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By David Torrance
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The Crown and the constitution

Summary

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Summary

The Crown is one of the oldest institutions in the United Kingdom and remains a significant part of its constitution. Professor Robert Blackburn has described it as "fundamental to the law and working of government in the UK".

It has, however, no single accepted definition. The term has been used to describe a physical object or as an alternative way of referring to the monarch in their personal or official capacity. At its most expansive, the Crown has been taken as a proxy for "the government" or what in other countries would be known as "the State".

Concept of "the Crown"

The concept of the Crown developed first in England as a separation of the physical crown and property of the kingdom from the person and personal property of the monarch. As the kingdom merged with those in Scotland and Ireland, the concept extended to the legal lexicons of not only the United Kingdom but its dependencies and overseas territories, as well as several now independent Commonwealth Realms.

There are, as a result, many distinct Crowns – of Canada, Australia and other countries (realms) where King Charles III is head of state – all connected via the "personal union" of the current monarch, who succeeded to the Throne in September 2022.

The terms "the sovereign" or "monarch" and "the Crown" are related but have separate meanings. The Crown encompasses both the monarch and the government. It is vested in the King, but in general its functions are exercised by Ministers of the Crown accountable to the UK Parliament or the three devolved legislatures.

Capacities of the Crown

After exploring differing interpretations of the Crown, this briefing paper examines the laws relating to succession to the Crown in the United Kingdom. As much of the uncodified constitution of the United Kingdom comes from the Crown, this paper also looks at the Crown's various capacities: parliamentary, executive, judicial, religious and international. This briefing describes the Crown as it operates today, as well as examining some of the continuing traditions with which it is associated.

1 A short history of the Crown

The Crown of the early 21st century can trace its origins to separate crowns or monarchies in England, Scotland, Wales and Ireland.

The Anglo-Saxon kingdom of Wessex emerged as the dominant English kingdom during the 9th century, while the first king of a united England is generally acknowledged as William the Conqueror (1066). Kenneth MacAlpin is viewed as the first king of a united Scotland (843).[1] Welsh leaders were known as the Prince of Wales, and when the Principality came under the control of the English Crown in 1284, that title was later given to its heir.

Ireland came under the Lordship of the English Crown in 1171. This lasted until the Parliament of Ireland conferred the Irish crown on King Henry VIII of England in 1542.[2] This "personal union" of the English and Irish crowns was expanded to include Scotland in 1603, when King James VI of Scotland became King James I of England.

From 1649, England, Scotland and Ireland were united under a republican government later led by a Lord Protector. The Crown was restored in 1660. In 1707, the personal union of the Scottish and English crowns ended with the creation of the Kingdom of Great Britain. The crowns of Ireland and Great Britain remained in personal union until the creation of the United Kingdom of Great Britain and Ireland in 1801. When the Irish Free State seceded in 1922, Northern Ireland remained under the Crown as a devolved part of the UK.[3]

For several centuries the Crown personally exercised supreme executive, legislative and judicial power, but with the growth of courts and parliaments in England, Scotland and Ireland during the 13th century, the direct exercise of these functions progressively decreased.

Attempts to restrict the power of the English and Scottish Crowns can be traced to Magna Carta (1215) and the Declaration of Arbroath (1320),[4] respectively, while prolonged 17th-century struggles between the Crown and Parliament(s) eventually produced a limited constitutional monarchy. This was known (in England) as the Glorious Revolution.

1 Royal Family website, Scottish Monarchs (AD400-1603).
2 This was the Crown of Ireland Act 1542, which was repealed in the Republic of Ireland by Statute Law Revision (Pre-Union Irish Statutes) Act, 1962.
3 The Irish Free State remained a constitutional monarchy until it adopted a new constitution (as Éire) in 1937. Residual links with the Crown were severed in 1949 when Éire became the Republic of Ireland (see Commons Library Briefing Paper CBP9260, The Anglo-Irish Treaty, 1921).
4 Little of either exist on the statute book but remain of symbolic importance.

1.1 What is the Crown?

There is no single agreed definition of the Crown. As the legal scholars Maurice Sunkin and Sebastian Payne have argued:

> The nature of the Crown has been taken for granted, in part because it is so fundamental and in part because many academics have no idea what the term The Crown amounts to.[5]

Nicholas Browne-Wilkinson KC concluded that the Crown was an "amorphous, abstract concept" and therefore "impossible to define".[6] The legal historian F.W. Maitland warned his students that they would:

> certainly read that the crown does this and the crown does that. As a matter of fact we know that the crown does nothing but lie in the Tower of London to be gazed at by sight-seers [...] the crown is a convenient cover for ignorance: it saves us from asking difficult questions [...] do not be content until you know who legally has the power – is it the king, is it one of his secretaries: is this power a prerogative power or is it the outcome of statute?[7]

In the view of the legal scholar Sir William Wade, the Crown "means simply the Queen".[8] The Labour Prime Minister Clement Attlee made a similar point in attempting to convince India not to become a republic in 1949:

> I say the King rather than the Crown. King George [VI] has often stressed this point to me. The Crown is an abstract symbol connoting authority, often connected in the minds of some with an external power. But the real link is a person, the King. At the head of the Commonwealth is a family.[9]

Lord Simon of Glaisdale suggested that "the Crown" was "a piece of bejewelled headgear under guard at the Tower of London", but one that symbolised "the powers of government which were formerly wielded by the wearer of the crown".[10] Similarly, Lord Diplock believed that the Crown meant "the government", and therefore included "all of the ministers and parliamentary secretaries under whose direction the administrative work of the government is carried on by the civil servants employed in the various government departments".[11]

Section 8 of the Pensions (Colonial Service) Act 1887 appeared to support this interpretation, in that it declared that the terms "permanent civil service of

5 Maurice Sunkin and Sebastian Payne, The Nature of the Crown: A Legal and Political Analysis, Oxford: Oxford University Press, 1999, Abstract.
6 *Town Investments v Department for the Environment* [1978] AC 359
7 F. W. Maitland, The Constitutional History of England, Cambridge: Cambridge University Press, 1908, p418.
8 Sir William Wade, The Crown, Ministers and Officials: Legal Status and Liability in M. Sunkin and S. Payne, The Nature of the Crown, p24.
9 Philip Murphy, Monarchy & the End of Empire, Oxford: Oxford University Press, 2013, p3.
10 *Town Investments v Department for the Environment* [1978] AC 359
11 *Town Investments v Department for the Environment* [1978] AC 359

the State", "permanent civil service of Her Majesty", and "permanent civil service of the Crown" were all to have the same meaning.

F. W. Maitland used the term "corporation aggregate" for the Crown, one that embraced the UK government and the whole political community.[12] Others have preferred "corporation sole", an office residing in a single person, which viewed the Crown as enduring "through generations of incumbents and, historically, lends coherence to a network of other institutions of a similar nature".[13] Lord Woolf believed both were an appropriate description.[14]

To the Canadian academic Philippe Lagassé, the Crown:

> acts in various capacities as such: Crown in Council (executive); Crown in Parliament (legislative); Crown in Court (judicial). It is also an artificial person and office as a corporation sole. At its most basic, 'the Crown' is in the UK what is most other countries is 'the State'.[15]

Eschewing theory, the Privy Council has referred to a single Crown with multiple "purses",[16] while the Canadian Supreme Court has spoken of a Crown which "wears many hats".[17]

In practical terms, the monarch has legal duties to perform. For example:

> the monarch's assent is legally required before a Bill or an Order in Council can pass into law; some appointments only take effect when they are formally approved by the monarch, which is sometimes signified by the Queen's personal signature, the royal sign manual, or at others by personal delivery by the monarch of seals of office. Some types of document require as a matter of law the affixing of the Great Seal, which can usually be done only by virtue of a warrant under the royal sign manual: examples include royal proclamations (say to dissolve Parliament), or Letters Patent (say to confer a peerage or to ratify a treaty).[18]

12 F. W. Maitland, pp246-47.
13 J. G. Allen, The Office of the Crown, Cambridge Law Journal 77:2, July 2018, p300.
14 *M v Home Office* [1994] 1 AC 377
15 Philippe Lagassé, The State, The Crown, and Parliament, lecture given at Carleton University, Ottawa, 2 November 2021.
16 *Re Silver Brothers; A-G Quebec v A-G Canada* [1932] AC 514
17 *Wewaykum Indian Band v Canada* [2002] 4 SCR 245
18 Rodney Brazier, Royal Incapacity and Constitutional Continuity: The Regent and Counsellors of State, Cambridge Law Journal 64:2, July 2005, p352.

2 Succession to the Crown

The Crown is hereditary but subject to special limitations by Parliament. By law the title to the Crown of the United Kingdom descends lineally to the issue of the reigning monarch, with no discrimination between male and female heirs.[19] A monarch must join in communion with the Church of England, declare themselves to be a Protestant, swear to maintain the established churches of England and Scotland and take the Coronation Oath.[20]

2.1 Bill of Rights 1688

The Bill of Rights 1688 was an English statute which emerged from the Glorious Revolution of 1688-89.[21] This culminated in the "abdication" and exile of King James II (who had Catholic sympathies) and the accession to the throne of William III and Mary II, who reigned as joint monarchs of England and Ireland. Several of its 13 "articles" limited the Crown by making regal authority subject to parliamentary consent in respect of suspending laws, levying taxes and the rights of subjects to petition the monarch.

The Bill of Rights also stated that any person professing "the Popish Religion" or marrying "a Papist" was to be excluded from and "for ever uncapeable" to "inherit possesse or enjoy" the Crown and government of England and Ireland. Finally, it required any king or queen upon their accession – at their first meeting of parliament or at their coronation – to "make subscribe and audibly repeate" the Declaration from Test Act of 1678 that, among other things, the "Sacrifice of the Masse as they are now used in the Church of Rome are superstitious and idolatrous".[22]

2.2 Coronation Oath Act 1688

The Coronation Oath Act 1688 was another statute of the Parliament of England which established a single uniform oath to be taken by William and

19 The Royal Family website lists the line of Succession as it stands.

20 Rodney Brazier is clear that if an heir at the time of accession and coronation "could not take the statutory oaths because he or she was not in communion with the established Church then there would be a demise of the Crown" (see Skipping a generation in the line of succession, Public Law, Winter 2000, p569).

21 Due to calendar changes the Bill of Rights is assigned to the year 1688 on legislation.gov.uk even though the Act received Royal Assent on 16 December 1689.

22 Three Scandinavian constitutions also impose a religious requirement.

Mary at their coronation and by all future monarchs. Unlike previous coronation oaths, which had recognised laws as being a monarch's prerogative, the Act's oath sought to bind the monarch to rule according to the law as agreed in parliament. The wording of the oath was also altered to make the section maintaining the established Church of England more explicit. The Coronation Oath was subsequently altered several times, not always via statute.

2.3 Claim of Right Act 1689

The Claim of Right Act 1689 was a statute passed by the Parliament of Scotland. Its provisions echoed those of the English Bill of Rights in bolstering "the position of parliament within the Scottish constitution at the expense of the royal prerogative".[23] William and Mary were therefore offered the Scottish Crown, having already accepted those of England and Ireland. The Act also stated that no King or Queen of the Scottish kingdom could "exercise the regal power" until he or she had sworn the (Scottish) Coronation Oath.

2.4 Act of Settlement 1700

The Act of Settlement 1700 was another statute passed by the Parliament of England. It was designed to further secure the Protestant succession as well as strengthen parliamentary government.[24]

The Act stated that succession to the Crown of England (and Ireland) was to pass to Princess Sophia, Electress of Hanover (King James VI/I's granddaughter), and her Protestant heirs. This was meant as a safeguard given the lack of male heirs in England. The Act of Settlement also restated the Bill of Rights' stipulation that no Catholic, or someone married to a Catholic, could hold the Crown, that they make a Declaration against the Catholic religion (Section 2) and, in addition, required whoever was in "Possession of this Crown" to "joyn in Communion with the Church of England as by Law established" (Section 3).[25]

Finally, under the Act, parliamentary consent was required for the monarch (if a foreigner) to engage in war, while judges were to hold office on the basis of good conduct rather than at Royal pleasure, thus establishing judicial independence.

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23 Tim Harris, Revolution: The Great Crisis of the British Monarchy 1685–1720, London: Allen Lane, 2006, pp401-02.

24 The Act of Settlement received Royal Assent in 1701.

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

2.5 The Acts of Union, 1706-07

The Union with Scotland Act 1706 (passed by the Parliament of England) and the Union with England Act 1707 (passed by the Parliament of Scotland) gave legal effect to the terms of the Treaty of Union agreed on 22 July 1706. This merged the kingdoms and parliaments of Scotland and England to create one new kingdom "by the name of Great Britain", with which the Irish Crown remained in personal union.

Article II restated the provisions of the Act of Settlement 1700, that the succession to the Crown remain with Princess Sophia, Electress of Hanover, and her Protestant heirs, thus extending those provisions to Scotland as part of Great Britain. Article II also stated that the Parliament of England "may provide" for the "Security of the Church of England".[26]

Article XXV provided that a monarch of Great Britain should:

> at His or Her Accession to the Crown swear and subscribe that they shall inviolably maintain and preserve the foresaid Settlement of the true Protestant Religion with the Government Worship Discipline right and Privileges of this Church [of Scotland] as above established by the Laws of this Kingdom in Prosecution of the Claim of Right.

This became known as the "Scottish Oath" and has been sworn by every monarch succeeding to the Throne from 1714.

2.6 Succession to the Crown Act 1707

The Succession to the Crown Act 1707 provides that in the event of the demise of the Crown, Parliament, if adjourned or prorogued, must meet as soon as possible and if sitting must immediately proceed to act without any summons in the usual form.

2.7 Union with Ireland Act 1800

The Union with Ireland Act 1800 (passed by the Parliament of Great Britain) and the Act of Union (Ireland) Act 1800 (passed by the Parliament of Ireland)[27] meant that the kingdoms of Great Britain and Ireland were, on 1 January 1801

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[26] The Parliament of England did so in the Act of 6 Anne 1706. Section 2 of this Act required a future monarch of Great Britain to "take and subscribe an Oath to maintain and preserve inviolably the said Settlement of the Church of England and the Doctrine Worship Discipline and Government thereof as by Law established within the Kingdoms of England and Ireland the Dominion of Wales and Town of Berwick upon Tweed and the Territories thereunto belonging".

[27] In the Republic of Ireland, the Statute Law Revision (Pre-Union Irish Statutes) Act, 1962 repealed the Act of Union (Ireland) 1800, while the Statute Law Revision Act, 1983 repealed the Union with Ireland Act 1800.

"and for ever after" united "into one kingdom, by the name of the United Kingdom of Great Britain and Ireland".

The Second Article stated that succession to:

> the imperial crown of the said United Kingdom [...] shall continue limited and settled in the same manner as the succession to the imperial crown of the said kingdoms of Great Britain and Ireland [...] according to the existing laws and to the terms of union between England and Scotland.

2.8 Demise of the Crown Act 1901

The Demise of the Crown Act 1901 provides that the "holding of any office under the Crown, whether within or without His Majesty's dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown". In 1910 the Judicial Committee of the Privy Council said that in its view this included judges, Justices of the Peace and Privy Counsellors.[28] The Act was necessary given the confusion that arose following the demise of Queen Victoria after a long reign. For example, it retrospectively removed the legal requirement for ministers reappointed by King Edward VII to win re-election in their constituencies.

2.9 Accession Declaration Act 1910

The Accession Declaration Act 1910 amended the Declaration required by a new monarch upon accession under the Bill of Rights 1688 and Act of Settlement 1700. It removed passages hostile to the Catholic faith but continued to require a monarch to "in the presence of God profess, testify, and declare that I am a faithful Protestant" and that they would "uphold and maintain" enactments securing the Protestant succession to the Crown.

2.10 Statute of Westminster 1931

The preamble to the Statute of Westminster 1931 stated that:

> any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.

The "Dominions" were defined as Canada, Australia, New Zealand, South Africa, the Irish Free State and Newfoundland. Newfoundland later became a Province of Canada, while South Africa and the Free State became republics.

