference in subsection (3) above to the provision of social services is a reference to the exercise of any social services function within the meaning of the Local Authority Social Services Act 1970.

(6) Any reference in subsection (3) above to the provision of health services does not include a reference to the provision of services or facilities for promoting improvements in, or protecting, public health.

(7) Nothing in subsections (1) to (6) above shall be taken to prevent the Authority incurring expenditure in co-operating with, or facilitating or co-ordinating the activities of, the bodies mentioned in those subsections.

⁶⁵² Greater London Authority Act 1999 c.29 s31

(8) The Secretary of State may by order amending this section make further provision for preventing the Authority from doing by virtue of section 153(1) above anything—

(a) which may be done by a London borough council, the Common Council or a public body, and

(b) which is specified, or is of a description specified, in the order.

(8) The Secretary of State may by order impose limits on the expenditure which may be incurred by the Authority by virtue of section 153(1) above.

(9) The Secretary of State may by order amending this section make provision removing or restricting any prohibitions or limitations imposed by this section on what may be done by the Authority by virtue of section 153(1) above.

155 Authority functions to be exercisable by Mayor, Assembly or both ⁶⁵³

(1) Any function transferred to, or conferred or imposed on, the Authority by or under the Greater London Authority Act 1999 (c.29) or any other Act (whenever passed) shall, in accordance with the provisions of that Act, be exercisable—

(a) only by the Mayor acting on behalf of the Authority;

(b) only by the Assembly so acting; or

(c) only by the Mayor and Assembly jointly so acting.

(2) Any function—

(a) which is transferred to, or conferred or imposed on, the Authority by or under the Greater London Authority Act 1999 (c.29) or any other Act (whenever passed), and

(b) which (apart from this subsection) is not made exercisable on behalf of the Authority by the Mayor, by the Assembly, or by the Mayor and the Assembly acting jointly,

shall be exercisable only by the Mayor acting on behalf of the Authority.

(3) Any function transferred to, or conferred or imposed on, the Mayor by or under the Greater London Authority Act 1999 (c.29) or any other Act (whenever passed) shall be taken to be a function of the Authority exercisable only by the Mayor acting on behalf of the Authority.

⁶⁵³ Greater London Authority Act 1999 c.29 s35

(4) Any function transferred to, or conferred or imposed on, the Assembly by or under the Greater London Authority Act 1999 (c.29) or any other Act (whenever passed) shall be taken to be a function of the Authority exercisable only by the Assembly acting on behalf of the Authority.

(5) Any function transferred to, or conferred or imposed on, the Mayor and the Assembly by or under the Greater London Authority Act 1999 (c.29) or any other Act (whenever passed) shall be taken to be a function of the Authority exercisable only by the Mayor and Assembly acting jointly on behalf of the Authority.

156 General functions and procedure

(1) The functions, powers and procedures of the Authority are those set out in sections 30 to 80 of the Greater London Authority Act 1999 (c.29).

157 General transport duty ⁶⁵⁴

(1) The Mayor shall develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London.

(2) The powers of the Authority under Part IV of the Greater London Authority Act 1999 (c.29) shall be exercised for the purpose of securing the provision of the transport facilities and services mentioned in subsection (1) above.

(3) The transport facilities and services mentioned in subsection (1) above include facilities and services for pedestrians and are—

(a) those required to meet the needs of persons living or working in, or visiting, Greater London, and

(b) those required for the transportation of freight.

Chapter 25: LOCAL GOVERNMENT

158 Local Government areas in England ⁶⁵⁵

(1) For the administration of local government on and after 1st April 1974 England (exclusive of Greater London and the Isles of Scilly) shall be divided into local government areas to be known as counties and in those counties there shall be local government areas to be known as districts.

⁶⁵⁴ Greater London Authority Act 1999 c.29 s141

⁶⁵⁵ Local Government Act 1972 c.70 s1

159 Constitution of Principal Councils in England. ⁶⁵⁶

(1) For every non-metropolitan county there shall be a council consisting of a chairman and councillors and the council shall have all such functions as are vested in them by the Local Government Act 1972 (c.70) or otherwise.

(2) For every district there shall be a council consisting of a chairman and councillors and the council shall have all such functions as are vested in them by the Local Government Act 1972 (c.70) or otherwise.

(3) Where a council mentioned in subsection (1) or (2) above are operating executive arrangements which involve a mayor and cabinet executive or a mayor and council manager executive, the council shall consist of an elected mayor, a chairman and councillors.

(4) In such a case, a reference in the Local Government Act 1972 (c.70) to a member of a council is a reference to—

(a) the elected mayor of the council,

(b) the chairman of the council, or

(c) a councillor of the council.

(5) Each council mentioned in subsection (1) or (2) above shall be a body corporate by the name “The County Council” or “The District Council”, as the case may be, with the addition of the name of the particular county or district.

(6) The ordinary elections of county councillors shall take place in 1973 and every fourth year thereafter, their term of office shall be four years and they shall retire together in every such fourth year on the fourth day after the ordinary day of election of county councillors, and in and after 1977 the newly elected councillors shall come into office on the day on which their predecessors retire.⁶⁵⁷

160 Constitution and membership of London borough councils ⁶⁵⁸

(1) Section 159 above shall not apply to London borough councils but the provisions of Schedule 2 to the Local Government Act 1972 (c.70) shall have effect in relation to them instead.

⁶⁵⁶ Local Government Act 1972 c.70 s2

⁶⁵⁷ Local Government Act 1972 c.70 s7

⁶⁵⁸ Local Government Act 1972 c.70 s8

161 Parishes,⁶⁵⁹ and constitution and powers of Parish Council ⁶⁶⁰

(1) For every parish there shall be a parish meeting for the purpose of discussing parish affairs and exercising any functions conferred on such meetings by any enactment and, subject to the provisions of this Act or any instrument made thereunder, for every parish or group of parishes having a parish council before 1st April 1974 there shall continue to be a parish council.

(2) A parish council shall consist of the chairman and parish councillors and shall have all such functions as are vested in the council by the Local Government Act 1972 (c.70) or otherwise.

(3) The parish council shall be a body corporate by the name “The Parish Council” with the addition of the name of the particular parish.

(4) If the parish has the style of community, the council shall be known by the name “The Community Council” with the addition of the name of the community.

(5) If the parish has the style of neighbourhood, the council shall be known by the name “The Neighbourhood Council” with the addition of the name of the neighbourhood.

(6) If the parish has the style of village, the council shall be known by the name “The Village Council” with the addition of the name of the village.

(7) If parishes are grouped under a common parish council—

(a) subsection (3), (4), (5) or (6) (as appropriate) applies to that council as the subsection would apply in the case of the council of an individual parish; but

(b) the names of all of the parishes, communities, neighbourhoods or villages in the group are to be included in the name of the common council.

(8) Notwithstanding anything in any rule of law, a parish council need not have a common seal, but where a parish council have no seal any act of theirs which is required to be signified by an instrument under seal may be signified by an instrument signed and sealed by two members of the council.

⁶⁵⁹ Local Government Act 1972 c.70 s9

⁶⁶⁰ Local Government Act 1972 c.70 s14

162 Local Authority's general power of competence⁶⁶¹

(1) A local authority has power to do anything that individuals generally may do.

(2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise—

(a) unlike anything the authority may do apart from subsection (1), or

(b) unlike anything that other public bodies may do.

(3) In this section “individual” means an individual with full capacity.

(4) Where subsection (1) confers power on the authority to do something, it confers power (subject to sections 2 to 4) to do it in any way whatever, including—

(a) power to do it anywhere in the United Kingdom or elsewhere,

(b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and

(c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

(5) The generality of the power conferred by subsection (1) (“the general power”) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.

163 Boundaries of the general power

(1) If exercise of a pre-commencement power of a local authority is subject to restrictions, those restrictions apply also to exercise of the general power so far as it is overlapped by the pre-commencement power.

(2) The general power does not enable a local authority to do—

(a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or

(b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply— (i) to the general power, (ii) to all of the authority's powers, or (iii) to all of the authority's powers but with exceptions that do not include the general power.

⁶⁶¹ Localism Act 2011, s.1 with territorial application to England and Wales: s.239.

(3) The general power does not confer power to—

(a) make or alter arrangements of a kind which may be made under Part 6 of the Local Government Act 1972 (arrangements for discharge of authority's functions by committees, joint committees, officers etc);

(b) make or alter arrangements of a kind which are made, or may be made, by or under Part 1A of the Local Government Act 2000 (arrangements for local authority governance in England);

(c) make or alter any contracting-out arrangements, or other arrangements within neither of paragraphs (a) and (b), that authorise a person to exercise a function of a local authority.

(4) In this section—

“post-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that— (a) is contained in an Act passed after the end of the Session in which this Act is passed, or (b) is contained in an instrument made under an Act and comes into force on or after the commencement of section 1;

“pre-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that— (a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or (b) is contained in an instrument made under an Act and comes into force before the commencement of section 1;

“pre-commencement power” means power conferred by a statutory provision that— (a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or (b) is contained in an instrument made under an Act and comes into force before the commencement of section 1.

164 Limits on charging in exercise of general power

(1) Subsection (2) applies where—

(a) a local authority provides a service to a person otherwise than for a commercial purpose, and

(b) its providing the service to the person is done, or could be done, in exercise of the general power.

(2) The general power confers power to charge the person for providing the service to the person only if—

(a) the service is not one that a statutory provision requires the authority to provide to the person,

(b) the person has agreed to its being provided, and

(c) ignoring this section and section 93 of the Local Government Act 2003, the authority does not have power to charge for providing the service.

(3) The general power is subject to a duty to secure that, taking one financial year with another, the income from charges allowed by subsection (2) does not exceed the costs of provision.

(4) The duty under subsection (3) applies separately in relation to each kind of service.

165 Limits on doing things for commercial purpose in exercise of general power

(1) The general power confers power on a local authority to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose.

(2) Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.

(3) A local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person.

(4) In this section “company” means—(a) a company within the meaning given by section 1(1) of the Companies Act 2006, or (b) a society registered or deemed to be registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.

166 Local Government in Scotland, Wales and Northern Ireland

(1) Whereas Acts of the United Kingdom Parliament have earlier made provision for the structure, functions and working of local authorities (many of which continue in force), now under the Scotland Act 1998 (as amended) with respect to Scotland, the Government of Wales Act 2006 (as amended) with respect to Wales, and the Northern Ireland Act 1998 (as amended) with respect to Northern Ireland, responsibilities and legislative powers for local government

have been devolved upon the Scottish Parliament, National Assembly of Wales and Northern Ireland Assembly.⁶⁶²

(2) Until devolution local government in Wales was subject to the same legislation as that in England. In contrast to Wales, Scottish local government legislation is mostly separate from that for England and Wales, although there have often been strong similarities (for example the 1973 Act in Scotland covered broadly the same matters as the 1972 Act in England and Wales). Northern Irish legislation has generally been entirely separate from legislation for England, Wales and Scotland. Legislation before Irish independence covered the whole of Ireland, rather than just the North.

(3) The following are the main statutory provisions regulating the constitutional structure of local government -

(i) Wales

Municipal Corporations Act 1835 (standardisation of franchise and some functions of municipal corporations)

Local Government Act 1888 (creation of county and county borough councils)

Local Government Act 1894 (creation of district and parish councils)

Local Government Act 1929 (new criteria for the creation of new county boroughs)

Local Government Act 1972 (creation of eight county councils, 37 district councils, and community councils in Wales)

Local Government (Wales) Act 1994 (creation of 22 unitary authorities to replace county and district councils)

Local Government Measure 2011 [passed by the National Assembly] (consolidation / restatement of various local government legislation, including provision for the creation and dissolution of community councils; provision for amalgamation of unitary authorities)

Local Government Democracy Act 2013 [passed by the National Assembly] (Updated provisions for boundary reviews, including merging or altering principal authority areas)

(ii) Scotland

Burgh Reform Act 1833 (standardisation of franchise in burghs, annual elections)

Local Government Act 1889 (creation of county councils)

Local Government Act 1894 (creation of parish councils)

⁶⁶² The Scottish Local Government Elections Order 2007 made by Scottish ministers under the authority of the Local Governance (Scotland) Act 2004, an Act of the Scottish Parliament, have implemented the Single Transferable Vote for Scottish local government elections.

Local Government (Scotland) Act 1929 (creation of district councils, to be undertaken by county councils; transfer of functions to county councils)

Local Government (Scotland) Act 1973 (creation of nine regions, 53 districts, and three all-purpose island councils; replacement of parish councils by 'community councils')

Local Government etc. (Scotland) Act 1994 (replacement of regions and districts with 32 unitary authorities (including the three island councils))

(iii) Northern Ireland

Municipal Corporations (Ireland) Act 1840 (representation and extra powers for larger town and cities)

Local Government (Ireland) Act 1898 (elected council in each county, with six county boroughs in Ireland (including Belfast and Londonderry); rural district councils covering public health and housing)

Public Health and Local Government Act 1946 (health and social welfare functions transferred to county councils, including functions of Poor Law Boards of Guardians; education nominally transferred to county councils)

Local Government (Northern Ireland) Act 1972 (26 district councils to replace counties, county boroughs, urban and rural district councils; introduction of local and regional rate; joint health and social services boards, education and library boards)

Local Government (Boundaries) Act (Northern Ireland) 2008 [passed by the Northern Ireland Assembly] (established 11 new local authority areas to replace the 26 district councils)

Local Government Act (Northern Ireland) 2014 [passed by the Northern Ireland Assembly] (constitutional provisions for 11 new local authorities, including type of executive, member conduct, general power of competence, performance improvement, access to meetings).

PART VII

CITIZENSHIP AND HUMAN RIGHTS

Chapter 26: CITIZENSHIP AND NATIONALITY

167 Acquisition by birth or adoption ⁶⁶³

(1) A person born in the United Kingdom after commencement, or in a qualifying territory on or after the appointed day, shall be a British citizen if at the time of the birth his father or mother is—

- (a) a British citizen; or
- (b) settled in the United Kingdom or that territory.

(2) A person born in the United Kingdom or a qualifying territory on or after the relevant day shall be a British citizen if at the time of the birth his father or mother is a member of the armed forces.

(3) A new-born infant who, after commencement, is found abandoned in the United Kingdom, or on or after the appointed day is found abandoned in a qualifying territory, shall, unless the contrary is shown, be deemed for the purposes of subsection (1)—

- (a) to have been born in the United Kingdom after commencement or in that territory on or after the appointed day]; and
- (b) to have been born to a parent who at the time of the birth was a British citizen or settled in the United Kingdom or that territory.

(4) A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1), (2) or (3) shall be entitled to be registered as a British citizen if, while he is a minor—

- (a) his father or mother becomes a British citizen or becomes settled in the United Kingdom; and
- (b) an application is made for his registration as a British citizen.

⁶⁶³ British Nationality Act 1981 c.61 s1 (as amended)

(5) A person born in the United Kingdom on or after the relevant day who is not a British citizen by virtue of subsection (1), (2) or (3) shall be entitled to be registered as a British citizen if, while he is a minor—

(a) his father or mother becomes a member of the armed forces; and

(b) an application is made for his registration as a British citizen.

(6) A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1), (2) or (3) shall be entitled, on an application for his registration as a British citizen made at any time after he has attained the age of ten years, to be registered as such a citizen if, as regards each of the first ten years of that person's life, the number of days on which he was absent from the United Kingdom in that year does not exceed 90.

(7) Where—

(a) any court in the United Kingdom or, on or after the appointed day, any court in a qualifying territory makes an order authorising the adoption of a minor who is not a British citizen; or

(b) a minor who is not a British citizen is adopted under a Convention adoption effected under the law of a country or territory outside the United Kingdom,

that minor shall, if the requirements of subsection (8) are met, be a British citizen as from the date on which the order is made or the Convention adoption is effected, as the case may be.

(8) Those requirements are that on the date on which the order is made or the Convention adoption is effected (as the case may be)—

(a) the adopter or, in the case of a joint adoption, one of the adopters is a British citizen; and

(b) in a case within subsection (7)(b), the adopter or, in the case of a joint adoption, both of the adopters are habitually resident in the United Kingdom or in a designated territory.

(9) Where an order or a Convention adoption in consequence of which any person became a British citizen by virtue of subsection (7) ceases to have effect, whether on annulment or otherwise, the cesser shall not affect the status of that person as a British citizen.

(10) If in the special circumstances of any particular case the Secretary of State thinks fit, he may for the purposes of subsection (6) treat the person to whom the application relates as fulfilling the requirement specified in that subsection although, as regards any one or more of the first ten years of that person's life, the number of days on which he was absent from the United Kingdom in that year or each of the years in question exceeds 90.

168 Acquisition by descent ⁶⁶⁴

(1) A person born outside the United Kingdom and the qualifying territories after commencement shall be a British citizen if at the time of the birth his father or mother—

(a) is a British citizen otherwise than by descent; or

(b) is a British citizen and is serving outside the United Kingdom and the qualifying territories in service to which this paragraph applies, his or her recruitment for that service having taken place in the United Kingdom or a qualifying territory; or

(c) is a British citizen and is serving outside the United Kingdom and the qualifying territories in service under an EU institution, his or her recruitment for that service having taken place in a country which at the time of the recruitment was a member of the European Union.

169 Acquisition by registration: minors ⁶⁶⁵

(1) If while a person is a minor an application is made for his registration as a British citizen, the Secretary of State may, if he thinks fit, cause him to be registered as such a citizen.

(2) A person born outside the United Kingdom and the qualifying territories shall be entitled, on an application for his registration as a British citizen made while he is a minor, to be registered as such a citizen if the requirements specified in subsection (3) or, in the case of a person born stateless, the requirements specified in paragraphs (a) and (b) of that subsection, are fulfilled in the case of either that person's father or his mother ("the parent in question").

(3) The requirements referred to in subsection (2) are—

(a) that the parent in question was a British citizen by descent at the time of the birth; and

(b) that the father or mother of the parent in question—

(i) was a British citizen otherwise than by descent at the time of the birth of the parent in question; or

(ii) became a British citizen otherwise than by descent at commencement, or would have become such a citizen otherwise than by descent at commencement but for his or her death; and

⁶⁶⁴ British Nationality Act 1981 c.61 s2 (as amended)

⁶⁶⁵ British Nationality Act 1981 c.61 s3 (as amended)

(c) that, as regards some period of three years ending with a date not later than the date of the birth—

(i) the parent in question was in the United Kingdom or a qualifying territory at the beginning of that period; and

(ii) the number of days on which the parent in question was absent from the United Kingdom and the qualifying territories in that period does not exceed 270.

(4) A person born outside the United Kingdom and the qualifying territories shall be entitled, on an application for his registration as a British citizen made while he is a minor, to be registered as such a citizen if the following requirements are satisfied, namely—

(a) that at the time of that person's birth his father or mother was a British citizen by descent; and

(b) subject to subsection (5), that that person and his father and mother were in the United Kingdom or a qualifying territory at the beginning of the period of three years ending with the date of the application and that, in the case of each of them, the number of days on which the person in question was absent from the United Kingdom and the qualifying territories in that period does not exceed 270; and

(c) subject to subsection (5), that the consent of his father and mother to the registration has been signified in the prescribed manner.

(5) In the case of an application under subsection (4) for the registration of a person as a British citizen—

(a) if his father or mother died, or their marriage or civil partnership was terminated, on or before the date of the application, or his father and mother were legally separated on that date, the references to his father and mother in paragraph (b) of that subsection shall be read either as references to his father or as references to his mother; and

(b) if his father or mother died on or before that date, the reference to his father and mother in paragraph (c) of that subsection shall be read as a reference to either of them.

170 Acquisition by registration: British Overseas Territories citizens etc.⁶⁶⁶

(1) This section applies to any person who is a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject under this Act or a British protected person.

⁶⁶⁶ British Nationality Act 1981 c.61 s4 (as amended)

(2) A person to whom this section applies shall be entitled, on an application for his registration as a British citizen, to be registered as such a citizen if the following requirements are satisfied in the case of that person, namely—

(a) subject to subsection (3), that he was in the United Kingdom at the beginning of the period of five years ending with the date of the application and that the number of days on which he was absent from the United Kingdom in that period does not exceed 450; and

(b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and

(c) that he was not at any time in the period of twelve months so ending subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and

(d) that he was not at any time in the period of five years so ending in the United Kingdom in breach of the immigration laws.

(3) So much of subsection (2)(a) as requires the person in question to have been in the United Kingdom at the beginning of the period there mentioned shall not apply in relation to a person who was settled in the United Kingdom immediately before commencement.

(4) If in the special circumstances of any particular case the Secretary of State thinks fit, he may for the purposes of subsection (2) do all or any of the following things, namely—

(a) treat the person to whom the application relates as fulfilling the requirement specified in subsection (2)(a) or subsection (2)(b), or both, although the number of days on which he was absent from the United Kingdom in the period there mentioned exceeds the number there mentioned;

(b) disregard any such restriction as is mentioned in subsection (2)(c), not being a restriction to which that person was subject on the date of the application;

(c) treat that person as fulfilling the requirement specified in subsection

(2)(d) although he was in the United Kingdom in breach of the immigration laws in the period there mentioned.

(5) If, on an application for registration as a British citizen made by a person to whom this section applies, the Secretary of State is satisfied that the applicant has at any time served in service to which this subsection applies, he may, if he thinks fit in the special circumstances of the applicant's case, cause him to be registered as such a citizen.

(6) Subsection (5) applies to—

- (a) Crown service under the government of a British overseas territory; and
- (b) paid or unpaid service (not falling within paragraph (a)) as a member of anybody established by law in a British overseas territory members of which are appointed by or on behalf of the Crown.

171 Acquisition By registration: children of members of the armed forces ⁶⁶⁷

(1) A person (“P”) born outside the United Kingdom and the qualifying territories on or after the relevant day is entitled to be registered as a British citizen if—

- (a) an application is made for P's registration under this section; and
- (b) each of the following conditions is satisfied.

(2) The first condition is that, at the time of P's birth, P's father or mother was—

- (a) a member of the armed forces; and
- (b) serving outside the United Kingdom and the qualifying territories.

(3) The second condition is that, if P is a minor on the date of the application, the consent of P's father and mother to P's registration as a British citizen has been signified in the prescribed manner.

(4) But if P's father or mother has died on or before the date of the application, the reference in subsection (3) to P's father and mother is to be read as a reference to either of them.

(5) The Secretary of State may, in the special circumstances of a particular case, waive the need for the second condition to be satisfied.

(6) The relevant day for the purposes of this section is the day appointed for the commencement of section 46 of the Borders, Citizenship and Immigration Act 2009.

172 Acquisition by registration: nationals for purposes of the EU Treaties ⁶⁶⁸

A British overseas territories citizen who falls to be treated as a national of the United Kingdom for the purposes of the European Union Treaties shall be entitled to be registered as a British citizen if an application is made for his registration as such a citizen.

⁶⁶⁷ British Nationality Act 1981 c.61 s4D (as amended)

⁶⁶⁸ British Nationality Act 1981 c.61 5 (as amended)

173 Acquisition by naturalisation ⁶⁶⁹

(1) If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 of the British Nationality Act 1981 (c.61) for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.

(2) If, on an application for naturalisation as a British citizen made by a person of full age and capacity who on the date of the application is married to a British citizen, or is the civil partner of a British citizen, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 of the British Nationality Act 1981 (c.61) for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.

Chapter 27: FUNDAMENTAL RIGHTS AND FREEDOMS

174 The Convention Rights

(1) In this Act "the Convention Rights" means the rights and fundamental freedoms set out in Articles 2 to 12 and 14 of the European Convention on Human Rights, Articles 1 to 3 of the First Protocol, and Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention.

(2) The Convention Rights that are to be protected in national law are as follows:

Article 2 Right to Life ⁶⁷⁰

(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

⁶⁶⁹ British Nationality Act 1981 c.61 s6 (as amended)

⁶⁷⁰ Human Rights Act 1998 c.42 Sch.1 article 2

Article 3 Prohibition of Torture ⁶⁷¹

(1) No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 Prohibition of Slavery and Forced Labour ⁶⁷²

(1) No one shall be held in slavery or servitude.

(2) No one shall be required to perform forced or compulsory labour.

(3) For the purpose of this Article the term “forced or compulsory labour” shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of the Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.

Article 5 Right to liberty and security ⁶⁷³

(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

⁶⁷¹ Human Rights Act 1998 c.42 Sch.1 article 3

⁶⁷² Human Rights Act 1998 c.42 Sch.1 article 4

⁶⁷³ Human Rights Act 1998 c.42 Sch.1 article 5

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(3) Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this section shall have an enforceable right to compensation.

Article 6 Right to a Fair Trial ⁶⁷⁴

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

⁶⁷⁴ Human Rights Act 1998 c.42 Sch.1 article 6

(3) Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 No Punishment Without Law⁶⁷⁵

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 Right to Respect for Private and Family Life ⁶⁷⁶

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

⁶⁷⁵ Human Rights Act 1998 c.42 Sch.1 article 7

⁶⁷⁶ Human Rights Act 1998 c.42 Sch.1 article 8

Article 9 Freedom of Thought, Conscience and Religion ⁶⁷⁷

(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 Freedom of Expression ⁶⁷⁸

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 Freedom of Assembly and Association ⁶⁷⁹

(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

⁶⁷⁷ Human Rights Act 1998 c.42 Sch.1 article 9

⁶⁷⁸ Human Rights Act 1998 c.42 Sch.1 article 10

⁶⁷⁹ Human Rights Act 1998 c.42 Sch.1 article 11

Article 12 Right to Marry ⁶⁸⁰

(1) Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 14 Prohibition of Discrimination ⁶⁸¹

(1) The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 16 Restrictions on Political Activity of Aliens ⁶⁸²

(1) Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 Prohibition of Abuse of Rights ⁶⁸³

(1) Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 Limitation on use of Restrictions on Rights ⁶⁸⁴

(1) The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Protocol 1, Article 1 Protection of Property ⁶⁸⁵

(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of

⁶⁸⁰ Human Rights Act 1998 c.42 Sch.1 article 12

⁶⁸¹ Human Rights Act 1998 c.42 Sch.1 article 14

⁶⁸² Human Rights Act 1998 c.42 Sch.1 article 16

⁶⁸³ Human Rights Act 1998 c.42 Sch.1 article 17

⁶⁸⁴ Human Rights Act 1998 c.42 Sch.1 article 18

⁶⁸⁵ Human Rights Act 1998 c.42 Sch. 1 First Protocol, article 1

property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Protocol 1, Article 2 Right to Education ⁶⁸⁶

(1) No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Protocol 1, Article 3 Right to Free Elections ⁶⁸⁷

(1) The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Legal status and enforcement of rights and freedoms

175 Interpretation of Convention Rights ⁶⁸⁸

(1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any—

- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
- (b) opinion of the Commission given in a report adopted under Article 31 of the European Convention on Human Rights,
- (c) decision of the Commission in connection with Article 26 or 27(2) of the European Convention on Human Rights, or
- (d) decision of the Committee of Ministers taken under Article 46 of the European Convention on Human Rights,

whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

(2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.

⁶⁸⁶ Human Rights Act 1998 c.42 Sch. 1 First Protocol, article 2

⁶⁸⁷ Human Rights Act 1998 c.42 Sch. 1 First Protocol, article 3

⁶⁸⁸ Human Rights Act 1998 c.42 s2

(3) In this section “rules” means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section—

- (a) by the Lord Chancellor or the Secretary of State, in relation to any proceedings outside Scotland;
- (b) by the Secretary of State, in relation to proceedings in Scotland; or
- (c) by a Northern Ireland department, in relation to proceedings before a tribunal in Northern Ireland—
- (i) which deals with transferred matters; and
- (ii) for which no rules made under paragraph (a) are in force.

176 Interpretation of legislation ⁶⁸⁹

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section—

- (a) applies to primary legislation and subordinate legislation whenever enacted;
- (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
- (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

177 Declaration of Incompatibility ⁶⁹⁰

(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

(3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with a Convention right.

⁶⁸⁹ Human Rights Act 1998 c.42 s3

⁶⁹⁰ Human Rights Act 1998 c.42 s4

(4) If the court is satisfied—

- (a) that the provision is incompatible with a Convention right, and
- (b) that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility, it may make a declaration of that incompatibility.

(5) In this section “court” means—

- (a) the Supreme Court;
- (b) the Judicial Committee of the Privy Council;
- (c) the Court Martial Appeal Court;
- (d) in Scotland, the High Court of Justiciary sitting otherwise than as a trial court or the Court of Session;
- (e) in England and Wales or Northern Ireland, the High Court or the Court of Appeal;
- (f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Chancellor of the High Court, or a puisne judge of the High Court.

(6) A declaration under this section (“a declaration of incompatibility”)—

- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
- (b) is not binding on the parties to the proceedings in which it is made.

178 Right of Crown to intervene ⁶⁹¹

(1) Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules of court.

(2) In any case to which subsection (1) applies—

- (a) a Minister of the Crown (or a person nominated by him),
- (b) a member of the Scottish Executive,
- (c) a Northern Ireland Minister,
- (d) a Northern Ireland department,

is entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings.

⁶⁹¹ Human Rights Act 1998 c.42 s5

(3) Notice under subsection (2) may be given at any time during the proceedings.

(4) A person who has been made a party to criminal proceedings (other than in Scotland) as the result of a notice under subsection (2) may, with leave, appeal to the Supreme Court against any declaration of incompatibility made in the proceedings.

(5) In subsection (4)—

“criminal proceedings” includes all proceedings before the Court Martial Appeal Court; and

“leave” means leave granted by the court making the declaration of incompatibility or by the Supreme Court.

179 Acts of public authorities ⁶⁹²

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if—

(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.

(3) In this section “public authority” includes—

(a) a court or tribunal, and

(b) any person certain of whose functions are functions of a public nature,

but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

(4) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.

(5) “An act” includes a failure to act but does not include a failure to—

(a) introduce in, or lay before, Parliament a proposal for legislation; or

(b) make any primary legislation or remedial order.

⁶⁹² Human Rights Act 1998 c.42 s6

180 Proceedings ⁶⁹³

(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 179(1) may—

(a) bring proceedings against the authority under this Constitution in the appropriate court or tribunal, or

(b) rely on the Convention right or rights concerned in any legal proceedings,

but only if he is (or would be) a victim of the unlawful act.

(2) In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.

(3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.

(4) If the proceedings are made by way of a petition for judicial review in Scotland, the applicant shall be taken to have title and interest to sue in relation to the unlawful act only if he is, or would be, a victim of that act.

(5) Proceedings under subsection (1)(a) must be brought before the end of—

(a) the period of one year beginning with the date on which the act complained of took place; or

(b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,

but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.

(6) In subsection (1)(b) “legal proceedings” includes—

(a) proceedings brought by or at the instigation of a public authority; and

(b) an appeal against the decision of a court or tribunal.

(7) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the European Convention on Human Rights if proceedings were brought in the European Court of Human Rights in respect of that act.

⁶⁹³ Human Rights Act 1998 c.42 s7

(8) Nothing in the Human Rights Act 1998 (c.42) creates a criminal offence.

(9) In this section “rules” means—

(a) in relation to proceedings before a court or tribunal outside Scotland, rules made by the Lord Chancellor or the Secretary of State for the purposes of this section or rules of court,

(b) in relation to proceedings before a court or tribunal in Scotland, rules made by the Secretary of State for those purposes,

(c) in relation to proceedings before a tribunal in Northern Ireland—

(i) which deals with transferred matters; and

(ii) for which no rules made under paragraph (a) are in force, rules made by a Northern Ireland department for those purposes, and includes provision made by order under section 1 of the Courts and Legal Services Act 1990.

(10) In making rules, regard must be had to section 182.

(11) The Minister who has power to make rules in relation to a particular tribunal may, to the extent he considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a public authority which is (or would be) unlawful as a result of section 179(1), by order add to—

(a) the relief or remedies which the tribunal may grant; or

(b) the grounds on which it may grant any of them.

(12) An order made under subsection (11) may contain such incidental, supplemental, consequential or transitional provision as the Minister making it considers appropriate.

(13) “The Minister” includes the Northern Ireland department concerned.

181 Judicial remedies ⁶⁹⁴

(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

⁶⁹⁴ Human Rights Act 1998 c.42 s8

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

(a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and

(b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining—

(a) whether to award damages, or

(b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the European Convention on Human Rights.

(5) A public authority against which damages are awarded is to be treated—

(a) in Scotland, for the purposes of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made;

(b) for the purposes of the Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.

(6) In this section—

“court” includes a tribunal;

“damages” means damages for an unlawful act of a public authority; and

“unlawful” means unlawful under section 179(1).

182 Judicial acts ⁶⁹⁵

(1) Proceedings under section 180(1)(a) in respect of a judicial act may be brought only—

- (a) by exercising a right of appeal;
- (b) on an application (in Scotland a petition) for judicial review; or
- (c) in such other forum as may be prescribed by rules.

(2) That does not affect any rule of law which prevents a court from being the subject of judicial review.

(3) In proceedings under the Human Rights Act 1998 (c.42) in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the European Convention on Human Rights.

(4) An award of damages permitted by subsection (3) is to be made against the Crown; but no award may be made unless the appropriate person, if not a party to the proceedings, is joined.

(5) In this section—

“appropriate person” means the Minister responsible for the court concerned, or a person or government department nominated by him;

“court” includes a tribunal;

“judge” includes a member of a tribunal, a justice of the peace (or, in Northern Ireland, a lay magistrate) and a clerk or other officer entitled to exercise the jurisdiction of a court;

“judicial act” means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge; and

“rules” has the same meaning as in section 180(9).

183 Power to take Remedial Action ⁶⁹⁶

(1) This section applies if—

- (a) a provision of legislation has been declared under section 177 to be incompatible with a Convention right and, if an appeal lies—

- (i) all persons who may appeal have stated in writing that they do not intend to do so;

⁶⁹⁵ Human Rights Act 1998 c.42 s9

⁶⁹⁶ Human Rights Act 1998 c.42 s10

(ii) the time for bringing an appeal has expired and no appeal has been brought within that time; or

(iii) an appeal brought within that time has been determined or abandoned; or

(b) it appears to a Minister of the Crown or Her Majesty in Council that, having regard to a finding of the European Court of Human Rights made after the coming into force of this section in proceedings against the United Kingdom, a provision of legislation is incompatible with an obligation of the United Kingdom arising from the European Convention on Human Rights.

(2) If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.

(3) If, in the case of subordinate legislation, a Minister of the Crown considers—

(a) that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed, and

(b) that there are compelling reasons for proceeding under this section, he may by order make such amendments to the primary legislation as he considers necessary.

(4) This section also applies where the provision in question is in subordinate legislation and has been quashed, or declared invalid, by reason of incompatibility with a Convention right and the Minister proposes to proceed under paragraph 2(b) of Schedule 2 to the Human Rights Act 1998 (c.42).

(5) If the legislation is an Order in Council, the power conferred by subsection (2) or (3) is exercisable by Her Majesty in Council.

(6) In this section “legislation” does not include a Measure of the Church Assembly or of the General Synod of the Church of England.

(7) Schedule 2 to the Human Rights Act 1998 (c.42) makes further provision about remedial orders.

184 Derogations⁶⁹⁷

(1) In this Constitution “designated derogation” means any derogation by the United Kingdom from an Article of the European Convention on Human Rights, or of any protocol to that Convention, which is designated for the purposes of this Constitution in an order made by the Secretary of State.

⁶⁹⁷ Human Rights Act 1998 c.42 s14

(2) If a designated derogation is amended or replaced it ceases to be a designated derogation.

(3) But subsection (2) does not prevent the Secretary of State from exercising his power under subsection (1) to make a fresh designation order in respect of the Article concerned.

(4) The Secretary of State must by order make such amendments to Schedule 3 to the Human Rights Act 1998 (c.42) as he considers appropriate to reflect—

- (a) any designation order; or
- (b) the effect of subsection (2).

(6) A designation order may be made in anticipation of the making by the United Kingdom of a proposed derogation.

185 Reservations ⁶⁹⁸

(1) In this Constitution “designated reservation” means—

(a) the United Kingdom’s reservation to Article 2 of the First Protocol to the European Convention on Human Rights; and

(b) any other reservation by the United Kingdom to an Article of the European Convention on Human Rights, or of any protocol to that Convention, which is designated for the purposes of this Constitution in an order made by the Secretary of State.

(2) The text of the reservation referred to in subsection (1)(a) is set out in Part II of Schedule 3 to the Human Rights Act 1998 (c.42).

(3) If a designated reservation is withdrawn wholly or in part it ceases to be a designated reservation.

(4) But subsection (3) does not prevent the Secretary of State from exercising his power under subsection (1)(b) to make a fresh designation order in respect of the Article concerned.

(5) The Secretary of State must by order make such amendments to the Human Rights Act 1998 (c.42) as he considers appropriate to reflect—

- (a) any designation order; or
- (b) the effect of subsection (3).

⁶⁹⁸ Human Rights Act 1998 c.42 s15

186 Period for which Designated Derogations have effect⁶⁹⁹

(1) If it has not already been withdrawn by the United Kingdom, a designated derogation ceases to have effect for the purposes of this Constitution at the end of the period of five years beginning with the date on which the order designating it was made.

(2) At any time before the period—

(a) fixed by subsection (1), or

(b) extended by an order under this subsection, comes to an end, the Secretary of State may by order extend it by a further period of five years.

(3) An order under section 184(1) ceases to have effect at the end of the period for consideration, unless a resolution has been passed by each House approving the order.

(4) Subsection (3) does not affect—

(a) anything done in reliance on the order; or

(b) the power to make a fresh order under section 184(1).

(5) In subsection (3) “period for consideration” means the period of forty days beginning with the day on which the order was made.

(6) In calculating the period for consideration, no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued; or

(b) both Houses are adjourned for more than four days.

(7) If a designated derogation is withdrawn by the United Kingdom, the Secretary of State must by order make such amendments to the Human Rights Act 1998 (c.42) as he considers are required to reflect that withdrawal.

⁶⁹⁹ Human Rights Act 1998 c.42 s16

187 Periodic review of designated Reservations ⁷⁰⁰

(1) The appropriate Minister must review the designated reservation referred to in section 185(1)(a)—

(a) before the end of the period of five years beginning with the date on which section 1(2) of the Human Rights Act 1998 (c.42) came into force; and

(b) if that designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).

(2) The appropriate Minister must review each of the other designated reservations (if any)—

(a) before the end of the period of five years beginning with the date on which the order designating the reservation first came into force; and

(b) if the designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).

(3) The Minister conducting a review under this section must prepare a report on the result of the review and lay a copy of it before each House of Parliament.

188 Safeguard for existing Human Rights ⁷⁰¹

(1) A person's reliance on a Convention right does not restrict—

(a) any other right or freedom conferred on him by or under any law having effect in any part of the United Kingdom; or

(b) his right to make any claim or bring any proceedings which he could make or bring apart from sections 180 to 182.

189 Freedom of Expression ⁷⁰²

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

⁷⁰⁰ Human Rights Act 1998 c.42 s17

⁷⁰¹ Human Rights Act 1998 c.42 s11

⁷⁰² Human Rights Act 1998 c.42 s12

(2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied—

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

(a) the extent to which—

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.

(5) In this section—

“court” includes a tribunal; and

“relief” includes any remedy or order (other than in criminal proceedings).

190 Freedom of Thought, Conscience and Religion ⁷⁰³

(1) If a court’s determination of any question arising under the Human Rights Act 1998 (c.42) might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

(2) In this section “court” includes a tribunal.

⁷⁰³ Human Rights Act 1998 c.42 s13

Chapter 28: FREEDOM OF INFORMATION

191 General right of access to information held by public authorities ⁷⁰⁴

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

(3) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(4) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Chapter, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

192 Exempt information

(1) Where any provision of Part II of the Freedom of Information Act 2000 (c. 36) states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that where either—

⁷⁰⁴ Freedom of Information Act 2000 c.36 s1

- (a) the provision confers absolute exemption, or
 - (b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information,
- section 191(1)(a) does not apply.⁷⁰⁵

(2) In respect of any information which is exempt information by virtue of any provision of Part II of the Freedom of Information Act 2000 (c. 36), section 191(1)(b) does not apply if or to the extent that—

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
 - (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- ⁷⁰⁶

(3) The following categories of information are exempt information within the meaning of Part II of the Freedom of Information Act 2000 (c. 36):

1. Information accessible to applicant by other means.
2. Information intended for future publication.
3. Information supplied by, or relating to, bodies dealing with security matters.
4. National security.
5. Certificates under ss.23 and 24: supplementary provisions.
6. Defence.
7. International relations.
8. Relations within the United Kingdom.
9. The economy.
10. Investigations and proceedings conducted by public authorities.
11. Law enforcement.
12. Court records, etc.
13. Audit functions.
14. Parliamentary privilege.
15. Formulation of government policy, etc.
16. Prejudice to effective conduct of public affairs.
17. Communications with Her Majesty, etc. and honours.
18. Health and safety.
19. Environmental information.
20. Personal information.
21. Information provided in confidence.
22. Legal professional privilege.⁷⁰⁷
23. Commercial interests.
24. Prohibitions on disclosure.

