



# The Cabinet Manual – Draft

*A guide to laws, conventions, and rules on the operation of government*

December 2010

# Foreword

The way in which government operates is a vital part of the United Kingdom's (UK) democracy, but it can be complex for those involved in, and for those outside of, government. The Cabinet Manual is intended to be of use to both audiences: it is primarily written to provide a guide for members of Cabinet, other ministers and Civil Servants, but it will also serve to bring greater transparency about the mechanisms of government, and to inform the public whom the Government serves.

Before the last election, the previous Prime Minister, the Rt Hon Gordon Brown MP, asked that I lead work to produce a Cabinet Manual. I published a draft chapter on elections and government formation when I gave evidence to the Justice Select Committee in February 2010, and that draft chapter helped as a guide through the process of supporting the formation of a new government after the General Election.

The Prime Minister, the Rt Hon David Cameron MP, and Deputy Prime Minister, the Rt Hon Nick Clegg MP, have endorsed the idea of the Cabinet Manual and agreed that this draft should now be published for comment. The three-month period allowed for comments will also provide an opportunity for Parliament to scrutinise the draft.

Following consideration of any comments, I expect to invite Cabinet to endorse a revised version of the Cabinet Manual in the spring of 2011.

## Background

While some parts of the way in which the Government operates are governed by statute law – for example limits on the number of ministerial salaries – many other aspects, such as the existence of Cabinet itself, are matters of convention or precedent. These conventions have evolved over time and in some cases have been the subject of uncertainty.

In recent years, more and more information has been made available on how government operates. For example, *Questions of Procedure for Ministers* was first made public in 1992, and its successor, the *Ministerial Code*, was first published in 1997 (with the most recent version published following the 2010 General Election). Information on other issues, such as the operation of Cabinet and its committees, is already available on the Cabinet Office website.

However, there has never been a single source of information on how the Government works and interacts with the Sovereign, Parliament, the judiciary, international organisations, the Devolved Administrations and local government.

Other countries with a 'Westminster-style' system similar to the UK have faced the same issue and consolidated their guidance. In particular, over the past 20 years, New Zealand has gradually developed its own Cabinet Manual, which, as the New Zealand Prime Minister said in the foreword to the latest edition, is now seen as “an authoritative guide to central government decision making for Ministers, their offices, and those working within government”.<sup>1</sup>

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<sup>1</sup> <http://cabinetmanual.cabinetoffice.govt.nz/foreword>

## The role and content of the Cabinet Manual

The Cabinet Manual is intended to be a source of information on the UK's laws, conventions and rules, including those of a constitutional nature, that affect the operation and procedures of government. It is written from the perspective of the Executive branch of government. It is not intended to have any legal effect or set issues in stone. It is intended to guide, not to direct.

The Cabinet Manual is a statement of the arrangements as they are on the date of publication. Some areas of the Manual continue to be subject to public debate. The Manual, however, does not seek to resolve or move forward those debates, but is instead a factual description of the situation today. In other words, it will be a record of incremental changes rather than a driver of change.

## Current issues

Some matters covered in the Manual are entirely a matter for the Government – above all the operation of Cabinet and its committees – and the Manual therefore incorporates changes made by the present administration as well as referring to longer-established practices and precedents.

Other matters are not simply for government; for example, the reforms proposed in the programme for government and agreed by the Coalition Government in May 2010. These include setting a fixed-term Parliament, changing the number of MPs, a referendum on the voting system, House of Lords reform, proposals relating to any future transfer of power or competence from the UK to the European Union (EU), the financing of devolution and a public reading stage for bills. It would be inappropriate to anticipate the final will of Parliament on these matters, although evidently if Parliament agrees changes to these or other relevant matters that require

the consent of Parliament, parts of the Cabinet Manual will be revised accordingly.

Legislation relevant to the draft Cabinet Manual is now before Parliament in the form of the Fixed-term Parliaments Bill (introduced in to the House of Commons on 22 July 2010), the EU Bill (introduced in to the House of Commons on 11 November 2010), and the Scotland Bill (introduced on 30 November 2010). As these bills are currently being considered by Parliament, it makes sense to indicate in general terms the changes that will need to be made to the draft Cabinet Manual if the bills are enacted in their current form. Parliament has also approved through secondary legislation the holding of a referendum under the Government of Wales Act 2006.

The principal effect of the Fixed-term Parliaments Bill would be to set out fixed dates for general elections and remove from the Prime Minister the right to request a dissolution of Parliament at a time of his or her choosing. A Parliamentary term would last five years unless the House of Commons voted (by a majority of two-thirds) to dissolve Parliament, or unless a government lost the confidence of the House and it proved impossible for an alternative government to be formed within 14 days.

If enacted in its present form, the Bill would require substantial changes to those parts of Chapter 2 dealing with the dissolution of Parliament and confidence motions. Consideration would also be needed on the date from which pre-election contact with opposition parties is allowed, and whether there should be any changes to the rules on restrictions on government activity before and after elections.

The provisions in the EU Bill, if enacted, would mean that if in the future there is a proposed change to the Treaty on European Union or the Treaty on the Functioning of the EU that would move a power or an area of policy from the UK to the EU, then the Government will need the prior approval of the British people in a national referendum: a 'referendum lock'. The

referendum lock would also apply to the use of any 'ratchet clause' in the existing EU treaties that amounted to the transfer of an area of power or competence from the UK to the EU. Furthermore, the Bill proposes that the use of ratchet clauses would require prior approval by Parliament through an Act of Parliament. A further provision of the EU Bill seeks to underline in statute that what a sovereign Parliament can do, a sovereign Parliament can always undo. Sections of the Cabinet Manual that relate to the EU may need to be revised to reflect the changes proposed in the EU Bill should it be enacted.

The Scotland Bill, if enacted, will provide for greater fiscal devolution to Scotland, make some amendments to the boundaries between devolved and reserved areas, reform the operation of the Scottish Parliament and make some technical changes to the operation of the existing Scotland Act 1998. This would require changes to the chapters dealing with devolution and finance.

In November 2010, the House of Commons and the House of Lords approved three statutory instruments that will enable the holding of a referendum on 3 March 2011 on the powers of the National Assembly for Wales. Those instruments will be put before the Privy Council in December 2010. The referendum will ask the people of Wales whether they want the National Assembly for Wales to take on the full range of powers set out in Schedule 7 to the Government of Wales Act 2006, or whether they wish the current system to continue – whereby the Assembly assumes new powers incrementally, on a case-by-case basis.

### **Development of the draft Cabinet Manual**

With the agreement of the previous Prime Minister, I published a draft chapter on elections and government formation when I gave evidence to the House of Commons' Justice Committee in February 2010. The Justice Committee welcomed publication of the draft and made a number of recommendations.

Since the election, the Cabinet Office has updated that chapter (Chapter 2), particularly in light of the experience gained in May 2010. The Cabinet Office, working with other departments, has also drafted chapters covering the other key aspects of how the Government works.

I also gave evidence to the Political and Constitutional Reform Committee on 4 November 2010 as part of their inquiry into government formation, which considered the draft chapter on elections and government formation.

In developing the draft, we have received invaluable contributions from constitutional experts and others. While we have incorporated many helpful comments, the Cabinet Office is responsible for the text of the draft published today.

I would welcome further comments, in particular from political parties represented in Parliament, the relevant committees of Parliament, academics and other commentators, and members of the public.

## **How to contribute**

Publishing the Cabinet Manual in draft has two main aims:

- first, to ensure that – as far as possible – the Cabinet Manual reflects an agreed position on important constitutional conventions. Where there is doubt or disagreement, we hope consultation will help clarify the position and achieve a common understanding
- second, to check that the draft covers the issues which need to be covered (that there is nothing missing which should be included and that nothing is included which does not need to be included in a Cabinet Manual), and that it does so in a way which is easy for the intended audience to follow.

It is important to remember that the Cabinet Manual is intended to record the current position on the operation of central government. We are not seeking comments on laws, rules or conventions that people may wish to see changed in the future.

Equally, readers of the draft are requested to bear in mind that it is a draft Cabinet Manual. The focus is on matters that are relevant to Cabinet, and to civil servants and others advising Cabinet and other ministers. It would be inappropriate to include other matters, however important.

In accordance with best practice, we will allow 12 weeks for comments. Responses should be sent to: [cabinetmanual@cabinet-office.x.gsi.gov.uk](mailto:cabinetmanual@cabinet-office.x.gsi.gov.uk) by Tuesday 8 March 2011.

We will not respond to individual comments, but will publish a summary of the issues raised alongside the final version of the Cabinet Manual, which we expect to publish in the New Year. Should you wish for your comments to remain confidential, please make this clear when you submit your response.

After the final version of the Cabinet Manual has been published, it will be regularly reviewed to reflect the continuing evolution of the way in which Parliament and government operate. We envisage that an updated version will be available on the Cabinet Office website, with an updated hard copy publication at the start of each new Parliament.

A handwritten signature in black ink that reads "Gus O'Donnell". The signature is written in a cursive, flowing style.

**Sir Gus O'Donnell**



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# Introduction

## Parliamentary democracy

1. The UK is a parliamentary democracy which has a constitutional sovereign as Head of State; a sovereign Parliament, which is supreme to all other government institutions, consisting of the Sovereign, the House of Commons and the House of Lords, an Executive drawn from and accountable to Parliament, and an independent judiciary.
2. Constitutional convention is that executive power is exercised by the Sovereign's Government, which has a democratic mandate to govern. Members of the Government are normally members of the House of Commons or the House of Lords and the Government is directly accountable to Parliament. The government of the day holds office by virtue of its ability to command the confidence of the House of Commons. Elections are held at least every five years to ensure broad and continued accountability to the people. Election candidates usually represent political parties, and party numbers in the House of Commons determine the composition of the Government.
3. Parliament is sovereign and it has provided by Acts of Parliament – which, by their nature, may be repealed – for certain issues to be considered and determined at different levels: within the EU; by the Devolved Administrations; and by local government.

## The UK constitution

4. 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'. The UK does not have a constitutional court to rule on the implications of a codified constitution, and the sovereignty of Parliament is therefore unrestrained by such a court.

5. Constitutional matters and practices may include:

- **statutes**, such as the Magna Carta in 1215; the Bill of Rights and Scottish Claim of Right Act in 1689; the Acts of Union; the various Acts extending the voting franchise; the Parliament Acts in 1911 and 1949 limiting the powers of the House of Lords; the European Communities Act 1972; the Northern Ireland Act 1998, the Scotland Act 1998; and the Government of Wales Acts of 1998 and 2006
- **the Royal Prerogative**, which is the residual power inherent in the Sovereign, and now exercised mostly on the advice of the Prime Minister and Ministers of the Crown
- **judicial decisions**, made by the Supreme Court (formerly the House of Lords), the Court of Appeal and the High Court (in England, Wales and Northern Ireland) and the Court of Session in Scotland
- **conventions**, rules of constitutional practice that are regarded as binding in operation but not in law
- **European and international law**, both of which inform and influence the UK's constitution.

## The Sovereign

6. The Sovereign is the Head of State of the UK, providing stability, continuity and a national focus. By convention, the Sovereign does not become publicly involved in the party politics of government, although he or she is entitled to be informed and consulted, and to advise, encourage and warn ministers. For this reason, there is a convention of confidentiality surrounding the Sovereign's communications with his or

her ministers. The Sovereign retains prerogative powers but, by constitutional convention, the majority of these powers are exercised by, or on the advice of, his or her responsible ministers, save in a few exceptional instances, (the 'reserve powers'). Paragraphs 58 and 59 of Chapter 2 are examples of the Sovereign's reserve powers.

## Parliament

7. Parliament has a number of functions, which include controlling national expenditure and taxation; making law; scrutinising executive action; being the source from which the Government is drawn; and debating the issues of the day. All areas of the UK are represented in Parliament and it provides a forum for Members of Parliament (MPs) to speak and correspond on behalf of their constituents, where they can seek redress if necessary.
8. Parliament comprises the Sovereign in Parliament and two Houses: the House of Commons, which is wholly elected, and the House of Lords, which comprises the Lords Spiritual and Temporal. Parliament has overall control of the public purse; the Government may not levy taxes, raise loans or spend public money unless and until it has authorisation from Parliament.
9. In the exercise of its legislative powers, Parliament is sovereign. In practice, however, Parliament has chosen to be constrained in various ways – for example by its commitment to the rule of law, through its Acts, and elements of European and other international law.
10. Parliament also scrutinises executive action. Indeed, the government of the day is primarily responsible to Parliament for its day-to-day actions. This function is exercised through a variety of mechanisms, such as the select committee system, parliamentary questions, oral and written statements and debates in both Houses.

11. By the Scotland Act 1998, the Government of Wales Acts 1998 and 2006, and the Northern Ireland Act 1998, Parliament devolved powers over areas of domestic policy such as housing, health and education to directly elected legislatures in Scotland, Wales and Northern Ireland. Parliament retains the legal power to continue to legislate on these matters, but it does not normally do so without the consent of these devolved legislatures.

### **The Prime Minister and ministers**

12. Ministers act pursuant to statutory powers conferred on them by Parliament, to the Royal Prerogative and to inherent or 'common law' powers. They are required to act in accordance with the law. The courts and other bodies have a role in ensuring that ministerial action is carried out lawfully.
13. The role of the Prime Minister and Cabinet are governed largely by convention. The Prime Minister is the Sovereign's chief adviser, chairs Cabinet and has overall responsibility for the organisation of government. Cabinet is the ultimate arbiter of all government policy; decisions made at Cabinet and Cabinet committee level are binding on all members of the Government, save where collective agreement is expressly set aside, and any minister who cannot accept them is expected to resign.
14. Ministers are individually responsible to Parliament for departmental matters and for their own conduct in office. They are collectively responsible to Parliament for the policies of the government to which they belong.
15. Ministers hold office as long as they have the confidence of the Prime Minister. They are supported by civil servants, non-partisan servants of the Crown. Civil servants are required to act with honesty, objectivity, impartiality and integrity. In return, ministers are expected to ensure that they do not bring the impartiality of the Civil Service into question, or

draw the Civil Service into conflict with the *Civil Service Code* or the requirements of the Constitutional Reform and Governance Act 2010.

### **The judiciary**

16. The judiciary interprets and applies the law in its decisions. It is a long-established constitutional principle that the judiciary is independent of both the government of the day and Parliament so as to ensure the even-handed administration of justice. Civil servants, ministers, and in particular the Lord Chancellor, are under a duty to uphold the continued independence of the judiciary, and must not seek to influence particular judicial decisions. The Lord Chief Justice is the head of the judiciary in England and Wales. The Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland are the heads of the judiciary in Scotland and Northern Ireland respectively. The Supreme Court is the final court of appeal for all civil cases in the UK and for all criminal cases in England, Wales and Northern Ireland.

### **European Union and other international law**

17. Parliament has provided for the incorporation of the EU into the UK's domestic law through the European Communities Act 1972 and by Acts of Parliament.
18. The UK has also ratified a wide range of other treaties that form part of the constitutional framework – for example the Charter of the United Nations, the North Atlantic Treaty and the various agreements of the World Trade Organization.

# Chapter 1: The Sovereign

This chapter covers the ceremonial and constitutional duties of the Sovereign in relation to government. The UK is a constitutional monarchy. 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 honour. The Sovereign appoints the Prime Minister and other ministers, and many of the Government's powers derive from those of the Sovereign. The Government is thus 'the Sovereign's Government' as well as having a democratic mandate. This chapter also sets out the functions of the Privy Council and the position of the Established Church.

19. The Sovereign appoints the Prime Minister and, on his or her advice, other ministers (see Chapter 3). He or she fulfils a number of ceremonial and constitutional duties relevant to the Government. The Sovereign opens each new session of Parliament, and brings the session to an end, proroguing Parliament if necessary by Order in Council. Before a General Election, the Sovereign dissolves Parliament by proclamation (see Chapter 2). Where a bill has completed all of its Parliamentary stages, it cannot become law until the Sovereign has formally approved it, which is known as Royal Assent. He or she also appoints the First Minister of Scotland and the First Minister of Wales, and has a role in relation to the devolved administrations.
20. The Sovereign is Head of the Armed Forces. The Army and Air Force Acts require that members of the Army, Royal Air Force and Royal Marines take an oath of allegiance to the Sovereign.<sup>2</sup> All titles of honour (for example knighthoods) are conferred by the Sovereign, mostly on the

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<sup>2</sup> Members of the Royal Navy do not take an oath as they are maintained under the Royal Prerogative rather than statute.

advice of the government of the day, although there are some honours that the Sovereign confers at his or her own discretion. British honours are usually conferred by the Sovereign on the advice of the Cabinet Office, while the Foreign and Commonwealth Office (FCO) advises the Sovereign where honorary decorations and awards are granted to people from other countries.

21. As Head of State, the Sovereign undertakes and hosts a number of State visits, helping to build relations with other nations. In addition to the UK, the Sovereign is Head of State of a number of other Commonwealth realms.<sup>3</sup> Her Majesty the Queen is also Head of the Commonwealth, a voluntary association of 54 countries (see Chapter 9, paragraphs 329 and 330 for more information on the Commonwealth).
22. The Sovereign has a role in relation to the Crown dependencies, the Channel Islands and the Isle of Man, which are not part of the UK but are dependent territories of the English Crown. The UK is responsible for their defence and representation internationally. The Sovereign is the ultimate authority in the Isle of Man and is responsible for the good governance of the Channel Islands. The Privy Counsellor with responsibility for the Crown dependencies is currently the Lord Chancellor. There are also 14 overseas territories<sup>4</sup> for which the UK is responsible. They are not constitutionally part of the UK, but the Sovereign has responsibility for appointing a governor or commissioner to represent him or her in the overseas territory.

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<sup>3</sup>Antigua and Barbuda, Australia, the Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, Solomon Islands, St Christopher and Nevis, St Lucia, St Vincent and the Grenadines, and Tuvalu.

<sup>4</sup>They are Anguilla, Bermuda, British Antarctic Territory, the British Indian Ocean Territory (Chagos Islands), the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, the Pitcairn Group of Islands, St Helena and its dependencies (Ascension and Tristan da Cunha), South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus, and Turks and Caicos Islands.



## The Royal Prerogative

23. The scope of the Royal Prerogative power, which is the residual power inherent in the Sovereign, has evolved over time. Originally the Royal Prerogative would only have been exercised by the reigning Sovereign. However, ministers now exercise the bulk of the prerogative powers, either in their own right or through the advice that they provide to the Sovereign, which she is constitutionally bound to follow. The Sovereign is, however, entitled to be informed and consulted, and to advise, encourage and warn Ministers. More detail on the exercise of the Royal Prerogative by ministers can be found in Chapter 3.

## Succession and coronation

24. The succession to the Crown is automatic; on the death of the previous Sovereign the heir succeeds without any further ceremony and, as in the case of Edward VIII, can reign without ever being formally crowned.<sup>5</sup> The coronation ceremony usually takes place some months later. Under the Coronation Oath, the Sovereign swears by oath to govern the people of the UK and the Commonwealth realms according to statutes passed in Parliament and their agreed laws and customs; to cause law and justice, in mercy, to be executed in all judgements; to the utmost of his or her power maintain the laws of God, the true profession of the Gospel and the Protestant Reformed Religion established by law; and to preserve to the bishops and clergy of England and to the churches committed to their charge all the rights and privileges which the law accords (see paragraphs 36 and 37 on the Established Church).

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<sup>5</sup> For more information see:  
[www.royal.gov.uk/MonarchUK/HowtheMonarchyworks/TheActofSettlement.aspx](http://www.royal.gov.uk/MonarchUK/HowtheMonarchyworks/TheActofSettlement.aspx)

## Absence and incapacity of the Sovereign

25. When the Sovereign is absent from the country for a short period, or temporarily incapacitated or for some definite cause not available, his or her functions are delegated to Counsellors of State, as set out in the Regency Acts 1937 to 1953. These are currently the Sovereign's spouse and the four nearest in line to the Throne. Two or more Counsellors of State may exercise any of the functions of the Sovereign except the powers to dissolve Parliament (otherwise than on the express instructions of the Sovereign), to grant any rank, title or dignity of the peerage, or to signify Royal Assent to any amendment to the Act of Settlement or Royal Style and Titles.
  
26. When the Sovereign is incapacitated for a longer period, or is under the age of eighteen, the Regency Act provides for the appointment of a Regent. With regards to incapacity of the Sovereign, a Regency can only be declared if three or more of the wife or husband of the Sovereign, the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice of England and Wales, and the Master of the Rolls determine that it is necessary because of the bodily or mental infirmity of the Sovereign. A Regent must take the oaths of the Sovereign, except the Coronation Oath, and may exercise any of the powers of the Sovereign except, as before, to assent to any bill for changing the order of succession to the Crown as defined by the Act of Settlement or for repealing or altering the Act preserving the Presbyterian system of Church government in Scotland.

## The Privy Council

27. The Privy Council advises the Sovereign on the exercise of the prerogative powers and certain functions assigned to the Sovereign and the Council by Act of Parliament. It is the mechanism through which interdepartmental agreement is reached on those items of government

business which, for historical or other reasons, fall to ministers as Privy Counsellors rather than as departmental ministers.

28. Those appointed to the Privy Council mostly comprise ministers, other parliamentarians and members of the judiciary. The appointment of Privy Counsellors is made by the Sovereign on the recommendation of the Prime Minister. Appointment to the Privy Council is for life and therefore the majority of Counsellors play no part in the Privy Council's day-to-day business, which is largely conducted by ministers of the government of the day.
29. The Lord President of the Council (fourth of the Great Officers of State) is responsible for presiding over meetings of the Privy Council, which are held by the Sovereign, and also forms part of the quorum on matters approved 'by the Lords of the Privy Council'. The post is generally a Cabinet post and is often held by the Leader of either the House of Commons or the House of Lords. The post of Lord President is currently held by the Deputy Prime Minister.

#### *Committees of the Privy Council*

30. Cabinet is the executive committee of the Privy Council (for more information on Cabinet see paragraphs 137 to 140 of Chapter 4). There are also a number of standing committees of the Privy Council (for example the Judicial Committee, which among other things is the court of final appeal for the UK overseas territories and Crown dependencies, and for some Commonwealth countries).

#### *Privy Council meetings*

31. Council meetings are occasions on which the Sovereign conveys formal approval to Orders in Council. The quorum is three, and summonses go only to Government ministers and are issued on a rota basis. Once a minister has accepted a summons to a meeting of the Privy Council, this

takes precedence over all other engagements. Decisions of the Council are recorded in Orders.

