



# United Kingdom: Parliamentary Process and Procedure

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# United Kingdom: Parliamentary Process and Procedure

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**SUMMARY** The United Kingdom’s Parliament took centuries to develop into the institution that it is today, and its role continues to evolve. Created initially as a way to allow the Crown to collect taxes from his or her subjects, the powers of Parliament gradually expanded to supplement and then act on behalf of the Crown in almost all areas. Parliament has met at Westminster, in London, for centuries.

The electoral process is heavily regulated by legislation, and the “first past the post” system was recently affirmed by a national referendum. The frequency that Parliament must call elections was recently affirmed in statute as being every five years.

## I. Background

The United Kingdom of Great Britain and Northern Ireland (UK) is the collective name of four countries – England, Wales, Scotland, and Northern Ireland. The four separate countries were united under a single Parliament in London, known as the Parliament at Westminster, through a series of Acts of Union.<sup>1</sup> The UK has undergone a period of devolution over the past twenty years with the creation of a Scottish Parliament, a National Assembly in Wales, and an Assembly in Northern Ireland. There are three constituent parts of Parliament: the Sovereign, the House of Lords, and the House of Commons.<sup>2</sup>

The UK does not have a formal written constitution; thus, there is no provision that specifically allocates responsibilities and powers to the legislative or executive branches. Instead, the distribution of responsibilities is governed by long-established custom and conventions. It is customary law that the Crown, as the head of state, acts on the advice of the relevant Ministers.<sup>3</sup>

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<sup>1</sup> Stat Wallie 1284, 12 Edw. 1 (*repealed*); Union with Scotland Act 1706, 6 Ann c. 11, *as amended*; Union with Ireland Act 1800, 38 & 40 Geo. 3 c. 67; Government of Ireland Act 1920, 10 & 11 Geo. 5 c. 67 (*repealed*), [http://www.legislation.gov.uk/ukpga/1920/67/pdfs/ukpga\\_19200067\\_en.pdf](http://www.legislation.gov.uk/ukpga/1920/67/pdfs/ukpga_19200067_en.pdf), archived at <https://perma.cc/F2S6-ZX5S>.

<sup>2</sup> House of Lords, *Library Note: The Sovereign and Parliament* (Mar. 2016), available at <http://researchbriefings.files.parliament.uk/documents/LLN-2016-0011/LLN-2016-0011.pdf>, archived at <https://perma.cc/DN3Y-9KT5>.

<sup>3</sup> “There is a well-established rule that the making of a treaty is an Executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action.” Att’y Gen. for Canada v. Att’y Gen. for Ontario [1937] A.C. 326 [347] (H.L.).

## A. Establishment of the Legislature

The year 2015 marked the 750th anniversary of the Parliament that was summoned by the baronial leader Simon De Montfort in 1265.<sup>4</sup> While this was not the first Parliament seen in England, as “there is no date that marks the exact beginning of parliament,”<sup>5</sup> this Parliament is seen as the prototype for Parliament as we know it today,<sup>6</sup> in that it included representatives from counties and towns across England, demonstrating to the King that he could no longer make decisions for the entire country without input from a wide group of people.<sup>7</sup>

## B. General History and Development

The Magna Carta of 1215 provided many important rights, mostly to the Barons of England, and limited the methods by which the King could collect monies. The limitation on money-collection methods was reaffirmed by the Magna Carta issued in 1216 and 1217 and forced the King to turn to taxation, which required the consent of his subjects. In 1265, King Henry III was held captive and a revolutionary regime headed by Simon de Montford confirmed the Magna Carta in a Parliament comprised of elected knights and townsmen.<sup>8</sup> The Magna Carta was confirmed again by Edward I, Henry II’s son, in the Parliaments of 1297 and 1300,<sup>9</sup> who also introduced the right to petition, whereby any person with a grievance or request could bring it to the King’s attention in Parliament.<sup>10</sup> Parliament did not take long to realize the power that these petitions had, as they determined they could withhold monies requested by the King if he did not grant their petitions.<sup>11</sup>

The centuries that followed involved power struggles between the Crown and Parliament. In the year 1376, the Parliament known as “The Good Parliament” showed for the first time that it had the potential to limit the powers of the Crown by prosecuting royal officials through a newly created procedure of impeachment.<sup>12</sup>

The sixteenth century saw the Reformation, where King Henry VIII rejected the Catholic Church and established a national, royal church, later to become known as the Church of England, which

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<sup>4</sup> HISTORY OF PARLIAMENT TRUST, *THE STORY OF PARLIAMENT*, foreword (2015).

<sup>5</sup> *Id.* at 8. Page 12 of this book notes that the first Parliament could be dated to the reign of King Athelstan (924–39), but this “Parliament” was a royal assembly of nobles and churchmen rather than a parliament as would be recognized today.

<sup>6</sup> *Id.* foreword.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *Id.* at 15.

<sup>9</sup> *Id.*

<sup>10</sup> Historically important petitions include those from suffragettes and anti-slavery campaigners. Today, any online petition that receives over 100,000 signatures will typically be debated in the House of Commons. *Petitions*, PARLIAMENT.UK, <https://petition.parliament.uk/help> (last visited Jan. 23, 2019), archived at <https://perma.cc/5MY3-KQUU>.

<sup>11</sup> HISTORY OF PARLIAMENT TRUST, *supra* note 4.

<sup>12</sup> *Id.* at 20.

served to enhance the standing of Parliament.<sup>13</sup> Parliament was still summoned primarily to provide the King with the ability to tax his subjects, the revenues from which were commonly used to conduct wars.<sup>14</sup>

By the early seventeenth century, Parliament had become a prominent part of the political landscape, which led to confrontations between the King and leading Members of Parliament<sup>15</sup> and the outbreak of two civil wars, the latter resulting in the beheading of King Charles I on January 3, 1649.<sup>16</sup>

The period 1649–60 was known as the Interregnum, when England was ruled as a republican nation. Power was vested mainly in the “Rump Parliament,” which abolished both the House of Lords and the Monarchy. In 1653, Oliver Cromwell forcibly dissolved the Rump Parliament, and army commanders appointed 140 members to a new assembly, known as the “Barebones Parliament.” This Parliament appointed Cromwell as Lord Protector of England, Scotland, and Ireland.

The Protectorate Parliament succeeded the Barebones Parliament; however, it was not a success and paved the way to military rule, which was extremely unpopular. The Rump Parliament was later reinstated and after voting that the government should be led by a king, returned Charles II, the son of Charles I, to the throne.<sup>17</sup> The return from republican state to monarchy became known as the Restoration. Charles II called few Parliaments and was succeeded by James II. James II was unpopular and was eventually overthrown by Prince William of Orange, the leader of the Dutch Republic. With William’s consent, a new Parliament was called in 1689 and offered the Crown to William and his wife, Mary.<sup>18</sup>

The Act of Union of 1707<sup>19</sup> united the country of Scotland with England and Wales to form the country of Great Britain. This Act was followed almost one hundred years later by the Act of Union 1801, which united the entire country of Ireland with Great Britain.<sup>20</sup> Later, the majority of Ireland would become an independent country,<sup>21</sup> leaving a small section of the north, known as Northern Ireland, as part of Great Britain, to form the United Kingdom of Great Britain and Northern Ireland.

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<sup>13</sup> *Id.* at 34.

<sup>14</sup> *Id.* at 38.

<sup>15</sup> *Id.* at 35.

<sup>16</sup> *Id.* at 35.

<sup>17</sup> *Id.* at 63.