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

Although not legally binding (preambles do not have the force of statute law), this became a political convention which "has always been treated in practice as though it were a binding requirement".[29] It also came to be extended to every Commonwealth Realm,[30] not just Canada, Australia and New Zealand.

Commonwealth assent was sought under the Statute on three occasions: in 1936 (the abdication of King Edward VIII); in 1948 (to remove "Emperor of India" from King George VI's titles); and in 1953 (upon Queen Elizabeth II's adoption of separate titles in each Commonwealth Realm).[31]

2.11 Succession to the Crown Act 2013

The Succession to the Crown Act 2013 also observed the convention in that it only reached the UK statute book following the 2011 Perth Agreement,[32] at which the UK and the then 15 Commonwealth Realms agreed to replace male-preference primogeniture with absolute primogeniture for those in the line of succession born after 28 October 2011.[33] They also agreed to repeal the Royal Marriages Act 1772, ending disqualification of a person marrying a Catholic, and restricting the number of people who must obtain the monarch's consent before marrying to the first six in line to the Throne.[34]

2.12 Abdication

Abdication is rare. King James VI/II was deemed to have abdicated by the (English) Convention Parliament,[35] when in fact he had fled to the Continent. King George III threatened to abdicate several times, as did King George IV if his government legislated for Catholic emancipation. He backed down and it became law in 1829.

In December 1936 King Edward VIII at first signed an Instrument of Abdication, which was then given legal effect by His Majesty's Declaration of Abdication Act 1936. This was a legal "Demise of the Crown", something usually associated with the death of a monarch. It required legislation as the Act of Settlement 1700 had made no allowance for abdication. Section 1(2) also

29 Rodney Brazier, Winter 2000, p572.
30 The Commonwealth Realms are Antigua and Barbuda, Australia, The Bahamas, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, the Solomon Islands and Tuvalu.
31 Rodney Brazier, Winter 2000, p572.
32 Political and Constitutional Reform Committee, Rules of Royal Succession, 1 December 2011, p11.
33 See Anne Twomey, Royal Succession, Abdication, and Regency in the Realms, Review of Constitutional Studies 22:1, April 2017, pp33-53 for a full discussion.
34 Section 3 of the Succession to the Crown Act 2013 states that if "one of the 6 persons next in the line of succession to the Crown" fails to obtain consent from the monarch to marry, then that "person and the person's descendants from the marriage are disqualified from succeeding to the Crown".
35 The Claim of Right Act 1689 used the term "forfaulted".

removed the former King's descendants from having "any right, title or interest in or to the succession to the Throne".

2.13 Regency Act 1937

Until 1937 there was no permanent statutory provision for a minor succeeding to the Crown or an incumbent monarch becoming incapacitated. When King George VI acceded in December 1936, his eldest daughter, Princess Elizabeth, was only 10 and the King proposed that permanent statutory provision be made.[36]

What became the Regency Act 1937 made provision for four eventualities: a minor succeeding to the Crown, permanent incapacity of an incumbent monarch, temporary incapacity and the absence of a sovereign from the UK. For the first two, provision was made for a Regency, and for the second two, Counsellors of State.

Permanent incapacity must be certified by three out of five people: the monarch's next of kin, the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice and the Master of the Rolls. A Regent is the next person in line to Throne who has reached the age of 21 (or 18 if the heir). He or she can exercise all the prerogative powers of a monarch except granting Royal Assent to a Bill which alters the line of succession or the Scottish system of Presbyterian religion.

In the case of temporary incapacity or an absence then Counsellors of State assume certain functions. These comprise the monarch's spouse, the four persons next in line to the Throne who have reached the age of 21 (or 18 in the case of an heir), and since 2022 the Princess Royal and Earl of Wessex and Forfar.[37] All are constitutionally equal, including the heir to the Throne. Two out of the seven are necessary to exercise the monarch's functions. Counsellors of State cannot create peerages,[38] and can only dissolve Parliament upon the express instructions of the monarch.[39]

Although the 1937 Act was intended to cover every eventuality, it was later amended twice. In the Regency Act 1943, the then Princess Elizabeth was enabled to become a Counsellor of State when she reached the age of 18 in 1944. A further amendment was requested by Queen Elizabeth II. The Regency

36 See Commons Library Briefing Paper CBP9374, Regency and Counsellors of State, for a full account of the relevant legislation

37 Under Sections 3(2) and 6(2A) of the 1937 Act, someone in the line of succession not domiciled in the UK would be disqualified from serving as a Counsellor.

38 Section 6(1) of the 1937 Act states that the Sovereign may "delegate [...] to Counsellors of State such of the royal functions as may be specified in the Letters Patent". See, for example, Letters Patent issued before Queen Elizabeth II's visit to Malta in 2015. These can also state functions which are **not** delegated.

39 This occurred on 8 February 1974 when a dissolution Proclamation was promulgated by Princess Margaret and Queen Elizabeth The Queen Mother as Counsellors of State. Queen Elizabeth II was in Australia but had to return to the UK to appoint a Prime Minister after the general election.

Act 1953 stated that Prince Philip should become Regent rather than Princess Margaret. Queen Elizabeth The Queen Mother was also to become an additional Counsellor of State. Both these alterations were "seen as being in accord with sentiment and common sense".[40] The Counsellors of State Act 2022 also made Princess Anne and Prince Edward Counsellors of State.

2.14 Royal style and titles

The monarch's formal style and titles were proclaimed at his Accession Council on 10 September 2022:

> Charles the Third, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of His other Realms and Territories, King, Head of the Commonwealth, Defender of the Faith.[41]

The Royal Titles Act 1953 also authorises the monarch to alter his style and titles via Proclamation.[42]

The King's title only applies in the UK, its British Overseas Territories and in the Crown Dependencies. The title varies in the 14 Commonwealth Realms (as determined by domestic legislation), although all forms include the phrase "Head of the Commonwealth".

Defining "Realm" is not straightforward. Halsbury's Laws of England states that the "United Kingdom and its dependent territories within [His] Majesty's dominions form one realm having one undivided Crown".[43] In 2012, the Foreign & Commonwealth Office went further in stating that:

> The UK, the Overseas Territories and the Crown Dependencies form one undivided Realm, which is distinct from the other States of which Her Majesty The Queen is monarch.[44]

However, the Succession to the Crown (Jersey) Law 2013 suggested that one part of the Channel Islands did not regard itself as part of "one undivided Realm" in that it referred to Queen Elizabeth II as "Sovereign of the Bailiwick of Jersey, such Realm being anciently part of the Duchy of Normandy".[45]

George V renounced his German titles and changed the family's name to Windsor by a Royal Proclamation dated 17 July 1917.[46] In 1960, Queen

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40 Vernon Bogdanor, The Monarchy and the Constitution, Oxford: Oxford University Press, 1998, p48. Sections of both amending Acts are now "spent" in that both Prince Philip and Queen Elizabeth The Queen Mother are dead.

41 Accession Proclamation, 10 September 2022.

42 Queen Elizabeth II did so via a Royal Proclamation dated 23 May 1953.

43 Halsbury's Laws of England, 5th ed, LexisNexis Butterworths, 2008, p617.

44 Foreign & Commonwealth Office, The Overseas Territories, Cmnd 8374, June 2012, p14. The 2020 United Kingdom Partnership Agreement referred to "the Queen of Gibraltar, Queen Elizabeth II", although this appeared to reflect informal usage in that particular Territory (para 9).

45 Article 1(1) states that references to "the Sovereign" and to "the Crown" are to the Sovereign and to the Crown "in right of the Bailiwick of Jersey".

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

Elizabeth II declared that descendants other than Royal Highnesses and Princes or Princesses should bear the name "Mountbatten-Windsor".

2.15 A monarch's spouse

Under common law, the wife of a male monarch automatically becomes Queen upon the death of the previous sovereign. The husband of a new Queen regnant, on the other hand, is not automatically granted a title, although one can be conferred at a later date. The Duke of Edinburgh, for example, was made a Prince of the United Kingdom by Letters Patent in February 1957, while Prince Albert was styled "Prince Consort" 20 years after Queen Victoria's accession.

In her 2022 Accession Day message, Queen Elizabeth II said that when "my son Charles becomes King [...] it is my sincere wish that [...] Camilla will be known as Queen Consort as she continues her own loyal service".

2.16 The Prince of Wales and Princess Royal

The Prince of Wales is a male heir to the Throne. He possesses few constitutional powers, although receives Cabinet papers and can grant audiences to ministers.[47] The Duke of Windsor, Prince of Wales between 1910 and 1936, complained that the role lacked "prescribed State duties or responsibilities",[48] although in the 20th century several male heirs were identified with certain causes.[49] Under a 1469 Act of the Parliament of Scotland, the heir to the Scottish (and subsequently UK) Crown is also Duke of Rothesay, Earl of Carrick and Baron of Renfrew, Lord of the Isles and Prince and Great Steward of Scotland.[50]

The eldest daughter of a monarch is sometimes known as the Princess Royal. The first was Princess Mary in 1641 and the title is currently held by Princess Anne. King George VI did not confer any title on the then Princess Elizabeth when she turned 18. The future Queen Elizabeth II was regarded as "heiress presumptive" rather than "heiress apparent" on the basis that her position in the line of succession could still have been displaced by a male heir.

47 See Rodney Brazier, The constitutional position of the Prince of Wales, Public Law, 1995, pp401-16
48 Duke of Windsor, A King's Story, London: Cassell, 1951, pp211-12.
49 As Prince of Wales, King Edward VII served on a Royal Commission investigating old-age pensions; the Duke of Windsor campaigned on behalf of ex-servicemen, while Prince Charles has focused on the environment.
50 See Prince of Wales website, Titles and Heraldry.

2.17 Granting and removal of Royal styles & titles

All the monarch's children are entitled to the style "Royal Highness" by Letters Patent, as are children of the monarch's sons and the eldest living son of the eldest son of the Prince of Wales. Wives of male Royal Highnesses also enjoy the style. The style of "Royal Highness" can either be removed by Letters Patent or stop being used by its holder.[51]

Royal titles are held by virtue of the Crown's personal prerogative and can therefore be removed by the same prerogative. The removal of such titles is rare. The Titles Deprivation Act 1917 allowed George V to remove (via a committee of the Privy Council) titles from three royal persons and one non-royal peer who had fought against the Crown during the First World War.

2.18 Working members of the Royal Family

Some members of the Royal Family work together to support the monarch in her official duties. On ceasing to be "working members" of the Royal Family, any honorary military appointments and Royal patronages are returned to the monarch before being redistributed among other working members.[52]

2.19 Lords-Lieutenant

Lords-Lieutenant are the Crown's representative in each county of the United Kingdom. Their duties include:

- arranging visits by members of the Royal Family
- representing the King, including presenting certain honours
- encouraging and assessing honours nominations
- liaising with local units of the Armed Forces[53]

Lords-Lieutenant give of their time voluntarily and are supported in their role by a Vice Lord-Lieutenant and Deputy Lieutenants.[54] As representatives of the Crown, they are "strictly apolitical". Lords-Lieutenant are selected following a consultation process involving the Prime Minister's Appointments Secretary, representatives from the devolved governments (in Scotland and Wales) and

51 The Duke and Duchess of Sussex and the Duke of York no longer use the style "Royal Highness".
52 See Royal Family website, Buckingham Palace statement on The Duke and Duchess of Sussex, 19 February 2021.
53 Lords-Lieutenant also lead the local magistracy in some counties in England and Wales.
54 Vice Lords-Lieutenant are nominated by the Lord-Lieutenant and require the Crown's approval; Deputy Lieutenants are appointed by the Lord-Lieutenant and do not.

the Northern Ireland Office. The Prime Minister asks the monarch for approval of the appointment. Lords-Lieutenant can also be removed by the King on the recommendation of the Prime Minister.[55]

[55] Cabinet Office, Process for the appointment of Lord-Lieutenants.

3 Prerogative powers of the Crown

The Royal Prerogative is one of the most significant elements of the UK's constitution.[56]

Originally, prerogative powers would have been exercised directly by the reigning monarch, but over time a distinction was drawn between the monarch acting in a personal and official capacity.

As governance became more complex, Ministers of the Crown came to exercise the bulk of prerogative powers, either on the Sovereign's behalf or via "Ministerial advice" provided to the Crown which the monarch of the day was constitutionally obliged to follow.[57]

3.1 Defining prerogative powers

The precise scope of prerogative powers is difficult to determine. A comprehensive survey was published by the Ministry of Justice in 2009.[58] These were divided into four categories:

Prerogative powers exercised by Ministers of the Crown

- Changes to the machinery of government
- Aspects of the Civil Service
- Appointment of King's Counsel
- The Prerogative of Mercy
- Diplomacy (including sending and receiving ambassadors)
- Governance of the British Overseas Territories
- Making and ratifying treaties
- Recognising States, acquiring and ceding territory

56 See Commons Library Briefing Paper SN03861, The Royal Prerogative.
57 See Select Committee on Public Administration, Fourth Report, 4 March 2004, paras 5 & 8.
58 For the full list of prerogative powers, see Ministry of Justice, The Governance of Britain: Review of the Executive Royal Prerogative Powers: Final Report, 2009, pp30-34. The list given in this paper should not be considered exhaustive.

- Responsibility for the Crown Dependencies
- Armed Forces, war and times of emergency
- Power to issue, refuse or withdraw passport facilities
- Establishing corporations (or recognising cities) by Royal Charter and amending existing Charters (for example that of the British Broadcasting Corporation)
- Crown copyright and printing of the Book of Common Prayer, the Authorized Version of the Bible and certain state papers
- Powers connected with pre-paid postage stamps

Constitutional/personal prerogatives of the monarch

Some of these are exercised on the advice of ministers, others on the basis of long-established conventions, and the remainder by the monarch personally.[59]

- Appointment and removal of ministers, including the Prime Minister
- Dismissing a government
- Power to summon, prorogue and dissolve Parliament
- Royal Assent to legislation
- The appointment of Privy Counsellors
- Granting of most honours, decorations, arms and matters of precedence
- King's personal honours: Order of the Garter, Order of the Thistle, Royal Victorian Order and the Order of Merit
- Power to appoint certain judges
- Power to legislate under the prerogative by Order in Council or by Letters Patent in certain circumstances
- Grant of approval for certain uses of Royal names and titles

Robert Hazell and Bob Morris have used the term "deep reserve power" to describe personal prerogative powers, such that to dismiss a Prime Minister, which theoretically exist but have not been used for a long time.[60]

[59] The legal academic Sir Ivor Jennings first coined the term "personal prerogatives".
[60] See Robert Hazell and Bob Morris, The Queen at 90 The changing role of the monarchy, and future challenges, London: Constitution Unit, 2016, pp8-9.

The constitutional academic Rodney Brazier calls them, simply, "reserve powers":

> All the reserve powers share a common attribute: the deployment of any of them would involve the setting aside of the cardinal convention of the constitution that the Queen must act on ministerial advice.[61]

See **Sections 4.1**, **4.4** and **5.2** for further analysis of areas in which the Crown's theoretical powers are constrained by contemporary practice.

Legal prerogatives of the Crown

The legal prerogatives of the Crown are powers that the monarch possesses as an embodiment of the Crown. These are sometimes described as Crown "privileges or immunities".

- The Crown is not bound by statute save by express words or necessary implication
- Crown immunities in litigation, including that the Crown is not directly subject to the contempt jurisdiction and the Sovereign has personal immunity from prosecution or being sued for a wrongful act
- Tax not payable on income received by the Sovereign
- Crown is a preferred creditor in a debtor's insolvency
- Priority of property rights of the Crown in certain circumstances

Archaic prerogative powers

These residual (and quite specific) powers are a legacy of a time before legislation was enacted in those areas. It is unclear whether some of these prerogative powers continue to exist.

- Guardianship of infants and those suffering certain mental disorders
- Right to sturgeon, (wild and unmarked) swans and whales
- Right to wreck as casual revenue
- Right to construct and supervise harbours
- Right to waifs and strays
- Right to mint coinage
- Right to mine precious metals (Mines Royal)

[61] Rodney Brazier, Constitutional Practice: The Foundations of British Government (third edition), Oxford: Oxford University Press, 1999, p189.

