

Modernising the Constitution - A Government Act

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This is the final article of 4 articles on Modernising the Constitution. These articles propose that all domestic constitutional legislation be placed in four Acts relating to: The Crown, Parliament, the Courts and the Government. Also, that all Crown prerogatives which are not obsolete (some 85% of Crown prerogatives are) be placed in legislation.

1. INTRODUCTION

The UK constitution needs to be modernised by removing obsolete and irrelevant material - both legislative and common law. Previous articles have proposed that - to achieve this (it is, actually, not difficult) - there should be 4 pieces of legislation, a:

- Crown Act;¹
- Parliament Act;²
- Courts Act;³
- Government Act.

Previous articles have analysed the first 3 Acts (another article has looked specifically at Quangos).⁴ This article considers the last of these, a *Government Act*. The *purpose* of these 4 Acts may be simply stated. It is to:

- consolidate all (domestic) constitutional legislation (c. 150 Acts, see *Appendix A*);⁵
- put all Crown prerogatives into legislation;
- repeal obsolete matter; and later;
- consolidate the above 4 Acts into 1 Constitution Act.⁶

As for a *Government Act*, it should deal with Central and Local Government as well as the Civil Service. It should also deal with institutions which always been intimately connected with government, *viz.* the:

- Armed Forces; and
- Emergency Services (i.e. police, fire and ambulance).

In conclusion, the above 4 Acts are intended to consolidate at least 150 pieces of constitutional legislation - a lot of which is obsolete or antiquated. And, much of it piecemeal. Such would save copious amounts of taxpayers' money. It would also enable our constitution to be understood by ordinary people (as well as ordinary lawyers). Further, it would serve as a template for Commonwealth (and other countries) modernising their constitutions.

¹ GS McBain, *Modernising the Constitution - A Crown Act* (2021) International Law Research ('ILR'), vol 10, no 1, pp 33-100.

² Ibid, *Modernising the Constitution - A Parliament Act* (2021) ILR, vol 10, no 1, pp 101-84.

³ Ibid, *Modernising the Constitution - A Courts Act* (2021) ILR, vol 10, no 1, pp 195-248.

⁴ Ibid, *Modernising the Constitution - Quangos* (2022) ILR, vol 11, no 1, pp 1-61.

⁵ Other material relates to foreign relations, see *Appendix F*. It, also, should be consolidated, see 24.

⁶ That said, it may be better to place the Crown, Parliament and Government Acts into 1 Constitution Act and leave the Courts Act - which is more likely to be amended on a regular basis - distinct.

2. LEGAL TEXTS

Legal texts in respect of the Crown, Parliament and the Courts have been referred to in previous articles.⁷ Of particular use in respect of a *Government Act* are various editions of Halsbury, *Laws of England*.⁸ Also, Halsbury, *Statutes of England*. Further, it is useful to refer to the following, to describe the legal history:

- Chitty Jun, *A Treatise of the Law of the Prerogatives of the Crown* (1820) ('Chitty');⁹
- Bowyer, *Commentaries on Constitutional Law* (1846) ('Bowyer');¹⁰
- Traill, *Central Government* (1892) ('Traill');¹¹
- Maitland, *English Constitutional History* (1908) ('Maitland');¹²
- Feilden, *Short Constitutional History of England* (1922) ('Feilden');¹³
- Chalmers & Asquith, *Outlines of Constitutional Law* (1922) ('Chalmers');¹⁴
- Wade & Phillips, *Constitutional Law* (1st ed, 1931) ('Wade');¹⁵
- Ridges, *Constitutional Law of England* (1934) ('Ridges');¹⁶
- Anson, *The Law and Custom of the Constitution* (1935) ('Anson');¹⁷
- Dicey, *Introduction to the Study of the Law of the Constitution* ('Dicey');¹⁸
- Plucknett, *Taswell-Langmead's Constitutional History* (1960) ('Plucknett');¹⁹
- Jennings, *Cabinet Government* (1969) ('Jennings');²⁰
- Brazier, *Constitutional Practice* (1994) ('Brazier');²¹
- De Smith & Brazier, *Constitutional and Administrative Law* (1998) ('De Smith');²²
- Munro, *Studies in Constitutional Law* (1999) ('Munro');²³
- Leyland, *The Constitution of the UK* (2012) ('Leyland');²⁴
- Bradley *et al*, *Constitutional and Administrative Law* (2018) ('Bradley');²⁵
- Barnett, *Constitutional and Administrative Law* (2020) ('Barnett').²⁶

In particular, Wade is useful to indicate the constitutional position in 1931. Then, to show whether the same has changed.

3. CENTRAL GOVERNMENT - OVERVIEW

Usually, **Parliament** and the **Crown** are distinguished from central and local government since they *pre-date* the same. Further, they do not govern the country on a daily basis as such.²⁷ Rather, they are the constitutional bodies which create - and oversight the operation of - the government. At present, central government comprises the following:

- the Cabinet (including 2 Cabinet offices);²⁸

⁷ See ns 1-4.

⁸ Halsbury, *Laws of England* (1st ed, 1907-17 with supp; 2nd ed, 1931-42 with supp; 3rd ed, 1953-63 with supp; 4th ed, 1973 with supp; 5th ed, 2008 with supp). The relevant volumes on constitutional law in the 1st ed were vols 6 and 7.

⁹ J Chitty Jun, *A Treatise of the Law of the Prerogatives of the Crown* (1820).

¹⁰ G Bowyer, *Commentaries on the Constitutional Law* (1846).

¹¹ HD Traill, *Central Government* (1892).

¹² FW Maitland, *English Constitutional History* (1st ed, 1908) (it contained a course of lectures delivered in 1887-8 at Cambridge university).

¹³ HC Feilden, *Short Constitutional History of England* (1922).

¹⁴ D Chalmers & C Asquith, *Outlines of Constitutional Law* (1922).

¹⁵ ECS Wade & GC Phillips, *Constitutional Law* (1st ed, 1931).

¹⁶ EW Ridges, *Constitutional Law of England* (5th ed, 1934, ed AB Keith).

¹⁷ Anson, *The Law and Custom of the Constitution* (ed AB Keith, 4th ed, 1935).

¹⁸ The first edition was in 1885. Reference in this article is to AV Dicey, *Introduction to the Study of the Law of the Constitution* (1948).

¹⁹ TFT Plucknett, *Taswell-Langmead's English Constitutional History* (1960).

²⁰ I Jennings, *Cabinet Government* (9th ed, 1969, ed ECS Wade).

²¹ R Brazier, *Constitutional Practice* (2nd ed, 1994).

²² S De Smith & R Brazier, *Constitutional and Administrative Law* (1998).

²³ CR Munro, *Studies in Constitutional Law* (2nd ed, 1999).

²⁴ H Barnett, *Constitutional and Administrative Law* (13th ed, 2020).

²⁵ AW Bradley, KD Ewing & CJS Knight, *Constitutional and Administrative Law* (2018). This text is the successor to Wade, n 15.

²⁶ P Leyland, *The Constitution of the United Kingdom* (2012).

²⁷ Wade, n 15, p 158 'Today Parliament does not in practice so much as govern as regulate the executive.'

²⁸ The Cabinet Office and the Prime Minister's Office.

- 18 Ministries;
- 20 non-ministerial government departments ('NMGD's');
- 13 public corporations ('PC's');
- 104 high profile groups ('HPG's');
- at least, 400 other quangos;
- the Privy Council.

These organs of government are administered by the **Civil Service** - to a greater or lesser extent. The purpose of this article is to argue that a gastric band is needed and the structure of central government should be streamlined, to result in:

- the Cabinet (including 2 Cabinet offices);
- 16-7 Ministries;
- c. 80-100 PC's;
- possibly, the Privy Council,²⁹

all as modernised and streamlined.

4. CENTRAL & LOCAL GOVERNMENT - CONFUSION

At the outset, however, it should be stated that the architecture (that is, the structure) of both central (and local) government is hugely confused and is little understood - even by many constitutional lawyers. The reasons why may be simply stated:

(a) No Legal Recognition

Because the Constitution has grown organically (haphazardly) many important government organs - and posts - have never been recognised in legislation. This can only be categorised as bizarre. It is also unhelpful since there are no generally accepted standard definitions. Wade (in 1931) observed:

The king and the king in council [i.e. the privy council] are known to the law...The terms, cabinet, ministry, administration, government, are extra-legal, as to all intents is the office of prime minister.³⁰

This is still the position. It is very unsatisfactory because it makes it difficult (if not impossible) for many people to understand the British constitution. Nor, where power lies. Nor, who (legally) should take responsibility for what. That is, who is accountable. The result has been - over the centuries - a great loss of taxpayers' money, much corruption and much mis-management.

(b) Confusing Terminology

Because central government has developed organically, out of the Crown, there is a large amount terminology which is archaic and unnecessary.

- Thus, reference is made to '*departments*',³¹ '*offices*', '*boards*' etc. when the more modern word '*ministry*' is more intelligible and appropriate in most instances;
- Then, there is a role call from the Mikado: the '*Secretary of State*', the '*Chancellor of the Exchequer*', the '*Lord High Chancellor*'; the '*Under Secretary of State*' etc. In other countries they simply refer to a minister (or deputy minister) and to a ministry. This is shorter, simpler and more understandable.
- Further, civil servants comprise the '*Permanent Under-Secretary*' and the '*Deputy Under Secretary*'. It would seem easier to refer to the head of a ministry and to a deputy head.

The lack of simple terms is not useful to a country which seeks to dominate in the global marketplace.³² Plain English is best.

(c) Not Business Like

The Civil Service (and Armed Forces) have spent decades saying that they are seeking to become more '*business-like*'. Yet, they never seem to get there. This is partly because of vested interest. Partly, because of amateurism. And, partly because no attempt is made to copy corporate structures which have proven to work in terms of

²⁹ As will be seen (see **15** and **16**), the current originator of the legal work of the privy council is the Cabinet Office or ministries. Thus, they could (easily) take over the same.

³⁰ Wade, n 15, p 150.

³¹ This originally meant no more than a division of government, see the Oxford English Dictionary (*department*). Even today the meaning of this word remains vague. De Smith, n 22, p 188 'There is no recognized definition of a government department; normally it is understood to mean a central government body staffed by civil servants and receiving its funds directly out of moneys provided by Parliament, but anomalies abound...'. Brazier, n 21, p 134 'A working definition of a department of state is that it is headed by a minister...'. Many ministries were dubbed departments after 1964. Before that they were called ministries and, before 1915, boards. Brazier, n 21, p 135 'There is no legal significance in whether a department of state is designated a board, office, ministry or department; but since 1964 the descriptions office and department and the style secretary of state have been reserved for the most politically important units.'

³² Brazier, n 21, p 128 'The titles enjoyed by ministers must baffle foreigners (and a few Britons).'

accountability, speed of decision-making and line management. Yet, government could easily become business-like, if it focused on the *legal* structures underpinning government.

(d) Too Many Organs

After the 1st and 2nd World Wars, there arose too many organs of government. Yet, the civil service continues to expand these - even when some are moribund and a large number of others could be merged. The result is that central and local government (as well as the Crown and Parliament) is struggling with a (mainly) Victorian structure of government into the 21st century. Such does not work. It, gradually, seizes up - which is what it presently doing.

(e) Failure to Look at the Whole

Robson in his book, *The Civil Service in Britain and France* (1956) pertinently noted:

The maladies from which bureaucracy most frequently suffers are...an inability to consider the government as a whole.

This is spot on. It is clear that few politicians have a good idea of central (or local) government because few of their own civil servants do.

- Such is not assisted by the same, also (rarely) having a good knowledge of British constitutional history or legal history. Thus, few civil servants can perceive government as a whole;
- Further, it is not helped by few lawyers (including few constitutional lawyers) having a good knowledge of both the Crown *and* Parliament. Also, of Crown prerogatives. And, of central and local government.

Thus, there is real tendency to the blind leading the blind. The result is endless internal - and external - reports pumped out by the civil service which are of little use because they are too myopic. That is, they are drafted without regard to the *overall* architecture of central (and local) government and how the same may be streamlined. However, if government as a whole is considered, it is possible to make some very simple statements that withstand testing *viz.*

- All domestic constitutional legislation could be placed into 4 Acts (see **1**);
- At least, 85% of all Crown prerogatives are obsolete (many not availed of for centuries);
- All crown prerogatives not obsolete should be put in legislation;³³
- Many organs of government could be merged; others streamlined.

Thus, all that is needed is for cabinet to confirm the above (if required, subsequent to a short report by a senior retired judge(s) expert on constitutional law).³⁴ Then, mandate consolidation, repeal and merger.

In conclusion, both central and local government have lost their shape (architecture). They have become flabby and obese. However, such can be (easily) remedied by a Government Act streamlining things (and reflecting such in legislation. There is no need to seek to develop a new constitution - which no one would, likely, agree on anyway.

5. WHERE TO BEGIN?

To re-vitalise the architecture of government it is important to begin at the beginning, as Lewis Carroll would say.³⁵ That is, to gather legislation and prerogatives on the *Crown* into one Act. And, those on *Parliament* into another Act. This has been considered in prior articles³⁶ and it will not be re-stated here. Then, when it comes to central government, it is best to work top-down. Thus, it is important to consider the following in order, *viz.*

- Cabinet;
- Prime Minister ('PM');
- Ministers;
- Ministries;
- Quangos;
- Privy Council;
- Law Officers.

³³ Such is important since as Wade, n 15, p 30 notes: 'the royal prerogative [is] whereby the servants of the Crown are empowered to do certain acts *without parliamentary authority.*' (*italics supplied*). Also, there is considerable uncertainty about the nature and scope of certain prerogatives these days even though the *Case of the Proclamations* (1611) 12 Co Rep 74 established that: 'the king hath no prerogative but what the law of the land allows him.'

³⁴ Retired judges have no vested interest. Also, they will be aware of the legal history of matters and the need to maintain accountability to Parliament as the metwand.

³⁵ L Carroll, *Alice's Adventures in Wonderland* (Macmillan, 1878), p 182 'Begin at the beginning' the king said, very gravely, 'and go on till you come to the end: then stop.'

³⁶ See McBain, ns 1 & 2.

This methodology will be employed in this article. Therefore, the legal nature of the cabinet will be considered first. Then, the means by which it may be modernised, if required.

6. THE CABINET

The cabinet (also, called the '*cabinet council*' to distinguish from the privy council, see 15) was, originally, a small (that is, a more private or inner) committee of the privy Council.³⁷ It is no longer so. It is a distinct organ of government.

- the word '*cabinet*' (a small chamber or room, a private apartment)³⁸ may have originated - in the political context - from the time of Charles I (1603-25);³⁹
- however, Charles II (1660-85) found large gatherings of the privy council too unwieldy for him to govern. Thus, he preferred to work with a more select group of senior politicians (advisers)⁴⁰ who sat in an inner room of the privy council rooms located in the palace of Westminster.

From the 17th century, the cabinet began to supercede the privy council in executive matters, achieving this by the 18th century.⁴¹ Today, the cabinet remains staffed with senior politicians, headed by the PM. Cabinet ministers act in a double capacity. They:

- collectively advise the Crown;⁴² and they
- individually are responsible to Parliament⁴³ (and to the Crown, in theory)⁴⁴ for the conduct of departments of State (ministries).⁴⁵

As to the cabinet:

- Cabinet members do not have to be ministers.⁴⁶ However, they usually are;
- All ministers are not cabinet members. The ministry is larger than the cabinet;⁴⁷
- Cabinet members do not have to be members of Parliament apart from the PM. However, by convention, they usually are;⁴⁸
- The number in cabinet is not fixed by law;⁴⁹
- Cabinet members can be peers - although they are, usually, not these days;⁵⁰
- The head of the cabinet is the PM;

³⁷ Traill, n 11, p 14 '[the] name of '*cabinet*' was derived from the circumstance of their deliberations being conducted in an inner room or cabinet of the [privy] council apartments in the Palace [of Westminster].'

³⁸ Oxford English Dictionary (*cabinet*).

³⁹ See Ridges, n 16, p 129.

⁴⁰ See also Traill, n 11, pp 16-7.

⁴¹ Ibid, n 24, p 24 'commencing with the formation by William III [1688-1702] of the first ministry...[t]he cabinet, though still remaining, as it remains to this day, unknown to the constitution, has now become *de facto*, though not *de jure*, the real and sole supreme consultative council and executive authority in the State.'

⁴² Wade (writing in 1931), n 15, p 159 'The king is bound [i.e. must] in political matters to follow the advice of his cabinet. This is the result of the prerogative of perfection, namely, that the king can do no wrong.' Ibid, 'the political responsibility of the cabinet is collective.'

⁴³ Ibid, p 13 '[The cabinet] are the advisers of the Crown collectively, and individually they are also responsible to the king and to Parliament for the conduct of a department of State.' Ibid, p 73.

⁴⁴ Ibid, p 74 'Legally the Cabinet is responsible to the Crown whose servants the members are.' However, this a *legal fiction* only since ministers are no longer paid for, or employed by, the sovereign (or the Crown in the body politic). Cf. in early times, Traill, n 11, p 3 'In earlier times...the Crown was not only the visible symbol, but the actual source of all executive authority...'

⁴⁵ Ibid, p 13 'The king is advised in all the important executive acts of government, not by his privy council in fact, but by his ministers, the most important of whom as a rule act in a double capacity. They are the advisers of the Crown collectively (the cabinet), and individually, they are also responsible to the king and to Parliament for the conduct of a department of State.'

⁴⁶ That is, *cabinet* ministers do not need to be heads of a government department. However, they usually are. Such is longstanding, e.g. Wade, (writing in 1931), n 15, p 13. That said, there are *sinecures* (Lord Privy Seal, Chancellor of the Duchy of Lancaster *etc*). Ibid, p 161.

⁴⁷ That is, only some ministers are cabinet ministers. Wade (writing in 1931), n 15, p 13 'Ministers outside the cabinet - and in recent times the cabinet has contained about twenty members out of some sixty holding ministerial office - have their departmental duties to perform, but take no part collectively in the deliberations of the inner body.'

⁴⁸ Wade (writing in 1931), n 15, p 160 'the cabinet and other ministers should be members of one or other House of Parliament. This is only a convention, but it is an important one. Until the realisation that some such rule was desirable, ministerial responsibility was difficult to achieve. Once ministers are in Parliament, they may be kept in check by a vigilant opposition, and indeed by a fire of questions emanating both from the opposition and the more independent members of their own party. Questions in the House, particularly the House of Commons, play a very important part in testing the feelings of the country towards the policy of the Cabinet.'

⁴⁹ Cf. Barnett, n 24, p 233 'The actual membership is not fixed, and is (subject to convention) for the [PM] to determine.'

⁵⁰ IV Jennings, *The British Constitution* (1968), p149 gave, perhaps, the best reason for this 'to authorise ministers to speak in both Houses would be to place a substantially increased burden on their shoulders. That burden is already so great that it should not be increased. The real solution is to insist that all the heads of the great departments should be in the [HC]...'. Today, such applies *a fortiori* since peers can renounce their peerage.

- The PM has sole discretion to appoint persons to the cabinet;⁵¹
- Though it is said there is a convention that certain posts carry cabinet rank such is dubious.⁵²

In modern times, the cabinet has comprised about 20 or so members.⁵³ At present, see *Appendix B*, there are 23 cabinet members (of which 4 are attendees).⁵⁴

The cabinet is assisted by a Cabinet Office (established in 1916) which provides secretarial support to the Cabinet. Also, a PM's office.

In conclusion, the cabinet is the most senior organ of executive government.⁵⁵ Its task is to carry out the will of Parliament (in the form of legislation) and to manage the daily apparatus of government.

7. REFORM: THE CABINET

The cabinet is a long-standing organ of government and works well. So too, the 2 offices which support it, *viz.* the:

- Cabinet office;
- PM's office.

However, there are some basic problems which a *Government Act* could (easily) address relating to cabinet *viz.*

(a) No Legal Recognition

The cabinet is still not recognised in legislation.⁵⁶ Yet, it *should* be recognised. This, in order to make the British Constitution less opaque. Also, for Parliament and others (such as the courts) to legally recognise that it comprises part of the present structure of government and is not just an *ad hoc* body. The two offices of cabinet (the Cabinet Office and the PM's Office) should also be recognised in legislation.

(b) Who Can Sit in Cabinet

Who can *sit* (that is, participate)⁵⁷ in cabinet meetings should be clarified. At present, this is unclear. Thus, the following, presently, can sit in cabinet, the:

- sovereign (although the same does not by convention);⁵⁸
- a person who is not an MP;
- a foreigner.

As to these:

- **Sovereign.** It is important that a *Crown Act*⁵⁹ makes it clear that the sovereign no longer has the Crown prerogative to sit in cabinet (or to attend the same). This, to prevent the sovereign overawing ministers. Or, to make government

⁵¹ Wade (in writing in 1931), n 15, p 160 'Invitations to sit in the cabinet are given at the discretion of the [PM] who in this matter is entitled to make his own choice of personnel and of numbers.'

⁵² Ibid, 'No minister can claim by virtue of office to be included in the Cabinet, but there may be said to be a convention that certain offices carry with them cabinet rank. The Lord Chancellor, the Chancellor of the Exchequer, the eight secretaries of state, the ministers in charge of departments supervising the more important social services, such as the Ministers of Health, Education and Labour, may be taken by way of illustration.' However, this seems to be more Wade's view than a firm convention. See Jennings, n 20, pp 76, 78, 81. Cf. Barnett, n 24, p 232.

⁵³ For example, in 1869, there were 15 cabinet members, see Whitaker's *Almanac* (1st ed, 1869), p 93 (and another 18 in the ministry). In 1931, there were 20 cabinet ministers, see Wade, n 15, pp 13-4, 159. Jennings, n 20, p 76 'Disraeli was able to govern with a cabinet of twelve. Between the wars the number was seldom less than twenty; in 1935, for instance, there were twenty-two.' Ibid, p 229 'During most of the nineteenth century, the cabinet contained from twelve to fifteen members.'

⁵⁴ Common attendees are the Lord President of the Privy Council, the Lord Privy Seal, the Attorney-General (such used not to be so, Wade, n 15, p 161) and the Chancellor of the Duchy of Lancaster. The office of Lord Privy Seal is a sinecure (the person is, usually, a minister in the cabinet without portfolio but with a ministerial salary). It should be abolished. So too the Duchy of Lancaster.

⁵⁵ Wade (writing in 1931), n 15, p 40 'the centre of executive power.' Jennings (writing in 1969), n 20, p 1 'The cabinet is the core of the British constitutional system. It is the supreme directing authority.'

⁵⁶ Cf. W Cobbett, *Parliamentary History*, vol 5, p 972 (*Debate on the War in Spain, 1711*) per Lord Cowper 'That the word '*ministers*' is of uncertain signification, and '*cabinet council*' a word unknown in our law.' Traill (writing in 1892), n 11, p 31 '*the cabinet*' has no recognised legal existence'. Jennings (writing in 1969), n 20, p 2 'Neither the cabinet nor the office of [PM] was established by legislation, nor has either been recognised by the courts of law.'

⁵⁷ To '*sit*' in Cabinet is not the same as to '*attend*' it.

⁵⁸ Wade (writing in 1931), n 15, p 55 noted: 'Not only did [Queen Anne, 1702-1714], like her predecessors, retain a personal initiative in the councils of the Crown, frequently presiding at meetings of the Cabinet, but the consultative body itself was by no means always of the same composition.' The Hanovarian, George I [1714-27] could not speak English. Thus, a Prime Minister represented him *in lieu*, see Wade, n 15, p 55. A convention, therefore, developed that the sovereign should not sit (or attend) Cabinet meetings. The last time a sovereign exercised the right to sit or attend Cabinet appears to have been in 1781, see McBain, n 1, p 20, fn 54. Traill (writing in 1892), n 11, p 19 'the sovereign cannot constitutionally preside at a meeting of the Cabinet.'

⁵⁹ See McBain, n 1, pp 20 & 71.

policy - which would be contrary to the doctrine of the separation of powers. Such is unlikely to be contentious since the sovereign has not sought to exercise such a right since 1781;⁶⁰

- **MP's Only.** It is also important that Cabinet only comprises MP's (who must be British citizens) since there are a number of restrictions on a person being an MP, such that they must not have committed serious crimes *etc.*⁶¹

In practice, cabinet ministers are MP's⁶² and, this convention has been longstanding. Thus, Traill (in 1892) noted that the only way to give Parliament control over Ministers was that they must be MP's:

To do so it was necessary that the ministers of the Crown should either be selected from among the members of the representative body, or else should be immediately on appointment provided with seats in the assembly; and this necessity was first formally recognised in the reign of William III [1689-1702]. It is of course true that individual ministers had sometimes had seats in Parliament before this period; but it was only then, for the first time, that ministers were introduced into Parliament for the avowed purpose of explaining, defending, and carrying out the measures of government.⁶³

It is important today that all ministers - especially cabinet ministers - be MP's because they should be persons elected to Parliament and, thus, they can be removed by voters if thought to be inadequate. Otherwise, corruption (as before) could creep in (for example, a PM could appoint family members, do so as a commercial favour *etc.*). Further, there are legislative restrictions as to who may be an MP⁶⁴ and there is no good reason why such should be avoided in the case of ministers (including cabinet ministers). Indeed, the opposite.

- **Cabinet - Maximum No.** Presently, there is no *limit* to the number of persons who can sit in the Cabinet. A PM could appoint the whole country or all MP's. However, since - at least - 1869 (some 150 years ago) cabinet members appear not to have exceeded (at any one time) more than c. 25 persons. As a result, there should be a restriction in a *Government Act* - to prevent cabinets being packed with large numbers of people. This would seem unobjectionable.
- **Cabinet - Minimum No.** Similarly, there is no *minimum* number. This, also, seems problematic. The privy council (see 15), often, reaches decisions with only 3-4 members. However, it is a formal body - one not exercising executive power as such. It would seem inadvisable to have so small a number in the case of the *cabinet*, in order to prevent cabals.⁶⁵ Thus, a minimum number (perhaps, 12) should be specified in a *Government Act*.

(c) **Who Appoints the cabinet**

Wade said (in 1931) that '*Legally the cabinet is responsible to the Crown whose servants the members are*'.⁶⁶ However, this is a legal fiction only. And, it has long been.

