



# The Cabinet Manual

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

1ST edition October 2011

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# Foreword by the Prime Minister

On entering government I set out, with the Deputy Prime Minister, our shared desire for a political system that is looked at with admiration around the world and is more transparent and accountable.

The Cabinet Manual sets out the internal rules and procedures under which the Government operates. For the first time the conventions determining how the Government operates are transparently set out in one place. Codifying and publishing these sheds welcome light on how the Government interacts with the other parts of our democratic system.

We are currently in the first coalition Government for over 60 years. The manual sets out the laws, conventions and rules that do not change from one administration to the next but also how the current coalition Government operates and recent changes to legislation such as the establishment of fixed-term Parliaments.

The content of the Cabinet Manual is not party political – it is a record of fact, and I welcome the role that the previous government, select committees and constitutional experts have played in developing it in draft to final publication.

Cabinet has endorsed the Cabinet Manual as an authoritative guide for ministers and officials, and I expect everyone working in government to be mindful of the guidance it contains.

This country has a rich constitution developed through history and practice, and the Cabinet Manual is invaluable in recording this and in ensuring that the workings of government are far more open and accountable.



**David Cameron**  
**Prime Minister**

# Preface by the Cabinet Secretary

Before the last general election, the previous Prime Minister, the Rt Hon Gordon Brown MP, asked that I lead work to produce a Cabinet Manual to provide a source of information on the laws, conventions and rules that affect the operation and procedures of the Government. With the endorsement of the current Prime Minister and Deputy Prime Minister, I published a draft in December 2010.

The draft generated considerable interest, including from three Parliamentary Select Committees, as well as from a number of constitutional experts, interest groups and members of the public. Their reports and comments have been extremely valuable in identifying areas of controversy, errors or omissions, and areas where the draft could be improved. On the whole, the process also demonstrated general support for the principle of the Cabinet Manual and the contents of the draft. A summary of the comments received has been published separately.

Over the past eight months, the Cabinet Secretariat has worked with colleagues from across government to review all the comments we received and to revise and update the text.

In addition to a significant number of detailed changes, the revised text incorporates important changes to aid understanding of the contents – in particular extensive references and links to more detailed guidance, and a glossary.

This updated text – the first edition of the Cabinet Manual – remains true to its original purpose. It is primarily a guide for those working in government, recording the current position rather than driving change. It is not intended to be legally binding or to set issues in stone. The Cabinet Manual records rules and practices, but is not intended to be the source of any rule.

While the document primarily provides a guide to the operation of the Government itself, it also sets out – from the view of the Executive – the Government's place in the UK's Parliamentary democracy. It therefore includes chapters on how the Government relates to the Sovereign, Parliament and the independent judiciary, as well as the other democratic institutions within the UK and key international bodies.

The content of the Cabinet Manual is not static, and the passage of new legislation, the evolution of conventions or changes to the internal procedures of government will mean that the practices and processes it describes will evolve over time. If the Cabinet Manual is to continue to play a useful role as a guide to the operations and procedures of government, it will need to be updated periodically to reflect such developments.

While some other administrations, most notably New Zealand, have developed their equivalent documents over a number of decades, this first edition of the Cabinet Manual has been produced in less than two years. This has been an intensive process and I am grateful to all those who have contributed to this achievement.

I am confident that the Cabinet Manual will come to be seen as an essential guide to our system of government and I hope that everyone working in, or with, the Government will use it as a key work of reference.

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

**Sir Gus O'Donnell**  
**Cabinet Secretary**

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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 can stand independently but they 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 European Union (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 (although see paragraph 6.41 for the jurisdiction of the UK Supreme Court over devolution matters.)
5. Constitutional matters and practices may include:
  - **statutes**, such as 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 Human Rights Act 1998; the Representation of the People Acts; and the Scotland Act 1998, the Government of Wales Acts of 1998 and 2006 and the Northern Ireland Act 1998;
  - **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**, for example, *Pepper v Hart* [1993] AC 593; *In re M* [1994] AC 377; *Jackson v Attorney General* [2005] UKHL 56 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; and
- **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'). See Chapter One for more on the Sovereign.

### 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 the House of Commons, which 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. The House of Commons claims exclusive rights and privileges over the House of Lords in relation to financial matters, and the powers of the House of Lords to reject legislation passed by the House of Commons are limited by statute.

9. In the exercise of its legislative powers, Parliament is sovereign. In practice, however, Parliament has chosen to be constrained in various ways – through its Acts, and by 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, debates in both Houses and the Parliamentary Commissioner for Administration. See Chapter Five for more on Parliament.
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. See Chapter Eight for more on devolution.

### The Prime Minister and ministers

12. Ministers' powers derive from legislation passed by Parliament, the Royal Prerogative and common law. They are subject to an overarching duty to act in accordance with the law. The courts rule on whether ministerial action is carried out lawfully. See Chapters Three and Six for more on ministers and the Executive and the law.
13. The roles of the Prime Minister and Cabinet are governed largely by convention. The Prime Minister is the Sovereign's principal 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. See Chapter Four for more on Cabinet and Cabinet committees.

14. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies.
15. Ministers hold office as long as they have the confidence of the Prime Minister. They are supported by impartial civil servants. Civil servants are required to act with honesty, objectivity, impartiality and integrity. Ministers must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the *Civil Service Code* and the requirements of the Constitutional Reform and Governance Act 2010. See Chapter Seven for more on civil servants.

## 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. See Chapter Six for more on the judiciary.

## European Union and other international law

17. Parliament has provided for the incorporation of EU law into the UK's domestic law through the European Communities Act 1972 and, where necessary, through further primary and secondary legislation.
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 European Convention on Human Rights, the North Atlantic Treaty and the various agreements of the World Trade Organization. See Chapter Nine for more on the EU and international bodies.

# Chapter One

The UK is a constitutional monarchy. The Sovereign has a number of ceremonial and constitutional duties in relation to the Government. 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 commanding the confidence of the House of Commons.

This chapter covers:

- ceremonial and constitutional duties
- the Royal Prerogative
- succession and coronation
- absence and incapacity of the Sovereign
- the Privy Council
- the Established Church.

# The Sovereign

## Ceremonial and constitutional duties

- 1.1 The Sovereign fulfils a number of ceremonial and constitutional duties relevant to the Government. The Sovereign appoints the Prime Minister and, on his or her advice, other ministers (see Chapter Three). The Sovereign opens each new session of Parliament,<sup>1</sup> and brings the session to an end, proroguing Parliament if necessary by Order in Council.<sup>2</sup> Under the Fixed-term Parliaments Act 2011, Parliament is dissolved automatically 17 working days before the fixed date for the election.<sup>3</sup> Where in accordance with the Act there is to be an early election, the Sovereign fixes the date of the election by Proclamation on the recommendation of the Prime Minister.<sup>4</sup> The Sovereign in all cases fixes by Proclamation the date for the next meeting of Parliament. A bill which has completed all of its prior Parliamentary stages becomes law when Royal Assent (the formal approval of the Sovereign) is given.<sup>5</sup> The Sovereign also appoints the First Minister of Scotland and the First Minister for Wales, and has a role in relation to the Devolved Administrations, as set out in legislation.<sup>6</sup>
- 1.2 The Sovereign is Head of the Armed Forces. Armed Forces recruits are required to swear an oath of allegiance to the Sovereign (or make a solemn affirmation to the same effect).<sup>7</sup> All titles of honour (for example knighthoods) are conferred by the Sovereign, mostly on the advice of the government of the day, although there are some honours that the Sovereign confers at his or her own discretion. An example would be an Order of Merit. 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.<sup>8</sup>
- 1.3 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>9</sup> Her Majesty the Queen is also Head of the Commonwealth,<sup>10</sup> a voluntary association of 54 countries.
- 1.4 The Sovereign has a role in relation to the Channel Islands and the Isle of Man, which are not part of the UK but are self-governing Crown Dependencies.<sup>11</sup> The Sovereign is ultimately responsible for the good government of the Crown Dependencies and the Lieutenant Governors are his or her personal representatives. Constitutionally, the UK is responsible for their defence and representation internationally. The Crown Dependencies make annual voluntary contributions towards the costs of their defence and international representation by the UK. The Privy Counsellor with responsibility for the Crown Dependencies is currently the Lord Chancellor. There

are also 14 Overseas Territories<sup>12</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.

## The Royal Prerogative

- 1.5 The scope of the Royal Prerogative power, which is the residual power inherent in the Sovereign, has evolved over time.<sup>13</sup> 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 he or 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 Three.

## Succession and coronation

- 1.6 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>14</sup> The coronation ceremony usually takes place some months later.
- 1.7 At the first Privy Council following accession, the Sovereign is required to take an oath to maintain and preserve the presbyterian Church of Scotland.<sup>15</sup> Subsequently, at the first Parliament of the reign,<sup>16</sup> the Sovereign is required to declare that they are a faithful Protestant and will secure the Protestant succession.<sup>17</sup> (See paragraphs 1.20 and 1.21 on the Established Church.) Under the Coronation Oath, the Sovereign swears by oath to govern the people of the UK and the Commonwealth realms according to 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 in the United Kingdom 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.<sup>18</sup>

## Absence and incapacity of the Sovereign

- 1.8 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.<sup>19</sup> 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 grant any rank, title or dignity of the peerage, or to signify Royal Assent to any amendment to the Act of Settlement 1700 or Royal Style and Titles.
- 1.9 When the Sovereign is incapacitated for a longer period, or is under the age of 18, a Regent may be appointed.<sup>20</sup> With regard 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 assent to any bill for changing the order of succession to the Crown as defined by the Act of Settlement 1700 or for repealing or altering the Act preserving the presbyterian system of Church government in Scotland.

## The Privy Council

- 1.10 The Privy Council<sup>21</sup> advises the Sovereign on the exercise of the prerogative powers and certain functions assigned to the Sovereign and the Council by Act of Parliament. The Privy Council is established under the Royal Prerogative and 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. For example, certain Statutory Instruments must take the form of Orders in Council.

- 1.11 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.
- 1.12 Exceptionally, non-Cabinet ministers attending Cabinet and senior members of opposition parties can be given briefings on confidential terms ('Privy Council terms'). Such an arrangement is entirely voluntary, and anyone not wishing to be briefed on such terms may decline the invitation. Having accepted a briefing on Privy Counsellor terms, he or she is understood to have agreed to treat it as confidential.
- 1.13 The Lord President of the Council (fourth of the Great Officers of State)<sup>22</sup> 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.
- 1.16 Decisions of the Council are recorded in Orders. 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 Overseas Territories.
  - An Order in Council made under a power conferred by legislation will usually be subject to a Parliamentary procedure. Examples of this are Orders giving effect to United Nations (UN) Measures or sanctions, and transfer of functions orders under the Ministers of the Crown Act 1975.
- 1.17 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).

#### *Committees of the Privy Council*

- 1.14 Cabinet is the executive committee of the Privy Council. There are 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*

- 1.15 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.<sup>23</sup>

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  - 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).

- 1.18 Her Majesty in Council also gives approval to statutory Proclamations for new coinage and for certain bank holidays. Prerogative Proclamations for proroguing Parliament and setting the date of the meeting of a new Parliament are approved in Council, as are Proclamations under the Fixed-term Parliaments Act 2011 setting the date for an election which has been varied in accordance with the terms of that Act.

### *Committees of Privy Counsellors*

1.19 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 Committees chaired by Lord Newton of Braintree<sup>24</sup> and by Lord Butler of Brockwell.<sup>25</sup>

### **The Established Church**

1.20 The Sovereign is the Supreme Governor of the Church of England and must, under the provisions of the Act of Settlement 1700, join in communion with it.<sup>26</sup> The Church's legislation<sup>27</sup> forms part of the public law of England. The responsibility for initiating Church legislation rests with the Church's General Synod. Once approved by the General Synod, a draft measure requires approval by both Houses of Parliament and Royal Assent before becoming law. 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.<sup>28</sup>

1.21 The Church was disestablished in the whole of Ireland in 1871 and in Wales in 1920.<sup>29</sup> The Church of Scotland, which has a Presbyterian system of church government, is the national church in Scotland. The Church of Scotland Act 1921 guaranteed its spiritual independence.

## Notes

- 1 Jack M (ed.) (2011) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition. London: LexisNexis Butterworths, pp. 158–161.
- 2 *Ibid.*, pp. 144–145.
- 3 Fixed-term Parliaments Act 2011, s.3(1).
- 4 *Ibid.*, s.2(7).
- 5 Jack (ed.) *Erskine May*, pp. 642–645.
- 6 See the Scotland Act 1998 and the Government of Wales Act 2006 for more information. Throughout this manual, reference is made to the 'Scottish Government' and the 'Welsh Government' although their statutory titles are 'Scottish Executive' and 'Welsh Assembly Government' (the Scotland Act 1998 and the Government of Wales Act 2006). These two organisations have made clear their preference to be known by these titles. The Government is legislating in the Scotland Bill to change the statutory title for the Scottish Executive to the Scottish Government. It is examining whether a suitable legislative vehicle can be found to change the statutory title for the Welsh Assembly Government to the Welsh Government.
- 7 Ministry of Defence (2011) *Manual of Service Law*, Chapter 18, paragraph 8.
- 8 For more information see: Directgov, 'The honours process explained': [www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/Honoursawardsandmedals/DG\\_067909](http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/Honoursawardsandmedals/DG_067909).
- 9 They are Antigua and Barbuda, Australia, the Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, the Solomon Islands, St Christopher and Nevis, St Lucia, St Vincent and the Grenadines, and Tuvalu.
- 10 The Commonwealth (1949) *London Declaration*.
- 11 Ministry of Justice (2011) *Background Briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man*.
- 12 They are Anguilla, Bermuda, British Antarctic Territory, the British Indian Ocean Territory, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, the Pitcairn Group of Islands, St Helena, Ascension Island 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.
- 13 For more information on the Royal Prerogative, see: House of Commons Library (2009) *The Royal Prerogative*, Standard Note SN/PC/03861.
- 14 Act of Settlement 1700.
- 15 Act of Union 1707.
- 16 The modern practice is to take the oath at the first State Opening of Parliament of the new reign. Her Majesty the Queen took the oath on 4 November 1952.
- 17 Accession Declaration Act 1910.
- 18 The exact form of the Coronation Oath may vary but it is based on the Coronation Oath Act 1689. For more information, see: House of Commons Library (2008) *The Coronation Oath*, Standard Note SN/PC/00435.
- 19 Regency Acts 1937, 1943, 1953.
- 20 Regency Act 1937.
- 21 For more information, see: [www.privycouncil.independent.gov.uk](http://www.privycouncil.independent.gov.uk).
- 22 The Great Officers of State for England and Wales comprise: Lord High Steward, Lord High Chancellor, Lord High Treasurer, Lord President of the Council, Lord Privy Seal, Lord Great Chamberlain, Lord High Constable, Earl Marshal and Lord High Admiral.
- 23 Cabinet Office (2010) *Ministerial Code*, paragraph 2.5.
- 24 See: Privy Counsellor Review Committee (2003) *Anti-terrorism, Crime and Security Act 2001 Review: Report* (HC381). London: The Stationery Office.
- 25 See: Report of a Committee of Privy Counsellors (2004) *Review of Intelligence on Weapons of Mass Destruction* (HC898). London: The Stationery Office.
- 26 Act of Settlement 1700, s.3.
- 27 For more information on Church of England measures, see: House of Commons Information Office (2010) *Church of England Measures*, Factsheet L10 and the Church of England Assembly (Powers) Act 1919.
- 28 Bishops Act 1878, s.5.
- 29 The Irish Church Act 1869 came into force in 1871. There were two Acts disestablishing the Church in Wales: the Welsh Church Act 1914 and the Welsh Church (Temporalities) Act 1919, both of which came into force in 1920.

# Chapter Two

A 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 covers:

- general elections
- meeting of the new Parliament
- the principles of government formation
- Parliaments with an overall majority in the House of Commons
- Parliaments with no overall majority in the House of Commons
- change of Prime Minister or government during a Parliament
- pre-election contact with opposition parties
- dissolution of Parliament
- finalisation of Parliamentary business
- restrictions on government activity.

# Elections and government formation

## General elections

- 2.1 General elections allow voters on the electoral roll to cast their ballot for an MP to represent them in the House of Commons. In accordance with the Fixed-term Parliaments Act 2011, general elections must normally be held on the first Thursday in May every five years<sup>1</sup> (although see paragraphs 2.2 and 2.3 below). Parliament is dissolved before such an election. Dissolution occurs automatically, 17 working days before the next election (see paragraph 2.22 for more on dissolution). Parliament meets on the date determined by the issue by Her Majesty in Council of a proclamation summoning a new Parliament. That date may be postponed by a subsequent proclamation under the Prorogation Act 1867.<sup>2</sup>
- 2.2 Once Parliament is dissolved, the Fixed-term Parliaments Act 2011 gives authority for 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 in Great Britain, and by the Clerk of the Crown for Northern Ireland to Returning Officers in Northern Ireland, and require them to cause elections to be held and to return the writ with the election result for their constituency. Writs of summons

are also issued to all Members of the House of Lords to summon them to a new Parliament.

- 2.3 The election process and a more detailed election timetable (derived from the Representation of the People Act 1983) is set out at the annex to this Manual. Candidates must submit nomination papers not later than the sixth working day after the date of the dissolution of Parliament.<sup>3</sup>

## Meeting of the new Parliament

- 2.4 The date of the first meeting of a new Parliament is determined by a proclamation issued by the Sovereign, on the advice of the Prime Minister. 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 recommended a reversion to the previous practice of having an interval of 12 days between polling day and the first meeting of Parliament.<sup>4</sup> This was adopted in 2010.
- 2.5 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.<sup>5</sup> The first business of the House of Lords is also for its Members to take the oath.<sup>6</sup> 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.<sup>7</sup> This is when the business of the new Parliament properly begins.

- 2.6 The election of the Lord Speaker is not dependent on a general election: it takes place on a day no later than 15 July in the fifth calendar year after the previous election of the Lord Speaker. The last took place on 13 July 2011. Where a dissolution of Parliament has been announced the election either takes place on the date set for the election of a new Lord Speaker or on a day no later than one month after the State Opening, whichever is later.<sup>8</sup>

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

- 2.7 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.<sup>9</sup> See paragraph 2.19 on fixed-term Parliaments and votes of no confidence. Commanding the confidence of the House of Commons is not the same as having a majority or winning every vote.
- 2.8 Prime Ministers hold office unless and until they resign. If the Prime Minister resigns on behalf of the Government, the Sovereign will invite the person who appears most likely to be able to command the confidence of the House to serve as Prime Minister and to form a government.<sup>10</sup>
- 2.9 Historically, the Sovereign has made use of reserve powers to dismiss a Prime Minister or to make a personal choice of successor, although this was last used in 1834 and was regarded as having undermined the Sovereign.<sup>11</sup> In modern times the convention has been that the Sovereign should not be drawn into party politics, and if there is doubt 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 to the Sovereign who is best placed to be able to command the confidence of the House of Commons. As the Crown's principal adviser this responsibility falls especially on the incumbent Prime Minister, who at the time of his or her resignation 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.

- 2.10 The application of these principles depends on the specific circumstances and it remains a matter for the Prime Minister, as the Sovereign's principal adviser, to judge the appropriate time at which to resign, either from their individual position as Prime Minister or on behalf of the government.<sup>12</sup> Recent examples suggest that previous Prime Ministers have not offered their resignations until there was a situation in which clear advice could be given to the Sovereign on who should be asked to form a government.<sup>13</sup> It remains to be seen whether or not these examples will be regarded in future as having established a constitutional convention.

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

- 2.11 After an election, if an incumbent government retains an overall majority – that is, where the number of seats won by the largest party in an election exceeds the combined number of seats for all the other parties 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 the appointment of the Prime Minister and ministers can be found in Chapter Three.

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

- 2.12 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.

- 2.13 Where a range of different administrations could potentially be formed, political parties may wish to hold discussions to establish who is best able to command the confidence of the House of Commons and should form the next government. The Sovereign would not expect to become involved in any negotiations, although there are responsibilities on those involved in the process to keep the Palace informed. This could be done by political parties or the Cabinet Secretary. The Principal Private Secretary to the Prime Minister may also have a role, for example, in communicating with the Palace.
- 2.14 If the leaders of the political parties involved in any negotiations seek the support of the Civil Service, this support may only be organised by the Cabinet Secretary with the authorisation of the Prime Minister. If the Prime Minister authorises any support it would be focused and provided on an equal basis to all the parties involved, including the party that was currently in government. The Civil Service would continue to advise the incumbent government in the usual way.
- 2.15 Following the election in May 2010, the Prime Minister authorised the Civil Service to provide such support to negotiations between political parties.<sup>14</sup>
- 2.16 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 2.27–2.34.
- 2.17 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>15</sup>

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

- 2.18 Where a Prime Minister chooses to resign from his or her individual position at a time when his or her administration has an overall majority in the House of Commons, it is for the party or parties in government to identify who can be chosen as the successor.<sup>16</sup>
- 2.19 Under the Fixed-term Parliaments Act 2011, if a government is defeated on a motion that 'this House has no confidence in Her Majesty's Government', there is then a 14-day period during which an alternative government can be formed from the House of Commons as presently constituted, or the incumbent government can seek to regain the confidence of the House.<sup>17</sup> If no government can secure the confidence of the House of Commons during that period, through the approval of a motion that 'this House has confidence in Her Majesty's Government', a general election will take place. Other decisions of the House of Commons which have previously been regarded as expressing 'no confidence' in the government no longer enable or require the Prime Minister to hold a general election. The Prime Minister is expected to resign where it is clear that he or she does not have the confidence of the House of Commons and that an alternative government does have the confidence.
- 2.20 Where a range of different administrations could be formed, discussions may take place between political parties on who should form the next government. In these circumstances the processes and considerations described in paragraphs 2.12–2.17 would apply.