32. **Orders in Council**, which are made by Her Majesty in Council, are a form of primary or secondary legislation.

- An Order in Council made under the Royal Prerogative is regarded as a form of primary legislation. Examples of this are Orders for the Prorogation of Parliament, approving or rejecting petitions or legislation of the Crown dependencies and Orders dealing with certain matters concerning the British Overseas Territories.
- An Order in Council made under statute is a form of secondary legislation and will usually be subject to a parliamentary procedure. Examples of this are Orders giving effect to UN Measures, or sanctions and Orders extending various Acts to the Crown dependencies.

33. **Orders of Council** are Orders that do not require personal approval by the Sovereign, but which can be made by 'The Lords of the Privy Council' (that is, ministers). Again, these can be statutory or made under the Royal Prerogative. Whether statutory Orders are also Statutory Instruments depends on the wording of the particular Act under which they are made.

- Examples of statutory Orders of Council include approval of regulations made by the General Medical Council and other regulatory bodies.
- Examples of prerogative Orders of Council include approval of amendments to the by-laws of Chartered bodies (institutions such as the Royal Institution of Chartered Surveyors and the Royal British Legion).

34. Her Majesty in Council also gives approval to statutory Proclamations for new coinage and for certain bank holidays. Prerogative Proclamations dissolving Parliament are also approved in Council.

#### *Committees of Privy Counsellors*

35. In addition to the permanent standing committees of the Privy Council, committees of Privy Counsellors are occasionally formed on an ad hoc basis to undertake a particular task, and are then dissolved. These are wholly independent of the Privy Council Office and do not report to the Lord President. The Chair, membership and terms of reference of each committee are determined by ministers and vary according to the issue which the committee is considering. Examples include the Newton Committee (anti-terrorism legislation) and the Butler Committee (operation of the intelligence services in the run-up to the military intervention in Iraq).

#### **The Established Church**

36. The Sovereign is the Supreme Governor of the Church of England and must, under the provisions of the Act of Settlement, enter into communion with it. The Church's legislation forms part of the public law of England and is subject to parliamentary approval. While the responsibility for most Church legislation rests with the Church itself, where there are significant changes to Church governance the measure requires approval by both Houses of Parliament and, if agreed, will go forward for Royal Assent. The Archbishops of Canterbury and York, the Bishops of London, Winchester and Durham and 21 further bishops are entitled ex officio to sit in the House of Lords.
37. The Church was disestablished in the whole of Ireland in 1869 and in Wales in 1919. The Church of Scotland, a Presbyterian system of church government, is the national church in Scotland. The Church of Scotland Act 1921 guaranteed its spiritual independence. Immediately on

succeeding to the Throne, the Sovereign is required to swear an oath to uphold the Presbyterian system of church government in Scotland.

# Chapter 2: Elections and government formation

**The Government holds office by virtue of its ability to command the confidence of the House of Commons, chosen by the electorate in a general election.**

**This chapter describes general elections, the concept of confidence, the principles and practice of government formation and the dissolution of a Parliament leading to the next general election. It is a combination of constitutional convention, statute and practice.**

*Certain significant elements of this chapter will be updated if Parliament agrees the proposals in the Fixed-term Parliaments Bill introduced on 22 July 2010, which will provide for five-year fixed-term Parliaments.*

## General elections

38. General elections allow voters on the electoral roll to cast their ballot for a Member of Parliament to represent them in the House of Commons. Elections follow the dissolution of one Parliament and the issue by Her Majesty in Council of a proclamation summoning a new Parliament. The proclamation names the date on which the new Parliament is to meet. That date may be postponed by a subsequent proclamation under the Prorogation Act 1867. At the same time as the proclamation, an Order in Council is made requiring the issue of writs for the election of a new House of Commons (a writ is a formal written order). Writs are issued under the Representation of the People Act 1983 by the Clerk of the Crown in Chancery, who is also Permanent Secretary to the Ministry of Justice, to Returning Officers, and require them to cause elections to be held and to return the writ with the election result for their constituency.

The election is held 17 working days after the proclamation and issuing of writs. Traditionally, parliamentary general elections are held on Thursdays. Writs of summons are also issued to all members of the House of Lords to summon them to a new Parliament.

39. The election process and a more detailed election timetable (derived from the 1983 Act) is set out at Annex A. Candidates must submit nomination papers not later than the sixth working day after the date of the proclamation. Polling day is the 11th working day after the last day for delivery of nomination papers.

### **Meeting of the new Parliament**

40. Recent practice had been for Parliament to meet on the Wednesday following the election. In 2007, the Select Committee on the Modernisation of the House of Commons<sup>6</sup> recommended a reversion to the previous practice of 12 days between polling day and the first meeting of Parliament. This was adopted in 2010, when there was an interval of 12 days.
41. The first business of the House of Commons when it meets is to elect or re-elect a Speaker and for Members to take the oath. The first business of the House of Lords is for its Members also to take the oath. Normally the Queen's Speech outlining the Government's legislative programme will take place in the second week of Parliament's sitting and is followed by four or five days of debate. This is when the business of the new Parliament properly begins.
42. The election of the Lord Speaker is not dependent on a general election: it takes place no more than five years after the previous election of the Lord Speaker, the last having taken place on 28 June 2006. Where a dissolution of Parliament has been announced and coincides with the

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<sup>6</sup> *Revitalising the Chamber: the role of the back bench Member*, HC 337, 2006–07: [www.publications.parliament.uk/pa/cm200607/cmselect/cmmodern/337/337.pdf](http://www.publications.parliament.uk/pa/cm200607/cmselect/cmmodern/337/337.pdf)



date set for the election of a new Lord Speaker, the deadline will be extended to one month after the opening of the next Parliament.

## Confidence

43. The ability of a government to command the confidence of the elected House of Commons is central to its authority to govern. It is tested by votes on motions of confidence, or no confidence. Confidence votes can take three broad forms:

- **a vote on a motion** “that this House has no confidence in Her Majesty’s Government”, tabled by the Opposition, or “that this House has confidence in Her Majesty’s Government”, tabled by the Government. By convention, the Government will make parliamentary time available for a debate on a no-confidence motion tabled by the Opposition at an early opportunity. A Government defeat on a confidence motion which it has tabled would be treated the same as the passing of a no-confidence motion tabled by the Opposition
- **a vote on a matter which the Government has publicly declared that it regards as a matter of confidence.** This may be any proposal which allows the House to reach a clear decision, such as the second reading of a specified bill, a substantive motion expressing a view on the Government’s policies, or a motion for the adjournment of the House
- **a vote on any matter which is so fundamental to the Government’s position that its rejection by the House (or, in the case of a non-Government proposal, its acceptance) constitutes a fatal objection to the Government’s continuation in office.**

44. Votes on the Address in reply to the Queen’s Speech have traditionally been regarded as votes of confidence (other than votes on minor amendments). Following an election, once the Government has secured

the support of the Commons for the Queen's Speech programme it is considered to have the confidence of the Commons unless and until it loses a confidence vote.

45. Commanding the confidence of the House of Commons is not the same as having a majority or winning every vote. Minority government is possible; and governments with a majority have lost votes on particular issues.

### **The principles of government formation**

46. Governments hold office unless and until they resign. If the Prime Minister resigns, the Sovereign will invite the person who it appears is most likely to be able to command the confidence of the House to serve as Prime Minister and to form a government.<sup>7</sup> It is the responsibility of those involved in the political process, and in particular the parties represented in Parliament, to seek to determine and communicate clearly who that person should be. At the time of his or her resignation, the incumbent Prime Minister may also be asked by the Sovereign for a recommendation on who can best command the confidence of the House of Commons in his or her place.

### **Parliaments with an overall majority in the House of Commons**

47. After an election, if an incumbent government retains an overall majority in the new Parliament, it will normally continue in office and resume normal business. There is no need for the Sovereign to ask the Prime Minister to continue. If the election results in an overall majority for a different party, the incumbent Prime Minister and government will immediately resign and the Sovereign will invite the leader of the party that has won the election to form a government. Details on

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<sup>7</sup> Rarely, a Prime Minister may resign and then be asked to form a new administration. For example, Sir Winston Churchill was asked to form a new Conservative administration following the break-up of the wartime coalition in 1945.

the appointment of the Prime Minister and Ministers can be found in Chapter 3.

### **Parliaments with no overall majority in the House of Commons**

48. Where an election does not result in an overall majority for a single party, the incumbent government remains in office unless and until the Prime Minister tenders his or her resignation and the Government's resignation to the Sovereign. An incumbent government is entitled to wait until the new Parliament has met to see if it can command the confidence of the House of Commons, but is expected to resign if it becomes clear that it is unlikely to be able to command that confidence and there is a clear alternative.
49. Where a range of different administrations could potentially be formed, discussions will take place between political parties on who should form the next government.<sup>8</sup> The Sovereign would not expect to become involved in such negotiations, although the political parties and the Cabinet Secretary would have responsibilities in ensuring that the Palace is provided with information on the progress of discussions and their conclusion. The Principal Private Secretary to the Prime Minister may also have a role.
50. The incumbent Prime Minister is not expected to resign until it is clear that there is someone else who should be asked to form a government because they are better placed to command the confidence of the House of Commons and that information has been communicated to the Sovereign.
51. Any negotiations between political parties over the formation of a stable government need to be as well informed as possible, and the leaders of

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<sup>8</sup> In 2010, the Leader of the Liberal Democrat Party expressed a view that "whichever party has won the most votes and the most seats, if not an absolute majority, has the first right to seek to govern, either on its own or by reaching out to other parties".

the political parties involved may therefore seek the support of the Civil Service. Such support may be organised by the Cabinet Secretary, with the authorisation of the Prime Minister.

52. Civil Service support may be provided for negotiations between the Government and opposition parties and/or between opposition parties themselves, and would normally be made available to parties with a realistic prospect of forming, joining or formally supporting the Government. Support would be focused and provided on an equal basis to all the parties involved, including the party that was currently in government. The incumbent government would also continue to be supported by the Civil Service in the usual way.
  
53. The support provided by the Civil Service to the parties could include: advice on the constitutional processes of government formation; provisions of factual information in relation to specific policy proposals; and facilitation of discussions and negotiations (including the provision of facilities, such as meeting rooms). Support would only commence following the election and support for opposition parties would normally cease once a stable government had been formed, although it could continue, with the authorisation of the Prime Minister, for any party formally supporting the Government. Following the election in May 2010, where there was no overall majority, the Civil Service provided support to negotiations between political parties. Further information on the nature of that support can be found at:  
[www.cabinetoffice.gov.uk/resource-library/civil-service-support-coalition-negotiations](http://www.cabinetoffice.gov.uk/resource-library/civil-service-support-coalition-negotiations)
  
54. As long as there is significant doubt following an election over the Government's ability to command the confidence of the House of Commons, certain restrictions on government activity apply; see paragraphs 67 to 73.

55. The nature of the government formed will be dependent on discussions between political parties and any resulting agreement. Where there is no overall majority, there are essentially three broad types of government that could be formed:

- single-party, minority government, where the party may (although not necessarily) be supported by a series of ad hoc agreements based on common interests
- formal inter-party agreement, for example the Liberal–Labour pact from 1977 to 1978, or
- formal coalition government, which generally consists of ministers from more than one political party, and typically commands a majority in the House of Commons.<sup>9</sup>

### **Change of Prime Minister or government during the life of a Parliament**

56. If a government is defeated on a motion of confidence in the House of Commons, the Prime Minister is expected to tender the Government's resignation, unless circumstances allow him or her to opt instead to request dissolution. If it is clear who should form an alternative administration, such a resignation should take effect immediately.

57. Where a range of different administrations could potentially be formed, discussions will take place between political parties on who should form the next government. In these circumstances the processes and considerations described in paragraphs 48 to 55 would apply.

58. At present, the Prime Minister may request that the Sovereign dissolves Parliament so that an early election takes place. The Sovereign is not bound to accept such a request, although in practice it would only be in

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<sup>9</sup> The Conservative Party and the Liberal Democrat Party coalition, formed in May 2010, is the most recent example of a UK coalition government. Further detail of how the coalition operates in practice and the procedures that apply are set out in the Government's *Coalition Agreement for Stability and Reform*, which includes detail on the composition of the Government and the application of collective responsibility and the coalition *Programme for Government* can be found at: [www.cabinetoffice.gov.uk/news/coalition-documents](http://www.cabinetoffice.gov.uk/news/coalition-documents)

very limited circumstances that consideration is likely to be given to the exercise of the reserve power to refuse it, for example when such a request is made very soon after a previous dissolution. In those circumstances, the Sovereign would normally wish to know before granting a second dissolution that those involved in the political process had ascertained that there was no alternative potential government that would be likely to command the confidence of the House of Commons. *This paragraph will be substantially affected if Parliament agrees the proposals in the Fixed-term Parliaments Bill, which will provide for five-year fixed-term Parliaments.*

59. Although they have not been exercised in modern times, the Sovereign retains reserve powers to dismiss the Prime Minister or make a personal choice of successor, and to withhold consent to a request for dissolution. However, there is a duty on the Prime Minister to act in a way that prevents the Sovereign being drawn into political controversy by having to exercise those reserve powers.

### **Pre-election contact with opposition parties**

60. At an appropriate time towards the end of any Parliament, as the next general election approaches, the Prime Minister writes to the leaders of the main opposition parties to authorise pre-election contacts with the Civil Service. For example, pre-election contacts were authorised from 1 January 2009 for the election held in May 2010. For the election held in June 2005 (which could have been held as late as July 2006), contacts had been authorised from 1 January 2005. The meetings take place on a confidential basis, without ministers being present or receiving a report of discussions. The Cabinet Secretary, as Head of the Civil Service, has overall responsibility for co-ordinating this process once a request has been made and authorised by the Prime Minister. These discussions are designed to allow the Opposition's shadow ministers to ask questions about departmental organisation and to inform civil servants of any organisational changes likely to take place in the event of a change of

government. Senior civil servants may ask questions about the implications of opposition parties' policy statements, although they would not normally comment on or give advice about policies.

## **Dissolution of Parliament<sup>10</sup>**

61. Under present rules, Parliaments either dissolve when they expire after a period of five years under the Septennial Act 1715 (as amended by the Parliament Act 1911) or more normally are dissolved earlier by the Sovereign, at the request of the Prime Minister. The five-year period is counted from the date of the first meeting of Parliament after a parliamentary general election. No proclamation or other formality is required for a dissolution at the end of a five-year period under the Act, but a proclamation will then be required as soon as practicable to summon a new Parliament for a specified date.
62. The Sovereign may currently dissolve Parliament by proclamation at any time before it has expired. Proclamations are issued by Her Majesty in Council. Modern practice has been for Parliaments to be dissolved only following a request from the Prime Minister, who may request dissolution whether or not Parliament is currently sitting.
63. As soon as an election is called, certain restrictions on government activity apply (see paragraphs 68, 69, 72 and 73 below).

## **Finalisation of parliamentary business**

64. Parliament often sits for a few days, known as the 'wash-up' period, after the election has been announced. Some business may have to be completed before the dissolution. In particular, any money voted to the Government but not appropriated has to be appropriated by the date of the dissolution, and, depending on the time of year, it may be necessary

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<sup>10</sup> Erskine May (23rd edition, 2004), Chapter 13 contains further detail on: parliamentary and sessional periods; meeting of a new Parliament; and opening of a new session.

to do other business to keep government working while Parliament is unavailable because of the dissolution.

### Parliamentary definitions

**Adjournment** is the process that brings an end to a sitting in either House (for example at the end of a day or before a recess – see below). The Houses usually adjourn only in accordance with a resolution to do so. In some cases the Standing Orders allow for other methods of adjournment. The Standing Orders may fix the time for the next sitting, or that may be varied by the motion. The expression is also used to describe the period while a House is adjourned.

**Recess** is the period while the House is adjourned between sittings for longer than provided for by the Standing Orders (for example over a holiday period – the Easter recess, the Christmas recess).

**Prorogation** is the process that brings an end to a session of Parliament. Parliament is suspended for a period by the Sovereign. Typically, Parliament is prorogued annually and then reassembles for a new session a few days later. It has often been the practice to prorogue Parliament before dissolving it.

**Dissolution** is the process that terminates a Parliament and, by convention, requires the summoning of a new Parliament, so triggering a general election for membership of the House of Commons.

65. At the end of the wash up, Parliament may be prorogued before being dissolved or may just adjourn. It is not the practice for Parliament to be dissolved while sitting. Prorogation brings a parliamentary session to an end. It is the Sovereign who prorogues Parliament on the advice of his or her ministers. The normal procedure is for commissioners appointed by the Sovereign to prorogue Parliament in accordance with an Order in



Council. The commissioners also declare Royal Assent to the bills that have passed both Houses, so that they become Acts, and then they announce the prorogation to both Houses in the House of Lords.

66. It is not necessary for Parliament to have been prorogued in order for it to be dissolved. In 1992, 1997, 2005 and 2010 Parliament was dissolved following prorogation, but in 2001 and for all the elections in the 1970s and 1980s after the 1970 election, Parliament was dissolved while adjourned without a prorogation.

### **Restrictions on government activity**

67. While the Government retains its responsibility to govern and ministers remain in charge of their departments, governments are expected to observe discretion in initiating any new action of a continuing or long-term character in the run-up to an election, immediately afterwards if the result is unclear, and following the loss of a vote of confidence. In all three circumstances essential business must be allowed to continue. In some jurisdictions this is referred to as a 'caretaker convention'.

### *Government activity between the announcement of an election and polling day*

68. When an election is called, the Cabinet Office publishes guidance on activities in the pre-election period. The Prime Minister writes to ministers in similar terms. The pre-election period starts on the day the election is announced. The guidance to government departments issued in 2010 is available at:

<http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/354815/2010electionguidance.pdf>

69. During this period, the Government retains its responsibility to govern and ministers remain in charge of their departments. Essential business is carried on, which may include meetings of Cabinet or Cabinet committees

as required.<sup>11</sup> Ministers continue in office but must observe discretion in initiating any action or making any commitment of a continuing or long-term character once the election has been announced. This means the deferral of activity such as: taking or announcing major policy decisions; entering into large/contentious procurement contracts or significant long-term commitments; and making some senior public appointments and approving Senior Civil Service appointments, provided that such postponement would not be detrimental to the national interest or wasteful of public money. If decisions cannot wait, they should, where possible, be handled by temporary arrangements or consultation with the relevant opposition spokesperson.

#### *Activity post election*

70. Immediately following an election, if there is no overall majority, for as long as there is significant doubt over the Government's ability to command the confidence of the House of Commons, many of the restrictions set out at paragraphs 68 and 69 would continue to apply. However, while avoiding long-term commitments, the Government would be able to announce its policy intentions – including policies it might hope to include in the Queen's Speech – since restrictions on announcements that would be inappropriate during an election campaign need no longer apply. The point at which the restrictions on financial and other commitments should come to an end depends on circumstances but may often be either when a new Prime Minister is appointed by the Sovereign or where a government's ability to command the confidence of the Commons has been tested in the House of Commons.

#### *Activity following loss of confidence*

71. If a government loses a vote of confidence it will often remain in office for a short period pending the formation of another government, in which case

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<sup>11</sup> In some previous elections this has been done through an Election Business Committee.

the restrictions in paragraph 70 would apply, or an election, in which case those in paragraphs 68 and 69 would apply.

### *Directions*

72. The rules under which an accounting officer may seek a direction from a minister (where the Officer has an objection to a proposed course of action on grounds of propriety, regularity or value for money relating to proposed expenditure) continue to apply during the three periods described above. The principles set out in paragraphs 68–70, as appropriate, will be relevant to the application of those rules. Any commitments of public resources for political purposes must be avoided.
  
73. In normal circumstances (as set out in Chapter 10: Government finance and expenditure), a ministerial direction to an accounting officer is sent to the Comptroller and Auditor General (C&AG) who will normally forward it to the Committee of Public Accounts. It should also be copied to the Treasury Officer of Accounts (TOA). During any period when Parliament is prorogued or dissolved, if the occasion for any such directions arose, and taking account of issues of commercial or other sensitivity, the direction, together with the reasoning provided by the accounting officer, should be made public by the department immediately and laid before both Houses at the first opportunity after Parliament meets. The direction should also be sent to the C&AG and copied to the TOA at the time of publication.

## Chapter 3: The Executive – the Prime Minister, ministers and the structure of government

This chapter covers the role and appointment of the Prime Minister and other ministers, membership of Cabinet, ministerial conduct, ministerial powers and the machinery of government, and restrictions on the number of ministers and their salaries.

The Prime Minister is the head of government by virtue of his or her ability to command the confidence of the House of Commons. He or she is appointed by the Sovereign and in turn recommends to the Sovereign the appointment of ministers to the Government. Statute governs the number of ministers that may be appointed from members of the House of Commons and the number of ministers overall who may be paid a salary. The *Ministerial Code* sets out the principles underpinning the standards of conduct expected of ministers. The Prime Minister is also responsible for the organisation of government and the allocation of functions between ministers, who derive their powers from statute, the Royal Prerogative and the common law. The Prime Minister, advised by the Cabinet Secretary, may make changes to the machinery of government.

