

# Modernising the UK Constitution - Draft Legislation

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*This article provides draft legislation for the modernization of the UK constitution. It proposes that all constitutional legislation presently existing (some 300 snippets) and any Crown prerogatives ('CP's') existing (c. 182, of which c. 85% are obsolete) be placed in 7 Acts. In most cases, the law can be stated very simply - since CPs were always simple proposition (often, a few lines or a statement in a judicial case). If the UK constitution is re-stated, this will not only be helpful in the UK, it will, also, be helpful for Commonwealth countries.*

## 1. INTRODUCTION

The UK constitution is a partly written one. However, it is little understood in its *entirety* by anyone these days. Even by many constitutional lawyers.<sup>1</sup> This is due to its being contained in c. 300 bits of general legislation as well as their being c. 182 Crown prerogatives ('CP's') at common law, some 85% of which are actually obsolete. The result is uncertainty and confusion. In 2004, the House of Commons indicated that something should be done about this.<sup>2</sup> However, as per usual, nothing has happened. The result of *failing to consolidate* legislation relating to the sovereign, the Crown, Parliament, government, the courts and the armed forces is a colossal cost to the tax payer as well as to the civil service, lawyers and judges. Yet, the solution is very simple. All general legislation should be consolidated. And, all the CP's should be abolished, with only those still needed being placed in legislation. All of this has been considered in detail in previous articles by the author which are available for free on the web, *viz.*

- Modernising the Constitution - A Crown Act;<sup>3</sup>
- Modernising the Constitution - A Parliament Act;<sup>4</sup>
- Modernising the Constitution - A Courts Act;<sup>5</sup>
- Modernising the Constitution - Quangos;<sup>6</sup>
- Modernising the Constitution - A Government Act;<sup>7</sup>
- Modernising the Constitution - A British Territories and Foreign Relations Act;<sup>8</sup>
- Modernising the Constitution - An Armed Forces Act;<sup>9</sup>
- Modernising the Constitution - Crown Estate & Sovereign's Private Estate;<sup>10</sup>
- Modernising the Constitution - Some Further Crown Prerogatives;<sup>11</sup>
- Modernising the Constitution - A Constitution Act;<sup>12</sup>
- Optimising the UK and Commonwealth Constitutions.<sup>13</sup>

<sup>1</sup> Many legal textbooks on constitutional law now only concentrate on a few CPs (not unexpected since so many are obsolete). However, this precludes an overview. Also, some ignore military, ecclesiastical or local government aspects. Very few consider old legislation.

<sup>2</sup> See House of Commons, Public Administration Committee, 4<sup>th</sup> Report of Session 2003. *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*. HC 422 (16 March 2004).

<sup>3</sup> International Law Research ('ILR') (2021), vol 10, no 1, pp 13-100.

<sup>4</sup> (2021) ILR, Ibid, pp 101-184.

<sup>5</sup> (2022) ILR, Ibid, pp 195-248.

<sup>6</sup> (2022) ILR, vol 11, no 1, pp 1-61.

<sup>7</sup> (2022) ILR, Ibid, pp 62-116.

<sup>8</sup> (2022) ILR, Ibid, pp 117-62 & 163-96.

<sup>9</sup> (2022) ILR, Ibid, pp 197-258.

<sup>10</sup> (2023) ILR, vol 12, no 1, pp 1-50.

<sup>11</sup> (2022) Journal of Politics and Law, vol 15, no 3, pp 65-88.

<sup>12</sup> (2022) ILR, vol 11, no 1, pp 259-325;

<sup>13</sup> (2022) Journal of Politics and Law, vol 15, no 3, pp 37-53.

The purpose of this article is to propose draft legislation which achieves all the above. It is, actually, not difficult since so much is *obsolete* and the remainder can, then, be set out in simple terms. This is now discussed.

## 2. **CONSOLIDATE INTO 7 ACTS**

The first person to publish a distinct treatise on CP's was the English textbook writer, Chitty, in 1820.<sup>14</sup> However, he did not list all of them since a number, even in his day, were obsolete. Also, there were, in his time, no good translations of Anglo-Saxon law since a number of CPs derived from the earliest of times. These, Chitty tended to gloss over. As it is, the author has sought to review all (or almost all)<sup>15</sup> of the c. 182 CP's.<sup>16</sup> This, and a review of all constitutional legislation, has caused the author to assert that - by far the best way to modernise things (and to ensure that all matters are dealt with) - is to consolidate the following into these distinct pieces of legislation: a

- Sovereign and Royal Family Act<sup>17</sup>
- Crown Act
- Parliament Act
- British Territories and Foreign Relations Act ('**BTFRA**')
- Armed Forces Act
- Courts Act
- Government Act

The first three - and some of the BTFRA - could, then, be consolidated into one **Constitution Act** of c. 100 sections. There is, quite frankly, nothing difficult in this. However, reviewing all this legislation and CP's makes it clear that previous attempts by the Law Commission and the Ministry of Justice to '*cherry pick*' individual CP's do not work. Indeed, it has resulted in some very poor legislative drafting at times, causing only problems for the courts.

As for the process of consolidating *constitutional legislation*, this could (easily) be achieved in c. 2 years by enacting the 7 Acts mentioned. Thus, without more ado, consideration is now given to the same, with short introductions. It should be noted that these *draft Acts* are not the same as those at the end of the articles referred to in 1. Rather, they intended to be optimised versions of the same, having now considered all CP's and legislation in detail and re-setting some provisions when they could be better placed in one Act, rather than another.

***Finally, it must be emphasised that there is, in truth, nothing difficult at all in consolidating all this constitutional material. The key thing is to cut out all:***

- ***obsolete personal prerogatives of the sovereign (most);***
- ***obsolete CPs (85%); and***
- ***obsolete fragments of constitutional legislation.***

*Why* this has not been done is due to the fact that few constitutional lawyers know anything about Anglo-Saxon law and history (which is where the prerogatives developed). And, there has been a distinct tendency in the Ministry of Justice and the Law Commission in the past to do things in a piecemeal fashion. The cynic would say that the motive is to milk the system ('to exhaust time and encroach upon eternity'). That is, to create a '*cushy billet*' and a job for life. And, the cynic might be right since this area of law is nowhere near as difficult as tax law, finance law, aviation law *etc.*

<sup>14</sup> J Chitty, *A Treatise on the Law of the Prerogatives of the Crown* (1820).

<sup>15</sup> One considered, but not yet published, relates to the CP to expel aliens (foreigners), including during wartime.

<sup>16</sup> See n 12, pp 301-7.

<sup>17</sup> Previous articles have not proposed this as a separate Act to the *Crown Act*. However, since there is confusion between personal prerogatives of the sovereign and CPs, this would seem useful (it, also, reduces the size of a *Crown Act*, making it more intelligible).

## 1. TEXT OF A SOVEREIGN AND ROYAL FAMILY ACT

Since 1322, legislation has distinguished between personal prerogatives of the sovereign and CP's.<sup>18</sup> The former were given to him, mainly for his *personal protection* (the latter were given to him to *govern the realm*; but he could not alienate them - although he could use the revenues from the Crown estate to maintain his royal household and the apparatus of government). As to these *personal prerogatives*, the following may be noted:

- **Succession**. The sovereign in Anglo-Saxon times was elected - at least, early on - by the people (the nation, *folk*) and, later, by the council of wise men (*witan gemote*), the precursor to Parliament. However, in later Anglo-Saxon times and thereafter the office of sovereign tended to be hereditary - albeit, the sovereign could be removed for misconduct. In 1700 legislation,<sup>19</sup> succession was derived from the bloodline of Electress Sophia of Hanover, the mother of George I (1714-27). The present sovereign, Elizabeth II, is of that line and no one seriously disputes that she is the legitimate sovereign. Thus, legislation should now derive from her and the heirs of her body (and successors) to make things clearer;
- **Continuity of Sovereignty**. To ensure there was no break in succession - one which could interrupt the operation of government - the common courts created the legal fiction that the sovereign was a *corporation sole* (also, called a body sole) in law. And, being such, the courts held that the office of sovereign (as opposed to the natural person) was immortal and, thus, could never die. This, also, should be reflected in a *draft Act*;
- **Prerogatives**. The sovereign was accorded - by the common law - with certain prerogatives. Also, the sovereign was made subject to certain limitations. However, most of these are obsolete. And, the latter can be stated in legislation with precision.

In conclusion, the *draft Act* simply states - in more intelligible terms - the present common law and legislation with regard to these matters. Thus, there is no loss to the sovereign in so providing. Indeed, it simply clarifies the law and removes legal detritus. In the case of the *royal family*, apart from the sovereign, no one else was given the benefit of the above personal prerogatives - save for a queen consort or a dowager queen who were accorded a few privileges. However, these are obsolete. So too, are various feudal obligations. They relate to the time of the Norman Conquest (1066) when land was granted by the conqueror (William I (1066-87)) in return for military and other services. However, this ended in 1660.<sup>20</sup> Thus, these remnants are vestigial and should have been abolished long ago. As to other matters:

- **Hereditary Peerages & Honours**. These were granted by the sovereign in person, for the purpose of government. However, after 1717, the sovereign no longer exercised direct power over government - her ministers (servants) becoming responsible to Parliament instead. Today, it is appropriate that hereditary peerages and honours no longer be granted save under advice. That is, on the recommendation of the government, since the sovereign no longer governs;
- **Church of England ('CoE')**. The CoE is a statutory creation from 1535, when the Catholic church was suppressed in the realm. The sovereign (Henry VIII (1509-47)) claimed - by legislation - the right to be head of the CoE. Further, by legislation in 1688,<sup>21</sup> the sovereign was prohibited from being a *catholic*. Today, in practice, the role of the sovereign as head of the CoE is purely formal. So too, the power of the sovereign to appoint various CoE priests to a living (patronage). If the formal role of the sovereign as head of the CoE is abolished - as well as the right of patronage - there is no need to preserve the prohibition on the sovereign being a catholic;
- **Salary & Tax**. Up to 1760, the sovereign used the revenues of the Crown Estate to pay salaries and pensions (annuities) to his royal household staff and to run the apparatus of government. However, today, the Sovereign Grant Act 2011 provides only for the royal household since the sovereign is now only a formal head of state and no longer runs government. Further, the sovereign did not pay tax on his personal salary (*privy purse*) since to do so served little purpose given that the sovereign was head of government. Also, until 1800, he could hold no real or personal property save as sovereign.<sup>22</sup> From 1800, this has changed. Thus, it is appropriate, today, that the sovereign pay tax and it seems that the sovereign now pays income tax. However, legislation should clarify that all forms of tax (including inheritance tax) should be paid by the sovereign, no different to a subject.

*Would the sovereign agree to these changes?*

<sup>18</sup> Revocation of the Ordinances 1322, art 4.

<sup>19</sup> Act of Settlement 1700.

<sup>20</sup> Tenures Abolition Act 1660.

<sup>21</sup> Bill of Rights 1688. The root of the prohibition was the fear that the sovereign (James II (1685-8)) was seeking to catholicise the CoE, which was (probably) not unfounded.

<sup>22</sup> It would have been pointless taxing the sovereign since Parliament would, then, simply have had to increase the sum paid, to take this into account. So too, from 1760, when the sovereign received a fixed sum to run government and his household (including a salary for himself).

- it is suggested there should be little problem in the case of *obsolete prerogatives and limitations*, since the same would not change the position in practice;
- nor, with regard to the abolition of obsolete feudal rights;
- nor, with regard to restrictions on the grant of hereditary peerages (since this reflects the current practice, these being only given to members of the royal family today);
- nor with regard to orders of knighthood *etc* (which are, generally, under advice);
- nor with regard to the ending of patronage since such is, generally, formal - the sovereign appointing under advice;
- as to giving up the role of formal head of the CoE, this is less certain. However, such would, then, place the sovereign in the same position she holds as with the Church of Scotland. Further, it should enable any prohibition on the sovereign being a catholic to be removed;
- as for taxation, the sovereign pays income tax. Thus, there would be no change. Further, since 1800, there is no good reason why the tax status of the sovereign should be any different to anyone else, since the sovereign is no longer running government. Thus, tax wise, the position of the sovereign should be no different to that of any subject.

**SOVEREIGN AND ROYAL FAMILY ACT**

*An Act to consolidate various matters relating to the sovereign and the royal family.*

**Contents****Part 1 - The Sovereign**

1. Person
2. Style and Titles
3. Legal Nature
4. Prerogatives and Limitations
5. Coronation
6. Regency
7. Death
8. Succession
9. Private Property
10. Royal Salary
11. Taxation
12. Sign Manual
13. UK Laws
14. Obsolete personal Prerogatives

**Part 2 - Royal Family**

15. Royal Family

**Part 3 - Royal Matters**

16. Royal Arms, Royal Standard and Union Jack
17. Hereditary Peerages
18. Life Peerages
19. Orders of Knighthood, Decorations and Medals
20. Reference in Legislation

**Part 4 - Church of England**

21. Head of the Church
22. Appointment etc. of Clerics
23. Patronage
24. Religion of the Sovereign

**Part 5 - Feudal Obligations**

25. Abolition

**Part 6 - General**

26. Repeals
27. Interpretation
28. Application

**Schedules**

1. The Sovereign
2. Regency
3. Disclaimer of Hereditary Peerages
4. Life Peerages
5. Orders of Knighthood, Decorations and Medals
6. Repealed Legislation
7. Repealed Church of England Legislation

## Part 1: The Sovereign

### 1. Person

- (1) The sovereign is Queen Elizabeth II and the heirs of her body.<sup>23</sup>
- (2) The sovereign, *ex officio*, is:
  - (a) Head of State (in a non-executive role);
  - (b) *Commander-in-Chief of the Armed Forces (in a non-executive role)*;<sup>24</sup>
  - (c) [*Supreme Governor of the CoE (in a non-executive role)*].<sup>25</sup>

### 2. Style and Titles

- (1) The style, and titles, of the sovereign from time to time for use:
  - (a) in the UK and British Territories
  - (b) shall be set out in a SI.

### 3. Legal Nature

- (1) The sovereign is a corporation sole.<sup>26</sup>

### 4. Prerogatives and Limitations

- (1) The sovereign shall have the privileges, and be subject (or not) to the limitations, in **Schedule 1, Part A**.

### 5. Coronation

- (1) The sovereign, at her coronation, in the presence of the assembled people shall either audibly give (or sign) the declaration in **Schedule 1, Part B**. It shall be administered by the:
  - (a) Archbishop of Canterbury; or the
  - (b) Archbishop of York; or
  - (c) any other CoE bishop of the realm the sovereign shall appoint.

### 6. Regency

- (1) If the sovereign is a minor, a regency shall take effect in accordance with **Schedule 2**.

### 7. Death

- (1) The sovereign, in the body politic, is never in abeyance or suspended; that is, the sovereign, in the body politic, never dies.<sup>27</sup>
- (2) The death of the sovereign, as a natural person, shall not result in the:
  - (a) dissolution of Parliament. However, Parliament shall meet immediately, if prorogued or adjourned at the time;
  - (b) termination of any:
    - (i) public office<sup>28</sup> in the UK or elsewhere;
    - (ii) office or appointment relating to the principality of Wales or the duchies of *Lancaster*<sup>29</sup> and Cornwall;
    - (iii) *membership of the privy council*,<sup>30</sup>
    - (iv) claims (or legal proceedings) by, or against, the Crown;
    - (v) *use of the UK Great Seal or any other public seal, all of which shall continue to be used as the seals of the successor until such shall order to the contrary*.<sup>31</sup>

### 8. Succession

- (1) On the death of the sovereign as a natural person, her successor shall become sovereign, that instant (*eo instante*).
- (2) In determining succession the:

<sup>23</sup> This updates the reference to Princess Sophia 'and the heirs of her body' in the Act of Settlement 1700, since the Queen is the lineal descendent of the same.

<sup>24</sup> This formal role could, actually, be abolished since the sovereign ended being C-in-C more than 200 years ago (in 1793). Thus, this role is a sinecure.

<sup>25</sup> Consideration should be given to the sovereign no longer being head of the CoE, see s 21.

<sup>26</sup> Only an individual can be a corporation sole.

<sup>27</sup> This is not, strictly, necessary. However, it explains why there is no absence in succession.

<sup>28</sup> 'Public office' is wider than 'Crown office' and clearer since there may be uncertainty today as to the precise meaning of the latter.

<sup>29</sup> Assuming this continues.

<sup>30</sup> For the abolition of the privy council, see the *Crown Act*.

<sup>31</sup> For the abolition of the UK Great Seal, see the *Crown Act*.

- (a) gender of a person born after 28 October 2011 does not give that person (or that person's descendants) precedence over any other person (whenever born);
- (b) fact that a child of the sovereign (whether born before, or after, the sovereign becomes such) was born outside the UK, is immaterial.<sup>32</sup>

(3) A person who (when the same marries) is one of the [six]<sup>33</sup> persons next in the line of succession to the Crown must obtain the sovereign's consent before marrying and, where any such consent has been obtained, it must be set out in a SI.<sup>34</sup>

(4) The effect of a person's failure to comply with (3) is that the person (and that person's descendants) from the marriage are disqualified from becoming sovereign.<sup>35</sup>

## 9. Private Property

(1) The sovereign, as a natural person, may own property (real and personal) to which the general law (including taxation) shall apply.<sup>36</sup>

(2) The sovereign may transfer, by SI, any private property to the Crown Estate without any taxation.<sup>37</sup>

(3) Any private property of the sovereign unallocated by will on death shall:

- (a) immediately become part of the Crown Estate, without taxation; and
- (b) such shall be evidenced in a SI.<sup>38</sup>

## 10. Royal Salary<sup>39</sup>

(1) The sovereign shall receive a royal salary in accordance with **Schedule 1, Part C**.<sup>40</sup>

(2) The legal concept of a '*privy purse*' is abolished.

(3) The following are abolished, any revenue (including any hereditary revenue) paid to the sovereign from the:<sup>41</sup>

- (a) Crown Estate;
- (b) *duchy of Lancaster*;<sup>42</sup>
- (c) *duchy of Cornwall*;<sup>43</sup>
- (d) principalities of Scotland and Wales.<sup>44</sup>

## 11. Taxation

(1) The sovereign:

- (a) shall pay income tax [all taxes]<sup>45</sup> at the applicable rate as if the same were a subject;<sup>46</sup>
- (b) may not levy any form of tax or toll.<sup>47</sup>

## 12. Sign Manual

(1) Execution by the sovereign under the sign manual is valid on the subscription of the sovereign's signature.

## 13. UK Laws

(1) The laws of the UK are the birthright of the people thereof and the sovereign must act in accordance with the same.<sup>48</sup>

<sup>32</sup> These deal with the Succession to the Crown Act 2013 and the Status of Children Born Abroad Act 1350-1.

<sup>33</sup> It may be this can be reduced to 4, it being a considerable intrusion on the freedom of an individual to marry. Further, a SI means that Parliament could permit marriage where, in the circumstances, it thinks that such would not be a problem in the instant case, despite the view of the sovereign.

<sup>34</sup> This will modernise the present method which is registration in the books of the privy council.

<sup>35</sup> This is clearer than the present words '*succeeding to the Crown*.'

<sup>36</sup> This will replace the Crown Private Estates Act 1800. It is assumed the sovereign is currently paying all taxes on private property. Albeit, the position on inheritance tax is unclear.

<sup>37</sup> For example, as with Osborne House, the sovereign may want to give private property (e.g. Sandringham, Balmoral) to the nation, on death or otherwise.

<sup>38</sup> This reflects the current position at common law.

<sup>39</sup> The term '*privy purse*' was a polite reference to a royal salary (income) which was paid to the sovereign for acting as such.

<sup>40</sup> The term '*civil list*' has been replaced. Further, the sovereign grant is to fund the royal palaces since the sovereign no longer takes the '*privy purse*' (personal salary, thought to be c. £60k at the beginning of the reign of Elizabeth II).

<sup>41</sup> As previously noted, all this was to fund the running of government which the sovereign was in charge of and this is no longer the case (not even in respect of the royal house(hold) which is funded pursuant to legislation, the Sovereign Grant Act 2011).

<sup>42</sup> This assumes the duchy is not abolished, see the *Crown Act*.

<sup>43</sup> The sovereign receives this if there is no eldest son to take up the title (e.g. as in the case of Edward VIII in 1936).

<sup>44</sup> There are no hereditary revenues from Northern Ireland.

<sup>45</sup> At present, it seems the sovereign is paying income tax. However, inheritance and other taxes should apply.

<sup>46</sup> This would be at the highest rate given the wealth of the sovereign.

<sup>47</sup> Originally, this applied to the sovereign in person and, later, it extended to the wider concept of the Crown, see the *Crown Act*.

<sup>48</sup> This comes from the Settlement Act 1700 (which only referred to the laws of *England*).

#### 14. **Obsolete Personal Prerogatives**

- (1) The personal prerogatives of the sovereign referred to in **Schedule 1, Part D** are abolished.

#### **Part 2: Royal Family**

#### 15. **Royal Family**

- (1) The use of the title ‘*His (or her) Royal Highness*’ (‘**HRH**’) shall be restricted to members of the Royal Family.
- (2) The following titles (and no others) may be awarded to members of the Royal Family by the sovereign under the sign manual, the title:
- (a) ‘Prince’ or ‘Princess’ (including ‘of Wales’);<sup>49</sup>
  - (b) ‘*Queen Consort*’;<sup>50</sup>
  - (c) ‘Prince Consort’.<sup>51</sup>
- (3) The titles in (2) may be removed by the sovereign, or by Parliament, for:
- (a) misconduct;
  - (b) on divorce; or
  - (c) at the request of the recipient.
- (4) Obsolete, or unrequired, royal titles may be abolished by a SI.<sup>52</sup>
- (5) Control by the sovereign over the education (and custody) of children who are minors is restricted to those of the Royal Family.
- (6) Any salary, annuity or pension payable to any member of the extended royal family by the [Crown/state] is abolished.<sup>53</sup>
- (7) The following are abolished, any Crown prerogative accorded to:
- (a) a consort of the sovereign;
  - (b) the heir(ess) apparent to the throne (and any consort of the same);
  - (c) a queen dowager;
  - (d) a prince or princess royal;
  - (e) any member of the Royal Family, except the sovereign.<sup>54</sup>

#### **Part 3: Royal Matters**

#### 16. **Royal Arms, Royal Standard [and Union Jack]<sup>55</sup>**

- (1) (*Royal Arms*). The royal arms (ensigns armorial) of the UK shall be quarterly. The first and fourth quarters shall be the arms of England, the second quarter shall be the arms of Scotland and the third quarter shall be the arms of NI. The sovereign may licence the use of the royal arms;
- (2) (*Royal Standard*). The royal standard is the personal flag of the sovereign. It may only be flown with the permission of the same;
- (3) (*Union Jack*). Save for (2), the union flag (the Union Jack) shall be used in all the sovereign’s flags, banners, standards and ensigns. It shall be azure with the crosses saltire of St Andrew and St Patrick quarterly per saltire and countercharged argent and gules. The latter shall be fimbriated of the second quarter (surmounted by the cross of St George) and of the third quarter, fimbriated as to the saltire.

#### 17. **Hereditary Peerages**

- (1) The following comprise hereditary peerages, the titles of:
- (a) duke;
  - (b) marquess;
  - (c) earl;
  - (d) viscount;
  - (e) baron.

<sup>49</sup> If the sovereign chooses, he can make his eldest son Prince of Wales by letters patent.

<sup>50</sup> The latter expression adds nothing legally. It was designed to get round the prohibition on the sovereign, unilaterally, making his consort king or queen, see fn 51 below.

<sup>51</sup> There are difficulties with the title the ‘*king*’ since this had to be enshrined in the Bill of Rights 1688 (William of Orange not being of the bloodline of James I (1603-25); his wife was). Are the titles ‘Prince’ or ‘Princess’ ‘*Royal*’ needed?

<sup>52</sup> For example, the title ‘*Earl of Chester*’ is, strictly, obsolete since the palatinate no longer exists.

<sup>53</sup> With the death of Prince Philip (for whom provision was made in legislation) it is uncertain whether any such payments are being made.

<sup>54</sup> In reality, only the consort of the sovereign and a queen dowager had any prerogatives and they are now obsolete.

<sup>55</sup> It is unclear whether the Union Jack is a national flag (and can be flown by anyone) or a royal flag. This should be clarified. Probably, the Union Jack is now a national flag and, thus, no permission is required for its use.



- (2) The sovereign may only award a hereditary peerage to a member of the Royal Family and a SI<sup>56</sup> shall provide for:
- (a) the award; and
  - (b) its removal by the sovereign, or Parliament, for misconduct.
- (3) Any prerogative of the sovereign to create any new hereditary peerage is abolished.
- (4) The High Court shall have jurisdiction to hear any hereditary peerage claim.
- (5) A hereditary peerage may be disclaimed in accordance with **Schedule 3**.<sup>57</sup>

#### **18. Life Peerages**

- (1) A life peerage may be granted and disclaimed in accordance with **Schedule 4**.<sup>58</sup>
- (2) For the avoidance of doubt, the sovereign has no prerogative to create a life peerage.<sup>59</sup>

#### **19. Orders of Knighthood, Decorations and Medals**

- (1) The orders of knighthood, decorations and medals awarded by the sovereign shall only comprise those referred to in **Schedule 5, Part A**. A SI shall provide for:
  - (a) the award; and
  - (b) their removal for misconduct.
- (2) Any order, decoration or medal in (1) may be abolished by means of a SI, save for the following, the:
  - (a) Victoria Cross;
  - (b) George Cross;
  - (c) Elizabeth Cross.
- (3) The orders, decorations and medals in **Schedule 5, Parts B and C** are abolished, without prejudice to those awarded.<sup>60</sup>

#### **20. Reference in Legislation**

- (1) Reference to the sovereign in legislation includes her successors.

#### **Part 4: Church of England ('CoE')**

#### **21. Head of the Church**

- (1) The Archbishop of Canterbury shall be head of the CoE in place of the sovereign.<sup>61</sup>

#### **22. Appointment etc of Clerics**

- (1) The appointment, dismissal and notification of any resignation of any:
  - (a) archbishop shall be made by the General Synod;
  - (b) bishop shall be made by the Archbishop of Canterbury [or General Synod];
  - (c) other person to any ecclesiastical office shall be made by the diocesan bishop, save where a Measure provides otherwise.

#### **23. Patronage**

- (1) The legal proceeding of *jus patronatus* is abolished.
- (1) Any:
  - (a) advowson (whether donative, elective, collative, presentative or otherwise);
  - (b) power of presentation;
  - (c) power to appoint a person to an ecclesiastical office;
  - (d) power of visitation; or
  - (e) other power of patronage (including being patron paramount),

held by the sovereign or the Crown (including in any royal or other peculiar) in respect of the CoE shall, herewith, pass to the diocesan bishop of the diocese where the same is held. A SI shall list the powers transferred and to whom.

<sup>56</sup> This enables Parliament, appropriately, to review the same.

<sup>57</sup> This re-states the Peerage Act 1963.

<sup>58</sup> This re-states the Life Peerages Act 1958, as modernised.

<sup>59</sup> It was thought, generally, that the sovereign had no such prerogative (which seems correct), leading to the enactment of the Life Peerages Act 1958.

<sup>60</sup> This material in **B** and **C** is speculative, the intent being to exclude colonial material as well as awards that are only given to civil servants and household staff as a matter of rote.

<sup>61</sup> If so provided, any limitation on the sovereign being a catholic could be removed (the concern being - in the reign of James II (1685-8) - that he was seeking to catholicise the CoE, which seems likely, historically).

**24. Religion of the Sovereign**

- (1) The religion of the sovereign is a private matter for the sovereign.<sup>62</sup>

**Part 5: Obsolete Feudal Obligations****25. Abolition**

- (1) The following feudal obligations to the sovereign are abolished, any:
- (a) honorary grand sarjeanty, save in relation any coronation service;
  - (b) petty serjeanty;
  - (c) obligation to pay homage (including any oath relating to the same);
  - (d) obligation to pay fealty (including any oath relating to the same).
- (2) The prerogative of the sovereign to suspend, or dispense with:
- (a) legislation (including by way of *non obstante*); or
  - (b) the common law; or
  - (c) the operation of (a) or (b),
- [without the consent of Parliament.]<sup>63</sup> is abolished.

**Part 6: Church of England ('CoE')****26. Repeals**

- (1) The legislation in **Schedules 6 and 7** is repealed.

**27. Interpretation**

- (1) In this Act:
- (a) 'AG' refers to the Attorney-General;
  - (b) 'Armed Forces' (match with definition in *Armed Forces Act*);
  - (c) 'BDT' mean the Channel Islands and the Isle of Man;
  - (d) 'BOT' mean the British Overseas Territories;
  - (e) 'British Territories' mean the BDT and BOT;
  - (f) 'CoE' refers to the Church of England;
  - (g) 'Ecclesiastical office' means any CoE ecclesiastical office, including any lay ecclesiastical office;
  - (h) 'General Synod' refers to the general synod of the CoE;
  - (i) 'HRH' means his (or her) royal highness;
  - (j) 'Legislation' refers to any Act (general, local or private) or SI;
  - (k) 'Measure' refers to a measure of the General Synod;
  - (l) 'Minister' means any minister of the Crown;
  - (m) 'Royal Family' refers to the: (i) sovereign; (ii) consort of the same; (iii) direct lineal descendants of the sovereign and consort deriving from the bloodline.
  - (n) 'SI' refers to a statutory instrument;
  - (o) 'UK' refers to the United Kingdom.

**28. Application**

- (1) This Act applies to Scotland and Northern Ireland.

<sup>62</sup> Such would enable the sovereign to have no religion, if they so choose.

<sup>63</sup> This applied to the sovereign originally and was, in effect, extended to the Crown, see the *Crown Act*. The words in [ ] seem inapposite today.

### **Schedule 1: Prerogatives of, and Limitations on, the Sovereign**

#### **A. Prerogatives and Limitations**

1. The sovereign:

- (a) has civil immunity; save when the common law remedy of suit against her AG applies.<sup>64</sup>
- (b) has criminal immunity, save when a sentence of life imprisonment may be imposed.
- (c) is immune from arrest.
- (d) shall not have *laches* (delay) attributed to the same.
- (e) shall not have negligence attributed to the same.

2. The sovereign cannot:

- (a) arrest a person;
- (b) give evidence in a court of law in her own cause;
- (c) act as a Minister;
- (d) hold any public office besides that of sovereign;
- (e) attend, or sit in, Cabinet;
- (f) alter succession to sovereignty in her will;
- (g) undertake paid employment;<sup>65</sup>
- (h) create, or grant, any rank in the Armed Forces, including to a member of the Royal Family.<sup>66</sup>

The restriction in 2(b) shall not prevent the sovereign giving written evidence to a UK court in a civil case between subjects, if the sovereign so wishes.

3. The following are abolished, any limitation on the sovereign:

- (a) being a trustee;
- (b) being an executor;
- (c) being a joint tenant, or tenant in common, with another person;
- (d) reserving rent;
- (e) being a minor.

#### **B. Coronation Oath**

Declaration to be delivered by the archbishop or bishop:

‘Do you promise to govern the peoples of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand and your other territories according to their respective laws and customs?’

Sovereign: ‘I promise.’

‘Do you promise to cause law and justice to be executed in all your judgements?’

Sovereign: ‘I promise.’

#### **C. Royal Salary**

(1) The following only shall receive an annual salary for the performance of their royal duties:

- |                                     |       |
|-------------------------------------|-------|
| (a) Sovereign                       | £ [ ] |
| (b) Duke of Cornwall (when not (a)) | £ [ ] |

(2) The salary in (1) may be amended by a SI.

#### **D. Obsolete Personal Prerogatives**

(1) The prerogative of the sovereign *in person* to:<sup>67</sup>

- (a) sit as a judge;
- (b) withdraw a case from a court (that is, order a court to refuse to hear it);
- (c) order a court to delay giving judgment;
- (d) sue in whatever court the sovereign pleases;
- (e) not pay (or receive) legal costs;
- (f) be exempt from the enforcement of any lien, pledge or debt in execution against the sovereign;

<sup>64</sup> For the abolition of the legal remedy of ‘*petition of right*’ (which is not the same as the right to petition), see the *Crown Act*.

<sup>65</sup> This may be advisable for the future.

<sup>66</sup> This supposed ‘*prerogative*’ has crept in - without *any* legal basis - since the sovereign has been titular C-in-C since 1793 and, thereafter, the same had no legal right to appoint any person to a military office (ceremonial or otherwise).

<sup>67</sup> The prerogative of the sovereign to eat royal fish and royal swans was (and is) statutory. Thus, it will fall if the relevant legislation is repealed (*Prerogativa Regis* c. 1322 and the Wild Animals Act and Forest Laws 1971, s 1).

- (g) approve the marriage of a queen dowager;
- (h) exempt a person from any liability imposed by legislation or the common law;
- (i) pardon or reprieve a person;
- (j) act as visitor in the case of a chartered corporation;
- (k) dispose of the Crown jewels, by way of a life interest.

### **Schedule 2: Regency**

#### **1. Regency while the Sovereign is under eighteen**

- (1) If the sovereign is, at his accession, under the age of eighteen years, then, until he attains that age, the royal functions shall be performed in the name and on behalf of the sovereign by a regent.
- (2) For the purpose of any enactment requiring any oath or declaration to be taken, made, or subscribed, by the sovereign on or after his accession, the date on which the sovereign attains the age of eighteen years shall be deemed to be the date of his accession.
- (3) The heir apparent or heir presumptive to the throne shall be deemed for all the purposes to be of full age if he or she has attained the age of eighteen years.