- In fact, the Crown - whether the sovereign personally or in the body politic (acting through civil servants) - does not employ MPs (including cabinet ministers). They are not her '*servants*';
- In particular, cabinet ministers are not selected by the sovereign. They are selected by the PM.⁶⁷ And, if the sovereign sought to intervene (interfere) in this, such would, doubtless, provoke a constitutional crisis.⁶⁸

Indeed, the *factual reality*, today, is that the role of the sovereign is only a *formal* one now. Unlike in times past, the sovereign no longer exercises *executive* power. Parliament is sovereign⁶⁹ - indeed, it can elect or dismiss the sovereign (as the events of 1642-9 and 1688 showed). Also, the cabinet is now accountable to Parliament for its

⁶⁰ See n 58. Also, Ridges (in 193), n 16, p 141 'the absence of the sovereign from all meetings of ministers where deliberations or discussions take place, including committees of the privy council, has become clearly recognised as a constitutional necessity.'

⁶¹ See McBain, n 2, pp 148-52, 172-4.

⁶² Lord Balfour in W Bagehot's *The English Constitution* (1928 ed), *Introduction* 'the [PM] is *primus inter pares* [first among equals] in a cabinet of which (according to peace-time practice) every member must, like himself, have had some parliamentary experience and gained some parliamentary reputation.' Cited by Wade (writing in 1931), n 15, p 41.

⁶³ Traill, n 11, p 8.

⁶⁴ See McBain, n 2, pp 148-52.

⁶⁵ Cf. LS Amery, *Thoughts on the Constitution* (1964), p 79 'The war cabinet of 1916 consisted of five members.' Cf. General Smuts later became a member and Balfour (as Foreign Secretary) 'while technically not a member, was, in fact, in continuous attendance.'

⁶⁶ Wade, n 15, p 97. Cf. Jennings (writing in 1969), n 20, p 76 'The [PM]...must also determine who shall be in cabinet.'

⁶⁷ Amery, n 65, p 73 'It is his cabinet and he has in large measure created it; he can at any time change its composition; his is the decisive voice in bringing it to an end by dissolution or resignation.' Chalmers, n 14, p 148 'All members of the cabinet must, in theory, defer to the premier, and when they disagree with him on a serious question of principle they ought in strictness to resign.' Ibid, p 149 'the premier...can undoubtedly select whom he likes.'

⁶⁸ For example, if the sovereign insisted that a person be made (or not made) a cabinet (or other) minister, the PM should simply ignore the same, since it breaches the longstanding convention that he has *sole* discretion (and is responsible to Parliament for his decisions, as well as to the electorate). Indeed, for the PM to subject his will to the sovereign (or any other person, whether for money or other favour or not) in appointing (or dismissing) ministers is, likely, a (serious) contempt of Parliament since it is failing to disclose to Parliament something manifestly material to the most senior organ of executive government. See also Brazier, n 21, pp 63-4 'cardinal convention of the constitution that the queen must act on ministerial (and usually prime ministerial) advice.'

⁶⁹ Wade (writing in 1931), n 15, pp 74-5 noted this: 'The cabinet is dismissible by adverse vote of the [House of] Commons on a vital issue. No government would declare war or conclude a political treaty without approval (previous or subsequent) of its action by the House of Commons. No government would hesitate to call Parliament together in a grave emergency...'

executive acts - not to the sovereign in person or in the body politic.⁷⁰ Traill (writing in 1892) succinctly stated how things used to be:

in theory the executive power is vested in the sovereign alone...In earlier times, however, the Crown was not only the visible symbol, but the actual source of all executive authority...Down to a period, then, which it is convenient and substantially if not strictly accurate to fix at the revolution of 1688, the government of England was carried on by the virtue of the royal prerogative - that is to say, by the sovereign in person, with the advice and assistance of ministers selected by himself, and not responsible (in any formally recognised way) to any one save himself. Under this system Parliament had nothing to say to the choice of the royal ministers, and possessed no power of controlling them when chosen.⁷¹

The result of Parliament's opposition to such untrammelled power was two revolutions (those of 1642-9 and 1688). Traill summarised the outcome, the development of certain legal principles (fictions):

the result...of the long constitutional struggle which ended in the great historic event above mentioned was to establish the three main principles upon which our system of government now rests, namely: - (1) that the sovereign is irresponsible [doctrine of perfection, i.e. the sovereign can do no wrong];⁷² but (2) that for every act of his prerogative his ministers are responsible to Parliament; and (3) that it is not only the right of Parliament, but its duty to the country, to inquire into the mode of exercising of the royal prerogative, to review the advice given by ministers with respect to its exercise, and to approve or condemn that advice as they may think fit.⁷³

Traill also noted that the recognition of those 3 principles imposed certain duties upon each of the three parties to the constitutional arrangement (i.e. the Crown, Parliament and Ministers). This included:

the *duty*⁷⁴ of the sovereign to select as his ministers such persons as enjoy the confidence of the majority in Parliament, and to retain them as his advisers, so long, and so long only, as that confidence [of Parliament] is continued to them.⁷⁵ (*italics supplied*).

This applies, *a fortiori*, to Ministers appointed to the cabinet. Such is the factual reality. And it has been so for, at least, 170 years - the PM appoints the members of his (her) cabinet. And, that such discretion lies in him (or her) alone. In short, it is not possible for the sovereign - in fact or in law - to command the PM as to who should be members of the cabinet or ministers. Nor, to refuse to approve their taking office as a whole as a ministry (administration). Nor, to dismiss a majority government. One says '*170 years*' (although the principle is much older (perhaps, 1711 or 1696, see below since Traill also pointed out the last time a sovereign sought to controvert this, in 1834:

The last instance of a contravention of this rule was the dismissal of Lord Melbourne [PM, 1834 & 1835-41], and his colleagues, a ministry possessing a majority in Parliament, by William IV [1820-37] in 1834, and the invitation to Sir Robert Peel [PM 1834-5, 1841-6], the leader of the party in opposition, to form a government. The new premier, on assuming office, advised an immediate dissolution, so that the constitutional question involved in this act of royal authority was not fully raised; but Sir Robert Peel's '*permission*' that the old Parliament, had he elected to meet it, would '*so far maintain the prerogative of the king as to give the ministers of his choice not an implicit confidence but a fair trial,*' must be regarded, if justifiable, as somewhat restricting the generality of the proposition in the text.⁷⁶

Further, the inadvisedness of allowing the sovereign, *post-1688*, to select his ministers (in effect, to run the government) was well displayed in the reign of George III (1760-1820). In a partial attempt to claw back the results of the two revolutions of 1642-9 and 1688,⁷⁷ the sovereign created what were called the '*king's friends*'.⁷⁸ These were not ministers but shadows of the same in which the sovereign sought to influence (undermine) the former when he disagreed with them. This '*experiment*' was unsuccessful and had ended by 1784 when George

⁷⁰ That is, to any minister, ministry or the civil service.

⁷¹ Traill, n 11, p 4.

⁷² See n 130.

⁷³ Traill, n 11, p 5. Jennings (writing in 1969), n 20, p 14 'The revolution of 1688 finally settled that in the last resort the king must give way to Parliament.'

⁷⁴ This was a polite way of saying '*must*' (that is, constitutionally must).

⁷⁵ Traill, n 11, p 5.

⁷⁶ *Ibid*, pp 5-6. Peel was, doubtless, wise to advise a dissolution and go to the country since the dismissal of Melbourne's administration by William IV [1820-37] was a contravention of the doctrine of the separation of powers even then. As to whether the dismissal of Lord Melbourne was such, see Jennings, n 20, p 6 (who thought no government had been dismissed by the sovereign since 1783, which seems correct).

⁷⁷ i.e. the Civil War (1642-9) and the Glorious Revolution 1688 (in which Parliament held that James II (1685-8) had abdicated the throne, pursuant to which, they selected a successor).

⁷⁸ Wade, n 15, p 55 'George III [1760-1820] tried through the king's friends to re-establish personal government, but on parliamentary lines, through the use of methods which both the Whigs and the Tories freely resorted to, namely, pensions, gifts of sinecure offices, government contracts, not to mention the influence of powerful peers under an unreformed franchise, by means of '*pocket boroughs*'. See also Traill, n 11, p 10.

III gave it up.⁷⁹ However, it weakened Parliamentary democracy and produced much corruption. Finally, as to *when* the principle of Cabinet responsibility to Parliament was established, Traill noted:

The work of government...[in] the present day...is performed by a body of ministers belonging to the party in which possesses a majority in the House of Commons, holding seats in Parliament, and responsible to Parliament for the way in which they perform the work. The principle of this responsibility was first formally recognised in fact in the year 1696,⁸⁰ and first publicly proclaimed and assented to in Parliament in the year 1711.⁸¹

In conclusion, for present purposes, it seems clear, today, that the PM has, in fact, the sole discretion to appoint his ministers (including those to serve in his cabinet) and that such is only formally approved by the sovereign. Also, that such ministers (when appointed) are subject to Parliament and not to the Crown. Thus, the same should be reflected in a Government Act.

(d) Notification to the Sovereign

At present, the PM notifies the sovereign (and, then, the general public)⁸² that he has formed (that is, appointed) a cabinet. He also indicates who they are. Also, the names of other ministers - albeit, the choice of them may take more time.⁸³ As for the mechanics of the appointment of the individuals in cabinet - as well as other ministers - the process is convoluted (and not consistent). As noted in the article on the *Parliament Act*:⁸⁴

- some ministers receive seals of appointment,⁸⁵
- some letters of patent;
- some a royal warrant; and
- the appointment of others (more junior) take effect when the sovereign accepts the PM's recommendation on the appointment.

Since, today, the role of the sovereign is purely formal, it would seem much better - and more consonant with reality -⁸⁶ that all ministers be appointed (also, that they be dismissed⁸⁷ or have their resignation accepted)⁸⁸ by means of a formal letter from the PM, issued from the Cabinet Office. This, then, clarifies *who* is appointing the same (the PM as head of the Cabinet) and *exactly* when. Thus, a *Government Act* should stipulate the same.

(e) Absolute Discretion

Just as the sovereign never had to give reasons for the appointment (or dismissal) of ministers neither did Sir Robert Walpole (1721-42) or his successors, acting as a prime (first) minister *in lieu* of the sovereign.

This should be reflected in legislation since the position would be otherwise unworkable if a person could seek to sue the PM (or the Crown) on the basis that they had been offered cabinet (or other ministerial) appointment which had not eventuated. Or to sue for unfair dismissal.

⁷⁹ Jennings, n 20, p 14 'From 1784 the policy was primarily that of Parliament.'

⁸⁰ See Traill, n 11, p 8.

⁸¹ Ibid, p 11 'The principle of this responsibility was first formally recognised in fact in the year 1696, and first publicly proclaimed and assented to in Parliament in the year 1711.' Traill cited Lord Rochester in a House of Lords debate on the affairs of Spain. See W Cobbett, *Parliamentary History*, vol 6, p 972 'that according to the fundamental constitution of this kingdom, the ministers are accountable for all [the acts of the sovereign]: and therefore he hoped no body would, nay, durst name the queen [Queen Anne 1702-14] in this debate.'

⁸² Notification was, also, made in the London Gazette to have a salary prescribed by the Ministers of the Crown Act 1937 (rep). See now the Ministerial and other Salaries Act 1975.

⁸³ Traill, n 11, p 13 'the [PM] proceeds, either with or without consultation with other leading members of his party, to nominate the persons to be appointed to the various executive offices. The whole number of persons thus nominated are in strictness entitled to the appellation of ministers; while those appointed to the more important of these offices compose, either exclusively or with one or two additions, what is called the *cabinet*.'

⁸⁴ See McBain, n 2, p 161.

⁸⁵ Handing over seals derives from Norman and medieval times when sovereigns were illiterate. Today, a written document would seem more sensible, to evidence the same and such is usually provided (obviating the need for a seal). Chalmers, n 14, p 163 '[the Chancellor of the Exchequer]...is appointed by letters patent under the great seal and personal delivery of certain seals of office.'

⁸⁶ For example, if the sovereign purported to dismiss a minister without the consent of the PM, there would seem little doubt (even if in the correct form) that a court would not accept it, since that would be revert to a position *pre*-1834 (and, indeed, 1711) that the sovereign has the legal authority to determine matters now subject to politics. Barnett, n 24, p 228 'Whatever the queen's personal opinions may be, she is bound to accept and act on the advice of her ministers.'

⁸⁷ Jennings, n 20, p 87 (form of dismissal). He noted, p 207 'According to law, the minister holds his office at the pleasure of the Crown. He can, therefore, be dismissed, according to law, at any moment: and this prerogative is exercised solely on the advice of the [PM]. The sovereign cannot dismiss without the PM's consent.' Ibid, p 211. See also Ibid, pp 212-3 (compel to resign).

⁸⁸ Brazier (writing in 1998), n 21, p 50 'A resignation may be express or implied...The Lord Chancellor and the Chancellor of the Duchy of Lancaster alone now retain the right of audience of the queen to surrender their seals. The earlier practice by which other ministers who had seals of office would personally deliver them up to [HM] has been discontinued, and their seals simply collected by the privy council office.'

In short, such appointments are political appointments and should be left to that arena. Thus, if the PM makes unwise appointments or dismissals, then, the cabinet and Parliament can remonstrate and punish the same.⁸⁹

(f) Conclusion

It would seem wise (and appropriate) for a *Government Act* to clarify that the Cabinet is an organ of government. Such legislatively accords recognition and legitimacy to the same. Also, for its two offices to be recognised. Further, the following - that:

- the sovereign may not sit (or attend) cabinet;
- a person who sits in cabinet must be an MP (and the House of Commons member, also);⁹⁰
- the maximum number of cabinet members may be no more than (say)25;⁹¹
- the minimum number of cabinet members may be no less than (say)12;⁹²
- ministers (including the cabinet) are responsible to Parliament;
- the head of the cabinet is the PM (see also 8);
- the PM selects such cabinet members as he shall determine in his sole discretion;⁹³
- ministers (including cabinet ministers) are appointed (also, dismissed or their resignation accepted) by a letter from the PM.

It is suggested that there is nothing contentious in stating any of the above in a *Government Act* since it reflects modern realities and avoids reliance on legal fictions that no longer apply since everyone (sovereigns included) have accepted - for a very long time - that the:

- cabinet is an organ of government;
- cabinet and ministers (i.e. the ministry/administration)⁹⁴ is subject to Parliament;
- the responsibility for appointing, and dismissing, ministers constitutionally belongs to the PM - not to the sovereign.

8. PRIME MINISTER

(a) Recognition of Post & Appointment

The PM is elected by his own political party and heads the Cabinet. However, the role of PM has never been directly recognised by legislation (the same as with the cabinet).⁹⁵ It should be. Lord Balfour in W Bagehot's *The English Constitution* (1928 ed) stated:

Under the Cabinet system...[the] head of the administration, commonly called the [PM] (although he has no statutory position) is selected for the place on the ground that he is the statesman best qualified to secure a majority in the House of Commons. He retains it only so long as that support is forthcoming, he is head of his party. He must be a member of one or other of the two houses of Parliament; and he must be competent to lead the House to which he belongs...the [PM] is *primus inter pares* [first among equals].⁹⁶

Traill (writing in 1892) had put a more Victorian emphasis (politeness) on things:

According to modern usage the premier [i.e. the PM] alone is the direct choice of the Crown; and he possesses the privileges of choosing his own colleagues, subject of course to the approbation [approval] of the sovereign.⁹⁷

Caution must be taken with this statement since it is clear that Traill was referring to the 'choice' and 'approval' as being only a formal one (especially, having already considered the position in 1834 of a sovereign seeking to

⁸⁹ Although the PM is *primus inter pares*, if he were to make a wholly unsatisfactory appointment (e.g. an MP well known to be corrupt), then, cabinet members could resign individually or as a whole. Further, he must run the gauntlet of Parliament. This system is not unfair, since ministers can resign at any time (with or without giving a reason).

⁹⁰ Some PM's were members of the House of Lords. However, such may not be appropriate today (not least, due to the need to have knowledge of the procedures of the House of Commons).

⁹¹ The figure, obviously, is a matter of debate. See also n 53.

⁹² Ibid.

⁹³ WI Jennings, *The British Constitution* (1965), p 163 put it thus: 'He [the PM] chooses the ministers and determines which of them shall be in cabinet... If he thinks fit, he can ask a minister to resign. He can shuffle his pack as he pleases.'

⁹⁴ In older times, ministers as a collective body were called the '*ministry*' or the '*administration*'. Such words have gone out of fashion. Instead, the word '*government*' tends to be referred to. Traill (writing in 1892), n 11, p 3 'The ministers of the Crown are accordingly spoken of in ordinary usage as the government. Sometimes, in contradistinction to the legislative body, they are spoken of as the executive government; sometimes in contradistinction to the various depositories of local authority, they are described as the central government.'

⁹⁵ Wade, n 15, p 157 'The cabinet is summoned by the [PM], who has no place in the legal theory of the constitution.' See also n 56. Traill, n 11, p 31 'there is no such official known to the language of constitutional law as a '*prime minister*': The term prime minister comes from the French. IV Jennings, *The Queen's Government* (1964), p 132 'The name itself is French, *premier ministre*...'

⁹⁶ *Introduction*, cited by Wade (in 1931), n 15, p 41.

⁹⁷ Traill, n 11, p 13.

reject an incoming administration which held a majority in Parliament, see 7(c)). In any case, today, the position would (clearly) seem to be as outlined by Bogdanor:

Under normal circumstances, the sovereign has no choice whom he or she should appoint as [PM]... When one party wins an overall majority in a general election, the leader of that party will be appointed [PM]. When a [PM] resigns or dies, the electoral machinery of the party concerned will be used to choose a new party leader, and that person will be summoned to the palace and appointed [PM].⁹⁸

(b) Deputy and Acting PM

Provision might (usefully) be made in a *Government Act* (or a *Parliament Act*) for the PM to be able to formally create a *deputy PM*, who can temporarily act if there is an *interregnum* in the premiership for any reason (such as on health grounds).⁹⁹ Such is possible in countries like Australia (and in the US, there is the post of Vice-President). Provision could be made that such an appointment carries no right of succession.

- Legislative provision could also be usefully made to deal with an *acting PM* in the case of: (a) a hung Parliament; or (b) a coalition government.¹⁰⁰ The effect of such would be to obviate the need for the Crown to choose a PM in any situation - something which has always proved problematic;¹⁰¹
- Further, given the unsettled state of the world it would seem imperative that, if something were to happen to a PM, another be able to step into their post immediately (especially, in the case of war or other emergency).¹⁰² Thus, a *Government Act* might, usefully, provide that a PM *can* appoint a Deputy, but *must* appoint, an Acting PM (who may be one and the same).

(c) Primus (First) Minister

It may be noted that the PM is not *primus inter pares* - in particular - by virtue of being (in the case of the Admiralty) the First Lord of the Admiralty. Nor, the First Lord of the Treasury (in the case of the Treasury).¹⁰³ This, for the following reasons:

- **First Lord of the Admiralty.** The head of the admiralty was, from 1385, the Lord High Admiral ('LHA') now a sinecure.¹⁰⁴ In 1690, this office was (effectively) put in commission by reason of an Act of 1690 (and a resolution of the House of Commons thereto). It constituted Lords Commissioners (the '*Commissioners for executing the office of [LHA]*')¹⁰⁵ who formed a Board of Admiralty.¹⁰⁶ The most senior member of the Board was the First Lord. By convention, the same was a cabinet minister - but such a person did not *have* to be the PM (and such was, sometimes, a member of the House of Lords). Further, the Admiralty was a *deliberative*, not an executive, body. And, it was *subordinate* to the War Department.¹⁰⁷ The Board of Admiralty ceased to exist in 1964, its duties being subsumed into the Joint Chiefs of Staff (the service chiefs being chaired by the Chief of the Defence Staff, the senior serving officer in uniform).¹⁰⁸ Today, the admiralty (navy) is part of the Armed Forces (army, navy, air force) and the senior civil government official is the Secretary of State for Defence (who is, usually, a cabinet minister but need not be). As a cabinet minister, he is subject to the PM (who appointed him) - not because the PM may be (from time to time) First Lord¹⁰⁹ - but because of the principle of *primus inter pares*, arising from the creation of a first minister (PM)

⁹⁸ V Bogdanor, *The Monarchy and the Constitution* (1995), p 84.

⁹⁹ Such has, actually, unofficially arisen on various occasions, *Ibid*, pp 87-8.

¹⁰⁰ These are the only situations in which the sovereign must make a choice today.

¹⁰¹ Bogdanor, n 98, ch 4.

¹⁰² See Brazier, n 21, p 76 (*re* 1984 Brighton bomb attack).

¹⁰³ Traill, n 11, p 31 noted (in 1892) that the sole official title of the PM was First Lord of the Treasury. Today, the PM can have other titles (Civil Service Minister, for example).

¹⁰⁴ This post should be abolished since it simply causes confusion. Prince Philip (1921-2021) was granted this title on his 90th birthday. However, it had long been in commission (since 1828). See GS McBain, *Abolishing Obsolete Offices* (2012) Coventry LJ, vol 17, no 1 p 54.

¹⁰⁵ Traill, n 11, p 117.

¹⁰⁶ *Ibid*, ch 9.

¹⁰⁷ Both points were made by Traill, n 11, pp 117-8. *Ibid*, p 117 'The Board of Admiralty, unlike the Treasury, is a really deliberative body; for although the First Lord possesses, in spite of the nominally co-ordinate powers conferred upon his colleagues by this patent, a supreme authority, he is bound to carry the naval lords with him in his measures; and he would therefore, in the event of finding any of them irreconcilably opposed to his policy, be compelled either to modify it in deference to their objections or to require them to resign.' See also Jennings, n 20, pp 120-1 (in 1969).

¹⁰⁸ McBain, n 104, p 54.

¹⁰⁹ Brazier (writing in 1998), n 21, p 51 'the last not to was Lord Salisbury from 1895 to 1902, when his nephew Arthur Balfour lead the House of Commons and took the title of First Lord.' There is also a separate oath taken in respect of the First Lord. *Ibid*, p 52. See also Bradley, n 25, p 276.

Sir Robert Walpole in 1721-42. This was due to the fact that George I (1714-27) could not speak English.¹¹⁰ Therefore, Walpole represented him in Cabinet (i.e. *sat in lieu*);¹¹¹

- **First Lord of the Treasury.** The Treasury (later, called the Exchequer)¹¹² is much older than other Ministries and it would have existed in Anglo-Saxon times. The head of it, from 16th century, was the Lord High Treasurer ('LHT'). This post was placed in commission in 1616 and permanently in commission in 1714 when Lords Commissioners for executing the office of LHT were appointed (they included the Chancellor of the Exchequer).¹¹³ The most senior member of these Lords Commissioners was the First Lord. By convention, the PM has held this post since 1806. However, this has, sometimes, been with another. The Board of Lord's Commissioners ceased to meet in mid-Victorian times and the head of the Treasury became the Chancellor of the Exchequer.¹¹⁴ As such, he is subject to the PM (who appointed him) not because the PM may be (from time to time) First Lord, but because of the principle of *primus inter pares*, arising from the creation of a first minister (PM), being Walpole (see above). It may also be noted that, when Jennings wrote in 1969, the Civil Service was controlled as a whole by the PM *qua* First Lord.¹¹⁵ However, today, the PM is the Civil Service Minister.

Thus, if these sinecures were abolished¹¹⁶ this would not affect the position of the PM as *primus inter pares* which practice derives, at least, from Walpole or, if not him - because he was not formally appointed PM - from Pitt the Younger.¹¹⁷ That said - to avoid all doubt - this principle of *primus* can be provided for in a *Government Act*. Abolition of the title '*First Lord*' would not affect the PM's salary under the Ministerial and other Salaries Act 1975 where the reference is to the PM as well to the First Lord.

- **Treasury Board.** On this subject it may be noted that the Treasury Board (which never meets)¹¹⁸ could (should) be abolished.¹¹⁹ This would also simplify who can execute treasury warrants;
- **10 Downing Street.** It may also be noted that PM's occupy 10 Downing Street as their official residence *qua* First Lord of the Treasury (but not Chequers, which is occupied *qua* PM).¹²⁰ However, as with Royal Palaces *etc.*,¹²¹ it would seem more apposite for a *Government Act* to indicate today that no 10 is held (and maintained) by the nation¹²² since the Board of the Treasury has not sat for more than 150 years.

¹¹⁰ C Roberts, *The Growth of responsible Government in Stuart England* (1966), p 425 was sceptical of this reason (though it may be partly true). Rather, he asserted the reason was that ministers recognised that they were subject to Parliament for their acts and that the sovereign's assent had become formal. The fact that impeachments had tailed off by the 18th century is also indicative of this fact and that Parliament did not have to resort to the same since the sovereign was no longer powerful.

¹¹¹ Others might assert that the principle of *primus inter pares* was only firmly established when Pitt the Younger was PM (1783-1801, 1804-6) since the appointment of Walpole as PM was not formal. Traill, n 11, p 23 'The supremacy which this statesman [i.e. Pitt] successfully asserted over his colleagues has ever since been the acknowledged right of the first minister of the Crown..'. For present purposes it is enough to assert that the principle of *primus inter pares* is, at least, 200 years old. See also Ridges (in 1934), n 16, p 141 'The [PM] thus presides in place of the sovereign at meetings of the cabinet...'

¹¹² Chalmers, n 14, p 162 'In the days of the plantagenets the present treasury was known as the *saccarium* (exchequer), and it was so named because the committee of the continuing council of the king sitting for revenue purposes occupied an apartment called *saccarium*.'

¹¹³ The treasury board was created by letters patent under the great seal. It was composed of a First Lord, Chancellor of the Exchequer, Financial Secretary (deputy to the Chancellor in the House of Commons), Parliamentary Secretary (by custom, the Lord Chief Whip, also called, in older times, the patronage secretary) and Junior Lords (assistant government whips). See also McBain, n 104, p 52.

¹¹⁴ Traill (writing in 1892), n 11, p 33 'the Treasury has long ceased to be a board in anything but name: it is now practically a department presided over by a single head, the Chancellor of the Exchequer.' Ibid, p 35. Wade (writing in 1931), n 15, p 188 'The board never meets, individual members being responsible for the business transacted. Treasury warrants are generally signed by two of the junior lords. The Chancellor of the Exchequer is the finance minister, not by virtue of his membership of the board, but by separate patents of office. He is invariably a member of the House of Commons.' Ibid, p 190 'It has long been provided by Standing Orders of the House of Commons that no charge can be placed upon the public revenue except on the recommendation of a minister of the Crown.'