## Pre-election contact with opposition parties

2.21 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.<sup>18</sup> The meetings take place on a confidential basis, without ministers being present or receiving a report of discussions. The Cabinet Secretary 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

2.22 Parliaments dissolve automatically 17 working days before the date of the next election.<sup>19</sup> This date will ordinarily be the first Thursday in May five years after the day on which the Parliament was elected, unless an early election is held in accordance with the provisions of the Fixed-term Parliaments Act 2011 or the Prime Minister has exercised his or her power to defer the election by up to two months because of an emergency. No further formality is required for dissolution in accordance with the Act, but a proclamation is required to summon a new Parliament for a specified date.

2.23 Early elections may take place in two circumstances. The first is where two-thirds of the membership of the House of Commons agree that it is right that there should be a general election immediately and pass a motion 'that there shall be an early Parliamentary general election'. The other circumstance is where a government has lost a motion that 'this House has no confidence in Her Majesty's Government' and no government has, within a 14-day

period, secured a motion that 'this House has confidence in Her Majesty's Government'. In either of these cases, the date of the election is set by the Sovereign by Proclamation on the advice of the Prime Minister and dissolution occurs 17 working days before the date appointed for the election. Proclamations are issued by Her Majesty in Council.

2.24 Parliament may be prorogued before being dissolved or may just adjourn. It has not been modern 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.<sup>20</sup>

2.25 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.

## Finalisation of Parliamentary business

2.26 Where an early general election takes place, the date appointed for the poll may enable Parliament to sit for a few days before dissolution, known as the 'wash-up' period. Dissolution occurs automatically 17 working days before the date appointed for the election. 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<sup>21</sup> and, depending on the time of year, it may be necessary to do other business to keep government working while Parliament is unavailable because of the dissolution.

### Restrictions on government activity

2.27 While the government retains its responsibility to govern and ministers remain in charge of their departments, governments are expected by convention to observe discretion in initiating any new action of a continuing or long-term character in the period immediately preceding 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.<sup>22</sup>

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

2.28 In the period immediately preceding an election, the Cabinet Office publishes guidance on activities in the run up to polling day.<sup>23</sup> The Prime Minister writes to ministers in similar terms.

2.29 During this period, the government retains its responsibility to govern, ministers remain in charge of their departments and essential business is carried on.<sup>24</sup> Ministers continue in office and it is customary for them to observe discretion in initiating any action of a continuing or long-term character. 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 may be handled by temporary arrangements or following relevant consultation with the Opposition.

#### *Activity post election*

2.30 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 2.27–2.29 would continue to 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*

2.31 If a government loses a vote that 'this House has no confidence in His or Her Majesty's Government', it will remain in office during the government formation period of up to 14 days, until a government has secured the confidence of the House of Commons, or no government has secured such confidence and Parliament is dissolved 17 working days before the date set for the early general election. During that period the restrictions in paragraphs 2.27–2.29 would apply.

#### *Directions during a period of restrictions on government activity*

2.32 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 2.27–2.29, as appropriate, will be relevant to the application of those rules.

2.33 In normal circumstances (as set out in Chapter Ten: 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. 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 immediately by the department 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 Treasury Officer of Accounts

at the time of publication.

### *Other elections*

2.34 Some more limited restrictions on government activity also apply during other elections: to the European Parliament, the Devolved Administrations and local government. The guidance issued by the Cabinet Office for the May 2011 elections provides an example.<sup>25</sup>

## Notes

- 1 Fixed-term Parliaments Act 2011, s.1(3).
- 2 Jack M (ed.) (2011) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition. London: LexisNexis Butterworths, p. 146.
- 3 Representation of the People Act 1983, Schedule 1, paragraph 1.
- 4 Select Committee on Modernisation of the House of Commons (2007) *Revitalising the Chamber: the role of the back bench Member* (HC337). London: The Stationery Office.
- 5 Jack (ed.) *Erskine May*, pp. 150–154.
- 6 *Ibid.*, pp. 501–502.
- 7 *Ibid.*, pp. 157–162.
- 8 House of Lords, Standing Order 19.
- 9 The minimum majority for a confidence vote is 50% + 1 of those present and voting.
- 10 Rarely, a Prime Minister may resign and then be asked to form a new administration. For example, Ramsay MacDonald resigned as Prime Minister of a Labour government and was reappointed as Prime Minister of a National Government in 1931. Winston Churchill was also asked to form a new Conservative administration following the break-up of the wartime coalition government in 1945.
- 11 William IV dismissed Lord Melbourne's government that had majority support in the House of Commons.
- 12 It has been suggested in evidence to select committees that the incumbent Prime Minister's responsibility involves a duty to remain in office until it is clear who should be appointed in their place (Political and Constitutional Reform Committee (2011) *Lessons from the process of Government formation after the 2010 General Election* (HC528). London: The Stationery Office, paragraphs 16–22). Whether the responsibilities of the Prime Minister in these circumstances amount to a duty and how far they extend has been questioned, and the House of Lords Constitution Committee concluded that an incumbent Prime Minister has no duty to remain in office following an inconclusive general election until it is clear what form any alternative government might take. (House of Lords Constitution Committee (2011) *12th Report: The Cabinet Manual* (HL107). London: The Stationery Office, paragraph 61).
- 13 Margaret Thatcher's resignation statement on 22 November 1990 said that she had informed Her Majesty the Queen that she did not intend to contest the second ballot of the election for leadership of the Conservative Party and gave notice of her intention to resign as Prime Minister as soon as a new leader had been elected. She formally tendered her resignation on 28 November 1990. On 10 May 2007 Tony Blair announced his intention to resign once a new leader of the Labour Party had been elected. He formally tendered his resignation on 27 June 2007. Following the 2010 general election, which took place on 6 May, Gordon Brown resigned on 11 May, by when it was clear that David Cameron should be asked to form a government.
- 14 The Civil Service was authorised to provide: advice on the constitutional processes of government formation; factual information in relation to specific policy proposals; and facilitation of discussions and negotiations (including the provision of facilities such as meeting rooms). 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).
- 15 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* (2010), which includes detail on the composition of the Government and the application of collective responsibility. This, and *The Coalition: our programme for government* (2010), can be found at: [www.cabinetoffice.gov.uk/news/coalition-documents](http://www.cabinetoffice.gov.uk/news/coalition-documents).
- 16 See note 13.
- 17 Fixed-term Parliaments Act 2011, s.2(3).
- 18 Cabinet Office (2000) *Directory of Civil Service Guidance*, Volume 2. London: Cabinet Office, pp. 18 and 19. 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.
- 19 Fixed-term Parliaments Act 2011, s.3(1).
- 20 Jack (ed.) *Erskine May*, paragraph 145.
- 21 *Ibid.*, pp. 742–743.
- 22 Cabinet Office (May 2011) *Elections Guidance*, paragraph 3.
- 23 The most recent guidance to government departments issued in relation to a general election is Cabinet Office (2010) *Elections Guidance*.
- 24 In some previous elections this has been done through an Election Business Committee.
- 25 Cabinet Office (2011) *Elections Guidance*.

# Chapter Three

The Prime Minister is head of the 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.

This chapter covers:

- the Prime Minister
- ministers
- powers of ministers
- ministerial conduct
- the structure of government.

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

## The Prime Minister

- 3.1 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. The Prime Minister's unique position of authority also comes from support in the House of Commons. By modern convention, the Prime Minister always sits in the House of Commons.<sup>1</sup> The Prime Minister will normally be the accepted leader of a political party that commands the majority of the House of Commons. For cases where no political party has an overall majority, see Chapter Two, paragraphs 2.12–2.17.
- 3.2 The Prime Minister accepts office at a private audience with the Sovereign, at which time the appointment takes effect. 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 3.29). In his or her capacity as First Lord of the Treasury, the Prime Minister takes oaths of office under the Promissory Oaths Act 1868.<sup>2</sup>
- 3.3 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>3</sup> The *Ministerial Code* states: 'the Prime Minister is responsible for the overall organisation of the Executive and the allocation of functions between Ministers in charge of departments.'<sup>4</sup>
- 3.4 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 certain statutory powers, such as the calling of elections where there is an early election or a deferred election under the Fixed-term Parliaments Act 2011 (see the section on ministers' powers below).
- 3.5 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.

3.6 The Prime Minister has held the office of Minister for the Civil Service since that office was created in 1968, in which capacity he or she has overall responsibility for the management of most of the Civil Service (see Chapter Seven: Ministers and the Civil Service).<sup>5</sup> The Prime Minister is the minister responsible for National Security and matters affecting the Secret Intelligence Service, Security Service and GCHQ collectively, in addition to which the Home and Foreign Secretaries of State and the Secretary of State for Northern Ireland have powers granted in legislation to authorise specific operations.<sup>6</sup> The Prime Minister is also sworn as a member of the Privy Council.

## Ministers

3.7 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.

3.8 There is a convention that an individual will be a minister only if they are a Member of the House of Commons or the House of Lords, with most being Members of the House of Commons. However, there are examples of individuals being appointed as a minister in anticipation of their becoming a Member 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.<sup>7</sup>

### Senior ministers

3.9 The most senior ministers in the Government are the members of Cabinet. The Prime Minister determines who forms Cabinet, but this will always include the Chancellor of the Exchequer, the Lord Chancellor and the secretaries of state. There are no formal limits on the size of Cabinet, but there are limits on the number of ministerial salaries that can be paid, and particularly who can be paid first-tier (Cabinet-level) salaries (see paragraph 3.23).

3.10 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*

3.11 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*

3.12 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. For more about the secretaries of state, see paragraphs 3.26–3.28.

### *Junior ministers*

3.13 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 3.40–3.44 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*

3.14 The UK Law Officers are:

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

3.15 The role of the Law Officers is covered in more detail in Chapter Six.

### *Whips*

3.16 Government whips are appointed for both the House of Commons and the House of Lords. The government chief whips in the House of Commons and the House of Lords arrange the scheduling of government business, often in consultation with their opposition counterparts. Collectively, the government and 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.<sup>8</sup>

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

### *Appointment of ministers*

3.18 Senior ministers are required to take oaths of office under the Promissory Oaths Act 1868<sup>9</sup> and all Cabinet members are made Privy Counsellors.

3.19 Secretaries of state and some other ministers (for example, the Lord Privy Seal) also receive seals of office. Their appointments take effect by the delivery of those seals by the Sovereign. Others have their appointments made or confirmed by Letters Patent (for example, the Attorney General) or Royal Warrant (for example, the Paymaster General). 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 One.

### *Resignation of ministers*

3.20 Ministers may resign when they are not able to continue to accept collective responsibility, or because of issues relating to their conduct in office, or due to a personal or private matter. Where a minister resigns their post by writing to the Prime Minister, it is often the case that the exchange of letters is published.

### *Parliamentary private secretaries*

3.21 Cabinet ministers and ministers of state may appoint Parliamentary private secretaries. All appointments require the prior written approval of the Prime Minister. The Chief Whip should also be consulted and no commitments to make such appointments should be entered into until such approval is received.<sup>10</sup>

3.22 Parliamentary private secretaries are not members of the Government, although by convention they are bound by collective agreement.<sup>11</sup> Their role is to support ministers in conducting Parliamentary business.

### *Limits on ministerial numbers and salaries*

3.23 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.<sup>12</sup> 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.<sup>13</sup> Parliamentary private secretaries do not count towards the limit on House of Commons ministers or the limits on salaries.

### **Powers of ministers**

3.24 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 Ten: government finance and expenditure). Powers may be exercised by civil servants on behalf of ministers (see paragraphs 3.40–3.44).

### *Powers granted by Parliament*

- 3.25 Many Acts of Parliament grant powers to ministers or place statutory duties on ministers.<sup>14</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>15</sup> Statute also provides ministers with emergency powers, in particular that emergency regulations could be made by Order in Council or by ministers as a last resort where existing legislation is insufficient to respond in the most effective way.<sup>16</sup>
- 3.26 Most statutory powers and duties are conferred on the Secretary of State; these may be exercised or complied with by any one of the secretaries of state.<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.
- 3.27 It is also the well-established practice for each secretary of state to be allocated responsibility by the Prime Minister for a particular department (for example health, foreign affairs, defence, transport, education etc.) and, accordingly, for each Secretary of State, in practice, to exercise only those functions that are within that department. It is for the Prime Minister to determine the various departments (see paragraphs 3.55–3.59 on machinery of government changes).
- 3.28 Most secretaries of state are incorporated as ‘corporations sole’. This gives the minister a separate legal personality. This is administratively convenient, for example as regards the ownership of property, because it facilitates continuity when the office-holder changes.
- 3.29 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.
- 3.30 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 4.16 in Chapter Four sets out the circumstances in which collective agreement applies, and the exceptions to collective agreement are at paragraphs 4.23–4.25 of that chapter.

### *Inherent or ‘common law’ powers*

- 3.31 Ministers’ functions are not limited to those authorised by statute. A minister may, as an agent of the Crown, exercise any powers which the Crown may exercise, except insofar as ministers are precluded from doing so by statute and subject to the fact that a minister will only be able to pay for what he or she does if Parliament votes him or her the money. This is a summary of what is known as the Ram doctrine.<sup>19</sup>
- 3.32 The powers that a minister may exercise include any of the legal powers of an individual, for example to enter into contracts, convey property or make extra-statutory payments. As more of ministers’ powers have been codified in legislation, the extent of inherent powers has been correspondingly reduced.

### *Prerogative powers*

- 3.33 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 (see paragraph 1.5).
- 3.34 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; grant assent to legislation; and prorogue Parliament.
  - Prerogative executive powers: these are the powers that are exercised on the Sovereign's behalf by ministers. Most prerogative powers fall into this category. They include powers in relation to foreign affairs, to deploy the Armed Forces and to grant mercy. The limited prerogative powers that are relevant to devolved functions are exercised by ministers in the Devolved Administrations.
- 3.35 The scope of the prerogative is affected both by the common law (as developed by the courts) and by statutes (as enacted by Parliament) and accordingly has changed over time.<sup>20</sup>
- 3.36 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.<sup>21</sup> 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>22</sup>

- 3.37 Over time, legislation has also clarified and limited the extent of the prerogative, including in some cases abolishing it.<sup>23</sup> Some Acts passed in recent years, although not primarily aimed at reforming the prerogative, have 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 in practice covers the majority of situations where it might previously have been appropriate to use the prerogative.
- 3.38 Departmental civil servants provide advice to ministers on the extent of their powers. In the most complex cases, reference can be made to the Law Officers (see Chapter Six).

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

- 3.39 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 6.10–6.13 in Chapter Six.

### *Exercise of ministers' powers*

- 3.40 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.
- 3.41 The principle derives from the case *Carltona Ltd v Commissioners of Works*.<sup>24</sup> 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.

- 3.42 Although decisions are treated as decisions of the minister, the Carltona principle can 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 person without express or implied statutory authority.
- 3.43 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.
- 3.44 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 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.
- 3.45 Ministers remain accountable to Parliament for the decisions made under their powers.<sup>25</sup>

### Ministerial conduct

- 3.46 The *Ministerial Code*, issued by the Prime Minister of the day, sets out the principles underpinning the standards of conduct expected of ministers. Ministers of the Crown are expected to behave in a way that upholds the highest standards of propriety, including ensuring that no conflict arises or appears to arise, between their public duties and their private interests.<sup>26</sup> Ministers are under an overarching duty to 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.<sup>27</sup>

- 3.47 On leaving office, former ministers 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 *Ministerial Code* makes it clear that former ministers must abide by the advice of the Committee. Former ministers are currently prohibited from lobbying government for two years.<sup>28</sup>

### The structure of government

#### *Allocation of functions to ministers*

- 3.48 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 Cabinet and the Government are structured in the most effective way.

#### *Government departments*

- 3.49 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.
- 3.50 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 conferred specifically on that Secretary of State by legislation. Other ministerial departments are headed by another senior minister (for example the Chancellor of the Exchequer in the case of the Treasury).
- 3.51 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*

3.52 Arm's-length bodies are public bodies established to carry out specific central government functions at arm's length from ministers. There are three main types of arm's-length body:<sup>29</sup>

- 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 are bodies that have a role in the processes of national government, but are not government departments or part of one, and operate to a greater or lesser extent at arm's length from ministers. They are usually set up as separate legal entities, such as statutory bodies, and employ their own staff, who are not civil servants.

3.53 The role and responsibilities of ministers in relation to individual arm's-length bodies are usually set out in framework documents.<sup>30</sup>

3.54 Existing arm's-length bodies are regularly reviewed and proposals for new arm's-length bodies must be approved by the Cabinet Office.

### *Machinery of government changes*

3.55 The Prime Minister has responsibility for machinery of government changes.<sup>31</sup> The Prime Minister's written approval must be sought where it is proposed by ministers 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; or
- between junior ministers within a department, when a change in ministerial titles is involved.<sup>32</sup>

3.56 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 ministerial 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.

3.57 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, usually where there is a transfer of statutory functions to or from a specific departmental minister such as the Lord Chancellor, it will not be possible to implement the change until the order is made. Where the change is a reallocation between secretaries of state of functions expressed to be exercisable by 'the Secretary 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 a ministerial department. The Office of the Parliamentary Counsel is responsible for drafting transfer of functions orders.

3.58 The Cabinet Secretary is responsible for advising the Prime Minister on machinery of government issues. Departments involved in machinery of government changes, or considering proposing such changes to the Prime Minister, should consult the Cabinet Secretariat for advice.

3.59 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 on the Cabinet Office website and arranges for it to be placed 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.

## Notes

- 1 Prime Ministers in previous centuries have sat in the House of Lords, for example the Marquess of Salisbury who was a member of the House of Lords and was Prime Minister for periods in the late 19th century and early 20th century.
- 2 Promissory Oaths Act 1868, s.5.
- 3 For example, under the *Coalition Agreement for Stability and Reform* (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.
- 4 Cabinet Office (2010) *Ministerial Code*, paragraph 4.1.
- 5 Constitutional Reform and Governance Act 2010, s.3.
- 6 Security Service Act 1989; Regulation of Investigatory Powers Act 2000; Intelligence Services Act 1994; further information is available at: [www.sis.gov.uk/about-us/sis-in-government.html](http://www.sis.gov.uk/about-us/sis-in-government.html).
- 7 Patrick Gordon Walker was appointed as Foreign Secretary in October 1964 after losing his Parliamentary seat in the general election. He resigned in January 1965 after being defeated in the Leyton by-election. Before devolution, the Solicitor General for Scotland was often not a Member of the House of Commons or the House of Lords.
- 8 For more information on whips, see: House of Commons Library (2008) *The Whip's Office*, Standard Note SN/PC/02829.
- 9 Promissory Oaths Act 1868, s.5.
- 10 Cabinet Office, *Ministerial Code*, paragraph 3.6.
- 11 *Ibid.*, paragraph 3.9.
- 12 Ministerial and Other Salaries Act 1975, Schedule 1.
- 13 House of Commons Disqualification Act 1975, Schedule 2.
- 14 Examples of provisions imposing duties on a minister are sections 5 and 6 of the Constitutional Reform and Governance Act 2010, which require the Minister for the Civil Service to publish codes of conduct for the Civil Service and Diplomatic Service, and section 7 of that Act, which imposes requirements as to their content. An example of a provision conferring a power on a minister is section 19 of the Companies Act 2006, which gives the Secretary of State power to prescribe model articles of association for companies.
- 15 HM Treasury (2011) *Managing Public Money*, Annex 2.1; Public Accounts Committee Concordat 1932.
- 16 Civil Contingencies Act 2004, ss.19–31.
- 17 '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).
- 18 'The Treasury' is defined in Schedule 1 to the Interpretation Act 1978 as meaning 'the Commissioners of Her Majesty's Treasury'.
- 19 The Ram doctrine is set out in a memorandum dated 2 November 1945 from Granville Ram, *Ministers of the Crown (Transfer of Functions)*.
- 20 'The King hath no prerogative, but that which the law of the land allows him'; see: the *Case of Proclamations* [1610] EWHC KB J22, 77 ER 1352.
- 21 *British Broadcasting Corporation v Johns* [1965] Ch 32 (CA).
- 22 *R v Secretary of State for the Home Department, ex parte Northumbria Police Authority* [1989] QB 26 (CA).
- 23 For example, the Bill of Rights 1689 put beyond doubt that there was no prerogative power to levy taxes.
- 24 *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 (CA).
- 25 Cabinet Office, *Ministerial Code*, paragraph 1.2(b). An earlier version of the Code, expressing substantially the same principles, was endorsed by a Resolution of the House of Commons of 19 March 1997 CHC Deb 292 cols. 1046–1047.
- 26 Cabinet Office, *Ministerial Code*, paragraphs 1.1–1.2.
- 27 *Ibid.*, Annex A.
- 28 *Ibid.*, paragraph 7.25.
- 29 For guidance on establishing, managing, reviewing and abolishing arm's-length bodies, see: [www.cabinetoffice.gov.uk/content/public-bodies-and-appointments](http://www.cabinetoffice.gov.uk/content/public-bodies-and-appointments).
- 30 Guidance on framework documents is published in HM Treasury *Managing Public Money* (2007), Chapter 7, Section 7.7.
- 31 Cabinet Office (2010) *Machinery of Government Changes*, p. 3.
- 32 Cabinet Office, *Ministerial Code*, paragraph 4.3.