## The Prime Minister

74. The Prime Minister is the head of the Government and holds that position by virtue of his or her ability to command the confidence of the House of Commons, which in turn commands the confidence of the electorate, as expressed through a general election. More detail on general elections and government formation can be found in Chapter 2.
75. It is for the Prime Minister to advise the Sovereign on the exercise of the Royal Prerogative powers in relation to government, such as the appointment, dismissal and acceptance of resignation of other ministers and the calling of elections (see the section on ministers' powers below). The *Ministerial Code*, paragraph 4.1, states: "The Prime Minister is responsible for the overall organisation of the executive and the allocation of functions between ministers in charge of departments."
76. The Prime Minister's unique position of authority also comes from support in the House of Commons. By modern convention, the Prime Minister now always sits in the House of Commons, although Prime Ministers in previous centuries have sat in the House of Lords. The Prime Minister will normally be the accepted leader of a political party or parties that commands the majority of the House of Commons. For cases where no political party has an overall majority, see Chapter 2.
77. The Prime Minister has few statutory functions but will usually take the lead on significant matters of state. The Prime Minister has certain prerogatives, for example recommending the appointment of ministers and determining the membership of Cabinet and Cabinet committees. However, in some circumstances the Prime Minister may agree to consult others before exercising those prerogatives.<sup>12</sup>

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<sup>12</sup> For example, under the *Coalition Agreement for Stability and Reform*, published in May 2010, the Prime Minister agreed that a number of prerogative powers, including the appointment of ministers and ministerial functions allocation, would only be exercised after consultation with the Deputy Prime Minister: [www.cabinetoffice.gov.uk/news/coalition-documents](http://www.cabinetoffice.gov.uk/news/coalition-documents)

78. The Prime Minister accepts office by attending the Sovereign in a private audience, at which time the appointment takes effect. At regular meetings with the Sovereign, the Prime Minister informs him or her of the general business of the Government. The Prime Minister's other responsibilities include recommending a number of appointments to the Sovereign. These include high-ranking members 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.
79. The Prime Minister is, by tradition, the First Lord of the Treasury (for more information on the Treasury Commissioners and the First Lord of the Treasury see paragraph 103 below). In his or her capacity as First Lord of the Treasury, the Prime Minister takes an oath of office under the Promissory Oaths Act 1868. The Prime Minister also usually holds the office of Minister for the Civil Service, in which capacity the Prime Minister has overall responsibility for the management of most of the Civil Service (see Chapter 7: Ministers and the Civil Service) and a number of statutory functions. He or she is also sworn as a member of the Privy Council.

## Ministers

80. In general, the ministers in the Government can be divided into the following categories: 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.
81. There is a constitutional convention that individuals will be ministers only if they are members of the House of Commons or the House of Lords, with most being members of the Commons. However, there are examples of individuals being appointed as ministers in anticipation of their

becoming members of one of the Houses and of continuing to hold office for a short period after ceasing to be members of the House of Commons. Also, before devolution, the Solicitor General for Scotland was often not a member of the House of Commons or the House of Lords.

### *Senior ministers*

82. 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 the 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 (see paragraphs 97 and 98 below).
83. 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.

### *The Deputy Prime Minister*

84. The title of Deputy Prime Minister is sometimes given to a senior minister in the Government, for example the Deputy Leader of the party in government or the leader of the smaller party in a coalition. The role of the Deputy Prime Minister is sometimes combined with other roles, but responsibilities will vary according to the circumstances. For example, in 2010 the role of the Deputy Prime Minister was combined with that of Lord President of the Council, with ministerial responsibility for political and constitutional reform. 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.

### *The First Secretary of State*

85. 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.

### *Junior ministers*

86. 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. See paragraphs 114–119 on the Carltona principle, under which junior ministers in a department may exercise statutory functions of the minister in charge of the department.

### *Law Officers*

87. The Law Officers in the UK are:

- the Attorney General
- the Solicitor General
- the Advocate General for Scotland
- the Advocate General for Northern Ireland.

88. The role of the Law Officers is covered in more detail in Chapter 6.

### *Whips*

89. 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, in consultation with their opposition



counterparts, arrange the scheduling of government business. Collectively, the government and opposition whips are often referred to as 'the usual channels' when the question of finding time for a particular item of business is being discussed.

90. 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.
91. By convention, whips in the House of Commons do not speak during parliamentary debates. However, Lords whips may speak in Parliament on behalf of departments.

### **Appointment of ministers**

92. Senior ministers are generally required to take an oath of office under the Promissory Oaths Act 1868 and all Cabinet members are made Privy Counsellors.
93. Secretaries of state and some other ministers also receive seals of office. Their appointments take effect by the delivery of those seals by the Sovereign. Others have their appointments made or confirmed by Letters Patent or Royal Warrant. Appointments of other ministers generally take effect from when the Sovereign accepts the Prime Minister's recommendation of the appointment. For more details on Privy Council appointments, see Chapter 1.

## Resignation of ministers

94. Where a minister resigns their post by writing to the Prime Minister,<sup>13</sup> it is often the case that the exchange of letters is published. Examples of when a resignation might take place include where a minister is not willing to continue to accept collective responsibility, or issues relating to their conduct in office, or a personal or private matter.

## Parliamentary private secretaries

95. Cabinet ministers and ministers of state may appoint parliamentary private secretaries. All appointments require the prior written approval of the Prime Minister.<sup>14</sup> The Chief Whip should also be consulted and no commitments to make such appointments should be entered into until such approval is received.

96. Parliamentary private secretaries are not members of the Government. Their role is to support ministers in conducting parliamentary business. More detail can be found in the *Ministerial Code*:  
[www.cabinetoffice.gov.uk/resource-library/ministerial-code](http://www.cabinetoffice.gov.uk/resource-library/ministerial-code)

## Limits on ministerial numbers and salaries

97. The Ministerial and other Salaries Act 1975 limits the number of paid ministers (whether sitting in the House of Commons or the House of Lords) to 109. Under the House of Commons Disqualification Act 1975 there is a maximum of 95 ministers, paid or unpaid, who may sit in the House of Commons.

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<sup>13</sup> Under the *Coalition Agreement for Stability and Reform*, no Liberal Democrat minister or whip may be removed on the recommendation of the Prime Minister without full consultation with the Deputy Prime Minister.

<sup>14</sup>, May 2010, paragraph 3.6.

98. Parliamentary private secretaries do not count towards the limit on Commons ministers or the limits on salaries. The detailed limits on the number of salaries that may be paid are set out in the table at Annex B.

### **Powers of ministers**

99. 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 (see Chapter 10 on government finance and expenditure). Powers may be exercised by civil servants on behalf of ministers.

### **Powers granted by Parliament**

100. Many Acts of Parliament grant powers to ministers or place statutory duties on ministers.<sup>15</sup> 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.<sup>16</sup> Most statutory powers are conferred on 'the Secretary of State'; these may be exercised by any one of the secretaries of state.<sup>17</sup> 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.

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<sup>15</sup> For example, section 1 of the National Health Service Act 2006 imposes a duty on the Secretary of State to continue the promotion in England of a comprehensive health service, and to provide or secure the provision of services for that purpose. Section 19 of the Companies Act 2006 gives the Secretary of State power to prescribe model articles of association for companies.

<sup>16</sup> A copy of the 1932 Public Accounts Committee concordat can be found at: [www.hm-treasury.gov.uk/d/mpm\\_annex2.1.pdf](http://www.hm-treasury.gov.uk/d/mpm_annex2.1.pdf)

<sup>17</sup> 'Secretary of State' is defined in Schedule 1 to the Interpretation Act 1978 as meaning "one of Her Majesty's Principal Secretaries of State" (unless a contrary intention appears).

101. 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 to exercise only those functions that are within that department. It is for the Prime Minister to determine what the various departments are to be from time to time (see paragraphs 127–132 on machinery of government changes).

102. Most secretaries of state are incorporated as ‘corporations sole’. This gives the minister a separate legal personality as such. This is administratively convenient, for example as regards the ownership of property, because it facilitates continuity when the office-holder changes.

103. Statutory powers conferred on the Treasury are exercisable by the Commissioners of the Treasury,<sup>18</sup> 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.

104. Other powers are conferred on a specific minister and may only be exercised by that minister. For example, a number of powers in relation to the judiciary are specifically conferred on the Lord Chancellor. While statutory powers may be conferred on individual ministers, in practice the exercise of those powers is normally subject to collective agreement. Paragraph 149 of Chapter 4 sets out the circumstances in which collective agreement applies, and the exceptions to collective agreement are at paragraphs 156–158 of that chapter.

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<sup>18</sup> ‘The Treasury’ is defined in Schedule 1 to the Interpretation Act 1978 as meaning “the Commissioners of Her Majesty’s Treasury”.

## Inherent or 'common-law' powers

105. 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 has to 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', contained in advice by the then First Parliamentary Counsel, Granville Ram,<sup>19</sup> in 1945.

106. The powers mentioned in paragraph 105 that a minister may exercise include the same legal powers as an individual, for example to enter into contracts, convey property or make extra-statutory payments.

## Prerogative powers

107. 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 (for example see paragraphs 58 and 59 of Chapter 2).

108. Prerogative powers may be divided into the following broad categories:

- 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;

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<sup>19</sup>The Ram doctrine is set out in a memorandum dated 2 November 1945 from the then First Parliamentary Counsel, Granville Ram. A copy of the memorandum can be found at: [www.parliament.the-stationery-office.co.uk/pa/ld200203/ldlwa/30122wa1.pdf](http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldlwa/30122wa1.pdf)

grant assent to legislation; and prorogue and dissolve Parliament.

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

109. The scope of the prerogative has evolved over time and its extent is a matter of common law, making the courts – if asked – the final arbiter of whether or not a particular type of prerogative power exists.<sup>20</sup>

110. 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, as was established in the case *British Broadcasting Corporation v Johns* [1965] (Ch 32 CA). Equally, however, the courts can recognise prerogatives that were previously of doubtful provenance, or adapt old prerogatives to modern circumstances. For example, the Secretary of State's prerogative power to act to maintain law and order where no emergency exists was not widely recognised until identified by the Court of Appeal in 1989.<sup>21</sup>

111. Over time, legislation has also clarified and limited the extent of the prerogative, including in some cases abolishing it.<sup>22</sup> As more of ministers' powers have been codified in statute, the extent of inherent powers has been correspondingly reduced. Some Acts passed in recent years, although not primarily aimed at reforming the prerogative, have

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<sup>20</sup> "The King hath no prerogative, but that which the law of the land allows him"; see the *Case of Proclamations* (1610) 12 Co Rep 74, 76.

<sup>21</sup> *R v Secretary of State for the Home Department, ex parte Northumbria Police Authority* [1989] QB 26 (CA).

<sup>22</sup> For example, the Bill of Rights of 1689 put beyond doubt that there was no prerogative power to levy taxes.

nevertheless brought about significant reforms. For example, historically there has been a prerogative power in times of emergency to enter upon, take and destroy private property. The Civil Contingencies Act 2004 – devised as a broad, flexible framework for dealing with emergencies – in practice covers the majority of situations where it might previously have been appropriate to use the prerogative.

### **Advice on the extent and limitations of ministers' powers**

112. Departmental civil servants provide advice to ministers on the extent of their powers. In more complex cases, departmental lawyers will need to be consulted and – in the most complex cases – reference can be made to the Law Officers (see Chapter 6). Accounting officers, or finance staff working to them, should be consulted about powers to spend money; in complex cases they may involve the Treasury.

### **Role of the courts in scrutinising the exercise of ministers' powers**

113. The courts scrutinise the manner in which powers are exercised. The main route is through the mechanism of judicial review, which enables the actions of a minister to be challenged on the basis that he or she did not have the power to act in such a way (including on human rights grounds); that the action was unreasonable; or that the power was exercised in a procedurally unfair way. For information on judicial review, see paragraphs 230–233 in Chapter 6: Ministers and the law.

### **Exercise of ministers' powers**

114. Generally speaking, junior ministers in a ministerial department and civil servants working for a departmental minister may exercise powers of the minister in charge of the department, under what is known as the Carltona principle.

115. The principle derives from the case *Carltona Ltd v Commissioners of Works*.<sup>23</sup> In that case, the Court of Appeal recognised that ministers' functions are normally exercised under the authority of the minister by responsible officials of the department and that public business could not be carried on if that were not so. The Court considered that, in such cases, decisions of officials are to be regarded, constitutionally, as decisions of the minister rather than as decisions of someone to whom the minister has delegated the function.

116. Ministers remain accountable to Parliament for the decisions made under their powers. However, Parliament will normally understand that the many comparatively routine administrative decisions that departments make in carrying out their responsibilities are not ones for which the minister can be held responsible, unless he or she was personally involved in the decision or any problems were symptomatic of a systemic issue.<sup>24</sup>

117. Although the decisions are treated as decisions of the minister, the *Carltona* principle can nevertheless be regarded as providing an exception, in practice, to the rule that a statutory function conferred on a particular person cannot in general be delegated to another without express or implied statutory authority.

118. The *Carltona* principle does not apply where the courts infer an intention on the part of Parliament that the named minister should act personally – for example with some quasi-judicial functions. In any case, ministers will require all major decisions to be referred to them.

119. Under Part 2 of the Deregulation and Contracting Out Act 1994, a minister may authorise any person (whether or not a civil servant) to exercise the minister's functions. The Act applies only to functions that are conferred on the minister by or under an enactment and can be

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<sup>23</sup> [1943] 2 All ER 560.

<sup>24</sup> The distinction is particularly clear in the case of a non-ministerial department such as HM Revenue and Customs; Treasury ministers are responsible for tax policy and officials for dealing with individual cases.



exercised by a civil servant in the minister's department (for example under the Carltona principle). Some categories of functions are excluded – for example functions that necessarily affect the liberty of an individual and powers to make subordinate legislation. A minister may authorise a person to exercise a ministerial function only if the function is specified in an order made under the Act. The exercise of a function by a person authorised under the Act is treated for most purposes as the exercise of the function by the minister.

## Ministerial conduct

120. The *Ministerial Code* sets out the principles underpinning the standards of conduct expected of ministers. Ministers of the Crown are expected to behave in a way that upholds the highest standards of propriety. Ministers must comply with the law, including international law and treaty obligations, uphold the administration of justice and protect the integrity of public life. They are expected to observe the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. For more information, see the *Ministerial code* at: [www.cabinetoffice.gov.uk/resource-library/ministerial-code](http://www.cabinetoffice.gov.uk/resource-library/ministerial-code)

121. The *Ministerial Code* also states that, on leaving office, ministers will be prohibited from lobbying government for two years. They must seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. The advice of the Committee is made public when the appointment is taken up or announced. The Code makes it clear that former ministers must abide by the advice of the Committee.

## The structure of government

### *Allocation of functions to ministers*

122. The Prime Minister is responsible for the overall organisation of the Government and the allocation of functions between ministers. It is a fundamental part of the Prime Minister's role to ensure that the Cabinet and the Government are structured in the most effective way.

### **Government departments**

123. As powers generally rest with the Secretary of State and departments do not have their own legal personality, the structure of government departments tends to change to reflect the allocation of functions to ministers.

124. Most government departments are headed by a secretary of state and will carry out the functions which the Prime Minister has allocated to that secretary of state or which are otherwise conferred specifically on that secretary of state by statute. Other ministerial departments are headed by another senior minister (for example the Chancellor of the Exchequer in the case of the Treasury).

125. Government departments generally have one or more junior ministers who are usually allocated specific areas of responsibility within which they carry out functions in the name of the department's senior minister. The roles of junior ministers may be set by the Prime Minister when they are appointed (for example as the 'Minister for Trade and Investment'), or functions may be allocated by a secretary of state to the junior ministers within his or her department.

## Arm's length bodies

126. Arm's length bodies are organisations established to carry out specific functions. There are three main types of arm's length bodies:

- Non-ministerial departments (NMDs) are central government departments staffed by civil servants. NMDs have a board and ministers do not have direct control over them. Instead they have a sponsoring minister, who typically appoints the board;
- Executive agencies are well-defined units with a focus on delivering specific outcomes. They are part of a department and are staffed by civil servants.
- Non-departmental public bodies (NDPBs) are bodies that have a role in the processes of national government, but are not government departments or part of one, and which operate to a greater or lesser extent at arm's length from ministers. Those NDPBs that are set up as separate legal entities, such as statutory bodies, employ their own staff who are not civil servants.

## Machinery of government changes

127. The *Ministerial Code*, paragraph 4.3, states that the Prime Minister's written approval must be sought where it is proposed to transfer functions:

- between ministers in charge of departments, unless the changes are minor and can be made administratively and do not justify public announcement
- within the field of ministerial responsibility of one minister, when the change is likely to be politically sensitive or to raise wider issues of policy or organisation
- between junior ministers within a department, when a change in ministerial titles is involved.

128. The Prime Minister's approval should also 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 a disagreement about who should be responsible. In addition, a head of department'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. The establishment of an NMD is considered a machinery of government change.

129. A transfer of functions order (an Order in Council under the Ministers of the Crown Act 1975) is likely to be needed for major changes involving ministerial departments. In some cases, it will not be possible to implement the change until the order has been made; but where the change involves the transfer of functions between secretaries of state it will usually be possible to implement the change in advance of the order being made. Primary legislation may be needed for machinery of government changes extending beyond ministerial departments. The Office of the Parliamentary Counsel is responsible for drafting transfer of functions orders.

130. The Cabinet Secretary is responsible for advising the Prime Minister on machinery of government issues, and he or she is supported in this by the Economic and Domestic Affairs Secretariat (see Chapter 4 for more on the Cabinet Secretariat). Departments involved in machinery of government changes, or considering proposing such changes to the Prime Minister, should consult the Secretariat for advice.

131. While the allocation of functions to ministers is a matter for the Prime Minister, the Government informs Parliament of significant machinery of government changes. The Cabinet Office publishes an explanatory document about major changes and places it in the libraries of both Houses. This helps explain to Parliament and the public the Prime

Minister's reasoning for making the changes. Ministers usually make themselves available to any relevant select committee that wishes to examine the implementation of such changes.

132. More information on machinery of government changes can be found at:  
<http://webarchive.nationalarchives.gov.uk/20101201150033/www.cabinetoffice.gov.uk/media/332838/mog-handbook.pdf>

# Chapter 4: Collective Cabinet decision-making

This chapter covers the principles of Cabinet government; Cabinet and Cabinet committees; procedures of Cabinet and Cabinet committees; and the role of the Cabinet Secretariat.

Government is a large and complex organisation and so it needs formal and informal mechanisms for discussing issues, building consensus, resolving disputes, taking decisions and chasing progress. Cabinet and Cabinet committees are the only groups formally empowered to take binding decisions on behalf of the Government. Cabinet and Cabinet committees consist of government ministers. Only they – since they are accountable to Parliament – can take binding decisions. Collective responsibility allows ministers to express their views frankly in discussion, in the expectation that they can maintain a united front once a decision has been reached.

## Principles of collective Cabinet government

133. Cabinet is the ultimate decision-making body of government. The purpose of Cabinet and its committees is to provide a framework for ministers to consider and make collective decisions on policy issues.

134. The Cabinet system of government is based on the principle of collective responsibility. All government ministers are bound by the collective decisions of Cabinet, save where it is explicitly set aside, and carry joint responsibility for all the Government's policies and decisions.

135. In practice, this means that a decision of Cabinet or one of its committees is binding on all members of the Government, regardless of whether they were present when the decision was taken or their personal views. Before a decision is made, ministers are given the opportunity to debate the issue, with a view to reaching an agreed position. It is for the Prime Minister, as Chair of Cabinet, or the relevant Cabinet committee chair to summarise what the collective decision is, and this is recorded in the minutes by the Cabinet Secretariat.

136. The *Ministerial Code*, paragraph 2.1, states that “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.” Chapter 11, paragraphs 394–396 provides more detail on the confidentiality of Cabinet papers and minutes and the application of the Freedom of Information Act 2000.

## Cabinet

137. Cabinet is the ultimate decision-making body of the UK Executive. Cabinet is chaired by the Prime Minister, who also determines its membership.<sup>25</sup> It will usually comprise of senior ministers (see Chapter 3, paragraph 82 on those ministers that are likely to be members of Cabinet). The Prime Minister may arrange for other ministers to attend the Cabinet, either on a regular basis or for particular business (for example the Attorney General to give legal advice). All members of the Cabinet as Privy Counsellors are bound by the Privy Council Oath.<sup>26</sup>

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<sup>25</sup> Ministerial selection may be subject to consultation in the event of a coalition government.

<sup>26</sup> A copy of the oath can be found at:

[www.privacy-council.org.uk/files/word/Privy%20Counsellor's%20Oath.doc](http://www.privacy-council.org.uk/files/word/Privy%20Counsellor's%20Oath.doc)

138. The full list of UK Cabinet Members can be found at:

[www.cabinetoffice.gov.uk/resource-library/government-ministers-and-responsibilities](http://www.cabinetoffice.gov.uk/resource-library/government-ministers-and-responsibilities)

139. Cabinet is established by convention. It honours the constitutional principle of collective responsibility. Cabinet does not have specific terms of reference or powers laid down in statute.

140. The Prime Minister determines and regulates the procedures of Cabinet, including when and where meetings take place. Cabinet usually meets in the Cabinet Room in 10 Downing Street every Tuesday morning while Parliament is sitting. Regional Cabinets can also take place, where the weekly Cabinet meeting is held in a location outside of London. The agenda for Cabinet usually includes parliamentary business, domestic and foreign affairs, and topical issues. The proceedings of Cabinet and Cabinet committees are recorded by the Cabinet Secretariat. The minutes produced are the official record of discussion and decisions, which are binding on all members of the Government. For more information, see paragraphs 166 and 167 on Cabinet minutes and paragraph 183 on the Cabinet Secretariat.

### **Political Cabinet**

141. At the discretion of the Prime Minister, members of the Cabinet may meet to discuss party political matters in a 'political Cabinet'. Such meetings may take place in the Cabinet Room as usual, but they will not be attended by officials and the conclusions of the discussion are not recorded in minutes.



## Cabinet committees

### *Role of Cabinet committees*

142. 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.

### *Structure of the Cabinet committee system*

143. The Prime Minister decides – with the advice of the Cabinet Secretary – the chair, deputy chairs (if there are any), membership and the terms of reference of each Cabinet committee.<sup>27</sup> Details are usually announced biannually in a written ministerial statement in Parliament.

144. Committees are usually established to consider a particular area of government business, such as home or domestic affairs, or national security. Where appropriate, a sub-committee 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.

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<sup>27</sup> In some circumstances the Prime Minister may agree to consult before exercising certain prerogatives. Under the *Coalition Agreement for Stability and Reform*, the Prime Minister agreed that the establishment of Cabinet committees, appointment of members and determination of their terms of reference will be agreed with the Deputy Prime Minister. The full text of the agreement can be found at: [www.cabinetoffice.gov.uk/news/coalition-documents](http://www.cabinetoffice.gov.uk/news/coalition-documents)

145. A list of the current committees, their terms of reference and the ministers who sit on them is available from the Cabinet Office website at: [www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees](http://www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees)

### *Official committees*

146. Cabinet committees are sometimes supported by an official committee. 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.

147. Official committees may be convened for a variety of purposes as required, 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 to allow ministers to focus on the key issues, and to help the Cabinet Secretariat identify points that are likely to be raised so that it can brief the Chair effectively.