⁷⁰⁵ Freedom of Information Act 2000 c.36 s2(1)

⁷⁰⁶ Freedom of Information Act 2000 c.36 s2(2)

⁷⁰⁷ Freedom of Information Act 2000 c.36 Part II s21-44

PART VIII

THE JUDICIARY

Chapter 29: THE SUPREME COURT

193 The Supreme Court

(1) There is to be a Supreme Court of the United Kingdom. ⁷⁰⁸

(2) The Court consists of the persons appointed as its judges appointed by Her Majesty by letters patent, but no appointment may cause the full-time equivalent of judges of the Court at any time to be more than 12. ⁷⁰⁹

(3) Her Majesty may from time to time by Order in Council amend subsection (2) so as to increase or further increase the maximum full-time equivalent number of judges of the Court. ⁷¹⁰

(4) No recommendation may be made to Her Majesty in Council to make an Order under subsection (3) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament. ⁷¹¹

(5) Her Majesty may by letters patent appoint one of the judges to be President and one to be Deputy President of the Court. ⁷¹²

(6) The judges other than the President and Deputy President are to be styled “Justices of the Supreme Court”. ⁷¹³

(7) The Court is to be taken to be duly constituted despite any vacancy in the office of President or Deputy President. ⁷¹⁴

(8) For the purposes of this section, the full-time equivalent number of judges of the Court is to be calculated by taking the number of full-time judges and adding, for each judge who is not a full-time judge, such fraction as is reasonable. ⁷¹⁵

⁷⁰⁸ Constitutional Reform Act (hereafter ‘CRA’) 2005 c.4 s23(1)

⁷⁰⁹ CRA 2005 c.4 s23(2)

⁷¹⁰ CRA 2005 c.4 s23(3)

⁷¹¹ CRA 2005 c.4 s23(4)

⁷¹² CRA 2005 c.4 s23(5)

⁷¹³ CRA 2005 c.4 s23(6)

⁷¹⁴ CRA 2005 c.4 s23(7)

⁷¹⁵ CRA 2005 c.4 s23(8)

194 First members of the Supreme Court

(1) On the commencement of section 23 of the Constitutional Reform Act 2005 (c.4)—

(a) the persons who immediately before that commencement are Lords of Appeal in Ordinary become judges of the Supreme Court,⁷¹⁶

(b) the person who immediately before that commencement is the senior Lord of Appeal in Ordinary becomes the President of the Court, and⁷¹⁷

(c) the person who immediately before that commencement is the second senior Lord of Appeal in Ordinary becomes the Deputy President of the Court.⁷¹⁸

195 Acting judges of the Supreme Court

(1) At the request of the President of the Supreme Court any of the following may act as a judge of the Court—

(a) a person who holds office as a senior territorial judge;

(b) a member of the supplementary panel under section 196.⁷¹⁹

(2) A request under subsection (1) may be made by the Deputy President of the Court if there is no President or the President is unable to make that request.⁷²⁰

(3) In section 26(7) of the Judicial Pensions and Retirement Act 1993 (c. 8) (requirement not to act in certain capacities after the age of 75) for paragraph (b) substitute—“(b)act as a judge of the Supreme Court under section 38 of the Constitutional Reform Act 2005;”.⁷²¹

(4) Every person while acting under this section is, subject to subsections (5) and (6), to be treated for all purposes as a judge of the Supreme Court (and so may perform any of the functions of a judge of the Court).⁷²²

⁷¹⁶ CRA 2005 c.4 s24(a)

⁷¹⁷ CRA 2005 c.4 s24(b)

⁷¹⁸ CRA 2005 c.4 s24(c)

⁷¹⁹ CRA 2005 c.4 s38(1)

⁷²⁰ CRA 2005 c.4 s38(2)

⁷²¹ CRA 2005 c.4 s38(3)

⁷²² CRA 2005 c.4 s38(4)

(5) A person is not to be treated under subsection (4) as a judge of the Court for the purposes of any statutory provision relating to—

- (a) the appointment, retirement, removal or disqualification of judges of the Court,
- (b) the tenure of office and oaths to be taken by judges of the Court, or
- (c) the remuneration, allowances or pensions of judges of the Court.⁷²³

(6) Subject to section 27 of the Judicial Pensions and Retirement Act 1993, a person is not to be treated under subsection (4) as having been a judge of the Court if he has acted in the Court only under this section.⁷²⁴

(7) Such remuneration and allowances as the Lord Chancellor may with the agreement of the Treasury determine may be paid out of money provided by Parliament to any person who acts as a judge of the Court under this section.⁷²⁵

(8) In this section “office as a senior territorial judge” means office as any of the following—

- (a) a judge of the Court of Appeal in England and Wales;
- (b) a judge of the Court of Session, but only if the holder of the office is a member of the First or Second Division of the Inner House of that Court;
- (c) a judge of the Court of Appeal in Northern Ireland, unless the holder holds the office only by virtue of being a puisne judge of the High Court.⁷²⁶

196 Supplementary panel for the Supreme Court

(1) There is to be a panel of persons known as the supplementary panel.⁷²⁷

(2) On the commencement of section 39 of the Constitutional Reform Act 2005 (c.4) any member of the House of Lords who—

- (a) meets one of the conditions in subsection (3),
- (b) does not hold high judicial office,
- (c) has not attained the age of 75, and
- (d) is not a person who was appointed to the office of Lord Chancellor on or after 12 June 2003,

becomes a member of the panel.⁷²⁸

⁷²³ CRA 2005 c.4 s38(5)

⁷²⁴ CRA 2005 c.4 s38(6)

⁷²⁵ CRA 2005 c.4 s38(7)

⁷²⁶ CRA 2005 c.4 s38(8)

⁷²⁷ CRA 2005 c.4 s39(1)

⁷²⁸ CRA 2005 c.4 s39(2)

(3) The conditions are—

- (a) that he ceased to hold high judicial office less than 5 years before the commencement of this section;
- (b) that he was a member of the Judicial Committee of the Privy Council immediately before that commencement;
- (c) that he ceased to be a member of that Committee less than 5 years before that commencement.⁷²⁹

(4) A person becomes a member of the supplementary panel on ceasing to hold office as a judge of the Supreme Court or as a senior territorial judge, but only if, while he holds such office—

- (a) his membership of the panel is approved in writing by the President of the Supreme Court, and
- (b) the President of the Court gives the Lord Chancellor notice in writing of the approval.⁷³⁰

(5) Subsection (4) does not apply to a person who ceases to hold office as a judge of the Supreme Court when he ceases to be President of the Court.⁷³¹

(6) Such a person becomes a member of the supplementary panel on ceasing to be President of the Court, unless—

- (a) while President, he gives the Lord Chancellor notice that he is not to become a member of the panel,
- (b) he ceases to be President on being removed from office as a judge of the Court on the address of both Houses of Parliament, or
- (c) his office is declared vacant under section 36 of the Constitutional Reform Act 2005 (c.4).⁷³²

(7) A person does not become a member of the supplementary panel under subsection (4) or (6) if—

- (a) on ceasing to hold office as a judge of the Supreme Court he takes office as a senior territorial judge, or

⁷²⁹ CRA 2005 c.4 s39(3)

⁷³⁰ CRA 2005 c.4 s39(4)

⁷³¹ CRA 2005 c.4 s39(5)

⁷³² CRA 2005 c.4 s39(6)

(b) on ceasing to hold office as a senior territorial judge he takes office as a judge of the Supreme Court.⁷³³

(8) A member of the supplementary panel may resign by notice in writing to the President of the Court.⁷³⁴

(9) Unless he resigns (and subject to sections 26(7)(b) and 27 of the Judicial Pensions and Retirement Act 1993 (c. 8)), a person ceases to be a member of the supplementary panel—

(a) at the end of 5 years after the last day on which he holds his qualifying office, or

(b) if earlier, at the end of the day on which he attains the age of 75.⁷³⁵

(10) In this section—

(a) “office as a senior territorial judge” has the same meaning as in section 195;

(b) a person's “qualifying office” is the office (that is, high judicial office, membership of the Judicial Committee of the Privy Council, office as a judge of the Supreme Court or office as a senior territorial judge) that he held before becoming a member of the supplementary panel.⁷³⁶

196 Qualification for appointment of judges of the Supreme Court

(1) A person is not qualified to be appointed a judge of the Supreme Court unless he has (at any time)—

(a) held high judicial office for a period of at least 2 years,

(b) satisfied the judicial-appointment eligibility condition on a 15-year basis, or

(c) been a qualifying practitioner for a period of at least 15 years.⁷³⁷

(2) A person is a qualifying practitioner for the purposes of this section at any time when—

(a) he is an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary, or⁷³⁸

⁷³³ CRA 2005 c.4 s39(7)

⁷³⁴ CRA 2005 c.4 s39(8)

⁷³⁵ CRA 2005 c.4 s39(9)

⁷³⁶ CRA 2005 c.4 s39(10)

⁷³⁷ CRA 2005 c.4 s25(1)

⁷³⁸ CRA 2005 c.4 s25(2)(b)

(b) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.⁷³⁹

197 Selection of the members of the Supreme Court

(1) This section applies to a recommendation for an appointment to one of the following offices—

- (a) judge of the Supreme Court;
- (b) President of the Court;
- (c) Deputy President of the Court.⁷⁴⁰

(2) A recommendation may be made only by the Prime Minister.⁷⁴¹

(3) The Prime Minister—

- (a) must recommend any person who is selected as a result of the convening of a selection commission under this section;
- (b) may not recommend any other person.⁷⁴²

(4) Where a person who is not a judge of the Court is recommended for appointment as President or Deputy President, the recommendation must also recommend the person for appointment as a judge.⁷⁴³

(5) If there is a vacancy in the office of the President of the Court or in the office of Deputy President of the Court, or it appears to him that there will soon be such a vacancy, the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.⁷⁴⁴

(6) If—

- (a) the full-time equivalent number of judges of the Court is less than the maximum specified in section 193(2), or it appears to the Lord Chancellor that the full-time equivalent number of judges of the Court will soon be less than that maximum, and

⁷³⁹ CRA 2005 c.4 s25(2)(c)

⁷⁴⁰ CRA 2005 c.4 s26(1)

⁷⁴¹ CRA 2005 c.4 s26(2)

⁷⁴² CRA 2005 c.4 s26(3)

⁷⁴³ CRA 2005 c.4 s26(4)

⁷⁴⁴ CRA 2005 c.4 s26(5)

(b) the Lord Chancellor, or the senior judge of the Court, after consulting the other considers it desirable that a recommendation be made for an appointment to the office of judge of the Court,

the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.⁷⁴⁵

(7) In subsection (6)(b) “*the senior judge of the Court*” means—

(a) the President of the Court, or

(b) if there is no President, the Deputy President, or

(c) if there is no President and no Deputy President, the senior ordinary judge.⁷⁴⁶

(8) Schedule 8 of the Constitutional Reform Act 2005 (c.4) is about selection commissions.⁷⁴⁷

(9) Subsections (5) and (6) are subject to Schedule 8 of the Constitutional Reform Act 2005 (c.4) (cases where duty to convene a selection commission are suspended).⁷⁴⁸

(10) For the purposes of this section and Schedule 8 of the Constitutional Reform Act 2005 (c.4), a person is selected as a result of the convening of a selection commission if the person's selection is the final outcome of—

(a) the selection process mentioned in section 198(1) being applied by the commission, and

(b) any process provided for by regulations under section 27A of the Constitutional Reform Act 2005 (c.4) being applied in the particular case.⁷⁴⁹

(11) Section 198 applies where a selection commission is convened under this section.⁷⁵⁰

⁷⁴⁵ CRA 2005 c.4 s26(5A)

⁷⁴⁶ CRA 2005 c.4 s26(5B)

⁷⁴⁷ CRA 2005 c.4 s26(6)

⁷⁴⁸ CRA 2005 c.4 s26(7)

⁷⁴⁹ CRA 2005 c.4 s26(7A)

⁷⁵⁰ CRA 2005 c.4 s26(8)

198 Selection process for members of the Supreme Court ⁷⁵¹

(1) The commission must—

- (a) determine the selection process to be applied by it,
- (b) apply the selection process, and
- (c) make a selection accordingly.

(2) The commission must have an odd number of members not less than five.

(3) The members of the commission must include—

- (a) at least one who is non-legally-qualified,
- (b) at least one judge of the Court,
- (c) at least one member of the Judicial Appointments Commission,
- (d) at least one member of the Judicial Appointments Board for Scotland,
and
- (e) at least one member of the Northern Ireland Judicial Appointments Commission,

and more than one of the requirements may be met by the same person's membership of the commission.

(4) If the commission is convened for the selection of a person to be recommended for appointment as President of the Court—

- (a) its members may not include the President of the Court, and
- (b) it is to be chaired by one of its non-legally-qualified members.

(5) If the commission is convened for the selection of a person to be recommended for appointment as Deputy President of the Court, its members may not include the Deputy President of the Court.

(6) Subsections (7) to (13) apply to any selection under this section or regulations under section 27A of the Constitutional Reform Act 2005 (c.4).

(7) Selection must be on merit.

⁷⁵¹ CRA 2005 c.4 s27

(8) Where two persons are of equal merit—

(a) section 159 of the Equality Act 2010 (positive action: recruitment etc) does not apply in relation to choosing between them, but

(b) Part 5 of that Act (public appointments etc) does not prevent the commission from preferring one of them over the other for the purpose of increasing diversity within the group of persons who are the judges of the Court.

(9) A person may be selected only if he meets the requirements of section 25 of the Constitutional Reform Act 2005 (c.4).

(10) A person may not be selected if he is a member of the commission.

(11) In making selections for the appointment of judges of the Court the commission must ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom.

(12) The commission must have regard to any guidance given by the Lord Chancellor as to matters to be taken into account (subject to any other provision of this Act) in making a selection.

(13) Any selection must be of one person only.

(14) For the purposes of this section a person is non-legally-qualified if the person—

(a) does not hold, and has never held, any of the offices listed in Schedule 1 to the House of Commons Disqualification Act 1975 (judicial offices disqualifying for membership of the House of Commons), and

(b) is not practising or employed as a lawyer, and never has practised or been employed as a lawyer.

199 Lord Chancellor to make regulations about the selection process for the Supreme Court

The Lord Chancellor must make regulations about the selection process in accordance with sections 27A and 27B of the Constitutional Reform Act 2005 (c.4).

200 Oath of allegiance and judicial oath

(1) A person who is appointed as President of the Court must, as soon as may be after accepting office, take the required oaths in the presence of—

(a) the Deputy President, or

(b) if there is no Deputy President, the senior ordinary judge.⁷⁵²

⁷⁵² CRA 2005 c.4 s32(1)

(2) A person who is appointed as Deputy President of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of—

(a) the President, or

(b) if there is no President, the senior ordinary judge.⁷⁵³

(3) A person who is appointed as a judge of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of—

(a) the President, or

(b) if there is no President, the Deputy President, or

(c) if there is no President and no Deputy President, the senior ordinary judge.⁷⁵⁴

(4) Subsections (1) and (2) apply whether or not the person appointed as President or Deputy President has previously taken the required oaths in accordance with this section after accepting another office.⁷⁵⁵

(5) Subsection (3) does not apply where a person is first appointed as a judge of the Court upon appointment to the office of President or Deputy President.⁷⁵⁶

(6) In this section “required oaths” means—

(a) the oath of allegiance, and

(b) the judicial oath,

as set out in the Promissory Oaths Act 1868 (c. 72).⁷⁵⁷

201 Salaries and allowances of judges of the Supreme Court

(1) A judge of the Supreme Court is entitled to a salary.⁷⁵⁸

(2) The amount of the salary is to be determined by the Lord Chancellor with the agreement of the Treasury.⁷⁵⁹

⁷⁵³ CRA 2005 c.4 s32(2)

⁷⁵⁴ CRA 2005 c.4 s32(3)

⁷⁵⁵ CRA 2005 c.4 s32(4)

⁷⁵⁶ CRA 2005 c.4 s32(5)

⁷⁵⁷ CRA 2005 c.4 s32(6)

⁷⁵⁸ CRA 2005 c.4 s34(1)

⁷⁵⁹ CRA 2005 c.4 s34(2)

(3) Until otherwise determined under subsection (2), the amount is that of the salary of a Lord of Appeal in Ordinary immediately before the commencement of section 23 of the Constitutional Reform Act 2005 (c.4).⁷⁶⁰

(4) A determination under subsection (2) may increase but not reduce the amount.⁷⁶¹

(5) Salaries payable under this section are to be charged on and paid out of the Consolidated Fund of the United Kingdom.⁷⁶²

(6) Any allowance determined by the Lord Chancellor with the agreement of the Treasury may be paid to a judge of the Court out of money provided by Parliament.⁷⁶³

202 Resignation and retirement of judges of the Supreme Court

(1) A judge of the Supreme Court may at any time resign that office by giving the Lord Chancellor notice in writing to that effect.⁷⁶⁴

(2) The President or Deputy President of the Court may at any time resign that office (whether or not he resigns his office as a judge) by giving the Lord Chancellor notice in writing to that effect.⁷⁶⁵

(3) In section 26(4)(a) of and Schedule 5 to the Judicial Pensions and Retirement Act 1993 (c. 8) (retirement), for “Lord of Appeal in Ordinary” substitute “Judge of the Supreme Court”.⁷⁶⁶

Chapter 30: THE JUDICIARY AND THE COURTS

203 Head of the judiciary in England and Wales⁷⁶⁷

(1) The Lord Chief Justice holds the office of President of the Courts of England and Wales and is Head of the Judiciary of England and Wales.

(3) As President of the Courts of England and Wales he is responsible—

(a) for representing the views of the judiciary of England and Wales to Parliament, to the Lord Chancellor and to Ministers of the Crown generally;

⁷⁶⁰ CRA 2005 c.4 s34(3)

⁷⁶¹ CRA 2005 c.4 s34(4)

⁷⁶² CRA 2005 c.4 s34(5)

⁷⁶³ CRA 2005 c.4 s34(6)

⁷⁶⁴ CRA 2005 c.4 s35(1)

⁷⁶⁵ CRA 2005 c.4 s35(2)

⁷⁶⁶ CRA 2005 c.4 s35(3)

⁷⁶⁷ CRA 2005 c.4 s7

(b) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales within the resources made available by the Lord Chancellor;

(c) for the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales and the allocation of work within courts.

(3) The President of the Courts of England and Wales is president of the courts listed in subsection (4) and is entitled to sit in any of those courts.

(4) The courts are the Court of Appeal, the High Court, the Crown Court, the county courts, and the magistrates' courts.

204 Head of the Scottish Judiciary

(1) The Lord President is the Head of the Scottish Judiciary.

(2) As Head of the Scottish Judiciary the Lord President is responsible—

(a) for making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts,

(b) for representing the views of the Scottish judiciary to the Scottish Parliament and the Scottish Ministers,

(c) 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 (i) the Scottish judiciary, or (ii) the administration of justice,

(d) for making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders, and

(e) for making and maintaining, in accordance with section 28, appropriate arrangements for (i) the investigation and determination of any matter concerning the conduct of judicial office holders, and (ii) the review of such determinations.

(3) If, in carrying out the responsibility mentioned in subsection (2)(a), the Lord President gives a direction of an administrative character to a sheriff principal, the sheriff principal must comply with the direction.

(4) In carrying out the responsibility for making and maintaining arrangements for training mentioned in subsection (2)(d) the Lord President must require any judicial office holder, or class of judicial office holder, to attend such training as the Lord President determines.

(5) References in this section to the Scottish judiciary are references to the judiciary of any court established under the law of Scotland (other than the Supreme Court of the United Kingdom).

(6) In this section, “the Scottish courts” means—

- (a) the Court of Session,
- (b) the High Court of Justiciary,
- (c) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983 (c. 2),
- (d) the election court in Scotland constituted under section 123 of that Act,
- (e) the Lands Valuation Appeal Court,
- (f) the sheriff courts,
- (g) justice of the peace courts, and
- (h) such other courts as the Scottish Ministers may by order specify.

(7) Before making an order under subsection (6)(h), the Scottish Ministers must consult the Lord President.

205 Role of the Lord Chief Justice in Northern Ireland⁷⁶⁸

(1) The Lord Chief Justice holds the office of President of the Courts of Northern Ireland and is Head of the Judiciary of Northern Ireland.

(2) As President of the Courts of Northern Ireland he is responsible—

- (a) for representing the views of the judiciary of Northern Ireland to Parliament, the Lord Chancellor and Ministers of the Crown generally;
- (b) 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;
- (c) 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;
- (d) for the maintenance of appropriate arrangements for the deployment of the judiciary of Northern Ireland and the allocation of work within courts.

⁷⁶⁸ Justice (Northern Ireland) Act 2002, s12

(3) The President of the Courts of Northern Ireland is president of the following courts and is entitled to sit in any of those courts -

- (a) the Court of Appeal
- (b) the High Court
- (c) the Crown Court
- (d) the county courts
- (e) the magistrates' courts.

Chapter 31: JUDICIAL INDEPENDENCE

206 Judicial independence: general principles

(1) There is a duty to uphold the continued independence of the judiciary extending to the Lord Chancellor, ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice, including civil servants and members of Parliament. There is also a duty not to seek to influence judicial decision-making through special access; for example, individual cases should not be discussed between ministers and judges.⁷⁶⁹

(2) The Lord Chief Justice may make written representations to Parliament on matters which he or she believes are of importance relating to the judiciary or the administration of justice. However, principles of judicial independence mean that the judiciary should not be asked to comment on the merits of proposed government policy, and individual judicial office-holders should not be asked to comment on matters that may then require the judge to disqualify him or herself in subsequent litigation.⁷⁷⁰

207 Guarantee of continued judicial independence in England and Wales

(1) The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.⁷⁷¹

(2) Subsection (1) does not impose any duty which it would be within the legislative competence of the Scottish Parliament to impose.⁷⁷²

⁷⁶⁹ *The Cabinet Manual: A Guide to Laws, Conventions and Rules on the Operation of Government* (2011) Ed.1 Ch.6 para 6.38

⁷⁷⁰ *The Cabinet Manual: A Guide to Laws, Conventions and Rules on the Operation of Government* (2011) Ed.1 Ch.6 para 6.40

⁷⁷¹ Constitutional Reform Act ('CRA') 2005 c.4 s3(1)

⁷⁷² CRA 2005 c.4 s3(2)

(3) A person is not subject to the duty imposed by subsection (1) if he is subject to the duty imposed by section 1(1) of the Justice (Northern Ireland) Act 2002 (c. 26).⁷⁷³

(4) The following particular duties are imposed for the purpose of upholding that independence.⁷⁷⁴

(5) The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.⁷⁷⁵

(6) The Lord Chancellor must have regard to—

- (a) the need to defend that independence;
- (b) the need for the judiciary to have the support necessary to enable them to exercise their functions;
- (c) the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.⁷⁷⁶

(7) In this section “the judiciary” includes the judiciary of any of the following—

- (a) the Supreme Court;
- (b) any other court established under the law of any part of the United Kingdom;
- (c) any international court.⁷⁷⁷

(8) In this section “the judiciary” also includes every person who—

- (a) holds an office listed in Schedule 14 to the Constitutional Reform Act 2005 (c.4) or holds an office listed in subsection (9), and
- (b) but for this subsection would not be a member of the judiciary for the purposes of this section.⁷⁷⁸

(9) The offices are those of—

- (a) Senior President of Tribunals;
- (b) President of Employment Tribunals (Scotland);
- (c) Vice President of Employment Tribunals (Scotland);
- (d) member of a panel of Employment Judges (Scotland);
- (e) member of a panel of members of employment tribunals that is not a panel Employment Judges.⁷⁷⁹

⁷⁷³ CRA 2005 c.4 s3(3)

⁷⁷⁴ CRA 2005 c.4 s3(4)

⁷⁷⁵ CRA 2005 c.4 s3(5)

⁷⁷⁶ CRA 2005 c.4 s3(6)

⁷⁷⁷ CRA 2005 c.4 s3(7)

⁷⁷⁸ CRA 2005 c.4 s3(7A)

⁷⁷⁹ CRA 2005 c.4 s3(7B)

(10) In subsection (7) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—

- (a) an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is a party, or
- (b) a resolution of the Security Council or General Assembly of the United Nations.⁷⁸⁰

208 Guarantee of continued judicial independence in Scotland⁷⁸¹

(1) The following persons must uphold the continued independence of the judiciary—

- (a) the First Minister,
- (b) the Lord Advocate,
- (c) the Scottish Ministers,
- (d) members of the Scottish Parliament, and
- (e) all other persons with responsibility for matters relating to (i) the judiciary, or (ii) the administration of justice, where that responsibility is to be discharged only in or as regards Scotland.

(2) In particular, the First Minister, the Lord Advocate and the Scottish Ministers—

- (a) must not seek to influence particular judicial decisions through any special access to the judiciary, and
- (b) must have regard to the need for the judiciary to have the support necessary to enable them to carry out their functions.

(3) In this section “the judiciary” means the judiciary of (a) the Supreme Court of the United Kingdom, (b) any other court established under the law of Scotland, and (c) any international court.

(4) In subsection (3)(c) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of (a) an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is a party, or (b) a resolution of the Security Council or General Assembly of the United Nations.

⁷⁸⁰ CRA 2005 c.4 s3(8)

⁷⁸¹ Judiciary and Courts (Scotland) Act 2008, s.1

209 Guarantee of continued judicial independence in Northern Ireland ⁷⁸²

(1) For section 1 of the Justice (Northern Ireland) Act 2002 (c. 26) (guarantee of continued judicial independence) substitute—

“1 Guarantee of continued judicial independence

(1) The following persons must uphold the continued independence of the judiciary—

(a) the First Minister,

(b) the deputy First Minister,

(c) Northern Ireland Ministers, and

(d) all with responsibility for matters relating to the judiciary or otherwise to the administration of justice, where that responsibility is to be discharged only in or as regards Northern Ireland.

(2) The following particular duty is imposed for the purpose of upholding that independence.

(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.

(4) In this section “the judiciary” includes the judiciary of any of the following—

(a) the Supreme Court;

(b) any other court established under the law of any part of the United Kingdom;

(c) any international court.

(5) In subsection (4) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—

(a) an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is a party, or

(b) a resolution of the Security Council or General Assembly of the United Nations.

⁷⁸² CRA 2005 c.4 s4(1)

210 Judicial immunity from civil liability

(1) Judges are immune at common law from civil claims in respect of acts that would otherwise be tortious providing they are done in a judicial capacity in a court of justice.⁷⁸³

(2) Statutory protection provides immunity from civil liability to certain offices in the administration of justice in respect of what is done or omitted to be done in the execution of his duty and in relation to matters within his jurisdiction.⁷⁸⁴

(£) No proceedings shall lie against the Crown by virtue of section of the Crown Proceedings Act 1947 (c.44) in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.⁷⁸⁵

211 Judicial appointment and removal

(1) Judicial appointments are made by the Sovereign on the advice of the appropriate Minister, as provided for by Acts of the United Kingdom Parliament, the Scottish Parliament, the National Assembly of Wales, and the Northern Ireland Assembly.

(2) Minimum qualifications for judicial office-holders are provided for by statute.⁷⁸⁶

(3) Statutory commissions assist in the process of judicial appointments, being -

(a) in England and Wales, the Judicial Appointments Commission, under the Constitutional Reform Act 2005 (as amended);⁷⁸⁷

(b) in Scotland, the Judicial Appointments Board for Scotland, under the Judiciary and Courts (Scotland) Act 2008 (as amended);

(c) in Northern Ireland, the Judicial Appointments Commission (under the Justice (Northern Ireland) Act 2002).

(4) Acts of the United Kingdom Parliament, Scottish Parliament, National Assembly of Wales, and Northern Ireland Assembly, make further provision for the selection

⁷⁸³ See *Floyd v Barker* (1607) 12 Co Rep 23; *Anderson v Gorrie* [1895] 1QB 668; *Sirros v Moore* [1975] QB 118

⁷⁸⁴ For example justices of the peace in England and Wales: Courts Act 2003 c.39 s31

⁷⁸⁵ Crown Proceedings Act 1947 c.44 s2(5)

⁷⁸⁶ They include the Senior Courts Act 1981, the Constitutional Reform Act 2005, the Judiciary and Courts (Scotland) Act 2008, and the Justice (Northern Ireland) Act 2002 (each as amended).

⁷⁸⁷ Schedule 12.

procedures of judicial office-holders and judicial members of the courts in their respective jurisdictions.⁷⁸⁸

(5) A Justice of the Supreme Court holds that office during good behaviour, but may be removed from it on the address of both Houses of Parliament.⁷⁸⁹ The tenure of other judicial office-holders is regulated by statute according to the court in which the judge belongs.⁷⁹⁰

(6) Any power to remove a person from a judicial office is exercisable only after the responsible minister in the jurisdiction has complied with prescribed procedures, as well as any other requirements to which the power is subject, as provided by statute.⁷⁹¹

Chapter 32: JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

212 Administrative justice ⁷⁹²

(1) The principles of administrative law governing the acts and decisions of public bodies in the exercise of their public functions are derived from the common law.

(2) Private sector bodies may be subject to administrative law when they are carrying out public functions. Generally bodies are to be regarded as performing public functions when they act, and have the authority to act, for the collective benefit of the general public.

(3) Acts of the United Kingdom Parliament, the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly, provide for independent Tribunals for the adjudication of disputes between citizens and public bodies.⁷⁹³

213 Judicial review procedure ⁷⁹⁴

(1) A 'claim for judicial review' means a claim to review the lawfulness of

- (a) an enactment; or
- (b) a decision, action or failure to act in relation to the exercise of a public function.

⁷⁸⁸ Such as by the Constitutional Reform Act 2005, the Senior Courts Act 1981, the Judiciary and Courts (Scotland) Act 2008, and Justice (Northern Ireland) Act 2002, each as amended.

⁷⁸⁹ Constitutional Reform Act ('CRA') 2005 c.4 s33.

⁷⁹⁰ Similar tenure to that of Supreme Court Justices is possessed by other senior judges: for example Court of Appeal and High Court judges in England and Wales under the Senior Courts Act 1981 c.54 s11. The lower ranks of the judiciary have less statutory protection: in England and Wales, for example, the Lord Chancellor may, if he thinks fit and if the Lord Chief Justice agrees, remove from office a Circuit judge or a District Judge (Magistrates' Courts) on the ground of incapacity or misbehaviour: Courts Act 1971 c.23 s17(4) and s22(5).

⁷⁹¹ See Constitutional Reform Act 2005, the Senior Courts Act 1981, the Judiciary and Courts (Scotland) Act 2008, and Justice (Northern Ireland) Act 2002, each as amended.

⁷⁹² Treasury Solicitor, *The Judge Over Your Shoulder*, 4th Edition, 2006, para 1.1, 1.2

⁷⁹³ Such as the Tribunals, Courts and Enforcement Act 2007.

⁷⁹⁴ Civil Procedure Rules r54.1(2)

(2) The judicial review procedure must be used⁷⁹⁵ in a claim for judicial review where the claimant is seeking –

- (a) a mandatory order;
- (b) a prohibiting order;
- (c) a quashing order; or
- (d) an injunction under section 30 of the Senior Courts Act 1981 (restraining a person from acting in any office in which he is not entitled to act).

214 When the judicial review procedure may be used ⁷⁹⁶

(1) The judicial review procedure may be used in a claim for judicial review where the claimant is seeking –

- (a) a declaration; or
- (b) an injunction.

(2) A claim for judicial review may include a claim for damages, restitution or the recovery of a sum due but may not seek such a remedy alone.

215 Permission required ⁷⁹⁷

The court's permission to proceed is required in a claim for judicial review whether started under Part 54 of the Civil Procedure Rules or transferred to the Administrative Court.

216 Time limit for filing claim form ⁷⁹⁸

(1) The claim form must be filed –

- (a) promptly; and
- (b) in any event not later than 3 months after the grounds to make the claim first arose.

(2) The time limit in this rule may not be extended by agreement between the parties.

(3) This rule does not apply when any other enactment specifies a shorter time limit for making the claim for judicial review.

217 Permission given ⁷⁹⁹

(1) Where permission to proceed is given the court may also give directions.

⁷⁹⁵ Civil Procedure Rules r54.2

⁷⁹⁶ Civil Procedure Rules r54.3

⁷⁹⁷ Civil Procedure Rules r54.4

⁷⁹⁸ Civil Procedure Rules r54.5

⁷⁹⁹ Civil Procedure Rules r54.10

(2) Directions under subsection (1) may include –

- (a) a stay of proceedings to which the claim relates;
- (b) directions requiring the proceedings to be heard by a Divisional Court.

218 Service of order giving or refusing permission ⁸⁰⁰

The court will serve –

- (a) the order giving or refusing permission; and
- (b) any directions, on –
 - (i) the claimant;
 - (ii) the defendant; and
 - (iii) any other person who filed an acknowledgment of service.

219 Defendant etc. may not apply to set aside ⁸⁰¹

Neither the defendant nor any other person served with the claim form may apply to set aside an order giving permission to proceed.

220 Grounds for judicial review

(1) The decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is essentially a justiciable question.⁸⁰²

(a) When a body is described as acting *ultra vires* it is acting beyond its prescribed powers. An action can be *ultra vires* where it the body has taken an action which is incompatible with a higher legal authority.

(b) A public body is not entitled either to improperly delegate its powers or to act under a completely inflexible policy. In particular, while it is accepted that Ministers cannot personally make every decision issued in their name where legislation confers a power on a specified individual or body, the power cannot be delegated to another person or body.

(c) A claim for judicial review can lie where a body or tribunal has either disregarded a relevant consideration, or taken into account an irrelevant consideration when reaching a decision.⁸⁰³

⁸⁰⁰ Civil Procedure Rules r54.11

⁸⁰¹ Civil Procedure Rules r54.13

⁸⁰² *Council of Civil Service Unions v Minister for the Civil Service* [1985] 1 AC 374, 410

⁸⁰³ *Judicial Review: A short Guide to Claims in the Administrative Court* (2006) HC Lib 06/44

(2) A decision must not be so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had his mind to the question to be decided could have arrived at it.⁸⁰⁴

(3) A decision-maker must not fail to observe basic rules of natural justice or fail to act with procedural fairness towards the person who will be affected by the decision.⁸⁰⁵

⁸⁰⁴ *Council of Civil Service Unions v Minister for the Civil Service* [1985] 1 AC 374, 410

⁸⁰⁵ *Council of Civil Service Unions v Minister for the Civil Service* [1985] 1 AC 374, 411

PART IX

GENERAL AND SUPPLEMENTAL

Chapter 33: CONSTITUTIONAL RULES AND PRACTICE OUTSIDE THE JURISDICTION OF THE COURTS

221 Constitutional Conventions

(1) In this Act, where the context permits, a "constitutional convention" means a principle, rule, procedure or practice of behaviour or conduct in public affairs that is regarded as binding upon the person or persons to whom it applies but which is not enforceable in law.

(2) Any provision in this Act which consolidates or describes a constitutional convention may not be called into question in any court of law, and the breach of a convention does not give rise to any cause of action or remedy in any court of law.

222 Law and Custom of Parliament

(1) Each House of Parliament has the inherent power to determine its own internal proceedings, which may not be called into question in any court of law.⁸⁰⁶

(2) Each House of Parliament has the inherent power to determine, adjudicate and punish any action which in its opinion constitutes a breach of its privileges or a contempt of Parliament, and any such decision by each House may not be called into question in any court of law.

(3) Each House of Parliament has the inherent power to send for persons whose conduct has been brought before the House on a matter or privilege by order for their attendance; and the House of Lords through the office of Black Rod and the House of Commons through the office of Sergeant at Arms may enforce the attendance of and take into custody such persons.

(4) Each House of Parliament has the inherent power to punish persons found guilty of a breach of parliamentary privilege or contempt of Parliament by way of reprimand or admonition, and imprisonment; and in addition the House of Lords has the power to impose a fine in substitution for or in addition to imprisonment.⁸⁰⁷

(5) In this Act, where the context permits, "the law and custom of Parliament" means the principles, rules, procedures and practices governing the internal affairs of each House of Parliament which are derived from the inherent power of each House to regulate and enforce its own internal proceedings.

⁸⁰⁶ *British Railways Board v Pickin* [1974] 1 All ER 609.

⁸⁰⁷ *Erksine May's Parliamentary Practice* (24th ed., 2011), p.196.

(6) The principles, rules, procedures and practices forming part of the law and custom of Parliament may not be called into question in any court of law, and the breach of a law or custom of Parliament by any person or body does not of itself give rise to any cause of action or remedy in any court of law.

Chapter 34: CONSTITUTIONAL AMENDMENT PROCEDURES

223 Amendment by Act of Parliament

(1) The Parliament of the United Kingdom may amend or repeal all or any part of this Act.

(2) Amendments to this Act are made through the same legislative procedures described in Chapters 14 and 15 of Part Three of this Act, subject to subsections (3) to (6) below.

(3) In the House of Commons, Bills of first class constitutional importance are normally considered in a committee of the whole House, but may be remitted to a Public Bill committee where evidence sessions are required.⁸⁰⁸

(4) The House of Lords is empowered to disapprove any Bill which would prolong the life of a Parliament beyond 5 years.⁸⁰⁹

(5) The consent of the Monarch to consideration of a Bill must be sought, granted and communicated to both Houses of Parliament whenever the substance of the Bill affects the prerogatives or property of the Crown including the Duchy of Lancaster; and the consent of the Prince of Wales must be obtained where a Bill affects the Duchy of Cornwall or matters affecting his titles.⁸¹⁰

(6) Any alteration in the law touching the succession to the throne or the royal style and titles shall require the assent as well of the Parliaments of the Commonwealth realms as of the Parliament of the United Kingdom.⁸¹¹

224 Use of Referendums

(1) The Parliament of the United Kingdom may legislate to require the holding of a referendum on policies or legislative proposals of a constitutional nature.

(2) Any such referendum must be conducted in accordance with the provisions of Part VII of the Political Parties, Elections and Referendums Act 2000 (c.41).

⁸⁰⁸ Convention.

⁸⁰⁹ Parliament Act 1911 c.13 s2(1)

⁸¹⁰ Law and custom of Parliament.

⁸¹¹ Convention; Preamble to the Statute of Westminster 1931 c.4

225 Amendment by the Courts

(1) The courts may interpret the provisions of this Act in accordance with any rules of statutory interpretation that are (a) specified in this Constitution, or (b) specified in any other Acts of Parliament, or (c) that form part of the common law in the legal systems of England and Wales, Scotland and Northern Ireland.

(2) The judiciary may develop and reinterpret rules of the common law which may be of constitutional significance,⁸¹² subject to subsections (3) to (5).

(3) Any development or reinterpretation of the rules of the common law must take place consistently with primary legislation enacted by the Parliament of the United Kingdom, the Scottish Parliament, the Welsh Assembly, and the Northern Ireland Assembly.

(4) Any development or reinterpretation of the rules of the common law must be consistent with the doctrine of precedent, subject to subsection (5) below.

(5) The Supreme Court will normally treat as binding its former decisions and the decisions of the Judicial Committee of the House of Lords, but the Supreme Court may depart from a previous decision when it appears right to do so.⁸¹³

226 Amendments to the Law and Custom of Parliament

The law, privileges, proceedings and usage of Parliament may be amended by (a) Act of Parliament, or (b) a resolution of each House of Parliament with respect to the proceedings of the House concerned but not with the effect of extending its jurisdiction and powers on matters of parliamentary privilege.

227 Amendment by Constitutional Convention

(1) In this section, the meaning of "constitutional convention" has the same meaning as that given in section 221(1).

(1) Constitutional conventions existing at the time of commencement of this Act may evolve and change from time to time, and they may be amended by the common agreement of those persons or institutions that are bound by them.⁸¹⁴

(2) A new constitutional convention may be created by the common agreement of those persons or institutions that are bound by them which are acted upon.

(3) A constitutional convention may be described in a written statement, declaration⁸¹⁵ or a code of conduct⁸¹⁶ without prejudice to its inherent and flexible nature.

⁸¹² See for example: section 238 Grounds for Judicial Review

⁸¹³ *Practice Statement (Judicial Precedent)* [1966] 3 All ER 77

⁸¹⁴ Examples of such rules in this Constitution may be found in: sections 3(1), 6-9, 16, 17, 18, 19

⁸¹⁵ For example, the 'Sewel Convention', as reflected in FN 532, above

Chapter 35: MISCELLANEOUS

228 Financial provision

(1) There is to be paid out of money provided by Parliament -

(a) any expenditure incurred by a Minister of the Crown by virtue of this Act, and

(b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

229 Commencement

(1) This Act comes into force on such day as the Secretary of State may appoint.

230 Extent

(1) This Act extends to England and Wales, Scotland and Northern Ireland.

231 Short title

(1) This Act may be cited as the Constitutional Consolidation Act 2015.

⁸¹⁶ For example, The Ministerial Code (2010) and *The Cabinet Manual: A Guide to Laws, Conventions and Rules on the Operation of Government* (2011), both referred to extensively throughout this Constitution

3 WRITTEN CONSTITUTION

An illustrative blueprint (third of three)

A document of basic law by which the United Kingdom is governed, including the relationship between the state and its citizens, an amendment procedure, and elements of reform.

Summary

The distinctive elements of this illustrative Written Constitution - being a document of basic law by which the United Kingdom is governed, including the relationship between the state and its citizens, an amendment procedure, and elements of reform - include, among others, the following.

Written form

The Constitution is codified into a single written document, serving as the source of authority and fundamental law in the state.

The existing political structure maintained

The Monarchy, Prime Minister and Cabinet, principles of ministerial responsibility, bicameral Parliament, devolution settlements, and structure of local government are established in the Constitution.

Conventions clarified

Conventions and customs on major constitutional issues, such as the appointment of a Prime Minister, consent of Parliament on decisions to go to war, and powers of the Head of State over law-making, are replaced by written procedures.

Process of constitutional change

Future amendments to the constitution may be made by Parliament under special majority procedures in each House of Parliament.

Continuous existence of Parliament

Parliament is established as a permanent body, superseding procedures for its summoning and dissolution.

The timing of general elections

There is a five-yearly cycle for parliamentary elections, with a more flexible procedure for the House of Commons to call an early election when the situation requires it.

A democratic Parliament

The First Past the Post system is retained for the House of Commons, and a smaller Second Chamber with enhanced functions is to be elected by proportional representation, with transitional arrangements for existing peers to remain as members for life or until retirement.

A United Kingdom Bill of Rights

A code of principles on the rights and freedoms of citizens in the United Kingdom replaces the Human Rights Act.

A broader devolution settlement

The existing devolution settlement in the Scotland Act, Government of Wales Act and Northern Ireland Act is unchanged, but operates within constitutional framework giving greater uniformity across the Union.

Localism

A greater autonomy for elected local authorities is provided for, and a new statutory code on central-local government relations, while maintaining the Local Government Acts to provide the operational details of local government.

International and European affairs

Draft treaties concluded by the Government require the scrutiny and approval of both Houses of Parliament within three months in order to become binding in international law. Treaty obligations, including those arising from membership of the European Union, require an Act of Parliament to take direct effect in domestic law.

The public services

A concept of the public service across all tiers of government is introduced, operating under a Code of Conduct and the supervision of a Public Services Commission.

Law officers

The Director of Public Prosecutions continues, and new office of Director of Civil Proceedings is established with responsibilities in public interest, human rights

and European law issues. The person occupying the office of Attorney General may no longer be a member of Parliament.

The constitutional role of the judiciary

The Supreme Court may review Acts of Parliament for conformity with the Constitution and, where found to be in violation, make a declaration of unconstitutionality that does not invalidate the statutory provision in question.

Constitutional watchdogs

A number of new or revised commissions are established to promote the accountability of public agencies, conduct inquiries, and/or keep existing arrangements under review, including a Commission for Democracy.

It should be repeated that this blueprint does not advocate any particular reforms by their inclusion in this illustrative Constitution; it simply give examples of how such changes might be incorporated in a document of this nature. The fundamental question remains the desirability or otherwise of codifying the constitution of the United Kingdom.