# Chapter Four

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 monitoring progress. By convention, Cabinet and Cabinet committees take decisions which are binding on members of the Government. Cabinet and Cabinet committees are composed of government ministers, who are then accountable to Parliament for any collective decisions made. 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.

This chapter covers:

- principles of collective Cabinet government
- Cabinet
- political Cabinet
- Cabinet committees
- business of Cabinet and Cabinet committees
- procedures of Cabinet and Cabinet committees
- the Cabinet Secretariat
- the Cabinet Secretary.

# Collective Cabinet decision-making

## Principles of collective Cabinet government

- 4.1 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. Cabinet and its committees are established by convention but it is a matter for the incumbent government to determine the specific arrangements for collective decision-making.
- 4.2 The Cabinet system of government is based on the principle of collective responsibility.<sup>1</sup> All government ministers are bound by the collective decisions of Cabinet, save where it is explicitly set aside,<sup>2</sup> and carry joint responsibility for all the Government's policies and decisions.
- 4.3 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.

- 4.4 The *Ministerial Code* states: '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.'<sup>3</sup> Chapter Eleven, paragraphs 11.18–11.20 provide more detail on the confidentiality of Cabinet papers and minutes and the application of the Freedom of Information Act 2000.

## Cabinet

- 4.5 Cabinet is chaired by the Prime Minister, who also determines its membership.<sup>4</sup> It will usually comprise senior ministers (see Chapter Three, paragraphs 3.9 and 3.10 on those ministers who are likely to be members of Cabinet). The Prime Minister may arrange for other ministers to attend Cabinet, either on a regular basis or for particular business (for example, the Attorney General to give legal advice). All members of Cabinet as Privy Counsellors are bound by the Privy Council Oath.<sup>5</sup> The full list of Cabinet Members is available on the Cabinet Office website.<sup>6</sup>

- 4.6 Cabinet is established by convention and does not have specific terms of reference or powers laid down in legislation.
- 4.7 The Prime Minister determines and regulates the procedures of Cabinet, including when and where meetings take place. Cabinet currently 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 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 the decisions made. For more information, see paragraphs 4.34 and 4.35 on Cabinet minutes and paragraphs 4.51 and 4.52 on the Cabinet Secretariat.

### Political Cabinet

- 4.8 At the discretion of the Prime Minister, members of 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 are not attended by officials and the conclusions of the discussion are not recorded in minutes.

### Cabinet committees

#### *Role of Cabinet committees*

- 4.9 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*

- 4.10 The Prime Minister decides – with the advice of the Cabinet Secretary – the overall structure of the Cabinet committee system, including the chair, deputy chair (if any),<sup>7</sup> membership and the terms of

reference of each Cabinet committee.<sup>8</sup> Details are usually announced biannually in a written ministerial statement in Parliament.

- 4.11 Committees are usually established to consider a particular area of government business, such as home or domestic affairs, or national security. Where appropriate, sub-committees may be established to consider detailed issues and report as necessary to the full committee. Ad hoc or miscellaneous committees may also be established by the Prime Minister to carry out a particular task, usually over a limited timescale. For example, the National Security Council and its sub-committees were established in May 2010 and charged with overseeing and co-ordinating all aspects of Britain's security, including terrorism, other security threats, hazards, resilience, intelligence policy and the performance and resources of the security and intelligence agencies.
- 4.12 The committee structure varies depending on the requirements of the incumbent government. A list of the current committees, their terms of reference and the ministers who sit on them is available from the Cabinet Office website.<sup>9</sup>

#### *National emergencies*

- 4.13 The Cabinet Office Briefing Room (COBR) is the mechanism for agreeing the central government response to major emergencies which have international, national or multi-regional impact.<sup>10</sup> Meetings at COBR are in effect Cabinet committee meetings, although there is no fixed membership, and they can meet at ministerial or official level depending on the issue under consideration. In general the chair will be taken by the secretary of state of the government department with lead responsibility for the particular issue being considered.<sup>11</sup>

### *Official committees*

- 4.14 Official committees can be established to support Cabinet committees.<sup>12</sup> 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.
- 4.15 Official committees may be convened for a variety of purposes, but would normally meet in advance of a Cabinet committee. This would enable them to consider the issues that would need to be covered in Cabinet committee papers and to help the Cabinet Secretariat identify points that are likely to be raised so that it can brief the chair of the Cabinet committee effectively.

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

#### *Issues for collective agreement*

- 4.16 Collective agreement can be sought at a Cabinet or Cabinet committee meeting or through ministerial correspondence.
- 4.17 No definitive criteria can be given for issues which engage collective responsibility and the Cabinet Secretariat can advise where departments are unsure.<sup>13</sup> 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; and/or
  - there is an unresolved conflict between departments.<sup>14</sup>

#### *Issues for Cabinet*

- 4.18 There are no set rules about the issues that should be considered by Cabinet itself and it is ultimately for the Prime Minister to decide the agenda, on the advice of the Cabinet Secretary. Cabinet and Cabinet committees can all take collective decisions and the level of committee at which a decision is taken should not be disclosed.<sup>15</sup> However, the following is an indication

of the kind of issues that would normally considered by Cabinet:

- decisions to take military action;
- 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; and
- national emergencies, including terrorism.

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

#### *Legislation*

- 4.20 All legislative proposals relating to primary legislation require clearance from the Cabinet committee that is responsible for Parliamentary business and legislation, in addition to clearance through the relevant policy committee.<sup>16</sup> 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.
- 4.21 The role of the Cabinet committee responsible for primary legislation differs from that of a policy Cabinet committee: it is concerned with the preparation and management of the legislative programme, rather than with agreeing government policy. The committee aims to ensure that the content of the legislative

programme as a whole implements the Government's priorities, and that the passage of bills through Parliament can be successfully managed.

- 4.22 More information on clearing legislative proposals can be found on the Cabinet Office website.<sup>17</sup>

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

- 4.23 The Chancellor of the Exchequer's Budget and any other Budget statement are disclosed to Cabinet at a meeting on the morning of the day on which they are presented to the House of Commons, although the content of the proposal will often have been discussed with relevant ministers in advance of the meeting. The expectation is that the proposals will be accepted by Cabinet without amendment, although the Chancellor may, if necessary, make amendments.
- 4.24 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.
- 4.25 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 when weighing the public interest in a prosecution.<sup>18</sup> This may happen, for example, where there is a risk that a prosecution may endanger national security, international relations or the safety of the Armed Forces abroad. This is known as a Shawcross exercise.<sup>19</sup> However, the decision whether or not to prosecute remains a matter for the prosecuting authority.

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

#### *Agenda*

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

committees, the agenda is agreed by the relevant chair.

- 4.27 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.<sup>20</sup>

#### *Papers and presentations*

- 4.28 The Cabinet Secretariat is responsible for setting standards for the form and content of papers and presentations.<sup>21</sup>
- 4.29 For each agenda item, the lead minister, or ministers, will normally submit 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.
- 4.30 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 be clear. Papers should explain any public expenditure implications. Where a paper does not reach the appropriate standard, the Cabinet Secretariat may refuse the paper, substitute their own note, or produce a cover sheet to the paper, highlighting the key issues for ministerial consideration.<sup>22</sup>
- 4.31 Final papers should be circulated the Friday before a Cabinet meeting and at least 48 hours before a Cabinet 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*

- 4.32 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.<sup>23</sup> 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.

- 4.33 Usually where critical decisions have legal implications they are considered after discussions with the Law Officers.<sup>24</sup> This includes issues that have the potential to lead to legal challenge or that might impact on the handling of government litigation.

#### *Minutes*

- 4.34 Minutes are taken for each Cabinet and Cabinet committee meeting, forming part of the historic record of government. They record the main points made in discussion and the Cabinet or Cabinet committee conclusions as summed up by the chair. To help preserve the principle of collective responsibility, most contributions by ministers are unattributed. However, points made by the minister introducing the item and the chair's summing-up are generally attributed.
- 4.35 It is the responsibility of the Cabinet Secretariat to write and circulate the minutes to members of Cabinet or the relevant Cabinet committee. This should be done within 24 hours of the meeting. Minutes are not cleared with the chair of Cabinet or the Cabinet committee in advance of circulation. If a minister has a factual correction to make, the Cabinet Secretariat should be informed within 24 hours of circulation of the minutes.<sup>25</sup>

#### *Attendance of ministers*

- 4.36 The *Ministerial Code* states that Cabinet and Cabinet committee meetings take precedence over all other ministerial business apart from the Privy Council, although it is understood that ministers may sometimes have to be absent for reasons of Parliamentary business.<sup>26</sup>

4.37 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>27</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.

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

#### *Attendance of officials*

- 4.39 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.
- 4.40 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 accompanied by a private secretary. This invitation also currently extends to the Deputy Prime Minister's office.
- 4.41 Where necessary, other 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*

- 4.42 There is no set quorum for Cabinet and Cabinet committee meetings. The decision to proceed with a meeting is made by the chair of the Cabinet committee, on the advice of the Cabinet Secretariat.

#### *Implementation of decisions*

- 4.43 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*

- 4.44 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.<sup>28</sup>
- 4.45 Ministers seeking collective agreement should write to the chair of the relevant Cabinet committee or, exceptionally, to the Prime Minister as chair of Cabinet. 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).
- 4.46 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.
- 4.47 Once all responses have been received from members of the Cabinet committee, the chair will (on advice from the Cabinet Secretariat) write to the minister confirming whether collective agreement has been reached or not, and setting out any conditions to that agreement.
- 4.48 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.

### *The Devolved Administrations*

- 4.49 Ministers should not copy Cabinet committee correspondence to the Devolved Administrations as they are separate administrations and not subject to the Government's collective responsibility. Consideration should be given to writing separately where they have an interest.<sup>29</sup> Exceptionally, with the consent of the relevant chair, ministers from the Devolved Administrations may be invited to attend meetings. One such exception is Cabinet committee meetings which deal with an emergency response requiring input from both the Government and one or more of the Devolved Administrations.

- 4.50 Formal discussions of policy issues with the Devolved Administrations take place through the Joint Ministerial Committee (JMC).<sup>30</sup> For more information on devolution, see Chapter Eight.

### **The Cabinet Secretariat**

- 4.51 The Cabinet Secretariat exists to support the Prime Minister, and currently the Deputy Prime Minister, 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.
- 4.52 The Cabinet Secretariat reports to the Prime Minister, the Deputy Prime Minister and other ministers who chair Cabinet committees.<sup>31</sup> The Cabinet Secretariat prepares the agenda of Cabinet committee meetings, with the agreement of the chair; it also provides them with advice and support in their functions as chair; and it issues the minutes of the committees.

### **The Cabinet Secretary**

- 4.53 The Cabinet Secretary is the head of the Cabinet Secretariat.<sup>32</sup> The Cabinet Secretary is appointed by the Prime Minister on the advice of the retiring Cabinet Secretary and the First Civil Service Commissioner.
- 4.54 The Cabinet Secretary, unless unavoidably absent, attends all meetings of Cabinet and is responsible for the smooth running of Cabinet meetings and for preparing records of its discussions and decisions. This includes responsibility for advising the Prime Minister on all questions connected with the appointment and organisation of Cabinet committees, including membership and terms of reference.

## Notes

- 1 Cabinet Office (2010) *Ministerial Code*, paragraph 2.3.
- 2 For example, HM Government (2010) *The Coalition: our programme for government* sets out a number of areas where collective agreement is explicitly set aside, for example, in relation to the referendum on the alternative vote, p. 27, and university funding, p. 32.
- 3 Cabinet Office, *Ministerial Code*, paragraph 2.1.
- 4 Ministerial selection may be subject to consultation in the event of a coalition government. See: Cabinet Office (2010) *Coalition Agreement for Stability and Reform*, paragraph 3.1.
- 5 A copy of the Oath can be found at: <http://privycouncil.independent.gov.uk/wp-content/uploads/2011/02/privy-counsellors-oath.doc>.
- 6 [www.cabinetoffice.gov.uk/content/list-government-departments-and-ministers](http://www.cabinetoffice.gov.uk/content/list-government-departments-and-ministers).
- 7 Under the *Coalition Agreement for Stability and Reform*, paragraph 3.5, each Cabinet committee has a deputy chair who is a member of the other political party to that of the chair. Both the chair and the deputy chair have the right to refer an unresolved issue to the Coalition Committee.
- 8 The *Coalition Agreement for Stability and Reform*, paragraph 3.1, states that the Prime Minister has agreed, and will continue to agree the establishment of Cabinet committees, appointment of members and determination of their terms of reference with the Deputy Prime Minister.
- 9 Cabinet Office (2010) *Cabinet Committee System*.
- 10 Cabinet Office (2010) *Responding to Emergencies: The UK Central Government Response. Concept of Operations*.
- 11 Cabinet Office, *Cabinet Committee System*, see: National Security Council (Threats, Resilience and Contingencies).
- 12 Cabinet Office (2010) *Guide to Cabinet and Cabinet Committees*, pp. 17–18.
- 13 Cabinet Office, *Ministerial Code*, paragraph 2.4.
- 14 Cabinet Office, *Guide to Cabinet and Cabinet Committees*, pp. 6–8.
- 15 Cabinet Office, *Ministerial Code*, paragraph 2.3.
- 16 Cabinet Office, *Guide to Cabinet and Cabinet Committees*, p. 10.
- 17 Cabinet Office (2011) *Guide to Making Legislation*.
- 18 Examples of prosecuting authorities are the Crown Prosecution Service, the Serious Fraud Office and the Public Prosecution Service (Northern Ireland).
- 19 In 1951 Sir Hartley Shawcross, who was the then Attorney General, 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. See: Hansard, HC vol. 483, cols 679–90 (29 January 1951).
- 20 Cabinet Office, *Guide to Cabinet and Cabinet Committees*, p. 17.
- 21 *Ibid.*, pp. 18–19.
- 22 *Ibid.*, p. 19.
- 23 *Ibid.*, p. 8.
- 24 Cabinet Office, *Ministerial Code*, paragraphs 2.10 and 2.12.
- 25 Cabinet Office, *Guide to Cabinet and Cabinet Committees*, p. 20.
- 26 Cabinet Office, *Ministerial Code*, paragraph 2.5.
- 27 A minister may, with the agreement of the chair, deputise to a member of the same party (see Cabinet Office, *Guide to Cabinet and Cabinet Committees*, p. 4).
- 28 Cabinet Office, *Guide to Cabinet and Cabinet Committees*, pp. 8 and 12–16.
- 29 *Ibid.*, pp. 13–14.
- 30 Cabinet Office (2011) *Devolution: Memorandum of Understanding and Supplementary Agreements*, paragraphs 23–26.
- 31 Cabinet Office, *Guide to Cabinet and Cabinet Committees*, p. 5.
- 32 The offices of Cabinet Secretary and Head of the Home Civil Service are currently held by the same civil servant and have been since 1983. However, it was announced on 11 October 2011 that, from January 2012, those two posts will be held by two different civil servants.

# Chapter Five

Parliament is central to the democracy of the United Kingdom. It is through Parliament that ministers are accountable to the people. 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.

This chapter covers:

- the House of Commons and the House of Lords
- core principles
- government business
- scrutiny of the Government
- legislation
- public appointments
- the Parliamentary Commissioner for Administration
- the Comptroller and Auditor General and the National Audit Office.

# The Executive and Parliament

## The House of Commons and the House of Lords

- 5.1 Members of the House of Commons are directly elected by universal suffrage of the adult population. Most Members of the House of Lords are appointed for life by the Sovereign, on the advice of the Prime Minister. In addition, 92 hereditary peers are Members of the House (15 office-holders elected by the whole House, 75 Members elected by their party or group within the House, and the holders of the offices of Lord Great Chamberlain and Earl Marshal). The two archbishops, and 24 bishops, of the Church of England are also Members.
- 5.2 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. The two Houses of Parliament acknowledge various conventions governing the relationship between them, including in relation to primacy of the House of Commons, financial privilege and the operation of the Salisbury-Addison convention.<sup>1</sup>
- 5.3 The House of Commons claims ancient rights and privileges over the House of Lords in financial matters and, under the Parliament Acts 1911 and 1949, a Money Bill which has been passed by the House of Commons receives Royal Assent even if it has not been passed by the House of Lords. The final decision on what constitutes a Money Bill is made by the Speaker of the House of Commons, in accordance with the provision of the Parliament Act 1911.<sup>2</sup> The financial powers of the House of Lords are also limited by the financial privilege of the House of Commons. The role of the House of Lords in relation to taxation and expenditure is to agree, not to initiate or amend. However, until the House of Commons invokes its financial privileges in respect of a particular piece of legislation, the House of Lords is free to act as it thinks fit (unless an amendment is a prima facie material and intolerable infringement of privilege).<sup>3</sup>
- 5.4 Under the Parliament Acts, if the House of Lords rejects any bill passed by the House of Commons (other than a Money Bill or a bill containing any provision to extend the maximum duration of Parliament beyond five years) and the House of Commons passes an identical bill in the following session of Parliament and sends it to the House of Lords more than one month before the end of that session, then it receives Royal Assent without being passed by the House of Lords, unless the House of Commons directs to the contrary. For the purposes of the Acts, a bill is deemed to be rejected by the House of Lords if it is not passed by that House either without amendment or with such amendments only as may be agreed by both Houses.

One year must elapse between the second reading of the bill in the first session and the bill being passed by the House of Commons in the second session. The bill must be passed the second time in an identical form to the one in which it was passed the first time, containing only such amendments that represent any amendments which have been made by the House of Lords in the former bill in the preceding session, or which are essential to allow for the passage of time. The House of Commons may suggest further amendments to the House of Lords which, if the House of Lords agrees to them, are treated as if they were House of Lords amendments to which the House of Commons had agreed.<sup>4</sup>

- 5.5 Only the House of Commons can trigger an early general election by either passing a motion for an early general election, with the support of at least two-thirds of all MPs, or where there has been a vote of no confidence in the Government and 14 days have elapsed without the House of Commons passing a motion of confidence in the Government. The form for such motions is set out in the Fixed-term Parliaments Act 2011.<sup>5</sup> See Chapter Two for more on confidence.

### Core principles

- 5.6 In all their dealings with Parliament, ministers should be governed by the following principles as set out in the *Ministerial Code*:<sup>6</sup>
- 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 legislation, including 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

- 5.7 Government business takes precedence at most sittings of the House of Commons, with the exception of 60 days in each session which are allocated for opposition business, backbench business and Private Members' Bills.<sup>7</sup> The subjects of debates in Westminster Hall are usually determined by backbenchers through a ballot system, and through the Liaison Committee<sup>8</sup> and the Backbench Business Committee.<sup>9</sup> This means that, in an average year, the Government has the equivalent of around 100 days at its disposal in the House of Commons.
- 5.8 In the House of Lords, the Government Chief Whip is responsible for the detailed arrangement of government business and the business of individual sittings. Government business is arranged by the Government Chief Whip through the 'usual channels'.<sup>10</sup>
- 5.9 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 of Lords 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 certain internal or domestic business, even though it is not government business.<sup>11</sup>
- 5.10 The House of Commons Backbench Business Committee now has responsibility for scheduling some of the House's domestic business that was, before the 2010 Parliament, the responsibility of the Leader of the House of Commons. The Commons Leader is also an ex-officio

member of various statutory bodies related to the House of Commons, 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*

- 5.11 Scrutiny of the Executive is one of the core functions of Parliament.
- 5.12 Members of both Houses can table questions – for oral or written answer – to ministers. In response to these, ministers are obliged to explain and account for the work, policy decisions and actions of their departments.<sup>12</sup>
- 5.13 Questions for oral answer in the House of Commons are tabled for answer by specific departments on specified days, according to a rota determined by the Government. In the House of 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. Additionally, the Speaker of either House may also allow for any urgent questions to be made at his or her discretion (see paragraph 5.16 on urgent questions in the House of Commons and private notice questions in the House of Lords).