#### **2. Regency during total incapacity of the Sovereign**

- (1) If the following persons or any three or more of them, that is to say, the wife or husband of the sovereign, the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice of England, and the Master of the Rolls, declare in writing that they are satisfied by evidence which shall include the evidence of physicians that the sovereign is by reason of infirmity of mind or body incapable for the time being of performing the royal functions or that they are satisfied by evidence that the sovereign is for some definite cause not available for the performance of those functions, then, until it is declared in like manner that his Majesty has so far recovered his health as to warrant his resumption of the royal functions or has become available for the performance thereof, as the case may be, those functions shall be performed in the name and on behalf of the sovereign by a regent.
- (2) A declaration under this section shall be made to the privy council and communicated to the governments of his Majesty's dominions [*amend to refer to British Overseas Territories*].<sup>68</sup>

#### **3. The Regent**

- (1) If a regency becomes necessary [under this **Schedule**], the regent shall be that person who, excluding any persons disqualified under this section, is next in the line of succession to the Crown.
- (2) A person shall be disqualified from becoming or being regent, if he is not a British subject of full age and domiciled in some part of the UK, [*or is a person who would, under section two of the Act of Settlement [1700], be incapable of inheriting, possessing, and enjoying the Crown, or is a person disqualified from succeeding to the Crown by virtue of section 3(3) of the Succession to the Crown Act 2013; and section 3 of the Act of Settlement [1700] shall apply in the case of a regent as it applies in the case of a sovereign.*]<sup>69</sup>
- (3) If any person who would at the commencement of a regency have become regent but for the fact that he was not then of full age becomes of full age during the regency, he shall, if he is not otherwise disqualified under this section, thereupon become regent instead of the person who has theretofore been regent.
- (4) If the regent dies or becomes disqualified under this section, that person shall become regent in his stead who would have become regent if the events necessitating the regency had occurred immediately after the death or disqualification.
- (5) Section two of this [**Schedule**] shall apply in relation to a regent with the substitution for references to the sovereign of references to the regent, and for the words "*those functions shall be performed in the name and on behalf of the sovereign by a regent*" of the words "*that person shall be regent who would have become regent if the regent had died.*"

#### **4. Oaths to be taken by, and limitations of power of Regent**

- (1) The regent shall, before he acts in or enters upon his office, take and subscribe before the privy council the oaths set out below and the privy council are empowered, and required, to administer those oaths and to enter them in the council books.
  - 1. I swear that I will be faithful and bear true allegiance to [*here insert the name of the sovereign*] his heirs and successors according to law. So help me God.
  - 2. I swear that I will truly and faithfully execute the office of regent, and that I will govern according to law, and will, in all things, to the utmost of my power and ability, consult and maintain the safety, honour, and dignity of [*here insert the name of the sovereign*] and the welfare of his people. So help me God.
  - 3. *I swear that I will inviolably maintain and preserve in England and in Scotland the Settlement of the true Protestant religion as established by law in England and as established in Scotland by the laws made in Scotland in prosecution of the Claim of Right, and particularly by an Act intituled "An Act for Securing the Protestant Religion and Presbyterian*

<sup>68</sup> That said, this provision is now unnecessary, especially if the privy council is abolished, see the *Crown Act*.

<sup>69</sup> This is not required if the terms of this Act are implemented. Indeed, since oaths are only morally binding, probably s 4 is, also, otiose.

*Church Government” and by the Acts passed in the Parliament of both Kingdoms for Union of the two Kingdoms, together with the Government, Worship, Discipline, Rights, and Privileges of the Church of Scotland. So help me God.<sup>70</sup>*

- (2) The regent shall not have power to assent to any Bill for changing the order of succession to the Crown or for repealing or altering an Act of the fifth year of the reign of Queen Anne made in Scotland entitled “*An Act for Securing the Protestant Religion and Presbyterian Church Government.*”]

#### 5. **Guardianship, &c. of Sovereign during Regency**

- (1) During a regency, unless Parliament otherwise determines,
- (a) if the sovereign is under the age of eighteen years, and unmarried, his mother, if she is living, shall have the guardianship of his person;
- (b) if the sovereign, being married, is under the age of eighteen years or has been declared under this Act to be incapable for the time being of performing the royal functions, the wife or husband of the sovereign, if of full age, shall have the guardianship of the person of the sovereign;
- (c) the regent shall, save in the cases aforesaid, have the guardianship of the person of the sovereign; and the property of the sovereign, except any private property which in accordance with the terms of any trust affecting it to be administered by some other person, shall be administered by the regent.

#### 6. **Power to delegate royal functions to Counsellors of State**

- (1) In the event of illness not amounting to such infirmity of mind or body as is mentioned in section two of this [Schedule], or of absence or intended absence from the UK, the sovereign may, in order to prevent delay or difficulty in the despatch of public business, by letters patent under the great seal,<sup>71</sup> delegate, for the period of that illness or absence, to counsellors of state such of the royal functions as may be specified in the letters patent, and may in like manner revoke or vary any such delegation: provided that no power to grant any rank, title or dignity of the peerage may be delegated.
- (2) Subject as hereinafter provided, the counsellors of State shall be the wife or husband of the sovereign (if the sovereign is married), and the four persons who, excluding any persons disqualified under this section, are next in the line of succession to the Crown, or if the number of such persons next in the line of succession is less than four, then all such persons: provided that, if it appears to the sovereign that any person who, in accordance with the foregoing provisions of this subsection, would be required to be included among the counsellors of state to whom royal functions are to be delegated, is absent from the UK or intends to be so absent during the whole or any part of the period of such delegation, the letters patent may make provision for excepting that person from among the number of counsellors of state during the period of such absence.
- (2A) The heir apparent or heir presumptive to the throne if not under the age of eighteen years shall not be disqualified from being a counsellor of state by reason only of his not being of full age, but save as aforesaid any person disqualified under this Act from being regent shall be disqualified from being a counsellor of state.
- (3) Any functions delegated under this section shall be exercised jointly by the counsellors of state, or by such number of them as may be specified in the letters patent, and subject to such conditions, if any, as may be therein prescribed.
- (4) The provisions of this section shall apply in relation to a regent with the substitution for references to the sovereign of references to the regent, so, however, that in relation to a regent subsection (2) of this section shall have effect as if after the word “*next*,” where that word first occurs therein, there were inserted the words “*after the regent*”. The provisions of this section shall apply in relation to a regent with the substitution for references to the sovereign of references to the regent and the omission, in subsection (2) thereof, of the reference to the wife or husband of the sovereign.
- (5) Any delegation under this section shall cease on the demise of the Crown or on the occurrence of any events necessitating a regency or a change of regent.

#### 7. **Interpretation**

- (1) In this [Schedule], save as otherwise expressly provided, the expression “*royal functions*” includes all powers and authorities belonging to the Crown, whether prerogative or statutory, [*together with the receiving of any homage required to be done to His Majesty. – obs, see s 25*]

### **Schedule 3: Disclaimer of Hereditary Peerages**

#### **1.Disclaimer of certain Hereditary Peerages**

(1) Subject to the provisions of this section, any person who succeeds to a peerage in the peerage of England, Scotland, Great Britain or the UK may, by an instrument of disclaimer delivered to the [Lord Chancellor]<sup>72</sup> within the period prescribed by this Act, disclaim that peerage for his life.

(2) Any instrument of disclaimer to be delivered under this section in respect of a peerage shall be delivered within the period of twelve months beginning with the day on which the person disclaiming succeeds to that peerage or, if he is under the age of twenty-one when he so succeeds,

<sup>70</sup> This would no longer appear necessary, if s 21 applies.

<sup>71</sup> Execution under the sign manual would be appropriate now.

<sup>72</sup> Reference to the Lord Speaker of the HL should now be made.

the period of twelve months beginning with the day on which he attains that age; and no such instrument shall be delivered in respect of a peerage by a person who is excepted from section 1 of the House of Lords Act 1999 by virtue of section 2 of that Act.

(3) In reckoning any period prescribed by this section for the delivery of an instrument of disclaimer by any person no account shall be taken of any time during which that person is shown to the satisfaction of the [Lord Chancellor] to have been subject to any infirmity of body or mind rendering him incapable of exercising or determining whether to exercise his rights under this section.

(4) The provisions of Schedule shall have effect with respect to the form of instruments of disclaimer under this section, and the delivery, certification and registration of such instruments.

## **2. Effects of Disclaimer**

(1) The disclaimer of a peerage by any person under section 1 shall be irrevocable and shall operate, from the date on which the instrument of disclaimer is delivered, - (a) to divest that person (and, if he is married, his wife) of all right or interest to or in the peerage, and all titles, rights, offices, privileges and precedence attaching thereto; and (b) to relieve him of all obligations and disabilities arising therefrom, but shall not accelerate the succession to that peerage nor affect its devolution on his death.

(2) Where a peerage is disclaimed under section 1, no other hereditary peerage shall be conferred upon the person by whom it is disclaimed.

(3) The disclaimer of a peerage under section 1 shall not affect any right, interest or power (whether arising before or after the disclaimer) of the person by whom the peerage is disclaimed, or of any other person, to, in or over any estates or other property limited or settled to devolve with that peerage.

(4) The reference in the foregoing subsection to estates or other property limited or settled to devolve with a peerage shall, for the purposes of the application of this Act to Scotland, be construed as including a reference to estates or other land devolving as aforesaid under an entail or special destination, or the beneficial interest in which so devolves under a trust.

## **3. Scottish Peerages**

The holder of a peerage in the peerage of Scotland shall have the same right to receive writs of summons to attend the House of Lords, and to sit and vote in that House, as the holder of a peerage in the peerage of the UK.

## **4. Peeresses in own Right**

A woman who is the holder of a hereditary peerage in the peerage of England, Scotland, Great Britain or the UK shall (whatever the terms of the letters patent or other instrument, if any, creating that peerage) have the same right to receive writs of summons to attend the House of Lords, and to sit and vote in that House, and shall be subject to the same disqualifications in respect of membership of the House of Commons and elections to that House, as a man holding that peerage.

### **SCHEDULE A: FORM, DELIVERY, CERTIFICATION AND REGISTRATION OF INSTRUMENTS OF DISCLAIMER**

1. An instrument of disclaimer under this Act shall be an instrument under seal in the following form or any form to the like effect:

Whereas I, succeeded to the peerage[s] described in the Annex hereto on the date[s] specified in that Annex, and desire to disclaim the said peerage[s] for my life under the above mentioned Act; And whereas I attained the age of 21 years [before the said date[s]] [on the day of]; Now therefore, I, the said, in accordance with the provisions of the said Act, hereby disclaim the said peerage[s] for my life.

In witness whereof I have hereunto set my hand and seal this day of  
Signed [and sealed]<sup>73</sup> by the said in the presence of:

Signature of Witness  
Address  
Description

(LS) Signature

Description of Peerage

Annex

Date(s) of Succession

2. Any instrument of disclaimer shall be delivered to the office of the Clerk of the Crown in Chancery.

3. Where the [Lord Chancellor] is satisfied that an instrument of disclaimer in respect of a peerage has been delivered within the time allowed by this Schedule, he shall furnish to the person disclaiming the peerage a certificate to that effect, and shall cause particulars of the instrument and of his certificate to be entered in a register kept by him for the purpose, which shall be open to inspection by the public at all reasonable times.

4. A certificate of the [Lord Chancellor] that an instrument of disclaimer was delivered within the time allowed by this Schedule shall be conclusive evidence of that fact, but shall not be evidence of any other matter relevant to the validity of the instrument, including the right of the person by whom it was delivered to any peerage to which it relates.

<sup>73</sup> Sealing would no longer seem necessary.

**Schedule 4: Life Peerages**<sup>74</sup>

1. *Conferring of Peerage.* The sovereign, on the recommendation of the PM, shall have power, under the sign manual, to confer on any person a peerage for life.
2. *Entitlement.* A peerage for life shall, during the life of the person on whom it is conferred, entitle the same -
- (a) to rank as a baron(ess) under such style as may be appointed; and
- (b) subject to ss 3, to receive writs of summons to attend the House of Lords and to sit and vote therein accordingly,<sup>75</sup>
- and it shall expire on death.
3. *Disqualification.* Nothing in ss 2 shall enable any person to receive a writ of summons to attend the House of Lords, or to sit and vote in that House, at any time when disqualified therefrom by law.
4. *Misconduct.* A life peerage may be removed by Parliament, in a SI, for misconduct.<sup>76</sup>

**Schedule 5: Orders of Knighthood, Decorations and Medals****Part A :Main Orders****Part B : Place in Abovance**<sup>77</sup>**Part C: Abolish****1. Orders of Knighthood**

Order of the Garter

Order of the Thistle

Order of St Patrick

Order of Merit

Order of the Bath

Order of the Star of India

Order of the Companions of Honour

Order of St Michael and George

Order of the Indian Empire  
Order of the Crown of IndiaRoyal Victorian Order  
Order of the British Empire

Distinguished Service Order

Royal Victorian Order (4<sup>th</sup> class)  
Order of the British Empire (4<sup>th</sup> class)  
Imperial Service Order  
Royal Victorian Order (5<sup>th</sup> class)  
Order of the British Empire (5<sup>th</sup> class)Baronet's Badge  
Knight Bachelor's Badge

Indian Order of Merit (Military)

Royal Victorian Chain

**2. Decorations**Conspicuous Gallantry Cross<sup>78</sup>Royal Red Cross (*class I*)  
Distinguished Service Cross

Military Cross

Distinguished Flying Cross  
Air Force CrossRoyal Red Cross (class II)  
Order of British India  
Kaisar-i-Hind Medal  
Order of St John

<sup>74</sup> At present, the Life Peerages Act 1958, s 1 states: '(1) [HM] shall have power by letters patent to confer on any person a peerage for life having the incidents specified in [ss] (2) of this [s]. (2) A peerage conferred under this [s] shall, during the life of the person on whom it is conferred, entitle him - (a) to rank as a baron under such style as may be appointed by the letters patent; and (b) subject to [ss](4) of this [s], to receive writs of summons to attend the House of Lords [HL] and sit and vote therein accordingly, and shall expire on his death.(3) A life peerage may be conferred under this [s] on a woman. (4) Nothing in this [s] shall enable any person to receive a writ of summons to attend the [HL], or to sit and vote in that House, at any time when disqualified therefor by law.'

<sup>75</sup> This provision could be removed so that life peers get a title but have no right to sit (such would happen anyway on any abolition of the HL).

<sup>76</sup> This would seem a reasonable addition.

<sup>77</sup> Consideration should be given to abolishing these.

<sup>78</sup> The civil version of the military cross.

### **3. Medals**

		Union of South Africa Queen's Medal for Bravery
	Distinguished Conduct Medal (DCM) Conspicuous Gallantry Medal (CGM) Conspicuous Gallantry Medal (Flying)	
George Medal (GM) <sup>79</sup>	Queen's Police Medal for Gallantry Queen's Fire Service Medal for Gallantry	Royal West African Frontier Force DCM King's African Rifles DCM Indian Distinguished Service Medal Union of South Africa Queen's Medal for Bravery
	Distinguished Service Medal	
Military Medal (MM)	Distinguished Flying Medal (DFM) Air Force Medal (AFM)	
	Medal for Saving Life at Sea (Sea Gallantry Medal)	Constabulary Medal (Ireland) Indian Order of Merit (Civil) Indian Medal for Gallantry Ceylon Medal for Gallantry Sierra Leone Police Medal for Gallantry Sierra Leone Fire Brigades Medal for Gallantry Overseas Territories Medal for Gallantry Queen's Gallantry Medal (QGM) Royal Victorian Medal (RVM) British Empire Medal (BEM) Canada Medal Queen's Police Medal for Distinguished Service (QPM) Queen's Fire Service Medal for Distinguished Service (QFSM) Queen's Volunteer Reserve Medal Queen's Medal for Chiefs

### **3. Efficiency & Long Service Decorations**

Medal for Meritorious Service ('MS')  
 Medal for Long Service & Good Conduct ('LS&GC')(Military)  
 Accumulated Campaign Service Medal  
 Naval LS&GC Medal  
 Medal for MS (Royal Navy 1918-28)  
 Indian LS&GC Medal  
 Indian MS Medal  
 Royal Marines MS Medal (1849-1947)  
 Royal Air Force (MS Medal) (1918-28)  
 Royal Air Force (LSGC) Medal  
 Medal for LS&GC (Ulster Defence Regiment)  
 Indian LS&GC Medal  
 Royal West African Frontier Force LS&GC Medal  
 Royal Sierra Leone Military Forces LS&GC Medal  
 King's African Rifles LS&GC Medal  
 Indian MS Medal  
 Police LS&GC Medal  
 Fire Brigade LS&GC Medal  
 African Police Medal for MS  
 Royal Canadian Mounted Police Long Service ('LS') Medal  
 Ceylon Police LSM  
 Ceylon Fire Services LS Medal  
 Sierra Leone Police LSM  
 Overseas Territories Police LSM  
 Sierra Leone Fire Brigades LSM  
 Mauritius Police LS&GC Medal  
 Mauritius Fire Services LS&GC Medal  
 Mauritius Prisons Service LS&GC Medal  
 Overseas Territories Fire Brigades LSM  
 Overseas Territories Prison Service Medal  
 HK Disciplined Services Medal  
 Army Emergency Reserve Decoration (ERD)  
 Volunteer Officers' Decoration (VD)  
 Volunteer LS Medal  
 Volunteer Officers' Decoration (India & Colonies)

<sup>79</sup> The civil version of the military medal.



Volunteer LS Medal (India & Colonies)  
 Colonial Auxiliary Forces Officers' Decoration  
 Colonial Auxiliary Forces LS Medal  
 Medal for Good Shooting (Naval)  
 Militia LS Medal  
 Imperial Yeomanry LS Medal  
 Territorial Decoration (TD)  
 Ceylon Armed Services LS Medal  
 Efficiency Decoration (ED)  
 Territorial Efficiency Medal  
 Efficiency Medal  
 Special Reserve LS&GC Medal  
 Decoration for Officers of the RN Reserve (RD)  
 Decoration for Officers of the RN Volunteer Reserve (VRD)  
 RN Reserve LS&GC Medal  
 RN Auxiliary Sick Berth LS&GC Medal  
 Royal Fleet Reserve LS&GC Medal  
 RN Wireless Auxiliary Reserve LSGC Medal  
 RN Auxiliary Service Medal  
 Air Efficiency Award (AE)  
 Volunteer Reserves Service Medal  
 Ulster Defence Regiment Medal  
 NI Home Service Medal  
 Queen's Medal (Champion Shots of RN & RM)  
 Queen's Medal (Champion Shots of NZ Naval Forces)  
 Queen's Medal (Champion Shots of Air Forces)  
 Cadet Forces Medal  
 HM Coastguard LS&GC Medal  
 Special Constabulary LS Medal  
 Canadian Forces Decoration  
 Royal Observer Corps Medal  
 Civil Defence LS Medal  
 Ambulance Service (Emergency Duties) LS&GC Medal  
 Royal Flee Auxiliary Service Medal  
 Prison Services (Operational Duties) LS&GC Medal  
 Jersey Honorary Police LS&GC Medal  
 Merchant Navy Medal for Meritorious Service  
 Ebola Medal for Service in West Africa  
 National Crime Agency LS&GC Medal  
 Rhodesia Medal  
 Royal Ulster Constabulary Service Medal  
 NI Prison Service Medal  
 Union of South Africa Commemoration Medal  
 Indian Independence Medal  
 Pakistan Medal  
 Ceylon Armed Services Inauguration Medal  
 Ceylon Police Independence Medal  
 Sierra Leone Independence Medal  
 Jamaica Independence Medal  
 Uganda Independence Medal  
 Malawi Independence Medal  
 Fiji Independence Medal  
 Papua New Guinea Independence Medal  
 Solomon Islands Independence Medal  
 Service Medal of the Order of St John  
 Badge of the Order of the League of Mercy  
 Voluntary Medical Service Medal  
 Women's Royal Voluntary Service Medal  
 South African Medal for War Services  
 Overseas Territories Special Constabulary Medal

#### **Schedule 6. Repealed Legislation**

<i>Prerogativa Regis</i> c. 1322	s 8
The Status of Children Born Abroad 1350-1	
Treason Act 1351	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.'
Appointment of Bishops Act 1533	repeal in s 4 any reference to making an oath of homage and of fealty.
Tenures Abolition Act 1660	repeal s 4.

Coronation Oath Act 1688	
Bill of Rights 1688	in s 1 delete [references to the suspending and dispensing powers]
	in s 1 repeal from ‘To which demand’ up to ‘shall attempt any thing to the contrary’
	repeal s 2
Act of Settlement 1700	repeal s 1
	in s 2 repeal the words ‘and that every king and queen of this realm who shall come to and succeed in the imperial Crown of this kingdom by virtue of this Act shall have the Coronation Oath administered to him her or them at their respective coronations according to the Act of Parliament made in the first year of the reign of His Majesty and the said late Queen Mary intituled <i>An Act for establishing the Coronation Oath</i> and shall make subscribe and repeat the declaration in the Act first above recited mentioned or referred to in the manner and form thereby prescribed.’
	repeal s 4
Demise of the Crown Act 1702	
Act of 1 Anne 1702	
Union with Scotland Act 1706	in art 2 repeal the words ‘That the succession to the monarchy of the United Kingdom of Great Britain and of the dominions thereto belonging after her most sacred majesty and in default of issue of her Majesty 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 <i>Act for the further Limitation of the Crown and better securing the rights and Liberties of the Subject.</i> ’
Union with England Act 1707	in art 2 repeal the words ‘That the succession to the monarchy of the United Kingdom of Great Britain and of the dominions thereto belonging after her most sacred majesty and in default of issue of her Majesty 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 <i>Act for the further Limitation of the Crown and better securing the rights and Liberties of the Subject.</i> ’
Succession to the Crown Act 1707	
Princess Sophia’s Precedence Act 1711	
Demise of the Crown Act 1727	
Representation of the People Act 1867, s 51	
Crown Office Act 1877	
Sheriffs Act 1887, s 3(3)	
Crown Office Act 1890	
Demise of the Crown Act 1901	
Titles Deprivation Act 1917 ( <i>spent</i> )	
Statute of Westminster 1931	in the <i>Preamble</i> , repeal paragraph 2.
His Majesty’s Declaration of Abdication Act 1936 ( <i>spent</i> )	
Regency Act 1937	
Regency Act 1943	
Regency Act 1953	
Royal Titles Act 1953	
Civil List Act 1937 <sup>80</sup>	
Civil List Act 1952	
Sovereign Grant Act 2011	
Crown Private Estate Act 1800	
Crown Private Estates Act 1862	
Crown Private Estates Act 1873 <sup>81</sup>	
Union with Ireland Act 1800	art 2
Act of Union (Ireland) Act 1800	art 2
Wild Creatures and Forest Law Act 1971	s 1(1)

#### **Schedule 7: Repealed Church of England Related Legislation<sup>82</sup>**

Supremacy Act 1558	
Bill of Rights 1668	in s 1 delete ‘And whereas it hath been found by experience’ up to end of s 1

<sup>80</sup> The sovereign no longer takes any privy purse. Thus, the Acts of 1937 and 1952 are unnecessary (and provision can be made for grants of £15k in this Crown Act, if required which, it is asserted, is not necessary). The Sovereign Grant Act is for the maintenance of royal palaces. However, if provision for the latter is made in this Act, it is not required.

<sup>81</sup> These are poorly drafted Acts, dealing with the private estate (property) of the sovereign. However, the general law (including tax) should apply to the same.

<sup>82</sup> If ss 1-24 are accepted generally, then this Schedule can be rolled into **Schedule 6**.

Act of Settlement 1700  
Act of Union with Scotland Act 1706

repeal ss 2 and 3(2)  
in art 2 delete ‘And that all papists... shall be excluded from and for ever incapable to inherit possess or enjoy the imperial Crown of Great Britain and the dominions thereunto belonging or any part thereof and in every such case the Crown and government shall from time to time descend to and be enjoyed by such person being a protestant as should have inherited and enjoyed the same in case such papist... was naturally dead according to the provision for the descent of the Crown of England made by another Act of Parliament in the first year of the reign of their late majesties king William and queen Mary intituled an *Act declaring the rights and liberties of the subject and settling the succession of the Crown* [i.e. the *Bill of Rights 1688*].’

in art 25(3) repeal the words ‘and be it further enacted by the authority aforesaid that after the demise of her majesty (whom God long preserve) the sovereign next succeeding to her Majesty in the royal government of the kingdom of Great Britain and so for ever hereafter every king or Queen succeeding and coming to the royal government of the kingdom of Great Britain at his or her Coronation shall in the presence of all persons who shall be attending assisting or otherwise then and there present take and subscribe an oath to maintain and preserve inviolably the said settlement of the Church of England and the doctrine worship discipline and government thereof as by law established within the kingdoms of England and Ireland the dominion of Wales and Town of Berwick upon Tweed and the Territories thereunto belonging.’  
Art 25 (2)-(5).<sup>83</sup>

Act of 6 Anne 1706 (re high treason)  
Act of Union with England Act 1707

in art 2 repeal ‘And that all papists... shall be excluded from and for ever incapable to inherit possess or enjoy the imperial Crown of Great Britain and the dominions thereunto belonging or any part thereof and in every such case the Crown and government shall from time to time descend to and be enjoyed by such person being a protestant as should have inherited and enjoyed the same in case such papist... was naturally dead according to the provision for the descent of the Crown of England made by another Act of Parliament in England in the first year of the reign of their late majesties king William and queen Mary intituled an *Act declaring the rights and liberties of the subject and settling the succession of the Crown*.’ [i.e. the *Bill of Rights 1688*].  
repeal art 25<sup>84</sup>

Accession Declaration Act 1910  
Succession to the Crown Act 2013

<sup>83</sup> The effect would be that the Church of Scotland would be governed by Scots legislation and not English legislation.

<sup>84</sup> See n 83 (but *vice versa*).

## 2. TEXT OF A CROWN ACT

### 1. INTRODUCTION

Since a *Sovereign and Royal Family Act* deals with the personal prerogatives of the sovereign, a *Crown Act* is needed to deal with Crown prerogatives ('CPs'). All these should be abolished (a large number are obsolete anyway) and those few needed placed in legislation. The following may be noted with regard to the text of this *draft Act*:

- **Meaning of the 'Crown'.** The concept of the Crown is a legal fiction. The notion derives from the time of William I (1066-87) and, likely, before. The sovereign had '*Crown wearing*' ceremonies three times a year at which his Great Council (*Magnum Concilium*) attended. This assembly was the successor to the Anglo-Saxon *witan gemote* (assembly of wise men) and the precursor to Parliament.<sup>85</sup> On these occasions, legislation was enacted. Thus, the image is that of the sovereign sitting as head of a legislative body; a corporation aggregate of which the sovereign was the head and those assembled, the body.<sup>86</sup> In this way, a distinction was later drawn by medieval lawyers between the sovereign as a corporation sole (*rex regnans*) and the sovereign as head of the legislature (the totality of the same being a corporation aggregate).

The '*Crown*', therefore, symbolised the Crown in Parliament and other occasions when the sovereign was head of a body aggregate, such as when the sovereign sat as head of the privy council, as head of the cabinet, as head of the armed forces and as head of the CoE. However, today, the sovereign's role as Head of State is a non-executive one and the same no longer runs government (or even her own royal household, which is paid for by the state). Thus, if all CPs are abolished, this (troublesome and confusing) legal fiction can be dispensed with. Instead, reference will simply be made - in legislation and generally - to Parliament, to the *privy council*,<sup>87</sup> to the cabinet *etc.*

- **Royal Household.** The sovereign no longer runs the royal household (that is, the staff in palaces which the sovereign occupies) nor pays the wages and pensions of the same. For this, since 1760, the sovereign received a '*civil list*.' In 2011, this was re-named a '*sovereign grant*'. It appears that all this money is used now only for the royal household and none that comprises a personal salary of the sovereign (the, '*privy purse*'). Given this, it would seem apposite that the Treasury directly funds the operational palaces (and, that a number be decommissioned). Also, that the '*sovereign grant*' be abolished and a more accurate description be employed (i.e. for the funding of the royal palaces). And, that the opaque wording of the Sovereign Grant Act 2011 be dispensed with and simple provision made for the Treasury funding the same on an annual basis.
- **Crown Estate.** This concept has become one of the most confusing of all. In Anglo-Saxon times, when a person became king and ruler, besides any personal estate (land and money) which he had, he was given land and other assets (robes, jewels, carts *etc.*) in order to enhance his prestige/indicate his status. These assets could not be alienated (sold off) by him. Instead, he could use the *revenue stream* (only while king) to fund government (his courts, household, army *etc.*). This system continued after the Norman Conquest (1066) and, by 1322, there was a clear *legal* distinction drawn between: (a) the personal estate of the sovereign; and (b) Crown (royal) estate. This was based on canon law and was a clear attempt by Parliament to prevent impecunious sovereigns raiding the Treasury. That is, selling - or pawning - Crown jewels and Crown land which did not belong to them.

The distinction between (a) and (b) later became muddled because (unlike in Anglo-Saxons times) when a person became sovereign all their personal estate went into the '*pot*' (i.e. became part of the Crown estate). It was only in 1800 that legislation re-established a distinction between (a) and (b). However, this was useful since it clarified the position previously reached in 1322 that the Crown (Royal) Estate did not belong to the sovereign and, thus, could not be alienated by the same.<sup>88</sup> Today, given the confusing concept, the term '*Crown*' Estate should be abolished and, instead, it should be called the '*Parliamentary*' Estate<sup>89</sup> since its true owner is Parliament, holding all this land, *regalia* (Crown jewels and robes), foreshore *etc.* on behalf of the nation (*folk, volk*). Thus, to clarify matters, a *Crown Act* should make provision for the same.

- **Other Crown Matters.** There are various other matters relating to government (and not to the sovereign) as such which are obsolete and should be abolished. Thus, proclamations were a form of legislation which the sovereign could enact alone, without the need for the assent of the *Magnum Concilium* or other assembly. After the establishment of Parliament (c. 1285-95) such was inappropriate and - in the 17<sup>th</sup> century - caselaw held that no proclamation could change the law. Today, *proclamations* at common law unnecessary and should be abolished; achieved by the abolition of the CP. The *privy council*, as previously mentioned, has been superseded by the smaller

<sup>85</sup> These Crown wearing ceremonies seemed to have died out in the reign turbulent reign of Stephen (1135-54) but were resurrected by Henry I (1154-89). Thereafter, they may have become more sporadic. Hence, the practical reality behind the, later, legal concept was forgotten.

<sup>86</sup> The legal concept of a '*corporation aggregate*' was developed by medieval canon lawyers (and common lawyers) to explain the rationale for the sovereign having a *legal body*.

<sup>87</sup> This governing body has been superseded since the 17<sup>th</sup> century by the cabinet and it should be abolished since there is no real accountability to Parliament with regard to its acts (and the sovereign no longer performs an executive role and, thus, there is no accountability to the latter).

<sup>88</sup> It may be noted that no sovereign since 1800 has attempted to assert the contrary (nor in relation to the duchies).

<sup>89</sup> Alternatively, the '*National Estate*'.

'cabinet' since the 17<sup>th</sup> century. It should be abolished. Not least, to ensure greater transparency and accountability. The *UK Great Seal* was to deal with illiteracy (including that of the sovereign). It has been superseded by SI (statutory instruments) and the royal signature (sign manual). For the same reasons as with the privy council, it should be abolished.

- **Obsolete CPs.** There is a large list of these. These were employed when the sovereign managed government. After 1717, when George 1 (1714-27) no longer sat in cabinet they became, progressively, redundant. Today, all are obsolete or have been superseded by legislation.
- **Duchy of Lancaster.** This was an attempt by Henry IV (1399-1413) in 1399 to avoid the principle that the assets of a person who became sovereign went into the '*pot*' and became part of the Crown Estate. This attempt was thwarted by 16<sup>th</sup> century lawyers (*Case of the Duchy of Lancaster* (1561)), later, holding, that the title of sovereign overreached that of any '*duke*'. This land has, always, been treated as part of the Crown Estate. Since, today, the duchy no longer holds any *jura regalia* (i.e. franchised CPs) of worth, the title of duchy should be (perhaps) dispensed with.
- **Duchy of Cornwall.** This duchy - unlike that of Lancaster - was not an attempt to avoid the '*pot*' principle. Instead, it was a Crown franchise (i.e. a franchise of Crown land) made in 1337 to the eldest son of the sovereign, to provide the former with annual revenue (for life, the tenancy being a life tenancy) until the same became sovereign. Today, the charters of 1337-8 (which are treated as legislation) are out of date and modern legislation should provide for the same (as well as end primogeniture). It may be noted that this duchy - and that of Lancaster - have always been owned by the Crown (if the personal estate of the sovereign, they would have been governed by the Crown Private Estate Act 1800).
- **Counties Palatine/Charters.** These are part of the Crown Estate. However, having no *jura regalia* (and being superseded by the higher title of '*duchy*' in the case of the duchy of Lancaster) they should be abolished (this would not affect the position of the duchies). Other charters relating to London and to the Cinque Ports should be abolished - as well as various obsolete matters.

*Would the sovereign agree to these changes?*

The simple answer is that none of these matters affect the sovereign today. In any case, since the sovereign no longer runs government (or the royal household). However, the legal fiction of the Crown misleads people into thinking that the sovereign is, in some way, involved with the same (and, sometimes, they draw unfair and erroneous conclusions). As it is, the fiction of the '*Crown*' is long past its sell-by date and it should be abolished. The way to do this would be abolish all CPs and to change any references in legislation to the Crown (as in the '*Crown Estate*') to the true owner.

This Act covers most CP's. However, others are best dealt with the context of the other Acts (an *Armed Forces Act etc*).