The Constitution of the United Kingdom

PART I

THE UNITED KINGDOM

1 The Name of the State

The name of the state is the United Kingdom of Great Britain and Northern Ireland (or "United Kingdom").

2 Sovereignty

The United Kingdom is one sovereign democratic state, founded on the values of liberty, equality, tolerance, and the rule of law.

3 The Symbols of State

(a) The national flag of the United Kingdom is the Union Flag combining the Crosses of Saint George, Saint Andrew and Saint Patrick in the three colours of red, white and blue.

(b) The national anthem of the United Kingdom is determined by the Head of State by Order in Council.

4 The Head of State

(1) There is established by this Constitution the office of Head of State of the United Kingdom, which is held by Her Majesty Queen Elizabeth II and her Heirs and Successors as Monarch.

(2) The Heirs and Successors are as determined by the Act of Settlement 1700, except that, in relation to persons born after the coming into force of this Constitution, the succession shall be in order of primogeniture without regard to gender or religion.

(3) Nothing in this Constitution prevents Her Majesty or any Heir or Successor from abdicating as Monarch in favour of the Heir to the Throne.

(4) If on Accession, the Head of State is under the age of 18 years, or at any time the Head of State is incapable of performing the functions of the Head of State, those functions shall be performed in the name of and on behalf of the Head of State by a Regent, who shall be appointed as Act of Parliament shall prescribe, until the Head of State attains that age or ceases to be incapacitated.

(5) An Act of Parliament shall provide for the performance of the functions of the Head of State in the case of absence from the United Kingdom, or the temporary incapacity, of the Head of State.

(6) The Head of State is personally entitled to immunity from suit and legal process in any civil cause in respect of all things done or omitted to be done by the Head of State in a private capacity and immunity from criminal proceedings in respect of all things done or omitted to be done by the Head of State either in an official capacity or in a private capacity.

(7) An Act of Parliament shall provide financial and other resources in support of the Head of State's official duties.

(8) The Head of State may, after considering such advice as may be given by the Prime Minister, appoint or dismiss such officers and other members of the Head of State's secretariat or household as the Head of State considers necessary.

Functions of the Head of State

(9) The functions of the Head of State, other than those of a ceremonial or formal nature, are derived only from this Constitution or an Act of Parliament.

(10) In the performance of any function under this Constitution or Act of Parliament, the Head of State shall act in accordance with the advice of the Prime Minister, except where the Head of State is required thereunder to act -

(a) on the advice or recommendation of any other person (when the Head of State shall act in accordance with that advice or recommendation), or

(b) after consultation with any person (when the Head of State shall act only after such consultation); or

(c) at the discretion of the Head of State (when the Head of State shall exercise an independent judgment); or

(d) in a way directed by this Constitution.

(11) Where the Head of State is required by this Constitution or an Act of Parliament to act on the advice or recommendation of, or after consultation with, another person, no court shall consider (a) whether or by whom the advice or recommendation was given or whether and with whom the consultation took place; or (b) the nature of the advice, recommendation or consultation; or (c) whether the Head of State acted in accordance with the advice or recommendation.

Duties of the Head of State

(12) The Head of State shall -

(a) on the report of the Speaker of the House of Commons, appoint as the Prime Minister the person elected to that office by the House of Commons; and accept the resignation of the Prime Minister when tendered by the Prime Minister

(b) appoint to, and remove from, the office of Minister the persons whose names are submitted by the Prime Minister;

(c) signify Assent to all Bills which, in accordance with this Constitution and the law and custom of Parliament, have passed through their stages in Parliament and are presented to the Head of State for Assent;

(d) appoint such military officers, members of a public service and other persons whose appointments are, under this Constitution or an Act of Parliament, required to be made by the Head of State;

(e) confer such honours, awards, decorations and distinctions upon such persons as are recommended by the Prime Minister;

(f) prorogue and summon Parliament.

(13) The Head of State is the supreme commander of all the Armed Forces of the United Kingdom but shall exercise powers in relation thereto only in accordance with this Constitution or Act of Parliament.

Personal Powers of the Head of State

(14) The Head of State may at his or her discretion -

(a) give advice and make comments upon affairs of state and the governance of the United Kingdom in private to the Prime Minister and to other Ministers;

(b) confer honours, awards, decorations and distinctions that are within the personal gift of the Head of State;

(c) make public statements in right of the office of Head of the Commonwealth, if occupying such position.

(15) In exercising any power under Article 4(14), the Head of State shall not manifest a preference directly or indirectly for any political party.

(16) No court shall consider, in relation to the exercise by the Head of State of any power under Article 4(14), whether and to whom the Head of State offered advice or whether and by whom advice was given to the Head of State, or whether the Head of State has manifested any preference for a political party.

5 The Privy Council

(1) There is established by this Constitution a Privy Council, the members of which consist of the Heir to the Throne, and persons who hold or have held any of the following offices -

- (a) Speaker of either House of Parliament,
- (b) Prime Minister,
- (c) member of the Cabinet,
- (d) Leader of the Opposition, and
- (e) such other persons as may be appointed, for life, to be members by the Head of State on the advice of the Prime Minister.

(2) Orders in Council under this Constitution or Act of Parliament shall be made by the Head of State acting in accordance with the advice of the Privy Council.

(3) The Privy Council shall perform such other functions as this Constitution or an Act of Parliament may prescribe.

6 Citizenship and Nationality

(1) There is established by this Constitution a new British nationality, the holders of which are known as British nationals.

(2) Every person is a British national who, immediately before the coming into force of this Constitution, held the status of any of the following -

- (a) British citizen;
- (b) British Overseas Territories citizen;
- (c) British Overseas citizen;
- (d) British subject;
- (e) British National (Overseas);
- (f) British Protected Person.

(3) Every person who is a British national by reason of paragraph (b) shall be treated as holding that nationality by descent, unless, immediately before the coming into force of this Constitution, the person held a status of a British citizen otherwise than by descent or a British Overseas Territories citizen otherwise than by descent.

Acquisition and Loss of British Nationality

(4) A person who is born in the United Kingdom, one of the other British Islands,⁸¹⁷ or an Overseas Territory, after the coming into force of this Constitution acquires British nationality by birth.

⁸¹⁷ Bailiwick of Guernsey (including Alderney, Herm and Sark), Bailiwick of Jersey, and Isle of Man.

(5) A person described in paragraph (4) does not acquire British nationality if, at the time of the birth, the mother or father possesses the immunity from suit and process accorded to an envoy of a foreign sovereign, and neither is a British national; or the mother or father is a national of a country at war with the United Kingdom and the birth occurs in a place occupied by that country.

(6) A person who is born in any place other than those described in paragraph (d) after the coming into force of this Constitution acquires British nationality by descent if, at the time of the birth, the mother or father is a British national otherwise than by descent.

(7) Act of Parliament shall provide for, and regulate, acquisition (in particular, acquisition by adoption, descent, registration and naturalisation), loss and withdrawal of British nationality.

(8) British nationality shall not be withdrawn arbitrarily or so as to render the holder stateless, and shall be lost only in the circumstances prescribed by an Act of Parliament, which shall also provide for the right of any person from whom British nationality is withdrawn to apply for judicial review.

Allegiance and Dual Nationality

(9) Every person holding British nationality owes a duty of allegiance to this Constitution.

(10) Nothing in this Chapter prevents a person who holds British nationality from holding the nationality or citizenship of another country.

(11) Every person holding British nationality has the right of abode in any part of the United Kingdom.

Civil Rights of Non-Nationals

(12) An Act of Parliament -

(a) shall determine the extent to which persons under the jurisdiction of the United Kingdom who do not hold British nationality are entitled to the civic rights, and are subject to the civic duties, attached to British nationality; and

(b) may provide for the continued entitlement of citizens of the Republic of Ireland and of Commonwealth countries to rights to which they were entitled immediately before the coming into force of this Constitution.

PART II

THE EXECUTIVE**7 The Executive Power**

(1) The executive power for the United Kingdom is vested in, and, subject to this Constitution, shall be exercised by, the Government of the United Kingdom.

(2) There is established by this Constitution a Government for the United Kingdom, which shall comprise -

(a) the Prime Minister; and

(b) the members of Parliament appointed as the Ministers of the Government.

(3) The Government has all the rights, powers and capacities of a person of full age and capacity, in addition to the rights, powers and capacities conferred by this Constitution and by or under Act of Parliament, subject to the terms of this Constitution, any Act of Parliament, and the judicial principles of public law.

(4) The Government may act through the Cabinet, the appropriate Minister or any member of the public service for the United Kingdom duly authorised by the Cabinet or a Minister.

8 The Office of Prime Minister

(1) There is established by this Constitution the office of Prime Minister, who serves as the Head of Government of the United Kingdom.

Appointment and Dismissal

(2) The Prime Minister shall be elected by the House of Commons from among its members⁸¹⁸ and is appointed by the Head of State in accordance with Article 4(12)(i).

(3) The Prime Minister ceases to hold office -

(a) if he or she ceases to be a member of the House of Commons; or

(b) on the receipt by the Head of State of a letter of resignation from the Prime Minister; or

⁸¹⁸ Procedurally this would be by way of motion presented to the House and supported by a majority of members, unless the Commons decided to draw up a new Standing Order with special procedures for electing the Prime Minister.

- (c) when a new election to the office is completed; or
- (d) if a motion of no confidence in the Prime Minister is passed by a majority of all the members of the House of Commons, or a motion for the confidence of the House of Commons in the Prime Minister defaults.

Role, Functions, and Responsibilities

(4) The roles, functions, and responsibilities of the Prime Minister shall include the following:

- (a) to act as Chair of Cabinet proceedings, consistent with Article 9(6) and (7);
- (b) to make recommendations on Cabinet and other ministerial appointments, in accordance with Article 9, and determine the departmental responsibilities of ministers;
- (c) to oversee the execution of the policies of the government of the United Kingdom with and through the appropriate Secretary of State or other head of government department;
- (d) to formulate and manage the government's legislative programme in Parliament, with the appropriate ministers;
- (e) to communicate the policies of the government of the United Kingdom to Parliament, the media, and the people of the country;
- (f) to participate in, and be held to account by, the House of Commons for the performance of his public duties, under procedures provided for in Standing Orders;
- (g) to be responsible for ministerial conduct and to prepare a Ministerial Code, in accordance with Articles 10 and 11;
- (h) to appoint the permanent heads in the public service, including (without limitation) the central government departments of state, the Security Services, and, in collaboration with the appropriate Secretary of State, in the Diplomatic Service and Armed Forces;
- (i) working with Cabinet, to determine the level and application of taxation within the United Kingdom and the objects of public spending, acting with and through the Chancellor of the Exchequer;
- (j) working with Cabinet, to determine the use the armed forces in armed conflict abroad or their deployment within the state, in accordance with Articles 47 and 48;

(k) working with Cabinet, to promote international co-operation and enter into treaties beneficial to the people of the United Kingdom, in accordance with Article 29;

(l) to recommend appointments to honours for outstanding public service, other than those in the personal gift of the Head of State; and

(m) to perform such other roles, functions and duties as may be provided for in law and by this Constitution.

Deputy Prime Minister

(5) The Prime Minister may appoint a Deputy Prime Minister from among the members of the Cabinet who are members of the House of Commons, who shall perform the functions of the Prime Minister when the Prime Minister is for any reason unable to perform them or the office of Prime Minister is vacant.

9 Ministers and the Cabinet

(1) Government ministers shall be appointed by the Head of State, acting on the advice of the Prime Minister, from among members of Parliament.

(2) The names and numbers of ministers shall be as determined by the Prime Minister from time to time, provide that -

(a) the number of ministers with seats in the House of Commons does not exceed 15 per cent of the total membership of the House;⁸¹⁹

(b) the number of ministers with seats in the Second Chamber does not exceed 20;

(c) the Ministers shall include among them -

(i) a Chancellor of the Exchequer having responsibility for national finance,

(ii) a Minister of Justice having responsibility for courts and legal services, and

(iii) a Minister having responsibility for international relations,

each of whom shall be appointed from among the members of the House of Commons.

⁸¹⁹ This maximum figure follows the recommendation of the House of Commons Public Administration Committee, *Too Many Ministers?*, 2009-10, HC 457 and evidence given to the Committee by the former Prime Minister John Major.

(3) A Minister shall be responsible for the conduct of such business of government and for the administration of, or within, such department of government as the Prime Minister assigns to the Minister.

(4) A Minister ceases to hold office -

(a) if he or she ceases to be a member of a House of Parliament for any reason other than the expiry or dissolution of the House; or

(b) if removed from office by the Head of State, acting on the advice of the Prime Minister; or

(c) on the receipt by the Prime Minister of a letter of resignation from the Minister; or

(d) when a new election to the office of Prime Minister is completed.

(5) There is established by this Constitution a Cabinet which consists of -

(a) the Prime Minister;

(b) the Chancellor of the Exchequer;

(c) the Minister of Justice;

(d) the Minister responsible for international relations;

(e) such other Ministers as the Prime Minister appoints, provided that the total membership of the Cabinet does not exceed 20.

(6) The Cabinet has the general direction and control of the government of the United Kingdom, and is collectively responsible to Parliament for the performance by the Government of its functions.

(7) The Cabinet may appoint such committees as it considers necessary, or are required, to assist the Cabinet in the discharge of its responsibilities; and the purpose, membership, terms of reference and duration of the committees shall be reported to Parliament by the Prime Minister.

10 Ministerial Responsibilities

(1) The Prime Minister shall keep Parliament and the Head of State fully informed about all matters pertaining to the conduct of government.

(2) A Minister shall -

(a) exercise general direction and control over all matters within the area of responsibility assigned to that Minister; and

(b) render a full and regular account to Parliament and its committees concerning those matters.

(3) Minister shall lay before Parliament a full description of the responsibilities assigned to the Minister as soon as practicable after appointment, and indicate with reasons any matter concerning which the Minister may be unwilling to give a full account to Parliament; providing that a Minister shall inform Parliament of any significant change in those responsibilities or with respect to any matter for which the Minister may be unwilling to give such an account as soon as practicable following such changes.

11 Ministers and Ministerial Conduct

(1) The Prime Minister shall lay before Parliament a Code of Conduct for Ministers.

(2) The Code, and any amendments to the Code, shall take effect when approved by resolutions of both Houses of Parliament, and is binding on all Ministers.

(3) An Integrity Committee shall be established by the Commission for Democracy, as provided for in Article 51, from among its members who are members of Parliament, with the Chairman of the Commission for Democracy serving as Chairman of the Integrity Committee, in order to investigate any alleged breach of the Code of Conduct by a Minister.

(4) The Integrity Committee –

(a) may investigate the propriety of the conduct as a Minister of any person who is or has at any time been a Minister, whether of its own initiative or on a reference by either House of Parliament or by a committee of either House;

(b) for that purpose, has all the powers of a inquiry appointed under the Inquiries Act 2005;

(c) shall lay before the House of Parliament of which the person under investigation is or was a member at the time of the conduct investigated, and shall publish, the report of its findings.

- (5) The House of Parliament before which a report is laid under paragraph (4)(iii) shall consider that report within 60 days after it has been laid.

12 The Law Officers

Attorney-General

- (1) There is established by this Constitution the office of Attorney-General, who shall be appointed by the Prime Minister from among persons who -

- (a) are not members of Parliament;⁸²⁰ and
- (b) have rights of audience, or are entitled to conduct litigation, in the superior courts of any part of the United Kingdom.

- (2) An Act of Parliament shall provide for the conditions of service in respect of the office, subject always to the Attorney-General ceasing to hold office -

- (a) if he or she ceases to have a qualification for appointment to the office; or
- (b) if removed from office by the Prime Minister; or
- (c) on the receipt by the Prime Minister of a letter of resignation from the Attorney-General; or
- (d) when a new election to the office of Prime Minister is completed.

- (4) The Attorney-General -

- (a) is the principal legal adviser to the Government; and
- (b) has responsibility, on behalf of the Government, with respect to the conduct of litigation to which the Government is a party.

- (5) The Attorney-General shall attend, but shall not vote at, meetings of the Cabinet.

Director of Public Prosecutions

- (6) There is established by this Constitution within the Ministry of Justice the office of Director of Public Prosecutions; and an Act of the Scottish Parliament shall establish and make provision with respect to an office for Scotland with equivalent powers; and an Act of the Assembly for Wales shall establish and make provision with respect to an office for Northern Ireland with equivalent powers.

⁸²⁰ This disqualification is supported by Richard Gordon QC in his blueprint for constitutional change: see *Repairing British Politics* (2010), p. 84; and for discussion see House of Lords Constitution Committee, *Reform of the Office of Attorney-General*, 2007-08, HL 93.

(7) The Director of Public Prosecutions shall be appointed by the Minister of Justice, acting in accordance with the recommendation of the Judicial Services Commission for England and Wales, from persons having rights of audience in the superior courts of the United Kingdom.

(8) The holders of the offices established by or under paragraph (6) have the same tenure as a judge under Article 44(4)-(5) and the provisions of Article 44(6)(a) with respect to the removal of judges apply as if those office-holders were judges.

(9) The Director of Public Prosecutions has the power, where the Director considers it in the public interest, -

(a) to institute and undertake criminal proceedings before any United Kingdom court or any court in England or Wales (other than a court trying offences by members of the Armed Forces);

(b) to consent or refuse consent to the institution of any such proceedings for which the consent of the Director is required by law;

(c) to take over and continue any such criminal proceedings instituted by another person or authority;

(d) to discontinue, at any stage before a decision is announced, any such criminal proceedings (other than an appeal by the person convicted), whether instituted or undertaken by the Director or by another person or authority.

(10) The powers in paragraph (9) are vested in the Director of Public Prosecutions to the exclusion of any other person or authority, and are not subject to the direction or control of any other person or authority, but before exercising the power of consent under paragraph (9)(b) the Director shall consult the Attorney-General.

(11) The powers of the Director of Public Prosecutions under paragraph (9) may be exercised by the Director personally or through other persons, who shall act in accordance with any general or specific instructions of the Director.

Director of Civil Proceedings

(12) There is established by this Constitution within the Ministry of Justice the office of Director of Civil Proceedings; and an Act of the Scottish Parliament shall establish and make provision with respect to an office for Scotland with equivalent powers; and an Act of the Northern Ireland Assembly shall establish and make provision with respect to an office for Northern Ireland with equivalent powers.

(13) The Director of Civil Proceedings shall be appointed by the Minister of Justice, acting in accordance with the recommendation of the Judicial Services

Commission for England and Wales, from persons having rights of audience in the superior courts of the United Kingdom.

(14) The holders of the offices established by or under this Article have the same tenure as a judge under Article 44(4)-(5) and the provisions of Article 44(6)(a) with respect to the removal of judges apply as if those office-holders were judges.

(15) The Director of Civil Proceedings has the power, where the Director considers it in the public interest, -

(a) to institute and, with the leave of the court, to intervene in, civil proceedings before any United Kingdom court or any court in England or Wales, and in particular, any proceedings

(i) in connection with any contravention of the Bill of Rights or other provisions of this Constitution; or

(ii) as a result of which the compliance of the United Kingdom with obligations under the law of the European Union or under treaty may come in issue;

(iii) for judicial review;

which, in the opinion of the Director, give rise to issues of public importance;

(b) to consent or refuse consent to the institution of any proceedings for which the consent of the Director is required by law.

(16) The power in paragraph (15) is vested in the Director of Civil Proceedings to the exclusion of any other person or authority, and are not subject to the direction or control of any other person or authority, but before exercising the power of consent under paragraph (15)(b), the Director shall consult the Attorney-General.

(17) The powers of the Director of Civil Proceedings under paragraph (15) may be exercised by the Director personally or through other persons, who shall act in accordance with any general or specific instructions of the Director.

13 The Public Services

(1) There is established by this Constitution (a) a public service under the Government of the United Kingdom; (b) a public service under the Executives for Scotland, Wales and Northern Ireland; and (c) a public service under each local authority.

Constitutional Principles

(2) The first duty of each public service, and of every person appointed to a public service, is to the Constitution.

- (3) Every public service shall be politically neutral and impartial.⁸²¹
- (4) Appointment in every public service shall be on the basis of merit only.

Public Services Commission

- (5) There shall be a Public Services Commission for the United Kingdom, consisting of a Chief Commissioner and such number of other Commissioners, not being fewer than twelve, as an Act of Parliament shall prescribe.
- (6) The Chief Commissioner and the Commissioners shall be appointed by the Head of State, on the recommendation of such Select Committee as the House of Commons shall designate for the purpose, which shall make its selection from nominations made by the Minister having responsibility for the public service.
- (7) No person may be appointed as a Commissioner who is a member of, or candidate for election to either House of Parliament, the European Parliament, a devolved Parliament or Assembly or a local authority.
- (8) A Commissioner ceases to hold office -
 - (a) at the expiry of 5 years from the date of appointment (which may be renewed); or
 - (b) upon the Commissioner attaining the age of 65 years; or
 - (c) on receipt by the Minister having responsibility for the public service of a letter of resignation from the Commissioner; or
 - (d) if the Commissioner is removed from office by the Head of State, upon grounds of misconduct or incapacity, acting in accordance with a resolution of the House of Commons; or
 - (e) if the Commissioner becomes a candidate for election to either House of Parliament, the European Parliament, a devolved Parliament or Assembly or a local authority.
- (9) Commissioners shall receive salaries, and office and administrative facilities, appropriate to the full-time performance of their responsibilities.

⁸²¹ A definition and explanation of impartiality for staff working in the public services will be covered by the Code provided for in paragraph (10) below, and would be similar in nature to that provided in the present Civil Service Code, clause 14-15, issued under the Constitutional Reform and Governance Act 2010.

Functions of the Public Services Commission

(10) The Public Services Commission has the duty -

- (a) to prepare, and from time to time amend, a Code of Professional Conduct for the public services;
- (b) to prepare, from time to time, regulations with respect to –
 - (i) the methods of recruitment to any public service;
 - (ii) the terms and conditions of employment or appointment in any public service;
 - (iii) the principles and procedures governing promotion and transfer within the public services;
 - (iv) vetting of officers in the public services for security purposes;
 - (v) procedures for the discipline of officers in any public service;
 - (vi) procedures for the hearing and settlement of the grievances of officers in any public service; and
 - (vii) removal from office of officers in any public service.

(11) The Public Services Commission shall adopt procedures for the identification of candidates for appointment to any public service which will ensure, so far as practicable, that adequate numbers of candidates of both sexes and from diverse racial, religious and social backgrounds are considered for appointment.

(12) The Public Services Commission shall prepare regulations governing appointments to, and tenure of office in, the public services under the Executives for Scotland, Wales and Northern Ireland and local authorities.

(13) Appointments to national organisations outside government departments and the public service that perform a public service, and are financed out of public funds, are to be made by the Head of State acting on the advice of the Public Services Commission.

(14) The Public Services Commission shall establish a Public Services Complaints Commission for the purpose of investigating complaints, including complaints by officers in a public service, concerning –

- (a) breaches or failures to comply with the Code of Professional Conduct or of the regulations governing a public service;
- (b) malversation of a public service;

- (c) improper conduct towards an officer in a public service by a Minister, a member of an Executive or an elected member of a local authority;

and to report its findings and any recommendations to the Public Services Commission and to Parliament.

- (15) No public servant shall suffer any detriment for disclosing information to the Public Services Complaints Commission for the purpose of protecting the Constitution or for making a complaint.

Miscellaneous

- (16) Nothing in this Article prevents a Minister from appointing a person to the public service under the Government as a personal adviser to the Minister; and any such person shall hold office during the Minister's pleasure and on such terms as the Minister shall determine with the consent of the Public Services Commission.

- (17) Acts of Parliament shall provide for procedures whereby executive agencies under the Government are held accountable to Parliament.

14 National Finance

The Public Funds of State

- (1) There shall be a Consolidated Fund and a National Loans Fund for the United Kingdom, and all revenues or other sums raised or received for the purposes of the government of the United Kingdom shall be paid into the Consolidated Fund, except revenues or other sums raised or received which, under this Constitution or another law, are payable into the National Loans Fund or another public fund established for a specific purpose.

- (2) No sums shall be withdrawn from the Consolidated Fund except -

- (a) to meet expenditure that is charged upon the Consolidated Fund by this Constitution or another law; or
 - (b) where the issue of the sums has been authorised by an Appropriation Act or under this Constitution.

- (3) All public funds, other than the Consolidated Fund and the National Loans Fund, shall be established and authorised by Act of Parliament; and no sums shall be withdrawn from the National Loans Fund or any public fund so established, unless the issue of those sums has been authorised by or under an Act of Parliament.

- (4) The public debt of the United Kingdom shall be a charge upon the Consolidated Fund, the National Loans Fund and such other public funds as may be established in accordance with paragraph (3); and the expression 'public debt' for this purpose includes interest on that debt, the repayment of that debt, charges in

respect of public funds, and all expenditure, costs, and charges in connection with the management of that debt.

(5) An Act of Parliament may provide for the establishment of a Contingencies Fund, and authorise the Chancellor of the Exchequer to make advances from that Fund to meet any urgent and unforeseen need for expenditure for which no other provision exists.

(a) Where an advance is made from the Contingencies Fund, a supplementary estimate shall be presented and a supplementary Appropriation Bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.

(b) The Treasury shall authorise the necessary arrangements for the accounting of all moneys authorised to be paid out of the Contingencies Fund.

Government Expenditure

(6) The Chancellor of the Exchequer shall cause to be prepared and laid before the House of Commons in each financial year estimates of the revenues and expenditure of the United Kingdom for the next following financial year; and the estimates of expenditure shall show separately -

(a) the total sums required to meet expenditure charged on the Consolidated Fund; and

(b) the sums required to meet other expenditure.

(7) When the estimates of expenditure have been approved by the House of Commons, a public Bill known as an Appropriation Bill shall be introduced into the House of Commons, which shall provide for the issue from the Consolidated Fund of the sums (other than sums charged on the Consolidated Fund) necessary to meet that expenditure and for the appropriation of those sums for the purposes specified therein.

(8) If, in respect of any financial year, it is found that -

(a) the sum appropriated by the Appropriation Act for any purpose is insufficient; or

(b) a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act; or

(c) sums have been expended for any purpose in excess of the amount appropriated for the purpose by the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the House of Commons, and a supplementary Appropriation Bill shall be introduced into the House.

(9) If the Appropriation Act for any financial year has not come into force, or is not likely to come into force by the beginning of that financial year, the House of Commons may, by a vote, authorise the withdrawal from the Consolidated Fund of

such sums as are considered necessary to carry on the government of the United Kingdom until the expiry of four months after the beginning of that financial year or the coming into force of the Act, whichever is the earlier.

(10) The department of state responsible for national finance shall make appropriate arrangements, including virement, for the authorisation of supply to ensure that all money shall be appropriated by Act of Parliament in accordance with this Constitution.

Taxation and the Budget

(11) No revenue may be raised except under the authority of an Act of Parliament.

(12) In each financial year, the Chancellor of the Exchequer shall prepare a comprehensive budget for the United Kingdom, which shall include proposals with respect to the raising of revenue for following financial year; and the Chancellor of the Exchequer shall present the budget, when approved by the Cabinet, to the House of Commons.

(13) Nothing in this Article prevents the Chancellor of the Exchequer during a financial year from presenting supplementary budgets, when so approved, to the House of Commons for the purpose of raising additional revenue for that year.

National Audit

(14) There shall be an office of Comptroller and Auditor General whose functions are to audit the public accounts of the United Kingdom and of all officers and authorities of the Government, and report to Parliament thereon.

(15) An Act of Parliament shall -

(a) provide for the appointment, tenure of office and conditions of service of the Comptroller and Auditor General, who shall be an officer of the House of Commons; and perform the functions set out in this Article and such additional functions as the Act of Parliament may prescribe; and

(b) provide the Comptroller and Auditor General with the means of access to all books, records, reports and other documents relating to those accounts.

PART III

THE NATIONAL PARLIAMENT**15 The Constitution of Parliament**

(1) Parliament consists of -

- (a) the House of Commons;
- (b) the Second Chamber; and
- (c) the Head of State.

(2) The Assemblies of Scotland, Wales and Northern Ireland, and the electorate of the United Kingdom, participate in the legislative process insofar as any or all of them are empowered or may be required by the Constitution.

(3) The House of Commons is elected to represent the people of the United Kingdom and ensure that the conduct of government is for, and with, the people under the Constitution. It does this by choosing the Prime Minister, by providing a national forum for public consideration of issues, by passing legislation, and by scrutinising and holding the executive and public services of state to account.

(4) The Second Chamber is elected to serve as a revising and complementary chamber alongside the House of Commons, with particular responsibility for the following areas of public business:

- (a) the scrutiny and approval of amendments to the Constitution and other legislation affecting the Constitution;
- (b) the scrutiny and debate of treaty negotiations conducted by the government;
- (c) the examination and approval of executive decisions to declare war or enter into armed conflict abroad;
- (d) inquiries into domestic compliance with international human rights law treaties.

(5) For the avoidance of doubt, all Bills brought from the House of Commons may be subject to amendment in the Second Chamber, other than Money Bills certified in accordance with Article 24.⁸²²

⁸²² This provision abolishes the government being able to claim House of Commons privilege in rejecting Lords amendments on legislative proposals where any financial expenditure is involved.

(6) A Joint Committee of both Houses shall be established by Standing Orders to facilitate the reconciliation of differences of opinion between the House of Commons and the Second Chamber.

(7) The seat of Parliament is the Palace of Westminster in London, but an Act of Parliament enacted in accordance with Article 53 may determine that the seat of Parliament is elsewhere.

(8) A Speaker for each House of Parliament shall be elected from among its members in accordance with Article 21, to chair the proceedings of each House, and to represent the House it chairs in communications with the Head of State or any external purposes.

(9) The term "Parliament" in this Constitution signifies the Parliament of the United Kingdom, unless the context indicates otherwise.

16 Legislative Authority in the State

(1) The legislative power in the United Kingdom is vested in Parliament and the Assemblies.

(2) The division of competence between Parliament and the Assemblies is determined by this Constitution.

(3) Nothing in this Constitution prevents an Act of Parliament, or a devolved Parliament or Assembly, conferring legislative functions upon another authority within its jurisdiction, as the case may be.

(4) No Bill may be passed by Parliament or by a devolved Parliament or Assembly that transfers permanently, or divests Parliament or the devolved Parliament or Assembly of, legislative power.

17 National Legislative Authority

(1) Parliament has exclusive powers to make laws with respect to -

(a) amendments to the Constitution, including without limitation matters relating to -

(i) Parliament;

(ii) elections and representation;

(iii) the courts of England and Wales;

(iv) the executive and offices of Prime Minister and Head of State;

(v) the territorial extent of the state; and

(vii) relations with the British Islands and Overseas Territories;

subject always to the applicable amendment procedures set down in the Constitution; and -

(b) pass legislation with regard to any matter, including without limitation matters relating to -

(i) the structure and operation of departments;

(ii) authorities or agencies under the Government;

(iii) the Armed Forces, civil defence and national security;

(iv) citizenship, nationality and immigration;

(v) taxation and social security;

(vi) coinage, legal tender, interest rates and credit, banking and insurance;

(vii) postal and communications services;

(viii) freedom of trade and commerce; and

(ix) membership of the European Union.

(2) Parliament has exclusive power to legislate where legislation is required to give effect, as part of the domestic law of the United Kingdom, to treaties or European Union obligations.

(3) Parliament may, by Act of Parliament, delegate to a devolved Parliament or Assembly the power to legislate on any matter that is within the exclusive legislative powers of Parliament.

18 Membership of Parliament

(1) The elections for members of Parliament in each House shall be conducted in accordance with, and at the times prescribed in, Part IV of the Constitution.

(2) The House of Commons shall be composed of not more than 650, and not fewer than 600, members, as determined by Act of Parliament.

- (3) The Second Chamber⁸²³ shall be composed of 240 members.
- (4) No member of a House of Parliament may stand for election to, or sit as a member of, the other House.
- (5) A person is qualified for election as a member of either House of Parliament if that person is entitled under Article 25(2) to vote in elections for Parliament.
- (6) No person is qualified for election as a member of either House of Parliament, if that person -
- (a) is not a British national;
 - (b) holds or is acting in any office in the public service under the Government or is a full-time member of the judiciary, the regular Armed Forces or the police;
 - (c) is an undischarged bankrupt;
 - (d) is detained under the provisions of any law on the ground of suffering from mental illness;
 - (e) is serving a sentence of imprisonment for more than one year, or an indefinite sentence, following conviction for a criminal offence;
 - (f) holds or is acting in any office the function of which involves any responsibility for, or in connection with, the conduct of any election for Parliament or the compilation or revision of any electoral register;
 - (g) is disqualified for membership of Parliament under any law by reason of having been convicted of any offence connected with an election for Parliament.
 - (h) The seat of a member of a House of Parliament becomes vacant –
 - (i) upon the next expiry or dissolution of that House after the election of the member; or
 - (ii) on the receipt by the Speaker of that House of a letter of resignation from the member; or
 - (iii) if the member is expelled by resolution of that House for misconduct or for persistent neglect of Parliamentary duties;

⁸²³ The Constitution leaves it to the decision of the Second Chamber itself to determine whether and if so how it wishes to designate its members ("peers", "senators", "MSC", etc).

- (iv) if any other circumstances arise which would cause the member, if he or she were not a member, to be disqualified from election as a member of that House.

19 Duration of Parliament and Electoral Terms⁸²⁴

General

- (1) Parliament remains in continuous existence, subject to the composition and meetings of the House of Commons and the Second Chamber being regulated in the electoral terms set out in this Article.
- (2) The two Houses of Parliament shall function in five yearly electoral terms, which expire following a general election on the date that the newly elected members in each House convene for their first meeting.
- (3) Within six weeks before the expiry of each electoral term, the Privy Council shall issue a proclamation that -
 - (a) authorises the procedures and timetable set out in an Act of Parliament⁸²⁵ necessary for the holding of a general election;
 - (b) specifies the dates for polling day (being a date before the end of the electoral term); and
 - (c) specifies the date for the first meeting of the newly-elected House of Commons and Second Chamber, which shall be no more than two weeks after the date of the polling day.

Early General Election

- (4) If, within twenty parliamentary days following the passing of a motion of no confidence in the Prime Minister, the House of Commons fails to elect a Prime Minister, an early general election shall be held, which shall be initiated by the Privy Council issuing a proclamation, taking place immediately or as soon as practicable at the expiry of the twenty parliamentary days, of similar effect and purpose to that set out in paragraph (3).

⁸²⁴ Article 80 revises the arrangements under the Fixed-term Parliaments Act 2011 in the manner proposed by Professor Blackburn to the House of Commons Political and Constitutional Reform Committee, *Fixed-term Parliaments Bill*, 2010-12, HC 436. It has the advantages of (a) ending the situation that no Parliament is in existence during the six weeks or so of an election campaign in the event of some grave national emergency arising for the government to deal with; and (b) facilitates an early general election if the House of Commons believes one is necessary (by way of simple majority voting, instead of the two-thirds membership majority required in the 2011 Act) but at the same time lays down a disincentive to the Prime Minister to abuse the process (ie by calling the election at a favourable moment simply to increase his majority or extend his tenure in office) which is that the electoral term after a vote for an early general election is the remainder of the previous House of Commons.

⁸²⁵ Currently set down in the Representation of the People Act 1983.

(5) If a motion of no confidence in the Government is passed by the House of Commons, or a motion for the confidence of the House of Commons in the Government defaults, an early general election shall be held, which shall be initiated by the Privy Council issuing a proclamation of similar effect and purpose to that set out in paragraph (3).

(6) The electoral term of the House of Commons after an early general election provided for in paragraphs (4) and (5) shall be the remainder of the term of the previous House of Commons.

Interpretation

(7) In this Article the expression "parliamentary days" means days on which either House of Parliament meets, and includes days comprised in any period of not more than four days when both Houses are adjourned; the expression "House" includes the Second Chamber; and the expression "general election" means an election of the membership of the House of Commons.

20 Parliamentary Privilege

(1) Each House of Parliament, and its members, have the rights, powers, privileges and jurisdiction vested in the corresponding House, or its members, as immediately prior to the coming into force of this Constitution, except to the extent that they are altered by, or are inconsistent with, this Constitution or an Act of Parliament passed after this Constitution comes into force.

(2) The rights and privileges of members apply notwithstanding paragraphs (4), (5), (8) and (10) of Article 36 (Bill of Rights).

(3) The freedom of speech and debates or proceedings in Parliament shall not be impeached or questioned in any court or place out of Parliament.

(4) Each House of Parliament may regulate its own procedure, and for that purpose may make standing orders.

(5) Each House of Parliament has the power to send for persons, papers and records, and this power may be delegated by the House to its committees.

21 The Speakers in both Houses

(1) At its first meeting after the summoning of a new House of Parliament and before proceeding to the despatch of any other business, that House shall elect one of its members, other than a Minister, to be the Speaker of that House; and if the office of Speaker in either House falls vacant at any time before the expiry of the House, that House shall, as soon as practicable, elect another such member of the House to the office.

(2) Standing orders of each House shall -

(a) provide for deputies to the Speaker; and

(b) regulate proceedings connected with the election of the Speaker and deputies; and

(c) provide for the appointment of a Counsel to the Speaker who shall provide such legal advice as the Speaker, a deputy to the Speaker or the House may require.

(3) A certificate that is endorsed on any Bill by the Speaker of the House of Commons or the Speaker of the Second Chamber, and in particular on a Money Bill under Article [67], a public Bill under Article [6], a Bill for the amendment of the Constitution under Article [69], or a Constitutional Bill under Article [70], is conclusive and its validity shall not be considered by any court, other than the Supreme Court.

22 Salaries, Standards and Interests

(a) Members of the Houses of Parliament shall receive salaries and pensions and facilities appropriate to the full time performance of their responsibilities.

(b) There shall be an Independent Parliamentary Standards Authority to determine the level of salaries and scheme of allowances for members in each House of Parliament; and the composition, organisation and resources for the Authority shall provided for by Act of Parliament.⁸²⁶

(c) In any debate or proceeding of either House or of any of its committees or in transactions or communications which a member may have with other members of Parliament or with Ministers or with members of a public service, the member shall disclose any pecuniary interest or benefit of whatever nature, whether direct or indirect, that he or she may have had, may have, or may be expecting to have.

(d) Each House of Parliament shall maintain a Register of Members' Interests, which shall be available for public inspection; and there shall be established a joint Select Committee of both Houses to examine, and make recommendations to Parliament on, matters connected with the Registers.

(e) Each House of Parliament shall maintain and by resolution approve a Code of Conduct for members, with the draft of each new edition being prepared under the supervision of the Speaker in consultation with the Commission for Democracy.

⁸²⁶ This enables the Parliamentary Standards Act 2009 to continue in operation.

23 Ordinary Legislative Procedures

Primary Legislation

(1) A public Bill, other than a Money Bill, may be introduced in either House by any member; and the term 'public Bill' for the purposes of this Article means a Bill for a Public General Act.

(2) Subject to this Constitution, a public Bill becomes law when it is passed by the affirmative vote of a majority of the members of both Houses of Parliament, sitting separately, and the Assent of the Head of State is signified.

(3) The presentation, and procedure for enactment, of Bills for Local and Personal Acts shall be regulated by standing orders of both Houses.

(4) Except on the recommendation or with the consent of the Cabinet, signified by a Minister, neither House of Parliament shall –

(a) proceed with any Bill (including any amendment to a Bill) which, in the opinion of the person presiding, makes provision for any of the following purposes –

(i) for imposing, increasing, reducing or abolishing any tax;

(ii) for imposing or increasing any charge on the Consolidated Fund, or other public fund or the public revenue, of the United Kingdom, or for altering any such charge otherwise than by reducing it; or

(iii) for compounding or remitting any debt due to the Government;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes; or

(c) receive any petition which, in the opinion of the person presiding, requests that provision be made for any of those purposes.

(5) The validity of the proceedings leading to the enactment of an Act of Parliament shall not be considered by any court.

Subordinate Legislation

(7) A joint Committee of both Houses of Parliament shall be established to examine and, where in the opinion of the Committee it is necessary, report to each House with respect to –

(a) an enabling provision in any public Bill presented to the House which delegates legislative power; and

(b) any subordinate legislation laid before the House which, in the opinion of the Committee -

(i) that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;

(ii) that its parent legislation says that it cannot be challenged in the courts;

(iii) that it appears to have retrospective effect without the express authority of the parent legislation;

(iv) that there appears to have been unjustifiable delay in publishing it, laying it before Parliament, sending notification where required to the Minister of Justice or Speakers of each House where the instrument has come into force before it has been laid; or

(v) that there appear to be doubts whether there is power to make it or that it appears to make an unusual or unexpected use of the powers conferred by the enactment under which it is made; or

(vi) that its form or meaning needs to be explained, or its drafting appears to be defective;

(vii) any other ground which does not go to its merits or the policy behind it.

(8) Nothing in this Constitution shall be construed as affecting the power of either House of Parliament to annul subordinate legislation that is subject to annulment by resolution of either House, or to disapprove subordinate legislation that is subject to approval by resolution of either House.

24 Powers of the Second Chamber

Money Bills

(1) If a Money Bill, that has been passed by the House of Commons and sent to the Second Chamber at least 30 parliamentary days before the end of the session, is not passed by the Second Chamber, without amendment, within 30 parliamentary days after it is sent, the Bill shall -

(a) unless the House of Commons otherwise directs, be presented to the Head of State for Assent; and

(b) become an Act of Parliament on Assent being signified,

notwithstanding that the Second Chamber has not consented to the Bill.

(2) For the purposes of this Constitution, the expression "Money Bill" means a public Bill which, in the opinion of the Speaker of the House of Commons, contains only provisions dealing with all or any of the following matters -

- (a) the imposition, repeal, remission, alteration, or regulation of taxation;
- (b) the imposition, for the payment of debt or other financial purposes, of charges on the Consolidated Fund, the National Loans Fund or on money appropriated by Parliament, or the variation or repeal of any such charges;
- (c) supply (parliamentary grants to government requests for resources);
- (d) the appropriation, receipt, custody, issue or audit of accounts of public money;
- (e) the raising or guarantee of any loan or the repayment thereof;
- (f) matters incidental to those matters or any of them.

(3) For the purposes of this Article, the expressions "taxation", "public money" and "loan" do not include, respectively, taxation, money or loan raised by a devolved Parliament or Assembly or local authority.

(4) There shall be endorsed on a Money Bill presented to the Head of State for Assent the certificate of the Speaker of the House of Commons, signed by the Speaker, that the Bill is a Money Bill.