<sup>18</sup> *Id.* at 73.

<sup>19</sup> Stat Wallie 1284, 12 Edw. 1 (*repealed*); Union with Scotland Act 1706, 6 Ann c. 11, *as amended*.

<sup>20</sup> Union with Ireland Act 1800, 38 & 40 Geo. 3, c. 67.

<sup>21</sup> Government of Ireland Act 1920, 10 & 11 Geo. 5 c. 67 (*repealed*), [http://www.legislation.gov.uk/ukpga/1920/67/pdfs/ukpga\\_19200067\\_en.pdf](http://www.legislation.gov.uk/ukpga/1920/67/pdfs/ukpga_19200067_en.pdf), archived at <https://perma.cc/F2S6-ZX5S>.

The government continued to evolve over the next three centuries, and its powers steadily expanded while the powers of the Crown were diminished, to the extent that, today, the role of the Monarch is largely ceremonial.

### C. The Palace of Westminster

The British Houses of Parliament are located at the Palace of Westminster, situated on eight acres in central London. There has been a palace in this location for almost one thousand years.<sup>22</sup> Westminster is comprised of over one thousand rooms, one hundred staircases and over three miles of passageways.<sup>23</sup> A devastating fire in 1834, started when an overheating stove set fire to the chamber of the House of Lords, destroyed most of Westminster.

Westminster Hall, designed and built in 1094 by William Rufus, the son of William the Conqueror, was one of the few original buildings that was saved due to a combination of fire-fighting efforts and a change in the direction of the winds. After the fire, a parliamentary committee determined that Westminster should be rebuilt in a Gothic or Elizabethan style, and held a competition to redesign the building. Charles Barry won this competition, with a Tudor-Gothic design that reflected the character and design of the neighboring buildings, and construction was completed in 1852.

The Chamber of the House of Commons consists of rows of benches that face one another. This design was chosen to acknowledge the original use of the first permanent Commons Chamber, St. Stephen's Chapel and to provide a more confrontational design to help promote lively and engaging debates.<sup>24</sup> The Chamber does not contain enough seating for all Members of Parliament: there are a total of 427 seats for 650 members. This was the result of an intentional decision, and even after the Chamber was being rebuilt after being destroyed during World War II, Winston Churchill and other MPs argued against increasing the size as, other than important debates, such as for the budget, not all MPs attend every debate. When discussing the rebuilding of the Chamber, Winston Churchill stated that,

[h]aving dwelt and served for more than 40 years in the late Chamber, and having derived fiery great pleasure and advantage therefrom, I, naturally, would like to see it restored in all essentials to its old form, convenience and dignity. The first is that its shape should be oblong and not semi-circular . . . . The party system is much favoured by the oblong form of Chamber. It is easy for an individual to move through those insensible gradations from Left to Right but the act of crossing the Floor is one which requires serious consideration.

A chamber formed on the lines of the House of Commons should not be big enough to contain all its members at once without overcrowding, and there should be no question of every member having a separate seat reserved for him. The reason for this has long been a puzzle to uninstructed outsiders . . . . Yet it is not so difficult to understand if you look at it from a practical point of view. If the House is big enough to contain all its Members,

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<sup>22</sup> *Westminster Hall*, PARLIAMENT.UK, <https://www.parliament.uk/about/living-heritage/building/palace/westminsterhall/> (last visited Jan. 22, 2018), archived at <https://perma.cc/GY2S-JNW3>.

<sup>23</sup> *Inside Parliament*, BBC, Ep. 1 (2015 Airdate).

<sup>24</sup> *Id.*

nine-tenths of its Debates will be conducted in the depressing atmosphere of an almost empty or half-empty Chamber. The essence of good House of Commons speaking is the conversational style, the facility for quick, informal interruptions and interchanges. Harangues from a rostrum would be a bad substitute for the conversational style in which so much of our business is done. But the conversational style requires a fairly small space, and there should be on great occasions a sense of crowd and urgency. There should be a sense of the importance of much that is said and a sense that great matters are being decided, there and then, by the House.<sup>25</sup>

#### D. Moving Parliament

Parliament was traditionally assembled by a writ of summons from the Crown that named the day and place of the meeting, which has traditionally been at the Palace of Westminster.<sup>26</sup> Members of the House of Lords and the House of Commons sit in separate chambers within Westminster.

There are no specific laws that grant or deny Parliament the authority to continue its responsibilities if it cannot meet due to some event or emergency situation, although decisions can be taken only with a quorum of forty.<sup>27</sup> Despite this restriction, the number of House Members present cannot formally be counted;<sup>28</sup> however, there are a number of ways a quorum can be ascertained, notably through a “division,” which is another term for vote.<sup>29</sup> If a quorum is not met, the business before the House stands over to another sitting, and the House proceeds to the next item of business.<sup>30</sup>

A confidential plan for the evacuation of Parliament to a secret location (later revealed as Stratford-upon-Avon) was developed prior to the commencement of World War II, although this plan was never used.<sup>31</sup> During the war, Parliament was forced to convene outside of its

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<sup>25</sup> 393 PARL. DEB. (4th ser.) (1943) 403-404, available at <https://api.parliament.uk/historic-hansard/commons/1943/oct/28/house-of-commons-rebuilding>, archived at <https://perma.cc/T2KQ-3PYR>.

<sup>26</sup> ERSKINE MAY'S TREATISE ON THE LAW, PRIVILEGES, PROCEEDINGS AND USAGE OF PARLIAMENT (C.J. Boulton et al. eds., 24th ed. 2011) at 59.

<sup>27</sup> House of Commons Standing Order No. 41 states as follows:

41.–(1) If it should appear that fewer than forty Members (including the occupant of the chair and the tellers) have taken part in a division, the business under consideration shall stand over until the next sitting of the House and the next business shall be taken.

(2) The House shall not be counted at any time.

The text is available at <http://www.publications.parliament.uk/pa/cm201213/cmstords/614/body.htm#BABEJHIHA>, archived at <https://perma.cc/CZP8-CMG9>.

<sup>28</sup> *Id.* 41(2).

<sup>29</sup> A division is the way the House “ascertains the number of Members for and against a proposition when the Chair’s opinion as to which side is in the majority on a Question is challenged.” PAUL EVANS, HANDBOOK OF HOUSE OF COMMONS PROCEDURE 196 (1st ed. 1997).

<sup>30</sup> House of Commons Standing Order No. 41(1).

<sup>31</sup> JENNIFER TANFIELD, HOUSE OF COMMONS LIBRARY, IN PARLIAMENT 1939–50: THE EFFECT OF THE WAR ON THE PALACE OF WESTMINSTER, 1991, House of Commons Library Document No. 20, at 5.



traditional setting after the chambers of the House of Commons were destroyed during an air raid. Until it was rebuilt in 1950, the House of Commons sat at Church Road House, which was made an annex of Westminster. This adjustment resulted in the meeting place of the House remaining technically unchanged.<sup>32</sup> The House of Lords made its chambers available for use by the House of Commons and moved its sittings to the King's Robing Room. For the remainder of the war years there was a ban on disclosing the location of Parliament.<sup>33</sup>

## II. Constitutional Status and Role

The UK is a constitutional monarchy. The Crown is the Head of State and has legal powers, although these are now largely ceremonial. The Crown must act upon the advice of its Ministers, who form the executive and are appointed by the Prime Minister. Ministers are typically elected Members of Parliament and thus are required to answer for their actions in Parliament.<sup>34</sup> The term "Crown" often refers interchangeably to either the Monarch or executive, although as the powers of the Monarch have been drastically reduced, the term is used primarily to refer to the executive branch of the government, which is deemed to act on the Monarch's behalf.