- Grant of franchises for markets, ferries and fisheries
- Power of the Crown in time of war to intern, expel or otherwise control enemy aliens

The prerogative right to treasure trove was abolished in England, Wales, and Northern Ireland by the Treasure Act 1996 but still exists in Scotland.

3.2 Limits and changes to prerogative powers

The existence and extent of prerogative powers is a matter of common law, making the courts the final arbiter of whether a particular type of prerogative power exists.

Parliament may legislate to modify, abolish or simply put on a statutory footing any particular prerogative power.[62] Prerogative powers are abolished by clear words in statute or where the abolition is necessarily implied. Three fundamental principles relating to prerogative powers are:[63]

- The supremacy of statute law. Where there is a conflict between the prerogative and statute, statute prevails
- Use of the prerogative remains subject to the common law duties of fairness and reason and is therefore subject to judicial review in certain circumstances
- While the prerogative can be abolished or abrogated by statute,[64] it can never be broadened.[65]

Two notable legal challenges were the intended use of prerogative powers to activate Article 50 of the Treaty of the European Union, which was upheld by the Supreme Court,[66] and the prorogation of Parliament advised by the government in 2019, which Justices ruled "null and of no [legal] effect".[67]

62 For example, the Constitutional Reform and Governance Act 2010 put the regulation of the Civil Service on a statutory basis and introduced a statutory role for Parliament in treaty ratification.
63 See Commons Library Briefing Paper SN03861, The Royal Prerogative, for a full discussion.
64 The Bill of Rights 1688 made it clear that "Parliament could amend or revoke any prerogative power".
65 Commons Library Briefing Paper SN03861, The Royal Prerogative.
66 *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5
67 *R (Miller) v The Prime Minister* and *Cherry v Advocate General for Scotland* [2019] UKSC 41

4 The Crown in Parliament

The Crown forms an integral part of the UK Parliament. Known formally as the "Crown-in-Parliament", it comprises the monarch, the House of Commons and the House of Lords. As Erskine May states, "the King or Queen has always enjoyed, by prescription, custom and law, the chief place in Parliament and the sole executive power":

> [T]he prerogatives of the Crown itself are, however, subject to limitations and change by legislative process with the consent and authority of the Sovereign; and in the exercise of the prerogatives and powers of the Crown the Sovereign now, by constitutional convention, depends on the advice of Ministers of the Crown, who continue to serve in that capacity only so long as they retain the confidence of Parliament.[68]

4.1 Dissolution and prorogation of Parliament

The dissolution and prorogation of Parliament were customarily prerogative powers of the Crown.

Dissolution

Dissolution is the mechanism by which a Parliament is brought to an end, enabling a general election to take place. Historically, this power was exercised at the absolute discretion of the monarch, unlike with many other prerogative powers where ministerial advice was invariably followed. Prior to the Fixed-term Parliaments Act 2011, dissolutions were formally "requested" by Prime Ministers and could, in theory, be refused. In practice, however, only "exceptionally" would the monarch reject a request.[69]

In a letter to The Times on 2 May 1950, the then King's Private Secretary (writing under the pseudonym "Senex") stated that "no wise Sovereign" would deny a dissolution unless he were satisfied that:

> (1) the existing Parliament was still vital, viable, and capable of doing its job; (2) a General Election would be detrimental to the national economy; (3) he could rely on finding another Prime Minister who could carry on his Government, for a reasonable period, with a working majority in the House of Commons.[70]

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68 Erskine May, para 1.4.
69 Joint Committee on the Fixed-term Parliaments Act, Report, HC 1046 HL 253, 24 March 2021, paras 124-35.
70 The Times, 2 May 1950.

By the 1990s, however, Sir Vernon Bogdanor believed the Crown's right to refuse a dissolution only existed if such a request "would be an affront to, rather than an expression of, democratic rights".[71]

Following the passage of the Fixed-term Parliaments Act 2011, the monarch could no longer dissolve Parliament via Proclamation. Instead, dissolution was governed wholly by statutory rules. The Dissolution and Calling of Parliament Act 2022, however, included provision to make it "exercisable again, as if the Fixed-term Parliaments Act 2011 had never been enacted". Lord True told the House of Lords that the government had "a sound legal basis for the position that prerogative powers can be revived, and there is no doubt on this question if this is made clear in statute".[72]

Prorogation

Whereas dissolution brings a Parliament to an end, prorogation only ends the current parliamentary session. It does not trigger a general election.

The Crown would dissolve Parliament by Proclamation. By contrast, the decision to prorogue Parliament is taken by Order in Council. In modern practice, the monarch appoints a Royal Commission to prorogue Parliament on her behalf and in accordance with her instructions.

In practice, the government of the day is responsible for drawing up the draft Order in Council, and in modern times there is no known precedent for the UK's monarch having refused to give approval for such an Order. However, it is unclear to what extent the monarch is now bound by ministerial advice in this context, and practice varies in other Commonwealth countries.[73]

4.2 Ceremonial role of the Crown in Parliament

The monarch continues to fulfil several ceremonial and formal roles with respect to Parliament. The State Opening of Parliament marks the beginning of each new session of Parliament. It is the only routine occasion when the three constituent parts of Parliament gather in the same place.[74]

The Companion to the Standing Orders and Guide to the Proceedings of the House of Lords states that:

> The King is met at the Sovereign's Entrance by the Lord Great Chamberlain and enters the Palace of Westminster preceded by the Earl Marshal, Lord Great Chamberlain, Lord Chancellor (with the Purse containing the King's Speech),

71 Vernon Bogdanor, pp159-62.
72 UIN HL5459 24 January 2022 [Royal Prerogative: Statute Law]
73 See Commons Library Briefing Paper CBP8589, Prorogation of Parliament and CBP9006, The Prorogation Dispute of 2019: one year on.
74 See Lords Library note LLN-2016-0011, The Sovereign's Ceremonial and Formal Role in Parliament Today. In a tradition dating from Gunpowder Plot of 1605, the Yeoman of the Guard search the vaults of the Houses of Parliament prior to the State Opening.

> Lord Speaker and Lord Privy Seal. They proceed to the Robing Room where the King robes and puts on the Crown and regalia. A procession is formed, marshalled by the Earl Marshal, and proceeds through the Royal Gallery and the Prince's Chamber to the Chamber of the House of Lords. When His Majesty has taken His seat on the Throne, the Lord Speaker and Lord Chancellor stand on His right at the foot of the steps of the Throne. The King is attended by the Officers of State. The King then commands Black Rod, through the Lord Great Chamberlain, to summon the Commons [...] The Commons come from their Chamber and advance to the Bar with their Speaker, bowing once only at the Bar. His Majesty then delivers His Speech from the Throne.[75]

The King's Speech is prepared by the government of the day and is delivered from "the only true throne of the sovereign", that in the House of Lords Chamber.[76] The side of the House "on the Sovereign's right hand when seated on the Throne is called the spiritual side, and that on the left the temporal side".[77] If the monarch is not present, then Parliament is opened by Royal Commission and the King's Speech is delivered by a Lords Commissioner.[78] It has in the past also been read by the Lord Chancellor. In March 2022 it was read by the then Prince of Wales in his capacity as a Counsellor of State.[79]

A Bill for "the better regulating of Select Vestries" is then read a first time pro forma on the motion of the Leader of the House of Lords. This asserts the right of the House of Lords to deliberate independently of the Crown.[80]

Westminster Hall is also used by the Houses of Parliament to present ceremonial Addresses to the Crown on important public occasions. The monarch replies with a speech. These have included the presentation of Addresses during Queen Elizabeth II's Silver Jubilee in 1977, Golden Jubilee in 2002 and Diamond Jubilee in 2012.[81]

House of Commons

Members of the House of Commons owe their election as the representatives of the people to the Crown's writ.[82]

The Parliamentary Oaths Act 1866 sets out the requirement for MPs to take an oath of allegiance to the Crown at the start of each Parliament (or following a by-election). It also sets out the place in which it is to be administered and the penalties applicable to any Member who takes part in parliamentary proceedings without having taken the oath. The Oaths Act 1978 prescribes the

75 Companion to the Standing Orders and Guide to the Proceedings of the House of Lords, Appendix E
76 Robert Hardman, Monarchy: The Royal Family at Work, London: Ebury Press, 2007, p22. Those at Buckingham Palace and Windsor Castle are "unofficial".
77 Companion to the Standing Orders, para 1.69
78 Companion to the Standing Orders, Appendix E
79 See Commons Library Briefing Paper CBP9501, State Opening of Parliament: history and ceremonial.
80 Companion to the Standing Orders, para 2.05. In the Commons, it is the Outlawries Bill.
81 Royal Family website, The Queen's Jubilees and other milestones.
82 This is the responsibility of the Clerk of the Crown in Chancery (also the Permanent Secretary to the Ministry of Justice), who is appointed under Royal Sign Manual. The Clerk of Crown in Chancery for Northern Ireland issues writs for constituencies in Northern Ireland.

form and manner of administering the oath or solemn affirmation. The current wording is:

> I swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King Charles, his heirs and successors, according to law. So help me God.

The wording of the solemn affirmation, as set out in the Oaths Act 1978, is:

> I do solemnly, sincerely, and truly declare and affirm, That I will be faithful and bear true allegiance to His Majesty King Charles, his heirs and successors, according to law.

By convention, MPs also retake the oath following the death of a monarch.[83]

A Member who has not taken the oath or made the affirmation cannot participate in any formal proceedings of the House and may not sit in the Chamber or vote in divisions. They also cannot draw a salary.[84]

Sinn Féin maintains an abstentionist policy towards the UK Parliament on the grounds that it does not recognise the Crown's sovereignty over any part of Ireland. The party's MPs do not take the oath of allegiance and therefore do not take part in the House's formal proceedings.[85]

Certain offices under the Crown cannot be held by an MP, thus an MP wishing to resign is appointed Crown Steward and Bailiff of the Chiltern Hundreds or Crown Steward and Bailiff of the Manor of Northstead.[86]

The Speaker of the House of Commons, although elected by MPs, is appointed subject to approval by the Crown.[87] The Clerk of the House of Commons (referred to in legislation as the "Under Clerk of the Parliaments") is required to make a declaration of fidelity to the King on assuming their office. By doing so, the Clerk can fulfil his or her duties, which include signing Addresses to the King and endorsing Bills sent to the Lords.[88]

No question can be put in the Commons which "brings the name of the Sovereign or the influence of the Crown directly before Parliament", or which "casts reflections upon the Sovereign or the royal family". Questions are, however, permitted on matters such as the Royal Flight, Royal Train and Royal Palaces. Similarly, petitions which relate to the prerogative powers of the Crown are not permitted.

Questions may be asked of ministers "regarding matters relating to those public duties for which the Sovereign is responsible". It has been ruled,

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83 See Commons Library Briefing Paper CBP9372, The death of a monarch, p28.
84 See Commons Library Briefing Paper CBP7515, The Parliamentary Oath, p4.
85 Commons Library Briefing Paper CBP7515, The Parliamentary Oath, pp12-13.
86 See Commons Library Briefing Paper SN06395, Resignation from the House of Commons
87 Erskine May, para 8.20.
88 Commons Library Briefing Paper CBP7515, The Parliamentary Oath, p30.

however, that the Prime Minister cannot be interrogated as to the advice that he may have given to the Sovereign regarding the grant of honours.[89]

The Vice-Chamberlain of the Royal Household (a government whip) emails a daily report to the monarch of proceedings in Parliament.[90] The Vice-Chamberlain is also held "captive" at Buckingham Palace during the State Opening of Parliament to guarantee the monarch's safe return.

Several appointments are made via Humble Address to the Crown, including the Parliamentary Commissioner for Administration, the Comptroller and Auditor General, members of the Independent Parliamentary Standards Authority Board and Electoral Commissioners.

In the name of the Crown, the government presents its requirements for the financing of public services to the House of Commons, which authorises the relevant expenditure (or "Supply").[91] In most cases the recommendation of the Crown to a "Money" resolution is made by a Minister of the Crown (usually the Financial Secretary to the Treasury). A note stating "King's recommendation signified" is then appended to the Order of Business.[92]

House of Lords

The Crown appoints the archbishops and bishops of the Church of England some of whom, as "Lords Spiritual", form part of the House of Lords. All titles of honour are also in the gift of the Crown, and thus all "Lords Temporal" (life peers) in the Upper House are created by royal prerogative, albeit on the advice of ministers.[93]

Peerage claims also rest with the Crown,[94] while under the "privilege of peerage" (as distinct from parliamentary privilege) members of the House of Lords theoretically have a "right of access to the Sovereign at any time".[95]

All members of the House of Lords are required to take an oath of allegiance, as prescribed in the Promissory Oaths Act 1868, before they can sit or vote in the House. The form of the oath is the same as that taken by Members of Parliament, and must be taken by peers:

- on their introduction to the Lords
- in every new Parliament
- after the death of the monarch

89 Erskine May, para 22.16.
90 See Politico, Queen Elizabeth is hooked on political gossip, 5 February 2022. No minister in the Lords has an equivalent responsibility, although the Lord Chamberlain is the monarch's formal link with the Upper House.
91 Erskine May, para 33.14.
92 Erskine May, para 9.5.
93 This is also administered by the Clerk of the Crown in Chancery.
94 See Lords Library note LLN-2017-0100, Life Peerage Creations: Powers of the Crown.
95 Companion to the Standing Orders, para 12.15.

Any peer or bishop who sits or votes without having taken the oath is subject to a fine of £500.[96] The Clerk of the Parliaments, the senior official in the Lords, is appointed by and required to make a declaration of fidelity to the King on assuming their office.[97]

The Lord Speaker, although elected by members of the House of Lords, is "subject to the approval of the King". If the House passes a motion for an Address to His Majesty seeking the Lord Speaker's removal from office, then the Lord Speaker is deemed to have resigned with effect from the date on which the motion is passed.[98] Certain members of the House are appointed by the Crown by Commission under the Great Seal to act as Deputy Speakers of the House of Lords in the absence of the Lord Speaker.[99]

Questions in the Lords that "cast reflections on the Sovereign or the Royal Family" are generally regarded as inadmissible.[100]

Until 1999, several senior members of the Royal Family were members of the House of Lords but rarely attended or spoke in debates. The then Prince of Wales (Prince Charles) was introduced in 1970 and delivered his maiden speech in the Lords on 13 June 1974.[101] He sat on the crossbenches.

Under the House of Lords Act 1999, all but two hereditary peers lost the automatic right to a seat in the Lords.[102] Hereditary peers whose titles were created in their lifetime were offered life peerages. These included "peers of the royal blood", the then Duke of Edinburgh, the Prince of Wales, the Duke of York (Prince Andrew), the Duke of Kent and the Earl of Wessex and Forfar (Prince Edward). All turned down the offer.[103]

This meant senior members of the Royal Family were eligible to vote in elections but, by convention, the King "does not vote or stand for election", although there exists no legal impediment to him doing so.[104]

Parliamentary maces

A mace is a symbol of Royal authority and without one in place neither House of Parliament can meet or pass laws. The House of Commons' mace is a silver gilt ornamental club of about five feet in length, dating from the reign of King Charles II. The House of Lords uses two maces, one dating from the time of King Charles II and another from the reign of King William III. The mace is

96 Commons Library Briefing Paper CBP7515, The Parliamentary Oath, p28.
97 Commons Library Briefing Paper CBP7515, The Parliamentary Oath, pp30-31. See also Clerk of the Parliaments Act 1824.
98 Companion to the Standing Orders, para 1.51.
99 Companion to the Standing Orders, para 1.66.
100 Companion to the Standing Orders, para 6.18.
101 HL Deb 13 June 1974 Vol 352 cc624-30
102 The exceptions were the Earl Marshal and Lord Great Chamberlain, both members of the Royal Household.
103 Dismay as Snowdon stays in Lords, Guardian, 3 November 1999.
104 BBC News online, Can the Queen vote in the EU referendum?, 18 May 2016.

absent from the Lords during the State Opening of Parliament as the monarch is there in person.