## **CROWN ACT**

*An Act to modernise various matters relating to the Crown.*

### **Contents**

#### **Part 1 - The Crown**

1. Legal Nature
2. Royal Household
3. Crown Estate

#### **Part 2 - Other Crown Matters**

4. Proclamations
5. Reference in Legislation
6. Power to Tax
7. UK Great Seal
8. Privy Council
9. Obsolete Crown prerogatives

#### **Part 3 - Duchy of Cornwall**

10. Nature
11. Ownership
12. Management
13. Mines and Foreshore
14. Succession
15. Taxation

#### **Part 4 - Duchy of Lancaster**

16. *Abolition*

#### **Part 5 - Counties Palatine**

17. Abolition

#### **Part 6 - Charters**

18. City of London and Cinque Ports Charters
19. County, Borough and Town Charters
20. Other Crown Charters

#### **Part 7 - Obsolete Matters**

21. Legal Concepts
22. Escheat and Bona Vacantia
23. Legal Processes and Crimes
24. Titles and Offices
25. Corporations Sole and Aggregate
26. Creation of Common Law Crimes

#### **Part 8 - General**

27. Repeals and Cancellations
28. Interpretation
29. Application

### **Schedules**

1. Crown Estate
2. Royal Household
3. Abolished Crown Prerogatives
4. Duchy of Cornwall - Nature
5. Duchy of Cornwall - Management Acts
6. Duchy of Cornwall - Mines
7. Cancelled City of London and Cinque Ports Charters
8. Obsolete Titles and Offices
9. Repealed Crown Legislation
10. Repealed Duchy of Cornwall Legislation
11. Cancelled Duchy of Cornwall Charters
12. Abolished Duchy of Cornwall Rights
13. Osborne House

## **Part 1: The Crown**

### **1. Legal Nature**

- (1) The Crown refers to the sovereign<sup>90</sup> as head of a body aggregate.

### **2. Royal Household**

- (1) The royal household comprises the staff employed at any royal palace referred to in **Schedule 2**.
- (2) The senior members of the royal household comprise the officers with their:
- (a) offices and titles referred to in **Schedule 1, Part A**
  - (b) which offices and titles shall now be as indicated in **Part B**.
- (3) The sovereign may select the officers indicated in **Schedule 1**.<sup>91</sup>
- (4) The salaries and pensions of the royal household shall be paid by the Treasury or by such other Ministry as the Cabinet shall determine from time to time.
- (5) The following are abolished, the:
- (a) term '*sovereign grant*';
  - (b) term '*civil list*';
  - (c) formal surrender of the revenues from the Crown Estate by the sovereign at the outset of each reign in return for a sovereign list (later, called a sovereign grant) used to fund the royal household and other government functions which functions the sovereign no longer performs;
  - (d) the offices referred to in **Schedule 1, Part C**; and
  - (e) royal almonry.

### **3. Crown Estate**<sup>92</sup>

- (1) The Crown Estate is owned by Parliament, on behalf of the nation.
- (2) The Crown Estate shall hold title to the assets referred to in **Schedule 2**.
- (3) The assets in **Schedule 2** shall be managed, and operated, in accordance with **Schedule 2** and a SI.

## **Part 2 - Other Crown Matters**

### **4. Proclamations**

- (1) Any Crown prerogative to issue a proclamation is abolished.<sup>93</sup>
- (2) The royal household may issue factual announcements in the case of a Royal Event.<sup>94</sup>

### **5. Reference in Legislation**

- (1) The Crown is bound<sup>95</sup> by legislation unless expressly excepted.

### **6. Power to Tax**

- (1) The Crown may not levy:
- (a) any form of tax or toll; or
  - (b) the same for a longer time (or otherwise as permitted by legislation),

without the consent of Parliament.<sup>96</sup>

### **7. UK Great Seal**

- (1) The UK Great Seal is abolished and any:

<sup>90</sup> The sovereign is a corporation sole. It is not the same as Elizabeth Mountbatten-Windsor who is an individual (a person in the body natural), see *The Sovereign and Royal Family Act*.

<sup>91</sup> It would seem better if the sovereign has no control over the employment of any royal household employees since, then, there is no accountability by the sovereign for the same (albeit, immunity still applies).

<sup>92</sup> Alternative terms are '*Parliamentary Estate*' (employed in the Cromwellian period) and '*National Estate*.'

<sup>93</sup> Proclamation (and, before them, assizes and ordinances) were a form of legislation promulgated by the sovereign alone. Such is no longer appropriate or required.

<sup>94</sup> These are just factual notices as to royal marriages *etc*.

<sup>95</sup> This changes the present position which is anomalous since the *Crown* is not the same as the *sovereign*. Further, since the Crown comprises acting *qua* Parliament, the privy council, the cabinet, the CoE *etc*, there is no good reason why legislation should not apply save where excepted. Further, all legislation should apply to the sovereign (for example, with regard to personal property) save where expressly excepted.

<sup>96</sup> This embodies the wording in the Bill of Rights 1688.

- (a) documents formerly issued thereunder
- (b) shall now be effected as provided in a SI.

### **8. Privy Council**

- (1) The Privy Council is abolished and any:
  - (a) documents and legal acts formerly issued or executed by the same
  - (b) shall now be issued, or executed, as provided in a SI.<sup>97</sup>

### **9. Obsolete Crown Prerogatives**

- (1) The Crown prerogatives (and any franchise thereof) in **Schedule 3** are abolished, as described.
- (2) Any legal presumption that the Crown cannot be negligent is abolished.

### **Part 3: Duchy of Cornwall**

#### **10. Nature**

- (1) The duchy is an estate comprising the:

- (a) manors;
- (b) foreshore
- (c) river beds; and
- (d) other real property,

referred to in **Schedule 4**.

#### **11. Ownership**

- (1) The duchy is owned by the nation pursuant to s 3, in which the Duke has a life interest.
- (2) The duchy, and the title, the 'Duke of Cornwall', are inalienable.<sup>98</sup>
- (3) The Duke is a corporation sole.
- (4) For the avoidance of doubt, the franchised Crown prerogatives and other rights in **Schedule 12** are abolished.

#### **12. Management**

- (1) The duchy shall be managed according to the provisions of **Schedule 5** and a SI.<sup>99</sup>

#### **13. Mines and Foreshore**

- (1) The general law on mines and mining shall apply in the duchy (including those manors called assessionable manors) [*save for Schedule 6*].
- (2) Any local customs in respect of mines and mining in the duchy (including tin bounding, whether in Cornwall or elsewhere) are abolished.
- (3) Any foreshore in the duchy held by the Duke shall be transferred to the Crown by a SI.<sup>100</sup>

#### **14. Succession**

- (1) (*Eldest Child of the Sovereign*). Subject to (2) and (3), the duchy shall automatically pass:
  - (a) on the birth of the eldest son (or daughter) of the body of the sovereign, to the same; or
  - (b) to the eldest son (or daughter) of the body of the sovereign, when the sovereign becomes such.
- (2) (*Eldest Child Dies*). If the eldest child in (1) dies without issue, the duchy shall:
  - (a) automatically pass to the second son or daughter of the body of the sovereign,

<sup>97</sup> An alternative would be to cut down the size of the privy council, perhaps, providing: '(1) The following only shall continue to sit as members of the Privy Council: (a) Cabinet Ministers; (b) former Cabinet Ministers. (2) All legal acts performed by the Privy Council shall now be transferred to, and undertaken by, the Cabinet Office - save where legislation provides otherwise.' The effect of (a) would be to exclude judges, CoE clerics, foreign members *etc* - appointed on the recommendation of the PM.

<sup>98</sup> This simply clarifies matters.

<sup>99</sup> This could be placed in a Schedule to this Act. However, a SI enables easier amendment.

<sup>100</sup> It is assumed that title to the foreshore presently lies with the duchy. See GS McBain, *Time to Abolish the Duchy of Cornwall?* (2013) *Review of European Studies*, vol 5, no 5, pp 40-58. However, since the duchy is held by the Crown (i.e. in this case, Parliament, on behalf of the nation) no franchise of the foreshore is appropriate (because the duke, if a subject, cannot alienate it).



(b) as if the same were the eldest.

If the eldest child in (1) dies leaving issue, the duchy shall revert to the sovereign.

(3) (*No Children*). Until the sovereign has children, the sovereign shall hold the duchy.

#### **15. Taxation**

(1) The Duke of Cornwall (including in right of the duchy of Cornwall) shall pay income tax [all taxes].<sup>101</sup>

- (a) at the appropriate rate,
- (b) the same as any other subject.

#### **Part 4: Duchy of Lancaster**

[*This, if retained, will reflect ss 10-12. However, ss 13-15 will not be needed in any case*]

#### **16. Abolition**

(1) The duchy of Lancaster, and the title the ‘*Duke of Lancaster*’, are abolished, including any right to:

- (a) any jura regalia;
- (b) *bona vacantia*;
- (c) *escheat*;
- (d) *exercise patronage in respect of the CoE, including any advowson*;
- (e) *appoint a high sheriff*;
- (f) *appoint a lord lieutenant*.<sup>102</sup>

[(2) All real and personal property and all rights and obligations in respect of (1) are hereby transferred to the Crown Estate, the details of which shall be set out in a SI.]

#### **Part 5: Counties Palatine**

#### **17. Abolition**

(1) The following are abolished, the:

- (a) county palatine of Chester and the title Earl of Chester;
- (b) county palatine of Durham, without prejudice to the Durham (County Palatine) Act 1858;
- (c) county palatine of Lancaster;
- (d) office of Attorney-General of the county palatine of Durham;<sup>103</sup>
- (e) office of Solicitor-General of the county palatine of Durham.

#### **Part 6: Charters**

#### **18. City of London and Cinque Ports**

- (1) The charters from the Crown to the City of London (the ‘*City*’) and to the Cinque Ports, referred to in **Schedule 7**, are cancelled.
- (2) A SI may:
  - (a) amend the dates of the charters in **Schedule 7**, if required;
  - (b) add new charters to **Schedule 7** if: (i) a report prepared by a legal expert indicates the same are obsolete; or (ii) they comprise charters of *inspeximus* (confirmation) only.
- (3) Any obligation of the mayor of the City to pay homage or fealty to the Crown is abolished and The City of London (Various Powers) Act 1959, s 5(1) is amended to state ‘The Corporation of London shall continue to have the right to elect a mayor annually who shall be elected by the liverymen of the City of London assembled in Common Hall in the manner laid down in an Act of Common Council.’

#### **19. County, Borough and Town Charters**

- (1) A SI may cancel all, or part, of any charter granted by the Crown to a county or a town if a report prepared by the Law Commission (or a legal expert appointed by the Government) indicates the same is obsolete or spent.

<sup>101</sup> It is unclear the extent to which the duke, when a subject, pays taxes. However, he should pay all taxes unless expressly exempted by legislation (for which there is no good reason).

<sup>102</sup> This Act seeks to abolish these matters. Therefore, they need not be expressly referred to. In respect of (d), see also *The Sovereign and Royal Family Act*.

<sup>103</sup> Abolishing the county palatine would, strictly, abolish this role (and that of Solicitor General) in any case.

**20. Other Crown Charters**

- (1) All counties, boroughs, towns, bodies corporate or other persons (legal or individual) shall, on request, supply details of any Crown charter granted to them, to:
  - (a) the Law Commission; or
  - (b) a legal expert appointed by the Government.

**Part 7: Obsolete Matters****21. Legal Concepts**

- (1) The following obsolete legal concepts are abolished:
  - (a) waif (being goods thrown away by a thief in flight);
  - (b) estrays (being certain stray animals found in manors whose owner is unknown);

**22. Escheat and Bona Vacantia**

- (1) In the case of property (real and personal) located or found in England and Wales to which no owner can be determined, including:
  - (a) where the same has been abandoned or disclaimed; or
  - (b) there is no heir to inherit; or
  - (c) there is no claimant to title,
 title to the same shall pass to the Treasury Solicitor (the 'TS')
- (2) In the case of (1), the TS shall sell the same and the proceeds shall be paid into the Consolidated Fund.
- (3) The following legal concepts at common law are abolished:
  - (a) escheat;
  - (b) bona vacantia.
- (4) This section shall not apply where legislation makes provision otherwise, including the Insolvency Act 1986, ss 178 and 315.

**23. Legal Processes and Crimes**

- (1) The following obsolete legal processes and crimes are abolished:
  - (a) the generic crime of high crimes and misdemeanours;
  - (b) the criminal process of impeachment;
  - (c) Acts of Attainder;
  - (d) Acts of Pains and Penalties.
  - (e) the civil process of securing a remedy by way of petition of right.
- (3) Any unrepealed Acts of Attainder and Acts of Pains and Penalties are hereby repealed, as spent.

**24. Titles and Offices**

- (1) The obsolete titles and offices in **Schedule 8** are abolished.
- (2) Any legislation or common law matter attendant on, or consequential to, (1) may be repealed or amended by a SI.

**Part 8 : General****25. Corporations Sole and Aggregate**

- (1) The following are, hereby, treated as corporations sole:
  - (a) the *Lord Chancellor*;<sup>104</sup>
  - (b) the Lord Chief Justice;
  - (c) Chamberlain of the City of London;
  - (d) *all CoE priests*.
- (2) All corporations aggregate existing at common law shall become statutory corporations aggregate by means of a SI save where the [Government Legal Department] determines that the same should be preserved for historical reasons.
- (3) A SI may provide for the:
  - (a) creation;

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<sup>104</sup> It is suggested this office be abolished.

- (b) dissolution;
- (c) powers of; and
- (d) all other legal matters relating to,

a corporation aggregate.

- (4) Any Crown prerogative to create a corporation sole, or a corporation aggregate, is abolished.

## **26. Creation of Common Law Crimes**

- (1) Any Crown prerogative to create a common law crime (and any punishment therefor) is abolished and:

- (a) all existing common law crimes
- (b) shall be placed in legislation or abolished.

## **27. Repeals & Cancellations**

- (1) *Crown Legislation*. The legislation in **Schedule 9** is repealed, as described.
- (2) *Duchy of Cornwall Legislation*. The legislation in **Schedule 10** is repealed, as described.
- (3) *Duchy of Cornwall Charters*. The charters in **Schedule 11** are cancelled, as described.
- (4) *Duchy of Cornwall Rights*. The rights of the duchy (or duke) in **Schedule 12** are abolished.
- (5) Any legislation or common law matter or charter attendant on, or consequential to (1) - (4) may be repealed (or amended) by a SI.

## **28. Interpretation**

- (1) In this Act:

- (a) ‘*BOT*’ refers to a British Overseas Territory;
- (b) ‘British Territory’ refers to the Channel Islands, the Isle of Man or a BOT;
- (c) ‘*CoE*’ refers to the Church of England;
- (d) ‘*Foreign Country*’ refers to a country not the UK or a BOT;
- (e) ‘*Ecclesiastical office*’ means any CoE ecclesiastical office, including any lay ecclesiastical office;
- (f) ‘*Great Seal*’ refers to the Great Seal of the UK;
- (g) ‘*Legislation*’ refers to any Act (general, local or private) or SI;
- (h) ‘*PM*’ means the Prime Minister;
- (i) ‘*Royal Event*’ includes:
  - (i) the accession, coronation, marriage, death or funeral of the sovereign;
  - (ii) the birth, marriage, death of any member of the Royal Family;
  - (iii) any other noteworthy incident of a factual nature concerning the Royal Family;
- (j) ‘*Royal Family*’ is as defined in The Sovereign and Crown Act;
- (k) ‘*Royal Palaces*’ comprise the residences in **Schedule 1**;
- (l) ‘*Royal Collections*’ comprise the collections in **Schedule 1**;
- (m) ‘*SI*’ refers to a statutory instrument;
- (n) ‘*ss*’ refers to a subsection;
- (o) ‘*UK*’ refers to the United Kingdom.

## **29. Application**

- (1) This Act applies to Scotland and Northern Ireland.

### **Schedule 1: Royal Household**

#### **Part A: Present Office and Title**

Lord Chamberlain\*  
 Private Secretary \*  
 Keeper of the Privy Purse and Treasurer to the Queen  
 Master of the Household  
 Comptroller, Lord Chamberlain’s Office  
  
 Director, Royal Collection Trust and Surveyor of the Queen’s Works of Art  
 Crown Equerry  
 Director of Royal Communications  
 Director of the Property Section  
 Secretary of the Central Chancery of the Orders of Knighthood  
 Marshal of the Diplomatic Corps  
 Director of Operations, Royal Travel

#### **Part B: New Office and Title**

Lord Chamberlain  
 Private Secretary to the Queen  
 Treasurer to the Queen  
 Head, Royal Household  
 Head, Lord Chamberlain’s Office  
  
 Director, Royal Collections  
 Director, Royal Carriages  
 Director, Communications  
 Director, Property  
 Director, Orders of Chivalry  
 Director, Diplomatic Corps  
 Director, Royal Travel

Those officers which the sovereign may appoint are marked with an \*

**Part C**

Master of the Queen's Music  
 Poet Laureate  
 Lord High Almoner  
 Hereditary Grand Almoner  
 Clerk of the Closet  
 Deputy Clerk of the Closet

[Also, in the House of Commons, (a) Treasurer of HM Household; (b) Comptroller of HM Household; (c) Vice-Chamberlain of HM Household]<sup>105</sup>

**Schedule 2: Crown Estate**

The Crown Estate shall hold title to the following:

- |    |  |   |
|----|--|---|
| A. | <b><u>Royal Palaces</u></b>  | <b><u>Manager</u></b>                                       |
|    | Hampton Court Palace   | Historic Royal Palaces <sup>106</sup>                       |
|    | Hillsborough Castle  | Historic Royal Palaces                                      |
|    | Kew Palace (with Queen Charlotte's cottage)                            | Historic Royal Palaces                                      |
|    | The Banqueting House, Whitehall  | Historic Royal Palaces                                      |
|    | Kensington Palace  | Historic Royal Palace                                       |
|    | Tower of London  | Historic Royal Palace                                       |
|    | <i>Bagshot Park</i>  | <i>(residence of Prince Edward)</i>                         |
|    | <i>Thatched House Lodge</i>  | <i>(residence of Princess Alexandra)</i>                    |
|    | <i>The Royal Lodge</i>   | <i>(residence of Prince Andrew)</i>                         |
|    | <i>St James' Palace</i>  | <i>(royal family residence)</i>                             |
|    | <i>Buckingham Palace</i>   | <i>(residence of Elizabeth II in England)<sup>107</sup></i> |
|    | Palace of Holyroodhouse  | (residence of Elizabeth II in Scotland)                     |
|    | Windsor Castle   | (residence of Elizabeth II in England)                      |
|    | [Balmoral]   |   |
|    | [Sandringham] <sup>108</sup>   |   |
| B. | <b><u>Royal Collections</u></b>  |   |
|    | Crown Jewels   |   |
|    | Collection administered by the Royal Collections Trust                 |   |
|    | Royal Philatelic Collection  |   |
|    | Royal Carriages  |   |
| C. | <b><u>Royal Parks</u></b>  | <b><u>Manager</u></b>                                       |
|    | Saint James' Park  | Royal Parks   |
|    | Hyde Park  | Royal Parks   |
|    | Green Park   | Royal Parks   |
|    | Kensington Gardens   | Royal Parks   |
|    | Regent's Park (and Primrose Hill)                                      | Royal Parks   |
|    | Greenwich Park   | Royal Parks   |
|    | Richmond Park and Green  | Royal Parks   |
|    | Bushey (Bushy Park)  | Royal Parks   |
|    | <i>Chelsea Garden</i>  |   |
|    | <i>The Treasury Garden</i>   |   |
|    | <i>Parliament Square Garden</i>  |   |
|    | <i>Victoria Park</i>   |   |
|    | <i>Battersea Park</i>  |   |
|    | <i>Kew Gardens, Pleasure Grounds and Green</i>                         |   |
|    | <i>Kew Road</i>  |   |
|    | <i>Richmond Road</i>   |   |
|    | <i>Hampton Court Gardens, Green and Road</i>                           |   |
|    | <i>Hampton Court Park<sup>109</sup></i>                                |   |
|    | <i>Holyrood Park (now transferred to Scottish Minister)</i>            |   |
| D. | The <i>Duchy of Lancaster</i> <sup>110</sup> and the Duchy of Cornwall |   |
| E. | The UK foreshore (seashore) save where privately owned.                |   |

<sup>105</sup> These are government appointments. However, they will not be required if the Treasury has full control over the operational royal palaces.

<sup>106</sup> This is a charity.

<sup>107</sup> It is suggested that all these should be de-commissioned and managed by Historic Royal Palaces.

<sup>108</sup> These are privately owned by the sovereign. However, like Osborne House, they may be donated by Elizabeth II to the nation.

<sup>109</sup> It is suggested that all these should be managed by Royal Parks, to the extent these parks still exist (they are mentioned in Victorian legislation).

<sup>110</sup> This assumes the same is not abolished.

- F. UK public rivers (including the riverbed, the *fundus*).
- G. Other assets (woods, forests, buildings *etc*) as set out in a SI.
- H. The royal yacht.
- I. Osborne House, to which **Schedule 13** shall apply.

### **Schedule 3: Abolished Crown Prerogatives**

The following Crown prerogatives (and any franchise relating to the same) are abolished:

#### 1. **Military Prerogatives**

- (1) The prerogative of the Crown to:
  - (a) billet any member of the armed forces on the general public;
  - (b) impose martial law (including the jurisdiction of courts martial) on civilians;
  - (c) impress civilians for military service;
  - (d) issue letters of marque and reprisal;
  - (e) dig for saltpetre (for gunpowder);
  - (f) enter private land to dig for saltpetre;
  - (g) castellate (that is, to build a castle or fortified residence);
  - (h) erect military fortifications on private land;
  - (i) impose a toll for murage (to build city or town defensive walls);
  - (j) *seize the goods of a pirate.*<sup>111</sup>

#### 2. **Prerogatives concerning Animals and Fish**

- (1) The prerogative of the Crown to:
  - (a) wild, unmarked, swans on the sea or the branches thereof (termed, 'royal swans');
  - (b) create a free fishery (including a several fishery).
- (2) The tradition of '*swan upping*' on the river Thames by the:
  - (a) Company of Vintners; and the
  - (b) Company of Dyers, shall not be affected by (1).
- (3) The maintenance of a swan breeding colony by the Ilchester family at Abbotsbury in Dorset shall not be affected by (1).
- (4) In the case of (1)(b), abolition of the Crown prerogative shall not affect the franchise of any free fishery which has been registered in the Land Register and which can be legally proved to exist.

#### 3. **Commercial Prerogatives**

- (1) The prerogative of the Crown to:
  - (a) treasure trove;
  - (b) dig for treasure trove on private land;
  - (c) wreck (as well as flotsam, jetsam, ligan and derelict);
  - (d) create (dissolve or amend the byelaws of) a chartered corporation;
  - (e) make byelaws for a chartered corporation;
  - (f) operate markets and fairs;
  - (g) operate ferries;
  - (h) charge any customary rate or toll;
  - (i) regulate weights and measures;
  - (j) license a commercial monopoly;
  - (k) grant a patent for any invention.
- (2) In the case of (d) and (e), a SI may: (i) establish a corporation; (ii) amend the charter of a chartered corporation; (iii) grant power to a chartered corporation to amend its byelaws; (iv) dissolve a chartered corporation or one established pursuant to (i).
- (3) In the case of any franchisee of (f) and (g) asserted to still exist, the same may be preserved by the Department of Environment (in the case of a market or fair) or the Department for Transport (in the case of a ferry) for an interim period of one year, in order for any market, fair or ferry (if necessary) to become regulated by legislation (including a SI). If not legislated for, the franchise (and any right to the same) shall lapse.

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<sup>111</sup> This is now covered by the Piracy Act 1850. However, for the sake of good order, it is best to repeal the CP, see also GS McBain, *Modernising some Final Crown Prerogatives* (2022) Journal of Politics and Law, vol 15, no 3, pp 65-88.

- (4) In the case of any customary rate or toll referred to in (h), which is asserted to still exist, such may be preserved in the same manner as in (3) by the Department of Environment (or the Department for Transport or other relevant Government department).
- (5) ‘Toll’ shall include any: (a) bridge toll (pontage); (b) road toll (including for pavage and passage as well as toll thorough and toll traverse); (c) ferry toll; (d) market toll (including for stallage, piccage, pennage, tronage, scavage, lastage, summage, toll turn); (e) port and water related toll (including for carriage, wharfage, anchorage, ballastage, keelage, moorage, terrage, hostellage, pesage, tronage, measurage, lastage, loadage, primage, groundage); (f) any forest and animal toll (including for cheminage, boscase, pannage, herbage).

#### 4. **Border Prerogatives**

- (1) The prerogative of the Crown to:
- (a) issue letters of safe conduct;
  - (b) prohibit subjects from leaving the realm (including by means of the writ *ne exeat regno*);
  - (c) order a subject to return to the realm;
  - (d) *control the entrance, and exit, of aliens to (and from) the realm, in peacetime.*<sup>112</sup>

#### 5. **Prerogatives concerning Prisons**

- (1) The prerogative of the Crown to:
- (a) establish a new prison;
  - (b) operate a prison;
  - (c) franchise the operation of a prison.

#### 6. **Prerogatives concerning Coinage**

- (1) The prerogative of the Crown to:
- (a) issue (that is, mint) coin of the realm and to fix its denomination (or value) and render it current;
  - (b) legitimate foreign coin;
  - (c) decry coin of the realm, making it no longer current.

#### 7. **Prerogatives concerning the Printing of Books**

- (1) The prerogative of the Crown to have the sole right (monopoly) to print any book (or to franchise the same) is abolished.
- (2) The Copyright, Design and Patents Act 1988, s 164 (1) is amended to include reference to the following:
- (a) *the Authorised Version of the Bible;*
  - (b) *the Book of Common Prayer;*<sup>113</sup>
  - (c) such State papers and documents as are specified in a SI.

#### 8. **Prerogatives concerning the Sea**

- (1) The prerogative of the Crown to:
- (a) establish public ports and harbours (havens);
  - (b) regulate public ports and harbours (havens);
  - (c) charge for services provided at (a);
  - (d) erect lighthouses and beacons as sea marks, including on the land of a subject without consent.

#### 9. **Prerogatives to Mines**

- (1) The prerogative of the Crown to:
- (a) gold and silver mines (royal mines).

#### 10. **Prerogatives to Suspend or Dispense with Legislation**

- (1) The prerogative of the Crown to suspend, or dispense, with:
- (a) legislation (including by way of *non obstante*); or
  - (b) the common law; or
  - (c) the operation of (a) or (b),
- without the consent of Parliament.<sup>114</sup>

<sup>112</sup> This issue the author has not yet published on.

<sup>113</sup> It may be that the CoE no longer require this monopoly.

<sup>114</sup> This encapsulates the wording in the Bill of Rights 1688.

#### 11. **General Constitutional Prerogatives**

- (1) The prerogative of the Crown to:
  - (a) create a county palatine;
  - (b) create a county corporate (or royal county corporate);
  - (c) grant the status of a city;
  - (d) grant the status of a borough (or royal borough);
  - (e) grant the status of a town (or royal town);
  - (f) supervise the persons and estates of minors and the mentally ill (as *parens patriae*);
  - (g) supervise any charity (as *parens patriae*).
- (2) In the cases of 1(f) and (g), supervision of the same (to the extent still existing) shall pass from the Crown to Government departments (or other bodies or legal persons) as provided for in an SI.

#### 12. **Constitutional Prerogatives as to Styles and Titles**

- (1) The prerogative of the Crown to create the style and title of:
  - (a) lord mayor or deputy lord mayor;
  - (b) 'right honourable';
  - (c) 'esquire';
- (2) The prerogative of the Crown to create any new title or dignity.

#### 13. **Legal Prerogatives**

- (1) The prerogative of the Crown to:
  - (a) priority, in the case of the joint ownership of property with a private person;
  - (b) exemption of the sovereign's personal property in the case of: (i) *wreck*; (ii) *estrays*; (iii) *waifs*; (iv) *customary rates and tolls*; <sup>115</sup>(v) *distress for rent*;
  - (c) exercise a right of distress;
  - (d) re-enter (on a default under a Crown lease) without having to make any demand (or to give any notice);
  - (e) not have to give a receipt (an acquittance) acknowledging the payment (or the discharge) of any debt to the Crown;
  - (f) not be bound by an estoppel;
  - (g) compel a person to accept a public office;
  - (h) prevent or inhibit the arrest of any person in a Royal Palace;
  - (i) create a [common] law court;
  - (j) create a commission exercising a judicial function;
  - (k) not be bound by any legal fictions;
  - (l) have a Crown grant construed in favour of the Crown;
  - (m) have a lost Crown grant presumed;
  - (n) be presumed to be deceived (or mistaken) in a Crown grant;
  - (o) *be presumed, in a Crown grant, to reserve an advowson, unless the grant expressly provides otherwise.*<sup>116</sup>

#### 14. **Prerogatives in connection with the Bill of Rights 1688**

- (1) The prerogative of the Crown to:<sup>117</sup>
  - (a) restrict a subject's right to petition the Crown;
  - (b) interfere in the selection (or empanelling) of a jury;
  - (c) interfere in the grant of bail by a court;
  - (d) interfere in the fining of a person by a court (including the amount of the fine);
  - (e) franchise any court fine.

#### [15. **Prerogatives in connection with the Act of Settlement 1700**

- (1) *The prerogative of the Crown to plead the grant of a pardon under the Great Seal to an impeachment by the Commons in Parliament.[the process of impeachment may be obsolete, so this provision may not be needed].*<sup>118</sup>

#### **Schedule 4: Duchy of Cornwall - Manors and Rivers**

##### (a) **Manors**

Helston-in-Trigg  
Penmayne  
Tintagel  
Restormel  
Penlyne

<sup>115</sup> This Act seeks to abolish these anyway. Further, distress for rent no longer exists at common law.

<sup>116</sup> This is also dealt with in the Act, *Prerogativa Regis* (c. 1322) s 17 - which section this Act seeks to abolish.

<sup>117</sup> This, originally, applied to the sovereign but the prerogative was, effectively, taken over by the government.

<sup>118</sup> This will not be required if the process of impeachment is abolished, see *The Sovereign and Royal Family Act*.

Penkneth  
Talskedy  
Liskeard  
Rillaton  
Stoke Climsland  
Trematon.

(b) **Rivers**

[*Duchy to provide details and legislative source*].

**Schedule 5: Duchy of Cornwall - Management Acts**

This Schedule [*or a SI*] will set out the provisions of the following Acts, as modernised:

Duchies of Lancaster and Cornwall (Accounts) Act 1838.  
Duchy of Cornwall Act 1844.  
Duchy of Cornwall Management Act 1863.  
Duchy of Cornwall Management Act 1868.  
Duchy of Cornwall Management Act 1982.

**Schedule 6: Duchy of Cornwall – Mines**

1. **Her Majesty and her lessees to have liberty to work such minerals through the lands of the Duchy.** It shall be lawful at all times hereafter for Her Majesty, Her heirs and successors, and all and every persons and person who may for the time being be entitled in right of the Crown to or to the management of any of the said mines and minerals lying below low-water mark under the open sea, adjacent to but not being part of the county of Cornwall aforesaid, and for Her and their lessees or tenants, when and so often and so long as may be necessary for the purposes herein-after expressed, to take or use or to pass through, over, or under any lands for the time being parcel of the soil and territorial possessions of the said duchy within the said county, and which lands shall be either in the occupation of tenants under leases or agreements made subsequently to the date of this Act, or in the occupation of the duke of Cornwall for the time being, in order to make or sink any pits, shafts, adits, drifts, levels, drains, watercourses, pools, or embankments, and to make, lay, place, use, and repair any spoil banks, roads, ways, bridges, and banks, and to make, erect, and repair any lodges, sheds, steam and other engines, buildings, works, and machinery in, under, upon, through, over, or along the said lands, or any part thereof, which may from time to time or at any time hereafter be required, and to do all such other acts as may be necessary or convenient for working, searching for, digging, raising, or carrying away, dressing, or making merchantable the same mines and minerals, giving to the duke of Cornwall for the time being, and to any other person or persons who for the time being may be interested in the land so required, two months previous notice thereof, stating the nature of the facilities required, and also making compensation and satisfaction to the duke of Cornwall for the time being, and to other the person or persons, if any, for the time being interested in the said lands so taken or used or passed through, over, under, or along in the manner herein mentioned: *provided always*, that no pit, shaft, adit, drift, level, drain, watercourse, pool, or embankment which shall or may weaken, damage, injure, or endanger any house or other building, shall be sunk, driven, or made, nor shall any tramroad, waggon, or other way, or any works or machinery, be placed, laid, made, or erected, nor shall any minerals be dressed or made merchantable within fifty feet of any dwelling house, or upon any garden or orchard, or so as to interfere with any mining works or operations for the time being of the duke of Cornwall for the time being, his lessees or tenants.
2. **Mode of ascertaining compensation.** In all cases where the said facilities or any of them shall be used upon, through, over, under, or along lands lying between high-water mark and low-water mark part of the soil and territorial possessions of the duchy of Cornwall, the compensation and satisfaction to be made shall be a sum equal to one fifteenth part of the nett dues or moneys to be from time to time received by Her Majesty, Her heirs or successors, from the mines and minerals lying below low-water mark as aforesaid, which shall be worked and gotten by means of the said facilities, or any of them, in addition to compensation and satisfaction for or in respect of any building, wharf, or other artificial structure on the said lands which may be injuriously affected by the said facilities being used upon, through, over, under, or along the same, such compensation and satisfaction to be settled in the same manner as the compensation and satisfaction hereinafter provided for; and that when the said facilities or any of them shall be used on, through, over, under, or along any land other than lands lying between high-water mark and low-water mark as aforesaid, if the amount of compensation and satisfaction to be made for the same shall not be determined by agreement, then and in every such case the matter in difference shall be settled by arbitration by two arbitrators, one arbitrator to be named by the officer for the time being having the management of the land revenues of the Crown in Cornwall, and another arbitrator to be named by the duke of Cornwall for the time being, or by the council of the duchy for the time being, or by other the person or persons, if any, for the time being interested in the said lands so to be used as aforesaid, and the matter in difference shall be determined by the said arbitrators, or by an umpire to be appointed by them before they shall enter upon the reference; and if such arbitrators or either of them, or such umpire, shall die or refuse or for seven days neglect to act, other persons or another person shall forthwith be named or appointed to supply the places or place of the persons or person so dying or refusing or neglecting to act, in the same manner as such last-mentioned persons or person were or was named or appointed; and further, the said arbitrators or umpire shall determine by whom and how the costs of the reference and award or umpirage shall in each case be paid, and they or he may call for any documents in the possession or power of either of the parties which may be deemed necessary for determining the matter in difference, and may summon and examine upon oath any witness, and administer the oath for that purpose.
3. **Interpretation of terms.** In this Act the following expressions and words shall have the several meanings hereby assigned to them, unless there is something in the context repugnant to such construction; the expressions “*Duke of Cornwall*” and “*duke of Cornwall for the time being*” shall comprehend the personage for the time being entitled to the revenues of the duchy of Cornwall, and shall include Her Majesty, Her heirs and successors, when there may be no duke of Cornwall; the expression “*Mines and Minerals*” shall comprehend all mines and minerals, and all quarries, veins, or beds of stone, and all substrata of any other nature whatsoever, and the ground and soil in, upon, and under which such mines and minerals, quarries, veins, or beds of stone, and other substrata lie; and the words “the County of Cornwall” shall mean the said county exclusive of any lands added thereto or taken therefrom by the counties (Detached Parts) Act 1844.