## **Business of Cabinet and Cabinet committees**

### *Issues for collective agreement*

148. Collective agreement can be sought at a Cabinet or Cabinet committee meeting or through ministerial correspondence.

149. It is for the relevant minister to determine on a case-by-case basis whether collective agreement is needed. At present, proposals will require consideration by a Cabinet committee if:

- the proposal takes forward or impacts on a Coalition agreement
- the issue is likely to lead to significant public comment or criticism

- the subject matter affects more than one department
- there is an unresolved conflict between departments.<sup>28</sup>

### *Issues for Cabinet*

150. There can be no hard and fast 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. However, the following is an indication of the kind of issues that would normally be considered by Cabinet:

- the Government's legislative priorities to be set out in the Queen's Speech
- issues of a constitutional nature, including matters relating to the Monarchy, reform of Parliament and changes to the devolution settlements
- the most significant domestic policy issues
- the most significant European or international business
- issues that impact on every member of Cabinet
- national emergencies, including terrorism
- any decision to take military action.

151. 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, or referred to Cabinet because the Cabinet committee has not been able to reach agreement.

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<sup>28</sup> Further detail on which policies require clearance can be found in 'Guide to Cabinet and Cabinet committees', which is published on the Cabinet Office website at: [www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees](http://www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees)

152. The Chancellor of the Exchequer also informs Cabinet of matters that will be covered in the Budget, and any other Budget statement to Parliament, on the morning of the statement (see paragraph 156 for more information).

### *Legislation*

153. All legislative proposals require clearance from the Cabinet committee responsible for considering 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.

154. The role of the Cabinet committee responsible for 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.

155. More information on clearing legislative proposals can be found in 'Guide to making legislation', available on the Cabinet Office website at:  
[www.cabinetoffice.gov.uk/resource-library/guide-making-legislation](http://www.cabinetoffice.gov.uk/resource-library/guide-making-legislation)

### *Areas outside Cabinet collective decision-making*

156. The Chancellor of the Exchequer's Budget or 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 Chancellor's privilege relates to taxation

decisions and not other policies to be announced in a Budget or any other Budget statement. The expectation is that the proposals will be accepted by Cabinet without amendment, although the Chancellor may, if necessary, make amendments.

157. Some ministerial posts have responsibility for quasi-judicial functions that are exercised by the individual minister and not through Cabinet. Examples of this are decisions on whether to grant planning permission following a call-in of planning applications, and whether to recommend exercise of the prerogative of mercy.

158. In a small number of cases, the Attorney General may write to relevant ministerial colleagues seeking any information that should be considered by a prosecuting authority<sup>29</sup> when weighing the public interest in prosecution. This may happen, for example, where there is a risk that a prosecution may endanger national security, international relations or the safety of armed forces abroad. This is known as a Shawcross exercise.<sup>30</sup> However, the decision whether or not to prosecute remains a matter for the prosecuting authority.

## **Procedures of Cabinet and Cabinet committees**

### *Agenda*

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

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<sup>29</sup> Examples of prosecuting authorities are the Crown Prosecution Service, the Serious Fraud Office and the Public Prosecution Service (NI).

<sup>30</sup> The Shawcross exercise takes its name from Sir Hartley Shawcross, who was Attorney General from 1945 to 1951. In 1951 he provided a detailed explanation to the House of Commons of how prosecutors decide whether or not to prosecute and the role of the Attorney General. He also explained how the Attorney General may seek information from ministerial colleagues to inform prosecutorial decisions. (Hansard OR 29 January 1951 col 681)

160. For each agenda item, the lead minister, or ministers, usually submits a paper for consideration by ministerial colleagues. However, any member of the committee and the Cabinet Secretariat can submit a paper on an agenda item, not just the lead minister. Ministers may also give notice to the Cabinet Secretariat that they wish to raise business orally at a Cabinet or Cabinet committee and, where agreed, this is included as an item on the agenda.

### *Papers and presentations*

161. Papers and presentations for Cabinet and Cabinet committees should include any information that is needed for ministers to make an informed decision. They should be concise and should set out the benefits, disadvantages and risks associated with the proposed policy. Any decisions that need to be made by ministers should also be clear. Papers should explain any public expenditure implications.

162. The Cabinet Secretariat is responsible for setting standards for the form and content of papers and presentations. More detailed guidance can be found in 'Guide to Cabinet and Cabinet committees', which is published on the Cabinet Office website at:  
[www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees](http://www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees)

163. Final papers should be circulated the Friday before a Cabinet meeting and at least 48 hours before a committee meeting. This ensures that the information can be properly considered by ministers before the item is discussed at Cabinet or the relevant Cabinet committee.

### **Clearance of proposals with expenditure or legal implications**

164. 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.

165. Usually where matters have legal implications they are considered after discussions have been had with the Law Officers. This includes issues that have the potential to lead to legal challenge or that might impact on the handling of government litigation.

## Minutes

166. 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 committee conclusions as summed up by the chair. To help preserve the principle of collective responsibility, most contributions by ministers are unattributed. However, points made by the minister introducing the item and the chair's summing-up are generally attributed.

167. 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 the 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.

## Attendance of ministers

168. The *Ministerial Code* states that ministers must uphold the principle of collective responsibility, save where it is explicitly set aside, and that Cabinet and Cabinet committee meetings take precedence over all other ministerial business apart from the Privy Council, although it is understood that ministers may sometimes have to be absent for reasons of parliamentary business.

169. Where a minister is unable to attend a Cabinet committee, with the consent of the chair, he or she may nominate a junior minister to attend instead. This will normally be another minister from the same department.<sup>31</sup> However, attendance at Cabinet meetings cannot be delegated. Delegation may also not be allowed for certain Cabinet committee meetings, as determined by the Prime Minister.

170. Where the Prime Minister is unable to attend Cabinet, the next most senior minister should take the chair (following the order of precedence as indicated in the list of Cabinet membership). The same principle is adopted for Cabinet committees if the chair and any deputy chair are absent.

## Attendance of officials

171. Attendance of officials (other than from the Cabinet Secretariat) at Cabinet and Cabinet committee meetings is kept to a minimum in order to allow ministers to have a free and frank discussion of the issues.

172. There is a standing invitation for a member of the Prime Minister's office to attend any Cabinet committee meeting, and the chair may be

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<sup>31</sup> Under the *Coalition Agreement for Stability and Reform*, a minister may, with the agreement of the chair, deputise to a member of the same party.



accompanied by a private secretary. This invitation also currently extends to the Deputy Prime Minister's Office.

173. Where necessary, officials may be invited to attend Cabinet committee meetings as set out in the terms of reference. Restrictions are in place regarding the attendance of other officials, and the Cabinet Secretariat must be consulted in advance should officials need to attend.

## **Quorum**

174. The decision to proceed with a meeting is made by the chair of the committee, on the advice of the Cabinet Secretariat. There is no set quorum for Cabinet or other Cabinet committees.

## **Implementation of decisions**

175. Ministers are responsible for ensuring that their departments take whatever action is necessary to implement decisions made by Cabinet or Cabinet committees, and for reporting back to colleagues on progress if needed.

## **Cabinet committee correspondence**

176. Most issues that require collective agreement do not need to be considered at a meeting of the relevant Cabinet committee and are handled through correspondence.

177. Where a minister wishes to seek collective agreement, they should write to the chair of the relevant Cabinet committee (or, exceptionally, to the Prime Minister as chair of Cabinet) seeking collective agreement. The proposal to which ministers are being asked to agree should be clear from the letter, as should the date by when a response is requested (this should normally allow at least six working days). Any replies should be addressed to the committee chair and all correspondence should be

copied to the Prime Minister, the Deputy Prime Minister, members of the committee and the Cabinet Secretary. First Parliamentary Counsel should be copied in where a proposal has implications for the drafting of legislation.

178. Once all responses are received from members of the committee, the chair will (on advice from the Cabinet Secretariat) write to the minister confirming whether collective agreement has been reached or not.

179. If it is not possible to reach a decision in correspondence, the chair of the relevant Cabinet committee may decide to call a meeting to consider the issue.

180. Further detail about the correspondence process, including advice for officials involved in drafting correspondence, is available on the Cabinet Office website at: [www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees](http://www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees)

## **The Devolved Administrations**

181. Ministers should write separately to the Devolved Administrations where they have an interest, and devolved ministers should often be consulted in confidence in parallel with seeking collective agreement. However, on sensitive matters the Government may wish to reach a collective view before consulting with devolved ministers. Cabinet committee correspondence itself must not be copied to Devolved Administrations as they operate independently from the Government and are not subject to the Government's collective responsibility. Exceptionally, with the consent of the relevant chair, devolved ministers may be invited to attend meetings, for example, committee meetings dealing with an emergency response.

182. Formal discussions of policy issues with the Devolved Administrations takes place through the Joint Ministerial Committee (JMC) established under the Memorandum of Understanding between the Government and the Devolved Administrations. For more information on devolution, see Chapter 8.

### **The Cabinet Secretariat**

183. The Cabinet Secretariat exists to support the Prime Minister, and currently the Deputy Prime Minister,<sup>32</sup> 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. The Secretariat reports to the Cabinet Secretary and to the Prime Minister, the Deputy Prime Minister and other ministers who chair Cabinet committees. The Cabinet Secretariat prepares the agenda of 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, in addition to providing wider support.

### **Cabinet Secretary**

184. The Cabinet Secretary is the head of the Cabinet Secretariat and, currently, also Head of the Civil Service and the Cabinet Office. The Cabinet Secretary is appointed by the Prime Minister on the advice of the

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<sup>32</sup> Since May 2010, the Cabinet Secretariat reports to the Deputy Prime Minister, as well as the Prime Minister and ministers who chair Cabinet committees. The Cabinet Secretariat also gives advice and support to the deputy chair of Cabinet committees, in addition to the chair.

retiring Cabinet Secretary who will consult with a number of individuals, including the First Civil Service Commissioner.

185. The Cabinet Secretary, unless unavoidably absent, attends all meetings of the 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. The Cabinet Secretary also has overall responsibility for advising the Prime Minister on machinery of government changes and ensuring that the Civil Service provides effective and efficient support to the Prime Minister and the Government.

## Chapter 5: Ministers and Parliament

This chapter sets out the relationship between ministers and Parliament, including parliamentary scrutiny of government and ministers' roles in the passage of legislation.

The *Ministerial Code* makes clear that ministers have a duty to Parliament to account, and to be held to account, for the policies, decisions and actions of their departments and agencies; it is of paramount importance that ministers give accurate and truthful information to Parliament.

### The House of Commons and the House of Lords

186. Members of the House of Commons are directly elected by universal suffrage of the adult population of the United Kingdom. Most Members of the House of Lords are appointed for life by the Sovereign, on the advice of the Prime Minister; 92 Members are chosen from among holders of hereditary peerages, comprising 15 office-holders elected by the House, 75 Members elected by their party or group within the House, and the Lord Great Chamberlain and the Earl Marshal, who are both ex-officio Members. Some Church of England bishops and archbishops are also Members of the House, representing the established Church.

187. The House of Commons has primacy over the House of Lords. It is the democratically elected institution of the United Kingdom and the Government derives its democratic mandate from its command of the confidence of the Commons. It claims ancient rights and privileges over the Lords in financial matters and, under the Parliament Acts 1911 and 1949, a Money Bill which has been passed by the Commons may receive Royal Assent without being passed by the Lords. Under the Parliament Acts, if the Lords reject any bill passed by the Commons and the

Commons pass an identical bill in the following session of Parliament, then it may receive Royal Assent without being passed by the Lords.

### Core principles

188. In all their dealings with Parliament, ministers should be governed by the following principles, which are set out in paragraph 1.2 of the *Ministerial Code*:

- Ministers have a duty to Parliament to account, and to be held to account, for the policies, decisions and actions of their departments and agencies.
- 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.
- 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 relevant statutes and the Freedom of Information Act 2000.
- Ministers should 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*.

### Government business

189. Government business takes precedence at most sittings of the House, with the exception of 60 days in each session which are allocated for opposition business, backbench business and Private Members' Bills.

The subjects of debates in Westminster Hall are determined by backbenchers through a ballot system and through the Liaison Committee<sup>33</sup> and the Backbench Business Committee. This means that, in an average year, the Government has the equivalent of around 100 days at its disposal in the House of Commons.

190. The Leader of the House of Commons and the Leader of the House of Lords are government ministers. They work closely with the government chief whip in each House to plan the Government's business. The Leader of the House has a responsibility to support the business of the House and on occasion to make time available and to move the necessary motions for the House to dispose of its own internal or domestic business, even though it is not government business. From the beginning of the 2010 Parliament, the Backbench Business Committee has been established in the Commons to take on much of this role. The Leader of the House of Commons is also an ex-officio member of various statutory bodies related to the House, including the House of Commons Commission, the Public Accounts Commission, the Speaker's Committee for the Independent Parliamentary Standards Authority and the Speaker's Committee on the Electoral Commission.

## **Scrutiny of the Government**

### *Parliamentary questions*

191. Scrutiny of the Executive is one of the core functions of Parliament.

192. Members of both Houses can table questions – for oral or written answer – to ministers. Parliamentary questions may seek factual information or press the Government to take a particular course of action. In response to

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<sup>33</sup> The Liaison Committee considers general matters relating to the work of select committees; advises the House of Commons Commission on select committees; chooses select committee reports for debate in the House; and hears evidence from the Prime Minister on matters of public policy.

these, ministers are obliged to explain and account for the work, policy decisions and actions of their departments.

193. Questions for oral answer in the Commons are tabled for answer by specific departments on specified days, according to a rota determined by the Government. In the Lords, up to four questions for oral answer may be taken each day, and may relate to the work of any department. Questions may be tabled for written answer to any department in either House on any sitting day. A written answer is sent to the Member tabling the question and is published in the Official Report of the relevant House.

194. More details on parliamentary questions can be found at:  
[www.parliament.uk/documents/upload/P01.pdf](http://www.parliament.uk/documents/upload/P01.pdf)

### *Evidence to committees*

195. Each House appoints select committees to scrutinise the work of government and hold it to account. In the Commons, a public bill committee may also take evidence on the bill that is before it.<sup>34</sup>

196. Ministers and civil servants usually appear before these committees to give evidence when they are invited to do so and supply written evidence when it is requested. Further guidance about the provision of information to select committees, known as the Osmotherly Rules, can be found at:  
[www.cabinetoffice.gov.uk/resource-library/guidance-departmental-evidence-and-response-select-committees](http://www.cabinetoffice.gov.uk/resource-library/guidance-departmental-evidence-and-response-select-committees)

197. Chapter 7: Ministers and the Civil Service sets out in more detail how these rules apply to civil servants.

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<sup>34</sup> For a full list of select committees of both Houses, see:  
[www.parliament.uk/business/committees](http://www.parliament.uk/business/committees)



## *Statements to Parliament*

198. When Parliament is in session the most important announcements of government policy should, in the first instance, be made to Parliament.<sup>35</sup>

199. Ministers may, subject to the relevant collective clearance being received, make statements to Parliament both orally and in writing on the work of their department. The Government, not the House of Commons, decides whether a statement is made. Oral statements are followed by the relevant minister taking questions from Members on the issue. Ministers may also make written statements to each House. These are distributed through the Vote Office and the Printed Paper Office and published in Hansard the following day. When the Government does not plan to make a statement on a matter of public interest, the Speaker of the House of Commons may allow a Member to ask an urgent question on the subject, or less commonly to apply for an emergency debate to discuss the issue in more detail to ensure appropriate scrutiny.

200. Announcements may also be accompanied by production of a paper presented to Parliament and published as a Command Paper.

## **Legislation**

### *Queen's Speech and introduction of legislation*

201. Each session of Parliament begins with the ceremony of the State Opening, when the Sovereign formally opens Parliament. This includes the Queen's Speech, which outlines the forthcoming legislative programme. The Speech is written by the Government and approved by

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<sup>35</sup> This principle is set out in Votes and Proceedings: 20 July 2010 No. 35, where the House resolved to reassert the principle that ministers ought to make statements to the House before they are made elsewhere.

the Cabinet, but delivered by the Sovereign from the throne in the House of Lords.

202. Following a State Opening, the Government's legislative programme is then debated by both Houses, usually for four or five days. Ministers will be required to explain and defend the proposed legislation of their departments. Topics for debate on each day are chosen by the Opposition.

### *Passage of legislation*

203. Every government bill goes through the following stages in each House. It is presented and read a first time; this is in effect a formality which enables the bill to be published. The first substantive proceeding is the second reading which is a debate, usually lasting an entire day, on the principles of the bill. The debate is opened by a minister (normally the Secretary of State in the House of Commons) with the closing speech usually given by another minister. The bill is then sent to a committee, which considers each clause of the bill in detail and may make amendments. Committee stage is usually handled by a junior minister and the demands on the minister's time can be very significant while the bill is in committee, with the committee typically meeting four times a week. The bill then returns to the House, where it can be further amended on consideration (also known as Report stage). It then receives a final, third reading before being sent to the other House. If the second House amends the bill, then the first House only considers the amendments which that House sends back, not the bill as a whole. This process may go through several iterations before agreement is reached between the two Houses.

204. Although the stages are the same in each House, there are two significant differences. In the House of Commons, bills are more usually committed to a public bill committee, which consists of a number of members specifically nominated to it and meets in a committee room

away from the Chamber, whereas in the House of Lords bills are more commonly considered by a committee of the whole House (which meets in the Chamber) or a grand committee, which any peer may attend. However, any bills that are of constitutional significance in the House of Commons are taken in committee of the whole House rather than in a public bill committee. The House of Lords also allows amendments to be tabled at third reading, whereas the Commons does not.

### *Draft bills, pre-legislative scrutiny and post-legislative scrutiny*

205. Ministers should consider publishing bills in draft for pre-legislative scrutiny, where it is appropriate to do so. Reports from the Commons Liaison Committee have identified this as good practice. Most draft bills are considered either by select committees in the Commons or by a joint committee of both Houses. Once a committee has scrutinised and reported on the draft bill, the Government considers the committee's recommendations and makes any alterations to the bill before it is formally introduced to Parliament. Pre-legislative scrutiny can help to improve the quality of legislation and to ensure that Parliament and the public are more involved with and aware of the Government's plans for legislation.

206. Once legislation has been passed, the Government has undertaken that ministers will (subject to some exceptions) provide the relevant select committee with a post-legislative scrutiny memorandum, within three to five years of Royal Assent. It includes a preliminary assessment of how the Act is working in practice, relative to its original objectives. The select committee uses the memorandum to decide whether to carry out a fuller post-legislative inquiry.

207. Post-legislative scrutiny is in addition to other post-enactment review work, which might include internal policy reviews, but may be combined

with reviews commissioned from external bodies, or post-implementation reviews as part of the Impact Assessment process.

208. Further information on both pre- and post-legislative scrutiny can be found in the Guide to making legislation at:  
[www.cabinetoffice.gov.uk/resource-library/guide-making-legislation](http://www.cabinetoffice.gov.uk/resource-library/guide-making-legislation)

### *Secondary legislation*

209. Many Acts of Parliament delegate to ministers powers to make more detailed legal provision. Several thousand pieces of delegated, or secondary, legislation are made each year. Whether or not a piece of secondary legislation is subject to any parliamentary procedure and, if so, what procedure it is subject to, is determined by the parent Act. Much secondary legislation is made without being subject to any parliamentary proceedings. Under the negative parliamentary procedure, an instrument is laid before Parliament and does not require active approval but may be annulled by a resolution of the House within 40 days of being laid. These instruments are rarely subject to debate, but if a debate is granted (usually at the request of the Opposition) then a minister will need to attend. Instruments subject to the affirmative parliamentary procedure must be approved, usually by both Houses, before being made. They must therefore be subject to a debate in each House, although in the Commons this usually takes place in a committee.

### *The Budget and financial procedure*

210. The Budget, which sets out the Government's taxation plans, is delivered by the Chancellor of the Exchequer, usually in March. Following his statement to the House of Commons, there is a four- or five-day debate, ending with votes on a series of motions to authorise the continuance of income tax and corporation tax, to impose any new taxes and to increase the rates of any existing taxes, and to authorise any changes to tax law.

211. These motions, when passed, are known as the Budget Resolutions. The Resolutions determine the scope of the Finance Bill, which is then formally introduced as soon as they are passed. The Bill is then subject to the normal legislative process, although committal is usually split between a public bill committee and a committee of the whole House.

212. All government expenditure must be authorised by Parliament. Ministers submit requests for expenditure to Parliament via HM Treasury, in the form of supply estimates. The Commons approves these requests and the Lords' only function is to formally pass the bill that ratifies the approvals. The bill's consideration is a formality and proceedings on the bill are taken without debate in either House.

213. Parliament, through the National Audit Office (NAO) and the Committee of Public Accounts, monitors and audits government expenditure to ensure that it is consistent with what Parliament has authorised.

214. For more information on Government finance and expenditure, see Chapter 10.

## **Public appointments**

215. Parliamentary select committees have a role in scrutinising key public appointments. Before such appointments are made, but after the selection process is complete, a pre-appointment hearing with the proposed appointee takes place in public. A report is then published setting out the committee's view on whether or not the candidate is suitable for the post. The hearings are non-binding and the Government has agreed that ministers should consider the committee's report before deciding whether to appoint the candidate.<sup>36</sup> Pre-appointment hearings only apply to new appointments; however, select committees already take

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<sup>36</sup> Exceptionally, the Budget Responsibility and National Audit Bill will require the consent of the Treasury Select Committee to the appointment of the members of the Budget Responsibility Committee of the Office for Budget Responsibility.

evidence from serving post-holders as part of their ongoing scrutiny of public bodies and public appointments.

### **Parliamentary Commissioner for Administration**

216. The Parliamentary Commissioner for Administration, known as the Parliamentary Ombudsman, is an officer of the House of Commons appointed by the Crown and is independent of the Government. Powers and responsibilities are set out in the Parliamentary Commissioner Act 1967.

217. The Ombudsman investigates complaints that injustice has been caused by maladministration on the part of government departments or certain other public bodies. If the Ombudsman finds that there has been maladministration, the Government is not bound by the findings or recommendations, but if it rejects a finding it should have cogent reasons for doing so and it is potentially open to challenge if it unreasonably rejects a recommendation.<sup>37</sup> In those cases where the Parliamentary Ombudsman makes a recommendation regarding the payment of compensation, departments follow the guidance set out in *Managing Public Money* at: [www.hm-treasury.gov.uk/d/mpm\\_whole.pdf](http://www.hm-treasury.gov.uk/d/mpm_whole.pdf). Further information on the Parliamentary Ombudsman can be found at: [www.ombudsman.org.uk/](http://www.ombudsman.org.uk/)

### **National Audit Office**

218. The NAO audits central government accounts on behalf of Parliament and reports on the value for money achieved by government projects and programmes.