## III. Structure and Composition

The UK has a bicameral Parliament consisting of the House of Lords (the Upper House composed of both hereditary and life peers<sup>35</sup>) and the House of Commons (the elected Lower House). The legislature debates issues and votes upon bills. A bill is generally first debated in the House of Commons and, if passed by a majority vote, continues to the House of Lords, which debates it and recommends changes or amendments. The bill then passes back to the House of Commons, which considers any amendments. If both Houses agree, the bill receives Royal Assent and becomes law.

There are currently 650 Members of the House of Commons and 790 Members of the House of Lords who are eligible to sit, making it the only bicameral parliament to have an upper chamber that is larger than its lower chamber.<sup>36</sup> The number of Members of the House of Commons has varied, and section 11 of the Parliamentary Voting System and Constituencies Act 2011 reduced the number of Members to six hundred, but this provision has yet to come into effect.<sup>37</sup>

The major parties within the UK, in order of seats won in the 2017 election, are the Conservative Party, the Labour Party, the Scottish National Party, the Liberal Democrats, the Democratic

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> SIR WILLIAM WADE, *ADMINISTRATIVE LAW* (8th ed. 2000).

<sup>35</sup> See House of Lords Act 1999, c. 34, <http://www.legislation.gov.uk/ukpga/1999/34>, archived at <https://perma.cc/485K-VQLR>. This Act provided for the gradual abolishment of hereditary peers.

<sup>36</sup> *Who's in the House of Lords*, PARLIAMENT.UK, <http://www.parliament.uk/business/lords/whos-in-the-house-of-lords> (last visited Dec. 18, 2018), archived at <https://perma.cc/9UKY-S2P8>.

<sup>37</sup> Parliamentary Voting System and Constituencies Act 2011 c. 1, § 11, <http://www.legislation.gov.uk/ukpga/2011/1/enacted>, archived at <http://perma.cc/XH5U-35EJ>.

Unionist Party, Sinn Fein, Plaid Cymru (the Party of Wales), and the Green Party.<sup>38</sup> There are a number of smaller parties, such as the Monster Raving Looney Party, but these are niche parties that are often not represented in Parliament.

As there are 650 seats in Parliament, 326 seats are needed to obtain a majority of the House. The party that gets the majority of votes during a general election goes on to form the government.

### A. Committees

Numerous parliamentary committees discuss the reform or creation of new laws and policies and are pivotal to the development of new legislation, and these committees are where a large part of the work of the House of Commons and Lords occurs.<sup>39</sup> The committees generally consist of between ten to fifty Members of Parliament who examine government expenditure, policy, and laws in detail, and make recommendations and proposals regarding steps that should be taken to correct any issues.<sup>40</sup> There are Joint Committees, which consist of Members of both Houses – the Commons and the Lords.

Select Committees are comprised of a cross-party group of approximately twelve MPs or Lords that “reflect the balance of Parliament”<sup>41</sup> and are elected by their parties for the committee in a “transparent and democratic way.”<sup>42</sup> Ministers, whips, and opposition front benchers generally do not sit on these committees.

A select committee for each government department is tasked with examining the spending, policies, and administration of that department.<sup>43</sup> Select committees may also be established for other purposes and are customarily given authority to investigate and gather evidence on a particular subject, as set out in the order of reference that established the committee.<sup>44</sup> It may call people, papers, and records to aid in such investigations as it pertains to matters within the scope of its inquiry.<sup>45</sup> The committee must provide a detailed report back to whichever House

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<sup>38</sup> *Political Parties in Parliament*, PARLIAMENT.UK, <http://www.parliament.uk/about/mps-and-lords/members/parties> (last visited Dec. 17, 2018), archived at <https://perma.cc/K7EG-FDDX>.

<sup>39</sup> *Committees*, PARLIAMENT.UK, <https://www.parliament.uk/business/committees/> (last visited Jan. 15, 2019), archived at <https://perma.cc/S2ML-TGSG>.

<sup>40</sup> ROBERT ROGERS & RHODRI WALTERS, *HOW PARLIAMENT WORKS* 306 (7th ed. 2015).

<sup>41</sup> House of Commons, *Select Committees: A Brief Guide* (Aug. 2011), available at <https://www.parliament.uk/documents/commons-information-office/brief-guides/select-committees.pdf> archived at <https://perma.cc/6E64-SJFZ>.

<sup>42</sup> *Id.*

<sup>43</sup> *Select Committees*, PARLIAMENT.UK, <https://www.parliament.uk/about/how/committees/select/> (last visited Jan. 16, 2019), archived at <https://perma.cc/5EWZ-GN7J>.

<sup>44</sup> ERSKINE MAY, *supra* note 26, at 805. A current list of select committees of the House of Commons is available at: *House of Commons Select Committees*, PARLIAMENT.UK, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/> (last visited Jan. 15, 2019), archived at <https://perma.cc/F7CE-5AC2>.

<sup>45</sup> House of Commons, *Select Committees: A Brief Guides*, *supra* note 41.

established the committee.<sup>46</sup> Recently, a select committee has been established to investigate exiting the European Union.

In the House of Commons, most select committees are appointed after the general election and work until the calling of the next election. Some are formed on an ad hoc basis to examine a particular question and must report back by a particular date. The government must respond back to the findings of these committees and form a key part of the checks and balances on the executive by requiring it to explain or justify the actions and decisions it has made or how it spends public money.<sup>47</sup>

Select committees in the House of Lords are different from those of the House of Commons in that they do not mirror the work of government departments. Instead, these committees tend to be thematic and, as in the House of Commons, committees can also be formed on an ad hoc basis.<sup>48</sup> Recent committees have been established in the House of Lords to investigate the development and regulation of artificial intelligence.

General Committees, including those previously known as Standing Committees, work within the Commons and consider proposed legislation. There are three Grand Committees that consider questions on Scotland, Wales, and Northern Ireland.<sup>49</sup>

## **B. Leadership and Roles in the House of Commons**

### *1. Speaker of the House*

The House of Commons is led by the Speaker of the House, who is elected by secret ballot and is responsible for chairing and leading debates, and keeping order in the Commons. This is the highest role within the House of Commons, and the Speaker of the House must remain impartial and resign from his or her political party upon being elected.<sup>50</sup> The Speaker chairs debates of the House of Commons and is responsible for maintaining order and calling upon MPs to speak. MPs notify the Speaker that they want to speak either in writing prior to the debate or standing during the debate, which is known as “catching the Speaker’s eye.”<sup>51</sup> The Speaker has the authority to take the following steps to maintain order:

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> A current list of select committees in the House of Lords is available at: *House of Lords Select Committees*, PARLIAMENT.UK, <https://www.parliament.uk/business/committees/committees-a-z/lords-select/> (last visited Jan. 15, 2019), archived at <https://perma.cc/NN6Q-WZ9K>.

<sup>49</sup> *Committees*, PARLIAMENT.UK, <http://www.parliament.uk/about/how/committees> (last visited Dec. 18, 2018), archived at <https://perma.cc/74KG-2VHV>.

<sup>50</sup> *Office and Role of a Speaker*, PARLIAMENT.UK, <http://www.parliament.uk/business/commons/the-speaker/the-role-of-the-speaker/role-of-the-speaker> (last visited Jan. 15, 2019), archived at <https://perma.cc/4R33-NND4>.