### *Evidence to committees*

- 5.14 Each House appoints select committees to scrutinise the work of government and hold it to account. In the House of Commons, a public bill committee may also take written and oral evidence on the bill that is before it.<sup>13</sup> 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.<sup>14</sup> Chapter Seven: Ministers and the Civil Service sets out in more detail how these rules apply to civil servants.

### *Statements to Parliament*

- 5.15 When Parliament is in session the most important announcements of government policy should, in the first instance, be made to Parliament.<sup>15</sup>
- 5.16 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 or the House of Lords, decides whether or not a statement is made. A copy of the text of an oral statement is usually given to the Opposition shortly before it is made.<sup>16</sup> 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 (House of Commons) and the Printed Paper Office (House of Lords) 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<sup>17</sup> to discuss the issue in more detail to ensure appropriate scrutiny. Private notice questions may be asked in the House of Lords and the decision over whether or not the question is of sufficient urgency to warrant immediate reply lies with the Lord Speaker.<sup>18</sup>
- 5.17 Announcements may also be accompanied by production of a paper presented to Parliament and published as a Command Paper.

## Legislation<sup>19</sup>

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

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

5.19 Following a State Opening, the Government's legislative programme is then debated by both Houses, usually for four or five days. In the debates, ministers explain and defend the proposed legislation of the Government. Topics for debate on each day are agreed by the usual channels.<sup>20</sup>

### *Passage of legislation*

5.20 Every government bill goes through the following stages in each House.<sup>21</sup> It is presented and read a first time; this is a formality which enables the bill to be published. The first substantive proceeding is the second reading, which is a debate on the principles of the bill. The debate is opened by a minister (normally the Secretary of State in the House of Commons). In the House of Commons the closing speech is usually given by another minister but the same minister frequently closes the debate in the House of Lords.

5.21 In the House of Commons, the committee stage of the bill is then usually dealt with by a public bill committee or sometimes by a committee of the whole House (see paragraph 5.22). The committee considers each clause of the bill in detail and may make amendments. Committee stage in the House of Commons is usually handled by a junior minister and the demands on the minister's time can be very significant, with a public bill committee typically meeting four times a week. Bills sent to a public bill committee in the House of Commons then return to the floor of the House, where they can be further amended on consideration (also known as Report stage). They then receive a final, third reading before being sent to the House of Lords. If either House amends the bill, then the other House only considers the amendments which were sent back, not the bill as a whole. This process may go through several iterations before agreement is reached between the two Houses.

5.22 Although the stages are the same in each House, there are three significant differences. In the House of Commons, proceedings on bills may be timetabled by means of a programme order.<sup>22</sup> No equivalent procedure is currently used in the House of Lords. 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 normally considered by a committee of the whole House (which meets in the Chamber) or a grand committee, which any peer may attend. However, bills with significant constitutional implications are in the House of Commons, by convention, taken in a committee of the whole House rather than in a public bill committee. The House of Lords also allows significant amendments to be tabled at third reading, whereas the House of Commons does not.

5.23 The Government has made commitments to Parliament about the supporting material which is to be provided in relation to each bill, much of which is contained in the Explanatory Notes of the Cabinet Office *Guide to Making Legislation*.<sup>23</sup>

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

5.24 Ministers should consider publishing bills in draft for pre-legislative scrutiny, where it is appropriate to do so.<sup>24</sup> Reports from the Commons Liaison Committee and the Lords Constitution Committee have identified this as good practice.<sup>25</sup> Most draft bills are considered either by select committees in the House of Commons or by a joint committee of both Houses. The decision to establish a joint committee is formally taken by both Houses, on a proposal from the Leader of the House. Whether or not a joint committee is established, any committee of either House may choose to examine a draft bill. Once a committee has scrutinised and reported on the draft bill, the Government considers the committee's recommendations and may make 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.

5.25 Once legislation has been passed, the Government has undertaken that ministers will (subject to some exceptions) publish

a post-legislative scrutiny memorandum, within three to five years of Royal Assent.<sup>26</sup> This includes a preliminary assessment of how the Act is working in practice, relative to its original objectives. The relevant select committee of the House of Commons may use the memorandum to decide whether or not to carry out a fuller post-legislative inquiry. Post-legislative scrutiny may also be conducted by Lords committees or a joint committee.<sup>27</sup>

- 5.26 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, carried out by the department with responsibility for the Act.<sup>28</sup>

### *Secondary legislation*

- 5.27 Many Acts of Parliament delegate to ministers powers to make more detailed legal provision. Several thousand Statutory Instruments – also known as delegated, or secondary, legislation – are made each year.<sup>29</sup> 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.
- 5.28 Much secondary legislation is made without being subject to any Parliamentary proceedings; it is simply approved and signed by the relevant minister. 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 either House within 40 days of being laid. These Instruments are not routinely subject to debate in the House of Commons, but if a debate is granted then a minister will need to reply. In the House of Lords, negative instruments are debated fairly regularly. 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 House of Commons this usually takes place in a committee.<sup>30</sup> The minister will speak in the debate, whether in committee or on the floor of the House.

5.29 Acts can also delegate legislative power to persons other than ministers. For example, Finance Acts sometimes delegate powers to make additional provision about taxation to the Commissioners for Her Majesty's Revenue and Customs. Other Acts delegate rule-making powers in particular areas, for example to Ofcom the communications regulator, or to committees in relation to procedural rules of courts or tribunals.

- 5.30 A power in an Act which enables primary legislation to be amended or repealed by secondary legislation (with or without further Parliamentary scrutiny) is often described as a 'Henry VIII power'. Questions as to whether it is appropriate for Parliament to confer particular Henry VIII powers, and questions as to the Parliamentary procedure appropriate for instruments made in the exercise of such powers, often arise during the passage of a bill. Such questions are a particular concern of the House of Lords Delegated Powers and Regulatory Reform Committee and Constitution Committee.<sup>31</sup>

### *The Budget and financial procedure*

- 5.31 The Budget, which sets out the Government's taxation plans, is delivered by the Chancellor of the Exchequer, usually in March. Following his or her 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 increase the rates of any existing taxes, and to authorise any changes to tax law.
- 5.32 These motions, when passed, are known as the Budget Resolutions. The Resolutions determine the scope of the Finance Bill, which is formally introduced as soon as they are passed. The Finance Bill is then subject to the normal legislative process of the House of Commons, although committal is usually split between a public bill committee and a committee of the whole House. The House of Lords does not amend Finance Bills, but does debate them on second reading, with their subsequent stages being taken formally.<sup>32</sup>

- 5.33 All government expenditure must be authorised by Parliament.<sup>33</sup> Ministers submit requests for expenditure to Parliament via the Treasury, in the form of Supply Estimates. The House of Commons approves these requests and the House of 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.
- 5.34 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.
- 5.35 For more information on government finance and expenditure, see Chapter Ten.

#### *Military action*

- 5.36 Since the Second World War, the Government has notified the House of Commons of significant military action, either before or after the event, by means of a statement and has in some cases followed this with a debate on a motion for the adjournment of the House.<sup>34</sup>
- 5.37 In the two most recent examples of significant military action, in Iraq and Libya, Parliament has been given the opportunity for a substantive debate. Debates took place in Parliament shortly before military action in Iraq began in 2003. In relation to Libya, the Prime Minister made a statement in the House of Commons on 18 March 2011 in advance of military action, which was followed by a government motion for debate on 21 March, expressed in terms that the House 'supports Her Majesty's Government [...] in the taking of all necessary measures to protect civilians and civilian-populated areas'.<sup>35</sup>
- 5.38 In 2011, the Government acknowledged<sup>36</sup> that a convention had developed in Parliament that before troops were committed the House of Commons should have an opportunity to debate the matter and said that it proposed to observe that convention except when there was an emergency and such action would not be appropriate.

#### **Public appointments**

- 5.39 Select committees of the House of Commons have a role in scrutinising certain key public appointments.<sup>37</sup> 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 views of the committee are almost invariably non-binding, but the Government has agreed that ministers should consider the committee's report before deciding whether or not to appoint the candidate.<sup>38</sup> Pre-appointment hearings only apply to new appointments; however, select committees already take evidence from serving post-holders as part of their continuing scrutiny of public bodies and public appointments.<sup>39</sup>

#### **The Parliamentary Commissioner for Administration**

- 5.40 The Parliamentary Commissioner for Administration,<sup>40</sup> known as the Parliamentary Ombudsman, is an officer of the House of Commons appointed by the Crown and is independent of the Government. In recognition of the Ombudsman's relationship with Parliament, the House now leads on the recruitment to the role. His or her powers and responsibilities are set out in the Parliamentary Commissioner Act 1967.
- 5.41 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>41</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. The Ombudsman's*

*Principles* outline the approach that public bodies should adopt when delivering good administration and customer service, and how to respond when things go wrong.

### **The Comptroller and Auditor General and the National Audit Office**

- 5.42 The C&AG audits central government accounts on behalf of Parliament and reports on the value for money achieved by government projects and programmes. The audit and inspection rights are vested in the C&AG, who is an officer of the House 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. Operating under the Budget Responsibility and National Audit Act 2011, the NAO is a corporate body with its own governance structure, constitution and functions, which include providing resources to the C&AG.<sup>42</sup>
- 5.43 The C&AG and the NAO have comprehensive statutory rights of access to the bodies to be audited.<sup>43</sup> 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 the NAO's external auditors and scrutinises its performance.<sup>44</sup> 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.

## Notes

- 1 Report of the Joint Committee on Conventions (2006) *Conventions of the UK Parliament* (HL265/HC1212). London: The Stationery Office.
- 2 Parliament Act 1911, s.1(2–3).
- 3 See: Jack M (ed.) (2011) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition. London: LexisNexis Butterworths, Chapter 36; and House of Lords (2010) *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 22nd edition. London: The Stationery Office, paragraphs 8.180 and 8.181.
- 4 Jack (ed.) *Erskine May*, pp. 648–651.
- 5 Fixed-Term Parliaments Act 2011, s.2(1).
- 6 Cabinet Office (2010) *Ministerial Code*, paragraph 1.2. An earlier version of the Code, expressing substantially the same principles, was endorsed by a Resolution of the House of Commons of 19 March 1997 (HC Deb 292 cols 1046–7).
- 7 House of Commons Standing Order 14.
- 8 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. The Liaison Committee is comprised of the chairs of other select committees. For more information on the Liaison Committee, see: [www.parliament.uk/business/committees/committees-archive/liaison-committee](http://www.parliament.uk/business/committees/committees-archive/liaison-committee).
- 9 House of Commons Standing Order 10.
- 10 *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, paragraph 3.30.
- 11 The role of the Leader of the House of Commons is described in more detail in Jack (ed.) *Erskine May*, p. 50. The role of the Leader of the House of Lords is described in more detail in the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, pp. 60–66.
- 12 For more details, see: Jack (ed.) *Erskine May*, pp. 352–368 and 503ff; and the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, pp. 92–104.
- 13 For a full list of select committees of both Houses, see: [www.parliament.uk/business/committees](http://www.parliament.uk/business/committees).
- 14 Further guidance about the provision of information to select committees, known as the Osmotherly Rules, can be found in Cabinet Office (2005) *Departmental Evidence and Response to Select Committees*.
- 15 This principle was reaffirmed by a Resolution of the House of Commons on 20 July 2010 (HC Deb 514 c 244–288).
- 16 Cabinet Office, *Ministerial Code*, paragraph 9.5.
- 17 Jack (ed.) *Erskine May*, pp. 374–375.
- 18 *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, paragraph 6.34.
- 19 Legislation is published in print by Her Majesty's Stationery Office and online at: [www.legislation.gov.uk](http://www.legislation.gov.uk).
- 20 See: Jack (ed.) *Erskine May*, pp. 157ff.
- 21 For a fuller description of the primary legislative process, see: Jack (ed.) *Erskine May*, Chapters 26–29.
- 22 House of Commons Standing Orders 83A–83I.
- 23 Cabinet Office (2011) *Guide to Making Legislation*, s.B. For example, the Government has made a commitment to provide more detailed information on the human rights aspects of government bills in its explanatory notes (s.B, paragraph 10.62). Furthermore, it has also made it a requirement for copies of Impact Assessments to be placed in the House of Commons Vote Office as opposed to being deposited in the House of Commons Library (s.B, paragraph 13.7).
- 24 *Ibid.*, paragraphs 22.1–22.33.
- 25 Notably in its annual reviews of the work of committees since 2001.
- 26 The undertaking was made in *Post-legislative Scrutiny: the Government's Approach* (Cm 7320). London: The Stationery Office, which sets out further details of how the process works.
- 27 *Ibid.*, paragraph 9.
- 28 Further information on both pre- and post-legislative scrutiny can be found in Cabinet Office (2011) *Guide to Making Legislation*, s.20 and s.40.
- 29 The number of Statutory Instruments registered has exceeded 1,500 in each year since 1950 and has exceeded 2,000 in each year since 1984.
- 30 For a fuller description of the Parliamentary procedure relating to secondary legislation, see: Jack (ed.) *Erskine May*, Chapter 30. Some aspects of the procedure on Statutory Instruments are set out in the Statutory Instruments Act 1946.
- 31 House of Lords Delegated Powers and Regulatory Reform Committee (2009) *Guidance for Departments on the Role and Requirements of the Committee* requires that all Henry VIII powers in bills be clearly identified, and a full explanation given where the proposed Parliamentary procedure is not affirmative. The Constitution Committee routinely comments on the use of Henry VIII powers in bills; its findings are summarised in its annual reports to the House.
- 32 *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, pp. 164–165.
- 33 HM Treasury (2011) *Managing Public Money*, Foreword and Chapter 1.
- 34 Examples before the Iraq debates of 2002 and 2003 include Afghanistan (4 and 8 October 2001); Kosovo (24 March 1999); and the Gulf War (17 and 21 January 1991).
- 35 The full text of the motion is at Hansard, HC cd. 700 (21 March 2011).
- 36 Leader of the House of Commons, Hansard HC col. 1066 (10 March 2011).

- 37 For more information, see: Liaison Committee (2010) *The Work of Committees in 2008-09* (HC426). London: The Stationery Office, and subsequent Government responses published in 2010–11 (HC415 and HC564).
- 38 Exceptionally, the Budget Responsibility and National Audit Act 2011 requires the consent of the Treasury Select Committee to the appointment of the members of the Budget Responsibility Committee of the Office for Budget Responsibility.
- 39 Liaison Committee (2008) *Pre-appointment Hearings by Select Committees: Government Response to the Committee's First Report of Session 2007–08* (HC594). London: The Stationery Office.
- 40 Further information on the Parliamentary Ombudsman and the *Ombudsman's Principles* can be found at: [www.ombudsman.org.uk](http://www.ombudsman.org.uk).
- 41 *R (Bradley and others) v Secretary of State for Work and Pensions* [2008] EWCA Civ 36.
- 42 More information on the NAO can be found at: [www.nao.org.uk](http://www.nao.org.uk).
- 43 Government Resources and Accounts Act 2000, s.8; National Audit Act 1983, s.8.
- 44 National Audit Act 1983, s.2.

# Chapter Six

Ministers are under an overarching duty to comply with the law.<sup>1</sup> Ministerial 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 by its own senior judge.

This chapter covers:

- the Law Officers
- litigation involving ministers
- legal advice and legal professional privilege
- indemnity of legal costs
- the European Convention on Human Rights and the Human Rights Act 1998
- the Treasury Solicitor and the Government Legal Service
- public inquiries
- relations with the judiciary.

# The Executive and the law

## The Law Officers

- 6.1 The term 'the Law Officers' refers to the UK Law Officers, who are the Attorney General, the Solicitor General and the Advocate General for Scotland. The Attorney General for England and Wales is also the ex-officio Advocate General for Northern Ireland.<sup>2</sup>
- 6.2 The Attorney General is the Chief Law Officer for England and Wales and is the Chief Legal Adviser to the Crown. The Solicitor General is in practice the Attorney General's deputy and may exercise any function of the Attorney General.<sup>3</sup>
- 6.3 The Advocate General for Scotland is the principal legal adviser to the Government on Scots law. Jointly with the Attorney General, the Advocate General for Scotland also advises the Government on legal issues, including human rights and EU law.

## *The role of the Law Officers*

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

- 6.5 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;<sup>4</sup>
  - bring contempt of court proceedings;<sup>5</sup>
  - grant consent for some specific prosecutions;<sup>6</sup>
  - intervene in certain charity<sup>7</sup> and family law cases;<sup>8</sup>
  - bring proceedings to restrain vexatious litigants;<sup>9</sup>
  - appoint advocates to the Court;<sup>10</sup> and
  - refer points of law to the Court of Appeal after acquittals in criminal cases.<sup>11</sup>

## *Seeking Law Officer advice*

- 6.6 The Law Officers must be consulted by ministers or their officials in good time before the Government is committed to critical decisions involving legal considerations.<sup>12</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 powers necessary to make proposed subordinate legislation; or
    - the legality of proposed administrative action, particularly where that action might be subject to challenge in the courts;
  - ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations that are likely to come before Cabinet or a Cabinet committee;
  - there is a particular legal difficulty (including one that arises in the context of litigation) that may raise sensitive policy issues; or
  - two or more government departments disagree on legal questions and wish to seek the view of the Law Officers.
- 6.7 The Law Officers have a role in ensuring the lawfulness and constitutional propriety of legislation. In particular, the Law Officers' consent is required for legislative provisions that have a retrospective effect or where it is proposed that legislation is commenced within two months of Royal Assent. For more information on the Law Officers' and ministers' responsibilities regarding the European Convention on Human Rights (ECHR), see paragraphs 6.28–6.31 in this chapter.
- 6.8 Where advice from the Law Officers is included in correspondence between ministers, or in papers for Cabinet or ministerial committees, the conclusions of the advice may be summarised, if necessary. But if this is done, the complete text of the advice should be attached.<sup>13</sup>
- 6.9 The fact that the Law Officers have advised, or have not advised, and the content of their advice may not be disclosed outside government without their authority.<sup>14</sup> The Law Officers' advice to government is subject to legal professional privilege (LPP) and is confidential.

## Litigation involving ministers

### *Judicial review*

- 6.10 Ministers' decisions, and the process by which they exercise (or fail to exercise) their powers, can be reviewed by the High Court,<sup>15</sup> 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 courts to make a judgment.<sup>16</sup>
- 6.11 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>17</sup> and for a proper purpose);<sup>18</sup>
  - **procedural fairness** (for example, giving an individual affected by the decision the opportunity to be heard);<sup>19</sup>
  - **reasonableness or rationality** (following a proper reasoning process to reach a reasonable conclusion);<sup>20</sup> and
  - **compatibility** (with the ECHR<sup>21</sup> and EU law).<sup>22</sup>
- 6.12 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 that takes into account the guidance given by the Court.<sup>23</sup>
- 6.13 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 Three for more information on the powers of ministers and the Carltona principle.

### *Disclosure of documents*

- 6.14 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').<sup>24</sup>
- 6.15 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.
- 6.16 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 Eleven on the protection of Cabinet and Cabinet committee papers.)
- 6.17 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 in order 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.
- 6.18 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>25</sup>

### **Legal advice and legal professional privilege**

- 6.19 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.
- 6.20 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 from reaching a conclusion that is fair and in the overall public interest.<sup>26</sup>
- 6.21 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.
- 6.22 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>27</sup> For more on the Freedom of Information Act 2000 and other exemptions, see Chapter Eleven.

## Indemnity of legal costs

- 6.23 It is the practice for ministers 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.<sup>28</sup> The indemnity will cover the cost of defending the proceedings, as well as any costs or damages awarded against the minister.
- 6.24 Ministers may be sued for acts which, although undertaken while a minister, have a more ‘personal’ aspect to them. For example, proceedings may be instituted alleging that a minister made a defamatory statement 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.
- 6.25 A minister may wish to bring proceedings in a personal capacity, for example where he or she believes that he or she has been defamed. Such proceedings may have a bearing on the minister’s official position as well as on his or her private position. For example, he or she may require disclosure of official documents or evidence about things done in the minister’s official capacity.
- 6.26 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 Ten 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.
- 6.27 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.