¹¹⁵ Jennings (writing in 1969), n 20, p 144. Ibid, p 149 'The general supervision and control of the civil service is vested in the Lords of the Treasury, among whom the [PM] as First Lord takes the major share of responsibility, while the Chancellor of the Exchequer is primarily concerned with financial and economic policy.'

¹¹⁶ Jennings, n 20, p 83 thought that the office of First Lord was '*not quite a sinecure*'. However, he may have been unaware that the Treasury board never meets.

¹¹⁷ Ibid, p 23 'The supremacy which this statesman successfully asserted over his colleagues has ever since been the acknowledged right of the first minister of the Crown; and the constitution, as now practically interpreted, may be said to proceed uniformly upon the principle that power and responsibility should be concentrated in the hands of some one man who enjoys the confidence of the country and the majority in Parliament, and whose unchallenged authority is necessary to secure consistency in policy and vigour in administration.'

¹¹⁸ See Traill, n 11, p 33.

¹¹⁹ As to what Treasury officials can sign warrants such should be placed in a *Government Act* in any case, see p 113. The Chancellor of the Exchequer (or cabinet) could approve names (or a SI could stipulate the same, if required).

¹²⁰ Jennings, n 20, p 82.

¹²¹ See McBain, n 1, p 41.

¹²² Ibid, pp 41 & 72.

9. REFORM: THE PM

The role of the PM does not, it is suggested, need to be reformed as such. However, a few things would be useful to reflect in a *Government Act*:

- ***Overall Majority***. It should be confirmed that the sovereign shall (that is, must) appoint as PM the leader of the political party that commands an overall majority of MPs in the House of Commons. Probably, this is best placed in a *Parliament Act*,¹²³
- ***PM must be an MP***. The settled rule (convention) that the PM must be an MP should be expressed in legislation.¹²⁴ It may also be appropriate - these days - for legislation to stipulate the PM must be a member of the House of Commons and not a peer;¹²⁵
- ***Primus Inter Pares***. It should be confirmed that the PM is *primus inter pares* (i.e. first minister) and that he, in his sole discretion, appoints (dismisses and accepts the resignation of) ministers - including cabinet ministers. This would enable the abolition of the sinecure of First Lord referred to above (albeit, as asserted, the same is not, actually, the basis of the PM being *primus* - not least, since the PM has not always been a First Lord).

In conclusion, provision for the above should be made in a Parliament (or a Government) Act.

10. MINISTERS

Ministers are appointed by the PM on his own initiative. This is the factual position. However, the *legal fiction* is that ministers are appointed by, and servants of, the Crown, see 7(c). Thus, their acts are executive acts of the Crown. Wade (in 1931) stated:

the king is the supreme executive authority in the State... Even though in many cases his powers are exercised, not merely on the advice of ministers, but actually by and in the name of ministers in person, the acts are still the executive acts of the Crown *since the ministers themselves owe their appointment to the Crown*. It must be noticed, however, that many of the powers of ministers derived from statute are not conferred upon them as agents of the Crown. The powers are given to ministers in charge of departments as such, and may be enforceable by writ of *mandamus*. This process is never available against a minister acting as agent of the Crown.¹²⁶ (*italics supplied*)

Also:

The king can do no wrong [doctrine of perfection]... The king cannot be sued or otherwise held responsible for executive actions. He must, therefore, act through ministers who can be made responsible and, if necessary, sued. The king must act through a minister is to ensure that someone is responsible. Seals of office are entrusted to ministers and play an important part in securing the responsibility which attaches to their holders.¹²⁷

As Wade noted, the acts of ministers are posited as being acts of the Crown (by way of *legal fiction*, since the sovereign no longer exercises executive power) on the basis that ministers are carrying out the orders of the sovereign and that they are appointed and employed by the same. However, *in fact*, ministers are appointed (and dismissed) by the PM and paid by Parliament (from taxpayers' money). Also, even in 1931 (as Wade noted), a distinction was being established between ministers acting, *sometimes*, as servants of the Crown and, *sometimes*, not - see above - when legislation indicated the contrary). Indeed, it is (often) overlooked as to when ministers being accountable to Parliament developed. Certainly, this had occurred by the reign of George I (1714-27) producing a *legal fiction* thereafter. Roberts put it well:

his [George I's] will often prevailed, but always within the limits of action set for him by his ministers, ministers who must in turn answer to Parliament that controlled the purse strings. Rather than consent to measures which they believed unwise or illegal or unlikely of success, the king's ministers would first resign, for they must answer to Parliament for the wisdom, the legality, and the success of the king's measures. They and not the king must assume this responsibility all Englishmen agreed. Parliament insisted upon it, the king's ministers acknowledged it, and the king himself admitted it. The epoch which opened on the summer morning in 1610 when James I [1603-25] refused to allow Parliament to prosecute his servants [ministers] ended in the summer of 1717 when George I declined to attend the cabinet regularly because, as he later told the imperial ambassador, his ministers were answerable to the nation, and he could not protect them.¹²⁸

Therefore, it is better to dispense with such a legal fiction (which became more than 200 years ago) and accept the reality. In conclusion, a *Government Act* should make it clear that:

¹²³ See McBain, n 2, pp 161 & 175. See also for precedents, Jennings, n 20, ch 2.

¹²⁴ Jennings, n 20, p 21 'It is a settled rule that the [PM] must be either a peer or a member of the [HC]... Every [PM] since Sir Robert Walpole [1721-42] has been in one of the Houses.'

¹²⁵ See Jennings (in 1969), n 20, ch 2. De Smith, n 22, p 172 'no [PM] has been a member of the Lords since 1902'.

¹²⁶ Wade, n 15, p 67.

¹²⁷ *Ibid*, p 66.

¹²⁸ Roberts, n 110, p 427. Jennings, n 20, p 336 quotes Asquith in 1913, when PM, stating in a Memorandum written by him on the rights and obligations of the Crown, 'We now have a well-established tradition of two hundred years, that, in the last resort, the occupant of the throne accepts and acts on the advice of his ministers...'

the PM appoints and dismisses ministers (including cabinet ministers) at his sole discretion;¹²⁹

ministers and the PM are subject to the control, and oversight, of Parliament - not the Crown. That is, they are accountable to Parliament.

In this way, the *legal fiction* is obviated (no longer be required) since it is accepted that the sovereign is not now responsible for the acts of ministers because they are not *her* servants. Rather, they are the servants of Parliament.

- Further, while the *legal fiction* of perfection of the sovereign¹³⁰ is still required; it is better for legislation to reflect the reality - which is not that the sovereign is perfect (clearly, sovereigns can, and have, done wrong and they are not above the law)¹³¹ - but that the sovereign cannot be made criminally, or civilly, liable for any legal act;¹³²
- That said, legislation (a *Crown Act*) should, perhaps, lift such immunity if the sovereign commits a crime meriting life imprisonment.¹³³ Further, civil immunity is (and has long been) subject to a petition of right or a suit against the Attorney-General.¹³⁴

11. REFORM: MINISTERS

The following reforms might be considered:

(a) No Longer Servants of the Crown

As with Cabinet ministers, it should be accepted that all ministers are appointed, dismissed and their resignation accepted by the PM - not by the sovereign.¹³⁵ And, that they are the servants of Parliament and not the Crown. Such will dispense with legal fictions which are, presently, wholly undermined by the fact that the sovereign, today, only exercises a formal - and not an *executive* - role. The doctrine of perfection would not be affected by this since legislation (a *Crown Act*) would provide for criminal and civil immunity of the sovereign to prevail - save as indicated in 10.

(b) Ministers should be MP's

Further, although it is a convention¹³⁶ that ministers (including cabinet ministers) be MP's, this should be legislatively provided for.¹³⁷

(c) Categorisation

For the purpose of identifying ministers within cabinet (**cabinet ministers**) and others (**junior ministers**) it is suggested that a *Government Act* use these terms. In respect of the latter, Brazier (writing in 1998) noted:

Junior ministers are those who are not in charge of a department of state. Given the all-inclusive nature of modern cabinets the term '*junior ministers*' today encompasses almost all ministers outside the cabinet. Whether a particular junior minister is actually chosen by the [PM] or by a ministerial head of the department in which he is to serve varies from one government to another.¹³⁸

It would also seem appropriate, in the interests of democratic government, for all appointments to be formally made in writing by the PM (to prevent jerryandering).

(d) Transferring Ministerial Functions

Also, set out in a *Government Act*, should be the Ministers of the Crown Act 1975 (ss 1-7) as updated. The Act was summarised by Brazier as follows:

¹²⁹ Barnett, n 24, p 232 'it is the [PM] who determines who shall be appointed.'

¹³⁰ This word '*perfection*' is infelicitous and a misnomer. So, too, that of '*irresponsible*'. Or, that the king can '*do no wrong*'. The more accurate legal term is '*immune*'. That is, the sovereign is not perfect, can be irresponsible and can commit crimes but is *immune from criminal or civil prosecution*. For the history of this principle, see GS McBain, *Expanding Democracy - Transferring the Crown Prerogative to Parliament* (2014) Review of European Studies, vol 6, no 1, pp 12-6.

¹³¹ Wade, n 15, p 62 'though legally irresponsible [immune], he is not above the law.' This principle dates back at least c. 1240 to the classic statement of H Bracton (trans Thorne), *On the Law and Customs of England* (c, 1240, CUP 1968-76), vol 2, p 33 '*lex facit regem*' (the law makes the king). Ibid, vol 2, p 305 'as long as he [the sovereign] does justice he is the vicar of the eternal king, but the devil's minister when he deviates into injustice. For he is called *rex* not from reigning but from ruling well, since he is a king as long as he rules well.'

¹³² See McBain, n 1, p 71.

¹³³ For example, if the sovereign murdered someone, doubtless, Parliament would not permit such an injustice to be unpunished. Instead, the immunity of the sovereign would be lifted by legislation (also, any claim that the sovereign cannot be tried in a court. Almost all courts now, in any case, are established pursuant to legislation and not by virtue of the Crown prerogative which was (regardless of immunity) the principle behind the sovereign not being able to be tried in her own courts (because the Crown was the originator of the court)).

¹³⁴ See McBain, n 1, pp 17 & 71. Whether immunity should be preserved when the sovereign acts in a private capacity (such as owner of a private property such as Sandringham) is moot. See McBain, n 1, p 16. Cf. Wade, n 15, p 71.

¹³⁵ Jennings (writing in 1969), n 20, p 61 'The nomination of ministers rests with the [PM]'. Queen Victoria [1837-1903] expressed views but, Ibid, p 66, 'never carried too far any objections on political grounds.' After George V [1910-36] sovereigns seem to have avoided involvement in commenting on ministerial appointments. Ibid, p 65-6.

¹³⁶ Ibid, p 60 'It is a well-settled convention that these ministers should be either peers or members of the [HC]. There have been occasional exceptions.'

¹³⁷ De Smith, n 22, p 173.

¹³⁸ Brazier, n 21, p 66.

An order in council may provide for the transfer to any minister of any function previously exercised by another minister, or for the dissolution of any government department and consequent transfer of functions;¹³⁹ it may make changes in the functions of a Secretary of State; and it may change the style and title of a minister. Provision is made for parliamentary scrutiny of such orders.¹⁴⁰

These sections should be set out in a *Government Act*. However,

- s 2 (changes in departments of office of Secretary of State or in their functions); and
- s 3 (transfer of property etc by a SS)

would not be needed in a *Government Act* if all references to a 'Secretary of State' are now to a 'Minister.'

In conclusion, a Government Act should recognise that ministers are appointed by the PM not the Crown. Also, ministers should be members of the House of Commons or the House of Lords.

12. MINISTERIAL DEPARTMENTS (MINISTRIES)

The matter of ministries - and the terminology employed - is a paradigm of the problems of understanding the British constitution, including for civil servants. The reason is that much of the terminology employed is archaic. Further, it was not always consistently employed.

(a) Secretaries of State

The Treasury (*Thesaurus*, later, called the Exchequer)¹⁴¹ was (apart from the royal household) one of the first organs of government. It would have existed even in Anglo-Saxon times.¹⁴²

- After the Norman Conquest of 1066, the Normans (who were illiterate) used scribes to conduct their correspondence. Most of these were clerics, the only people who could read and write;
- At some point, there was recognised a 'king's clerk' (*secretarius*).¹⁴³ That is, a scribe paid by the Crown who handled the king's confidential correspondence. At least, from the reign of Henry III [1216-72] mention was made of the same. In time, this title changed to that of the 'king's secretary';
- In the reign of Henry VIII (1509-47), 2 secretaries were appointed to handle increased business - especially foreign correspondence. One of these was the chief secretary.¹⁴⁴ However, 2 secretaries were not invariable.¹⁴⁵ The change in title to 'Secretary of State (*Estate*)', likely, derives from the reign of Elizabeth I (1558-1603).¹⁴⁶ From, at least, 1632, there were 2 Secretaries of State handling a Northern department and a Southern Department.¹⁴⁷

When the cabinet took over *executive* power from the privy council from the 17th century, the office of secretary became more important - since they commenced to run executive departments of government.¹⁴⁸ The title of 'secretary' should have changed then - since they were no longer secretaries of the *sovereign*. Rather, they became heads of government departments sitting in cabinet.¹⁴⁹ To prevent confusion it would have been better to call them something other than 'secretary' - as (later) happened, 'minister'.¹⁵⁰

- In 1782, a Foreign Office was separated out from the one dealing with home affairs. Thus, there was a Secretary for the Home Dept. and one for Foreign Affairs (the former being the more senior in time).¹⁵¹ Out of the Home Office (that dealing with domestic (home) affairs), in 1794, a Secretary of State for War was appointed. Then, in 1854, a

¹³⁹ e.g. S 1 (*Power by Order in Council to transfer functions of Ministers*). '(1) [HM] may by Order in Council - (a) provide for the transfer to any Minister of the Crown [(MC)] of any functions previously exercisable by another [MC]; (b) provide for the dissolution of the government department in the charge of any [MC] and the transfer to or distribution among such other Minister or [MC's] as may be specified in the Order of any functions previously exercisable by the Minister in charge of that department; (c) direct that functions of any [MC] shall be exercisable concurrently with another [MC], or shall cease to be so exercisable.'

¹⁴⁰ Brazier, n 21, p 58.

¹⁴¹ DM Walker, *The Oxford Companion to Law* ('1982) (*Treasury*) 'In the twelfth century the sitting of the *curia regis* to deal with financial business was known as the exchequer from the chequered cloth on the table to aid calculation.'

¹⁴² See JM Kemble, *The Saxons in England* (1876), vol 2, p 106.

¹⁴³ Likely, there were various scribes, what is referred to is the *head secretary* to the king. Also, the one handling the king's personal correspondence which involved secrecy (confidentiality), see generally J Otway-Ruthven, *The King's Secretary and the Signet Office in the XVth century* (1939).

¹⁴⁴ Thomas Wriothesley (1505-50) was secretary and Sir Ralph Sadley (appointed April 1540) became his deputy. See also, House of Lords Precedence Act 1539, s 6 (*extant*).

¹⁴⁵ See generally, Wade, n 15, pp 169-71. Also, Traill, n 11, ch 4.

¹⁴⁶ Traill, n 11, p 58.

¹⁴⁷ *Ibid*, p 77. See also J Sainty, *Officials of the Secretary of State 1660-1782* (1973).

¹⁴⁸ Chalmers, n 14, p 155 'The Secretary of State did not become the great executive officer he now is until the business formerly transacted by the privy council committees was transferred to government departments.'

¹⁴⁹ Wade (writing in 1931), n 15, p 170 'The Secretaries of State ceased in fact, though not in law, to be servants of the king and his [privy] council and become one of the motive forces in the cabinet.'

¹⁵⁰ The term (from the French, *ministre*, servant) seems to have come relatively later into English usage, in the 17th century, to describe politicians. See Oxford English Dictionary (*minister*). See also CT Onions, *The Oxford Dictionary of English Etymology* (1966).

¹⁵¹ Traill, n 11, pp 77-8. See also Walker, n 141 (*Secretary of State UK*).

Secretary of State for the Colonies. In 1858, one for India. In 1918, one for Air. In 1925, one for Dominion affairs. In 1926 one for Scotland.¹⁵² By 1931, there were 8 Secretaries of State, all represented in Cabinet - their departments being the: (a) Home; (b) Foreign; (c) Dominions; (d) Colonial; (e) War; (f) India; (g) Scottish; (h) Air, offices.¹⁵³

- There also arose other government departments. They were not presided over by ‘*Secretaries of State*’ as such - since they did not derive from the original office of the *King’s Secretary* of 1540 (and before). These departments were presided over by other ministers (usually cabinet ministers). However - as *per* usual - the descriptions did not follow rhyme or reason and were not coherently applied. Thus, in 1931, there were the following departments: (a) The Admiralty; (b) Board of Trade; (c) Ministry of Health; (d) Board of Education; (e) Ministry of Agriculture and Fisheries; (f) Ministry of Labour; (g) Post Office; (h) Ministry of Transport; (i) Ministry of Pensions; (j) Office of Works; (k) Lord Chancellor’s Office. There was also a Law Officer’s Department (i.e. the Attorney and Solicitor Generals).¹⁵⁴
- There were also other government organs not presided over by a government ministry.¹⁵⁵

Even when Wade wrote his first edition of *Constitutional Law* in 1931, it - surely - must have come to the mind of civil servants and ministers that all this terminology was becoming increasingly confusing. And, that there was no need to refer to a ‘*Secretary of State*’ since term - a creation of the prerogative¹⁵⁶ - was meaningless - the person *not* being a secretary to the sovereign *nor* employed by Crown other than in a formal sense (all being paid by Parliament from money raised through taxes). Thus, even in 1931, if not long before, it would have been sensible to abolish the title:

- ‘*Secretary of State*’ or ‘*Principal Secretary of State*’ and refer to a ‘*Minister*’;¹⁵⁷
- ‘*Under [ie. deputy] Secretary of State*’ (also, called a ‘*Parliamentary Secretary*’)¹⁵⁸ and refer to a ‘*Deputy Minister*’;
- ‘*Permanent Secretary of State*’¹⁵⁹ and refer to the ‘*Head*’ of the relevant ministry;
- ‘*Deputy Permanent Secretary*’ and refer to a ‘*Deputy Head*’;
- ‘*Assistant Permanent Secretary*’ and refer to an ‘*Assistant Head*’;
- ‘*Department*’ and refer to the relevant ‘*Ministry*’ (and, if not, to an ‘*Office*’).

The above would have brought intelligibility to matters. Further, any retention of the title of ‘*Secretary of State*’ by reason of the fact that it emanated from the original secretaries of the sovereign who had authority to countersign against the Great Seal or the sign manual (i.e. the signature) of the sovereign¹⁶⁰ - could be simply obviated by a *Government Act* providing for the modes of execution of legal documents evidencing the ‘*royal pleasure*’ (see **16**).¹⁶¹ It is not difficult.

(b) Ministries

At present, the titles of ministries and ministers are prolix and confused (confusing). For present ministries, see *Appendix B* and for present cabinet titles, see *Appendix C*. Such does not help understanding the British constitution. Nor assist with its transparency, accountability or business-like nature.

- In other countries (and in commerce) short form titles are usual. For example, ‘*Finance Minister*’ - as opposed to ‘*Chancellor of the Exchequer*’;
- As it is, it seems almost *de rigueur* for an incoming PM to change the titles to ministries - in many cases making them ever more prolix. The result is confusion and huge cost to the taxpayer.¹⁶²

¹⁵² See also Traill, n 11, chs 5-8.

¹⁵³ Wade, n 15, p 171. See also Traill, n 11, ch 4.

¹⁵⁴ *Ibid*, ch 4.

¹⁵⁵ *Ibid*, Wade (in 1931) cited some - such as the Public Trustee, Land Registry, Stationary office, Charity Commissioners, Public Record Office *etc.*

¹⁵⁶ Bradley, n 25, p 285 ‘the appointment of a Secretary of State [is a] prerogative act.’

¹⁵⁷ The term ‘*Secretary of State*’ at times was restricted to refer to *cabinet ministers* only (e.g. Chalmers, n 14 (writing in 1922), p 157 ‘The Secretary of State is a member of cabinet’...). However, this practice has not been consistent. Ridges (in 1934), n 16, p 157 ‘The Secretaries of State are now invariably members of the Cabinet, ...’

¹⁵⁸ Wade, n 15, p 164. Brazier, n 21, p 128 ‘the most junior minister in a department may be called the Parliamentary Under-Secretary of State, or simply the parliamentary secretary.’ Technically, the Parliamentary Secretary is only so called if the minister in charge is not a Secretary of State. Brazier, n 21, p 132.

¹⁵⁹ Walker, n 141, ‘In the civil service, the senior officers are known as the permanent secretary (or permanent under-secretary where the political head of the department is entitled secretary of state), deputy secretaries, and assistant secretaries.’

¹⁶⁰ All Secretaries of State are regarded as one. Brazier, n 21, p 129 ‘In legal theory there is only one secretary of state...’. This legal fiction can be dispensed with.

¹⁶¹ See pp 47-8.

¹⁶² Brazier, n 21, p 136.

An obvious solution is to refer to all cabinet bodies as ‘*Ministries*’ and the holder as the ‘*Minister*.’ Also, to keep the descriptive epithet as short as possible. Then, everyone will understand what it actually does. Thus, having regard to the present cabinet, it is suggested that the present ministries (and titles) in *Appendix B* and *Appendix C* could be altered to:

| <u>Title</u> | <u>Ministry or Office</u> |
|--|---|
| Prime Minister (also Civil Service Minister) | |
| Finance Minister | Finance Ministry |
| Foreign Minister | Foreign & Commonwealth Ministry |
| Home Office Minister | Home Ministry |
| Justice Minister | Justice Ministry |
| Defence Minister | Defence Ministry |
| Health Minister | Health Ministry |
| Energy Minister | Energy Ministry ¹⁶³ |
| Trade Minister | Trade Ministry |
| Employment Minister | Employment Ministry |
| Education Minister | Education Ministry |
| Environment Minister | Environment Ministry |
| Local Government Minister | Local Government Ministry |
| Transport Minister | Transport Ministry |
| Scotland, Wales & NI Minister | Scotland, Wales and Northern Ireland Ministry |
| Culture Minister | Culture Ministry |
| Leader of the House of Lords | Office of Leader of the House of Lords ¹⁶⁴ |

(c) Merge Ministries

If the corporate world teaches one thing, it is that the more departments and divisions there are in a company, the more bureaucratic, confusing and expensive things become. The same applies to government and to ministries.¹⁶⁵ The more of them that there are - and the more persons crowded around the Cabinet table - the more time is wasted, the more cost and confusion. There are presently 18 ministries. It is suggested that some mergers would be business friendly (and helpful to the general public) as well cut bureaucracy. Further, a 2 new ministries would gather together other quangos which are rather adrift at present. Thus:

- merge Dept for International Trade and the Export Credit Dept into the Trade Ministry (see above);
- upgrade the Scotland, Wales and NI offices into one ministry (see above);
- create an Energy Ministry (see above);
- merge various legal departments into a Legal Ministry - with the AG as head (see 17(b)).

It would be appropriate to limit the *maximum* number of ministries.¹⁶⁶

(d) Boards of Ministry

As in the corporate world, where it has worked very well, each ministry should have a board of directors. The chairman would be the relevant Cabinet Minister. The CEO (or head) would be the permanent secretary. That is, the most senior civil servant, now called the ‘*Head*’ of the ministry. It would seem wise to limit the number of directors (to say, 7). Also, stipulation would be made for there to be divisions. Surely, 5 would be enough all aspects of what they do.

In this way, ministries would have a structure and a chain of responsibility in which civil servants are located in divisions, the head of which sits on the relevant board of the ministry and reports to the most senior civil servant as head. The overall political head is the Minister who is responsible for the board to the cabinet and PM.

(e) Sinecures

¹⁶³ This would be a separate ministry. See also Ministry of Fuel and Power Act 1945.

¹⁶⁴ A previous article has suggested abolition, see McBain, n 2, pp 101-3.

¹⁶⁵ Wade (writing in 1931), n 15, pp 168-9 noted ‘It has been a source of criticism by many that the departments of central government are so organised that no one department may be entirely responsible for the administrative action required by a pressing problem calling for the intervention of government. Moreover the efficiency of ordinary routine administration suffers from divided control or, may be, overlapping.’

¹⁶⁶ Jennings, n 20, p 72 ‘The offices to be filled by the [PM] are not precisely defined in number...Further, the [PM] can, subject to certain restrictions, create new offices. He cannot, without legislation, add to the number of ministers and Parliamentary secretaries in the [HC]. But provided that Parliament will vote the money, he can create new offices...He can, too, create unpaid offices. But no new office (except that of Secretary of State) carries legal duties without legislation. The [HC] has, however, generally shown itself critical of the creation of new offices, especially when such creation has a political motive.’

Various ministerial titles are sinecures; also, very confusing to the public: *viz.*

- *First Lord of the Treasury;* (i.e. the PM)
- *Second Lord of the Treasury;* (i.e. the Chancellor of the Exchequer)
- *Lord Privy Seal;*
- *Chancellor of the Duchy of Lancaster;*¹⁶⁷
- *Paymaster General;*¹⁶⁸
- Secretary of State (including the First¹⁶⁹ and Second Secretaries of State);¹⁷⁰
- Under Secretary of State;¹⁷¹
- Parliamentary Secretary;¹⁷²
- Patronage Secretary.¹⁷³
- President of the Board of Trade.¹⁷⁴

Thus, those *in italics* are sinecures and it would be easier to refer to a cabinet minister (without portfolio, where necessary although the holders of these posts invariably hold others as well).¹⁷⁵ As mentioned, reference to a ‘*Secretary of State*’ would be replaced by one to a ‘*Minister.*’ Other titles such as ‘*Junior Lords of the Treasury*’ would be abolished if the Board is abolished (they could simply be termed junior ministers then). Nominal offices held in the royal household by government whips should, also, be abolished.¹⁷⁶

(f) Simplifying Titles

Also, other titles should be made more succinct and intelligible, *viz.*

- Lord Chancellor - merge with ‘Justice Minister’;¹⁷⁷
- Lord President of the Privy Council - change to ‘President of the Privy Council’ (cf. 16);
- Chancellor of the Exchequer - change to ‘Finance Minister’;
- Chief Secretary to the Treasury - change to ‘Head of the Finance Ministry’;
- Minister for the Civil Service - change to ‘Civil Service Minister’;
- Parliamentary Secretary to the Treasury - change to ‘Chief Whip’.