219. The audit and inspection rights are vested in the head of the NAO, the Comptroller and Auditor General (C&AG), who is an officer of the House

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<sup>37</sup> *R (Bradley and others) v Secretary of State for Work and Pensions* [2008] EWCA Civ 36.

of Commons, appointed by the Sovereign on an address proposed by the Prime Minister with the agreement of the Chairman of the Public Accounts Committee and approved by the House of Commons. The C&AG appoints the professional staff of the NAO who are not civil servants.

220. The C&AG and the NAO have comprehensive statutory rights of access to the bodies to be audited. The NAO's budget is set by Parliament, not the Government, and oversight of the NAO is carried out by the Public Accounts Commission, which appoints its external auditors and scrutinises its performance. The NAO does not audit local government spending, publish statistical information or audit the spending of the Devolved Administrations in the rest of the UK. More information on the NAO can be found at: [www.nao.org.uk](http://www.nao.org.uk)

# Chapter 6: Ministers and the law

This chapter covers the role of the Law Officers, the Lord Chancellor and relations with the judiciary, litigation involving ministers, the Treasury Solicitor and the Government Legal Service, legal advice and legal professional privilege, Human Rights Act 1998 and public inquiries.

Ministers must act lawfully in taking decisions. Their decisions, and the process by which they exercise (or fail to exercise) their powers, can be reviewed by the High Court. The Law Officers are the chief legal advisers to the Government. The Lord Chancellor is responsible for ensuring an efficient and effective system for the administration of justice, while the judicial branch in each jurisdiction of the UK is headed up by its own senior judge. Ministers receive most of their legal advice from government lawyers, and this is protected by legal professional privilege. Where Ministers become involved in proceedings for judicial review, they will be subject to the duty of candour in disclosure. Where ministers are involved in litigation personally, they should consult with the Law Officers.

## The Law Officers

221. 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.<sup>38</sup>

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<sup>38</sup> The Chief Law Officer to the Scottish Executive is the Lord Advocate, assisted by the Solicitor General for Scotland. The Chief Law Officer in Northern Ireland is the Attorney General for Northern Ireland.



222. 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.

223. 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.

### *The role of the Law Officers*

224. 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.

225. In addition to these roles, the Law Officers have a number of public interest functions. Acting in the public interest, independently of government, 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 for the Crown, and
- refer points of law to the Court of Appeal after acquittals in criminal cases.

### *Seeking Law Officer advice*

226. The Law Officers must be consulted in good time before the Government is committed to critical decisions involving legal considerations.<sup>39</sup> 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 vires of 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, which are likely to come before the Cabinet or 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 departments disagree on legal questions and wish to seek the view of the Law Officers.

227. The Law Officers normally 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. For more information on the Law Officers' and ministers' responsibilities regarding the European Convention on Human Rights (ECHR), see paragraphs 248–250 in this chapter.

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<sup>39</sup> *Ministerial Code* 2010, paragraph 2.10.

228. Where the advice from the Law Officers is included in correspondence between ministers or in papers for the Cabinet or ministerial committees, the conclusions may if necessary be summarised but, if this is done, the complete text of the advice should be attached.<sup>40</sup>

229. 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.<sup>41</sup> The Law Officers' advice to government is subject to legal professional privilege and is confidential.

## Litigation involving ministers

### *Judicial review*

230. Ministers' decisions, and the process by which they exercise (or fail to exercise) their powers, can be reviewed by the High Court, although the courts will usually hesitate to intervene in cases where they accept that, because of the subject matter (entering into treaties, the defence of the realm, the grant of honours etc), the decision-maker is better qualified than the Court to make a judgment.

231. In judicial review the Court will consider a minister's exercise of public powers by reference to:

- **legality** (acting within the scope of any powers<sup>42</sup> and for a proper purpose)
- **procedural fairness** (for example giving an individual affected by the decision the opportunity to be heard)
- **reasonableness or rationality** (following a proper reasoning process to reach a reasonable conclusion), and

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<sup>40</sup> *Ministerial Code* 2010, paragraph 2.12.

<sup>41</sup> *Ministerial Code* 2010, paragraph 2.13.

<sup>42</sup> The exercise of statutory powers conferred on particular ministers is usually subject to collective agreement. For more information, see the section on the powers of ministers in Chapter 3.

- **compatibility** (with the ECHR and EU law).

232. Where a decision is one that the minister had discretion to make, the Court will examine it to decide whether logical or rational principles were applied when making it. If the Court finds that the decision was unreasonable, it will usually simply cancel (or 'quash') the decision, so requiring the minister to make a fresh decision, taking into account the guidance given by the Court.

233. In practice, a minister will depend on civil servants in the decision-making process, and those officials will often be key witnesses in judicial review proceedings. Legally and constitutionally, however, the acts of officials are the acts of the ministers to whom they are accountable, and the Court will regard the minister as the person who is ultimately responsible for ensuring that a particular decision is made reasonably, fairly and according to law. See Chapter 3 for more information on the powers of ministers and the Carltona principle.

#### *Disclosure of documents*

234. Disclosure as applied in private law litigation is not often used in judicial review. More often than not the Court accepts the facts as presented by the parties. This imposes a duty on all parties to be open and honest ('the duty of candour').

235. The duty of candour weighs particularly heavily on ministers and civil servants, as they will have the information showing the basis for the decision under review and because they are representatives of the public interest, and it cannot be in the public interest for the Court to be presented with an incomplete or inaccurate account of the facts. While civil servants are responsible for finding the documents that relate to the matter in question, the lawyer acting for a minister in judicial review has overall responsibility for ensuring that the disclosure has been sufficient

to discharge the duty of candour. Any matter of disclosure may be referred to the Attorney General if necessary.

236. Any minister who receives a notice or order to give evidence or produce Cabinet or departmental papers to a court should refer it to the Treasury Solicitor or departmental legal adviser. Where it is appropriate to do so, the Treasury Solicitor or departmental legal adviser may consult the Attorney General on the question of whether public interest immunity should be claimed. Any notice or order requiring the release of Cabinet or Cabinet committee papers should also be referred to the Cabinet Secretariat. (See Chapter 11 on the protection of Cabinet and Cabinet committee papers.)

237. In judicial review proceedings it will usually be officials with relevant knowledge and responsibility within the department who give witness statements setting out the reasons for a minister's decision or action, although it may sometimes be desirable for a minister to give a statement. The Court will allow the cross-examination of a minister or official if it is necessary to enable the case to be disposed of fairly, but cross-examination is unlikely to be ordered if the chain of documents culminating in a decision is sufficiently complete and the witness statements address the matters raised in the case.

238. If there is any prospect of a minister becoming involved in legal proceedings in a personal capacity, or being a witness in proceedings in his or her personal capacity, he or she must consult the Law Officers in good time.<sup>43</sup>

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<sup>43</sup> *Ministerial Code* 2010, paragraphs 7.16 and 7.17.

## Legal advice and legal professional privilege

239. Legal professional privilege (LPP) is a term that applies to the protection of confidential communications between a lawyer and a client. All legal advice that is provided to ministers or government agencies will attract LPP and should generally be protected from disclosure.

240. When the Crown engages in civil litigation it is generally in the same position concerning the disclosure of legal advice as any other litigator, but there are a limited number of situations in which the Government should apply wider considerations. Broadly speaking, the Government will generally waive LPP in any case where withholding the material in question might mislead either the opponent or the Court, particularly if the information is of central importance to the case and it is apparent that withholding the information would prevent the Court reaching a conclusion that is fair and in the overall public interest.

241. It is primarily for the department to which legal advice was given to decide whether to waive (or potentially waive) LPP. The department should consult its own legal advisers or the Treasury Solicitor's Department, and other departments where relevant. In cases of particular sensitivity, the matter may be referred to the Attorney General.

242. Where disclosure of legal advice is sought under the Freedom of Information Act 2000, Section 42 provides an exemption for information which is subject to LPP, but it applies only if the public interest in withholding the information outweighs the public interest in disclosing it.<sup>44</sup> For more on the Freedom of Information Act 2000 and other exemptions, see Chapter 11: Official information.

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<sup>44</sup> For more details see [www.justice.gov.uk/guidance/foi-assumptions-legal.htm](http://www.justice.gov.uk/guidance/foi-assumptions-legal.htm) and [www.justice.gov.uk/guidance/docs/foi-exemption-section42.pdf](http://www.justice.gov.uk/guidance/docs/foi-exemption-section42.pdf)

## Indemnity of legal costs

243. It is the practice for ministers<sup>45</sup> to be indemnified by the Crown for any actions taken against them for things done or decisions made in the course of their ministerial duties. The indemnity will cover the cost of defending the proceedings, and any costs or damages awarded against the minister.

244. Ministers may be sued for acts which, although done while a minister, have a more 'personal' aspect to them. For example, proceedings may be instituted alleging that a minister said something defamatory in a speech or that a minister has acted dishonestly or in bad faith. The extent to which a minister will be personally liable will depend on the law relating to the particular matter.

245. A minister may wish to bring proceedings in a personal capacity, for example where they believe they have been defamed. Such proceedings may have a bearing on the minister's official position as well as their private position. For example, they may require disclosure of official documents or evidence about things done in the minister's official capacity.

246. Decisions about whether public funds should meet a minister's costs in bringing or defending any such proceedings, or any damages awarded against a minister, are for the relevant accounting officer, who should be consulted about the matter at the earliest opportunity (see Chapter 10 for more information on the responsibilities of the accounting officer). The accounting officer will wish to take into account any views of the Attorney General.

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<sup>45</sup> References to ministers in this section also apply to former ministers, including those of previous governments.

247. Where proceedings involving a minister are funded at public expense, it may be appropriate for any damages or costs awarded in a minister's favour to be paid to the Government. Again, such decisions are a matter for the relevant accounting officer.

### **European Convention on Human Rights and the Human Rights Act 1998**

248. The Human Rights Act 1998 gives further effect to the ECHR. The Act includes provisions that:

- make it unlawful for a public authority (which includes ministers of the Crown in their official capacity), subject to certain limited exceptions, to act in a way that is incompatible with a Convention right. Domestic courts can provide certain remedies if a public authority does so
- require all courts and tribunals to interpret all legislation, as far as possible, in a way that is compatible with the Convention rights. The Act does not allow the courts to 'strike down' Acts of Parliament, thus respecting Parliamentary sovereignty. However, certain higher courts can indicate their view to Parliament that an Act of Parliament is incompatible with the Convention rights by means of a declaration of incompatibility, but it remains for the Government to make proposals to Parliament to change the law.

249. Under Section 19 of the Human Rights Act 1998, the minister in charge of a government bill must, before second reading of the bill in Parliament, make a statement that in his or her view the bill's provisions are compatible with the Convention rights. Rarely, a minister may also make a statement that he or she cannot say that the bill's provisions are compatible but that the Government nevertheless wishes Parliament to proceed with the bill.

250. Before a bill is introduced or published in draft, ministers must submit to the Cabinet committee responsible for legislation the ECHR



memorandum, which sets out the impact, if any, of the bill on the ECHR rights.<sup>46</sup> The memorandum must be cleared by the Law Officers before it is submitted to the committee, and so should be sent to the Law Officers at least two weeks before being circulated to committee members.

## The Treasury Solicitor and the Government Legal Service

251. The Treasury Solicitor's Department is a non-ministerial department responsible to the Attorney General. It provides legal services to more than 180 central government departments and other publicly funded bodies in England and Wales, and collects *bona vacantia* (the legal name for ownerless properties that pass to the Sovereign when someone has died intestate).

252. The Treasury Solicitor is the Head of the Government Legal Service (GLS), which joins together around 2,000 government lawyers who work across some 30 government organisations. Other organisationally separate areas of government legal provision, such as the Crown Prosecution Service, the Foreign and Commonwealth Office and the Office of the Parliamentary Counsel, maintain close links with the GLS, as do the legal teams supporting the Scottish Executive and the Northern Ireland departments.

## Public inquiries

253. The Government has statutory and non-statutory powers to call inquiries. Statutory public inquiries are governed principally by the Inquiries Act 2005, which provides that a minister may establish an inquiry if it appears to him or her that particular events have caused or are capable of causing public concern, or if there is public concern that particular events may have occurred. The Act provides how the inquiry should be set up and

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<sup>46</sup> See paragraph 12.8 of the 'Guide to Making Legislation', which can be found at: [www.cabinetoffice.gov.uk/resource-library/guide-making-legislation](http://www.cabinetoffice.gov.uk/resource-library/guide-making-legislation)

conducted and how its findings should be reported. It grants powers compelling the attendance of witnesses and the production of documents, and provides for the conduct of an inquiry to take place in private if necessary.

254. A non-statutory inquiry may be held where, for example, all relevant parties have agreed to cooperate, and it may be convened and concluded more quickly and perhaps more cheaply. The terms of reference will normally be determined wholly by the minister in discussion with officials.

255. The Prime Minister must be consulted in good time about any proposal to set up a major public inquiry.<sup>47</sup> The power to hold an inquiry should be used sparingly and consideration given to potential costs.

## Relations with the judiciary

### *The Lord Chancellor and the judiciary*

256. The principles underpinning the separation of powers between the Executive and the judiciary are set out in the Constitutional Reform Act 2005. The Act provides for a system based on concurrence and consultation between the Lord Chancellor and the Lord Chief Justice, while clarifying their respective constitutional roles. The Lord Chief Justice is head of the judiciary in England and Wales, Head of Criminal Justice and President of the Courts of England and Wales.<sup>48</sup> More information is available at: [www.judiciary.gov.uk](http://www.judiciary.gov.uk)

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<sup>47</sup> *Ministerial Code* 2010, paragraph 4.10.

<sup>48</sup> The Lord President of the Court of Session is the head of the judiciary in Scotland. The Lord President has authority over any court established under Scots Law. The Lord Chief Justice of Northern Ireland is the head of the judiciary in Northern Ireland.

257. 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”,<sup>49</sup> 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.

258. The Lord Chancellor has a particular responsibility to defend judicial independence and to consider the public interest in respect of matters relating to the judiciary. The Lord Chancellor also has a responsibility to ensure that there is an efficient and effective system for the administration of justice. The Lord Chancellor is under a general duty to provide sufficient resources to support the business of the courts in England and Wales.

259. 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. In practice, dialogue between the judiciary and ministers occurs through consultation and regular meetings. Judges may comment on the practical effect of legislative proposals insofar as such proposals affect the operation of the courts 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 themselves in subsequent litigation.

### *Supreme Court of the UK*

260. The Supreme Court of the UK, which replaced the Appellate Committee of the House of Lords, is the final court of appeal for all civil law cases in

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<sup>49</sup> See Part 2, Section 3(1) of the Constitutional Reform Act 2005.

the UK and for all criminal law cases in England, Wales and Northern Ireland. The Supreme Court hears appeals on arguable points of law of general public importance, and concentrates on cases of the greatest public and constitutional importance. The impact of Supreme Court decisions extends beyond the parties involved in any given case and plays an important role in the development of UK civil law and criminal law in England, Wales and Northern Ireland. The Court also hears cases on devolution matters under the Scotland Act 1998, the Northern Ireland Act 1988 and the Government of Wales Act 2006.

# Chapter 7: Ministers and the Civil Service

This chapter covers the role of officials and their relationship with ministers, the *Civil Service Code* and the Constitutional Reform and Governance Act 2010, the roles of permanent secretaries, accounting officers and special advisers, civil servants' appearance before select committees, and public appointments.

The Civil Service helps the government of the day to develop and implement its policies as effectively as possible. Under the Carltona principle, civil servants may exercise the powers conferred on their departmental minister (see Chapter 3: The Executive). Civil servants are required to carry out their role in accordance with the values set out in the *Civil Service Code* and the Constitutional Reform and Governance Act 2010. Central to this is the requirement for political impartiality. Civil servants must act solely according to the merits of the case, and serve governments of different political parties equally well.

## The Civil Service

261. Civil servants are servants of the Crown. The Civil Service is an important part of the government of the UK. It supports the government of the day in developing and implementing its policies, and in delivering public services. Civil servants are accountable to ministers, who in turn are accountable to Parliament.

## The role of ministers and officials

262. The *Ministerial Code*, paragraph 5.1, sets out that ministers are required to uphold the political impartiality of the Civil Service and not ask civil servants to act in any way that would conflict with the *Civil Service Code* or the requirements of the Constitutional Reform and Governance Act 2010 (see paragraph 268 below).

263. Under the Code, ministers also 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.

264. In addition, civil servants should not be asked to engage in activities likely to call into question their political impartiality or give rise to the criticism that resources paid from public funds are being used for party political purposes.

## The *Civil Service Code*

265. Civil Servants serve the elected government of the day, in line with the standards set out in the *Civil Service Code* ([www.civilservice.gov.uk/about/values/cscode/index.aspx](http://www.civilservice.gov.uk/about/values/cscode/index.aspx)). The Code sets out the standards of conduct and behaviours expected of all civil servants in upholding the core Civil Service values, and in carrying out their duties and responsibilities, and makes clear what they can and cannot do.<sup>50</sup> The core Civil Service values and behaviours as set out in the Code are:

- **integrity** – putting the obligations of public service above your own personal interests
- **honesty** – being truthful and open

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<sup>50</sup> Civil servants working for the Scottish Executive and the Welsh Assembly Government and their agencies have their own versions of the Code. Similar codes apply to the Northern Ireland Civil Service and the Diplomatic Service. Civil servants working in non-ministerial departments in England, Scotland and Wales are covered by the Code.

- **objectivity** – basing your advice and decisions on rigorous analysis of the evidence
- **impartiality, including political impartiality** – acting solely according to the merits of the case and serving equally well the governments of different political persuasions.

266. The Code also makes clear that 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. Where an actual or perceived conflict of interest arises between a civil servant's official duties and responsibilities and their private interests, they must make a declaration to senior management so that senior management can determine how best to proceed.

267. The Code also sets out the procedure that civil servants should follow if they believe that they are being required to act in a way that conflicts with the Code, or if they have concerns about a possible breach of the Code. This includes raising the matter with line management, or with departmentally nominated officers who have been appointed to advise staff on the Code. It also includes the option to take the matter directly to the independent Civil Service Commissioners.

268. The Constitutional Reform and Governance Act 2010 provides the statutory framework for the Civil Service by providing a power for the Minister for the Civil Service (the Prime Minister) to manage the Civil Service, and making provision for a code of conduct for civil servants which specifically requires them to carry out their duties in accordance with the four core Civil Service values set out above. The Act also provides for recruitment to the Civil Service to be on merit on the basis of fair and open competition, and provides for a statutory Civil Service Commission to safeguard and oversee the application of this fundamental principle, and to investigate complaints under the Code of Conduct.

## The role of permanent secretaries

269. The most senior civil servant in a department is a permanent secretary.

Each permanent secretary supports the government minister who heads the department and who is accountable to Parliament for the department's actions and performance. In a limited number of departments there may be more than one permanent secretary, or a deputy or second permanent secretary to deal with issues of operational or national significance, such as national security. Permanent secretaries are responsible to the Cabinet Secretary and the Head of the Civil Service for the effective day-to-day management of their department, or the particular issues for which they are responsible (for more information on the Cabinet Secretary, see paragraphs 184 and 185 of Chapter 4).

270. The permanent secretary is normally the accounting officer for their department, reporting to Parliament. More information on accounting officers can be found in Chapter 10: Government finance and expenditure.

## The role of special advisers

271. Special advisers are employed as temporary civil servants to help ministers on matters where the work of government and the work of the party, or parties, of government overlap and where it would be inappropriate for permanent civil servants to become involved. They are an additional resource for the minister, providing assistance from a standpoint that is more politically committed and politically aware than would be available to a minister from the permanent Civil Service.<sup>51</sup> There are broad limits on the number of special advisers that ministers may appoint.<sup>52</sup>

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<sup>51</sup> Paragraph 2 of the Code of Conduct for Special Advisers makes clear that special advisers are appointed to service the Government as a whole, not just their appointing minister.

<sup>52</sup> *Ministerial Code* 2010, paragraph 3.2.



272. The employment of special advisers adds a political dimension to the advice and assistance available to ministers, while reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support.<sup>53</sup>

273. Further information on the role of special advisers can be found in the *Code of Conduct for Special Advisers* at:

[www.cabinetoffice.gov.uk/resource-library/special-advisers-guidance](http://www.cabinetoffice.gov.uk/resource-library/special-advisers-guidance)

274. The Code of Conduct sets out the kind of work special advisers may do if their minister wants it, and their relationship with the permanent Civil Service, including that special advisers must not ask civil servants to do anything that is inconsistent with their obligations under the *Civil Service Code*, or exercise any powers in relation to the management of any part of the Civil Service (except in relation to another special adviser), and must not authorise the expenditure of public funds or have responsibility for budgets.

### **Civil servants' appearance before select committees**

275. Parliamentary select committees have a crucial role in ensuring the full and proper accountability of the Executive to Parliament. Ministers are expected to observe the principle that civil servants who give evidence before parliamentary select committees on their behalf and under their direction should 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*.

276. Detailed guidance to officials from departments who may be called upon to give evidence before, or prepare memoranda for submission to,

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<sup>53</sup> The Constitutional Reform and Governance Act 2010 provides for the appointment of special advisers as temporary civil servants, and for the publication of a code of conduct which must specify restrictions on special advisers' activities.

parliamentary select committees is contained in the Cabinet Office memorandum *Departmental Evidence and Responses to Select Committees*, commonly called the Osmotherly Rules (July 2005). The Memorandum is on the Cabinet Office website at:

[www.cabinetoffice.gov.uk/resource-library/guidance-departmental-evidence-and-response-select-committees](http://www.cabinetoffice.gov.uk/resource-library/guidance-departmental-evidence-and-response-select-committees)

277. The memorandum summarises a number of long-standing conventions that have developed in the relationship between Parliament, in the form of its select committees, and successive governments. Parliament has generally recognised these conventions, but it is important to note that the memorandum is a government document and therefore has no parliamentary standing or approval.

### **Public appointments**

278. A public appointment is an appointment to the board of a public body or to an office. This includes appointments to the boards of non-departmental public bodies (NDPBs) and non-ministerial departments (NMDs) as well as appointments to the boards of NHS trusts and other NHS bodies. Most public appointments are made by ministers.