<sup>51</sup> *Id.*

- directing an MP to withdraw remarks if, for example, they use abusive language
- suspending the sitting of the House due to serious disorder
- suspending MPs who are deliberately disobedient – known as naming
- asking MPs to be quiet so Members can be heard.<sup>52</sup>

While the Speaker is required to be politically impartial, he or she retains his/her position as an MP, and may seek re-election during general elections. Major political parties will generally not oppose the Speaker with another candidate in the constituency and the Speaker, who cannot campaign for re-election on political issues, will stand for re-election as “the Speaker seeking re-election.”<sup>53</sup>

## 2. *Parliamentary Whips*

Parliamentary whips serve a number of important roles in Parliament. They work to get the government’s business through Parliament by securing majority votes on the government’s legislative policy and programs.<sup>54</sup> The Chief Whip also has an advisory role, informing the Cabinet about the “acceptability of its legislative proposals to the parliamentary party.”<sup>55</sup> The Chief Whip must also work to set out the schedule for the government’s program of business<sup>56</sup> and is directly responsible to both the Prime Minister and the Leader of the House. The Chief Whip must also liaise with Ministers regarding parliamentary business that affects their departments.<sup>57</sup> Each week when Parliament is sitting, Whips give members of their party a list of business that will be debated, and in cases where the vote of members of their party is necessary, the item is underlined three times, commonly referred to as a “three line whip.”<sup>58</sup> When the division bell rings out across Westminster, whips are also responsible for ensuring that members of their party go through the correct lobby to vote.

## 3. *Front Benchers and Back Benchers*

The terms “front benchers” and “back benchers” are used in relation to the location where MPs sit in the chamber of the House of Commons. Front benchers are either government ministers, or opposition shadow ministers whose role it is to scrutinize the work of the government. They are known as front benchers as the location of their seats are on the benches at the front of the

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> JENNIFER WALPOLE & RICHARD KELLY, HOUSE OF COMMONS LIBRARY, PARLIAMENT AND CONSTITUTION CENTRE, THE WHIP’S OFFICE, Oct. 10, 2008, Standard Note SN/PC/02829, at 4, <http://researchbriefings.files.parliament.uk/documents/SN02829/SN02829.pdf>, archived at <https://perma.cc/7RGV-E6VM>.

<sup>55</sup> *Id.* at 5.

<sup>56</sup> ERSKINE MAY, *supra* note 26, at 51.

<sup>57</sup> *Id.*

<sup>58</sup> *Whips*, PARLIAMENT.UK, <https://www.parliament.uk/about/mps-and-lords/principal/whips> (last visited Jan. 16, 2019), archived at <https://perma.cc/M9LM-MC2C>.

chamber. Back benchers are MPs that are not government ministers or opposition shadow ministers, and are known under this term as they sit in the benches at the back of the chamber.<sup>59</sup>

#### 4. Clerk of the House of Commons

The Clerk of the House is the main constitutional adviser to the House on all its procedures and parliamentary business and also records all decisions of the House of Commons. The Clerk is impartial and under the Parliamentary Corporate Bodies Act 1992 is the legal owner of the property of the House of Commons, including Big Ben.<sup>60</sup>

## IV. Elections

Parliamentary elections were first introduced in medieval England as a solution from the Crown, who was required to obtain consent from Parliament to directly tax his subjects.<sup>61</sup> These elections evolved over time to have a detailed set of rules and procedures that continue to be refined today.

National elections are known as General Parliamentary Elections.<sup>62</sup> The Fixed Term Parliaments Act 2011 established five-year fixed-term Parliaments, with the election occurring on the first Thursday of May, five years after the last election was held.<sup>63</sup> The political party that wins the most seats during this election goes on to form the government. Within each five-year term of Parliament are parliamentary years, which are known as sessions and begin and end in the spring of each year.<sup>64</sup> There are two circumstances in which elections may be held prior to the five year term. The first is if at least two-thirds of all members of the House of Commons vote in favor of an early election, which is known as a snap election. Upon announcing such an election there are six weeks of campaigning prior to the vote. A snap election was held by Prime Minister Theresa May in 2017, when she attempted to increase the majority of Conservative MP's in the House in an effort to help make the process of enacting legislation relating to the UK's exit from the EU easier.<sup>65</sup> The second is if there is a vote of no confidence in the government that cannot be resolved within fourteen days.<sup>66</sup>

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<sup>59</sup> *Backbench*, PARLIAMENT.UK, <https://www.parliament.uk/site-information/glossary/backbenches/> (last visited Jan. 15, 2019), archived at <https://perma.cc/NW8D-V44B>.

<sup>60</sup> Parliamentary Corporate Bodies Act 1992, c. 27, <http://www.legislation.gov.uk/ukpga/1992/27>, archived at <https://perma.cc/8U7V-WHMZ>.

<sup>61</sup> HISTORY OF PARLIAMENT TRUST, *supra* note 4, at 22.

<sup>62</sup> "Parliamentary Election" is defined as "the election of a Member to serve in Parliament for a constituency." Interpretation Act 1978, c. 30, § 5 sched. 1, <http://www.legislation.gov.uk/ukpga/1978/30>, archived at <https://perma.cc/BC4D-EK57>.

<sup>63</sup> Fixed Term Parliaments Act 2011, c. 14, § 1, <http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted>, archived at <http://perma.cc/2ERZ-8KFS>.

<sup>64</sup> *Id.* § 3.

<sup>65</sup> Anushka Asthana, Rowena Mason & Jessica Elgot, *Theresa May Calls for UK General Election on 8 June*, THE GUARDIAN (London) (Apr. 18, 2017), <https://www.theguardian.com/politics/2017/apr/18/theresa-may-uk-general-election-8-june>, archived at <https://perma.cc/9YYS-RV7A>.

<sup>66</sup> *Id.* § 2.

A principle of the British system of government is that the government of the day must have the confidence of the House of Commons. As noted above, the government is formed by the party that wins the majority of seats during the general election. A “hung Parliament” results when no party wins a majority during the election. A report from the House of Commons states that “there are four likely outcomes. These [are] . . . (a) a minority government; (b) a coalition; (c) a failure to produce a government at all; or (d) two or more of these things during the lifetime of a parliament.”<sup>67</sup> A hung Parliament occurred during the 2010 election, and the Conservative Party and Liberal Democrats went on to form a coalition government.<sup>68</sup>

Prior to the Fixed Term Parliaments Act 2011, the maximum duration of a Parliament was five years, at which point Parliament automatically expired.<sup>69</sup> This rarely happened, however, and elections would generally occur after Parliament was dissolved, either through Royal Proclamation<sup>70</sup> or upon the advice of the Prime Minister.<sup>71</sup> The effect of the Proclamation was to vacate all the seats in the House of Commons and require a general election for the Commons. Because there was no set timetable for when an election should be held, other than it should occur within the five-year maximum term of Parliament, the Prime Minister had a political and tactical advantage of deciding the date of the general election, although generally the election was announced in the spring in which the Parliament was due to expire.