4.3 Messages from the Crown

Contact between the Crown and Parliament is via "Messages", both written and verbal, and Addresses. A written Message under the Royal Sign Manual (literally the signature of the monarch) is usually delivered to both Houses, and generally acknowledged by an Address similar in form to that presented in Reply to the King's Speech following a State Opening.[105]

Messages usually relate to the Crown, its prerogatives, property or financial provision for the Royal Family. In such instances, a Royal Message is presented in the Commons at the Bar by a minister or member of the Royal Household and read by the Speaker. In the House of Lords, the peer charged with the Message (often the Lord Chamberlain) announces it from his or her place, and it is read by the Lord Speaker.

4.4 Royal Assent

When a Bill has been passed by the House of Commons and the House of Lords it is formally agreed to by the Crown. This is known as "Royal Assent", signified by Letters Patent under the Great Seal, which turns a Bill into an Act of Parliament.[106]

Under the Royal Assent Act 1967 signification of Royal Assent is either by Royal Commission "in the presence of both Houses" (the Clerk of Parliaments announces verbally "La Roi le veult", which means "The King wills it") or by notification to both Houses, "sitting separately, by the Speaker of that House".[107] The monarch can also declare Royal Assent "in person in Parliament", although this has not happened since 1854.

In modern times, Royal Assent for Bills agreed to by both Houses of Parliament is purely a formality: it is always given. The last time Royal Assent was withheld was when Queen Anne refused assent for the Scottish Militia Bill in 1708. In 1914, King George V believed he still possessed the prerogative power to veto a Bill, in that case legislation granting devolution to Ireland, although he did not exercise that right.[108]

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105 See Parliamentary facts and figures SN04064, Queen's Speech – proposers and seconders of the Loyal Address since 1900.

106 Statutory references to "His" or "Her Majesty" were replaced with "the Crown" from the 1860s.

107 Companion to Standing Orders, Appendix F. For a personal Bill, the Clerk of Parliaments states: "Soit fait comme il est désiré."

108 Vernon Bogdanor, p131. The Bill became the Government of Ireland Act 1914.

4.5 King's Consent

Where proposed legislation may affect Crown interests, "including personal property and personal interests of the Monarch", a requirement of the Parliamentary process is "King's Consent" or, in the case of the heir, "Prince's Consent". This is distinct from Royal Assent. Questioned about what was then known as Queen's Consent in October 2021, Michael Ellis said it was "agreed by the Monarch as a matter of course", had "never been refused by the Monarch in modern times" and that legislation was "not amended in order to ensure Queen's Consent".[109]

Prince's Consent is associated with legislation affecting the Duchy of Cornwall. It is narrower than that of Queen's Consent but has been requested in relation to draft Bills on matters such as gambling and the 2012 London Olympics.[110]

4.6 The Palace of Westminster

As a Royal Palace, until 25 April 1965 the entire Palace of Westminster was under the immediate control of the Crown, on whose behalf the Lord Great Chamberlain acted.[111] Thereafter Queen Elizabeth II made over to each House the control, use and occupation of the part of the Palace which it occupied, but responsibility for the Royal Apartments of the Palace, including the Robing Room and the Royal Gallery, remained with the Lord Great Chamberlain, as did certain ceremonial functions.[112]

The crowned portcullis has for many years been used as the emblem of the UK Parliament. In 1997, its use was formally authorised by licence granted by the monarch.[113]

4.7 The Crown and devolved legislatures

The Crown, including succession to the Crown and a regency, are reserved or excepted matters under the Scotland Act 1998, Northern Ireland Act 1998 and the Government of Wales Act 2006.[114]

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109 UIN 56265, Queen's Consent, 25 October 2021. See also House of Commons Political and Constitutional Reform Committee, The Impact of Queen's and Prince's Consent on the Legislative Process, 26 March 2014, HC 784.

110 Office of the Parliamentary Counsel, Queen's or Prince's Consent, September 2018.

111 The land around Parliament was purchased by the Crown under the Houses of Parliament Act 1867.

112 House of Lords Library Briefing, Governance and Administration of the House of Lords.

113 Erskine May, para 15.11.

114 See Schedule 5 of the Scotland Act 1998, Schedule 2 of the Northern Ireland Act 1998 and Schedule 7A of the Government of Wales Act 2006.

Although the Crown formed part of the Parliament of Northern Ireland between 1921 and 1973, the same is not true of the Northern Ireland Assembly established in 1998, and the Scottish and Welsh Parliaments established in 1999. Royal Assent is still required for the Acts of all three.[115]

Members of the Scottish and Welsh Parliaments are also required to swear the oath of allegiance or make a solemn affirmation before they can take their seats, and in those two bodies there is effectively a statutory bar on the practice of "abstentionism".[116] Members of the Northern Ireland Assembly, however, are not required to swear the oath.

It has become the custom that the monarch opens each session of the Scottish and Welsh parliaments with a speech, although this is not analogous to the King's Speech delivered in the House of Lords. There is no comparable custom at the Northern Ireland Assembly.[117] The Scottish and Welsh Parliament have ceremonial maces (that used in Scotland was gifted by Queen Elizabeth II); the Northern Ireland Assembly does not and those used by the former Parliament of Northern Ireland are in storage.

The King receives a weekly report from the Scottish Parliament on its business. Section 99 of the Scotland Act 1998 and Section 89 of the Government of Wales Act 2006 refer, respectively, to "the Crown in right of the Scottish Administration" and "in right of the Welsh Assembly Government", which means the Crown's legal personality in those devolved jurisdictions.

4.8 The Crown and local government

Elected councils across the United Kingdom also use ceremonial maces, which denote Royal authority. Dermot Morrah described a visit of Queen Elizabeth II to Winchester in the late 1950s:

> [A] guard of honour was posted; and, after a royal salute, the Queen passed along the ranks with an occasional word for selected men. Then with the Duke [of Edinburgh] she ascended the steps to meet the Mayor, who with formal words surrendered to her the symbol of civic authority, the municipal Mace. The Queen touched the Mace, in token that it existed for her service, and relinquished it as being well satisfied that it was in hands worthy of her trust. The bewigged Recorder, who is the chief legal officer of the City and presides over its quarter sessions, read a loyal address, welcoming the Queen in brief and formal words to her faithful city, and the Queen with equal formality and even more briefly replied.[118]

115 See Scottish Parliament website, Royal Assent and the Great Seal of Scotland.
116 See Section 84 of the Scotland Act 1998 and Section 23 of the Government of Wales Act 2006.
117 Queen Elizabeth II delivered a speech in the Great Hall at Stormont in May 2002, visiting again in 2005 and 2012.
118 Dermot Morrah, The Work of the Queen, London: William Kimber, 1958, p93.

The Accession Proclamation of a new monarch is read by High Sheriffs of each county in England and Wales,[119] or by mayors and lord mayors. In Scotland proclamations are read by sheriffs (in counties), lord provosts and provosts (in cities and towns), and in Northern Ireland by mayors and lord mayors. During mourning for a former monarch, a "small black bag or purse" is fitted over the jewel of the mayor or lord mayor's chain of office, "so that only the chain is seen".[120]

[119] Paul Millward, Civic Ceremonial: A Handbook, History and Guide for Mayors, Councillors and Officers, Crayford: Shaw & Sons, 2007, p159.

[120] Holbeach Parish Council, Operation London Bridge Protocol, para 9.

5 The Crown and the executive

In law, the Crown remains the source of executive authority in the United Kingdom, although most decisions are now taken by other bodies independent of the monarch, most significantly the Cabinet. As the legal academic Conor McCormick has observed, "in so far as the executive powers of central government are concerned, all roads lead back to the Crown".[121]

5.1 The Privy Council

The Privy Council (or, if the monarch is present, "His Majesty in Council") is an advisory body to the Crown and its members are known as Privy Counsellors. It is one of the oldest parts of the UK's constitutional arrangements, with origins dating back to at least the 13th century.[122]

Originally, it was the "executive instrument of the sovereign", but as power was transferred to ministers and a Cabinet accountable to Parliament, its authority declined. But as the historian Christopher Hibbert has observed, the "fiction" of the Privy Council's authority was preserved, its "theoretical authority" sustained by the requirement for all members of the Cabinet (the executive committee of the Privy Council) to be sworn in as Privy Counsellors.[123] The present Privy Council of the United Kingdom dates from 1 January 1801.[124]

Business of the Privy Council

Decisions of the Privy Council are either "Orders **in** Council", a form of primary or secondary legislation which require the monarch's personal approval, or "Orders **of** Council", which are made by "the Lords of His Majesty's Most Honourable Privy Council" (that is, Ministers of the Crown). Both can either be statutory (and therefore subject to parliamentary procedure) or prerogative.

121 Conor McCormick, The Three Tiers of Executive Power in Northern Ireland in B. Dickson and C. McCormick (eds), The Judicial Mind: A Festschrift for Lord Kerr of Tonaghmore, Oxford: Hart, 2021, p225.

122 See Commons Library Briefing Paper CBP7460, The Privy Council: history, functions and membership.

123 Christopher Hibbert, The Court of St James's: The Monarch at Work from Victoria to Elizabeth II, London: Weidenfeld and Nicolson, 1979, p4.

124 Before 1801 there existed a Privy Council for Great Britain and a separate Privy Council for Ireland. Prior to 1708, there existed three distinct privy councils for England, Scotland and Ireland. The Privy Council for Ireland continued to function until 1922, when it became the Privy Council for Northern Ireland (PCNI). No further appointments were made to the PCNI after 1973.

Examples of prerogative Orders in Council include those proroguing Parliament, while statutory Orders include those transferring functions between government departments.

Examples of statutory Orders of Council include the approval of regulations made by the General Medical Council, while prerogative Orders of Council can be the approval of amendments to the by-laws of Chartered Bodies such as the Royal Institution of Chartered Surveyors. Other functions of the Privy Council include:

- extending legislation to British Overseas Territories
- ratifying legislation from the Crown Dependencies
- issuing Proclamations, for example the dates of Bank Holidays
- granting Royal Charters to hundreds of Chartered Bodies

The Privy Council meets on average about once a month wherever the monarch is in residence.[125] Only current Ministers of the Crown (themselves Privy Counsellors) attend these meetings. The quorum is three, although four ministers will usually attend. One of these members will be the Lord President of the Council (the head of the Privy Council Office).[126] Everyone present, including the monarch, stands.[127] Most business is transacted by the monarch periodically saying "approved" as the Lord President reads a list of Orders in Council. An exception is the appointment of High Sheriffs in English and Welsh counties, whose names (listed on a roll of starched paper) are "pricked" with a bodkin.[128]

Some Privy Council proceedings are recorded in The Gazette, formally the combination of three official journals of record: The London Gazette, The Belfast Gazette and The Edinburgh Gazette. The legal power to print and publish The Gazette is a prerogative power conferred on The King's Printer by Letters Patent.[129]

Membership of the Privy Council

Members of the Privy Council are appointed by the monarch on the advice of the Prime Minister. Membership is for life, and members are entitled to be

[125] Queen Victoria often held Privy Council meetings in the Council Chamber at Osborne House on the Isle of Wight. More recently, meetings have taken place in Canberra and Wellington. On one latter occasion, the Prime Minister of New Zealand was deemed "Acting Lord President". Several New Zealanders are members of the UK Privy Council. There is a separate Privy Council of Canada, a meeting of which in Ottawa was attended by Queen Elizabeth II in 1957. The then Prince of Wales was sworn in as a member during a visit to Halifax in 2014.

[126] When Ann Taylor became the first woman to be appointed in 1997, she was known simply as "the President of the Council".

[127] A meeting of the Privy Council was filmed for the 1992 BBC documentary, Elizabeth R.

[128] Queen Elizabeth I was apparently asked to approve appointments while sewing and her bodkin was the only available marking instrument, although this is of doubtful provenance.

[129] There are equivalent Gazettes in each of the Commonwealth Realms, as well as in the Canadian Provinces and Australian States.

addressed as "the Right Honourable". New members kneel on a footstool in front of the monarch and "kiss hands".[130] They then return to a standing position to take an oath or make a solemn affirmation.

In addition to Cabinet ministers, middle-ranking government ministers, opposition party leaders, senior judges and some figures from Commonwealth Realms are also Privy Counsellors. This means they can receive briefings on matters relating to the national interest "on Privy Council terms", which means the contents are confidential.[131]

A full meeting of the Privy Council (which has more than 700 members) occurs only on two occasions. These are an Accession Council, which is summoned to proclaim a new monarch, and when an monarch announces his or her intention to marry.

The Cabinet

The Cabinet has been called the "executive committee" of the Privy Council, although it actually developed in parallel. The most senior members of the Cabinet follow certain procedures on assuming office.

The Promissory Oaths Act 1868 (as amended by an Order in Council dated 9 August 1872 and the Promissory Oaths Order 1939) requires an oath of office (set out in Section 3) to be taken by members of the Cabinet before the King in Council. Those ministers included in Part I of the Schedule to the 1868 Act but not in the Cabinet must take an oath of office before another senior minister, usually the Lord President of the Council.

In the case of offices which carry seals of office, the appointment is given effect by the delivery of those seals by the monarch to the holder of the office. This takes place, with one exception, during the Privy Council at which the oath of office is taken and the appointee kisses hands. The exception is the Chancellor of the Duchy of Lancaster who receives the seals in private audience, usually immediately after the Privy Council at which the other appointments have been made. He or she takes the oath and kisses hands at that audience.[132]

In some cases, Letters Patent form part of the appointment process. This is the case for the Lord Privy Seal, the Chancellor of the Exchequer, the Attorney General and Solicitor General (for England and Wales) and Commissioners of the Treasury (the Prime Minister, Chancellor and several whips).[133] The

130 New members merely brush the back of the monarch's hand with their lips.

131 A full list of Privy Council members is available on the Privy Council Office's website. The First Ministers of Scotland, Wales and Northern Ireland are also now appointed Privy Counsellors.

132 Rodney Brazier, Constitutional practice: the foundations of British government, Oxford: Oxford University Press, 1999, p312 (Memorandum by the Clerk of the Privy Council, 1987).

133 The appointment of Commissioners of the Treasury is regulated by Section 2 of the Consolidated Fund Act 1816.

Paymaster General is appointed by Royal Warrant under the Royal Sign Manual.[134] The Lord President is "declared" by the King in Council.

There are also a number of "phantom" appointments, offices that remain in being due to statute. The Presidency of the Board of Trade, for example, is held in conjunction with the Secretary of State for Department of International Trade. The Board of Trade remains a committee of the Privy Council and its President is appointed by an Order in Council approved at the same time as the holder of the substantive office receives the seal and takes the oath of office.[135]

There are fewer formalities upon the relinquishment of senior office. Only the Lord Chancellor and the Chancellor of the Duchy of Lancaster have the privilege of claiming a private audience with the King for the purpose of delivering up their seals. The seals of other outgoing ministers are simply collected by the Privy Council Office in preparation for their delivery to their new holders.[136]

The monarch once regularly attended Cabinet meetings, but by 1721 their place had been taken by a senior minister who became known as the "Prime Minister" (see below).[137]

The monarch, however, does see the Cabinet agenda in advance, and receives minutes of Cabinet meetings and its committees, as well as copies of all important Foreign Office telegrams and dispatches.[138] Like Ministers of the Crown, the monarch receives papers in a red box. These come in two sizes, a smaller "reading box" containing the above material as well as a daily account of parliamentary proceedings and weekly summaries from the Governors-General of the Commonwealth Realms and, at weekends, a larger briefcase-sized box containing documents which require a signature. There are four keys, one for the monarch and three for her private secretaries.[139]

5.2 His Majesty's Government

Walter Bagehot differentiated between the "dignified" functions of the constitution as fulfilled by the Head of State and its "efficient" functions as carried out by His Majesty's Government.[140]

134 See Section 4 of the Paymaster General Act 1835.
135 Rodney Brazier, pp313-14.
136 Rodney Brazier, p310.
137 Queen Elizabeth II informally attended a Cabinet meeting in 2012 to mark her Diamond Jubilee.
138 The King's Private Secretary may also seek further information on any subject from government departments.
139 Robert Hardman, p172. The Prince of Wales' boxes are green.
140 Bagehot's constitutional writing was studied by George V, George VI, Elizabeth II and Charles III before they succeeded to the Crown.