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

- 6.28 The ECHR 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, Sixth and Thirteenth (the latter two together completely abolish the death penalty). Not all of the rights are absolute: many may be limited or interfered with in certain defined circumstances, so long as it is necessary and proportionate to do so. Each country is given a certain latitude in how it gives effect to the Convention rights in order to reflect national circumstances (the margin of appreciation).
- 6.29 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.<sup>29</sup> Domestic courts can provide certain remedies if a public authority does so;<sup>30</sup> and
  - require all courts and tribunals to interpret all legislation, as far as possible, in a way that is compatible with the Convention rights.<sup>31</sup> 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.
- 6.30 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.<sup>32</sup> 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.<sup>33</sup>

- 6.31 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. 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.<sup>34</sup>

### The Treasury Solicitor and the Government Legal Service

- 6.32 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.
- 6.33 The Treasury Solicitor is the Head of the Government Legal Service, 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 Government Legal Service, as do the legal teams supporting the Devolved Administrations.

### Public inquiries

- 6.34 The Government has statutory and non-statutory powers to call inquiries. Statutory public inquiries are governed principally by the Inquiries Act 2005. It 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.<sup>35</sup> The Act provides how the inquiry should be set up and 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.

- 6.35 A non-statutory inquiry may be held where, for example, all relevant parties have agreed to co-operate, and it may be convened and concluded more quickly – and perhaps more cheaply. The terms of reference will normally be determined by the relevant minister in discussion with officials.
- 6.36 The Prime Minister must be consulted in good time about any proposal to set up a major public inquiry.<sup>36</sup> The relevant Scottish ministers must be consulted about proposals to set up inquiries on matters relating to Scotland which are not reserved under the Scotland Act 1998. There are similar requirements relating to Wales and Northern Ireland.<sup>37</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*

- 6.37 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>38</sup>
- 6.38 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>39</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.

6.39 The Lord Chancellor has special responsibility to defend judicial independence and to consider the public interest in respect of matters relating to the judiciary.<sup>40</sup> 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.

6.40 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 him or herself in subsequent litigation.

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 Government of Wales Act 2006 and the Northern Ireland Act 1998.

### *Supreme Court of the UK*

6.41 The Supreme Court of the UK has taken over the appellate jurisdiction of the House of Lords<sup>41</sup> as the final court of appeal for all civil law cases in 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

## Notes

- 1 Cabinet Office (2010) *Ministerial Code*, paragraph 1.2.
- 2 The equivalent offices in the Devolved Administrations are the Lord Advocate in Scotland, assisted by the Solicitor General for Scotland; the Attorney General for Northern Ireland (the Chief Legal Adviser to the Northern Ireland Executive); and the Counsel General to the Welsh Government (who is the General Counsel to the Welsh Government).
- 3 Law Officers Act 1997, s.1(1).
- 4 Criminal Justice Act 1988, ss.35 and 36.
- 5 Contempt of Court Act 1981, s.7.
- 6 For example, offences under the Explosive Substances Act 1883; the Terrorism Act 2000; Part III of the Public Order Act 1986; the Law Reform (Year and a Day Rule) Act 1996; and section 128 of the Serious Organised Crime and Police Act 2005.
- 7 The Attorney General has a number of powers in relation to charity cases arising from his or her role as *parens patriae*.
- 8 Family Law Act 1986, s.59.
- 9 Senior Courts Act 1981, s.42.
- 10 See Memorandum from the Lord Chief Justice and Attorney General published at paragraph 39.8.1 of the Civil Procedure Rules.
- 11 Criminal Justice Act 1972, s.36.
- 12 Cabinet Office (2010) *Ministerial Code*, paragraph 2.10.
- 13 *Ibid.*, paragraph 2.12.
- 14 *Ibid.*, paragraph 2.13.
- 15 Supreme Court Act 1981, s.31; and Part 54 of the Civil Procedure Rules.
- 16 For example, see *Home Secretary v Rehman* [2001] 3 WLR 877.
- 17 The exercise of statutory powers conferred on particular ministers is usually subject to collective agreement. For more information, see Chapter Three, paragraph 3.30.
- 18 These first three grounds of review were referred to as 'illegality', 'procedural impropriety' and 'irrationality' by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410.
- 19 *Ibid.*
- 20 *Ibid.*
- 21 Human Rights Act 1998, s.1(2).
- 22 European Communities Act 1972, s.2(1).
- 23 For example, see *R v Secretary of State for the Environment, ex parte Nottinghamshire CC* [1986] AC 240.
- 24 For further details on the duty of candour, see: Treasury Solicitor's Office (2010) *Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings*.
- 25 Cabinet Office, *Ministerial Code*, paragraphs 7.16–7.17.
- 26 For example, see: *R v Secretary of State for Transport, ex parte Factortame Ltd and others* [1999] UKHL 44.
- 27 For more details, see: [www.justice.gov.uk/guidance/freedom-and-rights/freedom-of-information/foi-assumptions-legal.htm](http://www.justice.gov.uk/guidance/freedom-and-rights/freedom-of-information/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).
- 28 References to ministers in this section also apply to former ministers, including those of previous governments.
- 29 Human Rights Act 1998, s.6.
- 30 *Ibid.*, s.4 and s.8.
- 31 *Ibid.*, s.3.
- 32 *Ibid.*, s.19(1)(A).
- 33 *Ibid.*, s.19(1)(B).
- 34 Cabinet Office (2010) *Guide to Making Legislation*, paragraph 11.8.
- 35 Inquiries Act 2005, s.1.
- 36 Cabinet Office, *Ministerial Code*, paragraph 4.10.
- 37 Inquiries Act 2005, s.27.
- 38 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. More information is available at: [www.judiciary.gov.uk](http://www.judiciary.gov.uk).
- 39 Constitutional Reform Act 2005, s.3(1).
- 40 Ministry of Justice (2011) *Her Majesty's Courts and Tribunals Service: Framework Document*, s.1.2.
- 41 Constitutional Reform Act 2005, Part III, s.40, Schedule 9.

# Chapter Seven

The Civil Service supports the government of the day to develop and implement its policies, and in delivering public services. 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.<sup>1</sup>

This chapter covers:

- the Civil Service
- the role of ministers and officials
- the *Civil Service Code*
- the role of permanent secretaries
- the role of special advisers
- civil servants' evidence to Parliamentary select committees
- public appointments.

# Ministers and the Civil Service

## The Civil Service

- 7.1 Civil servants are servants of the Crown. The Civil Service supports the government of the day in developing and implementing its policies, and in delivering public services.<sup>2</sup> Civil servants are accountable to ministers, who in turn are accountable to Parliament.<sup>3</sup>

## The role of ministers and officials

- 7.2 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.<sup>4</sup> 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.<sup>5</sup>
- 7.3 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.<sup>6</sup>

## The Civil Service Code

- 7.4 Civil servants serve the elected government of the day,<sup>7</sup> in line with the standards set out in the *Civil Service Code*. The Code sets out the standards of conduct and behaviour 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>8</sup> The core Civil Service values and standards of behaviour as set out in the Code are:
- **integrity** – putting the obligations of public service above your own personal interests;
  - **honesty** – being truthful and open;
  - **objectivity** – basing your advice and decisions on rigorous analysis of the evidence; and
  - **impartiality, including political impartiality** – acting solely according to the merits of the case and serving equally well governments of different political persuasions.

7.5 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.

7.6 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.<sup>9</sup> 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. The Public Interest Disclosure Act 1998, which protects individuals who make certain disclosures of information in the public interest, may apply.

7.7 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 core Civil Service values set out above.<sup>10</sup> 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 *Civil Service Code*.<sup>11</sup>

## 7.8 The role of permanent secretaries

7.9 The most senior civil servant in a department is the 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 or the Head of the Civil Service for the effective day-to-day management of the relevant department, or the particular issues for which they are responsible (for more information on the Cabinet Secretary, see Chapter Four, paragraphs 4.53 and 4.54).

7.10 The permanent secretary is normally the accounting officer for their department, with a personal responsibility to report directly to Parliament for the management and organisation of the department. More information on accounting officers can be found in Chapter Ten: Government finance and expenditure.

## The role of special advisers

7.11 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>12</sup> Limits on the number of special advisers that ministers may appoint are set out in the *Ministerial Code*.<sup>13</sup>

7.12 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>14</sup>

7.13 The *Code of Conduct for Special Advisers* 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.<sup>15</sup>

### **Civil servants' evidence to Parliamentary select committees**

- 7.14 Parliamentary select committees have a crucial role in ensuring the full 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*.<sup>16</sup>
- 7.15 Detailed guidance to officials who may be called upon to give evidence to Parliamentary select committees is contained in the Cabinet Office memorandum *Departmental Evidence and Response to Select Committees*, commonly called the Osmotherly Rules (July 2005).
- 7.16 The memorandum summarises 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 the memorandum is a government document and therefore has no Parliamentary standing or approval.
- ### **7.17 Public appointments**
- 7.18 A public appointment is an appointment to the board of a public body or to an office. This includes non-executive appointments to the boards of non-departmental public bodies and non-ministerial departments as well as non-executive appointments to the boards of NHS trusts and other NHS bodies. Public appointees of this kind are not employees but office-holders. Most public appointments are made by ministers.<sup>17</sup> For more on Parliamentary scrutiny in relation to some public appointments, see Chapter Five.
- 7.19 Many public appointment processes are regulated by the independent Commissioner for Public Appointments who is appointed under the Public Appointments Order in Council 2002. The Commissioner publishes a Code of Practice setting out the process for making public appointments, which are made on merit.<sup>18</sup>
- 7.20 Ministers are ultimately responsible for the appointments they make and will have involvement in some way in the process. For example, they may be consulted at the planning stage of the appointments process and will approve 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.
- 7.21 The role of individual public appointees will vary but, in general, those appointed to the board of a public body have collective responsibility for the overall performance and success of the body in question. Their role is to provide strategic leadership, direction, support and guidance. The Cabinet Office provides general guidance on the role of non-executive board members.<sup>19</sup> The specific responsibilities of individual public appointees should be set out in letters of appointment and in related documents.
- 7.22 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. Along with others in public life, they are expected to follow the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

## Notes

- 1 Cabinet Office (2010) *Civil Service Code*, paragraph 3.
- 2 Civil servants in the Scottish Government and the Welsh Government are part of the Home Civil Service and report ultimately to the Head of the Civil Service, the Cabinet Secretary. Civil servants in the Northern Ireland Executive are not part of the Home Civil Service but are part of the Northern Ireland Civil Service.
- 3 See: Cabinet Office (2010) *Ministerial Code*, Cabinet Office, *Civil Service Code* and the Constitutional Reform and Governance Act 2010.
- 4 Cabinet Office, *Ministerial Code*, paragraph 5.1.
- 5 *Ibid.*, paragraph 5.2.
- 6 Cabinet Office, *Ministerial Code*, paragraphs 14–15.
- 7 Some civil servants are accountable to the office-holder in charge of their organisation.
- 8 Civil servants working for the Scottish Government and the Welsh 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.
- 9 Cabinet Office, *Civil Service Code*, paragraphs 16–18.
- 10 Constitutional Reform and Governance Act 2010, ss.3–5.
- 11 *Ibid.*, ss.10–11.
- 12 Paragraph 2 of the *Code of Conduct for Special Advisers* (Cabinet Office, 2010) makes clear that special advisers are appointed to serve the Government as a whole, not just their appointing minister.
- 13 Cabinet Office, *Ministerial Code*, paragraph 3.2.
- 14 The Constitutional Reform and Governance Act 2010 provides for the appointment of special advisers as temporary civil servants (s.15), and for the publication of a code of conduct which must specify restrictions on special advisers' activities (s.8).
- 15 Further information on the role of special advisers can be found in Cabinet Office (2010) *Code of Conduct for Special Advisers*.
- 16 There is an exception for accounting officers as set out in Cabinet Office (2005) *Departmental Evidence and Response to Select Committees*, paragraph 5.
- 17 Ministerial appointments to the majority of NHS bodies are delegated to the Appointments Commission.
- 18 The Commissioner for Public Appointments' *Code of Practice* can be found at: [www.publicappointmentscommissioner.independent.gov.uk/codeofpractice/index.html](http://www.publicappointmentscommissioner.independent.gov.uk/codeofpractice/index.html).
- 19 Cabinet Office (2011) *Code of Practice for Board Members of Public Bodies*.

# Chapter Eight

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.

This chapter covers:

- devolution
- Parliament and legislation
- Scotland
- Wales
- Northern Ireland
- relations with the Devolved Administrations
- funding of devolution
- local government in England.

# Relations with the Devolved Administrations and local government

## Devolution

- 8.1 The main legislative basis for devolution in Scotland, Wales and Northern Ireland is set out in the Scotland Act 1998, the Government of Wales Act 2006 (which largely superseded the Government of Wales Act 1998) and the Northern Ireland Act 1998. Each of the devolution settlements is 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 see paragraph 6.41).
  - The devolved legislatures may amend Acts of Parliament (insofar as they relate to devolved responsibilities). However, they may not amend certain entrenched<sup>1</sup> or protected<sup>2</sup> enactments (for example the Human Rights Act 1998, most provisions of the devolution Acts and the European Communities Act 1972).
  - The devolved legislatures and administrations may only legislate or act in relation to the part of the UK for which they are responsible.
  - The devolved legislatures and administrations must legislate or act in a way that is compatible with EU law and the European Convention on Human 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.<sup>3</sup> The UK or devolved Law Officers may raise challenges on this basis, as may individuals. (See Chapter Six for more information on the Supreme Court and the Law Officers.)
- 8.2 Broadly speaking,<sup>4</sup> legislation provides that government ministers and Parliament remain responsible, among other things, for:
- the constitution;
  - international relations and defence;
  - national security;
  - nationality and immigration;
  - macroeconomic and fiscal policy;
  - broadcasting;
  - the UK tax system (except for the Scottish variable rate of income tax in Scotland); and
  - social security (which is transferred in Northern Ireland, although there is a principle of parity with the system in Great Britain).
- 8.3 Broadly speaking,<sup>5</sup> legislation provides that government ministers and Parliament are not responsible for the following areas in

Scotland, Wales and Northern Ireland, as they have been devolved to the respective legislatures and administrations:

- health and social care;
  - education and training;
  - local government;
  - housing;
  - transport;
  - agriculture, forestry and fisheries;
  - the environment and planning;
  - tourism, sport and heritage; and
  - economic development.
- 8.4 Responsibility for policing and justice is also devolved in Scotland and Northern Ireland.

### Parliament and legislation

- 8.5 Parliament remains sovereign and retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the Government proceeds in accordance with the convention that Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The Devolved Administrations are responsible for seeking such agreement as may be required for this purpose on an approach from the UK government.<sup>6</sup> In practice this agreement is signalled by a devolved legislature passing a Legislative Consent Motion. Details of the procedures for such motions are set out on the websites of the three legislatures.<sup>7</sup>

### Scotland

- 8.6 Following a referendum in Scotland in 1997, the 1998 settlement established a devolved legislature (the Scottish Parliament) and administration (the Scottish Executive, now referred to as the Scottish Government) in Scotland. The Scottish Parliament is composed of 129 members elected either on a constituency basis or on a regional list basis.
- 8.7 The Scotland Act 1998 identifies a number of issues that are reserved (Schedule 5 to the Act). These are issues on which the Scottish Parliament is not able to legislate.

Any other areas not listed in Schedule 5 to the Scotland Act are devolved. The Scottish Government's powers largely follow the legislative competence of the Scottish Parliament. This means that, where an area is devolved, the Scottish ministers will also exercise functions in that area.

- 8.8 The Scotland Act 1998 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.

### Wales

- 8.9 Following a referendum in Wales in 1997, the Government of Wales Act 1998 established the National Assembly for Wales as a corporate body. The Welsh Assembly is currently composed of 60 members elected either on a constituency or a regional list basis.
- 8.10 The Welsh settlement was revised by the Government of Wales Act 2006. That Act dissolved the corporate body and formally established an executive, the Welsh Assembly Government (now referred to as the Welsh Government), which exercises executive functions, and a legislature to pass laws equivalent to Acts of Parliament within its areas of legislative competence.
- 8.11 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. A referendum was held on 3 March 2011 which resulted in a vote in favour of enhanced law-making powers for the National Assembly. These powers came into force on 5 May 2011.

8.12 Unlike the Scottish and Northern Ireland settlements, the Welsh settlement operates on a 'transfer' model, whereby those areas not specifically transferred to the Assembly under Schedule 7 to the 2006 Act remain the responsibility of the Government and Parliament.

### Northern Ireland

- 8.13 The 1998 Belfast Multi-Party Agreement and Northern Ireland Act 1998 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 the basis of multi-member constituencies.
- 8.14 The Northern Ireland Executive is an inclusive power-sharing Executive chaired by a First and deputy First Minister who hold office jointly. It has 11 departmental ministers, 10 of whom are selected according to their party strengths in the Assembly by the d'Hondt process. The appointment of the Minister for Justice takes place on the basis of cross-community support.
- 8.15 The Northern Ireland devolution settlement, provided for in the Northern Ireland Act 1998, apportions matters into three categories of legislative competence:
- **Excepted matters** (listed at Schedule 2 to the 1998 Act) are those on which the Assembly cannot legislate unless the matter is ancillary to a reserved or transferred matter. These matters therefore generally remain for Parliament.
  - **Reserved matters** (listed at Schedule 3 to the 1998 Act) are those on 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.
- 8.16 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.

### Relations with the Devolved Administrations

- 8.17 Relations between the Government and the Devolved Administrations are underpinned by a *Memorandum of Understanding* between the four administrations, which is supported by *Devolution Guidance Notes* that set out advice on working-level arrangements.<sup>8</sup> These are not legally binding, but are designed to set out principles to which all officials can adhere. Many departments also have bilateral concordats with the Devolved Administrations, dealing with areas of shared interest and setting out a framework for co-operation.<sup>9</sup>
- 8.18 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.
- 8.19 The Secretaries of State for Scotland, Wales and Northern Ireland represent the interests of Scotland, Wales and Northern Ireland in the Government, and promote the Government's objectives in Scotland, Wales and Northern Ireland. The Scotland Office, Wales Office and Northern Ireland Office manage the day-to-day devolution issues which arise between the Government and the Devolved Administrations and are responsible for managing the devolution settlements. Additionally, the Secretary of State for Northern Ireland has responsibility for matters relating to national security in Northern Ireland.
- 8.20 Inter-governmental relations are conducted through formal mechanisms, such as the Joint Ministerial Committee (JMC) and the British–Irish Council (BIC), and working-level bilateral relationships across policy areas.

#### *Joint Ministerial Committee*

- 8.21 The JMC is established under the *Memorandum of Understanding* between the Government and the Devolved Administrations.<sup>10</sup> It 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. Other ministers are invited

to attend as appropriate when issues relevant to their areas of responsibility are to be discussed. The JMC has two sub-committees:

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

8.22 The JMC also oversees a formal mechanism for resolving disputes under a protocol to the *Memorandum of Understanding*.<sup>11</sup>

8.23 There is also a finance ministers' quadrilateral, which considers financial and economic matters, and which takes place alongside the JMC.<sup>12</sup> Additionally, government ministers regularly interact directly with ministers of the Devolved Administrations. Doing so helps to ensure good communication with the Devolved Administrations where the Government's activities have some bearing on their responsibilities or where all four administrations can benefit from working together on matters of mutual interest.<sup>13</sup> The JMC is supported by a joint secretariat of staff from the Cabinet Office and the Devolved Administrations.

#### *The British–Irish Council*

8.24 The Devolved Administrations and the Crown Dependencies participate in the 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 in order to 'promote the harmonious and mutually beneficial development of the totality of relationships among the people of these islands'.<sup>14</sup> It proceeds by consensus, and all member administrations are equal partners of the BIC. A Joint Secretariat is currently provided by the UK and Irish governments. A Standing Secretariat is due to be established in Edinburgh.

8.25 Summit meetings of the BIC 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 in turn. 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.

#### **Funding of devolution**

8.26 Government funding for the Devolved Administrations is normally determined within spending reviews in accordance with policies set out in the *Statement of Funding Policy*.<sup>15</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 with 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 given that funding for the Devolved Administrations is calculated in addition to what is made available to departments. A Devolved Administration is free to spend its allocation according to its own priorities in devolved areas, as agreed by the relevant devolved legislature. The Government places no conditions on expenditure of the Devolved Administrations.

## Local government in England

- 8.27 Local authorities are statutory bodies created by Acts of Parliament.<sup>16</sup> They are not accountable to Parliament, as they are directly elected by their local communities. However, ministers can direct local government to adhere to national policy frameworks where legislation permits. The current approach to, and structure of, local government in England is compliant with the European Charter of Local Self-Government.<sup>17</sup>
- 8.28 Local government is a devolved responsibility in Scotland, Wales and Northern Ireland.
- 8.29 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 regional 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.
- 8.30 Parish and community councils also operate at the grassroots level in many areas.

## Central government funding of local government in England

- 8.31 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 level of funding may vary from year to year to reflect changes in responsibilities placed on local authorities by government.
- 8.32 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**; and
  - **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.
- 8.33 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).<sup>18</sup> Local authorities also raise a significant amount through fees and charges, some of which are set centrally and others by local authorities themselves. Most are limited to cost recovery.