The last general election was held on June 8, 2017, and the Conservative party won 318 seats, accounting for 42.2% of votes. The next election will occur in accordance with the requirements established by the Fixed Term Parliaments Act 2011, and will take place the first Thursday in May 2022.<sup>72</sup>

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<sup>67</sup> LUCINDA MAER, HOUSE OF COMMONS LIBRARY, PARLIAMENT AND CONSTITUTION CENTER, HUNG PARLIAMENTS, Mar. 17, 2010, Standard Note SN/PC/04951, <http://dotat.at/tmp/hung.pdf>, archived at <https://perma.cc/4SBB-YYGU> (citing Lord Norton, *The Perils of a Hung Parliament*, in NO OVERALL CONTROL? THE IMPACT OF A “HUNG PARLIAMENT” ON BRITISH POLITICS (Hansard Society 2008), <http://www.hansardsociety.org.uk/wp-content/uploads/2012/10/No-Overall-Control-2008.pdf>, archived at <https://perma.cc/GGJ2-P3CX>). For an updated and expanded version of this Standard Note (which does not contain Lord Norton’s quote), see LUCINDA MAER, HOUSE OF COMMONS LIBRARY, HUNG PARLIAMENTS IN THE TWENTIETH CENTURY, May 8, 2015, Briefing Paper No. 04951, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04951#fullreport>, archived at <https://perma.cc/9QJC-6NUK>.

<sup>68</sup> *Election 2010: First Hung Parliament in UK for Decades*, BBC NEWS (May 7, 2010), <http://news.bbc.co.uk/2/hi/8667071.stm>, archived at <https://perma.cc/9C64-DS6T>.

<sup>69</sup> Septennial Act 1715, c. 38, 1 Geo. 1. St. 2, repealed by Fixed Term Parliaments Act 2011, c. 14, § 1, <http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted>, archived at <http://perma.cc/2ERZ-8KFS>.

<sup>70</sup> Representation of the People Act 1983, c. 2, sched. 1, <http://www.legislation.gov.uk/ukpga/1983/2>, archived at <https://perma.cc/7T5X-2ZTU>.

<sup>71</sup> The average term of Parliament since 1945 has been three years and seven months. ROBERT ROGERS & RHODRI WALTERS, *HOW PARLIAMENT WORKS* 22 (5th ed. 2004).

<sup>72</sup> Fixed Term Parliaments Act 2011, c. 14, § 3.

## A. Electoral System

In the UK, the electoral system used is that of a simple majority (plurality) for each constituency, more commonly known as the “first past the post” system. The candidate who wins the largest number of votes from his or her constituency is sent to Parliament. The political party that wins the most votes goes on to form the government. A referendum was held in 2011 in which voters were asked if they wished to change the electoral system from the first past the post system to an alternative voting system. Voter turnout was higher than expected at 41%, with an overwhelming majority of 67.9% of voters rejecting a change in the electoral system.<sup>73</sup>

In order to stand as a candidate in a UK parliamentary election, the candidate must be at least eighteen years old, and either a British citizen, a citizen of the Republic of Ireland, or an eligible Commonwealth citizen. There are a number of individuals who are disqualified from becoming members of Parliament, including, but not limited to, the following:

- civil servants
- members of police forces
- members of the armed forces
- government-nominated directors of commercial companies
- judges
- members of the legislature of any country or territory outside the Commonwealth
- peers who sit and can vote in the House of Lords
- bishops of the Church of England (known as the Lords Spiritual) who are entitled to sit and vote in the House of Lords.<sup>74</sup>

Eligibility to vote in general elections in the UK is subject to a number of criteria. Primarily, the individual wishing to vote must be registered in the register of parliamentary electors for his or her relevant constituency.<sup>75</sup> To be able to register his or her name in the register of parliamentary electors, the individual must be a British subject, which includes Commonwealth citizens,<sup>76</sup> or a

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<sup>73</sup> *Vote 2011: UK Rejects Alternative Vote*, BBC NEWS (May 7, 2011), <http://www.bbc.com/news/uk-politics-13297573>, archived at <https://perma.cc/CD52-JNA5>.

<sup>74</sup> The Electoral Commission, *UK Parliamentary General Election*, Nov. 2018, available at [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0019/173017/UKPGE-Part-1-Can-you-stand-for-election.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/173017/UKPGE-Part-1-Can-you-stand-for-election.pdf), archived at <https://perma.cc/RS66-8BF8>. The entire list of disqualifications is contained in the House of Commons Disqualification Act 1975, c. 24, <https://www.legislation.gov.uk/ukpga/1975/24/data.pdf>, archived at <https://perma.cc/C47N-Q7TR>.

<sup>75</sup> ERSKINE MAY, *supra* note 26, at 40.

<sup>76</sup> Representation of the People Act 1983, c. 2, § 4(6), <http://www.legislation.gov.uk/ukpga/1983/2>, archived at <https://perma.cc/KUW9-PCZX>. Commonwealth citizens are individuals who do not require leave to enter or remain in the United Kingdom. See also British Nationality Act 1981, c. 61, §§ 37 & 51(2), <http://www.legislation.gov.uk/ukpga/1981/61>, archived at <https://perma.cc/8KW5-XDVX>.

citizen of the Republic of Ireland residing in Britain,<sup>77</sup> and be eighteen years or older. A British citizen residing overseas can vote for up to fifteen years after he or she leaves the country.<sup>78</sup>

Individuals who are disqualified from voting are Members of the House of Lords, legal or illegal immigrants, individuals of unsound mind, individuals guilty of corrupt or illegal practices in elections, and prisoners detained while serving their sentence.

## B. Electoral Districts

Electoral Districts in the UK are known as parliamentary constituencies, with each constituency electing one Member of Parliament. There are currently 650 constituencies in the UK, with the average population represented by a Member of Parliament being 68,000.<sup>79</sup> The breakdown of Members of Parliament representing the countries of the UK is as follows: 533 in England, 59 in Scotland, 40 in Wales, and 18 in Northern Ireland.<sup>80</sup> The distribution of these seats is under continuous review by four non-departmental government bodies, known as the Boundary Commissions. The Boundary Commissions recommend changes to the boundaries of the constituencies they are responsible for reviewing to ensure that each Member of Parliament represents a proportionate number of constituents who are eligible to vote.<sup>81</sup>

## C. Registering to Vote

Provisions for the registration of voters in the UK are made through regulations under the Representation of the People Act 1983.<sup>82</sup> In the UK, local councils maintain voter registration lists (commonly known as the “electoral roll” or “electoral register”). The information held on the electoral roll is used for general elections, European Parliament elections, local government elections, and, depending upon the persons’ place of residence, elections to the National Assembly for Wales or the Scottish Parliament.<sup>83</sup>

Voter registration is not automatic and requires positive action (registration) on behalf of the individual wishing to vote. The electoral roll is compiled from three main sources:

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<sup>77</sup> Ireland Act 1949, 12, 13 & 14 Geo. 6, c. 41, <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/41>, archived at <https://perma.cc/BS3C-23T8>.

<sup>78</sup> Representation of the People Act 1983, c. 2, § 4(1), <http://www.legislation.gov.uk/ukpga/1983/2>, archived at <https://perma.cc/KUW9-PCZX>.

<sup>79</sup> HOUSE OF COMMONS LIBRARY, DEPARTMENT OF INFORMATION SERVICES, TOTAL NUMBER OF MPs, PEERS AND STAFF, Mar. 15, 2012, Parliamentary Information List, Standard Note, SN/PC/02411, <http://researchbriefings.files.parliament.uk/documents/SN02411/SN02411.pdf>, archived at <http://perma.cc/93L2-MZ4W>.

<sup>80</sup> *Westminster Parliamentary Constituency*, OFFICE FOR NATIONAL STATISTICS, <http://www.ons.gov.uk/ons/guide-method/geography/beginner-s-guide/electoral/westminster-parliamentary-constituencies/index.html> (last visited Dec. 18, 2019), archived at <http://perma.cc/TX28-BGZD>.