**Schedule 7: Cancelled London and Cinque Ports Charters****(a) City of London Charters**

<b><u>Charter</u></b>	<b><u>Sovereign</u></b>	<b><u>Date of Charter</u></b>
1 <sup>st</sup> Charter	William I	c. 1067 (in Anglo-Saxon)
[2 <sup>nd</sup> Charter	<i>William I</i>	? (in Anglo-Saxon). <sup>J119</sup>
Charter	Henry I	c. 1132/3
Charter	Henry II	c.1155
1 <sup>st</sup> Charter	Richard I	23 April 1194
2 <sup>nd</sup> Charter		14 July 1197
1 <sup>st</sup> Charter	John	17 June 1199
2 <sup>nd</sup> Charter		17 June 1199
3 <sup>rd</sup> Charter		5 July 1199
4 <sup>th</sup> Charter		20 March 1202
5 <sup>th</sup> Charter		9 <sup>th</sup> May 1215
Charter	Henry III	23 December 1226
1 <sup>st</sup> Charter		18 February 1227
2 <sup>nd</sup> Charter		18 February 1227
3 <sup>rd</sup> Charter		18 February 1227
4 <sup>th</sup> Charter		16 March 1227
5 <sup>th</sup> Charter		18 August 1227
Charter <i>re</i> Queenhithe		26 February 1247
6 <sup>th</sup> Charter		12 June 1253
7 <sup>th</sup> Charter (of Remission)		10 January 1266
Charter		11 January 1266
8 <sup>th</sup> Charter		26 March 1268
Charter of Confirmation	Edward I	18 April 1298
Constitutions (1 <sup>st</sup> Charter)	Edward II	8 June 1319
2 <sup>nd</sup> Charter		12 December 1321
1 <sup>st</sup> Charter	Edward III	6 March 1327
2 <sup>nd</sup> Charter		6 March 1327
3 <sup>rd</sup> Charter		26 March 1337
Charter		26 May 1341
Charter		3 June 1341
4 <sup>th</sup> Charter		10 June 1354
5 <sup>th</sup> Charter		12 November 1376
6 <sup>th</sup> Charter		4 December 1376
Charter	Richard II	4 December 1377
Charter		26 November 1383
Charter/Letter		8 March 1384
1 <sup>st</sup> Charter	Henry IV	25 May 1400
2 <sup>nd</sup> Charter		23 July 1406
Charter	Henry V	12 July 1415
Charter		6 October 1420
Charter	Henry VI	26 October 1444
1 <sup>st</sup> Charter	Edward IV	9 November 1462
2 <sup>nd</sup> Charter		27 August 1463
3 <sup>rd</sup> Charter		20 June 1478
4 <sup>th</sup> Charter		20 June 1478
Charter	Henry VII	22 August 1485
Charter	Henry VIII	12 July 1509
1 <sup>st</sup> Charter		16 June 1518
2 <sup>nd</sup> Charter		13 April 1531
Charter	Edward VI	23 April 1550
Charter	Mary	1 March 1553
Charter	Elizabeth	9 March 1572
1 <sup>st</sup> Charter	James I	20 August 1605
2 <sup>nd</sup> Charter		20 September 1608
3 <sup>rd</sup> Charter		15 September 1614
1 <sup>st</sup> Charter	Charles I	18 October 1638
2 <sup>nd</sup> Charter		5 September 1640
Charter	Charles II	24 June 1663
Charter	William III	28 July 1692
Charter	George II	25 August 1741

Further (possible) charters beyond these may be:<sup>120</sup>

- One of *inspeximus* of Edward I of 17 April 1299

<sup>119</sup> This should be excluded since not a charter to the City as such but to an individual.

<sup>120</sup> These are referred to in G Norton, *Commentaries on the History, Constitution and Chartered Franchises of the City of London* (3<sup>rd</sup> ed, 1869).

- One of Edward I, dis-warrening the warren of Staines, perhaps, of 12 October 1297
- One of Richard II of 23 July 1396.

(b) **Cinque Ports Charters**

<b><u>Charter</u></b>	<b><u>Sovereign</u></b>	<b><u>Date of Charter</u></b>
Any charter granted by the Crown to the Cinque Ports prior to 17 June 1278		
Charter	Edward I	17 June 1278
Letters Patent		28 April 1298
Letters Patent		28 April 1298
Charter	Edward II	26 July 1313
Charter	Edward III	25 February 1326
		1 July 1364
Charter	Richard II	22 January 1378
Charter	Edward IV	23 March 1465
Charter	Henry VII	13 December 1487
Charter	Henry VIII	5 March 1510
Charter	Edward VI	20 November 1548
Charter	Mary I	27 October 1553
Charter	Elizabeth I	8 March 1559
Letters Patent		20 January 1601
Charter	James I	30 January 1604
Charter	Charles I	16 June 1634
Charter	Charles II	23 December 1668

**Schedule 8: Obsolete Titles and Offices**

- (a) Lord High Admiral;
- (b) Lord High Admiral of the Wash;
- (c) Lord Admiral;
- (d) Vice-Admiral of the Coast;
- (e) First and Second Lords of the Admiralty;
- (f) Any other admiralty post which is non-operational (that is, one of active service);
- (g) Lord Lieutenant (also, any vice, deputy or lieutenant of the same);
- (h) Lord High Constable;
- (i) Lord High Constable of Scotland;
- (j) Earl Marshall (also, any deputy);
- (k) Earl Marshal of Ireland;
- (l) Earl Marischal of Scotland;
- (m) Vice-Gerent;
- (n) High Sheriff (also, any under-sheriff, deputy or London deputy);
- (o) Clerk of the Market;
- (p) Lord High Treasurer (also, called the Lord Treasurer);
- (q) First and Second Lord of the Treasury;
- (r) King's Secretary (also, called the Chief Secretary)(also, any deputy);
- (s) Paymaster General (and Assistant);
- (t) Chancellor of the Duchy of Lancaster;
- (u) President of the Board of Trade;
- (v) Lord Keeper of the Privy Seal;
- (w) Lord Keeper of the Privy Seal of Scotland;
- (x) Lord Clerk Register of Scotland;
- (y) Lord High Steward;
- (z) Lord High Steward of Ireland;
- (aa) Clerk of the Crown;
- (bb) Hereditary Usher of the White Rod (or Principal Usher) for Scotland;
- (cc) Hereditary Royal Standard Bearer for Scotland;
- (dd) Master of the Horse;
- (ee) Lord Steward of the Household (also, called the Lord Steward);
- (ff) Lord High Chamberlain (also, called the Lord Great Chamberlain);
- (gg) Lord High Chamberlain (Scotland);
- (hh) in respect of the Lord Mayor of the City of London:
- (i) Escheator of the City of London;
- (ii) Admiral of the Port of London;
- (iii) Chief Magistrate of the City of London;
- (iv) Gauger of the City of London;
- (v) Clerk of the Market of the City of London
- (vi) Coroner of the City of London;
- (vii) Registrar of Pawns in the City of London;
- (viii) Outroper (crier) of the City of London;
- (ix) Keeper of the Great Beam of the City of London.

(ii) High Steward (and deputy)

(jj) Common Sarjeant of London  
 (kk) Recorder of London  
 (ll) Queen's Champion  
 (mm) Chief Butler of England  
 (nn) Grand Carver of England  
 (oo) Lord or Lady Marcher  
 (pp) Lord Warden of the Stannaries  
 (qq) Searcher of the Sanctuary, Westminster Abbey  
 (rr) High Steward, Westminster Abbey  
 (ss) Keeper of the Signet  
 (tt) Hereditary Royal Falconer  
 (uu) Queen's Guide over the Kent Sands.<sup>121</sup>

#### **Schedule 9: Repealed Crown Legislation**

Statute concerning Tallage 1297  
 Confirmation of the Charters 1297  
 Prerogativa Regis 1322 (*temp incert*)  
 Revocation of the New Ordinances 1322  
 Confirmation of Liberties 1405-6  
 Confirmation of Charters and Statutes 1415-6  
 Confirmation of Liberties 1423  
 Petition of Right 1627  
 Free and Voluntary Present to his Majesty 1661  
 Bill of Rights 1688

repeal in s 1 wording [relating to levying money, excessive bail, juries, grants of forfeitures]. Also, in s 3(3) the words 'shall be capable to be of the privy council'.

Royal Mines Act 1688  
 Great Seal Act 1688  
 Royal Mines Act 1693  
 Act of Settlement 1700  
 Union with Scotland Act 1706  
 Union with England Act 1707  
 Great Seal (Offices) Act 1874  
 Crown Office Act 1877  
 Great Seal Act 1884  
 Sheriffs Act 1887  
 Crown Office Act 1890  
 Osborne House 1902  
 Osborne House 1908  
 Treasure Act 1996

repeal s 3(4)  
 repeal in art 24 the words 'That from' up to 'is now used'  
 repeal in art 24 the words 'That from' up to 'is now used'.

delete ss 4(1) and 5

#### **Schedule 10: Repealed Duchy of Cornwall Legislation**

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  
 Stannaries Act 1855

s 88 (1), delete the words 'or the Duchy of Cornwall'  
 delete s 31

#### **Schedule 11: Cancelled Duchy of Cornwall Charters**

- (a) any charter from the Crown concerning the duchy of Cornwall prior to 17 March 1337, including a charter of:
- (i) 10 August 1231 from the Crown to Richard, Earl of Cornwall;
  - (ii) 6 August 1307 from the Crown to Piers de Gaveston;
  - (iii) 1310 from the Crown to Piers de Gaveston and his wife, Margaret;
  - (iv) 25<sup>th</sup> July 1318 from the Crown to Isabella, Queen of England;
  - (v) 10 October 1332 from the Crown to John of Eltham, Earl of Cornwall.
- (b) a charter of 17 March 1337 from the Crown to the duchy.  
 (c) a charter of 18 March 1337 from the Crown to the duchy.  
 (d) a charter of 3 January 1338 from the Crown to the duchy.  
 (e) a writ under the Privy Seal of 9 July 1343 relating to the duchy.

#### **Schedule 12: Abolished Duchy of Cornwall Rights**

Any right of the duchy (or the Duke) to:

<sup>121</sup> Those from (mm)-(uu) are sinecures listed in A Bruce, *Keepers of the Kingdom. The Ancient Offices of Britain* (1999).

- (a) *royal fish*; [abolished in *Sovereign and Royal Family Act*]
- (b) *treasure trove*; [abolished in this Act]
- (c) *wreck (also, flotsam, jetsam and ligan)*; [Ibid]
- (d) *gold and silver mines*; [Ibid]
- (e) any jura regalia;
- (f) *bona vacantia*; [Ibid]
- (g) escheat; [Ibid]
- (h) appoint an attorney-general; [repeal in a *Government Act*]
- (i) *appoint a high sheriff*; [abolished in this Act]
- (j) *appoint a CoE priest to any living (that is, any advowson)*.<sup>122</sup>

**Schedule 13: Osborne House**

[This will repeal any sections in the Osborne House Acts 1902 and 1908 still required]

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<sup>122</sup> The Act seeks to abolish the matters in italics. Therefore, they need not be expressly referred to (they are also covered by (e)).

### 3. TEXT OF A PARLIAMENT ACT

#### 1. INTRODUCTION

A *Parliament Act* is, actually, much simpler than the other constitutional legislation. And, it has produced few legal cases with regard to its operation. At base, it simply regulates (as from Anglo-Saxon times) the opening and closing of a royal palace, the purpose of which is to provide an assembly hall ('*hus*', house) for the passing of legislation. In Anglo-Saxon times, the sovereign would, likely, have been present throughout the assembly. Today, and *post*-1688, the sovereign is absent, only attending an opening of Parliament which, itself, is a formal matter only. The following may be noted with respect to any *draft Act*:

- **Obsolete Prerogatives.** In 1688, it was clear that any power struggle between the sovereign and Parliament had been won by Parliament. The recognition of this was that Parliament (as in Anglo-Saxon times) could elect the sovereign, and could dismiss the same for misconduct.<sup>123</sup> From that date, all CPs relating to Parliament should have been abolished since Parliament, in practice, ruled its own affairs. Thus, many are wholly obsolete and should be abolished (see s 41);
- **Other Prerogatives.** Since the assembly met (and still does) in a royal palace, the sovereign could determine when to call it - prorogue or adjourn it - and when to close (i.e. dismiss it). Also, the sovereign could appoint its officers (speakers) and other officials. However, the role of the sovereign in all of such is now purely formal - and modern legislation should reflect this. That is, the speakers and other officials should be appointed by Parliament. And, they should call Parliament, avoiding any problems of an *interregnum*. In short, a formal Head of State should not be involved in the running of Parliament;
- **House of Lords ('HL').** This body derives from early times when the assembly of the *witan gemote* (and, later, the Great Council of the Normans) included judges, great landowners (who held their land in return for military service, *viz.* tenurial service) and royal family members. They were called by the sovereign to assemble in, in order to advise the sovereign on his running of government. However, in 1660, military service ended. And, today, neither judges nor any royal family sit in the HL. More importantly, the *sovereign no longer governs*. Thus, the entire *raison d'être* of an unelected assembly has gone. It was, for much of that reason, that the HL was abolished during the Cromwellian period (1649-60). If it had not been resurrected thereafter, probably, it would have been no loss at all. As it is, consideration should be given to its abolition. Certainly - if it was abolished - this would greatly simplify the law on Parliament. And, speed up its operation (which is sorely needed). It would also make Parliament a proper democratic assembly rather than a rather ersatz mixture - at present - of MP's, CoE bishops, various hereditary peers and many '*jobbing*' lords (i.e. peers with many other jobs whose attendance in the HL is, thus, cursory).
- **Other Matters.** Apart from the above, most other matters in the *draft Act* are non contentious (and a lot could, actually, be put into SI's). The key thing is consolidation since the current legislation on Parliament is very confusing and piecemeal.

*Would anyone disagree to these changes?*

In the case of the sovereign - since the same no longer exercises an executive role as head of state - the abolition of all CP's relating to Parliament will effect no substantive change. As for the abolition of the HL, this is a political matter.

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<sup>123</sup> Thus, the Bill of Rights 1688 - and Scots Claim of Right 1689 - recited the mis-deeds of James II (1685-8) and he was held to have abdicated by his fleeing the country. Parliament then elected William of Orange and Mary (daughter of James II) as sovereigns.

## **PARLIAMENT ACT**

*An Act to modernise various matters relating to Parliament.*

### **Contents**

#### **Part 1: Parliament**

1. UK Legislature
2. Style
3. Legal Nature
4. Houses of Parliament

#### **Part 2: Assembly**

5. Summons to Assemble
6. Opening
7. Meeting
8. Prorogation
9. Adjournment
10. Dissolution
11. Term

#### **Part 3: Members and Peers**<sup>124</sup>

12. Qualification
13. Disqualification
14. Privileges
15. Resignation
16. Recall
17. Death
18. Taxation

#### **Part 4: Legislation**

19. General or Local

#### **Part 5: Parliament Officers**<sup>125</sup>

20. Speaker(s)<sup>126</sup>
21. Clerks
22. Parliamentary Ombudsman
23. Other Officers

#### **Part 6: Constituencies**

24. Parliamentary Constituencies

#### **Part 7: Parliament Bodies**

25. House of Commons Commission
26. House of Commons *and House of Lords* as Corporate Bodies
27. *Joint Departments* <sup>127</sup>

#### **Part 8: Other Parliament Matters**

28. Parliamentary Papers
29. Costs
30. Standards
31. Rule Book
32. Code of Conduct
33. Petitions
34. Contempts of Parliament
35. Communications
36. Parliamentary Commission
37. Erskine May
38. Westminster Palace
39. Chequers and Chevening Estates
40. High Court Jurisdiction

<sup>124</sup> Reference is also made to peers of Parliament (assuming the HL is retained).

<sup>125</sup> Ibid.

<sup>126</sup> This will refer to 'speakers' if the HL is retained.

<sup>127</sup> Not required if the HL is abolished.

## 41. Abolition of certain Matters

**Part 9: General**

- 42. Supplementary
- 43. Repeals
- 44. Interpretation
- 45. Application

**Schedules**

- 1. Qualifications and Disqualifications of MPs *and Peers*
- 2. Vacancies and Recall
- 3. Taxation of MPs *and Peers*
- 4. General Legislation: Short Titles and Evidence in Court
- 5. Appointment of Deputy Speakers
- 6. Parliamentary Ombudsman
- 7. Parliamentary Constituencies
- 8. House of Commons Commission
- 9. House of Commons *and House of Lords* as Corporate Bodies
- 10. Joint Departments of the House of Commons *and House of Lords*
- 11. Parliamentary Papers
- 12. Parliamentary Costs
- 13. Parliamentary Standards
- 14. Chequers and Chevening Estates
- 15. Abolished Matters
- 16. Repealed Legislation

**Note.** In the case where the HL is abolished, *material in italics* will not be required.

**Part 1: Parliament****1. UK Legislature**

- (1) The UK is represented by one legislative assembly (legislature).

**2. Style**

- (1) The assembly in s 1 shall be styled:

- (a) the '*Parliament of the United Kingdom of Great Britain and Northern Ireland*,'
- (b) foreshortened to the '*UK Parliament*' or to '*Parliament*.'

**3. Legal Nature**

- (1) Parliament comprises a corporation aggregate, the:

- (a) sovereign being the head; and
- (b) the members of the HC *and the HL*, the body.

**4. Houses of Parliament**

- (1) The HC and the HL comprise the two houses (chambers) of Parliament.

*[(2) The HL in Parliament is abolished and the legislation in Schedule 16, Part B, shall be repealed.]*<sup>128</sup>

**Part 2: Assembly****5. Summons to Assemble**

- (1) MP's, *and members of the HL*, shall be summoned to assemble by the issue of a proclamation [summons].<sup>129</sup>

- (2) The proclamation shall be issued by the

- (a) HC Speaker; *and the*
- (b) Lord Speaker.<sup>130</sup>

<sup>128</sup> In the case where the HL is abolished by distinct legislation, see *Appendix A*. If the HL is abolished, then, this section would be amended to state that Parliament was unicameral, comprising the HC.

<sup>129</sup> Today, a proclamation (inc. in a standard electronic form) is more useful. I assume a proclamation would be used for the purposes of this *draft Act*.

<sup>130</sup> A proclamation (summons) issued by the Speaker makes it clear that Parliament is in control of the process since the role of the sovereign is now purely formal. It also avoids the problem of an *interregnum*.

or their deputy(ies).

## 6. Opening

- (1) Parliament shall open on the date specified in the proclamation referred to in s 5(1) which date shall not be:
  - (a) less than [6] days
  - (b) from the date the proclamation is issued.
- (2) Parliament may be opened by the sovereign *delivering an address*<sup>131</sup> or it being delivered by:
  - (a) a member of the Royal Family; or
  - (b) another person appointed by the sovereign.<sup>132</sup>
- (3) The opening of Parliament in (2) is a ceremonial act. It shall not affect the obligation of Parliament to meet in (1).

## 7. Meeting

- (1) In any one year Parliament shall meet, and sit, for a minimum period of [200-250] days.
- (2) Parliament shall sit in Westminster Palace save where:
  - (a) such is not physically possible; or
  - (b) the Civil Contingencies Act 2004 applies; or
  - (c) legislation provides otherwise.

## 8. Prorogation

- (1) Parliament shall be prorogued by means of an announcement made by the PM in the HC.
- (2) The announcement in (1) shall state the date when Parliament shall reconvene, which date shall not be:
  - (a) less than [6] days
  - (b) from the date the announcement is made.
- (3) Parliament may be prorogued, in any one year, a maximum number of:
  - (a) four times;
  - (b) of no more than 14 days each time; and
  - (c) [56] days in total.
- (4) Any prorogation of Parliament is subject to s 7(1).
- (5) *Prorogation (or a recall) by the HC shall automatically result in a prorogation (or a recall) by the HL.*
- (6) The HC may be recalled earlier than the date in (1) (that is, its recess may be shortened) if:
  - (a) the PM so announces in the HC;
  - (b) in which case (2) shall apply.<sup>133</sup>
- (7) Prorogation shall:
  - (a) end the existing session of Parliament; and
  - (b) all Bills presently before Parliament shall lapse.
- (8) This section is subject to the earlier recall of Parliament pursuant to the Civil Contingencies Act 2004.<sup>134</sup>

## 9. Adjournment

- (1) The HC may vote to adjourn itself, which vote shall state the date for re-meeting.
- (2) *Adjournment (or a recall from an adjournment) by the HC shall automatically result in an adjournment (or a recall) by the HL.*
- (3) The HC may be recalled earlier than the date in (1) (that is, its recess may be shortened) if the HC Speaker is satisfied this would be in the public interest.
- (4) In the case of (3), the HC Speaker shall issue a notice to MPs [*and members of the HL*]. It shall:

<sup>131</sup> The address was never a legal requirement and could be re-located to the same being delivered by the PM after the opening.

<sup>132</sup> See n above, in which case this would not be required.

<sup>133</sup> The period of 6 days could (perhaps) be reduced slightly.

<sup>134</sup> In the event of a national emergency (war *etc*), it may be necessary for Parliament to be recalled earlier than the 6 days.



- (a) state a date for re-assembling
- (b) which date shall not be
- (c) less than [6] days from the date the notice is issued.

If re-called, a new vote pursuant to (1) is required for any subsequent adjournment.

- (5) The maximum period for which the HC may be adjourned in any year is [165-115] days.<sup>135</sup>
- (6) Any adjournment of Parliament is subject to s 7(1).
- (7) This section is subject to the earlier recall of Parliament pursuant to the Civil Contingencies Act 2004.

#### 10. **Dissolution**

- (1) Parliament shall be dissolved by means of an announcement made by the PM, at his sole discretion, in the HC. It shall state the date of dissolution.
- (2) On the occurrence of (1), a general election must be held within [30] days.<sup>136</sup>
- (3) Any dissolution of Parliament is subject to s 7(1).

#### 11. **Term**

- (1) The maximum term of each Parliament shall be [5] years from the date on which it was opened pursuant to section 6.
- (2) On the occurrence of (1), a general election must be held within [30] days regardless of s10 (1).

### **Part 3: Members of Parliament (MPs) and Peers**<sup>137</sup>

#### 12. **Qualification**

- (1) A MP *or a peer* must be qualified in accordance with **Schedule 1, Part A** to be able to attend, and sit in, Parliament.

#### 13. **Disqualification**

- (1) A MP *or a peer* is disqualified in accordance with **Schedule 1, Part B** from being able to attend, and sit in, Parliament.
- (2) On the occurrence of (1), the seat of the MP *or the peer* shall immediately become vacant and **Schedule 2, Part A**<sup>138</sup> shall apply.

#### 14. **Privileges**<sup>139</sup>

- (1) The election of a MP must be freely made.
- (2) Freedom of speech and debates, or proceedings, in Parliament shall not be challenged, or questioned, in:
  - (a) any court; or
  - (b) place
 outside Parliament.
- (3) Neither the HC *nor the HL* have the power by any vote or declaration:
  - (a) to create for themselves any new privileges,
  - (b) not warranted by the known laws and customs of Parliament [other than by legislation].<sup>140</sup>

#### 15. **Resignation**

- (1) A MP may resign from Parliament by giving notice in writing to the HC Speaker:
  - (a) which notice shall take effect
  - (b) [6] days from the date of receipt by the same.
- (2) In the case of (1), the seat shall immediately become vacant and **Schedule 2, Part A** shall apply.

<sup>135</sup> The precise number will reflect s 7(1).

<sup>136</sup> The number of days is open to debate. However, the purpose is to prevent undue prolongation.

<sup>137</sup> Reference is also made to peers of Parliament (assuming the HL is retained).

<sup>138</sup> This will deal with where there is a vacancy.

<sup>139</sup> It is assumed the privilege in respect of arrest and/or imprisonment is abolished.

<sup>140</sup> If Parliamentary law is consolidated in this Act, then, this older wording would be better replaced by the words '*other than by legislation*'.

**16. Recall**

- (1) A MP shall be recalled pursuant to **Schedule 2, Part B**.<sup>141</sup>

**17. Death**

- (1) On the death of a MP, the seat shall immediately become vacant and **Schedule 2, Part A** shall apply.

**18. Taxation**

- (1) MPs *and peers* shall pay tax according to **Schedule 3**.<sup>142</sup>

**19. General or Local Legislation**

- (1) (*Categorisation*). Bills shall be categorised as:

- (a) general; or  
(b) local (including any private Bill).<sup>143</sup>

- (2) (*Passage*). Bills shall be passed as follows:

- (a) general Bills shall be heard, and passed, three times in the HC *and twice in the HL* <sup>144</sup> by vote.  
(b) local Bills shall be heard, and passed, twice in the HC *and once in the HL* by vote unless the HC Speaker is satisfied it would be in the public interest for (a) to apply.

- (3) (*Royal Assent*.) *The sovereign may not refuse assent to a Bill otherwise validly passed.*<sup>145</sup>

- (4) (*Commencement*).<sup>146</sup> The Clerk of the Parliaments<sup>147</sup> shall endorse on every Act, immediately after the title of the same, the:

- (a) day, month and year when the same shall have passed; and  
(b) such endorsement shall be taken to be part of such Act; *and*  
(c) *the Act shall take effect from 12 pm on the date so endorsed; or*  
(d) *on a failure to endorse, when the same should have so been endorsed.*<sup>148</sup>

- (5) (*Number and Citation*). Chapter numbers assigned to Acts shall be assigned by:

- (a) reference to the calendar year, and not the session, in which they are passed; and  
(b) any such Act may, in any Act, instrument or document, be cited accordingly.<sup>149</sup>

- (6) (*Short Title*). **Schedule 4, Part A** shall apply.<sup>150</sup>

- (7) (*Evidence in Court*). **Schedule 4, Part B** shall apply.<sup>151</sup>

- (8) Any local legislation may be repealed by means of an SI, subsequent to a report issued by the Law Commission that the same is obsolete or spent.

**20. Speakers**

- (1) The HC Speaker shall be appointed, and dismissed, by vote of the HC.  
(2) *The Lord Speaker shall be appointed, and dismissed, by vote of the HL.*  
(3) Deputy speakers shall be appointed according to **Schedule 5**.

**21. Clerks**

- (1) The Clerk of the HC shall be appointed, and dismissed, by vote of the HC.  
(2) *The Clerk of the Parliaments shall be appointed, and dismissed, by vote of the HL.*

<sup>141</sup> This will contain the Recall of MPs Act 2015.

<sup>142</sup> This will contain the Constitutional Reform and Governance Act 2010, s 41.

<sup>143</sup> Alternatively, the term could be 'Private' with the same including local Acts; it does not matter.

<sup>144</sup> Reference to 'chamber' may, also, be more appropriate.

<sup>145</sup> This assumes the requirement to give royal assent is not abolished. Alternatively, 'Any requirement of royal assent to enact any Bill is abolished.'

<sup>146</sup> See Acts of Parliament (Commencement) Act 1793.

<sup>147</sup> If the HL is abolished, it would be the HC clerk (the underclerk).

<sup>148</sup> These will apply if the royal assent is abolished. This material in (a) and (b) comes from the Acts of Parliament (Commencement) Act 1793.

<sup>149</sup> See Acts of Parliament Numbering and Citation Act 1962.

<sup>150</sup> See Short Titles Act 1896 - with regard to Acts still extant - of which there are now few.

<sup>151</sup> See Crown Debts Act 1801 (the wording needs to be modernised).

- (3) Any deputy or assistant HC clerk shall be appointed, and dismissed, by the HC Commission.
- (4) *Any deputy or assistant HL clerk (including the Clerk Assistant), shall be appointed, and dismissed, by the HL Commission.*
- (5) The Clerk of the Court of Chancery shall be appointed by the:
- (a) HC Speaker; *and the*
  - (b) *Lord Speaker*.<sup>152</sup>

## **22. Ombudsman**

- (1) **Schedule 6** shall apply to the Parliamentary Commissioner for Administration.<sup>153</sup>

## **23. Other Officers**

- (1) Save for those Parliamentary officers referred to in ss 20-22, all other Parliamentary officers and staff shall be appointed and dismissed by the:
- (a) HC Commission, in the case of those employed in the HC (including any sarjeant at arms); and
  - (b) *Clerk of the Parliaments, in the case of those employed in the HL (including Black Rod)*.<sup>154</sup>

## **24. Parliamentary Constituencies**

- (1) **Schedule 7** shall apply to the Parliamentary constituencies.<sup>155</sup>

## **25. House of Commons Commission**

- (1) **Schedule 8** shall apply to the HC Commission.<sup>156</sup>

## **26. Corporate Bodies**

- (1) **Schedule 9** shall apply to the HC *and the HL*.<sup>157</sup>

## **27. Joint Departments**

- (1) **Schedule 10** shall *apply to the HC and the HL*.<sup>158</sup>

## **28. Parliamentary Papers**

- (1) **Schedule 11** shall apply to Parliamentary papers.<sup>159</sup>

## **29. Costs**

- (1) **Schedule 12** shall apply to parliamentary costs.<sup>160</sup>

## **30. Standards**

- (1) **Schedule 13** shall apply to Parliamentary standards.<sup>161</sup>

## **31. Rule Book**

- (1) All Parliamentary practices and procedures shall be consolidated into a Parliament Rule Book (the '**PRB**').
- (2) The PRB shall be:
- (a) set out in as user-friendly a manner as possible;
  - (b) be comprehensive; and
  - (c) be updated every 3 years, at least.
- (3) A free copy of the PRB shall be:

<sup>152</sup> Alternatively, perhaps, this should be by vote of the HC. At present he (or she) is (technically) appointed by the Crown.

<sup>153</sup> This will contain the Parliamentary Commissioner Act 1967.

<sup>154</sup> This could also be by a House of Lords Commission.

<sup>155</sup> See Parliamentary Constituencies Act 1986 and the Parliamentary Voting and Constituencies Act 2011. Presently, there are some 650 constituencies.

<sup>156</sup> See House of Commons (Administration) Act 1978.

<sup>157</sup> See Parliamentary Corporate Bodies Act 1992.

<sup>158</sup> See *Parliament (Joint Departments) Act 2007 (this would be unnecessary if the HL is abolished)*.

<sup>159</sup> See Parliamentary Papers Act 1840; Parliamentary Returns Act 1869 & Laying of Documents before Parliament (Interpretation) Act 1948.

<sup>160</sup> See Parliamentary Costs Act 2006 (it relates to private Bills). This material could be modernised.

<sup>161</sup> See Parliamentary Standards Act 2009.

- (a) given to all MP's *and members of the HL*;
- (b) provided online.

(4) The PRB shall cover, *inter alia*, the following procedures and processes:

- Sitings (of the HC *and HL* and in Westminster Hall);
- Order of Business;
- Motions;
- Questions;
- Decisions;
- Debate (including manner of speaking, time and length of speeches, content of speeches, behaviour and enforcement of order by the chair);
- Divisions;
- Passage of Bills;
- Passage of SI;
- *Protests*;
- Personal Interests;
- *Committees of the whole House*;
- Select Committees;
- General and Grand Committees;
- Witnesses;
- *Communications between the HL and the HC*;
- Communications between the sovereign and Parliament (including Addresses by Parliament);
- Petitions;
- Other matters.

### 32. Code of Conduct

(1) Parliament shall issue a Parliament Code of Conduct ('PCC') to regulate the conduct of MPs *and members of the HL*.

(2) The PCC shall be:

- (a) set out in as user-friendly a manner as possible;
- (b) be comprehensive (incorporating any code of behaviour);<sup>162</sup> and
- (c) be updated every 3 years, at least.

(3) A free copy of the PCC shall be:

- (a) given to all MP's *and members of the HL*;
- (b) provided online.

### 33. Petitions

(1) It is the right of the subject to petition the sovereign.

(2) All petitions sent to:

- (a) the Crown (including the sovereign); or
- (b) Parliament (*including to the HC and the HL whether jointly or separately*); or
- (c) the government (including any Minister of the Crown or any Ministry),

shall be sent (or re-directed) to the Petitions Committee in Parliament (the 'PCIP').

(3) All petitions shall be made online to the PCIP and not in hard copy, to expedite processing.

(4) There is no obligation on the PCIP:

- (a) to reply to any petition; or to
- (b) publish the same (or any correspondence); and
- (c) any correspondence by the PCIP may be made online, to reduce cost.

### 34. Contempts of Parliament

(1) All contempts of Parliament<sup>163</sup> and any fines payable as a result:

- (a) shall be set out in a SI
- (b) which shall be amended from time to time.

[2] *The fines in (1) may be recovered by an action brought in the name of the:*

- (a) *HC Speaker; or the*

<sup>162</sup> In 2018 the [HC] endorsed a new Behaviour Code governing the conduct of everyone working in or visiting the parliamentary estate.

<sup>163</sup> These were originally contempts of the *sovereign* (as may be seen in Anglo-Saxon law) since persons assembled in his palace.