Ordinary Public Bills

(5) This Article applies to any public Bill which has been passed by the House of Commons, after considering the Bill as passed by the Second Chamber, and which is sent back to the Second Chamber; but does not apply to -

- (a) a Money Bill, as provided for in paragraphs (1)-(4); or
- (b) a Bill for the amendment of the Constitution, as provided for in Article 52;
or
- (c) a Constitutional Bill, as provided for in Article 53.

(6) If a Bill to which this Article applies is rejected by the Second Chamber, then, subject to this Article, the Bill shall, if the House of Commons so resolves, be presented to the Head of State for Assent, and become an Act of Parliament on Assent being signified, notwithstanding that the Second Chamber has not consented to the Bill.

(7) A resolution under this Article shall not be moved in the House of Commons until a period of delay of 12 calendar months has elapsed, either -

- (a) from the day on which the Bill was rejected by the Second Chamber; or
- (b) if the Bill was so rejected more than 120 parliamentary days after being sent to that House, from the last of those days.

(8) A resolution under this Article may be passed, and the Assent of the Head of State may be signified accordingly, notwithstanding any prorogation or the expiry or dissolution of either House during the period of delay; and in that case, the resolution shall not take effect unless passed within 30 parliamentary days after the end of the period of delay or the first meeting of the new House, as the case may be.

(9) For the purposes of this Article, a Bill is rejected by the Second Chamber in the following circumstances (and not otherwise) -

- (a) if a motion for the rejection of the Bill is carried, or a motion at any stage that the Bill be read or be passed is rejected or amended, by the Second Chamber;
- (b) if the Bill is passed by the Second Chamber with substantive provisions that are not identical with those in the Bill sent back to it by the House of Commons;
- (c) if, after 120 parliamentary days beginning on the day on which the Bill was sent back to the Second Chamber and in the session in which it was so sent -
 - (i) a motion relevant to the progress of the Bill in the Second Chamber and expressed to be made pursuant to this Article, is proposed by the member in charge of the Bill and is rejected by the Second Chamber; or
 - (ii) the House of Commons resolves, on a motion of which at least 10 parliamentary days' notice has been given, that the Bill be treated for the purposes of this Article as rejected by the Second Chamber.

(10) The date on which a Bill is rejected by the Second Chamber shall be endorsed on the Bill by the Clerk of the Parliaments or, if the Bill is then in the possession of the House of Commons, by the Clerk of that House.

(11) On the expiration of the period of delay, the Bill shall, unless it is then in the possession of the House of Commons, be returned to that House.

(12) A Bill shall not be presented to the Head of State for Assent under this Article, unless there is endorsed upon it the certificate of the Speaker of the House of Commons, signed by him, that this Article has been complied with.

PART IV

ELECTIONS AND REPRESENTATION**25 The Franchise**

(1) Elections for the United Kingdom Parliament, the European Parliament, the Scottish Parliament and Welsh and Northern Ireland Assemblies, local authorities, and the other elected bodies established by or under this Constitution shall be general and direct, conducted by secret ballot and under other conditions laid down in Acts of the Parliament in a manner which ensure the free expression of the opinion of the people of the United Kingdom in choosing their representatives.

(2) A British national who has attained the age of 18 years is entitled to vote in elections for, and stand for election to, Parliament, the European Parliament, the Assemblies and the other elected bodies established by this Constitution, subject to such disqualifications as Act of Parliament shall prescribe.

(3) An Act of Parliament shall determine the extent to which the franchise shall be extended to other classes of persons; and provide for the electoral law which shall govern the franchise, the qualification and nomination of candidates, election expenditure and other matters concerning the conduct of elections to Parliament, the European Parliament, the Assemblies and local authorities.

26 The Electoral and Boundary Commissions

(1) An Act of Parliament shall make provision for an Electoral Commission, which shall be politically neutral and impartial.

(2) The members and chairman of the Commission shall be appointed by the Head of State acting on the advice of the Public Services Commission, provided that no person may be appointed a Commissioner who is a member of, or a candidate for election to, either House of Parliament, the European Parliament, a devolved Parliament or Assembly, or a local authority.

(3) Commissioners shall receive salaries, and office and administrative facilities, appropriate to the full or part time performance of their responsibilities.

(4) A Commissioner ceases to hold office (a) at the expiry of 5 years from the date of appointment (which may be renewed); or (b) upon the receipt by the Chief Commissioner of the Public Services Commission of a letter of resignation from the Ordinary Commissioner; or (c) if the Commissioner is removed from office, upon grounds of misconduct or incapacity, by the Head of State on the advice of the Public Services Commission; or (d) if the Commissioner becomes a candidate for election to either House of Parliament, the European Parliament, the Scottish Parliament, the Welsh or Northern Ireland Assembly, or a local authority.

(5) Commissioners shall receive salaries, and office and administrative facilities, appropriate to the full or part time performance of their responsibilities.

(6) The functions of the Electoral Commission shall include -

(a) the distribution of state funding of political parties as may be provided by law, the registration of political parties in receipt of state funding, and the accounting and publication of the income and expenditure of registered political parties, in accordance with Article 28;

(b) the oversight of the fairness of referendum and election campaigns, and the preparation and publication of guidance and education with respect to the voting and electoral system and any referendum of the electorates of the United Kingdom or the nations of England, Scotland, Wales or Northern Ireland

(c) the review and preparation of reports with recommendations for Parliament on the administration of each election to the House of Commons, Second Chamber, European Parliament, Scottish Parliament, Assemblies of Wales and Northern Ireland Assembly, and on any referendum of the electorates of the United Kingdom or the nations of England, Scotland, Wales or Northern Ireland;

(d) to appoint returning officers for each constituency or region in which an election or referendum is being held, and to provide supervision and regulation of the administration of elections, including the registration of electors, the nomination of candidates, and preparation and conduct of polling;

(e) to consider any matter affecting the conduct of elections and referendums in the United Kingdom, including any matter affecting the franchise and candidature, that is referred to it by the Prime Minister or the Speaker of the House of Commons, or the Commission on its own initiative determines; and

(f) to receive, investigate, and report to the Parliament upon complaints in connection with the conduct of any election or referendum in the United Kingdom.

(7) An Act of Parliament shall make provision for four Boundary Commissions, one for each of England, Scotland, Wales and Northern Ireland, to keep under review and make recommendations with respect to the constituency boundaries of the House of Commons and Second Chamber, in accordance with Article 27.

27 Method of Election and Constituencies

The House of Commons

(1) For the purposes of elections to the House of Commons, the United Kingdom comprises between 600 and 650 constituencies, their boundaries being determined by an Act of Parliament following a recommendation by a Boundary Commission.

(2) At each general election one member shall be returned for each constituency, in accordance with the method of election laid down in paragraph (3).

(3) The votes at the poll in a general election shall be given by ballot, the result shall be ascertained by counting the votes given to each candidate, and the candidate to whom the majority of votes have been given shall be declared to have been elected.⁸²⁷

(4) The Boundary Commissions, established under Article 26, shall jointly agree and determine a common electoral quota for the constituencies of the House of Commons by dividing the total electorate of the United Kingdom by 625; and in making their recommendations on constituencies for the House of Commons shall seek to achieve a broadly equal electoral quota for each constituency in the United Kingdom, subject to the considerations in paragraph (5).

(5) Each constituency for the House of Commons shall be wholly in one of the four parts of the United Kingdom (England, Wales, Scotland and Northern Ireland); and in making its recommendations a Boundary Commission may take into account, if and to such extent as they think fit,

- (a) special geographical considerations, including in particular the size, shape and accessibility of a constituency;
- (b) local government boundaries as they exist on the most recent ordinary council-election day before the review date;
- (c) the boundaries of existing constituencies;
- (d) any local ties that would be broken by changes in constituencies; and
- (e) the inconveniences attendant on such changes.

(6) The recommendations of the Boundary Commissions with respect to the boundaries of House of Commons constituencies shall be laid before the House of Commons as soon as possible by the Secretary of State, and if approved by the House, shall take effect at the following general election.

⁸²⁷ This is the principle currently laid down in the Representation of the People Act 1983, Schedule 1, Rule 18.

The Second Chamber

(7) For the purposes of elections to the Second Chamber, there shall be twelve electoral regions, and an Act of Parliament following an agreed recommendation by the four Boundary Commissions acting jointly, shall prescribe for each region their boundaries, and the number of members returned from each region in relationship to the size of its electorate, subject to paragraph (12).

(8) The 240 members of the Second Chamber are each elected for a fifteen-year term, and may not stand for re-election.⁸²⁸

(9) One third of the seats in the Second Chamber fall vacant and are elected every five years, with polling day taking place on the same day as a general election.

(10) At each general election, and in any by-election, for the Second Chamber, the candidate who receives the necessary quota of votes shall be declared elected under a system of single transferable voting in which each vote –

(a) is capable of being given so as to indicate the voter's order of preference for the candidates for the election for the constituency; and

(b) is capable of being transferred to the next choice.

(11) For transitional purposes, the existing members of House of Lords at the time of this Constitution entering into force shall remain members of the Second Chamber until their death or retirement, in addition to the eighty members elected in each of the electoral terms following this Constitution entering into force.

(12) In making its recommendations with respect to the boundaries, sizes of electorates, and number of members returned from each region, of the Second Chamber electoral regions, the Boundary Commissions acting jointly shall –

(a) establish Scotland, Wales and Northern Ireland as individual electoral regions, and structure England into the broad regional areas of North West England, North East England, Yorkshire and the Humber, West Midlands, East Midlands, East of England, Wales, London, South West England, and South East England;

(b) cause the total members representing each region to be a number divisible by three;⁸²⁹ and

(c) so far as practicable taking paragraphs (a) and (b) into account, allocate the number of members to be returned from each region according to the size of the electorate in each region.

⁸²⁸ This equals the full lifetime of three electoral terms of the House of Commons. Article 18(3) sets the number of members of the Second Chamber.

⁸²⁹ This is to facilitate the rotating one-third membership of the Second Chamber.

(13) The recommendations of the Boundary Commissions with respect to the electoral regions of the Second Chamber shall be laid before the House of Commons by the Secretary of State, and if approved by the House of Commons shall take effect at the following general election.

By-elections

(14) Upon a vacancy arising in the membership of either House of Parliament in respect of a seat held by an elected member, an election for a new member shall be held as soon as is practicable in the constituency concerned; provided that -

(a) in the case of the House of Commons, no election shall be held if the vacancy occurs within three months immediately preceding the date upon which the electoral term expires, and

(b) in the case of the Second Chamber,

(i) if the seat for which the vacancy occurs is due for election at the next general election, no election shall be held if the vacancy occurs within the three months immediately preceding the date upon which the electoral term expires; or

(ii) if the seat for which the vacancy occurs is not due for election at the next general election, and the vacancy occurs within the three months immediately preceding the date upon which the electoral term expires, then an election shall be held at the same time as the next general election.

Devolved Parliament or Assembly, and European Elections

(15) Acts of Parliament shall provide for the constituencies, return of members, and by-elections in connection with elections to the Scottish Parliament, Assembly for Wales, Northern Ireland Assembly, and European Parliament.

Transitional arrangements

(16) The composition of the House of Commons, Second Chamber, Assemblies, local authorities, and European Parliament, immediately following this Constitution entering into force shall remain the same as before until elections are held on the due dates under the pre-existing law applicable to those bodies.

28 Political Parties

(1) The Electoral Commission shall maintain a register of political parties.

(2) The Electoral Commission shall from time to time prepare regulations for the registration of political parties, which shall include provisions requiring -

(a) a political party applying for registration to provide a copy of its constitution and of its accounts,

(b) every registered political party to submit annually a copy of its account to the Commission,

and such regulations shall have effect when approved by resolutions of both Houses of Parliament.

(3) The Commission shall submit an annual report to Parliament on the income, expenditure and financial status of all registered political parties; and on such matters concerning the registration of political parties as the Commission determines.

(4) Every political party is entitled to register with the Electoral Commission in accordance with the regulations made under this Article.

(5) A political party that is included in the register shall be eligible for public financial support and entitled to access to political broadcasting to the extent that an Act of Parliament provides.

(6) An Act of Parliament may, notwithstanding Article 36(10) (Freedom of Expression) place such restrictions as are necessary to allow for the conduct of free and fair elections on election expenditure by candidates, political parties, whether registered or not, and other bodies.

PART V

INTERNATIONAL RELATIONS

29 International Relations and Treaties**(1) The Government -**

(a) shall conduct the international relations of the United Kingdom; and

(b) subject to this Constitution and Acts of Parliament, has all necessary powers for that purpose, including the powers to maintain diplomatic representatives abroad and to receive in the United Kingdom diplomatic representatives from other states.

(2) No draft treaty agreement concluded by the Government of the United Kingdom shall be ratified or become binding upon the United Kingdom, unless -

(a) the treaty is laid before Parliament; and

(b) within three months after it has been so laid, each House of Parliament, by resolution, authorises the Government to give consent for the United Kingdom to be bound as a party to the treaty.

(3) A treaty is ratified and comes into force, under the terms expressed in the treaty, by way of the Great Seal of the Head of State being affixed in the office of the Clerk in Chancery.

(4) For the purpose of this Article, the expression "treaty" means an agreement in writing, governed by international law, between the United Kingdom and another state or an organisation of which only states are members.

30 The European Union

(1) The law of the European Union and the United Kingdom's obligations as a member of the European Union take effect in the United Kingdom only under the legal authority of Acts of the United Kingdom Parliament.⁸³⁰

(2) An Act of the United Kingdom Parliament will lay down procedures to ensure the consent of Parliament and the United Kingdom people at a referendum to any new or amending European Union treaty that extends the objectives, competence or powers of the European Union.⁸³¹

⁸³⁰ Currently sections 1 to 3 of the European Communities Act 1972 (as amended) provide the legal basis for European law in the domestic law of the United Kingdom.

⁸³¹ Currently section 2 of the European Union Act 2010 provides for these procedures.

PART VI

DEVOLUTION AND LOCAL GOVERNMENT**31 Establishment of the Devolved Parliament and Assemblies**

(1) There is established by this Constitution a Parliament for Scotland, and an Assembly for Wales and for Northern Ireland (the "devolved Parliament and Assemblies").

(2) In each case, the devolved Parliament and Assemblies may provide for the names and official designation of itself and its members.

(3) The devolved Parliament and Assemblies may, subject to this Constitution and the exclusive powers of the national legislative authority, make laws for the peace, order and good government of its territory and the people resident within it.

(4) The devolved Parliament and Assemblies shall hold their Executives, as provided for in Article 31, and the public service supporting its work, to account.

(5) The term of the devolved Parliament and Assemblies shall be four years, expiring twenty-one calendar days prior to the date on which the election of members to them are required by Act of Parliament.

(6) An Act of each of the devolved Parliament and Assemblies shall make provision for -

(a) the number of its members and, subject to Article 25 where applicable, the qualifications and disqualifications for membership; and

(b) its electoral arrangements, consistent with Articles 25 to 26 of this Constitution.

(7) The standing orders of the devolved Parliament and Assemblies shall, subject to any Act passed by them, make provision for -

(a) the nomination, mode of election and removal of the Chief Executive;

(b) the election of a presiding officer from among its members and for the tenure of that office;

(c) the requirements to be met by the Executive in the presentation of policies and legislative proposals;

(d) the information to be made available by the Executive to the devolved Parliament or Assembly;

(e) the disclosure of conflicts of interest by members and the maintenance of a register of members' interests.

(8) A Bill of the devolved Parliament or the Assemblies becomes an Act when it is passed by the affirmative vote of a majority of its members voting and is so certified by its presiding officer and Clerk.

(9) Nothing in this Constitution shall in any way abrogate existing provisions guaranteed in perpetuity under the Treaty and Acts of Union between Scotland and England in 1706 and 1707.

32 Legislative Powers of the Devolved Parliament and Assemblies

(1) The devolved Parliament and Assemblies have powers to make laws, in relation to their territory, with respect to the following matters –

- (a) agriculture and fisheries;
- (b) arts and leisure;
- (c) education;
- (d) energy;
- (e) the environment;
- (f) health;
- (g) housing;
- (h) local government;
- (i) policy and development;
- (j) social welfare;
- (k) trade and industry;
- (l) transport.

(2) The Scottish Parliament and Northern Ireland Assembly, in addition, have powers to make laws, in relation to their respective areas, with respect to the following matters –

- (a) the courts and legal services;
- (b) tribunals and inquiries;
- (c) civil law;
- (d) crime;
- (e) police and prisons.

(3) It is not within the powers of the devolved Parliament and Assemblies to make any provision of law which –

- (a) extends to any part of the United Kingdom beyond its territorial boundaries, except in the case of the Assembly of Wales in so far as is necessary to enable legal proceedings to be brought to enforce the provision;

- (b) has the effect of amending this Constitution;
- (c) is inconsistent with any provision of European Union law.

(4) Parliament may make laws with respect to any matter that is within the legislative powers of the devolved Parliament and Assemblies under this Article, if

- (a) that matter cannot be adequately regulated by the devolved Parliament or Assembly itself; or

- (b) the regulation of a matter by the devolved Parliament or Assembly would prejudice the interests or interfere with the rights of citizens of other parts of the United Kingdom.

(5) Where an Act of the devolved Parliament or Assembly or any part thereof is inconsistent with an Act of Parliament, the Act of Parliament prevails and the Act of the devolved Parliament or Assembly or the inconsistent part thereof is void to the extent of the inconsistency.

33 The Devolved Executives

(1) There is established by this Constitution an Executive for Scotland, for Wales, and for Northern Ireland.

(2) Each Executive shall consist of -

- (a) a First Minister, who shall be elected by the devolved Parliament or Assembly from among its members, in accordance with its standing orders; and

- (b) such members of the devolved Parliament or Assembly as are appointed by the First Minister to be members of the Executive.

(3) The Chief Executive may appoint members of the devolved Parliament or Assembly to be assistants to the members of the Executive.

(4) An Act of Parliament in respect of each of Scotland, Wales and Northern Ireland shall make provision for the number of the members of their Parliament or Assembly, as the case may be, who may be appointed to be members of the Executive or assistants to such members.

(5) In Scotland and Northern Ireland, notwithstanding paragraph (2), the First Minister may appoint a person who is not a member of the devolved Parliament or Assembly as a member of the Executive to perform functions corresponding to those performed by a Law Officer of the United Kingdom Government; and a member of the Executive appointed under this paragraph may participate in the proceedings of the devolved Parliament or Assembly but shall not vote.

(6) Each Executive shall exercise the executive powers of the United Kingdom Government with respect to all matters which fall within the legislative competence of the appropriate Parliament or Assembly as provided by this Constitution and such other matters as Act of Parliament may prescribe.

(7) A member of an Executive is responsible for the conduct of such business of the Executive as the First Minister assigns to the member.

(8) A member of an Executive, or an assistant to a member, ceases to hold office

(a) if the member or assistant ceases to be a member of the appropriate devolved Parliament or Assembly for any reason other than the expiry of the term of the devolved Parliament or Assembly; or

(b) if removed from office by the First Minister; or

(c) on the receipt by the Chief Executive of a letter of resignation from the member or assistant; or

(d) when a new election to the office of Chief Executive is completed; or

(e) if a motion of no confidence in the Executive is passed by a majority of all the members of the appropriate devolved Parliament or Assembly.

(9) The government of the United Kingdom and the Executive in Northern Ireland are under a duty to ensure compliance with the Belfast (Good Friday) Agreement of 10 April 1998 and St Andrew's Agreement of 13 October 2006, and Acts of the United Kingdom or Northern Ireland Assembly shall provide such regulation as may be necessary for this purpose.

34 Devolved Finance and Revenue

(a) In each of the devolved territories, there shall be a Consolidated Fund and a Loans Fund, and sums may be transferred from one to the other of these Funds on the authority of the Executive, signified by the member of the Executive having responsibility for finance.

(b) There shall be paid into the appropriate Consolidated Fund the share of the personal income tax raised in the United Kingdom allocated to it in accordance with a formula laid down by Act of Parliament; and such other receipts of its Executive that are not paid into the Loans Fund and have not been disposed of and accounted for under an order under paragraph (d).

(c) Sums forming part of a Consolidated Fund may be appropriated by an Executive only for purposes related to those matters in which, under Article 33(6) the Executive may exercise powers or to meet expenses incurred under Article 31(8).

(d) No order appropriating any sum shall be made by an Executive unless a draft of the order appropriating that sum has been laid before the appropriate Parliament or Assembly to whom it is accountable and has been approved by a resolution of the Parliament or Assembly.

(e) An Executive may request, and an Act of the devolved Parliament or Assembly may authorise, a variable rate of United Kingdom income tax by up to five pence in the pound paid into its Consolidated Fund.

(f) An Executive may borrow such sums as appear to the Executive to be necessary to meet expenditure approved by the appropriate devolved Parliament or Assembly, provided that -

(i) no such sums may be borrowed unless the borrowing has been approved by a resolution of the appropriate devolved Parliament or Assembly;

(ii) the total sums that may be borrowed in any financial year under this Article shall not exceed one-third of the annual expenditure approved by the appropriate devolved Parliament or Assembly for that financial year.

(g) Sums forming part of a Loans Fund, and sums forming part of the receipts of an Executive, may be appropriated by order of the Executive, which shall provide with respect to their disposal and accounting.

35 Principles of Local Government

(1) The local authorities of the United Kingdom are established by this Constitution under the principles set out in the Code provided for in paragraph (2).

(2) There shall be a Code on Local-Central Relations, setting out the freedoms, rights and duties of local authorities to promote the wellbeing of their citizens and communities, and the principles that regulate their independence, which shall declare among other matters that -

(a) Elected local councils in England, Scotland, Wales, and Northern Ireland are free and independent bodies, separate and equal partners with Parliament in England and with their parent Assemblies in the devolved territories, in the governance of the state;

(b) Elected councils are free to determine the policies and executive action on all local matters which are not reserved by Act of Parliament or an Act of their parent devolved Parliament or Assembly to the competence of some other authority, subject always to the approval of their electors to whom they are accountable.

(3) The Code provided for in paragraph (2) shall be presented to both Houses of Parliament for their approval every five years, following consultation with local authorities and the Assemblies (or their appropriate committee on local government), but no revision to the principles contained in paragraph (1) may be made without an amendment to this Constitution.

(4) The powers, functions and working of local authorities shall be provided for by Act of Parliament with respect to England, and by Act of the appropriate devolved Parliament or Assembly in Scotland, Wales, and Northern Ireland, which shall include provisions for -

- (a) the boundaries for each local authority, and their periodic review by Local Government Boundary Commissions for each of England, Scotland, Wales and Northern Ireland;
- (b) voting and elections in local authorities, including the timing of the elections and the qualifications and disqualification of elected local councillors, subject to Articles 24 to 28;
- (c) facilitating the functions required of a local authority as expressed in the Code provided for in paragraph 2.

(5) A local authority -

- (a) shall perform such functions as an Act of Parliament with respect to England, and as an Act of the appropriate parent devolved Parliament or Assembly with respect to Scotland, Wales and Northern Ireland, shall determine; and
- (b) has general competence to undertake whatever measures it sees fit for the benefit of all those within its area, including the making of bye-laws;

provided that, in performing such functions or undertaking such measures, the local authority shall not act in conflict or inconsistently with any legislation enacted by or under the authority of Parliament or its parent devolved Parliament or Assembly.

(6) An Act of Parliament shall specify an assigned percentage of national income tax revenue to be allocated for local authorities and its distribution by the appropriate central government department of state with respect to England and by the Executives of the devolved Parliament or Assemblies with respect to Scotland, Wales and Northern Ireland.

(7) Each local authority is entitled to levy a tax upon domestic and business properties within its jurisdiction, or raise any other form of local tax authorised by Act of Parliament in accordance with an Act of Parliament in England and with an Act of the appropriate parent devolved Parliament or Assembly in Scotland, Wales and Northern Ireland.

PART VII

THE INDIVIDUAL AND THE STATE

36 The Bill of Rights⁸³²

- (1) **Right to Life.** -- (a) Everyone's right to life shall be protected by law.
- (b) No one shall be deprived of life intentionally.
- (c) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary –
- (i) in defence of any person from unlawful violence; or
- (ii) in action lawfully taken for the purpose of quelling a riot or insurrection.
- (d) No one shall be condemned to death or executed.
- (2) **Freedom from Torture.** -- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- (3) **Freedom from Slavery and Forced Labour.** -- (a) No one shall be held in slavery or servitude.
- (b) No one shall be required to perform forced or compulsory labour.
- (c) For the purpose of this Article, the expression 'forced or compulsory labour' does not include –
- (i) any work required to be done in the ordinary course of detention according to Article 5 or during conditional release from such detention;
- (ii) any service of a military character or, in case of conscientious objectors, service exacted instead of compulsory military service;

⁸³² The rights and freedoms in this Article build on those written for the European Convention on Human Rights (which the UK was largely responsible for drafting in 1950, and was based on what was regarded as the existing situation in the UK) with some elements taken from the United Nations International Covenant on Civil and Political Rights. See IPPR, *The Constitution of the United Kingdom*, Commentary, pages 2-16. Subsection (1), right to life, takes out the exception of war to prohibition of the death penalty. Subsection (4) removes the exceptions in the ECHR to allow the detention of alcoholics, drug addicts and vagrants short of lawful arrest. "Economic wellbeing of the country" is removed as a ground for violating personal privacy in subsection (7), respect for private and family life. Subsections (10), freedom of expression, and (14), right to participation in public life and service, adopt the more robust articles of the UN International Covenant in preference to those of the ECHR. Subsection (17) adds a right of asylum taken from the American Convention of Human Rights, as there is no specific provision in the ECHR or UN International Covenant; and Subsection (18) provides a general right of equality before the law, wider than that of the ECHR, Protocol 12.

(iii) any service exacted in case of an emergency or calamity threatening the life or well being of the community;

(iv) any work or service which forms part of normal civic obligations.

(4) **Freedom and Security of the Person.** -- (a) Everyone has the right to liberty and security of the person.

(b) No one shall be deprived of their liberty except, on reasonable grounds and in accordance with fair procedures established by law, in the following cases –

(i) the lawful detention of a person after conviction by a competent court;

(ii) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(iii) the lawful arrest or detention of a person effected for the purpose of bringing them before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent their committing an offence or fleeing after having done so;

(iv) the lawful detention of persons for the prevention of the spreading of infectious diseases constituting a serious threat to public health, or of persons suffering from mental disorder where necessary for the prevention of harm to themselves or others;

(v) the lawful arrest or detention of a person to prevent their effecting an unauthorised entry into the United Kingdom or of a person against whom action is being taken with a view to deportation or extradition.

(c) Anyone who is arrested shall, at the time of arrest, be informed in a language which they understand of the reasons for their arrest and shall be promptly informed of any charges against them.

(d) It shall not be the general rule that persons awaiting trial shall be detained in custody.

(e) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and is entitled to trial within a reasonable time or to release pending trial. Release may be subject to guarantees to appear for trial or at any other stage of the judicial proceedings.

(f) Anyone who is deprived of liberty by arrest or detention is entitled to take proceedings before a court in order that the court may decide without delay on the lawfulness of the detention and may order their release if the detention is not lawful.

(g) Anyone who has been the victim of unlawful arrest or detention has an enforceable right to compensation.

(h) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(i) Accused persons in detention shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as people who have not been convicted.

(j) Accused juvenile persons in detention shall be separated from adults and brought as speedily as possible for adjudication.

(k) Juvenile convicted persons shall be separated from adults and accorded treatment appropriate to their age and legal status.

(l) No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

(5) **Right to Fair and Public Hearing.** -- (a) In the determination of their civil rights and obligations or of any criminal charges against them, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(b) Judgment shall be pronounced publicly but the press and public may be excluded from all or any part of the trial to the extent strictly necessary in the opinion of the court:

(i) in the interests of public order or national security in a democratic society;

(ii) where the interests of juveniles or the protection of the private life of the parties so require; or

(iii) where publicity would prejudice the interests of justice.

(c) Everyone charged with a criminal offence is presumed innocent until proved guilty according to law.

(d) Everyone charged with a criminal offence has the following minimum rights:

(i) to be informed promptly in a language which they understand and in detail of the nature and cause of the accusation against them;

(ii) to have adequate time and facilities for the preparation of their defence;

(iii) to defend themselves in person or through legal assistance of their own choosing or, if they have not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;

(iv) to examine or have examined witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(v) to have the free assistance of an interpreter if they cannot understand or speak the language used in court;

(vi) not to be compelled to testify against themselves or to confess guilt.

(e) When a person has, by a final decision, been convicted of a criminal offence and has suffered punishment as a result of such conviction, and it is subsequently shown that there has been a miscarriage of justice, that person shall be compensated according to law.

(f) Everyone convicted of a crime has the right to have their conviction and sentence reviewed by a higher tribunal according to law.

(g) No one is liable to be tried or punished again for an offence for which they have already been finally convicted or acquitted in accordance with the law and penal procedure.

(6) **Retrospective Offences Prohibited.** -- (a) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.

(b) Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(c) This Article does not prejudice the trial and punishment of any person for any act which constitutes the crime of genocide or a crime against humanity.

(7) **Respect for Private and Family Life.** -- (a) Everyone has the right to respect for their private and family life, their home and their correspondence.

(b) There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society –

(i) in the interests of national security or public safety; or

(ii) for the prevention of disorder or crime; or

(iii) for the protection of health or morals; or .4 for the protection of the rights and freedoms of others.

(8) **Freedom of Thought.** -- (a) Everyone has the right to freedom of thought, conscience and religion.

(b) This right includes freedom to change one's religion or belief, and freedom, either alone or in community with others and in public or private, to manifest one's religion or belief in worship, teaching, practice and observance.

(c) Freedom to manifest one's religion or belief is subject only to such limitations as are prescribed by law and are necessary in a democratic society –

(i) in the interests of public safety; or

(ii) for the preservation of public order; or

(iii) for the protection of health or morals; or

(iv) for the protection of the rights and freedoms of others.

(d) No law shall be made establishing any religion or imposing any religious observance.

(e) No religious test shall be required as a qualification for any office of public trust under any government in the United Kingdom.

(9) **Right to Education.** -- (a) No person shall be denied the right to education.

(b) In the exercise of their functions in relation to education and teaching, public authorities shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

(10) Freedom of Expression. -- (a) Everyone has the right to hold opinions without interference.

(b) Everyone has the right to freedom of expression. This right includes freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

(c) The exercise of this right carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but only such as are provided by law and are necessary in a democratic society –

(i) for respect of the rights or reputations of others; or

(ii) for the protection of national security or of public order or of public health or morals.

(d) A requirement by law that radio or television broadcasting, or cinema enterprises, must be licensed is not inconsistent with this Article.

(11) Freedom of Assembly and Association. -- (a) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions.

(b) No restriction shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society –

(i) in the interests of national security, public safety or the preservation of public order; or

(ii) for the protection of public health or morals; or

(iii) for the protection of the rights and freedoms of others.

(c) This Article does not prevent the imposition of restrictions prescribed by law and necessary in a democratic society on the exercise of this right by members of the Armed Forces or of the police or by persons charged with the administration of the state.

(12) Rights in Respect of Marriage. -- (a) Everyone of marriageable age has the right both to marry and to found a family.

(b) No marriage shall be entered into without the free and full consent of the intending spouses.

(c) Spouses have equality of rights and responsibilities as to marriage, during marriage, and at its dissolution.

(d) In the case of dissolution, provision shall be made for the necessary protection of any children.

(e) Every child has the right to such measures of protection as are required by their status as a minor, on the part of their family, society and public authorities.

(13) Right to Enjoyment of Possession. -- (a) Every natural or legal person is entitled to the peaceful enjoyment of their possessions.

(b) No one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and to prompt, adequate and effective compensation.

(c) This Article does not in any way impair the right to enforce such laws as may be necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

(14) Right to Participate in Public Life and Service. -- Every adult citizen has the right and the opportunity, without unreasonable restrictions -

(a) to take part in the conduct of public affairs directly or through freely chosen representatives;

(b) to vote and to stand for election at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the people;

(c) to participate, on general terms of equality, in public service.

(15) Freedom of Movement. -- (a) Everyone lawfully within the United Kingdom has the right of liberty of movement and freedom to choose their residence within the United Kingdom.

(b) Everyone is free to leave the United Kingdom, and everyone holding British nationality is entitled to a passport.

(c) No restrictions shall be placed on the exercise of the rights set out in this Article other than such as are in accordance with law and are necessary in a democratic society -

(i) in the interests of national security, public safety or the preservation of public order; or

(ii) for the prevention of crime or under an order imposed by a court on conviction of crime; or

(iii) for the protection of health; or

(iv) for the protection of the rights and freedoms of others.

(d) The rights set out in paragraph (a) may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

(16) Freedom from Expulsion from the United Kingdom. -- (a) No British national shall be expelled from the United Kingdom or deprived of the right to enter the United Kingdom.

(b) Other persons may be expelled from the United Kingdom only in pursuance of a decision reached in accordance with law.

(c) Any persons who have been lawfully admitted to the United Kingdom shall be allowed, prior to expulsion,

(i) to submit reasons against expulsion; and

(ii) to have their cases reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

(d) This Article does not prevent the extradition of persons, through established legal procedures, for the purpose of standing trial for a criminal offence or serving a sentence lawfully imposed on them in another jurisdiction.

(17) Right of Asylum. -- (a) Every person has the right to seek and be granted asylum in the United Kingdom in accordance with the law of the United Kingdom and international conventions, if they are being pursued for political offences.

(b) In no case may an alien be deported or returned to a country, regardless of whether or not it is their country of origin, if in that country their right to life or personal freedom is in danger of being violated because of their race, nationality, religion, social status, or political opinions.

(18) Equality. -- (a) Everyone has the right to recognition as a person before the law.

(b) All persons are entitled without any discrimination to the equal protection of the law.

(c) The equal protection of the law, and the enjoyment of the rights and freedoms set out in this Bill of Rights, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, homosexuality, disability, age, or other status.

Application, Interpretation, and Remedies

(19) The Bill of Rights applies to any act or omission by or on behalf of any person or body in the performance of any public function, including an omission by Government to take appropriate steps to secure compliance with any provision of the Bill of Rights.

(20) Where the protection of any right or freedom by the Bill of Rights is subject to any restriction or qualification, that restriction or qualification –

(a) has no wider effect than is strictly necessary in the circumstances; and

(b) shall not be applied for any purpose other than that for which it has been prescribed.

(21) In the interpretation of the Bill of Rights, judicial notice shall be taken of –

(a) the International Covenant on Civil and Political Rights and the European Convention on Human Rights;

(b) reports and expressions of views by the United Nations Human Rights Committee;

(c) judgments and advisory opinions of the European Court of Human Rights.

but without prejudice to any rights and freedoms protected by the Bill of Rights which are more extensive than those protected by the International Covenant or the European Convention.

(22) Nothing in the Bill of Rights shall be interpreted as implying for any group or person a right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set out therein.

(23) Without prejudice to any right to apply for judicial review, any person whose rights or freedoms protected by the Bill of Rights have been infringed or are threatened with infringement may bring civil proceedings for damages, an injunction or any other relief authorised by Rules of Court

37 Equality and Human Rights Commission

(1) There shall be a Commission, or office of Commissioner, to uphold and promote the Bill of Rights in England and Wales, in Scotland, and in Northern Ireland, collectively referred to herein as "the Commission".⁸³³

⁸³³ The current equivalent bodies are the Equality and Human Rights Commission (for England and Wales), the Scottish Human Rights Commission, and the Northern Ireland Human Rights Commission.

(2) An Act of Parliament or a devolved Parliament or Assembly shall make provision for the name, composition, membership, appointment, and resources of the Commission.

(3) The Commission shall have a general duty to encourage an understanding of, and compliance with, the Bill of Rights, and in pursuance thereof -

(a) may prepare and publicise guidelines for the avoidance of acts or practices inconsistent with the Bill of Rights by public authorities or other bodies providing services to the public;

(b) may inquire into or investigate any act or practice which may be inconsistent with the Bill of Rights, whether on its own initiative or following a complaint;

(c) may intervene in any legal proceedings that involve human rights issues, where it considers it appropriate, and with the leave of the court hearing the proceedings;

(d) may challenge the validity of any provision of an Act of Parliament or of a devolved Parliament or Assembly that, in its view, is inconsistent with or in contravention of the Bill of Rights, by initiating legal proceedings in the High Court, the Court of Session or the High Court for Northern Ireland, as the case requires;

(e) shall submit annual reports on its work to Parliament the Minister of Justice and appropriate committee or committees in Parliament with responsibility for human rights.

(4) The legislation making provision for the Commission shall grant it appropriate powers to secure the attendance of witnesses and the production of documents; and

(5) Nothing in this Article prevents a Commission or Commissioner being established for the whole of the United Kingdom, or for two of the territories combined of England and Wales, Scotland, and Northern Ireland; but where separate bodies are established they shall be under a general duty to co-operate wherever possible and necessary to the performance of their functions.

38 Social and Economic Rights

(1) In making provision for the social and economic welfare of the people of the United Kingdom, Parliament and the devolved Parliament and Assemblies shall be guided by the following principles -

- (a) the right of workers to earn their living in an occupation freely entered upon;
- (b) the right of everyone to an adequate standard of living, including adequate food, clothing and housing;
- (c) the right of everyone to social security;
- (d) the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- (d) the right of everyone to education;
- (e) the right of workers to resort to collective action in the event of a conflict of interests, including the right to strike;
- (f) the right of every worker to enjoy satisfactory health and safety conditions in their working environment.

(2) Parliament and the Assemblies of Scotland and Northern Ireland shall -

- (a) secure that the working of the legal system promotes justice on the basis of equality of access; and
- (b) in particular, provide by law for legal aid and services to ensure that no one is prevented from securing justice by reason of economic or other disabilities.

(3) The provisions of this Article are not enforceable in any court.

39 Freedom of Information

(1) There is right of access by the public to the information held by any public authority performing functions with respect to the government of the United Kingdom, to the government of Scotland, Wales and Northern Ireland, and to local government.

(2) This right is subject only to such limitations as are prescribed by law and are necessary in a democratic society -

- (a) for the protection of national security;

(b) in the interests of law enforcement or the prevention and detection of crime;

(c) for the protection of personal privacy, legal privilege or commercial processes or transactions;

(d) to enable a public service to perform its constitutional functions or a public authority, when acting in the capacity of regulator, contractor or employer, to perform its functions.

(3) An Act of Parliament shall –

(a) prescribe the procedures to enable the right of access to official information to be readily exercised and enforced; and

(b) make provision for the appointment, functions, powers and procedures of an Information Commissioner to promote and enforce the right of access to official information and the protection of personal data.

(4) Any person required by law to provide information to a public authority shall be informed of the purposes for which that information is required, and any information so provided shall be used for those purposes only, unless required on grounds of national security or for the prevention or investigation of serious crime.

PART VIII

THE JUDICIARY

40 Judicial Authority

- (1) The judicial authority of the United Kingdom is vested in the courts.
- (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.⁸³⁴
- (3) The courts shall operate in the separate jurisdictions and legal systems of England and Wales, in Scotland, and in Northern Ireland, subject to the Supreme Court of the United Kingdom.
- (4) An order or decision by a court binds all persons to whom, or organs of state to which, it applies.
- (5) The Minister for Justice and the executives of the United Kingdom and the devolved territories are under a duty to protect the courts to ensure their independence, impartiality, dignity, accessibility, and effectiveness.
- (6) No court or tribunal shall be established to exercise judicial functions of a public nature in any part of the United Kingdom except as provided or authorised by this Constitution.
- (7) The head of the judiciary in England and Wales shall be the Lord Chief Justice; the head of the judiciary in Scotland shall be the Lord President of the Court of Session; and the head of the judiciary in Northern Ireland shall be the Lord Chief Justice of Northern Ireland.
- (8) The Supreme Court, the Court of Appeal and High Court in England and Wales, the Court of Session and High Court of Justice in Scotland, and the Court of Appeal and High Court in Northern Ireland, have the inherent power to develop the common law taking into account the interests of justice.
- (9) The procedures of the courts shall function under the authority of Acts of Parliament and Acts of the Assemblies, and Rules Committees shall be established in each jurisdiction for the purpose of making, amending and keeping under review the rules and practices of the courts.

⁸³⁴ This reproduces the universal principle as expressed in Article 165(1) of the Constitution of the Republic of South Africa Act, No. 108 of 1996.

41 The Supreme Court

(1) There is established by this Constitution a Supreme Court for the United Kingdom, which shall be the final court of appeal in the state and possess the jurisdiction as set out in this Constitution and by Act of Parliament.

(2) The Court shall consist of twelve judges, including a President and Deputy President, to be appointed by the Head of State,⁸³⁵ and to be styled "Justice of the Supreme Court".⁸³⁶

(3) A Selection Committee comprising the President and Deputy President of the Court and one member from each of the Judicial Services Commissions in England and Wales, Scotland, and Northern Ireland, shall be established to make recommendations to the Prime Minister for the appointment or removal of Justices of the Supreme Court by the Head of State.

(4) The Head of State may from time to time by Order in Council increase the number of judges of the Court, provided that no recommendation may be made to the Head of State to make an Order under this paragraph unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.

(5) The Court shall be duly constituted despite any vacancy among the judges of the Court or in the office of President or Deputy President.

(6) An Act of Parliament shall provide for the appellate jurisdiction of the Supreme Court from decisions of the courts in England and Wales, in Scotland, and in Northern Ireland, and of the courts of countries outside the United Kingdom on the invitation and at the request of the Parliaments of those countries.

(7) Any decision of the Supreme Court, including a decision that it has jurisdiction to hear an appeal, is final and conclusive on all other courts.

(8) The Supreme Court is not bound by its own previous decisions.

42 Courts in the Three Jurisdictions

(1) An Act of Parliament⁸³⁷ shall establish the courts and matters of judicial administration in England and Wales, including the membership and jurisdiction of the courts, and shall make provision for -

(a) a Court of Appeal, being the highest appellate court in England and Wales, consisting of the Master of the Rolls and such number of other justices (not being less than twenty) as an Act of Parliament may prescribe;

⁸³⁵ Under Article 4(10) the Head of State will appoints Justices on the advice of the Prime Minister.

⁸³⁶ Paragraphs (3) to (8) of this Article summarise the present situation as laid down in the Constitutional Reform Act 2005.

⁸³⁷ Currently the Senior Courts Act 1981 performs this function.

(b) a High Court for civil and public proceedings of first instance, and appeals from inferior criminal courts by case stated as may be prescribed by Act of Parliament, consisting of the Lord Chief Justice and such number of other justices (not being less than fifty) as an Act of Parliament may prescribe;

(c) a Crown Court for criminal proceedings on indictment, consisting of the justices of the High Court and such number of other judges as may be prescribed by Act of Parliament; and

(d) such other courts⁸³⁸ and tribunals as may be established by Act of Parliament.