(g) Conclusion

If the UK is to play a global role, it is important that the structure of the UK government is clear and simple. At present, it is as clear as mud. However, it does not have to be. Ministeries and ministerial titles could be set out in a *Government Act*, and obsolete titles abolished. As importantly, since the endless changing of the titles of ministries and departments has incurred huge expense over the years, surely, agreement should be reached between the political parties (or a Government Act provide) that:

¹⁶⁷ Since the duchy no longer has any practical franchised Crown prerogatives it is suggested (in a *Crown Act*) that it be abolished, see McBain, n 1, p 54. The other titles in italics have been set out in a *Crown Act*, see McBain, n 1, p 91. Thus, they need not be referred to here, but could be if thought more appropriate.

¹⁶⁸ Now combined with that of Cabinet Office Minister.

¹⁶⁹ The first secretary is the Secretary of State for Foreign and Commonwealth Affairs.

¹⁷⁰ Any reference to these in legislation should now be to a cabinet minister. See also Secretaries of State Act 1926, s 1 (which will require amendment).

¹⁷¹ *Ibid.*, to a junior minister.

¹⁷² *Ibid.*

¹⁷³ This is the formal title of the Government Chief Whip. It is obsolete.

¹⁷⁴ *Is a Board of Trade needed?* Ridges (in 1934), n 16, p 167 ‘It has not been held worth while destroying the formal character of the board by changing it into a Ministry for Commerce and Industry as recommended by a committee in 1904.’ This board could be abolished and a formal board created for the Trade Ministry.

¹⁷⁵ The First Lord of the Treasury is the PM, the second is the Chancellor of the Exchequer. The President of the Board of Trade is also the Secretary of State for International Trade. The Lord Privy Seal is a cabinet minister (the privy seal was abolished in 1884). The Chancellor of the Duchy of Lancaster is the Cabinet Office Minister. The Paymaster General is a sinecure.

¹⁷⁶ De Smith, n 22, p 185 ‘Other government whips in the Commons hold nominal offices in the royal household or are styled junior lords of the treasury or merely assistant whips. In the lords all government whips hold nominal offices connected with the royal household.’ It is suggested these sinecures also be dispensed with. The Ministerial and other Salaries Act 1975, sch 1 pt 4 refers to the following posts appointed by the government in the royal household: (a) captain of the honourable corps of gentlemen-at-arms; (b) parliamentary secretary other than parliamentary secretary to the treasury; (c) captain of the queen’s bodyguard of the yeoman of the guard; (d) treasurer of [HM’s] household; (e) lord in waiting, (f) comptroller of [HM’s] household; (g) vice-chamberlain of [HM’s] household; (h) junior lord of the treasury; (i) assistant whip, house of commons.

¹⁷⁷ This assumes the LC’s powers of ecclesiastical patronage are transferred to the Archbishop of Canterbury (or abolished), see McBain, n 3, p 243. And, that his other powers are transferred to the Minister of Justice (or abolished).

- Titles of ministers and ministries should be kept very simple (e.g. Finance Ministry, Culture Ministry and Finance Minister, Culture Minister *etc*);
- The word ‘*department*’ should not be used, ministry (or office) is better.

13. QUANGOS

Wade (in 1931) noted the process of decentralisation. Thus, he stated:

Further evidence of the disintegration of legislative power may be found in the setting up of *ad hoc* bodies, which cannot be regarded as departments of state directly responsible to the legislature, to control the internal development of the country in a particular sphere, in whole or in part.¹⁷⁸

The bodies to which Wade was referring to were statutory.¹⁷⁹ It was only in the 1960’s that the term ‘*Quango*’ was coined (a quasi-autonomous non-governmental organisation) and there began a huge proliferation of the same. Today, as a prior article has indicated,¹⁸⁰ there are, at least, c 550 of them. Yet, even in 1965, Jennings - an expert on constitutional law - commented:

We shall soon reach the stage where it can seriously be asked whether we have democracy when we are governed by a vast array of boards, commissions, corporations, companies, authorities, councils, and the rest, whose relation to Parliament or to a local electorate is remote.¹⁸¹

14. QUANGOS - REFORM

The statement by Jennings in 1965 has come true. There is a waning oversight by - and accountability to - Parliament. While the process of decentralisation commenced in the 1960’s, it accelerated greatly with the ‘*Next Steps*’ programme in the 1990’s.¹⁸² This programme may have been beneficial in making the civil service more business-like. And, it identified parts of government that were better off in the private sector. However, such decentralisation, also, had consequences not fully grasped when it was initiated.¹⁸³ Some of these are apparent today *viz.*

- An excessive transfer of functions has eviscerated the ministries from which most quangos derive;
- there is no legal structure to many quangos - nor oversight;
- the creation of quangos has become almost uncontrollable.

Indeed, even a description of quangos and their categorisations is becoming impossible.¹⁸⁴ Also, there is a real problem of the accountability of quangos, as often noted and as summarised by Bradley (in 2018):

There are otherwise problems with administration by public body, these bodies not guaranteed to provide any greater independence from government than if the work were undertaken by civil servants in government departments with security of tenure. There are also serious problems of the parliamentary accountability of government departments that have no ministerial head...or public bodies that are at some length removed from their sponsoring department...’.¹⁸⁵

However, a relatively simple solution is at hand. Reform:

- the *first thing* should be to *excise* in-house civil service terminology. It obscures how many quangos there are (probably, c. 550 or more);
- the *second thing* should be to reduce the number of quangos by 50%. It is suggested, *inter alia*, that all pay review bodies, ombudsmen and regulators be consolidated into 1 Commission each. Also, consideration be given to consolidating c. 50 tribunals.
- the *third thing* is to call all:
 - internal committees of ministries - ‘*committees*’;

¹⁷⁸ Wade, n 15, p 103.

¹⁷⁹ Many general texts on quangos fail to note this. From Victorian times, there were many government boards, agencies *etc.* established by legislation (ie. statutory public corporations). However, such was with the consent of Parliament. And, this legislation defined their scope and ambits. However, these are (very different) to civil service established administrative bodies that have no Parliamentary sanction (by way of legislation) or oversight. See also Jennings, n 20, ch 4.

¹⁸⁰ McBain, n 4.

¹⁸¹ Jennings, n 20, p 125.

¹⁸² C Vincenzi, *Crown Powers, subjects and Citizens* (1998), p 171, ‘The great change came in 1990. Within a few months of Margaret Thatcher leaving office, the ‘*Next Steps*’ programme for transferring large chunks of Civil Service work to semi-autonomous agencies was initiated. By April 1996, there were 125 agencies established, with more than 70 per cent of the civil service working in them. In 1993, the minister responsible for the civil service described the changes as ‘*a genuine revolution in Whitehall*’ and the most radical changes in our public services since the Northcote-Trevelyn reforms of 1870.’ See also Bradley, n 25, p 290.

¹⁸³ This includes who in a quango can be subject to the common law offence of misuse of a public office.

¹⁸⁴ One of the best is given by Bradley, n 25, pp 311-329. Yet, although given in 2018, his description is already out of date since the civil service keep changing their own (self-made) categories of quangos (possibly, to avoid revealing how many there are).

¹⁸⁵ Bradley, n 25, p 328.

- external committees of ministries - ‘*independent committees*’;
- external public bodies - ‘*commissions*’.

In this way everyone can determine what’s what. These matters are set out in greater detail in the article. Further, although the Public Bodies Act 2011 enables a degree of culling quangos,¹⁸⁶ it is too complicated. They should be able to be abolished by way of SI, with a *Government Act* specifically providing that such could occur regardless of whether the body was statutory or not or whether other provision was made for the manner of its abolition. This is to forestall vested interests doing all they can to thwart the same, by asserting pretended (or otherwise legal difficulties).

In conclusion, the current number of c. 550 quangos should be reduced to some 80-100 public corporations. Also, many quangos should be brought in-house. Or exist as independent committees with the civil servants providing the secretary but not sitting on the boards). Or be merged or abolished.

15. PRIVY COUNCIL

The privy council was the precursor to the cabinet. The word ‘*privy*’ means ‘*small*’ or ‘*inner*’ since there was, also, a great council (*magnum concilium*) of the House of Lords - which council has not met since 1688.¹⁸⁷ The privy council - when meeting - comprises the ‘*Queen in council*’. Until the rising of the cabinet, the privy council was the sole repository of executive power.¹⁸⁸ However, today, it is a purely *formal* body.¹⁸⁹ Thus, Wade (in 1931) stated:

To-day the acts of the [PC] are purely formal and give effect to orders drawn up by government departments. These orders are made either by virtue of the common law prerogative, e.g., legislation for a colony with a non-representative assembly, or under the authority of an Act of Parliament. The council having ceased to be an advisory council of the Crown, meets for the purpose of making orders, issuing proclamations or performing formal State acts, such as admission to ministerial office¹⁹⁰... The office of privy councillor is to-day an office of honour. Appointments are made by the king on ministerial advice.

There are three classes of members. By convention all cabinet ministers become privy councillors, since the oath (or affirmation in lieu of an oath) binds to secrecy. Holders of other high offices of a political character, such as archbishops, lords justices of appeal, are usually sworn members of the council. In addition the office is a recognised reward for faithful public and political service ... The council numbers about 320 members at the present day. Members are entitled to the prefix, ‘*Right Honourable*’. Alienage is a disqualification, but on naturalisation an alien becomes qualified for membership.¹⁹¹... The council is convened by the clerk of the council, whose office dates back to the sixteenth century. Meetings of the council at the present day to give formal effect to executive orders consist only of four or five members. The only connecting link between the modern cabinet and the council is the oath and obligation of secrecy which binds cabinet ministers as members of the council.¹⁹²

Also:

The king can do no wrong [doctrine of perfection]... The king cannot be sued or otherwise held responsible for executive actions. ... The same is true of Orders in Council. The councillors present at a formal meeting of the privy council are legally responsible for the contents of the documents to which the [privy] council gives its sanction. Politically the responsibility is that of the departments which draw up the documents laid before the council. The actions of the departments are attacked through the ministers in charge in Parliament.¹⁹³

At present, the privy council has c. 700 (!) members.¹⁹⁴ These include (a) senior Church of England clerics;¹⁹⁵ (b) senior judges; (c) cabinet (and ex-cabinet) ministers; (d) ‘*eminent*’ people appointed by the Crown on the recommendation of the PM.

¹⁸⁶ Described by Bradley, n 25, pp 325-8.

¹⁸⁷ Wade, n 15, p 157 ‘The House of Lords is still in theory a council of the Crown. It has not been summoned, as such, since 1688...’ See also Traill, n 11, p 15 and Bowyer, n 10, p 123.

¹⁸⁸ Ibid, p 155 ‘The king in council, or the privy council, was until recently the sole repository, in theory of law, of executive power.’

¹⁸⁹ WI Jennings, *The British Constitution* (1965), p 117 ‘The privy council is a purely formal body and no discussion takes place...’ De Smith (in 1998), n 22, p 160 ‘The business is purely formal, approving and recording decisions already taken elsewhere.’ It may be noted that the Scottish privy council merged with the English one in 1708. There is a separate privy council for NI. However, it is moribund since no new appointment to it has been possible since 1973, Northern Ireland Constitution Act 1973, s 32(3). See De Smith, n 22, p 159.

¹⁹⁰ Wade also noted the Judicial C-ee of the Privy Council. A previous article has suggested it be abolished, merging with the Supreme Court.

¹⁹¹ Wade, n 15, pp 156-7 ‘Although all members of the Cabinet are privy councillors, it is not as a committee of the council that they meet, but as ‘*His Majesty’s Servants*.’

¹⁹² Ibid, p 157.

¹⁹³ Ibid, p 66.

¹⁹⁴ Whitaker, *Almanac 2021*, pp 118-2.

¹⁹⁵ Feilden, n 13, p 37 ‘In 1387, archbishop Courteney [of Canterbury] formally ‘claimed for himself and his successors in office, the right of assisting at all the sittings of the royal council...’

16. **PRIVY COUNCIL - REFORM**

The privy council could do with considerable reform.

- in earlier times, it was much smaller and closely connected to executive government (i.e. it consisted of politicians).¹⁹⁶ Coke thought there were only 12 or so members of the privy council in ancient times;¹⁹⁷
- Charles II in 1679 limited the privy council to 30 members of which 15 were to be principal officers of state (politicians) and the remainder to be 10 peers and 5 commoners chosen by the sovereign.¹⁹⁸

In Victorian times, the privy council began to swell.¹⁹⁹ Doubtless, these increases were due to the fact that the power of appointment was in hands of the sovereign. Appointment could be oral and not even under seal.²⁰⁰

(a) **Cutting the Numbers**

The privy council is clinically obese. Further, given the doctrine of the separation of powers, it should not contain judges (and there is no need for it to do so).²⁰¹ Nor Church of England clerics. Nor is it the place for the great and the good.

- If not abolished (see (c) below) the privy council should return to what it was. An assembly of senior politicians who have advised the sovereign;²⁰²
- Thus, a *Government Act* could (should) limit the privy council to cabinet and ex-cabinet ministers.

A reduction in numbers (besides saving much time and money) would maintain things more secret. Privy councillors are required give an oath - or affirmation - of secrecy.²⁰³

(b) **Legal Acts**

In practice, the privy council rarely assembles in full.²⁰⁴ Instead, daily business is conducted by 3-4 councillors who are part of the government. However, such prevents any real oversight or accountability. Therefore, it would seem apposite that all its legal business be transferred to the Cabinet Office - or to other relevant ministries.²⁰⁵ With respect to its activity, the privy council had various legal powers in the criminal field in 1820.²⁰⁶ These have all gone and the legal acts of the privy council, today, are mainly limited (it appears) to the expressing the royal will (the '*royal pleasure*') by means of:²⁰⁷

- Statutory Instruments, that is, orders in Council ('SI');²⁰⁸
- Proclamations;
- Orders, commissions or warrants under the royal signature (sign manual);²⁰⁹

¹⁹⁶ See e.g. JEA Jolliffe, *The Constitutional History of Medieval England* (1948), ch 5.

¹⁹⁷ E Coke, *Institutes of the Laws of England* (1817 ed), vol 4, p 53.

¹⁹⁸ Bowyer, n 10, p 124 who noted that: 'Privy councillors are made by the sovereign's nomination, without either patent or grant..'. See generally, Feilden, n 13, ch 2.

¹⁹⁹ Whitaker, *Almanac* 1869, p 74, records 191 privy councillors.

²⁰⁰ Chitty (writing in 1820), n 9, p 410 'Their number depends on the royal pleasure; they may be appointed merely by the royal nomination, without any particular ceremony or instrument...'

²⁰¹ In the past, at times, judges were excluded.

²⁰² That said, the sovereign already has political advisers (also, legal advisers and clerics) in the royal household.

²⁰³ De Smith, n 22, p 160 'Upon admission, a new privy counsellor must swear an oath or make an affirmation not to divulge any matter disclosed to him confidentially in the council. The general understanding used to be that the secrecy of cabinet proceedings is preserved by the undertaking thus given; but this view cannot be sustained either by a literal interpretation of the oath (because the cabinet is neither the privy council nor a committee of the privy council) or after the decision in *Attorney-General v Jonathan Cape Ltd* (the Crossman Diaries case).'

²⁰⁴ Ibid, p 160 'On rare ceremonial occasions a larger meeting, including persons other than ministers, is convened - for example, to proclaim a new monarch, or to hear the monarch give consent to a royal marriage.' The former is not legally required (it is ceremonial), the latter could (should) be in writing.

²⁰⁵ Chalmers, n 14, p 231 (5th ed, 1936) 'The council has certain administrative work assigned to it respecting the universities of Oxford and Cambridge and Scotland. Its other functions are not important.' See also Ridges, n 16, p 125. The work in respect of the universities could be handled by the Education ministry. So too, charters *re* learned societies which could be handled by the relevant ministry.

²⁰⁶ Chitty (writing in 1820), n 9, p 411.

²⁰⁷ Anson, n 17, p 62 'The king's pleasure is expressed for administrative purposes in one of three ways: .1. By order in council. 2. By order, commission, or warrant under the sign manual. 3. By proclamations, writs, letters patent, or other documents under the great seal.' He then discussed the meaning of the same. Ibid, pp 62-70.

²⁰⁸ Dicey (in 1948), n 18, p 326 'An order in council is made by the king '*by and with the advice of the privy council*'; and those persons who are present at the meeting of the council at which the order was made, bear the responsibility for what was there done.' However, no '*advice*' of the privy council, is given as such since there is no discussion.

²⁰⁹ Ibid. 'The sign-manual warrant, or other document to which the sign-manual is affixed, bears in general the countersignature of one responsible minister or of more than one; though it is not unfrequently authenticated by some one of the seals for the use of which a Secretary of State is responsible.'

- Writs, patents, letters or other documents under the great seal.²¹⁰

As to these:

- **SI.** Ministries now deal with the SI which relate to their areas of expertise²¹¹ and are responsible for the same.²¹² Further, the authority to issue these is now (in almost all cases) statutory - not deriving from the Crown prerogative.²¹³ A *Government Act* could provide for the latter being issued by the relevant ministry (the Cabinet Office otherwise). The effect would be to make all SI statutorily derived and, thus, more accountable than the process under the Crown prerogative which is by rote without any discussion or analysis;²¹⁴
- **Proclamations.** These are now few and a *Government Act* could provide for any Crown prerogative being replaced by legislation (that is, proclamations only being issued when permitted by legislation).²¹⁵ Also, their mode of execution.²¹⁶ This would make the same more accountable;
- **Sign Manual.** In the case of execution under the royal sign manual a *Crown Act* could provide for the same.²¹⁷ And, a *Government Act* for countersignature by any cabinet minister (or other minister authorised by the PM);
- **Great Seal.** In respect of execution under the Great Seal, a *Crown Act* could provide for the same. Also, their mode of execution.²¹⁸ The need for documents to be under the Great Seal, in any case, could be reduced - all of the same could be by way of an SI, which makes such more accountable to Parliament.²¹⁹ Thus, the Great Seal could be abolished.

In any case, the above indications of the ‘*royal pleasure*’ (an anachronistic survival)²²⁰ should now be effected by the Cabinet Office (or Parliamentary clerks) since, as Chalmers and Asquith noted nearly 100 years ago:

The privy council has at present no deliberative functions, but is to all intents and purposes a constitutional machine for carrying into effect the deliberations of cabinet.²²¹

More recently, De Smith (in 1998) observed:

The functions now performed by the privy council and its committees could be distributed tomorrow among other existing organs of government, and few people in the [UK] would notice any difference.²²²

Since the Crown has no executive function and exercises only a formal role, it has no control over privy council matters. Thus, there is no discussion and no accountability. However, if these legal acts were removed from the Crown by way of a *Government Act*, the legal fiction that ministers are responsible for the acts of the Crown (including the sovereign) could be dispensed with - since the issue, then, becomes one of legal acts of ministers who are responsible to Parliament (and the courts) for such. In particular, the following may be noted:

²¹⁰ See McBain, n 1, p 72, referring to a *Crown Act*, s 12.

²¹¹ Noted by Chalmers (as long ago as 1922), n 14, p 152 ‘Most of the business transacted by the privy council has now been transferred to other departments of government.’

²¹² AB Keith, *The King and the Imperial Crown* (1936), p 70 ‘The responsibility for making the order plainly cannot rest with a small body of members of the council, who often know nothing whatever regarding the order laid before them. The responsibility rests with the minister in whose department the order is drafted.’ The Government Legal Department drafts the vast majority of SI and there is no reason why they could not draft all of them.

²¹³ See De Smith, n 22, p 161 (in 1998, he referred to ‘those few orders in council...still made under prerogative powers (for example, for altering the constitution of the diminishing group of colonies, for altering rates of pensions for the armed forces, or for dealing with recruitment to the civil service, coinage).’

²¹⁴ SI deriving from the prerogative are not discussed at the privy council meeting. Their titles are read out and they are orally approved by the sovereign, with the clerk of the council attaching a seal. Hardly, a satisfactory process. See also De Smith, n 22, p 161.

²¹⁵ Proclamations are not the same as legislation and they cannot change the common law or legislation, see McBain, n 130, pp 40-3. See also Ridges, n 16, p 200 (in most cases they have been replaced by a SI). There is no reason why proclamations could not be drafted by the Parliamentary clerks in the case of those relating to Parliament and that they be in a standard form, laid down in a SI, see McBain, n 2, pp 152-3. As to any others required by legislation, the Cabinet Office or Government Legal Dept (GLD) or the Office of the Parliamentary Counsel could draft the same. See also De Smith, n 22, p 160, (*re* proclamations for summoning and proroguing Parliament, declaring and terminating war, declaring a state of emergency). See also Crown Office Act 1877, s 3 (*rules re proclamations*).

²¹⁶ See McBain, n 2, p 73. In the case of Parliament, a *Parliament Act* could provide for their execution by the relevant clerk (who is not a clerk of the Crown but one of Parliament).

²¹⁷ *Ibid*, p 73. The need for various documents to be under the royal sign manual should be considered.

²¹⁸ *Ibid*, p 72.

²¹⁹ For when the Great Seal is required, see p 72. However, for the ratification of treaties, see now Constitutional Reform and Government Act 2010, ss 20-5.

²²⁰ Bradley, n 25, p 259 ‘The Crown retains certain powers to legislate under the prerogative by Order in Council or by letters patent. Described as an ‘*anachronistic survival*’ [citing *R (Bancoult) v Foreign Secretary (No 2)* UKHL 61, [2009] 1 AC 453, at para [69] (Lord Bingham)] this power remains in use for the surviving overseas territories and the Channel Islands.’ It would seem more appropriate (and democratic) that the same be under legislative SI, in order to be subject to review by Parliament.

²²¹ D Chambers & C Asquith, *Outlines of Constitutional Law* (1922), p 146 who also (following Anson) described it as ‘the machinery by which the cabinet expresses the royal pleasure.’

²²² De Smith, n 22, p 159.

- sometimes, *ad hoc* committees of the privy council have conducted inquiries.²²³ It would seem more appropriate and accountable for the same to be handled by judges or Parliamentary committees;
- committees of the privy council also deal with institutions and companies established by royal charter.²²⁴ Since these are legal matters, it would seem more appropriate - and accountable - that such be handled (and their continued worth determined) by the Ministry of Justice or a Legal Ministry²²⁵ or the Government Legal Department.

(c) **Abolition**

Consideration should be given to abolition of the privy council since it is - these days - only a formal body. One whose acts emanate from the Cabinet Office. Thus, it has become a sinecure for all but 3-4 persons who effect legal matters in its name, but who could as appropriately do so from the Cabinet Office which office is subject to the cabinet and to Parliament. As for the Judicial Committee of the Privy Council which handles various legal appeals, it is a statutory body distinct from the privy council (in any case a prior article has suggested that it be abolished and merged with the Supreme Court).²²⁶

In conclusion, consideration should be given to abolishing the privy council. Or, reducing its size in order to return it to the political consultative body that it once was.

17. **LAW OFFICERS**

There are two English law officers. The Attorney-General ('AG'). And, the Solicitor-General ('SG'), who acts as his deputy.²²⁷ Originally, they were officers of the sovereign providing him with legal advice. However, they have long been political appointments made by the PM. Both handled criminal work for the Crown. However, in 1879, a Director of Public Prosecutions ('DPP') took over the same. The DPP is appointed and superintended by the AG. The DPP directs the Crown Prosecution Service (the first prosecution authority of general scope in English history).²²⁸

(a) **Solicitor-General**

As Walker noted, the title of AG was applied to the officer performing those functions in 1461. And, that of '*King's solicitor*' became that of the '*Solicitor General*' in 1515.²²⁹ There are separate SG's for the Duchy of Lancaster, the County Palatine of Durham and Duchy of Cornwall.²³⁰

(b) **Reform**

The title of the SG means nothing today since the person does not have to be a solicitor. Thus, '*Deputy AG*' would seem more intelligible. Further, there seems little purpose (but additional cost) for there being separate offices for the AG and the SG. The latter could be merged into the former. Indeed, as mentioned in the article on quangos,²³¹ there are just too many *legal* departments relating to government (on top of the Ministry of Justice).²³² Thus, there is the:

- Government Legal Department (GLD);²³³
- Government Legal Profession;²³⁴
- Office of the Parliamentary Counsel;²³⁵
- Official Solicitor and Trustee;²³⁶

²²³ See e.g. Bradley, n 25, p 255 (inquiries *re* phone tapping, invasion of Iraq, charter to regulate the newspaper industry).

²²⁴ Ibid, p 255 'Much of the work of the privy council is spent dealing with institutions and companies established by royal charter, of which there are in excess of 900.'

²²⁵ See 17(b).

²²⁶ See McBain, n 3, p 200.

²²⁷ Ridges, n 16, p 155 'When the office of [AG] is vacant, the full duties of his office devolve upon the [SG]'

²²⁸ M Sunkin & S Payne, *The Nature of the Crown* (1999), ch 6 by N Walker. See also Law Officers Act 1997, s 1, 'Any function of the [AG] may be exercised by the [SG].' Section 2 enables the SG to exercise the functions of the Advocate General for NI.

²²⁹ Ibid, p 139.

²³⁰ It has been suggested that the Duchy of Lancaster be abolished and merged with the Crown Estate and that counties palatine be abolished, see McBain, n 1, p 54. The SG for the duchy of Cornwall could, also, be abolished. It is unclear how the duchy acquired any right to an AG or a SG. It could only have been by way of charter or legislation. In any case, the SG can be abolished, being merged with the AG.

²³¹ See McBain, n 4.

²³² Ibid, n 4, p 7.

²³³ Formerly, the Government Legal Service 'we provide legal advice on the development, design and implementation of government policies and decisions and represent the government in court... Its head is the Treasury Solicitor.' The title could be modernised to the '*Head*' (or CEO) of the GLD.

²³⁴ 'provide legal advice to the government and represent it in court.'

²³⁵ 'specialise in drafting legislation.'

²³⁶ The Official Solicitor to the Senior Courts and the Public Trustee are distinct independent office holders. However, the Official Solicitor and Public Trustee (OSPT) are conjoined bodies and are treated as an arm's length body of the MOJ. Both 'help people who are vulnerable because of their lack of mental capacity or young people to take advantage of the services offered by the justice system.'