(b) *Lord Speaker,*

(as appropriate) on behalf of Parliament, before the High Court.]<sup>164</sup>

### 35. **Communications**

- (1) *All proclamations in this Act may be in electronic form.*<sup>165</sup>
- (2) All communications between the sovereign and Parliament shall be in:
  - (a) writing, save in the case of s 6(2);
  - (b) *not require the UK Great Seal, save where legislation requires.*<sup>166</sup>
- (3) *All communications between the HC and HL shall be:*
  - (a) *in writing, save where the same vote otherwise;*
  - (b) *may be in electronic form.*

### 36. **Parliamentary Commission**

- (1) Parliament may, on a free vote, establish any Parliamentary commission or inquiry on any matter of public interest or concern as it sees fit.
- (2) Any Crown Prerogative to establish a royal commission or inquiry is abolished.

### 37. **Erskine May**

- (1) Any future edition of the work Erskine May, Parliamentary Practice, shall be:
  - (a) put online on a Parliament website; and
  - (b) be accessible to the general public without charge
- (2) Any version in (1) is without prejudice to the issue of a hardcopy version, for which a charge may be made.

### 38. **Westminster Palace**

- (1) Parliament shall allocate money to:<sup>167</sup>
  - (a) acquire any title (whether freehold or leasehold)
  - (b) in respect of Westminster Palace;

and, after so doing, Parliament shall hold title to the Palace on behalf of the nation.
- (2) The physical ambits of (1) shall be:
  - (a) set out in a SI as amended from time to time; and
  - (b) title to Westminster Palace shall be registered in the name of Parliament.
- (3) Any title (whether freehold or leasehold) held by the Crown (or the Crown Estate) in Westminster Palace, hereby passes to Parliament, without payment.
- (4) Any control held by the Crown (or the Crown Estate) in Westminster Palace, hereby passes to Parliament without payment, including the following, any control over:
  - (a) Westminster Hall;
  - (b) HM's robing room (including the staircase and ante-room adjoining);
  - (c) the Royal Gallery;
  - (d) the Chapel of St Mary Undercroft,

without prejudice to Parliament according the sovereign access to (a)-(d) for any state occasion.

### 39. **Chequers and Chevening Estates**

- (1) **Schedule 14** shall apply to the Chequers and Chevening Estates.<sup>168</sup>

### 40. **High Court Jurisdiction**

- (1) The High Court shall have jurisdiction in respect of any legal proceedings brought pursuant to this Act.

<sup>164</sup> It may be that some other sanction should be specified in the SI.

<sup>165</sup> This assumes these are retained for any opening *etc* of Parliament.

<sup>166</sup> This assumes the UK Great Seal is retained.

<sup>167</sup> If this is done, this section need only state: 'Parliament owns Westminster Palace.'

<sup>168</sup> This will contain the Chequers Acts 1917 and 1958 and the Chevening Estate Acts 1959 and 1987.

**41. Abolition of Certain Matters**

- (1) The:
- (a) privileges of MPs or peers;
  - (b) obsolete Crown prerogatives;
  - (c) Parliamentary practices and procedures

referred to in **Schedule 15**, are abolished.

- (2) The HC *and the HL*, whether acting singly or jointly, shall no longer act as a court of law:<sup>169</sup>
- (a) without prejudice to the jurisdiction of each house
  - (b) to punish a breach of privilege by a member of that house.

**Part 9: General****42. Supplementary**

- (1) Any legislation or common law matter attendant on, or consequential to, s 1(3) may be:

- (a) repealed;
- (b) abolished; or
- (c) amended,

by a SI.

- (2) If at any time it is resolved by the HC that Schedule 1 to this Act be amended, whether by the addition or omission of any office or the removal of any office from one Part of the Schedule to another, or by altering the description of any office specified therein:
- (a) a SI may amend that Schedule accordingly, and
  - (b) a copy of this Act as from time to time amended by the SI section (or by or under any other enactment),
  - (c) shall be prepared and certified by the Clerk of the Parliaments, and
  - (d) deposited with the rolls of Parliament, and
  - (e) all copies of this Act thereafter to be printed by HM's printer shall be printed in accordance with the copy so certified.<sup>170</sup>

**43. Repeals**

- (1) The legislation in **Schedule 16** shall be repealed.

**44. Interpretation**

- (1) In this Act:

- (a) '*Act*' refers to an Act of Parliament;
- (b) '*Bill*' refers to a Bill of Parliament;
- (c) '*Hansard*' refers to the Official Reports of Parliament from 1803;
- (d) '*HM*' refers to Her Majesty;
- (e) '*MP*' refers to a member of the UK Parliament;
- (f) '*NI*' refers to Northern Ireland;
- (g) '*Parliamentary papers*' means all documents issued to the public, including: (i) the Journals of the House of Commons *and the House of Lords*; (ii) Hansard; (iii) all Parliamentary returns; (iv) Command papers; (v) Act papers;
- (h) '*NI*' means Northern Ireland;
- (i) '*PM*' means the Prime Minister;
- (j) '*s*' means a section and '*ss*' means sub-section;
- (k) '*SI*' means a statutory instrument;
- (l) '*UK*' means Great Britain and NI.

- (2) For the purposes of s12:

'*civil service of the Crown*' includes the civil service of NI, HM's Diplomatic Service and HM's Overseas Civil Service;

'*police authority*' means any police authority within the meaning of the Police Act 1996, the Scottish Police Authority, or the NI Policing Board;

'*member*' in relation to a police force means a person employed as a full-time constable;

'*Minister of State*' means a member of HM's Government in the UK who neither has charge of any public department nor holds any other of the offices specified in Schedule [1] or any office in respect of which a salary is payable out of money provided by Parliament under s 3(1)(b) of the Ministerial and other Salaries Act 1975;

'*Parliamentary Secretary*' includes a person holding Ministerial office (however called) as assistant to a member of HM's Government in the UK, but not having departmental responsibilities;

<sup>169</sup> Neither the HC nor the HL (jointly or severally) can act as a court since they contain no judges.

<sup>170</sup> This replicates the House of Commons Disqualification Act 1975, s 5.

'regular armed forces of the Crown' means the Royal Navy, the Royal Marines, the regular army (as defined by s 374 of the Armed Forces Act 2006) or the Royal Air Force.<sup>171</sup>

(3) For the purposes of s 13:

'certificate of vacancy' means - (a) where the seat has become vacant because the MP has died, become disqualified as a peer for membership of the HC or accepted a disqualifying office, a certificate under the hands of 2 members of the HC in the form set out in Schedule 2 to this Act, or to the like effect; and (b) where the seat has become vacant because of a MP's bankruptcy, a certificate under [s] 427(6)(a) of the Insolvency Act 1986;

'disqualifying office' means any office, [other than the office of steward or bailiff of HM's 3 Chiltern Hundreds of Stoke, Desborough and Burnham or of the Manor of Northstead,] which disqualifies its holder for membership of the HC.

#### 45. Application

(1) This Act applies to Scotland and NI.

#### Schedules

1. Qualifications and Disqualifications of MPs *and Peers*<sup>172</sup>
2. Vacancies in, and Recall of, MPs
3. Taxation of MPs *and Peers*
4. General Legislation: Short Titles and Evidence in Court.
5. Appointment of Deputy Speakers
6. Parliamentary Ombudsman
7. Parliamentary Constituencies
8. House of Commons Commission
9. House of Commons *and House of Lords* as Corporate Bodies
10. *Joints Departments of the House of Commons and House of Lords*
11. Parliamentary Papers
12. Parliamentary Costs
13. Parliamentary Standards
14. Chequers and Chevening Estates
15. Abolished Matters
16. Repealed Legislation

*Only those in bold are set out in detail here since the others can be found in the relevant legislation.<sup>173</sup> Much material could be placed in SI's (for example, material relating to Sch's 6,8, 12-14).*

#### Schedule 2

*The certificate of vacancy shall be as follows:*

#### CERTIFICATE OF VACANCY

We, whose names are underwritten, being 2 members of the House of Commons ('HC'), certify that [ ] member of Parliament ('MP') for [ ]

died on [ ]; or

has become disqualified as a peer from membership of the HC; or

has accepted the office of [ ], the acceptance of which has been gazetted in the [ ] issue of the Gazette dated [ ]

And, we give you this notice to the intent that you may issue your warrant to the Clerk of the Crown in Chancery to make out a new writ for the election of a member to serve as MP in place of him.

To the Speaker of the House of Commons.

*NOTE. If there is no Speaker, or if the Speaker is out of the UK, this certificate may be addressed to any one of the persons appointed under [s] to exercise the Speaker's powers under that section.*

#### Schedule 15

#### A. Privileges

(1) The following are abolished, any privilege of:

- (a) a MP, or a member of the HL, to require the sovereign to grant an audience to the same;
- (b) the HC to require the sovereign to favourably construe any HC proceedings;
- (c) a member of the HL to vote by proxy.

<sup>171</sup> This can refer to definition in the *Armed Forces Act*.

<sup>172</sup> This will include the need to give any oath.

<sup>173</sup> See also GS McBain, *Modernising the Constitution - A Parliament Act* (2021) International Law Research, vol 10, no 1, pp 101-184.

**B. Crown Prerogatives**

(1) The following Crown prerogatives are abolished, the prerogative of the sovereign (including the Crown in the case of (i)) to:

- (a) appoint any officer of the HC *or the HL* (including any sarjeant-at-arms or Black Rod);
- (b) appoint Lords Commissioners;
- (c) confirm the privileges of the HC;
- (d) communicate with Parliament orally, save when attending Parliament in person;
- (e) recommend, or consent, to any Bill (or the content thereof);
- (f) add to the members of the HC;
- (g) *add to the members of the HL by personal decision;*
- (h) *licence the use of a proxy in the HL;*
- (i) originate any Act of Grace;
- (j) fine (amerce) a member of the HC *or the HL* for non-attendance at Parliament subsequent to a summons.

(2) Any Crown prerogative in (1)(e), franchised to the Duke of Cornwall (or the Duchy of Cornwall) is abolished.

**C. Parliamentary Practices and Procedures**

(1) The following Parliamentary practices and procedures are abolished:

- (a) the reading of a bill *pro forma* after the address by the sovereign on the opening of Parliament;
- (b) any address by Parliament to the sovereign in reply to the address in (a);
- (c) any address by Parliament in reply to a message from the sovereign;
- (d) the use of parchment (vellum) to record any Parliamentary paper;
- (e) the making of any written protest by a member of the HL

**Schedule 16****Part A**

Bearing of Armour Act 1313

Summons to Parliament 1382

Privilege of Parliament Act 1512

Privilege of Parliament Act 1603

Convention Parliament Act 1688

Bill of Rights 1688

repeal the following words:

‘That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegall....That Election of Members of Parlyament ought to be free....That the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament...And that for Redresse of all Grievances and for the amending strengthening and preserveing of the Lawes Parlyaments ought to be held frequently.’

Crown and Parliament Recognition Act 1689

Meeting of Parliament 1694

Act of Settlement 1700

in s 3(3) repeal the words ‘capable to be... a member of either house of Parliament’.

repeal article 3

repeal article 3

repeal sections 7 and 29

Union with Scotland Act 1706

Union with England Act 1707

Succession to the Crown Act 1707

Parliamentary Privilege Act 1737

Parliamentary Privilege Act 1770

Acts of Parliament (Commencement) Act 1793

Meeting of Parliament Act 1797

Meeting of Parliament Act 1799

House of Commons (Disqualifications) Act 1801

Crown Debts Act 1801

Acts of Parliament (Expiration) Act 1808

Clerk of the Parliaments Act 1824

Parliamentary Papers Act 1840

Deputy Speaker Act 1855

House of Commons Offices Act 1856

Parliamentary Witnesses Act 1858

Parliamentary Oaths Act 1866

Prorogation Act 1867

Parliamentary Returns Act 1869

Meeting of Parliament Act 1870

Parliamentary Witnesses Oaths Act 1871

Short Titles Act 1896

Chequers Estate Act 1917

Parliament (Qualification of Women) Act 1918

Royal and Parliamentary Titles Act 1927



Statute of Westminster 1931  
 Parliament (Elections and Meeting) Act 1943  
 Laying of Documents before Parliament (Interpretation) Act 1948  
 Chequers Estate Act 1958  
 Chevening Estate Act 1959  
 Acts of Parliament Numbering and Citation Acts 1962  
 Parliamentary Commissioner Act 1967  
 Recess Elections Act 1975  
 House of Commons Disqualification Act 1975  
 Parliamentary and other Pensions and Salaries Act 1976  
 House of Commons (Administration) Act 1978  
 Parliamentary Commissioner (Consular Complaints) Act 1981  
 Parliamentary Pensions *etc* Act 1984  
 Parliamentary Constituencies Act 1986  
 Parliamentary and Health Service Commissioners Act 1987  
 Chevening Estate Act 1987  
 Parliamentary and other Pensions Act 1987  
 Parliamentary Corporate Bodies Act 1992  
 Parliamentary Commissioner Act 1994  
 Parliamentary Costs Act 2006  
 Parliament (Joint Departments) Act 2007  
 Parliamentary Standards Act 2009  
 Constitutional Reform and Governance Act 2010  
 Fixed Term Parliaments Act 2011  
 Parliamentary Voting and Constituencies Act 2011  
 Recall Act 2015  
 House of Commons Commission Act 2015  
 Union with Ireland Act 1800  
 Act of Union (Ireland) 1800

repeal ss 20-47  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
 repeal art 3  
 repeal art 3

## **Part B**

House of Lords Precedence Act 1539  
 Union with Scotland Act 1706, art 25(6)  
 Parliament Act 1911  
 Parliament Act 1949  
 House of Lords Act 1999  
 House of Commons (Removal of Clergy Disqualification) Act 2001  
 House of Lords Reform Act 2014.  
 House of Lords (Expulsion and Suspension) Act 2015  
 Lords Spiritual (Women) Act 2015

## **APPENDIX A**

*An Act to abolish the House of Lords.*

### **1. House of Lords**

- (1) The House of Lords in Parliament is abolished.
- (2) The High Court shall have jurisdiction to hear any peerage claim.
- (3) The legislation in the Schedule is repealed.
- (4) Any legislation or common law matter attendant on, or consequential to, 1(3) may be:
  - (a) repealed;
  - (b) abolished; or
  - (c) amended,

by a SI.

#### **Schedule**

House of Lords Precedence Act 1539  
 Union with Scotland Act 1706, art 25(6)  
 Parliament Act 1911  
 Parliament Act 1949  
 House of Lords Act 1999  
 House of Commons (Removal of Clergy Disqualification) Act 2001  
 House of Lords Reform Act 2014  
 House of Lords (Expulsion and Suspension) Act 2015 and Lords Spiritual (Women) Act 2015

#### 4. TEXT OF A BRITISH TERRITORIES & FOREIGN RELATIONS ACT ('BTFRA')

##### 1. INTRODUCTION

The law in respect of British territories and foreign relations has developed piecemeal. In part, because there was a large time gap between the acquisition of certain British domestic territories - such as the Channel Islands which William I (1066-87) brought with him at the time of the Norman Conquest (1066), being the Duke of Normandy - and the later establishment of plantations abroad from the 17<sup>th</sup> century onwards leading to the colonial Empire which reached its zenith in the time of Queen Victoria (1837-1901).

Further, foreign diplomacy was the prerogative of the sovereign almost wholly (in which the courts did not interfere) until the reign of George I (1714-27) when Parliament took over this field to an increasing extent. And, by the reign of Queen Victoria, CP's relating thereto were - in practice - wholly exercised by ministers. The result of all this is that the modern law on British Territories (which include British Overseas Territories) is a complete hodge-podge of older common law and legislation. One, which does not mesh well and which includes a considerable volume of spent and obsolete material. Especially, in respect of laws relating to the transition of colonies to Commonwealth countries and republics. In respect of any *draft Act*, the following may be noted:

- **British Territories.** There is no good reason why the law on the *domestic* and *overseas* territories should not be the same with regard to their relationship with the UK - as well as on the ability of the UK to legislate for them. So too, the UK's responsibility for defence and foreign affairs. Why this is not presently so - and why there are many anomalies - lies in historical developments no longer pertinent. Further, modern legislation needs to be framed against the background of most British Territories now having their own distinct legislatures;
- **Consolidation of Colonial Legislation.** There is a large volume of colonial legislation of a transitional nature. It is asserted that all this is spent and should be repealed, save for a few pieces;
- **Diplomacy.** The law on diplomacy - and role of the FCDO - should be placed in legislation;
- **Nationality.** The process of *denization* has been obsolete since 1870. And, there never was a CP to *naturalise* an alien (foreigner). Both of these should be clarified;
- **Foreign Territory.** The acquisition, and cession, of territory should only be with the consent of Parliament today.

*Would anyone object to the above?*

All the above is, really, a matter of consolidation - and clarification - which seems unobjectionable. In other words, there does not seem to be anything contentious here.

**BRITISH TERRITORIES AND FOREIGN RELATIONS ACT**

*An Act to consolidate various constitutional matters relating to British territories and to foreign affairs.*

**Contents****Part 1: British Domestic Territories ('BDT')**

1. Channel Islands and the Isle of Man
2. Application of UK legislation
3. Defence and Foreign affairs
4. Responsible UK Ministry
5. Content of Statutory Instrument
6. Abolition of Crown Prerogatives
7. Appeal to Supreme Court
8. Abolition of Feudal Services
9. Rockall
10. Repeal of Legislation

**Part 2: British Overseas Territories ('BOT')**

11. Territories comprising BOT
12. Application of UK legislation
13. Defence and Foreign affairs
14. Responsible UK Ministry
15. Content of Statutory Instrument
16. Abolition of Crown Prerogatives
17. Appeal to Supreme Court
18. St Helena
19. Admiralty Jurisdiction
20. Repeal of Legislation

**Part 3: Consolidation of Legislation**

21. Former Colonies or Dominions
22. Australia
23. Hong Kong
24. Cyprus
25. Antarctic
26. Commonwealth
27. United Nations
28. International Organisations
29. International Protected Persons

**Part 4: Obsolete Terminology**

30. Abolition

**Part 5: Diplomacy**

31. Conduct of UK Diplomacy
32. UK Diplomats
33. Foreign Diplomats: Responsibility
34. Foreign Diplomats: Dismissal
35. Diplomatic Privileges
36. Treaty Making

**Part 6: Passports & UK Nationality**

37. UK Passports
38. Denization
39. Naturalisation
40. Divestment and Renunciation

**Part 7: Acquisition and Cession of Territory**

41. Acquisition of Foreign Territory
42. Cessation of UK Territory

**Part 8: Foreign States**

43. Recognition

**Part 9: General**

- 44. Interpretation
- 45. Application

**Schedules**

- 1. Foreign Relations Legislation
- 2. Former Colonies and Dominions Legislation
- 3. Hong Kong Legislation
- 4. Cyprus Legislation
- 5. Antarctic Legislation
- 6. Commonwealth Legislation
- 7. United Nations Legislation
- 8. International Organisations Legislation
- 9. International Protected Persons Legislation
- 10. Diplomatic Legislation
- 11. Consular Legislation
- 12. State Immunity Act
- 13. Repealed Diplomatic and Consular Legislation [i.e. repeals of Sch 10-3 material].

**Part 1: British Domestic Territories****1. Channel Islands and Isle of Man**

- (1) The Channel Islands and the Isle of Man<sup>174</sup> are domestic territories of the UK ('BDT').

**2. Application of UK Legislation**

- (1) The UK may legislate for a BDT by means of a:
  - (a) UK Act of Parliament which expressly refers to the same; or a
  - (b) SI.
- (2) Legislation passed by a BDT legislature shall only be void and inoperative if (and to the extent) it is:
  - (a) repugnant to<sup>175</sup>
  - (b) the legislation in (1).<sup>176</sup>

**3. Defence and Foreign Affairs**

- (1) The UK is responsible for the defence, and foreign, affairs of BDT.

**4. Responsible UK Ministry**

- (1) The HO is the UK ministry primarily responsible for the relationship between the UK and BDT, including:
  - (a) the drafting of legislation in s 2(1);
  - (b) the appointment, and dismissal, of any Governor.
- (2) The HO may seek the assistance of other UK ministries in respect of (1).

**5. Content of Statutory Instrument**

- (1) A SI may, *inter alia*, provide, in respect of BDT, for the following:
  - (a) their constitution (and any variation, amendment or replacement thereof);
  - (b) any legislature;
  - (c) their government;
  - (d) the establishment of any court;
  - (e) the appointment, and dismissal, of a Governor and the powers of the same;
  - (f) any customs (or common) duty or tax;
  - (g) any Crown land or Crown revenues.
- (2) The power in (1) includes making any incidental, consequential or transitional provisions relating thereto.

**[6. Abolition of Crown Prerogatives**

- (1) *Any Crown prerogative applying to BDT is abolished and:*

<sup>174</sup> There is no need to draw any distinction between the same as UK territories. Thus, reference is made to both.

<sup>175</sup> More modern wording would be '*incompatible with*'.

<sup>176</sup> This reflects the Colonial Laws Validity Act 1865, s 2.

- (a) all matters relating to BDT undertaken by the Privy Council;  
 (b) are hereby transferred to the HO.]<sup>177</sup>

### **7. Appeal to Supreme Court**

- (1) Any appeal to the JCPC from the BDT shall now be to the UK Supreme Court.<sup>178</sup>

### **8. Abolition of Feudal Services**

- (1) All feudal services and obligations to the Crown (or for any franchisee) in the BDT are abolished, including any:
- (a) obligation to pay homage or fealty for the holding of land;
  - (b) escheat or forfeiture for breach of a feudal service relating to land;
  - (c) oath (or affirmation) required for the holding of land.

### **9. Rockall**

- (1) The island of Rockall is a BDT.
- (2) It is confirmed that Rockall became part of the UK pursuant to the Island of Rockall Act 1972 and:
- (a) from the date of the enactment of the same,
  - (b) the island (of which possession was formally taken in the name of HM] on 18th September 1955 in pursuance of a Royal Warrant dated 14th September 1955 addressed to the Captain of [HM's] Ship *Vidal*)
  - (c) was incorporated into that part of the UK known as Scotland and formed part of the Western Isles, and
  - (d) the law of Scotland applied accordingly.

### **10. Repeal of Legislation**

- (1) The legislation in **Schedule 1, Part A** is repealed.

#### **Part 2: British Overseas Territories ('BOT')**

### **11. Territories comprising BOT**

- (1) The territories set out in **Schedule 2** (as the same may be amended by a SI from time to time) comprise BOT, together with their legal form and date of acquisition.
- (2) All BOT referred to in **Schedule 2, Part A** (*settled territories*) have, from the date of their acquisition, as their law
- (a) the law of England at the time of acquisition
  - (b) as altered (or replaced) by subsequent local legislation; or
  - (c) UK legislation.
- (3) All BOT referred to in **Schedule 2, Part B** (*ceded and annexed territories*) have, from the date of their acquisition, as their law:
- (a) the law in force in the territory at the time of acquisition
  - (b) as altered (or replaced) by subsequent local legislation; or
  - (c) UK legislation.

### **12. Application of UK Legislation**

- (1) The UK may legislate for the BOT by means of a:
- (a) UK Act of Parliament which expressly refers to the same; or a
  - (b) SI.
- (2) Legislation passed by a BOT legislature shall only be void and inoperative if (and to the extent) it is:
- (a) repugnant to
  - (b) the legislation in (1).

### **13. Defence and Foreign Affairs**

- (1) The UK is responsible for the defence, and foreign affairs, of BOT.

### **14. Responsible UK Ministry**

- (1) The FCDO (or the MOD in the case of the SBA) is the UK ministry primarily responsible for the relationship between the UK and BOT, including:
- (a) the drafting of legislation in s 12;

<sup>177</sup> A *Crown Act* has proposed that the privy council be abolished in any case. Thus, this section would not be necessary.

<sup>178</sup> This would not be needed if a *Courts Act* otherwise provides for the abolition of the JCPC and the transfer of its jurisdiction to the UK Supreme Court.

(b) the appointment, and dismissal, of any Governor.

(2) The FCDO (or MOD) may seek the assistance of other UK ministries in respect of (1).

### **15. Content of Statutory Instrument**

(1) A SI may, *inter alia*, provide, in respect of the BOT, for the following:

- (a) their constitution (and any variation, amendment or replacement thereof);
- (b) any legislature;
- (c) their government;
- (d) the establishment of any court;
- (e) the appointment, and dismissal, of a Governor, and the powers of the same;
- (f) any customs (or common duty) or tax;
- (g) any Crown land or Crown revenues;
- (h) the alteration of any territorial boundaries.<sup>179</sup>

(2) The power in (1) includes making any incidental, consequential or transitional provisions relating thereto.

### **16. Abolition of Crown Prerogatives**

(1) *Any Crown prerogative applying to BOT is abolished and:*

- (a) *all matters relating to BOT undertaken by the Privy Council;*
- (b) *are hereby transferred to the HO.]*

### **17. Appeal to Supreme Court**

(1) *Any appeal to the JCPC from a BOT shall now be to the UK Supreme Court.*<sup>180</sup>

### **18. Saint Helena**

(1) The island of Saint Helena is a BOT pursuant to the St Helena Act 1833, s 122 and, from the date of the enactment of the same:

- (a) the island and
- (b) all stores and property thereon
- (c) fit or used for the service of the government thereof
- (d) became vested in the Crown.

### **19. Admiralty Jurisdiction**

(1) All BOT civil courts hereby have admiralty jurisdiction if the law of the BOT does not otherwise provide.

### **20. Repeal of Legislation**

(1) The legislation in **Schedule 1, Part B** is repealed.

*[Note. Sections could be inserted to deal with: admiralty crimes, colonial marriages and colonial prisoners. However, for the reasons given it is thought that such matters should be left to BOT legislatures (or to UK law) or to mutual assistance agreements (in the case of prisoners).]*

## **Part 3: Other Legislation**

### **21. Former Colonies and Dominions**

(1) The legislation in **Schedule 1, Part C** is repealed [save for:

- (a) extant sections which are consolidated in *Appendix 2*;
- (b) together with the title of the former Act; and
- (c) the date of its enactment.]<sup>181</sup>

### **22. Australia**

(1) The legislation in **Schedule 1, Part D** shall be repealed (including the application of the Statute of Westminster 1931 as the same applies as between the UK and Australia) when an Act of the Commonwealth is passed according to the Australia Act 1986, s 12.

### **23. Hong Kong**

(1) **Schedule 3** shall apply to Hong Kong [i.e. consolidation of legislation referred to in **Schedule 1, Pt E**]

<sup>179</sup> See Colonial Boundaries Act 1895.

<sup>180</sup> This would not be needed if a *Courts Act* otherwise provides for the abolition of the JCPC and the transfer of its jurisdiction to the UK Supreme Court.

<sup>181</sup> Probably, all these Acts can be repealed outright.

**24. Cyprus**

(1) **Schedule 4** shall apply to Cyprus [i.e. consolidation of legislation referred to in **Schedule 1, Pt F**]

**25. Antarctic**

(1) **Schedule 5** shall apply to the Antarctic [i.e. consolidation of legislation referred to in **Schedule 1, Pt G**]

**26. Commonwealth**

(1) **Schedule 6** shall apply to the Commonwealth [i.e. consolidation of legislation referred to in **Schedule 1, Pt H**]

**27. United Nations**

(1) **Schedule 7** shall apply to the UN [i.e. consolidation of legislation referred to in **Schedule 1, Pt I**]

**28. International Organisations**

(1) **Schedule 8** shall apply to International Organisations [i.e. consolidation of legislation referred to in **Schedule 1, Pt J**]

**29. International Protected Persons**

(1) **Schedule 9** shall apply to International Protected Persons [i.e. consolidation of legislation referred to in **Schedule 1, Pt K**]

**Part 4: Obsolete Terminology****30. Abolishing Obsolete Terminology**

(1) The following terms are abolished as obsolete:

- (a) dependent territory (including Crown dependency);
- (b) colony (including Crown colony);
- (c) dominion;
- (d) possession;
- (e) protectorate;
- (f) associated state;
- (g) mandated state.

**31. Conduct of UK Diplomacy**

(1) The FCDO is responsible for the conduct of the UK's foreign relations (foreign diplomacy):

- (a) in particular, for the matters outlined in ss 32-5,
- (b) save where legislation provides otherwise.

(2) Any Crown prerogative to conduct the UK's foreign relations is abolished.

**32. UK Diplomats**

(1) The FCDO is responsible for the employment of all UK:

- (a) ambassadors;
- (b) consuls; and
- (c) other officers performing a diplomatic role (together 'UK Diplomats').

(2) The FCDO shall:

- (a) appoint;
- (b) dismiss; and
- (c) accept the resignation of:

a UK Diplomat pursuant to a formal letter issued by the FCDO, signed by:

- (i) the Foreign Minister (or any designate); or the
- (ii) head of the FCDO (or any designate).

(3) A letter issued pursuant to (2) is conclusive of the same for all legal purposes, save in the case of manifest error.

(4) Any Crown prerogative in respect of UK Diplomats is abolished.

**33. Foreign Diplomats: Responsibility**

(1) The FCDO is responsible for the accreditation (that is, the appointment) in the UK of all foreign:

- (a) ambassadors;

- (b) consuls; and
- (c) other officers performing a diplomatic role (together '**Foreign Diplomats**').

(2) The FCDO shall:

- (a) accredit
- (b) dismiss; or
- (c) accept the resignation of:

a Foreign Diplomat pursuant to a formal letter issued by the FCDO, signed by the:

- (i) Foreign Minister (or any designate); or
- (ii) head of the FCDO (or any designate).

(3) A letter issued pursuant to (2) is conclusive of the same for all legal purposes, save in the case of manifest error.

(4) Any Crown prerogative in respect of Foreign Diplomats is abolished.

### **34. Foreign Diplomats: Dismissal**

(1) A Foreign Diplomat may not be appointed, or shall have his (or her) accreditation removed, by the FCDO if the same:

- (a) has committed (or commits) any serious criminal offence under UK law;
- (b) is a member (or becomes such) of any proscribed criminal or terrorist organisation;<sup>182</sup>
- (c) has been convicted (or is convicted) by any court of law in any designated country of:

- (i) drug trafficking;
- (ii) terrorism;
- (iii) people trafficking;
- (iv) prostitution;
- (v) money laundering;
- (vi) slave trading;
- (vii) genocide.

(d) is (or becomes) a family member of the leader of any country:

- (i) on a UK sanctions list;
- (ii) designated by the UK as being governed by a civil or military dictatorship.

(e) is a former Head of State or President or Vice-President.

### **35. Diplomatic Privileges**

- (1) **Schedule 10** shall apply in respect of diplomatic privileges.
- (2) **Schedule 11** shall apply to the consular handling of the estates of deceased persons.
- (3) **Schedule 12** shall apply to state immunity.
- (4) Any Crown prerogative in respect of diplomatic privileges is abolished.
- (5) The legislation in **Schedule 13** relating to consular fees is repealed.

### **36. Treaty Making**

(1) The FCDO is responsible for the making of treaties between the UK and foreign countries:

- (a) save where a SI designates
- (b) the Cabinet or another Ministry.

(2) A treaty shall be executed by the same being signed by the FCDO minister (or other minister in accordance with (1)).

(3) [*Ratification of Treaties. This will set out the Constitutional Reform and Governance Act 2010, ss 20-5*].

(4) No treaty that has been ratified shall have effect under UK domestic law unless the same is contained in an:

- (a) Act of Parliament; or a
- (b) SI.

(5) The following matters are not justiciable: the political decision whether to:

- (a) make;
- (b) ratify; or

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<sup>182</sup> Legislation (or a SI) should list proscribed criminal organisations (mafia *etc*) as well as terrorist organisations.



- (c) denounce,
- a treaty (or not).
- (6) Any Crown prerogative in respect of the making of treaties is abolished.
- (7) *Any requirement for a treaty to be executed by means of the Great Seal of the UK is abolished.*<sup>183</sup>
- (8) The term ‘*treaty*’ shall be as defined in the Vienna Convention on the Law of Treaties 1969.

### 37. **UK Passports**

- (1) The HM Passport Office (the ‘**PO**’) is responsible in respect of passports for their:
  - (a) issue (or non-issue);
  - (b) revocation;
  - (c) impounding.
- (2) Every qualified person (‘**Qualified Person**’) is entitled to legally require the PO:
  - (a) to issue him (or her) with a passport,
  - (b) on payment of the requisite fee.
- (3) A Qualified Person is one;
  - (a) over the age of [16];
  - (b) who is a UK citizen (including by way of naturalisation) (a ‘**UK Citizen**’).
- (4) The PO shall revoke, and impound, a UK passport when:
  - (a) the same has been obtained by any criminal act under UK law; or
  - (b) legislation provides for such; or
  - (c) a UK court so orders.
- (5) A criminal act (wherever committed) includes where a UK passport has been obtained by the holder by:
  - (a) theft;
  - (b) fraud;
  - (c) misrepresentation;
  - (d) failing to disclose to the PA facts which materially affect treating that person as a qualified person in (3).
- (6) Any Crown prerogative with respect to UK passports, is abolished.
- (7) UK Citizen means: [ ]
- (8) UK passports are the property of the PO.

### 38. **Denization**

- (1) The Crown prerogative to make an alien a denizen is abolished.

### 39. **Naturalisation**

- (1) There was (and is) no Crown prerogative to naturalise an alien.<sup>184</sup>

### 40. **Divestment and Renunciation**

- (1) A UK Citizen may only be:
  - (a) divested of; or
  - (b) renounce.

UK citizenship according to legislation.
- (2) Any Crown prerogative with respect (1) is abolished.

### 41. **Acquisition of Foreign Territory**

- (1) No foreign territory may be acquired by the UK, including by way of:
  - (a) annexation,
  - (b) cession,

<sup>183</sup> A *Crown Act* provides for the UK Great Seal to be abolished.

<sup>184</sup> This simply clarifies the common law position.

- (c) protectorate,
- (d) mandate,

unless by an Act of Parliament.

- (2) Any Crown prerogative in respect of (1) is abolished.

#### **42. Cession of UK Territory**

- (1) No UK territory may be ceded or given up, unless by an Act of Parliament.
- (2) Any Crown prerogative in respect of (1) is abolished.