<sup>81</sup> Parliamentary Constituencies Act 1986, c. 56, sched. 2, as amended, <http://www.legislation.gov.uk/ukpga/1986/56>, archived at <https://perma.cc/8RWM-SLDD>.

<sup>82</sup> Representation of the People Act 1983, c. 2.

<sup>83</sup> *Registering to Vote*, GOV.UK, <https://www.gov.uk/register-to-vote> (online registration site for voting; last visited Dec. 18, 2019), archived at <https://perma.cc/H72B-MCNH>.



- An annual canvass conducted by the Local Council between August and November. Voter registration forms are delivered to homes in the Local Councils area. Households are required by law to complete and return the form listing all their residents who are eligible to vote on October 15 of that year.<sup>84</sup> If the information on the form received by the household is accurate, registration can be renewed by phone or over the internet.
- Rolling registration by individual voters, who can register at any time by completing a registration form and sending it to the local electoral registration office.
- Online registration by individual voters, who can register at any time by completing and submitting an online registration form.<sup>85</sup>

The penalty for failing to complete the voter registration form or for providing false information is a fine of up to £1,000 (approximately US\$1,500).<sup>86</sup> Additionally, failure to register results in the individual not being able to vote in any election, and also has a negative impact on his or her ability to obtain credit, as credit reporting agencies use the electoral roll to verify names and addresses of credit applicants.<sup>87</sup>

The electoral register can be updated on a rolling basis with additions, deletions, or amendments. Individuals who move out of the voting district can submit a new voter registration form to be listed on the electoral register in their new district. Applicants must provide their old address so that the Electoral Registration Officer of the new district can notify the old district of the move.<sup>88</sup>

#### D. Voter Turnout

There were 45,325,100 UK parliamentary voters in 2014,<sup>89</sup> and 66.1% of the electorate voted during the general election in 2015, the highest turnout in eighteen years.<sup>90</sup>

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<sup>84</sup> Representation of the People Act 1983, c. 2, § 10.

<sup>85</sup> GOV.UK, *supra* note 83.

<sup>86</sup> Representation of the People (England and Wales) Regulations, 2001, SI 2001/341, ¶ 23, <http://www.legislation.gov.uk/uksi/2001/341/made>, archived at <http://www.legislation.gov.uk/uksi/2001/341/made>.

<sup>87</sup> Representation of the People (England and Wales) (Amendment) Regulations 2002, SI 2002/1871, ¶ 114, <http://www.legislation.gov.uk/uksi/2002/1871/made>, archived at <https://perma.cc/DW6X-G2F4>.

<sup>88</sup> GOV.UK, *supra* note 83.

<sup>89</sup> *Electoral Statistics for UK, 2014*, OFFICE OF NATIONAL STATISTICS (Apr. 16, 2015), <http://www.ons.gov.uk/ons/rel/pop-estimate/electoral-statistics-for-uk/2014/stb---2014-electoral-statistics.html>, archived at <https://perma.cc/W23P-PM28>.

<sup>90</sup> Sarah Knapton, *General Election 2015: Highest Turnout Since Tony Blair Landslide*, TELEGRAPH (London) (May 8, 2015), <http://www.telegraph.co.uk/news/general-election-2015/11592557/General-election-2015-highest-turnout-since-Tony-Blair-landslide.html>, archived at <https://perma.cc/7X7L-9WR4>.

## E. Replacing Members of Parliament

Once elected, Members of Parliament cannot directly resign their seats.<sup>91</sup> The only way that a seat can be vacated is through death, disqualification, dissolution, expulsion, or elevation to the Peerage. When a parliamentary seat becomes vacant, a writ for a by-election is issued.<sup>92</sup> To prevent long-standing vacancies of seats, these writs are normally issued within three months of the vacancy.<sup>93</sup> If the vacancy occurs during a parliamentary recess, the Speaker of the House is permitted to issue a writ for election during this time.<sup>94</sup>

There appears to be no legislation or procedure to replace a large number of MPs. It is likely that the normal procedure for appointing MPs through by-elections would be followed in these circumstances. For example, in 1985, fifteen members of the Unionist Party vacated their seats in protest over the Anglo-Irish Agreement. As technically Members of Parliament are not permitted to resign from their seats, a legal loophole was used by these members, whereby they were appointed to an office for profit under the Crown, which disqualified them from sitting as MPs. By-elections were subsequently held to fill the vacancies.

During World War II, many seats were left vacant when MPs were involved in government services or became active members of the armed forces. The government formed a coalition in 1940 and agreed upon an electoral truce, during which the parties agreed not to contest by-elections. Instead, the local constituency association of the party that had won the seat in the last election nominated a candidate.<sup>95</sup> However, despite this agreement, some elections were still contested when parties considered that the candidate was too radical.

## V. Legislative Process

### A. Overview

Legislative powers in England and Wales are vested in Parliament. Like the US, the legislature is bicameral. Subject to very limited exceptions, passing an Act of Parliament requires the consent of both Houses of Parliament—the House of Lords and House of Commons—and then the Act

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<sup>91</sup> House Resolution, 2 March 1623, COMMONS JOURNAL (1547–1628) at 724; *see also* HILAIRE BARNETT, CONSTITUTIONAL AND ADMINISTRATIVE LAW (2000).

<sup>92</sup> The process of obtaining a writ is through a warrant from the Speaker of the House being directed to the Clerk of the Crown in Chancery. On the receipt of the Speaker's warrant, the writ is issued by the Clerk of the Crown and transmitted in pursuance of the provisions of the Representation of the People Act 1983, ch. 2. "Neglect or delay in the delivery of the writ, or any other violation of the Act, is an offence; and in the event of any complaint being made the House will also inquire into the circumstances." ERSKINE MAY, *supra* note 26, at 33.

<sup>93</sup> SPEAKER'S CONFERENCE ON ELECTORAL LAW, 1973, Cm. 5500.

<sup>94</sup> Recess Elections Act 1975, c. 66, <http://www.legislation.gov.uk/ukpga/1975/66>, archived at <https://perma.cc/XX5D-WPYP>.

<sup>95</sup> TANFIELD, *supra* note 31, at 9. Tanfield states that there were seventy-five contested by-elections and sixty-six uncontested elections.

must be given Royal Assent.<sup>96</sup> There are many stages that a bill must pass through in each House of Parliament before it will receive Royal Assent and enter into law. The various stages occur in each House. The bill is first introduced, known as the first reading. There is then a general debate on the content of the bill during what is known as the second reading. It then passes to the committee stage, where it is examined in depth. Once the committee stage is completed, the bill goes to the report stage and then back to be read and debated again in the third reading before it is passed over to the other House, where this process occurs again. In some cases, a bill can be sent back and forth between the House of Commons and the House of Lords as MPs and Lords attempt to come to agreement over the text of the bill. This is commonly known as “ping-pong.”<sup>97</sup>

It is a principle that the supreme authority of the Queen in Parliament is sovereign, which means that Parliament alone has the authority, with Royal Assent, to enact or repeal legislation.<sup>98</sup>

Some have argued that this sovereignty has been eroded as Parliament no longer has exclusive legislative control over many areas since the UK joined the European Union (EU) and permitted it to directly impose enforceable rights and obligations.<sup>99</sup> In addition, the courts have ruled that EU law has precedence over the national law of the UK when there are inconsistencies.<sup>100</sup> Despite a ruling from the House of Lords stating that it could not overturn an Act of Parliament and grant “rights directly contrary to Parliament’s sovereign will,”<sup>101</sup> in cases where national law directly conflicts with obligations imposed by EU law, the European Court of Justice has “affirmed . . . that a national court which, in a case concerning [European] Community law, was precluded from granting interim relief by a rule of national law, must set aside that rule.”<sup>102</sup> This argument, and the argument that Parliament had acted to bind itself when joining the EU, will shortly become moot with the expected exit of the UK from the European Union (commonly referred to as “Brexit”).