The Crown approves the appointment of all Ministers of the Crown. Under the 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.[141]

When ministers offer formal "advice" to the Crown, the monarch is bound by convention to follow. Informal advice is not similarly binding.[142]

In a minute to King George V written in December 1910, the then Liberal Prime Minister H. H. Asquith observed that:

> The part to be played by the Crown [...] has happily been settled by the accumulated traditions and the unbroken practice of more than seventy years. It is to act upon the advice of the Ministers who for the time being possess the confidence of the House of Commons, whether that advice does or does not conform to the private and personal judgement of the Sovereign. Ministers will always pay the utmost deference, and give the most serious consideration, to any criticism or objection that the Monarch may offer to their policy; but the ultimate decision rests with them; for they, and not the Crown, are responsible to Parliament.[143]

During Queen Victoria's reign, there was always a "Minister in Attendance", although the regularity of this practice was abandoned following the First World War when communications were considered sufficiently advanced to render it unnecessary.[144]

Some Ministers of the Crown are Secretaries of State. Originally a single office, the first appointment of two concurrent Secretaries of State was by King Henry VIII and, in practice, as defined by the Interpretation Act 1978, the term "Secretary of State" today means "one of His Majesty's principal Secretaries of State".

The redistribution of functions between Ministers of the Crown or any alteration in "the style and title of such Ministers" is given effect by an Order in Council under the Ministers of the Crown Act 1975.

The Prime Minister

As a matter of law, the monarch has the prerogative power to appoint and to dismiss the Prime Minister.[145] In practice, however, the appointment and resignation of Prime Ministers is governed by constitutional convention. The incumbent Prime Minister may resign at any time, but they are expected to resign if they no longer command the confidence of the House of Commons,

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141 Cabinet Office, The Cabinet Manual, 2011, p103. The Ram doctrine was set out in a memorandum dated 2 November 1945 from the then First Parliamentary Counsel, Granville Ram.

142 In 1973, for example, the then UK Prime Minister Edward Heath did not wish Queen Elizabeth II to attend a Commonwealth meeting in Ottawa. She had been invited by the Canadian Prime Minister.

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

144 Christopher Hibbert, p216.

145 The power to dismiss the Prime Minister was last exercised by William IV in 1834.

and it is clear someone else is better placed to do so. There are principally two ways a Prime Minister might lose the confidence of the House. The first is if, following a general election, it becomes clear someone else is better placed to form a government. Alternatively, the government may have been defeated on matters or motions of confidence in the House of Commons during a Parliament.[146]

When a vacancy arises, the monarch invites the individual who is best placed to command the "confidence" of the House of Commons to form a government.[147] (The phrase "His Majesty's Loyal Opposition" was first used in 1826 and refers to the largest non-governing party in the House of Commons.)

The Prime Minister accepts office by attending the King in private audience.[148] The appointment – together with that as First Lord of the Treasury – takes effect from that moment. At the audience, the new Prime Minister kisses hands. There are no other formalities. The premier does not take an oath of office as Prime Minister, although they are required to take the oath of office in their capacity as First Lord of the Treasury. There is, however, no seal associated with this office.[149]

The last occasion on which the monarch is understood as having had genuine discretion was in 1963, when Queen Elizabeth II sent for the Earl of Home.[150] After 1965, the leaders of both main parties were elected either by MPs (Conservative) or an electoral college which include MPs (Labour), thus their choice guided the monarch in their choice of premier following an election or resignation.

A Prime Minister can be dismissed by the monarch, though this last occurred in 1834.[151] The constitutional lawyer Robert Blackburn has argued that a monarch would be "duty bound" to dismiss a Prime Minister from office if he or she was "acting in manifest breach of convention". The example he gave was if a Prime Minister, after a successful no confidence motion, refused to resign or call a general election.[152]

When a Prime Minister is in office, they enjoy a weekly audience with the monarch. This is held in person or, if that is not possible, by telephone. The meeting is entirely private, and no minutes are kept. "Anyone who imagines that they are a mere formality or confined to societal niceties is quite wrong," observed Margaret Thatcher in her memoirs, "they are quietly businesslike

146 See Commons Library Insight, How is a Prime Minister appointed?
147 If a Prime Minister wishes to resign, then the convention is that they resign as leader of the party but only as Prime Minister once a successor has been elected.
148 In 1908, H. H. Asquith had to travel to Biarritz (France) where King Edward VII was holidaying to be appointed Prime Minister.
149 Rodney Brazier, p312.
150 Home disclaimed his peerage and was thus Prime Minister for two weeks without being an MP or a peer. A by-election in Kinross and West Perthshire was pending.
151 This was William IV's dismissal of Lord Melbourne and his replacement by Sir Robert Peel.
152 Robert Blackburn, Monarchy and the Personal Prerogatives, Public Law, Autumn 2004, p551.

and Her Majesty brings to bear a formidable grasp of current issues and breadth of experience."[153]

Rights of the Crown vis-à-vis the government

According to Bagehot, the Crown enjoys three rights in relation to the government: the right to be consulted, the right to advise and the right to warn. In a letter to The Times on 28 July 1986, Sir William Heseltine, the then Private Secretary to Queen Elizabeth II, took "three points to be axiomatic":

1. The Sovereign has the right — indeed a duty — to counsel, encourage and warn her Government. She is thus entitled to have opinions on Government policy and to express them to her chief Minister.

2. Whatever personal opinions the Sovereign may hold or may have expressed to her Government, she is bound to accept and act on the advice of her Ministers.

3. The Sovereign is obliged to treat her communications with the Prime Minister as entirely confidential between the two of them.[154]

Neutrality of the Crown

Sir William's letter was in response to media reports that the Queen had departed from these "constitutional principles" by indicating displeasure at Margaret Thatcher's style of government. As Robert Hardman has written, "governments will always be controversial, challenging and confrontational, while the job of monarchy is to be uncontroversial, acceptable and agreeable".[155]

The strict neutrality of the Crown is a relatively recent phenomenon. Queen Victoria is regarded by some historians as having been anti-Liberal in the latter part of her reign. Sir Vernon Bogdanor believes Queen Elizabeth II was the first monarch whose personal political views were not generally known.[156]

If a member of the Royal Family intends to make a speech which could prove controversial, it is sent to the relevant government minister as a matter of courtesy. Sir Vernon Bogdanor also records instances of ministers asking for changes to speeches delivered by members of the Royal Family.[157]

In a BBC documentary marking his 70th birthday in 2018, the then Prince of Wales said he would no longer make public interventions on subjects such as the environment when he succeeded to the Throne. Prince Charles

153 Margaret Thatcher, The Downing Street Years, London: HarperCollins, 1993, p12.
154 The Times, 28 July 1986.
155 Robert Hardman, p31.
156 Vernon Bogdanor, p68.
157 Vernon Bogdanor, pp53-54.

acknowledged he would not be "able to do the same things I've done as heir" and as monarch would have to operate within "constitutional parameters".[158]

Queen Elizabeth II's speech to Parliament to mark her Silver Jubilee caused political controversy in May 1977 by making reference to the then "keen discussion of proposals for devolution to Scotland and Wales":

> I number Kings and Queens of England and of Scotland, and Princes of Wales among my ancestors and so I can readily understand these aspirations. But I cannot forget that I was crowned Queen of the United Kingdom of Great Britain and Northern Ireland. Perhaps this Jubilee is a time to remind ourselves of the benefits which union has conferred, at home and in our international dealings, on the inhabitants of all parts of this United Kingdom.[159]

SNP MPs later described the words as "ill advised".[160] When Donald Stewart, an SNP Member, asked the Prime Minister if he accepted "responsibility" for Her Majesty's address in Westminster Hall, James Callaghan replied:

> Unlike the speech from the Throne, the Queen's reply to the Loyal Addresses was not a statement of Government policy. It was a personal response by the Queen, but it should certainly be regarded as having been made on the advice of Ministers, as are all Her Majesty's speeches. I saw it myself before it was delivered and I saw no reason to propose any alteration.[161]

The monarch does not generally give interviews, although the King (when Prince of Wales) and other members of the Royal Family have done so. Queen Elizabeth II did, however, share memories of her coronation and what it is like to wear the Imperial State Crown in a 2018 BBC documentary.

Royal Commissions

The monarch no longer has a role in formulating government policy, although the monarch can appoint members of a Royal Commission by Royal Warrant on the advice of ministers. These are often appointed to address high-profile social concerns, issues that may be controversial or matters of national importance. Royal Commissions typically work by gathering evidence and producing a report. The last Royal Commission in the UK was that on Reform of the House of Lords, which reported in 2000. Royal Commissions are also used by Commonwealth Realm governments.[162]

The Civil Service

Civil servants are servants of the Crown and usually work in a department of state established under the prerogative powers of the Crown. Under the Carltona principle, the "civil service have no legal or constitutional

158 Guardian, Prince Charles: 'Me, meddle as a king? I'm not that stupid', 8 November 2018.
159 Royal Family website, A speech by The Queen to Parliament on her Silver Jubilee, 4 May 1977.
160 The Times, The Queen's remarks take MPs by surprise, 5 May 1977.
161 HC Deb 5 May 1977 Vol 931 c642 [Prime Minister (Engagements)]
162 See Lords Library Research Briefing, Royal Commissions: Making a Comeback? See also Commons Library Research Briefing SN2599, Public Inquiries: non-statutory public inquiries.

personality separate from the Government or ministers".[163] The Civil Service supports the government of the day in developing and implementing its policies, and in delivering public services.[164] Civil servants are accountable to ministers, who in turn are accountable to Parliament.[165]

The Constitutional Reform and Governance Act 2010 put the regulation of the Civil Service on a statutory basis. Civil Service Commissioners for Great Britain and Northern Ireland are appointed individually by Royal Warrant.

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. 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.

Papers presented to Parliament "by command of His Majesty" on the initiative of a Minister of the Crown are known as Command Papers.

5.3 The Royal Household

Some government ministers remain members of the Royal Household which at one time comprised the principal administrators of England/Great Britain by virtue of the executive power exercised by the Crown.

The Lord Chancellor, Lord President of the Council, Lord Privy Seal and the Secretary of State became members of the political administration and ceased Household duties. However, the Treasurer, Comptroller and Vice-Chamberlain of the Household all continue to act as government whips in the House of Commons, while the Captain of the Gentlemen-At-Arms, the Captain of the Yeoman of the Guard and three of the five non-permanent Lords-in-Waiting also continue to act as government whips in the House of Lords.

Two "Great Officers of State", the Lord Great Chamberlain and the Earl Marshal, retain duties in connection with Royal ceremonial and remain members of the House of Lords. The Lord Great Chamberlain organises the State Opening of Parliament, while the Earl Marshal is head of the College of Arms and responsible for organising State occasions.

The Private Secretary's Office

Today there are five main departments of the Royal Household, the most important of which is the Private Secretary's Office. The Private Secretary, along with a Deputy and an Assistant, supports the monarch in their

163 *Carltona v Commissioner of Works* [1943] 2 All ER 560
164 The Northern Ireland Civil Service and Home Civil Service (Great Britain) are separate.
165 The Cabinet Manual, p57.

constitutional, governmental and political duties as Head of State. The Private Secretary – a personal appointment of the monarch – is also an important conduit between the Head of State and the head of government, the Prime Minister. To Sir Vernon Bogdanor, the Private Secretary plays "a crucial constitutional role".[166] There is, separately, a Canadian Secretary to the King based in Ottawa, who is responsible for liaising with Buckingham Palace.

The Lord Chamberlain's Office

The Lord Chamberlain's Office is responsible for organising those elements of the monarch's programme which involve ceremonial activity or public events. These range from garden parties and State visits to Royal weddings and the State Opening of Parliament. It also handles the Royal Mews, as well as the awarding of honours. The Lord Chamberlain is also Chancellor of the Royal Victorian Order and the monarch's emissary to the House of Lords.[167]

The Royal Household in Scotland

The Royal Household in Scotland is the "residue" of the ancient Scottish Court. It has four parts, heraldic or ceremonial, ecclesiastical (comprising ministers from the Church of Scotland), medical and defensive (the Royal Company of Archers). Some positions within the Scottish Household are hereditary, such as the Lord High Constable and Master of the Household, others are purely honorific.[168]

5.4 Devolved governments

Under the Scotland Act 1998, the Presiding Officer of the Scottish Parliament recommends to the King the appointment as First Minister an MSP nominated by a majority vote in the Scottish Parliament. He or she is then appointed via Royal Warrant and holds office "at His Majesty's pleasure". With the agreement of the Scottish Parliament, the First Minister then appoints ministers from among MSPs (except two law officers) "with the approval of His Majesty".[169]

All this also applies to the First Minister of Wales. The Counsel General for Wales, the Welsh Government's law officer, is appointed by the sovereign on the recommendation of the First Minister.[170] The monarch holds regular audiences with the First Ministers of Scotland and Wales. Until 2012, Queen Elizabeth II received advice from the Secretary of State for Wales in respect of

166 Vernon Bogdanor, p202.
167 Although the Lord Chamberlain is a non-political appointment, he (together with the Earl Marshal) is still required to take an oath of office before the Lord President of the Council.
168 See David Torrance, Elites in Scotland in M. Stewart Leith & Duncan Sim (eds), Scotland: The New State of an Old Nation, Manchester: Manchester University Press, 2020, pp143-44.
169 See Sections 46-48 of the Scotland Act 1998.
170 See Sections 46-49 of the Government of Wales Act 2006.

the exercise of her functions in relation to Wales. But following a formal request from the First Minister of Wales, advice in respect of functions within devolved areas of competence passed from the Secretary of State to that office holder.[171]

The appointment of the First and deputy First Minister of Northern Ireland is by nomination and does not involve the Crown, although the Northern Ireland Act 1998 provides that "executive power in Northern Ireland shall continue to be vested in His Majesty" and "exercisable on His Majesty's behalf by any Minister or Northern Ireland department".[172]

171 HC Deb 15 Oct 2012 Vol 551 cc5-6WS [First Minister of Wales (Functions as Privy Counsellor)]. The King does not receive advice from the Northern Ireland Executive, even when it is functioning.

172 See Section 23 of the Northern Ireland Act 1998. Under the first devolution settlement in Northern Ireland (1921-73), all executive power was vested in the Crown as represented by the Governor of Northern Ireland. Following Direct Rule in 1972, these executive powers were vested in the Secretary of State for Northern Ireland (see Commons Library Briefing Paper CBP8884, Parliament and Northern Ireland, 1921-2021).

6 The Crown and the law

In the statutory Coronation Oath, a monarch "solemnly" promises and swears to govern the UK, its territories and Commonwealth Realms "according to their respective laws and customs", as well as to "cause Law and Justice, in Mercy, to be executed" in all the Crown's judgements.[173]

Statutes are presumed not to bind the Crown unless explicitly stated otherwise or (very rarely) by necessary implication.[174] Section 10 of the Interpretation Act 1978 states that:

> In any Act a reference to the Sovereign reigning at the time of the passing of the Act is to be construed, unless the contrary intention appears, as a reference to the Sovereign for the time being.[175]

The Crown is also immune from legal action at common law, although this does not extend to Ministers and Officers of the Crown,[176] or indeed other members of the Royal Family. As Tom Cornford has observed:

> Proceedings against officers of the Crown would be proceedings against the Crown; the doctrine that the King cannot be sued in his own courts would apply only to the Monarch in person and not to the Crown as a political entity.[177]

Although the Crown Proceedings Act 1947 allowed the Crown in its official capacity to be sued in criminal proceedings, it preserved the monarch's personal immunity. As Adam Tomkins has written: "the Sovereign cannot be arrested; no arrest can be made within the Sovereign's presence or within the royal palaces; the Sovereign's goods may not be seized; and the Sovereign may not give evidence in her own cause".[178]

173 Royal Family website, The Queen's Coronation Oath, 1953.

174 *Province of Bombay v Municipal Corporation of the City of Bombay* [1947] AC 58. For example, the Freedom of Information Act 2000 does not apply directly to the Royal Household, although it does apply to communications with members of the Royal Family held by public authorities (see Commons Library Briefing Paper SN05377, Freedom of information and the Royal Family).