#### **43. Recognition of Foreign States**

- (1) The FCDO is responsible for the recognition by the UK of any foreign state.
- (2) The FCDO shall issue a certificate of recognition, if required by a UK court of law, which shall be conclusive of the same for all legal purposes, save in the case of manifest error.
- (3) The certificate shall indicate whether:
  - (a) a foreign state and/or government (or asserted government) is
  - (b) recognised by the UK;
    - (i) *de jure*; and/or
    - (ii) *de facto*.
- (4) The certificate shall be signed by the:
  - (i) Foreign Minister (or any designate); or the
  - (ii) head of the FCDO (or any designate).
- (5) Any Crown prerogative to issue a certificate is abolished.

#### **44. Interpretation**

- (1) In this Act:

‘*BOT*’ means British Overseas Territory;  
 ‘*FCDO*’ means the Foreign Commonwealth and Development Office;  
 ‘*Governor*’ includes any commissioner or administrator (also, any deputy or person acting for any of the same);  
 ‘*JCPC*’ means the Judicial Committee of the Privy Council;  
 ‘*HO*’ means the Home Office;  
 ‘*MOD*’ means the Ministry of Defence;  
 ‘*SBA*’ refers to the Sovereign Base Areas in Cyprus;  
 ‘*SI*’ refers to a statutory instrument;  
 ‘*UK*’ means the United Kingdom;  
 ‘*UN*’ means the United Nations.

#### **45. Application**

- (1) This Act applies to the:
  - (a) UK;
  - (b) Channel Islands;
  - (d) Isle of Man; and
  - (e) BOT.

#### **Schedule 1: Foreign Relations Legislation**

[Extant sections are inserted by way of a note only and would be placed in any legislation. Short titles should be excluded]

##### **A. Channel Islands & the Isle of Man**

Alderney (Transfer of Property) Act 1923  
 Jersey and Guernsey (Financial Provisions) Act 1947  
 Isle of Man Act 1979  
 Island of Rockall Act 1972

##### **Sections**

s 1  
 s 1  
 ss 1-12  
 s 1

##### **B. Former Colonies (now BOT)**

Saint Helena Act 1833  
 Admiralty Offences (Colonial) Act 1849  
 Admiralty Offences (Colonial) Act 1860  
 Colonial Affidavits Act 1859

##### **Sections**

s 112  
 ss 1, 3-5  
 ss 1 & 4  
 s 2

Colonial Laws Validity Act 1865	ss 1-6
Colonial Marriages Act 1865	ss 1-2
Colonial Prisoners Removal Act 1869	ss 1 & 2, 4-7
Colonial Prisoners Removal Act 1884	ss 2-14
Courts (Colonial) Jurisdiction Act 1874	ss 2-3
British Settlement Act 1887 (and 1945)	ss 2-6 (and 1)
Foreign Jurisdiction Act 1890	ss 1-13, 16 & 19
Foreign Jurisdiction Act 1913	s 1
Colonial Courts of Admiralty 1890	ss 2-15
Colonial Boundaries Act 1895	s 1
Statute of Westminster 1931	ss 1-10 <sup>185</sup>
Mandated Trust Territories Act 1947	s 1
West Indies Act 1962	ss 3-5, 7-8
Anguilla Act 1980	s 1
Bermuda Constitution Act 1982	s 1

### **C. Former Colonies (now Independent Countries)**

Indian Independence Act 1947	ss 1, 6-7, 15, 20.
Ceylon Independence Act 1947	ss 1, 4-5
Ireland Act 1949	ss 1,2,4,7
India (Consequential Provision) Act 1949	ss 1-2
Ghana Independence Act 1957	ss 1,4-5
Federation of Malay Independence Act 1957	ss 1,2,4
Ghana (Consequential Provision) Act 1960	ss 1,3
Nigeria Independence Act 1960	ss 1,3-4
Sierra Leone Independence Act 1961	ss 1-3-4
Tanganyika Independence Act 1961	ss 1,3-4
West Indies Act 1962	ss 3-10
South Africa Act 1962	ss 2-4
Jamaica Independence Act 1962	ss 1,3-4
Trinidad and Tobago Independence Act 1962	ss 1,3-5
Uganda Independence Act 1962	ss 1,3,5
Tanganyika Republic Act 1962	ss 1,3
Rhodesia and Nyasaland Act 1963	ss 1-3
Malaysia Act 1963	ss 1,3-4,6
Kenya Independence Act 1963	ss 1,4,8
Zanzibar Act 1963	ss 1,6
Nigeria Republic Act 1963	ss 1-3
Uganda Act 1964	ss 1,2,4
Malawi Independence Act 1964	ss 1,4,7-8
Zambia Independence Act 1964	ss 1,8,11
Malta Independence Act 1964	ss 1,4-6
Gambia Independence Act 1964	ss 1,4,6-7
Kenya Republic Act 1964	ss 1-2
Guyana Independence Act 1966	ss 4-5,8-9
Malawi Republic Act 1966	ss 1-2
Botswana Independence Act 1966	ss 1,2,8
Lesotho Independence Act 1966	ss 1,2, 8
Singapore Act 1966	ss 1,3-5
Barbados Independence Act 1966	ss 1,4-6
West Indies Act 1967	ss 6,8,17,19
Bermuda Constitution Act 1967	ss 1,2
Mauritius Independence Act 1968	ss 1,4-5
Swaziland Independence Act 1968	ss 1-2,7-8
Tanzania Act 1969	ss 4-8
Guyana Republic Act 1970	ss 1-2
Tonga Act 1970	ss 1,3-4
Republic of The Gambia Act 1970	ss 1-3
Fiji Independence Act 1970	ss 1,4-6
Sierra Leone Republic Act 1972	ss 1-2
Sri Lanka Republic Act 1972	ss 1-2
Bahamas Independence Act 1973	ss 1-7
Bangladesh Act 1973	ss 1,3-4
Malta Republic Act 1975	ss 1-2
Seychelles Act 1976	ss 1,2,5,7-8
Trinidad and Tobago Republic Act 1976	ss 1-4
Tuvalu Act 1978	ss 1,4-6
Solomon Islands Act 1978	ss 1-7,9
Southern Rhodesia Act 1979	ss 1-4
Zimbabwe Act 1979	ss 1,3-7
Kiribati Act 1979	ss 1-3,6-8
Anguilla Act 1980	ss 1-2

<sup>185</sup> In the case of Australia, consent is required, see s 22.

New Hebrides Act 1980	ss 2,4
Papua New Guinea, Western Samoa and Nauru (Miscellaneous Provisions) Act 1980	ss 1,3-4
Belize Act 1981	ss 1-7
Canada Act 1982	ss 1-4
Brunei and Maldives Act 1985	ss 1-2
Brunei (Appeals) Act 1989	ss 1-2
Pakistan Act 1990	ss 1-2
Namibia Act 1991	ss 1-2
Mauritius Republic Act 1992	ss 1-3
South Africa Act 1995	ss 1-2
<b><u>D. Australia</u></b>	<b><u>Sections</u></b>
Australia Act 1986	ss 1-17
<b><u>E. Hong Kong</u></b> <sup>186</sup>	<b><u>Sections</u></b>
Hong Kong Act 1985	ss 1-2
Hong Kong Economic and Trade Office Act 1996	ss 1-2
<b><u>F. Cyprus</u></b>	<b><u>Sections</u></b>
Cyprus Act 1960	ss 1-4, 6-7
<b><u>G. Antarctic</u></b>	<b><u>Sections</u></b>
Antarctic Act 1994	ss 1-32, 34-6
<b><u>H. Commonwealth</u></b>	<b><u>Sections</u></b>
Commonwealth Secretariat Act 1966	ss 1-2
Commonwealth Act 2002	ss 1-4
<b><u>I. United Nations</u></b>	<b><u>Sections</u></b>
United Nations Act 1946	ss 1
UN Personnel Act 1997	ss 1-9
<b><u>J. International Organisations</u></b>	<b><u>Sections</u></b>
Int. Headquarters and Defence Organisations Act 1964	ss 1-3
International Organisations Act 1968	ss 1,2,4,4A,4B,5,5A,6-13
International Organisations Act 1981	ss 4,6
International Parliament Organisations Registrations Act 1989	s 1
International Organisations Act 2005	ss 1,2,4,7-8, 9-11
Commonwealth Development Corporation Act 1978	s 1
Commonwealth Development Corporation Act 1999	ss 1-28
<b><u>K. International Protected Persons</u></b>	<b><u>Sections</u></b>
International Protected Persons Act 1978 Act	1-2, 4-5
<b><u>L. Others</u></b>	<b><u>Sections</u></b>
Foreign Compensation Act 1950	ss 1, 3-9
Foreign Compensation Act 1962	ss 3-4
Foreign Compensation Act 1969	ss 3-5
<i>China Indemnity (Application) Act 1931(obs)</i>	
Japanese Treaty of Peace Act 1951	ss 1-2
Austrian State Treaty Act 1955	ss 1-2
German Conventions Act 1955	ss 1-3
<i>Treaties of Peace (Italy, Roumania, Bulgaria, Hungary and Finland) (obs)</i>	ss 1-2

## **Schedule 2: BOT**

### **Part A: Settled Territories**

Anguilla  
Bermuda  
Cayman Islands

<sup>186</sup> Acts relation to British nationality may be better dealt with in a revision of the British Nationality Act 1981, see British Nationality (HK) Acts 1990 & 1997, HK (War Wives and Widows) Act 1996 and HK (Overseas Public Servants) Act 1996.

Falkland Islands  
Montserrat  
Pitcairn Islands  
South Georgia & South Sandwich Islands  
St Helena, Ascension & Tristan da Cunha  
Turks and Caicos Islands  
British Virgin Islands (BVI)

**Part B: Ceded Territories or Annexed Territories**

Gibraltar(ceded)  
British Indian Ocean Territory (BIOT)(ceded)  
SBA of Akrotiri & Dhekelia (ceded)  
British Antarctic Territory (BAT)(annexed)

**Schedule 10** - Consolidates - Diplomatic Privileges Act 1964, Consular Relations Act 1968, Diplomatic and other Privileges Act 1971 and the Diplomatic and Consular Premises Act 1987.

**Schedule 11** - Consolidates the Consular Conventions Act 1949

**Schedule 12** - Consolidates the State Immunity Act 1978

**Schedule 13** - Repeals the above and the Consular Fees Act 1900 (which should become a SI).

## 5. TEXT OF AN ARMED FORCES ACT

### 1. INTRODUCTION

In Anglo-Saxon times, kings were, mainly, elected due to their military prowess and they were Commander-in-Chief ('C-in-C') of the army. However, when Queen Mary (1553-8) and Queen Elizabeth I (1558-1603) reigned they did not go into battle. And, the occasion of the last sovereign to do so was in 1743. In 1793, the sovereign gave up his role of being C-in-C in an operational capacity. Today, the role of the sovereign is a formal one. In light of this, in respect of a *draft Act*, the following may be noted:

- **Crown Prerogatives**. There are a number of CP's relating to the military which are obsolete (including the law on prize and booty). These should be abolished. Further, the fact that the sovereign no longer has an operational role should be noted. In particular, it needs to be recorded that the MOD is now accountable to Parliament and not to the sovereign;
- **Standing Army**. In earlier times - especially in the 17<sup>th</sup> century - there was a fear of the standing army, on the basis that an autocratic sovereign - such as Charles I (1625-49) or James II (1685-8) - would use the same in order to subvert Parliament (in both cases, this proved not unfounded). However, if the sovereign no longer has any operational role in respect of the military, then, any limitation on this can be abolished;
- **Wartime Events**. There are various naval acts (such as embargo, blockade, angary, requisitioning of ships) - all of which are less likely today - which were effected as CP's. Today, these should be legislative, requiring the consent of Parliament. So too, the waging of war, armed intervention *etc.* in which - in practice - the consent of Parliament would be required.

*Would anyone object to the above?*

Given that the role of the sovereign in military matters has long been a formal one, the same is unlikely to raise any objection. As to the other matters, the *draft Act* is, simply, a matter of abolishing obsolete material and modernising things. In particular, it is essential that matters relating to making (and declaring) war *etc* are updated to reflect modern realities.

**ARMED FORCES ACT****Part I: Responsibility for Defence**

1. Ministry of Defence (MOD)
2. MOD accountable to Parliament

**Part 2: Armed Forces (AF) and Territorial Army (TA)**

3. AF and TA
4. Standing AF
5. Commander-in-Chief
6. Employment
7. Armed Intervention Abroad

**Part 3: War**

8. War
9. Declaration of War

**Part 4: Wartime Events**

10. Trading with the Enemy
11. Angary
12. FCDO Certificate
13. Prize and Booty
14. Enemy Aliens

**Part 5: Peace**

15. Peace
16. Declaration of Peace

**Part 6: General**

17. Embargo or Blockade
18. Requisition of Ships
19. Requisition of Real Property by MOD
20. Obsolete Crown Prerogatives
21. Interpretation
22. Repeals and Application

**Part I: Responsibility for Defence****1. Ministry of Defence (MOD)**

- (1) The MOD is responsible for all matters relating to the military defence of the:
  - (a) UK; and the
  - (b) British Territories

In particular, for the matters referred to in this Act, save where legislation provides otherwise.

- (2) Any Crown prerogative in respect of (1) is abolished.

**Part 2: Armed Forces (AF) and Territorial Army (TA)****2. MOD Accountable to Parliament**

- (1) The MOD is accountable to Parliament.
- (2) Any accountability of the MOD to the Crown is abolished.

**3. AF and TA**

- (1) The MOD is responsible for the:
  - (a) command;
  - (b) management;
  - (c) control;
  - (d) administration;
  - (e) regulation;
  - (f) operation,
  - (g) deployment

- (h) employment, and
- (i) discipline

of the AF and the TA in the

- (i) UK;
- (ii) British Territories; and
- (iii) abroad

save where legislation provides otherwise.

(2) Section 3(1)(a)-(g) includes reference to all:

- (a) Military Land;
- (b) Military Installations; and
- (c) Military Equipment,

save where legislation provides otherwise.

(3) Any Crown prerogative in respect of (1) and (2) is abolished.

#### **4. Standing AF**

(1) The AF shall remain in existence *during peace time*,<sup>187</sup> unless Parliament resolves otherwise.

(2) Any legal requirement to renew, annually or otherwise:

- (a) the existence of any legislation governing the AF;
- (b) is abolished.

(3) Any Crown prerogative in respect of (1) is abolished.

#### **5. Commander-in-Chief**

(1) The sovereign is, *ex officio*, titular commander-in-chief of the AF.

(2) Save for (1), no person may hold:

- (a) any ceremonial rank in the AF or TA,
- (b) including any member of the Royal Family.<sup>188</sup>

#### **6. Employment**

(1) Employment in the AF and TA may only be made by:

- (a) voluntary enlistment; or
- (b) legislation.

(2) Any Crown prerogative in respect of (1) is abolished, including any power to:

- (a) compulsory require any person
- (b) to serve in the AF.<sup>189</sup>

(3) No foreigner (alien) may serve in the AF or TA, save where legislation provides otherwise.<sup>190</sup>

(4) No person may serve in the AF until they reach the age of 18.<sup>191</sup>

#### **7. Armed Intervention Abroad**

(1) Save in the case of (2), the AF may not engage in any:

- (a) military intervention abroad
- (b) without a resolution of Parliament.

(2) '*military intervention*' includes any peace keeping exercise.

(3) In the case of a National Emergency, a resolution of the Cabinet is sufficient.

<sup>187</sup> The Bill of Rights 1688 only referred to the position of a standing army in peace time.

<sup>188</sup> The automatic promotion in rank of members of the royal family is not a Crown prerogative and seems to have crept in recently.

<sup>189</sup> There was no CP relating to the TA.

<sup>190</sup> This repeals wording in the Bill of Rights 1688, s 3 (3). It was designed to prevent foreign troops serving as well as foreign officers commanding (William of Orange (i.e. William III (1688-1702)) being dutch).

<sup>191</sup> At present, 16-17 year olds can serve. However, such seems too young in modern times.



**Part 3: War****8. War**

- (1) Save in the case of (2), the AF may not make:
  - (a) war
  - (b) without a resolution of Parliament.
- (2) In the case of a National Emergency affecting:
  - (a) Parliament, a resolution of the Cabinet is sufficient;
  - (b) both Parliament and the Cabinet, war may be declared by the PM.
- (3) Any prerogative of the Crown in respect of (1) is abolished.

**9. Declaration of War**

- (1) Save in the case of (2), war shall be declared by:
  - (a) an announcement by the PM in Parliament; or
  - (b) in a SI.
- (2) No declaration of war is required in the case of a National Emergency.
- (3) A SI may set out the date, and time, when war shall take effect (or when it took effect).
- (4) Any prerogative of the Crown in respect of (1) is abolished.

**Part 4: Wartime Events****10. Trading with the Enemy**

- (1) **Schedule 1** shall apply.

**11. Angary**

- (1) The MOD, in war time, may:
  - (a) requisition any real property
  - (b) in the UK or the British Territories or enemy territory
  - (c) which belongs to a neutral person (whether legal or natural)
  - (d) for military purposes
  - (e) on payment of reasonable compensation,
  - (f) which is payable at the end of the war.
- (2) Any Crown prerogative in respect of (1) is abolished.

**12. FCDO Certificate**

- (1) The FCDO shall issue a certificate in the circumstances in (2), if required by a UK court of law:
  - (a) which shall be conclusive of the same
  - (b) for all legal purposes
  - (c) save in the case of manifest error.
- (2) The certificate shall indicate whether a:
  - (a) war exists between the UK and another state(s); or a
  - (b) a state is a neutral state or not.
- (3) The certificate shall be signed by the:
  - (a) Foreign Minister (or any designate); or the
  - (b) head of the FCDO (or any designate).
- (4) Any Crown prerogative to issue a certificate in (1) is abolished.<sup>192</sup>

**13. Prize and Booty**

- (1) Any Crown prerogative, in war time, to take:
  - (a) prize; or

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<sup>192</sup> As noted elsewhere, this is, probably, a 'false' CP since it is unlikely that the sovereign ever issued such in times past.

(b) booty (bounty),

is abolished.

(2) Title to any enemy Military Equipment captured in war time shall, on capture, forthwith pass to the MOD and it may be:

- (a) destroyed
- (b) scrapped;
- (c) disabled; or
- (d) otherwise dealt with by the MOD,

without payment of compensation.

#### **14. Enemy Aliens**

(1) In war time, enemy aliens may, forthwith, be:

- (a) prevented from entering the realm;
- (b) required to leave the realm for the duration of the war; or
- (c) restricted in their movements and activities within the realm.

(2) The matter in (1) is not justiciable.

(3) Any Crown prerogative in respect of (1) and (2) is abolished.

(4) Legislation or a SI may set out further matters in respect of (1), if required.<sup>193</sup>

#### **Part 5: Peace**

#### **15. Peace**

(1) Peace shall be made by means of:

- (a) a peace treaty; or
- (b) other agreement.

(2) Any prerogative of the Crown in respect of (1) is abolished.

#### **16. Declaration of Peace**

(1) Peace shall be declared by:

- (a) an announcement by the PM in Parliament; or
- (b) in a SI.

(2) A SI may set out the date, and time, when peace shall take effect (or when it took effect).

(3) Any prerogative of the Crown in respect of (1) is abolished.

#### **Part 6: General**

#### **17. Embargo or Blockade**

(1) In peace time, the MOD may not impose an embargo, or a blockade, on:

- (a) shipping,
- (b) without a resolution of Parliament.

(2) In war time, the MOD may impose a blockade, or an embargo, on:

- (a) enemy ships; or
- (b) neutral ships carrying enemy Military Equipment or goods.

(3) Any Crown prerogative in respect of (1) and (2) is abolished.

#### **18. Requisition of Ships**

(1) The MOD, in war time or pursuant to the Civil Contingencies Act 2004,<sup>194</sup> may:

- (a) temporarily requisition any UK or BOT registered ship
- (b) on payment of reasonable compensation.

(2) Any Crown prerogative in respect of (1) is abolished.

<sup>193</sup> The author has not published on this prerogative. However, it seems clear that the CP was plenary (and, effectively, based on *lex salus*).

<sup>194</sup> Alternatively, 'in the case of any emergency'.

**19. Requisition of Real Property by MOD**

- (1) **Schedule 2** shall apply.
- (2) Any Crown prerogative, whether in peace time or war time, to requisition, for military purposes:
- (a) any real property in the
  - (b) UK or the British Territories,
- is abolished.<sup>195</sup>

**20. Obsolete Crown Prerogatives**

- (1) The following are abolished, any Crown prerogative (including any franchise) to:
- (a) billet any member of the AF;
  - (b) impose martial law (including the jurisdiction of courts martial) on civilians;
  - (c) issue any letter of marque and reprisal;
  - (d) dig for saltpetre (to make gunpowder);
  - (e) enter private land to dig for saltpetre;
  - (f) castellate (that is, to build a castle or fortified residence);
  - (g) erect military fortifications on private land;
  - (h) impose a toll for murage (to build city or town defensive walls);
  - (i) prohibit the export of any Military Equipment.

**21. Interpretation**

- (1) In this Act:
- 'AF' means the: (a) army; (b) navy; (c) air force; (d) any special or other military forces;
  - 'BOT' means the British Overseas Territory;
  - 'British Domestic Territories' means the Channel Islands and the Isle of Man;
  - 'British Territories' means the British Domestic Territories and BOT;
  - 'FCDO' means the Foreign Commonwealth and Development Office;
  - 'Military' means the MOD, AF and TA collectively;
  - 'MOD' means the Ministry of Defence;
  - 'Royal Family' shall bear the same meaning as in the *Crown Act*;
  - 'SI' refers to a statutory instrument;
  - 'TA' means the territorial army;
  - 'UK' means the United Kingdom.
- (2) In this Act reference to the:
- (a) '*Military Land*' means any land used for any military purpose by the Military;
  - (b) '*Military Equipment*' means any equipment of whatever nature used for any military purpose by the Military;
  - (c) '*Military Installations*' means any building of whatever nature used for any military purpose by the Military;
  - (d) '*National Emergency*' means any:
    - (i) first strike, or pre-emptive military attack, on the UK;
    - (ii) military act which renders Parliament (or the Cabinet, where applicable) inoperative in any way such that the same cannot direct an immediate and full response in the circumstances.

**22. Repeals and Application**

- (1) The legislation in **Schedule 3** is repealed.
- (2) This Act applies to Scotland, Northern Ireland and the British Territories.

*Schedule 1 - [This will set out the Trading with the Enemy Act 1939 as modernised]*

*Schedule 2 - [This will set out, in an appendix, MOD legislation relating to land, see Appendix A, (a)]*

**Schedule 3**

Settlement Act 1700, delete s 3(2) and, in s 3(3), the words ' or military'  
 Bill of Rights, s 1 [delete material relating to standing arms and subject's arms]  
 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

<sup>195</sup> Ibid.

## 6. TEXT OF A COURTS ACT

### 1. INTRODUCTION

Presently, the English court structure is very antiquated and confused, being Victorian or older. It is not fit for purpose and should be streamlined. In the end, there should be 3 (not 4) tiers of courts *viz.*

Supreme Court (appeal)

Court of Appeal (appeal)

High Court (first instance, civil and criminal)

Thus, all obsolete courts should be abolished and others merged (see *draft Act, Part 7*). In particular, magistrates' courts should be professionalised; amateur magistrates belong to a different age. And, county courts should be merged into the High Court (which should have High Court, and deputy High Court, judges). Finally, to cut the excessive present backlog of cases, all appeals from the magistrates' courts and county courts and the High Court, should be to a single Court of Appeal judge who should review the appeal and indicate whether he (she) believes there is a '*realistic prospect of a successful appeal*'. If negative - and if a party still wants to appeal, this should be before a bench of 3 Court of Appeal judges, with all costs against the same, if that party loses. As for a *draft Act*, the following may be noted:

- **Consolidate Legislation.** The Supreme Court Act 1981 was a poor piece of drafting. So too, the Constitutional Reform Act 2005 which should have incorporated the 1981 Act. The result is a '*dog's dinner*'. Thus, both these Acts should be replaced by a *Courts Act* which sets out things in proper legal order;
- **SI's.** A lot of material currently in legislation (such as judicial salaries, pensions *etc*) should be in SI's, to enable easier amendment. So too, material on the accountant general, official solicitor, judicial appointments commission and judicial appointments and conduct ombudsman (see *Part 8*);
- **Chief Justice.** The CJ should be (a) Head of the Judiciary; (b) Head of Tribunals; (c) Head of the Law Commission.<sup>196</sup> And, the same should not sit as a judge. Further, all hiring and firing (and accepting the resignation of) *all other* judges and heads of tribunals, should be undertaken by the CJ (by written letter). This will enable the office of *Lord Chancellor* to be abolished. Also, not sitting as a judge will enable the CJ to have time to '*drive through*' vital reforms in order to: (a) cut the excessive volumes of legislation (general legislation and SI's); and (b) streamline the court (and tribunal) systems - so as to bring them into the 21<sup>st</sup> century.

*Would anyone object to the above?*

The sovereign no longer exercises any executive power with regard to the courts and tribunals. Thus, any CP's relating to the same should be abolished. Reducing the court system to 3 tiers would, also, reduce the huge backlog of cases. No lawyers (who make their money these days by way of throughput) would object. Doubtless, a few civil servants would object and the present *stasis* is (likely) due to Home Office, Ministry of Justice and Law Commission personnel (in the past) failing to do anything and adopting a wholly unbusiness-like approach *for years*.

Note: Apart from separating out senior judges from senior courts in this *draft Act*, little has changed from the *draft Act* in the article *Modernising the Constitution- A Courts Act* (see fn 1). Therefore, the fns to the same should be consulted.

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<sup>196</sup> This would free up a Court of Appeal judge.

**COURTS ACT**

*An Act to consolidate and reform various matters relating to courts.*

**Contents****Part 1 - Senior Courts**

1. Courts - Supreme Court (SC), Court of Appeal (CA), High Court (HC)
2. Composition
3. Title
4. Divisions
5. Due Constitution
6. Rules
7. Location
8. Sittings and Vacations
9. Judicial Assistance to the Court
10. Court Seals
11. Statutory Instruments

**Part 2 - Senior Court Judges**

12. Style
13. Maximum number
14. Increase in maximum number
15. Tenure
16. Precedence
17. Powers
18. Selection of Judges - Election Petitions

**Part 3 - Jurisdiction - SC**

19. Jurisdiction
20. Civil appeals
21. Criminal appeals - CA to SC
22. Criminal appeals - HC to SC

**Part 4 - Jurisdiction - CA**

23. Jurisdiction
24. Appeals from the HC
25. Applications for a New Trial
26. Restrictions on Appeals
27. Second Appeals
28. Assignment of Appeals
29. Criminal appeals

**Part 5 - Jurisdiction - HC**

30. Jurisdiction

**Part 6 - Certain Appeals**

31. Contempt of Court and *Habeas Corpus*

**Part 7 - Other Courts**

32. Judicial Committee of the Privy Council
33. Court Martial Court of Appeal
34. Crown Court
35. County Court
36. Magistrates' Courts
37. Obsolete Courts

**Part 8 - General**

38. Concurrent Administration of Law and Equity
39. Central Office
40. Accountant General
41. Official Solicitor

**Part 9 - Commissions & Registries**

42. Judicial Appointments Commission
43. Judicial Appointments and Conduct Ombudsman

44. Law Commission
45. [*District and Probate Registries*]

**Part 10 - Certain Judicial Offices**

46. *Lord Chancellor*
47. Chief Justice

**Part 11 - Other Legal Matters**

48. Court Buildings
49. Court Websites
50. Wigs and Robes
51. Barrister's Fee
52. Chief Justice's Report
53. Publication of Information in Private Proceedings

**Part 12 - General**

54. Repeals
55. Supplementary
56. Interpretation
57. Application

**Schedules**

1. Appointment *etc* of Senior Judges
2. Divisions of the CA
3. Divisions and Courts of the HC
4. Due Constitution
5. Rules of Court
6. Judicial Assistance
7. Powers of the HC
8. Process for Criminal Appeals from the CA to the SC
9. Process for Criminal Appeals from the HC to the SC
10. Process for Appeals to the CA
11. Jurisdiction of the HC
12. Appeals *re* Contempt of Court and *Habeas Corpus*
13. Transfer of Jurisdiction of the JCPC
14. Obsolete Courts
15. Judicial Appointments Commission
16. Judicial Appointments and Conduct Ombudsman
17. Law Commission
18. [*District Registry*]
19. [*Probate Register*]
20. *Lord Chancellor*
21. Repeals

**Part 1: Senior Courts**

**1. Courts**

(1) There shall continue to be a:

- (a) Supreme Court ('SC');
- (b) Court of Appeal ('CA')
- (c) High Court ('HC').

## **2. Composition**

- (1) The SC shall comprise persons appointed:
  - (a) its judges in accordance with **Schedule 1**,
  - (b) including the appointment of one judge to be President and one to be Deputy President.
- (2) The CA shall comprise persons appointed:
  - (a) its judges in accordance with **Schedule 1**<sup>197</sup>; and
  - (b) the CJ and the MR, *ex officio*.<sup>198</sup>
- (3) The HC shall comprise persons appointed:
  - (a) its judges in accordance with **Schedule 1**; and
  - (b) the: (i) CJ; (ii) President of the Queen's Bench Division; (iii) President of the Family Division; (iv) Chancellor of the HC; (v) Senior Presiding Judge; (vi) Vice-President of the Queen's Bench Division.

## **3. Title**

- (1) The title of the:
  - (a) SC is the '*Supreme Court of the United Kingdom*' (or '*Supreme Court of the UK*' or '*Supreme Court*');
  - (b) CA is '*The Court of Appeal*';
  - (c) HC is the '*High Court of Justice*' or '*High Court*'.

## **4. Divisions**

- (1) The SC shall have no divisions.
- (2) The CA shall have criminal and civil divisions. They shall operate in accordance with **Schedule 2**.
- (3) The HC shall have criminal and civil divisions. They shall operate in accordance with **Schedule 3**.
- (4) The HC shall contain the courts referred to in **Schedule 3** and:
  - (a) such may be increased (or decreased or merged) by a SI if determined by the [Minister of Justice/LC] and the CJ.
  - (b) the divisions '*Queen's Bench Division*' and '*Chancery Division*' are abolished.

## **5. Due Constitution**

- (1) The Senior Courts are duly constituted despite any vacancy in any office referred in ss 2(1)(b), 2(2)(b) or 2(3)(b).
- (2) The SC is only duly constituted if the conditions in **Schedule 4** are satisfied.

## **6. Rules**

- (1) Rules of court shall be made for the Senior Courts (including in respect of any court martial repeal, in the case of the CA).
- (2) Requirements as to (1) are set out in **Schedule 5**.

## **7. Location**

- (1) The SC shall sit in London [*or in any other location in the UK*].
- (2) The CA shall sit in London, save that:
  - (a) when hearing any court martial appeal,
  - (b) it may sit in any military base in the UK or in any BOT.
- (3) The HC shall sit in any locations in England and Wales as the [Ministry of Justice/LC] and the CJ shall determine from time to time.

## **8. Sittings and Vacations**

- (1) The sitting, and vacations, of the Senior Courts shall be set out in a SI.

## **9. Judicial Assistance to the Court**

- (1) Assistance for the transaction of judicial business shall be provided in accordance with **Schedule 6**.

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<sup>197</sup> It is asserted that all judges should be appointed (dismissed and any resignation accepted) by the CJ in writing, with the CJ being appointed by the Justice Minister in writing.

<sup>198</sup> This will change if the CJ no longer sits in court.

- (2) When requested by the CJ, a CA judge may:
- (a) sit as a HC judge, to help clear any backlog;
  - (b) under the *aegis* of the Law Commission, issue a report on any matter of English law considered to be potentially obsolete, spent or in need of reform;
  - (c) sit as a judge in a court of the Commonwealth or a foreign country, if invited.
- (3) When requested by the CJ, an HC judge (or any retired SC, CA or HC judge) may:
- (a) under the *aegis* of the Law Commission, issue a report on any matter of English law considered to be potentially obsolete, spent or in need of reform;
  - (b) sit as a judge in a court of the Commonwealth or a foreign country, if invited.

#### **10. Court Seals**

- (1) The Senior Courts shall, each, have an official seal.
- (2) Every document purporting to be sealed with the official seal or stamp of Senior Court shall be received in evidence in all parts of the UK without further proof.

#### **11. Statutory Instruments**

- (1) One or more SIs shall specify, in respect of the Senior Courts and any court in NI, the following:
- (a) any fees and payments;
  - (b) the: (i) appointment; (ii) terms of appointment; (iii) tenure; (iv) discipline; (v) retirement; (vi) resignation; (vii) removal or (viii) disqualification; of any Senior Courts;
  - (c) the staffing, resourcing and security of the Senior Courts;
  - (d) the practice and procedure of the Senior Courts;
  - (e) judicial salaries and pensions of Senior Court judges;
  - (f) any supplementary matters relating to the Senior Courts, including photography.

#### **Part 2: Senior Court Judges**

#### **12. Style**

- (1) Judges of the SC (except s 2(1)(b)), the CA (except s 2(2)(b)) and the HC (except s 2(3)(b)) shall be styled as follows:
- (a) SC - '*Justice of the Supreme Court*' (or '*Supreme Court judge*');
  - (b) CA - '*Justice of the Court of Appeal*' (or '*Court of Appeal judge*');
  - (c) HC - '*Justice of the High Court*' (or '*High Court Judge*').

#### **13. Maximum Number**

- (1) The maximum number of judges in the:
- (a) SC shall be 12 (including the President and Deputy President);
  - (b) CA shall be 39 (excluding any judge in s 2(2)(b));
  - (c) HC shall be 108 (excluding any judge in s 2(3)(b)).
- (2) No appointment may cause the full-time equivalent number of judges at any time to be more than the number stipulated in (1). It shall be calculated by taking the number of full-time judges and adding:
- (a) for each judge who is not a full-time judge,
  - (b) such fraction as is reasonable.