279. Many public appointment processes are regulated by an independent Commissioner for Public Appointments. The Commissioner publishes a Code of Practice setting out the process for making public appointments, which are made on merit: [www.publicappointmentscommissioner.org](http://www.publicappointmentscommissioner.org)

280. Ministers are ultimately responsible for the appointments they make and will be involved in some way in the process. For example, they are consulted at the planning stage of the appointments process and will agree the skills and experience needed for the post. They may also be consulted throughout the process and will make the final decision on which candidate to appoint.

281. All public appointees are expected to work to the highest personal and professional standards. To this end, codes of conduct are in place for boards of public bodies and all public appointees are expected to follow the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. For more on parliamentary scrutiny in relation to some public appointments, see Chapter 5.

# Chapter 8: Relations with the Devolved Administrations and local government

This chapter covers relations with devolved administrations and local government.

The establishment of the directly elected Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly has had a significant impact on the governance of the UK. In addition, central government has devolved powers and responsibilities to local authorities, which are directly elected and have limited power to tax.

*Certain significant elements of this chapter will be updated if Parliament agrees the proposals in the Scotland Bill, introduced on 30 November 2010, which implements recommendations of the Commission on Scottish Devolution. The chapter may also need to be updated to reflect the outcome of the referendum on further devolution in Wales, which will be held in March 2011.*

## Devolution

282. The main legislative basis for devolution in Scotland, Northern Ireland and Wales is set out in the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006 (which largely superseded the Government of Wales Act 1998). For detail on the three settlements see Annex C. Each of the devolutions settlements are different but features of all three settlements are as follows:

- Parliament remains sovereign: it expressly retains the power to legislate on any matter, whether or not the devolved legislature

could legislate in that area, and to amend the powers of the devolved legislatures (although it would not normally do so without the consent of the devolved legislature).

- The devolved legislatures may amend Acts of Parliament (insofar as they relate to devolved responsibilities). However, they may not amend certain 'protected enactments' (for example the Human Rights Act 1998, most of the devolution Acts and the European Communities Act 1972).
- The devolved legislatures and administrations may only legislate or act in relation to their part of the UK.
- The devolved legislatures and administrations must legislate or act in a way that is compatible with EU law and Convention rights.
- The devolved legislatures can pass legislation that is within the respective competence of that legislature. The Supreme Court has jurisdiction to hear disputes where it is alleged that a devolved legislature or administration has exceeded its powers. The UK or devolved Law Officers may raise challenges on this basis, as may individuals (see Chapter 6 for more information on the Supreme Court and the Law Officers).

283. Broadly speaking, government ministers and Parliament remain responsible, among other things, for:

- the constitution
- international relations and defence
- national security
- nationality and immigration
- macroeconomic policy and fiscal policy
- broadcasting
- the UK tax system (except for the Scottish variable rate of income tax in Scotland)

- social security (which is transferred in Northern Ireland, although there is a principle of parity with the system in Great Britain).

284. Broadly speaking, government ministers and Parliament are not responsible for the following areas in the devolved parts of the UK, as they have been devolved to the respective legislatures and administrations:

- health and social care
- education and training
- local government and housing
- agriculture, forestry and fisheries
- the environment and planning
- tourism, sport and heritage
- economic development.

285. Responsibility for policing and justice is also devolved in Scotland and Northern Ireland.

## **Parliament and legislation**

286. Parliament remains sovereign. However, there is a convention that the Government will not normally invite it to legislate on a matter that is devolved without the consent of the devolved legislature. A devolved legislature may pass a Legislative Consent Motion, giving its consent to the inclusion of provisions in a UK Bill that it could also pass, or which alter the functions that are devolved. Further detail about the convention is available in the *Memorandum of Understanding and Devolution Guidance Notes*, which can be found at:

[www.cabinetoffice.gov.uk/content/devolution-united-kingdom](http://www.cabinetoffice.gov.uk/content/devolution-united-kingdom)

## Funding of devolution

287. Government funding for the Devolved Administrations' budgets is normally determined within spending reviews in accordance with policies set out in the Statement of Funding Policy.<sup>54</sup> The Devolved Administrations receive their funding largely from a government block grant, although the Scottish Parliament may affect the size of the Scottish block grant by exercising its tax-varying powers. Changes to the level of funding for the Devolved Administrations are determined by the Barnett formula, which compares departmental allocations within government to devolved responsibilities and population share to ensure that comparable changes in public spending are the same per capita. Additional allocations or reductions in the budgets of government departments in a spending review will therefore have further repercussions for the funding of the Devolved Administrations and the Exchequer, as funding for the Devolved Administrations is calculated in addition to what is made available to departments. Once a Devolved Administration receives its allocation, it is free to spend it according to its own priorities in devolved areas, as agreed by the relevant devolved legislature. Government places no conditions on expenditure of the Devolved Administrations.

## Relations with the Devolved Administrations

288. Relations between the Government and the Devolved Administrations are underpinned by a Memorandum of Understanding between the four administrations and the *Devolution Guidance Notes* ([www.cabinetoffice.gov.uk/content/devolution-united-kingdom](http://www.cabinetoffice.gov.uk/content/devolution-united-kingdom)). They are not legally binding but set out the principles to which all four administrations adhere. Departments also have bilateral concordats with the Devolved Administrations, dealing with areas of shared interest and setting out a framework for cooperation.

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<sup>54</sup> HM Treasury, *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: Statement of Funding Policy*, 2010.

289. The foundation of the relationship between the Government and the Devolved Administrations is mutual respect and recognition of the responsibilities set out in the devolution settlements. Ministers do not normally comment on the proceedings of devolved legislatures or the exercise of functions by devolved ministers, but will have contact or express views where administrative responsibilities overlap.

290. An important forum for engagement between government ministers and ministers of the Devolved Administrations is the Joint Ministerial Committee (JMC), which is chaired by the Prime Minister or his or her representative. The Secretaries of State for Scotland, Wales and Northern Ireland also attend this meeting, along with the leaders of the Devolved Administrations. The JMC has two sub-committees:

- JMC (Domestic), which deals with domestic matters of mutual interest and is chaired by the Deputy Prime Minister
- JMC (Europe), which discusses EU issues, including the Government's priorities for meetings of the European Council, and which is chaired by the Foreign Secretary (for more information on the Devolved Administrations and Europe, see Chapter 9).

291. The JMC also oversees a formal dispute resolution mechanism, under a protocol to the Memorandum of Understanding.

292. There is also a finance ministers' quadrilateral, which considers financial and economic matters, and which takes place alongside JMC. Additionally, government ministers will often have direct relations with ministers of the Devolved Administrations. This may include consulting with them in advance of any announcement of policy that interacts with devolved areas or is likely to be of significant interest to the Devolved Administrations.



## The British–Irish Council

293. The Devolved Administrations and the Crown dependencies participate in the British–Irish Council (BIC), along with the governments of the UK and the Republic of Ireland. The BIC was established under the Multi-Party Agreement reached in Belfast on Good Friday 1998, to “promote the harmonious and mutually beneficial development of the totality of relationships among the people of these islands”. It proceeds by consensus, and all member administrations are equal partners of the BIC.

294. Summit meetings for heads of administration (or a nominated representative) are held twice a year, and include relevant ministerial representation in line with the chosen sectoral theme for each summit. Each member administration is expected to host, and therefore chair, a summit. The lead government minister represents the UK’s interests at summit meetings, including on key strategic decisions for the Council. Other sectoral ministerial meetings occur more frequently and only involve ministers who are responsible for the particular subject.

## Local government in England

295. Local authorities are statutory bodies created by Acts of Parliament. They are not accountable to Parliament as they are directly elected by their local communities. Local government is a devolved responsibility in Scotland, Wales and Northern Ireland. However, ministers can direct local government to adhere to national policy frameworks where legislation permits.

296. In England there is both single-tier and two-tier local government:

- **Single tier:** in the major metropolitan conurbations, including London, in a number of the larger towns and cities and in some shire county areas, there is single-tier local government,

although London additionally has a strategic authority (the Greater London Authority). In these areas, responsibility for most local government services rests with a single authority.

- **Two tier:** this is where some local services are provided by a county council and others by a district council. The county council provides large-scale services across the whole of the county and is responsible for the more strategic issues, such as strategic planning, refuse disposal, libraries and personal social services. The district council has a more local focus, with responsibility for providing services in its own area, such as environmental health, housing, and refuse collection.

297. Parish and community councils also operate at the grassroots level in many areas.

#### *Central government funding of local government in England*

298. Local authorities are responsible for their own finances within centrally set parameters and budgets. However, the Government sets the overall level of central government funding for local government in England, and decides expenditure priorities and standards for improvement. Some funding will, exceptionally, be ring-fenced for particular activities. The actual level of funding may vary year-on-year to reflect changes in responsibilities placed on local authorities by government.

299. There are three main areas of local authority spending. These are:

- **capital expenditure**, for example on roads or school buildings
- **revenue spending on council housing**
- **revenue expenditure**, mainly on pay and other costs of running services other than council housing. While, in the main, local authorities cannot use capital funding to meet revenue expenditure, they are able to spend revenue funding on capital projects.

300. Local authorities may borrow additional funds for capital expenditure, but not for revenue expenditure. This can be done without government consent provided they can afford to service the debt from their own resources. They also have the power to raise council tax – a local tax on domestic property set by local authorities. Councils can choose whether to charge council tax and at what level (subject to the Government's reserve powers to cap excessive increases, which are subject to parliamentary approval). Local authorities also raise a significant amount through fees and charges, some of which are set centrally and others by local authorities. Most are limited to cost recovery.

# Chapter 9: Relations with the European Union and other international institutions

This chapter covers the EU and other international institutions (such as the North Atlantic Treaty Organisation (NATO), the United Nations (UN) and international economic bodies) and their influence on the UK.

The UK and other states can, by means of a treaty, create an international organisation and can confer powers upon it. Such treaties can specify the structure and decision-making processes of an international organisation, including whereby the state parties to the treaty can take decisions collectively within the organisation. The Government puts forward the UK's position in negotiations on such decisions.

*Certain elements of this chapter will be updated if Parliament agrees the proposals in the EU Bill introduced on 11 November 2010. The Bill provides for: a requirement for a referendum on a proposed future EU treaty or use of a 'ratchet clause', which transfers areas of power or competence from the UK to the EU; and the requirement for additional parliamentary controls prior to the agreement to ratchet clauses in existing EU treaties.*

## **International treaties**

301. Treaties are negotiated between state parties and/or international organisations that possess legal capacity to enter into treaties. Bilateral

treaties involve two states; a larger number of states may be involved in negotiating multilateral treaties, for example those adopted at intergovernmental conferences (IGCs). Treaties do not automatically have force in domestic law. Depending on the nature and terms of a treaty, it may need to be incorporated into domestic law by legislation, and Parliament may have a role in the scrutiny and implementation of a treaty. Treaty-making is a prerogative power (see Chapters 1 and 3), which is exercised subject to Chapter 2, Part 2 of the Constitutional Reform and Governance Act 2010. The Act creates a new parliamentary scrutiny procedure for treaties that are subject to ratification or its equivalent, although the statute also provides for exceptions where the procedure does not apply.<sup>55</sup> Any necessary legislation or administrative arrangements should be in place before the treaty is ratified.

## The European Union

302. The 27 member states of the EU have agreed to confer competence on the EU to act in a wide range of issues of common interest. The UK joined the European Communities, the precursor of the EU, in 1973. The EU is based on a series of treaties, negotiated at IGCs and ratified by each member state.

### *Structure of the EU*

303. The EU's work is carried out by a number of different institutions, including the European Council, the Council of the European Union, the European Commission and the European Parliament and Court of Justice. Their powers and composition are determined by the EU treaties.

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<sup>55</sup> For example, a treaty covered by section 5 of the European Union (Amendment) Act 2008, which constitutes the amendment of founding treaties. Subject to parliamentary approval, these derogations will be amended to reflect the provisions of the EU Bill, which was introduced to Parliament on 11 November 2010.

304. The European Council is made up of heads of state and government. The UK is represented by the Prime Minister. It generally meets quarterly to set the EU's agenda and priorities.

305. The Council of the European Union is composed of ministers from each member state, usually those with the national lead on the subject under discussion. It meets in different formations according to the policy area under discussion. A key function of the Council is to adopt legal measures (often jointly with the European Parliament) that are binding on member states; depending on the subject area, decision-making may be by unanimity or by a qualified majority (a weighted system of votes) of member states. Most members of Cabinet will attend relevant meetings of the Council on a regular basis; their role is to represent the UK in negotiations on the adoption of EU measures.

306. The European Commission is the main executive body of the EU. It comprises 27 members – one from each member state – and is appointed by the European Council once approved by the European Parliament. In most areas, it has sole responsibility for proposing legal and other measures for adoption by the EU, and for policing compliance with EU laws by the member states. The European Parliament is the co-legislator with the Council for most of the laws proposed by the Commission, and it also monitors the actions of the Commission. The European Parliament is elected directly for a five-year term by the populations of the member states.

307. The Court of Justice of the EU comprises three courts – the European Court of Justice (ECJ), the General Court and the Staff Tribunal. The ECJ is the senior court and is comprised of one judge nominated by each member state and eight Advocates General. The Court has jurisdiction over the interpretation of the treaties and the validity and interpretations of acts of the EU institutions' bodies, offices and agencies. It does not have jurisdiction over the Common Foreign and Security Policy (which is the agreed foreign policy of the EU).

308. The EU can only act in areas where it has the requisite legal power or 'competence' has been conferred on it by the member states through the EU treaties. The treaties determine the nature and extent of the EU's competence in a particular area and the procedures to be followed in adopting EU measures. The EU can adopt a number of different types of legal instrument, including regulations (which are directly applicable in member states) and directives (which define a desired result but leave member states to choose the best means of achieving it). In addition, where it has the requisite competence, the EU can enter into international agreements with third countries and organisations. EU law is adopted by the Council or by the Council and the European Parliament jointly. They can also authorise the Commission to adopt delegated and implementing acts subject to scrutiny (under so-called 'comitology arrangements') by the member states or the Council and European Parliament.

#### *Implementation of EU law in the UK*

309. The UK is obliged to ensure that its national laws and measures are consistent with EU law. Some provisions of EU law may apply directly in the member states' national law. In the UK, directly applicable and directly effective provisions of EU law are given effect principally through Section 2(1) of the European Communities Act 1972. Other provisions of EU law may need to be implemented in national law. Government departments are responsible for ensuring the full and correct implementation of these obligations into national law in their areas.

310. If the UK fails to implement its obligations fully, it is liable to face legal proceedings (known as infraction proceedings) brought by the European Commission before the ECJ. The Court can also impose significant fines on member states. The general rule is that the lead department or administration responsible for an infraction (including the Devolved Administrations, the Government of Gibraltar and Crown dependencies) will bear the burden of any fine. The Chief Secretary to the Treasury is

ultimately responsible for deciding on the division and allocation of all fines.

311. Gibraltar is part of the EU as a European territory for which the UK is responsible, but is not covered by certain EU rules; in particular, it is outside the EU's common custom area. The Foreign and Commonwealth Office (FCO) has the main responsibility to liaise with Gibraltar on EU matters, and to ensure that it complies with its EU obligations. The relationship of the Crown dependencies (Jersey, Guernsey and the Isle of Man) with the EU is different to the UK's and Gibraltar's relationships. They are not members of the EU, but are bound by special rules, such as those relating to customs, quantitative restrictions and levies, and other import measures in respect of agricultural products. More information on overseas territories and the Crown dependencies can be found at paragraph 22, Chapter 1.

#### *Coordination of EU policy by the UK Government*

312. Where EU policy affects the interests of more than one department, the UK line is agreed collectively, usually through the relevant Cabinet committee. Clearance is sought for the UK line to take in negotiations, and any significant changes to this should a compromise position emerge in negotiations. The Cabinet Secretariat and the FCO provide support for this process. The Prime Minister's senior adviser on Europe usually leads the Cabinet Secretariat's work in this area. Legal coordination is provided by Cabinet Office legal advisers in the Treasury Solicitor's European Division, which also conducts all UK litigation before the ECJ.

313. The UK Permanent Representation to the EU (UKRep) negotiates and lobbies in Europe on behalf of the UK. UKRep is consulted by departments on the conduct of EU business. The UK's Permanent Representative (who leads UKRep) or his or her deputy (depending on the Council formation) will usually accompany ministers to meetings of the Council of Ministers and provide advice as needed.



### *Parliamentary scrutiny of EU legislation*

314. Parliament is given the opportunity to examine and express views on proposals for EU legislation and any other documents held to fall within the terms of reference of the scrutiny committees of both Houses of Parliament. The cornerstones of the process are Resolutions<sup>56</sup> in each House, which set out the Government's commitment not to agree to EU legislation before the scrutiny process has been completed, unless there are exceptional reasons for doing so. In these cases, ministers have to account for their actions to Parliament.

315. The Cabinet Secretariat is responsible for the maintenance of the Government's scrutiny procedures and is responsible for deciding, in consultation with departments, which documents should be deposited in Parliament. It is also responsible for monitoring overall government compliance with scrutiny requirements. For every proposal or document submitted for scrutiny, ministers are required to provide written evidence in the form of an explanatory memorandum (EM) which provides information about the document, including the policy implications arising and the Government's attitude towards the proposal.

### *EU policy and devolution*

316. EU policy is reserved, and therefore the Government is responsible for preparing UK policy positions and for negotiations with other member states. On EU matters that affect devolved policy areas, ministers ensure that the Devolved Administrations are appropriately informed of policy developments in the EU, and are consulted as necessary, for example through the Joint Ministerial Committee (Europe). See Chapter 8 for more information.

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<sup>56</sup> House of Commons Scrutiny Reserve Resolution of 17 November 1998 and House of Lords Scrutiny Reserve Resolution of 6 December 1999.

317. The composition of the UK delegations to meetings of the Council of Ministers is determined by the lead government minister, although the lead minister is encouraged to allow devolved ministers to attend if at all possible. Where devolved ministers participate in Council meetings, they are required to uphold the confidentiality of discussions and, if the lead minister agrees they may speak, to adhere to the UK line.

## **The Council of Europe**

318. The Council of Europe (CoE) was established as a pan-European international organisation to protect and promote common standards of human rights, democracy and the rule of law in Europe. CoE member states agree and set standards on issues including terrorism, crime, money laundering and trafficking, by negotiating conventions. There are now 47 CoE member states. The CoE's principal document is the European Convention of Human Rights (ECHR); the European Court of Human Rights is therefore part of the Council of Europe.

319. The ECHR is an international treaty under the auspices of the CoE, which came into force in 1953. The current Convention is divided into 59 articles, which set out the substantive rights and freedoms and establish the European Court of Human Rights. A number of further substantive rights are set out in additional protocols, of which the UK has ratified the First, Fifth, Sixth and Thirteenth Protocols (the latter two together completely abolish the death penalty), and the Eighth, Tenth, Eleventh and Fourteenth Protocols (the latter two both amend the control system of the Convention).

320. The Human Rights Act 1998 gives further effect in our domestic law to certain rights and freedoms drawn from the ECHR; these are called the Convention rights. In most cases, a person must first bring proceedings under the Human Rights Act before they are allowed to apply to the European Court of Human Rights. More information on the Human Rights Act can be found in Chapter 6: Ministers and the law.

## *The European Court of Human Rights*

321. The European Court of Human Rights considers cases alleging breach of the rights and freedoms contained in the ECHR. Any person or non-governmental organisation can apply to the European Court of Human Rights if they feel their rights have been breached, as long as they have exhausted all options open to them in our domestic courts first. Cases can also be brought by one member state against another, although these are extremely rare. A case in the European Court of Human Rights is a new case against the UK, rather than an appeal from our domestic courts. The European Court of Human Rights should not be confused with the ECJ (see paragraph 307), the highest court of the EU, which considers cases under EU law.

322. Article 46 of the ECHR obliges the UK to implement judgments made against it by the European Court of Human Rights. The implementation of a judgment usually involves the responsible minister or ministers taking both individual and general measures. Individual measures are steps required to put the applicant, as far as possible, in the position they would have been in had their rights not been breached; this may include paying just satisfaction (compensation) ordered by the Court. General measures are intended to prevent the breach happening again and to put an end to breaches that still continue; they may include changes to legislation, rules or administrative practice, depending on the terms of the judgment. Both individual and general measures must be completed to the satisfaction of the Committee of Ministers of the Council of Europe, which can take steps against the UK if it decides that a judgment is not being properly implemented.

## NATO

323. NATO is an intergovernmental security alliance of 28 nations based on the North Atlantic Treaty (also known as the Washington Treaty). Article 5 of the North Atlantic Treaty sets out the agreement on collective defence, based on the indivisibility of allied security. If members of the alliance agree collectively that action is necessary, including the use of armed force, states are obliged to respond, but they maintain the freedom to decide how they will respond. The alliance is headed by the NATO Secretary General.

### *NATO structures*

324. NATO decisions are taken entirely on the basis of consensus; there are no decisions by majority. Decisions taken represent collective agreement by all allies. Nations are able to prevent agreement where a policy does not meet their objectives. The principal policy and decision-making institution is the alliance in the North Atlantic Council (NAC). Subordinate to this senior body are specialised committees also consisting of national officials.

325. The NAC has powers of decision, and consists of permanent representatives of all member countries meeting together at least once a week. The Council also meets at higher levels involving foreign ministers, defence ministers or heads of state and government, but it has the same authority and powers of decision-making at all levels. However, substantial policy decisions that set the future direction of the alliance are usually the preserve of ministerial or summit meetings. There is also a NATO Military Committee, which consists of senior military representatives from each country who collectively act as the NAC's military advisers, along with the Supreme Allied Commander (Europe) and Supreme Allied Command (Transformation).

### *UK contribution to NATO*

326. The UK is a founder-member of the alliance. Almost all UK armed forces and capabilities are assigned to NATO in times of crisis. NATO does not generate income of its own, but depends on contributions from allies, both in cash and kind. Contributions differ, and the UK is one of the larger contributors. Contributions to the civil budget are paid by the FCO and contributions to the military budget are paid by the Ministry of Defence. A large number of the NATO civilian and military staff are British. The UK also contributes by loaning personnel with particular expertise to NATO when needed.