- Office of the Public Guardian,²³⁷
- DPP and Crown Prosecution Service (they undertake criminal prosecutions).

The result is confusing to anyone not a lawyer (and, often, confusing to lawyers). Further, the title ‘*Official Solicitor*’ is meaningless today since the holder does not have to be such. And, the Official Solicitor and Trustee and the Public Trustee could, profitably, be merged - together with that of the Office of Public Guardian which also deals with vulnerable people. Indeed, time and money could be saved by merging all these into one Legal Department, itself, a ministry (the ‘*Legal Ministry*’). Or, all of the same becoming part of the MOJ. The head could be the AG who - these days - anyway tends to sit in (or attend) cabinet, recognising his political function.²³⁸ Such ministerial responsibility, and accountability, to Parliament are important. There should be a chain of accountability since all the above are performing a *public function*. Yet, there is none.

(c) Legislation

Antiquated legislation, the Law Officers Fees Act 1872, s 1,²³⁹ deals with payment to the law officers for execution under the Great Seal. It should be repealed (the salaries paid to the AG and SG should cover the same, this being part of their general employment).²⁴⁰

In conclusion, the title of SG could be modernised to that of Deputy AG. And, the office merged with that of the AG. Other government offices could be merged into one Legal Ministry (or made part of the MOJ). Everyone (apart from those with vested interests) would, likely, appreciate the simplification.

18. CIVIL SERVICE

Vincenzi noted:

All the ordinary administrative functions of government are carried out by civil servants. In addition, senior civil servants provide expert advisory support to ministers...The professional civil service is a Victorian invention. Civil servants were originally no more than the handful of employees of the royal household.²⁴¹

The *legal fiction* that civil servants are servants of the Crown derives from the latter statement. Civil servants like ministers, *were*, originally, employees (servants) of the Crown. They are no longer so. They are paid for by the taxpayer, their political head is the PM (the Civil Service Minister, since 1968)²⁴² and they are accountable to Parliament. Recognition of this process by the government may be seen by juxtaposing two statements of Bradley:

In 1996 the government defended ‘the fundamental principle that civil servants are servants of the Crown, accountable to the duly constituted government of the day, and not servants of the house.’²⁴³

And,

In 2014, the Cabinet Office amended its approach to civil service evidence by including within the category of civil servants, who could be expected to account to Parliament ‘*senior responsible officers*’ for major projects, along with the formally designated ‘*accounting officer*’ for each department.²⁴⁴

Thus, it is important that a *Government Act* reflect this - as opposed to a legal fiction - since the sovereign no longer exercises *executive power*.

- If all Crown prerogatives were placed in legislation (those obsolete being abolished) it would be possible for any legal proceedings (brought in respect of irregular acts of civil servants when performing a public function) to be prosecuted by proceeding directly against the relevant ministry - and not the Crown which, in actuality, has no executive power and is only responsible for the same by way of a legal fiction;²⁴⁵
- At present, the Crown Proceedings Act 1947, s 17 provides that civil proceedings against the Crown must be brought against the relevant government department (and, if none, against the Attorney-General).²⁴⁶ In due course, this could

²³⁷ ‘helps people in [E & W] to stay in control of decisions about their health and finance and make important decisions for others who cannot decide for themselves.’

²³⁸ As Walker, n 228, p 164 noted, the AG is undertaking political functions ‘Accordingly, mechanisms of political accountability are required in order to scrutinize such decisions. For this to be achieved, however, the law officer has to be linked in a chain of responsibility to Parliament or some other democratically representative forum. This becomes more difficult if the [AG] is outwith the political process, and may involve a denial or an attenuation of accountability.’

²³⁹ S 1 (*application of certain fees payable to law officer*) ‘All fees payable to or to the credit of any law officer or his clerk...on account of...any gift, grant, or writing under the Great Seal, or any warrant for the same, or on account of any business in respect of which a salary is for the time being paid to such law officer out of moneys provided by Parliament, shall be paid to such person and in such manner as the Treasury may from time to time direct, and shall be carried to the Consolidated Fund.’

²⁴⁰ The Great Seal (Offices) Act 1874 should also be repealed, any relevant material inserted into a Crown Act, see McBain, n 1, p 72.

²⁴¹ Vincenzi, n 182, pp 168-9.

²⁴² De Smith, n 22, p 172.

²⁴³ Bradley, n 25, p 111.

²⁴⁴ Ibid.

²⁴⁵ In the case of statutory public corporations, they would be proceeded against directly.

²⁴⁶ See also Barnett, n 24, p 238 who also notes: ‘In Scotland, actions against [UK] departments may be instituted against the Advocate General for Scotland, and actions against Scottish devolved bodies instituted against the Lord Advocate.’

be amended to enable civil proceedings to be brought, in respect of governmental acts, to be brought against the relevant government department (and, if none, against the Attorney-General).²⁴⁷

(a) Legislation

The Constitutional Reform and Governance Act 2010, ss 1-17 made provisions on the Civil Service. Thus, s 2 established a Civil Service Commission.²⁴⁸ s 3 (*Management of the Civil Service*) provides:

(1) The Minister for the Civil Service has the power to manage the civil service (excluding the diplomatic service). (2) The Secretary of State has the power to manage the diplomatic service. (3) The powers in [ss] (1) and (2) include (among other things) power to make appointments. (4) But they do not cover national security vetting (and, accordingly, [ss] (1) and (2) do not affect any power relating to national security vetting). (5) The agreement of the Minister for the Civil Service is required for any exercise of the power in [ss] (2) in relation to - (a) remuneration of civil servants (including compensation payable on leaving the civil service), or (b) the conditions on which a civil servant may retire. (6) In exercising his power to manage the civil service, the Minister for the Civil Service shall have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and of the conventions governing the relationship between Parliament and [HM's] Government.

Other sections relate to other statutory management powers (s 4) codes of conduct (ss 5-9), appointment (ss 10-4), special advisers (ss 15-6), additional functions of the commission (s 17).²⁴⁹ These should be set out in a *Government Act*. However, the following may be noted:

(b) Corporate Structure Needed

As noted in the article on quangos, the Civil Service needs a corporate structure. One which could incorporate many distinct quangos at present. Thus, there should be a Civil Service Board (a merged board of the Civil Service Board and the Cabinet Office Board) with the following divisions:

- CS Human Resources;
- CS Infrastructure;
- CS Goods and Services;
- CS Support and Networks;
- CS Reform.

Such is discussed in the article on quangos and will not be considered further.²⁵⁰

(c) Supremacy of Parliament

As previously noted, the Crown no longer plays an executive role. Thus, if the civil service is made accountable to Parliament in legislation (i.e. the legal fiction of the Crown is dispensed with and this reality legally provided for) then wording in s 3(6) of the Constitutional Reform and Government Act 2010 (*'and of the conventions governing the relationship between Parliament'*) may be dispensed with. The management of the civil service should be that of the Cabinet Office Board, which Board is subject to cabinet. In cabinet, the PM - as the minister for the Civil Service - should be responsible (accountable) for the same. Thus, a clear chain of accountability is established, viz.

- liability for the acts of the civil service are the responsibility of the Board;
- the acts of the Board are the political responsibility of the Civil Service Minister (the PM);
- his acts are accountable to Parliament.

Thus, s 3 (which is opaque) should be re-cast in part to make clearer the chain of responsibility (which both protects individual civil servants and the Board). A separate power to manage the diplomatic service is not required.²⁵¹

19. CENTRAL GOVERNMENT - CONCLUSION

Central government is too convoluted²⁵² and it has been de-centralised too much. It has lost its structural form and it is growing like Japanese knotweed - with all the consequent cost, inefficiency, unintelligibility and people

²⁴⁷ Elsewhere (see 17(b)), it has been suggested that the AG become head of a Legal Ministry. This should enable all legal proceedings in respect of governmental acts to be brought against the same - saving time, money and ensuring a greater degree of expertise than might be available from individual ministries. In the case of public bodies (statutory and chartered) they would be proceeded against directly.

²⁴⁸ (*Establishment of the Civil Service Commission*). (1) There is to be a body corporate called the Civil Service Commission ("the Commission"). (2) Schedule 1 (which is about the Commission) has effect. (3) The Commission has the role in relation to selections for appointments to the civil service set out in [ss] 11 to 14. (4). ' See also- [s] 9 (which sets out the Commission's role in dealing with conduct that conflicts with civil service codes of conduct); (b) [s] 17 (under which the Commission may be given additional functions).

²⁴⁹ See generally Barnett, n 24, ch 5.

²⁵⁰ See n 4.

²⁵¹ See Constitutional Reform and Governance Act 2010, s 3(2) (see (a) above). It is not needed since each minister would be responsible for their own ministry and to cabinet, of which the PM would be *primus inter pares*.

²⁵² De Smith, n 22, p 188 quoted B Chapman, *British Government Observed* (1963), p 18 who referred to the 'rich Byzantine structure' of central government.

milking the system. However, giving it back some structure would not be difficult. Thus, consideration should be given to:

- reducing the number of ministries;
- cutting c. 550 quangos to 80-100 PC's;
- abolishing the Privy Council (or reducing the number of members).

Would the taxpayer be appreciative? Doubtless.

20. LOCAL GOVERNMENT

The structure of local government is something of a mystery even to those who work in it. When Wade wrote in 1931, he referred to (a) county councils; (b) county borough councils;²⁵³ (c) borough councils; (d) urban district councils; (e) rural district councils; and (f) parish councils.²⁵⁴ He also noted the confusing terminology.²⁵⁵ Today, the position is even more complicated. Indeed, the current system of councils in the UK is anomalous and conducive to wasting vast sums of money. The LGiU (the local authority membership organisation)²⁵⁶ calculate that there are:

- 408 principal councils in the UK (343 in England, 32 in Scotland, 22 in Wales and 11 in NI).
- These comprise 26 county councils, 192 district councils, 190 unitary councils and 10 Combined Authorities.

Also:

- 11,930 local councils in the UK, viz. c. 10,000 (!) in England, 1100 in Scotland, 730 in Wales, none in NI.
- These include town, village, parish, community and neighbourhood councils (in England they are, generally, called 'town, village, parish or neighbourhood' councils; in Scotland and Wales, 'community' councils).

(a) England

There appear to be 343 councils in England,²⁵⁷ comprising:

| | |
|------------------------|---|
| 26 | County councils (upper tier) ²⁵⁸ |
| 192 | District councils (lower tier) ²⁵⁹ |
| 32 | London <i>boroughs</i> (unitary) ²⁶⁰ |
| 36 | City Councils (that is, metropolitan boroughs)(which are unitary) ²⁶¹ |
| 55 | Unitary authorities; ²⁶² |
| 2 <i>sui generis</i> : | (a) City of London Corp ('CoL') ²⁶³ & (b) Isles of Scilly (both unitary) |

There are, also, 10 groups of councils called '*Combined Authorities*'.²⁶⁴ Since Scotland, Wales and NI have **unitary** authorities, consideration should be given to:

- Making all English councils *unitary* (by merging county and district councils);
- Making more Combined Authorities - but calling them '*councils*' for consistency;
- Reducing the 32 London *boroughs* to 16 London *councils*;
- Retaining the Isles of Scilly & the CoL (which are unitary).

The purpose of this should be to cut out the huge bureaucracy engendered by councils endlessly communicating with each other. Further, cutting out the word '*borough*' - in the case of the London boroughs - will enable all charters relating to the same (which are obsolete) to be automatically cancelled. The words '*county*', '*district*' and '*city*' councils and '*metropolitan borough*' should also be dispensed with, to remove confusion of nomenclature. Thus, only the word '*council*' should be used in all instances - so that everyone (ordinary people included) know what they are dealing with. The intention in the end should be to have in England only:

²⁵³ These referred to boroughs governed by charters (83 of them in 1931).

²⁵⁴ Wade, n 15, p 247 he noted as to (f), 'In small rural parishes the parish meeting has some powers.'

²⁵⁵ Ibid 'It is one of the most confusing features of the chaos of rules and regulations which pass under the name of local government that different institutions are called by the same name.' In particular, he noted that the word '*country*' as a unit of local government was not the same as the geographic county.

²⁵⁶ See *website lgiu.org*

²⁵⁷ Cf. Barnett, n 24, p 286 who refers to 27 county councils and 201 district councils.

²⁵⁸ See Whitaker, *Concise 2020*, p 258.

²⁵⁹ Ibid, pp 259-61.

²⁶⁰ Ibid, p 265.

²⁶¹ Ibid, p 262.

²⁶² Ibid, p 263.

²⁶³ Ibid, p 266-8.

²⁶⁴ viz. (1) Cambridgeshire and Peterborough; (2) Greater Manchester; (3) Liverpool City; (4) Sheffield City; (5) Tees Valley; (6) West Midlands; (7) West of England; (8) North East; (9) West Yorkshire; (10) North of Tyne. See Whitaker, *Concise 2020*, p 258.

- 16 London Councils (and 1 *sui generis*, CoL);
- 1 *sui generis* (Isles of Scilly);
- c. 100 Combined Councils.

Thus, all *county*, *district* and *city* councils as well as *unitary* authorities would merge into c. 100 (Combined) councils. This could be achieved relatively easily by letting these bodies, themselves, determine with whom they will merge (assuming the same are juxtaposed). The geographic term '*county*' (formerly called a '*shire*') should be done away with, as confusing.

In conclusion, England should only have 117 or so 'Councils.'

(b) Scotland

Scotland has 32 *unitary* councils (local authorities).²⁶⁵ However, it has (long) been recognised that this is too many. Thus, consideration should be given to reducing the number to c. 16 - so that the councils can cut out bureaucracy and offer a better service. Further, there are other administrative divisions still employed in Scotland, *viz.*

1369 community council areas (with 1129 active community councils)

34 counties & shires (older divisions)

871 civil parishes (an older division - still taken into account for some statistical purposes)

33 land registration areas.²⁶⁶

Consideration should be given to reducing the number of community councils by c.2/3rds.²⁶⁷ Also, wholly abolishing the use of terminology in the case of the next two. Also, reducing the 33 land registration areas to be the same as the 16 new councils.²⁶⁸ As with England, such could be achieved organically, by allowing councils to merge with whom they will. This could be more easily achieved than in the case of England given the present lower number of principal councils.

In conclusion, Scotland should (perhaps) have c. 16 'Councils.'

(c) Wales

Wales has 22 *unitary councils*.²⁶⁹ However, it has long been recognised this is too many. Further, the nomenclature is bewildering in that some are called '*councils*', others '*county councils*', others '*county borough councils*' and others '*city councils*.' Thus, the number should be reduced to c. 6 councils - with all called '*council*' in order to simplify things. Wales also has some 730 *community and town councils*.²⁷⁰ Again, it is suggested that this number be greatly reduced, for ease of administration, reference *etc.*

In conclusion, Wales should (perhaps) have c. 6 'Councils.'

(d) NI

NI has 11 *district councils*.²⁷¹ Consideration might be given to a reduction to 5 - using (perhaps) less lengthy titles. Also, employing only on the word '*council*' (as opposed to '*district*', '*borough*' or '*county*' council). There are no community councils.

In conclusion, NI should (perhaps) have c. 5 'Councils.'

(e) Conclusion

Effort should be made to bring consistency to the concept of councils in the UK. Also, increasing their size to make them more effective (as well as reduce costs *etc.*). Thus:

- All of the UK (including England) should have (combined) councils only;

²⁶⁵ *viz.* (1) Aberdeen City; (2) Aberdeenshire; (3) Angus; (4) Argyll & Bute; (5) Clackmannanshire; (6) Dunfries & Galloway; (7) Dundee City; (8) East Ayrshire; (9) East Dunbartonshire; (10) East Lothian; (11) East Renfrewshire; (12) Edinburgh City; (13) Falkirk; (14) Fife; (15) Glasgow City; (16) Highland; (17) Inverclyde; (18) Midlothian; (19) Moray; (20) North Ayrshire; (21) North Lanarkshire; (22) Orkney; (23) Perth & Kinross; (24) Renfrewshire; (25) Scottish Borders; (26) Shetland Islands; (27) South Ayrshire; (28) South Lanarkshire; (29) Stirling; (30) West Dunbartonshire; (31) Western Isles; (32) West Lothian. See Whitaker, *Concise 2020*, p 278.

²⁶⁶ See Wikipedia, *Community Council Areas in Scotland*. This data may not be wholly accurate or up to date.

²⁶⁷ The problem is, the more community councils there are, they more confusing it can become and the geographical range of the council less (also, a number of community councils seem not to be active at all).

²⁶⁸ Wikipedia also notes that Scotland is divided up into areas for: (a) electoral & valuation purposes; (b) health; (c) transport; (d) eurostat NUTS. Where possible, all these should be allied to the 16 or so new councils, to remove confusion and enhance simplicity.

²⁶⁹ *viz.* (1) Blaenau Gwent CBC; (2) Bridgend CBC; (3) Caerphilly CBC; (4) Cardiff Council; (5) Carmarthenshire CC; (6) Ceredigion CC; (7) Conwy CBC; (8) Denbighshire CC; (9) Flintshire CC; (10) Gwynedd Council; (11) Isle of Angelsey CC; (12) Merthyr Tdyfil CBC; (13) Monmouthshire CC; (14) Neath Port Talbot CBC; (15) Newport; (16) Pembrokeshire; (17) Powys; (18) Rhondda Cyron Taf CBC; (19) Swansea; (20) Torfaen CBC; (21) Vale of Glamorgan; (22) Wrexham CBC. See Whitaker, *Concise 2020*, p 273.

²⁷⁰ See law.gov.wales website for this estimate.

²⁷¹ *viz.* (1) Antrim & Newtonabbey BC; (2) Ards & North Down BC; (3) Armagh City Banbridge & Craigavon BC; (4) Belfast City Council; (5) Causeway Coast and Glens BC; (6) Derry City and Strabane DC; (7) Fermanagh and Strabane DC; (8) Lisburn and Castlereagh City Council; (9) Mid and East Antrim BC; (10) Mid Ulster DC; (11) Newry, Mourne and Down DC. See Whitaker, *Concise 2020*, p 281.

- Only the word ‘*council*’ should be employed - discarding references to *county, district, borough, city etc*;
- Perhaps, England should have c.117 councils, Scotland (16), Wales (6) and NI (5);
- All other administrative unit references should be discarded (counties, shires, civil parishes, boroughs *etc*). So too, other divisions for land registration and statistical purposes;
- The number of smaller ‘*community*’ councils should be greatly reduced (at least, halved). Further, in England, to reduce confusion, the term ‘*community*’ should also be adopted, as opposed to refs to parish, village, *etc*.

It may be useful to proceed with Scotland and Wales first (also, possibly, the London boroughs) and, then, England and NI. Obviously, a reduction in the number of councils - in terms of time, administration, cost savings, intelligibility *etc* - would be huge. All the above could be set out simply in a *Government Act*.

In conclusion, the number of councils in the UK should be reduced.

21. ARMED FORCES

The armed forces (the military) are part of Central Government and have been since Parliament allowed a standing army after the Glorious Revolution of 1688. The armed forces comprise the army, navy and air force. As to their modernisation, the following may be noted:

(a) Consolidate Legislation

Presently, some 106 Acts of Parliament govern the armed forces when only one Armed Forces Act, see *Appendix D*, is need of c. 750 sections. Such would be (easily) achieved by MOD draftsmen, using the (useful) Armed Forces Act 2006 as a base.

(b) Corporate Structure Needed

As noted in the article on Quangos, the MOD needs a corporate structure. One which could incorporate many distinct quangos at present. Thus, there should be an Armed Forces Command Board (a merged board of the Civil Service Board and the Cabinet Office Board) with the following divisions:

- Defence Human Resources;
- Defence Infrastructure;
- Defence Goods & Services;
- Defence Support & Networks;
- Defence Reform;
- Defence Commercial Services.

Such is discussed in the article on quangos and will not be considered further.²⁷²

In conclusion, c.106 Acts relating to the armed services could be consolidated into 1 Act. Also, like the Civil Service (see 18(b)) the MOD needs a corporate structure, to make it more business-like.

22. POLICE & EMERGENCY SERVICES

As with the armed forces, police and emergency services are part of Central Government, albeit there is now a degree of devolution. Thus, it should be dealt with in a *Government Act*.

(a) Introduction

Since 1829 there has been a police force. In more recent times, there have been established government funded fire and ambulance services. Given the nature of the work of these bodies - and the need to arrive on the scene very quickly - it would seem essential that interaction between the same should be as close as possible. In Scotland there is a combined (national) police force and this is taken as the benchmark. Thus, it is considered first.

(b) Scotland

In Scotland a national police force was established in 2013.²⁷³ The structure of it and for the other emergency services is as follows:

| | <u>Structure</u> | <u>Employs</u> |
|---------------|-------------------------------|--|
| Police | - 1 force, 3 regions, 13 divs | c. 23k people (17k police officers) ²⁷⁴ |
| Fire & Rescue | - 1 force, 3 regions, 6 divs | c 8k ²⁷⁵ |
| Ambulance | - 1 force, 3 regions, 5 divs | c. 5k ²⁷⁶ |

²⁷² See n 5, p 9.

²⁷³ See Whitaker’s *Concise 2020*, pp 308-11.

²⁷⁴ The headquarters is in Tulliallan, Fife. The 3 regions are East, West & North. There is 1 Chief Constable (‘CC’), 4 Deputies and 10 Assistants (2 are T/A). See the National Police Service of Scotland (Police Scotland), *scotland.police.uk*.

²⁷⁵ The headquarters is in Cambuslang, Glasgow. The 3 regions are East, West and North, see the Scottish Fire and Rescue Service (SFRS), *firescotland.gov.uk*.

²⁷⁶ See Scottish Ambulances Service (NHS Scotland), see *www.scottishambulance.com*.

A combined Scottish Emergency Services would only comprise some c. 34k people - much less than many companies or the armed services. Such would enable the same command and control centres, a heightened response time and the ability of employees to transfer from one part of the force to another. In such, regions (currently, 3) would not be required and there could be (say) 7 divisions. Also, there could be the same ranks for all 3 of police, fire and rescue and ambulance.²⁷⁷ A Scottish Emergency Services would copy the armed forces (one military, comprising the army, navy and air force). Consideration could, also, be given to merging the MoD police,²⁷⁸ British Transport police (BTP)²⁷⁹ and the Civil Nuclear Constabulary²⁸⁰ in Scotland, with Police Scotland. There is also a:

- Scottish Police Authority (established in 2012). It is responsible for maintaining policing, promoting policing principles, continuous improvement of policing and holding the Chief Constable to account;
- Police Investigations and Review Commissioner (the PIRC). It was, formerly, the Police Complaints C-er for Scotland;
- HM Inspectorate of Constabulary.

These 3 could be merged into one Scottish Police Authority.

In conclusion - as with the armed forces - consideration could be given to having 1 Emergency Services (with the same ranks, pay, pensions and the ability of persons to move between the same).

(c) Wales

In Wales there is no national police. Rather, the position is as follows:

| | <u>Structure</u> | <u>Employs</u> |
|---------------|-------------------------------------|----------------|
| Police | - 4 forces, 4-5 divs ²⁸¹ | c. 6-7k |
| Fire & Rescue | - 3 forces ²⁸² | c 3.4k |
| Ambulance | - 1 force, 2 regions ²⁸³ | c. 2.5k |

If all were merged into 1 force (with 2 divisions), the total employed would only be c. 12.k. Such would engender economies of scale, greater efficiency *etc.* Any MOD police, British Transport Police and Civil Nuclear Constabulary in Wales (see above) could be merged with them. Further, the ranks could be the same as in Scotland.

(d) NI

In NI,²⁸⁴ the position is as follows:

| | <u>Structure</u> | <u>Employs</u> |
|---------------|---|----------------|
| Police | - 1 forces, 8 regions (divs) ²⁸⁵ | c. 9k |
| Fire & Rescue | - 4 divs ²⁸⁶ | c. 2. 3k |
| Ambulance | - 1 force ²⁸⁷ | c. 1.3k |

If all these were merged into 1 force (with 2 divisions), the total employed would only be c. 12.k. Any MOD police, British Transport Police and Civil Nuclear Constabulary in NI (see above), could be merged with them. Further, the ranks could be the same as in Scotland. In NI there is also a NI Policing Board which is similar to the Scottish Police Authority.

(e) England

In Wales there is no national police, fire and rescue or ambulance services. Rather, there are:

| | |
|--------|--|
| Police | - 41 forces (inc. City of London and Met police). ²⁸⁸ |
|--------|--|

²⁷⁷ Is the rank of *Deputy CC* (and fire and rescue equivalent) needed?

²⁷⁸ The MOD police is part of the Ministry of Defence Police and Guarding Agency. It is a statutory civil police force with particular responsibility for the security and policing of the MOD environment.

²⁷⁹ The BTP is the national police force for the railways in England, Wales and Scotland (including London underground, Docklands Light Railway, Glasgo Subway, Midland Metro tram system, Sunderland metro, London Tramlink and Emirates Air Line cable car). It reports to the British Transport Authority.

²⁸⁰ The Civil Nuclear Constabulary (CNC) is overseen by the Civil Nuclear Police Authority (a quango sponsored by the Dept of Business, Energy and Industrial Strategy). It protects civil nuclear sites and materials.

²⁸¹ These forces (with 4 headquarters) are in Dyfed-Powys (employing c. 1k), Gwent (1.3k), N Wales (1.4k) and S Wales (3k).

²⁸² These forces (with 3 headquarters) are in N Wales (employing 1k), Mid & West Wales (1.4k) and S Wales (1k).

²⁸³ The force is the Welsh Ambulance Services NHS Trust (headquarters in St Asaph), with Swansea and Cwmbran regions.

²⁸⁴ The police service is wholly funded by central government.

²⁸⁵ The force is the Police Service of Northern Ireland (headquarters, Belfast).

²⁸⁶ The force is the NI Fire and Rescue Service (NIFRS).

²⁸⁷ The force is NI Ambulance Service (NIAS).