#### **14. Increase in the Maximum Number**

- (1) A SI may increase (or further increase) the number of judges stipulated in s 13(1).
- (2) It is for the Justice Minister [LC] to recommend to the making of an SI under (1).
- (3) No recommendation may be made to HM in Council to make an Order under (1) unless:
- (a) a draft of the Order has been laid before and approved
  - (b) by resolution of each House of Parliament.<sup>199</sup>

#### **15. Tenure**

- (1) This section applies to the office of any judge of the Senior Courts.

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<sup>199</sup> It is suggested (3) is unnecessary.



(2) A person appointed to an office to which (1) applies shall vacate it:

- (a) on the day on which he attains the age of 70 years,
- (b) unless by virtue of this section he has ceased to hold it before then.

(3) A person appointed to an office to which (1) applies shall:

- (a) hold it subject to a power of removal by the CJ;
- (b) pursuant to **Schedule 1**.

*[(4) It is for the LC to recommend to HM the exercise of the power of removal under (3).]*

*(5) A person holding an office within section 2(3)(b) shall vacate that office on becoming a judge of the SC.*

*(6) A judge of the CA shall vacate that office on becoming an ex-officio judge of the CA.*

*(7) A judge of the HC shall vacate that office on becoming a judge of the CA.]<sup>200</sup>*

(8) A person who holds an office to which this section applies may at any time resign it by giving the CJ notice in writing to that effect.

(9) The CJ, if satisfied by means of a medical certificate that a person holding an office to which this section applies is -

- (a) disabled by permanent infirmity from the performance of the duties of his office; and
- (b) for the time being incapacitated from resigning his office,

he may, *subject to (10)*, by instrument under his hand declare that person's office to have been vacated; and

- (c) the instrument shall have the like effect for all purposes as if that person had
- (d) on the date of the instrument resigned his office.

*[(10) A declaration under (9) with respect to a person shall be of no effect unless it is made in the case of -*

*(a) any of the CJ, MR, [the President of the [QBD], the President of the Family Division and the Chancellor of the HC with the concurrence of two others of them];*

*(b) a judge of the CA with the concurrence of the MR;*

*(c) a judge of the HC (except where (a) applies) with the concurrence of the senior judge of that division.]<sup>201</sup>*

## **16. Precedence**

(1) When sitting in the CA -

- (a) the CJ and the MR shall rank in that order; and
- (b) SC judges *and persons who have been LC [obs]* shall rank next after the MR and, among themselves, according to the priority of the dates on which they respectively became SC judges *or LC*, as the case may be.

(2) Subject to (1)(b), the President of the [QBD] shall rank next after the MR.

(3) The President of the Family Division shall rank next after the President of the [QBD].

(4) The Chancellor of the HC shall rank next after the President of the Family Division.

(5) The vice-president(s) ('VP') or VPs of the divisions of the CA shall rank next after the Chancellor of the HC; and if there are two VPs of those divisions, they shall rank, among themselves, according to the priority of the dates on which they respectively became VPs.

(6) Judges of the CA (other than the VP(s) of the divisions of the CA) shall rank after the *ex-officio* judges of the CA and, among themselves, according to the priority of the dates on which they respectively became such.

(7) Judges of the HC (except *ex officio* judges) shall rank next after the judges of the CA and, among themselves, according to the priority of the dates on which they respectively became such.

## **17. Powers**

(1) The judges of the Senior Courts shall, except where this Act expressly provides otherwise, have:

- (a) in all respects equal power, authority and jurisdiction
- (b) in the court of which they are a judge.

(2) The Senior Courts have the legal power (including for contempt of court) to:

<sup>200</sup> This material may not be necessary.

<sup>201</sup> *Ibid.*

- (a) fine;
- (b) imprison;
- (c) bind over for good behaviour (by requiring a recognisance or a surety(ies) or both);
- (d) bind over to keep the peace (by requiring a recognisance or a surety (ies) or both).

and the power in 2(c) or (d) shall apply whether a person has previously been convicted of a criminal offence or not.

(3) The legal concept of a ‘*court of record*’ is abolished.

(4) A judge of the Senior Courts or the [CC]<sup>202</sup> shall not be incapable of acting as such in any proceedings:

- (a) by reason of being, as one of a class of ratepayers, taxpayers or persons of any other description, liable in common with others to pay, or contribute to, or benefit from, any rate or tax which may be increased, reduced or in any way affected by those proceedings, and
- (b) “*rate or tax*” means any rate, tax, duty or liability, whether public, general or local, and includes - (i) any fund formed from the proceeds of any such rate, tax, duty or liability; and (ii) any fund applicable for purposes the same as, or similar to, those for which the proceeds of any such rate, tax, duty or liability are or might be applied.

(5) The HC shall have the powers set out in **Schedule 7**.

### **18. Selection of Judges - Election Petitions**

(1) The judges to be placed on the rota for the trial of parliamentary election petitions in England and Wales under the Representation of the People Act 1983, Pt 3 in each year shall be selected:

- (a) in such manner as may be provided by rules of court
- (b) from the judges of the [QBD] of the HC
- (c) *exclusive of any who are members of the House of Lords [obs]*

(2) Notwithstanding the expiry of the year for which a judge has been placed on the rota he may act as if that year had not expired for the purpose of continuing to deal with:

- (a) giving judgment in, or
- (b) dealing with ancillary matter relating to,
- (c) any case with which he may have been concerned during that year.

(3) Any judge placed on the rota shall be eligible to be placed on the rota again in the succeeding or any subsequent year.

### **Part 3: Jurisdiction of the SC**

#### **19. Jurisdiction**

(1) The SC has power to determine any question necessary to be determined for the purposes of doing justice in an appeal to it under any enactment. This lies only with:

- (a) the permission of the CA or the SC;
- (b) but this is subject to provision under any other enactment restricting such an appeal.

(2) In the SC, in exercising its jurisdiction, nothing is to affect the distinctions between the separate legal systems of the parts of the UK.

(3) A decision of the SC on appeal from a court of any part of the UK, other than a decision on a devolution matter, is to be regarded as the decision of a court of that part of the UK.

(4) A decision of the SC on a devolution matter is:

- (a) not binding on a court of any part of the UK when making such a decision;
- (b) otherwise, it is binding in all legal proceedings.

#### **20. Civil Appeals**

(1) An appeal lies to the SC from any order, or judgment of the CA, in civil proceedings.

#### **21. Criminal Appeals - CA to SC**

(1) An appeal lies to the CS, at the instance of the defendant or the prosecutor, from any decision of the CA in a criminal cause or matter under:

- (a) [Part I of this Act]; (spent) or
- (b) Criminal Justice Act 2003, part 9; or
- (c) Criminal Justice Act 1987, s 9; or

<sup>202</sup> This non-inclusion depends on whether the CC merges with the HC or not.

- (d) Criminal Procedure and Investigations Act 1996, s 35; or
  - (e) Criminal Justice Act 2003, s 47.
- (2) An appeal lies to the CS, at the instance of the acquitted person or the prosecutor, from any decision of the CA on an application under the Criminal Justice Act 2003, ss 76(1) or (2).
- (3) The appeal lies under (1) and (2) only with the leave of the CA or the SC and shall not be granted unless it:
- (a) is certified by the CA that a point of law of general public importance is involved in the decision; and
  - (b) it appears to the CA or CS (as the case may be) that the point is one which ought to be considered by the CS.
- (4) Except as provided herein and under [s 31]<sup>203</sup> no appeal shall lie from any decision of the criminal division of the CA.
- (5) In relation to an appeal under (2), references to a defendant are references to the acquitted person.
- (6) **Schedule 8** shall apply in respect of the process of criminal appeal.

## **22. Criminal Appeals - HC to SC**

- (1) An appeal shall lie to the SC, at the instance of the defendant or the prosecutor from any decision of the HC in a criminal cause or matter.
- (2) The appeal lies under (1) only with the leave of the HC or the SC and such shall not be granted unless it:
- (a) is certified by the HC that a point of law of general public importance is involved in the decision; and
  - (b) it appears to the HC or the SC (as the case may be) that the point is one which ought to be considered by the SC.
- (3) For the purpose of disposing of an appeal under (1) the SC may:
- (a) exercise any powers of the HC; or
  - (b) may remit the case to the HC.
- (4) **Schedule 9** shall apply in respect of the process relating to criminal appeal.

### **Part 4: Jurisdiction of the CA**

## **23. Jurisdiction**

- (1) There shall be exercisable by the CA -
- (a) all such jurisdiction (whether civil or criminal) as is conferred on it by this or any other Act; and
  - (b) *all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act. (obs)*
- (2) For all purposes of or incidental to -
- (a) the hearing and determination of any appeal to the civil division of the CA; and
  - (b) the amendment, execution and enforcement of any judgment or order made on such an appeal,
- the [CA] shall have all the authority and jurisdiction of the court or tribunal from which the appeal was brought.
- (3) It is hereby declared that any provision in this or any other Act which authorises or requires the taking of any steps for the execution or enforcement of a judgment or order of the [HC]:
- (a) applies in relation to a judgment or order of the civil division of the [CA]
  - (b) as it applies in relation to a judgment or order of the [HC].
- (4) **Schedule 10** shall apply to any process relating to an appeal.

## **24. Appeals from HC**

- (1) The [CA] shall have jurisdiction to hear and determine appeals from any judgment or order of the HC save where any of the following apply:
- (a) s 13(2)(a) of the Administration of Justice Act 1969;
  - (b) an appeal is made from the HC to the CS pursuant to s [21];
  - (c) as provided by any order made by the [Minister of Justice/LC] under [s] 56(1) of the Access to Justice Act 1999.
- (2) *An appeal from a judgment or order of the [HC] when acting as a prize court shall not be to the [CA], but shall be to [HM] in Council in accordance with the Prize Acts 1864 to 1944.*<sup>204</sup>

<sup>203</sup> The reference is to the Administration of Justice Act 1960, s13 (appeal in cases of contempt of court),

<sup>204</sup> In the *Armed Forces Act*, it is proposed that prize courts be abolished.

**25. Applications for a New Trial**

- (1) Where any cause or matter, or any issue in any cause or matter, has been tried in the HC, any application for a new trial thereof, or to set aside a verdict, finding or judgment therein, shall be heard and determined by the CA except where rules of court made in pursuance of (2) provide otherwise.
- (2) As regards cases where the trial was by a judge alone and no error of the court at the trial is alleged, or any prescribed class of such cases, rules of court may provide that any such application as is mentioned in (1) shall be heard and determined by the HC.
- (3) Nothing in (1) or (2) shall alter the practice in bankruptcy.

**26. Restrictions on Appeals**

- (1) No appeal shall lie to the CA:
  - (a) except as provided by the Administration of Justice Act 1960, from any judgment of the HC in any criminal cause or matter;
  - (b) from any order of the HC or any other court or tribunal allowing an extension of time for appealing from a judgment or order;
  - (c) from any order, judgment or decision of the HC or any other court or tribunal which, by virtue of any provision (however expressed) of this or any other Act, is final;
  - (d) from a decree absolute of divorce or nullity of marriage, by a party who, having had time and opportunity to appeal from the decree nisi on which that decree was founded, has not appealed from the decree nisi;
  - (e) from a dissolution order, nullity order or presumption of death order under the Civil Partnership Act 2004, Pt 2, ch 2 that has been made final, by a party who, having had time and opportunity to appeal from the conditional order on which that final order was founded, has not appealed from the conditional order;
  - (f) except as provided by Part I of the Arbitration Act 1996, from any decision of the HC under that Part.

**27. Second Appeals**

- (1) Where an appeal is made to the County Court, the Family Court or the HC in relation to any matter, and on hearing the appeal the court makes a decision in relation to that matter, no appeal may be made to the CA from that decision unless the CA considers that:
  - (a) the appeal would raise an important point of principle or practice, or
  - (b) there is some other compelling reason for the CA to hear it.

This does not apply in relation to an appeal in a criminal cause or matter.

**28. Assignment of Appeals**

- (1) Where in any proceedings in the County Court, the Family Court or the HC a person appeals, or seeks permission to appeal, to a court other than the CA or the SC:
  - (a) the MR, or
  - (b) the court from which or to which the appeal is made, or from which permission to appeal is sought, or
  - (c) the President of the Family Division where it is the family court from which or to which the appeal is made, or from which permission to appeal is sought,may direct that the appeal shall be heard instead by the CA.
- (2) The power conferred by (1)(b) shall be subject to rules of court.

**29. Criminal Appeals**

- (1) Subject to (3) a person convicted of an offence on indictment may appeal to the [CA] against his conviction.
- (2) An appeal under this section lies only:
  - (a) with the leave of the CA; or
  - (b) if, within 28 days from the date of the conviction, the judge of the court of trial grants a certificate that the case is fit for appeal.
- (3) Where a person is convicted before the [CC] of a scheduled offence it shall not be open to him to appeal to the [CA] against the conviction on the ground that the decision of the court which sent him to the [CC] for trial as to the value involved was mistaken.
- (4) In (3) “*scheduled offence*” and “*the value involved*” have the same meanings as they have in the Magistrates’ Court Act 1980, s 22.

### **Part 5: Jurisdiction - HC**

#### **30. Jurisdiction**

- (1) Subject to the provisions of this Act, there shall be exercisable by the HC -
  - (a) all such jurisdiction (whether civil or criminal) as is conferred on it by this or any other Act; and
  - (b) *all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act (including jurisdiction conferred on a judge of the HC by any statutory provision).* (obs)
- (2) Any jurisdiction of the HC shall be exercised only by a single judge of that court, except in so far as it is -
  - (a) by (or by virtue of) rules of court or any other statutory provision required to be exercised by a divisional court; or
  - (b) by rules of court made exercisable by a master, registrar or other officer of the court, or by any other person.
- (3) The specific mention elsewhere in this Act of any jurisdiction covered by (1) shall not derogate from the generality of the same.
- (4) **Schedule 11** shall apply to any process relating to an appeal.

#### **31. Appeal in Cases of Contempt of Court and Habeas Corpus**

- (1) The appeal process in the cases of:
  - (a) contempt of court; and
  - (b) habeas corpus
 shall be according to **Schedule 12**.

### **Other Courts**

#### **32. Judicial Committee of the Privy Council ('JCPC')**

- (1) The JCPC is abolished and its jurisdiction transferred in accordance with **Schedule 13**.

#### **33. Court Martial Court of Appeal ('CMCA')**

- (1) The CMCA, on a date appointed in an SI, shall become part of the CA and known by the latter title.

#### **34. Crown Court ('CC')**

- (1) The CC, on a date appointed in a SI, shall become part of the HC and known by the title, the '*High Court, Criminal Court*'.<sup>205</sup>
- (2) The Central Criminal Court ('CCC') shall continue to be known as such. However, none of the mayor, the sheriffs or the aldermen of the City of London shall sit as a judge (or in a judicial seat) in the same.

#### **35. County Court**

- (1) The County Court, on a date appointed in a SI, shall:
  - (a) become part of the HC and known by the latter title; and
  - (b) a judge of the County Court shall, thereupon, be styled a '*Deputy Justice of the High Court*' (or 'Deputy High Court Judge').
- (2) A Deputy HC judge shall have the same authority as a HC judge to hear any case before the HC, save where a SI provides otherwise.

#### **36. Magistrates' Courts**

- (1) Any Magistrates' Courts, on a date appointed in a SI, shall:
  - (a) become part of the HC and known by the latter title; and
  - (b) a judge of the Magistrates' Court shall, thereupon, be styled a '*Deputy Justice of the High Court*' (or 'Deputy High Court Judge').
- (2) A Deputy HC judge shall have the same authority as a HC judge to hear any case before the HC, save where a SI provides otherwise.

#### **37. Obsolete Courts**

- (1) The courts in **Schedule 14** are abolished, as described.
- (2) The criminal jurisdiction of the Verderers Court of the New Forest is transferred to the Magistrates' court:

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<sup>205</sup> The title '*Criminal Court*' fits in with the title '*Central Criminal Court*'.

- (a) without prejudice to the Verderers Court;
- (b) dealing with any non-judicial business.

(3) The power of a council of a borough to appoint an honorary recorder under the Courts Act 1971, s 54 is abolished.

#### **Part 8: General**

#### **38. Concurrent Administration of Law and Equity**

(1) Subject to the provisions of this or any other Act, every court exercising jurisdiction in England or Wales in any civil cause or matter shall continue to administer law and equity on the basis that:

- (a) wherever there is any conflict or variance
- (b) between the rules of equity and the rules of the common law with reference to the same matter,
- (c) the rules of equity shall prevail.

(2) Every such court shall give the same effect as hitherto:

- (a) to all equitable estates, titles, rights, reliefs, defences and counterclaims, and
- (b) to all equitable duties and liabilities; and
- (c) subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom or created by any statute, and
- (d) subject to the provisions of this or any other Act,

shall so exercise its jurisdiction in every cause or matter before it as to secure that, as far as possible that:

- (e) all matters in dispute between the parties are completely and finally determined,
- (f) and all multiplicity of legal proceedings with respect to any of those matters is avoided.

(3) Nothing in this Act shall affect the power of the [SC], CA or the HC [Senior Courts] to stay any proceedings before it, where it thinks fit to do so:

- (a) either of its own motion or on the application of any person,
- (b) whether or not a party to the proceedings.

#### **39. Central Office**

(1) The Central Office of the Senior Courts [and the CC]<sup>206</sup> shall perform such business as the CJ may, with the concurrence of the [Justice Minister/LC], direct.

(2) The CJ may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under (1).

#### **40. Accountant General**

(1) There shall continue to be an Accountant General of, and an accounting department for, the Senior Courts.

(2) The [Justice Minister/LC] shall appoint such person as he thinks fit to be Accountant General and the person so appointed shall hold and vacate the same in accordance with the terms of his appointment.

(3) The Accountant General shall be paid such salary or fees as the LC determines with the consent of the Treasury.

(4) If one person holds office both as the Accountant General as the Public Trustee then, if:

- (a) he ceases to be the Public Trustee,
- (b) he shall also cease to be the Accountant General unless the [Justice Minister] otherwise directs.

(5) If a vacancy occurs in the office of Accountant General or the person appointed to hold the office is for any reason unable to act for any period such person as the [Justice Minister/ LC] appoints as deputy in that office shall:

- (a) during the vacancy or that period,
- (b) perform the functions of that office
- (c) and any property vested in the Accountant General may accordingly be dealt with by the deputy
- (d) in all respects as if it was vested in him instead.

#### **41. Official Solicitor**

(1) There shall continue to be an Official Solicitor ('OS') to the Senior Courts who shall be appointed by the [Justice Minister/LC].

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<sup>206</sup> If the CC is not merged, reference to it is also required since it was a senior court.

- (2) There shall be paid to the OS out of money provided by Parliament such salary as the [Justice Minister/LC] may, with the concurrence of the Minister for the Civil Service, determine.
- (3) The OS shall have such powers and perform such duties as may for the time being be conferred or imposed on the holder of that office by or:
- (a) under this or any other Act; or
  - (b) in accordance with any direction given (before or after the commencement of this Act) by the [Minister of Justice/LC.
- (4) The holder for the time being of the office of OS shall have the right to conduct litigation in relation to any proceedings.
- (5) When acting as OS a person who would otherwise have the right to conduct litigation by virtue of the fact that he is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act) shall be treated as having acquired that right solely by virtue of (4).
- (6) If a vacancy occurs in the office of OS or the person appointed to hold the office is for any reason unable to act for any period such person as the LC appoints as deputy in that office shall:
- (a) during the vacancy or that period,
  - (b) perform the functions of that office
  - (c) and any property vested in the OS may accordingly be dealt with by the deputy
  - (d) in all respects as if it was vested in him instead.

#### **Part 9: Commissions & Registries**

##### **42. Judicial Appointments Commission**

- (1) There shall continue to be a Judicial Appointments Commission in accordance with **Schedule 15**.

##### **43. Judicial Appointments and Conduct Ombudsman**

- (1) There shall continue to be a Judicial Appointments and Conduct Ombudsman in accordance with **Schedule 16**.

##### **44. Law Commission**

- (1) There shall continue to be a Law Commission in accordance with **Schedule 17**.
- (2) The Head of the Law Commission shall submit an annual report to the parties referred to in s 52. Such may be combined in the CJ's report.
- (3) The report of the Head of the Law Commission, in his report, shall, in particular,
- (a) indicate the matters referred to in section 21(2)b)-(e);
  - (b) provide a table of general legislation enacted prior to 1925 which still exists and the extent to which it may be repealed or consolidated as expeditiously as possible;
  - (c) indicate the progress in consolidating legislation, in particular, in the following areas of law: (i) criminal law; (ii) constitutional law; (iii) commercial law; (iv) land law.
- (4) Every 5 years the Law Commission shall place on its website (and publish in hardcopy) a list of local and private legislation which has not yet been repealed as well as its rate of progress in so doing.

##### **45. [District and Probate Registries]**

- (1) There shall continue to be:
- (a) district registries in accordance with **Schedule 18**;
  - (b) probate registries in accordance with **Schedule 19**.

#### **Part 10: Certain Judicial Offices**

##### **46. Lord Chancellor**

- (1) The office of LC is abolished and his functions transferred in accordance with **Schedule 20** [or matters relating to the LC and his office are set out in **Schedule 20.**]
- [(2) When the Great Seal is in commission, the Lords Commissioners shall represent the LC for the purposes of this Act; but the powers vested in him by this Act in relation to –
- (a) the appointment of officers, and
  - (b) any act for which the concurrence or presence of the LC is required by this Act,

*may be exercised by the senior Lord Commissioner for the time being].<sup>207</sup>*

#### **47. Chief Justice**

- (1) The title of the ‘Lord Chief Justice’ shall, now, be that of ‘Chief Justice.’
- (2) The CJ shall be, *ex officio*:
  - (a) Head of the Judiciary;
  - (b) Head of Courts and Tribunals;
  - (c) *Head of the Law Commission*.<sup>208</sup>
- (3) The CJ has the right to sit in any court but need not exercise the same.

### **Part 11 – Other Legal Matters**

#### **48. Court Buildings**

- (1) The HC and magistrates’ courts shall sit in the same building, whenever possible.<sup>209</sup>

#### **49. Court Websites**

- (1) All courts shall host a website which shall set out, in a user-friendly manner:
  - (a) the physical location of the court;
  - (b) opening hours;
  - (c) access issues;
  - (d) a brief description of the court (including its history);
  - (e) reference to any general legislation, SI’s and rules relating to the court;
  - (f) other matters that would be useful to the general public and court users, to know.

#### **50. Wigs and Robes**

- (1) Wigs shall only be worn in the HC, Criminal Court.
- (2) A SI shall set out the form of robe to be worn in all courts.

#### **51. Barrister’s Fee**

- (1) Any common law restriction on a barrister suing for his fee, is abolished.

#### **52. Chief Justice’s Report**

- (1) After consulting Senior Courts judges, the CJ shall submit an annual report to:
  - (a) the [Minister of Justice/LC]; and to
  - (b) Parliament (Legal Affairs Committee).
- (2) The report shall indicate areas of English law where the CJ believes that:
  - (a) the court system might be further improved so as to expedite the process of justice;
  - (b) consolidation of legislation would be useful;
  - (c) potentially obsolete (or spent) legislation or common law material should be reviewed, for removal;
  - (d) common law material should be placed in legislation;
  - (e) reports reviewing areas of English law might, usefully, be issued by the Law Commission;
  - (f) there are log jams in the court process;
  - (g) court procedure and rules could be simplified;
  - (h) there are other concerns of a technical nature.

#### **53. Publication of Information relating to Private Proceedings**

- (1) The publication of information relating to proceedings before any court sitting in private shall not, of itself, be contempt of court except in the following cases, that is to say where the:
  - (a) proceedings:
    - (i) relate to the exercise of the inherent jurisdiction of the HC with respect to minors; or
    - (ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or
    - (iii) otherwise relate wholly or mainly to the maintenance, or upbringing, of a minor.

<sup>207</sup> In the *Crown Act*, it is provided for the UK Great Seal to be abolished.

<sup>208</sup> This would enable to CJ to improve the ‘snail’s pace of law reform’.

<sup>209</sup> This assumes that the magistrates’ courts are not merged into the HC.



(b) proceedings are brought under the Mental Capacity Act 2005 or under any provision of the Mental Health Act 1983] authorising:

- (i) an application or reference to be made to the First-tier Tribunal, or
- (ii) the Mental Health, or
- (iii) a Review Tribunal for Wales, or
- (iv) the county court;

(c) court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;

(d) information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without prejudice to (1), the publication of the text or a summary of the whole (or part) of an order made by a court sitting in private shall not:

- (a) of itself,
- (b) be contempt of court
- (c) except where the court (having power to do so) expressly prohibits the publication.

(3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting *in camera* or in chambers.

(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court).

#### **54. Repeals**

(1) The legislation **Schedule 21** is repealed.

#### **55. Supplementary**

(1) Any legislation or common law matter attendant on, or consequential to, sections 32-7 may be:

- (a) repealed;
- (b) abolished; or
- (c) amended,

by a SI.

#### **56. Interpretation**

(1) In this Act:

- (a) ‘*BOT*’ refers to a British Overseas Territory;
- (b) ‘*CJ*’ means the Lord Chief Justice;
- (c) ‘*devolution matter*’ means:

(i) a question referred to the SC under ss 99 or 112 of the Government of Wales Act 2006 or s 33 of the Scotland Act 1998 or s 11 of the Northern Ireland Act 1998;

(ii) a devolution issue as defined in Sch 9 to the Government of Wales Act 2006 or Sch 6 to the Scotland Act 1998 or Sch 10 to the Northern Ireland Act 1998.

- (d) ‘*Foreign Country*’ for the purposes of this Act refers to a country not the UK or a BOT;
- (e) ‘*judicial office holder*’ means as defined in s 109(4) of the Constitutional Reform Act 2005);
- (f) ‘*LC*’ means the Lord Chancellor;
- (g) ‘*JCPC*’ means the Judicial Committee of the Privy Council;
- (h) ‘*MR*’ means the Master of the Rolls;
- (i) ‘*SI*’ refers to a statutory instrument;
- (j) ‘*UK*’ refers to the United Kingdom.

#### **57. Application**

This Act applies to Scotland and Northern Ireland.

**Schedule 1: Appointment etc of Senior Judges**

**Schedule 2: Divisions of the CA**

**Schedule 3: Divisions and Courts of the HC**

Criminal Court  
Family Court  
Admiralty Court

Commercial Court  
 Administrative Court  
 Technology and Construction Court  
 Bankruptcy Court  
 Companies Court  
 Patents Court

**Schedule 4: Due Constitution****Schedule 5: Rules of Court****Schedule 6: Judicial Assistance****Schedule 7: Powers of the HC****Schedule 8: Process for Criminal Appeals from the CA to the SC****Schedule 9: Process for Criminal Appeals from the HC to the SC****Schedule 10: Process for Appeals to the HC****Schedule 11: Jurisdiction of the HC****Schedule 12: Appeals re Contempt of Court and Habeas Corpus****Schedule 13: Transfer of Jurisdiction of the JCPC**

- (1) The jurisdiction of the JCPC to hear an appeal:
- (a) from the disciplinary committee of the Royal College of Vets, shall pass to the HC;
  - (b) against a scheme of the church commissioners under the Mission and Pastoral Measure 2011, shall pass to the HC;
  - (c) *from an admiralty court in a BOT in respect of prize, shall pass to the HC; (obs)*
  - (d) from the Arches Court of Chancery (or Chancery Court of York), shall pass to the CA;
  - (e) from a court of a BOT, or from any other foreign country, shall pass to the SC;
  - (f) in respect of any other matter, shall pass to the SC or as transferred by an SI.
- (2) The:
- (a) House of Commons Disqualification Act 1975, s 7; and the
  - (b) Veterinary Surgeons Act 1966, s 17,

shall be amended to refer to the High Court instead of the JCPC.

**Schedule 14: Obsolete Courts**

1. The following are abolished, as described, the:

- (a) courts referred to in the Administration of Justice Act 1977, sch 4, parts 1, 2 and 3;
- (b) Court of the Chamberlain of the City of London;
- (c) Court of the Duchy Chamber of Lancaster;
- (d) High Court of Chivalry;
- (e) Cinque Ports Court of Admiralty;
- (f) Courts of the Vice-Admirals of the Coast;
- (g) Court of the Lord High Steward;
- (h) Court of Claims;
- (i) Court of Attachment (40 Days Court) of the New Forest;
- (j) Court of Attachment (40 Days Court) of the Forest of Dean;
- (k) Court of the Verderers of the Forest of Dean (also, called the Court of Swainmote or Swanimote of the Forest of Dean);
- (l) Barmote courts of the High Peak and Wirksworth;
- (m) judicial jurisdiction of the:
  - (i) Royal Court of Shepway; and
  - (ii) the Court of Brotherhood and Guestling,

without prejudice to the right of the same to ceremonially assemble in order to elect a Lord Warden of the Cinque Ports.

2. In the case of the court:

- (a) in 1(a), any jurisdiction of any court referred to in parts 1-3 shall pass to the:
  - (i) county court in the case of civil jurisdiction;
  - (ii) magistrates' court in the case of criminal jurisdiction.

Further, the abolition of any manorial court shall not affect any manor being held, legally, to be such;

- (b) in 1(d), any armorial jurisdiction it has shall transfer to the HC;
- (c) in 1(e), any admiralty jurisdiction it has shall transfer to the HC, Admiralty Division;
- (d) in 1(h), the persons who shall have the right to personally attend the sovereign at his (her) coronation, shall be set out in a SI.

**Schedule 15: Judicial Appointments Commission****Schedule 16: Judicial Appointments and Conduct Ombudsman****Schedule 17: Law Commission****Schedule 18: District Registry****Schedule 19: Probate Registry****Schedule 20: Lord Chancellor (abolish)****Schedule 21: Repeals**

## 7. TEXT OF GOVERNMENT ACT

### 1. INTRODUCTION

Because the UK has an unwritten constitution - one which has grown organically as well as all government, originally, being centred in the sovereign - there is a large degree of uncertainty and ambiguity. Indeed, such a statement is, really, a polite way of saying that almost no one knows what the UK constitution *is* - since it is a jumble of common law principles and scraps of legislation, some 85% of both of which is out of date. Thus, it has all the hall marks of Gormenghast *viz.*

- old conventions and traditions which no one is quite sure of, which are performed by rote;
- a stack of sinecures and quaint titles and terms;
- a failure to stipulate in legislation even the most basic organs of government - such as the Cabinet and the role of the PM.

Thus, such a constitution is open to much abuse. In older times, this may not have been problematic. Today - with the march of dictatorships around the world - it certainly is. That said, it is possible to re-state matters relatively easily, when shorn of obsolete material. There is no need to re-invent the wheel. As for a *draft Act*, the following may be noted:

- **Cabinet.** This was the smaller version of the privy council, created by Charles II (1660-85) because he found the latter too cumbersome. As a result, the *privy council* should be abolished because all that it does should, actually, be performed by the cabinet (and a few ministries). Thus, legislation should recognise that the cabinet is the highest organ of government. Further, at present, there is no stipulation as to number of persons which the cabinet should comprise - whether maximum or minimum. It could just comprise the PM (something which a recent Australian PM seems to have been working towards). Or it might contain 200 people - including the PM's entire family. Common sense - and good government - necessitates that some boundaries should be fixed.
- **Prime Minister (PM).** The PM, also, is not recognised in legislation; rather a disastrous thing. However, manifestly this role should be. It was, effectively, created in 1717 when George I (1714-27) no longer sat as head of his cabinet. Instead, a '*prime*' (senior) minister (servant) was appointed to exercise this role and to govern for him - including the exercise of all the CP's which the former possessed. Today, it should be clarified that the PM should be an MP and the head of the ruling political party. Also, that the same should sit in the HC and not the HL. Further, it should be clarified that the *sovereign* - who is now only a formal Head of State - has no right to appoint, dismiss (or accept the resignation of) the PM. This is to prevent the covert exercise of power by a sovereign, when the legal right has gone (since 1717).
- **Ministers.** Ministers were, originally, the household secretaries of the sovereign. That is, scribes. People who handled his communications - both personal and government (his '*secrets*'). However, they are now appointed and dismissed by the PM at his discretion. This should be reflected in legislation - as well as the maximum and minimum number who may sit in cabinet. Also, they should be MP's (if not, they could be foreigners, as has happened). Further, it should be clarified that the cabinet is a *corporation aggregate*. Thus, cabinet ministers are bound to work together, to try to reach a common *consensus* (also, they are bound to secrecy).
- **Ministries.** These have been eviscerated by quangos (see below) in that, at present, they are almost empty vessels (of power). This is, in part, due to the fact that ministries have no basic legal structure. Manifestly, they should have. Thus:
  - each ministry should be a corporation aggregate, with a board structure;
  - the minister should be head of the board (i.e. chairman). The other members should be junior ministers or business experts;
  - the only civil servant on the board should be the permanent secretary in that ministry.

Over time, the true role of *civil servants* has been wholly forgotten, with civil servants, these days, taking executive decisions when their actual role - for centuries - has been that of *secretaries*. That is, carrying out the wishes of the ministries not - as today - virtually running government with ministers being almost transient nuisances. Such has become the root of the malaise of good government in the UK - and in other countries. It is the death knell of accountability to Parliament and of democracy.

- **Quangos.** These are, mainly, a late 20<sup>th</sup> century invention, and a disaster. They comprise quasi-autonomous organisations which are funded or controlled (to a greater or lesser extent) by ministries. They have proved to be a

disaster, however, since a large number of them have *no legal structure at all*, despite being responsible for the huge expenditure of taxpayer's money (c. £ 220bn). The result is that neither Parliament - nor government - are cognisant of how many quangos there are (probably, c. 550). Further, many quangos have no corporate (board) structure. Thus, how they function is unclear. Further, many quangos have civil servants (or ex-civil servants) sitting on them - even though quangos are meant to be independent in terms of decision making (which is the rationale for their not being part of ministries). Legislation, therefore, should (a) define quangos; (b) make them accountable; and (c) reduce their number because, if retained in their present volumes, there is *very little point in having any ministries*.