175 This replaced Section 30 of the Interpretation Act 1889, which stated that statutory references "to the Crown" should also be construed as a reference to the reigning monarch.

176 It is the practice for Ministers of the Crown 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.

177 Tom Cornford, Legal Remedies Against the Crown and its Officers Before and After M in M. Sunkin and S. Payne, The Nature of the Crown, p265.

178 Adam Tomkins, Crown Privileges in M. Sunkin and S. Payne, The Nature of the Crown, pp171-72.

6.1 The Crown and the courts

The Crown remains "fountain of justice". As Martin Loughlin has written:

> All jurisdiction is [...] exercised in the name of the Queen, and all judges derive their authority from her commission. Every breach of the peace is a transgression against the Queen. She alone has the authority to prosecute criminals; when sentence is passed, she alone can remit the punishment.[179]

This is also reflected in nomenclature such as Crown Court, the Crown Prosecution Service, the Crown Office and Procurator Fiscal Service, the Royal Courts of Justice, the King's Bench Division and King's Counsel (KCs). Under the prerogative, the Crown can also create new courts, but only to administer the common law.

In criminal proceedings, the Crown is the prosecuting party and is usually designated on the title or name of a case as "R v [name]", with R standing for Rex or Regina depending on the monarch. This is verbally read as "the Crown against [name]". When cases are brought by the Crown according to the complaint of a claimant, their titles follow the pattern of "R (on the application of X) v Y".

In Scotland, criminal prosecutions are undertaken by the Lord Advocate (or the relevant Procurator Fiscal) in the name of the Crown. Accordingly, the abbreviation "HMA" is used in the High Court of Justiciary for "His/Her Majesty's Advocate" in place of Rex or Regina.[180]

Since crime is technically an offence against the Crown, the monarch can exercise the Prerogative of Mercy. A penalty may be reduced on advice from the Secretary of State for Justice (in England, Wales and the Channel Islands), the Lieutenant Governor (in the Isle of Man), Scottish Ministers (in Scotland) or the Minister for Justice (Northern Ireland). In the case of a miscarriage of justice, a person wrongly convicted can receive a "free pardon" from the Crown.[181]

The Crown appoints judges on the advice of ministers or the Judicial Appointments Commission and cannot dismiss them unless petitioned to do so by both Houses of Parliament.[182] The Crown also appoints the Attorney General and Solicitor General for England and Wales and the Lord Advocate and the Solicitor General for Scotland.[183]

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179 Martin Loughlin, The State, the Crown and the Law in M. Sunkin and S. Payne, The Nature of the Crown, p58.

180 The form varies in the 14 Commonwealth Realms.

181 Law Society Gazette, The royal prerogative of mercy, 6 November 2015.

182 See section 11 of the Supreme Court Act 1981.

183 Under section 22 of the Justice (Northern Ireland) Act 2002, the Attorney General for Northern Ireland is appointed by the First Minister and deputy First Minister of Northern Ireland, acting jointly.

When judges are sworn in they take two oaths/affirmations to the Crown. The first is the oath of allegiance and the second the judicial oath. These are collectively referred to as the judicial oath.[184]

Under the Promissory Oaths Act 1868, the Lord Clerk Register, the Advocate General for Scotland and the Lord Justice Clerk are required to take an oath of office before the Lord President of the Court of Session at a sitting of that Court.[185]

The Judicial Committee of the Privy Council is a standing committee of the Privy Council which, among other things, is the court of final appeal for the British Overseas Territories and Crown Dependencies. It also serves those Commonwealth countries that have retained the appeal to "His Majesty in Council" or, in the case of republics, to the Judicial Committee itself.

6.2 The Crown and the police

Police officers in England and Wales "are not employees, but servants of the Crown". Under the Police Act 1996, at their attestation ceremony all police officers (constables, regardless of rank) "do solemnly and sincerely declare and affirm" that they "will well and truly serve the King in the office of constable".[186]

The oaths taken by members of Police Scotland and the Police Service of Northern Ireland (PSNI) are similar but do not include reference to the King. The motifs used by the PSNI, Police Scotland and forces in England and Wales incorporate the Crown.

The Metropolitan Police Commissioner is appointed by a Royal Warrant of the Crown on the advice of the Home Secretary.[187]

His Majesty's Inspectors of Constabulary and His Majesty's Inspectors of Fire and Rescue Services, including His Majesty's Chief Inspector, are also appointed by the Crown on the advice of the Home Secretary and the Prime Minister, under section 54 of the Police Act 1996. As independent holders of public office under the Crown, appointed under Royal Warrant, they are neither civil servants nor police officers.[188]

184 Courts and Tribunals Judiciary website, Oaths.
185 See Part I of the Schedule to the Promissory Oaths Act 1868.
186 See Schedule 4; see also Police Federation, The Office of Constable.
187 See section 42 of the Police Reform and Social Responsibility Act 2011.
188 See HMICFRS website, Who we are.

7 The Crown and the Church

The monarch holds the titles of "Defender of the Faith" and "Supreme Governor of the Church of England".[189] Queen Elizabeth II's Coronation ceremony on 2 June 1953 included the statutory Coronation Oath:

> **Archbishop of Canterbury**: Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England? And will you preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them or any of them?
>
> **The Queen**: All this I promise to do.[190]

7.1 The Crown and Church of England governance

Since 1970, the monarch has inaugurated and addressed the opening session of the General Synod of the Church of England every five years following diocesan elections.[191] The Crown also nominates three of the Church Commissioners and, by convention, appoints a senior backbench MP from the governing party as the Second Church Estates Commissioner, who answers questions on behalf of the Church Estates Commissioners in the House of Commons.

As well as Synod Measures, which are subject to parliamentary approval and Royal Assent,[192] the Synod can make ecclesiastical regulations known as Canons. These are submitted directly to the Crown for the Royal Assent and Licence to "make, promulge and execute" the Canon. This is granted on ministerial advice, provided the Canon does not conflict with the Royal prerogative, the common or statute law or any custom of the Realm.[193]

189 These titles date back to the reign of King Henry VIII. See Commons Library CBP8886, The relationship between church and state in the United Kingdom.
190 Royal Family website, The Queen's Coronation Oath, 1953.
191 See, for example, Royal Family website, A speech by The Queen at the Inauguration of the General Synod, 2015, 24 November 2015. Queen Elizabeth II missed the Synod opening for the first time in 2021.
192 As with Bills, Consent of the Crown (either King's or Prince's) may also be required in respect of a Measure.
193 Vernon Bogdanor, p223.

The Church of England's view that marriage in a church during the lifetime of previous spouse was inadmissible played a large part in the abdication of King Edward VIII in December 1936, given his determination to marry a twice-divorced US citizen. When the then Prince and Princess of Wales separated in 1992, the Archbishop of Canterbury declared that "the monarch is Supreme Governor of the Church by virtue of being the Sovereign: there is no other legal requirement".[194] By 2002, the Church of England had altered its views regarding the remarriage of divorcees.

Ecclesiastical appointments

Under the Appointment of Bishops Act 1533, the Crown formerly chose the archbishops and bishops of the Church of England but came to do so on the advice of ministers. The 2007 Governance of Britain Green Paper stated that:

> Diocesan and Suffragan Bishops, as well as 28 Cathedral Deans, a small number of Cathedral Canons, some 200 parish priests and a number of other post-holders in the Church of England are appointed by The Queen on the advice of the Prime Minister.[195]

There are also some 450 parishes and a few canonries to which the Lord Chancellor advises the monarch on appointments.

The Church became more closely involved in Crown appointments through the creation of a Crown Appointments Commission (later the Crown Nominations Commission). This presented two names to the Prime Minister, who then selected one for submission to the monarch.[196] After 2007, the Prime Minister's role in the appointment of diocesan bishoprics was further narrowed. The Crown Nominations Commission now puts only one name to the Prime Minister, which is then conveyed to the monarch.[197]

Once the Prime Minister has conveyed the CNC's recommendation to the King, the Crown grants to the relevant College of Canons a licence (congé d'elire) to elect a bishop and a letter missive naming the person to be elected. Once the King has assented to the election, it is confirmed by formal legal processes.[198]

Oath of allegiance and paying homage

Clergy of the Church of England are required to swear an oath of allegiance under section 4 of the Clerical Subscription Act 1865 (as amended). Canon 13 states that every person "to be instituted, installed, licensed or admitted to

194 Vernon Bogdanor, p58.
195 Cmnd 7170, The Governance of Britain – Constitutional Renewal, London: HMSO, July 2007, para 58.
196 Vernon Bogdanor, p228.
197 Cmnd 7170, paras 62-63. No changes were proposed to Crown appointments to the Royal Peculiars such as Westminster Abbey and St George's Chapel, Windsor, which reflected "the personal nature of the relationship of these institutions with the Monarch" (para 66).
198 Mark Hill, Ecclesiastical Law (third edition), Oxford: Oxford University Press, 2007, paras 4.57-58.

any office in the Church of England" shall take the "Oath of Allegiance in the form following":

> I, A B, do swear that I will be faithful and bear true allegiance to His Majesty King Charles III, her heirs and successors, according to law: So help me God.[199]

A new bishop or archbishop makes Homage to the Crown following his or her appointment by kneeling before the King, who sits in a chair with the Lord Chancellor at her side. He places the palms of his hands together as if in prayer. The King takes them between his own. The bishop then repeats, after the Lord Chancellor, the words of the Homage:

> I A.B. having been elected, confirmed and consecrated Bishop of C. do hereby declare that Your Majesty is the only supreme governor of this your realm in spiritual and ecclesiastical things as well as in temporal and that no foreign prelate or potentate has any jurisdiction within this realm and I acknowledge that I hold the said bishopric as well the spiritualities as the temporalities thereof only of Your Majesty and for the same temporalities I do my homage presently to Your Majesty so help me God.
> God save [King Charles].[200]

The King then issues Letters Patent restoring the temporalities of the vacant see to the new (arch)bishop.

Resignation

Norman Doe's The Legal Framework of the Church of England states that archbishops:

> not less than six months before the required date of vacating an archbishop must tender his resignation to the monarch who declares the archbishopric vacant. The monarch has statutory power to authorize an archbishop to continue in office after that date, for not more than one year, if she considers there are special circumstances, and as she may 'in her discretion determine'.[201]

Restrictions on advice to the Crown

The Roman Catholic Relief Act 1829 placed restrictions on who can offer advice to the Crown regarding Church of England appointments. Under that Act, it remains a "high misdemeanour" for a Catholic to do so.[202] This applies to the Prime Minister and to the Prime Minister's Secretary for Appointments. Under Section 4 of the Jews' Relief Act 1858, Jews are also barred from advising the Crown on ecclesiastical matters. In either case, this aspect of the

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199 A solemn affirmation may also be made under section 5 of the Oaths Act 1978.

200 See James Jones, Church of England Bishops as Religious and Civic Leaders in R. Standing and P. Goodliff (eds), Episkope: The Theory and Practice of Translocal Oversight, London: SCM Press.

201 Norman Doe, The Legal Framework of the Church of England, Oxford: Oxford University Press, 1996, pp179-180. Bishops submit their resignations to the Archbishop of Canterbury rather than to the monarch.

202 See section 18.

Prime Minister's duties can be delegated to another Minister of the Crown not similarly barred.[203]

The coronation

The coronation of a new monarch is a Church of England service, as are Royal weddings and funerals.[204] As Prince of Wales, the King once said he would prefer to be thought of as a "Defender of Faith" rather than "Defender of the Faith". He suggested that his coronation be an inter-faith occasion.[205]

7.2 The Crown and the Church of Scotland

The Church of Scotland is a self-governing Presbyterian church and recognises only Jesus Christ as "King and Head of the Church". The King therefore does not hold the title "Supreme Governor" of the Church of Scotland. When attending church services in Scotland, the monarch does so as an ordinary member.[206] Chaplains of the Royal Household in Scotland are appointed from the Church of Scotland. The monarch also appoints the Dean of the Thistle Chapel.

The monarch is represented at the annual General Assembly of the Church of Scotland by a Lord High Commissioner. S/he attends as an observer and is appointed by His Majesty on the advice of the First Minister of Scotland.[207] The King presents her representative with "Private Instructions" as well as a "Most Gracious Letter". The Lord High Commissioner makes opening and closing addresses to the General Assembly and reports to His Majesty on its proceedings but plays no other part (a Moderator chosen each year acts as chair). For the duration of the General Assembly, the Lord High Commissioner resides in the Palace of Holyroodhouse and is treated as a royal personage.

Members of the Royal Family have often acted as Lord High Commissioner. In 1996 and 2017, the role was undertaken by the Princess Royal, in 2000 by the then Duke of Rothesay (Charles), in 2014 by the Earl of Wessex and Forfar, and in 2021 by the then Earl of Strathearn (Prince William). In 1969, 1977 and 2002 Queen Elizabeth II also attended the General Assembly in person.

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203 When the Chancellor of the Duchy of Lancaster is a Catholic or a Jew, the Clerk of the Council of the Duchy, who is a full-time Duchy official (and not a Minister of the Crown), takes his or her place in advising the King on certain benefices in the Church of England of which he is patron (see HC Deb 24 May 1976 [Ecclesiastical Patronage]).

204 See Commons Library Briefing Paper CBP9412, The Coronation: history and ceremonial.

205 Jonathan Dimbleby, The Prince of Wales: A Biography, London: Little, Brown and Company, 1994, p528.

206 This most likely began with Queen Victoria's visits to Scotland during the 1840s, when she would worship at Crathie Kirk near Balmoral.

207 As with appointments to the Church of England, a minister advising on a Lord High Commissioner cannot be a Catholic or a Jew.

The Scottish Oath

Scottish monarchs have sworn to maintain the Church of Scotland since the 16th century, while the duty was affirmed for all new sovereigns of Great Britain under Article 25 of the Union with England Act 1707. This oath is sworn at the Accession Council, which is the first official engagement of a new sovereign. It reads:

> I, [INSERT TITLE] by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of My other Realms and Territories King, Defender of the Faith, do faithfully promise and swear that I shall inviolably maintain and preserve the Settlement of the true Protestant Religion as established by the Laws made in Scotland in prosecution of the Claim of Right and particularly by an Act intituled "An Act for securing the Protestant Religion and Presbyterian Church Government" and by the Acts passed in the Parliament of both Kingdoms for Union of the two Kingdoms, together with the Government, Worship, Discipline, Rights and Privileges of the Church of Scotland. So help me God.[208]

King Charles III took his Scottish Oath at his Accession Council on 10 September 2022.[209]

While the Church of England is heavily involved in the coronation ceremony of a new monarch, the Church of Scotland has no formal role, although in 1953 the then Moderator presented the Queen with a bible.[210]

Queen Elizabeth II's relationship with the Church of Scotland was also symbolised by a Service of Dedication at St Giles Cathedral in Edinburgh on 24 June 1953, three weeks after her coronation. During this ceremony the Queen was blessed by the Dean of the Chapel Royal in Scotland (who is appointed by the monarch) and the Moderator of the General Assembly of the Church of Scotland.[211]

208 The Privy Council Office, The Accession Council.
209 See Commons Library Briefing Paper CBP9621, The Accession of King Charles III, p16.
210 See David Torrance (ed), Whatever Happened to Tory Scotland?, Edinburgh: Edinburgh University Press, 2012, p233. The Moderator also had a role at the funeral of King George VI in February 1952.
211 See Iain R. Torrance, The Chapel Royal in Scotland in Bryan D. Spinks, Scottish Presbyterian Worship, Edinburgh: Saint Andrew Press, 2020, pp269-72.