²⁸⁸ For details see Whitaker, *Concise 2020*, pp 310-1.

| | |
|---------------|------------------------------------|
| Fire & Rescue | - 45 (in 9 regions) ²⁸⁹ |
| Ambulance | - 11 NHS Trusts |

The problem with this is huge circumlocution, cost and bureaucracy. Thus, consideration could be given to having 1 police force (in 7 *divisions*). Also, 1 Fire and Rescue Service (in 7 *divisions*). Also, 1 NHS (in 7 *divisions*). That is, Police England (and Fire and Rescue England). In due course, these could be merged into 1 Emergency Service (with 7 *divisions*).

(f) Conclusion

There would seem to be a compelling case for England and Wales to have 1 police service, like Scotland and NI. And, for Scotland and NI to have a united Emergency Services - with England and Wales also doing so, in due course.

23. THE SOVEREIGN - ULTIMATE ROLE – HEAD OF STATE

(a) Introduction

At present, there is a complete mis-match between the *reality* of the Crown and the *legal fiction* concerning the same. Thus, in reality, the Crown - that is, sovereign in person or in the body politic - does not exercise any *executive* power. Yet, the legal fiction is that the sovereign appoints, pays, manages and oversees ministers (including the PM and cabinet ministers) as well as the civil service, which assists ministers in carrying out government. They are her '*servants*'. And that - as a corollary - ministers take responsibility for '*her*' acts in so doing. The result is confusion and much false logic.

Since the reality is that the Crown does none of these things and that all of ministers (including the PM and cabinet ministers) are, today, accountable to Parliament, it is better to state as such, being the truth. This means that everyone, then, knows where they stand. It is also more democratic since all government is, then, subject and accountable to Parliament which, itself, is subject to the electorate.

Reflecting the above in legislation is not difficult since it simply involves setting out the hierarchy of institutions and the chain of command. Also, dispensing with organs of government, titles and sinecures which still reflect the position of the Crown *pre-1688*. A *Government Act*, therefore, can achieve that.

(b) Head of State

If (a) above is undertaken, then, the sovereign is legally accepted as having a role. That of a formal (i.e. non executive) Head of State, which is (legal fictions aside) the actual current position of the sovereign.²⁹⁰ The recent *Miller* litigation in the courts²⁹¹ also clearly reflects the premise on which both Scots and English courts proceeded *viz*, that the sovereign no longer exercises executive power. That is, the sovereign no longer involves herself in running government - something which can be traced back to George I, in 1717, and his no longer attending cabinet meetings since his ministers were now accountable to Parliament.²⁹²

(c) The Future - Prerogatives

Crown prerogatives still exist in the law books but not, in fact, in all cases. Thus, Jennings, writing in 1965 succinctly stated:

The Queen has one, and only one, function of primary importance. It is to appoint a [PM].²⁹³

However, even that has now gone, save in rare circumstances²⁹⁴ and it would seem appropriate that it, also, be dispensed with and left to legislation and the choice of the party with a majority in Parliament. *Why* these Crown prerogatives have gone, over time, is simple to relate. Crown prerogatives, which had existed since Anglo-Saxon times²⁹⁵ had been given for - in the large majority of cases - specific reasons *viz*:²⁹⁶

- Funding - that is, to raise money for the Crown by way of tax or toll;
- Pre-eminence - they were designed to reflect the sovereign's importance;
- Reward - they were designed to favour retainers for their support;

²⁸⁹ See aace.org.uk/uk-ambulance-service

²⁹⁰ See also the Spanish Constitution, art 54, cited by Bradley, n 25, p 242.

²⁹¹ See McBain, n 2, pp 127-8.

²⁹² See also Bradley, n 25, p 246 'the Queen... is bound to accept and act on the advice of her ministers.' (quote of Sir William Heseltine, the Queen's private secretary in 1986).

²⁹³ WI Jennings, *The British Constitution* (5th ed, 1965), p 113.

²⁹⁴ That is, in the case of a hung parliament or a coalition. See Bogdanor, n 98, ch 4.

²⁹⁵ See the first Anglo-Saxon legislation extant in 616 AD, FL Attenborough, *The Laws of the Earliest English Kings* (1963), pp 5-17 (*Laws of Aethelberht*). These gave additional penalties in respect of the sovereign, recognising his pre-eminence.

²⁹⁶ See also GS McBain, *Expanding Democracy - Transferring the Crown Prerogative to Parliament* (2014) Review of European Studies, vol 6, no 1, p 6.

- Military prerogatives;²⁹⁷
- Corporate prerogatives.

However, by 1688 (if not before) these reasons had fallen by the wayside. Thus, Charles II (1660-85) gave up many Crown prerogatives of a financial nature in return for an excise tax on beer. Later, in 1760, all Crown land was given up in return for a stipend (being an annual payment, a civil 'list'). By 1688, effective control of the armed forces passed to Parliament (and the last sovereign fought in battle in 1743). Thus, the role of the sovereign as commander in chief of the military became formal. Further, legislation can - and has - abolished, limited and precluded Crown prerogatives, such that those that remain are, to a great extent, obsolete or formal.²⁹⁸ *What personal prerogatives are needed, therefore?* One would suggest only the following:²⁹⁹

Criminal & Civil Liability. The sovereign should have immunity from prosecution for any criminal or civil act (which is considered in a *Crown Act*).³⁰⁰ Also, freedom from arrest;³⁰¹

Also, two which relate to the sovereign's personal/politic role:

Immortality. In order to ensure that there is not a *hiatus* between the death of one sovereign and the other being acknowledged as such, it is appropriate to provide that the sovereign has a '*body politic*' a body which never dies, regardless of personal demise;³⁰²

Legal Nature. It is useful to confirm the legal nature of the sovereign as a corporation sole.

All other Crown prerogatives should be abolished or placed in legislation, with the prerogative being transferred to Parliament or to a government organ.³⁰³ *Why* they should be placed in legislation is to make any non-obsolete Crown prerogatives subject to Parliamentary control - as well as to clarify what they actually are.³⁰⁴

(d) The Future - Limitations

Certain historic limitations on the sovereign should, also, be legislatively retained in order to preserve the integrity of that office. Thus, the sovereign should be prohibited from:

- (a) giving evidence in a court of law in her own cause;
- (b) acting as a minister of the Crown;
- (c) holding a Crown office;
- (d) attending (or sitting) in cabinet;
- (e) altering succession to the Crown in her will;
- (f) being able to arrest a person.

Also, possibly, from granting hereditary peerages, something much abused in the past.³⁰⁵

(e) Conclusion

The result would be that the sovereign would be recognised in English law (legislation) as a *formal* Head of State, which reflects the present reality. The only prerogative (distinguishing feature) that she (he) would have would be criminal and civil immunity from prosecution (possibly, such being limited). Thus, the legal role would reflect the present actual, non executive, role. The law, always slow and meandering, will have caught up with reality. *Surely, a good thing?*

²⁹⁷ The ability of the Crown to maintain a standing army without consent was abolished long ago, in 1688, see Munro, n 23, p 266 who also noted 'with acts involved in the negotiation of treaties or the control of the armed forces, for example, the sovereign has no part to play at all, but the powers are purportedly exercised in his or her name. Thus, as to the largest class of prerogatives, the monarch today is little more than a cipher.'

²⁹⁸ Dicey, n 18 (10th ed, 1959), pp 434-5, 'The prerogative appears to be both historically and as a matter of actual fact nothing else than the residue of discretionary or arbitrary authority which at any given time is left in the hands of the Crown.' CR Munro, *Studies in Constitutional Law* (1999), n 23, p 256 'The royal prerogative...[comprises] those attributes belonging to the Crown which are derived from the common law, not statute, and which still survive...What remains [of the prerogative] is left to the executive by the grace of Parliament, for Parliament can abrogate or diminish the prerogative, like any other part of the law.'

²⁹⁹ It may be noted that things such as the identity of the sovereign, style and title, demise, and regency are all governed by legislation, see also McBain, n 1, p 70. So too, succession (i.e. gender, child born abroad, consent for certain marriages). Ibid

³⁰⁰ Ibid, p 71. See also Crown Proceedings Act 1947, s 40 (1) 'Nothing in this Act shall apply to proceedings by or against, or authorising proceedings in tort to be brought, against [HM] in his private capacity.'

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ See McBain, n 1, pp 68-1-00 (especially, sch 3).

³⁰⁴ Munro (writing in 1999), n 23, p 278 'the exercise of prerogative powers is imperfectly subject to parliamentary control, and in many - perhaps most - instances removed from the purview of the Parliamentary Ombudsman (notwithstanding that the office was supposedly created to supplement the deficiencies of existing controls).'

³⁰⁵ See McBain, n 1, pp 75, 86. This is on the assumption that certain other prerogatives in person are abolished, see Ibid, p 87.

24. **REMAINING CROWN PREROGATIVES**

It only remains to consider any Crown prerogatives not otherwise dealt with in the articles on the Crown and on Parliament.³⁰⁶ As indicated, these should be abolished if obsolete or placed in legislation, if not. They have been previously listed in the article on the Crown.³⁰⁷

(a) **Military Crown Prerogatives**

These include the following Crown prerogatives:

1. Armed Forces. Control, organisation and disposition of the armed forces (including the commissioning of officers, pay, pensions and maintaining the royal navy);
2. Armed Forces - Overseas. Deployment and use of the armed forces overseas for military purposes (i.e. armed conflicts) which fall short of war;
3. Angary. Taking neutral property on UK territory or enemy territory;
4. National Emergency. Military power in the case of national emergency (including military support given to the police and civilian authorities);
5. War – Enemy Alien. In wartime, to intern, expel (deport) or otherwise control an enemy alien;
6. Enemy Trading. Trading with the enemy;
7. Export. Export of weapons and ammunition, contraband of war.

There is also a section in the Act of Settlement 1700 relating to military matters. It provides:

That in case the Crown and Imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the Crown of England without the consent of Parliament.

...no person born out of the kingdoms of England Scotland or Ireland or the dominions thereunto belonging (although he be... made a denizen (except such as are born of English parents) shall...enjoy any office or place of trust either civil or military...’.

The first provision is not required if the Crown prerogative to make war (and declare peace) passes from the Crown to the Government (i.e. to the PM and his ministers) - and that such is subject to the consent of Parliament in the first case (in the case of the second it would be by way of a treaty or an agreement akin to the same). In conclusion, all the above should be placed in an Armed Forces Act which a later article will consider.

(b) **Government - Foreign**

1. Treaties. Make and ratify treaties;
2. Passports. Issue, refuse, impound and revoke passports;
3. Territory. Acquire (inc. by way of annexation) and cede territory;
4. Diplomacy. Conduct diplomacy;
5. Ambassadors & Commissioners. Send and receive ambassadors and high commissioners;
6. Foreign States. Recognize foreign states;
7. British Overseas Territories (BOT). Govern BOT;
8. Channel Islands, Isle of Man. Responsibility for the Channel Islands and the Isle of Man;
9. Diplomatic Protection. Accord diplomatic protection to British citizens abroad.

The first of these has already been considered in a *Parliament Act*.³⁰⁸ The remainder may be considered in a later article.

(c) **Political Prerogatives - Domestic Nature**

1. Civil Service. Management of the civil service;
2. Appointment of Persons to Public Offices. The appointment of persons to public offices (other than the appointment of the PM and Ministers of the Crown);
3. Crown Estate. The administration of the Crown Estate (including ownership of the foreshore, narrow seas and public navigable rivers);
4. Stamps. To permit, and administer, pre-paid postage stamps;
5. Adoption. To issue certificates of eligibility in respect of prospective inter-country adopters (in non-Hague Convention cases);
6. Public Inquiries. To hold public inquiries (inc. royal commissions);

³⁰⁶ Listed in McBain, n 1, pp 58-60.

³⁰⁷ Ibid, pp 59-60.

³⁰⁸ McBain, n 1, p 59.

The first of these has been considered in this article. The remainder of these will be considered in a further article. However, all of these prerogatives should become statutory and nos 4-5 placed in legislation specifically dealing with the same.³⁰⁹

(d) **Judicial & Legal Prerogatives**

1. Law Officers. The office and role of the Attorney-General (and Solicitor General);
2. Queen's Counsel. The prerogative to appoint QC's;
3. Appointment of Certain Judges. The prerogative to appoint certain judges (whose appointment is not otherwise statutory);
4. Preferred Creditor. The Crown as a preferred creditor;
5. Rights of Priority. The Crown having legal rights of priority;
6. Time and Limitation Periods. Time not running against the Crown (including limitation periods);
7. Immunity. Crown immunity;
8. Pardon. The prerogative to exercise mercy (i.e. to pardon and reprieve).

No 1 and 7 are considered in this article. In the case of 3, if the court system is streamlined,³¹⁰ all courts will be statutory and not subject to a Crown prerogative to appoint judges. The remainder of the above will be considered in a further article.

24. **OTHER LEGISLATION**

As noted in 1, and as can be seen from *Appendix A*, it is possible to place all domestic legislation comprising some 150 Acts into 4 Acts relating to the Crown, Parliament, Courts and Government. The only other material not yet considered comprises the following:

- **Crown Estate**. There are various pieces of antiquated legislation governing royal parks which refer to principal Secretaries of State being Commissioners of Works.³¹¹ This legislation should be modernised³¹² and reference to the same removed. This material should be placed in the *Crown Act*;
- **Oaths**. Other legislation of a constitutional nature relates to oaths.³¹³ Thus, privy councillors, judges, MP's and various other public persons have to give such (or an affirmation *in lieu*).³¹⁴ The problem with oaths is that they are not legally binding. Further, they were required in the context of a belief in a (Christian) deity since the sanction for breach was a fear of moral punishment by the same. An Oaths Commission was appointed in 1867.³¹⁵ It concluded that many oaths were unnecessary.³¹⁶ A dissentient report, however, has proved the more perceptive in light of history.³¹⁷ As it is, today, many people are not religious. Further, oaths are (too often) given lightly. Also, legally, binding commitments to observe (say) the Official Secrets Acts 1911-89 are more appropriate. Thus, a *Government Act* should consider abolishing all official oaths (and affirmations *in lieu*).³¹⁸ Such would abolish a slew of old legislation that has little (or no) relevance to modern times.³¹⁹

³⁰⁹ For the Crown Estate, see McBain, n 1, p 100.

³¹⁰ See McBain, n 3.

³¹¹ See Crown Lands Act 1851, s 15 refers to 'principal secretaries of State' viz (appointment of ex-officio commissioners and public buildings) '[HM's] Principal Secretaries of State for the time being, and the President and Vice President for the time being of the Committee of Council appointed for the consideration of matters relating to Trade and Foreign Plantations, (obs) shall by virtue of their respective offices be Commissioners of Works . . . and shall. . . be styled "The Commissioners of [HM's] Works and Public Buildings." See also ss 21-3. Also, (a) Commissioners of Works Act 1852, ss 1-2, 4-6; (b) Commissioners of Works Act 1894, ss 1-2 (s 3 is obsolete); (c) Crown Lands Act 1894, s 6 (obsolete); (d) Crown Lands Act 1906, ss 3, 6-7, 10; (e) Crown Lands Act 1927, s 13; (f) Crown Lands Act 1936, ss 1, 3-7, 9; (g) Crown Estate Act 1961, ss 1-8.

³¹² The functions were transferred to the Minister of Works in 1942, see Minister of Works Act 1942. See also the Public Offices (Site) Act 1947. The functions of the Ministry of Works are now those of the Secretary of State for the Environment (Ministers of the Crown Act 1975, s 1).

³¹³ See generally, GS McBain, *Modernising the Law on Oaths and Affirmations* [2020] International Law Research, vol 9, no 1, pp 1.55.

³¹⁴ See e.g. Parliamentary Oaths Act 1866, Promissory Oaths Act 1868 & 1871 etc.

³¹⁵ See McBain, n 313, pp 17-9.

³¹⁶ Ibid, p 18 'We find that, although recent legislation has abolished certain oaths and converted others into declarations, the number of oaths still required to be taken is exceedingly large. Of these, many appear to us unnecessary, some even mischievous. We believe that every requirement of an unnecessary oath tends to detract from the solemnity of necessary oaths. Further, we conceive that to maintain the solemnity of oaths the terms of every oath should be precise and exact; and that where altered circumstances have rendered some of the engagements needless or impossible of fulfilment the oath ought, if it be retained, to be cleared of these obsolete or impossible engagements.'

³¹⁷ Ibid. 'A careful examination of the oaths referred to this commission has led us to the conclusion that by far the greater number ought to be wholly abolished; and the rest changed into some convenient and distinct forms of declaration.'

³¹⁸ Cf. (a) oaths of allegiance be members of the armed forces, on enlistment; and (b) aliens, on naturalisation. See McBain, n 313, pp 39-40, 52. Even in this context, allegiance to the county (as opposed to the sovereign *per se*) would seem more appropriate. It may also be noted that the crime of treason is not dependent on any oath or affirmation.

³¹⁹ McBain, n 313, p 53.

- **Other Constitutional Legislation.** Halsbury, Statutes makes reference to other constitutional material which deals with foreign relations, see *Appendix G*. Much of this is piecemeal and little is contentious. It could be consolidated into 1 Act.

25. CROWN PROCEEDINGS ACT 1947

This legislation relates to the legal liability of the Crown and how it may be sued. Thus, it contains provisions on substantive law (ss 1-11), jurisdiction and procedure (ss 13-23), judgments and execution (ss 24-7), miscellaneous and supplemental (ss 28-40), Scotland (ss 41-51) and NI (s 53). It should be amended and set out in a *Government Act*, in order to reflect the matters discussed in this article. In particular, the fact that the sovereign no longer exercises executive power. Thus, the following, *inter alia*, should be amended:

- **Immunity of the sovereign.** The immunity of the sovereign in person should be provided for (see **23(c)**). It would seem better that such be in a *Crown Act*.³²⁰ Petition of Right (and suit against the AG) should be dispensed with;
- **Secretary of State/ Crown.** Reference in the Act to the former should be to the a Minister and reference to the latter should now be to the relevant Ministry against whom suit may be brought³²¹ (or, in the absence of such, the AG).

26. TIME, VESTED INTERESTS, COSTS

There is nothing actually difficult in setting out the position in legislation (in 4 Acts) once it is accepted that the sovereign today is, in practice, a titular head of State now exercising an executive function. Thus, ministers and the civil service are now responsible to Parliament. As to timing, all 4 Acts could be worked on at the same time and would take no more than 2 years to draft and pass. However, a Government Act, being residual would best take effect after *Crown, Parliament and Courts* Acts. To prevent vested interests stymieing matters (for example, those desperate to hang on to sinecures and titles, in order to preserve status) the legal position as to the legal worth of retaining various organs of government, offices or positions should be set out in a report(s) compiled by persons who are strictly impartial and have no vested interests (senior retired judges may be an idea). As to the cost of all this, it could be easily met by the following:

- **Abolition of the House of Lords.** The annual cost appears to be £100m pa. This would easily cover any changes to the name of ministries, any merger of the same etc. Indeed, one would suggest that everything mentioned in all 4 articles would, likely, cost less than £10m to effect;
- **Abolition of Privy Council.** Presently, with c 700 persons, abolishing the same would save much cost and administration if the work is handled by relevant ministries and the Cabinet Office. Reducing the need for documents to be under the Great Seal or sign manual would also save time, administration and costs;
- **Abolishing Sinecures.** Some British people have an ‘afan’ for empty titles. However, preserving them in the context of government simply clogs up decision making and the law books;
- **Abolishing Quangos.** A large number can (and should) be abolished, simplifying government and making it more open and transparent.

27. OVERALL CONCLUSION

Our constitutional law is antiquated, piecemeal and almost unintelligible. However, the remedy is plain:

- All constitutional legislation could be placed into 4 Acts (see **1**);
- At least, 85% of all Crown prerogatives are obsolete (many not availed of for centuries);
- All crown prerogatives not obsolete should be put in legislation;
- Many organs of government could be merged; others streamlined.

Such would save copious amounts of taxpayers’ money. It would also remove outworn legal fictions and legally acknowledge the true (factually accurate) role of the sovereign today as being that of a formal Head of State, exercising formal, but not executive, functions. Such could then be replicated in other Commonwealth States.

In 2004, the Public Administration Select Committee called for greater parliamentary control over ‘*all executive powers enjoyed by ministers under the royal prerogative*’ and such reform is ‘*unfinished constitutional business*’.³²² Yet, nothing has been done. In part, this may be due to little understanding of Crown prerogatives, how they developed and the extent to which they have been superceded by legislation or obsolescence (at least, 85% have). In part, however, it is likely due to vested interests. Such is not good for democracy, however. Nor the protection of ministers. Nor the public interest. Thus, something should be done. The current UK constitution does not need to be replaced. It is longstanding and works. But, it is not transparent or reflects current practice. Indeed, it is overgrown and, in places, open to manifest abuse.³²³ Reform would not be expensive. Nor, take much

³²⁰ Cf. Crown Proceedings Act 1947, s 41. For the background to this Act, see GL Williams, *Crown Proceedings* (1948).

³²¹ In the case of statutory bodies (publication corporations including chartered corporations), suit should be directly against them.

³²² Noted by Barnett, n 24, p 120.

³²³ Ibid, p 120 ‘Under the [UK] constitution, it may be concluded, quite reasonably, that parliamentary control over the exercise of prerogative power is less than adequate. Set alongside or juxtaposed with the excluded areas of judicial review under the concept of justiciability, it can be seen that there exists a reservoir of power, much of which is undefined or at best ill defined, which is not amenable to either judicial or parliamentary control.’

time. The government should get on with it. This would also help Commonwealth countries which are under great pressure from dictatorships around the world.

Graham McBain

Appendix A: Constitutional Legislation

| <u>Date</u> | <u>Act</u> | <u>Crown Act</u> | <u>Parliament Act</u> | <u>Government Act</u> |
|--------------------|---|----------------------------|------------------------------|------------------------------|
| 1297 | Statute concerning Tallage | R | | |
| 1297 | Confirmation of the Charters | R | | |
| 1313 | Bearing of Armour Act | | R | |
| 1322 | Revocation of the New Ordinances | R | | |
| c. /1324 | Prerogativa Regis | R | | |
| 1350 | The Status of Children Born Abroad | R | | |
| 1351 | Treason Act | R (in part) ³²⁴ | | |
| 1382 | Summons to Parliament | | R | |
| 1405-6 | Confirmation of Liberties | R | | |
| 1416 | Confirmation of Charters and Statutes | R | | |
| 1423 | Confirmation of Liberties | R | | |
| 1512 | Privilege of Parliament Act | | R | |
| 1533 | Appointment of Bishops Act | R s 4 ³²⁵ | | |
| 1558 | Supremacy Act | R | | |
| 1571 | <i>Letters Patent</i> ³²⁶ | | | |
| 1603 | Privilege of Parliament Act | | R | |
| 1623 | Crown Lands Act | R | | |
| 1623 | Statute of Monopolies Act | R | | |
| 1627 | Petition of Right | R | | |
| 1660 | Tenures Abolition Act | R | | |
| 1661 | Free and Voluntary Present to his Majesty | R | | |
| 1688 | Bill of Rights | R art 1 ³²⁷ | R ³²⁸ | |
| 1688 | Coronation Oath Act | R | | |
| 1688 | Convention Parliament Act | | R | |
| 1688 | Royal Mines Act | R | | |
| 1688 | Great Seal Act | R | | |
| 1689 | Crown and Parliament Recognition Act | | R | |
| 1693 | Royal Mines Act | R | | |
| 1694 | Meeting of Parliament | R | | |
| 1700 | Act of Settlement | R s 1-3 ³²⁹ | R ³³⁰ | see 24 |
| 1702 | Crown Lands Act | R | | |
| 1702 | Demise of the Crown Act | R | | |
| 1702 | Act of 6 Anne (1 stat 2) | R | | |
| 1706 | Union with Scotland Act | R art 2 | R (art 25(2)) | |

³²⁴ Repeal the words ‘when a man doth compass or imagine the death of our lord the king, or of our lady his queen or of their eldest son and heir; or if a man do violate the king’s companion, or the king’s eldest daughter unmarried, or the wife of the king’s eldest son and heir.’

³²⁵ Repeal in s 4 any reference to making an oath of homage and of fealty.

³²⁶ This is obsolete, being covered by other legislation. However, it is not dealt with in this article.

³²⁷ Repeal in s 1 from ‘that the pretended power of suspending of laws’ up to ‘for such petitioning are illegal.’ Repeal in s 1 from ‘that excessive bail’ up to ‘are illegal and void’. Repeal in s 1, the words from ‘to which demand of their rights they are particularly encouraged...’ up to the words ‘against all persons whatsoever that shall attempt any thing to the contrary...’. Also, the words from ‘and that every king and queen of this realm’ up to the words ‘shall have attained the said age of twelve’.

³²⁸ This will delete the remainder of this Act especially art 1 (sections on the standing army, freedom of election and frequent parliaments).

³²⁹ Delete wording save where otherwise provided for deletion in a *Parliament Act* (or pursuant to 24, in an *Armed Forces Act*).