(2) An Act of Parliament or the Scottish Parliament⁸³⁹ shall establish the courts and matters of judicial administration in Scotland, including the membership and jurisdiction of the courts, and shall make provision for -

(a) a Court of Session for civil and public proceedings, comprising an Inner House as court of first instance and an Outer House as the highest appellate civil court in Scotland, consisting of the Lord President (who shall preside over the First Division of the Inner House), the Lord Justice Clerk (who shall preside over the Second Division of the Inner House), and such number of other judges (who shall compose the Outer House) as Act of the Scottish Parliament may prescribe.

(b) a High Court of Justice, being the supreme criminal court, consisting of the Lord President, as Lord Justice General, and the other judges of the Court of Session;

(c) Sheriffs courts for criminal cases on indictment, being the number and titles of whose judges shall be such as may be prescribed by an Act of the Scottish Parliament;

(d) such other courts⁸⁴⁰ and tribunals as may be established by an Act of Parliament or of the Scottish Parliament.⁸⁴¹

(3) An Act of Parliament or the Northern Ireland Assembly shall establish the courts and matters of judicial administration in Northern Ireland, including the membership and jurisdiction of the courts, and shall make provision for -

⁸³⁸ This includes the Magistrates Courts dealing with less-serious criminal cases without jury under the terms of the various Magistrates Courts Acts, and the County Courts dealing with civil cases involving lesser sums of money under the terms of the Courts Act 1984 (as amended).

⁸³⁹ Currently the legislation performing this function includes the Court of Session Act 1988 (UK Parliament) and the Judiciary and Courts (Scotland) Act 2008 (Scottish Parliament).

⁸⁴⁰ This includes the Justice of the Peace Courts dealing with minor criminal cases without jury.

⁸⁴¹ Scottish Acts currently performing this function include the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

- (a) a Court of Appeal, being the highest appellate court in Northern Ireland, consisting of the Chief Justice of Northern Ireland and such number of other Justices (not being fewer than 3) as may be prescribed by an Act of the Northern Ireland Assembly;
- (b) a High Court for civil and public proceedings, consisting of the Chief Justice of Northern Ireland and such number of other Justices (not being fewer than 6) as an Act of the Northern Ireland Assembly may prescribe;
- (c) a Crown Court for criminal proceedings on indictment, consisting of the Justices of the High Court and such number of other judges as an Act of the Northern Ireland Assembly may prescribe;
- (d) such other courts⁸⁴² and tribunals as may be established by under the authority of an Act of Parliament ⁸⁴³ or by the Northern Ireland Assembly.

Cross-Jurisdictional Relations

- (4) Full faith and credit⁸⁴⁴ shall be given throughout the United Kingdom to the laws, acts and records of the Scottish Parliament, Assembly for Wales and Northern Ireland Assembly, and to the judicial proceedings of the courts of England and Wales, Scotland and Northern Ireland.
- (5) An Act of Parliament shall provide for the enforcement in one part of the United Kingdom of the judgments and orders of courts in another part of the United Kingdom.

43 Constitutional Jurisdiction of the Courts

- (1) The jurisdiction of the High Court in England and Wales, of the Court of Session in Scotland, and of the High Court in Northern Ireland, shall extend to the question of the compatibility of any law with this Constitution; and no such question shall be raised (whether by pleading, argument or otherwise) in any other court or tribunal except for the Supreme Court of the United Kingdom.
- (2) The term "law" in paragraph (1) for the purposes of this Article shall mean all or part of any Act of Parliament, an Act of the Scottish Parliament or Assembly for Wales or Northern Ireland Assembly, European Union law, local government bye-law, Order in Council, statutory instrument or other subordinate legislation,

⁸⁴² This includes the Magistrates Courts dealing with less-serious criminal cases without jury, and County Courts dealing with civil cases involving lesser sums of money.

⁸⁴³ Legislation currently performing this function include the Magistrates Courts Act (Northern Ireland) 1964 (as amended) and the County Courts (Northern Ireland) Order 1980 (as amended).

⁸⁴⁴ This adopts the constitutional principle facilitating respect and co-operation across different state jurisdictions laid down in the US Constitution ("Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof", Article IV, 1).

principle or doctrine of the common law, or any other legal rule or principle arising from a source of law recognised by the courts.

(3) When in the opinion of a court having jurisdiction to review the compatibility of a law with the Constitution under paragraph (1), an Act of Parliament or of the Scottish Parliament, Assembly for Wales or Northern Ireland Assembly is wholly or in part incompatible with the Constitution, it shall issue a declaration of unconstitutionality to the extent of the inconsistency, provided that -

(a) the declaration shall be conditional on its confirmation by the Supreme Court, to whom the question shall be directly referred;

(b) in all cases except for those specified in paragraph (c) below, the declaration shall not affect the validity, continuing operation or enforcement of the provision in respect of which it is given, and shall not be binding on the parties to the proceedings in which it is made;

(c) where the declaration unconstitutionality engages with Articles 00, 00, 00, or 00, the court shall declare the provision to be invalid, in which case pending the confirmation or otherwise by the Supreme Court as required by paragraph (a) the court may grant a temporary injunction or other temporary relief to a party or may adjourn the proceedings.

(4) When in the opinion of a court having jurisdiction to review the compatibility of a law with the Constitution under paragraph (1), a law other than an Act of Parliament or of the Scottish Parliament, Assembly for Wales or Northern Ireland Assembly is incompatible with the Constitution, it shall declare that law to the extent of its incompatibility to be invalid.

(5) If any question as to the compatibility of an Act of Parliament or of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly, or any part thereof, with the Constitution arises in the course of proceedings in a court or tribunal other than the High Court in England and Wales, or the Court of Session in Scotland, or the High Court in Northern Ireland then it shall be referred to the Supreme Court for a preliminary ruling unless it is satisfied that there is no substance in the question.

(6) An appeal from any decision in the High Court in England and Wales, or the Court of Session or High Court of Justice in Scotland, or the High Court in Northern Ireland, holding an Act of Parliament or Act of the Scottish Parliament, Assembly for Wales or Northern Ireland Assembly wholly or partially incompatible with the Constitution shall be taken directly, without leave, to the Supreme Court.

(7) The Supreme Court has original and exclusive jurisdiction -

(a) in any proceedings brought by the Government of the United Kingdom seeking a ruling that any Act of the Scottish Parliament, Assembly for Wales or Northern Ireland Assembly is wholly or partly invalid under this Constitution;

(b) in any proceedings brought by the Executive of the Scottish Parliament, Assembly for Wales or Northern Ireland Assembly seeking a ruling that any Act of Parliament is wholly or partly incompatible with this Constitution.

44 Judicial Appointments and Removal

(1) A judge's salary shall not be reduced, and no adverse changes shall be made in other conditions of service during tenure of office.⁸⁴⁵

(2) There shall be a Commission established in each of England and Wales, of Scotland, and of Northern Ireland, Judicial Services Commission (collectively and individually referred to in this Article as the Judicial Services Commission)⁸⁴⁶, which -

(a) shall make recommendations on the appointment and removal of judges and perform such other functions and duties as may be provided by Act of Parliament;

(b) shall comprise a lay President, five judges from the jurisdiction of the Commission, two members of the legal profession in the jurisdiction of the Commission (not each holding the same qualification as each other), five lay members, one tribunal judge, and one non-legally qualified judicial member;⁸⁴⁷

(c) shall adopt procedures for the identification of candidates for judicial office which will ensure, so far as practicable, that adequate numbers of candidates of both sexes and from diverse racial, religious and social backgrounds are considered for appointment;

and shall be further provided for by Act of Parliament or of the appropriate devolved Parliament or Assembly.

(3) Judges are appointed -

(a) in the case of a judge of the Court of Appeal or High Court in England and Wales, of the Court of Session or High Court of Justice in Scotland, or the Court of Appeal or High Court in Northern Ireland, by the Head of State acting on the advice of the Minister of Justice following a recommendation from the Judicial Services Commission; or

(b) in the case of all other courts or tribunals, by the Minister of Justice following a recommendation from the Judicial Services Commission;

⁸⁴⁵ This re-enacts in modern language the constitutional provision in the Act of Settlement 1700 protecting the judiciary from executive penalties for handing down decisions of which the government or Parliament disapproves.

⁸⁴⁶ The existing analogous bodies are the Judicial Appointments Commission in England and Wales, the Judicial Appointments Board for Scotland, and the Northern Ireland Judicial Appointments Commission.

⁸⁴⁷ Such as a lay magistrate.

(c) and in all cases, from persons who have such qualifications as may be prescribed by Act of Parliament or of the appropriate devolved Parliament or Assembly.

(4) A judge ceases to hold office -

(a) upon attaining the age of 70 years (or, in the case of judges below the High Court in England and Wales, the Court of Session and High Court of Justice in Scotland, or High Court in Northern Ireland, such lower age as an Act of Parliament or the appropriate devolved Parliament or Assembly may prescribe); or

(b) upon receipt by the Prime Minister, Minister of Justice, or Chief Executive, as the case may be, of a letter of resignation from the judge; or

(c) upon removal from office in accordance with the relevant provisions in this Article; or

(d) upon membership of either House of Parliament or acceptance of any office or position of emolument;

(e) in the case of a judge in a court beneath the High Court in England and Wales, the Court of Session and High Court of Justice in Scotland, or High Court in Northern Ireland, upon the expiration of any fixed term for which the appointment was made without the appointment having been renewed;

subject that a judge who attains the retiring age may continue to act in any proceedings the hearing of which had commenced before attaining that age.

(5) No judge may be removed from office except on the ground of -

(a) physical or mental incapacity which is likely to be permanent or prolonged; or

(b) serious judicial misconduct; or

(c) failure in the due execution of office; or

(d) having been placed, by personal conduct or otherwise, in a position incompatible with the due execution of office.

and no judge may be removed from office except by the specified procedure in paragraph (4).

(6) A judge may be removed from office only if -

(a) in the case of a Justice of the Supreme Court, a recommendation for dismissal of the judge has been presented by the Selection Committee

provided for in Article 40(3) to the Prime Minister which is then confirmed by affirmative resolution in each House of Parliament;

(b) in the case of a judge of the Court of Appeal or High Court in England and Wales, of the Court of Session or High Court of Justice in Scotland, or the Court of Appeal or High Court in Northern Ireland, a recommendation for dismissal of the judge has been presented by the Judicial Services Commission to the Minister of Justice which is then confirmed by affirmative resolution in each House of Parliament;

(c) in the case of all other courts or tribunals, where a recommendation for dismissal of the judge has been presented by the Judicial Services Commission to the Minister for Justice, who shall then give reasons for any proposed removal and allow the judge to make representations.

(7) A judge's dismissal under paragraph (6) shall be made -

(a) in the case of paragraphs (6)(a) and (6)(b) by the Head of State;

(b) in the case of paragraph (6)(c) by the Minister of Justice, whose decision is subject to judicial review.

45 Administrative Justice

Judicial Review

(1) An Act of Parliament shall provide for

(a) judicial review of acts or omissions of persons or bodies in the performance of any public functions; and

(b) a general duty upon public authorities to give reasons for their decisions;

(c) effective remedies including the payment of compensation in cases where applications for judicial review are upheld; and

(d) a process by which application for judicial review may be made by any person having a sufficient interest in the matter to which the application relates.

Commissioner for Public Administration

(2) An Act of Parliament shall establish a Commission for Public Administration, which may operate through associated Commissioners operating in England, Scotland, Wales and Northern Ireland, and through divisions concerned with particular categories of public authority, to receive complaints of maladministration causing injustice in the public services, and to undertake

inquiries into practices of any public authority that appear to constitute unfair administration, making provision for -

- (a) its composition and membership, which shall be subject to the approval of the House of Commons or, with the consent of Parliament, by the Assemblies;⁸⁴⁸
- (b) the acts and omissions of public authorities, and all public authorities, to be subject to investigation by the Commission, unless Parliament expressly provides otherwise;
- (c) it possessing powers to require the production of documents and information from the public authorities, unless Parliament expressly provides otherwise with respect to particular areas of government;
- (d) means of effective redress, including the payment of compensation, for persons whom the Commission finds to have been adversely affected by failure of administration or unfair administration; and
- (e) an annual report to Parliament, the appropriate devolved Parliament or Assembly, or local authorities, on its work including the findings of its investigations with r recommendations for improvements in any aspect of administrative justice.

Power of Mercy

(3) The Head of State, acting on the advice of the Minister of Justice, may -

- (a) grant a pardon, either free or subject to lawful conditions, to a person convicted of an offence; or
- (b) grant a delay, either indefinite or for a specified period, from the enforcement of any sentence or order imposed on a person for an offence; or
- (c) substitute a less severe form of punishment for any punishment imposed on a person for an offence; or
- (d) remit the whole or part of any punishment imposed on a person for an offence or of any penalty, fine or forfeiture otherwise due to the Government on account of an offence.

⁸⁴⁸ In practice, this would be delegated to a committee.

PART IX

PROTECTION OF THE UNITED KINGDOM**46 The Armed Forces**

(1) Acts of Parliament shall provide for, and regulate, the Armed Forces of the United Kingdom, comprising the Royal Navy, the British Army and the Royal Air Force, together with the Territorial and Reserve Forces.

(2) Each such Act shall expire at the end of the fifth year following its enactment.

(3) Expenditure with respect to the Armed Forces shall be authorised by annual Appropriation Act.

(4) There shall be a Defence Council, consisting of the Minister having responsibility for defence (who shall chair the Council) and such other Ministers, officers in the public services or in the Armed Forces as Act of Parliament shall prescribe; and an Act of Parliament shall provide for appointments, tenure of office and conditions of office of members of the Council.

47 War and Armed Conflict Abroad

(1) Any decision of the Executive or any agency of state to commit the United Kingdom to direct participation in any international armed conflict or any international peace keeping activities shall require the prior approval of each House of Parliament.

(2) Any declaration of a state of war by the Executive under the terms of any international covenant shall be expressed by way of Order in Council, provided that that no such Order shall be made unless a draft of the Order has been approved by resolution by a two thirds majority of those voting in each House of Parliament.

(3) As early as practicable prior to the parliamentary proceedings referred to in paragraphs (1) and (2), the opinion of the Attorney General on the legal grounds for the United Kingdom's participation in the international armed conflict, international peace keeping activities, or declaration of war, as the case may be, proposed by the Executive, shall presented to Parliament.

48 Use of the Armed Forces within the State

(1) An Act of Parliament shall regulate the deployment of the Armed Forces in support of the civil authorities in the state for -

- (a) the maintenance of national security or civil order;

(b) the maintenance of essential supplies to preserve life and livelihood in a civil emergency;

(c) the undertaking of necessary work of urgent national importance.

(d) the alleviation of distress and for connected purposes arising out of natural or other disaster.

(2) The minister responsible for national security and civil order may by Order in Council direct deployment of the Armed Forces under paragraph (1) provided that,

(a) no such Order may be made unless -

(i) a draft of Order is accompanied by a certificate signed by at least two-thirds of the members of the Defence Council stating their assent to such deployment of the Armed Forces; and

(ii) a draft of the Order is approved by each House of Parliament;

(b) the Order expires at the end of fourteen calendar days after it is made, but may be renewed in the manner provided in this paragraph.

(3) Nothing in this Constitution prevents the taking of any measures necessary for the defence of the country from imminent or actual invasion by a foreign power.⁸⁴⁹

(4) No armed force of any country outside the United Kingdom, nor any weapons or equipment for the use of such force, shall be based in, or used from the land, airspace or territorial waters of, the United Kingdom, the other British Islands or any Overseas Territory or their territorial waters.

49 The Police and Security Services

The Police Service

(1) An Act of Parliament or, in the case of Scotland and Northern Ireland, an Act of the Scottish Parliament or Northern Ireland respectively, shall provide for -

(a) the establishment, organisation, governance, and financing of such number of police authorities or directly elected Police and Crime Commissioners, serving such areas, as the Act shall prescribe, whose duty shall be to secure the maintenance of an efficient and effective police force for its area;

⁸⁴⁹ Countries such as France who have experienced invasion in recent history may require a declaration of Siege to accompany such measures, which in the case of the United Kingdom might be issued by Order in Council.

(b) the selection, appointment, and conditions of service of police officers and, in particular, procedures for the identification of candidates which will ensure, so far as practicable, that adequate numbers of candidates of both sexes and from diverse racial, religious and social backgrounds are considered for appointment;

(c) procedures whereby each police force can be held accountable with respect to the performance of its functions to such body of persons holding elected membership of Parliament, or appropriate devolved Parliament or Assembly, or local authority as the Act shall prescribe;

(d) the establishment of independent bodies with the duty of investigating, on their own initiative and on complaints, acts, omissions and practices in connection with the performance of their functions by police officers or police authorities, and means of redress including payment of compensation for persons adversely affected by the defective performance of such functions.

The Security Services

(2) For the purposes of this Constitution, the expression "national security" means the protection of the territorial integrity of the state, the safety of its citizens generally, and the maintenance of its system of government against espionage, sabotage or subversion by methods aimed at undermining that system of government, or against the use of violence in pursuit of political ends or against or between members of any group defined by race, ethnicity, national origins or religious beliefs; and the expression "security service" means those employed by the state for the purpose of national security.

(3) The security services shall be structured and regulated by Act of Parliament.

(4) The security services shall act in all matters in accordance with the law, including international agreements binding on the United Kingdom, and no member of any security service may obey a manifestly illegal order.

(5) The Prime Minister shall -

(a) establish a National Security Committee of the Cabinet to exercise a general direction over the activities of the security services, which shall be entitled to have access to all information and all records relating to the activities of security service

(b) submit annual report to Parliament concerning the activities of the security services, which may exclude any matter the publication of which the National Security Committee, after consultation with the Inspector-General of Security Services, considers to be prejudicial to the proper performance of the functions of any such service.

(6) An Office of Inspector General of Security Services, appointed by the Head of State on the advice of the Prime Minister, shall be established by Act of Parliament making provision for such functions, powers and resources as may be necessary to

(a) keep under review the operational activities of the security services, and

(b) investigate complaints arising from any of their activities or policies that appear to be unlawful or unreasonable,

(c) inquire into any matter at the Prime Minister's request connected to the security services, and

(d) submit annual reports with any recommendations to the National Security Committee.

Political Neutrality

(7) The police service and the security services shall be politically neutral, and neither they nor any of their members shall act in a manner calculated to further the interest of any particular political party.

50 Emergencies and Suspension of the Constitution

Suspension of the Constitution

(1) Where, in the opinion of the Prime Minister, in the United Kingdom or any part of the United Kingdom -

(a) a grave threat to national security or public order has arisen or is likely to arise; or

(b) a grave civil emergency has arisen or is likely to arise,

the Head of State may, by Order in Council, make provision, to the extent strictly required by the exigencies of the situation and reasonably justified in a democratic society, suspending, in whole or in part, absolutely or subject to conditions, any of the provisions of this Constitution set out in paragraph (2).

(2) Subject to paragraph (3), the following provisions may be suspended under this Article -

(a) Article 36 (Bill of Rights);

(b) Articles 19 with respect to the duration of Parliament and its electoral cycle, and 31(5) with respect to the Assemblies;

(d) the provisions of an Act made under Article 53 in so far as it affects any provision of the Bill of Rights.

(3) The following provisions set out in Article 36 may not be suspended under this Article –

(a) Paragraph (1) (*Right to life*), except in respect of deaths resulting from lawful acts of war;

(b) Paragraph (2) (*Freedom from torture*);

(c) Paragraph (3)(a) (*Freedom from slavery*);

(d) Paragraph (4)(f) (*Treatment of persons in detention*);

(e) Paragraph (5)(b) to 5(f) (*Right to fair hearing in criminal cases*);

(f) Paragraph (6) (*Prohibition of retrospective offences*);

(g) Paragraph (8) (*Freedom of thought*);

(h) Paragraph (18) (*Equality*).

(4) Unless the urgency of the situation makes it impracticable to obtain such approval, an Order in Council under this Article shall not be made, unless a draft of the Order has been approved, by resolution, by a two-thirds majority of those voting in each House of Parliament.

(5) An Order in Council that has been made without having been approved in draft under paragraph (4) ceases to have effect unless, within 14 days after it is made, it is confirmed, by resolution, by a two-thirds majority of those voting in each House of Parliament.

(6) The validity of an Order in Council made under this Article may be challenged in proceedings for judicial review.

(7) An Order in Council made under this Article has effect only for such time as shall be specified in the Order; and the duration of the Order may be extended, by resolution, by a two-thirds majority of those voting in each House of Parliament, if, and to the extent that, the making of a new Order in Council would be justified under this Article.

Detention in Emergencies

(8) Where a person is detained under an Order in Council made under this Article –

(a) the person shall, as soon as reasonably practicable and not more than 7 days after commencement of the detention, be provided with a statement in

writing, in a language that the person understands, specifying in detail the grounds of the detention;

(b) not more than seven days after the commencement of the detention, a notification shall be published in newspapers having general circulation in the United Kingdom stating that the person has been detained and the particulars of the provision of law under which the detention is authorised;

(c) not more than 3 weeks after the commencement of the detention and thereafter during the detention at intervals of not more than 6 months, the detention shall be reviewed by an independent and impartial tribunal, the members of which shall be appointed by the appropriate Judicial Services Commission;

(d) the person shall be afforded reasonable facilities to consult a representative of his or her choosing and to appear, in person or through such a representative, before the tribunal.

(9) The tribunal reviewing a detention under this Article may make recommendations concerning the necessity or expediency of continuing the detention, which shall be communicated to the detainee; and unless an Act of Parliament or the Order in Council otherwise provides, the authority by which the detention was ordered, after consideration of the recommendations, is not obliged to act in accordance with them.

PART X

CONSTITUTIONAL CHANGE**51 Commission for Democracy**

(1) There is established by this Constitution a Commission for Democracy, whose composition shall comprise -

- (a) not more than 16 members;
- (b) members to be appointed, in equal numbers from among their members, by the House of Commons and the Second Chamber, as soon as practicable after the House first meets following a general election;
- (c) co-opted members who are not members of Parliament, but the co-opted members shall not exceed one third of the total membership of the Commission;
- (d) a Chairman who shall be elected by the members from among their own number;

provided that no minister shall be a member of the Commission.

(2) The Commission shall have functions and duties to -

- (a) keep under review the working of the Constitution and the Constitutional legislation;
- (b) report its findings annually to Parliament, together with any recommendations for the amendment of the Constitution or such legislation; and
- (c) prepare Codes of Conduct and other guidelines concerning the standards of conduct with which persons may reasonably be expected to comply when holding a public office to which they have been appointed or elected by virtue of being persons elected to either House of Parliament, to an Assembly or to a local authority.

52 Amendment to the Constitution

(1) An Act of Parliament may amend this Article, Part VII (the Individual and the State), Article 14(1) to (13) (Head of State), Articles 7, 8, 9 and 12 (the Executive), Articles 15, 16 and 17 (Legislative Power), Article 30 (European Union), Articles 31, 32 and 33 (Devolved Government), Article 35 (Local Government), Articles 25, 26 and 27 (Elections), if the Bill for the Act is supported by -

(a) the votes of not less than two-thirds of all the members of the House of Commons at its final reading therein, and

(b) by the votes of not less than two-thirds of all the members of the Second Chamber at its final reading therein -

(2) An Act of Parliament may amend any of the provisions of this Constitution not mentioned in paragraph (1) if the Bill for the Act is supported by -

(a) the votes of not less than two-thirds of the members of the House of Commons present and voting at its final reading therein, and

(b) by the votes of not less than two-thirds of the members of the Second Chamber present and voting at its final reading therein -

(3) A Bill for the amendment of any provisions of Articles 31 to 34 (Devolved Government) which has been passed in accordance with paragraph (1) or (2) as the case may be, shall not be presented to the Head of State for Assent unless it has been ratified by at least two of the Assemblies by the affirmative votes of a majority of the members present and voting in each such Assembly.

(4) A Bill for the amendment of this Constitution which provides that any part of the United Kingdom should cease to be so, and which has been passed in accordance with paragraph (1), shall not be presented to the Head of State for Assent unless it has been approved by a majority of the registered voters in that part of the United Kingdom voting in a referendum.

(5) A Bill for the amendment of this Constitution shall not be presented to the Head of State for Assent unless there is endorsed upon it, as the case may require -

(a) a certificate of the Speaker of the House of Commons that paragraph (1)(a), (2)(a), (3) or (4) has been complied with; and

(b) a certificate of the Speaker of the Second Chamber that paragraph (1)(b) or (2)(b) has been complied with.

(6) For the purpose of this Constitution, the expression "amendment", in relation to this Constitution or any Article or provision of any Article, includes -

(a) revocation, with or without re-enactment, or the making of different provision in lieu;

(b) modification, whether by omitting, or altering, or inserting additional provision, or otherwise; and

(c) suspension of operation for any period or the termination of any such suspension.

53 Constitutional Bills

(1) A Constitutional Bill shall not be presented to the Head of State for Assent unless it is passed, at its final reading in both the House of Commons and the Second Chamber, by a majority of all the members of the House.

(2) If a Constitutional Bill, which has been passed by one House of Parliament, is not passed by the other House, the Bill shall be returned to the House by which it was passed, endorsed with the certificate of the Speaker of the other House, signed by the Speaker, that the Bill is a Constitutional Bill.

(3) For the purposes of this Constitution, the expression "Constitutional Bill" means a public Bill which, in the opinion of the Speaker of the Second Chamber, whilst not containing an amendment to the Constitution,

- (a) is required by or under this Constitution to be enacted; or
- (b) gives detailed effect to any Article of the Constitution; or
- (c) affects any provision in Article 36 (Bill of Rights); or
- (d) affects the functions of the Head of State or the composition, powers or jurisdiction of the House of Commons, the Second Chamber, the Assemblies, the Supreme Court or the judiciary;

and the expression "constitutional legislation" shall be construed accordingly.

Part III

The Preparation, Design and Implementation of a Codified Constitution

Summary

The policy issue

At the 2010 general election two of the main political parties, Labour and the Liberal Democrats, expressed their support for a written constitution for the UK and the intention to take steps towards the preparation of such a document. On the Conservative side, the earliest calls for a written constitution came from some of its leading figures, most notably the former party chairman and Lord Chancellor Lord Hailsham in his speeches and writings in the late 1970s. The idea of codifying the constitution - one that has remained famously unwritten since the seismic written settlements in Magna Carta 1215, the Bill of Rights 1689 and the Acts of Union 1707 and 1800 and one which some see as no longer reflecting the society it serves or equipped to deal with modern political conditions - is one that is now firmly on the political agenda for discussion and debate.

Aim of Part III

The case for and against written constitutions in general, and the arguments about a written constitution for the UK in particular, has been considered above (in Part I) and in two ancillary reports to this work, one providing a literature review of the subject;⁸⁵⁰ another on the existing constitution and its characteristics.⁸⁵¹ However if the decision were taken to try to introduce a codified constitution, the most challenging aspect to the debate in terms of practical politics is the process that might be adopted in its preparation, design and implementation. This is a complex subject that requires a consideration of a range of different factors, from technicalities of law to issues of political science and social psychology, drawing on the earlier experiences of constitutional engineering both in the UK and abroad. Part III puts to one side consideration of the merits and demerits of codification, and focuses on how it might be achieved if it were deemed a desirable outcome.

Framing the initiative and forms of codification

Any formal initiative to codify the UK constitution will need to come from a future government that has a clear understanding of the issues and problems such a project will entail, and has a clear programme of management and set of solutions to deal with them. The Cabinet Committee that sets in motion the project will need

⁸⁵⁰ See ancillary paper, *A Literature Review*.

⁸⁵¹ See ancillary paper, *The Existing Constitution*

to decide at an early stage precisely what type of written or codified constitution it will be endorsing, for the nature and scope of the document will to a large extent determine the procedures and processes that are best designed for its preparation and successful outcome. In this Part III, the alternative models or types of codified document illustrated in the three draft codified constitutions in Part II are discussed, being firstly, a non-legal constitutional code setting out the essential existing elements and principles of the constitution and workings of government (a non-legal Constitutional Code); secondly, a consolidation of existing laws of a constitutional nature together with a codification of essential constitutional conventions and principles into one Act of Parliament (Constitutional Consolidation Act); and thirdly, a document of basic law by which the country is governed and the relationship between the state and its citizens, with an amendment process and elements of reform (Written Constitution).

The moment for codification

The question of timing any such initiative would be crucial to its success. While too much can be made of the need for some "constitutional moment", yet political events and pressures will play an important role in prioritising the measure, even if a government is ideologically committed to the proposal and it had been mandated at the previous general election. Currently, the critical state of the national economy, and other constitutional issues such as the UK's relations with the European Union, and the forthcoming referendum on Scottish independence, are far greater concerns. Each however, together with unforeseen political crises, has the potential to serve as a catalyst for demands to commit the UK system of government into a new constitutional document.

A willingness to co-operate by the parties

To operate effectively and to endure, a constitution must be embraced across the political parties. For this reason any strategy for codification must address the need for inter-party talks and communication, and await circumstances in which there exists a pre-disposition across the parties to reach agreement. Facilitating a process whereby the political parties might co-operate in what is one of the most adversarial political systems in the world is not easy, but there are clear lessons to be learnt from earlier occasions where party leaders were in agreement on the need for some reform or initiative of a constitutional nature.⁸⁵²

Gathering public trust and opinion

The role of public opinion on this subject operates at different levels. While there is evidence that popular support for a written constitution exists,⁸⁵³ it is less as an electoral issue than as an expression of discontent with the unintelligible nature of the constitution, feeding a sense of alienation from the political process. The parties therefore may view the drawing up of such a document as a means of

⁸⁵² See the examples discussed below including the recent pre-IPSA and post-Leveson talks.

⁸⁵³ See the three polls taken in 2009-10 by YouGov, ICM and the Ministry of Justice cited below, p.39.

informing and engaging the public, and in helping reverse the current malaise in public confidence in government and its politicians generally. Deliberative exercises on constitutional affairs, such the proposal for a Constitutional Convention examined by the Committee this year,⁸⁵⁴ could play a useful role in further testing opinion on the constitution, and allowing representatives of the parties to engage in discussions with one another as well as with members of the public, representatives of civil society and professional groups.

The Commission or body that prepares the document

A decision on which type of public body is best situated to carry out the work of drafting the codified constitution will be determined by the working practices it will be required to follow, and these in turn will largely depend on the nature of the document being prepared. A minimalist document, such as a non-legal Constitutional Code, would clearly require a less intensive process of consultation and approval than would be the case for an entrenched written constitution. The various options previously used for constitutional reforms in the UK, and ideas drawn from constitution building precedents abroad, are considered for each of the three blueprints. Whichever body might be entrusted with constitutional codification would need to address a number of core drafting issues on length, level of detail and underlying principles, some of which might be set out in the terms of reference given it by the government.

Conclusions and recommendations

Although the primary aim of this programme of research has been to set out the issues and options involved in the preparation, design and implementation of a codified constitution, if a decision were taken by a future government to act on this enterprise, a series of conclusions and recommendations on the most appropriate processes to be adopted is set out in a concluding section.

⁸⁵⁴ House of Commons Political and Constitutional Reform Committee, *Do We Need a Constitutional Convention for the UK?*, 2012-13, HC 371.

Ancillary paper: Case Studies on Constitution Building

Ancillary to Part III, twenty-three case studies on issues of process relating to constitution building, and precedents from earlier experiences in the United Kingdom and in other countries, have been prepared to which reference is made in what follows for more detailed analysis. The subjects dealt with by the case studies are as follows:

- A The Existing Process of Constitutional Reform
- B The Use of Royal Commissions on Constitutional Affairs
- C The Role and Working of the Law Commission
- D The Making of the Devolved Scottish Constitution
(Unofficial Constitutional Convention)
- E The Welsh Assembly Powers and Electoral Arrangements
(Independent Commission)
- F A Northern Ireland Bill of Rights
(Human Rights Commission)
- G The Australian Republican Proposal
(Constitutional Commission and Referendum)
- H The Australian Proposal for a Human Rights Code
(National Human Rights Consultation Committee)
- I New Zealand's Electoral Reform Process
(Royal Commission & referendum)
- J Belgium's Constitutional Revision
- K The Making of the Spanish Constitution 1978
(‘Fathers of the Constitution’)
- L Germany's Post-Unification Constitutional Revisions
(Joint Parliamentary Committee)
- M Constitution-building in the canton of Geneva
(Elected Assembly and popular engagement)
- N The Adoption of the Swiss Federal Constitution 1999
- O Iceland: Crowd-Sourcing a Constitution
(Elected Council and Popular Engagement)
- P Post-apartheid Constitutional Reform in South Africa
(Negotiating Council and Technical Committee)
- Q Ireland's Constitutional Convention, 2012-14
- R Referendums and the Constitution
- S Comparative Constitutional Bills of Rights
- T Public Opinion and Codifying the Constitution
- U Constitutional Codification and Deliberative Voting
- V Conservatism and the Constitution
- W The Left and the Constitution

Case studies can be found at www.parliament.uk/pcrc-constitution

1 Nature and scope of the work

01 If a future UK government were to consider taking steps to codify the constitution, an initial decision at the same time would need to be made by the Prime Minister and Cabinet on the general nature and scope of the document it was proposing to be drawn up. This is because there are several different schemes of codification that such a document could take, and the options for how best to prepare, design and implement this document will differ significantly from one another.

02 For the purposes of this research, three different models of codification⁸⁵⁵ have been identified, illustrative drafts of which are set out in Part II (summarised below), and are now considered in the context of their preparation, design and implementation.

<p>A. Non-legal Constitutional Code A non-legal code setting out the essential existing elements and principles of the constitution and workings of government</p> <p>B. Constitutional Consolidation Act A consolidation of existing laws of a constitutional nature together with a codification of essential constitutional conventions and principles into one Act of Parliament</p> <p>C. Written Constitution A document of basic law by which the country is governed and the relationship between the state and its citizens, with an amendment process and elements of reform</p>

03 All three models would set out the framework within which the different branches of government and public administration operated. The common purpose of all would be clarity and accessibility for everyone on what the rules and practices of the constitution are. Each would provide an "organisation chart" for the structure of UK government and its relationship with citizens, describing the powers of the core political institutions, and the conditions upon which they are exercised and controlled.

04 Models A and B would not represent any substantive change in the law and working of the constitution. The former would simply be an authoritative guide on constitutional practice, particularly in those areas where it is useful to have unwritten conventions more clearly set out for public understanding. It could be

⁸⁵⁵ On terminology, references to a "codified" or "written" constitution are essentially interchangeable expressions. There has been some debate in the UK about the best short-hand expression to describe the nature of the existing UK constitution, many pointing out that to say it is "unwritten" is strictly speaking misleading as many constitutional rules are to be found written down in Acts of Parliament or administrative codes: see the House of Lords Constitution Committee, *Reviewing the Constitution: Terms of Reference and Method of Working*, 2001-02, HL 11, paras. 20-21. However, comparative constitutional studies still most commonly use the terms written/unwritten to classify and distinguish between states with and without a documentary constitution. For the purposes of this Report model C has been referred to as a "Written Constitution" to reflect it being most closely typical in nature to most documentary constitutions around the world.

seen as an evolutionary development of the Cabinet Manual published in 2010,⁸⁵⁶ changing its status from an internal to a public document, making its contents more comprehensive in terms of constitutional subject matter, and being submitted for formal approval by both Houses of Parliament.

05 Model B would be a consolidating statute, re-enacting the major elements of existing statutory law on the constitution, and additionally incorporating other relevant regulation such as some fundamental parliamentary standing orders, and codifying some core conventions. The legal status and means of enforcing this document would remain as at present, depending on the nature of the regulation in question. It would no doubt acquire a special status in matters of judicial interpretation, as a constitutional statute of great importance, whose provisions could only be changed by a later Act of Parliament expressly stating that it was repealing or amending certain sections.⁸⁵⁷ As a document, it could be re-issued by the Stationary Office from time to time in its current state.

06 Model C, containing a special status in law and amendment procedure, would be consistent with the type of written constitution almost universally adopted in the other western democracies.⁸⁵⁸ Its substance could be similar to that of model B but the text would require re-writing to redraft some of the more outdated statutes of constitutional law in modern and coherent fashion. It would also provide the opportunity, if so wished, to consider issues of modernisation and reform, particularly where a consensus exists on the need for change but a resolution is still pending (such as over the future of the House of Lords).⁸⁵⁹

07 Since a non-legal code (model A) or a consolidation of existing law and practice (model B) would not represent any substantive change in the workings of government or UK constitutional law, a less rigorous process of preparation would be required than for a documentary constitution that afforded itself a higher status in law and special amendment procedure (model C) together with any other novel elements taking place at the same time.

08 In what follows, consideration is given to the questions and options that would arise in the preparation, design and implementation of a codified constitution for the UK. These concern the initiation of a policy to codify the constitution; the issues in determining the content of the document; the type of commission or other body that would be best placed to draft the document; how the necessary cross-party negotiations and agreement might be achieved prior to its preparation; and what level and type of public involvement should form part of the process.

⁸⁵⁶ Cabinet Office, 2010, and see House of Commons Political and Constitutional Reform Committee, *Constitutional Implications of the Cabinet Manual*, 2010-12, HC 734.

⁸⁵⁷ See Francis Bennion, *Statutory Interpretation* (London: Butterworths, 5th ed. 2007).

⁸⁵⁸ For the text of comparative constitutions see *International Encyclopaedia of Laws: Constitutional Law* (ed. Andre Alen, Kluwer Law International).

⁸⁵⁹ This might include the constitution of the House of Lords, the inclusion of a UK bill of rights, a codification of central-local government relations, the state of the Union in the event of Scottish independence, and settlement of the UK's position in Europe.

2 The initiative for codifying the constitution

The Government's initiative

09 In the UK system of government, the initiative behind any successful constitutional innovation virtually always must come from the Prime Minister and Cabinet.⁸⁶⁰ This would be true in the implementation of any of the three models of codification described above. A non-legal constitutional code would in essence be a declaration and public commitment by the government to abide by its provisions, similar to the Ministerial Code. So far as models B and C are concerned, any major legislation on the constitution virtually always comes in the form of a government Bill, rather than from backbench private Member's bill. This is a practice simply reflecting political reality, which is that the government controls the legislative timetable of the House of Commons, will have a special interest in changes to the rules by which it operates, and has a working majority in the House to support its proposals and block those which lack its endorsement.⁸⁶¹

10 This is not to say that external pressures on the government will not have an important part to play in setting the government's agenda. The development of any particular constitutional policy of the party (or parties) in government, especially if it is of a major importance, is likely to have had a long gestation period. The earliest idea behind the proposal may have originated in academe, a policy think-tank, or a speech by a well-known politician or commentator. It may then be taken up on the backbenches of the House of Commons and House of Lords in motions for parliamentary debate or private Members' bills, and in one or more inquiries conducted by relevant select committees.

11 Parliamentary, media and other forms of public opinion have an important role to play in raising the profile of any constitutional proposal. Events may generate the necessary sense of urgency to deal with a particular political or constitutional problem. This was true, for example, in the government initiative behind the Parliamentary Standards Act 2009 following the public outcry over parliamentary expenses, and the current press standards reforms following the Leveson inquiry and press hacking scandal in the past two years.

⁸⁶⁰ There have been a few notable exceptions such as the private members bill of the late Norman St John Stevas that became the National Audit Act 1983.

National Audit Act 1983

⁸⁶¹ See Robert Blackburn and Andrew Kennon, *Parliament: Functions, Practice and Procedures* (London: Sweet & Maxwell, 2nd ed., 2003), chapter 7.

Political interest in codifying the constitution

12 The idea of codifying the constitution has steadily gathered momentum in political circles over the past forty or so years.⁸⁶² It first came to prominence among Conservatives in 1976 when the former party chairman and Lord Chancellor Lord Hailsham gave a high profile televised lecture entitled "Elective Dictatorship" arguing that the unwritten constitution had outlived its usefulness, contained too few checks and balances, and needed replacing by a written constitution. During 1980s the Liberal Democrats came to adopt the proposal as its official party policy that continues to this day.

13 On the Labour side, during the 1990s several Labour backbenchers were publicly advocating some form of written constitution, leading up to John Smith's leadership of the party in 1992-94 when he publicly spoke of the need for a new constitution for a new century. In 2009 the Labour Prime Minister Gordon Brown gave his support for a written constitution in a statement on constitutional renewal in the House of Commons, and the party's election manifesto in 2010 promised to "set up an All Party Commission to chart a course to a Written Constitution".

14 There is therefore a considerable level of support across the political parties on the desirability of codifying the constitution. This is likely to remain the official party policies of Labour and the Liberal Democrats at the forthcoming general election in 2015. Though this is not a policy or principle espoused by the Conservative leadership, yet there is a high level of interest among Conservative members for related constitutional reforms, particularly ones that better express the UK's national identity such as a Bill of Rights to replace the Human Rights Act and a delineation of the UK's membership of Europe. The idea of a codified constitution is neither Left nor Right in terms of social or political ideology. Indeed, it can be viewed alternatively as a progressive reform of modernisation on the one hand, or a conservative measure for consolidating British values and the status quo on the other.

The need for strong leadership

15 Once the Cabinet agrees to take forward a constitutional innovation, it would seem as a matter of historical observation that the greater the importance of the measure, the greater the need for strong leadership by the Prime Minister personally (or the Cabinet minister responsible with the Prime Minister's active support) to pilot the measure through to implementation.⁸⁶³

16 However this most certainly does not mean that the measure should be drawn up and implemented in a high-handed manner, and driven through Parliament in the teeth of opposition. Such a process for codifying the constitution

⁸⁶² For a discussion of party political attitudes towards the constitution see Robert Blackburn (ed), *Case Studies on Constitution Building* (2014) (hereafter 'Blackburn, *Case Studies*') ancillary to this work, W and X; and *Literature Review*.

⁸⁶³ On the passage of the major constitutional legislation in the 20th century, see Philip Norton (ed), *A Century of Constitutional Reform* (Parliamentary History, Wiley-Blackwell, 2011).

would be deeply counter-productive. There is a strong expectation that any constitutional innovation should be based on broad public and cross-party consultation and, so far as possible, common agreement, because it affects the rules of the political game by which all parties abide.⁸⁶⁴ If a constitutional changes or innovation is to endure beyond the lifetime of a particular government, it must have the backing, or at least acquiescence, of the main political parties.