8 The Crown and the Armed Forces

The Armed Forces Act 1996 defines the Armed Forces as "any of the naval, military or air forces of the Crown". The monarch is Head of the UK's Armed Forces.[212]

Prerogative powers provide authority for the Crown to:

- recruit members of the Armed Forces
- appoint commanders and grant commissions to officers
- establish the Defence Council; and
- make agreements with foreign states about stationing troops on their soil

Other matters, such as the enforcement of military discipline and the trial of offences under military law, are regulated by statute.

The Defence Council, chaired by the Secretary of State for Defence and including all defence ministers and Service Chiefs of Staff, is constituted by the Crown via Letters Patent. The monarch receives regular reports from the Chiefs of Staff.[213]

8.1 Oath of allegiance

Upon enlistment, members of the Army, Royal Air Force and Royal Marines are required to take or affirm an oath of allegiance to the monarch as the Head of the Armed Forces.[214] Members of the Royal Navy are not required to take an oath as it was originally created under the Crown's prerogative. For that reason, recruits have never been required to swear allegiance, although they do sign an attestation or engagement form upon entry.

The standard text of the oath for members of the Army, Royal Air Force and Royal Marines is as follows:

> I (insert Name) swear by Almighty God that I will be faithful and bear true allegiance to his Majesty King Charles III his heirs and successors and that I

[212] King George II was the last monarch personally to lead forces into battle. A separate office of Commander-in-Chief was established in 1793. It was abolished in 1904.

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

[214] There are two versions of the oath, a Christian one and a version for all beliefs.

> will as in duty bound honestly and faithfully defend his Majesty, in person, Crown and dignity against all enemies and will observe and obey all laws of his Majesty, his heirs and successors and of the generals and officers set over me.

8.2 Deployment of Armed Forces

The decision to deploy the Armed Forces in situations of armed conflict is a prerogative power exercised by the Prime Minister on behalf of the Crown.

In recent years, however, it has become the convention to seek Parliamentary approval when deploying the Armed Forces in military action overseas, as in 2003 (Iraq) and 2013 (Syria). The latter vote against military action was considered binding by the then government.[215]

In 1965, the House of Lords (in its former judicial capacity) held that the Royal prerogative permitted the British Army to destroy private property to prevent it from falling into the hands of an advancing enemy.[216]

[215] See Commons Library Briefing Paper CBP7166, Parliamentary approval for military action, p4.
[216] *Burmah Oil Company (Burma Trading) Ltd v The Lord Advocate* [1965] AC 75

9 The Crown internationally

Historically, the Crown was considered indivisible, so that the same (British/UK) Crown enjoyed legal authority in every UK territory. Today, the Crown is considered separate in every country, province, state or territory, regardless of its degree of independence, although limitations on the power of the monarch in right of each territory vary. As the House of Lords ruled in 2005:

> The Queen is as much the Queen of New South Wales and Mauritius and other territories acknowledging her as head of state as she is of England and Wales, Scotland, Northern Ireland or the United Kingdom.[217]

Over time, certain territories have terminated their link with the Crown, either peacefully by negotiation, or unilaterally, for example South Africa in 1960 and Southern Rhodesia (now Zimbabwe) at the end of that decade.

Today there are 14 Commonwealth Realms, independent countries where the King is also head of state. The Crown in each is a similar, but separate, legal entity. Commonwealth law employs the expression "the Crown in right of [place]", for example, the Crown in right of Canada or the Crown in right of the Commonwealth of Australia. Because both Canada and Australia are federations, there are also Crowns "in right of" each Canadian province and Australian state. As in the UK, most Crown powers in Commonwealth Realms are exercised by vice-regal representatives, domestic ministers and judges.[218]

9.1 Divisibility of the Crown

The 1926 Imperial Conference declared that the Dominions – Canada, Newfoundland, Australia, New Zealand, South Africa and the Irish Free State – were "equal in status" to the UK and in no way subordinate, "though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations".[219] This formula was given effect in the preamble to the Statute of Westminster 1931.

Despite these reforms, the Crown was not yet considered to be fully divisible. For example, when the (UK) Crown exercised its prerogative to declare war on

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217 *R v Secretary of State for Foreign and Commonwealth Affairs, Ex p Quark Fishing Limited* [2005] UKHL 57. See also *R v Secretary of State for Foreign and Commonwealth Affairs, Ex p Indian Association of Alberta* [1982] QB 892.

218 See Anne Twomey, The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems, Cambridge: Cambridge University Press, 2018, for an authoritative survey.

219 Cmnd 2768, Imperial Conference, 1926, Summary of Proceedings, November 1926, London: HMSO.

Germany in 1939, Australia declared that this meant it too was "automatically" at war. Canada and South Africa, however, took the decision to go to war separately and after some deliberation. "This meant that, for a period of six days, the king was at war in Britain, but at peace in Canada."[220] Éire, as the Irish Free State had become known in 1937, declared itself neutral, although in Murray v Parkes it was held that Éire remained a member of the Commonwealth and therefore its citizens resident in the UK were liable for conscription on account of their allegiance to the Crown.[221]

Until 1948, Commonwealth citizenship continued to rest upon allegiance to the Crown, although this was weakened in 1947 when it was agreed that each Commonwealth country could determine its own citizenship rules. Citizenship was therefore derived from nationality rather than allegiance. Burma became the first country to secede from the Commonwealth in 1948, followed by the Republic of Ireland in 1949.

9.2 The Crown and the Commonwealth

The London Declaration of 1949 shifted the basis of membership of the Commonwealth from allegiance to the Crown to recognition of King George VI as "Head of the Commonwealth".[222] Although this position was not considered to be hereditary, on 6 December 1952 Queen Elizabeth II was formally proclaimed Head upon her accession to the Throne.

Subsequently, the Royal Titles Act 1953 formally recognised the divisibility of the Crown. The Queen's Title was to be subject to legislation in the UK and in each Commonwealth Realm, which meant it varied from jurisdiction to jurisdiction, although common to each was "Head of the Commonwealth".

Commonwealth Heads of Government Meetings (CHOGM) take place every two years. If the monarch makes a speech as Head of the Commonwealth, as Queen Elizabeth II did at the United Nations in 1957, then the text is agreed in advance by all Commonwealth Realm governments. Twice a year the monarch broadcasts a message to the Commonwealth, on Commonwealth Day in March and on Christmas Day. The content of each is decided by the monarch rather than the UK government, although the latter will be provided with a text as a matter of courtesy.

During the 1980s, the UK government's opposition to sanctions against the Apartheid South African government caused tension between the monarch's role as Head of State and Head of the Commonwealth, in that most other Commonwealth countries supported sanctions.[223]

220 Vernon Bogdanor, p249.
221 *Murray v Parkes* [1942] All ER 123
222 The London Declaration did not take statutory form.
223 See Commons Library Insight, 70 Years: The Queen's role in the Commonwealth.

Fiji's membership of the Commonwealth was assumed to have lapsed after the 1987 coup and it did not reapply. Several Commonwealth Realms have become republics, thereby removing the Queen as their head of state, but remaining members of the Commonwealth. Barbados was the first to become a republic without having to reapply for membership.[224]

9.3 Vice-regal representatives

In every Commonwealth Realm, British Overseas Territory and Crown Dependency, there exists a representative of the Crown, usually a Governor-General, Governor or Lieutenant-Governor.

Since the 1926 Imperial Conference, Governors-General have been the:

> representative of the Crown, holding, in all essential respects, the same position in relation to the administration of public affairs in the Dominions as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government or of any Department of their Government.[225]

This marked a shift from a situation in which the Crown appointed all Dominion governors-general on the advice of the UK government, to one in which the Crown did so on the advice of the Dominion government in question.[226]

The manner of appointment varies from Realm to Realm. Papua New Guinea, for example, requires the Crown to appoint the person elected by its parliament, while the Solomon Islands and Tuvalu require the Crown to consult their respective legislatures.[227] Governors-General communicate directly with Buckingham Palace, not via 10 Downing Street, and take advice from their own governments rather than the King. Commonwealth Realms also mirror the UK Privy Council in making some executive decisions via the Governor-General-in-Council.

Even when the monarch is in residence in another Commonwealth Realm, he does not necessarily assume the functions of her vice-regal representative.[228] During her reign, for example, Queen Elizabeth II opened several Realm parliaments. These include the federal Parliament of Australia (1954, 1974 and 1977),[229] New Zealand (1954, 1963, 1970, 1974, 1977, 1986 and 1990), Canada

[224] See Commons Library Insight, Barbados becomes a republic.
[225] Imperial Conference, 1926, Summary of Proceedings.
[226] Vernon Bogdanor, p247.
[227] Vernon Bogdanor, p276.
[228] On such trips, the monarch is often accompanied by a "Minister in Attendance" from the host country's government, who act as their "principal guides and sources of information on every topic, political or social" (Dermot Morrah, p187).
[229] Queen Elizabeth II also opened the state parliaments of New South Wales (1954 and 1992), Tasmania (1954), Victoria (1954) and South Australia (1954).

(1957 and 1977),[230] and Ceylon, later Sri Lanka (1954). She did so as, respectively, Queen of Australia, Queen of New Zealand, Queen of Canada and Queen of Ceylon, and not as Queen of the United Kingdom.[231]

Having appointed a Governor-General, the monarch takes no active involvement in his representative's Realm. In 1975, for example, the Governor-General of Australia dismissed the Prime Minister, Gough Whitlam, as was his prerogative, after which Whitlam attempted to contact the Queen in London. The Speaker of the Australian House of Representatives also asked the Queen to intervene, but her Private Secretary replied that this was not possible.[232]

Until 1986 there was an anomaly under which the federal Australian States "remained colonial dependencies of the British Crown even though they were constituent parts of an independent sovereign nation".[233] This was terminated by the Australia Act 1986.

The Labour MP Patrick Gordon Walker proposed the creation of a domestic governor-general in 1953, in anticipation that Queen Elizabeth II would be absent for long periods of time as she toured other parts of the Commonwealth.[234] This idea was not taken up by the Crown or government.

Members of the Royal Family have often acted as vice-regal representatives, for example in Canada (1911-16), South Africa (1920-24), The Bahamas (1940-45) and Australia (1945-47).[235]

9.4 British Overseas Territories

There are 14 British Overseas Territories (BOTs) for which the UK is responsible. They are not constitutionally part of the UK, but the Crown has responsibility for appointing a Governor or Commissioner to represent them in each. Following a House of Lords decision in 2005, it was held that the Crown does not act on the advice of the UK government in the BOTs, but in its role as monarch of each territory (except when it comes to fulfilling the UK's international responsibilities).[236] To comply with the court's decision, the

230 The first time a monarch was present in the Parliament of Canada was during the royal visit of 1939, when King George VI gave Royal Assent to bills at a special ceremony on 17 May. George VI was the first monarch to open a Dominion parliament, that of South Africa in 1947. On the same Royal tour, he opened the Parliament of Southern Rhodesia.

231 The Canadian, Australian and New Zealand parliaments require members of their legislatures to swear an oath of allegiance to their respective monarchs (see CBP7515, The Parliamentary Oath, pp35-37).

232 See Anne Twomey, The Chameleon Crown: The Queen and Her Australian Governors, Alexandria: Federation Press, 2006. For a similar survey of the Crown in Canada, see D. Michael Jackson and Philippe Lagassé (eds), Canada and the Crown: Essays in Constitutional Monarchy, Kingston: Institute of Intergovernmental Relations, 2014.

233 Philip Murphy, p18.

234 HC Deb 11 Nov 1953 Vol 520 cc963-64 [Regency Bill]

235 Philip Murphy, p35.

236 *R (Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs* [2006] 1 AC 529

Crown's representative in the BOTs began to act on the advice of each territory's executive in certain respects.[237]

9.5 Crown Dependencies

The Crown has a role in relation to the Channel Islands (Guernsey and Jersey) and the Isle of Man, which are not part of the UK but are self-governing Crown Dependencies. The Crown is "ultimately responsible for the good government of the Crown Dependencies and the Lieutenant Governors are his or her personal representatives".[238] The UK is responsible for their defence and representation internationally.[239]

In the Crown Dependencies, legislation refers to "the Crown in right of Jersey". The Succession to the Crown (Jersey) Law 2013 defined the Crown, for the purposes of implementing the 2011 Perth Agreement, as "the Crown in right of the Bailiwick of Jersey". Legislation in the Isle of Man also defines "the Crown in right of the Isle of Man" as being separate from "the Crown in right of the United Kingdom". In Guernsey, legislation refers to "the Crown in right of the Bailiwick".

9.6 The Crown's international role

As the United Kingdom's Head of State, the monarch hosts state visits from other heads of state and conducts visits to other countries as well as the Commonwealth Realms. Expenditure in this regard is met by government departments.[240] It is also the monarch who accepts diplomatic credentials.[241] At the beginning of an Audience organised by the Marshal of the Diplomatic Corps, diplomats present their Letters of Credence (for Ambassadors) or Letters of High Commission (for High Commissioners).[242] They are all accredited "to the Court of St James's" rather than to the United Kingdom.

The conduct of foreign affairs by the UK government is carried out mainly under the prerogative powers of the Crown, including the power to acquire additional territory (for example, the island of Rockall in September 1955) and to declare or alter the limits of UK territorial waters.

A controversial example was the detachment of the Chagos Archipelago (and some other islands) from the then UK colony of Mauritius in 1965 by an Order in Council under the Royal Prerogative. The British Indian Ocean Territories

237 Some BOT governors continue to have "reserve powers" in relation to defence and financial services.
238 The Cabinet Manual, p7.
239 See Commons Library Briefing Paper CBP8611, The Crown Dependencies.
240 Queen Elizabeth II's yacht Britannia was decommissioned in 1997.
241 Prerogative powers in this regard work in conjunction with legislation such as the Consular Relations Act 1968, the Territorial Sea Act 1987 and the International Organisations Act 1968.
242 Royal Family website, Audiences.

Order 1965 reconstituted the islands as the British Indian Ocean Territory under powers contained in the Colonial Boundaries Act 1895.[243]

The making of treaties is also a prerogative power, although these may not be enforced in domestic courts until formally implemented by legislation. The Constitutional Reform and Governance Act 2010 provided the House of Commons (but not the House of Lords) with a veto over prerogative treaty-making powers in some circumstances. This gave statutory form to the long-standing convention on parliamentary scrutiny of treaties known as the Ponsonby Rule.

In the UK, there is no statutory right to a passport, although there is "discretion to refuse or withhold in certain circumstances as agreed by Parliament". The decision to issue, withdraw, or refuse a UK passport is at the discretion of the Home Secretary under the Royal Prerogative.[244] Passports have been issued in the UK by His Majesty's Passport Office, an agency of the Home Office, since 2014.

Under the prerogative, the Crown also has powers to restrain UK citizens from leaving, or to restrain aliens from entering, "the Realm" (the UK).

People who wish to become registered or naturalised as UK citizens must swear an oath of allegiance to the King under Section 42 and Schedule 5 of the British Nationality Act 1981 (as amended). The oath is as follows:

> I, [name], swear by Almighty God that, on becoming a British citizen, I will be faithful and bear true allegiance to His Majesty King Charles the Third, His Heirs and Successors according to law.[245]

243 *R (On the Application of Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2008] UKHL 61

244 Home Office, Royal Prerogative, 21 May 2021, p4.

245 The form of citizenship oath for registration of or naturalisation as a British Overseas Citizen is: "I, [name], swear by Almighty God that, on becoming a British overseas territories citizen, I will be faithful and bear true allegiance to His Majesty King Charles the Third, His Heirs and Successors according to law."

10 Finances of the Crown

The Sovereign Grant Act 2011 changed the way in which the monarchy is funded in the United Kingdom. It removed two existing sources of funding – the Civil List and grants-in-aid from government departments – and replaced them with a single "Sovereign Grant" based upon a percentage of revenue from the Crown Estate.[246]

In the modern era the Crown has six main sources of income:

- The Sovereign Grant
- Government grants-in-aid (usually for upkeep of royal palaces)
- The Privy Purse (mainly funded from the Duchy of Lancaster)
- Direct expenditure from government departments (to cover costs of the Royal Flight and Royal Train)
- Net income from visitor admissions to Royal Palaces
- The monarch's personal income

10.1 The Crown Estate

The finances of the Crown are inextricably linked with the Crown Estate.