³³⁰ In s 3(3) delete the words ‘be capable to be of the privy council or a member of either house of Parliament’. Also ‘or to have any grant of lands, tenements or hereditaments from the Crown to himself or to any other or others in trust for him.’

| | | | | |
|------|--|------------------------|---------------|---|
| 1707 | Union with Scotland (Amendment) Act | | | R |
| 1707 | Union with England Act | R art 2 ³³¹ | R (art 25(2)) | |
| 1707 | Succession to the Crown Act | R | | |
| 1711 | Princess Sophia's Precedence Act | R | | |
| 1727 | Demise of the Crown Act | R | | |
| 1737 | Parliamentary Privilege Act | | R | |
| 1770 | Parliamentary Privilege Act | | R | |
| 1793 | Acts of Parliament (Commencement) Act | | R | |
| 1797 | Meeting of Parliament Act | | R | |
| 1799 | Meeting of Parliament Act | | R | |
| 1800 | Union with Ireland Act | R (art 2) | | |
| 1800 | Act of Union (Ireland) Act | R (art 2) | | |
| 1801 | House of Commons (Disqualifications) Act | | R | |
| 1801 | Crown Debts Act | | R | |
| 1808 | Acts of Parliament (Expiration) Act | | R | |
| 1824 | Clerk of the Parliaments Act | | R | |
| 1829 | Roman Catholic Relief Act | R | | |
| 1837 | Civil List Act | R | | |
| 1840 | Parliamentary Papers Act | | R | |
| 1851 | Crown Lands Act | | | R |
| 1852 | Commissioners of Works Act | | | R |
| 1855 | Deputy Speaker Act | | R | |
| 1856 | House of Commons Offices Act | | R | |
| 1858 | Parliamentary Witnesses Act | | R | |
| 1858 | Durham County Palatine Act | | R | |
| 1859 | Clerk of the Council Act | R | | |
| 1866 | Parliamentary Oaths Act | | R | |
| 1867 | Prorogation Act | | R | |
| 1867 | Representation of the People Act | R | | |
| 1869 | Parliamentary Returns Act | | R | |
| 1870 | Meeting of Parliament Act | | R | |
| 1871 | Parliamentary Witnesses Oaths Act | | R | |
| 1872 | Law Officers (Fees) Act | | | R |
| 1874 | Great Seal (Offices) Act | R | | |
| 1877 | Crown Office Act | R | | |
| 1879 | Public Office (Fees) Act | | | R |
| 1884 | Great Seal Act | R | | |
| 1887 | Sheriffs Act 1887 | R | | |
| 1890 | Crown Office Act | R | | |
| 1894 | Crown Lands Act | | | R |
| 1894 | Commissioners of Works | | | R |
| 1896 | Short Titles Act | | R | |
| 1901 | Demise of the Crown | R | | |
| 1902 | Osborne Estate Act | R | | |
| 1910 | Accession Declaration Act | R | | |

³³¹ In art 2 repeal the words 'That the succession to the monarchy of the [UK] of [GB] and of the dominions thereto belonging after her most sacred majesty and in default of issue of [HM] be remain and continue to the most excellent princess Sophia electoress and dutchess dowager of Hanover and the heirs of her body being protestants upon whom the Crown of England is settled by an Act of Parliament made in England in the twelfth year of the reign of his late Majesty king William the Third intituled an *Act for the further Limitation of the Crown and better securing the rights and Liberties of the Subject.*'

| | | | | |
|------|--|---------------------|-------------|------------------|
| 1917 | Titles Deprivation Act | R | | |
| 1917 | Chequers Estate Act | | R | |
| 1918 | Parliament (Qualification of Women) Act | | R | |
| 1920 | Duchy of Lancaster Act | R | | |
| 1925 | Honours (Prevention of Abuses) Act | R | | |
| 1927 | Royal and Parliamentary Titles Act | | R | |
| 1931 | Statute of Westminster | R, preamble, para 2 | R | |
| 1936 | Crown Lands Act | | | R |
| 1936 | His Majesty's Declaration of Abdication Act | R | | |
| 1937 | Regency Act | R | | |
| 1943 | Regency Act | R | | |
| 1944 | Law Officers (<i>Scotland only</i>) | | | |
| 1943 | Parliament (Elections and Meeting) Act | | R | |
| 1948 | Laying of Documents before Parliament (Interpretation) Act | | R | |
| 1953 | Regency Act | R | | |
| 1953 | Royal Titles Act | R | | |
| 1958 | Chequers Estate Act | | R | |
| 1958 | Life Peerages Act | R | | |
| 1959 | Chevening Estate | | R | |
| 1961 | Crown Estate Act | | | R |
| 1962 | Acts of Parliament Numbering and Citation Acts | | R | |
| 1963 | Peerage Act | R | | |
| 1967 | Royal Assent | R | | |
| 1967 | Parliamentary Commissioner Act | | R | |
| 1975 | House of Commons Disqualification Act | | R | |
| 1975 | Ministers of the Crown Act | | | R |
| 1976 | Parliamentary and other Pensions and Salaries Act | | R | |
| 1979 | <i>Crown Agents Act</i> ³³² | | | |
| 1978 | House of Commons (Administration) Act | | R | |
| 1981 | Parliamentary Commissioner (Consular Complaints) Act | | R | |
| 1984 | Parliamentary Pensions <i>etc</i> Act | | R | |
| 1986 | Parliamentary Constituencies Act | | R | |
| 1987 | Parliamentary and Health Service Commissioners Act | | R | |
| 1987 | Parliamentary and other Pensions Act | | R | |
| 1988 | Duchy of Lancaster | R | | |
| 1992 | Parliamentary Corporate Bodies Act | | R | |
| 1994 | Parliamentary Commissioner Act | | R | |
| 1995 | <i>Crown Agents Act</i> ³³³ | | | |
| 1996 | Treasure Act | R, ss 4(1) & 5 | | |
| 1997 | Law Officers | | | R |
| 2006 | Parliamentary Costs Act | | R | |
| 2007 | Parliament (Joint Departments) Act | | R | |
| 2009 | Parliamentary Standards Act | | R | |
| 2010 | Constitutional Reform and Governance Act | | R, ss 20-48 | R ³³⁴ |
| 2011 | Sovereign Grant Act | R | | |
| 2011 | Fixed Term Parliaments Act | | R | |

³³² This legislation is modern and can be left as it is.

³³³ Ibid.

³³⁴ These would repeal the remaining provisions of this Act dealing with the civil service.

| | | |
|------|---|---|
| 2011 | Parliamentary Voting and Constituencies Act | R |
| 2013 | Succession to the Crown Act | R |
| 2015 | Recall Act | R |
| 2015 | House of Commons Commission Act | R |

Also,

Naval Prize Act 1864

Prize Courts Act 1894

Prize Courts (Procedure) Act 1914

Prize Courts Act 1915

Naval Prize (Procedure) Act 1916

Prize Act 1939

Prize Salvage Act 1944 [for these see s 17(4) of the Crown Act]

Also,

Crown Private Estate Act 1800

Crown Lands Act 1823

Crown Private Estates Act 1862

Crown Private Estates Act 1873 [for these, see sch 22, Part B of the Crown Act]

Also,

Duchies of Lancaster and Cornwall (Accounts) Act 1838

Duchy of Cornwall Act 1844

Duchy of Duchy of Cornwall (No 2) Act 1844

Duchy of Cornwall Act 1863

Duchy of Cornwall Management Act 1868

Duchy of Cornwall Management Act 1982

Solicitor's Act 1974 s 88 (1), repeal the words 'or the Duchy of Cornwall'

Stannaries Act 1855 repeal s 31 [for these see Crown Act, sch 16]

Also,³³⁵

House of Lords Precedence Act 1539

The Union with Scotland Act 1706, art XXV (VI) shall be amended to read:

And whereas since the passing the said Act in the Parliament of Scotland for ratifying the said Articles of Union one other Act intituled Act settling the manner of electing...forty five members to represent Scotland in the Parliament of Great Britain hath likewise passed in the said Parliament of Scotland at Edinburgh the fifth day of february One thousand seven hundred and seven the tenor whereof follows. Our Sovereign Lady considering that by the twenty second Article of the Treaty of Union as the same is ratified by an Act passed in this Session of Parliament upon the sixteenth of January last It is provided that by virtue of the said Treaty...forty five [shall be] the number of the representatives of Scotland in the House of Commons of the Parliament of Great Britain and that the ... forty five Members in the House of Commons be named and chosen in such manner as by a subsequent Act in this present Session of Parliament in Scotland should be settled which Act is thereby declared to be as valid as if it were a part of and ingrossed in the said Treaty [It is always hereby expressly provided and declared that none shall be capable to... be elected...but such as are twenty one years of age complete...] [It may be appropriate to delete this wording]

Parliament Act 1911

Parliament Act 1949.

House of Lords Act 1999

House of Commons (Removal of Clergy Disqualification) Act 2001 (*spent*)

House of Lords Reform Act 2014

House of Lords (Expulsion and Suspension) Act 2015

Appendix B: Cabinet

Part A: Present Cabinet Titles

Prime Minister³³⁶

Chancellor of the Exchequer

Part B: New Cabinet Titles

Prime Minister

Finance Minister

³³⁵ This is material that specifically relates to the HL.

³³⁶ Also, First Lord of the Treasury, Minister for the Civil Service, Minister for the Union.

| | |
|---|---|
| Secretary of State ('SS') for Foreign & Commonwealth Affairs ³³⁷ | Foreign Minister |
| Home Secretary | Home Minister |
| Chancellor of the Duchy of Lancaster ³³⁸ | Cabinet Office Minister |
| SS for Justice ³³⁹ | Justice Minister |
| SS for Defence | Defence Minister |
| SS for Health & Social Care | Health Minister |
| SS for Business, Energy & Industrial Strategy | Trade Minister |
| SS for International Trade ³⁴⁰ | |
| SS for Work & Pensions | Employment Minister |
| SS for Education | Education Minister |
| SS for Environment, Food & Rural Affairs | Environment Minister |
| SS for Housing, Communities & Local Government | Local Government Minister |
| SS for Transport | Transport Minister |
| SS for Scotland | Scotland, Wales & Northern Ireland Minister |
| SS for Northern Ireland | |
| SS for Wales | |
| Leader of the House of Lords ³⁴¹ | |
| SS for Digital, Culture, Media & Sport | Culture Minister |
| Minister of State | |
| COP26 President | |
| Minister without Portfolio | |
| | Energy Minister ³⁴² |
| | Legal Ministry ³⁴³ |

Also, as attendees:

| | |
|---|--|
| Chief Secretary to the Treasury | Head, Finance Ministry |
| Leader of the House of Commons ³⁴⁴ | Leader of the House of Commons |
| Chief Whip ³⁴⁵ | Chief Whip |
| Attorney- General for England & Wales | Attorney-General for England and Wales |
| <i>Advocate General for Scotland</i> | <i>Advocate General for Scotland</i> |

Appendix C: Ministries

Part A: Present Ministry Titles

Cabinet Office
 HM Treasury
 Foreign, Commonwealth and Development Office
 Home Office
 Ministry of Justice
 Ministry of Defence
 Department of Health and Social Care
 Department for Business, Energy & Industrial Strategy
 Department for International Trade

Part B: New Ministries and Titles

Cabinet Office
 Finance Ministry
 Foreign and Commonwealth Ministry
 Home Ministry
 Justice Ministry
 Defence Ministry
 Health Ministry
 Trade Ministry
Trade Ministry

³³⁷ Also, First Secretary of State.
³³⁸ Also, Minister for the Cabinet Office.
³³⁹ Also, Lord Chancellor.
³⁴⁰ Also, President of the Board of Trade.
³⁴¹ Also, Lord Privy Seal
³⁴² This ministry is suggested as new.
³⁴³ Ibid.
³⁴⁴ Also, Lord President of the Council.
³⁴⁵ Also, Parliamentary Secretary to the Treasury.

| | |
|---|--|
| Department for Work & Pensions | Employment Ministry |
| Department for Education | Education Ministry |
| Department for Environment, Food & Rural Affairs | Environment Ministry |
| Ministry of Housing, Communities & Local Government | Local Government Ministry |
| Department for Transport | Transport Ministry |
| Northern Ireland Office | Scotland, Wales & NI Ministry |
| Scotland Office | |
| Wales Office | |
| Department for Digital, Culture, Media & Sport | Culture Ministry |
| Department for International Development | <u>Foreign and Commonwealth Ministry</u> |
| UK Export Finance | <u>Trade Ministry</u> |
| | <u>Energy Ministry</u> |
| | <u>Legal Ministry</u> |

Underlined, where the present ministry is changed or it is a new one, in the case of the Energy Ministry and the Legal Ministry.

Appendix D – Consolidation of Armed Forces Legislation

The following legislation (much of it piecemeal, it may be found in Halsbury, *Statutes*, vol 3) could be consolidated into one **Armed Forces Code** of c. 750 sections. The merit of such would be: (a) all relevant legislative material would be in one place; (b) common definitions; (c) excision of transitional material; also, references to repealed matter; (d) user friendly; (e) up-to-date.

| | | <u>No of Sections</u> |
|---------------------------------|--|-----------------------|
| (a) <u>Military Land</u> | | |
| 1842 | Defence Act | 28 |
| 1854 | Defence Act | 3 |
| 1855 | Ordnance Board Transfer Act | 2 |
| 1859 | Defence Act | 3 |
| 1860 | Defence Act | 21 |
| 1864 | Defence Act Amendment Act | 3 |
| 1865 | Defence Act (<i>amends 1860 Act</i>) | 1 |
| | Defence Acts Amendment Act (<i>deals with 1842 and 1860 Acts</i>) | 1 |
| 1873 | Militia (Lands and Buildings) Act (<i>deals with 1842 and 1869 Acts</i>) | 1 |
| 1892 | Military Lands Act | 19 |
| 1897 | Military Lands Act (<i>refers to 1892 Act</i>) | 1 |
| 1900 | Military Lands Act | 4 |
| 1903 | Military Lands Act (<i>refers to 1892 Act</i>) | 1 |
| 1916 | Defence of the Realm (Acquisition of Lands) Act | 10 |
| 1920 | Defence of the Realm (Acquisition of Lands) Act | 5 |
| 1945 | Requisitioned Land and War Works Act | 21 |
| 1948 | Requisitioned Land and War Works Act | 9 |
| 1958 | Land Powers (Defence) Act | 4 Total: 127 |

Most of this material relates to the requisition of land for military purposes. It should be consolidated (much is also obsolete).

(b) Armed Forces, Reserves, Visiting Forces, Military Police

| | | |
|------|--|----|
| 1662 | City of London Militia Act | 1 |
| 1820 | Militia (City of London) Act | 8 |
| 1862 | Officers Commissions Act | 2 |
| 1890 | London Council (General Powers) Act (s 16 relates to <i>drills</i>) | 1 |
| 1894 | Uniforms Act | 3 |
| 1917 | Air Force (Constitution) Act | 4 |
| 1933 | Visiting Forces (British Commonwealth) Act | 3 |
| 1951 | Reserve and Auxiliary Forces (Protection of Civil Interests) Act | 49 |
| 1952 | Visiting Forces Act | 18 |

| | | |
|------|--|---------------|
| 1958 | Manoeuvres Act | 9 |
| 1971 | Armed Forces Act (<i>spent</i>) | 1 |
| 1976 | Armed Forces Act (<i>relates to Greenwich hospital</i>) | 1 |
| 1981 | Armed Forces Act (<i>s 26 relates to pensions</i>) | 2 |
| 1985 | Reserve Forces (Safeguard of Employment) Act | 19 |
| 1987 | Ministry of Defence Police Act | 15 |
| 1991 | Armed Forces Act | 10 |
| 1996 | Reserve Forces Act | 130 |
| 1996 | Armed Forces Act (<i>s 30 relates to Greenwich hospital</i>) | 4 |
| 2001 | Armed Forces Act | 6 |
| 2006 | Armed Forces Act | 380 |
| 2011 | Armed Forces Act | 3 |
| 2014 | Citizenship (Armed Forces) Act (amendments) | 1 |
| 2016 | Armed Forces Act | 15 Total: 682 |

The key Act is the 2006 Act (which is well drafted). It should be re-enacted, absorbing these other Acts (much could be put in Schedules). The effect would be a new (comprehensive) Armed Forces Code of c. 750 sections.

(c) Pensions

| | | |
|------|--|-------------|
| 1865 | Naval and Marine Pay and Pensions Act | 5 |
| 1884 | Naval Pensions Act | 1 |
| 1884 | Pensions and Yeomanry Pay Act | 4 |
| 1914 | Army Pensions Act 1914 (<i>applies pre-1981, obs</i>) | |
| 1917 | Naval and Military War Pensions <i>etc</i> (Administrative Expenses) Act | 3 |
| 1918 | War Pensions (Administrative Provisions) Act | 1 |
| 1919 | War Pensions (Administrative Provisions) Act | 4 |
| 1920 | War Pensions Act | 6 |
| 1921 | Admiralty Pensions Act | 3 |
| 1921 | War Pensions Act | 6 |
| 1939 | Pensions (Navy, Army, Air Force and Mercantile Marine) Act | 6 |
| 1942 | Pensions (Mercantile Marine) Act | 9 |
| 1942 | War Orphans Act 1942 | 1 |
| 1977 | Social Security (Misc Provs) Act | 2 |
| 1986 | Protection of Military Pensions Act | 9 |
| 1989 | Social Security Act (<i>s 25 relates to pensions</i>) | 1 |
| 2004 | Armed Forces (Pensions and Compensation) Act | 6 Total: 67 |

All this material should be put into a Statutory Instrument (of c. 20 sections at most, much is obsolete). It does not need to be in general legislation.

(d) Prize

| | | |
|------|------------------------------|-------------|
| 1864 | Naval Prize Act | 25 |
| 1894 | Prize Courts Act | 3 |
| 1914 | Prize Courts (Procedure) Act | 1 |
| 1915 | Prize Courts Act | 3 |
| 1916 | Naval Prize (Procedure) Act | 1 |
| 1939 | Prize Act | 4 |
| 1944 | Prize Salvage Act | 2 Total: 39 |

Consideration should be given to abolishing the law of prize and bounty. Thus, this legislation would be repealed.

(e) Wills

| | | |
|------|--|----|
| 1865 | <i>Navy and Marines (Wills) Act</i> | |
| 1865 | <i>Navy and Marines (Property of Deceased) Act</i> | 18 |
| 1889 | <i>Revenue Act (s 30 amends 1865 Act)</i> | 1 |
| 1918 | <i>Wills (Soldiers and Sailors) Act</i> | 4 |

| | | |
|------|-------------------------------------|-----------|
| 1930 | <i>Navy and Marines (Wills) Act</i> | |
| 1939 | <i>Navy and Marines (Wills) Act</i> | |
| 1953 | Navy and Marines (Wills) Act | Total: 23 |

The Acts in italics were repealed save for wills presently being dealt with under them (of which there are now none and, thus, they are spent) with the result that the 1953 Act may be repealed as well. This material should be left to be inserted in a new Wills Act.

(f) Greenwich & Chelsea Hospitals, Imperial War Museum, War Graves

| | | |
|------|--|-------------|
| 1826 | Chelsea and Kilmainham Hospital | 10 |
| 1865 | Greenwich Hospital Act | 21 |
| 1869 | Greenwich Hospital Act | 6 |
| 1872 | Greenwich Hospital Act | 3 |
| 1876 | Chelsea Hospital Act | 1 |
| 1883 | Greenwich Hospital Act | 4 |
| 1885 | Greenwich Hospital Act | 2 |
| 1920 | Imperial War Museum Act | 5 |
| 1926 | Imperial War Graves Endowment Fund Act | 2 |
| 1942 | Greenwich Hospital Act | 2 |
| 1955 | Imperial War Museum Act | 2 |
| 1967 | Greenwich Hospital Act | 1 |
| 1990 | Greenwich Hospital Act | 1 Total: 60 |

This material should be modernised and put in a Schedule to the AFC.

(g) Court Martial

| | | |
|------|-----------------------------|--------------|
| 1951 | Court Martial (Appeals) Act | 8 |
| 1968 | Court Martial Appeals Act | 68 Total: 76 |

Consideration should be given to merging this court with the Court of Appeal. If not, it should be placed in the AFC.

(h) Others

| | | |
|------|---|-------------------|
| 1864 | Naval Agency and Distribution Act | 25 |
| 1879 | Registration of Births, Deaths and Marriages (Army) Act | 2 |
| 1893 | Debts (Deceased Servicemen <i>etc</i>) Act [Regimental Debts Act] | 26 |
| 1916 | 'Anzac' (Restriction on Trade Use of Word) Act | 1 |
| 1935 | Regimental Charitable Funds Act | 2 |
| 1939 | Import, Export and Customs Powers (Defence) Act | 4 |
| 1949 | Armed Forces (Housing Loans) Act | 1 |
| 1950 | Royal Patriotic Fund Corporation Act (<i>refers to 1893 Act above</i>) | 1 |
| 1955 | Revision of the Army and Air Force (Transitional Provisions) Acts (<i>amends</i>) | 2 |
| 1958 | Defence Contracts Act | 6 |
| 1958 | Armed Forces (Housing Loans) Act | 1 |
| 1964 | Defence (Transfer of Functions) Act | 2 |
| 1965 | Armed Forces (Housing Loans) Act | 1 |
| 1986 | Protection of Military Remains Act | 9 |
| 2014 | Defence Reform Act | 48 ³⁴⁶ |
| 2015 | Armed Forces (Services Complaints and Financial Assistance) Act | 3 |
| 2018 | Armed Forces (Flexible Working) Act (<i>amends</i>) | 1 Total: 132 |

This should be placed (if still needed) in the AFC.

In conclusion, all the above material should be consolidated into 1 AFC. The material referred to below is also contained in *Halsbury Statutes*, vol 3 and it makes (at times) cross reference to military matters/legislation (which should be amended). These Acts, however, should not be incorporated into any AFC or AFA since they only deal with military matters incidentally.

(i) Emergency Legislation

| | | |
|------|----------------------------|--|
| 1939 | Compensation (Defence) Act | |
|------|----------------------------|--|

³⁴⁶ This includes material on the Reserve Forces and Military Police which should go into (b).

| | |
|------|--|
| 1939 | Liability for War Damage (Misc Provs) Act 1939 |
| 1939 | Trading with the Enemy Act |
| 1939 | Patents, Designs, Copyright and Trade Marks (Emergency) Act |
| 1939 | Import, Export and Customs Powers (Defence) Act |
| 1945 | Limitation (Enemies and War Prisoners) Act |
| 1947 | Emergency Laws (Misc Provs) Act |
| 1949 | Distribution of German Enemy Property Act (spent) |
| 1952 | Distribution of German Enemy Property Act (<i>amends 1949 Act</i>) |
| 1953 | Enemy Property Act |
| 1953 | Emergency Laws (Misc Provs) Act |
| 1956 | Underground Works (London) Act |
| 1959 | Emergency Laws (Repeal) Act |
| 1964 | Emergency Powers Act |
| 1964 | Emergency Laws (Re-enactment and Repeal) Act |
| 1965 | War Damage Act |
| 1990 | Import Export Control Act |
| 1998 | Landmines Act |
| 2002 | Export Control Act |
| 2004 | Civil Contingencies Act |
| 2006 | Emergency Workers Obstruction Act |
| 2010 | Cluster Munitions (Prohibition) Act |

Appendix E - GOVERNMENT ACT

An Act to consolidate and reform various matters relating to government.

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Sections**Central Government****1. Cabinet**

- (1) The cabinet is the highest executive organ of government.³⁴⁷
- (2) The following shall continue to comprise offices of the cabinet, the:
 - (a) Prime Minister's Office;
 - (b) Cabinet Office.

2. Prime Minister

- (1) The Prime Minister (the '**PM**') is head of the cabinet and *primus inter pares* (first among equals).
- (2) The PM, at his sole discretion, shall appoint, dismiss and accept the resignation of any:
 - (a) member of the cabinet ('**Cabinet Minister**');
 - (b) other minister ('**Junior Minister**').
- (3) The PM must be a member of the House of Commons.³⁴⁸
- (4) Any Crown prerogative to appoint (or to recommend the appointment of) or to dismiss or to accept the resignation of:
 - (a) the PM,³⁴⁹ or
 - (b) a Minister,

³⁴⁷ Amery, n 65, p 70 'It is in cabinet that administrative action is co-ordinated and that legislative proposals are sanctioned. It is the cabinet which controls Parliament and governs the country.'

³⁴⁸ See **9**.

³⁴⁹ The last time this is said to have occurred is 1834 (more probably 1783), see **7(c)**.

is abolished.

3. Deputy and Acting Prime Ministers

- (1) At his sole discretion, the PM may appoint a Deputy PM.
- (2) The PM shall appoint an Acting PM (who may be the Deputy PM).
- (3) The Acting PM shall take up the post on the:
 - (a) death;
 - (b) physical or mental incapacity; or
 - (c) resignation;
 of the PM, to prevent any *hiatus* between such an event and the election of a new PM.
- (4) Any Deputy (or Acting) PM shall have no right of succession.
- (5) An Acting PM does not have to be a Cabinet Minister.

4. Cabinet Ministers

- (1) There shall be a maximum of [25] and a minimum of [12] Cabinet Ministers.³⁵⁰
- (2) The PM, at his sole discretion, may settle precedence in cabinet.³⁵¹
- (3) Prior to taking office, Cabinet Ministers must give a written commitment to maintain secret all cabinet proceedings.³⁵²

5. Positions and Titles

- (1) Present cabinet positions and titles comprise those referred to in *Schedule 1 [being Appendix B, at present]*.³⁵³
- (2) The following titles shall be abolished:
 - (a) *First Lord the Treasury*;
 - (b) *Second Lord of the Treasury*;
 - (c) *Lord Keeper of the Privy Seal*;
 - (d) *Chancellor of the Duchy of Lancaster*.
 - (e) *Paymaster General (and assistant)*.³⁵⁴
 - (f) Secretary of State (including First and Second Secretaries of State);
 - (g) Parliamentary Secretary;
 - (h) Patronage Secretary.³⁵⁵
- (3) The title:
 - (a) 'Lord Chancellor' shall change to 'Minister of Justice';³⁵⁶
 - (b) '*Lord President of the Council*' shall change to '*President of the Privy Council*';³⁵⁷
 - (c) 'Chancellor of the Exchequer' shall change to 'Finance Minister';
 - (d) 'Chief Secretary to the Treasury' shall change to 'Head of the Finance Ministry';
 - (e) 'Minister for the Civil Service' shall change to 'Civil Service Minister'.
 - (f) 'Secretary of State' (including First and Second Secretaries) shall change to 'Minister';
 - (g) 'Parliamentary Secretary to the Treasury' shall change to 'Chief Whip';
 - (h) 'Parliamentary Secretary' shall change to 'Junior Minister'
- (4) All references in any Act of Parliament or SI shall be amended to reflect (1)-(4) as well as in any instrument, contract or legal proceedings made or commenced before the date of this enactment.³⁵⁸

³⁵⁰ Cf. Brazier, n 21, p 130 'The total number of paid [SS] cannot now exceed twenty-one...' citing the Ministerial and other Salaries Act 1975, s 1(1)(a), sch 1, pt V, para 2(a).

³⁵¹ Bradley, n 25, p 277 'The [PM] settles the order of precedence in the cabinet, and may name one of the cabinet to be deputy [PM].'

³⁵² For the privy council oath see McBain, n 313, pp 41-2, 52.

³⁵³ This section need not be provided for in legislation since the Prime Minister, in the past, has effected the same without legislation. However, it provides a point of reference for other sections of this Act.

³⁵⁴ These titles have been referred to in a *Crown Act*, see McBain, n 1, p 91. Thus, they need not be referred to here.

³⁵⁵ This is the formal title of the Government Chief Whip.

³⁵⁶ This assumes the LC's powers of ecclesiastical patronage are transferred to the Archbishop of Canterbury (or abolished). And that his other powers are transferred to the Minister of Justice (or abolished). See McBain, n 3, p 243.