### *NATO's external relations*

327. NATO works with the UN and the EU in supporting peacekeeping and peace support operations worldwide. The genesis of the cooperation with the EU was the Berlin Plus agreement, a comprehensive package of agreements made between NATO and the EU on 16 December 2002. With this agreement the EU was given the ability to use NATO assets in order to act independently in an international crisis, on the condition that NATO itself did not want to act – the so-called ‘right of first refusal’. Only if NATO elected not to act would the EU have the option to call on NATO resources.

### **The United Nations**

328. The UK was one of the 51 founding countries of the UN in 1945. The purposes of the UN are to maintain international peace and security, develop friendly relations among nations, and promote social progress, better living standards and human rights.<sup>57</sup> The key aspects of the UN structure are as follows:

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<sup>57</sup> The aims of the UN are set out in the UN Charter, which can be found at: [www.un.org/en/documents/charter/index.shtml](http://www.un.org/en/documents/charter/index.shtml)

- The UN Security Council (UNSC), which has primary responsibility for the maintenance of international peace and security. Uniquely among UN bodies, the Council (through Security Council resolutions) can impose legally binding requirements on members and enforce its decisions. As a permanent member of UNSC, the UK is in a strong position to influence UN decision-making. While the UK is bound to act on legally binding Security Council resolutions, it is under no obligation to deploy troops or other resources to peacekeeping missions. Where necessary, legislation is passed in the UK to give effect to UNSC resolutions.<sup>58</sup>
- The UN General Assembly (UNGA) and the Economic and Social Council (ECOSOC) agree resolutions that are not legally binding on a range of international issues, such as climate change and human rights. In UNGA and ECOSOC the UK generally intervenes through the EU, negotiating a position with EU partners in the first instance.
- The International Court of Justice (ICJ) settles legal disputes between states and gives advisory opinions to the UN and its specialised agencies. Its statute is an integral part of the UN Charter. The UK has accepted the compulsory jurisdiction of the ICJ for the settlement of international disputes in a broad range of categories.
- The Human Rights Council has a mandate to promote universal respect for human rights, and to address situations of violations of human rights, including gross and systematic violations. The

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<sup>58</sup> For example, The United Nations (International Tribunal) (Former Yugoslavia) Order 1996, which enables the UK to cooperate with the International Tribunal in the investigation and prosecution of crimes relating to the former Yugoslavia, implements UNSC Resolution 827 which "decides that all States shall cooperate fully with the International Tribunal and its organs... and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber."

main business of the Council is in passing resolutions that mandate activity of the UN, and explain and expand on international human rights standards.

## **The Commonwealth**

329. The Commonwealth was founded in 1949 and has 54 member states drawn from across the globe. Her Majesty the Queen is the Head of the Commonwealth (see Chapter 1: The Sovereign). The main aims of the Commonwealth are: to support member countries to prevent or resolve conflicts, strengthen democratic practices and the rule of law, and achieve greater respect for human rights; and to develop the national capacity of member countries.

330. The Commonwealth Heads of Government Meeting (CHOGM) is held every two years to decide on priorities and action for the Commonwealth. Commonwealth heads are aided by the Commonwealth Ministers Action Group (CMAG) of nine rotating foreign ministers, who deal with serious or persistent violations of the 1995 Harare Declaration, which lays down the Commonwealth's fundamental political values. The decisions made by CHOGM and CMAG are not binding and the Commonwealth is instead a global network that works to encourage countries to address issues.

## **International economic and financial organisations**

### *The World Trade Organization*

331. The World Trade Organization (WTO) was established in 1995 as the successor to the General Agreement on Tariffs and Trade (1948). The WTO is mainly a negotiating forum for global trade agreements and for settling trade disputes between its members through the Dispute Settlement Mechanism. Where disputes cannot be resolved by consultation, the matter is considered by a panel and any findings are then put to the WTO's members for endorsement. WTO members are

expected to implement the panel's findings quickly, or to offer suitable compensation or a penalty where they continue to breach the findings.

332. The UK Mission in Geneva represents the UK at the WTO. However, given that trade policy is an EU competence, in practice the UK (along with other EU member states) is usually represented by the European Commission on the basis of a mandate from the member states. Decisions at the WTO are normally taken by consensus and major decisions are put to all the members either to ministers (who meet every two years) or ambassadors at the General Council (which meets every two months).

### *The World Bank and the Regional Development Banks*

333. The World Bank is owned by its member countries and functions like a cooperative, where members are the shareholders. The UK is a major shareholder and has a seat on the World Bank Board. The Secretary of State for International Development is the UK's Governor to the Bank and represents the UK on the Development Committee. This committee is the main ministerial forum for discussing World Bank policies. The UK also has an executive director, based permanently in the UK Delegation (UKDel) in Washington, DC, who sits on the Board of Directors.

334. The UK is a member of the Regional Development Banks (RDBs)<sup>59</sup>. The RDBs focus on poverty reduction and lend to governments in their region, mainly for infrastructure development. They also lend smaller amounts to the private sector and provide concessional loans and grants to the poorest countries. The Secretary of State for International Development is the UK's Governor to each of the RDBs and meets with the presidents of the banks from time to time. The UK is also represented on the board of directors for each bank through an executive director. The UK is also a member of the European Bank for Reconstruction and Development

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<sup>59</sup> The African Development Bank, Asian Development Bank, Caribbean Development Bank and Inter-American Development Bank.



(EBRD), which provides finance for banks, industry and businesses where finance cannot be found on similar terms on the open market. The Chancellor of the Exchequer is the UK's Governor of the EBRD.

### *The International Monetary Fund*

335. The International Monetary Fund (IMF) is an organisation of 187 countries, and has its own Articles of Agreement, governing structure and finances. The IMF's role is to foster global economic growth and financial stability, and to promote international monetary cooperation. Through its surveillance, the IMF tracks the global economy and economies of member countries, issues forecasts and analysis, alerts member countries to potential risks and provides policy advice.

336. When a country joins the IMF, it agrees to subject its economic and financial policies to the scrutiny of the international community. Under these arrangements, an IMF staff mission normally visits member countries once a year to exchange views with the government, central bank and non-government stakeholders. The IMF mission then submits a report to the Executive Board for discussion. The Board's views are subsequently summarised and transmitted to the country's authorities. A summary of both the mission's and the Board's views, as well as the full report itself, are published with the consent of the country concerned.

337. The IMF also provides loans to members in economic difficulties. Most countries that access the IMF's resources usually do so in conjunction with an economic reform programme. The IMF also works with developing nations to help them achieve macroeconomic stability and reduce poverty. The IMF also offers technical assistance to its members, helping them to manage their economic and financial affairs.

338. IMF members are allocated a quota based broadly on their relative size in the global economy. The quota determines a country's voting power, the amount it can be asked to lend to the IMF and the amount it can

borrow. As one of the Fund's largest shareholders, the UK automatically holds one of five appointed seats at the IMF's Executive Board, which conducts the day-to-day work of the IMF. The UK's Executive Director is based permanently in the UKDel in Washington, DC. The Chancellor of the Exchequer is the UK's Governor of the IMF, and also sits on the International Monetary and Financial Committee, which acts as the ministerial steering committee for the IMF.

### *The Organisation for Economic Co-operation and Development*

339. Founded in 1961, the Organisation for Economic Co-operation and Development (OECD) brings together governments committed to democracy and the market economy in order to: support sustainable economic growth; boost employment; raise living standards; maintain financial stability; assist other countries' economic development; and contribute to growth in world trade. There are 32 member countries, and OECD also works in partnership with a number of non-member economies.<sup>60</sup> OECD provides analytical and policy advice on a vast range of economic issues, including forecasts, fiscal policies, investment, anti-corruption and corporate governance, which can help to inform government policy.

340. The OECD Council is the supreme decision-making body, although much of the work takes place in technical committees attended by capital-based experts. The Council meets regularly at the level of permanent representatives, and decisions are taken by consensus. It meets at ministerial level on an annual basis to discuss key issues and strategic priorities. The UK has a permanent delegation (UKDel OECD), staffed and funded by the FCO, which also pays for the UK's annual subscription.

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<sup>60</sup> Further detail on OECD, membership countries and the organisation's mission statement can be found at: [www.oecd.org/pages/0,3417,en\\_36734052\\_36734103\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html)

### *The Group of 8 and the Group of 20*

341. The Group of 8 (G8) and the Group of 20 (G20) are informal, not treaty-based, groups. The current members of G8 are Canada, France, Germany, Italy, Japan, Russia, the UK, and the USA. Traditionally, G8 leaders have met to discuss the major political issues of the day. In recent years these have included global economic issues, development (including the Millennium Development Goals), climate change, energy and environmental issues.

342. The presidency of the G8 rotates between the eight countries; the next UK presidency will be in 2013. The EU Commission is represented at meetings, but cannot hold the presidency. The G8 does not have a permanent secretariat or administrative structure. The presidency sets the agenda and hosts all preparatory meetings and the annual leaders' summit.

343. The G20 began as a meeting of finance ministers and Central Bank governors in 1999, and includes all G8 countries, plus Argentina, Australia, Brazil, China, India, Indonesia, Mexico, the Republic of Korea, Saudi Arabia, South Africa, Turkey and the EU. G20 is a forum for economic cooperation, meeting to discuss global economic issues such as international monetary systems and regulations, global currency and trade imbalances, and international financial institutions such as the IMF. In 2010, the G20 agenda has expanded to include consideration of climate change and development issues, from an economic perspective. G20 collectively represents about 85% of global GDP.

344. The chair rotates between countries. The Managing Director of the IMF, the President of the World Bank and the chairs of the International Monetary and Financial Committee and Development Committee of the IMF and the World Bank participate in G20 meetings on an ex-officio basis.

# Chapter 10: Government finance and expenditure

This chapter covers the role of Parliament, particularly the role of the House of Commons, and government in relation to finance and expenditure and the process by which government seeks money from Parliament (the Supply Estimates process). The Government has certain responsibilities to control and account for government expenditure, which are exercised by the Treasury. The Treasury is required to approve finance and public expenditure by other government departments. The Government has established procedures for ensuring efficient and transparent departmental governance and ways to account for government expenditure.

## The role of Parliament

345. It is for Parliament to approve the taxes levied for government expenditure, although in practice this is controlled by the House of Commons. The House of Commons claims exclusive rights and privileges over the House of Lords in relation to finance matters (see paragraph 187 in Chapter 5: Ministers and Parliament). The Government must ask the House of Commons for the money it needs, and this is done predominantly through the Estimates process (see paragraphs 350–357). Government expenditure must be spent in accordance with the purposes for which the Commons has supplied it. Together with the requirement that taxation can be imposed only with the approval of the Commons, this is one of the foundations of the constitutional power of Parliament.

346. Parliament, particularly the House of Commons, also has an important role in scrutinising expenditure and holding the Government to account. The House of Commons requires that the Government controls all aspects of finance and public expenditure. The Treasury, of which the Chancellor of the Exchequer is the ministerial head, is also by long-standing convention accountable to Parliament for ensuring the regularity and propriety of public expenditure.

## The Budget

347. The Budget is the major financial and economic report made each year by the Chancellor of the Exchequer. The Budget statement usually updates Parliament and the nation on the state of the economy, on the public finances and on progress against the Government's economic objectives. Through the Budget, the Chancellor of the Exchequer can review and propose changes in tax rates, and can make announcements as to how taxpayers' money will be spent in the coming years.

348. The Chancellor can deliver the Budget at any time of the year, although in recent years it has taken place in the spring. Traditionally, the Leader of the Opposition, rather than the Shadow Chancellor, replies to the Budget speech. This is usually followed by four days of debate on the Budget Resolutions.

349. Budget Resolutions determine the scope of the Finance Bill, which is formally introduced as soon as the Resolutions are passed. The Finance Bill is the legislative vehicle to implement the Budget's tax announcements. The Bill is then subject to the normal legislative process, although when it enters committee stage it is usually split between a public bill committee and a committee of the whole House. Chapter 4 sets out details on collective clearance in relation to the Budget.

## Supply Estimates process

350. Supply Estimates are put before Parliament and take the form of Votes on Account, Main Estimates and Supplementary Estimates. Expenditure for which supply is voted does not cover all government expenditure. Other legislation provides for some financing: Social Security Acts, acts covering local government and what is known as Consolidated Fund Standing Services (CFSS), where Parliament has agreed to fund services from year to year directly from the Consolidated Fund (which is the government's current account, operated by the Treasury) rather than annually through Supply. The Treasury presents the Supply Estimates to Parliament as a House of Commons paper.

### *Votes on Account*

351. In the November before the beginning of a financial year (an accounting period of 12 consecutive months, which for government departments is determined by Treasury direction), the House agrees to the Vote on Account. The Vote on Account is a form of Supply Estimate, requesting an allocation of money to enable government to continue spending on existing services for the first few months of the upcoming financial year until the main Supply Estimates are approved in July, without which departments would have little or no money on 1 April. The Vote on Account is usually based on about 45% of the current year's spending for each department.

### *Main Estimates*

352. The Main Estimates start the supply procedure and are presented by the Treasury on behalf of every government department about five weeks after the Budget.

### *Supplementary Estimates*

353. Treasury presents Supplementary Estimates on behalf of departments, asking Parliament for approval for any necessary additional expenditure, or for authority to incur expenditure on new services.

354. Currently there are three fixed Supplementary Estimates: summer, winter and spring. However, the later presentation of the Budget in the last few years has virtually made summer Supplementary Estimates redundant.

### *Parliamentary approval*

355. Supply Estimates seek Parliament's approval for resources and cash for a particular financial year. Following the presentation of the Estimates, the Liaison Committee (see footnote 33 in Chapter 5) selects up to two Estimates to be debated for half a day, and after the debate passes the motions to authorise the spending. When the House approves the Estimates, a bill is brought in to ratify the use of resources and expenditure of cash sums that are covered by the Estimates. Ratifying legislation must also appropriate expenditure to particular departmental and other services.

### *The Clear Line of Sight (Alignment) project*

356. From April 2011, Supply Estimates will be on a budgetary basis. Parliament will therefore be agreeing to the same budget boundaries as the Treasury uses to control public spending, namely Departmental Expenditure Limits (DELs) and Annually Managed Expenditure (AME). The intention of the project is to make clearer the relationship between accounts, budgets and Estimates. Under Alignment, it is expected that there will only be one Supplementary Estimate opportunity in January/February.

357. More information on the Supply Estimates process can be found at:

[www.hm-treasury.gov.uk/psr\\_estimates\\_mainindex.htm](http://www.hm-treasury.gov.uk/psr_estimates_mainindex.htm)

[www.hm-treasury.gov.uk/psr\\_estimates\\_supplementary.htm](http://www.hm-treasury.gov.uk/psr_estimates_supplementary.htm)

[www.hm-treasury.gov.uk/d/estimates\\_manual011007.pdf](http://www.hm-treasury.gov.uk/d/estimates_manual011007.pdf)

### **Treasury approval of expenditure**

358. Treasury consent is required for all government expenditure or resource commitments. However, in practice the Treasury delegates to departments the authority to spend within predefined limits without specific prior approval from the Treasury. These delegated authorities are designed to strike a balance between the Treasury's need to fulfil its responsibilities to Parliament and a department's freedom to manage within its agreed budget limits and Parliamentary provision.

359. There are some areas of expenditure that override delegated authority or where the Treasury cannot delegate authority. These include expenditure that would be novel, contentious or repercussive; expenditure that could exceed agreed budget limits and Estimates; commitments to significant spending in future years for which plans have not been set; and items requiring primary legislation. Nor can the Treasury delegate its power of approval where there is a requirement in legislation for Treasury approval.

360. Treasury approval is also required for all legislation that contains any provisions with financial and public service manpower implications and subsequently for any changes that are proposed to the agreed financial provisions (for example during the legislation's passage through Parliament). Legislation may require for specific Treasury consent to the exercise of statutory powers that have a financial dimension. Further information can be found in *Managing Public Money* on the Treasury website: [www.hm-treasury.gov.uk/psr\\_mpm\\_index.htm](http://www.hm-treasury.gov.uk/psr_mpm_index.htm)



## Departmental governance arrangements

361. The *Ministerial Code*, paragraph 3.5, states that:

- secretaries of state should chair their departmental board
- boards should comprise other ministers, senior officials and non-executive board members, largely drawn from the commercial private sector and appointed by the Secretary of State in accordance with Cabinet Office guidelines
- the remit of the board should be performance and delivery, and to provide the strategic leadership of the department.

362. Boards form the strategic and operational leadership of departments, and lead on performance, capability and delivery, including appropriate oversight of arm's length bodies. Boards are not responsible for developing policy but may challenge policy on financial management or feasibility grounds.

363. Boards will be balanced, with roughly equal numbers of ministers, senior officials (including the accounting officer of the department and the finance director), and senior non-executives from outside government (the majority of whom should be drawn from the commercial private sector, and should have between them experience of managing large organisations).

364. Further guidance on governance is available in the Enhanced Departmental Boards Protocol issued by the Minister for the Cabinet Office, available at:

[www.cabinetoffice.gov.uk/content/enhanced-departmental-boards-protocol](http://www.cabinetoffice.gov.uk/content/enhanced-departmental-boards-protocol)

and in *Corporate governance in central government departments: Code of good practice*, available at:

[www.hm-treasury.gov.uk/psr\\_governance\\_corporate.htm](http://www.hm-treasury.gov.uk/psr_governance_corporate.htm)

## The role of the accounting officer

365. Each organisation in central government must have an accounting officer, who has personal responsibility for the propriety and regularity of spending or the use of resources. The accounting officer is usually the senior official in the organisation, supported by the relevant board. In relation to departments, the accounting officer is usually the permanent secretary. The accounting officer may be called to account in Parliament for the stewardship of the resources within the organisation's control through appearing before the Committee of Public Accounts.<sup>61</sup> They take personal responsibility for the regularity and propriety, value for money judged for the public sector as a whole, risk management and accounting accurately for the financial position of their organisation. Further information can be found in *Managing Public Money* on the Treasury website: [www.hm-treasury.gov.uk/psr\\_mpm\\_index.htm](http://www.hm-treasury.gov.uk/psr_mpm_index.htm) and in the *Ministerial Code*: [www.cabinetoffice.gov.uk/resource-library/ministerial-code](http://www.cabinetoffice.gov.uk/resource-library/ministerial-code)

366. Where an accounting officer objects to a proposed course of action of a minister on grounds of propriety, regularity or value for money relating to proposed expenditure, they are required to seek a written ministerial direction.

367. When a direction is made, it is copied to the Comptroller and Auditor General who will normally draw the matter to the attention of the Committee of Public Accounts. See Chapter 2 for information regarding use and publication of directions during the pre-election period, following an election where there is no overall majority and following a vote of no confidence.

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<sup>61</sup> The Committee of Public Accounts is appointed by the House of Commons. The main work of the Committee is to examine the reports made by the Comptroller and Auditor General's value-for-money studies of government departments and other public bodies. The Committee's objective is to draw lessons from past successes and failures that can be applied to future activity by the department examined and others. The Committee does not consider the formulation or merits of policy.

## Government accounts

368. Central government accounts include those for departments, pension schemes, executive agencies, executive non-departmental public bodies (NDPBs) and trading funds. There are also accounts for each NHS body, for each local government body and for the Devolved Administrations. There are also consolidated accounts for the whole public sector – Whole of Government Accounts (WGA; see paragraphs 373 and 374).

369. Under the authority of the Government Resources and Accounts Act 2000, the Treasury issues accounts directions to most entities requiring the preparation of accounts for the relevant year in compliance with the accounting principles and disclosure requirements of the relevant version of the *Government Financial Reporting Manual* (FReM) which is in force for that year (see [www.hm-treasury.gov.uk/frem\\_index.htm](http://www.hm-treasury.gov.uk/frem_index.htm)). However, for executive NDPBs, the relevant sponsoring department, with the agreement of the Treasury, issues accounts directions.

370. The appointed accounting officer signs the accounts prior to their submission to the Comptroller and Auditor General for audit certification, their subsequent laying before Parliament and publication.

## Laying of accounts

371. The Treasury lays resource accounts for departments and pension scheme accounts before the House of Commons under the authority of the Government Resources and Accounts Act 2000. Accounts for other reporting entities are laid under arrangements with their sponsoring department.

372. The statutory deadline for the submission of signed resource and other accounts to the Comptroller and Auditor General is 30 November each year. Under statute, the Treasury is required to lay the accounts before

Parliament by 31 January of the following year. In practice, a Treasury administrative deadline requires departmental resource and pension scheme accounts to be laid before Parliament before the parliamentary summer recess following the financial year-end on 31 March.

### *Whole of Government Accounts*

373.WGA are full accruals-based accounts<sup>62</sup> covering the public sector, prepared in accordance with the FReM and audited by the National Audit Office. WGA is a consolidation of the accounts of approximately 1,500 bodies from central government, the Devolved Administrations, the health service, local government and public corporations. Under statute, the Treasury is required to lay an account before Parliament no later than 31 December of the following year, although in practice this may be much earlier.

374.Further information on WGA is available at:

[www.hm-treasury.gov.uk/psr\\_government\\_accounts.htm](http://www.hm-treasury.gov.uk/psr_government_accounts.htm)

### *The Government Financial Reporting Manual and the Financial Reporting Advisory Board*

375.The FReM is the technical accounting guide to the preparation of financial statements and complements guidance on the handling of public funds published separately by the relevant authorities.<sup>63</sup> The manual is prepared following consultation with the Financial Reporting Advisory Board (FRAB) and is issued by the relevant authorities.

376.The FRAB is an independent body fulfilling the statutory role as the “group of persons who appear to the Treasury to be appropriate to advise

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<sup>62</sup> Accounts that recognise receipts and payments as they fall due, rather than when they are received or paid.

<sup>63</sup> HM Treasury, the Scottish Government, the Northern Ireland Assembly, the Welsh Assembly Government, the Department of Health and the Chartered Institute of Public Finance and Accountancy and the Local Authority (Scotland) Accounts Advisory Committee.

on financial reporting principles and standards” for government as required by the Government Resources and Accounts Act 2000.<sup>64</sup>

377. The FRAB acts as an independent element in the process of setting accounting standards for government, and exists to promote the highest possible standards in financial reporting by government. In doing so, the FRAB ensures that any interpretations or adaptations of generally accepted accounting practice in the context of the public sector are justifiable and appropriate. The FRAB also advises the Treasury on the implementation of accounting policies specific to WGA. Further information on the FRAB, including access to its annual reports to Parliament, is available at:

[www.hm-treasury.gov.uk/psr\\_frab\\_index.htm](http://www.hm-treasury.gov.uk/psr_frab_index.htm)

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<sup>64</sup> Government Resources and Accounts Act 2000, section 24.