Although the ownership of some property by the Crown can be traced back to Edward the Confessor, as a whole the estate dates from 1066, when all land in England was deemed to belong to William the Conqueror "in right of The Crown".[247]

Despite centuries of change in law and custom, the underlying ownership of the Crown still exists and there is always a presumption in favour of the Crown unless it can be proved that the land belongs to someone else. The Land Registration Act 2002 states that Crown "is the only absolute owner of land", with all others holding "an estate in land", "estate" meaning "derive[d] from

[246] See Commons Library Briefing Paper SN00819, Finances of the Monarchy.
[247] The Crown Estate website, Our history.

feudal forms of tenure".[248] The Crown's paramount interest in Scottish land was abolished by the Abolition of Feudal Tenure etc. (Scotland) Act 2000.

The Crown's estates in England and Wales had always been used to raise revenue, and over time large areas were granted to nobles. The estate fluctuated in size and value but by 1760, when King George III acceded to the Throne, the asset had been reduced to a small area producing little income – revenue which George III needed to fulfil the Crown's fiscal responsibilities. The first Civil List Act was passed in 1697, following lengthy battles between the Crown and (English) parliament over finances. The Civil List was supposed to cover significant expenditure including the salaries of all public officials, including judges, civil servants and ambassadors.[249]

With the Crown unable to meet its financial obligations, an agreement was reached in 1760 under which Crown land would be managed on behalf of the government with surplus revenue going to the Treasury.[250] In return, the Crown was to receive a fixed annual payment, which continued to be known as the Civil List. This agreement, and therefore the size of the payment, was renewed (via an Act of Parliament) at the beginning of each reign.

An 1810 Act created the Commissioners of Woods, Forests and Land Revenues to manage the Crown's hereditary land revenues in England and Wales. This government department then expanded its territorial responsibilities to the Isle of Man in 1826, Ireland in 1828, Alderney in 1829 and finally Scotland in 1832.[251]

In 1955 a government committee recommended that to avoid confusion between government property and Crown land, the latter should be renamed "The Crown Estate" and be managed by an independent board. These recommendations were given legal effect by the Crown Estate Act 1956 and Crown Estate Act 1961. Crown Estate commissioners are appointed by the monarch on the advice of the Prime Minister.

Although the Crown Estate continues to be owned by the King "in right of the Crown", in other words by virtue of being the reigning monarch, the monarch has no active involvement in its business or management.

Other Crown land/property

Given that "the Crown" is also used to describe the government and the judiciary, properties owned and managed by government departments are

248 It also remains the case that the property of persons who die without a valid will or heirs within the statutory rules of intestacy passes to the Crown, something known as Bona Vacantia (vacant goods).

249 The Crown Estate website, Our history.

250 The Crown retained revenue from the Duchy of Cornwall and the Duchy of Lancaster.

251 This did not include the hereditary revenues of the Crown in Scotland, which continued to be administered by the Crown Office. Under Scots law, the Crown can claim ownerless property. The Crown's representative in Scotland is the King's and Lord Treasurer's Remembrancer. Crown Estate Scotland was formed in 2017 following devolution of the management of Crown Estate assets in Scotland via the Scotland Act 2016.

also "Crown Property", for example military training grounds, airfields, royal residences, public parks and even ruins. These are, however, separate from the Crown Estate and the finances of the monarchy.

The monarch is also the Duke of Lancaster and, as Duke, holds lands "in right of" the Duchy of Lancaster rather than in right of the Crown. The Chancellor of the Duchy of Lancaster (a Cabinet minister) is accountable to the monarch personally, rather than to Parliament, for the Duchy's affairs, but does answer Parliamentary Questions on matters relating to his or her Duchy responsibilities.

There are also lands which belong to the heir apparent to the Throne from birth or from the accession to the Throne of his father or mother. The Duchy of Cornwall is a private estate established by Edward III in 1337 to provide an independent income for his son and heir. Today, the Prince of Wales receives annual income generated by the Duchy.[252]

10.2 Income tax and the Crown

The Crown Private Estate Act 1800 allowed the monarch to own property as a private individual, rather than on behalf of the Crown.

Prince Albert, the husband of Queen Victoria, bought the Balmoral estate in 1852, while the Prince of Wales (the future Edward VII) bought the Sandringham Estate in 1862. When King Edward VIII abdicated in December 1936, both properties remained his, although a financial arrangement was reached under which King George VI then purchased them from his brother.[253]

Sections 6 and 7 of the 1800 Act meant that private estates owned by the monarch "shall be subject to all taxes" paid, if necessary, out of the Privy Purse. When income tax was reintroduced in the UK in 1842, Queen Victoria volunteered to pay it on her private income, something continued by her son, Edward VII. After 1910 the monarch no longer had to pay income tax on Civil List income, in return for which King George V agreed to cover the costs of making and receiving state visits. Immunity from income tax was also extended to the Prince of Wales' income from the Duchy of Cornwall after 1913.[254] In 1933, the monarch was relieved of income tax on Duchy of Lancaster income, and after 1936 on private income too.

Only in 1993 did this situation change. From the 1993/94 tax year, Queen Elizabeth II voluntarily paid income tax on her Privy Purse and private income,

252 Not all the Duchy estate is in Cornwall. The titles of Duke of Cornwall and Prince of Wales are held by the same person but are nevertheless distinct.

253 Llwynywermod is the Welsh home of The Prince and Princess of Wales in Llandovery, Myddfai

254 A law officers' opinion stated that "the same principles which render an Act of Parliament inapplicable to the Crown unless the Crown is expressly named, apply also to the Prince of Wales in his capacity as the Duke of Cornwall" (Phillip Hall, Royal Fortune, London: Bloomsbury, 1992, p54). The quid pro quo was a voluntary contribution to the Exchequer, although this was reduced from 50 to 25 per cent following Prince Charles' marriage in 1981.

although she remained exempt from inheritance tax on bequests left to her successor.[255] Income from the Civil List, grants-in-aid or departmental spending was also to be taxed, thus distinguishing the Queen's personal wealth from her official public finances.

The length of Queen Elizabeth's reign led to a review of her Civil List arrangements in 1971, specifically the impact of inflation. The ad hoc Select Committee established to make recommendations broke ground in publishing minutes of its evidence, which included oral evidence from members of the Royal Household.[256] It recommended that the Civil List be fixed every ten years, but further inflation during the 1970s meant annual supplementary payments continued to be necessary. Only in 1990 did Margaret Thatcher, the then Prime Minister, announce a return to the ten-year system recommended in 1972. This began in 1991 and continued until the Civil List was replaced with the Sovereign Grant – intended as a more permanent arrangement – in 2012.

10.3 Royal residences

The "Occupied Royal Palaces" include Buckingham Palace, St James's Palace,[257] Windsor Castle and parts of Kensington Palace. They "are held in Trust for the Nation by The Sovereign" and the cost of maintaining them falls to the UK government. Since 1991, responsibility for maintenance has rested with the Royal Household and the Keeper of the Privy Purse.[258]

"Historic Royal Palaces" was established by the government in 1989 to care for five royal palaces, including the Tower of London, Hampton Court and Kew, which are no longer regularly used for Royal Court purposes. It later became an independent charity and in 2014 took over the management of Hillsborough Castle in Northern Ireland. The Historic Royal Palaces are owned by the King "in Right of Crown", which means they are held in trust for the next monarch and cannot legally be sold or leased.[259]

The Palace of Holyroodhouse in Edinburgh is "the official residence of the Monarchy in Scotland" and is managed by the Royal Household. Historic Environment Scotland is responsible for its maintenance, while the Royal Collection Trust oversees the Palace as a visitor attraction.

255 This acknowledged the fact that the monarch, uniquely, was unable to retire or mitigate the impact of inheritance tax.
256 Report from the Select Committee on the Civil List, London: HMSO, 22 November 1971.
257 St James's Palace ceased to be the monarch's official residence in 1837, but remains the official residence of the Court, to which ambassadors and High Commissioners are accredited.
258 National Audit Office, Maintaining the Occupied Royal Palaces, 10 December 2008, p7.
259 Historic Royal Palaces website, About Us.

11 Symbols of The Crown

Symbols of the Crown can be found in many places in the United Kingdom, its Overseas Territories, the Crown Dependencies and in other Commonwealth Realms.

11.1 Coats of Arms

The monarch's Coat of Arms are used in the administration and government of the United Kingdom. It depicts the three lions of England in the first and fourth quarters, the lion of Scotland in the second and the harp of Ireland in the third. It is surrounded by a garter bearing the motto "Honi soit qui mal y pense" ("Evil to him who evil thinks"). Its shield is supported by the English lion on the left and Scottish unicorn on the right and is surmounted by the Royal crown. Below it appears the motto of the Sovereign, "Dieu et mon droit" ("God and my right"). The plant badges of the United Kingdom – rose, thistle and shamrock – are often displayed beneath the shield.[260]

The Scottish version of the Coat of Arms shows the lion of Scotland in the first and fourth quarters, with that of England being in the second. The harp of Ireland is in the third quarter. The mottoes read "In defence" and "No one will attack me with impunity". These are used for official purposes in Scotland (for example, on official buildings and official publications).[261]

11.2 Great Seal of the Realm

The Great Seal of the Realm is used to show the monarch's approval of important State documents.[262] Queen Elizabeth II had two Great Seals during her reign (entering usage in 1953 and 2001).[263] It is used for a range of documents requiring Royal approval, including Letters Patent, Royal Proclamations, some writs and instruments used for the ratification of treaties.[264] Separate Seals exist for Scotland and Northern Ireland, while the

260 Royal Family website, Coats of Arms.
261 Royal Family website, Coats of Arms.
262 It only became known as the Great Seal "of the Realm" in 1927, having hitherto been referred to as the Great Seal of England, Britain and the United Kingdom, sometimes within the same document.
263 The first Great Seal matrix had lost definition after nearly half a century of use.
264 Green seals are used for Letters Patent, blue for documents relating to close members of the Royal Family and scarlet red for documents appointing a bishop.

Government of Wales Act 2006 made provision for a new Welsh seal.[265] Sealing takes place in the office of the Clerk of the Crown in Chancery.

11.3 Royal regalia

The Royal regalia, or Crown Jewels, have been kept in the Tower of London since the coronation of King Charles II and are only removed for another coronation. The centrepiece of a coronation is the St Edward's Crown while the Imperial State Crown is often used at the State Opening of Parliament and at Royal funerals. The Scottish regalia or "Honours of Scotland" are kept at Edinburgh Castle, some of which is used at the opening of the Scottish Parliament after an election.[266] The Welsh regalia includes a sword, ring and rod made of Welsh gold for the 1911 investiture of the Prince of Wales. The coronet used on that occasion was retained by the Duke of Windsor and so a second was made for the 1969 investiture.

11.4 Royal Warrants

Royal Warrants of Appointment may be granted by the King and Prince of Wales to businesses in the UK and overseas which have supplied goods or services to the Royal Households regularly and satisfactorily for at least three years. The grant allows the display of the Royal Coat of Arms and the legend "By Appointment to..."[267]

11.5 The Royal Standard and other flags

The Royal Standard is flown when the monarch is in residence at one of the Royal Palaces, on the King's car during official journeys and on aircraft (when on the ground).[268] It may also be flown by request on any building, official or private, during a visit by the King. In 1960, Queen Elizabeth II also adopted a personal flag to be flown on any building, ship, car or aircraft in which she was staying or travelling. This consisted of the initial "E" ensigned with the Royal Crown and surrounded by a chaplet of roses. The Prince of Wales also has a personal flag based on the Arms of the Principality of Wales and a personal banner for use in Scotland.

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265 Under section 116, the First Minister of Wales is Keeper of the Welsh Seal.

266 The Honours of Scotland were also used at a service when Queen Elizabeth II visited Scotland following her coronation in June 1953. The Stone of Scone, once displayed in the coronation chair at Westminster Abbey, is now at Edinburgh Castle and only returns to the Abbey for a coronation.

267 The holder also becomes eligible for membership of the Royal Warrant Holders Association.

268 As with the Royal Coat of Arms, there is a different version of the Royal Standard in Scotland.

11.6 Stamps, bank notes and coinage

The present-day Royal Mail has its origins in the system used to send Court documents in previous centuries. A miniature silhouette of the monarch's head continues to be depicted on all stamps, while the Royal cyphers of monarchs since Queen Victoria appear on most letterboxes.[269] Stamp designs are subject to the monarch's approval. In 1965 the then Postmaster General, Tony Benn, attempted to remove Queen Elizabeth II's head from some commemorative stamps, but when the Queen's Private Secretary told Benn that the monarch "was not as enthusiastic about these designs as she sometimes is", the proposed designs were dropped.

There are also close ties between the Crown and the Royal Mint. There is a representation of the monarch on all circulating coinage in the UK (the current monarch has had four different profile portraits).[270] From the time of Charles II, a tradition developed of monarchs being represented on coinage facing in the opposite direction to their immediate predecessor.[271] The right to mint coins is a personal prerogative of the Crown (not subject to ministerial advice) and the monarch approves designs for coins and medals bearing her image.

A portrait of the monarch always features on notes produced by the Bank of England, but not on notes produced by banks in Scotland and Northern Ireland. The banknotes of the Crown Dependencies, British Overseas Territories and some Commonwealth Realms also feature the sovereign.

11.7 Honours

The Crown is "fountain of honour" and thus the monarch has the sole right to confer titles of honour on people from all walks of life. Recipients (usually announced twice a year) collect their awards from the King or another member of the Royal Family at an investiture ceremony, which are held throughout the year and sometimes in other Commonwealth Realms. Most honours are awarded on the advice of ministers; some, such as the Orders of the Garter and the Thistle, the Order of Merit and Royal Victorian Order, are selected and appointed personally by the King.[272]

269 Those with Edward VIII's cyphers are rare given his short reign, while those of Queen Elizabeth II in Scotland did not include "EIIR" on account of political sensitivities.

270 The Royal Mint also produces coins for other territories and countries in which the King is head of state.

271 This tradition took account of Edward VIII's reign even though no coins with his image were struck.

272 See Commons Library Standard Note SN02832, Honours: History and reviews.

12 Future of the Crown

Although there are republican movements in some Commonwealth Realms, republican sentiment in the UK is limited. An organisation called Republic wants "the monarchy abolished and the King replaced with an elected, democratic head of state".[273] Polling suggests that 60% of "Britons favour Britain remaining a monarchy" while around a fifth support the UK becoming a republic.

Republican activity was a felony under section 3 of the Treason Felony Act 1848, although the House of Lords ruled in 2003 that there was no likelihood of prosecution given that freedom of speech was protected under the Human Rights Act 1998.[274]

The late Duke of Edinburgh was clear that a constitutional monarchy could only exist with popular consent. Visiting Ottawa in 1969, he said it was:

> a complete misconception to imagine that the Monarchy exists in the interests of the Monarch – it doesn't. It exists in the interests of the people [...] if, at any stage, people feel that is has no further part to play, then for goodness' sake let's end the thing on amicable terms without having a row about it.

In a December 2021 editorial regarding Queen Elizabeth's Platinum Jubilee, the Guardian newspaper argued that a parliamentary committee could examine:

> the appropriate constitutional, political and military roles of the monarch, including with other nations; the regulation, financing and accountability of the monarchy; the size of the royal household maintained by the state; the laws of succession and the appropriate ceremonies for the inauguration of the new monarch, including their religious dimension.[275]

The Scottish Government continues to support independence for Scotland. A White Paper published before the 2014 referendum stated that on independence Scotland would remain "a constitutional monarchy, continuing the Union of the Crowns that dates back to 1603", thus becoming an additional Commonwealth Realm.[276]

273 Republic website, What we want. For a much-referenced critique of the UK monarchy, see Tom Nairn, The Enchanted Glass: Britain and Its Monarchy, London: Verso, 2011.
274 See *Regina v Attorney General* [2003] UKHL 38
275 The Guardian view on the Queen's jubilee: time to face change, Guardian, 27 December 2021.
276 Scottish Government, Scotland's Future, 26 November 2013, pp353-54.

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