³⁵⁷ This assumes the privy council is not abolished, see 16.

³⁵⁸ Cf. Ministers of the Crown Act 1975, s 1(b).

6. Junior Ministers

- (1) There shall be a maximum of [] Junior Ministers.
- (2) Junior Ministers must be members of the House of Commons *or the House of Lords*.³⁵⁹
- (3) The maximum number in (1) may be altered by a SI.³⁶⁰

7. Appointment etc of Ministers

- [(1) The PM shall:
- (a) appoint;
 - (b) dismiss; or
 - (c) accept the resignation of;
- a Minister pursuant to a formal letter issued by the [Cabinet Office, signed by the PM].³⁶¹

8. Notification of Appointments

- (1) On the election of a PM the same shall notify:
 - (a) the sovereign; and
 - (b) details shall be published in the Official Gazette.
- (2) On the appointment of a Deputy (or Acting) PM or a Cabinet Minister, the PM shall notify:
 - (a) the sovereign; and
 - (b) details shall be published in the Official Gazette.³⁶²
- (3) On the appointment of a Junior Minister:
 - (a) details shall be published in the Official Gazette.³⁶³

9. Salaries

- (1) The salaries of Ministers and other officers shall be according to *Schedule 2*.³⁶⁴

10. Transfer of Ministerial Functions

- (1) A SI may provide for the:
 - (a) transfer to any Minister of any functions previously exercisable by another Minister;
 - (b) dissolution of any ministry and the transfer to (or distribution among) such other Ministry(ies) as may be specified in the SI, of any functions previously exercisable by the Minister in the former ministry;³⁶⁵
 - (c) functions of any Minister to be exercisable concurrently with another Minister or to cease to be so exercisable;³⁶⁶
 - (d) the relevant Ministry to have new functions or its functions changed.³⁶⁷
- (2) The provisions of *Schedule 3* shall apply.³⁶⁸

11. Transfer of Ministerial Functions

- (1) A SI may provide for:
 - (a) a change in the title of a Ministry or a Minister;³⁶⁹
 - (b) the abolition of a title of a Ministry or a Minister;
 - (c) the creation of a new Ministry and any ministerial title thereto.³⁷⁰

³⁵⁹ Cf. Brazier, n 21, p 54 'By convention, all ministers must be or must become members of the [HC] or of the [HL].'

³⁶⁰ Cf. Ministerial and other Salaries Act 1975 where the maximum can be altered by an SI, see s 1(4). Also, Brazier, n 21, p 53.

³⁶¹ This has been previously set out in a *Parliament Act*, see McBain, n 2, p 175 but it may be more appropriate here.

³⁶² Brazier, n 21, p 68 'All cabinet appointments must be published in the *London Gazette* in order that the ministers may be paid the appropriate enhanced salaries.' See also Ministerial and other Salaries Act 1975, s 1 and sch 1.

³⁶³ Ibid.

³⁶⁴ This will set out the Ministerial and Other Salaries Act 1975 and the Ministerial and other Pensions and Salaries Act 1991.

³⁶⁵ Cf. Ministers of the Crown Act 1975, s 1 'provide for the dissolution of a government department in the charge of any Minister and the transfer to or distribution among such other Minister(s) as may be specified in the SI of any functions previously exercisable by the Minister in charge of that department.'

³⁶⁶ Ibid. Section 2 (*which deals with changes in departments of office of Secretary of State or their functions*) and s 3 (*transfer of property etc*) would not be needed.

³⁶⁷ It would seem sensible to provide for this.

³⁶⁸ Ministers of the Crown Act 1975, Sch 1 (*Provisions applying to certain ministers and their departments*). Also, ss 5-6, to the extent required.

³⁶⁹ Cf. Ministers of the Crown Act 1975, s 4 (*change in title of ministers*).

³⁷⁰ Smith, n 22, p 190 'Under the Ministers of the Crown Act 1975, functions may be transferred by Order in Council from one minister to another, the designations of ministers may be altered, and ministers and their departments may be similarly wound up. In order to create a

12. The term ‘Government’

- (1) The term the ‘*Government*’ shall refer, collectively, to:
 - (a) the PM;
 - (b) Ministers.

13. Governmental Acts

- (1) All acts performed by the Government comprise ‘Governmental Acts.’

14. Accountability

- (1) The Government is accountable to Parliament for all Governmental Acts and it shall no longer be:
 - (a) treated as part of the Crown; or
 - (b) held accountable to the sovereign [Crown]³⁷¹ for any Governmental Act.
- (2) The sovereign [Crown]³⁷² is not accountable for any Governmental Act.
- (3) Any legal fiction that the PM or any Minister:
 - (a) is accountable
 - (b) for the Governmental Acts of the sovereign [Crown],
 is abolished.
- (4) A Minister is accountable for all Governmental Acts which occur in his ministry, save where s 40 applies, excepting sub-section (b);
- (5) For the purposes of this section there is no difference between the words ‘accountability’ and ‘responsibility’.³⁷³

15. Execution of Government Documents

- (1) Any document to be executed under the Great Seal shall be executed in accordance with the Crown Act, s [].³⁷⁴
- (2) Any proclamation shall be executed in accordance with the Crown Act, s [].³⁷⁵
- (3) Any SI shall be executed by a:
 - (a) Cabinet Minister and a Junior Minister; or
 - (b) two Junior Ministers,
 of the relevant ministry (or the Cabinet Office) which has drafted the SI.
- (4) Any orders, commissions or warrants or other legal documents formerly required to be executed:
 - (a) under the royal sign manual; or
 - (b) to evidence the royal pleasure which are not otherwise within (a),
 shall be executed by two Junior Ministers.
- (5) The Crown shall no longer be involved in the making, or execution, of any document:
 - (a) referred to any of (1)-(4); or
 - (b) containing any Governmental Act,
 save where an Act of Parliament, or a SI, provides otherwise.

16. Ministries

- (1) Present Ministries and ministerial titles comprise those referred to in *Schedule 4 [at present, in Appendix C]*.³⁷⁶
- (2) Ministries may be increased or reduced in number from time to time by the PM at his sole discretion.
- (3) There shall be a maximum of [] Ministries.

17. Management Structure of Ministries

- (1) Each ministry shall have a board of management.
- (2) The name of the board shall reflect that of the ministry (such as ‘Finance Ministry Board’) and it shall be approved by cabinet.

ministerial office with entirely new functions, an Act of Parliament is required unless the office is that of a Secretary of State.’ Brazier, n 21, p 137 thought such a distinction a ‘*pointless complication*’ and that the 1975 should have been amended ‘to allow the creation of any new department (however called) and any new minister (however styled) by Order in Council [i.e. SI].’

³⁷¹ When all Crown prerogatives are abolished (or placed in legislation) the word ‘*Crown*’ may replace that of ‘*sovereign*.’

³⁷² Ibid.

³⁷³ See Constitution Committee of the House of Lords, cited by Bradley, n 25, p 115.

³⁷⁴ See *Crown Act*, n 1, p 72.

³⁷⁵ Ibid, p 73.

³⁷⁶ This section need not be provided for in legislation since the Prime Minister, in the past, has effected the same without legislation. However, it provides a point of reference for other sections of this Act.

- (3) The chairman of the board shall be the relevant Cabinet (or other) Minister of the ministry.
- (4) The Chief Executive Officer ('CEO') of the board shall be the civil servant who is Head of the relevant Ministry.³⁷⁷
- (5) The CSB shall have no more than one chairman and 8 directors without the consent of the cabinet.
- (6) The CSB shall have the up to 6 divisions:
- (7) The name of the board in (2) and the number of divisions in (6) may not be changed without the consent of the cabinet.

18. Non-Ministerial Government Organs

- (1) A SI shall list, annually, all:
 - (a) quasi-autonomous non governmental organisations ('quangos');
 - (b) statutory corporations which perform Governmental Acts;
 - (c) chartered corporations which perform Governmental Acts.³⁷⁸
- (2) No board of any of (1) shall have more than one chairman and 6 directors without the consent of the Cabinet Office.
- (3) The number of quangos may not be increased without the consent of cabinet.
- (4) Sections 10(a), (b) and (d) shall apply to any quango, as if reference to the same were made instead of that to a ministry.
- (5) Any quango may be abolished by a SI including:
 - (a) where the quango is established by legislation; and
 - (b) regardless of whether any alternative method of abolition is provided in any legislation, contract, crown prerogative, charter or otherwise,
 save that, where (a) applies, the Cabinet Minister shall inform Parliament in advance of the tabling of the relevant SI before the same.

19. Civil Service

- (1) *The PM shall be the Civil Service Minister.*³⁷⁹
- (2) There shall continue to be a Civil Service Board ('CSB').
- (3) The chairman of the CSB shall be the Cabinet Office Minister.
- (4) The chief executive officer ('CEO') of the CSB shall be the Cabinet Secretary.³⁸⁰
- (5) The CSB shall have no more than one chairman and 8 directors without the consent of the cabinet.
- (6) The CSB shall have the following 5 divisions:
 - (a) Civil Service Human Resources (including any fast stream);
 - (b) Civil Service Infrastructure;
 - (c) Civil Service Goods and Services;
 - (d) Civil Service Support and Networks;
 - (e) Civil Service Reform.
- (7) The number of divisions in (6) may not be changed without the consent of the cabinet.
- (8) There shall continue to be a Civil Service Commission to which *Schedule 5* shall apply.³⁸¹

20. Accountability of Civil Service

- (1) Every civil servant is accountable to:
 - (a) the Minister in whose ministry the civil servant is working;³⁸²
 - (b) the CSB;
 - (c) the Cabinet Office Minister; and³⁸³
 - (d) Parliament.

³⁷⁷ Cf. Cabinet secretary, see Bradley, n 25, pp 281-2.

³⁷⁸ i.e. so-called public corporations.

³⁷⁹ If the role of PM is recognised in legislation as *primus inter pares* (see s 2), it may be this title is not required. Thus, the relevant minister in overall charge of the civil service would be the Cabinet Office Minister, who is accountable to the PM in cabinet and generally.

³⁸⁰ See also Bradley, n 25, pp 281-2.

³⁸¹ This schedule will set out the Constitutional Reform and Governance Act 2010, ss 2-17.

³⁸² See Government Response HC 1057, 2007-8 cited by Bradley, n 25, p 117 'Civil servants are accountable to Ministers, who in turn are accountable to Parliament. It is this line of accountability which makes clear that ultimately Ministers are accountable to the electorate.' Ibid, Bradley, n 25, p 292 'The principle of responsibility through ministers to Parliament is one of the most essential characteristics of the civil service.'

³⁸³ Cf. the Civil Service Minister (the PM). This, then, makes the Cabinet Office Minister accountable to the PM in cabinet, which seems more appropriate.

for all Governmental Acts.

- (2) The civil service:
- (a) shall no longer be treated as part of the Crown;
 - (b) is not accountable to the sovereign [Crown] for any Governmental Act.³⁸⁴
- (3) In the case where a civil servant is working in a quango, then
- (a) section (1)(a) shall refer to the head of the quango.

21. Operation of Civil Service

- (1) The civil service shall operate in accordance with the following basic aims. It shall seek, as far as possible, to make Government:
- (a) streamlined;
 - (b) transparent;
 - (c) impartial;
 - (d) user-friendly;
 - (e) business-like.

22. Handbook of Civil Service

- (1) The civil service shall publish annually a Civil Service Handbook ('CSH') in hard copy and electronic formats.
- (2) The CSH shall contain:
- (a) general legislation and SI's on the civil service;
 - (b) a list of the organs referred to in s 18 and ministries referred to in s 16;
 - (c) an organogram of the civil service structure;
 - (d) a list of all internal civil service departments with details of their address *etc*;
 - (e) a list of civil service ranks and the pay for the same;
 - (f) other useful data, statistics and information on the civil service;
 - (g) reforms the civil service intends to make, to achieve the aims of s 21.
- (3) Section 2 (1)(f) shall include details of:
- (a) general legislation and SI's relating to the civil service that may be consolidated or repealed;
 - (b) organs referred to in s 18 that may be consolidated or abolished;
 - (c) internal units and offices of the civil service that may be consolidated or abolished;
 - (d) real property and major assets of the civil service that may be sold or dispensed with.

23. Privy Council

(1) The Privy Council is abolished and all legal acts of the same shall be transferred to a Ministry or the Cabinet Office, as stipulated in a SI. [*alternatively, perhaps:*

(1) *The following only shall continue to sit as members of the Privy Council:*

- (a) Cabinet Ministers;
- (b) former Cabinet Ministers.]³⁸⁵

(2) *Any legal act of the privy council may be transferred to a Ministry or the Cabinet Office, as stipulated in a SI.*

24. Law Officers for England and Wales

- (1) The salary of the Attorney General ('AG') shall be according to *Schedule 2*.
- (2) The title of Solicitor-General shall change to that of 'Deputy Attorney-General'.
- (3) The Office of the Solicitor-General shall merge with that of the AG.
- (4) The salary of the Deputy Attorney-General shall be according to *Schedule 2*.

25. Advocate General for Northern Ireland

- (1) [Repeats Law Officers Act 1997, s 2]

Local Councils

26. Principal Councils

- (1) The principal councils in the UK shall be re-organised as follows, there shall be in:
- (a) England, [] councils;

³⁸⁴ See n 371.

³⁸⁵ Such would exclude Church of England clerics, judges and others appointed at the sovereign's pleasure (that is, on the recommendation of the PM).

- (b) Scotland, [] councils;
- (c) Wales, [] councils;
- (d) Northern Ireland, [] councils,

as specified in a SI.

(2) All councils shall bear the title '*council*' only and other titles shall be discarded, including any title containing the following words:

- (a) County;
- (b) District;
- (c) Town;
- (d) Borough (Burgh);
- (e) City;
- (f) Metropolitan;
- (g) Unitary;
- (h) First tier;
- (i) Second tier.

(3) Without prejudice to (2), the City of London Corporation shall continue to bear that title.

(4) Any principal council may be abolished (or merged with another) pursuant to a SI.

(5) Any charters granted by the Crown to any borough (burgh) are hereby cancelled.

27. Community Councils

(1) Community councils in the UK shall be re-organised as follows, there shall be in:

- (a) England, [] community councils;
- (b) Scotland, [] community councils;
- (c) Wales, [] community councils,

as specified in a SI.

(2) All community councils shall bear the title '*council*' only and other titles shall be discarded, including any title containing the words referred to in s 26(2) or the following:

- (a) Parish;
- (b) Village;
- (c) Neighbourhood.

(3) Any community council may be abolished (or merged with another community council) pursuant to a SI.

Armed Forces

28. Joint Forces Command Board

(1) The Joint Forces Command Board ('JFCB') shall have no more than one chairman and 8 directors without the consent of the cabinet.

(2) The JFCB shall administer the following divisions:

- (a) Defence Service Reform;
- (b) Defence Service Human Resources (including any fast stream);
- (c) Defence Service Infrastructure;
- (d) Defence Service Goods and Services;
- (e) Defence Service Support and Networks;
- (f) Defence Commercial Services.

(3) The number of divisions referred to in (2) may not be increased without the consent of the cabinet.

29. Armed Forces Code

(1) All general legislation on the armed forces shall be consolidated into an Armed Forces Code ('AFC'), which Code shall be revised and re-enacted every 5 years.

(2) The MOD shall be responsible for (1).

30. Armed Forces Handbook

(1) The MOD shall publish an annual Armed Forces Handbook ('AFH').

(2) The AFH shall include:

- (a) the Code referred to in s 29(1), as amended;

- (b) all SI relating to the armed forces;
- (c) other useful data, statistics and information on the armed forces.

Emergency Services

31. Emergency Services

- (1) The Emergency Services shall be re-organised as specified in ss 32-35.

32. England

- (1) There shall be one national police service in England (called '**Police England**') with 7 geographical divisions, into which the police services specified in a SI shall be merged.
- (2) There shall be one national fire and rescue service in England (called '**Fire and Rescue England**') with 7 geographical divisions, into which the fire and rescue services specified in a SI shall be merged.
- (3) Police England, Fire and Rescue England and the ambulance service of the 11 NHS trusts in England shall have the same 7 geographical divisions as specified in a SI, but no regions.

33. Wales

- (1) There shall be one national police service in Wales (called '**Police Wales**'), with 4 geographical divisions, into which the police services specified in a SI shall be merged.
- (2) There shall be one national fire and rescue service in Wales (called '**Fire and Rescue Wales**') with 4 geographical divisions, into which the fire and rescue services referred to a SI shall be merged.
- (3) Police Wales, Fire and Rescue Wales and the Welsh Ambulances Services NHS Trust shall have the same 4 geographical divisions specified in a SI, but no regions.

34. Scotland

- (1) Pursuant to a SI:
 - (a) National Police Service of Scotland;
 - (b) Scottish Fire and Rescue Service; and
 - (c) Scottish Ambulance Service (NHS Scotland)shall merge to form '**Scotland Emergency Services**' ('SES'). It shall have 7 geographical divisions.
- (2) Pursuant to a SI the following shall also become part of SES:
 - (a) MOD police in Scotland;
 - (b) British Transport Police in Scotland;
 - (c) Civil nuclear constabulary in Scotland.
- (4) SES shall have 7 geographical divisions specified in a SI, but no regions.

35. Northern Ireland

- (1) Pursuant to a SI:
 - (a) Police Service of Northern Ireland;
 - (b) Northern Ireland Fire and Rescue Service; and
 - (c) Scottish Ambulance Service (NHS Scotland)shall merge to form '**Northern Ireland Emergency Services**' ('NIES').
- (2) Pursuant to a SI, the following shall also become part of NIES:
 - (a) harbour police of Belfast;
 - (b) harbour police of Larne;
 - (c) MOD police in NI;
 - (d) British Transport Police in NI;
 - (e) Civil Nuclear constabulary in NI.
- (3) NIES shall have 3 geographical divisions specified in a SI, but no regions.

36. Legal Proceedings

- (1) The liability of, and legal proceedings against, Ministries are as set out in *Schedule 6* [This will re-state the CPA 1947 as amended, see 26].

37. Treasury Board

- (1) The Board of the Treasury is abolished.
- (2) The head of the Treasury is the Finance Minister who shall report to the PM.

(3) Any treasury warrant may be signed by two Junior Ministers.³⁸⁶

38. Board of Trade

(1) The Board of Trade is abolished.

39. Number 10 Downing Street

(1) Number 10 Downing Street shall be:

- (a) held, and maintained, by the nation
- (b) as a residence for the PM as successor to the First Lord of the Treasury.

40. Crime of Abuse of a Public Office

(1) For the avoidance of doubt, *inter alia*, the following are subject to the common law offence of abuse of a public office:

- (a) the PM;
- (b) any Minister;
- (c) any civil servant;
- (d) any board member of a quango;³⁸⁷
- (e) any board member of a public corporation;
- (f) any MP;
- (g) any member of the House of Lords;
- (h) any officer of Parliament;
- (i) any employee of Parliament performing an administrative function.

(2) For the purpose of (1) a 'quango' and a 'public corporation' comprise those listed in a SI pursuant to s 18(1).

(3) Neither the PM nor any Minister is not accountable to Parliament for the abuse of a public office by any of (1) where the same is not involved.

41. Contempt of Parliament

(1) It is a contempt of Parliament for any person referred to in s 40(1) to:

- (a) intentionally mislead Parliament with respect to a Governmental Act;
- (b) intentionally fail to provide Parliament with relevant information so as to avoid accountability to Parliament;³⁸⁸
- (c) fail to disclose to Parliament that they are acting on behalf of a foreign government (or any organ of the same) when providing information to Parliament, including a failure to disclose that they have been or are:
 - (i) paid by that foreign government;
 - (ii) an employee of that foreign government (or any organ of the same);
 - (iii) secretly working for that foreign government.

(2) For the purpose of (1), reference to Parliament shall include any Parliamentary committee.³⁸⁹

42. Duchy of Cornwall

(1) The post of Solicitor General to the Duchy of Cornwall is abolished.

43. Repeals, Interpretation and Application

(1) The legislation in *Schedule 7*³⁹⁰ is repealed, or amended, as described.

(2) In this Act:

- (a) 'Civil servant' means any person employed in a ministry other than:
 - (i) the PM;
 - (ii) a Minister.³⁹¹
- (b) 'Emergency Services' refers to the police, fire and rescue and ambulance services of the UK;

³⁸⁶ De Smith, n 22, p 189 'the Junior Lords [of the Treasury] sign formal Treasury warrants, but their main function is to act as government whips in the [House of] Lords.'

³⁸⁷ That is, those listed in a SI.

³⁸⁸ Obviously, accountability is undermined where there is a deliberate withholding of information in order to defeat the purpose of accountability.

³⁸⁹ See Bradley, n 25, p 116. Also, p 111 in respect of civil servants.

³⁹⁰ See *Appendix A* in this article.

³⁹¹ Cf. De Smith, n 22, p 202 'A civil servant is a Crown servant (other than the holder of a political or judicial office or a member of the armed forces) appointed directly or indirectly by the Crown, and paid wholly out of funds provided by Parliament and employed in a government department.' See also Bradley, n 25, p 289.

(c) ‘*Ministers*’ means; (a) Cabinet Ministers; and (b) Junior Ministers [and includes the Treasury³⁹² and the Defence Council];³⁹³

(d) ‘*MOD*’ means the Ministry of Defence;

(e) ‘*NI*’ means Northern Ireland;

(f) ‘*SI*’ refers to a statutory instrument;

(h) ‘*UK*’ refers to the United Kingdom.

(3) In this Act reference to the:

(a) ‘*sovereign*’ refers to the sovereign in person (that is, in the body natural);

(b) ‘*Crown*’ refers to the sovereign as well as the same in the body politic, unless otherwise provided.

(4) This Act applies to Scotland and Northern Ireland.

Schedule 1 - Present Cabinet Positions and Titles

Schedule 2 - Salaries of Ministers and Law Officers

Schedule 3 - Various ss of the Ministers of the Crown Act 1975 (ss 5-6 and sch 1)

Schedule 4 - Present Ministerial Positions and Titles

Schedule 5 - Civil Service Commission

Schedule 6 - Legal Proceedings (Crown Proceedings Act 1947 as amended)

Schedule 7 – Repealed legislation

Appendix F: Foreign Relations Legislation

St Helena Act 1833

Colonial Affidavits Act 1859

Colonial Laws Validity Act 1865

Admiralty Offences (Colonial) Act 1860

Colonial Laws Validity Act 1865

Colonial Prisoners Removal Act 1869

Courts (Colonial) Jurisdiction Act 1874

Colonial Prisoners Removal Act 1884

British Settlement Act 1887

Foreign Jurisdiction Act 1890

Colonial Boundaries Act 1895

Foreign Jurisdiction Act 1913

Alderney (Transfer of Property) Act 1923

British Settlements Act 1945

United Nations Act 1946

Indian Independence Act 1947

Jersey and Guernsey (Financial Provisions) Act 1947

Ceylon Independence Act 1947

Mandated Trust Territories Act 1947

Ireland Act 1949

India (Consequential Provision) Act 1949

Foreign Compensation Act 1950

Japanese Treaty of Peace Act 1951

Austrian State Treaty Act 1955

German Conventions Act 1955

Ghana Independence Act 1957

Federation of Malay Independence Act 1957

Ghana (Consequential Provision) Act 1960

³⁹² Cf. Ministers of the Crown Act 1975, s 7 which states ‘*Minister of the Crown*’ means the holder of an office in [HM’s] Government in the [UK], and includes the Treasury, the Board of Trade and the Defence Council.’ It is suggested the Board of Trade be abolished, see s 37.

³⁹³ The words in brackets are, probably, not needed.

Cyprus Act 1960
Nigeria Independence Act 1960
Sierra Leone Independence Act 1961
Tanganyika Independence Act 1961
West Indies Act 1962
South Africa Act 1962
Jamaica Independence Act 1962
Trinidad and Tobago Independence Act 1962
Uganda Independence Act 1962
Tanganyika Republic Act 1962
Foreign Compensation Act 1962
Rhodesia and Nyasaland Act 1963
Malaysia Act 1963
Kenya Independence Act 1963
Zanzibar Act 1963
Nigeria Republic Act 1963
Int. Headquarters and Defence Organisations Act 1964
Uganda Act 1964
Malawi Independence Act 1964
Zambia Independence Act 1964
Diplomatic Privileges Act 1964
Malta Independence Act 1964
Gambia Independence Act 1964
Kenya Republic Act 1964
Commonwealth Secretariat Act 1966
Guyana Independence Act 1966
Malawi Republic Act 1966
Botswana Independence Act 1966
Lesotho Independence Act 1966
Singapore Act 1966
Barbados Independence Act 1966
West Indies Act 1967
Bermuda Constitution Act 1967
Aden, Perim and Kuria Muria Islands Act 1967
Mauritius Independence Act 1968
International Organisations Act 1968
Swaziland Independence Act 1968
Foreign Compensation Act 1969
Tanzania Act 1969
Guyana Republic Act 1970
Tonga Act 1970
Republic of The Gambia Act 1970
Fiji Independence Act 1970
Diplomatic and other Privileges Act 1971
Sierra Leone Republic Act 1972
Island of Rockall Act 1972
Sri Lanka Republic Act 1972
Anguilla Act 1980
Antartic Act 1994
Australia Act 1986

Bahamas Independence Act 1973
Bangladesh Act 1973
Belize Act 1981
Brunei and Maldives Act 1985
Brunei (Appeals) Act 1989
Canada Act 1982
Diplomatic and Consular Premises Act 1987
Hong Kong Act 1985
Hong Kong Economic and Trade Office Act 1996
Isle of Man Act 1979
Kiribati Act 1979
Malta Republic Act 1975
Mauritius Republic Act 1992
Namibia Act 1991
New Hebrides Act 1980
Pakistan Act 1990
Papua New Guinea, Western Samoa and Nauru (Miscellaneous Provisions) Act 1980
Seychelles Act 1976
Solomon Islands Act 1978
South Africa Act 1995
Southern Rhodesia Act 1979
Trinidad and Tobago Republic Act 1976
Tuvalu Act 1978
Zimbabwe Act 1979
Commonwealth Act 2002

[Note: Much of this material is piecemeal and repetitious. Much could, also, be put in a table. To prevent this list being overlong, legislation up to 2002 only is stated. The remainder can be found in Halsbury, Statutes].

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