## Notes

- 1 Northern Ireland Act 1998, s.7.
- 2 Scotland Act 1998, Schedule 4, Part I, ss.1–6, Government of Wales Act 2006, Schedule 5, Part II, s.3.
- 3 For further information on the Supreme Court, see: [www.supremecourt.gov.uk/about/the-supreme-court.html](http://www.supremecourt.gov.uk/about/the-supreme-court.html).
- 4 Settlements differ and the details should therefore be checked in each case.
- 5 *Ibid.*
- 6 Cabinet Office (2011) *Devolution: Memorandum of Understanding and Supplementary Agreements*.
- 7 *Ibid.*, Part I, paragraph 14.
- 8 For more information, see: [www.cabinetoffice.gov.uk/content/devolution-united-kingdom](http://www.cabinetoffice.gov.uk/content/devolution-united-kingdom).
- 9 The aim and purpose of concordats is to preserve existing good working relationships and ensure that the business of government is conducted smoothly and efficiently under devolution. Their purpose is not to create legal obligations or restrictions on any party; rather, they will set the ground rules for administrative co-operation and exchange of information. For further information, see: Ministry of Justice (2009) *Devolution Guidance Note 1*, Annex. For examples of bilateral concordats, see: <http://archive.defra.gov.uk/corporate/about/with/devolve/index.htm>.
- 10 The terms under which the Joint Ministerial Committee operates can be found in *Devolution: Memorandum of Understanding*, Part I, paragraph 24.
- 11 *Ibid.*
- 12 *Ibid.*, Part II, A3.7.
- 13 *Ibid.*, Part I, paragraph 4.
- 14 *The Agreement*, 1998, strand 3.
- 15 HM Treasury (2010) *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: Statement of Funding Policy*.
- 16 Historically, boroughs were created by Royal Charter, reformed by successive legislation such as the Municipal Corporations Act 1835, Local Government Act 1972, through to the Local Government and Public Involvement in Health Act 2007.
- 17 European Charter of Local Self-Government 1985.
- 18 The current Council Tax system was established by the Local Government Finance Act 1992, with Council Tax capping powers for central government being introduced by the Local Government Act 1999.

# Chapter Nine

The Executive has a role in relation to the European Union and other international organisations such as the North Atlantic Treaty Organization (NATO), the UN and international economic bodies.

This chapter covers:

- European and other international organisations
- the role of ministers
- collective agreement of international policy
- meetings
- implementation of international decisions and law
- Parliamentary scrutiny.

# Relations with the European Union and other international institutions

## European and other international organisations

9.1 The UK is a member of a range of European and international organisations. The key organisations that impact on the Executive and where ministers are likely to represent the UK at meetings are listed below:

- The Commonwealth<sup>1</sup>
- The Council of Europe<sup>2</sup>
- The European Union (EU)<sup>3</sup>
- The Group of 8 (G8)<sup>4</sup> and the Group of 20<sup>5</sup>
- The International Monetary Fund (IMF)<sup>6</sup>
- The North Atlantic Treaty Organization (NATO)<sup>7</sup>
- The Organisation for Economic Co-operation and Development (OECD)<sup>8</sup>
- The Organization for Security and Co-operation in Europe (OSCE)<sup>9</sup>
- The United Nations (UN)<sup>10</sup>
- The World Bank<sup>11</sup> and Regional Development Banks<sup>12</sup>
- The World Trade Organization (WTO).<sup>13</sup>

9.2 The organisations listed above are established by treaty or their working arrangements are set out in other documents; for example, the IMF has its own Articles of Agreement, governing

structure and finances.<sup>14</sup> The content of the treaties or instruments vary but can specify the structure, membership and decision-making processes of the organisation. The organisation can only act in the areas where the requisite legal power or 'competence' has been conferred on it. Treaties or instruments may be terminated with the agreement of the parties and in accordance with the terms established by the treaty or instrument itself.

## The role of ministers

9.3 The role of ministers in relation to international organisations includes representing the UK at relevant meetings, collectively agreeing the Government's policy and negotiating line and, if necessary, implementing or responding to the decisions of international organisations and taking forward any necessary UK implementing legislation.

## Collective agreement of international policy

9.4 Arrangements for agreeing government policy are established by the Executive itself and are not subject to statutory requirements (see Chapter Four, paragraphs 4.1–4.14 and 4.18–4.19). Where international policy affects the interests of more than one department, the UK line is agreed either bilaterally with the relevant departments or the responsible

minister will seek clearance from the relevant Cabinet committee. Although no definitive criteria can be given for issues which require collective agreement, clearance is usually required for the UK line to take in negotiations (and any significant changes to this line, should a compromise position emerge in negotiations) and for the proposed implementation of European legislation.<sup>15</sup>

- 9.5 The Cabinet Secretariat and the FCO provide support for the process. The Prime Minister's senior adviser on Europe usually leads the Cabinet Secretariat's work in relation to Europe and is the G8 and G20 Sherpa. In relation to Europe, legal co-ordination is provided by Cabinet Office European legal advisers in the Cabinet Office European Law Division. UK litigation before the European Court of Justice is conducted by the EU litigation team in the Law Division. Legal support in relation to other international organisations is provided by the relevant department.
- 9.6 Relevant departments and the UK representative (see paragraph 9.3), if there is one, are consulted by departments on the conduct of international business.

## Meetings

- 9.7 Ministers represent the UK's position in negotiations at higher-level meetings of international organisations. The minister who attends depends on the issues being discussed.
- 9.8 The Prime Minister represents the UK at the European Council, which is made up of heads of state and government and generally meets quarterly to set the EU's agenda and priorities. He or she also represents the UK at meetings of the G8 and G20 and the biennial Commonwealth Heads of Government Meeting (CHOGM), and often attends the UN General Assembly 'Ministerial Week' as the head of the UK Delegation.
- 9.9 However, more often it is ministers with a lead on particular subjects who attend meetings and represent the UK in negotiations. In particular:
- 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. Most members of Cabinet will attend relevant meetings of the Council on a regular basis.
- The Foreign Secretary or Defence Secretary represents the UK at ministerial or summit meetings of the North Atlantic Council, which set the future direction of the alliance.
  - The Foreign Secretary or other FCO ministers sometimes attend UN Security Council high-level meetings. Other ministers represent the UK at regular high-level meetings of a range of UN bodies, on various subjects (human rights, environment, development etc.).
  - The Chancellor of the Exchequer is the UK's Governor of the European Bank for Reconstruction and Development, which provides finance for banks, industry and businesses where finance cannot be found on similar terms on the open market. He or she is also the UK's Governor of the IMF, and sits on the International Monetary and Financial Committee, which acts as the ministerial steering committee for the IMF.
  - The Secretary of State for International Development is the UK's Governor of the World Bank and represents the UK on the Development Committee, which is the main ministerial forum for discussing World Bank policies. In addition, he or she is the UK's Governor of each of the Regional Development Banks.
- 9.10 The UK also has a number of permanent representatives, supported by missions or delegations, who are responsible for representing the UK below ministerial level and who may accompany ministers to meetings and provide advice as needed. For example, the UK has permanent representatives for the EU,<sup>16</sup> NATO,<sup>17</sup> the UN,<sup>18</sup> the OECD,<sup>19</sup> the OSCE,<sup>20</sup> the IMF and the Council of Europe.<sup>21</sup>
- 9.11 UK representatives with particular expertise may also meet to advise an international organisation, for example the NATO Military Committee, which consists of senior military representatives from each country who collectively act as the North Atlantic Council's military advisers, along with the Supreme Allied Commander

(Europe) and Supreme Allied Command (Transformation).

- 9.12 In many cases the UK's relations with international organisations involve working with the EU. For example, while retaining the right to act nationally, the UK often co-ordinates an agreed position with EU partners in the first instance for many issues covered in the UN General Assembly and the Economic and Social Council, and some UN specialised agencies. Agreed EU Member State positions may be represented in negotiations at international organisations by EU institutions, or in some cases the Member State holding the rotating presidency of the Council of the European Union. For example, while the UK Mission in Geneva represents the UK at the WTO, 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. The EU institutions may also lead representation on some areas of shared or Member State competence if the Member State explicitly authorises them to do so, for example where the EU Delegation has specific expertise.

### Implementation of international decisions and law

- 9.13 Some instruments or decisions agreed by international organisations are binding on Member States. International treaties, EU law, judgments of the European Court of Human Rights, NATO decisions and resolutions of the UN Security Council (UNSC) are considered below.

#### *International treaties*

- 9.14 Treaties are legally binding agreements concluded 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 party to multilateral treaties, including those adopted at inter-governmental conferences. Treaties do not automatically have force in the domestic law of the UK. Depending on the nature and terms of a treaty, domestic legislation may need to be adopted to enable the UK to

meet its international obligations when it is a party to a treaty, and Parliament may have a role in the scrutiny and implementation of a treaty. Treaty making is a prerogative power (see Chapters One and Three), which is exercised subject to 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>22</sup> Any necessary legislation should be in place before the treaty is ratified.<sup>23</sup>

#### *EU law*

- 9.15 The UK is obliged to ensure that its national laws and measures are compliant with EU law.<sup>24</sup> 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 and through provisions in other Acts of Parliament. 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.
- 9.16 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 Court of Justice of the European Union.<sup>25</sup> The Court can also impose significant fines on Member States. The lead department or administration responsible for an infraction would be expected by the Treasury to bear the burden of any fine. The Chief Secretary to the Treasury would ultimately be responsible for deciding on the division and allocation of all fines.
- 9.17 To the extent that financial costs and penalties imposed on the UK arise from the failure of implementation or enforcement by a Devolved Administration on a matter falling within its responsibility, or from a failure of a Devolved Administration to meet its share of an EU quota or obligation, responsibility for meeting these will be borne by the Devolved Administration.<sup>26</sup>

### *Judgments of the European Court of Human Rights*

9.18 Article 46 of the European Convention on Human Rights<sup>27</sup> 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 (which can take the form of 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.

### *UN Security Council resolutions*

9.19 Uniquely among UN bodies, the UNSC can impose legally binding requirements on members<sup>28</sup> through binding resolutions adopted under Chapter VII of the UN Charter. Chapter VII resolutions can also authorise the use of force, and impose mandatory sanctions and other measures. As a permanent member of the UNSC, the UK is in a strong position to influence UN decision-making.<sup>29</sup> While the UK is bound to act on legally binding UNSC resolutions, Member States are not bound to deploy troops to peacekeeping missions. Where necessary, legislation is passed in the UK to give effect to UNSC resolutions.<sup>30</sup>

### *Decisions of NATO*

9.20 Article 5 of the North Atlantic Treaty<sup>31</sup> sets out the agreement on collective defence, based on the indivisibility of allied security. In accordance with the Treaty, if members of the alliance agree collectively that action is necessary, including the

use of armed force, Member States are obliged to respond, but they maintain the freedom to decide how they will respond. NATO decisions are taken on the basis of consensus; there are no decisions by majority.<sup>32</sup> Decisions taken represent collective agreement by all allies. Nations are able to prevent agreement where a policy does not meet their objectives. The UK is a founder member of the alliance. Almost all UK Armed Forces and capabilities are assigned to NATO in times of crisis.

### *Other decisions of international organisations*

9.21 There is a range of other bodies and organisations, of which the UK is a member, where decisions influence government policy and decision-making but are not generally binding<sup>33</sup> on members. For example:

- With a few exceptions (such as on budgetary matters), the many bodies of the UN, including the General Assembly, adopt resolutions which constitute recommendations to Member States, rather than legally binding obligations. UK practice is to comply with recommendations contained in resolutions it has voted in favour of, or joined consensus on.
- The Commonwealth is a voluntary association that is values based<sup>34</sup> and works towards the shared goals of democracy and development. Decisions are taken by consensus of heads of government at the biennial CHOGM, and the Commonwealth Secretariat's work plan is based on mandates agreed by heads of government. Chapter One, paragraph 1.3 sets out more information on the Commonwealth and the role of the Sovereign.
- The WTO resolves trade disputes,<sup>35</sup> and where a matter cannot be resolved by consultation, it 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 members continue to breach the findings.

- Members of the IMF agree to subject its economic and financial policies to the scrutiny of the international community.<sup>36</sup> 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. It is for the Government to determine how to respond to the report.
  - The OECD provides analytical and policy advice on a range of economic issues, including forecasts, fiscal policies, investment, anti-corruption and corporate governance. It is for the Government to determine how to use that advice in developing policy, although the OECD committees have a peer review<sup>37</sup> function which allows other governments to question the UK.
- Devolved Administrations, Crown Dependencies and Overseas Territories*
- 9.22 International relations, including with the EU and its institutions, is a reserved matter.<sup>38</sup> The Government is therefore responsible for preparing UK policy positions and for negotiations with other Member States. Ministers ensure that the Devolved Administrations are involved in policy developments that touch on devolved matters and are consulted as necessary, in accordance with the arrangements set out in the *Memorandum of Understanding* and the concordats.<sup>39</sup> The Foreign Secretary is responsible for the concordats on the co-ordination of EU policy issues and international relations.
- 9.23 In relation to the Council of the European Union,<sup>40</sup> the composition of the UK delegations to, and decisions on UK representation at, meetings is determined by the lead government minister. The role of the ministers from the Devolved Administrations is to support and advance the single UK negotiating line. When EU business touches upon devolved responsibilities, Devolved Administration ministers will have played a part in developing the single UK negotiating line. Ministers are encouraged to respond positively to requests from Devolved Administrations to attend Council meetings, unless there is a compelling reason not to do so, which they should be willing to explain. The UK lead minister retains responsibility for the negotiations, and in appropriate cases could agree to the ministers from the Devolved Administrations speaking for the UK in Council. See Chapter Eight for more information on the Devolved Administrations.
- 9.24 The Government is responsible for defence and international representation of the Crown Dependencies.<sup>41</sup> They are not recognised as states in their own right but as territories for which the United Kingdom is responsible. As such they cannot sign international agreements under their own aegis but can have the UK's ratification of such instruments extended to them. However, in certain circumstances, the Crown Dependencies may be authorised to conclude their own international agreements by a process of entrustment. The Crown Dependencies are not members of the EU, receive no EU funding and have a limited relationship with the EU, which allows for free trade in agricultural products and manufactured goods. Under this relationship the Crown Dependencies are bound by special rules, such as those relating to customs, quantitative restrictions and levies, and other import measures in respect of agricultural products.<sup>42</sup>
- 9.25 The UK is generally responsible for the defence, security, international relations and overall good government of the Overseas Territories,<sup>43</sup> although each Overseas Territory has its own constitution. The Overseas Territories are not members of the EU, but all other than Gibraltar<sup>44</sup> and the Sovereign Base Areas have a special association with it, governed by the Overseas Association Decision (OAD).<sup>45</sup> Although Bermuda is associated with the EU, it is not covered by the present OAD, having decided to opt out of it. Some Overseas Territories receive development assistance from the EU via the European

Development Fund. With the exception of Gibraltar, the EU acquis does not apply to the Overseas Territories. The FCO has overall responsibility for the Overseas Territories' relations with the EU.

- 9.26 When the UK is considering ratification of a convention or treaty, the Crown Dependencies and Overseas Territories are consulted on whether or not they wish to have it extended to them.<sup>46</sup> Government departments are responsible for asking the Crown Dependencies and Overseas Territories to consider whether or not the convention or treaty should be extended to them – either at the same time as the UK ratifies it or at a later date (where this is possible under the terms of the convention or treaty).

scrutiny, ministers are required to provide written evidence in the form of an explanatory memorandum which provides information about the document, including the policy implications arising and the Government's attitude towards the proposal.<sup>48</sup>

### Parliamentary scrutiny

- 9.27 Specific arrangements for Parliamentary scrutiny have been made in relation to EU legislation. The cornerstones of the process are Resolutions<sup>47</sup> of 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. 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.
- 9.28 The Cabinet Secretariat is responsible for the maintenance of the Government's scrutiny procedures and 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

## Notes

- 1 For more information, see: [www.thecommonwealth.org](http://www.thecommonwealth.org).
- 2 For more information, see: [www.coe.int/lportal/web/coe-portal](http://www.coe.int/lportal/web/coe-portal).
- 3 For more information, see: [www.europa.eu/index\\_en.htm](http://www.europa.eu/index_en.htm).
- 4 For more information, see: [www.g20-g8.com/g8-g20/g8/english/home.18.html](http://www.g20-g8.com/g8-g20/g8/english/home.18.html).
- 5 For more information, see: [www.g20.org/index.aspx](http://www.g20.org/index.aspx).
- 6 For more information, see: [www.imf.org/external/index.htm](http://www.imf.org/external/index.htm).
- 7 For more information, see: [www.nato.int/cps/en/natolive/index.htm](http://www.nato.int/cps/en/natolive/index.htm).
- 8 For more information, see: [www.oecd.org/home/0,2987,en\\_2649\\_201185\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/home/0,2987,en_2649_201185_1_1_1_1_1,00.html).
- 9 For more information, see: [www.osce.org](http://www.osce.org).
- 10 For more information, see: [www.un.org/en](http://www.un.org/en).
- 11 For more information, see: [www.worldbank.org](http://www.worldbank.org).
- 12 For more information, see: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040614~menuPK:41699~pagePK:43912~piPK:44037~theSitePK:29708,00.html>.
- 13 For more information, see: [www.wto.org](http://www.wto.org).
- 14 International Monetary Fund (1994) *Articles of Agreement*.
- 15 Cabinet Office (2010) *Guide to Cabinet and Cabinet Committees*, p. 7.
- 16 For more information, see: [www.ukcu.fco.gov.uk](http://www.ukcu.fco.gov.uk).
- 17 For more information, see: [www.uknato.fco.gov.uk](http://www.uknato.fco.gov.uk).
- 18 For more information, see: [www.ukun.fco.gov.uk](http://www.ukun.fco.gov.uk).
- 19 For more information, see: [www.ukoecd.fco.gov.uk](http://www.ukoecd.fco.gov.uk).
- 20 For more information, see: <http://ukinaustria.fco.gov.uk/en/about-us/uk-delegation-osce/>.
- 21 For more information, see: [www.ukcoe.gov.uk](http://www.ukcoe.gov.uk).
- 22 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 Act 2011.
- 23 Foreign and Commonwealth Office (2004) *Treaties and MOUs: Guidance on Practice and Procedures*, pp. 6–7.
- 24 Treaty on the Functioning of the European Union, 2008, Article 288.
- 25 Treaty on the Functioning of the European Union, 2008, Articles 258 and 260.
- 26 Cabinet Office (2011) *Devolution: Memorandum of Understanding and Supplementary Agreements*, paragraph B4.25.
- 27 Council of Europe (1950) European Convention on Human Rights, Article 46.
- 28 United Nations (1945) Charter of the United Nations, Article 25.
- 29 Under Article 27 of the UN Charter, all permanent members of the UNSC have the power of veto (except on procedural matters).
- 30 For example, The United Nations (International Tribunal) (Former Yugoslavia) Order 1996, which enables the UK to co-operate 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 co-operate 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.’
- 31 NATO (1949) North Atlantic Treaty, Article 5.
- 32 For more information, see: [www.nato.int/cps/en/natolive/topics\\_49178.htm](http://www.nato.int/cps/en/natolive/topics_49178.htm).
- 33 There are a small number of exceptions; for example, Article 5 of the Convention on the Organisation for Economic Co-operation and Development (1960) provides that the OECD can take binding decisions on behalf of its members, although this relates to issues of governance such as budgets.
- 34 More recently CHOGM has agreed the values included in the Declaration of Commonwealth Principles 1971; the Harare Commonwealth Declaration 1991; and the Affirmation of Commonwealth Values and Principles 2009. For more information, see: [www.thecommonwealth.org/document/34293/35468/216908/commonwealth\\_values\\_and\\_principles.htm](http://www.thecommonwealth.org/document/34293/35468/216908/commonwealth_values_and_principles.htm).
- 35 For more information on the World Trade Organization’s trade dispute resolution mechanism, see: [www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/disp1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm).
- 36 International Monetary Fund, *Articles of Agreement*, Article IV. For more information, see: [www.imf.org/external/np/exr/facts/surv.htm](http://www.imf.org/external/np/exr/facts/surv.htm).