17 What would be required in terms of political leadership is considerable managerial, personal and tactical skills to facilitate the necessary cross-party negotiations and secure broad agreement. This is so because, whatever the ostensible levels of cross-party support, the proposal for a codified constitution of any nature would be bound to arouse some strong reactions and dissent within Parliament, and is certain to raise issues of controversy and disagreement.⁸⁶⁵ This would be especially so with respect to a written constitution introducing any innovation or novelties, even if only in the formulation of a special amendment process (model C).

Is a constitutional moment required?

18 It is commonly said that written constitutions around the world only ever come into existence in response to some revolutionary event or national independence - a "constitutional moment", as this is usually termed. The inference is, therefore, that without any such convulsion, the UK will not act to put its constitutional arrangements into a codified or written documentary form.

19 Hopefully a traumatic event of such magnitude will never occur in the UK. However, it is certainly conceivable that a catalyst of lesser proportions, coming against a backdrop of growing cross-party interest in the idea of codifying the constitution, might stimulate action by a future government. It is difficult to forecast what such an event might be, and of what nature (economic, political, environmental or psychological), but it could include a dramatic worsening of the UK or Europe's financial crisis,⁸⁶⁶ Scottish independence, withdrawal from the EU, a change in royal Head of State, or a combination of several factors arising simultaneously.

Popular pressures

20 In terms of popular opinion there is a low public salience of constitutional issues generally.⁸⁶⁷ This is unlike many other countries such as the USA where the constitution is a matter of great pride, viewed as a source of protection and liberty. This phenomenon is largely a product of the way in which the British state educates its citizens today, with little or no constitutional history from Magna Carta onwards in the compulsory school curriculum, and of course the lack of a written

⁸⁶⁴ R. Blackburn and R. Plant (eds), *Constitutional Reform* (London: Longman, 1999), pp.213ff.

⁸⁶⁵ Methods to facilitate cross-party co-operation and agreement with lessons from past inter-party talks on constitutional changes are considered below.

⁸⁶⁶ Iceland's financial collapse in 2008 precipitated its current constitutional experiment, it might be noted: see CRA O.

⁸⁶⁷ For further analysis, see CRA U.

constitution itself renders the existence, content and very concept of the UK constitution inaccessible and unintelligible to most people.

21 As is discussed below, opinion polling shows consistent support in principle for codifying the constitution.⁸⁶⁸ However, the depth of its concern or priority as a government initiative is low in comparison to other matters of public policy, especially on improvements in health care, education and the economy. It would seem there are few votes to be won by the parties by offering in their election manifestos to codify the constitution. However none of this means that people lack an interest in political affairs, or that most people do not have views on the workings of the system of government and questions of citizenship. The areas that provoke the strongest feelings are the credibility of their politicians, standards in the public services (especially health and education), and the UK's position in the world (in other words, international relations, questions of migration, and the UK's relationship with Europe).

22 If there is little prospect of popular pressure driving the political parties to act on codifying the constitution, nonetheless there is deep interest in improving the quality of government and making it more responsive to public concerns. The inclusive work of a constitutional convention taking place prior to any government initiative, or a process of deliberative public engagement undertaken by whatever public body was set up by the government to prepare the draft of a codified constitution, might serve to galvanise a higher interest in the subject, not least from media discussion and coverage of the issues, concentrating on their everyday relevance to citizens.

Engaging the judiciary

23 An important component in the early stages of any government initiative for a codified constitution of a legal nature (models B and C) will be to involve and hold talks with the senior judiciary. The key judicial office holders today are the Lord Chief Justice in England and Wales, the Lord President of the Court in Session in Scotland, and the Lord Chief Justice of Northern Ireland, together with the President of the Supreme Court of the UK. In England and Wales, the Lord Chief Justice is head of the judiciary and, since the termination of the judicial functions of the Lord Chancellor under the Constitutional Reform Act 2005, is the pivotal figure in representing judicial opinion.

24 The Supreme Court judges headed by its President already serve as the final court of appeal across the three UK legal systems in cases of a constitutional nature (such as jurisdictional disputes between the UK and regional governments under the devolution legislation, or in applying the Human Rights Act), and in the event that an written constitution was enacted with a fundamental status in law, they would be entrusted with upholding its provisions. The failure of the Cabinet Office to consult the judiciary prior to the government's announcement of intent to abolish the office of Lord Chancellor in 2003 is now accepted to have been a

⁸⁶⁸ See para. 175 and Blackburn, *Case Studies*, U.

serious gaffe⁸⁶⁹ in their implementation of policy, needlessly held up the process of reform by creating a major public controversy and disquiet at the high-handed methods of the executive.

25 In special circumstances, the Lord Chief Justice (or his counter-parts in Scotland and Northern Ireland) has the statutory authority to make representations directly to Parliament. Under section 5 of the Constitutional Reform Act 2005, he "may lay before 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 that part of the United Kingdom."⁸⁷⁰ However, in practice this is limited to extreme situations of some conflict of opinion arising, and is of limited use in facilitating dialogue between the judges and politicians.

26 The previous Lord Chief Justice, Lord Judge, has told the House of Lords Constitution Committee⁸⁷¹ that, unlike the situation before 2005, when the Lord Chancellor was head of the judiciary and could represent judicial opinion regularly at the highest level of government, today there is nobody qualified to offer advice to Cabinet on how a particular proposal may impact on the judiciary. Furthermore, now that Justices of the Supreme Court (formerly Law Lords) are no longer members of the House of Lords, neither may they express advice and judicial opinion directly to Parliament. A consequence of the Constitutional Reform Act changes, therefore, has been to isolate the judiciary from the ordinary processes of law reform. In his oral evidence Lord Judge gave some examples of policy decisions in government where judicial advice of the practical consequences were not taken into account, including cuts in legal aid and restrictions in the public funding of QCs that had resulted in longer trials and a greater net public expense.

27 There is no reason to suppose that the senior judiciary and justices of the Supreme Court would oppose or feel uncomfortable at the prospect of applying a documentary constitution, for (as stated above) the court already has experience of applying a higher nature of constitutional law in supervising the devolution arrangements and serving as final court of appeal under the terms of some Commonwealth constitutions. The preparation and passage of the Human Rights Act during 1997-98, conferring new powers of judicial review upon the judiciary, worked particularly smoothly, supported by an easy dialogue between ministers, parliamentarians and the judiciary due to the former position of the Lord Chancellor in Cabinet (and playing a pre-eminent part in the government's constitutional reform programme) and the former Law Lords able to participate in parliamentary debate.

⁸⁶⁹ Or "a complete mess-up" as the Cabinet Secretary at the time has described it: see House of Lords Constitution Committee, *Cabinet Office and the Centre of Government*, 2010-12, HL 30, p.30.

⁸⁷⁰ In relation to Scotland those matters do not include matters within the legislative competence of the Scottish Parliament, unless they are matters to which a Bill for an Act of Parliament relates; and in relation to Northern Ireland those 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.

⁸⁷¹ January 29th, 2013.

28 New forms of judicial consultation and dialogue will therefore need to be developed to ensure that the legal and judicial implications of codifying the constitution have been fully taken into account in formulating the government's initiative. Some implementation issues might be discussed at the same time, such as an education programme across the senior courts on the implications of constitutional review (as preceded the entry into force of the Human Rights Act in 2000, two years after its enactment), and the need to make changes to the terms of the judicial oath of office under the new constitutional arrangements.

Future prospects

29 The immediate prospects for a government acting on this issue, then, rest heavily on the ideological commitment of party leaders, unless some unforeseen catalyst or crisis raises it into an electoral issue. The amount of government and parliamentary time and effort involved in preparing and implementing a codified constitution, particularly if it is of the nature described as models B and C above, would be considerable, and could easily be seen as an unnecessary distraction from more urgent business of government. If there were steady political momentum behind the proposal, however, the most likely scenario over the next few years would be for the party or parties in government to set up one or more forms of inquiry into the subject, and an independent constitutional convention be established as a means of expressing solidarity around the policy and clarifying the general principles of common agreement on the form and content of the code.

3 The body entrusted with drafting the document

30 Once a future Cabinet might agree to start a process by which the constitution was to be codified, some important preliminary decisions would need to be reached almost immediately. One of these would be to settle the nature and scope of the document (which it might be, as suggested above, a non-legal Constitutional Code, a Constitutional Consolidation Act, or a Written Constitution). Only in the light of this decision, could it be decided what type of public body was best suited to be entrusted with the delicate task of preparing the document.

31 There are a wide number of public bodies that have been appointed by past governments for inquiries into constitutional affairs, designed to consult and bring forward recommendations. They include Royal Commissions, Independent Commissions, and Speaker's Conferences. A parliamentary select committee has also been used on occasion.⁸⁷² The Law Commissions, in England and in Scotland, work on law projects referred to them by the Justice Secretary.⁸⁷³ Operating independent of government a cross-party Constitutional Convention including representatives of civil society worked on Scottish devolution issues prior to the Scotland Bill being framed in 1997-98.⁸⁷⁴ The House of Commons Political and Constitutional Reform Committee has suggested a government-initiated Constitutional Convention with a strong element of public participation be established to review and recommend a new and more lasting settlement for regional government across the UK.⁸⁷⁵ Abroad, a number of public bodies have been entrusted with constitution-building projects, including specially established Constitutional Assemblies and Constitutional Commissions.⁸⁷⁶

The Cabinet Office

32 Initial consideration, however, should be given to the role of the Cabinet Office. In terms of government responsibility for political and constitutional reform, in the present Parliament it is the Deputy Prime Minister and a Minister of State who are the lead ministers, both of whom are based in the Cabinet Office. One of the key functions of the Cabinet Office, as set out in its Departmental Business Plan for 2011-15 is to 'Reform our political and constitutional system'. The Deputy Prime Minister chairs the Cabinet Home Affairs Committee whose terms of reference include consideration of issues relating to constitutional and political reform.

33 Within the Cabinet Office, these two ministers receive support from the Constitutional Group, transferred from the Ministry of Justice in 2010-11,

⁸⁷² These types of body are discussed below.

⁸⁷³ See below, and Blackburn, *Case Studies*, C.

⁸⁷⁴ See ancillary Blackburn, *Case Studies*, D.

⁸⁷⁵ *Do We Need a Constitutional Convention for the UK?*, 2012-13, HC 371.

⁸⁷⁶ See below and Blackburn, *Case Studies*, on overseas precedents.

comprising a Constitution Office and four units beneath it (Elections and Democracy, Parliament and Constitution, Electoral Registration Transformation, and Devolution Strategy). In the next Parliament, following the expected 2015 general election, ministerial and civil service responsibility for constitutional affairs is likely to revert to the Ministry of Justice if there is a change of party or parties in government.

34 While the Cabinet Office remains the lead body for constitutional reform, this can also at different times fall within the remit of various other departments, depending on the issue involved. For example, if a matter of European Union law is involved, the Foreign and Commonwealth Office will be involved. The Ministry of Justice has responsibility for constitutional affairs not covered by the Deputy Prime Minister, under the Lord Chancellor and Secretary of State supported by a Minister of State who currently is also Leader of the House of Lords.

35 Even if responsibility for constitutional reform moves back to the Ministry of Justice in the future, the Cabinet Office would still have an important role to play in codifying the constitution, whether of a central, supporting or coordinating nature. This would be particularly so with respect to the drawing up of a non-legal constitutional code, given the preparatory work it undertook during 2010-11 in the production of the Cabinet Manual.

36 The background and significance of the Cabinet Manual is as follows. In February 2010 the then Prime Minister Gordon Brown announced in a speech to the Institute of Public Policy Research that he has asked the Cabinet Secretary, then Sir Gus O'Donnell, to have the Cabinet Office produce a consolidation of the existing unwritten constitutional conventions (non-legal rules) affecting government into one single written document. In his speech, he said,⁸⁷⁷

"I can announce today that I have asked the Cabinet Secretary to lead work to consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single written document."

This initiative formed part of Mr Brown's broader project of working towards a written constitution, support for which he had informed the House of Commons earlier in a statement on constitutional renewal.⁸⁷⁸

37 The Cabinet Office then proceeded to produce the current Cabinet Manual, with support from colleagues across government, intended to be "a source of information on the laws, conventions and rules that affect the operation and procedures of government". A draft chapter covering the rules on government formation under a hung Parliament was published in February 2010, and submitted for comment to the House of Commons Justice Committee. To some extent it formed the basis for inter-party negotiations on constructing the coalition

⁸⁷⁷ *Towards a New Politics*, February 2, 2010.

⁸⁷⁸ *Commons Hansard*, 10 June 2009, col 798.

at the May general election. Work continued on the rest of the Manual after the election with the approval of the new Prime Minister David Cameron and Deputy Prime Nick Clegg. Following a full draft being published for consultation in December 2010, the final revised version was released in October 2011, with a foreword by the Prime Minister stating that it had been endorsed by the Cabinet as an "authoritative" guide for everyone working in government.

38 There is a debate to be had about the precise nature and status of the Manual. Thus in the view of the House of Lords Constitution Committee, "the Manual is not the first step towards a written constitution".⁸⁷⁹ Indeed, that Committee believes it should be re-titled "The Cabinet Office Manual", clearly indicating that it is a unilateral declaration of constitutional principles that others might not necessarily agree with. The House of Commons Political and Constitutional Committee, however differs in some degree, whilst accepting the Manual is certainly not a written constitution in itself. The Committee said,⁸⁸⁰

"It has, however, considerable overlap in content with what might be expected of a constitution. The Cabinet Secretary has suggested to us that it would be likely to be a starting point for any attempt to produce such a constitution. By bringing together and publishing the Government's interpretation of existing constitutional rules and conventions, the Government has already begun to spark debate about both the nature of these rules and conventions and if and how they should be written down. This is a debate in which Parliament needs to play a full part."

39 It is submitted that the very process of a Cabinet endorsed statement setting out the rules and conventions of the UK system of government in a single authoritative written document is of considerable significance to the general idea of codifying the constitution; and indeed, it was with this in mind that the then Prime Minister in February 2010 initiated the work on the Manual and required it to be drawn up by the Cabinet Office.

40 Having already undertaken a great deal of preparatory work on what is essentially a codification of internal practice, the Cabinet Office is well-situated, and has the necessary resources, to oversee the drafting of a non-legal constitutional code (model A above), covering all aspects of the constitution, extending to some areas it does not cover such as matters of citizenship, to be submitted to Parliament for formal scrutiny and approval.

A Royal Commission

41 The classic method of examining some major constitutional question in the United Kingdom has been to establish a Royal Commission.⁸⁸¹ This has the highest formal status in terms of a public inquiry, with members of the Commission being

⁸⁷⁹ *The Cabinet Manual*, 2010-12, HL 107.

⁸⁸⁰ *Constitutional Implications of the Cabinet Manual*, 2010-12, HC 734, p.10.

⁸⁸¹ See Blackburn, *Case Studies*, B.

formally appointed by royal warrant on the advice of the Prime Minister or a Secretary of State. Constitutional matters on which a Royal Commission has been set up in modern times include Systems of Election (1908-1910),⁸⁸² the Civil Service (1912-15,⁸⁸³ 1929-31,⁸⁸⁴ 1953-55⁸⁸⁵), the Local Government of Greater London (1921-23,⁸⁸⁶ 1957-60⁸⁸⁷), Local Government (1923-29,⁸⁸⁸ 1966-69⁸⁸⁹), the Police (1960-62)⁸⁹⁰, the Constitution (in practice, dealing with devolution, 1969-73),⁸⁹¹ and Reform of the House of Lords (1999-2000).⁸⁹²

42 In substance, there is little difference between a Royal Commission and a departmental committee of inquiry that is more simply appointed by one or more government ministers. Such inquiries on constitutional matters have included Ministers' Powers (1929-31)⁸⁹³ and Administrative Tribunals and Inquiries (1955-57).⁸⁹⁴ More recently, bodies of a similar nature termed Independent Commissions have been set up to consider some particularly controversial proposal, including on the Voting System (1997-98)⁸⁹⁵ and a Bill of Rights (2011-12).⁸⁹⁶

43 The membership of Royal Commissions and departmental committees is hand picked by the government, often taking nominees of opposition parties into consideration. Their working practices have varied considerably, and to a large extent are dictated by the government in setting the period of time in which the Commission or committee is required to report, and the human and financial resources assigned to them. A Royal Commission is more likely to hold extensive public hearings, but neither it nor a departmental committee of inquiry has the power to compel the attendance of witnesses, which bodies established under the Inquiries Act 2005 may do, such as the recent inquiry into the Culture, Practice and Ethics of the Press (2011-12),⁸⁹⁷ or (in theory) a parliamentary select committee.

44 All these public bodies are advisory in nature, leaving it to the government to accept or reject their recommendations, or cherry-pick which of their recommendations to adopt. Depending on the nature of the composition of the Royal Commission or committee/commission, it may perform a role in fostering a

⁸⁸² Cd. 5163 (1910).

⁸⁸³ Cd. 6210 (1912), Cd. 7338 (1914).

⁸⁸⁴ Cmd. 3909 (1931).

⁸⁸⁵ Cmd. 9613 (1955).

⁸⁸⁶ Cmd. 1798 (1923).

⁸⁸⁷ Cmd. 1164 (1960).

⁸⁸⁸ Cmd. 3436 (1929).

⁸⁸⁹ England, Cmd. 4040 (1973).

⁸⁹⁰ Cmd. 1728 (1962).

⁸⁹¹ Cmd. 5460 (1973).

⁸⁹² *A House for the Future*, Cm. 4534 (2000).

⁸⁹³ Cmd. 4060 (1931).

⁸⁹⁴ Cmd. 218 (1957).

⁸⁹⁵ Cm. 4090 (1998).

⁸⁹⁶ Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before Us* (December 2012).

⁸⁹⁷ HC 779, 29 November 2012.

degree of cross-party agreement. To the extent that it holds evidence-taking sessions, it will involve and gather useful information guiding its recommendations from experts, civil society, and the public generally.

45 In terms of prestige and tradition, a Royal Commission might appear the natural choice for designing or supervising a codification of the constitution. However, in practice there may be considerable drawbacks. The method of government appointment is opaque, often giving rise to suspicions that the membership is biased towards a particular conclusion. There has been little attempt in the past to make such a body representative of society.⁸⁹⁸ Its inquisitorial style of public hearing in the past has not been successful in terms of encouraging public participation and deliberation. The success rate of Royal Commissions in terms of outcome has been poor.⁸⁹⁹

46 Insofar as the requirements for drawing up the different models of codification under consideration are both to engage the public and stimulate greater interest and clarity in the constitution on the one hand, and to complete a largely technical exercise in consolidating existing constitutional law and practice into one document on the other hand, a Royal Commission fits awkwardly as a means of delivering either outcome, unless it is to act as a supervisory body sponsoring one or two sub-units specially commissioned for the purposes of public deliberation and documentary drafting.

A parliamentary inquiry

47 A parliamentary inquiry into codifying the constitution could play a positive and important role in terms of political involvement, cross-party discussion, and selective evidence taking from constitutional experts, interest groups and, to some extent, popular opinion. Since, as discussed earlier, the government would effectively retain the initiative over any particular course of action, its report would be advisory in effect, but add fresh pressure and influence on ministers to respond and give an account of its policy and intentions with regard to the issues raised. In other words, such an inquiry could play an important preparatory and contributory role in the wider process of working towards a codified constitution.

48 The setting up of a Select Committee inquiry could be on a government or parliamentary initiative, presented in a motion to the House of Parliament concerned, with a specific remit to draft a codified constitution with commentary and analysis for further consideration. A time limited Select Committee could be set up in the House of Commons with a special remit to bring forward recommendations on constitutional codification, in similar manner to the Select Committee on Reform of the House of Commons chaired by Tony Wright in 2009; or a similar Committee could be established in the House of Lords or a Joint Committee of both Houses.

⁸⁹⁸ For example, only 5 of the 53 members of the last three Royal Commissions combined were women.

⁸⁹⁹ See Blackburn, *Case Studies*, B.

49 An alternative procedure would be for two or more existing Select Committees with a common or overlapping interest in constitutional affairs (notably the House of Commons Political and Constitutional Reform Committee and House of Lords Constitution Committee, possibly with the House of Commons Justice Committee, the Joint Committee on Human Rights, and the House of Lords European Union Committee) to establish a special sub-committee on constitutional codification, as has been done in the case of the present Arms Export Controls Committee. There is considerably more flexibility in the select committee system generally today, both in the selection of its inquiries and in their operational methods for public consultation. In the House of Commons, they are also now more genuinely independent of government and representative of the House as a whole, following the introduction of elections for members and chairmen since 2010.

50 An alternative approach would be to adopt the mechanism of a Speaker's Conference, in other words a cross-party conference chaired by the Speaker of the House of Commons, with a view to recommendations being put forward for the government to consider acting upon. As things have evolved over the past 100 years, there is now a tradition that a Speaker's Conference is limited to the consideration of difficult issues of parliamentary election law, particularly if they have a broad scope in terms of representation and are a matter of cross-party concern.

51 However, there is no good reason why a Speaker's Conference should be limited in this way. Indeed, the first such Conference in 1916-17, established to consider universal voting, the female franchise, and the voting system, was simply an ad hoc response to the need to find a method of promoting cross-party agreement on matters of a highly controversial nature, but which all were agreed had to be resolved as a matter of urgency for the post-War reconstruction of civil society. Most of the recommendations of the Conference successfully found their way into the Representation of the People Act 1918.⁹⁰⁰

52 There is one precedent for a Speaker's Conference on a subject other than electoral matters, being on regional devolution in 1919-20 initiated at the request of some Conservative MPs. Two reports were produced, but the conference failed to reach agreement on whether there should be devolution to England as a whole or to the regions of England and on whether devolved bodies should be directly elected or not.⁹⁰¹

53 The great advantage of a Speaker's Conference would lie in the authority afforded it by virtue of the Speaker's chairmanship, with him being seen as politically neutral as it is possible for any parliamentarian to be in his capacity as Chair. In addition, it would be an effective device for promoting cross-party

⁹⁰⁰ For a detailed study of the preparation, passage and outcome of this major constitutional reform see Robert Blackburn, "Laying the Foundations of the Modern Voting System: The Representation of the People Act 1918", in Philip Norton (ed), *A Century of Constitutional Reform* (Parliamentary History, 2011, pp.33-52). A second such Conference was held in 1944 to examine the parliamentary constituency boundaries, reform of the franchise, conduct and costs of elections, and methods of election, which led to the Representation of the People Act 1944. Since then, there have been five further Speaker's Conferences, all dealing with matters of parliamentary representation and election law. The most recent was established in 2009 to examine female and ethnic minority representation, whether the voting age should be reduced to sixteen years of age, and on which day voting should take place.

⁹⁰¹ Cmd. 692 (1920), *Conference on Devolution: Letter from Mr Speaker to the Prime Minister*.

discussions, though this would need to be supported by genuine efforts at agreement in private meetings held elsewhere. It might have limitations in terms of engaging the public, though evidence-taking sessions could certainly take place, together with a specially commissioned programme of public deliberation on a range of constitutional questions.⁹⁰²

54 As the servant of the House of Commons, the initiative for a Conference could not realistically come from the Speaker himself. A backbench or opposition motion in the Commons could propose the creation of a Speaker's Conference on the constitution, but without the governing party's support it is almost certain to be rejected. If the Prime Minister were to instigate this procedure, however, this would signify a high level of commitment to act on its recommendations.

A constitutional Convention or Assembly with popular representation

55 The Committee on Political and Constitutional Reform has considered the case for a "constitutional convention" for the UK, focusing on the Union and future structure of devolution and regional governance in the United Kingdom.⁹⁰³ A deliberative body of this kind could play a significant role in preparing the ground for a future government initiative, particularly if any changes of substance were being considered (as in model C). It could usefully clarify the areas of common agreement and particular problems to be addressed.

56 An essential element of such a convention would be its highly inclusive nature and strong element of public participation. Delegates should be drawn widely from across society, including representatives from business and the trade unions, local and regional government, faith groups, and former holders of public office including the judiciary. The convention might contain a proportion of ordinary members of the public willing to serve as delegates selected at random from the electoral register or through a scheme of election. Various methods might be adopted for otherwise involving the public.⁹⁰⁴

57 It would be most effective for such a convention to be established by the government, following cross-party talks and agreement on the precise remit and composition of the convention. However, a body of this kind could come into existence on the independent initiative of influential public or academic figures, as did the Scottish Constitutional Convention in 1989 that proved influential in preparing the ground for the Labour government's legislation on Scottish devolution in 1998.⁹⁰⁵

⁹⁰² Such a programme was conducted, for example, by the Ministry of Justice in 2009-10 on the question of citizenship rights and responsibilities: see *Rights and Responsibilities: Developing Our Constitutional Framework*, Cm 7860 (2010).

⁹⁰³ House of Commons Committee on Political Constitutional Reform, *Do We Need a Constitutional Convention for the UK?*, 2012-13, HC 371. In 2007 a private member's bill presented by Julia Goldsworthy had proposed a Citizens' Convention drawn from all sections of society to consider and make recommendation on the way in which the UK is governed, which the Secretary of State would be required to consider and take steps to implement: Citizens' Convention Bill, 2006-07, HC 136.

⁹⁰⁴ See section 6, and Blackburn, *Case Studies*, U and V.

⁹⁰⁵ See Blackburn, *Case Studies*, D.

58 There would be a range of civil society groups able to participate or offer assistance. Some permanent policy institutes or ad hoc commissions have worked on the idea of codifying the constitution or related issues, such as Unlock Democracy (the successor to Charter 88), the Power Commission (whose membership included Ferdinand Mount and Helena Kennedy QC) which reported in 2006, the Institute of Public Policy Research ('The Constitution of the United Kingdom') in 1991, the Institute of Economic Affairs ('Britain's Constitutional Future') in 1991, the Smith Institute in 2007 ('Towards a New Constitutional Settlement'), and the law reform body Justice ('Towards a Codified Constitution') in 2010.⁹⁰⁶ Critical to the convention's success would be the participation of those political parties who wished to move forward the debate on codifying the constitution.

The Law Commissions

59 If codifying the constitution in legal form were seen as essentially a technical exercise, re-enacting and codifying pre-existing rules - as would be most of the work involved in preparing a document in the nature of model B, while modernising some of the language used in earlier Acts of Parliament - the Law Commissions could be regarded as well situated to take on this task. The Law Commission of England and Wales was created specifically for the purpose of achieving greater simplification, coherence and modernisation in the structure of the law.⁹⁰⁷ The Commission is required "to take and keep under review all the law including in particular the codification of such law".

60 There are three Law Commissions in the UK, dealing with the respective legal systems in England and Wales, Scotland and Northern Ireland. The Law Commission for England and Wales could be the lead body in codifying the constitution, acting in close association with the other two Commissions. The English Commission consists of a Chairman and four Commissioners, all of who are appointed by the Lord Chancellor and Secretary of State for Justice. The Chair is a person who holds office as a judge of the High Court or Court of Appeal, and the other Commissioners are qualified by the holding of judicial office or by experience as a legal practitioner or as a University professor of law.

61 The Commission adopts project proposals on the basis of government departmental submissions or at the suggestion of others, with the support of the department. These it considers taking into account factors such as whether it agrees the law is unsatisfactory, there are benefits of reform, the suitability of the Commission to undertake the work, and the Commission has the relevant expertise. Commissioners then submit their proposed programmes of work to the Lord Chancellor for his formal approval. After their work is completed, their reports (which include draft Bills and detailed legislative proposals) are submitted

⁹⁰⁶ The content of these publications are discussed in the ancillary paper, *Literature Review*.

⁹⁰⁷ For a detailed account see ancillary Case Studies, Case Study C. See also Graham Zellick, *The Law Commission and Law Reform* (1988); Michael Zander, *The Law-Making Process* (2004), ch. 9; and Lord Justice Munby, *Shaping the Law – The Law Commission at the Crossroad* (Denning Lecture, 2011).

to the Lord Chancellor to consider, and he will present them to Parliament if and when he and the Cabinet agree to do so.

62 Since the Commission is under a statutory duty to review "all of the law", this includes the law of the constitution. It has earlier conducted reviews of particular public law subjects, including on Administrative Redress and currently on Electoral Law. It has extensive experience of both consolidation work, producing over 200 consolidation Bills that have become Acts since 1965, and codification exercises, including in the law of divorce, family, crime, landlord and tenant relations, though only a few of these were in the event completed, largely for reasons of resource and shifting priorities. In the case of one project, on codifying the criminal law, it established a dedicated group of distinguished academics known as the "Code Team" under terms of reference set by the Commission to which it reported. The team's report, including a draft bill, was published with an introduction by the Commission, and presented to the Lord Chancellor as a "document for discussion".⁹⁰⁸

63 In the opinion of the Commission and the Lord Chancellor, any proposed project for its work must be "suitable", which has been described in its latest programme of law reform in the following way: "Whether the reform would be suitable to be put forward by a body of lawyers after legal research and consultation (this would tend to exclude subjects where the considerations are shaped primarily by 'political judgements'".⁹⁰⁹ This means that if the government requested that the Law Commission undertake this work of codifying the constitution, it must come with the agreement of the main political parties and without any significant degree of political contentiousness.

64 The advantage of using the Commission for codifying the constitution would be that its report and draft document would be conducted in a politically neutral and independent way, treated as a technical exercise, and it would follow the professional working practices of the Commission which are well suited for such a task in matters such as consultation and Commissioner peer-review. However, there would need to be a broad consensus not only on the desirability of codification, but also on what the content of codified constitution should be. The government's brief to the Commission on content would need to be established in advance through a prior process of public and parliamentary consultation and all-party agreement.

⁹⁰⁸ See Blackburn, *Case Studies*, for further details.

⁹⁰⁹ Law Commission of England and Wales, 11th Programme, 330.

65 In correspondence with the author, the Chairman of the Law Commission, Sir David Lloyd Jones, agrees that the Law Commission is suitably equipped to take on this task. In his letter of 19 June 2014, he has said,

"On a technical level, the task of bringing together in one statute, and modernising the language of, various provisions of existing statute law relating to constitutional matters is one for which, in principle, the Commission would be well suited. I can equally see how a similar process could be applied to constitutional conventions. I would only add two caveats. First, it would only be appropriate for the Commission to undertake such a task if there was a clear political consensus in favour of engaging in it as a technical exercise. Secondly, such a task, particularly if there were to be a requirement to conduct it speedily, would require appropriate additional resources for the Commission. The United Kingdom-wide nature of such a project would make involvement of the Scottish and Northern Irish Law Commissions desirable."

A Commission for Democracy

66 Beyond the UK's experience of the various commissions, inquiries, committees and conferences that have been involved in aspects of constitutional change in the past lie a number of other institutions or procedures that have either been used abroad for the purposes of constitution change and innovation, and/or might be constructed as a bespoke solution to the challenging task of codifying the UK constitution.

67 One option would be to establish a permanent constitutional commission, either under the royal prerogative or under an Act of Parliament, with its first task to be that of preparing a codified constitution for the UK. This would be an advisory body to the government, operating similarly to that of a Royal Commission but on a standing and permanent basis like the Committee on Standards in Public Life. Longer term responsibilities might include policy and impact reviews on issues of prospective reform, and undertaking initiatives of public engagement and deliberation on political and constitutional issues.

68 Proposals for a constitution commission for the UK have been made before,⁹¹⁰ and have been influenced by the Australian experience of such a commission.⁹¹¹ Its composition might be a mixture of nominees from the main political parties, together with representatives from relevant professional groups including law and business, as well as civil society and local and regional bodies.

69 Far more ambitious would be the creation of a Constitutional Assembly or Convention with an elected element, established by Act of Parliament for the specific purpose of enacting a new constitution. This would involve a specially composed representative body, with at least half being chosen through a

⁹¹⁰ See for example R. Brazier, *Constitutional Reform* (3rd ed., 2008), ch. 2.

⁹¹¹ See Blackburn, *Case Studies*, G.

democratic process of nomination and election, for the task of creating a new constitution or constitutional settlement. In recent times bodies of this nature have been used in Geneva, Iceland and Ireland, which are discussed in the ancillary paper *Case Studies on Constitutional Building*.⁹¹²

70 If substantive changes to the political system or citizens' rights were being proposed by the government at the same time as preparing the codified constitution, it would provide an institutional framework for both cross-party discussions and popular deliberation in which to take place. It would be a sensational event, arousing considerable media and popular discussion, particularly if the issues were perceived as directly affected ordinary people's social and political rights and everyday lives. However an Assembly of this nature is unlikely to be thought suitable for an exercise in codifying the constitution as it exists at present, and so is likely to be ruled out as unnecessary if a non-legal code or consolidation statute was being considered.

71 The most suitable option for supervising the preparation of any of the three models for codification, especially if the process of codification were regarded as a building block process with a written constitution as its projected endpoint, might well be a commission set up on executive action (in other words, under the royal prerogative). Its composition would need to be agreed between the parties, and could be political in nature (for example, a government minister as Chairman to drive the process forward and link it with the Cabinet, with twelve Commissioners from the two Houses of Parliament nominated by and representing the government, opposition and minor parties in a manner ensuring cross-party co-operation so far as possible, and three co-opted Commissioners), or comprising independent members approved by party agreement, or a combination of these two types, with the nominations being approved by a vote in each House of Parliament. The government initiating the process would need to ensure that the Commission had adequate resources for a secretariat and advisory group necessary for any purposes the Commission thought necessary in performing its task. Further consideration is given to such a body in the conclusions and recommendations below (paragraphs 212-217) with a proposal it be termed a Commission for Democracy.

⁹¹² See Blackburn, *Case Studies*, M, O and Q. Bodies of this representative nature have been called either Assembly or Convention: for example in Geneva and Iceland an Assembly, and in Ireland a Convention.

4 Issues of content

72 The starting point for any process determining the content of a codified constitution would be definitional in terms of what is regarded as being "constitutional" or fundamental in nature to the working of the UK system of government. Some leading conceptual issues about UK constitutionalism would be important to bear in mind, underpinning the design and structure of the document.

73 As useful precedents or models for comparison, particularly in preparing a written constitution in the nature of model C, those drafting the codified constitution regard might be had to the structure of some suitable foreign constitutions,⁹¹³ particularly in Commonwealth countries where their written constitution was principally drafted by the UK government on the Westminster model when granting independence.

74 In helping fix the parameters of the constitution that is being codified, a useful working definition has been provided by the House of Lords Constitution Committee, who addressed this question when it first set about its deliberations on being created in 2000. It defined its scope as addressing, "the set of laws, rules and practices that create the basic institutions of the state, and its component and related parts, and stipulate the powers of those institutions and the relationship between the different institutions and between those institutions and the individual".⁹¹⁴

Values and principles

75 Establishing the core principles and values underlying the UK's political and legal culture will be necessary, either to influence the design of the document or to be stated within it.

76 The House of Lords Constitution Committee has set out what it considers to be the five existing basic tenets of the UK constitution, as - the 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.⁹¹⁵

⁹¹³ On comparative constitutions see Beau Breslin, *From Words to Worlds* (2009); S. Finer, V. Bogdanor and B. Rudden, *Comparing Constitutions* (1995); A. Heringa, P. Kiver, *Constitutions Compared* (2009); D. Lutz, *Principles of Constitutional Design* (2006); H. Bagchi, *Inside Major Constitutions: An analytical, comparative, critical and selective treatise on five Constitutions – American, British, Indian, Soviet and Swiss* (1969); B. B. Gupta, *Comparative Study of Six Living Constitutions* (1978); Henc van Maarseveen and Ger van der Tang, *Written Constitutions: a computerized comparative study* (1978); J. H. Price, *Comparative Government* (2nd ed. 1975).

⁹¹⁴ See House of Lords Constitution Committee, *Reviewing the Constitution: Terms of Reference and Method of Working*, 2001-02, HL 11, para. 20.

⁹¹⁵ See House of Lords Constitution Committee, *Reviewing the Constitution: Terms of Reference and Method of Working*, 2001-02, HL 11, para. 21.

77 A Preamble might be prepared at the front of the document, declaring what the most basic of these values might be.⁹¹⁶ This is the case in most constitutions of the world, and indeed preambles to Acts of Parliament used to be used much more extensively in the past, particularly for important constitutional statutes. In a legal document, the Preamble does not form part of its enforceable text, though it may have an explanatory and purposive use in the interpretation of its provisions.

78 In adopting the terminology of some basic principles, it is useful to be aware of the origin of some commonly used expressions. Some commonly used terms are derived from the writings of University law professors, rather than any official source. This is because the nature of English common law renders itself impenetrable to most ordinary people, constructed as it is on a case-by-case basis and written down in lengthy law reports. The guiding principles underpinning the common law, therefore, added to by ad hoc legislation, are most clearly set out by jurists in their textbooks or published lectures.

79 An early book of this nature on the constitution was written by Professor Albert Venn Dicey in the pre-democratic era of 1885 shortly after English law started to be taught at Oxford and London Universities. His book, *The Law of the Constitution*, formulated three expressions in particular that subsequently became embedded in the UK's political and legal vocabulary. These were,

- "parliamentary sovereignty" - to describe the supremacy of an Act of Parliament over other sources of law and where two statutes were contradictory the more recent prevailed in the courts;
- "the rule of law" - to mean the absence of arbitrary authority (or government according to law) and equality before the law; and
- "constitutional conventions" - to describe the unwritten and non-legal customs of political and constitutional practice.⁹¹⁷

80 In the twenty-first century those drafting a codified UK constitution should consider how appropriate it is to continue adopting Professor Dicey's terminology and to what purpose. The term "the rule of law" is aspirational rather than descriptive, and "conventions" are essentially descriptive rather than aspirational. "Parliamentary sovereignty" as legal fact was descriptively accurate for the Victorian era, but has often been distorted into a political term in recent times. There are arguments about its contemporary relevance, and taken literally would infer the UK was an oligarchic state run by politicians at Westminster, rather than the political democracy we aspire to be today.⁹¹⁸

⁹¹⁶ As Beau Breslin has said, "Preambles often perform the task of isolating the polity's highest values", *From Words to Worlds* (2009), p.68, and is an opportunity to express the sovereignty of the people, as was famously expressed in the US constitution of 1787 ("We the people ...").

⁹¹⁷ The existence and importance of conventions to the working of the constitution is not, of course, a principle or value upon which a system of government is constructed. The codification of conventions is discussed below.

⁹¹⁸ Sometimes the term "parliamentary sovereignty" has been used in an aspirational sense to suggest that the EU should not issue regulations directly applicable in the UK, particularly if they overrule some element of domestic law. However, the UK national Parliament's

81 In terms of issues to be described and written down, whichever model of codification is adopted, those drafting the document will need to address issues such as:

- popular sovereignty and the democratic nature of the state
- equality and non-discrimination in citizenship
- government actions being in accordance with established law
- judicial independence and impartiality in supervising the legality of government and securing the freedoms of its citizens
- the accountability of ministers to Parliament
- the nature of the Union between England, Scotland, Wales, and Northern Ireland
- the constitutional relationship between central and local government
- the constitutional nature and limits of the UK's membership of the European Union
- the constitutional method of protecting human rights in the UK
- the delivery of core social and economic services to citizens
- the political impartiality of civil servants and parliamentary, regional and local government state officials

The debates around these issues were examined in the earlier report of the Centre, presented to the Committee in May 2012.⁹¹⁹

Form, subject matter, and level of detail

82 The form of codification is most likely to be in one document, but could alternatively be set out in a small series of related documents, or in the case of model C (Written Constitution) one document known as *the* Constitution with

competence to withdraw from the EU remains intact, and meanwhile under the terms of its own Acts, notably the European Communities Act 1972 as amended, it has simply delegated regulatory powers to EU bodies (in the same way as Parliament has delegated law making powers to other tiers of government in the UK) and stated it intends EU law to prevail if a domestic statutory provisions is unintentionally incompatible. For discussion, see A. W. Bradley, "Sovereignty of Parliament - Form or Substance?", Ch. 2 in J. Jowell and D. Oliver (eds), *The Changing Constitution* (7th ed. 2011). A codified constitution would be an opportunity to more clearly stipulate the nature of the relationship between the UK and EU, setting down the boundaries and controls upon EU legislative competence in the UK.

⁹¹⁹ Ancillary paper, *The Existing Constitution*.

other associated texts. The section dealing with rights and freedoms of citizenship, for example, could be located in a separate but related document, either retaining the Human Rights Act 1998 as it is at present or enacting a UK Bill of Rights in its place.⁹²⁰

83 The narrative and text of the codified constitution will extend across the different branches of government, including the Crown and political executive (head of state, head of government, ministers), their relationship with Parliament in the Westminster model (rules of ministerial responsibility), the legislature together with membership, powers, and central procedures (House of Commons, House of Lords, Speakers, legislative process, Select Committees), the civil service and freedom of information, the judiciary and court systems (in England and Wales, Scotland, and Northern Ireland), the devolved systems of regional government, the structure of local government, issues of nationality and citizenship (including human rights and freedoms), commissions or ombudsmen of a constitutional or quasi-constitutional nature, provision for national emergencies, arrangements with the European Union, and the status and ratification of treaties, and procedures for amendment.

84 The relative length and level of detail for a codified constitution will be heavily influenced by the type and nature of the document adopted, described in the three models set out at the start of the report.

85 Thus a non-legal document (model A), being in the nature of a code of guidance, can be expected to concentrate on general principles and clarity of expression without descending into too many qualifications or excessive detail. Where codes relating to particular components of the constitution or government already existed, or were being planned, such as with human rights⁹²¹ or in respect of relations between central and local government⁹²², then after an explanation and reference could be made to those documents instead.

86 The content of a consolidation Act (model B), comprising a re-enactment of pre-existing legislative material, would be more lengthy and detailed. It would need to deal with a great deal of statutory material, which in the traditional UK manner is drafted in very great detail, seeking to cover every eventuality. A line would need to be drawn between essential constitutional subject matter and public law of a more organic or subordinate nature to which reference could be made, undertaken with careful editing of the overall document accompanied by an explanatory memorandum.

87 This demarcation would be even more important with model C, as the content of the document would have a higher status in law and a special amendment procedure, as is most common for most democratic states around the

⁹²⁰ For the most recent inquiry into the proposal for a UK Bill of Rights, see Independent Commission on a Bill of Rights, *A UK Bill of Rights? The Choice before Us* (Ministry of Justice, 2012).

⁹²¹ Human Rights Act 1998 which incorporates into UK law the human rights code in the European Convention on Human Rights.

⁹²² See House of Commons Political and Constitutional Reform Committee, *Prospects for Codifying the Relationship between Central and Local Government*, 2012-13, HC 656.

world. Generally speaking, the shorter the document the less frequent the need for amendments.