Private Members’ bills may also be put forward by Members of Parliament who are not Ministers. These bills are afforded significantly less time in Parliament for debate and discussion and, as a result, are rarely enacted, but they frequently serve to raise awareness of an issue.<sup>103</sup>

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<sup>96</sup> Parliament Act 1911, 1 & 2 Geo. 5, c. 13, <http://www.legislation.gov.uk/ukpga/Geo5/1-2/13>, archived at <https://perma.cc/F9JT-76TL>.

<sup>97</sup> HOUSE OF COMMONS, MP’S GUIDE TO PROCEDURE, 221, available at <http://www.parliament.uk/gtp> (last visited Jan. 14, 2019), archived at <https://perma.cc/HB6J-G27V>.

<sup>98</sup> TANFIELD, *supra* note 31, at 19.

<sup>99</sup> 1 HOUSE OF COMMONS, EUROPEAN SCRUTINY COMMITTEE, THE EU BILL AND PARLIAMENTARY SOVEREIGNTY: TENTH REPORT OF SESSION 2010–11, Dec. 7, 2010, HC 633-I, 2010–11, ¶¶ 18–19, <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmeuleg/633/633i.pdf>, archived at <https://perma.cc/SP5D-P6D3>.

<sup>100</sup> *Macarthy Ltd. v. Smith*, [1981] 1 All E.R. 111 [120].

<sup>101</sup> *R v. Sec’y of State for Transp., ex p Factortame*, [1990] 2 A.C. 85 [142]–[143].

<sup>102</sup> *R v. Sec’y of State for Transp., ex p Factortame*, [1991] 1 A.C. 603.

<sup>103</sup> *Private Members’ Bills*, PARLIAMENT.UK, <http://www.parliament.uk/about/how/laws/bills/private-members> (last visited Jan. 6, 2019), archived at <https://perma.cc/EMF2-WY58>.

## B. Interesting Parliamentary Procedures

During the course of Parliament's development, a number of interesting procedures have evolved, many of which are unique to the United Kingdom.

### 1. *Salisbury Convention*

The Salisbury Convention provides that the House of Lords will not oppose a government bill that was featured in the government's election manifesto on its second or third reading. This "ensures that Government bills can get through the House of Lords when the Government do not have a majority in that House."<sup>104</sup>

### 2. *Parliament Acts*

In 1909, the House of Lords vetoed the Finance Bill, which provides for the annual government spending of public money and the raising of taxes. As a result of this, the Parliament Act was enacted in 1911. This bill served to remove the ability of the House of Lords to veto a bill. The Parliament Acts provide that when the Speaker of the House designates a bill as a "Money Bill," meaning a bill that only addresses the imposition or alteration of taxes, or charges on public funds, the agreement of the House of Lords is not needed for it to become an Act of Parliament.

The Parliament Act also provides that, in specified circumstances, the House of Commons may enact legislation without the approval of the House of Lords. The procedure for this is contained in the Parliament Acts and allow the House of Commons to unilaterally pass a bill if

- A bill has been passed in the House of Commons and rejected in the House of Lords;<sup>105</sup>
- Unless time requires small changes to be made, which must be approved by the Speaker of the House, or the Lords have made changes that should be incorporated, the exact same bill is passed by the House of Commons in the following parliamentary session;
- Twelve months has passed in between the bills first reading in the House of Commons and the date it receives its third reading in the House of Commons in the following session;
- The bill is sent to the House of Lords on both the first and second occasion at least one month before the end of the session.

Thus, upon the second rejection of a bill by the House of Lords, the bill will be presented to Her Majesty and become an Act of Parliament when it receives Royal Assent.<sup>106</sup> Use of this procedure is rare, and in practice enables the House of Lords to delay a bill for around thirteen months. It was last used to enact the Hunting Act in 2004, a controversial bill that prohibited the hunting of wild animals with dogs.<sup>107</sup> There are exceptions as to when this procedure may be used,

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<sup>104</sup> HOUSE OF COMMONS, *MP'S GUIDE TO PROCEDURE*, *supra* note 97, at 223.

<sup>105</sup> Parliament Act 1911, 1 & 2 Geo. 5, c. 13, § 2(3).

<sup>106</sup> ERSKINE MAY, *supra* note 26, at 649.

<sup>107</sup> Hunting Act 2004, c. 37, <https://www.legislation.gov.uk/ukpga/2004/37>, archived at <https://perma.cc/ZT8V-RT57>.

including any bill that starts in the House of Lords,<sup>108</sup> bills that would extend the terms of Parliament beyond five years, private bills, and any delegated legislation.<sup>109</sup>

### 3. Divisions

A division may occur during a contested vote. When the Speaker calls for MPs to vote, MPs must call out either “aye” or “no.” The Speaker must determine which side has cast the most votes by “endeavor[ing] to judge from the loudness and general character of the opposing exclamations, or from a consideration of the probabilities of the case, which side has the majority.”<sup>110</sup> If the Speaker cannot determine which side cast the most votes from this process, or if the House does not acquiesce in the Speaker’s determination of which side has the vote by “responding with further exclamations of ‘aye’ (or ‘no’) the Speaker will call for a division by stating ‘clear the lobbies’ in the House or clear the bar” in the Lords, which is known as dividing the chamber. At this point, the division bell is rung, which can be heard throughout Westminster, as well as in the Albert Pub, on Victoria Street, and all MPs have eight minutes after the sounding of this bell to walk to the division lobbies. There is one lobby for the ayes (“contents” in the Lords) and one lobby for the no’s (“non-contents” in the Lords). To cast a vote, the MP or Lord walks through the lobby, where his/her name is recorded and vote counted.<sup>111</sup> If there is a tie that cannot be resolved by calling for further discussions, the Speaker must cast the deciding vote. In casting this vote, the Speaker

is at liberty to vote like any other Member, according to his conscience, without assigning a reason; but in order to avoid any imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the House final, and to explain his reasons.<sup>112</sup>

### 4. Vote of No Confidence

It is a central tenet to the House of Commons that “[t]he ability of a government to command the confidence of the elected House of Commons is central to its authority to govern.”<sup>113</sup> A motion of no confidence may occur within the House of Commons when the majority of MPs are not confident in the leadership of the government. If the motion passes, and a new government cannot be formed that has the support of the majority of MPs within fourteen days,<sup>114</sup> Parliament

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<sup>108</sup> 317 PARL. DEB. (5th ser.) (1997-98) 169.

<sup>109</sup> HOUSE OF COMMONS, MP’S GUIDE TO PROCEDURE, *supra* note 97, at 224.

<sup>110</sup> ERSKINE MAY, *supra* note 26, at 411.

<sup>111</sup> *Divisions*, PARLIAMENT.UK, <https://www.parliament.uk/about/how/business/divisions/> (last visited Jan. 15, 2019), archived at <https://perma.cc/7KDS-FH4S>.

<sup>112</sup> ERSKINE MAY, *supra* note 26, at 420.

<sup>113</sup> THE CABINET MANUAL, ¶ 2.7, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60641/cabinet-manual.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf), archived at <https://perma.cc/8RA3-I66G>.