- **Civil Service.** Because the nature - and role - of the civil service has scarcely been recognised in legislation and because the roles of cabinet, the PM, ministers and ministries have, also, not (or have scarcely) been recognised in legislation, the role of the civil service has changed *post-WW2*. This to the great detriment of open, transparent and effective government. In Victorian times - and up to WW2 - the civil service was famed for *its skills, impartiality and a dedicated performance of its essential function. That is, ensuring that the will of the Cabinet was implemented*. Thus, the legal and practical structure of government, *pre-WW2* was as follows:

Cabinet	told ( <i>via</i> the Cabinet Office)
Ministries	what to do. Their ministers, then, told.
Civil Servants	to effect this.

However, post WW-2, this (transparent) structure has degenerated into one in which civil servants are close to performing *executive* functions, when this is **not** their role. Their role is **secretarial** and **administrative** only. That is, undertaking the relevant *administrative* functions required to fulfil the will of the cabinet. The effect of this subtle transition has been a marked loss of impartiality - as well as the loss of accountability of the civil service to ministers and to cabinet.<sup>210</sup>

Civil servants cannot be blamed. The clear blame must be laid at the door of a (distinct) failure of UK legislation to specify and define, in particular, the *nature and role* of the civil service. This can be (easily) achieved in a *Government Act*.

The above matters deal with **central government**. However, provision should, also, be made in a *Government Act* for the following:

- **Local Government.** Legislation on local government is excessive and piecemeal. This can be dealt with by consolidation and it is not discussed here. However, a *Government Act* should consider a reduction in the *number* of local councils in the UK, since there are - in England in particular - an excessive number, impeding administration and good government.
- **Armed Forces.** These had prominence because of the role of the sovereign as C-in-C. In particular, their present board structure is very antiquated (like that of the Treasury). Material on the former could be inserted into an *Armed Forces Act*, however (although I have placed it, for the present, in a *Government Act*).
- **Emergency Services.** The emergency services (police, fire, ambulance) originated at different historical periods (for example, the police originated in 1829 with the last local police being disbanded (in Hove) in 1898). Today, these emergency services all work together very closely - given the need for speed of service and the inter-relatedness of the activities which they perform. Consolidation, therefore, would seem requisite (essential).

***In conclusion, a draft Government Act should deal with all the above. Such would not be difficult. The intention should also be to incorporate all other legislation relating to government (of which there is, actually, surprisingly little).***

<sup>210</sup> This has not been helped by ministers, often, changing ministries with a speed akin to a child's game of 'musical chairs'.

**GOVERNMENT ACT**

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

**Contents****Part 1 : Central Government****Cabinet**

1. Cabinet

**Cabinet Office**

2. Cabinet Office and Prime Minister's Office

**Political Parties**

3. Election of Leaders

**Prime Minister (PM)**

4. Formal Appointment  
5. Membership of House of Commons  
6. Resignation or Death  
7. Hung Parliament  
8. Vacating Office  
9. Prerogative of Sovereign  
10. Notification

**Acting PM**

11. Appointment  
12. Role  
13. No Right of Succession  
14. Notification.

**Deputy PM**

15. Appointment  
16. Role  
17. No Right of Succession  
18. Notification

**Cabinet Ministers**

19. Appointment *etc*  
20. Membership of House of Commons  
21. Size of the Cabinet  
22. Secrecy  
23. Precedence, Style and Title  
24. Prerogative of Sovereign  
25. Notification

**Junior Ministers**

26. Appointment *etc.*  
27. Membership of House of Commons *or House of Lords*  
28. Number of Junior Ministers  
29. Precedence, Style and Title  
30. Application

**Ministers**

31. Salaries and Pensions  
32. Corporation Sole  
33. Ministerial Functions

**Government**

34. The term the '*Government*'  
35. Governmental Acts  
36. Accountability  
37. Execution of Government Documents

**Ministries**

- 38. Nature
- 39. Boards
- 40. Functions
- 41. Responsibility
- 42. Consolidation of Legislation
- 43. Form of Legislation

**Quangos**

- 44. List
- 45. Cabinet Office Consent
- 46. Boards

**Civil Service**

- 47. Civil Service Minister
- 48. Civil Service Board
- 49. Purpose
- 50. Accountability
- 51. Operation
- 52. Handbook

**Law Officers**

- 53. Appointment
- 54. Changes
- 55. Salaries
- 56. Additional Posts
- 57. Obsolete Crown Prerogatives

**Treasury Solicitor**

- 58. Title
- 59. Nature

**Public Offices**

- 60. List
- 61. Appointment *etc*

**Part 2: Local Government**

- 62. Principal Councils
- 63. Community Councils

**Part 3: Armed Forces**

- 64. Joint Forces Command Board
- 65. Code
- 66. Handbook

**Part 4: Emergency Services**

- 67. Emergency Services
- 68. England
- 69. Wales
- 70. Scotland
- 71. Northern Ireland

**Part 5: General**

- 72. Old Treasury Board
- 73. Old Board of Trade
- 74. Number 10 Downing Street
- 75. Statutory Instruments
- 76. Repeals
- 77. Interpretation
- 78. Application

### Schedules

1. Physical or Mental Incapacity of the PM
2. Precedence, Style and Titles of Cabinet Ministers
3. Precedence, Style and Titles of Junior Ministers
4. Names of Ministries
5. Civil Service
6. Powers of the Treasury Solicitor
7. Principal Local Councils
8. Statutory Instruments
9. Repealed Legislation

### Part 1: Central Government

#### Cabinet

#### 1. Cabinet

- (1) The Cabinet is the highest executive organ of government.
- (2) The Cabinet is a corporation aggregate, the:
  - (a) Prime Minister (the 'PM') being the head; and
  - (b) Cabinet Ministers, the body.
- (3) The Cabinet bears collective responsibility for its actions to Parliament (representing the nation).
- (4) As head of the Cabinet, the PM is *primus inter pares* (first among equals) and has sole discretion to:
  - (a) appoint;
  - (b) dismiss; and
  - (c) accept the resignation of

Cabinet Ministers, according to ss 19 and 14 and Junior Ministers according to ss 26 and 14.

#### 2. Cabinet Office

- (1) The Cabinet Office ('CO') is the administrative office of the Cabinet.
- (2) The CO is responsible for communicating the decisions of the Cabinet to Ministers and Ministries.
- [(3) The Prime Minister's Office is part of the CO].<sup>211</sup>

### Political Parties

#### 3. Election of Leaders

- (1) The leader of each political party in Parliament shall be elected by the:
  - (a) majority of the members of that political party
  - (b) exercising a free vote.

### Prime Minister

#### 4. Formal Appointment

- (1) The sovereign shall formally appoint as PM:
  - (a) the leader of the political party
  - (b) that commands an overall majority of MPs in the HC.

#### 5. Membership of House of Commons

- (1) The PM must be a member of the HC.
- (2) *A PM, even if entitled to sit in the HL, shall sit in the HC while PM.*<sup>212</sup>

#### 6. Resignation or Death of PM

- (1) If a PM resigns, or dies, while s 4(1)(b) prevails, the sovereign shall formally appoint as PM:

<sup>211</sup> The precise relationship of the PM's office to the CO is unclear.

<sup>212</sup> Not required if the HL is abolished.

- (a) the person elected by the members of his political party
- (b) to be his successor.

### **7. Hung Parliament**

(1) If s 4(1)(b) does not apply at any time (that is, the case of a ‘hung’ Parliament where no one party commands an overall majority of MPs in the HC) the incumbent PM shall:

- (a) tender his formal resignation (and that of his government);
- (b) to the sovereign.

(2) The incumbent PM may delay tendering his resignation (and that of his government) in (1) until:

- (a) the first meeting of a new session of Parliament
- (b) in order for him to determine whether his political party can command an overall majority of MP’s in the HC.

(3) If the PM:

- (a) cannot command an overall majority of MP’s in the HC by the time of the first meeting of a new session in Parliament in 2(a); or
- (b) his government suffers defeat [*on the address of the sovereign*]<sup>213</sup> at the first meeting of a new session of Parliament,

he (and his government) are dismissed and the sovereign shall:

- (c) formally appoint as PM
- (d) the leader of the largest opposition political party in the HC.

### **8. Vacating Office**

(1) A PM must vacate the office of PM, and leave 10 Downing Street, [3] days after:

- (a) his party has lost a general election pursuant to s 4(1);<sup>214</sup>
- (b) his resignation;
- (c) the occurrence of s 7(3)(a) or (b);
- (d) his not being head of a coalition government;
- (e) the physical, or mental, incapacity of the PM while in office has been held to have occurred pursuant to **Schedule 1**.

### **9. Prerogative of Sovereign**

(1) Any personal prerogative of the sovereign to:

- (a) appoint;
- (b) recommend the appointment of;
- (c) dismiss; or
- (d) accept the resignation of,

the PM is abolished.

### **10. Notification**

(1) The PM, on his:

- (a) election pursuant to s 3, or
- (b) resignation; or
- (c) dismissal pursuant to s 7(3), or
- (d) his not being head of a coalition government,

shall formally notify the sovereign and details shall be published in the Official Gazette.

### **Acting Prime Minister**

### **11. Appointment**

- (1) The PM shall appoint an Acting PM, who may be the Deputy PM.
- (2) On the occurrence of (1), details shall be published in the Official Gazette.

### **12. Role**

(1) An Acting PM shall act as the PM where there is any delay between the appointment of a successor to the PM, including in

<sup>213</sup> The need for a formal Address could be abolished, if an Address is no longer read by the sovereign.

<sup>214</sup> This is to prevent him (and his party) clinging on to government.



the event of:

- (a) the resignation, or death, of the PM;
- (b) any delay in the formation of a coalition government;
- (c) the physical, or mental, incapacity of the PM.

(2) An Acting PM does not need <sup>215</sup> to be a Cabinet Minister.

(3) An Acting PM cannot dismiss a Cabinet Minister or a Junior Minister.

### **13. No Right of Succession**

(1) An Acting PM has no right of succession.

### **14. Notification**

(1) The appointment, dismissal (and acceptance of the resignation of) an Acting PM shall be by means of a formal letter in writing issued by the CO which:

- (a) bears the letterhead of the CO;
- (b) is dated; and
- (c) is signed by the PM.

### **Deputy Prime Minister**

### **15. Appointment**

(1) At his sole discretion, the PM may appoint a Deputy PM.

(2) On the occurrence of (1), details shall be published in the Official Gazette.

### **16. Role**

(1) A Deputy PM must be a Cabinet Minister.

### **17. No Right of Succession**

(1) A Deputy PM has no right of succession.

### **18. Notification**

(1) Section 14 shall apply to the Deputy PM.

### **Cabinet Ministers**

### **19. Appointment etc**

(1) At his sole discretion, the PM may appoint a person to be a minister in the Cabinet (a 'Cabinet Minister').

### **20. Membership of House of Commons**

(1) Cabinet Ministers must be members of the HC or *the HL*.<sup>216</sup>

### **21. Size of the Cabinet**

(1) There shall be a maximum number of [25], and a minimum number of, [12], Cabinet Ministers.

### **22. Secrecy**

(1) Cabinet Ministers may only take up office on:

- (a) giving a written legal commitment to the CO;<sup>217</sup>
- (b) to maintain secret all Cabinet proceedings.

### **23. Precedence, Style and Title**

(1) The PM, at his sole discretion, may determine, and change, the:

- (a) precedence
- (b) style; and
- (c) title(s),

<sup>215</sup> Alternatively, 'does need' to be a cabinet minister.

<sup>216</sup> Today, it would seem appropriate that Cabinet Ministers be members of the HC.

<sup>217</sup> It is an issue whether this should be a binding legal commitment enforceable in a court or not.

of a Cabinet Minister.

- (2) The precedence, styles and titles of Cabinet Ministers presently comprise those referred to in **Schedule 2, Part A**.
- (3) The titles referred to in **Schedule 2, Part B** shall be abolished.
- (4) The titles referred to in **Schedule 2, Part C** shall be altered as designated.
- (5) All references in any Act of Parliament 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.<sup>218</sup>

#### **24. Prerogative of Sovereign**

(1) Any personal prerogative of the sovereign to:

- (a) appoint;
- (b) recommend the appointment of;
- (c) dismiss; or
- (d) accept the resignation of.

a Cabinet Minister is abolished.

#### **25. Notification**

(1) Section 14 shall apply to Cabinet Ministers.

#### **Junior Ministers**

#### **26. Appointment etc.**

(1) At his sole discretion, the PM may appoint a person a minister other than to the Cabinet (a '**Junior Minister**').

#### **27. Membership of the House of Commons or House of Lords**

(1) Junior Ministers must be members of the HC or the HL.

#### **28. Number of Junior Ministers**

(1) There shall be a maximum number of [ ] Junior Ministers.

#### **29. Precedence, Style and Title**

(1) The PM, at his sole discretion, may determine, and alter, the:

- (a) precedence
- (b) style; and
- (c) title(s),

of Junior Ministers.

- (2) The precedence, style and titles of Cabinet Ministers presently comprise those referred to in **Schedule 3, Part A**.
- (3) The titles referred to in **Schedule 3, Part B** shall be abolished.
- (4) The titles referred to in **Schedule 3, Part C** shall be altered as designated.
- (5) Section 23(5) shall apply to Junior Ministers.

#### **30. Application**

(1) Sections 14 and 24 shall apply to Junior Ministers.

#### **Ministers**

#### **31. Salaries and Pensions**

- (1) The salaries and pensions of Ministers and other officers shall be set out in a SI.<sup>219</sup>
- (2) The provisions of [ ] shall be set out in a SI.<sup>220</sup>

<sup>218</sup> Cf. Ministers of the Crown Act 1975.

<sup>219</sup> See **Schedule 5**.

<sup>220</sup> This will set out the Ministers of the Crown Act 1975, sch 1 (*provisions applying to certain ministers and their departments*), where required. See **Schedule 5**.

**32. Corporation Sole**

- (1) Each Minister is a corporation sole.
- (2) Ministers shall execute legal and other documents by signing the same, as Minister.
- (3) All ministerial seals are abolished.<sup>221</sup>

**33. Ministerial Functions**

- (1) A SI [*or the PM in writing*] may:
  - (a) create, abolish or change the title of a Minister;
  - (b) create, abolish or change the functions of Minister;
  - (c) transfer to any Minister any functions previously exercisable by another Minister;
  - (d) direct that functions of any Minister shall be exercisable concurrently with that of another Minister (or shall cease to be so exercisable.);
  - (e) provide for the delegation of any function of a Minister.

**Government****34. The term the 'Government'**

- (1) The term the '*Government*' shall refer, collectively, to:
  - (a) the PM; and
  - (b) Ministers
- (2) The Cabinet is a corporation aggregate, the:
  - (a) Prime Minister (the '**PM**') being the head; and
  - (b) all Ministers, the body.

**35. Governmental Acts**

- (1) All acts performed by the Government comprise '*Governmental Acts*.'

**36. Accountability**

- (1) The Government is accountable to Parliament for all Governmental Acts and it:
  - (a) shall no longer be treated as part of the Crown; and
  - (b) it is not accountable to the sovereign [or the Crown] for any Governmental Act.
- (2) The sovereign [and the Crown]<sup>222</sup> are not accountable for any Governmental Act.
- (3) Any legal fiction that the PM or any Minister:
  - (a) is accountable
  - (b) for any Governmental Act of the sovereign [or the Crown];
 is abolished.

**37. Execution of Government Documents**

- (1) *Any document to be executed under the Great Seal shall be executed in accordance with the Crown Act, s [ ].*<sup>223</sup>
- (2) *Any proclamation shall be executed in accordance with the Crown Act, s [ ].*<sup>224</sup>
- (3) Any SI shall be signed by a:
  - (a) Cabinet Minister and a Junior Minister; or
  - (b) two Junior Ministers,
 of the Ministry (or the CO) which has drafted the SI.
- (4) Any orders, commissions or warrants or other legal documents formerly required to be executed:

<sup>221</sup> Seals were only used to cope with illiteracy and most Ministers are now literate and can sign their own name.

<sup>222</sup> When all CPs are abolished, this legal fiction is not required. The Crown means the sovereign as head of a body aggregate, such as Parliament, privy council, cabinet, CoE. It is intended that legislation now deal with all these matters. And, that the *privy council* be abolished and that the sovereign no longer be the head of the *CoE*. Thus, in the end, the '*Crown*' shall bear the same meaning as in old times - being a reference to Parliament (the Crown in Parliament, also, called the legislature).

<sup>223</sup> It is proposed that this be abolished in a '*Crown Act*'.

<sup>224</sup> *Ibid.*

- (a) under the royal sign manual; or
- (b) to evidence the royal pleasure which are not within (a),

shall be executed by two Junior Ministers of the Ministry (or the CO) which has drafted the same.

(5) The sovereign [and the Crown] shall no longer be involved in the making, or execution of any Government document

- (a) referred to (1)-(4); or
- (b) containing any Governmental Act,

save where legislation, or a SI, provides otherwise.

### **Ministries**

#### **38. Nature**

(1) Ministries are executive organs of government subordinate to the Cabinet.

(2) Each Ministry shall be headed by a Minister.

(3) Each Ministry is a corporation aggregate, the

- (a) Minister being the head; and
- (b) and the board of the Ministry, the body.

#### **39. Boards**

(1) Each Ministry shall have a board of directors.

(2) The name of the board shall reflect that of the Ministry (such as '*Finance Ministry Board*') and it shall be approved by Cabinet.

(3) The board of each Ministry shall:

- (a) comprise no more than 9 directors, including the chairman and the CEO;
- (b) save where CO determines otherwise.

(4) The chairman of the board shall be the Minister.

(5) The secretary to the board shall be the Permanent Secretary of that Ministry.

(6) Each Ministry shall have no more than 7 divisions, save where the CO determines otherwise.

(7) Present Ministries comprise those in **Schedule 4**.

(8) There shall be a maximum number of [25] ministries.

(9) Subject to (10), the PM, at his sole discretion, may change the title of any Ministry.

(10) All Ministry titles shall be kept as simple as possible, to assist the general public.

#### **40. Functions**

(1) Each Ministry shall exercise the functions set out in SI.

(2) A SI may provide for:

- (a) the dissolution of any Ministry;
- (b) the creation of any new Ministry;
- (c) a transfer of functions from one Ministry to another;
- (d) a Ministry to have new functions;
- (e) a Ministry to have a change in functions.

#### **41. Responsibility**

(1) All Ministries shall:

(a) on their websites:

- (i) list all general legislation and SI's for which they are responsible;
- (ii) list all quangos, Public Corporations, and any other agencies, public bodies or organisations which they fund or for which they are responsible;
- (iii) provide other useful data so as to enable a reader to obtain a comprehensive overview of the Ministry, how it is structured and how it operates, as well as statistical information.

- (b) publish, in an annual Ministerial Handbook:
  - (i) the text of all general legislation and SI's for which they are responsible (excluding repealed matter);
  - (ii) the data in (1)(a).

#### **42. Consolidation of Legislation**

- (1) All Ministries must consolidate all general legislation for which they are responsible into one (or more) consolidation Acts.
- (2) Subsequent to (1), further review and consolidation must be undertaken every 5 years.
- (3) All Ministries must consolidate all SI's for which they are responsible:
  - (a) into one (or more) SI's (of, up to, 800 sections),
  - (b) commencing with the earliest.
- (4) Subsequent to (3), further review and consolidation must be undertaken every 3 years.

#### **43. Form of Legislation**

- (1) Legislation shall bear simple titles, so that their purport may be readily understood.
- (2) Preambles in legislation shall kept brief, where possible.
- (3) In the case of criminal legislation, the standard wording for any indictment, and the punishment for the crime:
  - (a) shall be set out in a Schedule to the relevant Act or in a SI,
  - (b) to permit easier amendment.

### **Quangos and Public Corporations**

#### **44. List**

- (1) A SI, and a government website, shall list, annually, all:
  - (a) quasi-autonomous non-governmental organisations ('quangos');
  - (b) statutory corporations which have a Government function;<sup>225</sup>
  - (c) chartered corporations which have a Governmental function.
- (2) The corporations referred to in 1(b) and (c) shall be called 'Public Corporations'.

#### **45. Cabinet Office Consent**

- (1) No new quangos or Public Corporations shall be created without the consent of the CO.

#### **46. Boards**

- (1) All quangos and Public Corporations shall have a board of management.
- (2) No board of any of (1) shall have no more than 9 directors, including the chairman and the CEO, without the consent of the CO.
- [(3) No civil servant shall sit on the board of any quango or Public Corporation other than in a secretarial capacity.]<sup>226</sup>
- (4) From time to time, by means of an SI, the number of (1) may be:
  - (a) increased;
  - (b) reduced; or
  - (d) have their titles changed,

regardless of any other provision made in Legislation.<sup>227</sup>

<sup>225</sup> i.e. so called public corporations.

<sup>226</sup> The intention should be that all quangos (where still required) become public corporations and that no civil servant sits on the board of the same (or is connected to the same) since public corporations are independent of government.

<sup>227</sup> The Public Bodies Act 2011 is an excruciating piece of legislation seemingly designed to make it as difficult as possible to get rid of quangos while pretending to do the opposite.

### Civil Service

#### 47. Civil Service Minister

- (1) The PM shall be the Civil Service Minister.

#### 48. Civil Service Board

- (1) There shall continue to be a Civil Service Board ('CSB').
- (2) The chairman of the CSB shall be a Cabinet Minister.
- (3) The CEO of the CSB shall be the Cabinet Secretary.
- (5) The CSB shall have no more than 9 directors (including the chairman and the CEO) without the consent of the CO.
- (6) The CSB shall have the following 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.

#### 49. Purpose

- (1) The purpose of the civil service is to provide administrative and secretarial assistance to:
- (a) the cabinet;
  - (b) the CO;
  - (c) Ministries;
  - [(d) *quangos*;
  - (e) *Public Corporations*.]<sup>228</sup>
- (2) In the case of (1), 'assistance' includes providing:
- (a) factual data; and
  - (b) a range of possible options and outcomes in respect of any decisions taken, or which are being considered to be taken, by 1 (a)-(e).
- (3) The purpose of the civil service is not to:
- (a) take executive or operational decisions affecting government; these shall be taken by (1)(a)-(e);
  - (b) instruct (1)(a)-(e) as to what to do.

#### 50. Accountability

- (1) The civil service is accountable to:
- (a) the CSB;
  - (b) the Civil Service Minister; and
  - (c) Parliament.
- for all Governmental Acts which it performs.
- (2) The civil service:
- (a) shall no longer be treated as part of the Crown;
  - (b) is not accountable to the sovereign [or the Crown] for any Governmental Act.<sup>229</sup>

#### 51. Operation

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

<sup>228</sup> It is suggested that all quangos be abolished, with those still needed becoming Public Corporations and that the latter have no civil servants.  
<sup>229</sup> As it is, the role of the sovereign is purely formal now. And the 'Crown' is a legal fiction which, effectively refers to the sovereign when head of a body aggregate (such as Parliament). Thus, like ministers, all civil servants should be accountable to Parliament.

(e) user-friendly.

(2) Schedule 5 shall apply to the Civil Service.<sup>230</sup>

## **52. Handbook**

(1) The civil service shall publish, annually, a Civil Service Handbook ('CSH').

(2) The CSH shall contain:

- (a) general legislation and SI's on the civil service;
- (b) a list of the Ministries and the organisations referred to in s 44;
- (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 51.

(2) With regard to 2(f) the same shall include details of:

- (a) general legislation and SI's relating to the civil service that may be consolidated or repealed;
- (b) organisations referred to in s 44 which may be consolidated or abolished;
- (c) internal units and offices of the civil service which may be consolidated or abolished;
- (d) real property and major assets of the civil service which may be sold or dispensed with.

## **Law Officers**

### **53. Appointment**

(1) The PM, at his sole discretion, shall appoint:

- (a) an Attorney General (the 'A-G'); and a
- (b) Deputy Attorney General ('Deputy A-G'),

which shall be called, together, the 'Law Officers'.

(2) Section 14 shall apply to the Law Officers.

### **54. Changes**

(1) The title of 'Solicitor-General' shall change to that of 'Deputy Attorney-General'.

(2) The Office of the Solicitor-General shall merge with that of the A-G.

### **55. Salaries**

(1) The salaries of the A-G, and Deputy A-G, shall be set out in a SI.

### **56. Additional Posts**

(1) The A-G, or Deputy A-G, may, also, hold the post of Advocate-General for NI.

(2) The A-G shall hold the office of the same in respect of the:

- (a) *duchy of Lancaster*; and the<sup>231</sup>
- (b) *duchy of Cornwall*, and

the franchises of attorney-general and solicitor general to these duchies are abolished.

### **57. Obsolete Crown Prerogatives**

(1) The following are abolished, any Crown prerogative:

- (a) for the A-G to stay legal proceedings by asserting *nolle prosequi*;
- (b) to claim trial at bar in civil proceedings;
- (c) *for the A-G, or Deputy A-G, to attend the HL at the opening of Parliament.*<sup>232</sup>

<sup>230</sup> This will set out the Constitutional Reform and Governance Act 2010, ss 1-18, where still needed.

<sup>231</sup> This assumes the duchy is retained.

<sup>232</sup> This may not be needed if the HL is abolished.

### **Treasury Solicitor**

#### **58. Title**

- (1) The ‘*Solicitor for the Affairs of Her Majesty’s Treasury*’ shall, now, be called the Treasury Solicitor (the ‘TS’).
- (2) The title ‘*Queen’s Proctor*’ shall be abolished and the TS shall assume the office of the same.

#### **59. Nature**

- (1) The TS is a corporation sole; the need for a seal is abolished.
- (2) The powers of the TS are set out in **Schedule 6**.<sup>233</sup>

### **Public Offices**

#### **60. List**

- (1) A SI shall set out every other public office other than those referred to in this Act, together with the appointee to the same.

#### **61. Appointment**

- (1) Any person appointed to a public office shall be appointed, dismissed and their resignation accepted, by way of signed writing and any legal obligation (whether at common law or pursuant to legislation) to appoint by:

- (a) the delivery of a seal of office;
- (b) warrant under the sign manual;
- (c) commission under the sign manual and signet;
- (d) oral declaration of the sovereign

is abolished and, in particular, all:

- (i) governors, lieutenant governors and commissioners of British Territories shall be appointed, dismissed and have their resignation accepted, by the Foreign Minister (or designate);
- (ii) persons commissioned in the Armed Forces shall be appointed, dismissed and have their resignation accepted, by the Defence Minister (or designate);
- (iii) all Judges<sup>234</sup> shall be appointed, dismissed and have their resignations accepted by the CJ.

### **Part 2: Local Government**

#### **62. Principal Councils**

- (1) The councils in the UK referred to in **Schedule 7** shall be re-organised as follows, there shall be in:

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

as specified in a SI.

- (2) All councils referred to in **Schedule 7** shall now 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 council referred to in **Schedule 7** 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.

<sup>233</sup> This will set out the Treasury Solicitor Act 1976, ss 1-6 without reference to the sovereign and in a more modern form.

<sup>234</sup> The definition will cross-refer to the *Courts Act*.



**63. Community Councils**

(1) Community councils in the UK referred to in a SI 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 in s 62(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.

**Part 3: Armed Forces**<sup>235</sup>**64. Joint Forces Command Board**

(1) The Joint Forces Command Board (‘**JFCB**’) shall have no more than 9 directors including the chairman and CEO, without the consent of the CO.

(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 CO.

**65. Code**

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

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

**66. Handbook**

(1) The MOD shall publish an annual Armed Forces Handbook which shall include:

- (a) the Code referred to in s 65(1), as amended;
- (b) all SI relating to the armed forces;
- (c) other useful data, statistics and information on the armed forces.

**Part 4: Emergency Services****67. Emergency Services**

(1) The Emergency Services shall be re-organised as specified in ss 68-71.

**68. 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<sup>236</sup> in England shall have the same 7 geographical divisions as specified in a SI, but no regions.

**69. Wales**

(1) There shall be one national police service in Wales (called ‘**Police Wales**’), with 4 geographical divisions, into which the

<sup>235</sup> This material could be placed in an *Armed Forces Act*.

<sup>236</sup> It would be better if these NHS trusts were consolidated into 6 corporate boards.

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.<sup>237</sup>

#### **70. Scotland**

(1) The National Police Service of Scotland shall continue to be called ‘**Police Scotland**.’ It shall have 7 geographical divisions.

(2) The Scottish Fire and Rescue Service shall continue to be called ‘*Fire and Rescue Scotland*.’ It shall have 7 geographical divisions.

(3) The following shall become part of Police Scotland, pursuant to a SI:

- (a) MOD police in Scotland;
- (b) British Transport Police in Scotland;
- (c) Civil nuclear constabulary in Scotland.

(4) Police Scotland, the Scottish Fire and Rescue Service and the Scottish Ambulance Service (NHS Scotland) shall have the same 7 geographical divisions specified in a SI, but no regions.<sup>238</sup>

#### **71. Northern Ireland**

(1) The Police Service of Northern Ireland shall continue to be called ‘**Police Northern Ireland**.’ It shall have 3 geographical Divisions but no regions.

(2) The Northern Ireland Fire and Rescue Service shall continue to be called ‘**Fire and Rescue Northern Ireland**.’ It shall have 3 geographical divisions but no regions.

(3) The following shall become part of Police Northern Ireland, pursuant to a SI, the:

- (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.<sup>239</sup>

### **Part 5: General**

#### **72. Old Treasury Board**<sup>240</sup>

(1) The old Board of the Treasury is abolished.

(2) The Treasury shall have a board pursuant to s 39.

(3) The chairman of the board in (2), and the head of the Treasury is the Finance Minister who shall report to the PM.

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

#### **73. Old Board of Trade**

(1) The old Board of Trade is abolished.

(2) The [Business Ministry] shall have a board pursuant to s 39.

#### **74. 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.<sup>241</sup>

#### **75. Statutory Instruments**

(1) **Schedule 8** shall apply to SI’s.

<sup>237</sup> In due course (a)-(c) could be combined into 1 Emergency Services, with 4 divisions.

<sup>238</sup> Ibid, with 7 divisions.

<sup>239</sup> Ibid, with 3 divisions.

<sup>240</sup> The Treasury is dealt with specifically since it has an (obsolete) board of trade and obsolete titles.

<sup>241</sup> This title will be abolished as obsolete.

**76. Repeals**

(1) The legislation in **Schedule 9** is repealed.

**77. Interpretation**

(1) In this Act:

- 'A-G' means the Attorney- General;
- 'Armed Forces' means [see *Armed Forces Act*];
- 'BOT' means British Overseas Territories;
- 'British Territories' means the Channel Islands and Isle of Man and BOT';
- 'Civil servant' means any person employed in a Ministry and paid out of funds provided by Parliament other than a Minister;
- 'CO' means the Cabinet Office;
- 'Emergency Services' refers to the police, fire and rescue and ambulance services of the UK;
- 'Judges' [shall bear the meaning as in the *Courts Act*];
- 'Legislation' includes SI's;
- 'Ministers' means Cabinet Ministers and Junior Ministers;
- 'Ministries' refer to those listed in **Schedule 4** and any successor;
- 'MOD' means the Ministry of Defence;
- 'NI' means Northern Ireland;
- 'PM' means the Prime Minister;
- 'Quangos' means all quasi-autonomous non-governmental organisations;
- 'Public Corporations' means all statutory and chartered corporations having a Governmental Function;
- 'SI' refers to a statutory instrument;
- 'TS' means the Treasury Solicitor;
- 'UK' refers to the United Kingdom.

**78. Application**

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

**Schedules**

1. Physical or Mental Incapacity of the PM<sup>242</sup>
2. Precedence, Style and Titles of Cabinet Ministers
3. Precedence, Styles and Titles of Junior Ministers
4. Names of Ministries
5. Civil Service
6. Powers of the Treasury Solicitor<sup>243</sup>
7. Principal Local Councils
8. Statutory Instruments
9. Repealed Legislation

**Schedule 7: Statutory Instruments<sup>244</sup>**

Statutory Instruments Act 1946	9
Statutory Instruments (Production and Sale) Act 1996 ( <i>amends</i> )	
Statutory Orders (Special Procedure) Act 1945	11
Statutory Orders (Special Procedure) Act 1965 ( <i>amends</i> )	

**Schedule 8: Repealed Legislation**

Ministerial and other Pensions and Salaries Act 1991	8 <sup>245</sup>
Ministerial and other Salaries Act 1975	6
Ministerial and other Salaries Act 1997 ( <i>amends</i> )	1
Ministers of the Crown Act 1975 <sup>246</sup>	8
Secretaries of State Act 1926 ( <i>Scots Secretary of State</i> )	1
Civil Service (Management Functions) Act 1992	3 <sup>247</sup>
Public Bodies Act 2011	33 <sup>248</sup>
Public Bodies (Admission to Meetings) Act 1960	2
Works and Public Buildings Act 1874 ( <i>deals with parks</i> )	4
Public Offices (Site) Act 1947 ( <i>spent?</i> )	

<sup>242</sup> Provision needs to be made as to how any medical physical or mental incapacity is determined.

<sup>243</sup> See s 59 and Treasury Solicitor Act 1876.

<sup>244</sup> The schedule will set out this material, where still required.

<sup>245</sup> Much material is spent and that relating to the HL (s 5) and LC (ss 1 & 3) would not be required if they are abolished.

<sup>246</sup> S. 1 (power to transfer ministerial functions); 2 (changes in depts. of office of SS or in their function), 3 (transfer of property by or to a SS); 4 (change of title of ministers), 5 (supplementary powers), 5A (C-ers of HM's customs), 6 (provisions applying to certain ministers and their depts.).

<sup>247</sup> Provides for the delegation of ministerial functions. Also, the power to authorise the exercise of functions without ministerial approval.

<sup>248</sup> See note 227 as to the inadequacy of this legislation.

Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014	40 <sup>249</sup>
Minister of Works Act 1942 ( <i>seal and style</i> )	2
Constitutional Reform Act 2005 (relating to the LC)	
Constitutional Reform and Governance Act 2010 (ss 1-18, civil service)	

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<sup>249</sup> Deals with lobbyists.