88 A shorter document might result in greater judicial creativity in interpreting and applying its provisions, as in the case of the constitution of the USA and its Supreme Court. However, a long and detailed constitution, such as that adopted by India in 1950 with 444 articles in 22 parts with 118 schedules, may give greater certainty in specific areas of public life, but may also prove highly politicised, both in the parliamentary sphere (because governments will far more frequently be seeking amendments to suits their ends). Experience shows that a more detailed constitution does not necessarily prevent the judiciary from becoming embroiled in the politics of the state through its rulings.⁹²³

89 A middle way is therefore most likely to gain broad support. For example, with respect to Parliament this would mean the principle of elections to the Commons be stated (constituency basis of representation, universal suffrage, secret ballot, regular intervals) but the details of electoral administration and precise method of election be left to organic law in the Representation of the People Acts. With regard to the House of Lords, it might mean the principle of selecting peers be stated as one of appointment by the Head of State on the recommendation of the Prime Minister (unless some change was simultaneously proposed) and the powers of the Lords as set out in the Parliament Act are re-enacted (with any changes proposed with respect to amendments to the constitution). It might mean the offices of Speaker in each House was included, together with the requirement that he or she be chosen from amongst their number, leaving the procedural details of election to standing orders as at present.

90 An important part of most documentary constitutions sets out the fundamental rights and freedoms of citizenship, containing limitations and inherent responsibilities. Currently, a code of human right law already exists in the form of the articles of the European Convention on Human Rights which are incorporated into UK law by the Human Rights Act 1998. The inconclusive inquiry and report of the Independent Commission on a Bill of Rights in 2012 suggests there is little present scope for agreement over revising those articles for the purposes for an indigenous constitutional Bill of Rights, whether in form this was separate from or included in, a codified constitution. In other words, a codified constitution could either simply make reference to the Human Rights Act; or, if preferred, a consolidation Act or written constitution could re-enact its provisions as they stand. Nonetheless, passage of time and changing political attitudes in the coming years may present another opportunity to enact a new Bill of Rights.

⁹²³ See for example A. G. Noorani, *Citizens' Rights, Judges and State Accountability* (2002) and *Constitutional Questions in India* (2002).

Codifying conventions

91 Codifying the constitution will involve putting into writing some important rules and customs of constitutional conduct which are of a non-legal and "unwritten" character. They were defined by Professor Dicey in 1885 as consisting of "customs, practices, maxims, or precepts which are not enforced or recognised by the courts" and "make up a body not of laws, but of constitutional and political ethics".⁹²⁴ They include some basic matters such as that the Head of State will appoint a person to act as Prime Minister and Head of Government, and that to be eligible for ministerial appointment the person appointed must have a seat in one of the two Houses of Parliament (which in the case of the Prime Minister and Chancellor of the Exchequer must be the Commons). Rules of this conventional character regulate the exercise of the Crown prerogatives, and the various relationships between the Cabinet and Prime Minister, between Parliament and ministers both collectively individually, between the House of Commons and House of Lords, between ministers and the judiciary, and between the UK and other Commonwealth states.⁹²⁵

92 A parliamentary Joint Committee on Conventions in 2006 was opposed to the codification of conventions, arguing that they, "by their very nature, are unenforceable ... codifying conventions is a contradiction in terms. It would raise issues of definition, reduce flexibility, and inhibit the capacity to evolve. It might create a need for adjudication.."⁹²⁶ However, that Committee had a specific task of dealing with conventions of restraint in the House of Lords (the Addison-Salisbury convention, in particular) in the changing context of House of Lords reform and controversy over what would be the likely effects of democratising the second chamber through a process of elections.

93 In reality there are few definitional problems in identifying and articulating the most basic conventions that would need to go into a codified constitution. The most authoritative analytical test for establishing the existence of a new convention is widely regarded as being that provided by Sir Ivor Jennings, who said there were three questions to ask – what are the precedents; did the actors in the precedents believe they were bound by a rule; and is there a reason for the rule.⁹²⁷

94 The task of codifying conventions is now substantially easier than ever before. Most conventions are already found described and defined in authoritative works of constitutional law such as *Halsbury's Laws of England* or leading textbooks,⁹²⁸ and are much commented on in scholarly articles and books.⁹²⁹ As a species of constitutional regulation they are also in a state of decline. Particularly

⁹²⁴ *The Law of the Constitution* (1885; 10th ed. 1985), p.417.

⁹²⁵ Generally see Geoffrey Marshall, *Constitutional Conventions* (1984).

⁹²⁶ *Conventions of the UK Parliament*, 2005-06, HL 265-1, para. 279.

⁹²⁷ See Sir Ivor Jennings, *The Law and the Constitution* (5th ed.1959), p.136.

⁹²⁸ For example A. W. Bradley & K. D. Ewing, *Constitutional and Administrative Law* (15th ed., 2011).

⁹²⁹ On the conventions governing the monarchy for example, see Robert Blackburn, "Monarchy and the Personal Prerogatives", *Public Law* (2004), pp.546-563.

in the post-1997 period of rolling constitutional change, any unwritten conventions have become markedly less robust in shaping political behaviour, a feature remarked upon recently in a lecture by a former Cabinet Secretary, Lord Wilson, who said, "Our unwritten constitutional conventions are under pressure from a variety of directions, for instance because of the power of the media, constitutional change, management change and a general ignorance of, or impatience with, the constitution."⁹³⁰

95 Principally for this reason, there has been an ad hoc process codifying conventions taking place anyway, positioned in a variety of documents of different status. For example, the conventions of ministerial responsibility are now set out in the Ministerial Code; those governing the position of civil servants have been described in the Civil Service Code issued under the Constitutional Reform and Governance Act 2010; there are parliamentary codes setting out pre-existing conventions governing the conduct of MPs and peers along with revised regulatory requirements; and the conventions for exercising the royal power of dissolution of Parliament have been superseded by the Fixed-term Parliament Act 2011.

96 In a small number of "grey areas" where there is uncertainty or ambiguity over the existence or scope of a convention, agreement and clarification would need to be reached to go into the codified constitution. The last Cabinet Secretary, Sir Gus O'Donnell, conducted an exercise of this nature in preparing the Cabinet Manual during 2010-11 that puts into writing virtually all the key conventions regulating the operation of government for the benefit of civil servants.⁹³¹ Indeed, that Manual usefully would provide a useful government perspective on conventions for those drafting a codified constitution.

97 Thus the conventions on prime ministerial appointment in hung Parliament situations could be included in the codified constitution.⁹³² On whether there is a convention that the agreement of the House of Commons should be sought before the government instructs the armed forces to enter into conflict abroad, or starts arming opposition groups in foreign countries, there will be clarity to replace the current level of uncertainty.⁹³³ So too, there could be clarity over whether it is now settled constitutional practice for the Prime Minister to appear at periodic intervals before the House of Commons Liaison Committee, whereas prior to 2002 it was always claimed to be a convention that Prime Ministers did not appear before Select Committees.⁹³⁴

⁹³⁰ Lord Wilson of Dinton, "The Robustness of Conventions in a Time of Modernisation and Change", *Public Law* (2004), pp.407f.

⁹³¹ Cabinet Manual (Cabinet Office, 2011), and see above paras. 36-40.

⁹³² For the current constitutional position, see Robert Blackburn, "The 2010 General Election Outcome and Formation of the Conservative-Liberal Democrat Coalition Government", *Public Law* (2011), pp.30-55; and House of Commons Political and Constitutional Reform Committee, *Lessons from the Process of Government Formation after the 2010 General Election*, 2010-12, HC 528.

⁹³³ See *Commons Hansard*, Debate on Arms to Syria, 11 July 2013, cols. 587-627.

⁹³⁴ For discussion see Robert Blackburn and Andrew Kennon, *Parliament: Functions, Practice and Procedures* (2nd ed., 2003), pp.763-766.

98 Conventions are currently enforced in a number of different ways, all of which are non-justiciable.⁹³⁵ For example, the principles of ministerial responsibility and accountability to Parliament are enforced by the Prime Minister who has the power to dismiss ministers if they conduct themselves in an unconstitutional manner. If a Prime Minister were to breach convention by refusing to resign office after a general election defeat, or following a vote of No Confidence in the House of Commons,⁹³⁶ it would be the duty of the monarch as Head of State to dismiss him or her from office and invite the Leader of the Opposition to form an administration.

99 The same existing mechanisms for enforcing conventions could, if desired, remain in place under any method of codification, including a legal document under models B and C. In a consolidation Act or written constitution, specific provisions setting out a convention can be stated to be non-justiciable and outside the scope of the courts. Their mention in these documents would elevate their authority, nonetheless, and any breach would lead to some form of parliamentary redress, if needs be by way of a censure motion in the House of Commons. However, in a written constitution (model C) it can be expected that most core conventions would be regarded as suitable for becoming legally enforceable, including prime ministerial appointment. None of this of course would prevent new informal practices and understandings of lesser importance developing in the political system over a period of time, as routinely occurs in any country whether or not it possesses a written constitution.

The status and priority of a codified constitution

100 An important component of any legal document (models B and C) codifying the constitution will be to determine its status as law, and whether or not the judiciary is to be given powers to review the validity of normal Acts of Parliament against the articles contained in the document.

Model B (Consolidation Act)

101 The re-enactment of existing statutory provisions in a consolidating Act of Parliament (model B) would need to address the problem of its provisions being overridden by later contradictory statutes. This is because of the ancient common law rule that where two statutory provisions contradict one another, the later statute prevails.

102 Formerly this principle applied even if the contradiction was merely incidental or implied, rather than being stated expressly.⁹³⁷ However there is recent case law to the effect that statutes of major constitutional importance,

⁹³⁵ However, there are a small number of cases where a convention has been taken into account in legal proceedings: see *Attorney-General v. Jonathan Cape* [1976] QB 752; *Madzimbamuto v. Lardner-Burke* [1969] 1 AC 645; *Reference re Amendment of the Constitution of Canada* (1981) 125 DLR (3d) 1 (Supreme Court of Canada).

⁹³⁶ Subject to the procedures in the Fixed-term Parliament Act 2011, s.2.

⁹³⁷ For general discussion, see A. W. Bradley, 'The Sovereignty of Parliament – form or substance?', Ch 2 in J. Jowell & D. Oliver (eds), *The Changing Constitution* (7th ed, 2011).

which an Act consolidating our constitutional law would be, are no longer subject to this doctrine of *implied* repeal.⁹³⁸ This still means, however, that any Act of Parliament passed after the Consolidation Act that was clearly expressed as to its intended effect would prevail over any sections contained within the Consolidation Act. Clearly, if the Consolidation Act was to confer new, extended powers of review upon the courts, particularly ones purporting to enable them to strike down Acts of Parliament as unconstitutional, this would be a major reform rather than a consolidation of the existing situation and therefore contradictory to its stated purpose.

103 The constitutional position of the judiciary under a Consolidation Act, therefore, would be that the courts uphold the terms of the Consolidation Act against infringement by all later Acts of Parliament, save where an intention to override, amend or repeal some part of the Consolidation Act is clearly expressed in the contradictory later statute. It would then be for Parliament and its scrutiny committees to ensure that any such later Act of Parliament had been carefully considered and approved as an amendment to the codified constitution. The Consolidation Act itself could be periodically re-issued in its amended form.

Model C (Written Constitution)

104 Most written constitutions afford themselves some higher status and priority as law, thereby enabling judicial review of ordinary legislation on grounds of incompatibility with the constitution. This would be a key issue for those drafting a codified constitution of this nature, and perhaps its most controversial aspect as it engages questions of parliamentary sovereignty and the balance of the relationship between executive, legislature and judiciary.

105 In the present state of affairs, the courts have limited powers of constitutional review. They may review the legitimacy of UK subordinate legislation (on specific grounds such as procedural impropriety⁹³⁹), and may review the legislative measures of the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly under the terms of the devolution settlements.⁹⁴⁰ Under the terms of the Human Rights Act 1998, the courts protect citizens from later legislative provisions that violate their fundamental rights and freedoms by making a "declaration of incompatibility".⁹⁴¹ Under this procedure, the courts go through the process of judicial review of primary legislation, but where a legislative provision is held to be unconstitutional in the sense of contradictory to the human rights code the court may make a declaration that has significant consequences even although it does not invalidate the offending statutory provision.⁹⁴² The purpose of this declaration is to inform the government and

⁹³⁸ See *Thoburn v. Sunderland City Council* [2002] EWHC 195, [2003] QB 151; *R (on the application of HS2 Action Alliance Limited) v The Secretary of State for Transport and another* [2014] UKSC 3 at para. 208; and Sir John Laws, "Constitutional Guarantees" (2008) 29 *Statute Law Review*, p.1.

⁹³⁹ See *Halsbury's Laws of England* (5th ed.), Vol. 61: *Judicial Review*.

⁹⁴⁰ Scotland Act 1998, Northern Ireland Act 1998, Government of Wales Act 2006.

⁹⁴¹ Human Rights Act 1998, s.4.

⁹⁴² Human Rights Act 1998, s.4(6).

Parliament, and in effect to invite them to initiate some reform of the law to amend the offending legislation.⁹⁴³ The Supreme Court has other first hand experience of constitutional review of primary legislation, arising from its jurisdiction as the final Court of Appeal from twenty-seven Commonwealth countries and Crown dependencies.

106 There are different levels of legal status and priority that might be considered for a written UK constitution, ranging from none at all (as effectively at present, subject to the qualifications cited above) to full judicial supremacy. Lord Hailsham in his lecture calling for a new constitution in 1976 was firmly of the view that it should be of the "controlled" variety, as he put it, meaning there should be a judicial power to invalidate Acts of Parliament that violated the constitution.⁹⁴⁴ This is the path taken by the framers of many written constitutions, including in the USA and Germany. This would not ultimately affect the supremacy of Parliament, of course, which could respond to any judicial decision of which it disapproved by enacting a constitutional amendment.

107 A qualified judicial entrenchment would be to give the codified constitution a higher status and priority in law, reflecting its national importance, but one which could be disregarded for the purpose of constitutional review where the Act of Parliament being considered by the court included a section stating that it was to apply "notwithstanding" the Constitution.⁹⁴⁵ It would then be for Parliament to ensure that future governments did not unnecessarily include such clauses in their Bills, or allow parliamentary draftsmen to fall into routine use of them.

108 A more pragmatic, and perhaps very British solution, would be to broaden the Human Rights Act procedure of non-legal declarations of incompatibility to the content of the codified constitution as a whole. This would satisfy those politicians who were wedded to traditional notions of parliamentary sovereignty, and/or those who were antipathetic to the idea of unelected judges having the final word on constitutional matters.⁹⁴⁶ At the same time, the terms of the codified constitutional document could be stated to have the status of a guide to statutory interpretation, to be used where relevant in the resolution of uncertainties or ambiguities in the provisions of later or earlier Acts of Parliament.

109 A number of non-judicial bodies could be designed to supervise compliance with, adjudicate upon, and/or enforce any type of codified constitution. If a new Constitutional Commission was established, as considered earlier, it could be entrusted with one or more of these tasks. Alternatively, particular parts of the

⁹⁴³ The government may do this by way of an Act of Parliament or by the Remedial Order procedure laid down in the Human Rights Act, s.10 and Schedule 2.

⁹⁴⁴ For Lord Hailsham's views on a written constitution, see his *Elective Dictatorship* (BBC, 1976) and *The Dilemma of Democracy* (1978); also Blackburn, *Case Studies*, W.

⁹⁴⁵ This procedure was adopted in Canada's Constitution Act 1982 for the purposes of its Charter of Rights and Freedoms, s.33 (1): "Exception where express declaration. Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 [fundamental freedoms] or sections 7 to 15 [legal and quality rights] of this Charter."

⁹⁴⁶ For a work of legal sociology of this issue, see J. A. G. Griffith, *The Politics of the Judiciary* (London, Fontana, 5th ed. 1997).

structure of government could supervised by particular watchdogs, analogous to those already existing such as the Committee on Standards in Public Life, the Commission on Equality and Human Rights, and the Electoral Commission.

Amendment of the codified constitution

110 Another important component of a codified constitution will be to establish the process and procedures by which it is to be amended.

Model A (Constitutional Code)

A non-legal Code might be re-issued at the start of each new Parliament, updating itself on any legislative changes that took place in the previous Parliament and inserting any proposed changes in convention or practice for the discussion and formal approval of each House.

Model B (Consolidation Act)

111 An Act that sought to include a consolidation of pre-existing procedures on constitutional law reform would need to be clear what this entailed. Currently there is a remarkably flexible process governing constitutional change or innovation in the United Kingdom, even at the formal level of legislation.⁹⁴⁷ There are a few specific laws or conventions governing the reform process relating to the powers of the House of Lords (prolongation of Parliament exception to the Parliament Acts 1911-49), committee stages in the House of Commons (committee of whole House for bills of first class constitutional importance), prior approval to proposed changes affecting the Crown and its prerogatives (convention of royal consent), and when referendums should be used (on major issues of regional or European government), but most of these are addressed to changes to particular parts of the constitution, rather than applying to the process of constitutional reform generally. There is even greater flexibility if the change being considered is of a non-legal nature, such as the preparation of a code of practice or introduction of a new convention.

112 Many, if not most, today believe that in the new era of rolling constitutional change since 1997, the UK constitution has become overly flexible, with its being too easy for alternating parties in government to make fundamental changes without going through a proper process of consultation and approval. Even without codifying the constitution, there is a case for standardising and making more rigorous the procedures through which reforms to the political system and the constitutional rights of its citizens are made.⁹⁴⁸

113 The Fixed-term Parliament Act 2011 for example, reforming the law on general election timing, was widely condemned as a prime example of poor process, including among those who agreed with its aims. The House of Commons

⁹⁴⁷ See Blackburn, *Case Studies*, A.

⁹⁴⁸ See the criticism and proposals of the House of Lords Constitution Committee, *The Process of Constitutional Change*, 2010-12, HL 177; and also Robert Blackburn, "Constitutional Amendment in the United Kingdom", Ch. 18 in Xenophon Contiades (ed.), *Engineering Constitutional Change* (2012).

Political and Constitutional Reform reported that, "it is unacceptable that a Bill of this legal and constitutional complexity has not been the subject of any prior consultation and pre-legislative scrutiny";⁹⁴⁹ and the House of Lords Constitutional Committee commented, "the origins and content of this Bill owe more to short-term considerations than to a mature assessment of enduring constitutional principles or sustained public demand".⁹⁵⁰ The Bill was pushed through both Houses on the back of its government majority and a three-line whip, effectively extending period between general elections from four to five years.

114 It is not difficult to formulate a set of procedures governing the constitutional reform process that would represent best practice in the minds of most parliamentarians. Most would agree there should be an established process of public consultation that government proposals should normally follow, such as those set out in the government's former *Code of Practice on Consultation* in 2000⁹⁵¹. That code was frequently not complied with, and then in 2012 was replaced by a less robust statement of *Consultation Principles* issued by the Coalition in 2012.⁹⁵² Any major constitutional reform should be the subject of a formal Green (consultation) paper, following by a White (statement and explanation of government intent) paper for public information and response. A draft Bill on any constitutional proposals should always be presented to Parliament for pre-legislative scrutiny. Only in genuinely exceptional circumstances, recognised and agreed by each House of Parliament, should these consultation procedures be departed from.⁹⁵³

115 A modest proposal from the House of Lords Constitution Committee is that when a constitutional Bill is presented to Parliament, the responsible minister might make an oral or written statement to the House in which it is first presented. This might detail the consultation processes through which the policy behind the Bill has gone through, together with a summary of representations received and the government's response; indicate any unusual procedures through which the Bill will pass, such as a referendum, time allocation motions, or departure from the House of Commons committee stage of the Bill being held by whole House, giving their justification; and give an assessment of the effect of the Bill upon existing constitutional arrangements.⁹⁵⁴

⁹⁴⁹ *Fixed-term Parliaments Bill*, 2010-12, HC 436.

⁹⁵⁰ *Fixed-term Parliaments Bill*, 2010-12, HL 69.

⁹⁵¹ The Code required that: (1) Formal consultation should take place at a stage when there is scope to influence the policy outcome. (2) Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible. (3) Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals. (4) Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach. (5) Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained. (6) Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation. (7) Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience. (2008 ed.)

⁹⁵² Cabinet Office, 17 July 2012; and Written Ministerial Statement, *Government Consultation*, HC Deb., 17 July 2012, col. 117WS.

⁹⁵³ A more proactive approach to public engagement in policy making has been urged by the House of Commons Public Administration Committee, making use of new techniques for public engagement (especially beyond vested interests and lobby groups) and digital technology: see *Public Engagement in Policy Making*, 2013-14, HC 75.

⁹⁵⁴ The view of the House of Lords Select Committee on the Constitution is that a minister should issue a written ministerial statement giving his view on whether a Bill he or she is presenting to Parliament provides for significant constitutional change; and that if so, it should also state what is the impact of the proposals upon the existing constitutional arrangements; whether and, if so, how the government engaged with the public in the initial development of the policy proposals and what was the outcome of that public engagement; in

116 All these requirements could be written into the codification Act, either as non-legal expectations for which ministers were responsible to Parliament, or as legal requirements. In present circumstances the idea that governments might voluntarily apply a rigorous and consistent approach to its constitutional proposals might be seen as unrealistic, for there is too often a political self-interest in such measures to welcome hurdles and procedures that may obstruct or delay their implementation. Ministers are accountable to Parliament for all their actions and policies, but the reality is that each House can only seek to persuade governments how to behave through debate and threats of intra-party dissent, they cannot dictate to it. There is a case therefore for including at least some minimum pre-existing ideas of good practice governing amendments into mandatory legal requirements within a codification Act.

Model C (Written Constitution)

117 Written constitutions around the world almost always lay down a special legislature procedure for amendments, different from those governing ordinary legislation. These are usually in the nature of special majorities in one or both of a bicameral legislature, enhanced powers of the second chamber, the consent of regional bodies or states within a federal structure, and/or a referendum.

118 Special majorities are unknown to the UK Parliament, with two exceptions. One is the requirement in Standing Orders for at least one hundred members in the House of Commons to vote in favour of a successful closure motion.⁹⁵⁵ The other, providing a possible precedent for those framing a written constitution, is a requirement for two-thirds of the membership of the House of Commons to vote in support of an early general election under the terms of the Fixed-term Parliament Act 2011.⁹⁵⁶ This is a high threshold and would normally require some degree of cross-party co-operation.

119 In theory at least, most people regard the House of Lords as performing some special role as watchdog of the constitution and in the scrutiny of constitutional Bills. For this very reason and purpose, it has a Select Committee on the Constitution. Under the Parliament Acts 1911-49 the second chamber at present possesses a one-year power of delay over non-financial public Bills dealing with any type of subject-matter introduced and passed by the House of Commons, with two exceptions where its approval is required without time limit. One is any Bill to

what way was were the detailed policies contained in the Bill subjected to rigorous scrutiny in the Cabinet committee system; whether a Green Paper was published, what consultation took place on the proposals, including with the devolved regional institutions, and the extent to which the government agree or disagree with the responses given; whether a White Paper was published and whether pre-legislative scrutiny was undertaken and the extent to which the government agree or disagree with the outcome of that process; what is the justification for any referendum held, or to be held, on the proposals; and when and how the legislation, if passed, will be subject to a post-legislative scrutiny. See *The Process of Constitutional Change*, 2010-12, HL177, pp. 24-25.

⁹⁵⁵ SO 37, Standing Orders of the House of Commons (Public Business) 2010 (New Parliament), HC 539.

⁹⁵⁶ s.2(1).

prolong the life of Parliament, in other words suspend general elections;⁹⁵⁷ the other is any subordinate legislation by way of statutory instrument including Remedial Orders under the Human Rights Act 1998.⁹⁵⁸

120 In the past, the two main parties' leaderships have opposed any extension in the powers of the House of Lords, no doubt because they fear the obstruction this might cause them in office. However, there would clearly be a case for extending the second chamber's powers with respect to amendments to a written constitution. Indeed, this might enhance its rationale generally within the parliamentary process, whereas at present a major factor stymying Lords reform generally has been uncertainty and disagreement over any distinguishing purpose.

121 A small enhancement would be that a majority of the membership of the House, rather than a majority of those present and voting as at present, is required. However, a two-thirds majority would not be unusual, as is case in Germany and the USA. Rather than being given an absolute power of veto, the Lords might be given an extended power of delay up to the remainder of the life of the Parliament, thereby allowing for an expression of the opinion of the electorate on the matter.

The referendum in constitutional amendment

122 In the past forty years, the referendum has emerged as part of the UK's constitutional structure, though largely as a procedure to be used on an ad hoc basis at the convenience of the government. It has been limited to questions of constitutional change, rather than other public policy or moral issues. Referendums have so far been held as a border poll in Northern Ireland in March 1973 (on whether the province should remain part of the UK or join with the Irish Republic); on the EEC, June 1975 (whether the UK should remain in the EEC); on devolution in Scotland and Wales in February 1979, and again later in September 1997; on the Greater London Authority proposals in May 1998; on the Northern Ireland Agreement in May 1998; on a regional assembly in the north-east of England in November 2004; on the powers of the National Assembly of Wales in March 2011; and on the Alternative Vote method of electoral system in May 2011. There is to be a referendum on Scottish independence in September 2014.

123 Legal provisions and political promises for a referendum are also now in existence. By the provisions of the Northern Ireland Act 1998, Northern Ireland cannot cease to be a part of the United Kingdom without a referendum. By the provisions of the Local Government Act 2000 (as amended by the Local Government and Public Involvement in Health Act 2007), a local authority has the power to hold a referendum to adopt a directly elected mayor, if it chooses. By the Regional Assemblies (Preparation) Act 2003, regional assemblies in England cannot be established without a referendum. By the provisions of the European Union Act 2011, any significant transfer of powers from Westminster to the European Parliament requires a referendum. David Cameron has promised that, if

⁹⁵⁷ Parliament Act 1911, s.2(1).

⁹⁵⁸ As delegated legislation was not mentioned in the Parliament Acts 1911-49 (not being the common occurrence it became later in the twentieth century) the Lords' veto remained.

he is able to do so after the next general election, he will seek reform of the EU as a whole, or a new position for the UK within it, at which point he will offer the electorate the choice in a referendum between the package he obtains and leaving the EU. Governments in the past have also promised that the UK will not join the Eurozone without a referendum, and that the electoral system for elections to the House of Commons will not be altered without a referendum.

124 In drafting an amendment process, therefore, a referendum might be stated to be required in any three of the different models of codifying the constitution.

125 In establishing the status quo to be consolidated, whether in a non-legal Code (model A) or a consolidation Act (model B), there are now some persuasive precedents and these may be said to amount to a doctrine or convention as to when a referendum should be called. These include that a referendum should be called before any part of the kingdom is allowed to secede; before there is devolution of powers from the Westminster Parliament; when a wholly novel constitutional arrangement is proposed, including when an alteration is proposed in the machinery by which laws are made; before joining the Euro currency; before leaving the European Union; before altering the electoral system to the House of Commons; and before establishing directly elected mayors. In addition, there is already a legal requirement for a referendum to be called before there is a transfer of powers to the European Union under the 2011 European Union Act.

126 In the preparation of a written constitution (model C) with a specially designed amendment process, consideration should be given to whether the scope of a referendum requirement should extend to changes proposed to other parts, or all, of the document. The form and details of the referendum would need to be settled (on such matters as eligibility to vote, turnout, and thresholds), and their conduct made subject to the guidelines of the Electoral Commission. Unlike deliberative referendums, considered below, any requirement for a referendum as part of an amendment process would most likely be in the nature of formal ratification.

127 The key balance to be struck in the drafting of any written constitution is between flexibility and rigidity, taking into account the political culture of a country's government and Parliament. There are useful lessons to be learnt from studying the processes by which foreign countries, particularly in western European, north America, and the Commonwealth, have gone about adopting new constitutions and laying down amendment procedures.⁹⁵⁹ However, while a variety of comparative models exist, the correct process for the United Kingdom would need to be determined by its own indigenous traditions and circumstances.

⁹⁵⁹ Generally see X. Contiades (ed.), *Engineering Constitutional Change* (London: Routledge, 2012), and D. Oliver and C. Fusaro (eds.), *How Constitutions Change* (2011).

5 Cross-party co-operation

The need and potential for co-operation

128 The task of preparing and implementing a codified constitution is essentially different to any other form of official document or piece of legislation. It would be counter-productive to the whole enterprise if pushed through Parliament on the basis of a simple government majority. Insofar as all our constitutional arrangements - legal or conventional - ultimately depend upon the acquiescence of those who govern us, a party taking office who had opposed the new code would be most likely to change or repeal it causing instability and uncertainty.

129 Furthermore, whether the form of codification was a non-legal Code or a legal instrument, if the initiative or any draft document prepared were to be actively resisted by the opposition parties, there is ample scope in the parliamentary process to protract its passage through either or both Houses, raising serious concerns about the expenditure of time in comparison to pressing social and economic issues. If a referendum were held in circumstances of political division, it would be self-defeating to its wider national purpose of serving as a means of binding and unifying the country.

130 Establishing a common ground between the political parties on codifying the constitution, in terms of both content and a framework for its preparation, presents the greatest challenge to such an initiative becoming a practical proposition. In a parliamentary system that has a more pronounced process of opposition than almost any other in the world, any proposal requiring cross-party support faces formidable difficulties.

131 In reality however, there is a great deal of consensus on the fundamentals and basic elements of the constitution. There may be some significant differences in terms of background ideology, values and priorities about the constitution embedded within Conservatism and the Left,⁹⁶⁰ but many proposals for constitutional change are cross-party in nature, carrying varying degrees of members' support or dissent within Conservative, Liberal Democrat and Labour parties.

132 Even on questions of substantive constitutional reform, such as elections to the House of Lords or a Bill of Rights, there are supporters and opponents to be found in each of the parties, and on some issues there are All Party Parliamentary Groups fostering cross-party dialogue such as the ones at present on the Constitution and on the United Kingdom. For electoral purposes and the credibility of maintaining a united front, the great majority of party members will naturally support their leaders' policies in public; but one should not mistakenly think the policy or attitude of a party's front bench is necessarily reflected or agreed with wholeheartedly by individual MPs, peers and party members.

⁹⁶⁰ See Blackburn, *Case Studies*, W and X.

133 Political attitudes to constitutional affairs evolve over a period of time, in response to events and other political changes taking place. For most of the past hundred years Labour barely concerned itself with the constitution, in the belief that it was largely a super-structural irrelevancy to securing social justice and the implementation of the party's economic and nationalisation programme.⁹⁶¹ Yet this attitude was transformed under Neil Kinnock, John Smith and Tony Blair, leading to the party's wide-ranging constitutional reform programme on taking office in 1997. Meanwhile Conservative opinion has radically changed on a raft of constitutional questions, ranging from Scottish and Welsh devolution, democratising the House of Lords, relations with Europe, and citizenship rights such as gay marriage.

134 All this suggests that there is certainly the potential for cross-party talks on a codified constitution. As already described, this proposal has steadily gathered momentum across the parties since the Conservatives' Lord Hailsham's public call for a written constitution in 1976. It has had consistent support from Liberal Democrats in their policy programmes. The Labour government began a process on a written constitution whilst in government during 2009-10.⁹⁶² The idea of codifying the constitution is essentially a pragmatic one, not one born of socialist, social democratic, liberal or conservative thought. For some it might be seen as a conservative consolidation of the best elements of the UK state; for others it might be viewed as a progressive modernising measure rendering the constitution more accessible to the general public.

Formal conferences and other institutional devices

135 Inter-party conferences were widely used before 1922 as a method to resolve problems which could not be dealt with by the normal machinery of party politics. The first such conference was on the disestablishment of the Irish church in 1869, and the second on the electoral reform and redistribution proposals of 1884. Both of these conferences came about as a result of disagreement between the House of Commons and the House of Lords, whose statutory powers were, at that time, in theory unlimited. Both yielded agreement on legislation, so preventing a constitutional crisis. The next four conferences – on the abortive education bill of 1906, on the constitution in 1910, on Irish Home Rule in 1914, and on conscription in 1915, – did not succeed in resolving problems.

136 In 1916, a conference was held at Buckingham Palace, following the resignation of Asquith, to ascertain who should be appointed Prime Minister, which resulted in the appointment of Lloyd George, after it was ascertained that Asquith would not serve under the leader of the Conservative Party, Bonar Law. In 1931, a similar conference was held at Buckingham Palace to decide upon a new government following the failure of Ramsay MacDonald's minority Labour government to agree upon an economy package. The conference decided upon an

⁹⁶¹ Time spent on its attempt at Lords reform in the 1960s (which failed) was justified on tactical rather than ideological grounds, as a device to remove the second chamber's in-built Conservative majority.

⁹⁶² See below.

emergency National Government under the leadership of MacDonald, and laid down the conditions under which the government would operate.

137 There have been a number of inter-party conferences on reform of the House of Lords. In 1917-18, an inter-party Conference, chaired by Lord Bryce, produced compromise proposals, but no action was taken upon them. In 1948, a party leaders conference was held to seek a consensus on Lords reform. It produced an Agreed Statement, which came near to agreement on the composition of a reformed House, but it could not agree on powers. The conference revealed a difference in viewpoint between the Conservatives, who believed that the Lords should enjoy a real delaying power to enable public opinion to crystallise, and Labour, who regarded the Lords as purely a revising chamber, and believed that a delaying power could too easily be used to thwart the government of the day. An inter-party conference on reform of the Lords during 1967 and 1968, agreed on the role of cross-benchers and on a delaying power of six months, but could not agree on the categories and qualifications for membership. The conference broke up after Conservative peers voted down a Southern Rhodesia sanctions order in 1968, and the government then proceeded to legislate without all-party agreement. But the reform bill met with such opposition from back-benchers of all parties who engaged in a determined filibuster that they had to be dropped in 1969.

138 Inter-party talks of a less formal nature were initiated on devolution in 1977, following the failure to achieve a guillotine resolution in the House of Commons on the Scotland and Wales bill in an attempt to break the deadlock. However no agreement could be reached and the Labour government with the support of the Liberals proceeded to new legislation on devolution without all-party agreement.

139 The use of Royal Commissions, Speakers' Conferences, select committees, and other constitutional reform bodies of inquiry, may be useful to clarify areas of likely agreement and disagreement, or to produce a for consideration, but is of limited practical value for actually securing inter-party agreement. This is because the memberships of such bodies, whilst usually containing members drawn from across the political parties, have no power to bind their party leaders.

140 Thus Royal Commissions⁹⁶³ have generally contained at least one member drawn from each of the main political parties to represent their viewpoint, though operating on an independent-minded basis, rather than representing any agreed position of the party to which they belonged. In 1999 for example the Royal Commission on Reform of the House of Lords included Lord Wakeham and Lord Hurd from the Conservative Party, and Gerald Kaufman MP and Baroness Dean from the Labour Party. The Liberal Democrats nominated Professor Dawn Oliver who had served as an adviser to the party on constitutional affairs. The same is true of Speakers' Conferences, which in the most recent case convened in 2008 on issues of parliamentary representation contained ten Labour MPs, four Conservative MPs, two Liberal Democrats, and one Democratic Unionist.

⁹⁶³ See Blackburn, *Case Studies*, B.

Inter-party talks as part of a Constitutional Convention

141 The innovation of a non-governmental Constitutional Convention, established by persons and bodies seeking to gather wide-ranging support and agreement for a scheme of Scottish devolution, has been described above, and is the subject of a separate case study in the Appendix.⁹⁶⁴ This was attended by representatives of the parties sympathetic to devolution – Labour and the Liberal Democrats – but not by the Conservatives who at that time were opposed to devolution, nor by the Scottish nationalists who were committed to independence. As is detailed below, the Convention also included representatives of civil society in Scotland. A significant outcome of the Convention was agreement that the Scottish Parliament should be elected by proportional representation, a concession on the part of the Labour Party during the negotiations. The Convention proved successful both in terms of laying the scheme for devolution that formed the basis of the Scotland Act 1998 (indeed when the legislation was debated in Parliament, amendments to it were criticised on grounds that they departed from the scheme agreed by the Convention which had, so it was argued, achieved a consensus in Scotland) and for pre-empting parliamentary hostility to devolution such as had killed earlier proposals in the 1970s.⁹⁶⁵

Informal methods: the pre-IPSA talks

142 There have been some recent episodes of cross-party talks on the need for reform, held in circumstances of sensational public controversy creating a sense of urgency for some action to be taken in response. One of these arose against the background of the furore created by the parliamentary expenses scandal in 2009. The daily front page embarrassing revelations in the Telegraph newspaper about how MPs had been spending their allowances for private purposes, which subsequently even led to some prosecutions, had created an atmosphere bordering on hysteria at Westminster, accompanied by outrage and damage in public confidence in the political class generally in media and public opinion, especially at a time of financial crisis and austerity.

143 The Speaker, Michael Martin, convened a meeting of party leaders on his last day in office, to agree an interim regime for MPs' expenses and how to go forward. All the party leaders attended (Prime Minister Gordon Brown, David Cameron, and Nick Clegg), together with the leaders of the minor parties who had been invited. The paper considered was in the name of the Speaker and had been prepared by parliamentary official. A separate paper by Prime Minister was not discussed in detail. The discussion led to an agreed plan of action, including the principle of establishing an external body supervise and regulate the operation of expenses in the future. This was a highly significant constitutional step, for Parliament has traditionally been jealous of, and resistant to, any external regulation of its internal affairs, even by the courts.⁹⁶⁶

⁹⁶⁴ See Blackburn, *Case Studies*, D.

⁹⁶⁵ See also Kenyon Wright, *The People Say Yes: The Making of Scotland's Parliament* (1997). Rev. Kenyon Wright was Chair of the Convention.

⁹⁶⁶ See *Halsbury's Laws of England*, 5th ed. Volume 78: *Parliament* (2010), pp.862f.

144 The government then took the lead in preparing further cross-party talks to agree the details of the permanent new body to be set up by statute. These meetings of about 30 people in total were conducted at Leader of the House level, with Jack Straw, Justice Secretary, leading and supported by a team of Ministry of Justice officials. Alan Duncan, then shadow leader of the House, represented the Opposition, with other important participants including Sir George Young, the chair of the Privileges Committee, and representatives of all the parties, together with the party leaders in the House of Lords. Six meetings were held in a large ministerial conference room at the House of Commons, directly beneath the Chamber.

145 In practice, Jack Straw led in the meetings, sharing with the others successive drafts of the Bill - itself an unusual development. Jack Straw, who was supported by officials from the Constitutional Secretariat in his department. His personal diplomatic abilities combined with a frank and open style of handling the debate and discussion made a significant difference. Another factor promoting the success of the talks was the presence of the minor parties, who had the effect of defusing some of the tension that built up on occasion between the three main parties, especially the contributions made by Elfyn Llwd for Plaid Cymru. This was commented upon in the parliamentary debates on the Bill later on, which became the Parliamentary Standards Act 2009 setting up the statutory Independent Parliamentary Standards Authority (IPSA).

Informal methods: the post-Leveson talks

146 Another recent episode of all-party talks on reform came in 2012-13 against a background of sensational exposés of gross press misconduct into people's private lives, including telephone hacking, leading to the closure of the *News of the World* newspaper, some prosecutions of journalists and senior managers in the press, and sensational revelations in public hearings before the House of Commons Culture Media and Sport Committee and a public inquiry under the chairmanship of Lord Justice Leveson set up to take evidence and bring forward recommendations for regulatory reform. The general sense of outrage in public opinion and among politicians created a political imperative and sense of urgency that concrete reform had to follow the publication of the Leveson report in November 2012.

147 As was the case in the pre-IPSA talks in 2009, initially the three party leaders (Prime Minister David Cameron, Ed Miliband, and Nick Clegg) met together on the subject, immediately after the House of Commons debate on the Leveson Report on 29th November. The matter was then taken forward by the Culture, Media and Sports Secretary, Maria Miller, who met separately with a group of press victims and a group of press editors within the next seven days, before convening a meeting with shadow spokesmen from the other two main parties, Harriet Harman for Labour and Lord Wallace for the Liberal Democrats. A key stumbling block between the parties was whether the new form of press regulation should be statutory or not, with Labour pressing for an Act of Parliament as recommended by Lord Justice Leveson, the Conservatives preferring a voluntary scheme set out in a Royal Charter, and the Liberal Democrats open-minded on the issue.

148 At least six further meetings of all the party representatives then took place over the next three months. Oliver Letwin, a minister in the Cabinet Office and the Prime Minister's principal policy adviser, emerged as the key broker in the cross-party negotiations, presenting draft papers for discussion with Justice spokesmen, including Lord Falconer (the former Lord Chancellor and Justice Secretary) on the Labour side.

149 Further meetings between the three main party leaders took place at two points when the negotiations stalled, on 19th December 2012 and 13th March 2013. The last of these two meetings ended in deadlock between Cameron and Miliband, resulting in the Prime Minister announcing he would proceed without Opposition support, followed by frenetic discussions with Nick Clegg and the Liberal Democrats. Mr Clegg then played a key role in returning to talks with Ed Miliband on 19th March, settling an agreed compromise that included a statutory right to exemplary damages in actions against publishers. The outcome was a Royal Charter dealing with enforcement of a new code of practice governing the press, and the matter of exemplary damages being dealt with by way of amendments to the Crime and Courts Bill then passing through Parliament.

150 Factors that contributed to the successful agreement reached as a result of the inter-talks included the initial impetus provided by the Leveson report; the influence of interested parties particularly the press and "Hacked Off" campaign representing victims of press intrusion; a tight schedule of timetabling and deadlines being kept to; the parliamentary arithmetic, meaning the Liberal Democrats as coalition partners had more leverage than had they been in opposition, and conversely the Labour opposition had limited leverage apart from exerting pressure through the media and exposing divisions of opinion in the coalition (on which there had been no discussion at the time of the coalition agreement in May 2010) and through parliamentary stalling tactics; and "brinkmanship", meaning that all sides recognised that some settled reform had to be put in place as a matter of urgency before the end of the end of the parliamentary session in May 2013.

Gordon Brown's initiative on a written constitution

151 An attempt was made to initiate informal inter-party talks on a written constitution by the last Labour government under Gordon Brown's premiership in February 2010. In a speech to the Royal Society of Arts,⁹⁶⁷ he said, "the question of a written constitution [is] an issue on which I hope all parties can work together in a spirit of partnership and patriotism". He went on to say that he was convening an all-party group to begin the process of working towards codifying the constitution:

"If we are to go ahead with a written constitution we clearly have to debate also what aspects of law and relationships between each part of the state and between the state and the citizen should be deemed 'constitutional'. I can therefore also announce today that a group will be set up to identify those

⁹⁶⁷ "Towards a New Politics", 2 February 2010.

principles and I hereby issue an invitation to all parties to be represented on this group. And if we are to decide to have a written constitution the time for its completion should be the 800th anniversary of the signing of the Magna Carta in Runnymede in 1215."