<sup>114</sup> *Id.* ¶ 2.31.

is dissolved and a general election must occur.<sup>115</sup> This is one of the few circumstances under which Parliament may be dissolved prior to its statutory five-year term.<sup>116</sup>

### 5. *The Mace*

The Mace is a symbol of the authority of the House, and was made for King Charles II. When the Commons is sitting, the Mace is placed in brackets on the Table of the House, and the House may not sit unless the Mace is present.<sup>117</sup> The role of the Mace was recently highlighted when, during a debate on the exit of the UK from the EU, an MP removed the Mace from the table and held it aloft in a symbolic act of defiance to show that the will of Parliament is no longer there to govern. The Chamber erupted in jeers and the MP who removed the Mace was expelled from the session by the Speaker and reportedly headed to the local pub, where he stated he removed the Mace as he “felt Parliament had effectively given up its sovereign right to govern properly.”<sup>118</sup>

## VI. Executive Branch

The Crown is the Head of State and has legal powers, although these are now largely ceremonial. The Crown must act upon the advice of its ministers, who form the executive and are appointed by the Prime Minister. Ministers are typically elected Members of Parliament and thus are required to answer for their actions in Parliament. The term “Crown” often refers interchangeably to either the Monarch or executive; because the powers of the Monarch have been drastically reduced, however, the term is primarily used to refer to the executive branch of the government, which is deemed to act on the Monarch’s behalf and is responsible for policy making.

The actual role of the executive is not defined in legislation and, in response to a question in the House of Commons calling on the Prime Minister to define his role, Prime Minister Tony Blair noted that his roles, “including the exercise of powers under the royal prerogative, have evolved over many years, drawing on convention and usage, and it is not possible precisely to define them.”<sup>119</sup>

One of the most important powers vested in the executive is the power to send forces into armed conflict. In Britain, this power rests with the Prime Minister, who may technically exercise it without formal parliamentary approval. The government has recently conducted a public consultation on its powers to go to war and has stated that it

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<sup>115</sup> Fixed Term Parliaments Act 2011, c. 14, § 2.

<sup>116</sup> Fixed Term Parliaments Act 2011, c. 14, Explanatory Notes, <http://www.legislation.gov.uk/ukpga/2011/14/notes>, archived at <https://perma.cc/KZK6-7R69>.

<sup>117</sup> ERSKINE MAY, *supra* note 26, at 61.

<sup>118</sup> Jessica Elgot, MP Causes Uproar in Parliament by Grabbing Mace in Brexit Protest, *GUARDIAN* (London), (Dec. 10, 2018), <https://www.theguardian.com/politics/2018/dec/10/day-of-brexite-drama-ends-with-mp-grabbing-the-ceremonial-mace>, archived at <https://perma.cc/Y5PS-85MQ>.

<sup>119</sup> HOUSE OF COMMONS SELECT COMMITTEE ON PUBLIC ADMINISTRATION, *FOURTH REPORT, 2003-4*, HC 422, ¶ 43 (Lord Hurd citing Prime Minister Tony Blair, 372 *PARL. DEB. HC* (5th ser.) (2001) 818W, <https://publications.parliament.uk/pa/cm200304/cmselect/cmpublicadm/422/422.pdf>, archived at <https://perma.cc/VA32-CQM4>).

believes that the ability to exercise the prerogative power to deploy the armed forces without requiring any formal parliamentary agreement is an outdated state of affairs in a modern democracy. It has proposed that a detailed House of Commons resolution should set out the processes Parliament should follow in order to approve any commitment of Armed Forces into armed conflict.<sup>120</sup>

While more recent events, such as a debate on military action in Syria in which Parliament voted as to whether or not the UK should engage in military action, cast uncertainty upon whether the Executive can act unilaterally in such actions, Parliament does not have an established legal role in determining whether or not to deploy the armed forces.<sup>121</sup>

One major contrast with the US system of government is that the English courts can challenge the constitutionality of legislation only with regard to its compatibility with EU law. The incorporation of the European Convention on Human Rights into the national law by the Human Rights Act 1998 gave British citizens a number of directly enforceable rights.<sup>122</sup> However, owing to the sovereignty of Parliament – the principle that Parliament is legislatively supreme and thus there are no legal restrictions on the matters it may legislate – judges cannot strike down an Act of Parliament if it finds it to be unconstitutional or invalid, even if they find it to be incompatible with the Human Rights Act. When the House of Lords does declare an Act to be incompatible with the Human Rights Act, the result is that Parliament must determine how to address the incompatibility.

The operation of this procedure substantially altered the relationship between the executive and judiciary, and initially caused some friction, particularly with regard to the government's robust antiterrorism legislation. In 2004 the House of Lords declared that the government's system of "preventive detention" for terrorist suspects was not compatible with the European Convention on Human Rights, resulting in a period of open hostility from members of the executive towards the judiciary, with the Secretary of State reportedly claiming they were "fed up with having to deal with a situation where Parliament debates issues and judges overturn them."<sup>123</sup> The Lord Chief Justice of England and Wales was allegedly referred to by a member of the executive as being a "muddled and confused old codger."<sup>124</sup>

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<sup>120</sup> HOUSE OF LORDS SELECT COMMITTEE ON THE CONSTITUTION, *WAGING WAR: PARLIAMENT'S ROLE AND RESPONSIBILITY*, 15th Report of Session 2005–6, HL 235-I, ¶ 103, <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/236/236i.pdf>, archived at <https://perma.cc/17BR-AJE3>.

<sup>121</sup> House of Commons Library, *Parliamentary Approval for Military Action*, May 8, 2016, available at <http://researchbriefings.files.parliament.uk/documents/CBP-7166/CBP-7166.pdf>, archived at <https://perma.cc/5MKK-3LGA>.

<sup>122</sup> Human Rights Act 1998, c. 42, <http://www.legislation.gov.uk/ukpga/1998/42>, archived at <https://perma.cc/V87Q-6C9B>.

<sup>123</sup> Michael Kallenbach, *Yesterday in Parliament*, TELEGRAPH (London) (Mar. 7, 2003), [http://www.telegraph.co.uk/news/uk\\_news/1423930/Yesterday-in-Parliament.html](http://www.telegraph.co.uk/news/uk_news/1423930/Yesterday-in-Parliament.html), archived at <https://perma.cc/6W5N-NQTC>.

<sup>124</sup> Francis Elliot, *Britain's Top Judge "Forced Out by Bullying Blunkett"*, INDEPENDENT (London) (Oct. 30, 2004), <http://www.independent.co.uk/news/uk/crime/britains-top-judge-forced-out-by-bullying-blunkett-7906421.html>, archived at <https://perma.cc/LP35-F5EY>.

In a statement that demonstrates a significant difference between the role of the courts in the US and the UK, a member of the British executive claimed that “if public policy can always be overridden by individual challenge through the courts, then democracy itself is under threat.”<sup>125</sup> The position of the principle of parliamentary sovereignty was reiterated by the executive, which stated that “it is ultimately for Parliament to decide whether and how we should amend the law.”<sup>126</sup>

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<sup>125</sup> Rachel Sylvester, *Blunkett Accuses Judges of Damaging Democracy*, TELEGRAPH (London) (Feb. 21, 2003), <http://www.telegraph.co.uk/news/uknews/1422661/Blunkett-accuses-judges-of-damaging-democracy.html>, archived at <https://perma.cc/C2AN-LU2E>.

<sup>126</sup> 428 PARL. DEB. HC (6th ser.) (2004) 1589, <http://www.publications.parliament.uk/pa/ld200405/ldhansrd/vo041220/text/41220-18.htm>, archived at <https://perma.cc/WMR4-PCZF>.