- 37 For more information, see:  
[www.oecd.org/document/0/0,3746,en\\_21571361\\_37949547\\_39418560\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/0/0,3746,en_21571361_37949547_39418560_1_1_1_1,00.html).
- 38 Schedule 5, paragraph 7 of the Scotland Act 1998; Schedule 2 of the Northern Ireland Act 1998; and international relations is not listed in Schedule 7 of the Government of Wales Act 2006, which sets out those matters that are devolved.
- 39 Cabinet Office, *Devolution: Memorandum of Understanding and Supplementary Agreements*.
- 40 *Ibid.*, paragraphs B4.12–15.
- 41 Ministry of Justice (2011) *Background Briefing on Crown Dependencies: Jersey, Guernsey and the Isle of Man*, pp. 5–6.
- 42 Act of Accession 1972, Protocol 3.
- 43 For more information on the Overseas Territories, see:  
[www.fco.gov.uk/en/about-us/what-we-do/overseas-territories](http://www.fco.gov.uk/en/about-us/what-we-do/overseas-territories).
- 44 Gibraltar is part of the EU as a European territory for which the UK is responsible, but it is not covered by certain EU rules; in particular it is outside the EU's common custom area.
- 45 Council Decision 2001/822/EC of 27 November 2001 on the association of the Overseas Countries and Territories with the European Community (Overseas Association Decision). For more information, see:  
[www.europa.eu/legislation\\_summaries/development/overseas\\_countries\\_territories/r12301\\_en.htm](http://www.europa.eu/legislation_summaries/development/overseas_countries_territories/r12301_en.htm).
- 46 Ministry of Justice, *Background Briefing on Crown Dependencies*, p. 6.
- 47 House of Commons Scrutiny Reserve Resolution of 17 November 1998 and House of Lords Scrutiny Reserve Resolution of 30 March 2010.
- 48 Jack M (ed.) (2011) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition. London: LexisNexis Butterworths, p. 702.

# Chapter Ten

The Government has certain responsibilities to control and account for government expenditure, which are primarily exercised by Treasury ministers, although other ministers and accounting officers also have important responsibilities. 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.

This chapter covers:

- the role of Parliament
- Budget and Spending Reviews
- the Supply Estimates process
- Treasury approval of expenditure
- departmental governance arrangements
- the role of the accounting officer
- government accounts.

# Government finance and expenditure

## The role of Parliament

- 10.1 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 Chapter Five, paragraph 5.3). The Government must ask the House of Commons for the money it needs, and this is done predominantly through the Supply Estimates process (see paragraphs 10.7–10.13). Government expenditure must be spent in accordance with the purposes for which the House of Commons has supplied it.<sup>1</sup> Together with the requirement that taxation can be imposed only with the approval of the House of Commons, this is one of the foundations of the constitutional power of Parliament.
- 10.2 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.<sup>2</sup> 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.<sup>3</sup>

## Budget and Spending Reviews

- 10.3 It is for the Chancellor of the Exchequer to make the Budget Statement.<sup>4</sup> The Statement is made each year to update 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.
- 10.4 The Chancellor of the Exchequer can decide to 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.
- 10.5 Budget Resolutions determine the scope of the Finance Bill, which is formally introduced as soon as the Resolutions are passed.<sup>5</sup> The Finance Bill is the legislative vehicle to implement the Budget's tax announcements. The Bill is then subject to the normal legislative process in the House of Commons, although when it enters committee stage it is usually split between a public bill committee and a committee of the whole House. The House of Lords does not amend Finance Bills but does

debate them on second reading, with subsequent stages taken formally. Chapter Four, paragraph 4.23 sets out details on collective clearance in relation to the Budget.

- 10.6 Since the late 1990s, Spending Reviews have been held regularly to allocate expenditure between departments, in a process led by the Treasury. The last Spending Review was published in October 2010, and set departmental budgets for 2011–12 to 2014–15. Compared with the previous approach of annual budgets, the Spending Reviews enable multi-year planning and therefore help in achieving better value for money.<sup>6</sup>

### The Supply Estimates process

- 10.7 Supply Estimates<sup>7</sup> are put before Parliament by the Chancellor of the Exchequer 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, 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 Estimates. The Treasury presents the Supply Estimates to Parliament as a House of Commons paper.

### Votes on Account

- 10.8 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 and is April to March), 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

- 10.9 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

- 10.10 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. The sole opportunity to alter spending occurs in January/February.

### Parliamentary scrutiny and approval

- 10.11 Supply Estimates seek Parliament's approval for the resources, capital and cash for a particular financial year. Each Estimate is accompanied by an Estimates Memorandum, providing further detail of the spending involved in the Estimate. The Estimates and accompanying Memorandum are scrutinised by departmental select committees with the assistance of the House of Commons Scrutiny Unit. Select committees may ask for further detail and information from the department if they are unhappy with the information provided, or think it unclear. Memoranda are published by Parliament on its website.<sup>8</sup>
- 10.12 Consideration of the Estimates provides the House with an opportunity to debate select committee reports. Following the presentation of the Estimates, the Liaison Committee of the House of Commons (see Chapter Five, note 8) selects one or two Estimates which relate to expenditure on areas that have been the subject of a select committee report; the reports are then debated on the basis of a motion to approve those Estimates. Once the selected Estimates have been approved, the remaining Estimates are dealt with formally, a procedure known as the

'roll-up'. A Consolidated Fund Bill is then brought in to appropriate the sums authorised in the Estimates.<sup>9</sup>

### *Format of expenditure*

10.13 Each Estimate is in a standard format and includes not only the spending plans of the relevant government department but also any other central government bodies for which the department has policy responsibility.<sup>10</sup>

### **Treasury approval of expenditure**

10.14 Treasury consent is required for all government expenditure or resource commitments.<sup>11</sup> 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.

10.15 There are some areas of expenditure that override delegated authority or where the Treasury cannot delegate authority.<sup>12</sup> 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.

10.16 Treasury approval is also required before the introduction of any 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).<sup>13</sup> Legislation may require specific Treasury consent to the exercise of statutory powers that have a financial dimension.

### **Departmental governance arrangements**

10.17 The current arrangements for departmental governance are set out in the *Ministerial Code*,<sup>14</sup> which 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 relevant secretary of state in accordance with Cabinet Office guidelines; and
- the remit of the board should be performance and delivery, and to provide the strategic leadership of the department.

10.18 Further guidance on governance is available in the Enhanced Departmental Boards Protocol issued by the Minister for the Cabinet Office<sup>15</sup> and in *Corporate Governance in Central Government Departments: code of good practice*.<sup>16</sup>

10.19 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.

10.20 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 who should have between them experience of managing large organisations).

### **The role of the accounting officer**

10.21 Each organisation in central government must have an accounting officer, who has personal responsibility for the propriety and regularity of spending and the use of resources.<sup>17</sup> 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>18</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.

- 10.22 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.
- 10.23 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 Two, paragraphs 2.29–2.32 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.

### Government accounts

- 10.24 Central government accounts include those for departments, pension schemes, executive agencies, executive non-departmental public bodies 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 paragraph 10.29).
- 10.25 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.<sup>19</sup>

- 10.26 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*

- 10.27 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.<sup>20</sup>
- 10.28 Treasury administrative deadlines require 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*

- 10.29 WGA are full accruals-based accounts<sup>21</sup> covering the public sector, prepared in accordance with the FReM and audited by the National Audit Office. WGA are 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.<sup>22</sup>

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

- 10.30 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>23</sup> The manual is prepared following consultation with the Financial Reporting Advisory Board (FRAB) and is issued by the relevant authorities.
- 10.31 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 on financial reporting principles and standards' for government as required by the Government Resources and Accounts Act 2000.<sup>24</sup>

10.32 The FRAB acts as an independent element in the process of setting accounting standards for government, and exists to promote the highest 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.<sup>25</sup>

## Notes

- 1 HM Treasury (2011) *Managing Public Money*. London: The Stationery Office.
- 2 *Ibid.*
- 3 For further information, see HM Treasury 'History of the Treasury': [www.hm-treasury.gov.uk/about\\_history.htm](http://www.hm-treasury.gov.uk/about_history.htm).
- 4 House of Commons Information Office (2010) *Budgets and Financial Documents Factsheet P5*.
- 5 Jack M (ed.) (2011) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition. London: LexisNexis Butterworths, pp. 774–775 and 780–783.
- 6 For further information, see HM Treasury 'An introduction to Spending Review': [www.hm-treasury.gov.uk/spend\\_spendingreview\\_introduction.htm](http://www.hm-treasury.gov.uk/spend_spendingreview_introduction.htm)
- 7 HM Treasury (2011) *Supply Estimates: a guidance manual*.
- 8 HM Treasury (2011) *Central Government Main Supply Estimates 2011-12* (HC921). London: HM Treasury.
- 9 House of Commons Standing Orders Nos. 54 and 55; Jack (ed.) *Erskine May*, pp. 735–744.
- 10 More information on the Supply Estimates process can be found in HM Treasury (2011) *Supply Estimates: a guidance manual*. London: HM Treasury.
- 11 HM Treasury, *Managing Public Money*, paragraph 2.1.5.
- 12 *Ibid.*, paragraph 2.1.7.
- 13 Further information can be found in HM Treasury, *Managing Public Money*, Annex 2.2.
- 14 Cabinet Office (2010) *Ministerial Code*, paragraph 3.5.
- 15 Information on the Enhanced Departmental Boards Protocol can be accessed at: [www.cabinetoffice.gov.uk/content/enhanced-departmental-boards-protocol](http://www.cabinetoffice.gov.uk/content/enhanced-departmental-boards-protocol).
- 16 HM Treasury (2005) *Corporate Governance in Central Government Departments: code of good practice*.
- 17 HM Treasury, *Managing Public Money*, paragraph 2.2.
- 18 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.
- 19 HM Treasury (2011) *Government Financial Reporting Manual*.
- 20 Government Resources and Accounts Act 2000, s.6.4.
- 21 Accounts that recognise receipts and payments as they fall due, rather than when they are received or paid.
- 22 Further information on WGA is accessible at: [www.hm-treasury.gov.uk/psr\\_government\\_accounts.htm](http://www.hm-treasury.gov.uk/psr_government_accounts.htm).
- 23 HM Treasury, the Scottish Government, the Northern Ireland Assembly, the Welsh Government, the Department of Health, and the Chartered Institute of Public Finance and Accountancy and the Local Authority (Scotland) Accounts Advisory Committee.
- 24 Government Resources and Accounts Act 2000, s.24.
- 25 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).

# Chapter Eleven

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, including to protect national security and in the interest of collective responsibility. Well-established rules govern access to information by former ministers and their successors.

This chapter covers:

- ministerial records
- maintaining the official record
- publishing data
- access to information
- access to papers of a previous administration
- disclosure and use of official information by the Prime Minister and ministers
- Prime Ministers' records on leaving office
- memoirs and the 'Radcliffe' Rules.

# Official information

11.1 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. Other formats that emerge will also be covered.

## Ministerial records

11.2 It is important that the official record is maintained and that there is a proper separation of official information (public records, as defined in Schedule 1 to 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 and should be managed in accordance with the Lord Chancellor's Code of Practice on the Management of Records issued under section 46 of the Freedom of Information Act 2000 (FOI Act). Any records produced by ministers or civil servants as part of their official duties are protected by Crown copyright which The National Archives administers on behalf of the Sovereign.

### *The role of ministers' private offices*

11.3 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.

11.4 Guidance issued by the Cabinet Office and The National Archives<sup>1</sup> emphasises the need for private offices to record ministerial decisions on any correspondence or submissions to ministers or officials, including special advisers, and outside interest groups, private sector organisations and MPs. This would include any meetings, telephone conversations and communications via the internet where decisions are taken that relate to government business, so that there is a clear audit trail.

11.5 All papers and electronic information relating to a minister's personal, party or constituency affairs remain the minister's personal 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.<sup>2</sup> Data security of constituency material is the responsibility of the minister in their capacity as an MP. Responsibility for party information is a matter for the relevant political party to determine.

## Maintaining the official record

11.6 Government departments routinely capture records as evidence of activity and to demonstrate accountability. The Lord Chancellor’s Code of Practice on the management of records sets out how government departments should manage their records.<sup>3</sup> 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>4</sup> Records required for administrative purposes or for some special reason may be retained beyond that period by the department with the approval of the Lord Chancellor on the advice of the Advisory Council on National Records and Archives.<sup>5</sup>

### *Cabinet records*

11.7 The record of the proceedings of Cabinet and its committees is kept by the Cabinet Secretariat. This includes agendas, papers, minutes and correspondence. Departments should not keep Cabinet or Cabinet committee minutes for longer than four weeks.

## Publishing data

11.8 A large amount of information is already available and accessible to the public; for example, [www.data.gov.uk](http://www.data.gov.uk) makes over 5,000 datasets, containing non-personal data, publicly accessible.<sup>6</sup> Departments are expected to publish information detailing their purpose, public functions, policies and spending, among other information specific to their role. The FOI Act requires public authorities to have a publication scheme that sets out the information they publish on a regular basis.<sup>7</sup>

11.9 The UK Government Licensing Framework provides a policy and legal framework for licensing the re-use of public sector information produced by central government (which is subject to Crown copyright and Crown database rights) and the wider public sector. The Open Government Licence is a non-transactional licence that enables public sector information to be re-used.<sup>8</sup> The framework is consistent with the Re-use

of Public Sector Information Regulations 2005. Under these Regulations the Office of Public Sector Information, which operates within The National Archives, has a statutory role in the investigation of complaints relating to the re-use of public sector information. The National Archives also has best practice with regard to public sector information through the Information Fair Trader Scheme.

11.10 The Office for National Statistics publishes independent statistical information to improve public understanding of the economy and society. Those statistics that are compliant with the UK Statistics Authority’s Code of Practice are designated as national statistics.<sup>9</sup>

## Access to information

11.11 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.<sup>10</sup> 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.

11.12 Under the FOI Act, a public authority (including a government department) normally has to respond to any request within 20 working days. The response should state whether the requested information is held and, if so, provide it. However, the FOI Act provides a number of exemptions<sup>11</sup> from this obligation. These are wide ranging and provide, for example, that information is exempt from disclosure where:

- it relates to policy formulation;
- withholding it is required for the purpose of safeguarding national security;
- its disclosure would be likely to prejudice international relations, the economic interests of the United Kingdom, defence or relations between administrations in the UK;
- information relates to communications with the Royal Family or those acting on their behalf, or with the Royal Household;

- its disclosure would prejudice commercial interests; or
  - its disclosure would constitute an actionable breach of confidence.
- 11.13 In some cases the exemption is absolute; in others a judgement is needed as to whether or not the public interest in maintaining the exemption exceeds that of making the information available. A public authority does not have to meet the obligation to comply with a request where the cost of identifying whether or not the relevant information is held, or locating, retrieving and extracting the information would exceed £600 (for government departments).
- 11.14 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 Committee of the Northern Ireland Assembly or the work of the Cabinet of the Welsh Government;
  - inhibit the free and frank provision of advice or exchange of views for the purposes of deliberation; or
  - otherwise prejudice the effective conduct of public affairs.
- 11.15 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 confirm that the information was supplied by, or relates to, one of the listed security bodies, or when exemption from disclosure is required for the purposes of safeguarding national security.<sup>12</sup> These exemptions may also apply in circumstances where no certificate has been issued.
- 11.16 In the case of EIR requests, there are statutory exceptions (similar although not identical to exemptions 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.
- 11.17 A requester of information under the FOI Act or the EIR has a right of complaint to the Information Commissioner's Office (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 to the First-tier Tribunal (General Regulatory Chamber) against a decision of the Information Commissioner.
- Cabinet records*
- 11.18 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 Government's working assumption is that information relating to the proceedings of Cabinet and its committees should remain confidential.<sup>13</sup> However, each case needs to be considered on its merits.
- 11.19 Under section 53(2) of the FOI Act, a Cabinet minister or the Attorney General, the Advocate General for Scotland or the Attorney 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. This power is sometimes referred to as the ministerial veto.<sup>14</sup> It has so far been used only twice, both times in relation to Cabinet and Cabinet committee minutes, although its use is not restricted to Cabinet information.<sup>15</sup>
- 11.20 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*

11.21 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 public servants, including government ministers, civil servants, members of the Armed Forces and the police. It also applies to government contractors.

### *Leaks of information*

11.22 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.<sup>16</sup>

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

11.23 As a general rule, ministers of an incoming administration may not see the papers of a former administration of a different political party<sup>17</sup> that indicate the views of their predecessors, including the advice they received from officials and correspondence with the Devolved Administrations and local government. 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.<sup>18</sup>

11.24 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 appropriate, as the accountable person for all government departments under section 53 and a Law Officer will act as the qualified person under section 36.<sup>19</sup>

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

11.25 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.<sup>20</sup> 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.

11.26 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,<sup>21</sup> 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.

11.27 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.

11.28 Ministers who leave office or move to another ministerial appointment should not 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 on leaving office**

11.29 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. 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. Documents that contain a mixture of personal and official information do, however, remain part of the government record.

### **Memoirs and the 'Radcliffe' Rules**

11.30 There are conventions governing the publication, in whatever medium, by former ministers of memoirs and other works relating to their experience as ministers.<sup>22</sup> 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; and
- refrain from publishing information that would affect the confidential relationships between ministers or of ministers with their officials.<sup>23</sup>

11.31 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.<sup>24</sup> 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; and
- 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.

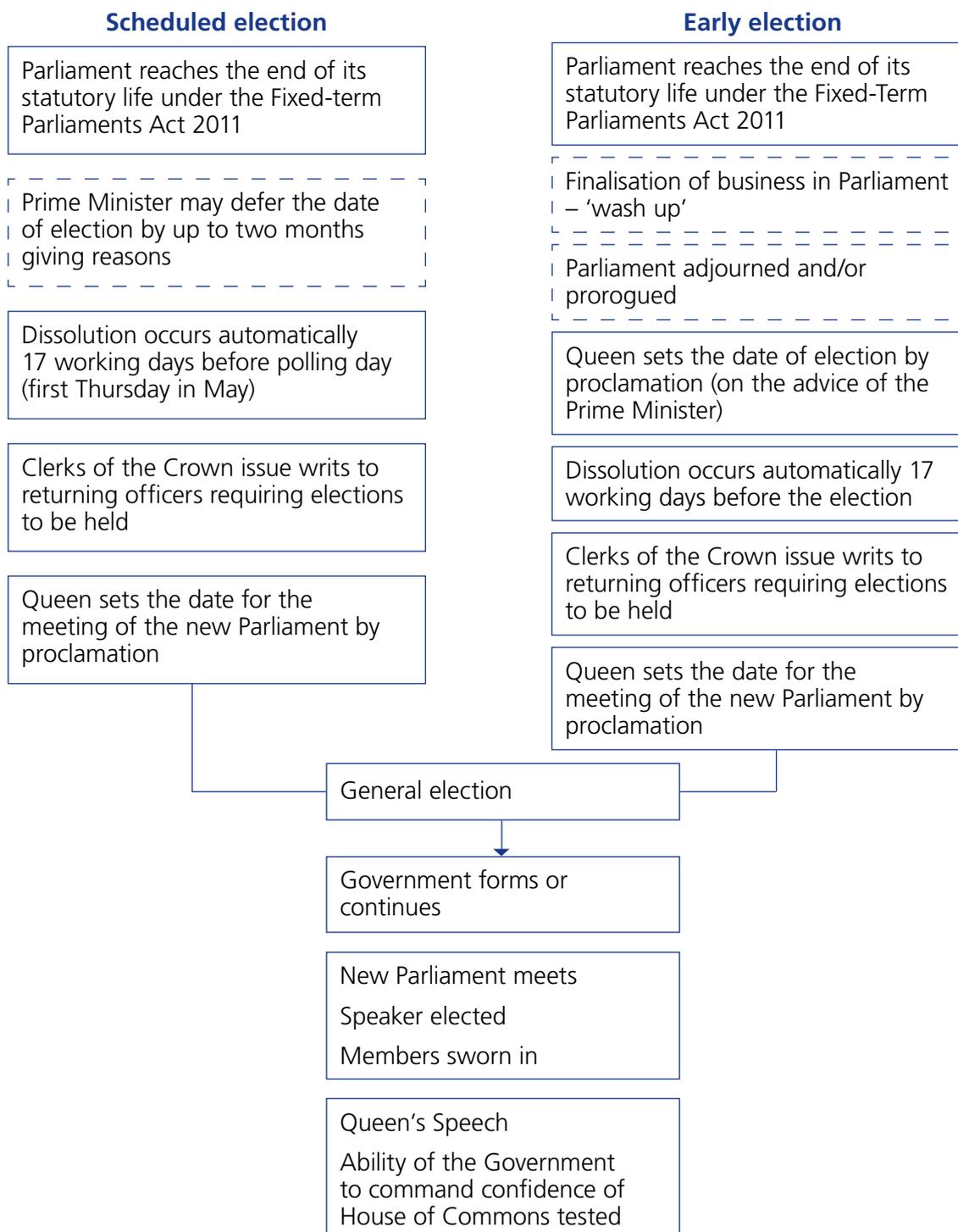
## Notes

- 1 Cabinet Office (2009) *Guidance on the Management of Private Office Papers*.
- 2 *Ibid.*, paragraph 5.
- 3 Ministry of Justice (2009) *Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000*.
- 4 Provisions in the Constitutional Reform and Governance Act 2010, which have yet to be implemented, allow for this period to be reduced to 20 years. The practical implication of such a change remains under consideration. Official records are transferred at the 20-year point under the Public Records Act (NI) 1923.
- 5 Public Records Act 1958, s.3(4).
- 6 *The Coalition: our programme for government* (2010), s.16, commits to ensuring that data published by public bodies is provided in a re-usable format.
- 7 Freedom of Information Act 2000, Part I, s.19.
- 8 For more information, see: [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/).
- 9 Ministers need to be mindful of the UK Statistics Authority (2009) *Code of Practice*; see: *Cabinet Office, Ministerial Code*, paragraphs 8.15–8.16.
- 10 The requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 differ significantly from those applicable under the corresponding UK legislation.
- 11 Freedom of Information Act 2000, ss.21–44.
- 12 Freedom of Information Act 2000, s.23(2).
- 13 The full working assumption on Cabinet and Cabinet Committee information can be found at: [www.justice.gov.uk/guidance/freedom-and-rights/freedom-of-information/foi-assumptions-cabinet.htm](http://www.justice.gov.uk/guidance/freedom-and-rights/freedom-of-information/foi-assumptions-cabinet.htm).
- 14 Ministry of Justice (2011) *Statement of HMG Policy: use of the executive override under the Freedom of Information Act 2000 as it relates to information falling within the scope of Section 35(1)*.
- 15 The ministerial veto was exercised on 23 February 2009 and 10 December 2009. For more information, see: [www.parliament.uk/documents/commons/lib/research/briefings/snpc-05007.pdf](http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-05007.pdf).
- 16 Cabinet Office (2000) *Directory of Civil Service Guidance*, vol. 2, pp. 54–56.
- 17 Hansard HC vol. 977 cols 305–307 (24 January 1980).
- 18 For further information, see: *Cabinet Office (2000) Directory of Civil Service Guidance*, vol. 2, pp. 8–10.
- 19 Ministry of Justice (2011), *Statement of HMG Policy*.
- 20 *Ibid.*, paragraph 14.
- 21 Cabinet Office, *Ministerial Code*, paragraph 2.9 and *Directory of Civil Service Guidance*, pp. 41–43.
- 22 Rules for civil servants on memoirs and books are set out in the *Directory of Civil Service Guidance*, vol. 2, p. 38.
- 23 Cabinet Office, *Directory of Civil Service Guidance*, vol. 2, pp. 41–42 (Key Principle 1).
- 24 *Ibid.*, p. 42 (Key Principle 8).