152 However, there is no record of any such group or inter-party talks taking place, and it seems likely that both David Cameron or Nick Clegg were unwilling to participate in any such initiative. A 10 Downing Street Policy Unit seminar had been held on the subject earlier in December 2009 but one whose membership consisted of selected constitutional specialists in the subject rather than politicians.

153 Given the proximity of the forthcoming general election in less than four months' time, it would have been surprising if David Cameron, then Leader of the Conservative Opposition, had wished to enter into any form of collaboration with a government he was intent on attacking generally. In the case of the Liberal Democrat leadership, it became clear during the five days in May during which time the three main party leaders were negotiating on the formation of a new government from the hung Parliament, that Nick Clegg was unwilling to co-operate with Labour whilst Gordon Brown remained its leader.⁹⁶⁸ It seems therefore that politics and personalities played the greater part in scuppering Gordon Brown's hopes for inter-party talks on a codified constitution in 2010.

The Cook-Maclennan agreement today

154 The failure of Labour-Liberal Democrat talks in 2010 may be contrasted with the successful nature and outcome of the 1996-97 inter-party negotiations and agreement between those two parties. In summer 1996 the then Labour Leader in opposition, Tony Blair, and the Liberal Democrat leader, Paddy Ashdown, set up a Joint Consultative Committee on Constitutional Reform. This was co-chaired by two senior party members, Robin Cook for Labour, and Robert Maclennan for the Liberal Democrats. The personal chemistry between both Blair and Ashdown, and between Cook and Maclennan, is known to have been particularly good.⁹⁶⁹ The background to the talks was favourable too, after what they both regarded as the monolithic tendencies of the Thatcher administration and eighteen years of Conservative rule, fostering unity in opposition and a preparedness to work together to strengthen the constitution.

155 The outcome of the Cook-Maclennan Agreement in 1997 was that it formed an agreed agenda for constitutional reform that the two parties endorsed and supported, leading to eighty per cent being subsequently enacted. It included the widest-ranging programme of reform since the nineteenth century, including devolution, the Human Rights Act, the Freedom of Information Act, an elected London mayor, removal of the great majority of hereditary peers, putting some

⁹⁶⁸ See Robert Blackburn, "The 2010 General Election Outcome and Formation of the Conservative-Liberal Democrat Coalition Government", *Public Law* (2011), pp.30-55.

⁹⁶⁹ This is made clear in subsequent diaries and memoirs: see Paddy Ashdown, *The Ashdown Diaries*, Volume 1: 1988-1997 (2000); Robin Cook, *The Point of Departure* (2003); Tony Blair, *A Journey* (2010).

prerogative powers on a statutory footing, and creating new independent commissions on human rights and electoral administration. The successful nature of the 1996-97 inter-party talks also translated into a special Cabinet Committee being set up by Tony Blair during 1997-2001 with terms of reference "to consider policy issues of joint interest to the government and the Liberal Democrats".

156 Codifying the constitution was viewed by Cook and MacLennan as being of less magnitude than their reform programme in terms of substance, and was principally a matter of form to be considered later on. As Cook commented in 2005,

"We have a constitution but it is spread across many Acts of Parliament. It seems to be that there is nothing wrong and a lot to be gained by bringing them together in one coherent text. But in itself that will not change anything about the constitution. It may, however, make it more accessible and more readily understood."⁹⁷⁰

157 It seems that, whilst a written constitution has risen as a policy objective within the Labour Party, it has dropped down the list of priorities for the Liberal Democrat leadership, despite its prominence in their policy documents and manifestos in the past. It was not an item negotiated for during the coalition talks in May 2010, in which the Liberal Democrat negotiators concentrated in political reform matters on elections to the House of Lords, a referendum on the Alternative Vote, and fixed-term Parliaments.

158 Currently therefore, Nick Clegg as Deputy Prime Minister has not raised this matter with his Conservative partners or pressed for any sort of initiative, however preliminary in nature, believing there are more important priorities. Thus in evidence to the House of Commons Political and Constitutional Reform Committee, Nick Clegg said,

"I believe in a written constitution. There are general differences between the parties, but what I would be very reluctant to do is to allow a debate about a written constitution to delay or hinder progress on a whole bunch of things that we can just get on with... If you said, 'Let's scoop it all together into some sort of great big jumbo exercise called the new written constitution', it might feel neat, but it might also be fearfully slow."⁹⁷¹

159 In retrospect, this may appear a lost opportunity to supporters of a codified constitution, for the Conservative leadership was open to negotiation on Liberal Democrat policies on the constitution as a set off for accepting other policies of the Coalition such as University fees. In the event, among the constitutional reform items they selected as a priority, electoral reform and elections to the House of Lords were prominent failures, and only fixed term Parliaments were introduced,

⁹⁷⁰ *Looking Back, Looking Forward: The Cook-MacLennan Agreement, Eight Years On* (New Politics Network, 2005), p.11.

⁹⁷¹ Oral evidence session, 19 April 2012, Q.205.

which in any event was principally of benefit to the duration of the Conservative Party in office.

The role of the Head of State

160 During early inter-party conferences, a crucial role was sometimes played by the monarch. It was indeed at Queen Victoria's initiative that inter-party talks were held to resolve differences between Commons and Lords on Irish Church disestablishment. In 1914, George V urged the Prime Minister to call a conference of party leaders to resolve the problems involved in Irish Home Rule. Further Buckingham Palace conferences were held in 1915 – on conscription – in 1916 – to discover a successor to Asquith – and in 1931, to secure agreement on a new government.

161 It would be highly unlikely today that Queen Elizabeth would wish to play an active role in resolving political differences. Following the 2010 election, for example, the Queen deliberately remained at Windsor Castle while the coalition negotiations took place, so that she could not be accused of seeking to influence the outcome. Her Private Secretary, Sir Christopher Geidt, however, did occupy a temporary office at the Cabinet Office during the inter-party negotiations, to be kept closely informed of developments.

162 Wisely or otherwise, the next in line to the throne has indicated he intends to perform a more proactive role than his mother. Prince Charles, our future monarch, has recently let it be known through his biographer and friend Jonathan Dimbleby, that he might be prepared to use his "convening power" to try to help facilitate general agreement where that might be thought useful.⁹⁷² Insofar as the Crown has a deep institutional interest in the constitution and its formalities, Prince Charles might well be extremely interested in any project to codify the constitution.

163 Some clarification about such a role is important, however. The better historical precedents for a monarch hosting inter-party conferences, such as the Buckingham Palace conference on the Home Rule Bill in 1914 proposed by the then Prime Minister Herbert Asquith, are as a means of facilitating discussion, not to provide a platform for the monarch to play a proactive role in determining the outcome.⁹⁷³ As Asquith had rightly stated to the King earlier in January 1910 during the storm over the Parliament Bill and future of the House of Lords,

"It is not the function of a Constitutional Sovereign to act as arbiter or mediator between rival parties and policies; still less, to take advice from the leaders of both sides, with a view to forming a conclusion of his own".⁹⁷⁴

⁹⁷² Jonathan Dimbleby, 'Prince Charles: Ready for Active Service', *The Sunday Times*, 16 November 2008.

⁹⁷³ See Harold Nicolson, *King George V: His Life and Reign* (1952), 242-243.

⁹⁷⁴ Quoted in Roy Jenkins, *Mr Balfour's Poodle* (1954), 133.

Lessons for the process of codifying the constitution

164 From past experience, it would seem that the following elements, or at least some of them together, would be required to produce a successful outcome of any initiative to codify the constitution.

165 A prior disposition of at least two, and preferably three, of the three main political party leaderships to the central aim and purpose of the reform proposal is necessary. To take some early examples, in 1869 over Irish Church disestablishment, in 1884-5 over the franchise and redistribution bills, and in 1916-7 over franchise reform, that pre-disposition was present and produced a successful outcome. However, in 1906 over the Education bill, in 1914 over Irish Home Rule, in 1929-30 over electoral reform, and in the various inter-party talks on Lords reform, agreement could not be reached because the predisposition to agree was not present. In the very recent examples of the pre-IPSA and post-Leveson inter-party talks, all parties were predisposed to the need for more effective and independent press regulation.

166 The context and political atmosphere surround the cross-party talks must carry some sense of urgency or imperative to reach a conclusion and for action to follow. This has already been considered in the context of the initiative for reform, and what catalysts might arise, such as a traumatic event affecting the political structure such as Scottish independence, a crisis in the monarchy, or departure from the European Union, or a crisis of public confidence in the political class brought on by a catastrophic financial collapse in the country, and/or a concerted public and media campaign of sufficient strength as to make it an electoral issue.

167 Inter-party talks and meetings of a relatively informal nature are more likely to produce a successful outcome, with ad hoc arrangements on personnel, agenda, timing and location of subsequent meetings to suit the stage at which negotiations had reached. The more formal processes adopted in the conferences held in the late 19th and early 20th centuries are less well adapted to modern conditions, particularly the more tribal nature of party politics today and the glare of modern media posing problems for the confidentiality of proceedings. For settling the general principles of a reform, a small meeting, preferably between the respective party leaders seems most effective. Subsequent details can be negotiated and agreed upon by the relevant Secretary of State and his or her shadow counterpart, with the support of officials as necessary for technical advice and information.

168 The personalities and personal chemistry between the party leaders and respective party negotiators will be important to a successful outcome, together with their diplomatic and management skills and a genuine willingness to co-operate. In other words, issues of human conduct are at least, if not more, important than those of institutional structure for the cross-party talks. There is evidence that the presence of minor parties at the negotiating table has a mollifying effect on any in-grained adversarial default approach taken by the three major political parties.

6 Forms of public engagement

169 An essential element in codifying the constitution will be to have the support and involvement of the British people. Whichever model of codification might be proposed by the government, there are common factors that point to the desirability of the body designing the constitution engaging in the broadest possible process of public engagement.

170 These factors are firstly, to give moral legitimacy to the document produced and, in terms of citizenship, promote a greater feeling of ownership by the British people in the system of government and issues of citizenship the document would describe. Secondly, it would be an beneficial opportunity for a public debate on the constitution and our political system generally, to raise awareness and appreciation of the distinctive characteristics of UK constitutionalism, to establish whether or not the British people are content with the settlement of reforms since 1997, and to receive an indication of the future direction that the UK's constitutional arrangements should take.

171 In other words, separate from but supplementary to involving and engaging the public in the preparation and implementation of the codified constitution, might be a simultaneous exercise of public deliberation and debate on the political and constitutional system, as a means to engage and inform public opinion as well as to feed into the policy making processes of the government and political parties.

172 In drafting a codified constitution, the level and intensity of public engagement, and the particular procedures adopted, will to a large extent be shaped by the particular model of codification initiated by the government. A minimalist codified constitution would warrant a less elaborate process than the preparation of a written constitution with new procedures for amendment to the constitution and powers of judicial review. Certainly the greater the changes a government proposes, the more likely it is that people will want to be involved in the making and approval of them.

173 All of the options considered above for the public body that might be entrusted with the task of preparing the codified document would have public consultation processes built into their work. A factor in selecting which type of body would in fact be their suitability for undertaking the level of consultation thought necessary for the method of codification proposed by the government. It is not the practice of the Cabinet Office and Law Commission to hold public oral evidence sessions, but either would invite write written submissions and hold some seminars with constitutional experts. A parliamentary committee, Speaker's Conference, Royal Commission⁹⁷⁵ or Constitution Commission could all hold oral evidence sessions directly from the public, as well as host some public debates and

⁹⁷⁵ The Royal Commission on Reform of the House of Lords (1999-2000), despite its lack of eventual impact, pioneered an impressive consultation process which included receiving 1,734 pieces of written evidence and holding 21 sessions of public hearings attended by 1,026 people in London (twice), Exeter, Peterborough, Newcastle, Manchester, Birmingham, Edinburgh, and Cardiff.

conferences. A Constitutional Convention, as considered above,⁹⁷⁶ could operate as a prior or parallel form of deliberative body, concentrating on general principles, values and issues to underlie the future direction of reform.

174 In the case of the Cabinet Office or Law Commission, some temporary advisory sub-unit could be created for the specific purpose of informing and engaging the public, similar to the Constitutional Advisory Group set up by the Ministry of Justice in New Zealand in 2012 to inform and engage the public on constitutional issues including on the question of Māori representation. Its underlying strategy is that "public understanding and participation is needed for enduring constitutional arrangements that reflect the values and aspirations of the UK people".⁹⁷⁷ the chairman of the Group is Professor John Burrows, a former law lecturer and former chairman of the country's own Law Commission.

175 Social surveys indicate that the public definitely support the idea of a written constitution in principle, with the level of support shown in opinion polls varying depending on how the question is phrased. To the question "Should the UK have a written constitution?", a 2010 poll carried out by the Ministry of Justice returned 44 per cent for, 39 against, and 17 don't know. In a YouGov poll in 2009 on whether respondents agreed or disagreed with a proposal to "devise a written constitution to replace the current unwritten constitution which has evolved gradually over the past 1000 years", 59 per cent agreed, 15 were opposed, and 26 were undecided. In an ICM poll in 2010 asking for a response to the more loaded question that "Britain needs a written constitution providing clear legal rules within which government ministers and civil servants are forced to operate", 73 per cent agreed, 8 per cent were opposed, and 19 per cent were undecided.

176 However, social surveys also show that the UK public has a low level of knowledge and understanding of the constitution and system of government. In a Hansard Society survey on "the constitutional arrangements governing Britain" undertaken in 2007, only one in five people thought they knew "a fair amount", and around one half of respondents said they knew "hardly anything at all" or had "never heard of it".⁹⁷⁸ This low public salience does not mean that ordinary members of the public does not have views on how we are governed or the issues that are raised by codifying the constitution, but it is a factor to be taken into account in determining the manner in which meaningful tests to gauge public opinion on specific aspects are conducted. In particular, it means that formal consultation exercises are of limited use, because whilst they enable interested groups and individuals to have their say, they are less effective in terms of establishing what the state of public opinion is generally across the country. All this points to the use of deliberative techniques being particularly useful both as a means of engaging the public and learning what the true state of public opinion is.

⁹⁷⁶ See paras. 55-52.

⁹⁷⁷ This is the role of the New Zealand Constitutional Advisory Panel: see its *Engagement Strategy for the Consideration of Constitutional Issues* (May 2012).

⁹⁷⁸ *An Audit of Political Engagement* 5 (2008). See Blackburn, *Case Studies*, T; and also Ministry of Justice, *People and Power: shaping democracy, rights and responsibilities*, March 2010, with the results of a programme of deliberative events with members of the public on constitutional change including the potential for a written constitution.

Methods of public deliberation

177 There is now a growing science in deliberative democracy principles and practices, with a wide variety of techniques to choose from in terms of engaging the public in policy decision-making. It includes forms of mandatory preliminary instruction before any public vote is taken on a proposal; scaled referendums asking voters to indicate support for reform options on a sliding quantitative scale with the values, costs and benefits associated with each option clearly listed in the ballot paper itself; and "preliminary values questioning" asking voters about the values they already hold and which they believe should drive the future of constitutional development, thereby encouraging purposive reasoning. Preliminary results on values could be publicised and help to guide those framing the codified constitution and future reform.

178 Some interesting deliberative models have been used in other constitution building or policy-making decisions abroad. The Citizens' Assembly on electoral reform in British Columbia in 2004 comprised 260 randomly selected citizens, selected on the basis of an equal gender balance and aboriginal representation, proceeding by way of initial instruction about electoral models and different voting systems, taking extensive oral and written evidence, and then deliberating and voting on the different options.⁹⁷⁹

179 In Geneva in 2008 following a vote in favour of a new constitution for the canton to replace its current one drafted in the early 19th century, a people's Constituent Assembly was set up by legislation to produce the document, comprising 80 members chosen by election out of a field of 530 candidates and 18 lists. It conducted its work in five sub-committees dealing with different areas (general provisions and fundamental rights, political rights and amendments to the constitution, the three powers (legislature, executive and judiciary), territorial organisation, and the role and tasks of the state including finance and social and economic duties), and took extensive evidence from those regarded as key stakeholders.⁹⁸⁰

180 In Iceland a Constitutional Assembly (later termed a "Council") was established by Act of Parliament in 2010, with a membership of 25 persons chosen on the basis of popular election, for the purpose of writing a new constitution. Public consultation exercises were conducted on a clause-by-clause basis, making particular use of the internet and new social media. The written constitution it produced in this way was then approved by Parliament and at a national referendum.⁹⁸¹

181 Most recently, in July 2012 a Convention on the Constitution was established by resolution of both Houses of the Oireachtas (national Parliament) in the

⁹⁷⁹ On the British Columbia precedent, see ancillary Case Studies, Case Study V. In the UK, Sir Menzies Campbell when leader of the Liberal Democrats in 2007 proposed a Convention on a written constitution to restore public faith in politics, in which he suggested half of The membership should be chosen by random lot: "A Rescue Plan for Politics", *The Guardian*, 6 September 2007.

⁹⁸⁰ For a detailed account see Blackburn, *Case Studies*, M.

⁹⁸¹ For a detailed account see Blackburn, *Case Studies*, O.

Republic of Ireland to make recommendations on a series of constitutional reform issues (such as reducing the voting age to 17 years, reducing the presidential term of office to five years, and reviewing the Dáil electoral system). The Convention consisted of 100 people, being 66 citizens who were eligible to vote selected at random and balanced in terms of gender, age and region, and the remainder being parliamentarians nominated by their parties in proportion to their relative strengths in the Oireachtas, one representative from each of the parties in Northern Ireland, and an independent chairman appointed by the government. The convention held a large number of public hearings throughout 2012-13, and appointed an Academic and Legal Support Group to provide expert research and reports to support the work and deliberations of the convention. Its terms of reference required it to report within 12 months of its first public hearing, with the government undertaking to respond to each of the recommendations within four months and, if accepting a recommendation, to indicate the timeframe it envisaged for the holding of any related referendum.⁹⁸²

Creative use of referendums

182 Referendums as a means of public engagement may be used in a number of ways. The simplest is by giving citizens a final vote on the entirety of the proposal, in our case the draft of a codified constitution. However if there was any division between or across the parties on the content of the document, or it was decided to put alternative models to a vote, it is most likely that none of the codified documents would gain majority support in a single vote. A reform process of this kind has been tried in recent decades in Europe, Canada, Australia and elsewhere, and often failed through presenting voters with extensive amending provisions in one referendum. Too many details provide too much for citizens or interested parties to dislike. Having found at least one undesirable detail, even voters who are neither purists nor perfectionists are likely to vote against the whole reform plan.⁹⁸³

183 A second model would be for a "preliminary values questioning" in advance of the work drawing up the codified constitution, requiring people to give preliminary endorsement to an outline proposal.⁹⁸⁴ They could be asked to vote on the principle a codified constitution, and invited to rank in order of preference their support for a number of different elements of the proposed document in broad outline. However, the level of truly deliberative voting involved here is limited, and if presented with too many options in broad outline, voters are likely once again to be overwhelmed and unable to decide meaningfully on not one but many unfamiliar subjects.

184 A third model could be to have staggered referendums at different stages of the draft document's preparation over a one or two year period. This method would allow people to become better informed as the public debates progressed,

⁹⁸² For a detailed account see Blackburn, *Case Studies*, Q.

⁹⁸³ See generally X. Contiades (ed), *Engineering Constitutional Change* (2012); and D. Oliver and C. Fusaro (eds), *How Constitutions Change* (2011).

⁹⁸⁴ On this and deliberative voting techniques generally see Blackburn, *Case Studies*, V.

and allow for reflection. A different vote could be held every three or four months, and on each occasion a preliminary values question and a discrete section of the codified constitution could be put in draft outline. Such a process would realistically need to be conducted by electronic voting, rather than using the traditional method of the ballot booth. The internet has now made e-voting perfectly feasible and cost effective, and has been trialed in several western democracies including Belgium, France, Germany and Italy as well as in the UK itself (for local elections). If such a scheme were envisaged, it would be best advised to clearly set out the schedule of votes at the outset, to ensure that all key elements of the codification plan would be put to the vote, and also guard against the voting events appearing uncertain and disengaging the public.

Permanent public engagement bodies

185 If governments and parliamentarians wish to promote greater public engagement in shaping the present and future constitutional arrangements of the country, a virtual pre-requisite is to set up new schemes established on a permanent basis for promoting better public understanding, knowledge and information about the political process, citizenship and constitutional issues generally.

186 Some initiatives of this kind already exist, such as the Parliamentary Outreach Service that was set up with the Speaker's endorsement in 2012. This Westminster unit aims to spread awareness of the work, processes and relevance of the institution of Parliament, encouraging greater engagement between the public and the House of Commons and House of Lords. It delivers free training explaining the work of Parliament; promoting engagement with Select Committee inquiries; showing how the public can get involved with legislative scrutiny; and demonstrating Parliament's relevance to each part of the UK. It collaborates with Universities and external bodies including local community groups, businesses, national campaign networks, and charitable bodies or societies concerned with the workings of parliamentary government.

187 A new Constitutional Commission, as described above, could play a leading role in this respect. Not only could the remit of such a body be to undertake inquiries, research and reports into constitutional affairs, on a reference from the government or otherwise, but it could perform an important educative role and have a specific responsibility to promote public participation through public education. Its delivery of such aims could include establishing a website for sharing information and ideas on constitutional issues; cultivating links and engaging not only with persons and bodies with a special interest in constitutional affairs but civil society groups operating in the field of public affairs or citizenship (including social welfare groups, professional or trade organisations, church groups, and student groupings); and hosting regular panels and conferences on current constitutional issues.

7 Conclusions and recommendations

Building blocks and blueprints

188 The three illustrative blueprints set out in Part II above show what the detailed form and contents of a UK codified constitution might be. They reflect the three models for a codified constitution addressed in this programme of research (a Non-legal Constitutional Code, a Constitutional Consolidation Act, and a Written Constitution). The drafting of these blueprints have drawn on recent published proposals on the subject⁹⁸⁵ and precedents in other democratic constitutions including ones in the Commonwealth based on the Westminster model of government.

189 The purpose behind preparing these blueprints, and their utility to policy-makers in government and Parliament as well as interested members of the public, is threefold. First, it aims to take the debate on codifying the constitution beyond general arguments into matters of practical detail, enabling a more meaningful discussion of the problems and questions to be addressed. Second, it serves to illustrate and visualise precisely what the different forms of codification might be, when for some it is difficult to conceive how the traditional constitution might be committed into documentary form at all. Thirdly, the preparation of these three different formats might be regarded as a building-blocks process that needs to be gone through in the preparation of a written constitution.

190 In other words, whilst each of the three models considered are worthy of adoption in their own right as a codified form of the constitution, for those wishing to move towards a written constitution (as in model C), there is some utility in first preparing the ground by agreeing the guiding principles of the constitution (as in model A, a non-legal code), and then collecting together the existing statutory, common law and conventional institutions, powers and procedures that make up our existing constitution (as in model B, a consolidation law exercise), before embarking on the more ambitious task of preparing a written constitution for the UK. For, as has proved the case elsewhere,⁹⁸⁶ this building blocks approach to enacting a written constitution can help facilitate agreement across conflicting views and attitudes by separating out more clearly matters of consolidation from those of reform in the process of selection, discussion and agreement of its individual provisions.

Initiative, commencement and the pre-condition of cross-party consent

191 The start of any process for codifying the constitution is most likely to come from a commitment set down in principle in a general election manifesto of one of the major political parties which is then voted into office. Pressures behind the

⁹⁸⁵ In particular those from the Institute for Public Policy Research, John Macdonald QC, Professor Vernon Bogdanor and Richard Gordon QC. For discussion see *Literature Review*.

⁹⁸⁶ For example see the case of Switzerland: Blackburn, *Case Studies*, N.

adoption of such a policy, and for prioritising it for action when in office, might come from a number of external sources, among them an initiative in the nature of a Constitutional Convention and/or some event affecting a core part of the political structure acting as a catalyst and providing a sense of urgency to address the UK's constitutional arrangements. This might arise from a lack of clarity around some element of the constitution, or some trauma affecting the structure and working of government.

192 In present circumstances pressure for a codified constitution is unlikely to come from public opinion itself, which apart from a small though influential number of specialist interest groups, has a low salience of understanding and interest in constitutional affairs. However, any proposal to codify the constitution, particularly if it is to be set down in a legal document, ought to be influenced by the values and principles regarded as most important to the lives of ordinary citizens, and should be legitimised through some formal process of approval. All this suggests the need to initiate some strategy for public information and engagement at an early stage of the proposal.

193 As has been emphasised earlier, an essential pre-condition to the task of codifying the constitution, whether it is in the nature of models A, B or C, will be a political consensus around its general desirability, and for the government to secure cross-party agreement on the central elements and nature of the document that is to be prepared. It would be counter-productive to the unifying purpose of codification, and the prospect of it enduring beyond the lifetime of the party in office, for it to be unilaterally imposed by one party. Past precedents suggest that informal methods of negotiation and dialogue are most effective rather than formal conferences, and success relies on a pre-disposition of the parties to reach agreement, facilitated by the personal skills of those leading the negotiations on each side.

The preparation of a Constitutional Code (Model A): the Cabinet Office

194 Under this model of codification, it is recommended that the Cabinet Office prepare a first draft of the document, building on its pre-existing guide to the laws, conventions and rules on the operation of government set out in its Cabinet Manual. It would need to substantially recalibrate the content of the Manual, both in the style of drafting (more in line with articles of principles than the minutiae of Whitehall practice), and extend its scope to important areas of constitutional affairs currently missing in the Manual, such as matters of citizenship, the law of Parliament, the role of the judiciary, and machinery of justice.

195 If this Code were to be the final work on codifying the constitution, then the Cabinet Office's draft should be submitted to a Joint Committee of Parliament constituted for the purpose to inquire into its accuracy, take evidence, and report to both Houses. In conducting its inquiry it would be instructive for the Committee to not only take expert evidence, but conduct a public consultation exercise (including means of establishing public opinion), with terms of reference making it clear that the codification exercise was to consolidate existing principles and elements of the constitution and not in any substantive way change it.

196 The government should then consider any changes recommended by the Joint Committee, provide a reasoned response to them, and explain why or why not they are acting upon them. The Prime Minister and Leader of the House of Lords should then submit their revised Constitutional Code to each House of Parliament respectively on a motion to take note and approve on a free vote. This process should be repeated within the first session of each new Parliament, providing the opportunity to amend the Constitutional Code as conventions and practice evolved.

The preparation of a Consolidation Act (Model B): The Law Commission

197 If the agreed nature of the method for codifying the constitution were to be a consolidation of existing constitutional law and practice, and no more, then insofar as such a document would be a major Act of Parliament regardless of it changing nothing or little of substance, it would be appropriate for the purpose and scheme of the proposal, together with the reasoning behind it and any problems and issues to be settled, to be set out in an initial Green Paper, inviting public and parliamentary response. The Green Paper should set out the government's intention that the Law Commission take on this task of consolidation.

198 The Law Commission for England and Wales has agreed with Professor Blackburn that it is a suitable vehicle for the preparation of a documentary constitution of this nature. In a letter to him from the Commission Chairman, Sir David Lloyd Jones, of 19 June 2014 Sir David wrote that, "the task of bringing together in one statute, and modernising the language of, various provisions of existing statute law relating to constitutional matters is one for which, in principle, the Commission would be well suited".⁹⁸⁷

199 A White paper should follow, setting out a timetable for production of the Bill and a commitment to present it to Parliament at the earliest opportunity. The brief to the Law Commission in its drafting and editing work, which will include certain conventions though stated to be without direct legal effect, should be to produce a document that contains the fundamental elements of the constitution, reproducing no more statutory provisions in its detail than essential to its task.

200 Operationally the project should be conducted on a tripartite basis between the three Law Commissions in the UK, with the Commission for England and Wales playing the lead role. If thought necessary or desirable, a sub-committee on the Constitution might be established for the purpose of carrying out or assisting with this work, with a chairman and members expert on constitutional law and practice being appointed, supervised and reporting to the Public Law team manager and Chairman. In all other respects, the process of drawing up the Consolidation Bill should follow normal Law Commission practices.⁹⁸⁸

⁹⁸⁷ For a fuller extract from the Letter see Part III, 3, para 65.

⁹⁸⁸ See Blackburn, *Case Studies*, C.

201 The draft Bill prepared by the Law Commission, and submitted to the Justice Secretary, should be published for scrutiny by Parliament. A Joint Committee should be established for the task, taking evidence and preparing a report with any suggested amendments. The government should then respond to this Report, and present the Consolidation Bill to Parliament for its consent in the customary manner. The legislative process agreed for this Bill should ensure that it was possible to take expert evidence during the committee stage in the House of Commons.⁹⁸⁹

The preparation of a Written Constitution (Model C): a Commission for Democracy

202 The process by which a new constitution, or written constitution containing any reforming elements, might be prepared and implemented would clearly be more intensive and complex than the other models considered, as it would symbolically become *the* Constitution in the state, providing the basic law and primary source of authority in the United Kingdom. The level of political importance and legal significance of such a document would make it essential that there was an extensive programme of public engagement built into its design and implementation process.

Option 1 - Constitutional Convention with popular representation

204 A first option, placing special emphasis on popular participation in the design of the document, would be for a body containing members of the public to be established, with its membership selected either through a process of direct election from persons nominated or at random, as discussed earlier.⁹⁹⁰ The composition of this Constitutional Convention or Assembly, however termed, could reflect similar constitution-building exercises in other countries in recent times.⁹⁹¹ Its membership might be 100 members, half being nominated representatives of the parties (in proportion to national votes cast for them at the previous general election), and half being members of the public interested in participating (selected through a rigorous process ensuring a geographical spread across the country and using quotas in relation to age with gender, ethnicity, and socio-economic status).

205 The proposal for a Convention of this nature could be presented for approval in both Houses of Parliament with terms of reference to consider and make recommendations on key questions and options in drawing up the codified constitution. Whether or not the motions for setting up the Convention were made in the name of the government or a group of backbench Members and peers respectively, it would need the support of the government to guarantee its passage and to ensure it would willingly respond to the Assembly's report. Government

⁹⁸⁹ In other words, there would need to be cross-party agreement reached in the House of Commons on the allocation of which clauses at committee stage were taken by the whole House, being the conventional committee stage for bills of first class constitutional importance, and those by a public bill committee enabling the taking of oral and written evidence.

⁹⁹⁰ Paras. 55-58.

⁹⁹¹ See paras. 177-180, and Blackburn, *Case Studies*, M, O and Q.

support, in turn, would largely depend upon the willingness of the opposition leaders to co-operate, since refusal to do so would undermine the authority of the Convention's work. Considerable informal negotiations and talks in advance of the parliamentary motions would be necessary.

206 It would be for the government in consultation with the other parties to agree the working details of the Convention. A suitable design might be for the chairman to be chosen by the government after consulting the other parties, subject to a pre-appointment hearing by a parliamentary committee. It would be desirable for the government to give an undertaking during the debate on the resolution setting up the Convention that it would respond to the Convention's recommendations within a specified time frame, such as four months, by way of a ministerial statement to Parliament and a published paper indicating those areas where it agreed or disagreed with the Convention's recommendations. The government would then proceed to have a draft of the documentary constitution drawn up and presented to Parliament.⁹⁹²

Option 2 - A statutory Constitutional Commission

211 A second option would be for the government to bring forward a Bill to create a permanent statutory Constitutional Commission, which as its first task would be the design and preparation of a draft constitution for the UK.⁹⁹³ A body of this nature could be constructed in similar fashion to the Electoral Commission, having up to twelve independent Commissioners including a Chairman formally appointed by the Queen, following an Address from the House of Commons, and a selection process supervised by a Speaker's Panel, with four of the Commissioners being nominated by the political parties. The tenure and conditions of office for the Chair and ordinary Commissioners would be settled in the legislation establishing the Commission,⁹⁹⁴ as would its other permanent functions and resources.

Option 3 (Recommended) - A Commission for Democracy

212 However, it is recommended that the most suitable way forward would be for a Commission for Democracy to be set up under ministerial authority for the purpose, following cross-party talks reaching consensus on its general aims, form of composition, and method of working.

213 If a government wished to accomplish its aim of a written constitution within its own lifetime, or that of a five year Parliament, this would be a more expeditious process than a statutory body. A government Bill to set up a Commission for this purpose would inevitably arouse extensive debate in both Houses of Parliament and in its committees on the whole subject of a written constitution, opening up the possibility of the whole process becoming so protracted that the work involved becomes derailed or paralysed before work has even started. This does not mean

⁹⁹² The agency conducting the work could be the Law Commission (see Blackburn, *Case Studies*, C) or an ad hoc commission established specially for the purpose directly responsible to the Justice Secretary or operating as a sub-committee of the Law Commission.

⁹⁹³ See para. 67.

⁹⁹⁴ See the Political Parties, Elections and Referendums Act 2000, Part I, for the statutory framework for the Electoral Commission.

that the role of Parliament should be circumvented in the process, but that the participation, influence, and agreement of both Houses and their members is best performed during the extensive debates that would take place on the Bill and draft written constitution itself.⁹⁹⁵

214 Furthermore, whilst it is agreed that a permanent Commission with broad responsibilities with respect to the constitution is desirable, if the Commission for Democracy succeeded in its task of designing and securing parliamentary and electoral approval to its draft written constitution, the terms of the new Constitution itself could make provision for the Commission for Democracy to become permanent, with new functions conferred upon it (such as to keep the working of the constitution under review, report and make recommendations to Parliament, and the duties set out in the illustrative blueprint in Part II⁹⁹⁶).

215 The Commission for Democracy would relieve the government of what would be a highly time-consuming and complex task, most likely undertaken at a time when most of the electorate perceived there to be other higher priorities relating to the economy and financial affairs, while maintaining the government's involvement and trust in the process and outcome.

216 Its title of "Commission for Democracy" would serve to emphasise that the preparation of a written constitution was part of a broader process to improve the quality of our political democracy and level of popular engagement in the governance of the United Kingdom.

217 The Commission would need sufficient resources for a secretariat and to establish effective sub-committees. One such sub-committees could provide expert advice and research on constitutional and legal questions arising, and another could design and organise its process of public engagement, consultation and opinion gathering.⁹⁹⁷ Members on the sub-committees could be seconded or recruited from government departments, Universities or professional bodies, as the Commission thought best equipped and appropriate. Lawyers from the office of parliamentary counsel could support the work of a commission in the drafting of the legal document.

215 The range of core questions to be considered by the Commission for Democracy would include the elements of content identified and discussed earlier.⁹⁹⁸ These include matters of entrenchment, such as the extent to which the judiciary should be given responsibility for enforcing the constitution, and the circumstances in which a referendum of the electorate should take place in any amendment process adopted.

⁹⁹⁵ Parliamentarians, individually and its committees, would also be involved in the consultation processes undertaken by the Commission.

⁹⁹⁶ Part II, 3 Written Constitution, Article 51.

⁹⁹⁷ On the deliberative processes that might be used, see above Part 6 above, Blackburn, *Case Studies*, U and V.

⁹⁹⁸ See Part 4 above.

216 In addition, the Commission would need to inquire into issues of constitutional modernisation that have stalled in recent times, such as a final settlement for the House of Lords and a British Bill of Rights. So long as the Commission for Democracy, assisted by its sub-committees, conducted a thorough and systematic process of public engagement and public opinion gathering, it should be able to command a special authority on these questions.

217 The final stage of the Commission's work, assisted by the Office of Parliamentary Counsel, would be for the agreed content for the Constitution to be set out in a draft Bill presented to the House of Commons, providing for its introduction as the Constitution for the United Kingdom. This should be in the form of an Act of Parliament with the text of the Constitution set out in its Schedule. A draft Bill of what this might be is set out below.

218 A referendum would be necessary to bring the new Constitution into effect, not only to exhibit the electorate's approval of the idea and content of the written constitution, but to confer moral legitimacy upon it, especially as the Constitution would be establishing itself as the primary authority in the state. Certain other formalities would be necessary or desirable to reinforce its authority, which should include amending the form of the Oaths taken by principal public office-holders, including ministers, parliamentarians, and members of the judiciary, so that henceforth they swear to uphold the provisions of the Constitution.

A
BILL

to

Provide for a referendum on a documentary Constitution for the United Kingdom, and subject thereto to provide for its entry into force.

Whereas the good governance of the four nations of England, Wales, Scotland, and Northern Ireland, constituting a United Kingdom, has evolved over many centuries, guided by principles of civil liberty, the rule of law, and parliamentary representation; with landmarks in its constitutional history that include the Magna Carta 1215, the Petition of Rights 1628, the Habeas Corpus Acts, the Bill of Rights 1688, the Acts of Union, the Representation of the People Acts, and the 1998 legislation starting the process of devolution to Wales, Scotland and Northern Ireland; the country has progressed into a democracy founded upon civic values of tolerance, equality, and mutual respect; the people of the United Kingdom now desire a new settlement that codifies the Constitution of the country, for the purpose of greater transparency and openness in government, the greater inclusion of all citizens of the United Kingdom in the political process, and greater stability in its governance and constitutional arrangements.

BE IT ENACTED by the Queen'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: —

PART I

REFERENDUM ON THE CONSTITUTION

1. A referendum shall be held to approve the Constitution, set out the Schedule.
2. The referendum question on the ballot paper shall be - "Are you in favour of the proposed Constitution for the United Kingdom?"
3. The referendum shall be held on 14th day of June 2019.

PART II

ESTABLISHMENT OF THE CONSTITUTION

4. Subject to a majority of those voting in the referendum being in favour of the Constitution, the Constitution shall take effect and become the fundamental law of the United Kingdom in accordance its terms and provisions.

PART III

GENERAL

5. Subject to section 4, the date of the Constitution entering into force shall be the 14th day of September 2019.
6. In this Act, the term "Constitution" means the document set out in the Schedule.
7. This Act may be cited as the Constitution of the United Kingdom Act 2015.

SCHEDULE

[Constitution of the United Kingdom]

Formal Minutes

Thursday 3 July 2014

Members present:

Mr Graham Allen, in the Chair

Mr Christopher Chope
Tracey Crouch
Mark Durkan
Paul Flynn

Fabian Hamilton
David Morris
Chris Ruane

Draft Report (A new Magna Carta?), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 read and agreed to.

A Paper was appended to the Report.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Thursday 10 July at 9.45 am]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/pcrc-constitution.

Thursday 7 July 2011

Question number

Sophie Boyron, Senior Lecturer, Birmingham University [Q1-21](#)

Peter Bajomi-Lazar, Senior Research Fellow, Oxford University [Q22-38](#)

Dr Bill Kissane, London School of Economics [Q39-60](#)

Thursday 14 July 2011

Professor Guðmundur Hálfðánarson, Professor of History, University of Iceland [Q61-72](#)

Professor Sir Jeffrey Jowell KCMG, QC, Director, Bingham Centre for the Rule of Law and **Professor Dawn Oliver**, Emeritus Professor of Constitutional Law, University College London [Q73-112](#)

Thursday 8 December 2011

Tony Benn, former parliamentarian, **Professor Richard Gordon QC**, and **Frank Vibert**, Department of Government, London School of Economics [Q113-153](#)

Thursday 12 January 2012

Dr John Allison, University Senior Lecturer in Law, Cambridge University, and **Professor Linda Colley**, Professor of History, Princeton University [Q154-183](#)

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/pcrc-constitution. INQ numbers are generated by the evidence processing system and so may not be complete.

- 1 [\(CDE 01\) King's College London \(Literature Review\)](#)
- 2 [\(CDE 02\) King's College London \(Existing Constitution\)](#)
- 3 [\(CDE 03\) Professor Iain McLean](#)
- 4 [\(CDE 04\) George Jones and John Stewart](#)
- 5 [\(CDE 05\) The Constitution Society](#)
- 6 [\(CDE 06\) Professor Stanley Henig on behalf of the Federal Trust for Education and Research](#)
- 7 [\(CDE 07\) Unlock Democracy](#)
- 8 [\(CDE 08\) Sebastian Hordern](#)
- 9 [\(CDE 09\) Perry Walker](#)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/publications/

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Parliamentary Voting System and Constituencies Bill	HC 422
Second Report	Fixed-term Parliaments Bill	HC 436 (Cm 7951)
Third Report	Parliamentary Voting System and Constituencies Bill	HC 437 (Cm 7997)
Fourth Report	Lessons from the process of Government formation after the 2010 General Election	HC 528 (HC 866)
Fifth Report	Voting by convicted prisoners: Summary of evidence	HC 776
Sixth Report	Constitutional implications of the Cabinet Manual	HC 734 (Cm 8213)
Seventh Report	Seminar on the House of Lords: Outcomes	HC 961
Eighth Report	Parliament's role in conflict decisions	HC 923 (HC 1477)
Ninth Report	Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12	HC 1477 (HC 1673)
Tenth Report	Individual Electoral Registration and Electoral Administration	HC 1463 (Cm 8177)
Eleventh Report	Rules of Royal Succession	HC 1615 (HC 586)
Twelfth Report	Parliament's role in conflict decisions—further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12	HC 1673
Thirteenth Report	Political party finance	HC 1763

Session 2012–13

First Report	Recall of MPs	HC 373 (HC 646)
Second Report	Introducing a statutory register of lobbyists	HC 153 (HC 593)
Third Report	Prospects for codifying the relationship between central and local government	HC 656 (Cm 8623)
Fourth Report	Do we need a constitutional convention for the UK?	HC 371

Session 2013–14

First Report	Ensuring standards in the quality of legislation	HC 85 (HC 611)
Second Report	The impact and effectiveness of ministerial reshuffles	HC 255 (1258)
Third Report	Revisiting Rebuilding the House: the impact of the Wright reforms	HC 82 (HC 910)

Fourth Report	The role and powers of the Prime Minister: the impact of the Fixed-term Parliaments Act 2011 on Government	HC 440 (HC 1079)
Fifth Report	Pre-appointment hearing: The Chair of the House of Lords Appointments Commission	HC 600
Sixth Report	Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012-13	HC 593
Seventh Report	The Government's lobbying Bill	HC 601 (801)
Eighth Report	Parliament's role in conflict decisions: an update	HC 649
Ninth Report	House of Lords reform: what next?	HC 251 (1079)
Tenth Report	The Government's lobbying Bill: follow up	HC 891
Eleventh Report	Impact of Queen's and Prince's consent on the legislative process	HC 784 (HC 224)
Twelfth Report	Parliament's role in conflict decisions: a way forward	HC 892
Thirteenth Report	Fixed-term Parliaments: the final year of a Parliament	HC 976
Fourteenth Report	Constitutional role of the judiciary if there was a codified constitution	HC 802
Session 2014-15		
First Report	Role and powers of the Prime Minister	HC 351