# Chapter 11: Official information

Information is central to government's effective functioning. Proper records need to be kept to ensure clarity and accountability, and in due course to provide a historic record of government. Much government information is available to the public, but some needs to be kept confidential, to protect national security and in the interest of collective responsibility. Well-established rules govern access to information by former ministers and their successors.

378. Official information is information created and commissioned in the course of official government business. It includes information created or received by ministers in a ministerial capacity. Official information can be in any format, and includes correspondence and memoranda, guidance, emails, datasets and databases, websites, official blogs and wikis, and film and sound recordings.

## Ministerial records

379. It is important that the official record is maintained and that there is a proper separation of official information (public records under the Public Records Act 1958) from personal, party or constituency information. Information received by ministers in an official capacity is the responsibility of ministers and their departments.

## *The role of ministers' private offices*

380. Private offices have an important role in managing information, and conventions apply to information created by, held in or passing through a private office that relates to the business activities of the department.

381. In particular, guidance issued by Cabinet Office and The National Archives<sup>65</sup> emphasises the need for private offices to record ministerial decisions on any correspondence or submissions to ministers, as well as any meetings or telephone conversations where decisions are taken that relate to government business, so that there is a clear audit trail.

382. All papers and electronic information relating to a minister's personal, party or constituency affairs remain the minister's responsibility during their time in office, and once they have left office or moved to another ministerial appointment. Private office staff and special advisers should manage and maintain personal, party and constituency papers and information separately from departmental material and Cabinet and Cabinet committee documents. Data security of constituency material is the responsibility of the minister in their capacity as a Member of Parliament. Responsibility for party information is a matter for the relevant political party to determine.

### **Maintaining the official record**

383. The Public Records Act 1958 requires government departments to review official records to identify those of enduring value and transfer them to The National Archives for preservation by the time they are 30 years old.<sup>66</sup> Records required for administrative purposes or for some specific reason may be retained by the department with the approval of the Lord Chancellor.

### *Cabinet records*

384. The record of the proceedings of Cabinet and its committees is kept by the Cabinet Secretariat. This includes agendas, papers, minutes and

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<sup>65</sup> [www.nationalarchives.gov.uk/documents/popapersguidance2009.pdf](http://www.nationalarchives.gov.uk/documents/popapersguidance2009.pdf)

<sup>66</sup> Provisions in the Constitutional Reform and Governance Act 2010, which have yet to be commenced, allow for this period to be reduced to 20 years. The practical implication of such a change remains under consideration.

correspondence. Departments should not keep Cabinet or committee minutes for longer than four weeks.

## Publishing data

385. A large amount of information is already in the public domain; for example, [www.data.gov.uk](http://www.data.gov.uk) makes over 5,000 datasets, containing non-personal data, publicly accessible.<sup>67</sup> Departments are expected to publish information detailing their purpose, public functions, policies and spending, among other information specific to their role. The Freedom of Information Act 2000 (FOI Act) requires public authorities to have a 'publication scheme' that sets out the information they publish on a regular basis.

386. Where the Crown retains copyright, a recipient, under the Open Government Licence (OGL) for public sector information, has an automatic right (free although subject to some conditions) to copy, publish, distribute and adapt the information; they also have the right to exploit the information commercially. Where a non-Crown public authority retains the copyright, recipients do not have an automatic right to re-use it, publish it or adapt it in the same way. An exception would be where the public authority has adopted the OGL. Under the Re-use of Public Sector Information Regulations 2005, an individual can request permission to unlock further information and also seek permission to re-use it. Under these regulations, there is provision for a dissatisfied recipient to request a review and appeal of the public authority's decision. Under these regulations, there is also provision to charge.

387. The Office for National Statistics publishes independent statistical information to improve public understanding of the economy and society.

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<sup>67</sup> The Coalition Government's Programme for Government commits to ensuring that data published by public bodies is provided in a re-usable format.



Those statistics that are compliant with the UK Statistics Authority's Code of Practice<sup>68</sup> are designated as national statistics.

## Access to information

388. The FOI Act and the Environmental Information Regulations 2004 (EIR) give the public a general right to request access to recorded information held by public authorities, including departments. The public also have the right to make a request under the Data Protection Act 1998 for information about themselves which may be held by a government department.

389. Under the FOI Act, a public authority (including a government department) normally has to respond to any request by providing the information requested – if it is held by the authority – within 20 working days. However, there are limited exemptions.<sup>69</sup> The most significant of these in relation to ministerial records are if the cost of complying with the request would exceed £600, or if the information relates to national security, defence, international relations, relations within the UK, the economy, law enforcement, the formulation of government policy, communications with the Sovereign, legal professional privilege or commercial interests. In some cases the exemption is absolute; in others a judgement is needed as to whether the public interest in maintaining confidentiality exceeds that of making the information available.

390. A minister of the Crown can also conclude, under Section 36 of the FOI Act, that information is exempt from disclosure if it would, or would be likely to:

- prejudice the maintenance of the convention of collective responsibility of ministers of the Crown, the work of the Executive

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<sup>68</sup> [www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html](http://www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html)

<sup>69</sup> See part II of the FOI Act.

Committee of the Northern Ireland Assembly or the work of the Cabinet of the Welsh Assembly Government

- inhibit the free and frank provision of advice or exchange of views, or
- otherwise prejudice the effective conduct of public affairs.

391. The FOI Act also provides a Cabinet minister, the Attorney General, the Advocate General for Scotland or the Attorney General for Northern Ireland with the power to issue a certificate that would exempt information from disclosure when the information was supplied by, or relates to, one of the listed security bodies or when it is required for the purposes of safeguarding national security.

392. In the case of EIR requests, there are similar (although not identical) statutory exemptions to those under the FOI Act but no cost limit; instead, consideration as to whether complying with a request is “manifestly unreasonable” applies. With requests under the Data Protection Act, a cost limit applies only to requests for personal information within unstructured manual records.

393. A requester of information under the FOI Act or the EIR has a right of complaint to the Information Commissioner’s Office (ICO, the independent authority set up to uphold information rights, and to promote openness and data privacy). Either the requester or the public authority can appeal against the Information Commissioner’s decision or assessment to take it to the First-tier Tribunal (General Regulatory Chamber).

### *Cabinet records*

394. The proceedings of Cabinet and its committees are specifically identified in the FOI Act as falling within the exemption at Section 35. This is a qualified exemption, meaning that the public interest needs to be

considered in each case. As there is always a strong argument in favour of maintaining the privacy of such information, given the public interest in collective responsibility and the maintenance of the ability of ministers to debate and develop policy frankly and freely, the working assumption is that information relating to the proceedings of Cabinet and its committees should remain confidential. However, each case needs to be considered on its merits.

395. Under Section 53(2) of the FOI Act, a Cabinet minister or the Attorney General, the Advocate General for Scotland or the Advocate General for Northern Ireland may issue a certificate that has the effect of substituting his or her decision for a decision or enforcement notice of the Information Commissioner or the Information Tribunal. This power is sometimes referred to as the 'ministerial veto'. It has so far been used only twice, both times in relation to Cabinet and committee minutes.

396. Any department considering releasing information relating to the proceedings of Cabinet and its committees should consult the Cabinet Secretariat in good time. Collective ministerial agreement is required for any such release.

#### *Official Secrets Act 1989*

397. Under the Official Secrets Act 1989, it is an offence to disclose official information relating to certain categories, including security and intelligence, defence and international relations. The Official Secrets Act applies to a number of public servants, including government ministers, civil servants, members of the armed forces and the police.

#### *Leaks of information*

398. In the event of an unauthorised disclosure or leak of information, there are established procedures on how to investigate the incident or incidents

and appropriate action to take. The published protocol on leak investigations can be found at:

[www.cabinetoffice.gov.uk/content/civil-service-conduct-and-guidance](http://www.cabinetoffice.gov.uk/content/civil-service-conduct-and-guidance)

### **Access to papers of a previous administration**

399. As a general rule, ministers of an incoming administration may not see the papers of a former administration of a different political party<sup>70</sup> that indicate the views of their predecessors, including the advice they received from officials and correspondence with the Devolved Administrations and local government.

400. This does, however, need to be balanced against the requirement for continuity. Thus, the Foreign Secretary will often see papers necessary for the continuity of diplomatic relations, and the Law Officers will see advice on matters of law.

401. When a decision is required on the application of Sections 36 or 53 of the FOI Act to papers of a previous administration, the Attorney General will act as the qualified person for all government departments.

### **Disclosure and use of official information by the Prime Minister and ministers**

402. If there is no change of government after a general election, ministers who leave office or move to another ministerial appointment are not permitted to take away any Cabinet or Cabinet committee documents. On a change of government, the Cabinet Secretary, on behalf of the outgoing Prime Minister, issues special instructions about the disposal of Cabinet papers of the outgoing administration. Cabinet or Cabinet committee documents of a previous administration may not be shown to a minister of the current administration without the approval of the Cabinet Secretary.

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<sup>70</sup> The most recent statement of this convention was given in the Prime Minister's written answer to a parliamentary question on 24 January 1980 (Official Report columns 305–7).

403. By convention and at the Government's discretion, former ministers are allowed reasonable access to the papers of the period when they were in office. With the exception of former Prime Ministers, access is limited to former ministers personally. Subject to compliance with the 'Radcliffe Rules' (see paragraph 2.9 of the *Ministerial Code*), former ministers may have access to copies of Cabinet or Cabinet committee papers that were issued to them when in office, and access in the relevant department to other official papers that they are known to have handled at the time.

404. In the case of former Prime Ministers, access can be extended to those on the former Prime Minister's staff who would have had access to the material at the time and would therefore have had the relevant security clearance.

405. Ministers who leave office or move to another ministerial appointment are not permitted to remove or destroy other papers which are the continuing responsibility of the department (papers that are not personal, party or constituency papers). There are separate arrangements for what papers former Prime Ministers may take away when no longer in office (see below).

### **Prime Ministers' records – leaving office**

406. When Prime Ministers leave office, it is customary for them to be allowed to take away copies of certain categories of 'personal' material, demonstrating important aspects of their time in office. It has also been customary for former Prime Ministers to donate such material to a library or archive centre for research purposes. Documents that contain a mixture of personal and official information do, however, remain part of the government record. Under the existing arrangements this courtesy only applies to material collected during the period of premiership and does not apply to any previous ministerial appointment.

## Memoirs and the Radcliffe rules

407. There are conventions governing the publication, in whatever medium, by former ministers of memoirs and other works relating to their experience as ministers.

408. In general, former ministers are free to use their ministerial experience for the purpose of giving an account of their own work, provided they:

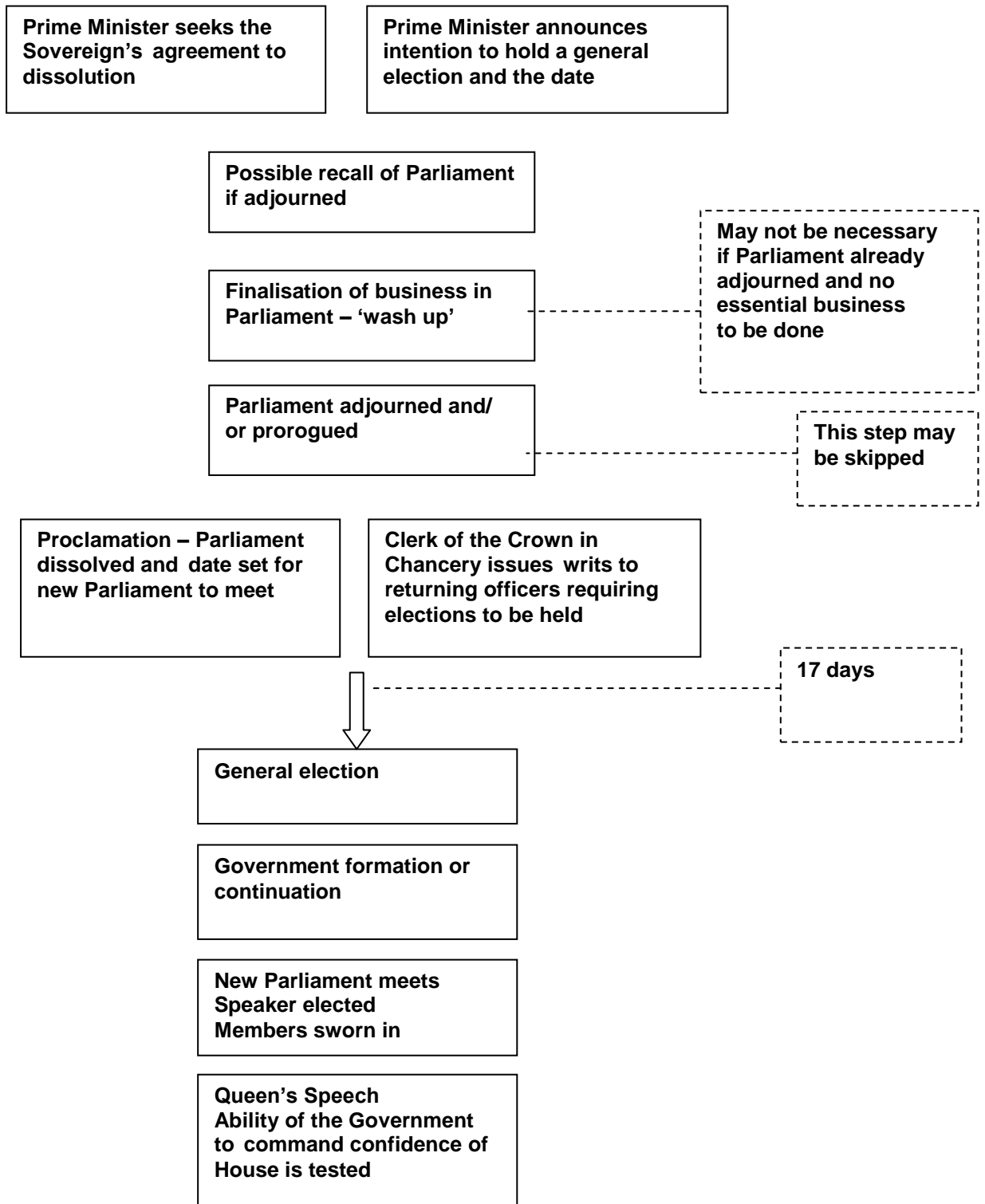
- do not reveal anything that contravenes the requirements of national security
- do not make disclosures that would harm the UK's relations with other nations
- refrain from publishing information that would affect the confidential relationships between ministers or of ministers with their officials.

409. All former ministers (including former Prime Ministers) intending to publish their memoirs are required to submit the manuscript to the Cabinet Secretary, who acts at the request and on behalf of the current Prime Minister. The Cabinet Secretary has two duties in relation to such a manuscript:

- to have it examined in respect of national security and the preservation of international relations and to transmit any objections to the former minister
- to offer views on the treatment of any confidential relationships of ministers with each other and of ministers with officials that are in the manuscript.

# Annex A: Election timetable

## Election and Government formation – process



## Election timetable

Milestone	Days
Proclamation – dissolution of old Parliament/summoning of new Parliament/issue of writ	Day 0
Receipt of writ	Day 1
Last day for publication of notice of election (4pm)	Day 3
Last day for delivery of nomination papers/withdrawals of candidature/appointment of election agents (4pm)	Day 6
Statement of persons nominated published at close of time for making objections to nomination papers (5pm on Day 6) or as soon afterwards as any objections are disposed of	
Last day for requests for a new postal vote or to change or cancel an existing postal vote or changing a proxy appointment to a postal vote (5pm)	
Last day to apply to register vote	
Last day for new applications to vote by proxy (except medical emergencies)	Day 11
Last day for appointment of polling and counting agents	Day 15
Polling day (7am–10pm)	Day 17
Last day to apply for a replacement for spoilt or lost postal ballot papers (5pm)	

**Source:** House of Commons Library briefing, 17 March 2010:  
[www.parliament.uk/commons/lib/research/briefings/snpc-04454.pdf](http://www.parliament.uk/commons/lib/research/briefings/snpc-04454.pdf)

Periods of time in the timetable above are reckoned in working days and exclude Saturdays, Sundays, Christmas Eve, Christmas Day, Good Friday, bank holidays in any part of the UK and any day appointed for public thanksgiving or mourning.



## Annex B: Statutory limits on ministerial salaries

		<b>Sub-total</b>	<b>Cumulative Total</b>
A.	One salary for the Lord Chancellor	<b>1</b>	<b>1</b>
B.	<p>Up to 21 first-tier salaries</p> <p>The following ministers are entitled to first-tier salaries:</p> <ol style="list-style-type: none"> <li>1. The Prime Minister, Chancellor of the Exchequer and secretaries of state.</li> <li>2. If in the Cabinet:               <ol style="list-style-type: none"> <li>a. ___ Lord President of the Council</li> <li>b. ___ Lord Privy Seal</li> <li>c. ___ Chancellor of the Duchy of Lancaster</li> <li>d. ___ Paymaster General</li> <li>e. ___ Chief Secretary to the Treasury</li> <li>f. ___ Parliamentary Secretary to the Treasury (Chief Whip)</li> <li>g. ___ Minister of State</li> </ol> </li> </ol>		
C.	<p>Up to 50 first-tier and second-tier salaries taken together</p> <p>The following ministers are entitled to second-tier salaries:</p> <ol style="list-style-type: none"> <li>1. If not in the Cabinet:               <ol style="list-style-type: none"> <li>a. ___ Minister of State</li> </ol> </li> </ol>		

	<p>b. ___ other office holder mentioned in 2a to f above</p> <p>c. ___ minister in charge of a government department and not specified elsewhere</p> <p>2. Financial Secretary to the Treasury</p>		
D.	Up to 83 first-tier, second-tier and parliamentary secretary salaries taken together	<b>83</b> <sup>71</sup>	<b>84</b>
E.	Three salaries for the Law Officers	<b>3</b>	<b>87</b>
F.	<p>Five salaries for the following Household offices:</p> <ol style="list-style-type: none"> <li>1. Treasurer of HM Household (Deputy Chief Whip)</li> <li>2. Comptroller of HM Household (Commons Whip)</li> <li>3. Vice-Chamberlain of HM Household (Commons Whip)</li> <li>4. Captain of the Honourable Corps of Gentlemen- at-Arms (Lords Chief Whip)</li> <li>5. Captain of the Queen's Bodyguard of the Yeoman of the Guard (Lords Deputy Chief Whip)</li> </ol>	<b>5</b>	<b>92</b>
G.	Five salaries for junior lords of the Treasury (Commons Whips)	<b>5</b>	<b>97</b>
H.	Seven salaries for assistant whips (Commons junior whips)	<b>7</b>	<b>104</b>
I.	Five salaries for lords or baronesses in waiting (Lords whips)	<b>5</b>	<b>109</b>

<sup>71</sup> The subtotal and cumulative total in line D of the table include the salaries listed in lines B and C.

# Annex C: Detail on devolution settlements

## Scotland

1. Following the referendum in Scotland in 1979, the 1978 settlement established a devolved legislature (the Scottish Parliament) and administration (the Scottish Executive) in Scotland. The Scotland Act 1978 identifies a number of areas that are reserved (Schedule 5 to the Act): the Scottish Parliament is not able to legislate in these areas. All other areas not listed in the Scotland Act are devolved. The Scottish Executive's powers largely follow the legislative competence of the Scottish Parliament, so where an area is devolved the Scottish ministers will also exercise functions in that area. The Act also allows the Scottish Parliament to vary the basic rate of income tax by three pence in the pound, following which funding allocated to the Scottish Government would be amended to reflect the reduced or increased tax yield. This power has not been used to date. The Scotland Bill introduced in the UK Parliament on 30 November 2010 will, if enacted, increase the financial accountability of the Scottish Parliament and revise the boundaries of the devolution settlement.

## Northern Ireland

2. The 1998 Belfast (Good Friday) Agreement and subsequent Northern Ireland Act 1998 continue to form the basis of the constitutional structure in Northern Ireland. The Northern Ireland Assembly is composed of 108 members elected by single transferable vote. On matters of key importance it votes by the special threshold of 'cross-community support', which ensures the support of a majority of both communities represented in the Assembly. The Northern Ireland Executive is an inclusive power-sharing Executive chaired by a First and Deputy First

Minister who hold office jointly and are required 11 departmental ministers, 10 of whom are selected according to their party strengths in the Assembly by the d'Hondt process.

3. The Northern Ireland devolution settlement, provided for in the Northern Ireland Act 1998, apportions subjects into three different categories of legislative competence:
  - **Excepted matters** (listed at Schedule 2 to the 1998 Act) are those that the Assembly cannot legislate on unless the matter is ancillary to a reserved or transferred matter. These matters therefore generally remain for Parliament.
  - **Reserved matters** (Schedule 3 to the 1998 Act) are ones upon which the Northern Ireland Assembly can legislate, but only with the consent of the Secretary of State and subject to parliamentary control.
  - **Transferred matters** (anything not listed at Schedules 2 or 3) comprise everything else upon which the Northern Ireland Assembly is free to legislate.
4. Ministerial functions in relation to transferred matters in Northern Ireland generally lie with Northern Ireland ministers and departments. These broadly replicate the legislative competence of the Assembly, although the Executive does not have the power to act on reserved matters.

## Wales

5. In Wales, following the 1997 referendum, the Government of Wales Act 1998 established the National Assembly for Wales as a corporate body. The Welsh settlement was revised by the Government of Wales Act 2006. The Act dissolved the corporate body and formally established an executive, the Welsh Assembly Government, which exercises executive functions, and a legislature to pass laws equivalent to Acts of Parliament within its areas of legislative competence. The 2006 Act also created a

mechanism for granting law-making powers on an incremental basis to the National Assembly for Wales, either in Acts of Parliament or Orders in Council conferring legislative competence (Legislative Competence Orders). The mechanism for the National Assembly for Wales to obtain broader primary law-making powers was also set out in the 2006 Act, in the event of a 'yes' vote in a referendum. The Government intends to hold a referendum on 3 March 2011. Unlike the Scottish and Northern Ireland settlements, the Welsh settlement operates on a 'transfer' model, whereby those areas not specifically transferred under the Act remain the responsibility of the Government and Parliament.

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