# Annex: Election timetable

## Elections and government formation – process

Note: Dotted line denotes that step may be skipped.



### Election timetable

<b>Milestone</b>	<b>Days</b>
Proclamation – dissolution of old 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 a proxy appointment to a postal vote (5pm)	
Last day to apply to register to 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).

Note: 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.

# List of abbreviations

BIC	British–Irish Council
C&AG	Comptroller and Auditor General
CHOGM	Commonwealth Heads of Government Meeting
COBR	Cabinet Office Briefing Room
ECHR	European Convention on Human Rights
EIR	Environmental Information Regulations
EU	European Union
FCO	Foreign and Commonwealth Office
FOI	Freedom of Information
FRAB	Financial Reporting Advisory Board
FReM	Government Financial Reporting Manual
GCHQ	Government Communications Headquarters
IMF	International Monetary Fund
JMC	Joint Ministerial Committee
LPP	Legal professional privilege
NAO	National Audit Office
NATO	North Atlantic Treaty Organization
NHS	National Health Service
NMD	Non-ministerial department
OAD	Overseas Association Decision
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
UNSC	UN Security Council
WGA	Whole of Government Accounts
WTO	World Trade Organization

# Glossary

## **Accounting officer**

The person who has responsibility for the propriety, regularity, feasibility and value for money of the use of public resources. In government departments this is usually the permanent secretary.

## **Accruals-based accounts**

Accounts that recognise receipts and payments as they fall due, rather than when they are received or paid.

## **Act of Parliament (Act)**

A bill that has become law on receiving Royal Assent; a statute. The main form of primary legislation.

## **Affirmative Parliamentary procedure**

Under this procedure Statutory Instruments are laid in draft, usually before both Houses of Parliament, and must be approved before they are made (see also Negative Parliamentary procedure).

## **Backbench Business Committee**

Committee of the House of Commons established in 2010. Decides the topics for debate on the set number of days allocated to backbench business.

## **Barnett formula**

The formula that allocates a population share of changes in planned expenditure on comparable services by departments of the UK Government to the Devolved Administrations in Scotland, Wales and Northern Ireland.

## **Bill**

A draft of an Act, after it has been introduced into Parliament.

## **Budget Resolutions**

Decisions of the House of Commons taken at the end of the Budget debate, which may give temporary legal effect to measures announced in the Budget Statement and which form the basis of the Finance Bill.

## **Cabinet Secretariat**

The Cabinet Secretariat supports the Prime Minister (and Deputy Prime Minister) and the chairs of Cabinet committees. It ensures the effective conduct of government business and that proper collective consideration takes place.

## **Carltona principle**

The principle by which 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.

## **Civil Service Commissioner**

Responsible for regulating the principle of recruitment on merit to the Civil Service and hearing complaints under the *Civil Service Code*.

## **Clerks of the Crown**

A position held by the Permanent Secretary at the Ministry of Justice. The Clerk is an officer of both Houses of Parliament, responsible to the Lord Chancellor for the issue of Parliamentary election writs and returns and the authentication of all formal state documentation under the Great Seal, including Commissions, Royal Assents to Acts of Parliament and, for example, the appointment of Peers, judges and bishops.

## **Collective responsibility**

The principle that decisions made by Cabinet or Cabinet committees are binding on all government ministers, save where collective agreement is explicitly set aside.

## **Commissioners for Her Majesty's Revenue and Customs**

Commissioners appointed by Her Majesty, responsible in particular for the collection and management of taxation. See: [www.hmrc.gov.uk/governance/commissioners.htm](http://www.hmrc.gov.uk/governance/commissioners.htm).

## **Commissioners of Her Majesty's Treasury**

The ministerial body in whose name the Treasury's affairs are conducted.

### **Committee of Ministers of the Council of Europe**

The Council of Europe's decision-making body.

### **Committee of Public Accounts**

Committee of the House of Commons responsible for scrutinising the accounts of government departments and other public bodies.

### **Committee of the whole House**

When the committee stage of a bill is taken in the Chamber, in either House, with all Members able to participate, rather than being committed to a public bill committee.

### **Concordats**

Formal but not legally binding agreements, for example those between the Government and the Devolved Administrations.

### **Consolidated Fund**

The Government's main bank account at the Bank of England.

### **Convenor of the Crossbench Peers**

The crossbench group, who are all independent peers, do not have a leader like the political parties. They do, however, elect one of their number as their Convenor, to look after their interests in the House.

### **Conventions**

Rules of constitutional practice that are regarded as binding in operation but not law.

### **Council of the European Union**

(also known as the Council of Ministers) The body comprised of one minister from each Member State of the EU; the minister will vary depending on the topic under discussion.

### **Counsellors of State**

Senior members of the Royal Family to whom the Sovereign may devolve certain responsibilities on a temporary basis, when abroad or incapacitated.

### **Crown copyright**

Works produced by government ministers and civil servants, in the course of their official duties, are protected by Crown copyright. This includes ministers' articles and contributions, and published speeches when written in a ministerial capacity. Material written by ministers in a non-ministerial capacity – as MPs, officers of a political party or private individuals – is not covered. Works produced by or under the direction and control of the UK Parliament are covered by Parliamentary copyright.

### **Crown Dependency**

The Crown Dependencies comprise the Bailiwicks of Jersey and Guernsey (the latter includes Alderney, Sark and Herm) and the Isle of Man. They are not part of the UK and are not represented in Parliament. They are self-governing dependencies of the Crown with their own legislative assemblies and administrative, fiscal and legal systems, and their own courts of law. The Sovereign is their Head of State.

### **Devolved Administrations**

The Scottish Government, the Welsh Government and the Northern Ireland Executive.

### **Devolved legislatures**

The Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

### **Devolved matters**

Policy areas within the competence of one or more of the three devolved legislatures. In the Northern Ireland Assembly, these are also referred to as 'transferred matters'.

### **d'Hondt formula**

The d'Hondt formula is used in UK elections to allocate seats in multi-member constituencies to political parties in broad proportion to the share of the vote each party received in that constituency (proportional representation). The first seat is awarded to the party with the greatest number of votes. That party's vote total is then adjusted according to the d'Hondt formula (total number of votes, divided by one more than the number of seats already received). The next seat is awarded to whichever party now has the highest number of votes; their vote total is then adjusted according to the formula, and the process continues. The d'Hondt formula is used in electing the UK Members of the European Parliament, and is part of the voting system used to elect Members of the Scottish Parliament, Welsh Assembly and Greater London Assembly. The same formula is also used to award 10 of the ministerial positions in the Northern Ireland Executive in proportion to the party vote achieved at elections to the Assembly.

### **Dissolution of Parliament**

Parliament is dissolved before a general election and summoned to meet again shortly after polling day.

### **Draft bill**

A bill may be published in draft form if it is considered appropriate to do so. Draft bills may be subject to pre-legislative scrutiny.

**Duty of candour**

The concept that a public authority should not seek to win litigation at all costs but should assist the court in reaching the correct result and thereby improve standards in public administration. It requires public authorities to openly set out all relevant material in the litigation.

**Economic and Social Council**

The body under the United Nations responsible for co-ordinating work on economic and social matters within the UN agencies.

**Enhanced Departmental Boards Protocol**

Cabinet Office guidance on the functioning of departmental boards. See: [www.cabinetoffice.gov.uk/content/enhanced-departmental-boards-protocol](http://www.cabinetoffice.gov.uk/content/enhanced-departmental-boards-protocol).

**EU acquis**

Legal acts, court decisions and legislation of the European Union are collectively known as the 'acquis'.

**European Commission**

The executive body of the European Union.

**European Council**

Heads of state or government of all EU Member States, along with the President of the Commission and the President of the European Council.

**European Court of Human Rights**

Considers alleged violations of the obligations of States under the European Convention on Human Rights.

**Excepted matters**

Those areas that the Northern Ireland Assembly cannot legislate on unless the matter is ancillary to a reserved or transferred matter.

**Executive**

Persons in whom the power of government is vested (i.e. ministers in the UK).

**Ex-officio member**

An ex-officio member is a member of a body who is part of it by virtue of holding another office.

**First Lord of the Treasury**

One of the Commissioners of the Treasury. A post held by the Prime Minister.

**First Parliamentary Counsel**

The head of the Office of the Parliamentary Counsel. Parliamentary counsel comprises specialist lawyers who draft bills on behalf of the Government and advise the Government on Parliamentary procedure.

**General Synod**

The governing body of the Church of England.

**Government Legal Service**

The organisation responsible for government lawyers.

**Group of 8 (G8)**

A forum of major economies for discussing global issues.

**Group of 20 (G20)**

A group of major advanced and developing economies established in 1997 to stabilise financial markets.

**Hansard**

The official report of debates in both Houses of Parliament.

**'Henry VIII power'**

A power in an Act which enables primary legislation to be amended or repealed by secondary legislation.

**House of Commons Commission**

The statutory body which oversees the administration of the House of Commons and is the formal employer of all staff of the House. It consists of the Speaker, the Leader and Shadow Leader of the House and three backbench MPs chosen by the House. It was established under the House of Commons (Administration) Act 1978.

**House of Commons Scrutiny Unit**

This body provides additional, central support to select committees of the House of Commons, especially in relation to legal and financial matters. It also provides the secretariats for joint committees scrutinising draft bills, and administrative support for public bill committees.

**Infraction proceedings**

These are brought by the European Commission against a Member State which the Commission considers has infringed EU law.

### **Junior minister**

A minister for a department that is headed by another minister.

### **Law Officers**

These are the Attorney General (who is also the ex-officio Advocate General for Northern Ireland), the Advocate General for Scotland and the Solicitor General. Law Officers provide legal advice to all government departments on a wide range of issues, including human rights, and European and constitutional law.

### **Legal professional privilege**

The principle which protects the confidentiality of communication between a qualified legal adviser and their client.

### **Legislative Consent Motion**

The process by which a devolved legislature may give its consent to the inclusion of provisions in a UK bill which also fall within the legislative competence of the devolved Assembly.

### **Letters Patent**

Official documents issued in the name of the Sovereign granting an office, right or status on a person or body.

### **Liaison Committee**

The Liaison Committee of the House of Commons is comprised of the chairs of other select committees. It: 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. The Liaison Committee of the House of Lords advises the House on the resources required for committee work and on allocation of resources between committees.

### **Lords Spiritual**

The Archbishops of Canterbury and of York, the Bishops of London, Durham and Winchester and other bishops of the Church of England who are Members of the House of Lords.

### **Lords Temporal**

Members of the House of Lords other than the Lords Spiritual.

### **Main Estimates**

The means through which departments seek Parliamentary approval for their spending plans (resources, capital and cash) for the year ahead. Main Estimates for central government departments are presented to Parliament by the Financial Secretary to the Treasury within five weeks of the Budget Statement.

### **Memorandum of Understanding**

A non-legislative framework of concordats and agreements. See, for example, Cabinet Office (2011) *Devolution: Memorandum of Understanding and Supplementary Agreements*.

### **Money Bill**

A bill which has been certified by the Speaker of the House of Commons under the Parliament Act 1911 as relating exclusively to financial matters, as defined in the Act.

### **Negative Parliamentary procedure**

Under this procedure Statutory Instruments are laid, usually before both Houses of Parliament, after being made. They may be annulled by a Resolution passed within a certain period (usually 40 days after laying).

### **Order in Council**

An order that is made by Her Majesty in Council and which is a form of primary or secondary legislation.

### **Order of Council**

An order that does not require personal approval by the Sovereign but can be made by 'the Lords of the Privy Council' (that is, ministers).

### **Osmotherly Rules**

The Osmotherly Rules set out detailed guidance for civil servants giving evidence before select committees. The Rules were first formally issued in May 1980 by E.B.C. Osmotherly, a civil servant in the Cabinet Office. They were revised most recently in July 2005.

### **Parliamentary Commissioner for Administration**

(also known as the Parliamentary Ombudsman) An officer of the House of Commons who investigates complaints from members of the public that they have suffered injustice caused by maladministration on the part of government departments or certain other public bodies. His or her powers and responsibilities are set out in the Parliamentary Commissioner Act 1967.

**Parliamentary Ombudsman**

See Parliamentary Commissioner for Administration.

**Post-legislative scrutiny**

An assessment of how an Act is working in practice relative to its original objectives, for example by a select committee. A post-legislative scrutiny memorandum should be published within three to five years of an Act receiving Royal Assent.

**Pre-legislative scrutiny**

An assessment of a draft bill, for example by a select committee.

**Prerogative of mercy**

A prerogative by which the Sovereign can grant pardons to convicted persons.

**Prerogative powers**

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.

**Primary legislation**

Legislation that does not owe its existence or authority to any other legislation. Acts of Parliament are the main form of primary legislation.

**Printed Paper Office**

The office responsible for providing documents required by Members of the House of Lords for the discharge of their Parliamentary functions.

**Private Member's Bill**

A public bill introduced by a 'private member' (not a minister). In the Lords, this is termed a Private Peer's Bill.

**Private notice question (House of Lords)**

A question which is tabled for oral answer on the same day, subject to the Lord Speaker agreeing that it is of sufficient urgency and importance to justify an immediate reply.

**Privy Council**

The Sovereign's own Council. Their role is to advise the Sovereign in carrying out his or her duties.

**Programme order**

A timetable for a bill in the House of Commons that is proposed by the Government and agreed by the House.

**Prorogation**

The formal end of a Parliamentary session which brings to an end almost all Parliamentary business.

**Public Accounts Commission**

The body that appoints the National Audit Office's external auditors and scrutinises its performance.

**Public bill committee**

A House of Commons committee which examines a bill. It consists of a number of members specifically nominated to it and meets in a committee room away from the Chamber.

**Public records**

Records that are subject to the Public Records Act 1958. They include records of, or held in, any government department, records of offices, commissions or other bodies or establishments under Her Majesty's Government in the UK, records of courts and tribunals, of the Armed Forces and of various named bodies. They are managed in each department by a Departmental Records Officer.

**'Radcliffe' Rules**

The rules that govern the publication of ministerial memoirs.

**Ram doctrine**

A minister may, as an agent of the Crown, exercise any powers which the Crown may exercise, except insofar as ministers are precluded from doing so by statute and subject to the financial controls governing public spending. The Ram doctrine is set out in a memorandum dated 2 November 1945 from the then First Parliamentary Counsel, Granville Ram.

**Recess**

A period when Parliament is not sitting.<sup>1</sup>

**Regent**

A person selected to act as the Sovereign because the Sovereign is under the age of 18 or is incapacitated.

<sup>1</sup> For more detailed explanation, see Jack M (ed.) (2011) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition, London: LexisNexis Butterworths, pp. 143–144.

### **Reserve powers**

Prerogative powers of the Sovereign that are not exercised by, or on the advice of, ministers.

### **Reserved matters**

Policy areas that are not within the competence of the Scottish Parliament or the Northern Ireland Assembly.

### **Royal Assent**

The final step in the legislative process whereby a bill is presented to the Sovereign to be signed in to law.

### **Royal Prerogative**

See Prerogative powers.

### **Royal Warrant**

A method of making or confirming ministerial appointments.

### **Salisbury-Addison convention**

(See: Report of the Joint Committee on Conventions (2006) *Conventions of the UK Parliament* (HL265/HC1212). London: The Stationery Office.) The House of Lords should not reject at second reading any government legislation that has been passed by the House of Commons and that carries out a manifesto commitment. In the House of Lords, a manifesto bill:

- is accorded a second reading;
- is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the bill; and
- is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the bill or any amendments which the House of Lords may wish to propose.

### **Secondary legislation**

Strictly, legislation that is made in the exercise of a power conferred by primary legislation; but the term is often used, as in this Manual, so as to include all legislation made in the exercise of a power conferred by legislation. Most secondary legislation is made in the form of a Statutory Instrument.

### **Shawcross exercise**

When the Attorney General writes to relevant ministerial colleagues seeking any information that should be considered by a prosecuting authority when weighing the public interest in prosecution.

### **Sherpa**

The Prime Minister's personal representative who is responsible for preparing for the G8 and G20 summits.

### **Sovereign Base Areas**

Military bases located on territory in which the UK is sovereign.

### **Speaker's Committee for the Independent Parliamentary Standards Authority**

The committee that considers the candidates proposed by the Speaker, following fair and open competition, for the posts of chair and members of the Independent Parliamentary Standards Authority, and approves the Authority's annual estimate of resources.

### **Speaker's Committee on the Electoral Commission**

The committee that oversees the procedure for the selection of individuals to be put forward for appointment or re-appointment as Electoral Commissioners (including the chair of the Commission), and for appointment as the chair of the Local Government Boundary Commission for England.

### **Statement of Funding Policy**

This document sets out government funding for the Devolved Administrations' budgets.

### **Statute**

An Act of Parliament.

### **Statutory Instrument**

The form in which most secondary legislation is made.

### **Supplementary Estimates**

The means by which departments seek to amend Parliamentary authority provided through Main Estimates by altering the limits on resources, capital and/or cash, or by varying the way in which provision is allocated. Supplementary Estimates for central government departments are presented by the Financial Secretary to the Treasury in January each year.

### **Supply Estimates**

The means by which Parliament gives statutory authority to departments for the consumption of resources (for resource and capital purposes) and for cash to be drawn from the Consolidated Fund. Supply Estimates for central government departments are presented by the Financial Secretary to the Treasury. They are usually presented twice a each year, as Main Estimates and Supplementary Estimates.

**Trading fund**

A government department, or an executive agency of a department, which has been established as such by means of a Trading Fund Order, and which is largely or wholly financed from revenue generated by its activities.

**Transferred matters**

The non-excepted and non-reserved matters on which the Northern Ireland Assembly has full legislative competence. They are also called 'devolved matters'.

**Treasury Solicitor's Department**

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.

**UK Government Licensing Framework**

A policy and legal overview for licensing the re-use of public sector information, both in central government and the wider public sector.

**Urgent question (House of Commons)**

A question which is tabled for oral answer on the same day, subject to the Speaker agreeing that it is of an urgent character and relates either to matters of public importance or to the arrangement of business. Urgent questions in the House of Commons are often repeated as government statements in the House of Lords.

**Usual channels**

Informal discussions, in both Houses of Parliament, that take place between the business managers of different parties.

**Vote on Account**

A Vote on Account provides departments with the authority to spend on consumer resources and draw cash from the Consolidated Fund in the early months of the financial year until the Main Estimates are given legal effect. They are presented to Parliament with the Supplementary Estimates.

**Whole of Government Accounts**

Full accruals-based accounts covering the public sector, prepared in accordance with the FReM and audited by the National Audit Office.

# Reference documents

This section provides links to some key reference documents.

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October 2011

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Ref 406764/1011